

From: [Toma, Michael](#)
To: [Rosenson, Valerie](#)
Cc: [Isidro, Judith](#); [Lee, Dana](#)
Subject: Legal Opinion Re: Commercial Building Permit Fee Exemptions
Date: Thursday, February 21, 2019 9:40:10 AM

Val,

Please forward the opinion below to Rep. Jacobson. Thanks.

Rep. Jacobson,

I have researched the issue of whether a municipality has authority to exempt certain developments, such as affordable housing developments and developments of non-profit organizations, from the commercial building permit fee increase. The answer is yes. The State of Connecticut Building Code provides, in Section R108.2, Schedule of permit fees: “Each municipality shall establish a schedule of fees for each construction document review, building permit, certificate of approval and certificate of occupancy. A schedule of adopted fees shall be posted for public view.” There is no requirement in this Code that all projects be charged an equivalent building permit fee. There are no other state regulations or statutes which address how local building permit fees should be set. Lastly, I could find no Connecticut judicial decisions relating to whether local building permit fees must be equivalent for all permit applicants.

I inquired with the State of Connecticut Building Official’s Office, which takes the position that municipalities determine what fees to charge for building permits; there is no oversight of such local fees by the State. This position is consistent with the home rule framework in Connecticut law, which has established that as to issues of local concern, such as the amount of fees for a local permit, the State defers to local decision-making. Home rule legislation was enacted to enable municipalities to conduct their own business and control their own affairs upon the principle that the municipality itself knew better what it wanted and needed than did the state at large. Ganim v. Smith and Wesson Corp., 258 Conn. 313 (2001). Providing exemptions from the full fee to select applicants will also pass constitutional muster. Tiering of tax obligations, as well as of other charges, have been upheld in court against equal protection challenges. “Claims that taxation schemes violate the equal protection rights of those more heavily taxed are subject to an especially deferential rational basis review.” Merscorp Holdings, Inc. v. Malloy, 320 Conn. 448, 461 (2016). The same deferential standards govern equal protection challenges to user fees. Id., at 462. The burden is on the complaining party to negate every conceivable basis that might support the legislation. If there is a rational basis for the differential treatment, the fee structure will not be invalidated. In the matter at hand, there is a legitimate public purpose for exempting nonprofits and affordable housing developments from increased fees – the lower fees will encourage further nonprofit and affordable housing activity in Stamford, which benefits the City and its residents.

Finally, I was informed by our Building Official, Mr. Gami, that New York City provides certain exemptions from the full building permit fee for nonprofits. My office is contacting larger Connecticut municipalities to determine if they provide such exemptions. I hope to have information from other towns to share at the Committee meeting.

Michael Toma

From: Cooper, Vikki <VCooper@StamfordCT.gov>
Sent: Wednesday, February 6, 2019 11:35 AM
To: Toma, Michael <MToma@StamfordCT.gov>; Emmett, Kathryn <KEmmett@StamfordCT.gov>;
Isidro, Judith <JIsidro@StamfordCT.gov>
Subject: FW: Legal Opinion Re: Commercial Building Permit Fee Exemptions

Mike, please handle this. Thanks.

Vikki

From: Emmett, Kathryn <KEmmett@StamfordCT.gov>
Sent: Tuesday, February 5, 2019 6:19 PM
To: Cooper, Vikki <VCooper@StamfordCT.gov>; Isidro, Judith <JIsidro@StamfordCT.gov>
Subject: FW: Legal Opinion Re: Commercial Building Permit Fee Exemptions

This needs to be assigned. Thanks.

Kathryn Emmett, Esq.
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From: Jacobson, Jonathan
Sent: Tuesday, February 05, 2019 5:29 PM
To: Emmett, Kathryn
Cc: Quinones, Matt; Nabel, Susan; Pratt, Rodney; Fedeli, Mary Lisa; Rosenson, Valerie
Subject: Legal Opinion Re: Commercial Building Permit Fee Exemptions

Director Emmett,

Good evening, I write to you in my capacity as Chair of the Operations Committee for the Board of Representatives to request a legal opinion in connection with the above. Specifically, I would like to know what action our Board can take, if any, to exempt non-profits or affordable housing developments from the commercial building permit fee increase recently passed by the full Board during the February 4, 2019 Regular Board Meeting.

Sincerely,

Jonathan Jacobson
Stamford Board of Representatives
District 12