

**LAFAYETTE TOWNSHIP  
SUSSEX COUNTY, NEW JERSEY**

**ORDINANCE 2026-04**

**AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 12-20 ENTITLED  
“AFFORDABLE HOUSING DEVELOPMENT FEE ORDINANCE”**

**§ 12-20. AFFORDABLE HOUSING DEVELOPMENT FEE ORDINANCE.**

**§ 12-20.1. Purpose.**

- a. 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 (the Act), N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the adoption of rules governing the collection, retention, administration, and expenditure of such fees.
- b. Pursuant to P.L. 2008, c. 46, Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), and as amended by P.L. 2024, c. 2, a municipality that is in the process of seeking compliance certification, has obtained compliance certification, is a qualified urban aid municipality, or that has been authorized by a court of competent jurisdiction, and which has adopted a municipal development fee ordinance, is authorized to impose and collect development fees, in accordance with rules promulgated by the Department of Community Affairs. Each amount collected shall be deposited and shall be accounted for separately, by payer and date of deposit.
- c. This section establishes standards for the collection, maintenance, administration, reporting, and expenditure of development fees and other affordable housing trust fund revenues in accordance with applicable law and rules promulgated by the Department of Community Affairs. Fees collected pursuant to this section shall be used for the sole purpose of providing low- and moderate-income housing and related eligible affordable housing activities. A municipality may not spend or commit to spend any affordable housing development fees, including Statewide non-residential fees deposited into the municipal affordable housing trust fund, without first obtaining approval of the expenditure as part of its compliance certification or by the Department of Community Affairs.

**§ 12-20.2. Basic Requirements.**

- a. This ordinance shall be administered and implemented in accordance with applicable law and rules promulgated by the Department of Community Affairs. Lafayette Township may impose and collect development fees only to the extent authorized by law, including when the Township is in the process of seeking compliance certification, has obtained compliance certification, is a qualified urban aid municipality, or has been so authorized by a court of competent jurisdiction, and the Township has adopted a municipal development fee ordinance. Each amount collected shall be deposited and accounted for separately, by payer and date of deposit.
- b. Lafayette Township shall not spend or commit to spend affordable housing development fees, including Statewide non-residential development fees deposited into the municipal affordable housing trust fund, unless the expenditure is approved as part of the Township’s compliance certification or by the Department of Community Affairs, and is consistent with the Township’s approved spending plan.

**§ 12-20.3. 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% affordable development.

COMPLIANCE CERTIFICATION — Shall mean a compliance certification issued pursuant to P.L. 2024, c. 2 (C. 52:27D-304.1 et al.) and applicable rules.

DEPARTMENT or DCA — Shall mean the New Jersey Department of Community Affairs.

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, or paid in lieu of constructing affordable housing, as authorized by law including C. 52:27D-329.2 and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), as amended, and as implemented through rules promulgated by the Department.

EQUALIZED ASSESSED VALUE — Shall mean the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L. 1973, c. 123 (C. 54:1-35a through C. 54:1-35c).

GREEN BUILDING STRATEGIES — Means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

#### **§ 12-20.4. Residential Development Fees.**

a. Imposed Fees.

1. Within all residential zoning districts, residential developers building less than five units and except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half (1 1/2%) percent of the equalized assessed value for 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) (known as a "d" variance) has been permitted, developers are required to pay a development fee of 6% of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base 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.

b. Eligible Exactions, Ineligible Exactions and Exemptions for Residential Development.

1. 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, if permitted by ordinance, or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2, shall be exempt from development fees.
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. 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. The fee percentage shall be vested on the date that the building permit is issued.
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 to a more intense use, is demolished and replaced (except as exempted by DCA rules), or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

**§ 12-20.5. Nonresidential Development Fees. Imposed Fees.**

- a. Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5%) percent of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
- b. Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5%) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- c. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half (2.5%) percent shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time 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.
- d. 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 two and one-half (2.5%) percent development fee, unless otherwise exempted below.
  2. The two and one-half (2.5%) percent 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 Non-Residential 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 Lafayette Township as a lien against the real property of the owner.

**§ 12-20.6. Collection Procedures.**

- 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 Non-Residential 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 Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- c. The Construction Official responsible for the issuance of a building permit shall notify the Municipal Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d. 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.
  - e. The Construction Official responsible for the issuance of a final certificate of occupancy shall notify the Municipal Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
  - f. Within 10 business days of a request for the scheduling of a final inspection, the Municipal 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.
  - g. Should Lafayette 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 (C.40:55D-8.6).
  - h. Fifty percent (50%) 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.
  - i. Payment Prior to Certificate of Occupancy for Nonresidential Development.
    - 1. The payment of nonresidential development fees required pursuant to Sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) shall be made prior to the issuance of a certificate of occupancy for such development. A final certificate of occupancy shall not be issued for any nonresidential development until the fee imposed pursuant to this section has been paid by the developer.
    - 2. Except where Lafayette Township is authorized by law to retain and expend nonresidential development fees, the developer shall remit the required nonresidential development fee to the appropriate account administered by the State Treasurer. The Township shall require documentation evidencing payment as may be provided by the State Treasurer or otherwise required by applicable law.
    - 3. If Lafayette Township is authorized by law to retain and expend nonresidential development fees, the developer shall remit the required nonresidential development fee to the Township, and the Township shall deposit the funds into the municipal affordable housing trust fund.
    - 4. A nonresidential developer may deposit the nonresidential development fee under protest with the recipient entity identified in paragraph (2) or (3) above, as applicable, and the local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy.
  - j. 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 Lafayette Township. 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 Lafayette Township. 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.

#### **§ 12-20.7. Affordable Housing Trust Fund.**

a. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls. Each amount collected shall be deposited and shall be accounted for separately, by payer and date of deposit.

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, and shall be accounted for separately, by payer and date of deposit:

1. Payments in lieu of on-site construction of affordable units, where previously permitted by ordinance or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2.
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.
7. Any other funds collected in connection with Lafayette Township's affordable housing program.

c. The housing trust fund shall be maintained and administered in accordance with applicable law and rules promulgated by the Department of Community Affairs, as may be amended from time to time.

d. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved as part of the Township's compliance certification process or otherwise approved by the Department of Community Affairs.

#### **§ 12-20.8. Use of Funds.**

a. The expenditure of all funds shall conform to a spending plan approved as part of the Township's compliance certification process or otherwise approved by the Department of Community Affairs. A municipality shall not spend or commit to spend any affordable housing development fees, including Statewide nonresidential fees collected and deposited into the municipal affordable housing trust fund, without first obtaining approval of such expenditure as part of its compliance certification or by the Department of Community Affairs. The municipality shall include in its housing element and fair share plan a spending plan for current funds in the municipal affordable housing trust fund and projected funds through the current round.

b. Funds deposited in the housing trust fund may be used for any activity approved as part of the Township's compliance certification process or otherwise approved by the Department of Community Affairs to address Lafayette Township's fair share obligation and may be set up

as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartments, market-to-affordable, or regional housing partnership programs, conversion of existing nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or State standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as may be permitted by applicable law and rules of the Department of Community Affairs and specified in the approved spending plan.

- c. Funds shall not be expended to reimburse Lafayette Township for past housing activities.
- d. 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. 1/3 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.
- e. Lafayette Township may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the administration of affordability assistance programs, in accordance with applicable law and rules promulgated by the Department of Community Affairs, as may be amended from time to time.
- f. 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 monitoring and reporting requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Department's rules and/or action are not eligible uses of the affordable housing trust fund.

#### **§ 12-20.9. Monitoring.**

Lafayette Township shall complete and submit to the Department of Community Affairs all monitoring and reporting forms and information required by applicable law and rules promulgated by the Department of Community Affairs related to the collection of development fees and other affordable housing trust fund revenues, the expenditure of revenues, and implementation of the Township's housing element and fair share plan and approved spending plan.

Until such time as the Department of Community Affairs adopts updated forms or specific reporting requirements applicable to municipal affordable housing trust funds, Lafayette Township shall continue to maintain records and complete reports in the manner required by applicable law and any currently applicable State information requests, to facilitate compliance with statutory reporting obligations.

#### **§ 12-20.10. Ongoing Collection of Fees.**

- a. Lafayette Township’s authority to impose, collect, and expend development fees shall be limited to the period during which the Township is authorized to impose and collect development fees pursuant to applicable law, and shall be administered in accordance with rules promulgated by the Department of Community Affairs, as may be amended from time to time.
- b. If Lafayette Township is no longer authorized to impose and collect development fees, or is otherwise directed by the Department of Community Affairs or a court of competent jurisdiction, any unexpended funds remaining within its municipal affordable housing trust fund shall be addressed in the manner required by applicable law and any applicable directive or order. Lafayette Township shall not impose or collect development fees except as authorized by applicable law.

**§ 12-20.11. Reporting Requirements.**

- a. No later than 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), any municipality that is or has been authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended since the inception of the municipal authorization to collect the fees.
- b. Beginning with the year after the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), by February 15, every municipality that is or has been authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended the previous year.
- c. No later than 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), any municipality that is authorized to retain and expend nonresidential development fees shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended since the inception of the municipal authorization to retain and expend those fees.
- d. Beginning with the year after the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), by February 15, every municipality that is authorized to retain and expend nonresidential development fees shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended the previous year.
- e. Lafayette Township shall provide any additional information regarding the collection and expenditure of affordable housing trust fund revenues as may be required by applicable law, rules promulgated by the Department of Community Affairs, or any directive issued by the Department of Community Affairs.

**NOTICE**

The above-entitled Ordinance was introduced and passed at first reading by the Lafayette Township Committee at a meeting held on February 26, 2026 and after publication and a public hearing was finally adopted by the Lafayette Township Committee at a meeting held on March 13, 2026.

Mayor:

Municipal Clerk: