

**STATE OF NEW JERSEY
COUNTY OF HUNTERDON
TOWNSHIP OF LEBANON
ORDINANCE NO. 2018-03**

**AN ORDINANCE OF THE TOWNSHIP OF LEBANON
AMENDING CHAPTER 110 OF THE CODE OF THE TOWNSHIP OF LEBANON
TO INCREASE DEVELOPER'S FEES IN COMPLIANCE WITH APPLICABLE LAW**

WHEREAS, COAH's Third Round Rules (N.J.A.C. 5:97-8.3) permit development fees in the amount of 1.5% of the equalized assessed value for residential projects and 2.5% of the equalized assessed value for non-residential projects; and

WHEREAS, the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1, et seq.) permits development fees in the amount of 2.5% of the equalized assessed value for non-residential projects; and

WHEREAS, the Township Committee of the Township of Lebanon wishes to amend the Township's Ordinances to comply with such rules and statute.

BE IT ORDAINED, by the Mayor and Committee of the Township of Lebanon in the County of Hunterdon and State of New Jersey as follows (additions are shown as thus):

SECTION 1: Chapter 110 entitled "Affordable Housing" is amended and supplemented as follows:

Article I. Development Fee

§ 110-1. Purpose.

No Change

§ 110-2. Retention of fees.

No Change

§ 110-3. Residential development fees.

Within all zones within the Township of Lebanon, developers shall pay a development fee of 1.5% of the equalized assessed value of any eligible residential activity pursuant to §110-5 of this article.

§ 110-4. Nonresidential development fees.

Developers within all zones within the Township of Lebanon shall pay a fee of 2.5% of the equalized assessed value for eligible nonresidential activities pursuant to §110-5 of this article.

§ 110-5. Eligible exaction, ineligible exaction and exemptions.

- A. Developers of low- and moderate-income units shall be exempt from paying development fees.
- B. A development fee in accordance with the Development Fee Ordinance in effect at the time of an expansion or other improvement shall be paid for the expansion or other improvement of any existing structure, provided such expansion results in an increase of the equalized assessed value by \$20,000 or greater, with such Fee to be applied on the amount in excess of such increase. Expansions aggregated over two (2) years from the date of issuance of an initial Building Permit shall be considered one expansion, and the total resulting increase in equalized assessed value shall be aggregated in the calculation of the development fee to be paid under this section.
- C. All development in any zone within the Township where affordable housing is not a permitted use shall be subject to payment of the development fee in accordance with the Development Fee Ordinance in effect at the time a building permit is issued.
- D. Properties owned by the State of New Jersey or any subdivision thereof (including, but not limited to, the County of Hunterdon, the North Hunterdon — Voorhees Regional High School District, the Lebanon Township School District or the Township of Lebanon) are exempt from the payment of fees under this article.
- E. Properties which are carried on the local tax rolls as properties totally exempt from the payment of local real estate taxes are exempt from the payment of fees under this article. Examples would be properties owned by churches or properties owned by nonprofit associations.
- F. Residential homes demolished and replaced shall be exempt from the payment of a development fee so long as the equalized assessed value of the property does not increase by more than \$20,000. In all other cases, the development fee shall be calculated on the increase in excess of \$20,000 in the equalized assessed value of the replacement structure and any ancillary improvements. This exemption shall only apply if the demolition and reconstruction are completed by the same owner.
- G. For new construction, whether residential or non-residential, a development fee will be applied to the entire equalized assessed value of the project, including land and structures

§ 110-6. Collection of fees.

- 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 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 developer as per the instructions provided in the Form N- RDF. The Township Tax Assessor shall verify any exemptions claimed and prepare estimated and final assessments in accordance with the instructions provided in Form N-RDF.
- C. For all development:
- 1) The construction official responsible for the issuance of a building permit shall notify the Tax Assessor of the issuance of the first building permit for a development that is subject to a development fee.
 - 2) Within 90 days of receipt of said notice, the Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
 - 3) The construction official responsible for the issuance of a final certificate of occupancy shall notify the Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
 - 4) Within 10 business days of a request for the scheduling of a final inspection, the 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.
 - 5) Should the 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).
- D. Payment of Development Fee. Developers shall pay 50% of the estimated development fee to the Township of Lebanon at the issuance of building permits. The development fee shall be estimated by the Tax Assessor prior to the issuance of building permits.

Developers shall pay the remaining fee to the Township of Lebanon at the issuance of certificates of occupancy. At the issuance of certificates of occupancy, the Tax

Assessor shall calculate the equalized assessed value and the appropriate development fee. The developer shall be responsible for paying the difference between the fee calculated at certificate of occupancy and the amount paid at issuance of building permit.

E. Appeal of development fees. (The following paragraphs shall be included on the application forms used in accordance with this provision.)

1) Residential. 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 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) Nonresidential. 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 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.

§ 110-7. Housing Trust Fund.

A. There is hereby created an interest-bearing Housing Trust Fund in the United National Bank for the purpose of receiving development fees from residential and nonresidential developers . All development fees paid by developers pursuant to this article shall be deposited in this fund. No money shall be expended from the Housing Trust Fund unless the expenditure conforms to a spending plan approved by COAH or a Court of competent jurisdiction.

B. The following additional funds shall be deposited in the Housing Trust Fund and shall at all times be identifiable by source and amount:

1) Payments in lieu of on-site construction of a fraction of an affordable unit;

2) Funds contributed by developers to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached unit 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 Township's affordable housing program.

C. If COAH or a Court of competent jurisdiction determines that the Township of Lebanon is not in conformance with COAH's rules on development fees or any order from a Court of competent jurisdiction, COAH or a Court of competent jurisdiction is authorized to direct the manner in which all development fees collected pursuant to this article shall be expended. Such authorization is pursuant to this article, COAH's rules on development fees and the written authorization from the governing body to the United National Bank.

§ 110-8. Use of funds.

- A. Money deposited in a Housing Trust Fund may be used for any activity approved by COAH or a Court of competent jurisdiction for addressing the Township of Lebanon's low- and moderate-income housing obligation. Such activities may include, but are not necessarily limited to, housing rehabilitation, new construction of affordable housing units and related costs, the purchase of land for low- and moderate-income housing, extensions and/or improvements of roads and infrastructure to low- and moderate-income housing sites, accessory apartment program, a market to affordable program, assistance designed to render units more affordable to low- and moderate-income households, improvements to land to be used for affordable housing, financial assistance designed to increase affordability, administrative costs necessary to implement the Township of Lebanon's housing element, and / or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 as may be amended by any decision of a court of competent jurisdiction. The expenditure of all money shall conform to a spending plan approved by COAH or a court of competent jurisdiction.
- B. At least 30% of the revenues collected shall be devoted to render units more affordable. Examples of such activities include, but are not limited to, down payment assistance, low-interest loans and rental assistance.
- C. No more than 20% of the revenues shall be expended on administrative costs necessary to develop, revise or implement the housing element. Examples of eligible administrative activities include personnel, consultant services, space costs, consumable supplies and rental or purchase of equipment.

- D. Development fee revenues shall not be expended to reimburse the Township of Lebanon for past housing activities.
- E. The Township of Lebanon 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, as may be amended by any order of a court of competent jurisdiction.

§ 110-9. Expiration of article.

This article shall expire if:

- A. COAH dismisses or denies the Township of Lebanon's petition for substantive certification;
- B. COAH revokes substantive certification or its certification of this article;
- C. A court of competent jurisdiction denies the Township of Lebanon a judgment of repose;
- D. Substantive certification or judgment of repose or order of immunity from a court of competent jurisdiction expires prior to the Township of Lebanon's filing an adopted housing element with COAH or a court of competent jurisdiction, petitioning COAH for substantive certification, or receiving approval of this article from COAH or a court of competent jurisdiction.

§ 110-10. Definitions.

No Change

SECTION 3. All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SECTION 4. 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 thereof.

SECTION 5. This Ordinance shall become effective following its final passage and publication as required by law.

Mike Schmidt, Mayor

ATTEST:

Kim Jacobus,
Deputy Clerk

Date of Introduction and First Reading: February 21, 2018

Date of Second Reading and final adoption: April 4, 2018

I certify that the foregoing Ordinance is a true and accurate copy of an Ordinance adopted by the Lebanon Township Committee on April 4, 2018.

Kim Jacobus,
Deputy Clerk