

## **RESOLUTION 1-28-03 B**

### **A RESOLUTION ESTABLISHING THE POLICY FOR CONSIDERING THE ISSUING OF INDUSTRIAL REVENUE BONDS**

**WHEREAS**, the City of Paola recognizes that it is essential to stimulate economic growth and development of new industry and businesses in order to provide services, employment and tax revenues for the benefit of the community; and

**WHEREAS**, Industrial Revenue Bond financing is a tool that promotes, stimulates and develops the general economic welfare of the community; and

**WHEREAS**, the authority to approve the issuance of Industrial Revenue Bonds is the responsibility of the Council; and

**WHEREAS**, the Council desires to establish procedures for application for Industrial Revenue Bonds and criteria by which such applications shall be reviewed;

#### **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PAOLA, KANSAS:**

**Section 1. General.** The Paola City Council shall evaluate all applications for Industrial Revenue Bonds (IRBs). The Council may approve issuing IRBs when, in the opinion of the Council, the project being financed in whole or in part by the proceeds is reasonably expected to promote, stimulate, and develop the general economic welfare of the City through the promotion and advancement of physical and mental health, industrial, commercial, agricultural, natural resources, and of recreational development in the City, and is deemed to be in the best interest of the City. Such bonds should also be used to encourage and assist in the location of new business and industry in the City and the expansion, relocation or retention of existing business, industry and health development, and to promote the economic stability of the City by providing greater employment opportunities, diversification of industry, and improved physical and mental health, thus promoting the general welfare of the citizens of the City.

This policy is a guide for the City Council in reviewing applications for IRBs.

#### **Section 2. Scope.**

In reviewing requests to issue IRBs, the City Council shall be guided by whether such an issue would help the City achieve some or all of the following objectives:

- A. A substantial increase in the number of jobs in the City;
- B. Diversification of the local economy;

- C. A positive impact on the City or a particular area of the City where economic assistance is needed;
- D. Enhance the economic climate of the City and increase or maintain the job market within the City;
- E. Expand the type of job skills available in the City or use of key skills of locally unemployed persons;
- F. Increase the property tax base of residential and commercial properties to support the cost of municipal services provided by the City;
- G. Promote the redevelopment of older parts of the City;
- H. Promote the development of new industrial enterprises in the City;
- I. Attract businesses that provide a valuable local service to the City; and
- J. Provide economic assistance to businesses when such assistance does not have a serious detrimental effect on an existing business or industry in the City; and
- K. Accomplish any other needs of the City.

### **Section 3. Definitions.**

The following words when used in connection with this policy shall have the meanings ascribed to them herein:

**Applicant:** Any person, firm, or entity making application to receive Industrial Revenue Bonds

**Board of Review:** Seven (7) member advisory committee formed under Resolution 8-27-96 to make recommendations to the City Council regarding applications for tax exemption and incentives.

**City:** City of Paola, Miami County, Kansas.

**City Bond Counsel:** That firm or individual designated by the City to handle bond matters and issues related to bond matters.

**City Financial Advisor:** That firm or individual designated by the City to handle financial matters and issues related to financial matters.

**Project:** The purpose for which the IRBs are being requested and expended.

## **Section 4. Provisions.**

Approval of IRBs issued by the Council shall be subject to the following conditions:

A. The applicant must have a sound financial base. The City's Financial Advisor shall make recommendations to the Council as to an applicant's financial stability.

B. The applicant must provide reasonable assurance that the bonds are secure and marketable and that the bond issue complies with applicable state and federal law.

C. The City may require some type of credit enhancement such as a letter of credit, bond insurance, personal guarantees, pledges of other collateral, a bond reserve account, or a combination thereof.

D. The City requires the use of its designated Bond Counsel and its designated Financial Advisor. The City reserves the right to approve the selection of other participants including, but not limited to, the underwriter and trustee/fiscal agent. The City, at its discretion, may retain additional independent advisors to assist the City in analyzing the merits of the application and in making a determination of its approval at the applicant's expense. Examples of additional advisors include economic or environmental specialists, or a certified public accountant.

E. The applicant must pay for or reimburse the City the cost of legal, financial, and administrative work performed in connection with the bond issue as determined by the City. Further, the City may retain special legal counsel in the transaction. In that event, the special legal counsel fee shall be negotiated between the special legal counsel and the applicant. The applicant must pay all costs related to the issue incurred by the City throughout the life of the bonds, including, but not limited to the City's actual costs of administering and supervising the issue, the cost of any special legal counsel, and any costs in the events of default, transfer of ownership, transfer of bonds, re-marketing issues, and any other assistance required in regard to the project which is subject to IRBs. Any costs incurred will be directly billed to the applicant for reimbursement.

F. The proceeds from any IRBs issued shall be used 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, industrial, natural resources, recreational development, and manufacturing purposes.

G. If the project is not within the City limits, the applicant must petition for annexation of the land on which the project is located prior to the issuance of the bonds, unless the applicant proposes multiple site locations within the State of Kansas.

H. The proposed use must be clean, nonpolluting, and consistent with all planning and community development policies, ordinances, and codes. Applicant shall

be responsible for performing at least a Phase I environmental audit. At its discretion, the City may require applicant to perform additional environmental audits beyond Phase I. Applicant shall be responsible for taking any and all remedial action necessary as required by the City or any other governmental entity. The City at its discretion may also require environmental audits for refunding bond issues.

I. Prior to making application, the project for which IRBs are requested must be appropriately zoned.

J. Unless the Council determines otherwise, all IRBs must be a level amortization and maturity of the bonds shall not exceed the useful life of the asset.

K. The City has adopted Resolution 8-27-96, Policy and Procedures For Tax Exemption and Incentives for Economic Development, which sets forth the policies and procedures associated with tax abatement. Any request for abatement must be made pursuant to the City's Policy.

L. The decision to grant or deny any IRB application lies within the sole discretion of the Council. Nothing in this policy obligates the City to approve any IRB application. Further, the Council reserves the right to grant or deny any IRB application under circumstances beyond the scope of this policy, or to waive any procedural requirement. However, no such action or waiver shall be taken or made except upon a finding by the Council 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 Council shall not waive any procedural requirement of state law.

## **Section 5. Procedures and Fees Regarding the Issuance of Industrial Revenue Bonds:**

A. Potential applicants may request a pre-application meeting with the City Manager to explore applicant's interest prior to formally submitting an application at no cost to the applicant.

B. The procedure and fee for the issuance of IRBs of the City shall be substantially as follows:

1. The prospective applicant shall submit eight (8) completed copies of the application form to the City Clerk.

2. A nonrefundable application fee of \$1,000.00 and an initial Financial Advisor Fee of \$500.00 shall be submitted with the application. The balance of the Financial Advisor fee, if any, and Bond Counsel fee is due and payable as provided in the application form. A closing fee to the City of \$500.00 shall be remitted on or prior to the day of closing. All application and closing fees shall be used for administering IRB applications.

3. Applicant shall be responsible for the payment of other professional fees such as Bond Counsel and Financial Advisor.

4. 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 is eligible for IRBs under the Kansas Constitution, this policy or 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 applicant is legally eligible for IRBs, the matter shall be referred to the City Attorney or Bond Counsel, who shall consult with the applicant. The City Manager shall notify the Board of Review, if the application is found complete, and is for a purpose which appears to be authorized by law.

5. The Board of Review shall convene to receive and review requests and applications for IRBs, gather and review such additional information as may be deemed necessary to determine if the applicant meets the objectives of this policy, and recommend to the Council whether or not the application should be favorably considered. In reviewing its information, the Board of Review may use consultants, including but not limited to bond counsel and financial advisers. Board of Review records, including applications for IRBs, may be withheld from public disclosure as provided under the Kansas Open Records Act, but shall be available for public inspection when otherwise required by law.

6. Upon receiving the recommendation of the Board of Review, reports from the City Manager, Bond Counsel and any other information requested, the Council shall determine whether to reject or further consider the IRB request.

7. No elected or appointed officer, employee or committee of the City, and no chamber of commerce, board, development council, or other public or private body or individual, shall be authorized to speak for and commit the Council to the issuing of IRBs.

8. A resolution of intent to issue the proposed IRBs shall be issued by the Council and shall be effective for a period of one year from the date of issue. The Council may grant an extension. The applicant is responsible for all related costs regardless of whether the bonds are issued.

9. At least seven days prior to the issuance of any IRBs, the City's Bond Counsel shall file the statutorily required statement with the Kansas State Board of Tax Appeals.

10. After holding a public hearing on the proposed IRBs, if required by state or federal law, the Council may adopt an ordinance authorizing the issuance of the proposed IRBs. All details pertaining to the issuance of the IRBs and the terms and conditions thereof shall be determined by ordinance.

## **Section 6. Responsibility for Enforcement.**

The City Manager shall be responsible to the Council for the enforcement of this policy.

**Section 7. Statutory Amendments.**

Any amendment to any statute cited herein or used as a source of authority for the development of the City's Industrial Revenue Bond Policy shall apply without modification or amendment to the Industrial Revenue Bond Policy.

**Section 8. Repeal of Prior Resolutions.** Any and all other Resolutions in conflict herewith are hereby repealed.

ADOPTED BY THE CITY OF PAOLA, KANSAS CITY COUNCIL this 28<sup>th</sup> day of January, 2003.

APPROVED By the Mayor this 28<sup>th</sup> day of January, 2003.

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Floyd J. Grimes, Mayor

ATTEST: [SEAL]

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Jill Ann Holmes, City Clerk