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County of Putnam
Industrial Development Agency

2026 - Recapture ("Clawback") Policy and Procedures
Amended and Adopted 2026-3-24

I. Purpose

To establish a procedure and policy to be compliant with the new enabling legislation, established by the NYS Office of the Comptroller, that would establish Material Factors which would be used to determine if a company which is receiving financial assistance is meeting the obligations required and stated in the approval and project agreements, and if not, to establish a process to review and determine if a reduction, termination and/or recapture of financial assistance is required.

II. Material Factors

The agency, for each project seeking financial assistance, will establish Material Factors which are to be defined and stated in the approving board resolution and project agreements. 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, may vary by project type or specific application. Each project approved by the board will have identified material factors, which will be measured and evaluated to determine if a project receiving financial assistance has met and or continues to meet the required obligations as set by the board at the time of project approval. (See attached best practice recommendations.)

For certain numerical Material Factors such as job creation, investment amount, etc., it is recommended that the board set an acceptable achievement factor, which would constitute compliance with the Material Factor requirement, not less than 85% of job creation or retention goals. For non-numeric factors, each board should 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; however, 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 conditions of project approval and project agreement.

III. 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,

such as 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—others may be a one-time 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, the Material Factors upon which the project will be evaluated, the measurable criteria, and the term for which each factor will be monitored.

Monitoring reports may be provided directly by the project applicant, from staff, field visits, or through various other methods as determined by the Board. Monitoring efforts should be documented in writing to verify compliance with Material Factor requirements.

Monitoring and compliance reports 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, the Agency shall develop a procedure to resolve non-compliance issues, or may undertake termination, reduction, or recapture efforts.

IV. 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, the agency shall have a written procedure to determine if an action by its Board is necessary.

If, during the annual monitoring and or reporting period, it is found that a company which is receiving financial assistance (which shall be defined as Sales, PILOT or Mortgage Recording Tax incentives), is non-compliant or in violation, the agency shall undertake the following:

A. The agency shall notify the company in writing that in the agency's determination they are or have violated a Material Factor.

B. The company shall be given an opportunity to remedy the violation.

C. The agency shall seek additional information/explanation from the company as to why a Material Factor was not achieved. These 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.

D. The company shall be provided the opportunity to present before the Board or designated committee, any information as outlined in #3 above regarding why the Material Factor was not achieved.

V. Board Actions

Actions regarding taking no action to recapture benefits, reduction, termination, or recapture of financial assistance should be made by the Board. The following options are recommended as considerations for actions when considering Material Factor compliance or violations of terms and conditions of project agreements:

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 an opportunity for the company to achieve compliance. This may also be accompanied by a period of increased reporting (i.e. review violated Material Factor(s) quarterly until remedied).

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.

VI. 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, or may be based on a pro-rata basis, depending on the extent of the Material Factor non-compliance. As an example, a project may have met three (3) out of four (4) Material Factors and the board could consider a 25% reduction in PILOT scheduled abatements, or a project may have only met 80% of a specific Material Factor, i.e. job creation or investment, and a 20% reduction in assistance may be considered. This same pro-rata concept may be applied to Material Factors which are multi-year and are enforced over the term of a PILOT, i.e. project met job retention goals for 8 of 10 years, etc.

VII. Termination of Financial Assistance

In addition to the typical reasons why a Board may act to terminate financial assistance such as, closure, change of use, change of ownership, etc., a Board may elect to terminate any ongoing financial assistance to a company. Reasons for termination should be explicit and may include continued non-compliance with a Material Factor, continued violation of the terms and conditions of the Project Agreement, failure to comply with ongoing reporting or compliance requirements of the agency, and an action by the Board to recapture financial assistance shall be accompanied by a termination of ongoing financial assistance.

VIII. 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 decision of 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 an applicant knowingly providing false information on an application or a compliance/monitoring report; the Board finds that 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: or 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.