

**AN ORDINANCE AMENDING CHAPTER 90 OF THE CODE  
OF THE TOWNSHIP OF SOUTH HARRISON TO AMEND THE MANDATORY  
DEVELOPMENT FEE REQUIREMENTS TO ASSIST THE TOWNSHIP IN  
MEETING ITS AFFORDABLE HOUSING OBLIGATIONS**

**WHEREAS**, South Harrison Township has petitioned the Council on Affordable Housing for Substantive Certification of its Fair Share Plan under the previous COAH rules, and the Township intends to submit a Fair Share Plan to comply with the new COAH rules when those rules are adopted and become effective; and

**WHEREAS**, South Harrison Township adopted a Development Fee Ordinance on May 16, 2005 in accordance with ordinance O-05-06, but the Township understands that the legislature has adopted amendments to the Fair Housing Act and the Municipal Land Use Law that alter the authority of the Township to impose and collect Mandatory Development Fees and COAH's rules related to the collection of Mandatory Development Fees have also changed; and

**WHEREAS**, this Ordinance is based upon the development fee regulations adopted by the New Jersey Council on Affordable Housing and the requirements of P.L. 2008 c. 46;

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

**SECTION I.** Chapter 90, Land Use and Development of the General Ordinances of the Township of South Harrison is amended to replace section 90-5.28 Development Fees as follows.

**90-5.28 Mandatory Development Fees**

**A. Purpose.** 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, 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. Subsequently, the New Jersey State Legislature adopted changes to the Municipal Land Use Law and to the Fair Housing Act (P.L.2008, c. 46) known as the Statewide Non-residential Development Fee Act, authorizing municipalities to collect non-residential development impact fees to provide a fair and balanced funding method to address the State's affordable housing needs. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to the Statewide Non-residential Development Fee Act and COAH's rules. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing funds for low- and moderate-income housing and other associated and permitted activities. This ordinance shall be interpreted within the framework of COAH's rules on development fees and the Statewide Non-residential Development Fee Act.

**B. Basic requirements.** The Township of South Harrison shall not spend development fees until COAH has approved a plan for spending such fees and the Township of South Harrison has received third round substantive certification from COAH or a judgment of compliance.

**C. Definitions**

The following terms, as used in this ordinance, shall have the following meanings:

1. "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.

2. "COAH" means the New Jersey Council on Affordable Housing.
3. "Construction" means new construction and additions, but does not include alterations, reconstruction, renovations, and repairs as those terms are defined under the State Uniform Construction Code promulgated pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).
4. "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.
5. "Development fee" means funds paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules.
6. "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.
7. "Mixed use development" means any development which includes both a non-residential development component and a residential development component, and shall include developments for which (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including but not limited to lots separated by a street, a river, or another geographical feature.
8. "Non-residential development" means: (1) any building or structure, or portion thereof, including but not limited to any appurtenant improvements, which is designated to a use group other than 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.), including any subsequent amendments or revisions thereto; (2) hotels, motels, vacation timeshares, and child-care facilities; and (3) the entirety of all continuing care facilities within a continuing care retirement community which is subject to the "Continuing Care Retirement Community Regulation and Financial Disclosure Act," P.L.1986, c.103 (C.52:27D-330 et seq.).
9. "Non-residential development fee" means the fee authorized to be imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).
10. "Relating to the provision of housing" shall be liberally construed to include the construction, maintenance, or operation of housing, including but not limited to the provision of services to such housing and the funding of any of the above.
11. "Spending plan" means a method of allocating funds collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) for the purpose of meeting the housing needs of low and moderate income individuals.

#### **D. Residential Development fees**

1. Within all zoning districts in the Township, developers of all new residential dwelling units not exempt from the collection of development fees in accordance with 90-5.28F

shall pay a fee of one and one half percent of the equalized assessed value for residential development, provided no increased density is permitted.

2. 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 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 units to be constructed on a site that was zoned for two units, the fees could equal one and one half percent of the equalized assessed value on the first two units; and six percent of the equalized assessed value for the two additional units. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the 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.

#### **E. Non-residential Development fees**

1. Within all zoning districts, all new construction of nonresidential buildings and structures not exempt from the collection of development fees in accordance with section 90-5.28F shall pay a fee equal to two and one half percent (2.5%) of the equalized assessed value of the land and improvements for new nonresidential construction on an unimproved lot or lots; or
2. A fee equal to two and one-half percent (2.5%) of the increase in equalized assessed value, of the additions to existing structures to be used for non-residential purposes.

#### **F. Eligible exactions, ineligible exactions and exemptions**

1. Affordable housing developments and inclusionary housing developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees unless exempted below.
2. Non-residential developments that have received certificates of occupancy prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a substantial change in the approval.
3. Residential developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from the development fees unless the developer seeks a substantial change in the approval. Where a site plan does not apply (such as for a single family dwelling) a zoning pre construction permit shall be synonymous with the preliminary or final site plan approval for this purpose.
4. Development fees shall be imposed and collected when an existing nonresidential structure is expanded or improved. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
5. All non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, which is tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the imposition of a non-residential development fee, provided that the property continues to maintain its tax exempt status under that statute for a period of at least three years from the date of issuance of the certificate of occupancy. In addition, the following shall be exempt from the imposition of a non-residential development fee:

- (a) parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development, such as an office building, or whether the parking lot is developed as an independent non-residential development;
- (b) any non-residential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a non-residential developer;
- (c) non-residential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;
- (d) projects that are located within a specifically delineated urban transit hub, as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208);

**G. Collection of fees**

- 1. For residential development , fifty percent of the development fee will be collected at the time of issuance of the building permit. The remaining portion will be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- 2. For non-residential development the development fee will be collected prior to the issuance of a certificate of occupancy.

**H. Contested fees**

Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by the Township of South Harrison. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

**I. Affordable Housing trust fund**

- 1. There is hereby created a separate, interest-bearing housing trust fund for the purpose of depositing development fees collected from residential and non-residential developers, payments in lieu of constructing units on site, and proceeds from the sale of affordable housing units with extinguished controls. All development fees and payments in lieu paid by developers pursuant to this ordinance shall be deposited into this fund.
- 2. Within seven days from the opening of the trust fund account, the Township of South Harrison shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:94-6.16(b).
- 3. No funds shall be expended from the affordable housing trust fund unless the expenditure conforms to a spending plan approved by COAH. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

**J. Use of funds**

- 1. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction of affordable housing units, ECHO housing, purchase of land for affordable housing, improvement of land to be used for affordable housing, purchase of housing for a market to affordable program, green building strategies for affordable housing, maintenance and repair of affordable housing units, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, or administration necessary for implementation of the Housing Element and Fair Share Plan. The expenditure of all funds shall conform to a spending plan approved by COAH.

2. At least 30% of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households, at least half of which shall be available 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 very low income households.
  - a. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance.
  - b. Affordability assistance to very low income households may include offering a subsidy to developers of inclusionary or 100% affordable developments or buying down the cost of low or moderate income units in the municipal fair share plan.
3. 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. 5:96-18.
4. No more than 20 percent of all development fee revenue shall be expended on administration. This includes but is 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. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees.

**K. Monitoring.**

The Township of South Harrison shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units with extinguished controls, and the expenditure of revenues and implementation of the plan approved by COAH. All monitoring reports shall be completed on forms designed by COAH.

**L. Ongoing collection of fees.**

The ability for the Township of South Harrison to impose, collect and expend development fees shall expire with its substantive certification unless the Township has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification of a plan that addresses its succeeding affordable housing obligation, and has received COAH's approval of its development fee ordinance. If the Township fails to renew its ability to impose and collect development fees prior to the expiration of the substantive certification, it may resume the imposition and collection of development fees only by complying with the requirements of N.J.A.C. 5:97-8.14.

**SECTION II. REPEALER**

Ordinances or provisions thereof inconsistent with the provisions of this Ordinance shall be and are hereby repealed to the extent of such inconsistency.

**SECTION III. INVALIDITY**

If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall only apply to the section, paragraph, subdivision, clause or provision and the remainder of this Ordinance shall be deemed valid and effective.

**SECTION IV. EFFECTIVE DATE**

This Ordinance shall take effect upon adoption and publication according to law.

**TOWNSHIP OF SOUTH HARRISON**

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Charles T. Tyson, Mayor

ATTEST:

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Nancy E. Kearns, RMC  
Municipal Clerk

**CERTIFICATION**

The foregoing Ordinance was introduced at a Regular Meeting of the Township of South Harrison held on the 10<sup>th</sup> day of September 2008 and will be considered for final passage and adoption at a meeting to be held on the 15<sup>th</sup> day of October 2008, at 7:30 P.M., at the South Harrison Township Municipal Building, 664 Harrisonville Road, Harrisonville, NJ 08039, at which time any person interested therein will be given an opportunity to be heard.

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Nancy Kearns, RMC  
Municipal Clerk

**NOTICE**

NOTICE is hereby given that the foregoing Ordinance O-08-25 was finally adopted at a meeting of the South Harrison Township Committee held on the 15<sup>th</sup> day of October 2008 at 7:30 pm in the South Harrison Township Municipal Building, 664 Harrisonville Road, Harrisonville, New Jersey.

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Nancy E. Kearns, RMC  
Municipal Clerk