ECONOMIC INCENTIVE POLICY

(ADOPTED 8/2/99 ~ REVISED: 11/5/01, 4/19/04, 9/7/04, 4/18/05, 6/5/05, 6/5/06, 10/2/17, and 7/01/19)

It is the policy of the City of Gilroy to encourage the expansion of its economic base through effective business expansion, attraction, and retention programs. The City of Gilroy provides an opportunity for qualifying companies to participate in a number of performance-based incentives, specifically (a) credits to offset development impact fees, (b) a waiver of processing fees, and (c) a deferral of impact fees. This Economic Incentive Policy will outline the terms and conditions that will apply to those applicants who are granted an incentive by the City Administrator.

It is the intent of the City Council that this policy will apply to significant new or expanding businesses and commercial/industrial centers that generate new local taxes and new jobs. It is specifically not the intent of the City Council that this policy be applied to businesses that are in direct competition with businesses that are well-represented within the City and are competing for the same revenues, unless it can be proven that they are expanding the economic and revenue base. The City intends to review any request for an incentive to ensure that the business is generating new sales tax or transient occupancy tax dollars for the City. The applicant may be required to submit a financial analysis that includes the following:

- Total taxable sales generated for the first 4 years
- Proportion and amount of sales that will be new
- Proportion and amount of sales generated by non-residents from outside of the City of Gilroy
- Distribution of new sales tax revenues to each affected taxing agency
- Negative sales tax impacts to existing retailers and/or loss of jobs to similar businesses
- Other economic information as required by staff

Development Impact Fees Offset by New Taxes

Those businesses which will be eligible for a tax offset against development impact fees may be either commercial or industrial businesses that generate new sales taxes or new transient occupancy tax) or provide new jobs for the community.

Single Businesses: In the case of sales tax and transient occupancy tax, the business must generate at least $50,000 in sales tax and/or transit occupancy tax revenues to the City annually. The total offset may be accumulated for a period not to exceed three (3) years. The three-year period will commence upon the issuance of the certificate of occupancy for the business. The tax offset must be applied against the development fees due for the project, and may not exceed the amount of development fees plus interest thereon due from the new business.

Commercial or Industrial Centers: In the case of sales tax and transient occupancy tax, a single center comprised of multi-tenant businesses may qualify for the incentive if it collectively generates an average of at least $50,001 in sales tax and transient occupancy tax revenue to the City annually. The amount of sales tax and/or transient occupancy tax generated by the multi-tenant center must: (1) exceed $50,000 annually when averaged over a three year period and (2) be equal to an amount of $2.00 or more per gross square foot of the multi-tenant center building are in excess of 25,000 square feet. The total offset may be accumulated for a period not to exceed three (3) years. The three-year period will commence one year from the issuance of the first certificate of occupancy to occupy a space at the center. The tax offset must by applied against the development fees due for the project, and may not exceed the amount of development fees plus the interest thereon due from the commercial/industrial center.

Small Business or Commercial Centers: Commercial development projects for which a building permit application is deemed complete on or before April 30, 2009 and that are not anticipated to generate sales tax or transit occupancy tax revenue in excess of $50,000 annually will be eligible in accordance with this section for a credit against development impact fees for the estimated amount of sales tax or transit occupancy tax to be generated. The tax offset must be applied against the development fees due for the project, may not exceed the amount of development fees plus interest thereon due from the commercial development project, and may be extended only to a new business, hotel or similar establishment, or to a new commercial center. The total offset may be accumulated for a period not to exceed three (3) years. The three (3) year period shall commence to run one (1) year from the date of issuance of the first certificate of occupancy in connection with the business or a space at the center. No credit shall be allowed under this section for an entity that is relocating from within the City of Gilroy.

Development Impact Fees Offset by New Jobs

Those businesses which will be eligible for a jobs offset must be industrial businesses that generate new jobs. In order to qualify, the business must create at least 25 permanent full-time jobs within two (2) years of the opening of the new business which meet the minimum conditions set out below. A credit of up to $4,000 per job may be granted for each job that has any combination of annual salary and benefits of at least Median Household Income (MHI) for the City of Gilroy. MHI is defined by the most recent Federal Census Bureau Decennial Census or American Community Survey from the date that the application for incentive is received. The number of jobs created and the salary and benefit package minimums must be met for three consecutive years following the initial attainment of the guaranteed employment level. The credit must be applied against the development fees due for the project, and may not exceed the amount of the development fees due from the new business.

If the salary and benefit package minimums are not met or are not maintained for three (3) consecutive years following the initial attainment of the guaranteed employment level, the business shall pay to the City the amount of the credit per job multiplied by the number of jobs by which the business falls short, plus interest at the highest yield rate in the City's investment portfolio.

Multi-tenant/owner Industrial Developments: Developers of multi-tenant/owner industrial buildings may be eligible for a job-offset credit if the businesses that will ultimately occupy the multi-tenant/owner building employ a cumulative total of at least 25 permanent employees that meet the minimum wage and benefit requirements stated above.

The minimum employment level must be met within two (2) years of the issuance of the first certificate of occupancy for the first building. The minimum 25 permanent employees that meet the wage and benefit package must be maintained for a minimum of three (3) consecutive years following the initial attainment of the guaranteed employment level.

DEVELOPMENT IMPACT FEE DEFERRAL

City imposed development impact fees may be deferred until the issuance of the certificate of occupancy for economic development projects. Not all projects will qualify for this incentive, as it is intended only for those developments that significantly improve or positively contribute to the City's economic development or tourism. The City Administrator, and/or the City Administrator's designee, will have the authority on the type of projects and the type of fees that qualify for the development impact fee deferral.

Single-tenant occupancy structure: The subject fees may be deferred until the building owner and/or tenant applies for a building Tenant Improvement ("TI") permit. Fees shall be paid prior to TI permit issuance.

Multi-tenant occupancy structure: The subject fees may be deferred until the building owner and/or first tenant applies for a building TI permit. Fess shall be paid prior to TI permit issuance.

IMPACT FEE PAYMENT PLAN OPTION

Certain large-scale economic development projects may qualify for an option to pay all required development impact fees in accordance with an executed payment plan agreement. Under this option, there is no waiver or reduction of required development fees, and therefore, does not constitute a use of public funds. Not all projects will qualify for this incentive, as it is intended only for those developments that are new to the City of Gilroy and significantly improve or positively contribute to the City's economic development or tourism. Relocation of a business already within the city boundaries would not be considered a "new" business to the city. Qualifying projects, at minimum, include:

Commercial or Industrial Development:

- Must be located within Gilroy city limits; and
- New development impact fees that exceed $750,000; and
- New construction for commercial and/or industrial user(s); and
- Project does not involve relocation of a business within city limits; and
- Creation of 100 or more new permanent jobs in the City.

Tourism Development:

- Must be located within Gilroy city limits; and
- New development impact fees that exceed $750,000; and
- Project does not involve relocation of a business within city limits; and
- New construction for commercial user(s); and
- Creation of 75 or more new hotel rooms in the City.

Terms for Payment Plan: The payment plan option may not burden Gilroy taxpayers, therefore, all associated costs to administer and monitor the plan (including but not limited to staff time and attorney costs) are the responsibility and obligation of the developer. Interest calculations would be based on the California LAIF (Local Agency Investment Fund) rates, and an additional 0.5% over the LAIF rate, over the life of the loan, will be applied at the time of loan initiation.

Participants in the payment plan option must enter into an agreement with the City prior to issuance of the building permit. Terms for repayment will include three equal installments. The first 1/3 payment would be due upon issuance of the certificate of occupancy. The second 1/3 payment would be due no later than one year after certificate of occupancy, and the final payment due no later than two years after certificate of occupancy.

DOWNTOWN COMMERCIAL CORRIDOR DEVELOPMENT INCENTIVE PROGRAM

The primary goal of the Commercial Corridor Development Incentive Program is to expand the tax base of the City by incentivizing investment in the downtown by establishing processing fees at a lower level to developers temporarily for a one-year period of time. The ideal result will be the attraction and retention of small businesses in the City's downtown core.

All City imposed engineering, planning, and building fees for internal staff time will be reset to 25% of the previous fee level for new or expanding commercial businesses that contribute sales tax or transient occupancy revenues to the City of Gilroy within the downtown corridor.

Applicable Fees: The Commercial Corridor Development Incentive Program applies to the following elements of the City of Gilroy's Master Fee Schedule:

- Planning Application Processing Fees
- Building Plan Check Processing Fees
- Building Permit Processing Fees
- Mechanical, Electrical, Plumbing, and Hazardous Item Fees
- Building Miscellaneous Item Fees
- Fire Prevention Processing Fees
- Building Inspection Fees
- Facility Plan Fees [Public Works / Engineering Department Fees]

Types of Construction: Eligible projects include new commercial construction, interior tenant improvements (commercial properties), facade improvements (commercial properties), Americans with Disability Act Improvements, and improvements to City streets, utilities, and sidewalks.

Description of Downtown Corridor: Eligible properties are those that abut to that portion of Monterey Street beginning at the intersection of First Street and ending at the intersection of Tenth Street.

GENERAL TERMS AND CONDITIONS

The recipient of an economic incentive under this policy must enter into an agreement with the City of Gilroy to perform the terms and conditions under which the incentive is provided. Each agreement must be recorded against the property in the office of the Santa Clara County Clerk/ Recorder, and is binding on successors-in-interest. The provisions stated below are applicable to all economic incentive agreements.

Financial Analysis Required

Each applicant for an economic incentive shall submit an economic analysis to the City for review. The scope of the financial analysis shall be determined by the City Administrator and may include, but need not limited to, an Executive Summary that is less than 6 months old, management profile, description of the applicant's or business's financial condition and products and services, and market analysis (of the market in which it competes). The financial analysis also shall include information sufficient to reasonably determine the impact of the proposed development on existing businesses within the City.

Approval Process

Business owner or commercial/industrial center developer/owner shall submit sufficient information, as determined by the City Administrator, to allow the City to ascertain whether the business or businesses qualify for an incentive. The Economic Incentive Review Committee, which will be comprised of representatives from the Community Development and Finance Departments, will review the information and determine whether the business/es qualify for the Tax or Job Credit component or for a deferral of development impact fees. The committee will make a recommendation to the City Administrator.

The City Council has delegated the authority to decide whether to grant or deny an economic incentive to the City Administrator, with a right of appeal to the City Council. Any approved incentive amount will also be noted in relevant development permit staff reports.

The Goals and Objectives of Economic Development

Each economic development incentive agreement shall include the goals and metrics specific to the project. Goals and measurable objectives create a context and accountability for the use of economic development incentives. Common goals used in economic development include: expansion of tax base, job creation, development of targeted economic sectors, business retention and/or recruitment blight mitigation, improving economically distressed neighborhoods, housing stock creation, and environmental/infrastructure improvements.

Financial Incentive Tools and Limitations

An economic development incentive agreement shall define the types of incentives the jurisdiction is permitted to use according to this policy and any limitations on their use (e.g., maximum dollar amounts, time limits, type of project that is eligible). For example, governments may choose to grant an entitlement to any firm that meets minimum qualifications, or may choose to provide incentives based on an assessment of individual firms.

When the agreement is presented along with a staff report to the City Council, the report should identify the funding sources for the incentives and ensure the use of incentives is not in conflict with the city's established fiscal policies.

Evaluation Process

A clearly defined evaluation process, with defined measures and timelines, should be outlined in an economic development incentive agreement for the purposes of consistency and transparency. When the agreement is presented along with a staff report to the City Council, the report should identify the evaluation process and when the City Council will receive a retrospective report that evaluates the effectiveness and efficacy of the incentive agreement. Evaluation activities and factors typically include:

- How a proposal measures up to the criteria a jurisdiction has established to evaluate proposals. The criteria should align with the jurisdiction's goals and objectives of economic development and guidance on financial incentive tools and their limitations.

- A comparison of the cost of the incentive against the benefits that the project is expected to produce.

- An evaluation of the impact on the tax base and revenue. This should include the impact on the tax base and revenue of the jurisdiction offering the incentive, but may also include the impact on other tax jurisdictions, especially where the incentive may have the potential to reduce the tax revenue of another jurisdiction.

- Analysis of the impact of a project on existing businesses. Projects that simply shift economic activity from one area of the community to another may not represent good investments of public funds.

- A determination of whether the project would proceed if the incentive were not provided. Local economic development incentives exist to induce private economic activity where it would have not otherwise occurred.

- The City may include in the agreement a list of required documentation for the economic development evaluation and the officials who are a part of the review team.

Performance Standards

An economic development incentive agreement shall require that specific performance standards, that are either quantitative or include an objective assessment that can determine if the standard is met, be established for each project receiving incentives. The program should also outline remedies the City would use in the event that specific performance standards are not achieved. Performance standards help a jurisdiction gauge the effectiveness of specific economic development projects. Performance standards also allow jurisdictions to avoid payment of incentives for projects that do not meet the performance standards. If the proper contractual provisions are in place, performance standards could even help jurisdictions to recover the cost the incentive if the financial benefits that the incentive was predicated on do not materialize.

Monitoring and Compliance

Each developer or business owner that is given a credit against development impact fees pursuant to this Policy shall pay all City administrative cost associated with the economic incentive agreement and compliance monitoring, and will deposit with the City funds sufficient to pay for the City's estimated costs of the monitoring or will otherwise provide security for the costs in a manner satisfactory to the City.

The monitoring process should examine performance standards relative to each economic development agreement and determine whether the goals for each project are achieved within the defined timeframe.

Developers and business owners that are granted a credit against development fees will be required to prepare and submit an annual audit report to the satisfaction of the City's finance Director. The developer will be financially responsible for the preparation of the annual audit for each year of the economic incentive agreement. The City Finance Director shall determine the scope of the audit and have the right to approve the certified public accounting firm that is retained to prepare the audit. Prior to the execution of an economic incentive agreement, the developer will be required to submit verification to the City that documents each business's willingness and obligation to release annual payroll or financial records as required for the preparation of the annual audit. Failure to provide the annual audit in any year of the economic incentive agreement will result in termination of the incentive, making the unpaid amount of the development impact fees and interest thereon immediately due and payable, and at the City's option, may result in the forfeiture of the security described below.

Security

To ensure that the guaranteed employment level is met throughout the minimum three (3) year period or that the required sales or transit occupancy tax is generated, the developer will provide security to the City until such time that all amounts due under the economic incentive agreement are paid in full. The amount of the security will be equal to the amount of the economic incentive or development impact fee credit, plus interest at the highest yield rate in the City's investment portfolio. The security may be a bond, a letter of credit, a bank account, or a certificate of deposit. The security must be drawable solely by the City of Gilroy without other approval, must be non-cancelable and automatically renewed, and must be approved by the City Attorney.

Prevailing Wage and Related Requirements

The City's grant of credit toward development impact fees constitutes the payment of public funds toward the construction of the building(s) that are subject of the economic incentive, causing the design, installation and construction of the building(s) to be a "public work," as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, to which section 1771, relating to prevailing wages, applies. Each agreement executed pursuant to this Policy shall contain a condition requiring the developer to cause the work to be performed as a "public work," unless otherwise provided by state law.