

BOROUGH OF HO-HO-KUS
BERGEN COUNTY, NEW JERSEY
ORDINANCE # 2018-02

ORDINANCE OF THE BOROUGH OF HO-HO-KUS, BERGEN COUNTY TO AMEND CHAPTER 17, ENTITLED “DEVELOPMENT FEES” OF THE BOROUGH CODE IN ACCORDANCE WITH THE CONDITIONS AND REQUIREMENTS OF THE SUPERIOR COURT.

BE IT ORDAINED that the Council of the Borough of Ho-Ho-Kus hereby amends Chapter 17, entitled “Development Fees”, of the Borough Code. The following sections of this Chapter shall read as follows:

Section I. §17-1, “Purpose”. §17-1.B shall be amended, §17-1.C shall be added, and new §17-1.D shall be amended:

- B. COAH was authorized by P.L. 2008, c. 46, Section 8 (N.J.S.A. 52:27D-329.2), and the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7) 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 a court of competent jurisdiction and have a COAH or court-approved spending plan may retain fees collected from nonresidential development.
- C. In Re: Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH’s duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from the municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 1, 2025 are under the Court’s jurisdiction and are subject to approval by the Court.
- D. This chapter 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 through 38.¹ Fees collected pursuant to this chapter shall be used for the sole purpose of providing low- and moderate-income housing. This chapter shall be interpreted within the framework of COAH’s rules on development fees, codified at N.J.A.C. 5:93-8.

Section II. §17-2, “Basic requirements”, Amended.

- A. This chapter became effective when COAH approved the Borough’s development fee ordinance, and remains effective pursuant to the Superior Court’s jurisdiction_in accordance with N.J.A.C. 5:93.8.
- B. COAH approved the Borough’s initial Spending Plan on July 7, 1998. Subsequently, in an Order of December 18, 2017, the Superior Court conditionally approved the Borough’s Amended Third Round Spending Plan. Consequently, upon the entry of an Order granting an unconditional Final Judgment of

¹ Editor’s Note: See N.J.S.A. 52:27D-329.2 and N.J.S.A. 40:55D-8.1 through 40:55D-8.7, respectively.

Compliance and Repose to Ho-Ho-Kus, Ho-Ho-Kus may spend development fees in conformance with N.J.A.C. 5:93-8.

Section III. §17-3, “Definitions”, Amended. The definitions of the following terms as found in §17-3 shall read as follows:

COAH or THE COUNCIL — The New Jersey Council on Affordable Housing established under the Fair Housing Act

DEVELOPMENT FEE — Money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.

Section IV. §17-7, “Affordable housing trust fund”, Amended. §17.7.C and D shall read as follows:

- C. Within seven days from the opening of the trust fund account, Ho- Ho-Kus previously provided COAH with written authorization, in the form of a three-party escrow agreement between the municipality, Bank of America and COAH, to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8. The Superior Court shall now have such jurisdiction to direct the disbursement of the Borough’s trust funds per N.J.A.C. 5:93-8.
- D. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

Section V. §17-8, “Use of funds”. §17.8.A, D and E shall read as follows:

- A. The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the housing trust fund may be used for any activity approved by the Court to address the Borough'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 nonresidential 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. 5:93-8.16 and specified in the approved spending plan.
- D. Ho-Ho-Kus 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. 5:93-8.16.
- E. No more than 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% 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 monitoring requirements set forth in the Court-approved January 12, 2017 executed Settlement Agreement with Fair Share Housing Center. 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.

Section VI. §17-9, “Monitoring”. §17.9 shall read as follows:

On or about January 12 of each year through 2025, Ho-Ho-Kus shall provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs (“DCA”), COAH, or Local Government Services (“LGS”), or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and Intervenors and posted on the municipal website, using forms developed for this purpose by the DCA, COAH, or LGS. This reporting shall include an accounting of all housing trust fund activity, including the collection of development fees from residential and nonresidential 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 Ho-Ho-Kus' housing program, as well as to the expenditure of revenues and implementation of the plan approved by the Court.

Section VII. §17-10, “Ongoing collection of fees”. §17.10 shall read as follows:

The ability for Ho-Ho-Kus to impose, collect and expend development fees shall expire with its court-issued Judgment of Compliance and Repose unless Ho-Ho-Kus has filed an adopted Housing Element and Fair Share Plan with the court or other appropriate jurisdiction, has filed a Declaratory Judgment Action, and has received the court's approval of its development fee ordinance. If Ho-Ho-Kus fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose, 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 (N.J.S.A. 52:27D-320). Ho-Ho-Kus 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 and Repose, nor shall Ho-Ho-Kus retroactively impose a development fee on such a development. Ho-Ho-Kus shall not expend development fees after the expiration of its or Judgment of Compliance and Repose.

Section VIII. Repealer. All ordinances or Code provisions or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section IX. Severability. If any section, subsection, paragraph, sentence or any other part of this ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance.

Section X. Effective Date. This ordinance shall take effect upon its passage and publication, as required by law.