

Economic Stimulus Act of 2009 Statewide Non-residential Development Fee Provisions

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Developments Exempt from the Statewide Non-Residential Development Fee

- Non-Residential Developments that have received or receive either preliminary or final site plan approval prior to July 1, 2010; provided that a building permit for the construction of the building is issued prior to January 1, 2013
- Non-residential public projects that, prior to July 1, 2010, were or are referred to a planning board by the State, a governing body, or other public agency for review pursuant to *N.J.S.A. 40:55D-31*; provided that a building permit for the construction of the building is issued prior to January 1, 2013

Developments Exempt from the Statewide Non-Residential Development Fee *(Cont'd)*

- Non-Residential Developments that have received or receive site plan approval from the New Jersey Meadowlands Commission prior to July 1, 2010; provided that a building permit for the construction of the building is issued prior to January 1, 2013
- Individual buildings within a nonresidential phased development that have received or receive either preliminary or final approval prior to July 1, 2010, provided that a permit for the construction of the building has been issued by prior to January 1, 2013

Refunds of the Statewide Non-Residential Development Fee

Developers of projects which are exempt from the Statewide Non-Residential Development Fee are entitled to a refund of the fee if they paid it.

Amount of the Refund

- Developers of non-residential developments who are entitled to a refund and who received approvals or referrals for their non-residential developments on or after July 17, 2008 are entitled to a 100% refund of the Statewide Non-Residential Development Fee
- Developers of non-residential developments who are entitled to a refund and who received approvals or referrals for their non-residential developments prior to July 17, 2008 and which non-residential developments were not subject to any non-residential development fees prior to July 17, 2008 are entitled to a 100% refund of the Statewide Non-Residential Development Fee

Amount of the Refund *(Cont'd)*

- Developers of non-residential developments who are entitled to a refund and who received approvals or referrals for their non-residential developments prior to July 17, 2008 and which non-residential developments were subject to non-residential development affordable housing fees prior to July 17, 2008 are entitled to a refund of the difference between the amount of 2.5% Statewide Non-Residential Development Fee and the amount of the pre-July 17, 2008 non residential affordable housing fee that they "committed" to pay.

Amount of the Refund *(Cont'd)*

"Committed" is not defined in the statute. However, it is likely that a developer who did not appeal a condition of a site plan approval imposing an affordable housing fee will be deemed to have "committed" to pay that fee. Clearly entering into a developer's agreement which sets forth an agreement to pay the fee will constitute a commitment to pay the fee.

Examples of Refund Amounts

- A developer of a warehouse with an equalized assessed value of \$10,000,000 receives a final site plan approval on June 5, 2006:
 - The municipality has an ordinance enacted pursuant to the then applicable COAH Rules requiring that the developer pay an affordable housing fee of 2% of the equalized assessed value of the Project.
 - The municipal planning board conditions the approval on paying the 2% fee of \$200,000.
 - The developer obtains a certificate of occupancy on August 1, 2008 and thus is required to pay a 2.5% fee of \$250,000.
 - The developer is entitled to a \$50,000 refund.

Examples of Refund Amounts *(Cont'd)*

- A developer of a warehouse with an equalized assessed value of \$10,000,000 receives a final site plan approval on June 5, 2006:
 - The municipality does not have an ordinance enacted pursuant to the then applicable COAH Rules requiring that the developer pay an affordable housing fee.
 - The developer obtains a certificate of occupancy on August 1, 2008 and thus is required to pay a 2.5% fee of \$250,000.
 - The developer is entitled to a \$250,000 refund.

Timing and Procedures for Refunds

- File a written claim, requesting the refund, with the municipality to whom you paid the fee, by November 24, 2009 [within 120 days of the effective date of the statute which was July 27, 2009].
- The municipality must pay you the refund within 30 days of its receipt of the written refund claim.

Non-Residential Projects and the Actual Growth Share Obligation

- Extent of Relief from the Actual Growth Share Obligation - A particular non-residential development that is exempted from the Statewide Non-residential Development Fee by the Economic Stimulus Act of 2009 will only generate an actual growth share obligation for the municipality to the extent that the Council on Affordable Housing (COAH) in consultation with the New Jersey Department of Community Affairs (DCA) determines, within two years of the effective date the Economic Stimulus Act of 2009, that there are funds available in the New Jersey Affordable Housing Trust Fund or through other State or Federal housing subsidies to pay the municipality all or some portion the amount of Statewide Non-residential Development Fee that the developer of that particular non-residential development would have otherwise paid to the municipality.

Example One

- The developer of an office building would have paid a Statewide Non-residential Development Fee of \$200,000 to the municipality and the office building would have generated an actual growth share obligation for the municipality of 24 affordable housing units.
- The office building is exempt from paying the Statewide Non-residential Development Fee by the Economic Stimulus Act of 2009.
- COAH, in consultation with the DCA, determines that there are funds available in the New Jersey Affordable Housing Trust Fund or through other State or Federal housing subsidies to pay the municipality \$200,000.
- That office building will generate an actual growth share obligation for the municipality of 24 affordable housing units.

Example Two

- The developer of an office building would have paid a Statewide Non-residential Development Fee of \$200,000 to the municipality and the office building would have generated an actual growth share obligation for the municipality of 24 affordable housing units.
- The office building is exempt from paying the Statewide Non-residential Development Fee by the Economic Stimulus Act of 2009.
- COAH, in consultation with the DCA, determines that there are funds available in the New Jersey Affordable Housing Trust Fund or through other State or Federal housing subsidies to pay the municipality \$100,000.
- That office building will generate an actual growth share obligation for the municipality of 12 affordable housing units.

Example Three

- The developer of an office building would have paid a Statewide Non-residential Development Fee of \$200,000 to the municipality and the office building would have generated an actual growth share obligation for the municipality of 24 affordable housing units.
- The office building is exempt from paying the Statewide Non-residential Development Fee by the Economic Stimulus Act of 2009.
- COAH, in consultation with the DCA, determines that there are no funds available in the New Jersey Affordable Housing Trust Fund or through other State or Federal housing subsidies to pay the municipality anything.
- That office building will not generate an actual growth share obligation for the municipality.