

RESOLUTION NO. 334

A RESOLUTION BY THE CITY OF COLUMBUS, KANSAS, AMENDING RESOLUTION NO. 144, TO MODIFY THE STATEMENT OF POLICY AND PROCEDURES FOR GRANTING TAX EXEMPTIONS AND INCENTIVES FOR ECONOMIC DEVELOPMENT, AUTHORIZING THE CITY'S ECONOMIC DEVELOPMENT COMMITTEE TO RECEIVE AND REVIEW APPLICATIONS FOR TAX EXEMPTIONS-INCENTIVES.

WHEREAS, the *Statement of Policy and Procedures for Granting Tax Exemptions and Incentives for Economic Development* was adopted by the City pursuant to Resolution No. 144 on September 16, 1991, and established an Administrative Review Committee to receive and review requests and applications for tax exemptions-incentives.

WHEREAS, the *Statement of Policy and Procedures for Granting Tax Exemptions and Incentives for Economic Development* shall be revised to reflect the authority of the City's Economic Development Committee to receive and review requests and applications for tax exemptions-incentives and eliminate the formation of an Administrative Review Committee to fulfill that function.

NOW THEREFORE, be it resolved by the governing body of the City of Columbus, Kansas, that the City does hereby amend Resolution No. 144 and modify the *Statement of Policy and Procedures for Granting Tax Exemptions and Incentives for Economic Development* by authorizing the City's Economic Development Committee to receive and review requests and applications for tax exemptions-incentives and to perform all functions and conduct all proceedings formerly delegated to the Administrative Review Committee.

Passed and approved by the governing body of the City of Columbus, Kansas, this 5th day of June, 2006.

CITY OF COLUMBUS, KANSAS


John Brassart, Mayor

ATTEST:


Janice Blancett, City Clerk

(Seal)



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**STATEMENT OF POLICY AND PROCEDURES
TAX EXEMPTIONS AND INCENTIVES FOR ECONOMIC DEVELOPMENT
CITY OF COLUMBUS, KANSAS**

Section 1. Purpose. The purpose of this statement is to establish the official policy and procedures of the City of Columbus, Kansas, for the granting of property tax exemptions and tax incentives for real and personal property used for economic development purposes, in accordance with the provisions of Section 13 of Article 11 of the Constitution of the State of Kansas and as required by K.S.A. 79-251 and amendments thereto.

Section 2. General Objective. The securing of private economic growth and development and the addition of new jobs within the community are important current and long-term objectives of this City. The granting of property tax exemptions and tax incentives is one of the tools available under Kansas law to help secure these public objectives. This Statement is intended to establish the procedure and policy standards to govern the fair, effective and judicious use of the power to grant such exemptions and tax incentives in this City.

Section 3. Legal Authority. The governing bodies of Kansas counties and cities may exempt certain property used for economic development purposes from taxes for a maximum of ten (10) years, in accordance with the provisions of Section 13 of Article 11 of the Kansas Constitution, subject to the requirements of K.S.A. 79-251 and amendments thereto. This authority is discretionary with the City, and the City may provide for tax exemptions-incentives in an amount and for purposes more restrictive than that authorized by the Constitution or any legislation. Pursuant to its home rule powers, the City may (1) require the owners of any property for which an exemption is requested to provide certain information, (2) condition the granting of an exemption to an agreement providing for the payment of in lieu charges or taxes under the provisions of K.S.A. 12-147 and 12-148 as amended, and (3) require the payment of initial application and annual renewal fees reasonably necessary to cover the costs of administration.

Section 4. General Procedure. The following basic procedure shall govern the issuance of tax exemptions-incentives within this City:

- 1) The applicant business shall apply for a tax exemption-incentive by filing a written application as provided in Section 15.
- 2) If the City determines the requested tax exemption-incentive (a) may be lawfully granted, and (b) the initial request is worthy of further consideration, the City shall prepare a cost-benefit analysis report of the requested tax exemption-incentive as provided in Section 12.
- 3) The City shall then determine whether the proposed tax exemption-incentive shall be granted following a public hearing after the required notice.
- 4) If it is determined that some tax exemption-incentive should be granted, a 100% exemption of that property of the business legally eligible for exemption

shall be provided, but subject to an agreement of the business to make an in lieu tax payment as may be required by the City.

5) The amount of the tax incentive, which will be an amount less than the taxes otherwise payable if the property were not exempt, will then be determined in accordance with this Statement.

6) Upon the failure of the business to fully and timely pay the in lieu tax payments, as may be required as a condition of the granting of an exemption, or to provide reports or other information requested by the City and reasonably necessary for the implementation of this policy, the City may either deny, revoke, or not renew the authorization of such an exemption. All requests for a tax exemption-incentive for economic development purposes shall be considered and acted upon in accordance with this Statement.

Section 5. "Tax Incentive" Defined. Various words and terms used in this Statement are defined in Section 28. The terms "tax incentive" or "tax exemption-incentive" shall mean the difference between the amount of ad valorem property taxes the affected business would pay if there were no City-granted exemption and the amount required to be paid as in lieu taxes or charged. For example, if the taxes required with no exemption were \$5,000. And the required in lieu payments were \$3,000., the "tax incentive" or "tax exemption-incentive" would be \$2,000.

Section 6. Jurisdiction. The City shall grant tax exemptions-incentives only for property located within the City. The City encourages the Board of County Commissioners to consult with the City as to applications outside the City and within the three-mile area of the City.

Section 7. Nominal Tax Determination. All tangible property of a business receiving a tax exemption-incentive under this Statement shall be annually assessed by the county appraiser in the same manner as if it were not exempt, but the amount thereof shall not be placed on the assessment rolls. The amount of the property taxes which would be payable shall also be determined annually by the county clerk and treasurer in the same manner as if the property were not exempt, but such amount shall not be placed on the tax rolls. Separate assessment and tax calculations shall be made for the land, for the improvements thereon, and for any taxable tangible personal property associated therewith, of the exempt business. The appropriate county officers are requested to provide the City with this information as early as possible, but not later than November 15 of each year.

Section 8. Minimum Payment In Lieu of Taxes. Any applicant receiving a tax exemption-incentive pursuant to this Statement shall be required to make a minimum payment in lieu of taxes which equals the amount of property tax which was paid or was payable for the most recent year on the appraised valuation of the real estate, including either buildings together with land or land only, prior to the construction of new buildings or added improvements to buildings on such property or prior to the acquisition of the property by the new business. The purpose of requiring this minimum in lieu tax payment is to insure that the city, county, school district and any other taxing jurisdictions affected by the exemption will not receive less tax revenue from the

exempted property than was received prior to the exemption. For extraordinary reasons, such as when vacant buildings are acquired for a new business, or when the market value of the property decreases, this requirement may be waived in part or in whole by the governing body, as provided in Section 27.

Section 9. Special Assessments. Any tax exemption granted for real property under this Statement shall not affect the liability of such property for any special assessments levied or to be levied against such property.

Section 10. Pirating. It shall be the policy of the City to discourage applications for tax exemptions-incentives, or to grant such tax incentives, which deliberately encourage and cause the pirating of business from another Kansas community to this community, or from this community to another Kansas community. It is the intent of the City to avoid participation in "bidding wars" between cities or areas competing for the location of new businesses or expansion of existing businesses through attempts to offer the largest tax incentive or other public inducement which is detrimental to the state's economy and the public interest as provided in K.S.A. 79-252 as amended. The City shall not exempt any tangible personal property of a business if such property is currently subject to ad valorem taxation within the State of Kansas or has been exempted from taxation pursuant to Section 13 of Article 11 of the Kansas Constitution, except if the Governing Body makes a factual determination that such an exemption is required to retain jobs in the State of Kansas an exemption may be granted for such tangible personal property.

Section 11. Application of "But-For" Principle. Any tax exemption-incentive granted by the City shall be subject to the "but-for" principle, i.e., the tax incentive must make such a difference in determining the establishment or expansion of the business that the business would not otherwise be established or expanded in the City but for the availability of the tax incentive. It is the policy of the Governing Body that private businesses should not be subsidized with public funds, the indirect consequences of tax exemptions-incentives unless some public good results, and the public subsidization can reasonably be expected to make a significant difference in achieving economic growth and development and the creation of new jobs within the City.

Section 12. Analysis of Costs and Benefits. The City will consider granting tax exemptions-incentives only upon a clear and factual showing of direct economic benefit to the City through advancement of its economic development goals, including the creation of additional jobs and the stimulation of additional private investment. Before a tax exemption-incentive is granted to an applicant, the **Economic Development Committee** shall prepare, or direct to be prepared, a cost-benefit analysis report which shall examine the costs and benefits to the public of the proposed tax exemption-incentive. The cost-benefit analysis report shall consider, but not be limited to the following factors, as applicable:

- a) The appraised valuation of the property in relation to the economic benefit to the City of increased employment.
- b) The gain in tax revenue which may result from the new or expanded business, including the increase in the property tax base upon the expiration of the exemption.

- c) The contribution that the new or expanded business will make towards increased employment and earnings within the community.
- d) The number of new jobs created directly by the business in relation to the amount of tax incentives granted.
- e) The kinds of jobs created in relation to the type of skills available from the local labor market.
- f) The utilization by the business of labor skills and abilities of unemployed persons in the community.
- g) The degree to which the business improves the diversification of the economy of the City and its environs.
- h) The degree to which the ultimate market for the manufactured products is outside the community, recognizing that outside markets bring in "new money" to the local economy.
- i) The potential of the business for future expansion and additional job creation.
- j) The beneficial impacts the business may have by creating other new jobs and businesses, including the utilization of local products or other materials and substances in manufacturing.
- k) The beneficial economic impact the business will have on a particular area of the City, including designated enterprise zones and areas of needed revitalization or redevelopment.
- l) The compatibility of the location of the business with land use and development plans of the City and the availability of existing infrastructure facilities and essential public services.
- m) The extent to which additional direct or indirect public costs to the City and to other local units would be necessary, such as the cost of the extension of public facilities.
- n) The extent to which the economic and employment benefits of the tax incentive accrue to the residents and taxpayers of those taxing subdivisions which indirectly "subsidize" the business as a result of the foregone tax revenue.

Section 13. No Exemptions. 1) No tax exemption shall be granted if the exemption would create, in the judgment of the Governing Body, an unfair advantage for one business over another competing business within the City. 2) No tax exemption shall be granted to any business which commenced operations prior to August 5, 1986, nor for the expansion of a business unless such expansion created new employment.

Section 14. Amount of Tax Incentives. The two primary objectives of the City in granting tax exemptions for economic development are to 1) provide needed jobs, and 2) expand the economic and tax base of the City. The City recognizes that a simple system of determining the amount of tax incentives to be granted to reach these objectives may not always be equitable if applied uniformly to different kinds of businesses. As a result, in determining the actual amount of tax incentive granted, the City shall consider the factors and criteria set forth in Section 12 of this Statement. In addition, the City shall consider the following standards.

Section 15. Application Required. The City will not consider the granting of any tax exemption-incentive unless the business submits a full and complete application, and provides such additional information as may be requested by the Governing Body. The City Clerk is hereby authorized and empowered to prepare a standard application form which, upon

completion, will provide the Governing Body with adequate and sufficient information to determine whether a tax incentive should be granted and the amount thereof. The accuracy of the information provided in the application shall be verified by the applicant. Any misstatement of, or error in fact, may render the application null and void and may be cause for the repeal of any ordinance adopted in reliance of said information.

Section 16. Application and Renewal Fees. Any business requesting a tax exemption pursuant to this Statement shall pay to the City an application fee of Two Hundred Fifty and No/100 Dollars (\$250.00), which shall be submitted at the same time the application form required by Section 15 is submitted. In addition, any business which has been granted a tax exemption shall pay an annual renewal fee in the amount of One Hundred and No/100 Dollars (\$100.00).

Section 17. Initial Review Procedure. On receipt of the completed application form and the required fee, the City Clerk shall determine a) whether the application is complete and sufficient for review, and b) whether the applicant business is eligible for an exemption under the Kansas Constitution, this Statement and any other applicable laws. If the application is incomplete, the City Clerk shall immediately notify the applicant, noting the need for such changes or additions as deemed necessary. If questions arise as to whether the business is legally eligible for an exemption, the matter shall be referred to the city attorney who shall consult with the applicant business. If the application is found complete, and is for a purpose which appears to be authorized by law, the City Clerk shall so notify the **Economic Development Committee**.

Section 18. Economic Development Committee Review. **The Economic Development Committee shall receive and review requests and applications for tax exemptions-incentives, gather and review such additional information as may be deemed necessary, prepare or cause to be prepared a cost-benefit analysis report, conduct preliminary negotiations with the applicant business, and make such recommendations as deemed advisable to the Governing Body. Economic Development Committee records that include applications for tax exemptions may be withheld from public disclosure under the Kansas Open Records Act, as provided for under subsections 20, 31 and other subsections of K.S.A. 45-221 as amended, but shall be available for public inspection when otherwise required by law. The Economic Development Committee is authorized to issue administrative letters of intent when requested by the applicant upon a finding that the public interest requires confidentiality in order to successfully negotiate the location of the prospective business within the City or the expansion of an existing business. Such administrative letters of intent shall not be binding on the Governing Body, and shall be superseded by any final action by the Governing Body or by any letter of intent issued by the Governing Body under Section 21.**

Section 19. Initial Governing Body Action. Upon receiving the recommendations of the **Economic Development Committee**, the Governing Body shall first determine whether to reject the requested exemption or to further consider the request. Upon a favorable vote for further consideration, the Governing Body shall either 1) issue a letter of intent as provided by Section

21, or 2) schedule a public hearing to consider granting a tax exemption-incentive.

Section 20. Notice and Hearing. No tax exemption shall be granted by the City prior to notice and a public hearing as required by K.S.A. 79-251 as amended. Notice of the public hearing shall be published at least seven (7) days prior to the hearing in the official city newspaper, giving the purpose, time and place, and the hearing may be held at a regular or special meeting of the Governing Body. The City Clerk shall thereupon notify in writing the board of county commissioners, the appropriate school district, and the clerk of any other taxing jurisdiction, excluding the state, which derives or could derive property taxes from the affected business, advising them of the scheduled public hearing and inviting their review and comment. Upon request, the City Clerk shall provide any such public agency with a copy of the application. The applicant business shall be invited but not required to attend the public hearing.

Section 21. Letters of Intent. Upon receiving the recommendations of the **Economic Development Committee**, the Governing Body may issue a letter of intent setting forth in general terms its proposed plans for granting a tax exemption-incentive and any conditions thereto. Such letters of intent shall be issued only with the approval of the Governing Body, and as an expression of good faith intent, but shall not in any way bind the City to the granting of an exemption-incentive. Such letters of intent shall expire six months after issuance, but may be renewed. A public hearing shall not be required prior to the issuance of letters of intent. No elected or appointed officer, employee or committee of the City, and no chamber of commerce, board, development council or other public or private body or individual shall be authorized to speak for and commit the Governing Body to the granting of a tax-exemption-incentive. Letters of intent issued by the Governing Body shall supersede any letters issued by the **Economic Development Committee**.

Section 22. Annual Renewal Subject to Review. The extent and term of any tax exemption-incentive granted shall be subject to annual review by the Governing Body to insure that the ownership and use of the property and any other qualifying criteria of the business for the tax exemption-incentive continue to exist. The review shall be completed by not later than February 1 of each year. The City shall require an annual renewal application to be filed by the business. The annual renewal application shall include information from the business indicating compliance with any terms or conditions established by the Governing Body for the granting of the exemption, such as number, quality of jobs created, etc. Upon a finding that the property continues to meet all the terms and conditions established as a condition of granting the exemption, the City Clerk shall so certify to the owner for submission to the assessing officer, as provided by K.S.A. 79-210a, as amended.

Section 23. Transfer of Ownership or Use. No exemption or tax incentives granted by the City shall be transferred as a result of a change in the majority ownership of the business. Any new owner shall file a new application for a tax exemption-incentive. Further, the City shall be notified by the business of any substantive change in the use of a tax exempt property (see Section 26).

Section 24. Distribution of Revenue. The granting of tax exemptions-incentives by the City is hereby declared to be a contract under the provisions of K.S.A. 12-147 and amendments thereto. The in lieu of taxes payment which may be required of a business granted a tax exemption under this Statement shall be paid to the county treasurer, with notice of the amount and date paid provided to the City. The county treasurer is directed to apportion the payment, under the provisions of K.S.A. 12-148, subsection (3), to the general fund of all taxing subdivisions, excluding the state, which levy taxes on property where the business is situated. The apportionment shall be based on the relative amount of taxes levied for any and all purposes by each of the applicable taxing subdivisions.

Section 25. Exemption Ordinance. The City Clerk shall provide a copy of the ordinance, as published in the official city newspaper, granting an exemption from taxation to the applicant for use in filing an initial request for tax exemption as required by K.S.A. 79-213, and by K.S.A. 79-210 for subsequent years.

Section 26. Exemption Forms. A copy of the exemption applications required by K.S.A. 79-213 and 79-210, as amended, and the statement required by 79-214 as amended, for the cessation of an exempt use of property, shall be filed with the City Clerk by the property owner.

Section 27. Waiver of Statement Requirements. The Governing Body reserves the right to grant or not to grant a tax exemption-incentive under circumstances beyond the scope of this Statement, or to waive any procedural requirement. However, no such action or waiver shall be taken or made except upon a finding by the Governing Body that a compelling or imperative reason or emergency exists, and that such action or waiver is found and declared to be in the public interest. The Governing Body shall not waive any procedural requirement required by state law.

Section 28. Definitions. For the purpose of this Statement, in application to this City, the words or phrases as used in either the Constitution, applicable state law, or this statement shall have meaning or be construed as follows:

a) "Applicant" shall mean and include the business, property owner or owners, and their officers, employees and agents.

b) "Associated therewith" as used with respect to tangible personal property shall mean being located within, upon or adjacent to buildings or added improvements to buildings.

c) "Commenced operations" shall mean the start of the business activity housed in the building for which a tax exemption-incentive is requested.

d) "Economic development purposes" shall mean the establishment of a new business or the expansion of an existing business, engaged in manufacturing articles of commerce, conducting research and development, or storing goods or commodities which are sold or traded in interstate commerce, which results in additional employment.

e) "Expansion" shall mean the enlargement of a building or buildings, construction of a new building, the addition of tangible personal property, or any combination thereof, which

increases the employment capacity of a business eligible for a tax exemption-incentive and which results in the creation of new employment.

f) "Manufacturing articles of commerce" shall mean a business engaged in the mechanical or chemical transformation of materials or substances into new products, as defined in the "Standard Industrial Classification Manual."

g) "Research and development" shall mean the application of science or technology to the improvement of either the process of manufacturing or manufactured products or both.

h) "Storing goods or commodities which are sold or traded in interstate commerce" shall refer to the business of storing property which may be exempt from ad valorem taxation under the provisions of K.S.A. 79-201f as amended.

I) "Tangible personal property" shall mean machinery and equipment used during the term of the tax exemption which may be granted.

j) "Tax incentive" or "tax exemption-incentive", see Section 5.