

City of Boerne, Texas

Incentives Policy

WHEREAS, upon full review and consideration of this Policy, the City Council of the City of Boerne is of the opinion that this Policy will assist in implementing programs whereby economic development will be promoted and business and commercial activity will be stimulated in the City; and

WHEREAS, on January 10, 2012, City Council approved the City of Boerne Economic Development Incentive Guidelines; and

WHEREAS, this City of Boerne Incentives Policy replaces the Economic Development Guidelines.

THEREFORE, BE IT KNOWN, that the Council on May 12, 2015 approved the following guidelines and criteria as the City of Boerne's Incentive Policy.

1. INTRODUCTION / GOALS

It is the intent of this Policy to provide guidelines and criteria, requirements, and procedures to evaluate and approve any incentives deemed appropriate and necessary by the City for the furtherance of its economic development and community goals. This Policy shall include provisions for use of general and utility funds of the City, and any other resources as approved by the Council. Incentives may be considered for both new facilities and for the expansion or modernization of existing facilities and structures. Nothing herein shall imply or suggest that the City is under any obligation to provide any incentive to any Applicant. The Council retains the right to evaluate applications and grant incentives, if any, as deemed appropriate on a case-by-case basis without the necessity of amending any contrary provisions of this Policy. The City will use return on investment (ROI) analysis as well as other pertinent criteria in its evaluation and decision making process. It is the objective of implementation of incentives to expedite new revenues to the City and to provide a catalyst for desired economic development projects. Incentives granted by the City will generally include retention of a substantial portion of any new revenues generated by the project. Following are the goals of this Policy:

- A. When in the best interests of the City, provide incentives to existing businesses that will enhance the commercial viability and sustainability of existing commercial properties in the City;
- B. When in the best interests of the City, provide incentives to attract desired businesses or developers to invest in the City;
- C. Encourage redevelopment of targeted areas in the City;
- D. Increase the non-residential ad-valorem tax and / or sales and use tax revenue base and/or utility revenue for the City; and
- E. Ensure that all policies, procedures and any resulting Performance Agreements related to the provision of incentives to stimulate economic development comply with all applicable state statutes.

2. DEFINITIONS

The following definitions shall apply to the terms used in this Policy. These Definitions shall apply to all subsequent Performance Agreements unless amended by that Performance Agreement.

380 Agreement: Shall mean an agreement to provide incentives as authorized by Chapter 380 of the Texas Local Government Code. It may also be referenced herein as a Performance Agreement.

Applicant: Shall mean the property owner or business occupant signing the Incentives Application.

Application: Shall mean the Incentives Application as maintained by Staff.

Base Year Value: Shall mean the assessed value of Facility on the 1st of January preceding the execution of a Performance Agreement.

Benefits: Any combination of group benefits for health care, dental care, vision care, disability insurance, or life insurance.

Business Personal Property: Shall be as defined by the Kendall County Appraisal District.

City: The City of Boerne, Texas.

Code Violations: Shall be as defined in the City's adopted building or zoning codes.

Construction Costs: The cost of permits, fees, construction materials, and installation labor. All other associated costs are deemed excluded, including, but not exclusively, the following costs: design, engineering, construction document preparation, bidding, and construction financing.

Council: The City Council of Boerne, Texas.

Effective Date: The date this Policy was approved by the Council or as otherwise defined in a Performance Agreement.

Employee, Full-Time: Shall mean any employee of the company that regularly works a minimum of thirty (30) hours per week.

Employee, Part-Time: Shall mean any employee that regularly works less than thirty (30) hours a week.

Employees, Full-Time Equivalent (FTE): Shall mean the number of employees equivalent to full-time employees, e.g. two part-time employees working 20 hours each is equal to one full-time employee.

Expansion: Shall mean the addition of buildings, structures, fixed equipment or machinery for the purpose of increasing production capacity.

Facility: Shall mean the site, building and improvements.

Freeport Exemption: If adopted by the City, the Freeport Exemption from ad valorem taxation applies only if qualifying goods, wares, merchandise, and ores have been detained in the state for 175 days or less for the purpose of assembly, storage, manufacturing, processing, or fabricating.

Grants: Funds provided by the City for a particular Project in accordance with this Policy.

Impact Fees: Fees adopted by the City in accordance with Chapter 395 of the Texas Local Government Code.

Improvements: Shall mean buildings, site improvements, and equipment.

Incentives: Shall be as defined in Section 7 herein.

Modernization: Shall mean the replacement and upgrading of existing equipment and facilities which increases the productive input or output, updates the technology, or substantially lowers the unit cost of the operation, and extends the economic life of the facility. This shall not include reconditioning, refurbishing, repairing or completion of deferred maintenance on the facility or its equipment.

Annual Payroll: The company's total expenditures for all employees for the month immediately preceding the application, multiplied by twelve (12).

Performance Agreement: A written contract summarizing the performance requirements of a business or developer and the incentives to be provided by the City.

Policy: Shall mean this Incentives Policy.

Project: The initiative or investment to be provided in accordance with the performance standards of any Performance Agreement providing for potential incentives.

Project Classification: Shall be as defined in Section 6 herein.

Project Eligibility: Shall be as defined in Section 7 herein.

Property: Shall mean the physical site, lot, and / or building for which incentives are being considered.

Public Works Improvements: Shall mean electric, gas, water, reclaimed water, streets and other capital improvements that upon completion and acceptance shall be owned by the City.

Real Property: Shall be as defined by the Kendall County Appraisal District.

Recapture (aka Claw-back): A provision in a Performance Agreement that states how and to what extent any incentives provided must be paid back to the City if the required performance criteria are not met.

Staff: The City Manager, Deputy City Manager and Director of Economic Development or their designee.

3. GENERAL ELIGIBILITY

The following shall establish the minimum eligibility for receiving incentives identified in this Policy.

- A. Properties: Only properties meeting the following requirements at the time an Application is submitted shall be eligible to receive incentives outlined by this Policy.
 - i. Within the City: Property must be located within the City's current municipal boundaries.
 - ii. Zoning: Property must be zoned for the proposed use(s).
 - iii. Taxes: Property shall be in good standing as it relates to taxes due to the City, Kendall County and Boerne Independent School District.
 - iv. Liens: Property shall be in good standing as it relates to any liens held by the City.
 - v. Ownership: Property owners must provide sufficient proof of ownership.
 - vi. Code Violations: Property must not have any outstanding code violations with the City.
 - vii. Construction Commencement: Construction for the Facility must not have commenced prior to the approval of a Performance Agreement.
- B. Businesses: Only businesses meeting the following requirements shall be eligible to receive incentives outlined by this Policy.
 - i. Taxes: The business shall be in good standing as it relates to taxes due to the City, Kendall County and Boerne Independent School District.
 - ii. Property Owner Approval: Businesses, if not the owner of the property to be occupied, must provide a copy of their lease agreement and support of the Incentives Application from the Property owner prior to City approval of the Application.
 - iii. Length of Operations: Existing businesses must have maintained operations in the City for two (2) years consecutively in order to receive incentives.
- C. Statutory Limitations: It is the intent of the City to comply with all statutory limitations on the use of any municipal funds.

4. **PRIORITIES**

The City has determined that the following are priorities for the incentives potentially granted pursuant to this Policy. The evaluation of the merits of any Application shall take into consideration whether or not the Application also meets these priorities.

- A. **Geographic Areas:** The following are the City's preferences for providing incentives in geographic areas of the City.
 - i. **High Priority:**
 - a. Locations where a new development may be the catalyst for additional private investment, or which spur activity in underutilized areas (e.g., the North Main area).
 - b. Locations where new development utilizes existing public infrastructure (e.g. roadways, utilities), or which bring about enhancement of the public infrastructure.
 - c. Redevelopment of aged or under-performing business areas.
- B. **Businesses:** The following are the City's preferences for providing incentives to certain types of businesses in the City.
 - i. **High Priority:**
 - a. Businesses that add significant ad valorem tax value and revenues.
 - b. Businesses that add significant sales tax revenues.
 - c. Businesses that enhance the tourism draw of the City.
 - d. Businesses that enhance revenues from City utilities, particularly natural gas, sanitary sewer, and reclaimed water.
 - e. Businesses that generate quality employment opportunities and high paying jobs.
 - f. Businesses which are judged by the City to be unlikely to develop in a timely fashion without providing a financial catalyst.
 - g. Businesses which are judged to provide a strong positive quality of life impact for the citizens of Boerne
 - h. Businesses and improvements which enhance the Downtown, Hill Country Mile, and Historic District.
 - i. Businesses which have a positive impact on the natural environment.
 - j. Businesses which provide advanced technology/emerging technology or similar services.
 - k. Hospitality/hotel/conference center or similar facility.
 - l. Light manufacturing.
 - m. Medical services
 - ii. **Low Priority:**
 - a. High water users.
 - b. Businesses, which are likely in the opinion of the City, to develop in a timely fashion without providing a financial catalyst (e.g. automotive and related uses, fast food).
 - c. Businesses involving hazardous materials or which create added costs for pre-treatment of wastewater.

- d. Businesses that are duplicative to existing businesses and/or detrimental to the sustainability of the downtown area.

5. **INCENTIVES**

Following are incentives that the City, on a case-by-case basis, may consider granting for specific Projects depending on the merits of the Project. Incentives are available to new facilities and structures and the Expansion and Modernization of existing facilities and structures. This shall include the redevelopment of existing properties. Eligibility for each type of incentive shall be as shown in Section 7 herein. Any incentives provided pursuant to this Policy shall not reduce the Base Year Value of the facility if applicable, for existing facilities. The City's standard ROI based term for financial incentives is three to five years.

- A. **Financial – Ad Valorem Taxes**: The City may consider granting the following incentives relative to Ad Valorem Taxes.
 - i. **Real Property Tax**: The City may consider approval of a 380 Agreement granting back real property taxes paid to the City.
 - ii. **Business Personal Property Tax**: The City may consider approval of a 380 Agreement granting back business personal property taxes paid to the City.
 - iii. **Inventory Tax**: The City grants relief of inventory taxes through their prior adoption of the Freeport Exemption. Inventory that is not eligible for Freeport Exemption is also not eligible for incentives pursuant to this Policy.
 - iv. **Tax Stabilization / Incremental Increase**: In a situation where an existing facility may be expanded or modernized or significant capital improvements made to a downtown business, the City may consider stabilizing the ad valorem taxes collected as of the date of completion and / or an incremental yearly increase to market rates for a period of three to five years. This shall be accomplished by granting back the increase in taxes paid to the City.
- B. **Financial – Sales Tax Grants / Reimbursements**: Through approval of a 380 Agreement, the City may provide Grants of all or a portion of the following sales and use taxes. Where the Project is a retail development, for the purposes of evaluating and granting incentives in accordance with this Policy, sales and use taxes shall be measured net of any business relocations occurring within the City. i.e. if a retail business is currently operating in the City, and relocates to the new development, its current sales taxes shall be excluded from the calculation of new sales taxes generated.
 - i. **General Fund Sales Tax**: Up to 80% of the incremental, new sales and use taxes going to the City's general fund as a result of the development.
- C. **Financial - Fee Reductions / Credits**: The City may consider the payment of all or a portion of the following fees on behalf of the development. This shall not include any charges by third-parties assisting the City with implementation of services provided by the fees unless provided for in an approved Performance Agreement.
 - i. **Impact Fee - Water**: Any water impact fee charged by the City. This shall not include the "pass-through" impact fees owed to any other entity or trunk main reimbursements.
 - ii. **Impact Fee - Wastewater**: Any wastewater (aka sanitary sewer) impact fee charged by the City. This shall not include the "pass-through" Impact Fees owed to any other Agency.
 - iii. **Building Permit Fee**: Any fee related to the review of non-Public Works construction plans and building plans required for the issuance of a building permit.

- iv. Plan Review Fee: Any fee related to the review and administrative processing of construction plans for Public Works Improvements.
 - v. Inspection Fee: Any fee related to the inspection of Public Works improvements or Code Enforcement review.
- D. Financial – (Other): The City may consider the following miscellaneous financial incentives.
- i. Tax Abatement: Under a separate policy, the City may consider abating ad-valorem taxes in addition to the provisions contained in this policy.
 - ii. Improvement Grants: Under a separate policy, the City may consider matching a portion of the cost of improvements made in the Downtown / Historical District.
- E. Sales, Lease, Purchase or Exchange of Land or Buildings: The City recognizes that the sale and conveyance, lease, or exchange of certain property owned by the City may meet the objectives identified in this Policy. In accordance with the provisions of Section 272.001 of the Local Government Code, the City may consider the sale, lease or exchange of land without the necessity of accepting written bids pursuant to a published notice and at or below market value to further the objectives identified herein. The City may also consider granting back portions of the costs of land or buildings as a part of a Performance Agreement.
- F. Employment-Related: The City may consider the following employment-related Incentives.
- i. Employee Training Assistance: Any provision where the City might partner with a training provider in the training of new employees employed at a new or existing facility in the City.
- G. Infrastructure Assistance: The City may consider the following infrastructure assistance incentives.
- i. Water and Reclaimed Water: Participation in all or a portion of the costs of water and reclaimed water improvements or improving or extending City water and reclaimed water distribution lines to the Facility.
 - ii. Sanitary Sewer: Participation in all or a portion of the costs of improving or extending City sanitary sewer lines to the Facility.
 - iii. Gas: Participation in all or a portion of the costs of improving or extending City gas lines to the Facility.
 - iv. Electric: Participation in all or a portion of the costs of improving or extending City electric lines to the Facility.
 - v. Roadway Improvements: Participation in all or a portion of the costs of roadway improvements serving the Facility.
 - vi. Storm Drainage Improvements: Participation in all or a portion of the costs of storm drainage improvements at or downstream of the Facility.
 - vii. Franchise Utility Extensions: Participation in all or a portion of the costs of improving or extending franchise utility services to the Facility.
 - viii. Franchise Utility Undergrounding: Participation in all or a portion of the costs of placing franchise utility services underground to the Facility.
- H. Process Related: The City may consider the following process-related incentives. In all instances, any accelerated or unique process shall meet all statutory requirements.
- i. Fast-track Zoning: Provisions allowing an accelerated consideration of zoning entitlements for the Project.

- ii. Fast-track Permitting: Provisions allowing an accelerated review of building and construction plans for the Project.
- iii. Fast-track Inspections: Provisions allowing for City inspector(s) to fast-track inspections throughout construction of the Project. This may or may not include a requirement for on-site office space to accommodate the inspector.
 - a. Exemptions: This shall not include the costs of “call-back” inspections, weekend inspections, or holiday inspections.
- I. Economic Development District Establishment: In instances where the Project is of a significant scope and scale, the City may consider the establishment of unique economic development districts (e.g. Tax Increment Reinvestment Zone, Public Improvement District).
- J. Hotel Occupancy Tax: The City may consider the use of Hotel Occupancy Tax in a financial incentive package in accordance with the provisions of Chapter 321 of the Texas Tax Code.
- K. Support for State Incentives: The City may consider providing support for the Project in the application and processing of incentives sponsored by the State of Texas.

6. PROJECT CLASSIFICATIONS

The following Project Classifications shall identify the minimum performance requirements for each project classification for the purposes of determining the eligibility of incentives for different types of Projects.

Project Classification	Minimum AV Tax Value	Minimum New Taxable Sales¹	Notes
Corporate	\$2,500,000	-	• Significant office uses, e.g. Corporate HQ or regional HQ
Industrial	\$2,500,000	-	• Owner occupied, industrial / logistics business
Retail	\$1,000,000	\$2,000,000	• Clothing stores, restaurants, etc.
Hotel / Conf. Center	TBD	TBD	• Hospitality or entertainment venues including hotels and conference centers
Other New Development	\$500,000	-	• Offices, Medical, Tech
Expansion	\$500,000	-	• Expansion of existing business

¹Generated annually

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7. PROJECT ELIGIBILITY MATRIX

The following Project Eligibility Matrix shall provide a framework for identifying the potential incentives that are eligible to various classifications of Projects as identified above. Term and amount of incentives shall be determined on a case-by-case basis.

Potential Incentive	Project Classification					
	Corporate	Industrial	Retail	Hotel / Conf. Ctr.	Other New Development	Expansion
AV Tax Grants	X	X	X	X	X	X
Sales Tax Grants	-	-	X	X	X	X
Fee Reductions / Credits	X	X	X	X	X	X
Misc. Financial	X	X	-	X	X	X
Land / Building Related	X	X	X	X	-	-
Employment Related	X	X	-	X	-	-
Infrastructure Assistance	X	X	X	X	X	X
Process Related	X	X	X	X	X	X
E.D. Districts	-	-	X	X	X	-
HOT	-	-	-	X	X	X
State Assistance	X	X	X	X	X	X

8. ADMINISTRATIVE PROCEDURES

The Applicant shall follow the administrative procedures noted below to apply for incentives as identified herein.

- A. Pre-Submittal: All Applicants are encouraged to meet with City Economic Development Staff prior to preparation of an Application. Applicants should contact the following to set up a meeting.

Office of the Planning & Community Development Director

or

Office of the Deputy City Manager & Director of Economic Development

402 E. Blanco, Boerne, TX 78006

PH: (830) 248-1527

- B. Application: The submittal of an application is required prior to any evaluation of the request for incentives. The application shall be on a form prepared by staff and available on the City’s website or in the office of Economic Development.

- i. Required Information: The following shall be included with the application.

- a. Legal description of the property.
 - b. Sufficient proof of ownership of the property.
 - c. Drawings, renderings, plans of the proposed improvements.
 - d. Current ad valorem tax appraised values of the site.
 - e. If Applicant is not the Property owner:
 - 1. Written approval of the Application from the owner
 - 2. Copy of the signed lease agreement
 - f. Projected Start Date and Completion Date. (Note: No incentives will be considered for a project which is already under development)

- ii. Required Performance Criteria: Provide the following information over time from establishment to full operation.
 - a. Types of Improvements: List the kind, number, use, square footage and location of all the proposed Improvements on the property.
 - b. Construction Cost of Improvements: An estimate of the construction costs of all improvements.
 - c. Estimated Appraised Value of Improvements: An estimate of the appraised value of all improvements post project completion.
 - d. Cost of Business Personal Property: An estimate of the cost of acquiring business personal property.
 - e. Estimated Appraised Value of Business Personal Property: An estimate of the appraised value of the business personal property post project completion.
 - f. Jobs: Number, type, quality and wage levels of jobs to be created as a result of the project, and the projected timing of job creation.
 - g. Payroll: As defined in Section 2.
 - h. Benefits: Estimated value of benefits provided to employees.
 - i. Taxable Sales: The amount of projected taxable sales that will be generated at the facility.
 - j. Infrastructure: The extent to which any infrastructure component of the City is enhanced or expanded.
 - iii. Requested Incentives: The applicant shall itemize the incentives they are requesting from the City. These are to be prioritized by order of importance to the applicant.
 - iv. Amendments: Staff may amend the form of the application as needed to more efficiently evaluate the merits of the requested incentives.
- C. Review & Evaluation: Following are criteria to review and evaluate the application.
- i. Review Criteria:
 - a. Completeness of Application: Including all required documentation, cost and review estimates.
 - b. Priorities: Determining if the application is in a high-priority business classification or is it located in a high-priority geographic area.
 - c. General Eligibility: Determining if the project meets the general eligibility requirements of this policy.
 - d. Revenues: Estimating the net new or increased tax and utility revenue benefits to the City.
 - e. Impacts: An estimation of the positive and negative impacts that the project might have.
 - 1. Duplication of Existing Businesses: Determining to what extent the project has a negative impact on the profitability of existing businesses.
 - 2. Private Investment Catalyst: Determining to what extent the Project acts as a catalyst for future private investment.
 - 3. City Services: Determining to what extent the project has an impact (positive or negative) on the utilities, services or infrastructure of the City.

- f. Transparency: Determining the extent which the applicant is willing to provide information to properly evaluate the projected benefits of the project including the cost of property/site acquisition and actual construction costs.
- ii. Staff Evaluation and Recommendation: The coordinating staff member shall convene a review team of appropriate staff members to evaluate the application. Upon review and approval by the City Manager, staff shall prepare a recommendation to forward to the City Council.
 - a. Site Visit: Prior to formal evaluation of the application, the applicant shall allow staff the opportunity to visit the property to verify its status prior to consideration of incentives.
 - b. Return on Investment / Break-even Analysis: Staff shall analyze the return on investment of incentives in the Project and / or the timing required for new revenues to “break-even” with the cost of the proposed incentives.
 - c. Staff shall utilize the guidelines provided in the Incentive Policy in making recommendations.
- D. Approvals: The following shall be required for approval of incentives.
 - i. Staff Recommendation: Staff shall consider the request for incentives and the City Manager or their designee shall make a recommendation to the Council.
 - ii. City Council: The Council shall make the final decision regarding the merits of the application and the appropriate incentives to be provided, if any, on a case by case basis.
- E. Performance Agreement: Upon mutual agreement on the project’s performance requirements and the incentives to be provided by the City, a Performance Agreement shall be prepared to the satisfaction of both parties and approved by the Council.
 - i. Approval Process: All Performance Agreements, shall follow and comply with all statutory requirements for notice, hearings and readings where applicable.
 - ii. Minimum Requirements: Any Performance Agreement shall include the following at a minimum:
 - a. Improvements: List the kind, number and location of all the proposed improvements on the Property.
 - b. Base Year Value: Provide that the agreement does not include any reduction in base year values.
 - c. Access: Provide access to and authorize inspection of the property by City employees to ensure that the improvements or repairs are made according to the specifications and conditions in the agreement.
 - d. Uses: Limit the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect.
 - e. Recapture Provisions: Provide for the recapture of any incentives provided as a result of the agreement if the owner of the Property fails to make the improvements or repairs as provided by the agreement or if values used to provide incentives are not maintained throughout the life of the agreement.
 - f. Term: Describe the term of the agreement.
 - g. Certification: Require the owner of the property to certify annually to the City that the owner is in compliance with each applicable term of the agreement.

- h. Cancellation / Modification: Provide that the City may cancel or modify the agreement if the property owner fails to comply with the agreement.
- iii. Amendments: Provide that the Performance Agreement may only be amended by the City.
- iv. Compliance Reporting: All Performance Agreements shall include requirements for reporting compliance with the provisions of the agreement on an annual basis prior to disbursement of incentive funds.

9. APPLICANT / OWNER CERTIFICATIONS

- A. Application Accuracy: The Applicant shall certify that the information provided in the application, and all that may have been affixed thereto, is true and correct, and that the City may rely on all of the information contained therein, and all that may have been affixed thereto, as being true and correct.
- B. Discretionary Rights: The applicant shall acknowledge that the City has the absolute right of discretion in deciding whether or not to approve any incentive relative to the application, whether or not such discretion is deemed arbitrary or without basis in fact.

10. GENERAL PROVISIONS

- A. Flexibility: The terms and conditions of this Policy are to be considered guidelines for City staff and the City Council during their deliberation and evaluation. The City reserves the right to modify the terms and conditions herein at any time, including for any pending application on a case by case basis.
- B. Section or Other Headings: Section or other headings contained in this Policy are for reference purposes only and shall not affect in any way the meaning or interpretation of this Policy.
- C. Severability: In the event that any provision of this Policy is illegal, invalid, or unenforceable under present or future laws, the remainder of this Policy shall not be affected thereby.

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