

RURAL HOUSING INCENTIVE DISTRICT POLICY

DRAFT v1 (090922)

DRAFTING QUESTIONS

- The statute seems to contemplate that the creation of one or more plans within a district occur concurrently with the district's creation (unlike a TIF which has a defined two step process). Does the City want to require that all projects within a district be created concurrently with the establishment of the district?
 - The Emporia policy includes language permitting the City to act as developer. Do we want to provide for that explicitly? (Nothing in the policy draft precludes this outcome, but it's not explicitly provided.)
 - Emporia also permits the layering of a benefit district with RHID, with repayment of specials from proceeds of the RHID. Most benefit districts rely on the issuance of GO bonds and the RHID statute precludes the issuance of GO-backed RHID bonds. This provision seems to be in conflict. Is this something we want to discuss? (I'd also note that the RHID statute does not permit the reimbursement of private financing, like the TIF statute does.)
 - The Emporia policy talks specifically about land outside the City limits needing to come with a petition to annex. Do we want to discuss that here or simply wait until the situation arises with a developer?
 - Do we want to, by policy, attenuate the level of incentive to encourage RHID use for the harder-to-develop stuff and discourage its use for luxury and market housing?
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PRINCIPLES

- The City will use RHID to address housing needs as described in its July 2020 Citywide Housing Market Study and Strategy document (the "Housing Study"). The City will amend this policy from time to time to adjust the targets below for progress to date or to address changing needs as identified by updates to its housing study. The Housing Study identifies a need for 500 units per year over the next 20 years to keep up with anticipated demand. The City's current 5-year average is just over 200 units per year. Therefore, a target of up to 300 units per year or 1,500 units over a 5-year period would be the equivalent need that is not being met by the market thus necessitating additional incentives. This mix currently breaks down annually to:
 - 160 affordable units (<=60% of AMI, 80% rental/20% owner-occupied)
 - 120 workforce units (61%<=x<=120%, 67% rental/33% owner-occupied)
 - 100 senior units (mixed type)
 - 80 market rate units (>120% of AMI, mix of rental and owner-occupied)
 - 40 upscale rental units (>150% of AMI)
- The City will use RHID to encourage an equitable distribution of projects citywide including downtown in keeping with the documented demand for 1,000 new units by 2030

- Per the Housing Study findings for greater housing choices, priority should be given to those projects that diversify the City’s inventory with more *attached* unit typologies such as duplexes, townhomes, and multi-family products.
- The City will reserve a portion of projected RHIF benefits to develop, improve or replace public infrastructure supporting housing developments and to fund multi-modal connections (transit, biking, walking) to housing developments
- The City will use a “but-for” approach (i.e., but-for the presence of the RHID incentive the project could not proceed or could not address the City’s housing goals) in assessing the amount of RHID benefit granted to a housing development, maintaining flexibility with respect to the amount of incremental taxes permitted to be captured and/or the length of time an RHID will remain in place.
- Housing developers seeking RHID assistance will need to be prepared to:
 - bear the costs of effecting an RHID incentive (estimated at \$25,000 to \$50,000 per project plan)
 - provide the contractual and financial guarantees contemplated in the RHID statute (see KSA 12-5245(a)(6))
 - provide detailed information regarding the type, timing and implementation plan for the housing they propose to develop
 - provide all information to the City required to effect an RHID project plan, as contemplated by Kansas law
 - provide evidence in support of its need for RHID incentive under the but-for principle

PROCESS

Creation of a District. The City intends to use the Housing Study, as updated from time-to-time at the discretion of the City, to meet the statutory requirement (KSA 12-5244) that the City conduct a “housing needs analysis” to determine that “housing needs exist” in Topeka.

Either the City or a housing developer may initiate the district creation process by delivering to the City Manager:

- a cover letter requesting the creation of a district, including a general description of the housing development expected to occur within the district, the names of the housing developer or developers expected to construct such housing, the expected timing such housing development, a narrative describing how the district is likely to address the policy goals of the Housing Study [NTD: this is *not* a statutory requirement, but I think we’d want to have a feel for what the eventual plan is] and discussion of how the use of RHID is consistent with the City’s but-for principle
- a legal description of the boundaries of the proposed district; and

- a map depicting the existing parcels of real estate in the proposed district (together, the “District Pre-Application”)
- evidence of site control or a detailed plan for which the developer intends to secure site control
- a certification that neither the developer entity nor any of its shareholders/partners/members is delinquent on its property tax or special assessment payments on any property it owns or controls in Shawnee County
- A non-refundable fee of [ideally the amount should be low enough to not price developers out of the program but also high enough to ensure serious applications before devoting of staff resources to vetting potential projects.]

Within thirty (30) days of receipt of a complete District Pre-Application, the City Manager will direct the preparation of a resolution for consideration by the Topeka City Council at a regular meeting not later than sixty (60) days following the City Manager’s receipt of a complete District Pre-Application that includes:

- the legal description and the map provided in the District Pre-Application
- the findings required in KSA 12-5244(a)(1) through (a)(4)

If the resolution is adopted by the Topeka City Council, the City Manager or designee will provide for publication of the adopted resolution as required in KSA 12-5244(b) and will request approval by the Kansas Secretary of Commerce in the manner provided in KSA 12-5244(c).

Creation of a Housing Development Plan. Once the Kansas Secretary of Commerce has approved creation of a district, one or more housing developers may petition the City Manager for the execution of a housing development plan within such district. This petition will need to include all of the following:

- a narrative describing the overall development plan specifically addressing how the plan meets the policy goals of the Housing Study
- a legal description of the proposed project area if such project area is not coterminous with the district boundaries
- a map of the proposed project area if such project area is not coterminous with the district boundaries
- a table (Excel format preferred) listing
 - each parcel within the proposed project area, listing separately the current Shawnee County assessed valuation of land and improvements separately
 - the property owner’s name and address for each parcel
- a narrative and graphical a description of the housing and public facilities that the developer will constructed or improve, and the location of each within the project area
- a narrative describing any improvements the developer expects the City to make to support the planned project, including off-site public infrastructure, coordination with other public agencies, etc.

- a listing of the names, addresses and specific interests in real estate in the project area of the housing developer developer(s) responsible for development of the housing and public facilities in the project area
 - for the purpose of this requirement, “housing developer” means both the name of the business entity or entities, and the natural persons comprising the ownership of such entity or entities
- a detailed total development cost budget for the housing and other improvements to be constructed including an identification of costs for which the developer will seek reimbursement from RHID proceeds
- a narrative describing all public incentives sought in support of the planned project (including those that might be provided by other government agencies, foundations or non-profits), including identification of whether the developer seeks potential bond financial related to the RHID
- a detailed construction schedule, identifying any phasing of construction anticipated
- a detailed financial pro forma, showing the operation of the project over the life of the RHID, including sufficient detail on assumptions so the City may determine, among other things, the developer’s expectations for the number and potential valuation of housing units to be constructed, the components developer’s expected private financing for the project (including debt, equity and other sources), and sufficient other detail to permit the City to make the required statutory finding as provided in KSA 12-5245(a)(7)
- a detailed description of the contractual assurances the developer is willing to make, including any financial guaranties it is willing to provide, to “guarantee the financial feasibility” of the project, all as required by KSA 12-5245(a)(6) (together, the “Plan Pre-Application”), along with commercially reasonable information evidencing developer’s financial and operational capabilities to effect the proposed project as presented

Within fifteen (15) days of receipt of a complete Plan Pre-Application, the City Manager will direct the City’s financial advisor to review the Plan Pre-Application for completeness (compared both to statutory requirements and the requirements of this policy), to prepare a financial analysis of the developer’s proposal and to provide a written report to the City in conformance with KSA 12-5245(a)(7).

The City’s financial advisor may request additional information from the developer to assist in its analysis and the developer may request to provide certain information directly to the City’s financial advisor, particularly with respect to its financial capacity to perform. The financial advisor may also consider: the extraordinary or unique costs of the housing development plan; the developer’s (and its shareholders’/partners’/members’) compliance with other City development agreements; the creditworthiness of the developer; and, the experience of the developer constructing, completing and managing projects of a similar nature, scale and complexity. The City’s financial advisor will provide its written report in draft to the City Manager within thirty (30) days after receipt of the Plan Pre-Application and any supplemental information it requests of the developer.

Concurrently with the City financial advisor's work, the City Manager will coordinate with City departments, as applicable, to identify any concerns with the City's ability to support the proposed project, including, but not limited to, availability of utilities, the cost to construct public infrastructure identified by the developer as the City's responsibility, traffic considerations, the ability to provide public safety services to the project, etc.

RHID Review Team. Within fifteen (15) days of receipt of the City financial advisor's draft analysis, the City Manager will convene a meeting of the RHID Review Team to include: the Mayor, Deputy Mayor, affected district council member(s), City Manager, Finance Director, Planning Director and City Attorney. The RHID Review Team will review the Plan Pre-Application, the City financial advisor's draft analysis and the City Manager's review of the City's ability to support the project, and may call on the financial advisor, City bond counsel and other resources to assist in its deliberations.

After reviewing the information presented, the RHID Review Team may (i) direct the City Manager to seek additional information or provide (or commission) additional analysis, (ii) make a recommendation to the Topeka City Council of "do not pass" or (iii) make a recommendation to the Topeka City Council of "do pass." Its recommendation of "do pass" may be made with conditions.

In the event the RHID Review Team directs additional work by the City Manager, it will include a reasonable timeline for the completion of such additional work and a schedule for its reconsideration. Upon reconsideration, the RHID Review team may take one of the actions identified above.

In the event the RHID Review Team makes a recommendation of "do not pass," the City Manager will calendar on the next regular meeting of the Topeka City Council an information item, reporting on the action of the RHID Review Team.

In the event the RHID Review Team makes a recommendation of "do pass":

- the City Attorney will prepare the resolution contemplated in KSA 12-1545(b), setting a date for a public hearing on the creation of the district, for inclusion on a regular City Council agenda within thirty (30) days of the action of the RHID Review Team
- the City Attorney will prepare a funding agreement, to be considered at the same meeting as the resolution setting the public hearing, under which the developer(s) will agree to fund with the City sufficient moneys to cover the City's costs in analyzing and effecting the district's creation
- the City Attorney will draft a development agreement and enter into negotiations with the developer and its counsel on the contents of such development agreement. The purpose of the development agreement will be to translate into contract form the rights, responsibilities and obligations of both the City and the developer in the implementation of the housing development plan. The City Attorney may involve the City's financial

advisor, bond counsel and other resources in the development and review of the development agreement

- the City’s financial advisor will finalize its analysis for inclusion in the city council agenda packet and will incorporate any provisions from the development agreement that might affect its analysis
- the City Manager will work with appropriate City departments to prepare project budgets for any capital improvements required to effect the housing development plan
- the City Planning Director will work with the developer to effect any planning and zoning approvals required to effect the housing development plan

City Council Review and Approval. Once a housing development plan achieves a “do pass” recommendation from the RHID Review Team, it will appear on the City Council agenda as follows:

- Approval of a funding agreement with the developer(s)
- A resolution setting a public hearing on the creation of the district, consistent with the requirements of KSA 12-5245(b), at least 30 and not more than 70 days from the adoption date of this resolution.
- After this public hearing is held, at the same meeting or at a subsequent meeting, the City Council may consider an ordinance creating the district and adopting the housing development plan
- At the meeting at which the City Council considers the ordinance creating the district and adopting the housing development plan it will also consider:
 - approval of the fully-negotiated development agreement(s) with the housing developer(s) for the project(s)
 - approval of any other City-provided incentives related to the project(s)
 - approval of project budgets related to any City-financed infrastructure related to the project(s)
 - approval of any planning or zoning matters required to effect the project(s)
- The effectiveness of all such related matters will be conditioned upon the RHID district creation ordinance surviving the 30-day veto period of Shawnee County and any affected school district

INCENTIVE STRUCTURE

Presumption of Pay-As-You-Go Incentives. The City will begin negotiations with housing developers with the presumption that it will structure RHID incentives on a pay-as-you-go basis.

Reimbursable Costs. The City will generally consider all statutorily-permitted uses of RHID proceeds as reimbursable costs (see KSA 12-5249); provided, however, the City will generally not reimburse land acquisition costs from owners affiliated with the housing developer unless the developer provides evidence of its actual acquisition costs from a bona fide arms-length purchase from an unaffiliated owner.

Bonds. The City will generally not consider the issuance of special obligation bonds. A housing developer may petition the City Manager in writing to issue bonds secured by the proceeds of an RHID if:

- the project is complete, leased-up (multifamily)/substantially occupied (single family) and stabilized (multifamily)
- Shawnee County has completed at least four (4) tax valuations of the district
- RHID-eligible costs exceed \$3 million

Upon receiving a petition for bond issuance, the City Manager will engage the City's financial advisor to assess the feasibility of bond issuance given the track record of the project, the potential size of the financing and then-current market conditions. If the City's financial advisor determines that a bond financing would be feasible and par offered would be likely to exceed \$3 million, the financial advisor will report its findings to the City Manager along with an estimate of the potential transaction costs to effect the financing.

If a bond financing would be feasible, upon receipt of the financial advisor's findings, the City Manager will communicate the findings with the housing developer to determine whether the housing developer desires to proceed. If the housing developer desires to proceed, the City Manager will, within fifteen (15) days, convene the RHID Review Team to evaluate the housing developer's petition for bond issuance and the financial advisor's report.

After reviewing the information presented, the RHID Review Team may (i) direct the City Manager to seek additional information or provide (or commission) additional analysis, (ii) decline to advance the housing developer's petition for bond issuance or (iii) direct the City Finance Director to proceed with execution of a potential bond issuance.

Upon direction from the RHID Review Team to proceed, the Finance Director will coordinate with the City's financial advisor and bond counsel to commence execution of a bond financing. The financial advisor will advise on method of sale and will assist the Finance Director in the selection of one or more underwriters for the financing. City bond counsel will prepare a bond sale intent resolution, describing the intended sale and authorizing appointment of the underwriter, directing staff and advisors/counsel to effect the financing, and causing the preparation of customary bond and sale documents.

Within thirty (30) days of bond counsel's preparation of the bond sale intent resolution, the City Manager will calendar the resolution for consideration by the City Council. If the City Council adopts the bond sale intent resolution, the City will use its best efforts to cause the issuance of the bonds.

No Issuance by Third Parties. The City will not consent to and will include language in any development agreement prohibiting the issuance of bonds by any third-party on behalf of the developer to be secured by an assignment of the developer's rights under the development agreement. For the purposes of clarity, this language is not intended to prevent or preclude

developer's collateral assignment of the development agreement to a bank to secure the developer's private financing of the project.

HOUSING DEVELOPER GUARANTEES

Assurances Required. The City interprets KSA 12-5245(a)(6) as requiring that housing developers provide contractual assurances of their performance under a development agreement related to an RHID project. The City will expect a housing developer to offer one or more of the following contractual assurances of performance as part of the development agreement:

- a firm commitment to construct and complete a substantial percentage of the housing units and related infrastructure proposed in its Plan Pre-Application with a fixed timeframe
- a performance and payment bond sufficiently sized to cause completion of a substantial percentage of the housing units and infrastructure proposed in its Plan Pre-Application
- a bank letter of credit sufficiently sized to secure completion of a substantial percentage of the housing units and infrastructure proposed in its Plan Pre-Application
- personal financial guarantees of one or more owners of the developer to ensure completion of a substantial percentage of the housing units and infrastructure proposed in its Plan Pre-Application
- other contractual assurances that, in the sole determination of the City, meet the intent of the statute

CITY REMEDIES IN THE EVENT OF DEVELOPER DEFAULT

Each development agreement will identify the conditions under which a developer may cause a default under the agreement. The City may impose one or more of the following remedies if a default occurs and is not cured timely:

- Reduction to or elimination of the amount of RHID proceeds that can be used to reimburse eligible costs
- Shortening of the expiration of the RHID incentive
- Cross-default against other incentives granted by the City
- Other penalties or claw backs unique to each development agreement