



CITY OF COUNCIL GROVE • 205 UNION STREET • PO BOX 313
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To whom it may concern:

The purpose of this letter is to update the leaseholders at the Council Grove City Lake as to the City's efforts to reach a mutually agreeable plan for the annexation of the leased lots at the lake. The city wants annexation in order to protect its water supply by extending public water and sewer to the lots at the lake. The City also wishes to end its liability for real estate taxes on the leased lots.

In July of 2022, the city sent a letter to the leaseholders regarding annexation. The city gave an estimated timeline of approximately three years for the extension of the services once annexation occurred. The city also asked for feedback from the leaseholders as to the leaseholders' positions on annexation. The responses from the leaseholders showed that many of the leaseholders did not want to take any action that would allow for annexation.

Consequently, the city engaged the services of an attorney to review the nature and validity of the leases from a real estate law perspective rather than a tax law perspective. That attorney was Pat Riordan of Riordan, Fincher & Mayo, P.A. of Topeka, Kansas. Mr. Riordan conducted his review, and subsequently communicated his thoughts to the Council Grove City Lake Association. The purpose of the communication was to get the thoughts of the Association in light of the Association's responsibility under the leases to serve as the leaseholders' representative regarding the leases. In August of 2024, Mr. Riordan received the Association's response. To date, no other action has been taken.

We are writing you directly because in its response, the Association stated it was not the real party in interest as to any legal issues concerning the nature or validity of the leases. Consequently, the city is now contacting you directly for your input before the city proceeds to take any action. The city will not be involving the Association going forward.

At this time, the city intends to terminate the leases for the reasons stated below. If the leases are terminated, the city will own the lots free and clear of the leases. Such a termination will affect the leaseholders.

However, the city is willing to sell the lots to the current leaseholders for \$25,000 per lot, as long as the leaseholder agrees to annexation. The City asks that you reply to this letter by **November 15, 2024** as to whether you will agree to buy your lot and agree to annexation. The City is not requiring that any sale closes by November 15, 2024, just that you agree to move forward with purchase and annexation. The city understands that there are additional details to work out. Additionally, if a leaseholder is financially unable to purchase their lot in the near future, the City is willing to work with the leaseholder to affect the sale.

As for those leaseholders who do not agree to move forward with a sale and annexation, the City will move forward with a lawsuit to terminate the leases as to those leaseholders. If a court allows for the

termination of the leases for those leaseholders, the City will simply terminate the leases, and the City will not sell any lots to those leaseholders.

The lawsuit will address the City's position that the leases are terminable because the leases are : 1.) void under the Cash Basis Law (KSA 10-1,101, et seq) and/or Budget Law (KSA 79-2934, 79-2935), and 2.) terminable because the current city council is not bound by leases made by prior city councils. The City's position regarding the Cash Basis Law and the Budget Law comes from the two cases: *Farmers Bank & Trust v. Homestead Community Development*, 38 Kan. App. 2d 877, 476 P.3d 1 (2020) *State ex rel. Hecht v. City of Topeka*, 296 Kan. 505, 293 P3d 713 (2013). The Courts in these cases ruled that a municipality cannot obligate itself to open end, unfunded liabilities exceeding one-year. The City's position is that the leases do just that; specifically, the leases require the City to pay real estate taxes for a period of several decades, if not in perpetuity.

An argument has been raised that the Cash Basis Law and the Budget Law are inapplicable to the leases because the City is required to pay real estate taxes as a landowner. However, this argument misses the point. But for the leases, the property owned by the City would be tax-exempt, and the City would have absolutely no requirement to pay real estate taxes. In the present case, it is not the ownership of the property that triggers the imposition of real estate taxes, it is instead the creation of the private leases, and only the private leases, that triggers the imposition of real estate taxes. The voluntary obligations created by the leases are quite different from a case in which a statutory obligation is imposed independently from any contract or lease executed after acquiring ownership.

Another argument has been that the leases do not impose an obligation to pay real estate taxes. This is incorrect. A landowner, such as the City, is the party that is ultimately responsible for paying real estate taxes. A lease can require the leaseholder to pay real estate taxes, but if the leaseholder fails to do so, the owner is still responsible. The owner can sue the leaseholder for a breach of the lease for the failure to pay the taxes, but the owner will have to pay the real estate taxes if the leaseholder does not. Consequently, the City has a conditional obligation to pay the real estate taxes and conditional obligations still violate the Cash Basis Law and the Budget Law.

A third argument that has been advanced is that the leases are allowed under KSA 14-2001. This statute allows for a municipality to lease municipal property for camping, cabin sites and incidental uses, which is quite different from building a residential dwelling. Additionally, while the statute states the lease can be for years, there is no language that allows a municipality to bind itself for a set period of certain years rather than allowing one year renewals that can be terminated by the municipality, which is allowed under the Cash Basis Law and the Budget Law. Finally, the statute clearly states that such a lease cannot allow for the taxation of the municipality's ownership interest, which is what the current leases do, and makes the leases in violation of KSA 14-2001.

As stated above, the City also believes that the leases made by prior city councils are terminable by the current city council. The reason for this is that the leases were done for a governmental purpose, specifically, the leases were for park administration under KSA 14-2001 and not for any compensation or particular benefit to the city. As a result, the current city council is not bound by the prior councils, and the current city council can terminate the leases as result. *Jayhawk Racing Properties, LLC v. City of Topeka*, 313 Kan. 149, 484 P.3d 250 (2021).

The above legal position is purely the City's position. There has not been a court ruling or determination on these issues. You need to consult your own attorney for any advice. The city will not provide any advice to any leaseholder on this matter.

Thank You,

Mayor Debi Schwerdtfeger
Council President Mark Berner
Councilperson Jason Booker
Councilperson Denise Hartman
Councilperson Sean Honer
Councilperson Nathan Adams
Councilperson Sharon Hauri