

**CITY OF ENGLEWOOD
BERGEN COUNTY, NEW JERSEY
ORDINANCE 23 -20**

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 250, TITLED “LAND USE,” SECTION §250-126 AFFORDABLE HOUSING DEVELOPMENT FEES

WHEREAS, the New Jersey Supreme Court issued its decision In re: Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015) on March 10, 2015 stripping COAH of its administrative duties relating to the affordable housing certification process and thereby created a judicial process by which a municipality can file a declaratory judgement action with the court seeking a judicial determination that their housing element and fair share plan satisfied their third round affordable housing obligation; and

WHEREAS, pursuant to the New Jersey Supreme Court’s March 10, 2015 decision and to preserve immunity from developer remedy lawsuits, the City filed a declaratory judgment action (DJ Action) entitled In the Matter of the Application of the City of Englewood for Judgement of Compliance and Repose, County of Bergen, Docket Number BER-L- 4069-19 with the Superior Court; and

WHEREAS, by way of negotiations with the Fair Share Housing Center in the DJ Action the City has arrived at a Settlement Agreement (Settlement) with Fair Share Housing Center concerning the City’s obligation which was approved by the Superior Court after a fairness hearing held on January 10, 2023 and in an order entered by the Court and filed on January 20, 2023; and

WHEREAS, the City is required to now take certain actions including the adoption of ordinances to implement the settlement agreement with Fair Share Housing Center;

BE IT ORDAINED by the Governing Body of the City of Englewood, Bergen County, New Jersey that it does hereby amend, and supplement Chapter 250, Land Use Code as follows:

SECTION 1. Article XVII entitled Development Fees is hereby repealed in its entirety.

SECTION 2. Article XVII is hereby amended to add the following section § 250-126 AFFORDABLE HOUSING DEVELOPMENT FEES.

A. Purpose.

- (1) In Holmdel Builder's Ass'n v. Holmdel City, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, *N.J.S.A. 52:27D-301.et seq.*, and the State Constitution, subject to the Council On Affordable Housing's (COAH) adoption of rules.
- (2) 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 or court of competent jurisdiction and that are now before a court of competent jurisdiction and have a Court-approved spending plan may retain fees collected from non-residential development.

- (3) The purpose of this section is to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules developed in response to P.L.2008, c.46, Sections 8 and 32-38 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C> 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. This section shall be interpreted within the framework of COAH's rules on development fees, codified at *N.J.A.C. 5:97-8*.

B. Basic Requirements.

- (1) The ability to impose, collect and spend development fees is consistent with the settlement terms and conditions entered into between the City of Englewood and FSHC and the judgement of compliance and repose granted by the Court.
- (2) The City of Englewood shall not spend development fees until the Court has approved a plan for spending such fees in conformance with *N.J.A.C. 5:97-8.10*.
- (3) This section shall not be effective until the Court has approved, and the City has adopted, the section.

C. Definitions.

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

Affordable housing development shall mean a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one hundred (100%) percent affordable development.

COAH or the *Council* shall mean the New Jersey Council on Affordable Housing.

Court or Court approved entity shall mean the entity that has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State pursuant to the Supreme Court decision issued in Mount Laurel IV on March 10, 2015.

Development fee shall mean 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.

Developer shall mean any person, partnership, association, company or corporation that is 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.

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

Green building strategies shall mean 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.

D. Residential Development.

(1) Within the City of Englewood, all residential developers, except for developers of the types of developments specifically exempted below and developers of developments that include affordable housing shall pay a fee of one and one-half (1.5%) percent of the equalized assessed value 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 six (6%) percent of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing.

(a) However, if the zoning of a site has changed during the immediate two (2) years prior to the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two (2) year time period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees will equal 1.5% of the equalized assessed value on the first two units, and 6% of the equalized assessed value for the two additional units, provided that zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

(b) In any case, these fees shall not apply to developments exempt from the collection of development fees in accordance with the provisions specified in subsection §250-126. D(3) of this section, hereinbelow.

(3) Eligible Exactions, Ineligible Exactions and Exemptions for Residential Development.

- (a) All affordable housing developments and/or developments that produce affordable units shall be exempt from the payment of development fees.
- (b) Developments that have received preliminary or final site plan approval prior to the adoption of this section, and any preceding section permitting the collection of development fees, shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where site plan approval is not applicable, the issuance of a Zoning Permit and/or Construction Permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the Development Fee Ordinance in effect on the date that the Construction Permit is issued.
- (c) Any repair, reconstruction, or improvement of a structure, the cost of which is less than 50% of the market value of the structure before the improvement or repair is started shall be exempt from the payment of development fees. For purposes of this section, “market value” shall mean the equalized assessed value of the existing improvement as established by the City Tax Assessor. The cost of the repair, reconstruction, or improvements shall be determined by an itemized construction cost estimate prepared and submitted to the Construction Official. The estimate shall be signed and sealed by an architect or professional engineer licensed by the State of New Jersey, or where no such professionals are retained, signed by the contractor or the homeowner. Where prepared by the homeowner or contractor, the City Engineer may review such estimates for accuracy. “Substantial improvement” is considered to commence when the first alteration of any wall, floor, or other structural part of the building commences, whether or not the alternation affects the external dimensions of the structure. The term does not, however, include either:
 - 1. Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
 - 2. Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places, 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.
- (d) Structural alterations that do not increase gross floor area of a building or structure or increase the equalized assessed value of a property shall be exempted from paying a development fee.
- (e) Nonprofit organizations constructing residential projects which have received tax-exempt status pursuant to Section 501(c)(3) of 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.

- (f) Federal, state, county, and local governments shall be exempted from paying a development fee.
- (g) Homes replaced as a result of a natural disaster such as a fire or a flood shall be exempt from the payment of a development fee. (This exemption applies only for the owner of record at the time of the fire, flood, or natural disaster.)
- (h) In addition to the construction of new principal and/or accessory buildings, development fees shall be imposed and collected for the construction of additions or expansions to existing buildings, for the change or conversion of an existing building to accommodate a more intense use, and/or for the demolition and replacement of an existing building, provided that:
 - 1. The development fee shall be calculated on the increase in the equalized assessed value of the improved building.
 - 2. No development fee shall be collected for a demolition and replacement of a residential building resulting from a natural disaster.
 - 3. No development fee shall be collected for the construction of an "accessory structure" which is not a "building" as these terms are defined in the Englewood City "Land Development" Ordinance.

E. Nonresidential Development.

- (1) Within all zoning districts, nonresidential developers, except for developers of the types of developments specially exempted below, shall pay a fee equal to two and one-half (2.5%) percent of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
- (2) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted below, shall also pay a fee equal to two and one-half (2.5%) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- (3) Development fees also shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half (2.5%) percent shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure, i.e., land and improvements, 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 (0).
- (4) Eligible Exactions, Ineligible Exactions and Exemptions for Nonresidential Development.

- (a) The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half (2.5%) percent development fee, unless otherwise exempted below.
- (b) The two and one-half (2.5%) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing building footprint, reconstruction, renovations, and repairs.
- (c) Nonresidential projects that have received a Certificate of Occupancy or general development plan approval or have entered into a developer's agreement or a redevelopment agreement, all prior to July 17, 2008 (the effective date of P.L. 2008, c.46), shall be exempt from the payment of non-residential development fees, provided that an affordable housing fee of at least one (1%) percent of the equalized assessed value of the improvements is included in the development plan, developer's agreement or redevelopment agreement.
- (d) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-81 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.
- (e) All nonresidential construction of buildings or structures on property used by houses of worship, and property used for educational purposes which is tax-exempt pursuant to R.S.54:4-3.6, provided that the property continues to maintain its tax-exempt status under that statute for a period of at least three (3) years from the date of the Certificate of Occupancy.
- (f) In addition, the following shall be exempt from the imposition of a nonresidential fee:
 - 1. Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a nonresidential development or as a stand-alone non-residential development;
 - 2. Any nonresidential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers and senior centers as defined in section 35 of P.L.2008, c.46 (C.40:55D-8.4), which are developed in conjunction with or funded by a non-residential developer;
 - 3. Nonresidential 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 section 2 of P.L.2007, c.346 (C.34: 1 B-208);

5. Projects that are located within an eligible municipality, as defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a majority of the project is located within a one-half (1/2) mile radius of the midpoint of a platform area for a light rail system;
 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 State Department of Transportation; and
 7. Commercial farms and Use Group "U" buildings and structures.
- (g) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the 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 nonresidential development fee, in that event, within three (3) years after that event or after the issuance of the final Certificate of Occupancy of the nonresidential development, whichever is later.
- (h) 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 forty-five (45) days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the City of Englewood as a lien against the real property of the owner.
- (i) Federal, state, county, and local governments of nonresidential development shall be exempted from paying a development fee.

F. Collection of Fees.

- (1) Englewood City shall collect development fees for affordable housing in accordance with the following:
- (a) The Planning Board Secretary of Englewood City shall notify the Englewood City Construction Code Official whenever either a preliminary, final or other applicable approval is granted to any development which is subject to the collection of a development fee.
 - (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," which is to be completed by the developer as per the instructions provided.
1. The City Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF.

2. The City Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
 - (c) City Construction Official responsible for the issuance of a building permit shall notify the City Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
 - (d) Within ninety (90) days of receipt of that notice, the City Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development. The equalized assessed value and the required development fee shall be estimated by the City Tax Assessor prior to the issuance of the construction permit, with the understanding that the estimate of the equalized assessed value is not intended to establish the equalized assessed value for tax purposes.
- (2) Except as provided in Section E.3. above, fifty (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.
- (3) The City Construction Official responsible for the issuance of a final Certificate of Occupancy shall notify the City Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- (4) Within ten (10) business days of a request for the scheduling of a final inspection, the City 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.
- (5) Should the City fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of Section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- (6) Upon tender of the remaining development fee, provided the developer is in full compliance with all other applicable laws, the City shall issue a final Certificate of Occupancy for the subject property.
 - (a) Regardless of the time of collection of the development fee, the fee shall be based upon the percentage that applies on the date that the construction permit is issued.

- (b) The Construction Code Official shall forward all collected development fees to Englewood City's Chief Financial Officer who shall deposit such fees into the established Housing Trust Fund.

(7) 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 the Board, collected fees shall be placed in an interest-bearing escrow account by the City of Englewood. 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 ninety (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 forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the City of Englewood. 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 ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

G. Affordable Housing Trust Fund.

- (1) A Development Fee Ordinance creating a dedicated revenue source for affordable housing was adopted by the City on April 11, 2007, by way of Ordinance No. 07-03. Said Development Fee Ordinance established the City's Affordable Housing Trust Fund that will be continued to be maintained by the Chief Financial Officer of the City of Englewood for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls. These funds shall be spent in accordance with N.J.A.C. 5:93-8.16 as described in the sections that follow.
- (2) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (a) Payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by Ordinance or by Agreement with the City of Englewood;
 - (b) Developer contributed funds to make ten (10) percent of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
 - (c) Rental income from municipally operated units;

- (d) Repayments from affordable housing program loans;
- (e) Recapture funds;
- (f) Affordable housing enforcement fines and application fees;
- (g) Proceeds from the sale of affordable units; and
- (h) Any other funds collected in connection with the City of Englewood's affordable housing program.
- (i) The City of Englewood shall provide the Court with written authorization, in the form of a three-party escrow agreement between the municipality, the bank with which the affordable housing fees are deposited by the City and maintained by said bank, and a Court approved entity to permit the Court to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8.19 and 8.20.
- (j) All interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court or a successor agency to COAH.
- (k) In the event of a failure by the City of Englewood to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; 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 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 City of Englewood, 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 non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Affordable Housing Trust Fund or impose such other remedies as may be reasonable and appropriate to the circumstances.

H. Use of Funds.

- (1) The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the affordable housing trust fund may be used for any activity approved by

the Court to address the City of Englewood's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, conversion of existing non-residential 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.

- (2) Funds shall not be expended to reimburse the City of Englewood for past housing activities.
- (3) Payments in lieu of constructing affordable housing units when the affordable housing calculation results in fractional units on residential and mixed-use sites shall only be used to fund eligible affordable housing activities within the City.
- (4) At least thirty (30%) percent of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the Housing Element and Fair Share Plan, provided and in accordance with the following:
 - (a) One-third (1/3) of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to very low-income households earning thirty (30%) percent or less of the regional median income by household size for Housing Region 1, in which the City of Englewood is located.
 - (b) 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.
 - (c) Affordability assistance for very low-income households earning thirty (30%) percent or less of the regional median income by household size may include buying down the cost of low- or moderate-income units in the City's Fair Share Plan to make them affordable to very low-income households (earning thirty (30%) percent 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.
 - (d) Payments in lieu of constructing affordable units on site, if permitted by Ordinance or by Agreement with the City of Englewood, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

- (5) The City of Englewood may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- (6) No more than twenty (20%) percent of all revenues collected from the development fees may be expended on administration, including, but not limited to, the salaries and benefits for Englewood City employees or consultant fees necessary to develop or implement a new affordable housing program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program or a rehabilitation program.
 - (a) In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the twenty (20%) of collected development fees that may be expended on administration.
 - (b) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the Court's monitoring requirements.
 - (c) Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the Housing Trust Fund.

(7) Court approval of Englewood's spending plan constitutes a "commitment" on the part of the City of Englewood for expenditure of funds pursuant to N.J.S.A. 52:27D-329.2 and -329.3. with the four-year time period for expenditure designated pursuant to those provisions to commence with the entry of a final Judgment of Repose in accordance with the provisions of *In re Tp. of Monroe*, 442 N.J. Super. 565 (Law Div. 2015) (Aff'd 442 N.J. Super. 563.)

I. Monitoring.

Beginning on May 31, 2024, the City of Englewood 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 City), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from City owned affordable housing units, repayments from affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

J. Ongoing Collection of Development Fees and Expiration of Section.

- (1) The ability for the City of Englewood to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its judgment of compliance and repose unless Englewood City has first filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a judgment of compliance from the Court or for Substantive Certification or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing compliance, and has received approval of its Development Fee Ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.
- (2) If the City of Englewood fails to renew its ability to impose and collect development fees prior to the date of expiration of judgment of compliance, it may be subject to forfeiture of any or all funds remaining within its municipal affordable housing trust fund.
 - (a) Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L. 1985, c.222 (C.52:27D-320).
 - (b) The City of Englewood shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its judgment of compliance, nor shall the City of Englewood retroactively impose a development fee on such a development.
 - (c) The City of Englewood shall not expend any of its collected development fees after the expiration of its Substantive Certification or judgment of compliance.

SECTION 3. The City Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this Ordinance to the Bergen County Planning Board and to all other persons or entities entitled thereto pursuant to N.J.S.A. 40:55D-15 and 40:55D-62.1. The City Clerk shall execute any necessary Proofs of Service of the notices required by this section, and shall keep any such proofs on file along with the Proof of Publication of the notice of the required public hearing on the proposed change.

SECTION 4. After introduction, the City Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the City Council, within thirty-five (35) days after referral, a report including identification of any provision in the proposed Ordinance which are inconsistent with the Master Plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

SECTION 5. If any paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

SECTION 6. All ordinances or parts of ordinances inconsistent with or in conflict with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 7. This ordinance shall take effect immediately upon: (i) adoption; and (ii) publication in accordance with the laws of the State of New Jersey.

ORDINANCE #23-20

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 250, TITLED “LAND USE,” SECTION §250-126 AFFORDABLE HOUSING DEVELOPMENT FEES

RECORD OF VOTE

FIRST READING DATE: June 13, 2023

| COUNCIL | MOTION | VOTE |
|------------|--------|------|
| Cobb | | Y |
| Maron | | Y |
| Rosenzweig | X | Y |
| Wilson | | Y |
| Wisotsky | | Y |

DATE PUBLISHED IN THE RECORD:

DATES PUBLIC HEARINGS HELD: July 11, 2023

DATE SECOND READING HELD: July 11, 2023

| COUNCIL | MOTION | OPEN | MOTION | CLOSE | MOTION | ADOPT |
|------------|--------|------|--------|-------|--------|-------|
| Cobb | | | | | | |
| Maron | | | | | | |
| Rosenzweig | | | | | | |
| Wilson | | | | | | |
| Wisotsky | | | | | | |

Y=YES

N=OPPOSED

A=ABSTAINED

AB=ABSENT

PRESENTED TO MAYOR:

APPROVED _____

REJECTED _____ (VETO)

MAYOR MICHAEL WILDES

I do hereby certify that the foregoing is a true and exact copy of an Ordinance adopted and approved by the Mayor and Council of the City of Englewood.

Yancy Wazirmas, RMC
City Clerk

**CITY OF ENGLEWOOD
NOTICE OF ORDINANCE INTRODUCTION/PUBLIC HEARING**

ORDINANCE 23 -20

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 250, TITLED “LAND USE,” SECTION §250-126 AFFORDABLE HOUSING DEVELOPMENT FEES

NOTICE IS HEREBY GIVEN that the above ordinance was introduced and passed at a Regular Meeting of the City Council of the City of Englewood on June 13, 2023 and that said ordinance will be further considered for final passage at a meeting of the City Council to be held at the Municipal Court Room, 73 S. Van Brunt Street, Englewood, Bergen County, New Jersey, on July 11, 2023 at 7:30 pm, or as soon thereafter as the matter can be reached, at which time and place all persons who may be interested will be given an opportunity to be heard concerning said ordinance. A copy of the ordinance in full may be requested at no charge from the City Clerk’s Office during regular business hours and can also be found on the City’s website at www.cityofenglewood.org.

The purpose of this Ordinance is to update the regulations governing the collection, maintenance and expenditure of both non-residential and residential development fees set forth in Article XVII of Part 4, Zoning, of Chapter 250, Land Use, of the Code of the City of Englewood as directed by the Superior Court and consistent with the statutes of the State of New Jersey (P.L.2008, C.46, Sections 8 and 32-38), the Uniform Housing Affordability Control rules (N.J.A.C. 5:80-26.1), COAH’s substantive rules (N.J.A.C. 5:93), and the Fair Housing Act (N.J.S.A. 52:27D-301. et seq.), which fees are to be used to assist the City in satisfying its affordable housing obligation.

Yancy Wazirmas, RMC
City Clerk