

DRAFT

CITY OF AUSTIN
ECONOMIC DEVELOPMENT
CHAPTER 380 POLICY

Public-Private Partnerships Framework &
Program Creation Guidelines
To Secure Equitable Prosperity, Affordability, Opportunity
In the City of Austin
Through Strategic Investments and Public-Private Partnerships

City of Austin Economic Development Department

2018 - 2023

Introduction

Why Economic Development Matters:

Purposeful Economic Development Practices Create Thriving Communities

A successful and beneficial Economic Development approach responds to the needs of the community, illustrates agility in the face of dynamic market conditions, utilizes a proactive intervention strategy, and is guided by shared community values.

In the City of Austin, we are fortunate to have such a shared vision for our values. This shared vision is captured in the [Austin Strategic Direction 2023](#), focusing on equity, economic opportunity, diversity, creativity, sustainability, leadership, and affordability at the forefront of our rapidly changing community. Economic Development practices help ensure the success of this plan by leveraging policies to implement programs that bring together community needs and Council direction.

This Economic Development Guiding Principles document outlines the values Economic Development can bring to the Austin community. These Guiding Principles are the lens through which all Economic Development policies and programs should be viewed in order to achieve the goals identified by the community and by Council direction. Further, the Guiding Principles document outlines what the City of Austin and the private partner are expected to deliver when entering into these agreements.

If our community desires equitable outcomes, such as those outlined in the Austin Strategic Direction 2023 plan, then City staff needs to use economic development tools and business services that support those outcomes. This means holding a more complete and proactive investment system accountable for improvement in the areas of equitable prosperity, opportunity, and affordability.

How do we achieve these goals?

By creating Policies and Programs that adhere to these Guiding Principles

Policies that are created under the direction of the overarching Guiding Principles can be used in implementing programs that achieve community goals. The policies are the “how”, or the tools, we use to create programs that can produce the community outcomes we want. This policy document outlines the framework to create the requirements, process, evaluation, and performance measures needed to ensure the programs under them are creating economic development value for Austin.

City of Austin Public-Private Partnerships & Chapter 380

The City of Austin seeks transformative public-private partnerships to strengthen the local economy, sustain economic activity, and build resilience against national economic downturns. Proactive programs, strategic partnerships and public investment in projects that create community value build resilience to the natural ebb and flow of market dynamics and economic conditions.

The Texas Constitution and Chapter 380 of the Texas Local Government Code establishes the City's authority to create and provide "economic development by contract" to promote state and local goals for economic development. Council authorized the City Manager to use Chapter 380 as part of the creation of the City's Economic Development Policy and Program via Council Resolution No. 20030612-015.

Current or active agreements are governed by the policy in place at the time the agreements were executed. The Economic Development Department has developed the following guidelines in this new Chapter 380 Policy to govern the implementation of new agreements and to establish a process for Program Creation, Project Selection, Program Stewardship, and Regular Reassessment.

Economic Development Value

Chapter 380 programs, as a part of the larger Economic Development Guiding Principles, adhere to current Economic Development Value definitions to determine priority outcomes:

The City of Austin could contribute any of the following* to support community outcomes through Economic Development Programs:

- 1) Government Role: Connector to Investors, Path-Clearer
- 2) Focus on Equity: Employment Opportunities for All
- 3) Unify the Community through Collaboration
- 4) Train, Recruit and Retain Local Workforce and Talent
- 5) Support Austin's Culture, Creative Sector and Community Identity
- 6) Incentivize, Support, Provide Staff to Train Small Businesses
- 7) Build Affordable, Livable and Accessible Development
- 8) Impact Business Growth
- 9) Control Affordability
- 10) Promote Economic Diversity

The Private Partner could contribute any of the following to support community outcomes through Economic Development Programs:**

- 1) Locational Enhancements (Place-Making)
- 2) Workforce Development
- 3) Quality Jobs
- 4) Equity & Diversity
- 5) Quality Investment
- 6) Transportation
- 7) COA Revenue (Taxes & Utilities)
- 8) Equitable Hiring Practices

**Exchange values are further defined in the [Community Conversations Summary](#)*

***Exchange values are further defined in the [Community Leaders Session Summary](#)*

Given the variety of projects Council is seeking to bring to the community, delivering all of these community priority outcomes in a single agreement for a single project would be next to impossible, therefore neither the City nor the Partner will be required to provide all or even most of these values in

one transaction. Instead, each program created under these Guiding Principles are crafted to achieve a different set of goals, such as neighborhood development, jobs, healthy outcomes, or affordable space. At times, some of those outcomes will overlap and multiple goals will be achieved. Criteria to qualify for each of these programs will differ depending on the intended outcomes and beneficiaries, therefore requirements under each will differ as well.

Program Creation: Criteria Selection

The City of Austin's Economic Development Chapter 380 Policy provides a framework to create various programs in the form of grants, loans, and other initiatives. Qualifying projects that will make an investment in Austin, and promote the pursuit of equitable prosperity, opportunity, and affordability through the achievement of those values.

The basic framework for spending City funds is:

1. City funds must be spent for a City purpose (municipal purpose);
2. The City must get a benefit that is roughly equivalent to what it is spending; and
3. The City must be able to track that the purpose is being achieved;
4. Additionally, the Texas Constitution generally prohibits the use of public funds for a private purpose, prohibits the City from giving a gift; and prohibits the City from investing in private entities.
5. The City can spend public funds in a manner that both meets a municipal purpose, and that benefits a private entity if the funds are spent for economic development and in accordance with Article III, Section 52-a of the Texas Constitution, and an adopted program as authorized by Chapter 380 of the Texas Local Government Code.

Each Program will be created in consideration of this framework and supporting key priorities determined by the overlap between:

- 1) Strategic Outcomes as defined by [Austin Strategic Direction 2023](#)
- 2) Current Community Priorities
- 3) Existing Policy Resolutions, Ordinances, and other applicable legal requirements



Each program will identify appropriate and market tolerable criteria from the list below of existing policy requirements and identify values that best achieve the program's goals. This Chapter 380 Policy outlines a framework for public-private partnerships and program creation guidelines that supersede prior resolutions and ordinances governing Chapter 380 agreements. However, this new policy maintains the spirit of past resolutions as adjusted for current market conditions, Council's objectives, community input, and Strategic Direction to the extent feasible:

Application/Evaluation Process:

- Incentive agreement grants are performance-based investments;
- Programs allow for project-based incentives for mixed-use projects;
- Incentive proposals are encouraged to locate near transit developments and transportation hubs.
- Incentive agreements will be created in accordance with the Incentive Program's Evaluation Tool/Matrix/Score Card to meet approved criteria as required by that program. Program Evaluation Tool/Matrix/Score Card will assess direct and indirect costs and integrate a formal cost-benefit analysis into the City's evaluation;
- Incentive proposals that include the use and development of publicly owned property will promote community values;
- For the redevelopment of public, or formerly public land, contractors and subcontractors are required to pay wages as required by Council.
- Incentive agreements will adhere to Minority and Women-Owned Business Enterprise Program requirements;
- Company shall provide health insurance benefits for all new full-time employees and extends benefits to domestic partners of employees and their dependents. The company's policy should reflect the definition of a domestic partner as an individual who lives in the same household and shares the common resources of life in a close, personal, intimate relationship with an employee if under Texas law the individual would not be prevented from marrying the employee on account of age, consanguinity, or prior undissolved marriage to another. A domestic partner may be of the same, or opposite, gender as the employee;
- All economic development grant and loan programs will encourage compliance with a non-discrimination policy and practice. In the event the business does not have official documentation of compliance, the City will require an affidavit from the recipients of the loans or grants to establish that they will adhere to non-discriminatory business practices;
- All construction workers hired for construction for the project will be provided Workers Compensation Insurance and OSHA 10 Training;
- All construction work on the project, even if not on public land or formerly public land, must comply with the City's established prevailing wage program that is used on City public works projects;
- The project will ensure all employees are paid no less than the City's living wage and as it may be adjusted annually, including full-time employees and contract employees, and if applicable to a project with capital expenditures in the form of construction, construction workers hired for construction work will be paid at least the City's living wage;

- Ongoing analysis will be performed by the City to determine expected annual average wage for the lowest paid 10 percent of local workers from companies negotiating firm-based economic development proposals with the City.

Approval Process:

- Programs may include an Exception process to establish how applicants can request Exceptions to minimum criteria and requirements as part of incentive proposal development.
- For projects that require Council approval, incentive package development will adhere to a prescribed process timeline to allow time for citizen review and comment before Council takes action on an economic incentive proposal;
- Incentive agreement applicants are considered ineligible for incentives if the applicants are not compliance with current water quality regulations. Incentive recipients agree to comply with City water quality requirements on all future developments, failure results in termination of incentive agreement;
- In the event of changes in City requirements or program criteria, the new criteria will apply to new incentive agreements, unless otherwise agreed to by the parties in a written amendment to the agreement. The City will continue to honor existing incentive agreements.

Compliance:

- Compliance review for all economic development agreements will be verified by an independent party and results made publicly available and posted on the City's website;
- Company may protest property tax valuation. In the event tax valuation of the property has been lowered as a result of a successful protest, the City will evaluate the impact of the new valuation on the net fiscal position of the City and the City may unilaterally reduce the incentive amount to reflect the lowered property value.

Portfolio Revenue Generation

For the City of Austin to achieve Economic Development Values (as defined above), the Economic Development Department will create an inclusive portfolio of outcome-focused programs for different users, areas and purposes. For example, one program may emphasize the creation of new revenue generation for the City of Austin in order to financially sustain other programs annually or as-needed in the portfolio that focus more on the delivery of community benefits and not impact revenues as significantly as the former. The purpose of this model is to include many different tools within this portfolio to achieve community outcomes and Council objectives while building in a funding model for the creation and sustainment of such programs within the Economic Development Department.

Program Structure:

Grant Types:

Revenue-Positive Grants are performance-based tax reimbursement payments or per-job payments to an entity that produces an economic development project that generates a positive fiscal impact for the City.

Revenue-Neutral Grants are performance-based tax reimbursement payments or per-job payments that generate a neutral fiscal impact for the City. As noted above, under State law, the City must receive a benefit roughly equivalent to what it is paying.

Other/Operational Support Grants: for performance-based tax reimbursement payments or per-job payments that have a neutral fiscal impact for the City, the projects may be able to utilize City assistance in the form of pre-development support, expedited permitting, dedicated ombudsman services, development fee waivers, transportation and public works resources, and other City services in exchange for values that connect to the program's priority goal. These resources can be included in or be in lieu of an incentive package. Qualifications for this type of "other support" varies by program and project.

Grant Program Structure:

Evaluation Tool:

Cost-Benefit Tool: At the time of program creation, a cost-benefit tool will be developed to assist staff with determining the fiscal impact of the project. In some cases, programs may require an outside or third-party cost-benefit tool depending on the complexity of the program and/or anticipated projects. In other cases where programs or projects are smaller scale, simpler transactions, or otherwise it may be more appropriate to develop and implement a tool internally. In any case, the goal of the cost-benefit tool is to identify the City's net position on a project that can help inform the level of appropriate investment, coupled with other program criteria measures and Score Card (see "Project Score/General Eligibility"). The cost-benefit tool and resulting value is not the sole determinant of the value of the total potential incentive package.

Return On Investment (ROI) Including Community Benefits: In some cases, community benefit, value and priority goals of the program may be achieved in either revenue-positive or revenue-neutral projects. For projects that are revenue positive, the City may choose to reinvest a portion of or all of the net proceeds into other economic development initiatives/programs of the City. This enables programs that support economic development value or priority goals of the program may invest in projects that do not produce a net positive fiscal benefit but provide equivalent benefit to the City's participation. In some cases, this is justified by the economic multiplier effect, where the project itself may not create a significant tax base increase for the City, but the multiplier and downstream effects created by the project in the community are impactful, albeit difficult to quantify. In other cases, there may be compelling community benefits (such as promoting small, local business sustainability) that justify investments of this type.

“Return” in this case can be defined beyond simple fiscal terms and include community values and benefits that align with the program’s priority goal. Fiscally net -neutral or net negative projects that yield community benefit may come at the cost of the value of the priority goal for the program in some cases. Maximum investment allowance for each project is identified in the program guidelines to mitigate risk in the event that projects qualify for the program and are high-scoring, but the projects produce a break-even fiscal ROI. The goal is to make sure the overall project benefits justify the investment. The program guidelines also outline whether or not a net positive ROI for the City is a requirement, as is appropriate in some cases. The guidelines will always require that the project return a value to the City that is roughly equivalent to what the City is paying or providing as in-kind as this is a requirement of State law.

Project Score/General Eligibility: At the time of program creation, minimum requirements, qualifiers, bonus criteria, and an accompanying formula for scoring will be created to generate an overall “Project Score”. A scale of Project Scores will be identified to set thresholds, such as a minimum Project Score to eliminate projects that do not carry sufficient community impact, a moderate score to indicate investment that may include an incentive allocation and a high score to open the possibility of additional investment in the project, such as operational support. Enhanced scoring may be considered for alignment with community need, Target Market industries and other strategic goals of the program. Scoring methodology will be different for each program, as will the score threshold levels.

Establishment of “But For” Statement: Included in all program guidelines, an Applicant must establish a ‘But For’ statement. The Applicant must provide credible evidence that the incentive either fills a gap that creates desirable outcomes, or addresses a competitive position around a relocation or expansion project that would otherwise locate at a site outside of Austin.

Exceptions/Waivers: Exceptions and Waivers can be identified during the Program Creation process. An “Exception” is requested by the Company during the project application process and could be granted by staff/Council in exchange for achieving other community values. A “Waiver” may only be requested by staff. A recommendation to waive a requirement occurs during Program Creation and, depending on desired outcomes of the program, can be requested by staff on a project-by-project basis.

In all cases, for all categories and programs, an applicant requesting an exception must provide written justification for granting the requested Exception. These justifications will be posted along with the other material related to evaluation of the proposed project. In exchange for an exception, staff will assess the impact of the exception being requested and in those cases may elect to negotiate the delivery of additional community benefits to offset the impact.

Programs may contain Exception and Waiver criteria as a subset of scoring criteria. In addition, each program identifies an Exception process. In order for a project to be eligible for an Exception from minimum requirements, the project has to score at certain threshold to receive consideration for the exception. Specific requirement Exceptions/Waivers will be different for each program, as will the Exception score threshold. For projects at or beneath City Manager's Spending Authority as established by City Charter and revised annually, financial and compliance controls will be identified in programs where Exceptions are approved by Council in Program ordinance adoption. If the incentive package is above City Manager Authority, staff will provide Council with information regarding the Exception being requested and the accompanying justification before Council is asked to approve the agreement.

Process:

The process for each Chapter 380 program is dependent upon the amount or equivalent community value of the incentive calculated. If the incentive for the project is beneath the City Manager Spending Authority threshold, Council approval is not needed. Any incentive offer above the City Manager Spending Authority will follow a specific process outlined in each program. In addition, each program has individual process guidelines that set expectations on timing, the exchange of information with applicants, negotiating terms and other measures. Projects seeking partnership with the City follow this general process for consideration:

Step 1: Applicants Complete the Online Application. The Online Application is the first opportunity for a Company to request consideration for a Chapter 380 incentive or public-private partnership with the City of Austin. It is imperative the Applicant self-select appropriate General Eligibility requirements as well as Chapter 380 Program-specific requirements, or if the Applicant does not meet those minimum criteria, make a clear case and request a consideration for an Exception of requirements complete with supporting documentation. This Online Application is not the Final Chapter 380 Application. It serves as the initial introduction of the project seeking incentives from the City and demonstrates alignment with the City's Chapter 380 Programs. If, in the creation of the program, City staff determines that the Online Application is not suitable for the applicant pool, staff will identify other entry-points to begin the process.

Step 2: Project Introduction & Application Review. In a timely manner, the Online Application will be reviewed by City staff. If City staff so determines, the Applicant may be invited to discuss the Online Application with Economic Development staff in person or via conference call. This meeting is an opportunity for both parties to discuss the project, review the application and make any needed adjustments to the application if the intention is to submit the application for formal consideration

(see Step 3.) Economic Development staff will make inter-Departmental connections within the City to help facilitate the Application in the event other Departments or City programs will be involved in the project. If in the creation of the program City staff determines that the review period or method of communication suggested above is not suitable for the applicant pool, other methods can be identified for each Program.

Step 3: Submit Final Chapter 380 Application. If adjustments are made to the original Online Application during Step 2, Applicants are requested to amend the documentation and re-submit a “Final Chapter 380 Application” for formal consideration by City staff. If the City does not request any adjustments, or the applicant chooses not to make any adjustments, the City will treat the initial application as a final application and advise the applicant of its determination of whether the initial application is acceptable as a final application or not.

Step 4: Project & Application Analysis. After the Final Chapter 380 Application submission, City staff will review the Final Application and determine whether General Eligibility requirements are met and measure program qualifications, Project Score, and fiscal impact, specific to that program’s process. It is at this time during the analysis that if an Exception to minimum requirements has been requested, justification for the Exception will be included in the evaluation consideration.

Bundling Programs: It is possible for projects to qualify for more than one program within the Chapter 380 Policy portfolio of programs. In those cases, potential agreement terms will be determined by City staff. If City staff has not done so already by this point, inter-Departmental connections within the City will be made to help facilitate the Application in the event other Departments or programs will be involved in the project. For a project that qualifies for more than one program, a blended Project Score may be created to measure overall impact weighted against total costs. In this case, the blended score and methodology will be determined by City staff managing the programs involved.

City Resources: Each program will identify a threshold of Other/Operational Support Grants to include, but not limited to, City resources such as expedited permitting, dedicated ombudsman services, development fee waivers, transportation and public works resources and other city services. These resources can be included in or in lieu of a financial or non-financial incentive package where a project fails to qualify or scores below the threshold for incentive package consideration but provides community benefit or value as defined by the program’s priority goals. It is at this time that City staff would engage with the Department that manages those

services to determine feasibility of support delivery for this project and ensure it aligns with the project timeline.

Step 5: Project Status – Accepted or Declined. Applicants will be informed of the status of their application in a timely manner after the Final Chapter 380 Application is submitted. If the project has been approved for further processing, City staff will communicate directly with the Applicant to inform them to expect the process going forward (Step 6).

Step 6: Proposal Execution. The following processes will be followed for varying levels of incentive package proposal valuations:

City Manager Authority Approval: For total incentive package proposals that are valued below City Manager Spending Authority, and if the company accepts the City's proposal, Applicants will be informed to expect a formal letter of "Program Acceptance" from the Program's Department including the City's Chapter 380 contract proposal and stipulated conditions upon which the company must agree. The agreement is executed by both parties and begins with the Compliance process. For projects at or beneath City Manager's Spending Authority as established by City Charter and revised annually, financial and compliance controls will be identified in programs where Exceptions are approved by Council in Program ordinance adoption.

City Council Approval: For incentive package proposals that are valued above City Manager Spending Authority but below a total \$5,000,000* net benefit value for the City, or less than a \$200,000,000* project Capital Investment Value, and if the company accepts the City's proposal, a Chapter 380 Program contract is drafted by City staff and submitted for City Council approval on the next regular Council Meeting Agenda date. If Council approves of the proposal, the agreement is executed by both parties and begins with the Compliance process. Information regarding the Exception being requested and accompanying justification would be provided alongside all other proposal materials to be presented to Council for approval.

City Council and Public Hearing Approval: For incentive package proposals that are valued above a total \$5,000,000* net benefit value for the City or more than a \$200,000,000* project Capital Investment Value, and if the company accepts the City's proposal, the following process is followed:

- The Chapter 380 proposal is placed on the Council agenda as a time-certain agenda item with a staff presentation on the proposal. The public is allowed to comment on the Chapter 380 proposal at this Council meeting.

- The Chapter 380 proposal, application, evaluation documents, analysis, information on any requested exception and proposed contract are announced in a press release and made available to the public no later than the sixth day before the Council agenda item with the staff presentation. All of this information is posted to the Economic Development Department's page on the City's website.
- An online comment portal is setup to collect public comments. All comments received are forwarded to the Council prior to the second Council meeting.
- The second City Council meeting includes a public hearing and City Council action.

*At the time of program creation, City staff may identify appropriate investment values to suit typical projects to best reflect the needs of the subject area. It is recommended as a starting point, however, that there is an approval process for projects below City Manager Spending Authority level, a regular Council Agenda approval level and an enhanced approval process with public engagement for higher value projects.

Stewardship

City staff is committed to the following values in the administrative implementation and stewardship of the Chapter 380 Programs:

Efficient, Inviting, and Responsive to Market Needs: The Chapter 380 Program is a visible, accessible opportunity for the City to use public funds to encourage private entities to discover new ways to improve the Austin community and improve business endeavors. This process must be efficient and expeditious to match the rapid pace of the business environment and minimize delay. Every effort will be made to build in appropriate timelines, clearly communicate expectations on those timelines, and carry out an efficient process of the Chapter 380 application steps.

Transparency: Each Chapter 380 Program will comply with best practice transparency measures, including producing timely and accurate reporting on all Chapter 380 contracts, supporting documentation, compliance reports, and ongoing payment information available on the City's website or other communication outlet. With each Chapter 380 program, all final public-private partnership agreements, and project information will be made available to the public via the Economic Development Department's section of the City website immediately and openly after approval.

Compliance and Third Party Assessment: All Chapter 380 agreements are performance-based, meaning the private partner must demonstrate its compliance annually to receive that year's contract payment. No upfront incentives are allowed. Every year, the Economic Development Department reviews the company's compliance with the contractual requirements, and an independent, third-party reviews the department's annual review. If both annual reviews confirm compliance, then the company is deemed to have fulfilled its annual obligations, and the contract payment is made for that year. All contract payment information will be available on the [Economic Development Department Open Portal website](#).

Reassessment:

Five-Year Programs: Each Chapter 380 program, from the creation date, will run with a standard five-year term to allow for changes in Austin's economic environment, community needs and shifting policy directives. Each program will identify high-level goals to be achieved at the end of the five-year term that connect with the current [Austin Strategic Direction](#) 2023 priorities. At the end of the five-year term, the program will be reassessed by City staff to determine if adjustments need to be made to the program evaluation method, criteria, process, administration or whether the program's current structure achieves the intended priority goals. If not, some programs may be allowed to "sunset", phased-out or replaced with new programs. Reassessment will include an overview of performance measured against the program's priority goals (annual and five-year) as well as City of Austin executive leadership input and community feedback. Community stakeholders will be consulted for feedback during this reassessment process, where suggestions and identification of new needs will be solicited on a five-year basis to recalibrate program priority goals to match community needs, Council objectives and changes in Strategic Direction.

Term of Agreements: Agreements made within the Chapter 380 programs may have a term longer than five years. Typically 5-10 years, the term of those agreements is made to best reflect the project's timeline, investment, and job creation schedule and the City will honor those agreements until the termination of the contract. In the event a program is allowed to sunset, or program criteria is changed to reflect shifting conditions, existing agreements will be grandfathered for the remainder of the term of the agreement unless otherwise agreed to by the parties in a written amendment to the agreement.

Market Conditions: "High-Impact" Projects:

High-impact projects, unique developments, and market competitive or other non-conforming projects will be considered on a case-by-case basis and within the context of the current market conditions at the time of program creation and/or project application. City staff will analyze those conditions and projects and determine if a recommendation for incentive proposal is achievable through current programs. If staff determines that the

non-conforming project is an economic benefit to the City, justifiable, and will provide significant community value given current market conditions and does not fit within the structure of a current program outline, special consideration may be made to create a program to support such a project depending on feasibility and City financial bandwidth.

Public Input: Each Chapter 380 program is created with the intention to meet a specific community need and to outline priority goals. If both the program and projects contained are not successful, underperforming, and/or the community need is not being met, then staff will conduct a thoughtful reassessment of the program's structure and existence. As a part of this reassessment, staff will engage the public and seek their input. Staff will consult community stakeholders for feedback during this process. Staff will also solicit suggestions and identification of new needs on a five-year basis to recalibrate program priority goals to match community needs, Council objectives, and changes in Strategic Direction.

Annual Update & Reporting: Staff will conduct an annual assessment for the "effectiveness" of the programs and projects in reaching the intended goals. Each program will identify Program Metrics and Project Metrics to track on an annual basis that will be shared publicly. Metrics vary widely depending on the program goals, but with a focus on [Austin's Strategic Direction 2023](#) outcomes, general performance measurements could include, but are not limited to;

Program Metrics:

- Number of Applications Received
- Number of Applications Accepted
- Community Preservation
- Catalytic Event Affects
- Equity Measures
- Transportation Impact
- Affordability Measurements
- Workforce Impacts
- Other Strategic Direction Measurements

Project Metrics:

- Metrics by Program Criteria
- New Jobs Created
- Jobs Retained
- Job Types
- Revenue Impacts
- Community Benefits Achieved
- Capital Investment
- Other Strategic Direction Measurements

At the end of the five-year period of the program, those Annual Reports will be reviewed and used as supporting documentation to make the decision to sunset, phase-out, or revise the program structure.

Loan Program Structure

A Chapter 380 Loan Program is an agreement between the City and a private entity offering low-interest loans to qualified entities that need financial support and access to capital to face rapidly changing economic conditions. Loan Program objectives and structure differ depending on intended recipients and outcomes, but all programs seek to enable existing local businesses to expand, create jobs, revitalize communities, achieve specific Austin Strategic Direction priority goals, increase the tax base of the City, and enhance the overall quality of life for Austin residents through advantageous loan structures and terms, while ensuring the protection and return of public benefits.

Loan Program Types:

Direct Gap Financing for Qualified Projects is available to address the financial gap experienced by a Company encountering roadblocks to new growth and/or development that will create value for the community. For programs that provide direct gap financing for qualified projects, those programs will identify incentive proposal value limits based on approved program criteria. These programs will take into consideration the current threshold for City Manager Spending Authority and approval processes will differ depending on whether the project loan value is determined to be above or below that threshold.

Loan Guarantees are available through programs that would require a contractual arrangement between the City and private creditors or banks. These agreements can be limited or unlimited. In the case of a limited loan guarantee program, a threshold limit for default coverage will be identified in the contract.

Forgivable Loans: are available through programs that create loans either direct to borrowers or through third-party lenders. These loans include “transformative conditions” that would effectively “transform” the original loan into a forgivable loan if certain program criteria is met. Each loan program will stipulate this criteria which can include, but may not be limited to, a certain percentage threshold above agreed-upon job creation, investment amount or other quantitative measure that results in an increase of the net benefit to the City that covers the debt service owed on the loan, or creates value for community priority goals.

Interest-Only: Interest-only loan programs will establish interest rates and maturity/amortization schedules that match the appropriate timeframes for project realization and asset lifespan.

Evaluation Tool:

Project Score/General Eligibility: At the time of program creation, minimum requirements, qualifiers, bonus criteria and an accompanying formula for scoring will be created to

generate an overall “Project Score”. A scale of Project Scores will be identified to set thresholds, such as a minimum Project Score to eliminate projects that do not carry sufficient community impact, a moderate score to indicate investment that may include an incentive allocation, and a high score to open the possibility of additional investment in the project, such as operational support. Enhanced scoring may be considered for alignment with community need, Target Market industries and other strategic goals of the program. Scoring methodology will be different for each program, as will the score threshold levels.

Grant/Loan Combinations: A program that combines a grant and a loan may have separate criteria in addition to the existing program criteria to be combined. At the time of a grant-loan program creation, City staff will identify the blended Project Score threshold to be met by both the grant qualifiers and the loan qualifiers.

Loan Structure & Terms: Loan programs or programs that include a loan as a part of the incentive package will consider program criteria and Project Score in determining what type of loan structure and terms are appropriate to offer. Loan Programs will be created with interest rate ranges and maturity and amortization schedules that are market competitive and within the risk allowance for the City.

Cost-Benefit Tool: At the time of program creation, a cost-benefit tool will be developed to assist staff with determining the fiscal impact of the project. In some cases, programs may require an outside or third-party cost-benefit tool depending on the complexity of the program and/or anticipated projects. In other cases where programs or projects are smaller scale, simpler transactions or otherwise where it may be more appropriate to develop a tool internally. In any case, the goal of the cost-benefit tool is to identify the City’s net position on a project that may help inform the level of appropriate investment, coupled with other program criteria measures and Score Card (see “Project Score/General Eligibility”). The cost-benefit tool and resulting value is not the sole determinant of the value of the total potential incentive package.

Establishment of “But For” Statement: Included in all program guidelines, an Applicant must establish a ‘But For’ statement. The Applicant must provide credible evidence that the incentive either fills a gap that creates desirable outcomes, or addresses a competitive position around a relocation or expansion project that would otherwise locate at a site outside of Austin.

Return On Investment (ROI) Including Community Benefits: In some cases, community benefit, value and priority goal of the program may be achieved in either revenue-positive or revenue-neutral projects. For projects that are revenue positive, the City may choose to reinvest a portion of or all of the net proceeds into other economic development initiatives/programs of the City. This enables programs that support economic development value or priority goals of the program may invest in projects that do not produce a net positive fiscal benefit. In some cases, this is justified by the economic

multiplier effect, where the project itself may not create a significant tax base increase for the city, but the multiplier and downstream effects created by the project in the community are impactful, albeit difficult to quantify. In other cases, there may be compelling community benefits (such as promoting small, local business sustainability) that justify investments of this type. “Return” in this case can be defined beyond simple fiscal terms and include community values and benefits that align with the program’s priority goal. Net- neutral projects that yield community benefit may come at the cost of the value of the priority goal for the program in some cases. Maximum investment allowance for each project is identified in the program guidelines to mitigate risk in the event that projects qualify for the program and are high-scoring, but the projects produce a break-even fiscal ROI. The goal is to make sure the overall project benefits justify the investment. The program guidelines also outline whether or not a net positive ROI for the City is a requirement, as is appropriate in some cases. The guidelines will always require that the project return a value to the City that is roughly equivalent to what the City is paying as this is a requirement of State law.

Underwriting: Loan Programs will identify acceptable risk thresholds such as Loan-to-Value Ratio and Debt Service Ratio minimums in either primary or subordinate lien positions. Loan programs will establish an underwriting process that includes borrower credit analysis, capacity and collateral.

Exceptions/Waivers:

Exceptions and Waivers can be identified during the Program Creation process. An “Exception” is requested by the Company during the project application process and could be granted by staff/Council in exchange of other community values achieved. A “Waiver” is requested by Staff. Staff will make a recommendation to waive a requirement during Program Creation and, depending on desired outcomes of the program, can be requested by staff on a project-by-project basis.

In all cases for all categories and programs, an applicant requesting an Exception must provide written justification for granting the requested Exception. These justifications will be posted along with the other material related to evaluation of the proposed project. In exchange for an exception, staff will assess the impact of the exception being requested and in those cases may elect to negotiate the delivery of additional community benefits to offset the impact.

Programs may contain Exception and Waiver criteria as a subset of scoring criteria. In addition, each program identifies an Exception process. In order for a project to be eligible for an Exception from minimum requirements, the project has to score at certain threshold to receive consideration for the exception. Specific requirement Exceptions/Waivers will be different for each program, as will the Exception score threshold. For projects at or beneath City Manager’s Spending Authority as established by City Charter and revised

annually, financial and compliance controls will be identified in programs where Exceptions are approved by Council in Program ordinance adoption. If the incentive package is above City Manager Authority, staff will provide Council with information regarding the Exception being requested and the accompanying justification before Council is asked to approve the agreement.

Process:

The process for each Chapter 380 program is dependent upon the amount of incentive. If the incentive for the project is beneath the City Manager Spending Authority maximum, Council approval measures are not needed. Any incentive offer above the City Manager Spending Authority will follow a specific process outlined in each program. In addition, each program has individual process guidelines that set expectations on timing, the exchange of information with applicants, negotiating terms and other measures. Projects seeking partnership with the City follow this general process for consideration:

Step 1: Complete the Online Application. The Online Application is the first opportunity for a private entity to request consideration for a Chapter 380 incentive or public private partnership with the City. It is imperative the Applicant self-select for appropriate General Eligibility requirements as well as Chapter 380 Program-specific requirements. This Online Application is not the Final Chapter 380 Application. It serves as the initial introduction of the project seeking alignment with the City of Austin's Chapter 380 Programs. If in the creation of the program City staff determines that the Online Application is not suitable for the applicant pool, staff will identify other entry-points to begin the process.

Step 2: Project Introduction & Application Review. In a timely manner, the Online Application will be reviewed by City staff. If City staff so determines, the Applicant may be invited to discuss the Online Application with Economic Development staff in person or via conference call. This meeting is an opportunity for both parties to discuss the project, review the application and make any needed adjustments to the application if the intention is to submit the application for formal consideration (see Step 3.) Economic Development staff will make inter-Departmental connections within the City to help facilitate the Application in the event other Departments or programs will be involved in the project. If in the creation of the program City staff determines that the review period or method of communication suggested above is not suitable for the applicant pool, staff will use other methods of communication.

Step 3: Submit Final Chapter 380 Application. If adjustments are made to the original Online Application during Step 2, Applicants are requested to amend the

documentation and re-submit as a “Final Chapter 380 Application” for formal consideration by City staff.

Step 4: Project & Application Analysis. After the Final Chapter 380 Application submission, City staff will review the Final Application and determine whether General Eligibility requirements are met and measure program qualifications, Project Score, and fiscal impact, specific to that program’s process. It is at this time during the analysis that if an Exception to minimum requirements has been requested, justification for the Exception will be included in the evaluation consideration.

Bundling Programs: It is possible for projects to qualify for more than one program within the Chapter 380 Policy portfolio of programs. In those cases, potential agreement terms pursuant to the project details will be determined by City staff. If City staff has not done so already by this point, inter-Departmental connections within the City of Austin will be made to help facilitate the Application in the event other Departments or programs will be involved in the project. For a project that qualifies for more than one program, a blended Project Score may be created to measure overall impact weighted against total costs. In this case, the blended score and methodology will be determined by City staff managing the programs involved.

City Resources: Each program will identify a threshold of Other/Operational Support Grants to include, but not limited to, city resources such as expedited permitting, dedicated ombudsman services, development fee waivers, transportation and public works resources and other city services. These resources can be included in or in lieu of a financial or non-financial incentive package where a project fails to qualify or scores below the threshold for incentive package consideration, but provides community benefit or value as defined by the program’s priority goals. It is at this time that City staff would engage with the Department that manages those services to determine feasibility of support delivery for this project and ensure it aligns with the project timeline.

Step 5: Project Status – Accepted or Declined. Applicants will be informed of the status of their application in a timely manner after the Final Chapter 380 Application is submitted. If the project has been approved, City staff will communicate directly with the Applicant to inform them to expect the process going forward (Step 6).

Step 6: Proposal Execution. The following processes will be followed for varying levels of incentive package proposal valuations:

City Manager Authority Approval: For total incentive package proposals that are valued below City Manager Spending Authority, and if the company

accepts the City's proposal, Applicants will be informed to expect a formal letter of "Program Acceptance" from the Program's Department including the City's Chapter 380 contract proposal and stipulated conditions upon which the company must agree. The agreement is executed by both parties and begins with the Compliance process. For projects at or beneath City Manager's Spending Authority as established by City Charter and revised annually, financial and compliance controls will be identified in programs where Exceptions are approved by Council in Program ordinance adoption.

City Council Approval: For incentive package proposals that are valued above City Manager spending authority but below a total \$1,000,000* net benefit value for the City or less than a \$200,000,000* project Capital Investment Value, and if the company accepts the City's proposal, a Chapter 380 Program contract is drafted by City staff and submitted for City Council approval on the next regular Council Meeting Agenda date. If Council approves of the proposal, the agreement is executed by both parties and begins with the Compliance process. Staff will provide information regarding the Exception being requested and accompanying justification alongside all other proposal materials for Council for approval.

City Council and Public Hearing Approval: For incentive package proposals that are valued above a total \$1,000,000* net benefit value for the City or more than a \$200,000,000* project Capital Investment Value, and if the company accepts the City's proposal, the following process is followed:

- The Chapter 380 proposal is placed on the Council agenda as a time-certain agenda item with a staff presentation on the proposal. The public is allowed to comment on the Chapter 380 proposal at this Council meeting.
- The Chapter 380 proposal, application, evaluation documents, analysis, information on any Exceptions being request and proposal contract are announced in a press release and made available to the public no later than the sixth day before the Council agenda item with the staff presentation. All of this information is posted to the Economic Development Department website.
- An online comment portal is setup to collect public comments. All comments received are forwarded to the City Council prior to the second Council meeting.
- The second City Council meeting includes a public hearing and City Council action.

*At the time of program creation, City staff may identify appropriate investment values to suit typical projects to best reflect the needs of the subject area. It is recommended as a starting point, however, that there is

an approval process for projects below City Manager spending authority level, a regular Council Agenda approval level, and an enhanced approval process with public engagement for higher value projects.

Stewardship:

City staff is committed to the following values in the administrative implementation and stewardship of the Chapter 380 Programs:

Efficient, Inviting, and Responsive to Market Needs: The Chapter 380 Program is a visible, accessible opportunity for the City to use public funds to encourage private entities to discover new ways to improve the Austin community and improve their business endeavors. This process must be efficient and expeditious to match the rapid pace of the business environment and minimize delay. Every effort will be made to build in appropriate timelines, clearly communicate expectations on those timelines, and carry out an efficient process of the Chapter 380 application steps.

Transparency: Each Chapter 380 Program will comply with best practice transparency measures, including producing timely and accurate reporting on all Chapter 380 contracts, supporting documentation, compliance reports, and ongoing payment information available on the City's website or other communication outlet. With each Chapter 380 program, all final public-private partnership agreements, and project information will be made available to the public via the Economic Development Department's section of the City website immediately and openly after approval.

Loan Repayment, Serving & Monitoring: Loan programs will establish repayment schedules and conditions. Each program will include status check-in timetables and points of contact for all involved parties. For ongoing project monitoring to mitigate default risk, supporting loan program documentation will be made available to all involved parties. All information will be available on the [Economic Development Department Open Portal website](#).

Reassessment:

Five-Year Programs: Each Chapter 380 program, from the creation date, will run with a standard five-year term to allow for changes in Austin's economic environment, community needs and shifting policy directives. Each program will identify high-level goals to be achieved at the end of the five-year term that connect with the current Austin Strategic Direction priorities. At the end of the five-year term, the program will be reassessed by City staff to determine if adjustments need to be made to the program evaluation method, criteria, process, administration, or whether the program's current structure achieves the intended priority goals. If not, some programs may be allowed to "sunset", phased-out or replaced with new programs. Reassessment will include an

overview of performance measured against the program's priority goals (annual and five-year) as well as City of Austin executive leadership input and community feedback. Community stakeholders will be consulted for feedback during this process. Staff will seek suggestions and identification of new needs on a five-year basis to recalibrate program priority goals to match community needs, Council objectives, and changes in Strategic Direction.

Term of Agreements: Agreements made underneath those Chapter 380 programs may have a term longer than five years. Typically 5-10 years, the term of those agreements are made to best reflect the project's timeline, investment, and job creation schedule and the City will honor those agreements until the termination of the contract. In the event a program is allowed to sunset, or program criteria is changed to reflect shifting conditions, existing agreements will be grandfathered for the remainder of the term of the project agreement

Market Conditions: "High-Impact" Projects:

High-impact projects, unique developments, and market competitive or other non-conforming projects will be considered on a case-by-case basis and within the context of the current market conditions at the time of program creation and/or project application. City staff will analyze those conditions and projects and determine if a recommendation for incentive proposal is achievable through current programs. If staff determines that the non-conforming project is attractive, justifiable and has the ability to provide significant community value, and does not fit within the structure of a current program outline, special consideration will be made to create a program to support such a project depending on feasibility and City financial bandwidth.

Public Input: Each Chapter 380 program is created with the intention to meet a specific community need and outline priority goals. If both the program and projects contained are not successful, underperforming, and/or the community need is not being met, then staff will conduct a thoughtful reassessment of the program's structure or existence. As a part of this reassessment, public input is of tremendous importance. Community stakeholders will be consulted for feedback during this process. Staff will solicit suggestions and identification of new needs on a five-year basis to recalibrate program priority goals to match community needs, Council objectives, and changes in Strategic Direction.

Annual Update & Reporting: An annual assessment will be made for the "effectiveness" of the programs and projects in reaching the intended goals. Each program will identify Program Metrics and Project Metrics to track on an annual basis that will be shared publically. Metrics vary widely depending on the program goals, but with a focus on Austin's Strategic Direction outcomes, general performance measurements could include but are not limited to;

Program Metrics:

Number of Applications Received
Number of Applications Accepted
Community Preservation
Catalytic Event Affects
Equity Measures
Transportation Impact
Affordability Measurements
Workforce Impacts
Compliance & Loan Payments
Other Strategic Direction Measurements

Project Metrics:

Metrics by Program Criteria
New Jobs Created
Jobs Retained
Job Types
Revenue Impacts
Community Benefits Achieved
Capital Investment
Other Strategic Direction Measurements

At the end of the five-year period of the program, those Annual Reports will be reviewed and used as supporting documentation to make the decision to sunset, phase-out, or revise the program structure.