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Title: AN ORDINANCE TO REPEAL ORDINANCE 6S&FE, SEPTEMBER 2, 1998 ESTABLISHING AND AMENDING THE NEWARK DOWNTOWN SPECIAL IMPROVEMENT DISTRICT AND DESIGNATING A DISTRICT MANAGEMENT CORPORATION, TO CREATE AN EXPANDED DISTRICT AND TO CHANGE REGULATIONS FOR THE OPERATION OF THE SPECIAL IMPROVEMENT DISTRICT.
 Invitation: Engineering Director, December 18, 2012
 Deferred 6PSF-d 020613/Public Hearing Open

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2/20/2013	2	Municipal Council	Close on Public Hearing and Adopt	Pass
2/6/2013	1	Municipal Council	maintained on public hearing and deferred to Special meeting	Pass
1/16/2013	1	Municipal Council	Close on Public Hearing and Adopt	Pass
1/3/2013	1	Municipal Council	Adopt on First Reading	Pass
12/19/2012	1	Municipal Council	Advance to First Reading	Pass

AN ORDINANCE TO REPEAL ORDINANCE 6S&FE, SEPTEMBER 2, 1998 ESTABLISHING AND AMENDING THE NEWARK DOWNTOWN SPECIAL IMPROVEMENT DISTRICT AND DESIGNATING A DISTRICT MANAGEMENT CORPORATION, TO CREATE AN EXPANDED DISTRICT AND TO CHANGE REGULATIONS FOR THE OPERATION OF THE SPECIAL IMPROVEMENT DISTRICT.

**Invitation: Engineering Director, December 18, 2012
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WHEREAS, the City of Newark (the "City") previously created a special improvement district in a portion of the Central Business District ("CBD") and designated the Newark Downtown District Management Corporation ("NDD") as the District Management Corporation to manage that District; and

WHEREAS, NDD wishes to expand their services to assist a greater portion of the CBD as it is their belief that such expansion would be desirable; and

WHEREAS, based on 14 years of successful operations by NDD, the Mayor and Municipal Council agree that such expansion would be in the best interests of the City and its residents and businesses; and

WHEREAS, the experience with NDD over that time has demonstrated that district management corporations assist municipalities in promoting economic growth and employment within business districts; and

WHEREAS, that experience has also demonstrated that district management corporations are an important means of providing self-help and self-financing programs to enhance the commercial viability and attractiveness of the CBD;

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

Ordinance 6S&FE 090298, adopted on September 2, 1998, and all amendments and supplements thereto, are hereby repealed in their entirety and replaced as follows:

SECTION 1. DEFINITIONS

- a. "District Management Corporation" means the "Newark Downtown District Management Corporation" (or "NDD"), an entity incorporated pursuant to Title 15A of the New Jersey Statutes and designated by this Ordinance to receive funds collected by a special assessment within a Special Improvement District, as authorized by N.J.S.A. 40:56-65 et seq. and this Ordinance.
- b. "Sidewalk Vending" means any form of hawking, peddling, selling or vending of any foods, beverages, confections, goods, wares, merchandise or commodities of any nature or description on the streets or sidewalks or on any other public place within the District.
- c. "Vendor" means anyone engaged in any form of Sidewalk Vending.
- d. "Special Improvement District" or "District" means an area within a municipality designated by municipal ordinance as an area in which a special assessment on property within the District shall be imposed for the purposes of promoting the economic and general welfare of the District and the City.
- e. "Vendor Handbook" means a written document containing all of the rules and regulations governing the conduct of Sidewalk Vending within the District.

SECTION 2. FINDINGS

The Mayor and Municipal Council find and declare:

- a. that the area within the City, as described in Schedules A, B and C of this Ordinance will benefit from being designated as a Special Improvement District; and
- b. that a District Management Corporation will provide administrative and other services to benefit the businesses, employees, residents and consumers in the Special Improvement District; and
- c. that a special assessment shall be imposed and collected by the City with the regular property tax payment or payment in lieu of taxes or otherwise, and that all or a portion of these payments shall

be transferred to the District Management Corporation to effectuate the purposes of this Ordinance and to exercise the powers given to it by this Ordinance; and

d. that it is in the best interest of the municipality and the public to create a Special Improvement District and to designate a District Management Corporation.

SECTION 3. CREATION OF DISTRICT

a. There is hereby created and designated within the City of Newark a Special Improvement District to be known as the “Downtown Newark Special Improvement District”.

b. The District shall have the following boundaries:

Beginning at the place where the centerline of University Avenue intersects with the southern boundary of the NJ Transit railroad property, continuing easterly along the boundary of the NJ Transit railroad property to the edge of the Passaic River, then southeasterly along the edge of the Passaic River to the point where it would intersect with the centerline of Jersey Street if Jersey Street were extended to the River, then southerly along the centerline of Jersey Street to the centerline of Raymond Boulevard, then westerly along the centerline of Raymond Boulevard to the centerline of Raymond Plaza East, then southerly along the centerline of Raymond Plaza East to the centerline of Edison Place, then westerly along the centerline of Edison Place until its intersection with the westerly edge of the Northeast Corridor railroad property, then southerly along the edge of the Northeast Corridor railroad property to the centerline of Walnut Street, then westerly along the centerline of Walnut Street to the centerline of Mulberry Street, then northerly along the centerline of Mulberry Street to the centerline of Franklin Street, then westerly along the centerline of Franklin Street, continuing across Broad Street to the centerline of Hill Street, then westerly along the centerline of Hill Street to the centerline of Washington Street, then northerly along the centerline of Washington Street to the centerline of William Street, then westerly along the centerline of William Street to the centerline of University Avenue, then northerly along the centerline of University Avenue to the place of the beginning.

c. The District shall include all of the properties listed in Schedules A, B and C of this Ordinance.

d. All properties located within the District, except for those which are exempt from real estate taxation and not subject to the payment of any amount in lieu of property taxes either directly or by some third party, shall be subject to the special assessments made on behalf of the District, subject solely to the approval of such assessments in the manner set forth in N.J.S.A. 40:56-65 et seq.

SECTION 4. DESIGNATION OF THE DISTRICT MANAGEMENT CORPORATION

a. The Newark Downtown District Management Corporation (NDD), a non-profit corporation created pursuant to Title 15S of the New Jersey Statutes, is hereby designated as the District Management Corporation for the Downtown Newark Special Improvement District. NDD shall have all of the powers necessary to effectuate the purposes of this Ordinance, including but not limited to:

(1.) Adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties; and

- (2.) Employ such persons as may be required, and fix and pay their compensation from funds available to the corporation; and
- (3.) Apply for, accept, administer and comply with the requirements respecting an appropriation of funds or a gift, grant or donation of property or money; and
- (4.) Make and execute agreements which may be necessary or convenient to the exercise of the powers and functions of the corporation, including contracts with any person, firm, corporation, governmental agency or other entity; and
- (5.) Administer and manage its own funds and accounts and pay its own obligations; and
- (6.) Borrow money from private lenders and from governmental entities; and
- (7.) Fund the improvement of the exterior appearance of properties in the district through grants or loans; and
- (8.) Fund the rehabilitation of properties in the District; and
- (9.) Accept, purchase, rehabilitate, sell, lease or manage property in the District; and
Enforce the conditions of any loan, grant, sale or lease made by the corporation; and
- (11.) Provide security, sanitation and other services to the District, supplemental to those provided normally by the municipality; and
Undertake improvements designed to increase the safety or attractiveness of the District to businesses which may wish to locate there or to visitors to the District, including, but not limited to, litter cleanup and control, landscaping, parking areas and facilities, recreational and rest areas and facilities, pursuant to pertinent regulations of the City; and
Publicize the District and the businesses included within the district boundaries; and
Recruit new businesses to fill vacancies in, and to balance the business mix of, the District; and
- (15.) Organize special events in the District; and
- (16.) Provide special parking arrangements for the District; and
Provide temporary and permanent decorative lighting and signage in the District. and
- (18.) Provide any activity which will enhance the movement, safety, convenience or

enjoyment of pedestrians, including seating, display and sale of merchandise, exhibiting, advertising, public events, and any other use or activity which will enhance the movement, safety, convenience or enjoyment of pedestrians and any other use or activity permitted by the special improvement district or other applicable law, and/or this Ordinance; and

(19.) Control and regulate the following:

(A.) The distribution and location of movable furniture, sculpture or pedestrian traffic control devices, landscaping and other facilities located on the streets or sidewalks within the District; and

(B.) The uses to be permitted on the streets or sidewalks within the District by occupants of abutting property, any transit or telephone utility, concessionaires, vendors and others to serve the convenience and enjoyment of pedestrians and the location of such uses; and

(C.) The issuance of permits to conduct any special activity consistent with the broad purposes of the District; and

(D.) The operation of any lighting, heating or other facilities on the streets or sidewalks within the District, replacing landscaping and maintaining the furniture and facilities on the streets or sidewalks within the District.

b. Wherever possible, the NDD shall utilize affirmative action in its personnel and procurement practices. Pursuant to N.J.A.C. 17:27-5.2, NDD shall not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status or gender.

c. By written agreement, the City may delegate to NDD the contracting of some or all of any work to be performed on any street, municipal property or other public place within the District. In such cases, NDD shall be deemed to be a "contracting unit", as such term is defined within the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) All plans and specifications to be used by NDD in such contracting must be approved by the City Engineer prior to the seeking of bids for any such work.

d. NDD is further authorized to assist the City in the regulation of Sidewalk Vending within the District, subject to the following conditions:

(1.) The rules and regulations set forth in the Vendor Handbook.

(2.) The conduct of Sidewalk Vending within the District is hereby authorized, subject to the terms set forth in the Vendor Handbook and any other rules or regulations regarding such activities as are set forth within the Revised Ordinances of the City.

(3.) The Vendor Handbook shall be subject to annual review and updating by such agency as may be designated for such task by the Mayor.

(4.) Nothing in this Section 4.d shall prohibit the holder of a valid restaurant license from

engaging in the sale of the products governed by that license on the sidewalk immediately adjacent to the licensed premises, provided that such activity complies fully with such health and other regulations as apply to that activity.

SECTION 5. BUDGET AND ASSESSMENTS

a. The cost of improvements within the District and the annual costs of operations and maintenance of services that are provided at a level specific to the District, as opposed to services normally provided by the City, will provide benefits primarily to the properties located within the District rather than to the entirety of the City. Such costs shall be borne by the properties within the District in the manner provided in N.J.S.A. 40:56-65, et seq.

b. The City shall continue to provide, either directly or through the NDD, the same level of municipal services (the "Basic Services") to the properties within the District as are generally provided throughout the City. The costs of such Basic Services shall be borne by the City as a part of the regular municipal budget or the regular municipal capital budget, as appropriate.

c. The City may, subject to the availability of funds and the demand for services, annually make additional municipal appropriations available to the NDD from either the regular municipal budget or the regular municipal capital budget.

d. The fiscal year of the NDD shall be the calendar year. Not later than October 15 of the year preceding the year for which the budget is proposed, NDD shall submit a detailed annual budget for consideration by the Mayor and Municipal Council.

e. The budget to be considered shall include the following:

(1.) an estimate of the cost of operating and maintaining and annually improving the District for the next fiscal year,

(2.) an estimate of changes in the amounts of such costs which would follow upon the adoption of any addition or amendment to the plan recommended to or under consideration by the Municipal Council.

(3.) Such estimates shall be reasonably itemized and shall include a summary of the categories of cost properly chargeable as follows:

(A.) The amount of such costs to be charged against the general funds of the City; and

(B.) The amount of costs to be charged and assessed against properties benefited in the district in proportion to benefits which shall be the aggregate of costs of annual improvements to be made in the district during the ensuing year; and

(C.) The amount of costs, if any, to be specially taxed against properties in the District.

(4.) A report explaining how the budget will contribute to the accomplishment of the goals

and objectives of the District.

f. The Municipal Council shall receive and consider such estimate and the items of cost after such notice and hearing before it or its appropriate committee as it shall deem necessary or expedient, and shall approve the same, with such amendments thereto as it shall find necessary, and the amounts of each item of cost estimated shall be deemed appropriated and expendable to operate and maintain the District during the ensuing fiscal year.

g. The Budget shall be considered and adopted in accordance with the following procedure:

(1.) The Budget shall be introduced, approved, amended and adopted by resolution passed by not less than a majority of the full membership of the Municipal Council.

The procedure shall be as follows:

- (A.) Introduction and approval;
- (B.) Public advertising;
- (C.) Public hearing;
- (D.) Amendments and public hearings, if required;
- (E.) Adoption.

(2.) The budget shall be introduced in writing at a meeting of the Municipal Council. Approval thereof shall constitute a first reading, which may be by title. Upon the approval of the budget by the Municipal Council, it shall fix the time and place for the holding of a public hearing upon the budget.

(3.) The budget shall be advertised after approval. The advertisement shall contain a copy of the budget and shall set forth the date, the time and place of the hearing. It shall be published at least 10 days prior to the date fixed therefor in a newspaper published and circulating in the City.

(4.) No budget shall be adopted until a public hearing has been held thereon and all persons having an interest therein shall have been given an opportunity to present objections. The hearing shall be held not less than 28 days after the approval of the budget.

(5.) The Public Hearing shall be held at the time and place specified in the advertisement thereof, but may be adjourned from time to time until the hearing is closed. The budget, as advertised, shall be read at the public hearing, in full, or it may be read by its title, if:

(A.) At least one week prior to the date of the hearing, a complete copy of the approved budget, as advertised:

(i.) shall be posted in a public place where public notices are customarily posted in City Hall; and

(ii.) is made available to each person requesting the same, during that week and during the public hearing; and

(B.) The Municipal Council shall, by resolution passed by not less than a majority of the full membership, determine that the budget shall be read by its title and declare that the conditions set forth in paragraph (A.) have been met. After closing the hearing, the Municipal Council may adopt the budget by title, without amendments, or may approve amendments, as provided in subsection g. of this section, before adoption.

(6.) The Municipal Council may amend the budget during or after the public hearing. No amendment by the Municipal Council shall be effective until taxpayers and all persons having an interest therein shall have been granted a public hearing thereon, if the amendment shall:

(A.) Add a new item in an amount in excess of 1% of the total amount as stated in the approved budget; or

(B.) Increase or decrease any item by more than 10%; or

(C.) Increase the amount to be raised pursuant to N.J.S.A. 40:56-80 by more than 5%, unless the same is made pursuant to an emergency temporary appropriation only.

Notice of hearing on an amendment shall be advertised at least three days before the date set therefor. The amendment shall be published in full in the same manner as an original publication and shall be read in full at the hearing and before adoption.

(7.) Final adoption shall be by resolution, adopted by a majority of the full membership of the Municipal Council, and may be by title.

h. Each year, when the Mayor and Municipal Council shall have acted on the estimate of costs for the ensuing year, the Municipal Assessor shall prepare an assessment roll setting forth separately the amounts to be specially assessed against the benefited and assessable properties in the District in proportion to the benefits. Descriptions of such properties, and the names of the then current owners of such properties, so far as names are available, shall be included in each annual assessment roll. The assessment roll, when so prepared, shall be filed in the Office of the City Clerk and be there available for inspection. The Municipal Council shall annually meet to consider objections to the amounts of such special assessments at least 10 days after a notice of hearing has been published once in the official newspaper and mailed to the named owners of all tracts, parcels and lots of property proposed to be assessed. The notice shall set forth the time and place of meeting, and set forth the purpose of such meeting, but may refer to the assessment roll for further particulars. When the Municipal Council shall have approved the amounts of the special assessments set forth therein, or as may be changed by it, the City Clerk shall forthwith certify a copy of the assessment roll, with such changes, if any, to the County Tax Board.

i. For the purpose of this section, "Annual Improvements" shall mean and include any reconstruction, replacement or repair of trees and plantings, furniture, shelters and other facilities of the District, furnishing overhead or underground heating for snow removal or for enjoyment of pedestrians, and any other local improvement which benefits properties within the District. For the purpose of this Ordinance, "costs" shall, with respect to annual improvements to and operation and

maintenance the District, mean costs of annual improvements; and all other costs, including planning costs, incurred or to be incurred in connection with annual improvements to and operation and maintenance of the District.

j. Monies appropriated and collected on account of annual improvement costs, and costs of operating and maintaining the District shall be credited to a special account. The Mayor and Municipal Council may incur the annual costs of improving, operating and maintaining the District during any fiscal year, though not specifically provided for by line item or other category in an approved estimate for such fiscal year, if in its discretion it shall be deemed necessary to provide for such annual improvements or operation or maintenance prior to the succeeding fiscal year and so long as the total amount of the account as approved for that year is not exceeded by that expenditure. Any balances to the credit of the account and remaining unexpended at the end of the fiscal year shall be conserved and applied towards the financial requirements of the succeeding year.

k. The City shall cause 25% of the Annual Budget approved by the City Council to be paid to the NDD quarterly, on or about the first day of March, June, September and December of each year.

l. All special assessment payments collected by the Tax Collector shall be placed and maintained in a special account that shall at all times be segregated from general municipal funds.

m. The City Tax Collector shall withhold from each quarterly payment an Administrative Fee of 1% of the amount actually collected by the Tax Collector.

SECTION 6. ANNUAL REPORT

a. The NDD shall, within 30 days after the close of each fiscal year, make an annual report to the Mayor and Municipal Council regarding its activities of the prior year.

SECTION 7. ANNUAL AUDIT

a. NDD shall cause an annual audit of its books, accounts and financial transactions to be made and filed with the Mayor and Municipal Council, and for that purpose NDD shall employ a certified public accountant of New Jersey. The annual audit shall be completed and filed with the Mayor and Municipal Council within four months after the close of the fiscal year and a certified duplicate copy of the audit shall be filed with the Director of the Division of Local Government Services in the Department of Community Affairs within five days of the filing of the audit with the Mayor and Municipal Council.

SECTION 8. MUNICIPAL POWERS RETAINED

a. Notwithstanding the establishment of the District and the designation of NDD, the City shall retain its police powers and other rights and powers relating to the District, and such actions shall not be interpreted or construed to be a vacation, in whole or in part, of any municipal street or part thereof, it being intended that the establishment of the District pursuant to this Ordinance is a matter of a regulation only. This Ordinance shall not prevent the City at any time hereafter from abandoning the operation of the District, changing the extent of the District, supplementing or amending the description of the District to be specially assessed or taxed for annual costs of District, or changing or repealing any limitations on the use of the District streets by private vehicles or any plan, rules or

regulations adopted for the operation of the District, with any such action to be done by adoption of an ordinance.

SECTION 9. SEVERABILITY

a. If any provision of this N.J.S.A. 40:56-65 et seq. (the Act) or this Ordinance or the application thereof to any person or circumstance is held invalid, such holding shall not affect other provisions or applications of the Act or this Ordinance, as applicable, and to this end the such invalid provisions of this Act are severable.

SECTION 10. NOTICE

a. At least 10 days prior to the date fixed for a public hearing for this Ordinance, a copy of the Ordinance and notice of the date, time and place of the hearing shall be mailed to the owners of all of the properties located within the proposed boundaries of the District.

SECTION 11. EFFECTIVE DATE

a. This ordinance shall take effect upon final passage and publication as required by law. The expansion of the District, the delivery of service to the expanded parts of the District and the assessment of the expanded parts of the District shall take place beginning on January 1, 2013.

STATEMENT

This ordinance provides for the expansion of the boundaries of the Downtown Newark Special Improvement District, with the expanded area to be subject to management by the existing Newark Downtown District Management Corporation, a not-for-profit corporation that has managed the district since its creation in 1998.

The ordinance also clarifies the designation of properties that will be subject to annual special assessment for the purpose of providing funding for the services provided within the district that are greater than the services normally provided by the City. Such assessments will apply to all properties, except those that are fully exempt from taxation and not subject to the payment of any amount in lieu of property taxes either directly or by some third party.