

## **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, May 17, 2021. Mayor Peggy Dunn presided.

**Councilmembers Present:** James Azeltine, Debra Filla, Andrew Osman, Mary Larson, Julie Cain, Chuck Sipple, and Lisa Harrison

**Councilmembers Present via Zoom:** None

**Councilmembers Absent:** Jim Rawlings

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

**Others Present via Zoom:** Ben Thompson and Kevin Wempe, Gilmore & Bell

### **Continued discussion of possible policy regarding property tax abatement and sales tax exemption through the issuance of IRBs**

Scott Lambers, City Administrator, stated that this is a continued discussion of the policy that he hopes will be finalized tonight. Patty Bennett, City Attorney, stated there are a few points on the staff memo that need to be resolved.

Ben Thompson, Gilmore and Bell, addressed the Governing Body via Zoom. He reminded the Council that this policy is when there have been no State incentives issued and a developer is requesting either a sales tax exemption or a property tax abatement.

Mayor Dunn stated the first topic up for discussion is the Jobs Requirement. She pointed out that 25 is a number that repeats in several policies throughout the County. Councilmember Azeltine stated that 25 seems very low, unless it is a special project. He recommended that the Council sets the number higher, but still be allowed to waive it. Councilmember Harrison asked what if the City offered incentives based on the number of jobs coming and staying in Leawood, then the company does not retain the jobs. Mayor Dunn stated that would be considered a clawback.

Kevin Wempe, Gilmore and Bell, addressed the Governing Body via Zoom. He explained that a clawback on unemployment figures functions as a matter of contract in the PILOT or Performance Agreement. He stated that if a performance is not accomplished over the course of the abatement, the tax incentive can be reduced or taken away. It would be by the City to include a non-compliance structure in the agreement. Mr. Wempe stated that a sub-tenant would have a similar response, in that the performance agreement contains any assignment rights that the City would be willing to grant within the scope of the intended project.

Councilmember Azeltine suggested 50 as a minimum number of jobs, in general. Mr. Lambers suggested 50 for both property tax abatement and sales tax exemption, and 25 for sales tax exemption. Councilmember Osman asked how to classify a “job” and if that means the number of employees who are physically working onsite and/or remotely. Mr. Lamberts replied that he would defer to what the State defines. Mr. Wempe agreed that there are State reports that are often cited in the performance agreement, so on a clawback, the performance is measured by employees onsite and on payroll. Mr. Lambers stated that the intent is that jobs are in the City and not remote.

Councilmember Sipple agreed that 25 is too low. He suggested 50 as a number for both of the incentives and asked if the number of jobs starts on day one or over the course of a year. Mr. Lambers replied that typically it is phased in over a period of time and that the company has to maintain that number through the remainder of the abatement period. He stated that the abatement starts in the first year under the assumption of the required jobs. Mayor Dunn agreed on 50 as a good job requirement number for both abatements and exemptions. Councilmember Azeltine stated the number should be a baseline. Ms. Bennett pointed out that if the Council decides on 50 for the sales tax exemption, it would be difficult for an apartment complex development to have that many employees. Mayor Dunn suggested that this be focused on commercial or retail where it is more applicable, rather than for multi-family development. Councilmember Harrison agreed that the baseline number would apply more for commercial and retail. She expressed concern for jobs onsite versus employees working remotely. Mayor Dunn replied that it will be a case-by-case analysis. Mr. Thompson stated that he was notified by the Leawood Chamber of Commerce that there was a recent change in the State law regarding employment based on which state the employee is taxed in. Mr. Wempe noted that the annual report mechanism in the State reports is what the City will rely upon but that the City does have the ability to audit the company, if needed.

Councilmember Azeltine opined that the employment numbers should start on day one, but affirmed that it is up to the State’s definition. Mayor Dunn agreed that the number of jobs should be for Leawood employees and not remote workers in other states. Councilmember Filla suggested it be 50 employees by the year end to allow them to transition, move or relocate to the City, if necessary. Councilmember Cain clarified 12 months, instead of year end. Councilmember Azeltine pointed out that it should be apparent in the application process if there is an appropriate number of office spaces planned.

Councilmember Cain asked about companies who plan to lease part of their building. Mr. Wempe stated that situation is not atypical because this type of financing is normally granted to industrial facilities that allow for sub-leasing. He stated on the commercial and retail end, it is fairly common. He suggested that in future performance agreements that the City consider adding prohibited uses.

Mayor Dunn asked if the Design Criteria language needs to be reviewed. Ms. Bennett pointed out that some cities reference policies that give preference to those who cannot use other tools, such as a Transportation Development District (TDD) or Special Benefit District (SBD.) Mayor Dunn mentioned the first item under “Preference will be given...” is closely matched to the Climate Action Playbook.

Councilmember Azeltine replied that the language “to exceed” is ambiguous and that it needs to be measurable. Mayor Dunn suggested replacing it with “demonstrate.” Councilmember Filla stated that some of the items on the list are measurable, such as energy efficiency that is defined in the City Code. Ms. Bennett pointed out that it is a list of seven items, but not all items have to be met. She explained that it is not a list of requirements, but that preference will be given, as in a bonus.

Councilmember Azeltine asked if there will be language in the ordinance to allow the Council to waive any of the requirements. Ms. Bennett warned that it would give them no standards and every developer would ask to waive requirements on every project. Mr. Lambers stated that preferences given are not intended to be a requirement. Mayor Dunn stated that the Council is looking for special projects and the list helps define what is considered special. Ms. Bennett stated that the list gives developers what the Governing Body is looking at, in terms of favorability.

Mayor Dunn stated that burying power lines is already in the Leawood Development Ordinance (LDO.) Ms. Bennett stated that projects could be looked at more favorably for those on the south side of 135<sup>th</sup> St.

Mayor Dunn stated when a project meets all the LDO requirements and developers do not request variances, exceptions or deviations, it eliminates lengthy conversations. Ms. Bennett confirmed that variances and exception requests go to the Board of Zoning Appeals (BZA) and deviations are defined in the LDO, so a developer is looked upon more favorably if there are no requests for special deviations.

Mayor Dunn stated that she agrees with the suggested language for a Mixed Use District (MXD.) Mr. Lambers commented that it is the synergy that retail and restaurants bring to an area that is important.

Mr. Lambers recommended that the City be as flexible as possible when issuing incentives or limiting the number of requests for an outstanding project that qualifies in the type of incentives that the City has. He stated that the Council still has the ability to approve or deny a project. Councilmember Azeltine asked if the other incentives would be included in the development agreement. Mr. Lambers confirmed but pointed out a Community Improvement District (CID) would not be eligible for new projects. Councilmember Filla noted that this should not be included in the list of preferences given. Mr. Lambers agreed and stated that the language should be deleted under Design Criteria and moved to another section of the policy.

Mayor Dunn stated that she is not in favor of property tax abatement for multifamily projects. Councilmember Azeltine agreed but asked about MXD projects being separated from the incentive. Councilmember Osman stated that he is not opposed if the multifamily development takes place at the same time as the office and retail construction and stated his concern with phasing a project. Councilmember Filla stated that if the project is similar to Park Place, she is in favor of the abatement. Mayor Dunn stated that she is not against sales tax exemption on multifamily projects if they have structured or underground parking. She stated that she is in favor of incentivizing the retail and commercial development, but not abatements on apartments.

Councilmember Osman questioned that if a project included an apartment building (podium/pyramid style) that has first floor retail or office, how it would be apportioned for incentives. Mayor Dunn stated it is done by the County appraisal. Mr. Lambers replied that for those projects an entire building will be constructed as mixed use, which is the intent of MXD. He warned that if structured parking is dedicated to commercial in a mixed-use development, the apartment complex cannot receive the incentive.

Councilmember Cain agreed with the property tax abatement not being available for multifamily, but should be allowed for sales tax exemption with structured parking or if it is an exemplary project. She asked about multifamily ownership versus leases. Ms. Bennett replied that it has to be leased property to be under the Industrial Revenue Bond (IRB) statute.

Councilmember Filla asked about TDD versus tax abatements. Mr. Lambers replied that a TDD can be either a property tax or sales tax exemption. He stated the TDD includes a special assessment. Councilmember Filla asked if there are any tax exemptions for condominiums. Mayor Dunn replied that there are none for residential ownership. Ms. Bennett reiterated that the IRB statute does not include owned residential property and is not allowed.

Mr. Lambers asked for a consensus from the Governing Body on who prefers sales tax exemption only, property tax abatement only, or both in regards to multifamily with structured parking. Mayor Dunn, Councilmembers Cain, Filla, Osman, Harrison, Azeltine and Larson agreed to sales tax exemption only. Councilmember Sipple agreed to both an exemption and abatement.

Mr. Lambers explained that the podium style building mentioned earlier by Councilmember Osman could qualify for both, provided it had the different types of components included. Councilmember Osman pointed out that typically one footprint of a building is for one property and it can be parceled out floor by floor under one ownership. Mr. Lambers replied that all three tax rates are the same at 25%. Mr. Wempe clarified that multifamily is taxed at 11.5% for a residential rate. He stated that retail cannot be subject to property tax abatement in a mixed use project. He explained that for facilities that have mixed uses, they can condo out the building so that certain subsets of the building can be subject to property tax and can be abated as a separate tax parcel.

Ms. Bennett asked if the Council would like to consider a minimum number of employees with the sales tax for multifamily with structured parking. Mayor Dunn stated that she does not see the value in having that number. Councilmember Cain mentioned that Park Place is a live/work area that was not incentivized other than TDDs for the structured parking and that it is thriving.

Mr. Lambers stated that staff will make the updates as discussed at this session and present the completed policy to the Governing Body in a City Council meeting in June. Mayor Dunn thanked Mr. Wempe and Mr. Thompson for their participation and guidance.

*The meeting adjourned at 7:15 p.m.*