

Downtown Sewer Disposal Facility Fee Deferral Program

PROGRAM GUIDELINES & POLICIES

CITY OF BEAUMONT
DOWNTOWN SEWER DISPOSAL FACILITY FEE
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I. INTRODUCTION

This written policy is intended as a guide in making credit decisions regarding applications from Eligible Businesses, as defined below, for sewer connection fee deferrals in the City of Beaumont (City). Projects will be considered for funding on a case-by-case basis, until available deferral funding designated by the City Council is exhausted. Only those projects falling within the scope of the guidelines will be considered for funding. Depending on funding amount as provided below, successful applicants will be determined by the City Council.

II. PURPOSE

This policy provides indirect financial assistance through a two-year deferral of sewage disposal facility fees to support economic development and business retention and expansion goals with the Downtown Beaumont Area. The goals are structured to promote Downtown Beaumont as a positive place for quality business, promote business expansion and attraction to enhance local economic growth, and ensure that government regulations promote a favorable business climate with the intent of furthering the health, safety and welfare of the residents of Beaumont.

This fee deferral program is not to be equated with a loan program available through banking or financial institutions. As a public agency, the City is interested as much in the social benefits as return on investment. The return to Beaumont is multiple: increased investment in the business community, additional jobs, increased foot traffic and business activity, increased tax revenues and quality of life for our residents.

The purpose of the economic development assistance is to:

1. Fulfill a need within the community.
2. Create jobs within the community.
3. Generate increased sales tax for the community.
4. Create opportunities for business expansion for existing Beaumont businesses.
5. Create opportunities for recruiting new businesses.
6. Encourage additional foot traffic and social activity within the Downtown Area.
7. Diversify the City's sales tax base.

III. PROHIBITION AGAINST CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF PARTICIPANT

The qualifications and identity of Participant in this program are of particular concern to City. It is because of those qualifications and identity that City will enter into an Agreement with Participant. No voluntary or involuntary successor in interest of Participant shall acquire any rights or powers under this program except as expressly set forth within executed documents under this program. A change in ownership,

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management and control shall be subject to the approval of City, but such approval shall not be unreasonably withheld.

Participant shall not assign all or any part of any Agreements or Notes under this program without the prior written approval of City, which approval shall not be unreasonably withheld.

IV. ELIGIBLE BUSINESSES

Only commercial properties located within the Downtown Incentive Area Program Boundary area are eligible to apply. [CLICK HERE](#) for the map showing the program boundary or access it via the City website beaumontcabusiness.gov/businesses/incentives.

A. The following types of businesses are eligible for a sewer connection impact fee deferral:

- Proposed sales tax generating businesses that are new to Beaumont which meet one or more of the following criteria detailed below. The City shall determine, in its sole discretion, whether a business falls within one of these four categories:
 - i.) Premium Casual Restaurants (upscale, fast casual dining, high quality food, elevated atmosphere but more casual than fine dining, seating areas indoors or outdoors)
 - ii.) Sit Down Fine Dining Restaurants (upscale dining, high quality food, wine list, formal atmosphere, sizable seating area indoors and bonus for outdoor seating)
 - iii.) Bars and Cocktail Lounges (upscale and elevated atmosphere, premium offerings, activities and events)
 - iv.) Breweries, Distilleries, small scale alcohol production (manufacturing of craft beer, spirits, or wine, product sold for onsite and offsite consumption, retail component with elevated atmosphere)

V. ELIGIBLE ACTIVITIES

This Program provides an owner of a new business meeting one of the categories defined in Section IV, a sewage disposal facility fee deferral for the period of two (2) years from the date a Certificate of Occupancy is granted for the building for the proposed use, in an amount not to exceed \$15,000. A Promissory Note and

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security will be required to evidence the applicant's obligation to pay repay the money to the City after two years or upon default.

VI. ADMINISTRATION

A. Staff Recommendations

In order to ensure timely review of applications, the Program Administrator will establish an internal review process whereby the review and recommendation of the City Manager, Community Development Director, Economic Development Manager, and Finance Director (Program Administrator) and other staff members as determined by the Program Administrator will be solicited. The internal review process shall result in the Program Administrator making a recommendation of approval or denial. The Program Administrator will also solicit from staff review and recommend approval or denial of requests from approved applicants for payment deferrals, substitution or release of collateral, waiver or release of covenants, and amendments to loan documents all of which shall be subject to final approval by the City Council.

B. Program Administrator

The Finance Director will serve as the Program Administrator. The Program Administrator will market, solicit, review, and process potential applications. The Program Administrator will decline or refer out to some other agency any applicant who clearly does not qualify under eligibility standards as set forth by the policy. The Program Administrator may recommend new credit, payment deferrals, release or substitution of collateral, waivers/amendments to loan covenants and exceptions of policy to the City.

VII. APPROVAL

Approval of all Fee Deferrals under this Program shall require City Council approval.

VIII. FUNDING AVAILABILITY

The sewer fee deferral program is funded on a fiscal year basis by the City Council. The City of Beaumont fiscal year begins on July 1 and ends on June 30 of the following year. Limited deferral amounts are available in each fiscal year when the program is activated by the City Council. If deferral amounts are exhausted no further Applications or awards will be available.

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IX. APPLICATION PERIOD

A. Submittal

Applications will be accepted on a continuous basis.

B. Processing

Applications will be processed when deferred fund set asides established by the City Council are available. The City has no obligation to process or approve applications if all available deferral funding has been exhausted.

X. RISK ASSESSMENT

All applications are subject to analysis to determine risk. Substantial evidence to support all decisions shall be required and such evidence shall be maintained by the Program Director and submitted to the City Council during the final review and approval process. Fee Deferrals will be awarded only to projects, which demonstrate that the service provided is commensurate with the risks incurred. In return for the public moneys provided, the businesses will generate increased investment, jobs, business activity, and thus increased tax revenues.

A. General Credit Criteria

The Fee Deferral applications will be analyzed for the following criteria, based on criteria specified by the U.S. Department of Housing and Urban Development, Office of Community Planning and Development, and by the Small Business Administration:

- 1) Ability to repay in case of default or termination of business.
- 2) Balance Sheet Analysis
Balance sheet must be meet established criteria and be sound before the loan is made.
- 3) Historical earnings and cash flow records, from verifiable sources as determined by the City, to ensure sufficient repayment of Fee Deferral, and to provide the owner(s) with a reasonable level of personal income to satisfy personal obligations. Typically, an applicant will have been profitable during the most recently completed year and will maintain a cash flow coverage ratio of 1:1 (defined as earnings before debt service, interest and taxes divided by debt service), with sufficient collateral. The ratio would be 2:1 without collateral. If partial collateral is pledged, the ratio may be prorated downward.

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- 4) Collateral
Collateral in any form (both real property and personal property), may be requested by the City and is generally required. Collateral will be pledged commensurate with the amount of requested Fee Deferral, . If the project cannot repay the loan from cash flow, the City may collect payment by liquidating the asset and satisfying the specific lien securing the property. A letter of credit or bond may be accepted in lieu of other collateral.

- 5) Commitment
Personal and corporate guarantees may be required. The applicant should sign personally for the loan.

- 6) Management Experience
The management team must have experience in all areas of running the business: sales, finance, operations, personnel, etc. The management team includes the principals, directors, senior management and consultants.

The management team should have direct experience in these areas or have comparable business skills which can be transferred.

- 7) Business Plan
The business plan will help identify worthy ventures. The monthly cash flow statement for the first year is especially important.

- 8) Character
The owners and management should have favorable credit histories, a reputation for treating customers fairly and without discrimination, no bankruptcy filing in the past five years, and a criminal record free from felony convictions and convictions of crimes involving dishonesty or moral turpitude. Good character and creditworthiness will be determined by credit reports, payment history with verified vendors, personal interview, or other means as determined.

All of the above criteria are important, and the absence of any one may be sufficient to deny a loan request.

B. Undesirable Credit Applications/Applicants/Guarantors

Using the guidelines for the Small Business Administration and the Department of Housing and Urban Development, the following are undesirable or unacceptable without mitigating circumstances acceptable to the City:

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- 1) Applications for funding that would substantially reduce the amount of other I support for the activity available in other recognized, reasonable loan or other programs available in the target areas;
- 2) Non-profit organizations, as designated by Charter/Bylaws, unless designated as approved Community Based Development Organizations (CBDO)
- 3) Lack of profitable operations, as demonstrated by sources acceptable to City.
- 4) Fee Deferrals for businesses to restricted membership or discriminatory groups/organizations.
- 5) Fee Deferrals to businesses with access restrictions based on age.
- 6) Lack of sufficient equity/highly leveraged situations as determined by City..
- 7) Personal or business bankruptcy, or prior business failure without sufficient, documented information to mitigate, as determined by City.
- 8) Poor personal or business credit as evidenced by many derogatory items including public record items, tax liens, judgments, or excessive existing credit as determined by City.;
- 13) Those unable to show citizenship or valid residency visa;
- 14) Felony convictions, dishonorable discharge or "Bad Conduct" discharge from military service (each situation will be independently evaluated);
- 15) Business active in any unlawful activity.

C. Exceptions to Fee Deferral Policy

If a project does not fall within the guidelines listed above, but is of such special character that it will substantially further the goals identified in Section II above the City Manager or City Council (depending on Fee Deferral amount) may consider the project for funding.

XI. PRICING AND TERMS

Considerations of Fee Deferral interest will be based on a rate equal to the average rate earned by the City's investment in the California Local Investment Fund

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(LAIF) or the current prime rate during the fiscal year prior to the issuance of the Fee Deferral (LAIF's Annual Returns: <https://www.treasurer.ca.gov/pmia-laif/historical/annual.asp>), but in no event to exceed 10 per cent (10%) per annum. Interest which accrues and is unpaid shall be added to principal on a monthly basis and thereafter bear interest as if it were part of principal. Principal and all accrued and unpaid interest shall be due and payable not later than two years from the date the Agreement is approved, as specified in the Note. Additional terms extended to applicants will be based on the amount of risk involved.

XII. COLLATERAL

Collateral is a mandatory requirement for all Fee Deferrals. Real property security is preferred but not required under appropriate circumstances. Property such as equipment will be considered as collateral. It is intended that any available collateral from the applicant and/or guarantor(s) will be required. Liens on real property will be required at the discretion of the City. However, it will be the policy that all collateral required for Fee Deferral approval will be of material value. Caution will be used whenever taking a junior lien position on collateral where there is a substantial senior lien. It will be a determination of the City whether to waive a collateral position when available.

XIII. CESSATION OF BUSINESS

If Participant should cease business at the site, participant may be required to repay its obligations to City as provided in the Note which shall be executed when Agreement is signed. The term "cease business" shall mean when the site is no longer used as the principal place of business for Participant's approved business for an aggregate period of ten days or more, as determined by City. Participant shall give City written notice not less than thirty (30) days prior to cessation of business. If Participant should cease business at the site, Participant shall pay to the City, in cash, within fifteen (15) days of the Participant's receipt of written notification from the City of the balance due on the Note. If the Participant moves the business to a new location within Beaumont the City may elect to not treat this relocation as a cessation of business.

XIV. GUARANTORS

The City will generally follow the rules of the Small Business Administration as to qualification of guarantors:

- A. Individuals involved in active management with any ownership equity in applicant must guaranty the Fee Deferral.
- B. Shareholders/owners of 20% or more equity in borrower must guaranty the Fee Deferral regardless of active involvement in management.

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Guarantees may be secured or unsecured as determined by the City.

XV. PROBLEM CREDITS

While it is the intent of this policy to be sensitive to the applicant's financial needs, and the intent to match any repayment schedule to the applicant's ability to repay, it is inevitable that there will be delinquencies and defaults. It is the responsibility of the Program Administrator to monitor all Fee Deferral payments, especially those that are in arrears. It will be the stated policy that upon determination of a "problem credit" the City will pursue any and all remedies allowed by regulation or law in a professional, aggressive, and consistent manner until some resolution is reached.

XVI. ACTION OCCURRENCES

The following occurrences will warrant action on the part of the Program Administrator and/or City Council.

- A. Delinquent payment – whenever the terms of the Promissory Note are not being met in a timely manner (delinquent by more than 30 days);
- B. Violation of Fee Deferral Covenants – whenever the terms of the Fee Deferral Agreement are not being met in a timely fashion. The severity and immediacy of action is dependent on the type of breach; some covenants are more serious and lead to a default, while others less severe can sometimes be managed at the discretion of the Program Administrator.
- C. Receipt of bankruptcy notice;
- D. Filing of a "Notice of Default" by another lienholder on real property;
- E. Legal Service, such as Writs of Attachment, Tax Liens, Subpoenas for records;
- F. Death of debtor or guarantor;
- G. Notice of significant legal action against applicant or guarantor;
- H. Returned mail from applicant's address by Post Office;
- I. "Skip Trace" inquiry from another creditor.

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XVII. COLLECTION ACTION

It is important to be clear and specific about any breach of the Note, Fee Deferral Agreement, or any of the above-mentioned occurrences. The circumstances of a particular situation will often dictate the method to use in taking corrective action. Telephone contact with the applicant/guarantor is the most expedient and cost effective; however, some cases demand more formal notification such as “Demand Letters”, Legal Action, and Foreclosure. Personal site visits and conversations with the applicant are warranted at the discretion of the Program Administrator.

XVIII. NON-ACCRUAL FEE DEFERRAL STATUS

Fee Deferrals will be moved to a non-accrual status at the 90-day delinquency point unless otherwise directed by the City Council. At this point, many of the above-mentioned “Action Steps” should have been started; a collection plan, if applicable, should be in process at this point. Rewriting the entire Note in an effort to provide relief to the applicant should be considered after a detailed analysis of the financial condition of the applicant and his/her prospects for timely payments in the future. In any case the City Council must approve a re-structured Note, depending on the dollar value of the re-structured Note.

XIX. COLLATERAL APPRAISALS

Collateral taken as security for any type of credit should be appraised if it has any significant value. In most cases, real property will be the collateral that is most needed for a third-party appraisal (the City may accept reliable “drive-by” and short-form appraisals). Since the City is not under the scrutiny of Federal and State Banking Regulators, there is more flexibility as to the extent of any appraisal and in which circumstances. It is the stated policy that some form of valuation be used to determine the equity of any collateral taken by the City, remembering that the cost and time of obtaining such appraisals may have an adverse affect on the applicant considering the size of the credit involved. The City shall use its discretion in all collateral matters, unless otherwise dictated by the City Council.

XX. FINANCIAL INFORMATION REQUIRED

It will be the policy of the City to require financial statements from each applicant in the form of a balance sheet and income statement for any and all fiscal year-ends since inception of the business (up to 3 years), and within the past 90 days of application date. Current personal financial statements for each business owner and guarantor and personal and business federal tax returns for the prior three years are required, including all supporting schedules and statements. The City will obtain the written permission of the applicant to verify any and all tax returns with the Internal Revenue Service for accuracy (IRS Form 4506). Month-to-month projections covering

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any interim period until year-end, plus one full fiscal year is required, including the assumptions that the projections were based upon. Additional information will be requested at the discretion of the Program Administrator with direction from the staff and/or City Council:

All applicants will be required as a covenant in the Fee Deferral Agreement to provide ongoing financial information as follows:

- A. Fiscal Year End balance sheet and income statement within 90 days of each year end;
- B. More frequent statements such as Accounts Receivable Agings, work in progress reports, or any other documents requested by the City to assist the applicant in the monitoring of the credit.
- C. Payroll reports showing employee status, on a quarterly basis.

XXI. FINANCIAL INQUIRIES

The City will not provide responses to inquiries regarding credit status of program participants. Participants are advised that under the Public Records Act, the Fee Deferral documents and related documents are subject to public disclosure and scrutiny. However, the City may, if appropriate, keep confidential the financial information provided by applicants to the City to the extent permitted by law as determined by City in its sole discretion. The City shall have no obligation to incur legal fees to establish that information is not subject to the Public Records Act.

XXII. INSURANCE

All collateral taken as security for any credit must be insured appropriately as determined by the City; evidence of that coverage must be provided showing the City as "Additional Insured," "Loss Payee," or "Mortgagee," whichever is appropriate for the collateral insured. The lapse of any insurance will create a default on the Fee Deferral Agreement, and must be remedied immediately by the applicant. If necessary, the City will obtain appropriate insurance to protect its collateral and debit the premium to the applicant.

Additionally, in the case where real estate collateral is taken, a lender's Policy of Title Insurance will be required.

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XXIII. AMENDMENTS

Amendments to these guidelines may be made from time to time by the City Council. Authority shall be granted to the City Manager or his/her designee to grant non-substantive minor waivers or non-substantive minor amendments to these guidelines, with the exception of state, federal or local laws, guidelines and regulations.