

COMMISSIONERS' ORDINANCE NO. 0-13-20

AN ORDINANCE AMENDING CHAPTER 116: COVINGTON JOBS DEVELOPMENT INCENTIVES.

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WHEREAS, staff has been reviewing the City's Job Development Incentive, aka, payroll tax incentives; and

WHEREAS, recommended changes are based on national best practices and staff believes they will help strike that balance while also creating a program that is flexible and predictable.

NOW THEREFORE,
BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY
OF COVINGTON, KENTON COUNTY, KENTUCKY:

Section 1

Section 116.01, which reads as follows, is added to and amends the Covington Code of Ordinances:

§ 116.01 PURPOSE

The appropriate purpose and use of incentives is to broaden and diversify the tax base, create new job opportunities for the citizens of the City of Covington, and promote the economic growth and welfare of the City of Covington. Economic development incentives are necessary because of the inherent competition between localities for new businesses, new investments, and jobs. Nevertheless, incentives shall be used prudently on projects where they will be a deciding factor as to whether a business will remain or locate in Covington.

The City's objective for offering economic development incentives shall be to encourage the expansion of commerce to businesses demonstrating a long-term commitment to the community by:

- **Creating and retaining quality, value-added (primary) jobs;**
- **Broadening and diversifying the City's tax base;**
- **Encouraging capital investments;**
- **Increasing the City's global competitiveness;**
- **Promoting the growth and wellbeing of the City of Covington.**

Section 2

Section 116.02 of the Covington Code of Ordinances is amended to read as follows:

§ 116.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGREEMENT. An agreement made pursuant to this chapter between the City and an approved business or building owner with respect to an economic development project.

ANNUAL PAYROLL. All compensation paid or payable by a business for work done or services performed or rendered in the city by every resident and nonresident who is an employee of that particular business, which is normally subject to the City's occupational license tax pursuant to § 110.03(A)(1) including compensation in excess of the FICA cap provided for in § 110.03(B)(1).

APPLICANT. A business or building owner applying for incentives under this chapter.

AWARDEE. ***A business or building owner that has been approved for incentives under this chapter by City Commission and has executed an agreement.***

BASE TAXABLE PAYROLL. A businesses existing taxable payroll as calculated as of an agreed-upon date under an agreement.

BUILDING OWNER. A natural person, corporation, limited liability company, partnership, or other entity that owns or has as similarly permanent interest in a building located within the city. For purposes of this section, any group of owners of a single building shall constitute a single BUILDING OWNER.

BUSINESS. A corporation, firm, partnership, limited liability company, sole proprietorship, or similar entity engaging or intending to engage in commercial activity within the city. Accelerators, incubators, and co-working spaces may constitute a single business for the purpose of applications and agreements under this chapter.

DEPARTMENT. ***The City's Department for Economic Development.***

ECONOMIC IMPACT ANALYSIS. ***An economic impact analysis (EIA) examines the effect of an event on the economy in a specified area. It usually measures changes in business revenue, business profits, personal wages, and/or jobs. The economic event analyzed can include implementation of a new policy or project, or may simply be the presence***

of a business or organization. An economic impact analysis typically measures or estimates the change in economic activity between two scenarios, one assuming the economic event occurs, and one assuming it does not occur. An economic impact analysis is commonly conducted when there is public concern about the potential impacts of a proposed project or policy.

GOOD STANDING. A qualified and properly licensed business with a Covington occupational license for any and all Covington locations, are not in default of any prior or current agreements with the city, have not made or filed pending adverse claims against the City in the form of settlement demands and/or lawsuits, are not delinquent on their obligations to pay loans, fines, liens, or other obligations owed to the City, and are in good standing with the City of Covington per 35.35 1984 edition.

NEW ANNUAL PAYROLL. The annual payroll that is created by a business following, as a result of, or in anticipation of an agreement.

PAYROLL INCENTIVE EVALUATION FACTORS. Written criteria approved by City Commission used for evaluating the payroll incentives described in this ordinance. The Payroll Incentive Evaluation factors shall provide the criteria for staff to make recommendations on the percentage amount of any incentive described in this ordinance. The Payroll Incentive Evaluation factors shall be available to the public upon request. The City is hereby authorized to pass and update the Payroll Incentive Evaluation Factors via Commissioners' Order.

PROJECT. The commercial and industrial projects created by such combined efforts of the public sector and the private sector are known as economic development projects.

RETURN ON INVESTMENT. Return on Investment (ROI) is a performance measure used to evaluate the efficiency of an investment ROI tries to directly measure the amount of return on a particular investment, relative to the investment's cost. To calculate ROI, the benefit (or return) of an investment is divided by the cost of the investment. The result is expressed as a percentage or a ratio.

TAXABLE PAYROLL. All compensation paid or payable in the city for work done or services performed or rendered in the city by every resident and nonresident who is an employee of a particular business, which is normally subject to the City's occupational license tax pursuant to § 110.03(A)(1) or any other provision of this code. This definition shall not include any compensation that is exempt or otherwise not subject to the City's occupational license tax.

Section 3

Section 116.03 of the Covington Code of Ordinances is amended to read as follows:

§ 116.03 GENERAL PROVISIONS.

(A) Application.

- (1) An Applicant shall submit its signed application for incentives under this chapter to the Department of **Economic** Development on forms provided by the Department and will provide any additional information reasonably requested to enable the Department to evaluate the application, **including a copy of the proposed lease, letter of intent, or purchase terms for the proposed Business location.**
- (2) **A non-refundable application fee of \$1,000 is payable to the City of Covington upon submission of a signed application.**
- (3) **Each request for incentives will be evaluated on an individual basis. All requests for local incentives will have an Economic Impact Analysis (EIA) and/or a Return on Investment (ROI) calculation completed prior to consideration by staff. These will be used initially to determine the viability of the proposed Project and must show a positive economic impact upon the City. The analysis will be performed for the number of years that equals the number of years the incentive recipient would be subject to monitoring and compliance provisions in the incentive Agreement.**
- (4) **All Economic Development Incentives will be formalized in a written Agreement between the City of Covington and the recipient Business. At minimum, it will outline:**
 - a. **Specific employment and capital investment targets, including:**
 - i. **Jobs created and payroll commitments**
 - ii. **Capital investment in real property**
 - iii. **Compliance with the non-incentivized retention period**
 - b. **Compliance with all applicable governmental laws, rules, ordinances, and regulations**
 - c. **Compliance with any conditions imposed by the Economic Development Incentive Agreement.**
- (5) **If the Department of Economic Development recommends approval of an Agreement and it is approved by the Covington Board of Commissioners, the Applicant will provide the Department with an**

executed copy of any lease or purchase agreement prior to execution of the incentive Agreement.

(B) Disbursement of incentives.

(1) All incentives provided for by this chapter shall be disbursed on an annual basis for the previous calendar year. **With the exception of Commonwealth of Kentucky incentives under § 116.05**, an Applicant's first year in which incentives are provided shall begin on January 1 of the year provided for in the Agreement, but no later than 18 months from the effective date of the Agreement between the City and the Applicant.

(2) **An Awardee** that has executed an Agreement pursuant to this chapter shall submit requests for reimbursement of incentives for the previous calendar year to the City Finance Department by April 30 of each year. The Awardee shall use the form provided by the City Finance Department, and provide all necessary information for the City Finance Department to calculate the amount of the incentive. If the City Finance Department does not receive an Awardee's request for reimbursement by April 30 of any year, then the **Awardee** shall forgo all reimbursements under this chapter for the previous calendar year.

(3) The City Finance Department, upon proper request by an **Awardee** pursuant to division (B)(2) of this section, shall disburse incentives for the previous calendar year to the **Awardee** by July 31 of the same year.

(4) **An Awardee** shall not be eligible to receive incentives under this chapter for the previous calendar year unless it has paid in full all taxes owed pursuant to § 110.03 of this code and is in Good Standing with the City.

(C) Failure to comply. If an **Awardee** fails to comply with the Agreement or fails to meet the requirements of this chapter, the **Awardee** shall not be eligible to receive any reimbursement provided for by this chapter that has not been disbursed at the time of noncompliance.

(D) Incentives may not be combined. The incentives provided for by this chapter may not be combined with any other occupational license incentive programs offered by the City without the approval of the Board of Commissioners.

(E) Prior incentives. **Changing economic conditions and availability of funds may cause the City of Covington to modify, amend, or discontinue any economic development incentive program.** Incentives provided to a business under an Agreement pursuant to prior version of this chapter shall remain in effect as originally agreed, unless this chapter clearly indicates otherwise.

(C) **Compliance.**

- (1) **Annual reviews will be conducted by Economic Development staff to establish compliance with the written Agreement between the City and the Awardee.**
- (2) **For any out of compliance incentive, the Economic Development Director will schedule a business retention & expansion meeting with the Awardee that has missed the contractual performance obligation. The Economic Development Director will then meet with the City Manager, City Solicitor, and Finance Director to review and make recommendations on non-performing Agreements.**
 - a. **1st Occurrence – City will not process a payment for that year, but the Agreement will continue without modification for a one-year probationary period. The City will warn the Business and notify them that they have one year to achieve their payroll expectations or the Agreement will be terminated.**
 - b. **2nd Occurrence – After two consecutive or non-consecutive years of non-compliance, the City will terminate the contract due to non-performance and pursue the claw backs outlined in the Agreement.**
- (3) **Each Fall, Economic Development and Finance will compile all active incentive Agreements and provide a summary incentive report on actual performance and compliance. The City Manager will include recommendations to City Commission for any out-of-compliance Agreement.**

Section 4

Section 116.04 of the Covington Code of Ordinances is amended to read as follows:

§ 116.04 JOBS DEVELOPMENT INCENTIVES.

- (A) New Business Incentive. **New Business Incentive is targeted for new companies are considering a site in the city and the incentive will be a deciding factor as to whether the Business will locate in Covington.**
- (1) Eligibility. A Business shall be eligible for incentives under this division provided the Business:
 - (a) Applies for an incentive under this division, is **recommended** by the **Department of Economic Development and approved by the Board of Commission**, and executes an **incentive** Agreement;

(b) **Has not announced a site location decision and is proposed to be located in the city at the time** of its application, and if approved, thereafter remains located in the city;

(c) **Will have employees** within the city who are primarily engaged in professional, technical and innovation, administrative, manufacturing, communication, or general medical and/or general surgical hospital occupations;

(d) Within the first year of the Agreement, Awardee must create a minimum New Annual Payroll of \$250,000 to be eligible for this incentive.

(3) Nature of incentive. A Business approved for an incentive under this division **may receive** an annual reimbursement of up to 1% of Taxable Payroll. **The incentive rate shall be based on the most recent Payroll Incentive Evaluation Factors.**

(4) Duration.

(a) **For companies leasing a site, the incentive period may be for up to half of the Applicant's lease term,** up to a total of five consecutive calendar years, provided the Business continues to meet all requirements of this chapter and the Agreement.

(b) **For companies purchasing a site, the incentive may be for up to a total of five consecutive years, provided the Business continues to meet all requirements of this chapter and the Agreement.**

(c) **A retention period equal to the number of years of the incentive period will immediately follow each incentive period, where the Business must remain an active business in Covington and meet all requirements of this chapter and the incentive Agreement, including but not limited to all Annual Payroll requirements.**

(B) Enhanced New Business Incentive.

(1) **Purpose. The Enhanced New Business Incentive is targeted for new companies that are considering a site in the city that will have a significant economic impact and the incentive will be a deciding factor as to whether the Business will locate in Covington.**

(2) Eligibility. A Business shall be eligible to apply for an incentive under this division, provided the Business:

(a) Applies for an incentive under this division, is **recommended** by the **Department of Economic Development and approved by the Board of Commission** ;

(b) **Has not announced a site location decision and is proposed to be located in the city at the time of its application and thereafter remains located in the city;**

(c) **Will have employees** within the city who are primarily engaged in professional, technical and innovation, administrative, manufacturing,

communication, or general medical and/or general surgical hospital occupations;;

- (d) Applicant must create a minimum New Annual Payroll of \$2,000,000 within the first year of business within the city to be eligible for this incentive.
- (e) The Business demonstrates to the Economic Development Department that the relocation of the Business sufficiently satisfies at least two of the evaluation criteria in Category A or at least four of the evaluation criteria in Category B below:
- a. Category A (at least 2)
- A. The Business is a target industry sector as determined by the City's economic development strategy, as such is adopted by City Commission from time to time;
 - B. The Business will be locating a facility headquarters in the city;
 - C. The Business will be making a private investment of at least \$3 million in property acquisition, lease, improvements, machinery & equipment, infrastructure, or other similar investments.
 - D. The Business will bring or create over 25 jobs paying above the city's median wages for that given year of the incentive application, and offer an employee benefit package.
- b. Category B (at least 4)
- A. The Project ties into a specific strategy recommendation within the City's economic development strategy, as such is adopted by City Commission from time to time
 - B. The Business has demonstrated a strong commitment to the City, such as hiring Covington residents, agreeing to a longer non-incentivized retention period, or other similar efforts as outlined by the Business.
 - C. The Project will stimulate investment in redeveloping neighborhoods outside of the TIF District that the City may deem of significant benefit to the community.
 - D. The investment provides the opportunity for future expansion and increased employment.
 - E. The Business' industry sector will help diversify the city's economy as determined by the Applicant's appropriate North American Industry Classification System (NAICS) codes.

(2) Nature of incentive. A Business approved for an incentive under this division **may receive** an annual reimbursement up to 1.25% of Taxable Payroll. **The incentive rate shall be based on the most recent Payroll Incentive Evaluation Factors.**

(3) Duration.

- (a) **For companies leasing a site, the incentive period may be for up to half of the Applicant's lease term, up to a total of ten consecutive calendar years, provided the Business continues to meet all requirements of this chapter and the Agreement.**
- (b) **For companies purchasing a site, the incentive may be for up to a total of ten consecutive years, provided the Business continues to meet all requirements of this chapter and the Agreement.**
- (c) **A retention period equal to the same number of years as the incentive period will immediately follow each incentive period, and the Business must remain in Covington and meet all requirements of the Agreement.**

(C) **Business Expansion Incentive.**

(1) **Purpose. The Business Expansion Incentive is targeted for existing Covington companies that are planning an expansion that includes new jobs.**

(2) **Eligibility. A Business shall be eligible for an incentive under this division provided the Business:**

- (a) **Applies for an incentive under this division, is recommended by the Department of Economic Development and approved by the Board of Commission, and executes an incentive Agreement;**
- (b) **Has not announced the expansion or started the Project;**
- (c) **Is located in the city; and**
- (d) **Applicant must create a minimum New Annual Payroll of \$250,000 in excess of its Base Taxable Payroll to be eligible for this incentive.**

(2) **Nature of incentive. A Business approved for an incentive under this division may receive an annual reimbursement up to 1% of Taxable Payroll in excess of its Base Taxable Payroll. The incentive rate shall be based on the most recent Payroll Incentive Evaluation Factors.**

(3) **Duration.**

- (a) **For companies leasing a site, the incentive period may be for up to half of the Applicant's remaining lease term, up to a total of five consecutive calendar years, provided the Business continues to meet all requirements of this chapter and the Agreement.**
- (b) **For companies owning or purchasing a site, the incentive may be for up to a total of five consecutive years, provided the Business**

continues to meet all requirements of this chapter and the Agreement.

- (c) A retention period equal to the same number of years as the incentive period will immediately follow each incentive period, and the Business must remain in Covington and meet all requirements of the Agreement.

F. Business Retention Incentives.

(1) Purpose. The Business Retention incentive is to be used prudently for existing Covington companies that are at risk of relocating out of Covington for an expansion that includes new jobs and capital investment.

(2) Eligibility. A Business shall be eligible for incentives under this division provided the Business:

- (a) Applies for an incentive under this division, is recommended by the Department of Economic Development and approved by the Board of Commission, and executes an Agreement;
- (b) Has employees within the city who are primarily engaged in professional, technical and innovation, administrative, manufacturing, communication, or general medical and/or general surgical hospital occupations;

(c) Applicant must have a minimum Annual Payroll of \$2,000,000 to be eligible for this incentive.

(d) Has operated in the city with a valid occupational license at all times;

(e) Can provide documentation to the Economic Development Department that the Business is undergoing due diligence on a site in another municipality, as demonstrated by a competing written incentive offer letter, a lease/purchase LOI, or other documentation deemed acceptable by the Economic Development Department; and

(f) The Economic Development Department demonstrates that the Project sufficiently satisfies at least three of the evaluation criteria in Category A or at least five of the evaluation criteria in Category B below:

a. Category A (at least 3)

- i. It can be demonstrated that without incentives the jobs may be moved away from the area or eliminated, as evidenced by a written statement and evidence from the Business.
- ii. If retained, the Business will be making a new private investment of at least \$3 million in property acquisition, lease, improvements, machinery & equipment, infrastructure, etc.;

- iii. *The Business will retain over 25 jobs and add additional jobs.*
- iv. *The Business is a headquarters facility.*
- b. *Category B (at least 5)*
 - i. *The Business has demonstrated a strong commitment to the City, such as hiring Covington residents, utilizing Covington contractors/suppliers, philanthropic activity, or other local community efforts.*
 - ii. *The Business is a target industry sector as determined by the City's economic development strategy, as such is adopted by City Commission from time to time;*
 - iii. *The Project ties into a strategy recommendation within the most recently adopted economic development strategy, such as "Develop and Invest in Real Estate Product for the City."*
 - iv. *The Project will stimulate investment in redeveloping neighborhoods outside of the TIF District that the City may deem of significant benefit to the community.*
 - v. *The investment provides the opportunity for future expansion and increased employment.*
 - vi. *The Business' industry sector will help diversify the city's economy as determined by the Applicant's appropriate North American Industry Classification System (NAICS) codes .*

(2) Nature of incentive.

(a) A Business approved for an incentive under this division may receive an annual reimbursement **up to** 0.75% of its Base Taxable Payroll and up to 1% of its Taxable Payroll in excess of its Base Taxable Payroll, provided the Business's total Taxable Payroll is in excess of its Base Taxable Payroll. **The incentive rate shall be based on the most recent Payroll Incentive Evaluation Factors.**

(b) If the Taxable Payroll of a Business approved for an incentive under this division is not in excess of its Base Taxable Payroll in any calendar year, then the Business may receive an annual reimbursement for that calendar year up to 0.75% of its Taxable Payroll.

(3) Duration.

- (a) For companies signing a new lease, the incentive period may be for up to half of the Applicant's new lease term, up to a total of five consecutive calendar years, provided the Business continues to meet all requirements of this chapter and the Agreement.
- (b) **For companies owning or purchasing a new site, the incentive may be for up to a total of five consecutive years, provided the Business**

continues to meet all requirements of this chapter and the Agreement.

- (c) **A retention period equal to the same number of years as the incentive period will immediately follow each incentive period, and the Business must remain in Covington and meet all requirements of the Agreement.**

Section 5

Section 116.05 of the Covington Code of Ordinances is amended to read as follows:

§ 116.05 COMMONWEALTH OF KENTUCKY INCENTIVES.

On the Commonwealth of Kentucky's approval of an application for the benefits and incentives available to an Applicant under the Commonwealth of Kentucky's economic development incentive programs that are provided through statutory authorization and otherwise, and that require the City's participation, the City may offer a rebate to the Applicant on all new Kentucky-resident jobs up to 1% of Taxable Payroll for a term not to exceed ten years from the date of activation of an incentive program. **The incentive rate shall be based on the most recent Payroll Incentive Evaluation Factors. Alternatively, the City may offer up to 1% rebate to the Applicant on all new jobs to Covington provided the Applicants agrees to a retention period equal to the same number of years as the incentive period. The Business must remain in Covington and meet all requirements of the Agreement.**

Section 6

Section 116.06 of the Covington Code of Ordinances is amended to read as follows:

§ 116.06 VACANT PROPERTY REHABILITATION INCENTIVES.

- (A) **Purpose. The vacant property rehabilitation incentive is to help convert Covington's vacant, historic inventory stock into move-in ready commercial space for prospective businesses.**

- (B) Eligibility. A Building Owner shall be eligible for incentives under this section provided the Building Owner:

(1) Applies for an incentive under this division, is recommended by **the Department of Economic Development and approved by the Board of Commission**, and executes an Agreement;

(2) Rehabilitates a building located within the city for use as leasable retail, office, or commercial space, provided the building is:

(a) At least 50 years old; and

(b) **Has been at least 51% vacant, as measured by gross floor space, for a period of 24 or more continuous months at the time the Building Owner submits an application for incentives under this section. For purposes of this requirement, area used for storage or residential shall be considered to be vacant.**

(B) Nature of incentive.

(1) A Building Owner approved for an incentive under this section shall receive an annual reimbursement equal to 1.25% of Taxable Payroll paid by employers with respect to all employees:

(a) With a primary workstation in the building that is the subject of the Agreement;

(b) Provided the **business** was not located within the city prior to its locating in the building that is the subject of the Agreement.

(2) A Building Owner approved for an incentive under this section shall receive an annual reimbursement equal to 0.625% of Taxable Payroll paid by employers with respect to all employees:

(a) With a primary workstation is the building that is the subject of the Agreement;

(b) But not meeting the requirements of division (B)(1)(b) of this section.

(C) Duration. The incentive may continue for a total of up to five consecutive calendar years, provided the Building Owner continues to meet all requirements of this chapter and the Agreement.

(D) Any tenants of a property receiving a Vacant Property Rehabilitation Incentive will be ineligible to apply for any other incentives under this chapter until after the vacant property rehabilitation incentive has expired.

(E) If the property falls outside of the TIF District, a vacant property rehabilitation incentive may be used in conjunction with a property tax moratorium outlined in Chapter 97 (10).

Section 7

This Ordinance shall take effect and be in full force from and after its passage, publication, which may be in summary form, and recording, according to law.

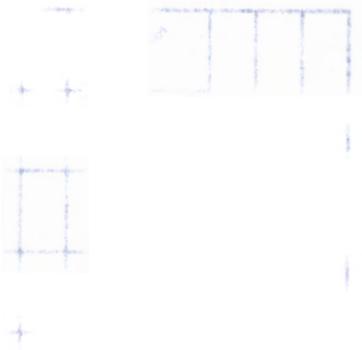

MAYOR

ATTEST:

Margaret Mayhan
CITY CLERK

Passed: 8-11-20 (Second Reading)

7-21-20 (First Reading)



Meeting Date:					
ORD.: 1ST		2ND			
OR:					
	Bowman	2 Downing	1 Smith	Williams	Meyer
Yeas	✓	✓	✓	✓	✓
Nays					
Present, not Voting					