

ORDINANCE NO. 16-051

AN ORDINANCE OF THE CITY OF GALVESTON, TEXAS, ESTABLISHING AN ECONOMIC DEVELOPMENT PROGRAM PURSUANT TO CHAPTER 380 OF THE LOCAL GOVERNMENT CODE; SPECIFYING CRITERIA FOR AWARDS UNDER THE PROGRAM; PROVIDING FOR THE ADMINISTRATION OF THE PROGRAM BY THE CITY MANAGER OR HIS DESIGNEE; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Texas Constitution Art. 3 Section 52-a authorized the Legislature to provide for the creation of programs and the making of loans and grants of public money for certain specified public purposes; and

WHEREAS, pursuant to such authorization, the Legislature passed Texas Local Government Code Chapter 380 which authorizes municipalities to establish certain economic development programs (hereinafter referred to as a "Chapter 380 Program"); and

WHEREAS, Texas Local Government Code §380.001, permits a municipality to establish and provide for the administration of one or more Chapter 380 programs to promote state or local economic development and stimulate business and commercial activity in the municipality, including programs for making loans and grants of public money and providing personnel and services of the municipality; and

WHEREAS, Texas Local Government Code §380.001, allows the governing body of a municipality to administer a Chapter 380 program by the use of municipal personnel, and may accept contributions, gifts or use other resources to administer a Chapter 380 Program; and

WHEREAS, the staff of the City of Galveston has recommended the creation of a Chapter 380 Program and guidelines for its administration to provide funds to qualified applicants, upon approval by City Council, and on a case by case basis; and

WHEREAS, in order to establish guidelines for Chapter 380 assistance eligibility, the staff of the City of Galveston has proposed the City Council adopt the "Criteria for Chapter 380 Assistance" as set forth in substantial form, as Exhibit "A" to this Ordinance, and

WHEREAS, the City Council of the City of Galveston has determined that a Chapter 380 Program will promote state and local economic development and stimulate business and commercial activity within the City of Galveston; and

WHEREAS, the City Council of the City of Galveston deems it to be in the public interest to create a Chapter 380 Program for the City as provided below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GALVESTON, TEXAS:

SECTION 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. The City Council hereby establishes the City of Galveston Chapter 380 Program under the provisions of Texas Local Government Code Chapter 380. The purpose of the Chapter 380 Program is to promote state or local economic development and to stimulate business and commercial activity in the City of Galveston through the restoration and/or rehabilitation of historic or other structures within the City of Galveston. To that end, the "Criteria for Chapter 380 Assistance" in its substantial form is set forth as Exhibit "A" to this Ordinance and is expressly adopted by the City Council of the City of Galveston.

SECTION 3. The 380 Program shall be administered by the City Manager or the City Manager's Designee. The City Manager is authorized to develop such forms and procedures deemed necessary to efficiently administer the 380 Program consistent with the criteria set forth in Exhibit A. The recommendation for an award of assistance under the 380 Program shall be made by the City Manager or his designee to the City Council. A project not within the area defined in Exhibit "A" may be proposed for assistance if, in the opinion of the City Manager or his designee, the project is meritorious and otherwise meets the goals of the 380 Program.

SECTION 4. The final determination to make an award of assistance under the 380 Program will be made solely by the City Council of the City of Galveston. The determination to make an award of assistance under the 380 program is made by the Council as a governmental function and is not to be considered as a proprietary function. The determination to make an award of assistance under the 380 Program shall be considered to be an offer of assistance which will be withdrawn if the Applicant does not issue a notice to proceed with construction within 270 days after the effective date of the authorizing Ordinance.


SECTION 5. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

SECTION 6. All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

SECTION 7. In accordance with the provisions of Sections 12 and 13 of Article II of the City Charter this Ordinance has been publicly available in the office of the City Secretary for not less than 72 hours prior to its adoption; that this Ordinance may be read and published by descriptive caption only.

SECTION 8. This Ordinance shall become effective on July 1, 2016 upon its adoption and publication in accordance with the provisions of The Charter of the City of Galveston.

APPROVED AS TO FORM:


DONALD S. GLYWASKY
CITY ATTORNEY

I, Janelle Williams, Secretary of the City Council of the City of Galveston, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the City Council of the City of Galveston at its Regular Meeting held on June 23, 2016, as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this 27th day of June, 2016.



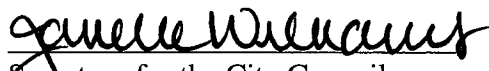

Secretary for the City Council
of the City of Galveston

EXHIBIT A

PROGRAM CRITERIA FOR ECONOMIC INCENTIVE PROGRAMS UNDER TEXAS LOCAL GOVERNMENT CODE CH. 380 IN THE CITY OF GALVESTON

1. Purpose:

The City of Galveston conducts this program under Texas Local Government Code Ch. 380. The purpose of the program is the promotion of state or local economic development and stimulate business and commercial activity in the City of Galveston through the reconstruction and/or rehabilitation of existing structures, primarily within the downtown area between 19th and 27th Streets and Harborside to Broadway, with an emphasis on preserving the historic character of the area and structures. Similar projects outside the defined area may be considered if the City Council determines them to be of historic interest to the City.

2. Incentives available under the 380 Program:

A grant of funds not to exceed 75% of the cost of reconstruction/rehabilitation of an existing structure. Funds will come from the following sources:

- a) An amount equal to the portion of the city's increased ad valorem tax over the base year for a maximum of twenty years.
- b) An amount equal to the portion of the city's increased personal property taxes over the base year, for a maximum of twenty years.
- c) An amount equal to the City's portion of the Texas sales tax generated by the applicant, for a maximum of twenty years.
- d) Waiver of permit and license to use (LTU) fees during the period of construction not to exceed two years.

3. Other incentives not affected:

Historic tax credits available from the local, state or federal government shall not be reflected in the cost of rehabilitation/reconstruction. An applicant may apply and receive those funds independently of any award by the City under its 380 Program.

4. Award of incentive amounts:

The incentive amounts shall be based on a percentage of the cost of rehabilitation or reconstruction. The initial amount of the award will be based on projected project costs. At the conclusion of the project the applicant shall certify to the City the final cost of rehabilitation/reconstruction.

The amount of the award which may be made by the City Council will be based on the nature of the rehabilitation/reconstruction projects determined using the factors below:

- a. Up to 75% of the final cost of reconstruction/rehabilitation:

This amount may be granted for projects for the reconstruction/rehabilitation of a building with preservation of any cast iron facades on the exterior of the structure as well as distinguishing architectural features on the exterior of the building.

- b. Up to 50% of the final cost of reconstruction/rehabilitation:

This amount may be granted for projects for the reconstruction/ rehabilitation of the building with no cast iron façade existing on the exterior; but which does include reconstruction/rehabilitation of distinguishing architectural features on the exterior of the building.

- c. Up to 25% of the final cost of reconstruction/rehabilitation:

This amount may be granted for projects for the total reconstruction/rehabilitation of the interior of the building with only minimal restoration of the exterior of the building. A minimal restoration would be evidenced by less than 10% of the project budget being dedicated to the exterior of the building.

The determination of whether features on the exterior of the building are “distinguishing architectural features” will be made by the City Council based on the recommendation of the City Manager or his designee. “Distinguishing architectural features” include, but are not limited to decorative brickwork, cornices, friezes, lintels or other moldings.

5. Application:

Proposer shall submit a project proposal to the City Manager or his designee. The City may promulgate forms for use by the applicant. The proposal will provide a description of the reconstruction/rehabilitation to be done and demonstrate how it will preserve the historic character of the structure in conformity with structures in the area.

The proposer will submit a project budget and projected project schedule as part of the application.

The proposer will make a statement which incentives are being requested from the City and specify the incentive percentage sought in accordance with the description set out above. The proposer is not required to select all the incentive opportunities above.

The City Manager or his designee will make a recommendation as to the incentives which should be made available to the proposer. The City Manager shall also make a determination of the total maximum dollar amount of incentives to be provided using the

formula of the total project budget multiplied by the amount of percentage of incentive. The recommendation will be submitted to City Council through the City Manager.

City Council will make the final determination whether to enter into a 380 agreement with a given applicant.

6. Receipt of funds by the applicant under the 380 Program:

To obtain the incentives under the 380 agreement, the applicant must make periodic requests as follows:

- a) Permit/License To Use (LTU) fees: If the 380 agreement provides for the waiver of permit and/or LTU fees, the proposer shall at the time of making application for the permit or LTU, a statement that the fees have been awarded by council as an incentive and no payment is due. The department issuing the LTU shall calculate the amount of permit or LTU fees that would have been paid absent the grant of the incentive, and that calculated fee amount shall be a charge against the total amount of incentives granted.

Incentives related to increase of value for ad valorem taxes: On an annual basis, the proposer shall submit an invoice for a payment. The proposer shall provide the Central Appraisal District (CAD) value for the building for the year in which the project was approved. The proposer shall also submit the CAD value of the property for the year for which payment is sought. The amount of payment shall be calculated on the increase of ad valorem valuation multiplied by the city ad valorem tax rate. The application shall be delivered to the City Manager or his designee who will verify the amount of increment due the proposer. The Manager shall issue an instruction to the Finance Department to issue payment to the applicant in the amount calculated. The award shall be calculated only as to City ad valorem taxes alone.

- b) Incentives related to increase of value for personal property taxes: On an annual basis, the proposer shall submit an invoice for a payment. The proposer shall provide the CAD value for the personal property in the building for the year in which the project attained substantial completion. The proposer shall also submit the CAD value of the personal property for the year for which payment is sought. The amount of payment shall be calculated on the increase of a personal property valuation multiplied by the city personal property tax rate. The application shall be delivered to the City Manager or his designee, who will verify the amount of increment due the proposer. The Manager shall issue an instruction to the Finance Department to issue payment to the proposer in the amount calculated. The award shall be calculated only as to City personal property taxes alone.

- c) Incentives related to sales tax: The proposer shall sign all forms necessary for the City to access sales tax data held by the State agency charged with the responsibility of collection of sales tax (currently the State Comptroller Office). On a yearly basis, the applicant shall make application for the city portion of the state sales tax the proposer collected in the previous 12 months. The application shall be delivered to the City Manager or his designee who shall verify the amount of the city's portion of sales tax generated during the prior years. Upon verification, the Manager shall issue an invoice to the Finance Department with direction a check be prepared for the proposer.
- d) Both the Finance and Development Services Departments shall record each credit given to the proposer to ensure that the total amount of incentives awarded to the proposer is not exceeded.
- e) At the end of the twenty year life of the 380 agreement, the agreement will expire on its own with no action required of either party.

7. General Program considerations:

After receipt of an Application for participation in the 380 Program, the City Manager or his designee and the applicant will enter into an agreement setting forth all the terms and conditions of the 380 agreement; the agreement will be effective upon approval of the City Council.

Incentives awarded an applicant under a 380 agreement shall expire upon sale of the building.

Incentives awarded an applicant under a 380 agreement shall remain available to the applicant for a period not to exceed twenty years. This 380 Program is a Performance-Based Incentive Program, with incentive funds being based on actual net increases in the ad valorem, personal property or sales taxes over the base year. Failure to achieve a net increase in ad valorem, sales or property taxes as identified in the agreement would result in zero incentive reimbursement to the applicant. No guarantee is made by the City that the total of the cost of reconstruction/rehabilitation will be recovered by the applicant through the receipt of funds under the 380 agreement.

If reconstruction/rehabilitation of the project is not completed within two years of the notice to proceed, the 380 agreement will automatically be cancelled. The City Council will have discretion to enlarge the two year period on recommendation of the Manager.