

(Published at www.andoverks.com on July 6, 2024)

ORDINANCE NO. 1910

AN ORDINANCE CREATING THE COMMUNITY IMPROVEMENT DISTRICT – RED BUD TRAIL PROJECT IN THE CITY OF ANDOVER, KANSAS AND AUTHORIZING THE LEVY OF A COMMUNITY IMPROVEMENT DISTRICT RETAILERS’ SALES TAX TO BE COLLECTED WITHIN THE DISTRICT

WHEREAS, pursuant to K.S.A. 12-6a26 *et seq.*, as amended (“the Act”), the City of Andover, Kansas (the “City”) is authorized to create a community improvement district (“CID”) within its jurisdiction to fund all or a portion of the cost of a “Project” as defined and authorized under the Act; and

WHEREAS, the Act further authorizes the City to impose a sales tax within the CID on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of K.S.A. 79-3601 *et seq.*, as supplemented and amended (the “Kansas Retailers’ Sales Tax Act”), in any increment permitted by the Act, and to pledge the revenue received from such tax to pay for the Project or reimburse the cost of the Project as “pay-as-you-go-financing” (as defined in the Act); and

WHEREAS, Redbud Trail Properties, LLC, a Kansas limited liability company (the “Developer”), has filed a petition with the City on May 24, 2024 (the “Petition”), proposing (i) the creation of a CID under the Act (the “District”) to assist in financing the development of a restaurant and associated uses, public space, outdoor patio and open space and/or similar, related or appurtenant uses, other structures and uses, and all associated site work, infrastructure, utilities, storm water control, access, street improvements, landscaping, lighting, parking facilities, interest and financing costs of the Project, and the City and the Petitioner’s administrative costs in establishing and maintaining the CID, infrastructure located outside the CID but contiguous to any portion of the CID and such infrastructure is related to the Project within the CID or substantially for the benefit of the CID, ongoing costs associated with the operations, maintenance, and upkeep of property located within the boundaries of the CID, and any other items allowable under the Act (the “Project”) all generally located at the southwest corner of West Harrison Street and North Andover Road in the City of Andover, Butler County, Kansas, (ii) the construction of the Project as more particularly described in the Petition, and (iii) the imposition of a CID sales tax within the District in the amount of two percent (2.0%) to pay a portion of the costs of the Project (the “CID Sales Tax”); and

WHEREAS, the Petition is signed by Developer, the owner of record of more than fifty-five percent (55%) (i) of the land area within the proposed District and (ii) by assessed value of the land area within the proposed District; and

WHEREAS, the City adopted Resolution No. 24-19 on May 28, 2024 (1) giving notice that a public hearing will be held before the governing body to consider (i) the advisability of creating the District, (ii) the Project described in the Petition, and (iii) the imposition of a CID sales tax in

the District; (2) containing the time and place of the hearing; (3) containing the general nature of the Project; (4) containing the estimated cost of the Project; (5) containing the proposed method of financing the project, (6) containing the proposed amount of the community improvement district sales tax, if any; (7) containing the proposed amount and method of assessment, if any; (8) containing a map of the District; and (9) containing a legal description of the District; and

WHEREAS, pursuant to the Act and Resolution No. 24-19 and after providing notice of hearing as required by the Act, the City conducted a public hearing on June 25, 2024 to consider (i) the advisability of creating the District, (ii) the Project described in the Petition, and (iii) the imposition of a CID sales tax in the District; and

WHEREAS, upon reviewing the Petition and considering the information and public comments received at the public hearing held on this date, the governing body of the City finds and determines it is in the best interest of the City and in furtherance of the purposes of the Act to create the District, authorize the Project, and authorize levy of the CID Sales Tax.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ANDOVER, KANSAS:

SECTION 1. Creation of District. The District is hereby created within the City and shall be designated the “Community Improvement District – Redbud Trail Project.” The legal description of the District is attached as **Exhibit A** and the boundaries of the District are depicted on the map attached as **Exhibit B**.

SECTION 2. Project and Project Costs. The Project is authorized and described as follows: the development of a restaurant and associated uses, public space, outdoor patio and open space and/or similar, related or appurtenant uses, other structures and uses, and all associated site work, infrastructure, utilities, storm water control, access, street improvements, landscaping, lighting, parking facilities, and any other items allowable under the Act (the “Project”), all generally located at the southwest corner of West Harrison Street and North Andover Road in the City of Andover, Butler County, Kansas. The governing body hereby approves the total estimated cost of the Project of \$1,673,000 and the total estimated cost of the Project to be financed or reimbursed by the CID Sales Tax of \$435,890. The estimated amount expected to be reimbursed from the CID Sales Tax revenue stated in the preceding sentence shall be neither a guarantee of nor a limitation on reimbursement and revenues of the CID Sales Tax may be utilized for costs of the Project if authorized by the Act and the Development Agreement (defined below).

SECTION 3. Method of Finance. The portion of Project cost to be financed or reimbursed from revenues of the CID Sales Tax (“Eligible CID Costs”) will be funded on a pay-as-you-go basis, as defined in the Act. No special assessments will be levied under the Act and no bonds of the City will be issued.

SECTION 4. Levy of CID Sales Tax. Pursuant to the Act, a two percent (2.0%) retailers’ sales tax shall be levied within the District on the selling of tangible personal property at retail or rendering or furnishing of services taxable under provisions of the Kansas Retailers’ Sales Tax Act. The imposition of the CID Sales Tax is intended to begin on January 1, 2025, as provided in

the Development Agreement, provided that proper notice is provided, and upon approval and implementation by the Kansas Department of Revenue (“KDOR”), or any other effective date the City may approve by ordinance if a change in the effective date of the CID Sales Tax is requested by the Developer and such date is approved by KDOR. The CID Sales Tax shall be administered, collected by KDOR, and subject to the provisions of the Act, K.S.A. 12-187 *et seq.* and KDOR’s rules and regulations.

Section 5. Development Agreement; Condition to Publication and Effectiveness of Ordinance. As a condition precedent to the City Clerk’s publication of this ordinance, the City and the Developer shall enter into a development agreement in substantially the form submitted to the governing body with this Ordinance (the “Development Agreement”), setting forth the terms and conditions of the Developer’s construction and completion of the Project, as well as the reimbursement procedures for Eligible CID Costs. The Mayor is authorized and directed to execute and deliver the Development Agreement for and on behalf of and as the act and deed of the City in substantially the form presented today with such minor corrections or amendments thereto as the Mayor shall approve (after consultation with the Bond Counsel), which approval shall be evidenced by his or her execution thereof, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance. The City Clerk or any Deputy City Clerk of the City are hereby authorized and directed to attest the execution of the Development Agreement 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 6. Further Authority. The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Development Agreement, establishment and operation of the District, and levy of the CID Sales Tax, all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

Section 7. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the governing body of the City and publication once in the official newspaper of the City. Following publication, the City Clerk is directed to provide a certified copy of the complete ordinance to the Kansas Department of Revenue – Director of Taxation as necessary to begin levy of the CID Sales Tax as described in Section 4 of this Ordinance and record this Ordinance in the office of the Butler County Register of Deeds, as required by the Act.

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ADOPTED AND APPROVED by vote of the governing body of the City of Andover,
Kansas on the 25th day of June, 2024.

CITY OF ANDOVER, KANSAS

[seal]



By


Ronnie Price, Mayor

ATTEST:

By


Dana Engstrom, City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF DISTRICT

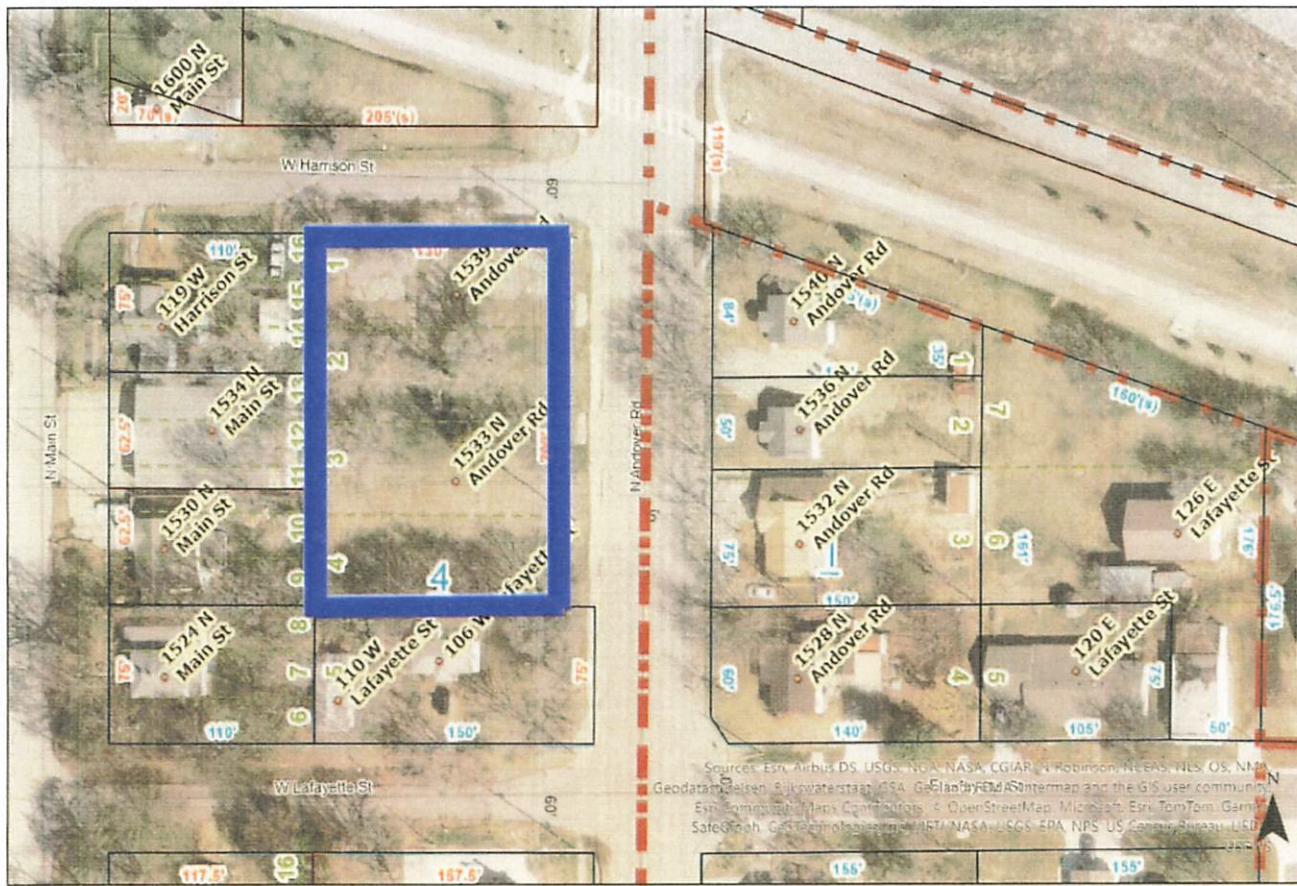
Parcel 1:

Lot 1 and the North 15 feet of Lot 2, Block 4, Original Town, now City of Andover, Butler County, Kansas

Parcel 2:

The south 35 feet of Lot 2 and all of Lots 3 and 4, Block 4, Original Town, now City of Andover, Butler County, Kansas.

ArcGIS Web Map



This map is intended for informational purposes only. It should not be used in lieu of a survey to determine property boundaries.

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EXHIBIT B

EXCERPT OF MINUTES

The governing body of the City of Andover, Kansas met in regular session, at the usual meeting place in the City on June 25, 2024, at 7:00 p.m., with Mayor Ronnie Price presiding, and the following members of the governing body present: Tim Berry, Philip Hamilton, Mike Warrington, Jodi Ocadiz, Paul Wemmer, Michael "Homer" Henry.

and the following members absent: None

Among other business, in accordance with Resolution No. 24-19 published on in *The Butler County Times-Gazette* and at www.andoverks.com on June 8, 2024 and June 15, 2024, and mailed via certified mail, return receipt requested, on June 11, 2024, 2024 to the owners of record of all real property within the proposed community improvement district, a public hearing was convened by the governing body relating to the advisability of creating a community improvement district, authorizing a project therein, and levying a community improvement district sales tax within said district to pay costs of such project, all as described in said Resolution.

All interested persons were afforded the opportunity to present their views on such matters.

Thereupon, there was presented to the governing body an Ordinance entitled:

AN ORDINANCE CREATING THE COMMUNITY IMPROVEMENT DISTRICT – RED BUD TRAIL PROJECT IN THE CITY OF ANDOVER, KANSAS AND AUTHORIZING THE LEVY OF A COMMUNITY IMPROVEMENT DISTRICT RETAILERS' SALES TAX TO BE COLLECTED WITHIN THE DISTRICT.

After discussion, upon motion by Council President Henry, seconded by Council Member Wemmer, the Ordinance was adopted by a majority of the members of the governing body.

A majority of the members having voted in favor of the adoption of said Ordinance, it was designated Ordinance No. 1910 and was ordered to be executed by the Mayor and by the City Clerk, and the City Clerk was directed to publish the Ordinance one time in the official City newspaper, provide a certified copy of the complete ordinance to the Kansas Department of Revenue – Director of Taxation, and record this Ordinance in the office of the Butler County Register of Deeds, all as required by law and provided therein.

CITY CLERK'S
CERTIFICATION OF EXCERPT OF MINUTES

I certify that the foregoing is a true and correct Excerpt of Minutes of the June 25, 2024 meeting of the governing body of the City of Andover, Kansas.

[seal]




Dana Engstrom, City Clerk