




HARTLEY DODGE MEMORIAL
BOROUGH OF MADISON
MADISON, NEW JERSEY 07940

September 11, 2007

Regular Mail with Ordinance in full

TO: Morris County Planning Board (Certified Mail)
NJ League of Municipalities
Borough of Madison Planning Board
Madison Free Public Library
Morris County Free Public Library
Municipal Clerk: Borough of Chatham, Township of Chatham, Borough of Florham Park,
Township of Harding, Township of Morris

Also To: Borough Auditor, Chief Financial Officer, COAH, Division of Local Government Services,
Municipal Housing Liaison Lou Riccio, Borough Engineer

FROM: Marilyn Schaefer, Borough Clerk 

ORDINANCE 59-2007

**ORDINANCE OF THE COUNCIL OF THE BOROUGH OF MADISON
AMENDING CHAPTER 195 OF THE MADISON BOROUGH CODE ENTITLED
"LAND DEVELOPMENT ORDINANCE OF THE BOROUGH OF MADISON"
TO REPLACE ARTICLE VIII, AS AMENDED BY ORDINANCE 36-2007,
ENTITLED "AFFORDABLE HOUSING DEVELOPMENT FEES"**

NOTICE IS HEREBY GIVEN that Land Development Ordinance 59-2007, having been submitted in writing and passed on first reading at a Regular meeting of the Mayor and Council of the Borough of Madison in the County of Morris and State of New Jersey, held on August 13, 2007, was finally adopted after public hearing and further consideration during a Regular Meeting of the Council held September 10, 2007.

STATEMENT OF PURPOSE: STATEMENT OF PURPOSE: Section 195-46 of the Borough Code entitled "Affordable Housing Development Fees" is hereby replaced in order to comply with the requirements of N.J.A.C. 5:94-6.1 et seq., and shall be submitted to the Council on Affordable Housing for their approval pursuant to law.

ORDINANCE 59-2007

ORDINANCE OF THE COUNCIL OF THE BOROUGH OF MADISON AMENDING CHAPTER 195 OF THE MADISON BOROUGH CODE ENTITLED "LAND DEVELOPMENT ORDINANCE OF THE BOROUGH OF MADISON" TO REPLACE ARTICLE VIII, AS AMENDED BY ORDINANCE 36-2007, ENTITLED "AFFORDABLE HOUSING DEVELOPMENT FEES"

WHEREAS, the Madison Planning Board previously recommended that the Madison Land Development Ordinance be amended to provide for the collection of affordable housing development fees in regard to eligible development projects within the Borough; and

WHEREAS, the Borough Council adopted Ordinance 19-2005, modified by Ordinance 36-2007, which was codified as Article VIII of the Madison Borough Code entitled "Affordable Housing Development Fees", Section 195-46; and

WHEREAS, Ordinance 19-2005, as modified by Ordinance 36-2007, contained inconsistencies and did not fully comply with the provisions of N.J.A.C. 5:94-6.1 et seq.; and

WHEREAS, the Borough Attorney has recommended that the Borough adopt a replacement for Section 195-46 that will comply with the requirements of N.J.A.C. 5:94-6.1 et seq., and that such Ordinance shall be submitted to the Council on Affordable Housing for their approval pursuant to law.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Madison, County of Morris, State of New Jersey that:

SECTION 1: Article VIII, Section 195-46 of the Borough Code, entitled "Affordable Housing Development Fees" shall be completely replaced with the following:

ARTICLE VIII

Affordable Housing Development Fees

Section 195-46: Affordable Housing Development Fees

A. Purpose.

- (1) 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,

shall pay a fee of one percent of the equalized assessed value for residential development, provided no increased density is permitted.

- (2) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a “d” variance) has been permitted, developers may be required to pay a development fee of six percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.
- (3) No fee shall be charged pursuant to this section for any addition or improvement to an existing residential structure, so long as such addition or improvement does not increase the equalized assessed value of the existing structure, as of the date hereof, by more than 50%.

E. Non-residential Development fees

- (1) Within the all zoning district(s), non-residential developers shall pay a fee of two percent of the equalized assessed value for non-residential development
- (2) If an increase in floor area ratio is approved pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six percent of the equalized assessed value for non-residential development. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the variance application.

F. Eligible exactions, ineligible exactions and exemptions

- (1) Affordable housing developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees unless exempted below.

municipality, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:94-6.16(b).

- (3) No funds shall be expended from the affordable housing trust fund unless the expenditure conforms to a spending plan approved by COAH. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

J. Use of funds

- (1) Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, RCAs subject to the provisions of N.J.A.C. 5:94-4.4(d), ECHO housing, purchase of land for affordable housing, improvement of land to be used for affordable housing, purchase of housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, or administration necessary for implementation of the Housing Element and Fair Share Plan. The expenditure of all funds shall conform to a spending plan approved by COAH.
- (2) Funds shall not be expended to reimburse the Borough of Madison for past housing activities.
- (3) After subtracting development fees collected to finance an RCA, a rehabilitation program or a new construction project that are necessary to address the Borough of Madison affordable housing obligation, at least 30 percent of the balance remaining shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
 - (a) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance.
 - (b) Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the third round municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The use of

of Madison fails to renew its ability to impose and collect development fees prior to December 31, 2014, it may resume the imposition and collection of development fees only by complying with the requirements of N.J.A.C. 5:94-6. The Borough of Madison shall not impose a development fee on a development that receives preliminary or final approval after the expiration of its substantive certification on December 31, 2014 nor will the Borough of Madison retroactively impose a development fee on such a development. The Borough of Madison will not expend development fees after the expiration of its substantive certification on December 31, 2014.

SECTION 2: This ordinance shall take effect as provided by law.

ADOPTED AND APPROVED
September 10, 2007


ELLWOOD R. KERKESLAGER, Mayor

Attest:


MARILYN SCHAEFER, Borough Clerk

Introduced and passed: August 13, 2007
Published, Madison Eagle: August 16, 2007
Hearing and final adoption: September 10, 2007
Published, Madison Eagle: September 13, 2007