



## Legislation Text

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**ORDINANCE AMENDING TITLE II, CHAPTER 10, DEPARTMENT OF HOUSING AND ECONOMIC DEVELOPMENT, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY 2000, AS AMENDED AND SUPPLEMENTED, BY CREATING AND ESTABLISHING SECTION 8, AN EMPLOYEE OWNERSHIP LOAN AND LOAN GUARANTEE PROGRAM AND RULES FOR QUALIFYING CERTAIN BUSINESSES AS MINORITY, WOMEN AND VETERAN-OWNED.**

**WHEREAS**, in Newark, approximately one-in-three residents live below the federal poverty level, which is nearly double the national average of 16%. The primary cause of this poverty is unemployment and joblessness; and

**WHEREAS**, in 2017, 96% of the people living in poverty in Newark did not have a full-time job, and 69% did not receive any income. As a result, nearly three quarters of Newark's children come from families that cannot afford to pay rent, buy food or afford quality childcare; and

**WHEREAS**, the median household income in Newark is \$30,122.00, as compared to the statewide median income of \$90,270.00. Many Newark residents are living in poverty despite income from work. In fact, 69% of Newark residents who are employed earn less than \$40,000.00, a year. And in a city where people of color make up a majority of the population (71.6%), they hold a minority of jobs (39.7%). Many businesses have been a part of the fabric of Newark for decades. Yet, of the 136,979 available jobs in the City, only 18% of them are held by local residents. Yet, many of these jobs will disappear; and

**WHEREAS**, according to the U.S. Census Survey of Business Owners, 60% of businesses were owned by baby boomers in 2007. A 2014 study by Baker Tilly International found that 80% of baby boomer family business owners have yet to complete succession plans. Job loss resulting from the baby boomer succession crisis is likely to be magnified in New Jersey, which is home to many of the nation's wealthiest baby boomers; and

**WHEREAS**, employee ownership is a mainstream aspect of the U.S. economy with approximately 13.5 million workers participating in some form of employee ownership program at over 7,000 companies. The vast majority of such programs were the result of a transfer from the business owners to the employees and in accordance with federal law that seeks to facilitate such transfers. Employee ownership transfers are in the interest of business owners, who seek to liquidate their ownership interest and retire. Such transfers are also in the interest of the employees, who then have an equitable interest in the business, and gain the opportunity to ensure the future survival of the firm and their jobs. In addition, employee ownership results in measurably better outcomes for younger workers (ages 28 to 34): young employee-owners have 92% greater median household wealth; young employee-owners of color earn 30% higher income from wages; and young low-wage employee-owners are 3.6 times more likely to secure tuition reimbursement from their employers;

and

**WHEREAS**, employee-owned businesses tend to be more productive and enjoy increased sales, lower turnover, and greater longevity. Most importantly, employee-owned businesses are less likely to move or relocate, and therefore more likely to retain and increase local jobs, and to sustain the local tax base through employee and corporate income tax, while saving costs on unemployment insurance and other benefit programs; and

**WHEREAS**, the City of Newark, through the Mayor and the Governing Body, pledges its support of encouraging and stimulating employee ownership, to transition existing businesses to employee ownership, grow existing employee-owned businesses, and nurture startup employee-owned businesses by the following:

(1) encouraging the State of New Jersey to improve State law with respect to the capacity of local governments to preference employee-owned businesses in public contracting procedures, the activation and expansion of existing state law programs in support of employee ownership, inclusion of professional corporations as eligible for employee ownership, and passage of legislation, including tax benefits, in support of the conversion of businesses to employee ownership;

(2) building awareness among existing business owners about employee ownership successions, and supporting business conversion to employee ownership;

(3) attracting existing employee-owned businesses to expand into Newark;

(4) considering employee ownership as a factor in the evaluation of businesses seeking to relocate or expand in Newark;

(5) leveraging existing land use powers to provide below-market leases and sales of commercial property to employee-owned businesses, as well as by designating employee-owned businesses as redevelopers for the purpose of municipal tax abatements;

(6) issuing redevelopment area bonds, as needed, to finance the redevelopment of properties leased or owned by employee-owned businesses;

(7) providing educational workshops that are intended to build awareness about employee ownership among Newark residents, nonprofits, and businesses; and

(8) supporting employee ownership plans for Newark businesses who are considering relocating from the City of Newark.

**WHEREAS**, this Ordinance amplifies federal and state programs in support of employee ownership at the local level and addresses a significant policy gap through loans and loan guarantees that provide financing for the conversion of existing businesses to employee ownership; and

**WHEREAS**, N.J.S.A. 40:48-2, authorizes a municipality to make ordinances, rules, regulations, and by-laws, as the municipality deems necessary and proper, for the order, good government, and protection of its residents and for the protection of the health, welfare and safety of the municipality and its residents; and

**WHEREAS**, the City has a significant public policy and economic interest in enacting an Ordinance establishing an Employee Ownership Loan and Loan Guarantee Program as this program will help to keep businesses, especially smaller ones, stable and economically viable. Most importantly, this program will help businesses remain in Newark and thereby strengthen and maintain the City's economic base.

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

**SECTION 1:** Title II, Administration, Chapter 10, Department of Housing and Economic Development, of the Revised General Ordinances of the City of Newark, New Jersey 2000, as amended and supplemented, be further amended, to establish an employee ownership loan and loan guarantee program and shall read in its entirety as follows:

**2:10-8.0. DEFINITIONS**

**In this Ordinance:**

**(a) "Department" means the Department of Economic and Housing Development.**

**(b) "Direct share ownership plan" means an arrangement in which a portion of the highest class of voting stock of a corporation or voting membership interest of a limited liability company is held directly by all tenured employees. Such stock or membership interest may be nontransferable and callable upon termination or retirement of the employee.**

**(c) "Eligible transaction" means the qualified transfer of some or all of the stock of a corporation or membership interest of a limited liability company to an employee stock ownership plan, employee ownership trust, or direct share ownership plan. An eligible transaction includes an acquisition of stock or membership interest by an employee ownership association, as an intermediary, for the purpose of a qualified transfer to an employee stock ownership plan, employee ownership trust, or direct share ownership plan.**

**(d) "Employee ownership association" means a corporation, limited liability company, trust, or other entity that acts on behalf of the employees of an existing employer for the purpose of achieving the qualified transfer of some or all of the stock or membership interest of the employer to ownership by an employee stock ownership plan, employee ownership trust, or direct share ownership plan. An employee ownership association includes a corporation or limited liability company with an existing employee stock ownership plan, employee ownership trust, or direct share ownership plan that acts on behalf of the employees of another employer for the purpose of achieving a qualified transfer by means of a consolidation or merger.**

**(e) “Employee ownership loan” means any of the following:**

**(1) Any loan to a corporation, limited liability company, employee stock ownership plan, employee ownership trust, or employee ownership association, to the extent that the proceeds are used to acquire employer stock or membership interest of an employer for a qualified transfer.**

**(2) Any loan to a corporation or limited liability company to the extent that, within 30 days, stock or membership interest of an employer are transferred to an employee stock ownership plan, employee ownership trust, or direct share ownership plan in an amount equal to the loan and in accordance with the terms of a qualified transfer.**

**(f) “Employee ownership trust” means a trust that holds the highest class of voting stock of a corporation or voting membership interest of a limited liability company and that meets the requirements under section V, and may be a non-charitable trust, perpetual trust, or both.**

**(g) “Employee stock ownership plan” means an employee stock ownership plan as defined in Section 4975(e)(7) of the Internal Revenue Code.**

**(h) “Employer” includes 2 or more persons who are treated as a single employer under Sections 414(b), (c), (m), or (o) of the Internal Revenue Code.**

**(i) “Qualified transfer” means the transfer of any amount of stock of a corporation or membership interest of a limited liability company to an employee stock ownership plan, employee ownership trust, or direct share ownership plan if all of the following apply:**

**(1) The stock or membership interest has voting power equal to or in excess of the class of stock or membership interest of the employer having the greatest voting power.**

**(2) The stock or membership interest has dividend rights equal to or in excess of the class of stock or membership interest of the employer having the greatest dividend rights.**

**(3) If the transfer is to a direct share ownership plan, the largest amount of stock or membership interest transferred to any employee does not exceed a multiple of 10 times the smallest amount of stock or membership interest transferred to any tenured employee.**

**(j) “Tenured employee” means any employee or independent contractor who has provided at least 1,000 hours of services to the employer within the immediately preceding 12-month period, unless a lower number of hours is established in the terms of the employee stock ownership plan, employee ownership trust, or direct share ownership plan.**

**(k) “Total cost” means all reasonable and necessary costs to be incurred in the course of an eligible transaction, including the fair market value of the business interest to be acquired, as well as costs for any additional construction, land acquisition, improvements, equipment, pertinent rights and easements, and associated technical, engineering, legal, and financial services.**

## **2:10-8.1. ESTABLISHMENT OF AN EMPLOYEE OWNERSHIP LOAN AND LOAN GUARANTEE PROGRAM**

There is established in the Office of the Mayor, Department of Economic and Housing Development, an Employee Ownership Loan and Loan Guarantee Program that shall utilize Employee Ownership Loans and Loan Guarantees as follows:

### **2:10-8.2. EMPLOYEE OWNERSHIP LOANS AND LOAN GUARANTEES**

(a) Establishment of Program. The Department shall establish an Employee Ownership Loan and Loan Guarantee Program ("Employee Ownership Loan Program") under this Section, to be administered by the Newark Community Economic Development Corporation ("NCEDC), to make Employee Ownership Loans and Employee Ownership Loan Guarantees to eligible applicants.

(b) Application. Any corporation, limited liability company, trust, or employee ownership association with its principle place of business in Newark, may apply to the NCEDC to be evaluated and considered for participation in the Employee Ownership Loan Program.

(c) Loans and Loan Guarantees. The NCEDC may contract with an applicant under Subsection (b) to do any one of the following:

(1) Make an employee ownership loan to the applicant for an amount which shall not exceed 40 percent of the total cost.

(2) Guarantee up to 100 percent of employee ownership loans made to the applicant by third party lenders. All loan guarantees made to an applicant under this subsection (c)(2) shall not exceed 80 percent of the total cost.

(d) Preference. Applications for the Employee Ownership Loan Program shall be prioritized where:

(1) at least fifty-one (51%) percent of employees of the subject business are Newark residents; or

(2) the subject business is pending closure that could cause a significant loss of employment to the City of Newark.

(e) Study. The NCEDC shall conduct a cost-benefit analysis of a potential transition to employee ownership. The application shall proceed if a determination is made by NCEDC that the transition of a business to employee ownership would have a reasonable chance of creating benefits to the public interest of the City of Newark greater than the total costs and risks.

(f) Advisory Board. The NCEDC shall establish an Advisory Board constituted by

representatives of local government, nonprofits and community groups, businesses, and employee ownership professional service providers. This board shall advise on policy concerning the characteristics of employee-owned businesses that may qualify under the program.

(g) Timeliness. No later than thirty (30) days after receiving a completed application, as identified in subsection (b), the NCEDC shall decide whether an applicant can participate in the Employee Ownership Loan Program and can receive a loan as provided under subsection (c). NCEDC shall inform the applicant of its decision in writing. If the NCEDC requests that an applicant supplement its application by submitting additional information, then the NCEDC shall have an additional fifteen (15) days after receiving the additional information to decide and comply with the decision notification process outlined above.

### **2:10-8.3. BUDGET**

The Newark Employee Ownership Loan and Loan Guarantee program shall be allocated an initial operating budget of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) which shall be procured from funds secured by the Department of Economic and Housing Development as set forth below:

<u>Bus. Unit</u>	<u>Dept. ID</u>	<u>Div/Proj.</u>	<u>Activity</u>	<u>Acct.#</u>	<u>Budget Ref.</u>
NW026	BS			32100	B2018

During the first quarter of the year, the Newark Employee Ownership Loan and Loan Guarantee Program shall submit a proposed annual operating budget to the Mayor and annual financial statements for consideration at a budget hearing to be conducted by the Mayor and/or the Business Administrator. The Mayor and/or Business Administrator of the City of Newark shall determine, upon conclusion of the hearings and subject to the availability of funds, the appropriation for the Newark Employee Ownership Loan and Loan Guarantee Program to be included in the year's corresponding City budget and shall be a line item in the Department of Economic and Housing Development Budget.

### **2:10-8.4. EMPLOYEE OWNERSHIP TRUSTS**

(a) The Employee Ownership Trust must fulfill all of the following:

#### **(1) Purposes.**

(A) Subject to subsections (a)(1)(B), (C), (D), and (E), the Employee Ownership Trust has the exclusive purposes of creating employee ownership by obtaining and holding stock or membership interest of an employer and promoting the financial and nonfinancial interests of all tenured employees.

(B) The exclusive purposes of an Employee Ownership Trust may include preserving the ability of all tenured employees to exercise the voting rights of the

trust on a one person, one vote basis. This Subsection (a)(1)(B) does not exempt the trustee from an obligation to carry out the express terms and purposes of the trust in the case of a conflict with the majority decision of all tenured employees.

(C) The exclusive purposes of an Employee Ownership Trust may refer to both current and prospective tenured employees.

(D) The exclusive purposes of an Employee Ownership Trust may include maintaining any of the purposes under subsections (a)(1)(A), (B), and (C) in perpetuity, as well as preserving the employer in perpetuity.

(E) An Employee Ownership Trust may prioritize certain exclusive purposes over others.

(2) No principal or income of the Employee Ownership Trust is distributed or allocated to any party other than a tenured employee, except that principal and income of the trust may be distributed to one or more charitable organizations. The Employee Ownership Trust may distribute principal to current and past tenured employees if the trust sells stock or membership interest of the employer by establishing a cutoff date for the inclusion of past tenured employees.

(3) Principal and income of the Employee Ownership Trust that is distributed or allocated to employees is administered proportionally to all tenured employees on the basis of hours worked, salary, seniority, or any combination of these factors.

(b) Trustee liability.

(1) An Employee Ownership Trust may limit trustee liability if the stock or membership interest of the employer are voted by the trustee in accordance with the direction of all tenured employees and on a one person, one vote basis and all of the following apply:

(A) The trustee votes all employer stock or membership interest as a unit in accordance with the majority decision of all tenured employees.

(B) Before voting, the trustee furnishes each tenured employee with the information statement and other materials provided to shareholders or members in connection with the shareholder or member meeting, together with a form on which confidential voting directions may be given to the trustee or, if the trustee is not independent of the employer, to an independent 3rd party designated by the trustee, who tabulates votes and provides instructions to the trustee. The trustee or a 3rd party may not disclose the confidential voting directions of any tenured employee to the employer.

(2) This Subsection (b) does not exempt the trustee from an obligation to carry out the express terms and purposes of the trust in the case of a conflict with the majority decision of all tenured employees.

(c) An Employee Ownership Trust is not disqualified solely because the terms of the trust do any of the following:

(1) Authorize the trustee to employ an entity, such as a corporation, a limited liability company, or another trust, to hold the stock or membership interest of the employer.

(2) Require that the employer obtain membership in one or more nonprofit associations.

(3) Require that the employer pay market rate wages or benefits or both.

(4) Require that the employer retain a percentage of annual net income as permanent reserves that shall never be distributed to employees.

(5) Impose other requirements that promote the long-term financial health of the employer and the continued ability of the employer to provide high-quality jobs under conditions of employee ownership to all current and prospective tenured employees.

(6) Appoint a trust protector or co-trustee or both to enforce the trust and approve amendments to the trust.

## 2:10-8.5. MINORITY-, WOMEN-, AND VETERAN-OWNED BUSINESS CERTIFICATION

The determination of Minority, Women and Veteran-Owned Businesses shall be made by the following additional criteria, consistent with the applicable City Code §2:2-28.3, and state rules and regulations: N.J.S.A. 52:32-31 and N.J.A.C. 17:46:

(a) For purposes of satisfying the criteria for minority-, women-, and veteran-owned business certification, an employee-owned business shall qualify as such, if the total stock or membership interest held by qualifying individuals, through an employee stock ownership plan, employee ownership trust, or direct share ownership plan, including stock or membership interest held by qualifying individuals outside of any such plan, is greater than 50%.

(b) Alternatively, a company shall qualify as a minority-, women-, or veteran-owned business, if:

(1) more than 50% of the company's stock or membership interest is owned by an employee stock ownership plan or an employee ownership trust; and

(2) the trustee is a qualifying individual, or a majority of the board of trustees, or equivalent body, are qualifying individuals; or

(3) a majority of the Board of Directors are qualifying individuals.

(c) Alternatively, a company shall qualify as a minority-, women-, or veteran-owned



**business, if:**

**(1) more than 50% of the company's stock or membership interest is owned by an employee stock ownership plan, an employee ownership trust, or a direct share ownership plan; and**

**(2) the chief executive officer of the company is a qualifying individual; and**

**(3) a majority of the board of directors are qualifying individuals.**

**(d) If any of the above requirements are met, the company shall qualify as a minority-, women-, or veteran-owned business.**

**(e) A company may apply to the Mayor's Office of Affirmative Action and Set-Aside Programs for written guidance that a plan for transition of a company to employee ownership, if adopted, would result in certification, or maintenance of a company's existing certification, as a minority-, women-, or veteran-owned business.**

**SECTION 2:** Any prior ordinances or parts thereof inconsistent herewith shall be amended and supplemented to conform to the provisions contained herein.

**SECTION 3:** If any part of this ordinance is declared unconstitutional or illegal, the remaining provisions shall not be affected and 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**

This ordinance amends and supplements Title II, Chapter 10, Department of Economic and Housing Development, of the Revised General Ordinances of the City of Newark, New Jersey, 2000, by adding Section 2:10-8, which creates and establishes an Employee Ownership Loan and Loan Guarantee Program, and rules for qualifying certain businesses as minority-, women-, and veteran-owned.