

ORDINANCE NO. 2017-01

AN ORDINANCE AUTHORIZING AND ESTABLISHING AN ECONOMIC DEVELOPMENT INCENTIVE PROGRAM TO ENCOURAGE PRIVATE INVESTMENT IN THE INCENTIVE AREA OF THE CITY OF DARLINGTON; AND OTHER MATTERS RELATED THERETO.

WHEREAS, the City of Darlington, South Carolina (the “City”), was created as a municipal corporation under the laws of the State of South Carolina (the “State”);

WHEREAS, the City is duly empowered to enact ordinances, not inconsistent with the laws of Constitution of the State of South Carolina, 1895, as amended exercising its powers related to the expenditure of public funds for public purposes and those other powers incident to, and necessary for the accomplishment of, the City’s express authorization to levy certain taxes and fees;

WHEREAS, City Council of the City of Darlington, the governing body of the City (the “Council”), through the adoption of its Comprehensive Plan, has established as a matter of policy that fostering the revitalization and redevelopment of the City’s historic downtown and connecting commercial corridors (collectively, the “Incentive Area,” as further defined in Sec. 22-102 below) brings about positive economic, social and cultural impacts within the City and greatly enhances the quality of life of the City’s citizens;

WHEREAS, it is essential to the City’s efforts to foster revitalization and redevelopment within the Incentive Area that the City offer certain Incentives (as defined in Sec. 22-102 below) that will encourage private investment in the Incentive Area. The goals (the “Goals”) of the City in offering the Incentives are as follows:

- (a) To promote the construction of new buildings or the rehabilitation of existing buildings within the Incentive Area; and
- (b) To support the establishment of the categories of new businesses that the Council determines will (i) significantly increase the overall commercial activity within the Incentive Area, (ii) attract the City’s residents and tourists into the Incentive Area, and (iii) increase the property values within the City as a whole.

WHEREAS, while the Incentives may benefit the Incentive Recipients (as defined in Sec. 22-102 below), the primary beneficiary of the Incentives will be the City and its citizens who shall realize the following benefits (the “Benefits”):

- (a) Increased property values within the Incentive Area and the City as a whole;
- (b) Increased revenue from property taxes, business license fees and permit fees;
- (c) Increased tourism and commercial activity within the Incentive Area and the City as a whole; and
- (d) The improvement of the character of the City by preserving historic buildings within the Incentive Area or promoting the construction of new buildings that are compatible with its historic character.

WHEREAS, the Incentives, as provided for in an Incentive Agreement (as defined herein), shall be structured in such a way that the value of the Benefits to the City will exceed their value to the Incentive Recipients; and

WHEREAS, the financial benefit of the Incentives to the Incentive Recipients will only be realized at such time as certain Benchmarks (as defined herein) are met or continue to be met. Should all the Benchmarks be accomplished, the City believes that there is a high probability that the Benefits will be realized by the City and that the value of the Benefits will exceed the value of public funds expended on the Incentives.

NOW, THEREFORE, BEING DULY ASSEMBLED, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DARLINGTON THAT:

Section 1. There is hereby enacted by the City, for the purposes discussed above, the “Economic Development Incentive Program.” Amendments, modifications and clarifications to the Economic Development Incentive Program or succeeding amendments, modifications or clarifications to the Economic Development Incentive Program shall become effective if approved and enacted by the City. Prior to such effective date, the version of the Economic Development Incentive Program enacted by the terms hereof shall remain in full force and effect.

Section 2. The Economic Development Incentive Program shall be codified into the City’s Code of Ordinances. By and through the enactment

of this ordinance, Article IV, entitled “ECONOMIC DEVELOPMENT INCENTIVE PROGRAM” shall be added to Chapter 22 “BUSINESSES” of the City’s Code of Ordinances. Chapter 22 “BUSINESSES”, Article IV “ECONOMIC DEVELOPMENT INCENTIVE PROGRAM” shall be added to the City’s Code of Ordinances as follows:

Sec. 22-100 – Title.

This ordinance shall be titled “Economic Development Incentive Program.”

Sec. 22-101 – Authority.

Subject to the realization of certain Benefits (as defined in Sec. 22-102 below), the Economic Development Incentive Program is enacted by the Council to meet its Goals (as defined in Sec. 22-102 below).

Sec. 22-102 – Definitions.

As used in this Article, unless the context shall otherwise require, the following terms shall have the following respective meanings:

“**Benefits**” means the value to the City of providing the Incentives, which generally includes: (a) increased property values within the Incentive Area and the City as a whole; (b) increased revenue from property taxes, business license fees and permit fees; (c) increased tourism and commercial activity within the Incentive Area and the City as a whole; and (d) the improvement of the character of the City by preserving historic buildings within the Incentive Area and promoting the construction of new buildings that are compatible with its historic character.

“**Incentive Area**” shall mean the area in which the Council has determined that the revitalization and redevelopment thereof is essential to preserving and improving the economy, society, and culture of the City and enhancing the quality of life of the citizens thereof. The Incentive Area shall include all properties located within the Core Commercial, General Commercial, Limited Commercial, Limited Industrial, or Basic Industrial Zoning Districts.

“Development” shall mean the activity of improving a real property to the extent of adding value to the tax base through real property improvements and the creation of employment opportunities.

“Goals” means the objectives of the City in offering the Incentives, which generally includes: (a) promoting the construction of new building or the rehabilitation of existing buildings within the Incentive Area; and (b) supporting the establishment of the categories of new businesses that will (i) significantly increase the overall commercial activity within the Incentive Area, (ii) attract the City’s residents and tourists into the Incentive Area, and (iii) increase property values within the City as a whole.

“Incentive” shall mean a grant of any inducement having monetary value by the City that is offered to a person, firm, or corporation to pursue a Development that encourages private investment and/or creation/retention of jobs. The Incentive may also include grants from other entities that the City may be able to obtain.

“Incentive Recipient” shall mean the private parties receiving the Incentives from the City.

“Job” shall mean each new (i) full-time position or (ii) full-time equivalent position that is created as a direct result of the ongoing operation of a Development. For the purposes of calculating the number of Jobs created by a Development, only those employed at businesses directly associated with the Development at positions permanently located within the Incentive Area shall be considered.

Sec. 22-103 – Authorization.

(a) Authorization to Grant Incentives.

The Council, at its discretion and on a case-by-case basis, but subject to the General Eligibility Criteria provided for in Sec. 22-105(a) herein, may enter into an Incentive Agreement (as defined herein) with a person, firm, or corporation providing for Incentives in order to encourage and support the Development of real property within the Incentive Area.

(b) Incentive Agreements.

The Incentives shall only be provided to an Incentive Recipient after an agreement has been entered into between the City and such person, firm, or corporation, which agreement shall set forth: the particulars of the Development; the Incentives to be provided; and sufficient assurances that the Benefits will accrue to the City and the Goals will be met by the Development (an “Incentive Agreement”). Pending the approval by the Council of any Incentive Agreement and subject to the provisions of Sec. 22-106 herein, the City Manager of the City is authorized to discuss the provisions of this Economic Development Incentive Program, aid in the completion of any Proposal (as defined herein) and, subject to the final approval by the Council, negotiate with the potential Incentive Recipient on behalf of the City. Each Incentive Agreement shall be approved by Council by ordinance. Council is authorized to provide Incentives in any amounts and for any periods of time within the thresholds provided for herein or within the time periods and thresholds provided for in any applicable statutory authorization.

Sec. 22-104 – Authorized Incentives.

(a) Multiple Incentives.

The Council may provide to an Incentive Recipient any combination of Incentives provided for herein; provided, however, that the total amount of Incentives given to a Development must be in keeping with the Goals and the value of the Benefits accruing to the City (and its citizens) must be greater than the financial value of the Incentives to an Incentive Recipient.

(b) Incentives to the City.

All direct Incentives of the City shall be granted in the form of reimbursements and refunds of fees and taxes that have been duly paid to the City. No upfront abatements of fees or taxes shall be permitted. Where Incentives continue for a period of more than one year, such Incentives may be graduated to increase or decrease year-to-year as the Council sees fit, but subject to monitoring by the City to ensure compliance with the terms of any Incentive Agreement. The Council may, at its discretion and on a case-by-case basis, enter into an Incentive

Agreement to reimburse or refund any person, firm, or corporation the following fees and taxes up to the amounts and percentages provided for herein:

1. For Developments creating 50 or more Jobs or investing \$500,000 in capital improvements, businesses shall have the building permit fees reimbursed at 50% on the initial construction period.
2. For Developments creating 100 or more Jobs or investing \$1 million (\$1,000,000) in capital improvements, businesses shall have the building permit fees reimbursed at 100% on the initial construction period.
3. For Developments creating 20 or more Jobs, businesses shall have their business license taxes reimbursed in the following manner:
 - a. 100 percent for the first taxable year of operation or any portion thereof;
 - b. 66 percent for the second taxable year of operation; and
 - c. 33 percent for the third taxable year of operation.
4. For Developments creating 50 or more Jobs, businesses shall have their business license taxes reimbursed in the following manner:
 - a. 100 percent for the first taxable year of operation or any portion thereof;
 - b. 80 percent for the second taxable year of operation;
 - c. 60 percent for the third taxable year of operation;
 - d. 40 percent for the fourth taxable year of operation; and
 - e. 20 percent for the fifth taxable year of operation.
5. For businesses required to collect local accommodations taxes, Incentive Recipients shall have their local accommodations taxes reimbursed in the following manner:
 - a. For Developments creating 20 or more Jobs, businesses shall have their local accommodations taxes reimbursed 50% for a period of twelve (12) months.
 - b. For Developments creating 100 or more Jobs, businesses shall have their local accommodations taxes reimbursed 50% for a period of thirty-six (36) months.

- c. Funds received through such incentive are to be spent only for purposes that are related to tourism, pursuant to S.C. Code 6-1-530, and which have been approved by Council and included in the Incentive Agreement;
6. For businesses required to collect local hospitality taxes, Incentive Recipients shall have their local hospitality taxes reimbursed in the following manner:
 - a. For Developments creating 20 or more Jobs, businesses shall have their local hospitality taxes reimbursed 50% for a period of twelve (12) months.
 - b. For Developments creating 50 or more Jobs, businesses shall have their local hospitality taxes reimbursed 100% for a period of twelve (12) months.
 - c. Funds received through such incentive are to be spent only for purposes that are related to tourism, pursuant to S.C. Code 6-1-730, and which have been approved by Council and included in the Incentive Agreement.
7. Such other Incentives that the Council, at its discretion on a case-by-case basis, determines are appropriate given the amount or type of investment made by the Incentive Recipient in the Investment Area.

(c) State Incentive Programs.

The State programs that may be considered by Council to be included within any package of Incentives or as a stand-alone set of Incentives for in-City projects include the following:

- (i) Property tax credits authorized by the provisions of the South Carolina Abandoned Buildings Revitalization Act, codified at S.C. Code Ann. 12-67-100 *et seq.* (collectively, the “**Abandoned Building Act**”). Incentive Recipients requesting consideration of the Abandoned Building Act by the Council shall submit an Abandoned Building Act Application form, a copy of which is attached hereto as Exhibit A.
- (ii) Property tax credits authorized by the provisions of the South Carolina Textiles Communities Revitalization Act,

codified at S.C. Code Ann. 12-65-10 *et seq.* (collectively, the “**Textiles Revitalization Act**”). Incentive Recipients requesting consideration of the Textiles Revitalization Act by the Council shall submit a Textiles Revitalization Act Application form, a copy of which is attached hereto as Exhibit B.

- (iii) Property tax credits authorized by the provisions of the South Carolina Retail Facilities Revitalization Act, codified at S.C. Code Ann. 6-34-10 *et seq.* (collectively, the “**Retail Revitalization Act**”). Incentive Recipients requesting consideration of the Retail Revitalization Act by the Council shall submit a Retail Revitalization Act Application form, a copy of which is attached hereto as Exhibit C.
- (iv) The South Carolina real property tax credit for the installation of a fire sprinkler system, codified at S.C. Ann. 12-6-3622.

Sec. 22-105 – Eligibility Criteria.

(a) General Eligibility Criteria.

Except for those Incentives discussed in Sec. 22-104(c) above as authorized by the State and which are intended by the terms of this Economic Development Incentive Program to be applied City-wide, in order for a Development to be eligible to receive incentives, the Council must determine that the Development meets, or upon completion will meet, each of the following criteria:

- (i) The Development is consistent with the City of Darlington Comprehensive Plan as well as the Goals.
- (ii) Absent the provision of Incentives, the Development would be unlikely to occur or unlikely to occur at the level or scale contemplated by the developer.
- (iii) The Development must be located within the Incentive Area, as defined in Sec. 22-102.
- (iv) The Development must have a minimum threshold investment of one million dollars (\$1,000,000) (the “Minimum Investment”). The Minimum Investment may be comprised of any combination of

- a. real property acquisition costs,
- b. the costs of physical improvements to real property, or
- c. the costs of capital improvements to City infrastructure.

The Minimum Investment may be calculated based upon investment in a single property or the cumulative investment in multiple properties, each within the Incentive Area. Where multiple uses or businesses are to be located within a single Development as separate businesses the Council may, at its discretion on a case-by-case basis, allocate appropriate portions of the total investment in the Development to such separate business in order to allow such business to meet the minimum Investment eligibility requirement. In order to meet the threshold for the Minimum Investment, a Development may be given a credit towards the Minimum Investment of fifty thousand dollars (\$50,000) for each Job (as defined herein) that will be created by the Development. In order to meet the threshold for the Job creation, a Development may be given a credit towards the number of Jobs created of five (5) for each executive required to live within the City limits by a written and dated policy reflecting this requirement.

- (v) The intended use of the Development must be for one or more of the following business purposes: (1) retail uses; (2) tourism-related business or activities; (3) cultural arts activities and associated businesses; (4) corporate headquarters; (5) research and development; (6) high-technology growth businesses; and (7) other uses, as may be determined by Council, that are consistent with the Goals and the Comprehensive Plan.

(b) Specific Criteria.

The Council may, at its discretion and on a case-by-case basis, include within an Incentive Agreement any other eligibility criteria that must be met upon completion of a Development in order to ensure that the Goals are met and that the Development provides Benefits to the City (and its citizens) in amounts that warrant the implementation of Incentives.

(a) Application for Incentives.

- a. Except where an applicant seeks only Incentives authorized by the State Incentive Programs listed in Sec. 22-104(c), in order to be eligible for Incentives, a person, firm, or corporation must submit to the City Manager a proposed set of Incentives for a Development (a "Proposal"). A form of the Proposal is attached hereto as Exhibit E. The Proposal must include a sufficient description of the Development, to include, without limitation, the following information:
- i. Identification of the property or properties on which the Development is to be located (the "Subject Property") and any acquisition costs thereof;
 - ii. The estimated start date and completion date for any work to be performed on the Subject Property;
 - iii. List of any physical improvements that are to be made to the Subject Property as part of the Development, including a good-faith estimate of the value of the Subject Property upon completion of the improvements thereto;
 - iv. Good-faith estimate of the number of Jobs that the Development is projected to create, including an estimate of the date upon which the estimated number of Jobs will have been created;
 - v. Statement affirming that, based upon any acquisition costs for the Subject Property, along with good-faith estimates for the costs of physical improvements and the number of Jobs created, the Development will meet or exceed the Minimum Investment requirements of Sec. 22-105(a)(iv);
 - vi. Good-faith estimate of other revenue for the City that will be created as a direct result of the Development, including anticipated business license fees, additional property tax revenue, capital improvements to City-owned infrastructure and utilities revenue; and
 - vii. Any other additional information that the Incentive Recipient or the City Manager deems may be necessary and helpful for the Council to evaluate and give due consideration to the Proposal.

b. Determination of Incentive Amounts.

The amount of Incentives granted to a Development shall be based upon the amount of the capital investment in the Development, the amount of new revenue for the City directly created by the Development and the number of new Jobs that will be directly created by the Development. The amount of Incentives granted to a Development shall in no case exceed the value of the direct and indirect benefits of the Development to the City. These amounts shall be expressly included within any Incentive Agreement.

- c. Certification, Commencement and Continuation of Incentives.
 - i. No Incentive shall commence or be given until such time as the Development has been issued a Certificate of Occupancy and/or a business license as well as a certificate that all terms and benchmarks included within the applicable Incentive Agreement, including without limitation benchmarks for capital investment, property valuation, and Job creation (the "Benchmarks"), have been fully achieved or otherwise completed.
 - ii. Where Benchmarks, such as the number of Jobs created, are to be met continuously over a period of time, the Incentive Recipient shall provide to the City, on an annual basis, sufficient proof that the Development has continuously achieved or otherwise complied with such Benchmarks.
 - iii. If, at any time after completion of a Development or at any time within the period of time during which a Development is granted Incentives, a Development fails to achieve or otherwise comply with a Benchmark, the Council may, at its discretion and on a case-by-case basis: (1) declare the Incentive Agreement null and void and refuse to grant any future Incentives; or (2) decrease the amount of the Incentives based upon the actual direct and indirect Benefits of the Development to the City and its citizens.

Sec. 22-107 Administration of Incentives and Incentive Agreements.

1. The administration of the application process, specifically including the drafting of any Proposal, and continuous monitoring of Developments pursuant to applicable Incentive Agreements shall be the responsibility of

the City Manager and any person designated to oversee such process by the City Manager.

2. For any Incentive Recipient who has entered into an Incentive Agreement with the City, a Request for Incentive Repayment must be filed in writing with the City Manager by July 31 of the year in which Incentives are to be received or forfeit those Incentives.

Sec. 22-108 Disqualification for Incentives.

1. No business and no successor or affiliated business entity having one or more of the same principals and substantially the same business activity may cease business operations in the name of one business and then resume business operations in another name if the effect of such resumption is to circumvent this section or to prolong the incentives, provided beyond the third taxable year.
2. Should an Incentive Recipient fail to provide proof of residency of executives included in a Request for Incentive Repayment, if using the special consideration to increase the Development's Job credits as per Sec. 22-105(a)(iv), the Incentives shall be forfeit.
3. Should an Incentive Recipient receive Incentives from the City and relocate the business outside the City limits during the sixty (60) months following the receipt of those funds, that person, firm, or corporation must repay those Incentives to the City within three (3) months of business closure. Unpaid penalties will be assessed to the real property associated with the Development.
4. Should an Incentive Recipient reduce the number of Jobs by 20 or more through attrition or layoffs during the sixty (60) months following the Incentive Agreement approval by Council, that person, firm, or corporation must repay the Incentives to the City by October 31 of that year. Unpaid penalties will be assessed to the real property associated with the Development.

Section 3. If any section, subsection, sentence, clause, or phrase of the Economic Development Incentive Program or this Ordinance is, for any reason, held or determined to be invalid, such decision shall not affect the validity of the remaining portions of the Economic Development Incentive Program and/or this Ordinance.

Section 4. Nothing in this Ordinance or in the Economic Development Incentive Program hereby enacted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause of causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 5. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this ordinance are hereby repealed to the extent of the conflict or inconsistency. This Ordinance and the provisions of the Economic Development Incentive Program shall take effect immediately upon its enactment by the Council or July 1, 2017, whichever is later.

DONE AND ORDAINED IN COUNCIL ASSEMBLED,
this _____ day of _____, 2017.

CITY OF DARLINGTON, SOUTH CAROLINA

By: _____
Gloria C. Hines, Mayor

(SEAL)

Attest:

By: _____
Gloria Pridgen, City Clerk/Treasurer
City of Darlington, South Carolina

Approved as to form:

By: _____
Kevin Etheridge, City Attorney

First Reading: January 3, 2017
Public Hearing: February 7, 2017
Second Reading: February 7, 2017