

**ORDINANCE NO. 22-22**

**AN ORDINANCE REPEALING SECTION 15-91.3 (DEVELOPMENT FEES FOR LOW AND MODERATE-INCOME HOUSING) OF ARTICLE VII (ADMINISTRATION, ENFORCEMENT, AND FEES) OF THE CHAPTER XV (LAND DEVELOPMENT ORDINANCES) OF THE ORDINANCES OF THE TOWNSHIP OF RANDOLPH, AND TO ENACT SECTION 15-55 (AFFORDABLE HOUSING DEVELOPMENT FEES) UNDER ARTICLE IV (SUPPLEMENTARY ZONING REGULATIONS) IN CHAPTER XV (LAND DEVELOPMENT ORDINANCES) OF THE ORDINANCES OF THE TOWNSHIP OF RANDOLPH**

**WHEREAS**, in accordance with In the Matter of the Adoption of N.J.A.C. 5:96 & 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”), the Township of Randolph filed an action for declaratory judgment requesting that the Court declare that Randolph has complied with its constitutional obligation to provide a realistic opportunity for the development of housing that is affordable to low- and moderate-income families and individuals; and

**WHEREAS**, in order to carry out such Constitutional obligation, the Ordinances of the Township of Randolph are to be amended to include provisions addressing Randolph’s constitutional obligation to provide for its fair share of low- and moderate-income housing; and

**WHEREAS**, this Ordinance is intended to update the regulations governing the collection of both non-residential and residential development fees set forth in Chapter XV of the Land Development Ordinances of the Township of Randolph as directed by the Superior Court and consistent with the statutes of the State of New Jersey (P.L.2008, C.46, Sections 8 and 32-38), the Uniform Housing Affordability Control rules (N.J.A.C. 5:80-26.1), COAH’s substantive rules (N.J.A.C. 5:93), and the Fair Housing Act (N.J.S.A. 52:27D-301. et seq.), which fees are to be used to assist the Township in satisfying its affordable housing obligation.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Randolph as follows:

**SECTION 1.** Existing Section 15-91.3 (Development Fees for Low- and Moderate-Income Housing) in Chapter XV (Land Development Ordinance) is hereby repealed.

**SECTION 2.** Section 15-55 (Affordable Housing Development Fees) under Article IV (Supplementary Zoning Regulations) in Chapter XV (Land Development Ordinances) of the Ordinances of the Township of Randolph is hereby enacted as follows:

### **Section 15-55.1. AFFORDABLE HOUSING DEVELOPMENT FEES**

#### **A. Purpose**

- 1) 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.
- 2) 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 a Court approved spending plan may retain fees collected from non-residential development.
- 3) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance 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 rules on development fees, codified at N.J.A.C. 5:93-8.

#### **B. Basic requirements**

- a) This ordinance shall not be effective until approved by the Court pursuant to N.J.A.C. 5:93-8.1(b).
- b) The Township of Randolph shall not spend development fees until the Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:93-8.9.

## **C. Definitions**

- 1) 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. "Court" or "Court approved entity" means the entity that has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State pursuant to the Supreme Court decision issued in Mount Laurel IV on March 10, 2015.
  - c. "Development fee" means money paid by a developer for the improvement of property as permitted in NJ.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.

## **D. Residential Development Fees**

- 2) Imposed fees
  - a. Within all zoning district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half (1.5) percent of the equalized assessed value for residential development provided no increased density is permitted.
  - b. 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 (6) 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.

- c. Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and a half 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.

3) Eligible exactions, ineligible exactions and exemptions for residential development

- a. 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 shall be exempt from development fees.
- b. 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.
- c. 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.
- d. Owner-occupied residential structures demolished and replaced, of equal building area or within 10% larger building area, as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.
- e. Developers of single-family residential structures which are undergoing additions and renovations shall be exempt from paying a development fee, provided the addition is less than 50% of the floor area prior to the expansion. Additions that are greater than 50% of the floor area shall be subject to the fee.

## **E. Non-Residential Development Fees**

1) Imposed fees

- a. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, 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.
- b. Non-residential developers, except for developers of the types of development specifically exempted, 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.
- c. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half (2.5) percent 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.

2) Eligible exactions, ineligible exactions and exemptions for non-residential development

- a. 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.
- b. The two and one-half (2.5) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- c. Non-residential developments shall be exempt from the payment of nonresidential 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.
- d. A developer of a non-residential development exempted from the nonresidential 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.
- e. 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 nonresidential development fees

under these circumstances may be enforceable by the Township of Randolph as a lien against the real property of the owner.

#### **F. Collection Procedures**

- 1) 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.
- 2) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDE "State of New Jersey Non-Residential Development Certification/Exemption". 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.
- 3) 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.
- 4) Within ninety (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.
- 5) The construction official responsible for the issuance of a final certificate of occupancy shall 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.
- 6) Within ten (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.
- 7) Should the Township of Randolph fail to determine or notify the developer of the amount of the development fee within ten (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 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 paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

9) Appeal of development fees

- i. 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 Township of Randolph. 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 ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
- ii. 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 forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Township of Randolph. 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 ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

**G. Affordable Housing Trust Fund**

- 1) A Development Fee Ordinance creating a dedicated revenue source for affordable housing was adopted by the Township on December 23, 2008, by way of Ordinance No. 30-2008; and subsequently amended on July 6, 2010, by Ordinance No. 10-2010. Said Development Fee Ordinance established the Township's Affordable Housing Trust Fund. All development fees and interest generated by the fees are deposited in a separate interest-bearing Affordable Housing Trust Fund at Provident Bank, located at 1185 Sussex Turnpike in the Township of Randolph, for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:93-8.16 as described in the sections that follow and is to be maintained by the Chief Financial Officer.
- 2) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  - a. Payments in lieu of on-site construction of affordable units;

- b. Developer contributed funds to make ten (10) percent of the adaptable entrances in a townhouse or other multistory attached development accessible;
- c. Rental income from municipally operated units;
- d. Repayments from affordable housing program loans;
- e. Recapture funds;
- f. Proceeds from the sale of affordable units; and
- g. Any other funds collected in connection with the Township of Randolph's affordable housing program.

- 3) The Township of Randolph shall provide the Court with written authorization, in the form of a three-party escrow agreement between the municipality, Provident Bank, and a Court approved entity to permit the Court to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8.19 and 8.20.
- 4) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

## **H. Use of Funds**

- 1) 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 Court to address the Township of Randolph'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, 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.
- 2) Funds shall not be expended to reimburse the Township of Randolph for past housing activities.
- 3) At least thirty (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 thirty (30) percent or less of median income by region.

- a. 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.
- b. Affordability assistance to households earning thirty (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 thirty (30) percent or less of median income.
- c. 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.

- 4) The Township of Randolph 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. 5:93-8.16.
- 5) 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 Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

## **I. Monitoring**

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

## **J. Ongoing Collection of Fees**

- 1) The ability for the Township of Randolph to impose, collect and expend development fees shall expire with its substantive certification unless the Township of Randolph has filed an adopted Housing Element and Fair Share Plan with the Court, has petitioned for substantive certification, and has received the Court's approval of its development fee ordinance. If the Township of Randolph fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, 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 Township of Randolph shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall the Township of Randolph retroactively impose a development fee on such a development.

**SECTION 3.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 4.** All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

**SECTION 5.** This Ordinance may be renumbered for codification purposes.

**SECTION 6.** This Ordinance shall take effect 20 days after passage and publication as provided by law.

ATTEST

TOWNSHIP OF RANDOLPH

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Donna Marie Luciani, Township Clerk

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Marie Potter, Mayor

## **LEGAL NOTICE**

### **TOWNSHIP OF RANDOLPH COUNTY OF MORRIS**

#### **ORDINANCE NO. 22-22**

Notice is hereby given that an Ordinance entitled "An Ordinance Repealing Section 15-91.3 (Development Fees for Low and Moderate-Income Housing) of Article VII (Administration, Enforcement, and Fees) of the Chapter XV (Land Development Ordinances) of the Ordinances of the Township of Randolph, and to Enact Section 15-55 (Affordable Housing Development Fees) under Article IV (Supplementary Zoning Regulations) in Chapter XV (Land Development Ordinances) of the Ordinances of the Township of Randolph " was submitted in writing at a regular meeting of the Mayor and Council of the Township of Randolph, County of Morris, State of New Jersey, held on September 1, 2022 and was introduced, read by title and passed on first reading. A Statement of Purpose of the Ordinance is contained below. The Governing Body of the Township of Randolph will further consider the Ordinance for second reading and final passage thereof at their regular meeting to be held on September 22, 2022 at 6 p.m. prevailing time, at the Municipal Building, 502 Millbrook Avenue, Randolph, New Jersey 07869, at which time and place a public hearing will be heard thereon by the Governing Body and all parties in interest and citizens shall have an opportunity to be heard concerning said Ordinance.

#### **Statement of Purpose of Ordinance**

The purpose of this Ordinance is to update the regulations governing the collection of both non-residential and residential development fees set forth in Chapter XV of the Land Development Ordinances of the Township of Randolph as directed by the Superior Court and

consistent with the statutes of the State of New Jersey (P.L.2008, C.46, Sections 8 and 32-38), the Uniform Housing Affordability Control rules (N.J.A.C. 5:80-26.1), COAH's substantive rules (N.J.A.C. 5:93), and the Fair Housing Act (N.J.S.A. 52:27D-301. et seq.), which fees are to be used to assist the Township in satisfying its affordable housing obligation.

A copy of the full Ordinance is available to any member of the general public, without cost, at the Township of Randolph, Municipal Building, Millbrook Avenue, Randolph, New Jersey, at the Office of the Township Clerk, between the hours of 9:00 a.m. and 4:30 p.m.

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Donna Marie Luciani, Township Clerk  
Township of Randolph  
County of Morris, State of New Jersey