

Ordinance No.: 1,438  
Adopted: 4/19/10  
Effective: 5/9/10

Ordinance 4-10

AN ORDINANCE AMENDING ARTICLE XX, AFFORDABLE HOUSING  
DEVELOPMENT FEES, OF CHAPTER 17, DEVELOPMENT REGULATIONS,  
OF THE ORDINANCES OF THE BOROUGH OF LINCOLN PARK

WHEREAS, effective June 2, 2008, the New Jersey Council on Affordable Housing ("COAH") Adopted new procedural and substantive rules concerning the implementation of Affordable Housing obligations for New Jersey municipalities; and

WHEREAS, among the changes made was an authorized increase in the residential development fees that can be imposed by municipalities who have Development Fee Ordinances in effect that have been approved by COAH; and

WHEREAS, on July 17, 2008, Governor Corzine signed into law P.L. 2008, c. 46, including the new Statewide Non-Residential Development Fee Act (the "Act"); and

WHEREAS, the Act requires all municipalities in this State to charge a standard 2.5% non-residential development fee for non-residential construction or improvements; and

WHEREAS, the Borough desires to amend Article XX, Affordable Housing Development Fees, of Chapter 17, Development Regulations, of the Ordinances of the Borough of Lincoln Park to reflect the residential development fees and non-residential development fees that are authorized by the new procedural and substantives rules that were Adopted by COAH and became effective on June 2, 2008 and by the Act;

NOW, THERFORE, BE IT ORDAINED by the Governing Body of the Borough of Lincoln Park, County of Morris, State of New Jersey, as follows:

SECTION ONE: Article XX, Affordable Housing Development Fees, of Chapter 17, Development Regulations, of the Ordinances of the Borough of Lincoln Park is hereby deleted in its entirety and is replaced by the following:

ARTICLE XX

AFFORDABLE HOUSING DEVELOPMENT FEES

**Section 17.200 Purpose**

The purpose of this Ordinance is to establish standards for the collection, maintenance and expenditure of fees in accordance with the Supreme Court decision in Holmdel Builder's Ass'n v. Holmdel Township, 21 NJ 550 (1990), and pursuant to the regulations Adopted by the New Jersey Council on Affordable Housing (COAH). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing low and moderate income housing in accordance with the Borough's Spending Plan approved by COAH. This Ordinance shall be interpreted within the framework of COAH's Rules pertaining to development fees.

**Section 17.201. Definitions**

"COAH" means the New Jersey Council on Affordable Housing.

"Development Fees" means money paid by an individual, person, partnership, association, company or corporation, pursuant to this Ordinance, for the improvement of property as permitted by COAH's Rules.

"Equalized Assessed Value" means the value of a property determined by the Borough's Tax Assessor, using the equalized value pursuant to N.J.S.A. 54:3-19, through a process designed to ensure that all property in the municipality is assessed at the same assessment ration or ratios required by law.

"Judgment of Repose" means a judgment issued by the Superior Court approving a municipality's plan to satisfy its fair share obligation.

"Substantive Certification" means a determination by COAH approving a municipality's Housing Element and Fair Share Plan in accordance with the provisions of the Fair Housing Act and the Rules and criteria set forth at N.J.A.C. 5:93-1 et seq. and N.J.A.C. 5:94-1 et seq.

"Borough" means the Borough of Lincoln Park, in the County of Morris, New Jersey.

**Section 17-202. Residential Development Fees**

a. Within the Borough of Lincoln Park, a development fee shall be paid equal to one and one-half percent (1.5%) of the equalized assessed value resulting from any eligible residential construction pursuant to Section 17-204 of this Ordinance, provided no increased density is permitted.

b. If Borough of Lincoln Park approves an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5)(known as a "d" variance), a development fee of up to six percent (6%) of the equalized assessed value will be imposed for each additional unit that may be realized. However, if the zoning on a site has changed during the two (2) year period prior to the filing of a "d" variance application, the base density for the purposes of calculating the development fee shall be the highest density permitted by right during the two (2) years preceding the filing of the "d" variance application.

**Section 17-203. Non-Residential Development Fees**

Within the Borough of Lincoln Park, a development fee shall be paid equal to two and a one-half percent (2.5%) of the equalized assessed value of any eligible nonresidential construction pursuant to Section 17-204 of this Ordinance in accordance with P.L. 2008, c. 46.

**Section 17-204. Eligible Exactions, Ineligible Exactions and Exemptions**

a. Eligible residential construction, as referred to in this Ordinance, shall be any new construction and any replacement of, additions to or alterations of existing residential buildings, for which a Construction Permit is required, pursuant to the N.J. State Uniform Construction Code Act.

b. Eligible non-residential construction, as referred to in this Ordinance, shall be any new construction or replacement of, additions to or alterations of existing non-residential buildings or conversions of residential buildings to non-residential buildings for which a Construction Permit is required, pursuant to the N.J. State Uniform Construction Code Act.

c. Developments containing low and moderate income units or making payments in lieu of the construction of low and moderate income units on site shall be exempt from paying development fees.

d. Fees for new construction shall be based on the equalized assessed value of land and improvements. Fees that result from additions and alterations shall be based on the increase in equalized assessed value that results from the addition or alteration.

e. The residential development fee specified in Section 17-202 must be paid in full prior to the issuance of a Certificate of Occupancy regardless of whether fifty percent (50%) of the estimated fee was collected at the time of issuance of the building permit. A final Certificate of Occupancy shall not be issued until the residential development fee specified in Section 17-202 is paid in full. The provisions of this Section shall apply to all residential property that did not receive a Certificate of Occupancy prior to the effective date of this Ordinance.

Whenever the developer of a residential development has made or committed itself to make a financial or other contribution relating to the provision of affordable housing prior to the effective date of this Ordinance, the residential development fee shall be reduced by the amount of the financial contribution and/or the fair market value of any other contribution made by the developer.

f. If the construction of any net new dwelling unit is subject to the terms of the Borough's Growth Share Ordinance, it shall not be subject to a development fee.

g. Development associated with the agricultural use of property that is qualified for farmland assessment shall be exempt from paying a development fee.

**Section 17-205. Collection of Fees**

a. The development fee shall be paid to the Borough as follows:

1) The Tax Assessor shall estimate the amount of the development fee prior to the issuance of a building permit.

2) Fifty percent (50%) of the estimated development fee shall be collected at the time of issuance of the building permit; the remaining portion shall be collected at the time of issuance of a Certificate of Occupancy. The Developer shall be responsible for paying the difference between the fee calculated at the building permit and that determined at the issuance of the Certificate of Occupancy.

b. Imposed and collected development fees that are challenged shall be placed in the interest bearing escrow account established by Lincoln Park Borough pursuant to Section 17-206 and shall remain there until the amount of the payment is resolved. 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.

**Section 17-206. Affordable Housing Trust Fund**

a. There is hereby created an interest bearing Affordable Housing Trust Fund for the purpose of receiving development fees from residential and non-residential development. All development fees paid pursuant to this Ordinance as well as the Borough's Growth Share Ordinance shall be deposited in this Fund. No money shall be expended from the Affordable Housing Trust Fund unless the expenditure conforms to a Spending Plan approved by COAH or the Superior Court of New Jersey. The Affordable Housing Trust Fund shall be deposited in a banking institution or savings and loan association in the State of New Jersey, insured by an agency of the federal government or in any other fund or depository approved for deposits by public entities of the State of New Jersey.

b. If COAH determines that the Borough is not in conformance with COAH's Rules on development fees, or in the event that any of the conditions described in N.J.A.C. 5:97-8.13(a) occur, COAH is authorized to direct the manner in which all development fees collected pursuant to this Ordinance shall be expended. Such authorization shall be pursuant to this Ordinance, COAH's Rules on development fees, and written authorization from the governing body to the bank or other approved depository for the Affordable Housing Trust Fund.

**Section 17-207. Use of Funds**

a. Money deposited in the Affordable Housing Trust Fund may be used for any activity approved by COAH for addressing the Borough's low and moderate income housing obligation and identified in the Borough's Spending Plan approved by COAH. Such activities may include, but are not necessarily limited to, housing rehabilitation; new construction; 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; purchase of existing market rate or affordable housing for the purpose of maintaining or implementing affordability controls; accessory apartment, market to affordable or affordable partnership programs; ECHO housing and related repair or relocation costs; green building strategies designed to be cost-saving for low- and moderate-income households; maintenance and repair of affordable housing units; repayment of bonds issued to finance low- and moderate-income housing activity; and any other activity as specified in the approved Spending Plan. The expenditure of all monies shall conform to a Spending Plan approved by COAH or the Superior Court of New Jersey.

b. At least thirty percent (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 Borough of Lincoln Park's Fair Share Plan. One-third of the affordability assistance portion shall be used to provide affordability assistance to very low income households.

c. No more than twenty percent (20%) of all affordable housing trust funds shall be expended on administration.

d. Development fee revenues shall not be expended to reimburse the Borough for housing activities that preceded the grant of Substantive Certification or a judgment of repose.

**Section 17-208. Penalties.**

a. In the event that any of the conditions set forth in Section 17-208(b) below occur, COAH shall be authorized, on behalf of the Borough of Lincoln Park, to direct the manner in which all development fees collected pursuant to this Ordinance shall be expended. Should any such condition occur, such revenues shall immediately become available for expenditure at the direction of COAH upon the Borough Clerk's receipt of written notification from COAH that such a condition has occurred. In furtherance of the foregoing, the Borough of Lincoln Park shall, in establishing a bank account pursuant to Section 17-206 of this Ordinance, ensure that the Borough of Lincoln Park has provided whatever express written authorization which may be required by the bank to permit COAH

to direct disbursement of such revenues from the account following the delivery to the bank of the aforementioned written notification provided by COAH to the Borough Clerk.

b. Occurrence of the following may result in COAH taking an action pursuant to Section 17-208(a) above.

1) Failure to meet deadlines for information required by COAH in its review of this Ordinance, the Borough's Housing Element and Fair Share Plan or spending plan;

2) Failure to address COAH's conditions for approval of a plan to spend development fees within the deadlines imposed by COAH;

3) Failure to address COAH's condition for substantive certification within the deadlines imposed by COAH;

4) Failure to submit accurate monitoring reports within the time limits imposed by COAH;

5) Failure to implement the spending plan for development fees within the time limits imposed by COAH, or within reasonable extensions granted by COAH;

6) Expenditure of development fees on activities not permitted by COAH;

7) Revocation of the Borough of Lincoln Park's substantive certification;

8) Other good cause demonstrating that the revenues are not being used for the intended purpose.

**Section 17-209. Monitoring**

The Borough shall complete and return all monitoring forms related to the collection of fees, expenditure of revenues and implementation of the plan certified by COAH. All reports shall be completed on forms designed by COAH as required by COAH.

**SECTION TWO.** All Ordinances of the Borough of Lincoln Park which are inconsistent with the provisions of this Ordinance are hereby repealed as to the extent of such inconsistency.

**SECTION THREE.** If any section, subsection clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any Court of competent jurisdiction, such decision shall not affect the remaining portion of the Ordinance.

**SECTION FOUR.** This Ordinance shall take effect as provided by law.

ATTEST:

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Annette Maida-Smith, RMC, Borough Clerk

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Louis Pepe, Council President

INTRODUCED	March 15, 2010
SENT TO MC PLANNING BOARD	March 16, 2010
PUBLISHED IN DAILY RECORD	March 21, 2010
PUBLIC HEARING AND ADOPTION	April 19, 2010
SENT TO COAH	April 20, 2010
SENT TO MC PLANNING BOARD	April 20, 2010
EFFECTIVE DATE	May 9, 2010