

Chapter 380: Recovery Lease Incentive Program

City of Austin – Economic Development Department

Background

On October 1, 2020, the Austin City Council approved Ordinance No. 20201001-052, which authorized the development of three grant programs – collectively referred to as Save Austin’s Vital Economic Sectors (SAVES) – to provide immediate relief for live music venues, art venues, restaurants and bars, and childcare facilities.

In Resolution No. 20200917-062 passed on September 17, 2020, City Council also instructed staff to “explore and identify additional ways that the city can provide support to these sectors and businesses within these sectors in addition to the funding and financing options addressed above. These may include, but not be limited to, revising the Chapter 380 program to expand its application...” Chapter 380 refers to the state statute that allows cities to create programs for making loans and grants of public money and provide personnel and services of the municipality to promote state or local economic development and to stimulate business and commercial activity in the municipality. The City of Austin adopted a new Chapter 380 Policy and a corresponding incentive program, the Business Expansion Incentive Program, on August 30, 2018 through Resolution No. 20180830-056 and Ordinance No. 20180830-057.

The Chapter 380 Policy, which promotes job creation, business expansion, and corporate relocations, does not adequately address the needs of the business community impacted by the COVID-19 pandemic. Accordingly, Council has directed staff to temporarily revise the existing Chapter 380 Policy to create programs that support restaurants, live music venues, art venues, and childcare facilities to help them stabilize and recover over the next year.

Council also provided guidance on 380 Program revision on October 15th, directing staff to “include provision of legal and financial expertise for businesses who are seeking relief through the programs to assist in such matters as extension of rental relief and other relief that enables the businesses to survive long-term.” The framework for providing for legal and financial consultation across programs is under development, but revised 380 processes will include this component.

Council has also directed recipients of SAVES program funding to demonstrate a “good faith effort to work with their property owner to negotiate a more favorable agreement.” It may be appropriate for this program to coordinate with other SAVES programs to incentivize these lease reductions.

Recovery Lease Incentives (RLI)

The Recovery Lease Incentive (RLI) offers commercial property tax reimbursements to property owners in exchange for renegotiating leases with small business to address arrears and long-term affordability in order to recover from the COVID-19 crisis.

Benefits

A participating property owner will be entitled to a City of Austin property tax reimbursement for the portion of property associated with the participating commercial lease. This reimbursement will be given following successful completion of contract terms, with lease documentation and verification by the tenant. Reimbursements will be available for one (1) year, with potential for annual renewal.

| *TENTATIVE* Benefit Schedule | | |
|-------------------------------------|-----------------------------------|--|
| % Reduction in Rent | Property Tax Reimbursement | Reimbursement Period (Amortized if necessary) |
| 50% | 100% | 14 months |
| 60% | 100% | 16 months |
| 70% | 100% | 18 months |
| 80% | 100% | 20 months |
| 90% | 100% | 22 months |
| 100% | 100% | 24 months |

*Subject to change

This reimbursement will be given following successful completion of contract terms, with lease documentation and verification by the tenant. Reimbursements will be available for one (1) year, with potential for annual renewal.

While this program is focused on reimbursing real property taxes associated with commercial leases, property taxes associated with business personal property of the commercial tenant may also be reimbursed. Tenants seeking business personal property tax reimbursements in addition to rent relief shall satisfy the requirements expressed herein. Property taxes associated with non-business assets will not be eligible for reimbursement. Additional criteria may apply.

Eligible Applicants

Commercial property owners **and** commercial businesses that lease a facility may apply to the RLI program.

Eligible commercial business tenant applicants must meet the following conditions:

- Demonstrate year-over-year revenue loss of 25% or more
- Be headquartered in a City of Austin Council District
- Operates from a publicly-facing, physical building
- Employ 75 full time equivalent (FTE) employees or fewer as of October 1, 2020
- May be organized as partnerships, sole proprietorships, LLCs, cooperatives, or other business structures
- Provide one (1) year of federal income tax returns
- Be a target sector of the SAVES resolution: restaurants/bars, live music venues, art venues) or an adjacent sector (including small retail in a restaurant and tourism-oriented district)

Eligible Criteria

Commercial property owners **and** the respective commercial business must renegotiate an existing lease that helps to mitigate the financial impact of COVID-19 and supports long term affordability.

A renegotiated lease shall:

- Extend for at least 12 months from date of execution;
- Be mutually agreed upon by the tenant and landlord; and,
- Provide a reduction in current terms, rather than a deferment of current rent.

The form of rent reduction may take, but not be limited to, the following forms:

- Addition of a 12-month amendment to current lease terms for a percentage reduction in rent, with an option to renew;
- Addition of a 12-month amendment to current lease terms making rent equivalent to a portion of sales rather than a base rate, with an option to renew; or,
- Address deferred commercial rent incurred between March 1, 2020, and the agreement start date.*

*If the property owner has deferred rent, the property owner and tenant may agree to use deferred months' rents toward the total 12 months of the first renegotiated lease.

Activity that **does not** qualify for a property tax reimbursement:

- Rent incurred prior to March 1, 2020
- Commercial rent without proof of reduced lease terms for at least twelve (12) months, verified by the commercial tenant
- Retroactive repayment of already paid or forgiven commercial rent

Obligations and Required Documentation

The following documents are required at time of application:

- Signed inducement statement from the commercial tenant asserting that but for this incentive program, their business would close, resulting in job loss for all employees
- Lease with specific terms (a final, legally binding lease signed by both parties must be provided to the City of Austin to ensure compliance and obtain reimbursement)
- Affidavit certifying that the commercial business has suffered a gross revenue loss of at least 25% as March 1, 2020 to date of application
- Payroll record of commercial tenant (to document number of employees)
- Registration with the Secretary of State or County Clerk for property owner and commercial tenant
- RLI application

Upon performance and at the end of the term, commercial property owners and the respective tenant shall sign off that the terms of the renegotiated lease were complied to by both parties, regardless of a transfer of property ownership during that term.

In the event that a commercial tenant closes during the term of the agreement, the property owner would be eligible for prorated property tax reimbursement based on the number of months of the term fulfilled, assuming all other conditions of the lease had been fulfilled. Verification of contract compliance by the commercial tenant would still be required in this case. Following this verification, the next commercial tenant for the space may be an eligible business for the purposes of this program.

Fiscal Impact

The City will assume the following inducement argument holds true for all transactions executed under the RLI:

“But for the financial assistance provided to the commercial tenant by incentivizing rent relief, the business in question would cease to exist, as would the jobs that relate to that enterprise.”

The inducement argument can also be represented by the following equation:

$$\begin{array}{r} \text{Property tax and sales tax generated by the business} \\ + \text{ Indirect impact of establishment} \\ + \text{ Property tax and sales tax induced by employee spending} \\ (-) \text{ Property tax reimbursement/abatement} \\ \hline \text{Positive Fiscal Impact} \end{array}$$

Depending on the preferred reimbursement period and timing of the incentive payment, there are two distinct implications on the City’s budget:

- If an incentive payment is made **at time of contract execution**, the commercial landlord would receive a reimbursement amount equal to **CY 2020’s** real property tax (and/or business personal property tax). This would require an allocation of funds from **this** fiscal year’s budget.
- If an incentive payment is **differed to the end of the term of the agreement**, the commercial landlord would receive a reimbursement amount equal to **CY 2021’s** real property tax (and/or business personal property tax). This would require an allocation of funds from **next** fiscal year’s budget. These costs may also be covered by additional federal aid for recovery if that is made available.