

Township of Plainsboro
County of Middlesex

Ordinance No. 26-03

AN ORDINANCE REPEALING AND REPLACING CHAPTER 57 OF THE CODE OF THE TOWNSHIP OF PLAINSBORO TITLED “DEVELOPMENT FEES”

WHEREAS, the collection of development fees from builders of residential and non-residential properties has been authorized by Holmdel Builder’s Association v. Holmdel Township, 121 N.J. 550 (1990), through the powers established pursuant to the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, et seq., and the New Jersey Constitution; and

WHEREAS, on March 20, 2024, Governor Murphy signed *P.L. 2024, c.2.* into law, further amending the Fair Housing Act (“Amended FHA”) and establishing a new framework for determining and enforcing municipalities’ affordable housing obligations under the New Jersey Supreme Court’s Mount Laurel doctrine; and

WHEREAS, the Amended FHA authorizes a municipality to impose and collect development fees from non-residential development, after the adoption of a municipal development fee ordinance, in accordance with rules to be promulgated by the Department of Community Affairs (“DCA”); and

WHEREAS, the Amended FHA requires a municipality to obtain approval as part of its compliance certification or by the DCA, prior to spending or committing to spend any affordable housing fees, including Statewide non-residential fees collected and deposited into the municipal housing trust fund; and

WHEREAS, on January 24, 2025, the Township of Plainsboro timely filed a Declaratory Judgment Action titled *In the Matter of the Application of the Township of Plainsboro*, Docket No. MID-L-000494-25, seeking court approval of its compliance with its affordable housing obligation for the Fourth Round, conditioned on the adoption of a Fourth Round Housing Element and Fair Share Plan; and

WHEREAS, on June 17, 2025, the Township of Plainsboro filed its Fourth Round Housing Element and Fair Share Plan (“Fourth Round Plan”) pursuant to the deadline of June 30, 2025 imposed by the Amended FHA; and

WHEREAS, Fair Share Housing Center (“FSHC”) challenged the Township of Plainsboro’s Fourth Round Plan per the established process and deadline imposed by the Amended FHA. FSHC stated that it was not facially challenging the Township’s Fourth Round Plan but instead requesting documentation to support the Township’s selection of sites and other elements in the Township’s Fourth Round Plan; and

WHEREAS, FSHC required that the Township of Plainsboro update its Spending Plan and Fee Development Ordinance in accordance with the Amended FHA and forthcoming regulations at N.J.A.C. 5:80-26.1, et seq, and N.J.A.C. 5:99 after they are adopted and before March 15, 2026, prior to the Court granting compliance certification; and

WHEREAS, the Division of Local Planning Services of the DCA (“Division”), adopted new rules at N.J.A.C. 5:99, effective December 15, 2025; and

WHEREAS, the Township of Plainsboro wishes to repeal and replace existing Chapter 57 titled “Development Fees” of the Code of the Township of Plainsboro in order

to obtain compliance certification, pursuant to the Amended FHA, N.J.S.A. 40:55D-8.4, and to assist the Township in achieving its affordable housing obligations.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Plainsboro, Middlesex County, New Jersey, that existing Chapter 57 titled "Development Fees" of the Code of the Township of Plainsboro is hereby repealed and replaced with the following provisions regulating the collection and disposition of mandatory development fees to be used in connection with the Township's affordable housing programs:

Article I. Affordable Housing Development Fees

§57-1. Findings and purposes.

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.

- A. *P.L.2024, c.2* amended N.J.S.A. 52:27D-329.2 and N.J.S.A. 40:55D-8.4, which authorize a municipality to impose and collect non-residential development fees.
- B. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees and other affordable housing trust fund revenue pursuant to P.L. 2008, c.46, the Fair Housing Act, and the Fair Housing Act Regulations at N.J.A.C. 5:99. Fees collected pursuant to this ordinance shall be used for the sole 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.
- C. The Township Committee finds and declares that the creation and preservation of affordable housing in the Township serves the public interest. Maintaining and improving a stock of sound affordable housing requires affirmative steps by local government working cooperatively with public bodies at all levels and with the private sector. The purpose of this section is to create in the Township of Plainsboro a trust fund from payment of development fees to assist in the marshaling of public and private money dedicated to affordable housing projects and programs.

§57-2. Basic requirements.

- A. This ordinance shall take effect in accordance with applicable law upon adoption and publication.
- B. The Township of Plainsboro shall not spend, or commit to spend, any affordable housing trust fund revenues unless the expenditure is approved as part of the municipality's 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.

- C. This ordinance shall provide that, 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 the municipality, 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.

§57-3. Definitions.

As used herein the following terms shall have the following definitions:

- A. "Affordable housing development" means a development included in a municipality's housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored affordable housing project, or a 100 percent affordable development.
- B. "AHMS" means the Affordable Housing Management System used for annual municipal monitoring submissions.
- C. "Construction" means new construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.).
- D. "COAH" or "Council" means the Council on Affordable Housing established in P.L.1985, c.222 (C.52:27D-301 et al.), abolished pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1).
- E. "Compliant municipality" means a municipality maintaining compliant status for purposes of development fee retention and trust fund maintenance as provided in N.J.A.C. 5:99.
- F. "Development fee" means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:99.
- G. "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.
- H. "Division" means the Division of Local Planning Services within the Department of Community Affairs.
- I. "Equalized assessed value" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (N.J.S.A. 54:1-35a through N.J.S.A. 54:1-35c).
- J. "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.

- K. "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.
- L. "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.).
- M. "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).
- N. "Program" means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L.2024, c.2 (C.52:27D-313.2).
- O. "Recreational facilities and community center" means any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including but not limited to ball fields, meeting halls, and classrooms, accommodating either organized or informal activity.
- P. "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.
- Q. "Senior center" means any recreational facility or community center with activities and services oriented towards serving senior citizens.
- R. "Spending plan" means a method of allocating funds contained in an affordable housing trust fund account, which includes, but is not limited to, development fees collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to N.J.S.A.52:27D-329.1 et seq., for the purpose of meeting the housing needs of low- and moderate-income individuals.

§57-4. Development Fee Schedule.

- A. Non-residential Development fees
- a) Imposed fees

- i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
 - ii. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
 - iii. 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
 - i. 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.
 - ii. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 - iii. 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.
 - iv. 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. Unpaid non-residential development fees under these circumstances may be enforceable by the Township of Plainsboro as a lien against the real property of the owner.
 - v. 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 Township of Plainsboro as a lien against the real property of the owner.

- vi. The following shall be exempt from the imposition of a non-residential development fee:
1. 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, 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.
 2. 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.
 3. 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.
 4. Non-residential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility.
 5. 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).
 6. Projects that are located within an eligible municipality, as defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system.
 7. Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the Department of Transportation.
 8. Development by the Township or any of its instrumentalities.
 9. Inclusionary developments shall be exempt from development fees.
 10. Development by charitable or not-for-profit entities formed and legally established in accordance with the laws of the State of New Jersey.

§57-5. 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, or the construction official's designee, responsible for the issuance of a building permit.
- B. 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 construction official or designee 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 or designee 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 the development.
- E. The construction official or designee, 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 the Township of Plainsboro 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. The Township shall collect 50% of the fee on any specific development prior to and as a condition of the issuance of the building permit therefor. The remaining portion shall be collected prior to and as a condition of the issuance of the certificate of occupancy. After an issuance of a building permit, the construction official or designee shall refer the plans for the development to the Tax Assessor. The Tax Assessor shall certify to the construction official the final equalized assessed value in advance of the issuance of a certificate of occupancy by the construction official. The remaining portion of the development fee shall be adjusted to reflect any change in the estimated equalized assessed value so that the total of the two payments shall equal 100% of the total development fee based upon the final equalized assessed value.

§57-6. Appeal of development fees

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 municipality if the municipality is authorized to retain the fees, or by the State if the municipality 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.

§57-7. Housing Fund and use of money.

- 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 non-residential developers and proceeds from the sale of units with extinguished controls.
- B. The development fees placed in the housing trust fund shall be deemed "dedicated revenues" as such term is defined in N.J.S.A. 40A:4-36.
- C. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - a. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - b. rental income from municipally operated units;
 - c. repayments from affordable housing program loans;
 - d. recapture funds;
 - e. proceeds from the sale of affordable units; and
 - f. any other funds collected in connection with the Township of Plainsboro's affordable housing program.
- D. 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.
- E. All interest accrued in the 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 Program or the Division.
- F. The municipality 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.

- G. The Township of Plainsboro 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, or any program or activity for which the municipality expends development fee proceeds, in accordance with N.J.A.C. 5:99-7.
- H. 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: (1) to reimburse the Municipality for activities occurring prior to authorization to collect development fees; or (2) on administrative costs, attorney fees, or court costs to obtain a judgment of repose; or (3) to contest a determination of the Municipality's fair share obligation; or (4) on costs of any challenger in connection with a challenge to the Municipality's obligation, housing element, or fair share plan. Nothing herein shall be construed to prohibit expenditures reasonably necessary for compliance with the Department's processes, including the Municipality's reasonable costs to resolve a challenge under the program, as permitted by P.L. 2024, c.2 and the Fair Housing Act rules.

§57-8. Spending Plan.

- A. The Township shall submit to the Program or the Division a spending plan for the development fees collected by it prior to the expiration of its substantive certification period. Plans to spend development fees shall consist of the following information:
 - a. A projection of revenues anticipated from imposing fees on development, based on historic activity;
 - b. A description of the administrative mechanism that the Township will use to collect and distribute revenues;
 - c. A description of the anticipated use of all development fees;
 - d. A schedule for the creation or rehabilitation of housing units;
 - e. In the event the Township envisions being responsible for public sector or non-profit construction of housing, a pro-forma statement of the anticipated costs and revenues associated with the development; and
 - f. The manner through which the Township will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan.

§57-9. Monitoring

- A. The Township of Plainsboro 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. The Municipality shall submit annual trust fund monitoring information through AHMS by February 15 of each year for activity through December 31 of the prior year, in the form and manner required by N.J.A.C. 5:99-5.2 and 5:99-5.3.

§ 57-10 Ongoing collection of development fees.

The ability for the Township to impose and collect and 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 Township has failed to maintain its status as a compliant municipality, the Township may be subject to forfeiture of any or all funds remaining within the municipal 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 II: Repealer, Severability, Applicability, Effective Date

- (a) All ordinances or parts thereof which are inconsistent with the provisions of this Ordinance are, to the extent of such inconsistency, hereby repealed.
- (b) In the event any section, clause, sentence, phrase or provision of this Ordinance is declared unconstitutional, unenforceable, or invalid by a court of competent jurisdiction, such a decision shall not affect the remaining portions of this Ordinance, and the Ordinance shall be interpreted consistent with its original intent to the fullest extent permissible by law.

This Ordinance shall become effective immediately upon adoption and publication in the manner prescribed by law.

Introduced at a Meeting of the Township Committee of the Township of Plainsboro on **January 28, 2026** and Published on **February 2, 2026**. Adopted at a Meeting held on **February 25, 2026** and Published on **March 3, 2026**.