

The Mueller MDA
And
The Proposed Charter Amendment
on Retail Financial Incentives

QUESTION PRESENTED:

If passed, will the proposed Stop Domain Subsidies charter amendment impact the Mueller Master Development Agreement? In other words, would the City's financial obligations under the Mueller MDA be prohibited "Financial Incentives" under the proposed charter amendment?

WHAT DOES CHARTER AMENDMENT PROHIBIT?

- The city shall not provide “financial incentives” . . .
- in connection with development or redevelopment of real property . . .
- that includes one or more retail uses
- “Financial Incentive” is broadly defined, including payments from sales taxes and any grants of funds
- For “pending agreements,” prohibition applies if the agreement makes payment of “financial incentive” contingent on or subject to “appropriation of funds”
- City payments pursuant to a tif program are excluded from the prohibition

Are There “Financial Incentives” In The Mueller Master Development Agreement?

- This MDA is approved and ongoing (Probably 10-15 years more)
- Mueller includes an extensive retail component
- The MDA requires “Financial Incentives” that benefit the retail development
 - Project costs (including infrastructure) partially funded by City sales tax collected from project retail development
 - Sales taxes committed to repay long term bonds (\$12 million to date)
 - Reinvestment of land sale proceeds into project finance fund
 - City must make annual payment for parks maintenance
 - City must make annual payment for pond maintenance
 - City to grant up to \$25 million in “account credits” to pay for fiscal postings (subdivision improvement guaranties)
 - Other incentives include developer use of city owned facilities, city funded storage, environmental clean-up, and future public financing commitment
- City commitments include funding infrastructure and other costs normally borne by a developer

- Many incentives are directly or indirectly “subject to annual appropriations by the city” (MDA Section 5.2(a)(i) and (ii), Section 8.2(h) and (i), Section 10.5)
- Property tax payments are tied to a TIF program; sales tax payments are not

Conclusion

Subject to potential legal defenses, including constitutional issues, some of the city’s major commitments under the MDA seem to meet the charter amendment’s definition of a prohibited “Financial Incentive.”

Can Mueller MDA Be Amended to Avoid Charter Problems?

- Possibly, but not a quick fix
- Entire MDA, and exhibits, would need to be scrubbed to identify and address all relevant financial incentives
- Catellus would have to consent
- Removal of “subject to appropriation” language for future funding obligations could create new problems under Texas Constitution’s prohibition on City assuming unfunded debt
(See claims in 2004 Domain litigation)
- Commitment of future sales tax revenues to repay bond is a “funded” obligation that probably would not trigger Constitutional problem

Other Options?

- A bond validation lawsuit is one statutory mechanism to confirm the validity of the city’s existing obligation