

# LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for October 29, 2003 PLANNING COMMISSION MEETING

**P.A.S.:** Miscellaneous# 03012: Economic Development Criteria

**PROPOSAL:** Adoption of the Criteria for Arterial Street Impact Fee Reimbursement for Economic Development.

**CONCLUSION:** The proposed criteria are in conformance with the goals and principles of the 2025 Comprehensive Plan and is consistent with the State of Nebraska economic development efforts. Incentives for economic development are necessary in order to compete with other communities in attracting and retaining primary employers. The proposed criteria are performance based, requiring the job creation and investment for three consecutive years prior to reimbursement. The criteria parallel the State of Nebraska incentives in order to reduce confusion among employers and ease in administration.

**RECOMMENDATION:**

Approval

## **GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** Adoption, by resolution, of the Criteria for Arterial Street Impact Fee Reimbursement for Economic Development.

**ASSOCIATED REQUEST:** Change of Zone #3399; Amendments to the Impact Fee ordinance, including text regarding the reimbursement of impact fees for economic development.

**SUMMARY:** In general the Economic Development Criteria are intended to:

- a. Establish criteria for reimbursing arterial street impact fees based on the system used by the Nebraska Dept. of Economic Development. Using the same criteria simplifies the process for firms looking at both state and local incentives.
- b. Clarify that reimbursement of impact fees is for economic development only and that only certain business activities are eligible. Once the City Council adopts the criteria based on objectives standards, then requests will be processed administratively rather than requiring multiple City Council actions.
- c. Initially require that impact fees to be paid by company at time of building permit. After three consecutive years of job creation, the arterial street impact fee would be repaid at:

- 50% for 30 jobs created and \$3 million in investment in building /equipment or
  - 100% for 100 jobs created and \$10 million investment
- d. Establishes a minimum average wage to qualify for a reimbursement at or over the average wage paid by the employment categories eligible under the Employment and Investment Growth Act. Currently, this is \$12.99 an hour.

### COMPREHENSIVE PLAN SPECIFICATIONS:

This proposal is in conformance with the 2025 Comprehensive Plan. Selected pertinent sections from the Plan include:

The pertinent principles in regards to impact fees include:

#### “Overall Guiding Principles

There needs to be a balance between new infrastructure in developing areas and the improvements and maintenance needs of the existing community. Funding for infrastructure improvements should not focus all of the funds into developing areas, leaving inadequate resources to address needs in other areas. The City and County need to adequately fund infrastructure maintenance and improvements in existing towns and neighborhoods.” (Page F 159)

#### “Guiding Principles for Financing Urban Infrastructure

**A Balanced Approach:** The community at large should provide more financing of maintenance and improvements in existing areas. Both new and existing development should pay its fair share of improvement costs due to growth and maintenance. In general, improvements which are of general benefit to the whole community should be paid by the community while improvements which are of special benefit to a specific area should be paid by that area. ” (Pages F 160 -161)

The strategies section then lists the different suggested mechanisms to meeting these principles. Impact fees is specifically stated in the following:

#### “Arterial Streets

The Community should establish a balanced system of financing improvements that uses both impact fees paid by new construction, wheel taxes paid by rate payers throughout the city and state and federal funds.” (Page F 162)

One of the Guiding Principles of the Plan states the following community vision for the future:

“Economic Opportunity: Existing businesses flourish and there are opportunities for new businesses within Lincoln and the incorporated communities. The Plan provides new employment locations and supports retention of existing businesses.” (Page F 16)

From the Future Conditions – The Economy section states the following:

“The Emergence of a New Economy:

A new economic perspective is structurally transforming all industrial sectors. Critical features are speed, quality, flexibility, knowledge and networks.

To maintain a competitive advantage, Lincoln and Lancaster County must respond by meeting the needs of future business by assuring the availability of attractive locations, a skilled workforce, a supportive government, and appropriate infrastructure. (Page F 10)

“Economic Future

The City of Lincoln and Lancaster County promote and foster appropriate, balanced, and focused future economic growth that maintains the quality of life features the community values and seeks to protect. The City and County will actively pursue economic development with an emphasis on household sustaining jobs.” (Page F 12)

## **ANALYSIS:**

1. In order to promote the economic development of the community and the Lincoln/Lancaster County Comprehensive Plan, the impact fee ordinance adopted in January 2003 authorized the City Council to reimburse the impact fees for economic development based on a set criteria. The ordinance states in the section on “Discretion to Reduce Impact Fees” that

“Any such decision to pay impact fees on behalf of a proposed development shall be at the discretion of the City Council and shall be made pursuant to goals and objectives adopted by the City Council to promote such development.” (Section 27.82.110 (i))

2. The goals and principles of the Comprehensive Plan adopted in May 2002 provide guidance regarding the community’s economic development goals. The Plan includes a section on “The Economy” and one on “Business and Commerce.” While the Plan does not specifically mention incentives, it does note that the community should encourage economic development in the community.

3. When the Impact Fee Ordinance was adopted, it was understood that the criteria would follow at a later date. During the past eight months, establishment of the criteria has been under consideration.
4. This proposal is to reimburse arterial street impact fees for employers engaged in defined primary business activities who make a substantial investment in the community and create at least 30 or more full time jobs. The intent of this reimbursement is to follow the thresholds and definitions of the State of Nebraska "Employment and Investment Growth Act" (also known as LB 775). This law was established in 1987 and the economic investment thresholds established have not been changed since.
5. The purpose of the proposed reimbursement is to allow the community to remain competitive in attracting and retaining primary employers in Lincoln. This reimbursement program is designed to compliment state incentives for economic development. Thus, this criteria uses the same State criteria in order to reimburse confusion by employers and ease the administration of the criteria.
6. In order to reduce the need for repetitive documentation and need for additional staff, the City of Lincoln's program is designed to rely on verification measures established by the Nebraska Department of Revenue that are already in place.
7. Since the economic development activity usually involves job creation that will occur after the time of the building permit, the business will have to pay the impact fee initially. The Employment and Investment Growth Act is a performance based program that requires the company obtain the job and investment thresholds, prior to receiving any benefits. Once the job and investment threshold have been met, the business can apply for reimbursement of impact fees paid. In order to track the number of potential reimbursements, businesses will be required to apply for the future reimbursement at time of building permit.
8. In order to be eligible for the reimbursement, the business must be engaged in one of the following primary business activities:
  - C research and development
  - C data processing
  - C telecommunications
  - C insurance services
  - C financial services
  - C manufacturing, transportation, warehousing and distribution of tangible personal property
  - C retail sales of tangible personal property, if more than 20% is at wholesale, manufactured by the seller, or sold to others in a qualified activity
  - C administrative management or headquarters

The definition of each business activity is in accordance with the definitions used by the Nebraska Department of Revenue.

9. The emphasis is on primary employment. Businesses such as retail stores, discount stores, or fast food restaurants would not qualify. This program could be used by large companies which are adding jobs or small, fast growing companies rapidly building jobs and investment over a number of years.
10. Reimbursement of Arterial Street Impact Fees will be done as follows:
  - C Qualified businesses which invest in qualified property at least **\$3 million in building and equipment** and hire **30 or more new full time jobs** shall be entitled to a 50% exemption from Arterial Street Impact Fees.
  - C Qualified businesses which invest in qualified property at least **\$10 million in building and equipment** and hire **100 or more new full time jobs** shall be entitled to a 100% exemption from Arterial Street Impact Fees.
11. In order to track the potential reimbursements, businesses are required to apply for the future reimbursements at time of building permit. A filing fee of \$300.00 shall accompany a request for a future fee reimbursements. A company has up to 7 years from date of building permit issuance to attain the thresholds described above. A company must show that it has meet the minimum threshold of investment and job creation for at least 3 consecutive years. The company must provide documentation from the Nebraska Dept. of Revenue, or other duly designated agency, that the minimum thresholds have been attained. Once the Impact Fee Administrator has verified the thresholds have been attained, the impact fee will be reimbursed.
12. The majority of the proposed text in the criteria sets forth the necessary definitions and qualifications of terms using the Employment and Investment Growth Act. In addition, Section 11 of the Criteria was added to provide for potential reimbursement when the original building permit is for a “speculative” building. In other words, an office or warehouse building constructed without a specific tenant in mind. This section will allow the building to qualify if it is purchased within the specific time frame by a qualifying employer who is going to create the needed number of jobs. However, the reimbursement application must be filed at the time of the original building permit, and the sale of the building to a qualified company must occur within three years.

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October 20, 2003

**APPLICANTS:**

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**CITY OF LINCOLN CRITERIA FOR  
IMPACT FEE REIMBURSEMENT FOR ECONOMIC DEVELOPMENT  
(IFRED)**

**RECITALS**

**I.**

In order to promote the economic development of the City of Lincoln, the City will reimburse all or a portion of the arterial street impact fees paid by employers engaged in qualified businesses who make the following required investment and creation of new full time jobs.

**II.**

To reduce the need for repetitive documentation and additional staff, the City of Lincoln's Criteria for Reimbursement of Impact Fees will follow the thresholds and definitions of the State of Nebraska "Employment and Investment Growth Act" (as amended) and rely upon verification measures established by the Nebraska Department of Revenue unless otherwise noted in the context of these Criteria.

**III.**

The business will be required to submit an application for Impact Fee Reimbursement for Economic Development at the same time as the business applies for a building permit. The business will be required to pay the impact fee at this time. The business will then have seven years to attain the requires thresholds, and if the business maintains and/or exceeds those thresholds for a period of three consecutive years, the business may then file a claim for reimbursement of the impact fees paid. The claim for reimbursement shall be allowed upon receipt of verification from the Nebraska Department of Revenue that the business has successfully fulfilled its agreement with the State.

Section 1.

**DEFINITIONS:**

(1) Any term shall have the same meaning as used in Chapter 77, Article 27 of the Nebraska Revised Statutes, unless the context otherwise requires or is noted.

(2) Base year shall mean the year immediately preceding the year during which the "Employment and Investment Growth Act" application, and IFRED future reimbursement application was submitted;

(3) Base-year employee shall mean any individual who was employed in Lincoln, Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the Lincoln, Nebraska project;

(4) Average base-minimum wage eligible to qualify for IFRED is \$12.99 per hour for calendar years 2003 and 2004. The required average base-minimum wage to qualify for IFRED will be annually adjusted for each year thereafter by the Impact Fee Administrator using the Workforce Development Labor Market Information provided that the required average base-minimum wage shall not exceed the Employment and Investment Growth Act Average Salary of New Employees for the most current year reported.

(5) Compensation shall mean the wages and other payments subject to withholding for federal income tax purposes;

(6) Entitlement period shall mean the year during which the required increases in employment and investment were met or exceeded, and the next three consecutive years to maintain; seven years allowed to attain employment and investment levels; three consecutive years maintaining the employment and investment levels.

(7) Equivalent employees shall mean the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year;

(8) Investment shall mean the value of qualified property incorporated into or used at the Lincoln, Nebraska project. For qualified property owned by the taxpayer, the value shall be the original cost of the property. For qualified property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is earlier. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation;

(9) Motor vehicle shall mean any motor vehicle, trailer, or semitrailer as defined in "Employment and Investment Growth Act" and subject to licensing for operation on the highways;

(10) Lincoln, Nebraska employee shall mean an individual who is either a resident or partial-year resident of Lincoln, Nebraska employed at the Lincoln, Nebraska project;

(11) Number of new employees shall mean the excess of the number of equivalent employees employed at the Lincoln, Nebraska project during a year over

the number of equivalent employees during the base year at Lincoln, Nebraska project;

(12) Average wage of new employees shall mean the total dollars paid to new employees over the total number of hours during the audit period at Lincoln, Nebraska Project;

(13) Qualified business shall mean any business engaged in the activities, in Lincoln, Nebraska, listed in subdivisions (b)(i) through (v) of this subdivision or in the storage, warehousing, distribution, transportation, or sale of tangible personal property within the City of Lincoln, Nebraska. Qualified business shall not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not (a) assembled, fabricated, manufactured, or processed by the taxpayer or (b) used by the purchaser in any of the following activities:

(i) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(ii) The performance of data processing, telecommunication, insurance, or financial services. Financial services for purposes of this subdivision shall only include financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the Securities and Exchange Commission;

(iii) The assembly, fabrication, manufacture, or processing of tangible personal property;

(iv) The administrative management of any activities, including headquarter facilities relating to such activities; or

(v) Any combination of the activities listed in this subdivision;

(14) Qualified employee leasing company shall mean a company which places ***all*** employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee;

(15) Qualified property shall mean any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, or the components of such property, that will be located and used at the Lincoln, Nebraska project. Qualified property shall not include (a) aircraft, barges, motor vehicles, railroad rolling stock, or water craft or (b) property that is rented by

the taxpayer qualifying under the Employment and Investment Growth Act to another person;

(16) Related persons shall mean any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under either Section 267(B) and (C) or Section 707(B) of the Internal Revenue Code of 1986;

(17) Taxpayer shall mean any person subject to the sales and use taxes and either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under Sections 77-3801 to 77-3807, any corporation, partnership, limited liability company, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners are, subject to such taxes, and any other partnership, limited liability company, S corporation, or joint venture when the partners, shareholders, or members are subject to such taxes; and

(18) Year shall mean the taxable year of the taxpayer.

## Section 2.

### **Qualification Requirements for IFRED Reimbursement.**

(1) Qualified businesses which paid Arterial Street Impact Fees and which invest at least \$3 million in qualified property and create thirty or more new full time jobs (threshold) shall be entitled to a 50% reimbursement of their Arterial Street Impact Fees.

(2) Qualified businesses which invest at least \$10 million in qualified property and create 100 or more new full time jobs (threshold) shall be entitled to a 100% reimbursement of their Arterial Street Impact Fees.

A qualified business shall have up to seven years to attain the applicable threshold. Upon attainment, the business must maintain those levels for three consecutive years to earn the reimbursement.

## Section 3.

### **Qualified Employee Leasing Company; Employees; Duty.**

An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of the Employment and Investment Growth Act if the employee performs services for the client-lessee.

Section 4.

**Application; Contents; Fee; IFRED; Created; Investment; Approval; Reimbursement.**

(1) In order to be eligible for the reimbursement set forth in the IFRED for the City of Lincoln, the taxpayer filing an application for a building permit requiring payment of an Arterial Street Impact Fee shall also file an IFRED application for future reimbursement at the same time with the City of Lincoln.

(2) The application shall contain:

(a) A written statement describing the plan of employment and investment for a qualified business in the City of Lincoln;

(b) A copy of the confirmation letter from Nebraska Department of Revenue regarding successful application for "Employment and Investment Growth Act" incentives.

(c) If one or more location outside the City of Lincoln is involved in the successful application for "Employment and Investment Growth Act" incentives, additional documentation satisfactory to the Impact Fee Administrator must be provided to show the employment and investment at the Lincoln, Nebraska location(s);

(d) A non-refundable application fee of three hundred dollars (\$300.00). The fee shall be deposited into the Administrative Fee Fund.

(e) A timetable showing the amount of the reimbursement expected and the year the reimbursement is to be claimed.

(3) Once satisfied that the plan in the application defines a project consistent with the purposes of the Criteria for IFRED in one or more qualified business activities within the City of Lincoln, Nebraska, that the plan will result in either (a) the investment in qualified property of at least three million dollars and the hiring of at least thirty new employees or (b) the investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees in the City of Lincoln, Nebraska, and that the required levels of employment and investment for the project will be met prior to the end of the sixth year after the year in which the application was submitted, the Impact Fee Administrator shall approve the application for future reimbursement of Arterial Street Impact Fees. In determining the net gain in value for purposes of this subsection, all tangible personal property shall be valued in a manner consistent with the value determined for qualified property, and the total

value on the last day of each year shall be compared with the total value on the last day of the base year.

(4) After approval of the application and satisfactory completion of the project, the Impact Fee Administrator, on behalf of the City of Lincoln, Nebraska, shall reimburse the taxpayer the applicable portion of the Arterial Street Impact Fees paid.

Section 5.

**Reimbursement Limitation.**

**The following transactions or activities shall not create any right to reimbursement under the IFRED except as specifically allowed by this section:**

(1) The acquisition of a business which is continued by the taxpayer and which was operated in the City of Lincoln during the three hundred sixty-six days prior to the date of application or the date of acquisition, whichever is later. All employees of the acquired business during such period shall be considered base-year employees, and the compensation paid during the base year or the year before acquisition, whichever is later shall be the base-year compensation. Any investment in the acquisition of such business shall be considered as being made before the date of application;

(2) The moving of a business from one location to another, which business was operated in the City of Lincoln during the three hundred sixty-six days prior to the date of application. All employees of the business during such three hundred sixty-six days shall be considered base-year employees;

(3) The purchase or lease of any property which was previously owned by the taxpayer or a related person. The first purchase by either the taxpayer or a related person shall be treated as investment if the item was first placed in service in the City of Lincoln after the date of the application;

(4) The renegotiation of any lease in existence on the date of application which does not materially change any of the terms of the lease, other than the expiration date, shall be presumed to be a transaction entered into for the purpose of generating benefits under the act and shall not be allowed in the computation of any reimbursement or the meeting of any required thresholds;

(5) Any purchase or lease of property from a related person, except that the taxpayer will be allowed any reimbursements under the IFRED to which the related person would have been entitled on the purchase or lease of the property if the related person was considered the taxpayer; and

(6) Any transaction entered into primarily for the purpose of receiving reimbursements under IFRED which is without a business purpose and does not result in increased economic activity in the city.

Section 6.

**Reimbursement Claims; Procedures; Interest.**

(1) (a) The IFRED shall be claimed by filing the forms required by the Impact Fee Administrator with the supporting documentation from the Nebraska Department of Revenue with the City of Lincoln Department of Public Works Impact Fee Administrator.

(b) The approved IFREDs shall be paid in the order in which they were first allowed. Any and all reimbursements are contingent upon the availability of appropriated funds.

(2) (a) No reimbursement claims shall be filed until after the required levels of employment and investment have been met and maintained as provided herein.

(b) All reimbursement claims shall be filed within three calendar years from the end of the year the required levels of employment and investment have been met and maintained.

(c) Interest shall not be allowed on any reimbursements under the IFRED.

Section 7.

**Disallowance of Reimbursement.**

(1) If the taxpayer fails either to meet the required levels of employment or investment for the applicable project by the end of the sixth year after the end of the year the application was submitted for such project or to utilize such project in a qualified business at employment and investment levels at or above those required herein for the entire entitlement period, all of the reimbursements set forth in the IFRED shall be disallowed.

(2) The disallowance required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency.

Section 8.

**Reimbursement; Transfer; When; Effect.**

(1) The reimbursement allowed under the IFRED shall not be transferable except in the following situations:

(a) The reimbursement may be transferred when a project covered by an approved application is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986.

(2) The acquiring taxpayer, as of the date of notification of the Tax Commissioner of the completed transfer, shall be entitled to the reimbursement.

(3) If a taxpayer operating a project and allowed a reimbursement under the IFRED dies and there is a reimbursement remaining, the personal representative shall determine the distribution of the reimbursement. The determination of the distribution of the reimbursement may be changed only after obtaining the permission of the Impact Fee Administrator.

Section 9.

**Reimbursement Claims; Interest Not Allowable.**

For all reimbursement claims filed, interest shall not be allowable on any reimbursements paid.

Section 10.

**Application; Valid; When.**

Any complete IFRED application for future reimbursement filed with the application for a building permit with the City of Lincoln filed on or after the date of adoption of this Criteria for IFRED shall be considered a valid application. A copy of the confirmation letter from Nebraska Department of Revenue regarding successful application for "Employment and Investment Growth Act" incentives will be required for purposes of the reimbursement process.

Section 11.

**Provisional IFRED for Speculative Buildings.**

Notwithstanding the above provisions, a developer who applies for a building permit to renovate an existing building or construct a new building for a speculative industrial building may apply for a provisional IFRED for future reimbursement of said impact fees conditioned upon the sale of the building and transfer of the developer's rights to the IFRED to a qualified business which has completed a successful application for "Employment and Investment Growth Act" incentives. Said sale and transfer must occur not more than three years following the date the building permit was issued for the speculative building. Upon completion of the sale and transfer, the qualified business shall have six months in which to submit a copy of the confirmation letter from the Nebraska Department of Revenue regarding successful application for "Employment and Investment Growth Act" incentives and receive final approval of the provisional IFRED. Thereafter, entitlement to reimbursement shall be based upon satisfactory completion of the project as provided in Sections 1 - 10 above.

Section 12.

**Annual Report; Contents.**

(1) The Impact Fee Administrator shall submit an annual report to the City Council no later than March 15 of each year.

(2) The report shall list:

(a) The applications for IFRED which have been approved during the previous calendar year,

(b) The approved projects which are still in effect,

(c) The name of each taxpayer,

(d) The location of each project,

(e) The expected reimbursement to be allowed on the proposed investment,

(f) The number of jobs to be created,

(g) The total number of qualified applicants, and

(h) The reimbursement outstanding.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Section 13.

**Impact Fee Administrator; Adopt Rules and Regulations.**

The Impact Fee Administrator shall adopt and promulgate all rules and regulations necessary to carry out the purposes of the IFRED.

Section 14.

**Estimate of Reimbursements Under IFRED; Duties.**

The Impact Fee Administrator shall, on or before the fifteenth day of March in every year, make an estimate of the amount of reimbursements to be paid under IFRED. The estimate shall be based on the most recent data available including pending and approved applications and updates thereof as are required. The estimate shall be forwarded to the City's Finance Director and the City Council and made a part of the advisory forecast.