ORDINANCE 03-2025

CITY OF ABSECON

AN ORDINANCE AMENDING ORDINANCE 13-2018 – AN ORDINANCE REPEALING AND REPLACING SECTION 224-194 "AFFORDABLE HOUSING" OF THE CITY OF ABSECON'S LAND USE AND DEVELOPMENT ORDINANCE TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) REGARDING COMPLIANCE WITH THE CITY'S AFFORDABLE HOUSING OBLIGATIONS

BE IT ORDAINED by the Council of the City of Absecon, Ordinance 03-2018 be amended as follows:

Replacing Subsection W. 1-4

Development Fee Ordinance.

1. Residential development fees.

   a. Imposition of fees. Within the City of Absecon, 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 in accordance with the following:

      i. For each new residential dwelling unit that is constructed pursuant to an application for development before the Land Use Board, except for isolated lot variances pursuant to N.J.S.A. 40:55D-70c on an existing lot of record, a fee of 1% of the equalized assessed value of the residential development fee imposed for the purposes of funding the City's Affordable Housing Program.

      ii. For each new residential dwelling unit that is constructed on an existing lot of record which was not created as a result of an application for development before the Land Use Board, a fee of 0.5% of the equalized assessed value of the residential development fee imposed for the purposes of funding the City's Affordable Housing Program.

      iii. When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a "bonus" development fee of 6% of the 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. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

   b. Eligible exactions, ineligible exactions and exemptions for residential developments.

      i. Affordable housing developments and/or developments where the developer has made a payment in lieu of on-site construction of affordable units, if permitted by ordinance or by agreement with the City of Absecon, shall be exempt from the payment of development fees.

ii. Developments that have received preliminary or final site plan approval prior to the adoption of this article 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.

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

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

2. Nonresidential development fees.

a. Developers of nonresidential development, as the term is defined in N.J.S.A. 40:55D-8.3, shall be obligated to comply with the requirements of the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq., and pay the nonresidential development fee, as the term is defined in N.J.S.A. 40:55D-8.3, calculated pursuant to the Statewide Non-Residential Development Fee Act.

b. Developers of mixed-use development, as the term is defined in N.J.S.A. 40:55D-8.3, shall be required to comply with the requirements of the Statewide Non-Residential Development Fee Act for the portion of the development consisting of nonresidential development, as the term is defined in N.J.S.A. 40:55D-8.3, and with the requirements of § 233-97D and F, for the portion of the development consisting of residential development, provided that no affordable housing obligation shall be imposed which would result in an affordable housing obligation greater than that which would have been imposed if the residential development portion of the mixed-use development would have been development independently of the nonresidential portion of the mixed-use development.

3. Collection procedures.

a. Upon the granting of a preliminary, final or other applicable approval for a development, the approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a construction permit.

b. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in 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.

c. The Construction Official responsible for the issuance of a construction permit shall notify the City Tax Assessor of the issuance of the first construction permit for a development which is subject to a development fee.

d. Within 90 days of receipt of such notification, the City Tax Assessor shall prepare an estimate of the equalized assessed value of the development based on the plans filed.

e. The 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 a property which is subject to a development fee.

f. Within 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 associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

g. Should the City of Absecon fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of § 37 of P.L. 2008, c.46 (N.J.S.A. 40:55D-8.6).

h. For any residential development fee imposed pursuant to § 233-97D, including any residential development fee imposed on the residential development portion of a mixed-use development (as the term is defined in N.J.S.A. 40:55D-8.3), 50% of the initially calculated residential development fee shall be collected at the time of issuance of the first construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of the certificate of occupancy.

i. For any nonresidential development fee, as the term is defined in N.J.S.A. 40:55D-8.3, imposed pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq., including any nonresidential development fee imposed on the nonresidential development portion of a mixed-use development, as those terms are defined in N.J.S.A. 40:55D-8.3, the entire nonresidential development fee shall be collected at the time of the issuance of the certificate of occupancy.

j. Appeal of development fees.

   i. 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 Absecon. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

   ii. A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the City of Absecon. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

4. Affordable Housing Trust Fund.

a. There is hereby created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Chief Financial Officer of the City of Absecon for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.

b. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

(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 Absecon;

(b) Funds contributed by developers to make 10% 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) Proceeds from the sale of affordable units; and

(g) Any other funds collected in connection with Absecon's affordable housing program.

c. In the event of a failure by the City of Absecon 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 the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the City of Absecon, or, if not practicable, then within the county or the housing region. Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the noncompliant condition(s), and upon a finding of continuing and deliberate noncompliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

d. Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court.

5. Ongoing collection of fees.

a. The ability for the City of Absecon to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its Judgment of Compliance unless the City of Absecon 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.

b. If the City of Absecon fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to § 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320).

c. The City of Absecon 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 Absecon retroactively impose a development fee on such a development. The City of Absecon also shall not expend any of its collected development fees after the expiration of its Judgment of Compliance.

Changing Subsection W title 5 to be numbered as title 6.

BE IT FURTHER ORDAINED that:

1. All Ordinances or parts of Ordinances inconsistent with the provision hereof, be and the same are hereby repealed and that this Ordinance shall take affect immediately after final passage and publication.

2. This Ordinance shall take effect upon final adoption and publication as required by law.

DATED: May 15th, 2025

SIGNED: ______________________
Thomas Marrone, Mayor

ATTEST: Carie A Crone, RMC
Carie A. Crone, RMC, Municipal Clerk

Passed on first reading at a regular meeting of the Municipal Council held on May 1st, 2025. Laid over and advertised for public hearing and final adoption on May 15th, 2025. Notice is hereby given that the foregoing Ordinance was approved for final adoption by the Municipal Council of the City of Absecon at a regular meeting held on May 15th, 2025.