

City of Perham

Job Opportunity Building Subzone Policy

April 12, 2004

1. Introduction

The Job Opportunity Building Zone (JOBZ) was created during the 2003 legislative session to provide rural Minnesota with an economic development tool to stimulate growth in rural areas. Job Opportunity Building Zones, also known as Tax Free Zones, provide specified tax exemptions to qualified businesses that start-up, expand, or relocate to rural Minnesota.

The City of Perham (City) and Perham Economic Development Authority (EDA) will consider the use of JOBZ to promote economic development within the City and review each application on a case-by-case basis to provide tax exemptions and benefits. It is anticipated that all approved Perham JOBZ Subzone projects will meet the definition of a business subsidy and be subject to Minnesota Statutes 116J.993 through 116J.995.

2. Intent

Perham intends to use JOBZ to expand its economic base, creating jobs that will have long-term positive impact on the community and surrounding area. The city's JOBZ focus is on manufacturing/assembly and professionals who do not compete against existing businesses.

The intent of this Perham Job Opportunity Building Subzone Policy is to provide a uniform set of standards and procedures for the City and EDA to follow when designating and utilizing the tax exemptions in conjunction with Minnesota Statutes 469.310 to 469.320. The tax free zones allow local units of government the opportunity to exempt qualified businesses from specific local and state taxes.

The City participated in a regional application with West Central Initiative for one tax free zone for west central Minnesota, and Perham is a Subzone in WCI. The City and EDA will use this policy to establish the local control and review of the approved Perham JOBZ Subzone.

3. Application Process

A business that wishes to receive tax exemptions and credits in the Perham JOBZ Subzone must complete an application and submit appropriate information to the EDA. This may include business plans (with all financial projections and disclosures), market studies, soil boring reports, environmental studies, and any other information the City, or its designated representative(s), deems necessary to conduct the City's underwriting of the project. Historical information is required from an existing company.

4. Staffing

Staffing for the JOBZ program will be provided by the Perham EDA. Staff will assist applicants in structuring the subsidy package to coordinate with non-subsidy programs, bank involvement, equity, and other necessary components. Staff will assist applicants in completing the necessary documentation for the subsidy.

5. Qualifying For Exemptions And Credits

- a. To meet the goals of the City, the potential Perham JOBZ Subzone property must be zoned or planned to be zoned appropriate to the intended development project.
- b. The applicant must be a Qualified Business, defined as follows:

Minnesota Statutes 469.310, Subdivision 11, define a qualified business as a person carrying on a trade or business at a place of business located within a job opportunity zone. However, it should not be presumed a request for use of tax-free sub-zone assistance meeting these approval criteria will automatically be approved. Meeting the approval criteria creates no contractual rights on the part of any party in a private development project.

c. The City further defines a qualified business as follows:

- i. An industrial manufacturing/assembly business that meets Perham's JOBZ criteria.
- ii. A professional, whose business is not in competition with an existing professional in the community. 'Professional' is defined as licensed by the State of Minnesota and requiring ongoing continuing education. Applicant will be responsible for showing they would not be in competition with existing businesses. EDA may require potential recipient to seek waiver from businesses that are deemed in competition.
- iii. The EDA will consider potential JOBZ projects if it can be demonstrated this project has especially significant economic development impact on the Perham area.
- iv. Retail establishments are not considered a qualified business.

d. A business is also not considered to be a "qualified business" until it enters into a Business Subsidy Agreement with the City. In the case of relocation, a business is not a "qualified business" until it enters into a Business Subsidy Agreement with the City AND enters into a Relocation Agreement with the Department of Employment and Economic Development (DEED).

e. Qualified businesses that may receive tax exemptions or credits include:

- i. Qualified businesses located in and operating in the Perham JOBZ Subzone at the time of Subzone designation;
- ii. Qualified business startups locating in the Perham JOBZ Subzone;
- iii. Qualified business expansions in the Perham JOBZ Subzone (as long as a business maintains its current operations in its current location and is expanding its operations *and* its payroll within a Perham JOBZ Subzone);
- iv. Qualified business relocations from another state;
- v. Qualified business relocations from another Minnesota non-Zone location, but only if the qualified business:

Ceases one or more operations or functions at a non-Zone location and begins performing substantially the same functions inside the Perham JOBZ Subzone; or

2. Reduces employment at the non-Zone location starting one year before and ending one year after beginning operations in the Perham JOBZ Subzone and its employees in the Perham JOBZ Subzone are engaged in the same line of business as the employees at the location where it reduced employment; and

Commits in writing to increase full time employment by 20% (measured relative to the operations that were relocated) within the first full taxable year of operation within the Perham JOBZ Subzone and maintains the required level of employment during each year of subzone designation; or

4. Commits in writing to make a capital investment during the first full taxable year of operation in the Perham JOBZ Subzone equivalent to at least 10% of gross revenues for the taxable year immediately preceding relocation to the Perham JOBZ Subzone.

Additional requirements for the Perham JOBZ Subzone:

- i. The qualified business must create employment opportunities within the Perham Subzone boundaries. Job goals will be established.

- 1 The established average combined wages and benefits for jobs created in the Perham JOBZ Subzone is as follows:

All business subsidy requests should have average combined wages and benefits of 110% of the Federal Poverty Level for a family of 4 (the 2004 Federal Poverty Level for a family of 4 = \$18,850 times 110% divided by 2080 equals \$9.97 per hour). The Federal Poverty Level is adjusted annually. Benefits are defined as health insurance, life insurance, dental insurance, retirement, profit sharing, output bonus, plus other benefits not mandated by law. Extenuating circumstances can be reviewed, on a case-by-case basis. The governing body reserves the right to approve exception to the wage requirement.

2. Specific job and wage goals must be met within a specific timeframe. However, reporting requirements will exist throughout the entire term of the Perham JOBZ Subzone to ensure that job and wage goals are maintained.

The City and EDA will **not** consider applications from qualified businesses receiving Tax Increment Financing or Tax Abatement, nor will qualified businesses approved for the Perham JOBZ Subzone receive Tax Increment Financing or Abatement.

4. Perham JOBZ Subzone Applicants are required to consult with the City staff, the City's engineer and the City's Building and Zoning Officials and other appropriate officials to assure their project meets all necessary requirements of those departments.
- 5 The qualified business agrees **not** to compete with or displace local businesses currently operating within the subzone community, for the duration of the qualified business' JOBZ involvement
6. Subsidies must meet a public purpose including, but not limited to: to enhance economic diversity, create high-quality job growth, stabilize the community, increase tax base or address other urgent community development needs.

6. Eligible Exemptions and Credits

According to Minnesota Statute 469.315, the following exemptions are provided to a qualified business:

- a. Exemption from individual income taxes (MS 469.316).
- b. Exemption from corporate franchise taxes (MS 469.317).

Exemption from state sales and use tax and any local sales and use taxes on qualifying purchases (MS 297A.68, sub 37).
- d. Exemption from state sales tax on motor vehicles and any local sales tax on motor vehicles (MS 297B.03).
- e. Exemption from property tax (MS 272.02, sub 64). The exemption applies beginning for the first assessment year after designation of the job opportunity building zone by DEED. The exemption applies to each assessment year that begins during the duration of the job opportunity building zone and to property occupied by July 1 of the assessment year by a qualified business.

f. Exemption from the wind energy production tax (MS 272.029, sub 7).

g. Jobs credit (MS 469.318).

Qualified businesses will be eligible for exemptions for a maximum duration of a twelve (12) year period, commencing January 1, 2004, and ending December 31, 2015. Business Subsidy Agreement must be in DEED's and the Otter Tail County Assessor's hands by June 15th of any particular year in order to qualify for JOBZ property tax exemption the following year.

7. Approval Process

The EDA Director will have the responsibility of making a finding, based upon the application and information presented by a qualified business, as to whether the project meets the statutory criteria for extending tax exemptions and benefits.

This finding will be forwarded to the Perham Economic Development Authority for consideration as well as a Business Subsidy Public Hearing. Applicant has the right to appeal directly to the EDA if they disagree with recommendation of EDA Director.

Approval is required by the Perham City Council following approval from the Perham Economic Development Authority. Therefore, a recommendation will be presented by EDA to the Perham City Council. Final approval will come from Minnesota Department of Employment and Economic Development.

8. Public Notice and Hearing

The City of Perham will hold a business subsidy public hearing on all JOBZ applications . The public hearing notice must be published in the City's legal paper at least ten (10) days prior to the public hearing, and if possible on the Internet. The public hearing notice must include the date, time and place of the hearing. The notice must also identify the location at which information about the subsidy is available. The City must make the information available in printed-paper copies, and if possible, on the Internet.

9. Business Subsidy Agreement

The Business Subsidy Agreement with the City must include.

- a. a description of all subsidies, including the amount and type of subsidy, as well as the terms and who provided the subsidy.
- b. a statement of the public purposes for the subsidy.
- c. a description of the measurable, specific, and tangible goals for the subsidy. There should be separate goals for the number of part-time or full-time jobs to be created, or, in cases where job loss is specific and demonstrable, goals for the number of jobs retained; wage goals for any jobs created or retained; and wage goals for any jobs to be enhanced through increased wages. The job and wage goals should contain specific goals to be attained during a specific timeframe and indicate that these goals are to be maintained during the entire term of the Perham JOBZ Subzone.
- d. a description of the financial obligation of the qualified business to repay all JOBZ related tax benefits obtained if the goals are not met and as defined in Minnesota State Statutes 469.319.

- e. a description of the financial obligation of the qualified business to repay other business subsidies provided to the qualified business as governed by the Business Subsidy statute and to repay tax benefits obtained if the goals are not met, and as defined in Minnesota State Statutes 116J.994 Subd. 6.
- f. a commitment by the qualified business to continue operations in the jurisdiction where the subsidy is used for the duration of the Perham JOBZ Subzone.
- g. the name and address of the parent corporation of the qualified business, if any; and
- h. In addition:
 - i. A qualified business agrees to furnish to the City, on or before March 1 of each year, an annual business subsidy report (see Section J).
 - ii. Before the City signs a business subsidy agreement, the City must check with the DEED compilation and summary report to determine if the qualified business is eligible to receive a subsidy.
 - iii. Benefit date is defined as the date after which tax benefits shall begin to accrue to the qualified business; and shall mean the "Operations Start Date" for a qualified relocating business.

10. Annual Reporting

The City must annually report to DEED on the progress of the qualified business in meeting performance goals and its compliance with the Business Subsidy Law (MS 116J.993 to 116J.995). The qualified business must provide information to the City, on forms developed and made available by DEED, regarding goals and results throughout the term of the Perham JOBZ Subzone. If the goals are not met, the qualified business must continue to provide information on the JOBZ subsidy until the subsidy is repaid (see Section K).

This information must be received from the qualified business no later than March 1 of each year for the previous year.

- a. the type, public purpose and amount of subsidies;
 - b. the hourly wage of each job created with separate bands of wages;
 - c. the sum of the hourly wages and cost of health insurance provided by the qualified business with separate bands of wages;
 - d. the date the job and wage goals will be reached;
 - e. a statement of goals identified in the subsidy agreement and an update on achievement of those goals;
 - f. the location of the qualified business prior to receiving the subsidy;
 - g. why the recipient did not complete the project outlined in the subsidy agreement at their previous location, if the recipient was previously located at another site in Minnesota;
 - h. the name and address of the parent corporation of the qualified business, if any;
- a list of all financial assistance for the project and who provided the assistance;

- j. the amount of private capital investment by the qualified business; the amount of property tax assessment not collected for the property where the qualified business was operating; the value of Wind Energy Production Tax, if any, for the qualified business, and
- k. other information DEED may request

If the qualified business does not submit its report, the City must mail a warning within one week of the required filing date. If, after 14 days of the postmarked date of the warning, the qualified business fails to provide a report, the qualified business must pay to the City a penalty of \$100 for each subsequent day until the report is filed. The maximum penalty shall not exceed \$1,000.

Annual reports from the City will be filed with DEED no later than April 1 of each year.

11. Failure To Meet Goals

- a. Qualified businesses who receive tax benefits under the JOBZ law are required to repay those tax benefits if the business:
 - i. Ceases to operate in the Perham JOBZ Subzone;
 - ii. Is no longer a qualifying business;
 - iii. Relocates into the Perham JOBZ Subzone but does not do one of the following: maintain a 20% increased employment level or make the 10% capital investment required by Minnesota Session Laws 2003, 1st Special Session, Chapter 21, Article 1, Section 15, Subdivision 11; or
 - iv Fails to meet goals specified in the Business Subsidy Agreement with the City.
- b. A qualified business must repay the amount of the total tax reduction listed in section 469.315, and any refund under section 469.318 in excess of tax liability, received during the two years immediately before it ceased to operate in the Perham JOBZ Subzone.

The repayment must be paid to the state to the extent it represents a state tax reduction and to the county to the extent it represents a property tax reduction. Any amount repaid to the county for the property tax exemption must be distributed to the local governments with authority to levy taxes in the zone in the same manner provided for distribution of payment of delinquent property taxes. Any repayment of local sales taxes must be repaid to the city or county imposing the local sales tax.

For the repayment of taxes imposed under chapter 290 or 297A or local taxes collected pursuant to section 297A.99, a business must file an amended return with the Commissioner of Revenue and pay any taxes required to be repaid within 30 days after ceasing to do business in the Perham JOBZ Subzone. The amount required to be repaid is determined by calculating the tax for the period or periods for which repayment is required without regard to the exemptions and credits allowed under section 469.315. The provisions of chapters 270 and 289A relating to the Commissioner of Revenue's authority to audit, assess, and collect the tax and to hear appeals are applicable to the repayment required. The Commissioner of Revenue may impose civil penalties as provided in chapter 289A, and the additional tax and penalties are subject to interest at the rate provided in section 270.75, from 30 days after ceasing to do business in the Perham JOBZ Subzone until the date the tax is paid. The Commissioner of Revenue may assess the repayment of taxes any time within two years after the business ceases to operate in the Perham JOBZ Subzone, or within any period of limitations for the assessment of tax under section 289A.38, whichever period is later.

For the repayment of taxes imposed under chapter 297B, a business must pay any taxes required to be repaid to the motor vehicle registrar, as agent for the Commissioner of Revenue, within 30 days after

ceasing to do business in the zone. The provisions of chapters 270 and 289A relating to the Commissioner of Revenue's authority to audit, assess, and collect the tax and to hear appeals are applicable to the repayment required. The Commissioner of Revenue may impose civil penalties as provided in chapter 289A, and the additional tax and penalties are subject to interest at the rate provided in section 270.75, from 30 days after ceasing to do business in the Perham JOBZ Subzone until the date the tax is paid. The Commissioner of Revenue may assess the repayment of taxes any time within two years after the business ceases to operate in the Perham JOBZ Subzone, or within any period of limitations for the assessment of tax under section 289A.38, whichever period is later.

For the repayment of property taxes, the county auditor shall prepare a tax statement for the business, applying the applicable tax extension rates for each payable year and provide a copy to the business. The business must pay the taxes to the county treasurer within 30 days after receipt of the tax statement. The taxpayer may appeal the valuation and determination of the property tax to the Tax Court within 30 days after receipt of the tax statement. If a property tax is not repaid the county treasurer shall add the amount required to be repaid to the property taxes assessed against the property for payment in the year following the year in which the treasurer discovers that the business ceased to operate in the Perham JOBZ Subzone.

For determining the tax required to be repaid, a tax reduction is deemed to have been received on the date that the tax would have been due if the taxpayer had not been entitled to the exemption or on the date a refund was issued for a refundable tax credit.

The commissioner may waive all or part of a repayment, if the commissioner, in consultation with the Commissioner of Deed and appropriate officials from the local government officials in which the qualified business is located, determines that requiring repayment of the tax is not in the best interest of the state or the local government units and the business ceased operating as a result of circumstances beyond its control, including, but not limited to:

a natural disaster

ii (2) unforeseen industry trends; or

iii (3) loss of a major supplier or customer

A recipient that fails to meet the terms of a subsidy agreement may not receive a business subsidy from any grantor for a period of five years from the date of failure or until a recipient satisfies its repayment obligation under this section, whichever occurs first.

12. Administration Fees

Administration costs will be financed through an initial application fee of \$500.00 along with an annual maintenance fee of \$300. The application fee must be submitted with the application and is non-refundable. Business will also be responsible for direct implementation costs, such as legal review, etc. The City will bill the qualified business annually for the maintenance fee. Fees will be reviewed periodically to ensure that they are adequate to cover administrative costs. Adjustments to the fees will be made as necessary.

CITY OF PERHAM

Business Subsidy Policy

1. PURPOSE

The purpose of this criteria is to establish the City's and the EDA's position as it relates to the use of business subsidies as defined in Minnesota Statutes 116J.993, Subdivision 3, for private development. This criteria shall be used as a guide in processing and reviewing applications requesting business subsidies.

- 1.02 The City shall have the option of amending or waiving sections of this criteria when determined necessary or appropriate. Amendments to these criteria are subject to public hearing requirements pursuant to Minnesota Statutes, Sections 116J.993 through 116J.995.

2. STATUTORY LIMITATIONS

In accordance with the Business Subsidy Criteria, Business Subsidy requests must comply with applicable State Statutes. The City of Perham's ability to grant business subsidies is governed by the limitations established in Minnesota Statutes 116J.993 through 116J.995.

3. PUBLIC POLICY REQUIREMENT

All business subsidies must meet a public purpose other than increasing the tax base. Job retention may only be used as a public purpose in cases where job loss is specific and demonstrable

4. BUSINESS SUBSIDY APPROVAL CRITERIA

- 4.01 All new projects approved by the City of Perham should meet the following mandatory minimum approval criteria. However, it should not be presumed that a project meeting these criteria will automatically be approved. Meeting these criteria creates no contractual rights on the part of any potential developer.
- 4.02 The business subsidy shall be provided within applicable state legislative restrictions, debt limit guidelines and other appropriate financial requirements and policies.
- 4.03 The project must be in accord with the Comprehensive Plan and Zoning Ordinances, or required changes to the plan and ordinances must be under active consideration by the City at the time of approval.
- 4.04 Business subsidies will not be provided to projects that have the financial feasibility to proceed without the benefit of the subsidy. In effect, business subsidies will not be provided solely to broaden a developer's profit margins on a project. Prior to

consideration of a business subsidy request, the City may undertake an independent underwriting of the project to help ensure that the request for assistance is valid.

Prior to approval of a business subsidies financing plan, the developer shall provide any required market and financial feasibility studies, appraisals, soil boring, information provided to private lenders for the project, and other information or data that the City or its financial consultants may require in order to proceed with an independent underwriting.

Any developer requesting a business subsidy should be able to demonstrate their capability to make the development successful. (This can be done through a financial pro-forma, a business plan or other written document presented to the City or the EDA.)

- 4.07 The developer must retain ownership of the project at least long enough to complete it, to stabilize its occupancy, to establish the project management and to initiate repayment of the business subsidy. However, the business subsidy may be assigned to a subsequent purchaser with prior written approval. The original developer may be required to assure the successful completion of the project.

A recipient of a business subsidy must make a commitment to continue operations in the jurisdiction where the subsidy is used for at least five years after the benefit date. The recipient may assign the business subsidy to a subsequent purchaser with prior written approval.

- 4.09 The level of business subsidy should be reduced to the lowest possible level and least amount of time by maximizing the use of private debt and equity financing first, and then using other funding sources or income producing vehicles that can be structured into the project financing, prior to using additional business subsidy.

5. PROJECT EVALUATION CRITERIA

All business subsidy requests will be evaluated on the following criteria for comparison with other proposed business subsidy requests reviewed by the City, and for comparison with other subsidy standards (where appropriate). It is realized that changes in local markets, costs of construction, and interest rates may cause changes in the amounts of subsidies that a given project may require at any given time.

Some criteria, by their very nature, must remain subjective. However, wherever possible "benchmark" criteria have been established for review purposes. The fact that a given proposal meets one or more "benchmark" criteria does not mean that it is entitled to funding under this policy, but rather that the City is in a position to proceed with evaluations of (and comparisons between) various business subsidy requests, using uniform standards whenever possible.

Following are the evaluation criteria that will be used by the City of Perham:

- A.** All business subsidy requests should optimize the private development potential of a site.
- B.** All business subsidy requests should obtain the highest amount of private financing that can be supported by the business and is available through private sources. Normally, private financing should at least equal the amount of public financing provided. Housing and retail/commercial projects shall be reviewed on an individual basis.
- C.** All business subsidy requests should have average combined wages and benefits of 110% of the Federal Poverty Level for a family of 4 (the 2004 Federal Poverty Level for a family of 4 = \$18,850 times 110% divided by 2080 equals \$9.97 per hour). The Federal Poverty Level is adjusted annually. Benefits are defined as health insurance, life insurance, dental insurance, retirement, profit sharing, output bonus, plus other benefits not mandated by law. Extenuating circumstances can be reviewed on a case by case basis. The governing body reserves the right to approve exception to the wage requirement.
- D.** All business subsidy requests should create the highest possible ratio of property taxes paid before and after development. Normally this would be at least a 2:1 ratio. In the event of redevelopment districts, brownfields, contaminated sites, and other special districts, the benefit to the community will be considered and decisions will be made on a case by case basis.
- E.** Business subsidy requests should normally not be used to support speculative industrial, commercial, and office projects. In general, speculative projects are defined as those projects which have letters of intent or pre-leasing for less than 50% of the available leasable space.
- F.** All front end financing Business Subsidy requests will be reviewed to determine the feasibility to provide the City with an equity participation or to secure the funding with appropriate security instruments.
- G.** All business subsidy requests involving displacement of low and moderate income residents should give specific attention to the re-housing needs of those residents. Normally, this should be done as a part of the business subsidy. Adequate solutions to these re-housing needs will be required as a matter of public policy.
- H.** Business subsidy requests will normally not be used in a project that involves an excessive land and/or property price. This will normally be where the acquisition price is more than 10% in excess of market value.
- I.** All business subsidy requests will need to meet the "but for" test. Business subsidies will not be granted unless the need for the City's economic participation is sufficient that, without that assistance the

project could not proceed in the manner as proposed.

- J. Business subsidies will be used in projects that allow the community to capture unrealized market share.
- K. Business subsidies will not be used when the developer's credentials, in the sole judgement of the City, are inadequate due to past track record relating to: completion of projects, general reputation and/or bankruptcy, or other problems or issues considered relevant by the City.
- L. Business subsidies will not be used to support projects that place demands on City services, or other capital or operating expenditures, unless the additional services or capital requirements are provided in a manner acceptable to the City Council.
- M. Business subsidies will not normally be used for projects that would generate significant environmental problems in the opinion of the local, state, or federal governments.
- N. Business subsidies will not be used when the schedule for development has exceeded the schedule established in the development agreement, and where the City has not agreed to extensions of that schedule.
- O. Business subsidies should not be provided to those projects that fail to meet good public policy criteria as determined by the Council, including: poor project quality; projects that are not in accord with the comprehensive plan, zoning, redevelopment plans, and City policies; projects that provide no significant improvement to surrounding land uses, the neighborhood, and/or the City; projects that do not provide a significant increase in tax base; projects that do not have significant new, or retained, employment; projects that do not meet financial feasibility criteria established by the City; and projects that do not provide the highest and best desired use for the property.

PROCEDURES

1. Meet with appropriate City Staff to discuss the scope of the project, public participation being requested, and other information as may be necessary.
2. Completion of Application form. This form shall be submitted to the Director of Economic Development Authority.
3. The request shall be reviewed by City Staff on a preliminary basis as to the feasibility of the project. The staff shall prepare a report on the project.
4. The application shall be placed on the appropriate governing body agenda for concept review. The applicant may make a formal presentation of the project. The Staff will present its' findings.
5. If the Preliminary Concept Review is positive, the applicant may elect to file a formal application accompanied by a non-refundable fee, when applicable. Fees will be established from time to time by the governing body(ies).
6. If further action is required by an additional governing body, it will be necessary for the applicant, at this time, to make application to governing body.

Following the necessary financial analysis and preparation of detailed plans, the appropriate governing body, if necessary, shall take action on the project. If approved, the staff will be directed to undertake the following steps:

prepare a plan and/or agreement based upon the terms approved

8. If a redevelopment plan or zoning action is required, the governing body(ies) shall take the appropriate action at the same time that the Redevelopment Agreement is considered for approval.