

### Article AP01 ECONOMIC DEVELOPMENT INCENTIVES PROCEDURE

---

#### Sections:

- AP01-1 DEFINITIONS.
- AP01-2 APPLICATION AND REVIEW.
- AP01-3 DEBT OBLIGATIONS.
- AP01-4 CONDEMNATION.

#### **AP01-1\_DEFINITIONS.**

**The following words when used in connection with this policy shall have the meanings ascribed to them herein:**

**APPLICANT:** The individual(s) or business(es) and its officers, employees, and agents requesting an Economic Development Incentive.

**CITY:** City of Eudora, Kansas

**DEVELOPMENT AGREEMENT:** A written agreement between the City and an Applicant for the completion of a development or redevelopment project. Such agreement shall address issues involved in the project, including but not limited to the following: schedule of construction; acquisition of land; expenses eligible for reimbursement; scope of development (including development performance criteria); indemnification of the City and insurance requirements; reimbursement of City costs; financing (private and/or public); transfer restrictions prior to completion; maintenance and restrictive covenants, City inspection and information access rights; reporting requirements; and remedies upon default.

**ECONOMIC DEVELOPMENT INCENTIVE:** Financial incentives granted by the City to an Applicant in order to achieve the City's economic development goals. These include, but are not limited to, loans, grants, infrastructure, property tax abatement, industrial revenue bond financing, tax increment financing, transportation development districts, and community improvement districts.

**FINANCE PLAN:** A written report prepared by the Finance Team addressing the feasibility and risks associated with providing an Economic Development Incentive.

**FINANCE TEAM:** A committee comprised of the City Administrator, City's bond counsel, and City's financial advisor whose function is to review Economic Development Incentive requests and make recommendations to the Governing Body.

**FUNDING AGREEMENT:** An agreement between the City and an Applicant for an Economic Development Incentive in which the Applicant agrees to provide the City with funds to reimburse the City for costs associated with review of the Application.

**GOVERNING BODY:** The Mayor and City Council of the City of Eudora, Kansas.

**INCENTIVE:** An Economic Development Incentive.

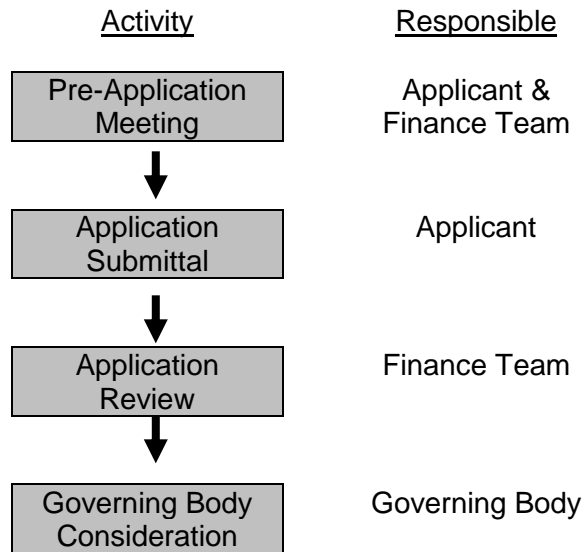
**OBLIGATIONS:** Any debt instrument of the City.

**PAYMENT IN LIEU OF TAXES AGREEMENT:** An agreement between the City and an Applicant receiving property tax abatement whereby the Applicant agrees to pay to local property taxing entities a percentage of the property taxes that would be due, but for the provision of tax abatement.

**AP01-2 APPLICATION AND REVIEW.**

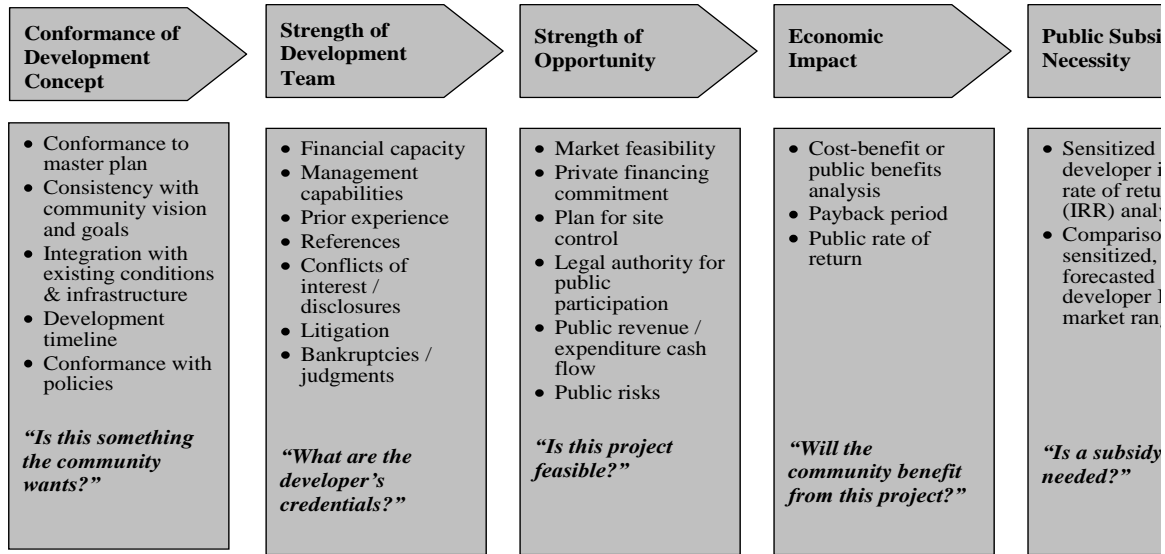
- A. Incentives addressed by this procedure include, but are not limited to:
  - 1. Industrial revenue bonds
  - 2. Tax abatement (constitutional or associated with industrial revenue bonds)
  - 3. Economic development grants or loans
  - 4. Tax increment financing (TIF)
  - 5. Transportation development districts (TDD)
  - 6. Community improvement districts (CID)
  
- B. Applicants seeking an economic development incentive shall initiate the process by contacting the City Administrator and requesting a pre-application meeting with the City's Finance Team. At, or immediately after the pre-application meeting, the Finance Team will provide the Applicant with an application form and a schedule for processing the Applicant's request. Only complete applications and petitions (if applicable) will be considered. The Applicant is responsible for providing any additional information requested by the City or its representatives deemed necessary to consideration of the application. Any inaccuracy, misstatement, misrepresentation, or error in fact may render the application null and void and may be cause for reduction or rescission of an economic development incentive.
  
- C. All applications shall be accompanied by the fee amount appropriate to the type of incentive sought.
  
- D. The City may require Applicants to enter into a Funding Agreement to reimburse the City for costs associated review of the application including, but not limited to, staff time and consulting services. A cash deposit may be required of the Applicant; the amount of such deposit will be based upon the characteristics of the requested incentive.
  
- E. Applications shall be reviewed by the City's Finance Team. The Finance Team will:
  - 1. Prepare a schedule for processing the application.
  - 2. Verify that the requested incentive is necessary to promote the general and economic welfare of the City.
  - 3. Gather and review such additional information as may be deemed necessary to determine if the applicant meets the objectives of the City's Economic Development Policy.
  - 4. Obtain input from applicable City departments with respect to the proposed physical plan and infrastructure needs.
  - 5. Conduct discussions and negotiations with the Applicant.

6. Develop a Finance Plan.
  7. The City Administrator shall recommend to the Governing Body whether the application should be favorably considered.
- F. The recommendation by the City Administrator does not constitute approval or denial of the project and/or the Incentive as submitted, and all site plans, rezoning, special use permit, or other regulatory requirements regarding land use must still be satisfied. Prior to the City Administrator's recommendations being forwarded to the Governing Body, the Applicant shall be given an opportunity to review and comment.
- G. In reviewing the application, the Finance Team may utilize the services of consultants. Finance Team records, including submitted applications, may be withheld from public disclosure as provided under the Kansas Open Records Act, but shall be available for public inspection when otherwise required by law.
- H. In cases in which proprietary information needs to be shared to evaluate an application, the City will utilize a third-party to review such information and prepare a report that summarizes any major concerns with the ability of the Applicant to complete the project. The third-party will also make recommendations regarding contractual obligations of the Applicant that the City may consider to secure its investment.
- I. The figure below illustrates the City's application review process:



- J. The steps taken during the Finance Team's Application Review will vary based upon:
1. Legal requirements.
  2. The type of incentive requested.
  3. The incentive amount.
  4. Magnitude and probability of City's financial risks.
  5. Type of costs funded with the incentive (private or public).
  6. Other factors unique to the project.

K. The figure below shows the general approach that will be taken to review Economic Development Incentive applications:



L. Applications requesting public funding of private costs (or public costs normally borne by the Applicant) will be considered in light of the “but-for” principle, i.e., public financing must make such a difference in the decision of the applicant that the project would not be economically feasible “but-for” the incentive. A formal “but-for” study (also called an internal rate of return analysis) may be required in some cases. Economic feasibility will be measured based on the market at the time the project is undertaken and will include financial feasibility measuring the project’s ability to attract private capital. No economic development incentives will be provided on a retroactive basis.

M. A cost benefit analysis sufficient to satisfy state statute requirements will always be prepared for tax abatement requests. Similarly, the feasibility report required by state statute will always be prepared for tax increment financing requests.

N. Prior to initiation of any economic development incentive, applicants will be required to enter into a Development Agreement, Payment in Lieu of Taxes (PILOT) agreement or other form of agreement containing performance criteria that must be met by the Applicant in order to continue receiving the incentive at the established level. City staff will review compliance with these agreements at least annually and provide the Governing Body with a summary report in February of each year.

### AP01-3 DEBT OBLIGATIONS.

#### A. Industrial Revenue Bonds

Approval of Industrial Revenue Bonds issued by the Governing Body shall be subject to the following conditions:

1. The Applicant must have a sound financial base. The City’s financial advisor shall make recommendations to the Finance Team and the Governing Body as to an Applicant’s financial stability.
2. The underwriter or purchaser of the bonds (to be selected by the Applicant, subject to review and consent by the City), City bond counsel and City financial

advisor must provide reasonable assurance that the bonds are secure and marketable and that the bond issue complies with applicable state and federal laws.

3. The City may require some type of credit enhancement such as a letter of credit, bond insurance, personal guarantees, pledges of other collateral, a bond reserve account, or a combination thereof.
4. The City requires the use of its designated bond counsel and financial advisor. The City reserves the right to approve selection of other participants including, but not limited to, the underwriter and trustee/fiscal agent. The City, at its discretion may retain additional independent advisors to assist in analyzing the merits of the application and in making a determination of its approval at the Applicant's expense, such as: economic specialist, environmental specialist, certified public accountant, etc.
5. The Applicant must pay or reimburse the City for the cost of legal, financial, and administrative work performed in connection with the bond issue as determined by the City. The Applicant must pay all costs related to the issue incurred by the City throughout the life of the bonds, including, but not limited to, the City's actual costs of administering and supervising the issue, the cost of any legal counsel, and any costs in the event of a default, transfer of ownership, transfer of bonds, re-marketing issues, requests for amendment, and any other assistance required in regard to the project which is subject to Industrial Revenue Bonds. Any costs incurred will be directly billed to the Applicant for reimbursement.
6. Prior to making application, the project for which Industrial Revenue Bonds are requested must be appropriately zoned.

#### B. Special Obligation Bonds

1. While it is the City's preference that TIF, CID and TDD incentives be funded on a pay-as-you-go basis rather than through the issuance of debt obligations, the City may issue special obligation bonds to finance eligible expenses associated with an economic development project. Such bonds are payable, both as to principal and interest, from revenues derived from the project.
2. Special obligation bonds are not general obligations of the City, nor in any event shall they give rise to a charge against its general credit or taxing power or be payable out of any funds or properties other than those associated with the project.
3. Each request for issuance of special obligation bonds shall be considered on a case by case basis, but the City shall consider a number of factors in deciding whether or not to issue special obligation bonds for a project. These factors may include but are not limited to:
  - a. Project compliance with the City's Economic Development Policy and Procedure
  - b. Source and reliability of revenue to repay the debt issued
  - c. Size of the issue
  - d. The Applicant's compliance with prior and proposed project agreements and plans

- e. Whether the project requested for financing meets the stated goals and objectives of the Governing Body
  - f. Any Applicant delinquency on other municipal financing projects or property tax
  - g. Overall security provisions for debt repayment
4. Special obligation bonds issued under this Procedure must include security for the bonds of a sufficient amount to minimize any risk of default; be sold to qualified investors (as defined in the Securities and Exchange Commission Regulation D) in accordance with the minimum denominations as provided herein.
  5. Special obligation bonds must initially be offered in denominations of \$100,000 or greater. These denominations may be stepped down (upon consultation with the City's bond counsel and financial advisor) when one or more of the following are met:
    - a. The project being bond funded is substantially leased
    - b. The estimated revenue stream acceptable to the City yields significant debt service coverage on the bonds
    - c. Construction of the project being financed is substantially complete, as determined by the City
    - d. The repayment term is less than or equal to 60% of the maximum permitted repayment term
    - e. Waiver of the minimum denomination provision by the Governing Body
  6. The City may require that special obligation bond proceeds be released in phases and amounts consistent with a percentage of construction or other performance standards which shall be agreed upon by the parties.
  7. If a negotiated sale of the bonds is necessary, the City will normally select through a competitive process the underwriter(s) needed to structure, market, price, and sell the bonds. Exceptions to this competitive selection process may be approved by the City Administrator upon consultation with the City's bond counsel and financial advisor. All pricing for negotiated sales will be performed with direct involvement by City staff and the City's financial advisor.
  8. At its sole discretion, the City may require that an independent feasibility study of the project revenues be performed, with any cost born by the Applicant.

#### C. Full Faith and Credit Bonds / Annual Appropriation Bonds

1. Subject to statutory authority, the governing body may choose to, but is not obligated to, secure Obligations by its full faith and credit or by annual appropriation. In the event either of these security options is considered, the financing plan prepared by the Finance Team shall specifically address the risk mitigation measures that will be taken to ensure an extremely low probability of the City having to use its general revenues for debt service. Except in

extraordinary circumstances in the sole discretion of the Governing Body, the proceeds of full faith and credit obligations will only be used to pay for public improvements or public projects which would otherwise be eligible to be paid for with proceeds of City general obligation bonds.

2. Applicants seeking financing may be reimbursed for projects on a “pay-as-you-go” basis until the Governing Body determines issuance of Obligations is viable and in the City’s best interest.

#### **AP01-4 CONDEMNATION.**

The City does not encourage the use of condemnation in association with economic development projects. However, the use of condemnation, as permitted by state statute, may be considered by the Governing Body, but only upon a finding that the Applicant has attempted, in good faith, to acquire the property privately. Although expenses associated with condemnation are eligible for reimbursement under some incentive programs, in the event condemnation is approved by the Governing Body, the Applicant may be required to be responsible for all costs associated with the proceedings, including court and litigation costs, attorney’s fees, and the final condemnation award.

