

Resolution No. 6343

A Resolution Establishing the Policy and Procedures for Tax Exemptions and Incentives for Economic Development for the City of Lawrence, Kansas; Repealing Resolution No. 5431.

Be It Resolved By the Governing Body of The City of Lawrence, Kansas:

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Section 1. Purpose. The purpose of this Statement is to establish the official policy and procedures of the City of Lawrence for the granting of property tax exemptions for real and personal 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.

Section 2. General Objective. The securing of private economic investment to broaden the tax base is an important current and long term objective of the City. When fiscal benefits exceed fiscal costs, a broadened tax base provides local government with the financial resources to maintain and enhance the services available to all residents. The creation of job opportunities for Douglas County residents is also an important current and long term objective of the City. The quality of life for all area residents is enhanced when good job opportunities are available.

The granting of property tax exemptions on new real and personal property is one of the incentives available under Kansas law to help achieve these public objectives. This statement is intended to establish the policy and procedures to govern the fair, effective and judicious use of

the power to grant such exemptions.

Because of Lawrence's assets and the desire of area residents to plan for the future and retain a community that is different from other growing suburban areas, a property tax exemption may not be offered to every firm that is eligible under state statutes. Instead, property tax exemptions will be targeted toward the kind of businesses defined in Section 3.

Section 3. Economic Development Objectives. The City of Lawrence works in cooperation with Douglas County and the Lawrence Chamber of Commerce to achieve the general objectives outlined in Section 2. This partnership enables the community to maximize its resources and to develop a consensus regarding the kind of economic development that best advances the interests of the entire community.

All of the partners in this effort share a commitment to:

- a) encourage existing industry to expand
- b) assist new business start-ups
- c) recruit new companies from out-of-state and internationally
- d) encourage high technology and research based-businesses
- e) encourage training and development of Lawrence area employees
- f) encourage the location and retention of businesses which are good "corporate citizens" that will add to the quality of life in Lawrence through their leadership and support of local civic and philanthropic organizations.

While it is the new companies from out-of-state that typically generate the most publicity, it is the policy of the City, County, and the Chamber to place a high priority on the retention and expansion of existing businesses.

The City's role in this economic development partnership involves: 1) providing the necessary zoning and infrastructure improvements that are required to create new jobs and new investment; and 2) providing the personal assistance and in some cases the incentives including a property tax exemption, that are required to compete for new start-up businesses, expansions of existing businesses and relocations from out-of-state.

All three partners believe that Lawrence and Douglas County should be selective as to the kinds of businesses that are recruited and assisted. In general, the target objectives the City is looking for in new and expanding businesses are:

- 1) environmentally sound.
- 2) small and medium size...to avoid a situation where the City becomes dependent on one industry, and to maintain the character of the community.
- 3) average wages per employment category that meet or exceed the average in the

community as determined annually by the Kansas Department of Human Resources Wage Survey.

- 4) 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.

It is the City's goal to attract a wide variety of jobs that utilize the full range of skills and educational levels possessed by Lawrence and Douglas County residents. To accomplish this goal, the governing body may determine that it is in the public interest to grant a property tax exemption to a business whose wages or cost:benefit ratio do not meet the requirements of the target objectives above if the business offers good benefits to their employees and/or complements and builds on the human resources and the scientific and technological capabilities of local high school or college graduates and also of the University of Kansas and Haskell Indian Nations University.

Section 4. 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 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 exemptions 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 (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 and (3) require the payment of initial application and annual renewal fees reasonably necessary to cover the costs of administration.

Section 5. General Procedure. The following basic procedure shall govern the issuance of tax exemptions within this City. (1) The applicant business shall apply for a tax exemption by filing a written application as provided in Section 15. Only new real and personal property that is not already on the Douglas County tax rolls shall be eligible. (2) The City Commission shall then determine whether the requested tax exemption (a) may be lawfully granted, and (b) should be granted, with the amount thereof to be determined later. (3) The amount of the tax exemption will be determined in accordance with Section 14 of this Statement of Policies and Procedures. (4) Notice of the City's intent to issue a tax exemption will be

submitted to the State Board of Tax Appeals for final approval. If such approval is denied the exemption cannot legally be awarded. (5) If the business fails to pay the in lieu tax payments, as may be required as a condition of the granting of an exemption, or fails to provide the reports or other information requested by the City, the City may revoke, or modify the exemption.

Section 6. Jurisdiction. The City shall grant tax exemptions 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.

Section 7. Nominal Tax Determination. All tangible property of a business receiving a tax exemption under this Statement 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 (1) land, (2) the improvements thereon, and (3) for any tangible personal property associated with, the business. 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.

Section 8. Minimum Payment In Lieu of Taxes. Any applicant receiving a tax exemption pursuant to this Statement of Policy and Procedures 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 exemption with as much tax revenue from the exempted property as was received prior to the exemption.

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

Section 10. 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 exemptions, or to grant tax exemptions 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 exemption in those situations- where: a) the company has already made a decision to relocate or expand or, b) the company is seriously considering moving out of state.

Section 11. "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 exemptions, unless the public good expressed in Section 2 of this Statement of Policy and Procedures is served.

Section 12. Standards for Costs and Benefits. The City, in determining whether a tax exemption should be granted; shall conduct a cost benefit analysis which will consider various factors including, but not limited to, the following:

- (a) The increase in appraised valuation of the property.
- (b) The sales and income tax revenue which may result.
- (c) The number of new jobs, the earnings and the benefits that will be provided.
- (d) The expenditures that local government will need to make to provide streets and utilities, police and fire protection and other services to the company itself.
- (e) The expenditures for police and fire protection, recreation, street maintenance, social programs, etc. for the new residents associated with the company.
- (f) The expenditures for capital investments (library, streets, airport, sewer plants, etc.) for the new residents associated with the company.
- (g) The expenditures by the local school district to provide the facilities and to educate the students of the new residents associated with the company.
- (h) Other public or private expenditures associated with attracting the new company.
- (i) The degree to which the business improves the diversification of the economy.
- (j) The kinds of jobs created in relation to the types of skills available from the local labor market.
- (k) The degree to which the ultimate market for the business products and services is outside the community, recognizing that outside markets bring "new money" to the local economy.
- (l) The potential of the business for future expansion and additional job creation.
- (m) 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.

- (n) 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.
- (o) 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.

Section 13. No Unfair Advantage. A tax exemption will not be granted if the exemption 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.

Section 14. Amount of Tax Exemption. In determining the actual amount of tax exemption to be granted to Kansas basic industries that meet the Economic Development Objectives of Section 3 of this policy statement and the other requirements of this policy statement, the City shall use as a guideline the following basic schedule:

- (1) 50% property tax exemption for ten years on investments less than \$20 million in adjusted 2001 dollars.
- (2) When the investment under consideration exceeds \$20 million dollars in adjusted 2001 dollars the City Commission may consider a property tax exemption that exceeds 50%.
- (3) 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.
- (4) 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 10 years. It shall be the policy of the City to approve a tax abatement for the real property and personal property portion of a project if the project meets the economic development objectives outlined in Section 3 of this policy.

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.

Section 15. Application Required. The City will not consider the granting of any tax 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 Manager 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 exemption 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 on said information.

Section 16. Application and Renewal Fees. Any business requesting a tax exemption pursuant to this Statement of Policy and Procedures shall pay to the City an application fee of \$1,000.00 which shall be submitted at the same time the application form required in 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 \$250.00. In addition to the application and renewal fees, the business seeking a tax abatement shall be responsible for any City costs associated with the retention of bond counsel, attorney costs, or auditing costs associated with abatement approval and review, auditing or industrial revenue bond issuance.

Section 17. Initial Review Procedure. Upon receipt of the completed application form and the required fee, the City Manager shall determine: (1) whether the application is complete and sufficient for review, and (2) whether the applicant's business is eligible for an exemption under the Kansas Constitution, this statement 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 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 Manager shall so notify the Public Incentives Review Committee.

Section 18. Public Incentives Review Committee. There is hereby created a Public Incentives Review Committee, which shall be composed of 1) the Mayor, or the Mayor's designee who shall serve as chair, 2) another member of the City Commission appointed by the Mayor with the consent of the City Commission, 3) a member of the Douglas County Commission appointed by the County Commission, 4) a member of the Lawrence Public Schools U.S.D. 497 School Board or a School Board representative appointed by the School Board, 5) a professional financial analyst appointed by the Mayor and City Commission for a three year term; 6) the Chair of the Lawrence/Douglas County Economic Development Board, and 7) 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 3, 3) to conduct preliminary negotiations with the applicant business, 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.

Section 19. Initial City Commission Action. Upon receiving the recommendations of the Public Incentives Review Committee, the City Commission shall first determine whether to reject the requested exemption or to further consider the request. Upon a favorable vote for further consideration, the City Commission may issue a letter of intent as provided by Section 20 and schedule a public hearing thereon.

Section 20. 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 exemption 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 exemption. 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 exemption. Letters of intent issued by the City Commission shall supersede any letters issued by the Public Incentives Review Committee.

Section 21. Notice and Hearing. No tax exemption shall be granted by the City prior to a public hearing thereon. Notice of the public hearing shall be published at least seven days prior to the hearing in the official City newspaper, giving the time and place, and the hearing may be held at a regular or special meeting of the City Commission. The City Clerk shall thereupon notify the Board of Douglas County Commissioners, the Superintendent of

appropriate school districts, 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 which shall remain confidential unless released by the City Commission or the Public Incentives Review Committee. The applicant business shall be invited, but not required, to attend the public hearing.

Section 22. Performance Agreement. Any tax exemption granted pursuant to this Resolution shall be accompanied by a Performance Agreement between the applicant and the City, which shall include provisions governing the situation if an applicant fails to meet the wage, number of jobs, and/or capital investment projections set forth in the original application. Each tax exemption shall be annually reviewed by the Public Incentives Review Committee, as set forth in Section 23, 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 exemption 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.

Section 23. Annual Review for Compliance. All tax exemptions 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 policy, 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: 1) no longer qualifies for a tax abatement pursuant to law or this policy; 2) 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 3) substantially fails to meet the criteria or objectives of this policy; 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.

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 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.

Section 24. Transfer of Ownership or Use. No exemption 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 exemption. Further, the City shall be notified by the business of any substantive change in the use of a tax exempt property.

Section 25. Distribution of Revenue. The granting of tax exemptions 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 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 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 26. 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 27. 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.

Section 28. Waiver of Statement Requirements. The City Commission reserves the

right to grant or not to grant a tax exemption 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 City Commission 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. In addition, no exemption can be provided without the approval of the State Board of Tax Appeals.

Section 29. Definitions. For the purpose of this Statement, in application to the City of Lawrence, the words or phrases as used in this Statement shall have the following meaning:

- (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:
 - (A) it is or will be primarily engaged in any one or more of the Kansas basic industries: or
 - (B) 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
 - (C) 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
 - (D) it is a national or regional enterprise which is primarily engaged in interstate commerce; or
 - (E) 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
 - (F) 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 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.

Section 30. Resolution No. 5431 and all other Resolutions in conflict herewith are hereby repealed.

Adopted by the Governing Body of the City of Lawrence, Kansas this 13th day of November, 2001.

Mike Rundle
Mike Rundle, Mayor

ATTEST:

Frank S. Reeb
Frank S. Reeb, City Clerk