



Legislation Text

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CITY of ALBUQUERQUE
TWENTY THIRD COUNCIL

COUNCIL BILL NO. F/S O-18-19 ENACTMENT NO. _____

SPONSORED BY: Diane G. Gibson and Ken Sanchez

ORDINANCE

F/S Approving A Project Involving Albuquerque Investors, LLC And TopGolf USA Albuquerque, LLC Pursuant To The Local Economic Development Act And The Local Economic Development Act Plan Ordinance To Support The Construction Of A Sports Entertainment And Restaurant Services Facility To Be Located On A 14-Acre In-Fill Site And Related Improvements; Authorizing The Execution Of A Project Participation Agreement And Other Documents In Connection With The Project; Making Certain Determinations And Findings Relating To The Project; Ratifying Certain Actions Taken Previously; Waiving Any Conflicts Between This Ordinance And The Local Economic Development Act Plan Ordinance; And Repealing All Actions Inconsistent With This Ordinance (Gibson, Sanchez)

APPROVING A PROJECT INVOLVING ALBUQUERQUE INVESTORS, LLC AND TOPGOLF USA ALBUQUERQUE, LLC PURSUANT TO THE LOCAL ECONOMIC DEVELOPMENT ACT AND THE LOCAL ECONOMIC DEVELOPMENT ACT PLAN ORDINANCE TO SUPPORT THE CONSTRUCTION OF A SPORTS ENTERTAINMENT AND RESTAURANT SERVICES FACILITY TO BE LOCATED ON A 14-ACRE IN-FILL SITE AND RELATED IMPROVEMENTS; AUTHORIZING THE EXECUTION OF A PROJECT PARTICIPATION AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; WAIVING ANY CONFLICTS BETWEEN THIS ORDINANCE AND THE LOCAL ECONOMIC DEVELOPMENT ACT PLAN ORDINANCE; AND REPEALING ALL ACTIONS

INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, the City of Albuquerque (the "City") is a legally and regularly created, established, organized, and existing municipal corporation of the State of New Mexico (the "State"); and

WHEREAS, pursuant to NMSA 1978, Sections 5-10-1 through 5-10-13 (1993, as amended) (collectively the "Act"), the City is authorized to provide economic development assistance to eligible entities for certain projects located within the corporate limits of the municipality; and

WHEREAS, pursuant to the Act, the City has adopted the Local Economic Development Act Plan Ordinance approving an economic development plan for the City and authorizing the City to assist economic development projects in any legally permissible manner, subject to the terms of the Local Economic Development Act Plan Ordinance; and

WHEREAS, the Local Economic Development Act Plan Ordinance provides that the City has considerable flexibility in determining the benefits that may accrue to the City from an economic development project and may consider both the qualitative and quantitative impacts of a proposal described in an application; and

WHEREAS, pursuant to the Local Economic Development Act Plan Ordinance, Albuquerque Investors, LLC, a Kansas limited liability company (the "Developer") and TopGolf USA Albuquerque, LLC a Delaware limited liability company (the "the Company" and together with the Developer are collectively the "Applicants") jointly constitute a Qualifying Entity and have submitted to City's Economic Development Staff and the Council and the Albuquerque Development Commission (the "Commission") an application (the "Application") requesting certain economic development assistance consisting of payment for a portion of the construction costs associated with site and facility development necessary for locating a sports entertainment and restaurant services facility to be operated by the Company, which will be located on an approximately 14 acre in-fill site in the City, in exchange for the creation of jobs and the expansion of the tax base in the City (the "Project"); and

WHEREAS, the Project will be located on real property owned by the Developer and leased to the Company pursuant to a twenty-year lease agreement between the Developer and the Company; and

WHEREAS, the Act and the Local Economic Development Act Plan Ordinance require that the City, the Developer and the Company enter into a project participation agreement meeting the requirements of the Act and the Local Economic Development Act Plan Ordinance; and

WHEREAS, the City has worked with the Developer and the Company to prepare, and has

negotiated the terms of, a project participation agreement and related exhibits that will govern the relationship between the City, the Developer and the Company with respect to the Project (collectively the "Agreement"); and

WHEREAS, the City will provide funds for the Project from moneys already appropriated for economic development projects, including general funds, other capital outlay funds, and based on gross receipts tax increment received by the City as a result of the construction of the Project, which increment will include funds transferred to the City by the State of New Mexico; and

WHEREAS, the Local Economic Development Act Plan Ordinance was amended in November of 2017 (C/S O-17-58, E. O-2017-026) to authorize the City's contribution of gross receipts tax increment received as a result of the construction of an economic development project; and

WHEREAS, the Project represents the first use gross receipts tax increment as authorized by C/S O-17-58, E. O-2017-026; and

WHEREAS, as authorized by C/S O-17-58, E. O-2017-026, the Agreement contemplates that the City's contribution of gross receipts tax increment of \$1,840,000 will be paid on a monthly basis, over a period of years pursuant to the terms and limitations of the Agreement, to be used for reimbursement of permitted Project expenditures that will be privately financed in advance of the City's distribution of the increment; and

WHEREAS, notwithstanding the passage C/S O-17-58, E. O-2017-026, the Local Development Act Plan Ordinance continues to require that the City Council retain the ability to terminate assistance to economic development projects based on certain performance metrics, however, this termination provision is not feasible for increment revenues pledged toward repayment of private financing of the Project, and by adoption of this ordinance the City Council is waiving the termination provision; and

WHEREAS, the City's participation in the Project is contingent upon Bernalillo County, New Mexico making approximately \$1,750,000 available for the Project and, as such, Bernalillo County, New Mexico may be a party to the Agreement; and

WHEREAS, the form of the proposed Agreement has been filed with the City Clerk and presented to the Council; and

WHEREAS, the proposed Agreement contains the provisions required by the Act and the Local Economic Development Act Plan Ordinance and, among other things, that to secure the Applicants' obligations under the Agreement the Developer will provide additional contributions and security in the form of an expanded tax base and new construction jobs, as well as additional

security described in the Agreement, and the Company will provide additional contributions and security in the form of an expanded tax base and new jobs, as well as additional security described in the Agreement; and

WHEREAS, the Application included information necessary for City staff to undertake a cost-benefit analysis with respect to the Project showing that the City will recoup the value of its contribution within ten (10) years; and

WHEREAS, the Application demonstrates the benefits that will accrue to the community as a result of the donation of public resources and demonstrates that the Company, by completing the Project, and the Developer will be making a substantive contribution to the community, as required by the Local Economic Development Act Plan Ordinance; and

WHEREAS, the total amount of public money expended and the value of credit pledged in each fiscal year in which money is expended by the City for the Project (and any other approved projects) pursuant to the Act does not and will not exceed ten percent of the general fund expenditures of the City in such fiscal year; and

WHEREAS, after having considered the Application and the Agreement, the Council has concluded that the economic and other benefits of the Project to the City will be substantial, that it is desirable and necessary at this time to authorize the City to enter into the Agreement, and that the City's provision of the assistance contemplated by the Agreement will constitute a valid public purpose under the Act; and

WHEREAS, there has been published in The Albuquerque Journal, a newspaper of general circulation in the City, public notice of the Council's intention to adopt this Ordinance, which notice was published at least fourteen (14) days prior to hearing and final action on this Ordinance.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Ordinance previously taken by the Council and the officials of the City directed toward the provision of economic development assistance in connection with the Project be approved and the same hereby are ratified, approved and confirmed.

Section 2. GOALS AND OBJECTIVES. The goals and objectives of the Project are, as set forth in the Agreement, to create and support an economic development project that fosters, promotes and enhances local economic development efforts and that provides job growth and career opportunities for Albuquerque-area residents and otherwise makes a substantive

contribution to the community.

Section 3. THE PROJECT. The Project will consist of site development work necessary for a sports entertainment and restaurant services facility to be located on a 14-acre in-fill site to be located near the southwest corner of Moñtano and I-25, including 132 new full-time employees in addition to part-time employees at the Albuquerque facility.

Section 4. FINDINGS. The Council hereby declares that it has considered all relevant information presented to it relating to the Project and the Agreement and hereby finds and determines that the provision of economic development assistance for the Project is necessary and advisable and in the interest of the public and will promote the public health, safety, morals, convenience, economy, and welfare of the City and its residents.

Section 5. AUTHORIZATION AND APPROVAL OF THE PROJECT AND THE AGREEMENT; APPROPRIATION OF FUNDS. The City hereby approves the Project and the Agreement, which provides, among other things, that the City will administer and disburse to the Applicants, in accordance with the Agreement, funds totaling \$2,566,000, in exchange for which the Company and the Developer will complete the Project as specified in the Agreement. The disbursements will be paid to the Applicants in compliance with the Agreement and will come from the following sources:

(A) \$400,000 of City funds is designated from General Fund carryforward, transferred and appropriated in Capital Acquisition Fund (305).

(B) \$326,000 of City funds is appropriated for the Project from Capital Improvement Program.

(C) \$1,840,000 of City funds to be paid based on an amount equal to 50% of the gross receipts tax revenues received by the City resulting from both the Municipal Local Option Gross Receipts Taxes imposed by the City and distributions to the City pursuant to NMSA 1978, Section 7-1-6.4 (2006) and NMSA 1978, Section 7-1-6.46 (2013), which are attributable to the development, construction and operation of the Project. There is hereby appropriated for the Project, effective upon receipt of such funds, amounts equal to the gross receipts taxes and distributions described in this Section 5(C).

The collection and pledge of the designated and appropriated City funds under this section and the Project Participation Agreement constitute a special fund and the sole and only source pledged or otherwise available for the payment by the City to the Applicants of the funds totaling \$2,566,000.

Section 6. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.

(A) The form, terms, and provisions of the Agreement in the form presented to the Council with this Ordinance are in all respects approved, authorized, and confirmed, and the City is authorized to enter into the Agreement in substantially the form thereof, with only such changes as are not inconsistent with this Ordinance or such changes as may be approved by supplemental resolution of the Council.

(B) The Council directs the Chief Administrative Officer of the City to execute and deliver the Agreement, as well as all exhibits thereto, in the name and on behalf of the City within ten (10) business days of delivery of the Agreement from City Council Services.

(C) The Mayor, Chief Administrative Officer, City Treasurer and City Clerk shall execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements and to do such other acts and things, either prior to or after the date of delivery of the executed Agreement, as are necessary or appropriate to consummate the transactions contemplated by the Agreement.

(D) City officials shall take such action as is necessary in conformity with the Act, the Local Economic Development Act Plan Ordinance and this Ordinance to effectuate the provisions of the Agreement and carry out the transactions as contemplated by this Ordinance and the Agreement, including, without limitation, the execution and delivery of any documents deemed necessary or appropriate in connection therewith.

Section 7. SEVERABILITY. If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provisions being declared unconstitutional or otherwise invalid.

Section 8. REPEALER. All bylaws, ordinances, resolutions, and orders, or parts thereof, inconsistent with this Ordinance are repealed by this Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, ordinance, resolution, or order, or part thereof, previously repealed.

Section 9. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Ordinance, immediately upon its final passage and approval, shall be recorded in the ordinance book of the City, kept for that purpose, and shall be there authenticated by the signature of the

Mayor and the presiding officer of the City Council, and by the signature of the City Clerk or any Deputy City Clerk, and notice of adoption thereof shall be published once in a newspaper that maintains an office in, and is of general circulation in, the City, and shall be in full force and effect five (5) days following such publication.

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