



**CITY OF LEAWOOD
GOVERNING BODY
MEETING AGENDA**

Council Chamber
4800 Town Center Drive
Leawood, KS 66211

**GOVERNING BODY
WORK SESSION**

**Monday, April 19, 2021
6:00 P.M.**

(This agenda is subject to changes, additions or deletions at the discretion of the City Council)

Mayor Peggy Dunn

Councilmembers

Ward One

Debra Filla
Andrew Osman

Ward Two

Jim Rawlings
Mary Larson

Ward Three

Chuck Sipple
Lisa Harrison

Ward Four

Julie Cain
James Azeltine

**Continued discussion of possible property tax abatement
and sales tax exemption through the issuance of IRBs**

To reduce the likelihood of the spread of COVID-19 the Leawood Governing Body Work Session is being conducted remotely using the Zoom media format and some of the members of the Governing Body may appear remotely. Public comments will not be accepted during this meeting. City Hall is closed to public access during this meeting, however, the meeting will be livestreamed on YouTube and the public can access the livestream by clicking on www.leawood.org.

ADJOURN

(This agenda is subject to changes, additions or deletions at the discretion of the City Council)

Regular meetings of the Leawood City Council are held the first and third Mondays of each month beginning at 7:30 PM. Copies of the agenda are available at the Office of the City Clerk on the Friday prior to the meeting. Leawood operates under a Council/Mayor form of government, with a separately elected mayor and 8 council persons. Council members are elected on a non-partisan basis from 4 wards. The Council develops policies and provides direction for the professional city administration.

If you require any accommodation (i.e. qualified interpreter, hearing assistance, etc.) in order to attend this meeting, please notify this office at 913.339.6700 or at CityClerk@leawood.org no later than 96 hours prior to the scheduled commencement of the meeting.

Memorandum

To: Governing Body of the City of Leawood, Kansas (the “City”)
From: Gilmore & Bell, P.C.
Date: April 14, 2021
Re: Discussion Topics Relating to EDRB Policy (Standard Process)

Gilmore & Bell, along with input from City staff, has prepared the Economic Development Revenue Bond Policy (Standard Process) (the “Policy”) for the City. We have received outside comments regarding the Policy and present them below for discussion.

1. Specifying number of added/retained jobs as a factor – Current draft of the Policy provides that a Project should either add or retain 25 jobs. While the Council can deviate from the policy, including a specific number of jobs may tie the Council’s hands for a future project. The section also includes “The City expects all Projects which receive a property tax abatement to produce and/or retain a significant quantity of jobs and pay above average wages.” This sentence standing alone may make more sense for the policy in that it gives the Council the flexibility to approve EDRBs for a great project that doesn’t bring in at least 25 jobs.
2. Excluding Multi-Family for EDRBs – This is a policy decision. Received a comment to provide that generally the City won’t consider EDRBs for multi-family but EDRBs may be considered for multi-family which incorporate structured parking and/or elements that produce a mixed-use project for purposes of granting sales tax exemption.
3. Financial Feasibility – Current policy provides that the City will not grant sales tax exemption or property tax abatement unless the Project is financially feasible without such incentives. Received comments that this is not typical in other cities’ policies, which is true. This is ultimately a policy decision to be made by the City.
4. Timing of Final Development Plan and Application – Current draft of the Policy provides that the Preliminary and Final Development Plans must be approved prior to the submittal of an application for EDRBs. Received a comment requesting that the application should be considered at the time of the rezoning (if applicable) / Preliminary Development Plan so the Developer doesn’t spend additional money in working toward the Final Development Plan, only to have the EDRB application denied.

CITY OF LEAWOOD, KANSAS

ECONOMIC DEVELOPMENT REVENUE BOND POLICY
(Standard Process)

Adopted _____, 2021

Section 1. Purpose. This Economic Development Revenue Bond Policy (Standard Process) (the “**Policy**”) is designed to create a positive business environment to stimulate economic growth and development in order to encourage capital investment, employment opportunities, and quality services for the benefit of the City. The objectives of this Policy are described below:

1. Promoting the City as a center for corporate headquarters and regional offices for major employers;
2. Attracting businesses which will substantially enhance the economic climate of the City, including the job market;
3. Leveraging private investment that is in the best interest of the City;
4. Promoting development or redevelopment projects which meet the intent of this policy and meet and exceed the standards of the City’s Development Ordinance and Comprehensive Plan;
5. Encouraging private investment in redevelopment having a substantial positive impact on the City;
6. Adding and retaining employment opportunities in the City; and
7. Attracting projects to grow the local tax base.

Section 2. Policy Guidelines. The Governing Body shall consider the following factors when granting sales tax exemption or property tax abatement pursuant to this Policy. Failure to meet any one or more of the criteria set forth below may result in denial of a sales tax exemption or property tax abatement.

A. Sound Financial Base. The Applicant must have a sound financial base and will be evaluated on its creditworthiness. The City will make this determination based upon the recommendations of the City’s Financial Advisor to the Finance Team. Additionally, Bond Counsel, the Financial Advisor and any underwriter must provide reasonable assurance that the bonds are secure and marketable and that the bond issue will comply with law. ~~The City may require some type of credit enhancement such as a letter of credit or bond insurance or use other similar enhancement vehicles to satisfy this requirement.~~

B. Experience of Applicant. The Applicant, including its partners and members, as well as all contractors shall have prior experience with projects that are similar to the Project and be satisfactory to the City.

C. Employment Opportunities/Wages. *****The Project shall either add or retain at least 25 jobs for residents of the City and its environs.***** The City expects all Projects which receive a property tax abatement to produce a significant quantity of jobs and pay above average wages.

D. Design Criteria. The City may require higher design standards for the design of buildings and materials used for Projects receiving property tax abatement. Projects must utilize construction materials and provide an architectural design that meets or exceeds the minimum requirements set forth in the Leawood Development Ordinance. All Projects must be environmentally acceptable to the location intended as well as the surrounding area. Preference will be given to businesses that exceed applicable environmental regulations and energy efficiency standards. The Applicant shall

City of Leawood, Kansas
Economic Development Revenue Bond Policy (Standard Process)
Adopted _____, 2021

be responsible for performing at minimum, a Phase I environmental audit. At its discretion, the City may require additional environmental audits beyond a Phase I environmental audit. Applicant shall be responsible for taking any and all remedial action necessary as required by the City or any other governmental entity.

E. Compatibility with Adopted Plans. All Projects shall be consistent with the City's Comprehensive Plan and any applicable corridor plans. ~~The Project proposal must not have a serious detrimental effect on an existing business or development in the City. Proposals should not result in an unfair business advantage over existing local businesses.~~ Additionally, the proposal should not overburden public facilities, streets, traffic patterns or other public improvements.

F. Involvement in the Community. ~~The~~ Preference may be given if the Applicant or members thereof ~~shall~~ demonstrate active and continued participation in civic, charitable, educational, philanthropic and/or economic development endeavors of the City.

G. Excluded Businesses. K.S.A. 79-201a *Second* and/or *Twenty-Fourth* prohibits tax abatement for certain uses.

H. Excluded Use. **Generally,** The City will not consider the issuance of EDRBs for tax abatement or sales tax exemption purposes for residential uses, including multi-family rental units. **However, EDRBs may be considered for multi-family uses which incorporate structured parking and/or other elements that produce a mixed-use project for purposes of granting a sales tax exemption.**

At the discretion of the Governing Body, the Governing Body may increase or decrease the property tax abatement for any particular Project based on the factors set forth herein or other factors determined by the Governing Body in its sole discretion.

Notwithstanding the foregoing or any other provision in this Policy, the City shall in no case grant sales tax exemption or property tax abatement unless the Project is financially feasible without such incentives.

Section 3. Policy Statement. So long as the Applicant and Project meets the criteria established by the City and this Policy, the Governing Body may, in its sole discretion, permit sales tax exemption and/or abatement of ~~up to 50%~~ up to 1% of eligible real property taxes for portions of a Project that qualify for tax abatement under K.S.A. 12-1740 *et seq.* (the "Act") via the issuance of economic development revenue bonds ("EDRBs").

~~The~~ Even if no tax abatement is requested or otherwise granted, the City will consider, ~~in exceptional cases,~~ issuance of EDRBs for the sole purpose of enabling a Project to obtain a sales tax exemption certificate for its building materials, FF&E and/or personal property ~~(with no real property tax abatement)~~. Such sales tax exemption will be considered in ~~limited~~ certain circumstances, such as when the Project will bring significant Capital Investment to the City, or the Project will result in the new development or redevelopment of an underutilized property, ~~and whether the project is not eligible to utilize other tools such as a transportation development district (TDD), or community improvement district (CID);~~ provided, however, the City will not consider issuance of EDRBs to obtain only a sales tax exemption certificate unless the Capital Investment is at least Five Million Dollars (\$5,000,000).

It shall also be the policy of the City that all Projects have a beneficial financial impact on the City, and the City reserves the right to approve the cost-benefit analysis model used to determine the financial

City of Leawood, Kansas
Economic Development Revenue Bond Policy (Standard Process)
Adopted _____, 2021

impact to the City and other taxing jurisdictions as required by the Act.

Section 4. Terms of Abatement. The abatement period for a Project receiving tax abatement approved under this Policy will be determined by the amount of new Capital Investment in the City. Capital Investment shall include expenditures for land and buildings, but not personal property, subject to ad valorem taxation.

A. Existing Businesses. The standard term of real property tax abatement for each Project where the Applicant is an Existing Business is ten (10) years so long as the Existing Business makes a Capital Investment of no less than Five Million Dollars (\$5,000,000).

B. New Businesses. The standard term of real property tax abatement for each Project where the Applicant is a New Business is ten (10) years so long as the New Business makes a Capital Investment of no less than Ten Million Dollars (\$10,000,000).

C. Commencement of Abatement. The abatement term for Projects under authority of the Act and K.S.A. 79-201a shall begin in the calendar year after the calendar year in which the EDRBs are issued. Projects which include multiple phases shall have an expiration date for the commencement of the term of the abatement for each phase as determined by the Governing Body at the time of the adoption of a resolution of intent.

D. Maintain Existing Tax Base. The amount of property taxes on the existing land and facilities shall under no circumstances be reduced below the previous year's amount of property taxes for Projects receiving tax abatement.

E. Special Assessments. The tax abatement shall not affect the liability of such property for any special assessments levied or to be levied against such property.

F. Prohibitions. EDRBs shall not be general obligations of the City, nor shall they constitute a pledge of the full faith and credit of the City and shall not be payable by taxation. EDRBs issued solely for the purpose of obtaining a sales tax exemption must be redeemed and paid in full within twelve months of the date of completion of the Project financed with EDRBs.

Section 5. Procedure. All requests for property tax abatement or sales tax exemption shall follow the processes set forth under the Act. The Governing Body, in its sole discretion, may require additional public hearings, notices to other taxing jurisdictions, or other procedural elements in addition to those required by the Act and Kansas law.

Prior to the Applicant submitting an application requesting property tax abatement and/or sales tax exemption, the Applicant will first meet with the City Administrator to discuss its request and shall have received approval of Preliminary and Final Development plans in accordance with the Leawood Development Ordinance. The Applicant is responsible for contacting the City to arrange this pre-application meeting.

Following the pre-application meeting, the Governing Body may consider granting a tax abatement and/or sales tax exemption pursuant to this Policy after: (i) receipt of a complete application in a format substantially similar to the application form attached as **Exhibit A** together with the application fee, (ii) a comprehensive review by the Finance Team of the Applicant's and Project's compliance with this Policy, (iii) a meeting between the Finance Team and the City Applicant to discuss its application and (iv) receipt by the Governing Body of the findings of the review by the City Administrator.

~~The~~For any application that includes tax abatement, the application shall be submitted in sufficient time for staff to follow established procedures for publication of notices required by law, to review the Project's preliminary site plans and building elevations, to contract for the preparation of a costs and benefits analysis described below, to contact the governing bodies of Johnson County and the school district within which the property proposed for property tax abatement is located, and to consider the application at a regularly scheduled Governing Body meeting thereafter. ~~The City shall contact representatives of the school district to discuss an Application that includes a request for tax abatements. The contact shall be made with school district representatives prior to Governing Body discussion of the Application and abatement request and the~~Governing Body shall consider ~~the~~any school ~~district's~~district feedback and input in reviewing such requests. ****The Project's site plans and building elevations are subject to final approval to ensure that they are similar to the preliminary plans and elevations submitted.****

The City requires the use of its designated Bond Counsel and Financial Advisor and reserves the right to approve the selection of other participants including, but not limited to, any underwriter and trustee/fiscal agent. The City, at its discretion, may retain additional independent advisors to assist in analyzing the application and construction of the Project at Applicant's expense.

Based on each application and such additional information as may be requested by the City, the City shall prepare or cause to be prepared a costs and benefits analysis, as required by the Act, of the proposed ~~exemption~~tax abatement on the City, Johnson County, unified school districts, other taxing jurisdictions and state of Kansas, which analysis shall be used by the Governing Body in considering the request for abatement.

Prior to formal action on each submitted application for property tax abatement, the Governing Body shall conduct a public hearing, to be scheduled at least seven days after publication of notice.

Adoption of a resolution of intent to issue bonds pursuant to the Act and to grant ~~an exemption~~a property tax abatement pursuant to K.S.A. 79-201a, as amended, must specify the length and amount of the exemption and may be subject to the execution of a PILOT/Performance Agreement as required by the City.

Section 6. Fee Schedule/Funding Agreement. The Fee Schedule for applications, issuance of EDRBs, and monitoring is contained in **Exhibit B** hereto.

Applicant may be required to enter into a Funding Agreement with the City to reimburse the City for out of pocket costs incurred in evaluating the Application and negotiating a PILOT/Performance Agreement (including but not limited to fees incurred by the City for legal counsel and financial advisory services). A deposit will be required as pre-payment for such costs. Further details regarding the Fee Schedule and expected out-of-pocket costs ~~may~~will be made available upon request.

Section 7. PILOT/Performance Agreement.

A. Contents. Any tax abatement or sales tax exemption granted pursuant to this Policy may be accompanied by a PILOT/Performance Agreement, if required by the City in its discretion, between the Applicant and/or lessee and the City. Each agreement will establish performance standards for the Applicant. The standards may include minimum Capital Investment amounts, minimum ~~appraised and assessed valuation amounts, minimum~~ employment levels, average salary targets, and any other standards deemed appropriate by the Governing Body. The agreement may also contain restrictions on the transfer of the property and appeal of property values and taxes.

City of Leawood, Kansas
Economic Development Revenue Bond Policy (Standard Process)
Adopted _____, 2021

B. Continued Compliance. Any property tax abatement and/or sales tax exemption is subject to ongoing review and determination by the City Administrator that the conditions qualifying the business for the incentives continue to exist.

All tax abatements will be subject to reduction or rescission based upon:

1. Submission of a fraudulent or materially inaccurate application;
2. Applicant's failure to submit any annual report and supporting information during any year in which an exemption is granted by the City;
3. Applicant's failure to comply with the material terms and conditions of the resolution of intent; or
- ~~4. Applicant's failure to comply with the terms and conditions of a PILOT/Performance Agreement; or~~
- ~~5.4. During any year in which an exemption is granted, failure of a property receiving an abatement to maintain an appraised valuation, as determined by Johnson County, in an amount equal to or greater than the minimum Capital Investment upon which the abatement was calculated.~~

C. Annual Report. The PILOT/Performance Agreement shall require that the Applicant file with the City Clerk an annual report which shall provide the performance standards set forth in the PILOT/Performance Agreement for the prior year for review no later than ~~January~~February 15 of each year for any term of abatement and shall submit an application filing fee of \$300 each year.

If the City Administrator finds that the business or Project is not in compliance with the PILOT/Performance Agreement, then the abatement may be modified or eliminated as the Governing Body deems appropriate. The County Assessor and the Board of Tax Appeals shall be notified of such action. Each PILOT/Performance agreement shall contain a notice and waiver disclosing to each Applicant that the City reserves the right to grant future tax abatements on comparable projects in amounts different than the abatement granted to such Applicant. Such notice and waiver shall include a provision that the Applicant waives any right to request a modification or amendment of such abatement based upon such differences.

D. Restriction on Transfers. The owner or lessee of a Project that is all or partially exempt from ad valorem taxes as the result of the City having granted an abatement shall obtain the City's written consent before transferring majority ownership of the Project unless the transfer is to an affiliate or a related entity, or if the transfer is to a third party as part of a sale, lease-back transaction wherein the Applicant or its affiliate remains in occupancy of the Project and its employees, both as to number and average wages, continue to satisfy the requirements of the PILOT/Performance Agreement with the City. Notwithstanding the foregoing, if EDRBs are issued on a tax-exempt basis for federal tax purposes, any transfer of the Project will require City consent. The City's consideration of any requested consent under this Subsection D shall not be unreasonably withheld. In the event that the Applicant or its affiliate vacates the Project, the City shall have the right to rescind the property tax abatement and pursue any other remedies set forth in the PILOT/Performance Agreement, if any.

E. Clawbacks. Each PILOT/Performance Agreement shall include language whereby, if certain conditions qualifying the Applicant for tax abatement are not met (e.g., the Applicant fails to provide the minimum Capital Investment / the Project does not meet workforce or wage targets, etc.), then the City shall have the right to rescind and recover certain incentives granted and shall

City of Leawood, Kansas
Economic Development Revenue Bond Policy (Standard Process)
Adopted _____, 2021

have the authority to eliminate or reduce the amount of the incentive going forward.

F. Additional Information. The City at any time may request additional information to determine compliance with the PILOT/Performance Agreement.

Section 8. Subsequent Applications. The City reserves the right to grant future tax abatements on projects in amounts or terms exceeding the abatement granted to any previous Applicant. By submitting an application to the City, each Applicant acknowledges this right and waives any right to request a modification or amendment of such Project's abatement based upon an abatement granted to another Project.

Section 9. No Entitlement. This Policy does not create any entitlement and property owners, Applicants and others are cautioned not to rely upon receipt of an abatement until all steps for granting an exemption have been approved, including, but not limited to evaluation of all factors by the City and adoption of a Resolution of Intent after notice and public hearing; approval of a PILOT/Performance Agreement; and compliance with all terms and conditions thereof by the Applicant.

Section 10. Purchase of EDRBs. It is anticipated that the Applicant shall be required to provide a purchaser of the EDRBs, which shall be a bank or financial institution acceptable to the City which shall execute an investment letter satisfactory to the Finance Team. Upon request by the Applicant ~~and in limited instances~~, the City may allow the EDRBs to be purchased by the Applicant or publicly offered for sale. ~~The~~ If publicly offered for sale, the City may require some type of credit enhancement such as a letter of credit or bond insurance or use other similar enhancement vehicles to satisfy this requirement.

Section 11. Authority of the Governing Body. The Governing Body reserves the right to deviate from this Policy, but not any procedure set forth in this Policy or any other procedural requirements of the Act or Kansas law, when it considers such action to be of exceptional benefit to the City or ~~extraordinary~~ circumstances prevail that the Council believes such deviation is in the best interests of the City. Approval of an application for an EDRB does not constitute zoning or plan approvals as required by the Leawood Development Ordinance and such approvals shall be a condition of the approval of any EDRBs.

Section 12. Definitions. For purposes of this Policy, when used in this Policy, the following words shall have the following meanings.

Abatement: The difference between the amount of ad valorem property taxes an entity would pay if there were no abatement granted and the amount required to be paid as payments in lieu of taxes. For example, if the taxes required with no abatement would be \$5,000, and the required in lieu payments were \$3,000, the "abatement" would be \$2,000.

Applicant: Any person, firm, or entity submitting an application requesting tax abatement and/or sales tax exemption.

Board of Tax Appeals: The Kansas Board of Tax Appeals.

Bond Counsel: That firm or individual designated by the City to handle legal matters and issues related to the issuance of temporary notes or bonds.

Capital Investment: Capital Investment shall include expenditures for land ~~and~~ buildings, and all other real property improvements, but not personal property, subject to ad valorem taxation.

City of Leawood, Kansas
Economic Development Revenue Bond Policy (Standard Process)
Adopted _____, 2021

City: City of Leawood, Kansas.

Existing Business: A business shall be an “Existing Business” if it has had facilities and operations in the City for a period of not less than one year prior to the date the application requesting tax abatement is submitted.

Finance Team: The City Administrator, Director of Finance, City Attorney, Planning Director, or their designees; Bond Counsel; and Financial Advisor.

Financial Advisor: That firm or individual designated by resolution of the City to handle financial matters and issues related to the Project.

Governing Body: The Mayor and Members of the City Council of the City of Leawood, Kansas.

New Business: Any business which is not an Existing Business.

PILOT/Performance Agreement: An agreement between the City and an Applicant receiving property tax abatement setting forth the terms of an abatement and associated Project, including providing a fixed amount or a percentage of the property taxes that would be due but for the abatement.

Project: The physical facility proposed for the purpose for which a tax abatement and/or sales tax exemption is being requested.

CITY OF LEAWOOD, KANSAS

Exhibit A

Form Application

Exhibit B

Fee Schedule

The following fees are hereby established:

- A. **Application Fee.** A non-refundable application fee of \$3,000 shall accompany all applications for the issuance of EDRBs.

- B. **Issuance Fee.** Applicants shall pay an issuance fee as set forth in the tables below. In no event will the issuance fee exceed \$100,000 ~~or be less than \$3,000.~~ The fee shall be due and payable at the time the EDRBs are issued.

Projects Requesting Real Property Tax Abatement. For Projects requesting real property tax abatement the City shall receive an issuance fee of (i) .0025 of the first \$10 million par amount of bonds being issued, plus (ii) .0020 of the par amount of bonds being issued in excess of \$10 million. In no event shall such issuance fee be less than \$2,500. The fee shall be due and payable at the time the EDRBs are issued.

Sales Tax Exemption Only. For Projects requesting a sales tax exemption but not a real property tax abatement, the City shall receive an issuance fee of (i) .0010 of the par amount of bonds. In no event shall the issuance fee be less than \$2,000. The fee shall be due and payable at the time the EDRBs are issued.

- C. **Additional Costs.** The Applicant shall reimburse the City for all costs associated with all legal publication notices, application fees to the Board of Tax Appeals, the City's Bond Counsel fees, and all other miscellaneous costs. Applicant may be required to enter into a Funding Agreement with the City to reimburse the city for out of pocket costs incurred in evaluating the Application and negotiating the Performance Agreement (including but limited to fees incurred by the City for legal counsel and financial advisory services). A deposit will be required as pre-payment for such costs.