



## Legislation Details (With Text)

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**Type:** Ordinance      **Status:** Passed  
**File created:** 4/8/2009      **In control:** Finance & Economic Development Committee  
**On agenda:** 4/20/2009      **Final action:** 4/22/2009

**Title:** To grant certain approvals for Capitol South Community Urban Redevelopment Corporation in connection with the Columbus Commons Project, and to declare an emergency.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:**

| Date      | Ver. | Action By                 | Action                             | Result |
|-----------|------|---------------------------|------------------------------------|--------|
| 4/22/2009 | 1    | CITY CLERK                | Attest                             |        |
| 4/21/2009 | 1    | MAYOR                     | Signed                             |        |
| 4/20/2009 | 1    | Columbus City Council     | Approved                           | Pass   |
| 4/20/2009 | 1    | COUNCIL PRESIDENT PRO-TEM | Signed                             |        |
| 4/10/2009 | 1    | CITY ATTORNEY             | Reviewed and Approved              |        |
| 4/10/2009 | 1    | Atty Drafter              | Sent to Clerk's Office for Council |        |
| 4/9/2009  | 1    | FINANCE DIRECTOR          | Reviewed and Approved              |        |
| 4/9/2009  | 1    | Atty Drafter              | Sent for Approval                  |        |
| 4/9/2009  | 1    | CITY AUDITOR              | Reviewed and Approved              |        |
| 4/9/2009  | 1    | CITY AUDITOR              | Reviewed and Approved              |        |
| 4/9/2009  | 1    | Atty Drafter              | Sent for Approval                  |        |
| 4/8/2009  | 1    | Atty Drafter              | Sent for Approval                  |        |

### BACKGROUND:

Capitol South Community Urban Redevelopment Corporation ("Capitol South") has proposed a project (the "Columbus Commons Project") which would result in the demolition of the Columbus City Center Mall in downtown Columbus and the construction of a park, to be known as "Columbus Commons," on the site of the Mall. In order to carry out the Columbus Commons Project, Capitol South has requested that the City grant several approvals pursuant to the following agreements between the City and Capitol South: (a) the July 30, 2001 Operative Agreement (the "Operative Agreement"), and (b) a series of leases (the "Parking Garage Leases") through which Capitol South owns the parking garage located on the block bounded by Main Street, High Street, Rich Street and Third Street in Downtown Columbus (the "Parking Garage"), originally constructed in order to serve the Columbus City Center Mall.

The approvals requested by Capitol South would allow Capitol South to take several steps that are necessary in order to allow Capitol South to carry out the Columbus Commons Project.

First, the approvals would allow Capitol South to enter into a financing arrangement with The Huntington National Bank. This financing arrangement would (a) provide partial funding for the Columbus Commons Project, and (b) enable Capitol South to cause the release of a mortgage that currently encumbers both the Parking Garages and the rest of the site of the Columbus Commons Project. The existing mortgage would be replaced by a mortgage in favor of The Huntington National Bank (the "Huntington

Mortgage"), covering Capitol South's interests in the Parking Garage Leases.

Second, the approvals would allow Capitol South to use a portion of the "Downtown Housing Incentive Funds" (as defined in the Operative Agreement), not to exceed \$2.7 million, for the Columbus Commons Project and other projects within the former City Center redevelopment area.

Last, the approvals would allow Capitol South to treat the cost of carrying out the Columbus Commons Project as expenses under the Operative Agreement.

This legislation (a) recognizes the Huntington Loan as an "Approved Loan" under the Operative Agreement; (b) approves the Huntington Mortgage, in accordance with the Parking Garage Leases, to replace the mortgage currently encumbering the Parking Garages and the rest of the City Center site; (c) allows Capitol South to utilize \$2.7 million of the Downtown Housing Incentive Funds for the Columbus Commons Project; and (d) allows Capitol South to deduct all expenditures made in connection with the Columbus Commons Project from "Cash Flow", as defined in the Operative Agreement. The legislation further authorizes the Director of Finance and Management to execute any and all documents, certificates or other instruments evidencing the foregoing.

Emergency action is requested to allow the foregoing actions to be initiated and completed in a timely manner.

FISCAL IMPACT:

No funding is required for this legislation.

To grant certain approvals for Capitol South Community Urban Redevelopment Corporation in connection with the Columbus Commons Project, and to declare an emergency.

**WHEREAS**, Capitol South Community Urban Redevelopment Corporation ("Capitol South") is a nonprofit corporation committed to the elimination of urban blight in Downtown Columbus; and

**WHEREAS**, while Capitol South has participated in numerous development and redevelopment projects throughout Downtown Columbus, Capitol South was originally founded in 1974 to lead the redevelopment of the "Redevelopment Area," as such term is defined in the July 30, 2001 Operative Agreement between the City and Capitol South (as amended, the "Operative Agreement"), which Redevelopment Area encompasses the portion of Downtown Columbus roughly bounded by High Street to the West, State Street to the North, Third Street to the East, and Main Street to the South; and

**WHEREAS**, through its activities in the Redevelopment Area and in Downtown Columbus generally, Capitol South has to date paid to the City over \$65 million in ground rents pursuant to the Operative Agreement and its predecessor agreements; and

**WHEREAS**, Capitol South is the owner of the improvements (the "Mall Improvements") formerly known as the Columbus City Center Mall, which Mall Improvements are located in the Redevelopment Area; and

**WHEREAS**, the Columbus City Center Mall was permanently closed to the public on March 5, 2009; and

**WHEREAS**, the City and Capitol South have concluded that the Mall Improvements have reached the end of their useful life, and, in their current form, impair the economic vibrancy and aesthetic value of the Redevelopment Area and surrounding portions of Downtown Columbus; and

**WHEREAS**, Capitol South has proposed a plan to demolish the Mall Improvements, and to construct a park in their place, which park shall be known as the "Columbus Commons" (the demolition of the Mall Improvements, and the construction of the Columbus Commons park, are, collectively, the "Columbus Commons Project"); and

**WHEREAS**, the City deems it desirable to support Capitol South in its efforts to design and construct the Columbus Commons Project; and

**WHEREAS**, in order to finance the Columbus Commons Project, and to cause the release of a mortgage that currently encumbers the site of the Columbus Commons Project, Capitol South may obtain a loan from The Huntington National Bank (the "Huntington

Loan"); and

**WHEREAS**, the City deems it desirable to recognize the Huntington Loan as an "Approved Loan," as defined in the Operative Agreement; and

**WHEREAS**, in connection with the Huntington Loan, Capitol South will grant to The Huntington National Bank a mortgage (the "Huntington Mortgage") on Capitol South's interests in the parking garage located on the block bounded by Main Street, High Street, Rich Street and Third Street in Downtown Columbus (the "Parking Garage"), which Parking Garage was originally constructed in order to serve the Columbus City Center Mall, the Huntington Mortgage being a replacement of the mortgage that currently encumbers all of Capitol South's interests in the Redevelopment Area; and

**WHEREAS**, the City deems it desirable to approve the Huntington Mortgage, in accordance with the following lease agreements with respect to the Parking Garage (collectively, the "Parking Garage Leases"): (a) that certain First Amended and Restated Lease Agreement between the City and Capitol South for Third Block Public Parking Facility, dated as of December 30, 1985, (b) that certain First Amended and Restated Lease Agreement between the City and Capitol South for Third Block Private Parking Facility, dated as of December 30, 1985; and (c) that certain First Amended and Restated Lease Agreement between the City and Capitol South for Third Street Retail, dated as of December 30, 1985; and

**WHEREAS**, the Operative Agreement designates certain funds held by Capitol South as "Downtown Housing Incentive Funds," and restricts the use of such Downtown Housing Incentive Funds by Capitol South; and

**WHEREAS**, the City and Capitol South deem it desirable to authorize Capitol South to utilize a portion of the Downtown Housing Incentive Funds, not to exceed \$2,700,000.00, for the Columbus Commons Project; and

**WHEREAS**, under the Operative Agreement, Capitol South is required to obtain the approval of the City in order to qualify certain expenditures relating to the Columbus Commons Project as deductions from "Cash Flow" (as such term is defined in the Operative Agreement); and

**WHEREAS**, the City deems it desirable to grant such approvals to Capitol South, in order to allow for the Columbus Commons Project to proceed; and

**WHEREAS**, an emergency exists in the usual daily operation of the Department of Finance and Management in that granting such approvals, and expediting the advancement of the Columbus Commons Project, will preserve the public health, peace, property, safety and welfare;

**NOW, THEREFORE:**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:**

**Section 1.** That the Huntington Loan be and hereby is deemed an "Approved Loan" pursuant to the Operative Agreement.

**Section 2.** That the Huntington Mortgage be and hereby is approved as a "Leasehold Mortgage", in accordance with each of the Parking Garage Leases.

**Section 3.** That Capitol South be and is hereby authorized to utilize a portion of the Downtown Housing Incentive Funds, not to exceed \$2,700,000.00, for the Columbus Commons Project.

**Section 4.** That the City hereby approves the deduction from Capitol South's net income, as determined by Section 15(c) of the Operative Agreement, of any and all expenditures by Capitol South made in connection with the operation, design, financing, demolition and construction of the Columbus Commons Project.

**Section 5.** That the Director of Finance and Management be and hereby is authorized to execute any and all agreements, documents, certificates or other instruments required or helpful to effect the intent of this Ordinance.

**Section 6.** That for the reasons stated in the preamble hereto, which is hereby made a part hereof, this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval by the Mayor or ten

days after passage if the Mayor neither approves, nor vetoes, the same.