

The following ordinance was introduced in writing:

ORDINANCE NO. 2018-3

AN ORDINANCE TO GRANT PUBLIC PROPERTY AND FUNDS IN ACCORDANCE WITH SECTION 94.01 OF THE CONSTITUTION OF ALABAMA OF 1901 AND PROVIDE FOR THE ISSUANCE OF A NOT-TO-EXCEED \$500,000 LIMITED OBLIGATION SALES TAX WARRANT, SERIES 2018, TO VHF HOLDINGS, LLC TO ENCOURAGE, PROMOTE AND SUPPORT ECONOMIC DEVELOPMENT IN THE CITY OF PINSON

BE IT ORDAINED by the Mayor and City Council ("the Council") of the City of Pinson in the State of Alabama as follows:

Section 1. Findings of Council. Having made due and proper investigation of the matters hereinafter referred to, the Council hereby finds and determines:

(a) VHF Holdings, LLC ("the Developer") proposes to acquire from the City certain real property ("the Site") on which the Developer proposes to construct a building and related improvements ("the Building") for lease to and use and occupancy by Big H Pinson, LLC ("the Operator").

(b) The Operator has committed to the use of the Site and the Building as a Shoney's restaurant ("the Restaurant").

(c) The acquisition of the Site by the Developer, the construction of the Building, and the lease of the Site and the Building to the Operator is in the best interests of the City and presents an opportunity for significant economic benefits to the City and its citizens as a result of added employment opportunities, increased expenditures within the City and the surrounding area and increased City tax revenues.

(d) To induce the Developer and the Operator to proceed, the City is willing to assist by (i) conveying the Site to the Developer without the payment of any monetary consideration and (ii) making certain payments to the Developer, but only to the extent of one-half (1/2) of all Shoney's Sales Tax Revenues (hereinafter defined) received by the City from the Restaurant.

(e) In order to provide for the development of the Restaurant as contemplated by the City and to provide for the obligations of the parties with respect thereto, it is in the best interests of the City to enter into a Project Development Agreement among the City, the Developer and the Operator ("the Project Agreement") in substantially the form presented at the meeting at which this Ordinance is considered, which form of Project Agreement is attached hereto as Exhibit A and which is hereby incorporated in this Ordinance as if set out in full herein.

(f) To evidence the City's limited payment obligation under the Project Agreement, it is necessary, advisable and in the interest of the public that the City issue its Limited Obligation Sales Tax Warrant (herein called "the Warrant"), in an amount not to exceed \$500,000, to the Developer.

(g) The Amendment to the Constitution of Alabama proposed by Act No. 2004-94, adopted at the 2004 Regular Session of the Legislature of Alabama and ratified on November 2, 2004 ("the Economic Development Amendment"), permits the City to take various actions for the purpose of economic and industrial development.

(h) In accordance with the requirements of the Economic Development Amendment, the City has caused notice of the meeting at which this Ordinance is considered to be published in *The Birmingham News* on January 17, 2018, and January 24, 2018, which notice includes a summary description of the action proposed to be taken as authorized in this Ordinance.

(i) The donation of public property and the expenditure of public funds (as evidenced by the Warrant) provided for in the Project Agreement will serve the valid and sufficient public purpose of encouraging, promoting and supporting economic development in the City, notwithstanding any incidental benefit accruing to the Developer, the Operator, Shoney's North America, LLC or any other private entity.

Section 2. Authorization of Project Agreement. The Mayor and City Clerk are hereby authorized and directed to execute and deliver the Project Agreement on behalf of the City.

Section 3. Authorization of Deed to the Site. The Mayor and the City Clerk are hereby authorized and directed to execute, for and in the name and behalf of the City, a Statutory Warranty Deed covering the Site, in substantially the form of Exhibit B attached hereto, which form is hereby incorporated in this Ordinance and made a part hereof as if set out in full herein, and the Mayor is authorized and directed to deliver the said deed to the Developer.

Section 4. Authorization of Warrant. Pursuant to the applicable provisions of the constitution and laws of the State of Alabama, including particularly the Economic Development Amendment, the City is hereby authorized to issue the Warrant. The Warrant shall be issued as a single warrant, shall be dated the date of its delivery, shall be payable solely from one-half (1/2) of all Shoney's Sales Tax Revenues (hereinafter defined) received by the City from the Restaurant, with the principal thereof payable on the twenty-fifth (25th) day of each calendar month ("the Payment Date"), commencing with the twenty-fifth (25th) day of the second month following the month of the delivery thereof, and continuing on the twenty-fifth (25th) day of each month thereafter until the earlier of (a) the twenty-fifth (25th) day of the one hundred twenty-first (121st) month from the month the Warrant is issued, (b) the termination date of the Project Agreement or (c) the date on which the City shall have paid to the holder of the Warrant a total of \$500,000 from the Shoney's Sales Tax Revenues, and shall contain and be subject to the terms and conditions set forth in the form of Warrant which shall be attached hereto as Exhibit C and which is incorporated in this Ordinance as if set out in full herein. The Warrant shall not bear interest.

Section 5. Source of Payment; Pledge of Certain Sales Tax Revenues. The indebtedness evidenced and ordered paid by the Warrant is and shall be a limited obligation of the City and the full faith and credit of the City shall not be pledged to the payment thereof. The City does hereby appropriate and agree to use, and does hereby specially and irrevocably pledge, for payment of the principal of the Warrant as the same becomes due, one-half (1/2) of the Shoney's Sales Tax Revenues (defined hereinafter). "Shoney's Sales Tax Revenues" shall mean: the City's actual receipts from sales taxes collected at the general municipal sales tax rate, presently four percent (4%), on retail sales at the Restaurant with respect to each calendar month, being a portion of the sales and use taxes levied by the City pursuant to Ordinance No. 2010-08, adopted by the governing body of the City on April 15, 2010, which became effective on and after September 1, 2010, as amended by Ordinance No. 2015-72, adopted by the governing body of the City on December 3, 2015, which became effective on and after January 1, 2016 (the said Ordinance No. 2010-08, as amended by the said Ordinance No. 2015-72, being herein together called "the Sales Tax Ordinance"), and any ordinance subsequently adopted amending the same. The City shall have no obligation to make any payment from other sources, including, without limitation, from any other sales taxes levied against the Restaurant or sales therein subject to a municipal sales tax rate other than the general municipal sales tax rate, or from increases in the general municipal sales tax rate which become effective hereafter.

The pledge of one-half (1/2) of Shoney's Sales Tax Revenues herein made and the agreements on the part of the City with respect to the application of one-half (1/2) of Shoney's Sales Tax Revenues contained in this Ordinance and the Project Agreement, are subject only to (i) any pledge of the taxes levied by the Sales Tax Ordinance for the benefit for the benefit of the City's general obligation warrants and (ii) the law-imposed requirement that, if necessary, the legitimate governmental expenses of operating the City must first be paid.

Notwithstanding anything to the contrary, the City shall have no obligation to pay to the Developer or the holder of the Warrant any Shoney's Sales Tax Revenues after the maturity date of the Warrant (herein called "the Maturity Date"). The Maturity Date shall be the earlier to occur of: (a) the Payment Date in the one hundred twenty-first (121st) month following the date of the Warrant, (b) the termination of the Project Agreement or (c) the date on which the City has paid to the Developer or the holder of the Warrant the maximum principal amount of the Warrant.

The City agrees that until the Maturity Date to the full extent of the City's power to do so under the constitution and laws of the State of Alabama, the City will continue to levy, collect and enforce the Shoney's Sales Tax Revenues to the extent necessary to pay the principal of the Warrant consistent with the terms and limitations set forth herein and therein.

The City's obligation to pay the amounts due under the Warrant shall be subject to the express limitations provided herein and in the Warrant. The City shall have no obligation, legal or moral or otherwise, to make any payment other than from the limited source, and in the limited amounts, as provided herein and in the Warrant. No interest shall accrue or be payable with respect to the Warrant.

Section 6. Creation of Warrant Fund. There is hereby created a special trust fund of the City, the full name of which shall be "City of Pinson, Alabama Limited Obligation Warrant Fund." The City shall have the right to designate any bank or trust company as the depository for

the Warrant Fund (herein called "the Depository"). The monies in the Warrant Fund shall be used to pay the principal of the Warrant as the same shall become due and payable. There shall be paid into the Warrant Fund, as soon as practicable after receipt by the City, one-half (1/2) of all Shoney's Sales Tax Revenues.

All monies on deposit in the Warrant Fund shall be used for payment of the principal coming due on the Warrant. Any amounts remaining in the Warrant Fund after the payment in full of the principal of the Warrant may be withdrawn by the City and used for any lawful purpose.

The Warrant Fund shall be and at all times remain public funds impressed with a trust for the purpose for which the Warrant Fund is herein created. The Depository for the Warrant Fund shall at all times keep the monies on deposit with it in the Warrant Fund continuously secured for the benefit of the City and the holder of the Warrant.

Section 7. Validation of Warrant. In order to cause the Warrant to be issued for the purposes hereinabove stated, and pursuant to the constitution and laws of the State of Alabama, the Mayor is hereby authorized and directed to file or cause to be filed on behalf of the City a petition for the purpose of determining the legality and validity of the Warrant, the Project Agreement and all matters related to the issuance and payment thereof, all in accordance with Article 17, Chapter 6, Title 6 of the Code of Alabama 1975, as amended.

Section 8. Execution and Delivery of the Warrant. The Mayor of the City is hereby authorized and directed to execute and deliver the Warrant, upon the receipt of a final, nonappealable order of validation (herein called "the Final Validation Decree"), on such date as shall be requested by the Developer not more than five hundred forty-five (545) days following the receipt by the City of the Final Validation Decree. The Warrant shall be executed on behalf of the City by its Mayor. The Warrant shall be registered by the City Treasurer, in the records maintained by her, as a claim against the City and the Warrant Fund, which registration shall be made simultaneously with the issuance of the Warrant. The certificate of registration on the Warrant shall be executed by the said Treasurer. The official seal of the City shall be impressed on the Warrant, and the said seal and the Warrant shall be attested by the signature of the City Clerk.

Section 9. Contractual Provisions. The provisions of this Ordinance shall constitute a contract between the City and the Holder of the Warrant. Upon payment in full of the principal of and interest on the Warrant, or upon cancellation of the Warrant as provided therein, the obligations of the City hereunder shall cease.

Section 10. Severability. The various provisions of this Ordinance are hereby declared to be severable. In the event any provisions hereof shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect any other portion of this Ordinance.

ADOPTED and APPROVED this 1st day of February, 2018.

/s/ Hoyt Sanders
Mayor
City of Pinson, Alabama

Attest:

/s/ Marie Turner
City Clerk

The Chairman stated that unanimous consent was required for immediate consideration of and action on said ordinance and upon being put to vote, the following vote in favor of immediate consideration was recorded:

YEAS:	NAYS:
Mayor Hoyt Sanders	None
Councilors John Churchwell	
Shannon Galamore	
Dawn Tanner	

The Chairman thereupon declared that the vote for immediate consideration of and action on said ordinance had been unanimously carried. Councilor Churchwell thereupon moved that the said ordinance be finally adopted, which motion was seconded by Councilor Tanner and, upon the said motion being put to vote, the following vote was recorded:

YEAS:	NAYS:
Mayor Hoyt Sanders	None
Councilors John Churchwell	
Shannon Galamore	
Dawn Tanner	

The Chairman then announced that the motion for adoption of said ordinance had been unanimously carried.

