

Ordinance 2004-28

BOROUGH OF HIGHTSTOWN
 COUNTY OF MERCER
 STATE OF NEW JERSEY

AN ORDINANCE OF THE BOROUGH OF HIGHTSTOWN ESTABLISHING A REQUIREMENT FOR THE PAYMENT OF DEVELOPMENT FEES, AND AMENDING AND SUPPLEMENTING CHAPTER 26, "LAND USE PROCEDURES," OF THE "REVISED GENERAL ORDINANCES OF THE BOROUGH OF HIGHTSTOWN, COUNTY OF MERCER, NEW JERSEY," IN ORDER TO ESTABLISH A NEW SECTION THEREOF TO BE KNOWN AS SECTION 26-10, "MANDATORY DEVELOPMENT FEES."

WHEREAS, in the case of Holmdel Builder's Association vs. 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, 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 appropriate rules; and

WHEREAS, such fees may be imposed upon developers and collected by municipalities relative to new construction, and may only be utilized for the provision of affordable housing; and

WHEREAS, in order to implement the collection and expenditure of such fees, municipalities must adopt an Ordinance that complies with COAH's regulations, and receive approval from COAH as to the contents of the Ordinance and the proposed expenditure of the anticipated funds; and

WHEREAS, the Borough of Hightstown is aware of the critical need for affordable housing within the State of New Jersey, and is committed to the provision of affordable housing within the Borough and within its housing region; and

WHEREAS, the Borough is currently seeking substantive certification from COAH as to its housing element and fair share plan, relative to the Borough's affordable housing intentions; and

WHEREAS, the Borough believes that it would be beneficial to enact a Development Fees Ordinance in order to provide the Borough with an additional means to obtain funding for the provision of much-needed affordable housing, both within the Borough and within the Borough's region; and

INTRO DATE: 11/1/04							ADOPT DATE: 11/15/04						
	Move	2nd	Aye	Nay	Abstain	Absent		Move	2nd	Aye	Nay	Abstain	Absent
HOLTZCLAW		✓	✓										✓
LAUDENBERGER			✓							✓			
QUATTRONE			✓				✓			✓			
SCHNEIDER			✓					✓		✓			
SIKORSKI	✓		✓							✓			
THOMPSON			✓							✓			
PATTEN													

ADVERTISE INTRO: 11/4/04

ADVERTISE ADOPT: 11/18/04

EFFECTIVE DATE:

WHEREAS, the Borough believes that adoption of the within Ordinance is in the best interests of the health, safety and welfare of the Borough and its residents.

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED, by the Borough Council of the Borough of Hightstown, in the County of Mercer and State of New Jersey, that the Borough hereby establishes a requirement for the payment of development fees within the Borough of Hightstown, in accordance with the provisions set forth in the within Ordinance.

BE IT FURTHER ORDAINED, that Chapter 26, "Land Use Procedures," of the "Revised General Ordinances of the Borough of Hightstown, Mercer County, New Jersey," is hereby amended and supplemented in order to establish a new Section 26-10, thereof, to be entitled "Mandatory Development Fees," as follows:

Section 26-10 MANDATORY DEVELOPMENT FEES.

Subsection 26-10-1. Purpose.

In the case of Holmdel Builder's Association vs. 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, 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 appropriate rules. The purpose of this Ordinance is to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules. Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing low and moderate income housing. This Ordinance shall be interpreted within the framework of COAH's rules on development fees.

Subsection 26-10-2. Definitions.

The following terms shall have the meanings indicated:

- a. "COAH" means the New Jersey Council on Affordable Housing.
- b. "Development fees" means money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules.
- c. "Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal tax assessor.
- d. "Judgment of Compliance" means a judgment issued by the Superior Court approving a municipality's housing element and fair share plan in accordance with the provisions of the Fair Housing Act and the rules and criteria as set forth herein. A grant of substantive certification shall be valid for a period of ten years in accordance with the terms and conditions therein.

Subsection 26-10-3. Residential Development Fees.

- a. Within all residential districts of the Borough of Hightstown, developers shall pay a development fee of one-half of one percent (1/2 of 1%) of the equalized assessed value of the residential development, provided no increased density is permitted.
- b. If a "d" variance is granted pursuant to N.J.S.A. 40:55d-70(5), then the additional residential units realized (above that which is permitted by right under the existing zoning) will incur a bonus development fee of six percent (6%) rather than the development fee of one half of one percent (1/2 of 1%). However, if the zoning on a site

has changed during the two-year period preceding the filing of the “d” variance application, the 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 “d” variance application.

Subsection 26-10-4. Non-Residential Development Fees.

a. Developers within the Borough of Hightstown shall pay a fee of one percent (1%) of the equalized assessed value for nonresidential development in the Borough of Hightstown.

b. If a “d” variance is granted pursuant to NJSA 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six percent (6%) rather than the development fee of one percent (1%). However, if the zoning on a site has changed during the two-year period preceding the filing of the “d” variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two year period preceding the filing of the “d” variance application. The development fee may be based on either the equalized assessed value for nonresidential development or the appraised value utilized on the document for construction, whichever is greater.

Subsection 26-10-5. Exemptions.

a. Developers of low and moderate income units shall be exempt from paying development fees.

b. Developers that have received preliminary or final Approval(s) prior to the effective date of this Ordinance shall be exempt from paying a development fee unless the developer seeks a substantial change in the approval.

Subsection 26-10-6. Collection of Fees.

a. Developers shall pay fifty percent (50%) of the calculated development fee to the Borough of Hightstown at the time of issuance of a building permit. At the time of issuance of a Certificate of Occupancy, the appropriate development fee shall be based on one of the options in N.J.A.C. 5:93-8-13. The developer shall be responsible for paying the difference between the fee calculated at building permit and that paid at issuance of the Certificate of Occupancy.

Subsection 26-10-7. Housing Trust Fund.

a. There is hereby created an interest bearing housing trust fund for the purpose of receiving development fees from all residential and nonresidential developers. All development fees paid by developers pursuant to this Ordinance shall be deposited into this fund. No money shall be expended from the housing trust fund unless the expenditure conforms to a spending plan approved by COAH.

b. If COAH determines that the Borough of Hightstown is not in conformance with COAH’s rules on development fees, COAH is authorized to direct the manner in which all development fees collected pursuant to this Ordinance shall be expended. Such authorization is pursuant to: this Ordinance, COAH’s rules on development fees and the written authorization from the Borough of Hightstown to the depository in which the housing trust fund is located.

Subsection 26-10-8. Use of Funds.

a. Money deposited in the housing trust fund may be used for any activity approved by COAH for addressing the Borough of Hightstown’s low and moderate income housing obligation. Such activities may include, but are not necessarily limited to: housing rehabilitation, new construction, regional contribution agreements, the purchase

of land for low and moderate income housing, extensions and/or improvements of roads and infrastructure to low and moderate income housing sites, assistance designed to render units for more affordable to low and moderate income households and administrative costs necessary to implement the Borough of Hightstown's housing element. The expenditure of all money shall conform to a spending plan approved by COAH.

b. At least thirty percent (30%) of the revenues collected shall be devoted to render units more affordable. Examples of such activities include, but are not limited to: down payment and closing cost assistance, low interest loans and rental assistance.

c. No more than twenty percent (20%) of the revenues collected each year shall be expended on administrative costs necessary to develop, revise or implement the housing element. Examples of eligible administrative activities include: personnel, consultant services, space costs, consumable supplies and rental or purchase of equipment directly associated with plan development or plan implementation.

d. Development fee revenues shall not be expended to reimburse the Borough of Hightstown for housing activities that preceded a first or second round substantive certification.

Subsection 26-10-9. Expiration of Ordinance.

This Ordinance shall expire if:

- a. COAH dismisses or denies the Borough of Hightstown's petition for substantive certification;
- b. COAH revokes substantive certification of or this Ordinance;
- c. The substantive certification/judgment of compliance expires prior to the Borough of Hightstown's filing of an adopted housing element with COAH or the Court, petitioning of a third round substantive certification and receiving COAH's approval of this Ordinance.
- d. For urban aid municipalities, when COAH's approval to collect development fees expires.

BE IT FURTHER ORDAINED, that if any sentence, paragraph or section of this ordinance, or the application thereof to any persons or circumstances shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any sentence, paragraph or section of this ordinance shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of this ordinance.

BE IT FURTHER ORDAINED, that this ordinance shall become effective immediately upon final passage and publication in accordance with the law, but not before approval is received from COAH.

BE IT FURTHER ORDAINED, that all other Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

ATTEST:

Candace B. Gallagher
Municipal Clerk

Robert F. Patten
Mayor