

## **PUBLIC MEETING NOTICE**

### **CENTRAL CITY ECONOMIC DEVELOPMENT SALES TAX BOARD**

A public meeting of the Central City Economic Development Sales Tax Board will take place at the following place and time:

Monday, November 27, 2017

6:00 p.m. – 8:00 p.m.

Southeast Community Center

4201 E. 63<sup>rd</sup> Street., Kansas City, Missouri 64130

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For the purposes of taking up the following matters:

#### **Agenda**

- A. Call to order
- B. Introduction/Purpose of Meeting
- C. Kansas City Planning Department Presentation
- D. Community Discussion/Presentation
- E. Scheduling of future meeting(s)
- F. Adjournment

#### **Additional Business**

- There may be general discussion of matters related to the Central City Economic Development Sales Tax.
- Pursuant to subsection (1) of Section 610.021 of the Revised Statutes of Missouri, there may be a closed session to discuss legal matters, litigation or privileged communications with attorneys.

**Any person with a disability desiring reasonable accommodation to attend this meeting should contact the City's 311 Action Center at (816) 513-1313 or send an e-mail to [meg.conger@kcmo.org](mailto:meg.conger@kcmo.org) at least 24 hours prior to the meeting.**

**CENTRAL CITY ECONOMIC DEVELOPMENT SALES TAX BOARD**  
**MEETING MINUTES**

**Meeting Date/Time/Location:** Wednesday, November 14, 2017  
8:30 a.m.  
Robert J. Mohart Multipurpose FOCUS Center  
3200 Wayne Ave., Kansas City, Missouri 64109

**Members Present:** Herbert Hardwick  
Donna Wilson  
Keith Brown  
Ron Finley  
Melissa Patterson-Hazley

**Members Absent:** N/A

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**Agenda Items:**

- A. The meeting was called to order by the Chair at 8:33 a.m.
- B. The City Clerk, Ms. Marilyn Sanders, administered the oath of office to each of the Board members.
- C. The Board members proceeded to review the draft minutes from the October 18, 2017 meeting. Ms. Wilson moved that the Board approve the minutes. The motion was seconded by Ms. Patterson-Hazley. The motion was approved by voice vote with all Board members voting in the affirmative. The Chair noted that he may have minor grammatical revisions that he would send to Mr. Rabineau for incorporation.
- D. The Board proceeded to consider adoption of bylaws as redlined by Mr. Rabineau pursuant to the discussions at the October 18, 2017 meeting. Mr. Rabineau discussed each of the redlines with the Board members and discussion ensued about the need for bylaws at all, followed by discussion related to specific provisions. Mr. Finley noted that he remained concerned about the minimum of twenty-four (24) hours' notice of meetings pursuant to Section 2.6. It was decided that it was preferable to keep that language so that the Board did not limit its ability to meet on short notice should a situation compel

it. Staff to the Board was directed, however, to endeavor to provide at least seventy-two (72) hours' notice to the Board members as a matter of standard policy. Ms. Patterson-Hazley suggested that the officers' terms of office as provided in Section 3.2 should continue for the duration of their term on the Board. The Board discussed that issue and ultimately agreed that the section should be further revised to reflect that officers would be elected every second year. The Chair requested a revision to Section 3.10 to clarify that any delegation of duties to another officer would only continue for so long as the officer remained absent. Ms. Wilson moved that the Board approve the bylaws as further revised. The motion was seconded by Mr. Brown. The motion was approved by voice vote with all Board members voting in the affirmative.

- E. The Board proceeded to take up the appointment of officers. Mr. Brown nominated Ms. Patterson-Hazley for Vice-Chairperson, Mr. Finley for Treasurer and Ms. Wilson for Secretary. Ms. Patterson-Hazley made a motion to close the nominations. The motion to close nominations was seconded by Ms. Wilson. There being no further discussion, the Board approved the slate by voice vote with all Board members voting in the affirmative.
- F. Mr. Rabineau proceeded to discuss the uses to which the Central City Economic Development Sales Tax funds could be utilized, pursuant to a memo which was distributed to the Board. There was general discussion about the range of permissive uses from funding social benefit programs up to and including hard construction. The Chair requested Mr. Rabineau revise the memo in a format that can be shared with the general public. The Board was informed that the City was establishing a website for the Board's materials and that the memo would be included on that site once available.
- G. The City's Director of Finance, Mr. Randy Landes, proceeded to address the Board and discuss the City's budget process, the range of options available to it in administering the funds, when funding would become available, and the manners in which the funds might be budgeted and appropriated. There was general discussion about those issues.
- H. The City's Director of Planning, Mr. Jeff Williams, informed the Board that his department has been compiling information about existing plans in the geographical area and would be presenting relevant information from the City's Data Book at the upcoming evening meeting.
- I. The Board discussed the matter of the boundaries in which the Central City Economic Development Sales Tax funds could be spent. Mr. Rabineau discussed the ballot and ordinance language with the Board and noted that neither provided any specificity as to where those boundary lines lie with respect

to the general street identifiers. There was discussion about including parcels that immediately front and abut the designated streets so that development was cohesive with respect to the exterior boundaries. The Board noted the need to limit the boundaries to immediately abutting parcels so that the sales tax proceeds did not creep beyond those areas that were intended to be addressed.

- J. Mr. Rabineau noted that formal resolutions had been prepared to implement the actions approved by the Board and identified those resolutions for the Board. Ms. Wilson moved to approve Resolution Nos. 2017-1, 2017-2, 2017-3, and 2017-5. The motion was seconded by Ms. Patterson-Hazley. The motion was approved by voice vote with all Board members voting in the affirmative.
- K. Ms. Patterson-Hazley moved to adjourn. The motion was seconded by Mr. Brown. The motion was approved by voice vote with all Board members voting in the affirmative. The meeting was adjourned at 10:12 a.m.
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## OFFICE OF THE CITY ATTORNEY

TO: Central City Economic Development Sales Tax Board  
FROM: Brian T. Rabineau, Assistant City Attorney  
DATE: November 14, 2017  
SUBJECT: Central City Economic Development Sales Tax

This memo will provide an overview of the required, permitted and prohibited uses of the newly enacted 1/8 cent central city economic development sales tax. These issues are governed by Section 67.1305, RSMo and Section 68-449(b), Code of Ordinances, copies of which have been separately distributed to each board member.

### REQUIRED USES

1. A minimum of twenty percent (20%) of the proceeds must be used for public infrastructure and/or development site preparation, so the Central City Economic Development Sales Tax Board (the "Board") should ensure that at least 20% of the project expenses it might recommended to the City Council fall within this category. The enabling legislation refers to these more generally as "projects directly related to long-term economic development preparation."<sup>1</sup> These include projects like the following (this list is not exhaustive):

- Land acquisition
- Demolition/Clearing
- Installation of infrastructure for industrial/business parks
- Improvements to waste/wastewater treatment capacity
- Streets/Sidewalks/Lighting
- Public facilities directly related to economic development and job creation
- Matching funds for federal/state grants

Note: This is only a minimum threshold. Up to one hundred percent (100%) of the funds may be spent on this category.

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<sup>1</sup> Section 67.1305.10(2), RSMo

## **PERMITTED USES**

1. Up to twenty-five percent (25%) of the proceeds may be used to cover administrative expenses in administering the central city economic development sales tax and the projects funded using it.<sup>2</sup> This could include funding for staffing (whether City, third party, or both), any consultant work that is needed, as well as providing a funding source for any city department(s) or contractor(s) (such as the Economic Development Corporation) providing services related to the administration of this fund.
  
2. Whatever amount is left (which may be as little as 0% but no more than 80% of the proceeds) can be used for almost anything one could classify as being related to economic development of a nature that will benefit the general public. This would include things like the following (this list is not exhaustive):<sup>3</sup>
  - Job training programs
  - Marketing
  - Financial subsidies to specific projects in the form of grants and/or loans for equipment acquisition, site development, construction, professional services, etc.
  - Economic development revolving loan program
  - Minor home repair
  - Lead abatement
  - Nuisance abatement
  - Small business assistance
  - Retirement of public debt under previously authorized bonded indebtedness or the repayment of bonds issued in the future, assuming those bonds were used for that which has not otherwise been prohibited (see **PROHIBITED USES** for further explanation).

The permitted uses are broad. The Missouri Constitution generally prohibits the City from granting any public money to private parties.<sup>4</sup> This does not, however, prevent grants of funds to private parties if those grants are made for a public purpose. So long as the welfare of the community is the objective intended to be primarily served by the expenditure, it is also permissible that private parties might enjoy incidental benefits.<sup>5</sup> Investments that are being made for the purpose of bringing direct and indirect economic benefits to the community, such as through the creation/retention of jobs and

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<sup>2</sup> Section 67.1305.10(1), RSMo

<sup>3</sup> Section 67.1305.10(3), RSMo

<sup>4</sup> Mo. CONST. Art. VI §§23, 25

<sup>5</sup> *State ex rel. Jardon v. Industrial Development Authority of Jasper County*, 570 S.W.2d 666, 674 (Mo. banc 1978)

improvements to the living standards of the local community have been deemed to serve primarily public purposes and are permissible.<sup>6</sup> It is important, however, to keep this in mind as you are recommending projects under this permissive category. The first object must always be to articulate the ways in which the contemplated investment will result in positive economic impacts to the community as a whole rather than to any particular project or person.

The Board should strive to identify the primary public purpose to be served by any project it recommends to the City Council, as it may be better positioned than the City Council to articulate how economic development would be promoted by the same.

Note: These are truly permissive uses, and there is no statutory requirement that the funds *must* be spent. So long as the minimum of 20% is used as required, the remaining balance could also be held in reserve until needed.<sup>7</sup>

### **PROHIBITED USES**

The following categories of uses are unlawful, *even if* they might otherwise classified as required or permitted uses:

1. Providing funding for the Board or its members.<sup>8</sup> This Board is statutorily prohibited from having an operations budget, funding or reimbursement of any kind.
2. Expending any revenue outside the boundaries of the area bounded by 9<sup>th</sup> Street on the north, Gregory Boulevard on the south, Paseo on the west, and Indiana on the east.<sup>9</sup>
3. Funding any "retail development project" or retiring debt under previously authorized bonded indebtedness or repaying bonds issued in the future, to the extent those bonds were/are used to finance any "retail development project." (There are limited exceptions. See **RETAIL DEVELOPMENT PROJECTS** subheading for additional analysis on this issue).

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<sup>6</sup> See, *Moschenross v. St. Louis County*, 188 S.W.3d 13, 22 (Mo. App. 2006)

<sup>7</sup> Section 67.1305.11, RSMo

<sup>8</sup> Section 67.1305.12(1), RSMo

<sup>9</sup> Section 67.1305, RSMo does not address whether and how these funds may be used if outside the geographical boundaries but still within the confines of the City's corporate limits. Nevertheless, the voters only authorized the tax proceeds "to be used for funding economic development projects within the area bounded by 9<sup>th</sup> Street on the north; Gregory Boulevard on the south; The Paseo on the west; and Indiana Avenue on the east[.]" See, Ordinance No. 160861, As Amended, Section 2. This is further reflected in Section 68-449(b), Code of Ordinances.

4. Redirecting any economic development sales tax increment to any existing or future tax increment financed project unless (1) the Board recommends to the contrary and (2) the City Council acts to authorize the redirection.<sup>10</sup>

The Board should strive to not recommend any prohibited use to the City Council, regardless of a particular project's merit, as the City Council would presumably not grant its approval to any unlawful expenditure.

## RETAIL DEVELOPMENT PROJECTS

Retail development projects are a unique category of expenditures, subject to a special subset of rules. The enabling legislation establishes a general rule that "[n]o revenue generated by the tax . . . shall be used for any retail development project."<sup>11</sup> The term "retail development project" is not defined by the enabling legislation, nor anywhere else in state statutes. It is a basic rule of statutory construction, however, that we seek to ascertain and give effect to the General Assembly's intent.<sup>12</sup> Undefined words are to be given their ordinary and usual meaning which, in the absence of a statutory definition, may be derived from the dictionary.<sup>13</sup> Retail is defined as "[a] sale for final consumption in contrast to a sale for further sale or processing (i.e., wholesale). A sale to the ultimate consumer."<sup>14</sup> This memo, as well as the enabling statute, should be interpreted as referencing places where the general public is able to make a purchase, e.g., a shopping center, strip mall, retail PAD site, etc.

There is language in the enabling statute that, if read in isolation, wholly exempts retail development projects owned by a public entity, e.g., the Linwood Shopping Center, from this prohibition. After prohibiting the use of funds for retail development projects, the General Assembly proceeded to mandate that the City "shall" spend funds on things such as "[p]ublic facilities directly related to economic development and job creation."<sup>15</sup> A publicly-owned retail center would be a public facility and it is difficult to argue that it would be anything other than related to economic development and job creation. This language ultimately does *not*, however, render the retail prohibition inapplicable with respect to such projects. When two statutory provisions on the same subject matter are unambiguous when read separately, but conflict when read together, they must be

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<sup>10</sup> Section 67.1305.15, RSMo

<sup>11</sup> Section 67.1305.10(1), RSMo

<sup>12</sup> *Centerre Bank of Crane v. Director of Revenue*, 744 S.W.2d 754, 759 (Mo. banc 1988)

<sup>13</sup> *Spradlin v. City of Fulton*, 982 S.W.2d 255, 262 (Mo. banc 1998)

<sup>14</sup> BLACK'S LAW DICTIONARY 1315 (6<sup>th</sup> ed. 1990)

<sup>15</sup> Section 67.1305.10(2)(e), RSMo



harmonized so that both are given effect if at all possible.<sup>16</sup> The only reasonable harmonization of these provisions is that “public facilities directly related to economic development and job creation” is to be construed as encompassing something other than what might otherwise be deemed a “retail development project.” Thus, the balance of this memo will proceed on the assumption that retail development projects, whether publicly or privately owned, are to be analyzed in the same manner.

There is only one relevant category of “retail development project” that has been wholly and expressly exempted from the prohibition. The central city economic development sales tax funds *may* be spent on retail development projects located in a “historic district.”<sup>17</sup> The term “historic district” is also not defined by the enabling legislation. We do, however, find the General Assembly’s intent elsewhere. The Local Historic Preservation Act granted to every city the power to create a historic preservation commission that would, among other things, make recommendations to the governing body as to the designation of historic districts.<sup>18</sup> The City subsequently established a local Historic Preservation Committee, reiterated its charge with respect to historic districts, and defined that term as including “buildings, structures, sites or objects as designated by the city council as together having particular historic, cultural, aesthetic or architectural significance and limited in size to that area reasonable for the proper identification and maintenance of the district; except that a district designated because of a common thematic element of historic, cultural, aesthetic or architectural significance need not be limited to such an area.”<sup>19</sup> What qualifies as a “historic district” may ultimately fluctuate over the 10-year life of the economic development sales tax. At present, however, it would include the 18th & Vine Streets Historical District.<sup>20</sup>

Beyond this, we begin to enter into an area of progressing uncertainty. Neither the enabling legislation, nor any of its analogous counterparts applicable to different jurisdictions, have ever been subjected to legal challenge. Thus, we ultimately cannot know with absolute certainty what conclusions any court asked to construe the statutory language might draw. In such circumstances, the safest and most conservative course of action would be to maintain total separation between the fund and “retail development projects” located outside a “historic district” in making recommendations to the City Council. If, however, there should ever come a time that the Board believes committing these revenues would further a public purpose sufficient to outweigh the risk that the funds might have to be restored, there are three ways in which that might be accomplished.

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<sup>16</sup> *Anderson ex rel. Anderson v. Ken Kauffman & Sons Excavating, LLC*, 248 S.W.3d 101, 107 (Mo. App. 2008)

<sup>17</sup> Section 67.1305.10(1), RSMo. Retail projects are also permitted if they are within the “downtown” area, but that exclusion is inapplicable and will not be discussed further given that this particular tax has been restricted to an area that excludes the downtown in its entirety.

<sup>18</sup> Section 253.415.2(2), RSMo

<sup>19</sup> Sections 2-912, 2-913, 2-914 and 2-916, Code of Ordinances

<sup>20</sup> <<https://data.kcmo.org/Historic-Preservation/Historic-Preservation-Map/v5e4-xbn4>>

1. Request that the City Council designate the area containing the “retail development project” a new “historic district.” The enabling legislation does not contain any limitations on the number or locations of historic districts. The creation of one (assuming it is otherwise proper under the standards established for such designations) is wholly a matter of local concern.
2. Request that the City Council approve utilization of the Real Property Tax Increment Allocation Redevelopment Act (the “TIF Act”) as a mechanism for reaching 50% of the incremental economic development sales taxes generated within a TIF Plan area. The enabling legislation allows this revenue to be redirected *if* (1) the Board recommends such redirection and (2) the City Council acts to authorize the redirection.<sup>21</sup> As previously noted, the enabling legislation purports to prohibit the use of the tax revenues for retail development projects, but the TIF Act contains no such similar restriction on the funds once they are captured under its provisions. The TIF Act is an exception to the requirement that sales taxes be devoted only to their specified purposes; the courts have already determined that sales tax enabling language mandating that a tax only be used in a certain manner becomes inapplicable once that revenue is captured under the TIF Act.<sup>22</sup> While it appears that a court has not yet heard a corollary case about how one is to construe sales tax enabling language that prohibits certain uses, a similar outcome can reasonably be anticipated. Mandating what a tax must be used for and prohibiting what a tax may be used for are ultimately identical in their impact in that each attempts to control its usage.
3. Recommend to the City Council that project reimbursements (or bond payments, if applicable) be allocated in a manner that segregates the “retail development project” from ancillary, albeit related, projects. The enabling legislation speaks in terms of projects. Retail development is a forbidden project. But other projects – projects which are not in the nature of development, but *preparation* for development – are permitted. These include those categories of expenses identified above under the **REQUIRED USES** subheading. It is possible that a court asked to construe this language might conclude that the General Assembly intended to prohibit the use of funds for both development and preparation for development activities in connection with retail development. There is also, however, a construction of these provisions that is arguably more consistent with the General Assembly's objectives.

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<sup>21</sup> Section 67.1305.15, RSMo

<sup>22</sup> *State ex rel. Village of Bel-Ridge v. Lohman*, 966 S.W.2d 356, 358-59 (Mo. App. 1998)(taxes that were to be used “only for the planning, development acquisition, construction, maintenance and operation of public transit facilities” and “solely for capital improvements” were captured by TIF Act notwithstanding the sales tax enabling language restricting the proceeds to specific uses).

Economic development preparation is a massive and expensive undertaking, particularly if a site warrants environmental abatement work. Property might be acquired, cleared, or even improved in some fashion in anticipation that it might be developed at a later date. The specifics of that development may not be concrete. Moreover, certain sites that have been prepared for development may ultimately include mixed-uses, including both the suspect “retail development project” and other more innocuous projects, e.g., office projects, residential projects, transit projects, etc. The nature of pre-development work would suggest that the General Assembly intended to draw the aforementioned distinction between site preparation and site development. If that were not the case, the General Assembly’s objective in encouraging that land be prepared for long-term economic development would be stymied. The Board would be reluctant to recommend expenditures related to preparing sites because if a prepared site were ultimately improved with a retail development project at some point – an occurrence that may not even be within the Board’s or City’s ability to prohibit – what appeared lawful in the first instance would be rendered unlawful. The General Assembly presumably did not intend to create that uncertainty or disincentive to pursue the very economic development it hoped to encourage by authorizing the economic development sales tax. Should this issue ever be resolved by the courts, there are statutory and policy arguments that could be advanced for distinguishing between site preparation and any vertical retail construction that follows, the former being permitted and the latter being prohibited.