

882.18 EXEMPTION FOR HAMBLIN OPERA HOUSE.

An Ordinance to provide for a service charge in lieu of taxes for a housing development for low income persons and families to be financed with a Mortgage Loan pursuant to the provisions of the State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401, et seq).

(a) Purpose; City Authority and Findings of Fact.

(1) It is determined that a proper public purpose of the State of Michigan and its political subdivisions is to assist in the provision of housing for its residents of low income and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with State law.

(2) The City is authorized to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under the Act, at any amount it chooses, but not exceeding the taxes that would be paid but for the Act. It is also found that such housing for low income persons and families is a public necessity and that the City will be benefited and improved by such housing, and that the encouragement of the same by providing a certain real estate tax exemption for such housing is a valid public purpose. It is further found that the continuance of the provisions of this section for tax exemption and the service charge in lieu of all ad valorem taxes during the period contemplated in this section are essential to the determination of economic feasibility of the housing development that is constructed with financing extended in reliance on such tax exemption.

(3) The City acknowledges that the Sponsor now has offered, subject to receipt of an allocation under the LIHTC Program by the Michigan State Housing Development Authority, and the maintenance of the same, to acquire and construct, own and operate a housing development identified as Hamblin Opera House on certain property located at 17 W Michigan Avenue in the City of Battle Creek to serve low income persons and families, and that the Sponsor has offered to pay the City on account of this Housing Development an annual service charge for public services in lieu of all *ad valorem* property taxes.

(b) Definition of Terms. All terms in this section shall be defined as set forth in the Act, except as follows:

(1) "Act" means the State Housing Development Authority Act, being Public Act 346 of 1966, as amended.

(2) "Annual Shelter Rent" means the total collections during the period January 1 through December 31 of each year paid on behalf of all occupants of the development representing rent or occupancy charges, exclusive of the portion of said charges attributable to Utilities.

(3) "Authority" means the Michigan State Housing Development Authority.

(4) "City" means the City of Battle Creek, a home rule municipality organized pursuant to Public Act 279 of 1909, as amended and located in Calhoun County, Michigan.

(5) "Housing Development" means the multiple family housing development to be to be rehabilitated in the City of Battle Creek at 17 West Michigan Avenue, which rehabilitation is intended to only include the upper three (3) floors of the building currently existing on this site (with the first floor to be separately owned), as well as parking in the basement, as needed to serve the development, and which rehabilitation is estimated to contain ~~at least twenty-five~~^{thirty} (2530) units, to be known as Hamblin Opera House units for the housing of Low-Income Persons and Families and such elements of other housing, commercial, recreational, industrial, communal and educational facilities as the Authority has determined improves the quality of the Housing Development as it relates to housing for Low Income Persons and Families.

(6) "LIHTC Program" means the low income housing tax credit program administered by the Authority under Section 42 of the Internal Revenue Code of 1986, as amended.

(7) "Low Income Persons and Families" means persons and families eligible to move into the Housing Development under the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, the units of which shall be rent restricted.

(8) "Mortgage Loan" means any of the following: (i) A below market interest rate mortgage insured, purchased, or held by the secretary of the department of housing and urban development; (ii) A market interest rate mortgage insured by the secretary of the department of housing and urban development and augmented by a program of rent supplements; (iii) A mortgage receiving interest reduction payments provided by the secretary of the department of housing and urban development; (iv) A mortgage on a housing project to which the Authority allocates low income housing tax credits under section 22b of the Act; (v) A mortgage receiving special benefits under other federal law designated specifically to develop low and moderate income housing, consistent with this act; or a loan or grant made or to be made by the Authority to the Sponsor for the construction, rehabilitation, acquisition and/or permanent financing of a housing development, and secured by a mortgage on the housing development.

(9) "Sponsor" means the Limited Dividend Housing Association Limited Partnership in which Hollander Development Corporation is a General Partner, which has or will apply for a Mortgage Loan to finance the Housing Development under this section and any entity that receives or assumes a Mortgage Loan for the Housing Development.

(10) "Utilities" means charges for gas, electric, water, sanitary sewer service and other utilities that are paid by the Sponsor.

(11) "Section 42" means Title 26 United States Code Section 42 of the Internal Revenue Code of 1986, as amended.

(c) Applicable Class of Housing Developments. It is determined that the class of housing development to which the tax exemption set forth in this section shall apply and for which a service charge shall be paid in lieu of such taxes shall be a housing development for Low Income Persons and Families that are financed with a Mortgage Loan. The tax exemption provided by this section shall apply, notwithstanding any language in Section [882.01](#) to the contrary, and the language in this section shall govern any conflict between this section and Section [882.01](#) so long as this section is in effect.

Based on representations and warranties of the Sponsor, it is determined that the Housing Development subject to this section is a housing development eligible for tax exemption provided by Section 15a of the Act.

(d) Establishment of Annual Service Charges.

(1) The housing development to be known as Hamblin Opera House and the property on which it will be located and constructed shall be exempt from all *ad valorem* property taxes as provided in below subsection (2) from and after the substantial completion of construction or rehabilitation until this section 18 terminates pursuant to its terms. The City acknowledges that the Sponsor and the Authority have established the economic feasibility of the Housing Development in reliance upon the enactment and continuing effect of this section and the qualification of the Housing Development for exemption from all *ad valorem* property taxes and a payment in lieu of taxes as established by this section. Therefore, in consideration of the Sponsor's offer, subject to the receipt of an LIHTC Program allocation from the Authority to assist the Sponsor to purchase, construct, own, and operate the Housing Development, the City agrees to accept payment of an annual service charge for public services in lieu of all *ad valorem* property taxes.

(2) Subject to receipt of a Mortgage Loan, the annual service charge to be paid in lieu of taxes shall be equal to 4.00% of the Annual Shelter Rents actually collected by the Housing Development during each operating year pursuant to the terms set out in below sub-section (g).

(3) Nothing in this section shall be construed to exempt the Housing Development and property on which it is constructed from any special assessment for street or other public improvements or as a result of its location within a business improvement district authorized by 1999 Public Act 49, as amended.

(4) The determination of when each housing unit in the Housing Development is occupied by a tenant qualified under the definition of Low-Income Persons or Families shall be made for each year as of December 31st of the immediately preceding year.

(e) Contractual Effect of Ordinance. Notwithstanding the provisions of Section 15a(5) of the Act to the contrary, a contract between the City and Sponsor with the Authority as third party beneficiary under the contract, to provide tax exemption, accept payment in lieu of taxes, as previously described, is effectuated by the enactment of this section. However, nothing contained in this section shall constitute a waiver of any rights the City of Battle Creek may possess or exercise under the provisions of Section 15(a)(2) of the Act, provided the exercise of such rights does not, in the opinion of the Authority, impair the economic feasibility of the Housing Development or the Mortgage Loan. Notwithstanding the contractual effect of this section, this section:

(1) Shall be null and void if construction of the Housing Development has not commenced by December 31, 2021 or the Housing Development is not substantially completed by December 31, 2023;

(2) The service charge to be paid each year in lieu of taxes for the part of the Housing Development that is tax exempt but which is occupied by other than Low Income Persons

or Families shall be equal to the full amount of the taxes which would be paid on that portion of the Housing Development if the Housing Development were not tax exempt; and

(f) Payment of Service Charge. The annual service charge in lieu of taxes as determined under subsection (d)(2) is payable to the City on or before February 14th of the year following the year for which payment is due. Failure to pay the service charge on or before February 14th of each year shall result in the service charge being subject to one (1 %) percent interest per month until paid. If any amount of the annual service charge or accrued interest shall remain unpaid as of December 31 of each year, the amount unpaid shall be a lien upon the real property constituting Hamblin Opera House Housing Development upon the City Treasurer filing a certificate of non-payment of the service charge, together with an affidavit of proof of service of the certificate of non-payment upon the Sponsor with the Calhoun County Register of Deeds, and proceedings may then be had to enforce the lien as provided by law for the foreclosure of tax liens upon real property.

(g) Duration and Conditions. Commencing in the tax year in which construction of the Housing Development is substantially completed, and ending with the tax year 2061 this section shall remain in effect and shall not terminate from the effective date hereof, provided that all of the following requirements are in existence and continue to be met:

(1) The development remains subject to income and rent restrictions pursuant to Section 42; and

(2) That the construction of the development has commenced on or before December 31, 2021 and is substantially completed by December 31, 2023; and

(3) The Mortgage Loan or grant from the Authority is outstanding.

In addition to the foregoing, the Sponsor shall make all annual reports supporting its claimed annual shelter rent and reduced rent allocation for the preceding annual period by February 14 of each year, and failure to do so shall result in a late fee of \$50.00 per month, which amount shall accrue one (1 %) percent interest per month until paid.

(h) Benefits. The Sponsor shall allocate the benefits of the tax exemption granted pursuant to this section exclusively to the Low-Income Persons and Families of the Housing Development in the form of reduced rent. Such benefits shall not be allocated to market rate persons or families. The Sponsor shall submit to the City, in its annual report documentation to verify Sponsor's compliance with this requirement.

(i) Audit and Inspection of Records. Subject to any limitations imposed by law, the Sponsor shall provide to the City annually, with its payment in lieu of taxes, such accounting records, audits and financial reports as will allow the City to verify the computation of the annual service charge as provided by this section. The Sponsor shall maintain such records of rent or occupancy charges received and the occupancy of units in the Housing Development as will permit the City to verify which of the units in the Housing Development have been occupied by Low-Income Persons and Families. Subject to any limitations imposed by law, the books and records of the Sponsor

pertaining to the Housing Development shall be available for review and audit by the City at all times.

(j) Lien. Annual service charges as well as any late fees payable pursuant to this section shall be a lien on the Housing Development, and, if delinquent, shall be collected and enforced in the same manner as general property taxes.

(k) Description of Development Site: The top three floors of the building located at: LOTS 70 & 77, ALL OF LOTS 71 & 76, WLY 0.5 FT OF NLY 106 FT OF LOT 72, RANGE OF BLOCKS 2 OF THE ORIGINAL PLAT OF THE VILLAGE (NOW CITY) OF BATTLE CREEK, ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 2 OF PLATS, ON PAGE 42, IN THE OFFICE OF THE REGISTER OF DEEDS, CALHOUN COUNTY, MICHIGAN. Commonly known as 17 West Michigan Avenue.

Subject to easements and restrictions apparent and of record.

(l) Severability.

The various sections and provisions of this Ordinance shall be deemed to be severable, and should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Ordinance as a whole or any section or provision of this Ordinance, other than the section or provision so declared to be unconstitutional or invalid.

(m) Inconsistent Ordinances.

All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.