

RESOLUTION NO. 3524

**A RESOLUTION ESTABLISHING CITY OF EMPORIA, KANSAS
POLICIES AND PROCEDURES FOR COMMUNITY IMPROVEMENT
DISTRICT FINANCED PROJECTS.**

WHEREAS, the City of Emporia, Kansas (the “City”) recognizes a need to stimulate economic growth and development of new commercial enterprise to provide employment, services, and tax revenues for the benefit of the City; and

WHEREAS, the City recognizes the need to provide and promote cultural, recreational and other amenities that enhance the quality of life for City residents; and

WHEREAS, the City recognizes that stimulation of balanced development in the City is a joint responsibility of the private and public sectors, working together creating a positive environment to aid private and public development and expansion in the City without requiring existing taxpayers, business, householders, wage earners and others to aggressively subsidize such new growth; and

WHEREAS, the economic development and related goals of the City include, but are not limited to, economic diversification, broadening of the property tax base, stimulation of private investment, enhancement and support of new development, remediation of blight and economic obsolescence, creation of new high quality jobs, increased per capita income, improvement of infrastructure, improvement of quality of life for City residents, and promotion of affordable housing; and

WHEREAS, to assist in meeting economic development and other public goals, the City is authorized by the Kansas Community Improvement District Act (K.S.A. 12-6a26 through 12-6a36) to create community improvement districts to finance projects for economic development and all other public purposes for which the City may spend public funds; and

WHEREAS, the City finds it in the best interest of the public to establish policies and guidelines for the consideration of proposals that may be presented to the City by private developers and others requesting community improvement district financing assistance (“CID”); and

WHEREAS, by adopting this policy the City has determined that the use of CID should be reserved for projects which further an important and clearly definable public interest of the City and which will provide a net benefit to the City and its residents compared to costs; and

WHEREAS, by adopting this policy the City intends to set forth a flexible framework for evaluating requests for CID assistance; and

WHEREAS, the use of CID can encourage the development of projects the City finds and determines are desirable, cost effective and in the public interest; and,

WHEREAS, all prospective CID projects must be carefully evaluated by the City to ascertain the character of tax revenues generated by the proposed district and the impact of CID assistance on other taxing jurisdictions in the Emporia community and on existing businesses and taxpayers; and

WHEREAS, the City desires to use CID assistance for those projects which demonstrate the highest public benefit by eliminating blight, financing desirable public improvements, strengthening the employment and economic base, increasing property values, reducing poverty, creating economic stability, upgrading older neighborhoods, facilitating economic self sufficiency, improving quality of life, and implementing other goals of the City; and

WHEREAS, the City Commission has designated the Regional Development Association of East Central Kansas (“RDA”) to expand their role in the economic development efforts of the City by assuming the promotional and administrative responsibility of these policies and procedures; and

WHEREAS, approved CID financed projects should be those that promote redevelopment in existing areas of the City or that attract unique or significant new commercial or other development in the City or otherwise further goals described in this preamble.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF EMPORIA, KANSAS AS FOLLOWS:

SECTION ONE: ADOPTION OF POLICIES AND PROCEDURES; RDA. The Community Improvement District Financing Application Procedures and Application Form (submitted with this Resolution) are approved and the City Manager is authorized and directed to implement the procedures and policies set forth in this Resolution and in the Application Procedures and Application Form, and to make such additional changes and clarifications as the City Manager deems advisable and in the best interest of the City.

Each CID application submitted to the City will be evaluated on its own merits, and an evaluation of the proposal will be performed by the RDA and the City Manager, other city staff or consultants appointed by the City Manager, which shall include representatives of the Chamber of Commerce, the City’s Financial Advisor, the City’s Bond Counsel and appropriate representatives of neighborhoods potentially affected by a CID application.

SECTION TWO: POLICY STATEMENT ON CID ASSISTANCE.

1. It is the policy of the City to consider creation of community improvement districts for projects qualified under state law and the policies of the City. An applicant for CID financing must comply with all applicable state laws and City requirements relating to the project, both before and after the community development district is created.

2. It is the policy of the City to consider the judicious use of CID financing assistance for projects that demonstrate a measurable public benefit

through constructing public improvements supporting developments that will achieve one of the City's development goals, including, but not limited to:

- (a) Eliminating blight, renewing or restoring areas that may become blighted;
 - (b) Provide for construction of transportation or other infrastructure that is beyond what the City requires or would otherwise build;
 - (c) Attract retail development which will benefit the City, or attract unique commercial, industrial or housing development that will enhance the economic climate of the City and/or enhance quality of life for City residents;
 - (d) Provide for construction or improvement of parks, lawns, trees and other landscape improvements or other cultural or recreational amenities that will enhance quality of life for City residents;
 - (e) Provide for the development of affordable housing,
 - (f) Promote projects of community wide importance;
- and
- (g) Provide services within a community development district that will enhance the foregoing purposes, as permitted by the community improvement district act.

An application for a CID project in the City must demonstrate how it will contribute to these goals.

3. It is the policy of the City to exercise care and to thoroughly evaluate each proposed CID project to ensure that benefits expected to accrue from approval of CID financing for a project justify the City's participation in such assistance.

4. The City will charge an application fee and an administrative fee for CID financing projects as later described in this resolution.

SECTION THREE: CID POLICY GUIDELINES. The following criteria are to be used by the RDA, the City Commission and consultants to evaluate requests for CID financing:

1. *Policy Goals.* An application for CID financing must demonstrate that it promotes one of the City's policy goals, particularly those stated in the preceding section of this Resolution.

2. *Pay As You Go Financing.* An application for CID financing may request "pay as you go" financing which provides for reimbursement to the developer of CID project costs paid in advance by the developer. If such financing is requested, the application should identify the sources of revenue anticipated to fund such reimbursement, which shall be limited to special

assessments and/or a community improvement district retailers' sales tax levied in the district.

3. *Special Obligation Bonds.* All applications for CID financing requesting issuance of the city's special obligation bonds or notes must demonstrate that the special assessments and/or community improvement district retailers' sales tax to be collected in the district will be sufficient to provide a debt coverage factor of at least 1.25 times the projected debt service on any CID special obligation bonds or notes. Debt service coverage greater than 1.25 times may be necessary to market any CID notes or bonds that are sold to the public. CID special obligation bonds or notes to be purchased by the developer of the project or by a financial institution may not require 1.25 times debt service coverage.

4. *Full Faith and Credit General Obligation Bonds.* In general, the City does not favor issuance of its full faith and credit general obligation bonds to pay costs of a CID project. The City will consider issuance of its full faith and credit general obligation bonds to pay all or a portion of project costs related to a CID project that has significant economic and/or cultural impact throughout the City or that proposes substantial redevelopment in an area the City Commission determines is blighted or in need of substantial upgrade.

5. *Amount and Term of Assistance.* The total amount of CID financing assistance and its term will be determined based on the economic or other payoff expectations of the project and its significance to the community. A 15-year or less payoff period is favored in the absence of unusual factors. Longer terms for CID financing (but not exceeding 22 years) may be considered if the proposed project is concerned with the redevelopment of blighted areas or areas that have deteriorated and may become blighted or is a project of community-wide significance.

6. *Financial Feasibility.* Each CID assistance request must include evidence acceptable to the City that the applicant:

(a) Has the financial ability to complete and operate the entire project.

(b) Will be liable for, or contribute equity or private financing of at least twenty percent (20%) of the total cost of the project or provide security for the completion of the project. Projects with equity or private financing contributions in excess of twenty percent (20%) will be viewed more favorably.

(c) Will provide a performance bond or other security acceptable to the City for completion of 100% of the public

improvements included within a CID project, unless otherwise provided by a development agreement for the project.

7. *Development Agreement.* The City will require satisfactory assurance that the project will be completed in a timely manner and in accordance with a Community Development District Development Agreement between the City and the developers of the project.

8. *Preferred Projects.* CID financing requests for the redevelopment of blighted areas or areas that have deteriorated and may become blighted in the City, applications for projects with significant city wide economic, cultural or quality of life impact and applications for development of new or expanded industrial, manufacturing, office, and retail projects will be viewed more favorably than projects for service commercial use (commercial uses that mainly provide a service rather than the sale of products). CID projects that create jobs with wages that exceed the community average will be favored. The City will give additional consideration to projects with a total capital investment in excess of ten million dollars (\$10,000,000) and those projects the City determines will stimulate other local economic development or otherwise improve the quality of life of its citizens.

9. *Retail or Service Projects.* CID financing requests for retail and for service commercial projects will be more favorably considered if the project is one where a substantial part of its total products and/or services are either exported from the Emporia area or the project will add jobs in the City and sell or provide products and services now acquired by Emporia citizens outside the City. Additional considerations should include whether the project has the ability to support or stimulate new retail development in the City.

10. *Redevelopment.* CID financing assistance requests for the redevelopment of existing residential neighborhoods, commercial and industrial areas will be viewed favorably. Projects to stabilize existing residential neighborhoods, commercial, and industrial areas that have or will likely experience deterioration will be favored.

11. *Applications.* All CID applications must comply with the requirements of the Kansas statutes governing CID financing and the Application Procedures and Application Form approved by this resolution.

12. *Information Describing the Project and Financing.* All CID financing applications shall present the following preliminary information to the RDA:

- (a) A complete and detailed description of the project to be financed with CID financial assistance along with a description of the type of the major tenants or residents to be located in the CID district and the

status of the developer's negotiations with such tenants or residents, if applicable;

(b) The estimated total cost of the project;

(c). The proposed method of financing the entire project, including the portion of the project not financed with CID assistance;

(d) A map and legal description of the proposed community improvement district or area to be developed;

(e) The proposed amount of special assessments to be levied in the district to pay qualified project costs;

(F) The proposed amount of any community improvement district retailers' sale tax;

(g) The proposed amount of any special obligation bonds to be issued by the City and the sources of revenue to be pledged to the payment of such bonds;

(h) The proposed amount of any City funds requested to be appropriated by the City to pay project costs and a justification for such request consistent with the City's goals as stated in this resolution;

(i) The proposed amount of any full faith and credit general obligation bonds to be issued by the City and a *detailed* argument supporting the commitment of the City's full faith and credit to the payment of the project costs, consistent with the City's goals, as stated in this resolution;

(j) A statement that the developer/applicant will agree to pay the costs of a financial feasibility study for the proposed project performed by an independent consultant selected by or approved by the City; and

(k) A statement that the developer/applicant will pay the costs of the City's financial advisor and bond counsel with respect to the proposed CID financing.

12. Applicants for CID financing may be required, at the request of the City and/or RDA, to prepare a thorough market analysis that identifies: (1) the population areas that the businesses in the CID will draw from; (2) the existing businesses in the City of similar types that will compete with new business in the CID; (3) the anticipated impact of the new businesses in the CID on existing business of a similar type; and (4) the anticipated effect on the City's net retailers' sales tax revenues, as received from the proposed new businesses in the CID.

SECTION FOUR: PROCEDURE.

1. Upon presentation of the preliminary information described in Section Three, the RDA will review the proposal in light of the City's policies as stated in this resolution. The RDA will forward the preliminary information and its findings to the City Commission. If the City Commission approves of the concept, it may authorize the City Manager and other City staff and consultants to work with the applicant/developer to develop a CID finance plan. After reviewing an application, the City may request and the applicant shall furnish additional information to further describe or clarify the proposal.

2. Upon receiving conceptual approval from the City Commission, the applicant shall, in consultation with the RDA proceed with the preparation of a plan for the financing and construction of the project pursuant to state law and City requirements, including a complete and comprehensive financial feasibility study showing, among other things, that the special assessments and/or community improvement district retailers' sales tax derived from the district and the project will fully fund any proposed bond payments and provide additional coverage as required by this policy or by the purchasers of such bonds, and that the term of the bonds or notes issued to finance the community development district project costs does not exceed a mutually agreed upon period of time, as permitted by law. The financial feasibility study for a CID project shall demonstrate that the proposed project will produce a net economic benefit to the City as a whole. The financial feasibility study shall be performed by an independent consultant selected by or approved by the City. The costs of the feasibility study shall be paid by the applicant/developer.

3. Before the City may create a community development district the applicant must file a petition as required by the Kansas Community Improvement District Act with the City Clerk. The petition must be signed by a percentage of property owners in the proposed district as required by law (presently 100% of owners of all the land in the district for projects to be financed solely by special assessments in the district, or, in the case of projects to be financed from a district retailers' sales tax or requesting issuance of the city's full faith and credit general obligation bonds, the owners of *more than* 55% of land in the district *and* property owners collectively owning land representing *more than* 55% of the assessed value in the proposed district).

4. The applicant and City will enter into a Community Improvement District Development Agreement with respect to the proposed project which will identify, among other things, the duties and responsibilities of the developer/applicant and those of the City with respect to financing, construction, property acquisition, environmental issues with respect to any property the City will acquire, any conditions precedent to the City's issuance of bonds or notes for the project, insurance, construction standards and other necessary matters.

SECTION FIVE: REQUEST FOR PROPOSAL. The City may request proposals for CID projects. When the City receives an application that is not in response to a City request, the City may, at its option, publish notice in a newspaper of general circulation in the City or on the City’s website requesting proposals for development in the proposed project area.

SECTION SIX: APPLICATION AND SERVICE FEES. Any applicant shall pay a non-refundable CID application and service fee of one percent (1%) of the total financial assistance requested for the CID project, in the form of special assessments, retailers’ sale tax in the CID, special obligation bonds, general obligation bonds or other funds of the City. The application fee shall not exceed \$50,000, as described below. The fee shall be paid as follows:

CID Application Fee

Initial application fee*	5%** or \$2,500 whichever is less
RDA preliminary approval fee	15%** or \$7,500 whichever is less
Resolution approving creation of the Community Improvement District and development agreement	80%** or \$40,000 whichever is less
Maximum fee – due at a prescribed time (includes initial application fee)	\$50,000

* To be paid with submission of application.

** Portion of 1% of total CID project to be financed

Reapplication fees for substantial changes will be charged at the same rate as the schedules shown above.

In addition to the fees described above, the applicant shall pay to the City an administration service fee of not to exceed 5% of the total cost of the CID project or the costs of work done by the City. This fee will be applied to reimburse administration, service and other City costs incurred for each approved CID Project and shall be in addition to the application fee. The service fee may be paid from district sales tax revenue, special assessments or other revenue generated from the project over time, from bond or note proceeds or from a direct billing to the applicant. The amount and payment method of the administration service fee shall be determined by the City on a case by case basis.

In addition, the applicant will be required to pay the costs of the required feasibility study as described above and any additional costs, including the fees of the City’s bond counsel, financial or other consultants for services related to the CID and issuing bonds or notes, if any.

The City may waive or reduce the fees established by this resolution if it is determined to be in the City's best interests.

SECTION SEVEN: DESIGN CRITERIA. CID development proposals are expected to meet the "highest development standards" as outlined by the City's adopted development policies for commercial and industrial buildings, as well as any design criteria adopted by the Planning Commission and City Commission or specifically required by the City Commission for the CID project. Development proposals are expected to demonstrate innovative design with human scale that exceeds the design standards of conventional development throughout the City. A CID project requires the use of high quality building materials, noteworthy architectural design and site design to achieve visual interest, provide human scale, place a premium on developing land in harmony with existing natural features, and enhance the value and function of adjacent properties.

All CID projects will be required to utilize a Planned Unit Development Overlay District, unless waived on a case-by-case basis at the sole discretion of the City Commission. Designs shall include strict architectural, site, and landscape design requirements. As well, the Community Improvement District Development Agreement, development review process, and zoning ordinances will establish land use controls, allowed uses and materials, traffic improvements, environmental preservation areas and other design criteria to ensure the development will achieve the highest development standards possible.

The compatibility of the CID project with land use and development plans of the City and the availability of existing infrastructure facilities and essential public services will be a consideration. The project must be environmentally acceptable to its location and the surrounding area. Preference will be given to businesses that do their own pre-treatment or do not require extensive environmental controls. The proposed use must be clean, nonpolluting, and consistent with all policies, ordinances, and codes. If requested, the applicant must be willing to provide a traffic study on any anticipated traffic impact increase on the City due to the project.

SECTION EIGHT: EMPLOYMENT AND BUSINESS RELOCATIONS; RETAILERS' SALES TAX NET IMPACT.

If the CID application is recommended based upon job creation criteria, language will be included in the community improvement district development agreement with the developer providing that the City's obligation may be reduced if the indicated number and quality of jobs have not been generated.

If businesses are to be relocated from other areas of the City as part of a CID project, the applicant must supply justification of the relocation in terms of benefit to the City as a whole before such a relocation will be considered as part of a CID project. If existing businesses are to be relocated to the CID district, the base year activity for purposes of determining any general sales tax increase as a result of the CID project (other than a special sales tax levied in the CID district) will be the last twelve month period at the businesses' current location, immediately preceding the relocation.

SECTION NINE: METHOD OF FINANCING. *Special Obligation Bonds.* CID applications may request that the City issue special obligation bonds or notes of the City to finance qualifying community improvement district costs. Such bonds shall be payable solely from special assessments levied in the community improvement district, from a retailers' sales tax approved for levy in the district, or from both. Special obligation bonds shall not be a general obligation of the City and shall not be payable from any other revenues of the City. The City may, in its discretion, agree to pledge other lawfully available funds of the City to the payment of such special obligation bonds, subject to annual appropriation requirements of the Kansas Cash Basis law.

General Obligation Bonds. In its discretion, the City will consider pledging its full faith and credit and issuing its general obligation bonds to pay costs of a CID project if the proposed CID project is shown to have significant and beneficial economic, cultural or quality of life impact throughout the entire City. Such general obligation bonds, if issued, will be payable first from the sources of revenue described in the preceding paragraph, with the City's full faith and credit pledge as a standby. A CID project applicant requesting issuance of full faith and credit general obligation bonds must demonstrate, through the financial feasibility study required by this resolution, that special assessments, a retailers' sales tax in the district or both, will fully fund the proposed general obligation bond payments.

Pay as You Go Financing. CID assistance will also be available as direct reimbursement to the applicant/developer of qualified costs paid by applicant/developer on a "pay as you go" basis as described in the Community Improvement District Act. The "pay as you go" method of financing is favored by the City.

The most significant factors in the City's decision to approve a method of financing will be the total amount of CID financing requested and the security for the revenue stream supporting any special obligation bonds or notes. The City will not provide credit enhancements for any special obligation bonds issued; however, credit enhancement provided by the applicant/developer will be viewed favorably. The City will have sole rights to determine the method of financing.

The City may request that an applicant/developer agree to do any or all of the following: (i) pay any shortfall in the special assessments or retailers' sales tax revenue pledged to pay special obligation bonds, or (ii) agree not to relinquish the applicant/developer's interest in the project for a specified period. In making such requests the City will take into account the impact such requirements may have on the tax-exempt status of interest paid on any bonds or notes to be issued for the project.

SECTION TEN: TERM. In general, the term of a CID financing shall be 15 years or less. Shorter projected terms will be viewed more favorably than longer terms. Terms longer than 15 years (but not exceeding 22 years) may be approved for CID projects in blighted areas or for projects the City determines will have significant positive impact on the community at large.

SECTION ELEVEN: AUTHORITY OF GOVERNING BODY. The Governing Body reserves the right to deviate from any policy, but not from any procedure set forth in this Resolution or any other procedural requirements of state law, when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that is in the best interests of the City.

SECTION TWELVE: EFFECTIVE DATE. This Resolution shall take effect immediately after it is adopted by the City's governing body.

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ADOPTED by the Governing Body This 2nd day of January, 2013.

CITY OF EMPORIA, KANSAS

[seal]

By Bobbi Mlynar

Bobbi Mlynar, Mayor

ATTEST:

By Kerry Sull
Kerry Sull, City Clerk