

ORDINANCE 2016-28

*Borough of Metuchen
County of Middlesex
State of New Jersey*

AN ORDINANCE TO REPEAL ARTICLE 7 (RESIDENTIAL DEVELOPMENT FEES) IN CHAPTER 87 (FEES) AND TO REPEAL ARTICLE 14A (DEVELOPMENT FEES FOR RESIDENTIAL DEVELOPMENT) IN CHAPTER 110 (LAND DEVELOPMENT) OF THE CODE OF THE BOROUGH OF METUCHEN AND TO ENACT ARTICLE 14B (DEVELOPMENT FEES) IN CHAPTER 110 (LAND DEVELOPMENT) OF THE BOROUGH OF METUCHEN TO ADOPT A COMPLIANT DEVELOPMENT FEE ORDINANCE IN ACCORDANCE WITH N.J.S.A. 52:27D-329.1, ET SEQ.

BE IT ORDAINED by the Mayor and Council of the Borough of Metuchen as follows:

SECTION 1. Article 7 (Residential Development Fees) in Chapter 87 (Fees) of the Code of the Borough of Metuchen is hereby repealed.

SECTION 2. Article 14A (Development Fees for Residential Development) in Chapter 110 (Land Development) of the Code of the Borough of Metuchen is hereby repealed.

SECTION 3. Article 14B (development fees) in Chapter 110 (Land Development) of the Code of the Borough of Metuchen is hereby enacted to read as follows:

ARTICLE 14B-DEVELOPMENT FEES

§110-55.8 - 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 is 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 the Council or Court of competent jurisdiction and have an approved spending plan may retain fees collected from non-residential development.
- c) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance with 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. This ordinance shall be interpreted within the framework of COAH's prior round rules on development fees, codified at N.J.A.C. 5:93-8. and 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).

§110-55.9 - Basic requirements

- a) This ordinance shall not be effective until approved by the Court.
- b) The Borough of Metuchen 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).

§110-55.10 - Definitions

- a) "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.
- b) "COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Fair Housing Act.
- c) "Development fee" means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.
- d) "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.
- e) "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. 54:1-35a through C. 54:1-35c).
- f) "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.

§110-55.11 - Residential Development fees

- a) Imposed fees

- i. Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half percent 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 “d” variance) has been permitted, developers may be required to pay a development fee of six percent of the equalized assessed value for each additional unit that may be realized. 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 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 fee percentage shall be vested on the date that the building permit is issued.
 - iii. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, unless the owner resided in the previous dwelling for a period of one year or more prior to obtaining a demolition permit, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved or replaced structure as compared to the previous structure.
 - iv. Homes replaced as a result of a natural disaster (such as a fire or flood) shall be exempt from the payment of a development fee.

§110-55.12 - 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 below, shall pay a fee equal to two and one-half (2.5) percent 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 below, shall also pay a fee equal to two and one-half (2.5) percent 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 pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time 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 footprint, reconstruction, renovations and repairs.
 - iii. Non-residential developments shall be exempt from the payment of non-residential 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 it at such time 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 of 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 non-residential development fees under these circumstances may be enforceable by the Borough of Metuchen as a lien against the real property of the owner.

§110-55.13 - 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 notifies 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 of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- g) Should Metuchen 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) Except as provided in §110-55.12(a)(iii), above, fifty (50) percent 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

- 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 Metuchen. 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.
- 2) 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 Borough of Metuchen. 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.

§110-55.14 - Affordable Housing Trust Fund

- a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer of the Borough of Metuchen 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:
 1. payments in lieu of on-site construction of affordable units;
 2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
 3. rental income from municipally operated units;
 4. repayments from affordable housing program loans;
 5. recapture funds;
 6. proceeds from the sale of affordable units; and

7. any other funds collected in connection with Metuchen's affordable housing program.
- c) Within seven days from the opening of the trust fund account, the Borough of Metuchen shall provide the State of New Jersey, Department of Community Affairs, Division of Local Government Services with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and NJDCA-LGS to permit NJDCA-LGS to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8.15, 8.18 and 8.19. This requirement shall be deemed to have been satisfied by a previously executed three-party escrow agreement with COAH, provided the bank remains the same as in the original agreement.
 - d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

§110-55.15 - 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 Department to address the Borough of Metuchen'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, market to affordable, or regional housing partnership 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 Borough of Metuchen for past housing activities.
- c) At least 30 percent 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 of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent 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 Borough of Metuchen may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance.
 - e) 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. In the case of a rehabilitation program, no more than 20 percent 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, and compliance with the reporting and monitoring requirements that have been approved by the Court. Legal or other fees related to litigation opposing affordable housing sites or objecting to or appealing Court's approval of Metuchen's Housing Element and Fair Share Plan are not eligible uses of the affordable housing trust fund.

§110-55.16 – Monitoring

On an annual basis commencing with the first anniversary of the entry of the Order granting a Final Judgment of Compliance and Repose to Metuchen, the Borough of Metuchen shall report all activity in connection with its Affordable Housing Trust Fund to the New Jersey Department of Community Affairs (either the Division of Local Government Services or the Council on Affordable Housing (COAH), whichever entity is designated by the State of New Jersey), with a copy provided to Fair Share Housing Center and to the Intervenors/Defendants in *In the Matter of the Application of the Borough of Metuchen*, Docket No.: MID-L-4012-15, and with a posting of same on the municipal website, using forms previously developed for this purpose by COAH. The reporting shall include all sources and amounts collected/earned and the amounts and purposes for which funds have been expended.

§110-55.17 - Ongoing collection of fees

- a) The ability for the Borough of Metuchen to impose, collect and expend development fees shall expire with its Judgment of Compliance and Repose unless the Borough of Metuchen has filed an adopted Housing Element and Fair Share Plan with the Court or with COAH or its successor agency designated by the State of New Jersey, has petitioned for a Judgment of Compliance and Repose or substantive certification, and has received the Court's or COAH's approval of its development fee ordinance. If the Borough of Metuchen fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose, 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 Borough of Metuchen 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 and Repose, nor shall the Borough of Metuchen retroactively impose a development fee on such a development. The Borough of Metuchen shall not expend development fees after the expiration of its Judgment of Compliance and Repose.

SECTION 4. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION 5. If any portion of this ordinance shall be determined to be invalid, such determination shall not affect the validity of the remaining portions of said ordinance.

SECTION 6. This ordinance shall take effect upon final passage and publication in accordance with law and upon filing with the Middlesex County Planning Board.

Introduction: October 17, 2016

Date of Publication: October 21, 2016

COUNCILMEMBER	YES	NO	NV	AB	COUNCILMEMBER	YES	NO	NV	AB
LEIBFRIED	X				MULDOON	X			
GRAYZEL	X				RASMUSSEN	X			
INSERRO	X				WALLACE	X			
MOTION	MULDOON			SECOND			RASMUSSEN		
X - INDICATES VOTE				AB- ABSENT			NV- NOT VOTING		

I hereby certify the foregoing to be a true copy of an ordinance introduced by the Borough Council of the Borough of Metuchen, Middlesex County, New Jersey at a regular meeting held on October 17, 2016

Susan D. Jackson, RMC
Borough Clerk

Adopted:

Date of Publication of Adoption:

COUNCILMEMBER	YES	NO	NV	AB	COUNCILMEMBER	YES	NO	NV	AB	
LEIBFRIED					MULDOON					
GRAYZEL					RASMUSSEN					
INSERRO					WALLACE					
MOTION					SECOND					
X – INDICATES VOTE					AB- ABSENT			NV- NOT VOTING		

I hereby certify the foregoing to be a true copy of an ordinance adopted by the Borough Council of the Borough of Metuchen, Middlesex County, New Jersey at a regular meeting held on November 7, 2016

 Susan D. Jackson, RMC
 Borough Clerk

BOROUGH OF METUCHEN

ATTEST:

APPROVED:

 Susan Jackson, Borough Clerk

 Peter Cammarano, Mayor