

ARTICLE V. - ECONOMIC DEVELOPMENT INCENTIVE PROGRAM

Footnotes:

--- (5) ---

Editor's note— Ord. No. 2010-051, § 1, adopted Aug. 10, 2010, amended Art. V in its entirety to read as herein set out.

Former Art. V, §§ 1-7-61—1-7-69, pertained to similar subject matter. See the Code Comparative Table for full derivation.

Sec. 1-7-61. - Short title.

This article shall be cited as the "Charlotte County Economic Development Incentive Code."

(Ord. No. 2010-051, § 1, 8-10-10)

Sec. 1-7-62. - Authority.

The expansion and enhancement of the economy of the county is a public purpose for which public funds are authorized to be expended toward the attraction and retention of business activities pursuant to the authority granted by F.S. section 125.045.

(Ord. No. 2010-051, § 1, 8-10-10)

Sec. 1-7-63. - Program basis.

The Charlotte County Economic Development Incentive Program (EDI) shall utilize county general funds as allocated by the board. Additionally, the board may designate county owned properties which may be utilized as incentives within the EDI program.

(Ord. No. 2010-051, § 1, 8-10-10; Ord. No. 2010-074, § 1, 12-14-10; Ord. No. 2016-009, § 1, 2-9-16)

Sec. 1-7-64. - Definitions.

As applied in this article, the following words and terms shall have the following meanings:

Applicant shall mean a business enterprise that has submitted or that intends to submit an application to the county to participate in the EDI program.

Application shall mean a form prescribed by the Director of the Charlotte County Economic Development Office that must be completed and properly executed in order for an applicant to be considered for participation in the EDI program.

Board shall mean the Board of County Commissioners of Charlotte County, Florida or its duly authorized designee.

Capital incentive(s) shall mean incentive(s) provided to participants for the development or acquisition of specified values of capital improvements.

Capital improvement(s) shall mean land improvements or personal property, or both.

Charlotte County Average Annual Wage or *CCAAW* shall mean the Charlotte County Average Annual Wage as established by the State of Florida Incentives Average Wage Requirements as published and updated annually by Enterprise Florida using ES202 Program data from the United States Department of Labor and the State of Florida Agency for Workforce Innovation.

County shall mean Charlotte County, Florida, a geographical area and a political subdivision of the State of Florida.

Derived impact shall mean the sum of the anticipated impact on county funds based on the cost of providing essential public services to the applicant or participant and the projected return over a ten-year period.

Direct return shall mean the expected general fund revenues collected from the applicant or participant based on current tax and fee assumptions projected annually and cumulatively over a ten-year period.

EDI program shall mean the program established by the Charlotte County Economic Development Incentive Code.

Enterprise Florida shall mean Enterprise Florida, Inc., a Florida non-profit corporation authorized by the Florida Legislature pursuant to F.S. section 288.901.

Employment incentive(s) shall mean incentive(s) provided to participants for the creation of specified levels of quality jobs.

Export sales shall mean the total sales of products or services by the applicant to purchasers located outside the boundaries of the county.

Governmental fees shall mean permitting, development, utility connection, impact and any similar fees owed to the county in connection with the development, installation or construction of capital improvements.

Economic Impact Analysis Model shall mean the Charlotte County Economic Development Office, Economic Impact Analysis Model, developed in 2008 by Impact DataSource, Austin, TX.

Incentive(s) shall mean economic or financial assistance, in the form of set-offs, direct compensation, or available land, provided to participants pursuant to the terms of this article. Incentives can be either capital incentives or employment incentives.

Land improvements shall mean improvements to real property, improvements to existing land improvements, or fixtures that are taxed pursuant to Title XIV, Florida Statutes, or both.

Local jobs shall mean jobs created in Charlotte County for full-time or full-time equivalent employees of an applicant or participant.

Participant shall mean an applicant who is approved by the county for participation in the EDI program.

Personal property shall mean "tangible personal property" as defined in F.S. section 192.001(11)(d) and taxed pursuant to Title XIV, Florida Statutes.

Program agreement shall mean an agreement between the county and the participant, which sets forth the rights and duties of the parties relative to the participant's participation in the EDI program. In no instance shall the term of the program agreement exceed ten (10) years.

Quality jobs means local jobs in a targeted industry provided by an applicant or participant that provide an average wage that equal or exceeds the wage levels set forth in subsections 1-7-65(g)(i), (ii) or (iii).

Regionally significant shall mean a project which creates one hundred (100) or more quality jobs, or fifty (50) or more quality jobs, with a minimum investment of one million dollars (\$1,000,000.00) in capital improvements.

Return on investment shall mean the direct return to county revenues plus the derived impact as derived by the impact analysis model, the total of which shall be subtracted by the total incentive award by the county.

Set-offs shall mean incentives in the form of economic credits granted a participant by the county towards governmental fees or taxes.

Specialized capital intensive industry shall mean an industry that, in order to establish or expand operations within the county, requires a capital investment of at least twenty-five million dollars (\$25,000,000.00) to improve land or install tangible personal property, resulting in a significant increase in the local tax base, but does not typically establish many new jobs. such industries may include, but are not limited to, data (cloud) centers, ocean wave power generators, or solar farms.

Targeted industries shall mean those identified by the Enterprise Florida and the Governor's Office of Tourism, Trade, and Economic Development at the time of application or identified by resolution of the board.

(Ord. No. 2010-051, § 1, 8-10-10; Ord. No. 2010-074, § 1, 12-14-10; Ord. No. 2015-001, § 1, 1-27-15)

Sec. 1-7-65. - Eligibility criteria, types of incentives, review and calculation of funding.

(a) Eligibility.

- (1) An applicant that complies with the requirements set forth in this article shall be eligible to participate in the EDI program. The county shall determine the eligibility of each applicant in its sole discretion, with the advice of the county attorney and budget director.

- (2) Each applicant shall be required to submit a complete and properly executed application to the director of the economic development office. In addition to the application, each applicant shall provide the county with such supporting information as the county shall reasonably require and shall allow the county to review its books and records relating to payroll and other matters which pertain to the applicant's eligibility for the EDI program.
 - (3) All applications shall be reviewed to determine applicant eligibility, incentive availability, risk assessment, return on investment, and economic impact before any incentive package is offered. This process shall be established by resolution of the board.
 - (4) An applicant must propose the creation of at least ten (10) quality jobs to be eligible for the EDI program, unless the applicant is proposing to expand or establish a specialized capital intensive industry as described herein.
 - (5) The quality jobs must be created no more than ninety (90) days prior to the date that the county receives the application and within five (5) years, or up to ten (10) years for regionally significant projects, from the date of the program agreement. Upon the creation of a quality job, the participant shall keep the quality job filled for a minimum of two (2) years. In the event that the participant fails to keep a quality job filled for at least two (2) years, the participant shall immediately reimburse the county in full for all employment incentives advanced in connection with that position. The terms of this subsection shall survive the expiration or termination of the program agreement.
 - (6) To be eligible for participation in the EDI program, the applicant must meet a fifty-one (51) percent export sales requirement as defined in this article.
 - (7) Applicants must be identified as a targeted industry as defined by this article.
 - (8) Applicants must show a one hundred (100) percent, ten-year cumulative direct return on investment, as defined within this article, to be eligible for participation within the EDI program. Where more than one (1) type of incentive is desired, the applicant must show that each proposed incentive satisfies the one hundred (100) percent, ten-year cumulative direct return on investment requirement.
- (b) Types of incentives.
- (1) *Performance-based incentives.* An applicant may receive a performance-based incentive, typically for creating and maintaining certain employment levels, paid to the applicant after it has fully performed its duties and obligations pursuant to the program agreement between the applicant and county.
 - (2) *Early-stage incentives.* Prior to creating jobs, an applicant may receive an early-stage incentive in the form of funds or in-kind contributions for the construction of utility lines, roads, or other horizontal infrastructure supporting the new or expanding company facility when the average annual salaries of the proposed quality jobs meets or exceeds one hundred fifteen

(115) percent of the CCAAW and the county receives adequate assurances through the terms and conditions of a program agreement that the project will maintain a one hundred (100) percent ten-year cumulative direct return on investment.

(3) *Up-front incentives.* An applicant may receive an up-front incentive, when the average annual salary of the proposed quality jobs exceeds one hundred fifty (150) percent of the CCAAW, and the county receives adequate assurances through the terms and conditions of a program agreement that the project will maintain a one hundred fifty (150) percent ten-year cumulative direct return on investment.

(4) *Expedited permitting.* The county may offer an expedited permit review process for all county permit applications directly related to a project where the average annual salary of the proposed quality jobs exceeds one hundred fifteen (115) percent of the CCAAW. This shall not entitle any applicant to receive approval of any specific permit.

(c) Calculation of the rates for employment incentives shall be based on the CCAAW.

(1) For quality jobs with salaries equal to or greater than the CCAAW, the amount of the employment incentive shall be one thousand dollars (\$1,000.00).

(2) For quality jobs with salaries equal to or greater than the CCAAW plus fifty (50) percent, the amount of the employment incentive shall be one thousand five hundred dollars (\$1,500.00).

(3) For quality jobs with salaries equal to or greater than the CCAAW plus one hundred (100) percent, the amount of the employment incentive shall be two thousand dollars (\$2,000.00).

(4) For regionally significant applicants, or where a project exceeds a one hundred (100) percent ten-year cumulative direct return on investment, the employment incentives may be increased up to six (6) times the amounts per quality job provided in subsections (c)(1), (2), or (3).

(5) Except as set forth in section 1-7-67 hereof or in the program agreement, there shall be no limits upon the number of quality jobs for which a participant may receive incentives.

(6) Participants shall be eligible for capital incentives in addition to employment incentives.

(d) Calculation of the rates for capital incentives.

(1) Capital incentives may be awarded in the amount of one thousand dollars (\$1,000.00) per one hundred thousand dollars (\$100,000.00) of real property value and personal property value that the subject land improvements and personal property, respectively, add to the first county tax roll pursuant to F.S. tit. XIV. Unless otherwise provided as an early-stage incentive in the program agreement, land improvements must be constructed pursuant to building permits issued no more than ninety (90) days prior to the date that the county receives the application and within two (2) years from the date of the program agreement. Similarly, unless otherwise provided in the program agreement, personal property must be acquired and placed in service no more than ninety (90) days prior to the date that the county receives

the application and within two (2) years from the date of the program agreement. Regionally significant applicants, or where a project exceeds a one hundred (100) percent ten-year cumulative direct return on investment, shall be eligible for up to six (6) times the standard capital incentive rate.

- (2) Capital improvements may be owned by the participant or a third party who, as landlord, has entered into a lease agreement with the participant. Capital improvements owned by a landlord must be made pursuant to a valid lease agreement between the landlord and the participant, as tenant. The lease agreement must obligate the participant to reimburse the landlord in full for the cost of the capital improvements. Said lease agreement must be otherwise acceptable to the county.
- (3) An applicant proposing a specialized capital intensive industry may be eligible for an increase in the maximum allowable rate for capital incentives where the capital investment exceeds twenty-five million dollars (\$25,000,000.00). The maximum annual allowable capital incentive rate for a specialized capital intensive industry investing twenty-five million dollars (\$25,000,000.00) or more may not exceed thirty (30) percent of the annual real and tangible personal property tax portion actually received by the county for land improvements or tangible personal property investments. This incentive shall be available for a period of no more than ten (10) years from the date the specialized capital intensive industry commences operation.
- (e) Timing of the payment of incentives to applicants shall be determined by the county on a case-by-case basis and shall be set forth in the program agreement. The county shall consider various factors in this determination including size, age, stage of development, potential for longterm success and other factors pertinent to nature of the participant's business operations and the welfare of the EDI program.

(Ord. No. 2016-009, § 1, 2-9-16)

Editor's note— Ord. No. 2016-009, § 1, adopted Feb. 9, 2016, amended § 1-7-65 in its entirety to read as herein set out. Former § 1-7-65 pertained to eligibility criteria and calculation of funding and derived from Ord. No. 2010-051, § 1, adopted Aug. 10, 2010; Ord. No. 2010-074, § 1, adopted Dec. 14, 2010; and Ord. No. 2015-001, § 1, adopted Jan. 27, 2015.

Sec. 1-7-66. - Funding of incentives.

Incentives shall be funded in accordance with the terms of this section. In the event that governmental fees are outstanding when incentives are due, incentives shall be funded in the form of set-offs. In the event no governmental fees are outstanding when incentives are due, incentives shall be funded in the form of set-offs, direct compensation, land, or a combination thereof, the form and amounts of which shall be at the sole discretion of the county. All outstanding governmental fees must be paid prior to the participant's

receipt of direct compensation. Delinquent ad valorem taxes on capital improvements and the underlying and associated land and all delinquent ad valorem taxes on personal property that the participant owes the county must be paid prior to the participant's receipt of any incentives.

(Ord. No. 2010-051, § 1, 8-10-10; Ord. No. 2010-074, § 1, 12-14-10)

Sec. 1-7-67. - Limitations on incentives.

The submittal or approval of an application does not establish any right or entitlement to the receipt of incentives. The actual amount and form of incentives granted to each participant by the county shall be limited by the terms of this article.

In addition to the incentives provided for in this article, the board may grant such other incentives as it deems necessary for regionally significant applicants or for projects that exceeds a one hundred (100) percent ten-year cumulative direct return on investment.

(Ord. No. 2010-051, § 1, 8-10-10; Ord. No. 2010-074, § 1, 12-14-10; Ord. No. 2016-009, § 1, 2-9-16)

Sec. 1-7-68. - Program agreement.

Prior to the participant's receipt of incentives, the county and the participant shall enter into a program agreement. The program agreement shall set forth certain rights and duties of the parties with respect to the participant's participation in the EDI program. Without limitation, the program agreement shall identify any incentives due and owing to the participant, set forth an indemnification covenant in favor of the county and provide for adjustments through the repayment of all or a portion of incentives upon the participant's failure to comply with the requirements herein and in the program agreement. The county may provide in the program agreement that the CCAAW, capital incentives, and employment incentives then in effect in the EDI program when the program agreement is approved by the board and signed by the participant shall be in effect for the term of the program agreement regardless of any subsequent amendments or changes to the incentives by the board. With the exception of incentives involving the conveyance of land, the indemnification covenants in each program agreement shall provide that should any participant who has already received said incentives achieve eighty (80) percent of its projected employment and capital improvements over the term of the program agreement, then reimbursement to the county may be waived upon petition to the board. The county may include such other and further provisions as the county, in its sole discretion, deems beneficial in light of the circumstances.

(Ord. No. 2010-051, § 1, 8-10-10; Ord. No. 2010-074, § 1, 12-14-10)

Sec. 1-7-69. - Liberal construction.

The provisions of this article shall be liberally construed to carry out effectively its purposes in the interest of public health, safety, welfare and convenience.

(Ord. No. 2010-051, § 1, 8-10-10)

Sec. 1-7-70. - Land as an incentive.

Consistent with the authority granted pursuant to F.S. § 125.045, and in conjunction with section 1-1-16 of this Code of Laws and Ordinances, the board has authorized the offering of county owned land as an inducement to attract and retain qualified businesses. An inventory of available lands shall be made available for economic development purposes each year. The appraised value to be utilized towards the calculation of incentives as provided in this article shall be calculated at their just value as reported by the property appraiser's office unless separately appraised if required which shall be at the sole discretion of county.

Conveyance of lands shall only occur upon performance of projected employment and capital improvement or subject to a reverter in favor of the county to be released upon said performance. Lands may be utilized by participants through land leases either convertible to fee simple upon performance or for a term with an option to convert to fee simple based on the appraised value determined in the program agreement minus prior lease value provided participant has met projected performance criteria. The value of all lease terms shall be provided for in the calculation of incentives.

(Ord. No. 2010-074, § 1, 12-14-10)