**CITY OF HERINGTON, KANSAS TAX FORECLOSURE REBATE, ABATEMENT, OR FORGIVENESS POLICY**

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| **Subject: TAX FORECLOSURE PROPERTY: Abatement or Partial Forgiveness Guidelines and Requirements for Liens or Assessments Outstanding in the City of Herington, Kansas** | **Effective Date: July 20th, 2022** |

The City of Herington, Kansas City Commission desires to develop guidelines for the standardization of rebate, abatement, or forgiveness of certain liens or other assessments which survive county tax foreclosure and sheriff’s sale. The City of Herington, Kansas intends that such guidelines be fairly, consistently, and equitably administered and therefore adopt the following policy toward that end.

**POLICY DEVELOPMENT PROCESS**

1. **POLICY STATEMENT**

The City of Herington is committed to the ongoing improvement in its financial state and the quality of life for its citizens. This can be achieved through the promotion of high quality development in all parts of the City, enhancing the competitiveness and expansion of Herington's economy. As these objectives are generally served by the enhancement and expansion of the local economy, the City of Herington will, on a case-by-case basis, give consideration to providing tax rebates, abatement, or partial forgiveness of outstanding liens or assessments on property acquired by owners through the county tax foreclosure and sheriff’s sale process in the hope of providing stimulation for economic development by new owners. It is the policy of the City of Herington that said consideration will be provided in accordance with the procedures and criteria outlined in this document. Nothing herein shall imply or suggest that the City of Herington is under any obligation to provide tax abatement or partial forgiveness to any applicant, but will serve as a guideline by which a new property owner may expect to apply for or rely on in receiving consideration from the local governing body on outstanding liens or assessments attached to the property.

1. **PURPOSE**

Relief from existing liens for maintenance and upkeep of distressed properties undertaken by the City for certain land parcels – is generally one of the most commonly sought after forms of financial assistance for an economic development project or residential rehabilitation that cities use to attract and retain businesses or improve blighted properties in their area. Assessment rebate, abatement, or partial forgiveness are awarded after a public review process that is often both bureaucratic and political. They typically are targeted for improvements but not land, and thus enable policy makers to use them for enhancing the attractiveness of locations for investment, rehabilitation, and other economic development.

The subject of such rebates, abatements, partial forgiveness, or exemption is sure to foster discussion in any public meeting, some of which is not likely to be very supportive. Part of the problem is that the term "abatement or partial forgiveness" suggests that these assessments representing an outlay of tax dollars, are being reduced, forgiven, or cancelled and the term "exemption" connotes that these forms of “reimbursement” do not have to be paid at all. Describing the tool as an "incentive" is a more accurate way to describe the role it plays in the economic development process as well as property rehabilitation.

There is a commonly held position that there are numerous benefits to offering such rebates, abatements or partial lien forgiveness. Doing so shows that a city is probusiness and growth-oriented and at least actively trying to encourage economic and residential development. The preservation of the local tax base and providing for future tax revenue increases are important considerations for communities when deciding whether to authorize any lien or assessment rebate, abatement, or partial forgiveness. The city still gains revenue through development with rebates, abatements or partial forgiveness while it may risk losing the local industry or perpetuating distressed property that generates no tax revenue or has functional utility if it fails to show support for the expansion or remediation. Abatement or partial forgiveness can also be seen as a method to say "thank you" to a company, property owner, or investor that has been a good corporate citizen, and that has made a strong and long-term commitment to the community. Tax abatement or partial forgiveness can and should be considered strong business incentives for attracting industries or facilitating property improvement in and to the local community.

Extended or longer-term incentives can be viewed as an exemption of the value of the improvements (redevelopment) of a property for a period of time negotiated in a tax agreement between the redeveloper and the municipality.

While there are solid reasons for granting lien or assessment rebates, abatements or partial forgiveness, municipalities should also be aware of some of the factors why such rebates, abatements or partial forgiveness might not be considered desirable. Given that contingency, the City reserves the right to deviate from the noted schedule for rebate, abatement or practical forgiveness contained in this policy.

The decision to grant rebates, tax abatements or partial forgiveness remains marginally subjective even when the parameters for consideration and approval are well defined. The City Commission must find that the expected benefits to the City of Herington of the proposed rebate, abatement or partial forgiveness agreement equal, at a minimum, the costs to the City of the proposed agreement and are likely to foster greater revenue in prospectively. They must also insure that the rebate, abatement or partial forgiveness is in the public interest because it will facilitate at the very least those objectives described below. The fact remains that to be a responsible in economic development or general improvement, local municipalities can't afford to ignore the utility of rebates, tax abatements or partial forgiveness as an incentive. If this is the tool that permits that overarching goal then it must be used judiciously whether or not there is community agreement on the benefits of rebates, tax abatements or partial forgiveness.

**3. Objectives**

Applications or agreements for rebates, tax abatements or partial forgiveness in the City of Herington will be evaluated in terms of potential benefit to the City of Herington by consideration of the following objectives.

Subsequent ultimateIncrease in the tax base;

Promote community sustainable development or improvement;

Attract companies and facilities engaged in economically compatible activity or housing enhancement;

Provide economic stimulus to other business activities in the City;

**4. Eligibile Property or Industries**

The following types of enterprises, commercial, industrial or residential, are eligible to apply for lien or assessment rebates, tax abatements or partial forgiveness

Residential rehabilitation post tax foreclosure

Commercial or Industrial rehabilitation post tax foreclosure

Real property owned by the successful bidder at tax foreclosure sale

**5. Criteria for Eligibility Consideration**

The value of land and existing facilities if any;

The type and value of any proposed improvements;

The expected economic life of the proposed improvements;

The number of existing, permanent jobs to be retained by the proposed improvements;

Applicant's commitment to improvement and sustained maintenance of the acquired property

The amount of ad valorem taxes to be paid the City after improvements to the property;

The types and values of public improvements, if any, to be made by applicant seeking rebate, abatement or partial forgiveness;

The potential community impact such as the estimated fiscal and services enhancement to the local community, local school district and county, or the projected improvement in the city's housing market;

The extent to which the proposed use of rebates, tax abatements or partial forgiveness is consistent with the City's goals, development priorities, Master Plan and zoning codes.

The aforementioned criteria are not intended to be absolute. The City Commission reserves the right to consider such additional goals and criteria which are consistent with the general health, safety and welfare of the City of Herington.

**6. Application**

Application for rebate, abatement or partial forgiveness on any property involves the City of Herington. Only the City Commission has the authority to grant such an application once the following procedures have been fulfilled. Applications may be accepted ***in anticipation of acquisition of property at an upcoming tax foreclosure and accompanying sheriff’s sale.***

**"Filing of Application."** Petitioner can submit an application for rebate, abatement or partial forgiveness on any property and shall be made to the City Clerk on forms provided by the City of Herington for rebate, tax abatement or partial forgiveness of real property.

**"Review of Application."** All rebate, abatement or partial forgiveness applications shall be individually reviewed by representatives of the City as necessary, including but not limited to, the City Manager and City Commission.

**"Existing Considerations."** The City Commission, at its discretion, give any weight it feels appropriate to the approval or denial of a rebate, abatement or partial forgiveness application, based upon their consideration of whether or not the petitioner's company or facility would compete with an already similar existing business. In general, the City Commission takes the position it is unfair for an existing local tax paying business or individual - operating in the same or a similar manner as far as type of product or services, scope of production and/or services, and the size of investment made - to have to compete with a new business or individual whose liens or assessments would be rebated, abated, or forgiven.

**"Denial of Abatement or Partial Forgiveness."** No rebate, abatement or partial forgiveness agreement shall be authorized if it is determined that:

There would be substantial adverse effect on the tax base or costs associated with the provision of government services;

The applicant has insufficient financial capacity, which reasonably could be expected to jeopardize the success of the undertaking;

The planned or potential use of the property would constitute a hazard to public safety, health, or welfare;

Granting a rebate, abatement or partial forgiveness might lead to the violation of other codes or laws;

For any other reason deemed appropriate by the City.

**7. Taxability**

From the execution of the rebate, abatement or partial forgiveness, to the end of the Agreement period, property taxes shall be payable as follows:

The value of ineligible property, such as land, as provided in **Section 5,** shall be fully taxable; ;

The current taxes due on eligible property, shall be fully paid as they come due.

**8. Agreement**

**"Agreement Contents."** The City shall formally execute an Agreement with the owner of the subject property, as required and applicable, which may include:

The commencement date and the termination date of rebate, abatement or partial forgiveness;

The estimated value to be rebated, abated, or forgiven;

The percent of value to be abated each year;

The minimum or Base-Year real and personal property tax liability during the life of the abatement or partial forgiveness;

The proposed use of the facility; nature of construction or improvements, time schedule, map, and legal description of the property;

**" Guarantee of Current Tax Payments."** The applicant guarantees to the City that, during the years of the tax rebate, abatement or partial forgiveness, the property taxes, for real or personal property, for all local taxing units, shall be maintained in current fashion. Any delinquency will result in cancellation of the granted rebate, abatement or partial forgiveness.

**9. Recapture of Taxes in Event of Non-Compliance**

**"Termination."** In the event that the company or individual (1) allows its ad valorem taxes

owed the City to become delinquent and fails to timely and properly follow the legal procedures for their protest and/ contest; or (2) violates any of the terms and conditions of the rebate, abatement or partial forgiveness and fails to cure during any granted Cure Period, the Agreement than may be terminated and all liens or assessments previously rebated, abated or forgiven by virtue of the Agreement will be recaptured and paid within thirty (30) days of the termination.

**"Cure Period."** Should the City determine that the company or individual is in default

according to the terms and conditions of its Agreement, the City shall notify the company or individual of such default in writing at the address stated in the Agreement, and if such is not cured within thirty (30) days from the date of such notice ("Cure Period"), then the Agreement may be terminated.

**11. Assignment**

A rebate, abatement or partial forgiveness agreement may not be transferred nor assigned by the holder to a new owner of the same property facility without prior approval by resolution of the City Commission of the City of Herington. Any assignment shall provide that all conditions, terms and obligations in the original rebate, abatement or partial forgiveness Agreement are guaranteed by execution of an additional contractual Agreement with the City as an addendum to the Abatement or partial forgiveness Agreement. No assignment or transfer shall be approved if the parties to the existing Agreement (the new owner or lessee) are liable to any jurisdiction for outstanding taxes or other obligations. Approval shall not be unreasonably withheld.

**12. Public Disclosure of Application. Agreement and Reports**

Information that is provided to the City of Herington in connection with an Application or request for rebate, abatement or partial forgiveness and that describes privileged financial and corporate data, the specific processes or business activities to be conducted, or the equipment or other property to be located as part of the facility for which the rebate, abatement or partial forgiveness is sought, is strictly confidential and not subject to public disclosure until the rebate, abatement or partial forgiveness is executed. That information in the custody of a governmental unit after the Agreement is executed is Public Record, and no longer confidential or privileged.

**13. Sunset Provision**

These guidelines and criteria are effective upon the date of their adoption, and will remain in force for five (5) years, unless amended by majority vote of the City Commission of the City of Herington, at which time this policy for tax abatement or partial forgiveness will be reviewed to determine whether the goals have been achieved. Based on that review, the guidelines and criteria may be modified, renewed or eliminated.

**14. Legal Disclaimer to Potential Applicants**

The adoption of these guidelines and criteria by the Herington City Commission do not:

Consequentially award a rebate, abatement or partial forgiveness tax abatement or partial forgiveness if the petitioner meets all the listed criteria;

Limit the discretion of the City Commission to decide whether to enter into a specific rebate, abatement or partial forgiveness agreement;

Limit the discretion of the City Commission to delegate to its employees the authority to determine whether or not the City Commission should consider a particular application or request for rebate, abatement or partial forgiveness;

Create any property, contract, or other legal right in any person to have the City of Herington consider or grant a specific application or request for rebate, abatement or partial forgiveness.

Exclude the right of the City Commission to modify the rebate, abatement or partial forgiveness policy to reflect changing objectives, priorities and/or conditions.

**15. Standardized Schedule for Rebate, Abatement, or Forgiveness**

Absent compelling need or circumstances established and confirmed by the Herington City Commission, the following schedule will be observed for any approved rebate, abatement, or forgiveness of existing liens or assessments applicable to the subject property:

EXISTING LIENS OR ASSESSMENTS REPRESENTING 10% OF THE TOTAL ARE FULLY PAID AT TIME OF PURCHASE. AND NOTHING IS INITIALLY ABATED OR FORGIVEN.

YEAR ONE ANNIVERSARY – AFTER REVIEW, 30% IS REBATED AS ABATED OR FORGIVEN.

YEAR TWO ANNIVERSARY – AFTER REVIEW, 30% IS ABATED OR FORGIVEN.

YEAR THREE ANNIVERSARY – AFTER REVIEW, 30% THE FINAL BALANCE IS ABATED OR FORGIVEN, LEAVING 10% AS THE AMOUNT ULTIMATELY REALIZED UNDER THE AGREEMENT.