

CITY OF OLATHE		Policy No.:	F-5
COUNCIL POLICY STATEMENT		Date Issued:	12-XX-2019
General Scope:	Finance	Effective Date:	01-01-2020
Specific Subject:	Industrial Revenue Bond and Property Tax Abatement Policy	Cancellation Date:	12-31-2020
		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. [18-1111-19-XXXX](#).

Establishment of previous tax abatement policies were incorporated with Resolution Nos. [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 new businesses was incorporated with Resolutions [04-1156](#), [03-1159](#), [02-1141](#), [01-1162](#), [00-1067](#), [00-1007](#), [98-1205](#), [97-1150](#), [96-1018](#), [95-1180](#), [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. 19-XXXX

**A RESOLUTION ESTABLISHING POLICIES RELATING TO INDUSTRIAL REVENUE BONDS AND
PROPERTY TAX ABATEMENTS; AND REPEALING RESOLUTION NO. 18-1111**

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 include 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 for real property 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 exemptions and tax incentives for real property is a privilege, not a right, and the City recognizes that use of such exemptions and 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 shall be 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 tax abatement under Kansas law so long as the project meets the criteria listed in Section 2. Depending upon how the tax abatement is structured over the term, the percentage tax abatement or PILOT payment for a project may be different from year to year and may exceed or be less than an overall average of 50%.

It shall also be the policy 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 shall have a positive financial impact on the City, and the City reserves the right to approve the cost-benefit analysis model used to determine the financial impact. The Governing Body shall 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 shall include, but shall 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 shall 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 retail development, and 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. The City will also consider providing incentives to encourage the expansion of existing Olathe businesses who would not otherwise qualify to receive incentives as set forth herein.

C. Targeted Industries. An abatement 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 include quality high technology and bioscience-related businesses (including, but not limited to, businesses in the alternative energy, animal health, and food

safety fields) and office development. At any time, the Olathe Economic Development Council may provide the City with a revised targeted industry list for approval by the Governing Body. 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%, for a total of 100%, may be considered for projects that locate in the Olathe Downtown Business District (as identified in **Exhibit A**) which meet the minimum investment thresholds set forth in Section 3. At any time, the Olathe Economic Development Council may provide the City with a revised targeted area list for approval by the Governing Body.

E. **Excluded Businesses.** In addition to the uses of property prohibited by K.S.A. 79-201a Second, the following uses shall not be eligible for property tax abatement: car wash, day care, private school, veterinary clinic, storage facility, branch bank offices and limited service hotels. 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 shall 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 shall under no circumstances be reduced for new development projects.

G. **Definitions of Existing Business & Existing Small Business.** A business shall be 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 shall be "New Businesses."

H. **Transfer of Ownership.** The owner or lessee of any property that is all or partially exempt from ad valorem taxes as the result of the City having granted the exemption shall obtain the City's written consent before 1) transferring majority ownership of the property or 2) transferring majority ownership in the owner or lessee, unless the transfer is to an affiliate or a related entity.

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 within a three (3) mile radius of the I-35 and Lone Elm Road interchange as the areas identified on **Exhibit B**.

J. Sales Tax Exemption on Building Materials and/or Personal Property. The City will consider, in exceptional ~~on a case-by~~ cases ~~basis~~, 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 ~~not be~~ 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 ~~Two~~ Three Million ~~Five Hundred Thousand~~ Dollars (~~\$2,5~~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.

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 engage in local business-education partnerships to enhance the overall quality of the City's workforce.

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. Projects

must utilize construction materials and provide an architectural design that exceeds the minimum requirements set forth in the City's Unified Development Ordinance. All projects must be environmentally acceptable to the location intended as well as the surrounding area. Preference will be given to businesses that exceed applicable environmental regulations and energy efficiency standards.

C. Compatibility with Adopted City Plans. All projects shall 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. Projects requesting incentives will agree to actively participate in the civic, charitable, educational, philanthropic, and economic development of the City of Olathe. Accordingly, during the entire term of any incentive the owner of the property receiving the incentive 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 Fund, as established in O.M.C. 2.34.010 as amended, in an amount to be determined in the sole discretion of the owner, but no less than \$3,000 annually.

Section 3. Term of Abatement. The abatement period for a project approved under this Resolution shall be determined by the amount of new capital investment in the City. Capital investment shall 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 shall 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 shall consider granting a tax exemption pursuant to this Resolution after receipt of a complete application from the applicant in a form prescribed by the City together with the application fee. The application shall be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the project's preliminary site plans and building elevations, 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 site plans and building elevations are subject to final approval 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 shall prepare or cause to be prepared a fiscal impact analysis of the proposed exemption on the City and state of Kansas, which analysis shall 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 exemption is located or the Johnson County Economic Research Institute.

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

Section 5. Performance Agreement.

A. **Contents.** Any tax exemption granted pursuant to this Resolution shall 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 exemption 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 exemption 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 shall be notified of such action. Each performance agreement shall 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 shall 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 shall 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 shall not consider an assignment resolution under a master resolution after the date of expiration of the master resolution unless the Governing Body shall have first extended

the expiration date of the master resolution. Each stand alone resolution of intent or assignment resolution shall provide that it expires on the date that is three years after the date of the adoption of such resolution unless either (i) bonds shall have been issued for the project, or (ii) a building permit shall have been issued by the City for construction of the related project.

C. **Clawbacks.** Each performance agreement for a project shall 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 shall 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 shall 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. **Fee Schedule.** City staff shall prepare a fee schedule and shall make the fee schedule available to each applicant upon request. The fee schedule shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall such issuance fee be less than \$2,500. The fee shall be due and payable at the time the bonds are issued or, for constitutional tax abatements, at the time the ordinance is adopted exempting the property from taxation.

2. Projects Not Requesting a Real Property Tax Abatement. For projects not requesting real property tax abatement, the City shall 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 shall the issuance fee be less than \$2,000. The fee shall 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 shall 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 and assignments).

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. Appraised 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 appraised valuation of property within the City. The Governing Body's objective also includes maintaining the commercial and industrial development at 30% of the total appraised 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 shall automatically expire on December 31, 2020 unless it is readopted for an additional term. No such tax abatement shall be granted following such expiration, unless this policy is readopted.

Section 10. Previous Resolution Repealed. Resolution No. 18-1111 is hereby repealed.

Section 11. Effective Date. This Resolution shall take effect on January 1, 2020.

ADOPTED by the Governing Body of the City of Olathe, Kansas this _____ of ___, 2019.

SIGNED by the Mayor this this _____ of ___, 2019.

CITY OF OLATHE, KANSAS

Mayor

ATTEST:

City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

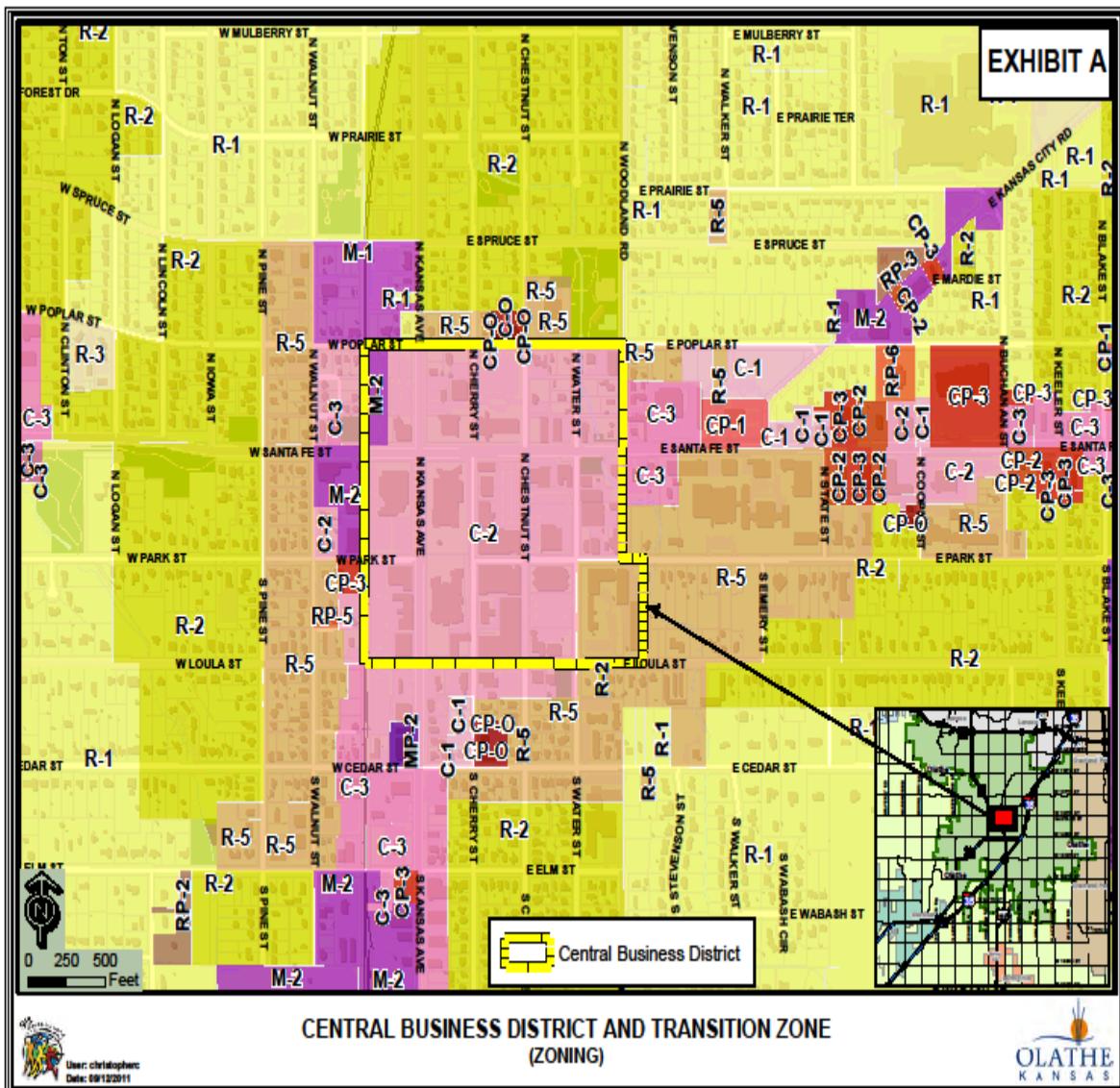


EXHIBIT B

