

Ordinance No. 0-10-06

TOWNSHIP OF DEPTFORD

COUNTY OF GLOUCESTER, STATE OF NEW JERSEY

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AN ORDINANCE OF THE TOWNSHIP OF DEPTFORD
IN GLOUCESTER COUNTY, NEW JERSEY,
AMENDING SECTIONS 38.1, ENTITLED "IMPACT
FEE - HOUSING" OF THE UNIFIED DEVELOPMENT
ORDINANCE OF THE TOWNSHIP OF DEPTFORD

WHEREAS, the New Jersey Supreme Court and New Jersey Legislature have recognized and mandated in *So. Burl. Co. NAACP v. Mount Laurel*, 92 N.J. 158 (1983) ("*Mount Laurel II*") and the Fair Housing Act, *N.J.S.A. 52:27D-301, et seq.* ("FHA") that every municipality in New Jersey has an affirmative obligation to facilitate the provision of low and moderate income housing; and

WHEREAS, the New Jersey Council on Affordable Housing ("COAH") is the State administrative agency created pursuant to the FHA vested with primary jurisdiction for the administration of affordable housing obligations in accordance with sound regional planning considerations in this State (*N.J.S.A. 52:27D-304(a)*); and

WHEREAS, COAH's Third Round Substantive Rules (*N.J.A.C. 5:94-1, et seq.*) contain requirements for the affirmative marketing of affordable units to the low and moderate income population; and

WHEREAS, COAH's Third Round Substantive Rules require the imposition of proper covenants and restrictions to ensure continued occupancy by low and moderate income households of affordable housing units; and

WHEREAS, the Township of Deptford desires to implement policies promulgated and adopted by COAH in its Third Round Substantive Rules, effective December 20, 2004, in an effort to foster the production of affordable housing opportunities for qualified low and moderate income households through the third housing cycle which extends from 2000 to 2014 pursuant to *N.J.A.C. 5:94 et seq.* and *N.J.A.C. 5:95 et seq.*;

NOW THEREFORE, BE IT ORDAINED by the Township Council of the Township of Deptford, County of Gloucester, New Jersey, that:

Section 1. §38.1, Impact Fee- Housing, is hereby replaced in its entirety with the following new section:

§38.1 Development Impact Fee

A. Purpose. This section establishes standards for the collection, maintenance, and expenditure of development fees pursuant to *N.J.A.C. 5:94-6* whenever a growth share obligation, contribution in lieu of constructing a growth share obligation pursuant to §38.2 is not required, or a development is an inclusionary (housing) development. Fees collected pursuant to this section shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework *N.J.A.C. 5:94-1 et seq.* and any words and phrases shall have the same meanings they have pursuant to *N.J.A.C. 5:94-1.4*, as such definitions may from time to time be amended.

B. Residential Development Fees.

1. Whenever residential development is exempted from the growth share requirements of §38.2, developers shall pay a fee of one percent (1%) of the equalized assessed value of residential development, provided no increased density is permitted.
2. When an increase in residential density pursuant to *N.J.S.A. 40:55D-70d(5)* has been granted by the Zoning Board of Adjustment, developers may be required to pay a development fee of six percent (6%) of the equalized assessed value for each additional unit that is realized.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the development fee equals one percent of the equalized assessed value and six percent of either 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 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.

C. Non-residential Development fees.

1. Where required, non-residential developers shall pay a fee of two percent (2%) of the equalized assessed value for non-residential development.

2. If an increase in floor area ratio 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 percent (6%) 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, the base floor area for the purposes 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.

D. Eligible exactions, ineligible exactions and exemptions.

1. Affordable housing developments shall be exempt from 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. Such requirement shall not affect the obligation of developers to pay such fee imposed by any applicable predecessor ordinance.
3. Development fees shall be imposed and collected when an existing structure is expanded or undergoes a change to a more intense use that requires an application for development or for the construction of an entirely new building. The development fee shall be calculated on the increase in the equalized assessed value of the improved or constructed structure.
4. Any use that is required to construct a growth share obligation or make a payment in lieu of construction and the uses enumerated in §38.2-B.3 shall be exempted from the payment of a development fee for affordable housing.

E. Collection of fees.

1. Fifty percent (50%) 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.
2. Contested fees. Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by the Township. 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.

F. Affordable housing trust fund.

1. There is hereby created a separate, interest-bearing housing trust fund in Commerce Bank, N.A., or as such depository may be changed by action of the governing body, 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. Nothing herein shall affect the continuation of existing affordable housing trust accounts.
2. Within seven days from the opening of the trust fund account, or change in such account by action of the governing body, the Township of Deptford shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the municipality's financial institution, 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 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.

G. Use of funds. 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, regional contribution agreements subject to the provisions of *N.J.A.C. 5:94-4.4(d)*, 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 implementation of the Housing Element and Fair Share Plan. The expenditure of all funds shall conform to a spending plan approved by COAH.

H. Other Requirements. The Township of Deptford shall comply with the requirements of *N.J.A.C. 5:94-6* with regard to collection of money, monitoring, the on-going collection of funds and other sundry items as promulgated by COAH for development fees.

Section 2. Continuation, All Ordinances. In all other respects the Deptford Code of Ordinances, as amended and supplemented, shall remain in full force and effect.

Section 3. Severability. If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole, or any other part thereof. Any invalidation shall be confined in its operation to the section, paragraph, sentence, clause, phrase, term, or provision or part there of directly involved in the controversy in which such judgment shall have been rendered.

Section 4. Interpretation. If the terms of this Ordinance shall be in conflict with those of another Ordinance of the Code of the Township of Deptford, then the restriction which imposes the greater limitation shall be enforced.

Section 5. Repealer. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

Section 6. Enactment. This Ordinance shall take effect twenty (20) days after final passage and publication pursuant to *N.J.S.A. 40:69A-181*, notice to the Gloucester County Planning Board within thirty (30) days pursuant to *N.J.S.A. 40:55D-15b* and approval of the NJ Council on Affordable Housing.

TOWNSHIP OF DEPTFORD

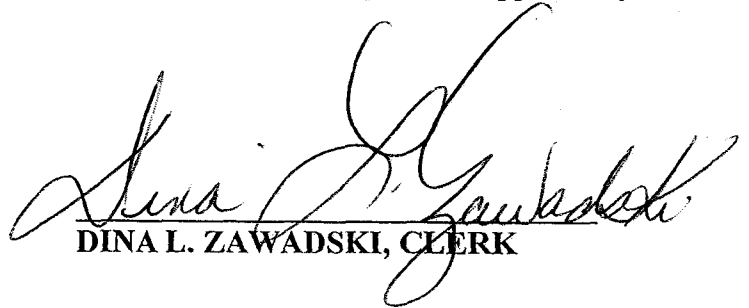
BY: Paul Medany
PAUL MEDANY, MAYOR

ATTEST:

Dina L. Zawadski
DINA L. ZAWADSKI, CLERK

CERTIFICATION

The above Amended Ordinance was introduced and passed upon first reading at a meeting of the Township Council of the Township of Deptford held on the 2nd day of October, 2006 and will be taken up for final consideration and passage at the Regular Meeting of Mayor and Council of the Township of Deptford to be held at the Municipal Building, 1011 Cooper Street, Deptford, New Jersey, Gloucester County, on the 13th day of November, 2006 at 7:00 P.M. or as soon thereafter as the matter can be reached at which time any person interested shall be given an opportunity to be heard.



DINA L. ZAWADSKI, CLERK