

AN ORDINANCE OF FORSYTH COUNTY, GEORGIA
ORDINANCE #130-A
AMENDMENT TO THE FORSYTH COUNTY ECONOMIC DEVELOPMENT
ORDINANCE (ORDINANCE 130)

WHEREAS, the Constitution of the State of Georgia, approved by the voters of the state in November of 1982, and effective July 1, 1983, provides in Article IX, Section II, Paragraph I thereof, that the governing authority of the county may adopt clearly reasonable ordinances, resolutions and regulations; and

WHEREAS, O.C.G.A. § 36-1-20 authorizes counties to enact ordinances for protecting and preserving the public health, safety and welfare of the population of the unincorporated areas of the county; and

WHEREAS, the Forsyth County Board of Commissioners has established an ordinance-based policy regarding economic development (the Forsyth County Economic Development Ordinance); and

WHEREAS, the Board of Commissioners desires to revise its Economic Development Ordinance to clarify the respective roles of the County Manager, Forsyth County Economic Development Director, and Forsyth County Chamber of Commerce; clarify the incentives that may be offered; and clarify the process for approving those incentives;

NOW THEREFORE, be it ordained and resolved by the Board of Commissioners of Forsyth County, Georgia, that Ordinance Number 130, codified at Chapter 22, Article VII, of the Code of Ordinances of Forsyth County (the "Economic Development Ordinance") shall be amended as follows:

AMENDMENT

(1) The text of the Economic Development Ordinance (County Code Chapter 22, Article VII) is deleted in its entirety and replaced with the text found at Exhibit "A" hereto.

(2) All remaining portions of the Code of Ordinances of Forsyth County shall continue in full force and effect, and shall remain unaffected by this amendment.

SEVERABILITY

(3) It is the express intent of the Forsyth County Board of Commissioners that this Ordinance be consistent with both federal and state law. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

CONFLICTING ORDINANCES REPEALED

(4) Any and all Ordinances or parts of Ordinances in conflict herewith shall be, and the same are, hereby repealed to the extent of such conflict.

EFFECTIVE DATE

This Ordinance shall become effective upon passage.

PASSED AND ADOPTED this 4th day of April, 2019, the public health, safety, and welfare demanding it.

FORSYTH COUNTY BOARD OF COMMISSIONERS:



Laura Semanson, Chairman



Cindy Jones Mills, Vice Chairman



Dennis T. Brown, Secretary



Molly Cooper, Member



Todd Levent, Member

Attest:



Clerk to the Board

EXHIBIT A

ARTICLE VII. - ECONOMIC DEVELOPMENT ORDINANCE

Sec. 22-256. Establishment.

There is hereby established an Economic Development Ordinance of Forsyth County, which shall be administered by the Economic Development Director and overseen by the County Manager. The Economic Development Director shall report directly to the County Manager.

Sec. 22-257. Definitions.

As used in this article, the following terms are defined:

Development permits means development-related permits, including land disturbance permits, building permits, sign permits, and water and sewer development permits.

Extraordinary project means a targeted business that invests substantial new capital investment and creates a substantial number of new jobs in Forsyth County.

Land use approvals means rezonings, conditional use permits, variances, sketch plats, zoning condition amendments, and any other such processes in furtherance of development.

Inspections means development-related inspections conducted by Forsyth County, including but not limited to, reinspections, certificate of occupancy inspections and after-hours inspections.

Plan reviews means reviews of plans conducted by Forsyth County, including plats, as-builts and other plans customarily associated with the development process.

Targeted business means a preferred business or industry type, as identified by the Economic Development Strategic Plan or a special impact project of such magnitude as may be identified by the County Manager or Economic Development Director.

Sec. 22-258. Economic Development Director's Responsibilities.

The Economic Development Director shall have the following responsibilities:

- (1) Assist with implementation of the Economic Development Strategic Plan and economic development element of the Forsyth County Comprehensive Plan.
- (2) Coordinate with the Cumming-Forsyth County Chamber of Commerce and Development Authority of Forsyth County so as to encourage new business development, redevelopment and retention of existing businesses.
- (3) Negotiate inducements to targeted businesses in accordance with the objectives of this article, the Economic Development Strategic Plan and the County's Comprehensive Plan, subject to approval by the County Manager and ratification by the Board of Commissioners.
- (4) Undertake any other lawful actions for purposes of improvement of economic vitality, economic development, redevelopment or revitalization in the unincorporated areas of Forsyth County.

Sec. 22-259. Available Inducements.

The County may provide economic development inducements to targeted businesses in the categories shown below. In no event may any inducement result in a payment of County funds to a targeted business.

- (1) Total or partial waiver of Impact Fees (to the extent any are imposed on businesses), consistent with the Forsyth County Impact Fee Ordinance and state law.
- (2) Fee credit to be paid toward fees for plan reviews, development permits and inspections, and the regulatory (non-tax) component of its business license fee.
- (3) Fee credit to be paid toward application fees for land use approvals.
- (4) Acceleration of the processes for plan reviews, inspections, and any other such processes in furtherance of the development process.
- (5) Acceleration of public hearing dates for rezonings, conditional use permits, variances, sketch plats and zoning condition amendments, so long as any such acceleration satisfies minimum state law and due process requirements. Such acceleration may include County-initiated actions.
- (6) Construction of infrastructure that may include, but is not limited to: roads, sidewalks, utilities and parking facilities, so long as such public works projects are undertaken in conformance with pertinent state law procurement requirements and will otherwise provide commonly enjoyed public benefits.
- (7) Inducements that are authorized by the Redevelopment Powers Act (O.C.G.A. § 36-44-1 et seq.).
- (8) Inducements that are authorized by the Development Authorities Act (O.C.G.A. § 36-62-1 et seq.).
 - a. For a tax abatement inducement, otherwise known as bonds for title, the County will not consider inclusion of the school millage unless it is an extraordinary project; and, even if an extraordinary project, the Forsyth County School Board of Education must approve the inclusion of the school millage.
 - b. As part of an incentive package offered, the County may agree to cooperate in a tax abatement inducement transaction. However, the grant of this incentive will not constrain the County's discretion in negotiating the terms of the bond documents and other agreements necessary to subsequently formalize the structure of the tax abatement.

Sec. 22-260. Inducement Eligibility.

- (1) The Cumming-Forsyth County Chamber of Commerce and the Economic Development Director shall work together to prepare a schedule that establishes the minimum criteria for eligibility for County inducements, broken down by industry if appropriate. Such schedule of criteria shall identify, but shall not be limited to, the minimum number of jobs that must be created, the percentage by which the minimum average salary must exceed the County average in the respective industry, and the minimum net present value of the estimated fiscal impact. If adopted by the County Board of Commissioners, this schedule shall be the official "Schedule of Criteria" for inducements.
- (2) The Cumming-Forsyth County Chamber of Commerce shall have a standing invitation to present

economic development proposals to the Economic Development Director. If County inducements are recommended by the Chamber of Commerce, the proposal shall contain at a minimum: (a) a draft offer letter to the targeted business setting forth the proposed inducements; and (b) an analysis setting forth the expected number of jobs that will be created, the percentage by which the minimum average salary will exceed the County average in the respective industry, and the net present value of the estimated fiscal impact. If a Schedule of Criteria has been adopted, the proposal shall also compare the results of the economic analysis to the applicable criteria in the Schedule of Criteria.

- (3) All economic analyses presented by the Cumming-Forsyth County Chamber of Commerce shall use the LOCI™ quantitative model, or an alternative method/model specifically approved by the Economic Development Director or County Manager.
- (4) In determining whether Forsyth County should offer inducements to a targeted business, the County Manager may consider factors including, but not limited to, the impact of the targeted business upon infrastructure, traffic generation, water usage, sewer generation, and storm water generation. In order to remain competitive on projects that are also targets for the State of Georgia, the County Manager may consider whether the targeted business has or will receive a funding commitment from the State of Georgia contingent upon the business' relocation or expansion within the State of Georgia.
- (5) Written approval of the economic analysis and the proposed offer letter must be provided by the County Manager or Economic Development Director to the Cumming-Forsyth County Chamber of Commerce before the Chamber of Commerce may present any County inducement offers to a targeted business.
- (6) In recognition of the time-sensitive and competitive nature of certain economic development proposals, the County Manager, working in good faith and in the best interests of Forsyth County, may in extraordinary circumstances approve inducement offers to a targeted business without an economic analysis and without formal comparison to the Schedule of Criteria. In such circumstances, an economic analysis of the proposed development shall be made as soon as practical under the circumstances.
- (7) The Board of Commissioners shall at all times retain supervisory control over decisions relating to inducements. All inducements shall be subject to approval by the Board of Commissioners before binding the County. All decisions to decline a request or proposal for inducements may, in the sole discretion of the Board of Commissioners, be reviewed and amended.

Sec. 22-261. Contract Requirement.

- (1) No economic inducement shall be binding on Forsyth County until set forth in a written contract signed by the County Manager and ratified by the Board of Commissioners.
- (2) Every contract for economic inducement shall set forth minimum quantitative requirements for the economic impact created by the targeted business, based on the economic analysis prepared for that business.
- (3) Every contract for economic inducement, with the exception of contracts providing tax abatement incentives (which may have individually-negotiated claw-back provisions), shall contain the following claw-back provisions to ensure the County receives a substantial benefit from the offered inducements:
 - a. Should the targeted business relocate outside Forsyth County within 10 years of the execution

of the incentive agreement, the targeted business shall immediately reimburse Forsyth County and/or the issuing authority for the full value of all inducements received pursuant to this article.

- b. Should the targeted business fail to meet any quantitative requirements (fiscal impact requirement, salary requirement, or employment requirement) in the contract, the total value of all inducements offered by the County shall be reduced by 20 percent for the first year of nonattainment, by 50 percent for the second such year, and by 100 percent (and all inducements shall terminate) for the third such year. The County may recoup the value of its inducements by terminating or diminishing any prospective economic inducements, and/or by requiring reimbursement of lump-sum fee waivers or credits already used.
- (4) It shall be the responsibility of the business contracting for inducements to provide evidence of contract compliance to the Economic Development Director annually. The contract for inducement shall specify when and how such evidence will be provided, but at a minimum the evidence must be supported by a notarized affidavit from an officer of the contracting business, attesting to the accuracy of the evidence provided. The Economic Development Director shall confirm timely submission of the required evidence and shall maintain submitted evidence as proof of contract compliance. Should a business fail to maintain compliance with any provisions of the inducement contract, it shall be the responsibility of the officer signing the contract on behalf of the business to notify the Economic Development Director immediately upon discovery of such noncompliance. The required inducement contract shall set forth the scope, timing and method of delivery of the evidence contemplated in this paragraph, with the frequency of submission being no less than an annual basis. Should the business receiving the inducements fail to provide the required evidence in the manner required by the inducement contract, the Economic Development Director and/or the County Manager shall report this to the Board of Commissioners which may, but shall not be required to, treat such omission as a failure to meet the qualitative requirements under the contract, thereby triggering any available recoupment remedies under the contract or as otherwise contemplated in 22-261(3)(b).

Sec. 22-262. Confidentiality Agreements.

The Economic Development Director and County Manager are hereby authorized to sign confidentiality agreements with prospective businesses as long as such confidentiality agreements are made subject to the provisions of the Georgia Open Records Act and Georgia Open Meetings Act. Such a confidentiality agreement will not be binding on the County until the agreement is ratified by the Forsyth County Board of Commissioners.