

**March 6, 2024**

**To:** Mayor and Members of City Council

202400698

**From:** Sheryl M.M. Long, City Manager

**Subject: Emergency Ordinance – Tax Increment Financing Exemption  
for 221 E. Fourth Street (Atrium II)**

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Attached is an Emergency Ordinance captioned:

**DECLARING** improvements to certain real property located at 221 E. Fourth Street in the Central Business District of Cincinnati, to be a public purpose and exempt from real property taxation for a period of thirty years pursuant to Ohio Revised Code Section 5709.41; and **AMENDING** Ordinance No. 412-2002, passed on December 18, 2002, as amended, to remove such real property from the operation of that ordinance.

## **BACKGROUND**

Atrium II is an office building located at 221 E. 4<sup>th</sup> Street in the Central Business District. The building was constructed in 1984 and represents one half of the larger Atrium office complex. With its sister property, Atrium I, located at 201 E. 4<sup>th</sup> Street, the complex contains roughly 1.2 million square feet of office and retail space, making it the largest office space in the city.

In 1982, prior to the construction of Atrium II, the City of Cincinnati entered the property's chain of title for the purpose of urban redevelopment. Since 1987, Atrium II has been privately owned. The building's current owner, Acabay Atrium Two, LP, has been in possession of the property since 2018. Atrium II's sister property, Atrium I, is owned by Acabay Atrium One, LP, and has been in the company's possession since 2019. The Atrium I property has always been under private ownership. The two companies respectively are subsidiaries of Acabay Inc., ("Acabay") based out of Colchester, Vermont.

Like most cities across the country, Cincinnati has experienced an unprecedented shift in the office market. With many now working on hybrid or fully remote schedules, the demand for office space has decreased dramatically. The Atrium complex has not been immune to this market shift. As a result, the building's owner has been exploring the potential redevelopment of Atrium I. As proposed, the project would result in roughly \$47 million in investment and 205 new residential units.

The .41 TIF Ordinance being considered today initiates necessary legal review for this development project. Further City Council deliberation and approval will be required for this redevelopment project to proceed. In summary, this .41 TIF Ordinance does not obligate the developer to place in service the 205 new residential units or invest \$47 million. However, it does allow the project to proceed with predevelopment planning and other necessary due diligence that may lead to the redevelopment described above.

## **LEGAL CONTEXT**

With interest rates and the cost of construction rising, developers and municipalities have been forced to get creative to finance projects. The potential redevelopment of Atrium I is one such project.

With the City of Cincinnati having entered the chain of title for Atrium II in 1982 for urban redevelopment purposes, a unique opportunity for financing redevelopment has presented itself. Under State law, a municipality may establish an Ohio Revised Code Section 5079.41 Project TIF (".41 TIF") on a property **only** if they have held title to the property prior to the passage of an ordinance establishing the .41 TIF.

**Importantly, the property's base value for the purpose of the .41 TIF is established when the City enters the property's chain of title for urban redevelopment purposes.**

With the City having entered the chain of title for Atrium II in 1982 for urban redevelopment purposes, prior to the construction of the existing Atrium II building, the property **may** be eligible for a significantly lower base .41 TIF value. This would allow for any .41 TIF placed on the property to generate a significantly higher "increment", which would return to the City of Cincinnati in the form of a service payment made by the property owner. This is because the .41 TIF increment would be capturing all improvements made to the property after 1982, including the Atrium II building itself, which was built in 1984. Thus, the entire value of the building would be considered an "improvement" to the property.

To allow for Atrium II's .41 TIF value to revert to the property's 1982 value, Acabay must pursue a base value determination from the State Department of Taxation. The City **must** establish a .41 TIF on the property before Acabay can pursue a base value determination. Should the State allow for the property's .41 TIF value to revert to 1982 value, this would unlock a significant amount of potential financing for any future redevelopment of the Atrium complex.

In the interim, Acabay has agreed to remit all .41 TIF service payments made on Atrium II back to the City of Cincinnati. The City Administration has executed a memorandum of understanding with Acabay that outlines this agreement.

## **POTENTIAL FUTURE APPLICATIONS**

If the State makes a favorable base value determination for Atrium II, it will set a precedent that would allow for the City to establish .41 TIFs on other properties where it previously entered the chain of title for urban redevelopment purposes. This would unlock critical financing for future redevelopment projects city-wide, as there would be a basis for the State allowing higher incremental value to be generated by a .41 TIF.

Unlocking this tool also unlocks future redevelopment projects that otherwise would not be able to move forward.

### **DEVELOPER INFORMATION**

Acabay, Inc. was founded in 1995 by Frank J. Motter. The company specializes in the construction, leasing, and management of office buildings in the greater Burlington, Vermont area. Recently, the company has expanded into Ohio and Michigan. Mr. Motter has over 40 years of experience as a real estate developer, owner, and manager in Quebec, Vermont, Michigan, and Ohio. He currently serves as the Chairman of the Board of Directors for Acabay. He is also the founder and President of Frank J. Motter Construction, based in Longueuil, Quebec. Frank J. Motter Construction specializes in the construction, leasing, and management of office and industrial buildings in the greater Montreal area. The majority of the company's industrial portfolio was sold to the Cominar REIT in 2013 for \$150 million.

### **RECOMMENDATION**

The Administration recommends approval of this Emergency Ordinance.

Copy: Markiea L. Carter, Director, Department of Community & Economic Development