

Council Special Committee on Economic Incentives

August 27, 2012, Meeting Q & A

1. **Question:** Mayor Leffingwell: “Can you please confirm with the companies why they are sending PDF documents instead of word?”

Answer: Companies use PDF documents in order to prevent the documents from being modified.

2. **Question:** CM Morrison: “Will you please look into the recommendation from the Construction Advisory Board regarding reporting on construction jobs and we would like a report from staff on their recommendation on this type of reporting?”

Answer: Construction Advisory Board Recommendations:

They recommend that the Economic Growth and Redevelopment Services Office (EGRSO) “include in its presentation of incentive packages to Council the following information:

- The number of construction jobs that will be created
- The average wage of the construction jobs
- The average wage of construction workers in the lowest 10% of pay
- Benefits available to construction workers
- Estimated dates for the initiation and completion of construction
- Whether the developer plans to utilize local firms to complete the construction”

The only one of these items that can be provided is the dates for initiation and completion of construction, which is already provided in the Business Information Form (BIF). All of the other items are not known at the time EGRSO is negotiating an economic development agreement, because developers often are not yet chosen or hired, and contractors not yet selected. So, there is no way to know how many jobs, what kind of wages and benefits, and plans to utilize local firms the contractors might have.

3. **Question:** CM Morrison: “Is there an allowance in State law where the City can brief Mayor and Council in Executive Session before proceeding with drafting an agreement?”

Answer: Section 551.087 of the Texas Open Meetings Act authorizes an executive session to deliberate economic development negotiations. The Act allows an executive session to: (1) to discuss or deliberate regarding commercial or financial information that the government body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).

4. **Question:** CM Morrison: “If there was a proposal to give financial incentives to small local businesses what would that look like? Do we have formal responses from small businesses as to what they would like?”

Answer: As part of *ElevateAustin*, small business owners who attended the 2010 Small Business Summit requested waivers for small businesses, similar to the waivers granted to large businesses, in order to “even playing field.” EGRSO’s Small Business Development Program (SBDP) is currently working on several options for a waiver program for small businesses.

Both the 2002 and 2009 small business needs assessment studies found that small business owners request greater access to loans and capital. EGRSO has established the *Family Business Loan Program (FBLP)*, which provides fixed asset and working capital loans at well below market interest rates. The *FBLP* is targeted to qualified small businesses that are ready to expand and create jobs.

The City also offers small businesses numerous financial incentives through rebate programs. For example, Austin Energy’s *Commercial High Efficiency Lighting Program* pays \$250 to \$300 per kiloWatt reduced on energy efficient lighting retrofits. SBDP has published the *Blue Pages* directory as a guide to the City rebates available to small businesses.

Chapter 380 agreements are not feasible for small projects. Small projects do not create enough new jobs and/or capital investment to generate a sufficient amount of new tax revenue for the City to offer an incentive.

5. **Question:** CM Martinez: “Is there a policy which states employees of companies that we give incentives to must live in Austin?”

Answer: No. In the Business Information Form (BIF) EGRSO asks the percentage of employees in each category (entry level, staff, managerial, supervisor, etc.) that will be hired locally. The fiscal impact analysis prepared using WebLOCI considers the proportion of employees likely to be living in Austin

as opposed to commuting in from outlying regions, but that figure is not company or project-specific, but based on typical commuting patterns in Austin.

- 6. Question:** CM Tovo: “Can you point us to some of the State laws governing the City of Austin regarding incentives for small businesses? Can you also provide us the study that Texas A&M participated in?”

Answer: State Law Authorizes Economic Development Incentives: Article III, Section 52a of the Texas Constitution approved by Texas voters in 1987 establishes that economic development programs are allowed as a legally authorized “public purpose.”

As previously mentioned, Chapter 380 Texas Local Government Code: Legislature enacted Chapter 380, Texas Local Government Code in 1989 in response to the passage of the constitutional amendment in 1987. Chapter 380 is broadly worded and has been interpreted to support a wide “range of incentives.” The City uses this statute as legal authority for its economic development agreements. Chapter 380 agreements are only used for projects that will create a significant number of new jobs and/or capital investment, and generate a significant amount of new tax revenue for the City. A copy of Chapter 360 is attached for your reference.

The executive summary from the Texas A&M study is attached.

- 7. Question:** CM Morrison: “Can the City of Austin legally require its employees to live in the city limits?”

Answer: As a general rule, the city may not require residency as a condition of employment with the city. Two exceptions: a city may require that candidates for office and officeholders reside in the city limits, and a city may require that department heads appointed by council reside in the city limits. This limitation is found in section 150.021 of the Texas Local Government Code.

- 8. Question:** CM Morrison: “Can the City of Austin legally require that HID to require its employees live in the city limits? Similarly, may the City require that HID hire some or all of its workers from within the City?”

Answer: This is some legal risks with an outright requirement that all or a percentage of employees be hired from within the city limits based on legal authority related to federal constitutional principles.

Specifically, a federal court in another state has ruled that a city ordinance that required businesses that received economic incentives from the city to make a good faith effort to hire 51% city residents burdened the opportunity of out-of-state

residents to seek employment with the businesses, which is a privilege protected by the US Constitution's "privileges and immunities" clause.

If the city adopted such a requirement and was challenged in court, it would be required to successfully show that the requirement is carefully tailored to cure a particular problem.

Travis County has added the following provision to its recent 381 Agreements: Travis County Residents. If the Company provides written certification to the County that 50% or more of the cumulative total of New Full-time Jobs for any Employment Year, or any year thereafter during the Agreement Term, are held by residents of Travis County, the Rebate Percentage for that year shall be increased by an additional 5%.

9. Question: CM Tovo: "Is a "but for" clause required?"

Answer: No, it is not legally required that the City provide evidence that the company would not have relocated to or expanded in Austin. Chapter 380 does not reference any similar requirement. One jurisdiction includes a policy statement that seeks to address the situation. The City of Arlington has a policy that states: A project shall not be eligible for incentives under these Policies and Procedures if a building permit has been issued for the project prior to making application in accordance with these Policies and Procedures.