

## STAFF REPORT

DATE: June 1, 2022

TO: Mayor Benage & City Council

FROM: Ty Lasher, City Manager & Ted Henry, Assistant City Manager / Finance Director

RE: IRB Funding and Policy

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### BACKGROUND:

At the May 17, 2022 City Council meeting, staff was asked to determine the cost of issuance incurred by the City for an IRB, budget impacts from an origination fee, benefits of an IRB to Bel Aire and what is the common practice regarding origination fees in Kansas.

### DISCUSSION:

K.S.A. 12- 1742 specifically address fees that can be assessed with an IRB issuance. Here is the language contained in the statute:

12-1742. Conditions of leases and lease-purchase agreements; origination fee; apportionment of payments in lieu of taxes; administrative costs. Such agreements shall provide for a rental sufficient to repay the principal of and the interest on the revenue bonds. Such agreements also may provide that the lessee shall reimburse the city or county for its actual costs of administering and supervising the issue. The city or county may charge an origination fee. Such fee shall not be deemed a payment in lieu of taxes hereunder. Such fee shall be used exclusively for local economic development activities but shall not be used to pay any administrative costs of the city or county. Except for the origination fee, all other fees paid in excess of such actual costs and any other obligation assumed under the contract shall be deemed payments in lieu of taxes and distributed as provided herein. If the agreement provides for a payment in lieu of taxes to the city or county, such payment, immediately upon receipt of same, shall be transmitted by the city or county to the county treasurer of the county in which the city is located. Payments in lieu of taxes received pursuant to agreements entered into after the effective date of this act shall include all fees or charges paid for services normally and customarily paid from the proceeds of general property tax levies, except for extraordinary services provided for the facility or an extraordinary level of services required by a facility. Payments in lieu of taxes may be required only upon property for which an exemption from ad valorem property taxes has been granted by the state court of tax appeals. The county treasurer shall apportion such payment among the taxing subdivisions of this state in the territory in which the facility is located. Any payment in lieu of taxes shall be divided by the county treasurer among such taxing subdivisions in the same proportion that the amount of the total mill levy of each individual taxing subdivision bears to the aggregate of such levies of all the taxing subdivisions among which the division is to be made. The county treasurer shall pay such amounts to the taxing subdivisions at the same time or times as their regular operating tax rate mill levy is paid to them. Based upon the assessed valuation which such facility would have if it were upon the tax rolls of the county, the county clerk shall compute the total of the property taxes which would be levied upon such facility by all taxing subdivisions within which the facility is located if such property were taxable.

As you can see, an origination fee can be assessed by the city and payment remains with the city. However, the origination fee must be used for economic development purpose.

In 2002, Bel Aire purchased 2,000 acres of land for economic growth which included 800 acres set aside for the Sunflower Commerce Park. As such, the city was responsible for over \$1 million annually in debt service payments. The city developed phase 1 of Sunflower Commerce Park for shovel ready sites and as such has been paying special assessments for infrastructure on lots owned by Bel Aire. Lastly, the city was the developer of Central Park that allowed for residential development and was responsible for those special assessments as well. All of these actions and costs were tied to economic development and growing Bel Aire.

In looking at revenues from IRB origination fees, the graph below shows how much was spent to fund economic development verses the amount paid in origination fees and the remaining funds paid by taxpayers. These numbers do not include staff time.

Year	Origination Fee	Land Debt	SCP Specials	Marketing	Total
2013	\$20,800	\$1,255,953	\$0	\$2,164	\$1,258,117
2014	55,000	1,235,631	0	7,446	1,243,077
2015	80,000	1,163,980	0	19,888	1,183,868
2016	0	1,038,535	157,551	7,432	1,203,518
2017	30,000	944,992	157,551	22,977	1,125,520
2018	55,000	948,490	125,551	18,817	1,092,858
2019	0	1,071,068	125,551	16,212	1,212,831
2020	0	1,158,918	125,551	18,222	1,302,691
2021	30,000	1,122,364	88,345	9,397	1,220,106
2022	130,000	1,158,310	32,548	11,315	1,202,173
	<b>\$400,800</b>	<b>\$11,098,241</b>	<b>\$812,648</b>	<b>\$133,870</b>	<b>\$12,044,759</b>

IRB fees are not budgeted as we do not know if, when and how much an IRB origination fee might be. The origination fees are simply used to subsidize economic development expenses listed above.

IRB costs of issuance fees are paid by the borrow at closing from bond proceeds. Bond counsel, banks, financial advisors and the city are each paid individually at closing. So, the city only bills for and is paid for the origination fee. City staff do spend time assisting with the processes. However, KSA 12-742 specifically states these fees cannot be used to pay administrative costs of the city. Therefore, those proceeds go to fund economic development initiatives within the city. The annual \$2,500 administrative fee can cover staff costs which is where those monies go. In addition, origination fees cannot be used as a PILOT to cover lost property taxes. A PILOT can be used for lost taxes but must be shared with each taxing authority where the organization resides.

In looking at cities around the Wichita metro, including the City of Wichita, no cities charge origination fees. Some do charge the annual administrative fee. Looking statewide, there are a number of cities that do charge origination fees and those amounts vary. The issue of charging an origination fee is really a policy related question. Past Councils felt an origination fee was appropriate to fund economic development expenses such as land debt, special assessments and marketing costs. Your decision hinges on whether funding economic development costs such as land debt payments are

important, should that be done through an IRB origination fee, should for-profit and non-profit companies be charged the same or differently and how much should the origination fee be. Each question has its own determinations.

RECOMMENDATION: Staff believes Bel Aire has taken the lead in the use of origination fees that have helped in growing the City. Eliminating the fee would reduce the amount of economic development costs we can cover and spread those to current taxpayers. In addition, removing the fee would put past IRB borrows at a disadvantage in that they paid those fees. We believe having separate structures for not-for-profit and for-profit issuances does not equitably share the cost of economic development for Bel Aire. We believe the 1% has been used in the past and is a good figure for the future. If there are any changes to consider, staff could support a cap. There is definitely a disadvantage to large companies wanting to borrow a lot of money for a big development and 1% could become an issue for say a \$100 million dollar investor. So, the idea of a cap can make sense. Based on past issuances and future borrows, staff would recommend a \$100,000 cap if this is something the governing body would like to consider. There has been no issuer to date that has paid more than \$100,000.