COMPARED VERSION
NEW ORDINANCE TO CODE BOOKS

ORDINANCE NO. TMP-6642

Amending Chapter 3, Code of Ordinances, by repealing Section 3-622, Prevailing wage application to incentive plans, and enacting in lieu thereof a new Section 3-622, for the purpose of enlarging the establishing applicable prevailing wage policies for certain types of categories of incentive projects, amending Chapter 3, Code of Ordinances by repealing Section 3-437, Waiver of MBE/WBE goals, for the purpose of greater alignment and efficiency among any economic development agency created by the city, and amending Chapter 74, Code of Ordinances, by repealing Section 74-11, Affordable housing set aside, and enacting in lieu thereof a new Section 74-11, for the purpose of right-sizing the Payment in Lieu fee to better reflect amount in subsidies provided per unit of affordable housing.

WHEREAS, the City of Kansas City, Missouri ("the City"), seeks to foster a robust and equitable economy through the strategic deployment of development incentives, infrastructure investment, and business attraction efforts; and

WHEREAS, the Economic Development Corporation of Kansas City ("EDC") serves as the primary portal for business recruitment and retention, providing a centralized point of entry for developers and businesses seeking to grow within the municipal boundaries; and

WHEREAS, the Port Authority of Kansas City ("Port KC") possesses unique statutory authority under Chapter 68 of the Revised Statutes of Missouri to catalyze development through the use of Port Improvement Districts, AIM Zones, and multi-modal logistics infrastructure; and

WHEREAS, a lack of coordination between separate development agencies can lead to inconsistent application of workforce standards, such as prevailing wage and minority-owned business (MBE/WBE) participation goals, thereby creating uncertainty in the marketplace; and

WHEREAS, the City of Kansas City's current affordable housing set aside policy and Payment in Lieu fee structure was calculated using the total cost of building a housing unit, rather than the subsidy necessary to make that unit affordable; and

WHEREAS, right-sizing the Payment in Lieu fee to align with the average Housing Trust Fund subsidy across development will ensure more consistent and effective PIL payments to support the production of affordable housing; and

WHEREAS, the alignment of the EDC and Port KC ensures that public incentives are used complementarily rather than competitively, preventing "agency shopping" by developers and ensuring the highest return on investment for Kansas City taxpayers; and

WHEREAS, consistent policy alignment regarding workforce protections, housing affordability requirements, and environmental sustainability allows the City to maintain a competitive edge against regional peers while upholding its commitment to social equity; and

WHEREAS, the unification of strategic goals—specifically in transit-oriented development and the revitalization of the Central Business Corridor—enables the City to streamline the public approval process, reducing bureaucratic delays for high-impact projects; and

WHEREAS, recent collaborative efforts, including the introduction of parallel legislation to standardize labor and apprenticeship requirements across both agencies, demonstrate that a unified front strengthens the City's negotiating position with private entities; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 3, Code of Ordinances, is hereby amended by repealing Section 3-622, Conditions, and enacting in lieu thereof a new section of like number and subject matter to read as follows:

Sec. 3-622. ~~Prevailing wage applications to incentive plans~~Conditions.

(a) The following definitions shall apply to this section:

(1) *Board* shall mean the ~~Fairness~~fairness in ~~Construction Board~~construction board.

(2) *City* means the City of Kansas City, Missouri.

(3) *Director* means the director of the civil rights and equal opportunity department or such director's delegate.

(4) *Prevailing wage rate* shall mean the prevailing hourly rate of wages as set forth in RSMo §§ 290.210 to 290.340 and the annual wage order which is paid to a workman engaged in work of a similar character within the locality.

(5) *Wage theft* shall mean the withholding or denial of wages or employee benefits rightfully owed to a workman or employee.

(6) *Workman* means a person employed to perform labor for which a prevailing wage rate is applicable.

(b) Unless superseded by federal or state law, no less than the prevailing wage rate shall be paid to a workman performing work as part of the construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair on any of the following:

(1) ~~All construction contracts entered into by the city~~ Projects in any of the following asset classes and for which the total ~~project cost exceeds $75~~estimated costs for construction equal or exceed $3,000,000.00~~.~~, as annually adjusted:

~~(2) Any new development plan, substantial modification to an existing plan, or development project, that is approved by the city council or any economic development agency created by the city and that seeks ad valorem real and/or personal property tax abatement, exemption, redirection, tax contribution, City or City created economic development agency grant, or other City or City created economic development agency subsidy for which the total project cost exceeds $75,000.00 conducted as part of the plan or project.~~

~~(3) Any projects on property leased by the city for which the total project cost exceeds $75,000.00.~~

~~(e~~a. *Data Centers*. Those buildings or facilities primarily dedicated to housing IT infrastructure, including servers, data storage systems, and networking equipment, for the purpose of storing, processing, and disseminating data for applications, cloud computing, AI, and/ or daily business operations.

b. *Industrial and Manufacturing.* Those buildings or facilities in the nature of factories, plants, or warehouses primarily intended to be used for manufacturing, fabricating, repairing, processing, assembling, and/ or storing goods, commodities, and materials.

c. *Logistics.* Those buildings or facilities in the nature of warehouses, distribution centers, or fulfillment hubs that are designed to store, manage, and facilitate the distribution of goods from manufacturers to retailers or final consumers and which incorporate activities such as receiving, sorting, inventory control, packaging, and/or shipping.

d. *Office.* Those buildings or facilities designed to primarily house administrative, professional, and/or clerical worker and provide the necessary infrastructure for business operations.

(2) Projects in any of the following asset classes and for which the total estimated costs for construction equal or exceed $15,000,000.00, as annually adjusted:

a. *Hotels.* Those buildings or facilities providing lodging to transient guests on a short-term basis and having at least fifty (50) keys.

b. *Multifamily.* Those buildings or facilities housing more than one family within a single building or complex of interrelated buildings.

c. *Mixed Use.* Those buildings or facilities integrating multiple asset classes or elements within a defined geographical area.

(c) The foregoing dollar thresholds shall be adjusted annually, commencing in January 2027, by a percentage equal to the preceding 12-month change in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average (not seasonably adjusted), as published by the Bureau of Labor Statistics, or if the publication of such Consumer Price Index is discontinued, a comparable index similar in nature to the discontinued index which clearly reflects that diminution (or increase) in the real value of the purchasing power of the U.S. dollar reported for the calendar year in question.

(d) The director shall promulgate rules and regulations as are necessary to carry out the provisions of this section. All such rules and regulations shall be provided to the economic development agencies created by the city and authorized to approve tax abatement, exemption or redirection within ten days of their promulgation.

(e) Notwithstanding the foregoing provisions of this section, ~~the city council~~any economic development agency created by the City shall retain the discretion to waive the requirements of this section~~. The city council shall give particular consideration to~~ based on the following characteristics~~ ("extraordinary qualifications") in determining whether to authorize waiver~~, regardless of ~~this section:~~estimated costs for construction:

(1) ~~(1) Projects~~Hotel projects that:

a. Are located in a severely distressed census tract that has continuously maintained such status for not less than ten years~~ immediately prior to the effective date of the request.~~ ; or

~~b.~~a. ~~(2) Projects that support affordable housing and extremely affordable housing by meeting the requirements Code § 74-11, for such housing~~Involve~~.~~

~~(3) Projects that connect residents living in continuously distressed census tracts to new employment opportunities by:~~

~~a. Providing at least 100 new entry-level jobs to Kansas City with an annual salary of at least $32,000.00, or $42,000.00 inclusive of wages and benefits; and~~

~~b. Incorporating options for mass public transportation or locating in an established high-frequency transit corridor.~~

b. ~~(4) Projects that involve~~ the renovation or rehabilitation of a building that has been designated by a government entity as a local or national historic landmark~~ or contribute~~, contributes to a historic district, or is the subject of a pending application with the National Park Service to be placed on the National Register of Historic Places.

(2) Multifamily projects that:

a. are located in a severely distressed census tract that has continuously maintained such status for not less than ten years; or

~~c.~~b. involve the renovation or rehabilitation of a building that ~~have filed an~~has been designated by a government entity as a local or national historic landmark, contributes to a historic district, or is the subject of a pending application with the National Park Service to be placed on the National Register of Historic Places~~, in which case the exclusion would be subject to such designation being approved.~~; or

c. include an affordable housing set aside meeting the requirements of Section 74-11, Code of Ordinances, as the same is amended from time-to-time, or that contain a mixture of unit types and for which the rent and utilities will not collectively exceed 30% of the income of a household at or below eighty percent (80%) of the HUD MFI for all households within the Kansas City metropolitan area.

(3) Projects of any asset class that:

a. are awarded an allocation of funds from the City of Kansas City, Missouri's Central City Economic Development Sales Tax.

(e) Any economic development agency created by the ~~City~~city may waive the requirements of this section on a case-by-case basis and enter into a development or financing agreement that does not require compliance with this section~~, if the project meets extraordinary qualification (1) (3) or if the project meets extraordinary qualification (4) and the total cost of the project does not exceed $1,000,000.00. Total~~ regardless of asset class or estimated costs of ~~the project~~construction. The developer, or the contractor acting on its behalf, shall ~~be based on the total costs of the entire project to be developed pursuant to the accompanying agreement with the~~bear the burden of requesting such a waiver and establishing, to the relevant economic development agency's satisfaction, the basis upon which such a waiver may be appropriate. Any such waiver shall be requested in writing, delivered to the economic development agency~~, not just based on the cost of the public contribution. For project where the total cost exceeds $1,000,000.00 the~~ at least thirty (30) calendar days prior to the agency's adoption of a resolution authorizing the waiver. Such request shall include therein the rationale for the requested waiver. The economic development agency ~~may choose to make a recommendation~~shall review the request, and the final determination shall be reserved solely for the agency. In the event the developer, or the contractor acting on its behalf, elects not to ~~the council as~~ request a waiver within the time limits established herein, or timely requests a waiver which is subsequently denied by the economic development agency, then the prevailing wage requirements shall be applicable to ~~whether waiver should be granted.~~the full extent required by this section. No subcontractors of any tier shall be permitted to request a waiver.

(f) Any contractor, subcontractor, developer or any other entity who performs work on a city contract, or receives tax incentive, abatement, redirection, contribution, grant, or other subsidy, from the ~~City~~city or an economic development agency created by the city, or contracts for the construction of a project or development on land owned by the city shall be subject to the following penalties if determined by the director to have not paid prevailing wage or otherwise engaged in wage theft:

(1) Termination of contract; and

(2) Loss of tax incentive, abatement, or redirection; and

(3) Debarment from future work pursuant to section 3-321.

(g) Upon a finding of non-compliance with this section, the director has the discretion to impose any of the above penalties. Any entity subject to penalty may appeal the determination of the director to the board in conformance with the appeal process outlined in section 3-453.

(h) In addition to penalties imposed pursuant to RSMo § 290.340, any person who is found to have violated this section shall be guilty of an ordinance violation, punishable by a fine of not more than $500.00, by imprisonment of not more than 180 days, or by such fine and imprisonment.

(i) This section shall apply only to projects that have not yet submitted an application for the abatement, redirection or exemption of taxes to the city or any economic development agency created by the city and shall not be construed in a manner as to apply to any tax abatement or transaction authorized by the city, any economic development agency created by the city, or any other public entity prior to May 14, 2021. Notwithstanding the foregoing, the requirements of this ~~ordinance~~section shall be imposed on any project that has submitted to the city or any economic development agency created by the city an application for the abatement, redirection or exemption of taxes prior to its effective date but has not received final approval from the relevant authorizing body within three years of May 14, 2021.

Section 2. That Chapter 3, Code of Ordinances is hereby amended by repealing Section 3-437, Waiver of MBE/WBE goals, and enacting in lieu thereof a new section of like number and subject matter to read as follows:

Sec. 3-437. Waiver of MBE/WBE goals.

(a) When a request for waiver has been filed on a city contract, the director may grant a full or partial waiver of contract goals when the director has determined a bidder or proposer has not met the goals despite its good faith efforts, as defined in section 3-441. When a request for waiver been filed on an ~~Incentive Agency Contract~~incentive agency contract, the ~~Director~~director and ~~Incentive Agency~~incentive agency shall make a mutual determination as to whether the ~~Developer~~developer or its prime ~~Contractor~~contractor has made good faith efforts, as defined in section 3-441 to meet the ~~Contract~~contract goals, and to the extent the ~~Director~~director and ~~Incentive Agency~~incentive agency fail to mutually agree within ~~thirty (~~30~~)~~ calendar days, the applicable ~~Board~~board as determined by sections 3-449 and 3-451 shall determine whether good

faith efforts were exerted and its determination shall be final~~.~~, and upon such determination that the developer or its prime contractor has made good faith efforts with respect to such request for waiver, the request for waiver shall be deemed approved by the director. The process for such determination shall be as described in sections 3-450 and 3-453.

(b) Notwithstanding any other provision of this division, the city council or any economic development agency created by the city may waive the requirements of this article and award a city contract to a lowest and best bidder or a best proposer if the council or any economic development agency created by the city determines it is in the best interests of the city.

Section 3. That Chapter 74, Code of Ordinances, is hereby amended by repealing Section 74-11, Affordable housing set aside, and enacting in lieu thereof a new section of like number and subject matter to read as follows:

Sec. 74-11. Affordable housing set aside.

(a) The following definitions shall apply to this section:

Affordability offset value means the estimated financial gap between revenues from market-rate units and affordable units. This amount shall be calculated annually by the city manager's office, by adjusting the current estimated $5,000.00, by an amount equal to any increase in the construction cost index for Kansas City published by the Engineering News Record.

Affordable housing means housing that a household having an income at or below ~~sixty (~~60~~%)~~ percent of the HUD MFI ~~(“~~("60% MFI~~”)~~") for all households within the Kansas City metropolitan area would be able to afford if they were to expend not more than ~~thirty~~30 percent ~~(30%)~~ of such income for the mortgage or rent, including utilities

City incentives means economic incentives granted by the ~~City~~city or any ~~economic devlopment~~economic development agency created by the ~~City~~city, including Port KC, in the nature of the capture and redirection, abatement, or exemption of taxes or the issuance of bonds or grants by the ~~City~~city or other ~~City~~city-backed financing.

Deeper levels of affordability means housing priced such that households at lower incomes than 60% MFI within the Kansas City metropolitan area would be able to afford it if they were to expend not more than ~~thirty~~30 percent ~~(30%)~~ of such income for the mortgage or rent, including utilities.

~~*Affordability offset value* means the estimated financial gap between revenues from market-rate units and affordable units. This amount shall be calculated annually by the City Manager’s Office, by adjusting the current estimated $100,000, by an amount equal to any increase in the construction cost index for Kansas City published by the Engineering News Record.~~

Sources of income means the lawful manner by which an individual supports themselves and their dependents, including tenant-based rental assistance.

(b) For all development projects primarily providing multi-family housing available for rent and including ~~twelve (~~12~~)~~ or more residential units across all sites and phases of the development project that are seeking ~~City~~city incentives, at least ~~twenty (~~20~~)~~ percent of the total residential units shall be affordable housing.

(c) A project developer may make a payment to the ~~City~~city in lieu of the affordable housing unit provision in an amount equal to the affordability offset value multiplied by the number of units needed to meet the requirements of subsection (b). Such payment shall be deposited into the ~~City's Housing Trust Fund.~~city's housing trust fund. For the purposes of calculating this payment, in any case where the number of units required by subsection (b) results in a number that is not a whole number, the number of units required shall be rounded down to the nearest whole number.

(d) That for purposes of this ordinance, affordable housing shall comply with the following criteria:

(1) That all units qualifying as affordable housing shall be on the principal development project site and shall not be off site from the project.

(2) That affordable housing units shall be mixed with, and not clustered together or segregated in any way, from market-rate units.

(3) That all units qualifying as affordable housing shall either be at least one-bedroom units in size or be equal to or share the same size as at least 25 percent of units to be constructed on the project site.

(4) That if the project development contains a phasing plan, the phasing plan shall provide for the development of affordable housing units concurrently with the market-rate units. No phasing plan shall provide that the affordable housing units built are the last units in a housing development.

(5) That the quality and cost of in-unit finishes, systems, appliances, and square footage of all units deemed as affordable housing shall be comparable with that of the remaining units on the project site.

(6) That the exterior appearance of affordable housing units shall be made similar to market-rate units by the provision of exterior building materials and finishes substantially the same in type and quality.

(7) That the project developer must covenant with the ~~City~~city and successors in interest that the designated units remain affordable for a period of not less than the period of the incentive awarded.

(8) That the project developer must covenant with the ~~City~~city and successors in interest that the appropriate number of units be rented to individuals or families

whose household incomes are at or below 60% MFI, in accordance with subsection (b).

(9) That the project developer must covenant with the City and successors in interest that the developer will not engage in any discriminatory housing practices as defined in ~~Section~~section 38-105(d) of the ~~City's~~city's Code of Ordinances, including discrimination based on lawful sources of income.

(10) That the project developer must covenant with the ~~City~~city and successors in interest that developer will use a procedure deemed acceptable by the ~~City~~city to determine income eligibility of residents qualifying for the affordable housing units and that the ~~City~~city or its designee shall have the right to audit any such income verification procedure records. Any required determinations of income eligibility shall occur at the time an initial lease with the resident is entered into.

(e) The following shall be exempt from the requirements of this section:

(1) Any project that has been awarded federal or state ~~Low Income Housing Tax Credits~~low income housing tax credits from the Missouri Housing Development Commission; and

(2) Any project that involves the renovation or rehabilitation of a building that has been designated by a government entity as a local or national historic landmark.

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Approved as to form:

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Emalea Kohler
Associate City Attorney