# RESOLUTION NO. 9626

A RESOLUTION introduced by City Manager Dr. Robert M. Perez amending the City of Topeka's policy for Tax Increment Financing Districts and rescinding Resolution No. 9016.

WHEREAS, the City of Topeka, Kansas (the "City") recognizes that it is essential to stimulate economic growth and development of new commercial enterprise in order to provide services, employment and tax revenues for the benefit of the community; and

WHEREAS, it is further recognized that the stimulation of balanced economic development is a joint responsibility of the private and public sectors, working closely together to create a positive business environment and induce commercial development and expansion in the City; and

WHEREAS, the economic development program goals of the City include economic diversification, broadening of the property tax base, stimulation of private investment, enhancement and support of new development, creation and quality employment opportunities, and increased per capita income, and creation of affordable housing; and

WHEREAS, to meet these economic development goals, the City recognizes the need to occasionally assist in the redevelopment of property located within the City by the creation of Tax Increment Financing ("TIF") redevelopment districts; an economic development vehicle established by K.S.A. 12-1770 et seq. for the financing of qualified redevelopment projects; and

WHEREAS, the City finds it in the best interest of the public it serves to establish certain policies and guidelines for the consideration of proposals that may be presented to the City by private developers requesting TIF assistance; and

WHEREAS, all prospective TIF projects must be carefully evaluated by the City because the character of tax revenues generated by different developments can vary widely, and in most cases will impact other taxing jurisdictions in the Topeka community; and

WHEREAS, the City desires to use TIF for projects that 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, increasing affordable housing, facilitating economic self-sufficiency, and implementing the Comprehensive Plan and economic development goals of the City; and

WHEREAS, each TIF application submitted to the City will be evaluated on its own merits, and an evaluation of the proposal will be performed by a TIF Committee comprised of City staff and/or consultants; and

WHEREAS, all projects must demonstrate financial and economic reasons such that but for TIF assistance, conditions of blight, extenuating circumstances regarding the site, location, or other factors preclude the viability of project.

NOW, THEREFORE, BE IT RESOLVED THAT THE TAX INCREMENT FINANCING REDEVELOPMENT DISTRICT POLICY FOR THE CITY OF TOPEKA, KANSAS WILL BE AS FOLLOWS**:**

**CITY OF TOPEKA**
**TAX INCREMENT FINANCING DISTRICT ("TIF") POLICY**

**SECTION ONE: GENERAL POLICY STATEMENT**.

1. It shall be the policy of the City to consider creation of a one or more TIF redevelopment districts, each hosting one or more qualifying TIF redevelopment projects.
2. It is the policy of the City to consider the judicious use of TIF for projects that demonstrate a substantial and significant public benefit by constructing public improvements in support of developments that will, by creating new jobs and retaining existing employment, eliminate blight, strengthen the employment and economic base of the City, increase property values and tax revenues, reduce poverty, create economic stability, upgrade older neighborhoods, increase affordable housing, facilitate economic self-sufficiency, promote projects that are of community wide importance, diversify the City's tax base and implement the Comprehensive Plan and/or economic development goals of the City.
3. The City will use care in the employment of TIF by thoroughly evaluating each proposed TIF redevelopment project to ensure that there is an appropriate balance between the benefits that will accrue from the approval of TIF and the corresponding costs, and that they are equitable to the City as a whole.
4. The City may unilaterally initiate the creation of a TIF redevelopment district which may contain a TIF redevelopment project plan or plans, or the City may respond to a third-party request to create such district and related project plan or plans.
5. The City will charge a TIF application and an administrative service fee as set forth in this policy.
6. It shall be the policy of the City to give priority considerations to TIF applications that request only pay-as-you-go-financing.

**SECTION TWO: POLICY GUIDELINES (TIF DISTRICTS)**.

The following criteria are to be used by members of the City's TIF Committee, with input from appropriate staff, to evaluate applications for the creation of a TIF redevelopment district:

1. The City seeks to avoid the creation of single-parcel TIF redevelopment districts, preferring instead to encourage the redevelopment of larger scale projects that

positively impact multiple land uses and bring economic activity to surrounding neighborhoods.

2. For third-party requests to create TIF redevelopment districts, the City will not consider creation of a TIF district unless the applicant certifies that it intends to submit a Redevelopment Plan and begin negotiating a Redevelopment Agreement within sixty (60) days of creation of the TIF district. Thereafter, the City will require satisfactory assurance that the project will be completed in a timely manner in accordance with the Redevelopment Plan and Agreement.

3. Within fifteen (15) business days of a third-party making application for the creation of a TIF redevelopment district, such third-party shall execute the City's standard Funding Agreement and deposit with the City, in immediately available funds, $25,000 to cover the City's costs of evaluating such request which may include, but not necessarily be limited to, direct costs of the City's financial and legal advisors on TIF and direct costs of outside consultants on TIF. The Funding Agreement shall provide that if the balance of such deposit declines below $10,000 at any point in time, the applicant shall restore such balance to $25,000 within ten (10) business days by making a subsequent deposit with the City in immediately available funds.

   Should the applicant withdraw its application, the City will use its best efforts to refund any unused balance of the deposit to the applicant within thirty (30) business days.

   The applicant may seek reimbursement from TIF proceeds (if any) for any such City costs charged against the deposit.

**SECTION THREE: POLICY GUIDELINES (TIF PROJECT PLANS)**.

The following criteria are to be used by members of the City's TIF Committee, with input from appropriate staff, to evaluate applications for the creation of a TIF project plan within a TIF redevelopment district:

1. Each TIF project plan application must demonstrate that "but-for" the use of TIF, the project is not feasible and would not be completed without the proposed TIF assistance. The City (through staff or its advisors and consultants; and at its sole discretion) will conduct the but-for analysis and the applicant shall be responsible for providing all information reasonably requested by the City to conduct such analysis.

   The City's but-for requirement is a greater burden than the statutory burden for approval of a TIF project plan. The City shall, in its reasonable discretion, select the calculation methodology for such but-for analysis but it shall generally compare the return of the project and/or its developer taking into account TIF and other incentives against market rates of return for similar projects developed on "greenfield" sites (that is, those without the physical and legal impediments leading to the request for TIF). The but-for analysis will use time value of money discounting using reasonable assumptions (at the discretion of the City).

The but-for analysis shall take into account all incentives requested by the developer from any governmental or other source (such as GO Topeka), not just those benefits provided by the TIF.

The City will generally seek to target a level of TIF incentive sufficient to provide the applicant with a market rate of return, including the effects of the incentives, but the City, at its discretion, may choose to provide a greater rate of return to the applicant in exchange for extraordinary benefits to the public.

The City will provide priority consideration for projects where less than twenty percent (20%) of the project's costs (excluding any interest on private financing) are expected to be paid from public incentives.

2. Each TIF project plan application must include evidence that the applicant:
    a. Has a complete capital stack established with sources and uses in balance;
    b. Has the financial ability to complete the project, on time, as proposed;
    c. Has a firm, demonstrable commitment from a lending institution(s) for any private borrowing required to complete the project;
    d. Has the financial wherewithal to make the equity contribution to the project required to secure such borrowing(s);
    e. Has a reasonable basis for its project cost estimates, with preference provided to applications that include professionally-estimated project costs; and
    f. Has the capacity, for itself or through experienced operators, to operate the project profitably over its lifecycle.

   The City will generally agree to permit the applicant to provide sensitive financial information to the City's advisors or legal counsel on the City's behalf under non-disclosure agreement; provided, however, that such advisors or legal counsel must have the right under such agreement to convey their conclusions about the applicant's ability to meet the requirements above based upon its review.

3. The City places priority on TIF redevelopment districts in areas of greatest need such as any approved neighborhood revitalization area, redevelopment planning area, and/or other similar areas where significant public/private investment has been directed consistent with the infill growth policies of the comprehensive plan.

4. The City will give preference to TIF project plan applications which request reimbursement of eligible project costs solely from the incremental real property taxes generated by the TIF project. Should an applicant request reimbursement of eligible project costs from the City's one percent (1%) general sales tax or other locally-levied taxes or fees, the applicant shall demonstrate the necessity of including such other locally-levied taxes or fees.

5. The City will give preference to TIF project plan applications that do not seek one hundred percent (100%) capture of incremental real property taxes or other locally-levied taxes or fees and/or that provide tangible, immediate public benefits (such as constructing high-priority infrastructure at the project's cost, producing high-wage jobs, making quality jobs available in highly-distressed neighborhoods, etc.).

6. The applicant will include in its TIF project plan application a uses-by-source-of-funding schedule illustrating the project costs that will be reimbursed from TIF and any other incentive program (public or private) for which the applicant has or plans to apply.

7. If businesses are to be relocated from other areas of the city to the proposed TIF project plan area, the applicant must provide sufficient justification to indicate why the City should subsidize such relocation.

8. The City may reasonably request of the applicant, at the applicant's cost, a thorough, third-party market analysis identifying: (1) the likelihood of success of the business mix proposed for the TIF project plan area; and (2) the potential economic impacts on existing businesses and corresponding tax revenues should the TIF project plan develop as proposed.

9. The applicant and/or developer must demonstrate that all real property taxes and assessments currently due on any real property owned by the applicant and located within the City limits have been paid and, furthermore, that the applicant is not indebted to the City. If the applicant is a business entity, this requirement will apply to any owner, member, or partner. If the applicant is a corporation, this requirement will apply to any shareholder holding a five (5) percent or greater interest.

10. Each TIF redevelopment project plan approved will expire not later than the 20$^{th}$ anniversary of the date upon which the Topeka Governing Body takes action to approve such project plan.

**SECTION FOUR: DEVELOPMENT AGREEMENT**.

Concurrent with the City's review of an application for a TIF project plan, the City will negotiate a Development Agreement to be considered and adopted by the Topeka Governing Body concurrent with its consideration of approval of the TIF project plan. Among other things, the Development Agreement will provide for:

1. A minimum private expense requirement for the developer and maximum permitted reimbursement amount to the developer.
2. Specific developer performance requirements, corresponding to the proposed improvements provided in the TIF project plan application.
3. Consequences for developer non-performance, including reductions in the amount of incentives available, reductions in the maximum permitted reimbursement amount and/or acceleration of the date of expiration of the TIF.
4. The mechanics for reimbursement of TIF-eligible expenses.

5. The mechanics for establishing base year values for non-ad valorem taxes captured by the TIF.
6. Charges for city services provided to the Developer.
7. Conditions under which the applicant could request the City issue special obligation TIF bonds on its behalf.

## SECTION FIVE: FEES.

### City Cost Reserve

At the point in time of an application for TIF redevelopment district is initiated by a third-party, such applicant shall deposit $25,000 with the City (as provided in Section Two herein) to cover the City's Application Fee and its direct costs (including costs related to its outside advisors, consultants and counsel) associated with the review and evaluation of the application for a TIF redevelopment district, the review and evaluation of the application for the initial TIF project plan or plans and the negotiation of the Development Agreement.

Should an applicant make application within an existing TIF redevelopment district for a new or modified TIF project plan, it shall similarly deposit $25,000 with the City to cover the costs of such review.

The City shall return any balance from this reserve upon the applicant's withdrawal of all applications then pending, or the conclusion of the approval processes.

Costs charged to the reserve are TIF eligible costs to the extent permitted by law.

### Application Fee

The City shall charge a non-refundable application fee, paid from the City Cost Reserve, for each application as follows:

Application to create or modify a TIF redevelopment district $5,000
The application fee is a TIF eligible cost.

### TIF Administration Service Fee

During the life of the TIF, the City will charge an administrative fee of two percent (2%) against the tax increment generated from the project prior to disbursement of the increment to the developer or bond trustee to cover the administrative costs incurred by the City for the administration of, and other City costs associated with each approved TIF Project. Such administrative service fee shall be in addition to the TIF application fee and any other fees associated with the TIF Project.

### Additional Costs

City bond issuance costs will be paid from proceeds of TIF bonds issued.

### City-Initiated Developments

The City reserves the right, at its sole discretion, to reduce or waive the above fees if a redevelopment project is City initiated and/or it is determined to be in the best interest of the City to do so.

**SECTION SIX: DESIGN CRITERIA**.

Development proposals under a TIF application are expected to meet the "highest development standards" as outlined by the City's adopted development policies for commercial, industrial, multi-family, and mixed use buildings, as well as all Design Guidelines adopted by the Topeka Planning Commission and Governing Body. Development proposals are expected to demonstrate innovative design with human scale that exceeds the design standards of conventional development throughout the City. A TIF 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 TIF projects will be required to utilize a Planned Unit Development and will include strict architectural, site, and landscape design requirements. In addition, the redevelopment plan and 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 TIF project shall be compatible with the Comprehensive Plan of the City and the availability of existing infrastructure facilities and essential public services. The compatibility of the TIF 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 the location intended as well as 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. The applicant must provide a traffic study on any projected traffic impact increase on the City based upon future growth.

**SECTION SEVEN: METHOD OF FINANCING**.

The City's general policy is that development should pay for itself. As a result, the City will consider general obligation or general fund support of TIF bonds only in extraordinary cases and typically only on City-initiated projects.

1. The City will give priority considerations to TIF applications that request only pay-as-you-go financing.
2. For third-party applications, the City will generally not consider full faith and credit TIF bonds or TIF bonds with other City credit enhancements.
3. The City will consider providing the applicant with the right to seek permit issuance of "special obligation" bonds (i.e. supported solely from TIF revenues) in the City's sole discretion. The City may include in the development agreement specific conditions precedent to this right becoming available (minimum leasing commitments, minimum revenue thresholds, etc.).
4. The City's financial advisor will manage the bond issuance process on the City's behalf, including advising the City on the selection of members of the bond

financing deal team (to include, but not be limited to, underwriters, trustees, feasibility consultants, etc.).

5. The City's bond counsel will serve as bond counsel on all TIF bond transactions.
6. For any bond financing, all City fees for itself, its counsel and advisors, will paid from TIF bond proceeds (or by the applicant through an equity contribution to the financing).
7. For any special obligation bond financing, the City may request up to $50,000 to cover its staff costs involved in preparing and managing the financing. Additionally, the City will charge to the TIF fund an additional one percent (1%) annually on all TIF collections for ongoing administration of the bonds.
8. If required by bond counsel, the applicant agrees to be a party to the tax compliance agreement and/or continuing disclosure agreement (if applicable) on any TIF bond transaction.

**SECTION EIGHT: AUTHORITY OF GOVERNING BODY**.

The Governing Body reserves the right to deviate from any policy, but not any procedure set forth in state law, when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that are in the best interests of the City.

NOW THEREFORE, BE IT FURTHER RESOLVED that Resolution No. 9016 is hereby rescinded.

ADOPTED and APPROVED by the Governing Body on February 18, 2025.

CITY OF TOPEKA, KANSAS

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Michael Padilla, Mayor

ATTEST:

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Brenda Younger, City Clerk