



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

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AN ORDINANCE OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, AUTHORIZING THE ISSUANCE OF UP TO \$16,000,000 AGGREGATE PRINCIPAL AMOUNT OF MOTOR VEHICLE RENTAL TAX REVENUE BONDS OF THE CITY, AUTHORIZING THE PLEDGE AND ASSIGNMENT OF ALL OR A PORTION OF THE PROCEEDS OF THE CITY'S MOTOR VEHICLE RENTAL TAX TO THE PAYMENT OF SUCH BONDS, APPROPRIATING THE PROCEEDS OF SUCH BONDS TO FUND CAPITAL GRANTS IN AN AGGREGATE AMOUNT NOT TO EXCEED \$13,400,000 IN SUPPORT OF CERTAIN ELIGIBLE PROJECTS AND FOR OTHER PURPOSES, AND AMENDING SECTION 10:22A-3 OF ORDINANCE 6PSF-i ADOPTED BY THE MUNICIPAL COUNCIL ON MAY 5, 2010, BY ADDING A PROVISION THAT THE RENTAL TAX MAY NOT BE REDUCED OR REPEALED SO LONG AS ANY BONDS SECURED THEREBY REMAIN OUTSTANDING.

Deferred 6PSF-g 010715

Deferred 6PSF-b 012115

WHEREAS, the New Jersey Economic Stimulus Act of 2009, specifically N.J.S.A. 40A:48H-1 et seq. (the "Municipal Motor Vehicle Rental Tax Law") authorizes certain municipalities to impose a tax on the rental of certain motor vehicles within designated industrial zones within such municipality (the "Rental Tax") and to use the proceeds thereof for certain eligible purposes related to redevelopment purposes, as defined in the Municipal Motor Vehicle Rental Tax Law, specifically N.J.S.A. 40:48H-2.b (the "Eligible Projects"); and

WHEREAS, pursuant to Ordinance 6PSF-i, adopted by the Municipal Council on May 5, 2010 (the "Tax Ordinance"), the City of Newark (the "City") authorized the imposition of a Rental Tax on motor vehicle rental transactions that occur within certain designated industrial zones of the City; and

WHEREAS, pursuant to and in accordance with the provisions of the Municipal Motor Vehicle Rental Tax Law, specifically N.J.S.A. 40:48H-6, the City is authorized to issue, or cause to be issued, bonds for the purpose of financing Eligible Projects, which bonds may be payable from and secured by Rental Tax proceeds; and

WHEREAS, such bonds are to be issued pursuant to and in accordance with the provisions of the Local Redevelopment and Housing Law, constituting Chapter 79 of the Pamphlet Laws of 1992 of the State, and the acts amendatory thereof and supplemental thereto, as codified in N.J.S.A. 40A:12A-1 et seq. (the "LRHL"); and

WHEREAS, the City intends to issue bonds from time to time under the LRHL and the Motor Vehicle Rental Tax Law, to appropriate the proceeds of such bonds toward the funding of Eligible Projects, the establishment of reserves to secure the payment of debt service, and the payment of

costs of issuance, and to secure the payment of such bonds with a pledge and assignment of all or a portion of the Rental Tax proceeds to be received by the City, all as contemplated by the Motor Vehicle Rental Tax Law; and

WHEREAS, pursuant to the provisions of the Municipal Motor Vehicle Rental Tax Law, specifically N.J.S.A. 40:48H-5, the City may assign, for the benefit of the hereinafter-defined Trustee and as security for the Motor Vehicle Rental Tax Revenue Bonds, all of the City's right, title and interest in and to all or a portion of the Rental Tax proceeds; and

WHEREAS, the City now intends to authorize (i) the issuance of an initial series of Motor Vehicle Rental Tax Revenue Bonds to finance, *inter alia*, the making of certain capital grants in support of certain designated Eligible Projects, (ii) the appropriation of the proceeds of such bonds to make such capital grants, to fund reserves for debt service and to pay costs of issuance, (iii) the pledge and assignment of all or a portion of the Rental Tax proceeds to be received by the City during a specified period of time, as security for the payment of debt service on such bonds and any additional bonds that may thereafter be issued on a parity therewith, and (iv) an amendment to the Tax Ordinance to provide that the Rental Tax may not be reduced or repealed so long as any bonds secured thereby remain outstanding; and

WHEREAS, the terms of such bonds, as well as the terms of the grants to be made in respect of said designated Eligible Projects, shall be approved by resolutions adopted, or to be adopted, by the Municipal Council from time to time; and

WHEREAS, the Motor Vehicle Rental Tax Revenue Bonds shall be special, limited obligations of the City, payable solely from and secured by the Rental Tax proceeds so assigned by the City to the Trustee; and

WHEREAS, pursuant to the provisions of the Municipal Motor Vehicle Rental Tax Law, specifically N.J.S.A. 40:48H-6, the issuance of the Motor Vehicle Rental Tax Bonds is subject to the approval of the Local Finance Board; and

WHEREAS, by the terms of a Memorandum of Understanding (the "MOU") with the New Jersey Department of Community Affairs, Division of Local Government Services (the "Division"), the approval of the Director of the Division is also required prior to the authorization of any bonds of the City; and

WHEREAS, by virtue of the State's fiscal supervision over the City under N.J.S.A. 52:27BB-54 et seq. (the "Local Government Supervision Act"), specifically N.J.S.A. 52:27BB-57 and N.J.S.A. 52:27BB-58, the approval of the Director is also required prior to the authorization or issuance of any bonds of the City, or any expenditures and appropriations of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring), **AS FOLLOWS:**

Section 1. There is hereby authorized the issuance by the City of not more than \$16,000,000 aggregate principal amount of its Motor Vehicle Rental Tax Revenue Bonds under the Municipal Motor Vehicle Rental Tax Law and the LRHL and other applicable provisions of law, for the

purpose of financing the cost of the Designated Projects. The Motor Vehicle Rental Tax Revenue Bonds may be issued in one or more series and from time to time, and shall be designated “Motor Vehicle Rental Tax Revenue Bonds, Series 2015” (the “Series 2015 Bonds”) or such other or additional designation as may be determined by subsequent resolution of the Municipal Council, and shall contain such other terms and conditions as shall be provided by subsequent resolution of the Municipal Council; provided, that all such Series 2015 Bonds shall mature not later than April 15, 2025. The Series 2015 Bonds shall constitute non-recourse obligations as to the City and shall not be secured by the full faith and credit of the City, nor by the provision of the Municipal Qualified Bond Act (N.J.S.A. 40A:3-1 et seq.), but shall be payable solely from a pledge and assignment of all or a portion of proceeds of the Rental Tax, as shall be determined by subsequent resolution of the Municipal Council and as shall be set forth in one or more trust indentures to be entered into by the City setting forth the terms of the Series 2015 Bonds. Said trust indenture(s) (collectively, the “Indenture”) shall be authorized by subsequent resolution of the Municipal Council, and in addition to authorizing or providing for the terms of the Series 2015 Bonds, may also provide for the issuance, from time to time, of one or more additional series of bonds on a parity with the Series 2015 Bonds (with respect to the pledge and assignment authorized in Section 4 below) subsequent to the issuance of the Series 2015 Bonds (the “Additional Bonds”); provided, that the issuance of any such Additional Bonds shall be conditioned upon the subsequent adoption of one or more ordinances authorizing said issuance and appropriating the proceeds of such Additional Bonds.

Section 2. The purpose for which the Series 2015 Bonds are being issued is to fund (i) the making of capital grants by the City (the “Grants”) in an aggregate amount not to exceed \$13,400,000 in support of the several redevelopment projects listed on Exhibit A hereto (the “Designated Projects”), in each case up to the maximum grant amount indicated therein for such Designated Project, (ii) the establishment of reserves to secure the payment of debt service on the Series 2015 Bonds and (iii) the payment of costs of issuance of the Series 2015 Bonds. The Municipal Council hereby determines that the Designated Projects reflected on Exhibit A constitute Eligible Projects to which the proceeds of the Series 2015 Bonds may be applied.

Section 3. The Grants in support of each Designated Project shall be implemented through Grant Agreements with the designated recipients as identified on Exhibit A, which Grant Agreements shall be in such form(s) as have been, or shall be, approved from time to time by resolution of the Municipal Council. Said Grant Agreements may contain modifications to the descriptions of the respective Designated Projects, which modified descriptions shall, to the extent so approved by resolution of the Municipal Council, be deemed to be incorporated herein by reference without further need for amending this Ordinance.

Section 4. Pursuant to the provisions of the Motor Vehicle Rental Tax Law, specifically N.J.S.A. 40:48H-5, the City is hereby authorized to assign, for the benefit of the bond trustee to be designated under the Indenture (the “Trustee”) and as security for the Series 2015 Bonds and any Additional Bonds (collectively, the “Bonds”), all or a designated portion (whether as a percentage, dollar amount or otherwise) of the City’s right, title and interest in and to the Rental Tax proceeds received or to be received by the City during the period commencing not sooner than January 1, 2015 and ending not later than April 15, 2025. To implement such assignment, the Mayor, the Assistant Business Administrator or the Acting Director of Finance (each, an “Authorized Officer”) is hereby authorized and directed to enter into a Pledge and Assignment Agreement with the Trustee in substantially the form attached as Exhibit B hereto, with such non-material changes as the Authorized Officer executing same may determine in his or her sole discretion, such approval to be conclusively

evidenced by his or execution thereof. There is hereby delegated to the Authorized Officers the power to determine, without subsequent Municipal Council action, the precise duration of said pledge within the above-referenced parameters, and the extent thereof (whether total or partial), and any variations of the foregoing in the event Additional Bonds shall be authorized to be issued, and any such determinations shall be conclusively evidenced by such Authorized Officer's execution of the Pledge and Assignment Agreement. Additional material changes to the form of the Pledge and Assignment Agreement may be authorized by resolution of the Municipal Council; provided, that any extension of the duration of the pledge and assignment beyond April 15, 2025 (other than for the purpose of assuring payment on any Bonds payable on or before such date) shall be authorized by ordinance. The Authorized Officers are each hereby further authorized to execute and deliver, on behalf of the City, such additional instruments as they may deem, in consultation with the Corporation Counsel, to be necessary or appropriate for the purpose of effectuating such pledge and assignment. The City Clerk is hereby authorized and directed to attest to the execution of the Pledge and Assignment Agreement and any such additional instruments by the Authorized Officer(s) of the City as determined hereunder and to affix the corporate seal of the City thereto.

Section 5. Pursuant to N.J.S.A. 40:48H-6(b), the Series 2015 Bonds shall not be considered gross debt of the City, and accordingly no supplemental debt statement need be filed in connection herewith.

Section 6. The proceeds of the Series 2015 Bonds shall be applied to the purposes described in Section 2 of this Ordinance, and such proceeds are hereby appropriated to such purposes. No down payment is required in connection with the authorization of Series 2015 Bonds pursuant to N.J.S.A. 40A:12A-37(c) (as this Ordinance involves one or more redevelopment projects).

Section 7. The Series 2015 Bonds shall bear interest at such rate or rates, shall be sold at public sale, or if approved by the Local Finance Board, at private sale, to such purchaser or purchasers at such price or prices, shall contain such maturity and redemption terms, and shall contain such other terms and conditions as may be determined by subsequent resolution of the Municipal Council and as shall be set forth in the Indenture.

Section 8. Any matter which is required or permitted hereunder to be determined by resolution of the governing body may be delegated by resolution of the Municipal Council to the any Authorized Officer, as set forth in a subsequent resolution.

Section 9. The capital budget or temporary capital budget, as applicable, of the City is hereby amended to conform with the provisions of this Ordinance to the extent of any inconsistency herewith. In the event of any such inconsistency and amendment, the resolution in the form promulgated by the Local Finance Board showing full detail of the amended capital budget or temporary capital budget, as applicable, and capital program as approved by the Director of the Division of Local Government Services is on file with the City Clerk and is available there for public inspection.

Section 10. The City reasonably expects that the designated recipients of the Grants as indicated on Exhibit A hereto may commence their respective Designated Projects, and may advance all or a portion of the costs in respect thereof, prior to the issuance of the Series 2015 Bonds and the execution of the respective Grant Agreements with the City. To the extent such costs are advanced, the City further reasonably expects to reimburse such expenditures from the proceeds of the Series

2015 Bonds, in an aggregate amount not to exceed the amount of the Series 2015 bonds authorized in Section 2 hereof.

Section 11. Section 10:22A-3 of Ordinance 6PSF-i050510 (Section 10:22A-3 of the Code) is hereby amended to add the following at the end thereof:

“If the City issues any bonds secured by the Motor Vehicle Rental Tax, the City shall not rescind such tax or reduce the rate of such tax while any such bonds are outstanding.”

Section 12. To the extent that any previous ordinance or resolution is inconsistent herewith or contradictory hereto, said ordinance or resolution is hereby repealed or amended to the extent necessary to make it consistent herewith.

Section 13. The provisions of this Ordinance are severable. To the extent any clause, phrase, sentence, paragraph or provision of this Ordinance shall be declared invalid, illegal or unconstitutional, the remaining provisions shall continue in full force and effect.

Section 14. This Ordinance shall take effect 20 days after the first publication thereof after final adoption, and upon the receipt of the approval of the Local Finance Board pursuant to N.J.S.A. 40:48H-6 and such approval(s) of the Director as are required pursuant to the MOU and the Local Government Supervision Act.

Section 15. Upon the final adoption hereof, the City Clerk is authorized and directed to forward a certified copy of this Ordinance to James G. Fearon, Esq., GluckWalrath LLP, Bond Counsel to the City.

STATEMENT

This bond ordinance authorizes the issuance of up to \$16,000,000 in Motor Vehicle Rental Tax Revenue Bonds of the City, the proceeds of which will be used to make capital grants in support of designated redevelopment projects in the City. The Bonds will not be secured by the full faith and credit of the City, but rather will be payable from and secured by the proceeds of the City’s tax on the rental of motor vehicles within designated industrial zones within the City. This ordinance also authorizes the pledge and assignment of certain of the motor vehicle rental tax proceeds to secure payment of such bonds, and authorizes the appropriation of the proceeds of such bonds to make such capital grants, to fund reserves for debt service and to pay costs of issuance. This ordinance also amends the ordinance that imposed the motor vehicle rental tax to provide that the tax may not be reduced or repealed so long as any bonds secured by such tax remain outstanding.