

CITY COMMISSION AGENDA MEMO
May 8, 2008

FROM: Lauren Palmer, Assistant City Manager

MEETING: May 20, 2008

SUBJECT: Resolution of Intent to Issue up to \$1.5 Million in Industrial Revenue Bonds for the Construction of a Commercial Office/Warehouse Facility to be Leased by Fraternal Investors, LLC, and Subleased to Western Extralite Company

PRESENTERS: Lauren Palmer, Assistant City Manager
Leith Winsor, Western Extralite Company

BACKGROUND

Municipalities have the statutory authority to issue Industrial Revenue Bonds (IRBs) for the purpose of constructing and/or equipping facilities, which will enhance economic development. Furthermore, interest earned from Industrial Revenue Bonds issued for certain purposes is exempt from Federal and State income taxes.

The City is the issuer of the Industrial Revenue Bonds. The City owns the real or personal property financed from bond proceeds, and leases the property to the applicant (tenant). The tenant makes lease payments to a Trustee Bank equal to the annual principal and interest payments on the bonds. When the bonds have been paid in full, the City deeds the real and/or personal property to the tenant. Although the City is the issuer of the bonds, the City incurs no legal obligation to make payments on the bonds should the tenant become unable to make the payments. Should there be a default, the real or personal property reverts to the City and the Trustee Bank would attempt to sell or lease the property to reimburse the bondholders. According to Bond Counsel, a default on a single Industrial Revenue Bond issue would not jeopardize the bond rating of a municipality. For informational purposes, attached is the City's Industrial Revenue Bond policy.

DISCUSSION

Fraternal Investors, LLC, proposes to utilize up to \$1.5 million in Industrial Revenue Bonds to finance a 22,300 square foot metal building at 1120 Kretschmer Drive. The facility will be subleased to Western Extralite, an electrical distributor. Western Extralite is a full-line, full-service distributor of electrical and datacomm products. Previously located at 221 Colorado Street, Western Extralite is a business that is relocating, and subsequently expanding, due to the South End Downtown Redevelopment Project. The new facility will allow the company to expand its capacity by over 50 percent, growing into a larger part of the Manhattan economy. The company intends to strengthen its focus on energy-saving products, both in construction of the site and in the products it sells.

On May 14, 2008 the Board of Zoning Appeals granted an exception and variance to Western Extralite for their new building at 1120 Kretschmer Drive. The exception allowed for a reduction in the front yard setback for off-street loading space, and the variance reduced the amount of landscape area along Kretschmer Drive.

The City Commission's policy on the use of Industrial Revenue Bonds states that projects will be evaluated according to the following criteria:

1. **Quality job creation:** The project is expected to create a total of four new jobs. Two new jobs will have an average hourly wage of \$13, and two jobs will have an average hourly wage of \$25.
2. **Capital investment:** The estimated value of the new construction is \$1.43 million. Over the next 10 years, Western Extralite intends to make additional investments totaling \$315,000 for other expansion-related costs including machinery/equipment, relocations/training, and vehicles.
3. **Diversification of the local economy and the extent to which the project would meet an identified need in the community:** Issuing IRBs will help preserve and expand a local business that was required to relocate because of the South End Downtown Redevelopment project.

Should the Commission approve the Resolution of Intent, the next steps for the City Commission include adoption of an ordinance issuing the bonds and authorizing the Mayor and City Clerk to sign the paperwork required for the bond issue.

FINANCING

The repayment on these bonds will be the responsibility of the developer; the City incurs no legal responsibility for repayment by acting as a financing conduit.

ALTERNATIVES

It appears the Commission has the following alternatives concerning the issue at hand. The Commission may:

1. Approve Resolution No. 052008-A indicating the Commission's intent to issue up to \$1.5 million in Industrial Revenue Bonds for the construction of a commercial office/warehouse facility to be leased by Fraternal Investors, LLC.
2. Do not approve the resolution.
3. Modify or develop alternatives if other concerns or factors arise to meet the needs of the Commission.
4. Table the request.

RECOMMENDATION

City Administration recommends that the City Commission approve the resolution of intent. The request of Fraternal Investors, LLC, meets the Industrial Revenue Bond Policy and will assist in the expansion of a local business that was relocated due to the South End Redevelopment Project.

POSSIBLE MOTION

Approve Resolution No. 052008-A indicating the Commission's intent to issue up to \$1.5 million in Industrial Revenue Bonds for the purpose of constructing a commercial office/warehouse facility to be leased by Fraternal Investors, LLC, and subleased to Western Extralite Company.

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LEP

Attachments:

1. Resolution No. 052008-A Resolution of Intent to Issue Industrial Revenue Bonds
2. Industrial Revenue Bond Policy

RESOLUTION NO. 052008-A

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF MANHATTAN DETERMINING THE ADVISABILITY OF ISSUING TAXABLE INDUSTRIAL REVENUE BONDS OF SAID CITY FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION, AND EQUIPPING OF A COMMERCIAL OFFICE/WAREHOUSE FACILITY LOCATED IN SAID CITY

WHEREAS, the City of Manhattan (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 \$1,500,000 be authorized and issued to provide funds to pay the costs of acquiring, constructing and equipping a commercial office/warehouse facility (the "Project") located in the City of Manhattan, and to be leased by the City to Fraternal Investors, LLC, a Missouri limited liability company, authorized to do business in the State of Kansas as a foreign limited liability company, or assigns (the "Tenant").

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

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 \$1,500,000 (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, approval 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 Capital City Bank, Overland Park, Kansas (the "Purchaser"), which sale shall be the responsibility of the Tenant and not the City; (iv) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("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 the City Attorney 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 and Bond 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 the execution on behalf of the City of the information statement regarding the proposed issuance of the Bonds to be filed with the State Board of Tax Appeals pursuant to the Act and application to the Kansas Department of Revenue for a Sales Tax Exemption Certificate.

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ADOPTED by the governing body of the City of Manhattan this 20th day of May, 2008.

[SEAL]

Mayor

Attest:

City Clerk

RESOLUTION NO. 070103-D



Subject: **Industrial Revenue Bond Policy**

A. BACKGROUND AND PURPOSE

The purpose of this policy is to establish the official position and procedures of the City of Manhattan, Kansas, for considering applications for the issuance of Industrial Revenue Bonds (IRBs) pursuant to State law.

B. DEFINITIONS

APPLICANT: Includes the business, property owner or owners, their officers, employees, and agents requesting industrial revenue bond financing.

ECONOMIC DEVELOPMENT: Relating to the establishment of a new business or the expansion of an existing business, medical facility, service industry business, or any other business which provides additional employment and/or substantial unique opportunities or significant community benefits.

MANAGEMENT COMMITTEE: A review committee comprised of the Assistant City Manager, the Director of Finance, and the City Clerk or their designees.

C. POLICY

1. **Goals:** The primary goal of IRB financing is to promote and stimulate economic development of the City and the region by providing an attractive financing tool, which does not constitute a debt obligation of the City.
2. **Eligibility:** Only those projects which qualify under Kansas law will be eligible for IRB financing. IRB financing will generally be discouraged when the effect would be to grant an unfair financial advantage to one firm over other firms within the local market structure. Commercial-retail and service businesses will receive particularly close scrutiny in this regard when applying for IRB financing.

A housing project will only be considered for IRB financing if such project will either set aside a minimum of one half of the units for individuals earning 50% or less of the median area income or set aside a minimum of three-fourths of the

units for individuals earning 60% or less of the median area income as defined in state tax credit guidelines for affordable housing projects.

3. **Criteria For Evaluating Industrial Revenue Bond Applicants:** The following criteria and factors shall be used in evaluating applications for IRB financing.
 - a. Quality job creation
 - b. Capital investment
 - c. Diversification of the local economy
 - d. The extent to which the project would meet an identified need in the community
4. **Tax Abatements:** Tax abatements authorized in conjunction with IRBs must follow the policies and procedures set forth in the City's Tax Abatement Policy.
5. **Sales Tax Exemptions:** Labor and materials used in construction as well as equipment purchased with IRB proceeds are typically exempted from State and local sales tax. Payments-in-lieu of sales tax may be made as negotiated between the City and the Applicant.
6. **Bond Counsel:** Applicants will be encouraged to utilize the City's designated bond counsel. In the event that other bond counsel is selected, the City may require its bond counsel to be involved in the transaction in a review capacity, depending upon the amount of the transaction and the project involved. Bond counsel fees and other fees associated with the transaction shall be paid by the applicant.

D. PROCEDURES

1. **Formal Application.** An applicant shall complete a formal application and file it with the City Manager. A fee of \$1,000 is due upon filing in order to help defray the City's cost in processing the application. Such fee shall be collected regardless of the City Commission's action on the application or if the bond issue closes.
2. **Preliminary Review.** The Management Committee will provide an initial review of the application to ensure that it meets with City policy. In the event that the applicant is requesting a tax abatement in conjunction with the IRB financing, the policy and procedures regarding tax abatements will be followed in addition to those herein.
3. **Coordination with Bond Counsel:** The Management Committee will coordinate with the applicant and bond counsel a schedule for the issuance of the bonds, which meets the needs of all parties involved. During the process, bond counsel will assist with the preparation of other documents needed for filing through the State of Kansas.

4. **Resolution of Intent and Ordinance Provisions:** The City Commission shall consider a Resolution of Intent followed by two readings of an ordinance authorizing the issuance of the bonds.
5. **Documents:** All documents related to Industrial Revenue Bonds will be kept on file with the City Clerk.

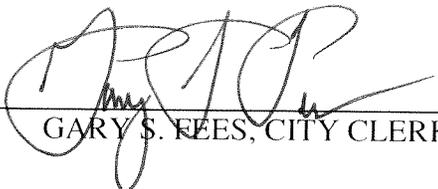
E. WAIVER OF POLICY OR PROCEDURES

Any portion of this policy or the procedures outlined herein may be waived by the City Commission if it is in the best interest of the City and in accordance with State law.

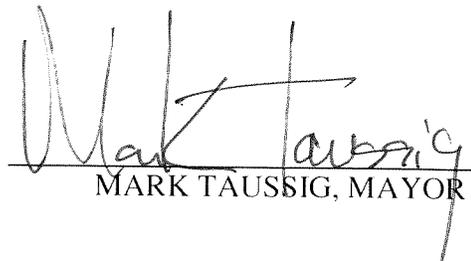
NOW THEREFORE, BE IT RESOLVED that the foregoing is adopted as the official policy of the City of Manhattan with respect to the subject matter thereof this 1st day of July, 2003.



ATTEST



GARY S. FEES, CITY CLERK



MARK TAUSSIG, MAYOR