



City of Omaha  
Jean Stothert, Mayor

## Law Department

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**Matthew M. Kuhse**

City Attorney

Honorable President

and Members of the City Council,

Submitted for your consideration is an Ordinance authorizing the City of Omaha to negotiate and enter into settlement agreements with four school districts located within Douglas County in regard to alleged overpayment of Payment in Lieu of Taxes ("PILOT") funds from the Douglas County Treasurer to the City of Omaha. The settlements would be in the following amounts:

1. Douglas County School District No. 10 (Elkhorn Public Schools)	\$1,124,453.53
2. Douglas County School District No. 17 (Millard Public Schools)	\$83,852.10
3. Douglas County School District No. 66 (Westside Community Schools)	\$3,693,048.02
4. Douglas County School District No. 54 (Ralston Public Schools)	\$662,369.79

TOTAL	\$5,563,723.44
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In 1958, the Nebraska Constitution was amended by an initiative petition to add what is now Article VIII, Section 11, which provides for public corporations and political subdivisions that supply electricity in a city to pay the sum of five percent of its annual gross revenue from retail sales of electricity within said city in lieu of other taxes. Said PILOT funds are to be distributed each year to the city, county, school districts, and State of Nebraska in proportion to each respective property tax mill levy. This is further codified in Neb. Rev. Stat. §§ 70-651.01 through 70-651.05.

Omaha Public Power District ("OPPD") supplies electricity to the City of Omaha. OPPD makes PILOT payments to the Douglas County Treasurer, who then distributes them to the City of Omaha, Douglas County, and the school districts that are within the City of Omaha.

On May 23, 2022, the Nebraska Auditor of Public Accounts ("APA") published a letter reporting that multiple political subdivisions were either overpaid or underpaid as a result of Douglas County's distribution of the April 2021 PILOT payment received from OPPD. In its report, the APA recommended that Douglas County correct the erroneous distributions and implement procedures to ensure that future distributions are calculated in compliance with the APA's findings, the Nebraska Constitution, and state statute.

As a result of that report, and rather than challenging the legal conclusions and statutory interpretations of the APA, Douglas County commenced discussions with the overpaid and underpaid entities to cooperate in resolving the allegedly erroneous prior distributions. Said distributions were corrected according to the APA report for 2022 payments.

Some of the underpaid school districts have sought repayment of prior years of erroneous payments from the alleged overpaid entities, such as the City of Omaha, Douglas County, and Omaha Public Schools. The amounts listed above are for repayment of years 2019, 2020, and 2021 of alleged overpayments to the City of Omaha.


The City of Omaha and Douglas County are attempting to resolve all claims from all of the alleged underpaid school districts amicably. We are in the process of finalizing terms of settlement with the four alleged underpaid school districts. This Ordinance gives the City of Omaha Law Department authority to resolve the claims and negotiate settlement pursuant to its terms. It also gives the Mayor the authority to sign any settlement agreements consistent with this Ordinance, and for the Finance Department to allocate funds from BFY 2022, General Fund No. 11111, General Expense No. 119014 and take the steps necessary to implement this Ordinance.

The amounts listed above would be paid by having the Douglas County Treasurer redirect a portion of future PILOT fund payments for the years 2024 through 2029 from the City of Omaha to the alleged underpaid school districts listed above. This would result in the City of Omaha receiving reduced payments those years, but not having to pay any amounts directly to the alleged underpaid school districts.

Your favorable consideration of this Ordinance is requested.

Respectfully submitted,

Referred to City Council for Consideration:

  
\_\_\_\_\_  
Jeffrey A. Bloom  
Assistant City Attorney

11/2/2022  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Mayor's Office/Title

11/3/22  
\_\_\_\_\_  
Date

Approved as to Funding:

  
\_\_\_\_\_  
Stephen B. Curtiss  
Finance Director

11/2/22  
\_\_\_\_\_  
Date

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to authorize the City of Omaha Law Department to negotiate and the Mayor to execute settlement agreements between the City of Omaha and Douglas County School District No. 10 a/k/a Elkhorn Public Schools, in the amount of \$1,124,453.53; the City of Omaha and Douglas County School District No. 17 a/k/a Millard Public Schools, in the amount of \$83,852.10; the City of Omaha and Douglas County School District No. 66 a/k/a Westside Community Schools, in the amount of \$3,693,048.02; and the City of Omaha and Douglas County School District No. 54 a/k/a Ralston Public Schools, in the amount of \$662,369.79; to settle any and all claims regarding alleged overpayments made by the Douglas County Treasurer to the City of Omaha from Payment in Lieu of Taxes ("PILOT") funds from Omaha Public Power District in the years 2019, 2020, and 2021; to pay out the settlement amounts by accepting a reduced distribution from the Douglas County Treasurer of future PILOT funds for the years of 2024 through 2029; to approve payment of money from appropriations of more than one year as provided in Section 5.16 and 5.17 of the Home Rule Charter of the City of Omaha, 1956, as amended; and to authorize the Finance Department to allocate funds from BFY 2022, General Fund No. 11111, General Expense No. 119014 and take the necessary steps to implement this Ordinance.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. Authority is hereby granted and approval hereby given for the City of Omaha Law Department to negotiate and for the Mayor to execute settlement agreements between the City of Omaha and Douglas County School District No. 10 a/k/a Elkhorn Public Schools, in the amount of \$1,124,453.53; the City of Omaha and Douglas County School District No. 17 a/k/a Millard Public Schools, in the amount of \$83,852.10; the City of Omaha and Douglas County School District No. 66 a/k/a Westside Community Schools, in the amount of \$3,693,048.02; and

the City of Omaha and Douglas County School District No. 54 a/k/a Ralston Public Schools, in the amount of \$662,369.79, to pay for overpayments made by the Douglas County Treasurer to the City of Omaha from Payment in Lieu of Taxes ("PILOT") funds from Omaha Public Power District in the years 2019, 2020, and 2021 and settle any and all claims involving past payments of PILOT funds. The City of Omaha may agree to accept reduced payments from the Douglas County Treasurer for future PILOT funds for the years of 2024 through 2029 to pay for said settlements, involving the payment of money from appropriations in more than one (1) year in accordance with section 5.16 and 5.17 of the Omaha Home Rule Charter of the City of Omaha, 1956 as amended. Said settlements are contingent on the respective school districts accepting the above-listed settlement amounts being paid out of future PILOT fund distributions by the Douglas County Treasurer to the City of Omaha over the years 2024 through 2029.

Section 2. That the City's obligations under these settlement agreements shall be paid by accepting reduced payments from the Douglas County Treasurer for future PILOT fund payments for the years of 2024 through 2029. The Finance Department has authority to allocate funds from BFY 2022, General Fund No. 11111, General Expense No. 119014 and take the necessary steps to implement this Ordinance.

Section 3. That pursuant to the provisions of Section 2.12 of the Home Rule Charter of the City of Omaha, 1956, as amended, this Ordinance, not being of legislative character, shall be in force and take effect immediately upon its date of passage.

INTRODUCED BY COUNCILMEMBER

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APPROVED BY:

\_\_\_\_\_  
MAYOR OF THE CITY OF OMAHA      DATE

PASSED \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK OF THE CITY OF OMAHA      DATE

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ASSISTANT CITY ATTORNEY      11/2/2022  
DATE

PILOT Funds Settlement Ordinance