

**TOWNSHIP OF INDEPENDENCE  
COUNTY OF WARREN  
ORDINANCE 2026-05**

**AN ORDINANCE AMENDING CHAPTER 206, ARTICLE I OF THE  
TOWNSHIP CODE ENTITLED “DEVELOPMENT FEES” TO ADDRESS  
THE REQUIREMENTS OF THE FAIR HOUSING ACT (FHA) AND THE  
UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC)  
REGARDING COMPLIANCE WITH THE TOWN’S AFFORDABLE  
HOUSING OBLIGATIONS.**

**WHEREAS**, Independence Township (the “Township”) filed a Complaint for Declaratory Judgement, captioned IMO Independence Township, Docket No. WRN-L-48-25 on January 27, 2025 identifying its present and prospective fair share obligation for the Fourth Round as set forth above and committing to adopting and submitting a fourth round housing element and fair share plan as required by the FHA; and

**WHEREAS**, the Township entered into a Consent Order with Fair Share Housing Center (“FSHC”) dated March 11, 2026 approving the Township’s Fourth Round Housing Element and Fair Share Plan (“HEFSP”) and granting the Township a Compliance Certification; and

**WHEREAS**, the Consent Order requires the Township to adopt revisions to its ordinances regarding development fees.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Committee of the Township of Independence, in the County of Warren and State of New Jersey, as follows:

**SECTION 1.** Chapter 206, I of the Code of the Township of Independence, entitled “Development Fees,” is hereby amended as follows (deletions noted in strikethrough ~~thus~~, and additions noted in bold italics **thus**):

§206-1. 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 section 8 (N.J.S.A. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), COAH 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 the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from nonresidential development.

This article establishes standards for the collection, maintenance, and expenditure of development *fees that are consistent with the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7)*, pursuant to COAH's regulations and in accordance with P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this article shall be used for the sole purpose of providing *very low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan*. This article shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

§ 206-2. Basic requirements.

A. This article shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1. *The Township previously adopted a development fee ordinance, which established the Municipal Affordable Housing Trust Fund.*

B. Independence Township shall not spend development fees until COAH *the Court* has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

§ 206-3. Definitions. The following terms, as used in this article, shall have the *same meanings as set forth in Chapter 112 herein*. following meanings:

~~AFFORDABLE HOUSING DEVELOPMENT~~

~~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 one-hundred-percent affordable development.~~

~~COAH or THE COUNCIL~~

~~The New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the state.~~

~~DEVELOPER~~

~~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.~~

~~DEVELOPMENT FEE~~

~~Money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.~~

## ~~EQUALIZED ASSESSED VALUE~~

~~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. 54:1-35e).~~

## ~~GREEN BUILDING STRATEGIES~~

~~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.~~

§ 206-4. Residential development fees.

A. Imposed fees.

(1) ~~Within the residential zone district,~~ ***Within all zoning districts***, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1 1/2% of the equalized assessed value for 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 pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers shall be required to pay a development fee of 6% 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. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1 1/2% of the equalized assessed value on the first two units; and the specified higher percentage up to 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a 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 the municipality***, and developments where the developer has made a payment in lieu of on-site construction of affordable units, ***if permitted by ordinance, or by agreement with the municipality and if approved by a municipality prior to***

*the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2, shall be exempt from development fees.*

(2) Developments that have received preliminary or final site plan approval prior to the adoption of *this ordinance and any preceding ordinance permitting the collection of development fees* ~~a municipal development fee ordinance~~ shall be exempt from *the payment of* development fees, unless the developer seeks a substantial change in the *original* approval. *Where a site plan approval does not apply, the issuance of* a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for ~~this~~ *the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.* ~~The fee percentage shall be vested on the date that the building permit is issued.~~

(3) 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.

***(4) 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.***

§ 206-5. Nonresidential development fees.

A. Imposed fees.

(1) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2 1/2% of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.

(2) ***Within all zoning districts,*** nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2 1/2% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.

(3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2 1/2% shall be calculated on the difference between the equalized assessed value of the preexisting 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 nonresidential development fee shall be zero.

B. Eligible exactions, ineligible exactions and exemptions for nonresidential development.

- (1) The nonresidential portion of a mixed-use inclusionary or market-rate development shall be subject to the development fee of 2 1/2%, unless otherwise exempted below.
- (2) The fee of 2 1/2% shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- (3) Nonresidential 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)*, P.L.2008, c.46, as specified in the 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 nonresidential development exempted from the nonresidential development fee pursuant to *the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7)*, P.L.2008, c.46, shall be subject to ~~it~~ *the fee* at such time the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.
- (5) If a property which was exempted from the collection of a nonresidential 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 nonresidential development fees under these circumstances may be enforceable by Independence Township as a lien against the real property of the owner.

§ 206-6. 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 nonresidential 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 *by the developer* as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the nonresidential 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 *Municipal* Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.

D. Within 90 days of receipt of that notice, the municipal Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

E. The construction official responsible for the issuance of a final certificate of occupancy **shall notify** ~~notifies the local~~ **Municipal Tax** 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 **Tax** 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 Independence Township 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 (N.J.S.A. 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) 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 Independence Township. 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, 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.

(2) A developer may challenge nonresidential 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 Independence Township. 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, 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.

§ 206-7. Affordable Housing Trust Fund.

A. ~~There is hereby created a~~ A separate, interest-bearing **Municipal Affordable** Housing Trust Fund ~~to~~ **shall** be maintained by the chief financial officer for the purpose of depositing

development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.

B. The following additional funds shall be deposited in the **Municipal** 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, **where previously permitted by ordinance or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2;**
- (2) Developer-contributed funds to make 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 Independence Township's affordable housing program, **including but not limited to interest earned on fund deposits.**

C. ~~Within seven days from the opening of the trust fund account,~~ Independence Township shall provide **the Division** COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and **the Division** COAH to permit **the Division** COAH to direct the disbursement of the funds as provided for in N.J.A.C. ~~5:97-8.13(b)~~ **5:99-2.1 et seq.**

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

**E. Occurrence of any of the following deficiencies may result in the Division requiring the forfeiture of all or a portion of the funds in the municipal Affordable Housing Trust Fund:**

- (1) **Failure to meet deadlines for information required by the Division in its review of a development fee ordinance;**
- (2) **Failure to commit or expend development fees within four years of the date of collection in accordance with N.J.A.C. 5:99-5.5;**
- (3) **Failure to comply with the requirements of the Non-Residential Development Fee Act and N.J.A.C. 5:99-3;**
- (4) **Failure to submit accurate monitoring reports pursuant to this subchapter within the time limits imposed by the Act, this chapter, and/or the Division;**

- (5) *Expenditure of funds on activities not approved by the Superior Court or otherwise permitted by law;*
- (6) *Revocation of compliance certification or a judgment of compliance and repose;*
- (7) *Failure of a municipal housing liaison or administrative agent to comply with the requirements set forth at N.J.A.C. 5:99-6, 7, and 8;*
- (8) *Other good cause demonstrating that municipal affordable housing funds are not being used for an approved purpose.*

§ 206-8. Use of funds.

A. The expenditure of all funds shall conform to a spending plan approved by *the Court* COAH. Funds deposited in the *Affordable* Housing Trust Fund may be used for any activity approved by ~~COAH~~ *the Court* to address Independence Township's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, ~~or regional housing partnership~~ programs, conversion of existing 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, or any other activity as permitted *by the Court* pursuant to ~~N.J.A.C. 5:97-8.7 through 8.9~~ and specified in the approved spending plan.

B. Funds shall not be expended to reimburse the Independence Township for *activities that occurred prior to the authorization of a municipality to collect development fees* ~~past housing activities~~.

C. At least *a portion* 30% of all development fees collected and interest earned shall be used to provide affordability assistance to *very low-*, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. ~~One-third of the~~ *A portion of the development fees which provide* affordability assistance ~~portion of development fees collected~~ shall be used to provide affordability assistance to *very low income households*. ~~these households earning 30% or less of median income by region.~~

(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, *infrastructure assistance*, 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 *for very low-income* to households earning 30% or less of median income may include *producing very low-income units or* buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.

(3) ~~Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.~~

D. Independence Township may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.

E. No more than 20% of all *affordable housing trust funds* revenues collected from ~~development fees, may~~ *shall* 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, *prepare and implement* a Housing Element and Fair Share Plan, and/or an affirmative marketing program, *and for compliance with the Court and the Program, including the costs to the municipality to resolve a challenge.* ~~In the case of a rehabilitation program, no more than 20% of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.~~

§ 206-9. Monitoring.

*On or before February 15 of each year, the municipality shall provide annual electronic data reporting of trust fund activity for the previous year from January 1st to December 31st through the AHMS Reporting System. This reporting shall include an accounting of all Municipal Affordable Housing Trust Fund activity, including the sources and amounts of all 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, previously eligible payments in lieu of constructing affordable units on site (if permitted by ordinance or by agreement with the municipality prior to the March 20, 2024 statutory elimination per P.L. 2024, c.4), funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income from municipally-owned affordable housing units, repayments from affordable housing program loans, interest and any other funds collected in connection with municipal housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.*

Independence Township shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments

from affordable housing program loans, and any other funds collected in connection with Independence Township's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court. All monitoring reports shall be completed on forms designed by COAH.

§ 206-10. Ongoing collection of fees.

*A. The ability to impose, collect and expend development fees shall continue so long as the municipality retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.*

*B. If the municipality 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 (N.J.A.C. 52:27D-320).*

The ability for Independence Township to impose, collect and expend development fees shall expire with its judgment of compliance unless Independence Township has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If Independence Township fails to renew its ability to impose and collect development fees prior to the expiration of judgment of compliance, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (N.J.S.A. 52:27D-320). Independence Township shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall Independence Township retroactively impose a development fee on such a development. Independence Township shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

**§206-10.1. Emergent Affordable Housing Opportunities.**

*Requests to expend affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be made to the Division and shall be in the form of a governing body resolution. Any request shall be consistent with N.J.A.C. 5:99-4.1.*

**SECTION 2.** All ordinances or parts of ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in conflict or inconsistent.

**SECTION 3.** If any section, provision, or part of provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance, or any part thereof, other than the part so held unenforceable or invalid.

**SECTION 4.** This Ordinance shall take effect after passage and publication in the manner provided by law.

NOTICE IS HEREBY GIVEN, that the foregoing Ordinance was introduced in writing at a meeting of the Township Committee of the Township of Independence, County of Warren and State of New Jersey, held on the 10<sup>th</sup> day of March, 2026, introduced and read by title and passed on the first reading and that the said Governing Body will further consider the same for second reading and final passage thereon at a meeting to be held on the 25<sup>th</sup> day of March, 2026, at 7:30 p.m., prevailing time, at the Municipal Building in said Township, at which time and place a public hearing will be held thereon by the Governing Body and all persons and citizens in interest shall have an opportunity to be heard concerning same.

**INTRODUCED:**

**ADOPTED:**

**Attest:**

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**Dena Hrebenak, Township Clerk**

