

1 (Published in the Topeka Metro News January 5, 2005)
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3 RESOLUTION NO. 7563
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6 A RESOLUTION introduced by the City Council Economic and Community
7 Development Committee relating to the issuance of industrial
8 revenue bonds, providing procedures for review of Industrial
9 Revenue Bond applications and rescinding City of Topeka
10 Resolution No. 6876.
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12 WHEREAS, the Council of the City of Topeka (hereinafter referred to as the "City
13 Council") desires to further encourage development of the City of Topeka (hereinafter
14 referred to as the "City") and its environs, and to consider the issuance of industrial
15 revenue bonds of the City upon its receipt of an application therefore meeting the
16 requirements of this Resolution; and

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

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

23 WHEREAS, in accordance with the provisions of K.S.A. 12-1740 *et seq.*, as
24 amended, the City is empowered to require applicants seeking the issuance of industrial
25 revenue bonds of the City to agree to make payment(s) to the City in lieu of ad valorem
26 taxes if the property acquired with the proceeds of such bonds is exempt from such ad
27 valorem taxation; and

28 WHEREAS, the City Council has determined that the social and economic
29 benefits to the City and its inhabitants associated with the continued and further
30 economic development of the City and its environs exceed the costs thereof to the City
31 and its inhabitants; and

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

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

42 Section 1. DEFINITIONS.

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

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

47 b. Contractor or Subcontractor - the applicant or other person or entity
48 employed by the applicant to perform the construction of the expansion or project

49 receiving any industrial revenue bond proceeds.

50 c. City - City of Topeka, Kansas.

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

53 e. IRB - industrial revenue bonds.

54 Section 2. POLICY.

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

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

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

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

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

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

70 structure.

71 f. Whether the land with which the project is connected fits within the relevant
72 land use plan.

73 g. Whether the proposed project involves retail enterprises.

74 h. Whether the applicant agrees to a payment in lieu of taxes.

75 i. Whether the applicant proposes to utilize resources within the City
76 (contractors, suppliers, sources of funding, etc.) for development of the industrial
77 revenue bond project.

78 j. Whether the applicant is willing to consent to annexation of land on which
79 the facility is situated if the project is to be located outside the City limits.

80 k. Whether the proposed project includes refinancing of any existing debt.

81 l. Whether the applicant agrees to utilize competitive bidding.

82 Section 3. REQUIREMENTS OF THE PROPOSAL.

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

85 Section 4. APPLICATION PROCESS.

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

88 2. The application will be reviewed for the completeness of documents and
89 information. If it is incomplete, the applicant will be advised of the deficiencies and the
90 proposal will be returned to applicant.

91 3. In order to complete the process and allow adequate time for review by the
92 financial, legal, and other staff of the City, the completed application form must be
93 submitted not less than thirty (30) calendar days prior to the date it is expected to be
94 considered by the City Council.

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

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

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

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

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

110 9. The bond ordinance trust indenture and lease agreement will be prepared
111 by bond counsel and be acceptable to the City. The documents will be reviewed by the

112 Chief Administrative Officer, City Attorney, and City Controller.

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

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

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

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

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

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

130 Section 5. BOND ISSUANCE REQUIREMENTS.

131 The bonds will not be issued until satisfaction of all conditions of the City's
132 resolution of intent to issue the bonds. Further, the applicant is required to submit

133 preliminary drafts of the following documents to the department at least five (5) calendar
134 days prior to the first reading by the City Council.

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

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

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

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

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

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

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

151 Section 6. INDUSTRIAL REVENUE BOND COMMITTEE.

152 The IRB Committee shall be composed of the following individuals:

153 The Mayor or Mayor's designee who shall serve as chair of the committee, the

154 City Attorney, the City Controller, the Deputy Mayor, the Chief Administrative Officer,
155 the member of the City Council whose district is affected by the IRB project, and the
156 Chief Administrative Officer.

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

163 Section 7. PAYMENTS IN LIEU OF TAXES.

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

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

175 City Council approval.

176 Section 8. CRITERIA.

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

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

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

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

193 Capital Investment Reduction: A capital investment payment reduction may be
194 calculated if the amount of the capital investment is significant, if the investment
195 contributes to the potential for new job creation or to the retention of existing jobs, if the

196 investment has a positive impact on a particular geographical area of the city where
197 investment is needed, or is such capital investment adds to the general economic
198 welfare of the city. The capital investment reduction shall be determined at the rate of
199 one percent (1%) for each one hundred thousand dollars (\$100,000.00) in capital
200 investment. The Capital investment reductions shall not exceed eighty percent (80%).

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

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

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

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

216 4. Minimum Payment. Any applicant making a payment in lieu of taxes and

217 receiving an IRB payment reduction pursuant to this resolution is required to pay taxes
218 on the assessed valuation of the real estate, including either buildings together with land
219 or land only, prior to the construction of new buildings or added improvements to
220 buildings on such property or prior to the acquisition of the property by the business.
221 This payment will insure that the City, Shawnee County, the affected School District and
222 any other taxing jurisdictions affected will not receive less tax revenue from the property
223 than was received prior to the reduction.

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

233 In addition, the City Council may consider issuing industrial revenue bonds to
234 businesses not qualifying under K.S.A. 79-213 and Section 13 of Article 11 of the
235 Kansas Constitution, in special circumstances and providing a reduction in the payment
236 in lieu of taxes in the same amount as businesses that qualify pursuant to Kansas law
237 K.S.A. 79-213, and Section 13 of Article 11 of the Kansas Constitution, if it is

238 determined that a special value is added to the development of the general economic
239 welfare and property of the City.

240 Section 9. ANNUAL RENEWAL.

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

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

256 Section 10. ELECTION.

257 The policy set forth herein with regard to payments in lieu of taxes and reduced
258 payments in lieu of taxes is considered separate and distinct from the City's policy

259 regarding economic development incentives which is set forth in City of Topeka Code §
260 138-76 *et seq.*, as amended. In the event a property would qualify under both policy
261 resolutions, then the property shall be eligible for only one incentive program which shall
262 be at the election of the applicant.

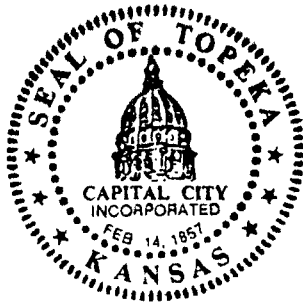
263 Section 11. That Resolution No. 6876 is hereby specifically repealed.

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

266 IT IS SO RESOLVED.

267 ADOPTED and APPROVED by City Council DEC 21 2004.

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CITY OF TOPEKA, KANSAS

James A. McClinton
James A. McClinton, Mayor

ATTEST:

Iris E. Walker
Iris E. Walker, City Clerk

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