



Borough of Manville
Ordinance #2021-1262

**An Ordinance By The Borough Of Manville In The County Of Somerset, State Of New Jersey,
Providing For The Collection Of Affordable Housing Redevelopment Fees, Repealing
And Replacing Ordinances #2007-1047 And #2009-1075**

WHEREAS, the Mayor and Council of the Borough of Manville (the “Borough”) finds that the creation of desirable affordable housing in the Borough serves the public interest; and
WHEREAS, in the case Holmdel Builder’s Association V. Holmdel Township, 121 N.J. 550 (1990), the Supreme Court of New Jersey 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 rules and regulations to be adopted; and

WHEREAS, the Borough previously adopted Ordinance #2007-1047 and Ordinance #2009-1075, establishing mandatory affordable housing development fees, thereby creating a dedicated revenue source for affordable housing; and

WHEREAS, said ordinance established standards for the collection, maintenance, and expenditure of development fees consistent with then applicable Council on Affordable Housing (“COAH”) rules and the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq.; and

WHEREAS, statutes, caselaw and regulations dealing with development fees have resulted in changes in the law since the adoption of Ordinances #2007-1047 and #2009-1075, and so it is necessary to revise the Borough’s development fee ordinance, as consistent with the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7);

NOW THEREFORE, BE IT ORDAINED, by the Mayor & Council of the Borough of Manville in the County of Somerset, State of New Jersey, Ordinances #2007-1747 and #2009-1075 shall be repealed, and replaced as follows:

Section 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, 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.

Section 2. Definitions

The following terms, as used in this ordinance, shall have the following meanings:

- (a) “Development Fee” means funds paid by an individual, person, partnership, association, company or corporation for the improvement of property as provided by this Ordinance.

- (b) "Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in a municipality is assessed at the same assessment ratio or ratios required bylaw. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal tax assessor.

Section 3. Residential Development fees

Unless authorized by future changes in State law and adoption of a future Ordinance by the Mayor & Council of the Borough of Manville incorporating any such future changes, no affordable housing fees shall be imposed on Residential Development in the Borough

Section 4. Non-Residential Development fees

- (a) Developers within all zoning districts shall pay a fee of two and one-half percent (2.5%) percent of the equalized assessed value for all Non-Residential development .
- (b) 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 an additional development fee of two-and-one-half percent (thus 5% total) of the equalized assessed value for such increased floor ratio. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, then 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.
- ©) In addition to Non-Residential new construction, the 2.5% development fee shall be imposed and collected when an existing structure is expanded and the equalized assessed value is increased as a result of such expansion. The development fee of 2.5% shall not apply to an increase in equalized assessed value resulting from alterations, renovations and repairs within the existing footprint of the structure.
 - (d) The Non-Residential portion of a mixed-use inclusionary or market rate development shall be subject to the 2.5% development fee.
- (e) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting Non-Residential land and improvements and the equalized assessed value of the Non-Residential portion of the newly improved structure, i.e., Non-Residential land and improvements, and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the Non-Residential development fee shall be zero.

Section 5. Exemptions

- (a) 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.
- (b) All Non-Residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, which are tax-exempt pursuant to N.J.S.A. 54:4-3.6, shall be exempt from the imposition of a non-residential development fee pursuant to this section, provided that the property continues to maintain its tax exempt status under that statute for a period of at least three years from the date of issuance of the certificate of occupancy.
- (c) In addition, any property exempted by State law, including as set forth at N.J.S.A. 40:55D-8.4, may be exempt from the imposition of a Non-Residential development fee, as

specified in Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption", or such other forms or regulations as may be applicable. Any exemption claimed by a developer shall be substantiated by that developer.

- (d) A developer of a non-residential development exempted from the non-residential development fee pursuant to this section shall be subject to it at such time the basis for the exemption set forth in this subsection no longer applies (by way of example, if a previously-exempt building is no longer used for a religious or educational purpose), and shall make the payment of the non-residential development fee within six months of such event, or prior to the issuance of the final certificate of occupancy of such non-residential development.
- (e) Any exemption claimed by a developer pursuant shall be substantiated by that developer, who shall have the burden of proof in showing entitlement to the claimed exemption.

Section 7. Collection of Fees

- (a) Prior to requesting a building permit, the developer shall submit to the Tax Assessor a request for a calculation of the development fee amount. The amount of the development fee shall be calculated based upon the difference in the equalized assessed value of the property before and after the development activity which is subject to the development fee.
- (b) Fifty percent (50%) of the development fee must be paid prior to the issuance of the building permit, and the balance prior to the issuance of a Certificate of Occupancy ("CO). Payment shall be made directly to the "Treasurer, State of New Jersey" as set forth in Section 8 of this Ordinance. The amount of the development fee shall be based initially on an estimate by the Tax Assessor of the increase in equalized assessed value attributable to the improvements to be constructed.
- (c) The remaining portion of the development fee must be paid prior to the issuance of the CO, . At that time the Tax Assessor shall calculate the actual equalized assessed value, which may differ from the estimate provided prior to the issuance of the building permit. The amount of the fee will at that time be recalculated, and the developer shall be responsible for paying the difference between the development free amount and the amount paid prior to issuance of the building permit.
- (d) No building permit or certificate of occupancy shall be issued unless or until such development fee, as set forth above, has been paid to the Treasurer, State of New Jersey in accord with Section 8 of this Ordinance, and a Receipt of Payment provided to the Borough.

Section 8. Collection Procedures

- (a) Upon the granting of a preliminary, final or other applicable approval for a development, the approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a construction permit.
- (b) 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 the Form N-RDF. The Tax Assessor shall verify aby 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 construction permit shall notify the Township Tax Assessor of the issuance of the first construction permit for a development which is subject to a development fee.

- (d) Within 90 days of receipt of such notification, the Township Tax Assessor shall prepare an estimate of the equalized assessed value of the development based on the plans filed.
- (e) The Construction Official responsible for the issuance of a final certificate of occupancy shall notify the Township Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.
- (f) Within ten (10) business days of a request for the scheduling of a final inspection, the Township Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- (g) Should the Borough fail to determine or notify the developer of the amount of the development fee within ten (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).
- (h) Prior to the issuance of a building permit, the developer shall pay 50% of the calculated development fee, by payment of same to the "Treasurer, State of New Jersey" and submitting same to the Office of Local Planning Services, N.J. Department of Community Affairs for deposit into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L. 1985, c.222 (N.J.S.A. 52:27D-320) in accord with Form N-RDF, and obtaining from the State a receipt of payment of same. When preparing the building permit, the Construction Official is to compare the Developer's Receipt of Payment from the "New Jersey Affordable Trust Fund" to the copy of the form N-RDF in the Construction Permit File, and if the sums match, then issue the building permit. A non-residential developer may deposit with the State Treasurer the development fees as calculated by the municipality under protest, 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.
- (i) A final Certificate of Occupancy ("CO") shall not be issued for any nonresidential development until such time as the fee imposed pursuant to this section has been paid by the developer. The developer shall be responsible for paying to the "New Jersey Affordable Housing Trust Fund", the difference between the fee calculated upon issuance of the building permit and the final fee upon the issuance of the CO. Prior to the issuance of a CO, the developer shall pay the balance of the development fee, by payment of same to the "Treasurer, State of New Jersey" and submitting same to the Office of Local Planning Services, N.J. Department of Community Affairs for deposit into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L. 1985, c.222 (N.J.S.A. 52:27D-320) in accord with Form N-RDF, and obtaining from the State a receipt of payment of same prior to the issuance of a CO. When preparing the CO, the Construction Official is to compare the Developer's Receipt of Payment from the "New Jersey Affordable Trust Fund" to the copy of the final form N-RDF in the Construction Permit File, and if the sums match, then issue the Certificate of Occupancy.

Section 9. Contested fees; Appeals

If the fee imposed is being contested, the payment must equal the estimated amount as calculated by the Borough, prior to a CO being issued. If payment does not match the final or the estimated fee, a CO will not be issued. A Developer may challenge Non-Residential Development Fees imposed pursuant to N.J.S.A. 40:55D-8.1 et seq. 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 State of New Jersey. Appeals from a determination of the Director may be made to the Tax Court of New Jersey in accordance with the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party

Section 10. Monitoring

The Borough of Manville shall complete and return to the State of New Jersey, Office Local Planning Services, N.J. Department of Community Affairs an annual monitoring report summarizing the collection of development fees from Non-Residential developers. All monitoring reports shall be completed on forms designed by COAH.

Section 11. Repealer

Repealer: Any prior Ordinance of the Borough of Manville, or any article, section, paragraph, subsection, clause, or other provision of any such prior Ordinance, which is inconsistent with the provisions of this Ordinance, is hereby repealed to the extent of such inconsistency.

Section 12. Severability

Severability: In the event that any provision of this ordinance, or the application thereof to any person or circumstance is declared invalid by any Court of competent jurisdiction, or is found to be inconsistent with or precluded by any overriding State Statute or Regulation, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this ordinance shall be deemed valid and effective; such holding shall not affect any other provision or application of this ordinance which may be given effect, and, to realize this intent, the provisions and applications of this ordinance are declared to be severable.

Section 14. Inconsistency with other Ordinances

Inconsistency with other Ordinances: Should any provision of this ordinance be inconsistent with the provisions of any other prior ordinances, or shall be inconsistent with any article, section, paragraph, subsection, clause, or other provision of any prior ordinances, the inconsistent provisions of such other prior ordinances are hereby repealed, but only to the extent of such inconsistencies.

Section 15. Effective Date

Effective Date: This ordinance shall take effect upon its passage and publication and filing with the Somerset County Planning Board and as otherwise provided for by law.

Borough of Manville



Richard M. Onderko, Mayor

ORDINANCE #2021-1262

**FIRST READING:
ROLL CALL**

Attest:



Wendy Barras, Borough Clerk

Introduced	Seconded	Council	Yes	No	Abstain	Absent
		Petrock	✓			
	✓	Lukac	✓			
		Maeder	✓			
		Magnani	✓			
✓		Szabo	✓			
		Zamorski	✓			
		Onderko				

INTRODUCED this 24th day of May, 2021

**SECOND READING AND FINAL ADOPTION:
ROLL CALL**

Attest:



Wendy Barras, Borough Clerk

Introduced	Seconded	Council	Yes	No	Abstain	Absent
		Petrock	✓			
	✓	Lukac	✓			
		Maeder	✓			
✓		Magnani	✓			
		Szabo	✓			
		Zamorski	✓			
		Onderko				

[ADOPTED] [DEFEATED] this 14th day of June, 2021