



Legislation Text

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[COMMITTEE SUBSTITUTE FOR] ORDINANCE NO. 230583

Sponsor: Councilperson Katheryn Shields

Approving an Industrial Development Plan for EPD3 Ellison, LP for the purpose of acquiring, equipping and constructing a project for industrial development consisting of the acquisition, purchase, construction and development of an 11-story, 68 unit multifamily apartment building (the "Project") located at 300 West Armour Boulevard, Kansas City, Missouri (the "Project Site"); authorizing and approving various agreements for the purpose of setting forth covenants, agreements and obligations of the City and EPD3 Ellison, LP; authorizing the issuance of taxable industrial revenue bonds in an amount not to exceed \$11,500,000; authorizing and approving other documents; authorizing certain other actions in connection with the issuance of said bonds; and directing the City Clerk to provide a copy of this Ordinance to the Director of the Missouri Department of Economic Development.

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, and Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended, and the City of Kansas City Charter (collectively, the "Act"), to issue its revenue bonds for carrying out a project or projects under the Act, such revenue bonds to be paid solely from revenue received from such project, and to enter into leases of certain property associated with the project to be financed with the proceeds of such revenue bonds with any person, firm or corporation; and

WHEREAS, the City has heretofore prepared and approved plans for the industrial development of the City and desires to approve a Chapter 100 Industrial Development Plan (the "Plan") for the purpose of carrying out the Project for EPD3 Ellison, LP, a Missouri limited partnership, and its affiliates or other designated entities that enter into a separate lease agreement with the City (the "Company"); and

WHEREAS, the City intends to issue its Taxable Industrial Revenue Bonds (Historic Ellison Project) (the "Bonds") for the purpose of furthering the Project located at the Project Site; and

WHEREAS, notice of the Project was given to the taxing jurisdictions in accordance with the Act and the City Council has fairly and duly considered all comments submitted to the City Council regarding the proposed Plan; 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 the Plan as proposed by the Company; and that the City issue the Bonds, as more fully described in the applicable Indenture and in the applicable Lease, as such terms are hereinafter defined and authorized, the proceeds of which shall be used for the purchase, construction and equipping of certain real property associated with the Project, which shall be located at the Project Site and leased, with an option to purchase, by the City to

the Company; and

WHEREAS, the principal amount of the Bonds will be issued in taxable Chapter 100 bonds which will be repaid solely by the Company under the terms of the Lease (defined herein); and

WHEREAS, for a Chapter 100 bond issuance, the City Council has previously established a policy (Ordinance No 160383) for the review and approval of these projects; and

WHEREAS, the City Council wishes in this instance to waive: (i) its Chapter 100 policy suggesting the maximum abatement period and maximum bond term; (ii) its Chapter 100 policy suggesting the minimum PILOT payment on behalf of the Project; and (iii) its Chapter 100 policy based upon the independent professional analysis of the anticipated financial return on the amount of private investment necessary to develop and construct the Project and the eventual net benefits to taxing jurisdictions from the implementation of the Project; and

WHEREAS, the proceeds of the Bonds will be used to construct and develop the Project (with a corresponding tax abatement as described herein) and to provide a sales tax exemption on construction materials for the Project, which does not require any waiver of the policy described above (found in Ordinance No. 160383); 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; 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 and industrial development 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) Construction, acquisition, equipping and installation of the Project located at the Project Site in the City;

(b) A total estimated project cost of approximately \$10,874,593; and

(c) The costs of constructing, acquiring, equipping and installing the Project that will be funded from proceeds of the sale of up to Eleven Million Five Hundred Thousand and No/100 (\$11,500,000.00) maximum principal amount of Taxable Industrial Revenue Bonds to be issued by the City and purchased by the Company or other purchaser named in the herein-defined Purchase Agreement.

Section 2. Authorization of Documents. The City is hereby authorized to enter into the following documents for each series of Bonds (collectively, the “City Documents”), in such form as shall be approved by the officials of the City executing such documents, with such officials’ signatures thereon being conclusive evidence of their approval thereof:

(a) A Trust Indenture (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;

(b) A Lease Agreement, between the City and Company, under which the City will lease the Project to the Company (the “Lease”), which Lease shall terminate following the issuance of a temporary certificate of occupancy for the Project or sooner at Company’s option as described in the Lease (“Lease Term”). The Bonds will be repaid solely by Company under the terms of the Lease.

(c) Purchase Agreement, 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 Revenue Bonds (Historic Ellison Project), in the maximum aggregate principal amount not to exceed \$11,500,000, for the purpose of providing funds for the costs associated with the construction, improvement, and renovation of 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 denomination, 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.

(a) The Bonds will be sold to the Company or other purchaser under the terms of a Bond Purchase Agreement between the City and the Company or other purchaser (the “Purchase Agreement”). The maximum principal amount of the Bonds shall be \$11,500,000, the interest rate on the Bonds shall not exceed 7%, principal shall be payable in accordance to the terms of the Lease, the maturity date shall be no later than the earlier of (i) December 1 that occurs in the 20th year following the year of issuance of the Bonds, or (ii) December 1, 2045, the Bonds shall be purchased at 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 or on behalf of and as the act and deed of the City.

(b) The issuance of the Bonds and the execution and delivery of the related Lease shall provide for a maximum of a 50% abatement of *ad valorem* real property taxes for 20 years with annual PILOTS equal to 50% of the estimated taxes that would otherwise be paid in each year, as further described in the Plan. Such PILOTS will be remitted to the affected jurisdictions that would have been payable had the real property been fully taxed, all as described in the Plan.

(c) In connection with the issuance of the Bonds, the City will provide a sales tax exemption for construction materials purchased with the proceeds of the Bonds.

(d) The City hereby waives Committee Substitute for Resolution No. 041033, as reaffirmed by Section 7 of Second Committee Substitute for Ordinance No. 160383, as amended, as modified by Second Committee Substitute for Ordinance 200497, as amended, to the extent necessary so that the terms of the Bonds and resulting abatement may be provided as authorized in this Ordinance.

(e) In accordance with Code § 3-622, City Council acknowledges that the project supports affordable housing as defined in Code § 74-11 and therefore hereby waives the requirement that prevailing wage be paid for the project. Additionally, in accordance with Code § 74-11(e), City Council acknowledges that the Project is receiving Low Income Housing Tax Credits and involves the renovation or rehabilitation of a structure that has been designated a historic landmark and is therefore exempt from the requirements outlined in Code § 74-11.

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 associated with the applicable portion of the Project described therein, and such payments, revenues and receipts shall be pledged and assigned to the Trustee as security for the payment of the applicable series of 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, (i) a special trust fund in the name of the City to be designated the "City of Kansas City, Missouri, Bond Fund - Historic Ellison Project" and the City shall cause all sums required by the applicable Indenture to be deposited within the applicable fund and shall create all accounts in such fund as required by the applicable 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. Further Authority. The Mayor, Director of Finance, the City Treasurer 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, and tax redirection.

Approved as to form:

Emalea Black
Associate City Attorney