

City Clerk File No. Ord. 18-133  
Agenda No. 4.F 1st Reading  
Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE 18-133

**TITLE:**

**ORDINANCE REPEALING AND REPLACING ARTICLE IV OF CHAPTER 304 (TAXATION) OF THE MUNICIPAL CODE (IMPOSING A TAX ON EMPLOYERS' PAYROLL OF NON-JERSEY CITY RESIDENTS FOR THE BENEFIT OF JERSEY CITY SCHOOLS)**

**THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY HEREBY ORDAINS:**

**WHEREAS**, the City of Jersey City ("the City") will experience a significant decrease in State funding for its public schools over the next five years; and

**WHEREAS** the City is committed to maintaining the quality of education in its schools and ensuring that every child receives a comprehensive education; and

**WHEREAS**, the State legislature has authorized municipalities to impose and collect an employer payroll tax pursuant to N.J.S.A. 40:48C-14 et seq; and

**WHEREAS** the Supreme Court of New Jersey declared the current contents of Article IV of Chapter 304 of the Municipal Code (the "1995 Payroll Tax") void and unenforceable in *Hudson County v. Jersey City*, 153 N.J. 254 (1998).

**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the City of Jersey City that the 1995 Payroll Tax is hereby revoked and the following shall replace it in its entirety:

**ARTICLE IV - 2018 PAYROLL TAX**

**§ 304-18. DEFINITIONS.**

As used in this article, the following terms shall have the meanings indicated:

**Audit Notice** shall mean a letter issued by the Director to an Employer or supposed Employer requesting information regarding its potential payroll tax liability.

**Certificate of Indebtedness** shall mean a certificate issued by the Director reflecting an unpaid assessment of payroll taxes by an Employer. A certificate of indebtedness shall reflect the name and address of the Taxpayer, the amount of the debt so certified as being owed and the periods for which such amounts are owed.

**Charitable Organization** shall mean a nonprofit organization that qualifies for tax exemption under Section 501(c)(3) of the Internal Revenue Code.

**City** shall mean the City of Jersey City, in the County of Hudson, State of New Jersey.

**Director** shall mean the Chief Financial Officer of the City, including his or her designee and/or agent.

**Employee** shall mean any individual in the service of an Employer, under an appointment or contract of hire or apprenticeship, express or implied, oral or written, pursuant to which such Employer controls or has the right to control the manner and performance of the Employee's work. In addition, for purposes of this tax, and irrespective of the common law tests for determining the existence of an independent contractor relationship, an individual performing work or service for compensation shall be deemed to be an Employee of the person for whom the work or service is performed unless: (1) such individual has been and will continue to be free from control or direction over the performance of such work or service under his/her appointment of contract of hire or apprenticeship; (2) such work or service is outside the usual course of the business of the person for which such service is performed; or, (3) such individual is customarily engaged in an independently established trade, occupation, business or profession. A licensed real estate salesperson is deemed an Employee of the broker under whom he or she is licensed.

**Employer** shall mean any individual, entity, corporation, company, association, society, firm, partnership, limited liability company or partnership, joint stock company, trust, estate, or foundation, whether or not such entity is for profit or nonprofit entity, and regardless of where such entity is formed or operated, standing in the position of Employer in an Employer-Employee relationship, having one (1) or more Employees, and having a Payroll in excess of two thousand five hundred (\$2,500.00) dollars in any calendar quarter; other than

- a. The government of the United States;
- b. The State of New Jersey, or a County, municipality, school district or special district of the State;
- c. An interstate agency;
- d. An agency or instrumentality of any entity enumerated in subsection a, b, or c. above;
- e. Any insurance company formed by authority of another State or foreign country, subject to the provisions of N.J.S.A. 17:32-15.

An entity which contracts with any of the entities identified in subsections a.-e. shall not be exempt from the definition of Employer.

**Final Notice** shall mean a notice of deficiency, which shall be issued by the Director prior to the commencement of legal proceedings to seek collection.

**Internal Revenue Code** shall mean the Internal Revenue Code of 1986, as amended.

**Interim Notice** shall mean a notice of proposed assessment, which offers the Taxpayer a hearing with the Director. The Director may combine an audit notice with an interim notice.

**Leased Employee** shall mean any person who is not an Employee of the recipient Employer and who provides services to the recipient Employer in the City if (i) such services are provided pursuant to an agreement between the recipient Employer and any other person, and (ii) services are performed under primary direction or control of the recipient.

A leased Employee shall be considered an Employee of the recipient Employer for purposes of this chapter unless the recipient Employer demonstrates to the Director that the leasing organization is including the Payroll relating to such leased Employee within its payroll tax return. The entire amount paid to the leasing company shall be treated as part of such Employer's Payroll, unless the recipient Employer demonstrates to the Director that a lesser amount should be used.

**Payroll** shall mean an amount equal to the total remuneration paid by an Employer to Employers which is subject to Federal income tax withholding by the Employer for Federal income tax purposes for services rendered, other than domestic services in a private residence, if:

- a. The services are performed within the City of Jersey City; or
- b. The services are performed outside of the City of Jersey City, but the place from which the services are supervised is in the City of Jersey City.

Such amount shall generally be based on the amount reportable by the Employer on its Federal Form 941 and shall include, but not be limited to, all wages, bonuses, commissions, tips, property, the right to

**Schools** shall mean all Jersey City public schools.

**Services.** For the purposes of this chapter, an individual shall be considered in the service of an Employer if (i) he is subject to the authority of the Employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the Employer, or he is rendering, on the property used in the Employer's operations, other personal services the rendition of which is integrated into the Employer's operations, and (ii) he renders such services for compensation.

**Supervision.** Services shall be considered to be supervised from the City if an individual who either works in or is based in the City has the right to control and direct the manner of rendition of the Employee's service, has hiring and firing responsibility, and oversees the work of such Employee.

**Taxpayer** shall mean a person, partnership, association, corporation, or other entity required hereunder to file a payroll tax return, and to pay the payroll tax imposed by this chapter.

**Trust Fund** shall mean the trust fund established pursuant to paragraph (a) of Section 19.1 of this article.

#### **§ 304-19. TAX IMPOSED.**

Except as provided in subsection (a) below, there is hereby imposed on every Employer a tax equal to 1% of the Employers' Payroll, on all Payrolls related to services performed on or after the first day of the first month of the calendar quarter in which this article takes effect; provided, however, that no tax shall be imposed with respect to services performed in any calendar quarter prior to that in which this article was adopted.

- a. An Employer shall incur no payroll tax relative to its Jersey City-resident Employees. In order for an Employer to claim and pay a reduced payroll tax obligation, the Employer must provide the Director, with written evidence and documentation, to the Director's satisfaction, of the relevant Employees' Jersey City residency statuses.
- b. A charitable organization, as defined above, shall calculate the tax that would otherwise be attributable to the City and file a return, but shall only pay the tax on that portion of its Payroll expense attributable to business activity for which a tax may be imposed pursuant to Section 511 of the Internal Revenue Code. If the charity has purchased or is operating branches, affiliates, subsidiaries or other business entities that do not independently meet the standards of a charity, the tax shall be paid on the Payroll attributable to such for profit branches, affiliates or subsidiaries, whether or not the Employees are leased or placed under the auspices of the charity's umbrella or parent organization.

**§ 304-19.1. TRUST FUND AND DISTRIBUTION OF PAYROLL TAX PROCEEDS.**

- a. The Director shall create a trust fund to be used exclusively for School purposes.
- b. All revenue collected by the City pursuant to Section 19 of this article shall be deposited into the Trust Fund.
- c. The City Business Administrator, including his or her designee and/or agent, shall monthly pay Employer payroll tax revenues deposited in the Trust Fund over to the treasurer of school moneys of the school district coextensive with the municipality or of which the municipality comprises a part in an amount equal to one-twelfth (1/12) of the difference in State school aid provided to that school district, pursuant to N.J.S.A. 18A:7F-43 et al. and N.J.S.A. 18A:7F-67 et al., between the current State fiscal year and State fiscal year 2018.
- d. All tax revenue distributed under this section shall be used in lieu of State adjustment aid and all other categories of State School aid.
- e. Any monthly balance remaining in the Trust Fund shall be reserved for use toward making future payments pursuant to paragraph (c) of this section.
- f. In the event that, when a monthly Trust Fund payment becomes due, the balance of the Trust Fund is insufficient to make a payment pursuant to paragraph (c) of this section, the City Business Administrator shall pay the remaining balance of the Trust Fund over to the treasurer of school moneys of the school district coextensive with the municipality or of which the municipality comprises a part for that month only.

**§ 304-19.2. ADMINISTRATION AND ENFORCEMENT.**

- a. *Powers and Duties of Director.*
  1. The Director is charged with the administration and enforcement of the provisions of this chapter, and is empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this chapter, including provisions for the reexamination and corrections of

declarations and returns, and of payment alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred, and to prescribe forms necessary for the administration of this chapter. Should an Employer fail or refuse to provide adequate information to the Director to determine the amount of payroll tax due, the Director may use prior year information of the Employer and/or information provided to the Director from other sources (i.e., the New Jersey Departments of Labor and/or Revenue) to determine the amount of payroll tax liability.

2. It shall be the duty of the Director to collect and receive the taxes, fines, and penalties imposed by this chapter. It shall also be the duty of the Director to keep a record showing the date of such receipt.
3. The Director is authorized to enter into agreements with the State of New Jersey Department of Labor and/or Department of Revenue to obtain information regarding Employers, their Employees and their Payroll to facilitate administration of the payroll tax.
4. The Director is authorized to issue a ruling upon written request of a Taxpayer or upon its own volition.

b. *Examination of Books and Records of Taxpayers and Employers.*

1. The Director is hereby authorized to examine the books, papers and records of any Employer or supposed Employer, or of any Taxpayer or supposed Taxpayer, in order to verify the accuracy of any declaration or return, or if no declaration or return was filed, to ascertain the tax due. Every Employer or supposed Employer, and every Taxpayer or supposed Taxpayer, is hereby directed and required to give to the Director, or to any agent designated by him/her, the means, facilities and opportunity for such examinations and investigations, as are hereby authorized.
2. If records are not available in the City to support the returns which were filed or which should have been filed, the Taxpayer will be required to make them available to the Director either by producing them in a City location or by paying for the expenses incurred by the Director or his agent in traveling to the place where the records are regularly kept.

c. *Records to Be Kept for the Employer.* Taxpayers and Employers liable for the payroll tax are required to keep such records as will enable the filing of true and accurate returns or the tax and such records shall be preserved for a period of not less than seven (7) years from the filing date or due date, whichever is later, in order to enable the Director or any agent designated by him to verify the correctness of the declarations or returns filed.

d. *Audits.*

1. The Director shall initiate an audit by means of an audit notice. If, as a result of an examination conducted by the Director, a return has not been filed by an Employer or a return is found to be incorrect and payroll taxes are owed, the Director is authorized to assess and collect any payroll tax due. If no return has been filed and tax is found to be due, the tax actually due may be assessed and collected with or without the formality of obtaining a return from the Taxpayer. Deficiency assessments (i.e., where

a Taxpayer has filed a return but is found to owe additional tax) shall include taxes for up to three (3) years to the date when the deficiency is assessed. Where no return was filed, there shall be no limit to the period of assessment.

2. Upon proposing an assessment, the Director shall send the Employer an interim notice by certified mail, return receipt requested, which advises the Taxpayer of additional payroll taxes that are due, along with penalties and interests. Should the Taxpayer wish to dispute the assessment administratively by requesting a hearing with the Director, it must do so within thirty (30) days of the date of such interim notice.
3. If, after the Director sends an interim notice, a Taxpayer fails to timely request a hearing with the Director or requests a hearing and after conducting a hearing, the Director determines that payroll taxes are due, the Director shall send the Employer by certified mail, return receipt requested, a final notice. Should the Taxpayer wish to dispute the assessment, he or she must do so in the manner described in Section 19.5 of this chapter.

**§ 304-19.3. RETURN REQUIREMENT; REGISTRATION.**

- a. *Filing a Return; Payment of Tax.* All Employers are required to file a payroll tax return with the Director to report their Payroll during each calendar quarter and the amount of payroll tax in accordance with the provisions of this chapter. Returns shall be filed and payments of payroll tax imposed for the preceding calendar quarter shall be made on or before the last day of April, July, October, and January, respectively. An Employer who conducts business in the City on a temporary, seasonal or itinerant basis shall file a return and pay the tax within ten (10) days of the completion of the temporary, seasonal, or itinerant business, but not less frequently than quarterly. Should the amount reflected on an Employer's Federal Form 941 be revised or amended at any time after the payroll tax return for such period has been filed (by the Employer or by the Internal Revenue Service), the Employer is required to amend its payroll tax return to be consistent therewith within three (3) months of the date of such revision or amendment.
- b. *Registration.* Every Employer must be registered with the City in accordance with any Jersey City Business Registration Ordinance and any existing business registration law. Should an Employer cease doing business in the City or having Payroll subject to the payroll tax, it shall notify the Director within three (3) months of such date.
- c. *Prohibition Against Deduction or Withholding.* No Employer shall deduct or withhold any amount from the remuneration payable to an Employee because of the tax imposed by this chapter.

**§ 304-19.4. SUITS FOR TAX COLLECTIONS, VIOLATIONS, FINES, INTEREST AND PENALTIES.**

- a. *Remedies Not Mutually Exclusive.* The remedies provided in this section are not mutually exclusive. The utilization by the Director of one remedy does not preclude utilization of the other. Moreover, any use of the remedies provided in these sections does not

preclude the use by the City of any other legal or administrative procedure which can bring about compliance by the Taxpayer with the provisions of this chapter.

b. *Suits for Recovery of Unpaid Taxes.* The Director may sue in the name of the City in law or in equity, for the recovery of those payroll taxes due and unpaid under the provisions of the payroll tax, to compel the production of records or to enforce any other provisions of the law.

c. *Limitations.*

1. The following periods of limitations shall apply to suits for collection of payroll taxes:

- i. When a return has been filed but no tax paid, any suit brought to recover the tax due and unpaid shall be filed within three (3) years after the return was due or filed, whichever is later. Where no return was filed or a fraudulent return was filed, there shall be no limits to file suit for the collection of taxes.
- ii. A return filed before the due date is deemed to be filed on the due date.
- iii. Extension by Agreement. Where, before the expiration of the time prescribed in this section for the filing a lawsuit against the Taxpayer, both the Director and the Taxpayer have consented in writing to its extension after such time, the suit may be filed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

d. *Penalty and Interest.*

1. If for any reason the payroll tax is not paid when due, interest at the rate of twelve (12%) percent per annum on the amount of tax and a penalty of one-half (1/2%) percent per month for each month or fraction of a whole month during the period in which the tax remains unpaid shall be added to the tax.
2. On any additional tax determined to be due as a result of a deficiency assessment, penalty and interest will be assessed from the date the tax should have been paid to the date of payment. Penalty and interest is calculated as described above in the applicable portion of subsection 1.
3. Where suit is brought for the recovery of such tax, the person liable therefore shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed. Once due and owing, penalty and interest become part of the tax and shall be collected as such. A person's belief that no tax is due and owing, or the failure of any person to receive or obtain the forms required for making the returns required under this chapter is not a valid defense to the imposition of penalties herein for violation. Good faith shall not be a defense to the imposition of penalty.

e. *Fines and Penalties for Violations.*

1. Violations. No person shall:
  - i. Fail, neglect or refuse to make any return or provide any reports required by this chapter.

- ii. Refuse to permit an officer or agent designated by the Director to examine the books, records, papers or accounts of any business taxable or otherwise to determine liability.
  - iii. Knowingly make any incomplete, false or fraudulent report or attempt to do anything whatever to avoid full disclosure of the amount of payroll tax due to avoid the payment in whole or in part of the payroll tax.
2. In addition to any other penalties or enforcement proceedings provided for the collection and enforcement of payroll taxes by applicable law, any person who commits a violation of this chapter shall, upon conviction, be subject to a fine of not less than one hundred (\$100.00) dollars and not exceeding two thousand (\$2,000.00) dollars, imprisonment for a term not exceeding ninety (90) days and/or a period of community service not exceeding ninety (90) days. Any person who is convicted of violating this chapter within one (1) year of the date of a previous violation of this chapter and who was fined for such previous violation, shall be sentenced to an additional fine as a repeat offender, which fine shall not be less than the minimum and not more than the maximum fine fixed for a violation of this chapter.
3. The fines and terms of imprisonment imposed under this section shall be in addition to any other relief granted to the City of a monetary nature under the provisions of this chapter.
- f. *Certificate of Indebtedness.* Upon making an assessment of payroll tax or additional payroll tax, the Director may issue a certificate of indebtedness, which shall be filed with the Clerk of the Superior Court to record as a judgment against the Employer.

**§ 304-19.5. TAXPAYER REMEDIES.**

- a. *Director Hearings.*
  1. Any person who receives an interim notice from the Director may within thirty (30) days after the date of an interim notice, request a hearing with the Director.
  2. Any person who fails to request a Director's hearing within a timely manner waives the right to administratively contest any element of the assessment.
- b. *Payment Under Protest.* The Director will accept payments of disputed tax amounts under protest pending appeals; however, any request for refund of such monies must be filed in accordance with subsection d of this section.
- c. *Refunds.*
  1. A Taxpayer who has overpaid the payroll tax, or who believes he is not liable for the payroll tax may file a written request on an amended tax return with the Director for a refund or a credit of the tax. A request for refund or a credit shall be made within three (3) years of the due date for filing the report or one (1) year after actual payment of the tax, whichever is later. If no report is required, the request shall be made within three (3) years after due date for payment of the tax or within one (1) year after actual payment of the tax, whichever is later.



2. For amounts paid as a result of a notice asserting or informing a Taxpayer of an underpayment, a written request for a refund shall be filed with the Director within one (1) year of the date of the payment.
3. Erroneous Refund Recovery. The Director may sue for recovery of an erroneous refund provided such suit is begun two (2) years after making such refund, except that the suit may be brought at any time if any part of the refund was induced by fraud or misrepresentation of material fact. Notwithstanding the foregoing, the Director may file a law suit within the limitations period under Section 19.4(c) of this chapter, if such period ends after the two (2) year period specified in the preceding sentence.
- d. *Appeals.* Any aggrieved Employer may, within ninety (90) days after the mailing of any final notice regarding a decision, order, finding assessment or action of the Director, appeal to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq. by filing a petition of appeal and upon payment of the amount stated by the Director to be due. The appeal provided by this section shall be the exclusive remedy available to any Employer for review of a final decision of the Director in respect to a determination of liability for the tax imposed by this chapter. If no such appeal is filed on a timely basis, the aggrieved party waives his right to contest any element of the Director's adjudication, and that party's failure to challenge the same will be construed as an admission by that party as to the propriety of the Director's decision. No hearing or appeal will operate to suspend the accrual of penalty and interest from the date the tax was due to the date it is actually paid.

**§ 304-20. INFORMATION CONFIDENTIAL.**

Any information contained in an Employer's report or received by the City of Jersey City or any of its officers or Employees as a result of any investigation, hearing or verification of a report shall not be disclosed except for official purposes, and shall not be disclosed except in accordance with an order of a court or as otherwise provided by law.

**§ 304-21. PROHIBITION AGAINST DEDUCTION OR WITHHOLDING.**

No Employer shall deduct or withhold any amount from the remuneration payable to an Employee because of the tax imposed by this article.

**§ 304-22. LIABILITY OF EMPLOYER TO ONLY ONE MUNICIPALITY.**

No employer shall be obligated to report and pay an employer payroll tax, or any interest, penalty or costs with respect thereto, to more than one municipality with respect to remuneration paid to an employee for services performed. Where any dispute as to the liability for an employer payroll tax to more than one municipality for services performed by an employee is not resolved by agreement between the employer and the municipalities, all of said municipalities shall be joined in a proceeding in the tax court to collect the tax alleged to be due.

**§ 304-23. EFFECTIVE DATE AND SUNSET PROVISION.**

- a. This ordinance shall take effect on January 1, 2019.
- b. This ordinance shall remain in effect only until December 31, 2020 unless an extension or re-authorization is approved by the Municipal Council of the City of Jersey City

**§ 304-24. DIVISION OF LOCAL FINANCE.**

The City Clerk shall file a copy of this article with the Director of the Division of Local Finance in the New Jersey Department of Community Affairs. He shall likewise file any amendments to this article, including any regulations promulgated in accordance with Section 19.2 of this article.

- A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- B. This ordinance shall be a part of the Jersey City Code as though codified and set forth fully herein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- C. The City Clerk and the Corporation Counsel be and are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible repeaters of existing provisions.

*HB/mma*  
*11/01/2018*

APPROVED AS TO LEGAL FORM

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Corporation Counsel

APPROVED: \_\_\_\_\_  
Business Administrator

Certification Required   
Not Required

**ORDINANCE FACT SHEET**

This summary sheet is to be attached to the front of any ordinance that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the ordinance.

**Full Title of Ordinance/Resolution**

**ORDINANCE REPEALING AND REPLACING ARTICLE IV OF CHAPTER 304 (TAXATION) OF THE MUNICIPAL CODE (IMPOSING A TAX ON EMPLOYERS' PAYROLL OF NON-JERSEY CITY RESIDENTS FOR THE BENEFIT OF JERSEY CITY SCHOOLS)**

**Initiator**

Department/Division	Business Administration	
Name/Title	Brian Platt	Business Administrator
Phone/email	BPlatt@jenj.org	201- 547-5147

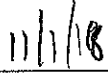
Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

**Ordinance Purpose**

The purpose of this ordinance is to establish a payroll tax on the payrolls of non-Jersey City residents for the benefit of the Jersey City schools.

**I certify that all the facts presented herein are accurate.**

  
\_\_\_\_\_  
**Signature of Department Director**

  
\_\_\_\_\_  
**Date**