



City of Marshall

Business Subsidy Policy and Criteria

Adopted January 3, 2000
Amended October 16, 2000
Amended to include JOBZ on June 21, 2004
Amended January 12, 2018

AMENDED BUSINESS SUBSIDY POLICY AND CRITERIA

CITY OF MARSHALL, MINNESOTA AND ITS LOCAL GOVERNMENT AGENCIES

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Introduction

This Amended Business Subsidy Policy and Criteria (the “Policy”) is adopted for purposes of Minnesota Statutes, Sections 116J.993 through 116J.995, inclusive, as amended (the “Business Subsidy Act”) and for the purposes of Minnesota Statutes, Sections 469.310 through 469.320, inclusive (the “Job Opportunities Building Zone Act” or “JOBZ Act”). Together the Business Subsidy Act and JOBZ Act shall be referred to as the “Acts”. Terms used in this Policy are intended to have the same meanings as used in the Acts. This Policy shall apply only with respect to subsidies granted under the Acts, if and to the extent required therein.

Section 1. Definitions.

The following defined terms apply equally to business subsidies generally and to JOBZ business subsidies. Any terms not defined herein shall have the meanings set forth in the Acts.

Acts means Minnesota Statutes, sections 116J.993 to 116J.995, inclusive, as amended and to Minnesota Statutes, sections 469.310 through 469.320, inclusive, also referred respectively to as the Business Subsidy Act and the JOBZ Act.

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

Business Subsidy Act means Minnesota Statutes, sections 116J.993 to 116J.995, inclusive, as amended.

Business Subsidy (for Business Subsidy Act) includes, but is not limited to one of the following types of subsidies: a grant, contribution of personal property, real property, infrastructure, a loan at interest rates below those commercially available, tax increment, tax abatement, or reduction or deferral of any tax or fee, guarantee of payment of loan, lease, or other obligation, or preferential use of government facilities by a business. Forms of financial assistance listed in *Appendix A* are not a Business Subsidy under the Business Subsidy Act.

Business Subsidy Report means the annual reports submitted by the City each year for each Recipient receiving a Business Subsidy in the City in compliance with the Business Subsidy Act.

City means the City of Marshall.

Council means the Common Council for the City of Marshall.

Criteria mean those elements considered by the Grantors as a guide in the processing and reviewing of applications requesting a Business Subsidy. Meeting the Criteria does not presume that a project will automatically be approved nor does it create any contractual rights on the part of any applicant.

DEED means the Minnesota Department of Employment and Economic Development.

Grantor means the City, the Economic Development Authority in and for the City, and the Housing and Redevelopment Authority in and for the City, or any combination thereof.

JOBZ Act means Minnesota Statutes, Sections 469.310 through 469.320, inclusive.

JOBZ Business Subsidy includes subsidies provided through the following set of tax benefits to certain qualified businesses: exemptions from (i) individual income taxes, (ii) corporate franchise taxes, (iii) state sales and use tax and any local sales and use taxes on qualifying purchases, (iv) state sales tax on motor vehicles and any local sales tax on motor vehicles, (v) property tax, (vi) wind energy production tax and jobs credit.

Person includes an individual, corporation, partnership, limited liability company, association, or any other entity.

Policy means this Amended Business Subsidy Policy and Criteria adopted for purposes of the Business Subsidy Act and the JOBZ Act.

Qualified Business means a Person which 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, such entity must also meet the requirements to increase employment or to make a capital investment.

Recipient means any business entity, including a Qualified Business receiving a JOBZ Business Subsidy, that receives a Business Subsidy or that has signed a Subsidy Agreement with the City.

Relocating Business means 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, 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.

Subsidy Agreement means an agreement between the Grantor and a Recipient, including a Qualified Business receiving a JOBZ Business Subsidy, which meets the requirements of section 116J.994, subd. 3 of the Business Subsidy Act. The terms listed under *Appendix B* are required for a Subsidy Agreement.

Subzone means the parcel or parcels of land within the Southwest Regional 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.

Zone means a Job Opportunity Building Zone or an Agricultural processing Facility Zone designated by the Commissioner of DEED.

Section 2. Public Policy.

Every Business Subsidy, including a Qualified Business receiving a JOBZ Business Subsidy, must meet a public purpose which may include but may not be limited to increasing the tax base. Job retention may only be used as a public purpose in cases where job loss is specific and demonstrable.

2.1 A Business Subsidy must have a defined public purpose. Public purposes that could apply to the project, among others, are listed in *Appendix C*.

2.2 A statement of the public purpose must be given in the Subsidy Agreement.

Section 3. Business Subsidy Criteria.

A Grantor reserves the right to approve a Business Subsidy that varies from the Criteria if the Grantor determines a valid public purpose will be served. Criteria may be amended at any time, subject to a public hearing, the notice of which shall be published ten days prior to the hearing.

- 3.1** The Criteria may not be adopted on a case-by-case basis.
- 3.2** Any Business Subsidy approved by a Grantor shall be in compliance with the requirements of State and local law, including conformance with the comprehensive plan of the City. A Grantor can approve a request for a Business Subsidy, however, if changes in the comprehensive plan, the zoning ordinance or other local laws or policies are under active consideration by the City.
- 3.3** Prior to consideration or approval of a Business Subsidy, an applicant shall provide the following, if requested by a Grantor:
 - (i) Demonstrate past successful general development capability and specific capability for the type and size of project proposed;
 - (ii) Substantiate that the project can not financially proceed without the benefit of a Business Subsidy, by demonstrating the inability to obtain full private financing prior to applying for a Business Subsidy;
 - (iii) Provide requested market and financial feasibility studies, appraisals, soil borings, information provided to private lenders regarding the project, or other information or data that the Grantor, or its financial advisor, requests to independently determine the need for a Business Subsidy. A Grantor may rely on data provided by an applicant to a financial institution.
- 3.4** A Recipient, including a Qualified Business receiving a JOBZ Business Subsidy, must enter into a Subsidy Agreement with the City that complies with the requirements of the Business Subsidy Act.
- 3.5** JOBZ Recipients agree not to compete with or displace local businesses currently operating within the City.
- 3.6** A Grantor, with the assistance of its financial advisor, will award the lowest responsible Business Subsidy within the shortest reasonable term of years, based on the equity of the Recipient and capacity to obtain private debt financing.
- 3.7** A Grantor shall require the following commitments of a Recipient, including a Qualified Business receiving JOBZ Business Subsidies, if applicable to the type of project under consideration:
 - (i) The Recipient must retain ownership of the project at least until the project is completed, its occupancy stabilized, project management established, and Business Subsidy repayment initiated.
 - (ii) The Recipient must continue operations in the jurisdiction where the Business Subsidy is used for at least five years from receipt of the benefit.
 - (iii) The Recipient may be authorized to move from the jurisdiction where the subsidy is used within the five-year period after the Benefit Date if, after a public hearing, the Grantor approves the Recipient's request to move.
 - (iv) JOBZ Recipients must further agree to continue operations in the Subzone for the duration of the JOBZ term determined for the Subzone, pursuant to the JOBZ Act.
- 3.8** A copy of the Criteria will be submitted to DEED with the first annual report after the adoption of the amended Policy.

Section 4. Job and Wage Goals

The Recipient of a Business Subsidy, including a Qualified Business receiving a JOBZ Business Subsidy, is required to meet wage and job goals determined by the Grantor. The setting of wage and job goals will be sensitive to prevailing wage rates, local economic conditions, external economic forces over which neither the Grantor nor the Recipient has control, the financial resources of the Recipient, the competitive environment in which the Recipient's business exists, and the public purpose for which the Grantor is providing the Business Subsidy.

- 4.1** Business Subsidy and JOBZ Business Subsidy Wage Goals. For all Business Subsidies and JOBZ Business Subsidy Wage Goals, the Recipient must create and retain an hourly wage average, including insurance, of 110 percent of the State poverty level for a family of four.
- 4.2** The Council may determine, after public hearing, that job creation or job retention is not a goal of either a Business Subsidy or JOBZ Business Subsidy. The Council may deviate from the wage or job goals by documenting in writing the reason for the deviation, attaching a copy of the written documentation to its next annual report to DEED.
- 4.3** A Relocating Business shall either (i) increase full-time or full-time equivalent employment in the first full year of operation within the Zone by at least 20 percent, or (ii) 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.
- 4.4** Default on Business Subsidy Act Requirements. (a) In the event of an Event of Default arising from a breach by the Borrower of any provision of Section 7.1 of this Agreement, if the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysis of the United States Department of Commerce for the 12-month period ending March 31st of the previous year, exceeds one percent (1.0%) on the date of the earliest such Event of Default, the Borrower shall, in addition to any other payment required hereunder, pay to the Lender the difference between the present value of the interest actually paid and accrued on the Loan as of the date of the payment required by this Section 4.4, and the amount of interest that would have been paid and accrued on the Loan if the interest rate of the Loan at all times had been equal to the implicit price deflator on the date of the earliest Event of Default.

Section 5. Subsidy Agreement.

A Recipient of a Business Subsidy, including a Qualified Business receiving a JOBZ Business Subsidy, is required by the Acts to enter into a Subsidy Agreement with a Grantor.

- 5.1** The Subsidy Agreement between the Grantor and the Recipient must meet the requirements set forth in *Appendix B*, attached hereto. The Subsidy Agreement may be incorporated into and made a part of a redevelopment agreement for the project.
- 5.2** For a Business Subsidy exceeding \$100,000, a public hearing is required unless a hearing is otherwise required, with public notice in the official newspaper at least ten-days before the public hearing. The notice must be sufficiently conspicuous in size and placement, make the information available in printed paper copies, and if possible, on the Internet.
- 5.3** The Subsidy Agreement must be approved by the Council and executed by both the Grantor and the Recipient.

Section 6. Pay Back Provisions and Extensions

- 6.1** Any Business Subsidy or JOBZ Recipient must pay back assistance received if the job and wage goals or other specified goals are not met with two (2) years of the Benefit Date or such time as permitted by the Acts.

- (i) Assistance provided by the City must be paid back, with interest as determined in the Business Subsidy Act. Any repayment may be prorated by the City to reflect partial fulfillment of goals.
- (ii) The City may, after a public hearing, extend the period for meeting job and wage goals for up to one year and may extend the period for meeting other goals for a period specified by the City.

6.2 For JOBZ Business Subsidies, state tax exemptions must be paid back to the State and property tax exemptions paid back to the Lyon County. The Commissioner of DEED may waive, without a hearing, the necessity of state and county repayment if, in consultation with the City, 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.

Section 7. Modification of Policy

The City reserves the right to modify this Policy from time to time in accordance with the Acts. Any modifications or amendments to the Acts shall amend or modify the definitions and terms of this Policy without any further action of the City and its local government agencies.

APPENDIX A

Exemptions From the Business Subsidy Act

The Business Subsidy, Act at section 116J.993, subdivision 3, exempts the following forms of financial assistance from the limitations of the Act:

1. A Business subsidy of less than \$150,000;
2. Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, location, or similar general criteria;
3. Public improvements to buildings or lands owned by the state or local government that serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made;
4. Redevelopment property polluted by contaminants as defined in section 116J.662, subdivision 3;
5. Assistance provided for the sole purpose of renovating old or decaying building stock or bringing it up to code, and assistance provided for designated historic preservation districts, provided that the assistance is equal to or less than 50 percent of the total cost;
6. Assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services;
7. Assistance for housing;
8. Assistance for pollution control or abatement, including assistance for a tax increment financing hazardous substance subdistrict as defined under section 469.174, subdivision 23;
9. Assistance for energy conservation;
10. Tax reductions resulting from conformity with federal tax law;
11. Workers' compensation and unemployment compensation;
12. Benefits derived from regulation;
13. Indirect benefits derived from assistance to educational institutions;
14. Funds from bonds allocated under chapter 474A, bonds issued to refund outstanding bonds, and bonds issued for the benefit of an organization described in section 501 (c) (3) of the Internal Revenue Code of 1986, as amended;
15. Assistance for collaboration between a Minnesota higher education institution and a business;
16. Assistance for a tax increment financing soils condition district as defined under section 469.174, subdivision 19 [pollution clean-up];
17. Redevelopment when the recipient's investment in the purchase of the site and in site preparation is 70 percent or more of the assessor's current year's estimated market value;
18. General changes in tax increment financing law and other general tax law changes of a principally technical nature;
19. Federal assistance until the assistance has been repaid to, or reinvested by, the state or local government agency;
20. Funds from dock and wharf bonds issued by a seaway port authority;
21. Business loans and loan guarantees of \$150,000 or less; and
22. Federal loan funds provided through the United States Department of Commerce, Economic Development Administration; and
23. Property tax abatements granted under §469.1813 to property that is subject to valuation under Minnesota Rules, Chapter 8100.

APPENDIX B

Requirements for Subsidy Agreements

Section 116J.994, subdivision 3 of the Business Subsidy Act requires as follows:

- A. A recipient must enter into a subsidy agreement with a grantor that includes:
1. A description of the subsidy, including the amount and type of subsidy, and type of district if the subsidy is tax increment financing;
 2. A statement of the public purposes for the subsidy;
 3. Measurable, specific, and tangible goals for the subsidy;
 4. A description of the financial obligation of the recipient if the goals are not met;
 5. A statement of why the subsidy is needed;
 6. A commitment to continue operations in the jurisdiction where the subsidy is used for at least five years after the benefit date; although a recipient may be authorized to move from the jurisdiction where the subsidy is used within the 5-year period after the benefit date if, after public hearing, the grantor approves the recipient's request;
 7. The name and address of the parent corporation of the recipient, if any; and
 8. A list of all financial assistance by all grantors for the project.
- B. Business subsidies in the form of grants must be structured as forgivable loans. For other types of business subsidies, the agreement must state the fair market value of the subsidy to the recipient, including the value of conveying property at less than a fair market price, or other in-kind benefits to the recipient.
- C. If a business subsidy benefits more than one recipient, the grantor must assign a proportion of the business subsidy to each recipient that signs a subsidy agreement. The proportion assessed to each recipient must reflect a reasonable estimate of the recipient's share of the total benefits of the project.
- D. The local governmental agency and the recipient must sign the subsidy agreement and the local elected governing body must approve the subsidy agreement.

Section 116J.994 subdivision 4 of the Business Subsidy Act requires as follows:

Subd. 4. **Wage and job goals.**

The subsidy agreement, in addition to any other goals, must include:

- (1) goals for the number of jobs created, which may include separate goals for the number of part-time or full-time jobs, or, in cases where job loss is specific and demonstrable, goals for the number of jobs retained;
- (2) wage goals for any jobs created or retained; and
- (3) wage goals for any jobs to be enhanced through increased wages. After a public hearing, if the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero. The goals for the number of jobs to be created or retained must result in job creation or retention by the recipient within the granting jurisdiction overall.

In addition to other specific goal time frames, the wage and job goals must contain specific goals to be attained within two years of the benefit date.

Additional JOBZ requirements:

- (i) Recipient agrees not to compete with or displace local businesses currently operating with the City.
- (ii) Recipient agrees to continue operations in Subzone for duration of JOBZ term.

APPENDIX C

Suggestions for Subsidy Public Purposes

Grantors may wish to consider any of the following public purposes, among others, when considering an applicant's request:

1. Increasing the tax base may be used as a public purpose as long as it is not the only public purpose.
2. Job retention may only be used in cases where job loss is specific and demonstrable.
3. The project provides a service or meets a consumer need not currently addressed in the City.
4. The project represents a significant investment in an area of the City that is economically depressed.
5. The project will remove blighting influences or rehabilitate an area of the City in need of revitalization.
6. The project will stimulate additional capital investment in a geographic area of the City and act as a catalyst for future (re)development.
7. The project will cause surrounding property values to increase and will stabilize the area.
8. The project will anchor a needed commercial center for the City.
9. The project will enhance the viability of other businesses in the City.
10. The project will assist in the processing, packaging, distribution, or marketing of agricultural products grown in the region.
11. The project will assist in the orderly growth of the City and generate significant economic spin off.
12. The project will prevent the closure of business needed in the community due to merger, physical expansion, change in market or economic factors, downsizing, and other factors.
13. The project will employ a classification of people in the community at large who are not fully employed.
14. A business subsidy will permit the project to employ more people, pay higher wages, be of better quality, or in some way be of more value to the City.

APPENDIX D

Business Subsidy Criteria

The Grantors hereby express its support for the use of business subsidies that generally meet the criteria listed below.

1. But for Test. There is a substantial likelihood that the project may not go forward without the business subsidy requested. The criteria must be supported by representations of the applicant for business subsidy.
2. Redevelopment. The project will remove, prevent or reduce blight or other adverse conditions of the property, thereby protecting the County's property values and the general public health, safety, and welfare.
3. Attraction of New Business. The project will attract or retain competitive and financially strong commercial and industrial companies, which offer the potential for significant growth in employment and tax base.
4. Highest and Best Land Use. The use of the business subsidy will encourage quality construction and promote the highest and best use of land, consistent with the Comprehensive Plan of the County or a city within the County, if such city seeks the Authority's assistance.
5. Needed Services. The project will provide a needed service in the County or applicable service area, including health care, convenience and social services which are not currently available.
6. Unmet Housing Needs. The project will provide housing alternatives the County or the area currently needs but are not available.
7. Economic Feasibility. The recipient can demonstrate that it has experience and adequate financing for the project, and that the project can be completed in a timely manner.
8. Impact on County/City Services and Infrastructure. The project will not significantly and adversely increase the demands for service needs in the County or city within the County seeking assistance.
9. Job Creation. The project will create or retain jobs which pay desirable wages and benefits in the area. The Grantors may take into account the special needs of small or growth-phase businesses with potential to create high paying jobs in the future.
10. Tax Base. The project will increase the County's tax base and generate new property tax revenue.