

DULUTH BUSINESS SUBSIDY CRITERIA

1. **PUBLIC PURPOSE.** Whenever the City of Duluth (the “City”) or the Duluth Economic Development Authority (“DEDA”) invests public funds or agrees to voluntarily forfeit tax or other revenue that provides preferential benefit for private development projects, those projects should serve a public purpose and create a return on taxpayer investment. The return on investment may come in many forms including increased tax base, creation of high quality jobs, or other benefits.

2. **POLICY DESCRIPTION**

- a. The purpose of this policy is to establish criteria regarding the use of business subsidies by the City under the general Business Subsidy Act pursuant to Minn. Stat. §§ 116J.993 through 116J.995 (the “Business Subsidy Act”) This policy and the criteria shall be used to guide processing and reviewing applications requesting business subsidy assistance. A copy of this policy shall be submitted to the Minnesota Department of Employment and Economic Development or a successor entity (“DEED”).
- b. The City may deviate from its criteria with good cause as evidenced by a vote of at least six (6) City Councilors. Pursuant to the requirements in Minn. Stat. § 116J.994, if the City amends or waives sections of this policy, they must hold a public hearing and document in writing the reason for the deviation, attaching a copy of the document to its next annual report to DEED.
- c. Incentives will be offered based on the nature of the project and the benefits to the City. Meeting all or a majority of the criteria does not mean that a business subsidy will be awarded or denied by the City. Furthermore, the approval or denial of one project is not intended to set precedent for approval or denial of another project.

3. **DEFINITIONS**

- a. “Business subsidy” or “subsidy” or “assistance” means a City grant, contribution of personal property, real property, infrastructure, the principal amount of a loan at rates below those commercially available to the recipient, any reduction or deferral of any tax or fee, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business. Specifically, a business subsidy includes loans, forgivable loans, tax increment financing (TIF), tax abatements or other tax reduction or deferral, guarantees of payment, contributions of property, land or infrastructure, preferential use of

governmental facilities, valued at \$150,000 or more.

The following forms of assistance are not a business subsidy:

- i. a business subsidy of less than \$150,000;
- ii. assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, location, or similar general criteria;
- iii. assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services and those services are not structured to benefit a single business;
- iv. public improvements to buildings or lands that do not principally benefit a single business or defined group of businesses at the time the improvements are made;
- v. clean up of property polluted by contaminants that do not principally benefit a single business or defined group of businesses at the time the improvements are made;
- vi. federal CDBG and HOME Program assistance;
- vii. assistance provided by the City where the assistance is determined by, granted, by and accountable to another entity, and the City acts merely as a financial agent and passes the assistance through to the recipient;
- viii. purchase of services at fair market value;
- ix. property or land that is sold at fair market value.

b. "City" means the city of Duluth or any agency, board, commission, department or other entity thereof, including the Duluth economic development authority (DEDA) and any entity established or controlled by DEDA. City does not mean Spirit Mountain authority, Duluth airport authority, Seaway Port Authority of Duluth, Duluth housing and redevelopment authority, and Duluth Entertainment and Convention Center Administrative Board.

c. "Business" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association or other entity that may employ individuals or enter into contracts. A government entity is not considered a business.

4. **BUSINESS SUBSIDY CRITERIA.** In accordance with this policy, the City will assess and measure applicants for business subsidies based on the following business subsidy criteria

a. **Public Purpose Criteria.** The project must meet at least two of the following five public purpose criteria:

- i. High quality jobs. Increase the number and diversity of jobs that offer stable, predominantly full-time employment with high quality wages and benefits;

- ii. Job retention. Retain local jobs in Duluth where the loss is imminent and demonstrable;
 - iii. Diversify Duluth's Economy. Enhance the economic diversity of the city and the City of Duluth's tax base;
 - iv. Quality of Life. Enhance the quality of life of the City's residents by investing in neglected neighborhoods or business areas, or stimulating the redevelopment of underutilized, blighted or obsolete land uses including rehabilitation or demolition of commercial and industrial areas in the city and substandard structures and contaminated land;
 - v. Tax Base. Expand Duluth's tax base and realize a reasonable rate of return on the public investment.
- b. **Minimum Wage.** All recipients of a business subsidy must pay wages to both current and new employees compensation that on an annualized basis is, at minimum, equal to at least 110 percent of the federal poverty level for a family of four, or a living wage as set forth in Section 2-137 (Living Wage) of the Duluth City Code, whichever is greater.

Additionally, a recipient of a business subsidy shall be required to cause the laborers, mechanics or apprentice-trainees employed directly upon the work site to be paid the prevailing wage rates as set forth in Section 2-25 (Wage Rates and Hours for City Projects) and 2-28 (Project Labor Agreements) of the Duluth City Code.

A qualifying hotel/restaurant recipient of a business subsidy must agree to the procedures for determining employee preference regarding whether to be represented by a labor organization as defined in Section 2-27 of the Duluth City Code (Labor agreements in hotel/restaurant development projects).

- c. **Specific Goals.** The project must have measurable, specific and tangible goals as they relate to the stated public purpose(s).
 - d. **Public Hearing.** Before granting a business subsidy of \$150,000 or more, the City or DEDA, as applicable, must provide public notice and a public hearing on the subsidy.
 - e. **Report to the Council.** Before the City Council or DEDA reviews a business subsidy of \$150,000 or more, a report (see attachment to this policy) shall be co-signed by the applicant for the business subsidy and submitted to Councilors, or DEDA Commissioners, with sufficient notice prior to the vote for them to exercise their due diligence.
5. **PREFERENTIAL PUBLIC BENEFIT CRITERIA.** Preferential public benefit criteria identify particular priorities for the City. Businesses that meet any or all of the following preferential

public benefit criteria shall be given special consideration for receiving assistance, although no project is guaranteed assistance.

- a. **Locally Owned Businesses.** Preference shall be given to locally owned businesses (businesses that are located within the city limits) or to projects that make extensive use of locally owned businesses and workers residing within the City for support.
- b. **Workforce development and hiring low-income, unemployed and hard-to-employ residents.** Preference shall be given to businesses with a commitment and plan to hire people earning at or below 200% of the poverty line, provide workforce development, apprenticeship and career pathways, or employ unemployed and hard-to-employ residents.
- c. **Protected Class Business Owners.** Preference shall be given to businesses owned in whole or in part by women or persons who are defined as socially disadvantaged in 13 CFR124.103.
- d. **Other community benefits.** Preference shall be given to businesses that provide other community benefits, such as energy efficiency and renewable energy, affordable housing construction or renovation, developing desired and accessible public spaces, locating businesses and jobs in economically disadvantaged neighborhoods, or other benefits that enhance the overall quality of life in the City.

6. **OTHER CONSIDERATIONS.**

- a. The project must be in accordance with the Comprehensive Plan and Zoning Ordinances, or required changes to the plan and ordinances must be under active consideration by the City at the time of approval.
- b. Prior to approval of a business subsidies financing plan and when deemed appropriate by the City, the developer or business shall provide any required market and financial feasibility studies, appraisals, environmental data, information provided to private lenders for the project, and other information or data relative to the successful operation of the project that the City or DEDA or its financial consultants may require in order to proceed with an independent underwriting. If requested by the City, the developer shall provide adequate financial guarantees to ensure completion of the project, including, but not limited to: assessment agreements, letters of credit, cash escrows, and personal guaranties.
- c. A developer requesting business subsidy assistance must demonstrate, to the satisfaction of the City, sufficient cash equity investment in the project.

7. **SUBSIDY AGREEMENT.** A business subsidy recipient must enter into a subsidy agreement

with the City, as applicable, which includes, but is not limited to, the following:

- a. Description of the subsidy;
- b. Statement of the reason why the subsidy is needed;
- c. Statement of the public purposes as defined in Section 4(a) of this policy (Public Purpose Criteria);
- d. Measurable, specific and tangible goals for the subsidy connected to the public purpose;
- e. Description of the financial obligation of the recipient if the recipient does not fulfill the agreement and/or the goals are not met, including any required repayment of the subsidy pursuant to Minn. Stat. § 116J.994, Subd. 6;
- f. Commitment to continue operations at the site where the subsidy is used for a minimum of five (5) years after receipt of all financial assistance;
- g. Name and address of parent corporation, if any;
- h. List of all financial assistance by all grantors for the project.

8. REPORTS.

- a. **Reporting.** A recipient of a business subsidy of \$150,000 or more must submit an annual, standardized report to the City on its progress toward business subsidy agreement goals, such report to be reported out to the City Council on an annual basis.
- b. Pursuant to Minn. Stat. § 116J.994, Subd. 7, certain recipients of business subsidies of \$150,000 or more must report the information required.
- c. Reporting by the City, as applicable, to DEED is required for financial assistance of \$25,000 or more and business loan or loan guarantees of \$75,000 or more unless specifically excluded in the Business Subsidy Act. Other financial assistance that is excluded from the definition of “business subsidy” may require reporting by recipients pursuant to Minn. Stat. § 116J.994, Subd. 7(c).
- d. The recipient must provide the required reporting data to the City, as applicable, by March 1 for the preceding year.
- e. Reporting is required for two (2) years after the “benefit date” as defined in the Business Subsidy Act or until goals specified in the Business Subsidy Agreement are met, whichever is greater.

9. BUSINESS SUBSIDY AGREEMENT PRE-APPROVAL REPORT TO COUNCIL

- a. A report will be filled out by the City and co-signed by the applicant. It shall be provided to the City Council (or DEDA) with sufficient time for review before

discussions over business subsidy approval. The development agreement (if completed) and any other relevant supporting materials shall be included with this standardized report.

- b. Purpose. The City Council (and DEDA) has an obligation to exercise its due diligence in determining if a specific project meets a public purpose; has measurable, specific and tangible goals; is feasible; represents a prudent investment of public money; and meets the economic development priorities and enhances the general quality of life of the City. In order to exercise its due diligence, City Councilors (and DEDA Commissioners) require a report summarizing the following basic information to be presented to City Councilors along with any project agreement submitted for their review and/or approval of \$150,000 or more.
- c. The report will include:
 - i. Business subsidy recipient information
 1. Name of Business or Organization
 2. Address:
 3. City/State:
 4. Does the recipient have a parent corporation? Yes/No If yes, what is it?
 5. Did the recipient relocate as a result of signing this agreement? Yes/No If yes, provide a brief explanation.
 - ii. Summary agreement information
 1. Brief description of the proposed project
 2. Total value of proposed project
 3. Summary of type(s) of subsidy and total dollar value for each
 - a. Type of assistance
 - b. Grantor of assistance
 - c. Total dollar value of assistance
 4. What other financing avenues were pursued?
 - iii. Applicability of current Duluth and State laws
 1. Is this project covered under Duluth's Prevailing Wage law as defined in Article 2, Section 2-25? If not, state the specific applicable exclusion.
 2. Is this project covered under Duluth's Project Labor Agreement law as defined in Article 2, Section 2-29? If not, state the specific applicable exclusion.
 3. Is this project is covered by Duluth's Living Wage law as defined in Article 26, Chapter 2 of the Duluth City Code? If not, state the specific applicable exclusion.
 4. Is this project is covered by the business subsidy statute as defined in Minnesota Statutes 116J.993-.995 and subject to reporting? If not, state the specific applicable exclusion listed under Minn. Stat. §

116J.993, Subd. 3, and Minn. Stat. § 116J.994, Subd. 7.

- iv. Public purpose and public benefit criteria
 - 1. Public Purpose Criteria. State which two (minimally) of the five public purposes this project meets with a brief explanation of why it the proposed project meets this criteria.
 - a. High quality jobs.
 - b. Job retention
 - c. Diversify Duluth's economy
 - d. Quality of life
 - e. Tax Base
 - 2. Preferential Public Benefit Criteria. Which other preferential public benefit criteria does this project meet, if any? Provide a brief explanation of how it meets the criteria.
 - a. Locally owned businesses
 - b. Workforce development and hiring low-income, unemployed and hard-to-employ residents
 - c. Protected class business owners
 - d. Other community benefits
 - 3. Duluth Comprehensive Plan and other City Plans
 - a. What current City plans, if any, cover this project? How does the project relate to the applicable plans?
 - b. Are there any special zoning or permitting exemptions that need to be made for this project? If yes, provide a brief explanation.
- v. Specific project goals
 - 1. For each public purpose state the specific, measurable and tangible goals that were set for the project:
 - a. Public Purpose - Type of goal
 - b. Specific Goals established
 - c. Target Attainment Dates
 - 2. Progress toward these goals will be reported by the recipient of a business subsidy on an annual basis by March 1 for the preceding year (see Section 8 (d) – Business Subsidy Criteria), and provided to the Council by April 1.

10. EFFECTIVE DATE. This modified business subsidy policy shall be effective August 1, 2018.