

NOTICE OF MEETING AND BOARD OF ALDERMEN AGENDA



CITY OF OSAGE BEACH **BOARD OF ALDERMEN MEETING**

1000 City Parkway
Osage Beach, MO 65065
573.302.2000
www.osagebeach.org

AMENDED TENTATIVE AGENDA

SPECIAL MEETING

June 27, 2023 - 9:00 AM

**IN PERSON MEETING OFFSITE AT
MARGARITAVILLE LAKE RESORT LAKE OF THE OZARKS
494 TAN TAR A ESTATES DRIVE
OSAGE BEACH, MO 65065**

**** Note:** All cell phones should be turned off or on a silent tone only. Agendas are available in the Council Chamber; however, complete meeting packets are available on the City's website at www.osagebeach.org.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

UNFINISHED BUSINESS

NEW BUSINESS

A. Mayor and Board of Aldermen Strategic Planning Session

- FY2022-23 Summary and Overview of Mgmt Meeting
- Future Goals & Priorities
 - What does the future look like?
 - Internal Development
 - Economic Growth/Development
 - Good Governance/Serving the Customer
- Other Issues / Wrap Up

ADJOURN

Remote viewing is available on Facebook at *City of Osage Beach, Missouri* and on YouTube at *City of Osage Beach*.

Representatives of the news media may obtain copies of this notice by contacting the following:

Tara Berreth, City Clerk
1000 City Parkway
Osage Beach, MO 65065
573.302.2000 x 1020

If any member of the public requires a specific accommodation as addressed by the Americans with Disabilities Act, please contact the City Clerk's Office forty-eight (48) hours in advance of the meeting at the above telephone number.



Board of Aldermen Strategic Planning

Tuesday, June 27, 2023

9 AM – 4:30 PM

Margaritaville Lake Resort – 494 Tan Tara Estate Drive, Osage Beach, MO

Room – Windward 70/71 (main bldg.-Anchor Bldg)

9 AM – Session Begins / Noon - Lunch (provided, pre-order required)

Strategic Planning purpose – To convey a clear direction forward for the organization, providing direction for management. Responsibility to our Voters: As a municipal government our core values of our relationship to our citizens and customers are transparency and accountability of use of public monies, in contrast with the profit centered goals of private industry.

1. Status Check and Updates

9 AM

- a. Overview of Management Meeting - Key Issues Identified by Management
FY2022-23 Summary of Board of Aldermen Objectives
- b. FY 2023 Budget / Financial Update
 - i. Updated Cash Flow Statement

2. Future Outlook - Goals and Priorities

- a. What does the future look like? What does the Mayor and Board of Aldermen want for Osage Beach?

Prior Year Summary:

9:30 AM

- *Best Looking / Appearance of our City*
- *High Integrity and Openness*
- *Safe and Appealing Place to Live*
- *Know our community profile*
- *Amenities and service to best serve our community*

- b. Internal Development – Enhancing and developing our human capital.

10 AM

- i. Workforce Attraction / Retention
- ii. Employee Development

- c. Economic Growth / Development – Optimizing long-term economic activity & growth.

10:30 PM

- i. Economic Development Vision /Areas of Focus
- ii. Development Incentives

Lunch 12 PM

- d. Good Governance/Serving the Customer

- i. Capital Investment – Vision / Direction – Optimizing quality of life, traffic, utility, and other infrastructure.

1 PM

1. Parks and Recreation
2. Transportation
3. Water/Sewer
4. Other

- ii. Ordinance / Guideline Standards

3 PM

Ordinance - local laws for public health, safety, behavior, and general welfare / Guidelines – series of statements which explain the desired elements/intent of the vision, goals, and policy.

1. Current Issues
2. Areas of Focus

3. Other Issues / Wrap Up

4 PM

- a. Mayor/Board of Aldermen Benefits
- b. Other

Adjourn 4:30 PM

Board of Aldermen Strategic Planning – June 27, 2023

The Mayor and Board of Aldermen met in June 2023 with the Management Team for the purpose of the departmental presentation on department details, current happenings, and successes and challenges. In June 2022 the Board of Aldermen last met for the purpose of strategic planning for FY2022-23. This was the sixth year the Mayor and Board of Aldermen has met in such a work session. Building from prior year sessions, the group revisited expectation of roles and responsibilities and discussed prior and current initiatives, tasks, and outcomes.

2022-23 Board of Aldermen Priority Items and Objectives (BOA Mtg June 8, 2022)

What does the future look like?

- Best Looking / Appearance of our City
- High Integrity and Openness; Provide Highest Quality Customer Service
- Safe and Appealing Place to Live
- Know our community profile
- Amenities and service to best serve our community

Economic Growth / Development:

- Develop Economic growth tools and assets that target revenue growth at twice the level of State growth rates
- Expand business retention and recruitment efforts; marketing region/City for commercial recruitment and increased visitors; increasing visitors by 500,000 over the next year
- Enhance standards, guidance, and policies related to commercial development tools; applying tools consistently with attention on how standards, guidance, and policies affect operating capacity
- Continue to pursue/promote voluntary annexation to provide revenue growth opportunities that broaden services the City of Osage Beach can provide
- Pursue / promote growth opportunities for airport expansion

Serve the Customer:

- Develop innovative methodologies to interact with the citizenry to drive its input deeper in the planning and implementation processes; collect and use data to evaluate programs and service needs
- Continue to enhance the perception of Customer Service at all levels; quality customer service is top priority
- Effectively partner with the Osage Beach Special Road District to improve the City's transportation system and reduce the quantity of private roads in Osage Beach; prioritize and complete necessary project planning regarding private roads, non-paved roads, and sidewalks
- Prioritize and develop project plans to fully build out our utility service within City limits, eliminating unserved areas in both water and sewer
- Evaluate ordinances and related practices for relevancy; consistent and regular ordinance review by staff, presenting to the Mayor and Board of Aldermen inconsistencies and modifications as needed
- Complete the Park Master Plan and develop projects or programs that enhance the growth of our parks system and/or recreational activities to meet the needs of our community

Develop Internally:

- Continue to expand City employee capabilities at all levels; Osage Beach employees will be viewed as the “Best of the Best” by their peers and the industry
- Continue to enhance and expand training opportunities for employee development
- Continue to enhance processes that improve and measure employee culture and satisfaction
- Develop department level metrics (performance measures) that demonstrate the progress and performance of City services as well as staff’s productivity
- Enhance efficient collection and use of data for enhanced internal awareness, improvement, and performance of City services

Good Governance:

- Ensure sufficient financial reserves relevant and consistent, and optimize asset life cycle costs
- Continue to evaluate capital investments needs for effective use of future cash flows and available funding
- Evaluate and enhance asset maintenance standards and practices; enhance effective asset needs, evaluate costs and replacement practices
- Continue to enhance record retention requirements and process; move towards an applicable paperless environment city-wide

Roles and Responsibilities:

Mayor

- Operational
- Carry out Board direction
- Leadership
- Voice of the Community
- Work with City Administrator to ensure standards
- Conduct Board meetings
- Visionary
- Peacemaker

Board of Aldermen

- Define Vision
- Represent District
- Look at the City as a whole
- Conduit to residents
- Implement Vision
- Problem finder
- Policymaker
- Stewards of resources
- Respect other views
- Participate / attend meetings

City Administrator

- Oversee Daily Operations
- Provide Point-of-View / Sounding Board
- Implement Goals
- Ensure Available Tools

Management Team

- Initiative
- Drive Accountability
- Stay Current
- Delegate / Knowledge share
- Motivate / Mentor
- Set Goals / Follow through / Follow up / Communicate

Roles & Responsibilities - continued

All Staff

- Care
- Loyal to City
- Stewards of resources
- Implement Vision
- Proficient use of available tools and systems
- Exceed Customer Service Expectations
- Master their work

- Own their career development
- Measurement and Report Results

Community

- Volunteer
- Provide Point of View
- Attend Community Events
- Follow rules / laws
- Be Aware
- Proactive
- Attend meeting

2023 Management Pre-Planning Summary

Special Board of Aldermen Meeting held June 6, 2023 – Departmental Updates with Management Team
The Mayor and Board of Aldermen met in June 2023 with the Management Team for the purpose of the departmental presentation on department details, current happenings, and successes and challenges.

Successes/Strengths/Opportunities:

- Private/developer interest and investment continues at a fast pace; grows our economic wealth and quality of life; increases revenues to enhance or add services for our community. Constructed value, permits, and licenses continue to outpace previous year.
- Increase in revenues and use of grant funds in 2023 are being utilized to complete nearly 150% more investment of needed capital purchases and expansion projects for our community compared to 2022 (nearly 200% over 2021); many of which are in progress.
- City reserves for most funds continue to meet policy requirements.
- Several Master Plans and assessments are in process to aid in the City's effective planning of internal needs and services for our residents and visitors; areas of study include sidewalks, private roads, public works operations, airport expansion, parks, 911 communication expansion, economic incentives, and employee compensation and benefits.
- Voters approved the additional Marijuana Tax, specific to Parks & Recreation and Public Safety, which includes Police, 911 Communication, and Ambulance services.
- Current bonded debt related to utility service (Water and Sewer Bonds) will be paid off at various dates through FY2027.

Struggles/Weaknesses/Threats:

- Supply-chain issues are affecting completion dates of purchases and projects, some improvement over previous year.
- Continued effects of inflation on supply costs.
- Personnel costs are expected to continue to increase, not only affecting the current budget, but expected to continue into next year; competitive labor markets continue locally and nationally; applicant pool struggles remain consistent in various areas.
- Continued attention to forecasted cash flow and various expenditures categories outpacing applicable revenue sources for appropriate timing of operational and capital needs.

- Overall growth of the area and increases in private/developer investment (also a strength and opportunity for the City) increases the need for City resources and services, both current needs and in planning for growth, i.e. staff/admin/internal resources, internal and external risk management, utility maintenance/expansion, public safety, Parks & Recreation, etc.; current staff capacity is being challenged.
- Upkeep, planning, and attention to Utility (water and sewer systems) maintenance and infrastructure needs due to growth in demand and aging of current systems.
- Federal and State legislation activity continues to pose challenges in municipal operations and planning.

City of Osage Beach FY2023 - FY2027 Forecast

May 31, 2023

GENERAL FUND	FY2021 Actual	FY2022 Y/E Estimate	FY2023 Budget	FY2024 Forecast	FY2025 Forecast	FY2026 Forecast	FY2027 Forecast
Beginning Balances (includes Restricted \$\$)	2,167,395	3,814,098	4,461,660	2,051,064	1,946,489	1,922,209	1,909,180
Revenues	\$ 8,831,519	\$ 8,880,937	\$ 9,310,324	\$ 9,371,071	\$ 9,745,914	\$ 10,087,021	\$ 10,440,067
Personnel	4,002,841	4,693,896	5,428,517	5,808,513	6,011,811	6,222,225	6,440,002
Operations & Maintenance	2,361,672	2,341,755	2,482,984	2,607,133	2,698,383	2,792,826	2,890,575
Capital	313,406	425,827	2,478,515	650,000	650,000	650,000	650,000
Debt Service	216,897	216,897	-	-	-	-	-
Transfers to Other Funds	290,000	555,000	1,330,904	410,000	410,000	435,000	480,000
Total Expenditures	\$ 7,184,816	\$ 8,233,375	\$ 11,720,920	\$ 9,475,646	\$ 9,770,194	\$ 10,100,051	\$ 10,460,578
NET Revenues/Expenditures	\$ 1,646,703	\$ 647,562	\$ (2,410,596)	\$ (104,575)	\$ (24,280)	\$ (13,030)	\$ (20,511)
Ending Balances (includes Restricted \$\$)	3,814,098	4,461,660	2,051,064	1,946,489	1,922,209	1,909,180	1,888,669
Restricted - Fund Reserves	1,776,000	1,933,000	1,975,000	1,975,000	2,000,000	2,000,000	2,050,000
Restricted - Other	513,471	976,000	30,000	30,000	30,000	30,000	30,000
Unrestricted	1,524,627	1,552,660	46,064	(58,511)	(107,791)	(120,820)	(191,331)
CAPITAL IMPROVEMENT FUND (CIT)	FY2021 Actual	FY2022 Y/E Estimate	FY2023 Budget	FY2024 Forecast	FY2025 Forecast	FY2026 Forecast	FY2027 Forecast
Beginning Balances (includes Restricted \$\$)	1,714,123	2,371,537	2,878,537	2,318,987	3,742,763	5,827,621	8,077,449
Revenues	\$ 2,909,769	\$ 3,007,000	\$ 3,157,350	\$ 3,267,857	\$ 3,382,232	\$ 3,500,610	\$ 3,623,132
Personnel	-	-	-	-	-	-	-
Operations & Maintenance	327,355	85,000	90,900	94,082	97,374	100,782	104,310
Capital	-	-	-	-	-	-	-
Debt Service	-	-	-	-	-	-	-
Transfers to Other Funds	1,925,000	2,415,000	3,626,000	1,750,000	1,200,000	1,150,000	1,105,000
Total Expenditures	\$ 2,252,355	\$ 2,500,000	\$ 3,716,900	\$ 1,844,082	\$ 1,297,374	\$ 1,250,782	\$ 1,209,310
NET Revenues/Expenditures	\$ 657,414	\$ 507,000	\$ (559,550)	\$ 1,423,776	\$ 2,084,858	\$ 2,249,828	\$ 2,413,822
Ending Balances (includes Restricted \$\$)	2,371,537	2,878,537	2,318,987	3,742,763	5,827,621	8,077,449	10,491,271
Restricted - Fund Reserves	-	-	-	-	-	-	-
Restricted - Other	660,463	490,000	125,000	125,000	50,000	-	-
Unrestricted	1,711,074	2,388,537	2,193,987	3,617,763	5,777,621	8,077,449	10,491,271

TRANSPORTATION FUND	FY2021 Actual	FY2022 Y/E Estimate	FY2023 Budget	FY2024 Forecast	FY2025 Forecast	FY2026 Forecast	FY2027 Forecast
Beginning Balances (includes Restricted \$\$)	4,561,295	5,498,936	5,502,152	4,344,001	4,659,295	3,917,474	4,781,264
Revenues	\$ 3,546,729	\$ 3,736,968	\$ 5,627,159	\$ 3,760,983	\$ 3,892,617	\$ 4,028,859	\$ 4,169,869
Personnel	438,456	537,184	667,587	700,966	725,500	750,893	777,174
Operations & Maintenance	994,588	803,417	2,052,781	1,534,723	3,063,938	1,594,176	1,625,472
Capital	1,094,044	2,003,151	3,874,942	500,000	500,000	500,000	500,000
Debt Service	-	-	-	-	-	-	-
Transfers to Other Funds	82,000	390,000	190,000	710,000	345,000	320,000	220,000
Total Expenditures	\$ 2,609,088	\$ 3,733,752	\$ 6,785,310	\$ 3,445,689	\$ 4,634,438	\$ 3,165,069	\$ 3,122,646
NET Revenues/Expenditures	\$ 937,641	\$ 3,216	\$ (1,158,151)	\$ 315,294	\$ (741,821)	\$ 863,791	\$ 1,047,223
Ending Balances (includes Restricted \$\$)	5,498,936	5,502,152	4,344,001	4,659,295	3,917,474	4,781,264	5,828,487
Restricted - Fund Reserves	3,909,402	4,249,568	3,168,374	3,000,000	2,000,000	3,000,000	3,000,000
Restricted - Other	-	-	-	-	-	-	-
Unrestricted	1,589,534	1,252,584	1,175,627	1,659,295	1,917,474	1,781,264	2,828,487
WATER FUND	FY2021 Actual	FY2022 Y/E Estimate	FY2023 Budget	FY2024 Forecast	FY2025 Forecast	FY2026 Forecast	FY2027 Forecast
Beginning Balances (includes Restricted \$\$)	3,180,961	3,296,230	1,958,115	1,729,853	1,960,177	2,165,731	2,385,636
Revenues	\$ 3,880,430	\$ 2,750,918	\$ 4,198,376	\$ 2,486,160	\$ 2,508,064	\$ 2,570,491	\$ 2,623,478
Personnel	380,312	499,099	530,708	557,243	573,961	591,180	608,915
Operations & Maintenance	567,117	807,332	1,551,040	998,592	1,028,550	1,059,406	1,091,188
Capital	49,674	81,602	1,228,090	525,000	525,000	525,000	525,000
Debt Service	2,768,058	2,701,000	1,116,800	175,000	175,000	175,000	-
Transfers to Other Funds	-	-	-	-	-	-	-
Total Expenditures	\$ 3,765,161	\$ 4,089,033	\$ 4,426,638	\$ 2,255,835	\$ 2,302,510	\$ 2,350,586	\$ 2,225,103
NET Revenues/Expenditures	\$ 115,269	\$ (1,338,115)	\$ (228,262)	\$ 230,325	\$ 205,554	\$ 219,905	\$ 398,375
Ending Balances (includes Restricted \$\$)	3,296,230	1,958,115	1,729,853	1,960,177	2,165,731	2,385,636	2,784,010
Restricted - Fund Reserves	1,508,840	1,252,833	783,622	1,500,000	1,600,000	1,700,000	1,800,000
Restricted - Other	1,489,551	703,100	910,000	240,000	135,000	135,000	-
Unrestricted	297,839	2,182	36,231	220,177	430,731	550,636	984,010

SEWER FUND	FY2021 Actual	FY2022 Y/E Estimate	FY2023 Budget	FY2024 Forecast	FY2025 Forecast	FY2026 Forecast	FY2027 Forecast
Beginning Balances (includes Restricted \$\$)	3,850,808	3,575,532	3,977,255	2,638,691	3,527,392	3,834,876	4,389,144
Revenues	\$ 3,090,453	\$ 4,689,460	\$ 5,598,804	\$ 5,397,210	\$ 4,937,740	\$ 4,980,534	\$ 5,004,647
Personnel	427,524	608,134	923,554	988,203	1,022,790	1,058,588	1,095,638
Operations & Maintenance	1,982,366	3,050,565	2,371,720	2,490,306	2,577,467	2,667,678	2,761,047
Capital	305,973	288,488	3,312,094	700,000	700,000	700,000	700,000
Debt Service	649,866	340,550	330,000	330,000	330,000	-	-
Transfers to Other Funds	-	-	-	-	-	-	-
Total Expenditures	\$ 3,365,729	\$ 4,287,737	\$ 6,937,368	\$ 4,508,509	\$ 4,630,257	\$ 4,426,266	\$ 4,556,685
NET Revenues/Expenditures	\$ (275,276)	\$ 401,723	\$ (1,338,564)	\$ 888,701	\$ 307,484	\$ 554,268	\$ 447,962
Ending Balances (includes Restricted \$\$)	3,575,532	3,977,255	2,638,691	3,527,392	3,834,876	4,389,144	4,837,107
Restricted - Fund Reserves	1,466,582	795,933	505,676	1,400,000	1,800,000	2,100,000	2,250,000
Restricted - Other	2,083,803	2,056,140	2,052,663	2,100,000	2,100,000	2,100,000	2,100,000
Unrestricted	25,147	1,125,182	80,352	27,392	(65,124)	189,144	487,107
AMBULANCE FUND	FY2021 Actual	FY2022 Y/E Estimate	FY2023 Budget	FY2024 Forecast	FY2025 Forecast	FY2026 Forecast	FY2027 Forecast
Beginning Balances (includes Restricted \$\$)	145,103	167,579	348,271	3,049	(2,857)	(13,585)	(29,947)
Revenues	\$ 722,941	\$ 923,366	\$ 769,850	\$ 807,647	\$ 815,600	\$ 848,712	\$ 901,986
Personnel	479,695	547,056	597,041	626,893	648,834	671,544	695,048
Operations & Maintenance	117,124	156,589	160,250	166,660	172,493	178,530	184,779
Capital	1,400	18,237	357,781	20,000	5,000	15,000	30,000
Debt Service	22,240	22,239	-	-	-	-	-
Transfers to Other Funds	-	-	-	-	-	-	-
Total Expenditures	\$ 620,459	\$ 744,121	\$ 1,115,072	\$ 813,553	\$ 826,327	\$ 865,074	\$ 909,826
NET Revenues/Expenditures	\$ 102,482	\$ 179,245	\$ (345,222)	\$ (5,906)	\$ (10,727)	\$ (16,362)	\$ (7,840)
Ending Balances (includes Restricted \$\$)	167,579	348,271	3,049	(2,857)	(13,585)	(29,947)	(37,787)
Restricted - Fund Reserves	-	-	-	-	-	-	-
Restricted - Other	-	-	-	-	-	-	-
Unrestricted	167,579	348,271	3,049	(2,857)	(13,585)	(29,947)	(37,787)

LEE C FINE AIRPORT FUND	FY2021 Actual	FY2022 Y/E Estimate	FY2023 Budget	FY2024 Forecast	FY2025 Forecast	FY2026 Forecast	FY2027 Forecast
Beginning Balances (includes Restricted \$\$)	264,749	205,330	250,439	189,191	103,256	20,114	3,991
Revenues	\$ 3,253,538	\$ 4,631,972	\$ 1,876,350	\$ 5,207,360	\$ 2,697,169	\$ 2,322,848	\$ 2,084,419
Personnel	206,545	238,462	308,321	323,737	335,068	346,795	358,933
Operations & Maintenance	808,716	938,028	971,008	1,019,558	1,055,243	1,092,176	1,130,403
Capital	2,297,696	3,410,373	658,269	3,950,000	1,390,000	900,000	615,000
Debt Service	-	-	-	-	-	-	-
Transfers to Other Funds	-	-	-	-	-	-	-
Total Expenditures	\$ 3,312,957	\$ 4,586,863	\$ 1,937,598	\$ 5,293,295	\$ 2,780,311	\$ 2,338,972	\$ 2,104,336
NET Revenues/Expenditures	\$ (59,419)	\$ 45,109	\$ (61,248)	\$ (85,935)	\$ (83,142)	\$ (16,123)	\$ (19,916)
Ending Balances (includes Restricted \$\$)	205,330	250,439	189,191	103,256	20,114	3,991	(15,926)
Restricted - Fund Reserves	46,200	65,000	65,000	65,000	66,000	66,000	66,000
Restricted - Other	-	-	-	-	-	-	-
Unrestricted	159,130	185,439	124,191	38,256	(45,886)	(62,009)	(81,926)
GRAND GLAIZE AIRPORT FUND	FY2021 Actual	FY2022 Y/E Estimate	FY2023 Budget	FY2024 Forecast	FY2025 Forecast	FY2026 Forecast	FY2027 Forecast
Beginning Balances (includes Restricted \$\$)	78,413	115,005	190,838	32,514	28,555	26,962	22,530
Revenues	\$ 358,806	\$ 438,120	\$ 1,276,786	\$ 899,448	\$ 815,934	\$ 1,652,708	\$ 462,650
Personnel	134,249	149,920	189,026	198,477	205,424	212,614	220,055
Operations & Maintenance	187,965	192,367	197,048	204,930	212,102	219,526	227,209
Capital	-	20,000	1,049,036	500,000	400,000	1,225,000	22,000
Debt Service	-	-	-	-	-	-	-
Transfers to Other Funds	-	-	-	-	-	-	-
Total Expenditures	\$ 322,214	\$ 362,287	\$ 1,435,110	\$ 903,407	\$ 817,526	\$ 1,657,140	\$ 469,265
NET Revenues/Expenditures	\$ 36,592	\$ 75,833	\$ (158,324)	\$ (3,959)	\$ (1,592)	\$ (4,432)	\$ (6,615)
Ending Balances (includes Restricted \$\$)	115,005	190,838	32,514	28,555	26,962	22,530	15,915
Restricted - Fund Reserves	21,700	31,000	30,000	31,000	31,000	31,000	31,000
Restricted - Other	-	-	-	-	-	-	-
Unrestricted	93,305	159,838	2,514	(2,445)	(4,038)	(8,470)	(15,085)
Inflation	4.7%	8.0%	5.3%	4.5%	2.3%	2.1%	2.0%
	Actual Ave/CPI Data			Average To Date		Projected Average	

Board of Aldermen Strategic Planning Session – June 27, 2023

Economic Growth / Development Discussion

Economic Development Vision

The economic development vision is the desired future outcome. The vision guides the decision making for a consistent review and discussion regarding the use of economic development incentives and emphasizes areas of focus. This aids in informing prospective investors of targeted outcomes that would best be served by a private-public partnership, which are the result of granting incentives.

For example:

- Build upon and promote a premier visitor destination,
- Build upon and enhance quality of life,
- Attracting and retaining targeted businesses,
- Create and foster a business environment to target quality job growth; entrepreneurial growth; commercial redevelopment,
- Create, foster, enhance residential / neighborhood redevelopment, targeting housing growth that meets the needs of the community,
- Encouraging projects to expand, create, improve public benefit through infrastructure, for example, bridges, streets, sidewalks, utilities, etc.

Growth Opportunities

Based on gap analysis, the City of Osage Beach's growth opportunities have been outlined in the following areas, in summary includes growth opportunities in service and retail (from entrepreneurial growth to franchises / from quick serve to specialty), unique dining, entertainment, and destination (defined to include visitor-related industries and suppliers of said industries).

- Apparel
- Convenience (general/convenience store/small retail)
- Destination (retail/targeted products)
- Dining (table service)
- Entertainment
- Fast Casual (self-serve, made-to-order)
- Grocery
- Quick Service (fast-food/no table service)

Active Osage Beach Economic Development Projects Utilizing Incentivized Programs

*6 Projects- 1-fully operational (construction completed); 2 start-ups (approved); 3-under construction.
Total Project Costs: \$876.9 million / Total Incentives for Reimbursable Costs: \$187.5 million (21.3%)
Total Acres: 375.6 ac.*

Arrowhead Redevelopment Project: TIF, CID-1% Sales Tax

Approved: Plan/Project Approved 02/18/2016
Area Type: Blight
Description: 226 ac.; Eight redevelopment districts; mixed use – institutional, residential, recreation, retail, and office.
Project Costs: TIF – 23 years; Total \$385.7 million; \$55.8 TIF Reimbursable Costs (14.5%)
Surplus: 50% EATS; 50% PILOTS Commercial
CID – 33 – years; \$28.1 million Reimbursable Costs Cap
Financing Method: Pay-As-You-Go
Status: Under Construction

Beach Drive: CID-1% Sales Tax/TDD-1% Sales Tax

Approved: Transportation Project Agreement 04/06/2023
Description: 74 ac.; Public Service/Public Improvement
Project Costs: Aggregate CID (27-years) & TDD; \$6.2 million Reimbursable Costs (plus issuance costs)
Financing Method: CID/TDD entity TBD
Status: Start-Up

Dierbergs Osage Beach Redevelopment Project: TIF, TDD-1% Sales Tax

Approved: Plan/Project Approved 12/16/2010/Amended 03/17/2011
Area Type: Blight
Description: 14.45 ac.; 142,000 sq. ft. retail; no residential.
Project Costs: TIF – 23 years (org. est. 13 years); Total \$34.2 million; \$5.1 TIF Reimbursable Costs (14.9%)
Surplus: 50% EATS; 50% PILOTS
TDD – \$3.5 million Reimbursable Costs Cap (plus issuance costs)
Financing Method: Pay-As-You-Go/TIF Notes; TDD Notes
Status: Fully Operational

Lakeport Village: TIF(Local)/SuperTIF(State), CID-1% Sales Tax/TDD-1% Sales Tax/Ch.100

Approved: Plan/Project Approved 06/01/2023
Area Type: Blight/Economic Development
Description: 13.71 ac.; mixed use amusement/retail/food/hotel; no residential.
Project Costs: Project: (nearly) \$360 million
TIF – \$51.9 TIF Reimbursable Costs
TIF(State) – \$10.9 million Reimbursable Costs
CID/TDD – \$15.7 million Reimbursable Costs
TOTAL - \$78.5 million Reimbursable Costs (21.8%)
Surplus: 50% EATS; Varied PILOTS/OBFPD PILOTS 100%-TBD
Financing Method: Bonds/TIF Notes/CID Notes/Industrial Revenue Bonds; Obligations through MDFB (Missouri Development Finance Board)
Status: Start-Up

Osage Beach Commons Redevelopment Project (TSG Osage Beach LLC): TIF, CID-1% Sales Tax

Approved: Plan/Project Approved 09/21/2017
Area Type: Blight
Description: 25 ac.; 131,000 sq. ft. retail; no residential.
Project Costs: TIF – 23 years; Total \$30.5 million; \$4.6 TIF Reimbursable Costs (15.0%)
Surplus: 50% EATS; 50% PILOTS
CID – \$2.0 million Reimbursable Costs
Financing Method: TIF Notes/CID Notes
Status: Under Construction

Preserve at Sycamore Creek LLC: Ch.353, Ch.100, Osage Beach Economic Fee Reimbursement

Approved: Plan/Project Approved 10/06/2022
Area Type: Blight
Description: 22.4 ac.; multi-building, multi-family; 268 rental units/amenities; approx. 297,000 sq. ft. space
Project Costs: Total \$60.3 million; \$3.7 Abatement(\$2.5m/Exemption(\$.9m)/Fee Reimb.(\$.3m)
– Total incentive = 6.1%
Abatement Varied PILOTS; 100%-75%-50%-25% 5-year increments
Financing Method: Notes/Equity Finance
Status: Under Construction

Other Active Transportation Development Districts (TDD)*:

Osage Station TDD (TDD00096) – current – .75% Sales Tax / Organized 7/19/2005 / approx. 26 ac.

Prewitt Point TDD (TDD00003) – current – 1.0% Sales Tax / Organized 8/2006 (?) / approx. 130 ac.

** TDDs are formed by the court (not the City) under Missouri TDD Act, RSMo 238.200 – 238.275. The two listed above are active in the City, but not in conjunction with any active City of Osage Beach adopted TIF, or other incentivized programs. No City representatives are on either TDD Board noted above.*

Completed/Inactive Osage Beach Economic Development Projects Utilizing Incentivized Programs

Prewitt's Point/Prewitt's Hwy 54 Enterprises LLC (approved 2000) – Completed/TIF Bonds Paid (23 yr. TIF, paid 21.5 yrs.) / 130 ac., 500,000 sq. ft. Retail-no residential, \$101.1 million w/ \$17.3 reimbursable costs (17.1%) / Includes an active TDD / Surplus: 50% EATS, 75% PILOTS / Blight/Econ Dev project.

Marina View Redevelopment (Hammons) (approved 2007) – Inactive – No Construction / Pay-As-You-Go, 28 ac. Hotel/Convention/Amenities-no residential, \$99 million w/ \$3.7 reimbursable costs (3.7%) / Surplus 50% EATS, 50% PILOTS / Blight/Econ Dev project.

Process and Guideline Overview - TIF

Process Overview:

- Pre-qualification Meeting - Potential developers/applicants meet with the applicable City staff for initial review to determine project eligibility. (minimum: Mayor, CA, Attorney, Planner, Treasurer, Econ Dev Specialist),
- Application Worksheet and (Draft/Initial) TIF Plan (includes CBA & Blight Study) submitted to the City for staff review and processing,
- Funding Agreement execution / Initial Funding Deposit,
- Final TIF Plan Completion,
- City Staff & City Consultant(s) Review,
- TIF Commission – If acceptable and project eligibility confirmed, Board of Aldermen authorizes TIF Commission / Final TIF Plan to TIF Commission, TIF Meeting(s) scheduled / Public Hearing,
- TIF Redevelopment Agreement – creation / negotiation (may be done simultaneously during plan development/submission),
- Board of Aldermen consideration upon completion of the TIF Commission process,
- Board of Aldermen consideration on TIF Redevelopment Agreement, upon adoption of TIF Plan, if applicable.
- Note: Other incentive application/process done simultaneously

Guidelines:

- Meet Statutory Requirements: the 'TIF Act' - RSMo 99.805 – 99.865
- TIF Plan and Project demonstrates vital economic interest to the City and evaluated on the following criteria:
 - Removal of Blight, promote revitalization and/or provide public improvements, strengthen economic and employment base, promotes Osage Beach economic development area of focus,
 - Immediate benefit to each existing taxing district; Fifty (50%) surplus and available to the taxing districts viewed more favorably; applicant/developer to include a list of all affected districts and impact on said district,
 - Demonstrate the 'but for' use of TIF,
 - Total TIF assistance =/ $\leq$ 25% of total project costs; up to 50% may be considered in special circumstances,
 - Applicant/developer demonstrates financial ability to complete and operate project and capital equity contribution is applicable to the project, the higher the equity contribution the more favorable the evaluation; Applicant/Developer background, experience, and identity(ies) shall be included in application submission,
 - Project TIF Term: Terms < Fifteen (15) years viewed more favorably,
 - TIF Financing:
 - Requests for City or other governmental entity (i.e. MDFB) issuance of bonds or notes, agreement on financing terms shall be included in the redevelopment agreement,
 - Requests to issue bonds or notes shall be reviewed by City's third-party consultant(s); PILOTS and EATS to be generated to provide debt service coverage of > 1.25 projected debt service,

- Requests for the City to issue annual-appropriation backed bonds are highly discouraged,
- Plans/Projects that include the use of a Community Improvement District (CID), Transportation Improvement District (TDD), Neighborhood Improvement District (NID), or other private or public financing mechanisms that result in reducing the term of the TIF project, or reduce the burden on affected taxing districts, are viewed more favorably,
- Accountability:
 - Contractual terms shall define reduction of incentive financing obligations when anticipated revenue has not been generated as outlined in adopted plan,
 - Performance standards shall be outlined in contractual terms to ensure direct public benefit through key performance standards – Completion Performance, City Revenue Protection, Rate of Return Limits, Interest Accrual, Reimbursement Shifting within Project Cost, Tax Protection During Construction, and Sale and Assignment Restrictions.

Other Incentives (*guidelines existing/further review underway*):

- **Community Improvement District (CID)** – Political subdivision created for the purpose of issuing bonds, levying taxes and applying special assessments to finance public improvements, public services, or removing blight,
- **Osage Beach Economic Development Fee Reimbursement Program** – Per City Code 135.025 – Program created for tourism or housing related projects under certain criteria to provide fee reimbursement, up to 75%, for certain City fees which included Water Impact, Sewer Development Charge, Building Permit, Site Development Fee, and/or Demolition Permit,
- **Neighborhood Improvement District (NID)** – A special assessment district created for the purpose of financing public facilities or improvements that confer a benefit upon the property for public use within the district,
- **Property Tax Abatement Under Chapter 100 RSMo** – Industrial Development Bonds – Used to provide a tax abatement for real and personal property, or for Sale Tax Exemption for qualified purchases. Common uses include land, building construction and/or rehabilitation, and to purchase of machinery or equipment.
- **Property Tax Abatement Under Chapter 353 RSMo** – Urban Development Corporations – Created under general corporation laws to operate redevelopment projects under a redevelopment plan; allows for tax abatement of incremental real property taxes provided as an incentive for clearance, re-planning, reconstruction, or rehabilitation of blighted areas.
- **Transportation Development District (TDD)** – Political subdivision created for the purpose of issuing bonds, levying taxes and applying special assessments to finance transportation related improvements.

Enclosures: MML Financing Capital Improvements in Missouri Municipalities; Columbia Capital Introduction to Bonds, Economic Development and the Art of Public Incentives; Columbia Capital Memorandum to City Administrator June 2022.

May 2023

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**Missouri
Municipal
League**

Growing Our Communities Together

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INTRODUCTION

Many cities are faced with the need to finance public improvements such as streets, sidewalks, and sewers. Cities are also heavily involved in efforts to promote economic development. The purpose of this publication is to outline the procedures that must be followed when issuing bonds and to provide an overview of the many economic development tools available to municipalities in Missouri.

State and federal laws impose many requirements and restrictions on the issuance of bonds by Missouri municipalities: from voter approval to the use of the bond funds, to limits on bond amounts, to reporting requirements and time schedules. Economic development is another area that city officials continue to be more involved in. Citizens, developers, and business leaders are increasingly looking to their local city government to engage in economic development programs. We hope this publication will make it easier for cities to understand and issue bonds and to engage in economic development programs.

The attorneys and staff at the Gilmore and Bell law firm were instrumental in revising this 2023 edition of the League's handbook Financing Capital Improvements in Missouri Municipalities. The Missouri Municipal League wishes to thank the law firm of Gilmore and Bell for their expertise and assistance in revising this handbook.

Reference to "RSMo" indicates the Revised Statutes of Missouri, as amended through the date of this Handbook.

INTRODUCTION TO MUNICIPAL FINANCE

This publication is intended to provide a summary of the various types of financing tools available to Missouri municipalities. It is not intended to be exhaustive. It is current through December 31, 2022. Any questions you may have related to these topics or other financing methods should be addressed to your municipal attorney, bond counsel or financial advisor. For simplicity, tax-exempt bonds, notes, leases and COPS are referred to in this chapter as “bonds.”

Financing Team

Before summarizing the types of financing tools, a brief description of the parties involved in the financing process and what role they play may be useful:

The Issuer – the municipality’s administration (City Administrator/Manager, Finance Director, City Clerk) is intimately involved throughout the process to provide information regarding the planned uses of proceeds, the municipality’s finances and other information necessary to complete the transaction.

Financial Advisor – provides guidance to the municipality on structuring the financing and acts as a liaison between the municipality and the other parties. Not all municipalities engage a financial advisor. For a discussion on selecting and managing a financial advisor, see the Government Finance Officers Association’s (“GFOA”) best practices guide below, which is also available at <http://www.gfoa.org/selecting-and-managing-municipal-advisors>.

Purchaser or Underwriter – is responsible for purchasing the bonds (for resale to other investors, if the bonds are sold through a public offering). The underwriter (subject to certain rules) also may assist the municipality in structuring the financing.

Paying Agent/Trustee – is responsible for making all principal and interest payments on the bonds from the funds it receives from the municipality. The trustee may also hold and disburse bond proceeds, depending on the type of financing.

Bond Counsel – is responsible for drafting most documents for the financing and providing an approving opinion that the bonds are valid obligations of the Municipality and are tax-exempt (assuming the requirements of the Internal Revenue Code have been met).

Other parties may be involved in a bond transaction, including a placement agent, verification agent, escrow agent, bidding agent, bond insurer or other credit enhancement provider.

Types of Sales of Municipal Obligations

Bonds are typically sold by one of two methods – a direct/private placement and a public offering.

What is a direct/private placement financing?

A direct or private placement is an agreement between the municipality and the ultimate purchaser of the obligations. The municipality may use a placement agent to locate a purchaser and structure the financing. A direct or private placement may have fewer documentation requirements than a public offering. While direct/private placements tend to be smaller transactions, there is no limitation on the issue size.

What is a public offering?

A public offering allows a municipality to access the public finance market, which includes large institutional investors such as insurance companies and bond funds and small investors, who are typically individuals.

Federal and state securities laws impose duties on municipalities to disclose to potential purchasers material information regarding the sale of the bonds. Specifically, federal securities laws provide that it is unlawful for any person, in connection with the offering of a security, to directly or indirectly make an untrue



statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

To comply with the federal securities laws, information describing the municipality and the bonds will be set forth in an official statement or other offering document. The official statement will include descriptions of, among other matters, the municipality, its revenues, expenses and financial condition and its outstanding debt and other material liabilities, and any other material information relative to the municipality and the bonds. This information must be accurate and complete in all respects and must not omit any information that a reasonable investor would consider important in making a decision to purchase the obligations. Even if the official statement is prepared by a financial advisor, bond counsel, disclosure counsel or other party to the transaction, the municipality is primarily responsible for the accuracy and completeness of the official statement and should take steps to ensure information material to investors is accurately disclosed.

A municipality may choose a public sale (lowest interest rate on a specific day) or a negotiated sale. These are discussed below in the GFOA's best practices guide, which is also available at <http://www.gfoa.org/selecting-and-managing-method-sale-bonds>.

GFOA Best Practices (reprinted with permission)

SELECTING AND MANAGING MUNICIPAL ADVISORS

Approved by GFOA's Executive Board: February 2014

State and local governments engage municipal advisors to assist in the structuring and issuance of bonds whether through a competitive or a negotiated sale process. While governments may hire municipal advisors for other types of financial transactions, such as investments and swaps, this Best Practice is focused on municipal advisors used primarily in conjunction with a bond sale. A municipal advisor represents the issuer in the sale of bonds, and unlike other professionals involved in a bond sale, has an explicit fiduciary duty to the issuer per the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Additionally, with the implementation of the 2010 Dodd-Frank Act, municipal advisors must register with the Securities and Exchange Commission (SEC) and Municipal Securities Rulemaking Board (MSRB) and meet professional and testing standards. Issuers should be aware that MSRB Rule G-23 prohibits a broker-dealer firm that also provides financial advisory services (in contrast to a non-broker-dealer municipal advisor) from serving as a municipal advisor to the issuer and an underwriter on the same transaction. Finally, it is important for issuers to become familiar with municipal advisor and underwriter responsibilities as discussed in the materials related to the SEC's Municipal Advisor Rule. Resources to help issuers become familiar with the Rule are included in the references section of this document.

Recommendation:

The Government Finance Officers Association (GFOA) recommends that issuers hire a municipal advisor prior to the undertaking of a debt financing unless the issuer has sufficient in-house expertise and access to current bond market information. Issuers should assure themselves that the selected municipal advisor has the necessary expertise to assist the issuer in determining the best type of financing for the government, selecting other finance professionals, planning the bond sale and successfully selling and closing the bonds. While a municipal advisor plays a key role on the financing team, it is important to note that the issuer remains in control of the decision-making process necessary for the issuance and sale of the bonds or implementing the financing.

The GFOA recommends that issuers select municipal advisors on the basis of merit using a competitive process and that issuers review those relationships periodically. A competitive process using a request for proposals (RFP) or request for qualifications (RFQ) process as applicable allows the issuer to compare the qualifications of proposers and to select the most qualified firm based on the scope of services and evaluation criteria outlined in the RFP. Standards related to the selection and hiring of municipal advisors should also be included in a government's debt management policy. The selection and use of municipal advisors may vary depending on the level of municipal market knowledge, expertise, and experience of the issuer's staff.

Before starting the RFP process issuers should decide whether the municipal advisor will assist the issuer in determining whether to do a competitive or negotiated sale. Additionally, the issuer should determine if it is seeking one municipal advisor for a specific transaction or a pool of municipal advisors to select from for future transactions. Small governments may be looking to hire a municipal advisor to assist with a single transaction, whereas larger governments may retain a municipal advisor to assist them with a broad scope of work, in addition to possibly creating a pool of advisors to choose from for transactions that the government anticipates doing for a period of time (e.g., three years). The RFP then can be carefully written in order to result in the type of relationship desired by the issuer. Additionally, issuers should write the RFP to comply with applicable procurement requirements.

If an issuer is contemplating the possibility of selling bonds through a negotiated sale, the municipal advisor should be retained prior to selecting the underwriter(s). This allows the issuer to have professional services available to advise on the appropriate method of sale, and if a negotiated sale is selected, to prepare the underwriter RFP and assist in the evaluation of the underwriter responses.

No firm should be given an unfair advantage in the RFP process. Procedures should be established for communicating with potential proposers, determining how and over what time period questions will be addressed and determining when contacts with proposers will be restricted.



Due to potential conflicts of interest, the issuer also should enact a policy regarding whether, and under what circumstances, it would permit a firm to serve as an underwriter on one transaction and a municipal advisor on another transaction. Additionally, when an issuer has a municipal advisor and the issuer is considering hiring that advisor to serve as a broker-dealer on a different negotiated bond transaction, the appearance of a conflict may exist.

Furthermore, each government should decide for itself if they choose to use only non-broker-dealer affiliated municipal advisors or municipal advisors affiliated with broker-dealer firms, and incorporate this into their debt management policies.

Request for Proposal Content. The RFP should include at least the following components:

1. The municipal advisor is registered with the SEC and MSRB. Issuers can determine this by visiting the SEC website at <https://tts.sec.gov/MATR/index.html> and the MSRB's municipal advisor registration page at <http://www.msrb.org/msrb1/pqweb/MARegistrants.asp>.
2. A clear and concise description of the scope of work, specifying the length of the contract and indicating whether joint proposals with other firms are acceptable.
3. Clarity on whether the issuer reserves the right to select more than one municipal advisor or to form municipal advisory teams.
4. A requirement that all fee structures be presented in a standard format. Issuers also should ask all proposers to identify which fees are to be proposed on a “not-to-exceed” basis, describe any conditions attached to their fee proposal, and explicitly state which costs are included in the fee proposal and which costs are to be reimbursed. Any MSRB fees imposed upon municipal advisors should not be passed through to the issuer.
5. A requirement that the proposer provide at least three references from other public-sector clients, preferably from ones that the firm provided similar services to those proposed to be undertaken as the result of the RFP.
6. A description of the objective evaluation and selection criteria and explanation of how proposals will be evaluated.

Requested Proposer Responses. RFPs should request relevant information related to the areas listed below in order to distinguish each firm's qualifications and experience, including:

1. Relevant experience of the individuals to be assigned to the issuer, identification of the individual in charge of day-to-day management, and the percentage of time committed for each individual on the account.
2. Relevant experience of the firm with financings of the issuer or comparable issuers and financings of similar size, types and structures, including financings in same state.
3. Discussion of the firm's municipal advisory experience necessary to assist issuers with either competitive or negotiated sales.
4. Demonstration of the firm's understanding of the issuer's financial situation, including ideas on how the issuer should approach financing issues such as bond structures, credit rating strategies and investor marketing strategies.
5. Demonstration of the firm's knowledge of local political, economic, legal or other issues that may affect the proposed financing.
6. Discussion of the firm's familiarity with GFOA's Best Practices relating to the selling of bonds and the selection of finance professionals.
7. Disclosure of the firm's affiliation or relationship with any broker-dealer and whether any personnel of the municipal advisor firm who would provide advice to the issuer were associated with a broker-dealer firm within the two years preceding the RFP.
8. Analytic capability of the firm and assigned individuals and the availability of ongoing training and educational services that could be provided to the issuer.

- 
9. Description of the firm's access to sources of current market information to assist in pricing of negotiated sales and information to assist in the issuer in planning and executing competitive sales.
 10. Amounts and types of insurance carried, including the deductible amount, to cover errors and omissions, improper judgments, or negligence.
 11. Disclosure of any finders fees, fee splitting, payments to consultants, or other contractual arrangements of the firm that could present a real or perceived conflict of interest.
 12. Disclosure of any pending investigation of the firm or enforcement or disciplinary actions taken within the past three years by the SEC, FINRA, MSRB, or other regulatory bodies.

Additional Considerations. Issuers should also consider the following in conducting the municipal advisor selection process:

1. Take steps to maximize the number of respondents by posting the RFP on the government's web site, using mailing lists, media advertising, resources of the GFOA and applicable professional directories.
2. Allow adequate time for firms to develop their responses to the RFP. Two weeks should be appropriate for all but the most complicated RFPs.
3. Establish evaluation procedures and a systematic rating process, conduct interviews with proposers, and undertake reference checks. Where practicable, one individual should check all references using a standard set of questions to promote consistency. To remove any appearance of a conflict of interest resulting from political contributions or other activities, elected officials should not be part of the selection team.
4. Document and retain the description of how the selection of the municipal advisor was made and the rankings of each firm.
5. Ensure that federal regulations and any state and local regulations, standards or policies related to the disclosure of gifts, political contributions, or other financial arrangements are met.

Basis of Compensation. Fees paid to municipal advisors should be on an hourly or retainer basis, reflecting the nature of the services to the issuer. Generally, municipal advisory fees should not be paid on a contingent basis to remove the potential incentive for the municipal advisor to provide advice that might unnecessarily lead to the issuance of bonds. GFOA recognizes, however, that this may be difficult given the financial constraints of many issuers. In the case of contingent compensation arrangements, issuers should undertake ongoing due diligence to ensure that the financing plan remains appropriate for the issuers needs. Issuers should include a provision in the RFP prohibiting any firm from engaging in activities on behalf of the issuer that produce a direct or indirect financial gain for the municipal advisor, other than the agreed-upon compensation, without the issuers informed consent.

Contract for Municipal Advisory Services. Issuers should have a written contract for municipal advisory services that should detail the scope of services and basis of compensation. As part of the RFP package, the issuer may also include a "Form of Contract" which incorporates elements and provisions conforming to prevailing law and procurement processes and requires RFP respondents to comment on the acceptability of the Form of Contract. The comments on the acceptability of the Form of Contract should be part of the evaluation process. The contract development process should allow for reasonable negotiation over the final terms of the contract. A final negotiated contract should make clear those services that will be included within the basic municipal advisor fee and any services or reimbursable expenses that might be billed separately. Additionally, the contract should be clear that the municipal advisor will only receive compensation for work specifically authorized by the issuer to avoid incurring expenses for work not authorized by the issuer.

SELECTING AND MANAGING THE METHOD OF SALE OF BONDS

Approved by GFOA's Executive Board: February 2014

State and local government bond issuers should sell their debt using the method of sale that is most likely to achieve the lowest cost of borrowing while taking into account both short-range and long-range implications for taxpayers and ratepayers. Differing views exist among issuers and other bond market participants with respect to the relative merits of the competitive and negotiated methods of sale. Moreover, research into the subject has not led to universally accepted findings as to which method of sale is preferable when taking into account differences in bond structure, security, size, and credit ratings for the wide array of bonds issued by state and local governments.

Concerns have been raised about the lack of a competitive process through the use of Request for Proposals (RFPs) in the selection of underwriters in a negotiated sale and the possibility of higher borrowing costs when underwriters are appointed based on factors other than merit. As a result, issuers have been forced to defend their selection of underwriters for negotiated sales in the absence of a documented, open selection process.

The appropriate duties, roles and responsibilities of municipal advisors and underwriters are often not well understood. Municipal advisors are the only parties with a federal fiduciary duty to state and local government issuers. In contrast, the relationship between the issuer and underwriter is one where the relationship has a common purpose but also some competing objectives, especially at the time of bond pricing. It is important for issuers to become familiar with the Securities and Exchange Commission's (SEC) Municipal Advisor Rule, and understand its implications on underwriter responsibilities as discussed in the materials related to the Municipal Advisor Rule. Resources to help issuers become familiar with the Rule are included in the References section of this document.

Recommendation:

When state and local laws do not prescribe the method of sale of municipal bonds, the Government Finance Officers Association (GFOA) recommends that issuers select a method of sale based on a thorough analysis of the relevant rating, security, structure and other factors pertaining to the proposed bond issue. If the issuer has in-house expertise, defined as dedicated debt management staff whose responsibilities include daily management of a debt portfolio, this analysis and selection could be made by the issuer's staff. However, in the more common situation where an issuer does not have sufficient in-house expertise, this analysis and selection should be undertaken with the advice of a municipal advisor. Due to the inherent conflict of interest, issuers should not use a broker-dealer or potential underwriter to assist in the method of sale selection unless that firm has agreed not to underwrite that transaction. Additionally, Municipal Securities Rulemaking Board (MSRB) Rule G-23 states that a broker-dealer firm may not serve as municipal advisor and underwriter on the same transaction.

The GFOA believes that the presence of the following factors may favor the use of a competitive sale:

1. The rating of the bonds, either credit-enhanced or unenhanced, is at least in the single-A category.
2. The bonds are general obligation bonds or full faith and credit obligations of the issuer or are secured by a strong, known and long-standing revenue stream.
3. The structure of the bonds does not include innovative or new financing features that require extensive explanation to the bond market.
4. The issuer is well known and frequently in the market.

Similarly, GFOA believes that the presence of the following factors may favor the use of a negotiated sale:

1. The rating of the bonds, either credit-enhanced or unenhanced, is lower than single-A category.
2. Bond insurance or other credit enhancement is unavailable or not cost-effective.
3. The structure of the bonds has features such as a pooled bond program, variable rate debt, deferred interest bonds, or other bonds that may be better suited to negotiation.

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4. The issuer desires to target underwriting participation to include disadvantaged business enterprises (DBEs) or local firms.
 5. Other factors that the issuer, in consultation with its municipal advisor, believes favor the use of a negotiated sale process.

If an issuer, in consultation with its municipal advisor, determines that a negotiated sale is more likely to result in the lowest cost of borrowing, the issuer should undertake the following steps and policies to increase the likelihood of a successful and fully documented negotiated sale process:

1. There should be a written contractual relationship with a municipal advisor (a firm unrelated to the underwriter(s)), to advise the issuer on all aspects of the sale, including selection of the underwriter, structuring, disclosure preparation and bond pricing.
2. Select the underwriter(s) through a formal request for proposals (RFP) process. The issuer should document and make publicly available the criteria and process for underwriter selection so that the decision can be explained, if necessary.
3. Due to potential conflicts of interest, the issuer should also enact a policy regarding whether and under what, if any, circumstances it will permit the use of a single firm to serve as an underwriter on one transaction and a municipal advisor on another transaction.
4. Issuers with sufficient in-house expertise and access to market information may not need to retain a municipal advisor. Such issuers should have at least the following skills and information: (i) access to real-time market information (e.g. Bloomberg) to assess market conditions and proposed bond prices; (ii) experience in the pricing and sale of bonds, including historical pricing data for their own bonds and/or a set of comparable bonds of other issuers in order to assist in determining a fair price for their bonds; and (iii) dedicated full-time staff to manage the bond issuance process, with the training, expertise and access to debt management tools necessary to successfully negotiate the pricing of their bonds.
5. Remain actively involved in each step of the negotiation and sale processes in accordance with the GFOA's Best Practice, Pricing Bonds in a Negotiated Sale.
6. Require that financial professionals make disclosures pursuant to MSRB Rule G-17 and disclose any conflicts of interest that may exist, as well as the name(s) of any person or firm compensated to promote the selection of the underwriter; any existing or planned arrangements between outside professionals to share tasks, responsibilities and fees; the name(s) of any person or firm with whom the sharing is proposed; and the method used to calculate the fees to be earned.
7. Review the "Bond Purchase Agreement" and "Agreement Among Underwriters" and ensure that the terms and conditions are acceptable to the issuer and identify issues that need to be negotiated with the underwriters.
8. Openly disclose public-policy issues such as the desire for Minority, Women and Disadvantaged Business Enterprises (MWDBEs) and regional firm participation in the syndicate and the allocation of bonds to such firms as reason for negotiated sale; measure and record results at the conclusion of the sale.
9. Prepare a post-sale summary and analysis that documents the pricing of the bonds relative to other similar transactions priced at or near the time of the issuers bond sale, and record the true interest cost of the sale and the date and hour of the verbal award.

Finally, as noted above, it is important for issuers to become familiar with and understand the Municipal Advisor Rules implications on underwriter responsibilities as discussed in the materials related to the Municipal Advisor Rule.

FINANCING GOVERNMENTAL PURPOSE PROJECTS

As federal and state regulations become more complex and the financial resources needed to fund governmental operations become more scarce, the 21st Century brings a significant challenge to Missouri municipalities to responsibly spend taxpayer funds while providing infrastructure and services for their citizens. Used prudently, the financing of capital improvements can allow a municipality to construct needed infrastructure improvements, while at the same time funding needed administrative, cultural and social programs from current revenues.

General Obligation Bonds

Missouri municipalities are authorized to issue general obligation bonds pursuant to Article VI, Sections 26(b), (c), (d) and (e) of the Missouri Constitution and Sections 95.115 to 95.130, RSMo.

What type of projects may be financed?

Municipalities may issue general obligation bonds for any municipal purpose authorized by charter or Missouri law.

What is the source of funds for repayment?

General obligation bonds are secured by the full faith and credit and taxing power of the municipality. This means that a court can compel the municipality to increase property taxes if needed to repay the bonds. The owner of a general obligation bond may look for repayment to all legally available sources of revenue that the municipality is entitled to receive.

Section 26(f) of the Missouri Constitution and Section 95.135 RSMo require that, before issuing general obligation bonds, a municipality must provide for the levy of an annual property tax that will be sufficient to pay the principal and interest on the bonds. To satisfy this requirement, the levy will be included in the ordinance authorizing the issuance of the bonds. The municipality may use other revenue sources (such as sales tax proceeds) to pay debt service on the bonds, in which case the property tax levy may be unnecessary and the municipality may choose not to collect the tax in a particular year.

What are the limits on issuing general obligation bonds?

“New Money” Bonds. Article VI, Section 26 of the Missouri Constitution governs the amount of general obligation bonds that may be issued by a municipality. The debt limit is tested at the time of the bond election. Sections 26(b) and (c) permit a municipality to incur general obligation debt in an amount not to exceed 10 percent of the municipality’s assessed valuation. Section 26(d) permits a municipality to incur general obligation debt for an additional 10 percent of the municipality’s assessed valuation for street and sewer improvements. Section 26(e) permits a municipality to incur general obligation debt for an additional 10 percent of the municipality’s assessed valuation for water, electric, or light plant improvements, but the total indebtedness cannot exceed 20 percent. Section 108.170, RSMo imposes limits on the interest rate and the sale price of the bonds, depending on whether the sale is a negotiated sale or a competitive public sale.

Refunding Bonds. Article VI, Section 28 of the Missouri Constitution and Section 108.140, RSMo authorize the municipality to issue general obligation bonds for the purpose of “refunding, extending, and unifying” all or any part of its validly issued general obligation bonds. The principal amount of the refunding bonds may not exceed the principal amount of the bonds being refunded, plus the accrued interest on those bonds to the date of the refunding bonds. The interest rate on the refunding bonds may not exceed the interest rate on the bonds being refunded. The interest rate and sale price limits under Section 108.170, RSMo apply equally to general obligation bonds issued to provide money for project financing, and to refund bonds previously issued.

Final Maturity Limitation. In accordance with Section 26(f) of the Missouri Constitution and Section 95.135 RSMo, the final maturity of a general obligation bond issue must not be later than 20 years from the

issuance date. Refunding bonds may extend the final maturity of the refunded bonds, as long as it does not exceed 20 years from the date of issuance of the refunding bonds; however, this frequently cannot be done because of the requirement that the refunding must result in debt service savings, and extending the maturity usually results in higher total debt service.

What are the voter-approval requirements?

Super-Majority Approval. Cities may only issue general obligation bonds after obtaining approval of four-sevenths or two-thirds (depending on the date the election is held) of the qualified voters of the municipality voting on the question. The below table shows the available election dates and the super-majority approval required for approving general obligation bond questions on each date:

Election Date (1st Tuesday after the 1st Monday)	Voter Approval Requirements for General Obligation Bonds
February	2/3-majority in all years
April	4/7-majority in all years
June	2/3-majority in all years
August	4/7-majority in even-numbered years 2/3-majority in odd-numbered years
November	4/7-majority in even-numbered years 2/3-majority in odd-numbered years

Section 115.123, RSMo provides for bond elections to be held on days other than those shown above in special circumstances, and Section 115.652, RSMo allows for elections to be conducted by mail under certain conditions.

Form of Ballot Question. Section 95.150, RSMo requires that the bond question be submitted in substantially the following form:

Shall _____ (name of city, town, or village) issue [general obligation] bonds in the amount of _____ dollars for the purpose of _____?

The prescribed form of the question in the statute does not include the bracketed words “general obligation,” though this practice is strongly recommended to clarify the nature of the bonds being voted upon. The bond question should not include any language stating that repayment of the bonds is intended to be made only from a particular funding source (such as sales taxes), that the property tax levy for repayment of the bonds is in any way limited, or that the election will not require a tax increase.

Filing Notice of the Election with the Election Authority. Section 115.125, RSMo requires that notice of the election be filed with the proper election authority (*i.e.*, county clerk(s) or elections board) not later than 5 p.m. on the 10th Tuesday before the election. The notice must include a certified copy of the ballot question and the legal notice required to be published by the election authority pursuant to Section 115.127, RSMo. It is always good practice to check with your local election authority, municipal attorney or bond counsel regarding any additional requirements that may be applicable to your municipality.

What is the procedure for issuing general obligation bonds?

After a successful election, the municipality can issue part or all of the bonds authorized at the election.

The governing body must pass an ordinance that includes all of the terms of the bonds (principal amount, interest rates, redemption provisions, paying agent, etc.). The municipality must also establish a debt service levy sufficient to pay principal of and interest on the bonds.

Section 108.240, RSMo requires all documents relating to the issuance of the bonds be reviewed and approved by the State Auditor. To allow staff time for that review, the “closing” (when funds are available to the municipality) typically occurs approximately two weeks after the approval of the authorizing ordinance.

What are advantages and disadvantages of general obligation bonds?

General obligation bonds are secured by the full faith, credit and taxing power of the municipality, which should result in the lowest possible interest rates for financing a capital project. Because the legal structure for issuing general obligation bonds is less complex than for most other financing methods, general obligation bonds generally have lower costs of issuance when compared to other methods of financing capital projects.

Disadvantages of issuing general obligation bonds include a requirement for a super-majority approval of the voters. This is sometimes difficult to obtain, and can be a time-consuming process because of the limited election dates available. Elections may be held only on the dates specified in Missouri statutes. The amount of general obligation bonds a municipality can issue is limited, which can make it difficult for small municipalities and financings.

What are the municipality's on-going administrative and compliance responsibilities?

Depending on the nature of the bond issue, the municipality may have additional continuing disclosure and record keeping duties. For a more detailed summary of these requirements, see Chapter 7 of this Handbook.

Revenue Bonds

What type of projects may be financed with revenue bonds?

Revenue bonds are issued to finance facilities that have a definable user or revenue base. Generally, specific statutory authority is required for the issuance of revenue bonds. Some commonly used sources of authority include Chapter 91, RSMo for waterworks system revenue bonds; Chapter 250, RSMo, for combined waterworks and sewerage system revenue bonds; Section 71.360, RSMo, for parking facility revenue bonds; Section 94.577, RSMo, for capital improvement sales tax revenue bonds; and Section 94.700, RSMo, for transportation sales tax revenue bonds.

What is the source of funds for repayment?

Revenue bonds are payable from and secured by the pledge of a specific source of funds from the facility or project that is financed. The most common types of revenue pledges are from a municipality's water, sewer or electric system. Other types of revenue sources are aquatic or community centers, parking lots or meters, or parks and recreation facilities.

What are the limits on issuing revenue bonds?

“New Money” Bonds. Unlike general obligation bonds, there is no constitutional or statutory debt limit on the amount of revenue bonds that can be issued. However, the ordinance or trust indenture pursuant to which the revenue bonds were issued may restrict the circumstances under which additional bonds may be issued from the same source of funds. This is typically referred to as an “additional bonds” test or covenant. Section 108.170, RSMo, imposes limits on the interest rate and the sale price of the bonds, depending upon whether the sale is a negotiated sale or a competitive public sale.

Refunding Bonds. Section 108.140(2), RSMo, authorizes a municipality to issue revenue bonds for the purpose of refunding outstanding revenue bonds, if the refunding revenue bonds are payable from the same sources as were pledged to the payment of the bonds being refunded. There is no interest savings requirement, as there is for general obligation refunding bonds. The interest rate and sale price limitations under Section 108.170, RSMo, also apply to refunding bonds.

Limit on Final Maturity. The maximum term for revenue bonds varies depending on the statutory authority. A common maximum term is 35 years. Sales tax revenue bonds, because they are considered “indebtedness” (as discussed below), are limited to a maximum term of 20 years.

What are the voter approval requirements?

Generally, Simple Majority Approval (Except for Sales Tax Revenue Bonds). Nearly all revenue bonds, other than sales tax revenue bonds, require simple majority voter approval for passage. (For available election dates, see the above discussion in this Handbook relating to the voter approval requirements for general obligation bonds.)

Super-Majority Approval for Sales Tax Revenue Bonds. Sales tax revenue bonds constitute “indebtedness” under the Missouri Constitution because they are payable from taxes (just like general obligation bonds). Consequently, sales tax revenue bonds require the same super-majority voter approval as general obligation bonds. (For available election dates and the super-majority voter approval requirements, see the above discussion in this Handbook relating to the voter approval requirements for general obligation bonds.)

Form of Ballot Question. The particular statute authorizing the issuance of the revenue bonds generally prescribes the form of the ballot question.

Filing Notice of the Election with the Election Authority. The notice filing requirements are discussed above in this Handbook, under the discussion on General Obligation Bonds.

What is the procedure for issuing revenue bonds?

After a successful election, the municipality can issue part or all of the bonds authorized at the election.

The governing body must pass an ordinance that includes all of the terms of the bonds (principal amount, interest rates, redemption provisions, paying agent, etc.). Typically, the “closing” (when funds are available to the municipality) occurs within two weeks after the approval of the authorizing ordinance.

What are advantages and disadvantages of revenue bonds?

Advantages to issuing revenue bonds, rather than general obligation bonds, are the lower threshold required for voter approval, and the longer term allowed for repayment. The interest rate for revenue bonds may be lower than for a lease-purchase financing with a similar term because the municipality is authorized to provide an enforceable pledge of revenues for repayment of the bonds, for the full term of the bonds. Lease purchase obligations are annually-renewable obligations, and are rarely secured by a pledge of revenues.

Revenue bonds usually have a higher interest rate than general obligation bonds with a similar term because revenue bonds are not backed by the full faith and credit of the municipality and are not payable from ad valorem taxing authority.

What are the municipality’s on-going administrative and compliance responsibilities?

Bond Covenants. It is customary for purchasers of revenue bonds to require the municipality to agree to a “rate covenant” and other covenants intended to ensure that the revenue-producing system will generate sufficient revenues to pay the operating and maintenance expenses, along with debt service on the bonds. This covenant will be contained in the authorizing ordinance or in a trust indenture pursuant to which the bonds are issued. It is important for the municipality to review the bond covenants annually to ensure continuing compliance. Failure to comply with a bond covenant may be considered a default.

Continuing Disclosure and Tax Compliance Requirements. Depending on the nature of the bond issue, the municipality may have additional continuing disclosure and record keeping duties. For a more detailed summary of these requirements, see Chapter 7 of this Handbook.

Lease-Purchase Obligations

What type of projects may be financed with lease-purchase obligations?

Lease-purchase financing can be used for virtually any capital improvement expenditure.

How is it structured and what is the legal authority?

Legal authority for a lease-purchase financing is found in statutes authorizing municipalities to lease property. Under a lease-purchase transaction, the municipality leases the equipment and/or real property to be acquired and constructed from a lessor, which may be an investor, a trustee bank, a leasing company, a nonprofit corporation or other entity. The municipality makes rental payments over a series of annually-renewable one-year terms, and has the option to purchase the leased property at the end of the term. The municipality's obligation to make rental payments in any subsequent year is subject to appropriation of funds each year for that purpose by the municipality. For this reason the obligation is not considered "indebtedness" for state law purposes as discussed below.

What is the source of funds for repayment?

Because the lease-purchase agreement is not a voter-approved obligation, the municipality cannot impose a debt service levy or pledge revenues to repay the bonds. Nonetheless, the municipality should identify the source of funds that will be available to make the rental payments. Sales tax revenues are a common source of payment for lease-purchase obligations. Note the difference between a legally-authorized "pledge" of revenues versus revenues that are legally available to be used to repay obligations. This is covered above under the discussion of sales tax revenue bonds. Because the sales tax is not "pledged" to the payment of the lease, the sales tax requires a simple majority voter approval. Contrast this to sales tax revenue bonds which are backed by a pledge of the sales tax and are subject to the constitutionally required super-majority. Chapter 3 of this Handbook includes a listing of sales taxes that municipalities are authorized to impose, upon receiving the required voter-approval.

Why isn't voter approval of the lease-purchase required?

Lease-purchase obligations are not considered indebtedness of the municipality because the municipality is not obligated to make payments beyond any current year. The obligation is not, therefore, subject to constitutional restrictions on incurring indebtedness without voter approval. Though no voter approval is required for the municipality to enter into a lease-purchase obligation, the municipality may seek voter approval to approve a source of funding for the lease-purchase obligation. See the discussion above under "What is the source of funds for repayment?"

What is the procedure for entering into a lease-purchase transaction?

Section 432.070, RSMo (applicable to all contracts entered into by the municipality) requires that the terms of the agreement be approved by the governing body. When it is anticipated that an interest in a lease-purchase agreement will be sold to more than one investor, it is necessary to document the transaction in a manner that will allow the sale of portions of the municipality's obligation under the lease-purchase agreement.

What are Certificates of Participation (COPs)?

Certificates of participation or lease participation certificates ("COPs") are certificates that represent a proportionate interest of the owner of each Certificate in the right to receive rental payments made by the municipality under a lease-purchase agreement between the municipality and a lessor (which may be a nonprofit corporation, a leasing company, an investment banking firm, a single purpose corporation or a bank or trust company) pursuant to which the lessor leases the leased property to the municipality and the municipality agrees to pay rent at specified times to the lessor or its assigns.

What are advantages and disadvantages of a lease-purchase financing?

Advantages to using a lease-purchase agreement as a capital financing tool include the lack of a voter-approval requirement, and the longer term allowed for repayment. General obligation bonds are limited to a 20-year repayment term. However, lease-purchase financing can have up to a 35-year repayment term. The longer repayment term permits a municipality to reduce its annual debt service requirement, thereby reducing the impact on the municipality's cash flow.



Disadvantages include generally higher interest rates for lease-purchase transactions than for general obligation bonds (and sometimes revenue bonds) with a similar term. Another disadvantage for lease-purchase transactions involving real property is generally higher transaction fees than for general obligation or revenue bonds, due to the more complicated nature of the financing.

What are the municipality's on-going administrative and compliance responsibilities?

Lease Covenants. It is customary for a lease-purchase agreement to impose on the municipality duties to protect the leased property. These will include requirements to maintain property and liability insurance, and requirements to maintain and repair the leased property. It is important for the municipality to review the lease covenants annually to ensure continuing compliance. Failure to comply with a lease covenant may be considered a default.

Continuing Disclosure and Tax Compliance Requirements. Depending on the structure of the lease-purchase transaction, the municipality may have additional continuing disclosure and record keeping duties. For a more detailed summary of these requirements, see Chapter 6 of this Handbook.

Tax and Revenue Anticipation Notes

Missouri municipalities are authorized to issue notes maturing within one year from the date of issuance, in an amount not to exceed the estimated taxes and revenues for the current fiscal year that have not yet been collected. The proceeds of the notes may be used for capital improvements or for operating purposes, and the tax and revenue receipts are accumulated and used to pay off the notes at maturity. If it is intended that the interest payments on the notes will be tax-exempt to the purchasers of the notes, there are special tax law issues to be considered.

THE SALES TAX AS A FINANCING TOOL

How to Use the Sales Tax as a Financing Tool

Missouri cities, counties and other political subdivisions have a continuing need for methods of financing capital improvements that are legal, practical and economically feasible. A sales tax can provide a workable financing alternative to issuing general obligation bonds. The sales tax is attractive as a financing tool because in most cases only a majority of voters needs to approve its imposition, as opposed to the super-majority required to authorize the issuance of general obligation bonds. A sales tax, once approved by the voters, can be used to finance particular projects in the following ways:

1. **Pay as you go.** As the sales tax is collected, it can be used immediately to fund capital improvement projects. This is the most straightforward method for utilizing sales tax revenue and is effective mainly for shortterm, relatively lowcost projects such as street repairs.
2. **Tax anticipation notes.** At the beginning of the sales tax collection year, cities can issue tax anticipation notes in an amount not to exceed a percentage of the estimated taxes and revenues for the year yet uncollected. The proceeds of the notes are available for capital improvements, and the sales tax receipts are accumulated and used to pay off the notes at maturity. Since such notes must mature within 12 months of their date of issuance or by the end of the fiscal period, this is necessarily a shortterm financing method.
3. **Lease-purchase financing.** Using this financing method, a municipality can acquire certain equipment or facilities from a private entity (such as a bank, manufacturer or leasing company) pursuant to a lease-purchase agreement that is subject to annual appropriation by the municipality's governing body. The municipality's sales tax revenue provides a source of funds for making the lease payments. The municipality receives unencumbered title to the items being leased when the final lease payment is made. Lease-purchase financing is discussed in more detail in Chapter 2 of this Handbook.
4. **Sales tax revenue bonds.** Certain cities may issue bonds directly to fund capital improvements and pledge sales tax revenues to repay the bonds. Before sales tax revenues can be pledged to the payment of bonds on a longterm basis, the bonds (other than refunding bonds) must be approved by the constitutionally-required percentage of voters under Article VI, Section 26 of the Missouri Constitution (either four-sevenths or two-thirds, depending on the election date). Sales tax revenue bonds are also subject to the debt limitations of the Missouri Constitution. For available election dates and the super-majority voter approval requirements, see the discussion in Chapter 2 of this Handbook relating to the voter approval requirements for general obligation bonds.

The financing methods described above must be structured carefully in order to comply with constitutional and other legal requirements. For example, under federal tax law, interest on an obligation of a state or political subdivision will be exempt from federal income taxation only if certain requirements are satisfied. A municipality should seek legal advice before utilizing a particular method.

Sales Taxes Available to Municipalities

Upon receiving the required voter approval, the following are examples of sales taxes available to municipalities under current law:

Type of Sales Tax Authorized	Statutory Authority (RSMo)
Capital Improvements (Any municipality except those located in St. Louis County)	Section 94.577
Capital Improvements (Any municipality located in St. Louis County)	Section 94.890
Capital Improvements (Springfield)	Section 94.578
Community Center (Excelsior Springs)	Section 94.585
Community Services for Children (All counties and St. Louis City)	Section 67.1775
Convention and Tourism (Kansas City)	Section 92.325
Economic Development (Jefferson City)	Section 94.1010
Economic Development (Kirksville)	Section 94.1008
Economic Development, Local Option	Section 67.1305
Economic Development (Municipalities within many, but not all, counties – see statute)	Section 67.1300
Economic Development, Local (St. Joseph, Springfield, Joplin, Buchanan County, Butler County and all cities therein and all cities within Jasper County)	Section 67.1303
Fire Protection	Section 321.242
General Purpose	Section 94.510
General Purpose (Any municipality in St. Louis County)	Section 94.850
Hotels and Motels (St. Louis City Regional Convention and Visitors Commission)	Section 67.619
Hotels and Motels – Transient Guest	Section 67.1000.1
Hotels and Motels – Transient Guest	Section 67.1003
Hotels and Motels – Transient Guest (Jefferson City)	Section 67.1000.4
Hotels and Motels – Transient Guest Tax (Edmundson and Woodson Terrace)	Section 67.1009
Hotels and Motels – Transient Guest (Marshall)	Section 67.1015
Hotels, Motels, Bed and Breakfast Inns, Campgrounds and Docking Facilities Used by Transients for Sleeping – Transient Guest (Arnold, Bethany, Bloomfield, Bonne Terre, Boonville, Caruthersville, Clarksville, Clinton, Cuba, Desloge, Festus, Grain Valley, Hollister, Leadington, Lebanon, Louisiana, New Madrid County and fourth-class cities therein, Pacific, Park Hills, Parkville, Riverside, St. James, Sullivan, Union and Warrenton).	Section 67.1360
Hotels, Motels, Bed and Breakfast Inns, Campgrounds and Docking Facilities Used by Transients for Sleeping – Transient Guest (St. Joseph and Buchanan County)	Section 67.1361
Hotels, Motels, Bed and Breakfast Inns, Campgrounds and Docking Facilities Used by Transients for Sleeping – Transient Guest (Independence)	Section 67.1366
Hotels and Motels – Transient Guest (Grandview)	Section 94.271

Type of Sales Tax Authorized	Statutory Authority (RSMo)
Hotels and Motels – Transient Guest (North Kansas City)	Section 94.832
Hotels and Motels – Transient Guest (Canton, LaGrange, Edina and special charter cities)	Section 94.837
Hotels and Motels – Transient Guest (Lamar Heights)	Section 94.838
Hotels and Motels – Transient Guest (Salem)	Section 94.839
Hotels and Motels – Transient Guest (Raytown)	Section 94.840
Hotels and Motels – Transient Guest (Waynesville)	Section 94.1011
Hotels and Motels – Transient Guest (Jonesburg and New Florence)	Section 94.1060
Mass Transit	Section 92.400
Medically Indigent (St. Louis City)	Section 94.1000
Museum and Tourism-Related Activities (Independence and Joplin)	Section 82.850
Museum, Local Option (Joplin)	Section 94.950
Parks and Storm Water Control, Local	Section 644.032
Police Department (Independence)	Section 82.875
Public Safety (Blue Springs, Centralia, Excelsior Springs, Fayette, Harrisonville, Lebanon, Portageville, Riverside, St. Joseph and certain other fourth-class cities)	Section 94.900
Public Safety (Fayette, Gladstone, Grandview, Liberty, North Kansas City, Raytown, Riverside and certain other fourth-class cities)	Section 94.902
Public Safety Department (St. Louis City)	Section 92.500
Public Safety Department (Springfield)	Section 94.579
Sales of Hotels (St. Louis City)	Section 67.657
Storm Water Control and Public Works Projects	Section 94.413
Theatre, Cultural Arts and Entertainment District	Section 67.2520
Tourism Community Enhancement District	Section 67.1959
Tourism (Branson)	Section 94.800
Tourism (Poplar Bluff and Sikeston)	Section 94.870
Tourism (Rolla)	Section 94.830
Tourism (Sweet Springs, Concordia and Marshall)	Section 94.834
Tourism (Weston)	Section 67.2030
Tourism and Infrastructure (Marston, Matthews and Steele)	Section 94.836
Transportation	Section 94.700
Transportation (Kansas City and St. Louis City)	Section 94.600
Transportation (St. Louis City)	Section 94.660
Use Tax, Local	Section 144.757

Local Option Economic Development Sales Tax

A Local Option Economic Development Sales Tax may be levied, subject to voter approval, at a rate of up to one-half of one percent (0.5%) by certain municipalities in Missouri pursuant to Section 67.1305, RSMo. If approved by the voters, the sales tax will become effective on the first day of the second calendar quarter following the election. If not approved by the voters, a proposal for a Local Option Economic Development Sales Tax may not be resubmitted to the voters for 12 months. The provisions of Section 67.1305, RSMo, are presented in this Handbook.

Certain municipalities, including Springfield, Joplin, St. Joseph, Buchanan County, Butler County, all cities within Butler County and all cities within Jasper County, may levy a Local Option Economic Development Sales tax, subject to voter approval, at a rate of up to one-half of one percent (0.5%) pursuant to Section 67.1303, RSMo, in lieu of the sales tax levied pursuant to Section 67.1305, RSMo. The provisions in Section 67.1303, RSMo, differ slightly from the provisions of Section 67.1305, RSMo. If your municipality is able to levy a Local Option Economic Development Sales Tax pursuant to either Section 67.1303, RSMo, or Section 67.1305, RSMo, please consult with bond counsel to determine which sales tax will best serve your municipality's needs.

Procedures for Implementation

After the Local Option Economic Development Sales Tax is approved by the voters, the municipality levying the tax must create an Economic Development Tax Board. Municipal Economic Development Boards may have either a five or nine member board. The number of representatives from local taxing entities is as shown in the following table:

Entity	5 member	9 member
School Districts	1	2
Municipality	3	5
County	1	2

The purposes of the Board are to (1) consider economic development plans, economic development projects and designations of economic development areas, (2) hold public hearings, and (3) make recommendations to the governing body of the municipality concerning economic development plans, economic development projects and designations of economic development areas. The governing body of the municipality levying the Local Option Economic Development Sales Tax has the power to make all final funding determinations.

Before making any recommendations to the municipality's governing body, the Board must hold a public hearing concerning the proposed economic development plan, economic development project or designation of an economic development area. Section 67.1305, RSMo, does not provide any direction concerning the content of economic development plans, the factors to be considered when evaluating an economic development project or the designation of an economic development area or the procedures to be followed when giving notice of the public hearing. Accordingly, we suggest that the governing body pass a resolution, ordinance or order addressing these items concurrently with the establishment of the Board.

Use of Local Option Economic Development Sales Tax Revenue

The use of Local Option Economic Development Sales Tax revenue is subject to several restrictions:

1. Sales tax revenue may not be used for any retail development project, except for the redevelopment of downtown areas or historic districts.
2. At least 20% of the revenue must be used for projects directly related to long-term economic development preparation, including but not limited to, the following:
 - a. Acquisition of land;
 - b. Installation of infrastructure for industrial or business parks;

- 
- c. Improvement of water and wastewater treatment capacity;
 - d. Extension of streets;
 - e. Public facilities directly related to economic development and job creation; and
 - f. Providing matching dollars for state or federal grants relating to such long-term projects.
3. Remaining revenue may be used for, but is not limited to, the following:
 - a. Marketing;
 - b. Providing grants and loans to companies for job training, equipment acquisition, site development and infrastructure;
 - c. Training programs to prepare workers for advanced technologies and high skill jobs;
 - d. Legal and accounting expenses directly associated with the economic development planning and preparation process; and
 - e. Developing value-added and export opportunities for Missouri agricultural products.
 4. Not more than 25% of the revenue may be used annually for administrative purposes, including staff and facility costs.
 5. Sales tax revenue may be used outside of the boundaries of the municipality imposing the tax if:
 - a. The municipality imposing the tax or the state receives significant economic benefit from the economic development plan, economic development project or designation of the economic development area; and
 - b. All municipalities participating in the economic development plan, economic development project or designation of the economic development area enter into an agreement detailing the authority and responsibilities of each municipality with regard to such plan, project or area designation.
 6. Tax increment financing does not capture Local Option Economic Development Sales Tax revenue.
 7. When imposed in any special taxing district, including but not limited to Tax Increment Financing Districts, Neighborhood Improvement Districts or Community Improvement Districts, Local Option Economic Development Sales Tax revenue may not be used for the purposes of the special taxing district unless recommended by the Economic Development Tax Board and approved by the governing body of the municipality levying the tax.

Reporting Requirements

The Board and the municipality's governing body must make a public report at least annually on the use of the sales tax revenue and the progress of any economic development plan, economic development project or designation of an economic development area.

Additionally, no later than March 1 of each year, the Board must submit to the Joint Committee on Economic Development (a joint committee of the Missouri General Assembly) a report that includes the following information for each economic development project funded:

1. A statement of the project's primary economic development goals.
2. A statement of the total Local Option Economic Development Sales Taxes received during the immediately preceding calendar year.
3. A statement of the total expenditures during the preceding calendar year in each of the following categories:
 - a. Infrastructure improvements;
 - b. Land and/or buildings;
 - c. Machinery and equipment;
 - d. Job training investments;

- 
- e. Direct business incentives;
 - f. Marketing;
 - g. Administration and legal expenses; and
 - h. Other expenditures.

Repeal of Local Option Economic Development Sales Tax

The governing body may choose to submit the question of repealing the sales tax to the voters on any election date. Additionally, upon receipt of a petition, signed by 10% of the registered voters of the municipality voting in the last gubernatorial election, calling for an election to repeal the sales tax, the governing body must submit the question of repealing the tax at the next available election date.

The repeal of the sales tax will become effective on December 31 of the calendar year in which the voters approve the repeal.

ECONOMIC DEVELOPMENT 101

Municipalities in Missouri and throughout the country are increasingly playing greater roles in economic development. These roles include approving and participating in public-private partnerships, administering certain incentive programs and protecting taxpayer interests. This chapter is intended to provide a brief overview of these roles for municipalities and summarizes some of the economic development programs available in Missouri. Chapter 5 of this Handbook includes more detailed summaries of some of the more popular economic development incentive tools.

Economic Development Policies

Some municipalities have found it desirable to adopt economic development policies to help guide their decision-making process. These policies often contemplate (1) the types of incentives that will be considered, (2) the value of the incentives that will be considered, which is often expressed as a percentage of total project costs, and (3) desired outcomes, such as the creation of jobs or the remediation of blight. Municipalities also use economic development policies to communicate which uses of economic development incentives are not acceptable in their communities.

Incentive Programs

Economic development incentive programs are often divided into the following categories:

Tax abatement. Project cash flows will improve when taxes are reduced or eliminated. Accordingly, projects that are not economically feasible because of low (or even negative) cash flows may become feasible if taxes are abated. Popular forms of real property tax abatement in Missouri include (1) the Urban Redevelopment Corporations Law (commonly known as “Chapter 353” abatement), which is available in blighted areas only and (2) industrial development bond transactions (commonly known as “Chapter 100” abatement), which does not require a blight finding, but is limited to certain types of projects. Sales taxes on construction materials and other personal property may also be abated as part of a Chapter 100 transaction. A more detailed summary of these incentive programs is included in Chapter 5 of this Handbook.

Tax addition. Missouri law allows for the creation of special taxing districts, known as Community Improvement Districts (CID), Transportation Development Districts (TDD) and Neighborhood Improvement Districts (NID). CIDs and TDDs can levy sales taxes, property taxes and special assessments within their boundaries. NIDs may levy special assessments. The revenues created from these additional taxes can then be used to finance the certain public improvements and services associated with a development. Recently, several municipalities have also implemented the Local Option Economic Development Sales Tax on a municipality-wide basis to provide funding for eligible economic development projects. A more detailed summary of these incentive programs is included herein.

Tax credits. Many tax credit programs exist at the state and federal level. Tax credits offset tax liability and can be used to improve project cash flow or encourage investment. Some tax credits may be sold to raise money for a project. Municipalities generally do not control awards or administration of tax credits. However, municipalities should have an understanding of the types of various tax credit programs so they can understand the true level of economic development incentives that a project hopes to utilize. Information on specific tax credit programs is available at <https://www.gilmorebell.com/resources/>

Tax redistribution. The most popular type of tax redistribution is tax increment financing (TIF). When TIF is implemented, a TIF district “captures” a portion of the incremental tax revenue generated from a project. This “captured” revenue can then be used to pay eligible project costs. The Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, RSMo (the “TIF Act”), provides the statutory requirements for implementing TIF in Missouri. A more



detailed summary of the TIF Act follows in Chapter 5 of this Handbook. As an alternative to the process described in the TIF Act, under Section 70.220, RSMo, municipalities may enter into tax rebate agreements with developers whereby incremental tax revenues from a project are directed to pay project costs. This is sometimes referred to as “Contract TIF”. Unlike the incentives available under the TIF Act, which includes “capture” of most sales and property taxes, tax rebate agreements can only “capture” taxes that (1) are levied by the municipality itself (i.e., a tax rebate agreement entered into by a municipality would not apply to county sales taxes) and (2) are not imposed for limited purposes (i.e., revenues from a fire protection sales tax could not be used to pay project costs).

Grants/loans. Some municipalities have funded grant or loan programs to provide direct assistance to businesses and projects. The legality of such programs depends on several variables, including (1) the source of the funding, (2) the classification of the municipality, (3) statutory or charter authority and (4) the primary intent of the program. Recent examples of permissible programs include (a) establishing a program to provide grants for façade improvements as part of a downtown TIF plan and (b) creating a forgivable loan program funded by revenues from a Local Option Economic Development Sales Tax (see Section 67.1305, RSMo.). Legal counsel should be heavily involved in the development of any type of grant or loan to program to ensure that such a program is within a local government’s statutory, charter and constitutional powers.

Public-Private Partnerships

Awards of economic development incentives often involve entering into a public-private partnership. The terms of such partnership are generally detailed in a redevelopment agreement or other agreement between the municipality and a developer. It is important that such documents clearly describe the rights and responsibilities of the parties, including, but not limited to:

- What will be built and when?
- What incentives are available and how will they be paid?
- If the project is not completed, what happens?

Such agreements should be drafted by legal counsel in close consultation with municipal officials to ensure that actions promised by the municipality are within the municipality’s power and that terms of the agreement correspond to the “business deal” agreed to with the company or developer.

It is common practice for a municipality and developer to enter into a preliminary funding agreement prior to a municipality’s consideration of incentives, whereby the developer will pay all or a portion of the municipality’s costs incurred in consideration of the requested economic development program incentive(s) and the negotiation of a redevelopment agreement.

Administering Incentive Programs

Program Administration. Administrative responsibilities vary greatly depending on the type of economic development incentive program used. For example, under Missouri statute, municipalities with active TIF districts must, among other duties, file annual reports with the Missouri Department of Revenue. If a municipality fails to provide an annual report, the Department of Revenue must send a notice of the failure to the municipality, specifying required corrections. If a municipality fails to comply with this notice within sixty days, it will be prohibited from approving new TIF projects for at least five years. Municipalities may also be involved with the administration of a CID or TDD, which are separate political subdivisions and have their own budgets, boards of directors, etc. When planning to implement an economic development incentive program, it is important to identify (1) which party (municipality or developer) and personnel (City Clerk, Director of Planning/Community Development, etc.) will have what responsibilities and (2) the source of funds for administrative costs (i.e., CID or TDD sales tax revenue, TIF revenue, developer payments, etc.).



Financing Administration. The use of CIDs, TDDs, NIDs and TIF often involve the issuance of bonds or notes and the verification of reimbursement requests from developers that advance fund eligible project costs. The process for verifying reimbursement requests should be detailed in the redevelopment agreement and/or other financing documents and will generally require a developer to provide copies of invoices or other proof of costs incurred to an identified municipal employee for review and approval. When bonds or notes are issued, other administrative duties may also apply. For example, on a note issue, the municipality might elect to serve as its own paying agent rather than employ a trustee bank. If bonds are issued, a trustee bank will almost always be involved. Depending on the nature of the bond issue, the municipality may have additional continuing disclosure and record keeping duties. For a more detailed summary of these requirements, see Chapter 6 of this Handbook. Recently, the Internal Revenue Service has targeted bonds issued for economic development projects for closer scrutiny. Accordingly, it is important that you work with your bond counsel to identify the types of records that need to be maintained.

Protecting Taxpayer Interests

Protection of taxpayer (and taxing district) interests is a critical component to any consideration of economic development incentives. Good public policy requires municipalities to analyze the need for incentives and the risk to taxpayers and taxing districts. Local governments should be prepared to understand financial information provided by developers and have some ability (through internal staff and/or consultants) to determine if the financial information presented is reasonably realistic (e.g., construction budgets, sales projections, assessed value projections, etc.).

The TIF Act requires a municipality to find that the project would not be feasible “but for” the TIF incentive. While such a finding is not legally required for other incentive programs, local governments may still want to rely on a similar justification before approving any tax abatement or tax redistribution incentives. Municipalities should also work closely with their legal counsel and financial advisors to ensure an incentive program remains in place for the least amount of time necessary to achieve the desired incentive value.

Tax abatement and tax redistribution incentive programs give municipalities the ability to affect the tax revenues of other taxing districts. While application of these incentive programs generally requires providing these affected taxing districts with an analysis of the impact of the proposed incentive program and an opportunity to participate in a public hearing, final approval is solely controlled by the municipality. Accordingly, municipalities should consider the impacts on other taxing districts and, if appropriate, explore measures to mitigate potential impacts.

SUMMARIES OF POPULAR ECONOMIC DEVELOPMENT INCENTIVE PROGRAMS

Property Tax Abatement Under Chapter 100, RSMo

Cities, counties, towns and villages in Missouri are authorized, pursuant to Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 to 100.200, RSMo (“Chapter 100”) to issue industrial development bonds (“IDBs”) to finance projects for private corporations, partnerships and individuals. There are two primary reasons to issue IDBs under Chapter 100. First, if the bonds are tax-exempt, it may be possible to issue the bonds at lower interest rates than those obtained through conventional financing. Second, even if the bonds are not tax-exempt, ad valorem taxes on bond-financed property may be abated so long as the bonds are outstanding. *The description below focuses primarily on the issuance of taxable industrial development bonds issued for the purposes of the abatement of ad valorem taxes.*

What type of projects are allowed?

Chapter 100 permits any city, county, town or village to issue bonds to finance the costs of warehouses, distribution facilities, research and development facilities, office industries, agricultural processing industries, services facilities which provide interstate commerce and industrial plants. Article VI, Section 27(b) of the Missouri Constitution also authorizes such bonds to be issued for other types of commercial facilities. In connection with such projects, the bond proceeds may be used to finance land, buildings, fixtures and machinery.

What are the advantages of Chapter 100?

From the municipality’s standpoint, IDB financing is a useful tool to induce responsible new industries to locate in the area, as well as encouraging companies already in the area to remain, by assisting them in improving their present facilities or in building new ones. The end result is often a combination of increased job opportunities, existing job retention and large-scale capital investment. Companies with large equipment investments may be particularly interested in an IDB financing because of the potential to abate both real and personal property taxes.

How are taxes abated?

Property Tax - Under Article X, Section 6 of the Missouri Constitution and Section 137.100, RSMo, all property of any political subdivision is exempt from taxation. In a typical IDB transaction, the municipality holds fee title to the project and leases the project to the company. The municipality and the company may determine that partial tax abatement - but not full tax abatement - is desirable, in which case the company will need to agree to make “payments in lieu of taxes” to the municipality equal to the difference between the abatement amount and the taxes otherwise due. The amount of payments in lieu of taxes is negotiable to any amount. The payments in lieu of taxes are payable by December 31 of each year, and are distributed to the applicable taxing districts in the same manner and in the same proportion as property taxes would otherwise be distributed under Missouri law. Ambulance, fire protection district and counties imposing a property tax for the purpose of operating a 911 center providing emergency or dispatch services are permitted under Chapter 100 to annually set a reimbursement rate between 50% and 100% of the amount of their entities’ ad valorem real property tax revenues they would have received in the absence of tax abatement prior to the time the assessment is determined.

Sales Tax - Under Section 144.054.3, RSMo, a company may apply to the Missouri Department of Economic Development to receive a sales tax exemption on all personal property purchased through an IDB transaction. The municipality may also furnish the company with a sales tax exemption certificate, so that materials used in constructing any real property improvements can be exempt from sales taxes.

How are projects approved?

Upon a determination by the municipality to proceed with the financing, the municipality normally adopts a resolution (referred to as a “resolution of intent” or “inducement resolution”) stating the municipality’s willingness and intent to issue IDBs for the project. Thereafter, the municipality must provide notice to each taxing district of the municipality’s intent to approve a “plan for industrial development” for the project. The plan must identify the primary terms of the proposed transaction, and must include a cost-benefit analysis that shows the impact of the proposed tax abatement on each taxing district. Finally, the municipality adopts an ordinance approving the various bond documents and authorizing the issuance of the bonds.

What on-going administrative responsibilities will municipalities have?

Municipalities that participate in an IDB financing will likely have to approve requisitions prepared by the company showing what real and personal property was purchased with bond proceeds and transferred to municipal ownership. County assessors will also have to determine which property is owned by the municipality (and thus tax-exempt) and which is owned by the company (and thus taxable). Bond documents are generally drafted to require the company to provide detailed descriptions of property to the county assessor to make this task easier. At the end of the tax abatement period, municipalities are required to transfer ownership of property by deed or bill of sale back to the company so that such property becomes taxable. The mechanism for such transfer should be included in the bond documents.

Property Tax Abatement Under Chapter 353, RSMo

Under Chapter 353, RSMo (“Chapter 353”), real property tax abatement is available within “blighted areas” as defined in Chapter 353. An Urban Redevelopment Corporation is created under the general corporations laws of Missouri (Chapter 351, RSMo) and, once created, it has the power to operate one or more redevelopment projects pursuant to a city-approved or county-approved (if St. Louis County or Jackson County) redevelopment plan.

What tax abatement is permitted?

Under Chapter 353, an eligible city or county may approve a redevelopment plan that provides tax abatement for up to 25 years, thus encouraging the redevelopment of the blighted area. To be eligible for the abatement, the Urban Redevelopment Corporation must take title to the property to be redeveloped. During the first 10 years of tax abatement, up to (1) 100% of the incremental increase in real property taxes on the land are abated, (2) 100% of the real property taxes on all improvements are abated, and (3) the property owner continues to pay real property taxes on the land in the amount of such taxes on such land (without considerable improvements) in the year before the redevelopment corporation takes title.

During the next 15 years, between 50% and 100% of the incremental real property taxes on all land and all improvements are abated. Payments in lieu of taxes (“PILOTS”) may be imposed on the Urban Redevelopment Corporation by contract with the city or county, as applicable, to achieve an effective tax abatement that is less than the abatement established by statute. PILOTS are paid on an annual basis to replace all or part of the real estate taxes that are abated. PILOTS will be allocated to each taxing district according to their proportionate share of ad valorem property taxes. The Urban Redevelopment Corporation may take title to lots, tracts or parcels of property within the redevelopment area in phases, in order to maximize the tax abatement during a phased redevelopment project.

Ambulance, fire protection district and counties imposing a property tax for the purpose of operating a 911 center providing emergency or dispatch services are permitted under Chapter 353 to annually set a reimbursement rate between 50% and 100% of the amount of their entities’ ad valorem real property tax revenues they would have received in the absence of tax abatement prior to the time the assessment is determined.

How is a development plan approved?

The statute requires the governing body of the municipality to hold a public hearing regarding any proposed development plan. Prior to receipt of any development plan, municipalities should adopt an ordinance setting forth (1) procedures for giving notice (i.e., how many days, certified mail, etc.), (2) any application fees or other submission requirements and (3) any desired content requirements for development plans. Before the public hearing, the governing body must, in the manner prescribed by the ordinance, furnish to the political subdivisions whose boundaries include any portion of the property to be affected by tax abatement (1) notice of the scheduled public hearing and (2) a written statement of the impact on ad valorem taxes such tax abatement will have on the political subdivisions (a “tax impact statement”). The tax impact statement must include, at a minimum, an estimate of the amount of ad valorem tax revenues of each political subdivision that will be affected by the proposed tax abatement.

After the public hearing, the municipality may approve a development plan by ordinance. However, no tax abatement available under a development plan will be permitted until (1) the developer enters into a redevelopment agreement with the municipality describing the terms and conditions of the abatement and (2) title to the property at issue passes to an urban redevelopment corporation established under Chapter 353.

Who prepares a development plan?

Unless limited by local ordinance, there is no restriction on what entity may submit a development plan. Generally, developers form their own urban redevelopment corporations and prepare development plans. However, several cities in Missouri have formed their own urban redevelopment corporations to prepare development plans and pursue redevelopment opportunities.

What role does a redevelopment agreement play?

The redevelopment agreement describes the Urban Redevelopment Corporation’s obligations to carry out the development plan. Among the provisions that typically are included in the redevelopment agreement are (1) procedures for acquiring property, including prerequisites to the use of condemnation; (2) the period for which tax abatement will be provided; (3) the time period within which the redevelopment corporation can carry out the project; and (4) procedures for the corporation to transfer title to property in the area.

In 2006, the General Assembly amended Missouri’s condemnation laws, which affected condemnation under Chapter 353. First, an Urban Redevelopment Corporation cannot acquire property through condemnation, unless the corporation entered into a redevelopment agreement before December 31, 2006. Second, farmland that is declared blighted cannot be acquired by eminent domain. Third, blight must be evaluated on a parcel-by-parcel basis, if any property in the redevelopment area will be acquired through (or under the threat of) condemnation.

What on-going administrative responsibilities will municipalities have?

If a municipality operates its own urban redevelopment corporation, it will need to make annual filings with the Secretary of State in the same manner as other Missouri corporations.

Community Improvement Districts (CID)

A community improvement district (“CID”) may be created for the purpose of financing a wide range of public facilities, improvements or services. A CID is either a separate political subdivision with the power to impose a sales tax, a special assessment or a real property tax, or a nonprofit corporation with the power to impose special assessments.

What types of projects may be funded by a CID?

A CID may fund public facilities or improvements within its boundaries, including the following:

1. Pedestrian or shopping malls and plazas.
2. Parks, lawns, trees and any other landscape.
3. Convention centers, arenas, aquariums, aviaries and meeting facilities.
4. Sidewalks, streets, alleys, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, drainage, water, storm and sewer systems and other site improvements.
5. Parking lots, garages or other facilities.
6. Lakes, dams and waterways.
7. Streetscape, lighting, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers.
8. Telephone and information booths, bus stop and other shelters, rest rooms and kiosks.
9. Paintings, murals, display cases, sculptures and fountains.
10. Music, news and child-care facilities.
11. Any other useful, necessary or desired improvement.

A CID may also provide a variety of public services within its boundaries, including the following:

1. With the municipality's consent, prohibiting or restricting vehicular and pedestrian traffic and vendors on streets.
2. Operating or contracting for the provision of music, news, child-care or parking facilities, and buses, mini-buses or other modes of transportation.
3. Leasing space for sidewalk café tables and chairs.
4. Providing or contracting for the provision of security personnel, equipment or facilities for the protection of property and persons.
5. Providing or contracting for cleaning, maintenance and other services to public and private property.
6. Promoting tourism, recreational or cultural activities or special events.
7. Promoting business activity, development and retention.
8. Providing refuse collection and disposal services.
9. Contracting for or conducting economic, planning, marketing or other studies.
10. Repairing, restoring or maintaining any abandoned cemetery on public or private land.

If the area within a CID has been found to be blighted by the governing body of the municipality, the CID has the additional power to demolish, renovate or rehabilitate any building or structure.

How is a CID created?

A CID is created by petitioning the municipality where the proposed district will be located. The CID petition must be signed by property owners that (1) collectively own at least 50% of the assessed value of the real property within the proposed district and (2) are more than 50% per capita of all owners of real property within the proposed district. Among other items, the petition must also identify the funding sources the CID may pursue and include a five-year plan that describes the purposes of the proposed district, the services it will provide, the improvements it will make and an estimate of the costs of those services and improvements, the sources of funds to pay the costs, and the anticipated term of the sources of those funds to pay the costs. Once the petition is filed, the governing body of the municipality must hold a public hearing and may approve the creation of the proposed district by ordinance.

After the CID has been created, it may seek voter approval for the funding sources identified in the CID petition. Property owners may vote in these elections if there are no registered voters residing in the CID.



A CID is governed by a board of directors. These directors may be appointed by the chief elected officer of the municipality (with the consent of the municipality's governing body) or elected by the qualified voters of the CID, as provided in the petition. Effective August 28, 2021, for CIDs in which there are no registered voters within the boundaries of the CID, at least one director must reside within the municipality, is registered to vote, has no financial interest in any real property or business operating within the CID, and is not a relative within the second consanguinity to an owner of real property or a business within the CID.

How does a CID finance a project?

A CID may finance the costs of a project through the imposition of (1) special assessments for those improvements that specifically benefit the properties within the district; (2) property taxes; or (3) a sales tax up to a maximum of 1% (however, CIDs created as nonprofit corporations may not levy property or sales taxes). A CID may finance the costs of a project through the imposition of fees, rents and charges for district property or services and seek out grants, gifts and donations.

A CID may issue bonds, notes and other obligations for not more than 20 years secured by its revenues and property. A CID may also appropriate its revenues to another entity, such as a municipality or industrial development authority that has issued obligations to fund the CID project.

How long can a CID operate?

Effective August 28, 2021, the term of a newly created CID shall not exceed 27 years from the adoption of the ordinance establishing the CID, unless extended by the municipality that created it.

What on-going administrative responsibilities will municipalities have?

CIDs, as legally separate entities, require significant administration – formulating budgets, procuring insurance, managing board meetings, etc. Further, the CID must annually submit a proposed budget and annual report to various entities. These duties may be handled by municipalities (if they agree to undertake such responsibilities), property owners within the CID, or a professional district administrator.

Transportation Development Districts (TDD)

A transportation development district (“TDD”) is a separate political subdivision that may be created to fund, promote, plan, design, construct, improve, maintain and operate one or more transportation-related projects or to assist in such activity. A TDD may impose a sales tax, property tax, or special assessment. A TDD may also collect tolls or fees on a project.

What types of projects may be funded by a TDD?

A TDD can fund transportation-related improvements, including any bridge, street, road, highway, access road, interchange, intersection, signing, signalization, parking lot, bus stop, station, garage, terminal, hangar, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail, or other mass transit and any similar or related improvement or infrastructure. However, before construction or funding of any project, a TDD is required to submit the proposed project, together with the proposed plans and specifications, to the Missouri Highways and Transportation Commission and/or the local transportation authority that will become the owner of the project for their prior approval. A “local transportation authority” is a county, city, town, village, county highway commission, special road district, interstate compact agency, or any local public authority or political subdivision with jurisdiction over the proposed transportation project.

How is a TDD created?

A TDD may be created by petition of (1) at least fifty registered voters within the proposed district or (2) if there are no registered voters within the district, the owners of all of the real property located within the proposed district. In addition, two or more local transportation authorities may adopt resolutions calling for the joint establishment of a district and then file a petition requesting the creation of a district. With certain limited exceptions, the property in the district must be contiguous. The petition is filed in the circuit court



of the county that the proposed TDD is located in. The court hears the case without a jury. The district may then be created upon judgment and order of the circuit court judge. Unless the petition was filed by property owners and there are no registered voters in the district, prior to ordering the creation of the TDD, the judge will call an election of the qualified voters within the proposed district. Voter approval is also required for implementation of any property tax, sales tax or special assessment.

How does a TDD finance a project?

Once created, a TDD can finance the costs of a project through the imposition of (1) special assessments for those improvements that specifically benefit the properties within the district; (2) a property tax in an amount not to exceed \$0.10 per \$100 of assessed valuation; (3) a sales tax up to a maximum of one percent; or (4) tolls and fees for use of the project. A TDD may also issue bonds, notes and other obligations for not more than 40 years and may secure its obligations by mortgage, pledge, assignment or deed of trust of any or all of the property and income of the district. A TDD may also appropriate its revenues to another entity that has issued obligations to fund the TDD project.

What on-going administrative responsibilities will municipalities have?

TDDs, as legally separate entities, require significant administration – formulating budgets, procuring insurance, managing board meetings, etc. These duties may be handled by municipalities (if they agree to undertake such responsibilities), property owners within the TDD, or a professional district administrator. Additionally, TDDs have annual reporting requirements to various state agencies.

Neighborhood Improvement Districts (NID)

A neighborhood improvement district (“NID”) is a special assessment district that may be created for the purpose of financing public facilities or improvements that confer a benefit upon property within the district.

What projects can be financed by a NID?

A NID may fund public facilities, improvements or reimprovements that confer a benefit on the property within the NID including the following:

1. Acquisition of property.
2. Improvement of streets, gutters, curbs, sidewalks, crosswalks, driveway entrances and structures, drainage works incidental thereto and service connections from sewer, water, gas and other utility mains, conduits or pipes.
3. Improvement of storm and sanitary sewer systems.
4. Improvement of streetlights and street lighting systems.
5. Improvement of waterworks systems.
6. Improvement of parks, playgrounds and recreational systems.
7. Landscaping streets or other public facilities.
8. Improvement of flood control works.
9. Improvement of pedestrian and vehicle bridges, overpasses and tunnels.
10. Improvement of retaining walls and area walls on public ways.
11. Improvement of property for off-street parking.
12. Acquisition and improvement of other public facilities or improvements.
13. Improvements for public safety.

How is a NID created?

A NID is created by either an election held or petition circulated within the proposed NID area. If created pursuant to an election, the NID must be approved by the percentage of voters within the proposed district voting thereon required for general obligation bonds (four-sevenths or two-thirds, depending on the date of the election). The voter-approval requirements for general obligation bonds are discussed under Chapter 2 of this Handbook. Alternatively, a NID may be created by resolution or ordinance of the governing body of a municipality upon receipt of a petition signed by the owners of record of at least two-thirds by area of all real property located within the proposed district.

How is a NID project financed?

Special assessments are used to finance NID improvements. Once the NID has been created, plans and specifications for the project and a preliminary assessment roll will be prepared and the governing body of the municipality will hold a public hearing. Following the completion of the construction of the project, the final costs and assessments will be computed and notice mailed to taxpayers. Charges may be assessed equally per front foot, per square foot or pursuant to any other reasonable assessment plan; provided, the amount of the assessment correlates to the benefits accruing to the property by reason of the improvements.

The governing body of the municipality can issue temporary notes and permanent bonds to finance NID projects. NID bonds are a type of general obligation bonds. The bonds are payable as to both principal and interest from the assessments and, if not so paid, from current income and revenue and surplus funds of the municipality that formed the NID. The municipality is not authorized to impose any new or increased ad valorem property tax to pay principal of or interest on the bonds without voter approval from the entire city or county. If the municipality uses funds on hand to pay debt service, the municipality can reimburse itself from assessments at a later date. The maturity of the bonds is limited to 20 years.

What on-going administrative responsibilities will municipalities have?

When implementing a NID, a municipality's administrative responsibilities with respect to the NID largely end after a project has been completed and bonds are issued. However, if bonds are issued, the municipality may have on-going disclosure and record keeping responsibilities. These responsibilities would be generally the same as the disclosure and record keeping responsibilities that a municipality undertakes in association with any standard municipal bond issuance. See Chapter 7 of this Handbook.

Tax Increment Financing (TIF)

Tax increment financing ("TIF") under the Real Property Tax Allocation Redevelopment Act, Sections 99.800 to 99.865, RSMo. (the "TIF Act"), is a mechanism to capture incremental tax revenues resulting from redevelopment and apply those revenues to pay redevelopment project costs.

What tax revenues does TIF affect?

The TIF Act allows for the capture of 100% of local incremental real property taxes ("PILOTs") and 50% of local incremental economic activity taxes (i.e., sales, utility and earnings taxes) ("EATs") generated within a redevelopment area. When a TIF plan is adopted, the assessed value of real property in the redevelopment area is frozen for tax purposes at the current base level prior to construction of improvements. The owner of the property continues to pay property taxes at this base level. As the property is improved, the assessed value of real property in the redevelopment area increases above the base level. By applying the tax rate of all taxing districts having taxing power within the redevelopment area to the increase in assessed valuation of the improved property over the base level, a "tax increment" is produced. These PILOTs are paid by the owner of the property in the same manner and at the same time as regular property taxes. In addition, local taxing districts transfer 50% of all incremental sales and utility tax revenues, which are measured by comparing the current tax revenue to the revenues generated in the year prior to adoption of TIF. In some instances, incremental state tax revenues may also be available.

Personal property taxes, the commercial surcharge and certain sales taxes (including those levied on the sales of hotel and motel rooms) are not captured by TIF.

How is TIF adopted?

Prior to adoption of TIF, a municipality must:

1. Establish a TIF Commission as prescribed in the TIF Act;
2. Prepare a redevelopment plan and cost-benefit analysis describing the economic impact on the various taxing districts if the project is built and is not built; and
3. Have the TIF Commission hold a public hearing regarding the proposed redevelopment plan and project and make a recommendation to the governing body of the municipality.

After completion of the hearing and receipt of the TIF Commission's recommendation, the municipality may then make the findings required by the TIF Act, approve the redevelopment plan and project, designate the redevelopment area and adopt TIF. Municipalities will also need to enter into a redevelopment agreement with a developer prescribing the terms and conditions upon which TIF revenues will be applied to a redevelopment project.

The TIF Act requires the municipality to make several findings, including that the redevelopment area qualifies as a "blighted area," "conservation area" or "economic development area" (as those terms are described in the TIF Act) and that the project would not be feasible without TIF assistance.

What type of costs can TIF fund?

TIF revenues may be used to fund:

1. Costs of studies, surveys and plans;
2. Professional service costs, such as financial advisory fees, bond counsel fees and planning expenses, subject to certain limitations as provided in the TIF Act;
3. Land acquisition and demolition costs;
4. Costs of rehabilitating and repairing existing buildings;
5. Initial costs for an economic development area;
6. Costs of constructing public works or improvements, such as street lighting, street repairs or parking;
7. Financing costs, including bond issuance costs, capitalized interest and reasonable reserves;
8. Capital costs incurred by any taxing jurisdiction as a direct result of the project;
9. Relocation costs; and
10. Payments in lieu of taxes.

TIF revenues may also be used to pay debt service on bonds or other obligations used to finance such costs.

How long can TIF operate?

TIF can be in place for up to 23 years from the date of approval of any redevelopment project. Redevelopment projects must be approved within 10 years from approval of a redevelopment plan.

What on-going administrative responsibilities will municipalities have?

The governing body of the municipality must submit to the Department of Revenue an annual report concerning the status of each redevelopment plan and project no later than November 15th of each year. If a municipality fails to provide an annual report, the Department of Revenue must send a notice of the failure to the municipality, specifying required corrections. If the municipality fails to comply with the notice within sixty days, it is prohibited from adopting any new TIF plans for five years from the date of the failure notice provided by the Department of Revenue.

The municipality must also publish in a newspaper of general circulation in the county a statement showing the payments in lieu of taxes received and expended in that year, the status of the redevelopment



plan and projects, the amount of outstanding bonded indebtedness and any additional information the municipality deems necessary.

Every five years, the governing body of the municipality must hold a public hearing to determine if the redevelopment project is making satisfactory progress under the proposed time schedule contained in the redevelopment plan. Notice of the public hearing must be given in a newspaper of general circulation in the redevelopment area once each week for four weeks immediately prior to the hearing and must also be provided to the Department of Revenue.

The municipality may also need to identify which of its tax receipts qualify as TIF revenues and provide any additional financial administration required by a redevelopment agreement. If TIF bonds are issued, the municipality will have on-going disclosure and record keeping responsibilities. These responsibilities will likely be somewhat greater than the disclosure and record keeping responsibilities that a municipality undertakes in association with a standard municipal bond issuance.

Sales Tax Rebate/Development Agreements

An alternative to TIF financing is for a municipality to enter into an agreement (commonly referred to as a “sales tax rebate agreement” or “development agreement”) with a property owner, whereby the owner of a retail establishment agrees to fund the costs of certain public improvements and the municipality agrees to reimburse the owner for the cost of those improvements, with interest at an agreed-upon taxable interest rate, from the incremental sales taxes generated by the project. The owner generally agrees to be paid solely from those incremental sales taxes, and not from any other funds of the municipality.

What is the legal basis for these agreements?

Section 70.220, RSMo (the “Cooperation Law”) authorizes any municipality or other political subdivision to contract with any other political subdivision, private person or firm for the “planning, development, construction, acquisition or operation of any public improvement or facility.” The political subdivision may authorize the contract by ordinance or resolution.

How are these agreements generally structured?

Many retail developments require the installation of public improvements (such as roads, traffic signals and utilities) to accommodate the development. Under the typical agreement, the developer agrees to advance the costs of the public improvements. The political subdivision agrees to reimburse the developer for such costs, with interest, over a specified period of time. The agreement usually provides that only a portion of the incremental (*i.e.*, new) sales tax revenues generated from the development will be used to reimburse the cost of the public improvements. This results in immediate new revenue to the municipality, while also providing a source of repayment for the public improvements.

The Missouri Constitution generally requires voter approval if a political subdivision pledges tax revenue to the repayment of indebtedness that lasts for more than one year. Therefore, sales tax rebate agreements specifically provide that the political subdivision’s obligation is from year-to-year only, and is subject to annual appropriation by the governing body.

What approvals are required?

Undertaking a sales tax rebate agreement is a fairly simple process, since the governing body is obligating only its funds – not the funds of any other political subdivision. No public hearing or consultation with other political subdivisions is required. Essentially, the governing body of the municipality is only required to approve the agreement by ordinance and make the applicable appropriations.

What ongoing administrative responsibilities will municipalities have?

All ongoing administrative responsibilities will be identified in the sales tax rebate agreement. At a minimum, these responsibilities will likely include financial record keeping regarding the payments made to the property owner.

SELECTED FEDERAL TAX ISSUES

Tax-Exempt Issuer Does Not Always Mean Tax-Exempt Bonds

There is no certainty that the interest paid by a municipality on its bonds or other obligations will be tax-exempt income for the holder. Many factors contribute to the analysis of whether particular bonds or other obligations will be “tax-exempt,” and federal tax law governing tax-exempt bonds and other obligations is complex.

Issuers of tax-exempt bonds and other obligations receive lower interest rates than on comparable taxable bonds because the interest is not taxable to the holder of the tax-exempt bonds. Accordingly, purchasers of a municipality’s tax-exempt bonds and other obligations are willing to accept lower interest rates than would be offered for a similar bond for which the interest income is fully taxable to the bond holder.

The detailed requirements of the Internal Revenue Code and the related Treasury Regulations (collectively referred to as the “Internal Revenue Code”) governing whether a municipality’s bonds or other obligations are tax-exempt are beyond the scope of this Handbook. However, municipalities should consult with bond counsel as they prepare for a financing to be sure that requirements are followed and proper procedures are in place to monitor federal tax responsibilities following the issuance of the tax-exempt bonds and other obligations.

Reimbursing Prior Expenditures

Sometimes a municipality will need to spend money on a project before the bonds or other tax-exempt obligations are issued. The municipality may want to reimburse those expenditures from bond proceeds following issuance. There are restrictions, and specific requirements to be followed, to preserve the option of using tax-exempt bond proceeds to reimburse prior expenditures. The municipality should consult with bond counsel before advancing money for project costs that it expects to reimburse from tax-exempt bonds or other obligations.

Bank-Qualified Bonds

What is a bank-qualified bond?

The term “bank-qualified” is a term that has been adapted by finance professionals and capital market participants to describe certain types of governmental obligations that may achieve more favorable federal tax treatment when owned by certain types of financial institutions. In fact, this term does not appear in the Internal Revenue Code; the actual term is a “qualified tax-exempt obligation” as described in Section 265 of the Internal Revenue Code.

What is the benefit of issuing bank-qualified bonds?

If a bond is “bank-qualified” it will be a more attractive investment to certain banks and financial institutions. The ability to market and sell the bonds to a wider group of potential investors should, in theory, result in lower interest rates for the bonds.

When can a municipality issue its bonds as bank-qualified?

Must be a Qualified Small Issuer and Make a Designation. Only “qualified small issuers” are permitted to designate their tax-exempt obligations as qualified tax-exempt obligations under Section 265(b)(3) of the Internal Revenue Code. Section 265(b)(3)(C) defines a qualified small issuer as any issuer that reasonably expects to issue less than \$10,000,000 of tax-exempt obligations (other than obligations described below), in a calendar year. Generally, an obligation is **not** taken into account in determining status as qualified small issuer if such obligation is:

- (a) a private activity bond (other than a qualified 501(c)(3) bond, as defined in section Code Section 145); or
- (b) an obligation issued to refund (other than to advance refund) any obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation.

Limitations on Amount of Designation. In general, not more than \$10,000,000 of obligations issued during any calendar year may be designated by such issuer as qualified tax-exempt obligations. Special rules apply for refundings.

Consult Bond Counsel. It is important to consult bond counsel to ensure that the bonds or other obligations can be designated as “bank-qualified,” and that this designation will not adversely impact the tax status of any other bonds or obligations that have been, or will be, issued by the municipality in the same calendar year.

Arbitrage Rules

The arbitrage rules are designed to limit a municipality’s ability to take advantage of the spread between the taxable and tax-exempt interest rates. There are two general categories of arbitrage rules: (a) yield restriction rules and (b) rebate rules. The yield restriction rules govern the circumstances when a municipality may invest the proceeds of a tax-exempt obligation at a rate higher than the interest rate on the tax-exempt obligation. The rebate rules provide that any investment spread that is earned by a municipality must be “rebated” to the federal government.

A common exception to the rebate rules is the “small issuer exception” (not related to the “qualified small issuer” for purposes of treating tax-exempt bonds and other obligations as “bank-qualified”), which applies if (a) the issuer is a governmental unit with general taxing powers, (b) no part of the issue is a private activity bond, (c) 95% of proceeds are used for local government purposes and (d) the aggregate face amount of all tax-exempt obligations (other than private activity bonds), and qualified tax credit bonds to be issued by the issuer during the current calendar year is not reasonably expected to exceed \$5,000,000.

There are other exceptions to both the yield restriction rules and the rebate rules, but a discussion of those exceptions is beyond the scope of the Handbook. As you are working through a tax-exempt bond issue, your bond counsel will help you navigate the requirements of the arbitrage rules.

Refunding Prior Tax-Exempt Debt

A municipality may want to refinance or “refund” previously issued tax-exempt bonds. Refundings are commonly executed to achieve interest cost savings, remove or change burdensome bond covenants, or restructure debt service payments for a more orderly plan of finance.

Federal tax law generally categorizes refundings into two categories – “current” refundings and “advance” refundings.

Current Refunding. A current refunding is where proceeds of a tax-exempt refunding bond are used within 90 days after the issue date to redeem a prior issue of bonds.

Advance Refunding. An advance refunding is where proceeds of a tax-exempt refunding bond are used more than 90 days after the issue date to redeem a prior issue of bonds.

Federal tax law currently prohibits a municipality from engaging in a tax-exempt advance refunding. Thus, a municipality seeking to advance refund outstanding tax-exempt obligations may only issue taxable obligations to accomplish such an outcome. By contrast, there is no limit on the number of times a municipality may currently refund a tax-exempt bond.

POST-ISSUANCE COMPLIANCE REQUIREMENTS

Establishing Post-Issuance Compliance for Federal Tax Purposes

Municipalities spend a great deal of time, energy and money issuing tax-exempt debt. That time, energy and money is worthwhile because tax-exempt debt results in significant cost savings when compared to the alternative of borrowing at a taxable rate. In addition to the time spent issuing tax-exempt debt, municipal issuers have responsibilities after the closing to comply with certain post-issuance compliance requirements, which include a range of federal tax, disclosure and bond document matters. Failure to attend to these responsibilities can have serious federal tax or securities law consequences. In addition, municipalities should be aware that their post-issuance compliance responsibilities apply to certain taxable debt as well, including Build America Bonds, Recovery Zone Economic Development Bonds and other types of tax credit bonds.

To ensure that a municipality is maintaining adequate records to establish post-issuance compliance, the municipality must be prepared to answer the following five questions:

- 1. How does the municipality monitor the ongoing federal tax and securities law requirements related to its bonds?**
How to be prepared? Adopt and implement written compliance procedures applicable to all of your bonds.
- 2. How does the municipality properly account for the expenditure of bond proceeds?**
How to be prepared? Complete a “final allocation” for each bond issue.
- 3. How does the municipality account for the use of bond-financed assets?**
How to be prepared? Complete an “annual compliance checklist” for each bond issue.
- 4. How does the municipality account for the investment of bond-related funds?**
How to be prepared? Have arbitrage rebate calculation(s) completed for each bond issue, if required.
- 5. Has the municipality made the required continuing disclosure filings?**
How to be prepared? File the municipality’s “annual report” and any material event notices with the Municipal Securities Rulemaking Board.

It is imperative that the municipality have adequate records to establish post-issuance compliance in the event of an examination or audit of its bonds by the U.S. Internal Revenue Service (“IRS”). In addition, adequate records establishing post-issuance compliance will preserve the municipality’s ability to refinance or refund its bonds in the future.

Written Compliance Procedures

What are the federal tax law requirements?

There is no provision in the Internal Revenue Code or the related Treasury Regulations (collectively referred to as the “Internal Revenue Code”) that requires a municipality to establish written procedures related to its outstanding bonds. For several years, however, IRS officials have expressed concern that state and local governments do not have adequate written procedures to ensure that ongoing federal tax requirements are met after the closing of a bond issue. If a municipality does not comply with its post-issuance compliance responsibilities, the IRS may determine that interest on the bonds is not tax-exempt, and the bond owners could incur a significant federal income tax liability.



Form 8038-G, the Informational Return for Tax-Exempt Governmental Obligations, must be signed by the bond issuer and filed with the IRS for each bond issue. Form 8038-G requires an issuer to “check the box” if it has written procedures to monitor its post-issuance compliance responsibilities. The IRS has also included questions about these written procedures in recent IRS examinations of bond issues. As a result, it is clear that the IRS expects municipalities to have written procedures to ensure compliance with its post-issuance compliance responsibilities.

How does the municipality meet these federal tax law requirements?

The IRS has identified certain key characteristics that should be included in a municipality’s written tax compliance procedures:

- Due diligence review at regular intervals;
- Identifying the official or employee responsible for review;
- Training of the responsible official/employee;
- Retention of adequate records to substantiate compliance (e.g., records relating to expenditure of proceeds);
- Procedures reasonably expected to timely identify noncompliance; and
- Procedures ensuring that the municipality will take steps to timely correct any noncompliance.

Most bond counsel generally recommend municipalities adopt and follow written procedures that cover each of the “key characteristics” described by the IRS. Gilmore & Bell has developed several model tax compliance procedures that may be helpful for municipalities that wish to draft and adopt a written tax compliance procedure. Examples of model tax compliance procedures may be viewed and downloaded at <https://www.gilmorebell.com/resources/>. While the municipality is welcome to use these forms in developing their own set of written procedures, keep in mind that a “model” document may not be appropriate for every municipality.

Accounting for the Expenditure of Bond Proceeds

What are the federal tax law requirements?

Generally, bond proceeds must be spent in a timely fashion for expenditures that can be capitalized to a project. When bonds are issued, a municipality must reasonably expect to spend at least 85% of the bond proceeds within three years of the issue date, and in most cases, the balance should be spent within a reasonable time thereafter. Municipalities that spend bond proceeds quickly may be able to take advantage of certain spending exceptions that reduce the municipality’s arbitrage rebate liability. Municipalities that are unable to meet these general guidelines or sufficiently explain the reasons for the delayed expenditure of bond proceeds may jeopardize the tax-exempt status of the bonds or impair their ability to refund the bonds at a later date.

In addition, the municipality must allocate bond proceeds (sale proceeds of the bonds plus any investment earnings on those sale proceeds) to project expenditures. A municipality may use any reasonable accounting method for allocating bond proceeds and other funds to project expenditures. When bond proceeds are held in a separate account, bond proceeds generally can be treated as allocated to expenditures at the time the bond proceeds are expended so long as the cost is a capital expenditure (such as hard costs to acquire, construct or improve land, buildings and equipment). If bond proceeds are deposited into an account with other municipality funds or proceeds of another bond issue, the municipality must (1) determine how the bond proceeds and other funds are allocated to expenditures (e.g., pro-rata, bond proceeds spent first, bond proceeds spent last, etc.) and (2) identify the property financed with the bond proceeds. The municipality must complete the allocation of bond proceeds to project expenditures (the “final allocation”) within 18 months after the later of the date of the expenditure or date the project is placed in service, but not later than five years after the issue date of the bonds.

How does the municipality meet these federal tax law requirements?

To properly account for the expenditure of bond proceeds and identify the property financed by the bonds, a final written allocation of bond proceeds should be completed for each bond issue. The municipality needs to designate the person responsible for accounting for the investment and allocation of bond proceeds and making the final written allocation; a “bond compliance officer.” Separate accounts or subaccounts should be established to record expenditures for the costs of the project(s) financed in whole or in part with proceeds of a bond issue. As the project is being constructed, the municipality must maintain detailed accounting records of all expenditures for the project, which should include the following information: (1) identity of person or business paid, along with any narrative description of the purpose for the payment; (2) the date of payment; (3) the amount paid; and (4) invoice number or other identifying reference.

Unless special circumstances apply, bond proceeds should be allocated to costs of the project in accordance with the municipality’s accounting records. Each final written allocation should contain the following: (1) a reconciliation of the actual total sources (including the bond proceeds and other municipality funds, if applicable) to total uses for costs of the project; (2) the percentage of the cost of the project financed with proceeds of the bonds; (3) the date the project was placed-in-service; and (4) the estimated economic useful life of the project. To complete the final written allocation, the municipality may be able to simply update the preliminary budget or cost allocation plan included in the tax document for the bond issue. An example of a final written allocation may be viewed and downloaded at <https://www.gilmorebell.com/resources/>.

Completing a final written allocation for all new money projects financed in whole or in part with bond proceeds is important for several reasons. First, in the event of an IRS audit, it provides the municipality with the backup documentation necessary to verify that all bond proceeds have been spent in a timely manner and on expenditures eligible to be financed with tax-exempt bonds. Second, the final written allocation identifies the bond-financed assets that require monitoring on an ongoing basis (See *Accounting for the Use of Bond Financed Assets* below). Finally, the municipality will likely be required to provide this information if it wishes to refinance or refund the bond issue in the future.

What records does the municipality need to maintain?

Each final written allocation completed for a bond issue, including the municipality’s accounting records detailing project costs, should be maintained in the bond file for the applicable bond issue. These records must be retained by the municipality for the term of the bonds (including any refunding issues) plus three years.

Accounting for the Use of Bond Financed Assets

What are the federal tax law requirements?

The Internal Revenue Code imposes limits on the municipality’s ability to enter into agreements or other contractual arrangements with any person or entity (other than another state or local governmental entity) involving the use of bond-financed property in the trade or business of that person or entity. This type of use of bond-financed property is referred to as “private business use” or “bad use.” Generally, no more than 10% of bond-financed property may be used in a bad use. Oddly, the federal government is not treated as a governmental entity for this purpose, so use of the property by the federal government is treated as bad use.

Private business use of bond-financed property may result from the following types of arrangements with an entity that is not a state or local government (or an agency of a state or local government):

1. the sale of bond-financed property;
2. the lease of bond-financed property;
3. entering into a contractual arrangement for the operation or management of bond-financed property (for example, agreements for the operation of a parking garage, or a food service agreement related to the operation of a cafeteria);
4. the use of bond-financed property to fulfill contractual obligations pursuant to a research agreement;

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5. the use of bond-financed property to fulfill an output contract (for example, agreements to provide electricity from a municipality's utility system); or
 6. any other arrangement that grants special legal entitlements of bond financed property to an entity that is not a state or local government (or an agency of a state or local government), such as the federal government or an agency thereof (including the Federal Bureau of Investigations and the U.S. Marshals Service).

How does the municipality meet these federal tax law requirements?

In the event of an IRS bond audit or in order to refinance a bond issue, the municipality will need to establish that it has not exceeded the private business use limits for that issue. The bond compliance officer should also complete an “annual compliance checklist” for each outstanding bond issue. The checklist will facilitate tracking, monitoring and documenting compliance with the federal tax requirements related to the use of bond-financed property. An example of an annual compliance checklist may be viewed and downloaded from the firm’s website at <https://www.gilmorebell.com/resources/>.

The bond compliance officer should complete the annual compliance checklist each year following completion of the bond-financed project and the final allocation of bond proceeds described above. Each annual compliance checklist should be designed and completed for the purpose of identifying potential noncompliance or bad use of the specific bond-financed property. If potential noncompliance is discovered, the bond compliance officer should contact bond counsel or other legal counsel to ensure that the agreement does not jeopardize the tax-exempt status of the bonds.

The annual compliance checklist can also serve as an additional reminder for the municipality to meet other post-issuance compliance responsibilities. For example, the municipality may wish to include questions about arbitrage rebate computations and any required continuing disclosure filings. These other post-issuance compliance responsibilities are described further in this chapter.

What records does the municipality need to maintain?

All annual compliance checklists completed for a bond issue and any contract or arrangement entered into with a private user for the use of bond-financed property in its trade or business should be maintained in the bond file for the applicable bond issue. These records must be retained by the municipality for the term of the bonds (including any refunding issues) plus three years.

Accounting for the Investment of Bond-Related Funds

What are the federal tax law requirements?

Unless the municipality meets certain exceptions in the Internal Revenue Code, the municipality must pay (or “rebate”) to the United States a dollar amount representing the “excess” earnings on the investment of bond-related funds. The excess earnings represent the difference between (1) what the municipality earned from the investment of bond related funds and (2) the amount the municipality would have earned had those same funds been invested at the average interest rate paid on the bonds (known as the “bond yield”). Generally, the municipality’s rebate liability must be calculated and paid at least every five years and upon the final maturity or redemption of the bonds. The bond-related funds subject to the arbitrage rebate requirements are identified in the federal tax certificate or other tax document executed by the municipality when the bonds are issued. If the bond issue is exempt from rebate, the federal tax certificate or other tax document will often affirmatively state this as well. For more discussion see the caption “SELECTED FEDERAL TAX ISSUES - Arbitrage Rules” in this Handbook.

How does the municipality meet these federal tax law requirements?

If the bonds are audited, the municipality will be required to prove either that the bond issue has no rebate liability or that the municipality has timely paid any rebate amounts to the IRS. The simplest way to establish that the municipality has complied with the arbitrage rebate requirements is to have an arbitrage



rebate computation completed by a rebate analyst. At a minimum, the municipality should have an arbitrage rebate computation completed approximately five years after the bonds are issued and, depending on the bond issue, every five years thereafter and upon the final maturity or redemption of the bonds.

Many municipalities find that having arbitrage rebate computations completed on an annual basis is beneficial. Annual calculations allow the municipality to identify any unanticipated accounting and record keeping problems before they become a major issue, when lost or missing records or statements are much easier to retrieve. Also, by periodically tracking the accrued rebate liability, municipalities can make timely accounting elections, take other corrective action that may reduce the amount of the rebate liability, and budget and reserve funds in order to make a required payment to the IRS.

What records does the municipality need to maintain?

In order to have an arbitrage rebate computation completed, the municipality must maintain and provide to a rebate analyst investment records related to the applicable bond-related funds. In cases where a bank, acting either as a trustee or as an escrow agent, holds the bond-related funds, monthly trust reports will typically contain the necessary investment information.

The easiest way to account for the investment of bond related funds is to segregate the funds in a separate account and to invest and reinvest the funds in the account separately until they are spent. If the bond-related funds are commingled with other funds (including other bond issues), the municipality must keep accurate accounting records for all investments in the commingled fund or account and provide an average monthly interest rate on invested funds.

For bond-related funds, the municipality's records should show the following information:

1. The amount, date and type of any investment that is purchased.
2. The amount and date of any interest payments received on the investments.
3. The amount and date of any payment received upon the sale or redemption of an investment.
4. A running balance of the total funds invested in the commingled fund or account.
5. A running balance of uninvested funds (if any) in the fund or account.
6. The date and amount of all deposits and withdrawals of cash from the commingled fund or account.

All records relating to the investment of bond proceeds, including any arbitrage rebate computation, must be retained by the municipality for the term of the bonds (including any refunding issues) plus three years.

Post-Issuance Compliance With Disclosure Obligations

What are the federal securities law disclosure requirements?

Generally, to sell bonds through a public offering, the municipality's underwriter will be required by the federal securities laws to determine that the municipality has entered into a written agreement or undertaking to provide certain financial and operating information at least annually for as long as any bonds remain outstanding. The written document that the municipality signs will usually be called the Continuing Disclosure Undertaking, the Continuing Disclosure Instructions or the Continuing Disclosure Agreement. For this discussion, the document is referred to as the "Continuing Disclosure Undertaking."

After bonds are issued, the Continuing Disclosure Undertaking requires specified information to be submitted to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access ("EMMA") website (www.emma.msrb.org) at least once a year. The exact type of information required to be updated annually and publicly disclosed through EMMA differs depending on the type of bond issue, but it generally consists of the municipality's audited financial statements and certain other specified operating data (the "Annual Report"), and will be clearly described in the Continuing Disclosure Undertaking. The



Annual Report is intended to provide investors annual updates of certain information included in the Official Statement for a bond issue so that investors have timely and relevant information about the municipality and the particular revenue stream pledged or used for repayment of the bonds, as applicable.

In addition, the Continuing Disclosure Undertaking will require a municipality to submit notice on EMMA within 10 business days after the occurrence of certain “material events” listed in the Continuing Disclosure Undertaking. The “Material Events” that the Securities and Exchange Commission requires to be included in Continuing Disclosure Undertakings are:

1. principal and interest payment delinquencies;
2. non-payment related defaults, if material;
3. unscheduled draws on debt service reserves reflecting financial difficulties;
4. unscheduled draws on credit enhancements reflecting financial difficulties;
5. substitution of credit or liquidity providers, or their failure to perform;
6. adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the bonds;
7. modifications to rights of bondholders, if material;
8. bond calls, if material, and tender offers;
9. defeasances;
10. release, substitution or sale of property securing repayment of the bonds, if material;
11. rating changes;
12. bankruptcy, insolvency, receivership or similar event of the obligated person;
13. the consummation of a merger, consolidation, or acquisition involving the obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. appointment of a successor or additional trustee or the change of name of the trustee, if material;
15. incurrence of a Financial Obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the obligated person, any of which affect security holders, if material; and
16. default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties.

The “Financial Obligation” noted in items 15 and 16 above means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of (a) or (b) in this definition; *provided however*, the term Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule. If a municipality has issued obligations subject to a continuing disclosure undertaking that includes items 15 and 16, it is important that they communicate with bond counsel prior to entering into a transaction that may be considered a Financial Obligation to ensure that proper notice is provided by making a filing on EMMA.

A municipality’s failure to comply in all material respects with its Continuing Disclosure Undertakings must be disclosed to investors in Official Statements for future bond issuances. In addition, future bond underwriters must be able to reasonably conclude, based on a municipality’s past compliance, that the municipality will comply with a new Continuing Disclosure Undertaking related to a potential bond issue before offering bonds to investors. As a result of recent focus by the Securities and Exchange Commission



on these requirements, underwriters have been paying close attention to past compliance with Continuing Disclosure Undertakings before issuing new bonds. Accordingly, a municipality's compliance with its Continuing Disclosure Undertakings is important to provide investors timely and accurate information about their bonds and to maintain a municipality's access to the credit markets in future financings.

How does the municipality meet these securities law requirements?

To meet its continuing disclosure obligations, the municipality should designate a person to review the Continuing Disclosure Undertaking for each outstanding bond issue to determine (1) the financial information and operating data required to be disclosed and the timing requirements for making the annual filings, and (2) the "material events" that require prompt notice be filed with the MSRB through EMMA. The municipality's designated person should be responsible for ensuring that all continuing disclosure filings are made on a timely basis. Annually, compliance involves timely submission of the Annual Report, for the preceding fiscal year for each outstanding bond issue. During the remainder of the year, compliance requires being mindful of the Material Events listed above and providing notice, within 10 business days, if any of them occur. The municipality may wish to obtain assistance with meeting its post-issuance compliance requirements related to its continuing disclosure filings from Gilmore & Bell, the municipality's auditor, the bond trustee or another organization offering these types of services.



Introduction to Bonds, Economic Development and the Art of Public Incentives

October 2022

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BONDS, GENERALLY

- A form of a loan
- Most often sold to the public in pieces called “denominations”
 - Typically, \$5,000
 - Can be higher: \$100,000, \$250,000 or higher if bonds are “speculative grade”/“non-investment grade”
- Repayable over a term that extends up to 40 years in some cases
 - Term often limited by statute or tax regulations
- Commonly, each individual principal payment—most commonly, one payment per year—has its own interest rate (a “maturity”)
- Muni bonds commonly provide interest to the investor that is exempt from Federal and state income taxation
- Because of the tax exemption, investors are willing to charge muni issuers a lower interest rate than they would be without the exemption

Bond Component	Maturity Date	Amount	Rate	Yield	Price	Yield to Maturity	Call Date	Call Price	Premium (-Discount)
Serial Bonds:									
	12/01/23	585,000.00	5.000%	2.440%	102.290				13,396.50
	12/01/24	540,000.00	5.000%	2.530%	104.577				24,715.80
	12/01/25	565,000.00	5.000%	2.560%	106.800				38,420.00
	12/01/26	590,000.00	5.000%	2.590%	108.907				52,551.30
	12/01/27	620,000.00	5.000%	2.620%	110.898				67,567.60
	12/01/28	655,000.00	5.000%	2.780%	112.021				78,737.55
	12/01/29	685,000.00	5.000%	2.830%	113.532				92,694.20
	12/01/30	720,000.00	5.000%	2.890%	114.823				106,725.60
	12/01/31	755,000.00	5.000%	3.050%	115.112				114,095.60
	12/01/32	795,000.00	5.000%	3.090%	116.196				128,758.20
	12/01/33	835,000.00	5.000%	3.240%	114.815 C	3.366%	12/01/32	100.000	123,705.25
	12/01/34	875,000.00	5.000%	3.360%	113.724 C	3.575%	12/01/32	100.000	120,085.00
	12/01/35	920,000.00	5.000%	3.460%	112.825 C	3.738%	12/01/32	100.000	117,990.00
	12/01/36	965,000.00	5.000%	3.510%	112.378 C	3.843%	12/01/32	100.000	119,447.70
	12/01/37	1,015,000.00	5.000%	3.550%	112.023 C	3.927%	12/01/32	100.000	122,033.45
	12/01/38	1,065,000.00	5.000%	3.590%	111.668 C	4.001%	12/01/32	100.000	124,264.20
	12/01/39	1,115,000.00	5.000%	3.630%	111.315 C	4.068%	12/01/32	100.000	126,162.25
	12/01/40	1,175,000.00	5.000%	3.670%	110.963 C	4.128%	12/01/32	100.000	128,815.25
	12/01/41	1,230,000.00	5.000%	3.740%	110.351 C	4.201%	12/01/32	100.000	127,317.30
	12/01/42	1,295,000.00	5.000%	3.800%	109.830 C	4.262%	12/01/32	100.000	127,298.50
17,000,000.00									1,954,781.25

Figure 1—Bond Structure Illustration

MISSOURI BOND ISSUANCE FOR CITIES/GENERAL PURPOSES

- **General obligation** (G.O.) (up to 20 year final maturity)
 - Secured by property taxes

- “Full faith and credit”—payable from any legally available source of moneys; cities obligated to raise taxes in order to repay bonds in full and on-time, even if they have to raise tax levy to do so
- Authorized by vote of the people with a super-majority threshold (5/7 or 2/3)
- **Revenue bonds** (typically, up to 30 year final maturity)
 - Secured by revenue producing facilities (e.g., water utility)
 - No direct property tax levy support
 - Authorized by vote of the people with a simple majority
- **Sales tax revenue bonds** (up to 20 year final maturity)
 - Works like a revenue bond
 - Authorization and limits like a GO bond
- **Lease-Purchase Financing** (final maturity tied to life of asset)
 - Not considered “debt” for state law purposes
 - Asset—building, equipment, etc.—leased to city
 - City lease payments are made for use of asset as a series of one-year payments, each subject to annual appropriation
 - No tax levy permitted to be pledged to repayment
 - Not subject to a vote of the people
 - Can be entered into directly with a lessor (common with equipment) or can be structured like a bond financing
 - “Certificates of Participation” (COPs) offering is a mechanism to divide the city’s annual lease payment stream into little slices, with each COP holder having ownership of a slice of the lease payment stream as security for repayment
 - “Lease-Revenue Bonds” where the bonds are repaid solely from the city’s lease payments, typically with those payments pledged to the bond trustee
- **Tax and Revenue Anticipation Notes** (TANs, RANs, TRANs) (up to 1 year final maturity)
 - Up to 1-year to finance negative operating cashflows or to fund capital expenditures in progress

TIF OVERVIEW

- Defined geographic area
- TIF plan developed, often including: Information which a municipality should require to be included in or accompany a TIF plan includes: (1) a general description of proposed development, (2) a blight study, (3) objectives of the plan (e.g., cure blighted conditions, provide needed services to municipal residents or provide additional employment), (4) a division of the redevelopment area into project areas and proposed land uses, including a schedule for development of each phase of development and public infrastructure to be constructed, if applicable, (5) sources of funds and commitments for financing project costs, including plans for any bonds to be issued, (6) a project budget showing project expenses to be funded privately by a developer and publicly by TIF revenues, (7) a market analysis showing the

feasibility of the proposed development, (8) a cost-benefit analysis showing the impact of the TIF plan on taxing jurisdictions if the project is built and not built, (9) a statement regarding whether condemnation is expected to be necessary, and (10) a relocation plan.¹

- Statutory qualification, usually blight: A property may be declared blighted in an area which, by reason of (1) the predominance of defective or inadequate street layout, (2) unsanitary or unsafe conditions, (3) deterioration of site improvements, (4) improper subdivision or obsolete platting, or (5) the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors (a) retards the provision of housing accommodations or (b) constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.²
- Statutory requirement for notice to affected taxing jurisdictions and property owners; public hearing required
- Finding: “the redevelopment area has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing,” otherwise known as the “but-for test”
 - St. Louis area practice: affidavit of developer
 - Kansas City region practice: developer rate of return calc with/without TIF
- Cost-benefit analysis of TIF for all affected taxing jurisdictions
- TIF commission makes recommendation to governing body
- Governing body can over-ride TIF commission negative recommendation with a two-thirds majority vote

TIF ASSESSED VALUE (AV) OVER PROJECT LIFE

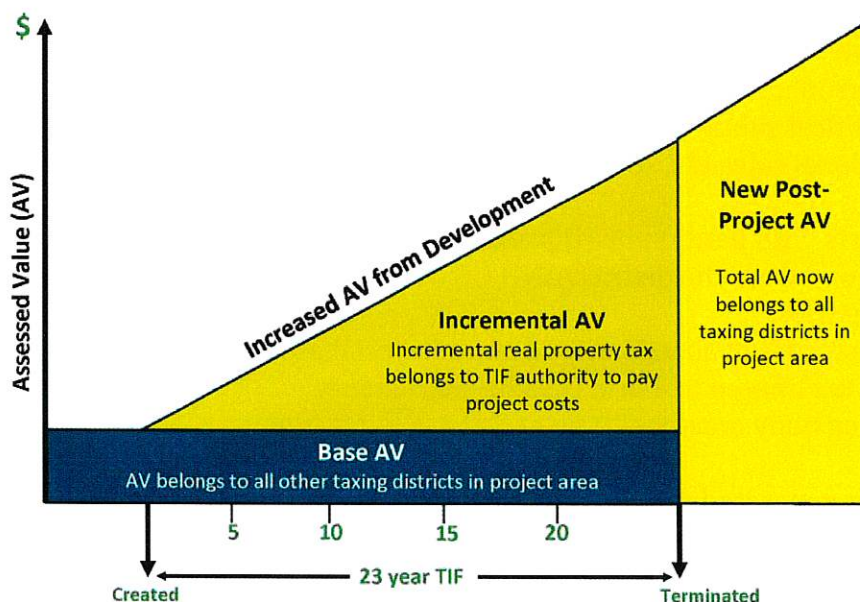


Figure 2—TIF Mechanics Illustration³

- Property owners and businesses continue to pay the same taxes (property/sales) they would have paid prior to imposition of the TIF
- Property tax and, often, sales taxes generated above base year levels are redirected into a special fund held at the City
- City uses redirected taxes to pay for or reimburse TIF-eligible costs of the developer(s) in the district
- A TIF district can have one or more redevelopment projects
- All projects have to be initiated within 10 years of creating the district
- Each project has a maximum term of 23 years
- Typically, 100% of incremental property taxes (“PILOTs”) and 50% of sales taxes (“Economic Activity Taxes” or “EATs”) are captured and redirected
- Sales tax capture excludes sales taxes on hotel/motel stays and certain dedicated sales taxes (children’s services fund, etc.). Also excludes new sales taxes imposed during the term of the TIF
- Wide array of permitted use of TIF reimbursement, including improvements on private property. Common reimbursable project costs include (1) public infrastructure, such as streets, water, sewer, and storm drainage, (2) private improvements within the redevelopment area, such as buildings, parking lots, and landscaping, (3) capital contributions to taxing districts, including the costs of taxing districts for capital improvements that are found to be necessary and to directly result from the redevelopment project (e.g., new school facilities), (4) property assembly and land purchase costs, (5) certain off-site improvements to public infrastructure outside the redevelopment area if they are essential to the preparation of the redevelopment area for use in accordance with a redevelopment plan, (6) professional fees associated with the preparation and implementation of the plan, such as attorneys’ fees, engineering fees, and architect fees, and (7) costs of issuing notes or bonds.⁴

CID OVERVIEW

- Defined geographic area
- Separate political subdivision
- Levies additional sales tax, special assessments or ad valorem taxes within the district
- Creation starts with petition by (i) property owners owning at least 50% of the assessed value within the district, AND (ii) at least 50% of owners per capita within the district
- Petition limits rates of ad valorem taxes and special assessments that can be levied; sales tax limited to 1% in 0.125% increments
- City governing body creates CID by ordinance but it is governed by a separate board
- CID revenues generated can be used for a wide variety of purposes, including: pedestrian or shopping malls and plazas; parks, lawns, trees and any other landscape; convention centers, arenas, aquariums, aviaries and meeting facilities; sidewalks, streets, alleys, bridges, ramps tunnels, overpasses and underpasses, traffic signs and signals, utilities, drainage, water, storm and sewer

systems and other site improvements; parking lots, garages or other facilities; music, news and child-care facilities; other useful, necessary or desired improvements; within a “blighted area,” costs of demolishing, renovating and rehabilitating structures; providing public services including prohibiting or restricting vehicular and pedestrian traffic and vendors on streets, operating or contracting for the provision of music, news, child-care or parking facilities, and buses, mini-buses or other modes of transportation; leasing space for sidewalk café tables and chairs; providing or contracting for the provision of security personnel, equipment or facilities for the protection of property and persons., providing or contracting for cleaning, maintenance and other services to public and private property; promoting tourism, recreational or cultural activities or special events, promoting business activity, development and retention, providing refuse collection and disposal services, contracting for or conducting economic, planning, marketing or other studies

- CID can be “layered” with TIF. If it is and if sales tax is levied, 50% of such CID sales tax is captured by the TIF as with regular sales taxes
- Missouri law provides for an entity similar to a CID called a Transportation Development District (TDD) which works similarly but where the use of proceeds is limited to transportation-related items. TDD creation requires validation by the applicable Circuit Court. Term of up to 40 years.

TIF BONDS

- Missouri law provides for the issuance of bonds or notes secured by the incremental revenues generated within a TIF district
- No tax support, although cities and counties have, from time-to-time, provided supplemental security through annual appropriation (general fund) support
 - Power & Light District in Kansas City
- Vote of the people not required
- Final maturity within the term of the TIF (i.e., maximum of 23 years)
- TIF bonds typically not issued until the project is constructed, leased-up and has “stabilized” revenues; even then, typically offered without a bond rating
- Early-stage TIF issuance typically requires: significant lease commitments for commercial spaces; completion guarantees for residential builders; construction guaranteed max prices; commissioning of a third-party market and revenue study to confirm viability of the project and likely revenues to be generated. Almost always issued without a bond rating, usually with very high interest rates. Significant, in-depth diligence required of all developers, of third-party construction and completion commitments; of developer’s private financing commitments; of viability of project components.

CID BONDS

- Missouri law provides for the issuance of bonds or notes secured by the CID revenues

- Similar to TIF, no tax support
- Interestingly, CID bonds can be secured by a mortgage/deed of trust on any property of the CID
- Vote of the people not required
- Final maturity within the term of the CID (i.e., maximum of 20 years)
- Same constraints as with TIF bonds (often issued at the same time)

ECO DEVO BEST PRACTICES

- Government Finance Officers Association (GFOA) best practices⁵
 - “...measure the benefits of projects receiving economic development incentives against the cost of the public expenditure, or willingness to forgo future revenue.”
 - Understand both financial and non-financial costs and benefits of the project
 - Use analysis that recognizes the time value of money (PV discounting)
 - Identify all costs and benefits
 - Assess the chance each cost and benefit occurs
 - Assess multi-jurisdictional impacts
 - Assess market impacts
- Other thoughts
 - Evaluate the public’s return on investment
 - Beware of partnerships that front-load private benefit and backload public benefit
 - The opportunity cost of granting exclusive development rights to a site is a *real* cost to the public (i.e., executing a long-term development deal with a specific developer means that another, potentially better, developer will not have the opportunity to develop the same site)
 - Be mindful that the issuance of bonds changes the incentives of the developer (i.e., risks are now borne in part by third-party bondholders, not just by the developer; this can change behaviors in a way inconsistent with ensuring public return on investment)
 - Development agreements
 - Contracts setting forth the incentives entitlements and developer’s responsibilities
 - Often, include “clawbacks” in the event the developer does not perform as required
 - Reductions in incentives available permanently or until underperformance is cured
 - Incentives Negotiations are a Team Sport
 - City Council sets policy goals
 - City staff works to translate those goals into practical outcomes from the development team
 - City’s consultants (bond counsel, financial advisor) work on the “nuts & bolts” of financial analyses, legal analyses, statutory and policy compliance
 - Policy considerations

- What will the City gain in both the short term and long term from the proposed development?
- What are the costs to the City to provide services to the proposed development?
- Are there certain types of uses that the City wants to encourage by incentives and, conversely, are there certain types of uses the City does not want to provide incentives for?
- Does the City want to limit the types or amounts of incentives that it will make available?
- For policy reasons, as well as for the ease of administration of the incentive, does the City want to limit the types of items the City will permit the incentive revenue to be used for?
- Does the City want to set performance requirements, i.e., all or some of the proposed buildings must be started and/or constructed by a certain time?
- For incentives that may be done on a reimbursement basis, does the City want to require that the incentive will be available only through reimbursement, rather than through upfront financing with bonds?

¹ https://www.gilmorebell.com/TIF_101_Part1.pdf

² Ibid.

³ <https://www.villageofschaumburg.com/government/economic-development/tax-increment-financing-tif>

⁴ https://www.gilmorebell.com/TIF_101_Part1.pdf

⁵ <http://www.gfoa.org/evaluating-and-managing-economic-development-incentives>

MEMORANDUM

06.XX.22

Jeana Woods
City of Osage Beach

The purpose of this memorandum is to provide our thoughts on large scale development best practices, particularly with respect to the timing and content of development agreement construction.

PHILOSOPHICAL UNDERPINNINGS

There are two key philosophies that guide our thinking about modern, incentivized mixed-use developments: (1) appropriate developer return on investment; and (2) appropriate public return on investment.

A city should structure an incentive package to provide exactly the level of incentive the project needs in order to proceed, but not a dollar more. Practically, though, it is impossible to know what that amount is. There is a massive asymmetry in these projects between developers and a city: the developer knows what its “walking away” number is but will never share that information with the city. As a result, the city needs to use other, imperfect measures to determine the appropriate amount of incentives, often by looking at the developer’s expected return versus market rates of return on similar projects in the region. It also needs to ensure that the developer constructs what it has promised and spends when it estimates it will have spent on the project or the project may end up over-incentivized.

A city also needs to protect the public’s return on investment. In modern, large-scale projects, developers will often request that more or less all of the new taxes generated by the project will be captured by or redirected to the incentives granted to the project. The effect of this is that direct public return on investment (new tax revenues) is often deferred for decades. Instead, cities need to closely consider indirect benefits: new job creation; resolution of blight; the creation of an environment where spin-off development will emerge; second-generation spending of companies in the development elsewhere in the community. Fortunately, both Missouri law and City policy mandate immediate public return on investment by passing through 50% of economic activity taxes (EATs) and 50% of property taxes (PILOTs) to the various taxing jurisdictions.

Cities also need to consider the opportunity cost of imbuing the developer with the long-term rights to construct the development on the subject site. By definition, if developer #1 is constructing the project, developer #2 will not have had the opportunity to do so, even if they have a better idea, are better capitalized, have better execution and would have accepted a lower level of incentives. A city’s option to choose where and to whom to provide incentives has significant value and it needs to generate an appropriate return on the sale of

that option to the developer it chooses for a project. Particularly since it is committing future tax dollars on behalf of all taxing entities, a city has the right and the responsibility to expect and demand a high-quality project with very strong execution.

BEST PRACTICE: APPROVAL PROCESS

In order to maintain its leverage in the negotiation regarding a large-scale mixed-used development project, **a city should require that the development agreement be considered and approved concurrently with all the incentives grants related to the project and concurrent with land use entitlements (zoning, etc.).** If these grants of incentives and development rights are delivered prior to negotiation of the development agreement, a city loses its leverage in the negotiation of that agreement, greatly diminishing the likelihood it will be able to deliver solid public returns on investment. (A developer would, similarly, likely be unwilling to make the commitments of it in the development agreement prior to the grant of incentives.)

The process to construct the development agreement should be deliberate, thoughtful and strategic: a city and developer will be “married” with respect to the project for 20 years or more. A city should not rush the development agreement and should not be swayed common developer attempts to short-circuit this process: threats that its site control (purchase options, etc.) is at risk, that its lease commitments will evaporate, that the market is moving away from it. None of these are a city’s problem; the developer is in the business of and will be compensated for taking these risks.

The development agreement construction process is typically measured in *months* of negotiation on modern, large scale mixed-use developments.

BEST PRACTICE: COMPONENTS OF DEVELOPMENT AGREEMENT

The development agreement for a modern, large scale mixed-used development should contain the following components:

- a detailed description of each and every public incentive the developer will apply for/rely upon, from any source, and limitations on how each can be used with respect to the project
- a requirement the developer prove it has site control for the entire project with any option expirations extending for a reasonable period past the time anticipated for financial close
- development timing to prepare the project for financial close
- list of developer diligence required to permit the project to proceed
- specific, measurable types and amounts of development the developer will construct
- specific, measurable tax generation targets for the resulting development
- specific, measurable deadlines for the construction of the components of the project
- a requirement the developer secure guaranteed price construction contracts for all major components of the project
- a developer proffer of detailed evidence of its ability to deliver the private financing components (equity, debt, third-party funds) required to execute on the development

- detailed mechanics regarding when and how the developer may submit qualified costs for reimbursement and the City's rights and responsibilities with respect to the review of such submittals as well as timing of making such reimbursements
- if the project contemplates bond financing, details about what conditions would have to be met as a pre-condition of bond issuance
- if the project contemplates bond financing, details about how bond proceeds will be released vis-à-vis development progress
- methods to verify the developer is building what it has promised to build and making the investment it has promised to make
- consequences and clawbacks for developer non-performance
- the ability for the city to terminate the developer from the project if it fails to move quickly to execute on the project

BEST PRACTICE: CONSIDERATIONS FOR PROJECTS INVOLVING BONDS

For projects where the developer has requested a city (or its TIF commission or IDA) issues bonds at an early stage (that is, prior to completion, lease-up and stabilization of the project), a city needs to strengthen its development agreement construction process even further.

Whereas with “pay-as-you-go” financing—where a city reimburses the developer's incentive-eligible costs as new tax revenues created by the project are generated—a city can enforce the requirements of the development agreement by reducing or eliminating, temporarily or permanently, the developer's rights to claim reimbursement, this mechanism is generally not available with bond financed projects. Bond investors will require access to an uninterrupted stream of incentive payments as an inducement to purchase bonds supporting the project.

With respect to a project involving early-stage bonds, a city will lose access to a key tool to ensure developer performance during construction and over time. As a result, the development agreement construction process needs to include a deeper level of developer diligence, pre-execution confirmation of developer capacity to construct and project readiness and alternative consequences/clawbacks for non-performance.

Further, the market for *taxable* municipal bonds supporting early-stage projects is incredibly limited. The presence of tax-exempt interest from these offerings is a material inducement for investors to seek investment in early-stage TIF bonds versus exploring a variety of other high-yield alternatives available. In order to achieve a tax-exempt opinion for bonds issued in support of an early-stage redevelopment project, among other things, an issuer needs to demonstrate that:

- substantially all of the proceeds of the bonds will be spent within 36 months of issuance
- the project is likely to generate an incentive stream sizeable enough to permit the bonds to be repaid at or before their final scheduled maturity
- the bonds will be repaid substantially from proceeds of generally-applicable taxes

It is very challenging to satisfy these requirements without assurances in place that the developer has the financial capacity to complete the project (equity in place, committed private financing to close concurrent with the bonds), that the project will be constructed on time (guaranteed price construction contracts executed and in place concurrent with closing on the bonds from all vertical developers) and that the project can generate sufficient a sufficient stream of incentives receipts to retire the bonds in full and on-time (substantial leasing commitments in place, purchase/sale agreements executed and in place with all third-party developers in the project at the time of bond closing).

The development agreement should provide that, before bonds are issued, the developer evidence:

- high levels of project readiness (60-80% of the project by new tax generation potential) as measured by significant pre-leasing and third-party development commitments
- provisions for performance-based releases of bond proceeds based upon the development status of the project
- firm commitments in place for private financing and equity sources, closing concurrently with closing on the bond financing
- agreements in place with the developer's lender regarding how bond proceeds will be drawn versus draws on private financing (bonds should be drawn no more quickly than private lending/equity)
- executed contracts in place with third-party developers within the project and verification of those third-parties' access to their own sources of equity and private financing
- one or more guaranteed maximum price construction contracts in place for the development of the project
- its willingness to actively provide complete and timely secondary-market disclosures during construction and lease-up of the project
- the full cooperation of the developer, its lender and equity provider, and third-party developers within the project to participate in due diligence reviews by bond and/or disclosure counsel ahead of the formal offering of the bonds

ADDITIONAL CONSIDERATIONS: EARLY-STAGE TIF BONDS IN 2022

The municipal bond market has been pummeled throughout 2022 by investor concerns about inflation and by actual Federal Reserve moves both increasing short-term interest rates and decreasing the amount of support the Fed provides to the "secondary" bond market through bond purchases. In fact, interest rates for 'AAA' issuers have risen approximately 2% across all maturity ranges through mid-June since the beginning of the year. The pain for lower-rated and unrated issues has been even more dramatic as "credit spreads"—the

penalty paid by issuers for not being ‘AAA’ rated—have also widened, compounding the impact of higher absolute interest rates. Liquidity in the market has also been impacted, with more than \$50 billion in investor withdrawals from tax-exempt mutual funds through the first five months of the year.

So-called “high yield” issues—bonds that carry ratings below the ‘BBB’ category or are unrated—suffer in this environment. Fewer investors have interest in purchasing high-yield bonds. Investors who remain demand greater protections against default: debt service reserve funds; higher projected debt service coverage; more conservative underwriting of the amount, timing and value of expected development; etc.

According to Bloomberg, as of June 20, only 18 publicly-offered tax increment financing transactions have priced nationally during 2022. Of these, twelve carried investment grade credit ratings. The table below summarizes key information for the remaining six financings across five projects:

Date	Issuer	Par	Type	Notes/Milestones
1/31/22	Whitestown, IN	3.5	New money; industrial/warehouse	Significant equity contribution (nearly 40%); leases in place for 74% of development; project is part of an existing logistics park
2/14/22	Winrock Town Center, NM	48.0	Refunding of existing bonds; mixed-use	Largely existing development; developer has >10 year track record with redevelopment at the site
3/21/22	Whitestown, IN	6.8	New money; industrial/warehouse	Developer closed on the land in fee simple and its private financing prior to the bond sale; equity in place; construction GMP in place; project is part of an existing logistics park
5/9/22	Brecksville, OH	9.7	New money; multifamily	Project is part of a 180 acre mixed-use development adjacent to a 600,000 sf research/development center with 900 employees
6/6/22	Smithville, MO	8.1	New money; retail	Two series of bonds for the same project; developer has completed the project and it is substantially leased and stabilized

As noted in the table, according to Bloomberg, only a very small handful of new money TIF bonds have been offered to the public at an early stage during 2022 and each had substantial factors providing comfort to bond investors including: significant pre-leasing; guaranteed price construction contracts in place; committed private financing in-place, etc. The balance of the unrated TIF financings reported by Bloomberg through roughly the first half of the year have been for developments that were partially or mostly complete at the time of bond issuance.

EVALUATING THE OSAGE BEACH OUTLET MALL TIF PLAN

Based upon information in the TIF application and the TIF plan, as supplemented by conversations PGAV had with the developer, the development status of the Osage Beach Outlet Mall TIF Plan (the “Plan”) is so early that it cannot comport with either the best

practices noted in this memo or with the City's own TIF policy. Further, although the Plan notes the developer's intention to rely upon monetization of future incentive revenue streams through the City's issuance of bonds, the development status of the Plan is likely more than six to eight months from a position of being able to successfully access the high-yield municipal bond market with tax-exempt bonds.

The developer's demands for the City's timing of approvals are unreasonable. The construction of a development agreement for a project of this magnitude is likely to take many months and many turns of the documents. To address the best practices herein, the developer will need to have provided substantially more detail and supporting evidence for its development plan to ensure the City can get the business deal it expects documented in the development agreement.

As noted above, we do not recommend the City consider approval of the TIF Plan separately from approval of the development agreement. Doing so significantly weakens the City's leverage in negotiating the terms and conditions of the development agreement.

The developer might argue that it needs City approval of the TIF plan to evidence the seriousness of the City's interest in the project and, further, that it will need to spend tens or hundreds of thousands of dollars advancing the development plan to the point where the best practices described in this memo can be met. This concern is legitimate. One middle ground approach might be an action by the City's governing body expressing its willingness to provide a reasonable period of exclusive negotiations with the developer (no more than four to six months). Such a public expression should provide the developer, its equity partners and lenders and its potential lessees and co-developers the confidence to continue active work with the developer to further development preparation while also providing a reasonable period to permit the parties to work actively on a development agreement that will improve in quality iteratively as the developer's plan takes shape.