



# Business Subsidy Policy

Repealed and Replaced: September 25, 2023

Last Amended: April 28, 2003

Originally Adopted: October 11, 1999

## I. PURPOSE

The purpose of the Chanhassen Business Subsidy Policy is to establish criteria for the granting of business subsidies, including financial assistance, through Tax Increment Financing (TIF), Tax Abatement, or other programs that may become available through the city or the Minnesota Department of Employment & Economic Development (DEED).

This policy will be used as criteria for providing subsidies, in addition to the requirements and limitations set forth by provision of Minnesota Statutes Section 116J.993 through 116J.995, as amended, the Business Subsidy Act (the Act). Any applicant who is not in good standing with the city regarding licenses, fees, code violations, or other city issues will not be considered for a business subsidy.

The criteria set forth in this Business Subsidy Policy shall be used as a guide in processing and reviewing the application and will be used in conjunction with other relevant policies of the city. The city reserves the right to approve or reject projects on a case-by-case basis, taking into consideration current polices, project criteria, and demand on city services or infrastructure in relation to the potential benefits from the project.

Meeting this policy criteria does not guarantee the award of business assistance for the project. The city also has the right to deviate from this policy at any time. Approval or denial of one project is not intended to set precedent for approval or denial of another project. The city may amend this policy at any time. Amendments are subject to public hearing requirements contained in the Act.

## II. TYPES OF BUSINESS SUBSIDY

A Business Subsidy, as further defined herein and in the Act shall include, but not be limited to one of the following types of subsidies provided by the city and/or DEED:

1. Loan
2. Grant
3. Tax Abatement
4. Tax Increment Financing (TIF) or other tax reduction or deferral
5. Guarantee of payment
6. Contribution of property or infrastructure
7. Preferential use of government facilities
8. Land contribution, or
9. Another specified subsidy

### III. Business Subsidy Criteria

The following criteria will be utilized in evaluating a request for a business subsidy.

1. *Public Purpose.* A business subsidy must be used to meet a public purpose. The public purpose 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. *Increase Tax Base.* The Act provides that an increase in tax base cannot be the sole basis for generating a business subsidy. However, the city considers an increase in tax base to be a critical factor in granting a business subsidy.
3. *Wage & Job Creation.* The project provided a business subsidy must have demonstrated that one-third (33%) of the full-time equivalent positions created or retained within the city will be paying at least 200% of the State of MN Minimum Wage in effect at the time the business subsidy is awarded.
4. *"But-For" Test.* When there is a substantial likelihood that the project would not go forward or would not go forward in the same capacity without the business subsidy. This criterion may be met based solely on representation of the recipient of the business subsidy.
5. *Other Economic or Redevelopment Goals.* If creation of jobs is determined not to be a goal of a project (and by extension wages) the proposed business subsidy must achieve specific, tangible, and measurable goals related to one or more of the following:
  - a. To encourage additional unsubsidized private development in the area, either directly or indirectly through "spin off" development.
  - b. To remove blight and/or encourage development of commercial and industrial areas in the city that result in higher quality development and private investment.
  - c. To support a project that will improve the quality of life in the city by providing a desirable good or service and addressing an unmet demand in the community.
  - d. To promote revitalization and redevelopment within the city, especially within the Downtown.
  - e. Focus on the creation of wealth through "high value investment" rather than on the number of jobs created.
6. *Demonstrated Ability.* The Recipient must demonstrate the ability to develop the type and size of project proposed. Upon request, the Recipient must provide a pro forma showing all sources and uses of funds, market and financial feasibility studies, appraisals, environmental reports (if applicable), 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 also rely on data provided by an applicant to a financial institution.
7. *Minimum Request.* The Recipient's request for Business Subsidy must be for the minimum amount of subsidy and duration of time required to make the project financially feasible.

In granting a business subsidy, the city may deviate from the criteria outlined above if:

- a. The reason for the deviation is documented in writing, and
- b. Reported to the DEED pursuant to the Act.

#### **IV. APPLICATION PROCESS**

The applicant will complete and submit the city's Business Subsidy Application, the required application fee (refer to the current year's adopted fee schedule), and any additional information requested by the city pertaining to the project. The applicant will be liable for any additional costs beyond the initial application fee, including the city's costs for outside financial analysis and development of a business subsidy agreement by legal counsel. All materials submitted to the city in connection with a business subsidy application shall become the property of the city and is subject to data privacy law. The review process shall involve at least the following:

1. The city shall review the application materials to ensure:
  - a. The completeness of the application, and
  - b. Whether the application meets the goals and criteria of this policy.
2. If the city determines the application is complete, a public hearing will be set.
3. At the time of the scheduled public hearing, staff will make a final recommendation to the city regarding the approval or denial of the business subsidy application. This recommendation will be based on:
  - a. Applicable credit analysis.
  - b. Financial structure of the proposed project/application.
  - c. Legal compliance of the project/application.
4. The city will conduct the public hearing, during which they will take citizen comment on the issuance of the business subsidy. After the public hearing is closed, the city will either approve or deny the business subsidy request. If the subsidy is approved, approval will be conditioned upon the Recipient entering into a Business Subsidy Agreement with the city.

#### **V. BUSINESS SUBSIDY AGREEMENT**

The following terms are specified under MN Statute 116J.994, Subd.3 Subsidy Agreement:

1. A recipient must enter into a subsidy agreement with the grantor of the subsidy that includes:
  - a. A description of the subsidy, including the amount and type of subsidy, and type of district if the subsidy is tax increment financing.
  - b. A statement of the public purposes for the subsidy.
  - c. Measurable, specific, and tangible goals for the subsidy.
  - d. A description of the financial obligation of the recipient if the goals are not met.
  - e. A statement of why the subsidy is needed.
  - f. A commitment to continue operations in the jurisdiction where the subsidy is used for at least five years after the benefit date.
  - g. The name and address of the parent corporation of the recipient, if any.
  - h. A list of all financial assistance by all grantors for the project.
  - i. Wage and job goals.
  - j. Agreement to repay all or a portion of the Subsidy if the business subsidy goals set forth in the Subsidy Agreement are not met.

2. A business subsidy in the form of grants must be structured as a forgivable loan. 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.
3. 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.
4. The city and the recipient must both sign the subsidy agreement, and the agreement must be approved by the local elected governing body.
5. Notwithstanding the provision in V.1. clause f. of this policy, a 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.

## **VI. COMPLIANCE AND REPORTING**

1. Any assistance that does not meet the definition of a "business subsidy" will be excluded from the requirement of holding a public hearing prior to granting a business subsidy. All assistance that meets the definition shall be subject to the requirement of a public hearing.
2. Every recipient of a business subsidy must enter into a business subsidy agreement with the city. This agreement must fulfill the requirements of the Act.
3. Both the recipient and the city must comply with the business subsidy reporting and monitoring requirements of the Act.
4. If a recipient fails within two (2) years of the benefit date as defined in the Act to meet the job and wage goals set forth in the business subsidy agreement, the recipient or its successors and assigns shall be liable to repay to the city the assistance plus interest. The city may prorate repayment to reflect partial fulfillment of the goals set forth in the business subsidy agreement. The rate of interest charged must be set at no less than the implicit price deflator for government consumption expenditures and gross investment for local governments prepared by the Bureau of Economic Analysis of the United States Department of Commerce.
5. The city may, after holding a public hearing, extend the time for compliance with the business subsidy agreement job and wage goals by up to one (1) year.

## **VII. Definitions**

*"The Act"* means the Business Subsidy Act, Minnesota Statutes Section 116J.993 through 116J.995, as amended.

*"Benefit date"* means the date that the recipient receives the business subsidy. If the business subsidy involves the purchase, lease, or donation of physical equipment, then the benefit date begins 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:

- a) When the improvements are finished for the entire project; or
- b) When a business occupies the property. If a business occupies the property and the subsidy grantor expects that other businesses will also occupy the same property, the grantor may assign a separate benefit date for each business when it first occupies the property.

*“Business Subsidy” or “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. Certain forms of financial assistance set forth in Section 116J.993, subd. 3 of the Act are not considered a Business Subsidy.

*“Business Subsidy Report”* means the annual reports submitted each year for each business receiving a business subsidy in the community. The report is submitted by the local government unit to comply with M.S. §116J.994 Subd. 7. (b).

*“City”* for purposes of this policy, the term “city” shall refer to the city of Chanhassen and the EDA.

*“Criteria”* means the equitably applied, uniform standards by which the city bases its decision to award any business subsidy to a private business or development project establishing a business and creating jobs in the city of Chanhassen. Meeting the criteria does not mean that a project will automatically be approved, nor does it create any contractual rights on the part of any applicant.

*“DEED”* means Minnesota Department of Employment and Economic Development.

*“EDA”* means the Chanhassen Economic Development Authority.

*“Full-Time Equivalent Job”* The number does not reflect headcount, but rather all annual hours recorded by the employer divided by 40 hours per week.

*“Grantor”* means city and the EDA.

*“High Value Investment”* will create jobs for highly skilled workers to operate the facility and often includes expensive equipment that is very difficult and costly to move and often requires customized buildings and building designs.

*“Local Government Agency”* Includes a statutory or home rule charter city, housing and redevelopment authority, town, county, port authority, economic development authority, community development agency, nonprofit entity created by a local government agency, or any other entity created by or authorized by a local government with authority to provide business subsidies.

*“Public Purpose”* A 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.

*“Recipient”* means any for-profit or nonprofit business entity meeting the requirements of Minn. Stat. Section 116J.993, subd. 6 that receives a business subsidy. Only nonprofit entities with at least 100 full-time equivalent positions and with a ratio of highest to lowest paid employee, that exceeds ten to one, determined based on full-time equivalent positions, are included in this definition.

*“Subsidy Agreement”* means an agreement between a Grantor and a Recipient that meets the requirements of Section 116J.994, subd. 3. The Subsidy Agreement may be incorporated into a broader Development Agreement for a project.

## **VIII. FINANCIAL ASSISTANCE *NOT* CONSIDERED A BUSINESS SUBSIDY**

The following forms of financial assistance are not considered business subsidy under MN Statute 116J.993, Subd.3 Business Subsidy:

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 116J.552, 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 sub-district as defined under M.S. §469.174, subdivision 23.
9. Assistance for energy conservation.
10. Tax reductions resulting from conformity with federal tax law.
11. Workers' compensation and unemployment insurance.
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 through December 31, 1999.
15. Assistance for a 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.
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 years 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, and 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.
22. Federal loan funds provided through the United States Department of Commerce, Economic Development Administration.
23. Property tax abatements granted under M.S. §469.1813 to property that is subject to valuation under Minnesota Rules, chapter 8100.
24. Such other exemptions as provided by amendments to Minn. Stat. Section 116J.993, subd. 3 of the Act, as it may be amended.

Requests for subsidies exempt from the Act are still subject to review and approval by the Grantor. Such approval is at the sole discretion of the Grantor.

**IX. DATA PRACTICES LAW**

The city is a governmental body and is subject to the requirements of Minn. Stat. Chapter 13 (“Minnesota Data Practices Act”). Some of the data provided by the applicant to the city as part of the application for a Business Subsidy may be required to be disclosed if requested pursuant to the Minnesota Government Data Practices Act.

**X. AMENDMENTS TO THE ACT**

The references to the Act in this Business Subsidy Policy shall include all amendments to the Act that are made after this policy is adopted.