

Property tax abatements: considerations of changes to current policy

Comment [Col1]: Should this section cover IRBs as well?

Note: removed cost-benefit section, which will be included in the overarching policy.

REQUIREMENTS FOR CONSIDERATION OF A TAX ABATEMENT.

The City shall only grant a tax abatement to a business which meets the legal requirements for a tax abatement and which indicates in their application that they will fully comply with the following qualifying requirements: (Ord. 7706)

(A) The business is environmentally sound.

Comment [Col2]: May wish to consider having a general "base" abatement and then offer additional incentive for LEED certified projects or other projects which demonstrate sound environmental practices.

(B) The business is small and medium size...to avoid a situation where the City becomes dependent on one industry, and to maintain the character of the community.

Comment [Col3]: Does the City wish to limit large prospects? May wish to discuss this.

(C) The business pays all employees in the abated project an average wage per employment category that meets or exceeds the average in the community as determined annually by the Kansas Department of Human Resources Wage Survey.

Comment [Col4]: We may want to think about combining C) and (D). I think the breakout of wages by category is intrusive. (roger)

(D) The business pays all covered employees a wage, at or above, an amount which is equal to one hundred thirty percent (130%) of the federal poverty threshold for a family of three (3), as established by the United States Department of Health and Human Services, as further set forth in Section 1-2105 of this ordinance.

Comment [Col5]: Need to discuss impact of changes of Wage Survey on this section, if any.

(E) The business provides one of the following:

(1) the availability of covered employees to obtain an employer-sponsored health insurance policy, pursuant to employer guidelines, in which case the employer provides a minimum of seventy percent (70%) of the cost of such policy; or

Comment [Col6]: This would be \$10.99 for 2008.

(2) as an alternative to offering an employer-sponsored health insurance policy, the employer shall pay the covered employee a wage which is at least \$1.50 per hour above the amount required in Section

Comment [Col7]: Perhaps discuss 70% amount; perhaps discuss requiring health insurance contribution for all companies, thus eliminating E2.

1-2104 (D) above, as further set forth in Section 1-2105 of this ordinance.

- (F) The proposed project and tax abatement results in a combined positive cost:benefit ratio of 1:1.25 or greater over a 15 year period as determined by the City adopted econometric model to keep the overall property tax rate as low as possible.

1-2105 WAGE FLOOR AND HEALTH INSURANCE REQUIREMENTS.

The requirements of Section 1-2104, subsections d and e, may be referred to as the wage floor and health insurance requirements of this Ordinance. The wage floor requirements shall be annually adjusted pursuant to the release of statistical information from the federal government, and the City shall notify in writing the businesses receiving a tax abatement, which are affected by the wage floor requirements. For 2003, the wage floor shall be \$9.53 per hour. These requirements shall apply to all employees of a business receiving a tax abatement at the specific real estate receiving the tax abatement, with the exception of a business that has Lawrence operations prior to the granting of a tax abatement in which case the wage floor and health insurance requirements shall apply to all employees in the abated project. (Ord. 7706)

The wage floor and health insurance requirements of this Ordinance shall not apply to the following employees:

- (A) employees employed in a bona fide or certified job training program for no more than 60 calendar days (once per employee);
- (B) temporary employees working fewer than 100 hours per calendar year;
- (C) employees with the status of student seasonal workers hired for not to exceed ninety calendar days.
- (D) employees of not-for-profit organizations.

Covered employees would not include subcontractors whose work is only incidental to plant operations. Suppliers, raw goods/material

suppliers, landscape companies, construction contractors, delivery employees shall not be covered employees.

The wage floor and health insurance requirements shall not apply to employees covered by a collective bargaining agreement that provides a wage higher than the requirements of this ordinance.

1-2106

LEGAL AUTHORITY.

The governing bodies of Kansas counties and cities may exempt certain property used by Kansas basic industry 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 and the provisions of K.S.A 12-1740 et seq. and K.S.A 79-201a, subject to such limitations or prohibitions as may be enacted by the legislature. This authority is discretionary with the City, and the City may provide for tax abatements in an amount and for purposes more restrictive than that authorized by the Constitution or any such legislation. Pursuant to its home rule and statutory powers, the City may: (Ord.7706)

- (A) require the owners of any property for which an abatement is requested to provide certain information;
- (B) condition the granting of an abatement to an agreement providing for the payment of in lieu charges or taxes; and
- (C) require the payment of initial application and annual renewal fees reasonably necessary to cover the costs of administration.

1-2107

GENERAL PROCEDURE.

The following basic procedure shall govern the issuance of tax abatements within this City: (Ord. 7706)

- (A) The applicant business shall apply for a tax exemption by filing a written application as provided in Section 1-2117. Only new real and property that is not already on the Douglas County tax rolls shall be eligible;
- (B) The City Commission shall then determine whether the requested tax abatement

Comment [Col8]: Will we need only parts of this, or perhaps none of this, once the overarching policy is in place?

(1) may be lawfully granted, and
(2) should be granted, with the amount thereof to be determined later.

(C) The amount of the tax abatement will be determined in accordance with Section 1-2116 of this chapter.

(D) Notice of the City's intent to issue a tax abatement will be submitted to the State Board of Tax Appeals for final approval. If such approval is denied the abatement cannot legally be awarded.

(E) If the business fails to pay the in lieu tax payments, as may be required as a condition of the granting of an abatement, or fails to provide the reports or other information requested by the City, the City may revoke, or modify the abatement.

1-2108 JURISDICTION.

The City shall grant tax abatements only as to property located within the City. The City will advise Douglas County and appropriate school districts on all applications. The City encourages the Board of County Commissioners to advise the City as to applications outside the City and within the three-mile area. (Ord. 7706)

1-2109 NOMINAL TAX DETERMINATION.

All tangible property of a business receiving a tax abatement under this ordinance shall be annually assessed by the County Appraiser in the same manner as if it were not exempt, but the amount exempted 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. Separate assessment and tax calculations shall be made for the land and the improvements thereon.

The County Clerk and Treasurer are requested to provide the City with this information as early as possible, but not later than November 15 of each year. (Ord. 7706)

1-2110 MINIMUM PAYMENT IN LIEU OF TAXES.

Any applicant receiving a tax abatement pursuant to this ordinance shall be required to make a minimum payment in lieu of taxes. The minimum payment shall equal the amount of property tax paid or was payable for the most recent year prior to the acquisition of the property by the new business or the construction of new buildings or added improvements to buildings. The purpose of requiring a minimum payment in lieu of taxes is to provide the City, the County, the School District and any other taxing jurisdictions affected by the abatement with as much tax revenue from the exempted property as was received prior to the abatement. (Ord. 7706)

Comment [CoL9]: This section appears to conflict with earlier statement that only new property is eligible for tax abatement. This section might make sense if property already on the tax rolls were eligible for exemption consideration.

1-2111

SPECIAL ASSESSMENTS.

Any tax abatement granted for real property under this ordinance shall not affect the liability of such property for any special assessments levied or to be levied against such property. (Ord. 7706)

1-2112

PIRATING.

It is the intent of the City, the County and the Chamber to avoid participation in "bidding wars" between Kansas cities or areas competing for the relocation of an existing Kansas business through attempts to offer the largest tax incentive or other public inducement, which is detrimental to the state's economy and the public interest. It is the policy of the City to discourage applications for tax abatements, or to grant tax abatements which deliberately encourage and cause the pirating of business from another Kansas community to this community. This policy does not preclude the providing of information to companies that inquire about Lawrence or are seeking an expansion rather than a relocation. It also does not preclude the granting of a tax abatement in those situations- where: (Ord. 7706)

- (A) The company has already made a decision to relocate or expand; or
- (B) The company is seriously considering moving out of state.

1-2113

PUBLIC GOOD REQUIREMENT.

The basic principle from which the City operates is that private business should not be subsidized with public funds, the indirect consequences of tax abatements, unless the public good expressed in Section 1-2102 of this ordinance is served. (Ord. 7706)

1-2115

NO UNFAIR ADVANTAGE.

A tax abatement will not be granted if the abatement would create, in the judgment of the City Commission, an unfair advantage for one business over another Lawrence business that competes for the same consumer market within the city. (Ord. 7706)

1-2116

AMOUNT OF TAX EXEMPTION.

In determining the actual amount of tax abatement to be granted to Kansas basic industries that meet the Economic Development Objectives of Section 1-2103 of this ordinance and the other requirements of this ordinance, the City shall use as a guideline the following basic schedule: (Ord. 7706)

- (A) fifty percent (50%) property tax abatement for ten years on investments less than \$20 million in adjusted 2001 dollars;
- (B) when the investment under consideration meets one of the following criteria, the City Commission may consider a property tax abatement that exceeds fifty percent (50%);
 - The investment exceeds \$20 million dollars in adjusted 2008 dollars
 - The project is constructed in compliance with Leadership in Energy and Environmental Design (LEED) criteria.
 - (a company that has been on the Douglas County property tax rolls for at least three (3) years shall be eligible for an additional five percent (5%) tax abatement for a new project; and
 - Unique site constraints or construction requirements that make development more difficult and costly
 - A project that is seen as a catalyst for future projects in an area of focus for the community, such as the biosciences.
- (C) the governing body may vary the amount and duration of the abatement provided the net abatement to a business shall not reduce the net tax revenues as would be received pursuant to the above schedules to the local taxing units over ten (10) years. It shall be the policy of the City to approve a tax abatement for the real property portion of a

project if the project meets the requirements of this ordinance.

The abatement term for projects considered 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. The abatement term for projects considered under authority of K.S.A. 12-1740 et seq. and K.S.A. 79-201a shall begin in the calendar year after the calendar year in which the bonds are issued.

1-2117

APPLICATION PROCEDURES.

Comment [CoL10]: Might we also remove this section once the overarching policy is in place?

All parties interested in obtaining a tax abatement shall be governed by the applications and procedures as found in the "City of Lawrence Economic Development Goals, Processes and Procedures." In addition to these procedures, the following steps shall apply for tax abatements and must be completed prior to City Commission hearings on the application:

1) Upon receipt of the completed application form and the required fee, the City Manager shall determine: (Ord. 7706)

(A) whether the application is complete and sufficient for review; and

(B) whether the applicant's business is eligible for an abatement under the Kansas Constitution, this ordinance or any other applicable laws. If the application is incomplete, the City Manager shall immediately notify the applicant, noting the need for such changes or additions as are necessary. If questions arise as to whether the business is legally eligible for an abatement, 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 Manager shall so notify the Public Incentives Review Committee.

1-2120

PUBLIC INCENTIVES REVIEW COMMITTEE.

Comment [CoL11]: Will PIRC be responsible for reviewing any other incentives? If so, should this be moved to another document?

There is hereby created a Public Incentives Review Committee, which shall be composed of: (Ord. 7706)

(A) the Mayor, or the Mayor's designee who shall serve as chair,

(B) another member of the City Commission appointed by the Mayor with the consent of the City Commission,

(C) a member of the Douglas County Commission appointed by the County Commission,

(D) a member of the Lawrence Public Schools U.S.D. 497 School Board or a School Board representative appointed by the School Board,

(E) a professional financial analyst appointed by the Mayor and City Commission for a three year term;

(F) the Chair of the Lawrence/Douglas County Economic Development Board, and

(G) a resident of Lawrence appointed for a three year term by the Mayor and the City Commission. City, County, and School District staff shall provide technical and policy advice to the Committee. The Committee shall meet on call of the Mayor.

The purpose of the Public Incentives Review Committee shall be to:

(1) receive and review requests and applications for tax exemptions,

(2) to gather and review such additional information as may be deemed necessary to determine if the company meets the target objectives of Section 1-2103,

(3) to conduct preliminary negotiations with the applicant business, as appropriate,

(4) to review the City's yearly tax abatement report and compliance with performance agreements, and

(5) to make such recommendations to the City Commission.

Public Incentives Review Committee records, including applications for tax exemptions, may be withheld from public disclosure under the Kansas Open Records Act as provided for under subsections (20) and (31) and other subsections of K.S.A. 45-221, but shall be available for public inspection when otherwise required by law. The Committee is authorized to issue administrative letters of finding which shall not be binding on the City Commission, and may be superseded by any action by the City Commission.

1-2122

LETTERS OF INTENT.

Upon receiving the recommendations of the Public Incentives Review Committee, the City Commission may issue a letter of intent, setting forth in general terms its proposed plans for granting a tax abatement and any conditions thereto. Such letters of intent shall be issued only as an expression of good faith intent and shall not in any way bind the City Commission to the granting of an abatement. 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, Chamber employee, or other public or private body or individual, shall be authorized to speak for and commit the City Commission to the granting of a tax abatement. Letters of intent issued by the City Commission shall supersede any letters issued by the Public Incentives Review Committee. (Ord. 7706)

1-2124

PERFORMANCE AGREEMENT AND ENFORCEMENT.

- (A) Any tax abatement granted pursuant to this ordinance shall be accompanied by a Performance Agreement between the applicant and the City. The Performance Agreement shall include provisions to ensure compliance with the requirements of this ordinance, and appropriate consequences in the event of non-compliance. (Ord. 7706)
- (B) The Performance Agreement shall indicate that if the business receiving tax abatement does not comply with the wage floor and health insurance requirements of this Ordinance, then the business shall be required to pay, on an annual basis, to the City a certain amount as established below:

The business shall pay to the City, by May 20, an amount of money equal to two hundred percent (200%) of the difference between the actual wages paid to employees covered by the wage floor and health insurance requirements and the amount of wages that should have been paid to the same employees to comply with the wage floor and health insurance requirements of this ordinance. This payment to the City may not exceed the annual value of the abated property taxes to the business. Upon City receipt of the payment from the business, the payment shall be disbursed as follows: half of the payment amount shall be sent to eligible employees or former employees of the business in amounts equal to the difference between their actual wages/health insurance benefits and the wages/health insurance benefits required by this ordinance; the other half of the payment shall be retained by the City and used, pursuant to City Commission direction, for economic development purposes, including employee training programs. (Ord. 7706)

Comment [CoL12]: Comment: based upon review of other policies, this seems very onerous. Most communities would adjust or eliminate the abatement at this point, but not further penalize the business.

(C) The Performance Agreement shall also require the monitoring of the average wage criteria of the Kansas Department of Human Resources, the number of jobs provided by the employer, and the capital investment projections set forth in the original application. The provisions concerning the consequences for non-compliance with the wage floor and health insurance requirements shall not apply to other areas of non-compliance of a tax abated business, rather any non-compliance shall be reviewed by the Public Incentive Review Committee, and as appropriate, the City Commission. Each tax abatement shall be annually reviewed by the Public Incentives Review Committee, as set forth in Section 1-2125, which shall forward a copy of the annual review and appropriate recommendations to the City Commission. The City Commission shall receive the annual review report, and if the City Commission determines that a business or project is not in compliance with the provisions of the Performance Agreement, then the tax abatement may be modified pursuant to the Performance Agreement as the City Commission deems appropriate. The County Appraiser and the State Board of Tax Appeals shall be notified of appropriate actions. (Ord. 7706)

Comment [CoL13]: Again, this wage information needs to be discussed as it is possibly changing

Comment [CoL14]: Should we have annual review here, or in overarching policy?

All tax abatements granted shall be subject to an annual review by the Public Incentives Review Committee to ensure that the ownership, use of property, and the economic performance of the business, including the capital investment, employment, and wages, are pursuant to requirements and criteria of this ordinance, the application for tax abatement, and the conditions of the granting of the tax abatement. The review shall also include a comprehensive review of the entire abatement period for the business, including milestones and project phases for the business. The annual review shall provide an opportunity for the company receiving the abatement to describe their achievements, especially in the areas of environmentally sound practice, community engagement and services, and job training. If the business: (Ord. 7706)

- (A) no longer qualifies for a tax abatement pursuant to law or this policy;
- (B) substantially fails to meet the expectations set forth in the application for a tax abatement, including failure to meet employment, wage, or capital investment plans in the application; or
- (C) substantially fails to meet the criteria or objectives of this ordinance;

the City Commission, after notice and a public hearing may modify the exemption by ordinance.

Each business receiving a tax exemption shall be required to complete an annual report by March 1. The information in the report will cover the time period of January 1 through December 31 of the previous year. The annual report will be reviewed by the Public Incentives Review Committee and presented to the City Commission by May 1.

Comment [CoL15]: Due to the changes in the annual report lately, we may want to specify which annual report- the one when their abatement went into effect or whichever report is the most current one.

By May 1 of each year, the Public Incentives Review Committee shall also present an annual report to the City Commission that lists all of the property tax exemptions that remain in effect at that time. The annual report shall include information regarding when the exemption was granted, when the exemption expires, current property taxes paid for the property, in lieu of tax payments, amount of any industrial revenue bonds issued, the assessed value of the property, number of employees, salary and payroll of

employees, and any additional information concerning the operation of the business receiving the exemption, and other information as requested by the City Commission.

The Public Incentives Review Committee shall monitor compliance for the wage floor and health insurance requirements. If a business fails to comply with the wage floor and/or health insurance requirements, the business shall provide a written explanation and a plan for correcting the non-compliance. This information shall be contained in the report submitted by the Public Incentives Review Committee to the City Commission. If the business is in non-compliance with the wage floor and/or health insurance requirements for two (2) consecutive years, the City Commission shall take appropriate actions to completely remove the tax abatement for the business, unless the City Commission, by a super-majority vote (currently four (4) votes), determines that extraordinary circumstances exist and the tax abatement should be allowed to continue.

The failure of a business to provide accurate and timely information to the City in the preparation of the annual report shall be grounds for the modification or repeal of the tax abatement. The City shall retain a qualified third party consultant to assist the preparation of any report and to maintain the confidentiality of the personnel and wage records of a business.

A business that is required to comply with the wage floor and health insurance requirements of this ordinance shall maintain payroll records for covered employees and shall preserve them for a period of two (2) years. The records shall contain:

- (1) the name and address of each covered employee;
- (2) the job title and classification;
- (3) the number of hours worked each day;
- (4) the gross wages earned and deductions made;
- (5) a record of health insurance payments made by the employee and the employer; and

- (6) additional information necessary to establish that an employee is exempt from the wage floor and health insurance requirements established in Section 1-2105.

A copy of these records shall be provided to the third-party auditor to review and determine compliance with the requirements of this ordinance. Members of the Public Incentive Review Committee, City staff selected by the City Manager, or the City Commission may review these records in the custody of the third-party auditor but may not do anything to remove or destroy their confidential nature.

1-2126 TRANSFER OF OWNERSHIP OR USE.

No abatement or tax incentive granted by the City shall be transferred as a result of a change in the majority ownership of the business. Any new majority owner shall file a new application for a tax abatement. Further, the City shall be notified by the business of any substantive change in the use of a tax exempt property. (Ord. 7706)

1-2127 DISTRIBUTION OF REVENUE.

The granting of tax abatement by the City Commission is hereby declared to be a contract under the provisions of K.S.A. 12-147. The in lieu of taxes payment which may be required of a business granted a tax abatement under this ordinance 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 to the general fund of all taxing subdivisions, excluding the state, which levies 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. (Ord. 7706)

1-2128 EXEMPTION ORDINANCE.

The City Clerk shall provide a copy of the ordinance, as published in the official city newspaper, granting an abatement 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. (Ord. 7706)

1-2129 EXEMPTION FORMS.

A copy of the exemption application required by K.S.A. 79-213 and 79-210, and the statement required by K.S.A. 79-214 for the cessation of an exempt

use of property, shall be filed with the City Clerk by the property owner. (Ord. 7706)

1-2131 **NO RETROACTIVE APPLICATION.**

This ordinance shall only apply to tax abatements approved after the adoption of the ordinance, and shall not apply retroactively to previously approved abatements and projects. Tax abatements granted pursuant to earlier City policies and procedures shall be governed by the City policy and procedures in effect upon the initial granting of the abatement. (Ord. 7706)

1-2132 **DEFINITIONS.**

For the purpose of this Ordinance, in application to the City of Lawrence, the words or phrases as used in this Ordinance shall have the following meaning: (Ord. 7706)

(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 is requested.

(D) "Economic development purposes" shall mean the expansion or the establishment of a new business enterprise which:

(1) is or proposes to be located or principally based in Kansas; and

(2) can provide demonstrable evidence that:

i) it is or will be primarily engaged in any one or more of the Kansas basic industries: or

ii) it is or will be primarily engaged in the development or production of goods or the provision of services for out-of-state sale; or

iii) it is or will be primarily engaged in the production of raw materials, ingredients or components for other enterprises which export the majority of their products; or

iv) it is a national or regional enterprise which is primarily engaged in interstate commerce; or

v) it is or will be primarily engaged in the production of goods or the provision of services which will supplant goods or services which would be imported into the city; or

vi) it is the corporate or regional headquarters of a multistate enterprise which is primarily engaged in out-of-state industrial activities that take place outside of Lawrence.

(E) "Kansas basic industry" shall mean:

- (1) Agriculture;
- (2) mining;
- (3) manufacturing;
- (4) interstate transportation;
- (5) wholesale trade which is primarily engaged in multistate activity or which has a major import supplanting effect within the state;
- (6) financial services which are primarily engaged in providing such services for interstate or international transactions;
- (7) business services which are primarily engaged in providing such services to out-of-town markets;
- (8) research and development of new products, processes or technologies; or

- (9) tourism activities which are primarily engaged in for the purpose of attracting out-of-state tourists.

As used in these subsections, "primarily engaged" means engagement in an activity by an enterprise to the extent that not less than fifty-one percent (51%) of the gross income of the enterprise is derived from such engagement.

- (F) "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 is new to the tax rolls and increases the employment capacity of a business eligible for a tax exemption.

- (G) "Tangible personal property" shall mean machinery and equipment which is new to the tax rolls and used during the term of the tax exemption which may be granted.

Property being added to the tax rolls by "Kansas basic industry" in accordance with the provisions of Section 13 of Article 11 of the Constitution of the State of Kansas and the provisions of K.S.A 12-1740 et seq. and K.S.A 79-201a. In addition, certain requirements of this ordinance shall apply to the granting of certain public subsidies by the City as further set forth in Section 1-2130. (Ord. 7706)