

**CITY OF BONNER SPRINGS**  
**Governing Body Policy**

<b>Type Policy</b>	Governing Body
<b>Policy #</b>	GB- 05-08R
<b>Subject</b>	<b>POLICY AND PROCEDURES FOR ISSUING INDUSTRIAL REVENUE BONDS IN BONNER SPRINGS, KANSAS</b> [Pursuant to K.S.A. 12-1740 et seq.]
<b>Date Adopted</b>	September 12, 2005, Revised October 11, 2011
<b>Prepared By</b>	City Clerk and Community and Economic Development Director
<b>Approved By</b>	Governing Body
<b>Purpose</b>	To establish a policy for the City of Bonner Springs on issuing Industrial Revenue Bonds for Property Tax and/or Sales Tax Exemption for Developments as a means to financially aid economic development per KSA 12-1740 et. seq.

**1. Policy.**

A. The Governing Body shall evaluate all requests to issue industrial revenue bonds for the purposes allowed by law and shall approve the issuance of the bonds when, in its opinion, the project to be financed in whole or in part by the proceeds of the bonds is reasonably expected to promote, stimulate and develop the general economic welfare of the City through promotion and advancement of physical and mental health, industrial, commercial, agricultural, natural resources and recreational development in the City, to encourage and assist in the location of new business and industry in the City and the expansion, relocation or retention of existing business, industry and health facilities; and to promote the economic stability of the City by providing greater employment opportunities, diversification of industry and improved physical and mental health of the citizens of the City, and is deemed to be in the best interests of the City.

In evaluation of a request for the issuance of industrial revenue bonds, the Governing Body shall consider whether the proposed bond issue will help achieve the following objectives:

1. Add substantially to employment in the City or preserve existing jobs in the City.
2. Help produce diversification of the local economy.
3. Create a positive impact on an area of the City where economic assistance is needed.
4. Expand the type of job skills available to the job market in the City or use of key skills of locally unemployed persons.
5. Create economic growth through the production of goods and/or services which will be exported from the City or which will replace goods and/or services which are currently imported to the City.
6. Increase the property tax base of both residential and commercial properties to further support the costs of municipal services provided by the City and increase the credit worthiness of the City with an increased tax base.
7. Open up other property for future development due to extension of utilities associated with the project.

B. In evaluation of an application for the issuance of industrial revenue bonds, the Governing Body shall also consider the positive or negative influence for the City of the following factors:

1. Whether the issuance of the requested bonds would grant an unfair advantage to the applicant over other firms that provide the same or similar services in the City.
2. Whether the land used for the project fits the land use and development plans of the City.
3. Whether the applicant requests property tax abatement and whether such applicant will make payments in lieu of taxes (PILOT).
4. Whether the applicant proposes to use existing resources within the City (contractors, suppliers, sources of funding, services, etc.) for the development of the proposed project.
5. Whether the proposed project includes refinancing any existing debt.

6. Whether the applicant is in good standing with the state where the applicant was organized; if that state is not Kansas, whether the applicant is also in good standing in the State of Kansas and whether any member of the applicant was convicted of a criminal offense, charged by a regulatory financial or professional agency or has been a debtor in a bankruptcy.

## **2. Requirements of Proposal, Fees, Origination Fee.**

The potential applicant should arrange for a pre-application meeting with the City Clerk, Community & Economic Development Director, City's Financial Advisor and City's Bond Counsel or their appointees, to explore the applicant's interest prior to formally submitting an application. Applicants must complete the standard application form attached to this resolution and incorporated herein by this reference. At least fifteen (15) days before the Governing Body considers the proposal, the applicant shall submit two (2) completed copies of the application form to the City Clerk along with a non-refundable application fee of \$1,250. A closing fee of \$750 shall be remitted to the City Clerk on or prior to the day of the bond closing. Such fees shall be used to defray costs of the City associated with issuance of industrial revenue bonds and for other lawful purposes.

The applicant is also responsible for payment of other professional fees to include, but not limited, to bond counsel, financial advisors and any fees of the City Attorney incurred in connection with the issuance of the bonds.

Each applicant approved for issuance of industrial revenue bonds shall pay to the City an origination fee in an amount equal to one percent (1%) of the total industrial revenue bond issuance. Payment of the origination fee is a requirement for issuance of industrial revenue bonds. All origination fees collected by the City shall be used by the City for the purpose of promoting and furthering local economic development activities.

## **3. Conditions of Approval.**

Approval of industrial revenue bonds is subject to the conditions below:

Publicly Offered Bonds: Applicant must provide reasonable assurance that the bonds are secure and marketable and that the bond issue complies with applicable state and federal law. The City may require credit enhancement such as a letter of credit, bond insurance, personal guarantees or other pledges of collateral, a bond reserve account or any combination of these enhancements.

Privately Placed Bonds: Applicant must provide reasonable assurance that the bonds are secure and marketable to sophisticated investors, approved by the City and that the bond issue complies with applicable state and federal laws.

Secondary Market Disclosure: Applicant must agree to provide ongoing secondary market disclosure to bond investors of material information regarding the security for the bonds to the extent required by law.

Required City Advisors: The City requires the use of its designated bond counsel, Dorothea K. Riley, Kutak Rock, LLP. The City reserves the right to approve the selection of other participants in the bond issue to include, but not limited to, the underwriter and trustee/fiscal agent. The City, in its discretion, may retain additional independent advisors or counsel to assist the City to analyze the legality or other merit of the proposed bond issue.

Reimbursement of City Costs: The applicant must pay for or reimburse the City for all legal, financial and administrative work performed in connection with the bond issue as determined by the City. All post-closing costs (i.e. default, transfer of ownership, transfer of bonds, redemption, remarketing issues, etc.) will be billed to the applicant for reimbursement to the City.

Environmental and Planning: The proposed project must be non-polluting and consistent with all applicable planning and community development policies and regulations. The City may require the applicant to perform at least a Phase I environmental audit of the project site and take any remedial action necessary.

Pirating: Generally, it is the City's policy to discourage applications for tax abatement and other incentive which deliberately encourage and cause the pirating of existing business from other Kansas communities. The City intends to avoid participation in "bid wars" between Kansas counties or cities that compete for the location or expansion of existing businesses.

Taxes: The applicant must not have any delinquent property taxes within Wyandotte, Leavenworth or Johnson counties.

#### **4. Tax Abatement.**

The City has authority under Kansas law to exempt certain property from ad valorem taxation for a maximum 100% for 10 years, as an economic development incentive. If an applicant desires to be considered for tax abatement, the applicant must complete the appropriate application form. Only new real property is eligible, except as provided for in the case of vacant buildings that have been vacant for a considerable period of time as outlined in Section 5.

If an application for abatement is made, the Governing Body shall determine whether the requested tax abatement should be granted and if so, the amount to be abated. The amount of the tax abatement shall be determined at the discretion of the Governing Body based on its review of the application, consideration of the factors listed in Section 6 and generally following the schedule provided below.

<b>Calendar year following Issuance of Bonds</b>	<b>% of Property Tax Abated</b>
Year 1	95%
Year 2	85%
Year 3	75%
Year 4	65%
Year 5	55%
Year 6	45%
Year 7	35%
Year 8	25%
Year 9	15%
Year 10	5%
Thereafter	0%

The Governing Body's authority is discretionary and applications may be considered on a case-by-case basis. The Governing Body is under no obligation to approve any requested tax abatement and reserves the right to deviate from the policies contained herein and the schedule above (though not the procedures) if, in the opinion of the Governing Body, circumstances warrant such deviation.

If the Governing Body approves tax abatement, the City will submit an application to the Kansas Court of Tax Appeals for approval of the tax abatement after the issuance of the bonds in accordance with State law. If such approval is denied, no tax abatement may be granted. If the applicant fails to pay required payment in lieu of taxes which may be a condition for granting the abatement, or fails to provide data requested by the City, or fails to comply with terms of the performance agreement, the City may revoke or modify the abatement.

## **5. Payment in Lieu of Taxes (PILOT).**

- A. An applicant that receives tax abatement shall be required to make a payment in lieu of taxes equal to the amount of property tax paid or that was payable for the most recent year before acquisition of the property by the applicant business, construction of new facilities or added improvements to buildings. This policy ensures that entities within the taxing jurisdiction affected by the abatement will receive the same tax revenue from the abated property as received before the tax abatement granted by the City. If a new or business expansion applicant purchases or leases vacant buildings or the market value of the property decreases, this requirement may be waived in whole or in part, at the discretion of the Governing Body.
- B. The incremental payment of taxes on new development based upon the tax abatement schedule in Section 4 (or as determined by the Governing Body) shall be considered an additional payment in lieu of taxes over and above the minimum payment described above. The payment terms will be determined before the City approves the resolution of intent for the bonds or takes other official action with respect to the bonds.

## **6. Kansas Retailer's Sales Tax.**

Under the current provisions of K.S.A. 79-3606, subsections (b) and (d) and other applicable laws, sales of certain tangible personal property or services purchased in connection with the IRB-financed improvements may be entitled to exemption from the tax imposed by the Kansas Retailers' Sales Tax Act.

## **7. Standards for Cost-Benefit Analysis of Tax Abatements.**

In determination of whether tax abatement should be granted, the Governing Body shall examine the cost benefit to the City and consider various factors, to include, but not limited to:

- a. The increase in appraised value of the subject property.
- b. The sales and income tax revenue which may result from the project.
- c. The number of new jobs, earnings and benefits that will be provided to employees of the applicant.
- d. The cost to provide City services for the new residents associated with the applicant business.
- e. The cost of infrastructure enhancements for new residents associated with the applicant business.
- f. The cost to the local school districts to provide facilities and to educate the students of the new residents associated with the applicant business.
- g. Other associated public or private expenditures to attract the new business.
- h. The degree to which the applicant business improves the diversification of the local economy.
- i. The kinds of jobs created in relation to the skills available in the local labor market.
- j. The potential of the business for future expansion and additional job creation.
- k. The beneficial impacts the business may have by creation of other new jobs, businesses and the utilization of local products and services in the operations of the applicant business.
- l. The beneficial impact the business will have on a particular area of the City.
- m. The compatibility of the location of the business with land use and development plans of the City, the affected areas within the City and the availability of existing infrastructure and essential public services.

## **8. Initial Review and Public Hearing.**

Each completed application shall be reviewed initially by the City Clerk and Bond Counsel who shall determine whether (a) the application is complete and sufficient for review, and (b) the applicant's business is eligible for tax abatement under the applicable laws, if the applicant requested abatement. If an application is incomplete, the City Clerk shall notify the applicant as to what changes or additions are necessary. If the application is found complete and is for a purpose which appears to be authorized by law, the City Manager shall place the item before the Governing Body for its review.

No tax abatement shall be granted by the City prior to a public hearing. Notice of the public hearing shall be published by the City Clerk at least seven days prior to the hearing in the official city newspaper. The City Clerk shall notify by certified mail the applicable taxing authorities within Wyandotte, Leavenworth and/or Johnson Counties to advise them of the public hearing and provide them a copy of the application and cost benefit analysis. The applicant business shall be invited, but not required, to attend the public hearing.

## **9. Letter and Resolution of Intent.**

Administrative Letter of Intent: The City Manager 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. Such administrative letter of intent does not bind the Governing Body and shall be superseded by any final action or final resolution of intent issued by the Governing Body.

Governing Body Resolution of Intent: The Governing Body may issue a resolution of intent, to set forth in general terms its proposed plans to grant tax abatement and any conditions of performance. Such resolution of intent is an expression of good faith and in no way binds the City to grant a tax abatement. Such resolution of intent shall expire nine (9) months after issuance but may be renewed. A public hearing shall not be required prior to the issuance of a resolution of intent. No other group or individual shall be authorized to speak for and commit the Governing Body to grant tax abatement. A resolution of intent issued by the Governing Body supersedes any letter of intent issued by the City Manager.

## **10. Performance Agreement.**

To provide reasonable assurance that the projected benefits to the City will be realized, the agreement for payment in lieu of taxes shall include a performance agreement to require the applicant to maintain certain standards of performance (i.e. minimum job levels, minimum capital investment, etc.) while the tax abatement is in place.

## **11. Annual Review.**

Each performance agreement is subject to annual review and determination by the City Clerk that: (i) the conditions that originally qualified the business for the exemption continue to exist, and (ii) the specific conditions of the performance agreement have been met. The business shall pay a non-refundable fee of \$250 no later than January 15 of each year for the term of the tax abatement to cover costs to conduct the review. The annual review shall include the completion by the applicant of the required tax exempt renewal form submitted to the City Clerk who shall forward the completed application to the appropriate County Official. If conditions substantially change, such information shall be forwarded to the Governing Body through the City Manager, along with any recommended actions. Any business granted a tax abatement shall notify the City of any substantive change in the use of tax exempt property.

## **12. Special Assessments.**

Any tax abatement granted under this policy shall not affect the liability of such property for any special assessments levied or to be levied against such property.