



**CITY COUNCIL WORK SESSION**  
**Wednesday, May 31, 2023 at 6:00 p.m.**

**CITY HALL**  
**6090 WOODSON STREET**

**Meeting In Person and Virtually via Zoom**

*This meeting will be held in person at the time and date shown above. The meeting will also be available virtually via Zoom. Information will be posted, prior to the meeting, on how to join at [www.missionks.org/calendar](http://www.missionks.org/calendar).*

*If you require any accommodations (i.e. qualified interpreter, large print, reader, hearing assistance) in order to attend this meeting, please notify the Administrative Office at 913-676-8350 no later than 24 hours prior to the beginning of the meeting.*

**AGENDA**

1. Review and Discussion of Tax Abatement Policy – Laura Smith/Pete Heaven/Kevin Wempe

Mission's current tax abatement policy (Council Policy 116) was approved in May 2007. It was drafted to ensure there was a foundation for the consideration of requests for tax abatement, but has not been used since its adoption. Until 2022, the City had not received any requests for the consideration of a property tax abatement. In light of ongoing discussions with two developers who have requested consideration of both sales and property tax abatements in connection with their proposed multi-family projects staff initiated a review of the existing Council policy to ensure it aligns more appropriately with the current Council's goals and objectives related to redevelopment and the use of incentive tools.

<b>City of Mission</b>	Item Number:	1.
<b>DISCUSSION ITEM SUMMARY</b>	Date:	May 31, 2023
<b>Administration</b>	From:	Laura Smith

Discussion items allow the committee the opportunity to freely discuss the issue at hand.

**RE:** Review and Discussion of Tax Abatement Policy

**DETAILS:** In the Economic Development Revenue Bonds Act of 1961, codified as amended at K.S.A. 12-1740 *et seq.*, the Kansas Legislature created industrial revenue bonds (IRBs) as an economic development tool for cities to stimulate economic prosperity and to promote economic stability, by providing greater employment opportunities and diversification of industry. Cities, may consider, and issue IRBs when a proposed project furthers the economic goals and objectives of the City. The statutes provide for the use of IRBs to grant a property tax exemption or to grant a sales tax exemption on the purchase of materials and some labor.

Mission's current tax abatement policy (Council Policy 116) was approved in May 2007. It was drafted to ensure there was a foundation for the consideration of requests for tax abatement, but has not been used since its adoption. Until 2022, the City had not received any requests for the consideration of a property tax abatement. The IRB sales tax exemption has been used on most major private redevelopment projects undertaken in the past 15-20 years.

In light of ongoing discussions with two developers (58/Nall and Milhaus) who have requested consideration of both sales and property tax abatements in connection with their proposed multi-family projects staff initiated a review of the existing Council policy to ensure it could align more closely with the current Council's goals and objectives related to redevelopment and the use of incentive tools.

To develop a policy with clearer parameters and guidance for both potential developers and the Governing Body, the Mayor and staff have been working with Pete Heaven to draft a new policy for Council's review, discussion and consideration. The draft policy included in the packet for discussion during the May 31 work session reflects feedback heard from the Council over the last several months regarding goals and objectives when considering requests for incentives.

Mr. Heaven and Kevin Wempe of Gilmore & Bell have provided examples from other Kansas jurisdictions and ideas and sample language from many of these policies have been considered or incorporated in the development of Mission's draft policy.

Additional information on the tax abatement tool, the process and other considerations has been included in a memo included in the packet.

Related Statute/City Ordinance:	K.S.A. 12-1740 <i>et seq.</i>
Line Item Code/Description:	NA
Available Budget:	NA

<b>City of Mission</b>	Item Number:	1.
<b>DISCUSSION ITEM SUMMARY</b>	Date:	May 31, 2023
<b>Administration</b>	From:	Laura Smith

Discussion items allow the committee the opportunity to freely discuss the issue at hand.

**CFAA IMPACTS/CONSIDERATIONS:** Access to quality housing for individuals of all ages, abilities and income levels is an important pillar of the Community for All Ages initiative. The proposed redevelopment projects currently seeking consideration of a property tax abatement will provide additional housing options for residents of Mission, contribute to the goals of increased density throughout the community, and address the removal of several blighted or aging properties.

Related Statute/City Ordinance:	K.S.A. 12-1740 <i>et seq.</i>
Line Item Code/Description:	NA
Available Budget:	NA



## MEMORANDUM

---

Date: May 24, 2023  
To: Mayor and City Council  
From: Laura Smith, City Administrator  
RE: Revised Tax Abatement Policy

---

### Background

Under Kansas law, various economic development incentives are available to assist cities in achieving their economic development goals. In the Economic Development Revenue Bonds Act of 1961 (the "Act"), codified as amended at K.S.A. 12-1740 *et seq.*, the Kansas Legislature created industrial revenue bonds (IRBs) as an economic development tool for cities to stimulate economic prosperity and to promote economic stability, by providing greater employment opportunities and diversification of industry. Cities, may consider, and issue IRBs when a proposed project furthers the economic goals and objectives of the City. The statutes provide for the use of IRBs to grant a property tax exemption or to grant a sales tax exemption on the purchase of materials and some labor.

The IRB Act requires that the Issuer (City) prepare a cost benefit report, conduct a public hearing, adopt an ordinance authorizing the issuance of the revenue bonds and follow certain other procedural requirements prior to issuing revenue bonds. During the May 31, 2023 work session staff and our legal staff will provide more detailed information on the steps that must be followed to obtain property tax abatement. A white paper prepared by the City's Bond Counsel Gilmore & Bell and entitled, "*Kansas Industrial Revenue Bond Tax Abatement Overview*," is included in the packet for Council's review and reference.

As referenced above, the IRBs may be used to grant a sales tax exemption, a property tax exemption or both for a particular project. A brief overview of the differences is highlighted below:

- **Sales Tax Exemption.** Upon approval of an application, the applicant may obtain a sales tax exemption certificate which may be used by the applicant and its contractor(s) to purchase construction materials, machinery and equipment, or other tangible services if done with the proceeds of the revenue bonds. The purchases are then exempt from sales tax which might be charged by any taxing entity.

- **Property Tax Exemption.** Upon approval of an application, real property that is acquired with the proceeds of revenue bonds may be 100% exempt from property taxation, except for a school district's capital outlay levy (in an amount not to exceed 8 mills) for a period of up to ten years. Although the abatement is always for 100%, the City may require the applicants to make payments in lieu of taxes. Kansas law requires all payments in lieu of taxes to be distributed to all taxing jurisdictions on a pro-rata basis, according to the jurisdiction's allocable mill levy rate.

### **City Council Policy 116**

Mission's current tax abatement policy (Council Policy 116) was approved in May 2007. It was drafted to ensure there was a foundation for the consideration of requests for tax abatement but has not been used since its adoption. Until 2022, the City had not received any requests for the consideration of a property tax abatement. The IRB sales tax exemption has been used on most major private redevelopment projects undertaken in the past 15-20 years.

Considering ongoing discussions with two developers (58/Nall and Milhaus) who have requested consideration of both sales and property tax abatements in connection with their proposed multi-family projects staff revisited the existing Council policy. Upon review, it doesn't seem to align well with the current Council's goals and objectives related to redevelopment proposals and economic development in general. Primarily because it is too general and doesn't communicate clearly the Council's values, goals and objectives.

To develop a policy with clearer parameters and guidance for both potential developers and the Governing Body, the Mayor and staff have been working with Pete Heaven to draft a new policy for Council's review, discussion and consideration. The draft policy included in the packet for discussion during the May 31 work session reflects feedback heard from the Council over the last several months regarding goals and objectives when considering requests for incentives.

Mr. Heaven and Kevin Wempe of Gilmore & Bell provided examples from other Kansas jurisdictions and ideas and sample language from many of these policies have been considered or incorporated in the development of Mission's draft policy. Policies from the Unified Government and the cities of Olathe, Lenexa, Shawnee, Manhattan and Lawrence were reviewed as a part of the preparation for the work session.

### **Draft Tax Abatement Policy**

The draft policy seeks to clearly define the purpose, scope and policy statements for the Governing Body's consideration of property tax abatement requests. It is important to note that, like any other economic development incentive, the decision to approve the tax abatement tool is completely discretionary, and no decision to grant or deny property tax abatement and/or tax incentives shall serve as a precedent for any future decisions.

Like many of the other sample policies, Mission's draft sets out a standard of a 45% real property tax abatement, assuming the project meets all the other criteria outlined in Section 3. This includes a provision that requires a minimum capital investment of \$3 million to even have a project considered, and a minimum capital investment of \$10 million to be considered for the full abatement.

The policy then goes on to outline additional abatement criteria and potential adjustments (increases over 45%) that could be earned by a developer. Again, the increases would be discretionary, but this section outline those things which are reflective of the Governing Body's values and priorities, especially when considering whether to approve a public incentive for a private development project.

These criteria provide some flexibility for both the City and the developer when evaluating each project on a case-by-case basis. Additionally, the criteria (or the percentages) can be adjusted over time to be reflective of the highest redevelopment and community investment priorities of our Mission community. The place holders included in the draft policy are included as a starting point for our discussion at the May 31 work session.

The policy also speaks generally to the procedure to be followed, and those steps are outlined in more detail later in this memorandum. The policy also includes the obligations of the developer to cover costs incurred by the City in the review and evaluation of any request, and the bond origination fees to be paid by the developer should the City approve the request for a tax abatement.

### **Procedure/Process**

The process and procedure for consideration of a property tax abatement will follow the steps outlined below:

- **Formal Application.** Developer submits a formal application along with the application fee (\$2,500) and submits it to the City Administrator.
- **Preliminary Review.** City staff will complete an initial review of the application to ensure it meets the minimum criteria outlined in City Policy.
- **Cost Benefit Analysis.** A cost-benefit analysis will be conducted in accordance

with the City policy and statutory provisions. This model estimates the economic impact taking into account the public costs (tax abatement and other) and the public benefits (property tax base, sales tax base, and other spin-off benefits).

- **Notice to Taxing Jurisdictions/Public Hearing.** Prior to granting any tax abatement, the City Council shall hold a public hearing. Notice of the public hearing shall be published once in the official City newspaper at least seven days prior to the hearing. In addition to the public hearing notice, the City Clerk shall notify in writing the Board of County Commissioners and the School Board about the public hearing and the proposed abatement at least seven days prior to the public hearing, but as early as possible, and provide the two taxing jurisdictions with a copy of the cost-benefit analysis and background materials.
- **Resolution of Intent.** Following review of the cost-benefit analysis, provision of notice to other taxing jurisdictions, and the public hearing, the City's Review Team will recommend to the Governing Body whether or not the application should be favorably considered; and if such recommendation is provided, the Governing Body, at their discretion, may adopt a Resolution of Intent authorizing the issuance of the bonds.
- **Negotiate Terms and Conditions of Performance Agreement.** The performance agreement will contain all of the specific details of the abatement to be granted and is similar to a redevelopment agreement adopted in connection with a tax increment financing or community improvement district incentives.
- **Preparation of Bond Documents.** Bond Counsel drafts the lease agreements, the indenture of trust, the bond ordinance, performance agreement, and all other documents related to the bond issuance.
- **Ordinance and Performance Provisions.** After the public hearing the City Council may adopt an ordinance authorizing issuance of industrial revenue bonds and specifying the annual abatement and the length of the abatement. The ordinance may also outline any additional targets or criteria which the applicant must meet for all or a portion of the abatement to continue.
- **Bond Issuance.** Applicant or applicant's underwriter markets the bonds (if applicable). Basic bond documents are executed by the City and the applicant. All parties close transaction including making all necessary UCC filings, recordings and transfers, applicant pays origination fee to City and any other fees or costs outstanding. Proceeds are deposited into an account maintained by the trustee to be spent on the project as directed by the application. Bond Counsel notifies BOTA within 15 days of issuance that the bond issue has been closed.
- **Submission of Application to the Kansas Board of Tax Appeals.** After the bonds are issued, the City Clerk will forward all necessary documentation to County Appraiser's Office, which will then be filed with the Kansas Board of Tax Appeals (BOTA) early in the calendar year following issuance of the bonds. The City Council's decision to grant an abatement is subject to the final determination

of the Kansas Board of Tax Appeals.

- **Annual Certification.** After the first year of the abatement, and by March 1 each year thereafter, the City's consulting team will review the abatement to certify that use of the property is still in accordance with Kansas law and that all other provisions of the abatement are being met. The applicant will be required to complete and submit all necessary documentation to the City Clerk for annual submission to the County Appraiser's Office and the Kansas Board of Tax Appeals. It is the applicant's obligation to see that the appropriate annual information is filed for the abatement to continue.

### **Next Steps**

If there is consensus and support for the revised tax abatement policy during the May 31 work session, a final draft will be prepared and included as an action item on the June 7 Finance & Administration Committee meeting agenda with final consideration by the City Council at the June 21 legislative meeting. Should the Council not be ready to move forward with adoption of a policy that quickly, we will discuss potential timelines for advancing the policy.

If you have questions prior to Wednesday's work session, please do not hesitate to contact me.





## **KANSAS INDUSTRIAL REVENUE BOND TAX ABATEMENT OVERVIEW**

**July 2020**

### **Overview of Kansas Industrial Revenue Bond Tax Abatement**

The issuance of revenue bonds is authorized by K.S.A. 12-1740-1749d, inclusive, as amended (the “IRB Act”) K.S.A. 12-1740 permits cities and counties (each referred to herein as the “Issuer”) to issue revenue bonds for the purpose of paying the costs of purchasing, acquiring, constructing or equipping facilities for “agricultural, commercial, hospital, industrial, natural resources, recreational development and manufacturing purposes” and to enter into leases or lease-purchase agreements for such facilities with the party applying for the property tax abatement (referred to herein as the “Applicant”).

The IRB Act requires that the Issuer prepare a cost benefit report, conduct a public hearing, adopt an ordinance authorizing the issuance of the revenue bonds and follow certain other procedural requirements prior to issuing revenue bonds. Bond Counsel can provide a detailed description of the steps that must be followed to obtain property tax abatement.

### **Required Steps for Issuing Revenue Bonds**

*Transfer of Property to Issuer.* The IRB Act requires that the Issuer have a legal interest in the property that is subject to tax abatement. To satisfy this requirement the property that will be subject to abatement is either (1) deeded to the Issuer or (2) base leased to the Issuer.

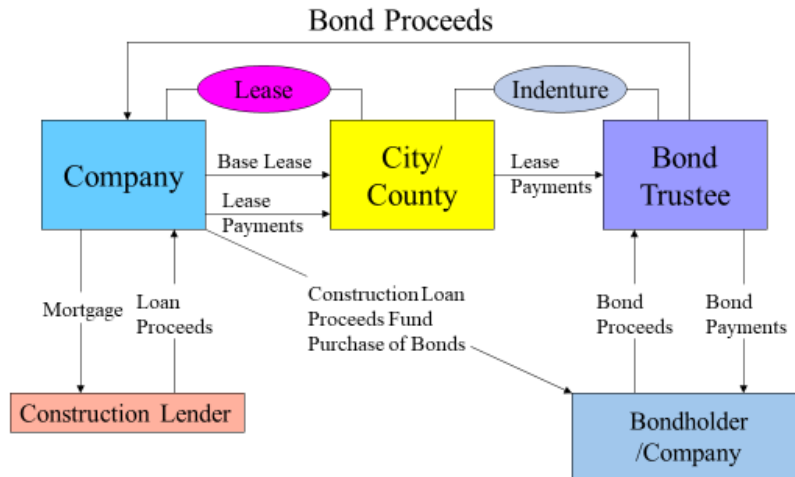
*Lease of Property to the Applicant.* The Issuer will enter into a lease agreement with the party requesting the property tax abatement (referred to herein as the “Applicant”). The term of the lease will generally be the same as the term of the property tax abatement, but may extend for a longer period in some circumstances. The Applicant will have the obligation to purchase the property at the end of the lease term. The Lease will require that the Applicant make lease payments during the term of the lease equal to the principal and interest payments due on the bonds.

### **Purchase of the Revenue Bonds**

The Applicant is responsible for finding a purchaser for the revenue bonds. Revenue bonds may be purchased by a bank, by an underwriter or by the Applicant.

*Applicant Purchased Bonds.* This is commonly referred to as a “buy your own bond” tax abatement financing, and is the most common arrangement on tax abatement financings. For a buy your own bond financing, the bonds are sold to the Applicant. The Applicant then makes lease payments to itself. Under this structure, the bonds are commonly issued after the Applicant’s lender has recorded its mortgage and advanced funds under its loan. When the property is transferred to the Issuer, it is transferred subject to the lender’s mortgage. A diagram describing this method of tax abatement financing is shown below:

## IRB Structure Diagram – Applicant Purchased Bonds



*Bank and Underwriter Purchased Bonds.* When revenue bonds are sold to a bank or to the public through an underwriter, the proceeds from the sale of the revenue bonds are made available to the Applicant and used to acquire and construct the property that will be subject to property tax abatement. The Applicant will agree to make lease payments under the lease which will then be passed on to the bank or the other owners of the revenue bonds.

### Benefits of Issuing Industrial Revenue Bonds

*Sales Tax Exemption Certificate.* The Applicant may obtain a sales tax exemption certificate which may be used by the Applicant and its contractor to purchase construction materials, machinery and equipment if such items will be purchased with proceeds of the revenue bonds. K.S.A. 79-3606(d) exempts “all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state . . . the total cost of which is paid from funds of such political subdivision . . . and which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision or district. This Section further provides that funds of a political subdivision include “the proceeds of any bonds.”

K.S.A. 79-3606(d) sets forth the following mechanics for using the sales tax exemption certificate: “When any political subdivision of the state . . . shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the political subdivision . . . a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. . . . All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed

upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the political subdivision . . . shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79- 3615, and amendments thereto.”

*Property Tax Abatement.* Real property that is acquired with the proceeds of revenue bonds may be exempt from certain property taxation for a period of ten years.

K.S.A. 79-201(a) *Second* states that any property “constructed or purchased in part with the proceeds of revenue bonds . . . shall be exempt from taxation to the extent of the value of that portion of the property financed by the revenue bonds and only for a period of 10 calendar years after the calendar year in which the bonds were issued.” Property used in any retail enterprise identified under NAICS sectors 44 and 45, except facilities used exclusively to house the headquarters or back office operations of such retail enterprises, is not eligible for property tax abatement.

Real property purchased with bond proceeds is 100% exempt from all property taxes except for a school district’s capital outlay levy (in an amount of not to exceed 8 mills) for a period of ten years.<sup>1</sup>

Although the real property is exempt from property taxes as described in the preceding paragraph, the Issuer will often require that the Applicant make certain payments in lieu of property taxes to the Issuer. It is common for an Issuer to require 50% payments in lieu of tax, which results in 10 years of 50% real property tax abatement. Kansas law requires all payments in lieu of tax to be distributed to all taxing jurisdictions on a pro-rata basis, according to the jurisdiction’s allocable mill levy rate.

### **Tax Status of Interest on Revenue Bonds**

*Federal Taxation.* The interest paid on revenue bonds is generally subject to federal income taxation. If revenue bonds are used to finance certain projects, such as a project that will be used for manufacturing or processing or a project owned by a non-profit 501c3 corporation, the interest paid on the revenue bonds may be exempt from federal income taxation. Bond Counsel should be consulted to determine whether interest paid on the revenue bonds may be exempt from federal income taxation.

*State Taxation.* The interest on all revenue bonds is exempt from state of Kansas income taxation. If the revenue bonds are purchased by the Applicant or a related party, the party purchasing the revenue bonds may not be able to receive the benefit of the tax-exempt interest. Tax counsel or an accountant should be consulted to determine the tax implications of purchasing revenue bonds.

---

<sup>1</sup> Kansas law was changed in 2017 to exclude school district’s capital outlay mill levy of up to 8 mills from property tax exemption through an IRB or constitutional abatement. See Senate Bill 19 (2017). Certain projects are grandfathered and may exempt the capital outlay mill levy. Contact bond counsel for details.



### **Depreciation of Bond Financed Property**

The Applicant should consult with its accountants and attorneys to determine how to depreciate bond financed property. It has been our experience that the Applicant will generally be treated as the owner of bond financed property for federal tax purposes. This accounting treatment is not uniform, and the Applicant and its accountants and attorneys should make their own determination.

### **For More Information**

For more information, contact any Gilmore & Bell attorney:



GILMORE & BELL PC  
2405 GRAND BOULEVARD, SUITE 1100  
KANSAS CITY, MISSOURI 64108-2521

816-221-1000 | 816-221-1018 FAX

ONE MAIN PLACE - 100 NORTH MAIN, SUITE 800  
WICHITA, KANSAS 67202-1311

316-267-2091 | 316-262-6523 FAX  
GILMOREBELL.COM

**CITY OF MISSION**  
**CITY COUNCIL POLICY MANUAL**

---

---

**POLICY NO. 116**

**POLICY RELATING TO THE ISSUANCE OF TAX ABATEMENTS**

---

---

The purpose of this policy is to establish the official position and procedures of the City of Mission, Kansas, for considering applications for property tax abatement for real and personal property used for economic development purposes in accordance with the provisions of Section 13, Article 11 of the Kansas Constitution, or when associated with the issuance of Industrial Revenue Bonds (IRBs) pursuant to State law.

- 1.01 It shall be the Policy of the City of Mission that only those firms which qualify under Kansas law and will produce a final project greater than \$25,000,000 in value will be considered. Abatements for businesses that would compete directly with existing businesses will not be encouraged unless the competing businesses have received or been offered similar incentives or unless there is an overriding benefit to the City as a whole.
- 1.02 An applicant shall complete a formal application and file it with the City Administrator or his/her designee. A fee of \$2,500 is due upon filing.
- 1.03 The following criteria and factors shall be used in evaluating applications for tax abatements;
  - Net benefit to the City, County and School District as shown in a Cost-Benefit Analysis
  - Quality job creation
  - Capital investment
  - Diversification of the local economy
  - The extent to which the project would meet an identified need in the community
  - The extent to which the project follows the applicable design guidelines and long-term plans for an area
- 1.04 No abatement granted by the City shall be transferred as a result of a change in ownership of the exempted property. Any new owner shall file a new application for an abatement. Further, the City shall be notified by the business of any substantive change in the use of the tax exempt property

- 1.05 In reviewing abatement applications the City Administrator will convene a meeting of the City's management team to review the cost-benefit analysis of a project, as well as any other appropriate financial indicators. It shall be the responsibility of the applicant requesting Tax Abatement to reimburse the City in full all costs associated with the City's Financial Advisor.
- 1.06 Prior to the granting of any tax abatement, the City Council shall hold a public hearing. Notice of the public hearing shall be published in the official city newspaper at least once seven days prior to the hearing and shall indicate the purpose, time and place of the public hearing. In addition to the public hearing notice, the City Clerk shall notify in writing the Board of County Commissioners and the School Board about the public hearing and the proposed abatement at least seven days prior to the public hearing, but as early as possible, and provide the two taxing jurisdictions with a copy of the cost-benefit analysis and other background materials.
- 1.07 Annual Certification: After the first year of the abatement and by February 1 each year thereafter, the City's management team will review the abatement to certify that use of the property is still in accordance with Kansas law and that all other provisions of the abatement are being met. The applicant will be required to complete and submit all necessary documentation to the City Clerk for annual submission to the County Appraiser's Office and the Kansas Board of Tax Appeals. It is the applicant's obligation to see that the appropriate annual information is filed for the abatement to continue.

**PASSED AND APPROVED BY THE CITY COUNCIL ON MAY 16, 2007.**

CITY OF MISSION, KANSAS  
CITY COUNCIL POLICY MANUAL

---

POLICY NO. \_\_\_\_\_

**POLICY RELATING TO THE GRANTING OF TAX ABATEMENTS**

---

**Section 1. Purpose.** This Tax Abatement Policy is designed to create a positive business environment to stimulate economic growth and development in order to encourage capital investment, employment opportunities, and quality services for the benefit of the community. The objectives of the Tax Abatement Policy are:

- Attract and retain quality businesses for the community;
- Add and retain employment opportunities for residents;
- Attract projects to impact the local tax base;
- Diversify the local economy;
- Provide attainable housing opportunities; and
- Reward quality environmental design

**Section 2. Scope.** This Policy shall apply to the granting of real property tax abatements in accordance with Kansas Law. The granting of property tax abatements for real property is a privilege, not a right, and the City recognizes that use of such exemptions and incentives should be considered in a prudent, judicious, and selective manner based upon the economic and community benefits of an economic development Project to the City. No decision to grant or deny property tax abatements and/or tax incentives shall serve as precedent for any future decision with respect to the grant or denial of property tax abatements and/or tax incentives. The authority and decision to grant tax abatements is vested solely with the Governing Body, is entirely discretionary, and shall be considered on a case-by-case basis. The Governing Body is under no obligation to approve any requested bond issuance and/or tax abatement and reserves the right to deviate from the policies and criteria contained herein if, in the opinion of the Governing Body, circumstances exist to warrant such deviation, so long as such deviation does not conflict with state law. This policy does not create any entitlement and property owners, applicants, and others are cautioned not to rely upon receipt of an abatement until all steps for granting an exemption have been approved, including but not limited to evaluation of all factors by the City and adoption of a Resolution of Intent after notice and public hearing; preparation of a cost-benefit analysis; approval of a Performance Agreement and compliance of all terms and conditions therewith by the applicant.

**Section 3. Policy Statement.** To meet the economic goals of the community, it shall be the policy of the City to typically provide a 45% real property tax abatement (such percentage referring only to mills that are eligible for property tax abatement under Kansas law) for portions of a Project that qualify for tax abatement under Kansas law so long as the Project meets the criteria established by the City and this Policy. Depending how the tax abatement is structured over the term, tax abatement for a Project may exceed an overall average of 45%. It shall be the policy of the City that, regardless of the percentage amount of abatement an applicant may be eligible for, the maximum percentage of tax abatement provided for any Project shall not exceed 75% for 10 years, except in extraordinary circumstances.

It shall also be the policy of the City that economic development Projects pay their fair share of property tax and special assessments. Economic development Projects shall have a positive financial impact on the community, and the City reserves the right to approve the cost-benefit analysis model used to determine the

financial impact. In the exercise of its discretion, the Governing Body of the City shall give consideration to following factors when granting property tax incentives.

- A. **Minimum Capital Investment.** The minimum capital investment required for consideration of tax abatement is \$3,000,000. In order to receive the maximum tax abatement allowed under this policy, the minimum capital investment required is \$10,000,000. The term capital investment shall apply to the acquisition cost of land and building improvements, but not to personal property.
- B. **Existence of Economic Benefit.** The Project must add economic benefit to the community and provide a positive fiscal impact.
- C. **Type of Business.** The Project must be of a nature that is desirable and meets the development goals of the City.
- D. **Compatibility with Adopted Plans.** All Projects must be consistent with the City's Comprehensive Plan, any applicable corridor plans, and other plans of the City that may be relevant to the Project.
- E. **Maintain Existing Tax Base.** Except in extraordinary circumstances, the amount of existing property taxes on the land and facilities shall not be reduced or abated
- F. **Transfer of Ownership.** The owner or lessee of any property that is all or partially exempt from ad valorem taxes as the result of the City have granted the exemption shall obtain the City's written consent (which may be subject to additional conditions or abatement adjustments) before transferring majority ownership of the property, unless the transfer is to a parent, affiliate, or related entity.
- G. **Non-Litigation.** The Governing Body may not consider an application for issuance of industrial revenue bonds if the applicant, its principals or officers, or any related, affiliated, or parent company of the applicant, is currently engaged in or has threatened a suit, action, or proceeding against the City.

**Section 4. Abatement Criteria and Adjustments.** Adjustments made to increase the total amount of abatement are intended to be provided as an extra incentive to exceed certain criteria when others may not be met and to fulfill certain goals of the community. The following are the criteria for adjustments to the total amount of abatement.

- A. **Project Investment Adjustment.** It is the goal to strengthen the local economy through the growth of the local tax base. Capital Investments produce a long-term tax benefit to the community; therefore a major Project may be eligible for an additional abatement percentage determined by the level of capital investment. Depending upon the Project's capital investment, an increase in the abatement may be considered as follows:
  - a. Capital Investment of up to \$24,999,999 may receive an adjustment of up to 5%
  - b. Capital Investment of \$25,000,000 to \$49,999,999 may receive an adjustment of up to 10%
  - c. Capital Investment of \$50,000,000 and above may receive an adjustment of up to 15%
- B. **Target Area Adjustment.** It is a goal to encourage development / redevelopment in distressed areas of the community. Strong consideration will be given for a business that will be located in an area targeted for economic development or redevelopment, or which may have unusual or difficult site conditions. An abatement adjustment of up to 10% may be



considered for Projects that locate in the targeted area. Target areas shall be determined from time to time by the Governing Body.

- C. **Targeted Industries.** It is a goal to attract and retain certain targeted industries for the community due to their long-term economic impact. An abatement adjustment of 5% to 15% may be considered for Projects that are in targeted industries. The current targeted industries generally include Class A office, high technology and bioscience-related businesses and development.
- D. **Job Creation:** It is a goal to create new employment opportunities for the community. An abatement adjustment of 5% to 10% will be considered depending on the new jobs a Project will create. To be considered for this abatement adjustment a minimum of 35 total jobs must be created in the first year of operation. To maintain this abatement adjustment, the company will be required to provide an annual certification of the number of employees and any other reasonable information requested by the City.
- E. **Attainable Housing.** It is a goal to offer attainable housing opportunities in the City. An abatement adjustment of up to 10% may be awarded based on the commitment of the applicant to make available dwelling units of varying sizes for occupants earning 60% or less than the Kansas City Area Median Income (AMI) at rental rates no greater than the maximum affordable rental rates published annually by the U.S. Department of Housing and Urban Development for a minimum of number of years as set forth in the Performance Agreement.
- F. **Environmental Design Adjustment.** It is a goal to create quality and sustainable developments / structures throughout the City. The City, at its sole discretion, may require higher design standards for the design of buildings and materials used for Projects receiving property tax abatement. An abatement adjustment may be given to businesses whose new construction achieves a U.S. Green Building Council LEED Certification or comparable certification. This abatement adjustment shall range from 5% to 10% given the level of certification.

#### **Section 5. Commencement of Abatement.**

- A. The abatement term for Projects under authority of Section 13 of Article 11 of the Kansas Constitution shall begin in the calendar year after the calendar year in which the business commences its operations or the calendar year in which expansion of an Existing Business is completed, as the case requires. The abatement term for Projects under authority of K.S.A. 12-1740 through 12-1749 and 79-201a shall begin in the calendar year after the calendar year in which the industrial revenue bonds are issued. Projects which include multiple phases shall have an expiration date for the commencement of the term of the abatement for all phases as determined by the Governing Body at the time of the adoption of the Resolution of Intent.

**Section 6. Procedure.** The Governing Body will consider granting a tax exemption pursuant to this Policy after receipt of a complete application in a form prescribed by the City together with the application fee. The application shall be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the Project's preliminary site plans and building elevations, to prepare a fiscal impact analysis, and to contact the school district.

Based on each application and such additional information as may be requested by the City, the City shall prepare or cause to be prepared a fiscal impact analysis of the proposed exemption on the City, County, and State of Kansas. Prior to formal action on each Resolution of Intent, the Governing Body shall conduct a public hearing to be scheduled at least seven days after publication of notice or as otherwise provided by law. Notice of the hearing shall also be sent to the Johnson County Clerk's Office and the Shawnee Mission School District. The City shall contact representatives of the school district to discuss any application that includes a request for tax abatements.

**Section 7. Performance Agreement.** The Performance Agreement will set forth the terms and conditions of the granting of the tax abatement, including the amount the applicant must pay “in lieu” of the abated taxes to reach 100%. For example, if taxes eligible for abatement are \$1,000 and a tax abatement of 75% (\$750.00) is granted, the applicant will be required to pay \$250.00 each year in lieu of such taxes.

- A. **Continued Compliance.** The Performance Agreement will provide that the granted tax abatement is subject to annual review and determination by the City Administrator that the conditions qualifying the business for the abatement continue to exist. The City at any time may review information provided by the owner, its lessee, or State of Kansas, or may request additional information to determine compliance with the Performance Agreement. If the Governing Body finds that the business or Project is not in compliance, then the tax abatement may be modified pursuant to the Performance Agreement or eliminated as the Governing Body deems appropriate. Each Performance Agreement shall contain a notice and waiver stating that the City reserves the right to grant future tax abatements on comparable Projects in amounts different than the exemption or abatement granted in the Performance Agreement. Such notice and waiver shall include a provision that the applicant waives any right to request a modification or amendment of such exemption or abatement based upon such differences.
- B. **Clawbacks.** Each Performance Agreement shall provide that the percentage of property tax abatement shall be scaled back if the applicant has not incurred the required capital investment within the time set forth therein or has otherwise not complied with the requirements of the Performance Agreement. Further, the Performance Agreement may address the consequences of selling the Project during the tax abatement period.
- C. **Costs.** It shall be the responsibility of the applicant to reimburse the City in full for all costs and fees associated with economic analyses and bond issuance, including an application fee of \$\_\_\_\_\_ and the fees of the City financial advisors, consultants and bond counsel.

**Section 8. Origination Fee Schedule.** Origination fees assessed by the City (as authorized by K.S.A. 12-1742 as amended) are the responsibility of the applicant. This fee is due upon closing of the debt issue, and will be reduced by the amount of the application fee. The fee is calculated as outlined in the tables below.

**Commercial Property Debt Issues**

Par Amount of Bond Issue	Fee Calculation
First \$10 million	.0025 of par amount
Second \$10 million	\$25,000 + .0020 of par amount over \$10 million
Amounts in excess of \$20 million	\$45,000 + .0010 of par amount over \$20 million
Refunding Bond Issues	Fee is 50% of the amount that would be calculated
MAXIMUM FEE is \$100,000 (including both new money and refunding portions of issue.)	

**Multi-Family Housing Debt Issues**

Par Amount of Bond Issue	Fee Calculation
First \$10 million	.0040 of par amount
Second \$10 million	\$40,000 + .0020 of par amount over \$10 million
Amounts in excess of \$20 million	\$60,000 + .0010 of par amount over \$20 million
Refunding Bond Issues	Fee is 50% of the amount that would be calculated
MAXIMUM FEE is \$100,000 (including both new money and refunding portions of issue.)	

**Section 9. Sales Tax Exemption on Building Materials and/or Personal Property.** The Governing Body may consider issuance of industrial revenue bonds for the sole purpose of enabling a project to obtain a sales tax exemption certificate on its building materials, taxable labor and/or personal property (with no real property tax abatement). This consideration may include many factors which may induce the City to issue such bonds. These factors include, but are not limited to, whether a project will result in the adaptive re-use of an underutilized property; whether a Project is included in a tax increment financing district (TIF) or community improvement district (CID); and whether the Project will bring significant capital investment to the City. The City will not consider issuance of bonds to obtain a sales tax exemption certificate on building materials/personal property for project costs of less than the minimum Investment Amount under Section 4. The Governing Body may adjust or waive the origination fees above for industrial revenue bonds issued solely for sales tax exemption.

**Section 10. Authority of the Governing Body.** The Governing Body reserves the right to deviate from this Policy, but not any procedural requirements of State law, when it considers a Project to be of exceptional benefit to the City or extraordinary circumstances prevail such that the Governing Body believes such deviation is in the best interests of the City.

**Section 11. Repeal.** City Council Policy No. 116, “Policy Relating to the Issuance of Tax Abatements,” is hereby repealed.