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City of Topeka  
Council Action Form  
Council Chambers  
214 SE 8th Street  
Topeka, Kansas 66603  
www.topeka.org  
October 13, 2015

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DATE: October 13, 2015  
CONTACT PERSON: Brandon Kauffman, Director of Finance  
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**DOCUMENT DESCRIPTION:**

A RESOLUTION introduced by City Manager Jim Colson, establishing a policy for the financing of public improvements through the use of special benefit districts in the city of Topeka, Kansas, and rescinding Resolution No. 8242.

*(Approval would establish a policy for the financing of public improvements through the use of Special Benefit Districts in the City of Topeka, Kansas.)*

**POLICY ISSUE:**

The policy issue to consider is whether or not to change the approach to special assessments, in light of development concerns after the financial crisis. Recommendations included in the policy are prudent and would assist with orderly development in the community that is self supporting.

**STAFF RECOMMENDATION:**

It is recommended that the Governing Body establish a policy for special assessments that would require financial review, financial sureties and water improvements paid for by the developer. This approach is similar to what a financial institution would require: financial review, collateral and a down payment.

**BACKGROUND:**

In light of the 2008 financial crisis and its impact on the Topeka housing market, staff have taken a comprehensive review of special assessment improvement districts within the City. After reviewing, a new special assessment policy has been drafted with input from developers in the community. Staff conducted two public forums. The first meeting conducted May 21, 2015, collected ideas from developers in the community about what should be included in the policy. The second meeting conducted September 23, 2015, received input from developers about the draft of the proposed policy.

**BUDGETARY IMPACT:**

In 2014, the City collected approximately \$340,000 less than needed for special assessments bond payments. When special assessments collections are less than needed, general property taxes support the bond payments for the improvement districts. Having a special assessment policy in place should assist with improving collections for future improvement districts.

**SOURCE OF FUNDING:**

When special assessments do not cover debt service payments for improvement districts, general property taxes pay for the remaining amounts.

**ATTACHMENTS:**

**Description**

Resolution

Special Assessment Policy Fact Sheet

Summary of Kansas City's Policies

Resolution No. 8242

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WHEREAS, the Governing Body of the City of Topeka, Kansas, is authorized to construct public improvements that confer a special benefit upon real property within a definable area of the City in accordance with K.S.A. 12-6a01 *et. seq.*, and to levy special assessments upon the benefited property to pay all or any part of the costs of making such improvements (“benefit district financing”); and

WHEREAS, the City entrusts its Benefit District Committee, comprised of City staff representing all departments involved in the benefit district process, to determine conformance with its benefit district policy, the level of completeness of benefit district petitions, and to provide recommendations to the Governing Body regarding proposed benefit districts; and

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

- a. Scope. Benefit districts shall only be considered for installation of public improvements owned and maintained by the City of Topeka. This policy applies to developers seeking improvement benefit districts for the purpose of creating subdivision improvements and does not apply to individual property owners or projects less than \$100,000.
- b. Creation. Benefit district improvement proceedings may be initiated by action of the Governing Body or in response to a petition. The Governing Body may initiate the creation of a benefit district for any improvement authorized by K.S.A. 12-6a01 *et seq.* pursuant to the notice and public hearing procedures set forth in K.S.A. 12-6a04. The Governing Body may initiate the creation of a benefit district for sanitary and/or

storm water sewer improvements without a petition or notice and public hearing, as set forth in K.S.A. 12-6a04.

c. Petition Information. Should a benefit district be initiated by petition, all benefit district petitions submitted for consideration shall contain the information required by K.S.A. 12-6a04 or K.S.A. 12-6a19 if applicable.

d. Costs and Methods of Assessment. Benefit district project costs shall include all required reports and studies, preliminary and final engineering, design, land acquisition, construction, inspection, financing, professional analysis, and administrative costs. Determination of all benefit district costs shall occur prior to construction of any benefit district improvements. All petitions for creation of a benefit district must utilize one of the following methods of assessment in accordance with K.S.A. 12-6a08.

1. Unit. If the assessments are to be determined by unit, the total number of lots included in the district will be assigned a number of units per lot. The total cost to be assessed is then divided by the total units. This figure multiplied by the number of units per lot or parcel would determine the assessment costs.

2. Frontage. If the assessments are to be determined by front foot along the improvement, the footage of each lot or parcel must be determined. The total cost to be assessed is then divided by the total footage to fix the amount per foot. This figure multiplied by the footage of the lot or parcel determines the assessment on the lot or parcel.

3. Area. If the assessments are to be determined according to area, the total number of square feet in the benefit district and the number of square feet of each lot and parcel must be determined. The total cost to be assessed divided by the total number of square feet of the district gives the charge per square foot. This amount multiplied by the square foot of a lot or parcel gives the assessment to be charged.

4. Value. If the assessments are to be determined according to appraised value or assessed value, the values of all the lots and parcels are added to get the total value of property within the benefit district. The total cost to be assessed divided by the total appraised or assessed value of the benefit district gives the amount to be paid per dollar value. This amount multiplied by the appraised or assessed value of each lot or parcel gives the amount of the assessment.

5. Other Method. If some other method is used, the assessment method must meet the standard of reasonableness. Examples of alternative assessment plans include determining the assessments according to zoning classifications or decreasing the assessment levels on the basis of proximity from the improvement on the theory that the land nearest to the improvement receives the greatest benefit from the improvement.

The Governing Body, upon the recommendation of the City's Benefit District Committee, may determine the proper method of assessment for a benefit district improvement.

- e. Petitions. The City may facilitate new development by providing for the installation of public improvements upon submission of a sufficient petition of the property owners.
- f. Signatures of Owners. The City favors benefit districts that have the signature of 100% of the property owners within a proposed district and are funded 100% by the landowners in the proposed district. Pursuant to K.S.A. 12-6a01, the City at-large may, at its sole discretion, pay up to 95% of the benefit district cost. However, the City will, at its sole discretion, give preference to benefit district projects that either are funded entirely by the benefit district or by no more than 5% from the City at-large, subject to the limitations of the City's debt management policy and availability of funds allocated within the City's annual Capital Improvements Program ("CIP").
- g. Benefit District Committee. A Benefit District Committee comprised of the City Manager or their appointee, Finance Director, Planning Director, Public Works Director, Neighborhood Relations Director and the City Engineer, will meet to review and make recommendations to the Governing Body consistent with this policy.
- h. Maximum Term. General Obligation Bonds. Pursuant to K.S.A. 12-6a01 *et seq.*, the Governing Body may authorize the financing of benefit district improvements by the issuance of general obligation bonds to finance benefit district improvements. The general obligation bond term cannot exceed twenty (20) years. The Benefit District Committee shall review the impact of each proposed benefit district in light of the debt management policy.
- i. Maximum Term. Special Obligation Bonds. Pursuant to K.S.A. 12-6a01 *et. seq.*, the Governing Body may authorize the financing of benefit district improvements by the issuance of special obligation bonds to finance benefit district improvements. The special obligation bond term may extend up to twenty (20) years. The Benefit District Committee shall review the financial feasibility of each benefit district proposed to be financed by special obligation bonds.
- j. Financial Due Diligence. The Benefit District Committee will conduct due diligence on developer finances in order to ensure developers have the financial capacity and wherewithal to support the development. Financial due diligence will include:
  - 1. Delinquent Tax Obligations. Benefit district financing will not be approved if any signator to a petition has a financial interest in an existing development with delinquent tax obligations. All petitioners for new development (including anyone with a material ownership interest in the Developer's parent organization or any single purpose entity created for the subject development)

will be required to certify, under oath, that they have no financial interest in any property with delinquent special assessments, ad valorem taxes, or other federal or state tax liens anywhere within the State of Kansas.

2. Review of Finances. Developers desiring to create benefit districts for new housing developments shall be required to provide financial statements and shall be required to document ownership or control of the land. The City recognizes that many developments are constructed under single-purpose legal entities; the City requires financial statements to demonstrate the ability of the Developer, its single-purpose entity or any of its members or shareholders to complete the project as proposed and to make special assessment payments in full and on time, should development not materialize according to the development plan.
3. Special Assessment Monthly Payments. The developer shall provide a certification from a reputable real estate broker with knowledge of the Topeka market that the anticipated annual assessments for the development for which special assessments are granted are not inconsistent with assessments imposed on comparable properties in the market and will not materially impair the salability of the properties benefitted in the current real estate market.
4. Cost Benefit Analysis. A cost-benefit analysis shall be prepared by the Department of Finance to ensure that a public benefit exists for utilizing special assessment financing.

- k. Financial Sureties. Any petitioner requesting the creation of a benefit district shall pledge financial commitments guaranteeing payment of assessments levied to pay principal and interest on bonds issued for the improvement project. Financial guarantees shall be in place with the City prior to the construction contract being awarded. Financial guarantees shall equal at least 30% of the estimated costs of the project, except for items i through iii, which would require 20%.

1. A financial guarantee may consist of:
  - i. Cash
  - ii. Cashier's Check
  - iii. Escrow Account, held in trust for the City's benefit by a financial institution approved by the City in its sole discretion, funded with high quality securities approved at the discretion of the City's Director of Finance, where the principal balance along with the project interest is sufficient to satisfy the full amount of the guarantee.
  - iv. Irrevocable letter of credit for up to ten (10) years from a reputable bank, subject to the City's Director of Finance approval.
  - v. Surety bond. Surety bonds will be on a form approved by the City, from a company authorized to sell insurance in the State of Kansas, and have a rating of at least A – (excellent) from A&M Best. Developers will be responsible for costs incurred by the City to verify the rating for the proposed surety provider.

Project costs shall include, but not be limited to, engineering design, construction, inspection, temporary note interest (which will be calculated by the City), and the City's administrative cost in creating and administering the district. In the event that any special assessment is not paid when due, the financial guarantee will be applied by July 1 of each year to satisfy the principal and interest costs and any additional costs, such as penalties, occasioned by delinquent payment of the bonded public improvements.

Upon request of the developer, the financial guarantee shall be released on the following conditions:

1. Improvements on at least thirty (30%) of the properties (by lot) within the benefit district have been completed and issued an occupancy permit; or
2. The appraised value of improvements located within the benefit district is equal to seven (7) times the amount of the special assessments.

The Director of Finance or designee will approve the release, when the above conditions have been met and proof of evidence has been provided.

- l. Phase of Lots. In order to ensure orderly development and limit the potential of too many lots on the market at any given time, the maximum number will be 45 lots per development. Consideration also will be given to the accumulation of lots resulting from multiple benefit districts; and therefore, the City reserves the right to withhold approval of a benefit district if the lots created by said benefit district are anticipated to result in excess market supply. The City may give preference to the use of benefit districts as an incentive to support infill and redevelopment of existing neighborhoods in order to implement the goals and policies of the City's Land Use and Growth Management Plan.
- m. Termination. Benefit districts may be terminated by the Governing Body at the Governing Body's sole discretion at any time prior to the issuance of temporary notes in support of the project. Prior to termination, the Governing Body will endeavor to provide regular mail notice to all property owners within the district. The Governing Body may consider the following factors when considering whether to terminate a benefit district:
  1. Construction of the improvements described in the petition have not commenced within five (5) years after approval of the petition, or acquisition of all rights-of-way and/or easements necessary for construction of the improvements has not been secured within five (5) years of approval of the petition;
  2. Changes in ownership and/or land development patterns in the area have reduced or eliminated the need for the improvements described in the petition; and/or
  3. The City's share of the total costs to construct the improvements in the benefit area exceeds the amount described in the resolution creating the benefit district.

n. Development Agreement. Upon submission of a sufficient petition, which is approved by the Governing Body, a development agreement will be submitted acknowledging the terms of this policy by the developer.

o. Foreclosure. Properties with special assessments that are delinquent for a period of at least three years will be subject to a judicial tax foreclosure sale.

## SECTION 2: COST DISTRIBUTION POLICIES.

### a. Cost Distribution Policies for Streets.

1. Benefit district financing is allowable for the construction of arterial streets, collector streets and local streets in commercial or industrial developments and new residential developments.
2. All streets shall be designed in accordance with the City's technical design criteria for public improvements.
3. One hundred percent (100%) of the construction costs of local streets, including related drainage facilities and sidewalks, shall be funded by the developer or, if by benefit district, shall be assessed to property within the benefit district.
4. Pursuant to K.S.A. 12-6a19, the Governing Body of the City may require the owners of property that benefits from such improvement but that was not included within the original improvement district, to pay a benefit fee at the time the owners of such property request, by petition, will be served by such improvement.
5. Pursuant to K.S.A. 12-692, the owner or owners or predecessors with title to all lots or tracts of land abutting upon any existing or proposed street or highway that have dedicated or conveyed property necessary for the opening, widening or extending of such street or highway, may, at the discretion of the Governing Body, be exempt, in whole or in part, from the payment of special assessment to pay the cost of acquiring land necessary for such opening, widening or extension from owners of lots or tracts of land abutting upon such existing or proposed street or highway and failing or refusing to dedicate or convey such property.

### b. Cost Distribution Policies for Water Lines

1. Benefit district financing shall generally be limited to the construction or extension of water mains along arterial, collector and local streets within commercial and industrial developments.
2. Benefit districts shall not be established for the purpose of financing distribution or service line improvements in residential subdivisions.
3. Water main sizes shall be determined in accordance with the City's technical design criteria for public improvements.
4. Construction costs of all water mains up to and including 12" diameter shall be assessed 100% to the property within the benefit district. However, if water



demands caused by the development to be served by the benefit district or unique hydraulic or topographic conditions require construction of a distribution main in excess of 12" to meet building and fire codes, the Governing Body, at its sole discretion, may require all costs of the main in excess of 12" to be assessed and paid 100% by the benefit district.

5. When the City determines that a water transmission main in excess of the size determined in Subsection b. 4., above, is needed to benefit the overall water transmission system, construction costs shall be distributed so that property within the benefit district pays the cost equivalent of the required distribution main and the City-at-large pays the cost differential between the transmission and distribution sized main.
6. Pursuant to K.S.A. 12-6a19, the Governing Body of the City may require the owners of property that benefits from such improvement but which was not included within the original improvement district, to pay a benefit fee at the time the owners of such property request, by petition, will be served by such improvement.

c. Cost Distribution Policies for Sanitary and Storm Sewers.

1. Benefit district financing is available for the construction or extension of sewer main and sub-main district lines, as well as lateral lines within commercial and industrial developments and new residential subdivisions.
2. Sanitary sewer mains shall be sized to carry flows from the ultimate tributary population in accordance with the City's technical design criteria for public improvements. At the discretion of the Governing Body, if improvements are required to downstream receiving sewers, the cost of paralleling or upsizing existing downstream sewer mains may be included in the benefit district.
3. Construction costs of all sanitary sewer improvements shall be assessed 100% to the property within the benefit district.
4. Pursuant to K.S.A. 12-6a19, the Governing Body of the City may require the owners of property that benefits from such improvement but which was not included within the original improvement district, to pay a benefit fee at the time the owners of such property request, by petition, will be served by such improvement.

d. Cost Distribution Policies for Other Improvements.

In addition to the public improvements described above in this Section, the Governing Body may use benefit district financing for other types of public improvements as authorized by law. The Governing Body shall distribute the costs of these improvements to the benefit district in accordance with its determination of the special benefits accruing to the district from the improvement.

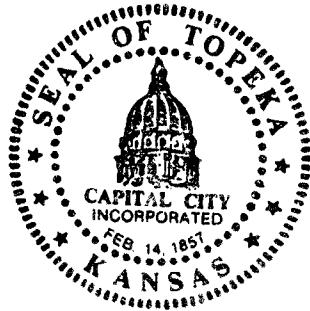
SECTION 3: FEES. City may charge up to 5% of the total costs of an improvement or the cost of work done by the City to reimburse for administration and supervision of the improvement by its employees.

310 SECTION 4: NOTICE. Except in the case of a benefit district petition proposed by a single  
311 owner, the Governing Body shall notify all property owners within a proposed benefit district  
312 that certain improvements have been proposed, and the date, time, and place the Governing Body  
313 will consider authorizing said improvements. In the case of improvements proposed by petition,  
314 the petitioner shall provide the City with a current mailing list of property owners within the  
315 proposed benefit district, including those not signing the petition.

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317 SECTION 5: AUTHORITY OF GOVERNING BODY. The Governing Body reserves the right  
318 to deviate from any policy or practice set forth in this Resolution when it considers such action to  
319 be in the best interests of the City.

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321 SECTION 6: EFFECTIVE DATE. This Resolution shall take effect upon passage.

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323 ADOPTED and APPROVED by the Governing Body on this 13<sup>th</sup> day of October, 2015.



CITY OF TOPEKA, KANSAS

  
Larry E. Wolgast, Mayor

331 ATTEST:

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334 Brenda Younger, City Clerk  
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