

ECONOMIC DEVELOPMENT AGREEMENTS

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DRAFTING ECONOMIC DEVELOPMENT AGREEMENTS*

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I. INTRODUCTION

The use of economic incentives by cities and developers has become an integral part of major development projects in Texas. It is imperative for attorneys representing both cities and developers to understand the tools in the economic development tool box as well as common issues that surface during incentive negotiations. Often, businesses are not aware of the economic development incentives that local governments provide to encourage expansion or relocation. At the same time, many local governments are often unfamiliar with the full array of economic development incentives while others simply do not have a regular program for use of such programs. In today's business environment, development can be fueled by the use of economic development incentives. Additionally, cities many times recruit the same businesses turning a relocation into a contest among cities.

With the increasing competition among cities for economic development and the importance of incentives to offset development costs, it has never been more important for real estate attorneys to understand the various tools cities utilize as economic development incentives for new development. As new development expands, cities and developers face the financial challenges of extending and improving infrastructure. The redevelopment of inner-city sites and development of in-fill sites present similar burdens to the developer with regard to the preparation of blighted sites and reconstruction of obsolete infrastructure. Still further, many cities aggressively promote economic development using several key incentive tools.

Whether the tool is tax abatement, tax increment financing, economic development sales tax corporation assistance for infrastructure or for other projects, or a combination of incentives, there are vital issues to be addressed in any agreement between a municipality and developer.

The statutes that authorize these incentives generally set forth the basis for providing the incentive, but there are additional significant details which must be included in such agreements.

This article sets forth several frequently used incentive tools and guidelines for drafting the agreements between the municipality and developer. This article further details the pre-annexation agreement between a city and an owner of property in a city's extraterritorial jurisdiction.

II. ECONOMIC DEVELOPMENT INCENTIVES

Economic development incentives are the focus of much debate due to the perception that an individual may be receiving unwarranted assistance from a city that may be able to apply such funds to other municipal needs. However, in many situations, the incentive is vital to the economic success of an important project that will bring significant benefit to the municipality. Many of the incentives require an economic analysis to justify an incentive. Other incentives require a city to establish a program by which incentives will be awarded thus permitting cities to establish their own public policy, as well as financial prerequisites, for economic assistance. Often, a municipality will offer an incentive package that consists of several programs depending on the sources of revenue that the City will realize. Therefore, in many situations it is imperative to understand how the incentives work together to maximize the benefit to both the municipality and private sector.

A. General Economic Development Agreement Considerations

The following are key concerns to an attorney when considering economic development incentives:

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