

F-5

CITY OF OLATHE	Policy No.: F-5
COUNCIL POLICY STATEMENT	Date Issued: Upon Approval
General Scope: Finance	Effective Date: 1-1-2025
Specific Subject: Industrial Revenue Bond and Property Tax Abatement Policy	Cancellation Date: 12-31-2025
	Supersedes No.: Listed Below

Purpose:

To set forth the general public policy objectives of the City as relates to industrial revenue bonds and property tax abatements regarding new businesses.

Statement of Policy:

The statement of policy is hereby incorporated with Resolution No. 24-XXXX

Establishment of previous tax abatement policies were incorporated with Resolution Nos. 23-1080, 22-1080, 21-1064, 20-1069, 19-1071, 18-1111, 17-1086, 17-1001, 16-1003, 14-1079, 13-1093, 12-1081, 11-1074, 10-1076, 09-1099, 08-1128, 07-1147, 06-1177 and 05-1129. The tax abatement policies for new and existing businesses were combined with Resolution 05-1129.

Establishment of previous property tax abatement policy for existing businesses was incorporated with Resolutions 04-1155, 03-1158, 02-1140, 01-1161, 00-1068, 00-1008, 98-1206, 97-1151, 96-1017, 95-1179, 94-1163, 93-1172, 93-1008, 92-1013, 90-1170, 90-1092, 89-1098 and 88-1136

Establishment of previous property tax abatement policy for existing businesses was incorporated with Resolutions 04-1155, 03-1158, 02-1140, 01-1161, 00-1068, 00-1008, 98-1206, 97-1151, 96-1017, 95-1179, 94-1163, 93-1172, 93-1008, 92-1013, 90-1170, 90-1092, 89-1098 and 88-1136.

RESOLUTION NO. 24-XXXX

A RESOLUTION ESTABLISHING POLICIES RELATING TO INDUSTRIAL REVENUE BONDS AND PROPERTY TAX ABATEMENTS; AND REPEALING RESOLUTION NO. 23-1080.

WHEREAS, the City of Olathe, Kansas (the “City”) recognizes that it is essential to stimulate economic growth and development for industries and businesses in order to provide services, employment and tax revenues for the benefit of the community; and

WHEREAS, it is further recognized that the stimulation of balanced economic development is a joint responsibility of the private and public sectors, working closely together to create a positive business environment and to encourage industry to locate and expand in the City; and

WHEREAS, the economic development program goals of the City (the “Goals”) include identifying/securing funding to maintain existing and build new infrastructure, including but not limited to water, sewer, roads, and quality of life amenities; identifying market niches and industries; identifying incentives appropriate to targeted industries; creating a uniform, consistent brand and identity to market Olathe and attract targeted industries; developing intellectual infrastructure necessary for a knowledge-based economy; and creating an environment that supports local business creation, retention and expansion; and also includes the broader goals of economic diversification, broadening of the property tax base, stimulation of private investment, creation and quality of employment opportunities, and increased per capita income; and

WHEREAS, to meet these economic development goals, the City recognizes the occasional necessity of issuing industrial revenue bonds and granting property tax exemptions and tax incentives to stimulate private investments in Olathe pursuant to the provisions of Section [13](#) of Article [11](#) of the Kansas Constitution or K.S.A. [12-1740](#) et seq. and [79-201a](#); and

WHEREAS, the granting of property tax incentives for real property is a privilege, not a right, and the City recognizes that use of such incentives should be considered in a prudent, judicious, and selective manner based upon the economic and community benefits of an economic development project to the City on a case by case basis.

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

Section 1. Policy Statement. To meet the economic goals of the City as outlined above, it is the policy of the Governing Body of the City to consider either a 50% real property tax abatement or a negotiated fixed payment in lieu of taxes (“PILOT”) payment for portions of a project that qualify for by offering to issue industrial revenue bonds for qualifying projects pursuant to this policy. Depending upon the project, the Governing Body may offer to provide a fixed payment in lieu of taxes (“PILOT”) or a PILOT based on a percentage of the ad valorem taxes which would otherwise be due if such property was not exempt from ad valorem taxes, which PILOT amount is subject to the discretion of the governing body and may be different from year to year and may exceed or be less than an overall average of 50%.

It is also the policy of the Governing Body of the City that economic development projects pay their fair share of property tax, special improvement district assessments and cost of utility services. Economic development projects must have a positive financial impact on the City based on a cost-benefit analysis model used to determine the financial impact of each project on applicable taxing jurisdictions (as more fully described in Section 4, below). The Governing Body will consider the following factors when granting property tax incentives pursuant to Section [13](#) of Article [11](#) of the Kansas Constitution and K.S.A. [12-1740](#) et seq. and [79-201a](#):

A. **Existence of Economic Benefit.** The project must add to the Olathe economy and demonstrate how it achieves the Goals stated above. Evaluation criteria to be used in determining benefit to the community may include but not be limited to the following: the amount of capital investment; whether the project produces value-added products and services; and whether the project provides a positive fiscal impact and economic impact.

B. **Type of Business.** The project must be of a nature that has been identified by the Governing Body as desirable to stimulate the local economy and improve the quality of life for its citizens. The project should be one in which a substantial part of its total products and/or services are either exported from the Olathe area or they would add jobs and replace purchases now being made by Olathe citizens in areas outside of the City if the items are for local consumption. Additional considerations may include whether the project would be considered a business 'headquarters', whether a project has the effect of supporting or spurring ancillary development in Olathe, whether a project would help the City achieve successful completion of an existing commercial or industrial park or the development of a new commercial or industrial enterprise, and whether a project would result in the expansion of existing Olathe businesses.

C. **Targeted Industries.** An abatement bonus adjustment of up to 5%, for a total of 55%, may be considered for projects that are in targeted industries and development types. The current targeted industries as outlined in the City's Economic Development Strategic Plan include 1) healthcare and bioscience, 2) aerospace, 3) advanced manufacturing, 4) finance, insurance, and services, and 5) energy. The Governing Body may exceed the 5% adjustment for any project it determines to be of extraordinary benefit to the entire City.

D. **Targeted Area.** An abatement adjustment of up to 50%, (providing a total abatement of up to 100% of eligible mills) may be considered for projects that locate in the Olathe Downtown Business District (as identified in **Exhibit A**).

E. **Excluded Businesses.** In addition to the uses of property prohibited by K.S.A. [79-201a](#) Second, the following uses will not be eligible for property tax abatement: car wash, day care, private school, veterinary clinic, storage facility, any Distance Restricted Businesses (as defined in Olathe Municipal Code Section [5.43.010](#) and any amendments thereto), dance studios, branch bank offices, limited service hotels, and multi-family apartments on any greenfield (i.e., previously undeveloped) tract of land. The City may, at its sole discretion, not provide a property

tax abatement for an otherwise eligible use or waive any of these prohibitions if the applicant demonstrates compelling and unique circumstances regarding its project.

F. Maintain Existing Tax Base. To facilitate new development, the City and the Olathe Chamber of Commerce will assist new industries that invest in new buildings, building expansion or install or locate new machinery and equipment in the City. However, the amount of property taxes or special assessments on the existing land and facilities may under no circumstances be reduced for new development projects.

G. Definitions of Existing Business & Existing Small Business. A business is considered an “Existing Business” if it has had facilities and operations in the City for a period of not less than one year prior to submitting an application for issuance of industrial revenue bonds in accordance with this policy. All other businesses will be considered a “New Business.”

H. Transfer of Ownership. The owner or lessee of any property where the City has granted an abatement must obtain the City’s written consent before 1) assigning or transferring majority ownership of the property or 2) assigning or transferring majority ownership in the owner or lessee, unless the transfer is to an affiliate or a related entity. When notifying the City of a request to assign or transfer to an unrelated entity, the then-current owner or lessee must disclose the prospective assignor or transferor of the property, including their proposed use of the property. No such assignments or transfers may be made when the use of the property will include any Excluded Businesses as set forth in Section 1, Paragraph E, above. The City reserves the right to request that, prior to approval of any assignment or transfer of an abatement, the assignee or transferee pay the cost of the city performing a cost-benefit analysis of the proposed use of the abated property in order for the City to determine and ensure compliance with this policy.

I. Warehouse Distribution & Logistics Projects. The primary location in which the City will consider providing property tax abatements for qualifying warehouse distribution, and logistics-type development projects will be only within the areas identified on **Exhibit B**.

J. Sales Tax Exemption on Building Materials and/or Personal Property. The City will consider, in exceptional cases, issuance of industrial revenue bonds for the sole purpose of enabling a project to obtain a sales tax exemption certificate on its building materials and/or personal property (with no real property tax abatement). This consideration may include many factors which may induce the City to issue such bonds. These factors include, but are not limited to, whether a project will result in the adaptive re-use of an underutilized property; whether a project is included in a tax increment financing district (TIF), transportation development district (TDD), or community improvement district (CID); and whether, but for issuance of bonds to obtain a sales tax exemption certificate on building materials/personal property, the project would not occur, and whether the project will bring significant capital investment to the City. The City will not consider issuance of bonds to obtain a sales tax

exemption certificate on building materials/personal property for investments of less than Three Million Dollars (\$3,000,000), or for development of a greenfield site not associated with a TIF, TDD, or CID.

K. Investment not Limited to Bond-Financed Project Costs. For purposes of determining compliance with the required investment thresholds herein, the term "investment" includes all costs of a project requesting issuance of industrial revenue bonds regardless of whether those costs are financed with bond proceeds. Such project costs may include, but not be limited to, land acquisition, bond issuance costs, professional fees, and machinery and equipment and/or other personal property costs related to the project.

L. Delinquent Tax Obligations. Property Tax Abatements will not be approved if any signatory to a petition has a financial interest in an existing development with delinquent tax obligations for any property located within the city. All petitioners for new development under this policy will be required to certify, under oath, that they have no financial interest in any property with delinquent special assessments, ad valorem taxes, or other federal or state tax liens anywhere within the state of Kansas.

M. Non-Litigation. The Governing Body may not consider applications for issuance of industrial revenue bonds if the applicant, its principals or officers, or any related, affiliated, or parent company of the applicant, is currently engaged in or has threatened a suit, action, or proceeding against the City.

Section 2. Abatement Criteria and Adjustments. It is the intention of the Governing Body that all projects receiving property tax abatement meet the criteria that are detailed below. Failure to meet the standards set forth below may result in a decrease in the total abatement percentage available to a project. Adjustments made to increase the total amount of abatement are intended to be provided as an extra incentive to exceed certain criteria when others may not be met.

A. Employment – Wages. Projects requesting a property tax abatement must increase the amount and diversity of additional employment opportunities in the City. The City expects all projects which receive a property tax abatement to produce a high quantity of jobs and pay above average wages. The City encourages businesses seeking a property tax abatement to provide reasonably accurate anticipated wage information in its application and cost-benefit analysis information, and to engage in local business-education partnerships to enhance the overall quality of the City's workforce once their project is constructed. An abatement bonus adjustment of up to 5%, for a total of 55%, may be considered for projects that do not meet the targeted industry abatement adjustment but pay an average wage of at least 110% of the Johnson County, KS per capita income as set by the most recent publication of the U.S. Census Bureau.

B. Design Criteria. The City will, at its sole discretion, require higher design standards for the design of buildings and materials used for projects receiving property tax abatement.

1. Projects must utilize construction materials and provide an architectural design that exceeds the minimum requirements set forth in the City's Unified Development Ordinance (UDO).
2. All projects must be environmentally acceptable to the location intended as well as the surrounding area through utilization of sustainability practices, tree preservation, and green infrastructure design. Projects seeking a tax abatement will be expected to exceed applicable environmental regulations and energy efficiency standards, and to demonstrate how they will exceed such standards during the development review process.

C. Compatibility with Adopted City Plans. All projects must be consistent with the City's Comprehensive Plan, any applicable corridor plans, and other plans of the City which may be relevant to the project. When evaluating proposed projects, the City will consider a variety of factors to determine compliance, including compatibility of the location of the business with land use and development plans of the City and the availability of existing infrastructure facilities and essential public services. The proposed use must be clean, nonpolluting and consistent with all policies, ordinances, and codes. Based upon future growth, the applicant must be willing to work with the City to provide a traffic study on any projected traffic impact increase on the City. The City will look favorably upon projects which result in infill development, Brownfield redevelopment, adaptive re-use of an existing building, or ameliorate a blight condition.

D. Community Benefit. All applicants will agree to actively participate in the civic, charitable, educational, philanthropic, and economic development of the City of Olathe. Accordingly, each performance agreement for an abatement project will require that, during the entire term of the abatement the applicant will (1) at all times be a dues-paying member in good standing with both the Olathe Chamber of Commerce and the Olathe Economic Development Council and (2) make an annual donation to the Olathe Community Foundation in an amount to be determined in the sole discretion of the owner, but no less than \$3,000 annually. In cases where an applicant leases a project, the applicant may pass on all or a portion of the required annual donation cost to its lessees but must collect their lessee's donations and remit them to the City.

Section 3. Term of Abatement. The abatement period for a project approved under this Resolution will be determined by the amount of new capital investment in the City. Capital investment will include expenditures for land, building or personal property subject to ad valorem taxation.

A. Existing Businesses. The normal term of abatement for each stand-alone (non-business park) project where the applicant is an Existing Business is 10 years so long as the Existing Business makes a capital investment of no less than \$5 million.

B. New Businesses. The normal term of abatement for each project where the applicant is a New Business is 10 years so long as the New Business makes a capital investment of no less than \$10 million.

C. **Businesses Locating in a Business Park.** The normal term of abatement for each project where the applicant is locating within a business park where the Governing Body has already established an abatement term and total investment and the applicant wishes to be assigned a portion of the interest in industrial revenue bonds will be 10 years so long as the applicant makes a minimum investment of \$2 million if an Existing Business and \$3 million if a New Business.

D. **Commencement of Abatement.** The abatement term for projects under authority of Section [13](#) of Article [11](#) of the Kansas Constitution shall begin in the calendar year after the calendar year in which the business commences its operations or the calendar year in which expansion of an existing business is completed, as the case requires. The abatement term for projects under authority of K.S.A. [12-1740](#) through [12-1749](#) and [79-201a](#) shall begin in the calendar year after the calendar year in which the bonds are issued. Projects which include multiple phases shall have an expiration date for the commencement of the term of the abatement for all phases as determined by the Governing Body at the time of the adoption of the Resolution of Intent.

E. **Incremental Tax Revenues.** When a project's abatement term expires, for all incremental City property tax revenues above the property tax revenues received by the City the last year of a project's abatement term, the City Manager or designee may segregate all such revenues received by the City for the following tax year into a separate account for Economic Development Promotion activities, as such activities are defined in the Transient Guest Tax Charter Ordinance.

Section 4. Procedure. The City may consider granting a tax abatement pursuant to this Resolution after an eligible project has obtained approval by the Governing Body of the project's rezoning and preliminary site development plan applications (if necessary to accommodate the applicant's proposed land use for its project in accordance with the UDO). Once such approval has been obtained, the applicant may submit a complete industrial revenue bond and tax abatement application in a form prescribed by the City together with the application fee. The application must be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the project's approved preliminary site plans and building elevations for conformance with this policy, to prepare a fiscal impact analysis, and to contact the unified school district within which the property proposed for exemption is located. The project's preliminary site development plans and building elevations are subject to final approval in accordance with the UDO to ensure that they are similar to the preliminary plans and elevations submitted.

Based on each application and such additional information as may be requested by the City, the City will prepare or cause to be prepared a fiscal impact analysis of the proposed abatement on the City and state of Kansas, which analysis will be used by the Governing Body in considering the request for abatement. In making its decision, the Governing Body may also consider any fiscal and/or economic impact analyses performed by the unified school district within which the property proposed for abatement is located or the Johnson County Economic Research Institute.

Prior to formal action on each resolution of intent, the Governing Body will conduct a public hearing thereon, to be scheduled at least seven days after publication of notice. Notice of the hearing will also be sent to the Johnson County Clerk's Office and the unified school district within which the property proposed for abatement is located. The Olathe Chamber of Commerce and/or City staff will contact representatives of the unified school district to discuss an application that includes a request for tax abatements. The contact will be made with school district representatives prior to Governing Body discussion of the application and abatement request. The Governing Body may consider the school district's feedback and input in reviewing such requests.

Section 5. Performance Agreement.

A. **Contents.** Any tax abatement granted pursuant to this Resolution will be accompanied by a performance agreement between the applicant and/or lessee and the City, which is subject to annual review and determination by the Governing Body that the conditions qualifying the business for the abatement continue to exist. The City, including the City's internal auditor, may, at any time, review information provided by the company, lessee, county, or state, or may request additional information to determine compliance with the Agreement. If the Governing Body finds that the business or project is not in compliance, then the tax abatement may be modified pursuant to the performance agreement or eliminated as the Governing Body deems appropriate. The County Assessor and the Board of Tax Appeals will be notified of such action. Each performance agreement will contain a notice and waiver disclosing to each applicant that the City reserves the right to grant future tax abatements on comparable projects in amounts different than the abatement granted to such applicant. Such notice and waiver will include a provision that the applicant waives any right to request a modification or amendment of such abatement based upon such differences. The City Manager or designee is hereby authorized to do all things necessary to complete and/or terminate transactions on the City's behalf which have been approved by the Governing Body, including, but not limited to, preparing and executing all documents deemed necessary for such purposes by the City Manager, City staff, the City Attorney, and/or outside legal counsel or bond counsel.

B. **Expiration of Resolutions.** Each business park master resolution will provide that it expires on the date that is ten (10) years after the date of the adoption of the master resolution. The Governing Body may not consider an assignment resolution under a master resolution after the date of expiration of the master resolution unless the Governing Body extends the expiration date of the master resolution. Each standalone resolution of intent or assignment resolution will provide that it expires on the date that is three years after the date of the adoption of such resolution unless either (i) bonds have been issued for the project, or (ii) a building permit has been issued by the City for construction of the related project.

C. **Clawbacks.** Each performance agreement for a project will provide that the percentage of property tax abatement will be reduced if, within one (1) year after the issuance of the bonds, the applicant has not incurred the required minimum capital investment, which is equal to 80%

of the principal amount of the bonds for industrial revenue bonds or 80% of the estimated project costs for a constitutional abatement. The Governing Body may also reduce or eliminate a property tax abatement for a project which does not comply with applicable laws as required by the project's performance agreement.

D. Utilization of City Services. The performance agreement will require that the company receiving the property tax abatement (or any other user of the property) utilize solid waste services provided by the City. This requirement will not apply to any user if (1) the user demonstrates that solid waste services provided by the City are not adequate to serve such user's reasonable needs, (2) the City is not able to demonstrate that it can provide solid waste services at a competitive price; or (3) the user has an existing contract with another provider of solid waste services; provided, however, that the user agrees not to renew any such contract during the abatement term and to then utilize the City's solid waste services by the end of the first year of the abatement term.

E. Annual Report. Each year during the term of the abatement, the company will file with the City's Director of Economy (or designee) a report that evidences compliance with the terms of the performance agreement, including: (1) the company's (and any tenant's or subtenant's) employment and wage data, including the total number of employees, the number of net new employees hired in the preceding calendar year, and average wages; (2) a certification and supporting documentation evidencing compliance with the obligations described under "Community Benefit" herein; and (3) such other information reasonably requested by the City.

F. Fee Schedule. City staff will prepare a fee schedule and shall make the fee schedule available to each applicant upon request. The fee schedule will apply to both industrial revenue bond and constitutional tax abatement requests.

Section 6. Fees. The Governing Body hereby establishes the following fees:

A. Application Fee. For Existing Businesses, a non-refundable application fee of \$2,000 will accompany all applications for the issuance of industrial revenue bonds or for constitutional tax abatement. For New Businesses, a non-refundable application fee of \$4,000 will accompany all applications for the issuance of industrial revenue bonds or for constitutional tax abatement. All applications for master resolutions of intent where the requested amount of bonds exceeds \$10,000,000 will be charged an additional application fee of \$4,000.

B. Issuance Fees.

1. Projects Requesting Real Property Tax Abatement. For projects requesting real property tax abatement which are not warehouse distribution or logistics-type development projects, the City will receive an issuance fee of (i) .0025 of the first \$40 million par amount of bonds being issued or the amount of constitutional tax abatement being requested, plus (ii) .0020 of the par amount in excess of \$40 million of bonds being issued or the amount of

constitutional tax abatement being requested. For projects requesting real property tax abatement which are warehouse distribution or logistics-type development projects, the City will receive an issuance fee of .0030 of the par amount of bonds being issued or the amount of constitutional tax abatement being requested. In no event will such issuance fee be less than \$2,500 or more than \$250,000. The fee will be due and payable at the time the bonds are issued or, for constitutional tax abatements, at the time the ordinance is adopted abating the property from taxation.

2. Projects Not Requesting a Real Property Tax Abatement. For projects not requesting real property tax abatement, the City will receive an issuance fee of (i) .0010 of the par amount of bonds being issued on behalf of a for-profit company. In no event will the issuance fee be less than \$2,000 or more than \$100,000. The fee will be due and payable at the time the bonds are issued.

3. Projects for Tax-Exempt Nonprofit Organizations. The City will not charge an issuance fee for bonds issued on behalf of tax-exempt nonprofit organizations [designated as such under United States Internal Revenue Code ([26 U.S.C. § 501\(c\)\(3\)](#))] unless otherwise approved by the Governing Body. The City will not charge an issuance fee for any amount of any bond issue that refunds a prior bond issue for a tax-exempt nonprofit organization.

C. Additional Costs. The applicant will reimburse the City for all costs associated with the cost-benefit analysis, all legal publication notices, application fees to the Board of Tax Appeals, the City's bond counsel fees and all other miscellaneous costs, including, but not limited to, the City's reasonable costs to process any modifications to existing bond-financed projects (e.g., subordinations, reapplications, assignments and reassignments).

D. Waiver of Fees. The City may elect to waive any or all of the City's fees in the event the project is deemed to be a targeted industry or in a targeted area.

E. Public Art. Prior to issuance of any bonds, all projects requesting real property tax abatement will comply with all applicable provisions of Olathe Municipal Code Chapter [2.82](#), and any amendments thereto, which pertain to Public Art associated with Development Incentives.

Section 7. Assessed Valuation Objective. The Governing Body desires to increase the non-residential tax base to preserve and enhance the City's fiscal capacity to provide public infrastructure and services necessary to support economic development. The Governing Body's objective is to increase commercial and industrial development to 30% of the total assessed valuation of property within the City. The Governing Body's objective also includes maintaining the commercial and industrial development at 30% of the total assessed valuation of property within the City.

Section 8. Authority of Governing Body. The Governing Body reserves the right to deviate from any policy, but not any procedure, set forth in this Resolution or any other procedural requirements of state law, when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that are in the best interests of the City.

Section 9. Sunset Date. Since the justification for tax abatements will be lessened as the local economy moves towards its goals of balance and diversification, this policy will automatically expire on December 31, 2025 unless it is readopted for an additional term. No such tax abatement may be granted following such expiration, unless this policy is readopted.

Section 10. Previous Resolution Repealed. Resolution No. 23-1080 is hereby repealed.

Section 11. Effective Date. This Resolution will take effect January 1, 2025.

ADOPTED by the Governing Body this ____ day of ____, 2024.

SIGNED by the Mayor this ____ day of _____, 2024.

CITY OF OLATHE, KANSAS

/s/ John W. Bacon

Mayor

ATTEST:

/s/ Brenda D. Swearingian

City Clerk

(SEAL)

APPROVED AS TO FORM:

/s/ Ronald Shaver

City Attorney

EXHIBIT A

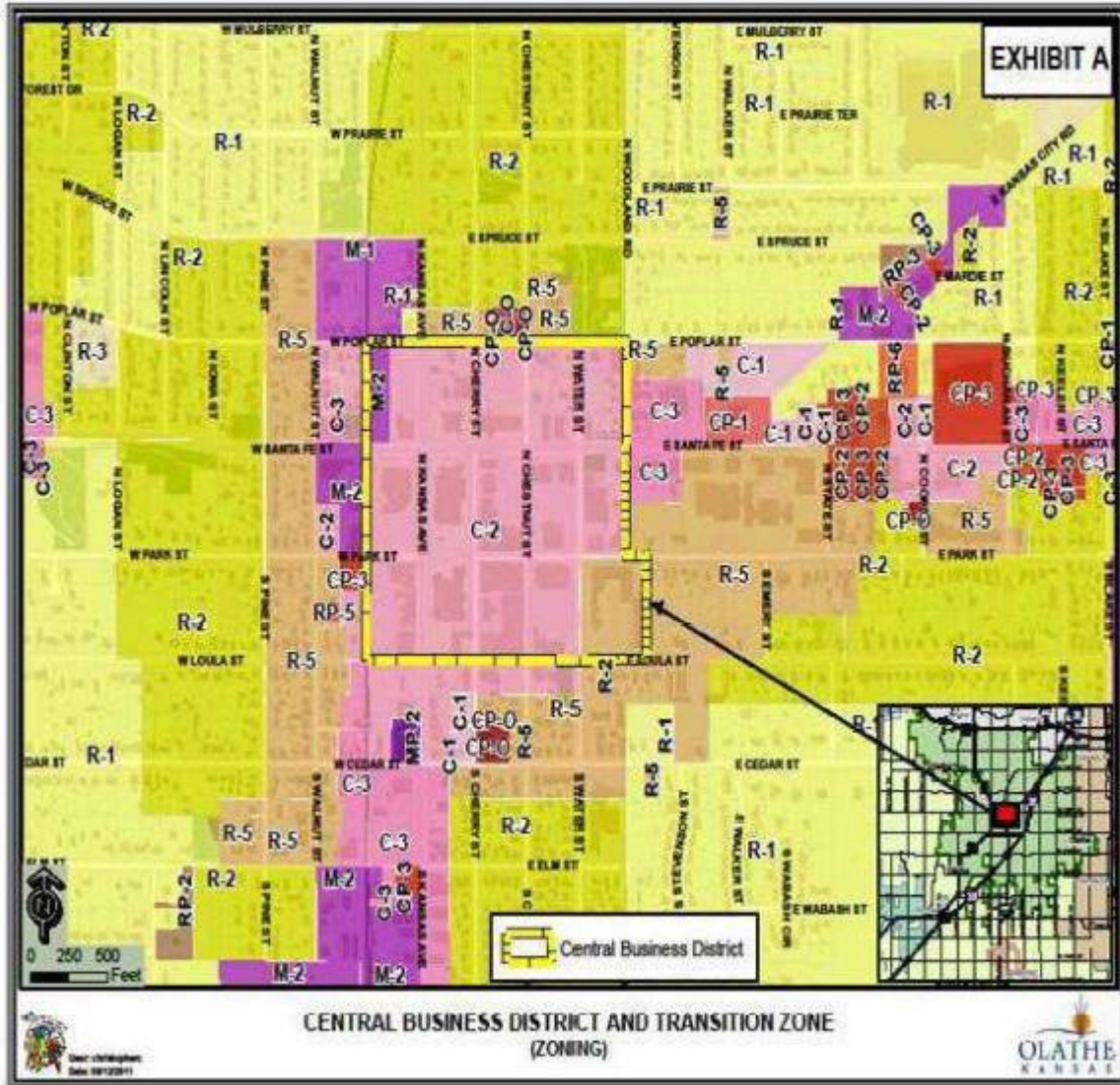
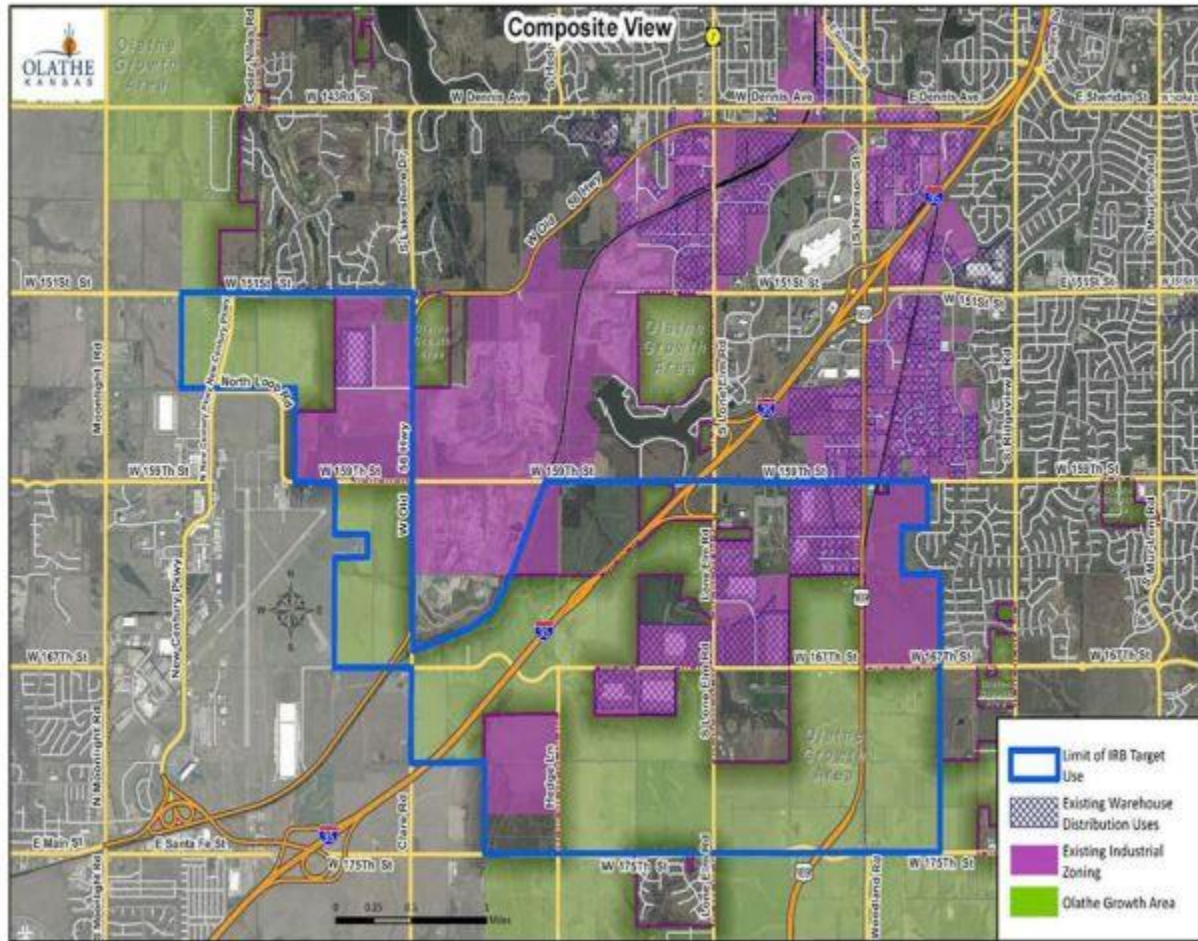


EXHIBIT B



Disclaimer: The City Clerk's Office has the official version of the Olathe City Council Policies. Users should contact the City Clerk's Office for resolutions passed subsequent to the resolution cited here.

[City Website: www.olatheks.org](http://www.olatheks.org)

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