

## **Article GB05-B PRIVATE ACTIVITY CONDUIT FINANCING AND TAX ABATEMENT POLICY FOR ECONOMIC DEVELOPMENT**

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### **Section GB05-B-1 OBJECTIVES.**

- A. Create an economic environment in the City of Lenexa that stimulates economic growth and development for industries and businesses in order to provide quality services, employment opportunities, and encourage capital investment for the benefit of the community.
- B. Enhance the City's diversified property tax base by increasing the commercial property percentage share of the City's total real property appraised valuation.

In reviewing requests to issue Private Activity Bonds and/or grant tax abatements, the Governing Body shall be guided by whether such bond issue and/or abatement would help the City achieve some or all of the following objectives:

- A. Retention and/or expansion of existing businesses located in the City (granting of an abatement should make such a difference in determining the decision of a business to locate, expand, or remain in the City that the business would not otherwise be established, expanded or retained without the availability of the abatement);
- B. Diversification of the local economy;
- C. A positive impact on the City or a particular area of the City where economic assistance is needed;
- D. Enhance the economic climate of the City and increase or maintain the job market within the City;
- E. Establish the City's visual identity as the highest quality built commercial environment in the metropolitan area;
- F. Increase the property tax base of commercial properties to further support the cost of municipal services provided by the City (granting of an abatement shall not result in the City, County, school district, or any other taxing jurisdiction affected by the abatement receiving less property tax revenue from the abated property than was received prior to the abatement);
- G. Enhance the credit worthiness of the City with a broader tax base, thus enhancing the City's ability to have its borrowings at a reduced interest cost to its residents and taxpayers;
- H. Promote the redevelopment of older parts of the City;
- I. Promote the completion of existing business parks in the City and encourage the development of new

business enterprises in the City; and

J. Accomplish any other needs of the City.

It is the policy of the City to be the sole issuer of private activity bonds for eligible projects within the City.

**Section GB05-B-2 SCOPE.**

Private Activity Conduit Financing (Private Activity Bonds) and tax abatements serve as financing mechanisms to accomplish the objectives referenced above. The City of Lenexa Governing Body shall approve the use of these financing mechanisms when, in the opinion of the Governing Body, the project being financed in whole or in part by such financing mechanisms is reasonably expected to promote, stimulate, and develop the general economic welfare of the City through the promotion and advancement of physical and mental health, industrial, commercial, agricultural, natural resources, and of recreational development in the City, and is deemed to be in the best interest of the City. Such financing mechanisms should also be used to encourage and assist in the location of new business and industry in the City and the expansion, relocation or retention of existing business, industry and health development, and to promote the economic stability of the City by providing greater employment opportunities, diversification of industry, and improved physical and mental health, thus promoting the general welfare of the citizens of the City.

The authority and decision to issue Private Activity Bonds and grant tax abatements is vested solely with the Governing Body. This policy is intended to provide a guide to the Governing Body in considering both Private Activity Bond issuance and/or tax abatement applications. The decision to issue Private Activity Bonds and/or grant tax abatements is discretionary and shall be considered on a case-by-case basis. The Governing Body is under no obligation to approve any requested bond issuance and/or tax abatement and reserves the right to deviate from the policies and criteria contained herein if, in the opinion of the Governing Body, circumstances exist to warrant such deviation, as long as any deviation does not conflict with state law. This policy does not create any entitlement and property owners, applicants and others are cautioned not to rely upon receipt of an abatement until all steps for granting an exemption have been approved, including, but not limited to evaluation of all factors by the City and adoption of a Resolution of Intent after notice and public hearing; approval of a Payment in Lieu of Taxes (PILOT) agreement; and compliance of all terms and conditions therewith by the applicant.

**Section GB05-B-3 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 entity would pay if there were no City-granted abatement and the amount required to be paid as in lieu of taxes or charges. For example, if the taxes required with no abatement were \$5,000, and the required in lieu payments were \$3,000, the "abatement" would be \$2,000.

**APPLICANT:** Any person, firm, or entity making application to receive Private Activity Conduit Financing and/or requesting tax abatement.

**CITY:** City of Lenexa, Johnson County, Kansas.

**CITY BOND COUNSEL:** That firm or individual designated by resolution of the City to handle bond matters and issues related to bond matters.

**CITY FINANCIAL ADVISOR:** That firm or individual designated by resolution of the City to handle financial matters and issues related to financial matters.

**ECONOMIC DEVELOPMENT PURPOSES:** For purposes of an abatement pursuant to the Kansas

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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 Private Activity Bonds, this term shall also include service industry businesses and any other business which provides substantial or unique opportunities or significant community benefits.

FINANCE TEAM: City Administrator, Finance Director, City Attorney, Planning Director, or their designees; City Bond Counsel; and City Financial Advisor.

PRIVATE ACTIVITY CONDUIT FINANCING: The financing or refinancing of projects, including, but not limited to, buildings, equipment, furniture and fixtures and related capital items, by bonds or other obligations issued by the City, where the projects are owned by or leased to a private entity and the debt service on such bonds or other obligations is paid or secured by a private entity.

PROJECT: The purpose for which the Private Activity Bonds/or an abatement is being requested.

### **Section GB05-B-4 PROVISIONS.**

- A. Approval of Private Activity Bonds issued by the Governing Body shall be subject to the following conditions:
1. The applicant must have a sound financial base. The City's Financial Advisor shall make recommendations to the Finance Team and Governing Body as to an applicant's financial stability.
  2. The underwriter, City Bond Counsel and City Financial Advisor must provide reasonable assurance that the bonds are secure and marketable and that the bond issue complies with applicable state and federal law.
  3. The City may require some type of credit enhancement such as a letter of credit, bond insurance, personal guarantees, pledges of other collateral, a bond reserve account, or a combination thereof.
  4. The City requires the use of its designated Bond Counsel and its designated Financial Advisor. The City reserves the right to approve the selection of other participants including, but not limited to, the underwriter and trustee/fiscal agent. The City, at its discretion, may retain additional independent advisors to assist the City in analyzing the merits of the application and in making a determination of its approval at the applicant's expense, such as: economic specialist, environmental specialist, certified public accountant, etc.
  5. The applicant must pay for or reimburse the City the cost of legal, financial, and administrative work performed in connection with the bond issue as determined by the City. The applicant must pay all costs related to the issue incurred by the City throughout the life of the bonds, including, but not limited to the City's actual costs of administering and supervising the issue, the cost of any legal counsel, and any costs in the event of default, transfer of ownership, transfer of bonds, re-marketing issues, requests for amendment, and any other assistance required in regard to the project which is subject to Private Activity Bonds. Any costs incurred will be directly billed to the applicant for reimbursement.
  6. The proceeds from any Private Activity Bonds issued shall be used for the purpose of paying all or part of the cost of purchasing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling facilities for agricultural, commercial, hospital, industrial, natural resources, recreational development, manufacturing, and multi-family housing purposes.

7. The proposed use must be clean, nonpolluting, and consistent with all planning and community development policies, ordinances, and codes. Applicant shall be responsible for performing at least a Phase I environmental audit. At its discretion, the City may require applicant to perform additional environmental audits beyond Phase I. Applicant shall be responsible for taking any and all remedial action necessary as required by the City or any other governmental entity. The City, at its discretion, may also require environmental audits for refunding bond issues.
8. Prior to making application, the project for which Private Activity Bonds are requested must be appropriately zoned.
9. The minimum issuance size for all Private Activity Bond issues shall be at least \$3 million, and the maturity schedule of all Private Activity Bond issues cannot exceed the useful life of the asset.

The City may issue Private Activity Bonds in conjunction with other economic development tools in order to meet some or all of the objectives previously mentioned in this policy.

- B. Approval of property tax abatements by the Governing Body are subject to certain statutory and procedural requirements including publication of notice; public hearing and notice to the school district and county in which the property proposed for exemption is located. The decision to grant an abatement shall be further subject to the following conditions:
  1. The minimum capital investment required for consideration of tax abatement is \$3,000,000. In order to receive the maximum tax abatement allowed under this policy, the minimum capital investment required is \$10,000,000. The term capital investment shall apply to the acquisition cost of land and building improvements, but not to personal property.
  2. A cost-benefit analysis shall be performed using a model approved by the City. The analysis should reflect the effect of the abatement on State, County, City, and school district revenues.
  3. The maximum abatement term is ten years.
  4. Adoption of a Resolution of Intent to issue bonds pursuant to K.S.A. 12-1740 et seq. as amended and grant an exemption pursuant to K.S.A. 79-201a, as amended, which resolution specifies the length and amount of the exemption and is subject to the execution of a PILOT agreement. The Resolution of Intent shall be valid for a period of 12 months or until bonds are issued, whichever occurs first, unless the resolution is extended by vote of the City Council.
  5. The execution of a PILOT agreement between the applicant and the City. The PILOT agreement will establish performance standards for the applicant, and is subject to annual review by the City to ensure conditions qualifying the business for the abatement continue to exist. These performance standards may include minimum capital investment amounts, minimum appraised and assessed valuation amounts, minimum employment levels, average salary targets, and any other standards deemed appropriate by the Governing Body. The PILOT agreement may also contain restrictions on transfer and appeal of property values and taxes.
  6. The tax abatement shall not affect the liability of such property for any special assessments levied or to be levied against such property.
- C. The Governing Body reserves the right to amend or revoke a previously approved tax exemption for any of the following reasons:
  1. Submission of a fraudulent or inaccurate application;
  2. Applicant's failure to submit the annual review application and supporting information

- during any year in which an exemption is granted by the City;
3. Applicant's failure to comply with the terms and conditions of the Resolution of Intent;
  4. Applicant's failure to comply with the terms and conditions of an approved PILOT agreement and
  5. During any year in which an exemption is granted, failure of a property receiving an abatement to maintain an appraised valuation, as determined by the Johnson County Appraiser, in an amount equal or greater to the minimum capital investment upon which the abatement was calculated.
- D. At a minimum, the Governing Body shall review this policy annually to determine if it still reflects the goals, policy and objectives of the City. The Governing Body reserves the right to amend or repeal this Policy at any time.

**Section GB05-B-5 PROCEDURES.**

Procedures and Fees Regarding the Issuance of Private Activity Bonds and/or the Granting of Tax Abatements:

- A. City staff shall develop internal procedures for processing private activity bond issuance and tax abatement applications, and revoking previously approved tax abatements. Such procedures shall be approved, and amended when appropriate, by the City Administrator. All request or applications for either private activity bond issuance or tax abatements shall be considered and acted upon in accordance with this Policy and its accompanying procedures.
- B. The fees for the issuance of Private Activity Bonds of the City shall be as follows:
  1. A nonrefundable application fee of \$2,000 shall be submitted with the application. All application fees shall be used for administering Private Activity Bond applications.
  2. Applicant shall be responsible for the payment of other professional fees such as Bond Counsel and Financial Advisor, according to the current fee schedules referenced in the application form. The applicant shall also be responsible for the City's actual legal fees incurred for services associated with any requests for document amendments, including but not limited to assignments, assumptions, and redemptions. Both the City's actual legal fees and other professional fees are separate and in addition to the application and origination fees.
  3. An origination fee shall be assessed by the City as authorized by K.S.A. 12-1742 as amended. This fee is due upon closing of the bond issue, and will be reduced by the amount of the application fee. The fee will be calculated as outlined in the tables below:

Origination Fee Table #1 - Commercial Property Bond Issues

| Par Amount of Bond Issue          | Fee Calculation  |
|-----------------------------------|--|
| First \$10 million                | .0025 of par amount  |
| Second \$10 million               | \$25,000 plus .0020 of par amount over \$10 million  |
| Amounts in excess of \$20 million | \$45,000 plus .0010 of par amount over \$20 million  |
| Refunding Bond Issues             | Fee is 50% of the amount that would be calculated for a new money issue of the same par amount |

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| MAXIMUM FEE is \$100,000 (including both new money and refunding portions of issue) |  |
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Origination Fee Table #2 - Multi-Family Housing Bond Issues

| Par Amount of Bond Issue  | Fee Calculation  |
|---|--|
| First \$10 million  | .0040 of par amount  |
| Second \$10 million   | \$40,000 plus .0020 of par amount over \$10 million  |
| Amounts in excess of \$20 million   | \$60,000 plus .0010 of par amount over \$20 million  |
|   |  |
| Refunding Bond Issues   | Fee is 50% of the amount that would be calculated for a new money issue of the same par amount |
|   |  |
| MAXIMUM FEE is \$100,000 (including both new money and refunding portions of issue) |  |

Origination Fee Table #3 - Tax-exempt Organization Issues

| Par Amount of Bond Issue          | Fee Calculation  |
|-----------------------------------|--|
| First \$10 million                | .0080 of par amount  |
| Second \$10 million               | \$80,000 plus .0040 of par amount over \$10 million  |
| Amounts in excess of \$20 million | \$120,000 plus .0020 of par amount over \$20 million   |
|                                   |  |
| Refunding Bond Issues             | Fee is 50% of the amount that would be calculated for a new money issue of the same par amount |
|                                   |  |
| NO MAXIMUM FEE                    |  |

C. The fee for the consideration of tax abatements and the structure for tax abatements shall be as follows:

1. A nonrefundable application fee of \$2,000 shall be submitted with the application, accompanied by \$8,000 as a retainer to be applied to the professional fees incurred on behalf of the City in processing the tax abatement request. This retainer is in addition to other fees which may be required by the City, including origination fees and all additional professional services costs required to process the application and issue the debt.
2. To accomplish the economic objectives of the City as outlined earlier in this document, it shall be the policy of the City to provide a standard 45% tax abatement for projects that qualify for tax abatement under Kansas law and meet the tax abatement provisions in Section GB05-B-4 of this policy. The standard abatement percentage of 45% may be adjusted by a maximum of 10% (to 55%) according to Abatement Table #1 below. The City may also offer a larger abatement percentage for projects with a capital investment of at least \$10 million (see Abatement Table #3).

Abatement Table #1 - Adjustments to Standard Abatement Percentage

| Nature of Project  | Abatement Adjustment |
|--|----------------------|
| Retention and/or expansion of existing business*   | Adjustment of 10%    |
| Capital investment of at least \$25 million  | Adjustment of 5%     |
| Type of business is of a nature that has been identified by the Governing Body as desirable for the community and will generate wages in excess of the average Johnson County wage. Such businesses include, but are not limited to, regional or national headquarters, high technology businesses, and projects that spur significant retail development. | Adjustment of 5%     |
| Unique site constraints or construction requirements that make development more difficult and/or costly.   | Adjustment of 5%     |
| Construction of Leadership in Energy & Environmental Design (LEED) certified facilities and neighborhood development.  | Adjustment of 5%     |

\*defined as currently operating in the City for a period of at least one year.

- The term of tax abatements granted by the Governing Body will generally be structured as follows for capital investment of at least \$3,000,000, but less than \$10,000,000:

Abatement Table #2 - Capital Investment of \$3,000,000 to \$9,999,999

| Capital Investment                               | Abatement Term |
|--|----------------|
| At least \$3 million, but less than \$4 million  | 3 years        |
| At least \$4 million, but less than \$5 million  | 4 years        |
| At least \$5 million, but less than \$6 million  | 5 years        |
| At least \$6 million, but less than \$7 million  | 6 years        |
| At least \$7 million, but less than \$8 million  | 7 years        |
| At least \$8 million, but less than \$9 million  | 8 years        |
| At least \$9 million, but less than \$10 million | 9 years        |

- The amount and term of tax abatements granted by the Governing Body will generally be structured according to one of the following alternatives for a capital investment of \$10 million or greater. The alternative will be selected by the City on a case-by-case basis. The abatement term for projects under the authority of K.S.A. 12-1740 et seq. and K.S.A. 79-201a, as amended, 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 and such date(s) and further conditions shall be included in the PILOT.

Abatement Table #3 - Capital Investment of \$10 million and greater

| Abatement Alternative | Abatement Percentage* | Abatement Term |
|-----------------------|-----------------------|----------------|
| Alternative A         | 45%                   | 10 years       |
| Alternative B         | 90%                   | 5 years        |
| Alternative C         | (varies by year)      | 10 years       |

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|         |     |  |
|---------|-----|--|
| Year 1  | 90% |  |
| Year 2  | 80% |  |
| Year 3  | 70% |  |
| Year 4  | 60% |  |
| Year 5  | 50% |  |
| Year 6  | 40% |  |
| Year 7  | 30% |  |
| Year 8  | 20% |  |
| Year 9  | 10% |  |
| Year 10 | 5%  |  |

\*These abatement percentages may be adjusted by a maximum of 10% as described in Abatement Table #1.

- Each tax abatement granted shall be subject to an annual review for the purpose of monitoring the applicant and determining if the applicant continues to remain in compliance with all established terms or conditions set forth in the PILOT agreement. The application for annual review shall be filed on an annual basis with the City Clerk no later than January 15th of each year for the term of the exemption. The filing fee shall be \$300 per year and is non-refundable.

**Section GB05-B-6 RESPONSIBILITY FOR ENFORCEMENT.**

The City Administrator shall be responsible to the Governing Body for the enforcement of this policy. The City Attorney and Finance Director shall assist in the implementation of this policy.

**Section GB05-B-7 STATUTORY AMENDMENTS.**

Any amendment to any statute cited herein or used as a source of authority for the development of this policy shall apply without modification or amendment to this policy.

**Section GB05-B-8 REFERENCES.**

Resolution No. 2001-27 (repealed with adoption of this Policy)

Resolution No. 2001-52 (repealed with adoption of this Policy)

Resolution No. 2007-142 (repealed with adoption of this Policy)

Resolution No. 93-78

K.S.A. 12-1740 through 12-1749d

Section 13 of Article 11 of the Kansas Constitution as limited by K.S.A. 79-251 through 79-253

K.S.A. 12-147 and 12-148

K.S.A. 79-201, 79-201a, 79-210, 79-213, 79-214, and K.S.A. 45-221