

# Local Redevelopment and Housing Law

*(N.J.S.A. 40A:12A-1 et seq.)*

# Purposes:

1. Arrest and reverse conditions of deterioration of housing, commercial and industrial facilities.
2. Promote the advancement of community interests through programs of redevelopment, rehabilitation and incentives to the expansion of improvement of commercial, industrial, residential and civic facilities.
3. Promote physical development that will be most conducive to the social and economic improvement of the State and its municipalities.
4. Simplify and codify the legal mechanisms for local redevelopment.

# Definitions:

REDEVELOPMENT AREA means an area determined to be in need of redevelopment or to be a blighted area, which may include lands, buildings or improvements which of themselves are not detrimental to the public health, safety or welfare, but the inclusion of which is found necessary for the effective redevelopment of the area in which they are a part. (May qualify for the exercise of eminent domain and long term tax abatement)

REHABILITATION AREA means any area determined to be in need of rehabilitation to eliminate substandard structural or housing conditions and arrest the deterioration of that area through the extensive repair, reconstruction or renovation of existing structures. (Does not qualify for the exercise of eminent domain nor long term tax abatement)

# Steps for Declaring an Area in Need of Redevelopment

1. Council adopts resolution authorizing planning board to undertake a preliminary investigation.
2. Planning board undertakes a preliminary investigation and prepares a map.
3. Planning board provides notice and publication of public hearing.
4. Planning Board holds public hearing.
5. Planning board adopts a resolution recommending a redevelopment area.

6. Council adopts a resolution determining that the area is a redevelopment area.
7. Copy of the resolution provided to the Commissioner of the N.J. Department of Community Affairs
8. Notice of determination provided to all record owners of property located within the delineated area and upon each person who filed a written objection.
9. Notice to advise whether eminent domain is authorized and that any legal challenge thereto must be commenced within 45 days of receipt of the notice.
10. 45 day time limit to challenge determination.

# Criteria for Determining an Area in Need of Redevelopment

*(N.J.S.A. 40A:12-5)*

An area may be determined to be in need of redevelopment if any of the following conditions are found:

- a. buildings are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or are lacking in light, air, or space.
- b. The discontinuance or abandonment of the use of buildings or the disrepair thereof so as to be untenable.
- c. Publicly owned land or unimproved vacant land for a period of ten years not likely to be developed through the instrumentality of private capital.

- d. Areas containing buildings which are dilapidated, obsolete, overcrowded or having other deleterious conditions, which are detrimental to the safety, health, morals, or welfare of the community.
- e. A stagnant and unproductive condition of land having a negative social or economic impact or otherwise being detrimental to the safety, health, morals, or welfare of the surrounding area or the community in general.
- f. Areas in excess of 5 acres which have been destroyed by casualty resulting in material depreciation.
- g. Designated urban enterprise zones.
- h. consistency with smart growth planning principles.

Note: There are two leading New Jersey Supreme Court cases clarifying the foregoing criteria. The first, *Gallentin v Paulsboro*, 191 N.J. 344 (2007) held that the clause “e” allowing for the redevelopment of “stagnant or not fully productive” property did not allow redevelopment of areas which were merely operated in less than an optimal matter but only applied to property that had become stagnant or unproductive due to issues of title, diversity of ownership, or other similar conditions and which negatively affects surrounding properties. In *62-64 Main Street, LLC v. Mayor and Council of City of Hackensack*, 221 N.J. 129 (2015), the Court limited the holding of *Gallentin* to clause “e” and rejected the contention that a heightened constitutional standard for blight was applicable to the other clauses of the Redevelopment Law.



# Determination of an Area in Need of Rehabilitation

(N.J.S.A. 40A:12A-14)

a. An area may be determined to be in need of redevelopment if any of the following conditions are found:

(1) deteriorated or substandard structures ;

(2) more than 50% of [housing stock is at least 50 years old](#);

(3) vacancy, abandonment or underutilization of properties;

(4) arrearage of property tax payments;

(5) [environmental contamination](#); or

(6) water and sewer infrastructure is at least 50 years old and is in need of repair or substantial maintenance.

b. a need for rehabilitation may extend to the entire municipality.

- c. Council submission of a proposed resolution to planning board for its review and receipt of its recommendations within 45 days.
- d. Council adopt of resolution, with or without modification.
- e. Submission of resolution to Commissioner of Community Affairs for approval, if required by law.

Note: The simplified procedure to designate an area in need of rehabilitation does not include the exercise of the power of eminent domain to acquire property nor to grant long term tax abatement.

# Designation of a Redevelopment Entity

- a. May designate the Council, a redevelopment agency or housing authority as the redevelopment entity.
- b. municipal redevelopment agency created by ordinance:
  1. 7 commissioners appointed by Council, 5 year staggered terms.
  2. vacancies filled for the unexpired term.
  3. Not more than two commissioners may be officers or employees of the municipality.
  4. Not more than two commissioner may be members of the Council.
  5. No compensation for Commissioners but shall be reimbursed for expenses.
  6. Quorum of 4 commissioners; actions require the affirmative vote of a quorum present.
  7. Dissolution by Council ordinance.

# Redevelopment Plan

*N.J.S.A. 40A:12A-7*

- a. redevelopment plan adopted by ordinance.
- b. The redevelopment plan shall indicate:
  - (1) Its relationship to definite local objectives and other public improvements.
  - (2) Proposed land uses and building requirements in the project area.
  - (3) temporary and permanent relocation of residents
  - (4) any property to be acquired
  - (5) relationship to county and adjoining municipal master plans and the State Development and Redevelopment Plan.

(6) inventory of all low/moderate housing units to be removed.

(7) replacement of affordable housing unit.

- c. Redevelopment plan supersedes development regulations.
- d. consistency with the municipal master plan.
- e. Referral of ordinance to Planning Board for its recommendations.
- f. adoption of the redevelopment plan
- g. option to have Planning Board prepare proposed redevelopment plan for Council approval.

# Powers of Redevelopment Entity

*N.J.S.A. 40A:12A-8*

Upon the adoption of a redevelopment plan, the redevelopment entity may:

- a. Undertake redevelopment projects, and for this purpose issue bonds.
- b. Acquire property.
- c. Exercise eminent domain [within a Condemnation Redevelopment Area](#).
- d. Prepare sites for use in accordance with the redevelopment plan.
- e. contract for professional services and other consultants for the carrying out of redevelopment projects.

- f. contract with public agencies or redevelopers for any project or redevelopment work;
- g. Negotiate and collect revenue from a redeveloper to defray the costs of the redevelopment entity;
- h. contract with public agencies or redevelopers for property or services in connection with a redevelopment area.
- i. Lease or convey property or improvements, without public bidding.
- j. conduct investigations or make surveys and tests.
- k. contract with a public agency for the relocation of residents, industry or commerce displaced from a redevelopment area.

- l. repair, rehabilitate, demolish, or remove buildings and improvements.
- m. recommend the redevelopment or rehabilitation of other areas.
- n. Publish and disseminate information.
- o. Do all things necessary or convenient to carry out its powers.



# Long-term Tax Abatement (P.I.L.O.T.)

*(N.J.S.A. 40A:20-1 et seq.)*

## PURPOSE:

Long-term tax abatement providing for payment in lieu of taxes (PILOT) was traditionally used to encourage redevelopment within areas which would otherwise not attract private investment. It can also be used to fund the cost of community facilities which the municipality wishes the developer to construct and fund. It can also be used to offset the loss of potential income resulting from a municipality's requirements to scale back a project for planning or aesthetic purposes so as to make the project economically viable.

## “URBAN RENEWAL ENTITY”:

- a. Authority for financial agreement with an urban renewal entity.
- b. Definition of “urban renewal agency”
- c. Submission of application by a qualified urban renewal entity, containing:
  1. A general statement of the nature of the proposed project.
  2. A description of the proposed project.
  3. The estimated cost of the proposed project.
  4. The source, method and amount of money to be raised.
  5. A fiscal plan for the project.
  6. A proposed financial agreement

## FINANCIAL AGREEMENT:

- a. The proposed financial agreement shall be prepared by the entity and approved by ordinance of the municipality.
- b. Content and annual administrative fee
- c. Transmittal to the Director of the Division of Local Government Services, challenges and notice.

## PAYMENTS IN LIEU OF TAXES:

- a. Duration
- b. Annual Service Charge

(1) percentage of the annual gross revenue from the project,  
or

- (2) percentage of the total project cost upon substantial completion of the project.
- (3) schedule of annual service charges over term of the exemption period, which shall be in stages as follows:
  - (A) During first stage the urban renewal entity shall pay the municipality the annual service charge for municipal services supplied to the project.
  - (B) For the second stage either the annual service charge or 20% of the amount of taxes, whichever is greater;
  - (C) For the third stage either the annual service charge, or 40% of the amount of taxes, whichever is greater;

(D) For the fourth stage either the annual service charge or 60% of the amount of taxes, whichever is greater; and

(E) For the final stage either the annual service charge, or 80% of the amount of taxes, whichever is greater.

(4) The annual service charge shall be paid quarterly

(5) 5 % of the annual service charge payable to the county.

(6) credit for the amount of the real estate taxes paid on land.

(7) minimum annual service charge.

(8) Termination of the annual service charge.

c. Upon the termination of the exemption, the project shall be assessed and subject to taxation as are other taxable properties in the municipality.

# Short-term Tax Abatement

(*N.J.S.A. 40A:21-1 et seq.*)

Short term tax abatement (five years) is available for both areas in need of redevelopment and areas in need of rehabilitation:

- a. Cost basis: the agreement may provide for the applicant to pay to the municipality in lieu of full property tax payments an amount equal to 2% of the cost of the project.
- b. Gross revenue basis: the agreement may provide for the applicant to pay to the municipality in lieu of full property tax payments an amount annually equal to 15% of the annual gross revenues from the project.
- c. Tax phase-in basis: the agreement may provide for the applicant to pay to the municipality in lieu of full property tax payments an amount equal to a percentage of taxes otherwise due.