



## Legislation Text

File #: 13-0055, Version: 2

**ORDINANCE APPROVING THE EXECUTION OF A FINANCIAL AGREEMENT WITH 36-54 RECTOR URBAN RENEWAL LLC 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 \$5,000,000 IN PROJECT COSTS, AND DETERMINING VARIOUS OTHER MATTERS IN CONNECTION THEREWITH.**

**Deferred 6PSF-e 022013/Public Hearing Open**

**Note: Public Hearing to be held on March 20, 2013**

**Deferred 6PSF-c 032013/Public Hearing Open**

**Deferred 6PSF-a 040313/Public Hearing Open**

**ORDINANCE APPROVING THE EXECUTION OF A FINANCIAL AGREEMENT WITH 36-54 RECTOR URBAN RENEWAL LLC 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 \$5,000,000 IN PROJECT COSTS, AND DETERMINING VARIOUS OTHER MATTERS IN CONNECTION THEREWITH.**

**WHEREAS**, on June 15, 2005, the Municipal Council of the City of Newark (the “City”) adopted Resolution No. 7RDO (A.S.), designating the entire City as an area in need of rehabilitation (the “Rehabilitation Area”), for purposes 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 (the “Redevelopment Law”, as codified by N.J.S.A. 40A:12A-1 et seq.); and

**WHEREAS**, on September 3, 2008, the Municipal Council of the City adopted Ordinance No. 6S&FE, approving a redevelopment plan for a portion of the Rehabilitation Area encompassing, *inter alia*, the Parcel (as defined below), entitled “The Living Downtown Plan” dated May 23, 2008 (the “Original Redevelopment Plan”); and

**WHEREAS**, on June 30, 2010, the Municipal Council of the City adopted Ordinance No. 6PSA(S), approving an amendment to the Original Redevelopment Plan, entitled “First Amendment to the Living Downtown Plan” (the “First Amendment to Redevelopment Plan”); and

**WHEREAS**, on September 21, 2010, the Municipal Council of the City adopted Ordinance No. 6PS&FA(S), approving an amendment to the Original Redevelopment Plan, entitled “Second Amendment to the Living Downtown Plan” (the “Second Amendment to Redevelopment Plan” and, collectively with the

Original Redevelopment Plan and the First Amendment to Redevelopment Plan, the “Redevelopment Plan”); and

**WHEREAS**, on August 6, 2008, the Municipal Council of the City adopted Resolution No. 7R7N, authorizing the execution and delivery of a Redevelopment Agreement between the City and 36-54 Rector Urban, L.L.C. (the “Original Redeveloper”), which Redevelopment Agreement became effective on October 8, 2008 (the “Original Redevelopment Agreement”); and

**WHEREAS**, the Original Redevelopment Agreement designated the Original Redeveloper as the redeveloper of certain City-owned property identified as Block 17, Lot 26 on the Official Tax Map of the City of Newark, more commonly known as 36-54 Rector Street (the “Parcel”) and authorized the sale thereof to the Original Redeveloper for the purposes of rehabilitating and redeveloping the Parcel; and

**WHEREAS**, on May 2, 2012, the Municipal Council of the City adopted Resolution No. 7R3C, designating the Parcel as an area in need of redevelopment (the “Redevelopment Area”) pursuant to the Redevelopment Law; and

**WHEREAS**, on July 3, 2012, the Municipal Council of the City adopted Resolution No. 7R3H, authorizing the execution and delivery of an undated First Amendment to Redevelopment Agreement between the City and the Original Redeveloper, which has been executed by the parties thereto (the “First Amendment to Redevelopment Agreement” and, collectively with the Original Redevelopment Agreement, the “Redevelopment Agreement”); and

**WHEREAS**, pursuant to Section 8.2 of the Original Redevelopment Agreement, the Original Redevelop may, upon written notice to the City, assign its rights under the Redevelopment Agreement to an entity controlling, controlled by, or under common control of the Original Redeveloper, including but not limited to an urban renewal entity formed by the Original Redeveloper pursuant to N.J.S.A. 40A:20-4; and

**WHEREAS**, 36-54 Rector Urban Renewal LLC, 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.), is an affiliate of the Original Redeveloper, and the Original Redeveloper has heretofore assigned all of its right, title and interest in and to the Redevelopment Agreement to the Owner URE; and

**WHEREAS**, pursuant to the Redevelopment Agreement, the Owner URE proposes to acquire the Parcel (including the existing twelve-story structure thereon) from the City, and to substantially renovate said structure into a twenty-three (23) story high rise residential tower containing approximately one hundred and sixty nine (169) rental apartments with approximately seven thousand six hundred and forty (7,640) square feet of ground floor retail space, residential lobby and amenity space, and approximately one hundred and seventeen (117) parking spaces for the tenants (collectively, the “Improvements”), as more fully described in the Exemption Application, as such term is defined herein, and in accordance with the Redevelopment Agreement and the Redevelopment Plan (such acquisition and Improvements are collectively referred to herein as the “Project”); and

**WHEREAS**, as of the Effective Date of the hereinafter-defined Financial Agreement, and as a condition thereto, fee simple title to the Parcel will be owned by the Owner URE; 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**, included in the Exemption Application is a request for a tax exemption and payment in lieu of taxes pursuant to the the Tax Exemption Law and the Redevelopment Bond Law; 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 \$5,000,000 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**, the 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 to the City with the tax exemption granted herein are minor compared to the estimated Total Project Cost of \$63,747,500 and the benefit created by (i) the construction of the Improvements, (ii) approximately three hundred fifty (350) jobs during the construction period and (iii) approximately 15-20 permanent jobs created through the permanent operation of the Improvements.

(b) Without the tax exemption granted herein it is highly unlikely that the Owner URE would be able to undertake the Project because certain sources of funding and/or a portion of the costs thereof, other than from the proceeds of the Bonds, would not otherwise be 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 Office of 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 Office of 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 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; (b) the Project is for the health, welfare, convenience or betterment of the inhabitants of the City; (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

**WHEREAS**, the First Amendment to Redevelopment Agreement provided, *inter alia*, that a portion of the purchase price for the Parcel be evidenced by a mortgage and mortgage note in the amount of One Million Dollars (\$1,000,000) to be delivered to the City (the "PLA Increase Mortgage"), with a corresponding offset to the cash amount payable to the City; and

**WHEREAS**, under the First Amendment to Redevelopment Agreement, the Original Redeveloper's repayment obligation in respect of the PLA Increase Mortgage is contingent, being limited in any calendar year during its twenty (20) year term to fifty percent (50%) of the amount, if any, by which the Redeveloper's "Net Operating Income" exceeds Seven Million Four Hundred Forty Thousand Dollars (\$7,440,000.00); and

**WHEREAS**, the parties have renegotiated said provisions so as to reduce the annual threshold of Net Operating Income (above which amounts are payable to the City) to an amount equal to one hundred fifty percent (150%) of the Redeveloper's "Estimated Net Operating Income" if this figure exceeds Seven Million Four Hundred Forty Thousand Dollars (\$7,440,000) for such year, and to extend the term to thirty-one (31) years; and

**WHEREAS**, said contingent payment obligation of the Original Redeveloper (which has since been assigned to, and assumed by, the Owner URE) has been incorporated into the Financial Agreement as the "City Amount", which is an element of the Annual Service Charge payable by the Owner URE thereunder, and therefore the Financial Agreement also amends the First Amendment to Redevelopment Agreement so that all references therein to the PLA Increase Mortgage shall refer instead to an unsecured limited recourse note of the Owner URE to the City (the "City Amount Promissory Note"), payable solely from and to the extent of any "City Amount" payable to the City under the Financial Agreement, except that the full unpaid balance shall be payable (regardless of the amount of Net Operating Income for such year) in the event of any early termination of the tax abatement provided for in the Financial Agreement prior to the scheduled termination date thereof.

**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 to the City with the tax exemption granted herein are minor compared to the estimated Total Project Cost of \$63,747,500 and the benefit created by (i) the construction of the Improvements, (ii) approximately three hundred fifty (350) jobs during the construction period and (iii) approximately fifteen to twenty (15-20) permanent jobs created through the permanent operation of the Improvements, and (b) without the tax exemption granted herein it is highly unlikely that the Project would otherwise be undertaken, as certain sources of funding or a portion of the costs thereof, other than from the proceeds of the Bonds, would not otherwise be 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) thirty-five (35) years from the date of execution of the Financial Agreement or (ii) thirty (30) 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 (in an amount sufficient to generate up to \$5,000,000.00 in project costs) 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. The Owner URE shall pay all outstanding taxes and all outstanding water and sewer charges within thirty (30) days of the adoption of this Ordinance.

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

### **STATEMENT**

This Ordinance grants a long-term exemption and approves the execution of a financial agreement with 36-54 Rector Urban Renewal LLC 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 \$5,000,000 in project costs (to be secured by an assignment of certain pledged annual service charges under the financial agreement), and determining various other matters in connection therewith for the renovation of a residential project on property identified as Block 17, Lot 26 on the Official Tax Map of the City of Newark, more commonly known as 36-54 Rector Street.