

TOWNSHIP OF MEDFORD

ORDINANCE 2020 – 17

AN ORDINANCE ADOPTING AND ENDORSING THE AFFORDABLE HOUSING DEVELOPMENT FEE ORDINANCE FOR THE TOWNSHIP OF MEDFORD

WHEREAS, the New Jersey Supreme Court, in Mount Laurel II, ruled that each municipality in New Jersey has a constitutional obligation to provide its fair share of the region’s affordable housing needs; and

WHEREAS, in response to Mount Laurel II, the New Jersey Legislature enacted the New Jersey Fair Housing Act, which created the Council on Affordable Housing (COAH) to supervise and implement fair share affordable housing plans in New Jersey municipalities; and

WHEREAS, the New Jersey Supreme Court, in Mount Laurel IV, as a result of inaction by COAH, vested jurisdiction over municipal fair share affordable housing plans in the New Jersey judiciary; and

WHEREAS, as contemplated by the New Jersey Supreme Court’s decision in Mount Laurel IV, Medford Township, and many other municipalities, filed a Declaratory Judgement Action (DJA) in the New Jersey Superior Court, Burlington County, Law Division (the “Court”) under Docket Number L-2596-15, to establish and finalize Medford Township’s obligation for affordable housing; and

WHEREAS, Fair Share Housing Center (FSHC) a New Jersey housing advocate, intervened in Medford’s DJA; and

WHEREAS, Medford Township and FSHC reached a settlement establishing and finalizing Medford Township’s constitutional obligation for the Township’s fair share of the region’s affordable housing needs for the prior Round (1987 - 1999) and Third Round (1999 – 2025); and

WHEREAS, by adoption of Resolution 208-2016, on November 15, 2016, the proposed Settlement Agreement was approved and executed by the Township; and

WHEREAS, in order for the settlement agreement to take effect, it had to be finally approved by the Court at a “Fairness Hearing”; and

WHEREAS, at the “Fairness Hearing “ on May 3, 2017, the Court ordered the amendment of the settlement agreement to correct the calculation of credits, including group homes, in paragraphs 5 and 6, and to add a new paragraph 15A to provide that the settlement agreement expressly included any affordable housing units that were required during the “gap” period ; and

WHEREAS, the above terms were included in an Amended Settlement Agreement (the “Final Settlement Agreement”) with Fair Share Housing and executed by the Township Attorney on behalf of the Township in order to include same in the Court Order dated June 20, 2017, approving same after the Fairness Hearing on May 3, 2017; and

WHEREAS, by adoption of Resolution 130-2017 on July 5, 2017, the Township Council ratified and authorized the Township Attorney’s execution of the Amended Settlement Agreement with Fair Share Housing Center, dated May 10, 2017; and

WHEREAS, after the required public notice, and receipt and review of a report dated April 17, 2017 from the court-appointed Special Master, Phillip B. Caton, PP, FAICP, of the planning firm of Clarke, Caton and Hintz, the Court conducted the required “Fairness Hearing” to consider whether the terms of the Final Settlement Agreement were fair and reasonable to low and moderate income households of the region; to review said Final Settlement Agreement and to allow public comment on the Township’s Amended Settlement Agreement with Fair Share Housing Center; and

WHEREAS, by Court Order dated June 20, 2017 (the “Fairness Order”), the Court approved the Final Amended Settlement Agreement and ordered the Township to comply with the terms and conditions of the Special Master’s Report and the Amended Settlement Agreement; and

WHEREAS, as required by the terms of the Fairness Order above, the Township and the Medford Township Planning Board thereafter prepared a draft housing plan, spending plan, affordable housing plan and adopted Redevelopment Plans and entered into Redevelopment Agreements rezoning the Stokes Square, Tofamo and Arc Wheeler sites for affordable housing, and entered into negotiations with the owners of the Flying W property

for a Redevelopment Plan and inclusionary affordable housing development. The Township further required the developer of the commercial Hartford Square project to deed restrict a 6 acre site for a 70 unit age restricted 100% inclusionary affordable housing project to be developed by Volunteers of America, subject to tax credit financing. The Township further executed a cost-sharing sanitary sewer extension agreement for the extension of public sewer to the Arc Wheeler, Tofamo and Hartford Square affordable housing projects and has reserved Medford Township public sewer and water for said projects, and also for the Flying W property, which will be served by its own extension of Medford public sewer and water; and

WHEREAS, the Township thereafter requested the Court to conduct a compliance hearing on the Townships compliance efforts, including its draft affordable housing documents above; and

WHEREAS, due to the unavailability of the prior Court Master, Philip B. Caton, PP, FAICP, the Court appointed Mary Beth Lonergan, PP, AICPA, of the planning firm of Clarke Caton and Hintz as Medford's Special Master, effective April 1, 2019; and

WHEREAS, the Special Master then prepared and issued an updated Special Master's Compliance Report dated May 7, 2019, said report having been maintained on file for public inspection in the Township Clerk's office

WHEREAS, after the required public notice, and receipt and review of the Special Master's May 7, 2019 Compliance Report, the Court conducted an Interim Compliance Hearing on May 13, 2019, to review Medford's compliance with the terms and conditions of the original Fairness Hearing Order and the Final Settlement Agreement; and

WHEREAS, by Court Order dated June 27, 2019 (the "Interim Compliance Order"), the Court adopted the Special Master's May 13, 2019 Compliance Report and ordered the Township to address the conditions in said Report (the "Conditions"); and

WHEREAS, the conditions included the need for updated and revised documents to address many items not addressed in the Township's Prior Round Obligation (1987-1999), as well as its Third Round Obligation, consisting of both its Gap Obligation for 1999-2015) and its Prospective Need Obligation for 2015-2025; and

WHEREAS, one of the conditions was the adoption and endorsement of a new Affordable Housing Development Fee Ordinance, to replace the current

Affordable Housing Development Fee Ordinance codified in Section 905 of the Medford Township Code.

NOW, THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Medford, County of Burlington, and State of New Jersey, that Section 905 of the Medford Township Code, entitled “Development Fees for Affordable Housing is hereby repealed in its entirety and the updated and revised Affordable Housing Development Fee Ordinance is hereby endorsed and adopted by the Township Council on behalf of the Township of Medford as follows:

1. Purpose

- a) 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.
- b) Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D--8.1 through 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 are under the jurisdiction of a court of competent jurisdiction and have an approved spending plan may retain fees collected from non-residential development.
- c) Pursuant to the March 10, 2015 Supreme Court Order, the Court transferred all functions, powers, and duties of COAH to the courts.
- d) This Ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing low- and moderate-income housing.

2. Basic Requirements

- a) This Ordinance shall not become effective until approved by the Court pursuant to N.J.A.C. 5:93-8.2.
- b) The Township of Medford shall not spend development fees until the Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:93-5.1(c).

3. Definitions

- a) The following terms, as used in this ordinance, shall have the following meanings:
- i. **"Affordable housing development"** means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.
 - ii. **"COAH"** or the **"Council"** means the New Jersey Council on Affordable Housing established under the Fair Housing Act which previously had primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.
 - iii. **"Development fee"** means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.
 - iv. **"Developer"** means the legal or beneficial owner or 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.
 - v. **"Equalized assessed value"** means 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:l-35a through C.54:l-35c).
 - vi. **"Green building strategies"** means 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.

4. Residential Development Fees

- a) Imposed fees
- i. Within all Township zoning district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half percent (1.5%) of the equalized assessed value for residential development provided no increased density is permitted.
 - ii. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a density or "d" variance) has been approved, developers shall be required to pay a development fee of six percent (6%) 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 a set-aside of affordable housing units. 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.

- b) Eligible exactions, ineligible exactions and exemptions for residential development
- i. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be **exempt** from development fees.
 - ii. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be **exempt** from development fees, unless the developer seeks a substantial change in the 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 this purpose. The applicable development fee percentage shall be vested on the date that the building permit is issued.
 - iii. 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.
 - iv. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
 - v. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, which requires the issuance of a Certificate of Occupancy (for example, when a single-family home is converted to a two-family home or a single-family home is converted to an apartment building). The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
 - viii. Development fees shall be imposed and collected when a Certificate of Occupancy is issued for a new residential unit on a newly created lot that

is the result of a subdivision. The development fee shall be calculated on the equalized assessed value of the land and improvements.

- vii. Additions to existing homes and improvements such as decks, patios and like shall be **exempt** from the payment of a development fee.

5. **Non-Residential Development Fees**

a) Imposed fees

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

b) Eligible exactions, ineligible exactions and exemptions for non-residential development

- i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
- ii. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing building footprint, reconstruction, renovations and repairs.
- iii. Non-residential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, 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.

- iv. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to the development fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy for the non-residential development, whichever is later.
- v. If a property which was exempted from the collection of a non-residential 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 Township of Medford as a lien against the real property of the owner.

6. Collection Procedures

- a) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- b) For non-residential 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 non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential 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.
- c) 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.
- d) 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.
- e) The construction official responsible for the issuance of a final certificate of occupancy shall notify the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.

f) Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

g) Should the Township of Medford 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 section 37 of P.L.2008, c.46 (C.40:55D-8.6).

h) Fifty percent (50%) of the 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.

i) Appeal of development fees:

i) 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 Township of Medford. 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, R.S.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.

ii) A developer may challenge non-residential 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 Township of Medford. 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, R.S.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.

7. Affordable Housing Trust Fund

a) There is a separate, interest-bearing housing trust fund to be maintained by the chief financial officer of the Township for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

- i) payments in lieu of on-site construction of affordable units;
- ii) developer-contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
- iii) net rental income (after payment of expenses) from municipally operated units;
- iv) repayments from affordable housing program loans;
- v) recapture funds;
- vi) proceeds from the sale of affordable units; and
- vii) any other funds collected in connection with the Township of Medford's affordable housing program.

c) Within seven days from the opening of the trust fund account, the Township of Medford shall provide COAH and/or the Department of Community Affairs (“DCA”) with written authorization, in the form of a three-party escrow agreement between the Township, the bank, and COAH and/or DCA to permit COAH and/or DCA to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8.19.

d) All interest accrued in the housing trust fund shall only be used to fund eligible affordable housing activities approved by the Court.

8. Use of Funds

a) The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the housing trust fund may be used for any activity approved by the Court to address the Township of Medford'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 apartment and market to affordable programs, conversion of existing non-residential 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, or any other activity as permitted pursuant to N.J.A.C. 5:93-8.16 and specified in the approved spending plan.

b) Funds shall not be expended to reimburse the Township of Medford for past affordable housing activities.

c) At least thirty percent (30%) of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third (1/3rd) of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty percent (30%) or less of median income by region.

- i. 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.
- ii. Affordability assistance to households earning 30 percent or less of median income 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.
- iii. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

d) The Township of Medford may contract with a private or public entity to administer any part of its amended Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:93-8.16(d).

e) No more than twenty percent (20%) 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. In the case of a rehabilitation program, no more than twenty percent (20%) of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, compliance with the monitoring requirements set forth in the Court-approved May 10, 2017 executed Settlement Agreement with Fair Share Housing Center. Legal or other fees related to litigation opposing affordable housing sites or objecting to the COAH's regulations and/or action are not eligible uses of the affordable housing trust fund.

9. Monitoring

a) On or about May 10 of each year through 2025, the Township of Medford shall provide reporting of trust fund activity to the DCA, Local Government Services (LGS), 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 DCA, COAH, or LGS. This reporting shall include an accounting of all housing trust fund activity, including the collection of

development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Township of Medford's housing program, as well as in connection with the expenditure of revenues and implementation of the plan approved by the Court.

10. Ongoing Collection of Fees

a) The ability for the Township of Medford to impose, collect and expend development fees shall expire with the end of the repose period covered by its judgment of compliance unless the Township of Medford has filed an adopted Housing Element and Fair Share Plan with the Court or with a designated administrative entity of the State of New Jersey, has petitioned for a judgment of compliance or substantive certification, and has received approval of its development fee ordinance by the entity that will be reviewing the Housing Element and Fair Share Plan.

b) If the Township of Medford 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 municipal 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). The Township of Medford shall not impose a development fee on a development that receives preliminary or final site plan approval after the expiration of its judgment of compliance and repose, nor shall the Township of Medford retroactively impose a development fee on such a development. The Township of Medford shall not expend any development fees after the expiration of its judgment of compliance.

REPEALER, SEVERABILITY AND EFFECTIVE DATE

- A. Any and all Ordinances and provisions thereof inconsistent with the provisions of this Ordinance shall be and are hereby repealed to the extent of such inconsistency
- B. If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision and the remainder of this ordinance shall be deemed valid and effective.
- C. This Ordinance shall take effect immediately upon final passage and publication according to law.