

Article GB05-E TAX INCREMENT FINANCING ("TIF") POLICY.

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Section GB05-E-1 OBJECTIVES.

The proper use of TIF can promote, stimulate and develop the general and economic welfare of and quality of life in the City. This Policy establishes the procedures of the City of Lenexa, Kansas, for considering applications for Tax Increment Financing ("TIF") used for economic development and redevelopment purposes in accordance with the provisions of K.S.A. 12-1770 *et seq.* and any amendments thereto (the "Act").

Section GB05-E-2 SCOPE.

The City is committed to the high quality and balanced growth and development of the community; to preserving the City's unique character and distinctive atmosphere; and to revitalizing and redeveloping areas of the City. Although the City does not encourage the practice of subsidizing private business with public funds, insofar as the City's objectives are substantially advanced by the expansion of the tax base and enhancement of the local economy, the City will consider, on a case-by-case basis, the approval of TIF projects where, but for the availability of TIF, such development would not be economically viable. It is the policy of the City that any decision regarding the approval of TIF projects will be made in accordance with the guidelines, criteria, and procedures outlined in this Policy. Nothing herein shall imply or suggest that the City is under any obligation to approve a TIF Project for any applicant.

Section GB05-E-3 DEFINITIONS.

For the purpose of this Policy, the words or phrases as used in this Policy shall have meaning or be construed as follows unless otherwise defined by state statute.

APPLICANT: The individual or business and its officers, employees, and agents requesting approval of a redevelopment district or redevelopment project plan associated with any proposed TIF Project. May also be referred to as Developer.

ASSOCIATED THEREWITH: As used with respect to tangible personal property shall mean being located within, upon, or adjacent to buildings or added improvements to buildings.

BASE YEAR ASSESSED VALUATION: The assessed valuation of all real property within the boundaries of a redevelopment district on the date the redevelopment district was established.

BLIGHTED AREA: An area of real property which:

1. Because of the presence of a majority of the following factors, substantially impairs or arrests the development and growth of Lenexa or constitutes an economic or social liability or is a menace to the public health, safety, morals or welfare in its present condition and use:
 - a. a substantial number of deteriorated or deteriorating structures;
 - b. predominance of defective or inadequate street layout;
 - c. unsanitary or unsafe conditions;
 - d. deterioration of site improvements;
 - e. tax or special assessment delinquency exceeding the fair value of the real property;
 - f. defective or unusual conditions of title including but not limited to cloudy or defective titles, multiple or unknown ownership interests to the property;
 - g. improper subdivision or obsolete platting or land uses;
 - h. the existence of conditions which endanger life or property by fire and other causes;
or
 - i. conditions which create economic obsolescence; or
2. Has been identified by any state or federal environmental agency as being environmentally contaminated to an extent that requires a remedial investigation, feasibility study and remediation or other similar state or federal action; or
3. Previously was found by resolution of the Governing Body to be a slum or a blighted area under K.S.A. 17-4742, *et seq.*, and amendments thereto.

CAPITAL INVESTMENT: The acquisition cost of land, buildings and tangible personal property constituting capital assets for accounting purposes.

CONSERVATION AREA: Any improved area comprising 15% or less of the land area within the corporate limits of Lenexa in which 50% or more of the structures in the area have an age of 35 years or more, which area is not yet blighted, but may become a blighted area due to the existence of a combination of two or more of the following factors:

1. dilapidation, obsolescence or deterioration of the structures;
2. illegal use of individual structures;
3. the presence of structures below minimum code standards;
4. building abandonment;
5. excessive vacancies;
6. overcrowding of structures and community facilities; or
7. inadequate utilities and infrastructure.

DISPOSITION AND DEVELOPMENT AGREEMENT: A written agreement between the City and a Developer regarding the construction and financing of a redevelopment project. Such agreement shall address issues involved in the redevelopment project, including, but not limited to the following: Schedule of construction; acquisition of land; eligible TIF expenses; prioritization of payment; scope of the development (including development criteria); indemnity of the City and insurance requirements; reimbursement of City costs; financing (private and/or public); transfer restrictions prior to completion; maintenance and restrictive covenants; city inspection and information access rights; reporting

requirements; and remedies upon default.

FEASIBILITY STUDY: A study which shows whether a redevelopment project's benefits and tax increment revenue and other available revenues under K.S.A. 12-1774(a)(1), and amendments thereto, are expected to exceed or be sufficient to pay for the redevelopment project costs and the effect, if any, the redevelopment project costs will have on any outstanding special obligation bonds as authorized pursuant to K.S.A. 12-1774(a)(1)(D), and amendments thereto. A Feasibility Study performed by the City or its designee shall be prepared prior to approval of the redevelopment project plan.

FINANCE TEAM: A Committee comprised of the City Administrator, the Assistant City Administrator, the City Attorney, the City Finance Director, the City Community Development Director, the City's Financial Advisor and the City's Bond Counsel, or their designees, whose function is to review TIF applications and make recommendations for approval or denial to the Governing Body.

REAL PROPERTY TAXES: Includes all taxes levied on an *ad valorem* basis upon land and improvements thereon.

REDEVELOPMENT DISTRICT: The specific area declared to be an eligible area in which Lenexa may develop one or more redevelopment projects. This is sometimes referred to as a TIF District.

REDEVELOPMENT DISTRICT PLAN: The preliminary plan that identifies all of the proposed redevelopment project areas and identifies in a general manner all of the buildings, facilities and improvements in each that are proposed to be constructed or improved in each redevelopment project area.

REDEVELOPMENT PROJECT: The approved project to implement a project plan for the development of the established redevelopment district and for which a redevelopment project plan is approved and a disposition and development agreement is executed. This is sometimes referred to as a TIF Project.

REDEVELOPMENT PROJECT PLAN: The plan adopted by the City for the development of a redevelopment project or projects which conforms to K.S.A. 12-1772, and amendments thereto, in a redevelopment district. Any redevelopment project must be completed within 20 years from the date of approval of the redevelopment project plan.

TAX INCREMENT: The amount of real property taxes collected from real property located within the redevelopment district that is in excess of the amount of real property taxes which is collected from the base year assessed valuation. In certain circumstances, the City may also allow capture of the incremental sales tax revenues and franchise fees generated by the redevelopment project.

TAXING SUBDIVISION: Includes the county, the city, the unified school districts and any other taxing subdivision levying real property taxes, the territory or jurisdiction of which includes any currently existing or subsequently created redevelopment district.

Section GB05-E-4 PROVISIONS.

A. Legal Authority.

Pursuant to state law, the City may create redevelopment districts in blighted areas, conservation areas, and enterprise zones created pursuant to K.S.A. 12-17,110 prior to July 1, 1992. Certain costs of improvements within the redevelopment district may be reimbursed to the Developer or paid through the issuance of special obligation bonds or full faith and credit bonds. Funds to pay the reimbursement or to retire the bonds are generated by the tax increment and other sources that may be pledged by the City. This authority is discretionary and the City may provide for tax increment financing in an amount and for purposes more restrictive than that authorized by statute. No privately owned property shall be acquired and redeveloped if the

Johnson County Board of County Commissioners or the Board of Education levying taxes on property proposed to be included in the redevelopment district determines, in the manner prescribed by K.S.A. 12-1771(d) , and amendments thereto, that the proposed redevelopment district will have an adverse effect on such county or school district.

B. Eligible Redevelopment Project Costs

1. Permissible redevelopment project (TIF Project) costs or expenses are those costs necessary to implement a redevelopment project plan, including but not limited to:
 - a. acquisition of property within the redevelopment project area;
 - b. payment of relocation assistance;
 - c. site preparation including utility relocations;
 - d. sanitary and storm sewers and lift stations;
 - e. drainage conduits, channels and levees and river walk canal facilities;
 - f. street grading, paving, graveling, macadamizing, curbing, guttering and surfacing;
 - g. street lighting fixtures, connection and facilities;
 - h. underground gas, water, heating, and electrical services and connections located within the public right-of-way;
 - i. sidewalks and pedestrian underpasses or overpasses;
 - j. drives and driveway approaches located within the public right-of-way;
 - k. water mains and extensions;
 - l. plazas and arcades;
 - m. parking facilities;
 - n. landscaping and plantings; fountains, shelters, benches, sculptures, lighting, decorations and similar amenities; and
 - o. all related expenses to redevelop and finance the redevelopment project.
2. Regardless of what may be allowed by the Act, it is the City's Policy that redevelopment project costs shall not include:
 - a. costs incurred in connection with the construction of buildings or other structures to be owned by or leased to a Developer;
 - b. 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 or the infrastructure construction;
 - c. soft costs such as marketing expenses; and moving expenses for employees of businesses locating to the district;
 - d. excise taxes and property taxes for the project or for businesses locating in the district;
 - e. all development fees, licenses and taxes of general applicability for similar real estate development projects including but not limited to TIP fees, PRIF fees, storm

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- water fees, building permit fees, and development review fees; and;
 - f. the annual TIF administrative service fee;
 - g. bond origination fees charged by the City pursuant to K.S.A. 12-1742 et seq.;
 - h. any personal property; and
 - i. travel, entertainment and hospitality.

C. Bond Authority

The City may use proceeds of special obligation bonds or full faith and credit tax increment bonds to finance the undertaking of a redevelopment project, as provided in K.S.A. 12-1774 and amendments thereto. The maximum maturity of any such special obligation bonds or full faith and credit tax increment bonds shall be twenty (20) years. The City may also issue industrial revenue bonds or private activity bonds for a project located within a redevelopment district.

1. Special Obligation Bonds

- a. The City may issue special obligation bonds to finance permissible expenses of a redevelopment project. Such bonds may be payable, both as to principal and interest: (a) from property tax increments allocated to, and paid into a special fund of the City; (b) from revenues of the City derived from or held in connection with the undertaking and carrying out of any redevelopment project; (c) from private sources, contributions or other financial assistance from the state or federal government; (d) from the increased franchise fees and city sales tax, or (e) from any combination of these methods.
- b. Special obligation bonds are not general obligations of the City, nor in any event shall they give rise to a charge against its general credit or taxing powers or be payable out of any funds or properties other than those sources set forth above.
- c. Factors for Issuance. Each request for the issuance of special obligation bonds shall be considered on a case by case basis, but the City shall consider a number of factors in deciding whether or not to issue special obligation bonds for a Project. These factors may include but are not limited to:
 - 1. Project compliance with this Policy;
 - 2. Source of revenue to repay the debt issued;
 - 3. The size of the issue (the City recommends a minimum size of \$5,000,000 per issue);
 - 4. The Applicant's compliance with the approved Redevelopment Project Plan and phasing Plan;
 - 5. Whether the Project requested for financing meets the stated goals and objectives of the Governing Body;
 - 6. Developer compliance with existing redevelopment projects and project agreements;
 - 7. Any developer delinquency on other municipal financing projects or property tax; and
 - 8. Overall security provisions for debt repayment.

d. Sale of Bonds. Special obligation bonds issued under this Policy, whether privately placed or offered to the public through a competitive sale, must include security for the bonds of a sufficient amount to minimize any risk of default; be sold to qualified investors (as defined by the Securities and Exchange Commission Regulation D) in accordance with the minimum denominations as provided herein.

1. Special obligation bonds must initially be offered in denominations of \$100,000 or greater. These denominations may be stepped down (upon consultation with the City's bond counsel and financial advisor) when one of the following are met:
 - a. the Project being bond financed is substantially leased;
 - b. the estimated revenue stream yields significant debt service coverage on the bonds;
 - c. construction of the Project being bond financed is substantially complete, as determined by the City;
 - d. the repayment term is less than or equal to 60% of the maximum permitted repayment term; or
 - e. waiver of the minimum denomination provision by the Governing Body.
2. The City may require that special obligation bond proceeds be released in phases and amounts consistent with a percentage of construction or other performance standards which shall be agreed upon by the parties.
3. If a negotiated sale of the bonds is necessary, the City will normally select the underwriter(s) needed to structure, market, price, and sell the bonds through a competitive process. Exceptions to this competitive selection process may be approved by the City Administrator upon consultation with the City's bond counsel and financial advisor. In addition, the City may issue a Request for Proposals and Qualifications to establish a list of pre-qualified underwriters for TIF special obligation bonds. All pricing for negotiated sales will be performed with direct involvement by City staff and the City's financial advisor.

2. Full Faith and Credit Bonds

The City may also issue full faith and credit tax increment bonds to finance a redevelopment project. Any resolution establishing a public hearing on a redevelopment project plan for which the city intends or may intend to issue full faith and credit tax increment bonds, shall state the City's intent to issue full faith and credit tax increment bonds. These bonds are payable, both as to principal and interest: (a) from the revenue sources identified for special obligation bonds; and (b) from a pledge of the City's full faith and credit to use its *ad valorem* taxing authority for repayment thereof in the event all other authorized sources of revenue are not sufficient. Except in extraordinary circumstances in the sole discretion of the Governing Body, the proceeds of full faith and credit tax increment bonds shall only be used to pay for public improvements or public projects which would otherwise be eligible to be paid for with the proceeds of City general obligation bonds.

In accordance with K.S.A. 12-1774(b)(5), full faith and credit tax increment bonds are

general obligations of the City and shall be exempt from all state taxes except inheritance taxes, and the amount of full faith and credit tax increment bonds issued and outstanding which exceed three percent (3%) of the assessed valuation of the City shall be within the bonded limit of the City.

3. Industrial Revenue Bonds

Industrial revenue bonds may be issued by the City pursuant to K.S.A. 12-1740, *et seq.* to benefit a Developer within the redevelopment district. All state law benefits associated with such bonds shall be available, except that pursuant to K.S.A. 79-201a *Second*, as amended, no *ad valorem* tax abatement shall be available for property which is located in a redevelopment project area established under the authority of K.S.A. 12-1770 *et seq.*, as amended.

Special assessment districts, Transportation Development Districts (TDD), and other forms of financing may also be used in conjunction with TIF districts.

D. Reimbursement Authority

Pursuant to Attorney General Opinion 96-45, tax increment can be used to reimburse a Developer for eligible redevelopment project plan costs as opposed to issuing bonds. Under this method, the City may agree to reimburse the Developer for eligible redevelopment project costs over a period of time not to exceed twenty (20) years from the date of redevelopment project plan approval in accordance with the terms set forth in the Disposition and Development Agreement. The reimbursement amount is paid solely from all or a portion of the Tax Increment, and the Developer takes the risk that the portion of the increment pledged for reimbursement will be insufficient to retire the eligible redevelopment project costs. This reimbursement method is preferred by the City over the use of bond financing as the method to reimburse Developers for eligible redevelopment project costs.

E. Amount of Tax Increment Financing Available.

1. Criteria.

The general objectives of the City in granting TIF for economic development are: (a) promote, stimulate and develop the general and economic welfare of the state of Kansas and the City; (b) promote the general welfare of the citizens of Kansas and the City through assisting in the development, redevelopment, and revitalization of central business areas, blighted areas, conservation areas, and environmentally contaminated areas located within the City; (c) create new jobs and retain existing jobs; and (d) expand the economic and tax base of the City. The specific objectives of the City to be considered when reviewing a proposed redevelopment district include but are not limited to promoting the redevelopment of locations that need assistance due to unique methods of construction, geological, environmental, or other site constraints. The City recognizes that a simple system of determining the amount of TIF to be granted in order to reach these objectives may not always be equitable if applied uniformly to different kinds of redevelopment project plans. As a result, in determining the actual amount and duration of TIF to be granted, the City shall review each application on a case by case basis and consider the factors and criteria set forth in this Policy including where applicable, a Feasibility Study as required by state law, as well as the amount and duration of previous TIF Projects supported by the City.

2. Capital Investment.

Although no minimum capital investment is required by the City, the amount of capital

investment made by an applicant is a factor to be considered by the City in determining whether or not to authorize a redevelopment project plan.

3. Application Of "But-For" Principle.

All TIF applications shall be considered in light of the "but-for" principle, i.e., tax increment financing must make such a difference in the decision of the Applicant that the Project would not be economically feasible "but for" the availability of TIF. In evaluating the economic feasibility, the staff shall consider factors that include, but are not limited to:

- a. the extraordinary or unique costs associated with developing the project;
- b. the applicant's financial investment in the project;
- c. the property, sales and other tax and fee revenue that may result from the project;
- d. the credit worthiness and experience of the applicant;
- e. Developer compliance with other City development projects and development agreements, including but not limited to delinquency on property tax; and
- f. the value added, including intangible costs and benefits received by the City and other taxing jurisdictions, as a result of the proposed project.

The Governing Body does not encourage the subsidy of private businesses with public funds, the indirect consequence of TIF, unless some measurable public good results, as determined by the City, and the public subsidization can reasonably be expected to make a significant difference in achieving one or more objectives of the City.

F. Distribution of *Ad Valorem* Taxes.

All tangible taxable property located within a redevelopment district shall be assessed and taxed for *ad valorem* tax purposes pursuant to law in the same manner that such property would be assessed and taxed if located outside such district, and all *ad valorem* taxes levied on such property shall be paid to and collected by the county treasurer in the same manner as other taxes are paid and collected.

Some or all of the increment in *ad valorem* property taxes resulting from a redevelopment district may be apportioned by the City to a special fund for the payment of the eligible redevelopment project costs of the TIF Project, including reimbursement or the payment of principal and interest on any special obligation bonds or full faith and credit tax increment bonds issued.

G. Condemnation.

The City does not encourage the use of condemnation in association with projects. However, the use of condemnation, permitted under K.S.A. 12-1773 and 12-1773a, may be considered by the Governing Body in non-conservation areas, but only upon a two-thirds (2/3) vote of the members of the Governing Body. Although expenses associated with condemnation are an eligible redevelopment project cost under state law, in the event condemnation is approved by the Governing Body, the Applicant may be required to be responsible for all costs associated with the proceedings, including court and litigation costs, attorney's fees and the final condemnation awards made.

H. Waiver of Requirements.

The Governing Body reserves the right to grant or deny tax increment financing for the development or redevelopment of a redevelopment district under circumstances beyond the scope of this Policy or to waive provisions herein. However, no such action or waiver shall be taken or made except upon a finding by the Governing Body that a compelling or imperative

reason or emergency exists, and that such action or waiver is found and declared to be in the public interest. The Governing Body may be more restrictive than state law, but shall not waive any legal requirement of State law.

Section GB05-E-5 PROCEDURES.

City staff shall develop internal procedures for processing redevelopment district and redevelopment project plan applications and the applicable fees associated therewith. Such procedures shall be approved, and amended when appropriate, by the City Administrator. All requests or applications for either redevelopment districts or redevelopment project plans shall be considered and acted upon in accordance with this Policy and its accompanying procedures.

Section GB05-E-6 STATUTORY AMENDMENTS.

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

Section GB05-E-7 RESPONSIBILITY FOR ENFORCEMENT.

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

Section GB05-E-8 REFERENCES.

K.S.A. 12-1770 through 12-1780; 12-17,110; and 12-1740 as amended.

K.S.A. 79-201aSecond.

Administrative Policy AD05-B TIF Procedures

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