

CITY OF OSAWATOMIE



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L. Mark Govea, Mayor

CITY OF OSAWATOMIE

CITY COUNCIL POLICY MANUAL

Policy No. 104

Tax Increment Financing Policy

1.01 OBJECTIVES

The purpose of this Policy is to establish the official position and procedures of the City of Osawatomie, 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.

1.02 SCOPE

The City recognizes that the proper use of Tax Increment Financing can promote, stimulate and develop the general and economic welfare of 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 City's unique character and distinctive atmosphere; and to revitalizing and redeveloping areas of the City. Although the City does not encourage the practice of subsidizing private businesses with public funds, insofar as the City's objectives are substantially advanced by the expansion of the tax base and enhancement of the local economy, the City will consider, on a case-by-case basis, the approval of TIF projects where, but for the availability of TIF, such projects would not be economically viable. It is the policy of the City that any decision regarding the approval of TIF projects will be made in accordance with the guidelines, criteria, and procedures outlined in this Policy. Nothing herein shall imply or suggest that the City be under any obligation to approve a TIF project for any applicant.

1.03 DEFINITIONS

For the purpose of this Policy, the words or phrases as used in either the Kansas Constitution, applicable State statutes, or this Policy shall have meaning or be construed as follows:

Applicant: The individual or business and its officers, employees, and agents requesting approval of the TIF Project.

Associated Therewith: As used with respect to tangible personal property shall mean being located within, upon, or adjacent to buildings or added improvements to buildings.

Blighted Area: An area of real property qualifying as such, in the opinion of the Governing Body, pursuant to K.S.A. 12-1771.

Feasibility Study: A comprehensive study, prepared as required under K.S.A. 12-1771, which shows the benefits derived from the TIF Project will exceed the costs and the income therefrom will be sufficient to pay for the Project.

Redevelopment Plan: A description of a TIF Project, which includes the requirements of K.S.A. 12-1772.

TIF District: An area determined to be a redevelopment district by the Governing Body pursuant to the requirements of K.S.A. 12-1771.

TIF Project: The improvements to real property for which Tax Increment Financing has been approved.

Tax Increment: The difference between the amount of *ad valorem* property taxes assessed against the TIF District prior to the completion of the TIF Project and the amount of *ad valorem* property taxes assessed against the TIF District after completion of the TIF Project. For example, if the taxes assessed prior to completion of the TIF Project were \$5,000, and the taxes assessed after the completion of the TIF Project were \$50,000 annually, the “tax increment” would be \$45,000.

1.04 PROVISIONS

A. Legal Authority

Pursuant to K.S.A. 12-1771, the City may create TIF Districts in blighted areas, conservation areas, and enterprise zones created pursuant to K.S.A. 12-17,110. 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 to 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 the purposes more restrictive than that authorized by statute.

No privately owned property shall be acquired and redeveloped under the provisions of the Act if the Miami County Board of Commissioners or the Board of Education levying taxes on property proposed to be included in the TIF District determines that the proposed TIF District will have an adverse effect on such county or school district.

B. Eligible TIF Expenses

The Act specifies permissible TIF expenses, including:

- a. Acquisition of property within the TIF Project area;
- b. Payment of relocation assistance;
- c. Site preparation;
- d. Sanitary and storm sewers and lift stations;
- e. Drainage conduits, channels and levees;
- f. Street grading, paving, graveling, macadamizing, curbing, guttering and surfacing;
- g. Street lighting fixtures, connection and facilities;
- h. Underground gas, water, heating, and electrical services and connections located within the public right-of-way;
- i. Sidewalks and pedestrian underpasses or overpasses;
- j. Drives and driveway approaches located within the public right-of-way;
- k. Water mains and extensions;
- l. Plazas and arcades;
- m. Parking facilities, including parking structures;
- n. Landscaping and plantings; fountains, shelters, benches, sculptures, lighting, decorations and similar amenities; and
- o. All related expenses to redevelop and finance the Redevelopment Project

The costs of construction of buildings or other structures to be privately owned are not eligible TIF expenses.

C. Bond Authority

The City may use proceeds of special obligation bonds or full faith and credit tax increment bonds to finance the undertaking of a redevelopment project, as provided in K.S.A. 12-1774. The maximum maturity of any such special obligation bonds or full faith and credit tax increment bonds shall be twenty (20) years. The City may also issue industrial revenue bonds or private activity bonds to benefit a developer located within a TIF District.

1. 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: (1) from property tax increments allocated to, and paid into a special fund of the City; (2) from revenues of the City derived from or held in connection with the undertaking and carrying out of any Project; (3) from private sources, contributions or other financial assistance from the state or federal government; (4) from the increased franchise fees and city sales tax; or (5) from any combination of these methods.

Special obligation bonds are not general obligations of the City, nor in any event shall they give rise to a charge against its general credit or taxing powers or is 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 payable is the responsibility of the applicant, not the City.

If a special obligation bond issued under this Policy is offered to the public, an investment grade rating must be assigned to the issue; if the bond is privately placed, it may be issued without a rating, but must be sold to an accredited investor as that term is defined by securities industry standards.

2. Revenue Bonds

Industrial revenue bonds may be issued by the City pursuant to K.S.A. 12-1740 *et seq.* to benefit a developer within the TIF District. All state law benefits associated with such bonds shall be available, except that no *ad valorem* tax abatement shall be available.

D. Reimbursement Authority

Pursuant to Attorney General Opinion 96-45, TIF can be used to reimburse a developer for eligible TIF expenses as opposed to issuing bonds; this is the preferred method of granting TIF benefits. Under this method, the City agrees to reimburse the developer for eligible TIF expenses over a period of time not to exceed twenty (20) years with interest on the outstanding reimbursement amount. 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 insufficient to retire the eligible TIF expenses and interest.

E. Amount of Tax Increment Financing Available

1. Criteria

The primary objectives of the City in granting TIF for economic development are: (a) promote, stimulate and develop the general and economic welfare of the citizens of Kansas and the City; (b) promote the general welfare of the citizens of Kansas the City through assisting in the development, redevelopment, and revitalization of central business areas, blighted areas, conservation areas, and environmentally contaminated areas located within the City; (c) create new jobs and retain existing jobs; and (d) expand the economic and tax base of the City. The City recognizes that a simple system of determining the amount of TIF to be granted in order to reach these objectives may not always be equitable if applied uniformly to different kinds of redevelopment plans. As a result, in determining the actual amount and duration of TIF to be granted, the City shall consider the factors and criteria set forth in this Policy under the Analysis of Costs and Benefits, as well as the amount and duration of previous TIF Projects supported by the City.

2. Capital Investment

To be considered for TIF, an individual or business should be making a minimum capital investment in the City of \$5,000,000.00. The term “capital investment” means the acquisition cost of land, buildings and tangible personal property constituting capital assets for accounting purposes. The minimum amount of capital investment required for TIF Projects, as provided herein, may be waived by the City based upon the unique nature of the project as determined by the Governing Body.

F. Analysis of Costs and Benefits

Prior to granting TIF, the City shall prepare, or direct to be prepared, a cost benefit analysis examining the costs and benefits to the public of the proposed TIF Plan. The Cost-Benefit Analysis shall be performed on a model approved by the City and shall be in addition to the Feasibility Study. The cost of preparing the Cost-Benefit Analysis shall be paid by the applicant. This cost will be in addition to the application fee required under this Policy. The City shall use the Cost-Benefit Analysis to assist in its decision-making process, but the results of the analysis will not be determinative or obligate the City to any course of action. The Cost-Benefit Analysis shall consider, but not be limited to, the following factors, as applicable:

1. The market value of the applicant’s investment in real and personal property;
2. The property tax, sales tax, franchise fees, transient guest tax, and other tax and revenue that may result and directly benefit the City;
3. The number and average employee salary of full-time equivalent jobs that will be created;
4. The expenditures that local government will need to make to provide streets and utilities, police and fire protection, and other services as a result of the TIF Project;
5. The expenditures for police and fire protection, recreation, street maintenance, social programs, etc., for the new residents associated with the TIF Project;
6. The expenditures for public capital investments (library, streets, etc.) for the new residents associated with the TIF Project;
7. The expenditures by the local school district(s) to provide the facilities and to educate the students of the new residents associated with the TIF Project;
8. Other public or private expenditures associated with attracting a new business;
9. The kinds of jobs created in relation to the types of skills available from the local labor market;

10. The degree to which the ultimate market for the applicant's business products and services is outside the community, recognizing that outside markets infuse "new money" to the local economy;
11. The potential of the applicant's business for future expansion and additional job creation;
12. The indirect costs and benefits the applicant's business may have by creating other new jobs and businesses, including the utilization of local products or other materials and substances in manufacturing;
13. The compatibility of the location of the applicant's business with land use and development plans of the City and the availability of existing infrastructure facilities and essential public services;
14. An evaluation of the applicant's current and projected financial strength and market viability;
15. The number and average employee salary of full-time equivalent jobs that will be retained in the City, community, or State as a result of the applicant's decision to locate or remain in the City; and
16. The value added, including tangible costs and benefits such as City reputation, congestion, environment, and quality of life to the City and community as a result of the unique nature of the applicant's business.

G. Application of "But-For" Principle

All TIF applications shall be considered in light of the "but-for" principle, i.e., the TIF must make such a difference in the decision of the applicant that the Project would not be economically feasible but for the availability of the TIF. The Governing Body does not encourage the subsidy of private businesses with public funds, the indirect consequence of TIF, unless some measurable public good results, as determined by the City, and the public subsidization can reasonably be expected to make a significant difference in achieving one or more objectives of the City. The Governing Body shall also review the Internal Rate of Return to make sure that TIF revenues are necessary in achieving a rate of return commensurate with the risk and size of the project.

H. Unfair Competition

In reviewing TIF proposals, the Governing Body shall consider whether or not such financing is likely to create an unfair advantage for the applicant over any existing competing business within the City.

I. Distribution of *Ad Valorem* Taxes

All tangible taxable property located within a TIF District shall be assessed and taxed for *ad valorem* tax purposes pursuant to law in the same manner that such property would be assessed and taxed if 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.

Some or all of the increment in ad valorem property taxes resulting from a redevelopment district may be apportioned by the City to a special fund for the payment of the eligible TIF expenses of the TIF Project, including reimbursement or the payment of principal and interest on any special obligation bonds or full faith and credit tax increment bonds issued.

J. Condemnation

The use of condemnation, permitted under K.S.A. 12-1773, will be considered by the Governing Body only upon a finding that the applicant has attempted, in good faith, to acquire the property privately. In the event condemnation is approved by the Governing Body, the applicant shall be responsible for all costs associated with the proceedings, including court or litigation costs, attorney's fees and the final condemnation awards made.

K. Waiver of Requirements

The Governing Body reserve 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. However, no such action or waiver shall be taken or made except upon a finding by the Governing Body that a compelling or imperative reason or emergency exists, and that such action or waiver is found and declared to be in the public interest. The Governing Body shall not waive any procedural requirement of State Law.

1.05 PROCEDURES

The following basic procedures shall govern the approval of TIF Projects within the City. All requests for Tax Increment Financing shall be considered and acted upon in accordance with this Policy.

A. Proposal

The applicant shall apply for approval of a TIF Project by filing with the Public Works Department five (5) copies of a written proposal on a form provided by the Public Works Department. The proposal shall include, but is not limited to: (a) 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; (b) description and map of the proposed redevelopment district; (c) description of the proposal boundaries of the redevelopment district; (d) information regarding expected capital expenditure by the applicant; and (e) a proposal for development assistance. The Public Works Department shall retain one copy and distribute the remaining copies to: City Manager, City Attorney, City Clerk and City Treasurer. The City will consider full and complete proposals, and additional information as may be requested by the Governing Body. Any inaccuracy, misstatement of or error in fact may render the proposal null and void and may be cause for the repeal of any development assistance rendered through the TIF statutes granted by the City in reliance upon said information.

B. Proposal and Renewal Fees

All proposals shall be accompanied by an application fee of \$5,000. 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 as required by K.S.A. 17-1771, costs associated with the Cost and Benefit Analysis required by the City and costs incurred, if any, for review and work done by the City's Financial Advisor and Bond Counsel. Actual costs incurred for review shall be billed by the City Clerk for payment within thirty (30) days of the review process.

C. Initial Review Procedure

On receipt of the completed proposal and the required fee, the City Manager shall determine whether the proposal is complete and sufficient for review. If the proposal is complete, the City Manager shall immediately notify the applicant of the need for such changes or additions as

deemed necessary. The matter shall then be referred to the City Attorney for a decision as to whether the proposed area of a redevelopment meets the requirements of a redevelopment district, as described under K.S.A. 12-1771. The City Manager shall notify the Finance Committee of the Governing Body, if the proposal is found complete and is for a purpose, which appears to be authorized by law.

D. Review by Finance Committee

The Finance committee ("Committee") shall review requests and applications for TIF, evaluate the proposed TIF District and verify that redevelopment is necessary to promote the general and economic welfare of the City, gather and review such additional information as may be 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 Attorney or his/her designee for Governing Body consideration and to recommend to the Governing Body whether the proposal should be favorably considered. In reviewing the information, the Committee may utilize the services of consultants, including but not limited to bond counsel and financial advisors. Committee records, including proposals submitted for TIF, may be withheld from public disclosure as provided under the Kansas Open Records Act, but shall be available for public inspection when otherwise required by law.

E. Governing Body Action

1. Reviewing and Establishing the TIF District

Upon receiving the recommendation of the Committee, the Governing Body shall determine whether to reject the TIF proposal or to further consider the request. Upon a favorable vote for further consideration, the Governing Body shall take action to establish a TIF District, unless such District is already in existence. The Governing Body must conclude that redevelopment of the proposed area is necessary to promote the general and economic welfare of the City. If such a finding is made the Governing Body may adopt a resolution.

A. TIF District Resolution

The resolution shall state that the City is considering the establishment of a TIF District; additionally, it shall: (1) 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; (2) describe the proposed boundaries of the redevelopment district; (3) describe a proposed comprehensive plan that identifies all of 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 development project area; (4) state that a description and map of the proposed redevelopment district are available for inspection at a time and place designated; and (5) state that the Governing Body will consider findings necessary for the establishment of a redevelopment 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 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.

B. Notice and Hearing

No TIF District shall be established, nor TIF granted, by the City prior to notice and a public hearing as required by K.S.A. 12-1771. 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. The applicant or his/her designee is required to attend the public hearing.

C. Establishing the TIF District

Upon the conclusion of the public hearing and determination by Osawatomie City Attorney that the proposed area complies with K.S.A. 17-1771, the Governing Body may establish the TIF District by ordinance. Any addition of area to the TIF District or any substantial change to the comprehensive plan shall be subject to the same procedure for public notice and hearing as is required for the establishment of the District.

2. The Redevelopment Project

The Governing Body and the Planning Commission will consider the redevelopment project as proposed. Together, they will prepare a redevelopment plan. The Planning Commission must determine that the Plan is consistent with the comprehensive general plan for the development of the City.

A. Redevelopment Plan

The redevelopment plan shall include: (1) a summary of the Feasibility Study; (2) a reference to the redevelopment district that identifies the redevelopment project area that is set forth in the comprehensive plan that is being considered; (3) a description and map of the area to be redeveloped; (4) the relocation assistance plan, as required by K.S.A. 17-7777; (5) a detailed description of the buildings and facilities proposed to be constructed or improved in such area; and (6) 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 Miami County Board of Commissioners and the Board of Education of any school district 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 will or may adopt a resolution.

B. Redevelopment Plan Resolution

The resolution shall state that the Governing Body is considering the adoption of the Plan. Such resolution shall: (1) 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; (2) describe the boundaries of the TIF District within which the redevelopment project will be located and the date of establishment of such a district; (3) describe the boundaries of the area proposed to be included within the TIF Project area; and (4) 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 office hours in the office of the City Clerk.

Where the Governing Body determine 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 fixed for the hearing shall be no less than 30 or more than 70 days following the date of the adoption of the resolution fixing the date of the hearing.

3. Hearing

At the public hearing, a representative of the City shall present the City's proposed redevelopment plan. Following the presentation of the Plan, all interested persons shall be given an opportunity to be heard. The Governing Body for good cause shown may recess such hearing to a time and date certain, which shall be fixed in the presence of persons in attendance at the hearing.

Following the public hearing, the Governing Body may adopt the redevelopment plan by ordinance passed upon a 2/3 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-day protest period expires after the date of the public hearing.

F. 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.

1.06 Responsibility for Enforcement

The City Manager shall be responsible to the Governing Body for the enforcement of this Policy.

REFERENCES

K.S.A. 12-1770 through 12-1780; 12-17,110; and 12-1740.

APPROVED BY THE GOVERNING BODY ON _____, 20__

**CITY OF OSAWATOMIE
439 MAIN ST.
OSAWATOMIE, KANSAS 66064
(913) 755 - 2146**

APPLICATION FOR TAX INCREMENT FINANCING

(Applicant may attach supplemental documents to the application rather than typing the answers on the form below. The supplemental documents shall be in the same order as requested below.)

A. Project:

1. Business Name _____
Address _____
Telephone # _____
Fax # _____
Contact Person _____

2. Brief description of business.

3. Names and addresses of the principal owners, officers, and directors of the firm requesting the Tax Increment Financing.

4. Legal description, address, parcel IDs, and size of project site.

5. Proposed Project: Description of building(s) including square footage, materials, proposed use, etc. Attach site plan if available.

6. If property is to be subdivided, describe division planned.

7. Estimated Project Costs: (Please enclose construction pro forma, if available)

a. Land Acquisition	\$	_____
b. Public Improvements		_____
c. Site Improvements		_____
d. Demolition		_____
e. Building(s)		_____
f. Equipment		_____
g. Architectural & Engineering Fees		_____
h. Legal Fees/Other Consulting Fees		_____
i. Financing Costs		_____
j. Contingencies		_____
k. Other _____		_____
l. Other _____		_____
TOTAL: \$		_____

8. Source of Financing

a. Equity	\$	_____
b. Bank Financing		_____
c. Tax Increment Assistance		_____
d. Other _____		_____
e. Other _____		_____
TOTAL: \$		_____

9. Form of tax increment financing requested: _____ Pay-as-You-Go or
_____ Bonds.

10. Name and address of architect, engineer and general contractor

11. Project Construction Schedule

- a. Construction Start Date _____
- b. Construction Completion Date _____
- c. If phased project:
- | | |
|------------|------------------|
| _____ Year | _____ % Complete |
| _____ Year | _____ % Complete |

12. Total estimated market value of project upon completion \$_____

13. Estimated real estate taxes generated by project upon completion (Please show calculations)

14. Projected number of new jobs created:

_____ Full-time

_____ Part-time

_____ Seasonal

B. Tax Increment Financing Request

1. Describe the amount and purpose for which tax increment financing is required.

2. Statement of necessity for use of tax increment financing for project.

3. Specify below any other data or information you deem pertinent for the City's consideration in this application:

4. If requesting bonds, please attach two complete sets of the following items to the application:
- a. Certified copies of the applicant's financial audits for the past three years
 - b. Applicant's most recent annual or quarterly financial report

5. Applicant acknowledges and agrees that all fees and expenses incurred in connection with this application or establishment of the TIF project, whether or not approved, will be paid by the

Applicant. The Applicant shall hold the City, its officers, consultants, attorneys and agents harmless from any and all claims arising from or in connection with the Project, including but not limited to any legal or actual violations of any State or Federal securities laws.

Applicant agrees and understands that a **non-refundable application fee of \$5,000** to the City of Osawatomie must be submitted with this application.

Partial completion of this application is permitted, however, prior to the adoption of the TIF agreement, the remaining supplementary information to complete this application must be furnished. Additional information may be required by the City's Attorney, Bond Counsel, or Financial Advisor.

It is understood and agreed the information required in this application or any other information will be disclosed to the City's financial team and may be disclosed to the public.

Applicant recognizes and agrees that the City reserve the right to deny any Application for Tax Increment Financing at any state of the proceedings prior to adopting the resolution approving the district, that the Applicant is not entitled to rely on any preliminary actions of the City prior to the final resolution, and that all expenditures, obligations, costs, fees or liabilities incurred by the Applicant at its sole risk and expense and not in reliance on any actions of the City.

The undersigned, a duly authorized representative of the Applicant hereby certifies that the foregoing information is true, correct and complete as of the date hereof and agrees that the Applicant shall be bound by the terms and provisions herein.

DATE: _____

APPLICANT: _____

BY: _____

ITS: _____