



City of Columbus

Legislation Report File Number: 3215-2021

Office of City Clerk
90 West Broad Street
Columbus OH 43215-9015
columbuscitycouncil.org

rental excise taxes generated from the hotel to be constructed at the North Market; to authorize the North Market Workforce Housing Agreement between the City and NM Developer LLC; and to authorize the North Market Capital Maintenance Agreement between the City and North Market Development Authority, Inc.

Sponsors: Nicholas Bankston

Attachments: AMENDED 3215-2021 - Exhibit A

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
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History of Legislative File

Ver.	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Columbus City Council	07/18/2022	Read for the First Time				
1	Columbus City Council	07/25/2022	Amended as submitted to the Clerk				Pass
1	Columbus City Council	07/25/2022	Approved as Amended				Pass
2	COUNCIL PRESIDENT	07/25/2022	Signed				
2	ACTING MAYOR	07/26/2022	Signed				
2	CITY CLERK	07/27/2022	Attest				

ODI: Following the review and approval, when required, the Office of Diversity and Inclusion certifies compliance with Title 39 as of date listed.

City Attorney: Following review and approval, when required, this ordinance has been reviewed by the City Attorney's Office as



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to its form and legality only.

Explanation

BACKGROUND: City Council passed Ordinance 1993-2019 on July 22, 2019 authorizing the Director of the Department of Development to enter into an Economic Development Agreement by and between the City of Columbus (the “City”), North Market Development Authority, Inc. (“NMDA”), and NM Developer LLC (the “Developer”), dated September 11, 2019, as modified by the letter dated August 9, 2021 from the City to the Developer (as so modified, the “EDA”), concerning the development of a 31-story, mixed-use building on the surface parking lot adjacent to the existing “North Market,” which is owned by the City and located on Franklin County Tax ID Parcel No. ~~010-054645~~ (the Nos. **010-054645, 010-307273, 010-307274, 010-307275, 010-307276** (collectively, the “Site”). The mixed-use development will include an expansion of the North Market, a new public atrium and plaza, structured parking, office, residential units, and a hotel (collectively, the “Project”). The Developer has agreed to provide 20% of the residential units as affordable workforce housing on the condition that the City provide financial assistance, which the City intends to fund using a portion of the hotel/motel/short-term rental excise taxes (“Bed Taxes”) that are generated by the hotel located within the mixed-use development (the “North Market Hotel”). Additionally, the City has committed to using the remaining Bed Taxes generated by the North Market Hotel to providing funding to NMDA for the maintenance of the North Market and the cultural enrichment it provides to the community.

This legislation will amend Chapter 371 of the Columbus City Codes regulating hotel/motel/short-term rental excise taxes to provide that the tax revenues generated from a rate of three and six-tenths percent (3.6%) of the overall five and one-tenths percent (5.1%) hotel/motel/short-term rental excise tax rate applied to the North Market Hotel will be deposited into two new City funds, the North Market Housing Fund and North Market Capital Maintenance Fund, both created by this Ordinance, all in accordance with the EDA. This legislation will also authorize separate housing and capital maintenance agreements between the City and the Developer and the City and NMDA, respectively.

FISCAL IMPACT: No funding is required for this legislation. The City is diverting a portion the hotel/motel/short-term rental excise tax revenue that will be generated by the hotel on the Site, once constructed, to two new city housing and maintenance funds.

Title

To amend Sections 371.02 and 371.18 and to enact Section 371.20 of Chapter 371 of the Columbus City Codes in order to amend the distribution schedule of the hotel/motel/short-term rental excise taxes to segregate a portion of the hotel/motel/short-term rental excise taxes generated by the hotel to be constructed at the North Market so that such funds may be used to subsidize affordable workforce housing, pursuant to the Economic Development Agreement dated September 11, 2019, by and between



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the City, North Market Development Authority, Inc., and NM Developer LLC, as modified by the letter dated August 9, 2021 from the City to NM Developer LLC; to establish two new city funds (North Market Housing Fund and North Market Capital Maintenance Fund) for the deposit of a portion of the hotel/motel/short-term rental excise taxes generated from the hotel to be constructed at the North Market; to authorize the North Market Workforce Housing Agreement between the City and NM Developer LLC; and to authorize the North Market Capital Maintenance Agreement between the City and North Market Development Authority, Inc.

Body

WHEREAS, City Council passed Ordinance 1993-2019 on July 22, 2019 authorizing the Director of the Department of Development to enter into an Economic Development Agreement dated September 11, 2019, as modified by the letter dated August 9, 2021 from the City to the Developer, (as so modified, the “EDA”) by and between the City, North Market Development Authority, Inc. (“NMDA”), and NM Developer LLC (the “Developer”); and

WHEREAS, the EDA concerns the development of a 31-story, mixed-use building on the surface parking lot adjacent to the existing “North Market” owned by the City and located on Franklin County Tax ID Parcel No. ~~010-054645~~ (the Nos. **010-054645, 010-307273, 010-307274, 010-307275, 010-307276** (collectively, the “Site”)).

WHEREAS, Chapter 371 of the Columbus City Codes sets forth city law pertaining to the excise taxes applicable to hotels/motels and short-term rental operations; and

WHEREAS, pursuant to the EDA and in compliance with Section 371.02(a) of the Columbus City Codes, the City has agreed to use a portion of the hotel/motel/short-term rental excise taxes generated from the new hotel to be constructed on the Site (the “North Market Hotel”) to provide financial assistance to the Developer to support affordable workforce housing and to NMDA to sustain and expand the cultural enrichment of the community by supporting the capital maintenance of the North Market; and

WHEREAS, the City, in promotion of its efforts to provide affordable housing while encouraging cultural development of the community, finds it necessary to amend Chapter 371 to provide terms pursuant to which the hotel/motel/short term rental excise taxes generated by the North Market Hotel will be reserved for the uses set forth herein, in accordance with the EDA; and

WHEREAS, in order to effectuate the EDA, the City will enter into the North Market Workforce Housing Agreement with the Developer setting forth the parties’ respective commitments concerning the

provision of affordable housing within the North Market development and the City’s provision of funding to subsidize such affordable housing (the “Housing Agreement”), and the City will enter into the North



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Market Capital Maintenance Agreement with NMDA concerning capital maintenance of the North Market (the "Maintenance Agreement"); and

WHEREAS, this Council has determined to establish two new city housing and maintenance funds (the "North Market Housing Fund" and the "North Market Capital Maintenance Fund") into which there shall be deposited and distributed a portion of the tax receipts from the North Market Hotel after first providing for the required contributions to convention and visitors bureaus operating within the county annually (the "Available Hotel Tax Proceeds"); **NOW, THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

Section 1. Amendment to Chapter 371 of the Columbus City Codes. In accordance with the EDA, defined herein, Sections 371.02 and 371.18 of Chapter 371 of the Columbus City Codes are hereby amended as described on Exhibit A attached hereto, and Section 371.20 as also described on Exhibit A is enacted.

Section 2. Repeal. That Sections 371.02 and 371.18 in their current form are hereby repealed.

Section 3. North Market Housing Agreement. That the Director of the Department of Development (the "Director"), or his or her designee, for and in the name of the City, is hereby authorized to execute and deliver the North Market Workforce Housing Agreement (the "Housing Agreement") with NM Developer LLC (the "Developer") presently on file with the Director along with any changes or amendments thereto not inconsistent with this Ordinance and not substantially adverse to the City and which shall be approved by the Director and the City Attorney, provided that the approval of such changes and amendments thereto, and the character of those changes and amendments as not being substantially adverse to the City, shall be evidenced conclusively by the Director's execution and delivery thereof.

Section 4. North Market Capital Maintenance Agreement. That the Director or his or her designee, for and in the name of the City, is hereby authorized to execute and deliver the North Market Capital Maintenance Agreement (the "Maintenance Agreement") with North Market Development Authority, Inc. ("NMDA") presently on file with the Director along with any changes or amendments thereto not inconsistent with this Ordinance and not substantially adverse to the City and which shall be approved by the Director and the City Attorney, provided that the approval of such changes and amendments thereto, and the character of those changes and amendments as not being substantially adverse to the City, shall be evidenced conclusively by the Director's execution and delivery thereof.

Section 5. Subsequent Agreements and Instruments. That the Director or other appropriate officers of the City are authorized to execute and/or acknowledge and agree to such other agreements and instruments, subject to approval by the City Attorney's Office, and to take all actions as may be necessary to implement this Ordinance and the transactions contemplated by the EDA, the Housing Agreement, and



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the Maintenance Agreement.

Section 6. North Market Housing Fund and North Market Capital Maintenance Fund. This Council hereby establishes in accordance with the EDA and Chapter 371 of the Columbus City Codes as amended by Exhibit A attached hereto, a city housing fund (the “North Market Housing Fund”) and a city

capital maintenance fund (the “North Market Capital Maintenance Fund”) into which there shall be deposited hotel/motel/short-term rental excise taxes collected from the North Market Hotel (as that term is defined in this Ordinance) other than those tax revenues required to be distributed to convention and visitors bureaus operating within the county annually (the “Available Hotel Tax Proceeds”) in accordance with the Economic Development Agreement dated September 11, 2019, as modified by the letter dated August 9, 2021 from the City to the Developer, (as so modified, the “EDA”) by and between the City, NMDA, and the Developer, and the Housing Agreement and the Maintenance Agreement, as authorized pursuant to Sections 3 and 4 of this Ordinance. The City Auditor may establish the North Market Housing Fund and North Market Capital Maintenance Fund as new City funds or as new City subfunds within the City’s Excise Tax Fund (2231). Those Available Hotel Tax Proceeds shall be used solely for the purposes authorized by the new Section 371.20, subject to annual appropriation. The North Market Housing Fund shall remain in existence so long as the Available Hotel Tax Proceeds are collected and used for the purposes set forth in the Housing Agreement after which time, the North Market Housing Fund shall be dissolved, and any surplus remaining therein shall be transferred to a fund of the new community authority established by City Council pursuant to the EDA and Chapter 349 of the Ohio Revised Code. The North Market Capital Maintenance Fund shall remain in existence so long as Available Hotel Tax Proceeds are collected and used for the purposes set forth in North Market Capital Maintenance Agreement. after which time, the North Market Capital Maintenance Fund shall be dissolved, and any surplus remaining therein shall be transferred to or within the City’s Excise Tax Fund (2231) or to other City funds, subfunds, or project accounts established for the deposit of the hotel/motel/short-term rental excise taxes, as determined necessary by the City Auditor.

EXHIBIT A

371.02 - Imposition of tax.

(a) For the purpose of providing revenue for the advancement of the cultural development of the community, for promotion and publicizing of the city of Columbus as a desirable location for conventions, trade shows and similar events to encourage the patronage and business of cultural, educational, religious, professional, sports, and other organizations to utilize the city of Columbus and its numerous facilities for such events, to support the production of affordable housing and create home ownership opportunities within the city of Columbus through the Affordable Housing Trust for Columbus and Franklin County, and for the further purpose of providing emergency human service needs to the community, all for the benefit of the citizens of the city of Columbus, an excise tax of three (3) percent is hereby levied on transactions by which lodging by a hotel or transient accommodations, including short-term rentals, is or is to be furnished to transient guests or short-term rental guests, pursuant to former Ohio Revised Code Sec. 5739.02(C)(1) (currently Ohio Revised Code Sec. 5739.08(A)) and furthermore, an additional excise tax of three (3) percent is hereby levied on transactions by which lodging by a hotel or transient accommodations, including short-term rentals, is or is to be furnished to transient guests or short-term rental guests, pursuant to former Ohio Revised Code Sec. 5739.02(C)(2) (currently Ohio Revised Code Sec. 5739.08(B)). Effective January 1, 1989, the excise tax of three (3) percent levied pursuant to former Ohio Revised Code Sec. 5739.02 (C)(1) (currently Ohio Revised Code Sec. 5739.08(A)) above shall be reduced to two and one-tenths (2.1) percent and shall be levied on transactions by which lodging by a hotel or transient accommodations is or is to be furnished to transient guests.

(b) Although the above levies are separate and distinct, for purposes of determining distribution, the combined amounts are hereinafter referred to as the "Hotel-Motel—Short-Term Rental Excise Taxes".

(c) Except as otherwise provided in this Chapter, all All revenues received by the city from the hotel/motel/short-term rental excise taxes each year shall be divided for the use of promoting and publicizing the city of Columbus as a desirable location for conventions, trade shows, and similar events; for use in purchasing cultural services for the enrichment of the community; for support of the production of affordable housing and creation of home ownership opportunities in Columbus; and for emergency human service needs. Of the combined rates of five and one-tenths percent (5.1%) the amount of tax allocated for the purpose of promoting the city of Columbus from funds generated by the hotel/motel/short-term rental excise taxes shall be two and thirty-nine-hundredths percent (2.39%) effective January 1, 2014. The maximum amount of said tax to be allocated for the purpose of expanding cultural services for the enrichment of the community shall not exceed a rate of one and sixty-eight-hundredths percent (1.68%) in relation to the five and one-tenths percent (5.1%) combined rate effective January 1, 2014. By December of each year, recipients of funding pursuant to promoting the city and for cultural enrichment shall provide the mayor and city council a performance report of that year's activities. The maximum amount of said tax to be allocated for the purpose of providing emergency human service needs to the community shall not exceed a rate of six-tenths percent (.6%) in relation to the five and one-tenths percent (5.1%) combined rate, effective January 1,

2014, of which up to three hundred thousand dollars (\$300,000.00) annually may be allocated by city council to assist social service agencies in the city with the capital costs of maintaining their facilities. The amount of tax allocated to support the production of affordable housing and create home ownership opportunities within the city of Columbus through the Affordable Housing Trust for Columbus and Franklin County shall be up to forty-three-hundredths percent (.43%) in relation to the five and one-tenths percent (5.1%) combined rate, effective January 1, 2014.

(d) The payment scheduled for each of the aforementioned allocations in Section 371.02(c) shall be determined by the city auditor, provided that the city shall disperse at least fifty (50) percent of the revenue from the three (3) percent tax levied pursuant to former Ohio Revised Code Sec. 5739.02(C)(2) (currently Ohio Revised Code Sec. 5739.09), to make contributions to convention and visitors bureaus operating within the county, annually. The payment schedule for contributions to convention and visitors bureaus operating within the county shall be determined by the city auditor and shall follow the priorities established below:

(1) The first priority is for said contributions to be paid to the Franklin County Convention Facilities Authority, a duly constituted convention and visitors bureau operating within the county of Franklin, Ohio, to the extent necessary to satisfy the city's obligation under Section 3.06 of the lease agreement dated as of June 1, 1990 between the Franklin County convention facilities authority, as lessor, and the city and the county of Franklin, Ohio, as lessees.

(2) The second priority is for said contributions to be made pursuant to authorization of council to convention and visitors bureaus operating within the county of Franklin, Ohio, when in the judgment and opinion of the city auditor such contributions are not required to meet the first priority. The city auditor may make contributions on a monthly basis provided no second priority contribution shall be made in a month until such time as a first priority contribution is either satisfied or deemed not required.

(3) Receipts attributed to the full service convention center hotel located on High Street in Columbus, Ohio across from the existing Columbus Convention Center shall be allocated for use as directed under Section 3.4 of the Cooperative Agreement ~~among~~ by and between the City, the County of Franklin and the Franklin County Convention Facilities Authority beginning January 1, 2013 for a period of up to 30 years or the life of the bonds for the project, whichever is greater.

(~~d~~e) Each recipient organization of funds pursuant to the above described allocation shall within one hundred twenty (120) days after the end of their fiscal year provide to the city auditor financial statements of the organization for such fiscal year prepared in accordance with generally accepted accounting principles, with an opinion thereon by a firm of certified public accountants.

(~~e~~f) The tax imposed herein applies and is collectible at the time the lodging is furnished regardless of the time when the price is paid. The tax does not apply to lodging furnished to the state, or any of its political subdivisions, or any charitable organization for the lodging of transient indigent individuals, when such charitable organization pays the hotel or transient

accommodation, including short-term rentals, for such lodging.

(fg) For the purpose of the proper administration of this chapter and to prevent evasion of the tax it is presumed that all lodging furnished by hotels or short-term rentals to transient guests and short-term rental guests is subject to the tax until the contrary is established.

(gh) To defray the expenses incurred in the collection and administration of the tax, the auditor may retain one-half percent (0.5%) of the collected gross revenues from the city's proportion of the tax on short-term rental guests paid to either the hosting platform or the short-term rental host.

371.18 - Convention Center Hotel.

Subject to Section 371.02(€d)(1), Hotel-Motel Excise Taxes receipts attributed to the full-service convention center hotel located on High Street, in Columbus, Ohio across from the existing Columbus Convention Center shall be paid to the Franklin County Convention Facilities Authority for use as directed under Section 3.4 of the Cooperative Agreement ~~among~~ by and between the City, the County of Franklin and the Franklin County Convention Facilities Authority governing the acquisition, construction, installation, equipping and financing of such full-service convention center hotel.

371.20 – North Market Hotel.

Notwithstanding anything in this Chapter to the contrary, the hotel-motel excise taxes receipts attributed to the full-service hotel located on the real property, or parts thereof, identified as Franklin County Tax ID Parcel Numbers 010-054645-00, 010-307273-00, 010-307274-00, 010-307275-00, 010-307276-00, on the date of the passage of this Ordinance, as may be later divided (the “North Market Development Site”), shall be subject to the following: Of the combined rates of five and one-tenths percent (5.1%) constituting the hotel-motel excise taxes as defined in Section 371.02(b), the receipts constituting a rate of one and five-tenths percent (1.5%) of the overall tax rate shall be made for contributions to convention and visitors bureaus operating within the county annually in accordance with Section 371.02(d). The remaining receipts constituting a rate of three and six tenths percent (3.6%) (the “Available Hotel Tax Proceeds,”) shall, in lieu of being distributed as required by Section 371.02(c), be allocated to a housing fund and capital maintenance fund for use pursuant to Section 4(A) of the Economic Development Agreement entered into the 11th of September 2019 by and between the City of Columbus, North Market Development Authority, Inc., and NM Developer LLC, as modified by the letter dated August 9, 2021 from the City of Columbus to NM Developer LLC.