

Rockland County Industrial Development Agency

Recapture Policy and Termination Procedures

Purpose:

Pursuant to Section 875 of Article 18A, of General Municipal Law, the Rockland County Industrial Development Agency adopts Recapture Policy and Termination Procedures that (a) establish the Agency's recapture policy and procedures to ensure compliance with the enabling legislation, (b) establish Material Factors which will be used to determine if a company receiving financial assistance is meeting the obligations required and stated in the approval and project agreements, and (c) if non-compliance occurs, establish a process to review and determine if a reduction, termination and/or recapture of financial assistance is required.

Material Factors:

The Agency, for each project seeking financial assistance, will establish Material Factor(s) which are to be defined and stated in the approving board resolution and project agreements. This includes the Agency's Policies and the required Material Factors which will be explicit and measurable and may include items such as investment, job creation, retention, or other factors as determined by the Board. Material Factors may vary by project type or specific application. Each project approved by the Board will have identified material factors, which will be reviewed, measured and evaluated to determine if a project receiving financial assistance has met and or continues to meet the required obligations, or has claimed tax abatements in excess of an amount authorized by Board approvals and project agreements.

For certain numerical Material Factors, such as job creation, investment amount, etc., the Board will consider acceptable achievement factors which would constitute compliance with the Material Factor requirement. For non-numeric factors, the Board may determine how the project will be evaluated to demonstrate that it has met the Material Factor requirement.

The Board may consider a number of Evaluative Criteria when determining whether to approve a project for financial assistance. Note, a Material Factor shall differ from Evaluative Criteria in that it should be directly measurable and will be utilized to determine whether a project has met its requirements under the condition of project approval and project agreement.

Material Factor Monitoring:

The Agency shall develop a reporting/monitoring system to determine whether the Material Factors have been met or are being met over the term of the financial assistance, (for example, the duration of the PILOT agreement). Some Material Factors may be required and complied with over the term of the financial assistance (i.e. jobs), while others may be a onetime check (i.e. project investment). For Material Factors that are multi-year, the Agency will monitor for compliance on at least an annual basis,

and for the full term of the financial assistance period. Upon project approval, the Board should be explicit in its project approvals those Material Factors which the project will be evaluated for, the measurable criteria, and the term for which each factor will be monitored.

Monitoring reports may be provided directly by the project applicant or through various other methods determined by the Board.

A project compliance report should be presented to the Board of Directors on an annual basis. If it is determined that a project receiving financial assistance has not met or maintained compliance with a Material Factor, term or condition of the project agreement, or any other condition as set by the Board, a procedure to resolve non-compliance issues should be established and reflect possible actions, including termination, reduction or recapture of benefits.

Non-Compliance Process:

If a company is found to be in violation or non-compliant with a Material Factor during the course of the compliance period, Project Agreements will have a procedure to determine board action (if any).

If during the annual monitoring/reporting period, or other event that indicates non-compliance (in the Project Agreement), the Board will undertake the following:

1. The Agency shall notify the company in writing that the Agency's determination a Material Factor or other Project Agreement requirement has been violated.
2. The company shall be given an opportunity to remedy the violation as provided in the Project Agreement.
3. The Agency shall consider information as to why a Material Factor or other condition was violated or not achieved. This may include economic or natural factors that led to the default. These factors should be discussed and predetermined to the extent possible by the Board and may include items such as, natural disaster, industry dynamics, unfair competition or economic events that were outside the control of the company.

Board Actions:

Following the above, the board may take no action or take steps up to and including recapture, reduction of incentives, project termination. The following options are recommended as considerations for actions when considering Material Factor compliance or violations of terms and conditions of project agreements.

1. Upon a review of the facts regarding a non-compliance determination, the Board may determine that the cause of the non-compliance was a valid reason for not meeting the Material Factor and may consider the matter closed without further action, or set a specific time period to give the opportunity for the company to achieve compliance, this may also be accompanied by a period of increased reporting (for example, quarterly reporting until remedied).
2. If a company is ultimately unable to meet a Material Factor or is in continued violation of the terms and conditions as set forth in the project agreement, the Board shall develop procedures

and policies which will define when it will take actions regarding reduction, termination or recapture of financial assistance. Below are listed several best practice options that may be undertaken:

- Reduction of Financial Assistance: At the discretion of the Board, it may consider a reduction in assistance as an appropriate action to take in the event of a Material Factor or project agreement non-compliance. The reduction may be set at the sole discretion of the Board
- Termination of Financial Assistance: In addition to typical reasons why the Board may act to terminate a project (i.e. business closure, change of use, etc.), the Board may elect to terminate ongoing financial assistance to a company due to reasons such as (but not limited to) continued non-compliance with a Material Factor, continued violation of the terms and conditions of the Project Agreement, or failure to comply with ongoing reporting or compliance requirements of the Agency.
- Recapture of Financial Assistance: The Board may take action to recapture a portion or all of the Financial Assistance provided to a company. Actions to recapture shall be made by the Board and shall be reserved for continued and/or severe violations of Material Factors or the terms and conditions of the Project Agreement. An event leading to recapture may include, for example (but not limited to), an applicant/company knowingly providing false information on an application or compliance/monitoring report, the company did not make a good faith effort or have any intention of meeting a Material Factor or a term and condition of the Project Agreement, the company ceases operations and/or relocates prior to fulfilling the length of term for a Material Factor, the company demonstrates a wanton disregard for state and or local laws or regulations.
- In the event the Agency is successful in receiving Recaptured Financial Assistance, such funds shall be returned to the appropriate affected taxing jurisdictions unless otherwise agreed upon by the local taxing jurisdiction.

Adopted and amended: March 28, 2019