

## HUTCHINSON CITY COUNCIL POLICY - 5

**SUBJECT:** INDUSTRIAL REVENUE BOND POLICY

**DATE:** February 27, 1990  
Revised: July 23, 2001  
Revised: October 2, 2012

**PURPOSE:** The City of Hutchinson is committed to encouraging economic development of the City and Reno County by promoting the expansion and improvement of existing businesses and by encouraging new business enterprises to locate facilities in the Hutchinson area. Preservation and redevelopment of the City's downtown core area is a principle concern along with expansion of job opportunities for persons of all skill levels. To assist in such economic development efforts, the City is willing to consider requests for the issuance of industrial and economic development revenue bonds under the provisions of Kansas law.

**POLICY:** The City Council's policy on Industrial Revenue Bonds shall be as follows:

1. Authority to issue Industrial Revenue Bonds  
Under K.S.A. 12-1740 et seq., the City is authorized to issue industrial revenue bonds to promote and advance the physical and mental health, industrial, commercial, agricultural, natural resources and recreational development and to encourage and assist in the location of new businesses and industry in the state and the expansion, relocation or retention of existing businesses. The proceeds of industrial revenue bonds issued under Kansas law may be used to pay all or part of the costs of purchasing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling facilities for such purposes. Such revenue bonds and the interest thereon are exempt from all Kansas taxes. In addition, the interest on such bonds may also be excludable from gross income for purposes of federal income taxation, subject to the various exceptions and limitations imposed by the Internal Revenue Code.
2. Approval of Application for Industrial Revenue Bonds  
The City Council generally will approve requests to issue industrial revenue bonds for economic development purposes as permitted by Kansas law. Requests for approval to issue industrial revenue bonds shall be submitted through a completed copy of the application form attached hereto as Exhibit A. Along with the completed application form, a Resolution Determining the Advisability of the Issuance of Industrial Revenue Bonds ("Resolution"), an example attached hereto as Exhibit B, shall be submitted.

City Council approval of the Resolution is intended to satisfy the “official action” requirements imposed by the Internal Revenue Code in connection with the issuance of “Qualified Private Activity Bonds” as such terms are defined in the code. Such Resolution does not constitute, nor shall it be construed as, approval of the issuance of revenue bonds. The applicant submitting such Resolution is required to acknowledge that the City’s approval of the Resolution does not impose any obligation upon the City to approve the issuance of such revenue bonds and that the City Council retains the authority at all times to impose such additional requirements or conditions as it may determine to be appropriate in connection with its authorization and issuance of bonds. In addition, each applicant is required to waive any claim or right of action against the City in the event revenue bonds are not issued for any reason including the City Council’s subsequent determination not to approve issuance of the bonds.

3. Submission of Required Information

In addition to the requirements in Section 2, the applicant will be required to make arrangements for preparation of the legal instruments required in connection with authorization and issuance of the industrial revenue bonds. The applicant is responsible for selecting Bond Counsel to render the customary legal opinions with respect to the authorization and issuance of the bonds and the treatment of the interest on the bonds for purposes of Federal and State income taxation. The City, however, retains the right to approve the applicants selection of Bond Counsel and the further right to retain counsel satisfactory to the City. As a matter of policy the, City requires that Bond counsel be admitted to practice in the State of Kansas. In the event the applicant retains counsel who is not admitted to practice in Kansas or is otherwise not satisfactory to the City, the applicant shall assume responsibility for payment of the professional fees and expenses of counsel selected by the City.

The City requires, as a matter of policy, the inclusion of certain specific provisions in the agreements relating to the authorization of and security for payment of revenue bonds issued by the City. Such provisions include specific representations and warranties with respect to the authorized uses of the project site and the prevention of environmental contamination, representations, warranties and indemnity provisions with respect to the offering and sale of the bonds and compliance with applicable provisions of the United States and Kansas securities laws as well as various other matters identified by the City as matters of particular concern. Copies of such required provisions may be obtained from the City’s Bond Counsel. Any amendments or modifications of such prescribed provisions will be subject to the approval of the City Attorney and Bond Counsel.

Formal action by the City Council to authorize issuance of industrial revenue bonds is subject in all circumstances to the discretion of the City Council. Neither the approval of the Resolution nor any subsequent negotiations between the applicant and the staff, employees, and agents of the City shall be construed as

creating any obligation on the part of the City to approve the issuance of any particular revenue bond issue.

4. Exemption of Ad Valorem taxes

In connection with the issuance of industrial revenue bonds under Kansas law, the City also is authorized to grant exemption of ad valorem taxes with respect to property acquired from the proceeds of such revenue bonds. Such exemption is limited to a period of ten calendar years commencing in the year subsequent to the year in which the bonds are issued. The City, however, is not required to approve any such tax exemptions. If the applicant intends to request the exemption of all or some portion of the ad valorem taxes with respect to property acquired from bond proceeds, the applicant is required to submit a completed Industrial Revenue Bond Questionnaire (“Questionnaire”) in the form attached hereto as Exhibit C, and provide sufficient information so that a cost-benefit analysis can be performed. The City Council will not consider requests for formal action to authorize the issuance of bonds until the completed Questionnaire is submitted and the City’s staff has had an adequate opportunity to review the Questionnaire as well as all other materials and information which may be required to satisfy the conditions prescribed in the Resolution. The decision to grant any exemption of ad valorem taxes rests within the discretion of the City Council and requests will be considered on a case-by-case basis.

As a general rule, the City will approve requests for ad valorem tax exemption only in connection with those projects which promise substantial expansion of employment opportunities and some other unusual economic benefit to the City. As a matter of policy, grants of ad valorem tax exemption will reflect the anticipated economic benefits to be realized as a result of a particular project. In addition, the applicant will be required to enter into an agreement to make payments in lieu of taxes in such amounts (which may be subject to adjustment from time to time based upon an evaluation of the applicant’s compliance with specified criteria) as may be approved by the City Council.

Under K.S.A. 12-1749d., prior to issuing any revenue bonds pursuant to K. S. A. 12-1740 to 12-1749, for any business the property of which will be eligible for an exemption from ad valorem taxation, the governing body of any city shall be required to:

- a) Prepare an analysis of the costs and benefits of each exemption which shall include the effects of the exemption on state revenues; and
- b) Conduct a public hearing on the granting of such exemption.

Notice of the public hearing shall be published at least seven days prior to the hearing in the official city 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 and school district within which the property proposed for exemption is located.

The City will also notify other governmental taxing units which might be affected by a property tax exemption and solicit their input as a part of the decision making process.

5. Service Fee to City

Following approval of the Lease Agreement, each tenant of a facility shall pay the City annually, on March 1, a service fee to cover administrative and other City costs during the lease period. The service fee will be in addition to any payment by the applicant to reimburse the city for its out-of-pocket expenses associated with processing the application or the bonds. In addition, the applicant will pay the City for the costs, expenses, and the City's attorney's time in reviewing and preparing documents. A provision for payment of the service fee will be included in the Lease Agreement.

The annual service fee will be \$250 for industrial revenue bonds without an ad valorem property tax exemption and \$1,000 for industrial revenue bonds with an ad valorem property tax exemption.

6. City Not Bound Policy

This policy is intended to be a set of general guidelines only. Any provisions herein may be waived or added to at the discretion of the City Council.



7. Proposed location: \_\_\_\_\_
8. Estimated amount of issue: \$ \_\_\_\_\_
9. Are the applicant or any principals delinquent in real or personal property taxes to Reno County, Kansas?
- a. Elsewhere \_\_\_\_\_ if so, specify \_\_\_\_\_
10. Has the applicant or any principals been convicted of crimes or misdemeanors other than traffic violations during the last 10 years?
- a. If so, specify \_\_\_\_\_
11. Are there any outstanding federal or state tax liens against the applicant or any principal?
- \_\_\_\_\_ If so, specify \_\_\_\_\_
- \_\_\_\_\_
12. Are there outstanding judgments in a court of record against applicant or any principal? If so, specify \_\_\_\_\_
- \_\_\_\_\_
13. Has the applicant or any principal been declared bankrupt, filed a Chapter 11 or 13 reorganization proceeding, or been in receivership within the last 10 years? \_\_\_\_\_ If so, specify \_\_\_\_\_
- \_\_\_\_\_
14. Has the applicant or any principal been involved in a previous industrial revenue bond issue which failed? \_\_\_\_\_ If so, specify \_\_\_\_\_
- \_\_\_\_\_
15. Give name, address and phone number of two banking or credit references:
- \_\_\_\_\_
- \_\_\_\_\_

16. Applicant Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

17. Sworn Affidavit Statement.

I, \_\_\_\_\_, hereby certify that the above instrument is true and correct to the best of my personal knowledge.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public

My term expires \_\_\_\_\_

## **EXHIBIT B**

### **RESOLUTION DETERMINING THE ADVISABILITY OF ISSUING INDUSTRIAL REVENUE BONDS**

:The following is an example of the resolution determining the advisability of issuing industrial revenue bonds:

**A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF  
HUTCHINSON, KANSAS DETERMINING THE ADVISABILITY OF  
ISSUING INDUSTRIAL REVENUE BONDS OF SAID CITY FOR THE  
PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION, AND  
EQUIPPING OF A [FACILITY TYPE] TO BE LOCATED IN SAID CITY**

**WHEREAS**, the City of Hutchinson, Kansas (the "City") desires to promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas; and

**WHEREAS**, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the "Act"), the City is authorized to issue revenue bonds for such purposes, and it is hereby found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that industrial revenue bonds of the City in the principal amount of not to exceed \$X,XXX,XXX be authorized and issued, in one or more series, to provide funds to pay the costs of acquiring, constructing, and equipping a [facility] (the "Project") to be located in the City of Hutchinson, Kansas, and to be leased by the City to [Developer], a [state and legal form], or assigns (the "Tenant").

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE  
CITY OF HUTCHINSON, KANSAS:**

**Section 1. Public Purpose.** The governing body of the City hereby finds and determines that acquiring, constructing and equipping the Project will promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas.

**Section 2. Authorization to Acquire Project; Intent to Issue Bonds.** The City is hereby authorized to acquire, construct, and equip the Project and to issue its industrial revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$X,XXX,XXX (the "Bonds") to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein.

**Section 3. Conditions to Issuance of Bonds.** The issuance of the Bonds is subject to:  
(i) the passage, signature and publication of an ordinance authorizing the issuance of the Bonds;  
(ii) the successful negotiation of a Trust Indenture, Guaranty Agreement, Lease, Bond Purchase

Agreement or other legal documents necessary to accomplish the issuance of the Bonds, the terms of which shall be in compliance with the Act and mutually satisfactory to the City and the Tenant; (iii) the successful negotiation and sale of the Bonds to a purchaser or purchasers yet to be determined (the "Purchaser"), which sale shall be the responsibility of the Tenant and not the City; (iv) the receipt of the approving legal opinion of [BOND COUNSEL] ("Bond Counsel") in form acceptable to the City, the Tenant and the Purchaser; (v) the obtaining of all necessary governmental approvals to the issuance of the Bonds; and (vi) the commitment to and payment of all expenses of the City, any underwriting fees and expenses and all legal fees and expenses of Bond Counsel and Kutak Rock LLP as Counsel to the City ("City's Counsel") relating to the issuance of the Bonds by the Purchaser or the Tenant.

**Section 4. Notices.** The City Clerk is hereby authorized and directed to publish an appropriate notice of intent to issue the Bonds and to enter into a Lease with the Tenant pursuant to the provisions of the Act and to provide all notices as required by the Act.

**Section 5. Reliance by Tenant; Limited Liability of City.** It is contemplated that in order to expedite acquisition of the Project and realization of the benefits to be derived thereby, the Tenant may incur temporary indebtedness or expend its own funds to pay costs of the Project prior to the issuance of the Bonds. The Bonds herein authorized and all interest thereon shall, in any event, be paid solely from the revenues to be received by the City from the Project and not from any other fund or source. The City shall not be obligated on such Bonds in any way, except as herein set out. In the event that the Bonds are not issued, the City shall have no liability to the Tenant.

**Section 6. Further Action.** The City Clerk is hereby authorized to deliver an executed copy of this Resolution to the Tenant. The Mayor, City Clerk and other officials and employees of the City, including the City Attorney, Bond Counsel and City's Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including providing all notices required by the Act and the execution on behalf of the City of the information statement regarding the proposed issuance of the Bonds to be filed with the State Court of Tax Appeals pursuant to the Act.

**EXHIBIT C**

**CITY OF HUTCHINSON, KANSAS**

**QUESTIONNAIRE FOR ISSUANCE OF INDUSTRIAL REVENUE BONDS  
INCLUDING EXEMPTION OF AD VALOREM PROPERTY TAXES**

**I. GENERAL INFORMATION**

1. \_\_\_\_\_  
Name of Applicant Firm \_\_\_\_\_ Date of Request \_\_\_\_\_
  
2. \_\_\_\_\_  
Firm Address \_\_\_\_\_ Firm Phone Number \_\_\_\_\_
  
3. Names and addresses of all persons or corporations who would be obligated as either applicant or personal guarantors of the bond documents:  
  
\_\_\_\_\_  
Name \_\_\_\_\_ Address \_\_\_\_\_  
  
\_\_\_\_\_  
Name \_\_\_\_\_ Address \_\_\_\_\_
  
4. The products to be assembled or manufactured or service to be rendered.  
  
\_\_\_\_\_  
  
\_\_\_\_\_
  
5. \_\_\_\_\_  
Applicant's Attorney \_\_\_\_\_ Address \_\_\_\_\_ Phone Number  
(Toll free if applicable)
  
6. \_\_\_\_\_  
Applicant's Bond Counsel \_\_\_\_\_ Address \_\_\_\_\_ Phone Number
  
7. \_\_\_\_\_  
Applicant's Bond Underwriter \_\_\_\_\_ Address \_\_\_\_\_ Phone Number
  
8. Estimated amount of issue \$ \_\_\_\_\_

9. Number of years to retire bonds: \_\_\_\_\_

10. List all previous participation in industrial revenue bond financing:

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Governmental Entity	Date of Issue	Underwriter
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II. **NATURE OF IMPROVEMENTS**

1. Purchase of land: \$ \_\_\_\_\_  
Acres \_\_\_\_\_

2. Land improvements (buildings): \$ \_\_\_\_\_

3. Machinery and equipment \$ \_\_\_\_\_

III. **COSTS OF ISSUANCE**

1. Capitalized debt service: \$ \_\_\_\_\_

2. Underwriting expense: \$ \_\_\_\_\_

3. Attorney fees: \$ \_\_\_\_\_

4. Other (specify): \$ \_\_\_\_\_

TOTAL REQUEST: \$ \_\_\_\_\_

IV. **IRB PROPOSAL**

1. Will the issue refinance an existing facility? \_\_\_\_\_

2. Is the proposed project an expansion or replacement of another existing facility? \_\_\_\_\_  
(which)

3. Is the applicant presently doing business in the City of Hutchinson? \_\_\_\_\_

4. What type and size of building and/or improvements will be constructed?  
\_\_\_\_\_

5. Name and address of contractor and/or architect:

\_\_\_\_\_

6. What type of equipment will be financed? \_\_\_\_\_

V. **MARKETING OF BONDS**

1. Has a bond underwriter analyzed the marketability of the bonds? \_\_\_\_\_

a) If yes, attach a copy to this application.

2. Will the bonds be sold as a public offering or privately placed? \_\_\_\_\_

3. Have arrangements for the marketing of the bonds been made? \_\_\_\_\_

4. Has the tenant investigated conventional financing? \_\_\_\_\_

5. Does the tenant intend to purchase all or any part of the industrial revenue bonds? \_\_\_\_\_

6. Will the applicant use a local Trustee? \_\_\_\_\_

VI. **PROPOSED LOCATION**

1. Location of the proposed facility: \_\_\_\_\_

2. If facility is a proposed expansion or replacement of another plant, state size and location of current operations:  
\_\_\_\_\_  
\_\_\_\_\_

3. What percentage of the facility will be occupied by the applicant? \_\_\_\_\_

4. Is the prospective location properly zoned? \_\_\_\_\_

5. If a zoning change is pending, cite application number and present status.

If an application has not been made, briefly describe what change will be needed and plans for submitting application:

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6. If unusual demands for water or sewer will be made, specify the demands:

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7. Has an environmental assessment study been conducted? (if so attach)

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**VII. FINANCIAL RESPONSIBILITY**

1. How many years has the applicant been in business? \_\_\_\_\_

2. What amount is the applicant to deposit in a reserve account for payment of debt service? \$ \_\_\_\_\_

3. How many years taxes would applicant be willing to place in an Escrow Account? (Circle One)  
1 yr. 2 yrs. 3 yrs.

4. What portion of the project is being financed from other company funds (in addition to the bond issue)? \$ \_\_\_\_\_

Please explain \_\_\_\_\_

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5. Attach pro-forma statements for the first five (5) years of operation after issuance of the bonds, including revenue projections, operating expense projections and a debt amortization schedule.

6. Provide a time-line in which bond transactions will be consummated.

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**IX. ECONOMIC BENEFIT TO COMMUNITY**

1. What dollar amount of revenue is contemplated? \$ \_\_\_\_\_
2. What percentage of sales will be sold locally? \_\_\_\_\_
3. What is the estimated amount of merchandise and services purchase locally, per year? \_\_\_\_\_
4. How many people will the project employ? \_\_\_\_\_  
Type: Professional \_\_\_\_\_  
Technical \_\_\_\_\_  
Clerical \_\_\_\_\_  
General Labor \_\_\_\_\_
5. Number of current full-time employees at applicant's present location \_\_\_\_\_
6. Provide salary range information \_\_\_\_\_
7. Will facility improvements be constructed using local contractor? \_\_\_\_\_

Full Time Part Time

**X. In order to facilitate the timely processing of the application, please attach as part of the proposal the following items:**

1. Certified copies of applicant's financial statement for the past three years.
2. Applicant's most recent annual or quarterly financial report.
3. Interim financial statements, to date, for the current fiscal year.
4. A financial statement, current to date, for each personal guarantor certified by a certified public accountant and the guarantor.

**XI. Applicant should be aware that additional financial data may be required if requested by the City Manager, City Attorney, Bond Counsel or the Bond Underwriter.**

XII. **Attached hereto is a copy of the Policy of the City of Hutchinson, Kansas, Governing the Issuance of Industrial Revenue Bonds for informational purposes. HOWEVER, APPLICANT ACKNOWLEDGES AND AGREES THAT SAID POLICY, AS WELL AS THIS APPLICATION, IS A SET OF GUIDELINES AND ANY OF THE PROVISIONS STATED THEREIN MAY BE WAIVED OR ADDED TO AT THE DISCRETION OF THE HUTCHINSON CITY COUNCIL.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone Number