

City of Edwardsville, Kansas

Community Improvement District (CID) Policy

Date Adopted: September 12, 2011

Section 1. Policy Statement

It shall be the policy of the City of Edwardsville to consider establishment of a Community Improvement District (CID), when the Governing Body deems it necessary to finance certain Improvement Projects within the City. K.S.A. 12-6a26 et seq. (Supp. 2009, as amended, (the “Act”) authorizes CIDs to encourage and promote economic development, community investment and tourism within a defined CID area (“District”). A CID Project should provide public benefit such as: strengthen economic development and employment opportunities, reduce blight, upgrade older real estate through redevelopment or rehabilitation, enhance tourism or promote sustainability. To achieve public financing, cities levy and collect special assessments and/or a CID sales tax upon property in the District, the proceeds of which may be pledged to repay any special obligation bonds issued to finance the Improvement Project or may be pledged for pay-as-you-go financing. While the CID Act permits the issuance of either full-faith and credit general obligation bonds or special obligation bonds payable solely from the CID revenue, it is the policy of the City to only consider the issuance of Special Obligation CID Bonds on a case by case basis. Preference will be given to pay-as-you-go financing.

Section 2. Scope

An applicant may Petition the City to utilize CID financing to fund Projects eligible under the Act. The authority and decision to approve a Petition to establish a CID for an Improvement Project is within the sole discretion of the Governing Body. The Governing Body is under no obligation to approve any Petitioned Project. This Policy is intended to provide a guide to consider applications. The Governing Body reserves the right to deviate from this policy when it believes it is in the City’s best interest.

Section 3. Definitions

- A. “CID Sales Tax” means a retailers’ 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 sales of tangible personal property at retail or to render or furnish services taxable pursuant to the provisions of the Kansas retailer’s sales tax act, within a District, in any increment of .10% or .25% not to exceed 2% as authorized by the Act, to pledge such revenue to pay Special Revenue Bonds issued for the Project or to reimburse the cost of the Project pursuant to pay-as-you-go financing.
- B. “Cost” means the definition set out in K.S.A. 12-6a27(f) as amended. The City, on a case by case basis, will consider costs incurred within 12 months

prior to District establishment. The City reserves the right to exclude otherwise eligible costs under the Act. The approved project costs shall be described in detail in a Development Agreement.

- C. “Development Agreement” is a written agreement between the City and Petitioner(s) for the construction of a CID Improvement Project. Such agreement shall address issues involved in the Improvement Project, including but not limited to the following: Schedule of construction, land acquisition; eligible Project expenses, scope of the development, indemnity of the City and insurance requirements, reimbursement of City costs, payment of CID revenues for eligible Improvement Project costs, financing methods (private and/or public); transfer restrictions, maintenance and restrictive covenants, city inspection and information access rights; reporting requirements and remedies upon default.
- D. “Finance Team” includes the City Administrator, City Bond Counsel, City Financial Advisor, and additional staff may be added or called upon as necessary.
- E. “Funding Agreement” is a written agreement required by the City in which the Petitioner agrees to deposit upfront funds with the City to be used by the City to pay for actual out-of-pocket expenses necessary to perform a full evaluation of the Petition and engage outside consultants as needed for such evaluation.
- F. “Owner” means the owner or owners of record, whether resident or not, of real property within the District. The applicant shall be an Owner.
- G. “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 costs of such Project are reimbursed after Project completion as monies are deposited in the District fund. It is the City’s preference to use pay-as-you-go financing.
- H. “Project” may include any item eligible under the Act, as described in K.S.A. 12-6a27(m) as amended, but 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. These terms and approvals shall be set out in a Development Agreement.

Section 4. Project Eligibility

Pursuant to the Act, certain projects and activities may be paid from the proceeds of a CID sales tax or special assessments. The City hereby identifies projects and activities identified as eligible for reimbursement under the Act, which it will deem eligible for reimbursement:

- A. **Eligible Projects.** The following projects within the district to acquire,

improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip or extend shall be eligible for reimbursement out of the proceeds of a CID sales tax or special assessments:

1. buildings, structures and facilities;
2. sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heating and electrical services and connections located within or without the public right-of-way, water mains and extensions and other site improvements;
3. parking garages;
4. streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers;
5. parks, lawns, trees and other landscape;
6. communication and information booths, bus stops and other shelters, stations, terminals, hangers, rest rooms and kiosks;
7. airports, railroads, light rail and other mass transit facilities;
8. lakes, dams, docks, wharfs, lakes or river ports, channels and levies, waterways and drainage conduits;
9. to produce and promote any tourism, recreational or cultural activity or special event, including, but not limited to advertising, decoration of any public place in the district, promotion of such activity and special events and furnishing music in any public place;
10. to support business activity and economic development, including but not limited to the promotion of business activity, development and retention and the recruitment of developers and business;
11. to provide or support training programs for employees of businesses; and
12. to contract for or conduct economic impact, planning, marketing or other studies.

Section 5. Procedure

Pursuant to the Act, the City shall consider creation of a CID after receipt of a completed CID Petition ("Petition") (Exhibit A) and a Petition Fee as described in Section 10.A. The completed Petition will be reviewed by the City's Finance Team and any other staff required for review of the Petition prior to consideration of a complete and valid Petition by the Governing Body.

To form an Improvement District, the following procedure is established:

- A. **Pre-Application Meeting.** Prior to submittal of a formal Petition, the Petitioner is required to meet with the City Finance Team to discuss a

proposed project and possible CID financing. These discussions are preliminary and do not bind the Petitioner, Finance Team or the Governing Body.

- B. **Petition Procedure.** A valid Petition that proposes the creation of a CID, make Improvement Projects thereto and the imposition of a CID sales tax or special assessments in order to pay the costs of such Improvement Projects must be filed with the City Clerk of the City of Edwardsville.
1. **Petition Sufficiency.** The Petition must be signed by the owners of more than fifty-five percent (55%) of the land area within the proposed district, and signed by owners who collectively own more than fifty-five percent (55%) by assessed value of the land area within the proposed district, if the Petitioners seek financing in whole or in part by a proposed CID sales tax. The Petition must be signed by 100% of the owners of record, whether resident or not, of all of the land area within the proposed District if the Petitioners seek financing only by assessment.
 2. **Petition Submittal Requirements.** The Petition shall be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the Improvement Project's site plans, and to analyze the merits of the proposed CID in the context of current economic development and infrastructure projects. The Petition must contain a description of the following:
 - a. the general nature of the Improvement Project;
 - b. the estimated cost of the Improvement Project, supplemented by a preliminary budget that describes each element of the Improvement Project proposed to be paid for by CID sales tax or assessments
 - c. the proposed method of financing the Improvement Project;
 - d. the proposed amount and method of assessment, if any;
 - e. the proposed amount of any CID sales tax, if any;
 - f. a map and legal description of the proposed District.
- C. **Supplemental Information.** The City reserves the right to request any additional information to supplement the Petition.
- D. **Governing Body Findings.** After the Public Hearing for the proposed District, the Governing Body shall determine the advisability to create a District to set forth the boundaries thereof, authorize the proposed Improvement Projects, approve the maximum costs thereof, levy the District sales tax, impose any special assessments and approve the method of financing by adoption of an ordinance.

- E. **Project Fund.** The City shall create a separate fund for each District whereby all District sales tax and/or special assessment revenues shall be deposited into such fund.
- F. **Project Completion.** The City will require satisfactory assurance that the Improvement Project will be completed in a timely manner in accordance with the Development Agreement described in Section 9.

Section 6. Sources of Funding

- A. Petitioners who seek to form a CID may request to draw upon one of the following two revenue sources, or a combination of both, to fund eligible improvements:
 - 1. **Special Assessment Districts.** Upon filing of a Petition for a CID financed only by special assessments, the Governing Body may proceed without notice or a hearing to make findings by ordinance as to the nature, advisability and maximum cost of the project, the boundaries of the District and the amount and method of assessment. Upon making such findings, the Governing Body may authorize the Improvement Project in accordance with such findings as to the advisability of the Improvement Project, except no assessments may be levied against the municipality at large. The assessments may be reduced or eliminated once the City receives sufficient funds to pay the debt service on any bonds issued for the Improvement Project which would have been paid out of such annual installment. The ordinance shall be effective upon publication once in the official City newspaper.
 - 2. **Sales Tax or a Combination of Sales Tax and Special Assessment Districts.** After the Finance Team's review of a completed Petition for a CID financed by sales tax or a combination of sales tax and special assessments and prior to the creation of a CID, the Governing Body shall, by resolution, direct and order a public hearing on the advisability to create such District and the construction of such Improvement Projects therein, and to give notice of the hearing 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 District, 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. In addition, the City will require that the Petitioner(s) notify the existing tenants in the proposed District of the Public Hearing and provide written certification with a copy of the notice to the City that all tenants were notified. The notice of Public Hearing shall contain the following information:
 - a. the time and place of the hearing;

- b. the general nature of the proposed Improvement Project;
 - c. the estimated cost of the proposed Improvement Project;
 - d. the proposed method of financing the costs of the Improvement Project;
 - e. the proposed amount of the CID sales tax, if any;
 - f. the proposed amount and method of assessment, if any; and
 - g. a map and legal description of the proposed District.
- B. Upon the creation of a CID by the Governing Body, revenue generated by these sources is available to pay for eligible improvements and costs. This can occur in one of two ways: a bond issuance or a pay-as-you-go dedicated account. Funds used to pay eligible CID costs, whether from bond proceeds or a pay-as-you-go account, will be held by the City or a third-party trustee, and disbursed to pay actual costs pursuant to conditions stipulated in a Development Agreement.
1. **Bond Issuance.** The City may issue Special Obligation Bonds in which the CID revenue will retire the debt. The proceeds from the sales of the bonds will be used on eligible improvements and costs pursuant to the Development Agreement. CID bonds issued to finance the Improvement Project shall mature on a date approved by the City, but no later than twenty-two (22) years from date of issue, unless otherwise provided by law. In cases where the Petitioner requests issuance of Special Obligation Bonds, the following debt service coverage ratio will be required:
 - a. **CID Sales Tax Revenue Bonds.** All Petitions that request the imposition of a CID sales tax and the issuance of Special Obligation Bonds should demonstrate that the CID sales taxes expected to be generated will be sufficient to provide enough security to pay off the bonds. The CID sales taxes generated should provide a debt service coverage ratio of at least 1.25 times the projected debt service on the bonds. A debt service coverage ratio greater than 1.25 times may be necessary to market any bonds that are public offerings. Petitioner or bank purchased bonds may be less than 1.25 times debt service coverage.
 - b. **CID Special Assessment Revenue Bonds.** All Petitions that request the imposition of CID special assessments and the issuance of Special Obligation Bonds should demonstrate that the CID special assessments expected to be levied will be sufficient to provide enough security to pay off the bonds. The CID special assessments should generate enough revenue to provide a debt service coverage ratio of at least 1.25 times the projected debt service on the bonds. A debt service coverage ratio greater than 1.25 times may be necessary to market any bonds that are public offerings. Petitioner or bank purchased bonds may be less than

1.25 times debt service coverage.

2. **Pay-As-You-Go Fund** – As an alternative to a bond issuance, the Petitioner(s) for the CID may request the establishment of a pay-as-you-go fund. This fund will be a dedicated fund into which the CID revenues will be deposited and will be available to be used as funds accrue to pay eligible costs. The CID sales tax shall expire on a date approved by the City, but no later than twenty-two (22) years from the date the state director of taxation begins collection of such tax or when the Project costs have been paid. The City of Edwardsville prefers projects that use pay-as-you-go financing.

Section 7. Criteria

The Governing Body shall consider establishment of a CID when it determines it is in the best interest of the City, the Petition satisfies all statutory requirements of the CID Act and the Project meets a sufficient number of the following criteria:

- A. The Petition should demonstrate that "but for" the creation of a CID and use of a CID sales tax and/or the levy of special assessments, the Improvement Project is not feasible and would not be completed without the proposed CID assistance.
- B. The CID will attract development which would enhance the economic climate of the City or otherwise benefit the City or its residents.
- C. The CID will result in the construction of public and/or private property improvements and infrastructure, or the provision of ongoing services, that would otherwise not be financially feasible.
- D. The CID will promote redevelopment or rejuvenation of properties within the City which would otherwise be unlikely to happen.
- E. The CID will be used to assist the development of commercial, mixed-use and industrial projects.
- F. The CID will not be used for projects that are incompatible or inconsistent with a neighborhood or comprehensive plan.
- G. The CID incorporates high standards for the design and construction of improvements. All projects will be subject to overlay districts.
- H. The CID enables the development and location of new products, services and amenities in the City rather than the relocation of existing City businesses, unless it is an existing business that is expanding sufficiently to warrant a CID. This may be considered on a case-by-case basis on inclusion in a CID.

Section 8. Developer Contribution & Cost Allocation.

Each Petition should include evidence that the Petitioner will do the following:

- A. Have the financial ability to complete and operate the Improvement Project.

- B. Will be liable for a portion, preferably 50%, of the total cost of the Improvement Project or provide a performance bond, irrevocable letter of credit, or other appropriate security for the completion of the Improvement Project. The amount of equity and private investment made by the petitioner will be a factor for approval by the Governing Body.

Section 9. Development or Redevelopment Agreement.

Concurrently with, or prior to, the creation of a CID by the City Council, a Development or Redevelopment agreement ("Agreement") between the Petitioner and the City will be required. The Development Agreement must include items, such as: an exact budget; a project timeline; exact sales tax estimates; a project cap; and project transferability. The Agreement will be subject to approval by the Governing Body prior to reimbursement of eligible Improvement Project costs and/or issuance of CID Sales Tax Revenue Bonds or CID Special Assessment Revenue Bonds, and prior to construction of the Improvement Project.

Each Agreement shall contain a notice and waiver to disclose to each Petitioner that the City reserves the right to create future Improvement Districts on comparable projects with different Improvement District sales tax rates or different amounts of special assessments than those approved for such project. The aforementioned notice and waiver shall include a provision that the Petitioner waives any right to request a modification or amendment of such Improvement District sales tax rate or amount of special assessments based upon such differences.

Section 10. Fees

The Governing Body hereby establishes the following CID fees:

- A. **Petition Fee.** A non-refundable Petition Fee of \$5,000 shall accompany all Petitions. Should an Improvement District be created, the Petition Fee shall be credited toward the City's Administrative Service Fee paid by Petitioner.
- B. **Administrative Service Fee.** The Petitioner shall pay to the City, at the time prescribed in the Development Agreement, an Administrative Service Fee of five percent (5%) of the total cost of the CID project, minus the Petition Fee, for the cost of services rendered by the City in the administration and supervision of the project. Such Administrative Service Fees may be paid from the District sales tax generated from the project, special assessments, bond proceeds, or from a direct billing to the Petitioner. The payment method of the Administrative Service Fee shall be determined on a case by case basis under the terms of the Development Agreement.
- B. **Funding Agreement.** The City will retain administrative and professional staff, outside counsel and consultants and incur expenses, which it, in its sole discretion, deems necessary to consider the Petition. On a case-by-case basis, the City will negotiate with the Petitioner a sum of money to be included in a Funding Agreement (Exhibit A) based upon the size and scope of each project, but no less than \$5,000. The City shall use the

money to pay for City Bond Counsel, Financial Advisor, City Attorney and other professional consultant or administrative fees incurred by the City for work on this project. The Funding Agreement shall be signed and the money paid before the Finance Team considers the Development Agreement.

Section 11. Background Check

The City reserves the right to conduct a background check on all CID Petitioners and Petitioner's project partners. If requested, Petitioners shall furnish City Staff the personal and business information needed to carry out such a background check upon submittal of a Petition. Such information will be treated as confidential information to the maximum extent allowed by the Kansas Open Records Act.

Section 12. Termination of CIDS

Subject to provisions contained in Development Agreements, the City shall take appropriate action to terminate CIDs when all eligible project costs have been fully paid, to include the principal and interest on any Special Obligation CID Bonds or in the case of pay-as-you-go projects, the maximum CID funding amount provided in the Development Agreement.