

ORDINANCE NO. 11-5539

ORDINANCE APPROVING THE EMPIRE PARKING GARAGE AND NORTHERN HOTEL PROJECT AS URBAN RENEWAL PROJECTS IN THE EXPANDED NORTH 27TH STREET URBAN RENEWAL AREA - 2008; AUTHORIZING THE FINANCING THEREOF WITH TAX INCREMENT REVENUES; AND DETERMINING THAT THE DISPOSITION OF PARKING SPACES AND RETAIL SPACES AS SET FORTH IN CERTAIN REAL ESTATE DOCUMENTS IS REASONABLE AND FAIR WITHIN THE MEANING OF MONTANA CODE ANNOTATED, SECTION 7-15-4263

BE IT ORDAINED by the City Council (the "Council") of the City of Billings, Montana (the "City"), as follows:

Section 1. Recitals.

1.01. On July 11, 2005, the City Council adopted Ordinance No. 05-5333, which created the North 27th Street District Urban Renewal Area as an urban renewal district and approved the North 27 Street Urban Renewal Plan (the "North 27th Street Plan") containing a tax increment financing provision. On November 13, 2006, and December 8, 2008, the City Council adopted Ordinance Nos. 06-5394 and 08-5483, respectively, which expanded the boundaries of the North 27th Street Urban Renewal Area and amended the North 27th Street Plan to create the Expanded North 27th Street Urban Renewal Area – 2008 (the "District").

1.02. In adopting the North 27th Street Plan, the City noted the need for additional public parking in the District, and the North 27th Street Plan contemplates the development of additional parking in the District. The North 27th Street Plan determined it necessary to use tax increment financing to encourage private reinvestment within the District, and provided for the segregation of the tax increment; and the North 27th Street Plan further contemplates the use of tax increment received in the District to finance the costs of development projects approved by the Council, including issuing bonds secured by the tax increment, as a way of encouraging private investment, and development and redevelopment in the District.

1.03. The Council on June 27, 2011, conducted a public hearing on a proposal to undertake urban renewal projects in the District, to finance the costs thereof with tax increment revenues and to provide for the sale of parking spaces and retail space to certain private persons, all as authorized by Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act").

1.04. Pursuant to the Act and the procedures contained in the North 27th Street Plan, and Resolution No. 11-19060, adopted June 13, 2011, the City has set forth its intention to use tax increment in an amount sufficient to finance all or a portion of certain urban renewal projects and has undertaken to designate and approve the following urban renewal projects (the "Projects"):

(a) Empire Parking Garage. The Downtown Billings Partnership has proposed that the City build a 505-car parking garage and 18,000-square-foot retail space on the corner of North 27th Street and Montana Avenue (the "Empire Parking Garage"). The Empire Parking Garage is proposed to be built on the site of the Northern Hotel's current parking structure, the Windsor Court office building, and the parking lot that was once the site of the Empire Bar. It is necessary for the City to acquire such property from the respective owners. The total estimated costs of designing, acquiring land for, and the construction of the Empire Parking Garage is \$21,000,000. To pay a portion of the costs of Empire Parking Garage, the City proposes to issue tax increment revenue bonds in the estimated amount of \$15,000,000 (the "Bonds"). Costs of the Empire Parking Garage in excess of the proceeds of the Bonds will be paid from tax increment funds on hand, City parking funds, proceeds from the sale of the Park IV Parking Garage, if any, and proceeds from the sale of parking spaces and the retail space in the Empire Parking Garage to the Sellers (as hereinafter defined). The Bonds proposed to be issued would be payable from the tax increment revenue generated in the District.

(b) Northern Hotel Project. Zootist Hospitality, LLC, a Montana limited liability company, owns and plans to rehabilitate and redevelop the Northern Hotel in the District and has requested that the City reimburse it for the costs of certain qualified improvements from tax increment of the District (the "Northern Hotel Project"). It is proposed that the City will reimburse Zootist Hospitality, LLC from tax increment revenues in the District, on a subordinate lien basis and on other terms and conditions set forth in the Development Agreement (as hereinafter defined), the costs of the following improvements to the Northern Hotel Project (collectively, the "Qualified Improvements").

- new sewer and storm sewer connections,
- new water service;
- irrigation improvements on streetscape;
- sidewalk demolition;
- asbestos demolition and abatement;
- general demolition of dilapidated/outdated structures;
- new energy efficient windows;
- repair of exterior masonry;
- landscaping and site work;
- upgrade and replace exterior doors;
- hoisting services – equipment rental; and

concrete work and rebar - exterior.

The estimated cost of the Qualified Improvements is \$2,180,827. The City's obligation to reimburse Zootist Hospitality, LLC shall be dependent upon completion of the Northern Hotel Project and completion of the Qualified Improvements and is limited to the actual costs of the Qualified Improvements, not to exceed \$2,180,827 or the Maximum Reimbursement Amount. The Maximum Reimbursement Amount is calculated based on 33% of the difference between \$2,110,130 (the 2010 assessed value of the Northern Hotel located in Billings Original Townsite 613, Block 109, Lots 8-12) and the assessed value of the same property including improvements thereon in the first full tax year following completion of the Northern Hotel Project.

1.05. The Council approved and the City has entered the following agreements (collectively, the "Real Estate Documents") with respect to the Projects:

- (a) Real Estate Purchase Agreement dated as of May 4, 2011 with Alley Cat Investments, LLC ("Alley Cat") pursuant to which the City agreed to purchase seven of the lots necessary for the construction of the Empire Parking Garage at a purchase price of \$1,635,000 (the "Alley Cat Purchase Agreement").
- (b) Sale and Purchase Agreement dated as of May 31, 2011 with Zootist Garage, LLC pursuant to which the City agreed to purchase the five other lots necessary for the construction of the Empire Parking Garage at a purchase price of \$810,000 (the "Zootist Purchase Agreement"). The current Northern Hotel parking garage is located on such property.
- (c) Development Agreement dated as of May 31, 2011 with Zootist Hotel, LLC (the "Development Agreement") pursuant to which the City agreed to reimburse Zootist Hotel, LLC from tax increment revenues of the District for the costs of the Qualified Improvements.
- (d) Lease Agreement dated as of May 4, 2011 with Alley Cat (the "Alley Cat Lease") to lease back to Alley Cat for \$1.00 a portion of the property acquired from it for continued use as a parking lot until the City is ready to commence construction of the Empire Parking Garage.
- (e) Lease Agreement dated as of May 31, 2011 with Zootist Hospitality, LLC (the "Zootist Lease"), pursuant to which the City leases back to Zootist Hospitality, LLC for \$1.00 the current Northern Hotel parking garage until the City is ready to commence construction of the Empire Parking Garage.
- (f) Empire Garage Option Agreement, dated May 4, 2011 (the "Alley Cat Option Agreement") pursuant to which the City has granted Alley Cat an irrevocable option and right of first refusal to purchase first floor retail space in the Empire Parking Garage for fair market value and a right to purchase a minimum of 25 first floor ground level parking spaces in the Empire Parking Garage as replacement parking for a purchase price of \$4,331.55 per space. Pursuant to the Alley Cat Option Agreement, the City also

granted Alley Cat a right to repurchase the property sold to the City pursuant to Alley Cat Purchase Agreement if the City terminates its plan to build the Empire Parking Garage.

(g) Empire Garage Option Agreement, dated May 31, 2011 (the "Zootist Option Agreement"), with Zootist Garage, LLC and Zootist Hospitality, LLC (collectively, "Zootist") pursuant to which the City granted Zootist an irrevocable option and right of first refusal to purchase first floor retail space in the Empire Parking Garage for fair market value and the right to purchase 187 contiguous parking spaces in the Empire Parking Garage chosen by Zootist as replacement parking for a purchase price of \$4,331.55 per space, which equals the purchase price for the property sold to the City pursuant to the Zootist Purchase Agreement. Pursuant to the Zootist Option Agreement, the City also agreed to provide Zootist with alternative parking for up to 100 construction workers renovating and rehabilitating the Northern Hotel, granted Zootist a right to approve the design plans for the Empire Parking Garage and granted Zootist a right to repurchase the property sold to the City pursuant to the Zootist Purchase Agreement if the City terminates its plan to build the Empire Parking Garage. If at the time of terminating its plan to build the Empire Parking Garage the City has demolished any part of the current Northern Hotel parking garage, the City will be obligated to compensate Zootist for any amounts necessary to complete the demolition and rebuild 187 parking spaces.

1.06. Pursuant to Resolution No. 11-19060, a public hearing was duly noticed and held on June 27, 2011, at which all persons wishing to speak were given the opportunity to address the Council with respect to approval of the Projects as urban renewal projects, to finance the costs thereof with tax increment revenues and to provide for the sale of parking spaces and retail space in the Empire Parking Garage to the Sellers.

Section 2. Findings. The Council hereby finds, with respect to each of the Projects described in Section 1.04, as follows:

- (a) a workable and feasible plan exists for making available adequate housing for any persons who may be displaced by the Projects;
- (b) the Plan and the Projects conform to the comprehensive plan or parts thereof for the City as a whole;
- (c) the Plan and the Projects will afford maximum opportunity, consistent with the needs of the City as a whole, for the rehabilitation or redevelopment of the District by private enterprise;
- (d) based on the findings and recommendations of Springsted, Inc., the City's financial advisor, using estimated annual tax increment receipts of \$1,900,000 per year from the District, the City can issue and pay annual debt service on approximately \$15,000,000 of Bonds. The proceeds of the Bonds and the other funds identified in Section 1.04 hereof will be adequate to cover the costs of the Empire Parking Garage. Thus, there is a workable plan of financing for the Empire Parking Garage based on construction estimates as of the date of this Ordinance;
- (e) based on tax increment receipts of \$1,900,000 a year, the City estimates there will be adequate tax increment revenue remaining each year after the payment of the estimated

annual debt service on the Bonds to reimburse Zootist Hospitality, LLC for the Qualified Improvements in accordance with the provisions of the Development Agreement. Thus there is a workable plan of financing for the Northern Hotel Project, based on construction estimates as of the date of this Ordinance; and

(f) each of the Projects constitutes an urban renewal project within the meaning of the Act and the Plan.

Section 3. Approval of Projects and Financing.

3.01. The Projects are hereby approved as urban renewal projects.

3.02. The Council approves the use of tax increment revenues to finance a portion of the Empire Parking Garage and sets forth its intention to issue Bonds in the estimated principal amount of \$15,000,000.

3.03. The Council approves the use of tax increment revenues to reimburse the costs of the Qualified Improvements in connection with the Northern Hotel pursuant to the Development Agreement.

Section 4. Procedure for Disposition of Tax Increment Financed Property. The disposition of parking spaces and retail spaces as set forth in the certain real estate documents as set forth in Section 1.05 hereof is reasonable and fair within the meaning of Montana Code Annotated, Section 7-15-4263.

Section 5. Effective Date. This Ordinance shall take effect from and after 30 days of its passage by the City Council and approval by the Mayor.

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PASSED AND APPROVED by the City Council of the City of Billings, Montana, on the second reading this 22nd day of August, 2011.

CITY OF BILLINGS



Thomas W. Hanel  
Thomas W. Hanel, Mayor

Attest: Cari Martin  
Cari Martin, City Clerk