

# HUTCHINSON CITY COUNCIL POLICY - 10

**SUBJECT: TAX EXEMPTIONS FOR ECONOMIC DEVELOPMENT**

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Section 1. **Definitions.** When used in these policies and procedures or in forms for their implementation, the following words and phrases shall have the meanings respectively ascribed to them in this section unless the context clearly requires another meaning:

- a. “Applicant” means and includes a business property owner or owners, and their officers, employees and agents.
- b. “City” means Hutchinson, Kansas.
- c. “City’s designated representative” is defined as an individual designated by the Governing Body for the purpose of attending to certain administrative details associated with this policy.

d. “Economic development” means the establishment of a new business or the expansion of an existing business, which business is engaged or to be engaged in manufacturing articles of commerce, conducting research and development or storing goods or commodities which are sold or traded in interstate commerce, and which results in additional employment.

e. “Expansion” means the enlargement or renovation of a building or buildings and/or the construction of a new building which results in the creation of new employment, which is used for purposes qualifying for tax exemption pursuant to Section 13, Article 11 of the Kansas Constitution.

f. “Governing Body” means the Hutchinson City Commission.

g. “Manufacturing articles of commerce” means engaging in the mechanical or chemical transformation of materials or substances into new products.

h. “Payment in lieu of tax” means a payment made to a governmental entity under an agreement executed in conjunction with approval of a tax exemption granted pursuant to these policies and procedures.

i. “Recipient” means a beneficiary of any tax incentive granted by the Governing Body.

j. “Research and development” means the application of science or technology to the improvement of either the process of manufacturing or manufactured products.

k. “Storing goods or commodities which are sold or traded in interstate commerce” means engaging in storage or property which is exempt from ad valorem taxation under the provisions of K.S.A. 79-201f.

l. “Tax Incentive” means the net reduction of ad valorem tax resulting from a tax exemption granted under the authority of section 13, Article 11 of the Constitution of the State of Kansas in conjunction with payments in lieu of tax which may be required as a condition precedent to approval of such tax exemption.

m. “Tax exemption” means an exemption from ad valorem taxes on real property, granted by the Governing Body pursuant to the authority conferred by section 13, Article 11 of the Constitution of the State of Kansas.

Section 2. **Purpose and Objectives.**

a. The policies and procedures set forth in this document will be used by the City in considering and acting upon applications for property tax exemptions in connection with new or expanding businesses. It is adopted pursuant to K.S.A. 2003 Supp. 79—251 for the purpose of effectuating the power of the City to grant ad valorem tax exemptions under appropriate circumstances, all pursuant to the provisions of Section 13, Article 11 of the Constitution of the State of Kansas.

b. Economic growth and development and the creation of new jobs within the

community are important long-term objectives of the City. Tax exemptions are available under Kansas law to help accomplish these objectives. Their effectiveness depends upon fair and judicious use of the power to grant such exemptions and tax incentives in Hutchinson, Kansas.

Section 3. **Authority and Discretion of Governing Body.**

a. The authority to grant tax exemptions within Hutchinson, Kansas, is vested in the Governing Body of the City. Although tax exemptions require the initial approval of the Governing Body, the final authority for granting tax exemptions in Kansas rests with the State Board of Tax Appeals.

b. No tax exemption shall be granted by the City hereunder unless the Governing Body, in its sound discretion, finds that additional jobs would not be created in the City unless such incentive is granted. It is the policy of the Governing Body that private businesses should not be granted tax incentives unless some public good results and such incentive can reasonably be expected to significantly enhance economic growth and development and the creation of new jobs within the City.

c. The Governing Body would not look favorably upon an applicant who does not provide a comprehensive employee health insurance plan which is funded at least in part by a significant employer contribution to the plan.

Section 4. **General Procedure.** The following basic procedure shall govern the granting of tax exemptions by the City:

a. The applicant business shall apply for a tax exemption by filing a written application as provided in Section 9 hereof.

b. Pursuant to K.S.A. 79-251 and prior to the granting of an exemption for any property from ad valorem taxation, the Governing Body shall have prepared an analysis of the costs and benefits of each exemption, including the effect of the exemption on state revenues.

c. **Initial Review Procedure.** Upon receipt of completed application form accompanied by the required fee, the City's designated representative shall determine whether the application is complete and sufficient for review. The City's designated representative shall determine whether the subject property is eligible for a tax exemption under the Kansas Constitution, applicable state statutes and City policy. If the application is incomplete the City's designated representative shall promptly notify the applicant of the specific deficiencies. If the application is found complete and is for a purpose which appears to be authorized by law, the City's designated representative shall so advise the Governing Body.

d. **Initial Action by the Governing Body.** Upon receipt of the recommendations of the Committee relative to a specific application for tax incentives, the Governing Body shall by motion either reject such application or place the same on the agenda for further consideration at a future meeting. Upon a favorable vote for further consideration, the Governing Body may issue a letter of intent to grant a tax incentive, as provided by Section 11, or alternatively, schedule a further public hearing on the advisability thereof.

e. If the Governing Body determines that the proposed project is eligible for a tax exemption under Section 13, Article 11 of the Constitution of the State of Kansas, it shall further determine whether and to what extent such a tax exemption should be granted. The extent of the tax incentive will be determined in accordance with the policies set forth herein; provided, that such incentives will not exceed the taxes otherwise payable.

f. In Lieu of Tax Payment. The extent of the exemption may be subject to payments in lieu of tax by the applicant as may be required by the Governing Body. In the event a tax incentive recipient fails to fully and timely pay any payment in lieu of tax required in connection with a tax incentive granted hereunder, or fails to pay any portion of ad valorem tax due on any property owned by the applicant in Hutchinson, Kansas, before the same shall become delinquent (timely payment under protest shall not be construed as nonpayment), or fails to provide reports or other information requested by the City which are reasonably necessary for the implementation of this policy, the City may either deny, revoke, or decline to renew the authorization of the associated tax exemption. All requests for a tax incentive for economic development purposes shall be considered and acted upon in accordance with this statement.

g. Consultation With Other Governmental Entities. Prior to issuing a Letter of Intent as provided at Section 11 or prior to granting any tax exemption, the Governing Body shall provide notice to the governing body of each incorporated City within the county, the Board of any Unified School District, any Township Board, and the Board of Trustees of Hutchinson Community College of applications for tax incentives to the extent any such city, school district, township or college is affected thereby.

Section 5. Jurisdiction. The Governing Body may grant tax incentives only for property located within Hutchinson, Kansas.

Section 6. Special Assessments. Any tax exemption granted for real property shall not affect the liability of such property for any special assessments levied or to be levied against such property.

Section 7. Disqualification for Tax Exemptions. No tax exemption shall be granted:

- a. If in the judgment of the Governing Body it would result in an unfair advantage for one business over another competing business within the City;
- b. To any leased or rented property, except for property owned by a local not for profit economic development corporation which is used by a tenant exclusively for a qualifying tax exemption purpose.
- c. For land value or for the value of existing buildings prior to “Expansion”.
- d. For property for which a building permit has been issued or construction commenced prior to the date the Applicant has submitted a written application for a tax exemption pursuant to this policy.

- e. In the event the Applicant owes any ad valorem real estate or personal property tax in the State of Kansas, or in the event the Applicant has allowed at any time any taxable property to go to judicial foreclosure sale for taxes.

Section 8. **Computation of Tax Exemptions.**

a. The Governing Body may exempt from ad valorem taxation in accordance with the criteria set out below, (1) the appraised value of newly constructed buildings and (2) the additional appraised value of an existing building which results from an Expansion (See Section 1 (e)). Tax exemptions are available only to Recipients eligible for economic development tax exemptions pursuant to Section 13, Article 11 of the Constitution of the State of Kansas.

b. **Amount and Term.** Recipients may be granted in the discretion of the Governing Body a 100% tax exemption on eligible property for a period not to exceed ten (10) years, provided a minimum of ten (10) new jobs is created with an annual payroll of at least \$250,000.00 (wages subject to Social Security withholding) and health care benefits are provided. The employment and payroll standards must be established as of December 31 to be effective the following tax year, and the standards must be reconfirmed by the Recipient as of December 31 of each year thereafter during the term of the exemption. Property valuation is determined as of January 1 of each year. The first year of tax exemption shall be the year in which the full appraised value of the Expansion is realized on the tax rolls.

c. **Tax Determination.** All real property of the applicant which is subject to a valuation exemption, in full or in part, by the City under Section 13, Article 11 of the Constitution of the State of Kansas, shall be annually assessed by the Reno County Appraiser in the same manner as if it were not exempt in full or in part; provided, that only that portion of the appraised valuation of property not exempt from taxation shall be placed on the assessment rolls. The Reno County Clerk and Reno City Treasurer shall ascertain the amount of ad valorem tax which would have been paid on the exempt valuation and shall provide the same to the Governing Body.

Section 9. **Application Required.**

a. The City's designated representative shall prepare a standard application form to implement this policy. Any person or firm seeking tax incentives shall submit a full and complete application and provide such additional information as may be requested by the county's designated representative. The accuracy of the information provided in the application shall be verified by the applicant. Any material omission or misstatement of fact in information provided to the City in the application process may render the application void and may be cause for repeal of any tax exemption resolution adopted in reliance thereon.

b. Each application for tax incentives shall be accompanied by a nonrefundable fee of \$500. Said fee shall be used to defray expenses incurred in processing and evaluating the application.

Section 10. **Public Hearing.** No tax exemption shall be granted by the City prior to a public hearing thereon. Notice of the purpose, time and place of the public hearing shall be published once in the official City newspaper, at least seven (7) days prior to the hearing. The hearing may be held at a regular or special meeting of the Governing body. The City Clerk shall

thereupon provide written notice of such hearing to the Governing Body of each city whose ad valorem tax would be affected thereby, the Board of the appropriate unified school district, the appropriate Township Board, the Board of Trustees of Hutchinson Community College and the applicant. Upon request, the City Clerk shall provide any such public agency with a copy of the application.

Section 11. **Letters of Intent.** Letters of intent to grant tax incentives may be issued by the Governing Body. A letter of intent shall include a general description of the proposed incentives and any conditions to be attached thereto. A letter of intent shall be deemed to be only a statement of the present sense of the Governing Body and shall not be construed to bind Hutchinson, Kansas to grant any tax incentive or to subject the City to liability should it subsequently decline to do so. A letter of intent may be issued either before or after the public hearing required by Section 10 hereof and shall expire six months after issuance unless extended by the Governing Body.

Section 12. **Grant of Exemption.** Tax exemptions hereunder shall be granted only by resolution, duly adopted by the Governing Body. The City Clerk shall provide a copy of the resolution granting an exemption hereunder, as published in the official City newspaper, to the recipient for use in filing the initial request for tax exemption as required by K.S.A. 79—213, and K.S.A. 79—210 for subsequent years. The Recipient shall be responsible for filing a formal application for tax exemption with the County Appraiser.

Section 13. **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 recipient or property owner.

Section 14. **Annual Review of Exemptions.** The extent and term of any tax exemption granted shall be subject to annual review by the Governing Body to insure that the recipient and the exempted property continue to meet all criteria for the tax exemption, whether under this policy, Kansas law or the Constitution of the State of Kansas. No later than January 31 of each year following the year of initial tax exemption, the Recipient shall file with the County Appraiser a statement evidencing continuing employment and payroll qualifications for the tax exemption, together with a nonrefundable filing fee of \$50. The county may require filing of an annual renewal application, submission of other information necessary to assess the continued qualification of the exempt business, including the Kansas Department of Human Resources Quarterly Wage Report and Contribution Return, and payment of additional fees for processing the same. Any material omission or misstatement of fact in information provided to the City in any such statement or renewal application may be cause for repeal of any tax exemption resolution adopted, renewed or extended in reliance thereon. In the event the Recipient fails to provide a statement evidencing continuing employment and payroll qualifications for the tax exemption, the exemption will be repealed, and the County Appraiser will place the property on the tax rolls at its fair market value.

Section 15. **Transfer of Ownership or Use.** All tax incentives and exemptions granted hereunder shall be personal to the recipient and may not be sold or otherwise transferred to any other party by the recipient. Each Recipient shall notify the City Clerk, in writing by certified mail, of any substantive change in the use of a tax exempt property.

Section 16. **Distribution of Revenue.** Any tax exemption which includes a provision for payments in lieu of tax to the City shall be construed as a contract under the provisions of K.S.A. 12-147. All payments in lieu of tax required to be made by a Recipient pursuant to any such contract shall be paid to the Reno County Treasurer. The Reno County Treasurer is directed to apportion such payments, pursuant to K.S.A. 12-148, to the general fund of all taxing subdivisions, excluding the state, within the jurisdictions of which the Recipient's exempt property is located. Such apportionment shall be based on the relative amount of taxes levied for all purposes by each such taxing subdivision.

Section 17. **Policy Subject to Mandatory Review.** This Tax Exemptions For Economic Development Policy and Procedures shall be reviewed on or about July 1, 2010 to determine if it effectively addresses its purposes and objectives of promoting economic growth and the development and creation of new jobs within the City and to reassess the public benefits achieved relative to the tax incentives extended.

Section 18. **Effective Date.** This policy shall apply to all applications for tax incentives which are submitted on or after the date of adoption.

ADOPTED BY THE GOVERNING BODY this \_\_\_\_\_ day of \_\_\_\_\_ 2007.

HUTCHINSON CITY COUNCIL

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R. E. Sellers, Mayor

ATTEST:

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Gina Rayburn, City Clerk