

ORDINANCE NO. 1-2009

AN ORDINANCE AMENDING THE WAKEFIELD ECONOMIC DEVELOPMENT PROGRAM FOR THE CITY OF WAKEFIELD TO COMPLY WITH NEW STATUTORY REQUIREMENTS CONCERNING THE CITIZEN ADVISORY COMMITTEE MEMBERSHIP AND DUTIES; AMENDING THE NAME OF THE LOAN REVIEW COMMITTEE TO THE PROJECT REVIEW COMMITTEE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; AND PROVIDING FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WAKEFIELD, NEBRASKA:

Section 1. That the Wakefield Economic Development Program Ordinance be amended to read as follows:

Section 1. Establishment of Wakefield Economic Development Program.

As approved by the voters of the City of Wakefield, Nebraska, at a special election held on March 13, 2007, an Economic Development Program for the City of Wakefield is hereby established (hereinafter "Economic Development Program"). The Economic Development Program is in conformity with the proposed City of Wakefield Economic Development Plan identified in adopted Resolution No. 1-2007 and the Nebraska Local Option Municipal Economic Development Act (Neb. Rev. Stat. §§18-2701, et seq.).

Section 2. Purpose.

a. The purpose and goals of the Wakefield Economic Development Program are to keep current businesses, attract new businesses, and provide opportunities in Wakefield to keep the community, its school, and its social and economic life vibrant; to create jobs and generate employment opportunities; to expand the labor markets of Wakefield and its environs; to attract new capital investment to the community; to broaden the tax-base; to retain jobs; to assist existing businesses to be more competitive and profitable; and to provide economic diversification to ensure economic stability and vitality for the community of Wakefield and the surrounding area.

b. Priority activities include:

1. funding for community improvement projects (including but not limited to a new swimming pool and principal and interest on bonds issued or other obligations incurred to pay the costs of such improvements);

2. grants for public works improvements for private business purposes;

3. the purchase of real estate, options for such purchases, and the renewal or extension of such options, but not including housing;

4. the issuance of bonds as provided for in the Act;

5. funds for retention of existing businesses in the community and the recruitment of new businesses to the community; structure or facility improvement, remodeling, or demolition; and public safety.

c. Further examples of eligible activities include expenses related to population and business recruitment, promotional activities and related administrative expenses, and could include, but are not limited to such costs as travel, office expenses, advertising, legal and related costs.

d. The funds may also be used to purchase real estate and to construct facilities, structures, and/or appurtenances for new or proposed facilities or structures on a speculative basis to attract, retain or expand business or industry.

Section 3. Duration.

The Economic Development Program for the City of Wakefield shall begin on October 1, 2007, and shall end on October 1, 2022. However, uncommitted funds and revenues, including but not limited to, repayment of loans, return on investments, fees for activities such as loan guarantees, and sales proceeds from properties, may continue to be used for Economic Development Program approved activities for an additional twenty (20) year period. Thus the Economic Development Program shall remain in effect until October 1, 2042, for Economic Development Program approved activities.

Section 4. Funding.

a. Sales tax. The local source of revenue for the Economic Development Program is the one percent (1%) local option sales tax approved by the voters of the City of Wakefield in a special election held on March 13, 2007. This tax will remain in force for a period of fifteen (15) years, beginning with commencement of the tax collection by the Nebraska Tax Commissioner.

b. Bonds.

1. The City of Wakefield may authorize the issuance of bonds for community improvement projects to fund and carry out the Economic Development Program following a public hearing. Future sales tax receipts that are received by the Economic Development Program will be used to help retire the bonds. Bonds to fund the Economic Development Program projects shall not be a general obligation of the City or a pledge of its credit or taxing power except to the extent of the obligation of the City to contribute funds to the Economic Development Program pursuant to the Nebraska Local Option Municipal Economic Development Act.

2. Issuance of bonds for Economic Development Program funding shall comply with state and federal laws and particularly the Nebraska Local Option Municipal Economic Development Act (Neb. Rev. Stat. §§18-2724 to 18-2736).

Section 5. Budgeting.

a. Annual Budget. The amount to be expended on the Economic Development Program for the ensuing year shall be fixed at the time of making the annual budget required by law and shall be included in the budget.

b. Program Fund. There is hereby established a separate Economic Development Fund. All funds derived from the sales tax for the Economic Development Program, any earnings from the investment of such funds including, but not limited to, interest earnings, loan payments, and any proceeds from the sale or rental by the City of assets purchased by the Economic Development Program shall be deposited into the Economic Development Fund. Any proceeds from the issuance and sale of bonds pursuant to the Local Option Municipal Economic Development Act to provide funds to carry out the Economic Development Program, except as provided in section 18-2732 of the Local Option Municipal Economic Development Act, shall be deposited into the Economic Development Fund. Except as provided in this section or the Local Option Municipal Economic Development Act, no money in the Economic Development Fund shall be deposited in the general fund of the City. The City shall not transfer or remove funds from the Economic Development Fund other than for the purposes prescribed in the Local Option Municipal Economic Development Act, and the money in the Economic Development Fund shall not be commingled with any other City funds. Any money in the Economic Development Fund not currently required or committed for purposes of the Economic Development Program shall be invested as provided in the Economic Development Program and according to Nebraska law, as provided for in Neb. Rev. Stat. §77-2341.

c. Appropriated Funds and Restrictions to Appropriation.

1. The City may appropriate funds for the Economic Development Program from the estimated sales tax receipts, bonds, carry-over funds and Economic Development Program revenues from repayment of loans, sale and return of investments, fees, leases, etc. All Economic Development Program funds shall be held in a separate account from other funds of the City and shall be known as the Economic Development Fund.

2. The City shall not appropriate from funds derived directly from the sales tax revenues for all approved Economic Development Program projects in each year during which the Economic Development Program is in existence, an amount in excess of four-tenths of one percent (.004%) of the taxable valuation of the City in the year in which the funds are collected, or in an amount exceeding one million dollars (\$1,000,000.00). Furthermore, the City shall not appropriate from funds derived directly from sales tax revenues an amount for the Economic Development Program in excess of the total amount approved by the voters. These restrictions on the appropriation of funds from sales tax revenue shall apply only to the appropriation of funds derived directly from sales tax revenues and not funds received from Economic Development Program investments, grants, or other forms of funding, or funds which were appropriated but not expended during previous fiscal years.

3. Sales tax collections in excess of the amount which may be appropriated shall be deposited in the City Economic Development Fund and invested as provided for the in the Economic Development Program.

4. Any funds in the Economic Development Fund not otherwise restricted from appropriation by reason of the City's ordinance governing the Economic Development Program or state statute may be appropriated and spent for the purposes of the Economic Development Program in any amount and at any time at the discretion of the City Council, subject to the annual budget.

5. The restrictions on the appropriation of funds from sales tax revenue shall not apply to the reappropriation of funds which were appropriated but not expended during previous fiscal years.

d. Expenses. Economic Development Program expenses may include, but are not limited to, loans, property acquisitions, grants, recruitment, technical assistance, infrastructure, administration, qualifying programs as defined in the Economic Development Program, and other expenses allowed by the Nebraska Local Option Municipal Economic Development Act, except that no funds may be expended for grants or loans for the construction or rehabilitation for sale or lease of housing for persons of low or moderate income. Expenses shall not exceed the funds annually appropriated in the annual budget for the Economic Development Program.

e. Other Economic Funds. Appropriations and expenditures made by the City which are authorized by Neb. Rev. Stat. §13-315 and made according to its provisions are not subject to the Local Option Municipal Economic Development Act and shall be kept separate and distinct from Economic Development Funds.

Section 6. Investments.

Economic Development Program funds not currently required or committed for purposes of the Economic Development Program shall be invested in secure investments (insured deposits, collateralized deposits, securities issued by the United States government or guaranteed by the United States government, securities of political subdivisions of the State of Nebraska, securities issued by United States government agencies) to assure availability of funds to meet program requirements. To the extent possible local financial institutions shall be utilized for deposit and investment of funds.

Section 7. Audit.

The City Council shall provide for an annual, outside, independent audit of the Economic Development Funds by a qualified private auditing firm or individual pursuant to the requirements of the Nebraska Local Option Municipal Economic Development Act. The auditing business shall not, at the time of the audit for any period during the term subject to the audit, have any contractual or business relationship with any qualifying business receiving funds or assistance under the Economic Development Program or any financial institution directly involved with a qualifying business receiving funds or assistance under the Economic Development Program. The results of said audit shall be filed with the City Clerk and made available for public review during normal business hours.

Section 8. Administration.

The program shall be administered as follows:

a. Program Administrator. The City Administrator shall be the Program Administrator for the Economic Development Program. The Program Administrator's duties shall include:

1. responsibility for the day-to-day activities of administering the Economic Development Program;

2. recommending the annual budget of the Economic Development Program to the Council and responsibility for Economic Development Program compliance to the approved budget;

3. assisting applicants and conducting active recruiting for potential applicants;

4. serving as a non-voting member of the Citizen Advisory Review Committee, providing this Committee with necessary advice and information, and preparing and submitting reports, requests, and concerns of the Committee to the City Council;

5. serving as a member of the Project Review Committee, providing the monthly Project Review Committee's accounting to the Council, and providing recommendations, reports, requests and concerns of the Project Review Committee to the Citizen Advisory Review Committee and the City Council;

6. maintaining all files required by the Economic Development Program at the City offices and keeping a separate file of all real estate, infrastructure and construction projects funded by the Economic Development Program; and

7. taking appropriate action to maintain the integrity of the Economic Development Program and its funds, including retaining experts to invest, audit and collect Economic Development Funds.

b. Citizen Advisory Review Committee.

1. There is hereby created a Citizen Advisory Review Committee for the Economic Development Program. The Citizen Advisory Review Committee shall consist of five (5) registered voters of the City of Wakefield and the Program Administrator, who shall be a non-voting *ex officio* member. The term of the Committee members shall be four (4) years (except the initial appointed members shall have terms of 1, 2, 3, 4, and 5 years so as to establish a staggered basis and allowing for one (1) appointment each year after the first). The Committee members shall be appointed by the Mayor with the approval of the Council. At least one member of the Committee shall have expertise or experience in the field of business finance or accounting. No appointed member of the Citizen Advisory Review Committee shall be an elected or appointed City official, an employee of the City, a participant in a decision-making position regarding expenditures of program funds, or an official or employee of any qualifying business receiving financial assistance under the Economic Development Program or of any financial institution participating directly in the Economic Development Program.

2. The Citizen Advisory Review Committee will meet as required to review concerns of the Program Administrator, recommendations of the Project Review Committee and to review the Economic Development Program activities. Said meetings shall be at least quarterly.

3. The Committee shall report to the City Council on its findings, suggestions, and recommendations at such times as it determines necessary or at any time the City Council or Mayor shall request.

4. The Citizen Advisory Review Committee shall submit semi-annual accountings, findings, and summaries at a public hearing called for that purpose at the first regularly scheduled meeting in January and July of each year.

c. Project Review Committee

1. There is hereby established a Project Review Committee. The Project Review Committee shall consist of the Program Administrator, one person appointed by the Mayor with the approval of the City Council who has lending and/or financial background, education and/or

experience, and one additional person appointed by the Mayor with the approval of the City Council.

2. The Project Review Committee shall be in charge of the primary administration of the Economic Development Program (“Program”). It will monitor the individual loan accounts of the Program; assure that the annual Economic Development Program audit includes information necessary for a complete audit of the Program; and submit to the Mayor and City Council concerns as to impropriety, fraud or deceit in the Program.

3. This Committee shall be responsible for drafting guidelines and identifying procedures for application to the Program (including the loan and security documents required for a loan); the type or types of financial assistance available to various applicants; the maximum proportion of financial assistance that may be provided by the Program to any single qualifying business and the criteria that will be used to determine the appropriate level of assistance; the criteria and procedures that will be used to determine the necessity and appropriateness of permitting a qualifying business to participate in the Program; the criteria for determining the time within which a qualifying business must meet goals set for it under its participation in the Program; and procedures for identifying problem loans and when further action, including legal action, is necessary to protect the loan funds. These guidelines shall be presented to the City Council for final approval.

4. The guidelines for the Program shall also specify what personnel or other assistance beyond regular City employees will be needed to assist in the administration of the Program and the manner in which they will be paid or reimbursed; and the investment strategies that the City will pursue to promote the growth of the program fund while assuring its security and liquidity; the methods of auditing and verification that will be used by the City to insure that the assistance given is used in an appropriate manner and that the City is protected against fraud or deceit in the conduct or administration of the Economic Development Program.

5. The Project Review Committee shall review all applications to the Program. The Project Review Committee shall consider collateral and other security, business plans, outside income, and other criteria it believes is necessary for a successful project, including, if applicable, loan repayment. The Project Review Committee may also consider alternatives to a standard loan, require additional information from the applicant, and require additional documents necessary for a valid loan, including security documents.

d. The Program Administrator shall prepare and submit to the City Council a monthly report of loan accounts, program income, and current investments of unexpended funds.

e. The Wakefield City Council shall (a) approve the annual budget for the Economic Development Program; (b) approve expenditures of the Economic Development Program Funds in the form of a motion or resolution at either a regular or special meeting of the Council; and (c) have ultimate responsibility for the Economic Development Program.

Section 9. Eligibility.

The Economic Development Program may provide direct or indirect financial assistance to “qualifying businesses” for “eligible activities” as allowed by the Local Municipal Option Economic Development Act and the Economic Development Program.

a. Qualifying Business.

1. “Qualifying business” shall mean:

(a) any corporation, partnership, limited liability company, or sole proprietorship which derives its principal source of income from any of the following: the manufacture of articles of commerce; the conduct of research and development; the processing, storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce; the sale of services in interstate commerce; headquarters facilities relating to eligible activities as listed in this section; telecommunications activities, including services providing advanced telecommunications capability; or tourism-related activities; and

(b) a business which derives its principal source of income from retail trade.

(c) So long as the City has a population of two thousand five hundred inhabitants or less, a business shall be a qualifying business even though it derives its principal source of income from activities other than those set out in this section.

3. If a business which would otherwise be a qualifying business employs people and carries on activities in more than one city in Nebraska or will do so at any time during the first year following its application for participation in an economic development program, it shall be a qualifying business only if, in each such city, it maintains employment for the first two years following the date on which such business begins operations in the city as a participant in its economic development program at a level not less than its average employment in such city over the twelve-month period preceding participation.

4. A qualifying business need not be located within the corporate limits of the City of Wakefield if the City Council determines that there is a clear economic benefit to the City. Eligible qualifying businesses may apply more than once and receive program benefits more than once.

b. Eligible Activities. “Eligible activities” means those activities allowed by the Local Option Municipal Economic Development Act for the purpose of providing assistance to a qualified business or for related expenses of the Economic Development Program. Eligible activities include, but are not limited to:

1. direct loans or grants to qualifying businesses for fixed assets or working capital or both;

2. loan guarantees for qualifying businesses;

3. grants for public works and infrastructure improvements which are essential to the location or expansion of, or the provision of new services by, a qualifying business, including, but not limited to streets, storm drainage, water, sewer, gas, electric or railroad extensions;

4. grants or loans for job training;

5. purchase of real estate, options for such purchases, and the renewal or extension of such options;

6. issuance of Economic Development Program qualified bonds;
7. payments for salaries and support of City staff to implement the Economic Development Program or the contracting of such to outside persons or entities;
8. business and industry recruitment;
9. incentives for business and industry investment and job creation;
10. purchase of commercial or industrial site(s) and obtaining options for the purchase of such real estate;
11. grants or loans for construction of facilities, structures, and/or appurtenances for new or proposed qualifying businesses or for a speculative basis to attract new business or industry.

Eligible activities do not include grants or loans for the construction or rehabilitation for sale or lease of housing for persons of low or moderate income.

Section 10. Application to the Program.

a. In order to be considered for Economic Development Program benefits, a qualifying business shall first become an “Applicant” by applying to the City for assistance. The application shall contain information as required by the Economic Development Program and any additional information as may be requested by the Program Administrator, the Project Review Committee, or the City Council.

b. Upon receipt of an application, the Program Administrator shall make a preliminary determination as to whether (1) the applicant is eligible; (2) the proposed activities are eligible; (3) the applicant has no legal actions underway that may significantly impact its ability to meet program obligations; and (4) the business complies with the provisions of the application guidelines.

c. Once the Program Administrator makes a determination that the application appears to be complete and viable, the application shall be referred to the Project Review Committee. Completed applications shall be submitted to the Project Review Committee in the same order that they are received. The Committee shall review all applications, including any financial information furnished, and provide recommendations to the Program Administrator if additional information is required or for recommendations of modifications to the application.

1. Once the Project Review Committee has completed its review, and following any additional negotiations conducted by the Program Administrator, the Project Review Committee shall make a recommendation to the City Council that (1) the application be approved, (2) the application be disapproved, or (3) the Committee is not able to make a recommendation due to lack of information or other factors to be cited by the Committee. Approval or disapproval will be based on whether the applicant is able to show (1) eligibility for funding, and (2) that the type and level of assistance will not unduly enrich the business or be unreasonable in relation to the public benefit to be achieved from the funding. If the recommendation is “disapproval” or the Project Review Committee is “not able to make a recommendation”, the reasons will be cited. Recommendations for disapproval by the Project Review Committee are subject to final review and approval by the City Council.

d. All recommendations of the Project Review Committee for approval of a project shall be submitted to the City Council for consideration of funding. The Project Review Committee may also refer to the City Council certain applications, in its sole discretion, where it is unable to make a recommendation. In making its determination as to funding, the City Council shall not be presented with any information which has been determined by the Program Administrator or the Project Review Committee to be “confidential”. An applicant, which has been awarded funding under the Program, shall be referred to as a “Funded Business”. All decisions by the City Council will be deemed final, subject to review and modification as necessary by the City Council consistent with the contractual rights of any parties involved.

e. There shall be no limit on the number of times that a qualifying business may apply for assistance. Applications shall be received until all funds anticipated for the Program have been committed. The decision as to whether or not Program benefits shall be granted is at the sole discretion of the City Council.

f. The Project Review Committee and the Program Administrator shall develop guidelines and application forms for the process of applying and approval of projects that comply with this ordinance. These guidelines shall be approved by the City Council and should require from the applicant, at a minimum:

1. a detailed description of the proposed project;
2. a business plan, including employment and financial projections;
3. current financial statements, financing requirements for the project, and total cost;
4. a completed Program application for financial assistance; and
5. any additional information necessary to determine the economic viability of the proposed project(s).

Section 11. Included Programs.

There is established within the Economic Develop Program a “Loan Program”. The purpose of the Loan Program is to make loans for eligible activities to qualifying businesses.

a. Any, and up to all, of the Economic Development Program funds may be used for loans for the purpose of the Loan Program.

b. The Loan Program shall be administered primarily by the Project Review Committee with oversight by the Program Administrator, Citizen Advisory Review Committee, and the City Council.

c. The Project Review Committee shall review loan applications as submitted to it by the Program Administrator. It shall then make recommendations regarding its suggested maximum proportion of financial assistance from program funds for each loan application, its suggested loan requirements, and shall then make its recommendations to the Council for final action.

d. At the time when a qualifying business makes an application to the City to participate in the Loan Program, the applicant shall provide to the City appropriate documentation evidencing its negotiations with one or more primary lenders and the terms on which it has received or will receive the

portion of the total financing for its activities which will not be provided by the Economic Development Program.

e. The Project Review Committee's recommendation concerning each loan application shall include its recommendation for (1) the time within which the loan applicant must meet goals set for it; (2) a determination when the loan shall be declared in default; and (c) the action to be taken to deal with a default on the loan.

f. There shall be established a separate account in a financial institution for each loan made from the Loan Program.

g. For each loan there shall be kept a file at the City Office containing a record of said loan which include (1) the name of the borrower; (2) the purpose of the loan; (3) the date of the loan; (4) the amount of the loan; (5) the date of disbursement of Economic Development Funds; (6) interest rate; (7) maturity date; (8) frequency of payments; (9) copy of loan documents, including notes, security documents, and guarantees; (10) current accounting of payments, disbursements, and balances; (11) documentation of comments of the Program Administrator, Citizen Advisory Review Committee, or City Council; and (12) collection proceedings, if any. Any records or information of a loan or loan application that is identified as "confidential" shall be kept in a file cabinet at the City Office which is secured for that purpose. Confidential information and records are those that have been identified as such by the applicant and not been released from such characterization by said applicant.

h. The Loan Program shall be audited annually by the Economic Development Program auditor.

Section 12. Program Procedures for Real Estate Purchase, Infrastructure Development and Facility Construction.

Use of Economic Development Funds for the purchase of real estate, infrastructure development, and construction of facilities, in addition to the procedures outlined elsewhere in the Economic Development Program, shall follow these procedures.

a. Purchasing real estate and commercial or industrial sites. Eligible Economic Development Program activities include the purchase of real estate or improvements to said real estate and options to purchase such real estate or improvements for commercial or industrial use. The real estate or improvements to real estate may include property within or outside the corporate limits of the City of Wakefield. Property to be purchased will be identified through local analysis by the City and/or industrial site evaluation teams organized by the Mayor and City Council, and/or by the Program Administrator as property which will improve the attractiveness of Wakefield to business and industry for economic development. If an identified site is for a future or speculative business location, the Program Administrator shall contact the Business Recruitment Division of the Nebraska Department of Economic Development for a review by the "Nebraska Site Evaluation Team" (or similar organization) and provide such information for consideration prior to recommendation to the City Council for purchase of or improvements to said site. The proposed real estate or property shall be properly zoned with no excessive easements, covenants, or other encumbrances, and shall conform to the City's comprehensive plan. These identified properties may then be considered for option or purchase and further development by the Citizen Advisory Review Committee with final authority in the City Council. Real estate purchased with Economic Development Funds shall be separately identified from other City real estate.

b. Infrastructure. Eligible Economic Development Program activities include the infrastructure to commercial or industrial sites, or proposed sites and real estate to be purchased with Economic Development Funds, or other sites to make them attractive to new or expanding businesses or existing businesses that need alternative sites. Infrastructure improvements and costs may extend beyond the corporate limits of the City. Infrastructure includes, but is not limited to, streets, storm drainage, water, sewer, gas, electric or railroad extensions. Infrastructure shall also include those improvements which make Wakefield an attractive place to live and which will promote economic activity in the community, such as a new swimming pool. Application for Economic Development Program funding for infrastructure may be made by the Program Administrator, the Citizen Advisory Review Committee, the Mayor, and/or the City Council. Final approval or rejection for infrastructure projects shall be made by the City Council by resolution. If bids are required for infrastructure projects, they shall conform to the City bidding requirements for other City infrastructure projects.

c. Construction of facilities, structures, and/or appurtenances. Eligible Economic Development Program activities include the construction of facilities, structures, and/or appurtenances. The purpose of said construction is to facilitate new or proposed development or to attract new business or industry and may be used as an incentive to aid in the location, relocation or expansion of a new or current businesses. These facilities, structures and appurtenances are not required to be within the corporate limits of the City of Wakefield. Application for Economic Development Program funding for construction may be made by the Program Administrator, the Citizen Advisory Review Committee, the Mayor, and/or the City Council. Final approval or rejection for construction projects shall be made by the City Council by resolution. If bids are required for construction projects, they shall conform to the City bidding requirements for other construction projects.

d. Lease or sale of Economic Development Program real estate, sites, infrastructure, or structures. Any investment in land, infrastructure, and facility construction can provide an incentive for a business or industry to remain, relocate, or start in Wakefield while at the same time provide a benefit that will remain in the community. Developed industrial sites, buildings, and infrastructure will be of long-term benefit to the community regardless of future ownership. Thus, the real estate, sites, infrastructure, and facilities purchased with Economic Development Funds may be sold or leased at a price at or below current market value. The proceeds from the sale or lease of land purchased and developed may be used for the purchase and development of additional land or may be used for any and all other eligible activities. Upon approval of the City Council, the sale of land or businesses at market rate may be handled without application by the buyer to the Economic Development Program. If the attraction of a new business or industry requires an incentive to ensure its location in Wakefield, the potential buyer may apply to the Economic Development Program for other assistance. All sales of Economic Development Program real estate, infrastructure, and facilities shall be approved by resolution of the City Council and said sales shall not be subject to the right of remonstrance or other requirements regarding the sale of real estate belonging to the City.

Section 13. Confidential Information.

a. Confidential information shall mean that information which is provided by an applicant, declared in writing to be confidential by said applicant, and which may be withheld from the public pursuant to Neb. Rev. Stat. §84-712.05.

b. Procedures. The Program Administrator and Project Review Committee will be responsible for development of procedures to insure the confidentiality of business information received from applicants for financial assistance. These procedures will include restrictions on the number of people with access to the files, identification of the parties with the responsibility for the safe keeping of said

files, and requirements that personnel involved in the program review sign statements of confidentiality regarding all personal and private submission of applicants.

c. Access to confidential information. The Program Administrator, Project Review Committee, and Citizen Advisory Review Committee and the City Attorney shall have access to confidential information for review for the benefit of the Economic Development Program. Said information shall be clearly identified as “confidential” by the Program Administrator and shall be kept in a separate secure file in the City Office.

d. Removal of confidential characterization. The applicant may remove the “confidential” characterization at any time in writing to the Program Administrator at which time said information shall be declassified.

e. Failure to remove confidential characterization. If it is determined by the Program Administrator that it is necessary for “confidential” information to be declassified to obtain Economic Development Program benefits, the applicant shall be so notified. If the applicant refuses to agree to declassification of the information, no Economic Development Program benefits shall accrue and the information shall be returned to the applicant.

f. Penalty for failure to maintain confidential information. It shall be a Class III Misdemeanor and punishable as any other Class III Misdemeanor in the State of Nebraska for a person to disclose Economic Development Program confidential information.

Section 14. Amending the Program.

a. Amending to Comply with Law or the Economic Development Plan. This ordinance may be amended to conform to the provisions of any existing or future state or federal law, or, after notice, at least one public hearing, and a two-thirds vote of the members of the City Council, when necessary to accomplish the purposes of the Economic Development Plan of the City of Wakefield.

b. Fundamental alterations. The Economic Development Program shall not be amended so as to fundamentally alter its basic structure or goals, either with regard to the qualifying businesses that are eligible to participate, the uses of the funds collected, or the basic terms set out in the original enabling resolution, without submitting the proposed changes to a new vote of the registered voters of the City in the manner in which the Economic Development Plan of the City of Wakefield was originally submitted to the voters.

Section 15. Continuing and Terminating the Program.

a. By election. The registered voters of the City may, at any time after March 13, 2008, request a vote on the continuation of the Economic Development Program.

1. The question shall be submitted to the voters whenever petitions calling for its submission, signed by registered voters of the City in number equal to at least twenty (20%) percent of the number of persons voting in the City at the last preceding general election, are presented to the City Council.

2. Upon receipt of the petitions, the City Council shall submit the question at a special election to be held not less than thirty (30) days nor more than forty-five (45) days after receipt of the petitions, except that if any other election is to be held in the City within ninety (90) days

of the receipt of the petitions, the governing body may providing for holding the election on the same date.

3. The City Council shall give notice of the submission of the question of whether to continue the Economic Development Program not more than twenty (20) days nor less than ten (10) days prior to the election by publication one time in one or more newspapers published in or having a general circulation in the City of Wakefield. Such notice shall be in addition to any other notice required by the election laws of the State of Nebraska.

4. The question on the ballot shall generally set out the basic terms and provisions of the Economic Development Program as required for the initial submission, except that the question shall be "Shall the City of Wakefield continue its economic development program?"

5. A majority of the registered voters voting on the question at the election shall determine the question. The final vote shall be binding on the City, and the City Council shall act within sixty (60) days of the certification of the vote by the County Clerk or the Election Commissioner to repeal this ordinance if a majority of the voters voting on the question vote to discontinue the Economic Development Program.

6. Notwithstanding the provisions of paragraph 2 above, if two-thirds of the members of the City Council vote to repeal this ordinance within fifteen days of the receipt of the petitions for an election, the Economic Development Program shall end and the election shall not be held.

b. Failure to use funds. If, after five full budget years following initiation of the Economic Development Program, less than fifty (50%) of the money collected from sales and use taxes is spent or committed by contract for the Economic Development Program, the City Council shall place the question of the continuation of the Economic Development Program on the ballot at the next regular election.

c. By other method. The Economic Development Program may also be discontinued by any other method that is described in the Local Option Municipal Economic Development Act.

d. Contractual consequences of termination. The repeal of this ordinance and the discontinuation of the Economic Development Program shall be subject only to the provisions of any contracts related to the Economic Development Program and the rights of any third parties arising from those contracts existing on the date of the election. Any funds collected by the City under the Economic Development Program and unexpended for the Economic Development Program on the date of its repeal and any funds received by the City on account of the operation of the Economic Development Program thereafter shall be deposited in the general funds of the City.

e. Program funds after termination. The Economic Development Program Fund shall not be terminated until such time as all projects and contracts related to the Economic Development Program have been finally completed and all funds related to them fully accounted for, with no further City action required, and after the completion of a final audit. When the Economic Development Program is terminated, the City Council shall by resolution certify the amount of money to be transferred from the Economic Development Program Fund to the general fund of the City and the amount that is anticipated will be received by the City between such time and the final audit of the Economic Development Program Fund. The sum of those two amounts shall be divided by the number of years in which funds for the Economic Development Program were collected from sales and use taxes. The resulting figure shall constitute the amount to be applied against the budgeted expenditures of the City during each

succeeding year until all funds from the Economic Development Program are expended. The installments shall be used to reduce the property tax levy of the City by that amount in each year in which they are expended.

Section 16. Compliance.

To assure all applicable laws, regulations and requirements are met by the City and qualified businesses or industry, the following process shall be followed:

a. The Program Administrator will be responsible for monitoring changes in the law and for the procedures to insure that all applicable laws, regulations and requirements are met by the City and the qualifying businesses that receive assistance. These procedures will be subject to review and approved by the Citizen Advisory Review Committee.

b. The City Council, Citizen Advisory Review Committee, Project Review Committee, or Program Administrator may direct the City Attorney to review contracts, official documents, land transactions and other official actions related to the Economic Development Program to ensure compliance with existing law and to monitor changes in the law to ensure future compliance.

c. Any provision, paragraph, section, sentence, or word of the Economic Development Program that is found not to be in compliance with the Local Option Municipal Economic Development Act, any other state or federal law, or the enabling resolution, may be stricken from the Economic Development Program, and the remainder of the Economic Development Program shall remain in full force and effect.

Section 17. Repeal of All Conflicting Ordinances.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 18. Effective Date.

This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting as provided by law.

Section 19. Publication in Pamphlet Form.

This ordinance shall be published in pamphlet form as provided by the Statutes of the State of Nebraska.

PASSED AND APPROVED this _____ day of _____, 2009.

CITY OF WAKEFIELD, NEBRASKA

By _____
Tom Henderson – Mayor

ATTEST:

Kathy Skinner – City Clerk