



**2015
BOROUGH OF DUMONT
ORDINANCE**

MEMBERS	AYE	NAY	ABSTAIN	ABSENT
CORREA	✓			
HAYES	✓			
MANNA	✓			
MORRELL				✓
RIQUELME	✓			
ZAMECHANSKY	✓			
MAYOR KELLY				
TOTALS	5			1

Ordinance No. 1494
Date: November 10, 2015
Page: 1 of 5
Subject: Smoking Regulated in Public Areas
Purpose: Approval
Dollar Amount: _____
Prepared By: Gregg Paster, Esq.

Offered by: Manna
Seconded by: Hayes

Certified as a true copy of an Ordinance Introduced and Passed by the Governing Body of the Borough of Dumont on the above date at a Public Meeting by:



Susan Connelly, RMC, Municipal Clerk
Borough of Dumont, Bergen County, New Jersey

ORDINANCE ESTABLISHING CHAPTER 360-REGULATING SMOKING IN AND UPON PUBLIC BUILDINGS AND PUBLIC PROPERTIES, PARKS, PLAYGROUNDS AND RECREATIONS AREAS ENTITLED "SMOKING PROHIBITED" OF THE ORDINANCES OF THE BOROUGH OF DUMONT

BE IT ORDAINED by the Mayor and Council of the Borough of Dumont, County of Bergen, State of New Jersey, as follows:

Section 1. Chapter 360 be and is hereby established as a new Chapter of the Borough Code with the addition of this Chapter, entitled Smoking.

Chapter 360

Section 1: **Findings**

The Mayor and Council of the Borough of Dumont hereby find and determine that:

- a. The smoking of tobacco products is a major contributor to indoor air pollution and breathing second-hand smoke is a cause of disease to non-smokers;
- b. Reliable studies have shown that environmental tobacco smoke is a cause of cardiovascular disease, impaired respiratory function and asthma;
- c. The United States Department of Environmental Protection (USEPA) has designated second-hand smoke as a Class A carcinogen as well as a significant cause of respiratory problems in children;
- d. The U.S. Surgeon General has found that the active smoking of tobacco products and the passive inhalation of environmental tobacco smoke are the most prevalent causes of preventable death, disease and disability;
- e. The U.S. Surgeon General has found that separating smokers from non-smokers within the same air space does not eliminate the exposure of non-smokers to environmental tobacco smoke;
- f. The State of New Jersey has acknowledged that careless smoking is the leading cause of death from fire;
- g. Smoking leads to the inevitable discard of tobacco products and a source of litter by those who fail to properly dispose of cigar, cigarette, pipe or other combustible tobacco product in any manner or in any form.
- h. The State Legislature has deemed the control of smoking to be a necessary and proper exercise of municipal authority pursuant to N.J.S.A. 40:48-1 et seq., 40:48-2 et seq., N.J.S.A. 26:3D-46 et seq. and N.J.S.A. 2C:33-13 for the preservation of public health, safety and welfare of the community.

Section 2- **Definitions.**

As used in this section:

Common Area shall mean the walkways, lawns, yards, gardens of any public building and all accessory structures, improvements or appurtenances used for the management, operation, or maintenance of the public building.

Person shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee or any other legal entity.

Public Building shall mean any building, structure, facility or complex used by the general public, or to which the general public is invited; which is owned, leased, operated or under the ownership or control of the Borough of Dumont (Dumont Board of Education has its own policy).

Smoking shall mean the inhaling, exhaling, burning, or possession of any lighted cigar, cigarette, pipe or other combustible tobacco product in any manner or in any form, including the vapor from electronic smoking devices.

Section 3- **Smoking Prohibited-Locations.**

- a. Except as otherwise provided herein, smoking shall be prohibited in the following places:
 1. Every room, chamber, lobby, hallway, restroom, plaza, and other common areas in and upon any public building;
 2. Any entrance or exit areas of any public buildings where smoke may enter the air people breathe through such entrances, exits, windows or ventilation systems.
 3. Any vehicles owned and/or leased, in part or entirely, by the Borough of Dumont.
 4. On any public property including parks, recreations areas, playgrounds, and swimming pools. This prohibition on smoking shall not apply to individuals in privately owned vehicles, provided that all debris is retained within the vehicle.

Section 4- **Signs.**

"Smoking" or "No Smoking" signs, as appropriate, or the international, "No Smoking" symbol (a picture of a burning cigarette inside a red circle with a red bar across it) shall be clearly and conspicuously posted by the owner, operator, manager, employer or such other person in control of every public building where smoking is controlled by this chapter. The color of such signs, when not of the international type, shall have letters that are distinct, contrasting to the background and easily read. Letters shall have a minimum height of three-quarters of an inch and should be posted in English. The "No Smoking" signs shall be posted, at a minimum, on every doorway which provides an entry to the building. The "Smoking" signs shall be posted only in those areas so designated by the governing body provided by this chapter.

Section 5- **Enforcement.**

The provisions of this article shall be enforceable by a police officer, employee or elected official of the Borough of Dumont, as well as by any other individual who observes a violation. Any person seeking to enforce the provision of this ordinance shall be authorized to file a complaint with the Police Department of the Borough of Dumont.

Section 6- **Violations and Penalties.**

- a. It shall be unlawful for any person to smoke in any area where smoking is prohibited under this chapter.
- b. Unless a greater fine is permitted under N.J.S.A. 26:3D-56 et seq., for smoking in specific areas defined therein, in which case such higher level of fine shall be imposed, any person who smokes in an area in which smoking is prohibited hereunder shall be guilty of a disorderly persons offense and subject to a maximum fine of \$200 for each violation pursuant to N.J.S.A. 2C:33-13.
- c. Any person found guilty defacing, tampering with or removing "No Smoking" or "Smoking" signs which are required by this chapter shall be guilty of a disorderly persons offense and subject to a maximum fine of \$200, plus the cost of replacing the sign.
- d. Any juvenile adjudicated to have violated the provisions of this article shall be subject to such penalties, fines or other discipline as may be imposed upon an adult pursuant to this chapter.

Section 7. Chapter 283 Parks, Playgrounds and Recreation Areas, Section 14, entitled 'Smoke Free Playgrounds and Recreation Areas' to include of the following:

- j. *Smoking Prohibited.* Smoking and/or the carrying of a lighted cigarette, cigar, pipe or other combustible substance, in any manner or any form, including vapor from an electronic smoking device, shall be prohibited at all times, in all Borough parks, playgrounds, playing fields, recreation facilities, and recreational areas. This includes all public areas adjacent to such parks and facilities, including but not limited to the seating areas, paths, walkways, or drive aisles.

Section 8. All ordinances of the Borough of Dumont that are inconsistent with the provisions of this Ordinance are hereby repealed as to the extent of such inconsistency.

Section 9. If any subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid in any Court of competent jurisdiction, such decision shall not affect the remaining portion of this Ordinance.

Section 10. This Ordinance shall take effect following final passage and publication in accordance with law.

James J. Kelly, Mayor

Attest:

Susan Connelly, RMC
Municipal Clerk

Introduced:
Adopted:




**2015
BOROUGH OF DUMONT
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CORREA	✓			
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MAYOR KELLY				
TOTALS	5			1

Ordinance No. 1495
Date: November 10, 2015
Page: 1 of 10
Subject: Development Fee Ordinance
Purpose: Approval
Dollar Amount: _____
Offered by: Hayes
Prepared By: Gregg Paster, Esq.

Seconded by: Manna

Certified as a true copy of an Ordinance Introduced and Passed by the Governing Body of the Borough of Dumont on the above date at a Public Meeting by:



Susan Connelly, RMC, Municipal Clerk
Borough of Dumont, Bergen County, New Jersey

**AN ORDINANCE TO AMEND CHAPTER 209, ARTICLE III, SECTION 16
"DEVELOPER FEES" OF THE BOROUGH OF DUMONT, COUNTY OF BERGEN,
STATE OF NEW JERSEY**

WHEREAS, Section 209-16 entitled Fees for use of Joint Land Use Board shall be amended by inserting the text below to include revisions mandated by the Council on Affordable housing that address the requirements regarding DEVELOPER FEES;

NOW, THEREFORE IT BE ORDAINED, by the Mayor and Borough Council of the Borough of Dumont, in the County of Bergen that Chapter 209, Article III, Section 16 shall read as follows:

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 the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- c) Pursuant to the Executive Reorganization Act of 1969, P.L. 1969, c. 203 (C. 52:14C-1 et seq.), the Governor abolished COAH and transferred all functions, powers, and duties to the Commissioner of the Department of Community Affairs, effective August 29, 2011. Any and all references to COAH shall mean the Department of Community Affairs (the Department).
- d) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to the Department's regulations and in accordance 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 the Department'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 Department pursuant to N.J.A.C. 5:96-5.1.
- b) The Borough of Dumont shall not spend development fees until the Department 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 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 100 percent (100%) affordable development.
- ii. **“COAH”** or the **“Council”** means the New Jersey Council on Affordable Housing established under the Fair Housing Act which previously had primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State. Pursuant to the opinion and order of the New Jersey Supreme Court dated March 10, 2015, in the matter of In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing (M-392-14) 067126, any reference to COAH or the Council shall be understood to refer to the Superior Court of New Jersey, Law Division-Bergen County.
- iii. **“Development fee”** means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.
- 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. **“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).
- vi. **“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.

4. Residential Development fees

- a) Imposed fees
 - i. Within the all Borough zoning district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of a half percent (0.5%) of the equalized assessed value for residential development provided no increased density is permitted.
 - ii. 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 (6%) 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.

- b) Eligible exactions, ineligible exactions and exemptions for residential development
- i. Affordable housing developments, developments where the developer is providing for the construction of affordable units 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 development fees.
 - ii. 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. 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.
 - iii. Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be **exempt** from paying a development fee.
 - iv. Development fees shall be imposed and collected when 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.
 - v. Development fees shall be imposed and collected when 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.
 - vi. Development fees shall be imposed and collected when a Certificate of Occupancy is issued for a new residential unit 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.

5. Non-residential Development fees¹

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 percent (2.5%) 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 percent (2.5%) 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 a half percent (2.5%) 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 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 percent (2.5%) development fee, unless otherwise exempted below.
- ii. The two and a half percent (2.5%) 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.

¹ It should be noted that pursuant to P.L. 2009, c. 90 and P.L.2011, c. 122, the non-residential statewide development fee of 2.5% for non-residential development is suspended for all non-residential projects that received preliminary or final site plan approval subsequent to July 17, 2008 until July 1, 2013, provided that a permit for the construction of the building has been issued prior to January 1, 2015.

- 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 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 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Dumont as a lien against the real property of the owner.

6. Collection procedures

- a) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- b) 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.
- c) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d) Within 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.
- e) The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.

- f) Within 10 business days of a request for the scheduling of a final inspection, the municipal 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.
- g) Should the Borough of Dumont 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 section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- h) Fifty percent (50%) 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.
- i) 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 the Borough of Dumont. 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 Borough of Dumont. 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 purpose of depositing

development fees collected from residential and non-residential 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:
 - 1. payments in lieu of on-site construction of affordable units;
 - 2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - 3. rental income from municipally operated units;
 - 4. repayments from affordable housing program loans;
 - 5. recapture funds;
 - 6. proceeds from the sale of affordable units; and
 - 7. any other funds collected in connection with the Borough of Dumont's affordable housing program.

- c) Within seven days from the opening of the trust fund account, Borough of Dumont shall provide the Department with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and the Department to permit the Department to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).

- d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Department.

8 Use of funds

- a) The expenditure of all funds shall conform to a spending plan approved by the Department. Funds deposited in the housing trust fund may be used for any activity approved by the Department to address the Borough of Dumont'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, 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 necessary for implementation of the Housing Element and Fair Share Plan, 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 Borough of Dumont for past housing activities.
- c) At least 30 percent (30%) of all development fees collected and interest earned 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 (30%) 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 (30%) or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent (30%) 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) Borough of Dumont may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- e) No more than 20 percent (20%) 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 necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent (20%) of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the Department's monitoring requirements. 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) Borough of Dumont shall complete and return to the Department 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 Borough of Dumont's housing program, as well as to the expenditure of revenues and implementation of the plan certified by the Department. All monitoring reports shall be completed on forms designed by the Department.

10. Ongoing collection of fees

- a) The ability for Borough of Dumont to impose, collect and expend development fees shall expire with its substantive certification unless Borough of Dumont has filed an adopted Housing Element and Fair Share Plan with the Department, has petitioned for substantive certification, and has received the Department's approval of its development fee ordinance. If Borough of Dumont fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, 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). Borough of Dumont 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 Borough of Dumont retroactively impose a development fee on such a development. Borough of Dumont shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

James J. Kelly, Mayor

Attest:

Susan Connelly, RMC
Municipal Clerk

Introduced: November 10, 2015
Adopted: