

Resolution No. 09-2023

A RESOLUTION ESTABLISHING POLICIES FOR MUNICIPAL FINANCING OF CERTAIN PUBLIC IMPROVEMENTS AND LEVYING OF SPECIAL ASSESSMENTS WITHIN THE CITY OF DERBY, KANSAS; AND REPEALING RESOLUTION NO. 32-2016 OF THE CITY.

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

WHEREAS, City policy requires, as a condition precedent to financing for such public improvements, that petitions for public improvements be supported by adequate assurances of full and timely payment of annual special assessments before such improvements are authorized; and

WHEREAS, the City has determined that a portion of the cost of public improvements should be paid by the city-at-large where the benefits of such improvements extend beyond the area of immediate impact; and

WHEREAS, the City is not obligated to approve improvements for which petitions are submitted, but does seek to satisfy the industry’s need for predictability in decisions affecting availability of municipal financing for public improvements; and

WHEREAS, the City has identified a need for revision of its current policy with respect to construction and financing of public improvements, as set forth in Resolution No. 32-2016;

NOW, THEREFORE, be it resolved by the Governing Body of the City of Derby, Kansas:

Section 1. Definitions.

- a. **“City”** means the City of Derby, Kansas.
- b. **“Cost,” “costs,” or “project costs”** means the entire cost of installing a public improvement, including but not limited to costs for engineering design, acquisition of necessary lands or other property rights, construction, inspection, temporary note interest and administration.
- c. **“Developer”** means any person, firm, corporation or other entity that subdivides real property located within the City and petitions the City for construction and financing of any public improvement required therefor pursuant to K.S.A. 12-6a01 *et seq.*, or other statutory or ordinance authority for construction and municipal financing of such improvements.
- d. **“Public Improvement”** means any infrastructure or other improvement, including but not limited to streets, sidewalks, sanitary sewer, water and storm drainage

improvements, which is constructed and financed pursuant to K.S.A. 12-6a01 *et seq.* or other statutory or ordinance authority.

Section 2. Initiation of public improvements. a. The City encourages new development by permitting developers to petition, pursuant to K.S.A. 12-6a01 *et seq.*, for installation of public improvements including but not limited to streets, sidewalks, storm drains, water lines, and sanitary sewers; provided, that the Developer, as a condition precedent to initiation of any such improvement, makes any advance payment required therefor pursuant to this policy and furnishes financial security satisfactory to the City for payment of special assessments to be levied in connection with such improvements. Such financial security may, at the City's sole discretion, consist of:

- (1) A deposit, in cash or cash equivalent, equal to 20% of estimated project costs, or
- (2) An irrevocable letter of credit, corporate surety bond or other equivalent financial guaranty equal to 35% of estimated project costs.

Any such advance payment or deposit shall be used to reduce project costs to be financed through issuance of debt instruments by the City and recovered by levy of special assessments. Required financial security shall be furnished to the City prior to award of a design contract for the petitioned improvements. In the event actual project costs are lower than estimated costs, required financial security may at the City's discretion be correspondingly reduced by partial refund of a deposit or reduction of the principal amount of a letter of credit or surety bond.

b. Installation of public improvements with special assessment financing may be authorized by the City Manager without financial security when deemed to be in the public interest and when one or more of the following conditions exist:

- (1) Improvements are ordered by resolution of the Governing Body;
- (2) The majority of land in the improvement district is in public ownership; or
- (3) There are multiple owners in the proposed improvement district and a majority of the land therein is developed with residences or other principal buildings.

c. All petitions for public improvements shall include the proposed method for distribution of associated costs. 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 the owners of all property within the proposed improvement district.

d. Nothing in this section 2 shall be construed to limit the City's authority to require other or additional financial security, including a letter of credit or surety bond for more than 35% of project costs, as a condition precedent to authorization or construction of public improvements petitioned for by a Developer.

Section 3. Limitation on Total Special Assessments in New Subdivisions. The City may, at the time petitions are presented for a proposed subdivision, determine a maximum feasible monthly or annual assessment to be levied upon the properties in such subdivision and may decline to approve such petitions if it appears, based on estimated project costs, that special assessments will exceed the maximum so established. Should it appear that required improvements would result in assessments in excess of the maximum determined by the Governing Body to be feasible, the Developer may:

- a. Redesign or modify the size, scope or character of the subdivision;
- b. Privately finance construction of some or all required improvements; or
- c. Abandon or postpone development of the subdivision.

Section 4. Term of Special Assessments. a. All special assessments levied to finance public improvements constructed in or conjunction with developing residential subdivisions shall be spread over a term of twenty (20) years, except that special assessments to finance deceleration lanes, acceleration lanes, traffic signals, arterial sidewalks, and paving of sand/gravel streets in existing neighborhoods shall be spread over a term of ten (10) years.

b. All special assessments levied to finance public improvements constructed in or in conjunction with non-residential subdivisions shall be spread over a term of fifteen (15) years.

c. 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 in its sole discretion approve such other assessment period.

Section 5. Apportionment of Public Improvement Costs. The cost of public improvements shall be apportioned between the Developer and the city-at-large in accordance with the following policies. Unless otherwise provided herein, a Developer may meet its obligation to pay all or a portion of the cost of a public improvement by submitting a valid petition therefor, in a form acceptable to the City, all pursuant to K.S.A. 12-6a01 *et seq.*

a. Streets.

(1) New Local Streets. 100% of project costs, including curbs, gutters and related storm drains, shall be charged against property within the improvement district.

(2) Local sand/gravel streets annexed into the City may be improved to a rural road section approved by the City Engineer upon receipt of a valid petition from property owners of an appropriate improvement district. 65% of the project costs shall be charged against property within the improvement district and 35% shall be charged against the city-at-large.

(3) Collector Streets. That portion of project costs equal to the cost of a local street and that portion of project costs attributable to construction of required turning lanes shall be charged against the improvement district; all other costs, including the cost of additional width or thickness needed to meet city standards and specifications, shall be charged against the city-at-large.

(4) Arterial Streets. That portion of project costs attributable to construction of a local street and required turning lanes shall be charged against property within the improvement district; all other costs, including the cost of additional width or thickness required to meet City standards and specifications, shall be charged against the city-at-large.

(5) Commercial Streets. When an improvement district consists wholly or primarily of commercial property, 100% of the cost of all public streets located within or required to support such development shall be charged against property within the improvement district.

(6) Improvements benefiting specific property. 100% of the cost of such improvements, including but not limited to curb cuts, driveways, frontage roads, special turn lanes, shall be charged against property within the improvement district.

b. Sidewalks. Except as otherwise required hereby or pursuant to City ordinance, project costs, including handicapped-accessible ramps at intersections, shall be charged against property within the improvement district.

(1) With respect to sidewalk improvements located along arterial streets and initiated by resolution of the Governing Body without petition, an amount equal to the cost to construct a standard sidewalk five (5) feet in width shall be charged against property within the improvement district; any excess cost shall be charged against the city-at-large.

(2) With respect to sidewalk improvements located near schools, identified as a priority project in the City's Capital Improvements Plan, and initiated by petition of the owners of property within the improvement district, an amount equal to 50% of the cost to construct a standard sidewalk (width determined by City Engineer) shall be charged against property within the improvement district; any excess cost shall be charged against the city-at-large.

c. Storm Drainage.

(1) 100% of the cost of drainage improvements, including levees and related improvements, of general benefit to the City shall be charged against the city-at-large.

(2) 50% of the cost of drainage improvements in developed areas which were not previously included in a drainage improvement district shall be charged against property within the improvement district and 50% shall be charged against the city-at-large.

(3) 100% of the cost of drainage improvements in developed areas of the City that were previously included in a drainage improvement district shall be charged against the city-at-large.

(4) 100% of the cost of all other drainage improvements shall be charged against property within the improvement district.

(5) For bridge structures determined by the City to serve a significant area beyond the improvement district; 25% of the improvement cost shall be charged against the improvement district and any benefit fee area, and 75% charged against the city-at-large. The cost charged against the improvement district and benefit fee area shall be charged based on the proportion of each benefitting area compared to the overall area served by the improvement. Petitions for such improvements shall include the ability for the City to assess the benefit fee area, at the time properties in the benefit fee area are developed. The City will typically not initiate such improvements unless the improvement district represents at least 25% of the area benefitting from the improvements.

d. Water System.

(1) In residential areas, 100% of the cost of lines up to twelve (12) inches in diameter, together with valves, hydrants and other appurtenances, shall be charged against property within the improvement district; when a larger water line is constructed to or through the area to improve the overall system, an amount equal to the cost of a

twelve (12) inch line shall be charged against property within the improvement district and any excess cost against the city-at-large.

(2) In commercial or industrial areas, 100% of the cost shall be charged against the improvement district.

(3) For large waterline projects, determined by the City to benefit the overall system or a significant area beyond the improvement district; 25% of the improvement cost shall be charged against the improvement district and any benefit fee area and 75% charged against the city-at-large. The cost charged against the improvement district and benefit fee area shall be charged based on the proportion of each benefitting area compared to the overall area served by the improvement. Petitions for such improvements shall include the ability for the City to assess the benefit fee area, at the time properties in the benefit fee area are developed. The City will typically not initiate such improvements unless the improvement district represents at least 25% of the area benefitting from the improvements.

e. Sanitary Sewers.

(1) In residential areas, 100% of the cost of lines up to eight inches in diameter, including required manholes and pump stations, shall be charged against property within the improvement district; when a larger sewer line to or through the area to improve the overall system, an amount equal to the cost equivalent of an eight (8) inch line shall be charged against property within the improvement district and any excess cost against the city-at-large.

(2) In commercial or industrial areas, 100% of the cost, including the cost of service lines, shall be charged against property within the improvement district.

(3) For large sanitary sewer projects including interceptor sewers, lift stations and force main projects, determined by the City to benefit the overall system or a significant area beyond the improvement district; 25% of the improvement cost shall be charged against the improvement district and any benefit fee area and 75% charged against the city-at-large. The cost charged against the improvement district and benefit fee area shall be charged based on the proportion of each benefitting area compared to the overall area served by the improvement. Petitions for such improvements shall include the ability for the City to assess the benefit fee area, at the time properties in the benefit fee area are developed. The City will generally not initiate such improvements unless the improvement district represents at least 25% of the area benefitting from the improvements.

f. Traffic control signals. 20% of the cost shall be charged against property within the improvement district and 80% against the city-at-large; provided, that when such improvements are required to control the intersection of a private drive or commercial entrance with a public street, 100% of the cost thereof shall be charged against property within the improvement district.

g. 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 in its sole discretion when unusual facts or circumstances are present or when otherwise in the best interests of the City.

Section 6. Demand Against Issuer of Letter of Credit or Surety Bond. a. In the event annual special assessments attributable to public improvements financed pursuant to this resolution become delinquent, the City may at its discretion make demand against the issuer of any letter of credit or surety bond given to secure payment of such special assessments, for payment of an amount sufficient to cure such delinquency, including interest thereon. Such issuer or surety shall forthwith satisfy such delinquent special assessment obligation pursuant to the applicable letter of credit or surety bond.

b. The director of finance shall periodically consult with the county treasurer to ascertain the status of all special assessments the payment of which is secured pursuant to this resolution or any preceding resolution requiring such security. In the event the clerk determines that a special assessment so secured is delinquent, the director of finance shall promptly notify the Council of such delinquency, including the amount thereof and the name of the Developer. After examining the circumstances surrounding such delinquency, the Council shall direct staff to take such enforcement action as the Council deems appropriate.

Section 7. Release or Reduction of Financial Security. a. When principal structures conforming to City building and zoning regulations have been constructed on properties against which have been levied at least 35% of the total of all special assessments levied to finance a public improvement and certificates of occupancy for such structures have been issued, the Developer may make written request for a 50% reduction of the face amount of any letter of credit or surety bond issued to secure payment of special assessments for such public improvement. Upon receipt of such request and verification of the facts asserted therein, the City shall reduce the obligation represented by such letter of credit or surety bond as requested and shall notify the Developer and issuer of such reduction in writing.

b. When principal structures conforming to City building and zoning regulations have been constructed on properties against which have been levied at least 75% of the total of all special assessments levied to finance a public improvement and certificates occupancy for such structures have been issued, the Developer may make written request for release of all letters of credit or surety bonds issued to secure payment of special assessments for such public improvement. Upon receipt of such request and verification of the facts asserted therein, the City shall release all such letters of credit or surety bonds and shall notify the Developer and issuer of such release in writing.

c. Notwithstanding any other provision of this resolution:

(1) No request for reduction or release of the security provided by a letter of credit or surety bond shall be granted unless at least six (6) months have elapsed since the most recent reduction of such security; and

(2) No request for reduction or release of the security provided by a letter of credit or surety bond shall be granted for any Developer owning property within the City with respect to which there is, at the time of such request or before action thereon by the City, any due and unpaid special assessment

Section 8. Effect of Outstanding Delinquent Special Assessments. a. No petition for public improvements under K.S.A. 12-6a01 *et seq.*, or other statutory or ordinance authority, to serve a proposed subdivision will be approved by the City if submitted by:

1. A Developer that is currently delinquent in payment of special assessment levied against any real property located within the City; or

2. Any person, firm, corporation or other entity that is currently delinquent in payment of special assessment levied against any real property located within the City, and –

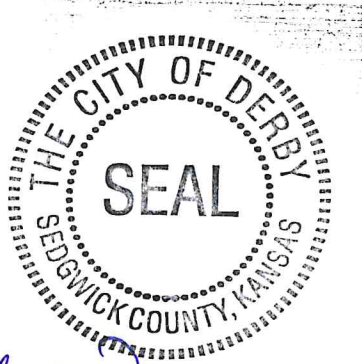
- (a) Has any ownership interest in the Developer;
- (b) Is an employee, officer or agent of the Developer;
- (c) Is owned in whole or in part by the Developer or any person, firm, corporation or entity that has an ownership interest in the Developer; or
- (d) Is owned, in whole or in part, by any person or entity that owns, in whole or in part, any entity that has an ownership interest in the Developer;

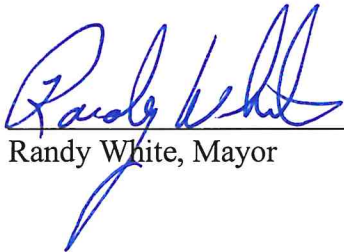
b. Each Developer petitioning for public improvements governed by this Resolution shall, prior to award of any contract for any such improvement, certify under oath that neither such Developer nor any person, firm, corporation or other entity described in subsection “b” of this section has a financial interest in any property anywhere within the City with respect to which there are delinquent special assessments.

Section 9. Exceptions to Policy. Nothing herein shall be construed to limit the authority of the City to take any action it deems appropriate, either consistent with Kansas law or in the exercise of its constitutional home rule powers, respecting the financing of public improvements.

Section 10. Repealer. Resolution No. 32-2016 of the City is hereby repealed.

ADOPTED BY THE GOVERNING BODY of the City of Derby, Kansas, this 28th day of March, 2023.





 Randy White, Mayor

Attest:


 Lynn Chiarleglio, City Clerk

Approved as to form:


 Jacqueline Kelly, City Attorney