

### **Article GB05-C SPECIAL BENEFIT DISTRICT POLICY.**

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#### **Section GB05-C-1 OBJECTIVES.**

To finance collector and arterial roadways and other public improvements for which the primary purpose is to promote economic development when the improvements confer a special benefit upon property within a defined improvement district area. This is accomplished by levying and collecting special assessments upon property in the improvement district and providing for the payment of all or any part of the cost of the improvement out of the proceeds of such special assessments ("benefit district financing"). (eff. 1-1-95)

#### **Section GB05-C-2 SCOPE.**

Benefit district financing is at the City's discretion. The Governing Body is under no obligation to approve any petitioned improvements, nor is it relinquishing its authority to initiate improvements by benefit district, or other financing means, as it deems necessary to promote the general health and welfare of the City.

#### **Section GB05-C-3 DEFINITIONS.**

**COST:** All costs necessarily incurred for the preparation of preliminary reports, preliminary engineering (within three years of establishing the district), plans and specifications, construction, the preparation and publication of notices, resolutions, ordinances and other proceedings, fees and expenses of consultants (including but not limited to engineers, architects, planners, attorneys) and interest accrued on borrowed money during the period of construction, together with the cost of the land, materials, labor, inspection and other lawful expenses incurred in planning and doing any improvement. Cost may include an administrative fee up to 5% of the total cost of an improvement, as herein defined, to reimburse the City in the administration and supervision of such improvement.

**BENEFIT DISTRICT TEAM:** Includes the Finance Director, City Attorney, City Administrator, Public Works Director and Planning Director, or their designees; City Bond Counsel, and City Financial Advisor.

**IMPROVEMENT:** The construction, reconstruction, maintenance, restoration, replacement, renewal, repair, installation, equipping, extending or otherwise performing any work which will provide a new public facility or public infrastructure or enhances, extends or restores value or utility to an existing public facility or infrastructure.

**UNDEVELOPED AREA:** As used in K.S.A. 12-6,110 *et seq.* means those areas which:

- A. are in excess of 2 1/2 acres;
- B. have not been platted;
- C. are primarily used for agricultural purposes; and
- D. have a population density of less than one family per acre.

**Section GB05-C-4 PROVISIONS.**

- A. General Policies.
  - 1. The Benefit District Team shall review all benefit district petitions, including City initiated benefit district petitions, for compliance with City Policy and State law; and provide recommendations to the City Administrator for City Council consideration and action.
  - 2. Benefit district proceedings shall be initiated by petition, on a form prescribed by the City and containing the information required in K.S.A. 12-6a04, as amended. The method under which the proceeding is initiated determines the procedure required to consider and/or approve the improvement district.
  - 3. Although not required, the City encourages petitions to be submitted with 100% property owner participation or with an agreement that the persons submitting the petition agree to be responsible for all assessments.
  - 4. Benefit districts may only be used to fund public improvements owned and maintained by the City or WaterOne. Eligible public improvements include, but are not limited to, arterial and collector streets and the landscaping and appurtenances thereto, public parking facilities, and storm sewers.
  - 5. The City Council shall review the impact of each benefit district proposed on the City's current and future financial condition, and shall use this information in determining the appropriate term of the benefit district. The term of the general obligation bonds used to finance a benefit district shall not exceed the useful life of the improvement. In addition, the City prefers to issue general obligation bonds for street improvement benefit districts for a ten (10) year term, however, when justified by the size of the project or other compelling reasons, the City may approve a longer term.
  - 6. Petitions submitted with the signature of 100% of the property owners within a proposed district shall provide for all necessary easements and right-of-way within the district to be dedicated without cost to the City.
  - 7. Pursuant to K.S.A. 12-6,110 *et seq.* the City may, at its discretion, authorize and provide for a delay in the payment of special assessments for the cost of constructing improvements in unplatted and undeveloped areas as defined herein. The period of delay may be for a designated period of time determined by the Governing Body, which term may not exceed 15 years, or until such property is platted or developed, if the same occurs prior to conclusion of the period so designated.
  - 8. The City encourages the use of the "maximum assessment approach" as set forth in K.S.A. 12-6a09(c) and amendments thereto. This approach allows the Governing Body to hold a public hearing and levy assessments on the parcels within the benefit district based upon the estimated maximum amount of the costs, prior to commencing the project improvement. If the final cost of the completed improvement is less than the maximum amount of the assessment, the City shall adjust the assessments to reflect the cost of the actual improvement. If the final cost of the completed improvement is more than the

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maximum amount of the assessment, the City may not adjust the assessment unless complying with the procedure for levying supplemental assessments as set forth in K.S.A. 12-6a12 and amendments thereto. Alternatively, the City may also apply the "assessment after completion approach" outlined in K.S.A. 12-6a09.

9. All persons interested in filing a petition for benefit district are encouraged to contact the City Finance Director to schedule a pre-petition meeting with the Benefit District Team.

B. Tax Delinquencies.

Benefit district financing will not be approved if any signatory to a petition has a financial interest in an existing development with delinquent tax obligations. All petitions must be certified, under oath, that the signatories have no financial interest in any real estate with delinquent special assessments, ad valorem taxes, or other city, state or federal tax liens.

C. Arterial and Collector Road Projects.

1. Assuming compliance with other provisions of this Policy, special benefit district financing may be used to finance arterial or collector roads in Lenexa, in advance of placement on the City's Capital Improvement Plan (CIP) or to achieve construction in advance of the date designated in the City's CIP. If a project is advanced on the CIP as the result of benefit district formation, the associated funding identified in the CIP does not advance with and accompany the accelerated benefit district project.
2. Arterial or collector roads financed with this approach should create a linkage between existing or future planned streets. As a general rule, the road built should be at least one-half mile long. One mile in length is preferable.
3. The benefit district shall be responsible for payment of the following:
  - a. In the case of a 2-lane arterial or collector road, the entire roadway shall be constructed and the district shall be responsible for the costs as defined herein.
  - b. When a 4-lane arterial or collector road is identified on the City's transportation plan but not necessitated by the development proposed to initially occur along the road, construction of the 4-lane road may be phased such that the benefit district would pay the costs to improve two (2) lanes of the road. The developer and all other property located within the benefit district (if any) would also be required to dedicate right of way for the ultimate 4-lane road for all property within their control.
  - c. When a 4-lane arterial or collector road is constructed in phases by the benefit district, the City shall be responsible for constructing the two remaining lanes. The timing and manner in which the ultimate construction is completed shall be at the City's discretion.
  - d. Construction of the entire 4-lane arterial or collector road by developer may be required if necessitated by initial development depending upon the density and use. In this case, the benefit district's financial responsibility could be for the ultimate construction.
4. Property owners located within an established benefit district for improvement of an arterial or major collector roadway shall be required to final plat all portions of their property located within the special benefit district, in addition to any areas within their final plat for development. They will be responsible for payment of the applicable excise tax on the areas so platted. There is no credit for excise tax payments made by the

property owner, however, on an arterial or major collector special benefit district project, the City will participate in such special benefit district at a level of 20%. This amount is reflective of the approximate amount excise tax payments were intended to fund in the construction of arterial and major collector roadways in the City.

D. Local Street Special Benefit District Projects.

1. The City may use special benefit districts to finance local streets for projects that meet stated goals and objectives of the City and provide other benefits to the City which in the sole discretion of the City Council makes the use of public financing for the project in the best interest of the City.
2. Local street special benefit districts should be financed 100% by the property owner and zero percent (0%) City-at-large.
3. There is no excise tax credit given for special assessments levied for local street projects regardless of the amount of property located with a special benefit district.
4. The streets and other appurtenances to be financed must be public and located on public right of way which should be donated to the City.
5. For special benefit districts that only include one property owner, the City may require the property owner or developer to post a letter of credit or other guarantee in a form approved by the City Attorney, in an amount up to 35% of the costs of the improvement which shall remain in effect for the duration of the temporary notes.

E. Storm Water, WaterOne or Other Similar Benefit District Projects.

1. Assuming compliance with other provisions of the Policy, the Governing Body may authorize the use of special benefit district financing to finance storm water, water mains or other similar projects, in advance of their placement on the City's Capital Improvement Plan (CIP). To merit special benefit district financing, these projects should generally have a broad benefit, should create a positive cost/benefit analysis, and meet an existing or stated goal of the City.
2. There is no excise tax credit granted for payment of cash or special assessments in this type of benefit district.
3. This type of benefit district, unless initiated upon petition of the City, should require 100% participation and shall require all necessary right of way and easements to construct the improvement be donated.

F. Short Term Temporary Note Special Benefit District Projects ("Short Term Benefit Districts").

1. The City may authorize the use of a "Short Term Benefit District" for property under the single ownership of one developer. Such districts are initiated upon petition of the developer owning 100% of the benefited property and follow the same procedures as for regular benefit districts except as provided herein. As with all benefit districts, use of this tool is at the sole discretion of the Governing Body.
2. All property receiving similar benefits from the improvement must be included in the special benefit district, although there may be multiple benefit districts created for one project if there are multiple improvements with differing benefits.
3. The improvements to be constructed and financed must be public improvements.
4. The design and construction projects shall be done pursuant to contract with the City. The

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City may, but is not obligated to, waive its sealed bid and consultant selection process, and to work with the developer's engineer and contractor to design and/or build the improvement if it finds it is in the City's best interest to do so.

5. Developer shall be responsible for paying all costs of the design and construction of the improvement, including but not limited to interest on the notes, costs of issuance and the City's 5% administrative fee.
6. It is the City's intention to finance the Short Term Benefit District with temporary notes. The term of the financing shall be at the discretion of the Governing Body and may include multiple series of notes. The City does not guarantee an interest rate to the developer for any series of temporary notes. The City does not intend to issue general obligation debt for a Short Term Benefit District, however, the District is established such that if the City should need to certify assessments to pay the costs of the improvement, it shall do so.
7. Developer is encouraged to locate a willing buyer of the temporary note(s), rather than utilizing a public sale.
8. Prior to awarding a bid on the construction project, the developer must provide the City a letter of credit or other guarantee in a form approved by the City Attorney in an amount up to 35% of the costs of the improvement which shall remain in effect for the duration of the temporary notes, unless otherwise waived by the City Council. Should developer fail to prepay the assessments 90 days prior to maturity of the last series of temporary note(s), the City may draw on the letter of credit and apply it to project costs prior to issuing general obligation debt.
9. After completion of the improvement, the City will determine the actual final costs, including any anticipated costs of issuance for subsequent series, and when adopting the assessment ordinance, the Governing Body shall give the developer (and/or property owners) time to prepay the assessments that coincides with a date equal to 90 days prior to the date of maturity of the last series of temporary notes. It is anticipated and expected that the property owner shall prepay the assessments without the need to certify the assessments and convert the temporary notes to general obligation debt.

#### **Section GB05-C-5 PROCEDURES.**

City staff shall develop internal procedures for processing special improvement district applications. Such procedures shall be approved, and amended when appropriate, by the City Administrator.

#### **Section GB05-C-6 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. The Governing Body reserves the right to deviate from this Policy when it believes it is in the best interest of the City to do so, and provided such deviations are in accordance with state or local law.

#### **Section GB05-C-7 REFERENCES.**

K.S.A. 12-6a01 *et seq.*, Supp. 2003; 12-6,110 through 12-6,114.

City of Lenexa Resolution No. 90-50.

Formerly Administration Policy No. 5-07 and AD05-C.

Revised 1/1/95