

RESOLUTION NO. 2009-12

A RESOLUTION ADOPTING A POLICY FOR THE GRANTING BY THE CITY OF AUGUSTA, KANSAS OF EXEMPTIONS FROM AD VALOREM TAXATION FOR ECONOMIC DEVELOPMENT PURPOSES.

Section 1. Purpose. The purpose of these provisions is to establish the official policies and procedures of Augusta, Kansas (the "City") for the granting of property tax exemptions for real and tangible personal property used for qualified economic development purposes under Article 11, Section 13 of the Kansas Constitution.

Section 2. Authority and Discretion. The authority to grant property tax exemptions within the City is vested solely in the Governing Body of the City (the "Governing Body"). The Governing Body is under no obligation to approve any requested exemption and reserves the right to deviate from the policies and criteria contained herein if circumstances exist to warrant such deviation. Such circumstances may include, but are not limited to:

(a) economic development projects financed other than by issuance of industrial revenue bonds for which resolutions of intent granting a full or partial property tax exemption have previously been issued, thus resulting in a reduction in the amount of bonds to be issued pursuant to the resolution of intent; and

(b) economic development projects which, due to their unusual nature or magnitude, offer extraordinary benefits to the community.

Section 3. Notice and Hearing. Prior to granting a property tax exemption, a public hearing shall be held by the Governing Body. Notice of the public hearing shall be published at least once seven (7) days prior to the hearing and shall indicate the purpose, time and place thereof. The City Clerk shall also notify in writing the governing bodies Butler County, Kansas, and the unified school district in which the project is located.

Section 4. Criteria for Granting Exemption. Each application for property tax exemption shall be evaluated in accordance with the following criteria:

(a) Demonstration of Economic Benefit. The Governing Body should consider granting a property tax exemption upon clear and factual demonstration of direct economic benefit to the City. The project must create additional permanent jobs or increase private capital investment in new plant and/or equipment, or both.

(b) Preservation of Existing Tax Base. It is the intent of this policy to promote expansion of the tax base and to preserve the existing tax base, by ensuring that the taxing districts having authority to levy taxes on the property affected will receive, in the future, not less than the amount received prior to granting the exemption.

(c) Eligible Businesses. In accordance with Article 11, Section 13 of the Kansas Constitution, a tax exemption will be considered only for businesses engaged in the following activities:

- (1) Manufacturing articles of commerce;

- (2) Conducting research and development; or
 - (3) Storing goods or commodities which are sold or are traded in interstate commerce.
- (d) Eligible Property. The Governing Body may exempt from ad valorem taxation all or any portion of the appraised valuation of:
- (1) All buildings, together with the land upon which such buildings are located, or additions to existing buildings used exclusively for an eligible business activity, (A) used by a new business, or (B) which is necessary to facilitate the expansion of an existing business if, as a result of such expansion, new employment is created;
 - (2) All tangible personal property used exclusively for an eligible business activity, (A) used by a new business, or (B) which is necessary to facilitate the expansion of an existing business if, as a result of such expansion, new employment is created.
- (e) Findings of Fact. In accordance with K.S.A. 79-251(c), prior to adopting a resolution granting a property tax exemption for eligible property, the Governing Body must adopt a resolution containing the following findings of fact:
- (1) That the property for which the exemption is to be granted will be used exclusively for one of the purposes specified in this subsection; and
 - (2) If the business using the property is relocating from one city or county to another within the state of Kansas, that the business has received the approval of the Kansas Secretary of Commerce prior to qualifying for the exemption, upon a finding by the Secretary that such relocation is necessary to prevent the business from relocating outside the state of Kansas.

Section 5. *Legal Authority.* The governing bodies of Kansas counties and cities may exempt certain property used for economic development purposes from *ad valorem* property taxation for a maximum of 10 years, in accordance with the provisions of Article 11, Section 13 of the Kansas Constitution, subject to such limitations or prohibitions as may be enacted by the legislature that are uniformly applicable to all cities and counties. This authority is discretionary with the Governing Body, and the Governing Body may provide for such tax exemptions to an extent and for purposes more restrictive than that authorized by the Constitution or any such legislation. In exercise of its home rule powers, the Governing Body may

(a) require the owners of any property for which an exemption is requested to provide certain information;

(b) condition the granting of an exemption on an agreement with the affected business providing for the payment of in lieu charges or taxes under the provisions of K.S.A. 12-147 and 12-148; and

(c) require the payment of initial application and annual renewal fees reasonably necessary to cover the costs of administration.

Section 6. *Jurisdiction.* The Governing Body may grant property tax exemptions for any eligible property located within the City's boundaries.

Section 7. *Minimum Payment in Lieu of Taxes.* Any applicant receiving a property tax exemption pursuant to this Resolution may be required to make a minimum payment in lieu of taxes which equals the amount of property tax which was paid or was payable for the most recent year on the appraised valuation of the real estate, including either buildings together with land or land only, prior to the construction of new buildings or added improvements to buildings on such property or prior to the acquisition of the property by the new business. The purpose of requiring this minimum in lieu of tax payment is to insure that the city, county, school district and any other taxing jurisdictions affected by the exemption will not receive less tax revenue from the exempted property than was received prior to the exemption. For extraordinary reasons, such as when vacant buildings are acquired for a new business, or when the market value of the property has decreased, or with respect to projects which, due to their unusual nature or magnitude, offer extraordinary benefits to the community, this requirement may be waived in part or in whole by the Governing Body.

Section 8. *Special Assessments.* Any property tax exemption granted for real property under this Resolution shall not affect the liability of such property for any special assessments levied or be levied against such property.

Section 9. *Pirating.* It shall be the policy of the City to discourage applications for property tax exemptions, or to grant such property tax exemptions, which deliberately encourage and cause the pirating of a business from another Kansas community. It is the intent of the City to avoid participation in “bidding wars” between cities or areas competing for the location of new businesses or expansion of existing businesses, through attempts to offer the largest tax incentive or other public inducement, which is detrimental to the state’s economy and the public interest. In order to grant a property tax exemption to a business relocating from another city or county within the state of Kansas, the Governing Body must adopt the resolution described in Section 4(e) of this Resolution.

Section 10. *Standards for Determining Benefits.* The Governing Body will consider granting property tax exemptions upon a clear and factual showing of direct economic benefit to the City, through advancement of its economic development goals, including the creation of additional jobs and the stimulation of additional private investment. The Governing Body, in determining the amount and term of a property tax exemption to be granted, shall consider various factors including, but not limited to, the following:

- (a) The appraised valuation of the property in relation to the economic benefit to the City of increased employment.
- (b) The gain in tax revenue which may result from the new or expanded business, including the increase in the property tax base upon the expiration of the exemption.
- (c) The contribution that the new or expanded business will make towards increased employment and earnings within the City.
- (d) The number of new jobs created directly by the business compared to the amount of property tax exemption granted.
- (e) The kinds of jobs created in relation to the type of skills available from the local labor market.
- (f) The utilization by the business of labor skills and abilities of unemployed or underemployed persons in the City.

- (g) The degree to which the business improves the diversification of the economy of the City and its environs.
- (h) The degree to which the ultimate market for the manufactured products is outside the City, recognizing that outside markets bring in “new money” to the local economy.
- (i) The potential of the business for future expansion and additional job creation.
- (j) 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.
- (k) 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.
- (l) The extent to which additional direct or indirect public costs to the City and to other local units would be necessary, such as the cost of the extension of public facilities.
- (m) The extent to which the economic and employment benefits of the property tax exemption accrue to the residents and taxpayers of those taxing subdivisions which indirectly “subsidize” the business as a result of the foregone tax revenue.

Section 11. *Limitations on Exemptions.* No tax exemption shall be granted (a) if the exemption would create, in the judgment of the Governing Body, an unfair advantage for one business over another competing business within the City; (b) for the land upon which qualified buildings and improvements are located, unless an adequate payment in lieu of taxes is agreed to; and (c) for the expansion of any existing business, unless such expansion creates new employment.

Section 12. *Term of Exemption.* The term of the property tax exemption may not exceed ten (10) calendar years, commencing with the first calendar year after completion of the building or improvements constructed, or acquisition of the tangible personal property to be exempted. In addition to the years of the exemption after completion, the Governing Body may grant a property tax exemption for an additional construction period of not to exceed 24 months. Any business receiving a property tax exemption must pay property tax not exempted as specified in the exemption resolution, or, if it is not practical to do so, the entire property may be exempted and the business must make payments in lieu of taxes equal to the non-exempt portion of the property. Said payments shall be payable to the Butler County Treasurer for distribution, under the provisions of K.S.A. 12-148, to the general fund of all taxing subdivisions, excluding the state, which levy taxes on property where the business is situated. This apportionment shall be based on the relative amount of taxes levied by each of the applicable taxing subdivisions.

Section 13. *Preliminary Review.* Prior to submittal of a formal application, a business may inquire as to eligibility for tax exemption and the anticipated amount based on preliminary employment and capital investment figures. The Governing Body shall designate a City official or other designated agent to review the applications.

Section 14. *Application Process.*

(a) Application Contents. The City will not consider the granting of any property tax exemption unless the applicant submits a full and complete application providing such additional information as may be reasonably requested. The application shall contain the following:

- (1) Name and address of business, principal owners and officers, contact person and telephone number.
- (2) A general description of the nature of the business, business history and experience, and a list of principal competition in the local market.
- (3) Name and address of the owner of the land and building occupied or to be occupied by the business.
- (4) A general description of the proposed building project or improvements, including estimated capital costs, plus the amount or percentage of tax exemption being requested.
- (5) A site plan of the proposed building project or improvements.
- (6) If an existing business, average total monthly employment figures for the past twelve months.
- (7) Number of new jobs (FTE) to be created by type or position.
- (8) A statement explaining why the requested tax exemption is a critical factor in determining whether the proposed project is to be completed.
- (9) A completed Firm Data Sheet for the cost benefit study.

(b) Filing Fee. An application for a property tax exemption shall be accompanied by a non-refundable filing fee of \$250.00. The fee shall be used to defray expenses incurred in processing and evaluating the application.

(c) Review Procedures. Each application for property tax exemption shall generally comply with the following procedures:

- (1) The applicant will submit a completed application and pay the required filing fee to the City Clerk.
- (2) The City Clerk will then provide notification of the application for property tax exemption to the City Manager.
- (3) The City Manager will then notify the Governing Body and request preparation of an analysis of the costs and benefits of the proposed exemption. The public hearing may then be scheduled, for a date not earlier than the date on which the analysis of the costs and benefits is complete and available to the City.

- (4) The City Clerk will arrange publication of the required notice of the hearing and notify the required governmental bodies in writing.
- (5) The Governing Body will review the analysis of costs and benefits, conduct the required public hearing, and receive comments from the applicant, affected taxing districts, and the general public. At the conclusion of the hearing, the Governing Body will take formal action on the application. Approval will be in the form of an ordinance. The approval ordinance must contain any conditions to the continuation of the property tax exemption, or make reference to a development agreement or other contract between the City and business owner containing such conditions, or the criteria by which the amount or length of the property tax exemption is to be determined, and if a partial exemption or payment for services or in lieu of taxes is required, must authorize the City and the applicant to enter in to a separate agreement providing for such payments.
- (6) Any property tax exemption granted shall be finalized upon completion of the project and certification that conditions have been met. The City may request any information necessary to verify the exemption conditions. The City's grant of a property tax exemption by ordinance is a conditional grant only, and is subject to the further order of the State Board of Tax Appeals after application by the applicant.
- (7) If granted conditional approval by the City, the applicant will need to file the exemption claim form and required exhibits with the County Appraiser as required by state statute, and secure the final approval of the State Board of Tax Appeals.

Section 15. *Letters of Intent.* Upon preliminary approval of the property tax exemption, the Governing Body may authorize the issuance of a resolution or letter of intent, setting forth in general terms its proposed plans for granting a property tax exemption and any conditions thereto. Such letters of intent shall be issued only with the approval of the Governing Body, and as an expression of good faith intent. No elected or appointed officer, employee or committee of the City, and no chamber, board, development council or other public or private body or individual, shall be authorized to speak for and commit the Governing Body to the granting of a property tax exemption.

Section 16. *Application for Exemption.* After the granting of a full or partial property tax exemption by the Governing Body pursuant to this resolution, the owner of the property to be exempted must file the exemption claim form and required exhibits with the County Appraiser required by state statute, and seek approval of the exemption by the State Board of Tax Appeals. The City Clerk shall provide the applicant copies of the ordinances, resolutions, mailed notices, notice of public hearing as published in the official newspaper, and a copy of the cost benefit study preliminary to the granting of the exemption to the applicant for use in filing the initial request for tax exemption as required by K.S.A. 79-213, and a copy of the written statement required by K.S.A. 79-210 for subsequent years. A copy of the exemption applications 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 at such time as they are filed with the County Appraiser.

Section 17. *Annual Review.* The extent and term of any property tax exemption granted are subject to annual review by the Governing Body to insure that the ownership and use of the property and any other qualifying criteria of the business for the property tax exemption continue to exist. The review shall be completed by not later than February 15 of each year. After conducting the review, the Governing Body may continue, modify or revoke the property tax exemption theretofore granted. In evaluating the qualifying criteria of the business for the property tax exemption, the Governing Body may

take into account economic conditions or other mitigating factors operating to delay production of the economic benefits promised. Upon completion of the review, a written statement containing the findings of the Governing Body after review shall be provided by the City Clerk to the owner of the property exempted. The information used in the review process will include the following:

- (a) The filing fee for the annual review shall be \$100.00.
- (b) The business must provide an annual report and pay the annual review filing fee. The annual report must indicate the business's total employment and total payroll, excluding fringe benefits. The report must summarize this information for three different time periods:
 - 1) The year during which the exemption was requested – to be repeated in all annual reports,
 - 2) the current year, and
 - 3) projected values for the next year.
- (c) The renewal application is due not later than January 15 of each year. The renewal action by the Governing Body will be in form of a letter, resolution or other written statement complying with K.S.A. 79-210.

Section 18. *Notice of Transfer of Ownership or Change in Use.* The City shall be notified by any business owning property subject to a property tax exemption granted under this Resolution of any change in ownership or substantive change in the use of a tax exempt property within 30 days after such change becomes effective. A covenant to comply with this requirement shall be included in any contract between the City and the business owner.

Section 19. *Waiver of Resolution Requirements.* The Governing Body reserves the right to grant or not to grant a property tax exemption due to circumstances beyond the scope of this Resolution, or to waive any procedural requirement not otherwise required by state statute. However, no such action or waiver shall be taken or made except upon finding by the Governing Body 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.

Section 20. *Revocation.* The Governing Body reserves the right to revoke a granted property tax exemption due to submittal of an application containing false or fraudulent information, failure to submit the annual evaluation and review reports or a direct showing of bad faith by the applicant or recipient. Further, failure to produce the stated economic benefits anticipated in the application may result in a reduction or loss of the property tax exemption granted.

Section 21. *Definitions.* For the purposes of this Resolution, in application to the City, the words or phrases as used in this Resolution shall have meaning or be construed as follows:

- (a) “Applicant” shall mean and include the owner or owners of the property proposed to be exempt, and their officers, employees and agents.
- (b) “Economic development purposes” 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, as contemplated by Article 11, Section 13 of the Kansas Constitution.

- (c) "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 increases the employment capacity of a business eligible for a property tax exemption.
- (d) "Project" shall mean the construction or acquisition of eligible property, as defined in Section 4 of this Resolution.

Section 22. Confidentiality. All applications and records pertaining to a property tax exemption request shall be subject to the provisions of the Kansas Open Records Act. Any business records or information eligible to remain confidential will be kept confidential only if requested by an applicant.

Section 23. Industrial Revenue Bonds. The criteria, terms and provisions of this policy may also serve as a guideline for tax exemption requests associated with industrial revenue bonds for which resolutions of intent are requested after the effective date of this Resolution.

Section 24. Amendments. The Governing Body reserves the right to amend, revoke, change or otherwise modify this policy from time to time to promote the best interests of the City.

Section 25. Repealer. Resolution No. 28-94 is hereby repealed.

Section 26. Effective Date. The policy set forth in this Resolution shall apply to all applications for property tax exemption submitted on or after the date of its adoption.

ADOPTED by the Governing Body this 18th day of May, 2009.

/s/Mike L. Rawlings, Acting Council President

[SEAL]

Attest:

/s/Erica L. Jones, City Clerk