CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENTS

THE RIGHT STUFF?

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CHAPTER 380 AGREEMENTS: WHAT THEY ARE ... AND WHAT THEY ARE NOT.

- CHAPTER 380 AGREEMENTS ARE NOT LIKE:

- CHAPTER 380 AGREEMENTS ARE LIKE:
WHAT IS CHAPTER 380?

• PRE-1987, IT DIDN’T EXIST.

• IN 1987 – PROP. 4 (TEXAS ASSISTANCE FOR ECONOMIC DEVELOPMENT)

• IN 1989 – CHAPTER 380 WAS ADDED TO THE TEXAS LOC. GOV’T CODE

• IT’S SHORT, BUT THE ”MEAT” OF THE STATUTE IS SEC. 380.001:

Sec. 380.001. ECONOMIC DEVELOPMENT PROGRAMS.
(a) The governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality. For purposes of this subsection, a municipality includes an area that:
   (1) has been annexed by the municipality for limited purposes; or
   (2) is in the extraterritorial jurisdiction of the municipality.
(b) The governing body may:
   (1) administer a program by the use of municipal personnel;
   (2) contract with the federal government, the state, a political subdivision of the state, a nonprofit organization, or any other entity for the administration of a program; and
   (3) accept contributions, gifts, or other resources to develop and administer a program.
CHAPTER 380: BREAK IT DOWN

• GOVERNING BODY MAY ESTABLISH AND ADMINISTER ONE OR MORE “PROGRAMS”

• INCLUDING:
  • LOANS OF PUBLIC MONEY
  • GRANTS OF PUBLIC MONEY
  • MUNICIPAL PERSONNEL
  • MUNICIPAL SERVICES

• PROMOTE STATE OR LOCAL ECONOMIC DEVELOPMENT

• STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE MUNICIPALITY
WHY INCENTIVES?

- Bring development and commercial activity that would not otherwise come to your community.
- Incentivize expansions
- Incentivize enhancements
- Incentivize more expedient developments
- Do not incentivize developments that are coming anyway
- Do not incentivize activities that a developer has to do anyway
THE “BIG ONE” IS ON THE HOOK...

- WHAT ARE THE DEVELOPER’S NEEDS?
- HOW WILL THE DEVELOPMENT IMPACT THE CITY’S INFRASTRUCTURE, RESOURCES, ETC.?
- WHAT IS THE CITY WILLING TO INCENTIVIZE?
  - PUBLIC INFRASTRUCTURE
  - LAND ACQUISITION
  - ARCHITECTURAL / LANDSCAPING ENHANCEMENTS
  - ACCEPTANCE OF CONTRIBUTIONS, GIFTS, RESOURCES
  - SALES TAX SHARING
  - ”PILOT” PAYMENTS
DOING THE DEAL:

• START WITH A NON-BINDING LETTER OF INTENT (LOI)
• NEGOTIATE ABSOLUTE TERMS EARLY (E.G., CLAWBACKS)
• ARE YOUR PLEDGED FUNDS APPROPRIATE FOR THE PROJECT?
• DRAFT THE AGREEMENT (BUT DON’T START FROM SCRATCH)
• IS IT YOUR FIRST DEAL / AGREEMENT? THAT’S OK.
  • RESEARCH SIMILAR INCENTIVES
  • TALK TO YOUR COLLEAGUES
  • OBTAIN SIMILAR AGREEMENTS
  • USE WHAT WORKS; MAKE IMPROVEMENT
LAYING THE GROUNDWORK:

• MUST CREATE A “PROGRAM”
  • A POLICY (E.G. TAX ABATEMENT)
  • A SPECIFIC CONTRACT
  • OUTLINE OF TERMS AND CONDITIONS
    • DURATION / TIME LIMITS
    • INCENTIVE CAPS
    • GEOGRAPHICAL LIMITATIONS
    • JOBS, LOCAL LIMITATIONS, CAPITAL INVESTMENTS

• USE AN ORDINANCE / RESOLUTION WHEN CREATING YOUR “PROGRAM”
GETTING APPROVAL:

• A 380 AGREEMENT INCENTIVE CAN BE A BIG DEAL
  • SOMETIME FOR SPRUCING UP THE LOCAL RESTAURANT
  • SOMETIME ASSOCIATED WITH $100M INCREASE IN TAX BASE

• 380 AGREEMENT APPROVAL SHOULD OCCUR AT A REGULAR MEETING
  • AVOIDS OPTICS OF SECRECY
  • ENSURES THAT OTHER COMPANION AGREEMENTS (E.G., CHAPTER 312) ARE PROPERLY APPROVED
  • USE AN ORDINANCE OR RESOLUTION TO AUTHORIZE EXECUTION AND INCORPORATE OTHER CONTINGENCIES
SAMPLE DEALS:

• NEW GROCERY MARKETPLACE
  • LAND GRANT (USED 380)
  • CH. 312 TAX ABATEMENT
  • SALES TAX SHARING AGREEMENT
  • DIRECT TAX PAYMENT PERMIT
  • PERFORMANCE BENCHMARKS
  • CLAWBACKS PEELED AWAY INCENTIVES LAYER AT A TIME

• NEW LNG FRACTIONATOR PLANT
  • CH. 312 TAX ABATEMENT
    • MAX: 10 YEAR / 100%
  • CH. 380 AGREEMENT
    • CITY RECEIVED ANNUAL PILOTS
    • CITY RECEIVED "PROJECT" $$$
    • CITY GAVE RELOCATION STIPENDS FOR NEW / EXISTING EMPLOYEE TRANSFERS
QUESTIONS?

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