

# ORDINANCE 2016-02

*BOROUGH OF HIGHTSTOWN  
COUNTY OF MERCER  
STATE OF NEW JERSEY*

## **AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 26, ENTITLED “LAND USE”, SECTION 10, ENTITLED “MANDATORY DEVELOPER FEES”, OF THE “REVISED GENERAL ORDINANCES OF THE BOROUGH OF HIGHTSTOWN, NEW JERSEY.”**

**WHEREAS**, the Borough Planner has made certain recommendations for revisions to Chapter 26, “Land Use”, Section 10, entitled “Mandatory Development Fees” of the Borough Revised General Ordinances of the Borough of Hightstown; and

**WHEREAS**, the Borough Council has reviewed and concurs with these recommendations.

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

Section 1. Chapter 26 “Land Use”, Section 10, entitled “Mandatory Developer Fees” is hereby amended as follows (underline for additions, strikethroughs for deletions):

### **Proposed Development Fee Ordinance**

#### **26-10 MANDATORY DEVELOPMENT FEES**

##### **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 and/or approval from New Jersey Superior Court. The purpose of this Ordinance is to establish standards for the collection, maintenance and expenditure of development fees pursuant to applicable affordable housing 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 current affordable housing rules on development fees.

##### **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 current affordable housing 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 or as otherwise may be determined by the Superior Court in accordance with the terms and conditions therein.

#### **26-10-3 Residential Development Fees.**

a. Within all districts of the Borough of Hightstown, developers shall pay a development fee of one and one-half percent (1.5%) of the equalized assessed value of the residential development with an assessed value less than \$150,000 and one percent (1.0%) of the equalized assessed value of the residential development with an assessed value equal to or greater than \$150,000, provided no increased density is permitted. Notwithstanding the aforementioned, developers shall pay a development fee of one and one-half percent (1.5%) of the equalized assessed value for all rental apartments.

b. If a "d" variance is granted pursuant to N.J.S.A. 40:55d-70d, 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 and one-half percent (1.5%).

#### **26-10-4 Non-Residential Development Fees.**

a. Developers within the Borough of Hightstown shall pay a fee of two and one-half percent (2.5%) of the equalized assessed value for nonresidential development in the Borough of Hightstown, including but not limited to service uses, contractors, schools, churches. Developers shall pay a fee of two percent (2.0%) of the equalized assessed value for retail and office use development, except in those incidents where they provide and maintain outdoor eating or other similar public gathering space; such retail and office uses shall pay a fee of one and one-half percent (1.5%).

b. If a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d, 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 two and one-half percent (2.5%).

#### **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.

c. Developers who demolish and replace or renovate and re-occupy abandoned housing units shall be exempt from paying development fees, provided the number of housing units on the property does not increase.

d. Home improvements or expansions shall be exempt from development fees, provided the improvements or expansions do not create any new housing units.

e. There shall be no fee for improvements to non-residential uses when the improvements do not increase the intensity of the existing use. For instance, there shall be no fee for façade or signage improvements.

f. Development projects that are the subject of redevelopment agreements, in which case development fee obligations will be negotiated as part of the redevelopment agreement.

**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, developers shall pay the remaining portion of the fee that is owed to the Borough.

**26-10-7 Housing Trust Fund.**

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 an approved spending plan.

**26-10-8 Use of Funds.**

a. Money deposited in the housing trust fund may be used for any activity identified in the Borough's approved housing plan 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, 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 an approved spending plan.

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.

**26-10-9 Expiration of Ordinance.**

This Ordinance shall expire if:

a. the Borough of Hightstown's petition for substantive certification is dismissed or denied;

b. the Borough of Hightstown's substantive certification or this Ordinance are revoked;

**SECTION 3 Severability**

The provisions of this Ordinance are severable, and the invalidity of any section, subdivision, paragraph or other wording in this Ordinance shall not affect the validity or effectiveness of the remainder of this Ordinance.

**SECTION 4 Effective Date**

This Ordinance shall take effect upon compliance with procedures prescribed by law, including NJSA 40:55D-97 of the Municipal Land Use Law (Submission of plan and ordinances to County Planning Board for approval).

Introduced: February 1, 2016

Adopted:

ATTEST:

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Debra L. Sopronyi  
Municipal Clerk

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Lawrence D. Quattrone  
Mayor