

INTRODUCED: 7/15/2019

REFERRED TO: Metropolitan and Economic Development Committee

SPONSOR: Councillor Osili

DIGEST: approves the issuance of economic development tax increment revenue bonds for Charles Street Development Co., LLC, in a maximum aggregate principal amount not to exceed \$9,852,000 to finance the construction of a 13-story mixed-use development consisting of approximately 213 residential units, approximately 27,400 square feet of combined retail and office space, and approximately 214 parking spots, located at 421 North Pennsylvania Street (District 11), and approves and authorizes other actions in respect thereto

SOURCE:

Initiated by: Department of Metropolitan Development

Drafted by: Office of Corporation Counsel

LEGAL REQUIREMENTS FOR ADOPTION:

Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:

Adoption and approvals

GENERAL COUNSEL APPROVAL: _____

Date: July 11, 2019

CITY-COUNTY SPECIAL ORDINANCE NO. , 2019

A SPECIAL ORDINANCE of the City-County Council of the City of Indianapolis and of Marion County, Indiana authorizing the issuance of one or more series of its City of Indianapolis, Indiana Economic Development Tax Increment Revenue Bonds, Series 2020 (421 N Penn Project), (to be completed with the designation as determined to be necessary), in a maximum aggregate principal amount not to exceed Nine Million Eight Hundred Fifty-Two Thousand Dollars (\$9,852,000), and approving and authorizing other actions in respect thereto.

WHEREAS, Indiana Code 36-7-11.9 and 12 (collectively, the "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, the City of Indianapolis, Indiana (the "City") is authorized to issue revenue bonds for the purpose of financing, reimbursing or refinancing the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the City; and

WHEREAS, Charles Street Development Co., LLC and/or one or more affiliates and/or designees (collectively, the "Developer"), has informed the City that it will be constructing a thirteen (13) story mixed-use development building consisting of approximately 213 residential units, approximately 27,400 square feet of combined retail and office space, and approximately 214 parking spots, located at 421 N. Pennsylvania Street in the City, together with all necessary appurtenances, related improvements and equipment and incidental expenses in connection therewith (the "Project"); and

WHEREAS, the Project will be located in the 421 N Penn Allocation Area (the "Allocation Area") as established by the Metropolitan Development Commission of Marion County, Indiana, acting as the Redevelopment Commission of the City; and

WHEREAS, Developer has advised the Indianapolis Economic Development Commission (the "Commission") and the City concerning the Project and requested that the City issue one or more series of its Economic Development Tax Increment Revenue Bonds, Series 2020 (421 N Penn Project) (with

such further series or other designation as determined to be necessary), in an aggregate principal amount not to exceed Nine Million Eight Hundred Fifty-Two Thousand Dollars (\$9,852,000) (the "Bonds") under the Act, and make the proceeds of the Bonds, exclusive of cost of issuance, available to Developer for construction or reimbursement of the costs of financing a portion of the Project; and

WHEREAS, the Commission has rendered its report regarding the proposed financing of economic development facilities for Developer and the Metropolitan Development Commission of Marion County, Indiana, has been given an opportunity to comment thereon; and

WHEREAS, the Commission has heretofore conducted a public hearing in accordance with Indiana Code 36-7-12-24 and adopted its resolution subsequent thereto finding that the financing of the Project complies with the purposes and provisions of the Act and that such financing will be of benefit to the health and welfare of the City; and

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of ordinance by this City-County Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the City-County Council, the Financing Documents (as hereinafter defined); and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to finance and reimburse a portion of the Project by issuing the Bonds; and

WHEREAS, Section 1.150-2 of the Treasury Regulations on Income Tax (collectively, the "Reimbursement Regulations") specify conditions under which a reimbursement allocation may be treated as an expenditure of proceeds of Bonds, and the City intends by this ordinance to qualify amounts advanced by it to the Project for reimbursement from proceeds of the Bonds in accordance with the requirements of the Reimbursement Regulations; and

WHEREAS, the Act provides that such Bonds may be secured by a trust indenture between an issuer and a corporate trustee; and

WHEREAS, the City intends to issue the Bonds consistent with the terms of this Ordinance and pursuant to a Trust Indenture, to be dated as of the first day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (the "Bond Indenture"), by and between the City and a corporate trustee to be selected by the City (the "Bond Trustee"), in order to obtain funds necessary to provide for the financing of a portion of the Project, in accordance with the terms of a Financing Agreement, to be dated the first day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (the "Financing Agreement"), by and between the City and Developer with respect to the Bonds and the Project; and

WHEREAS, pursuant to the Financing Agreement, Developer will make certain representations, warranties and commitments with respect to the Project which will permit the City to derive incremental real property tax revenues from the Project within the Allocation Area (the "421 N Penn TIF Revenues"), sufficient to pay principal of and interest on the Bonds, as the same become due and payable, and to pay administrative expenses in connection with the Bonds, as further described herein; and

WHEREAS, no member of the City-County Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the City-County Council and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16; and

WHEREAS, there has been submitted to the Commission for its approval forms of the Bond Indenture, the Bonds and the Financing Agreement (collectively, the "Financing Documents"), and a form of this proposed Ordinance, which were incorporated by reference in the Commission's Resolution adopted on July 17, 2019, which Resolution has been transmitted to the City-County Council; and

WHEREAS, prior to the issuance of the Bonds, the Metropolitan Development Commission of Marion County, Indiana, acting as the Redevelopment Commission of the City, will pledge eighty percent (80%)

of the 421 N Penn TIF Revenues as the sole payment of interest on and principal of the Bonds (the "Pledged TIF Revenues"); and

WHEREAS, based upon the resolution adopted by the Commission pertaining to the Project, the City-County Council hereby finds and determines that the financing and reimbursement approved by the Commission for the Project will be of benefit to the health and general welfare of the citizens of the City, complies with the provisions of the Act and the amount necessary to finance and reimburse a portion of the costs of the Project will require the issuance, sale and delivery of one or more series of economic development revenue bonds in an aggregate combined principal amount not to exceed Nine Million Eight Hundred Fifty-Two Thousand Dollars (\$9,852,000); now, therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. It is hereby found, determined, ratified and confirmed that the financing and reimbursement of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Bonds, and the use of the net proceeds thereof to finance and reimburse a portion of the Project (i) will result in the diversification of industry, the creation or retention of business opportunities and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, (ii) will serve a public purpose, and will be of benefit to the health and general welfare of the City, (iii) complies with the purposes and provisions of the Act and it is in the public interest that the City take such lawful action as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, and (iv) will not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the City.

SECTION 2. The forms of the Financing Documents presented herewith are hereby approved and all such documents shall be kept on file by the Clerk of the City-County Council or City Controller. In compliance with Indiana Code 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk of the City-County Council for public inspection.

SECTION 3. The City shall issue its Bonds in one or more series, any series of which may be taxable or tax-exempt for federal income tax purposes, in the maximum aggregate principal amount not to exceed Nine Million Eight Hundred Fifty-Two Thousand Dollars (\$9,852,000), with a maximum term not to exceed twenty-five (25) years from the date of issuance and with an interest rate of six and one-half percent (6.5%) per annum, for the purpose of procuring funds to finance the Project and costs of issuance of the Bonds, which Bonds will be payable as to principal and interest solely from the Pledged TIF Revenues, upon such terms and conditions as otherwise provided in the Financing Documents and this Ordinance. The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City. The Bonds shall be purchased by and delivered to the Developer. The Bonds shall be subject to optional redemption as set forth in Section 5.1 of the Bond Indenture.

SECTION 4. The City reasonably expects (as defined in Treasury Regulation 1.148-1(b)) to use the proceeds of the Bonds to reimburse expenditures for the Project as made prior to the completion of the final financing package for said Project (a "Reimbursement Expenditure"). The City reasonably expects to reimburse each Reimbursement Expenditure with funds made available as a result of such Bonds and intends that this statement be a declaration of official intent under Treasury Regulation 1.150-2(e). There are no funds from sources other than the Bonds that are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside of the City or by any member of the same controlled group (as defined in Treasury Regulation 1.150-1(e)) as the City pursuant to their budget and financial policies with respect to any Reimbursement Expenditure.

SECTION 5. The Mayor, the Controller and any other officer of the City are authorized and directed to execute the Financing Documents, such other documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transaction contemplated by the Financing Documents and this Ordinance, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor, the Controller and any other officer of the City on the Bonds which may be necessary or desirable to consummate the transactions, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor, the Controller and any other officer of the City on the Bonds may be facsimile signatures. The Mayor, the Controller and any other officer of

the City are authorized to arrange for the delivery of such Bonds to the purchaser, payment for which will be made in the manner set forth in the respective Financing Documents. The Mayor, the Controller and any other officer of the City may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in those Financing Documents which do not require the signature of the Mayor, the Controller or any other officer of the City without further approval of this City-County Council or the Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

SECTION 6. The provisions of this Ordinance and the Financing Documents shall constitute a contract binding between the City and the holder or holders of the Bonds and after the issuance of said Bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the right of such holder or holders so long as said Bonds or the respective interest thereon remains unpaid.

SECTION 7. The Mayor and the Clerk, or any other officer having responsibility with respect to the issuance of the Bonds, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the City, to deliver a certificate for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the Bond proceeds as of the date of issuance thereof.

SECTION 8. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this ordinance, the Financing Documents or under any judgment obtained against the City, including without limitation the Commission, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Financing Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the City, including without limitation the Commission, either directly or through the City, or otherwise, for the payment for or to the City or any receiver thereof or for or to any holder of the Bonds secured thereby, or otherwise, of any sum that may remain due and unpaid by the City upon any of such Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the City or any receiver thereof, or for or to any owner or holder of the Bonds, or otherwise, of any sum that may remain due and unpaid upon the Bonds hereby secured or any at them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Financing Agreement and the issuance, sale and delivery of the Bonds.

SECTION 9. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 10. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION 11. It is hereby determined that all formal actions of the City-County Council relating to the adoption of this Ordinance were taken in one or more open meetings of the City-County Council, that all deliberations of the City-County Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5, as amended.

SECTION 12. The Mayor, the Controller, the Clerk and any other officer of the City are hereby authorized and directed, in the name and on behalf of the City, to execute and deliver such further documents and to take such further actions as such person deems necessary or desirable to effect the purposes of this Ordinance, and any such documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved.

SECTION 13. This Ordinance shall be in full force and effect upon compliance with Indiana Code 36-3-4-14.

The foregoing was passed by the City-County Council this _____ day of _____, 2019, at _____ p.m.

ATTEST:

SaRita Hughes
Clerk, City-County Council

Vop Osili
President, City-County Council

Presented by me to the Mayor this _____ day of _____, 2019, at 10:00 a.m.

SaRita Hughes
Clerk, City-County Council

Approved and signed by me this _____ day of _____, 2019.

Joseph H. Hogsett, Mayor