

RESOLUTION NO. 24 - 31

A RESOLUTION OF RESTATEMENT OF POLICY FOR THE FINANCING OF
PUBLIC IMPROVEMENTS AND THE LEVYING OF SPECIAL
ASSESSMENTS WITHIN THE CITY OF ANDOVER, KANSAS.

WHEREAS, it is the policy of the City of Andover, Kansas (the "City") to encourage development within the City limits through the use of special assessment financing for public improvements under K.S.A. 12-6a01 *et seq.*; and

WHEREAS, the City desires to encourage the development of undeveloped parcels within uncompleted subdivisions, high-priority redevelopment areas and high-priority growth areas; and

WHEREAS, the City recognizes that the long-term health, safety and general welfare of its citizens is furthered by the efficient utilization of land resources, investment and reinvestment in areas that are targeted for growth and have existing infrastructure; and

WHEREAS, the City, in return for providing such financing for public improvements, requires that all petitioners and/or developers provide shared financing or adequate assurance for full annual payment of special assessments before their petitioned improvements are approved; and

WHEREAS, the City desires to fund public improvements through the use of special assessments in accordance with an adopted debt policy and capital improvement program and in such a manner as to increase the creditworthiness of the City; and

WHEREAS, nothing in this policy shall prohibit any individual from financing and constructing public improvements in accordance with City standards and specifications; and

WHEREAS, the City is under no obligation to approve any petitioned improvements nor is the City relinquishing any authority to initiate improvements by the resolution method.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ANDOVER, KANSAS:

Section 1. Definition of "Project". For the purpose of this policy, the term "Project" will be defined to mean any capital improvement, water, sanitary sewer, storm drainage, streets, with or without associated storm sewer, sidewalks, traffic signals, or any combination thereof, whose sponsor petitions the governing body for public financing resulting in the creation of a defined benefit district.

Section 2. Special Assessment Financing Eligibility. Residential and non-residential Projects may be eligible for special assessment financing from the City under the limits imposed by this resolution and the City of Andover, Kansas's (the "City") Debt Policy with the following exceptions, which exceptions may be financed privately:

- a) Special assessment financing by the City, or the sale of water or wastewater services, will not be used for Projects that are not within the growth area of the city as defined by the Comprehensive Plan for the City.
- b) For Projects that are not contiguous to the City limits, the cost of extending utilities, including oversizing, from their existing end point, across non-annexed property, to the Project site will not be eligible for special assessment financing.
- c) Special assessment financing will not be approved if the developer has a financial interest in an existing development that has delinquent special assessment taxes. All petitioners for new development under this policy will be required to certify, under oath, that they have no financial interest in any property with delinquent special assessments anywhere in the City.

Section 3. Initiation of Public Improvements. The City will facilitate new development by considering the installation of public improvements (streets, sidewalks, traffic signals, storm sewers, water lines, sanitary sewer, etc.) upon submission of the following items from developer (“Developer Deliverables”).

- a) A valid petition in accordance with K.S.A. 12-6a01 *et seq.*, including but not limited to:
 - i) The petitioner shall indicate the recommended method of distributing the costs of improvements within the benefit district.
 - ii) When notice and hearing on any such petition is required or deemed advisable by the City, the Developer shall, at its expense, provide the City with a current list of all owners of real property within the benefit district.
 - iii) A Project estimate or opinion of probable costs produced by a professional engineer licensed by the State of Kansas shall accompany all submitted petitions.
- b) A Developer’s Agreement in a form satisfactory to the City.
- c) A required financial commitment. Said commitment is considered to be provided whenever the City has been furnished with:
 - i) A written guaranty of payment of assessments in form acceptable to the City attorney; and
 - ii) A financial guaranty equaling 35% of the total estimated cost of the Project. Project cost shall include engineering design, construction, inspection, temporary note interest, and administration. The required financial guaranty must consist of one or more of the following:
 - (1) Cash.

- (2) Cashier's check.
 - (3) Escrow account.
 - (4) Irrevocable letter of credit renewable for a term equivalent to the proposed term of the special assessments.
 - (5) A surety bond on a form approved by the City, from a company authorized to sell insurance in the State of Kansas, and have a rating of at least A - (excellent) from A&M Best. Developers shall be responsible for the costs associated with the City's independent verification of the surety provider's rating.
- d) Submission of Requirements; Timing.
- i) The Developer Deliverables must be in place and submitted to the City prior to the City Council's acceptance of dedications within the applicable final plat, but no later than six months following the City's notification to the developer that the Project may proceed utilizing special assessment financing ("Developer Submission Deadline"). If the developer elects to initially guaranty only the design engineering of the Project, the 100% guaranty to cover design engineering must be provided within thirty days after the developer receives the City's notice of its intent to proceed with the financing of the Project. Full guaranties must still be provided by the Developer Submission Deadline. Should the developer fail to submit all Developer Deliverables by the Developer Submission Deadline, the developer's Project shall be deemed abandoned and the Project shall lose its allocation for special assessment financing. For good cause shown the Developer Submission Deadline may be extended by the City Council within its absolute and sole discretion. Further, in the absolute and sole discretion of the City staff, the recording of a land developer's final plat previously accepted by the City Council may be conditioned upon delivery to the City of the Developer Deliverables. A developer may submit multiple plats for final approval, which represent separate phases of a proposed development, but the City Council's acceptance of dedications with respect to any plat(s) representing any phase of development shall be conditioned upon the delivery of the Developer Deliverables applicable to that phase. Developer Deliverables shall be appropriate to that phase of development with the amount of petition(s) and financial guaranties to be based upon engineer's estimated costs for the Project or applicable phase contemporaneous with the City Council's consideration of the plat of the Project or such phase.

Section 4. Waiver of Financial Guaranty Required. Installation of public improvements with special assessment financing may be authorized by the governing body without a financial commitment when deemed to be in the public interest and when one or more of the following conditions exist:

- a) Improvements are ordered in by resolution of the governing body;
- b) The majority of land in the benefit district is in public ownership; or

- c) The benefit district is in multiple ownership and a majority of the land therein is developed with principal buildings.

Section 5. Project Scheduling. The number of Projects financed and the extent of any financing will be determined by the amount of financing available for that fiscal year determined by the Debt Policy for the City and the number of other Projects waiting for financing.

Section 6. Term of Special Assessments.

- a) All special assessments levied to finance public improvements shall be spread over a term not to exceed twenty (20) years.
- b) Notwithstanding the foregoing, a Developer or other petitioner may request that assessments for a particular improvement be spread over some other period of time. If the City determines that another assessment period will not adversely affect its security or the interests of present or future owners of property burdened by such assessments, the City may approve such other assessment period, not exceeding the time period allowed by law.

Section 7. Apportionment of Public Improvement Costs. The cost of public improvements shall be apportioned between the Developer and/or property owner(s) and the City-at-large in accordance with the following policies. The policies established by this section are intended to address those circumstances commonly encountered in constructing public improvements, and may be varied by the City's discretion when unusual facts or circumstances are present or when otherwise in the best interests of the City. Notably, potential projects to upgrade substandard infrastructure and/or the installation of the public improvements specified within this section in the absence thereof will begin with the development of a neighborhood plan. This neighborhood plan will investigate and establish findings related to the preferred and/or recommended standards and the cost apportionment for proposed improvements based on the benefit district's unique circumstances, e.g. existing right-of-way, utility conflicts, extend of previous improvements, predominant lot sizes, etc.

- a) Streets.
 - i) New Local Streets: 100% of project costs, including curbs, gutters and appurtenant storm drains in conformance with the City's Subdivision Regulations shall be assessed to the property within the benefit district. If the City desires alternative surfacing options, (e.g. concrete as opposed to asphalt), any additional costs shall be charged to the City-at-large.
 - ii) Existing Local Sand, Gravel and/or Chip-Seal Streets: Upon receipt of a valid petition from property owners of a benefit district, local substandard streets within the corporate limits of the City may be improved to a street section consisting of a minimum of six inches of base stabilization with treated subgrade and a 24-foot wide driving surface, paved with a minimum of six (6) inches of asphalt or concrete. 50% of the total project costs shall be assessed to the benefit district, and 50% will be charged to the City-at-

large. If the City desires in its discretion to improve the streets to the standards required by the City's Subdivision Regulations, 50% of the total project costs will nonetheless be assessed to the benefit district, and 50% will still be charged to the City-at-large.

- iii) Collector Streets: That portion of project costs, including curbs, gutters and related storm drains, equal to the costs of a local street and that portion of project costs attributable to construction of required turning lanes shall be assessed 100% to the benefit district. All other costs, including the costs of additional width or thickness needed to meet City standards and specifications, shall be assessed to the City-at-large.
 - iv) Arterial Streets (where paving does not exist at the time of platting to the entrance of a proposed subdivision): That portion of project costs equal to the costs of a Class D Arterial Street as defined by the City's Subdivision Regulations, and that portion of project costs attributable to the construction of required turning lanes shall be assessed 100% to the benefit district. All other costs associated with additional improvements required for Class A, Class B or Class C Arterial Streets as defined by the City's Subdivision Regulations shall be charged to the City-at-large.
 - v) Non-Residential Streets: When a benefit district consists wholly or primarily of non-residential property, 100% of the costs of all public streets located within or required to support such development shall be assessed to the benefit district.
 - vi) The cost of improvements providing direct benefit to adjacent property such as curb cuts, driveways, frontage roads, special turn lanes, etc., shall be assessed 100% to the benefited property.
- b) Sidewalks.
- i) Sidewalks Adjacent to New Local Streets: 100% of the projects costs including the cost of handicap accessible ramps built at the intersections shall be assessed to the benefit district.
 - ii) Sidewalks Adjacent to New Collector Streets: That portion of project costs equal to the costs of construction of a standard sidewalk five (5) feet in width, including handicap accessible ramps built at the intersections in conjunction with new street construction, shall be assessed 100% to the benefit district. All other costs, including the costs of additional width to meet City standards and specifications, shall be charged to the City-at-large.
 - iii) Non-Residential Sidewalks: When a benefit district consists wholly or primarily of non-residential property, 100% of the costs of all public sidewalks located within or required to support such development shall be assessed to the benefit district.
 - iv) When sidewalk improvements located along either existing arterial or collector streets are initiated by petition by a benefit district, an amount equal to the costs to construct a standard sidewalk five (5) feet in width shall be assessed to the benefit district. All

other costs, including the costs of additional width to meet City standards and specifications, shall be charged to the City-at-large.

- v) When sidewalk improvements located along either arterial or collector streets are initiated by the governing body, 100% of the costs shall be charged to the City-at-large.

c) Storm Drainage.

- i) Drainage improvements in developed areas of the City that have been included in a previous drainage benefit district shall be funded 50% by the benefit district and 50% by the City-at-large.
- ii) Drainage improvements in developed areas of the City that have not been included in a previous drainage benefit district shall be funded 100% by the benefit district.
- iii) Drainage improvements in undeveloped areas of the City shall be funded 100% by the benefit district.

d) Sanitary Sewer.

- i) In new residential developments, the cost of mains, manholes, lateral extensions and pump stations for eight-inch sewer mains shall be assessed 100% to the benefit district. If the City desires to place a larger sewer main to or through the area to benefit the overall system, the benefit district shall pay the cost equivalent of an eight-inch line and the City shall pay the remainder.
- ii) In existing residential areas within the corporate limits of the City without public sanitary sewer service, mains and manholes will be constructed upon receipt of a valid petition from property owners of a benefit district. 100% of the project costs shall be assessed to the benefit district.
- iii) In a non-residential area, the benefit district shall pay 100% of the cost of the collection system necessary to satisfy their requirements including oversizing of lines.
- iv) The cost of service lines shall be paid by the benefited property.
- v) For projects that require a new interceptor sanitary sewer line or the extension thereof, the benefit district shall pay the equivalent of an eight-inch line and the City shall pay the remainder.

e) Water.

- i) In residential areas, the cost of eight-inch or smaller water lines, valves, hydrants, and appurtenances shall be assessed 100% to the benefit district. If the City desires to place a larger water line to or through the area to benefit the overall system, the benefit district shall pay the cost equivalent of an eight-inch line and the City shall pay the remainder.

- ii) In residential areas within the corporate limits of the City without public, potable water service, water lines, valves, hydrants, and appurtenances will be constructed upon receipt of a valid petition from property owners of a benefit district. 100% of the project costs shall be assessed to the benefit district.
 - iii) In a non-residential area, the benefited property owner or owners shall pay 100% of the cost of the water lines. Hydrants, and appurtenances necessary to satisfy their requirements including oversizing the lines.
 - iv) The cost of water service lines shall be paid by the benefited property.
- f) Traffic Control Signals.
- i) When such improvements are required to control the intersection of a private drive or non-residential entrance with a public street, 100% of the cost thereof shall be assessed to the benefit district.
 - ii) When such improvements are required to control the intersection of an existing public residential entrance with a public street, 100% of the cost thereof shall be charged to the City-at-large.

Section 8. Benefit District Created After Original District. Pursuant to K.S.A. 12-6a19, the City shall require the owners of property, which benefits from such improvement for water lines, hydrants and appurtenances, and sewer collection system, but which was not included within the original improvement district, to pay a benefit fee at the time the owners of such property request, by petition to be served by such improvement. The amount of such benefit fee shall not exceed the amount of the assessment, including principal and interest, which would have been levied against the property, had it been included in the original improvement district. The benefit fee shall be assessed only against the property described in the petition requesting service by the improvement. Unless otherwise provided by the City, such benefit fee shall be due and payable at the time the property begins being served by the improvement, and shall be subject to the same interest, as assessments against property originally included in the improvement district for such improvements. Any benefit fees paid hereunder shall be applied: (a) To the remaining principal and outstanding interest on the bonds issued to finance the improvement, with a resulting pro rata reduction of the assessments against property originally included in the improvement district for such improvement; or (b) to the City general bond and interest fund if any of the cost of the improvement was paid by the City-at-large.

Section 9. Demand Against Issuer of Financial Guaranty. In the event that any special assessment is not paid when due, the financial guaranty will be applied on July 1 of each year by

the City to satisfy the principal and interest costs and any additional costs occasioned by delinquent payment of the bonded public improvements.

Section 10. Release or Reduction of Financial Guaranty. Upon request by the Developer, the financial guaranty shall be released on the following schedule:

- a) Upon completion and acceptance by the City of all improvements, the financial guaranty may be reduced to an amount equal to 35% of the total actual cost of the improvements. Said actual cost will include the actual cost of construction, engineering, and good faith estimates of temporary note interest and administrative costs.
- b) Upon expiration of one-half (1/2) of the original length of maturity of bonds issued for improvements, or upon issuance of certificate of occupancy for a principal building on at least one-half (1/2) of the properties within the development that petitioned for the improvements, whichever first occurs, an amount equal to 50% of the original amount of the financial guaranty shall be released, less any amounts which have been previously applied towards completion or bond principal and interest; and
- c) Upon the maturity date of the bonds issued for improvements, or upon the issuance of certificates of occupancy for a principal building on at least 75% of the properties within the development that received the improvements, whichever first occurs, the remaining portion of the financial guaranty shall be released, less any amounts which have been previously applied towards completion or bond principal and interest.

Section 11. Alternative Financing.

- a) **Butler County Financing.** Sponsors of projects to be constructed outside of the corporate limits of the City but within the extraterritorial jurisdiction of the City may request that the Project be constructed utilizing Butler County's bonding ability, with the following conditions:
 - i) If a Project sponsor wishes to develop in the extraterritorial jurisdiction and be provided City wastewater and water services, the Project sponsor must submit a request to the City for those services. The request will include the estimated number of gallons per day of water consumption and wastewater generated by the Project, the proposed use of the land, and its consistency with the comprehensive plan of the City.
 - ii) All approvals must be processed through the planning procedures established for properties in Butler County, but within the City's extraterritorial jurisdiction.

- iii) All Projects will agree to be annexed by the City at such time. This agreement will be included on any deeds or titles of land generated by the Project.
 - iv) All Projects that are within the extraterritorial jurisdiction and connected to City water and wastewater services will pay the same impact fees as required of those Projects within the corporate limits of the City.
- b) Other alternative financing methods within the corporate limits of the City will be reviewed on a case-by-case basis.

Section 12. Applicability. This policy will be in effect upon adoption by the governing body and be in effect for all Projects that have not posted sufficient guaranties for special assessments with the City upon said date of adoption.

Section 13. Exceptions. Based upon conditions that exist at the time of the request, exceptions to this policy may be granted by the governing body. All requests for exceptions must be submitted in writing to the governing body prior to final plat or site plan approval. The request for an exception must state the provision of this policy from which the applicant requests an exception and the reason for the requested exception.

Section 14. Modifications. This policy may be modified from time to time without notice. Nothing herein should be construed by a developer/petitioner to constitute a commitment by the City to assist in the financing of public improvements.

Section 1. This Resolution shall supersede Resolution Nos. 8-30, 10-17, 14-16, 14-17, 15-12, 20-05, 21-06 and all resolutions pertaining to Section 2-10 Financing of Public Improvements within the Code of Municipal Policies (Municipal Policies). The Resolution shall also supersede Resolution 72-01, 89-02, 94-01, 98-60, 01-14, 04-09B, 07-24, 07-33 and all resolutions pertaining to Section 5-1: Street Policy and delete 5-1: Street Policy from the Code of Municipal Policies (Municipal Policies).

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PASSED, ADOPTED and APPROVED by the governing body of the City of Andover, Kansas
this 10th day of September, 2024.

CITY OF ANDOVER, KANSAS

[Seal]



ATTEST:



Ronnie Price Mayor



Dana Engstrom, City Clerk