

Frequently Asked Questions
Statewide Non-Residential Development Fee Act

1. Why do I have to pay a 2.5% non-residential development fee?

On July 17, 2008, Governor Corzine signed into law the Statewide Non-Residential Development Fee Act sections 32-38 of P.L. 2008 c. 46. This Act imposes a 2.5% fee on new construction of and additions to non-residential development in the State of New Jersey. Monies collected pursuant to this fee will support the development of affordable housing throughout the State, including funding the Urban Housing Assistance Fund which was created as part of the same piece of legislation. The Act was passed as part of sweeping reforms to the New Jersey Fair Housing Act.

2. Does the Statewide Non-Residential Development Fee Act apply to towns that have a municipal non-residential development fee ordinance?

Yes. The Act standardizes the amount of the fee (2.5% with limited exceptions), and the allowable exemptions. In addition, the Departments of Community Affairs and Treasury have developed a uniform form and process to standardize the collection of the fee throughout the State (Form N-RDF).

3. Does the Act affect a municipality's residential development fee ordinance?

The Act does not affect the residential portion of a development fee ordinance. However, section 8 (C. 52:27D-329.2-329.3) of P.L.2008, c.46 specifies additional requirements for residential development and payment-in-lieu fees, on which the Council on Affordable housing (COAH) has provided further guidance.

The Act supersedes any NON-RESIDENTIAL development fee ordinance, including the non-residential provisions of previously adopted development fee ordinances. COAH has provided additional information to municipalities regarding a revised model development fee ordinance to address both residential and non-residential development fees.

4. Does the new Statewide Non-Residential Development Fee Act apply to all work being done on non-residential buildings or properties?

No. The Act applies only to new construction of and additions to non-residential structures. The Act defines construction as "new construction and additions, but does not include alterations, reconstruction, renovations, and repairs as those terms are defined under the State Uniform Construction Code promulgated pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.)." N.J.S.A. 52:27D-5.3.

In order to determine if the Act is applicable to the work being done, please refer to the classifications of work contained within the Uniform Construction Code (N.J.A.C. 5:23), and the type of work listed on the construction permit for the project.

5. How do I know if the development is exempt from or not subject to the fee?

The following developments are exempt from or not subject to the Statewide Non-Residential Development Fee:

- State, county, and local government buildings;
- Commercial Farm buildings;
- Use Group U buildings and structures;
- Churches, synagogues, mosques, and other houses of worship which are exempt from real property taxes;
- Property used for educational purposes which is exempt from real property taxes;
- Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development, such as an office building, or whether the parking lot is developed as an independent non-residential development;
- Any non-residential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a non-residential developer;
- Non-residential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;
- Projects that are located within a specifically delineated urban transit hub, as defined pursuant to section 2 of P.L.2007, c.346 (*C.34:1B-208*);
- Projects that are located within an eligible municipality, as defined under section 2 of P.L.2007, c.346 (*C.34:1B-208*), when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system; and
- Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the Department of Transportation.”

The categories of developments not subject to the fee pursuant to section 35 b. of P.L. 2008 c.46 (C. 40:55D-8.4 b.) are listed in Section A of Form N-RDF. A copy of the form as well as maps of urban transit hubs, and additional information regarding transit villages can be found at www.nj.gov/dca/coah/legislation.shtml.

If a Developer claims that the development is not subject to the fee or claims payment of less than the full 2.5 percent by checking the appropriate box in Section A of Form N-RDF, the Developer should substantiate that claim. Substantiation may include a map showing that the property is located within the delineated transit hub, a copy of a development plan, planning board approval, or a receipt for payment made prior to July 17, 2008.

6. Who should Tax Assessors contact if they need assistance completing Form N-RDF?

The Department of the Treasury, Division of Taxation, Property Administration at 609-292-7974.

7. Who should I contact for questions regarding exemptions or the assessment of my property?

Inquiries regarding the assessment of the property, the calculation of the equalized assessed value, or exemption should be directed to the local tax assessor.

8. How do I determine if payment should be made to the Treasurer, State of New Jersey or to the municipality?

A list of each municipality that is permitted to retain the development fees collected pursuant to section 35 c. of P.L. 2008 c.46 can be found on the Council on Affordable Housing's website at www.nj.gov/dca/coah/legislation.shtml. If the municipality in which the development is located appears on the list, payment should be made to the municipality. All other payments should be made to the Treasurer, State of New Jersey. Regardless of whether the fee is retained by the municipality or paid to the Treasurer, Form N-RDF must be used.

9. How do I make payment to the Treasurer, State of New Jersey?

Payments to the Treasurer, State of New Jersey should be made through the New Jersey Business Gateway, www.state.nj.us/njbgs/nrdf.htm, unless the developer is eligible for a reduced fee pursuant to section 37 a. (2) of P.L. 2008, c.46 (C. 40:55D-8.7 a. (2)) or the developer has made or committed itself to the provision of affordable housing prior to the enactment of the Statewide Non-Residential Development Fee Act and is claiming a credit (Section 37c.). In those circumstances, payment must be made to the Department of Community Affairs. Checks made payable to the Treasurer, State of New Jersey should be sent with the completed Form N-RDF.

If using the United States Postal Service mail to

Department of Community Affairs
Division of Codes and Standards
PO BOX 802
Trenton, NJ 08625-0802
Attn: Non-Residential Development Fee Coordinator

If hand delivering or using an overnight delivery service use

Department of Community Affairs
Division of Codes and Standards
101 South Broad Street
6th Floor
Trenton, NJ 08608
Attn: Non-Residential Development Fee Coordinator

10. If I contest the amount that is due, how do I file an appeal?

Subsequent to making payment, you may contest the non-residential development fee as permitted pursuant to section 37 b. of P.L. 2008 c.46, by contacting the Division of Taxation at 609-292-7974.

11. How is the non-residential development fee applied to a new multi-tenant building, such as an office building or a strip mall?

Generally, the fee would be applied to the whole building and the equalized assessed value at the time the Certificate of Occupancy is issued, and if “tenant fit-outs” or “fit-ups” are performed after the building has been issued a Certificate of Occupancy, an additional fee would not be assessed against the additional work done as part of the fit-out or fit-up.

In the situation outlined above, a construction permit would be issued for the new construction of the multi-tenant building. Once construction is complete and a determination has been made by the construction official that the requirements of the Uniform Construction Code have been met, a Certificate of Occupancy would be issued. Subsequent construction permits may then be issued for tenant fit-ups or fit-outs, however, this work most often is not in the nature of new construction or additions, and as such, not subject to the Statewide Non-Residential Development Fee Act. Additionally, the tenant fit-ups and tenant fit-outs result in a Certificate of Approval being issued, not a Certificate of Occupancy, further distinguishing this type of work from that subject to the Statewide Non-Residential Development Fee Act.

12. Is the developer entitled to a credit for any development fees already paid?

Yes. The COAH model development fee ordinance permits a municipality to collect half of a non-residential development fee at the time a construction permit issued and the remaining amount prior to a Certificate of Occupancy being issued. If a portion of a non-residential development fee was paid prior to July 17, 2008, that amount should be listed in Section A of Form N-RDF under “Prior payment or commitment for low and moderate income housing.” This amount should then be deducted from the fee calculated by the Tax Assessor (Section B, box F6 of Form N-RDF).

13. If a developer committed to a development fee greater than 2.5% of the equalized assessed value of the property prior to July 17, 2008, is the developer required to pay the 2.5% or the amount the developer previously agreed to?

If the developer committed to a payment higher than 2.5% prior to July 17, 2008, such as through a municipal development fee ordinance or a payment in lieu of construction, the developer would pay the higher amount, unless the developer obtained an amended, modified, or new land use approval for the development. If the developer has not committed to a higher payment, the fee would be 2.5% of the equalized assessed value with a credit for any payment already made.

The Statewide Non-Residential Development Fee Act states that:

Unless otherwise provided for by law, no municipality shall be required to return a financial or any other contribution made by or committed to be made by the developer of a non-residential development prior to the enactment of P.L.2008, c.46 (*C.52:27D-329.1 et al.*) relating to the provision of housing affordable to low and moderate income households, provided that the developer does not obtain an amended, modified, or new municipal land use approval with a substantial change in the non-residential development. If the developer obtains an amended, modified, or new land use approval for non-residential development, the municipality, person, or entity shall be required to return to the developer any funds or other contribution provided by the developer for the provision of housing affordable to low and moderate income households and the developer shall not be entitled to a reduction in the affordable housing development fee based upon that contribution. N.J.S.A. 40:55D-8.6 d.

A developer is considered to have made a commitment if:

(1) the contribution has been transferred, including but not limited to when the funds have already been received by the municipality; (2) the developer has obligated itself to make a contribution as set forth in a written agreement with the municipality, such as a developer's agreement; or (3) the developer's obligation to make a contribution is set forth as a condition in a land use approval issued by a municipal land use agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (*C.40:55D-1 et seq.*). N.J.S.A. 40:55D-8.6 c.

14. If I have questions that are not addressed on this page, whom do I contact?

Any questions concerning the Non-Residential Development Fee Act should be directed to Department of Community Affairs, Division of Housing at 609-292-3732. Any questions concerning municipal development fee ordinances should be directed to the Council on Affordable Housing at 609-292-3000.

THIS DOCUMENT WILL BE UPDATED FROM TIME TO TIME BASED ON FEEDBACK RECEIVED BY THE DEPARTMENTS OF COMMUNITY AFFAIRS AND TREASURY