
ORDINANCE NO. 2016:18

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 32.2,
DEVELOPMENT FEES FOR AFFORDABLE HOUSING, OF THE REVISED
GENERAL ORDINANCES OF THE BOROUGH OF NEW MILFORD**

WHEREAS, Section XXXII of the Borough Code regards Affordable Housing, and more specifically:

WHEREAS, §32-2 regards Development Fees and

WHEREAS the Planning Board has suggested the following changes to the Code to more fully conform with the current state of the Council on Affordable Housing, which has not yet approved a spending plan; and

WHEREAS, the Mayor and Council of the Borough of New Milford are desirous of amending said the Ordinance in accordance with the Municipal Land Use Law.

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

Replace Section 32-2 in its entirety with the following:

32-2 DEVELOPMENT FEES.

32-2.1 Purpose.

In Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to COAH developing rules as amended from time to time and/or in accordance with the enacted legislation and/or in accordance with directives from the Courts. The purpose of this article is to establish standards for the collection, maintenance and expenditure of development fees pursuant to the above. Fees collected pursuant to this article shall be used for the sole purpose of providing low- and moderate-income housing.

32-2.2 Definitions.

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

Affordable housing development shall mean 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.

COAH shall mean the New Jersey Council on Affordable Housing.

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.

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

Equalized assessed value shall mean 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.

32-2.3 Residential Development Fees.

a. Imposed fees.

1. Within all zone districts, developers of residential housing, 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 that no increased density is permitted.
2. When an increase in residential density has been permitted pursuant to N.J.S.A. 40:55D-70d (known as a "d" variance) or pursuant to Zoning Amendment or pursuant to the adoption of a Redevelopment Plan pursuant to New Jersey Local Redevelopment and Housing Law (NJSA 40A-12-1 et. seq.), developers shall be required to pay a development fee of a maximum of 6% of the equalized assessed value for each additional unit that may be realized.

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

1. The housing portion of affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees. Other site improvements ancillary or accessory to an affordable housing development shall pay the fee.
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 or the developer has accepted responsibility to pay a development fee. 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. A development fee shall be based on the

percentage that applies on the date that a building permit is issued, regardless of the time of collection of the fee.

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 that results in an increased assessed value, not exempt as set forth in Section 32-2.3b5 below. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
5. The development fee shall not apply to the expansion of a single- or two-family home where the net increase interior floor area is less than 15% of the existing structure. In no event shall the development fee be collected where the total increase in floor area is 500 square feet or less. Upon the request of the Zoning Officer, the property owner shall produce, within 30 days, a set of certified plans signed by a licensed architect, confirming the amount of previously existing and as-built conditions.

32-2.4 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 2.5% of the equalized assessed value of the land and improvements for all new nonresidential construction.
2. Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% 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 2.5% 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 the 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 2.5% development fee, unless otherwise exempted below.

2. The 2.5% 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. Nonresidential developments shall be exempt from the payment of nonresidential 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 Nonresidential Development Certification/Exemption Form. 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 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 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 the Borough of New Milford as a lien against the real property of the owner.

32-2.5 Collection of Fees.

a. Collection procedures.

1. 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.
2. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF, State of New Jersey Nonresidential Development Certification/Exemption, to be completed 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.
3. 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.

4. 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.
 5. 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.
 6. 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.
 7. Should the Borough of New Milford 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).
 8. 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.
- b. Appeal of development fees
1. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough of New Milford. Appeals from a determination of the Board may be made to the Tax Court in accordance with the provisions of the State Uniform Tax 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 the Borough of New Milford. Appeals from a determination of the Director may be made to the Tax Court in accordance with the provisions of the State Uniform Tax 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.
- c. Retention of fees

Any fees collected prior to the adoption or amendment of this article shall be retained by the Borough of New Milford pursuant to COAH's rules regarding the retention of development fees.

32-2.6 Contested Fees.

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.

32-2.7 Affordable Housing Trust Fund.

- a. There is hereby created a separate, interest-bearing housing trust fund in a bank utilized by the Borough for its ordinary business purposes, for the purpose of depositing development fees collected from residential and nonresidential developers, any other payments made pursuant to this article from residential and nonresidential developers and proceeds from the sale of units with extinguished controls. All development fees paid by developers pursuant to this section shall be deposited into this 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 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 the Borough of New Milford's affordable housing program.

32-2.8 Use of Funds.

- a. Money deposited in a housing trust fund may be used for any activity approved by COAH or in accordance with any directives from the Courts for addressing the Borough of New Milford's low- and moderate-income housing obligation. Such activities may include, but are not necessarily limited to: housing rehabilitation; new construction; the purchase of land for low- and moderate-income housing; preservation or purchase of

housing for the purpose of maintaining or implementing affordability controls, including the extension of controls, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing nonresidential buildings to create new affordable units, extensions and/or improvements of roads and infrastructure to low- and moderate-income housing sites; assistance designed to render units to be more affordable to low- and moderate-income households; and administrative costs necessary to implement the Borough of New Milford's housing element. The expenditure of all money shall conform to a spending plan approved by COAH or by the Courts.

- b. At least 30% of all development fees collected and interest earned 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% 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, and assistance with emergency repairs.
 - 2. Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% 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.
- c. 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. 5:96-18.
- d. No more than 20% 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% 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 or the Courts 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.
- e. Funds shall not be expended to reimburse the Borough of New Milford for housing activities carried out prior to the establishment of the Affordable Housing Trust Fund.

- f. This section is intended to be interpreted and applied consistent with the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 et seq.). In the event of any inconsistency, this section shall be read so as to comply with the Act.

32-2.9 Monitoring.

The Borough of New Milford shall complete and return to COAH or to the Courts 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 the Borough of New Milford's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH or the Courts. All monitoring reports shall be completed on forms designed by COAH or the Courts.