

**City of
Tonganoxie, KS**

TAX ABATEMENT POLICY

**Adopted
July 17, 2017**

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Section 1. Purpose. This Tax Abatement Policy is designed to create a positive business environment to stimulate economic growth and development in order to encourage capital investment, employment opportunities, and quality services for the benefit of the community. The objectives of the Tax Abatement Policy are described below:

- Attract and retain quality businesses for the community
- Add and retain employment opportunities for Residents
- Attract major projects to impact local tax base
- Diversify the local economy
- Reward quality environmental design

Section 2. Scope. This Policy shall apply to the City of Tonganoxie, Kansas (“City”).

Section 3. Policy Statement. To meet the economic goals of the community, it shall be the policy of the City to typically provide a 45% real property tax abatement for portions of a Project that qualify for tax abatement under Kansas law so long as the Project meets the criteria established by the City. Depending how the tax abatement is structured over the term, tax abatement for a Project may exceed an overall average of 45%. It shall be the policy of the City that, regardless of the percentage amount of bonus provisions an applicant may be eligible for, the maximum percentage of abatement provided for any Project shall not exceed 70% for 10 years. The City may, at its sole discretion, waive any of these prohibitions if the applicant demonstrates compelling and unique circumstances regarding its Project.

It shall also be the policy of the City that economic development Projects pay their fair share of property tax, special improvement district assessments, and cost of utility services. Economic development Projects shall have a positive financial impact on the community, and the City reserves the right to approve the cost-benefit analysis model used to determine the financial impact. The City Council shall consider the following factors when granting property tax incentives pursuant to Section 13 of Article 11 of the Kansas Constitution and K.S.A. 12-1740 *et seq.* and 79-201a.

- A. **Existence of Economic Benefit.** The Project must add to the local economy. Evaluation criteria to be used in determining benefit to the community shall include but shall not be limited to the following: the amount of Capital Investment; whether the Project produces value-added products and services; number of jobs created and associated payroll; and whether the Project provides a positive fiscal impact and economic impact.
- B. **Type of Business.** The Project shall be of a nature that is desirable and stimulates the local economy and improves the quality of life for its citizens. Additional considerations may include whether the Project has the effect of supporting or spurring other development and whether a Project would help achieve successful completion of an existing commercial or industrial park or the development of a new commercial or industrial enterprise.
- C. **Compatibility with Adopted Plans.** All Projects shall be consistent with the City’s Comprehensive Plan, any applicable corridor plans, and other plans of the City which may be relevant to the Project. When evaluating proposed Projects, the City will consider a variety of factors to determine compliance, including 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.
- D. **Excluded Businesses.** In addition to the uses of property prohibited by K.S.A. 79-201 (a) *Second*, the following uses shall not be eligible for property tax abatement: car wash, day care, private school, , storage facility, and branch bank offices. The City may, at its sole discretion, waive any of these prohibitions if the applicant demonstrates compelling and unique circumstances regarding its Project.

CITY OF TONGANOXIE, KS
TAX ABATEMENT POLICY
ADOPTED JULY 17, 2017

- E. **Maintain Existing Tax Base.** To facilitate new development, the City shall assist new industries that invest in new buildings and building expansion. However, the amount of property taxes or special assessments on the existing land and facilities shall under no circumstances be reduced for new development Projects.
- F. **Transfer of Ownership.** The owner or lessee of any property that is all or partially exempt from ad valorem taxes as the result of the City having granted the exemption shall obtain the City's written consent before transferring majority ownership of the property unless the transfer is to an affiliate or a related entity.

Section 4. Definitions. For purposes of this Tax Abatement Policy, when used in this Policy, the following words shall have the following meanings. Additional definitions may be added in exhibits to this Policy.

ABATEMENT: The difference between the amount of ad valorem property taxes an entity would pay if there were no abatement granted and the amount required to be paid as payments in lieu of taxes. 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.

BOND COUNSEL: That firm or individual designated by the City to handle legal and financial matters and issues associated with the issuance of temporary notes and bonds by the City.

CAPITAL INVESTMENT: Capital investment shall include expenditures for land, buildings, or personal property subject to ad valorem taxation.

ECONOMIC DEVELOPMENT EXEMPTION or EDX: 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 commodities which are sold or traded in interstate commerce.

EXISTING BUSINESS: A business shall be an "Existing Business" if it has had facilities and operations in the City for a period of not less than one year. All other businesses shall be "New Businesses."

LEED CERTIFICATION: A third party green building certification program developed by the U.S. Green Building Council that offers validation of a Project's green features and verifies that the building is operating exactly the way it was designed to.

LOCAL BUSINESS ENTERPRISE or LBE: A business headquartered or that maintains a major branch that performs the significant functions of the business in the City or businesses of which at least 51% of the stock, equity, or beneficial interest is owned, held, or controlled and whose day-to-day management is under the control of an individual residing in the City.

NEW BUSINESS: Any business which is not an Existing Business.

PRIVATE ACTIVITY BONDS or BONDS: The financing or refinancing of Projects, including but not limited to buildings, equipment, furniture and fixtures, and related capital items by bonds or other debt 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 issuance of the Private Activity Bonds/or an EDX abatement is being requested.

RESIDENT: An individual residing in the City.

WOMEN BUSINESS ENTERPRISE or WBE: A business of which at least 51% of the stock, equity, or beneficial interest is owned, held, or controlled and whose day-to-day management is under the control of one or more women who are citizens or lawful permanent residents of the United States .

Section 5. Abatement Criteria and Adjustments. Adjustments made to increase the total amount of abatement are intended to be provided as an extra incentive to exceed certain criteria when others may not be met and to fulfill certain goals of the community. The following are the criteria for abatement and adjustments to the total amount of abatement.

- A. Project Investment Bonus/Water Service User .** It is the goal to strengthen the local economy through the growth of the local tax base. Capital Investments produce a long-term tax benefit to the community; therefore a major Project may be eligible for an additional abatement percentage determined by the level of capital investment. Depending upon the Project's capital investment, and a commitment to Municipally supplied water, an increase in the abatement may be considered as follows:
- a. Capital Investment of up to \$24,999,999 may receive a bonus of up to 5%
 - b. Capital Investment of \$25,000,000 to \$49,999,999 may receive a bonus of up to 10%
 - c. Capital Investment of \$50,000,000 and above may receive a bonus of up to 15%
- B. Target Area Bonus.** It is a goal to encourage development / redevelopment in distressed areas of the community. Strong consideration will be given for a business that will be located in a targeted area for economic development or redevelopment. An abatement adjustment of up to 10% may be considered for Projects that locate in the targeted area. The Target Area is defined in Exhibit A of this document.
- C. Targeted Industries.** It is a goal to attract and retain certain targeted industries for the community due to their long term economic impact. An abatement adjustment of 5% to 15% may be considered for Projects that are in targeted industries. The current targeted industries generally include Class A office, high technology and bioscience-related businesses and development. The attached list of Targeted Industries and associated abatement bonuses are defined in Exhibit B of this document.
- D. Residency Bonus:** It is a goal to create new employment opportunities for community Residents. An abatement adjustment from 5% to 10% will be considered depending on the percentage of City Residents employed by the company receiving tax abatements; the required percentage of City Residents and the associated abatement percentage are attached in Exhibit C of this document. To be considered for this abatement bonus a minimum of 35 total jobs must be created in the first year of operation. Existing Businesses which apply for abatement will be examined for the amount of existing City Residents currently employed in operations, as well as commitment for new hires due to the Project receiving abatement. To maintain this abatement bonus, the company will be required to provide an annual certification of the number of City Residents employed.

CITY OF TONGANOXIE, KS
TAX ABATEMENT POLICY
ADOPTED JULY 17, 2017

- E. **Women and Locally Owned Businesses Bonus:** It is a goal to give opportunities for the utilization of, Women and Locally Owned Business where available and applicable. A bonus of 5% to 10% may be given depending on the participation of WBE, and LBE in the construction of the Project receiving tax abatement; the attached list of WBE, LBE percentages and associated abatement bonuses are defined in Exhibit D of this document. It is the intent that the designated percentages for each of WBE, LBE categories are achieved, but an adjustment may be made for a designated level of cumulative participation by, WBEs, and LBEs.
- F. **Environmental Design Bonus.** It is a goal to create quality and sustainable developments / structures throughout the City. The City, at its sole discretion, may require higher design standards for the design of buildings and materials used for Projects receiving property tax abatement. An abatement adjustment will be given to businesses whose new construction achieves U.S. Green Building Council LEED Certification, or similar certification agency/process. This abatement adjustment shall range from 5% to 10% given the level of LEED Certification. The levels of certification and associated bonuses are defined in Exhibit E of this document.

Section 6. Term of Abatement. The abatement period for a Project approved under this Policy will be determined by the amount of new Capital Investment in the City. Capital Investment shall include expenditures for land, building, or personal property subject to ad valorem taxation.

- A. **Existing Businesses.** The normal term of abatement for each Project where the applicant is an Existing Business is determined according to the following schedule, unless a different term is established by the Board of Commissioners:

<i>Capital Investment</i>	<i>Normal Term</i>
\$3,999,999 or less	5 years
\$4,000,000 or greater	10 years

- B. **New Businesses.** The normal term of abatement for each Project where the applicant is a New Business is determined according to the following schedule, unless a different term is established by the Board of Commissioners:

<i>Capital Investment</i>	<i>Normal Term</i>
\$5,999,999 or less	5 years
\$6,000,000 and greater	10 years

- C. **Commencement of Abatement.** The abatement term for Projects under authority of Section 13 of Article 11 of the Kansas Constitution shall begin in the calendar year after the calendar year in which the business commences its operations or the calendar year in which expansion of an Existing Business is completed, as the case requires. The abatement term for Projects under authority of K.S.A. 12-1740 through 12-1749 and 79-201a shall begin in the calendar year after the calendar year in which the Private Activity 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 Board of Commissioners at the time of the adoption of the Resolution of Intent.

Section 7. Procedure. The City will consider granting a tax exemption pursuant to this Policy after receipt of a complete application from the applicant in a form prescribed by the City together with the application fee. The application shall be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the Project's preliminary site plans and building elevations, to prepare a fiscal impact analysis, and to contact the school district within which the property proposed for exemption is located. The Project's site plans and building

elevations are subject to final approval to ensure that they are similar to the preliminary plans and elevations submitted.

Based on each application and such additional information as may be requested by the City, the City shall prepare or cause to be prepared a fiscal impact analysis of the proposed exemption on the City, County, and State of Kansas, which analysis shall be used by the City Council in considering the request for abatement.

Prior to formal action on each Resolution of Intent, the City Council shall conduct a public hearing thereon, to be scheduled at least seven days after publication of notice.

Section 8. Performance Agreement.

- A. **Continued Compliance.** Any tax exemption/abatement granted pursuant to this Policy shall be accompanied by a performance agreement between the applicant and/or lessee and the City. Any tax exemption or abatement is subject to annual review and determination by the City Manager that the conditions qualifying the business for the exemption or abatement continue to exist. The City at any time may review information provided by the company, lessee, or State of Kansas, or may request additional information to determine compliance with the performance agreement. If the City Council finds that the business or Project is not in compliance, then the tax exemption or abatement may be modified pursuant to the performance agreement or eliminated as the City Council deems appropriate. The County Assessor and the Board of Tax Appeals shall be notified of such action. Each performance agreement shall contain a notice and waiver disclosing to each applicant that the City reserves the right to grant future tax exemptions or abatements on comparable Projects in amounts different than the exemption or abatement granted to such applicant. Such notice and waiver shall include a provision that the applicant waives any right to request a modification or amendment of such exemption or abatement based upon such differences.
- B. **Clawbacks.** Each performance agreement for a Project shall provide that the percentage of property tax abatement shall be scaled back to the term provided for in this Policy if, within three years after the issuance of the Private Activity Bonds, the applicant has not incurred the required Capital Investment.
- C. **Utilization of City Services.** The performance agreement shall require that the company receiving the property tax abatement (or any other user of the property) utilize solid waste services provided by the City. This requirement shall not apply to any user if the user demonstrates that solid waste services provided by the City are not adequate to serve such user's reasonable needs.
- D. **Fee Schedule.** The Fee Schedule for applications, issuance, and monitoring is contained in Exhibit F of this document. Such Fee Schedule shall apply to both Private Activity Bonds and EDX abatement requests. The Fee Schedule will be made available upon request.

Section 9. Authority of the City Council. The City Council reserves the right to deviate from this Policy, but not any procedure set forth in this Policy or any other procedural requirements of State law, when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that the Council believes such deviation is in the best interests of the City.

Exhibit A
Target Area Bonus

To include the Tonganoxie Business Park, Urban Hess Industrial Park, and the State Ave and 24/40 corridor within City limits.

Exhibit B
Target Industries ***

NAICS Code	Industry	Bonus Abatement Percentage
3111	Animal Food Manufacturing	5%
3251	Basic Chemical Manufacturing	5%
3253	Pesticide, Fertilizer, and other Ag Chemical Mfg	5%
3254	Pharmaceutical and Medicine Manufacturing	5%
3341	Computer and Peripheral Equipment Manufacturing	5%
3342	Communication Equipment Manufacturing	5%
3343	Audio and Video Equipment Manufacturing	5%
3344	Semiconductor and Other Electronic Component Manufacturing	5%
3345	Navigational Measuring, Electromedical, and Control Instruments Manufacturing	5%
3359	Other Electrical Equipment and Component Manufacturing if researching developing or manufacturing power system technology for the following: <ul style="list-style-type: none"> • Aerospace; • Space; • Defense; • Hybrid vehicles; or • Implantable or wearable medical devices 	5%
3364	Aerospace Product and Parts Manufacturing	5%
3391	Medical Equipment and Supplies Mfg	5%
5171	Wired Technology Carriers	5%
5179	Other Telecommunications	5%
5181	Internet Service Providers and Web Search Portals	5%
5182	Data Processing, Hosting, and Related Services	5%
5416	Management, Scientific, and Technical Consulting Services	5%
5417	Scientific Research and Development Services	5%
6113	Colleges, Universities and Professional Schools	5%
54171	Research & Development in	5%

CITY OF TONGANOXIE, KS
TAX ABATEMENT POLICY
ADOPTED JULY 17, 2017

	Physical, Engineering and Life Sciences	
325193	Ethyl Alcohol Manufacturing	5%
325199	All Other Basic Organic Chemical Manufacturing	5%
325411	Medicinal and Botanical Manufacturing	5%
325412	Pharmaceutical Preparation Manufacturing	5%
325414	Biological Product (except Diagnostic) Manufacturing	5%
327331	Concrete Block and Brick Manufacturing	5%
334510	Electromedical and Electrotherapeutic Apparatus Mfg	5%
334516	Analytical Laboratory Instrument Manufacturing	5%
334517	Irradiation Apparatus Manufacturing	5%
339111	Laboratory Apparatus and Furniture Mfg	5%
339112	Surgical and Medical Instrument Manufacturing	5%
339113	Surgical Appliance and Supplies Mfg	5%
339114	Dental Equipment and Supplies Mfg	5%
541380	Testing Laboratories	5%
541711	Research and Development in Biotechnology	5%
621511	Medical Laboratories	5%
621512	Diagnostic Imaging Centers	5%
622110	General Medical and Surgical Hospitals	5%

Quality office developments shall receive up to a 15% bonus depending on quality design and material used.

***Target Industries included in Exhibit B are excluded from Minimum Employment Requirements.

Exhibit C
Residency Bonus

<i>Percentage of Residency Hires</i>	<i>Abatement Bonus Percentage</i>	<i>Minimum Employment</i>
25% City Residents Employed	5% Abatement Bonus	20 New Hires
50% City Residents Employed	10% Abatement Bonus	40 New Hires

***Target Industries included in Exhibit B are excluded from Minimum Employment Requirements.

Exhibit D

Minority, Women, and Locally Owned Business Bonus

MBE / WBE / LBE Participation Percentage	Abatement Bonus Percentage
LBE – 15% WBE – 5% Combined Total – 20%	5% Abatement Bonus
LBE -20% WBE – 10% Combined Total – 30%	10% Abatement Bonus

Exhibit E
Environmental Design Bonus

LEED Certification Level	Abatement Percentage Bonus
LEED Certified or LEED Silver	5% Abatement Bonus
LEED Gold or LEED Platinum	10% Abatement Bonus

Exhibit F
Fee Schedule

The following fees are hereby established:

- A. **Application Fee.** For Existing Businesses, a non-refundable application fee of \$1,000 shall accompany all applications for the issuance of Private Activity Bonds or for EDX abatement. For New Businesses, a non-refundable application fee of \$2,000 shall accompany all applications for the issuance of Private Activity Bonds or for EDX abatement.
- B. **Issuance Fee.** For Projects requesting tax abatement, applicants shall pay an issuance fee of (i) .25 of the first \$10 million par amount of Bonds being issued or the amount of EDX abatement being requested, plus (ii) .20 of the par amount in excess of \$10 million but less than \$25 million of Bonds being issued or the amount of EDX abatement being requested. (iii) .15 of the par amount in excess of \$25 million of Bonds being issued. The fee shall be due and payable at the time the Bonds are issued.
- C. **Additional Costs.** The applicant shall reimburse the City for all costs associated with all legal publication notices, application fees to the Board of Tax Appeals, the City's Bond Counsel fees, and all other miscellaneous costs.
- D. **Monitoring Fee.** The City will require an annual compliance review of all Projects receiving tax abatement either from the issuance of Private Activity Bonds or by EDX. The business will be required to submit an annual monitoring fee of \$1,000 for activities required to insure compliance.