

BOROUGH OF NORWOOD

ORDINANCE NO. 17:03

**An Ordinance Amending Chapter 233 of the Code of the
Borough of Norwood Establishing Development Fees
and a Trust Fund for Affordable Housing**

WHEREAS, the purpose of this ordinance is to amend the Boroughs Code to update the Borough's development fee ordinance and affordable housing trust fund ordinance to better protect the public health, safety, and welfare, of the residents of the Borough.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Norwood as follows:

Section 1: The Code of the Borough of Norwood shall be amended to include in Chapter 233 titled Zoning, a revised Article XII "Affordable Housing Trust Fund" (§233-90 to 233-98.1), to state as follows:

Article XII, Affordable Housing Development Fees and Trust Fund.

233-90. 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 "FHA"), 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) ("Development Fee Act"), 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, such as the Borough of Norwood, that were or are under the jurisdiction of COAH, or a court of competent jurisdiction, and that had approved spending plans and were authorized to retain fees collected from non-residential and residential developer.

- C. This ordinance ratifies and confirms the standards for the collection, maintenance, and expenditure of development fees in the Borough after the expiration of the COAH regulations. All fees collected pursuant to this ordinance will be used only for the purpose of providing low- and moderate-income housing or otherwise advancing the Borough's compliance with its affordable housing obligations.

233-91. Basic Requirements.

- A. This ordinance is to be effective retroactively to the expiration of the regulations approved by COAH pursuant to the Development Fee Act and the FHA.
- B. The Borough will continue to spend development fees in accordance with its approved plan for spending these fees.

233-92. Definitions.

The following terms, as used in this ordinance, shall have the following meanings:

- 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. “Borough” means the Borough of Norwood.
- C. “COAH” means the New Jersey Council on Affordable Housing.
- D. “Construction” means new construction and additions, but does not include alterations, reconstruction, renovations, and repairs as those terms are defined under the State Uniform Construction Code promulgated pursuant to the “State Uniform Construction Code Act” P.L., 1975, c.217 (C.52:27D-119 et seq.).
- E. “Development Fee” means funds paid by an individual, person, partnership, association, company, or corporation for the improvement of property in the Borough pursuant to the Development Fee Act, this ordinance, and the FHA.
- F. “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.
- G. “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).
- H. “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.

- I. "Mixed Use Development" means any development which includes both a non-residential development component and a residential development component, and shall include developments for which (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including but not limited to lots separated by a street, a river, or another geographical feature.
- J. "Non-Residential Development" means: (1) any building or structure, or portion thereof including but not limited to any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code promulgated to effectuate the "State Uniform Construction Code Act," P.L. 1975, c.217 (C.52:27D-119 et seq.), including any subsequent amendments or revisions thereto; (2) hotels, motels, vacation timeshares, and child-care facilities, and (3) the entirety of all continuing care facilities within a continuing care

retirement community which is subject to the “Continuing Care Retirement Community Regulation and Financial Disclosure Act,” P.L. 1986, c.103 (C52:27D-330 et seq.).

- K. “Non-Residential Development Fee” means the fee authorized to be imposed pursuant to the Development Fee Act.
- L. “Residential Development” means any development in the Borough that includes one or more residential dwelling units and that is not a mixed use development.
- M. “Residential Developer” means any person obtaining approval for a residential development in the Borough.

233-93. Residential Development Fees.

- A. Imposed Fees.
 - i. Within the R-40, R-22.5, R-10, R-7.5, and TH zoning districts, or in any other zoning district in which a developer is granted variance approval under N.J.S.A. 40:55D-70(d) for the construction of a building or buildings including a residential dwelling or dwellings, residential developers shall pay a fee of one and one-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 “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.

- iii. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced with new construction, or is expanded by and addition to an existing structure, if the expansion is not otherwise exempt from the development fee requirement.
- iv. Fees for the construction of new buildings not existing will be based on the equalized assessed value of the land and improvements.
- v. Fees for the construction of additions to existing buildings will be based on the increase in the equalized assessed value resulting from the additions.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one percent of the equalized assessed value on the first two units; and the specified higher percentage up to six 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.

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 the Borough's development fee ordinance on November 5, 2008 will continue to 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 is vested on the date that the building permit is issued.

233-94. Construction Procedures for Residential Development Fees.

- A. Upon the grant of a preliminary, final, or other applicable approval for a residential development, the approving authority will direct its staff to notify the construction official responsible for the issuance of a building permit.
- B. 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 residential development that is subject to a development fee.

- C. 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 residential development.
- D. The construction official responsible for the issuance of a final certificate of occupancy will notify the local assessor of any and all requests for the scheduling of a final inspection on property that is subject to a residential development fee.
- E. 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 residential development fee; and thereafter notify the developer of the amount of the fee.
- F. If the Borough fails to determine or notify the residential developer of the amount of the residential development fee within 10 business days of the request for final inspection, the residential 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).
- G. Fifty percent of the residential development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected before 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. No

certificate of occupancy may be issued until the developer pays the required residential development fee.

233-95. Non-residential Development Fees.

- A. In all zoning districts developers obtaining approval for the construction of non-residential developments and mixed use developments will pay to the Borough the 2.5% non-residential development fee required by the Development Fee Act.
- B. Imposed Fees.
 - i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted by the Development Fee Act, 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 by the Development Fee Act, 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.

C. Eligible exactions, ineligible exactions, and exemptions for non-residential development.

- i. The residential portion of a mixed-use inclusionary or market rate development will be exempt from the non-residential development fees, but the non-residential portion is subject to the two and a half (2.5) percent non-residential 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, changes in use within existing building 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 will 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 as a lien against the real property of the owner.

233-96. Collection Procedures for Non-residential Development Fees.

- A. The Borough's officials, including the construction official and assessor, will calculate and collect the non-residential development fee in accordance with the Development Fee Act.
- B. 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. The developer will also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption," which the developer will complete as per the instructions provided.

- C. The construction official shall verify the information submitted by the non-residential developer as per the instructions provide in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated final assessments as per the instructions provided in Form N-RDF.
- D. 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.
- E. 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.
- F. The construction official responsible for the issuance of a final certificate of occupancy will 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.
- G. 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.
- H. If the Borough fails 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).

- I. The non-residential development fee shall be collected before the issuance of the certificate of occupancy. No certificate of occupancy may be issued until the developer pays the required residential development fee.
- J. 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. 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.

233-97.

Affordable Housing Trust Fund.

- A. There is hereby ratified and confirmed a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing residential development fees and non-residential development fees collected from residential and non-residential developers in the Borough and the proceeds from the sales 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 the Borough's affordable housing program.

C. Within seven days from the opening of the trust fund account, the Borough shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).

D. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH, or otherwise consistent with the Borough's affordable housing spending plan and obligations.

233-98. Use of Funds.

A. The expenditure of all funds shall conform to the Borough's approved spending plan. Funds deposited in the housing trust fund may be used for any activity addressing the Borough'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 previously permitted pursuant to N.J.A.C. 5:97-8-7 through 8.9 and specified in the approved spending plan.

- B. Funds shall not be expended to reimburse the Borough 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. The use of development fees in this manner shall entitle the Borough to bonus credits pursuant to N.J.A.C. 5:96-18.
- 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 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, in accordance with N.J.A.C. 5:96-18.

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 COAH's monitoring requirements. 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.

233-98.1. Monitoring.

The Borough shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, and 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 Borough's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

Section 2: All ordinances or parts of ordinances that are inconsistent with the provisions of this ordinance are repealed, but only to the extent of any inconsistencies.

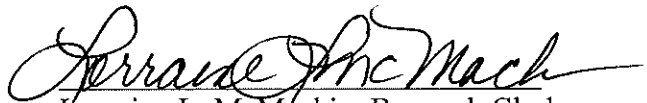
Section 3: The provisions of this ordinance are severable. If any part of this ordinance is declared to be unconstitutional or invalid by any court, the remaining parts of this ordinance will remain in full force and effect.

Section 4: This ordinance will take effect after final approval and publication in accordance with N.J.S.A. 40-49-2(d), with copies to be served on the County Planning Board and the Borough tax assessor within 30 days of adoption. This ordinance is intended to be in effect retroactively to the expiration date of the applicable regulations at N.J.A.C. 5:97-8.

Introduced and passed first reading: February 8, 2017

Passed second reading: March 8, 2017

ATTEST:


Lorraine L. McMackin, Borough Clerk

APPROVED BY:


James P. Barsa, Mayor

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