

**ORDINANCE REPLACING SECTION 38.1 OF ARTICLE V  
OF THE UNIFIED DEVELOPMENT ORDINANCE**

**NOW, THEREFORE, BE IT ORDAINED** that Section 38.1 of the Unified Development Ordinance of the Township of Deptford is hereby amended and shall henceforth read in its entirety;

**38.1 Impact Fee - Housing**

**A. Purpose.**

1. 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 the Council on Affordable Housing's (COAH's) adoption of rules. 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.

**B. Basic requirement.**

1. Deptford Township shall not spend development fees until COAH has approved a plan for spending such fees.

**C. Residential development fees.**

1. Within the R-40, R-20, R-10, R-10A and R-6 zone districts, residential developers shall pay a fee of one (1%) percent of the equalized assessed value for residential development provided no increased density is permitted. Any PUD is subject to the fee, if approved or re-approved by amendment, without affordable units.
2. When an increase in residential density pursuant to *N.J.S.A. 40:55D70d(5)* (known as a "d" variance) has been permitted, developers may be required to pay a development fee of up to six (6%) percent of the equalized assessed value for each additional unit that may be realized.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one (1%) percent of the equalized assessed value of the first two units; and six (6%) percent of the equalized assessed value for the two additional units. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the density for the purpose 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.

**D. Non-residential development fees.**

1. With the BC4, BC2, BC2, BC1, C-1, C-2, FLX, LI-1 and LI-2 districts, non-residential developers shall pay a fee of two (2%) percent of the equalized assessed value for non-residential development.
2. If an increase in floor area ration is approved pursuant to *N.J.S.A. 40:55D-70d(4)*, then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six (6%) percent of the equalized assessed value for non-residential development. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, base floor area for the purpose of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the variance application.

**E. Eligible exactions, ineligible exactions and exemptions.**

1. Affordable housing developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees.
2. Developments that have received preliminary or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a substantial change in the approval.
3. 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.

**F. Collection of fees.**

1. Fifty (50%) 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.

**G. Contested fees.**

1. Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by the Township of Deptford. 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.

**H. Housing trust fund.**

1. There is hereby created a separated, interest-bearing housing trust fund in a bank for the purpose of collecting development fees 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.
2. Within seven days from the opening of the trust fund account, Deptford Township shall provide COAH with written authorization, in the form of a three-party

escrow agreement between the municipality, the 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)*.

3. No money shall be expended from the 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.

**I. Use of money.**

1. Money deposited in a 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, RCA's subject to the provisions of *N.J.A.C. 5:94-4.4(d)*, ECHO housing, purchase of land for affordable housing, improvements of land to be used for affordable housing, purchase of housing, extension or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, or administration necessary for implementation of the Housing Element and Fair Share Plan. The expenditure of all money shall conform to a spending plan approved by COAH.
2. Funds shall not be expended to reimburse municipalities for past housing activities.
3. After subtracting development fees collected to finance an RCA, a rehabilitation program or a new construction project that are necessary to address the municipality's affordable housing obligation, at least thirty (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 thirty (30%) percent or less of median income by region.
  - a. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance.
  - b. Affordability assistance to households earning thirty (30%) percent or less of median income may include buying down the cost of low income units in the municipal Fair Share Plan to make them affordable to households earning thirty (30%) percent or less of median income. The use of development fees in this manner shall entitle Deptford Township to bonus credits pursuant to *N.J.A.C. 5:94-4.22*.
  - c. 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.
4. Deptford 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. 5:94-7*.
5. No more than twenty (20%) percent of the revenues collected from development fees each year, exclusive of the fees used to fund an RCA, 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, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than twenty (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 COAH's monitoring requirements. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees.

**J. Monitoring.**

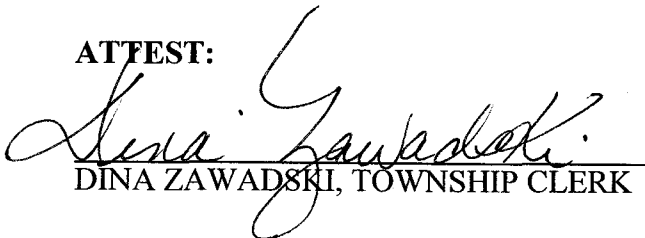
1. Deptford Township shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units 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.

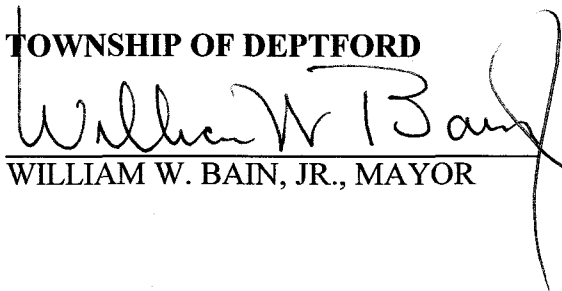
**K. Ongoing collection of fees.**

1. The ability for Deptford Township to impose, collect and expend development fees shall expire with its substantive certification on July 25, 2006 unless Deptford 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 Deptford Township fails to renew its ability to impose and collect fees prior to July 25, 2006, it may resume the imposition and collection of development fees only by complying with the requirements of this section. Deptford Township shall not impose a development fee on a development that receives preliminary or final approval after July 25, 2006, nor will Deptford Township retroactively impose a development fee on such a development. Deptford Township will not expend development fees after July 25, 2006.

**BE IT FURTHER ORDAINED**, that this Ordinance will take effect after adoption and publication according to law.

**ATTEST:**

  
DINA ZAWADSKI, TOWNSHIP CLERK

**TOWNSHIP OF DEPTFORD**  
  
WILLIAM W. BAIN, JR., MAYOR

**CERTIFICATION**

The foregoing Ordinance was introduced at a regular meeting of the Township of Deptford held on the 14<sup>th</sup> day of November, 2005 and will be considered for final passage and adoption at a regular meeting, at which time any person interested therein will be given an opportunity to be heard. Said meeting to be held on the 5<sup>th</sup> day of December, 2005 at the Municipal Building of the Township of Deptford, 1011 Cooper Street, Deptford.

  
DINA ZAWADSKI, TOWNSHIP CLERK