

RESOLUTION NO. 36-2009

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, ADOPTING THE REVISED GUIDELINES AND CRITERIA FOR GRANTING BUSINESS INCENTIVES AND CHAPTER 380 AGREEMENTS IN THE CITY OF MESQUITE.

WHEREAS, pursuant to Resolution No. 35-2009, adopted on October 5, 2009, the City Council adopted the Guidelines and Criteria for Granting Business Incentives and Chapter 380 Agreements; and

WHEREAS, Staff failed to delete the references in the document pertaining to the adoption of a resolution prior to presenting the document to the City Council for approval; and

WHEREAS, the Revised Guidelines and Criteria for Granting Business Incentives and Chapter 380 Agreements (Revised Guidelines and Criteria), attached hereto as Exhibit "A," have deleted any reference to the adoption of a resolution; and

WHEREAS, Staff recommends the approval of the Revised Guidelines and Criteria; and

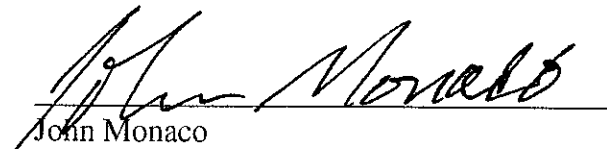
WHEREAS, the Revised Guidelines and Criteria are effective for a period of two years and will expire on October 19, 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City of Mesquite, in accordance with State law, hereby establishes the revised guidelines and criteria for the application and evaluation of business incentives and Chapter 380 agreements, attached hereto as Exhibit "A" and made a part hereof for all purposes.

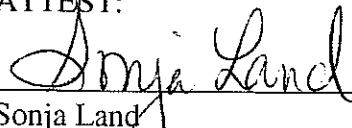
SECTION 2. That these revised guidelines and criteria shall not be construed as implying or suggesting that the City of Mesquite is under obligation to provide business incentives to any applicant, and all applicants shall be considered on a case-by-case basis.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 19th day of October, 2009.



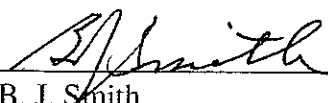
John Monaco
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



B. J. Smith
City Attorney



Business Incentive Program

Policy

and

Application

Office of Economic Development
P. O. Box 850137
Mesquite, Texas 75185-0137
972-216-6342 Office
972-216-6431 Fax
www.cityofmesquite.com

GUIDELINES AND CRITERIA
FOR GRANTING BUSINESS INCENTIVES
IN CONNECTION WITH PROGRAMS
AS PROVIDED BY
TEXAS LOCAL GOVERNMENT CODE,
CHAPTER 380

POLICY STATEMENT

The City of Mesquite (the "City") is committed to the promotion of high quality development in all parts of the city and to improvement in the quality of life for its citizens. In order to help meet these goals, the Mesquite City Council has adopted Guidelines and Criteria for granting business incentives as authorized by Chapter 380 of the Texas Local Government Code. As outlined in this application packet, these Guidelines and Criteria provide procedures for the application, evaluation and comprehensive criteria governing business incentive agreements. Nothing herein shall imply or suggest that the City is under any obligation to provide business incentives to any applicant. All applicants shall be considered on a case-by-case basis, and the decision to approve or deny a business incentive shall be at the discretion of the City Council.

Further, it is the policy of the City to grant business incentives for the purpose of attracting new business and industry to the City and to encourage expansion and modernization of existing business facilities, resulting in the creation and retention of job opportunities within the community. This policy applies to owners of real property and provides for financial and non-financial incentives that the City may provide pursuant to Texas Local Government Code, Chapter 380. Special terms and conditions may be set in the agreement governing each specific business incentive.

Section 1. Definitions.

- (a) "Agreement" means a contractual agreement between a property owner and/or lessee and the City of Mesquite, Texas.
- (b) "Base Year Value" means the assessed value of eligible property on January 1st of the year of the execution of the Agreement plus the agreed upon value of eligible property improvements made after January 1st but before the execution of the Agreement.
- (c) "Business Incentive" means any financial or non-financial inducement offered by the City of Mesquite to a business entity.
- (d) "City" means the City of Mesquite.
- (e) "Deferred Maintenance" means improvements necessary for continued operation, which do not improve productivity or alter the process technology.
- (f) "Eligible Facilities" means new, expanded or modernized buildings and structures, including fixed machinery and equipment, and projects that fulfill the goals and objectives of the City's Project Renewal, which are reasonably likely as a result of granting an incentive to contribute to the retention or expansion of primary employment, an increase in the property tax base of the City, or to attract major investment that would be a benefit to the property and that would contribute to economic development within the City.
- (g) "Expansion" means the addition of buildings, structures, machinery, equipment or payroll for purposes of increasing production capacity.
- (h) "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.
- (i) "Hotel" means a commercial structure which provides overnight accommodations to travelers and which contains 150 rooms or more.
- (j) "Modernization" means the replacement and/or upgrading of existing facilities, which increase the productive input or output, updates the technology or substantially lowers the unit cost of an operation. Modernization may result from the construction, alteration or installation of buildings, structures, machinery or equipment, or both.
- (k) "New Facility" means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.

- (l) "Office Building" means a new office which meets the minimum criteria for an incentive.
- (m) "Productive Life" means the number of years a property improvement is expected to be in service in a Facility.
- (n) "Project Renewal" means a project that substantially contributes to the revitalization of the City of Mesquite.

Section 2. Incentive Authorized.

- (a) Eligible Facilities. Upon application, Eligible Facilities shall be considered for a Business Incentive as hereinafter provided.
- (b) Creation of New Value. A Business Incentive may only be granted for the additional value of eligible property improvements made subsequent to and specified in a Business Incentive Agreement between the City and the property owner or lessee, subject to such limitations as the City may require.
- (c) New and Existing Facilities. A Business Incentive may be granted for new Facilities and improvements to existing Facilities for purposes of Modernization or Expansion.
- (d) Eligible Property. A Business Incentive may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements, inventory and related fixed improvements necessary to the operation and administration of a Facility, except as provided in Section 2(f).
- (e) Owned/Leased Facilities. If a Leased Facility is granted a Business Incentive, the Agreement shall be executed with the lessor and the lessee.
- (f) Ineligible Property. The following types of property shall be fully taxable and ineligible for a Business Incentive: supplies, tools, furnishings and other forms of moveable personal property, housing, Deferred Maintenance, property to be rented or leased except as provided in Section 2(e), and property which has a Productive Life of less than 10 years.

Section 3. Criteria.

- (a) Minimum Criteria. The City will consider a Business Incentive only for Eligible Facilities and/or Eligible Property which meet the following criteria:

- (1) The project has a total project value including land, construction and fixed improvements of:
 - a) At least \$2,000,000 for new construction;
 - b) At least \$750,000 for an existing Facility;
 - c) Is a project that meets or exceeds the goals of the City's Project Renewal as may be periodically defined by the City Council or
 - d) Is a project considered exceptional because of one or more of the following conditions:
 - i) Makes use of an under-utilized asset, either facilities or land;
 - ii) Diversifies the local economic base;
 - iii) Creates leverage with local companies;
 - iv) Expands the local market for a good or service; or
 - v) Is a good corporate citizen.
- (2) The project must conform to the Comprehensive Zoning Ordinance.
- (3) The project must contribute to the retention or Expansion of primary employment or contribute substantially to redevelopment efforts and must not be expected to solely or primarily have the effect of transferring employment from one part of the City to another.
- (b) Additional Standards. In addition to the minimum requirements provided in Section 3(a), the following criteria shall be considered in determining whether to grant a Business Incentive and, if so, the amount, type and duration of the Business Incentive:
 - (1) The taxable value of land and existing improvements, if any;
 - (2) Type and value of proposed improvements;
 - (3) Productive Life of proposed improvements;
 - (4) Number of existing jobs to be retained by proposed improvements;

- (5) Number and type of new jobs to be created by proposed improvements;
- (6) Amount of local payroll to be created or retained;
- (7) Whether the new jobs to be created will be filled by persons residing or projected to reside within affected taxing jurisdictions;
- (8) Amount of local sales tax to be generated directly;
- (9) Amount of property tax base valuation that will be increased during term of the Business Incentive and after the Business Incentive;
- (10) The costs to be incurred by the City to provide facilities or services directly resulting from the new improvements;
- (11) The amount of ad valorem taxes to be paid the City during the Business Incentive period considering the existing values, the amount and type of the Business Incentive, the Business Incentive period and the value after expiration of the Business Incentive period;
- (12) The population growth of the City that occurs directly as a result of new improvements;
- (13) The types and values of public improvements, if any, to be made by applicant seeking the Business Incentive;
- (14) Whether the proposed improvements compete with existing businesses to the detriment of the local economy;
- (15) The impact on the business opportunities of existing businesses;
- (16) The attraction of other new businesses to the area;
- (17) Whether the project is environmentally compatible with no negative impact on quality of life perceptions;
- (18) The degree to which the project makes a substantial contribution to redevelopment efforts or special area plans by enhancing either functional or visual characteristics: e.g., historical structures, targeted neighborhood plans, traffic circulation, parking, facades, signs, materials, urban design, etc; and

- (19) The location of the proposed business.

Section 4. Procedural Guidelines.

- (a) Application. All applications shall be considered on a case-by-case basis. Each application will be reviewed on its merits utilizing the criteria provided in Section 3. After such review, a Business Incentive may be denied entirely or may be granted to the extent deemed appropriate after full evaluation.
- (1) Any present or potential owner of taxable property in Mesquite, Texas, may request the consideration of a Business Incentive by filing a completed Business Incentive Program Application with the Mesquite Economic Development Office. The Economic Development Office shall prepare a Cost/Benefit Analysis utilizing the information in the application and shall forward the results for review and for final disposition by the City Council of the City of Mesquite ("City Council").
 - (2) The application shall consist of a completed application for which shall provide detailed information on the items described in Section 3 above; a map and property description; and a time schedule for undertaking and completing the planned improvements. In the case of Modernization, a statement of the assessed value of the Facility separately stated for real and personal property shall be given for the tax year immediately proceeding the year of application.
 - (3) The application form may require such financial and other information as may be deemed appropriate for evaluating the financial capacity and other factors of the applicant. Information which describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which Business Incentive is sought is confidential and not subject to disclosure except as required by law until the Business Incentive Agreement is executed.
 - (4) Before acting upon the application, the City shall, by public hearing, afford the applicant and any interested persons the opportunity to show cause why the Business Incentive should or should not be granted.
- (b) Approval. If approved, the City shall execute a Business Incentive Agreement with the owner of the Facility and lessee, as required, which shall include:

- (1) The estimated value of the Business Incentive and the Base Year Value;
 - (2) The commencement date and termination date of the Business Incentive;
 - (3) The proposed use of the Facility, nature of construction, time schedule for construction, map, property description and improvement list as provided in Application;
 - (4) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in these Guidelines and Criteria; and
 - (5) The size of investment and average number of jobs involved.
- (c) Denial. A Business Incentive Agreement shall not be authorized if it is determined that:
- (1) Applicant failed to meet the minimum criteria;
 - (2) The request for the Business Incentive was filed after the commencement of construction, alteration, Modernization, Expansion or New Facility;
 - (3) There would be a substantial adverse affect on the provision of government service or tax base;
 - (4) The applicant has insufficient financial capacity;
 - (5) Planned or potential use of the property would constitute a hazard to public safety, health or morals;
 - (6) Violation of other codes or laws; or
 - (7) Any other reason deemed appropriate by the City Council.

Such Agreement shall normally be executed within 60 days after the applicant has forwarded all necessary information and documentation to the City.

- (d) Taxability. From the execution of the Business Incentive Agreement to the end of the Business Incentive period, taxes shall be payable as follows:

- (1) The value of ineligible property as provided in Section 2(f) shall be fully taxable;
- (2) The Base Year Value of existing eligible property, as determined each year, shall be fully taxable;
- (3) The additional value of new eligible property shall be taxed in the manner and for the period provided in the Business Incentive Agreement; and
- (4) The additional value of new eligible property shall be fully taxable at the end of the Business Incentive period.

Section 5. Administration.

- (a) The Chief Appraiser of the Dallas Central Appraisal District ("Chief Appraiser") will annually determine an assessed value of real and personal property subject to the Business Incentive. Each year, the company or individual receiving the Business Incentive shall furnish the Economic Development Office of the City of Mesquite with such information as may be necessary to process the Business Incentive.
- (b) The Business Incentive Agreement shall stipulate that employees and/or designated representatives of the City will have access to the property during the term of the Business Incentive to inspect the Facility to determine if the terms and conditions of the Agreement are being met. All inspections will be made only after the giving of 24 hours prior notice and will only be conducted in such a manner as to not unreasonably interfere with the construction and/or operation of the Facility. All inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.
- (c) Upon completion of construction, the designated representative of the City shall annually evaluate each Facility receiving a Business Incentive to insure compliance with the Agreement, and a formal report shall be made to the City Council regarding the findings of each evaluation.

Section 6. Recapture.

- (a) Should the City determine that the company, the lessee or individual is in default according to the terms and conditions of its Business Incentive Agreement, the City shall notify the company, the lessee or individual of such default in writing at the address stated in the Business Incentive Agreement, and if such is not cured within 60 days from the date of the notice ("Cure Period"), then the Business Incentive Agreement may be terminated.

- (b) In the event that the company, lessee or individual (1) allows its ad valorem taxes owed the City to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; or (2) violates any of the terms or conditions of the Business Incentive Agreement and fails to cure during the Cure Period, the Business Incentive Agreement then may be terminated by the City and all incentives previously granted by virtue of the Business Incentive Agreement will be recaptured and paid within 30 days of the termination.

Section 7. Assignment.

Business Incentive Agreements may be transferred and assigned by the holder to a new owner or lessee of the same Facility upon the approval of the City Council subject to the financial capacity of the assignee and provided that all conditions and obligations in the Business Incentive Agreement are guaranteed by the execution of a new contractual Business Incentive Agreement with the City. No assignment or transfer shall be approved if the parties to the existing Agreement, the new owner or new lessee, are liable to any jurisdiction for outstanding taxes or other obligations. Approval shall not be unreasonably withheld.

Section 8. Variance.

These Guidelines and Criteria shall not limit the discretion of the City Council to decide whether to enter into a specific Business Incentive Agreement. Accordingly, the City Council may vary the specific terms of the Business Incentive Agreement where the improvements proposed are in excess of \$100 million.

Section 9. Restrictions on Use of Incentives to Employ Undocumented Workers.

The City shall require the applicant to certify that it does not and will not knowingly employ an undocumented worker and that if, after receiving any incentive hereunder, it is convicted of a violation of the Immigration Laws found under 8 U.S.C. Section 1324a(f), the applicant shall be required to notify the City of such conviction. Upon notification of conviction by applicant, or if City should discover such conviction on its own and notifies applicant of same, the applicant shall repay an amount equal to the total amount of incentives received hereunder with interest, at the rate and according to the terms provided in any written agreement signed by the parties. Additionally, the City and the Texas Attorney General shall be authorized to bring suit against applicant to enforce the provisions of this section.

APPLICATION INSTRUCTIONS

Applicant Information.

Established companies for which public information is available, or the wholly-owned businesses of such companies, should include with the application a copy of their latest annual report to stockholders. Other applicants and new companies should attach a statement showing when the company was established, business references (name, contact and telephone number of principal bank, accountant and attorney) and may be required to submit an audited financial statement and business plan.

Project Information.

A map of project location is required. A detailed narrative fully explaining the project must include a list of all improvements to be made.

Economic Information.

As provided in Sections 3 and 4 of the Guidelines and Criteria, certain economic information is needed to evaluate each applicant. If the applicant must estimate value because the taxable value is not known or is combined with other properties under a single tax account, please state so. Projections of value should be a "best estimate" based on taxability in Texas.

Applications should be filed no less than 60 days prior to the beginning of construction or the installation of equipment. Applications will become part of the Business Incentive Agreement and knowingly false representations will be grounds for the City to void the Agreement. An original copy of the application should be submitted to:

Thomas E. Palmer
Manager of Economic Development
City of Mesquite
P. O. Box 850137
Mesquite, Texas 75181-0137.

**Please provide current assessed tax values (from the tax bills)
for each existing facility, including land, building
and personal property assessed valued.**

CITY OF MESQUITE

Business Incentive Program Application

I. Company Information.

Company Name: _____ Headquarters' City: _____

Contact Name: _____ Contact Title: _____

Address: _____ City: _____

State: _____ Zip Code: _____

Phone: _____ Fax Number: _____

Email Address: _____

Company Web Address: _____ Publicly or Privately Owned: _____

Type of Business: _____ NAICS Industry Code: _____

Year(s) in Which Capital Expenditures on the Project Will Begin: _____

II. Existing Dollar Values Prior to Project.

Total Assessed Values from Last Tax Roll (Year): _____

Assessed Land Value: _____ Assessed Building Value: _____

Assessed Business Personal Property Value (Equipment): _____

Amount Eligible for Freeport Exemption: _____

III. Project Development.

On a separate sheet, please describe the overall impact the expansion or relocation will have on the City of Mesquite and surrounding economic base. Please describe property improvements, timeframe for completion as well as any necessary infrastructure and costs. Describe the potential utilization of local firms for design, construction and/or operations.

Estimated Added Land Value: _____ Acres and Cost Per Square Foot: _____
Added Assessed Building Value: _____ Project Construction Costs: _____
Percentage of Construction Costs Subject to Local Sales Tax: _____
Added Equipment Value (BPP) Subject to Local Sales Tax: _____
Added Equipment Value (BPP) Not Subject to Local Sales Tax: _____
Total Annual Taxable End of Year Inventory: _____
Percent of Inventory Shipped Outside Texas: _____
Site(s) Being Considered: _____ Projected Date of Occupancy: _____
Acreage of Site: _____ Square Footage of Building: _____
Owner/Landlord: _____ Lease Term: _____
Square Footage: _____ Additional Square Footage Added: _____

IV. Employment.

Percentage of Onsite *Construction* Employees Estimated to Live in This Jurisdiction: _____
Total Number of Permanent Employees (in Full-Time Equivalents): _____
Total Number of Permanent Employees Estimated to Live in This Jurisdiction: _____
Average Salary of Permanent Employees: _____
Describe Types of Jobs: _____

Hourly Wage Range by Position: _____

On a separate sheet, please describe the full-time benefits the company offers salaried and hourly employees (retirement, health insurance, dental, etc.) and the eligibility requirements for participation.

V. Local Benefit.

Fee and Permit Income, Including One-Time Tax Rollback If Any: _____
Utility Franchise Fees: _____

Road Impact Fees, Inspection Fees and Engineering Fees: _____

Amount of Project Sales: _____ Amount of Project Purchases: _____

Percentage of Project *Purchases* Subject to the Jurisdiction's Sales Taxes: _____

Percentage of Project *Sales* Subject to the Jurisdiction's Sales Taxes: _____

Gross Hotel Room Receipts Generated in This Jurisdiction Due to This Project: _____

Other Monetary Benefit or Contribution: _____

Are the Improvements Compatible With the Comprehensive Zoning Ordinance? _____

Are There Any Rezoning, Platting or Replatting Considerations? _____

VI. Importance of Incentive.

On a separate sheet, please describe why an incentive is necessary for the success of this project and how the improvements will benefit the property at the conclusion of the term of the agreement.

VII. Future Expansion Plans.

On a separate sheet, please describe any plans for future expansion beyond the initial development. Describe investments and employment associated with those plans on a year-to-year basis.

VIII. Project Renewal Impacts.

On a separate sheet, please describe how the project relates to and furthers the goals of Project Renewal. Describe the value proposition the company will bring to the City of Mesquite and how it will strengthen the objectives of Project Renewal.

Please contact the City of Mesquite
Economic Development Department
for assistance at 972-216-6340.
P. O. Box 850137
Mesquite, Texas 75185-0137

AUTHORIZATION:

Authorization Signature of Applicant

Name and Title (Please Print)