



Legislation Text

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AN ORDINANCE OF THE CITY OF NEWARK, AS AMENDED AND SUPPLEMENTED, AMENDING TITLE 10, FINANCE AND TAXATION, CHAPTER 23, FIVE-YEAR TAX EXEMPTION AND ABATEMENT, MULTIPLE SECTIONS, RESTORING STATUTORY AUTHORITY OF APPROVALS OF FIVE YEAR TAX EXEMPTIONS AND ABATEMENTS TO THE ASSESSOR AND REPEALING GRANTING OF FIVE YEAR TAX EXEMPTIONS AND ABATEMENTS FOR MULTIPLE DWELLINGS, COMMERCIAL AND INDUSTRIAL STRUCTURES.

WHEREAS, New Jersey State Law authorizes the granting of Five Year Tax Abatements and Exemptions provided the City has enacted an enabling ordinance for the requirements and process for application and approval of Five Year Tax Abatements and/or Exemptions; and

WHEREAS, the Five Year Tax Abatements and Exemptions authorized by N.J.S.A. 40A:21-1 et seq., are automatically granted upon the filing and approval of the application by the Tax Assessor; however, the Municipal Council enacted an enabling Ordinance requiring the approval of Five Year Tax Abatements and Exemptions be by an Ordinance and Financial Agreement subject to Municipal Council approval; and

WHEREAS, there is no statutory requirement for Municipal Council approval; and

WHEREAS, the current enabling ordinance requiring Municipal Council approval by ordinance and Financial Agreement has created a backlog in securing authority to approve and implement the Five Year Tax Abatements and Exemptions by the Tax Assessor, in some instances years, negatively impacts the applicants and the City's overall economic growth; and

WHEREAS, returning the statutory authority for approval of Five Year Tax Abatements and Exemptions to the Tax Assessor, is more efficient and timely.

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

Additions are shown as bold underline and deletions as strike-through.

Section 1. Title 10, Finance and Taxation, Chapter 23, Five-Year Tax Exemption and Abatement, is hereby amended, as follows:

§ 10:23-1 **STATEMENT OF INTENTION.**

The City of Newark pursuant to N.J.S.A. 40A:21-1 et seq., makes known its intention to utilize the tax exemption and abatement provision authorized by the State legislature to provide five year exemptions and abatements for residential structures, ~~and commercial projects~~ as defined herein.

§ 10:23-2 **DEFINITIONS.**

As used in this chapter:

ASSESSOR

Shall mean the Tax Assessor of the City of Newark, the officer of a the taxing district charged

with the duty of assessing real property for the purpose of general taxation.

COMMERCIAL OR INDUSTRIAL STRUCTURE

Shall mean a structure or part thereof used for the manufacturing, processing or assembling of material or manufactured products, or for research, office, industrial, commercial, retail, recreational, hotel or motel facilities, or warehousing purposes, or for any combination thereof, which the Governing Body determines will tend to 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. It shall not include any structure or part thereof used or to be used by any business relocated from another qualifying municipality.

CONSTRUCTION

Shall mean the provision of a new dwelling, multiple dwelling or commercial or industrial structure, or the enlargement of the volume of an existing multiple dwelling or commercial or industrial structure by more than 30%, but shall not mean the conversion of an existing building or structure to another use.

COST

Shall mean when used with respect to abatements for dwellings or multiple dwellings, only the cost or fair market value of direct labor and materials used in improving a multiple dwelling, or of converting another building or structure to a multiple dwelling, or of constructing a dwelling, or of converting another building or structure to a dwelling, including any architectural, engineering, and contractor's fees associated therewith, as the owner of the property shall cause to be certified to the Governing Body **Tax Assessor of the City of Newark** by an independent and qualified architect, following the completion of the project.

DWELLING

Shall mean a building or part of a building used, to be used or held for use as a home or residence, including accessory buildings located on the same premises, together with the land upon which such building or buildings are erected and which may be necessary for a fair enjoyment thereof, but shall not mean any building or part of a building, defined as a "multiple dwelling" pursuant to the "Hotel and Multiple Dwelling Law," N.J.S. 55:13A-1 et seq. **and containing more than four residential units so as to be consistent with Class II residential property as defined in N.J.A.C. 18:12-2.2.** A dwelling shall include, as they are separately conveyed to individual owners, individual residences within a cooperative, if purchased separately by the occupants thereof, and individual residences within a horizontal property regime or a condominium, but shall not include "general common elements" or "common elements" of such horizontal property regime or condominium as defined pursuant to the "Horizontal Property Act," N.J.S. 46:8A-1 et seq., or the "Condominium Act," N.J.S. 46:8B-1 et seq., or of a cooperative, if the residential units are owned separately.

IMPROVEMENT

Shall mean a modernization, rehabilitation, renovation, alteration or repair which produces a physical change in an existing building or structure that improves the safety, sanitation, decency or attractiveness of the building or structure as a place for human habitation or work, and which does not change its permitted use. In the case of a multiple dwelling, it includes only improvements which affect common areas or elements, or three or more dwelling units within the

multiple dwelling. In the case of a multiple dwelling or commercial or industrial structure, it shall not include ordinary painting, repairs and replacement of maintenance items, or an enlargement of the volume of an existing structure by more than 30%. In no case shall it include the repair of fire or other damage to property for which payment of a claim was received by any person from an insurance company at any time during the three-year period immediately preceding the filing of an application pursuant to this act.

MULTIPLE DWELLING

Shall mean a building or structure meeting the definition of "multiple dwelling" set forth in the "Hotel and Multiple Law," N.J.S. 55:13A-1 et seq., and means for the purpose of improvement or construction the "general common elements" and "common elements" of a condominium, a cooperative, or a horizontal property regime.

NEW CONSTRUCTION

Shall mean any construction or development of residential, commercial, or industrial building on vacant land, or the demolition of existing structures on real property and the construction or development of a new structure on the previously developed real property.

PROJECT

Project means the construction, improvement or conversion of a structure in an area in need of rehabilitation that would qualify for an exemption, or an exemption and abatement, pursuant to P.L., c441 (C.40A:21-1 et seq.)

§ 10:23-3 **ELIGIBLE PROPERTY.**

Categories of improvements eligible for the abatement or exemption under this authorizing Ordinance may be amended by the Municipal Council after review and evaluation.

Properties outside of non-applicable areas where the owner(s) seek to newly construct dwellings, multiple dwellings, commercial, or industrial structures, and properties outside of non-applicable areas where the owner(s) seek to construct improvements to dwellings, multiple dwellings, commercial, or industrial structures that are located outside of the non-applicable areas of City of Newark are entitled to avail themselves of the opportunity to receive a five-year tax exemption and/or tax abatement as provided in this chapter when the qualifications are met as follows:

- a. All real estate taxes must be current;
- b. Written application to the Tax Assessor shall be filed within 30 days, including Saturdays and Sundays, following completion of the improvements, and the form of the application shall contain requirements set forth in N.J.S.A. 40A:21-9;
- c. Approval by **the Assessor in accordance with the requirements set forth in this ordinance; and** Ordinance of the Municipal Council
- d. Submission by applicant of a Certificate of Occupancy; and
- e. ~~A five-Year Financial Agreement between the City and the applicant is executed.~~

§ 10:23-4 **APPLICATION FEE.**

No application for Tax Exemption and Abatement submitted pursuant to this chapter shall be accepted unless it is accompanied by full payment of the required application fee. Such fees shall be in the amount of \$250 for dwellings; and for multiple dwellings and commercial projects the fee shall

be \$2,500 for all projects whose total project cost is less than \$1,000,000 and \$5,000 for all projects whose total project cost is greater than \$1,000,000 but less than \$5,000,000 and \$7,500 for all other projects. These fees shall be received as compensation for the legal review and related work of the City's departments and agencies. All checks shall be certified and payable to the City. This application fee shall be nonrefundable.

§ 10:23-5 **EXEMPTIONS AND ABATEMENTS FOR IMPROVEMENTS TO DWELLINGS.**

For the exemption from taxation of improvements to dwellings, in determining the value of real property, the municipality shall regard the first \$25,000 in assessor's full and true value of improvements for each dwelling unit primarily and directly affected by the improvement in any dwelling more than 20 years old, as not increasing the value of the property for a period of five years, notwithstanding that the value of the property to which the improvements are made is increased thereby. During the exemption period, the assessment on the property shall not be less than the assessment thereon existing immediately prior to the improvements, unless an abatement is granted pursuant to this Section **10:23-5**, or there is damage to the dwelling through action of the elements sufficient to warrant a reduction.

For any property for which an exemption is granted under the preceding paragraph of this Section **10:23-5**, the Assessor upon ordinance approving said exemption may also provide for the abatement of some portion of the assessed value of the property (including the land) receiving the exemption as it existed immediately prior to the improvement, as provided in and subject to the limitations of N.J.S.A. 40A:21-5(b).

An ordinance authorizing an exemption and/or abatement pursuant to this Section **10:23-5** need not contain a form of tax agreement, but may instead refer to a form of tax agreement which has been approved by separate ordinance.

If the applicant shall transfer ownership of a dwelling during the term of the applicable tax agreement tax abatement and/or exemption or if any such transferee shall thereafter again transfer such ownership, the tax abatement and/or exemption agreement, relating thereto shall be deemed to be assigned to and assumed by each such subsequent owner. Accordingly, the abatement and/or exemption shall continue notwithstanding such transfer, and the tax agreement shall remain in effect during the original term thereof. Such continuation shall also apply to any tax abatement and/or exemption tax agreement relating to a dwelling which has been transferred prior to the effectiveness of the ordinance authorizing this amendment to Section **10:23-5**, provided that the Tax Assessor has not previously notified either the transferor or the transferee of the lapse of such abatement and/or exemption.

§ 10:23-5A **EXEMPTIONS AND ABATEMENTS FOR NEW MULTIPLE DWELLINGS PROJECTS CONSISTING OF CONDOMINIUM HOUSING UNITS.**

In the case of construction of a multiple dwelling projects consisting of condominium housing units, or of conversions of other buildings and structures, including unutilized public buildings, to condominium housing use, or both, the owner of such property may apply for an exemption and abatement in respect of such project, stating separately (i) the "common elements" of such condominium as defined pursuant to the "Condominium Act," P.L. 1969, c.257 (C.46:8B-1 et seq.) and (ii) each proposed condominium housing unit which is intended to be subsequently conveyed by the applicant to an individual owner thereof (each, an "Eligible Property"). Such application shall be made in accordance with the provisions of N.J.S.A. 40A:21-9, and upon approval by the Assessor

Governing Body of an ordinance authorizing a tax agreement for such **the tax abatement and/or exemption for the** project, the applicant (or, if an Eligible Property shall have been conveyed to an individual owner thereof and the requirements of the following paragraph have been satisfied, such owner) shall, in lieu of full property tax payments on the Eligible Property, pay to the municipality an amount annually equal to the following percentage of taxes otherwise due:

- a. In the first full tax year after completion, no payment in lieu of taxes otherwise due on the Eligible Property;
- b. In the second tax year, an amount not less than 20% of taxes otherwise due on the Eligible Property;
- c. In the third tax year, an amount not less than 40% of taxes, otherwise due on the Eligible Property;
- d. In the fourth tax year, an amount not less than 60% of taxes, otherwise due on the Eligible Property; and
- e. In the fifth tax year, an amount not less than 80% of taxes otherwise due on the Eligible Property.

If the applicant shall transfer ownership of an Eligible Property during the term of the applicable tax agreement **the tax abatement and/or exemption**, or if any transferee shall thereafter again transfer such ownership, the Municipal Council hereby determines that, in the absence of information to the contrary, each such subsequent owner shall continue to use the property pursuant to conditions which qualified the property for its abatement and/or exemption, and the tax agreement **tax abatement and/or exemption** relating thereto shall be deemed to be assigned to and assumed by each such subsequent owner. Accordingly, the abatement and/or exemption shall continue notwithstanding such transfer; and the tax agreement **and** shall remain in effect during the original term thereof.

No exemption or abatement shall be granted under this Section **10:23-5A** more than ten years following the date of final adoption of this amendment to Section **10:23-5A** of this chapter.

All other provisions of N.J.S.A. 40A:21-8 through N.J.S.A. 40A:21-13 shall be applicable to any exemption and abatement granted pursuant to this Section **10:23-5A**. An ordinance authorizing an exemption and/or abatement pursuant to this Section **10:23-5A** need not contain a form of tax agreement, but may instead refer to a form of tax agreement which has been approved by separate ordinance. Each such tax agreement shall require that the applicant (and any transferee of more than a single Eligible Property) shall provide written notice to each purchaser of an Eligible Property as to the existence and details of the exemption and/or abatement provided in the applicable tax agreement, together with instructions as to such actions, if any, such purchaser must take in order to remain entitled to the benefits thereof following such transfer.

Any applications on file for such abatements or exemptions, on January 1, 2019, to the date of enactment of this section (Ord. No. 6PSF-M, 11-18-2020), shall be eligible for consideration. However, the abatement or exemption shall not obligate the City to pay a refund of any taxes paid. Any adjustments to the assessment for each property shall be made by the Tax Assessor and credits applied to the account for the applicable property.

~~§ 10:23-5B EXEMPTIONS AND ABATEMENTS FOR MULTIPLE DWELLINGS.~~

Exemptions and abatements from taxation shall be permitted within the City other than the Non-Applicable Areas for improvements to Multiple Dwellings.

Categories of improvements eligible for the abatement or exemption shall be approved by the Municipal Council or on an individual basis after review, evaluation, and approval of each application by the Tax Assessor.

Applicants shall provide a completed application containing information set forth in N.J.S.A. 40A:21-9 for the applicant to pay to the City in lieu of full property tax payments an amount annually to be computed as set forth in N.J.S.A. 40A:21A-6.

Notwithstanding that the value of the property to which the improvements or conversion alterations are made is increased, in determining the value of the real property, the City shall regard the Tax Assessor's full and true value of the improvements as not increasing the value of the property for a period of five years (0% increase to the value of the property for the improvements or alterations for a period of five years). The assessment on any property granted an exemption pursuant to this Section shall not be less than the assessment on the property existing immediately prior to the improvements or conversion.

Any applications on file for such abatements or exemptions, on January 1, 2019 to the date of enactment of this section (Ord. No. 6PSF-M, November 18, 2020), shall be eligible for consideration. However, the abatement or exemption shall not obligate the City to pay a refund of any taxes paid. Any adjustments to the assessment for each property shall be made by the Tax Assessor and credits applied to the account for the applicable property.

§ 10:23-5C EXEMPTIONS AND ABATEMENTS FOR COMMERCIAL AND INDUSTRIAL STRUCTURES.

Exemptions and abatements from taxation shall be permitted within the City other than the Non-Applicable Areas for improvements to Commercial and Industrial structures.

Categories of improvements eligible for the abatement or exemption shall be approved by the Municipal Council or on an individual basis after review, evaluation, and approval of each application by the Tax Assessor.

Applicants shall provide a completed application containing information set forth in N.J.S.A. 40A:21-9 for the applicant to pay to the City in lieu of full property tax payments an amount annually to be computed as set forth in N.J.S.A. 40A:21A-7.

Notwithstanding that the value of the property to which the improvements or conversion alterations are made is increased, in determining the value of the real property, the City shall regard the Tax Assessor's full and true value of the improvements as not increasing the value of the property for a period of five year (0% increase to the value of the property for the improvements or alterations for a period of five years). The assessment on any property granted an exemption pursuant to this section shall not be less than the assessment on the property existing immediately prior to the improvements or conversion.

Any applications on file for such abatements or exemptions, on January 1, 2019 to the date of enactment of this section (Ord. No. 6PSF-M, November 18, 2020), shall be eligible for consideration. However, the abatement or exemption shall not obligate the City to pay a refund of any taxes paid. Any adjustments to the assessment for each property shall be made by the Tax Assessor and credits applied to the account for the applicable property.

§ 10:23-5D EXEMPTIONS AND ABATEMENTS FOR NEW CONSTRUCTION OF DWELLINGS, ~~MULTIPLE DWELLINGS, COMMERCIAL, AND INDUSTRIAL STRUCTURES.~~

Exemptions and abatements from taxation shall be permitted within the City other than the Non-Applicable Areas for New Construction of Dwellings and Projects, ~~Multiple Dwellings~~, ~~Commercial~~

~~and Industrial structures.~~

~~Categories of improvements eligible for the abatement or exemption shall be approved by the Municipal Council or on an individual basis after review, evaluation, and approval of each application by the Tax Assessor.~~

Applicants shall provide a completed application containing information set forth in N.J.S.A. 40A:21-9 **10** for the applicant to pay to the City in lieu of full property tax payments an amount annually to be computed by ~~one of the following formulas:~~

- ~~a. Costs Basis (2% of cost of construction);~~
- ~~b. Gross Revenue Basis (15% of the annual gross revenues from the Project) or~~
- c. Tax Phase-in Basis (0% payment in lieu of taxes in year one, 20% payment in lieu of taxes in year two, 40% payment in lieu of taxes in year three, 60% payment in lieu of taxes in year four, 80% payment in lieu of taxes in year five) as set forth in N.J.S.A. 40A:21A-10.

Any applications on file for such abatements or exemptions, on January 1, 2019 to the date of enactment of this section (Ord. No. 6PSF-M, November 18, 2020), shall be eligible for consideration. However, the abatement or exemption shall not obligate the City to pay a refund of any taxes paid. Any adjustments to the assessment for each property shall be made by the Tax Assessor and credits applied to the account for the applicable property.

§ 10:23-6 **APPLICATION PROCEDURES.**

Applicants for tax exemption and abatement shall provide the Governing Body **Department of Finance, Office of the Tax Assessor** with an application setting forth:

- a. A general description of a project for which exemption and abatement is sought;
- b. A legal description of all real estate necessary for the project;
- c. Plans, drawings and other documents as may be required by the Governing Body **Tax Assessor** to demonstrate the structure and design of the project;
- d. A description of the number, classes and type of employees to be employed at the project site within two years of completion of the project;
- e. A statement of the reasons for seeking tax exemption and abatement on the project, and a description of the benefits to be realized by the applicant if a tax agreement is granted;
- f. Estimates of the cost of completing such project;
- g. A statement showing (1) the real property taxes currently being assessed at the project site; (2) estimated tax payments that would be made annually by the applicant on the project during the period of the agreement; and (3) estimated tax payments that would be made by the applicant on the project during the first full year following the termination of the tax agreement;
- h. ~~If the project is a commercial or industrial structure, a description of any lease agreements~~

between the applicant and proposed users of the project, and a history and description of the users' businesses;

- i. Such other pertinent information as the City of Newark **Assessor** may require **to effectuate the authority granted to the Assessor by N.J.S.A. 40A:12-16.**

§ 10:23-7 **AUTHORIZATION FOR TAX EXEMPTION AND TAX ABATEMENT.**

All tax exemptions and/or tax abatements shall be approved by **the Assessor** Ordinance of the Municipal Council authorizing **a** an agreement for tax exemption and/or tax abatement for a particular property for a period of five years following completion **that meet the requirements of this Ordinance as authorized by N.J.S.A. 40A:21-1, et seq.**

If during the term of the tax exemption and/or abatement, the property owner disposes of the property, the tax which would otherwise have been payable for each tax year shall become due and payable unless the Municipal Council determines by Resolution that the subsequent owner will continue to use the property pursuant to the conditions which qualified the property.

§ 10:23-8 **FINANCIAL AGREEMENT.**

Each commercial project which has been approved a tax exemption and/or abatement shall be evidenced by a financial agreement between the City of Newark and the applicant. The agreement shall be in a form prepared by the applicant and shall contain the representations that are required by this chapter, together with such other information required by the Corporation Counsel. The form of the agreement shall be approved by the Corporation Counsel and shall be on file in the Office of the City Clerk. The agreement shall provide for the applicant to pay to the municipality in lieu of full property tax payments an amount annually to be computed by the formulas as set forth in N.J.S. 40A:21-10.

New Section: TERMINATION

A. Failure to meet qualifying conditions. If during any tax year prior to the termination of the tax agreement the property owner ceases to operate or disposes of the property, or fails to meet the conditions for qualifying, then the tax which would have otherwise been payable for each tax year shall become due and payable from the property owner as if no exemption and abatement had been granted. The City through the Assessor shall notify the property owner and Tax Collector forthwith, and the Tax Collector shall, within 15 days thereof, notify the owner of the property of the amount of taxes due. However, with respect to the disposal of the property, where it is determined that the new owner of the property will continue to use the property pursuant to the conditions which qualified the property, no tax shall be due, the exemption and the abatement shall continue, and the tax abatement and/or exemption shall remain in effect.

B. <https://ecode360.com/13130136> Termination. At the termination of a tax abatement and/or exemption, a project shall be subject to all applicable real property taxes as provided by state law and regulations and local ordinances, but nothing herein shall prohibit a project, at the termination of the tax abatement and/or exemption from qualifying for and receiving the full benefits of any other tax preferences provided by law.

§ 10:23-12 **PROPERTY TAXES SUBJECT TO EXEMPTION AND ABATEMENT.**

The exemption and abatement of real property taxes provided by the **Assessor on behalf of the** City of Newark pursuant to this chapter shall apply to property taxes levied for municipal purposes, school purposes, county/government purposes, and for the purposes of funding any other property

tax exemptions or abatements.

~~§ 10:23-13 APPLICANT'S RESPONSIBILITY FOR COSTS.~~

All advertising costs for publishing the ordinance to grant tax exemption or tax abatement to a particular project shall be paid by the applicant.

§ 10:23-14 CONFORMANCE WITH STATUTORY AND REGULATORY REQUIREMENTS.

All projects ~~subject to tax agreements~~ as provided herein shall be subject to all applicable Federal, State and local laws and regulations on pollution control, worker safety, discrimination in employment, housing provision, zoning, planning and building code requirements.

§ 10:23-17 INSPECTION.

Any property which is granted a Tax Exemption and/or Abatement pursuant to this chapter shall be subject to an inspection by the City of Newark on an annual basis to ensure that such properties are in compliance with all ordinances, regulations, and safety codes of the City. Any property which is determined to be in violation of any ordinance, regulation, and/or safety code of the City, shall be subject to rescission by the **Assessor** Municipal Council.

§ 10:23-18 AUTHORIZATION FOR TAX EXEMPTION AND TAX ABATEMENT.

All ~~tax agreements~~ **Five year tax abatements** shall be applied for and granted on a project basis pursuant to N.J.S.A. 40A:12A-8.

Section 2. All City ordinances or portions of ordinances inconsistent herewith are hereby repealed to the extent of their inconsistency only.

Section 3. Severability. If any part of this ordinance shall be declared to be invalid or inoperative, such part shall be deemed severable and the invalidity thereof shall not affect remaining parts of this ordinance.

Section 4. Effectiveness. 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 Title 10, Finance and Taxation, Chapter 23, Five Year Tax Exemption and Abatement restoring statutory authority of approvals of Five Year Tax Abatements to the Assessor and repealing Five Year Tax Abatements eligibility for multiple dwelling, commercial and industrial projects.