

**PENDING ORDINANCE O-26-05  
TOWNSHIP OF MONTCLAIR**

**AN ORDINANCE TO AMEND CHAPTER 202 LAND USE PROCEDURES OF THE  
CODE OF THE TOWNSHIP OF MONTCLAIR, NEW JERSEY**

February 10, 2026 (date of introduction)  
February 24, 2026 (date of public hearing)

**WHEREAS**, pursuant to N.J.S.A. 52:27D-313(a), the Township Council of the Township of Montclair petitioned the Affordable Housing Dispute Resolution Program (“Program”) to review and approve its Fourth Round Housing Element and Fair Share Plan by and through a Complaint for Declaratory Judgment, Docket No. ESX-L-000297-25; and

**WHEREAS**, the Township of Montclair Planning Board has adopted a HEFSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. and the Fair Share Plan describes the ways the municipality shall address its fair share of very low-, low- and moderate-income housing as approved by the Superior Court and documented in the Housing Element; and

**WHEREAS**, the Township of Montclair’s Fourth Round Housing Element and Fair Share Plan promotes an affordable housing program pursuant to P.L. 2024, c.2, which amended the Fair Housing Act (N.J.S.A. 52:27D-301, et. seq.); and

**WHEREAS**, Chapter 65 Affordable Housing of the Montclair Code must be amended to implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of P.L 2024, Chapter 2, the FHA, N.J.A.C. 5:99, NJ Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1, as may be amended and supplemented;

**NOW, THEREFORE BE IT ORDAINED** by the Mayor and Council of the Township of Montclair, in the County of Essex, State of New Jersey that it hereby amends Chapter 202 of the Montclair Code as follows:

**ARTICLE VI. Development Fees**

[Added 10-8-2002 by Ord. No. 02-43; amended 3-4-2003 by Ord. No. 03-7; 2-22-2005 by Ord. No. 05-06; 6-24-2008 by Ord. No. 08-17; 8-4-2009 by Ord. No. O-037-09]

**§ 202-39. Purpose. [Amended 11-27-2018 by Ord. No. O-18-043]**

A. This ordinance establishes standards for the collection, maintenance and expenditure of development fees—, including the payment of any necessary costs related to the administration of affordable units included in the municipal plan. All non-residential development in the State is subject to the Statewide Non- Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7. A compliant or Qualified Urban Aid Municipality which has adopted a residential development fee ordinance shall be authorized to impose and collect development fees from developers of residential property, in accordance with this chapter and N.J.S.A. 52:27D-329.2.

~~A. that are consistent with COAH's regulations developed in response to P.L. 2008, c. 46, §§ 8 and 32-38 (N.J.S.A. 52:27D-329.2) and the Statewide Non-Residential Development~~

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~~Fee Act (N.J.S.A. 40:55D-8.1 through 8.7). Fees collected pursuant to this section shall be used for the sole purpose of providing very low, low and moderate income housing in accordance with a Court approved spending plan (See § 202-40, Basic requirements).~~

~~B. This article shall not be effective until approved by the Court.~~

~~C. The Township of Montclair shall not spend development fees until the Court has approved a plan for spending such fees (spending plan).~~

**§ 202-40.—Basic requirements General non-residential and residential development fee requirements.**

~~A. This article shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.~~

~~B. Montclair shall not spend development fees until COAH has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.~~

A. Montclair Township shall impose, collect, retain, and expend fees collected from non-residential development in accordance with the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7 N.J.A.C. 5:99-3.1.

B. All amounts collected shall be deposited and shall be accounted for separately, by payer, source property or development, and date of deposit as set forth at N.J.A.C. 5:99-5.

C. As a Qualified Urban Aid Municipality, Montclair Township may continue to impose residential development fees regardless of its compliance status.

D. The Township shall collect 100 percent of the development fee for residential and non-residential development at or prior to the issuance of the certificate of occupancy.

(1) The Township may collect up to 50 percent of the development fee at the time of issuance of the building permit. The remaining portion shall be collected at, or prior to, the issuance of the certificate of occupancy. Developers shall be notified of the fee by the municipality, including when payment is required to be made, at the time of land use board approval or application for a construction permit.

(2) For residential developments, regardless of the time of collection or the date of approvals, the fee shall be based on the residential development fee percentage pursuant to the municipal ordinance in effect on the date that residential building permits are issued.

(3) For non-residential developments as of July 17, 2008, the fee shall be 2.5 percent of the EAV, or such other amount pursuant to the Non- Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D- 8.7.

E. Imposed and collected residential development fees that are contested shall be deposited under protest in an interest-bearing escrow account by the Township. The Code Enforcement Official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. 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.

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- F. A developer may challenge non-residential development fees imposed pursuant to N.J.S.A. 52:27D-329.1 et seq., by filing a challenge with the Director of the Division of Taxation. Collected fees shall be placed in an interest-bearing escrow account by the Township. The Code Enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. 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.
- G. Any ordinance adopted by the Township for the purpose of imposing and collecting development fees shall provide that, in the event any of the conditions described at N.J.A.C. 5:99-5.6 occur, the Division shall be authorized, on behalf of the municipality, to direct the manner in which all funds in the affordable housing trust fund shall be expended. A three-party escrow agreement between the municipality, the institution in which funds are deposited, and the Division shall be maintained at all times.
- H. The Township shall identify the development fees collected on its monitoring report pursuant to N.J.A.C. 5:99-5 and include a plan for the use of the funds in its spending plan pursuant to N.J.A.C. 5:99-2.2.
- I. The Division shall maintain, on its Internet website, a list of each municipality that is authorized to retain the development fees collected pursuant to this section and that has a confirmed status of compliance with the Act, or is in the process of seeking compliance certification, which compliance shall include a spending plan pursuant to N.J.S.A. 52:27D-329.2 for all development fees collected.

**§202-41. Definitions. [Amended 11-27-2018 by Ord. No. O-18-043]**

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

**AFFORDABLE HOUSING DEVELOPMENT** — 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.

**AFFORDABLE HOUSING TRUST FUND** – A separate, interest- bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter. As used in this chapter, “municipal affordable housing trust fund” shall also mean a “municipal development trust fund” and a “municipal development fee Trust fund.”

~~**COAH or THE COUNCIL** — The New Jersey Council on Affordable Housing established under the Fair Housing Act.~~

**DEVELOPER** — The legal or beneficial owner or owners of a lot or of any land proposed to be

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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 — The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

DEVELOPMENT FEE — Money paid by a developer for the improvement of property as authorized by Holmdel Builder's Association v Holmdel Township, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and regulated by applicable COAH rules.

DIVISION – The Division of Local Planning Services within the New Jersey Department of Community Affairs (DCA).

EQUALIZED ASSESSED VALUE — ~~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 §§ 1, 5 and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through 54:1-35e).~~ 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 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b, and 54:1-35c). Estimates at the time of building permit may be obtained by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

GREEN BUILDING STRATEGIES — 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.

MIXED USE DEVELOPMENT – Any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including, but not limited to, lots separated by a street, a river, or another geographical feature.

NON-RESIDENTIAL DEVELOPMENT –

1. Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code, N.J.A.C. 5:23, promulgated to effectuate the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., including any subsequent amendments or revisions thereto;
2. Hotels, motels, vacation timeshares, and child-care facilities; and

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3. The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A. 52:27D- 330 et seq.

NON-RESIDENTIAL DEVELOPMENT FEE – The fee authorized to be imposed pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

PROGRAM – The Affordable Housing Dispute Resolution Program, established pursuant to section 5 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-313.2).

RESIDENTIAL DEVELOPMENT FEE – Money paid by a developer for the improvement of residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-3.2.

SPENDING PLAN – A method of allocating funds contained in an affordable housing trust fund account, which includes, but is not limited to, development fees collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to N.J.S.A. 52:27D-329.1 et seq., for the purpose of meeting the housing needs of low- and moderate-income individuals.

**§ 202-42. Residential development fees. [Amended 11-27-2018 by Ord. No. O-18-043]**

**A. Imposition of fees.**

- (1) Within all zoning districts, residential developers, except for developers of the types of development specifically exempted below and developers of developments that include affordable housing, shall pay a fee of 1.5% of the ~~e~~Equalized ~~A~~Assessed ~~V~~value (~~EAV~~) for all new residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- (2) When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a "bonus" development fee of 6% of the ~~e~~Equalized ~~a~~Assessed ~~V~~value (~~EAV~~) for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. 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 and/or developments where the developer has made a payment in lieu of on-site construction of affordable units, if permitted by ordinance or by agreement with the Township of Montclair, shall be exempt from development fees.
- (2) In all cases, the applicable fee percentage shall be determined based upon the

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Development Fee Ordinance in effect on the date that preliminary or preliminary and final site plan approval is granted, or, where site plan approval is not applicable, the date the construction permit is issued.

(3) Improvements or additions to existing one- and two-family dwellings on individual lots shall not be required to pay a development fee, but a development fee shall be charged for any new dwelling constructed as a replacement for a previously existing dwelling on the same lot that was or will be demolished, unless the owner resided in the previous dwelling for a period of one year or more prior to obtaining a demolition permit. Where a development fee is charged for a replacement dwelling, the development fee shall be calculated on the increase in the equalized assessed value of the new structure as compared to the previous structure.

(4) Homes replaced as a result of a natural disaster (such as a fire or flood) shall be exempt from the payment of a development fee.

(5) Non-profit organizations that have received tax exempt status pursuant to the Internal Revenue Code, providing current evidence of that status is submitted to the municipal clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee; and

(4)(6) Federal, State, county, and local governments shall be exempt from paying a development fee.

**§ 202-43. Nonresidential development fees. [Amended 11-27-2018 by Ord. No. O-18-043]**

A. Imposition of fees. Non-residential development fees shall be imposed pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

(1) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted below, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.

(2) Nonresidential developers, except for developers of the types of development specifically exempted below, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.

(3) 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 land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement, and such calculation shall be made 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.

(4) A developer of property that received preliminary site plan approval, pursuant to N.J.S.A. 40:55D-46, or final approval pursuant to N.J.S.A. 40:55D-50 prior to July 17,

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2008, and that was subject to the payment of a validly imposed municipal non-residential development fee ordinance shall continue to be subject to the conditions of the municipally imposed fee.

(3)(5) A payment in lieu of constructing affordable housing shall not be required by a developer of non-residential property as a condition of non-residential development.

**B. 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 development fee of 2.5% unless otherwise exempted below.

(2) The 2.5% development 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 the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in the Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer. 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, that 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 pursuant to that statute for a period of at least three years from the date of issuance of the certificate of occupancy. In addition, the following shall be exempt from the imposition of a non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7:

(a) Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development, or whether the parking lot is developed as an independent non-residential development;

(b) Any non-residential development that is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers that are developed in conjunction with, or funded by, a non-residential developer;

(c) Non-residential construction resulting from a relocation of, or an on-site improvement to, a nonprofit hospital or a nursing home facility;

(d) Projects that are located within a specifically delineated urban transit hub, as defined pursuant to N.J.S.A. 34:1B-208;

(e) Projects that are located within an eligible municipality, as defined pursuant to N.J.S.A. 34:1B-208, the Urban Transit Hub Tax Credit Act, when a majority of the project is located within a one-half mile radius of the midpoint of a platform area

for a light rail system; and

(f) Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the New Jersey Department of Transportation.

(4) A developer of a mixed use development shall be required to pay the non-residential development fee relating to the non-residential development component of a mixed use development subject to the provisions at N.J.S.A. 52:27D-329.1 et seq.

(5) Non-residential construction connected with the relocation of the facilities of a for-profit hospital shall be subject to the fee authorized to be imposed pursuant to this section to the extent of the increase in equalized assessed valuation.

~~(3)~~

~~(4)(6)~~ A developer of a nonresidential development exempted from the nonresidential development fee pursuant to Statewide Non-Residential Development Fee Act shall be subject to the fee 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.

(7) 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 the Township of Montclair as a lien against the real property of the owner.

~~(5)~~

**§ 202-44. Collection procedures. [Amended 11-27-2018 by Ord. No. O-18-043]**

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. 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. The payment of non-residential development fees 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 non-residential development until such time as the fee imposed pursuant to this section has been paid by the developer. A non-residential developer may deposit with the appropriate entity, the development fees as calculated by~~

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the Township under protest, and the Code Enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy.

(1) The Construction Official shall notify the Township tax assessor of the issuance of the first building permit for a development that may be subject to a residential or non-residential development fee.

(2) Within 90 days of receipt of that notice, the Township tax assessor, based on the plans filed, shall provide an estimate of the EAV of the residential or non-residential development. 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 property that may be subject to a non-residential development fee.

(3) Within 10 business days of a request for the scheduling of a final inspection, the tax assessor shall confirm or modify the previously estimated EAV of the improvements of the residential or non-residential development in accordance with the rules adopted by the Treasurer pursuant to N.J.S.A. 54:1-35.35; calculate the residential or non-residential development fee pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7; and thereafter notify the developer of the amount of the residential or non-residential development fee.

(4) Should the Township fail to determine or notify the developer of the amount of the residential or non-residential 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 at N.J.S.A. 40:55D-8.6.b.

(5) Upon tender of the estimated residential or non-residential development fee, provided the developer is in full compliance with all other applicable laws or rules, the Township shall issue a final certificate of occupancy for the subject property.

~~B. \_\_\_\_\_~~

~~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 that notice, the Township 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 Township 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 Township 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.~~

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~~G. Should Montclair 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 § 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).~~

H.C. Except as provided in § 202-43A(3) hereinabove, 50% of the initially calculated development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of the certificate of occupancy.

I.D. 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 the Township of Montclair. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform 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 the Township of Montclair. Appeals from a determination of the Director may be made to the Tax Court in accordance with the provisions of the State Tax Uniform 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.

**§ 202-45. Affordable Housing Trust Fund. [Amended 11-27-2018 by Ord. No. O-18-043]**

- A. There is hereby created a separate, interest-bearing affordable 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.
- 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.
  - (1) Payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by ordinance or by agreement with the Township of Montclair;
  - (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;

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- (5) Recapture funds;
- (6) Proceeds from the sale of affordable units; and
- (7) Any other funds collected in connection with the Township of Montclair's affordable housing program.

~~C. In the event of a failure by the Township of Montclair to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports, or a failure to implement the approved spending plan and to expend funds within the applicable required time period as set forth in In re: Tp of Monroe, 442 N.J. Super 565 (Law Div 2015) (aff'd 442 N.J. Super. 563), or the expenditure of funds on activities not approved by the Court, or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Township of Montclair, or, if not practicable, then within the County or the Housing Region. Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the noncompliant condition(s), and upon a finding of continuing and deliberate noncompliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund or impose such other remedies as may be reasonable and appropriate to the circumstances. The Township shall not spend, or commit to spend, any affordable housing trust funds, including Statewide non-residential fees collected and deposited into the Township's affordable housing trust fund, without first obtaining the approval of the expenditure as part of its compliance certification or by the Division pursuant to N.J.S.A. 52:27D-329.2.a(4). If the Township is within the jurisdiction of the Program or a court of competent jurisdiction, affordable housing trust funds shall not be spent unless the Program has approved a plan for spending such funds in accordance with N.J.S.A. 52:27D-329.2.a(4) or the Division has approved spending plan expenditures for emergent opportunities to create affordable housing after a municipality has obtained compliance certification in conformance with N.J.A.C. 5:99-4.~~

~~C.~~

~~D. All interest accrued in the affordable housing trust fund shall only be used to fund eligible affordable housing activities approved by the Court. All affordable housing trust funds shall be deposited in a separate, interest-bearing account. In establishing the account, the Township shall provide written authorization, in the form of a three-party escrow agreement between the Township, the bank or other financial institution, and the Division, to permit the disbursement of the funds, as provided for at N.J.A.C. 5:99-5.6, shall be maintained at all times. This authorization shall be submitted to the Division within 21 days from the opening of the trust fund account and/or within 21 days of any change in banks or other financial institutions in which trust funds are deposited.~~

~~E. With the approval of the Department's Division of Local Government Services, the Township may invest its affordable housing trust fund in the State of New Jersey cash management fund, provided that the amount of money in the cash management fund that~~

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comprises the funds and income attributable to such funds shall at all times be identifiable.

F. All interest accrued in the affordable housing trust fund shall only be used on eligible affordable housing activities included in an approved spending plan or an emergent opportunity authorized by the Division.

G. The Township shall be subject to N.J.A.C. 5:99-4.

H. The Montclair Affordable Housing Trust Fund shall not be expended:

(1) To reimburse the Township for activities that occurred prior to the authorization of a municipality to collect development fees;

(2) On attorney fees or court costs to obtain a judgment of compliance or order of repose, including any associated administration costs;

(3) On any costs in connection with a challenge to a determination of the municipality's fair share obligation; or

(4) On any costs in connection with a challenge to the municipality's obligation, housing element, or fair share plan.

I. In addition to the restrictions at H above, no more than 20 percent of all affordable housing trust funds, exclusive of those collected prior to July 17, 2008, to fund an RCA, may be expended on administration, in accordance with N.J.A.C. 5:99-2.4.

J. The Township shall set aside a portion of its affordable housing trust fund for the purpose of providing affordability assistance to low- and moderate-income households in affordable units included in a municipal fair share plan, in accordance with N.J.A.C. 5:99-2.5.

~~D.~~

**§ 202-46. Use of funds. [Amended 11-27-2018 by Ord. No. O-18-043]**

~~A. The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the Housing Trust Fund may be used for any activity approved by the Court to address the Township of Montclair's affordable housing program 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, housing rehabilitation, new construction of affordable housing units and related costs, accessory apartments, a market to affordable program, 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; and/or any other activity as permitted by the Court and specified in the approved spending plan.~~

~~B. Funds shall not be expended to reimburse the Township of Montclair for past housing~~

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activities.

~~C. At least 30% of all development fees collected and interest earned on such fees shall be used to provide affordability assistance to very low, 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 very low income households earning 30% or less of median income for Housing Region 2, in which the Township of Montclair is located.~~

~~(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. The specific programs to be used for affordability assistance shall be identified and described within the spending plan.~~

~~(2) Affordability assistance to households earning 30% or less of median income by household size 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. The specific programs to be used for very low income affordability assistance shall be identified and described within the spending plan.~~

~~(3) Payments in lieu of constructing affordable units on site, if permitted by ordinance or by agreement with the Township of Montclair, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.~~

~~(4) The Township of Montclair 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.~~

~~(5) 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, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or rehabilitation program.~~

~~(a) In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20% of collected development fees that may be expended on administration.~~

~~A. 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. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgement from the Court are not eligible uses of the Affordable Housing Trust Fund.~~

~~A. Montclair Township may use affordable housing trust funds for any housing activity as itemized in the spending plan and approved by the Program or as approved by the Division as an emergent opportunity to create affordable housing. Such activities include, but are not limited to:~~

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- (1) A rehabilitation program whose purpose is to renovate deficient housing units that are occupied by low- and moderate-income households, in accordance with the New Jersey State Housing Code, N.J.A.C. 5:28, or the requirements of the Rehabilitation Subcode, N.J.A.C. 5:23-6, as applicable. Any recaptured funds from a rehabilitation program shall be deposited into a municipality's affordable housing trust fund and subject to the provisions thereof;
- (2) New construction of affordable housing units and related development costs; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;
- (3) Creation of a market to affordable program to pay down the cost of unrestricted units and offer them in sound condition, for sale or rent, at affordable prices to low- and moderate-income households to address all or a portion of the affordable housing obligation;
- (4) Extensions or improvements of roads and infrastructure directly serving affordable housing development sites; in the case of inclusionary developments, costs shall be prorated based on the proportion of affordable housing units included in the development;
- (5) Acquisition and/or improvement of land to be used for affordable housing;
- (6) Accessory dwelling units;
- (7) The extension of expiring controls;
- (8) The construction of group homes and supportive and special needs housing;
- (9) Maintenance and repair of affordable housing units;
- (10) \_\_\_\_\_ To defray the costs of structured parking; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;
- (11) \_\_\_\_\_ Affordability assistance in accordance with N.J.A.C. 5:99-2.5;
- (12) \_\_\_\_\_ Repayment of municipal bonds issued to finance low- and moderate-income housing activity;
- (13) \_\_\_\_\_ Any other activity as specified in the approved spending plan or as approved by the Division as an emergent affordable housing opportunity; or
- (14) \_\_\_\_\_ Any other activity approved by the Division.

B. Use of funds for administrative expenses

- (1) No more than 20 percent of all affordable housing trust funds, exclusive of those collected prior to July 17, 2008, to fund an RCA, shall be expended on administration.
- (2) Administrative expenses may include costs reasonably related to the determination of the fair share obligation and the development of a municipal housing element and fair

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share plan and may include fees necessary to develop or implement affordable housing programs, an affirmative marketing program, and/or expenses that are reasonably necessary for compliance with the processes of the Program, including, but not limited to, the costs to the municipality of resolving a challenge pursuant to the Program.

(3) Administrative expenses may also include costs associated with functions carried out in compliance with UHAC, including activities related to the marketing program and waitlist management, administering the placement of occupants in housing units, income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with the Division's monitoring requirements.

(4) The proportion of a municipal employee's salary related to the MHL or RCA administrator functions and fees for required educational programs, may be paid as an administrative expense from the municipal affordable housing trust fund.

C. Use of funds for affordability assistance.

(1) The Township shall set aside a portion of all development fees collected and interest earned for the purpose of providing affordability assistance to low- and moderate-income households in affordable units included in the municipality's fair share plan.

(2) Affordability assistance for very-low-income households may include offering a subsidy to developers of inclusionary or 100 percent affordable housing developments or buying down the cost of low- or moderate-income units in a municipal fair share plan to make them affordable to very low-income households, including special needs and supportive housing opportunities.

(3) The 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, or any program or activity for which the municipality expends development fee proceeds.

D. Barrier-free escrow. An affordable housing trust fund may include fees collected to adapt affordable unit entrances to be accessible in accordance with the Act and the Barrier Free Subcode, N.J.A.C. 5:23-7. The Township shall set forth the mechanism by which it will collect and distribute funds intended to convert adaptable entrances in compliance with the technical design standards of the Barrier Free Subcode at N.J.A.C. 5:23-7. Funds collected for this purpose shall at all times be identifiable from other funds. If the Township collects, or anticipates collecting, funds to adapt affordable unit entrances, this information shall be identified on its monitoring report pursuant to N.J.A.C. 5:99-5.

E. Payments in lieu of constructing affordable units on-site.

(1) Payments in lieu of constructing affordable units shall not be imposed on any non-residential development.

(2) The Township shall identify funds collected as payments in lieu of constructing affordable units onsite in its monitoring report pursuant to N.J.A.C. 5:99-5.2 and include a plan for the use of the funds in its spending plan.

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(3) Payment-in-lieu fees shall be deposited into the municipality's affordable housing trust fund, but shall be accounted for separately from any other fees collected by a municipality. Whenever a payment-in-lieu fee is assessed by the Township pursuant to this section, a development fee authorized pursuant to N.J.S.A. 52:27D-329.2 shall not be charged in connection with the same development.

F. Other funds.

The affordable housing trust fund may also contain recaptured funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected by the municipality in connection with its affordable housing programs. The Township shall identify these other funds on its monitoring report pursuant to N.J.A.C. 5:99-5 and include a plan for the use of the funds in its spending plan.

(b)

**§ 202-47. Monitoring. [Amended 11-27-2018 by Ord. No. O-18-043]**

~~The Township of Montclair shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and nonresidential developers, payments in lieu of constructing affordable units on site (if permitted by ordinance or by agreement with the Township of Montclair), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from the Township of Montclair-owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with Township of Montclair's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the spending plan approved by the Court.~~

A. Trust Fund Monitoring.

(1) Montclair Township shall annually submit monitoring information to the Division that includes the information described at N.J.A.C. 5:99-5.3. Monitoring reports for each calendar year shall be in the form of a certification specifying that all information provided in the AHMS is complete, accurate, and current through the most recent calendar year and shall be accompanied by a year-end bank or other financial institution statement that will be used to reconcile municipal reporting. Municipal monitoring information certifications shall be submitted by the municipal housing liaison, or their designee, which shall be a municipal employee, through the AHMS, by February 15 of each year for trust fund activity through December 31 of the previous year.

(2) Montclair Township shall provide the Division with a copy of the adopted development fee ordinance and a detailed accounting of all fees that have been collected into the affordable housing trust fund and all expenditures from the previous calendar year.

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(3) Monitoring information shall include a full accounting of any affordable housing trust fund activity, including the source and amount of funds collected, the amount and purpose for which any funds have been expended, and the status of the plan to spend the remaining balance pursuant to N.J.A.C. 5:99-5.5. All municipal monitoring information submissions shall be made through the online AHMS, made available by the Department on the Division's website.

(4) The Township shall deposit all fees collected, including non- residential or residential development fees, into the municipal affordable housing trust fund.

B. Completed affordable unit monitoring information

(1) Montclair Township shall submit information to the Division concerning completed affordable housing units pursuant to this subchapter on an annual basis. Municipalities shall provide the following information to the Division:

(a) The number and type of affordable housing units actually constructed, including:

[1] The housing type;

[2] The tenure of the housing, in the case of a rental unit;

[3] The affordability level;

[4] The number of bedrooms;

[5] The date and expiration of affordability controls; and

[6] Whether occupancy is reserved for families, senior citizens, or other special populations;

(b) Construction commencement dates;

(c) Certificates of occupancy granted;

(d) Start and expiration dates of deed restrictions; and

(e) Residential and non-residential development fees collected and expended, including:

[1] The purposes and amounts of such expenditures; and

[2] The current balance in the municipality's affordable housing trust fund.

(2) Monitoring reports for each calendar year shall be in the form of a certification, submitted by the municipal housing liaison, or their designee, which shall be a municipal employee, through the AHMS, by February 15th of each year, specifying that all information provided in the AHMS is complete, accurate, and current through the most recent calendar year.

(3) The Division shall maintain on its Internet website, and publish on an annual basis, an up-to-date municipal status report based on its collection of information of the

information pursuant to this subchapter.

**§ 202-48. Ongoing collection of fees. [Amended 11-27-2018 by Ord. No. O-18-043]**

~~A. The ability for Montclair to impose, collect and expend development fees shall expire July 1, 2025, unless the Township of Montclair has first filed an adopted Housing Element and Fair Share Plan with the Court and has same approved and received approval of its Development Fee Ordinance from the Court. The ability for Montclair to impose and collect and retain residential development fees and the ability to retain non-residential development fees and maintain an affordable housing trust fund is subject to maintaining its status as a compliant municipality, except that a Qualified Urban Aid Municipality may continue to retain residential development fees regardless of its compliance status pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7.-~~

~~A. If Montclair fails to renew its ability to impose and collect development fees prior to July 1, 2025, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund, established pursuant to § 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320). If a court of competent jurisdiction finds that Montclair Township has failed to maintain its status as a compliant municipality, the Township may be subject to forfeiture of any or all funds remaining within their affordable housing trust fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D- 320.~~

~~B. —~~

~~B. The Township of Montclair shall not impose a residential development fee on a development that receives preliminary or final site plan approval after July 1, 2025, unless authorized to do so, nor shall Montclair retroactively impose a development fee on such a development. The Township of Montclair shall not expend any of its collected development fees after July 1, 2025, unless authorized to do so by the Court.~~

~~C. Requirement to spend or commit to expend development fees within four years of the date of collection~~

~~(1) Development fees shall be expended or committed for expenditure within four years of the date of collection. For purposes of this section, funds are expended, or committed for expenditure, if one of the following standards has been met:~~

~~(a) The funds have been spent on a housing activity in accordance with N.J.A.C. 5:99-2.3;~~

~~(b) An executed contract or legally enforceable agreement funding the implementation of an allowable housing activity in accordance with N.J.A.C. 5:99-2.3, and the following, as applicable:~~

~~[1] a municipal resolution or ordinance creating the affordable housing program,~~

[2] a policy and procedures manual, and

[3] completion of affordable housing trust fund and unit monitoring, indicating units completed or rehabilitated, or

[4] Another document demonstrating a firm and binding obligation to spend such funds in a manner consistent with addressing its respective affordable housing obligation;

(c) For affordability assistance expenses, the Division has been provided with the following:

[1] demonstration of a firm and binding obligation to spend such funds in a manner consistent with addressing the affordability assistance obligation required by the Act or a municipal resolution or ordinance and an executed contract or agreement for expenses related to providing affordability assistance to existing low- and moderate-income households,

[2] a policies and procedures manual for any affordability assistance program executed by the municipality,

[3] and a contract with an administrative agent to carry out the program if applicable;

(d) For administrative expenses, the Division has been provided with the following:

[1] a municipal resolution or ordinance and an executed contract or agreement for expenses related to administering affordable housing.

D. A municipality that fails to expend or commit to expend the amounts collected within four years of the date of collection pursuant to N.J.S.A. 52:27D-329.2 shall be required to transfer any unexpended and/or uncommitted revenue collected to the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.

E. Enforcement

(1) The Township's ability to impose and collect funds and maintain its affordable housing trust fund pursuant to this chapter shall be conditioned on its compliance with all requirements of this chapter.

(2) Occurrence of any of the following deficiencies may result in the Division taking an action pursuant to (c) below:

(a) Failure to meet deadlines for information required by the Division in its review of a development fee ordinance;

(b) Failure to commit or expend development fees within four years of the date of collection in accordance with N.J.A.C. 5:99-5.5;

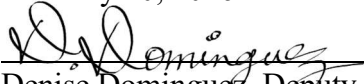
(c) Failure to comply with the requirements of the Non-Residential Development Fee Act and N.J.A.C. 5:99-3;

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- (d) Failure to address the Division’s conditions for approval of a plan to spend funds within the deadlines imposed by the Division;
- (e) Failure to submit accurate monitoring reports pursuant to this subchapter within the time limits imposed by the Act, this chapter, and/or the Division;
- (f) Expenditure of funds on activities not approved by the Program or the Division or otherwise permitted by law;
- (g) Revocation of compliance certification;
- (h) Failure of a municipal housing liaison or administrative agent to comply with the requirements set forth at N.J.A.C. 5:99-6, 7, and 8; or
- (a)(i) Other good cause demonstrating that municipal affordable housing funds are not being used for an approved purpose.

<b>RECORD OF COUNCIL VOTE ON INTRODUCTION</b>						
<b>COUNCIL MEMBER</b>	<b>MOVANT</b>	<b>SECOND</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
<b>Deputy Mayor Andersen</b>			✓			
<b>Councilor Birmingham</b>			✓			
<b>Councilor D’Amato</b>			✓			
<b>Councilor Harrison</b>	✓		✓			
<b>Councilor Toler</b>						✓
<b>Councilor Williams</b>			✓			
<b>Mayor Baskerville</b>		✓	✓			

**I HEREBY CERTIFY** the foregoing to be a true copy of Ordinance O-26-05 introduced by the Mayor and Council of the Township of Montclair, in the County of Essex, at its meeting held on February 10, 2026.

  
 \_\_\_\_\_  
 Denise Dominguez, Deputy Township Clerk