

1 **RESOLUTION NO. 8392**

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3 A RESOLUTION introduced by Daniel R. Stanley, Interim City Manger, establishing a
4 process for considering a petition for the creation of a community
5 improvement district and establishing a policy on the criteria approving
6 such a district.
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8 WHEREAS, the City of Topeka is committed to the encouragement and promotion of
9 the economic health and vitality of the City; and

10 WHEREAS, the Governing Body is authorized by the Community Improvement
11 District Act, K.S.A. 12-6a26 *et seq.* (the "Act"), to create a community improvement district
12 ("CID") for projects related to amenities and improvements as provided in the Act from
13 certain revenues generated within the district; and

14 WHEREAS, these revenues may be derived from a CID sales tax up to 2% that is
15 charged only within the district or from special assessments on the property within the
16 district or a combination of sales tax and special assessments; and

17 WHEREAS, the creation of a CID is a complex legal and administrative matter
18 requiring clear direction from the Governing Body; and

19 WHEREAS, the Governing Body finds that it is in the best interest of the City to
20 establish certain policies and guidelines for consideration of CID petitions.

21 NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE
22 CITY OF TOPEKA, KANSAS, THAT:

23 It hereby adopts the Community Improvement District policy attached as Exhibit A
24 and incorporated by reference. The City Manager shall prepare and approve procedures
25 necessary to implement the CID policy.
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27 ADOPTED and APPROVED by the City Council October 25, 2011.

28 CITY OF TOPEKA, KANSAS

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William W. Bunten, Mayor

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33 ATTEST:

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Brenda Younger, City Clerk

**CITY OF TOPEKA
COMMUNITY IMPROVEMENT DISTRICT (“CID”) POLICY**

Effective Date: October 25, 2011

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I. OBJECTIVES.

The proper use of a Community Improvement District (CID) should promote, stimulate and develop the general and economic welfare of and quality of life in the City of Topeka. A CID involves public financing of all or a portion of a “Project” as defined in the Community Improvement District Act (“Act”) within a prescribed area (the District). A CID Project should provide public benefit such as strengthening economic development and employment opportunities; 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.

II. 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. However, Projects in which the anticipated costs are less than \$1 million dollars will not be considered. 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.

III. 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

Exhibit A

- 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, as amended. The City, on a case by case basis, may 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. . The approved project costs shall be described in detail in a Development Agreement.
 - C. “Owner” means the owner or owners of record, whether resident or not, of real property within the District. The applicant shall be an owner.
 - D. “Pay-As-You-Go” means a method of financing in which the costs of a Project are financed privately, and the approved costs of such Project are reimbursed after Project completion as monies are deposited in the District fund.
 - E. “Project” may include any item eligible under the Act, as described in K.S.A. 12-6a27, 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.
 - F. “Review Committee” includes the Deputy City Manager, Director of Finance, Director of Public Works, Director of Planning, Director of Development Coordination, and the City Attorney, or their designees. The Committee may also include City staff and individuals designated by the City Manager, including but not limited to the City’s bond counsel and City financial advisor.

IV. 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. Creates facilities which promote the cultural, historical, or artistic elements of the City and enhance tourism and quality of life.
 - 2. Attracts unique commercial, office, industrial, and/or mixed use development which will enhance the economic climate of the City and diversify the economic base.
 - 3. Substantially promotes economic development, investment or reinvestment in the community.

Exhibit A

4. Encourages retail projects that enhance the retail base by either attracting new sales or capturing sales moving to other markets.
5. Provides for the construction of facilities that promote tourism or enhance the quality of life within the City.
6. Upgrades older real estate through redevelopment and/ or rehabilitation.

B. Applicant Responsibility. The application process shall include an application form and the petition required by the Act. As part of the process, the applicant shall complete the following prior to submission of the petition to the Governing Body:

1. Provide evidence in a form satisfactory to the City of the applicant's financial ability to complete the proposed project in a timely manner.
2. Provide documentation substantiating the applicant's sources of funding, including the amount/percentage of equity funding.
3. Submit a financial analysis demonstrating that the projected revenue is sufficient to pay the costs of the project, including bond debt service. The Review Committee may secure an independent feasibility study, the costs of which shall be borne by the applicant.
4. Pay all required fees and comply with all procedural requirements of the Act and the City's CID Policy.
5. Execute a Development Agreement contemporaneous with presentation of the CID petition to the governing body.

C. Review Committee Consideration. The Review Committee shall review each application and petition and make a recommendation to the Governing Body. In determining whether to recommend approval of a CID petition and the method of financing, the Review Committee may consider all of the following:

1. Whether creation of a CID meets one or more of the criteria set forth in Section IV(A);
2. The total development costs and investment, including estimated Project costs for which public financing is sought;

Exhibit A

3. Sources of funding, including the amount of equity funding in comparison to public financing;
4. Experience and financial stability of Developer;
5. Whether tenants for the Project are in place and the nature and quality of the tenants;
6. Financial viability of the Project, including potential competition;
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 Review Committee believes the Governing Body would find relevant to its decision.

D. Governing Body Review. The Governing Body shall review the financial viability of each CID and shall use this information in determining whether to grant the Petition and, if granted, 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 twenty-two (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. General Obligations Bonds;

e. Any other funds appropriated by the City; or

f. A combination of the foregoing methods.

2. Development Agreement. If after review of the application, the Review Committee determines to recommend approval of the CID to the Governing Body, the Applicant shall supply an executed Development Agreement (the "Development Agreement") which shall be presented to the Governing Body for consideration contemporaneous with the Petition. The Development Agreement 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 any other terms the Committee 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 may consider the issuance of Bonds. Any determination to issue Bonds is within the sole discretion of the Governing Body.

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. 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

Exhibit A

under this Act, but may 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 or in the Development Agreement.

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 shall also require the applicant to reimburse all 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 Section

V. 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 Manager.

VI. STATUTORY AMENDMENTS; CONFLICT WITH STATE LAW.

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 the need to modify or amend this Policy. If any part of this policy conflicts with state law, the latter shall control.

VII. EFFECTIVE DATE.

This CID Policy shall take effect upon passage by the City Council.

VIII. RESPONSIBILITY FOR ENFORCEMENT.

The City Manager shall be responsible for the enforcement of this Policy.