

**REGULAR MEETING OF FLORENCE CITY COUNCIL**

**MONDAY, MARCH 9, 2015 - 1:00 P.M.**

**CITY-COUNTY COMPLEX, COUNCIL CHAMBERS, ROOM 604**

**FLORENCE, SOUTH CAROLINA**

**ADDENDUM TO THE AGENDA**

**V. APPEARANCE BEFORE COUNCIL**

**c. Miss Florence, Kierra Carter**

**VII. INTRODUCTION OF ORDINANCES**

**d. Bill No. 2015-07 – First Reading**

*An Ordinance amending Code Section 2-205 in order to add a sub-paragraph (5) to provide for an additional “General Eligibility Requirement” to the Downtown Economic Development Incentive Program which requires that developers seeking economic incentives from the City include minority contractors and sub-contractors in invitations to provide work on the project.*

**FLORENCE CITY COUNCIL MEETING**

**DATE:** March 2, 2015

**AGENDA ITEM:** An ordinance amending Code Section 2-205 in order to add a sub- paragraph (5) to provide for an additional “general eligibility requirement” to the Downtown Economic Development Incentive Program which requires that developers seeking economic incentives from the city include minority contractors and subcontractors in invitations to provide work on the project.

**DEPARTMENT/DIVISION:** Councilman Robinson, City Staff, and City Attorney

**I. ISSUE UNDER CONSIDERATION**

Should the City add subparagraph (5) to Code Section 2-205 in order to add an “SRF like” requirement to the eligibility criteria for the Downtown Economic Development Incentive Program to ensure that developers seeking incentives from the City and their prime contractor(s) will make good faith efforts to actively invite and encourage minority business entities to participate in activities arising out of incentivized projects?

**II. CURRENT STATUS/PREVIOUS ACTION TAKEN:**

(a) City Code Sections 2-200 through 2-207 were adopted by the passage of Ordinance No. 2011-23 in October, 2011. The ordinance was designed to accomplish the following specific goals:

1. Establish the mechanism needed for Council to consider and approve applications for incentives on a case-by-case basis;
2. Establish the minimum requirements that must be met before Council will approve an application for incentive;
3. Establish a set of criteria that Council will consider on a case-by-case basis in determining whether to approve an incentive for a project that meets the minimum pre-requisites, and the amount of any such incentive.
4. Establish the administrative criteria and the terms of delivery of incentives granted.

(b) City Council, in directing staff to prepare an amendment to Resolution 2013-26 regarding the Royal Knight Building under the Downtown Economic Development Incentive Program, instructed staff to add requirements designed to ensure that the developers seeking an amendment to the incentives from the City and their prime contractor(s) will make good faith

efforts to actively invite and encourage minority business entities to participate in activities arising out of incentivized projects.

(c) Councilman Robinson, several months ago, raised the issue and requested an opinion from the City Attorney regarding the lawful steps available to Council to ensure that developers seeking incentives from the City and their prime contractor(s) will make good faith efforts to actively invite and encourage minority business entities to participate in activities arising out of incentivized projects.

### **III. POINTS TO CONSIDER**

(a) A review of Councilman Robinson's request from both a legal analysis and a practical analysis has resulted in the attached Ordinance which was drafted by the City Attorney to accomplish the stated goals in a lawful manner by adding a new eligibility requirement to the Downtown Economic Development Incentive Program.

(b) Assuming that Council passes the ordinance attached, or something close to it, then, using the program established by the ordinance, applications for incentives will continue to come before Council on a case-by-case basis and Council, after applying the requirements and criteria set out in the ordinance, will address the application for incentive by resolution.

(c) Upon adoption of the Ordinance, the City Attorney and City Staff will develop both the form and the procedure described in the Ordinance to finalize the reporting mechanism required by the Ordinance to ensure that developers and their prime contractors make good faith efforts to actively invite and encourage minority business entities to participate in activities arising out of incentivized projects.

### **IV. OPTIONS**

(a) Approve the Ordinance as presented on first reading.

(b) Amend the Ordinance to accomplish the same goals.

(c) Defeat the Ordinance.

### **IV. ATTACHMENTS**

Proposed Ordinance 2015-07

**ORDINANCE NO. 2015-07**

**AN ORDINANCE AMENDING CODE SECTION 2-205 IN ORDER TO ADD A SUB PARAGRAPH (5) TO PROVIDE FOR AN ADDITIONAL "GENERAL ELIGIBILITY REQUIREMENT" TO THE DOWNTOWN ECONOMIC DEVELOPMENT INCENTIVE PROGRAM WHICH REQUIRES THAT DEVELOPERS SEEKING ECONOMIC INCENTIVES FROM THE CITY INCLUDE MINORITY CONTRACTORS AND SUB CONTRACTORS IN INVITATIONS TO PROVIDE WORK ON THE PROJECT.**

**WHEREAS**, the City Council (the "Council") of the City of Florence, South Carolina recognizes that it is necessary and in the best interests of the City of Florence to encourage the economic development and redevelopment of the downtown area of the City and to provide for the increased benefit and prosperity of its citizens;

**WHEREAS**, the Council desires to facilitate business growth in designated areas;

**WHEREAS**, it is the desire of the Council to create new tools to encourage private capital investment and reinvestment in any of the designated areas that may be specifically identified;

**WHEREAS**, the establishment of an economic development program that recognizes the benefits and economic impact of new investment will contribute to the health and stability of the City and in furtherance of the various adopted goals and plans of the City;

**WHEREAS**, it is in the best interest of the City to take steps necessary to encourage recipients of incentives from the City to actively seek involvement of minority and women owned businesses in activity generated by incentivized construction activity; and

**WHEREAS**, the Council of the City of Florence, South Carolina, hereby finds and determines:

(a) The City of Florence, South Carolina (the "City"), is an incorporated municipality located in Florence County, South Carolina, and as such possesses all powers granted to municipalities by the Constitution and the laws of the State of South Carolina, including the powers enumerated in S.C. Code § 5-7-30.

(b) Council is mindful of the criteria set forth by the South Carolina Supreme Court in *Byrd v. Florence County* in determining when industrial development constitutes a public purpose. In that case, as further developed in *Nichols v. South Carolina Research Authority*, the South Carolina Supreme Court formulated a four-point standard to include (1) the ultimate goal or benefit to the public, (2) whether public or private parties will be the primary beneficiaries, (3) the speculative nature of the project and (4) the probability that the public interest will be ultimately served.

(c) While recognizing that the provision of incentives to private developers has some benefit to the private developers, the purpose of this incentive program is to benefit the citizens of the City by encouraging revitalization and redevelopment of the downtown area thereby bringing about great positive direct economic impact upon the City, indirect economic impact upon the City by attracting

additional businesses, investment and patronage into the downtown, and through enhancing quality of life and enjoyment issues by restoring the historic downtown area of Florence. Council has therefore applied the four-part test formulated by the Supreme Court to the incentive program to ensure that Council's decision on individual incentive applications will be based upon consideration of proper objective criteria.

(d) The criteria and requirements under the incentive program are designed to make sure that decisions by Council will properly weigh the benefit to the public and the established goals of the City for effective redevelopment of the downtown area and to ensure that the benefit to the public greatly outweighs any private benefit resulting from any incentive granted.

(e) As repeatedly stated in both the City's Comprehensive Plan and the Master Plan for downtown revitalization, the provision of significant incentives to encourage investment in downtown properties is essential for the success of these programs.

(f) As repeatedly alluded to in both the City's Comprehensive Plan and the Master Plan for downtown revitalization, it is important to the process and to the goals of revitalization to encourage recipients of incentives from the City to actively seek involvement of minority and women owned businesses in activity generated by incentivized construction activity;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FLORENCE, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED, AND BY THE AUTHORITY THEREOF THAT SECTION 2-205 OF THE CITY CODE BE, AND THE SAME IS HEREBY, AMENDED AS FOLLOWS:**

**Section 1. Enactment.** The provisions contained in the "Downtown Economic Development Incentive Program" contained in Chapter 2 of the City Code are hereby amended by adding a new sub paragraph (5) to Section 2-205 which will read as follows:

(5) The entity seeking the incentive shall ensure that it and its prime contractors shall make good faith efforts as described herein to provide equal opportunity to and to actively invite minority business enterprises (MBE) to participate in the incentivized activities. For the purpose of this ordinance, MBE is defined as a minority business enterprise that is certified in accordance with South Carolina Regulations §19-445.2160, as authorized by §11-35-5270 the South Carolina Code of Laws, as amended. In order to meet this requirement, the entity must agree that it and its prime contractors will submit documentation on a form provided by the City and in a method prescribed by City Staff to establish that the developing entity and the prime contractors have actively solicited and encouraged MBE's to participate in subcontracting and significant material supplier opportunities available related to the incentivized project.

**Section 2. Codification.** The Municipal Code Corporation as codifier of the City of Florence Code shall, in consultation with the City Attorney of Florence, have discretion to make such adjustments

in the numbering and sequencing of the article numbers and sections numbers as will reasonably assure compliance with standard practices in codification and to codify the new provisions as soon as feasible after their effective dates.

**Section 3. Severability.** If any part of this Ordinance is held to be invalid or unconstitutional, it shall be construed to have been the legislative intent to pass said Ordinance without such invalid or unconstitutional provision, and the remainder of said Ordinance shall be deemed to be valid as if such portion had not been included. If said Ordinance, or any provisions thereof, is held to be inapplicable to any person, group of persons, property, kind of property, circumstances or set of circumstances, such as holding shall not affect the applicability thereof to any persons, property or circumstances.

**Section 4. Effective Date.** This Ordinance shall become effective immediately upon its approval and adoption on Second Reading.

**ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2015.**

**Approved as to form:**

\_\_\_\_\_  
**James W. Peterson, Jr.**  
City Attorney

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**Stephen J. Wukela**  
Mayor

**Attest:**

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**Dianne M. Rowan**  
Municipal Clerk