

County of Wilkin

Business Subsidy Policy

County Commissioners Adopted: November 12, 2019

County of Wilkin
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**COUNTY OF WILKIN
POLICY AND PROCEDURES RELATING TO THE
USE OF BUSINESS SUBSIDIES**

Introduction

Pursuant to the requirements of Minnesota’s Business Subsidy Act (“Act”), Minnesota Statutes, Sections 116J.993 to 116J.995, the County of Wilkin, as a local government agency within the meaning of the Act, adopted this policy containing criteria for awarding any business subsidies, following notice and a public hearing. A copy of this policy shall be submitted to the Department of Employment and Economic Development (“DEED”) along with the County’s first annual Business Subsidy report required to be filed with DEED by the Act. Terms used in this Policy are intended to have the same meanings as used in the Act, and this policy shall apply only with respect to subsidies granted under the Act if and to the extent required thereby.

I. PURPOSE, AUTHORITY AND LIMITATIONS

For the purposes of this document, the term “County” shall include the Wilkin County Commissioners and staff, and the Wilkin County Economic Development Authority.

Business subsidies granted to recipients must serve a public purpose as determined by the County and be authorized by statute, charter or other applicable law. A business subsidy must meet a public purpose other than or in addition to increasing the tax base of the County of Wilkin and other taxing jurisdictions.

The purpose of this policy is to establish guidelines and criteria regarding the use of business subsidies, such as tax increment financing (TIF), tax abatement, and other public assistance for private development projects within the County of Wilkin. This policy shall be used as criteria for providing subsidies, in addition to the requirements and limitations set forth by provisions of Minnesota State Statute 116J.993 to 116J.995 (Act) or other applicable statute, County ordinance, policy or guideline applicable to the particular form of subsidy at issue.

These guidelines shall be used in processing and reviewing applications requesting business subsidy assistance from the County. The fundamental purpose of business subsidies in the County is to encourage desirable development or redevelopment that would not otherwise occur “but for” the assistance provided through business subsidies. It is the intent of the County to provide business subsidies, as well as other incentives that the County may deem appropriate, at the shortest term required for the project to proceed, taking into account established policies, specific project criteria, and demand on county services in relation to the potential benefits to be received from a proposed project.

Meeting the guidelines or other criteria established in this policy or applicable law does not guarantee the award of a business subsidy; determinations to approve or reject assistance to projects will be made by the County on a case-by-case basis, taking into consideration all aspects of the specific project. Furthermore, the approval

or denial of assistance to one project is not intended to set precedent for approval or denial of assistance to another project. The County reserves the right, in its sole judgment and discretion, to approve or deny assistance to a project based on the merits of the project and the overall benefit of the project to the community, using this policy and the criteria contained herein as the means of measuring overall public benefit.

Any applicant who is not in good standing with the County, in regards to any licenses, fees, property taxes, or other specific County charges, will not be considered for business subsidies.

Business subsidies granted by the County must satisfy all requirements of the Act. The County shall require the recipient to certify that it is eligible to receive a business subsidy.

Whenever possible, it is the County's intent to coordinate the use of business subsidies with other applicable taxing jurisdictions.

The County shall have the option of amending or waiving sections of this policy and criteria when determined necessary or appropriate in the public interest. The Act permits the County to deviate from this policy by documenting in writing the reason(s) for the deviation and attaching a copy of the document to the County's next annual report to DEED.

II. DEFINITION OF "BUSINESS SUBSIDY"

The Act requires a policy establishing criteria for granting business subsidies be in place before a County grants assistance of \$25,000 or more on a business loan or guarantee of \$75,000 or more, and establishes limited reporting requirements for assistance above such thresholds.

The following types of assistance having a value in excess of \$150,000 are defined as a "business subsidy" within the Act and are subject to additional procedural requirements, including public notice, a public hearing and extensive reporting requirements:

1. Loans;
2. Grants;
3. Contributions of personal property, real property, or infrastructure;
4. The principal amount of a loan at rates below those commercially available to the recipient;
5. Reductions or deferrals of taxes or fees;
6. Guarantees of any payment under any loan, lease, or other obligation; or,
7. Preferential use of government facilities.

III. FINANCIAL ASSISTANCE NOT CONSIDERED A BUSINESS SUBSIDY

Under the Act, the following forms of financial assistance are not a 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 other 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 Minnesota Statutes, Section 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% 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 Minnesota Statutes, 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 Minnesota Statutes, 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 collaboration between a Minnesota higher education institution and a business.
16. Assistance for a tax increment financing soils condition district as defined under Minnesota Statutes, Section 469.174, subdivision 19.
17. Redevelopment when the recipients' 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; and
23. Property tax abatements granted under Minnesota Statutes, Section 469.1813 to property that is subject to valuation under Minnesota Rules, Chapter 8100.

IV. OBJECTIVES OF BUSINESS SUBSIDIES

In accordance with the Act, the County will consider granting business subsidies to assist private development projects to achieve one or more of the following objectives, which may include, but may not be limited to, increasing the tax base:

1. To retain local jobs and/or increase the number and diversity of jobs that offer stable employment and/or attractive wages and benefits.
2. To enhance and diversify the County of Wilkin's tax base.
3. To encourage additional unsubsidized private development in the area, either directly or indirectly through "spin off" development.
4. To achieve development on sites that would not be developed without business subsidies assistance.
5. To remove blight and/or encourage development of commercial and industrial areas in the county that result in higher quality development or redevelopment and private investment.
6. To offset increased costs of development of specific properties when the unique physical characteristics of the site may otherwise preclude private investment.
7. To create opportunities for the construction, operation and maintenance of affordable housing.

V. EVALUATION CRITERIA

The County recognizes that the award of a business subsidy may serve a variety of public purposes of varying importance depending upon the specific project facilitated by the subsidy. The degree of importance to be attached to various public purposes that may be served by a particular project must therefore involve the exercise of sound judgment after weighing all relevant criteria as identified herein.

1. Minimum Criteria. A recipient receiving a business subsidy from the County shall create/retain a minimum of three full-time equivalent job per \$100,000 in business subsidy **AND/OR** invest \$500,000 in capital improvements per \$100,000 in business subsidy. If the creation or retention of jobs is determined not to be a goal of a business subsidy, the wage and job goals may be set at zero. Where creation or retention of jobs is a goal, the specific number of jobs to be created or retained shall be stated in the subsidy agreement. Where creation of new jobs is required, those jobs shall have a wage floor of at least \$2.00 per hour over the State minimum wage.
2. Other Criteria: In addition to the minimum criteria set forth in Paragraph 1 of this section, the County will evaluate applications for assistance according to the proposed project's potential to provide the following public benefits:
 - a. Tax Base. The net increase in property taxes estimated to be generated by the project in the first full year of operation per \$25,000 of the business subsidy.
 - b. Services to the Community. Whether the project will provide services in the community and the need for such services. For example, the project

- may provide health services, retail convenience services such as a grocery store, or welfare services needed in the community.
- c. Non-Developable Property. Whether the project is located on property which needs but is not likely to be developed or redeveloped because of blight or other adverse conditions of the property. For example, property may require remediation due to pollution, and the cost of making the land available for redevelopment exceeds the fair market value.
 - d. Design and/or Other Amenity Concessions. Whether, as a result of the business subsidy, the project will include design and/or amenity features not otherwise required by law. For example, the project may, at the request of the County, include landscaping, open space, public trails, employee work out or day care facilities, which serve a public purpose but aren't required by law.
 - e. Preferred Business. Whether, apart from any needed services to the community, the project is more compatible with the comprehensive plan than other permitted uses of the property. For example, the project may involve a "clean" industry such as a technology or service business, which is preferred over other permitted uses.
 - f. Utilization of Existing Infrastructure Investment. Whether and to what extent the project will utilize existing public infrastructure capacity OR the project will require additional publicly funded infrastructure investments.
 - g. Leveraged Public Funds. For every dollar of business subsidy to be provided for the project, the minimum amount of private funds which will be applied towards the capital cost of the project.
 - h. Spin Off Development. The dollar amount of non-subsidized development per \$25,000 of business subsidy the project is expected to generate in the surrounding area and the need for and likelihood of such spin off development.
 - i. Growth Potential. Based on recipient's market studies and plans for expansion, whether and to what extent the project is expected, within five years of its completion, to be expanded to produce a net increase of full time equivalent jobs and of payroll.
 - j. Direct Monetary Return on Public Investment. Arrangements made or to be made for the County to receive a direct monetary return on its investment in the project. For example, the business subsidy may be in the form of an investment-bearing loan or may involve a profit sharing arrangement.
 - k. Other Factors. Depending on the nature of the project, such other factors as the County may deem relevant in evaluating the project and the business subsidy proposed for it.
3. The following principles shall apply to the County's application of the criteria contained in this section to an application for assistance:
 - a. The County may include any other public assistance received, or to be received, from a grantor other than the County.
 - b. If the business subsidy is a guaranty, the amount of the business subsidy may be valued at the principal amount of the guaranteed payment obligation.
 - c. If the business subsidy is property, the amount of the subsidy shall be the

- fair market value of the property as determined by the County.
- d. If the business subsidy is received over time, the County may value the subsidy at its present value based on a discount rate equal to the interest rate which the County determines is fair and reasonable under the circumstances.
 - e. The County shall determine an appropriate financing structure which limits future financial risk to the County and its taxpayers.

VI. BUSINESS SUBSIDY AGREEMENTS

1. The County shall require all businesses receiving a business subsidy from the County to enter into a business subsidy agreement with the County that requires compliance with the Act's requirements set forth in Section VII below, and includes at a minimum, all requirements for a business subsidy agreement imposed by the Act, including the following:
 - a. a description of the business 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 (5) years after the benefit date;
 - g. the name and address of the parent corporation of the recipient, if any; and
 - h. a list of all financial assistance by all grantors for the project.
2. The subsidy agreement may be incorporated into a broader development agreement for a project.

VII. COMPLIANCE

1. Public Hearings. A public hearing is required for all Business Subsidies from a local grantor when it exceeds \$150,000. This hearing can be held in conjunction with other public hearings as may be required; however, notice and other requirements must be in accordance with the Act's requirements, including the following:
 - a. A notice must be published in a local paper of general circulation at least ten days before the hearing.
 - b. The notice must identify the location of information about the subsidy, including a summary of the terms of the subsidy. (This means the subsidy agreement must be negotiated prior to the hearing).
 - c. Published notice should be "sufficiently conspicuous in size and placement to distinguish the notice from surrounding text"
 - d. The grantor must make the information available in "printed paper copies" and, if possible, on the Internet.

- e. The public notice of any public meeting on a business subsidy agreement shall include notice that a person with residence in, or the owner of taxable property in, the County, may file a written complaint with the County if the County fails to comply with the Act. The notice shall also state that no such action may be filed against the County for the failure to comply with the Act unless such written complaint is timely filed with the County. The written complaint under Minnesota Statutes, Section 116J.994, subdivision 11 for failure to comply with subdivisions 1 to 5 of said statute must be filed with the County within 180 days after approval of the business subsidy agreement.
2. 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.
3. If a Business Subsidy benefits more than one recipient, the County must assign a proportion of the business subsidy to each recipient that signs the business 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. Reporting Requirements. The County shall monitor the progress by the recipient in achieving the goals contained in the business subsidy agreement, and the recipient shall cooperate in all respects in meeting the reporting requirements contained in Minn. Stat. § 116J.994, subd. 7. A recipient must provide information regarding goals and results for two (2) years after the benefit date or until the goals are met, whichever is later. If the goals are not met, the recipient must continue to provide information regarding the business subsidy until the subsidy is repaid. The information must be filed on forms developed by DEED. Copies of the completed forms must be sent to the County and contain all the information required in Minn. Stat. § 116J.994, subd. 7. A report must be filed by the recipient with the County no later than March 1 of each year for the previous year. The County shall thereafter forward copies of the recipient's completed report(s) received to DEED by April 1.

Financial Assistance excluded from the definition of business subsidy will require reporting to DEED officials in a manner similar to the reporting required by businesses receiving a Business Subsidy. Financial Assistance goals will be detailed in a loan agreement or an agreement similar to that of a Business Subsidy Agreement.

5. Failure to Submit Reports. If the recipient does not submit its report, the County must mail the recipient a warning within one week of the required filing date. If, after 14 days of the postmarked date of the warning, the recipient fails to provide a report, the recipient must pay to the grantor a

penalty of \$100 for each subsequent day until the report is filed. The maximum penalty shall not exceed \$1,000.

6. Failure to Meet Goals. Pursuant to Minn. Stat. § 116J.994, subd. 6, the business subsidy agreement must specify the recipient's obligation if the recipient does not fulfill the terms contained in the agreement. At a minimum, the business subsidy agreement must require a recipient failing to meet subsidy agreement goals to pay back the assistance plus interest to the County or, at the County's option, to the account created under Minn. Stat. § 116J.551, provided however that repayment may be prorated to reflect partial fulfillment of the stated goals by the recipient. The interest rate must be set at no less than 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 31 of the previous year. The County, after a public hearing, may extend for up to one (1) year the period for meeting the wage and job goals provided in the business subsidy agreement. The County may extend the period for meeting other goals contained in the business subsidy agreement by documenting in writing the reason(s) for the extension and attaching a copy of the document to its next annual report to DEED.

A recipient that fails to meet the terms of a business subsidy agreement may not receive a business subsidy from the County for a period of five (5) years from the date of failure or until a recipient satisfies its repayment obligations, whichever occurs first. Before the County signs a business subsidy agreement, the County must check with the compilation and summary report required by DEED to determine if the recipient is eligible to receive a business subsidy.

VIII. MODIFICATIONS; APPLICABILITY

The foregoing criteria for granting business subsidies may be amended or supplemented from time to time by the County Commissioners of the County of Wilkin in accordance with the Act. Any amendments or modifications to the Act shall amend or modify the terms and definitions of this policy and criteria without any further actions of the County. Any subsidy agreement relating to a business subsidy awarded pursuant to the foregoing criteria may provide, to the extent permitted by the Act, that if the Act is amended, either prospectively or retroactively, to provide that it does not apply to the business subsidy, then the subsidy agreement or provisions thereof required by the Act shall no longer be in effect. The foregoing criteria are intended to apply when the County is itself awarding a business subsidy or when the County is acting on behalf of other local government agencies pursuant to a joint powers agreement or otherwise.

Adopted this 12th day of November, 2019 by the Wilkin County Commissioners.