

Article GB05-I COMMUNITY IMPROVEMENT DISTRICT ("CID") POLICY

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Section GB05-I-1 OBJECTIVES.

Establish Community Improvement Districts ("CID") to enable public financing of all or a portion of Project or infrastructure improvements. A CID is authorized by K.S.A. 12-6a26 *et seq.* (Supp. 2009), as amended, (the "Act") to encourage and promote economic development, tourism and community investment within a defined CID area ("District"). A CID Project should provide public benefit such as strengthening economic development and employment opportunities; reducing blight, enhancing tourism; upgrading older real estate through redevelopment or rehabilitation; or promoting sustainability. Public financing is achieved by levying and collecting special assessments and/or a CID sales tax upon property in the District.

Section GB05-I-2 SCOPE.

An applicant may petition the City to utilize CID financing to fund Projects eligible under the Act. The authority and decision to approve a petition establishing a CID for a Project is within the sole discretion of the Governing Body. The Governing Body is under no obligation to approve any petitioned Project. This Policy is intended to provide a guide in considering applications. The Governing Body reserves the right to deviate from this Policy when it believes it is in the City's best interest.

Section GB05-I-3 DEFINITIONS.

- A. "CID Sales Tax" means a retailers' sales tax over and above the aggregate amount of the retailers' sales tax contained in K.S.A. 12-187 through 12-197, and amendments thereto, on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailer's sales tax act, within a District, in any increment of .10% or .25% not to exceed 2% as authorized by the Act, pledging such revenue to pay the bonds issued for the Project or to reimburse the cost of the Project pursuant to pay-as-you-go financing.
- B. "Cost" means the definition set out in K.S.A. 12-6a27(f) as amended. The City, on a case by case basis, will consider costs incurred within 12 months prior to District establishment, provided the costs were incurred after July 1, 2009. The City reserves the right to exclude otherwise eligible costs under the Act. For purposes of the City's Policy, project costs shall not include a

Developer's attorney fees, financial advisor fees, real estate commissions paid to developers, developer fees and fees paid to consultants representing developers. This prohibition does not extend to architectural and engineering fees; environmental and geotechnical consultants or other similar due diligence expenses associated with a project, structure or infrastructure construction. The approved project costs shall be described in detail in a Development Agreement.

- C. "Finance Team" includes the City Administrator, Finance Director, and City Attorney, or their designees; City Bond Counsel and City Financial Advisor.
- D. "Owner" means the owner or owners of record, whether resident or not, of real property within the District. The applicant shall be an Owner.
- E. "Pay-As-You-Go" means a method of financing in which the costs of a Project are financed without notes or bonds, and the approved costs of such Project are reimbursed after Project completion as monies are deposited in the District fund.
- F. "Project" may include any item eligible under the Act, as described in K.S.A. 12-6a27(m) as amended, but the City reserves the right to exclude otherwise eligible Projects under the Act; determine eligible and ineligible projects; and determine the amount of funding for a Project on a case by case basis. These terms and approvals shall be set out in a Development Agreement.

Section GB05-I-4 PROVISIONS.

A. CRITERIA

The Governing Body shall consider establishment of a CID when it determines it is in the best interest of the City and provided the Project meets one or more of the following criteria:

1. Furthers an identified Governing Body goal.
2. Attracts and promotes mixed use development.
3. Has unique site constraints making development more difficult and costly.
4. Substantially promotes economic development, investment or reinvestment in the community.
5. Incorporates higher standards for the design and construction of improvements than the minimum Code required standards.
6. Utilizes LEED construction with the businesses located therein using sustainable best practices.
7. Encourages retail projects that enhance the retail base by either attracting new sales or capturing sales moving to other markets.
8. Encourages or enhances public transportation opportunities.
9. Provides for the construction of facilities that promote tourism or enhance the quality of life within the City.
10. Incorporates construction of public infrastructure.

B. APPLICANT RESPONSIBILITY

At submission of the application petitioning the City for establishment of a CID, the applicant shall also provide the following information:

1. Evidence in a form satisfactory to the City of the applicant's financial ability to complete

the proposed project in a timely manner.

2. Documentation substantiating the applicant's sources of funding, including the amount/percentage of equity funding.
3. Submission of a pro forma and with project feasibility analysis.
4. Payment of all required fees and compliance with all procedural requirements of the Act and the City's CID Policy.
5. Execution of a Development Agreement contemporaneous with establishment of the CID.

C. FINANCE TEAM CONSIDERATION

The Finance Team shall review each application and petition and make its recommendation for approval to the Governing Body. In determining whether or not to recommend approval of a CID petition and the method of financing, the Finance Team will review and evaluate the following:

1. Whether or not creation of a CID meets one or more of the criteria set forth in GB05-I-4A;
2. The total development costs and investment, including estimated Project costs for which public financing is sought;
3. Sources of funding, including the amount of equity funding in comparison to public financing;
4. Similar experience and financial stability of Developer;
5. Whether or not tenants for the Project are in place and the nature and quality of the tenants;
6. Economic competition the Project has and is expected to have in the future;
7. The amount and purpose of the funding request, including the percentage of funding for capital costs; operational costs; and public costs.
8. If bonds are requested, the projected debt service coverage from projected revenues; any additional security pledged by the Developer; and the marketability of the bonds; and
9. Whatever other factors or considerations the Finance Team believes the Governing Body would find relevant to its decision.

D. TERM

The Governing Body shall review the financial feasibility of each CID and shall use this information in determining the appropriate term of the CID, which may be less than the duration allowed by the Act.

1. In the event pay-as-you go financing is utilized, the CID sales tax shall expire on a date approved by the City, but no later than 22 years from the date the state director of taxation begins collecting such tax or when the pay-as-you-go costs have been paid.
2. CID Bonds issued to finance the Project shall mature on a date approved by the City, but no later than twenty-two (22) years from date of issue, unless otherwise provided by law.
3. In no event shall any CID sales tax extend later than the date the bonds issued to finance such project or refunding bonds issued for the Project mature.

E. FINANCING

1. Source of Funds. The cost of all or a portion of any authorized CID Project may be financed

by any or all of the following sources:

- a. Pay-As-You-Go financing based either on a special assessment or a CID sales tax within the District, or both;
 - b. Special Obligation Bond financing payable wholly through special assessments within the CID;
 - c. Special Obligation Bond financing payable in part through special assessments within the CID and in part through a CID sales tax;
 - d. A combination of the foregoing methods.
2. Development Agreement. If after review of the application, the Finance Team finds it in the City's best interest to recommend approval of the CID to the Governing Body, the Finance Team will work with the applicant on a Development Agreement (the "Development Agreement") which shall be presented to the Governing Body for consideration contemporaneous with the Petition. The Development Agreement must be executed prior to or simultaneous with creation of the District and shall address the recommended method of financing, approved Project(s) and approved Costs; the feasibility of the Project, the steps to be taken to minimize the risk of default; and other terms the City deems appropriate.
3. Bonds. The City encourages the use of private financing ("Pay-As-You-Go") with reimbursement to the applicant for eligible, approved costs associated with a CID Project, but the City shall reasonably consider the issuance of Bonds. Any determination to issue Bonds is the sole discretion of the Governing Body and shall be accompanied by a recommendation of the City's Financial Advisor that issuance of the Bonds for the Project is feasible and marketable.
- a. CID Bonds. The City may issue special obligation notes or bonds ("CID Bonds") (collectively, "Bonds") to finance one or more Projects. In no event shall special assessments be levied against the City-at-large. The City will not provide credit enhancements for CID Bonds; however, credit enhancement provided by an applicant will be viewed favorably.
 - b. G.O. Bonds. The City discourages the use of full faith and credit notes or bonds (G.O. Bonds) to finance a Project under this Act, but may reasonably consider such action for that portion of a CID Project that is exclusively for public improvements.

Prior to the issuance of any Bonds, the applicant must receive a Certificate of Completion from the City. In addition, the applicant must agree to certain disclosures required by the City and the Bond underwriters and ensure that if necessary, such disclosure requirements are included in all subsequent tenant leases and land sales within the District.

4. Project Funds. A separate fund shall be created for each District and such fund shall be identified by a suitable title (the "Fund"). CID sales tax receipts, special assessments paid to the City under this Act, the proceeds from the sale of Bonds, and any other moneys appropriated by the Governing Body for the purpose of paying Project Costs, including the principal and interest on the bonds issued pursuant to this Act shall be credited to such Fund.
- a. The Fund shall be solely used to pay the Costs of the Project either through the issuance of Bonds or Pay-As-You-Go financing, and shall be limited to approved

costs included in the ordinance authorizing the Project.

- b. Reimbursement of approved Costs may only be made after a Certificate of Completion has been issued by the City.
 - c. In the event moneys remain in the Fund after the expiration of the CID sales tax, such moneys shall continue to be used solely to pay the Cost of the Project. Upon payment of all Project Costs and principal and interest on any bonds issued for such District, the City has the authority to terminate the CID and spend any moneys remaining in such Fund for the purposes for which local sales tax receipts may be spent.
5. Fees. When submitting its application the applicant shall pay a non-refundable application fee to cover City expenses associated with reviewing and processing the CID request. The City may also require the applicant to submit a retainer or enter into a funding agreement to finance costs incurred by the City for additional legal, financial and/or planning consultants, for direct out-of-pocket expenses, and for other costs relating to services rendered for the City to review, evaluate, process and consider the petition for a CID. If bonds are requested and subsequently approved by the City the applicant shall also be responsible for all costs of issuance associated therewith. The applicant shall also be responsible for paying an annual administrative fee to cover the cost of monitoring and administering the CID. Fee amounts shall be set out in the CID Procedures as described in GB05-I-5.

Section GB05-I-5 PROCEDURES.

City staff shall develop procedures for processing CID applications and filing CID petitions, in addition to such other matters such as the establishment of fees. Such procedures shall be approved, and amended as appropriate, by the City Administrator.

Section GB05-I-6 STATUTORY AMENDMENTS.

Any amendment to the Act or any statute cited herein or used as a source of authority for development of the City's CID Policy shall apply without modification or amendment to the CID Policy.

Section GB05-I-7 EFFECTIVE DATE.

This CID Policy shall take effect upon passage of the Governing Body authorizing the same.

Section GB05-I-8 RESPONSIBILITY FOR ENFORCEMENT.

The City Administrator shall be responsible to the Governing Body for the enforcement of this Policy. The Finance Director and City Attorney shall assist in the implementation of this Policy.

Section GB05-I-9 REFERENCES.

K.S.A. 12-6a26 *et seq.*, and amendments thereto.

K.S.A. 12-6a01 *et seq.*, and amendments thereto.

K.S.A. 10-112, 10-115, 10-116a and 10-142 and amendments thereto.