

COUNCIL POLICY

CURRENT

SUBJECT: BUSINESS INCENTIVE PROGRAM

POLICY NO.: 900-12

EFFECTIVE DATE: January 16, 2024

BACKGROUND:

The City of San Diego (City) supports local businesses that create and retain jobs, incentivizes companies that increase tax and other City revenue sources, and promotes various economic development goals that lead to a healthy economy and higher quality of life for all residents.

In recent years, best practices in economic development have identified inclusive activities that lead to regional economic prosperity in a meaningful way. Using best practices, the City can better position itself to incentivize and support long-term growth that is attuned to the City's needs and goals. The City's Business Incentive Program provides the framework in which the City can support businesses that are investing in local communities, creating middle income jobs, and have the potential for a broad, sustained economic net benefit to the City and its residents.

With more than 100 science and technology research centers and major colleges, universities, and award-winning trades schools, the City is well-positioned to continue to compete globally by producing and attracting some of the most talented entrepreneurs, engineers, scientists, and technology professionals in the world. Additionally, the City's diverse layered industries supporting military and defense, tourism, innovation, creative economy, and a robust small business sector are key contributors to the notable and rapid economic recovery following the COVID-19 pandemic. The City's human capital, quality of life, and diverse industry clusters drive its economic vitality. However, even as the City experiences increasing economic growth, the benefits are not accruing equitability throughout all communities. Additionally, the City is increasingly vulnerable to the potential loss of businesses due to the high cost of living and real estate.

To sustain the City's prosperity into the future and facilitate growth and accrued benefits throughout all communities, the City must focus on (1) retaining and recruiting high performing businesses with strong potential for business growth, increasing revenue for the City, and creating quality jobs capable of increasing the standard of living for all residents; and (2) prioritizing businesses committed to supporting the City's workforce, sustainability, and economic goals.

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To accomplish this, the City must prioritize established and emerging businesses and industries by investing in the ecosystems of innovation, trade, talent, infrastructure, and governance. The City must support local businesses in growing their export and trade activities in ways that deepen regional industry specializations and generate new income and investment. Given the importance of its human capital, the City must invest in education and skills development, with special emphasis on fulfilling the needs of its anchor institutions and growing life sciences, technology, and cyber-tech industry clusters. Finally, the City must engage in all these endeavors with a focus on connecting every community to regional jobs, housing, and economic opportunity.

PURPOSE:

The City Council (Council) intends to facilitate the retention, expansion, creation, and attraction of businesses to the City. The Council also seeks to support inclusive economic growth and broaden access to opportunity for all San Diegans. The Council therefore intends to invest City resources in the ecosystems of innovation, trade, talent, infrastructure, and governance to support globally competitive businesses and enable businesses to start and grow in the market.

In addition, the Council seeks to leverage certain resources to facilitate business activity aimed at achieving the following goals:

- To connect all communities within the City to regional jobs and economic opportunity;
- To incorporate skills development of workers as a priority for employers so that improving the local workforce results in meaningful work and income gains;
- To encourage small and medium sized businesses to expand into international markets and attract foreign direct investment; and
- To encourage businesses to engage in sustainable growth, which furthers the goals articulated in the City's Climate Action Plan.

In exchange for the City's financial or dedicated technical assistance offered to a business for the purpose of incentivizing business activity aimed at furthering one or more of the stated goals, a business must commit to a minimum investment or the creation of a minimum number of jobs over a defined period of time. Further, the desired outcome of this Council Policy is the creation and retention of quality jobs and capital investments across San Diego, with a particular emphasis in low- and moderate-income communities.

DEFINITIONS:

"*Application*" means a standard form document to be developed by the Economic Development Department and submitted by a *Business* to the City requesting one or more *Incentives* from the City.

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“*Area Median Income (AMI)*” means the median income calculated by the U.S. Department of Housing and Urban Development (HUD); adjusted for the San Diego County Metropolitan Statistical Area, year, and household size; and published annually by the California Department of Housing and Community Development (HCD). AMI, for this Policy, uses the median income calculated for a one-person household (i.e., individual), as published annually by HCD.

“*Business*” means any corporation, partnership, limited liability company, joint venture, sole proprietorship, association, or trust, other than a public entity, that holds a current Business Tax Certificate issued by the City.

“*Business Incentive Program (BIP)*” means the City’s program for awarding and administering *Incentives* in accordance with this Policy.

“*Business Incentive Workplan*” means the most recent resolution adopted by the Council titled “A Resolution of the Council of the City of San Diego Establishing the Business Incentive Workplan for Evaluating an Application Under Council Policy 900-12 Business Incentive Program” and on file with the San Diego City Clerk’s Office, which identifies a variety of additional criteria that represent the Council’s economic goals, and for which participation in the stated activities by a *Business* can increase an *Incentive* award.

“*City Fees*” means charges imposed by the City for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged. *City Fees* include, but are not limited to, Mechanical, Plumbing/Gas, and Electrical fees, Sign Permit fees, Substantial Conformance Review fees, fees associated with obtaining building permits, Grading and Public Right-of-Way Permit fees, fees associated with Development Permits and Policy Approvals, Fire Department Plan Check fees, Development Project Management fees, Development Services Preliminary Review fees, Demolition/Removal Permit fees, Development Impact Fees, and Water and Sewer Fees.

“*Gap Analysis*” means the assessment method whereby the City evaluates a *Business*’s need or cost associated with a new business activity and the anticipated resulting community benefit in order to determine whether, and in which manner, to award one or more *Incentives* to a *Business*. The analysis must be quantitative and may consider factors specific to the *Business*, including non-quantifiable intangibles, or infrastructure, facilities, workforce, and other necessary resources that can be location dependent. The City will conduct its analysis in accordance with current and relevant economic development best practices. The level of analysis will be proportional to the *Incentive* award. If the aggregate value of the anticipated *Incentives* exceeds \$1 million dollars, the City may require a *Business* to retain and pay for an independent consultant, selected by the City, to perform the *Gap Analysis*.

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“*Incentive*” means financial assistance provided by the City to, or on behalf of, a *Business*, or dedicated technical assistance provided by the City to a *Business* in excess of 120 hours per project during a single fiscal year, or a combination thereof, in exchange for the *Business*’s commitment to make a minimum investment or create a minimum number of jobs over a defined period of time.

“*Incentive Award Date*” means the date on which a *Business* enters into a written agreement with the City to receive an *Incentive* under the *BIP*.

“*Ineligible Business*” means any of the following: (a) “adult entertainment” businesses, as described in San Diego Municipal Code section 141.0601; (b) short- or long-term rental owners or investment property independent contractors (including Airbnb, Vrbo, etc.); (c) independent realtors in personal real estate; (d) ride shares, taxis, food delivery service and car services (such as Uber, Lyft, Door Dash, etc.); (e) lending and investment institutions and insurance companies; (f) any business that is in violation of a Federal, State, or local environmental protection law or regulation or an enforceable land use restriction unless *Incentive* given will result in curing or removing the violation; (g) charitable institutions; (h) churches, organizations affiliated with or sponsored by churches, and fraternal organizations; or (i) speculative activities such as land banking and construction of speculative buildings that do not have specific job creating tenants committed and businesses whose projects would adversely (without mitigation) impact flood plains, wetlands, significant historic or archeological properties, drinking water resources, or nonrenewable natural resources.

“*Low- and Moderate-Income (LMI) Census Tract*” means a low- and moderate-income census tract within the City meeting the requirements set forth in title 24, section 570.208(a)(4)(iv), (v) of the Code of Federal Regulations in the most recent Federal census.

“*New Capital Investment*” means fixed machinery and equipment, working capital, soft costs, or private financing which will result in expanded operations for a *Business*.

“*Qualifying Jobs*” means: jobs located in the City that pay between 80% and 120% AMI for a one-person household and are either: (a) new jobs created by a *Business* within 36 months after the *Incentive Award Date* and thereafter retained by the *Business* for a minimum of 18 months; or (b) existing jobs at a *Business* as of the *Incentive Award Date* and thereafter retained by the *Business* for a minimum of 18 months.

“*Recipient*” means a *Business* that the City has awarded an *Incentive* and that has entered into a written agreement with the City under the *BIP*.

“*Small Business*” means a *Business* with fewer than 25 employees as of the date of *Application* submittal to the City.

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The Council supports local business activity aimed at increasing jobs and economic opportunity in the local region and supporting sustainable growth designed to improve the quality of life for San Diegans. The City may award *Incentives* in furtherance of these goals to *Businesses* in accordance with the terms set forth below.

A. Award Criteria

The City may award one or more *Incentives* as part of the *BIP* to a *Business* that meets all the following criteria:

1. The *Business* must be located in the City and have a current Business Tax Certificate issued by the City or provide a letter of intent to locate in the City.
2. The *Business* must meet one of the following criteria outlined in Sections A.2.a or A.2.b:

a) *Qualifying Jobs*

A viable plan and commitment to create or retain *Qualifying Jobs* as indicated below:

- i. A *Small Business* must create or retain at least:
 - One *Qualifying Job* located within the City's Promise Zone, Opportunity Zone, or a *LMI Census Tract*; or
 - Three *Qualifying Jobs* located outside of the City's Promise Zone, Opportunity Zone, or a *LMI Census Tract*.
- ii. Any *Business* other than a *Small Business* must create or retain at least:
 - Three *Qualifying Jobs* located within the City's Promise Zone, Opportunity Zone, or a *LMI Census Tract*; or
 - Five *Qualifying Jobs* located outside of the City's Promise Zone, Opportunity Zone, or a *LMI Census Tract*.

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b) *New Capital Investment*

A viable plan and commitment to complete a *New Capital Investment* to retain, expand, or attract a *Business*, or its workforce, products, services, facilities, or general operations within the 24-month period immediately following the *Incentive Award Date*. For purposes of this subsection (b), a new capital investment shall be deemed complete upon the earlier of either the initial date of occupancy of new construction or substantial completion of the new capital investment.

- i. A *Small Business* must make a new capital investment of at least \$300,000, or \$150,000 if located within the City's Promise Zone, Opportunity Zone, or *LMI Census Tract*.
- ii. Any *Business* other than a *Small Business* must make a new capital investment of at least \$1,000,000, or \$500,000 if located within the City's Promise Zone, Opportunity Zone, or *LMI Census Tract*.

B. Types of Incentives

The City may award *Incentives* as follows:

1. Payment of *City Fees* on behalf of the *Business*.
2. Reimbursement of *City Fees* paid by the *Business*.
3. Secured or unsecured financing through existing City loan programs with specialized rates and terms.
4. Payment made by the City directly to a *Business* or organization under contract with the *Business* to support the hiring or training of employees through an existing or qualified workforce training program.
5. Dedicated technical assistance provided to a *Business* by City staff on the City's Business, Expansion, Attraction, and Retention Team, or other equivalent City staff.

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C. Business Incentive Workplan

The City will consider providing an increased level of *Incentives* to any qualifying *Business* that meets additional criteria to help reach the City's goal to support workforce, sustainability, and economic goals. Additional criteria are likely to change as San Diego's economy changes and grows. City staff shall, on an as-needed basis, provide to the Council a written evaluation of the additional criteria in the *Business Incentive Workplan* and, where appropriate, recommend that the Council delete, revise, or add new criteria in the *Business Incentive Workplan*. Any revisions to the *Business Incentive Workplan* will be informed by stakeholder outreach.

D. Procedures

1. Application

To be eligible for any *Incentives* through the *BIP*, an authorized representative of the *Business* must submit an on-line or physical *Application* to the City's Economic Development Department that contains information showing how the proposed project is *BIP*-eligible. This may include information such as: estimated capital investment in the project; estimated tax base impact; number of prospective jobs, including *Qualifying Jobs*, created or retained by the project; or other specific benefits the *Business* expects to generate for the City's benefit. The City may require a *Business* to provide, or otherwise make available for review, financial statements and other proprietary information relevant to determining *BIP* eligibility. City staff will request from applicants the minimum amount of information and documentation required to evaluate the *Application* and decide whether to recommend approval by the Mayor or the Council, as applicable. The City will provide the *Application* in multiple languages used frequently in the affected local communities. If City staff determines a *Business* that submitted an *Application* is an *Ineligible Business*, City staff will make best efforts to refer the *Ineligible Business* to other programs and resources.

2. Economic Development Department Review

- a) City staff must analyze and evaluate the *Application* and any supporting material, then communicate to the Mayor or designee its recommendation on whether, and in which manner, to award one or more *Incentives*. City staff's recommendation must be based on consideration and analysis of the following potential benefits to the City:

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- i. The cost of any proposed *Incentives* compared to the economic benefits that the applicant's project is expected to produce.
 - ii. The impact of the project on the City's tax base and revenue.
 - iii. A determination that the project is not expected to shift economic activity from one area of the City to another.
 - iv. Analysis of whether the project would proceed if the proposed *Incentives* were not provided.
- b) If City staff recommends an *Incentive* that exceeds \$100,000, City staff must also conduct a *Gap Analysis* and include the results of this analysis in its recommendation to the Mayor or designee.

City staff will present the *Application*, its written review of the *Application*, and any supporting documentation for the *Application* to the Mayor or designee. After evaluating the *Application* and determining *BIP* eligibility, the Mayor or designee may enter into a contract with the *Business* regarding any proposed *Incentive*.

3. Authorization

a) Mayoral Authorization

The Mayor or designee will have the authority to grant *Incentives* up to a cumulative total of \$100,000 per *Recipient* in a fiscal year. All *Incentives* authorized by the Mayor or designee will be awarded through the City's standard form of agreement, signed by the *Recipient* and the Mayor or designee. Within 30 days after the *Incentive Award Date*, City staff shall provide a memorandum to the Council that describes a finding of the Mayor or designee, supported by specific facts, that the *Recipient* has demonstrated an economic need for the *Incentive*.

b) Council Approval

Council approval is required for all *Incentives* awarded in excess of \$100,000 per *Recipient* in a fiscal year. City staff will present to the Council, for its review and approval, a proposed contract between the City and the *Recipient* based on the City's standard form of agreement. City staff also will present for the Council's review a *Gap Analysis* and a memorandum describing the economic need for any proposed *Incentive*.

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4. Contract Administration

a) Compliance Review

City staff will routinely monitor all *Recipients'* progress to ensure that the *Recipients* are actively engaged in meeting all pertinent *Business Incentive Workplan* criteria. At a minimum, City staff will conduct a semi-annual evaluation to determine each *Recipient's* compliance with its obligations under the signed *Incentive* agreement.

b) Enforcement

If any *Recipient* does not comply with its obligations under the signed *Incentive* agreement, City staff will confer with the Office of the City Attorney to explore the feasibility of recovering any City funds committed under the *Incentive* agreement or other value provided to the *Recipient* in connection with any awarded *Incentive*.

c) Amendment

The *Incentive* agreement may include reasonable conditions the City may consider as a basis for modifying the *Recipient's* performance requirements. Reasonable conditions include, but are not limited to, changed economic or market conditions, economic hardship, or unforeseen circumstances resulting in the *Recipient's* need for additional time to fully comply with its contractual obligations. Any modification of the *Recipient's* performance requirements must be approved in writing by the Mayor or designee and supported by a memorandum from City staff that provides analysis demonstrating the rationale for the modification, including the economic or other benefit accruing to the City. Any Council-approved *Incentive* agreement will be amended in accordance with the agreement's terms, or by the Council if the agreement does not specify a procedure for amendments.

d) Reporting

i. Within 30 days after awarding an *Incentive*, the City will post the following information on its website:

- a. A memorandum to the Council outlining the *Incentive*.
- b. Complete information on the amount of the *Incentive*.

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- c. The name, identity, and nature of interest of all persons or parties with ownership or controlling interest in the *Recipient*.
 - d. The exact location (e.g., street address or parcel number) and Council District of the subsidized facility or facilities.
 - e. Data on actual or anticipated outcomes, such as jobs created and wages paid.
 - f. Information on steps, such as recapture or repayment of *Incentives*, the City could take if the *Recipient* fails to meet minimum investment or job creation requirements.
- ii. If the City is engaged in efforts to recapture or seek repayment of *Incentives* from a *Recipient*, the City will post a notice of this status on its website. Notice must be posted within 30 days after commencing efforts and must remain posted until final resolution of the matter.
 - iii. The City shall collect and update all reporting data at the end of each fiscal year.
 - iv. The City shall maintain all reporting data throughout the term of the agreement, unless otherwise required by State law, for any year in which a *Recipient* receives an *Incentive*.
 - v. Any website on which disclosures are made in compliance with this Policy must be easy to find, easy to use, and have current and archival data.
 - vi. The City shall post the previous fiscal year's reporting data on at least one external open government website.
 - vii. The City's website must map subsidies located in areas of need, such as a Promise Zone, Opportunity Zone, and *LMI Census Tract*.

E. **Incentive Agreements**

The City's standard form of *Incentive* agreement must contain the following terms:

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1. **Mandatory Recapture:** To ensure that City funds are used for the authorized purpose and allow the City to recapture the *Incentive* amount or value if a *Recipient* does not meet any stated performance requirements, the agreement must identify: (a) one or more quantifiable measures by which the *Recipient's* performance will be evaluated; (b) the specific terms under which the *Recipient* must repay the *Incentive* amount or value; and (c) any other reasonable form of recapture if repayment to the City is not feasible.
2. **Mandatory Reporting:** Each *Recipient* must provide to the City, on an annual basis, all data needed by the City to evaluate the *Recipient's* compliance with the agreement and to meet the reporting obligations identified in Paragraph 4(d) of Section D above. The *Recipient's* failure to provide the required data will result in penalties described in the *Incentive* agreement. Unless otherwise required by applicable law, the City will use reasonable efforts to avoid public disclosure of any *Recipient's* confidential or proprietary information.
3. **Nature of Award:** The City's award of an *Incentive*, whether by Mayoral or Council action, does not constitute or imply approval of required development or building permits, including discretionary permits.

F. Periodic Review of Policy

City staff shall periodically evaluate the need to update this Policy and the *Business Incentive Workplan* and, at least once every two years, provide to the Council any proposed amendments to this Policy and *Business Incentive Workplan* or a written report confirming that no changes are needed. City staff will also conduct a review of this Policy and *Business Incentive Workplan* following any significant amendments to the Economic Development Department's Tactical Equity Plan.

HISTORY:

"Business and Industry Incentive Program"

Adopted by Resolution R-282497 – 08/09/1993

Amended by Resolution R-290241 – 06/15/1998

Amended by Resolution R-294831 – 05/15/2001

"Business Incentive Program"

Amended and renamed by Resolution R-311911 – 07/30/2018

Amended by Resolution R-315298 – 01/16/2024