

<b>CITY OF OLATHE</b>		Policy No.:	F-5
<b>COUNCIL POLICY STATEMENT</b>		Date Issued:	12-4-07
General Scope:	Finance	Effective Date:	1-1-08
Specific Subject:	Property Tax Abatement Policy	Cancellation Date:	12-31-08
		Supersedes No.:	Listed Below

Purpose:

To set forth the general public policy objectives of the city as relates to property tax abatements regarding new businesses.

Statement of Policy:

The statement of policy is hereby incorporated with Resolution No. 07-1147.

Establishment of previous tax abatement policies were incorporated with Resolution Nos. 06-1177 and 05-1129. The tax abatement policies for new and existing businesses were combined with Resolution 05-1129.

Establishment of previous property tax abatement policy for new businesses was incorporated with Resolutions 04-1156, 03-1159, 02-1141, 01-1162, 00-1067, 00-1007, 98-1205, 97-1150, 96-1018, 95-1180, 94-1163, 93-1172, 93-1008, 92-1013, 90-1170, 90-1092, 89-1098 and 88-1136.

Establishment of previous property tax abatement policy for existing businesses was incorporated with Resolutions 04-1155, 03-1158, 02-1140, 01-1161, 00-1068, 00-1008, 98-1206, 97-1151, 96-1017, 95-1179, 94-1163, 93-1172, 93-1008, 92-1013, 90-1170, 90-1092, 89-1098 and 88-1136.

## RESOLUTION NO. 07-1147

### A RESOLUTION ESTABLISHING POLICIES RELATING TO INDUSTRIAL REVENUE BONDS AND PROPERTY TAX ABATEMENTS; AND REPEALING CERTAIN PRIOR RESOLUTIONS.

**WHEREAS**, the City of Olathe, Kansas (the “City”) recognizes that it is essential to stimulate economic growth and development for industries and businesses in order to provide services, employment and tax revenues for the benefit of the community; and

**WHEREAS**, it is further recognized that the stimulation of balanced economic development is a joint responsibility of the private and public sectors, working closely together to create a positive business environment and to encourage industry to locate and expand in the City; and

**WHEREAS**, the economic development program goals of the City include economic diversification, broadening of the property tax base, stimulation of private investment, enhancement and support of existing development, quality of materials and design, maintenance of environmental quality, creation and quality of employment opportunities, and increased per capita income; and

**WHEREAS**, to meet these economic development goals, the City recognizes the occasional necessity of issuing industrial revenue bonds and granting property tax exemptions and tax incentives for real property pursuant to the provisions of Section 13 of Article 11 of the Kansas Constitution or K.S.A. 12-1740 et seq. and 79-201a.

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

**Section 1. Policy Statement.** To meet the economic goals of the City as outlined above, it shall be the policy of the City to normally provide a 50% real property tax abatement for portions of a project that qualify for tax abatement under Kansas law so long as the project meets the criteria listed in Section Two.

Depending upon how the tax abatement is structured over the term, tax abatement for a project may slightly exceed an overall average of 50%. It shall also be the policy of the City that economic development projects pay their fair share of property tax, special improvement district assessments and cost of utility services. Economic development projects shall have a positive financial impact on the City, and the City reserves the right to approve the cost-benefit analysis model used to determine the financial impact. The Governing Body shall consider the following factors when granting property tax incentives pursuant to Section 13 of Article 11 of the Kansas Constitution and K.S.A. 12-1740 et seq. and 79-201a.

- A. **Existence of Economic Benefit.** The project must add to the Olathe economy. Evaluation criteria to be used in determining benefit to the community shall include, but shall not be limited to the following: the amount of capital investment; whether the project produces value-added products and services; and whether the project provides a positive fiscal impact and economic impact.
- B. **Type of Business.** The project shall be of a nature that has been identified by the Governing Body as desirable to stimulate the local economy and improve the quality of life for its citizens. The project should be one in which a substantial part

of its total products and/or services are either exported from the Olathe area or they would add jobs and replace purchases now being made by Olathe citizens in areas outside of the City if the items are for local consumption. Additional considerations may include whether the project has the effect of supporting or spurring retail development and whether a project would help the City achieve successful completion of an existing commercial or industrial park or the development of a new commercial or industrial enterprise.

- C. **Targeted Industries.** An abatement adjustment of up to 5%, for a total of 55%, may be considered for projects that are in Targeted Industries. The current targeted industries include quality high technology and bioscience-related businesses and office development. At any time, the Olathe Economic Development Council may provide the City with a revised Targeted Industry list for approval by the Governing Body. The Governing Body may exceed the 5% adjustment for any project it determines to be of extraordinary benefit to the entire City.
- D. **Targeted Area.** An abatement adjustment of up to 25%, for a total of 75%, may be considered for projects that locate in a Targeted Area. The “Targeted Area” is the Olathe Downtown Core. The Olathe Downtown Core includes the Santa Fe Corridor, the Central Business District, and the Central Business District Transition Area. At any time, the Olathe Economic Development Council may provide the city with a revised Targeted Area list for approval by the Governing Body. Projects which locate in a Targeted Area may receive property tax abatement for new construction or an abatement of the increase in value resulting from façade improvements and rehabilitation made to an existing structure. The Governing Body may exceed the 25% adjustment for any project it determines to be of extraordinary benefit to the entire City. The City’s issuance fee will be waived for projects that consist of façade improvements and or rehabilitation of an existing structure which are located in the Targeted Area.
- E. **Excluded Businesses.** In addition to the uses of property prohibited by K.S. A. § 79-201 (a) *Second*, the following uses shall not be eligible for property tax abatement: car wash, day care, private for-profit school, veterinary clinic, storage facility, landscaping, branch bank offices and limited service hotels. The City may, at its sole discretion, waive any of these prohibitions if the applicant demonstrates compelling and unique circumstances regarding its project.
- F. **Maintain Existing Tax Base.** To facilitate new development, the City and the Olathe Chamber of Commerce shall assist new industries that invest in new buildings, building expansion or install or locate new machinery and equipment in the City. However, the amount of property taxes or special assessments on the existing land and facilities shall under no circumstances be reduced for new development projects.
- G. **Definition of Existing Business.** A business shall be an “Existing Business” if it has had facilities and operations in the City for a period of not less than one year. All other businesses shall be “New Businesses.”
- H. **Transfer of Ownership.** The owner or lessee of any property that is all or partially exempt from ad valorem taxes as the result of the City having granted the exemption shall obtain the City’s written consent before transferring majority

ownership of the property unless the transfer is to an affiliate or a related entity.

**Section 2. Abatement Criteria and Adjustments.** It is the intention of the Governing Body that all projects receiving property tax abatement meet the criteria that are detailed below. Failure to meet the standards set forth below may result in a decrease in the total abatement percentage available to a project. Adjustments made to increase the total amount of abatement are intended to be provided as an extra incentive to exceed certain criteria when others may not be met. The Governing Body is at its sole discretion to adjust a property tax abatement depending on a project's conformance to the below criteria. However, in no instance shall adjustments based on these criteria exceed the abatement percentages outlined in Section One.

A. **Employment – Wages.** The amount and diversity of additional employment opportunities which would be provided shall be a primary consideration. The City expects all projects which receive a property tax abatement to produce a high quantity of jobs and or pay above average wages.

B. **Location.** The Governing Body will give strong consideration for a business that will be located in a targeted area for economic development or redevelopment, has specific site constraints making development more difficult or costly, or is considered in need of rehabilitation in some way.

C. **Design Criteria.** The City will, at its sole discretion, require higher design standards for the design of buildings and materials used for projects receiving property tax abatement. Projects shall utilize construction materials that meet or exceed the requirements set forth in the design guidelines as provided by the City's Development Services Department. The project must be environmentally acceptable to the location intended as well as the surrounding area. Preference will be given to businesses that do their own pre-treatment or do not require extensive environmental controls. Preference may also be given to businesses whose new construction achieves U.S. Green Building Council LEED Certification.

D. **Compatibility with Adopted City Plans.** All projects shall be consistent with the City's Comprehensive Plan, any applicable corridor plans, and other plans of the City which may be relevant to the project. When evaluating proposed projects, the City will consider a variety of factors to determine compliance, including 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. The proposed use must be clean, nonpolluting and consistent with all policies, ordinances, and codes. Based upon future growth, the applicant must be willing to work with the City to provide a traffic study on any projected traffic impact increase on the City.

**Section 3. Term of Abatement.** The abatement period for a project approved under this Resolution shall be determined by the amount of new capital investment in the City. Capital investment shall include expenditures for land, building or personal property subject to ad valorem taxation.

A. **Existing Businesses.** The normal term of abatement for each project where the applicant is an Existing Business is determined according to the following schedule, unless a different term is established by the Governing Body pursuant to Section Eight herein:

<b>Capital Investment</b>	<b>Normal Term</b>
\$1 million but less than \$1.5 million	3 years

\$1.5 million but less than \$2 million	4 years
\$2 million but less than \$2.5 million	5 years
\$2.5 million but less than \$3 million	6 years
\$3 million but less than \$3.5 million	7 years
\$3.5 million but less than \$4 million	8 years
\$4 million but less than \$4.5 million	9 years
\$4.5 million or greater	10 years

- B. **New Businesses.** The normal term of abatement for each project where is the applicant is a New Business is determined according to the following schedule, unless a different term is established by the Governing Body pursuant to Section Eight herein:

Capital Investment	Normal Term
\$1 million but less than \$3 million	3 years
\$3 million but less than \$4 million	4 years
\$5 million but less than \$6 million	5 years
\$6 million but less than \$7 million	6 years
\$7 million but less than \$8 million	7 years
\$8 million or greater	10 years

- C. **Businesses Locating in a Business Park.** The normal term of abatement for each project where the applicant is locating within a Business Park where the Governing Body has already established an abatement term and total investment and the applicant wishes to be assigned a portion of the interest in industrial revenue bonds shall be 10 years so long as the applicant makes a minimum investment of \$1 million.
- D. **Commencement of Abatement.** The abatement term for projects 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 or the calendar year in which expansion of an existing business is completed, as the case requires. The abatement term for projects under authority of K.S.A. 12-1740 through 12-1749 and 79-201a shall begin in the calendar year after the calendar year in which the bonds are issued. Projects which include multiple phases shall have an expiration date for the commencement of the term of the abatement for all phases as determined by the Governing Body at the time of the adoption of the Resolution of Intent.

**Section 4. Procedure.** The City shall consider granting a tax exemption pursuant to this Resolution after receipt of a complete application from the applicant in a form prescribed by the City together with the application fee. The application shall be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the project's preliminary site plans and building elevations, to prepare a fiscal impact analysis, and to contact the unified school district within which the property proposed for exemption is located. The project's site plans and building elevations are subject to final approval to ensure that they are similar to the preliminary plans and elevations submitted.

Based on each application and such additional information as may be requested by the City, the City shall prepare or cause to be prepared a fiscal impact analysis of the proposed exemption on the city and state of Kansas, which analysis shall be used by the Governing Body in considering the request for abatement. In making its decision, the Governing Body may also consider any fiscal and/or economic impact analyses performed by the unified school district

within which the property proposed for exemption is located or the Johnson County Economic Research Institute.

Prior to formal action on each resolution of intent, the Governing Body shall conduct a public hearing thereon, to be scheduled at least seven days after publication of notice. Notice of the hearing shall also be sent to the Johnson County Clerk's Office and the unified school district within which the property proposed for exemption is located. The Olathe Chamber of Commerce and the City shall contact representatives of the unified school district to discuss an application that includes a request for tax abatements. The contact shall be made with school district representatives prior to City Council discussion of the application and abatement request. The City Council shall consider the school district's feedback and input in reviewing such requests.

**Section 5. Performance Agreement.** Any tax exemption granted pursuant to this Resolution shall be accompanied by a performance agreement between the applicant and/or lessee and the City, which is subject to annual review and determination by the Governing Body that the conditions qualifying the business for the exemption continue to exist. The City, including the City's internal auditor, may, at any time, review information provided by the company, lessee, county, or state, or may request additional information to determine compliance with the Agreement. If the Governing Body finds that the business or project is not in compliance, then the tax exemption may be modified pursuant to the performance agreement or eliminated as the Governing Body deems appropriate. The County Assessor and the Board of Tax Appeals shall be notified of such action. Each performance agreement shall contain a notice and waiver disclosing to each applicant that the City reserves the right to grant future tax abatements on comparable projects in amounts different than the abatement granted to such applicant. Such notice and waiver shall include a provision that the applicant waives any right to request a modification or amendment of such abatement based upon such differences.

For property tax abatements considered pursuant to the provisions of Section 13 of Article 11 of the Kansas Constitution, the costs of preparation of the performance agreement, publication of legal notices and all other related application costs shall be paid by the applicant.

The performance agreement shall require that the company receiving the property tax abatement (or any other user of the property) utilize solid waste services provided by the City. This requirement shall not apply to any user if (i) the user demonstrates that solid waste services provided by the City are not adequate to serve such user's reasonable needs, or (ii) the user has an existing contract with another provider of solid waste services.

**Section 6. Application and Issuance Fees.** The Governing Body hereby establishes the following fees:

- A. **Application Fee.** For Existing Businesses, a non-refundable application fee of \$1,000 shall accompany all applications for the issuance of industrial revenue bonds or for constitutional tax abatement. For New Businesses, a non-refundable application fee of \$2,000 shall accompany all applications for the issuance of industrial revenue bonds or for constitutional tax abatement. All applications for master resolutions of intent where the requested amount of bonds exceeds \$10,000,000 shall be charged an additional application fee of \$2,000.
- B. **Issuance Fee.** For projects requesting tax abatement, the City shall receive an issuance fee of (i) .0025 of the first \$40 million par amount of bonds being issued or the amount of constitutional tax abatement being requested, plus (ii) .0020 of the par amount in excess of \$40 million of bonds being issued or the amount of constitutional tax abatement being requested. In no event shall the issuance fee be

less than \$2,500 or more than \$150,000. The fee shall be due and payable at the time the bonds are issued or, for constitutional abatements, at the time the ordinance is adopted exempting the property from taxation. The City will not charge an issuance fee for bonds issued for projects that are not requesting tax abatement. The City will not charge the issuance fee for any amount of any bond issue that refunds a prior bond issue.

- C. **Additional Costs.** The applicant shall reimburse the City for all costs associated with the cost-benefit analysis, all legal publication notices, application fees to the Board of Tax Appeals, the City's bond counsel fees and all other miscellaneous costs.
- D. **Waiver of Fees.** The City may elect to waive any or all of the fees in the event the project is deemed to be a targeted industry or in a targeted area.

**Section 7. Appraised Valuation Objective.** The Governing Body desires to increase the non-residential tax base to preserve and enhance the City's fiscal capacity to provide public infrastructure and services necessary to support economic development. The Governing Body's objective is to increase commercial and industrial development to 30% of the total appraised valuation of property within the City. The Governing Body's objective also includes maintaining the commercial and industrial development at 30% of the total appraised valuation of property within the City.

**Section 8. Authority of Governing Body.** The Governing Body reserves the right to deviate from any policy, but not any procedure, set forth in this Resolution or any other procedural requirements of state law, when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that are in the best interests of the City.

**Section 9. Sunset Date.** Since the justification for tax abatements will be lessened as the local economy moves towards its goals of balance and diversification, this policy shall automatically expire on December 31, 2008 unless it is readopted for an additional term. No such tax abatement shall be granted following such expiration, unless this policy is readopted.

**Section 10. Previous Resolution Repealed.** Resolution No. 06-1177 is hereby repealed.

**Section 11. Effective Date.** This Resolution shall take effect on January 1, 2008.

**ADOPTED** by the Governing Body of the City of Olathe, Kansas this 4th day of December, 2007.

/s/ Michael Copeland  
Mayor

ATTEST:

/s/ Debra S. Gragg  
City Clerk

(SEAL)

APPROVED AS TO FORM:

/s/ Thomas A. Glinstra  
City Attorney