

Resolution # 50-26
3-11-2026

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

RESOLUTION OF THE COUNCIL OF THE BOROUGH OF EAST NEWARK, COUNTY OF
HUDSON, STATE OF NEW JERSEY ADOPTING THE AMENDED FOURTH ROUND
AFFORDABLE HOUSING TRUST FUND SPENDING PLAN

WHEREAS, in accordance with the Fair Housing Act (“FHA”) and the Administrative Office of the Court’s Directive No. 14-24 (the “Directive”), the Borough of East Newark (the “Borough”) filed a timely Fourth Round Declaratory Judgment Complaint (the “DJ Action”) with the Affordable Housing Dispute Resolution Program (the “Program”), along with its binding resolution, on January 31, 2025, accepting a Fourth Round Present and Prospective Need; and

WHEREAS, pursuant to the FHA, a municipality may not spend or commit to spend any affordable housing development fees collected and deposited into the municipal affordable housing trust fund, without first obtaining the approval of the expenditure as part of its compliance certification; and

WHEREAS, by Order Affirming and Fixing Present and Prospective Need Affordable Housing Obligation entered on April 7, 2025, the Court ordered that (1) the Borough had established jurisdiction for the Program by filing the DJ Action within 48 hours of adopting a binding resolution, Resolution #15-25 adopted on January 30, 2025, to confirm its present and prospective affordable housing obligations; (2) the Borough will prepare and adopt a Fourth Round Housing Element and Fair Share plan (4th Round HEFSP”), which will be adopted by the Borough’s Planning Board (the “Planning Board”) and subsequently endorsed by the Borough’s Council, no later than June 30, 2025; and (3) the Borough shall have continued immunity from all exclusionary zoning lawsuits, including builder’s remedy lawsuits; and

WHEREAS, by Resolution #93-25 adopted on June 26, 2025, the Borough endorsed and sought approval of the 4th Round HEFSP, which had been previously approved by the Planning Board on June 26, 2025; and

WHEREAS, by Resolution #94-25 adopted on June 26, 2025, the Borough Council adopted the Borough of East Newark Affordable Housing Trust Fund Fourth Round Spending Plan, dated June 12, 2025 (the ‘Spending Plan’); and

WHEREAS, in accordance with the Directive, the Borough filed with the Court its 4th Round HEFSP and Spending Plan on June 30, 2025 ; and

WHEREAS, the Fair Share Housing Center (“FSHC”) filed a letter in the DJ Action regarding the Borough’s 4th Round HEFSP on August 30, 2025 seeking additional information and documentation and requesting modifications to the Spending Plan prior to approval by the Program and Court; and

WHEREAS, pursuant to the FSHC letter, the Borough’s affordable housing planner, Hanah Davenport, PP, AICP, of Heyer, Gruel & Associates, amended the Spending Plan (the “Amended Spending Plan”) on March 6, 2026, which Amended Spending Plan is attached hereto as Exhibit “A”; and

WHEREAS, the Borough Council, at its public meeting on March 11, 2026, considered the Amended Spending Plan outlining how the Borough intends to allocate development fees and other funds, and how the Borough proposes to expend funds for affordability assistance, especially those funds earmarked for very low income affordability assistance; and

WHEREAS, the Borough has prepared the Amended Spending Plan consistent with the FHA, the implementing regulations thereunder and the FSHC letter dated August 30, 2025.

NOW, THEREFORE BE IT RESOLVED, that the Council of the Borough of East Newark, in the County of Hudson, State of New Jersey hereby adopts the Spending Plan, amended March 6, 2026, that is attached hereto as Exhibit A.

###

Resolution 50-26

| Councilmember | Motion | Second | Ayes | Nays | Abstain | Absent |
|---------------|--------|--------|------|------|---------|--------|
| De Oliveira | | | X | | | |
| Evaristo | | | X | | | |
| K. Graham | X | | X | | | |
| R. Graham | | X | X | | | |
| Pinto | | | X | | | |
| Zincavage | | | X | | | |

CERTIFICATION

I, Dr. Cosmo A. Cirillo, Borough Clerk of the Borough of East Newark, County of Hudson, State of New Jersey, do hereby certify that the foregoing is a true copy of a resolution adopted by the Mayor and Borough Council at their regular meeting held on Wednesday, March 11, 2026.

 Dr. Cosmo A. Cirillo, RMC
 Borough Clerk

EXHIBIT A

**Borough of East Newark
Affordable Housing Trust Fund
Fourth Round Spending Plan**

June 12, 2025

Adopted by the Borough Council on June 26, 2025

Amended on March 6, 2026 and adopted by the Borough Council on

March 11, 2026

Borough of East Newark
Hudson County, New Jersey

Prepared By:



Heyer, Gruel & Associates
Community Planning Consultants
236 Broad Street, Red Bank, NJ 07701
(732) 741-2900

The original of this report was signed and
sealed in accordance with N.J.S.A. 45:14A-12

Hanah Davenport, PP #6561, AICP

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INTRODUCTION

On December 29, 2025, East Newark Borough adopted its first Development Fee Ordinance (Ordinance No. 17-2025), which established the Borough's Affordable Housing Trust Fund (see Appendix A). All development fees, payments in lieu of constructing affordable units on site, and any other funds collected by the municipality in connection with its affordable housing program are deposited into this separate Affordable Housing Trust Fund for the purposes of affordable housing. Since adopting its Development Fee Ordinance, the Borough has actively been collecting monies from its Affordable Housing Trust Fund in accordance with applicable rules and regulations.

The Borough prepared an updated Development Fee Ordinance (housed within its Affordable Housing Ordinance, Ordinance No. 03-2026), which is anticipated to be adopted in March 2026. This amended ordinance establishes standards for the collection, maintenance, and expenditure of development fees consistent with the Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and N.J.S.A. 52:27D-329 as most recently amended.

The Borough established its Affordable Housing Trust Fund with an amount of \$204,907.00. As of February 9, 2026, the Borough had collected a total of \$0.00 in development fees and \$1,920.78 interest over the lifetime of its Affordable Housing Trust Fund. The Borough has spent a total of \$0.00 during that time, leaving a balance of \$206,827.78. These funds shall be spent in accordance with N.J.A.C. 5:99 and other applicable regulations, as described in the sections that follow.

1. REVENUES FOR CERTIFICATION PERIOD**METHODOLOGY**

To calculate a projection of revenue anticipated during the period of the Fourth Round, the Borough of East Newark considered the following:

(a) Projected Development Fees

1. Nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the Planning Board for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on historical rates of development.

(b) Payment in Lieu ("PIL")

Actual and committed payments in lieu ("PIL") of construction from developers.

(c) Other Funding Sources

Funds from other sources, including but not limited to, the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, and proceeds from the sale of affordable units.

(d) Projected Interest

Interest on the projected revenue in the municipal Affordable Housing Trust Fund at the current average interest rate. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing.

PROJECTED REVENUES CHART

To calculate the projection of revenue anticipated from the general development fees, 10 years (2014 through 2023) of construction data (for both residential and non-residential construction) for the Borough, acquired from the New Jersey Department of Community Affairs, was examined.

East Newark projects a total of \$154,460.00 in development fees will be collected between February 9, 2026 and June 2035. An additional \$3,089.20 in interest is projected to be earned during this time frame. The Borough projects a total of \$157,549.20 in revenues to be collected through June 30, 2035. In conjunction with the existing Affordable Housing Trust Fund balance of \$206,827.78, the Borough projects total Affordable Housing Trust Fund revenues and interest of \$364,376.98 through June 30, 2035. These projected revenues through 2035 are outlined in Table 1 below.

| TABLE 1: PROJECTED REVENUES | | | | |
|------------------------------------|--|---|-----------------------------------|---------------------|
| Year | Source of Funds | | | |
| | Historical Balance (as of 2/9/2026) | (a) Projected Development Fees | (d) Projected Interest | Total |
| Current Balance* | \$206,827.78 | -- | -- | \$206,827.78 |
| 2026 | -- | \$16,259.00 | \$325.18 | \$16,584.18 |
| 2027 | -- | \$16,259.00 | \$325.18 | \$16,584.18 |
| 2028 | -- | \$16,259.00 | \$325.18 | \$16,584.18 |
| 2029 | -- | \$16,259.00 | \$325.18 | \$16,584.18 |
| 2030 | -- | \$16,259.00 | \$325.18 | \$16,584.18 |
| 2031 | -- | \$16,259.00 | \$325.18 | \$16,584.18 |
| 2032 | -- | \$16,259.00 | \$325.18 | \$16,584.18 |
| 2033 | -- | \$16,259.00 | \$325.18 | \$16,584.18 |
| 2034 | -- | \$16,259.00 | \$325.18 | \$16,584.18 |
| 2035 | -- | \$8,129.00 | \$162.58 | \$8,291.58 |
| TOTAL | \$206,827.78 | \$154,460.00 | \$3,089.20 | \$364,376.98 |

2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Borough of East Newark:

COLLECTION OF DEVELOPMENT REE REVENUES

Collection of development fee revenues shall be consistent with the Borough’s Development Fee Ordinance for both residential and non-residential developments and in accordance with the Statewide Nonresidential Development Fee Act, N.J.S.A. 40:55D8.1 through 8.7 (“SNDFA”).

DISTRIBUTION OF DEVELOPMENT FEE REVENUES

The Administrative Agent and Municipal Housing Liaison will manage the projects outlined in this Spending Plan and the Housing Element and Fair Share Plan. The release of funds requires the adoption of a resolution by the Borough Council. Once a request is approved by resolution, the Chief Financial Officer releases the requested revenue from the trust fund for the specific use approved in the Borough Council’s resolution.

COLLECTION AND DISTRIBUTION OF BARRIER FREE FUNDS

N.J.A.C. 5:99-2.6 establishes that an Affordable Housing Trust Fund may include fees collected to adapt affordable unit entrances to be accessible in accordance with the Fair Housing Act (P.L.2024, c.2) and the Barrier Free Subcode (N.J.A.C. 5:23-7). Municipalities choosing to collect funds for this purpose must ensure that the funds remain identifiable from other funds. Collection and distribution of barrier free funds, as applicable, shall be consistent in accordance with the appropriate regulations.

3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS**METHODOLOGY**

The following represent the anticipated affordable housing projects within the Borough of East Newark that will utilize Affordable Housing Trust Fund monies.

(a) Affordability Assistance (N.J.A.C. 5:99-2.5)

As per the requirements regarding the use of funds for affordability assistance laid out in N.J.A.C. 5:99-2.5, municipalities are required to dedicate a portion of all development fees collected and interest earned to provide affordability assistance to very-low-, low-, and moderate-income households in affordable units included in the municipality's Fair Share Plan pursuant to N.J.S.A. 52:27D-329.1.

N.J.S.A. 52:27D-329.2 specifies that affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, common maintenance expenses for units located in condominiums, rental assistance, and any other program authorized by the department. Further, N.J.A.C. 5:99-2.5 stipulates that affordability assistance offered specifically to very-low-income households may include the following:

1. Offering a subsidy to developers of inclusionary or 100% affordable housing developments; or
2. Buying down the cost of low- or moderate-income units in a municipal fair share plan to make them affordable to very-low-income households, including special needs and supportive housing opportunities.

To project the funding amount that is dedicated to affordability assistance, all actual expenditures spent on new construction activities as well as any rehabilitation activities from the inception of the fund are subtracted from the sum of the actual and projected development fees and interest throughout the lifetime of the Affordable Housing Trust Fund. In the case of this Spending Plan, that total was multiplied by 30% to determine the projected affordability assistance amount that will be set aside. The actual affordability assistance expenditures from the inception of the fund are then subtracted from the overall 30% being set aside for affordability assistance. This final outcome is the total remaining funds that will be dedicated to affordability assistance for the period moving forward.

As outlined in Table 2 below, East Newark Borough has collected \$206,827.78 in development fees, other income, and interest through February 9, 2026. The Borough projects an additional \$154,460.00 in development fees and \$3,089.20 in interest through June 30, 2035. To date, the Borough has expended \$0.00 from the Affordable Housing Trust Fund. The Township will reserve \$109,313.09 from the Affordable Housing Trust Fund to render units more affordable for very-low, low-, and moderate-income households.

| TABLE 2: AFFORDABILITY ASSISTANCE | | |
|---|---------|---------------------|
| Actual Development Fees, Other Income, and Interest Earned through 2/9/2026 | | \$206,827.78 |
| Projected Development Fees 2026-2035 | + | \$154,460.00 |
| Projected Affordable Housing Trust Fund Interest 2026-2035 | + | \$3,089.20 |
| Less Housing Activity through 2/0/2026 (including new construction and rehabilitation) | - | \$0.00 |
| Total | = | \$364,376.98 |
| 30% Affordability Assistance Contribution | x 0.3 = | 109,313.09 |
| Less Affordability Assistance Expenditures through [date] | - | \$0.00 |
| Projected Affordability Assistance through 6/30/2035 | = | \$109,313.09 |

(b) Administrative Expenses (N.J.A.C. 5:99-2.4)

N.J.A.C. 5:99-2.4 sets forth that no more than 20% of revenues collected from development fees, exclusive of those collected prior to July 17, 2008 to fund a RCA, shall be expended on administration. These funds may apply to costs including, but not limited to:

1. Those reasonably related to the determination of the fair share obligation or development of a municipal Housing Element/Fair Share Plan;
2. Fees necessary to develop or implement affordable housing programs or an affirmative marketing program;
3. Expenses reasonably necessary for compliance with the processes of the Program;
4. Costs associated with functions carried out in compliance with UHAC, including those related to the marketing program and waitlist management, administering the placement of occupants in housing units, income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with the Division’s monitoring requirements; and
5. The proportion of a municipal employee’s salary related to the Municipal Housing Liaison or Regional Contribution Agreement administrator functions and fees for required educational programs.

The calculation of allowable administrative expenses is performed by considering the lifetime of the Affordable Housing Trust Fund. To project the funding amount that will be available for administrative costs, the sum of all development fees actually collected and all interest earned since the inception of the account is added to the sum of all projected development fees and interest projected to be collected throughout the Fourth Round. From this amount, any Regional Contribution Agreement (RCA) expenditures made or contractually obligated from the inception of the account are subtracted. This final amount is

multiplied by 20% and then any actual administrative expenditures made since the inception of the Affordable Housing Trust Fund are subtracted out. The final outcome of this calculation, as depicted in the following table, equates to the total remaining funds that will be available for administrative expenses through the end of the Fourth Round.

The Borough collected \$206,827.78 in development fees, other income, and interest through February 9, 2026. The Borough projects an additional \$154,460.00 in development fees and \$3,089.20 in interest through 2035. The Borough has never taken part in an RCA and has spent \$0.00 on administrative expenses between the inception of the Affordable Housing Trust Fund and February 9, 2026.

| TABLE 3: ADMINISTRATIVE EXPENSES | | |
|---|----------|---------------------|
| Actual Development Fees, Other Income, and Interest Earned through 2/9/2026 | | \$206,827.78 |
| Projected Development Fees 2026-2035 | + | \$154,460.00 |
| Projected Affordable Housing Trust Fund Interest 2026-2035 | + | \$3,089.20 |
| Less RCA Contributions | - | \$0.00 |
| Total | = | \$364,376.98 |
| 20% Max. Permitted on Administrative Expenses through June 30, 2035 | x 0.20 = | \$72,875.40 |
| Less Administrative Expenditures through 2/9/2026 | - | \$0.00 |
| Projected Allowed Administrative Expenditures | = | \$72,875.40 |

As of February 9, 2026, the Borough has spent \$0.00 on administrative expenses. Therefore, moving forward the Borough projects that a maximum of \$72,875.40 is available from the Affordable Housing Trust Fund for administrative expenses for the Fourth Round. Because the actual administrative expense maximum is calculated on an ongoing basis based on actual revenues, the Borough shall be permitted to spend 20% of the actual balance of the Affordable Housing Trust Fund at any given time on administrative fees. As additional income is collected, money becomes available for administrative expenses. Projected administrative expenditures, subject to the 20% cap, include but are not limited to:

- Administration and expenses associated with the Borough’s affordable housing units;
- Expenses associated with the preparation and implementation of the Housing Element and Fair Share Plan and monitoring of the current and future housing programs for the Borough;
- Affirmative marketing; and
- Income qualification.

(c) New Construction Programs and Projects + Borough Rehabilitation Program

The Borough will dedicate the remaining \$182,188.49 from its Affordable Housing Trust Fund to support:

- The implementation of a Mount Laurel-compliant, Borough-wide rehabilitation program to partially address its Present Need Obligation of 31 units for income eligible households, in conjunction with funds administered by the County HOME and CDBG programs; and
- Any emergent 100% affordable housing developments during the Fourth Round.

EXPENDITURE SCHEDULE

| TABLE 4: PROJECTED EXPENDITURE SCHEDULE THROUGH 2035 | | | | |
|---|-------------------------------------|---------------------------|--|---------------------|
| Year | Program | | | Total |
| | (a) Affordability Assistance | (b) Administration | (c) New Construction and Rehabilitation | |
| 2026 | \$6,072.95 | \$4,048.63 | \$10,121.58 | \$20,243.17 |
| 2027 | \$12,145.90 | \$8,097.27 | \$20,243.17 | \$40,486.33 |
| 2028 | \$12,145.90 | \$8,097.27 | \$20,243.17 | \$40,486.33 |
| 2029 | \$12,145.90 | \$8,097.27 | \$20,243.17 | \$40,486.33 |
| 2030 | \$12,145.90 | \$8,097.27 | \$20,243.17 | \$40,486.33 |
| 2031 | \$12,145.90 | \$8,097.27 | \$20,243.17 | \$40,486.33 |
| 2032 | \$12,145.90 | \$8,097.27 | \$20,243.17 | \$40,486.33 |
| 2033 | \$12,145.90 | \$8,097.27 | \$20,243.17 | \$40,486.33 |
| 2034 | \$12,145.90 | \$8,097.27 | \$20,243.17 | \$40,486.33 |
| 2035 | \$6,072.95 | \$4,048.63 | \$10,121.58 | \$20,243.17 |
| TOTAL | \$109,313.09 | \$72,875.40 | \$182,188.49 | \$364,376.98 |

4. SUMMARY

As of February 9, 2026, the Borough’s Affordable Housing Trust Fund had a balance of \$206,827.78. East Newark Borough anticipates an additional \$157,549.20 in revenues and interest by June 30, 2035, resulting in a projected balance of \$364,376.98 for the Fourth Round. The Borough will commit \$109,313.09 for affordability assistance efforts, a maximum of \$72,875.40 for administrative expenses, and the remaining \$182,188.49 for (a) any 100% affordable housing developments to emerge during the Fourth Round and (b) to support the Borough-wide Rehabilitation Program.

| TABLE 5: SPENDING PLAN SUMMARY | |
|---|-----------------------|
| Balance as of February 9, 2026 | \$206,827.78 |
| | |
| PROJECTED REVENUE THROUGH JUN 30, 2025 | |
| Development fees | + \$154,460.00 |
| Interest | + \$3,089.20 |
| | |
| TOTAL REVENUE + CURRENT BALANCE | = \$364,376.98 |
| EXPENDITURES | |
| Affordability Assistance | - \$109,313.09 |
| Administrative Expenses | - \$72,875.40 |
| New Construction and Rehabilitation | - \$182,188.49 |
| Excess Funds for Additional Housing Activity | = \$0.00 |
| TOTAL PROJECTED EXPENDITURES | = \$364,376.98 |
| REMAINING BALANCE | = \$0.00 |

Borough of East Newark, Hudson County
Affordable Housing Trust Fund Spending Plan

June 12, 2025
Amended March 6, 2026

Appendix A

Development Fee Ordinance No. 17-2025

ORDINANCE NUMBER 17-2025

FIRST READING/
INTRODUCTION: November 12, 2025

SECOND READING/
PUBLIC HEARING/
ADOPTION: December 29, 2025

ORDINANCE

**BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY**

**AN ORDINANCE OF THE BOROUGH OF NEW EAST NEWARK, COUNTY OF HUDSON,
STATE OF NEW JERSEY, AMENDING CHAPTER 32 TO CREATE A NEW SECTION
ENTITLED "AFFORDABLE HOUSING DEVELOPMENT FEES"**

BE IT ORDAINED by the Mayor and the Borough Council of the Borough of East Newark, that Chapter 32 entitled "Affordable Housing Development Fees," is hereby established to read as follows:

§32-1 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, N.J.S.A. 52:27d-301 *et seq.*, and the State Constitution, subject to the adoption of Rules by the Council on Affordable Housing (COAH).

B. 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 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 were under the jurisdiction of COAH and that are now before a court of competent jurisdiction and have a 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 that are consistent with COAH's regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32-38 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing low- and moderate-income housing in accordance with a Court-approved Spending Plan.

D. On March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2 (hereinafter "A4" or "Amended FHA"), which, among other things, formally abolished COAH. However, because new regulations regarding the preparation and implementation of a development fee ordinance have not been adopted, the following ordinance continues to apply the standards consistent with COAH's regulations.

§32-2 Basic Requirements

A. This Ordinance shall not be effective until approved by the Court or body of competent jurisdiction.

B. The Borough of East Newark shall not spend development fees until the Court or body of competent jurisdiction has approved a plan for spending such fees (Spending Plan).

§32-3 Definitions

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

"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 housing development.

"Development fee" means money paid by a developer for the improvement of property as permitted at N.J.A.C. 5:97-8.3.

"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.

"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).

"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.

§32-4 Residential Development Fees

A. Imposition of Fees

1) Within the Borough of East Newark, all residential developers, except for developers of the types of developments specifically exempted below and developers of developments that include affordable housing, shall pay a fee of one and a half percent (1.5%) of the equalized assessed value for all new residential development provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.

2) When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a "bonus" development fee of six percent (6%) percent of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating

the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

B. Eligible Exactions, Ineligible Exactions and Exemptions for Residential Developments

- 1) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- 2) 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.
- 3) Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.
- 4) 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.
- 5) Where there is an improvement to, expansion of, reconstruction or replacement of an existing residential structure requiring a Construction Permit, no development fee shall be required to be paid. The construction or improvement of a permitted accessory structure on a lot containing an existing residential structure shall not require the payment of a development fee.
- 6) Developers of houses of worship and other uses that are entitled to exemption from New Jersey real property tax shall be exempt from the payment of a development fee, provided that such development does not result in the construction of any additional housing or residential units, including assisted living and continuing care retirement communities.

§32-5 Non-Residential Development Fees

A. Imposition of Fees

- 1) Within all zoning districts, non-residential developers, except for developers of the types of developments specifically exempted below, 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.
- 2) Within all zoning districts, non-residential developers, except for developers of the types of developments specifically exempted below, 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.
- 3) 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 improvements and the equalized assessed value of the newly improved structure, i.e. land and improvements, and such calculation shall be made at the time a final Certificate of Occupancy is issued. If the calculation required under this Section results in a negative number, the nonresidential development fee shall be zero.

B. Eligible Exactions, Ineligible Exactions and Exemptions for Non-residential Development

- 1) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to a two and a half percent (2.5%) development fee, unless otherwise exempted below.
- 2) The two and a half percent (2.5%) development fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing footprint, reconstruction, renovations and repairs.
- 3) Non-residential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption". Any exemption claimed by a developer shall be substantiated by that developer.
- 4) A developer of a non-residential development exempted from the nonresidential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final Certificate of Occupancy for the non-residential development, whichever is later.
- 5) 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 the Borough of East Newark as a lien against the real property of the owner.
- 6) Pursuant to P.L. 2009, c. 90 and P.L.2011, c. 122, the non-residential statewide development fee of two and one-half (2.5%) percent for non-residential development is suspended for all non-residential projects that received preliminary or final site plan approval subsequent to July 17, 2008 until July 1, 2013, provided that a permit for the construction of the building has been issued prior to January 1, 2015.

§32-6 Collection Procedures

A. Upon the granting of a preliminary, final or other applicable approval for a development, the approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a Construction 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 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.

C. The Construction Official responsible for the issuance of a Construction Permit shall notify the Borough Tax Assessor of the issuance of the first Construction Permit for a development which is subject to a development fee.

D. Within 90 days of receipt of such notification, the Borough Tax Assessor shall prepare an estimate of the equalized assessed value of the development based on the plans filed.

E. The Construction Official responsible for the issuance of a final Certificate of Occupancy shall notify the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.

F. Within 10 business days of a request for the scheduling of a final inspection, the Borough Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

G. Should the Borough of East Newark fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of Section 37 of P.L. 2008, c.46 (C.40:55D-8.6).

H. Except as provided in Section 5.A.3) hereinabove, fifty percent (50%) of the initially calculated development fee shall be collected at the time of issuance of the Construction Permit. The remaining portion shall be collected at the time of issuance of the Certificate of Occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the Construction Permit and that determined at the time of issuance of the Certificate of Occupancy.

I. 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, collected fees shall be placed in an interest bearing escrow account by the Borough of East Newark. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1, *et seq.*, within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

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

§32-7 Affordable Housing Trust Fund

A. There is hereby created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Chief Financial Officer of the Borough of East Newark 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:

1) Payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by Ordinance or by Agreement with the Borough of East Newark;

- 2) Funds contributed by developers to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
- 3) Rental income from municipally operated units;
- 4) Repayments from affordable housing program loans;
- 5) Recapture funds;
- 6) Proceeds from the sale of affordable units; and
- 7) Any other funds collected in connection with East Newark's affordable housing program.

C. In the event of a failure by the Borough of East Newark 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 Tp. of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (affd 442 N.J. Super. 563); 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 Borough of East Newark, 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 to the circumstances.

D. Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court or body of competent jurisdiction.

§32-8 Use of Funds

A. The expenditure of all funds shall conform to a Spending Plan approved by the Court or body of competent jurisdiction. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court/body of competent jurisdiction to address the Borough of East Newark'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; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market to affordable program; Regional Housing Partnership programs; conversion of existing nonresidential 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; and/or any other activity permitted by the Court or body of competent jurisdiction and specified in the approved Spending Plan.

- B. Funds shall not be expended to reimburse the Borough of East Newark for past housing activities.
- C. At least 30 percent of all development fees collected and interest earned on such fees 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 the median income for Housing Region 2, in which East Newark is located.
- 1) 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. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.
 - 2) 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. The specific programs to be used for very low income affordability assistance shall be identified and described within the Spending Plan.
 - 3) Payments in lieu of constructing affordable housing units on site, if permitted by Ordinance or by Agreement with the Borough of East Newark, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- D. The Borough of East Newark may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance.
- 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 consultants' fees necessary to develop or implement a new construction program, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or a rehabilitation program.
- 1) In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20 percent of collected development fees that may be expended on administration.
 - 2) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the Affordable Housing Trust Fund.

§32-9 Monitoring

The Borough of East Newark shall provide annual reporting of Affordable Housing Trust Fund activity through the DCA monitored online Affordable Housing Monitoring System. 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 Borough), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Borough owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with East Newark's affordable housing

programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by a Court or body of competent jurisdiction.

§32-10 Ongoing Collection of Fees

A. The ability for the Borough of East Newark to impose, collect and expend development fees shall expire with the expiration of the Fourth Round when at such time, a new Housing Element and Fair Share Plan will be required to be prepared and adopted.

B. If the Borough of East Newark 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 Affordable Housing 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).

C. The Borough of East Newark shall not impose a residential development fee on a development that receives preliminary or final site plan approval should the Borough not receive approval of this development fee, nor shall the Borough of East Newark retroactively impose a development fee on such a development.

ORDINANCE 17-2025

Introduced: November 12, 2025

Introduction – First Reading

| Councilmember | Motion | Second | Ayes | Nays | Abstain | Absent |
|---------------|--------|--------|------|------|---------|--------|
| De Oliveira | | X | X | | | |
| Diaz | | | X | | | |
| Evaristo | | | X | | | |
| Graham | X | | X | | | |
| Reis | | | X | | | |
| Zincavage | | | X | | | |

CERTIFICATION

I, Dr. Cosmo A. Cirillo, Borough Clerk of the Borough of East Newark, County of Hudson, State of New Jersey, do hereby certify that this Ordinance was introduced on first reading by the Mayor and Borough Council at a public meeting of the Mayor and Borough Council held on Wednesday, November 12, 2025.

 Dr. Cosmo A. Cirillo, RMC
 Borough Clerk

ORDINANCE 17-2025

Adopted: December 29, 2025

Adoption – Second Reading

| Councilmember | Motion | Second | Ayes | Nays | Abstain | Absent |
|---------------|--------|--------|------|------|---------|--------|
| De Oliveira | | | X | | | |
| Diaz | | X | X | | | |
| Evaristo | | | | | | X |
| Graham | | | X | | | |
| Reis | | | X | | | |
| Zincavage | X | | X | | | |

CERTIFICATION

I, Dr. Cosmo A. Cirillo, Borough Clerk of the Borough of East Newark, County of Hudson, State of New Jersey, do hereby certify that this Ordinance was adopted on second reading after a public hearing, by the Mayor and Borough Council at a public meeting of the Mayor and Borough Council held on Monday, December 29, 2025.

 Dr. Cosmo A. Cirillo, RMC
 Borough Clerk