

ORDINANCE NO. 2640

AN ORDINANCE AUTHORIZING THE CREATION OF THE WAVERLY PLAZA COMMUNITY IMPROVEMENT DISTRICT IN THE CITY OF GARDNER, KANSAS; AND AUTHORIZING THE IMPOSITION OF A COMMUNITY IMPROVEMENT DISTRICT SALES TAX TO BE COLLECTED WITHIN SUCH DISTRICT.

WHEREAS, pursuant to K.S.A. 12-6a26 *et seq.*, as amended (the “Act”), municipalities are authorized to create community improvement districts for economic development purposes and any other purpose for which public money may be expended; and

WHEREAS, the City of Gardner, Kansas (the “City”), is a municipality within the meaning of the Act; and

WHEREAS, a petition (the “Petition”) was filed by Bristol Partners XIX, LLC, a Kansas limited liability company (the “Developer”), with the City Clerk requesting: (a) that the community improvement district described therein (the “CID”) be created; (b) that the City levy a community improvement district sales tax on the selling of tangible personal property at retail or rendering or furnishing services within the CID in the amount of 1.00% (the “CID Sales Tax”); and (c) that certain community improvement district project costs to be incurred within the CID be financed on a pay-as-you-go basis, all in accordance with the Act; and

WHEREAS, said Petition was signed by the Developer, the owner of record of more than 55% of the land area within the proposed CID and the owner of record collectively owning more than 55% by assessed value of the land area within the proposed CID; and

WHEREAS, the Act provides that prior to creating any community improvement district and imposing a community improvement district sales tax, the Governing Body shall, by resolution, direct and order a public hearing on the advisability of creating such community improvement district and the construction of such community improvement district project therein, and provide for notice of the hearing by publication at least once each week for two consecutive weeks in the official city newspaper, with the second publication occurring at least seven days prior to the hearing, and by certified mail to all property owners within the proposed community improvement district, with such certified mail sent at least ten days prior to such hearing; and

WHEREAS, pursuant to Resolution No. 2038 of the City, adopted on November 18, 2019, the Governing Body of the City directed a public hearing on the proposed CID be held and declared its intent to levy the CID Sales Tax in the proposed CID; and

WHEREAS, on December 16, 2019, following proper notice as provided in the Act, the Governing Body of the City held a public hearing on the proposed CID, the proposed community improvement district project, and the imposition of the CID Sales Tax in the proposed CID; and

WHEREAS, the Governing Body hereby finds and determines that it is in the best interests of the City and in furtherance of the purposes of the Act to create the CID;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS AS FOLLOWS:

Section 1. Creation of the Community Improvement District; Boundaries. The Governing Body of the City hereby creates the CID within the City, which shall be designated as the “Waverly Plaza CID.” The boundaries of the CID shall be as legally described on *Exhibit A* attached hereto and as depicted on the map attached as *Exhibit B* hereto.

Section 2. Authorization of Community Improvement District Project; Estimated Costs. The Governing Body of the City hereby authorizes the project within the CID described on *Exhibit C* attached hereto (the “Project”) and approves the total estimated cost of the Project at \$20,000,000. Notwithstanding the approval of the Project by this Ordinance, the Project and owner or owners of all property comprising the Project must comply with all applicable zoning, planning, permit and other laws and regulations applicable to the Project.

Section 3. Method of Financing. The Project within the proposed CID is expected to be financed on a pay-as-you-go basis, from revenues received from the imposition of the CID Sales Tax, as more particularly set forth in a memorandum of understanding between the City and the Developer (the “MOU”). No special assessments shall be implemented under the Act to pay for the Project and no general obligations bonds or notes will be issued to finance the Project; provided, however, that the City may, in its discretion, consider the issuance of special obligation community improvement district revenue bonds.

Section 4. Levy of Sales Tax. In accordance with the Act and to provide funds to pay a portion of the costs of the Project, the Governing Body of the City hereby levies a community improvement district sales tax on the selling of tangible personal property at retail or rendering or furnishing services within the CID in the amount of 1.00%, *i.e.*, the “CID Sales Tax.” The collection of the CID Sales Tax shall commence on January 1, 2022, or the date on which the Kansas Department of Revenue agrees to begin the imposition of the CID Sales Tax and shall expire 22 years from the date the Department of Revenue begins the collection of the CID Sales Tax or otherwise in accordance with law. The CID Sales Tax shall be imposed for such period of time, be administered, collected and subject to the provisions of K.S.A. 12-187 *et seq.*, this Ordinance and the MOU. The CID Sales Tax will be applied on an annual basis to: (a) reimburse the City for its share of debt service payable in connection with the special benefit district created pursuant to Resolution No. 2032 of the City, adopted on October 7, 2019, as subsequently amended (the “Waverly Plaza SBD”), which Waverly Plaza SBD improvements comprise a portion of the proposed Project; (b) reimburse the Developer for its share of debt service payable in connection with the Waverly Plaza SBD; and (c) reimburse the Developer for certain other costs of the Project as agreed to by the City.

Section 5. Authorization to Execute Documents. The Mayor, City Clerk and other appropriate officers of the City are hereby authorized and directed to execute, attest, acknowledge and deliver for and on behalf of and as the act and deed of the City, any other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 6. Effective Date. This Ordinance shall be in force and take effect from and after publication of the Ordinance once in the official City newspaper. When this Ordinance becomes effective in accordance with this section, the City Clerk shall provide a certified copy of the same to the State Director of Taxation pursuant to K.S.A. 12-189.

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PASSED by the Governing Body of the City and approved by the Mayor on December 16, 2019.

CITY OF GARDNER, KANSAS

(Seal)

_____/s/_____
Mayor

ATTEST:

_____/s/_____
City Clerk

EXHIBIT A

Legal Description of Waverly Plaza CID

All that part of the Southwest Quarter of Section 23, Township 14 South, Range 22 East, in the City of Gardner, Johnson County, Kansas, being more particularly described as follows:

Beginning at the Southwest corner of the Southwest Quarter of said Section 23; thence N 1°53'36" W, along the West line of the Southwest Quarter of said Section 23, a distance of 660.92 feet; thence N 88°06'24" E, a distance of 50.00 feet; thence Easterly on a curve to the left, said curve being tangent to the last described course and having a radius of 445.00 feet, an arc distance of 87.82 feet; thence N 76°48'00" E, a distance of 169.86 feet; thence Easterly on a curve to the right, said curve being tangent to the last described course and having a radius of 480.00 feet, an arc distance of 94.67 feet; thence N 88°06'00" E, a distance of 331.11 feet; thence Easterly along the Southerly plat line of THE RESERVE AT WAVERLY POINTE, TENTH PLAT, a platted subdivision of land in the City of Gardner, Johnson County, Kansas and its Westerly extension, on a curve to the right, said curve being tangent to the last described course and having a radius of 430.00 feet, an arc distance of 346.73 feet to the Southmost plat corner of said THE RESERVE AT WAVERLY POINTE, TENTH PLAT, said point also being on the South line of N. Laurel Street, as now established; thence S 45°18'00" E, along the South line of said N. Laurel Street, a distance of 50.00 feet to the Westmost plat corner of THE RESERVE AT WAVERLY POINTE, EIGHTH PLAT, a platted subdivision of land in the City of Gardner, Johnson County, Kansas; thence S 53°05'33" E, along the Southwesterly plat line of said THE RESERVE AT WAVERLY POINTE, EIGHTH PLAT, a distance of 259.69 feet to a point on the North most plat corner of THE RESERVE AT WAVERLY POINTE, ELEVENTH PLAT, a platted subdivision of land in the City of Gardner, Johnson County, Kansas; thence along the Northerly plat line of said THE RESERVE AT WAVERLY POINTE, ELEVENTH PLAT and THE RESERVE AT WAVERLY POINTE, NINTH PLAT, THE RESERVE AT WAVERLY POINTE, FIFTEENTH PLAT, both being platted subdivisions of land in the City of Gardner, Johnson County, Kansas, for the following three (3) courses; thence S 86°15'48" W, a distance of 25.66 feet; thence S 70°42'18" W, a distance of 183.20 feet; thence S 68°47'47" W, a distance of 77.68 feet to the Northwest plat corner of said THE RESERVE AT WAVERLY POINTE, NINTH PLAT; thence S 1°58'45" E, along the West plat line of said THE RESERVE AT WAVERLY POINTE, NINTH PLAT and the West plat line of THE RESERVE AT WAVERLY POINTE, FOURTEENTH PLAT, a platted subdivision of land in the City of Gardner, Johnson County, Kansas, a distance of 298.01 feet to the Southwest plat corner of said THE RESERVE AT WAVERLY POINTE, NINTH PLAT, said point also being on the South line of the Southwest Quarter of said Section 23; thence S 88°01'15" W, along the South line of the Southwest Quarter of said Section 23, a distance of 1002.77 feet to the point of beginning, containing 16.8493 acres, more or less, of unplatted land.

EXHIBIT C

Project Description

The general nature of the proposed community improvement district Project is:

1. Design, construction and improvement of Laurel Street from Santa Fe Street to Washington Street and all related improvements;
2. Design, construction and improvement of Washington Street from Waverly Road to Laurel Street and all related improvements; and
3. Design, construction and improvement of an approximately 60,000 square feet retail shopping center, with all related sitework, parking, and infrastructure improvements and other items incidental to complete construction of the proposed improvements.

The improvements described in Items 1 and 2 above have been financed through the Waverly Plaza SBD (as such term is defined in Section 4 of this Ordinance).