

RESOLUTION NO. 4570

RESOLUTION AMENDING THE CITY OF LEAWOOD'S COMMUNITY IMPROVEMENT DISTRICT ["CID"] POLICY AND REPEALING RESOLUTION NO. 3930.

WHEREAS, the Kansas Community Improvement District Act, K.S.A. 12-6a26 et seq. [the "Act"] authorizes the governing body of any city to create community improvement districts ("Improvement Districts" or "CIDs") to enable public financing of all or a portion of certain projects or infrastructure improvements in order to encourage and promote economic development, tourism and community investment within a CID; and

WHEREAS, the Act further authorizes governing bodies, in order to pay the costs of such Projects (as defined herein), to impose a 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 within Improvement Districts in any increment of .10% or .25%, not to exceed 2.0%, to levy special assessments upon property within such Improvement Districts, to issue special and or general obligation revenue bonds payable from such CID sales taxes and/or special assessments, or to reimburse the cost of the Project pursuant to Pay-As-You-Go financing (collectively, "CID Financing").

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

Section 1. Objectives.

The primary objective of this policy is to establish CID guidelines to enable public financing of all or a portion of a Project. A Project should provide a benefit to the public,

strengthen economic development, reduce blight, or upgrade older real estate through exterior redevelopment or rehabilitation. Public financing may be achieved by levying and collecting a sales tax in any increment of .10% or .25%, not to exceed 1.0% ("CID Sales Tax").

Section 2. Scope.

This policy will apply when an owner or developer of land ("Petitioner") submits a proper petition ("CID Petition") and application to create a CID and/or utilize CID financing to fund approved Projects. The authority and decision to approve a CID Petition is within the sole discretion of the Governing Body. This policy is intended to provide guidelines only, and the Governing Body reserves its right to deviate from this Policy when it deems it to be in the best interest of the City.

The City of Leawood may consider establishment of CIDs, when the Governing Body deems it appropriate for certain Projects. In such case, Projects shall be financed by a CID Sales Tax on the sale of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas Retailers' Sales Tax Act, and amendments thereto, within the CID. The City, in accordance with the Act and in addition to and notwithstanding any limitations on the aggregate amount of the retailers' sales tax contained in K.S.A. 12-187 through 12-197, may, at its sole discretion, levy a CID Sales Tax within the CID area, all of which may be pledged for pay-as-you-go financing of the verified costs of approved Projects.

Section 3. Definitions.

"Cost" means the definition set out in K.S.A. 12-6a27(f) as amended except as further set forth in this policy. The term Cost does not include: (a) costs incurred prior to CID establishment, (b) a developer's attorney's fees, financial advisor fees, real estate commissions, developer fees and fees paid to consultants representing developers, and (c) interest costs. The

term “Cost” may include engineering and architectural fees, environmental and geotechnical consultant fees and other similar due diligence expenses associated with a Project. Costs approved for reimbursement associated with an established CID must be as approved by the Governing Body in a development agreement entered into by and between the Petitioners and the City.

“Pay-As-You-Go” means a method of financing in which the costs of a Project are financed without notes or bonds, and the approved and verified costs of a Project are reimbursed after Project completion or completion of a phase of the Project as monies are deposited in the CID Fund (defined herein), all as approved by the Governing Body in an agreement between the Petitioner and the City [Development Agreement].

“Project” may include projects deemed eligible under this policy and that are otherwise eligible under the Act. 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.

Section 4. Criteria.

The Governing Body may consider establishment of a CID when it determines it is in the City’s best interest and provided that it meets one or more of the following criteria:

1. The Project would attract and promote mixed use development.
2. The CID area has unique site constraints making development more difficult and costly.
3. The Project would substantially promote economic development.
4. The Project would incorporate higher standards for the design and construction of improvements than the minimum requirements under the Leawood Development Ordinance.
5. The Project encourages redevelopment, renovation or rehabilitation of commercial properties.
6. The Project incorporates the construction of public infrastructure.

Section 5. Project Eligibility.

The City of Leawood has determined that CID Financing is appropriate for redevelopment or renovation of existing developments that were built at least twenty (20) years prior to the date of the petition. The 20 year period shall be measured from the date of the first building permit issued for building construction in the development. The following Projects pertaining to such developments, if otherwise qualified under the Act, may be eligible for CID Financing under this policy:

A. Projects within the CID area to acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, restore, replace, renew, repair, install, relocate, furnish, equip or extend:

1. The exterior of buildings, structures, marquees and facilities;
2. Sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, tunnels, traffic signs and signals, utilities, pedestrian or bicycle amenities, public transit options, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, and water mains and extensions;
3. Parking garages;
4. Streetscape, exterior lighting, street light fixtures, street light connections, street light facilities, and exterior benches, walls and barriers;
5. Parks, lawns, trees and other landscape;
6. Awnings and canopies;
7. Bus stops and other outdoor shelters; and
8. Outdoor cultural amenities, including but not limited to, sculptures and fountains.

B. Within the District, to operate or to contract for the provision of parking lots or garages.

C. The following project types are not eligible for CID financing:

1. Roof installation, maintenance or repair;
2. HVAC installation, maintenance or repair; or
3. General maintenance items.

Section 6. Procedure.

The City shall consider creation of a CID for improvements shown on an approved Preliminary Development Plan after receipt of a completed CID application and petition ("CID Petition) and a fee in the amount of \$500. The completed CID Petition and application will be reviewed by the City's staff, including the City Administrator, City Attorney and Finance Director.

A. Application.

At submission of the application to the City for establishment of a CID, the Petitioner shall also provide the following information:

1. Evidence in a form satisfactory to the City of the Petitioner's financial ability to complete the proposed project in a timely manner.
2. Documentation substantiating the Petitioner's sources of funding, including the amount/percentage of equity funding.
3. Submission of a pro forma with project feasibility analysis.
4. Payment of all required fees and compliance with all procedural requirements of the Act and the City's CID Policy.
5. Copy of approved Preliminary Development Plan.
6. Draft of a Development Agreement to be executed contemporaneous with establishment of the CID.

B. Application Process.

The City's staff will first review the application and any supplemental information requested by the City Administrator. The review will determine whether the proposed CID fulfills the criteria and objectives of this policy. If the City Administrator determines that the proposed CID meets the criteria and objectives of the policy, a Governing Body work session will be scheduled to review the CID application for preliminary consideration. If the application is favorably considered, then the Governing Body may direct staff to work with the applicant to prepare a formal petition and resolution to call a public hearing.

C. Petition.

The procedure for Governing Body consideration will be in compliance with the Act and this policy and shall meet the following minimum requirements:

1. **Petition Sufficiency.** It is a goal of the Council that the CID Petition be signed by the owners of 100% of the property within the proposed district. However, if the Petitioner submits evidence that 100% participation cannot be achieved due to extenuating circumstances then the Governing Body may, in its sole discretion, choose to accept the Petition with less than 100% participation. In no case shall the signatures submitted be less than a minimum of owners of more than fifty-five percent (55%) of the land area within the proposed district, and owners collectively owning more than fifty-five percent (55%) by assessed value of the land area within the proposed district as required by the Act.
2. **Petition Submittal Requirements.** The CID Petition must contain a description of the following:
 - a. The general nature of the Project;
 - b. The estimated cost of the Project, supplemented by a preliminary budget describing each element of the Project proposed to be paid for by CID Sales Tax;
 - c. The proposed method of financing the Project;
 - d. A statement that there will be no assessments;
 - e. The proposed amount of any CID sales tax; and
 - f. A map and legal description of the proposed District.
3. **Public Hearing Procedure.** The City may, at any time, request such additional information as it deems necessary and appropriate. The CID Petition and Resolution calling for a public hearing will be placed on a Governing Body agenda, after approval of a final development plan for the property [and may be heard on the same agenda].

After review of a completed CID Petition and accompanying information by the City staff, the Governing Body shall, by resolution, direct and order a public hearing on the advisability of creating such Improvement District and the construction of such Projects therein. Such resolution shall direct that notice of the hearing be given by publication at least once each week for two (2) consecutive weeks in the official City Newspaper and by certified mail to all property owners within the proposed Improvement District, with the second publication to be at least seven (7) days prior to the hearing and such certified mail sent at least ten (10) days prior to such hearing. The notice of public hearing shall contain the following information:

1. The time and place of the hearing;
2. The general nature of the proposed Improvement Project;
3. The estimated cost of the proposed Improvement Project;
4. The proposed method of financing the costs of the Project;
5. The proposed amount of the CID Sales Tax;
6. Notation that there will be no assessments; and
7. A map and legal description of the proposed Improvement District.

A copy of the notice shall also be made available on the City's website.

4. **Governing Body Findings.** After the Public Hearing is conducted on the proposed CID, the Governing Body shall determine the advisability of creating an Improvement District in accordance with section 7 below, setting forth the boundaries thereof, authorizing the proposed Projects, approving the maximum Costs thereof and approving the method of financing the same. Such determinations will be made by adoption of an ordinance. Any approved CID Sales Tax will be approved by separate ordinance.

Section 7. Consideration.

The Governing Body shall review and evaluate each CID Petition on its merits which may include, but not be limited to the following factors:

1. The Petitioner's history of timely payment of property taxes.
2. Whether the CID meets the criteria stated herein.
3. The total development costs and investment, including estimated Project costs for which public financing and CID financing is sought;
4. Sources of funding, including the amount of equity funding in comparison to CID financing;
5. Similar experience and financial stability of developer or owner;
6. Whether or not tenants for the Project are in place and the nature and quality of the tenants;
7. Economic competition the Project has and is expected to have in the future;
8. The amount and purpose of the funding request, including the percentage of funding for capital costs and public infrastructure costs;
9. Strong consideration will be given to Projects which add to and diversify the Leawood tax base as well as Projects which would provide an extraordinary or particularly unique community-wide economic opportunity. Evaluation criteria to be used in determining economic benefit to the community shall include, but shall not be limited to, consideration of the amount of capital investment and a determination of whether the proposed Project enables the development and location of new products, services and amenities in the City rather than the relocation of existing City businesses.
10. The Governing Body will give strong consideration for a CID that will be located in a targeted area for economic development or redevelopment, has specific site constraints making development more difficult or costly, or is considered in need of rehabilitation in some way.
11. The City may require higher standards for the design of improvements and materials used in making improvements within a CID. Preference will be given to businesses that practice sustainable design practices, including but not limited to, energy efficient construction, use of recycled materials, use of native and drought-resistant landscaping, and conservation of natural hydrological systems. The proposed use must be clean, nonpolluting and consistent with all City policies, ordinances, and codes. The Governing Body may require additional stipulations or revisions to the approved Final Development Plan
12. All Projects should be consistent with the City's Comprehensive Plan, street improvement plans, approved Preliminary Development Plans and any special established corridor plans. The City will consult these plans for consistency prior to the City approving any proposed CID. Preference will be given to Projects which enhance pedestrian, bicycle, or public transit options. If a Project requires a rezoning in addition to any rezoning required within the CID, the Petitioner shall demonstrate the Project's compatibility with land use, capital improvement, and other relevant plans of the City.
13. Preference will be given to those projects which bring the existing development into compliance with the City's current Leawood Development Ordinance.

Section 8. Term.

The Governing Body shall review the financial feasibility of each CID and shall use this information in determining the appropriate term of the CID which may be less than the duration allowed by the Act. 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 pay-as-you-go costs have been paid, whichever comes first.

Section 9. Financing.

The cost of all or a portion of any approved and authorized Project shall be financed by pay-as-you-go financing based on CID Sales Tax within the Improvement District.

After review and prior to presentation of the CID Petition to the Governing Body, the staff will work with the Petitioner on a Development Agreement which shall be presented to the Governing Body for consideration, contemporaneous with the CID Petition. The Development Agreement must be executed prior to or simultaneously with the creation of the CID and shall address the recommended method of financing, approved Projects and approved Costs, the feasibility of the Project, and other terms the City deems appropriate.

Section 10. Project Funds.

A separate fund shall be created for each CID ("CID Fund") and such fund shall be identified by a suitable title. CID sales Tax receipts shall be credited to such fund. The CID Fund shall be solely used to pay the approved and verified Costs of the Project. Reimbursement of approved Costs may only be made after a certificate of completion of the Project or phase of the Project has been issued by the City.

In the event moneys remain in the CID 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, the City has the authority to terminate the CID and spend any moneys remaining in such fund for the purposes which local sales tax receipts may be spent.

Section 11. Fees.

When submitting its application, the Petitioner shall pay a non-refundable application fee in the amount of \$500 to cover City expenses associated with reviewing and processing the CID Petition. The City may also require the Petitioner to submit a retainer or enter into a funding agreement to finance 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 CID Petition.

The Petitioner shall also be responsible for paying an annual administrative fee to cover the cost of monitoring and administering the CID in an amount not to exceed 2.5% of the total approved amount of CID revenues received by the City from the State Department of Revenue each year which shall be deducted from the Project Funds each year.

Section 12. Criteria and Adjustments.

A. Projected Payoff. The total amount of CID assistance provided for projects will be based on the economic payoff expectations of the Project and the Project's significance to the community. In general, the goal for Projects would be a 10-year payoff. Longer periods may be considered up to the maximum statutory payoff period of 22 years from creation of the Improvement District if a determination is made that the Project is of community-wide significance.

B. Developer Contribution & Cost Allocation. Each Petition should include evidence that the Petitioner or someone on Petitioner's behalf will do the following:

1. Have the financial ability to complete and operate the Project,

2. Will meet at least one of the following private financing thresholds: (a) provide private financing of at least twenty-five percent (25%) of the total cost of the Project [exterior improvements]; or (b) provide private financing of at least fifty percent (50%) of all work being done on a redevelopment project, including interior renovation. Projects with equity or private financing contributions from the developer in excess of the percent required above will be viewed more favorably,

C. Project Completion. The City will require satisfactory assurance that the Project will be completed in a timely manner in accordance with the Development Agreement.

Section 13: Resolution no. 3930 is hereby repealed.

Section 14: This resolution shall become effective upon passage.

PASSED by the Governing Body this 15th day of February, 2016.

APPROVED by the Mayor this 15th day of February, 2016.


Peggy J. Dunn, Mayor

[SEAL]

ATTEST:


Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:


Patricia A. Bennett, City Attorney