

Minutes

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting, 4800 Town Center Drive, at 6:00 P.M. on Monday, February 22, 2021. Mayor Peggy Dunn presided.

Councilmembers Present: James Azeltine, Deb Filla, Julie Cain, Chuck Sipple, and Lisa Harrison

Councilmembers Present via Zoom: Andrew Osman and Jim Rawlings

Councilmembers Absent: Mary Larson

Staff Present: Scott Lambers, City Administrator; Patty Bennett, City Attorney; Ross Kurz, Information Services Director; Mark Tepesch, IS Senior Specialist; and Stacie Stromberg, Assistant City Clerk

Others Present via Zoom: Bill Hess and Ben Thompson, Gilmore & Bell

Discussion of possible property tax abatement and sales tax exemption through the issuance of IRBs

Scott Lambers, City Administrator, addressed the Governing Body. He stated he has been involved with property tax abatement and sales tax exemption throughout his 40-year career and believes he brings some expertise to the Council. Mr. Lambers provided an article to the Governing Body from the *Kansas City Star* regarding Kansas City, Missouri revamping their public taxpayer subsidies. He explained that there are numerous taxing jurisdictions that receive tax revenues through property taxes who are not receiving funds due to a City Council decision, and typically have no voice on the matter. Mr. Lambers stated that he believes this is unfair.

Mr. Lambers suggested reviewing two paths of choice and would like to have changes to the language in the City's Industrial Revenue Bonds (IRB) policy for the March 15, 2021, City Council agenda. He reminded the Governing Body that their previous action was to remove the prohibition providing property tax abatement and noted that IRBs should be for exceptional projects.

For "Path A" Mr. Lambers suggested that the City use the State of Kansas as the entity to determine whether or not a project is worthy of public tax support from the City since the State already has the Department of Commerce and the Governor's Office giving incentives to businesses to locate or stay in Kansas. He pointed out that the City would utilize the State's staff and resources to determine a worthy project. Mr. Lambers' proposal is that the criteria in Path A would show that an applicant has received tax incentives from the State and it would be a streamlined process. The City's participation would be limited to property tax abatement and sales tax exemption. Mr. Lambers stated it is his recommendation to avoid the issue of other taxing entities not receiving funds by the City, but to have a 50% tax abatement policy for the statutory limit of 10 years. He also suggested that the sales tax

exemption on construction materials be for a period of 5 years, since not all construction typically happens at once. He stated that the City would not want it to linger and 5 years would be a motivating factor to complete the project.

Mr. Lambers stated if a company does not meet their performance obligations, there is typically a standard clawback provision paid back over time. He stated it is typically taken out of the years that go beyond year 5, such that the City would give a company 5 years to meet the provisions but if short in year 6, then there would be the removal of the property tax abatement, and so on in year 7 if still not met. Mr. Lambers explained that there would also be the possibility of the company meeting the criteria and then it gets clawed back if they meet it over 6 or 7 years. He suggested that the language be incorporated into the City's ordinance and require them to meet the State statute requirements. Mr. Lambers stated this would be a major step forward to provide for property tax abatement and a sales tax exemption that has never been allowed in the City's history.

Councilmember Sipple asked if the City is in the position to forgive the County's sales tax. Mr. Lambers stated that all sales tax from the City, County and State are not imposed on the entity for construction materials.

Councilmember Azeltine asked to clarify that the City would not issue an abatement or IRB unless the company already received incentives from the State. Mr. Lambers explained that in Plan A a company would have received incentives from the State, then come to the City as a continuum. He noted that Path B involves a project requesting tax incentives without either going to the State or having been denied by the State. Councilmember Azeltine affirmed that for Path A, any consideration of a project by the City would have been conditioned upon the company already having received incentives from the State. He added that he is not in favor of Path A, because the City should determine its own destiny. He stated that if the first path requires the company to meet the statutory requirements, then why have this choice offered by the City at all. Mr. Lambers stated the State would have already screened the companies. Councilmember Azeltine asked if the State is only checking if a company has met all the statutory requirements. Mr. Lambers replied that there is a statutory procedure for the State but also a worthiness of a corporations' finances.

Councilmember Cain asked if this is only pertaining to IRB bonds. Mr. Lambers stated yes. She stated the IRBs are limited to areas where it would apply within the City. Mr. Lambers agreed there is a limitation on the availability of land in Leawood.

Mayor Dunn stated that the name IRB is a misnomer because it does not have to be in an industrial area but in any commercial area.

Councilmember Osman indicated that Mr. Lambers' recommendation was for a 5-year potential sunset on sales tax, but remarked that some projects have multiple phases. Mr. Lambers stated there is not enough land available in the City to do large, multi-phase projects and sees a 5-year limit as an incentive to keep moving forward on a project. Councilmember Osman gave the example of Park Place that was only 17 acres but was a multi-phased, vertical project.

Councilmember Filla stated she is familiar with Kansas City Area Development Council (KCADC) projects where entire companies have relocated to the Kansas City area and feels Path A would be a good streamline for those kinds of situations. She stated she appreciates all the due diligence that is

already being done with the KCADC. Councilmember Filla stated she is in favor of Path A but to include caveats in the policy.

Councilmember Sipple asked where the money comes from to service the debt. Mr. Lambers replied that they would be bonds that are privately placed, and the City would not be involved but simply to act as a conduit. He explained that the way they achieve tax abatement is where the City technically owns the project and the City's tax exemption is extended to that project. Bill Hess, Gilmore & Bell, answered via Zoom. He stated the bonds would be bought by a bank or underwriter, but the amortizing of the debt comes from the payment of a lease from the company for the life of the bonds. Ben Thompson of Gilmore & Bell, appeared via Zoom and added that the City's name is on the face of the bonds but it is not a general obligation nor does it have any effect on the City's credit rating.

Councilmember Rawlings asked what the track record is for the Kansas Department of Commerce on projects asking for incentives. Mr. Lambers stated he has no way of knowing that information but mentioned he is aware of some of the financial struggles with a development at 135th St. inside a neighboring city. Mayor Dunn stated that the clawback provision will be important, if the Governing Body chooses Path A.

Councilmember Cain noted that she thought the AMC Headquarters received State incentives years ago and wondered if there were others looking to Leawood that did not receive State incentives. Mayor Dunn stated there were retention dollars in Leawood but that number of potential companies is unknown. Councilmember Cain stated she was disappointed that apartment complexes are eligible for IRBs but not condominiums because she supports ownership. Mr. Lambers stated that on the commercial side jobs are being created, and not so with single-family homes, so they are not incentivized. Mr. Hess stated that the Kansas statute allows for commercial development to include apartments.

Councilmember Azeltine stated that if a developer has already received an incentive from the State before the Governing Body would even consider a project, it then usurps the Governing Body's authority. He stated that with bonds the risk to the City is nearly zero, and he is not anxious to give away the City's property tax base. He does want companies to know the City is open to incentives with limits, and he is not in favor of putting the City's destiny in the hands of the Kansas Department of Commerce.

Mayor Dunn stated she appreciates Path A, but believes there can be exceptions. She warns that without parameters every project henceforth will demand an incentive. Mayor Dunn indicated that Mr. Lambers' proposal eliminates that from happening.

Councilmember Sipple asked whose responsibility it is to monitor the metrics on a project to check that requirements have been met. Mr. Lambers stated that if it is a project approved by the State, it is the State's responsibility. Councilmember Sipple asked that if the City provides incentives over and above what the State does, will the State monitor the City's metrics. Mr. Lambers stated the City will use the State statute metrics and the City's approval will be contingent upon the company meeting the provisions. If not met, the State would notify the City and the City would have a clawback in place. Councilmember Sipple asked where does the money from the clawback activity go. Mr. Lambers stated it is not a penalty where the company would have to pay an amount, but rather the company

would not get a tax break, for example. He said there is no return of cash because the company has not paid anything. Mr. Lambers reiterated that the City is not a venture capital bank.

Councilmember Harrison asked if there were any projects brought to the Governing Body in the last 6 months that are still hoping to move forward in which Path A would apply. Mr. Lambers stated no, because the developers would have to go through the planning process and request this type of incentive. He stated the City allows other incentives to accompany a final plan but that an IRB request would be treated separately from the planning process.

Mr. Lambers asked for consensus on moving forward with adding Path A to the IRB policy. Mr. Hess asked to clarify if Path A is only in the case of a world headquarters request. Mayor Dunn asked to use the word “special” project instead of world headquarters in the policy. Councilmember Azeltine remarked that it appears Path A was agreed upon and he suggested that the entire comprehensive plan for the IRB ordinance be brought before the Governing Body at one time. Mr. Lambers stated that they are two separate paths and did not agree with waiting. Councilmember Filla noted she supports Mr. Lambers’ suggestion.

Mr. Lambers stated the Path B is a much more complex process when done at the local level. Mr. Hess explained that the City’s credit is not on the line but they are still responsible for making sure everything is economically and fiscally in order. He stated that the City has a couple of choices when a company is asking for incentives. He explained one choice is an exemption from sales tax on construction materials, because the City has an ownership interest in the project with an IRB. The State statute provides for a 10-year exemption from property tax. He also stated that in the agreement between the company and the City there could be a provision for a payment in lieu of taxes for the full amount. Mr. Hess gave examples of school districts as taxing entities and how the abatements would affect them.

Mr. Hess does not recommend that the City be responsible for the financial representations that go with financing that is not of a high-level credit. He explained there are ways of credit enhancing, such as Letters of Credit provided by the company. He noted that the IRBs were created largely in order to produce jobs.

Mr. Thompson stated that in Path B the projects would be reviewed on a case-by-case basis with factors and metrics in place on whether or not to grant an incentive. He stated it is time consuming for the City in determining if all the factors are met. Mayor Dunn agreed that she would prefer not to see every project come before the Governing Body asking for incentives under Path B.

Mr. Lambers stated it is important that the Governing Body review all the documents provided in the Work Session packet. He stated that he would like to set some minimal parameters so that the definition of “special” is clear to companies. He stated that if the Governing Body does develop a policy on Path B he would like to include that whenever there is a denial by the City Administrator, there can be an appeal to the Governing Body. Councilmember Azeltine stated he would like to pursue Path B, but feels that Leawood should have the highest standards of any city in Johnson County. He asked when a further discussion on Path B could be scheduled. Mr. Lambers stated it can be scheduled for March 15, 2021.

Councilmember Sipple asked if a school district has a vote equal to the Council regarding incentive packages. Mr. Lambers stated that in another city in which he worked, school boards were allowed to vote giving them the opportunity to declare if they needed a payment in lieu of taxes and what that amount would be. Mayor Dunn stated that she believed the school district has veto power. Mr. Lambers replied that had come up recently with the Shawnee Mission School District, but they did not exercise that power. Mr. Hess answered that in the State statute the City is required to give notice of the proposal to the school district, but he was unsure of the veto power. Mr. Lambers stated he will double-check on it.

Mayor Dunn thanked Mr. Hess and Mr. Thompson for their insight.

The meeting adjourned at 7:21 p.m.