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Intro to Economic Development Incentives

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INTRO TO ECONOMIC DEVELOPMENT INCENTIVES

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 toolbox as well as common issues that surface during incentive negotiations. Businesses and 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.

With the increasing competition among cities for economic development and the importance of incentives to offset development costs, it has never been more important to understand the various tools cities utilize as economic development incentives for new development and the limitations of such 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 issues that need 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 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.

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 city sources of revenue. It is important to understand how the incentives work together to maximize the benefit to both the municipality and private sector.

General Economic Development Agreement Considerations.

The following are key concepts when considering economic development incentives:

- (1) Understand the business deal. What does the developer need and what can the city afford to provide?
- (2) Recognize that there are different available programs and which improvements are covered by the respective incentive programs. Different programs offer incentives for diverse purposes.
- (3) Know the statutory authority for the incentive, the implementation process, the statutory limitations, and general limitations on its contract authority.
- (4) Know the municipality's programs and policies concerning incentives. Even though a statute enabling a particular incentive may provide broad incentives, local programs or policies may limit the city's willingness to make available the full incentive.
- (5) Educate the municipality regarding other types of incentives not traditionally used by the jurisdiction.
- (6) Review and update local tax abatement and economic development guidelines.
- (7) Know the municipality's political limitations and the need for stakeholder buy-in.
- (8) Know the municipality's record for awarding incentives. Know prior incentive deals and be prepared to explain why this project is different.
- (9) Seek the assistance of appropriate consultants. Many of the programs require financial analysis. In most cases, assembling a team of financial consultants, tax specialists, engineers, planners, and architects is necessary to structure a successful incentive package. The municipality will expect a feasibility study to establish that the project is viable.
- (10) Determine which other taxing jurisdictions can participate in the project.
- (11) Understand the financial impact an incentive program may have on a project.
- (12) Determine if several programs may be used in an overall economic development package and whether the use of one program dilutes the economic benefit of another incentive.
- (13) Research whether other municipal processes, such as zoning, are required for the project.
- (14) The Attorney General suggests that proper use of public funds is generally contingent on a provision requiring that incentives are recouped (often

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