



**Chapter 380 Program Description
For Consideration by Dumas City Commission**

*Presented By
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**Chapter 380 of the
Texas Local Government
Code**

Texas City Attorneys Association

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What are chapter 380 grants?

Chapter 380 is a reference to chapter 380 of the Texas Local Government Code. This chapter of the Texas Local Government Code authorizes Texas municipalities, both home-rule and general law municipalities to provide assistance for economic development. Texas cities may provide monies, loans, city personnel, and city services for promotion and encouragement of economic development.

What type of assistance may a city provide under chapter 380 of the Local Government Code for economic development?

Cities are authorized to “provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality.” Nonetheless, the programs must serve the purpose of promoting state or local economic development by stimulating business and commercial activity within the city, within the extraterritorial jurisdiction (or “ETJ”) of the city, or an area annexed by the city for limited purposes.

What constitutes serving a public purpose?

The Texas Constitution requires all expenditures of municipal funds serve a “public purpose.” Accordingly, expenditures pursuant to chapter 380 programs must also serve a public purpose. Prior to 1987, Texas cities did not have constitutional authorization to provide economic assistance to businesses for economic development. In 1987, the Texas voters approved a constitutional amendment which provided that grants of monies for economic development may serve a “public purpose.” Article III, section 52-a of the Texas Constitution authorizes “the making of loans and grants of public money . . . for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state . . . or the development or expansion of transportation or commerce in the state.” Further, any transaction providing public monies must contain sufficient controls “to insure that the public purpose [is] carried out.”

TEX. LOC. GOV'T CODE ANN. § 380.001(a) (as amended by Texas House Bill 918, 79th Legislature, Regular Session (2005) (effective date May 17, 2005)).

See also, Texas Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n, 74 S.W.3d 377, 384 (Tex. 2002) (“A political subdivision’s paying public money is not gratuitous, within meaning of state constitutional provision prohibiting gratuitous payments to individuals, associations, or corporations, if the political subdivision receives return consideration.”).

Tex. Att’y Gen. Op. No. JM-1255 (1990) at 8-9.

What is the durational limitations in chapter 380 of the Texas Local Government Code?

Unlike tax abatements which are limited to ten (10) years, chapter 380 of the Local Government Code does not contain a durational limitation. Consequently, some Texas cities have entered into 380 agreements which extend beyond ten (10) years. Whether your particular city has a durational limitation may be controlled by a home-rule city charter or other local provision.

Can you abate delinquent taxes under chapter 380 of the Local Government Code?

Article III, section 55 of the Texas Constitution provides that the legislature “shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State or to any country or defined subdivision thereof.” Consequently, in a Texas Attorney General opinion, the Attorney General concluded “section 380.001(a) of the Local Government Code does not authorize a municipality, as part of an economic development program, to agree to abate a taxpayer’s delinquent taxes.”

Can a City provide a municipal sales tax rebate as a form of chapter 380 grant?

Many cities may condition the grant or loan of public monies based upon estimated sales tax revenue generated by the business prospect. In a recent Texas Attorney General opinion, the Attorney General considered whether recent legislative changes prevented Texas cities from providing chapter 380 grants in the form of a sales tax rebate. The Attorney General concluded the “Local Government Code authorizes municipalities to refund or rebate municipal sales taxes and otherwise expend public funds for certain economic development purposes.” Further, the recent legislative change “does not invalidate existing tax rebate contracts, nor does it prohibit municipalities from executing new ones.”

Can a City provide section 4A or 4B economic development corporations city funds for economic development?

A home-rule municipality may provide public money to a section 4A or section 4B Corporation. Nonetheless, the grant of public monies must be pursuant to a contract. Further, the development corporation must use the grant money for the “development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development and expansion of commerce in the state.”

Chapter 380 Economic Development Agreements

(Bickerstaff Heath Delgado Acosta LLP 2008)

Chapter 380 of the Texas Local Government Code was enacted to implement article III, section 52(a) of the Texas Constitution, which essentially establishes that economic development is a public purpose. In general, section 380.001 authorizes municipalities to offer a range of local incentives to promote state or local economic development. Examples include programs for making loans and grants of public money and providing personnel and services of the municipality to promote state or local economic development and to stimulate business and commercial activity in the municipality. Article III, section 52(a) of the Texas Constitution prohibits political subdivisions, including cities, from lending their credit or granting public money to individuals, corporations and associations. The Attorney General has stated in Opinion Number JM-1227 (1990) that the constitutional provision permitting the expenditure of funds to promote economic development purposes was an exception to the constitutional prohibition on lending public credit.

The Attorney General has recognized that a municipality may constitutionally finance a Chapter 380 Economic Development Agreement in whole or in part through sales tax rebates. Specifically, the statute authorizes grants and loans from city funds for economic development purposes. The statute does not provide for a funding source for such grants and loans, such as a tax or fee.

There are limitations on the funding of such programs. A home-rule municipality may issue bonds to fund an economic development program under the statute, but only if two conditions are met: (1) the bonds must be in an amount and to the extent provided by the municipality's charter and (2) a majority of the qualified property tax paying voters voting at an election must approve the issuance of the bonds. Funds granted under section 380.002 to a Section 501(c)(3) corporation or a 4A or 4B development corporation by a home-rule city cannot be from the proceeds of bonds or other obligations of the municipality payable from ad valorem taxes. Pursuant to section 380.002(b), a home-rule municipality may grant public money to a 4A or 4B economic development corporation created by the municipality under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

A city cannot abate delinquent taxes as an economic development program under the statute. Further the Texas Attorney General has recently opined that a city may make a loan to a private developer for a private housing project if it will promote economic development within the meaning of the constitution and statute, even though housing is not specifically cited in the statute. The plain language of the statute does not limit the governing body to specific programs or projects but requires that the purpose of the program must be to foster and promote economic development.

As with all economic development projects, a municipality must insure that the use of the funds for a Chapter 380 project are consistent with the authorized use of the funds as permitted under the law. This requires that all statutes and "contracts with the voters" be carefully analyzed prior to obligating any funds.

In 2004 an environmental group from Travis County opposed to a project that was to be funded in part through a Chapter 380 program filed suit and challenged the constitutionality of Chapter 380 economic development programs. In response to the lawsuit and because of the importance of Chapter 380 programs to the success of economic development in Texas, the Legislature in 2005 proposed a Constitutional amendment to clarify that Chapter 380 programs were authorized by the Texas

Constitution. This amendment was approved by the voters in November 2005 thus removing the cloud of uncertainty created by the lawsuit.

One of the more popular Chapter 380 programs for economic development of commercial or retail projects involves the use of sales tax. By contract the city funds the public improvements needed for the development by agreeing to refund sales tax generated by the development back to the developer. Cities and developers alike have found these types of programs to be very effective in increasing economic development. The developer receives assistance that makes the development possible, the city is not required to front any money or to pay for any of the public improvements with ad valorem taxes and receives improved property that will generate increased ad valorem, new jobs in the community and additional sales taxes.

Negotiating the 380 Agreement:

- It is important to understand the transaction and the potential financial implications in order to frame and draft the remaining terms of the agreement.
- Limit the term of the agreement. The developer should not expect the city to pay sales tax rebates forever.
- Limit the percentage of sales tax and place a cap on the maximum amount that the developer can collect.
- Tie the development requirements and other major terms and conditions of the agreement to the developer's right to collect the rebate.
- If the city will own the public improvements after construction, then the competitive bidding requirements may apply.
- Describe how much the development can change in design before the agreement must be amended. Administrative versus full council approval required?
- Consider whether or not the developer will be allowed to assign the 380 agreement or the payments under the agreement.
- Establish start dates and project completion dates.
- Make sure that the requirement for the commencement of 380 payments to the developer does not occur until after the city begins to receive sales tax from the project.
- Require the developer to assist with documentation of the amounts of sales tax generated by a particular retail establishment.
- Make sure that the city's obligation to make payments is limited to the sales tax generated by the specific project and actually received by the city and that other sources of city funds are not implicated.
- Termination and recapture. In case of termination and the developer does not abide by the terms of the agreement, the city should be reimbursed for any incentives already provided. What happens if does not or cannot complete project?

Chapter 380 of the Texas Local Government Code
Section 380.001(a) as amended by Texas House Bill 918, 79th
Legislature, Regular Session (2005) (effective date May 17, 2005)

§ 380.001. ECONOMIC DEVELOPMENT PROGRAMS.

(a) The governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality. For purposes of this subsection, a municipality includes an area that:

- 1) has been annexed by the municipality for limited purposes; or
- 2) is in the extraterritorial jurisdiction of the municipality.

(b) The governing body may:

- 1) administer a program by the use of municipal personnel;
- 2) contract with the federal government, the state, a political subdivision of
- 3) the state, a nonprofit organization, or any other entity for the administration of a program; and
- 4) accept contributions, gifts, or other resources to develop and administer a program.

(c) Any city along the Texas-Mexico border with a population of more than 500,000 may establish not-for-profit corporations and cooperative associations for the purpose of creating and developing an intermodal transportation hub to stimulate economic development. Such intermodal hub may also function as an international intermodal transportation center and may be collocated with or near local, state, or federal facilities and facilities of Mexico in order to fulfill its purpose.

Added by Acts 1989, 71st Leg., ch. 555, § 1, eff. June 14, 1989. Amended by Acts 1999, 76th Leg., ch. 593, § 1, eff. Sept. 1, 1999.

§ 380.002. ECONOMIC DEVELOPMENT GRANTS BY CERTAIN MUNICIPALITIES.

(a) A home-rule municipality with a population of more than 100,000 may create programs for the grant of public money to any organization exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 as an organization described in Section 501(c)(3) of that code for the public purposes of development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development or expansion of commerce in the state. The grants must be in furtherance of those public purposes and shall be used by the recipient as determined by the recipient's governing board for programs found by the municipality to be in furtherance of this section and under conditions prescribed by the municipality.

(b) A home-rule municipality may, under a contract with a development corporation created by the municipality under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), grant public money to the corporation. The development corporation shall use the grant money for the development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development and expansion of commerce in the state.

(c) The funds granted by the municipality under this section shall be derived from any source lawfully available to the municipality under its charter or other law, other than from the proceeds of bonds or other obligations of the municipality payable from ad valorem taxes.

Added by Acts 1991, 72nd Leg., ch. 16, § 13.06(a), eff. Aug. 26, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 4, § 25.02, eff. Aug. 22, 1991; Acts 2001, 77th Leg., ch. 56, § 1, eff. Sept. 1, 2001.

§ 380.003. APPLICATION FOR MATCHING FUNDS FROM FEDERAL GOVERNMENT.

A municipality may, as an agency of the state, provide matching funds for a federal program that requires local matching funds from a state agency to the extent state agencies that are eligible decline to participate or do not fully participate in the program.

Added by Acts 1995, 74th Leg., ch. 1051, § 1, eff. June 17, 1995.

Article III, Section 52-a of the Texas Constitution (as amended November 8, 2005)

Sec. 52-a. Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money, other than money otherwise dedicated by this constitution to use for a different purpose, for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state. Any bonds or other obligations of a county, municipality, or other political subdivision of the state that are issued for the purpose of making loans or grants in connection with a program authorized by the legislature under this section and that are payable from ad valorem taxes must be approved by a vote of the majority of the registered voters of the county, municipality, or political subdivision voting on the issue. A program created or a loan or grant made as provided by this section that is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the political subdivision does not constitute or create a debt for the purpose of any provision of this constitution. An enabling law enacted by the legislature in anticipation of the adoption of this amendment is not void because of its anticipatory character.

Chapter 380/381 Economic Development Agreements

Municipality Examples

Chapter 380 of the Local Government Code authorizes municipalities to offer incentives designed to promote economic development such as commercial and retail projects. Specifically, it provides for offering loans and grants of city funds or services at little or no cost to promote state and local economic development and to stimulate business and commercial activity.

In order to provide a grant or loan, a city must establish a program to implement the incentives. Before proceeding, cities must review their city charters or local policies that may restrict a city's ability provide a loan or grant.

By Resolution, the City Commission would approve the general concepts for Chapter 380 incentives and other matters and instruct staff to develop these programs in greater detail. This procedure and application process shall govern the 380 program incentives that may be considered by the City Commission.

The following pages provide examples of 380 Programs used in other Texas Municipalities.

FORT WORTH: Chapter 380 Economic Development Program Grants

Purpose of Incentive

The purpose of these local grants is to reimburse private developers for the range of expenses that may contribute to a financing gap yielding projects financially infeasible. To this end, the City will also be sensitive to the taxable implications these grants may have for the developer and where possible, use transfer mechanisms (i.e., soft loans, accrual notes, etc.) which result in a favorable financial impact.

Project Use

The Economic Development Program grants are made in accordance with Texas Local Government Code 380. The City will work with the applicant to match dollars to appropriate costs.

Limitations

This incentive may only be used as a gap financing tool of last resort. The use of this incentive is for projects facing extraordinary impediments to development and offering significant positive impact to the community and surrounding neighborhood where the project is located. Limitations on how this incentive is used are predicated on the source of the funds and terms and conditions of the award to the City and the project.

Retail Sales Tax Sharing

The purpose of this incentive, administered under Local Government Code, Chapter 380, is to specifically encourage the development or expansion of retail operations that fill an important void in the existing retail market. In order to qualify for this incentive, the applicant's project must embody a retail opportunity that conforms to the stated vision for the area, as well as fulfills an unmet demand.

The City may provide a rebate of a percentage of the sales tax increment attributable to property improvements or upgraded tenant mix. The rebate can be made either to the site developer as a reimbursement for site improvement expenses or to the retail tenants of the improved center in order to assist in relocation or expansion related costs of the tenants. The percent of the City's sales tax rebate and length of time will be negotiable.

This incentive is only available for a commercial retail project along one of the 31 Commercial Corridors of the Central City or in a designated Urban Village. The City sales tax to be rebated excludes the .5% sales tax for the Fort Worth Transit Authority and the .5% sales tax for the Crime Control Prevention District.

PLANO: City of Plano Policy Statement for Tax Abatement and Chapter 380 Program for Economic Development Incentives

Plano offers qualified projects the following incentives on a case-by-case basis:

1. Economic Development Grants (Chapter 380 Grants)
2. Tax Abatements on improvements to Real and Business Personal Property
3. Freeport Exemption

General Purpose and Objectives of Incentives

The City of Plano is committed to the promotion and retention of high quality development in all parts of the city and to an ongoing improvement in the quality of life for its citizens. Plano will, on a case-by-case basis, give consideration to providing Tax Abatement and/or Economic Development Grants as a stimulus for economic development activity including business attraction, relocation and retention.

Incentives

- A. Tax Abatement can be offered in two categories: (1) Real Property and/or (2) Business Personal Property. Real Property abatements will apply to the value of improvements made. Business Personal Property abatements will apply to the value of new personal property brought into the taxing jurisdiction.
- B. Economic Development Grants (Chapter 380 Grants) can be considered for, but are not limited to: grants and/or loans to provide a competitive advantage, foster relocation, encourage employment retention or growth, and/or assist in public infrastructure improvements.

Criteria

Recommendations for incentives will be based upon evaluation of criteria including the following:

Employment Impact

- ✓ How many jobs will be brought to Plano?
- ✓ How many jobs will be retained?
- ✓ What types of jobs will be created?
- ✓ What will the total annual payroll be?

Fiscal Impact

- ✓ What is the value of the Real and Business Personal Property that will be added to the tax rolls?
- ✓ How much direct sales tax will be generated?
- ✓ What infrastructure construction will be required?
- ✓ Community Impact
- ✓ What beneficial economic impact will the project have on the community?

How to Apply

Applications, deadline and meeting information can be obtained by contacting the Plano Economic Development Board (PEDB) or by e-mail at sallyb@plano.gov. A full review of the application with the PEDB is recommended prior to submitting.

Process

Requests for incentives are facilitated by the Plano Economic Development Board staff. Following a review of the application, a letter representing an incentive recommendation is issued. All proposed incentives are subject to final City Council and other participating entities public review and approval.

ARLINGTON: CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM POLICIES AND PROCEDURES

- I. **General Statement of Purpose and Policy:** The City of Arlington 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. The City of Arlington has previously developed economic development programs and incentives designed to encourage high quality business, commercial, professional sports and manufacturing concerns to locate, remain, and expand in the City of Arlington. Now the City of Arlington seeks to enhance its economic development efforts to attract and retain high quality development and jobs by establishing these Chapter 380 Economic Development Program Policies and Procedures.
 - a. 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 diversify and expand job opportunities or by promoting and encouraging 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 Arlington residents. In furtherance of these objectives, the City of Arlington will, on a case-by-case basis, give consideration to providing 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. *Nothing in this document is intended to imply or suggest that the City of Arlington is under any obligation to provide economic incentives to any applicant.* All applicants shall be considered on a case-by-case basis. 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 Arlington 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 invested to stimulate economic development in Arlington.
- 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 meet the following minimum requirements:
 - a. Either the project will result in a minimum increased taxable value for the City of \$25,000,000 in real and business personal property (excluding inventory and supplies); or
 - b. will result in a minimum increased taxable value for the City of \$250,000 in real and business personal property (excluding inventory and supplies) in the Downtown Business Zoning District or the Downtown Neighborhood Overlay District; or
 1. is specifically determined by resolution of the Arlington City Council to bring benefit to the City consistent with the General Statement of Purpose and Policy as stated in Paragraph I above; and
 2. In addition, the project is qualified as a target industry according to the City of Arlington Policy Statement for Tax Abatement; or
 - c. will make a unique or unequalled contribution to development or redevelopment efforts in the City of Arlington, due to its magnitude, significance to the community or aesthetic quality; or

- d. will enhance the City's fiscal ability to provide high quality municipal services for the safety, comfort and enjoyment of Arlington residents.
- III. **Project Eligibility:** 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.
- a. 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 value of any incentives granted under this Program.
- IV. **Additional Considerations:** Additional factors to be considered by the City Council in determining whether to authorize an Agreement for incentives as a Chapter 380 Economic Development Program (Program) are:
- a. the number and types of jobs to be created or retained;
 - b. the financial capacity of the applicant to undertake and complete the proposed project;
 - c. other incentive programs for which the applicant has applied or is qualified;
 - d. the market conditions and growth potential for the business activity, and
 - e. any other factors the City Council finds helpful and relevant to accomplishing the City's economic development objectives.
- V. **Application Process:**
- a. 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.
 - b. 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.
- VI. **Agreement Terms:** An Agreement established for a Program must include:
- a. 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;
 - b. a complete description of the location of the proposed Program or projects included in the Program;
 - c. a timetable and list of the kind and amount of property values, revenues, incomes or other public benefits that the proposed Program will provide;
 - d. a provision establishing the duration the Agreement;
 - e. a provision identifying the method for calculating and source of funding for any grant, loan or other incentives provided in the Agreement;
 - f. a provision providing a tangible means for measuring whether the applicant and other responsible parties have met their obligations under the Agreement;
 - g. 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;
 - h. 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;

- i. 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;
- j. 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:
 - 1. all rights, duties, obligations and liabilities under the Agreement are assigned from the assignor to the assignee; and
 - 2. the assignment is made subject and subordinate to the Agreement and the Chapter 380 Economic Development Program Policies and Procedures; and
 - 3. the assignment document is in a form and contains content acceptable to the City Attorney's Office;
- k. provisions relating to administration, delinquent taxes, reporting requirements and indemnification;
- l. 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
- m. such other provisions as the City Council shall deem appropriate. Adopted by Council Resolution 98-67. (Revised 12/06/05) 5

DRIPPING SPRINGS: CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM POLICIES & PROCEDURES

I. PURPOSE & POLICY

The City of Dripping Springs 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. The City of Dripping Springs desires to encourage superior business, commercial, and manufacturing concerns to locate, remain, and expand in the City of Dripping Springs. Now the City of Dripping Springs seeks to enhance its economic development efforts to attract and retain high quality development and jobs by establishing these Chapter 380 Economic Development Program Policies and Procedures.

These Policies and Procedures are established in an effort to develop and expand the local economy by:

- a. promoting and encouraging development and redevelopment projects that enhance the City's economic base; or
- b. diversify and expand job opportunities; or
- c. by promoting and encouraging 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 municipal services for the safety, comfort, and enjoyment of Dripping Springs residents.

In furtherance of these objectives, the City of Dripping Springs will, on a case-by-case basis, give consideration to providing 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.

Nothing in this document is intended to imply or suggest that the City of Dripping Springs is under any obligation to provide economic incentives to any applicant. All applicants shall be considered on a case-by-case basis. The decision to approve or deny economic incentives shall be at the discretion of an Advisory Committee and City Council. Each applicant granted economic incentives as a Chapter 380 Economic Development Program ("Program") under these Policies and Procedures must enter into an agreement with the City of Dripping Springs 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 invested to stimulate economic development in Dripping Springs.

II. PROGRAM REQUIREMENTS To be considered eligible to receive incentives as a Chapter 380 Economic Development Program, a project must at least meet the following minimum requirements:

- a. the project will result in a minimum increased revenue for another existing locally owned City business(es) of \$250,000 in the City limits or City ETJ; or
- b. will result in a minimum increased taxable value for the City of \$250,000 in real and business property tax (excluding inventory and supplies) per City fiscal year in the City limits or City ETJ; or
- c. will result in a minimum increased taxable value for the City of \$200,000 per City fiscal year in sales tax in the City limits or City ETJ; or
- d. will result in a minimum of 50 additional local full-time jobs; or
- e. is specifically determined by resolution of the Dripping Springs City Council to bring benefit to the City consistent with the General Statement of Purpose and Policy as

stated in Section I above; and In addition, the project is qualified as a Target Industry. A “Target Industry” is a business, structure, or other project deemed critical to the City’s current, anticipated, or ongoing growth and development needs. The City may redefine “needs” from time to time as the City’s circumstances warrant; or will make a unique or unequalled contribution to development or redevelopment efforts in the City of Dripping Springs, due to its

1. financial magnitude (e.g., wage scale, total dollars invested),
2. significance to the community (e.g., includes a charitable innovation, provides an underrepresented service, attracts tourists),
3. aesthetic quality (e.g., ability to operate within City Ordinances, renovates or remodels a historic building(s), design complementary to adjacent or area structures), or
4. benefit to the environment (e.g., minimal impervious cover, water conservation); or
5. will enhance the City’s fiscal ability to provide municipal services for the safety, comfort, and enjoyment of Dripping Springs residents; or
6. will enhance the City’s public infrastructure by including the construction of infrastructure that may or may not be contiguous to the project, and may or may not be related to the project (e.g., sidewalks, lap posts, water/sewer, roads, parking, drainage).

B. All applicants shall be considered on a case-by-case basis. However, an eligible project that meets more than one requirement from Section II and/or II(e) will be preferred over projects that meet only the minimum of one requirement from Section II.

C. A project shall not be eligible for incentives if a building permit has been issued for the project prior to making application in accordance with these Policies and Procedures.

D. Incentives 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.

E. The public benefit or amount of revenue realized by the City and attributable to the project must be commensurate with value of any incentives granted under this Program.

III. **ADDITIONAL CONSIDERATIONS** Additional factors to be considered by the City Council in determining whether to authorize an Agreement for incentives as a Chapter 380 Economic Development Program are:

- a. the number and types of jobs to be created or retained;
- b. the financial capacity of the applicant to undertake and complete the proposed project;
- c. other incentive programs for which the applicant has applied or is qualified;
- d. the market conditions and growth potential for the business activity; and
- e. Any other factors the City Council finds helpful and relevant to accomplishing the City’s economic development objectives.

- IV. APPLICATION PROCESS 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. 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 for any person to have the City Council consider or grant incentives.
- V. AGREEMENT TERMS An Agreement established for a Program must include:
- a. 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 Section II above;
 - b. a complete description of the location of the proposed Program or projects included in the Program;
 - c. a timetable and list of the kind and amount of property values, revenues, incomes or other public benefits that the proposed Program will provide;
 - d. a provision establishing the duration the Agreement;
 - e. a provision identifying the method for calculating and source of funding for any grant, loan, refund, in-kind, or other incentive either up front or over time provided in the Agreement;
 - f. a provision identifying whether any grant, loan, or other incentive provided in the Agreement will be utilized for construction costs or for other specified business expenses;
 - g. a provision providing benchmarks or other tangible means for measuring whether the applicant and other responsible parties have met their obligations under the Agreement;
 - h. 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;
 - i. 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;
 - j. 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;
 - k. 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:
 1. all rights, duties, obligations and liabilities under the Agreement are assigned from the assignor to the assignee; and
 2. the assignment is made subject and subordinate to the Agreement and the Chapter 380 Economic Development Program Policies and Procedures; and
 3. the assignment document is in a form and contains content acceptable to the City Attorney's Office;

- l. provisions relating to administration, delinquent taxes, reporting requirements, and indemnification;
- m. 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;
- n. a provision providing for auditing of the Program, including public access to non-privileged or confidential documents; and
- o. such other provisions as the City Council shall deem appropriate.

Dumas Recommendations

In consideration of the Chapter 380 Program for Dumas, it is important to examine some of the business trends we are experiencing:

- a. The North Dumas section has less aesthetic appeal due to its industrial purposes
- b. The Center part & more historical portion of the city has more properties in need of repair and revitalization
- c. The South Dumas section is the newer commercial area and does not have any aesthetic building codes
- d. The south end of Dumas is more retail oriented
- e. We are experiencing more retail attraction to the community
- f. Costs for development have become restrictive to new businesses
- g. A high demand for recognized national chains has been voiced by the community
- h. Existing local businesses cannot financially afford relocation to the higher retail traffic areas
- i. There are no restrictions regarding the types of businesses and construction styles for businesses on the south end that would promote aesthetically appealing developments
- j. The Courthouse area is in need of façade improvements which are cost-prohibitive to business owners
- k. There are a number of properties which may be in poor condition, that with available programs could be revitalized
- l. The community is growing and a larger number of workforce insist on more local business amenities
- m. The economic leakage we experience to Amarillo is directly related to the lack of retail opportunities available in the community in comparison
- n. Dumas is a regional hub for an estimated 75,000 people
- o. Many Amarillo travelers pass through Dumas daily without stopping
- p. Market Potential Indexes show vast opportunities for new retail businesses in Dumas
- q. DEDC is hearing more requests for financial incentives for retail establishments

An established 380 program in Dumas would alleviate some of the previous issues indicated. It is by creating this program that we feel a substantial increase in sales tax revenues for the community would be captured. In addition, the program guidelines could allow us to provide some incentive for more aesthetically appealing building designs. Currently, a new metal building project used for equipment storage and operated by heavy equipment could be built adjacent to the hotels. This could develop into another industry looking area. By creating a rule which controls the type of design for those firms wishing to take advantage of the 380 program, we would help insure a more attractive retail/commercial area.

Current Prospects:

Considering locations in the high traffic areas of South Dumas and Middle Dumas Avenue areas are:

- 2 National Discount Retailers
- 4 Regional Restaurant Chains
- 2 National Restaurant Chains
- Beauty Supply Chain
- Home Improvement Chain
- Pet Supply Chain

2 Women's National Clothing Store Chains
New Car Dealership
2 Fast Food Chains
5 Existing Local Retailers
4-5 Screen Movie Theater
12-24 Lane Bowling Alley
Child Recreation Business
Truck Stop Travel Center

South Hampton Retail Center- The owners of the Hampton Inn are considering the development of an attractive retail center to locate retail chains and local retailers. They have indicated that the only way that they can make this development work financially is by finding ways to reduce the total investment. Located across from Wal-Mart, we are finding more and more firms interested in property. The Hampton owners hope to develop a retail center that can be built in phases where they can recover the debt service through lease rates. Current lease rates along Dumas Avenue have not been at a level where many of these prospective retailers could afford. If the 380 program is approved, the owners would be more comfortable in initiating development. In addition, the folks that have been exploring the development of a new theater and bowling alley may find the incentives allow them to proceed with their plans.

The vacant lots in front of the La Quinta and Holiday Inn Express- They are currently negotiating with restaurants to locate. However, as we meet with these prospects, we are learning of their financial requirements and the costs to construct and operate exceed the anticipated revenues. By providing 380 funds, we believe some of these firms would find the incentive more attractive.

In either of these situations, we do not know the specific firms that would locate. However, we believe that by providing funds to developers with the stipulation that they develop multi-use tenant space, we would be accommodating more than single firms. For example, we could provide 380 funds to the developers in order to encourage projects that attract multiple businesses.

The area around the Courthouse could be developed into a more aesthetically appealing area if funds were available for revitalization. One prospect we have visited with has looked at renovating the old theatre on 7th into a playhouse. If we were able to provide some assistance, we would be able to remove the property from its current state and construct a new, historically accurate building in its place.

The program for Dumas should provide opportunities to both new firms and existing firms. It should focus on the areas in the community of most growth and in most need of repair. This should be the only retail oriented program available in the community so that traditional DEDC efforts can be focused on attracting primary jobs. In deciding on who shall receive the program incentives, we believe that the same scrutiny should be applied to them as with other firms we work with. They should demonstrate an ability to self-fund the project, have no adverse financial history and provide a product or service that will improve the economy and attract more dollars to the community. The ultimate decision for providing the funds shall rest with the City Commission by a vote in favor of the respective resolution and the program should be administered by the office of the City Manager and DEDC Executive Director. Regular reporting shall be required and all financials shall be subject to review. Non-conformance to the terms established shall be grounds for termination of the agreements.

Return on Investment Example:

In the event, the 380 program is the reason a firm locates to Dumas, the return on investment would be calculated by the value of the property taxes, utilities, jobs, incomes, estimated amount of dollars spent at other businesses and estimated amount of dollars it prevented from leaving the community through the term of the agreement. After the agreement expiration, we would add the total sales tax figures to the impact. For example, if the program helped develop a new movie theater in Dumas, we can assume a large number of people would forego a trip to Amarillo. This would calculate into more dollars being spent at other non-380 agreement businesses. Another variable would be the added property tax revenues, job creation and increase in dollars circulating locally.

Foregoing on the sales tax dollars for these businesses calculates into an increase in sales felt through other businesses as well as an increase in dollars spent locally by travelers. Although we would not see the sales tax dollars from the qualified businesses for a period of time, we would see revenues in other areas that would help to make up the difference.

The following is an example of the 10 year impact on just the city of a discount store if the property is built for \$500k and they provide 5 jobs to the community:

Net Benefits to the City from the Firm and New Workers			
	Benefits/Costs from:		
	The Firm	New Workers	Total
<u>Additional revenues:</u>			
Sales taxes	\$315,128	\$9,201	\$324,329
Property taxes	\$14,107	\$0	\$14,107
Utility revenues	\$34,163	\$17,082	\$51,245
Utility franchise fees	\$1,956	\$990	\$2,947
Hotel occupancy taxes	\$0		\$0
Other taxes and user fees		\$1,095	\$1,095
Building permits and fees	\$5,000		\$5,000
Total additional revenues	\$370,354	\$28,368	\$398,723
<u>Additional costs:</u>			
Costs of providing utilities	\$33,821	\$16,911	\$50,732
Costs of providing municipal services for new residents		\$1,642	\$1,642
Total additional costs	\$33,821	\$18,553	\$52,375
Net Benefits	\$336,533	\$9,815	\$346,348
<i>Percent of total net benefits for city</i>	<i>97%</i>	<i>3%</i>	

The following is the impact if the estimated sales tax dollars were applied to the development firm for the first ten years:

Net Benefits to the City from the Firm and New Workers			
	Benefits/Costs from:		
	The Firm	New Workers	Total
<i>Additional revenues:</i>			
Sales taxes	\$96,134	\$9,201	\$105,335
Property taxes	\$14,107	\$0	\$14,107
Utility revenues	\$34,163	\$17,082	\$51,245
Utility franchise fees	\$1,956	\$990	\$2,947
Hotel occupancy taxes	\$0		\$0
Other taxes and user fees		\$1,095	\$1,095
Building permits and fees	\$5,000		\$5,000
Total additional revenues	\$151,360	\$28,368	\$179,728
<i>Additional costs:</i>			
Costs of providing utilities	\$33,821	\$16,911	\$50,732
Costs of providing municipal services for new residents		\$1,642	\$1,642
Total additional costs	\$33,821	\$18,553	\$52,375
Net Benefits	\$117,538	\$9,815	\$127,354
<i>Percent of total net benefits for city</i>	<i>92%</i>	<i>8%</i>	

The total cost of the 380 agreement over a 10-year period would be \$219,000.

For a business of this type, the project is a homerun. Smaller businesses that do not directly lead to more visitors in the community would not be as valuable. Therefore, it is important to apply funds for them through a developer that would create opportunities affecting more than one business.

Administrative Requirements

For our purposes, the program would require that each project seek approval through an application process initiated at the DEDC.

DEDC would calculate the economic impact, compare like businesses in similarly sized communities and/or obtain national average revenues for the business specialty, identify industry standards that would apply, estimate the impact on the community and determine a recommended not-to-exceed amount and term.

One example of how we can estimate the sales tax revenues is by calculating the per capita spending related to the retail type, and multiplying that by the adult spending population of Dumas. If we wish to determine an estimate of an appliance store, we would multiply 321 (line #443 below) by the immediate trade area population of 6,000 adults, to find sales estimated at \$1,926,000. Sales taxes would then be calculated by multiplying that total by 2%, or our local tax; the estimate of an annual amount would be \$38,520.

NAICS Code Kind of business 2009

Per capita spending, total	11,865
Total (excl. motor vehicle and parts dealers)	9,658
441 Motor vehicle and parts dealers	2,207
442 Furniture and home furnishings stores	283
443 Electronics and appliance stores	321
444 Building mat. and garden equip. and supplies dealers	875
445 Food and beverage stores	1,861
446 Health and personal care stores	826
447 Gasoline stations	1,267
448 Clothing and clothing access. stores	668
451 Sporting goods, hobby, book and music stores	265
452 General merchandise stores	1,931
453 Miscellaneous store retailers	344
454 Non-store retailers	1,019
722 Food services and drinking places	1,478

In most cases, we would anticipate that many firms would be able to provide a pro forma of what they anticipate in total sales. DEDC would present the project for consideration to the Board of Directors. An affirmative vote for the project would allow DEDC to present the resolution for the project to the City Commission for approval. After 2 readings, the project will have been approved.

The project developers will then be required to present the annual sales records and state sales tax submissions to the DEDC for review and calculation. The 2% of the total sales tax, or amount agreed upon, would then be determined for reimbursement at that time.

The estimated amount should have been calculated in advance and that amount should be accessible for the project on an annual basis. That may be through a separate account created by the City or available in existing accounts. Issuance of the payment shall be subject to the appropriate verifications submitted by the business, developer and State Comptroller’s Office.