

**ORDINANCE NO. 2025-01**

**ORDINANCE OF THE TOWNSHIP OF HARDWICK, COUNTY OF WARREN, STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER 13 – LAND DEVELOPMENT – BY CREATING ARTICLE XII-A ENTITLED “DEVELOPMENT FEES” TO AUTHORIZE THE COLLECTION OF DEVELOPMENT FEES FOR RESIDENTIAL AND NON-RESIDENTIAL DEVELOPMENT WITHIN THE MUNICIPALITY**

**WHEREAS**, the Township of Hardwick is legally authorized to adopt an ordinance to establish standards for the collection, maintenance, and expenditure of development fees pursuant to Council on Affordable Housing’s regulations and in accordance with P.L. 2008, c. 46, sections 8 and 32 through 38; and

**WHEREAS**, fees collected pursuant to such ordinance shall be used for the sole purpose of providing low- and moderate-income housing; and

**WHEREAS**, the Township of Hardwick adopted a development fee ordinance via Ordinance No. 2009-05; and

**WHEREAS**, by way of Ordinance No. 2018-04, the Township inadvertently repealed the relevant portions of Chapter 13 – Land Development – as they relate to the collection of residential and non-residential development fees; and

**WHEREAS**, the Township of Hardwick received its Final Judgment of Compliance and Repose from the Superior Court of New Jersey on January 19, 2019; and

**WHEREAS**, the Township Committee, having been alerted of such unintentional removal thereof, wishes to amend Chapter 13 to include the relevant development fee provisions by creating Article XII-A; and

**WHEREAS**, the Township Committee believes that such an amendment is in the best interest of the Township and its residents.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Committee of the Township of Hardwick, County of Warren, State of New Jersey that Chapter 13 – Land Development – be amended and supplemented by creating Article XII-A entitled “Development Fees,” as follows:

**SECTION I:**

Article XII-A is hereby created as follows:

**ARTICLE XII-A DEVELOPMENT FEES**

**§ 13-108A-1. Purpose.**

- A. In *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the 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 relevant rules and regulations.
- B. Pursuant to P.L. 2008, c. 46 Section 8 (N.J.S.A. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved or Court-approved spending plan may retain fees collected from non-residential development.
- C. 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 in accordance with the COAH-approved or Court-approved Spending Plan.

**§ 13-108A-2. Basic Requirements.**

- A. This Ordinance shall not be effective until approved by the Court;
- B. Hardwick Township shall not spend development fees until the Court has approved a plan for spending such fees.

**§ 13-108A-3. Definitions.**

- A. 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. **"COAH"** or the **"Council"** means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State, a court of competent jurisdiction, or any such other Agency as is created by the Legislature which has primary jurisdiction for the Administration of housing obligations in accordance with sound regional planning consideration in the State.

- c. **“Development fee”** means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.
- 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 (N.J.S.A. 54:1-35a through N.J.S.A. 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.

#### § 13-108A-4. Residential Development Fees.

##### A. 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 one-half percent (1.5%) 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 percent (6%) 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.

Example: If an approval allows four (4) units to be constructed on a site that was zoned for two (2) units, the fees could equal one and one-half percent (1.5%) of the equalized assessed value on the first two units; and six percent (6%) of the equalized assessed value for the two additional units.

##### B. Eligible Exactions, Ineligible Exactions, and Exemptions for Residential Development

- a. Affordable housing developments and developments where the developer has made 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 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 as a result of a fire, flood, or other natural disaster shall be exempt from paying a development fee.

### **§ 13-108A-5. Non-Residential Development Fees.**

#### **A. 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 a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

#### **B. 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 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 non-residential development fees in accordance with the exemptions required pursuant to P.L.2008,

c.46, as specified in the Form N-RDF “State of New Jersey Non-Residential Development Certification/Exemption” Form. Any exemption claimed by a developer shall be substantiated by that developer.

- d. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
- 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 non-residential development fees under these circumstances may be enforceable by Hardwick as a lien against the real property of the owner.

#### **§ 13-108A-6. Collection Procedures.**

- A. 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 for the issuance of a building permit.
- B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF “State of New Jersey Non-Residential Development Certification/Exemption” to be completed as per the instructions provided. The developer of a non-residential development shall also 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 also verify exemptions and prepare estimated and final assessments as per the instructions provided in the Form N-RDF.
- C. 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 shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- D. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- E. The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. 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.

G. Should Hardwick fail to determine or notify the developer of the amount of the development fee within ten (10) 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 (N.J.S.A. 40:55D-8.6).

H. Appeal of development fees

a. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by Hardwick. 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.

b. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by Hardwick. 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.

#### **§ 13-108A-7. Affordable Housing Trust Fund.**

A. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

B. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

- a. payments in lieu of on-site construction of affordable units;
- b. developer contributed funds to make ten percent (10%) 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 Hardwick's affordable housing program.

C. In the event of a failure by the Township of Hardwick to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports, or a failure to comply with the conditions of the Judgment of Compliance or a revocation of the Judgment of Compliance, or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in *In Re. Twp. Of Monroe*, 442 N.J. Super. 565 (L. Div. 2015) (aff'd 442 N.J. 562), or the expenditure of funds on activities not approved by the Court, or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS) to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Township of Hardwick, or, if not practicable, then within the County or the Housing Region.

Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate under the circumstances.

D. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

#### **§ 13-108A-8. Use of Funds.**

A. 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 Hardwick's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted by the Court and specified in the approved spending plan.

B. Funds shall not be expended to reimburse Hardwick for past housing activities.

- C. At least 30 percent of all development fees collected, and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
  - 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 30 percent or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
  - 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.
- D. Hardwick may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- E. No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the 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.

### **§13-108A-9. Monitoring.**

The Township of Hardwick shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or Local Government Services or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of

all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, payments in lieu of constructing affordable units on site (if permitted by Ordinance or by Agreement with the Township), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Township-owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with Hardwick's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

**§13-108A-10. Ongoing Collection of Fees.**

The ability for Hardwick to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its Judgment of Compliance unless Hardwick has filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a Judgment of Compliance from the Court or for substantive certification or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing compliance, and has received approval of its development fee ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan. If Hardwick fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, 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 (N.J.S.A. 52:27D-320). Hardwick shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance, nor shall Hardwick retroactively impose a development fee on such a development. Hardwick shall not expend development fees after the expiration of its Judgment of Compliance.

**SECTION II: Severability:**

Each section, subsection, sentence, clause, and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause, and phrase, and finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause or reason shall not affect any other portion of this Ordinance.

**SECTION III: Repealer.**

Any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

**SECTION IV: Effective Date:**

This Ordinance shall be in full force and effect from and after its adoption and any publication as may be required by law.

Introduction: February 19, 2025

Motion: Lovell

Second: Meuse

AIF: Lovell, Meuse, Jacksic

Adoption: March 19, 2025

Motion: Lovell

Second: Jacksic

Roll Call: Lovell—yes, Meuse—yes, Jacksic—yes

**NOTICE**

**NOTICE** is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Committee of the Township of Hardwick held on February 19, 2025 and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a regular meeting of the Township Committee to be held on March 19, 2025 at 7:00 p.m. or as soon thereafter as the Township Committee may hear this Ordinance at the Municipal Building, 40 Spring Valley Road, Hardwick, New Jersey, at which time all persons interested may appear for or against the passage of said Ordinance.

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Kristin Shipps  
Township Clerk