

THE BUSINESS SUBSIDY ACT

Legislative Authority

In the 1999 legislative session, the Minnesota State Legislature enacted the Business Subsidy Act (Minnesota Statutes, Section 116K.993-995). The act authorizes any statutory or home rule charter city to offer a business subsidy to a business so long as that subsidy serves a public purpose. This public purpose may be increasing the tax base, but other public purposes generally related to economic development are also valid. It's important to note that although job creation is specifically mentioned as a valid public purpose, job retention can only be used as a public purpose in cases where job loss is specific and demonstrable.

What is business subsidy under the Act?

A business subsidy is a local government agency grant 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 that are given to a business.

There are 18 specific exceptions to the general business subsidy rule listed in the Statute. Those that may apply to the Prior Lake EDA/City of Prior Lake ("Prior Lake EDA") could include: 1) a business subsidy of less than \$25,000; 2) assistance for housing; 3) assistance for energy conservation; and 4) tax increment financing for a soil conservation district. Although a business subsidy of less than \$25,000.00 is exempt from the act, the City of Prior Lake requires all business subsidies, regardless of size, to comply with all of the requirements of the Act to be eligible for funds.

Who grants a business subsidy?

With respect to the City of Prior Lake, the Prior Lake EDA has control over the provision of business subsidies. Only by appealing to the Prior Lake EDA pursuant to the *Policies and Procedures Relating to the Use of Business Subsidies* can a business successfully obtain a business subsidy.

What are the criterion that the Economic Development Authority and the City of Prior Lake use to determine whether or not to grant business subsidies?

Any business subsidy must meet one or more of the adopted business subsidies criteria of the Prior Lake EDA. The *Business Subsidy Criteria* were adopted by the City of Prior Lake in August of 1999, following a public hearing.

Basically, the likelihood that a business subsidy will be granted increases if its proponent can demonstrate that the public purpose will be achieved if, and only if, the business subsidy is granted. Any business that is seeking to obtain a business subsidy should carefully articulate the public purpose to be achieved and then demonstrate how the project in question would achieve that public purpose.

Each of the five general types of tax increment financing districts may have its own qualifications, duration, and purpose as they are outlined in the Business Subsidies Criteria. This is because each of the districts must consider which public purpose that district needs to address.

What are the requirements for a Business Subsidy Agreement?

1. A recipient and the Prior Lake EDA must enter into a subsidy agreement that includes:
 - i. A description of the subsidy, including the amount and type of subsidy and the type of district if the subsidy is tax increment financing:
 - a. This may include a description of whether the subsidy was in the form of cash, or some other tangible good obtained for less than its reasonable commercial value.
 - b. The amount of the subsidy will be estimated in good faith by the Prior Lake EDA if it comes in any form other than cash.
 - c. The description of the type of district in the case of a tax increment financing is important because each TIF district may have different criterion for what constitutes a public benefit.
 - ii. A statement of the public purposes for the subsidy:
 - a. The statement of the public purposes of the subsidy should include a description of the public purpose to be served through the project.
 - b. The statement of the public purposes of the subsidy should also include specific wage and job goals. These goals must include a description of how many jobs should be created (separate part-time and full-time) over what time frame and any increased wage goals that should be realized by the project.
 - iii. Goals for the subsidy:
 - a. The goals for the subsidy should include an economic analysis of the return on the investment from the perspective of the Prior Lake EDA.
 - b. The Prior Lake EDA will approach its analysis from the standpoint that the greater the economic benefit to be derived per subsidy dollar, the more likely the subsidy agreement will be approved.
 - iv. A description of the financial obligation of the recipient if the goals are not met:
 - a. This description must include a specific discussion of the financial penalties paid by the recipient of a subsidy if the recipient fails to meet its goals.

- b. At a minimum the agreement *must* require the recipient to *repay* the assistance with interest if goals are not met. This repayment may be prorated to reflect the fact that some goals were partially achieved.
 - v. A statement of why the subsidy is needed:
 - a. This should include a description of the precise economic condition in the affected area that will be addressed by the subsidy.
 - b. This should also include a description of why the business cannot proceed without the subsidy.
 - vi. A commitment to continue operations at the site where the subsidy is used for *at least five years* after the benefit date.
 - vii. The name and address of the parent corporation of the recipient, if any.
 - viii. A list of all financial assistance by all grantors, for the project.
- 2. The subsidy agreement must be approved by the Prior Lake EDA.
- 3. The Prior Lake EDA must provide public notice and hold a public hearing on any subsidy in excess of \$100,000. At the hearing the business will be expected to support the case in favor of the subsidy before the citizens of Prior Lake and that hearing will be considered part of the application.
- 4. Before entering into a Business Subsidy Agreement, the Prior Lake EDA must check with the compliance and summary report requirements to determine if the recipient is eligible to receive a business subsidy.

Reports by Recipients

Any recipient of a business subsidy must file certain reports with the Prior Lake EDA. The Business Subsidy Agreement will provide for periodic reports to the Prior Lake EDA for at least two years, or until the goals outlined in the agreement have been achieved, whichever is later. These reports will include the following:

- 1. A restatement of the type of subsidy, the public purpose served by it, and the amount of subsidies by type and districts;
- 2. The hourly wage or salary for each job that has been created by the subsidy, with separate bands for full-time and part-time positions;
- 3. The sum of the hourly wages and the cost of health insurance provided by the employer with separate bands for full and part-time positions;
- 4. The date when the recipient expects to reach any job and wage goals;

5. A restatement of the goals identified in the Business Subsidy Agreement and an update on whether or not those goals are being achieved;
6. The location of the recipient prior to receiving the subsidy;
7. If the recipient was previously receiving a subsidy in Minnesota and failed to finish that project, a discussion of why that project was not completed in the previous location;
8. The name and address of the parent corporation, if any;
9. A list of all financial assistance granted by all grantors; and
10. Any other information requested by the commissioner.

When is the Act in effect?

The Business Subsidy Act has been effective for all business subsidies entered into on or after August 1, 1999.

City of Prior Lake, Minnesota

Business Subsidies Policy

Adopted:
Prior Lake City Council

DATE:
Oct. 18, 2004

Amended:

City of Prior Lake
16200 Eagle Creek Avenue, S.E.
Prior Lake, MN 55372
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**CITY OF PRIOR LAKE
POLICY AND PROCEDURES RELATING TO
THE USE OF BUSINESS SUBSIDIES**

I. PURPOSE

For the purposes of this document, the term "City" includes the Prior Lake City Council and Economic Development Authority.

This policy establishes guidelines and criteria regarding the use of business subsidies, such as tax increment financing ("TIF"), tax abatement and other business subsidies for private development projects within the City of Prior Lake. These guidelines and criteria are in addition to the requirements and limitations set forth by provisions of Minnesota Statute 116J.993 ("MN Business Subsidy Law"), and policies and guidelines with respect to any particular form of subsidy.

The fundamental purpose of business subsidies in the City is to encourage desirable development or redevelopment that would not otherwise occur "but for" the assistance. Business subsidies do not exist to enhance the return on investment for projects that would otherwise occur, but to facilitate development that would not otherwise occur.

Any developer that applies for business subsidy assistance may look to these guidelines for guidance regarding the criterion the City will use in evaluating an application. However, whether a particular project meets the criterion and serves the City's present needs shall be the City's decision. The guidelines are instructive only and do not have the force of law. If the City finds that its present needs require one project to be given priority over another, then the City's judgment will ultimately prevail.

The City will provide subsidies and incentives in the most limited fashion possible to assure that the project will proceed. The City reserves the right to approve or reject projects on a case-by-case basis, taking into account established policies, specific project criteria, and demand on city services in relation to the potential benefits to be achieved from a proposed project. This process is inherently subjective, and whether a project receives a business subsidy may be as much a function of the City's budget as the merit of the project.

The City will work to maximize the subsidies to those projects that, in the City's judgment, will address the most pressing public purpose. The ability to demonstrate that the project will most likely achieve its stated goals and therefore address the most pressing public purpose will be the primary factor in determining whether a project receives a business subsidy. Meeting these policy guidelines does not guarantee that a business subsidy will be awarded. Furthermore, the approval or denial of one project should not be construed as setting a precedent that another similar project should be approved or denied. The City cannot possibly approve a business subsidy for every worthy project. Whenever possible, it is the City's intent to coordinate the use of business subsidies with other applicable taxing jurisdictions.

II. DEFINITION OF "BUSINESS SUBSIDY"

The following types of assistance in excess of \$25,000.00 are defined as a "business subsidy" within the MN Business Subsidy Law:

- State and local government agency grants;
- Contributions of personal property, real property, or infrastructure;
- Any loan that has a principal amount in excess of \$75,000 for which interest accrues at a rate below those commercially available for loans of that risk profile;
- Reductions or deferrals of taxes or fees;
- Guarantees of any payment under any loan, lease, or other obligation;
- Preferential use of government facilities.

In any case where the value of the business subsidy is indeterminate, the City will make a good faith determination of the value of the subsidy.

Although only assistance in excess of \$25,000.00 is subject to the law, the City of Prior Lake has a policy requiring all developers that request business subsidies to comply with the requirements imposed by the MN Business Subsidy Law, regardless of the size of the grant or loan. Therefore, although they are not strictly subject to the act, developers requesting subsidies under \$25,000.00 must agree to comply with all the requirements of the Act to be eligible.

III. PUBLIC PURPOSE OBJECTIVES OF BUSINESS SUBSIDIES

In accordance with the MN Business Subsidy Law, the City will consider using business subsidies to assist private development projects in an attempt to achieve one or more of the following public purpose objectives:

- To retain local jobs and/or increase the number and diversity of jobs that offer stable employment and/or attractive wages and benefits. Because it is required by the Business Subsidy Law, if the stated public purpose is to retain jobs, there must be a showing that job loss in the affected area is specific and demonstrable.
- To enhance and diversify the City of Prior Lake's tax base.
- To encourage additional unsubsidized private development in the area, either directly or indirectly, through "spin off" development. In this case, a business subsidy may be given to an "anchor" property in the hopes that one business locating in the area will create a domino affect and other unsubsidized businesses will locate to the area.
- To achieve development on sites that would not be developed without business subsidies assistance.
- To remove blight and/or encourage development of commercial and industrial areas in the city that result in higher quality development or redevelopment and private investment.
- To offset increased costs of development of specific properties when the unique physical characteristics of the site may otherwise preclude private investment.

IV. GENERAL POLICIES FOR THE USE OF BUSINESS SUBSIDIES

- A. Business subsidy assistance will be provided from the City, by a “pay-as-you-go” note method, to the developer if the business subsidy is tax increment financing or tax abatement. Requests for up front financing will be considered on a case-by-case basis. However, the MN Business Subsidies Law requires that any up front grant financing be given in the form of forgivable loans. This means that any grants will be documented as loans that will be forgiven if the specific goals of the subsidy are met.
- B. A developer requesting business subsidy assistance must demonstrate, to the satisfaction of the City, sufficient cash equity investment in the project as required within the City’s policy for the particular form of subsidy. The City will assure that the business will be adequately capitalized to guarantee it will continue as a going concern for many years.
- C. Business subsidies will not be provided in circumstances where land and/or property price is demonstrated by the County Assessor to be in excess of fair market value. This would normally be where the acquisition price is more than 10% in excess of market value as determined by an independent appraiser.
- D. A developer must be able to demonstrate to the City, or, if applicable, to the underwriting authority, market demand for a proposed project.
- E. Business subsidies will not be given if the subsidy would create an unfair and significant competitive financial advantage over other similar projects in the area.
- F. Business subsidies will not be given to projects that would place extraordinary demands on city infrastructure and services.
- G. If the City requests it, the developer will provide adequate financial guarantees to ensure completion of the project, including, but not limited to: assessment agreements, letters of credit, cash escrows, personal guaranties, mortgages, and other securities.
- H. Each developer must be able to demonstrate to the City’s satisfaction an ability to construct, operate, and maintain the proposed project based on past experience, general reputation, and credit history.
- I. If requested by the City, or its consultants, the developer shall provide sufficient market, financial, environmental, or other data relative to the successful operation of the project.
- J. Projects receiving business subsidy approval from other affected taxing jurisdictions will be more favorably received by the City.

V. GUIDELINES FOR COMMERCIAL/INDUSTRIAL BUSINESS SUBSIDIES

- A. Business subsidies will not be used for on-site retail or service business unless it is a redevelopment project that demonstrates that it will result in a substantial increase in tax base and a significant improvement in quality employment.
- B. The project must be consistent with the City's Comprehensive Plan, Land Use Plan, and Zoning Ordinances.
- C. The project must result in the retention of existing jobs that would be lost "but for" the proposed development, or result in an increase and diversification in local jobs that would not otherwise occur, "but for" the proposed development.
- D. The City will determine the specific wage and job goals giving consideration to the particular form of the subsidy, nature of the development, the purpose of the subsidy, local economic conditions and similar factors. The recipient will have up to two years to meet the job and wage goals established by the City. The minimum wage for a job to be considered a new or retained job shall be \$13.00 per hour, exclusive of benefits. Deviations less than the wage floor will be considered on a case-by-case basis and in accordance with the requirements of the MN Business Subsidy Law.
- E. Business subsidies will not be given to commercial/industrial projects or developers that have a history of inconsistent compliance with applicable environmental rules and regulations, or failure to comply with State and Federal Regulations regarding Equal Opportunity and Occupational Safety Standards.

VI. BUSINESS SUBSIDY AGREEMENT

Each developer receiving a business subsidy, regardless of the size of that subsidy, shall be subject to the subsidy agreement set forth by the MN Business Subsidy Law and summarized below:

- A. A Statement of the Public Purpose. The recipient must state the public purpose the subsidy will address.
- B. Goals of the Subsidy. The recipient will state the specific and tangible wage goals that will be achieved by the subsidy. Specifically, the agreement will outline the number of jobs created and the wage goals for each of those jobs. Although it is possible that the job and wage goals may be set at zero, there must then be a public hearing that addresses what the public purpose for the subsidy will be.
- C. Need. The recipient will state in the Business Subsidy Agreement why the subsidy is necessary and describe why the economic development would not occur without the subsidy.

- D. Maintain Facility. The recipient agrees to maintain and operate its facility at the site where the subsidy is used for a period of five years after the date the subsidy is provided.
- E. Failure to Comply Business. Failing to comply with the subsidy agreement will be subject to fines, repayment requirements, and be deemed ineligible by the state to receive any loans or grants from public entities for a period of five years.

VII. REPORTING REQUIREMENTS

Each developer receiving a business subsidy, regardless of the size of that subsidy, shall be subject to the subsidy reporting requirements set forth by the MN Business Subsidy Law and summarized below:

- A. Responsibility to Report. Any developer receiving a business subsidy will provide information regarding the goals and results for two years after the subsidy is granted, or until the goals are met, whichever is later. If the goals go unmet beyond two years, then the developer will provide reports until the subsidy is fully repaid.
- B. Public Purpose. The developer will restate in each report the public purpose of the subsidy.
- C. Wages. The developer will report on the hourly wage of each job created by the subsidy.
- D. Benefits. The developer will report on the sum of hourly wages and any health insurance provided by the developer.
- E. Goal Date. Each year the developer will reassess the date it expects to meet its specific job and wage goals and report what that date is.
- F. Update. Each year the developer will provide an informal update on the likelihood that the goals will be achieved and indicate the progress made during the year toward achieving the stated goals.
- G. Recipient Information. Each year the recipient developer will report its name, address of itself and any parent corporation. Furthermore, the report will include a summary of all financial assistance received from the Authority or any other organization and any other information the Commissioner of Employment and Economic Development may request.

VIII. SUBSIDY APPLICATION PROCESS AND PROCEDURE

- A. Application for business subsidies shall be made on forms for the particular form of assistance provided by the City of Prior Lake Community Development Director, or designee. A fee of \$2,500.00 shall accompany any Tax Increment Finance, Tax Abatement, or grant

request application to cover the City's initial legal, administrative, and planning costs.

- B. Following a review by appropriate City Staff the application shall be referred to either the Economic Development Authority or City Council for further action.
- C. The application for business subsidies shall request information required within the City's policies on the particular form of subsidy, including, but not limited to: a detailed description of the project; a preliminary site plan; the amount of business subsidy requested; the public purpose of the project; the number and types of jobs to be created; the wages and benefits to be paid new employees; and verifiable funding sources and uses.

**CITY OF PRIOR LAKE
ECONOMIC DEVELOPMENT AUTHORITY
TAX INCREMENT FINANCING POLICY**

ADOPTED BY THE CITY COUNCIL APRIL 16, 2001

PURPOSE

This policy is established to outline the City's position on the use of tax increment financing ("TIF") policy for private development. This policy will be used as a guide in processing and reviewing applications for tax increment financing assistance. In accordance with the TIF policy, TIF requests must comply with applicable state statutes. The City of Prior Lake is governed by the limitations established in Minnesota Statutes Chapter 469.174, the Minnesota Tax Increment Financing Act, for all districts created after August 1, 1979.

PROGRAM GOALS

This program exists to achieve the following goals:

1. To promote commercial, industrial and residential development under special circumstances that would otherwise not occur.
2. To increase and diversify the long-term tax base of the City in order to ensure the ability of the City to provide adequate services for its residents while lessening reliance on the residential property tax.
3. To improve the City's economic vitality through the creation and expansion of employment opportunities.
4. 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.
5. To assure that projects are constructed and maintained at a level of quality consistent with the goals of the City of Prior Lake.
6. To retain local jobs, increase the local job base and provide economic diversity in that job base. The Program will only be used to retain jobs in those situations when job loss has been documented and specific and demonstrable.
7. To assist in achieving other goals contained in adopted public policies as may be adopted by the City Council from time-to-time, including, without limitation, quality design and construction, energy conservation and reductions in the capital and operating costs of government.
8. To provide high density housing in the Downtown (C-3) zoning district and to assist in the development of other housing in the community that is consistent with City goals and policies and is generally not being provided by the private sector.

PROGRAM ELIGIBILITY CRITERIA

Qualified projects should meet or exceed the following criteria to be eligible for TIF assistance. These criteria are being adopted to meet the requirements of Minnesota Statutes Annotated § 116J.994 Subdivision 2. Meeting the threshold of eligibility does not guarantee approval of the project by the City. Final approval of any project will be made by the City Council.

1. The project must be consistent with the City's Comprehensive Plan, zoning ordinance and other applicable City ordinances as well as applicable state statutes.
2. The project shall meet at least one of the Program Goals listed above.
3. The applicant must be willing to enter into a development or redevelopment agreement satisfactory to the City.
4. It must be demonstrated that the project would not be financially feasible but for the public assistance to be provided. The level of TIF financing shall be reduced to the lowest possible level.
5. The project must comply with all applicable environmental regulations.
6. The applicant must submit all of the materials required in the application.
7. The applicant must agree to provide surety to the City to cover all costs paid by the increment, unless the project is a "pay-as-you-go" agreement. These may include assessment agreements, letters of credit, personal deficiency guarantees, guaranteed maximum cost contracts and minimum payment agreements.
8. The applicant/developer must provide a minimum of 10% equity in the project.
9. The City Council will favor owner-occupied projects over projects that will be leased.
10. For projects in an Economic Development District, a maximum of \$10,000 of public money will be invested for each full-time equivalent position created or retained.
11. For projects in Redevelopment Districts, those that remove or prevent blight will be favored.
12. For projects in Redevelopment Districts, a ratio of taxes paid before and after redevelopment of 1:2 is desired.
13. TIF will not be used in projects that would give: a significant competitive financial advantage over similar projects in the area. Developers will provide information to demonstrate that this criterion is met.
14. The developer should be able to provide market data, letters of intent or financial statements that illustrate the market potential or demand for the project.

The applicant for assistance must complete an Application for TIF Assistance pursuant to the procedures outlined in the Application.

PROJECT COSTS ELIGIBLE FOR TIF ASSISTANCE

Project costs that qualify for TIF assistance include the following:

- Property acquisition
- Land clearance
- Relocation and demolition of structures
- Site preparation

- Soils correction
- Removal of hazardous wastes or remediation of site contamination
- Installation of Utilities
- Construction of public or private improvements
- Administrative costs directly related to the identified parcels
- Design fees
- Surveys
- Environmental studies
- Relocation of building occupants
- Rehabilitation of structures
- Special assessments
- Other costs allowed by Minnesota Statutes