

AN ORDINANCE 4325

APPROVING AND ACCEPTING GRANT MONIES FROM THE BYERLY FOUNDATION; AUTHORIZING THE CONVEYANCE AND TRANSFER OF CERTAIN REAL PROPERTY; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED by the Mayor and City Council of the City of Hartsville in a meeting duly assembled:

Section 1. Findings of Fact

The City Council of the City of Hartsville (the “**City Council**”), the governing body of the City of Hartsville, South Carolina (the “**City**”), has made the following findings of fact:

(A) The City is a municipal corporation of the State of South Carolina (the “**State**”) located in Darlington County, South Carolina, and as such possesses all general powers granted by the Constitution and statutes of the State of South Carolina to such public entities.

(B) The Hartsville Public Development Corporation (the “**Corporation**”) is a South Carolina nonprofit corporation, incorporated, organized and existing under the laws of the State of South Carolina.

(C) The Corporation has been formed to assist in the development of public facilities and other projects which benefit the City.

(D) The Corporation is controlled by the City Council as two of its three directors are appointed by the City Council.

(E) By the terms of its Articles of Incorporation and its Bylaws, the Corporation is authorized “to acquire, by gift, lease or purchase...any property, real or tangible personal, incidental to carrying out” projects located in and for the benefit of the City.

(F) The City is authorized by the laws of the State to sell, alien, convey, lease or otherwise dispose of real property.

(G) The City has acquired certain properties (the “**City Parcels**”) as listed on Exhibit A hereto.

(H) In addition to the City Parcels, there are other parcels (the “**Other Parcels**” and together with the City Parcels, the “**Parcels**”), as listed on Exhibit A hereto, that are anticipated to be acquired by the Corporation.

(I) Upon the acquisition of all necessary Parcels (as determined by the Corporation), the Corporation, acting in concert with the City, has stated its intent to develop or arrange for the development of a mixed-use commercial and residential development, currently known as

the “Canalside Project” (the “**Project**”), which is intended to benefit the City by further developing and improving its downtown corridor and adding multi-family housing options, which are needed in the City.

(J) By the terms of this Ordinance, the City intends to convey the City Parcels to the Corporation. In making such conveyance, the City is cognizant that its authority to dispose of real property is limited by a fiduciary duty to act in the best interest of the public.¹ The City has a fiduciary duty to receive consideration of “reasonably equivalent value” in exchange for its sale or conveyance of real property.² In determining what constitutes “reasonably equivalent value,” a municipality is not limited to considering the monetary value received for the property but may also “consider indirect benefits resulting to the public in determining what is a fair and reasonable return for disposition of its properties....”³

(K) The City is mindful of and has considered the requirements of *Nichols v. South Carolina Research Authority*, 290 S.C. 415, 351 S.E.2d 155 (1986) and *WDW Properties v. City of Sumter*, 342 S.C. 6, 535 S.E.2d 631 (2000) (the “**Byrd Test**”), wherein public purpose of the proposed incentives is determined by the following four-part test: (1) what is the ultimate goal or benefit to the public intended by the project; (2) are public parties or private parties the primary beneficiaries; (3) is the benefit to the public speculative; and (4) what is the probability that public interest shall be served and to what degree.

(L) The Byerly Foundation (the “**Byerly**”) has agreed to provide a grant to the City (the “**Grant**”) and a loan to the Corporation (the “**Loan**”) in order to finance the costs of acquiring the Other Parcels, reimbursing the City for certain of the City Parcels and paying certain due diligence and other costs associated with the Project.

(M) The Grant in the amount of \$500,000 is to be made directly to the City to acquire certain of the Other Parcels (the “**Other City Parcels**”) and pay for other approved costs.

(N) The Loan in the amount of up to \$1,500,000 is to be made and secured pursuant to a line of credit agreement between the Corporation and Byerly, a promissory note executed and delivered by the Corporation, registered in the name of Byerly, and secured by a mortgage and security agreement on each Parcel acquired with the proceeds of the Loan as such amounts are drawn upon by the Corporation.

(O) The City Council is enacting this Ordinance in order to:

- (1) authorize the conveyance of the City Parcels and the Other City Parcels (by grant or below-market sale) to the Corporation;
- (2) evidence the City’s approval of the Project and the acceptance of the Grant;
- (3) accept and receive the proceeds of the Grant from Byerly; and

¹ *Haesloop v. City Council of Charleston*, 115 S.E. 596, 600 (S.C. 1923).

² *Id.*

³ Quoting *McKinney v. City of Greenville*, 203 S.E.2d 680, 688 (S.C. 1974).

(4) authorize the execution and delivery by, and on behalf of, the City of such other agreements and certificates and the taking of such other action by the City (acting through the City Manager) as shall be necessary or desirable in connection with the acquisition of the Other City Parcels and the financing of the Project.

Section 2. Ratification of the Byrd Test; Recital of Indirect Benefits

(A) The City reaffirms the criteria set forth by the South Carolina Supreme Court in the Byrd Test. The City, in conveying the City Parcels and the Other City Parcels to the Corporation as an incentive for the future development of the Project, complies with the objective provisions of Byrd Test as described in Section 2(B).

(B) With regard to the Byrd Test recited above, the City believes that:

(1) the development of the Project is integral to the growth of the City's downtown and the Project shall serve as a catalyst for future redevelopment in the area; further, there is a significant shortage of good quality multi-family housing options in the City and the Project will address such shortage;

(2) although some benefits inure to the Corporation (as well as future third-party developers), the City is the primary beneficiary because the Project shall provide a direct economic impact to the City through increased tax and fee levies, wide-spread growth in property valuations, and the creation of jobs, and shall provide indirect economic impacts by attracting businesses, investment and patronage into its downtown and enhancing quality of life and enjoyment for City residents by developing/restoring blighted or vacant areas in the community, increasing property tax revenues within the areas surrounding the Project and increased demand in property and property values in the vicinity of the Project;

(3) while the Project is in its introductory phase, the Corporation's stated corporate purpose is to serve the City's best-interests and through the City Council's control of the Corporation it can ensure that the Project is developed in a manner best benefiting the City; and

(4) the public interest shall be greatly served, as the Project is expected to generate capital investment of at least \$10,000,000 and the creation of 3 jobs. The direct investment of capital and the creation of jobs are vital to the success of the City and its general welfare.

Section 3. Authorization to Convey Property

In order to incentivize and induce the success of the Project, the City may convey the City Parcels and the Other City Parcels, by grant, sale or otherwise to the Corporation; in the event of a sale, the amount of the sale may be for amounts less than the appraised value of any the City Parcels or the Other City Parcels and the specific sales price may be determined by the City

Manager based on her estimate of best value at the time of conveyance.

Section 4. Authorization for Grant; Approval of the Grant Agreement

(A) The City Council hereby authorizes the City's acceptance of the Grant from Byerly in an amount of \$500,000, or such other amount as Byerly may determine.

(B) In connection with the delivery of the Grant, the City Manager is additionally authorized to prepare, review, negotiate, execute, deliver, and agree to such additional agreements, certifications, documents, closing proofs, and undertakings as she shall deem necessary or advisable.

DONE AND ORDAINED IN COUNCIL ASSEMBLED, this ____ day of ____, 2018.

CITY OF HARTSVILLE, SOUTH
CAROLINA

(SEAL)

Carl M. (Mel) Pennington IV, Mayor

Attest

Sherron L. Skipper, City Clerk

First Reading: February 13, 2018
Public Hearing: _____, 2018
Final Reading: _____, 2018

Exhibit A

List of City Parcels

056-11-01-021
056-00-01-020
056-11-01-048
056-07-01-065
056-11-02-051
056-11-01-007
056-11-01-006
056-11-01-008
056-11-01-010
056-06-02-052
056-06-02-109
056-06-02-084
056-06-02-051
056-06-02-085
056-06-02-056
056-06-02-086
056-06-02-055
056-11-01-022

List of Other Parcels

056-06-02-057
056-11-01-019
056-11-01-045
056-11-01-014
056-11-01-047
056-11-01-003
056-11-01-002
056-11-01-001
056-06-02-054
056-06-02-053
056-11-01-004
056-11-01-005
056-11-01-046
056-11-02-018
056-07-01-039
056-07-01-040