



Legislation Text

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ORDINANCE AMENDING TITLE X, CHAPTER 24, PROCEDURES FOR APPLICATION, APPROVAL AND ADMINISTRATION OF LONG TERM TAX EXEMPTIONS.

Deferred 8-a 051717

Deferred 6PSF-c 071217

Deferred 6PSF-a 092017

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, the LTTEL grants municipalities the authority to issue and extend tax abatements in order to accomplish their redevelopment goals; and

WHEREAS, the City previously adopted an ordinance entitled Title X, Chapter 24, Procedures for Application, Approval, and Administration of Long Term Tax Exemptions pursuant to the LTTEL and codified at Newark Municipal Code Section 10:24-1 et seq; and

WHEREAS, the City previously adopted Title X, Chapter 25, Extension of Non-Profit Tax Abatement agreements pursuant to the Urban Renewal Corporation and Association Law of 1961 ("URCAL" N.J.S.A. 40:55C-40 et seq.) and the Urban Renewal Nonprofit Corporation Law of 1965 ("URNCL" N.J.S.A. 40:55C-77 et seq.) and codified at Newark Municipal Code Section 10:25-1 et seq.; and

WHEREAS, the URCAL and URNCL were repealed by LTTEL (P.L.1991, c. 431 at N.J.S.A. 40A-20-1); and

WHEREAS, the LTTEL permits the issuance of tax abatements pursuant to the New Jersey Housing and Mortgage Finance Agency Law, ("NJHMFA" N.J.S.A. 55:14K-1 et seq.) for redevelopment projects financed by state subsidies for the construction of low and moderate income housing and the Redevelopment Bond Financing Law ("RBFL" N.J.S.A. 40A:12A-64 et seq.) for redevelopment projects financed with bonds; and

WHEREAS, the City of Newark wishes to standardize and improve its long-term tax exemption policy and procedures and revive its authority to extend tax abatements pursuant to the LTTEL through a measurement of the number and type of jobs created by the redevelopment project and the costs associated with significant capital improvements of such projects in order to ensure a proper balance between the benefits and costs, if any, of the tax exemption.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF

NEWARK, NEW JERSEY, THAT:

Section 1. Title X, Section 24 of the City of Newark General Code is hereby amended to read as follows:

CHAPTER 24, PROCEDURES FOR APPLICATION, APPROVAL AND ADMINISTRATION OF LONG TERM TAX EXEMPTIONS

Editor's Note: Additions are **bold and underlined** and deletions are shown as **~~strikethroughs~~**

10:24-1. DEFINITIONS.

When used in this Chapter, the following terms shall be defined as indicated:

Abatement (or **tax abatement** or **exemption** or **tax exemption**) shall mean the exemption of property from real estate taxes, subject to the payment of an annual service charge in lieu of taxes, authorized pursuant to the provisions of the Long Term Tax Exemption Law, (N.J.S.A. 40A:20-1 et seq.), **New Jersey Housing and Mortgage Finance Agency Law, (N.J.S.A. 55:14K-1 et seq., and the Redevelopment Bond Financing Law (N.J.S.A. 40A:12A-64 et seq.)**. Where an abatement or exemption is authorized pursuant to the provisions of the Long Term Tax Exemption Law **or the New Jersey Housing and Mortgage Finance Agency Law**, real estate taxes levied on the value of land shall continue to be assessed for the purpose of general taxation, except as otherwise provided by **S**tate statute.

Act shall mean the Long Term Tax Exemption Law (C.40A:20-1 et seq.); **the Redevelopment Bond Financing Law (C.40A-12A-65 et seq.); or the Housing and Mortgage Finance Agency Law (C.55:14K-1 et seq.), as applicable.**

Affordable Housing Project shall mean **housing affordable to persons of low or moderate income as defined pursuant to the "Fair Housing Act," N.J.S.A. (52:27d-301 et seq.)**

Agreement (or **F**inancial **A**greement) shall mean the contract entered into between the City of Newark and an entity, pursuant to the Act.

Applicant shall mean **an entity duly qualified under the Act which is requesting long-term tax abatement pursuant to an Application required by the City.**

Application shall mean the information and data required, **by the City**, to be submitted by an entity requesting an **long-term tax** abatement or exemption, ~~as required by the City.~~

Annual Service Charge shall mean **annual gross revenue, or gross shelter rent plus other income, or annual gross rents plus other income, as appropriate, for each Applicant.**

Best Efforts shall be indicated by compliance with the following requirements:

- (a) **The Applicant or its designee shall meet with the Deputy Mayor of the Division of Full Employment, prior to approval of the Tax Abatement Committee; and**
- (b) **The Applicant or its designee shall identify and provide the Deputy Mayor of the Division of Full Employment with the name, address, tax identification number, qualifications, WMBE certification, if any, and the Co-developer's invested dollar amount or percentage of ownership of the Project. If the Applicant fails to identify**

a Co-developer, the Applicant will provide a report to the Deputy Mayor of the Division of Full Employment with the reasons why; and

- (c) The Applicant or its designee shall provide the Deputy Mayor of the Division of Full Employment with a monthly construction report detailing the status of its minority and women workforce compliance with regard to the hiring process. Said report shall include name, address, social security number and ethnic background of the individual worker; and
- (d) The Applicant or its designee shall make an effort throughout the duration of the Project to contact and meet with minority and women business enterprises for the purpose of satisfying affirmative action, contracting, long-term employment and workforce goals ("Workforce Goals") set forth in the Revised General Ordinances (2:2-28-1 et seq. and 2:4-21 et seq.) The Applicant shall provide the Deputy Mayor of the Division of Full Employment with a monthly report on its efforts to contact and meet with minority and women business enterprises; and
- (e) The Applicant shall provide Deputy Mayor of the Division of Full Employment with a monthly report on minority and women contractors and minority and women subcontractors hired. Said report shall identify if the minority contractor and minority subcontractor have WMBE certification, the ethnic background, name, address, the scope (type) of business, the dollar amount of contract, and the percentage of the development contract awarded to the contractor and subcontractor; and
- (f) The Applicant or its designee shall make an effort to contact and meet with Newark residents throughout the duration of the Project for the purpose of satisfying the Workforce Goals of this Agreement. The Applicant shall provide the Deputy Mayor of the Division of Full Employment with a monthly report on its efforts to contact and meet with Newark residents; and
- (g) The Applicant shall require that its Contractors shall maintain a file of the names, addresses, and telephone numbers of each Newark resident who has sought employment with respect to a project or who was referred to the contractor by the Newark Resident Jobs Policy Office but was not hired. The contractor shall maintain a record of the reason any such person was not hired; and
- (h) The Applicant shall designate an individual to serve as a compliance officer for the purpose of satisfying the Workforce Goals of this Ordinance; and
- (i) If requested by Deputy Mayor of the Division of Full Employment, the Applicant shall meet with the Deputy Mayor/ Director of Economic and Housing Development to review and discuss compliance with the Workforce Goals of this Ordinance.

Certified audit shall mean a financial statement or report of the fiscal operations of a project, including but not limited to revenues and expenses, which shall be submitted annually pursuant to N.J.S.A. 40A:20-9(d). The contents of an audit shall be prepared in a manner consistent with the current standards of the Financial Accounting Standards Board, shall fully detail all items required by applicable statutes, and shall be certified as to its conformance with such standards by an Independent Certified Public Accountant who is licensed to practice that profession in the State of New Jersey.

City (or **municipality**) shall mean the City of Newark, New Jersey.

Commercial project shall mean any project which “consists of a place or activity involving the sale of goods or services or the operation of an office” as defined by the Newark Zoning and Land Use Regulations, Ordinance 6PSF-c February 4, 2015, and shall include, but not be limited to, any retail, office, or hotel project.

Co-Developer shall mean an Applicant’s partnering entity for any development project eligible under the Act for a long-term tax abatement that is a woman and/or minority as defined pursuant to the Revised General Ordinances, (2:2-28-1 et seq.) with a residential address, business residency or principal place of business in the City of Newark.

Development Officer shall mean the person the Deputy Mayor/Director of the Department of Economic and Housing Development and/or other person designated by the Director of Economic and Housing Development to conduct, manage and oversee development programs and projects in the City.

Division of Revenue Collection shall mean the agency or office within the Department of Finance of the City of Newark, which is headed and managed by the Tax Collector.

Division of Tax Abatement and Special Taxes shall mean the Division of Tax Abatement and Special Taxes within the Department of Finance. **This office shall be responsible for oversight and administration of tax abatements and tax exemptions, except as otherwise assigned by the Director of the Department of Finance.**

Director of Finance shall mean the Finance Director of the City of Newark.

Entity shall mean an urban renewal entity meeting the qualifications set forth in N.J.S.A. 40A:20-5 and/or a **“housing sponsors” as defined in N.J.S.A. 55:14K-1 et seq accordance with HMFA law.**

Gross Shelter Rent: the gross rent or carrying charge, less the cost of utilities furnished by the project, and excluding cost of sewage and water.

Industrial project shall mean:

- a. A combination of land, improvement and equipment which have been integrated into a functioning unit intended for the assembling, processing and manufacturing of finished or partially finished products from raw materials or fabricated parts, **including, but not limited to,** but shall not include warehouses; and
- b. Where the Municipal Council determines that the project will maintain or provide gainful employment within the municipality, assist in the economic development of the municipality, maintain or increase the tax base of the municipality and maintain or diversify and expand commerce within the municipality.

Living Wage shall mean the prevailing wage rate defined pursuant to Ordinance. 6S&Fe April 18, 2007.

Mayor shall mean the Mayor of the City of Newark, New Jersey.

Market-rate Housing Project shall mean housing not affordable to persons of low or moderate income as defined pursuant to the “Fair Housing Act,” N.J.S.A. (52:27d-301 et seq.)

Minimum Annual Service Charge shall mean the amount of the total taxes assessed against all real property in the area covered by the project in the last full tax year in which the area was subject to taxation, and the minimum annual service charge shall be paid in each year in which the annual service charge calculated would be less than the minimum annual service charge.

Mixed-income housing project shall mean housing with both market-rate units and units affordable to persons of low and moderate income as defined pursuant to the “Fair Housing Act,” N.J.S.A. (52:27d-301 et seq.)

Municipal Council shall mean the Municipal Council of the City of Newark, New Jersey.

Other Income shall mean revenue from parking, commercial and office space, coin-operated machines, and any other revenue not derived from residential rents.

Project shall mean the any work or undertaking, as defined in the Long Term Tax Exemption Law at N.J.S.A. 40A:20-3e, by an Urban Renewal Entity; a housing project financed by the New Jersey Housing and Mortgage Finance Agency, pursuant to N.J.S.A. 55:14K-37; and any work or undertaking pursuant to the Redevelopment Area Bond Financing Law at N.J.S.A. 40A:12A-64 that requires a financial agreement for the payment in lieu of taxes or special assessment, which has as its purpose the redevelopment of all or any part of a redevelopment area, in accordance with N.J.S.A. 40A:20-3(e).

Pronouns. He or it shall mean the masculine, feminine or neuter gender, the singular as well as the plural, as proper meaning requires.

Property shall mean the real property and improvements thereon which existed prior to the execution of a Financial Agreement.

Substantial Completion shall mean the date on which a Project receives, or is eligible to receive a Certificate of Occupancy.

Tax Assessor shall mean the Assessor for the City of Newark.

Tax Collector shall mean the Tax Collector for the City of Newark.

Total Project Cost shall mean that as defined in the Long Term Tax Exemption Law at N.J.S.A. 40A:20-3(h).

Total Project Cost Audit shall mean the Financial Statement or report submitted by the Applicant within ninety (90) days after the Substantial Completion of the Project of the Total Project Cost, supported by a certification of the licensed architect for the Project.

(Ord. 6S&Fa, 1-15-86 § 10:11-1; Ord. 6S&Fa, 2-27-90; Ord. 6S&Fd, 10-21-92; Ord. 6S&Fo, 8-6-97; Ord. 6S&Ff, 6-21-06 § 1)

10:24-2. PURPOSE.

This ~~Chapter~~ sets forth the procedures **and standards** to be followed by the City in the **formation**, review and consideration of applications for abatement or exemption of real estate taxes,

and the administration of Financial Agreements **as** authorized by the Municipal Council. This ~~Chapter~~ is intended to apply to residential, industrial and commercial projects. Should there be any conflicting provisions in this ~~Chapter~~ with the provisions of the **Act** the provisions of the Act will be controlling. N.J.S.A. 40A:20-12, **N.J.S.A. 40A:12A-66, and N.J.S.A. 55:14K-37** shall govern permissible annual service charge amounts and permissible durations of any long term tax exemption or abatement. (Ord. 6S&Fd, 10-21-92; Ord. 6S&Fn, 2-17-93; Ord. 6S&Ff, 6-21-06 § 1; Ord. 6PSF-f, 5-19-10 § 1)

10:24-3. APPLICATION FOR EXEMPTION.

a. *Form of Application.* All applications shall be submitted by an entity utilizing the Application form on file with the Office of the City Clerk and adopted by the Municipal Council by resolution. The Application form may be revised from time to time subject to the approval of the Municipal Council by Resolution. An application shall include but not be limited to: **the name, address, tax identification number, WMBE certifications, if any, and qualifications of the Applicant and co-developer, or, a showing that the Applicant complied with Best Efforts to identify a co-developer; the name of the owners and/or Board of Directors of Applicant and co-developer (if applicable); the percentage of ownership of the owners of Applicant and co-developer (if applicable); a description identification of** the property by metes and bounds, tax map block and lots and corresponding street address for which the exemption is sought, including a survey or plotting from the tax map; the requested duration of the exemption; the purpose for which the project shall be used; a detailed description of the improvements to be made to the property; an estimate of the total project cost or total project unit cost, where applicable, as defined by the Act; a ten (10) year projected pro forma for the project; an estimated schedule for commencement and completion of construction; a copy of the resolution granting final site plan approval; and a declaration that the proposed project is located within a redevelopment area or area appurtenant thereto, ~~an Urban Enterprise Zone~~, or is for a redevelopment relocation housing project and any other information which the Application may require.

In addition, the Application shall set forth the representations of the **Applicant** as to the assessments on the property for land and improvements as of the date of the filing of the Application, the tax levy on the property for the year in which the Application is filed, and the status of all municipal taxes, fees and charges due and payable to the City arising from or imposed on the property. A complete explanation as to the expected methods and sources of financing the project shall also be included.

The Application shall further contain statements of disclosure in the form contained in the Application as to all parties, including parent and subsidiary companies having any interest in the property and/or project, or any other tax exemption or financial agreement then in force and effect in which any of those parties have any interest, and as to any other contracts or agreements with the City in which any of those parties have any interest, and if so provide the Federal Identification Number of each party listed.

The Application shall contain the certification of the Entity **Applicant** that construction of the project has not and will not commence prior to approval of exemption and execution of Financial Agreement between the City and the entity.

The Application shall also include an estimate by the Entity **Applicant** as to the **number percentage** and type of jobs to be **created by the Project held by Newark residents** during the period of construction and the ~~number~~ **estimated percentage** and type of permanent jobs to be

created by the Project held by Newark residents within one (1) year after the completion date. The Application shall contain the affirmative action plan of the entity and a certification by the entity that such plan complies with the affirmative action requirements of the City.

The Application shall also include the certification of the Entity **Applicant** that the proposed project meets the requirements of the laws of New Jersey for exemption. Where a property is required to be declared "in need of redevelopment" by the City and a redevelopment plan is required to be adopted by the City as a prerequisite to the grant of an exemption, the entity shall further certify that the proposed project complies with the redevelopment plan as adopted.

The Application shall also include a proposed Financial Agreement prepared by the Entity, which shall include at minimum the terms and conditions required by the Act, **this chapter, and in the form that is on file with the City Clerk.**

Ten (10) copies of an Application shall be submitted with all copies executed in the original by an authorized agent or officer of the entity. Where the entity is a corporation or company, the signature on the Application shall be certified as to its authenticity and authority by the submission of a notarized corporate or company resolution, affixed with the seal of the corporation or company and the signature of the secretary of the corporation or company, or similar bona fide evidence.

b. *Application Fee.* No Application for abatement or exemption submitted pursuant to this chapter shall be accepted unless it is accompanied by full payment of the required Application fee. Such fees shall be two (2%) percent of the first year annual service charge estimated for the project **pursuant to N.J.S.A. 40A:20-12(b).** The Application fee shall be received for processing the Application. Further, the administrative fee for processing a request for the assignment and assumption of a tax exemption and financial agreement shall be two (2%) percent of the annual service charge for the current year. Checks shall be certified and payable to the City. ~~The application fee shall be nonrefundable.~~

c. Administrative Fee. The administrative fee for processing a request for the assignment and assumption of a tax exemption and financial agreement shall be two (2%) percent of the annual service charge for the current year pursuant to N.J.S.A. 40A:20-12(b). Checks shall be certified and payable to the City. The Application fee shall be nonrefundable.

d. *Submission.* All Applications for abatement or exemption shall be submitted to the Mayor **and Development Officer**, either in person or by certified mail, at his ~~the office of the Mayor and Development Officer~~. The Mayor shall thereupon transmit the Applications to the Division of Tax Abatement and Special Taxes for processing.

(Ord. 6S&Fd, 10-21-92; Ord. 6S&Fn, 2-17-93 § 10:11-3; Ord. 6S&Ff, 6-21-06)

10:24-4. CONSIDERATION AND APPROVAL.

a. *Distribution of Application.* Upon receipt of any Application, the the Division of Revenue Collection Development Officer shall forward one (1) copy to individual designated by the Mayor as Development Officer, the Director of Finance, **one copy to the Manager of the Division of Tax Abatement and Special Taxes,** one (1) copy to the Tax Assessor, one (1) copy to the Tax Collector, one (1) copy to the City Clerk and ~~three (3)~~ **two (2)** copies to the Corporation Counsel. The final copy of the Application shall be retained by the Division of Revenue Collection for processing and shall be placed on permanent file with that office.

b. *Development Review.* Upon receipt of an Application, the Development Officer shall conduct a complete review of the project outlined therein. Such review shall take into consideration the propriety, accuracy and validity of the description(s), plan(s) and estimate(s) submitted, the degree to

which the project complies with the City's development goals as expressed in the master plan, zoning ordinances, redevelopment plans, **the Development Officer's policies**, the necessity of tax abatement, and the feasibility of the project.

Based on the review, the Development Officer shall submit his recommendation to approve or disapprove the Application to the Corporation Counsel. Such recommendation shall include any changes to the Application that may be deemed necessary by the Development Officer, as well as set forth the reasons for the recommendation.

c. *Financial Review.* Upon receipt of an Application, the Director of Finance shall conduct a financial review of the Application including a cost and benefit analysis of the proposed project. In addition, the Director of Finance shall obtain written certifications from municipal officials as necessary to review and substantiate the information contained within the Application. Those certifications shall include the following:

1. Certification of the Tax Assessor as to:

- (a) The taxes levied on the real property included within the project in both the year in which the Application was filed and the immediately preceding year.
- (b) The precise identity of all real property included within the project, including the metes and bounds description, all tax block and lot designations and corresponding street addresses, as well as a survey or plotting of the property on the official tax map.
- (c) The owner of record as recorded in the office for each tax lot included within the project.
- (d) The tax assessment for land and improvements then in effect for each tax lot included within the project.
- (e) The total amount assessed on all real property included within the project in the calendar year immediately preceding its acquisition by the City, the City's agent, the entity or the entity's agent.

2. Certification of the Tax Collector as to:

- (a) The current status of payments due for real estate taxes, service charges and/or municipal liens of any type arising from the property included within the project or from any other property owned by the entity.
- (b) The taxes levied on the real property included within the project in both the year in which the Application was filed and the immediately preceding year.
- (c) The current status of payments due for any financial agreement then in force and effect which the entity is a party.

3. Certification from the Division of Tax Abatement and Special Taxes as to:

- (a) the current status of payroll, hotel and/or parking taxes due from the entity.**
- (b) The current status of payments due for any Financial Agreement then in force and effect which the entity is a party.**

4. Certification of the Director of the Division of Billing and Customer Service, or appropriate

office, as to the status of payments due for water and sewer services provided to the real property included within the project or other real property within the City, which the entity has an interest.

5. Certification of the Director of the **Uniform Construction Code Office** Division of Licenses as to the status of licenses and permits, and the amount of any payments due for licenses and permits issued to or held by the entity or related party.

Based upon the review, the Director of Finance shall submit his/her recommendation to approve or disapprove the application to the Corporation Counsel. Such recommendation shall state the basis or reasons supporting the recommendation.

d. *Legal Review.* Upon receipt of an application, the Corporation Counsel shall conduct a review as to the form and legality of the application. In addition, the Corporation Counsel shall obtain written certifications from municipal officials as necessary to substantiate the information contained in the application.

At a minimum, such certifications shall include the following:

1. The certifications provided for in paragraph c. above.
2. Certification of the Secretary of the Board of Adjustment identifying whether the use proposed for the project conforms to the zoning ordinance of the City.
3. Certification of the Secretary of the Central Planning Board, if applicable, identifying whether the project is located within a redevelopment area and identifying whether the project has received final site plan approval from the Central Planning Board.
4. The Certification of the Affirmative Action Officer that the Applicant has met with their office, received the applicable ordinances and resolutions and has been made aware of their responsibilities pursuant to the program.

The **Manager of Tax Abatement and Special Taxes** shall also review any Financial Agreements then in force and effect to determine the extent to which each party to the application is a party to any other agreements with the City and whether they are current on their obligations in those agreements.

Upon receipt of the aforementioned certifications and the review thereof, the Corporation Counsel shall make a determination as to the propriety of the application. Applications shall be deemed proper in those cases where they are presented in the proper form, satisfy the requirements of this Chapter and all other applicable statutes and ordinances, and for which no delinquency has been found with respect to any payments due to the City.

Where an Application is deemed proper, the Corporation Counsel shall prepare an ordinance in the form necessary to authorize the exemption and shall review, revise and modify the form of the Financial Agreement, as appropriate. All Financial Agreements shall be in the form filed with the City Clerk. The authorizing ordinance shall be signed by the Corporation Counsel as to form and legality and submitted, together with the Financial Agreement, the Application, the certifications and the recommendation of the Director of Finance and the Development Officer to the Mayor for consideration.

Where an application is deemed improper or deficient, the Corporation Counsel shall prepare a correspondence outlining those aspects of the application that are deficient and shall forward the correspondence with the application, the certifications and the recommendation of the Director of Finance and the Development Officer to the Mayor for consideration.

e. *Mayoral Review.* Upon receipt of an application and recommendations from the Corporation Counsel, the Mayor shall determine the action to be taken in regard to an application. When an application is deemed complete and receives favorable review by the Corporation Counsel, the Mayor shall determine whether to recommend the adoption of the authorizing ordinance by the Municipal Council, or to recommend the rejection of the application as not being in the interests of the City. Where an application does not receive a favorable recommendation by the Corporation Counsel, the Mayor shall determine whether the deficiencies can be cured, and if so may direct the entity and/or the appropriate municipal official as to the actions required. If the deficiencies cannot be cured or if the application is deemed not in the interest of the City, the Mayor may recommend the rejection of the application.

In those cases where the Mayor affords the entity the opportunity to cure deficiencies, the application may be reconsidered after correction or modification by submission to the Mayor. Afterwards, the process outlined in this Chapter shall be followed again. No fee shall be charged for consideration of a resubmitted application.

In those cases where the Mayor has recommended the rejection of an application and where such action has been ratified by the Municipal Council, the application may only be reconsidered by the submission of another application and application fee to the **Division of Tax Abatement and Special Taxes**, which shall be treated as a new application.

The recommendation of the Mayor to the Municipal Council, whether for approval or rejection, shall occur within sixty (60) calendar days after the date of receipt of a complete application.

f. *Municipal Council Consideration.* Upon receipt of an ordinance to authorize a Financial Agreement, the application together with all of the documents which were submitted by the Applicant, the certifications and review by the Finance Director required by this Chapter and the Mayor's recommendation, the Municipal Council shall not place such ordinance on the agenda for consideration, but rather shall refer the matter to its Tax Abatement Committee for review. The Tax Abatement Committee shall review the ordinance, the application, certifications, the recommendations, and the form of the Financial Agreement to ensure that the requirements of this Chapter have been satisfied. Where an Application is determined to be in proper form, the Tax Abatement Committee may make findings and recommendations.

The Tax Abatement Committee shall submit its findings and any recommendation to the Municipal Council. Upon receipt of the submission of the Tax Abatement Committee, the Municipal Council shall place the Application on its agenda for consideration. Upon action by the Municipal Council, an ordinance may be adopted, rejected or returned to Administration for correction, modification or further information. Notice of the adoption of an ordinance granting exemption and approving a Financial Agreement shall be published, pursuant to N.J.S.A. 40A:20-12.

(Ord. 6S+Fd, 10-21-92; Ord. 6S&Ff, 6-21-06 § 1)

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 at a minimum 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**, and the conditions thereof, 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.). and the grounds for termination of the exemption. The Financial Agreement shall in all cases provide that any transfer in the ownership of an entity that is greater than ten (10%) percent 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 certified audit of the total project cost **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 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 reconciliation of the estimated 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.**

The financial agreement shall also provide that the entity shall comply with the Affirmative Action Ordinance and the requirements of the City as follows:

1. The entity shall be deemed to impliedly agree that if it operates, controls or manages a project that it will in good faith assist the City of Newark in its goal of having fifty (50%) percent of all new jobs arising out of the businesses conducted on the project site after the issuance of a certificate of occupancy and during the term of the financial agreement dedicated to Newark residents of which twenty-five (25%) percent of such new employees shall be minority residents.

1. An entity shall concomitantly with the submission of a certified independent audit, 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.) subsection a,1. above. The employment report shall, like the certified audit, be filed with both the Director of Finance and the City Clerk.

2. An entity shall concomitantly with the submission of a certified audit, attach an employment report under oath, with particulars, stating the manner and the extent to which it has complied with subsection a,1. above. The employment report shall like the certified audit be filed with both the Director of Finance and the City Clerk.

2. 3. The Director of Finance shall forthwith, after receiving the employment report, send a copy thereof to the Office of Affirmative Action for investigation of the factual representation contained therein and to report its findings to the Municipal Council.

b. *Execution of Financial Agreement.* Upon adoption of an ordinance by the Municipal Council authorizing exemption, it shall be the responsibility of the City Clerk to insure that the financial agreement is fully executed. No Financial Agreement shall be considered to be in force and effect unless and until it has been signed by the entity, the Corporation Counsel, the Mayor, and dated and

certified by the City Clerk by his signature and affixing the Municipal Seal.

c. *Distribution of Executed Financial Agreement.* When a Financial Agreement has been fully executed, the City Clerk shall be responsible for distributing certified copies thereof to the entity, the Tax Assessor, the Tax Collector, the Manager of the Division of Tax Abatement and Special Taxes, the Construction Code Official and the Corporation Counsel. The City Clerk shall retain one (1) executed copy which shall be placed on permanent file with his office, where it shall be available for examination during regular business hours. Further, the City Clerk shall forward a certified copy of all ordinances approving an exemption and the accompanying Financial Agreement to the Director of the Division of Local Government Services, pursuant to N.J.S.A. 40A:20-12.Ord. 6 S+F_d, 10-21-92; Ord. 6 S+F_n, 2-17-93 § 10:11-5; Ord. 6 S+F_f, 6-21-06 § 1)

10:24-6. PERIOD OF CONSTRUCTION; OVERSIGHT AND CHARGES.

During the period of construction of a project, the Tax Assessor, Division of Revenue Collection and the Construction Code Official shall each be responsible for oversight of the project as outlined below.

a. *Permits and Inspections.* Upon receipt of an executed Financial Agreement, the Construction Code Official shall cause permits to be issued upon the application of the entity and shall cause inspections of all work activity to be conducted in the manner provided by applicable municipal ordinances. The Construction Code Official shall notify the Division of Revenue Collection of any failure by the entity to properly apply for permits, to begin or complete construction within the time frame set forth in the Financial Agreement. When permits are issued, the Construction Code Official shall be responsible for notifying the Tax Assessor, Tax Collector and the Division of Tax Abatement and Special Taxes and the Affirmative Action Office of such issuance.

b. *Quarterly Report to Assessment.* From the date of the execution of a Financial Agreement until the issuance of a permanent Certificate of Occupancy for the project, the Construction Code Official shall report to the Tax Assessor each quarter as to the status of permit and construction activity on the project. Upon the total or partial completion of construction, the Construction Code Official shall issue a Certificate of Occupancy in appropriate form, and shall be responsible for filing a copy of every certificate with the Tax Assessor, Tax Collector and the Division of Tax Abatement and Special Taxes.

c. *Assessments and Taxes.* When a permanent Certificate of Occupancy is issued for a project granted exemption pursuant to the Act, the Tax Assessor shall reflect the improvements and land thereof, as authorized, on the Exempt Property List or as otherwise required by State statute. Further, the Tax Assessor shall exempt the assessment of all improvements covered by the Financial Agreement during the period the exemption remains in effect. Assessments for land shall remain taxable throughout the term of the exemption, except as otherwise provided.

At any time that the Tax Assessor causes the assessment on the improvements or land of a project to be removed, in whole or in part, from taxable to exempt status, he shall so notify the ~~Tax Collector~~ **Manager of Tax Abatement and Special Taxes** in writing so as to insure the commencement and payment of annual service charges, pursuant to the terms of the Financial Agreement.

d. *Collection and Audit.* Upon receipt of an executed Financial Agreement, the ~~Division of Revenue~~ **Division of Tax Abatement and Special Taxes** shall note within its books of account a record of the execution of the agreement and the dates provide for commencement and completion of construction. The Tax Collector shall thereafter continue to levy taxes and collect

payment thereof on the property until the occurrence of the following:

1. In the event that a Certificate of Occupancy is issued for the project, the Tax Collector shall immediately cease to levy or collect taxes on the portion of the assessed value covered by the Certificate of Occupancy and **the Manager of the Division of Tax Abatement and Special Taxes** shall instead commence billing the entity the estimated annual service charge as required by the Financial Agreement. Where the Financial Agreement is authorized pursuant to the Act, taxes on the value of the land shall continue to be levied and collected according to the laws of New Jersey, except as otherwise authorized.

When a Certificate of Occupancy for a project is issued, in addition to the steps outlined above, the entity shall submit to the Finance Director, Tax Collector **Manager of Tax Abatement and Special Taxes** and the City Clerk a copy of a certified total project cost audit prepared by a certified public accountant and the independent and qualified architect's certification required by the Act, within ninety (90) days from the date of issuance of the Certificate of Occupancy.

The Division of ~~Revenue Collection~~ **Tax Abatement and Special Taxes** shall review the certified total project cost audit and the architect's certification and make a determination as to the acceptability of the audit. If the audit is deemed unacceptable it may be performed by the City's designated auditor and the cost thereof shall be borne by the Entity. The Division of ~~Revenue Collection~~ **Tax Abatement and Special Taxes** shall be responsible for billing the entity for the cost of the audit. Once the audit is accepted, if its findings cause any change in the basis to be used in the determination of the annual service charge, net profit or excess profits, the Division of ~~Revenue Collection~~ **Tax Abatement and Special Taxes** shall bill the entity for any adjustment. The Division of **Tax Abatement and Special Taxes Revenue** shall also maintain a copy of an approved certified total project cost audit with the permanent files of its office.

Upon adoption of an ordinance authorizing amendment to the Financial Agreement, the Division of ~~Revenue Collection~~ **Tax Abatement and Special Taxes** shall bill the entity for the cost of the audit services and for any additional service charges resulting from an adjustment of the estimated service charges, and thereafter annual service charges or excess profits, if owed, shall be billed to the entity. The City Clerk shall be responsible for distributing and filing executed copies of the Financial Agreement, as amended, in the same manner as set forth for in Section 10:24-5(c) of this cChapter.

2. In the event that the entity fails to commence or complete construction of the project within the time required by the Financial Agreement, fails to make payment of annual service charges as required by the Agreement, or otherwise fails to satisfy a material condition of the Agreement, the ~~Revenue Collection~~ **Division of Tax Abatement and Special Taxes** shall notify the Corporation Counsel of the default by the entity. The Corporation Counsel shall thereupon take steps necessary to terminate the Financial Agreement and to advise the Tax Assessor and the Tax Collector of the actions to be taken regarding the assessment and collection of real estate taxes. The Corporation Counsel shall also be responsible for the preparation of such ordinance necessary to authorize the termination of the Financial Agreement. Upon adoption of such an ordinance, the City Clerk shall be responsible for filing and distributing the ordinance in accordance with the procedures established by Section 10:24-5(c) of this cChapter.

(Ord. 6 S+Fd, 10-21-92 § 10:11-6; Ord. 6 S+Ff, 6-21-06 § 1)

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 Revenue Collection **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:

a. *Billing and Payment.* During the term of an exemption, the ~~Tax Collector~~ **Manager of the Division of Tax Abatement and Special Taxes** shall bill service charges quarterly. The bills prepared by the Division of **Tax Abatement and Special Taxes** shall reflect the taxes due on the value of all land included within the project and all service charges, or other fees or charges due on the improvements, respectively. If authorized by law, the land upon which housing is constructed, acquired or rehabilitated by an entity, may be exempt from taxation during the term of the Financial Agreement. Irrespective of the date of issuance, any bill for annual service charges or other municipal charges shall be deemed to have been issued on the first day of each calendar quarter and to be due and payable within thirty (30) calendar days thereafter. Where annual service charges are billed on the basis of estimated or projected figures, any payments thereof shall be reconciled upon the submission of a certified audit. In such instance, the entity shall make any additional or required payments within ninety (90) days after the close of its fiscal year. Any additional payment by an entity shall be submitted along with a statement by a certified public accountant, attesting that the additional payment was the actual amount due based upon the gross revenue or total project cost as computed in accordance with provisions of the Act and the Financial Agreement.

All payments due to the City arising out of the Financial Agreement which are not paid as of the date due shall be subject to the same charges for penalties and interest as arrears then in effect for nonpayment of real estate taxes.

The Division of Revenue Collection shall accept all payments made pursuant to an effective and valid Financial Agreement and shall maintain books of account as to each agreement. Except as otherwise required by law, the Division of Revenue Collection ~~and the Revenue Collection Division~~ **of Tax Abatement and Special Taxes** shall apply payments received for real estate taxes in the following order: first, amounts due for penalties and interest on taxes, and then amounts due for the principal of tax payments. As to payments received for service charges, first, amounts due for penalties and interest, and then, amounts due for the principal of service charge payments. The entity shall be responsible for making timely payments for real estate taxes and service charges directly to the Division of Revenue Collection ~~and/or the Division of Tax Abatement and Special Taxes~~ **Taxes**.

In addition to payment of the annual service charge an entity shall be required to pay an annual administrative fee to the City. The requirement to pay an annual administrative fee shall be included as a covenant in all deeds to a purchaser or transferee of a project or unit owner thereof. The annual administrative fee shall be two (2%) percent of the annual service charge payable and due on or before February 1st of each year. In the event an entity or owner of a property granted exemption pursuant to the Act does not pay the annual administrative fee, such delinquency shall be grounds for rescission or termination of the exemption.

b. *Annual Audits.* Where required by the Act, other applicable law or by the Financial Agreement, an entity shall submit a certified audit prepared by a certified public accountant of the financial performance of the project. A certified audit shall be submitted each year within ninety (90) days after the end of the fiscal year of the Entity to the Division of Revenue Collection **Manager of the Division of Tax Abatement and Special Taxes** with a simultaneous copy to the City Clerk for archival purposes. As part of or in addition to the submission of a certified audit, the Entity shall submit a statement prepared by a certified public accountant attesting to the net profits and the

percentage of excess profits utilized to maintain reserves authorized pursuant to the provisions of the Act. The ~~Division of Revenue Collection~~ **Manager of the Division of Tax Abatement and Special Taxes** shall review each audit upon submission and make a determination as to any adjustment required in the annual service charge, net profit and/or excess profits.

The certified audit shall be submitted to the Director of Finance **and/or the Manager of the Division of Tax Abatement and Special Taxes** for review. If the Director of Finance **and/or the Manager of the Division of Tax Abatement and Special Taxes** determines that an audit is acceptable, it shall be used as the basis for the adjustments of any taxes, charges or fees outlined in subsection a. of this Section. If it is determined that a certified audit is not acceptable, the Division of **Tax Abatement and Special Taxes** shall notify the entity, and the entity shall have responsibility to cure the deficiencies identified and to submit a corrected or restated audit. As part of the audit process, in the event that the certified audit is determined to be unacceptable, the entity shall have responsibility for the payment of a fee to offset the City's cost for review of the certified audit. This fee shall be billed by the ~~Division of Revenue Collection~~ **Tax Abatement and Special Taxes** as part of the annual service charge and shall be payable under the same terms as that charge.

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 ~~Revenue Collection~~ **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.

1. In the case where any payment due to the City pursuant to a Financial Agreement, whether arising from real estate taxes or service charges is in arrears for a period of six (6) months or more, the Division of ~~Revenue Collection~~ **Tax Abatement and Special Taxes** shall notify the Entity or responsible party that unless the total amount due including penalties and interest and subsequent charges are brought to current status within a period of thirty (30) days from the date of the notification, the exemption and Financial Agreement shall be rescinded. If the entity fails to comply with such notice, the Division of ~~Revenue Collection~~ **Tax Abatement and Special Taxes** shall recommend that the Law Department prepare an ordinance rescinding the exemption and Financial Agreement, and shall notify the Tax Assessor of the pending action.

Where an exemption and Financial Agreement is rescinded, the entity shall have thirty (30) calendar days to seek reinstatement of the exemption and Financial Agreement, which shall only be permitted when all obligations of the Entity or person receiving the benefit of an exemption are satisfied and made current. Upon satisfaction of all obligations, the Division of ~~Revenue Collection~~ **Tax Abatement and Special Taxes in consultation with the Development Officer** shall recommend that the Law Department prepare an ordinance to reinstate the exemption and Financial Agreement for the remainder of its term.

It shall be the responsibility of the City Clerk to file and distribute copies of all ordinances to rescind or reinstate an exemption and Financial Agreement.

2. In the event of any nonpayment as outlined in Subsection **(c)(1)** ~~c.1.~~ of this Section, in addition to the remedies outlined therein, the entity by signing the Financial Agreement agrees that the City shall have the same rights to enforce liens and commence foreclosure proceedings against its project as though the nonpayment were real estate taxes. The City may exercise such rights by following the procedures established by State statute and local ordinances for the collection of

delinquent real estate taxes.

3. Where any certified audit required to be submitted pursuant to a Financial Agreement is delinquent for a period of thirty (30) days or more from the date required to be submitted, the Division of ~~Revenue Collection~~ **Tax Abatement and Special Taxes** shall notify the entity that unless the audit is submitted in proper form within thirty (30) days from the date of notification, the exemption and Financial Agreement shall be rescinded. If the entity fails to comply with the notice, the Division of ~~Revenue Collection~~ **Tax Abatement and Special Taxes** shall recommend that the Law Department prepare an ordinance rescinding the exemption and Financial Agreement, which shall cause the project or unit thereof to be assessed according to the general laws of taxation.

Where an exemption or Financial Agreement is rescinded, the remaining procedure shall be the same as set forth in Subsection ~~(c)(1)~~ of this Section. However, the City, at its option may choose not to exercise its right to rescind or terminate, but instead cause an equivalent audit to be conducted by qualified personnel under the City's direction. Where this option is elected, the City shall utilize the resulting audit as the basis for billing as if it had been submitted by the entity. Further, the City shall have the right to bill the entity for the cost of conducting an audit. Exercise of this option by the City shall not in any way preclude or waive the right of the City to terminate an exemption for any other default.

4. Where an entity or other person fails to comply with any other material condition of a Financial Agreement, the Division of ~~Revenue Collection~~ **Tax Abatement and Special Taxes** shall notify the Corporation Counsel of the default. The Corporation Counsel shall thereupon take appropriate steps necessary to declare the exemption and Financial Agreement void or take such other legal or equitable action.

(Ord. 6 S+Fd, 10-21-92 § 10:11-7; Ord. 6 S+Ff, 6-21-06 § 1)

10:24-8. TAX EXEMPTION ELIGIBILITY AND DURATION.

Notwithstanding anything to the contrary, the following projects are eligible for a tax abatement: an exemption shall be granted for the following projects:

- a. Construction or development of a residential project consisting of five (5) or more units and not exceeding a period of thirty (30) years **Affordable Housing Project for a period of thirty (30) years from the completion of the entire project, or not more than thirty-five (35) years from the execution of the Financial Agreement, or for the period of time required by the federal agency subsidizing the project, whichever is greater;**
- b. **Mixed-Income Housing Project as follows:**
 1. **Affordable housing with twenty percent (20%) to thirty nine percent (39%) set-aside for a period of fifth teen (15) years;**
 2. **Affordable housing with forty percent (40%) to forty nine percent (49%) set-aside for a period of twenty (20) years;**
 3. **Affordable housing with fifty percent (50%) to ninety nine percent (99%) set-aside for a period of twenty-five (25) years**

- c. Market-rate Housing Project for a period of fifteen (15) years;
 - d. Senior Market-rate Housing Project for a period of twenty (20) years;
 - e. Commercial Project designed to be a hotel for a period of twenty (20) years, or a Commercial Project designed to be a worker cooperative or other cooperative enterprise for a period of twenty (20) years, or all other Commercial Projects for a period of fifteen (15) years with special considerations for:
 - (i) the character of the neighborhood,
 - (ii) the economic and social opportunities for residents,
 - (iii) the overall economic impact of the targeted location, and
 - (iv) the institution of green building and construction
 - f. Industrial Project designed for computer and technical industries for a period of twenty (20) years, or an Industrial Project designed for renewable energy production for a period of twenty (20) years, or all other Industrial Projects for a period of fifteen (15) years with special considerations for:
 - (i) the character of the neighborhood,
 - (ii) the economic opportunities for residents,
 - (iii) the overall economic impact of the targeted location, and
 - (iv) the institution of green building and construction;
- b. Construction or development of an industrial project not to exceed a period of fifteen (15) years.
- and
- c. Construction or development of a commercial project not to exceed a period of fifteen (15) years.

(Ord. 6 S+Fd, 10-21-92 § 10:11-8; Ord. 6 S+Fn, 2-17-93; Ord. 6 S+FD, 5-21-97; Ord. 6 S+Fd, 8-6-97; 6 S+Fd, 8-9-00 § 1; Ord. 6 S+Ff, 6-21-06 § 1)

10:24-9. DISTRIBUTION OF APPLICATION AND FINANCIAL AGREEMENTS.

The City hereby approves the format of the application and Financial Agreement for long term tax exemption of residential, commercial and industrial projects, which shall be placed on permanent file in the Office of the City Clerk. All such documents shall be available for examination and distribution during regular business hours.

The Corporation Counsel may, from time to time, make technical and legal changes not affecting the substance of these documents. (Ord. 6 S+Fd, 10-21-92 § 10:11-9; Ord. 6 S+Fn, 2-17-93 § 10:11-9; Ord. 6 S+Fd, 5-21-97; Ord. 6 S+Ff, 6-21-06 § 1)

10:24-10. ANNUAL SERVICE CHARGE FOR TAX EXEMPT PROJECTS.

During the term of an exemption, in lieu of any taxes to be paid on the project improvements, buildings or land, as authorized by law, an entity shall make payment to the City of an annual service charge. The annual service charge required to be paid by the entity shall be in accordance with the following:

a. The annual service charge for low and moderate income housing projects shall not be greater than fifteen (15%) percent of the annual gross revenues generated from the operation of such projects.

b. The minimum annual service charge for all other housing projects shall not be less than fifteen (15%) percent of the annual gross revenues generated from the operation of such projects and the duration of the tax abatement shall not exceed thirty (30) years.

c. The minimum annual service charge for commercial and industrial projects shall not be less than fifteen (15%) percent of the annual gross revenues generated from the operation of such projects and the duration of the tax abatement shall not exceed fifteen (15) years.

d. Where annual gross revenues cannot be reasonably determined because of the nature of the development, ownership, use or occupancy of a project, the annual service charge may be calculated on the basis of the total project cost or total project unit cost. However, the annual service charge for low and moderate income housing projects shall not be greater than two (2%) percent of the total project cost or total project unit cost. For all other housing projects the annual service charge shall not be less than two (2%) percent of total project costs or total project unit costs and the maximum term shall not exceed thirty (30) years. For industrial and commercial projects the annual service charge shall not be less than two (2%) percent of total project costs or total project unit costs and the maximum term shall not exceed fifteen (15) years.

e. The annual service charge for condominium projects shall be not less than ten (10%) percent of the annual gross revenues generated from the operation of such projects and the maximum term shall not exceed thirty (30) years. In the case of a condominium project "annual gross revenue" means the amount equal to the annual aggregate constant payments to principle and interest, pursuant to N.J.S.A. 40A:20-14 (a).

a. Low and Moderate Income Senior and/or Disabled Housing Projects. The annual service charge for low and moderate income housing projects reserved for seniors and/or disabled persons shall not be less than six and twenty eight percent (6.28%) of the annual gross rents plus fifteen percent (15%) of other income, or two percent (2%) of the total project cost, throughout the tax abatement term.

b. Other Low and Moderate Income Housing Projects. The annual service charge for all other low and moderate income housing projects shall not be less than seven and a half percent (7.5%) of the annual gross rents plus fifteen percent (15%) of other income, or two percent (2%) of the total project cost, throughout the tax abatement term.

c. Mixed-income Housing Project. The annual service charge for mixed-income housing projects shall be the following:

i. Twenty-Percent (20%) Set-Aside for Affordable Housing. The annual

service charge for mixed-income housing projects with a twenty-percent (20%) set-aside for affordable housing shall not be less than ten percent (10%) of the annual gross rents plus fifteen percent (15%) of other income, or four percent (4%) of the total project cost of the market-rate units and seven and a half percent (7.5%) of the annual gross rents plus fifteen percent (15%) of other income, or two percent (2%) of the total project cost of the low and moderate income units throughout the tax abatement term.

*ii. **Forty-Percent (40%) Set-Aside for Affordable Housing.*** The annual service charge for mixed-income housing projects with forty percent (40%) set-aside for affordable housing shall not be less than eleven and a half percent (11.5%) of the annual gross rents plus fifteen percent (15%) of other income, or three percent (3%) of the total project cost of the market-rate units and seven percent (7%) of the annual gross rents plus fifteen percent (15%) of other income, or two percent (2%) of the total project cost for the low and moderate income units throughout the tax abatement term.

*iii. **Fifty-Percent (50%) Set-Aside for Affordable Housing.*** The annual service charge for mixed-income housing projects with fifty percent (50%) set-aside for affordable housing shall not be less than eleven percent (11%) of the annual gross rents plus fifteen percent (15%) of other income, or three percent (3%) of the total project cost of the market-rate units and six and twenty eight percent (6.28%) of the annual gross rents plus fifteen percent (15%) of other income, or two percent (2%) of the total project cost for the low and moderate income units throughout the tax abatement term.

*d. **Senior Market-rate Housing.*** The annual service charge for market-rate housing reserved for seniors only shall be ten percent (10%) of the annual gross rents plus fifteen percent (15%) of other income, or two percent (2%) of the total project cost, throughout the tax abatement term.

*e. **Other Market-rate Housing Project.*** The annual service charge for all other market-rate housing projects shall not be less than fifteen (15%) percent of the annual gross rents plus fifteen percent (15%) of other income, or two percent (2%) of the total project cost Specifically, the annual service charge for low and moderate income housing projects shall be:

*i. **Fifteen percent (15%) of the annual gross rents plus fifteen percent (15%) of other income, or two percent (2%) of the total project cost for***

- the first ten (10) years of the tax abatement term; and
- ii. Sixteen and a half percent (16.5%) of the annual gross rents plus fifteen percent (15%) of other income, or two percent (2%) of the total project cost for years eleven through fifteen (11-15) of the tax abatement term; and
- f. **Commercial Projects.** The annual service charge for commercial projects shall not be less than fifteen (15%) percent of the annual gross revenues , or two percent (2%) of the total project cost Specifically, the annual service charge for low and moderate income housing projects shall be:
- i. Fifteen percent (15%) of the annual gross revenues, or two percent (2%) of the total project cost for the first ten (10) years of the tax abatement term; and
- ii. Sixteen and a half percent (16.5%) of the annual gross revenues, or two percent (2%) of the total project cost for years eleven through fifteen (11-15) of the tax abatement term; and
- iii. Eighteen and a half percent (18.5%) of the annual gross revenues, or three percent (3%) of the total project cost for years sixteen through twenty (16-20) of the tax abatement term.
- g. **Industrial Projects.** The annual service charge for commercial and industrial projects shall not be less than fifteen (15%) percent of the annual gross revenues, or two percent (2%) of the total project cost. Specifically, the annual service charge for low and moderate income housing projects shall be:
- i. Fifteen percent (15%) of the annual gross revenues, or two percent (2%) of the total project cost for the first ten (10) years of the tax abatement term;
- ii. Sixteen and a half percent (16.5%) of the annual gross revenues or two percent (2%) of the total project cost for years eleven through fifteen (11-15) of the tax abatement term;
- iii. Eighteen and a half percent (18.5%) of the annual gross revenues or three percent (3%) of the total project cost for years sixteen through twenty (16-20) of the tax abatement term;
- h. **Notwithstanding any other provision of this ordinance, the annual service charge for condominium projects shall be not less than ten (10%) percent of the annual gross revenues generated from the operation of such projects and the maximum term shall not exceed thirty (30) years. In the case of a condominium project "annual gross revenue" means the amount equal to the annual aggregate constant payments to principle and interest, pursuant to N.J.S.A. 40A:20-14(a).**

- i. Minimum Annual Service Charge.** Whenever the minimum annual service charge for the project exceeds the amount which otherwise would be due as the annual service charge, as determined by Section 10:24-10, the minimum annual service charge shall be deemed the amount of the annual service charge, except the minimum annual service charge shall not apply to qualified subsidized housing projects, pursuant to N.J.S.A. 40A:20-1 et seq.

(Ord. 6 S+Fd, 10-21-92 § 10:11-10; Ord. 6 S+Fn, 2-17-93 § 10:11-10; Ord. 6 S+Fd, 5-21-97; Ord. 6 S+Fo, 8-6-97; Ord. 6 S+Ff, 6-21-06 § 1)

10:24-11. AFFORDABLE HOUSING TRUST FUND.

An abatement authorized pursuant to this Chapter for any market rate housing project or any commercial or industrial project shall not be approved unless the entity makes a contribution to the City of Newark's Affordable Housing Trust Fund, in accordance with N.J.S.A. 40A:12A-4.1 et seq. and this Chapter.

No contribution shall be required of an entity that by a recorded deed or agreement, restricts (thereby setting aside) a minimum of **twenty fifteen (20%)** (15%) percent of the project for low and moderate income affordable housing for a minimum period of thirty (30) years in accordance with the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

- a. *Amount of payments.* The amount of contribution shall be calculated based upon the classification of the improvements to be tax exempt in accordance with the following formulas:

Market Rate Housing: \$1,500.00 per unit

Commercial Space: \$1.50 per square foot

Industrial Space: \$.10 per square foot

- b. *Time of Contribution.* All contributions shall be due and payable as follows:

1. One-third (1/3) on or before the effective date of the executed Financial Agreement;
2. One-third (1/3) on or before the issuance of the first of any construction permit for the project, but no later than six (6) months after the date of the Financial Agreement;
3. One-third (1/3) on or before the date the first of any Certificate of Occupancy is issued for the project, but no later than twenty-four (24) months after the date of the Financial Agreement.

Any payment that is late or unpaid in whole or in part, whether billed or not, shall bear the highest rate of interest allowed by law for unpaid taxes until paid in full.

- c. *Notices.* The entity shall send a written notice to the Business Administrator and the Tax Assessor's Office, immediately advising the City of the occurrence of each of the following events:

1. The submission of the executed Financial Agreement to the City;
2. The filing of the application for the first construction permit for the project; and
3. The issuance of the first Certificate of Occupancy by the Construction Code Official for any part of the project.

- d. *Guidelines for the Expenditure of Funds.* All contributions made to the Affordable Housing Trust Fund shall be expended solely for the rehabilitation or preservation of existing low or moderate

affordable housing or the construction of new low or moderate income affordable housing, as those terms are defined in the Fair Housing Act, N.J.S.A. 52:27-301 et seq., and any regulations promulgated thereunder.

All funds shall be awarded by the City from the Affordable Housing Trust Fund as loans, on a reimbursement basis only, to supplement other private or public funds needed to complete the project.

No award will be approved unless the Applicant at a minimum satisfies the following conditions:

1. An Applicant must file a completed application form; which shall include an administrative questionnaire, financial disclosure statement and any other forms or supporting documents the City deems appropriate or necessary; and
 2. An Applicant must provide proof that it is a for profit or a nonprofit entity, organized under State and Federal Law for the purpose of constructing affordable housing or a public entity; and
 3. An Applicant must demonstrate that it or a related entity has successfully completed the construction of at least one other significant housing project; and
 4. An Applicant must provide proof that it is the recipient of funds from another public or private source that, together with the Trust Fund award, will constitute sufficient funds to complete the proposed project; and
 5. The Applicant must commence construction no later than one (1) year from the date of the award of the Trust Fund money. Failure to commence construction within one (1) year will result in cancellation of the award.
- e. *Dedication of Funds.* The funds shall be used only for the construction of low or moderate income housing projects in accordance with the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. Two (2%) percent of the funds shall be retained by the City for its own administrative fees and/or capacity building activities for local development corporations.

No funds shall be distributed to an entity earlier than closing date of the first mortgage. The funds shall be distributed in accordance with the construction draws which the entity is scheduled to receive from the financing source(s)

f. *Collateral.* All loans shall be collateralized by a note and the recordation of a mortgage. The mortgage may only be subordinated to a permanent governmental loan or a private institutional lender used to finance the initial project acquisition or construction. All loans, including self-amortizing loans, shall bear interest to be determined on a project-by-project basis at a rate not to exceed the interest rate imposed on the first mortgage as of the 1st day of the month immediately preceding the closing.

(Ord. 6S+Ff, 6-21-06 § 1)

10:24-12 COMMUNITY SCHOOL TRUST FUND

An Abatment authorized pursuant to this chapter shall not be approved unless the entity makes a contribution of one percent (1%) of the annual service charge to the City's Community School Trust Fund.

10:24-13. COMMUNITY ECONOMIC DEVELOPMENT TRUST FUND.

An abatement authorized pursuant to this Chapter for any market rate housing project, or any commercial or industrial project shall not be approved unless the entity makes a contribution to the City's Community Economic Development Dedicated Trust Fund, established by Resolution 7Rg, adopted by the Municipal Council of the City of Newark on November 6, 1985, in order to satisfy the objectives of Title I of the Housing and Community Development Act of 1974, codified as 42 U.S.C. 5301 et seq., and this Chapter.

- a. Commercial and Industrial Projects. All Applicants for a commercial or industrial project shall contribute a minimum of 1% of annual service charge to the City to be held in trust for financing the development costs associated with redevelopment projects, urban revitalization projects, economic stabilization and stimulation projects, and such other projects within the City of Newark which are consistent with the activities eligible for assistance under Title I of the Housing and Community Development Act of 1974 as amended.
- b. Market-rate Housing Projects. All Applicants for a housing project having less than twenty percent (20%) affordable housing shall contribute a minimum of 0.25% of the annual service charge to the City to be held in trust for financing the development costs associated with redevelopment projects, urban revitalization projects, economic stabilization and stimulation projects, and such other projects within the City of Newark which are consistent with the activities eligible for assistance under Title I of the Housing and Community Development Act of 1974 as amended.
- c. Mixed-Income and Affordable Housing Projects. All Applicants for a housing project having more than twenty percent (20%) affordable housing shall not be required to contribute to the City's Community Economic Development Dedicated Trust Fund.

Ord. 6 S+Ff, 6-21-06 § 1)

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 requiring certain conditions and standards for application procedures and Financial Agreements for Long Term Tax Exemptions