

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: BUSINESS INCENTIVE PROGRAM
POLICY NO.: 900-12
EFFECTIVE DATE: July 30, 2018

BACKGROUND:

The City of San Diego has historically supported local businesses in an effort to create and retain jobs, attract, and retain firms that will increase tax and other City revenue sources, and promote various economic development goals that lead to a healthy economy and higher quality of life for all residents.

New best practices have emerged in the economic development field since the early 2000s, as research has identified with greater accuracy what activities truly lead to regional economic prosperity. Using these practices, the City can better position itself to incentivize and support long-term growth that is attuned to the City's needs and goals. This program provides the framework for certain ways in which the City can support, or maximize the value of, businesses that are capable of bringing in money from outside the region and that have the potential for a broad economic net effect.

With more than 80 research institutions, San Diego is well-positioned to compete globally by producing and attracting some of the most talented engineers, scientists, and technology professionals in the world. Combined, the City's human capital, quality of life, and multiple robust technology-based industry clusters drive its economic vitality. Technology-based industry and other base-sector growth also drives significant demand for professionals in finance, marketing, sales, facilities management and other administrative positions. However, even as San Diego experiences increasing economic growth, there are recognizable signs that the benefits are not accruing equitability throughout all communities. Additionally, the City is constantly vulnerable to the potential loss of large firms with high economic value due to the high cost of living.

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 firms 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 firms 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 firms and industries by investing in the ecosystems of innovation, trade, talent, infrastructure, and governance. The City must seek out globally competitive firms, enable them to start and grow in San Diego, and encourage and support local firms 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 growing technology-based industry clusters. Finally, the City must engage in all these endeavors with a focus on connecting every community to regional jobs, housing, and opportunity.

PURPOSE:

It is the intent of the San Diego City Council (Council) to facilitate the retention, expansion, creation and attraction of businesses to the City. The Council 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 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 firms to expand into international markets and attract foreign direct investment; and
- To encourage firms 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 (Incentives), a business must commit to a minimum investment and/or job creation 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 an *Incentive* 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) as State Income Limits. *AMI*, for this policy, uses the median income calculated for a one-person household (i.e., individual), as published annually by HCD.

“*Base Sector Firm*” means a *Firm* within an industry that produces goods, services, or both, that are customarily sold outside of the region. A key characteristic of a *Base Sector Firm* is its ability to move all or a significant portion of its operations to another region without impacting the *Firm’s* revenues or negatively impacting its customer base. *Base Sector Firm* also means a *Firm* that demonstrates a viable plan to possess these key characteristics within a 24-month period following the date of the *Firm’s application* for an *Incentive*. A *Firm* that primarily supplies goods and services consumed locally, and does not demonstrate a viable plan as described above, is not a *Base Sector Firm*.

“*Business*” or “*Firm*” 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 incentive program administered by the City in accordance with this Council 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, as amended from time to time, 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, 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 Services Preliminary Review Fees, fees for Demolition/Removal Permits, and Water & Sewer Fees.

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“*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*.

“*Green Business Network*” refers to a program operated by the City which helps businesses identify measures they can take to reduce their operating costs by improving their energy and water efficiency, and reducing their solid waste.

“*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 a commitment of investment and/or job creation 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* provided pursuant to the *BIP*.

“*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.

“*Qualifying Jobs*” means jobs located in the City that pay between 80% and 120% *AMI*, and are either: (a) created by a *Business* within 24 months after the *Incentive Award Date*; or (b) retained by a *Business* for a minimum of three years after the *Incentive Award Date*.

“*Recipient*” means a *Business* that has been awarded an *Incentive* and has entered into a written agreement pursuant to the *BIP*.

POLICY:

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

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A. Award Criteria

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

1. *Business* must be a *Base Sector Firm*; and
2. *Business* must demonstrate one of the following:
 - a. A viable plan and commitment to create or retain at least 10 *Qualifying Jobs*; or
 - b. A viable plan and commitment to create or retain at least 3 *Qualifying Jobs* located within the San Diego Promise Zone, San Diego Opportunity Zone, or a *LMI Census Tract*; or
 - c. A viable plan and commitment to complete a new capital investment in excess of \$5,000,000 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 i) the initial date of occupancy of new construction, or ii) substantial completion of the new capital investment.

B. 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. For that reason, the 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*. Applicants will be evaluated using the most recently adopted *Business Incentive Workplan* on file with the Office of the City Clerk.

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C. Types of BIP Awards

The City may award *Incentives* as follows:

1. Payment of City Fees. Payment made by the City on behalf of the *Business*.
2. Secured and Unsecured Financing. Financing assistance through City loan programs with specialized rates and terms.
3. Payment to Business. Payments made by the City directly to a *Business* to support the hiring or training of employees through an existing program offered by the San Diego Workforce Partnership or other program identified in the *Business Incentive Workplan*.
4. Dedicated Technical Assistance. Project-specific technical assistance provided to a *Business* by City staff on the City's Business, Expansion, Attraction, and Retention Team, or other equivalent City staff, in excess of 120 hours per project during a single fiscal year.

D. Procedures

1. Application

To be eligible for *Incentive(s)* through the *BIP*, an authorized representative of the *Business* must submit an *application* to the City 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 benefit of the City. City may require a *Business* to provide, or otherwise make available for review, financial statements and other proprietary information relevant to determining *BIP* eligibility.

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 the *Incentive(s)* compared to the economic benefits that the project is expected to produce.
 - ii. The impact of the project on the City's tax base and revenue.
 - iii. A determination 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 *Incentive(s)* 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 review of the *application*, and any supporting documentation for the *application* to the Mayor or designee. After reviewing the *application*, the Mayor or designee may enter into a contractual agreement with the *Business* regarding the awarded *Incentive(s)*.

3. Authorization

a) Mayoral Authorization.

The Mayor, or designee, shall have the authority to grant *BIP Incentives* in an amount not to exceed \$100,000 per *Recipient* in a fiscal year. All *BIP Incentives* shall be granted solely through a Standard Incentive Agreement, approved by the Mayor or designee. Within 30 days of the *Incentive Award Date*, City staff shall provide a memo to the Council that describes a finding by the Mayor or designee that there is an economic need for the *Incentive(s)*. The maximum total amount of all *Incentives* awarded under the *BIP* by the Mayor, or designee, shall be \$700,000 per fiscal year. At the minimum, 50% of the maximum total amount shall be awarded to *Businesses* in *Low- and Moderate-Income Census Tracts*.

b) Council Approval

Council approval is required for all *Incentives* awarded in excess of \$100,000 per *Recipient* in a fiscal year. Council approval is also required for *Incentives* awarded in any amount if the Mayor, or designee, has awarded \$700,000 in the same fiscal year. A Standard Incentive Agreement brought to the Council for approval must be accompanied by a *Gap Analysis* and a memo to the Council describing the economic need for the *Incentive(s)*.

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4. Contract Administration

a) Compliance Review

City staff will routinely monitor and document all *Recipients*' progress to ensure that the *Recipients* are meeting all *Business Incentive Workplan* criteria as they relate to each *Recipient*. At a minimum, City staff must conduct a semi-annual evaluation to determine each *Recipient's* contractual compliance.

b) Enforcement

If any *Recipient* does not meet its contractual obligations, City staff must commence all contractually allowable recapture procedures to recover funds, or other value, provided to the *Recipient* in connection with the *Incentive(s)*.

c) Amendment

The Standard Incentive Agreement may include reasonable conditions the City may consider in order to amend 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 amendment to modify the *Recipient's* performance requirements must be approved in writing by the Mayor, or designee, and supported by a memo from City staff that provides analysis demonstrating the rationale for the modification, including the economic benefit, or other benefit, accruing to the City. A Standard Incentive Agreement approved by the Council shall be amended in accordance with the terms approved by the Council.

d) Reporting

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

a. Memo to the Council outlining the *Incentive*.

b. Complete information on the amount of the *Incentive*.

c. The name, identity, and nature of interest of all persons or parties with ownership or controlling interest in the *Recipient*.

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- d. The exact street-address location of the facility or facilities relating to the *incentive* awarded.
- e. Data on 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 job or investment targets.
- 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 of commencing efforts and must remain posted until final resolution on 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 Council 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 against patterns of economic need and other relevant economic patterns.

E. Standard Incentive Agreement

All *BIP Incentives* must be granted solely through a Standard Incentive Agreement approved by the Mayor. The Standard Incentive Agreement must contain the following terms:

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1. Mandatory Recapture for Failure to Perform as Agreed. To ensure that City funds are used for the authorized purpose, and allow for recapture if a *Recipient* does not meet performance requirements as agreed, the Standard Incentive Agreement must state: a) the measure(s) by which performance will be evaluated; b) the specific terms under which repayment of the *Incentive* must be made; and c) other reasonable form(s) of recapture if repayment to the City is not feasible.
2. Mandatory Reporting. Each *Recipient* must provide on an annual basis all data identified in Paragraph 4(d) of Section D above. Failure to do so will result in penalties described in the Standard 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. Award of an *Incentive*, whether by Mayoral or Council action, does not imply approval of required development or building permits, including discretionary permits.

F. Council Policy Review

City staff shall periodically evaluate the need to update this Council Policy and *Business Incentive Workplan* and, at least once every two years, provide to the Council any proposed amendments to the Council Policy and *Business Incentive Workplan* or a written report that no changes are needed.

HISTORY:

“Business and Industry Incentive Program”

Added 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