

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:

Tuesday, November 14, 2017

8:30 a.m.

Robert J. Mohart Multipurpose FOCUS Center

3200 Wayne Ave., Kansas City, Missouri 64109

For the purposes of taking up the following matters:

Agenda

- A. Call to order
- B. Administration/Acknowledgment of oath(s) of office
- C. Approval of Minutes
- D. Adoption of By-Laws
- E. Appointment of officers
- F. Legal - Presentation of Eligible Uses for Sales Tax
- G. Finance - Process through Council/Budget of Making Funds Available
- H. Discussion/Consideration of Geographic Boundaries
- I. Scheduling of future meeting(s)
- J. 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 at least 24 hours prior to the meeting.

CENTRAL CITY ECONOMIC DEVELOPMENT SALES TAX BOARD

Resolution No. 2017-

Acknowledging the board members' acceptance of appointment and oath of office.

WHEREAS, pursuant to Ordinance No. 160861, As Amended, and an election held on April 4, 2017, the City of Kansas City, Missouri, caused a one-eighth cent economic development sales tax to be imposed for the benefit of an area bounded by 9th Street on the north, Gregory Boulevard on the south, The Paseo on the west, and Indiana Avenue on the east; and

WHEREAS, pursuant to Section 68-449(c), Code of Ordinances, and Section 67.1305.12, RSMo, a five-member board, denominated as the Central City Economic Development Sales Tax Board (the "Board"), was established; and

WHEREAS, the Kansas City, Missouri School District has appointed Ron Finley to the Board; and

WHEREAS, Jackson County, Missouri has appointed Melissa Patterson Hazley to the Board; and

WHEREAS, the City of Kansas City, Missouri has appointed Keith Brown, Donna Wilson and Herbert Hardwick to the Board; and

WHEREAS, each of the aforementioned appointees have accepted such appointments and have taken the prescribed oath of office; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF DIRECTORS:

Section 1. That each member's execution of the oath of office is hereby acknowledged and those persons identified herein have been lawfully appointed as the members of the Central City Economic Development Sales Tax Board.

Herbert Hardwick
Chairperson

Date of Adoption

CENTRAL CITY ECONOMIC DEVELOPMENT SALES TAX BOARD
MEETING MINUTES

Meeting Date/Time/Location: Wednesday, October 18, 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

Agenda Items:

- A. The meeting was called to order by the Chair at 8:37 a.m. The Board members introduced themselves, followed by City staff in attendance. There was a brief discussion about the priorities and objectives hoped to be established by the Board over the course of the next several meetings.
- B. The administration of the oath of office was postponed to the next Board meeting as the City Clerk was unable to attend. Resolution No. 2017-1 was tabled until such time as the oath of office can be administered.
- C. The Board proceed to consider adoption of bylaws pursuant to Resolution No. 2017-2, and the Chair opened the matter up for discussion by the Board. Mr. Finley provided feedback with respect to the provisions relative to the board terms, selection process for the chairperson, minimum meeting notice, quorum provisions, failure to establish Robert's Rules as the governing procedure, certain mandatory language with respect to obligating the Board to utilize City staff, and the process for hiring third-party professional assistance.

Ms. Patterson-Hazley noted concerns with regards to the obligations to be undertaken by the proposed Treasurer and Secretary officer positions.

There was general discussion amongst the Board and legal counsel as to these matters, the enabling legislation, the role of the City Council, and the role of City staff in providing professional assistance to the Board.

The Board instructed legal counsel to revise the bylaws based on the discussions that occurred and to distribute them prior to the next Board meeting. Resolution No. 2017-2 was tabled.

- D. Resolution No. 2017-3 was tabled until such time as the bylaws are approved and the roles of the Board's officers clarified.
- E. Legal counsel to the Board provided each member with a copy of the Missouri Sunshine Law publication and discussed its requirements with the Board. The Board requested that Ms. Jennifer Tidwell with the City of Kansas City, Missouri serve as its custodian of records for purposes of complying with the law, and she agreed to do so.

The Board and legal counsel engaged in a brief exchange with respect to certain issues arising under the Missouri Sunshine Law.

Mr. Finley moved that the Board adopt Resolution No. 2017-4 with Ms. Tidwell named as custodian. The motion was seconded by Ms. Wilson. The motion was approved by voice vote with all Board members voting in the affirmative.

- F. Legal counsel to the Board provided each member with a copy of the City's Ethics policies as codified in Chapter 2, Code of Ordinances, as well as summary materials highlighting the provisions relative to conflicts of interest and gifts. There was general discussion amongst the Board and legal counsel as to these matters.

Miscellaneous matters:

The Chair opened the floor for a public comment period. One person asked when the Board would be prepared to start receiving applications for plan/project approval. There was general discussion about the tax being collected as of October 1, 2017 and when those revenues would begin to flow to the City. Legal counsel indicated that he would engage the Finance Department to get some clarification on when those funds would be available and how that would work for the remainder of the existing fiscal year. Mr. Hardwick noted that the Board hoped to be in a position to start receiving applications by December 1, 2017.

Two others submitted questions via e-mails related by Mr. Brown. They asked what the structure and funding priorities would be for the tax revenues, and who would be administering the tax.

Mr. Hardwick noted that the answer to the first question would be guided by upcoming meetings and public input. Legal counsel to the Board addressed the second matter and generally explained the roles of the Board and City Council with respect to administering the funds. Counsel also discussed the decisions needing to be made by the Board in the immediate future with regards to whether the sales tax funds were to be made available independently of EDC assistance, as well as in addition to EDC sources as a means of leveraging public assistance, and the need to establish a process for both.

Another person testified they were disappointed to hear so much conversation about buildings and developers, and encouraged the Board to gather community input about the social needs that should be addressed with the funds. The Board agreed to allow a group led by Dr. Karen Curis to make a formal presentation to the Board at its November 27, 2017 meeting.

The Board engaged in an open exchange about topics that it would like to see addressed by City and/or EDC staff at future meetings including such matters as getting a synopsis of the EDC's processes/procedures for public incentives, data review of existing conditions in the eligible boundaries, existing City-approved plans for the development of the central core and available small business incentives. Ms. Patterson-Hazley also expressed that it was important to get an understanding of the public funds currently being invested in this area so that the Board can be assured that the economic development sales taxes are being used to supplement such efforts and not as a source for replacing other public funds in the area.

The Board discussed upcoming meetings and it was agreed that two meetings per month for the next several months would be appropriate, to be held in various locations in the area. A morning meeting will be held to handle the Board's administrative matters, and an evening meeting will be held to allow for public input into the uses of the tax revenues.

The next meetings dates were set as follows:

November 14, 2017, 8:30 a.m. at Mohart.

November 27, 2017 6:00 p.m. at Mohart.

December 12, 2017, 8:30 a.m. (location TBD)

December 18, 2017, 6:00 p.m. (location TBD)

Agenda Items, con't:

- G. The meeting was adjourned at 10:22 a.m. Mr. Finely moved to adjourn. The motion was seconded by Ms. Wilson. The motion was approved by voice vote with all Board members voting in the affirmative.
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CENTRAL CITY ECONOMIC DEVELOPMENT SALES TAX BOARD

Resolution No. 2017-

Adopting bylaws for the Central City Economic Development Sales Tax Board.

WHEREAS, the Central City Economic Development Sales Tax Board desires to adopt bylaws and has determined that such bylaws will provide an efficient and effective structure for its governance and affairs; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF DIRECTORS:

Section 1. That the bylaws in the form attached hereto are approved and adopted.

Section 2. That the Secretary is authorized and directed to execute the bylaws.

**Herbert Hardwick
Chairperson**

Date of Adoption

**BYLAWS OF THE
CENTRAL CITY ECONOMIC DEVELOPMENT
SALES TAX BOARD**

**ARTICLE I
THE BOARD**

Section 1.1 Name of Board. The name of the Board is the Central City Economic Development Sales Tax Board.

**ARTICLE II
BOARD OF DIRECTORS**

Section 2.1 General Powers. The Board of Directors (the "Board") shall possess and may exercise all of the Board's powers as provided in Section 67.1305, RSMo, and Section 68-449, Code of Ordinances, as each of the foregoing may be amended from time-to-time.

Section 2.2 Number, Appointment and Tenure. The Board shall consist of five (5) members, to be appointed as provided in Section 68-449(c), Code of Ordinances. The members appointed by the Kansas City, Missouri School District (which shall have one (1) member) and Jackson County, Missouri (which shall have one (1) member) shall each initially be appointed to a term of two (2) years. The three (3) members appointed by the City of Kansas City, Missouri shall be appointed such that one (1) member shall initially be appointed to a term of two (2) years, and two (2) members shall initially be appointed to terms of four (4) years. Each member shall thereafter be appointed, or reappointed, to a term of four (4) years. Each Board member shall hold their respective seat on the Board until the term to which they were appointed, or reappointed, shall have lapsed; or until that member's incapacity, disability, resignation, death or removal by the entity appointing said member, whichever shall first occur.

Section 2.3 Annual Meetings. The Board shall hold an annual meeting each year for the purpose of electing officers, with the exception of the Chairperson which shall be appointed by the Mayor of the City of Kansas City, Missouri subject to the consent of the City Council of the City of Kansas City, Missouri. Annual meetings shall be held at any such place as may be determined by the Board.

Section 2.4 Regular Meetings. The Board shall hold such meetings from time-to-time as it shall determine to be appropriate for purposes of exercising its powers. Regular meetings shall be held at any such place(s) as may be determined by the Board.

Section 2.5 Special Meetings. Special meetings of the Board may be called by or at the request of the chairperson or any other three Board members for the purpose of transacting any business designated in the notice for such meeting, and shall be held at any place as the person(s) calling the meeting may determine. At such special meetings no business shall be considered other than that designated in the notice.

Section 2.6 Notice. Written notice, as required by statute regulating meetings of public governmental bodies, shall be delivered by hand, mail, electronic mail or facsimile to each Board member at least twenty-four (24) hours prior to the scheduled annual, regular or special meeting. If mailed, notice shall be deemed delivered on the second business day after deposit in the United

States mail, addressed to the member at his/her address as it appears on the Board's records, with postage prepaid. Each member may waive this notice requirement for any meeting by written consent given before, during, or after such meeting. Notice, as required by statute regulating meetings of public governmental bodies, must be posted at a conspicuous place open to the public at least twenty-four (24) hours prior to the scheduled annual, regular or special meeting.

Section 2.7 Quorum. A simple majority of the Board shall constitute a quorum for the transaction of business, and the acts of a majority of the members present at a meeting at which a quorum is present shall constitute the acts of the Board. If a quorum is not present at any meeting of the Board, or is lost during the course of any meeting of the Board, the meeting shall be permitted to commence or continue but no vote, except upon a motion to adjourn, shall be taken until such time as adjourned until a quorum is shall be present.

Section 2.8 Telephone Participation. Members may participate in a meeting of the Board by means of a conference telephone call or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

Section 2.9 Manner of Voting. The voting on all questions coming before the Board shall be by voice vote unless the presiding officer ~~directs,~~ or any member ~~demand requests~~ a vote by roll call or by ballot. In the case of an abstention or nay vote, the member so abstaining or voting nay shall be identified in the minutes of such meeting.

Section 2.10 Compensation. Members shall not receive any compensation or reimbursement for their services to the Board.

Section 2.11 Open Meeting and Records. Sections 610.010 through 610.035 RSMo (the Missouri Sunshine Law), shall apply to all meetings and records of the Board and the Board shall not close any meetings or records of the Board, unless so permitted by law.

Section 2.12 Parliamentary Authority. Robert's Rules of Order Newly Revised shall be the parliamentary authority of the Board in all cases to which they are applicable and in which they are not inconsistent with these Bylaws, or any applicable law.

ARTICLE III OFFICERS

Section 3.1 Enumeration of Offices. The officers of the Board shall be a Chairperson ~~appointed by the Mayor of the City of Kansas City, Missouri, and a~~ Vice-Chairperson, Secretary and Treasurer, each of which shall be elected ~~and or~~ appointed from among the membership of the Board as provided in Section 2.3 of these Bylaws. The positions of Secretary and Treasurer may be combined and held by the same person.

Section 3.2 Appointment and Term of Office. At its first meeting, the Board shall elect a Vice-Chairperson, Secretary and Treasurer. Thereafter, the Vice-Chairperson, Secretary and Treasurer shall be elected annually by the Board at the annual meeting of the Board. If an election is not made at such meeting, then such election shall be held as soon thereafter as convenient. Each officer shall hold office until that officer's successor has been duly appointed or elected, as is applicable, or until that officer's incapacity, disability, resignation, death or removal.

Section 3.3 Vacancies. Vacancies in the office of Vice-Chairperson, Secretary and Treasurer, however caused, may be filled by the Board at any time for the unexpired terms of such offices.

Section 3.4 Chairperson: Powers and Duties. The Chairperson shall have the following powers and duties:

- (a) Preside at all meetings of the Board at which the Chairperson shall be present; and
- (b) Make reports to the Board and government agencies, on behalf of the Board, as required by law; and
- (c) Generally perform all duties incident to the office of Chairperson and such other duties as may be prescribed by the Board.

Section 3.5 Vice-Chairperson: Powers and Duties. The Vice-Chairperson shall exercise the powers of the Chairperson in the case of the absence or inability to act of the Chairperson.

Section 3.6 Treasurer: Powers and Duties. The Treasurer shall have the following powers and duties, provided however that nothing herein shall be deemed to require that the Treasurer perform such services as will otherwise be performed by the City of Kansas City, Missouri's Finance Department with respect to maintaining the required accounts and financial records and managing the collection, custody, investment and disbursement of the Central City Economic Development Sales Tax Fund:

- (a) Report to the Board as to the revenues on deposit and available to be expended within the Central City Economic Development Sales Tax Fund maintained by the City of Kansas City, Missouri; and
- (b) Perform all of the duties incidental to the office of the Treasurer and such other duties as may be assigned to the Treasurer by the Chairperson or the Board.

Section 3.7 Secretary: Powers and Duties. The Secretary shall have the following powers and duties:

- (a) Keep, or cause to be kept, the minutes for the meetings of the Board in or more books provided for that purpose; and
- (b) Ensure that all notices are duly given in accordance with the Bylaws and as required by law; and
- (c) Serve as custodian of record for the Board; and
- (d) Perform all duties incidental to the office of Secretary and such other duties as may be assigned to the Secretary by the Chairperson or the Board.

Section 3.8 General Administration. The Board ~~shall~~ may utilize the services of one or more employees of the City of Kansas City, Missouri as ~~shall~~ may be designated by the City

Manager for the purpose of providing such administrative assistance as may be required. Such employee(s) may, subject to consent of the Board, perform such functions as might otherwise be performed by an officer, including without limitation:

- (a) Keeping, or causing to be kept, the minutes for the meetings of the Board; and
- (b) Ensuring that all notices are duly given in accordance with the Bylaws and as required by law; and
- (c) Acting as custodian of records for the Board; and
- (d) Compiling and providing such data with respect to the Central City Economic Development Sales Tax, and economic development plans and economic development projects funded therewith, as the Board may request; and
- (e) Drafting such reports as the Chairperson, on behalf of the Board, may be required by law to make; and
- (f) Performing such duties as may be requested by the Chairperson or the Board.

Section 3.9. Professional Assistance. The Board may request that the City Manager of the City of Kansas City, Missouri cause the City to retain, on its behalf and for its benefit, any professional assistance that the Chairperson or the Board may deem advisable, provided however that the provision of such assistance shall be made and funded at the discretion of the City Council of the City of Kansas City, Missouri. In the event that such professional assistance is obtained, such individual(s), subject to the consent of the Board, may perform one or more of those functions that might otherwise be performed by an employee of the City of Kansas City, Missouri as provided in Section 3.8 of these Bylaws.

Section 3.10 Delegation of Duties. In case of the absence of any officer of the Board, for any reason that the Board may deem sufficient, the Board may delegate the power or duties of such officer to another Board member for the interim, provided a majority of the Board concurs.

ARTICLE IV BOOKS AND RECORDS

Section 4.1 Books, and Records. The Board shall keep or cause to be kept correct and complete books and records of account for the Board and shall also keep minutes of the proceedings of the Board.

ARTICLE V NOTICE AND WAIVER

Section 5.1 Written Waiver. Whenever any notice is required under the provisions of these Bylaws or under the provisions of applicable law, a waiver thereto in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice, provided, however, that the waiver of notice by any such person shall in no way be deemed to waive or modify any notice that is required by the Missouri Sunshine Law.

**ARTICLE VI
AMENDMENT OF BYLAWS**

Section 6.1 Amendments. These Bylaws may be altered, amended, provisions deleted, or new provisions added by a majority of the members present at any properly called annual, regular or special meeting.

The foregoing Bylaws were adopted on this 18th _____ day of October _____, 2017 pursuant to Resolution No. 2017-2__.

Secretary

**BYLAWS OF THE
CENTRAL CITY ECONOMIC DEVELOPMENT
SALES TAX BOARD**

**ARTICLE I
THE BOARD**

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**ARTICLE II
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ARTICLE III OFFICERS

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Section 3.4 Chairperson: Powers and Duties. The Chairperson shall have the following powers and duties:

- (a) Preside at all meetings of the Board at which the Chairperson shall be present; and
- (b) Make reports to the Board and government agencies, on behalf of the Board, as required by law; and
- (c) Generally perform all duties incident to the office of Chairperson and such other duties as may be prescribed by the Board.

Section 3.5 Vice-Chairperson: Powers and Duties. The Vice-Chairperson shall exercise the powers of the Chairperson in the case of the absence or inability to act of the Chairperson.

Section 3.6 Treasurer: Powers and Duties. The Treasurer shall have the following powers and duties, provided however that nothing herein shall be deemed to require that the Treasurer perform such services as will otherwise be performed by the City of Kansas City, Missouri's Finance Department with respect to maintaining the required accounts and financial records and managing the collection, custody, investment and disbursement of the Central City Economic Development Sales Tax Fund:

- (a) Report to the Board as to the revenues on deposit and available to be expended within the Central City Economic Development Sales Tax Fund maintained by the City of Kansas City, Missouri; and
- (b) Perform all of the duties incidental to the office of the Treasurer and such other duties as may be assigned to the Treasurer by the Chairperson or the Board.

Section 3.7 Secretary: Powers and Duties. The Secretary shall have the following powers and duties:

- (a) Keep, or cause to be kept, the minutes for the meetings of the Board in or more books provided for that purpose; and
- (b) Ensure that all notices are duly given in accordance with the Bylaws and as required by law; and
- (c) Serve as custodian of record for the Board; and
- (d) Perform all duties incidental to the office of Secretary and such other duties as may be assigned to the Secretary by the Chairperson or the Board.

Section 3.8 General Administration. The Board may utilize the services of one or more employees of the City of Kansas City, Missouri as may be designated by the City Manager for the

purpose of providing such administrative assistance as may be required. Such employee(s) may, subject to consent of the Board, perform such functions as might otherwise be performed by an officer, including without limitation:

- (a) Keeping, or causing to be kept, the minutes for the meetings of the Board; and
- (b) Ensuring that all notices are duly given in accordance with the Bylaws and as required by law; and
- (c) Acting as custodian of records for the Board; and
- (d) Compiling and providing such data with respect to the Central City Economic Development Sales Tax, and economic development plans and economic development projects funded therewith, as the Board may request; and
- (e) Drafting such reports as the Chairperson, on behalf of the Board, may be required by law to make; and
- (f) Performing such duties as may be requested by the Chairperson or the Board.

Section 3.9. Professional Assistance. The Board may request that the City Manager of the City of Kansas City, Missouri cause the City to retain, on its behalf and for its benefit, any professional assistance that the Chairperson or the Board may deem advisable, provided however that the provision of such assistance shall be made and funded at the discretion of the City Council of the City of Kansas City, Missouri. In the event that such professional assistance is obtained, such individual(s), subject to the consent of the Board, may perform one or more of those functions that might otherwise be performed by an employee of the City of Kansas City, Missouri as provided in Section 3.8 of these Bylaws.

Section 3.10 Delegation of Duties. In case of the absence of any officer of the Board, for any reason that the Board may deem sufficient, the Board may delegate the power or duties of such officer to another Board member for the interim, provided a majority of the Board concurs.

ARTICLE IV BOOKS AND RECORDS

Section 4.1 Books, and Records. The Board shall keep or cause to be kept correct and complete books and records of account for the Board and shall also keep minutes of the proceedings of the Board.

ARTICLE V NOTICE AND WAIVER

Section 5.1 Written Waiver. Whenever any notice is required under the provisions of these Bylaws or under the provisions of applicable law, a waiver thereto in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice, provided, however, that the waiver of notice by any such person shall in no way be deemed to waive or modify any notice that is required by the Missouri Sunshine Law.

**ARTICLE VI
AMENDMENT OF BYLAWS**

Section 6.1 Amendments. These Bylaws may be altered, amended, provisions deleted, or new provisions added by a majority of the members present at any properly called annual, regular or special meeting.

The foregoing Bylaws were adopted on this _____ day of _____, 2017 pursuant to Resolution No. 2017-__.

Secretary

CENTRAL CITY ECONOMIC DEVELOPMENT SALES TAX BOARD

Resolution No. 2017-

Appointing officers of the Central City Economic Development Sales Tax Board.

WHEREAS, pursuant to Resolution No. 170733, adopted on September 21, 2017, the City Council appointed Herbert Hardwick as the Chairperson of the Central City Economic Development Sales Tax Board; and

WHEREAS, the bylaws of the Central City Economic Development Sales Tax Board require the appointment of certain additional officers; and

WHEREAS, the Chairperson and such additional officers as are provided for within the bylaws shall have, hold and exercise the powers and duties as described therein; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF DIRECTORS:

Section 1. That _____ is appointed Vice-Chairperson of the Central City Economic Development Sales Tax Board.

Section 2. That _____ is appointed Secretary of the Central City Economic Development Sales Tax Board.

Section 3. That _____ is appointed Treasurer of the Central City Economic Development Sales Tax Board.

Section 4. That the officers shall exercise those powers and perform those duties for such terms as are set forth in the bylaws.

Herbert Hardwick
Chairperson

Date of Adoption



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."¹ 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.

¹ 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.² 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):³
 - 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.⁴ 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.⁵ 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

² Section 67.1305.10(1), RSMo

³ Section 67.1305.10(3), RSMo

⁴ Mo. CONST. Art. VI §§23, 25

⁵ *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.⁶ 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.⁷

PROHIBITED USES

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

1. Providing funding for the Board or its members.⁸ 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 9th Street on the north, Gregory Boulevard on the south, Paseo on the west, and Indiana on the east.⁹
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).

⁶ See, *Moschenrass v. St. Louis County*, 188 S.W.3d 13, 22 (Mo. App. 2006)

⁷ Section 67.1305.11, RSMo

⁸ Section 67.1305.12(1), RSMo

⁹ 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 9th 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.¹⁰

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."¹¹ 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.¹² 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.¹³ 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."¹⁴ 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."¹⁵ 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

¹⁰ Section 67.1305.15, RSMo

¹¹ Section 67.1305.10(1), RSMo

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

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

¹⁴ BLACK'S LAW DICTIONARY 1315 (6th ed. 1990)

¹⁵ Section 67.1305.10(2)(e), RSMo

harmonized so that both are given effect if at all possible.¹⁶ 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.”¹⁷ 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.¹⁸ 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.”¹⁹ 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.²⁰

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.

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

¹⁷ 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.

¹⁸ Section 253.415.2(2), RSMo

¹⁹ Sections 2-912, 2-913, 2-914 and 2-916, Code of Ordinances

²⁰ <<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.²¹ 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.²² 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.

²¹ Section 67.1305.15, RSMo

²² *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.

CENTRAL CITY ECONOMIC DEVELOPMENT SALES TAX BOARD

Resolution No. 2017-

Statement of intent with regards to the boundaries in which the Central City Economic Development Sales Tax may be spent.

WHEREAS, on April 4, 2017, the voters enacted the one-eighth cent Central City Economic Development Sales Tax be spent "within the area bounded by 9th Street on the north; Gregory Boulevard on the south; The Paseo on the west; and Indiana Avenue on the east"; and

WHEREAS, neither the ballot language nor the initiative as codified at Section 68-449(b), Code of Ordinances, is more specific as to whether those boundaries lie on the north, south, west, east or elsewhere with respect to the identified rights-of-way, or whether they include those parcels immediately abutting and fronting such rights-of-way on one or both sides; and

WHEREAS, it is the sense of the Board that a sound economic development policy should include both sides of the identified rights-of-way so that there is cohesive redevelopment with respect to the outlying boundaries of the impacted areas; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF DIRECTORS:

Section 1. That it shall be the policy of the Board that those parcels immediately abutting and fronting 9th Street on the north; Gregory Boulevard on the south; The Paseo on the west; and Indiana Avenue on the east, shall be eligible for consideration with respect to recommending economic development plans, economic development projects, or designations of economic development areas to the City Council.

Herbert Hardwick
Chairperson

Date of Adoption