

**ORDINANCE NO. 06-2026**

**AN ORDINANCE OF THE MAYOR AND COMMITTEE OF THE TOWNSHIP OF HARRISON, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY AMENDING ARTICLE III “AFFORDABLE HOUSING DEVELOPMENT FEES” OF CHAPTER 110 “FEES”, OF THE TOWNSHIP CODE REGARDING AFFORDABLE HOUSING DEVELOPMENT FEES**

**WHEREAS**, Harrison Township has an affirmative statutory and constitutional obligation to provide its fair share of affordable housing for low- and moderate-income households within Harrison Township; and

**WHEREAS**, in 1975, the New Jersey Courts announced in Southern Burlington County N.A.A.C.P., et al, v. Township of Mount Laurel, 67 N.J. 151 (1975), that New Jersey municipalities have a constitutional obligation to affirmatively plan and provide for its fair share of affordable housing for low- and moderate-income households; and

**WHEREAS**, the New Jersey Legislature codified this constitutional obligation in 1985 through the adoption of the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (“FHA”); and

**WHEREAS**, the New Jersey Supreme Court, in Holmdel Builders Association v. Township of Holmdel, 121 N.J. 550 (1990), approved the use of development fees as a device for meeting a municipality’s affordable housing obligations; and

**WHEREAS**, the New Jersey Legislature has adopted the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq., limiting a municipality’s authority to impose development fees on non-residential development, and setting forth specific standards and obligations with regard to the imposition and collection of development fees on non-residential development; and

**WHEREAS**, on March 20, 2024, the New Jersey Legislature adopted an amendment to the FHA, which abolished the Council on Affordable Housing (“COAH”), created an Affordable Housing Dispute Resolution Program within the Courts (the “Program”), and codified standards for complying with a municipality’s affordable housing obligation (“FHA Amendments”); and

**WHEREAS**, the Department of Community Affairs adopted regulations set forth at N.J.A.C. 5:99-1 et seq. (“Affordable Housing Regulations”), implementing the FHA Amendments and the New Jersey Housing and Mortgage Finance Agency also adopted an amendment to the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. (“UHAC”) to implement the FHA Amendments; and

**WHEREAS**, pursuant to that authority, the Township previously adopted Article III, entitled “Affordable Housing Development Fees” within Chapter 110, entitled “Fees” of the Township Code, imposing development fees on residential development and non-residential development (“Affordable Housing Development Fee Ordinance”); and

**WHEREAS**, the Affordable Housing Development Fee Ordinance must be updated to reflect the changes set forth in the FHA, the Affordable Housing Regulations and the amendments to UHAC; and

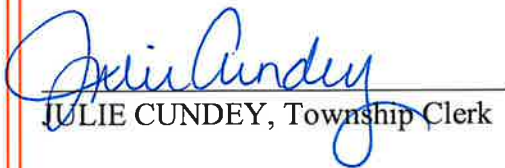
**WHEREAS**, the Township Committee has determined that it is in the best interest of Harrison Township to amend Article III, entitled “Affordable Housing Development Fees” within Chapter 110, entitled “Fees” of the Township Code to reflect the current laws as they relate to the affordable housing development fees.

**NOW THEREFORE BE IT ORDAINED** by the Township Committee of the Township of Harrison, Gloucester County, State of New Jersey, as follows:

1. Article III, entitled “Affordable Housing Development Fees” within Chapter 110, entitled “Fees” is hereby replaced in its entirety with Exhibit A attached hereto.
2. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.
3. In the event any clause, section, or paragraph of the Ordinance is deemed invalid or unenforceable for any reason, it is the intent of the Township Committee that the balance of the Ordinance remains in full force and effect to the extent it allows the Township to meet the goals of the Ordinance.
4. This Ordinance shall take effect after final adoption and publication according to law.

**ATTEST:**

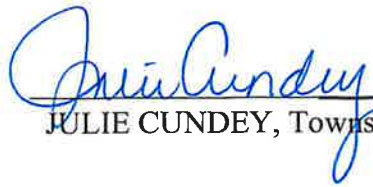
**TOWNSHIP OF HARRISON**

  
JULIE CUNDEY, Township Clerk

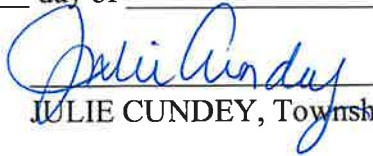
  
THOMAS COAKLEY Deputy Mayor

**PUBLIC NOTICE**

**NOTICE** is hereby given that the foregoing Ordinance was introduced and passed at a meeting of the Township Committee of the Township of Harrison, County of Gloucester, State of New Jersey, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2026, and will be considered for final passage after a public hearing at a meeting of the Township Committee of the Township of Harrison to be held on the \_\_\_ day of \_\_\_\_\_, 2026.

  
\_\_\_\_\_  
JULIE CUNDEY, Township Clerk

I hereby certify that the foregoing Ordinance was approved for final adoption by Mayor and Township Committee of the Township of Harrison, County of Gloucester, State of New Jersey at a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2026.

  
\_\_\_\_\_  
JULIE CUNDEY, Township Clerk

## Exhibit A

### Chapter 110. Fees

#### Article III. Affordable Housing Development Fees

##### § 110-5. 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, the State Constitution, and all implementing regulations.
- B. Pursuant to N.J.S.A. 52:27D-329.2(a) of the Fair Housing Act, municipalities may adopt ordinances to impose and collect development fees from developers of residential developments. In addition, the Statewide Non-Residential Development Fee Act mandates that municipalities impose and collect development fees from developers of non-residential developments.
- C. Pursuant to N.J.S.A. 52:27D-329.2, and the Statewide Non-Residential Development Fee Act, municipalities that maintain their status as a “compliant municipality,” under the Fair Housing Act and Affordable Housing Regulations may retain fees collected from non-residential development and residential developments.
- D. This article establishes standards for the collection, maintenance, and expenditure of residential development fees and non-residential development fees pursuant the Fair Housing Act, the Statewide Non-Residential Development Fee Act and the Affordable Housing Regulations. Fees collected pursuant to this article shall be used for the sole purpose of providing very-low-income units, low-income units and moderate-income unites in accordance with an approved Spending Plan. This article shall be interpreted within the framework of the Fair Housing Act and the Affordable Housing Regulations as may be amended and supplemented. In the event of a conflict between this Article and the Affordable Housing Regulations, the provisions of the Affordable Housing Regulations shall govern.

##### § 110-6. Basic requirements.

- A. The ability of Harrison Township to impose, collect and expend development fees shall continue so long as Harrison Township maintains its status as a “compliant municipality,” under the Fair Housing Act and the Affordable Housing Regulations.
- B. The Township shall not spend development fees except in conformance with a Spending Plan approved by the Court.

##### § 110-7. Definitions.

As used in this Article, the following terms shall have the following meanings:

**AFFORDABLE**

A sales price or rent within the means of a very-low-income household, low-income household or moderate-income household; in the case of an ownership restricted unit (as defined in Section 67-2 of the Township Code) means that the sale price for the ownership restricted unit conforms to the standards set forth at N.J.A.C. 5:80-26.7 in UHAC, as may be amended and supplemented, and in the case of rental restricted unit (as defined in Section 67-2 of the Township Code) means that the rent (as defined in N.J.A.C. 5:80-26.2) conforms to the standards set forth a N.J.A.C. 5:80-26.13 in UHAC.

**AFFORDABILITY CONTROLS**

The controls or restrictions placed on a dwelling unit that requires the dwelling unit to be affordable to very-low-income households, low-income households or moderate-income households, which are imposed pursuant to UHAC, Chapter 67 of the Township Code and/or other state or federal statute or regulation.

**AFFORDABLE HOUSING DEVELOPMENT**

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 one hundred percent affordable development, or a development of which all or a substantial portion consists of restricted units.

**AFFORDABLE HOUSING TRUST FUND**

A separate, interest-bearing account held by the Township of Harrison and created pursuant to Section 110-11 for the deposit of funds collected by the Township of Harrison in connection with its affordable housing programs or any funds allowed to be collected by the Township of Harrison pursuant to the Fair Housing Act, the Fair Housing Act Regulations, and/or the Non-Residential Development Fee Act, and which shall be expended in accordance with the Spending Plan, the Fair Housing Act and the Fair Housing Act Regulations.

**BARRIER FREE ESCROW FUNDS**

Funds held by the Township that have been collected from developers pursuant to Section 67-3.E.(2)(e)(2) to adapt restricted unit entrances to be accessible in accordance with N.J.S.A 52:27D-311a et seq. Such funds shall be held in the Affordable Housing Trust Fund pursuant to N.J.A.C. 5:99-2.6.

**COURT**

Any court of competent jurisdiction to hear and decide matters pursuant to the Fair Housing Act, including but not limited to the Affordable Housing Dispute Resolution Program established pursuant to N.J.S.A. 52:27D-313.2 and a County-Level Housing Judge, as the term is defined in N.J.S.A. 52:27D-304.r.

**DCA**

The New Jersey Department of Community Affairs, including but not limited to the Division of Local Planning Services within the Department of Community Affairs and the New Jersey Housing and Mortgage Finance Agency established pursuant to N.J.S.A. 55:14K-1 et seq.

### **DEVELOPER**

Any person, partnership, association, company, corporation or other entity that is the legal or beneficial owner or owners of a lot or 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.

### **DEVELOPMENT**

The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

### **DEVELOPMENT FEE**

Money paid by a developer as a residential development fee and/or a non-residential development fee.

### **DWELLING UNIT**

Any room or group of rooms or any part thereof located within a building and forming a single habitable unit with facilities which are used, or designed to be used for living, sleeping, cooking, and eating. A dwelling unit shall include a market-rate unit and a restricted. A dwelling unit includes all structures satisfying the definition of "dwelling" set forth in Section 225-3 of the Township Code.

### **EQUALIZED ASSESSED VALUE**

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 §§ 1, 5, and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through c) (N.J.S.A. 54:1-35a, 54:1-35b and 54:1-35c). Estimates at the time of building permit may be obtained by the Tax Assessor using construction cost estimates. Final equalized assessed value shall be determined at project completion by the County Tax Assessor.

### **FAIR HOUSING ACT**

The Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., as amended and supplemented by P.L.2024, c.2 (C.52:27D-304.1 et al.), and as may be further amended and supplemented.

### **FAIR HOUSING ACT REGULATIONS**

The regulations adopted by the DCA pursuant to the Fair Housing Act and codified at N.J.A.C. 5:99, et seq.

### **FAIR SHARE PLAN**

The plan or proposal that is in a form which may readily be adopted, with accompanying ordinances and resolutions, pursuant to N.J.S.A. 52:27D-304.1.f., by which the Township of

Harrison proposes to satisfy its obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of Region 5 and which details the affirmative measures the Township of Harrison proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the housing element, and addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the Township's land use ordinances and regulations.

### **HOUSING ELEMENT**

That portion of the Township of Harrison's master plan, required by the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-28b(3) and the Act, consisting of reports, statements, proposals, maps, diagrams, and text designed to meet the Township of Harrison's fair share of Region 5's present and prospective housing needs, particularly with regard to low- and moderate-income housing, and which shall contain the Township of Harrison's present and prospective obligation for affordable housing, determined pursuant to N.J.S.A. 52:27D-304.1.f.

### **INCLUSIONARY DEVELOPMENT**

A development containing both restricted units and market-rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a nonresidential structure to residential and the creation of new restricted units through the reconstruction of a vacant residential structure.

### **LOW-INCOME HOUSEHOLD**

A household with a total gross annual household income equal to 50% or less of the median gross household income for households of the same size within Region 5.

### **MARKET-RATE UNITS**

Any dwelling unit that is not a restricted unit.

### **MIXED-USE DEVELOPMENT**

Development which includes both residential development and non-residential development.

### **MODERATE-INCOME HOUSEHOLD**

A household with a total gross annual household income in excess of 50% but less than 80% of the median gross household income for households of the same size within Region 5.

### **NON-RESIDENTIAL DEVELOPMENT**

As defined in N.J.S.A. 40:55D-8.3.

### **NON-RESIDENTIAL DEVELOPMENT FEE**

The fee authorized and/or the money paid by a developer for non-residential development pursuant to the Statewide Non-Residential Development Fee Act.

### **REGION 5**

Collectively, Burlington County, Camden County, and Gloucester County.

### **RESIDENTIAL DEVELOPMENT**

Development which includes any building or structure, or portion thereof, including but not

limited to any appurtenant improvements, which qualifies as 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.). Residential development does not include any portion of a building or structure, which meets the definition of non-residential development.

### **RESIDENTIAL DEVELOPMENT FEE**

The fee authorized and/or the money paid by a developer for residential development pursuant to Section 110-8 of the Township Code and as permitted by N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-3.2.

### **RESTRICTED UNIT**

A dwelling unit, whether a rental restricted unit or ownership restricted unit (as those terms are defined in Section 67-2 of the Township Code), that is subject to the affordability controls, and includes a dwelling unit created with monies from the Township's Affordable Housing Trust Fund but does not include a market-rate unit financed under the former Urban Homeownership Recovery Program (UHORP), the former Market Oriented Neighborhood Investment Program (MONI) or the former Choices in Homeownership Incentives for Everyone Program (CHOICE).

### **STATEWIDE NON-RESIDENTIAL DEVELOPMENT FEE ACT**

The Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 to 40:55D-8.8.

### **SPENDING PLAN**

The plan approved by the Court or the DCA, which establishes the method of allocating funds contained in the Affordable Housing Trust Fund in accordance with the Fair Housing Act and the Fair Housing Act Regulations.

### **TAX ASSESSOR**

The Gloucester County Tax Assessor's Office.

### **UHAC**

The Uniform Housing Affordability Controls, N.J.A.C. 5:26-80.1, et seq., as may be amended and supplemented.

### **VERY-LOW-INCOME HOUSEHOLD**

A household with a total gross annual household income equal to 30% or less of the median gross household income for households of the same size within Region 5.

## **§ 110-8. Residential development fees.**

### **A. Imposed fees.**

- (1) Within all zoning districts, developers of residential developments, except for developers of the types of development specifically exempted below, shall pay a residential development fee of 1.5% of the equalized assessed value of land and improvements

within the residential development, provided no increased density is permitted. Residential 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) Within all zoning districts, developers of mixed-use development, except for developers of the types of development specifically exempted below, shall pay a residential development fee of 1.5% of the equalized assessed value of land and improvements of the residential portion of the mixed-use development, provided no increased density is permitted, and shall pay a non-residential development fee in accordance with the requirements of §110-9 for the portion of the mixed-use development consisting of non-residential development.
- (3) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permit shall be required to pay a residential development fee of 1.5% of the equalized assessed value of the initial "by-right" number of dwelling units permitted under the base density and 6% of the equalized assessed value for each additional dwelling unit that may be realized by the increased density permitted by the variance. 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 residential development fee shall be the highest density permitted "by-right" during the two-year period preceding the filing of the variance application. The "by-right" density shall be the density permitted under the zoning ordinance as if no variance had been granted.
  - (i) Until the total number of "by-right" dwelling units have been constructed, the residential development fee charged shall be the 1.5% residential development fee. Once the total number of "by-right" dwelling units have been constructed, as determined on the date of the application for a Certificate of Occupancy, each subsequent dwelling unit constructed shall be subject to the 6% residential development fee.
  - (ii) Example: If an approval allows four units to be constructed on a site that was zoned for two units, the residential development fee shall equal 1.5% of the equalized assessed value on the first two units, and 6.0% 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.
  - (iii) This requirement subsection (3) shall apply both to developers of residential development and to developers of mixed-use development when determining the residential development fee applicable to the residential development portion of the mixed-use development.

(4) Residential development fees shall be imposed and collected when an existing dwelling unit or any structure containing one or more dwelling units undergoes a change to a more intense use, is demolished and replaced, or is expanded, if not otherwise exempt from the residential development fee requirement. The residential development fee shall be calculated on the increase in the equalized assessed value of the improved dwelling unit or the structure containing one or more dwelling units. A change to a more intense use shall include, but not be limited to, the conversion of unfinished basement, attic and/or garage spaces to habitable space.

B. Exemptions from the Residential Development Fee. The following shall be exempt from the residential development fee requirements:

- (1) Affordable housing developments providing on-site affordable units and/or affordable housing developments where the affordable units are being provided elsewhere in the Township, shall each be exempt from residential development fees.
- (2) Residential developments where the developer has made an eligible payment in lieu of on-site construction of affordable units pursuant to ordinance or an agreement with the Township of Galloway that was adopted prior to any invalidation of payments in lieu of construction.
- (3) Developments that have received preliminary or final site plan approval prior to the adoption of this ordinance and any preceding ordinance permitting the collection of development fees, shall be exempt from residential 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 this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- (4) Any change to a more intense use, replacement or expansion of an existing dwelling unit or any structure containing one or more dwelling units that does not result in an increase to the equalized assessed value by greater than \$19,999 shall be exempt from residential development fees.
- (5) Developers of an existing dwelling unit or any structure containing one or more dwelling units that have been demolished as a result of an accidental fire, flood, or any natural disaster or catastrophe, and replaced with a substantially similar dwelling unit or structure shall be exempt from residential development fees.
- (6) Non-profit organizations that have received tax exempt status pursuant to the Internal Revenue Code shall be exempt from residential development fees, provided that the non-profit organization submits current evidence of that status to the municipal clerk and Tax Assessor, together with a certification that the services of the non-profit organization are provided at reduced rates to those who establish an inability to pay existing charges.

(7) Federal, State, county, and local governments shall be exempt from paying a development fee.

(8) Any other exemption authorized under the Fair Housing Act or the Fair Housing Act Regulations, provided that the developer seeking the exemption submits to the municipal clerk and Tax Assessor evidence sufficient to establish qualification for the exemption.

#### **§ 110-9. Non-residential development fees.**

##### **A. Imposed fees.**

(1) Developers of non-residential development are obligated to comply with the requirements of the Statewide Non-Residential Development Fee Act and pay the non-residential development fee calculated pursuant to the Statewide Non-Residential Development Fee Act, unless otherwise exempt pursuant to the Statewide Non-Residential Development Fee Act.

(2) Developers of mixed-use developments shall be required to comply with the requirements of the Statewide Non-Residential Development Fee Act and pay the non-residential development fee calculated pursuant to the Statewide Non-Residential Development Fee Act for the portion of the mixed-use development consisting of non-residential development, unless otherwise exempt pursuant to the Statewide Non-Residential Development Fee Act, and shall pay a residential development fee in accordance with the requirements of §110-8 for the portion of the mixed-use development consisting of residential development; provided that no non-residential development fee shall be imposed which would result in a non-residential development fee greater than that which would have been imposed if the non-residential development portion of the mixed-use development would have been developed independently of the residential development portion of the mixed-use development.

**B. Exemptions from the Non-Residential Development Fee.** Developers of non-residential development or mixed-use development who are claiming an exemption under the Statewide Non-Residential Development Fee Act shall be required to provide evidence sufficient to establish qualification for an exemption under the Statewide Non-Residential Development Fee Act and/or the Fair Housing Act Regulations. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to qualify for an exemption under the Statewide Non-Residential Development Fee Act and/or Fair Housing Act Regulations, the owner of the property shall pay the non-residential development fee within 45 days of the termination of the exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Township as a lien against the real property of the owner. The property owner shall submit a Form N-RDF to the Tax Assessor for calculation of the equalized assessed value of the property.

#### **§ 110-10. Collection procedures.**

- A. Upon the granting of a preliminary, final or other applicable approval for a development, the appropriate approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- B. For residential developments, the developer shall be provided with a copy of the Residential Development Fee Form for completion. The developer shall complete fully the form as per the instructions provided and provide the same to the Tax Assessor. The construction official shall verify the information submitted by the developer. The Municipal Housing Liaison shall then verify any exemptions claimed and the Tax Assessor prepare estimated and final assessments in accordance with the instructions provided on the Residential Development Fee Form.
- C. For non-residential developments, the developer shall be provided with a copy of Form N-RDF, State of New Jersey Non-Residential Development Certification/Exemption, for completion. The developer shall complete fully Form N-RDF as per the instructions provided and provide the same to the Tax Assessor. The construction official shall verify the information submitted by the developer. The Tax Assessor shall then verify any exemptions claimed and prepare estimated and final assessments in accordance with the instructions provided on Form N-RDF.
- D. For mixed use developments, the developer shall be provided both with a copy of Form N-RDF, State of New Jersey Non-Residential Development Certification/Exemption for the non-residential portion of the project, which shall be completed in accordance with Subsection C. above, and a copy of the Residential Development Fee Form which shall be completed in accordance with Subsection B. above. Both forms shall be submitted to the Tax Assessor upon completion.
- E. For all development fees:
  - (1) The construction official responsible for the issuance of a building permit shall notify the Tax Assessor and the municipal housing liaison of the issuance of the first building permit for a development that is subject to a residential development fee and/or a non-residential development fee.
  - (2) Within 90 days of receipt of said notice, the Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
  - (3) The construction official responsible for the issuance of a final certificate of occupancy shall notify the Tax Assessor and the municipal housing liaison of any and all requests for the scheduling of a final inspection on development which is subject to a residential development fee and/or a non-residential development fee.

(4) Within 10 business days of a request for the scheduling of a final inspection, the Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the development; calculate a residential development fee and/or a non-residential development fee; and thereafter notify the developer of the amount of the residential development fee and/or the non-residential development fee.

(5) Should the Township 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 N.J.S.A. 40:55D-8.6(b).

F. For all development fees, both residential development fees and non-residential development fees, the entire amount of the development fee shall be collected at the time of the issuance of the Certificate of Occupancy.

G. 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 of Taxation, collected residential development fees shall be placed in an interest-bearing escrow account by the Township. Appeals from a determination of the Board of Taxation may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 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 of the Division of Taxation, 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 Township. Appeals from a determination of the Director of the Division of Taxation may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 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.

(3) In the event that a development fee is challenged, all development fees subject to a challenge must be submitted to the Township and deposited in an interest-bearing account. No Certificate of Occupancy shall be issued unless and until the full amount of the challenged development fees are deposited and the development otherwise satisfies all of the requirements for issuance of a Certificate of Occupancy.

**§ 110-11. Affordable Housing Trust Fund.**

- A. The Township shall create and/or continue to maintain a separate, interest-bearing affordable housing trust fund that is maintained by the Township Chief Financial Officer for the purpose of depositing the following, each of which shall be identifiable at all times by amount:
- (1) Residential development fees
  - (2) Non-residential development fees;
  - (3) Mixed Use Development Fees;
  - (4) Other development fees;
  - (5) Payments in lieu of on-site construction of restricted units;
  - (6) Repayments from affordable housing program loans and other loan repayments;
  - (7) Enforcement fines and fees;
  - (8) Interest earned;
  - (9) Proceeds from the sale of restricted units with extinguished controls or other restricted unit sales;
  - (10) Rental income from municipally operated restricted units;
  - (11) Grants;
  - (12) Recapture funds;
  - (13) Barrier Free Escrow Funds;
  - (14) RCA Funds
  - (15) Other funds, including but not limited to: unexpended RCA funds remaining from a completed RCA project, Application fees, any other funds collected by the municipality in connection with its affordable housing programs, any other funds authorized to be deposited in a municipal housing trust fund under the Fair Housing Act, the Fair Housing Act Regulations or any other law.
- B. The barrier free escrow funds deposited in the Affordable Housing Trust Fund shall at all times be identifiable by source and amount and shall be used by the Township for the sole purpose of making the adaptable entrance of any restricted unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the restricted unit and requires an accessible entrance.
- C. Within 21 days from the opening of the Affordable Housing Trust Fund account and/or within 21 days of any change in banks or other financial institutions in which Affordable Housing Trust Fund are deposited, the Township shall provide the Division of Local Planning Services within the DCA with written authorization, in the form of a three-party escrow agreement between the Township, the bank, and the Division, to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-2.2(a) and N.J.A.C. 5:99-3.1(h).
- D. All interest accrued in the Affordable Housing Trust Fund shall only be used on eligible affordable housing activities approved by the DCA or in an Spending Plan approved by the Court.

- E. In the event any of the conditions described at N.J.A.C. 5:99-5.6 occur, the Division of Local Planning Services within the DCA shall be authorized, on behalf of the Township, to direct the manner in which all funds in the affordable housing trust fund shall be expended in accordance with the Fair Housing Act Regulations. In addition, pursuant to N.J.A.C. 5:99-1.1(c), if the Township is found to be not in compliance with the Fair Housing Act Regulations, it is subject to forfeiture of any and all funds remaining in the Affordable Housing Trust Fund.

**§ 110-12. Use of funds.**

- A. The expenditure of all funds shall conform to the Spending Plan approved by the Court and/or the DCA. Funds deposited in the Affordable Housing Trust Fund may be used for any activity identified in the Spending Plan and/or approved by Court or the DCA to address the Township's affordable housing obligation and may be set up as a grant or revolving loan program, subject to any limitations set forth in the Fair Housing Act Regulations. Such activities include, but are not limited to, any activity permitted pursuant to N.J.A.C. 5:99-2.3 through 5:99-2.8. Affordable Housing Trust Funds may also be used for emergent opportunities to create affordable housing that have been approved by DCA in accordance with N.J.A.C. 5:99-4.1.
- B. Affordable Housing Trust Funds shall not be expended to reimburse the Township for past housing activities.
- C. A portion of all development fees collected and interest earned shall be used to provide affordability assistance to very-low-income households, low-income households and moderate-income households, as those terms are defined in N.J.A.C. 5:99-1.2, occupying restricted units included in the Township's Fair Share Plan. A portion of development fees collected shall be used to provide affordability assistance to very-low-income households. Affordability assistance shall be provided in accordance with N.J.A.C. 5:99-2.5 and the Township's Spending Plan.
- D. The Township 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. 5:99-2.5(b).
- E. No more than 20 percent of all Affordable Housing Trust Funds, exclusive of those collected prior to July 17, 2008, to fund a Regional Contribution Agreement, may be expended on administration, in accordance with N.J.A.C. 5:99-2.4(a). Activities set forth in N.J.A.C. 5:99-2.2(f) are not eligible uses of the Affordable Housing Trust Fund. Eligible administrative expenses include any activities authorized in N.J.A.C. 5:99-2.4.

**§ 110-13. Monitoring.**

The Township shall prepare and submit to DCA all monitoring reports and other information required to be reported to DCA in the Fair Housing Act and/or Fair Housing Act Regulations.

**§ 110-14. Ongoing collection of fees.**

The Township's ability to impose, collect and expend development fees shall continue so long as the Township maintains its status as a compliant municipality, as that term is defined in N.J.A.C. 5:99-1.2. If the Township has failed to maintain its status as a compliant municipality, it shall be subject to the following until it has regained its status as a compliant municipality:

- A. The Township shall not impose and collect residential development fees.
- B. The Township shall not retroactively impose a residential development fee on a development after the Township subsequently regains its status as a compliant municipality.
- C. The Township shall continue to impose and collect non-residential development fees pursuant to the Statewide Non-Residential Development Fee Act, which shall be paid to the New Jersey State Treasurer in accordance with N.J.A.C. 5:99-3.1 in a manner and on such forms as required by the Treasurer, provided that a certified proof concerning the payment shall be furnished by the Treasurer, to the Township.
- D. The Township shall not retain or expend non-residential development fees.

**§ 110-14.1. Impact of Other Applicable Laws.**

This article and the provisions set forth in §§ 110-5 through 110-14 above are being adopted in accordance with the policies, procedures and requirements of the Fair Housing Act, the Fair Housing Act Regulations and the Statewide Non-Residential Development Fee Act. In the past, laws have been enacted that have imposed a moratorium on collection of development fees, such as Sections 36 through 41 of P.L. 2009, C. 90, known as the "Economic Stimulus Act of 2009," which in relevant part, suspended the imposition of the non-residential development fee imposed by the Statewide Non-Residential Development Fee Act, for non-residential development for which preliminary or final site plan approval, or capital project review pursuant to N.J.S.A. 40:55D-31, was obtained prior to July 1, 2010, provided that a permit for the construction of the building has been issued by the local enforcing agency prior to January 1, 2013. Imposition and collection of development fees shall be subject to and be in accordance with all applicable laws in effect at the time of imposition and collection of the applicable development fee.