

**ORDINANCE NO. 2026-06**

**AN ORDINANCE OF THE BOROUGH OF SHIP BOTTOM, COUNTY OF OCEAN, STATE OF NEW JERSEY, ESTABLISHING AFFORDABLE HOUSING DEVELOPMENT FEES FOR RESIDENTIAL AND NONRESIDENTIAL DEVELOPMENT AND CREATING AN AFFORDABLE HOUSING TRUST FUND PURSUANT TO THE FAIR HOUSING ACT AND THE STATEWIDE NON-RESIDENTIAL DEVELOPMENT FEE ACT**

**WHEREAS**, the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., requires municipalities to provide a realistic opportunity for the creation of affordable housing to meet their fair share obligations; and

**WHEREAS**, N.J.S.A. 52:27D-329.2 authorizes municipalities with an approved Housing Element and Fair Share Plan, or a judgment of compliance, to impose development fees for the purpose of funding affordable housing activities; and

**WHEREAS**, the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq., authorizes municipalities to impose development fees on nonresidential development to support affordable housing; and

**WHEREAS**, the Borough of Ship Bottom (the “Borough”) has adopted a Housing Element and Fair Share Plan, and had previously filed a declaratory judgment action with the Affordable Housing Dispute Resolution Program within the Superior Court of New Jersey, docketed as OCN-L-322-15, which yielded a mediation agreement between the Borough and Fair Share Housing Center; and

**WHEREAS**, the Borough Council finds it necessary and appropriate to establish standards for the assessment, collection, administration, and expenditure of affordable housing development fees in order to comply with the Borough’s affordable housing obligations, address requirements raised by the Fair Share Housing Center, and avoid the imposition of penalties, sanctions, or adverse judicial determinations that may result from noncompliance with applicable affordable housing laws and regulations; and

**WHEREAS**, the establishment of an Affordable Housing Trust Fund is required to properly administer and expend development fees collected pursuant to state law;

**NOW, THEREFORE, BE IT ORDAINED** by the Borough Council of the Borough of Ship Bottom, County of Ocean, State of New Jersey, a majority of the full authorized membership thereof affirmatively concurring, that:

**SECTION 1. Purpose and Authority**

This ordinance establishes affordable housing development fees for residential and nonresidential development pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., and the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq., to fund affordable housing activities consistent with the Borough’s Housing Element and Fair Share Plan.

**SECTION 2. Applicability**

This ordinance shall apply to all residential and nonresidential development approvals granted after the effective date of this ordinance.

**SECTION 3. Residential Development Fees**

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

B. 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. Same, however, does not apply to accessory dwelling or apartments. 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.

C. Eligible exactions, ineligible exactions and exemptions for residential development

i. Inclusionary 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 March 15, 2026 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.

#### **SECTION 4. Nonresidential Development Fees**

A. Nonresidential developers shall pay a development fee equal to 2.5% of the equalized assessed value of land and improvements for new nonresidential construction or expansion, where same is required pursuant to N.J.S.A. 40:55D-8.1 et seq.

B. For demolition and replacement projects, the development fee shall be calculated on the increase in equalized assessed value between the preexisting structure and the new construction, where same is required pursuant to N.J.S.A. 40:55D-8.1 et seq..

C. Nonresidential developments exempt pursuant to N.J.S.A. 40:55D-8.1 et seq. shall not be subject to development fees under this ordinance.

#### **SECTION 5. Calculation and Collection of Fees**

A. Development fees shall be calculated by the Borough Tax Assessor. All non-residential fees shall be imposed and assessed in a manner and process consistent with N.J.S.A. 40:55D-8.1 et seq.

B. No certificate of occupancy shall be issued for any residential or nonresidential structure unless all required development fees have been paid in full.

C. In the event of a challenge to such development fees, same shall be paid under protest by the developer as a condition precedent to the issuance of any certificate of occupancy.

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 Borough. 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 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 Borough. 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.

#### **SECTION 6. Affordable Housing Trust Fund**

- A. All development fees collected pursuant to this ordinance shall be deposited into the Borough of Ship Bottom's Affordable Housing Trust Fund.
- B. Funds shall be used solely for eligible affordable housing purposes in accordance with the Borough's approved spending plan and applicable state law.
- C. Funds shall be committed or expended within four (4) years of collection or transferred as required by law.

#### **SECTION 7. Administration and Reporting**

The Borough Affordable Housing Administrator shall maintain records of all development fees collected and expended and shall provide required annual reports to the New Jersey Department of Community Affairs, in a manner consistent with applicable rules, including N.J.A.C. 5:99 et seq.

#### **SECTION 8. Severability**

If any section, subsection, sentence, clause, or provision of this ordinance is held invalid, such invalidity shall not affect the remaining portions of this ordinance.

#### **SECTION 9. Effective Date**

This ordinance shall take effect upon final passage and publication according to law.

### **NOTICE**

Public Notice is hereby given that the foregoing Ordinance was introduced and passed on the first reading at a regular meeting of the Mayor and Council of the Borough of Ship Bottom, County of Ocean, State of New Jersey, held on Tuesday, April 28, 2026, at 6:30 p.m.

Further public notice is hereby given that said ordinance shall be considered for final passage and adoption at a regular meeting of the Mayor and Council to be held on May 26, 2026, at 6:30 p.m. at the Municipal Building, 1621 Long Beach Boulevard, Ship Bottom, New Jersey 08008.

---

Kristy Correnti, RMC  
Municipal Clerk