



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 12-2310, Version: 3

ORDINANCE APPROVING THE EXECUTION OF A FINANCIAL AGREEMENT WITH TWO CENTER STREET URBAN RENEWAL, L.L.C., C/O DRANOFF PROPERTIES, INC., 3180 CHESTNUT STREET, PHILADELPHIA, PENNSYLVANIA 19104, AND OTHER APPLICABLE DOCUMENTS RELATED TO THE AUTHORIZATION AND ISSUANCE BY THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY OF ITS REDEVELOPMENT AREA BONDS (NON-RECOURSE TO THE FULL FAITH AND CREDIT OF THE CITY) IN AN AMOUNT SUFFICIENT TO GENERATE UP TO \$1,000,000 IN PROJECT COSTS, AND DETERMINING VARIOUS OTHER MATTERS IN CONNECTION THEREWITH.

Deferred 6PSF-d 010313/ Public Hearing Open

Deferred 6PSF-b 011613/ Public Hearing Open

Deferred 6PSF-a 020613/ Public Hearing Open

Deferred 6PSF-a 022013/ Public Hearing Open

Deferred 6PSF-a 032013/ Public Hearing Open

Deferred 6PSF-a (s) 032613/ Public Hearing Open

Deferred 6PSF-c 040313/Public Hearing Open

Deferred 6PSF-c 041713/Public Hearing Open

Deferred 6PSF-a 050113/Public Hearing Open

No Action Taken 6PSF-a 051513

Tabled 6PSF-a 052213 (DS/LQ)

Due to advertising, Public Hearing will be held at the November 18, 2013, Regular Meeting.

WHEREAS, on July 10, 1961, the Municipal Council of the City of Newark (the "City") adopted Resolution No. 7RR, designating an area generally bounded by the Passaic River, Rector Street and Park Place, Park Street, Cherry Street, the southerly line of City Blocks 128, 129 and the southerly line of Block 130, Lot 29 (collectively, the "Redevelopment Area"), as a blighted area in accordance with the Blighted Areas Act, N.J.S.A. 40:55-22.1 et seq. (the "Blighted Areas Act"); and

WHEREAS, the Blighted Areas Act has been repealed and superseded by the Local Redevelopment and Housing Law, constituting Chapter 79 of the Pamphlet Laws of 1992 of the State of New Jersey (the "State"), and the acts amendatory thereof and supplemental thereto (the "Redevelopment Law", as codified by N.J.S.A. 40A:12A-1 et seq.); and

WHEREAS, the Redevelopment Area, including the hereinafter-defined Parcel, is deemed to constitute an "area in need of redevelopment" pursuant to the Redevelopment Law, specifically N.J.S.A. 40A:12A-3; and

WHEREAS, on May 20, 1964, the Municipal Council of the City adopted Resolution 7RBK an urban renewal plan for the Redevelopment Area (the "Original Plan"); and

WHEREAS, pursuant to the Redevelopment Law, the Original Plan has subsequently been amended: by Ordinance No. 6S&FD adopted on October 5, 1977 (1st amendment); by Ordinance No. 6S&FD adopted on May 3, 1978 (2nd amendment); by Ordinance No. 6S&FN adopted on October 7, 1981 (3rd amendment); by Ordinance No. 6S&FF adopted on September 6, 1988 (4th amendment); by Ordinance No. 6S&FV adopted on November 14, 1988 (5th amendment); by Ordinance No. 6S&FC adopted on October 4, 1989 (6th amendment); by Ordinance No. 6S&FE 031892 adopted on March 18, 1992 (7th amendment); and by Ordinance No. 6PSF-A(S) adopted on August 25, 2009 (8th amendment) (as so amended, the “Redevelopment Plan”); and

WHEREAS, the Redevelopment Plan establishes within the Redevelopment Area a “special redevelopment area” consisting of Block 125, Lots 23, 26 and 115, which includes the hereinafter-defined Parcel; and

WHEREAS, the Redevelopment Plan provides, as permitted uses within the Redevelopment Area and within said “special redevelopment area”, inter alia, high density residential, retail, and parking garage uses, and any combination thereof; and

WHEREAS, as of the date hereof, Two Center Street Urban Renewal, L.L.C., c/o Dranoff Properties, Inc., 3180 Chestnut Street, Philadelphia, Pennsylvania 19104, a New Jersey limited liability company (the “Owner URE”) qualified as an Urban Renewal Entity in accordance with the Long Term Tax Exemption Law of 1992, constituting Chapter 431 of the Pamphlet Laws of 1991 of the State, and the acts amendatory thereof and supplemental thereto (the “Tax Exemption Law”, as codified in N.J.S.A. 40A:12A-1 et seq.), has entered into a Ground Lease Option Agreement (the “Option Agreement”) with New Jersey Performing Arts Center Corporation (“NJPAC”), by which NJPAC has agreed to enter into a long-term (approximately 98 year) ground lease with the Owner URE (the “Ground Lease”), conveying to the Owner URE, subject to certain terms and conditions (including conditions to effectiveness), a long-term ground lease interest in a parcel of real estate within the Redevelopment Area described as Block 125, Lot 26 on the current tax map of the City (the “Parcel”); and

WHEREAS, as of the date hereof, the Parcel is owned by the State of New Jersey, Department of Treasury (“Treasury”); and

WHEREAS, as a condition to the “Effective Date” of the hereinafter-defined Financial Agreement, NJPAC shall acquire title to the Parcel from Treasury and shall enter into the Ground Lease with the Owner URE; and

WHEREAS, the Owner URE proposes to acquire said long-term ground lease interest in the Parcel in accordance with the Option Agreement and to construct upon the Parcel a twenty-two (22) story mixed-use rental residential and retail project, which will include approximately 10,000 square feet of common area, approximately 15,000 square feet of retail space, and approximately 244 residential units consisting of studio, one (1) bedroom, two (2) bedroom and three (3) bedroom units

(twenty-four (24) of these residential units to be reserved for use and occupancy by households earning 50% or less of the area median gross household income), together with approximately five hundred and forty-three (543) parking spaces (which will be located in a structure above the retail space), and also including green building features, landscaping and other site amenities (collectively, the “Improvements”), as more fully described in the Exemption Application, as such term is defined herein, and in accordance with the Redevelopment Plan (such acquisition and Improvements are collectively referred to herein as the “Project”); and

WHEREAS, the Owner URE has represented to the City that (i) the Ground Lease will be on commercially reasonable terms resulting from an arms’-length negotiation between unrelated parties and (ii) the Improvements are expected be taxed to said ground lease interest (and not to the underlying fee interest retained by NJPAC), but the City makes no representation as to such matters; and

WHEREAS, pursuant to the Tax Exemption Law, the City is authorized to provide for tax exemption within a redevelopment area and for payments in lieu of taxes in accordance with the applicable provisions thereof; and

WHEREAS, pursuant to and in accordance with the provisions of the Redevelopment Area Bond Financing Law, constituting Chapter 310 of the Pamphlet Laws of 2001 of the State, and the acts amendatory thereof and supplemental thereto (the “Redevelopment Bond Law”, as codified by N.J.S.A. 40A:12A-64 et seq., and together with the Redevelopment Law and the Tax Exemption Law, the “Acts”), specifically N.J.S.A. 40A:12A-66(a), the City is authorized to provide for such tax exemption and payments in lieu of taxes in a manner that deviates from the structure otherwise established under the Tax Exemption Law, if the development project is to be financed with bonds issued in accordance with the Redevelopment Bond Law; and

WHEREAS, the Owner URE has submitted an application to the City for the approval of a redevelopment project, as such term is used in the Tax Exemption Law, all in accordance with N.J.S.A. 40A:20-8 (the “Exemption Application”, a copy of which is attached hereto as Exhibit A); and

WHEREAS, the Exemption Application contains documentation evidencing financial responsibility and capability with respect to the proposed development; estimated total development costs; estimated time schedule for start and completion of the proposed development; and conceptual plans; and

WHEREAS, the City evaluated the Exemption Application according to criteria which included financial capabilities, experience, expertise, and project concept descriptions; and

WHEREAS, in order to enhance the economic viability of and opportunity for a successful project, the City will enter into a Financial Agreement with the Owner URE, governing payments made to the City in lieu of real estate taxes on the Project pursuant to the Tax Exemption Law, and

WHEREAS, to finance certain aspects of the Project, the New Jersey Economic Development Authority (the “NJEDA”) will issue bonds in an aggregate principal amount sufficient to generate up to \$1,000,000 in project costs (the “Redevelopment Area Bonds”) pursuant to the Redevelopment Bond

Law, debt service for the repayment of which Redevelopment Area Bonds will come from the Pledged Annual Service Charge (as that term is defined in the Financial Agreement attached hereto); and

WHEREAS, City and the Owner URE have agreed that the Unpledged Annual Service Charge (as that term is defined in the Financial Agreement attached hereto) paid by the Owner URE to the City shall be for the City's use in its sole discretion, following payment of the "County Amount" (as such term is defined in the Financial Agreement attached hereto) to the County of Essex, as required by N.J.S.A. 40A:20-12; and

WHEREAS, the City made the following findings:

In accordance with the Tax Exemption Law, specifically N.J.S.A. 40A:20-11, the City hereby finds and determines that this Agreement is to the direct benefit of the health, welfare and financial well-being of the City and its citizens because it allows for the development of a vacant and fallow site into a productive, useful and job-creating property, and further:

(a) The costs associated with the tax exemption granted herein are minor compared to the estimated Total Project Cost of \$108,000,000 and the benefit created by (i) the construction of the Improvements, (ii) approximately 600 jobs during the construction period and (iii) approximately fifty (50) permanent full-time or part-time jobs in areas of residential property management, parking and retail, and (iv) the construction of twenty-four (24) new residential units that will be reserved for use and occupancy by households earning 50% or less of the area median gross household income.

(b) Without the tax exemption granted herein it is highly unlikely that the Project would otherwise be undertaken, as a source of funding all or a portion of the costs thereof, other than from the proceeds of the Bonds, is not otherwise available; and

WHEREAS, in order to set forth the terms and conditions under which the Owner URE and the City (the "Parties") shall carry out their respective obligations with respect to: (a) payment of the Annual Service Charge (as that term is defined in the Financial Agreement attached hereto) by the Owner URE, in lieu of real property taxes; and (b) issuance of the Redevelopment Area Bonds by the NJEDA and provision for repayment thereof by the Owner URE, the Parties have determined to execute this Financial Agreement; and

WHEREAS, the Owner URE is qualified to do business under the provisions of the Tax Exemption Law, and has submitted to the Mayor the Exemption Application, which is on file with the City Clerk, requesting a tax exemption for the Project; and

WHEREAS, there was also submitted to the Mayor by the Owner URE a financial agreement on file with the City Clerk (the "Financial Agreement") (capitalized terms not defined herein shall have the meaning assigned to such terms in the Financial Agreement); and

WHEREAS, the Mayor has submitted the Application and Financial Agreement to the Municipal Council with his written recommendation of approval (the "Mayor's Recommendation"), a copy of which is attached hereto as Exhibit B; and

WHEREAS, the Financial Agreement contemplates that the Annual Service Charge will be paid in two (2) categories: the Unpledged Annual Service Charge, to be retained (following payment of the County Share) by the City for Municipal Services as set forth in the Tax Exemption Law; and the

Pledged Annual Service Charge, said payments to be dedicated to debt service on the Redevelopment Area Bonds issued to support certain costs of the Project, pursuant to Bond Financing Law; and

WHEREAS, pursuant to the Bond Financing Law, the City, in the exercise of its power under the Bond Financing Law, may enter into contracts as necessary, for the purpose of securing the Redevelopment Area Bonds to finance the Project; and

WHEREAS, the Bond Financing Law requires the approval of the New Jersey Local Finance Board prior to the issuance of financial instruments such as the Redevelopment Area Bonds where such financial instruments are to be secured by payments in lieu of taxes such as the Pledged Annual Service Charges; and

WHEREAS, the City believes that: (a) it is in the public interest for the Owner URE to undertake the Project; and (b) the Project is for the health, welfare, convenience or betterment of the inhabitants of the City; and (c) the amounts to be expended by the City for said Project are not unreasonable or exorbitant; and (d) the Project is an efficient and feasible means of providing services for the needs of the inhabitants of the City and will not create an undue financial burden to be placed upon the City; and

WHEREAS, the City further wishes to approve the execution and delivery of a Pledge and Assignment Agreement with the NJEDA and/or its bond trustee (the "Pledge Agreement"), which Pledge Agreement will provide for, *inter alia*, the pledge and assignment of the Pledged Annual Service Charge to the NJEDA or its bond trustee as security for the payment of debt service on the Redevelopment Area Bonds; and

WHEREAS, the terms of any trust indenture to be entered into by the NJEDA in connection with the issuance of the Redevelopment Area Bonds will provide terms and provisions relating to the disbursement of proceeds of the Redevelopment Area Bonds to the Owner URE or its agent; and

WHEREAS, the Financial Agreement states that, prior to commencement of construction, the Owner shall enter into a Project Labor Agreement or other binding agreement with the Essex County Building Trades that contains provisions that provide for Newark resident participation in the construction of the Project (the "Trades Agreement"), which Trades Agreement is subject to the review and approval by the Deputy Mayor/Director of the Department of Economic and Housing Development; and

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, AS FOLLOWS:

1. The Owner URE is hereby designated to act as redeveloper for the Project, in accordance with the Redevelopment Plan and the plans and specifications contained in the Application, subject to the conditions and as more fully set forth in the form of Financial Agreement attached hereto.

2. The Exemption Application, a copy of which is attached hereto as Exhibit A, is hereby approved in accordance with the Mayor's Recommendation, a copy of which is attached hereto as Exhibit B.

3. The Municipal Council hereby finds and determines that the Financial Agreement is to the direct benefit of the health, welfare and financial well-being of the City and its citizens because it allows for the development of a vacant and fallow site into a productive, useful and job-creating property, and further: (a) the costs associated with the tax exemption granted herein are minor compared to the estimated Total Project Cost of \$108,000,000 and the benefit created by (i) the construction of the Improvements, (ii) approximately six hundred (600) jobs during the construction period, (iii) approximately fifty (50) permanent full-time and part-time jobs in areas of residential property management, parking and retail, and (iv) the construction of twenty-four (24) new residential units that will be reserved for use and occupancy by households earning 50% or less of the area median gross household income; and (b) without the tax exemption granted herein it is highly unlikely that the Project would otherwise be undertaken, as a source of funding all or a portion of the costs thereof, other than from the proceeds of the Bonds, is not otherwise available.

4. An exemption from taxation is hereby granted to the Owner (as such term is defined in the Financial Agreement attached hereto), with respect to the Project for the term set forth in the Financial Agreement, but in no event shall the tax exemption commence until the Effective Date (as such term is defined in the Financial Agreement), nor extend beyond the earlier of: (i) twenty-five (25) years from the date of execution of the Financial Agreement or, (ii) twenty (20) years from the Project Completion Date (as defined in the Financial Agreement) and only so long as the Owner remains subject to and complies with the Financial Agreement and the Tax Exemption Law. To the extent of any inconsistency with any prior City ordinance and/or Municipal Code provision governing the granting of long-term tax exemptions, including, inter alia, procedures for application, review and approval, required terms of the financial agreement, required conditions and covenants, limits on duration, means of enforcement, and all other matters whatsoever, such prior City ordinances and/or Municipal Code provisions are hereby waived (or, alternatively, shall be deemed to be amended and/or superseded by this Ordinance) to the extent of such inconsistency, but only with respect to this Ordinance.

5. The Financial Agreement, in substantially the form attached hereto as Exhibit C, is approved. The Mayor and the Deputy Mayor/Director of the Department of Economic and Housing Development of the City (each, an "Authorized Officer") are each hereby authorized to execute, on the City's behalf, the Financial Agreement in substantially such form, with such changes as the Authorized Officers shall determine, in consultation with the Corporation Counsel, such determination to be conclusively evidenced by their execution of the Financial Agreement. The City Clerk is hereby authorized and directed to attest to the execution of the Financial Agreement by the Authorized Officers of the City as determined hereunder and to affix the corporate seal of the City to the Financial Agreement.

6. Pursuant to the provisions of the Redevelopment Bond Law, specifically N.J.S.A. 40A:12A-67(c) and, if applicable, N.J.S.A. 40A:12A-69, the City is hereby authorized to assign, for the benefit of the NJEDA and/or its bond trustee and as security for the Redevelopment Area bonds, all of the City's right, title and interest in and to the Pledged Annual Service Charges. The Pledge Agreement, in substantially the form attached hereto as Exhibit D, is approved. The Authorized Officers, or either of them, are each hereby authorized to execute and deliver, on behalf of the City,

the Pledge Agreement in substantially such form, with such changes as the Authorized Officers shall determine, in consultation with the Corporation Counsel, such determination to be conclusively evidenced by their execution of the Pledge Agreement. The Authorized Officers, or either of them, 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 assignment. The City Clerk is hereby authorized and directed to attest to the execution of the Pledge 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.

7. Executed copies of the Financial Agreement and the Pledge Agreement shall be certified by the City Clerk and filed with the Office of the City Clerk. The Office of the City Clerk shall also forthwith file certified copies of this ordinance and the Financial Agreement with the Director of the Division of Local Government Services pursuant to N.J.S.A. 40A:20-12.

8. Upon the execution of the Financial Agreement as contemplated herein, the Authorized Officers and the City Clerk are each hereby severally authorized and directed to file and record this ordinance and the Financial Agreement with the Essex County Register such that the Financial Agreement and this Ordinance shall be reflected upon the land records of the County of Essex as a lien upon and a covenant running with each and every parcel of land constituting the Parcel. Pursuant to and in accordance with the provisions of the Redevelopment Bond Law, specifically N.J.S.A. 40A:12A-68(c), and notwithstanding any other law to the contrary, upon recordation of both this ordinance and the Financial Agreement, the lien thereof shall be perfected for all purposes in accordance with law and the lien shall thereafter be superior to all non-municipal liens thereafter recorded or otherwise arising, without any additional notice, recording, filing, continuation filing or action, until payment of all of the Redevelopment Area Bonds.

9. The Authorized Officers of the City are hereby further severally authorized and directed to (i) execute and deliver, and the City Clerk is hereby further authorized and directed to attest to such execution and to affix the corporate seal of the City to, any document, instrument or certificate deemed necessary, desirable or convenient by the Authorized Officers or the City Clerk, as applicable, in their respective sole discretion, after consulting with the Corporation Counsel, to be executed in connection with the execution and delivery of the Financial Agreement and the Pledge Agreement and the consummation of the transactions contemplated thereby, which determination shall be conclusively evidenced by the execution of each such certificate or other document by the party authorized hereunder to execute such certificate or other document, and (ii) perform such other actions as the Authorized Officers deem necessary, desirable or convenient in relation to the execution and delivery thereof.

10. The Project when completed shall conform with all Federal and State law and ordinances and regulations of the City relating to its construction and use.

11. The Owner shall in the operation of the Project comply with all laws so that no

person shall, because of race, religious principles, color, national origin or ancestry, be subject to any discrimination.

12. The Owner shall, from the time the Annual Service Charge becomes effective, pay the Annual Service Charge as set forth in the Financial Agreement.

13. All City officers and professionals are hereby authorized to take all necessary and appropriate steps to assist and join with the Owner URE: (i) in connection with the required application to the New Jersey Local Finance Board for approval of the issuance of the Redevelopment Area Bonds for the funding of a part of the cost of the Project; and (ii) in connection with the required application to the NJEDA for approval of its issuance of said Redevelopment Area Bonds.

14. This ordinance shall take effect upon final passage and publication as required by law.

STATEMENT

This ordinance secures bonds or other obligations issued in accordance with the provisions of the "Redevelopment Area Bond Financing Law" and the lien hereof in favor of the owners of such bonds or other obligations is a municipal lien superior to all other non-municipal liens hereinafter recorded.