

**ORDINANCE 910 OF THE BOROUGH OF HOPEWELL,
COUNTY OF MERCER, STATE OF NEW JERSEY, ADDRESSING
THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE
UNIFORM HOUSING AFFORDABILITY CONTROLS, AND
AMENDING SECTION 10A-4.4 OF THE “REVISED GENERAL
ORDINANCES OF THE BOROUGH OF HOPWELL, 1975”
REGARDING “DEVELOPMENT FEES”**

WHEREAS, the Borough of Hopewell (the “Borough”) filed a Declaratory Judgment Action in the Superior Court of New Jersey, Mercer County, captioned IMO Borough of Hopewell, Docket No MER-L-184-25 (the “Declaratory Judgment Action”), in furtherance of the “Municipality”), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D- 301, et seq. (collectively, the “FHA”), and in accordance with Section II.A of Administrative Directive #14-24 (“Directive #14-24”) of the Affordable Housing Dispute Resolution Program (the ”Program”), seeking a certification of compliance with the FHA; and

WHEREAS, the Borough Planning Board adopted a Housing Element and Fair Share Plan on June 4, 2025 by way of resolution, which was endorsed by the Borough of Hopewell Council on June 5, 2025 by way of Resolution No. 2025-70, in compliance with the Fair Housing Act and Administrative Directive #14-24 and pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.; and

WHEREAS, Fair Share Housing Center (“FSHC”) filed a challenge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) to the Borough’s Housing Element and Fair Share Plan on August 31, 2025; and

WHEREAS, the Borough and FSHC entered into a Settlement Agreement dated December 10, 2025, as authorized by Borough Council Resolution No. 2025-121, arising out of the Declaratory Judgment, which determines the Borough’s affordable housing obligation and the mechanisms for how the obligation will be addressed (“Settlement Agreement”); and

WHEREAS, the Settlement Agreement was approved by the Superior Court of New Jersey, Mercer County Law Division on January 21, 2026 at a duly noticed Fairness Hearing; and

WHEREAS, pursuant to and consistent with the terms of the Settlement Agreement and Housing Plan Element and Fair Share Plan, the Borough is required to adopt one or more ordinances to address compliance issues on or before March 15, 2026; and

WHEREAS, at this time, the Mayor and Council seek to adopt this ordinance to be known as the “Development Fee Ordinance.”

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Hopewell, Mercer County, New Jersey, as follows:

Section 1. Subsection 4.4h (“Development Fees”) of Chapter 10A (“Land Use Procedures”) of the “Revised General Ordinances of the Borough of Hopewell, 1975” is hereby repealed and replaced with the following new subsection 4.4h. to read as follows:

§10A-4.4 Applications and Fees.

h. Development Fees.

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 rules.
- (b) Pursuant to P.L. 2008, c.46, §8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), the Division of Local Planning Services in the New Jersey Department of Community Affairs is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of COAH or court of competent jurisdiction and have an approved spending plan may retain fees collected from non-residential development.
- (c) Where applicable, references to approvals or compliance certification are those issued through the Affordable Housing Dispute Resolution Program (the “Program”) or a court of competent jurisdiction, and/or approvals issued by the Division, as provided in N.J.A.C. 5:99.
- (d) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees and other affordable housing trust fund revenues pursuant to P.L. 2008, c.46, the Fair Housing Act, and the regulations implementing the Act at N.J.A.C. 5:99. Fees collected pursuant to this ordinance shall be used solely for the purpose of providing low- and moderate-income housing in accordance with an approved spending plan and the requirements of N.J.A.C. 5:99.

2. Basic Requirements.

- (a) Hopewell Borough shall not spend, or commit to spend, any affordable housing trust fund revenues unless the expenditure is approved as part of its compliance certification or otherwise approved as permitted by N.J.A.C. 5:99 and N.J.S.A. 52:27D-329.2.a(4). A municipality within the jurisdiction of the Program or a court of competent jurisdiction shall not spend trust fund revenues unless the Program or court has approved a plan for spending such funds, or unless the Division has approved spending plan expenditures for emergent opportunities as provided in N.J.A.C. 5:99.
- (b) In the event any of the conditions described at N.J.A.C. 5:99-5.6 occur, the Division shall be authorized, on behalf of Hopewell, to direct the manner in which all funds in the affordable housing trust fund shall be expended, and the three-party escrow agreement shall be maintained at all times.

3. Definitions.

The following terms, as used in this subsection h., shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT

Shall mean a development included in the Borough's 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.

AHMS

Shall mean the Affordable Housing Management System used for annual municipal monitoring submissions.

COAH OR THE COUNCIL

Shall mean the former New Jersey Council on Affordable Housing established under the Fair Housing Act which previously had primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State. Pursuant to the Executive Reorganization Act of 1969, P.L. 1969, c. 203 (C. 52:14C-1 et seq.), the Governor abolished the Council and transferred all functions, powers, and duties to the Commissioner of the Department of Community Affairs, effective August 29, 2011.

DEPARTMENT

Shall mean the New Jersey Department of Community Affairs.

COMPLIANT MUNICIPALITY

Shall mean a municipality maintaining compliant status for purposes of development fee retention and trust fund maintenance as provided in N.J.A.C. 5:99.

DEVELOPMENT FEE

Shall mean money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:99.

DEVELOPER

Shall mean 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.

DIVISION

Shall mean the Division of Local Planning Services within the Department of Community Affairs.

EQUALIZED ASSESSED VALUE

Shall mean 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

Shall mean 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.

MUNICIPALITY

Shall mean the Borough of Hopewell in Mercer County, also referred to herein as "Hopewell" or the "Borough."

PROGRAM

Shall mean the Affordable Housing Dispute Resolution Program, where applicable.

4. Residential Development fees.

(a) Imposed fees

- (1) Within the Borough, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half percent (1.5%) 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 (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.

(b) Eligible exactions, ineligible exactions and exemptions for residential development.

- (1) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in Hopewell, 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. Non-residential Development fees.

(a) Imposed fees

- (1) 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 a 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) Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and a 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 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.
- (1) 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.
 - (2) The two and a half (2.5%) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 - (3) 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.
 - (4) 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.
 - (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 Hopewell Borough as a lien against the real property of the owner.

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 responsible 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 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 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 non-residential 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 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 Hopewell Borough 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) Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- (i) Appeal of development fees,
 - (1) For residential developments, imposed and collected residential development fees that are contested shall be deposited under protest in an interest-bearing escrow account by Hopewell. The local code enforcement

official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. 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.

A developer may challenge non-residential development fees by filing a challenge with the Director of the Division of Taxation. Collected fees shall be placed in an interest-bearing escrow account by the Borough if the Borough is authorized to retain the fees, or by the State if the Borough is not authorized to retain the fees. The local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. Appeals from a determination of the Director may be made to the Tax Court in accordance with N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

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 (“Affordable Housing Trust Fund”).
- (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 affordable units;
 - (2) Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached 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 Hopewell’s affordable housing program.
- (c) Within 21 days from the opening of the Affordable Housing Trust Fund account, and within 21 days of any change in the bank or other financial institution in which trust funds are deposited, Hopewell shall provide the Division with written authorization, in the form of a three-party escrow agreement between Hopewell, the bank or other financial institution, and the Division, to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-5.6. This escrow agreement shall be maintained at all times.
- (d) All interest accrued in the Affordable Housing Trust Fund shall only be used on eligible affordable housing activities included in an approved spending plan or an emergent opportunity authorized by the Division.

8. Use of Funds.

- (a) The expenditure of all funds shall conform to a spending plan approved by the Program or a court of competent jurisdiction, or as approved by the Division for an emergent opportunity to create affordable housing, as permitted by N.J.A.C. 5:99 and N.J.S.A. 52:27D-329.2.a(4). 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 and specified in the approved spending plan.
- (b) Funds shall not be expended to reimburse Hopewell Borough for past housing activities.
- (c) The Borough shall set aside a portion of all development fees collected and interest earned for the purpose of providing affordability assistance to very low-, low-, and moderate-income households in affordable units included in the municipality's fair share plan. Affordability assistance for very-low-income households may include offering a subsidy to developers of inclusionary or 100 percent affordable developments or buying down the cost of low- or moderate-income units to make them affordable to very-low-income households, including special needs and supportive housing opportunities.

Payments in lieu of constructing affordable units shall be deposited into the Affordable Housing Trust Fund and accounted for separately, identified in annual monitoring submissions, and included in the municipal spending plan. Whenever a payment-in-lieu fee is assessed for a development, a development fee shall not be charged in connection with the same development.

- (d) Hopewell Borough may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:99-7.
- (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 Department's monitoring requirements. Municipal affordable housing trust funds shall not be expended on attorney fees or court costs to obtain a judgment of compliance or order of repose (including associated administration costs), on any costs in connection with a challenge to the municipality's fair share

obligation, or on any costs in connection with a challenge to the municipality's obligation, housing element, or fair share plan, as provided in N.J.A.C. 5:99.

9. Monitoring.

- (a) Hopewell Borough shall submit all required monitoring information through the online AHMS in the time and form required by the Division. Monitoring information for each calendar year shall be submitted in the form of a certification by the municipal housing liaison, or their designee (who shall be a municipal employee), and shall be accompanied by a year-end bank or other financial institution statement used to reconcile municipal reporting. Municipal monitoring information certifications shall be submitted through AHMS by February 15 of each year for trust fund activity through December 31 of the previous year.

10. Ongoing Collection of Fees.

- (a) The ability for Hopewell Borough to impose and collect and retain residential development fees, retain non-residential development fees, and maintain an affordable housing trust fund is subject to maintaining its status as a compliant municipality, except as otherwise provided by law for Qualified Urban Aid Municipalities. If a court of competent jurisdiction finds that the municipality has failed to maintain its status as a compliant municipality, the municipality may be subject to forfeiture of any or all funds remaining within the Affordable Housing Trust Fund, and any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.

Section 2. Repealer, Severability, and Effective Date.

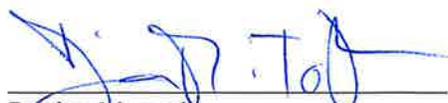
(a) All ordinances or parts of ordinances inconsistent with this ordinance are repealed as to such inconsistencies.

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

(c) The provision of this ordinance shall take effect upon passage and publication as provided by law.

INTRODUCED: 2/5/2026
PUBLISHED: 2/13/2026
ADOPTED: 3/5/2026
INTRODUCED BY: Ms. Stuhler

ATTEST:



Regina M. Toth
Borough Clerk



Ryan P. Kennedy
Mayor

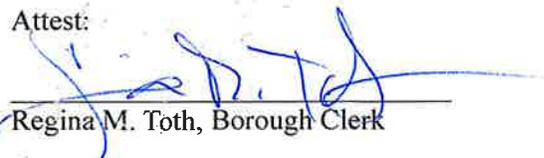
ROLL CALL VOTE				
COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT
BUDA	✓			
FULLER	✓			
HOOK	✓			
STUHLER	✓			
WEAVER	✓			
WILENIUS				✓

NOTICE IS HEREBY GIVEN, that the foregoing Ordinance was introduced in writing at a meeting of the Borough Council of the Borough of Hopewell, County of Mercer and State of New Jersey, held on the 5th day of February, 2026, introduced and read by title and passed on the first reading and that the said Governing Body considered the same for second reading and final passage thereon at a meeting held on the 5th day of March, 2026, at 7:00 p.m., prevailing time, at the Municipal Building in said Borough, 88 East Broad Street, Hopewell NJ, at which time and place a public hearing was held thereon by the Governing Body and all persons and citizens in interest had an opportunity to be heard concerning same.

INTRODUCED:

ADOPTED:

Attest:



 Regina M. Toth, Borough Clerk