RESOLUTION NO. 7543

A RESOLUTION introduced by the City Council Economic and Community Development Committee relating to the issuance of industrial revenue bonds, providing procedures for review of Industrial Revenue Bond applications and rescinding City of Topeka Resolution No. 6876.

WHEREAS, the Council of the City of Topeka (hereinafter referred to as the “City Council”) desires to further encourage development of the City of Topeka (hereinafter referred to as the “City”) and its environs, and to consider the issuance of industrial revenue bonds of the City upon its receipt of an application therefore meeting the requirements of this Resolution; and

WHEREAS, the City is empowered to issue such bonds pursuant to the provisions of K.S.A. 12-1740, et seq., as amended; and

WHEREAS, in accordance with the provisions and requirements of the laws of the State of Kansas, the land and other property acquired and improved with the proceeds of industrial revenue bonds issued by Kansas cities and counties may be exempt, for a limited period, from ad valorem taxation; and

WHEREAS, in accordance with the provisions of K.S.A. 12-1740 et seq., as amended, the City is empowered to require applicants seeking the issuance of industrial revenue bonds of the City to agree to make payment(s) to the City in lieu of ad valorem taxes if the property acquired with the proceeds of such bonds is exempt from such ad valorem taxation; and
WHEREAS, the City Council has determined that the social and economic benefits to the City and its inhabitants associated with the continued and further economic development of the City and its environs exceed the costs thereof to the City and its inhabitants; and

WHEREAS, the City Council has further determined that such benefits of continued and further economic development warrant in those instances as hereinafter described, the Council's continued encouragement of the economic development of the City and its environs by adopting a program of reduced payments in lieu of ad valorem taxes in those instances where industrial revenue bonds are issued by the City for the purposes herein described;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Topeka, that the City Council hereby adopts the following policies as incentives to the development and expansion of new and existing business in the City and the creation of new and increased job opportunities for the inhabitants of the City;

Section 1. DEFINITIONS.

As used herein, the following terms or phrases shall have the meaning ascribed to them within this section:

a. Applicant - person or entity making application to the City for industrial revenue bond financing.

b. Contractor or Subcontractor - the applicant or other person or entity employed by the applicant to perform the construction of the expansion or project
receiving any industrial revenue bond proceeds.

c. City - City of Topeka, Kansas.

d. Department – Chief Administrative Office or designated staff for economic development.

e. IRB - industrial revenue bonds.

Section 2. POLICY.

The primary aim of industrial revenue bond financing is to promote, stimulate, and develop the general economic welfare of the City and its residents. Industrial revenue bonds may be issued for the applicant after the City has had an opportunity to review the following policy considerations:

a. Whether the project to be financed by industrial revenue bonds will contribute to an increased number of jobs in the City.

b. Whether the project will add to the diversification of the local economy, or have a positive impact on a particular geographical area of the City where economic assistance is needed.

c. Whether the project will result in other economic growth beneficial to the City.

d. Whether the project will expand the type of job skills available to the job market in the City, or utilize key skills of locally unemployed persons.

e. Whether the issuance of industrial revenue bonds would effectively grant an unfair advantage to the applicant over other firms already within the local market.
structure.

f. Whether the land with which the project is connected fits within the relevant land use plan.
g. Whether the proposed project involves retail enterprises.
h. Whether the applicant agrees to a payment in lieu of taxes.
i. Whether the applicant proposes to utilize resources within the City (contractors, suppliers, sources of funding, etc.) for development of the industrial revenue bond project.
j. Whether the applicant is willing to consent to annexation of land on which the facility is situated if the project is to be located outside the City limits.
k. Whether the proposed project includes refinancing of any existing debt.
l. Whether the applicant agrees to utilize competitive bidding.

Section 3. REQUIREMENTS OF THE PROPOSAL.

The applicant will be required to complete a standard application form which will be available at the chief administrative office.

Section 4. APPLICATION PROCESS.

1. The completed application form shall be submitted by the applicant to the City Clerk and a copy shall be delivered to the department.

2. The application will be reviewed for the completeness of documents and information. If it is incomplete, the applicant will be advised of the deficiencies and the proposal will be returned to applicant.
3. In order to complete the process and allow adequate time for review by the
financial, legal, and other staff of the City, the completed application form must be
submitted not less than thirty (30) calendar days prior to the date it is expected to be
considered by the City Council.

4. Upon completion of the review process by the department, the applicant
will provide eight (8) additional copies of the application form which will be forwarded to
the IRB Committee by the department for review and recommendation. The department
will make a recommendation to the IRB Committee pertaining to payment in lieu of
taxes.

5. The IRB Committee shall make a report which shall be prepared by the
department and presented to the City Council at or before the Council's consideration
on the resolution of intent to issue IRB's.

6. Upon the City Council's receipt of the IRB Committee report, the City
Council will consider a resolution of intent to issue the bonds. The resolution of intent
will contain those conditions which are required to be met prior to the issuance of the
bonds.

7. The Department will obtain a sales tax exemption certificate.

8. The applicant's bond counsel will obtain any necessary allocation from the
Kansas Department of Commerce and Housing.

9. The bond ordinance trust indenture and lease agreement will be prepared
by bond counsel and be acceptable to the City. The documents will be reviewed by the
Chief Administrative Officer, City Attorney, and City Controller.

10. A public hearing will be held by the City Council prior to final action on the resolution. Notice thereof will be published by bond counsel, at the applicant's expense. The City Clerk shall give notice to Shawnee County and the appropriate School Board on a form prepared by bond counsel for any issue which includes abatement of any ad valorem property tax.

11. After adoption of the bond ordinance, the closing and delivery of bonds will be handled by bond counsel with assistance of the City Attorney and City Controller.

12. The Department will assist the applicant, if applicable to the project, in filing a property tax exemption application before the State Board of Tax Appeals after the delivery of the bonds.

13. The trustee/fiscal agent will disburse the bond proceeds, collect and account for all monies and handle payment of the bonds and interest for the City.

14. The department will communicate with the County Clerk on the tax status of the property financed with the bonds and payment in lieu of taxes.

15. The Department will review payment of in lieu of tax payments annually to insure that the ownership and use of the property and any other qualifying criteria of the payment continue to exist.

Section 5. BOND ISSUANCE REQUIREMENTS.

The bonds will not be issued until satisfaction of all conditions of the City's resolution of intent to issue the bonds. Further, the applicant is required to submit
preliminary drafts of the following documents to the department at least five (5) calendar
days prior to the first reading by the City Council.

1. The proposed bond ordinance and lease agreement for execution by the
   Mayor.

2. The Affirmative Action Plan in a form approved by the City must be filed by
   applicant with the City.

3. Any lease guarantee previously agreed to and/or required by the resolution
   of intent.

4. The preliminary offering statement prepared by the bond underwriter.

5. A statement by the proposed trustee to serve as such trustee in connection
   with the bonds, if the appointment of such trustee is required as an issuance condition
   of the bonds.

6. Any other statement or documents which require approval or execution by
   the Mayor or the City Council, or statements or documents that would need to be
   reviewed by the City Attorney’s Office before the City Attorney would give a legal
   opinion, or additional statements or documents that pertain to full disclosure by the
   applicant.

7. Any other statement or document required by this resolution.

Section 6. INDUSTRIAL REVENUE BOND COMMITTEE.

The IRB Committee shall be composed of the following individuals:

The Mayor or Mayor’s designee who shall serve as chair of the committee, the
City Attorney, the City Controller, the Deputy Mayor, the Chief Administrative Officer, the member of the City Council whose district is affected by the IRB project, and the Chief Administrative Officer.

The IRB Committee shall meet on call of the chair as applications are received and consideration is necessary. The IRB Committee shall make a written report to the City Council at or before the time the City Council will consider the resolution of intent to issue industrial revenue bonds. Any applicant must be prepared to appear in person and by bond counsel before the IRB Committee prior to the IRB Committee’s final decision.

Section 7. PAYMENTS IN LIEU OF TAXES.

Unless a reduction in ad valorem taxes is specifically granted by the City Council, the applicant may not apply for a tax exemption.

Correspondingly, the payment in lieu of taxes is presumed to be one hundred percent (100%) of ad valorem taxes otherwise due for the subject property. In determining the amount of payment in lieu of taxes, if any, associated with the issuance of industrial revenue bonds, the City will require an agreement that the applicant will not otherwise apply to the State Board of Tax Appeals for an exemption to property taxes without approval of the City Council. Payments in lieu of taxes shall be required upon property for which an exemption from ad valorem taxes has been granted by the State Board of Tax Appeals. Property may be exempt and a payment in lieu of taxes calculated and reduced in accordance with the guidelines under Section 8 and upon
City Council approval.

Section 8. CRITERIA.

For any industrial revenue bond issue on which the resolution of intent has been issued prior to May 1, 1991, the calculation shall be based on the formulas then in Ordinance No. 15898, however, no exemptions, even those calculated using Ordinance No. 15898, shall result in a payment in lieu of taxes less than the minimum set out in Section 4. The following criteria shall be used in arriving at a reduced payment in lieu of taxes, hereinafter referred to as “payment.”

1. IRB Payment Reduction: The IRB payment reduction shall be calculated using the following formula:

Job Quantity Reduction: A job quantity payment reduction shall be determined at the rate of one percent (1%) reduction for each new full-time equivalent job created not to exceed seventy percent (70%).

Job Quality Reduction: A job quality payment reduction shall be determined by dividing the company’s average wage rate for the newly created jobs by the Shawnee County base wage rate.* The resulting factor shall be multiplied by thirty percent (30%) to determine the job quality payment reduction. The job quality reduction shall not exceed thirty percent (30%).

Capital Investment Reduction: A capital investment payment reduction may be calculated if the amount of the capital investment is significant, if the investment contributes to the potential for new job creation or to the retention of existing jobs, if the
investment has a positive impact on a particular geographical area of the city where
investment is needed, or is such capital investment adds to the general economic
welfare of the city. The capital investment reduction shall be determined at the rate of
one percent (1%) for each one hundred thousand dollars ($100,000.00) in capital
investment. The Capital investment reductions shall not exceed eighty percent (80%).

*The Shawnee County base wage rate is computed annually using the most
recent County Business Patterns published by the U.S. Bureau of Census. The base
wage rate is determined by averaging the hourly wage rate for all Shawnee County
industries with the combined hourly wage rate for the Manufacturing and Wholesale
Trade industries.

**Total Payment Reduction:** The total payment reduction shall be the sum of the job
quantity reduction, the job quality reduction and the capital investment payment
reduction. The total payment reduction shall not exceed one hundred percent (100%).

2. **Payments In Lieu Of Taxes:** The payment in lieu of taxes shall be
determined by subtracting the total IRB payment reduction from the ad valorem taxes
for the subject property. The remaining amount of ad valorem taxes otherwise due and
payable on the subject property is the amount required as the payment in lieu of taxes.

3. **Exemption Qualification.** The applicant is required to initially and annually
provide proof, to the satisfaction of the Chief Administrative Officer and/or the City
Council, of qualification of the business for the exemption.

4. **Minimum Payment.** Any applicant making a payment in lieu of taxes and
receiving an IRB payment reduction pursuant to this resolution is required to pay taxes on the assessed 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 business. This payment will insure that the City, Shawnee County, the affected School District and any other taxing jurisdictions affected will not receive less tax revenue from the property than was received prior to the reduction.

Additionally, each business will pay a payment in lieu of taxes equal to twenty percent (20%) of the tax otherwise due with respect to the IRB improvement. If application of the formula in Section 8(1) yields a lesser payment, then the minimum payment of twenty percent (20%) will apply. For extraordinary reasons, such as when vacant buildings are acquired for a new business, when the market value of the property has decreased, or when the size of the project is exceptionally large (i.e., jobs created and/or new capital investment), this requirement may be waived in part or in whole by the City Council. No exemption application will be considered after the start of construction for improvement on which exemption is sought.

In addition, the City Council may consider issuing industrial revenue bonds to businesses not qualifying under K.S.A. 79-213 and Section 13 of Article 11 of the Kansas Constitution, in special circumstances and providing a reduction in the payment in lieu of taxes in the same amount as businesses that qualify pursuant to Kansas law K.S.A. 79-213, and Section 13 of Article 11 of the Kansas Constitution, if it is
determined that a special value is added to the development of the general economic
welfare and property of the City.

Section 9. ANNUAL RENEWAL.

The extent and term of any payment in lieu of taxes granted shall be subject to
annual review and determination by the City Council to insure that the ownership and
use of the property and any other qualifying criteria of the business for the payment in
lieu of taxes continue to exist. Information justifying the continued reduction of payment
in lieu of taxes will be submitted annually to the department for review and approval.
The department will advise the City Council of all annual determinations.
Determinations by the Chief Administrative Officer may be reversed if the City Council
places the matter on an agenda and so votes.

Upon the failure of the business to fully and timely pay the payment in lieu of
taxes due as may be required or to provide reports or other information requested by
the department or the IRB Committee and reasonably necessary for the implementation
of this policy, the City Council may, at its sole discretion, either revoke the authorization
of such a payment in lieu of taxes or require payments in lieu of taxes in an annual
amount equal to the amount of ad valorem taxes the subject property would bear but for
any applicable exemption from such taxes.

Section 10. ELECTION.

The policy set forth herein with regard to payments in lieu of taxes and reduced
payments in lieu of taxes is considered separate and distinct from the City's policy
regarding economic development incentives which is set forth in City of Topeka Code § 138-76 et seq., as amended. In the event a property would qualify under both policy resolutions, then the property shall be eligible for only one incentive program which shall be at the election of the applicant.

Section 11. That Resolution No. 6876 is hereby specifically repealed.

BE IT FURTHER RESOLVED that the City Clerk shall cause this Resolution to be published once in the official newspaper of the City.

IT IS SO RESOLVED.

ADOPTED and APPROVED by City Council __________ DEC 21 2004 __________.

CITY OF TOPEKA, KANSAS

James A. McClinton, Mayor

ATTEST:

Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE 1/3/05 BY 81

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