

ORDINANCE NO. **BG2011 – 17**

ORDINANCE AMENDING CODE OF ORDINANCES

ORDINANCE AMENDING CHAPTER 11
(FINANCE, TAXATION AND ECONOMIC
DEVELOPMENT) OF THE CITY OF BOWLING
GREEN CODE OF ORDINANCES TO MAKE
AMENDMENTS TO THE JOB DEVELOPMENT
INCENTIVE PROGRAM

WHEREAS, the City of Bowling Green created the Job Development Incentive Program (JDIP) to provide incentives to businesses creating new jobs in the City; and,

WHEREAS, the JDIP initially consisted of a loan program and a credit program; and,

WHEREAS, the JDIP has been amended through the years and needs to be amended again to reflect changes in the Commonwealth of Kentucky economic incentives and to eliminate the loan program, among other changes; and,

WHEREAS, these amendments have been proposed by the City's Chief Financial Officer who is also the Program Manager for the JDIP and recommended by the JDIP Committee; and,

WHEREAS, it is in the best interests of the City to adopt the amendments to the JDIP.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. Chapter 11 (Finance, Taxation and Economic Development) is hereby amended as follows:

...

11-6 JOB DEVELOPMENT INCENTIVE PROGRAM.

11-6.01 Definitions.

Unless the context requires otherwise, the following terms as used in this Subchapter shall have the following meanings:

a. "Activation Date" shall mean the date the Board of Commissioners established in the incentive agreement that is within two (2) years of final approval of the agreement and which aligns with the State incentive if applicable.

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~~ab. "Applicant" shall mean one applying for an incentive loan or occupational license fee withholdings credit pursuant to this Subchapter or one in whose name the Bowling Green Area Economic Development Authority is applying for an incentive loan or credit.~~

~~bc. "Approved Company" shall mean an applicant approved by the Job Development Incentive Program Committee.~~

~~ed. "Committee" shall mean the Job Development Incentive Program Committee.~~

~~e. "Eligible Company" shall mean any corporation, limited liability company, partnership, limited partnership, sole proprietorship or any other entity engaged in manufacturing, agribusiness, nonretail service or technology or national or regional headquarters operations, regardless of the underlying business activity of the company, but Eligible Company shall not include companies where the primary activity to be conducted in the City is forestry, fishing, mining, coal or mineral processing, the provision of utilities, construction, wholesale trade, real estate, rental and leasing, educational services, accommodation and food services or public administration services.~~

~~df. "Employee withholdings" shall mean the occupational license fee withholdings from an employee's wages, salaries, bonuses or commissions as set forth in Chapter 18 of the Code of Ordinances.~~

~~eg. "Fund" shall mean the Job Development Incentive Fund.~~

~~fh. "Program Manager" shall mean the Job Development Incentive Program Manager.~~

~~gi. "New jobs" shall mean the creation of full time jobs directly created and employed by the applicant as a result of the project in the on-going operation of the applicant's business, not including jobs temporarily created or retained by construction of the project, that generate over the term of the agreement between the applicant and the City of Bowling Green an average of at least ten thousand dollars (\$10,000.00) annually in occupational license fee withholdings.~~

~~h. "Service or technology" means any activity involving the performance of work in~~

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~~accordance with the "North American Industrial Classification Manual" as revised by the United States Office of Management and Budget from time to time, or any successor publication, but excluding the divisions of agriculture, forestry, and fishing, mining, utilities, construction, manufacturing, wholesale trade, retail trade, real estate rental and leasing, educational services, accommodation and food services, and public administration. Notwithstanding the excluded classifications by divisions, those service and technology activities of a company engaged in an ineligible activity may be operated as a separate division and, with the approval of the Job Development Incentive Program Committee and subject to the record keeping requirements established by the Committee, may be deemed an eligible activity.~~

11-6.02 Purposes, Goals and Objectives.

The City of Bowling Green hereby declares that improvement of the quality of life for citizens in the City is an important goal and objective, and that as part of its effort to meet that objective the City must (1) recognize the importance of a growing and expanding economy, (2) create programs to foster an atmosphere that encourages economic development, and (3) provide incentives for the creation of new jobs to eligible companies in the service or technology and industrial sectors. In order to satisfy the needs and take the action identified hereinabove, the City has determined that it should create a program to offer ~~incentive loans or~~ employee withholdings credits to eligible companies service or technology and industrial prospects based on the amount of occupational license fees directly created by the company prospect.

11-6.03 Creation of Job Development Incentive Program.

There is hereby established the Job Development Incentive Program by which employee withholding credits ~~incentive loans~~ may be made available to eligible companies ~~qualified applicants~~ upon the terms and conditions set forth in this Subchapter. The credits shall consist of employee withholdings generated by the new jobs created by the eligible company. ~~Said loans shall be funded by~~

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~~appropriations, program income, borrowed money as necessary, and otherwise as provided in this Subchapter. The Job Development Incentive Program may also make available to qualified applicants employee withholdings credits upon conditions established by the Committee.~~

11-6.04 Job Development Incentive Program Committee; Committee Duties; Program Manager and Duties.

a. There is hereby created a Job Development Incentive Program Committee composed of four (4) members as follows:

1. The Mayor;
2. A City Commissioner nominated by the Mayor and approved by the Board of Commissioners;
3. The City Manager; and,
4. The Chief Financial Officer as an ex-officio, non-voting member.

The City Commissioner shall serve for his two year term of office ~~a term of one (1) year, or until their successor is appointed to replace them.~~ All other members of the Committee shall serve so long as he holds that position.

b. The Committee shall establish and evaluate terms and conditions for ~~incentive loans~~ ~~and~~ employee withholdings credits in conformity with this Subchapter and recommend to the Board of Commissioners the disposition of ~~incentive loan~~ and employee withholdings credit applications submitted to it.

c. The Chief Financial Officer of the City of Bowling Green shall serve as the Job Development Incentive Program Manager, and shall have the following duties:

1. To assist in the implementation of this Subchapter;
2. To assist applicants in the preparation of applications;
3. To act as liaison between the Committee and applicants;

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4. To recommend disposition of applications to the Committee; and,

5. To monitor existing ~~incentive loan~~ and employee withholdings credit agreements and periodically report to the Committee.

d. The Chief Financial Officer as Program Manager shall also provide technical and managerial assistance to the Committee, which shall include, but not be limited to the following:

1. Evaluate and review policy considerations for the Job Development Incentive Fund Program;

2. Establish rules and regulations with the approval of the Committee which assist the implementation of said policy and this Subchapter; and,

~~3. Review the availability of funds for the Program as necessary, and make appropriate recommendations to the Board of Commissioners to ensure needed funds are available; and,~~

~~4.~~ Provide the Committee such advice and support as is needed to carry out their duties and accomplish the purposes, goals and objectives of this Subchapter.

11-6.05 Job Development Incentive Program Eligibility Requirements.

a. Eligible Applicants. An applicant shall be eligible for an ~~incentive loan~~ or employee withholdings credit only if:

1. It is an eligible company ~~a sole proprietorship, partnership, limited liability company, corporation or other entity~~ authorized to do business in the Commonwealth of Kentucky; and,

~~2. It engages in industrial, service or technology activity inside the corporate limits of the City of Bowling Green; or,~~

~~3.~~ It is an agent for an eligible company ~~another that satisfies both requirements above.~~

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b. Eligible Projects. A project shall be eligible for an ~~incentive loan or employee withholdings credit only if:~~ 1) it directly creates sufficient payroll so as to generate employee withholdings of at least an average of ten thousand (\$10,000.00) annually, beginning on the activation date and continuing through the remainder of ~~over~~ the term of the agreement between the Applicant and the City of Bowling Green; or 2) it qualifies for economic development incentives pursuant to a program administered by the Commonwealth of Kentucky and the program requires participation by the City. Once an incentive ~~loan credit~~ is granted to an applicant, no additional ~~loans credits~~ will be made to the applicant or the applicant's principal without proof of increased employment resulting in additional employee withholdings. Any additional incentive ~~loans credits~~ will be at the sole discretion of the City. ~~A project shall be considered eligible for an incentive loan or employee withholdings credit only if the Applicant agrees to compensate the new employees and/or provide employee benefits in amounts satisfactory to the Committee.~~

~~e. Incentive Loan Amount. The loan portion of the Job Development Incentive Program is designed and intended to make incentive loans available to eligible applicants in an amount not to exceed seventy five percent (75%) of the amount of employee withholdings the prospect expects to generate for an amortization period of up to ten (10) years, less interest. In order to qualify for a loan, the amount of employee withholdings the Applicant expects to generate for the amortization period shall be, at a minimum, an average of ten thousand dollars (\$10,000.00) annually over the term of the agreement between the Applicant and the City of Bowling Green and any Applicant failing to qualify for the minimum employee withholdings amount shall be ineligible for an incentive loan from the Program.~~

~~dc. Employee Withholdings Credits. The employee withholdings credit portion of the Job Development Incentive Program is designed and intended to provide a credit to eligible applicants of up to one percent (1%) of gross wages paid inside the~~ seventy five percent (75%) of the employee

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~~withholdings fees payable to the~~ City of Bowling Green, which are generated by new employees. To be eligible for the credit, the Applicant must generate employee withholdings of a minimum of that, at a minimum, average ten thousand dollars (\$10,000.00) annually beginning on the activation date and continuing through the remainder of ~~over~~ the term of the agreement between the Applicant and the City of Bowling Green or qualify for economic development incentives pursuant to a program administered by the Commonwealth of Kentucky involving participation by the City. If approved, the Applicant may retain up to one percent (1%) of gross wages ~~seventy-five percent (75%)~~ of the ~~employee withholdings~~ generated by new jobs otherwise owed to the City for a period up to ten (10) years following the activation date as determined by the City. This credit is to be applied to the employee withholdings payable to the City and not to any other type of taxes or fees payable to the City, to the Warren County School System or to any other taxing entity. It shall be the responsibility of the Applicant to deduct the employee withholdings from its employees' paychecks. It shall also be the responsibility of the Applicant to properly report all employee withholdings and credits taken to the City.

11-6.06 Application and Review Procedure.

a. An Applicant shall submit to the Program Manager a completed incentive program application which shall include:

1. A description of the project, total project cost, sources of funding, and purpose of the incentive application, ~~whether the Applicant is requesting a loan or employee withholdings credit, and if a loan is requested, the amount of incentive loan and terms requested;~~

2. A pro forma, including the number of new jobs to be created, the gross wages, salaries, bonuses, commissions and employee benefits expected to be paid and the amount of employee withholdings expected to be generated by the new jobs over the term of the agreement between the Applicant and the City of Bowling Green and the long term growth potential of the applicant;

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3. General information about the company, its product or service and sales and employment growth projections ~~management capabilities, including resumes of top management and marketing strategies;~~

4. Such financial and non-financial information about the project, the Applicant or its principals as is required by regulation or as otherwise deemed necessary by the Program Manager or Committee; and,

5. Certification that the Applicant is an equal opportunity employer and agrees that it shall not discriminate in hiring and employment because of race, color, national origin, religion, sex, age, disability, political affiliation or belief, and that it shall comply with all applicable federal, state and local equal opportunity policies and laws to insure non-discrimination because of race, color, national origin, religion, sex, age, disability, political affiliation or belief, including but not limited to the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973, the Civil Rights Act of 1991 and all similar anti-discrimination laws and regulations adopted by the U.S. Government, the Commonwealth of Kentucky and the City of Bowling Green. Applicant also agrees to provide the City a summary of its work force during the term of this Agreement delineating the above classifications, if requested.

b. In lieu of the City's ~~an~~ incentive program application, an Applicant may submit a ~~photocopy of the incentive application submitted to the Commonwealth of Kentucky a loan application to a lending institution or to a state or federal agency,~~ so long as said application is not stale and contains or is supplemented with the information required to be submitted hereinabove.

c. Each application and supporting information submitted therewith shall be executed under oath by an authorized representative of the Applicant or of the Applicant's principal with personal knowledge of the facts and representations made therein. It shall be unlawful for any person to materially misrepresent any statement or fact on the application or supporting documents submitted

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to the Program Manager, Committee or City, and upon conviction thereof, said person shall be fined not more than ten thousand (\$10,000.00) dollars or imprisoned not more than twelve (12) months, or both. For purposes of this subsection, the City need not rely on the material misrepresentation.

d. The Program Manager shall review each application to verify the information submitted therewith and determine:

1. Whether the application meets the program eligibility requirements;

2. The accuracy of the factual representations in the application and Applicant's employment and financial projections;

~~3. The amount of the incentive loan, if applicable, for which the Applicant qualifies, and terms, if any, upon which the Program Manager would recommend approval to the Committee;~~

~~4. Special credit risks presented by the Applicant or the project;~~

~~5. Whether the incentive loan or credit is in the best interests of the City of Bowling Green, using sound financial and lending criteria which would be most appropriate for determining the long term viability of the that Applicant; and,~~

~~6. Any and all other matters deemed appropriate by the Program Manager to weigh the credit worthiness of the Applicant, the incentive program application and the project.~~

The Program Manager may request additional information from the Applicant at any time.

e. After the Program Manager's review of the application, he shall submit it with his recommendations to the Committee for review. The Committee may request additional information from the Applicant at any time. Following its review, the Committee shall either reject the application or recommend its approval based on the terms and conditions it may reasonably impose, including ~~whether to recommend a loan or the percentage or amount of the employee withholdings credit, and if a loan is recommended, the incentive loan amount, interest rate, deferral and repayment terms and such~~

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other terms deemed appropriate. If the Committee recommends approval of the application, the Mayor shall be authorized to send a letter of preliminary support for the Applicant to the Kentucky Economic Development Cabinet, if applicable.

If the terms and conditions of approval are accepted by the Applicant, the incentive program agreement shall be submitted to the Board of Commissioners for final approval. ~~No incentive loan or employee withholdings credit shall be made without prior approval of the Board of Commissioners. Following final approval of the incentive loan or credit by the Board of Commissioners, the Mayor shall be authorized to execute on behalf of the City any and all documents necessary to effect closing of the incentive loan or employee withholdings credit. No loans shall be approved without security in a form satisfactory to the City guaranteeing the performance of all program guidelines being submitted to the City in an amount equal to the loan amount and in a form satisfactory to the City.~~

~~11-6.07—Deferral and Repayment of Incentive Loan.~~

~~a.—Deferral and repayment terms for any incentive loan made pursuant to this Subchapter shall include the following:~~

~~1.—The original term for deferral and repayment of any incentive loan shall be no more than one hundred and twenty (120) months; and,~~

~~2.—Deferral installments shall be calculated and paid monthly and deficiencies shall be calculated and paid annually unless the incentive loan agreement otherwise provides.~~

~~3.—For good cause shown, the Program Manager may recommend to the Committee that the deferral and repayment term be extended beyond one hundred and twenty (120) months, but in no event shall the deferral and repayment term exceed a total of one hundred and forty four (144) months. All requests for extensions of the deferral and repayment term beyond one hundred and twenty (120) months shall be approved by the Committee and the Board of Commissioners of the City~~

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~~of Bowling Green.~~

~~4. — If the Payee is an existing license holder in the City of Bowling Green, employee withholdings generated by new jobs shall be reported and paid to the City separately from employee withholdings generated by existing jobs.~~

~~b. — Subject to the terms and conditions of this Subchapter, repayment of an incentive loan by an Approved Company shall be deferred by the payment of employee withholdings generated by new jobs. Notwithstanding contrary terms in Chapter 18, an Approved Company shall, until its incentive loan agreement is deferred, paid or discharged in full, report and pay to the City all employee withholdings generated by new jobs on a monthly basis, which payment shall operate as a credit against the installment due on the Approved Company's incentive loan agreement pursuant to this Subchapter. In the event the Approved Company's monthly remittance of employee withholdings exceeds its monthly installment obligation, such excess shall operate as a credit against the principal balance of the incentive loan. In the event the Approved Company's total annual remittance of employee withholdings is less than its total annual incentive loan installment obligation, such difference shall be paid by the Approved Company such that the annual incentive loan installment obligation is not underpaid.~~

11-6.087 Events of Default.

The following shall constitute events of default which may be declared by the City:

~~a. — In the event of a loan, failure of the Approved Company to satisfy the projected schedule of employee withholdings submitted with its incentive program application or as otherwise modified by agreement, so as to in the sole discretion of the Program Manager: (1) increase the risk that the incentive loan will not be deferred or repaid with employee withholdings generated by new jobs as contemplated by the parties, or (2) otherwise jeopardize deferral or repayment of the incentive loan;~~

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~~b. In the event of a loan, failure of the Approved Company to pay any installment when it becomes due;~~

~~ea. In the event of a loan or employee withholdings credit, Failure of the Approved Company to report or to pay employee withholdings as required by this Subchapter or Chapter 18, whether from new jobs or existing jobs;~~

~~db. In the event of an employee withholdings credit, Failure of the Approved Company to substantially satisfy the projected schedule of employee withholdings submitted with its incentive program application or as set forth in the program agreement;~~

~~ec. Failure of the Approved Company to pay any tax, license fee, penalty or other charge or obligation to the City pursuant to the Code of Ordinances;~~

~~fd. Failure of the Approved Company to comply with any term, condition or obligation imposed by Chapter 18 or any other City ordinances;~~

~~ge. Failure of the Approved Company to comply with any term, condition or obligation of the incentive program agreement; or,~~

~~hf. The making of any material misrepresentation of any statement or fact on the Approved Company's incentive program application or supporting documents, whether or not relied upon by the City, Committee or Program Manager.~~

~~g. The abandonment or closing of the Approved Company's business for a period of thirty (30) days; or,~~

~~h. If applicable, the Approved Company is determined to be in default under an incentive program or agreement administered by the Kentucky Economic Development Cabinet.~~

11-6.098 Remedies.

~~a. In any event of default under a loan agreement, the City may accelerate the incentive loan balance and agreement, and declare the entire principal balance, plus accrued interest, then due~~

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and owing.

ba. In the event of default under an employee withholdings credit agreement, the City may suspend the credit until such time as the default is cured or the City may terminate the credit. If the credit is terminated, the City may initiate legal proceedings to recover the amount of employee withholdings credited to the Approved Company up to the date the credit was terminated. The Approved Company shall immediately begin paying to the City one hundred percent (100%) of all employee withholdings upon notification of a suspension or termination of the credit.

eb. In the event the City initiates legal proceedings to enforce its rights under the incentive program agreement and/or this Subchapter, it shall be entitled to collect its costs, reasonable attorney's fees and any other charges imposed or authorized by the incentive program agreement or this Subchapter.

dc. The failure of the City to declare a default in any event thereof shall not constitute a waiver thereof.

ed. The remedies contained in the incentive program agreement, this Subchapter and Chapter 18 shall be cumulative and in addition to any other remedy authorized by law. Said remedies may be exercised separately, together or in any combination thereof, and any such exercise shall not constitute a waiver of any remaining remedies.

~~f. In an event of default pursuant to Section 11-6.08 (a) or 11-6.08 (d), the Approved Company shall, in addition to the remedies specified in this Section, pay a liquidated sum in an amount equal to the difference between the Approved Company's projected schedule of employee withholdings and its actual employee withholdings generated by new jobs reported and/or paid to the City. If, in an event described in Section 11-6.08(a) or (d), the City does not declare a default, the Approved Company, upon final deferral and/or payment of the incentive payment agreement or upon obtaining the final employee withholdings credit, shall in addition pay a liquidated sum in an amount equal to the~~

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~~difference between the Approved Company's projected schedule of employee withholdings and its actual employee withholdings generated by new jobs reported and/or paid to the City.~~

~~11-6.109~~ Bankruptcy.

No discharge in bankruptcy or other bankruptcy proceedings shall affect the Approved Company's obligation to comply with Chapter 18, except as provided by Federal or State Law.

~~11-6.110~~ Allocation of Receipts into the Job Development Incentive Fund.

The Department of Finance shall allocate and deposit all receipts from this Subchapter, including employee withholdings and installment payments, origination fees, interest earnings, fines, and penalties and liquidated amounts required by this Subchapter, and all other program income, receipts or funds deemed necessary or appropriate by the City into the Job Development Incentive Fund. To the extent possible, all incentive loans to Approved Companies and expenses incurred by the City in the implementation of this Subchapter, including interest expenses, court costs, attorney's fees and incidental expenses, shall be paid from the Fund; provided, however, services provided by employees of the City shall not be borne by said Fund. Any excess monies in the Fund may be transferred to the General Fund or may be used as deemed appropriate by the City.

~~11-6.121~~ Exemption from Open Records.

Any and all information submitted to the Program Manager, Committee or City pursuant to this Subchapter shall be exempt from public disclosure as authorized by ~~pursuant to~~ KRS Chapter 61 and/or Chapter 2 of the Code of Ordinances.

~~11-6.13~~ ~~Bowling Green Area Economic Development Authority May Serve as Applicant.~~

~~a. Notwithstanding other provisions of this Subchapter, the Bowling Green Area Economic Development Authority may serve as an applicant for one who is otherwise eligible for an incentive loan pursuant to Section 11-6.05, if said Authority:~~

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~~1. Qualifies as a non profit corporation under Section 501(c)(3) of the Internal Revenue Code;~~

~~2. Represents in writing that it is an agent for one who otherwise qualifies for an incentive loan pursuant to Section 11-6.05, and is fully authorized to act for and on behalf of said principle for purposes of obtaining said incentive loan;~~

~~3. Provides on behalf of its principle any and all information required by this Subchapter; and;~~

~~4. Undertakes the duties and obligations imposed by this Subchapter, including financial obligations as an Approved Company, which would otherwise be the obligation of its principle.~~

~~b. Any and all employee withholdings paid to the City by the principal for which the Bowling Green Area Economic Development Authority acted as agent shall operate as a credit against any payments or deferrals to which the Bowling Green Area Economic Development Authority is obligated by reason of its having served as applicant for said principle pursuant to this Subchapter.~~

~~c. The principal for whom the Bowling Green Area Economic Development Authority has acted may assume the representations and obligations of its agent at any time during the application, review, closing, deferral or repayment process.~~

~~11-6.14 Advance Written Approval of Department of Finance Required When the Bowling Green Area Economic Development Authority Provides its Own Direct Incentive Payment if Repayment is Requested of City.~~

~~a. Notwithstanding other provisions of this Subchapter, the Bowling Green Area Economic Development Authority may provide its own incentive loan to industrial prospects.~~

~~b. In certain incentive loans made by the Bowling Green Area Economic Development Authority, the City of Bowling Green may assist the Authority in obtaining repayment of its incentive~~

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~~loan by paying to the Authority up to seventy-five percent (75%) of the amount of employee withholdings the industrial prospect generates for a period of up to ten (10) years up to the amount of the Authority's incentive loan to the industrial prospect, plus reasonable interest. Such arrangements require prior approval of the Job Development Incentive Program Manager.~~

~~e. In such an event, the incentive loan provided by the Authority need not be based on the same criteria used for incentive loans made by the City of Bowling Green, but all other requirements of this Subchapter shall apply, including but not limited to:~~

- ~~1) eligibility requirements for applicants and projects;~~
- ~~2) application and review procedure; and,~~
- ~~3) deferral and repayment of incentive loan.~~

~~d. Nothing in this Section obligates the City of Bowling Green to reimburse the Authority to the full extent of its incentive loan to the industrial prospect, should the industry's employee withholdings fall short of the Authority's loan. Nor, will the City be obligated for commitments made by the Authority without prior approval of the City.~~

~~e. The City of Bowling Green shall be entitled to keep and maintain any late charges, interest or penalties incurred as a result of the industrial prospect's failure to timely file the necessary returns or to pay the required withholdings.~~

~~f. The City of Bowling Green shall not be liable to the Authority for the industrial prospect's failure to accurately report and/or accurately pay all employee withholdings.~~

...

2. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

3. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in

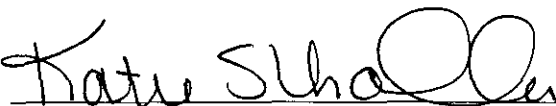
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conflict herewith are hereby repealed.

4. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on April 5, 2011, and given final reading on April 19, 2011, and said Ordinance shall be in full force and effect upon signature, recordation and publication in summary pursuant to KRS Chapter 424.

ADOPTED: April 19, 2011

APPROVED: 
Mayor, Chairman of Board of Commissioners

ATTEST: 
City Clerk

SPONSORED BY: Kevin D. DeFebbo, City Manager, 03/28/2011, 4:30 p.m.