



## CITY OF SHAWNEE POLICY STATEMENT

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### BACKGROUND

The Governing Body finds that it is of critical importance to have a strong partnership with private industry to create a balanced tax base for the community. It is the policy of the Governing Body that private businesses should not be subsidized with public funds, the indirect consequence of tax exemptions-incentives, unless some public good results and the public subsidization can reasonably be expected to make a significant difference in achieving economic growth and development, to expand and diversify the tax base and the creation of new jobs within the City.

### PURPOSE

The purpose of this policy is to define the Industrial Revenue Bonds (IRB) and Property Tax Exemption Policies and to establish the standards by which they will be implemented by the City. The establishment of a new business and the expansion of an existing business may be considered for IRB and property tax incentives.

### DEFINITIONS

The following words, when used in connection with this policy, shall have the meanings ascribed to them herein:

**Abatement:** The difference between the amount of ad valorem property taxes an affected business would pay if there were no property tax exemption and the amount required to be paid in lieu of taxes or charges. For example, if the taxes required with no Abatement were \$5,000, and the required payment in lieu of taxes (PILOT) was \$3,000, the "Abatement" would be \$2,000.

**Applicant:** Any person, firm, or entity making application to receive IRB's and/or property tax incentives.

**City:** City of Shawnee, Johnson County, Kansas.

**City Bond Counsel:** The firm or individual designated by the City to handle bond matters and issues related to bond matters.

**Cost Benefit Analysis:** A prepared analysis of the cost and benefits of an exemption which shall include the effect of the exemption on State revenues, and be prepared on a model approved by the City as required by K.S.A. 12-1749d(a). The result of the analysis should indicate that the benefit of the establishment, expansion or relocation of the Applicant's business, even with the proposed Abatement, outweighs the cost to the City and other affected taxing jurisdictions.



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**Economic Development Purposes:** For purposes of an Abatement pursuant to the Kansas Constitution, this term shall mean the establishment of a new business or the expansion of an existing business, engaged in manufacturing articles of commerce, conducting research and development, or storing goods or commodities which are sold or traded in interstate commerce, which results in additional employment. For purposes of an Abatement associated with an IRB, this term shall also include service industry businesses and any other eligible business which provides substantial unique opportunities or significant community benefits.

**Finance Team:** A Committee comprised of the City Manager, the City Attorney, the Finance Director, the City Planning Director, the Shawnee Economic Development Council Executive Director, the City's Bond Counsel, or their designees.

**Formula for thirty (30%) percent commercial property tax base:** This number is determined using the actual assessed valuation of properties classified by the Johnson County Appraiser as Commercial or Industrial.

**LEED Certification:** Leadership in Energy and Environmental Design (LEED). The recognized standard for measuring building sustainability.

**Project:** The acquisition, construction, improving and equipping of facilities, including real estate, buildings, improvements and equipment.

**Sales Tax Exemption:** The exemption from sales and for tangible personal property or services used or consumed in construction of the Project pursuant to K.S.A. 79-3606(d).

**Size of Project:** Estimated value of the Project as requested in the application.

### POLICY

The City of Shawnee will offer incentives, on a limited basis, to new and expanding existing businesses until such time that the commercial portion of the Shawnee property tax base reaches thirty (30%) percent, at which time the policy will sunset unless renewed by the majority vote of the Governing Body of the City of Shawnee. The City expects Applicants receiving incentives to make a commitment to the Shawnee community and be a participating corporate citizen.



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### I. Exemption

#### A. Property Tax Exemption

There are essentially two methods that allow a company to receive an exemption of all or a percentage of property taxes:

##### 1. Industrial Revenue Bonds

Kansas law (K.S.A. 12-1741) authorizes cities to issue economic development revenue bonds (commonly known as industrial revenue bonds, or IRBs) to provide financing of private business facilities. Economic development revenue bonds may be issued to pay for all or part of the cost of purchasing, reconstructing, improving, repairing, or remodeling commercial, industrial, manufacturing, recreational and other types of facilities. The Project is typically owned by the City and leased to the company while the bonds are outstanding.

##### 2. Kansas Constitutional Exemption

Article 11, Section 13 of the Kansas Constitution authorizes cities to grant property tax exemptions or Abatements for certain economic development purposes. The constitutional exemption provisions are more narrowly limited to real and personal property tax exemptions used for certain purposes (i.e., manufacturing, research and development, or the storing of goods in interstate commerce). The Project is NOT owned by the City.

#### B. Sales Tax Exemption on Property Financed with Bond Proceeds

Kansas law also permits the Issuer to apply to the Kansas Department of Revenue (KDOR) for an exemption from sales tax on tangible personal property or services used or consumed in construction of the Project. The exemption request is typically filed by the City after the City passes a resolution indicating its intent to issue bonds for a Project but before the bonds have actually been issued. The Applicant receives a sales tax exemption certificate number from the KDOR that the Applicant, in turn, can provide to its vendors so they do not charge sales tax on items to be used or consumed in the bond-financed Project. The exemption includes an agreement that if



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for any reason the bonds are not issued, the Applicant is obligated to repay the sales tax.

**II. Transfer of Ownership of the Project**

An owner of a Project for which the City has approved an exemption from ad valorem taxes shall notify the City in writing of the intent to transfer all or a portion of the ownership interest in the Project. The subsequent transferee of all or a portion of the Project shall file a separate application with the City in accordance with this Policy. The transferee Applicant is responsible for the City application fee set forth in the Procedures section, paragraph IV. The transferee shall request an exemption from ad valorem taxes for the transferred portion of the Project.

**III. Pirating**

It is the intent of the City to avoid participation in "bidding wars" amongst Johnson County cities competing for a relocation of a Johnson County economic development prospect (outside Shawnee). If a Johnson County economic development prospect notifies their local jurisdiction, in writing, that it has exhausted all available alternatives to expand locally; and but for local property tax exemption incentives from another Johnson County community, the business will move out of Johnson County, the City of Shawnee may offer local property tax exemption incentives to retain the business in Johnson County.

**IV. Criteria for Exemptions**

To qualify for financial incentives, the Project shall meet a substantial portion of the following criteria:

**A. Type of Business**

1. The Project must be a targeted industry as identified by the Governing Body. Targeted businesses include, but are not limited to, office users (corporate headquarters, export oriented services, telecommunications, insurance, architectural, engineering and legal), information technology and computer related, light manufacturing including high tech businesses, interstate wholesale distribution, hotel, hospitality and entertainment.



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2. The City may give consideration to office developments, redevelopment projects and new emerging business parks where initial project incentives will serve as a catalyst for additional development and/or offer unique sustainability features.
3. The City will consider exemptions for spec construction as long as the proposed use is consistent with this policy and Kansas law.

**B. Financial Capacity**

The Applicant must demonstrate the financial capacity to complete the Project, as well as provide evidence of adequate financial stability to allow the City to issue industrial revenue bonds to the company with an exemption of ad valorem taxes, or to grant an exemption of ad valorem taxes under the State of Kansas constitutional tax exemption amendment provisions.

**C. Compliance with Shawnee's Approval Process**

1. The proposed development must obtain all necessary permits and compliance with all necessary regulatory approvals and with the City Ordinances and any other established City policy, plan, regulation, or procedure, including:
  - Any required rezoning and site plan approval;
  - Compliance with the City of Shawnee Comprehensive Plan;
  - Construction materials that meet or exceed the requirements set forth in the appropriate design standards as provided by the City of Shawnee Planning Department; and
  - Environmentally acceptable to the location intended, as well as the surrounding area.
2. The Applicant must follow City planning guidelines and may be requested to provide a development impact study which may include traffic, stormwater, utilities and other studies as may be appropriate for the specific site.

The City will consider, and the Applicant must address, the extent to which extraordinary public service requests would be required of the City or other local units, such as the costs of additional public safety equipment or



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infrastructure that may be required to meet minimum safety or service standards.

### D. Investment

#### 1. Capital Investment

The Project must qualify in accordance with the Federal Government and State of Kansas definitions and be able to invest a total Project capital cost of \$1,500,000 or more.

#### 2. Employment

Qualifying new businesses must create new employment opportunities in Shawnee. Preferential consideration will be provided to projects that create new jobs at, or above, average wages in the firm's industry group or among all Johnson County private sector employers. Qualifying expanding businesses within the City of Shawnee must already employ at least ten (10) persons, and create new jobs in Shawnee at above-average wages, or demonstrate why job creation should not be a factor for financial incentive consideration.

#### 3. Community Investment

- The degree to which the business improves the diversification of the economy of the City and its environment;
- The potential of the business for future expansion and additional job creation;
- The gains in tax revenue, which may result from the new or expanded business, including the increase in the property tax based upon the expiration of the exemption;
- The utilization of local products or other materials and services; and
- The beneficial economic impact the business will have on a particular area of the City, including areas in need of revitalization or redevelopment.



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### V. Financial Incentives

#### A. Length and Timing of Tax Exemptions.

1. The City of Shawnee may approve property tax exemptions for a period of time from one (1) to ten (10) years for exemptions granted with IRB financing, which period of time commences with the first calendar year after the year in which industrial revenue bonds are issued.
2. For property exempted under the Constitutional Method, the exemption begins on the first calendar year after commencement of operation of a business for which an economic development property tax exemption has been granted.

#### B. Amount of Exemption

1. The City of Shawnee has developed guidelines for levels of exemption based on what types of projects are most desirable to ensure a sustainable community, with a diverse economic base where people want to live, work and play.
2. a. The amount of exemption is determined at the discretion of the Governing Body; however, the following guidelines provide the basis for determining the amount or percentage of the property tax exemption. A greater level of incentive may be considered for a time period of less than ten (10) years.

Size of Project (in millions)	New Development			Redevelopment Expansion	
	Other	Office/ Bioscience	3+Story Office	Other	Office/ Bioscience
\$1.5 - \$5.0	50%	65%	50%/65%	55%	65%
\$5.0 - \$ 15*	55%	70%	75%	60%	70%
\$ 15 and up*	60%	75%	80%	65%	75%

\* Project could include multiple buildings.



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b. LEED Certification Provision. An additional five (5%) percent of property tax exemption up to a maximum of incentives equaling eighty (80%) percent for LEED certified or substantially equivalent "LEED-like" buildings.

c. The Council may consider a combination of abatement percentages and time different than what is stated in the chart above. The general intent would be that the total taxes abated for the shortened period of time be equal to the amount abated over a ten-year period. For example, a higher percentage may be granted for a length of time less than ten years.

### VI. Compliance with Provisions

#### A. Required Proof of Compliance

Any business which has been granted an exemption from ad valorem taxes for economic development purpose pursuant to Article 11, Section 13 of the Kansas Constitution shall annually supply to the City such proof as the City may reasonably require that the business is in compliance with any terms and conditions established by the Governing Body for the granting of the exemption.

#### B. Payment in Lieu of Taxes (PILOT) Agreement

In order to grant an Abatement, a PILOT Agreement between the City and the Applicant will be required. The PILOT Agreement is the mechanism whereby the City establishes the level of Abatement (by setting the payment in lieu of taxes) and any performance standards (e.g. levels of payroll and numbers of employees).

The PILOT Agreement will establish a PILOT payment required of the business on an annual basis. The PILOT payment usually is a certain percentage of the taxes the Applicant would have paid without the Abatement. The PILOT Agreement may include a clawback provision as addressed below in section C.

#### C. Clawback Provisions

A clawback provision allows the Governing Body to modify or eliminate the tax exemption if they find that the business is not in compliance with the provisions of the PILOT. The tax exemption may be modified or eliminated as the Governing





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Body deems appropriate and the County Assessor and Court of Tax Appeals shall be notified of such action. Provisions requiring specified performance as a condition for granting and maintaining the Abatement may be considered as part of the agreement; and the time within which construction on the abated property must begin and be completed.

### PROCEDURES

#### I. Application

The Applicant seeking Industrial Revenue Bonds or tax incentives must apply to the City Manager for consideration of a resolution by the Governing Body to issue such bonds and grant such incentives. Any misstatement of, or error in, fact may render the application null and void and may be cause for the repeal of any resolution or ordinance adopted in reliance on said information.

#### II. Project Summary

The Applicant shall submit a project summary sufficient to provide a thorough understanding of the proposed Project and proposed financing. This shall include estimated Project size and cost, industry description, NAICS code, number of jobs created, and all other items required to prepare the Cost Benefit Analysis.

#### III. Finance Team Review

A. The Finance Team shall review applications for IRB and Constitutional Tax Exemptions. The Finance Team will review the application and request such additional information as may be deemed necessary to determine if the Applicant meets the objectives of this Policy, prepare a timeline for processing the application, conduct discussions and negotiations with the Applicant, and recommend to the Governing Body whether the application should be favorably considered.

B. In reviewing the information, the Finance Team may utilize the services of consultants, including, but not limited to, Bond Counsel and financial advisors. Applications submitted for IRB and Constitutional Tax Exemptions, and Finance Team records, are generally public records and shall be publicly disclosed as required by the Kansas Open Records Act. It is the declared public policy of the State of



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Kansas and of the City of Shawnee that public records shall be open. A narrow exception is that the City may, in its discretion, agree to not disclose certain records pertaining to any business on which there has been no public disclosure of the business' interest in relocating or expanding within Kansas. However, such records become an open record and shall be disclosed once the matter is referred to during, or placed on an agenda for, a public meeting of a Council Committee or the Governing Body.

#### IV. Fees

##### A. Application Fee

The Applicant will be required to pay a non-refundable application fee of \$1,500 to the City of Shawnee prior to placement on the agenda of the initial City Council meeting.

##### B. Origination Fee

The origination fee provided for herein shall be deposited in the General Fund but shall be used exclusively for economic development activities. The City Finance Director shall keep such accounts and records as deemed appropriate to comply with this provision.

The Applicant shall pay the following origination fee schedule:

1. Fee Payable at Closing
  - a. 0.20% of the bond principal issued on the first \$20,000,000
  - b. 0.10% of the bond principal issued on amounts in excess of \$20,000,000
  
2. Additional Fee Payable at Closing and on the First and Second Anniversaries of Issuance Date (Refunding bond issues will be exempt from this fee.)
  - a. \$5,000 on each of the three dates
  
3. Additional Annual Fee Payable on the First Anniversary Date and Each Anniversary Date thereafter for the Life of the Issue



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- a. 0.04% of the bond principal outstanding on the first \$20,000,000
- b. 0.01% of the bond principal outstanding on amounts in excess of \$20,000,000

The City may agree that annual fees may be paid on a date coinciding with the principal payment date where that date is different than the anniversary date of the issuance.

The Applicant shall reimburse the City for all costs associated with the cost-benefit analysis, all legal publication notices, application fees to the Court of Tax Appeals, the City's Bond Counsel fees and all other miscellaneous costs.

### C. Legal Fees

The Applicant shall pay the cost of all legal fees due to the City Attorney and Bond Counsel associated with the Project and the exemption from ad valorem taxes. The fees for Bond Counsel services and the fees of the City Attorney are in addition to the non-refundable industrial revenue bond Application Fee of \$1,500 and the Origination Fees.

1. The fees for Bond Counsel services are based, among other things, upon the principal amount of bonds issued, the number of series of bonds issued, the structure of the bond and the method of sale of the bonds.
2. The fees of the City Attorney are also based on these factors.

### D. Other Costs

1. The Applicant will cover any other costs associated with the process for the incentives provided under this policy.
2. The Applicant will be billed directly by the City Attorney or Bond Counsel for other fees and expenses incurred including any application for sales tax exemption, the application to the Court of Tax Appeals for the tax exemption,



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and any other expenses the City may incur during the term of the Lease, as will be provided for in the Lease.

### V. Steps in the Process

The City follows all State-required procedures related to tax exemptions and issuance of industrial revenue bonds, which include action by the Governing Body several different times in the process. The Applicant will work with Bond Counsel and City Attorney to ensure that all required documents are completed. All notices and public hearings must be completed, and required resolutions and ordinances passed prior to finalizing the exemption and the bond issuance.

### IMPLEMENTATION

This policy shall take effect upon approval by the Governing Body and remain in effect until such time that the commercial portion of the Shawnee property tax base reaches thirty (30%) percent.

### OTHER

The City of Shawnee reserves the right to add additional incentives for a Project that represents an outstanding economic impact and positive cost-benefit analysis to the City of Shawnee.

### AUTHORITY OF GOVERNING BODY

The Governing Body reserves the right to deviate from any policy or procedure set forth in this Policy other than procedural requirements of State law when it considers such action to be in the best interest of the City of Shawnee.

### APPROVAL AND REVISION DATES

September 11, 1989; October 8, 1990; October 26, 1992; June 24, 1996; June 8, 1998;  
November 8, 1999; November 27, 2000; December 11, 2000; February 26, 2001;  
November 12, 2001; April 22, 2002; January 27, 2003; June 23, 2003; September 26, 2005;  
November 26, 2007; March 23, 2009; February 24, 2014

### OTHER REFERENCES

September 6, 1989, Finance & Administration Committee Minutes, Agenda Item 5  
September 11, 1989, City Council Minutes, Agenda Item 11b  
October 8, 1990, City Council Minutes, Agenda Item 13  
October 20, 1992, Public Works & Safety Committee Minutes, Agenda Item 4  
October 26, 1992, City Council Minutes, Agenda Item 10d



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June 18, 1996, Public Works & Safety Committee Minutes, Agenda Item 6  
June 24, 1996, City Council Minutes, Agenda Item 9e  
June 2, 1998, Finance & Administration Committee Minutes, Agenda Item 4  
June 8, 1998, City Council Minutes, Agenda Item 14d  
November 2, 1999, Finance & Administration Committee Minutes, Agenda Item 4  
November 8, 1999, City Council Minutes, Agenda Item 14d  
November 21, 2000, Public Works & Safety Committee Minutes, Agenda Item 4  
November 27, 2000, City Council Minutes, Agenda Item 15c  
December 5, 2000, Finance & Administration Committee Minutes, Agenda Item 4  
December 11, 2000, City Council Minutes, Agenda Item 18a  
February 20, 2001, Public Works & Safety Committee Minutes, Agenda Item 1  
February 26, 2001, City Council Minutes, Agenda Item 6a  
November 6, 2001, Finance & Administration Committee Minutes, Agenda Item 3  
November 12, 2001, City Council Minutes, Agenda Item 19c  
April 22, 2002, City Council Minutes, Agenda Item 8  
January 7, 2003, Finance & Administration Committee Minutes, Agenda Item 5  
January 27, 2003, City Council Minutes, Agenda Item 15a  
June 23, 2003, City Council Minutes, Agenda Item 19  
September 26, 2005, City Council Minutes, Agenda Item 9

### OTHER REFERENCES (Continued)

November 6, 2007, Finance & Administration Committee Minutes, Agenda Item 1  
November 26, 2007, City Council Minutes, Agenda Item 9  
March 3, 2009, Finance & Administration Committee Minutes, Agenda Item 1  
March 23, 2009, City Council Minutes, Agenda Item 12  
February 24, 2014, City Council Minutes, Agenda Item H3

  
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Jeff Meyers, Mayor

  
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Vicki Charlesworth, City Clerk