



Legislation Details (With Text)

**File #:** 18-1722      **Version:** 1      **Name:** Ordinance amending and supplementing to add Transient Accommodation (Short Term Rentals) to the list of properties subject to the license fee assessment

**Type:** Ordinance      **Status:** Adopted

**File created:** 11/2/2018      **In control:** Finance

**On agenda:** 1/15/2019      **Final action:** 8/7/2019

**Title:** ORDINANCE AMENDING ORDINANCE 6PSF-h, JUNE 19, 2013, ORDINANCE AMENDING AND SUPPLEMENTING THE CODE OF THE CITY OF NEWARK TO AUTHORIZE THE CREATION OF A SPECIAL IMPROVEMENT DISTRICT TO BE KNOWN AS THE "GREATER NEWARK TOURISM IMPROVEMENT DISTRICT", BY ADDING TRANSIENT ACCOMODATION (SHORT TERM RENTALS) TO THE LIST OF PROPERTIES SUBJECT TO THE LICENSE FEE ASSESSMENT AND AMENDS SCHEDULE A, TO AUTHORIZE THE INCLUSION OF TRANSIENT ACCOMODATIONS AS THEY BECOME IDENTIFIED.

- Deferred 6F-d 012319
- Deferred 6F-c 020619
- Deferred 6F-c 022219
- Deferred 6F-c 030619
- Deferred 6F-c 032019
- Deferred 6F-c 040319
- Deferred 6F-c 041719
- Deferred 6PSF-d 051519
- Deferred 6PSF-d 060619
- Deferred 6PSF-d 071019

**Sponsors:** Council of the Whole

**Indexes:**

**Code sections:**

Date	Ver.	Action By	Action	Result
8/7/2019	1	Municipal Council	Close on Public Hearing and Adopt	Pass
7/10/2019	1	Municipal Council	Maintained on Public Hearing and Deferred	Pass
6/6/2019	1	Municipal Council	Maintained on Public Hearing and Deferred	Pass
5/15/2019	1	Municipal Council	Maintained on Public Hearing and Deferred	Pass
5/1/2019	1	Municipal Council	Adopt on First Reading	Pass
4/17/2019	1	Municipal Council	Defer on First Reading	Pass
4/3/2019	1	Municipal Council	Defer on First Reading	Pass
3/20/2019	1	Municipal Council	Defer on First Reading	Pass
3/6/2019	1	Municipal Council	Defer on First Reading	Pass
2/22/2019	1	Municipal Council	Defer on First Reading	Pass
2/20/2019	1	Municipal Council	No Action Taken	
2/6/2019	1	Municipal Council	Defer on First Reading	Pass

1/23/2019	1	Municipal Council	Defer on First Reading	Pass
1/15/2019	1	Municipal Council	Advance to First Reading	Pass

**ORDINANCE AMENDING ORDINANCE 6PSF-h, JUNE 19, 2013, ORDINANCE AMENDING AND SUPPLEMENTING THE CODE OF THE CITY OF NEWARK TO AUTHORIZE THE CREATION OF A SPECIAL IMPROVEMENT DISTRICT TO BE KNOWN AS THE “GREATER NEWARK TOURISM IMPROVEMENT DISTRICT”, BY ADDING TRANSIENT ACCOMODATION (SHORT TERM RENTALS) TO THE LIST OF PROPERTIES SUBJECT TO THE LICENSE FEE ASSESSMENT AND AMENDS SCHEDULE A, TO AUTHORIZE THE INCLUSION OF TRANSIENT ACCOMODATIONS AS THEY BECOME IDENTIFIED.**

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**WHEREAS**, on July 1, 2018, the New Jersey Legislature enacted Assembly No. 1753 imposing the State sales and use tax and hotel and motel occupancy fee on transient accommodation, authorizing various municipal taxes and fees on transient accommodations and amending various parts of statutory law, and supplementing P.L. 1966, c. 30 (C.54:32B-1 et seq.); and

**WHEREAS**, on June 19, 2013 the City of Newark Municipal Council approved Ordinance 6PSF-h establishing the Special Improvement District and authorizing the creation of the Greater Newark Tourism Improvement District Management Corporation; and

**WHEREAS**, Ordinance 6PSF-h June 19, 2013 also authorizes the City of Newark to impose a license fee assessment of 1.5% on hotel owners in the Tourism Improvement District (TID) on hotel room rates charged and actually paid; and

**WHEREAS**, it becomes necessary to amend Ordinance 6PSF-h June 19, 2013 to include the addition of Transient Accommodations to the list of properties subject to license fee assessment as reflected in **Schedule A**.

**NOTE:** Additions are shown as **underlined and bold**. Deletions are shown as strikethroughs.

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

**Section 1: Definitions.**

- a. “Special Improvement District” (sometimes referred to as the “District”), means an area within the City of Newark designated by this Ordinance as an area in which a special assessment on

certain property within the District shall be imposed for the purposes of promoting the economic and general welfare of the District and the Municipality.

- b. "District Management Corporation" means the Greater Newark Tourism Improvement District Management Corporation" (also referred to as the "Management Corporation"), an entity to be incorporated pursuant to Title 15A of the New Jersey Statutes and designated by this Ordinance to receive funds collected by a special assessment within the District, as authorized by this Ordinance and any amendatory supplemental ordinances.
- c. **Transient accommodation means a room, group of rooms, or other living or sleeping space for the lodging of occupants, including but not limited to residences or buildings used as residences. Transient accommodation does not include: a hotel or hotel room; a room, group of rooms, or other living or sleeping space used as a place of assembly; a dormitory or other similar residential facility of an elementary or secondary school or a college or university; a hospital, nursing home, or other similar residential facility of a provider of services for the care, support and treatment of individuals that is licensed by the State; a campsite, cabin, lean-to, or other similar residential facility of a campground or an adult or youth camp; a furnished or unfurnished private residential property, including but not limited to condominiums, bungalows, single family homes and similar living units where no maid service, room service, linen changing service or other common hotel services are made available by the lessor and where the keys to the furnished or unfurnished private residential property, whether a physical key, access to a keyless locking mechanism, or other means of physical ingress to the furnished or unfurnished private residential property, are provided to the lessee at the location of an offsite real estate broker licensed by the New Jersey Real Estate Commission pursuant to R.S.45:15-1 et seq.; or leases of real property with a term of at least 90 consecutive days.**
- d. **Transient space marketplace means an online marketplace through which a person may offer transient accommodation or hotel rooms to individuals. A transient space marketplace allows transient accommodations or hotel rooms to be advertised or listed through an online marketplace in exchange for consideration or provides a means for a customer to arrange for the occupancy of the transient accommodation or hotel room in exchange for consideration. A transient space marketplace shall not include an online marketplace operated by or on behalf of a hotel or hotel corporation that facilitates customer occupancy solely for the hotel or hotel corporation's owned or managed hotels and franchisees.**

**Section 2: Findings.** Pursuant to *N.J.S.A. 40:56-65, et seq.* (the "Act"), the Governing Body of the City of Newark hereby determines the following:

- a. That the enhancement of business and leisure tourism presents an untapped source of employment opportunities and tax revenues which can enhance the economic well-being of the City of Newark and its residents.
- b. That the hotel industry properties, **transient accommodations** and businesses described by Lot and Block and street address as set forth in **Schedule A** of this Ordinance are an integral, vital economic and social component within the City and that the creation of a special

improvement district including and benefitting such properties and businesses will serve to enhance the safety, welfare and economic growth of the District and, consequently, the residents of the City as a whole.

- c. That through creation of a District Management Corporation to provide administrative and other services, the hotel property, **transient accommodations** and businesses owners and operators of the District, and residents and consumers, will benefit, and the City will have added ability to promote tourism and economic growth and employment.
- d. That all costs for the administration and management of the District should be funded by a special license fee assessment imposed and collected by the City on the hotel properties **and transient accommodations** identified in **Schedule A** of this Ordinance who benefit from and facilitate tourism within the District and within the City. Such levy shall be collected by the City and shall be transferred to the District Management Corporation to effectuate the purposes of this Chapter and to exercise the powers granted to it pursuant to this Chapter.
- e. That it is in the best interests of the City and the public to create a Special Improvement District and a management corporation to administer the District.
- f. That the hotel **and transient accommodation** industry and business community should be encouraged to provide self-help and self-financing programs to meet local and regional needs, goals and objectives through the formation of an independent District Management Corporation formed under Title 15A of the New Jersey Statutes.

### **3. Establishment of the District.**

- a. Based upon the findings hereinabove set forth and the interests of the hotel business owners, **transient accommodation operators**, merchants and property owners comprising the District, there is hereby established the Greater Newark Tourism Improvement District (“TID” or the “District”) as a Special Improvement District within the City of Newark pursuant to the provisions of the Act.
- b. The District shall consist of all hotel properties **and transient accommodation operators** within the City of Newark, which are identified by street address and by Block and Lot designation in **Schedule A** hereto. Included among such properties identified in **Schedule A** are two (2) properties that are currently under construction, which properties shall not be subject to license fee assessment until after obtaining a Certificate of Occupancy. **Schedule A** may be amended by Ordinance to add new hotel properties and **transient accommodations** or to delete properties which have a change of use from hotel to other uses.
- c. This Ordinance contemplates that other contiguous municipalities may form similar Special Improvement Districts and such municipalities Special Improvement Districts, which are authorized to participate in the TID established by this Ordinance and share in the benefits of the efforts of the District Management Corporation based upon license fee assessments to be established that are commensurate with level of benefit received by such participants. Any such participating municipalities’ Special Improvement Districts shall pay license fee assessments to and be managed by the District Management Corporation designated pursuant to Section 5 herein.

- d. **Schedule A is hereby amended to allow the inclusion of transient accommodations (Short-Term Rentals) on a rolling basis as they become identified and registered by the City of Newark.**

**4. License Fee Assessments.**

- a. All costs of improvements and maintenance, other than those costs of improvements and maintenance normally incurred by the City of Newark out of general funds, shall be financed through a business license fee, pursuant to N.J.S.A. 40:56-85, and determined by the District Management Corporation and approved pursuant to N.J.S.A. 40:56-80. Hotel owners **and transient accommodation operators** in the TID shall pay a license fee assessment of not less than 1.5% of the hotel room and **transient accommodation** rates charged and actually paid. For example, if a hotel has seventy-five (75) rooms and rents out fifty (50) of those rooms at a rate of One Hundred Dollars (\$100.00) per room, the hotel shall pay a license fee assessment of Seventy-Five Dollars (\$75.00) for that day. The license fee assessment rate may be increased only if requested by a majority of the Board of Directors of the District Management Corporation.
- b. No license fee assessment shall be due based upon rates collected on stays in rooms from ninety-one (91) days and thereafter for any rooms rented for a stay of greater than ninety (90) days, but there shall be license fee assessments due for the initial ninety (90) day period. No license fee assessment shall be charged based upon any room occupancy that was booked or reserved and paid for prior to May 1, 2013. Any hotels subject to an assessment imposed by any other special improvement district within the City shall be entitled to deduction from the license fee assessment due pursuant to this Ordinance in an amount equal to the assessment paid by such hotel owner into such other special improvement district. Such deductions shall be determined by dividing the annual assessment paid to the other special improvement district by twelve (12) and deducting that amount from each monthly license fee assessment payment due pursuant to this Ordinance.
- c. In view of the policy reflected in N.J.A.C. 18:24-3.6 whereby the New Jersey Department of Treasury in adopting such regulation, has recognized that the importance of certain industries to the economy of the State out-weighs the benefit that would flow from imposition of sales taxes on such business, if a business is exempt from hotel taxes pursuant to N.J.A.C. 18:24-3.6 then such businesses shall be exempt from the Special Improvement District assessment hereby imposed and participating hotels shall not be expected, nor required to collect Special Improvement District assessments from any business exempt from hotel taxes and the hotels shall not be required, nor responsible to pay over any monies based upon hotel stays by businesses that are exempt from the hotel tax pursuant to N.J.A.C. 18:24-3.6.
- d. License fee assessments shall be collected by each hotel **and transient accommodation** owner or operator or **transient space marketplaces (i.e. AIRBNB)** as a regular additional "room charge" imposed upon such hotel owners and operators based upon actual room rentals. Hotel **and transient accommodation** owners and operators and **transient space marketplaces** shall pay all such license fee assessments in quarterly installments due with regular real property tax payments each February, May, August, and November, which payments shall be received by the City Tax Collector and paid over to the Management Corporation by the end of each month in which the license fee assessments are collected.

The City Tax Collector shall withhold from each monthly payment an Administrative Fee of .0025% of the amount actually collected by the Tax Collector. All license fee 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.

- e. The City shall pay over 25% of the budget for each of the first three quarters of the tax year in February, May and August. In the final quarter, the City shall turn over the remaining license fee assessment funds actually collected and shall be under no obligation to fund or subsidize any shortfall in anticipated license fee assessment revenues.
- f. Unpaid license fee assessments shall become a lien against the underlying property and shall be collectible in the same manner as any other municipal property taxes and assessments as provided by the laws of the State of New Jersey.

**Section 5. Designation of the District Management Corporation.**

- a. There shall be formed a New Jersey non-profit corporation called the “Greater Newark Tourism Improvement District Management Corporation” (hereinafter the “Management Corporation”), which shall be the District Management Corporation for the TID.
- b. The Management Corporation shall be an organization without membership.
- c. The Board of Directors of the Management Corporation shall consist of twenty-six (26) persons who shall, in the first instance, be selected by the Brick City Development Corporation Tourism Advisory Committee. Thereafter, with the exception of the At-Large Directors, the Board of Directors shall be responsible for the appointment of future and replacement Board members. The representative of the Board of Directors shall be comprised of the following:

- (i) Nine (9) Hoteliers (which may include Hotel owners and/or Directors), This number may be increased as more hotels enter the District or decreased if any hotels cease operations in the District.

- (ii) Six (6) At-Large Representatives, which shall include:

- (a) the CEO of Brick City Development Corporation
      - (b) a member of the Newark Municipal Council
      - (c) the Mayor’s Designee
      - (d) a community member appointed by the Newark Municipal Council;
      - (e) two members appointed by the Mayor, one of whom shall be a community member;

- (iii) the remaining members shall be comprised of Representatives from the following industries:

- (a) representatives of transportation industries,
        - (b) representatives from the restaurant industry,
        - (c) representatives from areas attractions,
        - (d) representatives of the media industry,
        - (e) representatives from the arts/culture industry, and

- (f) representatives of area associations.

This organizing Board shall, upon appointment, assume the management of the District and shall adopt bylaws governing the procedures of the Board.

The non-Hotel Directors shall each have a vote with a value of 1 person = 1 vote. Each Hotelier Director shall have a vote with a value of 1 person = 2 votes.

d. The Management Corporation, as the managing entity, shall have all powers necessary and requisite to effectuate the purposes of this Chapter and the District. Such powers shall include, without limitation:

- (i) Adoption of bylaws for the regulation of the affairs of Management Corporation and the conduct of its business and the prescribing of rules, regulations and policies in connection with the performance of its functions and duties.
- (ii) Employment of such persons as may be required to carry out the business of Management Corporation and to fix and pay their compensation from funds available to the management entity.
- (iii) Retention of legal counsel.
- (iv) Application, acceptance, administration, and compliance with requirements respecting an appropriation of funds or a gift, grant or donation of property or money.
- (v) Making and executing agreements which may be necessary or convenient to the exercise of the powers and functions of the management entity, including contracts with any person, firm, corporation, government agency or other entity.
- (vi) Administration and management of its own funds and accounts and payment of its own obligations.
- (vii) Borrowing money from private lenders and from government entities.
- (viii) Acceptance, purchase, rehabilitation, sale, lease or management of property in the District.
- (ix) Enforcing the conditions of any loan, grant, sale or lease made by the management entity.
- (x) Undertaking improvements designed to increase the safety or attractiveness of the District.
- (xi) Publicizing and promoting the District and the businesses included within the District boundaries.
- (xii) Taking any other actions that are necessary and proper to achieve the purposes of this Chapter and that are otherwise permitted by law.

- e. The Management Corporation shall utilize affirmative action goals and guidelines in its hiring and expenditures whenever possible. Pursuant to N.J.A.C. 17:27-5.2, the Management Corporation will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status or sex. The Management Corporation will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status or sex.

#### **Section 6: Hiring Practices - Newark Residents**

In connection with future hiring by the Management Corporation, the Management Corporation has committed to the hiring of Newark residents. Each year, in conjunction with the presentation and approval of the Management Corporation Budget by the Municipal Council, the Management Corporation shall report to the Municipal Council on its progress in connection with this hiring commitment. Should the Management Corporation fail to comply with this commitment, the Municipal Council shall consider withholding some or all of the annual funding to the Management Corporation.

#### **Section 7: Annual Budgets; Reports.**

- a. The Management Corporation shall operate on a calendar year basis, January 1 through December 31, inclusive.
- b. Not later than December 1 of each year, the Management Corporation shall submit a detailed business plan and budget for the upcoming year, for approval by the Governing Body pursuant to N.J.S.A. 40:56-84. The budget shall be accompanied by a report explaining how the budget contributes to the goals and objectives for the District.
- c. The budget shall be introduced, approved, amended and adopted by resolution passed by not less than a majority of the full membership of the Governing Body.
- d. The Management Corporation shall cause an annual audit of its books, accounts and financial sections to be made and filed with the Governing Body. Such audit shall be completed and delivered to the Governing Body within four (4) months after the close of the fiscal year. A certified duplicate copy of the audit shall be filed with the Director of the Division of Local Government Services in the State Department of Community Affairs within five (5) days of the filing with the City. The Management Corporation shall employ a certified public accountant licensed by and practicing within the State of New Jersey to perform the required audit.
- e. The Management Corporation shall submit an annual report to the Governing Body pursuant to N.J.S.A. 40:56-80 within thirty (30) days of the close of the fiscal year. The report shall consist of a narrative covering the previous year's operation and detailed financial statements and shall include a report on the hiring commitment established in Section 6 hereof.

#### **Section 8: Municipal Powers Retained.**

Notwithstanding the creation of the Special Improvement District, the City of Newark expressly



reserves and retains all its police powers and other rights and powers related to the area within the District.

**Section 9: Triennial Review.**

The Municipal Council shall review and assess the effectiveness of the TID on or about October 15, 2015, and shall consult with representatives with an interest in the hotels paying the assessment hereunder, and consider such factors as room rates, occupancy rates, and reports from included hotels.

**Section 10: Severability.**

All Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance shall be repealed to the extent of such inconsistency only. Should any section, paragraph, clause or any other portion of this Ordinance be adjudged by a Court of competent jurisdiction to be invalid, such judgment shall not affect or impair the remainder of this Ordinance.

**Section 11: Effective Date.**

This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

**STATEMENT**

Ordinance amending and supplementing the code of the City of Newark to amend the Ordinance creating a Special Improvement District known as the Greater Newark Tourism Improvement District by adding Transient Accommodation (Short Term Rentals) to the list of properties subject to the license fee assessment and amends Schedule A to authorize inclusion of Transient Accommodations as they become identified.