

ORDINANCE 2021-15

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

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 26, ENTITLED “LAND USE”, SECTION 10, ENTITLED “MANDATORY DEVELOPMENT 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):

Section 26-10

MANDATORY DEVELOPMENT FEES

Subsections:

26-10-1	Purpose.
26-10-2	Definitions.
26-10-3	Residential Development Fees.
26-10-4	Non-Residential Development Fees.
26-10-5	Exemptions.
26-10-6	Collection of Fees.
26-10-7	Housing Trust Fund.
26-10-8	Use of Funds.

Subsection 26-10-1. Purpose.

This Section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH’s regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32-38 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Section shall be used for the sole purpose of providing very low-, low- and moderate-income housing.

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 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.

Subsection 26-10-3. Residential Development Fees.

a. Imposition of fees.

1. Within the Borough of Hightstown, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
2. When an increase in residential density is permitted pursuant to a “d” variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a bonus development fee of 6.0% 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 affordable housing. 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.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units; and the specified higher percentage of 6% 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

1. 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, or by redevelopment agreement or other agreement with the Borough of Hightstown, shall be exempt from the payment of development fees.
2. Developments that received preliminary or final site plan or subdivision approval prior to January 1, 2005 shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.
3. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, 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 structure.
4. No development fee shall be collected for a demolition and replacement of a residential building resulting from fire, war, or a natural disaster.

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

a. Imposition of fees.

1. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted below, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

2. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted below, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
 3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a 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.
1. The non-residential portion of a mixed-use inclusionary or market-rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.
 2. The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 3. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/ Exemption." Any exemption claimed by a developer shall be substantiated by that developer.
 4. A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the 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 of the non-residential development, whichever is later.
 5. If a property that 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 Hightstown as a lien against the real property of the owner.

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.
- 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.

Subsection 26-10-6. Collection of Fees.

- a. The Borough of Hightstown shall use the following procedures in the collection of fees:
 1. Upon the passage of the resolution of memorialization granting of a preliminary, final or other applicable approval for a development, the Planning Board Secretary shall notify the construction code official responsible for the issuance of a building permit of the approving authority's action.

2. Once all prior approvals have been obtained, the person requesting a building permit application for a non-residential development, only, shall also be provided with a copy of Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption," to be completed by the developer as part of the building permit application. The construction code official shall verify the information submitted by the non-residential developer or developer's designee. The Hightstown Borough tax assessor shall verify any requested exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
 3. The construction code official responsible for the issuance of a building permit shall notify the Borough tax assessor of the issuance of the first construction permit for a development that is subject to a development fee.
 4. Within 90 days of receipt of that notice, the Borough tax assessor shall provide an estimate, based on the plans filed, of the equalized assessed value of the development.
 5. The construction code official responsible for the issuance of a final certificate of occupancy shall notify the Borough tax assessor of any and all requests for the scheduling of a final inspection on property that is subject to a development fee.
 6. Within 10 business days of a request for the scheduling of a final inspection, the Borough tax 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.
 7. Should the Borough of Hightstown 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).
 8. Fifty percent (50%) of the development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.
- b. **Appeal of development fees.**
1. A developer may challenge residential development fees imposed by filing a challenge with the Mercer County Board of Taxation. Pending a review and determination by that board, collected fees shall be placed in an interest-bearing escrow account by the Municipal Finance Officer of the Borough of Hightstown. 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 New Jersey 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 Hightstown. 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.

Subsection 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.

Subsection 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.

Section 2. Severability. If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the Zoning Ordinance as a whole, or any other part thereof.

Section 3. Repealer. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

Section 4. Enactment. This Ordinance shall take effect upon the filing thereof with the Mercer County Planning Board after final passage, adoption, and publication by the Borough Clerk of the Borough of Hightstown in the manner prescribed by law.

Introduction:

Adoption:

ATTEST:

MARGARET RIGGIO
MUNICIPAL CLERK

LAWRENCE D. QUATTRONE
MAYOR