

THIS ORDINANCE AND ANY FINANCIAL AGREEMENT ENTERED INTO AND ATTACHED HERETO FROM TIME TO TIME SECURES BONDS OR OTHER OBLIGATIONS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE "REDEVELOPMENT AREA BOND FINANCING LAW" AND THE LIEN HEREOF IN FAVOR OF THE OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-MUNICIPAL LIENS HEREINAFTER RECORDED

**Ordinance No. O-061701
Ordinance of the City of New Brunswick**

ORDINANCE OF THE CITY OF NEW BRUNSWICK, IN THE COUNTY OF MIDDLESEX, STATE OF NEW JERSEY, APPROVING THE APPLICATION FOR A LONG TERM TAX EXEMPTION AND AUTHORIZING THE CITY OF NEW BRUNSWICK TO ENTER INTO A FINANCIAL AGREEMENT WITH CULTURAL CENTER REDEVELOPMENT ASSOCIATES URBAN RENEWAL LLC AND GRANTING A TAX EXEMPTION

WHEREAS, the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "**Redevelopment Law**") authorizes municipalities to determine whether certain parcels of land in the municipality constitute areas in need of redevelopment; and

WHEREAS, the Redevelopment Law confers certain contract, planning and financial powers upon a redevelopment entity, as defined in Section 3 of the Redevelopment Law, in order to implement redevelopment plans adopted pursuant thereto; and

WHEREAS, the City of New Brunswick (the "**City**"), in the County of Middlesex, State of New Jersey, in accord with its plans for the revitalization of the City and pursuant to the Redevelopment Law, in 1977 designated property known as Block 12, Lot 23.01, as being in need of redevelopment and, in 1975, memorialized by resolution the rehabilitation area designation of Block 12, Lots 13.01 and 15.01, which properties are located in the City's Urban Enterprise Zone (collectively, the "**Redevelopment Area**"); and has adopted a redevelopment plan to include the Redevelopment Area, entitled, "Cultural Center Redevelopment Plan" ("**Redevelopment Plan**"), by Ordinance #O-011701, adopted February 1, 2017; and

WHEREAS, the Redevelopment Plan sets forth the standards and goals by which the Redevelopment Area will be developed; and

WHEREAS, the New Brunswick Housing Authority (the "**Housing Authority**"), acting as the City's redevelopment entity under the Redevelopment Law, has designated Cultural Center Redevelopment Associates Urban Renewal LLC, an urban renewal entity formed pursuant to the Redevelopment Law (the "**Entity**"), as the redeveloper of the Redevelopment Area; and

WHEREAS, the Entity shall be the ground lessee of that portion of the Redevelopment Area on which the improvements that are the subject of the exemption granted hereunder (i.e., the Theater Component and the Apartment Component, both as hereinafter defined) are to be constructed (referred to herein as the "**Property**"); and

WHEREAS, on April 26, 2017, the Housing Authority adopted a resolution authorizing the execution and delivery of that certain Redevelopment Agreement (the "**Redevelopment Agreement**"), which sets forth the respective obligations for each Entity and the Housing Authority with respect to the redevelopment of the Redevelopment Area in accordance with the Redevelopment Plan and which is dated May 9, 2017; and

WHEREAS, the Redevelopment Agreement provides for, inter alia, a mixed-use redevelopment project consisting of two state-of-the-art theaters and accompanying rehearsal and office space (the "**Theater Component**"), as further described on Exhibit A to the Financial Agreement (as defined herein), approximately 207 rental apartments including an affordable component, as further described on Exhibit A of the Financial Agreement (the "**Apartment Component**"), approximately 31,700 square feet of office space (the "**Office Component**"), an approximately 350-space structured parking garage (the "**Parking Component**"), and approximately 4,250 square feet of separately demised rehearsal space (the "**Ballet Component**"), as well as infrastructure improvements and related remediation (collectively, the "**Greater Project**"), which Greater Project is consistent with the Redevelopment Plan; and

WHEREAS, the Greater Project constitutes a redevelopment project under the Redevelopment Law; and

WHEREAS, the cost of the Greater Project is expected to be approximately \$169,000,000; and

WHEREAS, despite the Entity's current and future substantial investment of "at-risk" equity, governmental grants and contributions, and traditional borrowed funds for acquisition, development and construction of the Greater Project, such amounts of equity and traditional borrowed funds are insufficient to pay for all of the costs associated with the acquisition, development and construction of the Project; and

WHEREAS, the Greater Project will consist of two separate, but connected, buildings, the Theater Tower (which includes the Theater Component, the Office Component and the Apartment Component) and the Parking Garage (which includes the Parking Component and the Ballet Component); and

WHEREAS, the Office Component (to be owned by the County of Middlesex, a governmental entity), the Parking Component (to be owned by the New Brunswick Parking Authority, a governmental entity) and the Ballet Component (to be owned by the Princeton Ballet Society d/b/a American Repertory Ballet and Princeton Ballet School, a non-profit corporation) are all, as result of their ownership and use, exempt from real property taxes and thus are not the subject of the Financial Agreement; and

WHEREAS, the Entity intends to enter into a Management Agreement with a to-be-formed limited liability company or non-profit corporation expected to be known as NBPAC Management, whose members or trustees will consist of Rutgers University, New Brunswick Cultural Center, Inc., New Brunswick Development Corporation, American Repertory Ballet and George Street Playhouse; all entities being either governmental or nonprofit and exempt from taxation ("**NBPAC Management**"); and

WHEREAS, NBPAC Management will pay \$1.00 to the Entity for the rights it will obtain under the Management Agreement; and

WHEREAS, NBPAC Management is not an affiliate of the Entity and its gross revenues will not be considered as revenues of the Entity; and

WHEREAS, the City is agreeable to granting a long term tax exemption to the Entity for the Theater Component and the Apartment Component (the "**Project**" or the "**Improvements**"), and, in connection therewith, City and the Entity will utilize the Long Term Tax Exemption Law, codified at N.J.S.A. 40A:20-1 *et seq.* (the "**LTTE Law**"), Redevelopment Area Bond Financing Law, codified at N.J.S.A. 40A:12A-64 *et seq.* (the "**Bond Financing Law**"), and such other statutes as may be sources of relevant authority, if any, to facilitate financing of the Project; and

WHEREAS, each of the Theater Component and the Apartment Component shall be deemed a "unit" for the purposes of the LTTE Law; and

WHEREAS, the provisions of the LTTE Law, the Bond Financing Law, and such other statutes as may be sources of relevant authority, if any, authorize the City to accept, in lieu of real property taxes, one or more annual service charges paid by the Entity or its assignee to the City as set forth in the LTTE Law; and

WHEREAS, the Entity has submitted an application for seeking long term tax exemption for the Project, which application is on file with the City Clerk (the "**Application**") and seeking approval of a financial agreement between the Entity and the City pursuant to which the Entity agrees to pay, in lieu of tax payments, an Annual Service Charge (the "**Financial Agreement**") providing for exemption from municipal taxation for the Project as aforesaid, for a period of the earlier of (A) 35 years from the date of execution hereof or (B) 30 years from the Annual Service Charge Start Date and for payment in lieu of taxes of an Annual Service Charge; and

WHEREAS, pursuant to the Bond Financing Law, specifically N.J.S.A. 40A:12A-68, the Annual Service Charge (as such term is defined in the Financial Agreement) shall, upon the recordation of the Financial Agreement and this Ordinance, constitute a municipal lien on the Project within the meaning of such law; and

WHEREAS, pursuant to and in accordance with the provisions of the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(a), the City or the redevelopment entity may issue bonds, may apply to an authority (as such term is defined in the Bond Financing Law) to issue bonds, or may cause the issuance of such bonds, which bonds may be secured by all or a portion of the Annual Service Charge (as defined below, the "**Pledged Annual Service Charge**"); and

WHEREAS, in order to assist in financing a portion of the costs of the Theater Component of the Project, the City has agreed to issue, or cause to be issued, its General Obligation Redevelopment Area Bonds (New Brunswick New Brunswick Cultural Center Project), Series 20_____ (such designation to reflect the year of issuance) (the "**Bonds**") in accordance with that certain resolution anticipated to be adopted on June 21, 2017 relating to the issuance of the Bonds (as the same may be amended, modified or supplemented from time to time, the "**Bond Resolution**") and a bond ordinance introduced as of the date hereof and anticipated to be finally adopted on June 21, 2017 authorizing issuance of the Bonds (the "**Bond Ordinance**" and, together with the Bond Resolution, the "**Bond Authorization Proceedings**") for the purpose of providing funds for the Theater Component of the Project; and

WHEREAS, pursuant to the terms of the Financial Agreement and the Bond Authorization Proceedings and in accordance with the terms of the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(a), the Pledged Annual Service Charge shall be pledged to the payment of the principal or redemption premium of, and interest on, the Bonds; and

WHEREAS, the Entity and the City have agreed that the Debt Service (as defined in the Financial Agreement) on the Bonds shall be paid from the Pledged Annual Service Charge (as well as from the County Grant, as such term is defined in the Financial Agreement) and that any portion of the Pledged Annual Service Charge not utilized for Debt Service (if any) may be used by the City for any lawful

purpose in the exercise of the City's sole discretion following the repayment and defeasance of the Bonds in full; and

WHEREAS, the Entity has represented to the City that the Project would not be feasible in its intended scope but for the provision of financial assistance by the City; and

WHEREAS, improvements to property located within an area in need of redevelopment or an Urban Enterprise Zone may qualify for tax exemptions; and

WHEREAS, after review of the Application, the Mayor recommended that the Application be approved on such terms as set forth in a proposed form of Financial Agreement substantially in the form attached hereto as Exhibit A, and by this reference incorporated herein, as may be modified in consultation with counsel as set forth herein, and

WHEREAS, the City Council has reviewed the Application and the terms of the Financial Agreement, and wishes to approve the Application on such terms; and

WHEREAS, the City Council has determined that the Project represents an undertaking permitted by the LTTE Law, and has further determined that the Project is an improvement made for the purposes of clearance, replanning, development, or redevelopment of an area in need of redevelopment within the City, as authorized by the LTTE Law and shall promote and further the redevelopment of the City; and

WHEREAS, the City hereby finds that the relevant benefits of the Project to the outweigh the costs, if any, associated with the tax exemption, and in fact increase City revenues over current levels by granting the long term tax exemption for the Project, which relevant benefits are further described in the Application and the Financial Agreement; and

WHEREAS, the City hereby determines that the assistance provided to the Project pursuant to the Financial Agreement will be a significant inducement for the Entity to proceed with the Project and that based on information set forth in the Application, the Project would not be feasible without such assistance; and

WHEREAS, pursuant to and in accordance with the provisions of the Bond Financing Law and together with the Redevelopment Law and the LTTE Law (the "**Acts**"), specifically N.J.S.A. 40A:12A-66(a), the City is authorized to provide for such tax exemption and payments in lieu of taxes in accordance with the LTTE Law, except that the provisions of the LTTE Law: (i) establishing a minimum or maximum annual service charge and requiring staged increases in annual service charges over the term of the exemption period, and (ii) permitting an urban renewal entity to relinquish its status under the LTTE Law, shall not apply to redevelopment projects financed with bonds issued in accordance with the Bond Financing Law.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the City Council of the City of New Brunswick, in the County of Middlesex, State of New Jersey as follows:

I. GENERAL

The aforementioned recitals are incorporated herein as though fully set forth at length.

II. APPROVAL OF EXEMPTION FROM TAXATION

An exemption from taxation as set forth in the Application is hereby approved and granted to the Entity with respect to the Project in accordance with the terms set forth in the Financial Agreement; provided that in no event shall the term of the Financial Agreement exceed the earlier of thirty-five (35) years from the date of execution thereof or (ii) to the extent permitted by the LTTE Law, thirty (30) years from the Entity's receipt of a Certificate of Occupancy (as defined in the Financial Agreement) for the Project and only so long as the Entity remains subject to and in compliance with the Financial Agreement and the LTTE Law and any other agreement related to the Project or the Property; and provided, further, that in no event shall the resulting property tax obligation in each year the property tax exemption is in effect, when combined with the Annual Service Charge as defined in the Financial Agreement, be less than the amount of the Land Taxes (as defined in the Financial Agreement) prior to redevelopment.

III. EXECUTION OF FINANCIAL AGREEMENT AUTHORIZED

(a) The Mayor, in consultation with legal counsel to the City, are hereby authorized and directed to execute the Financial Agreement, substantially in the form as it has been presented to the City Council, and attached hereto as Exhibit A, subject to additions, deletions, modifications, or revisions deemed necessary and appropriate in consultation with counsel, and any other agreements necessary to effectuate the Financial Agreement.

(b) The Clerk of the City is hereby authorized and directed, upon the execution of the Financial Agreement in accordance with the terms of Section III (a) hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed to affix the corporate seal of the City upon such document.

(c) Within thirty (30) days of its execution, the City Clerk shall file certified copies of this ordinance and the executed Financial Agreement with the Tax Assessor of the City and shall forward a certified copy of this Ordinance and the executed Financial Agreement to the Director of the Division of Local Government Services within the New Jersey Department of Community Affairs in accordance with Section 12 of the LTTE Law.

(d) The executed copy of the Financial Agreement shall be filed with the Office of the City Clerk.

IV. ENTITY OBLIGATIONS

(a) The Project shall conform with all Federal and State laws and ordinances and regulations of the City relating to its construction and use.

(b) The Entity shall, in the operation of the Project, require compliance with all laws so that no person because of race, religious principles, color, national origin or ancestry, will be subject to discrimination.

(c) The Entity shall, from the time that the Annual Service Charge becomes effective, pay the Annual Service Charge as set forth in the Financial Agreement.

(d) The Entity shall complete the Project within the timeframes set forth in the Redevelopment Agreement.

V. SEVERABILITY

If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereof shall not affect the remaining parts of this Ordinance.

VI. ACTION REGARDING FINANCIAL AGREEMENT

The Mayor is hereby authorized and directed to determine all matters and terms in connection with the Financial Agreement, all in consultation with the counsel to the City, and the manual or facsimile signature of the Mayor upon any documents shall be conclusive as to all such determinations. The Mayor, the Chief Financial Officer, the City Clerk and any other City official, officer or professional, including but not limited to, redevelopment counsel, bond counsel, the financial advisor and the auditor to the City, are each hereby authorized and directed to execute and deliver such documents as are necessary to facilitate the transactions contemplated hereby, and to take such actions or refrain from such actions as are necessary to facilitate the transactions contemplated hereby, in consultation with, as applicable, redevelopment counsel, bond counsel, the financial advisor and the auditor to the City, and any and all actions taken heretofore with respect to the transactions contemplated hereby are hereby ratified and confirmed.

VI. AVAILABILITY OF THE ORDINANCE

A copy of this Ordinance shall be available for public inspection at the offices of the City.

VII. EFFECTIVE DATE

This Ordinance shall take effect according to law.

ADOPTED ON FIRST READING
DATED: June 7, 2017




COUNCIL PRESIDENT

ATTEST:


CITY CLERK

ADOPTED ON SECOND READING
DATED:



COUNCIL PRESIDENT

ATTEST:

CITY CLERK

APPROVAL OF THE MAYOR ON THIS DAY OF _____, 2017.

MAYOR

APPROVALS:

CITY ADMINISTRATOR

CITY ATTORNEY

CHIEF FINANCIAL OFFICER

TKS/kc

Councilmember	Yes	No	No Vote	Absent
John Anderson V. Pres M	X			
Kevin. Egan				X
Rebecca Escobar S	X			
Suzanne Sicora Ludwig	X			
Glenn Fleming. Pres	X			

M=Moved S=Second
First Reading Vote on JUNE 7, 2017
I, Daniel A. Torrasi, City Clerk of the City of New Brunswick, N.J., do hereby certify that this is a true and correct copy of an ordinance adopted on first reading at the regular meeting of the New Brunswick City Council on: JUNE 7, 2017

Daniel A. Torrasi, City Clerk 

Councilmember	Yes	No	No Vote	Absent
John Anderson, V. Pres				
Kevin. Egan				
Rebecca Escobar				
Suzanne Sicora Ludwig				
Glenn Fleming, Pres				

M=Moved S=Second
Second & Final Reading Vote on _____
I, Daniel A. Torrasi, City Clerk of the City of New Brunswick, N.J., do hereby certify that this is a true and correct copy of an ordinance adopted on second and final reading at the regular meeting of the New Brunswick City Council on: _____

Daniel A. Torrasi, City Clerk _____
Any reproduction of the original document must contain the raised seal of the City of New Brunswick to be legally certified.