

**TOWNSHIP OF FLORENCE
ORDINANCE NO. 2016-20**

**AN ORDINANCE ESTABLISHING REGULATIONS AND PROCEDURES FOR THE
ALLOCATION AND RECAPTURE OF THE COST OF OFF-TRACT STREET
IMPROVEMENTS PAID FOR OR CONSTRUCTED BY DEVELOPERS PURSUANT
TO N.J.S.A. 40:55D-42**

WHEREAS, the Township legally may apportion the costs of off-tract public improvements in one of three recognized ways: (1) the public improvement may be undertaken entirely at the Township's cost and expense; (2) the Township may undertake the public improvements as a local improvement project and assess the costs and expenses against the owners of properties benefitted thereby; or (3) if authorized by ordinance, the Township may require that the work be undertaken by or at the expense of a developer whose project necessitated the improvements, subject to partial or total reimbursement from other developers or owners benefitted thereby so that the developer ultimately incurs no more than its *pro-rata* share of the cost of such improvements; and

WHEREAS, the Township is authorized by the provisions of N.J.S.A. 40:55D-42 to adopt regulations requiring developers, as a condition of approval of subdivisions or site plans, to pay the *pro-rata* share of the cost of providing only reasonable and necessary improvements to streets and drainage facilities, and easements therefor, located off-tract, but which are necessitated or required by construction or improvements within such subdivision or development; and

WHEREAS, N.J.S.A. 40:55D-42 provides that such regulations shall be based upon the Township's Master Plan; and

WHEREAS, N.J.S.A. 40:55D-42 also provides that such regulations shall establish fair and reasonable standards to determine the proportionate or *pro-rata* amount of the cost of such off-tract street and drainage improvements, and easements therefor, that shall be borne by each developer or owner benefitted thereby within a related and common area; and

WHEREAS, the Township has not heretofore adopted such regulations, but now wishes to do so;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED as follows:

1. **Title**: This ordinance shall be known as the "Off-Tract Street Improvement Cost Allocation and Recapture Ordinance". For purposes of this ordinance, the terms "*pro-rata* contribution", "*pro-rata* share" and "fair share" are intended to be used interchangeably.

2. **Purpose and Intent:** The purpose and intent of this ordinance is to (a) ensure adequate off-tract street and related drainage improvements, and easements therefor, which are clearly, directly and substantially related to or necessitated by any construction or development which is the subject of an application for subdivision or site plan approval; (b) facilitate safe and efficient traffic circulation and control to maintain satisfactory levels of traffic service during peak travel times; (c) assess all developers and owners benefitted by such off-tract street improvements a fair share of the reasonable and necessary costs and expenses of such improvements proportionate to the benefit conferred thereby; (d) provide reasonable standards by which such fair share assessments shall be calculated, and to provide for recapture in the event that any party shall pay or incur more than its fair share; and (e) encourage development that is compatible with the goals and objectives of the circulation plan element and other provisions of the Township's Master Plan.

3. **Scope:** This ordinance shall apply to off-tract street improvements and related drainage facilities and necessary easements therefor. For purposes of this ordinance, "off-tract" shall mean "not located on the property which is the subject of the pending development application nor on the closest half of the abutting street or right-of-way." Such off-tract street improvements may be to Township and Burlington County streets and roads, or portions thereof, located within the Township, whether improved or unimproved, existing or shown upon a plat heretofore approved pursuant to law or which hereafter is approved by official action pursuant to law, and to intersections located within the Township of such streets and roads with State highways. Such improvements may include, but shall not be limited to, street widening, alignment, realignment, channelization of intersections, construction of barriers, new or improved traffic signalization, signs, curbs, street drainage and related drainage facilities, sidewalks, street lighting, shade trees, utility improvements or relocations, grading or re-grading, paving or repaving, the establishment or widening of shoulders, the construction or reconstruction of existing or new streets, and other street or traffic improvements to improve capacity or level of service within the public right-of-way.

4. **Assessment for Required Off-Tract Street Improvements:** As a condition of final subdivision and final site plan approval, the board of jurisdiction shall require the applicant to pay its *pro-rata* share of the cost of providing reasonable and necessary off-tract street improvements and associated drainage facilities and easements that are clearly, directly and substantially related to or necessitated by construction or improvements within such subdivision or development. Such *pro-rata* share shall be determined in accordance with Sections 5 and 6 of this ordinance, as applicable. The board of jurisdiction, in its sole discretion, may require the applicant to install some or all of the required off-tract street improvements; *provided, however*, that in the event the applicant shall incur more than its *pro-rata* share of the cost of such improvements, the applicant shall be entitled to recapture the amount incurred in excess of its *pro-rata* share, with the assistance of the Township, as provided in this ordinance.

5. **Off-Tract Street Improvements Benefitting Only Applicant:** Where required off-tract street improvements will provide additional capacity that is sufficient to accommodate only the applicant's proposed development and/or the additional traffic to be generated as a

result of such development, and no other developers or property owners will be benefitted by any excess capacity created by the improvements installed or to be installed by the applicant, as determined by the board of jurisdiction's traffic consultant using the formula set forth in Section 6 below, then the applicant's *pro-rata* contribution shall be one hundred percent (100%) of the cost of such improvements, and the board of jurisdiction may, in its sole discretion, require the applicant to install all of such improvements at the applicant's own cost and expense.

6. **Off-Tract Street Improvements Benefitting Applicant and Others:** Where required off-tract street improvements will provide additional capacity that is in excess of what is necessary to accommodate the applicant's proposed development and/or the additional traffic to be generated as a result of such development, the applicant's *pro-rata* contribution shall be determined by the board of jurisdiction's traffic consultant utilizing either (i) the square footage of the proposed development or (ii) the formula $[A/B \times Cost]$, where:

"A" equals the additional traffic to be generated as a result of the applicant's proposed development, utilizing trip generation research data in the most current edition of *Trip Generation* published by the Institute of Transportation Engineers (ITE) and as accepted by the board of jurisdiction based on the testimony and reports of the applicant's traffic consultant and any testimony or reports of the board of jurisdiction's traffic consultant; and

"B" equals the total traffic design capacity of the installed off-tract street improvements less the traffic currently using the streets and intersections required to be improved (background traffic), as determined by the board of jurisdiction's traffic consultant utilizing traffic counts, the traffic circulation plan element of the Township's Master Plan, if available, or trip generation research data in the most current edition of *Trip Generation* published by the Institute of Transportation Engineers (ITE), as applicable; and

"Cost" equals the cost of the required improvements as determined in accordance with Sections 8 and 9 of this ordinance; and

"*Excess Capacity*" equals B-A.

If the approved development is to be constructed in phases, the applicant's *pro-rata* share may be calculated separately for each phase if the board of jurisdiction determines that each phase warrants separate treatment because of the length of time of the phasing schedule and other pertinent factors. The board of jurisdiction may, in its sole discretion, require the applicant to install all of such improvements; *provided, however*, that the applicant shall be entitled to recapture the amount incurred in excess of its *pro-rata* share, determined pursuant hereto, with the assistance of the Township as provided in this ordinance, from other developers and owners benefitted by such excess capacity.

7. **Right of Judicial Review:** In order to preserve the right to a judicial review and determination as to the reasonableness and fairness of the amount determined as its *pro-rata* contribution pursuant to Section 5 or Section 6 of this ordinance, the applicant must pay such

amount and indicate, in writing, that it is paying such amount under protest, and must institute legal action within one (1) year of such payment.

8. **Estimated Costs:** When off-tract street improvements are required as a condition of final subdivision or final site plan approval, the Township Engineer shall initially estimate the cost of permitting, design and installation of such improvements, in writing and on an itemized basis, in accordance with the cost estimates, if any, set forth in the circulation plan element of the Township Master Plan, or, if no cost estimates are set forth in the Master Plan, then in accordance with the provisions of N.J.S.A. 40:55D-53.4. The Township Engineer may be guided by the highway bid price index for the State of New Jersey, as published by McGraw Hill Publishing Co., or its successor, in the Dodge Building Cost Indexes for United States and Canadian Cities, and shall be the average of the Philadelphia Area and the New York Metropolitan Area, or the Federal Highway Administration's bid price index. The Township Engineer also may be guided by detailed costs estimates for the required improvements submitted by the applicant's engineer, allocating costs to each of the components of the required improvements on a line item basis; provided, however, that the burden of proof as to the reasonableness, necessity and relatedness of such costs shall be on the applicant. In addition to and without duplication of such costs, the Township Engineer may include reasonable amounts proposed by the applicant that are directly related to such improvements and are likely to be incurred by the applicant on account of the following: planning, surveying, permit acquisition, design, specification, bidding, demolition, clearing, site work, construction, construction management, inspection, approval, property and easement acquisition, related legal fees, and any other reasonable costs customarily incurred in connection with similar street improvements ("**Additional Costs**"); provided, however, that no interest or overhead and profit of the applicant shall be included in such Additional Costs, and provided further, that the burden of proof of the reasonableness, necessity and relatedness of such Additional Costs shall be on the applicant. The applicant shall provide all documents and information relating to such Additional Costs, if any, within thirty (30) days after written request from the Township Engineer, and, if the applicant fails to do so, the applicant shall be deemed to have waived the right to claim any such Additional Costs. The applicant may appeal the Township Engineer's written cost estimate to the Burlington County Construction Board of Appeals pursuant to N.J.S.A. 40:55D-53.4 and N.J.A.C. 5:23A-2.1 et seq.; *provided, however*, that the applicant shall have no right of appeal with respect to any Additional Costs deemed waived pursuant hereto. The costs so estimated shall be used for all purposes of this ordinance unless and until actual costs are certified in accordance with Section 9.

9. **Actual Costs:** Upon completion of the required off-tract street improvements and acceptance thereof by the Township, including pursuant to N.J.S.A. 40:55D-53j, including on a phase-by-phase basis, if applicable, the Township Engineer shall prepare, or the applicant shall provide to the Township Engineer, for his or her review and acceptance or rejection, in whole or in part, a certified, itemized list of all costs of the type and nature described in Section 5 of this ordinance that were actually incurred by the Township or the applicant, as the case may be, in connection with the design and installation of such improvements; *provided, however*, that the applicant shall not include any Additional Costs which are deemed to have been waived pursuant to Section 8. If the improvements were installed by the applicant, the burden of proof shall be on the applicant as to the reasonableness, necessity, relatedness and incurrence of such

costs, and the applicant shall submit genuine copies of all contracts, purchase orders, invoices and proof of payment necessary to support all of such costs claimed on its certified, itemized list within thirty (30) days of completion and acceptance of the improvements. Failure of the applicant to submit such certified, itemized list and supporting documentation within the said thirty (30) day period shall be deemed a waiver and release of the right to recapture or reimbursement of any amount paid or incurred in excess of the applicant's *pro-rata* share of the cost of such improvements. The Township Engineer shall issue his or her decision as to the acceptance or rejection, in whole or in part, of the applicant's costs in writing, and shall certify the costs as accepted, within thirty (30) days of receipt of the applicant's submission. The applicant may appeal the Township Engineer's written decision to the Burlington County Construction Board of Appeals pursuant to N.J.A.C. 5:23A-2.1 *et seq.*; *provided, however*, that the applicant shall have no right of appeal with respect to any costs deemed waived pursuant to Section 8 or this Section. Once certified pursuant hereto, the actual costs shall be substituted for the costs estimated pursuant to Section 8 of this ordinance and shall be used for all purposes of this ordinance.

10. **Recapture:** In the event that the applicant pays or incurs more than its *pro-rata* share of the cost of required off-tract street improvements which provide excess capacity for other developers or owners, the applicant shall be entitled to recapture the amount paid or incurred in excess of its *pro-rata* share from the party or parties benefitted by such excess capacity. Each such party shall be assessed its respective *pro-rata* share of the cost of the required off-tract street improvements installed by the applicant based on Section 6 of this ordinance; *provided, however*, that "A" shall represent the benefitted party's traffic or additional traffic using or which shall use the subject improvements, as determined based on traffic counts, the traffic circulation plan element of the Township's Master Plan, if available, or trip generation research data in the most current edition of *Trip Generation* published by the Institute of Transportation Engineers (ITE), as applicable. If the party benefitted is another applicant developer, such developer shall be assessed its *pro-rata* share at the time of signing of the final subdivision plat or final site plan applicable to its development application, as a condition precedent to such signing, together with an administrative fee of two percent (2%), not to exceed \$2,000.00, and the Township shall remit the amount of such assessment to the initial applicant entitled thereto within ten (10) days of receipt of payment thereof.

11. **Time Limit for Recapture:** Notwithstanding any other provision of this ordinance to the contrary, no right of recapture or reimbursement of any costs paid or incurred by the initial applicant in excess of the its *pro-rata* share of the costs of required off-tract street improvements shall subsist after ten (10) years have elapsed from the date of certification of actual costs by the Township Engineer pursuant to Section 9; *provided, however*, that if the applicant's *pro-rata* share shall have been determined on a phase-by-phase basis pursuant to Section 6, then the ten (10) year period shall apply to each phase, and shall run from the certification of actual costs by the Township Engineer as to each phase.

12. **Performance Guarantee:** Before recording of the final subdivision plat or as a condition of final site plan approval, or as a condition to the issuance of a zoning permit pursuant to N.J.S.A. 40:55D-65d, the applicant shall be required by the board of jurisdiction or the Township, as the case may be, to provide a performance guarantee with respect to the

required off-tract street improvements in accordance with the requirements of N.J.S.A. 40:55D-53 et seq.

13. **Developer's Agreement**: The amount of an applicant's *pro-rata* share of required off-tract street improvements and the amount of Excess Capacity, if any, as well as the method of computation thereof in accordance with Section 6 of this ordinance, shall be memorialized in a municipal developer's agreement ("**Developer's Agreement**") to be reviewed and approved by the Township Attorney, who may request advice and assistance from the attorney of the board of jurisdiction. The Developer's Agreement also shall memorialize the applicant's rights set forth in Sections 10 and 11 hereof, as well as the applicant's obligations set forth in Section 12, all of which shall be subject to specific performance. The Developer's Agreement also may require completion of all or a specified portion of the off-tract street improvements as a condition precedent to issuance of a construction permit or certificate of occupancy for the applicant's development, or, if the applicant's development is to be constructed in phases or units, as a condition precedent to the issuance of construction permits or certificates of occupancy for more than a specified number of units or for any phase or phases beyond a specified phase or phases, at the discretion of the Township.

14. **Failure to Pay Pro-Rata Share**: Should any party fail to pay its *pro-rata* share of the cost of required off-tract street improvements as determined pursuant to this ordinance, the amount due shall be deemed a municipal charge and debt collectible in the same way and manner as real property taxes in the State of New Jersey. The Clerk shall certify the amount due to the Tax Collector, who shall record the same as a lien against the real property of the delinquent party. Payment in full of the amount of such lien shall be a condition of approval of any land use development application by such delinquent party or in which such delinquent party has an interest, and shall be a condition precedent to issuance of any construction permits, certificates of occupancy or other permits or approvals to such delinquent party, directly or indirectly. If a delinquent party already has commenced construction, then non-payment of the delinquent party's *pro-rata* share or any portion thereof shall be grounds for the Township to stop such construction until the amount due shall have been paid in full.

15. 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.

16. In the event of any inconsistencies between the provisions of this ordinance and any prior ordinance of the Township of Florence, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Revised General Ordinances of the Township of Florence are hereby ratified and confirmed, except where inconsistent with the term hereto.

17. This Ordinance shall be so construed as not to conflict with any provision of New Jersey or Federal Law.

18. This Ordinance shall take effect 20 days after adoption thereof.

THEODORE J. LOVENDUSKI
Council President

JOY M. WEILER, RMC/MMC
Township Clerk

TOWNSHIP OF FLORENCE
NOTICE OF PENDING ORDINANCE
Ordinance No. 2016-20

**AN ORDINANCE ESTABLISHING REGULATIONS AND
PROCEDURES FOR THE ALLOCATION AND RECAPTURE OF THE COST
OF OFF-TRACT STREET IMPROVEMENTS PAID FOR OR CONSTRUCTED
BY DEVELOPERS PURSUANT TO N.J.S.A. 40:55D-42**

Take Notice that the Ordinance identified above which establishes regulations and procedures for the allocation and recapture of the cost of off-tract street improvements paid for or constructed by developers pursuant to N.J.S.A. 40:55D-42 has been adopted on first reading by the Township Council of the Township of Florence, County of Burlington, State of New Jersey, held on June 15, 2016. It will be considered for final passage after public hearing to be held on July 13, 2016, at 8:00 P.M. in the Municipal Complex, Council Chambers, 711 Broad Street, Florence, New Jersey.

The Ordinance will take effect immediately upon adoption and publication as required by law.

Copies of the full ordinance are on file with the Township Clerk of the Township of Florence in the Municipal Complex. Copies may be obtained free of charge on request and a copy is posted on the municipal bulletin board in the Municipal Complex at 711 Broad Street, Florence, New Jersey.

Joy M. Weiler, RMC/MMC
Township Clerk