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 Chapter 278: Taxation

## Article IX: Business Incentive Program

[Adopted by the Town Council 10-8-2013]

**278-32 Purpose.**

The purpose of the Business Incentive Program is, in accord with the Town's Plan of Conservation and Development (POCD), to attract appropriate new businesses to the Town, promote the expansion of existing businesses (including home-based businesses relocating into commercial, industrial, and design development zones), and to encourage the rehabilitation and reuse of vacant commercial and industrial buildings. It is the intent of the Town to:

- A. Assist in the creation of jobs for local residents;
- B. Create long-term tax base growth through the appropriate replacement, reconstruction, expansion or remodeling of existing business facilities;
- C. Encourage the construction of new commercial and industrial facilities in accord with the Future Land Use Plan found in the Town's POCD; and
- D. Encourage substantial investment in new machinery, equipment and other personal property subject to taxation within the Town.

**§ 278-33 Program implementation by Town.**

Subject to C.G.S. §§ 12-65b and 12-65h, the Town of East Hampton (the Town) shall, 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 real property upon which is located or proposed to be located a manufacturing facility as defined in Subdivision (72) of C.G.S. § 12-81, fixing the assessment of the real property 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 the provisions of § 278-40 of this article.

**§ 278-34 Duties of Economic Development Commission.**

- A. The East Hampton Economic Development Commission (EDC or the "Commission") shall provide any property owner or lessee with general information concerning the Business Incentive Program (the Program), prepare and supply interested parties with an application to participate in the Program and any other information that may be reasonably requested by an interested party. An "interested party" is one who owns or proposes to acquire an interest in real property as defined in C.G.S. § 12-65b and who is considering replacement, reconstruction, expansion, or remodeling of existing business facilities located or to be located in East Hampton.
- B. The EDC shall perform such research about any party applying to participate in the Program to effectuate the purposes of this article and may request of any such party any relevant information that in the opinion of the EDC bears upon consideration of the application. The EDC shall obtain from the Tax Assessor an evaluation of the impact of any proposed abatement of taxes on the applicable Grand List and an estimate of the impact on future Grand Lists.

**§ 278-35 General requirements.**

- A. Applications properly filed with the Town will be considered for the Program, provided:
  - (1) The applicant must possess a good environmental practices history and be able to demonstrate adequate financial strength to finance the proposed capital improvements and expansions to the real property and machinery and equipment purchases that would be the subject of the agreement.

- (2) The proposed use is located in an appropriate zone as defined by East Hampton's Zoning Regulations.
  - (3) The proposed use receives approvals, licenses, and permits of the East Hampton Planning and Zoning Commission and of other East Hampton, State of Connecticut and federal agencies, boards, commissions, and officials having jurisdiction with respect to the project, as required.
  - (4) No real estate property tax or other tax or fee or municipal charge due East Hampton by the applicant, the businesses, or any other business organization or entity owned or controlled by the applicant is unpaid at the time the application is submitted or at any time thereafter.
  - (5) If the applicant is relocating its business to East Hampton, the applicant should provide a five-year history of tax assessments and payments to the municipality or municipalities and/or other political subdivisions in which its business was operated.
  - (6) The project must have a clear economic benefit to East Hampton, as described by the applicant on the application.
- B. Notwithstanding the results of any scoring under § 278-39, if the overall project does not constitute a net economic benefit to and otherwise improve the quality of life in the Town, the Commission shall decline to refer the application to the Council for its consideration.

### **§ 278-36 Application procedure.**

- A. All tax incentive requests shall be made, in writing, on a form referred to as "Business Incentive Program Application" (the "application"), published and provided by the EDC and approved by the Town Council ("Council"). The application and all accompanying documentation shall be submitted, in duplicate, at the office of the Clerk. Upon receipt by the Clerk, one copy of the application and materials shall be provided to the EDC for preliminary review, and the Clerk shall also provide notice to the Council that an application has been submitted. "Receipt by the Clerk" means that the applicant's application and all accompanying documentation has been filed with the Town's Clerk of the Court.
- B. The following timeframes for action are not mandatory, but the EDC and the Council shall use reasonable efforts to meet the following timeframe in their consideration of the application: Within 10 days of the receipt by the Clerk, the Clerk shall forward a copy of the application and materials to the EDC and provide notice to the Council that an application has been submitted. Upon its receipt of the application, the EDC shall have 45 days to review the application, request additional information and meet with the applicant and/or the applicant's representative. Provided the applicant has submitted all of the information required in the application, by this article, and by the EDC, the EDC will, within 30 days thereafter, report its findings to the Council. If the report of the EDC is favorable to the applicant, the Council will place the report [along with the Town Manager's Tax Impact Report (as defined herein)] on the agenda of the next regularly scheduled Council meeting for discussion and action. Nothing herein, however, shall preclude the EDC and/or Council from continuing their consideration of the application for any reason and/or in the regular course of their deliberations. If the Council approves the EDC report (with or without any conditions or limitations), the Town Manager and the applicant shall enter into a written agreement which shall incorporate the terms and conditions of any afforded tax abatement, including, without limitation, the timely fulfillment by the applicant of the criteria predicated the tax abatement. The final agreement shall be subject to additional and affirmative vote of the Council.

### **§ 278-37 Assessment of property subject to agreement.**

The East Hampton Assessor shall, in the Assessor's sole discretion, determine the assessment of the real property 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.

### **§ 278-38 Application scoring guidelines.**

- A.

The purpose of this article is to encourage economic growth in the Town that is in accord with the POCD in effect at the time of the given application. The POCD reflects the strongest expression of the Town's intentions for its future development, character, and quality of life. Accordingly, there is room for flexibility in scoring under criteria listed in § 278-39 of this article.

- B. When scoring a new application, the members of the EDC shall strive for consistency and transparency. All like applications shall receive equal treatment and the EDC shall consult the scoring of previously granted applications when scoring a new application. Consistency between like applications must be balanced, however, with the goals of the POCD in effect at the time. Where no similar application has been submitted, care should be taken to score the new application relative to the goals of the POCD and relative to the merits of any previous application.
- C. Only the EDC shall approve or deny an application for consideration by the Council, and any adverse decision is not appealable by the applicant. When approving or denying an application, the EDC should issue a written statement showing the scoring and explaining its reasoning. It is recognized that evaluation of an application under this article requires a blend of quantitative and qualitative reasoning, the Commission to strive to make that reasoning plain.
- D. Projects recommended to the Council must evince a clear net benefit (economic and quality of life) to the Town. In addition to the EDC report referenced herein, the Town Manager, in conjunction with the East Hampton Tax Assessor, shall provide to the Council its best estimate of the total dollar amount of taxes abated should the tax abatement proposed by the EDC be approved by the Council in its full amount (the "Town Manager's Tax Impact Report").
- E. Notwithstanding to the contrary contained herein, final approval or denial of the application (previously approved by the EDC) or conditioning or limiting any approval shall be within the sole and final discretion of the Council and any evaluation, weighting or scoring of the application and its impact on the Town, including any determination of its net economic impact and quality of life on the Town shall be strictly advisory (and not binding) on the Council.

### § 278-39 Scoring criteria categories.

- A. Location: Only projects within those areas zoned "Commercial," "Industrial," or "Design Development" according to the Zoning Map for the Town of East Hampton (see POCD) are eligible for consideration under this article. Points under this section may be awarded for properties located in the following priority areas:
  - (1) Village Center: Properties located in the Village Center District as defined by the Zoning Map for the Town of East Hampton are eligible for a maximum of 10 points.
  - (2) Cobalt Center: Properties located on Route 66 between its junction with Old Depot Hill Road and its junction with Old Middletown Road are eligible for a maximum of seven points.  
Maximum points: 10
- B. Use: those uses set forth in § 12-65b(b) of the Connecticut General Statutes, as may be amended from time to time. Projects for these uses may be awarded five points. At the EDC's discretion, "high needs" uses under these categories may be awarded up to 10 points.  
Maximum points: 10
- C. Brownfields: East Hampton contains a number of sites designated as "Brownfields" by the USEPA. Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Cleaning up and reinvesting in these properties protects the environment, reduces blight, and takes development pressures off green spaces and working lands, all of which are goals of East Hampton's POCD.
  - (1) Any application that proposes to remediate and commit to reuse a Brownfield as designated by the EPA or the State of Connecticut is eligible for 10 points.
  - (2) Depending upon the project, financing and other factors, the Town may also seek to partner with the applicant for federal grant funding or supply other in-kind considerations.

Maximum points: 10

**D. Revitalization.**

(1) Revitalization of an existing, inhabited structure, such revitalization defined as at least:

- (a) Facade improvement: substantial investment in improving the outward appearance of the structure or to restore nontrivial deterioration as determined by the Commission; or
- (b) Rehabilitation: significant alteration of the interior and/or exterior of a property that would result in an increase of greater than 25% in its valuation; or
- (c) Historical: Additional points may be awarded to either of the forgoing categories where the property is designated as "historic" by recognized Town, state or national authorities (including the Connecticut Trust for Historic Preservation), or lies within a Town-designated historic district, and such designation or location requires the adoption of techniques or design elements.

(2) The Commission may award between five and 10 points for any project that falls into one of these three categories. Placement in the range is at the discretion of the Commission and will take into account such things as the cost and difficulty of the work.

Maximum points: 10

**E. Use of a vacant property:** The applicant may be awarded five points if proposing to occupy a building which has been unoccupied for a period greater than 12 months at the time the applicant signed a lease or closed on the property. If, in the opinion of the EDC, the property can be considered "blighted," 10 points may be awarded.

Maximum points: 10

**F. Number of jobs created:** Points may be awarded based upon the number of nonseasonal full-time equivalent positions (FTEs) the business will generate:

- (1) One to five FTEs: five points.
- (2) Five to 10 FTEs: seven points.
- (3) More than 10 FTEs: 10 points.

Maximum points: 10

**G. Cost of services to the Town:**

- (1) A project or use proposed by an applicant may require the Town to assume an extraordinary cost beyond normal maintenance and upkeep. For example: a chemical manufacturer may require the Town to retrain and potentially re-equip its fire protection services. If the Commission determines such is the case, no points may be awarded under this category.
- (2) If no such cost exists, five points may be awarded.
- (3) The Commission may ask the applicant to pay for a fiscal impact analysis, to be conducted by a consultant approved by the Commission.
- (4) The applicant may be given the opportunity to show that the Commission's determination of the cost to the Town is in error; provided, however, that the Commission's determination is final (as to the applicant).

Maximum points: five

**H. Design of the building or renovation:**

- (1) The Commission may award 10 points when the applicant can show that the design of the renovation brings the structure into compliance with current Town building design guidelines for its zone.

- (2) The Commission may award five points when an applicant can show that the design of a new structure complies with current Town building design guidelines for its zone.  
Maximum points: 10

I. Sustainable building:

- (1) The Commission may award two points for each of the following and up to 10 points total:
  - (a) If the investment will result in the business generating at least 20% of its own energy requirements.
  - (b) If the investment will result in the business feeding energy back into the grid.
  - (c) If the project meets, at minimum, LEED Gold standard or equivalent. (As of this writing, LEED is the dominant evaluation system in the US market and the one favored for use by the GSA.)
  - (d) If the project requires a public transportation node such as a bus stop.
  - (e) If the project supplies a recharge station for electric vehicles.
  - (f) Water-saving fixtures throughout.
- (2) "Sustainability" characteristics and measures are constantly evolving, and the Commission may update this list periodically as it sees fit.  
Maximum points: 10

J. Amount invested.

<b>Points</b>	<b>Investment Amount</b>
10	\$3,000,000 or larger investment in construction or renovations
9	\$1,000,000 or larger investment in construction or renovations
8	\$800,000 or larger investment in construction or renovations
7	\$500,000 or larger investment in construction or renovations
6	A business new to that parcel investing over \$300,000 or a business existing on that parcel investing at least \$250,000 in construction or renovations
5	A business new to that parcel investing over \$200,000 or a business existing on that parcel investing at least \$100,000 in construction or renovations

**Maximum points: 10**

Total Available Points: 95

**§ 278-40 Tax incentive tiers and implementation.**

- A. Depending upon the number of points an application receives, it may be denied or, if approved, subject to a final vote by the Council (in conjunction with the net economic benefits and quality of life qualifications set forth in Section D and G being met), and provided with one of tiers of tax abatement as follows:

<b>Points</b>	<b>Benefits</b>
Fewer than 24 or determination of substantial expense to Town	Denied
25 to 44	Third-tier benefit: 70% of fixed assessment abated for two years, or 50% of fixed assessment abated for four years
45 to 69	Second-tier benefit: 70% of fixed assessment abated for three years, or 50% of fixed assessment abated for five years
More than 70	

**Points****Benefits**

Highest benefit: 100% of fixed assessment abated for years one to three, 70% of fixed assessment abated for years four to five, 50% of fixed assessment abated for six year

- B. The Town may abate real estate property taxes based on increased real property tax assessments up to but not more than the percentages shown above.
- C. The fixed assessment period shall commence the first fiscal year for which a tax list is prepared on October 1, 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 which is the subject of the agreement. Notwithstanding anything written in this article, the Town may, in its sole discretion, offer to enter into an agreement with the applicant for the abatement of taxes of a lesser percentage and/or fewer years.
- D. On a case-by-case basis, the Town may provide other incentives in addition to the incentives provided by C.G.S. §§ 12-65b and 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, sidewalks, or curbing, extension of water and/or sewer lines or other public improvements.
- E. Machinery and equipment defined in Subdivision (72) of C.G.S. § 12-81 and intended to qualify for tax relief pursuant to C.G.S. § 12-65h shall have, for federal income tax purposes, a depreciable useful life of five or seven years.
- F. In addition any other requirements provided herein, entitlement to any tax abatement shall be subject to the following requirement: Construction shall commence within six months of, and not prior to, final approval by the Town and shall be completed no later than 24 months from the date of final approval by the Town. The times for commencement and completion of the construction are mandatory except the applicant's performance may be excused when the applicant is prevented from performing by causes beyond the applicant's control, including natural disasters or other calamities or a state- or national-declared state of emergency.

### **§ 278-41 Default by owner or lessee; recapture of abated taxes.**

- A. Abatement of taxes under this article constitutes a municipal subsidy to the successful applicant. In the event that the applicant fails to meet negotiated benchmarks or other requirements as described herein, he/she shall, by the terms of the Agreement, be required to repay all abated amounts, with interest consistent with C.G.S. § 12-146, as of the date of default.
- B. In addition to the specific timing benchmarks noted in § 278-40, the Town is encouraged to establish relevant benchmarks to be met by a successful applicant related to the nature of the business or the project. At a minimum, they must include the following triggers.
  - (1) In the event the owner or lessee of the real property at any time fails to pay real estate and/or personal property taxes when due and payable; fails to commence or complete on time the construction of all improvements upon the property which is the subject of the Agreement; fails to perform or satisfy any term, condition or benchmark of the Agreement; within 10 years of the date of the Agreement, the applicant ceases doing business or operations at the property which is the subject of the Agreement or if the property or lease is taken under a writ of execution or becomes the subject of foreclosure proceedings; or abandons at any time 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 § 278-42 of this article, such event shall constitute a material default of the agreement, and the Town may terminate the agreement on the giving of written notice whereupon (a) the right of the owner and/or lessee under the terms of the agreement shall cease and come to an end; and (b) 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 C.G.S. § 12-146, all waived fees, if any, and all actual costs to the Town in providing in-kind considerations to the property owner and/or the lessee.

- (2) 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 under the terms of the agreement shall be terminated; 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 C.G.S. § 12-146, all waived fees, if any, and all actual costs to the Town in providing in-kind considerations to the property owner and/or the lessee.

### **§ 278-42 Recapture terms.**

It is of no benefit to East Hampton to drive an applicant in default into further economic straits by virtue of an onerous repayment plan. Terms for the recapture of abated taxes as described in § 278-41 should be calculated to ensure the recapture of the highest possible percentage of public funds, taking into account the fiscal reality of the applicant, the circumstances of the default, and the state of the project.

### **§ 278-43 Assignment of agreement.**

The Agreement between the Town and the applicant shall not be assigned by the applicant to any person(s) or business organization or entity or estate or trust without the express consent of both the Council and the EDC which shall signify their consents by an affirmative vote taken at a separate meeting of each body duly noticed for the stated purpose. Additionally, this Agreement, to the fullest extent allowed by law, shall not be assignable in any federal bankruptcy proceeding or assignment for the benefit of creditors. A conveyance of 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 applicant 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 or transferee, including but not limited to any remaining tax abatements under the terms of the agreement. A "controlled entity" means a business which is 80% or more owned by the grantor or transferor.

### **§ 278-44 Amendments to applicable statutes.**

All references in this article to C.G.S. § 12-65b or § 12-65h or § 12-81 or any other section of the Connecticut General Statutes made herein shall include all amendments to such statutes enacted and signed into law subsequent to the effective date of this article.