

COMMITTEE ON ANNA W. WOODS
REVENUE & FINANCE
CITY OF PROVIDENCE
CITY CLERK

CHAPTER 2014-24

No. 314 AN ORDINANCE ESTABLISHING A TAX EXEMPTION AND STABILIZATION PLAN FOR THE FOUNDRY

Approved July 2, 2014

Be it ordained by the City of Providence:

WHEREAS, SHARPE BUILDING ASSOCIATES, LLC ("Sharpe") is the owner of a portion of the Foundry, comprising certain real estate located in the City of Providence at 25 Holden Street, AP 4, Lot 256 and 35 Holden Street, AP 4, Lot 255; and

WHEREAS, Sharpe intends on rehabilitating the building and returning it to a productive use as approximately 196 residential apartments; and

WHEREAS, the City of Providence envisions the Sharpe project will generate jobs within the City of Providence as well as protecting, preserving and showcasing an historic mill building; and

WHEREAS, Rhode Island General Laws § 44-9-3 ("Act") authorizes, subject to certain enumerated conditions, the city council of a city for a period not to exceed twenty (20) years, to exempt and determine an amount of taxes to be paid on account of real property used for residential and commercial purposes, notwithstanding the valuation of the real estate or the rate of tax; and

WHEREAS, the tax payments contemplated to be made pursuant to this Ordinance have been determined by the City Council of the City of Providence to be fair, equitable and acceptable to the City; and

WHEREAS, it is in the interest of the residents of the City of Providence to grant a tax exemption and stabilization plan in order to induce the rehabilitation of the Foundry;

Be It Ordained by the City of Providence:

Section 1. That the findings set forth in the preceding recitals are hereby made and confirmed.

Section 2. Definitions. The following terms shall have the meanings set forth herein:

- (a) "Assessment" shall mean the value placed upon the improvements made by Sharpe by the City of Providence Tax Assessor.
- (b) "Commencement Date" shall be the effective date of this Ordinance.
- (c) Intentionally Omitted.
- (d) "Project Site" means all of the real estate and buildings and improvements thereto located at City of Providence Assessor's Plat 4, Lot 256, together with City of Providence Tax Assessor's Plat 4, Lot 255 which will be used for parking purposes.
- (e) "Project Site Owner" or "Project Owner" means an entity with the right and interest in and to the Project Site (or portions thereof), including successors to units and/or sub-units of the Project Site.
- (f) "Project Taxable Property" means collectively, the Project Site and all Real Property Improvements thereon.

(g) "Real Property Improvements" means any structures or improvements including but not limited to buildings, parking lots/structures and related improvements to be constructed and developed on the Project Site.

(h) "Stabilized Tax Payments" shall mean the Assessment multiplied by the tax rate and further multiplied by the appropriate percentage contained in Section 5.

(i) "Termination Date" means the 15th anniversary of the December 31 in which the Project Site is first assessed pursuant to the schedule set forth in Section 5 below.

Section 3. Grant of Tax Stabilization Plan. The City of Providence, in accordance with the Laws of the State of Rhode Island and the Code of Ordinances for the City of Providence, is hereby authorized to grant and does grant the schedule of Stabilized Tax Payments pursuant to Section 5.

Section 4. Term. The term of this Ordinance shall be a period commencing upon the Commencement Date and terminating on the Termination Date.

Section 5. Tax Exemption and Stabilization Plan. The presently assessed tax payments will be frozen for the first three (3) tax years of the Term, during which Sharpe must complete construction on the Project Site, subject to a Force Majeure Event (as defined below). In the fourth tax year after the Commencement Date, the value of the property will be frozen at \$15,000,000.00. Beginning in the fourth tax year, the assessor shall issue a bill for a percentage of the \$15,000,000.00 value as follows: 8.33% of the taxes due at the then current tax rate, but in no event shall the taxes paid be in an amount less than paid the previous year. At the end of the fourth tax year, the assessor shall reassess the Project Site and assign a new assessed value. Beginning in the fifth tax year, the assessor shall issue a bill for a percentage of the new assessed value as follows: 16.66% of the taxes due at the then current tax rate in Year 5; 24.99% of the taxes due at the then current tax rate in Year 6; 33.32% of the taxes due at the then current tax rate in Year 7; 41.65% of the taxes due at the then current tax rate in Year 8; 49.98% of the taxes due at the then current tax rate in Year 9. At the end of the ninth tax year, the assessor shall reassess the Project Site and assign a new assessed value. Beginning in the tenth tax year, the assessor shall issue a bill for a percentage of the new assessed value as follows: 58.31% of the taxes due at the then current tax rate in Year 10; 66.64% of the taxes due at the then current tax rate in Year 11; 74.97% of the taxes due at the then current tax rate in Year 12; 83.30% of the taxes due at the then current tax rate in Year 13; 91.67% of the taxes due at the then current tax rate in Year 14; 99.90% of the taxes due at the then current tax rate in Year 15. At the conclusion of fifteen full years after completion, the new construction will be paying the full current assessment.

Section 6. Payment of Taxes.

(a) Stabilized Tax Payments due to the City, pursuant to the schedule listed in Section 5, may be made in either a lump sum during the first quarter of the applicable tax year or in equal quarterly installments. If the quarterly payments are to be made, they shall be due on the same dates that quarterly taxes are due for all other taxpayers in the City.

(b) The liability for the Stabilized Tax Payments due and owing under this Ordinance shall constitute an obligation of the Project Site Owner, and the City shall be granted by the Owner of the Project Site, a first lien on the Project Taxable Properties, which lien shall be of the same priority and entitle the City to the same foreclosure remedies as the lien and foreclosure remedies provided under the applicable laws and ordinances with respect to real property and personal property taxes. The City agrees to provide Notice to the Owner of the Project Site prior to exercising any foreclosure or other remedies available and the Owner of the Project Site shall have ninety (90) days to cure any alleged default under this Ordinance from the date upon which Notice of any alleged default is received from the City. Said Notice shall include, with specificity, the nature of any alleged default, and the actions which the City believes to be reasonably necessary to cure any alleged default under this Ordinance.

(c) It is understood that the Stabilized Tax Payments made hereunder are deemed by the City to be tax payments, and the Owner of the Project Site making the Stabilized Tax Payments shall be entitled to all of the rights and privileges of a taxpayer in the City, including, without limitation, the right to challenge and appeal any assessment and/or reassessment. It is further understood and agreed that the City's sole and exclusive recourse to the Owner of the Project Site is limited to the City's first lien on the Project Taxable Properties, however, nothing herein shall be construed to limit the right of the City to foreclose or take any other judicial proceeding available at law for the collection of taxes.

(d) Stabilized Tax Payments not made by the Owner of the Project Site as they become due shall be subject to any and all penalties allowed under Rhode Island General Laws. Failure to receive a stabilized tax bill shall not relieve the Owner of the Project Site of its obligation to make Stabilized Tax Payments herein. If for any reason the Owner of the Project Site does not receive an appropriate stabilized tax bill, the Owner of the Project Site shall have the responsibility and obligation to make reasonable inquiries to the City in order to have such a stabilized tax bill issued and thereafter to make payment of the same no later than the due dates provided herein. Stabilized Tax Payments shall be made by the Owner of the Project Site directly to the City of Providence Tax Collector's Office.

Section 7. Effect of Failure to Make Payments. The real property taxes payable to the City for the Project Site during the term of this Ordinance shall be based upon the stabilized real property taxes set forth in Section 5 on the Project Site and on any other tax lots owned by the Project Owner. This Ordinance is further conditioned upon the Owner of the Project Site, whether now or in the future, remaining current on tax payments pursuant to Section 5. Failure to make said timely Stabilized Tax Payments may, at the discretion of the City of Providence following the Notice and the 90-day cure period set forth in Section 6(b), render this Ordinance null and void.

Section 8. Retroactive Revocation For Failure to Satisfy Performance Milestones. In the event that the Project Owner fails to satisfy the following performance milestones, then this Ordinance shall be automatically repealed following the Notice and the 90-day cure period set forth in Section 6(b), and the Owner of the Project Site shall be reassessed any unpaid real estate taxes, penalties and interest which remain unpaid as if this Ordinance had never been passed:

(a) Obtaining all necessary permits and approvals being secured from the municipal agencies of the City of Providence or the State of Rhode Island for the redevelopment of the Project Site in accordance with the second recital hereof within twenty-four (24) months of the Commencement Date.

(b) Achieving substantial completion of and the redevelopment of the Project Site within thirty-six (36) months of the Commencement Date.

(c) Notwithstanding anything to the contrary in this Section 8, the Project Site Owner may be entitled to an extension of the time for performance of the preceding milestones, if for a cause beyond the Project Site Owner's reasonable control, including strikes and/or labor disputes, accidents, invasion, riot, rebellion, civil commotion, insurrection, acts of terrorism against the United States interests, any act or judgment of any court granted in any legal proceeding, acts of god such as fire, wind or lightning, explosion, ("Force Majeure Event"), the performance milestones are delayed. In such event, the Project Site Owner shall be entitled to an extension of such dates upon making a request for extension from the City Council, provided that in no event shall the Project Site Owner delay substantial completion of construction of the Project Site beyond forty-eight (48) months after the Commencement Date.

Section 9. Transfers. As long as the Project Site Owner or any successor or assignee owns or operates the Project Site, it will continue to pay Stabilized Tax Payments for the Project Site pursuant to this Ordinance.

(a) The Project Site Owner or any successor or assignee, acknowledge and agree that the Project Site will be subject to taxation pursuant to the terms of this Ordinance and thereafter subject to taxation pursuant to Rhode Island General Laws and the ordinances of the City of Providence. The Project Site Owner, or any successor or assignee, agrees that the exemption and conditions under this Tax Stabilization Plan shall run with the land.

(b) If the Project Site is sold to a real property tax-exempt entity, the Tax Stabilization Plan may terminate at the discretion of the City of Providence following the Notice and the 90-day cure period set forth in Section 6(b), and unless otherwise agreed to by the City, the Project Site Owner/Seller shall pay to the City an amount equal to the difference between the Stabilized Tax Payments made under the Tax Stabilization Plan and the amount of real estate taxes that would have been paid during the effective term of said plan, but for the Tax Stabilization Plan.

Section 10. Employment and Contracts.

(a) Construction.

- i. **MBE/WBE.** The Project Site Owner shall undertake all reasonable efforts to collectively award to Minority Business Enterprises and Women Business Enterprises, as defined in Rhode Island General Laws, no less than 10% of the dollar value of the construction costs for the Project (as determined in accordance with Section 21-52 of the Code of Ordinances of the City of Providence) inclusive of work connected to the redevelopment completed to date. The Project Site Owner will request the City MBE/WBE office establish a list of qualified MBE/WBE companies in order to satisfy its MBE/WBE construction goals. In this manner, the City will assist the Project Site Owner in meeting said goals. The process of participating with the MBE/WBE office shall begin upon passage in order to develop a designated MBE/WBE subcontractor list which will encourage MBE/WBE participation and joint ventures with other members with the construction industry. Work on the project performed at the Project Site prior to the implementation of this agreement shall be included in calculating compliance with this provision.
- ii. **Apprenticeship.** The Developer or Project Owner shall undertake all reasonable efforts to ensure that all trade tiers for the construction of this Project shall have or be affiliated with an apprenticeship program as defined in 29 C.F.R. § 29 et seq. for any and all crafts or trades that will or may be working on the Project. This shall not apply to any trade or profession which does not have an apprenticeship program for such trade or profession in the State of Rhode Island.

The Developer or Project Owner shall make a requirement in the contract with the General Contractor that he undertakes all reasonable efforts to ensure that not less than ten percent (10%) of the total hours worked on the Project are completed by apprentices registered in the aforementioned apprenticeship programs.

The Developer or Project Owner shall as part of its contracts with the General Contractor require that the General Contractor submit to the Department of Planning and Development quarterly reports verifying compliance with this section or the reasons for non-compliance.

The Developer or Project Owner, its Construction Manager or General Contractor or other authorized person/entity may petition the City of Providence Department of Planning and Development to adjust the apprenticeship work hour requirements to a lower percentage upon a showing that compliance is not feasible because:

- a. a trade or field cannot produce members from its program capable of performing the scope of work within the contract; or
 - b. it would involve a risk or danger to human health and safety or the public at large; or
 - c. it would create a significant economic hardship; or
 - d. for any other reason which is justifiable and demonstrates good cause.
- iii. **Internal Revenue Service reporting.** Except as provided under Rhode Island General Laws § 28-42-8, any person performing services at the Project Site shall annually receive either a W-2 statement or an IRS Form 1099.

- iv. **Permanent Employment.** In conjunction with its efforts pursuant to this Section and its ongoing efforts to provide equal employment opportunity without regard to race, color, religion, natural origin, sex, age or handicap, the Project Owner shall liaise with the City to assist in the recruitment of qualified minority, women, and handicap applicants for all of its permanent non-executive employment positions at the Project.
- v. **First Source List.** Pursuant to the City of Providence First Source Ordinance, the Project Site Owner shall enter into a First Source Agreement covering the hiring of non-executive level employees necessary to complete the proposed Project and throughout the term of this tax stabilization agreement. The Project Site Owner shall work in conjunction with the Director of First Source Providence to develop the First Source Agreement.
- vi. In the event that there shall be a failure to materially comply with this Section 10(a), the Department of Planning and Development shall have standing to seek enforcement of this provision of the ordinance in the Rhode Island Superior Court.

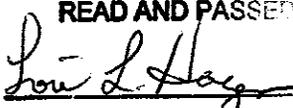
(b) **Reporting.** The Project Site Owner shall annually report to the City Council on its progress in complying with the provisions of this Ordinance, including but not limited to, Section 10.

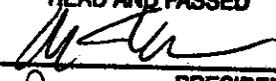
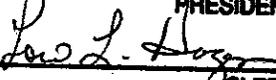
Section 11. Resolution of Calculation Disputes. Intentionally Omitted.

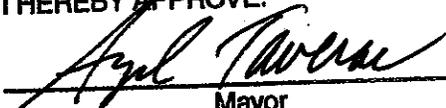
Section 12. Severability. If any one section of this Ordinance is found to be unenforceable, then the other provisions herein shall continue to have the same force and effect as if the unenforceable provision were not passed as part of this Ordinance.

Section 13. Applicable Law. This agreement shall be construed under the laws of the State of Rhode Island.

Section 14. Effective Date. This Ordinance shall become effective immediately upon its passage by the City Council and approval by the Mayor.

IN CITY COUNCIL
JUN 19 2014
 FIRST READING
 READ AND PASSED

 CLERK
 ACTING

IN CITY
COUNCIL
JUN 23 2014
 FINAL READING
 READ AND PASSED

 PRESIDENT

 CLERK
 ACTING

I HEREBY APPROVE.

 Mayor
 Date: 7/2/14

**The Foundry
Sharpe Building Associates, LLC
4/255 and 4/256**

Proposed - 196 residential apartments

Year	Projected Value	Rate per thousand	Percentage	Tax Payment
1	\$ 1,836,500	36.75	100%	\$ 67,491
2	\$ 1,836,500	36.75	100%	\$ 67,491
3	\$ 1,836,500	36.75	100%	\$ 67,491
4	\$ 15,000,000	36.75	8.33%	\$ 67,491
5	\$ 20,000,000	36.75	16.66%	\$ 122,451
6	\$ 20,000,000	36.75	24.99%	\$ 183,677
7	\$ 20,000,000	36.75	33.32%	\$ 244,902
8	\$ 20,000,000	36.75	41.65%	\$ 306,128
9	\$ 20,000,000	36.75	49.98%	\$ 367,353
10	\$ 25,000,000	36.75	58.31%	\$ 535,723
11	\$ 25,000,000	36.75	66.64%	\$ 612,255
12	\$ 25,000,000	36.75	74.97%	\$ 688,787
13	\$ 25,000,000	36.75	83.30%	\$ 765,319
14	\$ 25,000,000	36.75	91.67%	\$ 842,218
15	\$ 25,000,000	36.75	99.90%	\$ 917,831
Total Tax Payments				\$5,856,608