FINAL: For Council Consideration

BUSINESS SUBSIDY POLICY AND CRITERIA

CITY OF WEST CONCORD
COUNTY OF DODGE
STATE OF MINNESOTA

Public Hearing: July 20, 2006
Adopted: July 20, 2006

EHLERS
& ASSOCIATES INC

Prepared by: EHLERS & ASSOCIATES, INC.
3060 Centre Pointe Drive, Roseville, Minnesota 55113-1105
651-697-8500 fax: 651-697-8555 www.ehlers-inc.com

CITY OF WEST CONCORD

BUSINESS SUBSIDY POLICY AND CRITERIA

1. PURPOSE

1.01 The purpose of this policy and criteria is to establish the **City of West Concord, Minnesota's** (the "City") position as it relates to business subsidies under the **Job Opportunity Building Zones Act** pursuant to *Minnesota Statutes, Sections 469.310 through 469.320* (the "JOBZ Act") and the general **Business Subsidy Act** pursuant to *Minnesota Statutes, Sections 116J.993 through 116J.995* (the "Business Subsidy Act", and with the JOBZ Act, the "Acts"). This policy and criteria shall be used as a guide in processing and reviewing applications requesting business assistance. A copy of this policy shall be submitted to the Minnesota Department of Employment and Economic Development or a successor entity ("DEED") along with the first annual report.

1.02 The City shall have the option of amending or waiving sections of this policy and criteria when determined necessary or appropriate. The Business Subsidy Act 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 report to DEED.

1.03 Meeting all or a majority of the criteria, however, does not mean that the business subsidy will be awarded or denied by the City. The City maintains its ability to approve or reject a business subsidy at its discretion, based on the merits of the project and the overall benefit to the community, using the criteria as a means of measuring overall benefit.

2. STATUTORY LIMITATIONS

2.01 In accordance with the **City's Business Subsidy Policy and Criteria**, assistance requests must comply with applicable laws of the State of Minnesota.

2.02 Any amendments or modifications to the Acts shall amend or modify the terms and definitions of this policy and criteria without any further actions of the City.

3. DEFINITIONS

3.01 **Business Subsidy Generally.** A Business Subsidy, as further defined herein and in the Business Subsidy Act shall include, but not be limited to one of the following types of subsidies provided by the City:

A. Loan,
B. Grant,
C. Tax abatement,
D. TIF or other tax reduction or deferral,
E. Guarantee of payment,
F. Contribution of property or infrastructure,

G. Preferential use of governmental facilities,

H. Land contribution, or

I. Other specified subsidy.

A Business Subsidy does not include assistance of less than $25,000, business loans or loan guarantees of less than $75,000, assistance generally available to all businesses, housing assistance, or any other type of assistance specifically excluded in the Business Subsidy Act.

3.02 **Job Opportunities Building Zone (JOBZ) Business Subsidy.** Under the JOBZ Act, a Business Subsidy includes the subsidy provided through the following set of tax benefits to certain qualified businesses:

A. Exemption from individual income taxes,

B. Exemption from corporate franchise taxes,

C. Exemption from state sales and use tax and any local sales and use taxes on qualifying purchases,

D. Exemption from state sales tax on motor vehicles and any local sales tax on motor vehicles,

E. Exemption from property tax,

F. Exemption from wind energy production tax, and

G. Jobs credit.

3.03 **Further Definitions.** The following defined terms apply equally to all business subsidies. Any terms not defined herein shall have the meanings set forth in the Acts.

"Benefit Date" the later of either the date on which the Business Subsidy Agreement is executed or the date on which any amount of Business Subsidy is first provided to the Business Subsidy Recipient.

"Business Subsidy" means 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, and as defined by the Business Subsidy Act.

"Business Subsidy Agreement" means the agreement between the Recipient as defined herein and the City entered into pursuant to the Business Subsidy Act describing the subsidy, specific tangible goals (i.e., create number of jobs, establish minimum wage rates and time periods in which goals will be achieved) and providing remedy for failure to achieve goals and providing for reporting to the State of Minnesota.

"Business Subsidy Recipient" means any business entity that receives a business subsidy as defined by the Business Subsidy Act and that has signed a Business Subsidy Agreement with the City.

"Business Subsidy Report" means the annual reports submitted by the City each year for each business receiving a Business Subsidy in the City in order to comply with the Business Subsidy Act.

"JOBZ Business Subsidy" means tax exemptions or tax credits available to a Qualified Business

located in a Zone, as defined by the Business Subsidy Act, and as modified by amendments to these Acts.

"Qualified Business" means a person that carries on a trade or business at a place of business located within a Zone and which complies with the reporting requirements specified therein and the criteria set forth herein, except in the case of a Relocating Business, as defined herein, in which case such person must also meet the requirements described in the JOBZ Act, which as of March 2004 were to increase employment or to make a capital investment.

"Relocating Business" A person that relocates a trade or business from outside a Zone into that Zone according to the criteria set forth in the JOBZ Act, which as of March 2004 meant ceasing one or more operations or functions at the non-Zone location and beginning performing substantially the same functions inside the Subzone or by reducing employment at the non-Zone location starting one year before and ending one year after beginning operations in the Zone, where the relocated employees in the Zone are engaged in the same line of business as the employees at the location where employment was reduced.

"Relocation Agreement" means a binding written agreement between a Relocating Business and the Commissioner of DEED pledging that the qualified business shall meet the requirements of the JOBZ Act, which as of March 2004 meant either: (a) increase full-time or full-time equivalent employment in the first full year of operation within the job opportunity building zone by at least 20 percent, *or* (b) make a capital investment on the property equivalent to 10% of the gross revenues of operation that was relocated in the immediately preceding taxable year. As of March 2004, a Relocation Agreement also had to provide for repayment of all tax benefits if the requirements of (a) or (b) are not met.

"Subzone" means the parcel or parcels of land within the Region V Zone in the City, which the Commissioner of DEED has now, or at any time in the future, shall designate to receive certain tax credits and exemptions specified under the JOBZ Act.

"Zone" means a Job Opportunity Building Zone or an Agricultural Processing Facility Zone designated by the Commissioner of DEED under the JOBZ Act.

4. ELIGIBLE USES FOR THE RECEIPT OF BUSINESS ASSISTANCE

4.01 As a matter of adopted policy, the City will consider using a business assistance tool to assist private developments only in those circumstances in which the proposed private projects meet one or more of the following uses:

A. To redevelop blighted or under-utilized areas of the community.

B. To meet the following housing-related uses:

1. To provide a diversity of housing not currently provided by the private market.

2. To provide a variety of housing ownership alternatives and housing choices.

3. To promote affordable housing for low or moderate-income individuals.

4. To promote community stabilization and revitalization by the removal of blight and the upgrading in existing housing stock in residential areas.

C. To remove blight and encourage redevelopment in the commercial and industrial areas of the City in order to encourage high levels of property maintenance and private reinvestment in those areas.

D. To enhance economic growth by increasing the tax base of the City in order to ensure the long-term ability of the City to provide adequate services for it's residents while lessening the reliance on residential property tax.

E. To retain high quality local jobs, create high quality local job growth, and provide diversity in that job base.

F. To increase the local business and industrial market potential of the City.

G. To encourage additional unsubsidized private development in the area, either directly, or through secondary "spin-off" development.

H. To offset increased costs of redevelopment, over and above those costs that a business would incur in normal development.

I. To accelerate the development process and to achieve development on sites which would not be developed without this assistance.

5. BUSINESS ASSISTANCE PROJECT APPROVAL CRITERIA

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

A. The assistance shall be provided within applicable state legislative restrictions, State Auditor interpretation, debt limit guidelines, and other appropriate financial requirements and policies.

B. The project should meet one or more of the uses identified in Section 4, Eligible Uses for the Receipt of Business Assistance.

C. The project must be in accordance with the City's comprehensive plan and zoning ordinances, or required changes to the City's comprehensive plan and zoning ordinances must be under active consideration by the City at the time of approval.

D. The assistance will not be provided to projects that have the financial feasibility to proceed without the benefit of the assistance. Assistance will not be provided solely to broaden a businesses's profit margins on a project. Prior to consideration of a business assistance request, the City may undertake an independent underwriting of the project to help ensure that the request for assistance is valid with underwriting costs to be reimbursed by the business in all instances which shall be in addition to the application fee described herein.

E. Prior to approval of business assistance, the business 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.

F. Any business 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.

G. The business must continue operations of the project for at least five years after the Benefit Date in order to stabilize its occupancy, to establish the project management, and to initiate repayment of the business assistance. If the business is a Qualified Business, that business shall agree to continue to operate in the City for the duration of the Zone.

H. 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.

6. BUSINESS ASSISTANCE PROJECT EVALUATION CRITERIA

6.01 All projects will be evaluated by the City Council (the "Council") 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.

6.02 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.

6.03 Following are the evaluation criteria that will be used by the City:

A. All proposals should, in the opinion of the City Council, optimize the private development potential of a site.

B. All proposals should, in the opinion of the City Council, create the highest feasible number of jobs on the site.

C. Business assistance will not be provided when the relocating or new business requesting assistance would be in direct competition with an established business in the community.

D. All proposals should, in the opinion of the City Council, create the highest possible ratio of property taxes paid before and after redevelopment. Given the different assessment circumstances in the City, this ratio will vary widely.

E. Proposals should usually not be used to support speculative industrial, commercial, and office projects.

F. Assistance will usually not be used in a project that involves an excessive land and/or property price.

G. All business assistance projects will need to meet the "but for" test. 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.

H. Business assistance will not be used when the business's credentials, in the sole judgment of the City, are inadequate due to past track record relating to: completion of projects, general business reputation and/or bankruptcy, or other problems or issues considered relevant by the City.

I. Business assistance will not normally be used for projects that would generate significant environmental problems in the opinion of the local, state, or federal governments.

J. Business assistance funding should not be provided to those projects that fail to meet good public policy criteria as determined by the City Council, including: poor project quality; projects that are not in accord with the 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 have significant new, or retained, employment; projects that do not meet financial feasibility criteria established by the City; and projects that do not provide the highest and best use for the property.

K. Except where job creation or job retention is not a goal, all projects receiving business assistance must create a minimum of one new full-time equivalent job in the community which provides employer paid basic health insurance with a minimum wage and health benefits that total at least the rate per hour of 110% of the current poverty level for a family of four within two years from the Benefit Date. 110% of 2006 poverty level for a family of four in the State of Minnesota is $10.58 per hour.

L. The City shall have an overall goal that City residents hold a majority of new jobs created under this policy. It is expected that all qualified businesses or recipients shall have a quantified target for the number of residents to be hired.

M. In the case where job creation or job retention is not a goal, the business must meet at least one of the following minimum requirements:

1. The Business Subsidy accomplishes the removal, rehabilitation or redevelopment of, or prevention of development or spread of, a blighted area as defined by Minnesota Statutes, Section 469.002, Subdivision 11, or constitutes a cost of correcting conditions that permits designation of a redevelopment district or renewal and renovation district under Minnesota Statutes, Section 469.174 to 469.179; or

2. The Business Subsidy improves public infrastructure or public facilities, including without limitation streets, sewers, storm sewers, streets, parks, recreational facilities, and other City facilities; or

3. The Business Subsidy removes physical impediments to development of land, including without limitation poor soils, bedrock conditions, steep slopes, or similar geotechnical problems.

The above requirements must be expressed as specific, measurable and tangible goals in each Business Subsidy Agreement. The job and wage goals that would otherwise be required may be set at zero. In addition, in the case where a business is qualified to receive job opportunity building zone tax benefits, the requirements of a Relocation Agreement must be met.

N. Any Business Subsidy Recipient must pay back assistance received if the job and wage goals or other specified goals are not met within two (2) years of the Benefit Date or such time as permitted by the Acts as they may be amended. For all Business Subsidies, assistance provided by the City must be paid back, with interest as determined in the Business Subsidy Act, to the City, or at the City's request, to the account created under the Business Subsidy Act. Any repayment may be prorated by the City to reflect partial fulfillment of goals. The City may, after a public hearing, extend the period for meeting job and wage goals for up to one year and may pursuant to the procedure in the Acts, extend the period for meeting other goals for any period specified by the City. For JOBZ Business Subsidies, state tax exemptions must be paid back to the State of Minnesota and property tax exemptions paid back to the Subzone county, all pursuant to the JOBZ Act. The Commissioner of DEED may waive, without a hearing, the necessity of such state and county repayment if in consultation with City officials the Commissioner determines that requiring repayment is not in the best interest of the state or City and the business ceased operating as a result of circumstances described in the JOBZ Act.

6.04 Following are the procedures that will be used by the City:

A. Meet with appropriate City staff to discuss the scope of the project, public participation being requested, and other information as may be necessary.

B. Completion of Pre-Application Business Assistance Financing form. This form shall be submitted to the City Council.

C. The City Council shall review the request on a preliminary basis as to the feasibility of the project.

D. The application shall be placed on the City Council agenda for concept review. The applicant may make a formal presentation of the project. The City staff and/or their consultants shall present their findings.

E. If the City Council's preliminary concept review is positive, the applicant may elect to file a formal application accompanied by an administrative fee as well as annual fees for monitoring and reporting as required by statute. The amount of these fees will be determined based upon the complexity of the project and corresponding requirements for administrative services.

F. Following the necessary financial analysis and preparation of detailed plans, the City Council shall take action on the project. If approved, the staff will be directed to undertake the following steps:

- Prepare a Business Subsidy Agreement based upon the terms approved

- Prepare a development plan and tax increment financing plan if required

G. The City may require the business to provide additional security, such as a letter of credit, a security bond, or a guaranty from an affiliate or third party.

CITY OF WEST CONCORD
PRE-APPLICATION
BUSINESS ASSISTANCE FINANCING

Legal name of applicant: _____

Address: _____

Telephone number: _____

Name of contact person: _____

REQUESTED INFORMATION

Addendum shall be attached hereto addressing in detail the following:

1. A map showing the exact boundaries of proposed development.
2. Give a general description of the project including size and location of building(s); business type or use; traffic information including parking, projected vehicle counts and traffic flow; timing of the project; estimated market value following completion.
3. The existing comprehensive land use designation and zoning of the property. Include a statement as to how the proposed development will conform to the land use designation and how the property shall be zoned or petitioned to be rezoned.
4. A statement identifying how the business assistance will be used and why it is necessary to undertake the project.
5. A statement identifying the public benefits of the proposal including estimated increase in property valuation, new jobs to be created, hourly wages and other community assets.
6. A written description of the developer's business, principals, history and past projects.

I understand that the application fee will be used for City staff and consultant costs and may be partially refundable if the request for assistance is withdrawn. Refunds will be made at the discretion of the City Council and be based on the costs incurred by the prior to the withdrawal of the request for assistance. If the initial application fee is insufficient, I will be responsible for additional deposits.

SIGNATURE

Applicant's signature: _____

Date: _____

CITY OF WEST CONCORD
APPLICATION FOR BUSINESS ASSISTANCE FINANCING

GENERAL INFORMATION:

Business Name: _____ Date: _____

Address: _____

Type (Partnership, etc.): _____

Authorized Representative: _____ Phone: _____

Description of Business: _____

_____

Legal Counsel: _____

Address: _____ Phone: _____

FINANCIAL BACKGROUND:

1. Have you ever filed for bankruptcy? _____

   _____

2. Have you ever defaulted on any loan commitment? _____

   _____

3. Have you applied for conventional financing for the project? _____

   _____

4. List financial references:

   a. _____

   b. _____

   c. _____

5. Have you ever-used business assistance financing before? _____

   If yes, what, where and when? _____

PROJECT INFORMATION:

1. Location of Proposed Project: _____

_____

2. Amount of Business Assistance requested? _____

3. Need for Business Assistance: _____

4. Present ownership of site: _____

5. Number of permanent jobs created as a result of project? _____

6. Estimated annual sales: Present: _____ Future: _____

7. Market value of project following completion: _____

_____

8. Anticipated start date: _____ Completion Date: _____

FINANCIAL INFORMATION:

1. Estimated project related costs:
   a. Land acquisition $ _____
   b. Site development _____
   c. Building cost _____
   d. Equipment _____
   e. Architectural/engineering fee _____
   f. Legal fees _____
   g. Off-site development costs _____

2. Source of financing:
   a. Private financing institution $ _____
   b. Business assistance funds _____
   c. Other public funds _____
   d. Developer equity _____

PLEASE INCLUDE:

1. Preliminary financial commitment from bank.
2. Plans and drawing of project.
3. Background material of company.
4. Pro Forma analysis.
5. Financial statements.
6. Statement of property ownership or control.
7. Payment of application fee.