

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

Effective Date: 11-9-11

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I. POLICY APPLICABILITY.

The following procedures are established under the authority of the City Manager and are intended to provide guidance in establishing a Community Improvement District (“CID” or “District”) in accordance with the Governing Body CID Policy as approved by Resolution No. 8392 on October 25, 2011. The CID Policy is incorporated herein by reference. These procedures may be waived by the City Manager, if such waiver is in the best interest of the City and does not conflict with any statutory or procedural requirement of state law. If any part of this procedure conflicts with state law, the latter shall control.

II. DEFINITIONS.

The terms used in these Procedures shall have the same meaning as set forth in Section III of the CID Policy.

III. APPLICATION PROCESS.

A. CID Application. An applicant shall make application for a CID by filing with the City Clerk one (1) original written application on a form provided by the City, in addition to an electronic copy of the application. The applicant shall also submit the petition required by the Act.

B. Fees.

1. Application Fee. A non-refundable application fee in the amount of \$1,500.00, made payable to the City of Topeka, shall accompany the CID Application.

2. Reimbursement. Applicant shall pay the following costs by either paying the third party directly or by reimbursing the City prior to the City incurring the cost:

a. All costs necessary to comply with state law, including but not limited to: costs of all legal publication notices, resolutions, ordinances, and proceedings relating to the issuance of bonds;

b. City bond counsel, the City's financial advisor, and any other third party professional retained by the City to review and evaluate the petition.

3. CID Administrative Fee if District is Approved. An annual administrative fee of 1% of the annual CID revenue generated within the District shall be charged to reimburse City for services rendered in the administration and supervision of the Project. Such CID Administration Fee shall be paid from the Project Fund. The CID Administrative Fee is an eligible cost for reimbursement if there are sufficient funds. In no event shall the total fee, including the initial application fee and the CID Administrative Fee, but excluding the costs in Section III(B)(2), exceed 5% of the total Project cost.

4. Amendments. The City Manager may establish City fees, for amendments and modifications to the District financing documents that occur throughout the term. In addition, the applicant shall be responsible for all City Consultant fees associated with any such amendment request.

5. State Fee. In addition to the CID Administrative Fee, if a CID sales tax is utilized, the Kansas Dept of Revenue may retain 2% of the CID sales tax up to a maximum of \$60,000.00 per state fiscal year, in the state CID sales tax administration fund to defray the expenses of the state in administration and enforcement.

C. Preliminary Review and Pre-Application Meeting. Prior to submittal of a formal application, an applicant is encouraged to meet with the Review Committee to discuss a proposed project and possible CID financing. These discussions are preliminary and are not binding on the applicant, the Review Committee, or the Governing Body. If the City utilizes any consultants to assist with the preliminary evaluation, the applicant shall be responsible to pay the associated costs, provided the City has first notified the applicant of such request and received their consent.

IV. DISTRICT ESTABLISHMENT.

A. Petition. A CID shall be established by petition filed with the City Clerk. The Petition must meet all requirements of the Act, the CID Policy and these Procedures and must be submitted in sufficient time for staff to follow established procedures for publication; to perform site plan review; and to analyze the merits and feasibility of the proposed CID. The City reserves the right to request any additional information to supplement the Petition.

B. Petition Participation.

1. An applicant seeking to finance all or a portion of the CID eligible expenses with a CID special assessment must obtain the signatures of 100% of the property owners of all land area within the District.
2. An applicant seeking to finance CID eligible expenses in whole or in part by a CID sales tax must obtain the signatures of 100% of the property owners of the land area within the proposed District.

C. Public Hearing (Sales Tax Only). If a CID sales tax is requested for all or part of the project, the Governing Body shall adopt a resolution calling for a public hearing on the creation of the District and imposition of a CID sales tax. The resolution shall be published once per week for two (2) consecutive weeks with the last publication at least seven (7) days prior to the hearing and also sent by certified mail to all owners at least ten (10) days prior to the hearing.

For Districts financed by special assessments only and for which a petition signed by 100% of the property owners is submitted, no notice or public hearing is required for Governing Body action.

D. Governing Body Action. The Governing Body will not consider a CID until a complete application is submitted and reviewed by the Review Committee, fees are paid, and a recommended Development Agreement is available. Following the public hearing, if required, the Governing Body by majority vote may establish the District by ordinance.

1. The ordinance shall authorize the Project, approve the estimated cost of Project, include a legal description of the District (with map), approve the method of financing including the levying of a CID sales tax (if applicable), and approve the maximum amount and method of assessment, if applicable. The ordinance shall become effective upon publication once in the official city newspaper. The ordinance shall also be recorded with the Register of Deeds.
2. Governing Body establishment of a CID does not constitute approval of a site plan, zoning, or other land development approval. Establishment of a CID is an entirely separate process. CID projects are still required to obtain the necessary development and regulatory approvals.

V. **METHOD OF PROJECT FINANCING.**

A. Certificate of Completion.

1. As noted in the Policy, Projects may be financed by a variety of methods. Before payment will be made to applicant, the City must issue a

Certificate of Completion. Multiple Certificates of Completion may be issued for projects with approved phases.

2. The request for Certificate of Completion shall include an affidavit of the applicant certifying:

- a. Project improvement is an approved CID eligible cost and identify its priority for reimbursement, if any;
- b. Project was constructed in accordance with all applicable laws and codes;
- c. Cost was incurred for authorized project improvements;
- d. Cost has not previously been submitted for reimbursement;
- e. Cost reflects the actual cost expended; and
- f. Applicant has no outstanding or anticipated liens for work constructed.

B. Reimbursement.

1. If pay as you go financing is used, the applicant shall submit to the Director of Finance copies of all invoices supporting its request for reimbursement, accompanied by a Certificate of Completion. Invoices must be submitted quarterly and such submission must occur at least thirty (30) days prior to any quarterly disbursement period or applicant shall have to wait until the next quarterly disbursement period.

2. The Director of Finance shall attempt to determine the eligibility of the cost within thirty (30) days of the submittal. If the Director determines the nature or amount of the request for reimbursement is outside the scope of the Act or the Development Agreement, Developer may appeal this decision in accordance with the procedure in Chapter 2.145 of the Topeka Municipal Code. Any reimbursement payment shall be stayed pending a determination by the hearing officer.

3. Requests for reimbursement shall be denied unless submitted before the Project is closed or within thirty (30) days thereafter.

4. CID revenues shall be paid in the following order:

- a. First, the CID administrative fee.
- b. Second, cost of preparation and publication of notices of

hearings, resolutions, ordinances and other proceedings relating to the creation or administration of the District or the issuance of bonds.

c. Third, the Petitioner's other costs as defined in Section III(B) of the CID Policy.

C. Special Assessments.

1. If special assessments shall be levied to finance all or any part of the Project cost, the City must follow the procedures set out in K.S.A. 12-6a01 *et seq.* except that no assessments may be levied against the City at large. In addition, if the source of financing includes payment from a pledge of revenue received from the CID sales tax or any other funds appropriated by the City for purpose of paying Project costs, including the principal and interest of bonds, then the ordinance levying the assessments may state that the annual installments of such assessment for any year may be reduced or eliminated to the extent that, prior to the date the City certifies the City tax levy to the County, the City has received sufficient funds from the above described sources to pay the debt service on any bonds issued for the Project costs, which would have been paid by such installment.

2. The City is not required to refund any prepayment of assessments after such prepayment is made to the City. Any prepayment must be paid in full prior to the issuance of bonds, or after the issuance of bonds by paying all of the installments which have been levied and also the unlevied installments with interest on the latter at the rate provided in the bonds from the date of the bonds to the time of maturity of the last installment in compliance with K.S.A. 10-115, and amendments thereto.

D. CID Sales Tax.

1. A CID sales tax may be levied in any increment of .10% or .25% not to exceed 2%, which amount is in addition to the aggregate amount of the retailers' sales tax contained in K.S.A. 12-187 through 12-197. The revenue from the CID sales tax may be pledged to pay the bonds issued for the Project or to reimburse the cost of the Project through pay-as-you go financing.

2. If CID bonds are issued, the CID sales tax shall expire no later than the date the bonds mature. If pay-as-you-go financing is used, 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 Project bonds or pay-as-you-go costs have been paid.

3. Procedure:

a. Upon adoption of a CID sales tax, the City shall send a certified copy of the resolution or ordinance authorizing the levy of the CID sales tax to the Kansas Director of Taxation. Notice must be received ninety (90) days before the first day of the quarter in which the CID sales tax will commence. Thereafter, the Kansas Director of Taxation shall commence collection of the CID sales tax in the District at the same time and in the same manner for the collection of the state retailers' sales tax. The full remittance shall be deposited in the state treasury.

b. The state may retain 2% of all CID sales taxes collected up to \$60,000 per state fiscal year for deposit in the state CID sales tax administration fund to defray the state costs of administration and enforcement (the "state fee").

c. The state shall no less than quarterly remit to the City the CID sales tax receipts collected less the state fee, if any. The amount shall be deposited in the City CID Project fund. Such fund shall be created for each District.

d. Within 15 days of written request of the City, the state will provide the City with a copy of any retailers' sales and use tax return filed with the state in connection with a District for which sales or use tax revenues are intended to be used to finance Project costs. Such returns and the information contained therein shall be kept confidential, but may be used for purposes of allocating and depositing such revenues in connection with the bonds used to finance Project costs.

E. Appeals. No suit to set aside assessments or otherwise question the validity of the proceedings for the District establishment or Project authorization shall be brought 30 days after publication of the resolution or ordinance creating the District. No suit to set aside the CID sales tax may be brought 30 days from the publication of the ordinance or resolution declaring the intent to impose the CID sales tax. No protest petition pertaining to the issuance of full faith and credit bonds may be brought 60 days following the date of public hearing to create or modify the District.

VI. BOND FINANCING GUIDELINES.

If CID bonds are issued for the project, the following guidelines shall be applied:

A. The maximum maturity for Bonds is 22 years.

B. For feasibility, it is recommended that Bonds be issued in a minimum amount of \$ 1,000,000. This amount may be adjusted upon recommendation of the Review Committee and approval of the Governing Body.

C. CID Bonds issued under this Policy must include security for the bonds of a sufficient amount, and in a form approved by the City's bond counsel and financial advisor, to minimize any risk of default.

D. Bonds issued under this Policy must be sold to qualified investors (as defined by the Securities and Exchange Commission Regulation D) in accordance with the minimum denominations as provided herein.

E. 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:

1. the Project being bond financed is substantially leased;
2. the estimated revenue stream yields significant debt service coverage on the bonds;
3. construction of the Project being bond financed is 100% complete;
4. the repayment term is less than or equal to 60% of the maximum permitted repayment term; or
5. waiver by the City Manager.

F. If a negotiated sale of the bonds is utilized, the City will generally select the underwriter(s) needed to structure, price, and sell the bonds. Exceptions to this process may be approved by the City Manager upon consultation with the City's bond counsel and financial advisor.

G. All pricing for negotiated sales will be performed with direct involvement by City staff and the City's financial advisor. Any savings generated as a result of discounts or premiums will be used for the benefit of the District.

CITY OF TOPEKA



Daniel R. Stanley, Interim City Manager