

<b>CITY OF OLATHE</b>	Policy No.:	PI-5
<b>COUNCIL POLICY STATEMENT</b>	Date Issued:	Upon Approval
General Scope: Public Improvements	Effective Date:	1-1-2024
Specific Subject: Financing of Public Improvements – Benefit Districts	Cancellation Date:	12-31-25
	Supersedes No.:	Listed Below

Purpose:

To set forth the general public policy objectives of the City as it relates to establishing financing of public improvements through the use of benefit districts.

Statement of Policy:

The statement of policy is hereby incorporated with Resolution No. 23-1077. Previous policies covering Financing of Public Improvements for Benefit Districts was established with Resolution Nos. 21-1073, 20-1068; 18-1110, 16-1095, 16-1004, 14-1066, 12-1082, 10-1077, 08-1129, 07-1156 and 91-1191.

**RESOLUTION NO. 23-1077**

**A RESOLUTION ESTABLISHING A POLICY FOR THE FINANCING OF PUBLIC IMPROVEMENTS THROUGH THE USE OF SPECIAL BENEFIT DISTRICTS IN THE CITY OF OLATHE, KANSAS; AND REPEALING THE PRIOR POLICY RESOLUTION.**

**WHEREAS**, the Governing Body of the City of Olathe, Kansas is authorized to construct public improvements which confer a special benefit upon real property within a definable area of the City in accordance with K.S.A. [12-6a01](#) et. seq., and within three miles thereof pursuant to K.S.A.

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[12-693](#), and to levy special assessments upon the benefited property to pay all or any part of the cost of making such improvements ("benefit district financing"); and

**WHEREAS**, it is the policy of the City to prudently use its authority to create benefit districts as a tool to encourage and promote orderly development within Olathe which will pay for itself; and

**WHEREAS**, the City recognizes the need to consider the use of benefit district financing within the context of its five-year capital improvement plan and debt management policy to properly manage and account for growth; and

**WHEREAS**, the City entrusts its Benefit District Committee, comprised of City staff representing all departments involved in the benefit district process, to determine conformance with its benefit district policy, the level of completeness of benefit district petitions, and to provide recommendations to the Governing Body regarding proposed benefit districts; and

**WHEREAS**, the use of benefit district financing is discretionary with the City, and the Governing Body is under no obligation to approve any petitioned improvements, nor is it relinquishing its authority to initiate improvements by resolution as may be necessary to promote the general welfare of the community.

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

**SECTION ONE: GENERAL POLICIES** . The following general policies and practices apply to benefit district financing in Olathe.

A. Scope. Benefit districts may only be considered for installation of public improvements owned and maintained by the City or through interlocal agreements with neighboring political jurisdictions.

B. Creation. Benefit district improvement proceedings may be initiated by action of the Governing Body or in response to a petition in substantially the form of **Exhibit A**. The Governing Body may initiate the creation of a benefit district for any improvement authorized by K.S.A. [12-6a01](#) et seq. (and within three miles thereof pursuant to K.S.A. [12-693](#)), pursuant to the notice and public hearing procedures set forth in K.S.A. [12-6a04\(a\)](#). The Governing Body may initiate the creation of a benefit district for sanitary and/or storm water sewer improvements without a petition or notice and public hearing, as further set forth in K.S.A. [12-6a04\(a\)](#).

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C. Petition Information. Should a benefit district be initiated by petition, all benefit district petitions submitted for consideration must contain the information required by K.S.A. [12-6a04\(b\)](#) or [\(c\)](#) and K.S.A. [12-6a19](#) if applicable.

D. Costs and Methods of Assessment. Benefit district project costs must include all required reports and studies, preliminary and final engineering, design, land acquisition, utility mitigation, construction, inspection, financing, professional analysis, and administrative costs described in the City's Debt and Fiscal Management Policy No. [F-1](#). All such costs will be for construction of improvements at the highest possible development standard. All petitions for creation of a benefit district must request that the assessments be levied equally per square foot within the benefit area, unless otherwise required by law.

If some other assessment method is used, the assessment method must meet the standard of reasonableness.

The Governing Body is at its sole discretion, upon the recommendation of the City's Benefit District Committee, to determine the proper method of assessment for a benefit district improvement.

E. Petitions. The City may facilitate new development by providing for the financing of public improvements upon submission of a valid petition of the property owners which include or acknowledge the following elements:

1. Maximum Cost. Each petition will include a maximum cost to construct the benefit district improvements, which amount will include appropriate contingencies. Such maximum cost will be based on the presumption that, upon creation of the benefit district, the City will contract for the design and construction of the project under a public solicitation process in accordance with Olathe Municipal Code Chapter 3.50 (Procurement Policies) and any amendments thereto. The City discourages, but reserves the discretion, to allow a petitioner to design and construct benefit district improvements in lieu of the city contracting for those improvements if they can demonstrate that doing so will result in cost savings for property owners within the district. In such event, the City will conduct all standard reviews and inspections of the project (and charge such related fees to the project) to ensure compliance with the City's technical specifications and requirements for the design and construction of public improvements.
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2. Benefit District Boundaries. Each petition will include a legal description which includes all property to be assessed the cost to construct the proposed improvements. It is the City's strong preference that no lots be partially included within and partially excluded from a benefit district.

F. Delinquent Tax Obligations. Benefit district financing will not be approved if any signatory to a petition has a financial interest in an existing development with delinquent tax obligations for any property located within the city. 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, ad valorem taxes, or other federal or state tax liens anywhere within the state of Kansas.

G. Non-Litigation. The Governing Body may not consider an application for creation of an Improvement District if the applicant, its principals or officers, or any related, affiliated, or parent company of the applicant, is currently engaged in or has threatened a suit, action, or proceeding against the City.

H. Signatures of Owners. The City desires to create benefit districts which have the signature of 100% of the property owners within a proposed district and are funded 100% by the landowners in the proposed district. No petition to create a benefit district will be considered if the proposed district contains platted single family lots of less than 3 acres and the owners of such lots have not signed the petition. Notwithstanding the foregoing, the Council may waive this requirement for benefit districts proposed to finance the conversion of private streets to public streets or the construction of water or sewer infrastructure.

I. City Funding of Benefit District Costs. Pursuant to K.S.A. [12-6a07](#), the City may, at its sole discretion, pay up to 95% of the benefit district cost. However, the City will, at its sole discretion, give preference to benefit district projects which are either funded entirely by the benefit district or by no more than 10% from the City. Any City funding is subject to the limitations of the City's debt management policy and availability of funds allocated within the City's annual Capital Improvements Program ("CIP").

J. Benefit Fees.

1. Pursuant to K.S.A. [12-6a19](#), the Governing Body may require the owners of property, which benefit from an improvement initiated by petition but which was not

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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 benefit fee will be the amount of the assessment, including principal and interest (limited to the term of bond financing for the improvement district), which would have been levied against the property had it been included in the original improvement district. The benefit fee will be due and payable in one lump sum at the time the property begins being served by the improvements unless an alternate payment schedule is approved by the Governing Body.

2. If the costs of the project were originally assessed 100% to the original improvement district, any benefit fees paid will first be applied to the outstanding balance of bonds financing the improvements and will result in a commensurate reduction of any remaining assessments to be levied against property originally included in the improvement district. Any benefit fees paid in excess of the outstanding balance of bonds financing the improvements will be remitted to the then current owners of property within the original improvement district to reimburse such owners for assessments related to the improvements. No benefit fees will be collected after bonds financing the improvements have been paid in full.

3. If the costs of the project were shared by the original improvement district and the City, with the City paying the project costs attributable to the additional property subject to the benefit fee, any benefit fees paid will be applied to the City general bond and interest fund. Benefit fees financing improvements paid in whole or in part by the City will be collected regardless of whether bonds financing the improvements have been paid in full.

K. Donation of Easements and Right-of-Way. Petitions which are submitted with the signature of 100% of the property owners within a proposed district will provide for all necessary easements and rights of way within the district to be dedicated without cost to the City. The donation requirement may be waived by the Governing Body. If a property owner refuses to donate land for right-of-way, the Governing Body may assess all costs of purchasing right-of-way for that property upon the non-donating property owner pursuant to K.S.A. [12-692](#).

L. Maximum Term – General Obligation Bonds. Pursuant to K.S.A. [12-6a01](#) et seq., the Governing Body may finance benefit district improvements by the issuance of general

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obligation bonds. The general obligation bond term should not exceed ten (10) years under the parameters of the City's Debt and Fiscal Management Policy No. [F-1](#). The Governing Body will review the impact on the debt management policy of each benefit district proposed for consideration.

M. Maximum Term – Special Obligation Bonds. Pursuant to K.S.A. [12-6a01](#) et. seq., the Governing Body may finance improvements by the issuance of special obligation bonds. The special obligation bond term may extend up to twenty (20) years, but absent special circumstances should not exceed ten (10) years. The Governing Body will review the financial feasibility of each benefit district proposed to be financed by special obligation bonds.

N. Agricultural Deferment. Pursuant to Charter Ordinance No. 33, as amended by Charter Ordinance No. 34, and K.S.A. [12-6,110](#) et seq., as amended, the City may, at its sole discretion, authorize and provide for a delay in the payment of special assessments for the cost of constructing public improvements in unplatted and undeveloped areas of the City committed to use for productive agricultural purposes.

O. Submittal Deadline.

1. In accordance with the City's Debt and Fiscal Management Policy No. [F-1](#), annual CIP, Comprehensive Plan, and Subsection G, above, the deadline to submit all requests for creation of a benefit district and funding of the benefit district improvements by the City's general obligation temporary notes or bonds is the December 31 of the year preceding the year the project would be funded with the proceeds of temporary notes.

2. Adherence to the deadline set forth in Subsection 1, above, will allow the Governing Body to include benefit district projects in the CIP process and to prioritize benefit district projects based on a combination and variety of factors in order to account for areas of greatest need. These factors may include, but not be limited to, the percentage of City cost participation proposed to finance construction of the benefit district improvements, the physical size of the district, the amount of private investment proposed for and served by the benefit district improvements, the location of the district, the impact on existing infrastructure caused by the district, the proposed land use of the development served by benefit district improvements, the degree to which the proposed improvements conform to the City's growth

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management policies and comprehensive plan, and whether the proposed improvements are of a community-wide significance.

3. A petition which requests construction of improvements funded 100% by the property owners within a benefit district will be considered and recommended for approval after the submission deadline identified in Subsection 1, above, if the City determines, at its sole discretion, that it has the capacity to administer the requested benefit district project.

P. Maximum Assessments. The City will levy maximum special assessments prior to commencement of construction pursuant to K.S.A. [12-6a09\(c\)](#), except in extraordinary circumstances.

Q. Termination. Benefit districts may be terminated by the Governing Body at the Governing Body's sole discretion at any time prior to the issuance of general obligation bonds to permanently finance the project costs. Prior to termination, the Governing Body will endeavor to provide regular mail notice to all property owners within the district proposed to be terminated. The Governing Body may consider the following factors when considering whether to terminate a benefit district:

1. If construction of the improvements described in the petition have not begun for at least five (5) years after approval of the petition, and acquisition of all right-of-way and/or easements necessary for construction of the improvements has not been completed within five (5) years of approval of the petition (due to delays related to unforeseen events, including, but not limited to, litigation, inflation-related increases in construction costs, and changes in the financial environment such as a recession);
2. If changes in ownership and/or land development patterns in the area have reduced or eliminated the need for the improvements described in the petition; and/or
3. If the City's share of the total costs to construct the improvements in the benefit area have increased over the amount described in the resolution creating the benefit district.

## **SECTION TWO: COST DISTRIBUTION POLICIES.**

A. Cost Distribution Policies for Streets.

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1. Benefit district financing will generally be limited to the construction of arterial streets and service streets in commercial and industrial developments, as defined in the City's Street Improvement Policy (Public Improvement Policy No. [PI-3](#)).
  2. Arterial streets which serve primarily residential development may be initially constructed or improved to City arterial street construction standards through benefit districts so long as the developer petitioning the Governing Body to create a benefit district for such improvements makes the following affirmations in writing:
    - a. The developer is committed to a high standard of development quality through creation of a specific geographic overlay district that includes defined development standards for lot size, building setbacks, architecture and design, building materials, multi-modal accommodations, sidewalks, landscaping and open space preservation that will cause homes to be constructed to meet the targeted threshold sales price level described in Subsection b., below; and
    - b. The developer will price its lots so that the average home values within the benefit area exceed one hundred fifteen percent (115%) of the average sales price of a new single-family home in Johnson County (as calculated at the end of calendar year preceding the date when the benefit district petition is submitted). Contemporaneously with submitting its benefit district petition, the developer will also submit an affidavit and market analysis demonstrating that it will price its lots in satisfaction of this paragraph. Failure to submit such information will result in the petition being deemed incomplete and the petition will not be processed. At time of release of 50% occupancy (or temporary occupancy) of the homes within the benefit area, the developer will submit to the City a report demonstrating satisfaction of this requirement for audit purposes. The City will be afforded access to all financial, sales transaction, and marketing records of the developer to verify the report information in furtherance of such audit. No future benefit districts will be created with the developer, development group, or any affiliated group if the audit finds the average sales price requirement has not been met. At the discretion of the Governing Body, the average sales price criteria set forth in this section may be waived if the proposed benefit district includes property to be developed by a unified school district for educational purposes.
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Residential collector streets are eligible for benefit district funding so long as they provide access to an educational building owned by a public school district.

3. No benefit district created for the purpose of financing construction of an arterial street may have assessments levied against property in the district in excess of ten (10) years, with a goal of such assessments being levied for shorter periods of time. This maximum assessment term may be extended if the developer demonstrates extraordinary circumstances to the Governing Body which justify a term longer than ten (10) years.
4. The construction costs of service streets, including related drainage facilities, sidewalks, paths, side paths, landscaping, traffic control, traffic signals and other associated public infrastructure as determine by the City Engineer will be assessed 100% to the property within the benefit district.
5. The construction costs of arterial streets will be distributed in accordance with the City's street improvement policy contained in Public Improvement Policy No. [PI-3](#). However, the City, at its sole discretion, may require costs of all street improvements and related benefit district fees to be assessed against and paid 100% by the benefit district.

**B. Cost Distribution Policies for Water Mains.**

1. Benefit district financing will generally be limited to the construction or extension of water mains along arterial streets and service streets within commercial and industrial developments. At the discretion of the Governing Body, water mains along collector or local streets may be improved through benefit districts if they principally serve property owned and/or to be developed by a unified school district for educational purposes or the Governing Body determines that improvement of these mains is in the public interest and such financing is the most feasible alternative.
  2. Except as provided in Section One (General Policies) above, benefit districts will not be used to finance internal water line improvements in residential subdivisions.
  3. Water main sizes will be determined in accordance with the City's technical design criteria for public improvements.
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4. Construction costs of all water mains up to and including 12" diameter will be assessed 100% to the property within the benefit district. However, if water demands caused by the development to be served by the benefit district or unique hydraulic or topographic conditions require construction of a distribution main in excess of 12" to meet building and fire codes, the Governing Body, at its sole discretion, may require all costs of the main in excess of 12" to be assessed and paid 100% by the benefit district.
5. When the City determines that a water transmission main in excess of the size determined in Subsection B. 4., above, is needed to benefit the overall water transmission system, construction costs will be distributed so that property within the benefit district pays the cost equivalent of the required distribution main and the City pays the cost differential between the transmission and distribution sized main.
6. Pursuant to K.S.A. [12-541](#), all costs associated with compensation to a rural water district for the value of facilities located within the boundary of a benefit district may be included in the benefit district cost. Any bonds issued which include such costs are taxable under Federal law.

C. Cost Distribution Policies for Sanitary and Storm Sewers.

1. Benefit district financing will generally be limited to the construction or extension of trunk mains and collection mains, as well as sub-basins within commercial and industrial developments. At the discretion of the Governing Body, sub-basins outside of commercial and industrial developments may be improved through benefit districts if the district principally serves property owned and/or to be developed by a unified school district for educational purposes or the Governing Body determines that the improvements are in the public interest and such financing is the most feasible alternative.
  2. Except as provided in Section One (General Policies) above, benefit district financing may not be used to finance sanitary sewer improvements in existing residential subdivisions.
  3. Sanitary sewer mains will be sized to carry flows from the ultimate tributary population in accordance with the City's technical design criteria for public improvements. At the discretion of the Governing Body, if improvements are required to downstream receiving sewers, the cost of upsizing existing downstream sewer
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mains lift stations, force mains, treatment plant expansions may be included in the benefit district.

4. Benefit district Financing may be used to finance the construction of flood control, and sanitary sewer pipe replacement projects for new developments.

5. Construction costs of all sanitary sewer improvements will be assessed 100% to the property within the benefit district.

D. Cost Distribution Policies for Other Improvements. In addition to the public improvements described above in this Section, the Governing Body may use benefit district financing for other types of public improvements as authorized by law. Costs of private improvements, including privately-owned utilities, are not eligible for benefit district financing.

**SECTION THREE: FEES** . The Governing Body may, from time to time, establish fees to recover costs of administering various aspects of a benefit district. These fees will be identified in the benefit district petition, and may include petition fees, administrative fees, legal fees, internal or third party project management and inspection fees, engineering fees, and any other fees regarding benefit districts which may be levied under Kansas law. The Governing Body is at its sole discretion to levy these and any other related fees as authorized by the City's Fee Resolution and K.S.A. [12-6a01](#).

**SECTION FOUR: NOTICE** . Except in the case of a benefit district petition proposed by a single owner, the Governing Body will notify all property owners within a proposed benefit district that certain improvements have been proposed, and the date, time, and place the Governing Body will consider authorizing said improvements. In the case of improvements proposed by petition, the petitioner will provide the City with a current mailing list of property owners within the proposed benefit district, including those not signing the petition. Upon creation of a benefit district, the City will post signage adjacent to such district to inform prospective purchasers of property within the district of the existence of the district and where they can obtain additional information about the district. If a benefit district is created, but special assessments have yet to appear on tax bills within the district, the City will, on an annual basis, send a letter to all homeowners of record (as of January 1 of every year when assessments are not levied) informing all owners of the existence of the district and where they can obtain additional information about the district. The failure of any landowner to receive any such notice will not negate the validity of an otherwise validly created benefit district.

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**SECTION FIVE: REALLOCATION OF ASSESSMENTS** . Property within a benefit district may be platted or otherwise split into multiple parcels after a benefit district is created by the Governing Body. In connection with the filing of a plat or other request for a property split, 100% of the property owners subject to the split must file with the City a petition consenting to reallocation of special assessments against such property. The petition must specify the method for reallocation, and the specified method must comply with the resolution of the Governing Body creating the benefit district.

**SECTION SIX: AUTHORITY OF GOVERNING BODY** . The Governing Body reserves the right to deviate from any policy or practice set forth in this Resolution when it considers such action to be in the best interests of the City.

**SECTION SEVEN: SUNSET DATE** . Since the necessity to consider creation of benefit districts will change as the City moves closer to full build-out, this policy will automatically expire on December 31, 2025 unless it is readopted for an additional term. No benefit district petition may be considered by the Governing Body following such expiration, unless this policy is readopted.

**SECTION EIGHT: PREVIOUS RESOLUTION REPEALED** . Resolution No. 21-1073 is hereby repealed.

**SECTION NINE: EFFECTIVE DATE** . This Resolution shall take effect immediately.

**ADOPTED** by the Governing Body this [5th day of December, 2023](#).

**SIGNED** by the Mayor this 6th day of December, 2023

CITY OF OLATHE, KANSAS

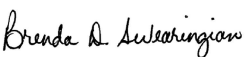
  
John W. Bacon (Dec 6, 2023 09:32 CST)

John W. Bacon, Mayor



(Seal)

ATTEST:



Brenda Swearingian, City Clerk

APPROVED AS TO FORM:

  
Ron Shaver (Dec 6, 2023 10:08 CST)

Ron Shaver, City Attorney

## **BENEFIT DISTRICT INSTRUCTIONS AND PETITION**

[Click here to view the content.](#)

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