



Legislation Text

File #: 210514, **Version:** 1

SECOND COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 210514, AS AMENDED

Approving an Industrial Development Plan for Lux Living, LLC for the purpose of the acquisition and construction of a commercial multifamily apartment complex and a related parking garage, located at 3948 Main Street, Kansas City, Missouri; authorizing and approving various agreements for the purpose of setting forth covenants, agreements and obligations of the City and Lux Living, LLC or its affiliate or designee, including a \$600,000.00 City contribution from previously appropriated 4th District PIAC funds; authorizing the issuance of taxable industrial development revenue bonds in a maximum aggregate principal amount not to exceed \$32,000,000; authorizing and approving certain other documents; authorizing certain other actions in connection with the issuance of said bonds; directing the City Manager to include an appropriation in a proposed budget for fiscal year 2023-24 to reimburse the 4th District PIAC fund up to \$600,000.00 for funds utilized for the Project; and recognizing this ordinance as having an accelerated effective date.

WHEREAS, the City of Kansas City, Missouri, a constitutional charter city and municipal corporation of the State of Missouri (the “City”) is authorized pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, as amended (the “Constitutional Provisions”) and the City of Kansas City Charter to issue its revenue bonds for the purpose of paying all or a part of the cost of purchasing, constructing, extending or improving any facility to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes, including the real estate, buildings, fixtures and machinery, such revenue bonds to be paid solely from revenue received from such project; and

WHEREAS, inasmuch as the Constitutional Provisions provide authority to issue industrial development revenue bonds for commercial projects but do not contain provisions, processes and procedures relating to such bonds and such projects, while Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended (“Chapter 100”) provide authority to issue industrial development revenue bonds for a variety of purposes not including commercial projects but do contain provisions, processes and procedures relating to the bonds and projects authorized thereunder, the City hereby directs that the Chapter 100 provisions, processes and procedures be utilized for industrial development revenue bonds issued under the Constitutional Provisions for commercial projects, including the herein-defined Bonds and Project (the Constitutional Provisions, Chapter 100 and City of Kansas City Charter are referred to collectively herein as the “Act”); and

WHEREAS, the City has heretofore prepared and approved plans for the industrial development of the City and desires to approve an Industrial Development Plan (the “Plan”) for the purpose of carrying out a development project (the “Project”) for Lux Living, LLC, a Missouri limited liability company, or an affiliate or other designee thereof (the “Company”); and

WHEREAS, the City intends to issue its Taxable Industrial Development Revenue Bonds (Historic Katz Westport Project) (the “Bonds”) in one or more series for the purpose of furthering the Project located at 3948

Main Street, Kansas City, Missouri (the “Project Site”); and

WHEREAS, pursuant to the City’s direction to utilize Chapter 100 procedures for the Bonds and the Project, notice of the Project was given to the taxing jurisdictions in accordance with the procedures set forth in Section 100.059.1 of the Revised Statutes of Missouri; and

WHEREAS, the City Council has heretofore and does hereby find and determine that it is desirable for the economic development of the City and within the public purposes of the Act that the City Council approve a Chapter 100 Industrial Development Plan; and that the City issue the Bonds, as more fully described in the Indenture and in the Lease, as hereinafter defined and authorized, proceeds of which shall be used for the purchase and construction of certain real property associated with the Project and which shall be located at the Project Site and leased by the City to the Company, with an option to purchase; and

WHEREAS, the principal amount of the Bonds will be issued in one or more series of taxable Chapter 100 industrial development bonds over a period of not to exceed ten (10) years following the issuance of each respective series, with not to exceed ten (10) years of real property ad valorem tax abatement at seventy-five percent (75%), and payments-in-lieu-of-taxes (PILOTS) equal to twenty-five percent (25%) to the affected taxing jurisdictions during the term of the Bonds, which Bonds will be repaid solely by the Company under the terms of the Lease; and

WHEREAS, for a Chapter 100 bond issuance, the City Council has previously established a policy (Ordinance No. 041033) for the review and approval of such projects, one component of which suggests a maximum bond term of ten (10) years and another of which suggests payments-in-lieu-of-taxes (PILOTS) at a level of no less than fifty percent (50%) of the amount that would have been paid to the affected taxing jurisdictions on the property if it had been fully taxed during the term of the bonds, which policy the City hereby directs also be applied to bonds issued under the Constitutional Provisions, one component of which suggests a maximum bond term of 10 years; and

WHEREAS, the City Council has previously established a policy (Ordinance No. 160383) capping the amount of real property tax abatement for Chapter 100 projects at fifty percent (50%) for ten (10) years, which policy the City hereby directs also be applied to bonds issued under the Constitutional Provisions;

WHEREAS, the Council wishes in this instance to waive: (i) its Chapter 100 policy suggesting the minimum PILOT payment on behalf of the Project, and

WHEREAS, the principal amount of the Bonds will be advanced following the commencement of each phase of the Project to be financed by such series, and such property will be leased by the City to the Company for a period of not to exceed ten (10) years, commencing in the year of the first advance for such property to be financed by such series of Bonds (subject to earlier termination as provided in the Lease); and

WHEREAS, the City further finds and determines that it is necessary and desirable in connection with the Project and the issuance of the Bonds that the City enter into certain documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided; and

WHEREAS, the Project, by renovating the historic Katz building, serves a public purpose by contributing to the preservation of historic structures in Kansas City; and

WHEREAS, the Fourth District Councilpersons desire to utilize \$600,000 of 4th District PIAC funds to assist the Project with public infrastructure costs; and

WHEREAS, surplus revenues from the Midtown Redevelopment Tax Increment Finance Plan will be returned to the City upon the plans termination in 2023; and

WHEREAS, the Council intends to reimburse the 4th District PIAC funds from funds captured from the Midtown Redevelopment Tax Increment Finance Plan in fiscal year 2023-24; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. Approval of Plan. The City Council hereby finds and determines that the Project will promote the economic well-being of the City and the Project will be in furtherance of the public purposes set forth in the Act. The City Council hereby approves the Plan for the Project, which includes the following provisions:

(a) Acquisition and construction of a 190-unit commercial multifamily apartment complex and a 175 stall parking garage, including real property acquisition and improvements and the historic renovation of the Katz building, located at the Project Site in the City of Kansas City, Missouri; and

(b) A total estimated project cost of approximately \$37,600,00.00 to fund acquisition and construction and related building costs; and

(c) The costs for the real property will be funded from proceeds of the sale of up to \$32,000,000.00 maximum principal amount of Taxable Industrial Development Revenue Bonds to be issued by the City and purchased by the Company or other purchaser designated by the Company.

Section 2. Authorization of Documents. The City is hereby authorized to enter into the following documents (the "City Documents"), in such form as shall be approved by the officials of the City executing such documents, such officials' signatures thereon being conclusive evidence of their approval thereof:

(a) Pre-Development Agreement (the "Predevelopment Agreement") between the City and the Company, pursuant to which the City will provide its project exemption certificate for the purpose of allowing the Company to maintain the Project timeline and effect a sales tax exemption on construction materials prior to the issuance of the Bonds;

(b) Forward Delivery Agreement (the "Forward Delivery Agreement") between the City and the Company, pursuant to which the Bond documents shall be escrowed, and the Bonds shall not be issued, until after the Company has received a certificate of occupancy for the Project;

(c) One or more Trust Indentures (collectively, the "Indenture"), between the City and the trustee named therein (the "Trustee"), pursuant to which the Bonds shall be issued and the City shall pledge the Project and assign certain of the payments, revenues and receipts received pursuant to the Lease to the Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Indenture;

(d) One or more Lease Agreements (collectively, the "Lease"), between the City and the Company, under which the City will acquire the Project and lease the Project to the Company pursuant to the terms and conditions in said Lease and which shall require a provision for the City to provide 4th District PIAC funds in the maximum amount of \$600,000.00 for the Project to be applied towards the cost of public improvements, including the design of such improvements, within the public right of way in exchange for the Company's commitment to the historic renovation and maintenance of the Katz

building located at the Project Site and upon proof of the financial capital necessary to complete the Project in its entirety, in consideration of rental payments by the Company which will be sufficient to pay the principal of, premium, if any, and interest on the Bonds. The \$600,000.00 shall be funds previously appropriated to 4th District in-district accounts in the Capital Improvements Sales Tax Fund; and

(e) Purchase Agreements, as defined below, under which the purchaser named therein agrees to purchase the Bonds.

Section 3. Authorization of the Bonds. The City is hereby authorized to issue and sell its Taxable Industrial Development Revenue Bonds (Historic Katz Westport Project), in one or more series, in a maximum aggregate principal amount not to exceed \$32,000,000, for the purpose of providing funds for the acquisition, construction and development of certain real property associated with the Project. The Bonds shall be issued and secured pursuant to the herein authorized Indenture and shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rates, shall be in such form, shall be subject to redemption and other terms and conditions, and shall be issued in such manner, subject to such provisions, covenants and agreements, as are set forth in the Indenture.

Section 4. Sale and Terms of Bonds; Authorization and Execution of Bond Purchase Agreement. The Bonds will be sold to the Company or other purchaser under the terms of one or more Bond Purchase Agreements between the City and the Company or other purchaser identified therein (collectively, the "Purchase Agreements"). The maximum aggregate principal amount of the Bonds shall be \$32,000,000.00; the interest rate on the Bonds shall not exceed five point zero percent (5.0%); principal shall be payable at maturity; and the maturity date shall be no later than December 31, 2033; provided that, no series of Bonds shall remain outstanding for longer than ten (10) years after the issuance of each respective series; the Bonds shall be purchased at one hundred percent (100%) of the principal amount thereof; and the Bonds may be redeemed at any time at a redemption price equal to the principal amount thereof plus accrued interest. The Director of Finance or the City Treasurer is each authorized to execute the Purchase Agreement for and on behalf of and as the act and deed of the City.

Section 5. Limitation on Liability. The Bonds and the interest thereon shall be limited obligations of the City payable solely out of certain payments, revenues and receipts derived by the City from the Lease described herein, and such payments, revenues and receipts shall be pledged and assigned to the Trustee as security for the payment of the Bonds as provided in the Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City or the State of Missouri. The Bonds shall not constitute indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation.

Section 6. Creation of Bond Fund. The City is hereby authorized to establish with the Trustee pursuant to the Indenture, a special trust fund in the name of the City to be designated the "City of Kansas City, Missouri, Bond Fund - Historic Katz Westport Project" and the City shall cause all sums required by the Indenture to be deposited therein and shall create all accounts therein required by the Indenture.

Section 7. Execution of Documents. The Mayor is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Director of Finance is hereby authorized and directed to execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed

of the City. The City Clerk or a deputy City Clerk, of the City is hereby authorized and directed to attest to and affix the seal of the City to the Bonds and the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 8. Future Appropriation. The City Manager is directed to include an appropriation in the proposed budget for fiscal year 2023-24 sufficient to provide for reimbursement of the 4th District PIAC funds utilized for the Project up to a maximum amount of \$600,000.00.

Section 9. Further Authority. The Mayor, Director of Finance and other officials, agents and employees of the City as required, are hereby authorized and directed to take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds, the City Documents, tax redirection, and future appropriation.

Section 10. That this ordinance is recognized as an ordinance with an accelerated effective date as provided by Section 503(a)(3)(C) of the City Charter in that it appropriates money and shall take effect in accordance with that section.

Approved as to form and legality:

Katherine Chandler
Assistant City Attorney