

Tax and Business Incentive Program Ordinance

BE IT RESOLVED: That the "Tax and Business Incentive Program Ordinance" be added to the East Haddam Code of Ordinances.

A. Tax and Business Incentive Program; Authority

Subject to Connecticut General Statutes ("CGS") Sec. 12-65b and Sec. 12-65h, the Town of East Haddam (sometimes referred to herein as the "Town") may, by affirmative vote of its legislative body, enter into a written agreement with any party owning or proposing to acquire an interest in real property or an interest in air space in the Town or with any party who is the lessee of, or proposes to be the lessee of, air space in the Town in such manner that the air space leased or proposed to be leased shall be assessed to the lessee pursuant to CGS Sec. 12-64, or an interest in real property upon which is located or proposed to be located a manufacturing facility as defined in subdivision (72) of CGS Sec. 12-81, fixing the assessment of the real property or air space and all improvements to be constructed thereon and therein or of the personal property located in the manufacturing facility, which is the subject of the agreement in accordance with provisions of Section H of this Ordinance.

B. Purpose

The purpose of the Tax and Business Incentive Program (the "Program") is to attract new businesses to the Town, promote expansion of existing businesses (including home based businesses relocating into commercial and industrial zones), and to encourage rehabilitation and reuse of vacant commercial and industrial buildings. It is the intent of the Town: (1) to assist in the creation of jobs for local area residents, (2) to create long term tax base growth through the replacement, reconstruction, expansion and remodeling of existing business facilities where appropriate and not injurious to the surrounding environment, (3) to encourage construction of new commercial and industrial facilities, and (4) to encourage substantial investment in new machinery, equipment and other personal property subject to taxation within the Town.

C. Economic Development Commission

The East Haddam Economic Development Commission (EDC) shall provide any property owner or lessee with general information concerning the Program, prepare and supply interested parties with a fact sheet about the Town, an application to participate in the Program and any other information that may be reasonably requested by an interested party. For purposes of this ordinance, an "interested party" is one who owns or proposes to acquire an interest in real property or air space in East Haddam or otherwise meets the definition of an owner or lessee of real property or airspace as defined in CGS Sec. 12-65b and who is considering replacement, reconstruction, expansion or remodeling of existing business facilities located or to be relocated in East Haddam. The EDC may perform research about any party applying to participate in the Program and may request of such party any relevant information that in the opinion of the EDC or the Board of Selectman (BOS) bears upon consideration of the application. The EDC shall obtain from the Tax Assessor an opinion of the impact of any proposed abatement of taxes on the applicable Grand List and on future Grand Lists.

D. Qualifying Businesses

The following types of businesses, consistent with Town ordinances, regulations, rules and codes and with the East Haddam Plan of Conservation and Development shall receive priority consideration under the provisions of this ordinance and the Program:

1. All business uses enumerated in subdivision (b) of CGS Sec. 12-65b
2. Resorts and other tourist attractions
3. Other business uses

All applicants should have no fines or violations assessed against the applicant or its subsidiaries by state or federal agencies regarding environmental or health codes, and be able to demonstrate adequate financial strength to undertake the proposed capital improvements and expansions to the real property and machinery and equipment purchases that would be the subject of the agreement.

E. General Requirements

Applications filed with the Town will be considered provided:

1. The proposed use is located in an appropriate zone as defined in East Haddam's Zoning Regulations.
2. The proposed use receives all necessary approvals, licenses and permits from the East Haddam Planning and Zoning Commission and any other Town, State of Connecticut and federal agencies, boards, commissions and officials having jurisdiction with respect to the project, if such approvals, licenses or permits are required under applicable laws, regulations, rules and codes.
3. If the applicant is a tenant operating under a written lease, the term of the lease must be for no less than the applicable term of the tax abatement period and preferably longer. The agreement and the tax incentives must be clearly recited in said lease and be for a period no less than the applicable term of the tax abatement period. A copy of said lease should be submitted at the same time as the Application to enter the Program is submitted.
4. No real estate property tax or other tax or fee or municipal charge due East Haddam is unpaid at the time the Application is submitted or at any time thereafter.
5. If the applicant is relocating its business to East Haddam, the applicant should provide a maximum of five year history of tax assessments and payments to the municipality or municipalities and/or other political subdivisions in which its business was operated, as is available, and as determined by the Town.
6. The project should have a clear economic benefit to East Haddam. The applicant should submit in writing with the Application a list of benefits, such as new jobs and growth of the Town grand list, to be realized by East Haddam if the applicant receives tax incentives under the Program.
7. Applicants are encouraged to provide East Haddam residents with the opportunity to apply for open positions and businesses the opportunity to bid for construction jobs and projects and be accorded

priority provided such applicants meet all of the criteria of established job requirements or are competitive and qualified bidders.

8. Definitions

New Business Development: an eligible project involving real property acquisition, new construction or renovation, FOR either a new to town business OR the relocation of a town business to the new project site.

Business Expansion Project: an eligible project involving an addition or renovation of the applicant's existing property and/or facilities.

F. Application Procedures

All tax incentive requests shall be made in writing on a form referred to as Tax and Business Incentive Application (the "Application") published and provided by the EDC and approved by the BOS as it may be amended from time to time. The Application and all accompanying documentation required hereunder or voluntarily provided shall be submitted in duplicate at the Office of the First Selectman. Upon receipt by the BOS, one copy of the Application shall be provided to the EDC for preliminary review. For purposes of this ordinance, "receipt by the BOS" means an Application and all accompanying documentation required in accordance with all applicable provisions of this Ordinance is submitted. The following time periods for review of the Application and action are not mandatory, nonetheless, the EDC and the BOS shall try to meet the time limits stated hereafter: From date of receipt by the BOS of the Application the EDC shall have forty-five (45) days to review the Application, request additional information and meet with the property owner and/or lessee or the property owner and/or lessee's representatives. Provided the property owner and/or lessee has provided all information required in the Application, by this Ordinance and by the EDC, the EDC will within thirty (30) days thereafter report its findings to the BOS. The BOS will place the report on the agenda of the next regularly scheduled BOS meeting for discussion and action. If the BOS approves the report, the First Selectman and the property owner/lessee shall enter into a written agreement (subject to the affirmative vote of the Board of Finance and the Town Meeting) which agreement accompanied by the report will be referred to the Board of Finance for its review and action. If the Board of Finance approves the financial terms of the agreement, the BOS shall place the agreement on the agenda of the next Town Meeting for its review and action.

G. Assessment of the Property Subject to the Agreement

The East Haddam Assessor shall, in the Assessor's sole discretion, determine the assessment of the real property or the air space or the personal property and any and all improvements constructed or to be constructed on or in the real property which is the subject of the agreement.

H. Specific Requirements of the Tax Incentive Agreement

Pursuant to CGS Sec. 12-65b(a) the assessment of real property and all improvements in or on or to be constructed in or on said real property or air space may be fixed (1) for a period of not more than seven

years, provided the cost of such improvements to be constructed is not less than three million dollars (\$3,000,000);

Percentage of Abatement	80%	70%	60%	50%	40%	30%	20%
Year	1	2	3	4	5	6	7

(2) for a period of not more than two years, provided the cost of such improvements to be constructed is not less than five hundred thousand dollars (\$500,000);

Percentage of Abatement	80%	70%
Year	1	2

or (3) to the extent of not more than fifty percent of such increased assessment, for a period of not more than three years and provided the cost of such improvements to be constructed is not less than twenty-five thousand dollars (\$25,000);

Percentage of Abatement	50%	50%	50%
Year	1	2	3

The fixed assessment will be based on the following:

- 1) New Business Development with the value of improvements to be constructed greater than \$3,000,000.00, the fixed assessment will be calculated using the assessed value after completion of the improvements;
- 2) Business Expansion Projects with the value of improvements to be constructed greater than \$3,000,000.00, the abatement will be based on the increase in the assessment;
- 3) New Business Development with the value of improvements to be constructed greater than \$500,000.00 but less than \$3,000,000, the fixed assessment will be calculated using the assessed value after improvements;
- 4) Business Expansion Projects with the value of improvements to be constructed greater than \$500,000.00 but less than \$3,000,000, the abatement will be based on the increase in the assessment;

- 5) Projects with the value of improvements to be constructed greater than \$25,000.00 but less than \$500,000.00, the abatement will be based 50% or the difference between the before and after improvements assessments

The fixed assessment period shall commence the first fiscal year for which a tax list is prepared on the October 1st immediately following the issuance of a Certificate of Occupancy by the appropriate building official for construction of the buildings or manufacturing facilities or other structures and all improvements in or on the real property or air space which is the subject of the agreement.

Notwithstanding anything written in this Ordinance to the contrary and provided in all other respects the applicant qualifies under the provisions of CGS Sec. 12-65b and Sec. 12-65h and this Ordinance, the Town may, in its sole discretion, offer to enter into an agreement with such applicant for abatement of taxes of a lesser percentage and/or for fewer years.

On a case by case basis, the Town may provide other incentives in addition to the incentives provided by CGS Sec. 12-65b and Sec. 12-65h or in lieu thereof as follows: (1) waiver of building permit fees; (2) waiver of filing fees with land use agencies; or, (3) provision of in kind services such as construction of access roads or road widening, construction of storm drains and culverts or sidewalks or curbing, extension of water and/or sewer lines or other public improvements.

Machinery and equipment defined in subdivision (72) of CGS Sec. 12-81 and intended to qualify for tax relief pursuant to said Sec. 12-65h shall have for federal income tax purposes a depreciable useful life of five or seven years.

Construction shall commence within six months of approval of the Agreement by the Town Meeting and shall be completed no later than twenty-four months from date of approval by the Town Meeting. The times for commencement and completion of the construction are mandatory except owner or lessee's performance may be excused when the owner or lessee is prevented from performing by causes beyond owner's or lessee's control including natural disasters, fires or other calamities or a state or national declared state of emergency.

I. Default by the Owner or Lessee under the Terms of the Agreement

In the event the owner or lessee of the real property or air space:

- a. Fails to pay real estate and/or personal property taxes when such taxes are due and payable;
- b. Fails to commence or complete on time the construction of all improvements upon the property which is the subject of the agreement;
- c. Becomes insolvent or bankrupt or files any debtor proceedings or others file such debtor proceedings against the owner or lessee, in any court, in any jurisdiction, state or federal, and does not withdraw such filing within ninety (90) days or such other proceedings have not been dismissed or withdrawn by such other parties within ninety (90) days or makes an assignment for the benefit of creditors or if the

property or lease is taken under any writ of execution or becomes the subject of foreclosure proceedings;

d. Abandons the real property or, in the case of the lessee, purports to assign its lease without the express consent of the Town as set forth in Section J of this Ordinance; or,

e. Fails to perform any obligation of owner or lessee under the terms of the agreement;

such event shall constitute a material default of the agreement and the Town may terminate the agreement on the giving of written notice whereupon (i) the right of the owner and/or lessee to receive tax abatements and any other considerations granted to the property owner and/or lessee under the terms of the agreement shall cease and come to an end; and, (ii) the property owner and/or lessee shall be obligated to repay the Town the amounts of all tax abatements retroactive to the due date of the first abated tax payment plus interest at the rate set and payable pursuant to provisions of CGS Sec. 12-146, all waived fees, if any, and all actual costs of the Town in providing in kind considerations to the property owner and/or the lessee. In the event of failure to pay a tax when due and if such delinquency continues for six months and one day, the Town shall terminate the agreement whereupon (i) the right of the owner and/or lessee to receive the tax abatement and any other considerations granted to the property owner or lessee under the terms of the agreement shall cease and come to an end; and, (ii) the property owner and/or lessee shall be obligated to repay the Town the amounts of all tax abatements retroactive to the due date of the first abated tax payment plus interest at the rate set and payable pursuant to provisions of CGS Sec. 12-146, all waived fees, if any, and all actual costs of the Town in providing in kind considerations to the property owner and/or the lessee.

J. Assignment of the Agreement

The agreement between the Town and the owner and/or lessee of real property or of air space shall not be assigned by the owner or lessee to any person(s) or business organization or entity or estate or trust without the express consent of both the BOS and the Board of Finance which boards shall signify their consent by an affirmative vote taken at a separate meeting of each board duly warned and noticed for the stated purpose. A conveyance of the real property or a transfer of ownership of the business or substantially all of the assets of the business, which is the subject of the agreement, to a person or business organization or entity that is not owned or controlled by the owner of the real property and/or the owner of the business who are parties to the agreement with the Town, shall not constitute a valid assignment of the agreement or vest any rights under the agreement in the grantee of the real property or transferee of the business or of the assets of the business or allow for enforcement of any obligations of the Town against the Town by the grantee of the real property or transferee of the business or of the assets of the business including but not limited to any remaining tax abatements under terms of the agreement. For purposes of this section a "controlled entity" means a business which is eighty or more percent owned by the grantor or transferor, as the case may be.

K. Amendments to Applicable Statutes

All references to CGS Sec. 12-65b or Sec. 12-65h or Sec. 12-81 or any other section of CGS made herein shall include all amendments to such statutes enacted and signed into law subsequent to the effective date of this ordinance.

L. Effective Date

This ordinance shall become effective fifteen days after publication in a newspaper having circulation in the Town. Adopted at Town Meeting, June 30, 2010. Published Hartford Courant [DATE].

Dated at East Haddam, Connecticut this XX day of XXXX, XXXX.

Mark B. Walter, First Selectman

