

MEMO



To: Chris Brown, Director, City of Hoboken Department of Community Development

From: Dan Levin, Senior Planner, CGP&H

Date: February 7, 2019

Re: Development Fees: NJ Trends and State/National Examples

Overview

In New Jersey, "Development Fees" are monies paid by developers of both residential (i.e. dwelling units) and non-residential development (i.e. retail/office developments) to municipalities' Affordable Housing Trust Funds to facilitate the future provision of affordable housing. These fees are paid in addition to the normal municipal filing fees for planning/zoning/building permits etc., and are not conditional on receiving tax abatements or other financial dispensation to the town. Essentially, with an adopted development fee ordinance, a municipality can ensure that any and all new development within its jurisdiction provides funding towards new affordable housing.

Legal Enabling Framework

In *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the adoption of Rules by the Council on Affordable Housing (COAH). Pursuant to P.L. 2008, c. 46, Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that were under the jurisdiction of COAH, and that are now before a court of competent jurisdiction and have a Court-approved Spending Plan, may retain fees collected from non-residential development.

Amendments to the Fair Housing Act enacted in July 2008 (N.J.S.A. 52:27D-329.2 and -329.3) require each municipality to spend or commit to expend development fees (or payment-in-lieu of construction fees) in its affordable housing trust fund within four years of the date of collection. The Act goes on to specify that a municipality that fails to spend or commit to expend development fees or payment-in-lieu fees within four years of the date of collection must transfer the remaining unspent balance at the end of the four-year period to the "New Jersey Affordable Housing Trust Fund."

According to N.J.A.C. 5:97-8.3, for residential development fees, fees **shall be a maximum of one and one half percent of the equalized assessed value (EAV)**, provided no increased density is permitted. When a municipality approves an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance), the municipality **may impose a development fee of up to six percent of the equalized assessed value (EAV), for each additional unit that may be realized.**

For non-residential development fees, 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 value of land and improvements of the final development**. When the land being developed already has existing improvements, **the Non-Residential Development Fee is 2.5% of the value of the new improvements of the final development only**; the land value and value of existing improvements are excluded from the calculation of the fee.

There are additional rules and conditions for the imposition of residential and non-residential development fees in N.J.A.C. 5:97-8.3, however the regulations detailed here cover the majority of applicable situations.

NJ and National Trends

Most if not all of the roughly 300 communities that have entered into Settlements with Fair Share Housing Center have adopted development fee ordinances. Municipalities known to have adopted development fees include **Edison, Maplewood, Union Township** (Union County), **Bernardsville, Montgomery, and Berkeley Heights** where CGP&H serves as Administrative Agent (“AA”) administering affordable housing. While there are many more towns, at this time no centralized list that has been compiled.¹

Both the **City of Newark** and the **City of Jersey City** have not adopted development fees as established under N.J.A.C. 5:97-8.3, however they do have impact fee (also called linkage fee) ordinances that are tied to their Affordable Housing Trust Fund. For both cities, both residential and non-residential projects cannot receive a tax abatement without a contribution to the trust fund, with the amount of payments set at \$1,500/market rate residential unit, \$1.50/sqft for commercial space, and \$0.10/sqft for industrial space. It is CGP&H’s opinion that these figures are considerably below the market value to a developer for any abatement, and should Hoboken consider the adoption of impact fees, that it set the payment amounts considerably higher. See Exhibit A.

Along with New Jersey, Oklahoma, California and Massachusetts are at the forefront of impact fee programs – though it should be noted that these are not always linked to affordable housing funding, but rather to other infrastructure improvements:

In **Oklahoma City**, impact fees are linked to infrastructure, but are graduated on the geography of the development, with rural locations paying a higher impact fee than infill and “core” developments. There is an additional graduation of fees based on use, with “customer oriented” charged up to \$2.43/sqft, with residential charged the least at a floor of just \$0.26/sqft. See Exhibit B.

In Massachusetts, **Boston** has one of the oldest commercial linkage programs in the country. It charges about \$8.34 per square foot of new commercial development for the provision of affordable housing. Between 1986 and 2012, Boston has committed \$133,804,969 in linkage funds. These funds have helped create or preserve 10,176 affordable housing units in 193 development projects.²

In California, **San Jose** requires \$17/sqft for new rental residential development and **Berkeley** charges \$28,000 per unit for rental developments. These fees must be paid prior to the issuance of a certificate of occupancy.³ **San Diego’s** Housing Impact fee applies only to non-residential development, however all fees are deposited into the city’s Affordable Housing Trust Fund. Fees for San Diego range from \$0.80/sqft for research and development uses to over \$2/sqft for office developments. See Exhibit C

¹ Nationally, InclusionaryHousing.org maintains a national database to which New Jersey statistics have yet to be included and has asked FSHC for assistance in developing a statewide database. Telephone Conversation, January 8, 2019.

² Policy Brief: Affordable Housing Impact Fee Programs, Grounded Solutions Network

³ Cities with Impact Fees on New, Market-Rate Residential Development, The Non-Profit Housing Assn. of Northern California

Exhibit A – NJ Impact Fee Ordinances

Newark

10:24-11. AFFORDABLE HOUSING TRUST FUND.

An abatement authorized pursuant to this chapter for any market rate housing project or any commercial or industrial project shall not be approved unless the entity makes a contribution to the City of Newark's Affordable Housing Trust Fund, in accordance with N.J.S.A. 40A:12A-4.1 et seq. and this chapter.

No contribution shall be required of an entity that by a recorded deed or agreement, restricts (thereby setting aside) a minimum of twenty (20%) percent of the project for low and moderate income affordable housing for a minimum period of thirty (30) years in accordance with the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

a. *Amount of Payments.* The amount of contribution shall be calculated based upon the classification of the improvements to be tax exempt in accordance with the following formulas:

Market Rate Housing: \$1,500.00 per unit

Commercial Space: \$1.50 per square foot

Industrial Space: \$.10 per square foot

b. *Time of Contribution.* All contributions shall be due and payable as follows:

1. One-third (1/3) on or before the effective date of the executed Financial Agreement;
 2. One-third (1/3) on or before the issuance of the first of any construction permit for the project, but no later than six (6) months after the date of the Financial Agreement;
 3. One-third (1/3) on or before the date the first of any Certificate of Occupancy is issued for the project, but no later than twenty-four (24) months after the date of the Financial Agreement.
- Any payment that is late or unpaid in whole or in part, whether billed or not, shall bear the highest rate of interest allowed by law for unpaid taxes until paid in full.

Jersey City

§ 304-28. - Contribution required.



[Amended 9-11-2013 by Ord. No. [13-088](#); 11-26-2013 by Ord. No. [13-129](#); 3-12-2014 by Ord. No. [14-027](#); 9-24-2015 by Ord. No. [15-130](#)]

- A. No long term tax exemption permitted under N.J.S.A. 40A:20-1 et seq., or five year tax exemption permitted under N.J.S.A. 40A:21-8 and [Section 304-12](#) of the Jersey City Municipal Code, for any market rate housing project or any commercial or industrial project, shall be approved unless the recipient makes a contribution to the Jersey City's Affordable Housing Trust Fund, in accordance with N.J.S.A. 40A:12A-4.1 et seq., and this Chapter.
- B. No contribution shall be required of a recipient that by a recorded deed or agreement, restricts (thereby setting aside) a minimum of fifteen percent (15%) of the gross number of residential units within the project for low and moderate income affordable housing in accordance with the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.
- C. Contributions to Jersey City's Affordable Housing Trust Fund shall be paid in accordance with N.J.S.A. 40A:12A-4.1 et seq., for a term equal to the length of the tax abatement.

§ 304-29. - Amount of prepayments.



The amount of contributions shall be calculated based upon the classification of the improvements to be tax exempt in accordance with the following formulas:

Market Rate Housing	\$1,500.00 per unit
Commercial Space	\$ 1.50 per sq. ft.
Industrial Space	\$ 0.10 per sq. ft.

Exhibit B – Oklahoma City Linkage Fee Rates

Streets Development Fee Rates

The total streets development fee is calculated using three factors:

1. the type of building based on its classification in the [land use categories](#) table
2. the building's location within one of four [assessment areas](#) (Core, Infill, New Growth or Rural)
3. the building's square footage

The fee is determined by multiplying the total building square footage (excluding porches and garages) by the appropriate per-square-foot fee from the table below. Developers and builders should contact the [Development Center's Plan Review Office](#) for questions about land use categories and to confirm accurate fees.

Streets Fee Table

Amount shown is the dollar amount per square foot of development.

Land Use	Rural	New Growth	Infill	Core
Residential	\$0.36	\$0.36	\$0.31	\$0.26
Industrial	\$0.60	\$0.40	\$0.33	\$0.29
Office/Institutional/Lodging	\$1.21	\$1.14	\$0.96	\$0.84
Customer-Oriented Low	\$1.01	\$1.01	\$0.86	\$0.75
Customer-Oriented Moderate	\$1.41	\$1.41	\$1.19	\$1.04
Customer-Oriented High	\$2.43	\$2.43	\$2.05	\$1.79

Exhibit C – San Diego Development Fee Schedule

Appendix A of Division 6

TYPE OF USE	FEE/BUILDING SQUARE FEET		
	Through December 31, 2015	January 1, 2016 through December 31, 2016	On and After January 1, 2017
Office	\$1.41	\$1.76	\$2.12
Hotel	\$0.85	\$1.06	\$1.28
Research and Development	\$0.80	\$0.80	\$0.80
Retail	\$0.85	\$1.06	\$1.28

(Amended 11-25-2014 by O-20431 N.S.; effective 1-1-2015.)