

RESOLUTION NO. 3853

A RESOLUTION ESTABLISHING A PROCESS FOR CONSIDERING A PETITION FOR THE CREATION OF A COMMUNITY IMPROVEMENT DISTRICT AND ESTABLISHING A POLICY ON THE CRITERIA APPROVING SUCH A DISTRICT.

WHEREAS, the Governing Body of the City of Overland Park, Kansas (the “Governing Body”) is committed to the encouragement and promotion of the economic health and vitality of the City; and

WHEREAS, the Governing Body is authorized by the Community Improvement District Act, K.S.A. 12-6a26 *et seq.* (the “Act”), to create a community improvement district (“CID”) for projects related to amenities and improvements as provided in the Act from certain revenues generated within the district; and

WHEREAS, these revenues may be derived from a CID sales tax up to 2% that is charged only within the district or from special assessments on the property within the district or a combination of sales tax and special assessments; and

WHEREAS, the creation of a CID is a complex legal and administrative matter requiring clear direction from the Governing Body; and

WHEREAS, the Governing Body finds that it is in the best interest of the City to establish certain policies and guidelines for consideration of CID petitions.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS, THAT:

SECTION 1. CRITERIA: It shall be the policy of the City to create a CID if, in the opinion of the Governing Body, it is in the best interest of the City to do so, and if, in the opinion of the Governing Body, creation of such a CID would meet one or more of the criteria below. The CID would:

- a. Attract unique retail development which will enhance the economic climate of the City.
- b. Attract large regional retail development which will benefit the City.
- c. Result in the construction of infrastructure beyond what the City would require or otherwise build.
- d. Promote rejuvenation and/or redevelopment within the City.

SECTION 2. METHOD OF FINANCING: CID projects may be financed by one of the following methods:

- a. Pay-as-you-go financing based either on a special assessment within the CID or a CID sales tax within the district, or both; or
- b. Special or general obligation bond financing payable wholly through special assessments within the CID; or
- c. Special or general obligation bond financing payable wholly through CID sales tax; or
- d. Special obligation bond financing payable in part through special assessments within the CID and in part through a CID sales tax; or
- e. A combination of the foregoing methods.

The City has sole determination of the method of financing.

SECTION 3. INITIATION OF THE PRELIMINARY REVIEW AND APPROVAL PROCESS: The creation of a CID may be initiated, reviewed and preliminarily approved in the following manner:

- a. A CID Applicant must present the following preliminary information regarding the proposed CID to the City Manager for his or her consideration:
 - 1) The general nature of the proposed project.
 - 2) The estimated cost of the project.
 - 3) The proposed method of financing the project.
 - 4) The proposed amount and method of assessment.
 - 5) The proposed amount of CID sales tax.
 - 6) A map of the proposed district.
 - 7) A site plan for all public and private improvements to be located within the proposed district.
 - 8) A project budget outlining the proposed uses of the CID revenue.
 - 9) A business plan evidencing that the applicant has the financial ability to complete the proposed project in a timely manner; has demonstrated success in similar type projects; and can operate the project for the term of the proposed CID.
- b. The City Manager or his or her designee, in consultation with City staff, bond counsel and financial advisor, may then request additional information to assist in determining whether the proposed CID meets one or more of the criteria listed in Section 1, above.

- c. If the City Manager determines that at least one of the criteria for creating a CID is met, then the City Manager will forward the preliminary information as amended and supplemented, to the Finance, Administration, and Economic Development Committee (the “FAED Committee”), a standing committee of the Council, for its preliminary consideration.
- d. If the FAED Committee preliminarily approves the concept of the proposed CID, then the Committee may authorize staff to work with the CID Applicant to prepare for the Governing Body’s consideration a finance plan and a resolution to call a public hearing.

SECTION 4. PROCESS FOR FORMAL APPROVAL OF A CID: The following process will be used by the City for consideration of formal approval of a proposed CID:

- a. Petition and Supplemental Information. The CID applicant must file with the City Clerk a formal petition for the creation of a CID based upon the concept of the proposed CID that is preliminarily approved by the FAED Committee and based upon the finance plan subsequently developed by the City staff, financial advisor, and bond counsel in consultation with the CID applicant. The petition shall contain all of the information required by the Act as well as an acknowledgement by the applicant that the applicant will pay all out-of-pocket costs incurred by the City related to the City’s review of the petition, including but not limited to the City’s cost of legal counsel and financial advisors necessary to evaluate the petition. The petition shall contain the required property owners’ signatures as set forth in the Act. The applicant shall furnish such additional information as requested by the City in order to clarify the information in the petition or to assist staff or the Governing Body with the evaluation of the petition.
- b. Timing of Submissions. The petition and all additional information required by this Resolution must be submitted in sufficient time to allow staff to follow established procedures for publication of notice, to review the project’s site plans, and to analyze the merits of the proposed CID in the context of existing economic development and infrastructure projects.
- c. Public Hearing. Upon receipt of the petition and all additional information required by this Policy, the Governing Body may order a public hearing on the creation of a CID and the imposition of a CID sales tax, if any. The Governing Body shall give public notice and hold such hearing in the manner required by the Act.
- d. Governing Body Findings; Development Agreement Required. After the public hearing is conducted, the Governing Body shall determine the advisability of creating a CID pursuant to the Act. If advisable, the Governing Body may create a CID by adopting an ordinance. At or near the time of the adoption of an ordinance creating a CID, the Governing Body shall consider a Development

Agreement between the City and the applicant setting forth the specific terms and conditions under which the City will reimburse the applicant for the costs of certain CID improvements.

SECTION 4. APPLICANT REQUIREMENTS.

- a. The applicant must agree to enter into a Funding Agreement with the City whereby the applicant will reimburse the City for costs the City incurs as a result of the consideration of the CID petition.
- b. If a CID is created, the applicant must agree in the Development Agreement to pay to the City an annual administrative fee to cover the administration and other City costs related to the CID.
- c. If a CID is created, the applicant must complete an annual report by March 1 of each year covering the previous calendar year.

SECTION 5. AUTHORITY OF GOVERNING BODY: The Governing Body, by its inherent authority, reserves the right, in its sole discretion, to reject any proposal or petition for creation of a CID at any time in the review process when it considers such action to be in the best interests of the City.

SECTION 6. POLICY MANUAL: This resolution shall be included in the Governing Body Policy Manual of the City.

ADOPTED this 7th day of February, 2011.

Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Senior Assistant City Attorney