



Current Legal Landscape for Local Incentives

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1



How to provide economic development incentives and keep your City out of trouble (and out of the news)

- Why provide incentives?
- Types of incentives
- What projects qualify for incentives?
- Avoiding a gift of public funds
- Post-award legal requirements



2



What is an incentive and why should you provide one?

- In the local economic development context, an incentive is an investment of public resources to make private investment feasible. The investment returns are in the form of positive economic impacts to your communities.
- Incentives can address specific community needs and drive significant investments into your communities.
- Development is expensive, and local incentives are often necessary to make projects feasible.



3



Types of Local Incentives

- Legislated vs. Discretionary
- Direct subsidies/grants
- Infrastructure assistance
- Fee waivers/deferrals
- Tax incentives
- Loan guarantees
- Non-monetary incentives



4



What types of projects qualify for local incentives?

- Dependent on community needs and the potential project impact – what do your planning documents say about providing incentives?
- Certain incentive programs have defined qualifying requirements – other incentives are determined on a case-by-case basis
- Local municipalities should employ a robust review process to evaluate and consider any requested incentive – be cautious & don't be a rubber stamp.



5



How to avoid a gift of public funds?

- The provision of financial incentives typically will not constitute an impermissible gift of public funds so long as the incentives involve an exchange of adequate consideration and the incentives achieve one or more public purposes.
- Local municipalities should document the exchange of consideration and the public purposes associated with any granted incentive. The local legislative body should adopt findings of public purpose in connection with any incentives.



6



Post-Award Considerations

- **Prevailing Wage**
 - The provision of public subsidies is likely to convert certain projects into "public works" for purposes of determining applicability of prevailing wage laws.
- **AB 562**
 - Public notice, public hearing, and ongoing reporting obligations.
- **Ongoing Contract Administration**
 - Many incentives will require multi-year agreements that will necessitate ongoing monitoring/administration

