



## Legislation Text

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File #: 21-0143, Version: 1

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**AN ORDINANCE AMENDING TITLE X, FINANCE AND TAXATION, CHAPTER 24, PROCEDURES FOR APPLICATION, APPROVAL AND ADMINISTRATION OF LONG TERM TAX EXEMPTIONS, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED TO ADD BUILDING MAINTENANCE AS A MATERIAL CONDITION OF THE FINANCIAL AGREEMENT AND TO PERMIT THE CITY OF NEWARK TO RESCIND A TAX EXEMPTION AND FINANCIAL AGREEMENT IF AN ENTITY FAILS TO COMPLY WITH BUILDING MAINTENANCE REQUIREMENTS.**

**WHEREAS**, the Long Term Tax Exemption Law ("LTTEL" at N.J.S.A. 40A:20-1 et al.) provides municipalities with the means of accomplishing the redevelopment and rehabilitation purposes of the Local Redevelopment and Housing Law ("LRHL" at N.J.S.A. 40A:12A-1 et al.); and

**WHEREAS**, to effectuate the means of accomplishing redevelopment and rehabilitation within the City of Newark, the Municipal Council adopted Title X, Chapter 24, entitled "Procedures for Application, Approval, and Administration of Long Term Tax Exemptions" pursuant to the LTTE and codified in Newark Municipal Code Section 10:24-1 et seq; and

**WHEREAS**, the Municipal Council has recently become aware that certain owners of properties who have received Long Term Tax Exemptions have been delinquent in making their payment in lieu of taxes. This is resulting in the lowering of property values, tax revenue shortfalls, and is placing an undue tax burden on those taxpayers who timely pay their taxes as they are forced to shoulder the burden of those owners who have received a tax break by the Municipal Council through the issuance of Long Term Tax Exemptions; and

**WHEREAS**, the Municipal Council has also become aware that certain owners who have received Long Term Tax Exemptions are failing to properly maintain their properties for reasons that include, but are not limited to, repairing or replacing broken elevators; repairing or replacing broken heating and air conditioning units or systems; providing inadequate heat and air condition for commercial and residential tenants in violation of State and Local Laws and Regulations; and remediating consistent and repeated building code violations; and

**WHEREAS**, failing to properly maintain residential and commercial properties has resulted in negative impacts on the quality of life and community pride of those commercial and residential tenants who live in and occupy these properties, resulting in conditions that are dangerous, unhealthy, and unacceptable to the habitability of any human being. It also results in a physical degrading of the appearance of the City of Newark which has the effect of lowering property values; and

**WHEREAS**, Newark Municipal Code Section 10:24-1 et seq. already permits the City to rescind a Long Term Tax Exemption and the Financial Agreement authorized by the City in granting

a Long Term Tax Exemption when owners fail to pay the required payment in lieu of taxes; and

**WHEREAS**, in an effort to mitigate these negative impacts on the public health, safety and the welfare of its citizens, the City of Newark wishes to amend Newark Municipal Code Section 10:24-1 et seq. to expand: (i) the reasons that the City can rescind a Long Term Tax Exemption and the Financial Agreement authorized by the City in granting a Long Term Tax Exemption and (ii) the liability of certain designated responsible parties when recipients of Long Term Tax Exemptions fail to properly maintain their properties which reduces the public safety protection to the inhabitants and the rest of the City.

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

**Section 1.** Title X, Finance and Taxation, Chapter 24, Procedures for Application, Approval and Administration of Long Term Tax Exemptions, of the Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, be further amended as follows:

**[Note: Bold and underlined text represent additions and Strike-throughs represent deletions]**

10:24-5 FINANCIAL AGREEMENT; FORM AND EXECUTION.

- a. Form of Financial Agreement. A Financial Agreement shall be in the form appropriate to the nature of the project, as on file with the City Clerk and approved by the Municipal Council. The Financial Agreements shall set forth the identification of the affected property, the nature and magnitude of the improvements to be constructed or developed thereon, the service charges to be paid to the City in accordance with Section 10:24-10 of this chapter, the duration of the exemption in accordance with Section 10:24-8 of this chapter, and a provision that requires compliance with the City's Affirmative Action Plan, First Source Employment Linkage Program, Newark Resident's Employment Policy, and Apprenticeships and Project Labor Agreements set forth in the Revised General Ordinances of the City of Newark, New Jersey, as amended and supplemented, 2000, (2:2-28-1 et seq., 2:4-21 et seq., and 2:4-22D.1 et seq.). **The Financial Agreement shall include a Responsible Party for purposes of: (i) receiving service of process for any notice of breach, default or a violation of any of the provisions of the Financial Agreement and (ii) being jointly and severally liable with the Entity for the payment of any fines, penalties, costs or other assessments imposed by the City for such breach, default or a violation of any of the provisions of the Financial Agreement. "Responsible Party" means an individual who is an officer, shareholder, member, manager, partner or other person authorized by the Entity to make day-to-day decisions relating to its business affairs who has or will benefit, directly or indirectly, from the Entity's receipt of a Long Term Tax Exemption.** The Financial Agreement shall in all cases provide that any transfer in the ownership of an entity that is greater than 10% or that would materially change the terms of the Financial Agreement shall be void unless disclosed to the City in an annual disclosure statement or in correspondence sent to the City in advance of an annual disclosure. The Financial Agreement shall require the timely submission of a Total Project Cost Audit and a certified audit of the fiscal operations of the project, and shall require timely payment of all municipal taxes, fees and charges arising out of the agreement or in any way arising out of the property. **The Financial Agreement shall require an entity, as a material condition of the Agreement, to do whatever is necessary to maintain the entire property, including common areas, in good condition and in a manner that satisfies basic habitability including, but not limited to, complying with all building codes, keeping the property free from infestation, ensuring the property is structurally sound, ensuring that elevators and the systems that supply plumbing, electricity, gas, heat and air condition (central or individual units supplied by entity), are in good and functioning order either through routine repairs or replacements. Additionally, the entity shall keep the property clean and sanitary by providing the appropriate garbage cans and recycling bins and ensure their adequate removal from the property as required by State and Local Laws and Regulations ("Building Maintenance").** The Financial Agreement shall provide that the failure to comply with the requirement to submit certified audits, make payment of municipal taxes, fees and charges, or failure to comply with any material

condition of the Agreement, shall be grounds for the City to terminate the Agreement, and/or to exercise such other remedies as may be provided by statute, municipal ordinance or the Financial Agreement. The Financial Agreement shall further provide for the annual service charges and administrative fees that are to be paid to the City, based on the submission of a certified audit by an independent certified public accountant and in accordance with Section 10:24-10.

1. An entity shall concomitantly with the submission of a certified independent audit **certify that the Entity has complied with the requirement to include a Responsible Party for purposes of: (i) receiving service of process for any notice of breach, default or a violation of any of the provisions of the Financial Agreement and (ii) being jointly and severally liable with the Entity for the payment of any fines, penalties, costs or other assessments imposed by the City for such breach, default or a violation of any of the provisions of the Financial Agreement, and** attach an employment report under oath, with particulars, stating the manner and the extent to which it has complied with the City's Affirmative Action Plan, First Source Employment Linkage Program, Newark Resident's Employment Policy, and Apprenticeships and Project Labor Agreements set forth in the Revised General Ordinances, as amended and supplemented, 2000, (2:2-28.1 et seq., 2:4-21 et seq., and 2:4-22D.1 et seq.). The employment report shall, like the certified audit, be filed with both the Director of Finance and the City Clerk.

#### 10:24-7 ADMINISTRATION OF FINANCIAL AGREEMENT AFTER CONSTRUCTION.

After construction of the project is completed and the issuance of a permanent Certificate of Occupancy, the entity shall operate the project in conformance with the terms of the Financial Agreement. The Division of Tax Abatement and Special Taxes shall be responsible for oversight and administration of the Financial Agreement during the term of the exemption, in accordance with the procedures set forth as follows:

- c. Noncompliance. If an entity fails to comply with the requirements for submission of a certified audit and/or timely payment of real estate taxes and service charges during the term of the Financial Agreement, the Division of Tax Abatement and Special Taxes shall have responsibility to enforce the terms of the Financial Agreement through the following procedure. Such procedure shall not be the City's sole remedy, but rather shall be used in addition to such other remedies as may be provided by the laws of New Jersey and the terms of the Financial Agreement.

**5. Where an Entity has not complied with Building Maintenance and receives one (1) or more determinations of guilt by a court of competent jurisdiction either through a court hearing or through the entity's own admission of guilt through a plea agreement for City code violations related to the Property or structure(s) on the Property, the Entity shall be deemed in default of the Financial Agreement and the City shall begin the default process pursuant to the terms of the Financial Agreement. In the event the Entity shall fail to cure such default, the Division of Tax Abatement and Special Taxes shall notify the Municipal Council and recommend that the Corporation Counsel terminate the Financial Agreement, which shall cause the project or unit thereof to be assessed according to the general laws of taxation.**

**Section 2.** Any prior ordinances or parts thereof inconsistent herewith are hereby repealed and superseded by this ordinance.

**Section 3.** If any part of this ordinance is declared unconstitutional or illegal, the remaining provisions shall continue in full force and effect.

**Section 4.** This ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

#### **STATEMENT**

Ordinance amending Title X, Finance and Taxation, Chapter 24, Procedures for Application, Approval and Administration of Long Term Tax Exemptions, of the Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented to add Building Maintenance as a material condition to the Financial Agreement and to permit the City of Newark to rescind a tax exemption when an entity fails to comply with building maintenance requirements.

