

CITY OF EAST BETHEL, MINNESOTA

BUSINESS ASSISTANCE POLICY

Public Hearing: October 3, 2012

Adopted: October 3, 2012

I. PURPOSE

The purpose of this policy is to provide guidance for the City of East Bethel (the "City") in its provision of assistance for commercial and housing development and redevelopment projects. As a matter of adopted policy, the City will consider using public assistance to assist private development only in those circumstances in which the proposed private project shows a demonstrated financing gap, meets one of more of the goals presented in the City's Development Program, and is consistent with the City's Comprehensive Plan.

This policy shall be used as a guide in processing and reviewing applications requesting public financing assistance. The City shall have the option of amending or waiving sections of this policy when determined to be necessary or appropriate.

II. STATUTORY LIMITATIONS

All forms of business assistance provided by the City must comply with applicable state law and regulations, including *Minnesota Statutes*, Sections 116J.993 through 116J.995. *Minnesota Statutes*, Section 116J.993, Subd. 3 defines a Business Subsidy as "a state or local government agency grant, contribution of personal property, real property, infrastructure, the principal amount of a loan at rates below those commercially available to the recipient, any reduction or deferral of any tax or any fee, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business." Appendix A lists forms of financial assistance that state law does not consider business subsidies.

A business subsidy may not be granted until the grantor has adopted criteria after a public hearing for awarding business subsidies. A grantor may deviate from its criteria by documenting in writing the reason for the deviation and attaching a copy of the document to its next annual report to the Department of Employment and Economic Development (DEED). A copy of the criteria must be submitted by the City to DEED along with its first annual report following the enactment of this Policy or with the first annual report after it has adopted criteria, whichever is earlier. Notwithstanding *Minnesota Statutes* 116J.993, subdivision 3, clauses (1) and (21), "business subsidies" as defined under section 116J.993 includes the following forms of financial assistance: (1) a business subsidy of \$25,000 or more; and (2) business loans and guarantees of \$75,000 or more.

III. GOALS

As a matter of adopted policy, the City will consider using a business assistance tool to assist private development only in those circumstances in which the proposed private project shows a demonstrated financing gap, meets one of more of the goals presented in the City's Development Program, and is consistent with the City's Comprehensive Plan. The City's primary development priority is to encourage high-value commercial development, including but not limited to manufacturing, warehousing, distribution, office and retail uses. Single-family residential and multi-family housing proposals may be considered for assistance on a case-by-case basis. In all instances, the terms and conditions of any business assistance are to be decided at the discretion of the City Council.

IV. PUBLIC ASSISTANCE TOOLS

1. Tax Increment Financing

Tax increment may be spent only for specified purposes permitted in the underlying development statutes. The Minnesota Tax Increment Act is codified as *Minnesota Statutes* 469.174 through 469.1799. In addition, the Tax Increment Act specifies the qualifying conditions and/or development purposes for several types of TIF districts, and the required process for establishing and reporting on a TIF district.

2. Tax Abatement

Tax abatement may be spent only for specified purposes permitted in the underlying development statutes. The Minnesota Tax Abatement Act is codified as *Minnesota Statutes* 469.1812 through 469.1815.

3. City Fees

The City may consider deferring the assessment of City fees for purposes permitted in the development statutes and City Code. Whether a particular fee is eligible to be deferred or assessed over time may depend on the City Fund's ability to support the deferment.

4. Revolving Loan Fund

The City may make a loan to a business, a for-profit or nonprofit organization, or an individual for any purpose that the City is otherwise authorized to carry out under various state statutes related to redevelopment, housing, economic development, or any special law.

V. BUT FOR TEST

With tax increment financing, the City is statutorily required to find that the increased market value of the site that could reasonably be expected to occur without the use of TIF would be less than the increase in the market value of the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the district permitted by the TIF Plan according to *Minnesota Statutes*, Section 469.175, subd. 3(d).

This market value-based "but for" analysis is required only for non-housing TIF projects. To allow for this evaluation, the developer must provide a complete development budget and operating pro forma, and an accompanying statement explaining the need for TIF assistance.

VI. TYPES OF FINANCING

The City will consider "pay as you go" financing arrangement with a developer. With pay as you go financing, the developer pays for various costs initially, and the City promises to reimburse the developer from tax increment, tax abatement, or other identified economic development and redevelopment tools over time as the development is completed and an increased market value is generated. This arrangement may be structured as a revenue note or bond issued to the developer, with an interest component to compensate the developer for costs of financing the improvements up front.

Interfund loans and transfers secured by tax increments or tax abatements may be used when there is an extraordinary capital requirement that cannot be met through conventional private debt and/or equity, and

to benefit a project of high priority and interest to the City.

Bonds secured by tax increments or tax abatements may be issued only when there is an extraordinary capital requirement that cannot be met through conventional private debt and/or equity, and to benefit a project of high priority and interest to the City. The bonds may be general obligation bonds backed by the full faith and credit of the City.

VII. TERM OF ASSISTANCE

The City retains the ability to provide a shorter term for the tax increment or tax abatement assistance than the Minnesota Tax Increment Act and Minnesota Tax Abatement Act, respectively.

VIII. BUSINESS ASSISTANCE PROJECT APPROVAL CRITERIA

All new projects approved by the City must meet the following mandatory minimum approval criteria. However, it should not be presumed that the business assistance request of a project meeting these criteria will automatically be approved. Meeting these criteria creates no contractual rights on the part of any potential developer.

1. The assistance shall be provided within applicable state legislative restrictions, State Auditor interpretation, debt limit guidelines, and other appropriate financial requirements and policies.
2. The project should meet one or more of the goals referenced in the City's Comprehensive Plan.
3. The project must be in accord with the City's Comprehensive Plan and Zoning Ordinances, or required changes to the Comprehensive Plan and Zoning Ordinances must be under active consideration by the City at the time of approval.
4. Prior to approval of business assistance, the developer shall provide any required market and financial feasibility studies, appraisals, soil boring, information provided to private lenders for the project, and other information or data that the City or its financial consultants may require in order to proceed with an independent underwriting.
5. Any developer requesting business assistance should be able to demonstrate past successful general development capability as well as specific capability in the type and size of development proposed.
6. The developer must retain ownership of the project at least long enough to complete it, to stabilize its occupancy, to establish the project management, and to initiate repayment of the business assistance.
7. The level of business assistance funding should be reduced to the lowest possible level and least amount of time by maximizing the use of private debt and equity financing first, and then using other funding sources or income producing vehicles that can be structured into the project financing, prior to using additional business assistance funding.

IX. BUSINESS ASSISTANCE PROJECT EVALUTATION CRITERIA

If a business meets the criteria in Section 4 and is eligible for assistance, the following criteria will be

used to determine the amount of assistance and type of assistance that may be provided. All projects will be evaluated by the East Bethel City Council, and if necessary, the City's Economic Development Authority or Housing and Redevelopment Authority, on the following criteria for comparison with other proposed business assistance projects reviewed by the City, and for comparison with other subsidy standards (where appropriate). It is realized that changes in local markets, costs of construction, and interest rates may cause changes in the amounts of business assistance subsidies that a given project may require at any given time. In applying the criteria to a specific project, the following will apply:

1. The City may consider the requirements and benefits of any other business subsidy received, or to be received, by a developer from a grantor other than the City.
2. If the business subsidy is a guaranty, the amount of the business subsidy may be valued at the principal amount plus interest of the guaranteed payment obligation.
3. If the business subsidy is real or personal property, the amount of the subsidy will be the fair market value of the property as determined by the City.
4. If the business subsidy is received over time, the City may initially value the subsidy as it determines is fair and reasonable under the circumstances.
5. As used herein, "Benefit Date," means the date the business subsidy is received. If the business subsidy involves the purchase, lease, or donation of physical equipment, then the benefit date occurs when the recipient puts the equipment into service. If the business subsidy is for improvements to property, then the Benefit Date refers to the earliest date of either when the improvements are finished for the entire project or when a business occupies the property.
6. All business assistance projects will need to meet a "Reasonable Rate of Return." Assistance will not be used unless the need for the City's economic participation is sufficient that, without that assistance the project could not proceed in the manner as proposed. The Reasonable Rate of Return will be based on market standards at the time of the application for assistance.
7. Business assistance will not be used when the developer's credentials, in the sole judgment of the City, are inadequate due to past track record relating to: completion of projects, general reputation and/or bankruptcy, or other problems or issues considered relevant by the City.
8. Business assistance funding should not be provided to those projects that fail to meet good public policy criteria as determined by the Council, including: poor project quality; projects that are not in accord with the City's comprehensive plan, zoning, redevelopment plans, and city policies; projects that provide no significant improvement to surrounding land uses, the neighborhood, and/or the City; projects that do not meet one or more of the goals referenced in the City's Comprehensive Plan; projects that do not meet financial feasibility criteria established by the City; and projects that do not provide the highest and best desired use for the property.
9. All projects receiving business assistance under the criteria listed in *Minnesota Statutes* 116J.994, Subd. 3 must meet at a minimum the job and wage goals described below. *Minnesota Statutes* 116J.994, Subd. 2 allows the City to deviate from its criteria by documenting in writing the reason for the deviation and attaching a copy of the document to its next annual business subsidy report to the Department of Employment and Economic Development.

Projects receiving business assistance must create a minimum of 1 full time job(s) paying an average wage of 150% of Federal minimum wage, excluding benefits.

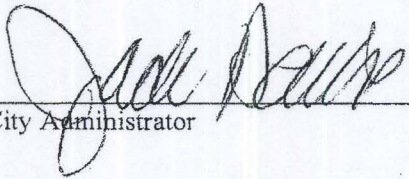
10. The amount of assistance available to a project will be limited by the amount of proceeds that TIF or other financing tools may support.
11. Job creation or retention is not required for businesses subsidies as long as the grantor identifies an alternate public purpose in addition to tax base increase. If after Council consideration of the alternate public purpose(s) proposed, the creation or retention of jobs is determined not to be a goal (after a public hearing), the wage and job goals may be set at zero.
12. In lieu of job creation or retention, other measurable, specific, and tangible goals shall be established. Examples of tangible goals may include tax base diversification, property redevelopment, enhanced economic diversity, community stabilization, investment in the community and/or other goals identified in the City's Comprehensive Plan and City's Comprehensive Plan.
13. Business assistance will normally be used for projects that address the following land use issues: (1) high value development consistent with the City's Comprehensive Plan; (2) location on property which needs but is not likely to be developed or redeveloped because of blight or other adverse conditions of the property; and possibly (3) the inclusion of design and/or amenity features not otherwise required by law.
14. Business assistance will be evaluated on the project's impact on existing and future public investment: (1) whether and to what extent the project will utilize existent public infrastructure capacity and the extent it requires additional publicly funded infrastructure investments; and (2) arrangements for the City to receive a direct monetary return on its investment in the project.
15. Business assistance will normally be used for projects that demonstrate to the satisfaction of the City adequate financing for the project is available and that the project will be completed in a timely fashion.
16. Business assistance from the City must satisfy all requirements of *Minnesota Statutes* 116J.993 through 116J.995, and all other applicable laws and regulations.

X. LOOK BACK PROVISION

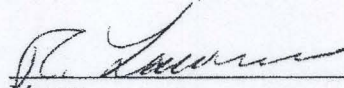
The City reserves the ability to include a Look Back Provision in the Development Agreement for a project. Under the Look Back Provision, the City has the ability to review the development proforma and grant assistance based on the estimates for the project. After completion of the project, the City has the ability to compare the actual project costs and performance with the estimates and adjust the assistance provided so a "Reasonable Rate of Return" is achieved. This adjustment will be made only in circumstances when the business subsidy can be reduced to achieve a "Reasonable Rate of Return." The adjustment will not be made to increase the amount of the business subsidy.

At the time the Development Agreement is being negotiated, the City will consider if and how any assistance above the "Reasonable Rate of Return" may be shared.

Some criteria, by their very nature, must remain subjective. However, wherever possible "benchmark" criteria have been established for review purposes. The fact that a given proposal meets one or more "benchmark" criteria does not mean that it is entitled to funding under this policy, but rather that the City is in a position to proceed with evaluations of (and comparisons between) various business assistance proposals, using uniform standards whenever possible.



City Administrator



Mayor

**CITY OF EAST BETHEL
EAST BETHEL, MINNESOTA**

RESOLUTION NO. 2012-61

**RESOLUTION ADOPTING A POLICY AND
CRITERIA FOR GRANTING A BUSINESS
SUBSIDY**

BE IT RESOLVED By the City Council (the "Council") of the City of East Bethel, Minnesota (the "City") as follows:

Section 1. Recitals.

1.01. Minnesota Statutes, Sections 116J.993 through 116J.995 (the "Statutes") require the adoption of a policy and criteria for the granting of business subsidies as defined in the Statutes; and,

1.02. The City has determined that it is necessary and appropriate to adopt a business subsidy policy and criteria pursuant to the Statutes; and,

1.03. The City has performed all actions required by law to be performed prior to the adoption and approval of the proposed business subsidies policy and criteria, including the holding of a public hearing upon published notice as required by law on October 3, 2012.

Section 2. City Approval; Further Proceedings

2.01. The business subsidy policy and criteria, contained in Exhibit A of this resolution are hereby approved, ratified, established, and adopted and shall be placed on file at City Hall.

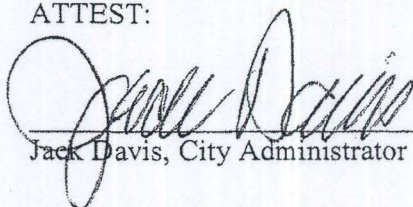
2.02. The City Administrator is authorized and directed to file a copy of the business subsidy policy and criteria, along with annual reports, to the Minnesota Department of Employment and Economic Development, pursuant to the Statutes.

Adopted this 3rd day of October, 2012 by the City Council of the City of East Bethel.



Richard Lawrence, Mayor

ATTEST:



Jack Davis, City Administrator