

Ordinance of the City Council of
The City of Hamilton, Alabama

ORDINANCE NO. 2012-12

AN ORDINANCE TO ESTABLISH A POLICY FOR ECONOMIC DEVELOPMENT
ASSISTANCE TO ELIGIBLE RETAIL DEVELOPMENTS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF Hamilton,
ALABAMA as follows:

SECTION 1. Definitions.

The following terms shall have the meanings respectively ascribed to them unless the context indicates otherwise:

City Sales Tax for any Month Period shall mean collectively privilege license and excise taxes levied by the city (commonly called sales and use taxes) during such Month Period which consists of (i) a privilege or license (commonly called sales) tax on person engaged in the business of selling at retail any tangible personal property within the city (subject to exemption of certain property as described by law) or in the business of conducting places of amusement or entertainment within the City, generally measured by the gross sales or receipts of such businesses and (ii) an excise (commonly called use) tax on the storage, use or other consumption of tangible personal property (subject to exemptions of certain property as provided by law) within the City, generally measured by the sales price of such property.

Calendar Quarter shall mean a period of three consecutive months.

City Sales Tax Rebate shall mean an amount equal to the percentage of the City Sales Tax Proceeds actually received by the City from businesses in a Project Area during the immediately preceding Calendar Quarter with in the Project Area, net of all out-of-pocket costs incurred by the City to collect the City Sales Tax Proceeds, less the percentage to be paid for public school purposes or public election purposes.

Developer shall mean a legal entity that has made application for assistance pursuant to this policy, and/or one that has been determined to be "qualified" in accordance with this policy

and/or one that has entered into negotiations for or executed a Development Agreement with the City.

Developer Improvement Cost shall mean the total amount expended by the Developer for Development Improvements, including that for design, testing, inspection, construction, installation and all other costs associated with the Development Improvements as described in this policy, which also may include all costs, fees, charges and interest associated with the issuance by the City of any debt to fund the improvements plus the amount of City or public infrastructure improvement assistance and/or EDL assistance provided by the City to the Developer.

Development Plan shall mean that certain plan for the Development as depicted upon the plat and maps as permitted and approved by the City.

Excess Sales Tax Revenue shall mean that portion of the sales tax revenue generated by and collected from a Relocated Business for any one Calendar Quarter that is in excess of, or greater than, the average amount of sale tax revenue collected from the Relocated Business in the four calendar quarters prior to its relocation.

Main Building shall mean the specified square foot building in the Project Area.

Month Period shall mean each calendar month during the Term in which City Sales Tax Proceeds are collected in the Project Area, commencing on the Commencement Date.

New Business shall mean a business that has not purchased a business license in the City of Hamilton within the last five years.

Payment Date shall mean the 20th day of each month during the Term beginning on the 20th day of the first month which immediately follows the Commencement Date.

Project shall mean a specified square foot building (the "Main Building") and any accessory buildings located in the Project Area.

Project Area shall mean the land and buildings located at the specific site and address identified in the project agreement.

Relocated Business shall mean a business(es) licensed to operate in Hamilton that moved into the Project Area. A business may be deemed a Relocated Business if it is substantially similar to the previously existing business, and it is not required that any of the following factors be identical to the previously existing business: ownership or ownership entity, staffing, products/services offered, size of business, or scope of business. The initial determination of whether the business is a new business or a Relocated Business shall be made solely in the discretion of the Mayor and/or the Mayor's designee to address economic development assistance issues, and such initial determination may be reviewed if, during the applicable rebate period, factors change such that the business appears to bear even more resemblance to the previously existing business. A business which wishes to challenge the determination of the Mayor and/or designee that the business is a Relocated Business, as opposed to a New Business, may appeal such decision to the City Council of the City of Hamilton, Alabama, and shall bear the burden of establishing to the satisfaction of the Council by preponderance of evidence that the determination of the Mayor and/or designee is incorrect.

Total Developer Commitment shall mean an amount not less than One Million Dollars (\$1,000,000.00)

SECTION 2. General Criteria for Economic Retail Development Assistance from the City.

This policy only applies to retail and/or commercial Developments within the City.

The primary effect of any assistance by the City to private Development must be to serve the general public in the areas of public safety, public infrastructure, planning and technical assistance, research and information, fair and equitable tax structure and the creation of a community that fosters and supports economic development through commercial/retail activities. Although any assistance provided pursuant to this policy may incidentally benefit the private Development, this should not be its primary purpose or effect of such assistance. As a consequence, in evaluating any application for economic assistance from the City, the following principles will be applied:

- (a) *Public Purpose.* The activity or expenditure requested of the City in regard to the Development must not violate Ala. Const. Art. IV Section 94 or 94.01 in that there

must be a demonstrable "Public Purpose." In addition, a Public Purpose also includes promoting the economic and industrial development of the City pursuant to Ala. Const. Art IV Section 94.01.

- (b) *Beneficial and needed by the community.* The Development must be one that is beneficial and needed by the City as a community or by a particular area of the City. The Development must not adversely impact the City or any community of the City to a degree that exceeds the Development's overall benefit.
- (c) *Taxes.* There must be no adverse effect on existing City tax base or revenues. The City does not have the legal authority to abate ad valorem taxes for Developments subject to this Article.
- (d) *Type of Development.* The Development itself must be of such magnitude in size, scope, features, location, and/or creation of a significant number of new jobs and retailers as to distinguish it from existing Developments. A Development should also offer the City an opportunity to attract and locate a significant and/or distinctive retail or commercial operation which creates a meaningful prospect for the City to promote and realize significant economic development.
- (e) *An experienced, qualified Developer.* The Developer must provide references and proof of experience with prior, similar Developments that demonstrate knowledge and expertise concerning the type of Development under consideration.
- (f) *Proper zoning and other land use restrictions.* Prior to acceptance by the City of any application pursuant to this policy, the site of the Development must be properly zoned in accordance with the Zoning Ordinance of the City of Hamilton, Alabama, for the intended use. The use of the site, further, must not be prohibited by any prohibitive private land use restrictions nor any prohibitive restrictions imposed by any state, federal or local laws or ordinances.
- (g) *Annexation.* The Development must be annexed into the corporate limits of the City of Hamilton.

SECTION 3. City Assistance Available To Qualifying Developments and Developers:

Assistance available from the City to qualifying Developments and Developers will be in the following form and subject to the terms and conditions stated herein and elsewhere in this policy:

- (a) City Sales Tax Rebate (New Business) - A rebate of sales tax will be available to the developer for a development project that generates 20 or more new full-time jobs within one calendar quarter, which has a development cost of \$1,000,000.00 or greater and which has paid all applicable local permit fees. This rebate will be made by way of a refund of sales tax revenues generated and paid to the City from new business(es) located on the Development Property. The Developer shall commit to the City to use commercially reasonable efforts to seek and obtain new and additional businesses for location on the Development Property. Commencing on the grand opening date at the Development Property, which date shall be not later than three months from the first date on which the first business on the Development Property is open for business, the City will rebate to the Developer thirty percent (30%) of the sales tax generated by the new business(es) in the Development Project Area for a period of five (5) years. In Year Six (6) of the Project, the City will rebate to the Developer twenty percent (20%) of the sales tax generated by the new business(es) in the Development Project Area. In Year Seven (7) of the Project, the City will rebate to the Developer ten percent (10%) of the sales tax generated by the new business(es) in the Development Project Area.
- (b) City Sales Tax Rebate (Relocated Business) - A rebate of sales tax will be available to the Developer for development projects that generate 20 or more new full-time jobs within one calendar quarter and which has development cost of \$1,000,000.00 or greater. This rebate will be made by way of refund of sales tax revenues generated and paid to the City from Relocated Business(es) which relocate into the Project Area. The rebate shall be calculated and paid only on the Excess Sales Tax Revenue received from Relocated Business. Commencing on the grand opening date of the Development Property, which date shall be no later than three months from the first date on which the first business on the

Development Property is open for business, the City will rebate to the Developer ten (10%) of the Excess Sales Tax Revenue generated by the new business(es) in the Development Project Area for a period of seven (7) years.

SECTION 4. Application for Economic Development Assistance.

The Developer shall file an application with the Mayor's Office requesting economic development assistance in accordance with this policy.

(a) Generally. The application shall be in writing on a form provided by the City and contain, at a minimum, the following information and any other information deemed relevant and/or material by the City in evaluating the application:

1. The legal name of all Developers, partners and investors, including mailing addresses, telephone numbers, e-mail addresses (should be active and monitored each business day), and fax numbers.
2. The legal name of the entity that is the principal Developer and with which the City could legally enter into a Development Agreement.
3. The location of the principal office of the Developer, primary contact person, business brochures, web addresses related to the Developer or Development and copies of any news articles (or broadcasts, if available) related to the Developer or Development.
4. The names, addresses and phone numbers of at least three (3) references per Developer, partner and investor.
5. A statement as to the Developer's experience with similar Developments together with names, location and contact information.
6. A statement that the property is properly zoned for the Development.
7. Any other specific information deemed relevant with the Application.

- (b) Additional information to be submitted with the Application.

The Developer must establish that the Development meets the criteria and requirements in accordance with the terms and conditions of the policy. To that end, the Developer shall also submit the following additional information, in writing, to the City, if so requested:

1. A completed application on a form provided by the City for economic development assistance.
2. Maps and plats prepared by a professional engineer depicting the property upon which the Development is to be constructed, a plot plan depicting the Development upon the property and conceptual drawings of the Development consisting of architectural renderings and elevations.
3. A traffic impact analysis, storm water and sanitary sewer impact analysis, all performed by qualified experts.
4. A statement that the Development is currently within the corporate limits of the City or a statement affirming the Developer's willingness and ability to annex the property into the City prior to any public assistance. The City will not provide any assistance to a Development outside its corporate limits.
5. A statement of the number of new full-time jobs and part-time jobs to be created by the Development.
6. All information submitted by the Developer shall be supported by reference and/or documentation verifying the adequacy and accuracy of the same. The City reserves the right to request further information if it deems the submittal incomplete or inadequate.

SECTION 5. Requirements to Bind the City.

Prior to the City of Hamilton becoming bound by or to any proposal, response, resolution, recommendation, negotiation, communication or other action or inaction, or prior to the City being obligated to provide assistance to any Developer for any

Development, each of the following prerequisite conditions must be satisfied:

- (a) The Mayor's recommendation to the City Council that the economic development incentives be provided to the Developer.
- (b) The designee of the Mayor shall certify that the Development meets the criteria of this policy, and will constitute a significant and/or distinctive retail or commercial operation within the City of Hamilton, and is one which will create a meaningful prospect for the City to promote, encourage and realize significant economic development.
- (c) The City certifies that it has verified the accuracy of the Developer's estimates of the Development Improvement Cost.
- (d) The City Clerk certifies that the sales and use tax abatement application(s) is/are complete.
- (e) The City Attorney prepares or approves a proposed Development Agreement to be entered into by the City and the Developer.
- (f) The City Council enacts a resolution setting a public meeting in regard to the Development Agreement and at least seven (7) days prior to the public meeting, a notice is published in the newspaper having the largest circulation in the City describing in reasonable detail the action proposed to be taken, a description of the public benefits sought to be achieved by the action and identifying each individual, firm, corporation or other business entity to whom or for whose benefit the City proposes to lend its credit or grant public funds or things of value.
- (g) After said public meeting, the City Council enacts a resolution to the following effect:
 1. The Development offers the City an opportunity to attract and locate a significant and/or distinctive retail or commercial operation which creates a meaningful prospect for the City to promote and realize significant economic development.

2. Determines that the expenditure of public funds for the purpose specified will serve a valid and sufficient public, notwithstanding any incidental benefit accruing to any private entity or entities.
 3. Authorizes the Mayor to execute the Development Agreement by and as an act of the City of Hamilton.
- (h) In the event that the City elects to submit any proposed assistance or Agreement for assistance to the Circuit Court of Marion County, Alabama, or any other court of competent jurisdiction, or seeks an opinion from the Attorney General of Alabama, a favorable ruling on such submission, or a favorable opinion from such authority, is obtained. The Developer must agree to bear the City's costs for such legal proceedings.

SECTION 6. Monitoring of Development for Compliance with Requirements.

Following the entry into a Development Agreement between the City and a Developer, and the location of a Project within the City, the City shall, by way of annual reports from the City Clerk and/or Revenue Department, continuously monitor the Development to ensure that the same complies with the Development Agreement and with the requirements of this Ordinance. The City's obligations under either this Ordinance or any Development Agreement entered into with any Developer shall be contingent upon the Development's compliance with such requirements. Developers shall provide to the City any and all information required to monitor such compliance, but this requirement should not be construed to require a Developer to provide any confidential information which is not necessary for monitoring such compliance.

SECTION 7. Disclaimer.

The purpose of this policy is to inform potential Developers considering making application to the City for any type of assistance of the economic development principles and concepts of the City in responding to any such request. As such, this policy does not constitute an offer to contract, a financial or legal commitment of the City nor should it be relied upon by anyone in making any decisions in regard to any aspect of a Development. This policy is supplemental to and does

not replace or amend current policies, laws, codes or ordinances of the City including but not limited to those related to construction, business activity, zoning, water main extensions, sanitary sewers, cost recovery mains, right-of-way permits, site or land development permits, Developer constructed sewers and/or any other policy or regulation of the City in regard to a specific activity or the City's ability to engage in any public works projects pursuant to applicable state law. Without limiting the generality of the forgoing, this policy does not alter, amend or supersede any ordinance, law, code, rule or regulation of the City, its Planning and Zoning Commission, or Zoning Board of Adjustment.

ADOPTED AND APPROVED this the 4th day of September, 2012.

THE CITY OF HAMILTON, ALABAMA

By: _____

ATTEST

By: _____