

Introduced On: May 16, 2024			
Council	Motion	Second	Vote
Sohmer		X	X
Yoon			ABSENT
Suh			X
Drumgoole			ABSTAIN
Kasofsky			X
Cervieri	X		X

Adopted On: July 11, 2024			
Council	Motion	Second	Vote
Sohmer			X
Yoon			X
Suh		X	X
Drumgoole			ABSTAIN
Kasofsky			X
Cervieri	X		X

**BOROUGH OF FORT LEE
309 Main Street
Fort Lee, New Jersey 07024**

ORDINANCE NO. 2024-9

**AN ORDINANCE AMENDING AND CHAPTER 410 ENTITLED “ZONING”
WITH REGARD TO AN AFFORDABLE HOUSING DEVELOPMENT FEE**

WHEREAS, it has been determined by the Mayor and Council of the Borough of Fort Lee that there is a need to amend Chapter 410 entitled “Zoning” to update the regulations related to an Affordable Housing Development Fee; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Fort Lee that Chapter 410 entitled “Zoning” is hereby amended and supplemented as follows:

Section 1:

§ 410-88. Affordable Housing Development Fee Ordinance.

A. Purpose.

- (1) In Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- (2) Pursuant to P.L. 2008, c. 46, Section 8 (N.J.S.A. 52:27D-329.2), and the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds

and corresponding spending plans. Municipalities that were under the jurisdiction of COAH and that are now before a court of competent jurisdiction and have a court-approved spending plan may retain fees collected from nonresidential development.

- (3) The Code of the Borough of Fort Lee is hereby amended to include the following provisions regulating the collection and disposition of mandatory development fees to be used in connection with the Borough's affordable housing programs, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985.
- (4) This Ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32 through 38 (C. 52:27D-329.1) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this section shall be used for the sole purpose of providing very low-, low- and moderate-income housing. This chapter shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.
- (5) This Ordinance shall not be effective until approved by the Court.
- (6) The Borough of Fort Lee shall not spend development fees until the Court has approved a plan for spending such fees, i.e., a Spending Plan.

B. Definitions.

AFFORDABLE HOUSING DEVELOPMENT – A development included in and approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable housing development.

COAH or THE COUNCIL – the New Jersey Council on Affordable housing established under the Fair Housing Act.

DEVELOPER – any person, partnership, association, company, or corporation that is the legal or beneficial owner of owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT FEE – money paid by a developer for the improvement of property as authorized by *Holmdel Builder's Association v. Holmdel Township*,

121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., and regulated by applicable COAH rules.

EQUALIZED ASSESSED VALUE – the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with Sections 1, 5, and 6 of P.L. 1973, c. 123 (C. 54: 1-35a through C. 54:1-35c).

GREEN BUILDING STRATEGIES – those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

C. Residential Development Fees.

- (1) Within all zoning districts, residential developers, except for developers of the types of development specifically exempted below and developers of developments that include affordable housing, shall pay a fee equal to 1.5 percent of the equalized assessed value for all new residential development provided no increased density is permitted. For residential projects involving the creation of 3 or 4 new dwelling units, a fee of \$18,000 per unit shall be imposed. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- (2) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers shall be required to pay a "bonus" development fee of 6 percent of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application. Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5 percent of the equalized assessed value on the first two units, and 6 percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

D. Nonresidential Development Fees.

- (1) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5 percent of the equalized assessed value of the land and improvements for all new nonresidential construction on an unimproved lot or lots.
- (2) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted below, shall also pay a fee equal to 2.5 percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5 percent shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvements, and such calculation shall be made at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

E. Eligible Exaction, Ineligible Exaction and Exemptions.

- (1) Eligible exactions, ineligible exactions and exemptions for residential development.
 - a Affordable housing developments and/or developments that produce affordable units, including projects permitted to make a payment-in-lieu, shall be exempt from development fees.
 - b Developments that have received preliminary or final site plan approval prior to the adoption of this Ordinance and any preceding Ordinance permitting the collection of development fees shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the Development Fee Ordinance in effect on the date that the Construction Permit is issued, regardless of the time of collection of the fee.

- c Any repair, reconstruction or improvement of a one- or two-family structure.
- d Any repair, reconstruction or improvement of a structure that is not a one- or two-family structure, the cost of which is less than 50 percent of the market value of the structure before the improvement or repair is started shall be exempt from the payment of development fees. For purposes of this sections, "market value" shall mean the equalized assessed value of the existing improvement as established by the Borough Tax Assessor. The cost of the repair, reconstruction or improvements shall be determined by an itemized construction cost estimate prepared and submitted to the Construction Official. The estimate shall be signed and sealed by an architect or professional engineer licensed by the State of New Jersey, or where no such professionals are retained, signed by the contractor or the homeowner. Where prepared by the homeowner or contractor, the Borough Engineer may review such estimates for accuracy. "Substantial improvement" is considered to commence when the first alteration of any wall, floor or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure. The term does not, however, include either:
 - [1] Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
 - [2] Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places but a development fee shall be charged for any new dwelling constructed as a replacement for a previously existing dwelling on the same lot that was or will be demolished, unless the owner resided in the previous dwelling for a period of one year or more prior to obtaining a demolition permit. Where a development fee is charged for a replacement dwelling, the development fee shall be calculated on the increase in the equalized assessed value of the new structure as compared to the previous structure.
- e Structural alterations of a structure that is not a one- or two-family structure that do not increase gross floor area of a building

or structure or increase the equalized assessed value of a property shall be exempted from paying a development fee.

- f Nonprofit organizations constructing residential projects which have received tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the Municipal Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee.
- g Federal, state, county and local governments shall be exempted from paying a development fee.
- h Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee. (This exemption applies only for the owner of record at the time of the fire, flood, or natural disaster.)

(2) Eligible exactions, ineligible exactions and exemptions for nonresidential development

- a The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the two-and-a-half-percent development fee, unless otherwise exempted below.
- b The two-and-a-half-percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- c Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in the Form N-RDF, State of New Jersey Non-Residential Development Certification/Exemption Form. Any exemption claimed by a developer shall be substantiated by that developer.
- d A developer of a nonresidential development exempted from the nonresidential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time that the basis for the exemption no longer applies and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.
- e If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt

from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Borough of Fort Lee as a lien against the real property of the owner.

- f (f) Federal, state, county and local governments of nonresidential development shall be exempted from paying a development fee.

F. Collection of fees.

- (1) Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority or entity shall notify or direct its staff to notify the construction official responsible for the issuance of a building permit.
- (2) For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF, State of New Jersey Non-Residential Development Certification/Exemption, to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- (3) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- (4) Within 90 days of receipt of that notice, the Municipal Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- (5) The construction official responsible for the issuance of a final certificate of occupancy shall notify the Municipal Tax assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.
- (6) Within 10 business days of a request for the scheduling of a final inspection, the Municipal Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

- (7) Should the Borough of Fort Lee fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of § 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).
- (8) Except as provided in C(3) above, fifty percent of the initially calculated development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

G. Appeal of development fees.

- (1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough of Fort Lee. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
- (2) A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Borough of Fort Lee. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

H. Affordable Housing Trust Fund.

- (1) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer/Treasurer of the Borough of Fort Lee for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.

- (2) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - a Payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by Ordinance or Agreement with the Borough of Fort Lee;
 - b Developer-contributed funds to make 10 percent of the adaptable entrances in a townhouse or other multistory attached dwelling development accessible;
 - c Rental income from municipally operated units;
 - d Repayments from affordable housing program loans;
 - e Recapture funds;
 - f Proceeds from the sale of affordable units; and
 - g Any other funds collected in connection with the Borough of Fort Lee's affordable housing program.
- (3) All interest accrued in the Housing Trust Fund shall only be used on eligible affordable housing activities approved by the Court.

I. Use of funds.

- (1) The expenditure of all funds shall conform to a Spending Plan approved by the Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address the Borough of Fort Lee's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartments, a market to affordable program, Regional Housing Partnership programs, conversion of existing nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, and/or any other activity as permitted by the Court and specified in the approved Spending Plan.
- (2) Funds shall not be expended to reimburse the Borough of Fort Lee for past housing activities.

- (3) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to very low-income households earning 30 percent or less of regional median household income by household size for Housing Region 1, in which Fort Lee is located.
- a Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.
 - b Affordability assistance to households earning 30 percent or less of regional median household income by household size may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The specific programs to be used for very low-income affordability assistance shall be identified and described within the Spending Plan.
 - c Payments in lieu of constructing affordable units on site, if permitted by Ordinance or by Agreement with the Borough of Fort Lee, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- (4) The Borough of Fort Lee may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- (5) No more than 20 percent of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program or a rehabilitation program. In the case of a rehabilitation program, the administrative costs of the rehabilitation shall be included as part of the 20 percent of collected development fees that may be expended on administration. Administrative funds may be used for

income qualifications of households, monitoring the turnover of sale and rental units, and compliance with the monitoring requirements set forth in the Court-approved executed Settlement Agreement with Fair Share Housing Center. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the affordable housing trust fund.

J. **Monitoring.**

- (1) On the first anniversary of the "Judgment of Compliance and Repose" or "the judicial equivalent of substantive certification", and every anniversary thereafter through the end of the repose period, the Borough agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the sources and amounts of funds collected and the amount and purpose for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and nonresidential developers, payments in lieu, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Borough-owned affordable housing units, repayments from affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.
- (2) In the event of a failure by the Borough of Fort Lee to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 N.J. Super 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the

Borough of Fort Lee or, if not practicable, then within the County or the Housing Region.

- (3) Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund or impose such other remedies as may be reasonable and appropriate to the circumstances.

K. Ongoing Collections of Fees.

- (1) The ability of the Borough of Fort Lee to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its Judgment of Compliance unless the Borough of Fort Lee has first filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a Judgment of Compliance from the Court or for Substantive Certification or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing compliance and has received approval of its Development Fee Ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.
- (2) If the Borough of Fort Lee fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its affordable housing trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (C. 52:27D-320).
- (3) The Borough of Fort Lee shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance, nor shall the Borough of Fort Lee retroactively impose a development fee on such a development. The Borough of Fort Lee also shall not expend any of its collected development fees after the expiration of its Judgment of Compliance.

Section 2. If any section or provision of this Ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the

section or provision so declared invalid shall be inseparable from the remainder of any portion thereof.

Section 3. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

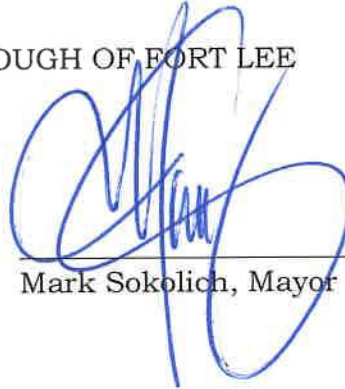
Section 4. This Ordinance shall take effect upon final adoption and publication in accordance with Law.

ATTEST:



Evelyn Rosario, RMC, CMC, MMC
Municipal Clerk

BOROUGH OF FORT LEE



Mark Sokolich, Mayor