



# City of Chanute

## STATEMENT OF POLICY AND PROCEDURES TAX EXEMPTIONS AND INCENTIVES FOR ECONOMIC DEVELOPMENT

---

### **Section 1. Purpose.**

The purpose of this statement is to establish the official policy and procedures of the City of Chanute for the granting of property tax exemptions and tax incentives for real and tangible personal property used for economic development purposes, in accordance with the provisions of Section 13 of Article 11 of the Constitution of the State of Kansas.

### **Section 2. General Objective.**

The securing of private economic growth and development and the addition of new jobs within the community are important current and long-term objectives of this City. The granting of property tax exemptions and tax incentives is one of the tools available under Kansas's law to help secure these public objectives. This statement is intended to establish the procedure and policy standards to govern the fair, effective and judicious use of the power to grant such exemptions and tax incentives in this City.

### **Section 3. Legal Authority.**

The governing bodies of Kansas counties and cities may exempt certain property used for economic development purposes from taxes for a maximum of 10 years, in accordance with the provisions of Section 13 of Article 11 of the Kansas Constitution, subject to such limitations or prohibitions as may be enacted by the Legislature that are uniformly applicable to all cities and counties. This authority is discretionary with the City, and the City may provide for tax

exemptions/incentives in an amount and for purposes more restrictive than that authorized by the Constitution or any such legislation. Pursuant to its home rule powers, the City may (1) require the owners of any property for which an exemption is requested to provide certain information, (2) condition the granting of an exemption to an agreement providing for the payment of in lieu charges or taxes under the provisions of K.S.A. 12-147 and 12-148, and (3) require the payment of initial application and annual renewal fees reasonably necessary to cover the costs of administration.

#### **Section 4. Eligible Businesses.**

In accordance with Article 11 of the Kansas Constitution, a tax exemption, not in connection with an industrial revenue bond issue, will be considered only for businesses engaged in the following activities:

- a. Manufacturing articles of commerce as defined by the Standard Industrial Classification Manual which describes manufactures as “establishments engaged in the mechanical or chemical transformation of material or substances into new products;” or
- b. Conducting research and development relative to the manufacturing of a product;  
or
- c. Storing goods or commodities which are sold or traded in interstate commerce.

#### **Section 5. General Procedure.**

The following basic procedure shall govern the issuance of tax exemptions/incentives with this City: (1) The applicant business shall apply for a tax exemption/incentive by filing a written application as provided in Section 16 (2) The City shall then determine whether the requested tax exemption/incentive (a) may be lawfully granted, and (b) should be granted, with the amount thereof later determined (3) If it is determined that some tax exemption/incentive should be granted, a 100 percent exemption of that property of the business legally eligible for exemption

shall be provided, but subject to an agreement of the business to make an in lieu tax payment as may be required by the City (4) The amount of the tax incentive, which will be an amount less than the taxes otherwise payable if the property were not exempt, will then be determined in accordance with the Statement (5) Upon the failure of the business to fully and timely pay the in lieu of tax payments, as may be required as a condition of the granting of an exemption, or to provide reports or other information requested by the City and necessary for the implementation of this policy, the City may either deny, revoke, or not renew, the authorization of such an exemption. All requests for a tax exemption/incentive for economic development purposes shall be considered and acted upon in accordance with this statement.

#### **Section 6. "Tax Incentive" Defined.**

Various words and terms used in the Statement are defined in Section 28. The terms "tax incentive" or "tax exemption/incentive" shall mean the difference between the amount of ad valorem property taxes the affected business would pay if there were no city-granted exemption and the amount required to be paid in lieu taxes or charges. For example, if the taxes required with no exemption were \$5,000, and the required in lieu payment were \$3,000 the "tax incentive" would be \$2,000.

#### **Section 7. Jurisdiction.**

The City encourages the Board of Commissioners of Neosho County to consult with the City as to applications to tax incentives relating to property located outside the City. The City shall grant tax exemptions/incentives only as to property located within the City.

#### **Section 8. Nominal Tax Determination.**

All real and tangible personal property of a business receiving a tax exemption/incentive under this Statement shall be initially assessed by the county appraiser in the same manner as if it were not exempt, but the amount thereof shall not be placed on the assessment 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.

### **Section 9. Minimum Payment in Lieu of Taxes.**

Any applicant receiving a tax exemption/incentive pursuant to this statement shall be required to make a minimum payment in lieu of taxes which equals the amount of real and tangible property tax which was paid, or was payable, for the most recent year on the appraised valuation of the real estate and tangible personal property, including either buildings, together with land, or land only, prior to the construction of new buildings or added improvements to buildings on such property or added improvements to buildings on such property or prior to the acquisition of the property by the new business. The purpose of requiring this minimum in lieu tax payment is to insure that the City, County, school district and any other taxing jurisdictions affected by the exemption will not receive less tax revenue from the exempted property than was received prior to the exemption. For extraordinary reasons, such as when vacant buildings are acquired for a new business, or when the market value of the property decreases, this requirement may be waived in part or in whole by the governing body, as provided in section 27.

### **Section 10. Special Assessments.**

Any tax exemption granted for real property under this Statement shall not affect the liability of such property for any special assessments levied, or to be levied, against such property.

### **Section 11. Pirating.**

It shall be the policy of the City to discourage applications for tax exemptions/incentives, or to grant such tax incentives, which deliberately encourage and cause the pirating of business from another Kansas community to this community, or from this community to another Kansas community. It is the intent of the City to avoid participation in "bidding wars" between cities or areas competing for location of new businesses or expansion of existing businesses, through

attempts to offer the largest tax incentive or other public inducement, which is detrimental to the State's economy and the public interest.

### **Section 12. Application for “But-For Principle.**

Any tax exemption/incentive granted by the city shall be subject to the "but-for" principle, i.e., the tax incentive must make such a difference in determining the establishment or expansion of the business that the business would not otherwise be established or expanded in the City but for the availability of the tax incentive. It is the policy of the Governing Body that private businesses should not be granted exemption, unless some public good results and the exemption makes significant difference in achieving economic growth and development and the creation of new jobs within the City.

### **Section 13. Standards for Determining Benefits.**

The City will consider granting tax exemptions/incentives only upon a clear and factual showing of direct economic benefit to the City through advancements of its economic development goals, including the creation of additional jobs and the stimulation of additional private investment.

### **Section 14. No Exemptions.**

(1) No tax exemption shall be granted if the exemption would create, in the judgment of the Governing Body, an unfair advantage for one business over another competing business within the City (2) No tax exemption shall be granted to any business unless new employment is created or capital expansion is planned.

### **Section 15. Amount of Tax Incentives.**

The two primary objectives of the City in granting tax exemptions for economic development are to (1) provide needed jobs, and (2) expand the economic and tax base of the city. The City recognizes that a simple system of determining the amount of tax 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 incentive granted, the

Commission shall consider the factors and criteria set forth in Section 13 of this Statement, however, the following amounts are intended to establish the City's tax incentive formula:

	<u>Real Property</u>	<u>Personal Property</u>
Year One	100% Exemption	100% Exemption
Year Two	100% Exemption	100% Exemption
Year Three	100% Exemption	100% Exemption
Year Four	100% Exemption	100% Exemption
Year Five	100% Exemption	100% Exemption
Year Six	100% Exemption	80% Exemption
Year Seven	100% Exemption	60% Exemption
Year Eight	100% Exemption	40% Exemption
Year Nine	100% Exemption	20% Exemption
Year Ten	100% Exemption	20% Exemption

Threshold for base exemption is the creation of two new jobs; OR \$50,000 capital investment; OR the increase of 2% of Net Fixed Assets facilities or machinery/equipment in Chanute (over amount on balance sheet for the prior fiscal year); AND business must be current on all financial obligations with City, County, and State and in good financial condition.

An additional year of 100% exemption is available based on one or more of the following criteria being met over the base exemption:

1. Job Creation -- for each net two new jobs created; OR
2. Capital Investment -- for each \$25,000 in capital investment; OR
3. Increase in Net Fixed Assets -- for each 2% increase.

A 100%/ 10 year exemption is available for either or a combination of:

1. The creation of 12 new jobs;
2. A \$175,000 capital investment;
3. A 12% increase in net fixed assets in facilities or machinery/equipment in Chanute.

## **Section 16. Application Required.**

The City will not consider the granting of any tax exemption/incentive unless the business submits a full and complete application and provides such additional information as may be requested by the Governing Body. In addition, a non-refundable fee of \$100 shall accompany each application for tax exemption, to defray expenses incurred in processing and evaluating the application. The City Manager is hereby authorized and empowered to prepare a standard application form which, upon completion, will provide the Governing Body with adequate and sufficient information to determine whether a tax incentive should be granted and the amount thereof. The applicant shall verify the accuracy of the information provided in the application. Any misstatement of or error in fact may render the application null and void and may be cause for the repeal of any ordinance adopted in reliance on said information. The business must acknowledge in the Application for Tax Exemption that they understand the City's Governing Body cannot assure tax exemption.

#### **Section 17. Initial Review Procedure. .**

On receipt of the completed application form and the required fee, the City Manager shall determine (a) whether the application is complete and sufficient for review, and (b) whether the applicant business is eligible for an exemption under the Kansas Constitution, this Statement and any other applicable laws. If the application is incomplete, the City Manager shall immediately notify the applicant, noting the need for such changes or additions as deemed necessary. If questions arise as to whether the business is legally eligible for an exemption, the matter shall be referred to the City Attorney, who shall consult with the applicant business. If the application is found complete, and is for a purpose which appears to be authorized by law, the City Manager shall so notify the Administrative Review Committee.

#### **Section 18. Administrative Review Committee.**

There is hereby created an Administrative Review Committee, which shall be composed of the City Manager, who shall serve as chairman, the City Clerk, and the Economic Development Director and City Attorney, which shall meet on call of the Chairman. The purpose of the Administrative Review Committee shall be to receive and review requests and applications for tax exemptions/incentives, to gather and review such additional information as may be deemed necessary, to conduct preliminary negotiations with the applicant business and to make such recommendations as deemed advisable to the Governing Body. Administrative Review Committee records, including applications for tax exemptions, 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. Supp. 45-221, but shall be available for public inspection when otherwise required by law. The committee is authorized to issue administrative letters of intent when requested by the applicant upon a finding that the public interest requires confidentiality in order to successfully negotiate the location of the prospective business within the City of the expansion of an existing business. Such administrative letters of intent shall not be binding on the Governing Body or by any letter of intent issued by the Governing Body under Section 21.

### **Section 19. Initial Governing Body Action.**

Upon receiving the recommendations of the Administrative Review Committee, the Governing Body shall first determine whether to reject the requested exemption or to further consider the request. Upon a favorable vote for further consideration, the Governing Body shall either (1) issue a letter of intent as provided by Section 21, or (2) schedule a public hearing thereon.

### **Section 20. Public Meeting.**

No tax exemption shall be granted by the City prior to a public meeting hereon. The meeting may be a regular or special meeting of the Governing Body. The City Clerk shall give notice of the public hearing by publishing it at least once seven (7) days prior to the hearing in the official City or county newspaper and shall indicate the purpose, time and place thereof. In addition to

such publication notice, the City Clerk shall notify, in writing, the Governing Body of the County, Unified School District and Junior College within which the property proposed for exemption is located.

### **Section 21. Letters of Intent.**

Upon receiving the recommendations of the Administrative Review Committee, the Governing Body may issue a letter of intent, setting forth in general terms, its proposed plans for granting a tax exemption/incentive and any conditions thereto. Such letters of intent shall be issued only with the approval of the Governing Body, and as an expression of good faith intent, but shall not in any way bind the City to the granting of an exemption/incentive. Such letters of intent shall expire six months after issuance, but may be renewed. Letters of intent issued by the Governing Body supersede letters issued by the Administrative Review Committee.

### **Section 22. Annual Review.**

The extent and term of any tax exemption/incentive granted shall be subject to annual review and determination by the Governing Body to insure that the ownership and use of the property and any other qualifying criteria of the business for the tax exemption/incentive continue to exist. The recipient shall file with the City, not later than February 1 of each year, a statement or statements evidencing continued qualification for the abatement. This statement shall include total employment figures for the business as of January 1<sup>st</sup> of that year. Failure to submit this statement, any material omission or misstatement of fact in information provided to the City in any such statement or renewal application may be cause for repeal of any tax incentive either adopted, renewed, extended or to be granted in the future.

### **Section 23. Transfer of Ownership or Use.**

No exemption or tax incentives granted by the City shall be transferred as a result of a change in the majority ownership of the business. Any new owner shall file a new application for a tax

exemption/incentive. Further, the City shall be notified by the business of any substantive change in the use of a tax-exempt property (see Section 26).

#### **Section 24. Distribution of Revenue.**

The granting of tax exemptions/incentives by the City is hereby declared to be a contract under the provisions of K.S.A. 12-147. The in lieu of taxes payment which may be required of a business granted a tax exemption under this Statement shall be paid to the County Treasurer, with notice of the amount and date paid provided to the City. The County Treasurer is directed to apportion the payment, under the provisions of subsection (3) of K.S.A. 12-148, to the general fund of all taxing subdivisions, excluding the state which levy taxes on property where the business is situated. The apportionment shall be based on the relative amount of taxes levied, for any and all purposes, by each of the applicable taxing subdivisions.

#### **Section 25. Exemption ordinance.**

The City Clerk shall provide a copy of the ordinance, as published in the official city newspaper, granting an exemption from taxation to the applicant for use in filing an initial request for tax exemption as required by K.S.A. 79-213, and by K.S.A. 79-210 for subsequent years.

#### **Section 26. Exemption Forms.**

A copy of the exemption applications required by K.S.A. 79-213 and 79-210, and the statement required by K.S.A. 79-214 for the cessation of an exempt use of property, shall be filed with the City Clerk by the property owner.

#### **Section 27. Waiver of Statement Requirements.**

The Governing Body reserves the right to grant or not to grant a tax exemption/incentive under circumstances beyond the scope of this Statement, or to waive any procedural requirement. However, no such action or waiver shall be taken or made, except upon a finding by the Governing Body that a compelling and imperative reason or emergency exists, and that such action or waiver is found and declared to be in the public interest.

## **Section 28. Definitions.**

For the purpose of this Statement, in application to the City, the words or phrases as used in either the Constitution or this statement shall have meaning or be construed as follows:

- a) "Applicant" shall mean and include the business, property owner or owners, and their officers, employees and agents.
- b) "Associated therewith" as used with respect to tangible personal property shall mean being located within, upon or adjacent to buildings or added improvements to buildings.
- c) "Commenced operations" shall mean the start of the business activity housed in the building for which a tax exemption-incentive is requested.
- d) "Economic development purposes" 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.
- e) "Expansion" shall mean the enlargement of a building or buildings, construction of a new building, the addition of tangible personal property, or any combination thereof, which increases the employment capacity of a business eligible for a tax exemption-incentive and which results in the creation of new employment.
- f) "Manufacturing articles of commerce" shall mean a business engaged in the mechanical or chemical transformation of materials or substances into new products, as defined in the "Standard Industrial Classification Manual."
- g) "Research and development" shall mean the application of science or technology to the improvement of either the process of manufacturing or manufactured products or both.
- h) "Storing goods or commodities which are sold or traded in interstate commerce" shall refer to the business of storing property which may be exempt from ad valorem taxation under the provisions of K.S.A. 79-201f.
- i) "Tangible personal property" shall mean machinery and equipment used during the term of the tax exemption which may be granted.