

**RESOLUTION NO. 612**

**A RESOLUTION BY THE GOVERNING BODY OF THE CITY OF COLUMBUS, KANSAS, UPDATING ITS STATEMENT OF POLICY AND PROCEDURES FOR CONSIDERATION OF APPLICATIONS FOR ECONOMIC DEVELOPMENT REVENUE BONDS AND EXEMPTIONS, RENAMED "CITY OF COLUMBUS, KANSAS, STATEMENT OF POLICY AND PROCEDURES FOR EVALUATING APPLICATIONS FOR ECONOMIC DEVELOPMENT EXEMPTIONS."**

**WHEREAS**, the organizational structure of the Governing Body of the City of Columbus, Kansas, has changed and no longer includes an Economic Development Committee, which was formerly charged with the responsibility to receive and review requests for tax exemptions and economic development incentive projects.

**WHEREAS**, the *Statement of Policy and Procedures for Granting Tax Exemptions and Incentives for Economic Development City of Columbus, Kansas*, shall be revised and updated to authorize the Governing Body to receive and evaluate requests for economic development revenue bonds and tax exemptions and to update application criteria and costs associated with the procedures.

**WHEREAS**, the updated *"CITY OF COLUMBUS, KANSAS, STATEMENT OF POLICY AND PROCEDURES FOR EVALUATING APPLICATIONS FOR ECONOMIC DEVELOPMENT EXEMPTIONS"* shall be consistent with applicable Constitutional or statutory provisions.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF COLUMBUS, KANSAS:**

Section 1. This policy shall be known as ***"CITY OF COLUMBUS, KANSAS, STATEMENT OF POLICY AND PROCEDURES FOR EVALUATING APPLICATIONS FOR ECONOMIC DEVELOPMENT EXEMPTIONS."***

Section 2. Purpose. The purpose of this statement is to establish the official policy and procedures of the City of Columbus, Kansas, for granting property tax exemptions for real and personal property on projects reasonably expected to promote, stimulate and develop general economic stability and growth in the best interests of the City, by generating employment opportunities and diversification for the citizens of the City, according to the provisions of Section 13, Article 11 of the Kansas Constitution or K.S.A. 12-1740, *et seq.* (the "IRB Act"), and all other applicable statutes and procedures.

Section 3. General Objective. Securing private economic growth and development and the addition of new jobs within the community are important current and long-term objectives of the City. Granting property tax exemptions under the Kansas Constitution or through the IRB Act are available tools pursuant to Kansas law to achieve these objectives. This policy statement establishes procedure and policy standards for fair, effective and judicious use of the power to grant tax exemption incentives.

Section 4. Legal Authority. The governing bodies of Kansas counties and cities may exempt certain property used for economic development purposes from taxes (except as provided in Section 10) for a maximum of ten (10) years. This authority is discretionary with the City, and the City may provide for tax exemption incentives in an amount, and for purposes, more restrictive than that authorized by the Constitution or under the IRB Act. 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, 12-148 and 12-1742, as amended; and (3) require the payment of initial application and annual review fees, and incidental costs and administrative fees necessary to process the request.

Section 5. Procedure and Scope. The following procedure and scope govern tax incentive requests:

- (1) The applicant shall apply for a tax exemption incentive by filing a written application as provided in Sections 15 and 16.
- (2) If the Governing Body determines the requested tax exemption may be lawfully granted and may be worthy of further consideration either under the Kansas Constitution or the IRB Act, the City shall retain a qualified expert consultant to prepare a thorough cost-benefit analysis and report, with the applicant responsible to reimburse the City for costs of the cost-benefit analysis.
- (3) After public notice at least seven (7) days in advance, the City shall conduct a public hearing on the granting of a proposed tax exemption, as amended, before determining whether the project shall be exempt from property taxes.
- (4) If a tax exemption incentive proposal is granted, 100% of the business property legally eligible for exemption shall be provided subject to an agreement with the City for payment in lieu of tax payment.
- (5) The amount of taxes otherwise payable if the property were not exempt, less the amount of the tax incentive will be determined in accordance with this Statement.
- (6) Upon the failure of the business to fully comply with the terms and conditions of the exemption agreement including timely annual reports to the City, annual claims for exemption payment of City fees, and payments in lieu of taxes, if applicable, the City may either deny, revoke or not renew the authorization of such an exemption.

Section 6. "Tax Incentive" Defined. 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 in lieu of 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 7. The City shall grant tax exemption-incentives only for property located within the City. The City encourages the Board of County Commissioners of Cherokee County to consult with the City as to applications outside the City and within a three-mile area of the City.

**Section 8. 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 9. 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 the minimum in lieu of 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 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 10. Special Assessments and USD Capital Outlay Levy.** Any tax exemption incentive granted for real property under this Statement shall not exempt such property for any special assessments or capital outlay levied against such property.

**Section 11. Pirating.** It shall be the policy of the City to discourage applications for tax exemption incentives, or to grant such tax incentives which deliberately encourage and cause the pirating of business from 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. 79-252a, 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 12. Application of "But For" Principle.** Any tax exemption incentive approved 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 and 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 13. 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 13 of the Statement. In addition, the City shall consider the following standards.

Section 15. Application Required. The City will not consider the granting of any economic development exemption 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, including, but not limited to:

(1) The applicant must have a sound financial base. The City Administrator or financial consultant shall make recommendations to the Governing Body as to an applicant's financial stability.

(2) The applicant must provide reasonable assurance that revenue bonds are secure and marketable, and that the bond issue complies with applicable state and federal law.

(3) The City may require some type of credit enhancement such as a letter of credit, bond insurance, personal guarantees, pledges of other collateral, a bond reserve account, or a combination thereof.

(4) The City requires the use of its designated Bond Counsel and its City Administrator or designated financial advisor. The City reserves the right to approve the selection of other participants including, but not limited to, the underwriter and trustee/fiscal agent. The City, at its discretion, may retain additional independent advisors to assist the City in analyzing the merits of the application and in making a determination of its approval at the applicant's expense. Examples of additional advisors include economic or environmental specialists or a certified public accountant.

(5) The applicant must pay for or reimburse the City the cost of legal, financial, and administrative work performed in connection with the bond issue as determined by the City. Further, the City may retain special legal counsel in the transaction. In that event, the special legal counsel fee shall be negotiated between the special legal counsel and the applicant. The applicant must pay all costs related to the project, incurred by the City throughout the life of bonds, including, but not limited to the City's actual costs of

administering and supervising the issue, the cost of any special legal counsel, and any costs in the event of default, transfer of ownership, transfer of bonds, re-marketing issues, and any other assistance required in regard to the revenue bond tax exemption incentive. Any costs incurred will be billed directly to the applicant for reimbursement.

(6) The proceeds from any revenue bonds issued shall be used for the purpose of paying all or part of the cost of purchasing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling a facility.

(7) The proposed use must be clean, nonpolluting and consistent with all planning and community development policies, ordinances and codes. Applicant shall be responsible for performing at least a Phase I environmental audit. At its discretion, the City may require applicant to perform additional environmental audits beyond Phase I. Applicant shall be responsible for taking any and all remedial action necessary as required by the City of any other governmental entity. The City at its discretion may also require environmental audits for refunding bond issues.

**Section 16. Application and Renewal Procedures and Fees.** The business applicant requesting tax exemption pursuant to this Statement shall pay to the City a nonrefundable application fee of \$1,000.00 and an initial financial advisor fee of \$500.00 with the completed application required by Section 15. A \$500.00 closing fee to the City shall be remitted on or prior to the day of closing, and the applicant shall reimburse the City for the cost of the professional cost-benefit analysis report. In addition, any business which has been granted a tax exemption shall pay an annual administrative fee in the amount of \$250.00.

**Section 17. Initial Review Procedure.** Upon receipt of the completed application form and the required fee, the City Clerk and/or City Administrator shall determine 1) whether the application is complete and sufficient for review, and 2) whether the applicant business is eligible for an exemption under the Kansas Constitution or the IRB Act and this Statement. If the application is incomplete the City Clerk shall immediately notify the applicant, noting the need for such necessary changes or additions. 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 notify the Governing Body.

**Section 18. Governing Body Review.** The Governing Body shall receive and review requests and applications for tax exemptions-incentives and gather and review such additional information as may be deemed necessary. The Governing Body review may include consultation with local economic development professionals and resources and a preliminary analysis based on the following tax incentive objectives:

- a. A substantial increase in the number of jobs in the City;
- b. Diversification of the economy;
- c. Positive impact on the City or a particular area of the City where economic assistance is needed;
- d. Enhance the economic climate of the City and increase or maintain the job market within the City;
- e. Expand the type of job skills available in the City or use of key skills of locally unemployed persons;

- f. Increase the property tax base of properties to support the cost of municipal services provided by the City;
- g. Promote the redevelopment of older parts of the City;
- h. Promote the development of new industrial enterprises in the City;
- i. Attract businesses that provide a valuable local service to the City;
- j. Provide economic assistance to businesses when such assistance does not have a serious detrimental effect on an existing business or industry in the City;
- k. Accomplish any other needs of the City.

Business records and information reviewed by the Governing Body for the purpose of tax exemption-incentives and IRBs may be withheld from public disclosure according to the Kansas Open Records Act as provided by K.S.A. 45-221 subsections 20, 31 and other subsections as amended, but shall be available for public inspection when otherwise required by law. Upon a favorable vote for further consideration, the Governing Body shall retain an independent, qualified, expert consultant to prepare a thorough cost-benefit analysis report which shall examine the costs and benefits to the public of the proposed tax exemption-incentive.

**Section 19. Cost-Benefit Analysis.** The City will consider granting tax exemptions-incentives only upon a clear and factual showing of direct economic benefit to the City and advancement of its economic development goals, including the creation of additional jobs and the stimulation of additional private investment. Prior to a tax exemption-incentive is granted to an applicant, the Governing Body shall retain an independent, qualified expert consultant to prepare a thorough cost-benefit analysis report which shall examine the costs and benefits to the public of the proposed tax exemption-incentive. The cost-benefit analysis shall consider, but not be limited to the following factors, as applicable:

- (1) The appraised valuation of the property in relation to the economic benefit to the City of increased employment.
- (2) 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.
- (3) The contribution that the new business or expanded business will make towards increased employment and earnings within the community.
- (4) The number of new jobs created directly by the business in relation to the amount of tax incentives granted.
- (5) The kinds of jobs created in relation to the type of skills available from the local labor market.
- (6) The utilization by the business of labor, skills and abilities of unemployed persons in the community.
- (7) The degree to which the business improves the diversification of the economy of the City and its environs.
- (8) 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.
- (9) The potential of the business for future expansion and additional job creation.
- (10) 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.

(11) 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.

(12) 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.

(13) 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 20. Letters of Intent. Upon favorable vote for further consideration, the Governing Body 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. Such letters shall represent an expression of good faith intent but shall not bind the City to the granting of the tax exemption-incentive or the issuance of IRB. 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.

Section 21. Notice and Hearing. The Governing Body may proceed to schedule a public hearing to consider granting the tax exemption incentive. The City shall conduct a public hearing by providing notice of the public hearing, published once at least seven days prior to the hearing in the official City newspaper. Said notice shall indicate the purpose, time, date and hearing location. In addition to publication notice, the City Clerk shall notify in writing the Board of County Commissioners of Cherokee County, Kansas, and the Board of Education of Unified School District Number 493.

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 continue to exist. The review shall be completed 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. 79-210.

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 an economic development exemption. 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 economic development exemptions by the City is hereby declared to be a contract under the provisions of K.S.A. 12-147

and amendments thereto, or K.S.A. 12-1742, as amended. 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) or K.S.A. 12-1742, as amended, to the general fund of all taxing subdivisions, 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.

Section 26. Exemption Forms. A copy of the exemption application, 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 decision to grant or deny the tax exemption application lies within the sole discretion of the Governing Body. Nothing in this policy obligates the City to approve any tax exemption incentive or IRB application. Further, the Governing Body reserves the right to grant or deny any IRB applications under circumstances beyond the scope of this policy, or to waive any procedural requirement. 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 of state law.

Section 28. Definitions. For the purpose of this Statement, in application to the 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:

- (1) "Applicant" shall mean and include the business, property owner or owners, and their officers, employees and agents.
- (2) "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.
- (3) "Commenced operations" shall mean the start of the business activity housed in the building for which a tax exemption-incentive or IRB is requested.
- (4) "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.
- (5) "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.
- (6) "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 "North American Industry Classification System."



(7) "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.

(8) "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.

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


(10) "Tax incentive" or "tax exemption-incentive", see Section 6.

**NOW THEREFORE**, be it resolved by the Governing Body of the City of Columbus, Kansas, that the City does hereby amend Resolution No. 334 and modify the *Statement of Policy and Procedures for Granting Tax Exemptions and Incentives for Economic Development*, renamed, "**CITY OF COLUMBUS, KANSAS, STATEMENT OF POLICY AND PROCEDURES FOR EVALUATING APPLICATIONS FOR ECONOMIC DEVELOPMENT EXEMPTIONS.**"


**BE IT FURTHER RESOLVED** that the Governing Body shall receive and review requests and applications for tax exemptions-incentives based on the Kansas Constitution or the IRB Act and to perform all functions and conduct all proceedings formerly delegated to the Economic Development Committee.

**PASSED AND APPROVED** by the Governing Body of the City of Columbus, Kansas, this 19th day of July, 2021.

CITY OF COLUMBUS, KANSAS

  
Grant Spieth, Mayor

ATTEST:

  
Cherri Chancellor, City Clerk

