

Town of Clarence, Erie County, Industrial Development Agency (CIDA)
Policy for Recapture and/or Termination and/or Modification of Financial Assistance
Adopted: June 16, 2016

Purpose:

To establish and provide a fair procedure compliant with Sections 874 and 875 of the New York State General Municipal Law and Town of Clarence, Erie County, Industrial Development Agency (CIDA) policies establishing a policy for recapture and/or termination and/or modification of all or a portion of Agency Financial Assistance.

Annual Review:

The Chairman will review annual reports it receives from companies to determine compliance with the Material Factors or other Significant Factors set forth in the Inducement Resolution. If the Chairman determines that a company appears to be in violation of a Material or Significant Factor, the project will be considered non-compliant and enter full review by the Executive Committee. The Chairman will notify the entire Board of Directors of his determination.

Non-Compliance Process:

1. The CIDA shall notify the company in writing that in the Agency's determination they are or have violated a Material or Significant Factor. The notification will include the Factor(s) violated and seek an explanation from the company that 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.
2. The company shall be given an opportunity to remedy the violation and will have thirty (30) days to provide a written response or seek an extension of such response.
3. Upon receipt of the company's response, Chairman will review with the Executive Committee and notify the entire Board of Directors. The company shall be provided the opportunity to present before the Executive Committee, any information in the written response outlined above regarding why the Factor was not achieved. The Executive Committee will have the option of entering into Executive Session should material evidence be deemed proprietary.
4. Upon hearing the company's position, the Executive Committee will make a recommendation for proposed action and forward the matter to the full CIDA Board of Directors. A written record will occur clearly stating the reason to, or not to, recapture and/or modify and/or reduce financial assistance.
5. Notwithstanding the foregoing, the CIDA Board of Directors, acting through its Chairman, retains the right to terminate Agency benefits for other significant factors. Cause for such termination of Agency benefits include, but are not limited to, failure to make PILOT payments, failure to make reports to the CIDA as detailed in transaction documents, failure to maintain insurance requirements, or other uncured breaches of CIDA transaction documents.

Compliance Period:

Unless otherwise noted in the Project's Inducement Resolution, Private Sector Investment and Local Labor during construction must be met by the Project Completion Date. Job creation and/or job retention targets must be met within 2 years of Project Completion Date and such job creation and/or job retention numbers must be maintained for one calendar year following the calendar year that the applicant met the job creation and/or job retention numbers.

Projects that do not involve a PILOT would be subject to maintaining its material terms one calendar year after a certificate of occupancy is issued or the expiration of a sales tax exemption.

Distribution of Recaptured Financial Assistance:

Any and all such returned/recaptured amounts of Agency Financial Assistance shall be redistributed to the appropriate tax jurisdiction unless agreed to otherwise by a local taxing jurisdiction.

STATE REQUIRED CRITERIA	MATERIAL TERMS	SIGNIFICANT FACTORS List may vary based on project
<ul style="list-style-type: none"> - Extent to which a project will create or retain permanent jobs - Estimated value of tax exemptions - Amount of private sector investment - Likelihood of project being accomplished in a timely fashion - Extent of new revenue provided to local taxing jurisdictions - Any other misc. public benefits 	<ol style="list-style-type: none"> 1. Create or Retain Jobs (If applicable) ⁱ 2. Private Sector Investmentⁱⁱ 3. Local Labor Construction 	<ol style="list-style-type: none"> 1. Exceeding Sales Tax Exemption 2. Failure to maintain Insurance requirements 3. Failure to make PILOT payments 4. Failure to submit reports – Annual Reporting, State Reporting, Etc.

ⁱ Employment Commitment – that there were to be at least a certain stated number of FTE employees located at, or to be located at the Facility as stated in the Company’s application for Financial Assistance (the “Baseline FTE”) with an additional stated number of FTE to be created by the Company and the Company fails to maintain employment at 85% of the total of the Baseline FTE and new FTE. The Company shall have the right to establish that the failure to comply with the Employment Commitment was due to circumstances beyond their control.

ⁱⁱ Investment Commitment, the total investment actually made with respect to the Project at the Project Completion Date must equal 85% of the project cost as set forth in the application for Financial Assistance. The Company shall have the right to establish that it did not meet the requirements due to cost savings achieved by the Company and that the benefits that the Company has received have been reduced proportionately in accordance with the reduction in investment.