

Sponsor(s) : County Council  
 First Reading : October 4, 2022  
 Committee Referral : N/A  
 Committee Consideration Date : N/A  
 Committee Recommendation : N/A  
 Second Reading : November 1, 2022  
 Public Hearing : December 6, 2022  
 Third Reading : December 6, 2022  
 Effective Date : Immediately

I, Kaela Brinson, Council Clerk,  
 certify that this Ordinance was  
 advertised for Public hearing on  
 November 17, 2022.

**AMENDED AND RESTATED ORDINANCE NO. 22-O-15**

**COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT FOR COLLETON COUNTY**

**[AN AMENDED AND RESTATED ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND AMONG COLLETON COUNTY, SOUTH CAROLINA, GEHL FOODS SOUTHEAST, LLC AND NM GL, L.L.C., WHEREBY COLLETON COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAXES ARRANGEMENT WITH GEHL FOODS SOUTHEAST, LLC AND NM GL, L.L.C.; PROVIDING FOR PAYMENT BY GEHL FOODS SOUTHEAST, LLC AND NM GL, L.L.C. OF CERTAIN FEES IN LIEU OF *AD VALOREM* TAXES; PROVIDING FOR THE ASSIGNMENT OF CERTAIN EXISTING ECONOMIC DEVELOPMENT INCENTIVES TO GEHL FOODS SOUTHEAST, LLC AND NM GL, L.L.C.; PROVIDING FOR CERTAIN SPECIAL SOURCE REVENUE OR INFRASTRUCTURE CREDITS; PROVIDING FOR THE ALLOCATION OF FEE-IN-LIEU OF TAXES PAID BY GEHL FOODS SOUTHEAST, LLC AND NM GL, L.L.C. UNDER THE AGREEMENT FOR ESTABLISHMENT OF MULTI-COUNTY INDUSTRIAL/BUSINESS PARK; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ASSIGNMENT AND ASSUMPTION OF INCENTIVE AGREEMENTS AND RELEASE FROM INCENTIVE AGREEMENTS AMONG COLLETON COUNTY, SOUTH CAROLINA, CRESCENT DAIRY & BEVERAGES, LLC, AND GEHL FOODS SOUTHEAST, LLC AND A PARTIAL ASSIGNMENT AND ASSUMPTION OF FEE IN LIEU OF TAX AGREEMENT BY AND AMONG GEHL FOODS SOUTHEAST, LLC, NM GL, L.L.C., AND COLLETON COUNTY, SOUTH CAROLINA; AND OTHER MATTERS RELATING THERETO.]**

WHEREAS, Colleton County, South Carolina (the “County”), acting by and through its County Council (the “County Council”) is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the “FILOT Act”), to designate real and tangible personal property as “economic development property” and to enter into an arrangement which provides for a negotiated payment in lieu of taxes (“Negotiated FILOT Payments”) for a project qualifying under the FILOT Act; and

WHEREAS, the County, acting by and through the County Council, is further authorized and empowered under and pursuant to the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina 1976, as amended (the “MCIP Act”), to provide for payments in lieu of taxes (“PILOT Payments”) with respect to property located in a multi-county business or industrial park created under the MCIP Act, and to create, in conjunction with one or more other counties, a multi-county park (the “Multi-County Park”) in order to afford certain enhanced tax credits to such

investors and to use all or a portion of the PILOT Payments resulting from such designation to pay, or reimburse such investors for paying, the cost of infrastructure used in the operation of a manufacturing or commercial enterprise (“Infrastructure Improvements”), which serves the economic development of the County pursuant to Sections 4-1-175, 4-29-68, and 12-44-70 of the Code of Laws of South Carolina 1976 as amended (the “SSRC Act”); and

WHEREAS, in order to promote the economic welfare of the citizens of Colleton County and Hampton County (collectively, the “Counties”) by providing employment and other benefits to the citizens of the Counties, the Counties entered into an Agreement for Development for a Joint County Industrial Park executed on December 11, 2007 by Colleton County and on January 22, 2008 by Hampton County (the “Original Park Agreement”), to develop jointly an industrial and business park (the “Park”), as provided by Article VIII, Section 13 of the South Carolina Constitution and in accordance with the MCIP Act; and

WHEREAS, the Original Park Agreement, as amended, is referred to herein as the “MCIP Agreement”; and

WHEREAS, Gehl Foods Southeast, LLC, a Delaware limited liability company (the “Company”), intends to locate its operations in Colleton County by leasing, constructing, renovating, furnishing, equipping, and expanding the existing industrial facility (the “Existing Facility”) formerly owned by Crescent Dairy & Beverages, LLC (the “Existing Industry”), located at 181 Crescent Way, Walterboro, South Carolina and a second building to be part of the Project located at 825 Global Place, Walterboro, South Carolina. The Existing Facility and existing investment acquired by the Company are referred to herein as the “Acquired Project,” the new facilities, acquisitions, construction, renovation, furnishings, equipment and expansions are referred to herein as the “New Project,” and the Acquired Project and New Project are referred to herein collectively as the “Project.” The Project is to be located at 181 Crescent Way and 825 Global Place, Walterboro, South Carolina (collectively, the “Project Site”). As of September 29, 2022, the real property and improvements comprising the Project and Project Site were acquired by NM GL, L.L.C., a Delaware limited liability company (the “Project Landlord”), and the Company leases the same from the Project Landlord pursuant to that certain Master Lease Agreement, dated as of September 29, 2022 (the “Master Lease”); and

WHEREAS, the New Project when completed will represent an anticipated new “investment” (as defined in the FILOT Act) (the “Investment”) by the Company and the Project Landlord in the aggregate amount of not less than \$44,825,000, of which \$15,885,000 has been made by the Project Landlord in real property (land and building), \$11,962,000 will be made by the Company in real property improvements to the Project Site, and \$28,940,000 will be made by the Company in tangible personal property (new machinery and equipment) as part of the Project (collectively, the economic development property under the FILOT Act); and

WHEREAS, the Investment contemplated under this Ordinance will be in addition to the \$30,000,000 investment made previously by the Existing Industry in the Acquired Project which investment was made subject to that certain Fee Agreement, dated as of January 1, 2013, between the County and the Existing Industry (the “2013 Fee Agreement”); and

WHEREAS, the benefits and obligations of the 2013 Fee Agreement were assigned to and assumed by the Company pursuant to that certain Assignment and Assumption of Incentive Agreements and Release from Incentive Agreements, dated as of May 31, 2022, among the Existing Industry, the Company and the County (the “May 2022 Assignment”), and the term of the 2013 Fee Agreement was extended to a final termination date of December 31, 2048; and

WHEREAS, the benefits and obligations of the 2013 Fee Agreement were further partially assigned by the Company to the Project Landlord solely with respect to the real property acquired by the Project Landlord on September 29, 2022 pursuant to that certain Partial Assignment and Assumption of Fee in Lieu of Tax Agreement, dated as of September 29, 2022, by and among the Company, the Project Landlord and the County (the “Land Assignment”); and

WHEREAS, the County has been advised that upon the completion of the Project, the Company is anticipated to employ an additional approximately 106 full-time employees within five (5) years of the completion of the New Project, which will be in addition to the Company’s maintenance of the current level of 60 employees who are part of the Acquired Project; and

WHEREAS, the Project Site has been previously designated by the County as a portion of the Park; and

WHEREAS, the County has made specific proposals, including proposals to offer certain economic development incentives set forth herein, for the purpose of inducing the Company and the Project Landlord to invest their funds to acquire, construct, and equip the Project (the “Incentives”); and

WHEREAS, pursuant to the FILOT Act, and based on factual representations made by the Company and the Project Landlord to the County, the County hereby finds that: (a) it is anticipated that the Project will benefit the general public welfare of the County by providing services, employment, recreation, and other public benefits not otherwise adequately provided locally; (b) neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against the general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project to the public are greater than the costs to the public; and

WHEREAS, it is in the public interest, for the public benefit, and in furtherance of the public purposes of the FILOT Act, and the SSRC Act that the County Council provide final approval for qualifying the Project under the FILOT Act, and the SSRC Act for the Incentives; and

WHEREAS, this Amended and Restated Ordinance amends and restates that certain Ordinance No. 22-O-01 (the “Original Gehl Foods FILOT Ordinance”) enacted by County Council on June 7, 2022;

NOW, THEREFORE, BE IT ORDAINED by the County Council as follows:

Section 1. Evaluation of the Project. County Council has evaluated the Project on the following criteria based upon any advice and assistance of the South Carolina Department of Revenue and the Revenue and Fiscal Affairs Office, as necessary:

- (a) the purposes to be accomplished by the Project are proper governmental and public purposes;
- (b) the anticipated dollar amount and nature of the investment to be made; and
- (c) the anticipated costs and benefits to the County.

Section 2. Findings by County Council. Based upon information provided by and representations of the Company, County Council's investigation of the Project, including the criteria described in Section 1 above, and any advice and assistance of the South Carolina Department of Revenue and the Revenue and Fiscal Affairs Office, as necessary, County Council hereby find that:

- (a) the New Project constitutes a "project" as that term is defined in the FILOT Act;
- (b) the New Project will serve the purposes of the FILOT Act and the SSRC Act;
- (c) the Investment by the Company and the Project Landlord in the New Project will be approximately \$44,825,000, all to be invested within the "investment period" (as defined in the FILOT Act); and the Company will employ 106 new full-time employees at the Project within 5 years of the completion of the New Project;
- (d) the New Project will be located entirely within Colleton County and is anticipated to be located in the Park created pursuant to the MCIP Act;
- (e) the Infrastructure Improvements to be financed or reimbursed from the SSRCs (as defined in Section 5 hereof) consist of infrastructure serving Colleton County and improved or unimproved real estate and personal property, including machinery and equipment, used or to be used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of Colleton County; and
- (f) the New Project is anticipated to benefit the general welfare of Colleton County by providing services, employment, or other public benefits not otherwise adequately provided locally;
- (g) the New Project gives rise to neither a pecuniary liability of the County nor a charge against its general credit or taxing power;
- (h) the purposes to be accomplished by the New Project are proper governmental and public purposes;

- (i) the inducement of the location of the New Project is of paramount importance; and
- (j) the benefits of the New Project to the public are greater than the cost to the public.

Section 3. Fee-in-Lieu of Taxes Arrangement. Pursuant to the authority of the FILOT Act, the New Project is designated as “economic development property” under the FILOT Act and there is hereby authorized a fee-in-lieu of taxes arrangement with the Company and the Project Landlord which will provide Negotiated FILOT Payments to be made with respect to the New Project based upon a 6% assessment ratio with the millage rate which is the lower of (a) the cumulative property tax millage rate levied on behalf of all taxing entities within the county in which the New Project is located on June 30 of the year preceding the calendar year in which the FILOT Agreement (as defined below) is executed or (b) the cumulative property tax millage rate levied on behalf of all taxing entities within the county in which the New Project is located on June 30 of the calendar year in which the FILOT Agreement (as defined below) is executed, such rate to be fixed for the entire 25-year term of the fee-in-lieu of taxes arrangement, all as more fully set forth in the Fee-in-lieu of Tax Agreement among the County, the Company, and the Project Landlord (the “FILOT Agreement”). The FILOT Agreement shall be a “Fee Agreement” within the meaning of Section 12-44-30(10) of the FILOT Act.

Section 4. Multi-County Park Incentive.

(A) By separate ordinance of the County Council, the County, in cooperation with Hampton County (the “Partner County”) has previously designated the Project Site as a multi-county business park pursuant to Article VIII, Section 13 of the South Carolina Constitution, the MCIP Act, and the terms of the Agreement for the Development of a Joint County Industrial Park between the County and Hampton County, South Carolina, executed on December 11, 2007 by Colleton County and on January 22, 2008 by Hampton County, as further amended, supplemented, or replaced from time to time (the “MCIP Agreement”).

(B) The County will provide for 25 years that the annual allocation of the PILOT Payments generated by the New Project will be distributed (after distribution of a portion of the PILOT Payments to the Partner County in accordance with the MCIP Agreement) as follows:

- (i) To the Company, for providing the SSRCs (as defined in Section 5 hereof), an amount equal to the annual SSRC provided in Section 5 of this Ordinance and in the FILOT Agreement; and
- (ii) Except as may otherwise be provided by ordinance of the County Council from time to time, the balance of the PILOT Payments to the County and the other overlapping taxing entities, in the same relative percentages as the relative millage rates imposed by such taxing entities for the applicable tax year.

Section 5. Special Source Revenue Credits.

(A) After the identification of qualifying public infrastructure located solely within Colleton County and the costs thereof to the satisfaction of the County, the County will provide to the Company an annual infrastructure or special source revenue incentive (the “SSRCs”) all as more fully set forth in the FILOT Agreement.

(B) The FILOT Agreement shall include customary terms providing: (i) for the recovery by the County, on a pro rata basis, of certain moneys if certain thresholds are not achieved (a “clawback” provision); (ii) that the Company will pay the County’s administrative expenses associated with the approval and administration of the SSRC; (iii) that under certain terms and conditions, the County will have access to certain information of the Company; and (iv) that the Company will indemnify and hold the County harmless for claims, losses, and damages with respect to the Project, the terms of which are further set forth in the FILOT Agreement.

Section 6. Execution of the FILOT Agreement. The form, terms, and provisions of the FILOT Agreement presented to the meeting at which this Ordinance received third reading and filed with the Clerk of the County Council be and hereby are approved, and all of the terms, provisions, and conditions thereof are hereby incorporated herein by reference as if such FILOT Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and the Clerk of the County Council be and they are hereby authorized, empowered, and directed to execute and deliver the FILOT Agreement in the name and on behalf of the County, and thereupon to cause the FILOT Agreement to be delivered to the Company and the Project Landlord. The FILOT Agreement is to be in substantially the form before the meeting of County Council at which this Ordinance received third reading and hereby approved, or with any changes therein as shall not materially adversely affect the rights of the County thereunder, upon the advice of legal counsel, by the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of all changes therein from the form of FILOT Agreement presented to said meeting.

Section 7. Approval of Transfer, Extension, and Release.

(a) Pursuant to the authority of the FILOT Act and the terms of the 2013 Fee Agreement, the County ratifies and/or agrees to (i) the assignment of the 2013 Fee Agreement from the Existing Industry to the Company as a Sponsor (as defined in the FILOT Act) pursuant to the May 2022 Assignment, (ii) the extension of the term of the 2013 Fee Agreement to a final termination date of December 31, 2048, (iii) that as of the effective date of Original Gehl Foods FILOT Ordinance, the Existing Industry was in full compliance with the 2013 Fee Agreement, and (iv) the release of the Existing Industry from unaccrued liability under the 2013 Fee Agreement with respect to the Transferred Assets (as defined in the May 2022 Assignment), all as more fully set forth in the Assignment and Assumption of Incentive Agreements and Release From Incentive Agreements (the “Assignment Agreement”) among the County, the Existing Industry and the Company.

(b) Pursuant to the authority of the FILOT Act and the terms of the Land Assignment (and subject to any limitations contained in the Land Assignment), the County ratifies and/or agrees to (i) the partial assignment of the 2013 Fee Agreement from the Company to the Project

Landlord pursuant to the Land Assignment, (ii) that as of the effective date of the Land Assignment, the Company was in full compliance with the 2013 Fee Agreement, and (iii) the release of the Company from unaccrued liability under the 2013 Fee Agreement with respect to the assets transferred subject to the Land Assignment, all as more fully set forth therein.

(c) The form, terms, and provisions of the Assignment Agreement were fully approved by the Original Gehl Foods FILOT Ordinance, and the execution and delivery of the Assignment Agreement in the name and on behalf of the County, and the delivery of the Assignment Agreement to the Existing Industry and the Company is hereby ratified. The form, terms, and provisions of the Land Assignment presented to this meeting and filed with the Clerk of the County Council be and hereby are ratified and approved, and all of the terms, provisions, and conditions thereof are hereby incorporated herein by reference as if such Land Assignment were set out in this Ordinance in its entirety. The execution of the Land Assignment by the County Administrator in the name and on behalf of the County, and the delivery of the Land Assignment to the Company and the Project Landlord is hereby ratified.

#### Section 8. Miscellaneous.

(a) The Chairman and all other appropriate officials of the County are hereby authorized, empowered, and directed to execute, deliver, and receive any other agreements and documents as may be required by the County in order to carry out, give effect to, and consummate the transactions authorized by this Ordinance.

(b) This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

(c) This Ordinance shall become effective immediately upon approval following third reading by the County Council.

(d) The provisions of this Ordinance are hereby declared to be severable and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, that declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

(e) All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of the conflict, hereby repealed. Other than as amended and restated by this Ordinance, the authorizations provided by the Original Gehl Foods FILOT Ordinance, Ordinance No. 22-O-01 enacted by County Council on June 7, 2022, shall remain in effect.

COLLETON COUNTY, SOUTH CAROLINA

By: Steven D. Munday  
Chairman, County Council of  
Colleton County, South Carolina

ATTEST:

Karla Brunson  
Clerk to County Council  
Colleton County, South Carolina

ST  
Approved as to Form  
Sean Thornton, County Attorney

COUNCIL VOTE: Unanimous  
OPPOSED:

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