

ORDINANCE No. 2026-01

AN ORDINANCE ADDING ARTICLE XIII OF THE BOROUGH OF AUDUBON TO PROVIDE FOR THE COLLECTION OF DEVELOPMENT FEES IN SUPPORT OF AFFORDABLE HOUSING AS PERMITTED BY THE NEW JERSEY FAIR HOUSING ACT

WHEREAS, In *Holmdel Builder's Association v. Holmdel Borough*, 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 adoption of Rules by the Council on Affordable Housing (COAH); and

WHEREAS, 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), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that were under the jurisdiction of COAH and that are now before a court of competent jurisdiction and have a Court-approved Spending Plan may retain and spend non-residential development fees collected in accordance with the approved Spending Plan;

BE IT ORDAINED by the Mayor and Committee of the Borough of Audubon, Camden County, New Jersey, that Article XIII of the Code of the Borough of Audubon is hereby added to include the following provisions regulating the collection and disposition of mandatory development fees to be used in connection with the Borough's affordable housing programs, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985.

Section 1: Add Article XIII Affordable Housing Development Fees

Sec. 113-577. - Purpose and Basic Requirements.

This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan.

This Ordinance establishes the Municipal Affordable Housing Trust Fund. The municipality shall not spend development fees until the court has approved a plan for spending such fees.

Sec. 113-578. – Definitions.

The following terms when used in this Ordinance shall have the meanings given in this Section:

"Accessory dwelling unit" means a residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation, and cooking, including a stove and refrigerator, and is located within a proposed or existing primary dwelling, within an existing or proposed structure that is an accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling.

"Act" means P.L. 2024, c. 2.

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with N.J.A.C. 5:99-7, and as designated by the UHAC at N.J.A.C. 5:80-26.15.

"Affordability assistance" means the use of funds to render housing units more affordable to low- and moderate-income households and includes, but is not limited to, down payment assistance,

security deposit assistance, low interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed-restricted units up to code, pursuant to N.J.A.C. 5:99-2.5.

"Affordable" means a sales price or rent within the economic means of a low- or moderate-income household, as defined in the UHAC as, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.7 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.13.

"Affordable housing delivery mechanisms" means any of the methods of creating or preserving actual housing units available to low- and moderate-income households or creating a realistic opportunity for the construction of such units, as permitted by the Act.

"Affordable housing development" means a development included in a municipality's housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored affordable housing project, or a 100 percent affordable development.

"Affordable Housing Dispute Resolution Program" or "the Program" refers to the dispute resolution program established pursuant to N.J.S.A. 52:27D-313.2.

"Affordable Housing Monitoring System" or "AHMS" means the Department's cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

"Affordable unit" means a housing unit proposed or developed pursuant to the Act, including units created with municipal affordable housing trust funds.

"Barrier-free escrow" means the holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds shall be held in a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

"Builder's remedy" means court-imposed site-specific relief for a litigant who seeks to build affordable housing for which the court requires a municipality to utilize zoning techniques, such as mandatory set-asides or density bonuses, including techniques that provide for the economic viability of a residential development by including housing that is not for low- and moderate-income households in accordance with N.J.S.A. 52:27D-304.

"Commissioner" means the Commissioner of the Department of Community Affairs.

"Compliance certification" means the certification issued to a municipality by the Program pursuant to section 3 at P.L. 2024, c. 2, that provides a municipality immunity from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next round of affordable housing obligations begins, which is also known as a "judgment of compliance" resulting in an "order for repose." "Compliance certification" shall include a judgment of repose granted in an action filed pursuant to section 13 at P.L. 1985, c. 222 (N.J.S.A. 52:27D-313).

"Compliant municipality" means a municipality that is in the process of seeking compliance certification pursuant to the directives issued by the Administrative Office of the Courts, has obtained compliance certification, or who has filed for, or has obtained, a Judgment of Compliance, Order for Repose, or other court approval pursuant to the Act.

"Construction" means new construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the

State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.).

"County-level housing judge" means a judge appointed pursuant to section 5 at P.L. 2024, c. 2, to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal fair share plans and housing elements with the Act.

"Department" means the New Jersey Department of Community Affairs.

"Developer" means 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" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement 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 the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

"Development application" means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, a site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permit pursuant to N.J.S.A. 40:55D-34 or 40:55D-36.

"Development fee" means money paid by a developer for the improvement of residential and non-residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and 40:55D-8.1 through 40:55D-8.7 and N.J.A.C. 5:99-3.

"Division" means the Division of Local Planning Services within the Department of Community Affairs.

"Emergent opportunity" means a circumstance that has arisen whereby affordable housing will be able to be produced through a delivery mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

"Equalized assessed value" or "EAV" means 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.

"Exclusionary zoning litigation" means litigation challenging the fair share plan, housing element, ordinances, or resolutions that implement the fair share plan or housing element of a municipality based on alleged noncompliance with the Act or the Mount Laurel doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder's remedy.

"Extension of expiring controls" means extending the deed restriction period on units where the controls will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.

"Fair share obligation" means the total of the present need and prospective need as determined by the Affordable Housing Dispute Resolution Program, or a court of competent jurisdiction.

"Fair share plan" means the plan or proposal, which may readily be adopted with accompanying ordinances and resolutions, pursuant to subsection f. of section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and

which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal housing element, and addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

"Firm and binding obligation" means a demonstration by a municipality, evidenced by documentation substantiating a legally enforceable agreement entered into by the municipality with a third party, sufficient proof of building or other permits, efforts concerning land acquisition or project development, or other documentation that demonstrates a commitment to spend trust fund monies in a manner consistent with the Act, the municipality's fair share plan, the Act, an approved spending plan, and all applicable regulations.

"HMFA" or "the Agency" means the New Jersey Housing and Mortgage Finance Agency established pursuant to P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

"Housing element" means the portion of a municipality's master plan adopted in accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28.b(3) and the Act consisting of reports, statements, proposals, maps, diagrams, and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low- and moderate-income housing, which shall include the municipal present and prospective obligation for affordable housing, determined pursuant to subsection f. at N.J.S.A. 52:27D-304.1.

"Housing project" means a project, or distinct portion of a project, which is designed and intended to provide decent, safe, and sanitary dwellings, apartments, or other living accommodations for persons of low- and moderate-income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes. The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

"Housing region" means a geographic area established pursuant to N.J.S.A. 52:27D-304.2 for each round of low- and moderate-income housing obligations pursuant to the Act.

"Inclusionary development" means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate- income households.

"Judgment of compliance" or "judgment for repose" means a determination issued by the Superior Court approving a municipality's fair share plan to satisfy its affordable housing obligation for a particular 10-year round.

"Low-income household" means a household with a household income equal to 50 percent or less of the regional median income.

"Low-income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Mixed use development" means 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.

"Moderate-income household" means a household with a household income in excess of 50 percent but less than or equal to 80 percent of the regional median income.

"Moderate-income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

"Municipal affordable housing trust fund" means 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."

"Municipal development fee ordinance" means an ordinance adopted by the governing body of a municipality that authorizes the collection of development fees.

"Municipal housing liaison" or "MHL" means an appointed municipal employee who is responsible for oversight and/or administration of the affordable housing units created within the municipality and oversight of the authorization of individuals being provided access to the AHMS.

"New construction" means the creation of a new housing unit under regulation by a code enforcement official regardless of the means by which the unit is created. Newly constructed units are evidenced by the issuance of a certificate of occupancy and may include new residences created through additions and alterations, adaptive reuse, subdivision, or conversion of existing space, and moving a structure from one location to another.

"New Jersey Affordable Housing Trust Fund" means an account established pursuant to N.J.S.A. 52:27D-320.

"Non-residential development" means:

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;

Hotels, motels, vacation timeshares, and child-care facilities; and

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" means the fee authorized to be imposed pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

"Order for repose" means the protection a municipality has from a builder's remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

"Payment in lieu of constructing affordable units" means the payment of funds to the municipality by a developer when affordable units are not produced on a site zoned for an inclusionary development.

"Receiving municipality" means, for the purposes of an RCA, a municipality that contractually agreed to assume a portion of another municipality's fair share obligation.

"Reconstruction" means any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied, pursuant to the Rehabilitation Subcode of the Uniform Construction Code, N.J.A.C. 5:23-6. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

"Recreational facilities and community centers" means any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including, but not limited to, ball fields, meeting halls, and classrooms, accommodating either organized or informal activity.

"Regional contribution agreement" or "RCA" means a contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered into prior to July 18, 2008, to transfer a portion of a municipality's affordable housing obligation to another municipality within its housing region.

"Rehabilitation" means the repair, renovation, alteration, or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

"Residential development fee" means 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.

"Sending municipality" means, for purposes of an RCA, a municipality that has contractually agreed to transfer a portion of its fair share obligation to another willing municipality.

"Senior center" means any recreational facility or community center with activities and services oriented towards serving senior citizens.

"Spending plan" means 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.

"Treasurer" means the Treasurer of the State of New Jersey.

"UHAC" means the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26.

"Very-low-income household" means a household with a household income less than or equal to 30 percent of the regional median income.

"Very-low-income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

Sec. 113-579. - General non-residential and residential development fee requirements.

- A. A compliant municipality 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 and this chapter.
- 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. A municipality that has failed to maintain its status as a "compliant municipality" shall not impose a residential development fee on a development that receives preliminary or final approval after the expiration of the municipality's compliance certification or a judgment of compliance, nor shall a municipality retroactively impose a development fee on such a development should the municipality subsequently come into compliance. A Qualified Urban Aid Municipality may continue to impose residential development fees regardless of its compliance status.
- D. A municipality 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. A municipality 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 municipality. The local 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.
- 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 municipality if the municipality is authorized to retain the fees, or by the State if the municipality is not authorized to retain the fees. The local 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. 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. A municipality that collects or anticipates collecting development fees shall identify the 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 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.

Sec. 113-580. - Residential Development Fees

- A. A residential development fee ordinance shall impose a maximum fee of one-and-one-half percent of the EAV of the development provided no increased density is permitted.
 - 1. The ordinance may impose an increased development fee of up to six percent of the EAV, for each additional unit that may be realized for a development that has received an increase in residential density pursuant to N.J.S.A. 40:55D-70.d(5) (known as a "d" variance). If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the density for the purposes of calculating the increased development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.
 - 2. Ordinances imposing residential development fees may apply to new construction, additions, and alterations to existing residential development. Residential development fee ordinances shall clearly indicate which types of development are subject to the imposition of the fee. Development fees assessed on new construction shall be based on the EAV of land and improvements. Development fees assessed on additions and alterations shall be based only on the increase in EAV that results from the addition or alteration.
- B. Eligible exactions, ineligible exactions, and exemptions from residential development fees shall be treated as follows:
 - 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 and approved by the Court as part of its approval of the settlement of litigation, shall be exempt from the payment of development fees.
 - 2. Residential development fees may be imposed and collected when an existing structure is expanded, undergoes a change to a more intense use, or is demolished and replaced. The development fee that may be imposed and collected shall be calculated on the increase in the EAV resulting from the expansion, change to a more intense use, or replacement;
 - 3. 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 necessitating an amended preliminary or a new preliminary approval pursuant to N.J.S.A. 40:55D-46.b and 40:55-48.b. Where a site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose;

4. Municipal development fee ordinances may exempt or impose lower development fee rates for specific types of residential development, provided each classification of development is addressed consistently. Examples include, but are not limited to, exempting or reducing the fee for improvements where the EAV does not exceed a threshold minimum determined by the municipality, developments with one or two owner-occupied dwelling units, or green buildings;
 5. A municipality may exempt or reduce fees in specific residential areas or zones in order to promote development in that area. Examples include, but are not limited to, exempting all residential development in a mixed-use zone, residential development within a one-half-mile radius of a train station, or residential development within areas in need of redevelopment pursuant to N.J.S.A. 40:12A-1 et seq.;
 6. Residential structures demolished and replaced as a result of a fire, flood, or any natural disaster or catastrophe shall be exempt from paying any residential development fee, even if the new structure has an increased EAV as compared to the previous structure;
 7. 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
 8. Federal, State, county, and local governments shall be exempt from paying a development fee.
- A. Any municipality that is not in compliance with the requirements of this Section may be subject to forfeiture of any or all funds remaining within its municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-5.6. 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.

Sec. 113-581. - Non-Residential Development Fees.

- A. 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.
- B. 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, 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.
- C. Any non-residential development fee ordinance shall be consistent with the provisions of the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7, and shall not impose a payment in lieu of constructing affordable housing upon a developer of non-residential property as a condition of non-residential development.
- D. Any municipality that is not in compliance with the requirements of the Statewide Non-Residential Development Fee Act and this Section may be subject to forfeiture of any or all funds remaining within its municipal affordable housing trust fund pursuant to N.J.S.A. 40:55D-8.4 and N.J.A.C. 5:99-5.6. 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.
- E. Non-residential development fees shall be imposed as follows:
 1. A fee equal to two-and-one-half percent of the EAV of the land and improvements, for all new non-residential construction on an unimproved lot or lots, or such other amount pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7; or

2. A fee equal to two-and-one-half percent of the increase in EAV, of the additions or alterations to existing structures to be used for non-residential purposes, 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.
- F. 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:
1. 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;
 2. 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;
 3. Non-residential construction resulting from a relocation of, or an on-site improvement to, a nonprofit hospital or a nursing home facility;
 4. Projects that are located within a specifically delineated urban transit hub, as defined pursuant to N.J.S.A. 34:1B-208;
 5. 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
 6. 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.
- G. 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.
- H. 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.
- I. A developer of a non-residential development exempted from the non-residential development fee pursuant to this section shall be subject to that fee at such time as the basis for the exemption set forth in this subsection no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
- J. If a property that was exempt from the collection of a non-residential 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 non-residential development fees in these circumstances may be enforceable by the municipality as a lien against the real property of the owner.
- K. 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 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.

1. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development that may be subject to a non-residential development fee.
 2. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the EAV of the non-residential development. The construction official responsible for the issuance of a final certificate of occupancy shall notify the local 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.
- L. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated EAV of the improvements of the non-residential development in accordance with the rules adopted by the Treasurer pursuant to N.J.S.A. 54:1-35.35; calculate the 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 non-residential development fee.
- M. Should the municipality fail to determine or notify the developer of the amount of the 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.
- N. Upon tender of the estimated non-residential development fee, provided the developer is in full compliance with all other applicable laws or rules, the municipality shall issue a final certificate of occupancy for the subject property.
- O. Any municipality that is not in compliance with the requirements established pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7, or the rules of the Division promulgated pursuant thereto, may be subject to forfeiture, pursuant to N.J.A.C. 5:99-5.6, of any or all funds remaining within its municipal 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.
- P. Failure of the municipality to comply with the timeframes or procedures set forth in this section may subject the municipality to penalties imposed by the Commissioner; any penalties so imposed shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.

Sec. 113-582. - Ongoing Collection of Fees.

- A. The ability for a municipality 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.
- B. If a court of competent jurisdiction finds that a municipality has failed to maintain its status as a compliant municipality, the municipality may be subject to forfeiture of any or all funds remaining within their affordable housing trust fund.

- C. 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.
- D. A municipality that is not a compliant municipality that imposes and collects fees and maintains an affordable housing trust fund shall submit an updated spending plan in accordance with the time frames set forth at N.J.S.A. 52:27D-304.1 for municipal submission of a housing element and fair share plans.

Sec. 113-583. - Appeal of development fees

- A. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by that board, collected fees shall be placed in an interest-bearing escrow account by the municipality. 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, R.S. 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.
- B. A developer may challenge non-residential 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 municipality. 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, R.S. 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.

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication as provided by law.

ATTEST:

BOROUGH OF AUDUBON

Danielle Ingves, R.M.C.
Municipal Clerk

Robert Jakubowski, Mayor

Introduced:

Motion by:

Second by:

Introduction Roll Call:

RECORDED VOTE	AYE	NAY	ABSTAIN	ABSENT
Mayor Jakubowski				
Commissioner Wendell				
Commissioner Alemi				

Adopted: _____

Motion by: _____

Second by: _____

Adoption Roll Call:

RECORDED VOTE	AYE	NAY	ABSTAIN	ABSENT
Mayor Jakubowski				
Commissioner Wendell				
Commissioner Alemi				

I hereby certify the foregoing to be a true copy of an Ordinance adopted by the Mayor and Commissioners at a meeting held on March 12, 2026.

Danielle Ingves, R.M.C., C.M.R.
Municipal Clerk

NOTICE:

BOROUGH OF AUDUBON

Robert Jakubowski, Mayor

ATTEST: _____
Danielle Ingves, RMC, Borough Clerk

The foregoing Ordinance was adopted on final reading and public hearing at a meeting held by the Board of Commissioners on March 12, 2026.

Danielle Ingves, Municipal Clerk

NOTICE IS HEREBY GIVEN, that the above Ordinance was introduced and passed on first reading at the Regular Business Meeting of the Governing Body of the Borough of Audubon held in the Municipal Building on the 17 day of February 2026, and the same shall come up for public hearing at the Regular Business Meeting of the Governing Body to be held on the 12 day of March 2026, at 5:00 P.M., at which time any persons interested shall be given the opportunity to be heard concerning said Ordinance. Following the public hearing, said Ordinance shall be considered for final adoption.

Danielle Ingves, R.M.C., C.M.R.
Municipal Clerk