

ORDINANCE NO. BL2010- 764

An ordinance authorizing The Industrial Development Board of The Metropolitan Government of Nashville and Davidson County to negotiate and accept payments in lieu of ad valorem taxes with respect to Omni Nashville, LLC.

WHEREAS, The Metropolitan Government of Nashville and Davidson County (the "Metropolitan Government") is vitally interested in the economic welfare of its citizens and wishes to provide the necessary leadership to enhance this area's capabilities for growth and development; and,

WHEREAS, the Metropolitan Government has established the Convention Center Authority of the Metropolitan Government of Nashville and Davidson County (the "Authority") pursuant to Title 7, Chapter 89, Part 1, Tennessee Code Annotated, as amended (the "Convention Center Authorities Act"), to, among other things, construct convention center facilities along with associated hotel accommodations in order to promote and further develop tourism, convention and employment opportunities and thereby provide a means to attract conventions, public assemblies, conferences, trade exhibitions or other business, social, cultural, scientific and public interest events, enhance the Metropolitan Government's image as a convention destination, and encourage and foster economic development and prosperity and employment; and,

WHEREAS, in order to implement the public purposes enumerated in the Convention Center Authorities Act, the Authority has undertaken the construction of a new convention center (the "Music City Center"), to be owned and operated by the Authority; and,

WHEREAS, in order to further implement the public purposes enumerated in the Convention Center Authorities Act, the Authority has entered into a Preliminary Development Agreement (the "Preliminary Development Agreement") with Omni Nashville, LLC ("Omni") regarding the process the parties will follow to reach certain definitive agreements governing the development by Omni of a premier headquarters hotel, to be operated to AAA's Four Diamond Standard, for the Music City Center with a minimum of 800 rooms, restaurants, an exercise facility, pool, business facility and other supporting facilities and amenities necessary for a full-service hotel and additional ballroom and meeting space (collectively the "Hotel"); and,

WHEREAS, the Preliminary Development Agreement provides that the Hotel is intended to include a structured parking facility with approximately 560 parking spaces, shared common areas and access to the Country Music Hall of Fame and Museum, and certain public areas (along with the Hotel referred to as the "Hotel Project"); and,

WHEREAS, the Authority anticipates that the proposed Hotel Project has an estimated total development cost in excess of \$250 million and will be constructed on two tracts of land, consisting of more than three acres on 5th Avenue South, located within the Downtown Central Business Improvement District, established pursuant to Ordinance No. BL2007-1312 (the "Hotel Site"); and,

WHEREAS, the Authority anticipates that the Hotel Project will benefit the residents of Davidson County by creating a significant number of jobs during the construction phase and upon completion of the construction of the Hotel Project, hire a minimum of 300 full-time equivalent jobs to operate the Hotel Project; and,

WHEREAS, the Preliminary Development Agreement further provides that to induce Omni to undertake the Hotel Project, certain financial incentives will be provided to Omni, including the partial abatement of ad valorem real and personal property taxes on the real and personal property encompassing the Hotel Project; and,

WHEREAS, the provision of jobs to area citizens by local business is both necessary and vital to the economic well-being of the Metropolitan Government; and,

WHEREAS, pursuant to the Industrial Development Corporations Act, currently codified at Tenn. Code Ann. § 7-53-101 through 314 (such act, as heretofore or hereafter amended, the "Industrial Development Act"), the General Assembly of the State of Tennessee (the "General Assembly") has authorized the incorporation of public corporations known as "industrial development boards" in municipalities in the State of Tennessee (the "State"); and,

WHEREAS, The Industrial Development Board of The Metropolitan Government of Nashville and Davidson County (the "Board") has been duly organized and incorporated in compliance with the Industrial Development Act; and,

WHEREAS, the General Assembly has found and declared in the Industrial Development Act that the Board is performing a public function on behalf of the Metropolitan Government and that the Board is a public instrumentality of the Metropolitan Government; and

WHEREAS, the Supreme Court of Tennessee (the "Supreme Court") has found that the Board is an agency or instrumentality of the Metropolitan Government; and,

WHEREAS, the Industrial Development Act expressly incorporates by reference the statement of public policy set forth in Section 3 of Chapter 209 of the Public Acts of 1955; and

WHEREAS, Chapter 209 of the Public Acts of 1955 states that the declared purpose of the Industrial Development Act is to do that which the State welfare demands and that which the State public policy requires to alleviate the problems of unemployment, to raise family income, to provide a means by which the citizens of the community may promote and develop industry in their area so as to obtain a balanced economic development highly essential to the welfare of the State, and to promote the development of commercial, industrial, agricultural and manufacturing enterprises by the several municipalities so as to be given local benefits peculiar to each and general benefits to the entire State; and,

WHEREAS, the General Assembly also has declared that the purposes of the Industrial Development Act include maintaining and increasing employment opportunities by promoting industry, trade, and commerce by inducing manufacturing, industrial, financial, service, and commercial enterprises to locate or remain in the State; and,

WHEREAS, the Supreme Court has held that the purposes of the Industrial Development Act includes the promotion of industry and the development of trade to provide against low wages and unemployment and that such purposes are public in nature; and,

WHEREAS, the Board is empowered pursuant to the Industrial Development Act to acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish, "projects" (as defined in the Industrial Development Act), and to lease such projects to others; and,

WHEREAS, Tenn. Code Ann. § 7-53-101(13)(B)(i) provides that a "project" includes a hotel, including any conference or convention center facilities related to such hotel, that is located within an area that could provide substantial sources of tax revenues or economic activity to the municipality; and,

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305, all properties owned by the Board are exempt from ad valorem taxation in the State of Tennessee; and,

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305(b), the Metropolitan County Council (the "Council") has the power to delegate to the Board the authority to negotiate and accept from its lessees payments in lieu of ad valorem taxes, provided that such payments are in furtherance of the Board's public purposes; and,

WHEREAS, the benefits to the Metropolitan Government of the development of the Hotel Project on the Hotel Site located within the boundaries of the Metropolitan Government will provide an opportunity for the Board to exercise its powers, enumerated above, to acquire, by purchase, exchange, gift or lease, property that will be used with respect to the Hotel Project, to lease that real and personal property encompassing the Hotel Project to Omni, and to enter into one or more agreements with Omni to accept payments in lieu of ad valorem taxes with respect to the real and personal property encompassing the Hotel Project; and,

WHEREAS, the Board may only negotiate and accept payments in lieu of ad valorem taxes with authorization from the Council; and,

WHEREAS, it is in the interest and welfare of the citizens of the Metropolitan Government to delegate authority to the Board to negotiate and execute a payment-in-lieu-of-tax agreement with Omni.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the Council of the Metropolitan Government finds that the Hotel Site is an area that could provide substantial sources of tax revenues or economic activity to the Metropolitan Government.

Section 2. That the Council of the Metropolitan Government finds that the Board's acceptance of payments in lieu of ad valorem taxes with respect to the Hotel Project is in furtherance of the Board's public purpose of maintaining and increasing employment

opportunities, as set forth in Tenn. Code Ann. § 7-53-102, and the other public purposes described above.

Section 3. That the Metropolitan Government hereby delegates to the Board the authority to negotiate and accept payments in lieu of all real and personal property taxes with respect to the Hotel Project. The amount of the payment of lieu of real and personal property taxes that shall be required shall be as follows:

- (a) For the years commencing on the date the Board enters into a lease with Omni with respect to the Hotel Project through December 31 of the year following the completion of construction of the Hotel Project, the payments of lieu of real and personal property taxes shall be 100% of the Standard Tax;
- (b) For the years commencing on January 1 of the year following the completion of construction of the Hotel Project until December 31 of the calendar year occurring twenty years thereafter, the payments of lieu of real and personal property taxes shall be 37.5% of the Standard Tax;
- (c) For any years following the period set forth in Section 3(b), the payments of lieu of real and personal property taxes shall be 100% of the Standard Tax.

The payment in lieu of real and personal property taxes for any calendar years to be paid by Omni shall be reduced by the amount of ad valorem taxes for such year actually paid by Omni by reason of its leasehold interests in the Hotel Project.

Section 4. That the term "Standard Tax" shall mean the amount of ad valorem real and personal property tax that Omni would be required to pay with respect to a given tax year with respect to the real and personal property that is then subject to the payment in lieu of tax arrangement authorized hereby if Omni owned such property. Omni shall be permitted to challenge the assessment of any real or personal property that is then subject to the payment in lieu of tax arrangement authorized hereby in the same manner as if Omni owned such property.

Section 5. (a) That the payment in lieu of tax arrangement authorized by this Ordinance shall apply to all real property and personal property comprising a portion of, or used at or in connection with the facilities located on the Hotel Site.

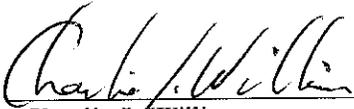
(b) That the payment in lieu of tax arrangement authorized by this Ordinance shall apply to all buildings, improvements, fixtures, construction in progress, equipment, furniture, and other properties of any nature comprising a portion of, or used in connection with, facilities located on the Hotel Site. Such arrangement shall apply to such facilities and such properties in their current scope and configuration and to all replacements, enhancements, additions, expansions, and improvements to such properties and facilities.

Section 6. That the final version of the payment in lieu of tax agreement authorized by this Ordinance must be approved as to legality by the Director of Law of the Metropolitan Government prior to being executed by the Board and as to availability of funds by the Director of Finance.

Section 7. That all ordinances or resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

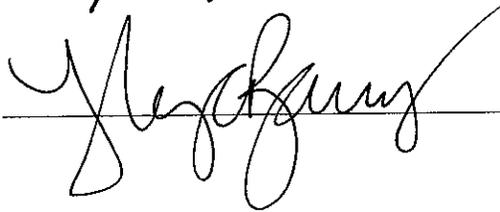
Section 8. That this Ordinance shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED:



Charlie J. Williams
Deputy Director of the Mayor's Office
of Economic Development

INTRODUCED BY:



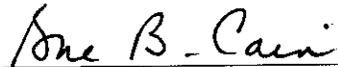
APPROVED AS TO AVAILABILITY
OF FUNDS:



Richard M. Riebeling
Finance Director

Members of Council

APPROVED AS TO FORM AND
LEGALITY:



Sue B. Cain
Director of Law