

RESOLUTION NO. 032904 - 1

A RESOLUTION ESTABLISHING POLICY AND PROCEDURES FOR CONSIDERING AND OFFERING OF INDUSTRIAL REVENUE BOND FINANCING AND AD VALOREM TAX EXEMPTIONS IN CONJUNCTION WITH INDUSTRIAL REVENUE BOND FINANCING.

WHEREAS, the City Commission is responsible for encouraging and promoting the economic health of the City; and

WHEREAS, the City Commission is authorized by Kansas law to issue industrial revenue bonds (IRBs) to further that objective; and

WHEREAS, the consideration and issuance of IRBs is a complex policy, legal and administrative matter requiring clear direction from the City Commission.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF ABILENE, KANSAS THAT:

PART I. INDUSTRIAL REVENUE BONDS

SECTION 1. INDUSTRIAL REVENUE BOND POLICY:

It shall be the policy of the City to consider requests from business entities to issue IRBs for purposes allowed by law when, in the opinion of the City Commission, it is in the best interest of the City to do so, and providing that the proposed use and applicant business meet the criteria set forth in this policy. In addition, this Resolution establishes the official policy and procedures for considering and granting property tax exemption incentives for IRB projects under the authority of K.S.A. 79-201a. Second, as amended, for real property and tangible personal property purchased or constructed with proceeds of IRBs issued under the authority of K.S.A. 12-1740 et seq. and amendments thereto.

SECTION 2. OBJECTIVES

In reviewing requests to issue IRBs, the City Commission shall be guided by whether such an issue would help the City achieve the following objectives:

Promote Abilene as a tourist destination by providing visitor amenities and preservation of Abilene's historic assets;

Promote investment within existing industrial parks in Abilene and encourage the development of new industrial enterprises within the City;

Promote the rejuvenation and/or redevelopment of downtown and aging commercial areas;

Attract firms and businesses which will enhance the economic climate and diversity of the City and increase or maintain the job market therein; and

Promote the provision of quality, affordable, elderly and special needs housing opportunities.

### SECTION 3. REVIEW CRITERIA

The following criteria will be used by the City Commission to judge the desirability and feasibility of IRB proposals:

The proposal must be that IRBs be issued 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, health care related facilities, industrial, natural resources, recreational development and manufacturing projects.

The proposal must not have a serious detrimental effect on an existing business or industry in the City. IRBs will be discouraged when the effect would be to grant the applicant business an unfair competitive advantage within the local market.

The proposed use must be nonpolluting and consistent with all development regulations and other applicable City codes.

The proposed use must not overburden or threaten public facilities, infrastructure or services.

The applicant business must have a sound financial base indicated by a reputable index of financial strength and show that the bonds will be marketable either by producing evidence that they will be underwritten by a registered securities dealer or will be sold in a private sale.

### SECTION 4. APPROVAL CONDITIONS

Prior to approval for issuance of IRBs, the City Commission must be satisfied that the objectives and criteria for review established in this policy have been met. Further, all proposals approved shall be subject to the following conditions:

The City will review applications and decide whether to grant tax exemption incentives in accordance with state law and as set forth in Part II of this policy, which establishes policy and procedures for tax exemption incentives relating to the issuance of IRBs.

The applicant business shall agree to pay all utility connections, impact fees, user fees and service charges.

IRBs may be used to finance the purchase of real property and tangible personal property associated with the project.

The applicant business shall pay to the City at the prescribed time a service fee of \$500 per million dollars of issue or \$1,000, whichever is less.

The City will not accept proposals:

For the establishment of a new business or industry if the request is for a bond issuance of less than \$500,000 principal amount.

For the expansion, relocation, or retention of existing business or industry if the request is for a bond issuance of less than \$250,000 principle amount.

The City will carefully examine the bond repayment schedule and will require that the applicant business have at least 20 percent unreserved equity in the project. Equity participation does not include professional or consulting fees.

IRBs will not be used to refinance existing debt. This does not include the payment of an existing mortgage on real estate in order to purchase it for the proposed project.

The applicant business agrees to immediate annexation of the property involved if it is not within the City's corporate limits. In addition, the applicant business shall comply with all laws of the City and all requirements established by the City as stated in zoning and building regulations.

The City will request a Sales Tax Exemption Certificate for the project under conditions established by the state.

The Resolution of Intent shall be effective for a period of nine (9) months from the date of issue. A single extension not to exceed six (6) months may be granted by the City Commission. The applicant business is responsible for all related costs if the bonds are not issued.

An IRB application must be submitted to the Community Development Director or his/her designee at least three (3) weeks prior to the City Commission considering the proposal.

All costs associated with the issuance of bonds shall be paid by the applicant. The City shall not be obligated for any costs for issuing bonds. In addition, the City shall not have any liability to bondholder(s) if there is a default in repayment by the applicant.

## SECTION 5. CITY COMMISSION ACTION

Prior to the issuance of IRBs, the City Commission shall conduct at least two (2) public hearings to adopt a "Resolution of Intent to Issue IRBs" and consider an ad valorem property tax exemption. The City Commission, by its inherent authority, reserves the right to reject or amend any proposal for issuance of IRBs when it considers such action to be in the best interest of the City.

## PART II. AD VALOREM PROPERTY TAX EXEMPTION

### SECTION 1. OBJECTIVE OF TAX EXEMPTIONS

The City is committed to quality and balanced growth and development of the community, to working continually to improve the quality of life for its citizens, and to maintaining a skilled and competitive work force. Insofar as these objectives are generally served by the expansion of the tax base and enhancement of the local economy, the City will, on a case-by-case basis, give consideration to providing tax abatement as a stimulant for the economic development of the

community. It is the policy of the City that said consideration will be provided in accordance with the guidelines, criteria, and procedures outlined in this Resolution. Nothing herein shall imply or suggest that the City is under any obligation to provide tax abatement to any applicant.

## SECTION 2. LEGAL AUTHORITY TO EXEMPT PROPERTY TAXES

Certain real property and tangible personal property purchased or constructed with proceeds of IRBs issued pursuant to K.S.A. 12-1740 et seq., as amended, may be exempted from taxation for a period of 10 calendar years after the calendar year in which the bonds were issued in accordance with K.S.A. 79-201a. Second as amended. Pursuant to K.S.A. 12-1741, as amended, the City may execute agreements which in accordance with K.S.A. 12-1742, as amended, may provide for payment in lieu of taxes and provide for an origination fee and for the actual costs of administering and supervising the bond issue.

Prior to the approval of a "Resolution of Intent to Issue IRBs" which includes an agreement for ad valorem property exemption for property to be financed by IRBs, the City Clerk shall notify in writing the governing board of Dickinson County, Unified School District #435, Township and other taxing entities within which the property proposed for exemption is located.

## SECTION 3. GENERAL PROCEDURE

The following general procedure shall govern the considering and granting of tax exemption incentives for IRB projects:

The applicant business shall apply for a tax exemption incentive by filing a written application as provided in Part II, Section 5 of this Resolution.

If the City determines (a) that the requested tax exemption incentive lawfully may be granted, and (b) that the initial IRB request is worthy of further consideration, the City shall prepare a cost-benefit analysis report on the requested tax exemption incentive as provided in Part II, Section 9 of this Resolution.

The City shall then determine whether some or all of the proposed tax exemption incentive should be granted, pursuant to the guidelines in Part II, Section 13 of this Resolution.

If the City determines that some or all of the tax exemption incentive should be granted, a 100% exemption of that real property and tangible personal property legally eligible for exemption may be granted, but subject to an agreement of the applicant business will make in lieu tax payments in an amount not less than the taxes otherwise payable if the property were not exempt. This amount will be determined in accordance with this Resolution.

## SECTION 4. "TAX INCENTIVE" AND "TAX EXEMPTION INCENTIVE" DEFINED

The terms "tax incentive" and "tax exemption incentive" shall both mean the difference between the amount of general ad valorem property taxes the affected business would pay if there were no city-granted exemption and the amount required to be paid as in lieu of taxes. For example, if the taxes required to be paid with no exemption were \$5,000, and the required in lieu tax payments were

\$3,000, the "tax incentive" or "tax exemption incentive" would be \$2,000.

#### SECTION 5. APPLICATION REQUIRED

The City will not consider the granting of any tax exemption incentive unless the applicant business submits a full and complete application, and provides such additional information as may be requested by the City Commission. The Community Development Director is hereby authorized and empowered to prepare a standard application form which, upon completion, will provide the City Commission with adequate and sufficient information to determine whether a tax exemption incentive should be granted and the amount thereof. The accuracy of the information provided in the application shall be verified by the applicant business. Any misunderstanding of or error in fact may render the application null and void and may be cause for the repeal of any action taken in reliance upon said information.

#### SECTION 6. APPLICATION FEE

Any applicant business requesting a tax exemption incentive pursuant to this Resolution shall pay to the City a nonrefundable application fee of \$250, which shall be submitted at the same time the application form required in Part II, Section 5 of this Resolution is submitted. Annual monitoring applications, as provided for in Part II, Section 15 of this Resolution must be accompanied with a fee of \$50 to defray on-going monitoring costs.

#### SECTION 7. INITIAL REVIEW PROCEDURE

On receipt of the completed application form and the required fee, the Community Development Director shall determine (a) whether the application is complete and sufficient for review, and (b) whether the property is eligible for an exemption under this Resolution and any other applicable state laws. If the application is incomplete, the Community Development Director shall immediately notify the applicant business, noting the need for such changes or additions as deemed necessary. If questions arise as to whether the business is legally eligible for a tax exemption incentive, the matter shall be referred to the City Attorney, who shall consult with the applicant business. If the application is found to be complete, and is for a purpose which appears to be authorized by law, the Community Development Director shall so notify the Abilene Tax Exemption Review Committee (ATERC). The ATERC consists of the City Manager, Community Development Director, City Attorney, City Finance Director and the Chairman of the Economic Development Council (EDC).

#### SECTION 8. ADMINISTRATIVE REVIEW

The ATERC will review requests and applications for tax exemption incentives, conduct preliminary discussions with the applicant business, and if the applicant business meets the threshold objectives of this Resolution, the Community Development Director shall prepare a cost-benefit analysis report, which shall be submitted to the City Commission for consideration. The records generated by the applicant business and by the City may be withheld from public disclosure under the Kansas Open Records Act as provided for under subsections (20) and (31) and other subsections of K.S.A. 45-221, as amended, but shall be available for public inspection when otherwise required by law.

#### SECTION 9. COSTS/BENEFIT ANALYSIS

The City will consider granting tax exemption incentives only 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. Before a tax exemption incentive is granted to an applicant business, the City shall prepare, or direct to the applicant to be prepared, a cost-benefit analysis report which shall examine the costs and benefits to the public of the proposed tax exemption incentive. The cost-benefit analysis report shall consider, but not be limited to, the following factors, as applicable:

The increase in appraised valuation of the property;

The sales and income tax revenue which may result;

The number of new jobs, the earnings and the benefits that will be provided;

The compatibility of the location of the applicant business with land use and development plans of the City and the availability of existing infrastructure facilities and essential public services;

The expenditures that local government will need to make to provide streets, water, wastewater, police protection, fire protection, parks, libraries, schools and other public facilities and services to the applicant business and new residents directly associated with the job creation resulting from the IRB issue;

Other public or private expenditures associated with attracting the new applicant business;

The kinds of jobs created in relation to the types of skills available from the local labor market;

The degree to which the ultimate market for the business products and services produced by the applicant business is outside the community, recognizing that outside markets bring "new money" to the local economy;

The potential of the applicant business for future expansion and additional job creation;

The beneficial impacts the applicant business may have by creating other new jobs and businesses, including the utilization of local products or other materials and substances in manufacturing;

An evaluation of the applicant business's current and projected financial strength and market viability;

The gain in tax revenue which may result from the new or expanded business, including the increase in the real property and tangible personal property tax base upon the expiration of the exemption.

## SECTION 10. NOTICE AND HEARING

No tax exemption incentive shall be granted by the City prior to notice and a public hearing as required by K.S.A. 12-1749c. The public hearing may be held at a regular or special meeting of the City Commission. Notice of the public hearing shall be published at least once seven (7) days prior

to the hearing in the official City newspaper, giving the purpose, time and place of the hearing. The City Clerk shall thereupon notify in writing the Board of Dickinson County Commissioners, the Superintendent of USD #435, the Township Board and other taxing entities within which the property proposed for exemption is located, and advise them of the scheduled public hearing and invite their review and comment. Upon request, the City Clerk shall provide any such agency with a copy of the application. The applicant business shall be invited, but not required, to attend the public hearing.

#### SECTION 11. GOVERNING BODY ACTION

Upon receiving the ATERC recommendation and the cost/benefit analysis, the City Commission shall first determine whether to reject the requested tax exemption incentive or to further consider the request. Upon a favorable vote for further consideration, the City Commission shall instruct staff to prepare the necessary agreement providing for the payment in lieu of taxes.

#### SECTION 12. MINIMUM PAYMENT IN LIEU OF TAXES

Any applicant business receiving a tax exemption incentive pursuant to this Resolution shall be required to make a minimum payment in lieu of taxes which equals the amount of the general ad valorem property tax which was paid or was payable for the most recent year on the assessed valuation of the property proposed to be exempted, including buildings and tangible personal property together with land, either prior to the construction of new buildings or added improvements to buildings and added tangible personal property on such land or prior to the acquisition of the property by the new business. The purpose of requiring this minimum in lieu tax payment is to ensure that the City, County, School District and any other taxing entities affected by the exemption will not receive less tax revenue from the exempted property than was received prior to the exemption.

#### SECTION 13. AMOUNT OF TAX EXEMPTION INCENTIVES

*Criteria* - The two primary objectives of the City in granting tax exemption incentives are:

To provide needed jobs; and

To expand the economic and tax base of the City.

The City recognizes that a simple system of determining the amount of tax exemption incentives to be granted to reach these objectives may not always be equitable if applied uniformly to different kinds of businesses. As a result, in determining the actual amount of tax exemption incentive granted, the City shall consider the factors reported in the cost/benefit analysis and the criteria set forth in Subsection B to this Section.

*Limitation* -

No tax exemption incentives shall be given for the establishment of a new business or industry if the request of the applicant business is for a bond issuance of less than \$500,000 principal amount; and

No tax exemption incentives shall be given for an expansion, relocation or retention of an existing business or industry if the request of the applicant business is for a bond issuance of less than \$250,000 principal amount.

*Amount* – The amount of tax exemption incentive is expressed as a percent of the additional taxes due as a result of the IRB funded project. The incentive amount consists of a minimum “base exemption” and a “performance exemption”, which is based on capital investment and job creation.

**Base exemption.** Said tax exemption incentive may be granted for 50% of the property taxes due on projects with at least \$250,000 of new capital investment and that create a minimum of two (2) new full time equivalent (FTE) jobs. All newly created jobs shall be non-contractual jobs with benefits that are currently available to existing full time employees.

**Performance exemption.** The City will consider increasing the amount of tax exemption up to 100% by giving consideration to the amount of capital investment and FTE jobs created based on the scale presented in Table 1. Table 2 provides an example of the tax exemption percent calculation.

*Table 1: Performance Exemption Scale*

Performance Measure	Incentive Percent
Every \$25,000 capital investment over \$250,000	2%
Every FTE jobs created over 3	2%

**Table 2: Tax Exemption Percent Calculation**

<b>New Construction Project</b>		
<b>Capital Investment = \$1,250,000</b>		
<b>FTE Jobs Created = 15</b>		
<i>Base Exemption</i>		50.0%
<i>Capital Investment Incentive</i>		
Capital Investment	\$1,250,000	
Minimum Capital Investment ( <i>Subtract</i> )	\$500,000	
Capital Investment Eligible for Incentive	\$750,000	
Incremental Investment ( <i>Divide</i> )	\$25,000	
Eligible Incremental Investments	30	
2% for each Incremental Investment ( <i>Multiply</i> )		60.0%
<i>Job Creation Incentive</i>		
FTE Jobs Created	15	
Minimum Job Creation ( <i>Subtract</i> )	2	
Jobs Created Eligible for Incentive	13	
2% for each Eligible Job Created		26%
<b>Total Exemption Percent*</b>		<b>136%</b>
<i>* Not to exceed 100%</i>		

*Descending exemption scale* – The calculated tax exemption incentive will be applied according to the scale shown in Table 3. For example, a project with a tax exemption incentive of 80% would receive a tax exemption of 100% of 80% in years 1 through 5 and 50% of 80% (or 40%) in years 6



through 10. Table 4 provides an example of the application of the descending exemption scale to the tax exemption percent.

Table 3: Descending Exemption Scale

Exemption Period	Descending Percent
Years 1 through 5	100%
Years 6 through 10	50%

Table 4: Application of the Descending Exemption Scale

Year	Appraised Value Eligible <sup>1</sup>	Tax Exemption Percent	Tax Exempt Value Prior to Descending Scale	Descending Scale	Tax Exempt Value
1	1,000,000	99.5%	\$995,000	100.0%	\$995,000
2	1,000,000	99.5%	\$995,000	100.0%	\$995,000
3	1,000,000	99.5%	\$995,000	100.0%	\$995,000
4	1,000,000	99.5%	\$995,000	100.0%	\$995,000
5	1,000,000	99.5%	\$995,000	100.0%	\$995,000
6	1,000,000	99.5%	\$995,000	50.0%	\$497,500
7	1,000,000	99.5%	\$995,000	50.0%	\$497,500
8	1,000,000	99.5%	\$995,000	50.0%	\$497,500
9	1,000,000	99.5%	\$995,000	50.0%	\$497,500
10	1,000,000	99.5%	\$995,000	50.0%	\$497,500

*City Commission Discretion* – The City Commission reserves the right to vary from the tax incentive amount and descending exemption scale when it is determined that an extraordinary public benefit would result.

#### SECTION 14. COMPLETION REVIEW

Each tax exemption incentive granted in connection with IRB projects shall be subject to a review to determine project completion. This review shall be for the purpose of determining if the economic benefits stated in the application are achieved, if the estimated percent and term of the exemption remain valid, and if the business is in compliance with any established terms and conditions. In the event that a capital investment project has not been completed, the review status shall be considered “in-progress” and no tax exemption incentive shall be granted. If the capital investment project is complete but the employment goal has not been reached and hiring remains active, the applicant business may request to be considered “in-progress” and receive no tax exemption, or be considered partially complete as long as the minimum employment and investment threshold is met and may receive a prorated tax exemption for the subject year. A prorated exemption shall count against the tax exemption term. In any case a project shall be considered complete if more than 36 months have elapsed since initial approval of the “Resolution of Intent to Issue IRBs”, unless otherwise requested by the applicant and approved by the City Commission.

<sup>1</sup> In reality, the Eligible Appraised Value will change from year to year.

*Filing date and fee* - The application for completion review shall be filed within two (2) months after the completion date as set forth in the application, unless extended as set forth herein. The filing fee shall be \$125.00 and is nonrefundable. There shall be no filing fee for an in-progress review.

*Business information* - The recipient business shall provide information pertaining to the number of full-time permanent jobs created as a result of the project, the actual amount of capital invested in the project, the ongoing nature of business activities, an "as-built" site plan of the completed project, and any other data that may reasonably be requested.

*Review process* - The ATERC will review the application and submit a recommendation to the City Commission within 45 days. The City Commission will consider the application and the ATERC recommendation at a public hearing, advance notice of which shall be as provided for the hearing on the original application. Approval of the certification of compliance shall be in the form of a certificate of compliance resolution determining compliance with this Resolution.

*Certification* - If certification of compliance for the IRB tax exemption incentive is granted, a State of Kansas exemption claim form shall be filed with the Dickinson County Appraiser within 30 days of the certificate of compliance resolution. A copy of the original "Resolution of Intent to Issue IRBs" and a copy of the certificate of compliance resolution shall be submitted with said claim form.

*Revocation* - The City Commission reserves the right to revoke or modify a granted IRB tax exemption incentive due to a fraudulent submittal of an application, failure to submit the completion review application and supporting information, failure to meet qualifying criteria, or failure to comply with established terms or conditions. Failure to produce the stated economic benefits will result in a reduction or loss of tax exemption incentive.

## SECTION 15. ANNUAL COMPLIANCE REVIEW

Following receipt of certification of compliance, each IRB tax exemption incentive granted shall be subject to an annual compliance review of business status. This review shall be for the purpose of determining if the business continues to meet eligibility criteria and remains in compliance with any established terms or conditions.

*Filing date and fee* - The application for monitoring review shall be filed on an annual basis no later than January 15 of each year for the term of the exemption. The filing fee shall be \$100.00 and is non-refundable.

*Business information* - The recipient business shall provide information pertaining to the ongoing nature of business activities, average total monthly employment, any change in majority ownership of the business and any other data as may reasonably be requested.

*Review process* - The ATERC will review the application and, unless ineligibility or noncompliance is evident, the City Clerk shall issue a certificate of compliance. In the alternative, the ATERC shall submit a recommendation to the City Commission for their determination of compliance, which may result in a reduction or revocation of the IRB tax exemption incentive.

*Certification* - If compliance is deemed to exist, a written statement, signed by the City Clerk, that the property continues to meet all terms and conditions established as a condition of granting an exemption, shall be attached to the IRB tax exemption incentive claim form filed with the Dickinson County Appraiser.

#### SECTION 16. EXACTIONS

Any general ad valorem property tax exemption granted for real property and tangible personal property pursuant to this Resolution shall not affect the liability of such property for any impact fees, special assessments or other exactions levied or to be levied against such property.

#### SECTION 17. DISTRIBUTION OF REVENUE

The payment in lieu of taxes agreement required under this Resolution shall provide that all payments in lieu of taxes be transmitted to the Dickinson County Treasurer, who shall apportion such payments in accordance with K.S.A. 12-1742, as amended.

#### SECTION 18. NOMINAL TAX DETERMINATION

All property of a business receiving a tax exemption incentive under this Resolution shall be appraised and assessed annually by the Dickinson County Appraiser in the same manner as if it were not exempt, but the amount thereof shall not be placed on the assessment rolls. The amount of the general ad valorem property taxes which would have been payable shall also be determined annually by the Dickinson County Clerk and Treasurer, in the same manner as if the property were not exempt, but such amount shall not be placed on the tax rolls. Separate assessment and tax calculations shall be made for the land, for the improvements thereon, and for any tangible personal property associated therewith, of the exempt business. The appropriate county officers are requested to provide the City with this information as early as possible, but by not later than November 15 of each year.

#### SECTION 19. WAIVER OF REQUIREMENTS


The City Commission reserves the right to grant or not to grant a tax exemption incentive under circumstances beyond the scope of this Resolution, or to waive any non-statutory procedural requirement. However, no such action or waiver shall be taken or made except upon a finding by the City Commission 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. The City Commission shall not waive any procedural requirements required by state law.

#### SECTION 20. TAX EXEMPTION INCENTIVE FILINGS

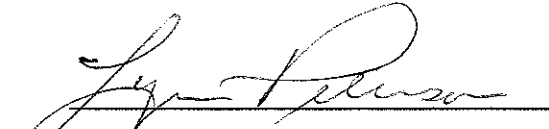
The City shall file a statement with the Board of Tax Appeals in accordance with K.S.A. 12-1744(a), as amended; file the initial request for tax exemption incentive with the County Appraisers Office in accordance with K.S.A. 79-213, as amended; and file the annual request for exemption in accordance with K.S.A. 79-210, as amended.

ADOPTED this the 29th day of March, 2004.

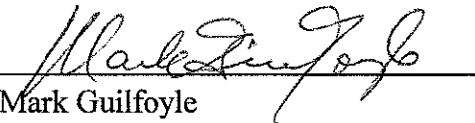


ATTEST  


Penny Soukup  
City Clerk

  
Lynn Peterson  
Mayor

APPROVED AS TO FORM:

  
Mark Guilfoyle  
City Attorney