

**BOROUGH OF NEW MILFORD
BERGEN COUNTY, N.J.**

ORD. # 2008:19

INTRODUCED	November 24, 2008
PASSED FIRST READING	November 24, 2008
PUBLIC HEARING	December 15, 2008
ADOPTED	December 15, 2008
APPROVED	December 15, 2008

Mayor Frank DeSari

This is to certify that the foregoing ordinance was finally passed and adopted at the regular meeting of the Council of the Borough of New Milford, New Jersey on December 15, 2008 and that same was approved by the Mayor on December 15, 2008.

Christine Demiris
Borough Clerk

**BOROUGH OF NEW MILFORD
ORDINANCE # 2008:19**

**AN ORDINANCE AMENDING CHAPTER XXXII, AFFORDABLE HOUSING, IN THE
REVISED GENERAL ORDINANCES OF THE BOROUGH OF NEW MILFORD,
ADDING SECTION 32-2, DEVELOPMENT FEES.**

NOW THEREFORE BE IT ORDAINED, by the Mayor and Council of the Borough of New Milford, as follows:

The Revised General Ordinances of the Borough of New Milford Chapter XXXII is hereby amended to include Section 32-2, Development Fees, to read as follows:

1. Purpose

a) Pursuant to the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution, as interpreted by the the New Jersey Supreme Court in Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), and as authorized by Council on Affordable Housing's (COAH's) regarding real estate development fees. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's rules. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees.

2. Basic requirements

- a) *Borough of New Milford* shall not spend development fees until COAH has approved a plan for spending such fees and *Borough of New Milford* has received third round substantive certification from COAH or a judgment of compliance.

3. Definitions

- a) The following terms, as used in this ordinance, shall have the following meanings:
 - i. "Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.
 - ii. "COAH" means the New Jersey Council on Affordable Housing.
 - iii. "Development fee" means funds paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules.
 - iv. "Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal tax assessor.

4. Residential Development fees

- a) Within the *Residential A Zone, Residential B Zone, Residential C/Garden Apartment Zone, Residential D/ Townhouse Zone and the Residential E/Multi-Family Townhome Zone* districts, residential developers shall pay a fee of 1 ½ (1.5) of the equalized assessed value for new residential development and for additions and alterations to existing residential dwellings.
- b) 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 will be required to pay a development fee of up to 6 percent of the equalized assessed value for each additional unit that may be realized.

5. Eligible exactions, ineligible exactions and exemptions

- a) Affordable housing developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees
- b) Developments that have received construction permits prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a substantial change in the project.

- c) Development fees shall be imposed and collected when an existing structure is expanded or undergoes a change to a more intense use. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

6. **Collection of fees**

Fifty percent of the development fee will be collected at the time of issuance of the building permit. The remaining portion will be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

7. **Contested fees**

- a) Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by *Borough of New Milford*. 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.

8. **Affordable Housing trust fund**

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

9. **Use of funds**

- a) Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, RCAs subject to the provisions of N.J.A.C. 5:94-4.4(d), ECHO housing, purchase of land for affordable housing, improvement of land to be used for affordable housing, purchase of housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, or administration necessary for creation, and implementation of the Housing Element and Fair Share

Plan. The expenditure of all funds shall conform to a spending plan approved by COAH.

- b) Funds shall not be expended to reimburse *Borough of New Milford* for past housing activities.
- c) After subtracting development fees collected to finance an RCA, a rehabilitation program or a new construction project that are necessary to address the *Borough of New Milford* affordable housing obligation, at least 30 percent of the balance remaining 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 median income by region.
 - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance.
 - ii. 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 third round municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall entitle *Borough of New Milford* to bonus credits pursuant to N.J.A.C. 5:94-4.22.
 - iii. 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) *The Borough of New Milford* 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. 5:94-7.

10. **Monitoring**

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

11. **Ongoing collection of fees**

The ability for *The Borough of New Milford* to impose, collect and expend development fees shall expire with its substantive certification or judgment of compliance unless *New Milford* 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 *The Borough of New Milford* fails to renew its ability to impose and collect development fees prior to *un-determined date in 2018*, it may resume the imposition and collection of development fees only by complying with the requirements of N.J.A.C. 5:94-6. *The Borough of New Milford* shall not impose a development fee on a development that receives a building permit after the expiration of its substantive certification or judgment of compliance on such a development. *The Borough of New Milford* will not expend development fees after the expiration of its substantive certification or judgment of compliance on *un-determined date*.

Introduced: November 24, 2008

Adopted: December 15, 2008