

Ordinance of the City of Jersey City, N.J.

File No. Ord. 23-029
Agenda No. 3.1 (1st Reading)
Agenda No. (2nd Reading and Final Passage)



AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 160 (FEES AND CHARGES) OF THE CODE OF ORDINANCES OF THE CITY OF JERSEY CITY, BY ADDING NEW SECTION 2, ENTITLED "DEVELOPMENT FEES TO FUND AFFORDABLE HOUSING."

COUNCIL AS A WHOLE offered and moved adoption of the following ordinance:

Whereas, Jersey City has seen an immense amount of development over the last two decades and has seen immense increases in property values; and,

Whereas, Jersey City is facing an affordability crisis with rents increasing approximately 10% between 2021 and 2022 with and thousands of residents receiving eviction notices; and,

Whereas, the City of Jersey City has made affordability a priority and has adopted an Inclusionary Zoning Ordinance and an Affordable Housing Overlay to incentivize the building of more affordable units; and,

Whereas, the State of New Jersey requires all municipalities to collect a Non-Residential Development Impact Fee to support affordable housing and allows municipalities to keep said fee to use for their own affordable housing needs if they submit a spending plan which is approved by the court; and,

Whereas, the State of New Jersey permits any municipality to collect a Residential Development Impact Fee to support affordable housing and allow municipalities to keep said fee to use for their own affordable housing needs if they submit a spending plan which is approved by the court; and,

Whereas, Jersey City is in need of more funding for its Affordable Housing Trust Fund to directly fund affordable housing; and,

Whereas, adopting these fees will be greatly beneficial to Jersey City and can be used for a number of programs serving residents with low to moderate incomes; and,

Whereas, the City can ensure through its spending plan that revenue collected through this fee benefits a diverse cross-section of our city’s residents; and,

Whereas, this funding has the potential to benefit residents of Public Housing by providing direct funding for maintenance of the buildings; and,

Whereas, this funding has the potential to benefit homeowners by funding Emergency Rental Assistance so that tenants and landlords can pay their bills; and,

Whereas, this funding has the potential to benefit low and moderate income tenants by funding Right to Counsel services; and

Whereas, by adopting Residential and Non-Residential Development Impact Fees, the city can further its commitment to keeping Jersey City the diverse and welcoming city it is and seeks to remain.

APPROVED AS TO LEGAL FORM

An Ordinance to amend and supplement Chapter 160 (Fees and Charges) of the Code of Ordinances of the City of Jersey City, by adding new Section 2, entitled "Development Fees to fund Affordable Housing."

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JERSEY CITY THAT: that Chapter 160 (Fees and Charges) of the Municipal Code shall be amended by adding new Section 2 (Development Fees to fund Affordable Housing) which reads as follows:

§160-2 Development Fees to fund Affordable Housing:

1.Purpose

a)In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.

b)Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is 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 are under the jurisdiction of COAH or court of competent jurisdiction and have a COAH-approved or court-approved spending plan may retain fees collected from non-residential development.

c)This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance with P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

2.Basic requirements

a)This ordinance shall not be effective until approved by the Superior Court of New Jersey pursuant to N.J.A.C. 5:93-8.

b)Jersey City shall not spend development fees until COAH or a court of competent jurisdiction 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.

3.Definitions

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

i. "Affordable housing development" means, but is not limited to, an Inclusionary Development created pursuant to a local inclusionary zoning ordinance, affordable housing overlay, or redevelopment area plan, a municipally sponsored construction project or a 100 percent affordable development.

ii. "Approving authority" means the Zoning Board of Adjustment or the Planning Board, whichever land use board has jurisdiction over the subject application.

iii."COAH" or the "Council" means the New Jersey Council on Affordable Housing, established under the Act, or such other Agency as is created by the Legislature which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the state.

iv."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.

v."Development fee period" means the period of time for which COAH and/or the Court specifies that the City's Development Fee Ordinance will be in effect pursuant to N.J.A.C. 5:94-6.3.

vi."Equalized assessed value" 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 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

vii."Green building strategies" means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

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viii. "Inclusionary development" means a development containing a number of low and moderate income units, as required pursuant to local inclusionary zoning ordinance, affordable housing overlay, or redevelopment area plan. This term includes, but is not limited to, new construction, the conversion of a non-residential structure to a residential structure and the creation of new low and moderate income units through the gut rehabilitation of a vacant residential structure.

ix. "Low income housing" means housing affordable according to 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% or less of the median gross household income for households of the same size within the housing region in which the housing is located.

x. "Mixed-use development" means any development which 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.

xi. "Moderate income housing" means housing affordable according to 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% but less than 80% of the median gross household income for households of the same size within the housing region in which the housing is located.

xii. "Non-residential development fee" means the fee authorized to be imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).

xiii. "Residential Development fee" means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

xiv. "Very low income housing" means housing affordable according to 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% or less of the median gross household income for households of the same size within the housing region in which the housing is located.

4. Residential Development fees

a) Imposed fees

i. Residential developers, except for developers of the types of development specifically exempted below, who obtain final and unappealable site plan approval between July 9, 2023, and June 30, 2024, shall pay a fee of one-half percent (0.5%) of the equalized assessed value of the land and improvements for all new residential development.

ii. Residential developers, except for developers of the types of development specifically exempted below, who obtain final and unappealable site plan approval between July 1, 2024, and June 30, 2025, shall pay a fee of one percent (1.0%) of the equalized assessed value of the land and improvements for all new residential development.

iii. Beginning July 1, 2025, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half percent (1.5%) of the equalized assessed value of the land and improvements for all new residential development.

iv. Residential development fees shall be imposed and collected when:

a) An existing structure is demolished and replaced. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

b) An existing structure undergoes a change to a more intense use, which requires the issuance of a Certificate of Occupancy (for example, when a single-family home is converted to a two-family home or a single-family home is converted to an apartment building). The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

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c)A Certificate of Occupancy is issued for one or more new residential units on a newly created lot that is the result of a subdivision. The development fee shall be calculated on the equalized assessed value of the land and improvements.

b)Eligible exactions, ineligible exactions and exemptions for residential development

i.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, exclusive of minor application changes not requiring a new Application for Development pursuant § 345-25 of the Jersey City municipal code. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.

ii.Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from residential development fees.

iii.Affordable housing developments where the developer is providing for the construction of affordable units either on site or elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from residential development fees.

iv.Developments undertaken by the Jersey City Housing Authority or a non-profit corporation for the purpose of developing, through new construction or substantial rehabilitation, residential property in which the percentage of the total residential units in the development that are for very-low-, low-, and/or moderate-income households meets the requirements of an applicable local inclusionary zoning ordinance, affordable housing overlay, or redevelopment area plan shall be exempt from residential development fees.

v.Additions to existing homes, including the creation of an accessory dwelling unit, and improvements such as decks, patios, and like shall be exempt from the payment of a residential development fee.

5.Non-residential Development fees

a)Imposed fees

i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

ii.Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

iii.Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one half (2.5) percent shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time the final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

b)Eligible exactions, ineligible exactions and exemptions for non-residential development

i.The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.

ii.The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.

iii.Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.

iv.A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the

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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.

v.If a property which was exempted 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 forty-five (45) days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by Jersey City as a lien against the real property of the owner.

6.Collection procedures

a)For non-residential 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 non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

b)The construction code 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 which is subject to a development fee.

c)Within ninety (90) days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

d)The construction code official responsible for the issuance of a final certificate of occupancy notifies the municipal tax assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.

e)Within ten (10) business days of a request for the scheduling of a final inspection, the municipal tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

f)Should Jersey 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).

g)Fifty (50%) percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

h)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 Jersey City. 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.

2)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 Jersey City. 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.

7.Affordable Housing trust fund

a)There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer for the purposes of depositing development fees collected from residential and non-residential developers pursuant to this chapter.

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b)Note that this ordinance does not apply to funds collected pursuant to the NJ Local Housing and Redevelopment Law (LHRL) or pursuant to Chapter 304, Article VI of the Jersey City Municipal Code.

c)All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the COAH and/or the Court.

8.Use of funds

a)The expenditure of all funds shall conform to a spending plan approved by the COAH and/or the Court. Funds deposited in the housing trust fund may be used for any activity approved by the COAH and/or the Court to address the need for Affordable Housing in Jersey City 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, or regional housing partnership programs, 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 of which shall include a tenant right to counsel program, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.

b)Funds shall not be expended to reimburse Jersey City for past housing activities.

c)At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.

i.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.

ii.Affordability assistance to households earning 30 percent or less of area median income may include buying down the cost of low or moderate income units to make them affordable to households earning 30 percent or less of median income.

iii.Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

d)Jersey City may contract with a private or public entity to administer this ordinance and satisfy the need to create and/or preserve affordable housing in Jersey City.

e)No more than 20 percent 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. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's or the Court's monitoring requirements. In addition to the aforementioned allowable administrative expenses, a tenant right to counsel program shall be a necessary administrative expenditure as part of the implementation of this ordinance. No funds generated from this Chapter shall be used to provide legal services as part of a tenant right to counsel program for tenants whose income, after taxes, is greater than 80 percent of the current area median income established annually by the United States Department of Housing and Urban Development. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

9.Monitoring

a)Jersey City shall complete and return to COAH and/or the Court all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with Jersey City's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH or approved by the Court. All monitoring reports shall be completed on forms designed by COAH and/or the Court.

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b)In the event of a failure by the City of Jersey City to comply with trust fund monitoring requirements or to submit accurate monitoring reports, or a failure to implement the approved spending plan, or a failure to expend funds within the applicable time period as set forth in N.J.S.A. 52:27D-329.2(d), or for other good cause demonstrating unapproved use(s) of funds, a motion may be brought before the Superior Court. The Court may, after considering the evidence and providing the City a reasonable opportunity to respond and/or remedy the non-compliant conditions, impose such remedies as may be reasonable and appropriate to the circumstances, including but not limited to authorizing the State of New Jersey, Department of Community Affairs, Division of Local Government Services, to direct the manner in which the funds shall be expended.

10.Ongoing collection of fees

a)The ability for Jersey City to impose, collect and expend development fees shall expire at the end of the Development Fee Period. If Jersey City fails to renew its ability to impose and collect development fees prior to the expiration of the Development Fee Period, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. 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). Jersey City shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall Jersey City retroactively impose a development fee on such a development. Unless extended, Jersey City shall not expend development fees after the expiration of its Development Fee Period.

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RECORD OF COUNCIL VOTE ON INTRODUCTION – Apr 12 2023						
RIDLEY	AYE	SALEH	AYE	DEGISE	AYE	8-0
PRINZ-AREY	AYE	SOLOMON	AYE	RIVERA	ABSENT	
BOGGIANO	AYE	GILMORE	AYE	WATTERMAN, PRES	AYE	

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING –						
RIDLEY		SALEH		DEGISE		
PRINZ-AREY		SOLOMON		RIVERA		
BOGGIANO		GILMORE		WATTERMAN, PRES.		

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY –						
RIDLEY		SALEH		DEGISE		
PRINZ-AREY		SOLOMON		RIVERA		
BOGGIANO		GILMORE		WATTERMAN, PRES.		

RECORD OF FINAL COUNCIL VOTE –						
RIDLEY		SALEH		DEGISE		
PRINZ-AREY		SOLOMON		RIVERA		
BOGGIANO		GILMORE		WATTERMAN, PRES.		

Adopted on first reading of the Council of Jersey City, N.J. on Apr 12 2023
Adopted on second and final reading after hearing on

This is to certify that the foregoing Ordinance was adopted
by the Municipal Council at its meeting on

City Clerk

Joyce E. Watterman, President of Council
Approved:

Steven M. Fulop, Mayor
Date to Mayor:
Approved:

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FACT SHEET -

This summary sheet is to be attached to the front of any ordinance that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the ordinance.

Project Manager

James Solomon, Councilperson		201-547-5315	jsolomon@jcnj.org
Department	Municipal Council		
Division	Municipal Council		

Note: Project Manager must be available by phone during agenda meeting (Wednesday prior to council meeting @ 1:00 p.m.)

Meeting	Regular Meeting of Municipal Council - Apr 12 2023
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Purpose

Ordinance establishing Residential and Non-Residential Development Impact Fees to fund Affordable Housing in Jersey City.

Cost (Identify all sources and amounts)	Contract term (include all)
N/A	

Approved by
John Metro, Business Administrator

Status:
Approved - Apr 05 2023