

CITY OF OTTAWA
TAX INCREMENT FINANCING POLICY
(Accepted in 2004)

1. PREAMBLE

The purpose of this policy is to establish the official position and procedures of the City of Ottawa, Kansas, for considering applications for tax increment financing (TIF) used for economic development and redevelopment purposes in accordance with the provisions of K.S.A. 12-1770 through 12-1780(d), as amended.

2. OBJECTIVES

The City recognizes that the proper use of tax increment financing can promote, stimulate and develop the economic welfare and quality of life in the city. The City is committed to the high quality and balanced growth and development of the community, to preserving the community's unique character and distinctive atmosphere, and to revitalizing and redeveloping areas of the community. The City's objectives are advanced by the expansion of the tax base and approval of TIF projects where, but for the availability of TIF, such projects would not be as economically viable. It is the policy of the City that any decision regarding the approval of TIF projects be made in accordance with the guidelines, criteria, and procedures outlined in this policy. Nothing herein shall imply or suggest that the Governing Body is under any obligation to approve a TIF project for an applicant, or that the City is prevented from applying for a project on its own initiative.

3. DEFINITIONS

Within this policy the words or phrases used shall have meaning or be construed pursuant to the definitions within K.S.A. 12-1770(a), attached.

In addition, the phrase Development Agreement shall be defined as: an agreement between the City and developer with clear contractual statements concerning the understanding or agreements between the parties of all matters relating to the funding of the project and the reimbursement of the developer, when applicable. Any such contract should articulate the project costs, how they will be paid by the developer or the City, how the developer will be reimbursed for the costs, when applicable, and how and under what conditions bonds, if issued, will be sold and paid. A development agreement may include an initial funding agreement, a master development agreement and individual project area agreements.

4. PROVISIONS

A. Legal Authority

Pursuant to statute, the City may create TIF districts in blighted areas, conservation areas and enterprise zones created prior to July 1, 1992, major tourism areas, major commercial entertainment and tourism areas or other eligible areas. Certain costs of improvements within the TIF district may be reimbursed to the developer or paid through the issuance of special obligation bonds or full faith and credit bonds. Funds to pay the reimbursement or retire the bonds are generated by the tax increment and other sources that may be pledged by the City. This authority is discretionary and the City may provide for tax increment financing in an amount and for purposes more restrictive than authorized by statute.

B. Distribution of Ad Valorem Taxes

All tangible taxable property located within a TIF district shall be assessed and taxed for ad valorem tax purposes in the same manner as property located outside such district, and all ad valorem taxes levied on such property shall be paid to and collected by the county treasurer in the same manner as other taxes are paid and collected. Such funds shall then be distributed to the City to be placed into a special fund for the TIF district. Some or all of the increment in ad valorem property taxes resulting from a TIF project may be apportioned by the City for the payment of the eligible TIF expenses of the project, including reimbursement or the payment of principal and interest on any special obligation bonds or full faith and credit tax increment bonds issued.

C. Eligible TIF Expenses

The statute specifies permissible TIF expenses, including: a) sanitary and storm sewers, lift stations, drainage conduits, channels and levees, b) street grading, paving, graveling, curbing, guttering and surfacing, c) water mains and extensions, underground gas, water, heating, and electric services and connections within public r-o-w, d) sidewalks and pedestrian underpasses or overpasses, e) site preparation, such as demolition, environmental mitigation, or utility relocation, f) drives and driveway approaches located within the public right-of-way, g) street lighting fixtures, connection and facilities, plazas, arcades, and parking facilities, h) landscaping, plantings, fountains, shelters, benches, sculptures, lighting, decorations, etc., i) acquisition of property within the TIF district, and j) payment of relocation assistance and all related expenses to redevelop and finance the TIF district/projects.

D. Non-Eligible Expenses

The costs of construction of buildings or other structures to be owned or leased to any party other than the City are not eligible.

E. Financing Methods

At the City's discretion, the following methods of financing TIF project expenses may be used. The maximum period for any debt, bond or reimbursement shall be twenty (20) years. The issuance of TIF bonds is dependent on structure and creditworthiness of each bond issue. The City shall determine whether TIF bonds will be sold through negotiation or public sale and, if sold through negotiation, will select the underwriter to purchase the TIF bonds.

I. Special Obligation Bonds

The City may issue special obligation bonds to finance permissible expenses of the TIF district. Such bonds shall be payable, both as to principal and interest from: a) property tax increments allocated to, and paid into a special fund of the City, b) revenues of the City derived from or held in connection with the undertaking and carrying out of any project, c) private sources, contributions or other outside funding, d) increased franchise fees, City sales and use taxes or utility revenues, or e) a combination of these methods. The City's policy, practice and preference is to solely use the first ("a") of these options. The City shall determine the use of the other less preferred options of this section at its own discretion.

Special obligation bonds are not general obligations of the City, and in no event shall they give rise to a charge against the City's general credit or taxing powers, nor be payable out of any funds or properties other than those sources set forth above. Should the annual increment fall short of the amount necessary to pay the principal and interest of the special obligation bonds issued under this policy, the remaining amount is not payable by the City.

II. Industrial Revenue Bonds

Industrial revenue bonds may be issued by the City pursuant to K.S.A. 12-1740 *et seq.*, and the City's policy to benefit a developer within the TIF district. All legal benefits associated with such bonds shall be available, except for ad valorem tax abatements.

III. General Obligation Bonds

While less preferable, the City may issue full faith and credit (G.O.) bonds subject statute.

IV. Private Activity Bonds

A private activity bond is the term used under federal tax law to describe any bond that is used to finance a private purpose (as opposed to a public purpose).

V. Reimbursement

TIF can be used to reimburse a developer for eligible expenses as opposed to issuing bonds. Under this method, the developer pays for the costs of public improvements upfront and the City may reimburse the developer for the eligible TIF expenses over a period of time not to exceed twenty (20) years. The interest on the outstanding reimbursement amount would be at a rate determined by the City. The reimbursement amount and interest is paid solely from all or a portion of the tax increment, and the developer takes the risk that the portion of the increment pledged for reimbursement will be sufficient to payback the eligible TIF expenses (with interest) that they incurred upfront.

F. Amount of Tax Increment Dedicated to a Project

The City recognizes that a simple system of determining the amount of TIF to be granted in order to reach the objectives within this policy may not always be equitable if applied uniformly to different kinds of redevelopment plans. As a result, in determining the actual amount, percentage and duration of TIF to be granted, the City will consider the factors using a cost/benefit analysis on a case-by-case basis. If financing for a redevelopment project plan requires the issuance of bonds, the projected increment typically must be an amount that is at least 125% of the amount necessary to pay the principal of and interest on the bonds.

G. Property Acquisition

The use of condemnation by the City to acquire the property as permitted by law will be considered by the City only upon a finding that the applicant has attempted in good faith to acquire the property privately. In the event the City approves the use of condemnation, the applicant shall be responsible for all costs associated with the proceedings, including court and litigation costs, appraisals, attorney's fees and the final condemnation awards made, through the cost of sale as clarified in the development agreement. The City may proceed to acquire property within the TIF district by purchase or eminent domain (with 2/3 vote of the Governing Body) and implement the plan. However, the City may not exercise eminent domain in conservation areas.

5. PROCEDURES FOR THE ESTABLISHMENT OF A TIF DISTRICT

A. Proposal of the TIF District Plan

The applicant shall initially submit to the Planning and Zoning Department two draft copies of a written plan, which shall include: i) a proposed comprehensive plan that identifies all the proposed redevelopment project areas and that identifies in a general manner all of the buildings and facilities that are proposed to be constructed or improved in each redevelopment project area, ii) a general text description and map of the proposed redevelopment district, iii) a legal description of the proposed boundaries of the redevelopment district, iv) information regarding expected capital expenditure by the applicant, v) a proposal for development assistance, vi) the current assessed value of real property within the proposed TIF district, and vii) the estimated construction schedule and assessed value of the project when completed.

B. Governing Body Action

I. Reviewing and Establishing the TIF District

Upon receiving a recommendation from the Committee, the Governing Body shall determine whether to reject or further consider the TIF proposal. If the Governing Body determines to further consider the application, it shall take action to establish a TIF district, unless such district already exists. The Governing Body must conclude that redevelopment of the proposed area is necessary to promote the general and economic welfare and that the area proposed for the TIF district is an eligible area. If such a finding is made the Governing Body may adopt a Resolution to that effect.

II. TIF District Resolution

The Resolution shall state that the City is considering the establishment of a TIF district. Additionally, it shall: i) give notice that a public hearing will be held to consider the establishment of a redevelopment district and to fix the date, hour and place of such hearing; ii) describe the proposed boundaries of the redevelopment district; iii) describe a proposed district plan that identifies all of the proposed redevelopment project areas and in a general manner all of the buildings and facilities that are proposed to be constructed or improved in each development project area,

iv) state that a description and map of the proposed redevelopment district are available for inspection at a time and place designated, and v) state the Governing Body will consider findings necessary to establish a TIF district. Such Resolution shall be an expression of good faith intent, but shall not in any way bind the City to establishing a TIF district. No elected or appointed officer, employee or committee of the City, and no Chamber of Commerce, Board, Development Council, or other public or private body or individual, shall be authorized to speak for and commit the Governing Body to the provision of TIF, nor to the establishment of a TIF district.

III. Notice of Hearing

No TIF district shall be established, nor TIF granted, by the City prior to notice and public hearing as required by statute. Upon request, the City Clerk shall provide any public agency with a copy of the proposal and a description and map of the proposed TIF district.

IV. Hearing to Establish or Amend the District

At the public hearing, a representative of the City shall present the City's proposed district plan. Following the presentation of the plan, all interested persons shall be given an opportunity to be heard.

V. Post-Hearing

Following the public hearing, the Governing Body may adopt the district plan by Ordinance passed by at least a two-thirds (2/3) majority vote. Any addition of area to the TIF district or substantial change to the City's district plan shall be subject to the same form and procedure for public notice and hearing as required to establish the district. No privately owned property shall be acquired and redeveloped under the provisions of the statute if the Franklin County Commission or the USD-290 Board of Education levying taxes on property proposed to be included in the TIF district determines by resolution within 30 days following the conclusion of the hearing for the establishment of the district that the proposed TIF district will have an adverse effect on such county or school district.

6. PROCEDURES FOR THE ESTABLISHMENT OF A TIF PROJECT

The following basic procedures shall govern the approval of TIF projects within the City. All requests for TIF shall be considered and acted upon in accordance with this policy.

A. Development Application

Applications shall include the: i) applicant's name and resume, ii) summary of project goals, iii) consultants, iv) description of the proposed project, v) construction schedule, vi) definition of boundaries of the proposed TIF area, vii) identification of the property in control of the applicant, viii) zoning status, ix) any residual effects, x) need and justification for TIF assistance, xi) financial sources, xii) outline of costs, xiii) description of market feasibility, xiv) estimation of the increment, xv) description of the economic and quality of life benefits, xvi) number of jobs created, and xvii) financial capacity of the applicant.

B. Proposal Fees

An application fee of \$500 payable to the City shall accompany all proposals. This fee is in addition to other fees which may be required by the City, including fees for the issuance of tax exempt or taxable bonds, costs incurred for preparation of the feasibility study, and costs incurred for review and work done by any consultants retained by the City to evaluate and develop the proposed TIF project. Other actual costs incurred for review shall be billed by the City Clerk for payment within thirty (30) days of the review process.

C. Initial Staff Review

Upon receipt of two (2) copies of the draft proposal and payment of the required fee, the City Manager and the Planning and Codes Director shall determine whether the proposal is complete and sufficient enough to forward for full review to the TIF Committee. If determined to be complete, copies will be provided to the TIF Committee. If the proposal is incomplete, the City Manager or the Planning and Codes Director shall notify the applicant of the changes deemed necessary to make such proposal complete.

D. Thorough Review by TIF Committee

A TIF Committee comprised of the City Manager, Planning Director, Utilities Director, Public Works Director, City Engineer, Bond Counsel, City Clerk and Financial Advisor, shall conduct a thorough review and evaluation of the application and the proposed TIF district. The Committee shall gather and review any additional information deemed necessary to determine if the applicant meets the objectives of this policy, conduct preliminary discussions with the applicant, discuss terms of an agreement to be drafted by the City's Bond Counsel, City Attorney, staff or other agents, and to recommend to the Governing Body whether the proposal should be favorably considered.

The Committee may use the services of outside professional consultants and advisors as part of the review, as necessary. Committee records, including proposals submitted, may be withheld from public disclosure as provided under the Kansas Open Records Act. Any inaccuracy, misstatement of, or error in fact may render the proposal null and void and may cause a repeal of any development assistance rendered through the TIF statutes granted by the City in reliance upon said information.

E. Redevelopment Project Plan

The redevelopment plan shall include: i) a summary of the feasibility study, ii) a reference to the redevelopment district that identifies the redevelopment project area that is set forth in the comprehensive plan that is being considered, iii) a description and map of the area to be redeveloped, iv) the relocation assistance plan, as required by statute, v) a detailed description of the buildings and facilities proposed to be constructed or improved in such area, and vi) any other information the Governing Body deems necessary to advise the public of the intent of the plan. A copy of the redevelopment plan shall be delivered to the Franklin County Commission and the USD-290 Board of Education, and any other entities levying taxes on property within the proposed redevelopment project area. Upon a finding by the Planning Commission that the redevelopment plan is consistent with the comprehensive general plan for the development of the City, and determination by the Governing Body that said plan shall be further considered, the Governing Body may adopt a Resolution.

F. Governing Body Action

I. Redevelopment Plan Resolution

The resolution shall state that the Governing Body is considering the adoption of the plan. Such resolution shall: i) give notice that a public hearing will be held to consider the adoption of the redevelopment plan and fix the date, hour and place of such public hearing, ii) describe the boundaries of the TIF district within which the redevelopment project will be located and the date of establishment of such a district, iii) describe the boundaries of the area proposed to be included within the TIF project area, and iv) state that the redevelopment plan, including a summary of the feasibility study, relocation assistance plan and financial guarantees of the prospective developer and a description and map of the area to be redeveloped are available for inspection during regular hours in City Clerk's office.

Where the Governing Body determines that it will or may issue full faith and credit tax increment bonds to finance the redevelopment project, in whole or in part, the resolution shall also include notice thereof. The date of the hearing shall be no less than 30 and no more than 70 days after the date of the adoption of the Resolution fixing the date of the hearing.

II. Hearing

At the public hearing, a representative of the City shall present the proposed redevelopment plan, and all interested persons given an opportunity to be heard. The Governing Body, for good cause, may recess such hearing to a time and date, which shall be fixed in the presence of persons in attendance at the hearing. The applicant or his/her designee is required to attend the public hearing. Following the public hearing, the Governing Body may adopt the redevelopment plan by Ordinance passed upon at least a two-thirds (2/3) majority vote. Any substantial changes to the plan as adopted shall be subject to public hearing. No full faith and credit bonds or special obligation bonds may be issued until the sixty (60) day protest period expires after the conclusion of the public hearing.

G. Acquisition of Land

The City may proceed to acquire property within the TIF district by purchase or eminent domain (with 2/3 vote of the Governing Body) and implement the plan. However, the City may not exercise eminent domain in conservation areas.

H. Sale of TIF Bonds

The issuance of TIF bonds is dependent on structure and creditworthiness of each bond issue. The City shall determine whether TIF bonds will be sold through negotiation or public sale and, if sold through negotiation, will select the underwriter to purchase the TIF bonds.

I. Waiver of Requirements

The City reserves the right to grant or deny TIF for the development or redevelopment of a district under circumstances beyond the scope of this policy, or to waive any procedural requirement not required under law.

J. Responsibility for Administration

The City Manager or his/her assigns shall be responsible to the Governing Body for the administration of this policy.