

## **HUTCHINSON CITY COUNCIL POLICY – NO. 29**

**SUBJECT:** COMMUNITY IMPROVEMENT DISTRICT POLICY

**DATE:** June 18, 2013

**TITLE:** This policy shall be known as the “CID Policy.” The City of Hutchinson will hereinafter be referred to as the “City.”

### **I. PURPOSE AND BACKGROUND**

In 2009, the Kansas Legislature enacted the Community Improvement District Act (the “CID Act”), pursuant to which municipalities may create districts in which certain special taxes imposed and the revenue used to fund certain public and private improvements and the payment of certain ongoing operating costs within the geographic bounds of the specified district. The creation of a Community Improvement District (“CID”) is a particularly useful tool of economic development in that it can help facilitate beneficial private development and redevelopment without negatively impacting the tax base of the approving municipality.

It is the policy of the City of Hutchinson to utilize the provisions of the CID Act to assist private developers by providing financing for commercial, industrial and mixed-use projects that meet the local eligibility criteria outlined below, subject to certain special local policy limitations outlined below. A CID can exist for a maximum of 22 years.

### **II. LOCAL ELIGIBILITY CRITERIA**

It shall be the policy of the City to create a CID if, in the opinion of the City Council, the petition satisfies all statutory requirements of the CID Act and if creation of such CID would meet the following criteria:

- A. The CID will attract development which would enhance the economic climate of the City or otherwise benefit the City or its residents;
- B. The CID will result in the construction of public or private property improvements and infrastructure, or the provision of ongoing services, that would otherwise not be financially feasible;

- C. The CID will promote redevelopment or rejuvenation of properties within the City which would otherwise be unlikely to happen;
- D. The CID will be used to assist the development of commercial, industrial and mixed-use projects;
- E. The CID will not be used for projects that are incompatible or inconsistent with a neighborhood plan including any of the following: sexually oriented businesses, community correctional facilities, half-way houses, drug or alcohol rehabilitation facilities, new or used car lots, multi-game, casino-style gambling facilities, and commercial billboard sites.

### **III. CID PETITION PROCESS**

Pursuant the CID Act, the City shall consider creation of a CID after receipt of a completed CID Petition, Application, and required fees as described in Section IV herein.

#### **A. CID Petition**

A valid CID petition must be submitted with signature of either of the following:

1. 100% of the property owners of all the land area within the proposed Special Assessment CID who seek financing solely by assessment. If all landowners petition for a CID, a public hearing is not required, and the City Council may adopt a resolution or ordinance by a majority vote to authorize the project and create the CID; or
2. By property owners representing more than 55% of the land area of the proposed Sales Tax CID and also signed by property owners collectively owning more than 55% of the assessed value of the land within the proposed CID. If this petition method is utilized, then the City will be required to adopt a resolution giving public notice of hearing on the advisability of the creation and financing of a CID. After hearing, the City Council may adopt a resolution or ordinance by a majority vote to authorize the project and create the CID.
3. If the CID is both a Special Assessment CID and a Sales Tax CID, then 55% of the property owners must sign the petition; provided, however, upon evaluation of the proposed project the City Council may require a percentage greater than 55%.

**B. Application** – A CID petition must contain:

1. The general nature of the proposed CID project;
2. The estimated cost of the proposed CID project including maximum amount of CID funding to be paid prior to termination of CID;
3. The proposed method of financing the project (special assessments or special sales tax);
4. The proposed amount and method of assessment;
5. The proposed method of financing (pay-as-you-go or special obligation bonds);
6. A map of the proposed CID;
7. The legal description of the boundaries of the proposed CID; and
8. A project budget with a list of the reimbursable expenses.

The City reserves the right to request any additional information to supplement the Petition, including those items described above, prior to consideration by the City Council.

**IV. REQUIRED FEES**

A. Initial Application Fee. A non-refundable fee in the amount of \$5,000 shall accompany the CID application. If the CID application is successful, the application fee will constitute a project cost and be eligible for reimbursement from CID proceeds.

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 CID. The applicant shall enter into a funding agreement in order to reimburse the City for: its fees and expenses; the time of its administrative and professional staff, as the City may from time to time deem appropriate; all charges for the City's outside counsel, including the fees of the City Attorney, and consultants; and all other expenses incurred by the City. The funding agreement shall call for the applicant to establish a fund in order to ensure the prompt and timely payment of the above charges. A deposit of \$20,000 to the fund will be required, and may be higher or lower as determined by City Manager, depending on the transaction.

C. Annual Administrative Service Fee. An amount equal to 5% of the annual CID sales taxes and/or special assessments reimbursed to applicant or its successor in interest.

Each CID petition shall be accompanied by the application fee. This fee is in addition to other fees which may be required by the City, costs incurred for preparation of studies as required by this Policy, and costs incurred, if any, for review and work done by the City's Financial Advisor and Bond Counsel. In addition, any applicant that receives approval shall pay an annual administration service fee. All fees shall be due and payable as provided for herein or as otherwise set forth in an approved Development Agreement.

## **V. PROCESS FOR CREATING A CID**

The decision to establish a CID is within the sole discretion of the City Council. All projects will be subject to the notice and hearing process.

### **A. Approval Process**

1. Upon petition for a Sales Tax CID, the City Council shall adopt a resolution giving notice of a public hearing to consider the advisability of creating the CID. Such resolution shall be published once each week for two consecutive weeks in the City's official newspaper and shall be sent by certified mail to all owners of property within the proposed district.

The second publication of such resolution shall occur at least seven (7) business days prior to the date of the hearing and the certified mailed notice shall be sent at least ten (10) business days prior to the hearing. Such resolution shall contain the following information:

- Time and place of the hearing;
  - General nature of the proposed district;
  - Estimated cost of the project;
  - Proposed method of financing the project, including, if applicable, the issuance of full-faith and credit bonds;
  - The proposed amount of the CID sales tax, if any;
  - The proposed amount and method of assessment, if any;
  - A map of the proposed district; and
  - A legal description of the proposed district.
2. Following the hearing, the City Council may by majority vote approve the CID by ordinance or resolution. The ordinance or resolution shall:
    - Authorize the project;
    - Approve the estimated costs of the project;
    - Contain a legal description and map of the proposed district;
    - Levy the CID sales tax, if any;
    - Approve the maximum amount and method of assessment, if any; and
    - Approve the method of financing.

Such ordinance or resolution shall become effective upon publication once in the newspaper. The ordinance or resolution shall also be submitted for recording in the office of the register of deeds of the county in which the district is located.

## **B. Preliminary Review Meeting**

Prior to consideration by the City Council, parties intending to request the creation of a CID must submit a draft version of the intended petition to the City Manager and any other City Staff designated by the City Manager. Such draft petition need not be signed by any landowners within the proposed district until such time as it is formally submitted for consideration by the City Council. Within ten (10) business days after the submission of any such draft petition, the City Manager and other City Staff designated by the City Manager shall hold a pre-petition meeting with the party submitting such petition to evaluate the sufficiency thereof and gather information needed to determine the eligibility of the project.

## **C. Development Agreement Required**

Concurrently with, or prior to, the creation of a CID by the City Council, the City and the petitioner shall enter into a Development Agreement governing the conduct of the respective parties in relation to the proposed CID. The Development Agreement will include a site plan and elevation drawings or renderings of the CID project, and a Sources and Uses of Funds table that identifies the various sources of public and private project funds and how they will be used. Among all other provisions, the Development Agreement will set forth the method and manner for disbursement of CID funds by the City, including the proceeds of bonds paid with CID funds, to pay for eligible project costs pursuant to acceptable documentation that such costs have been incurred. In addition, the agreement shall provide for rapid repayment of the bonds and termination of the tax. City administrative fees and costs of issuance shall be paid from CID funds. For “pay-as-you-go” CID projects, the agreement will set forth the method and manner of disbursement of CID funds to the developers and shall include provisions for the termination of the CID taxes when developers have been fully reimbursed for eligible CID costs.

## **D. “GAP” Financing Requirement**

CID projects financed with special obligation bonds will not be approved without a financial analysis that demonstrates that the project would not otherwise be possible without the use of CID funding (“GAP” analysis). CID projects financed on a “pay-as-you-go” basis do not require a “GAP” analysis. Any applicant requesting use of special obligation bonds will be required to provide City Staff with pro forma cash flow analyses and sources and uses of funds in sufficient detail to demonstrate that reasonably available conventional debt and equity financing sources will not fund the entire cost of the project

and still provide the applicant a reasonable market rate of return on investment. “GAP” financing, including CID and any other public financing, should not exceed 30% of the total project cost.

#### **E. Background Check**

The City will conduct a background check on all CID applicants and applicants’ project partners. Applicants are required to furnish City Staff the personal and business information needed to carry out such a background check. Such information will be treated as confidential information to the maximum extent allowed by the Kansas Open Records Act (KORA).

### **VI. SOURCES OF FUNDING FOR CID IMPROVEMENTS**

Landowners or developers seeking 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 property tax assessments on the property within the district, or
2. A special sales tax of up to 2% on all taxable sales within the district.

Upon the creation of a CID by the City Council, 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.

- A. Bond Issuance** – In cases in which a bond issuance is requested, the City’s Planning and Finance Departments will work with the landowners within the CID to calculate how much revenue will be raised from the CID revenues (the special property tax and/or special sales tax levied within the CID) and the principal amount of bonds that can be issued based on the CID revenue stream and a minimum 1.25 debt service coverage ratio. The City may then issue bonds in that amount and use the CID revenue to retire the debt. The proceeds from the sale of the bonds will be used on eligible improvements and costs pursuant to the development agreement. 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 of Hutchinson to issue only special obligation CID bonds. Funds used to pay eligible CID costs will be held by the City and disbursed to pay actual costs pursuant to a development agreement.

The City encourages applicants to request the pay-as-you-go CID financing, rather than the issuance of bonds, and may require any CID bonds to be privately placed, or may decline to issue CID bonds.

**B. Pay-As-You-Go Account** – As an alternative to a bond issuance, the landowners within the CID may request the establishment of a pay-as-you-go account. This account will be a dedicated account into which the CID revenues will be deposited and will be available to be used as funds accrue to pay eligible costs. Funds used to pay eligible CID costs will be held by the City and disbursed to pay actual costs pursuant to a development agreement.

Preference will be given to projects that use pay-as-you-go financing.

## **VII. ELIGIBLE CID COSTS**

The CID Act provides an exclusive list of eligible improvements and costs that may be paid for with CID funding. CID funds may be used to acquire, plan, design, engineer, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip, extend or finance:

1. Buildings, structures, and facilities;
2. Site improvements, including without limit 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, and water mains and extensions;
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 landscaping;
6. Communication and information booths, bus stops and other shelters, stations, terminals, hangars, rest rooms and kiosks;
7. Paintings, murals, display cases, sculptures, fountains and other cultural amenities;
8. Airports, railroads, light rail and other mass transit facilities; and
9. Lakes, dams, docks, wharfs, lakes or river ports, channels and levies, waterways and drainage conduits.

The CID Act also permits the use of CID funds to pay ongoing operating expenses, including security, entertainment, public events, business promotion, employee training, and market studies; however, it is the policy of the City of Hutchinson that CID funds may only be used to pay eligible operating costs up to the maximum amount identified in the petition. CID funds may be used to reimburse capital costs incurred not earlier than one year prior to City Council action initiating the establishment of a CID, and City administrative costs and costs of issuance.

### **VIII. PROJECT MANAGEMENT AND DEVELOPMENT FEES**

CID funds may not be used to pay development fees. Project management fees may be financed through CID revenues only if the need for such financing is established through analysis of financial information showing that private funding is not available to pay such costs based on a market rate of return on investment. If allowed, project management fees paid through CID revenues must be documented as actual costs incurred.

### **IX. STANDARD DESIGN GUIDELINES GOVERN**

All property improvements commenced under an approved CID shall be subject to City regulations, standards, and policies, including, but not limited to: zoning and subdivision regulations, building codes, the City code, and any applicable design guidelines currently in place or hereafter approved. In addition, project plans and renderings shall be reviewed by the City's Planning Department and any suggestions provided by that body will be incorporated into the design of the project unless expressly overruled by the City Manager.

### **X. SIGNAGE REQUIREMENT FOR CID SALES TAX**

Upon establishment of a CID utilizing sales tax as the source of CID revenue, each business shall have a sign prominently displayed at each public entrance for the duration of time that the CID sales tax is collected. The sign shall be a minimum size of 8.5 inches by 5.5 inches with a font size of at least 28. The sign shall at a minimum contain the following:

“This project made possible by Community Improvement District Financing. Additional Community Improvement District sales tax of \_\_\_\_% is collected here.”

### **XI. FINANCIAL REPORTING**

Developer will provide a certified annual accounting to the City on the amount and use of CID funds used to pay CID costs. City reserves the right to audit the use of CID financing at its discretion and expense.

## **XII. TERMINATION OF CID**

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, including 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 petition.

## **XIII. WAIVER OF REQUIREMENTS**

The City Council reserves the right to grant or deny a CID under circumstances beyond the scope of the Policy or to waive provisions here. However, no such action or waiver shall be taken or made except upon a finding by the City Council that the terms of the policy are inappropriate to evaluate a particular CID application, or 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 City Council shall not waive any statutory requirement of State law.