



Legislation Text

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CITY of ALBUQUERQUE
TWENTY FOURTH COUNCIL

COUNCIL BILL NO. O-21-57 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton, by request

ORDINANCE

Relating To The Redevelopment, Leasing And Sale Of A Metropolitan Redevelopment Project Within The Sycamore Metropolitan Redevelopment Area Consistent With The Terms Of The Sycamore Metropolitan Redevelopment Plan; Approving The Metropolitan Redevelopment Application Entitled "Highlands East"; Authorizing The Acquisition Of Land And Existing Improvements And Construction Of A Building Within The Sycamore Metropolitan Redevelopment Area; Authorizing The Disposition By Lease And Sale Of The City's Interest In Such Project To Urban Highlands East, LLC, Its Successors And Assigns; Authorizing The Execution And Delivery Of A Lease Agreement And Other Documents In Connection With The Project; Making Certain Determinations And Findings Relating To The Project; Ratifying Certain Actions Taken Previously; And Repealing All Actions Inconsistent With This Ordinance (Benton, by request)

RELATING TO THE REDEVELOPMENT, LEASING AND SALE OF A METROPOLITAN REDEVELOPMENT PROJECT WITHIN THE SYCAMORE METROPOLITAN REDEVELOPMENT AREA CONSISTENT WITH THE TERMS OF THE SYCAMORE METROPOLITAN REDEVELOPMENT PLAN; APPROVING THE METROPOLITAN REDEVELOPMENT APPLICATION ENTITLED "HIGHLANDS EAST"; AUTHORIZING THE ACQUISITION OF LAND AND EXISTING IMPROVEMENTS AND CONSTRUCTION OF A BUILDING WITHIN THE SYCAMORE METROPOLITAN REDEVELOPMENT AREA; AUTHORIZING THE DISPOSITION BY LEASE AND SALE OF THE CITY'S INTEREST IN SUCH PROJECT TO URBAN HIGHLANDS EAST, LLC, ITS SUCCESSORS AND ASSIGNS;

AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; 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, the City desires to promote redevelopment in areas designated as blighted areas so as to promote neighborhood stabilization by providing affordable housing, convenient services, creating new jobs, upgrading area buildings, infrastructure and housing for such areas and to promote public health welfare, safety convenience and prosperity; and

WHEREAS, pursuant to the Metropolitan Redevelopment Code, Sections 3-60A-1 through 3-60A-13 and Sections 3-60A-14 through 3-60A-48, New Mexico Statutes Annotated, 1978 Compilation, as amended (the "Act"), the City is authorized to acquire, whether by construction, purchase, gift or lease, and to finance, sell, lease, or otherwise dispose of, projects as defined in the Act; and

WHEREAS, the City Council (the "Council") has adopted an ordinance establishing the Albuquerque Development Commission (the "Development Commission") to review metropolitan redevelopment projects proposed to be owned and leased by the City pursuant to City Resolution No. 16-1985, as amended; and

WHEREAS, Urban Highlands East, LLC, a New Mexico limited liability company (together with its successors and assigns, the "Company") has presented to the Development Commission and the Council a proposed metropolitan redevelopment project application (the "Plan") whereby the City will, pursuant to the Act, acquire from the Company land and existing improvements located within the City and within the Sycamore Metropolitan Redevelopment Area for redevelopment by the lessee/purchaser thereof for a multi-family project (the "Project") consistent with the Sycamore Metropolitan Redevelopment Plan and the Act; and

WHEREAS, under the Company's proposal, the City will effectuate the transfer and sale of real property with the Company related to the Project, as authorized under this ordinance (this "Ordinance"); and

WHEREAS, under the Company's proposal, after the City's acquisition of the Property through a deed, the City and the Company will enter into a Lease Agreement (the "Lease"), pursuant to which the Company will lease and agree to purchase the land and improvements comprising the Project from the City, and the Company shall comply with the obligations incurred pursuant to the provisions of the Lease and this Ordinance; and

WHEREAS, the Albuquerque Development Commission has reviewed the Plan, has held a public hearing on the Plan and Project, has determined that the Company has complied with Resolution No. 16-1985, as amended, and has recommended approval of the Plan and Project by the Council; and

WHEREAS, the Council has held a public hearing on the Plan and the Project, after proper notice; and

WHEREAS, the Plan and Project meets the objectives of the Act and will benefit the City's efforts to revitalize the Sycamore Metropolitan Redevelopment Area of the City; and

WHEREAS, the Plan has been filed with the City Clerk and presented to the Council; and

WHEREAS, the form of the Lease has been filed with the City Clerk and presented to the Council; and The Lease and Deed are collectively referred to in the Ordinance as the "Project Documents"; and

WHEREAS, the Council has determined that it is in the best interest of the City to approve the Project and to execute and deliver the Project Documents, and other documents related thereto; and

WHEREAS, the City is authorized to execute the Project Documents under the Act and this Ordinance, and has concluded that it is desirable at this time to approve the Project which constitutes a valid public purpose; 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 contained certain information concerning the Plan and the ownership, purpose, location and size of the Project, which notice was published at least fourteen days prior to final action upon 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 approval of the Plan and the Project should be approved and the same hereby are ratified, approved and confirmed.

Section 2. FINDINGS. The Council, after a public hearing held upon proper notice, hereby declares that it has considered all relevant information presented to it relating to the Plan and the Project and hereby finds and determines that approval of the Plan and the Project, and the execution of the Project Documents, pursuant to this Ordinance are necessary and advisable and in the interest of and will promote the public health, safety, morals, convenience, education, economy and welfare of the City and the residents of the City. The Council finds that:

(1) The Plan and the proposed activities under the Plan aid in the elimination or prevention of slum or blight;

(2) The Plan conforms to the general plan for the City as a whole and the terms of the Sycamore Metropolitan Redevelopment Plan;

(3) The Plan affords maximum opportunity consistent with the needs of the community for the rehabilitation or redevelopment of the area by private enterprise or persons, and the objectives of the Plan justify the proposed activities as public purposes and needs;

(4) The developer of the Project property is the Company; and

(5) The Project property comprises of 228-unit multi-family mixed use community on 2.85 acres located near Central Avenue and Sycamore Street in central Albuquerque, New Mexico, all within the Sycamore Metropolitan Redevelopment Area.

Section 3. THE PROJECT. The City shall acquire the Project for the purposes hereinabove described, and the Project shall be located at all times within the corporate limits of the City and within the Sycamore Metropolitan Redevelopment Area.

Section 4. PLAN APPROVAL.

A. The Plan in the form on deposit in the office of the City Clerk is hereby approved in all respects.

B. Prior to submitting for building permit approval by the City, the Developer shall submit to MRA the site plan, landscape plan, and full color elevations of the Project for review and approval to ensure final building plans are consistent with the Proposal. Proposal includes enhanced streetscape to include sidewalks a pedestrian realm that is at

least 12-feet wide along Central and at least 9-feet wide along Copper and Sycamore; sidewalk pavers along Central, planters along the building on all four sides, 6 benches; and 2 number of electric car charging stations.

Section 5. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN.

A. The form, terms and provisions of the Project Documents in the form on deposit in the office of the City Clerk are in all respects approved, authorized and confirmed.

B. The Mayor or Chief Administrative Officer of the City is authorized to execute and deliver in the name and on behalf of the City, and the City Clerk or Deputy City Clerk is hereby authorized to attest, as necessary, the Project Documents with such changes therein as are not inconsistent with this Ordinance.

C. The Mayor, Chief Administrative Officer, Treasurer and City Clerk are further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements and to do such other acts and things as are necessary or appropriate to consummate the transactions contemplated by the Project Documents and the Plan.

D. The officers of the City shall take such action as is necessary to effectuate the provisions of the Project Documents and shall take such action as is necessary in conformity with the Act for the Project and for carrying out other transactions as contemplated by this Ordinance and the Project Documents.

E. The Project Documents shall not be executed until Construction of the Project is complete, as exemplified by a final Certificate of Occupancy, or prior at the sole discretion of the City. The Project Documents must be entered into and effective within three years of the date of this Ordinance.

Section 6. LEASE TERM. The Lease term shall not exceed seven years.

Section 7. PROJECT LEASE PROVISIONS. Developer is responsible for securing tenants to ensure that seventy-five (75%) percent of the retail and restaurant rentable square footage is occupied within one (1) year of the Completion Date. "Retail Rentable Square Footage" is defined as the 4,000 sq. ft. retail space shown on the southwest corner of the Building in the Site Plan. Once seventy-five percent (75%) of the retail and restaurant rentable square footage is initially occupied, Developer will maintain an average of seventy

-five percent (75%) of the retail and restaurant rentable square footage for the term of the tax abatement, as documented in annual reports submitted to MRA, showing the monthly occupancy (the “Initial Occupancy Requirements”). Developer is responsible for making best-faith efforts to recruit tenants including lowering rents, if necessary. If Initial Occupancy Requirement is not met, a fee of 5% of the abated taxes shall be made payable to the MRA for the year prior.

Section 8. FINDINGS REGARDING PROPERTY TAX ABATEMENT AND OTHER MATTERS. The Council makes the following determinations and findings in accordance with Sections 3-60A-39 and 3-60A-40 of the Act:

A. The Company is committed to pay the fair value of the Project pursuant to the Project Documents and the Act and comply with the terms of the Lease.

B. It shall not be necessary to deposit any amount in a controlled account for the maintenance of the Project property.

C. The Lease requires that the Company maintain the Project property in good repair and condition (excepting reasonable wear and tear) and carry all proper insurance with respect to the Project property.

D. The Lease requires the Company to make all payments of or relating to the Project property as they become due.

E. In accordance with Section 7-36-3.1, NMSA 1978, as amended and supplemented, the Project property shall be exempt from property taxation on the improvements to the Project for the shorter of the period of time in which the City owns the Project or December 31 of the year in which the seventh anniversary of the acquisition of the Project property by the City will occur.

Section 9. LIMITED OBLIGATIONS. Nothing contained in the Ordinance or in the Project Documents or any other instrument shall be construed as obligating the City (except with respect to the Project property as provided in the Project Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the City or against its taxing power, nor shall the breach of any agreement contained in the Ordinance, the Project Documents or any other instrument be construed as obligating the City (except with respect to the Project property as provided in the Project Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the City or against its taxing power, the City having no power to pay out of its general funds, or otherwise

contribute any part of the costs of constructing or furnishing the Project property.

Section 10. APPROVAL OF INDEMNIFICATION. The Council specifically approves the provisions of the Lease relating to indemnification which provide that the Company shall indemnify and hold harmless the City and its City Councilors, officials, members, officers, employees and agents against liability to the Company, or to any third parties that may be asserted against the City or its City Councilors, officials, members, officers, employees or agents with respect to the City's ownership of the Project property and arising from the condition of the Project property or the acquisition, construction and operation of the Project property by the Company, except to the extent Section 56-7-1, New Mexico Statutes Annotated, 1978 Compilation, applies, and except claims for any loss or damage arising out of or resulting from the gross negligence or willful misconduct of the City or any member, officer, employee or agent of the City.

Section 11. REPEALER. All bylaws, orders, resolutions and ordinances, 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, order, resolution or ordinance, or part thereof, previously repealed.

Section 12. SEVERABILITY. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 13. 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 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 which maintains an office in, and is of general circulation in, the City, and shall be in full force and effect five days following such publication.

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