

INTRODUCTION

The Non-Residential Development Fee Act, Public Law 2008, chapter 46, N.J.S.A. 40:55D-8.1 et seq., reforms the New Jersey Fair Housing Act and imposes a statewide 2.5% fee on new construction and additions to non-residential development approved subsequent to July 17, 2008.

The Non-Residential Development Fee (NRDF) supports the development of affordable housing throughout New Jersey for low, moderate and middle income households.

The NRDF Act supersedes any municipal non-residential fee ordinances, and standardizes the amount of the fee and allowable exemptions. Fees must be paid in order to receive a certificate of occupancy.

MORATORIUM LIFTED

The NRDF has been suspended a number of times since its inception. In 2009 the New Jersey Economic Stimulus Act imposed a moratorium on imposition of fee where the projects received preliminary or final site plan approval prior to July 1, 2010, provided building permits were issued before January 1, 2013. The moratorium was extended until July 1, 2013 by Public Law 2011, chapter 122, provided the project received a construction permit prior to January 1, 2015. That extension has expired and the moratorium has not been renewed. The NRDF is now back in force.

CALCULATION

N.J.S.A. 40:55D-8.4(a) establishes two different assessments of the Non-Residential Development Fee, one for new non-residential construction on vacant land and one for structural additions on sites

with existing improvements. When the land being developed is vacant, the Non-Residential Development Fee is 2.5% of the equalized assessed value of land and improvements of the final development. When the land being developed has existing improvements, the Non-Residential Development Fee is 2.5% of the equalized assessed value of the new improvements only; the equalized assessed value of the land and improvements existing at the time a construction permit was sought are excluded from the calculation of the fee.



EXEMPTIONS FROM THE NRDF:

- Non-profit and public education buildings
- Houses of worship
- Public amenities (recreational, community or senior centers)
- Parking lots and structures
- Nursing homes or non-profit hospital relocations or improvements
- State, County, and local government buildings
- Transit Hubs, Villages, and Light Rail Hubs

- Commercial farm buildings and Use Group U structures
- Preliminary or final approval granted prior to July 1, 2013 and construction permit issued prior to January 1, 2015.

APPLICATION FORM & FILING

Form N-RDF (Rev. 6/2016) is used to implement this program, and is found on the Division of Taxation's website at: http://www.state.nj.us/treasury/taxation/pdf/other_forms/lpt/n-rdf.pdf.

The Developer completes Section A and submits the form with the Construction Permit Application. If a reduced fee amount (1%) or credit is claimed, substantiation of the claim (dated prior to the effective date of the Act, July 17, 2008) must be attached to the certificate, i.e., the redevelopment agreement, general plan approval, Developer's agreement, or proof of prior commitment of payment toward low and moderate income housing.

The Construction Official verifies Section A is completed correctly and corresponds with the Construction Permit Application; verifies the form is signed by the Developer; and fills in the Construction Permit Application Number. The Construction Official will refuse any incomplete form and return it to the Developer. The Construction Official then forwards the original form to the Assessor.

The Assessor determines if a claimed exemption is justified. If so, the Assessor checks the "exempt" box at the bottom of Section B, signs, and provides the original signed Form N-RDF to the Construction Official and a copy to the Developer. If not exempt, the Assessor, based on review of plans submitted with Construction Permit Application, estimates the property's

assessment. When the property is completed the Assessor determines the value based on the actual construction.

DEFINITIONS

"Construction" means new construction and additions, but does not include alterations, reconstruction, renovations, and repairs.

"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. If equalizing a 2016 taxable value, use the Director's Ratio promulgated on October 1, 2015.

"Non-residential development" means: any building or structure, or portion thereof, including but not limited to any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code. Non-residential development includes: hotels, motels, vacation timeshares, and child care facilities and the entirety of all continuing care retirement community subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act.

"Mixed use development" means any development which includes both a non-residential development component and a residential development component, for which (1) there is a common developer for both components. Multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and

non-residential developments are located on the same lot or adjoining lots, including but not limited to lots separated by a street, a river, or another geographical feature.



QUESTIONS

1. **Does the Non-Residential Development Fee affect a municipality's residential development ordinance?**

No. It applies to non-residential development. Municipal Residential Development Fee ordinances may remain in effect.

2. **Does the Non-Residential Development Fee apply to all work being done on non-residential buildings or properties?**

No. The fee applies only to new construction of and additions to non-residential structures. It does not apply to alterations, reconstruction, renovations, and repairs.

3. **How is the Non-Residential Development Fee applied to a new multi-tenant building, such as an office building or a strip mall?**

The fee would be applied to the whole building and the equalized assessed value at the time the Certificate of

Occupancy is issued. If "tenant fit-outs" or "fit-ups" are performed after the building is issued a Certificate of Occupancy, an additional fee would not be assessed against the work done as part of the fit-out or fit-up as the work is not generally new construction or additions. Fit-ups/fit-outs are issued Certificates of Approval and not C.O.s as a further distinction from those improvements subject to the fee.

4. **Does the Non-Residential Development Fee apply to mixed-use development?**

Yes, the fee applies to the non-residential development component of a mixed use development as defined in the Act.

5. **How is it determined if payment is made to the Treasurer, State of New Jersey or to the municipality?**

If the municipality is participating in the Fair Housing Act process, payment is remitted to the town to address local housing needs. Section C of Form N-RDF is to be completed as receipt of payment. If the municipality is not participating in the Fair Housing Act process, then payment is made to the Treasurer, State of New Jersey. The mailing address for this payment is found on Form N-RDF under General Instructions, "For Payment Recipient."

6. **How is an appeal filed if a Developer wants to challenge the NRDF imposed?**

A Developer who disputes the fees imposed as per N.J.S.A. 40:55D-8.1 et seq. may file a challenge with the Director, Division of Taxation. If the fee imposed is contested, the payment must equal the estimated Non-Residential Development Fee. Pending

review and a determination by the Director, which is made within 45 days of receipt of the challenge, collected fees are placed in an interest bearing escrow account by the municipality, or by the State. Appeals from a determination of the Director may be made to the Tax Court of New Jersey within 90 days after the date of such determination. Interest earned on amounts escrowed is credited to the prevailing party.



FOR MORE INFORMATION

Questions concerning the Non-Residential Development Fee may be directed to the municipal assessor of your taxing district. Contact information for assessors is found on the New Jersey Division of Taxation's website: www.state.nj.us/treasury/taxation/lpt/addr.shtml.

The NJ Division of Taxation:
www.state.nj.us/treasury/taxation/index.shtml

The NJ Department of Community Affairs: www.nj.gov/dca/

NEW JERSEY'S NON-RESIDENTIAL DEVELOPMENT FEE

N.J.S.A. 40:55D-8.1 et seq.

