ORDINANCE NO. 48-2019

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HANOVER IN THE COUNTY OF MORRIS AND STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER 166 OF THE CODE OF THE TOWNSHIP ENTITLED LAND USE AND DEVELOPMENT LEGISLATION BY REPEALING SECTION 48.1 ENTITLED “COAH MANDATORY DEVELOPMENT FEES” AND INSERTING IN ITS PLACE A NEW SECTION 48.1 BY THE SAME TITLE WITH REVISED AND UPDATED DEVELOPMENT FEE REGULATIONS

INTERPRETIVE STATEMENT

This Ordinance amends, revises and updates the Township’s existing Affordable Housing Development Fee Ordinance in accordance with applicable Council on Affordable Housing (COAH) regulations, the Fair Housing Act ("FHA"), and under the direction of the Superior Court of New Jersey. Residential development fees will be collected at a rate of 1.0% of the equalized assessed value for all new residential development, and non-residential development fees will be collected at a rate of 2.5% of the equalized assessed value of the land and improvements for all new non-residential construction. All collected development fees will be placed in the Township’s Affordable Housing Trust Fund, and such fees will be utilized for affordable housing projects located within the Township.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Hanover, County of Morris, State of New Jersey, as follows:

Section 1. Chapter 166, “Land Use and Development,” Section 166-48.1, “COAH Mandatory Development Fees,” is hereby repealed and replaced with an updated development fee ordinance, which shall read as follows:

§166-48.1. COAH mandatory development fees

A. Purpose.

(1) In 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.

(2) 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 8.8), 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.

(3) In In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. (2015), the New Jersey Supreme Court
found that the COAH administrative process had become non-functioning and, as a result, returned primary jurisdiction over affordable housing matters to the trial courts. Until and unless COAH adopts new regulations or a new statute is passed, any and all references to COAH herein shall mean the trial courts or any agency that supersedes COAH.

(4) This section 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 (C. 52:27D-329.2 and C. 40:55D-8.1 through 8.7). Fees collected pursuant to this section shall be used for the sole purpose of providing low- and moderate-income housing. This section shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:93-8 and the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 8.7, as applicable.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

(1) "Affordable housing development" means a development that contains affordable housing units eligible for credit against the Township's affordable housing which shall include, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

(2) "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 In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. (2015), the New Jersey Supreme Court returned primary jurisdiction over affordable housing matters to the trial courts. As such, until and unless COAH adopts new regulations or a new statute is passed, any and all references to COAH shall mean the trial courts or any agency that supersedes COAH.

(3) "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.

(4) "Development fee" means a monetary obligation imposed and paid by a developer pursuant to this ordinance or State law, which money is to be used as permitted by the rules of the New Jersey Council on Affordable Housing or other applicable law, in order to address affordable housing needs.

(5) "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).

C. Residential development fees.
(1) Imposed fees.

(a) Residential developers, except for developers of the types of development specifically exempted, shall pay a fee of one percent (1.0%) of the equalized assessed value for residential development, provided that no increased density is permitted.

(b) If a "d" variance is granted for increased density, then the additional residential units realized above what is permitted by right under the existing zoning will incur a bonus development fee of six percent (6%) rather than the development fee of one percent (1.0%). However, if the zoning on a site has changed during the two-year period prior to the filing of the "d" variance application, the base density for the purpose of calculating the bonus development fee shall be the highest density permitted by right during such two-year period.

(2) Eligible exactions, ineligible exactions and exemptions for residential development.

(a) 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.

(b) Developments that have received preliminary or final approval prior to the effective date of this section shall be subject to the law in effect at the time of such approval, unless the developer seeks a substantial change in the approval.

(c) Development fees shall be imposed and collected when a developer constructs a new structure, or expands or otherwise alters an existing structure. The development fee shall be calculated based on the increase in the equalized assessed value of the improved structure.

D. Non-residential development fees.

(1) Imposed fees.

(a) 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.

(b) 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.
(c) 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.

(2) Eligible exactions, ineligible exactions and exemptions for non-residential development.

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

(b) The two and one-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.

(c) 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.

(d) 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.

(e) 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 Township of Hanover as a lien against the real property of the owner.

E. Collection procedures.

(1) 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 Code Official responsible for the issuance of a building permit that a development fee is required to be imposed in accordance with this Section.

(2) 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 Code 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.

(3) The Construction Code Official responsible for the issuance of a building permit shall notify the Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.

(4) Within 90 days of receipt of that notice, the Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

(5) The Construction Code Official responsible for the issuance of a final certificate of occupancy shall notify the Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.

(6) Within 10 business days of a request for the scheduling of a final inspection, the 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.

(6) Should the Township of Hanover 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).

(7) The developer shall pay one hundred percent (100%) of the calculated development fee amount prior to the municipal issuance of a final certificate of occupancy for the subject property.

(8) Appeal of development fees.

(a) 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 Township of Hanover. 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.

(b) 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 the Township of Hanover. 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.

F. Affordable housing trust fund.

(1) There is hereby created an interest-bearing housing trust fund to be maintained by the Township's Chief Municipal Finance 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. All development fees paid by developers pursuant to this section shall be deposited in this fund. No money shall be expended from the housing trust fund unless the expenditure conforms to a spending plan approved by COAH.

(2) 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 affordable units;

(b) Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multi-story attached 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 the Township of Hanover's affordable housing program.

(3) If COAH determines that the Township of Hanover is not in conformance with COAH's rules on development fees, COAH is authorized to direct the manner in which all development fees collected pursuant to this section shall be expended. Such authorization is pursuant to this section, COAH's rules on development fees and the written authorization from the governing body to the selected trust fund bank.

(4) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

G. Use of funds.

(1) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the Township of Hanover'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. 5:93-8 and specified in the approved spending plan.

(2) Funds shall not be expended to reimburse the Township of Hanover for housing activities which occurred prior to the imposition of required development fees.

(3) 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 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, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.

(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 municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.

(c) 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. Development fees collected to finance a rehabilitation program or a new construction project shall also be exempt from this requirement.

(4) The Township of Hanover 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.

(5) 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 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 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 COAH’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.

H. **Monitoring.** The Township of Hanover shall complete and return to COAH 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 the Township of
Hanover’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.

I. **Ongoing collection of fees.** The ability for the Township of Hanover to impose, collect
and expend development fees shall expire with its substantive certification or judgment of
compliance unless the Township of Hanover has filed an adopted Housing Element and
Fair Share Plan with COAH, has petitioned for substantive certification, and has received
COAH’s approval of its development fee ordinance. If the Township of Hanover fails to
renew its ability to impose and collect development fees prior to the expiration of
substantive certification or judgment of compliance, 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). The Township of Hanover 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 the Township of Hanover retroactively impose a development fee
on such a development. The Township of Hanover shall not expend development fees
after the expiration of its substantive certification or judgment of compliance.

**Section 2.** If any article, section, subsection, sentence, clause or phrase of this
Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall
not affect the remaining portions of this Ordinance and they shall remain in full force and
effect.

**Section 3.** In the event of any inconsistencies between the provisions of this
Ordinance and any prior ordinance of the Township of Hanover, the provisions hereof
shall be determined to govern. All other parts, portions and provisions of the Revised
General Ordinances of the Township of Hanover are hereby ratified and confirmed,
except where inconsistent with the terms hereof.
Section 4. This ordinance shall take effect in accordance with law.

TOWNSHIP COMMITTEE
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY

ATTEST:

Joseph A. Giorgio, Township Clerk

DATE OF INTRODUCTION: October 10, 2019
DATE OF ADOPTION: November 14, 2019

Ronald F. Francioli, Mayor