

1 **RESOLUTION NO. 9452**

2
3 A RESOLUTION introduced by Interim City Manager Richard U. Nienstedt amending
4 Resolution No. 9379 to change the references from 'Rural' to
5 'Reinvestment' in the City of Topeka's policy for Reinvestment
6 Housing Incentive Districts in order to conform to K.S.A. 12-5241, as
7 amended by 2023 S.B. 17
8

9 WHEREAS, the City of Topeka, Kansas (the "City") recognizes that it is essential
10 to stimulate economic growth and development of new residential housing developments
11 in order to provide services, employment and tax revenues for the benefit of the
12 community; and
13

14 WHEREAS, the declared purpose of the ~~Rural~~ Reinvestment Housing Incentive
15 District Act is to encourage the development and renovation of housing in ~~the rural~~ areas
16 of Kansas that experience a shortage of housing by authorizing cities and counties to
17 assist directly in the financing of public improvements that will support such housing; and
18

19 WHEREAS, the Housing Study identified a need for approximately 420 units per
20 year over the next 5 years to keep up with anticipated demand and another 2,300 units
21 to catch up from past demand in order to have a balanced market with lower housing cost
22 burdens; and
23

24 WHEREAS, to meet these housing goals, the City recognizes the need to
25 occasionally assist in the redevelopment of property located within the City by the creation
26 of Rural-Reinvestment Housing Incentive Districts (RHID), an economic development tool
27 established by K.S.A. 12-5241 et seq. for the financing of qualified redevelopment
28 projects; and
29

30 WHEREAS, the City finds it in the best interest of the public it serves to establish
31 certain policies and guidelines for the consideration of proposals that may be presented
32 to the City by private developers requesting RHID assistance; and
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34 WHEREAS, all prospective RHID projects must be carefully evaluated by the City
35 because the character of tax revenues generated by different developments can vary
36 widely, and in most cases, will impact other taxing jurisdictions in the Topeka community;
37 and
38

39 WHEREAS, the City desires to use RHID for projects that demonstrate the highest
40 public benefit and encourage an equitable distribution of projects citywide, including
41 downtown, in keeping with the documented demand for housing; and
42

43 WHEREAS, each RHID application submitted to the City will be evaluated on its
44 own merits, and an evaluation of the proposal will be performed by a RHID Committee
45 comprised of City staff and/or consultants; and
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47 WHEREAS, all projects must demonstrate financial and economic reasons such
48 that but-for RHID assistance, the project could not proceed or could not address the City’s
49 housing goals.

50
51 NOW THEREFORE, THE RURAL REINVESTMENT HOUSING INCENTIVE
52 DISTRICT POLICY FOR THE CITY OF TOPEKA, KANSAS WILL BE AS FOLLOWS:

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54 **SECTION ONE: PREFERENCES FOR PROJECTS**

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56 1. The City will use RHID to address housing needs as described in its July
57 2020 Citywide Housing Market Study and Strategy document (the “Housing Study”) as
58 amended from time to time as needed. The City will amend this policy from time to time
59 to adjust the targets below for progress to date or to address changing needs as identified
60 by updates to its Housing Study. The Housing Study identified a need for approximately
61 420 units per year over the next 5 years to keep up with anticipated demand and another
62 2,300 units to catch up from past demand in order to have a balanced market with lower
63 housing cost burdens. The City’s current 3-year average is almost 270 new units per year.
64 Therefore, a target of up to 3,100 units over a 5-year period is the substantiated need that
65 is not being met by the market thus necessitating additional incentives. This total is further
66 broken down by affordable, workforce, senior, market rate, and upscale units as
67 referenced in the Housing Needs Analysis completed as an update to the Housing Study.

68
69 2. The City will use RHID to encourage an equitable distribution of projects
70 citywide in keeping with the documented demand for 900 new units in downtown by 2030.

71
72 3. Per the Housing Study findings for greater housing choices, priority should
73 be given to those projects that diversify the City’s inventory with more attached unit
74 typologies such as duplexes, townhomes, and multi-family projects.

75
76 4. The City will reserve a portion of projected RHID benefits to develop,
77 improve or replace public infrastructure supporting housing developments and to fund
78 multi-modal connections (transit, biking, walking) to housing developments.

79
80 5. The City will use a “but-for” approach (i.e., but-for the presence of the RHID
81 incentive the project could not proceed or could not address the City’s housing goals) in
82 assessing the amount of RHID benefit granted to a housing development, maintaining
83 flexibility with respect to the amount of incremental taxes permitted to be captured and/or
84 the length of time an RHID will remain in place.

85
86 6. Housing developers seeking RHID assistance will need to be prepared to:

- 87
88 • Bear the costs of effecting an RHID incentive (estimated at \$25,000
89 to \$50,000 per project plan). Cost may include, but are not limited to,
90 updating the housing study, preparation of necessary resolutions,
91 ordinances, publication notices, development agreement, and
92 statutory feasibility findings. The City will first apply the

93 nonrefundable application fee described below towards the costs.
94 Once a better estimate of costs is obtained, the City may, at its sole
95 discretion, require a deposit to cover outstanding costs. If an
96 additional deposit is required in addition to the nonrefundable
97 application fee, the City shall return any balance from this deposit
98 upon the applicant's withdrawal of the application or the conclusion
99 of the approval processes.

- 100 • Provide the contractual and financial feasibility guarantees
101 contemplated in the RHID statute (see K.S.A. 12-5245(a)(6)).
- 102 • Provide detailed information regarding the type, timing and
103 implementation plan for the housing they propose to develop.
- 104 • Provide all information to the City required to effect an RHID project
105 plan, as contemplated by Kansas law.
- 106 • Provide evidence in support of its need for RHID incentive under the
107 but-for principle.

108 **SECTION TWO: PROCESS**

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111 1. *Creation of a District.* The City intends to use the Housing Study, as updated
112 from time-to-time at the discretion of the City, to meet the statutory requirement (K.S.A.
113 12-5244) that the City conduct a "housing needs analysis" to determine that "housing
114 needs exist" in Topeka.

115
116 Either the City or a housing developer may initiate the district creation process by
117 delivering to the City Manager a District Pre-Application consisting of the following:

- 118
119 a) A cover letter requesting the creation of a district, including a general
120 description of the housing development expected to occur within the district,
121 the names of the housing developer or developers expected to construct
122 such housing, the expected timing of such housing development, a narrative
123 describing how the district is likely to address the policy goals of the Housing
124 Study and discussion of how the use of RHID is consistent with the City's
125 but-for principle.
- 126 b) A legal description of the proposed district and a map depicting the existing
127 parcels of real estate in the proposed district.
- 128 c) Evidence of site control or a detailed plan for which the developer intends
129 to secure site control.
- 130 d) A certification that neither the developer entity nor any of its
131 shareholders/partners/members is delinquent on its property tax or special
132 assessment payments on any property it owns or controls in Shawnee
133 County.
- 134 e) A certification that neither the developer entity nor any of its
135 shareholders/partners/members has any outstanding utility bills, zoning or
136 property maintenance, or other code cases pending with the city.
- 137 f) A non-refundable application fee of \$5,000. If the Developer withdraws the
138 application, the City Governing Body elects not to create the District or does

139 not approve the Housing Plan, or Kansas Secretary of Commerce elects to
140 not approve the application, the City shall keep the application fee to
141 reimburse it for the costs of processing and reviewing the application. The
142 Developer shall not be entitled to any refund of the fee.
143

144 Within thirty (30) days of receipt of a complete District Pre-Application, the City Manager
145 will direct the preparation of a resolution for consideration by the Topeka Governing Body
146 at a regular meeting not later than sixty (60) days following the City Manager's receipt of
147 a complete District Pre-Application. The resolution shall include:
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- 149 a) The legal description and the map provided in the District Pre-Application;
150 and
- 151 b) The findings required in K.S.A. 12-5244(a)(1) through (a)(4).
152

153 If the resolution is adopted by the Topeka Governing Body, the City Manager or designee
154 will provide for publication of the adopted resolution as required in K.S.A. 12-5244(b) and
155 will request approval by the Kansas Secretary of Commerce in the manner provided in
156 K.S.A. 12-5244(c).
157

158 2. *Creation of a Housing Development Plan.* Once the Kansas Secretary of
159 Commerce has approved creation of a district, one or more housing developers may
160 petition the City Manager for the execution of a housing development plan within such
161 district. This petition will need to include all of the following:
162

- 163 a) Narrative describing the overall development plan specifically addressing
164 how the plan meets the policy goals of the Housing Study.
- 165 b) A legal description of the proposed project area if such project area is not
166 coterminous with the district boundaries.
- 167 c) A map of the proposed project area if such project area is not coterminous
168 with the district boundaries.
- 169 d) A table (Excel format preferred) listing (i) each parcel within the proposed
170 project area, listing the current Shawnee County assessed valuation of land
171 and improvements separately and (ii) the property owner's name and
172 address for each parcel.
- 173 e) A narrative and a graphical description of the housing and public facilities
174 that the developer will construct or improve, and the location of each within
175 the project area.
- 176 f) A narrative describing any improvements the developer expects the City to
177 make to support the planned project, including any on or off-site public
178 infrastructure and coordination with other public agencies, etc.
- 179 g) A listing of the names, addresses and specific interests in real estate in the
180 project area of the housing developer(s) responsible for development of the
181 housing and public facilities in the project area.
 - 182 • For the purpose of this requirement, "housing developer(s)" means
183 both the name of the business entity or entities, and the natural
184 persons comprising the ownership of such entity or entities.

- 185 h) A detailed total development cost budget for the housing and other
186 improvements to be constructed including an identification of costs for which
187 the developer will seek reimbursement from RHID proceeds.
- 188 i) A narrative describing all public incentives sought in support of the planned
189 project (including those that might be provided by other government
190 agencies, foundations or non-profits), including identification of whether the
191 developer seeks potential bond financing related to the RHID.
- 192 j) A detailed construction schedule, identifying any phasing of construction
193 anticipated.
- 194 k) A detailed financial pro forma, showing the operation of the project over the
195 life of the RHID, including sufficient detail on assumptions so the City may
196 determine, among other things, the developer's expectations for the number
197 and potential valuation of housing units to be constructed, the developer's
198 expected private financing for the project (including debt, equity and other
199 sources), and sufficient other detail to permit the City to make the required
200 statutory finding as provided in K.S.A. 12-5245(a)(7).
- 201 l) A detailed description of the contractual assurances the developer is willing
202 to make, including any financial guarantees it is willing to provide, to
203 "guarantee the financial feasibility" of the project, all as required by K.S.A.
204 12-5245(a)(6) (together, the "Plan Pre-Application"), along with
205 commercially reasonable information evidencing developer's financial and
206 operational capabilities to effect the proposed project as presented.

207
208 Unless there are extenuating circumstances, within fifteen (15) days of receipt of a
209 complete Plan Pre-Application, the City Manager will direct the City's Finance Director, or
210 other City Manager designee, to review the Plan Pre-Application for completeness
211 (compared both to statutory requirements and the requirements of this policy), to prepare
212 a financial analysis of the developer's proposal and to provide a written report to the City
213 in conformance with K.S.A. 12-5245(a)(7).

214
215 The City's Finance Director may request additional information from the developer to
216 assist in its analysis and the developer may request to provide certain information directly
217 to the City's Finance Director, particularly with respect to its financial capacity to perform.
218 The Finance Director may also consider: (a) the extraordinary or unique costs of the
219 housing development plan; (b) the developer's (and its shareholders'/partners'/members')
220 compliance with other City development agreements; (c) the creditworthiness of the
221 developer; and (d) the experience of the developer constructing, completing and
222 managing projects of a similar nature, scale and complexity. The City's Finance Director
223 will provide its written report in draft to the City Manager within thirty (30) days after receipt
224 of the Plan Pre-Application and any supplemental information it requests of the developer.

225
226 As authorized under the Kansas Open Records Act, the City will treat as confidential any
227 such sensitive financial information provided by the applicant or its guarantors to the City's
228 Finance Director, other city advisors or legal counsel, and will, if requested, enter on the
229 City's behalf into a non-disclosure agreement; provided, however, that such advisors or

230 legal counsel must have the right under such agreement to convey their conclusions
231 about the applicant's ability to meet the requirements above based upon its review.

232
233 Concurrently with the City Finance Director's work, the City Manager will coordinate with
234 City departments, as applicable, to identify any concerns with the City's ability to support
235 the proposed project, including, but not limited to, availability of utilities, the cost to
236 construct public infrastructure identified by the developer as the City's responsibility,
237 traffic considerations and the ability to provide public safety services to the project, etc.

238
239 3. *RHID Review Team.* Within fifteen (15) days of receipt of the City Finance
240 Director's draft analysis, the City Manager will convene a meeting of the RHID Review
241 Team to include: the Mayor, Deputy Mayor, affected district council member(s), City
242 Manager, Finance Director, Public Works Director, Utilities Director, Planning Director
243 and City Attorney. In the absence of one of the named members above, the City Manager
244 may designate alternative members to the RHID Review Team as appropriate. The RHID
245 Review Team will review the Plan Pre-Application, the City Finance Director's draft
246 analysis and the City Manager's review of the City's ability to support the project, and may
247 call on the financial advisor, City bond counsel and other resources to assist in its
248 deliberations.

249
250 After reviewing the information presented, the RHID Review Team may (i) request the
251 City Manager to seek additional information or provide additional analysis; (ii) make a
252 recommendation to the Governing Body to establish the District and approve the plan
253 with or without conditions; or (iii) not approve the plan.

254
255 In the event the RHID Review Team requests the City Manager obtain additional
256 information from the developer, it will include a reasonable timeline for the completion of
257 such additional work and a schedule for its reconsideration. Upon reconsideration, the
258 RHID Review Team may take one of the actions identified above.

259
260 In the event the RHID Review Team makes a recommendation to not approve, the City
261 Manager will report on the action of the RHID Review Team at a future Governing Body
262 meeting.

263
264 In the event the RHID Review Team makes a recommendation of approval:

- 265
- 266 a) The City Attorney, or appropriate designee, will prepare the resolution
267 contemplated in K.S.A. 12-5245(b), setting a date for a public hearing on
268 the creation of the district for inclusion on a regular City Governing Body
269 agenda within thirty (30) days of the action of the RHID Review Team.
 - 270 b) The City Attorney, or appropriate designee, will prepare a funding
271 agreement, to be considered at the same meeting as the resolution setting
272 the public hearing, under which the developer(s) will agree to pay the City
273 sufficient moneys to cover the City's costs in analyzing and effecting the
274 district's creation.

- 275 c) The City Attorney, or appropriate designee, will draft a development
276 agreement and enter into negotiations with the developer and its counsel
277 on the contents of such development agreement. The purpose of the
278 development agreement will be to translate into contract form the rights,
279 responsibilities and obligations of both the City and the developer in the
280 implementation of the housing development plan. The City Attorney may
281 involve the City's financial advisor, bond counsel and other resources in the
282 development and review of the development agreement.
- 283 d) The City's Finance Director will finalize its analysis for inclusion in the
284 Governing Body agenda packet and will incorporate any provisions from the
285 development agreement that might affect its analysis.
- 286 e) The City Manager will work with appropriate City departments to review
287 project budgets for any capital improvements required to effect the housing
288 development plan.
- 289 f) The City Planning Director, or appropriate designee, will work with the
290 developer to effect any planning and zoning approvals required to effect the
291 housing development plan.

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293 4. *Governing Body Review and Approval.* Once a housing development plan
294 is recommended for approval from the RHID Review Team, it will appear on the
295 Governing Body agenda as follows:

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- 297 a) Approval of a funding agreement with the developer(s).
- 298 b) A resolution setting a public hearing on the creation of the district, consistent
299 with the requirements of K.S.A. 12-5245(b), at least thirty (30) and not more
300 than seventy (70) days from the adoption date of this resolution.
- 301 c) After this public hearing is held, at the same meeting or at a subsequent
302 meeting, the Governing Body may consider an ordinance creating the
303 district and adopting the housing development plan.
- 304 d) At the meeting at which the Governing Body considers the ordinance
305 creating the district and adopting the housing development plan it will also
306 consider:
 - 307 i. Approval of the fully-negotiated development agreement(s) with the
308 housing developer(s) for the project(s).
 - 309 ii. Approval of any other City-provided incentives related to the
310 project(s).
 - 311 iii. Approval of project budgets related to any City-financed
312 infrastructure related to the project(s) including the adoption or
313 amendment of the CIB/CIP, if necessary.
 - 314 iv. Approval of any planning or zoning matters required to effect the
315 project(s).
- 316 e) The effectiveness of all such related matters will be conditioned upon the
317 RHID district creation ordinance surviving the thirty (30) day veto period of
318 Shawnee County and any affected school district.

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320 **SECTION THREE: INCENTIVE STRUCTURE**

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1. *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.

2. *Reimbursable Costs.* The City will generally consider all statutorily-permitted uses of RHID proceeds as reimbursable costs (see K.S.A. 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 or the housing developer can provide satisfactory evidence to the City Manager that the land acquisition was purchased at fair market value which may include the cost of reimbursing delinquent special assessments or other delinquent taxes from an owner affiliated with the housing developer and that the reimbursement of the acquisition costs satisfy the public purpose doctrine.

3. *Downtown.* Buildings or structures must be more than twenty-five (25) years old and used primarily for residential use located in the central business district or in a business or commercial district within a qualified census tract as approved by the Secretary of Commerce. Certification of the building/structure’s age must be provided to the Secretary of Commerce. Improvements are limited to the second or higher floors. Improvements for commercial purposes are not eligible. K.S.A. 12-5249

4. *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:

- a) The project is complete, leased-up (multifamily)/substantially occupied (single family) and stabilized (multifamily).
- b) Shawnee County has completed at least four (4) tax valuations of the district.
- c) 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.

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

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

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

385
386 5. *No Issuance by Third Parties.* The City will not consent to and will include
387 language in any development agreement prohibiting the issuance of bonds by any third-
388 party on behalf of the developer to be secured by an assignment of the developer's rights
389 under the development agreement. For the purposes of clarity, this language is not
390 intended to prevent or preclude developer's collateral assignment of the development
391 agreement to a bank to secure the developer's private financing of the project.

392
393 **SECTION FOUR: HOUSING DEVELOPER GUARANTEES**

394
395 1. *Assurances Required.* The City interprets K.S.A. 12-5245(a)(6) as requiring
396 that housing developers provide contractual assurances of their performance under a
397 development agreement related to an RHID project. The City will expect a housing
398 developer to offer one or more of the following contractual assurances of performance as
399 part of the development agreement. The City does not expect a developer to provide all
400 of these contractual assurances and will work with the developer on what is the most
401 appropriate assurance for a particular project:

- 402
- 403 a) A firm commitment to construct and complete a substantial percentage of
404 the housing units and related infrastructure proposed in its Plan Pre-
405 Application within a specified timeframe.
 - 406 b) A performance and payment bond sufficiently sized to cause completion of
407 a substantial percentage of the housing units and infrastructure proposed
408 in its Plan Pre-Application.
 - 409 c) A bank letter of credit sufficiently sized to secure completion of a substantial
410 percentage of the housing units and infrastructure proposed in its Plan Pre-
411 Application.

- 412 d) Personal financial guarantees of one or more owners of the developer to
- 413 ensure completion of a substantial percentage of the housing units and
- 414 infrastructure proposed in its Plan Pre-Application.
- 415 e) Other contractual assurances that, in the sole determination of the City,
- 416 meet the intent of the statute.

417
418 **SECTION FIVE: CITY REMEDIES IN THE EVENT OF DEVELOPER DEFAULT**

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

- 423
- 424 a) Reduction to or elimination of the amount of RHID proceeds that can be
- 425 used to reimburse eligible costs.
- 426 b) Shortening of the expiration of the RHID incentive.
- 427 c) Cross-default against other incentives granted by the City.
- 428 d) Other penalties or claw backs unique to each development agreement.

429
430 ADOPTED and APPROVED by the Governing Body on August 8, 2023.

431 CITY OF TOPEKA, KANSAS

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436 _____
437 Michael A. Padilla, Mayor

438 ATTEST:

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442 _____
443 Brenda Younger, City Clerk