

CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM

POLICIES AND PROCEDURES

I. General statement of Purpose and Policy

The City of New Braunfels is committed to the promotion of high quality development in all parts of the City and to an ongoing improvement in the quality of life for its citizens. These Policies and Procedures are established in an effort to develop and expand the local economy by promoting and encouraging development and redevelopment projects that enhance the City's economic base and a higher quality of life, diversify and expand job opportunities, or encourage projects that create additional revenue for the city without substantially increasing the demand on City services or infrastructure. The ultimate goal and public purpose of programs established hereunder is to protect and enhance the City's fiscal ability to provide high quality municipal services for the safety, comfort and enjoyment of New Braunfels residents. Insofar as the enhancement and expansion of the local economy generally serve these objectives, the City of New Braunfels will, on a case-by-case basis, give consideration of economic incentives to applicants in accordance with these Policies and Procedures as authorized by Chapter 380 of the Texas Local Government Code, as amended from time to time.

The Chapter 380 Program is intended as an incentive for developers and businesses to address revenue gaps in development projects, defined as having insufficient revenues to support the project's debt service under a standard financing scenario. The program can also apply to projects that have a development margin or rate of return that is below market. Any sources of public financing are not intended to substitute conventional debt and equity financing, and a project should generally be able to deliver the terms of most of its financing. In order for a project to be approved, it will undergo an analysis of the development budgets, projected revenues and expenses and sources and uses of funds for the project. These figures will be compared to industry standard measures. The City Council will give preference to proposals that contribute public infrastructure investments and seek reimbursement through enhanced sales and property taxes generated from the project.

Nothing in this document is intended to imply or suggest that the City of New Braunfels is under any obligation to provide economic incentives to any applicant. The decision to approve or deny economic incentives shall be at the discretion of the City Council. Each applicant granted economic incentives as a Chapter 380 Economic Development Program (also referred to as "Program") under these Policies and Procedures must enter into an agreement with the City of New Braunfels containing all terms required by these Policies and Procedures and by state law to protect the public interest of receiving a public benefit in exchange for public funds, assets and services.

II. Program Requirements

To be considered for incentives as a Chapter 380 Economic Development Program under these Policies and Procedures, a project must at least fulfill one of the following minimum requirements:

1. The project will:
 - a. Result in a minimum increased taxable value for the City of Ten Million Dollars (\$10,000,000.00) in real and/or business personal property (excluding inventory and supplies); or
 - b. Result in a minimum increased taxable value to the City of \$420,000 in real and business personal property (excluding inventory and supplies) in the area defined as the Downtown in the Downtown Implementation Plan; or
 - c. Generate an amount of municipal sales tax with a single location that, on an annual basis, ranks the facility in the top quartile of the top 100 sales tax generators in the City as determined by the most recently available sales tax report (2014, Q3: \$143,000); or
 - d. Provide employment opportunities for City residents where a majority of the available positions are offered at an average hourly wage that is at least 10% greater than the MSA's average wage as determined by the Bureau of Labor Statistic's most recently available Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates for the San Antonio-New Braunfels MSA; or
 - e. Is specifically determined by resolution of the City Council to bring benefit to the City consistent with the General Statement of Purpose and Policy as stated in Paragraph I above.
2. In addition, the City Council shall determine in the Resolution adopting the Agreement that the project:
 - a. Will make a unique or unequalled contribution to development or redevelopment efforts in the City of New Braunfels, due to its magnitude, significance to the community or aesthetic quality; or
 - b. Makes a significant contribution to the City of New Braunfels 2020 Vision principles and/or its Strategic Priorities as identified in the annual municipal budget document; or
 - c. Will enhance the City's fiscal ability to provide high quality municipal services for the safety, comfort and enjoyment of New Braunfels residents.
3. A project shall not be eligible for incentives under these Policies and Procedures if a building permit has been issued for the project prior to making application in accordance with these Policies and Procedures.
4. Incentives provided in accordance with these Policies and Procedures will be provided only to the extent that the revenue realized by the City and attributable to a project exceeds a minimum amount established by the Agreement. The public benefit or amount of revenue realized by the City and attributable to the project must be commensurate with the value of any incentives granted under this program.

III. Additional Considerations

Additional factors that can be considered by the City Council in determining whether to authorize an Agreement for incentives as a Chapter 380 Economic Development Program are:

1. The existence and size of the financing gap;
2. The number and types of jobs to be created or retained;
3. The financial capacity of the applicant to undertake and complete the proposed project;
4. The extent to which the project constructs public infrastructure and if the applicant seeks funding for the infrastructure through a reimbursement from increased sales and/or property taxes.
5. Other incentives programs for which the applicant has applied or is qualified;
6. The market conditions and growth potential for the business activity;
7. The Project's contribution of a service or good that will decrease the likelihood that citizens will travel to other communities to purchase that service or good;
8. Whether the project makes a financial contribution beyond minimally established requirements that fulfills a strategic priority as determined by the City Council;
9. Any other factors the City Council finds helpful or relevant to accomplishing the City's economic development objectives.

IV. Application Process

1. An application for consideration as a Program shall be made on forms supplied by the City. An applicant may be required to provide additional information to show compliance with minimum Program requirements. If City staff determines minimum Program requirements have been met, City staff shall prepare and present a proposed Agreement with the applicant to the City Council.
2. The City Council may consider the proposed Agreement and may take action on the proposal as it deems appropriate. Nothing in these Policies and Procedures and nothing in the application form and process shall create any property, contract or other legal right in any person to have the City Council consider or grant incentives.

V. Agreement Terms

An Agreement established for a program must include:

1. A timetable and list of the kind of improvements or development that the Program will include and conditions to assure that the Program meets or exceeds the City's requirements pertaining to property values and revenues, which in no event shall be less than the minimum Program requirements established in Paragraph II above;
2. A complete description of the location of the proposed Program or projects included in the Program;
3. A timetable and list of the kind and amount of property values, revenues, incomes or other public benefits that the proposed Program will provide;
4. If public funds are delivered to a project in advance of the City realizing revenue increases from the project (property and sales tax, fees, etc.), the City will require credit enhancement mechanisms to protect the City in the event of a default in an amount and for a term to be determined and approved by the City Council. Such security may include collateral security, Letter of Credit, or a Third-party guarantee in forms approved by the City Attorney;
5. A provision establishing the duration of the Agreement;

6. A provision detailing a limit on the value of any rebates and/or grants of funds for the duration of the Agreement;
7. A provision identifying the method for calculating and sourcing the funding for any grant, loan or other incentives provided in the Agreement;
8. A provision providing a tangible means for measuring whether the applicant and other responsible parties have met their obligations under the Agreement;
9. A provision providing for access to and authorizing inspection of the property and applicant's pertinent business records by municipal employees in order to determine compliance with the Agreement;
10. A provision detailing monitoring and reporting requirements of the Owner;
11. A provision for cancellation of the Agreement and/or nonpayment of incentives if the Program is determined to not be in compliance with the Agreement;
12. A provision for recapturing City funds granted or loaned, or for recapturing the value of other public assets granted or loaned, if the applicant does not meet its duties and obligations under the terms of the Agreement;
13. A provision that allows assignment of the Agreement with prior written approval of the City Council, or without the prior written approval of the City Council provided that:
14. A provision that allows assignment of the Agreement with prior written approval of the City Council, or without the prior written approval of the City Council provided that:
 - i. All rights, duties, obligations and liabilities under the Agreement are assigned from the assignor to the assignee; and
 - ii. The assignment is made subject and subordinate to the Agreement and the Chapter 380 Economic Development Program Policies and Procedures; and
 - iii. The assignment document is in a form and contains content acceptable to the City Attorney's Office.
15. Provisions relating to administration, delinquent taxes and indemnification; and
16. A provision that the Agreement may be amended by the parties to the Agreement by using the same procedure for approval as is required for entering into the Agreement; and
17. Such other provisions as the City Council shall deem appropriate.