

2019 RESOLUTION AMENDING ECONOMIC DEVELOPMENT POLICY

WHEREAS, the Board of Commissioners finds that expenditures for economic development of industrial and commercial plants stimulate the local economy, increase the tax base, promote business, and result in the creation of jobs for the citizens of Durham County; and

WHEREAS, the Board of Commissioners desires to amend its consolidated, uniform plan for providing economic development funds which will not duplicate the investment efforts of other governmental units; and

WHEREAS, the Board of Commissioners intends to implement its economic development policy in conjunction with related County policies and plans that allow Durham County residents to compete for jobs which pay a liveable wage; and

WHEREAS, the Board of Commissioners desires to provide for the option of infrastructure investments in lieu of or in addition to other appropriations in Durham County; and

WHEREAS the County may make these appropriations pursuant to N.C.G.S. § 158-7. 1.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM DOTH RESOLVE:

1. The prior Resolution entitled "Resolution Amending Economic Development Policy" is hereby amended by the adoption of this Resolution.

2. Appropriations will be considered for developers of commercial and industrial facilities in strategic economic areas, which shall be such areas as are designated from time to time by the Board of Commissioners, and for companies with a presence in or to be located in Durham County which meet the new investment and new jobs thresholds. In no event will appropriations be made for residential development.

3. Appropriation shall only be considered for:

- a) companies or developers which produce new taxable capital investment of at least \$50 million in assessed valuation at the potential Durham County location(s) as determined by the tax value placed on the property by the Durham County Tax Administrator. These minimum amounts shall be calculated in the most current schedule of values. Only taxable capital invested within five years of the date of the incentive contract will be counted in determining the investment amount.

or

- b) companies or developers of facilities which create a minimum of 200 new full-time jobs. For a new job to qualify and be counted towards the minimum 200 new jobs, the following criteria must be met:
 - (i) the new job must be a net increase in the company's number of full-time employees working in Durham County; and
 - (ii) the new job must be filled by a full-time employee. A full-time employee is defined as a person who is employed by the company for at least 35 hours per week and whose wages

are subject to withholding, or a permanent hourly or salaried position of employment with the Company that requires not less than 1800 hours of work per year at the Durham County site and is intended to be performed by one employee during the entire year and for which the average weekly wage for a given calendar year (such average weekly wage calculated over the entire calendar year and not prorated for any reason) equals or exceeds the specified wage; and

- (iii) the average wage for new full-time jobs must equal the average wage as to each category of employee hired, as defined by the Department of Labor or similar Government entity, for Durham County or Metropolitan Statistical Area; and
- (iv) the company must also agree to provide health insurance satisfying the standard established for Job Development Investment Grants in N.C. Gen. Stat. § 143B- 437.53(c) that includes paying a minimum of 50% of the premiums; and
- (v) the net new jobs must represent the number of full-time jobs in Durham County tied to the incented project and cannot include employees transferred or relocated from another company site in North Carolina.

4. Companies or developers seeking to qualify for an appropriation pursuant to this policy shall provide Durham County with a written statement which includes the following project information:

- Project physical location and parcel number(s)
- Estimated value and square footage of the facility(s) to be constructed or upfitted
- Estimated value and type of equipment to be installed
- Estimated costs and schedule of the design and construction of any activity related to the proposed project, including land use costs that are being incurred by the County
- Number of net new full-time jobs created
- Position type or classification and salary information
- As available, projected educational requirements or certifications necessary for new positions
- If applicable, anticipated number of new jobs that will be transferring from out of state
- If applicable, projected number of existing positions that are at risk of relocating if not retained

5. The Board of Commissioners reserves the right to require a study to be performed by a consultant to establish that the proposed commercial development would not materialize at the proposed level of taxable investment without incentives paid pursuant to this policy. The costs of the study shall be paid in advance by the company or developer requesting the incentive grant.

6. The Board of Commissioners is not obligated to make any appropriations for a company or developer. If an appropriation is made, the amount of the appropriation shall be determined including, but not limited to, the following factors:

a) Base Factors:

- The need for the appropriation of funds as a deciding factor for the construction of the facility or the relocation or expansion of the company in Durham County
- Amount of new investment
- Number and type of new jobs
- Type of business relative to the tax base
- Reputation of the company
- The presence of competition for the project
- Location in the community
- Capacity of available infrastructure

- Whether or not the incentives in any given year exceed the amount of taxes collected by the County
- Whether in the case of a company, a prior appropriation has been made to a developer of the facility

b) Company Policies and Project Attributes - Interested Company should identify which of the following criteria apply to the project that you are proposing or are policies that your Company maintains:

- Diversity of project's employment opportunities, including jobs that do not require an advanced degree and/or contain manufacturing jobs (Identify all that apply)
- Employers that provide childcare support and/or pre-k programming (Identify all that apply)
- Sustainable building design, construction and operating practices
- Employers that hire current or previous justice-involved individuals
- Project location in a Durham County Opportunity Zone
- Companies that have a Diversity Purchasing program or M/WBE targets for purchasing contracts
- Businesses locating in Research Triangle Park, Treyburn Corporate Park or Downtown
- Companies locating their Headquarters in Durham County
- Businesses that create clean technology jobs that contribute towards a more sustainable environment
- Relation to existing industry clusters such as Life Sciences, Information Technology and Cleantech
- Industries that diversifies Durham's economy
- Retention of existing jobs at stake
- Contains high-paying jobs with an increased multiplier effect on the Durham economy
- All Company positions exceed \$15 an hour (Durham County Living Wage)

c) Workforce Partnership Engagement Plan - As necessary to ensure that Durham County continues to offer a skilled workforce capable of successfully meeting future employment needs, companies are encouraged to identify the partnerships in which they will participate. The Workforce Partnership Engagement Plan includes but is not limited to the following:

- Hold job fairs with NC Works
- Paid summer Internships and jobs – Identify High School and/or College
- Participate in any of the following Durham Public Schools Career and Technical Education programs:
 - Educational sessions with students to include Guest Speaking and Career Conversations
 - Hosting teachers over the summer or Career Readiness Expo participation
 - Hosting students to include Job Shadowing and the Scholars-At-Work-Program
 - Serving as a Durham Public Schools Career and Technical Education Advisor
- Collaborate with North Carolina Central University's Biomanufacturing Research Institute and Technology Enterprise (BRITE) Center
- Partner with local organizations to advise with Diversity Purchasing policy creation and/or attend related training events
- Participate in Diversity Purchasing trade and outreach events
- Partner with Criminal Justice Resource Center to identify employment ready participants
- Work with Durham Public Library STEAM Center to provide job awareness programming

- Collaborate with Durham Technical Community College's (DTCC) BioWorks Advisory Committee and similar local organizations to recruit local talent
- Communicate employment opportunities with relevant industry networks like DTCC's BioWorks Program, Research Triangle Cleantech Cluster, etc.
- Engage Duke's Office of Durham and Regional Affairs to participate in workforce and community activities
- Work with DTCC to ensure that necessary course curriculum is available to support project's employment opportunities

7. Notwithstanding the foregoing, in no event shall an appropriation be made to a company or developer for property which has been or is proposed to be classified as historic for purposes of *ad valorem* taxation pursuant to N.C.G.S. § 105-278 or any successor statute.

8. Companies may seek incentives through the taxable capital investment criteria or the jobs criteria.

- (i) For companies seeking incentives through the investment criteria, the maximum appropriation which may be made for a developer of a facility or a company locating or expanding in Durham County shall be up to 50% of the net new revenue as a result of the new, taxable capital investment, as determined by the tax value placed on the property by the Durham County Tax Administrator. Section 6 criteria will be used to inform the percentage of net new revenue that is considered.
- (ii) For companies which are requesting incentives through job creation criteria, the project must include a minimum of 200 new full-time jobs. Incentives of up to \$1,000 per job may be offered and Section 6 criteria will be used to inform the amount that is considered per job. One of the goals of the jobs criteria is to potentially unlock a State Jobs Development Investment Grant (JDIG) award by participating with a required, qualifying local match.
- (iii) In lieu of the appropriation provided in subparagraph "a" and "b" above, the Board of Commissioners, in its sole discretion, may elect to provide or recognize infrastructure investments made by Durham County that are necessary to the execution of the project as a part or the sum of the total incentive offer from the County. Infrastructure may include but is not limited to utilities, public amenities, structured parking, lift stations and roads.

9. The payments shall be made based on a schedule which is acceptable to the company or developer and the Board of Commissioners of up to ten years for companies and up to fifteen years for developers. Awards greater than \$1 million are to be paid out on a minimum of a seven-year schedule.

10. All funds appropriated or spent pursuant to this policy shall be used only for the purposes as stated in N.C. G.S. § 158-7.1 (a) or (b). Whenever funds are provided for projects that include new personnel, the incentive Agreement shall provide that the developer or company shall post the job openings with the North Carolina Works Career Center. Whenever funds are provided for projects that include taxable capital investment related to new construction or building upfit, the developer or company shall post investment-related Request for Proposals (RFP), with a state or local organization that notifies minority vendors of bid opportunities.

11. Any appropriations of funds pursuant to this policy may only be made following a public hearing before the Board of Commissioners, which notice of such hearing shall be published at least ten days before the hearing is held. The notice shall contain the information as required by N.C.G.S. § 158-7.1(c).

12. Developers and companies receiving appropriations of funds pursuant to this policy shall enter into an incentive Agreement with Durham County. Agreement summaries will be shared with the Board of County Commissioners for their review prior to the execution of the Agreement. All incentive Agreements shall be subject to performance criteria as set forth therein. Performance criteria shall include, but not be limited to verification of jobs, investment, and related contract criteria prior to payment. Contract criteria to include but not limited to Company Policies, Project Attributes, and Workforce Partnership Engagement Plan. Individual elements to be verified as outlined below:

(i) Created jobs will be verified through:

- Employment Security Commission's NCUI 101 Form provided by Company
- Company will provide employee information that can be confirmed against the NCUI 101 report to include employee name as well as employee title, SOC Code and Salary or Wage information
- Project wages will be verified against Department of Labors' annual report of average wage by occupational code for Durham County or similar report
- Durham County Affidavit Standard Form confirming accuracy of employee information

(ii) Investment amounts will be confirmed through:

- Tax Office valuation of Real Property and Business Personal Property
- General Contractor summary of spending report
- Inspections Building Permits' estimated cost of construction
- Durham County Affidavit Standard form confirming accuracy of investment information

(iii) Community Partnerships will be verified through:

- Third party as applicable

All Agreements are performance based and require the fulfillment of the aforementioned criteria to qualify for payment. If for any reason, the developer or company fails to meet its obligations under the contract by not achieving jobs, investment and related criteria outlined in the annual schedule of payments, then it will not qualify for payment unless remedied within six months as referenced in the Cure Period.

13. All companies or developers seeking and receiving appropriations shall be and remain current on all Durham County and Durham City levied bills. Pertaining to the County's environmental standards, notwithstanding any other regulations or requirements, Companies currently located in Durham County and looking to expand shall be in full compliance with all Federal, State and local environmental laws, ordinances, regulations and standards including all Durham County environmental ordinances and standards in order to be considered for any Durham County incentives. Further, any existing company if incented shall maintain full compliance of referenced environmental standards for the full period of the incentive Agreement. Moreover, any company seeking an incentive from Durham County to locate a new facility in Durham County shall agree to maintain full compliance with all Durham County environmental standards and ordinances as well as all applicable Federal, State and Local environmental laws, ordinances, regulations and standards for the full period of the incentive Agreement. Failure to maintain such compliance may cause refusal of the County to pay the incentive for that period and any period in which a violation of these referenced standards exists. Should a violation be discovered following a payment, the Company may be required to either pay back said payment or to forfeit the upcoming payment.

14. If an appropriation is to be made to a developer or company, a provision in the Agreement referenced above shall contain, among other provisions including default of the Agreement, a "claw-back" provision which will require a repayment, in full, of any appropriation to the developer or company from the County should:

- (i) a company fail to make at least 90% of the investment as stated in the economic development Agreement, close its operations in Durham County, or fail to employ at least 90% of the number of employees agreed to in the incentive contract or reduce the number of employees by more than 10% below the number agreed to in the contract after initially hiring the number of employees agreed to in the incentive contract within five years of the date of the signing of the incentive contract;
- (ii) a developer close the facility which is the subject of the appropriation or fail to make the investment as stated in the incentive contract within five years of the date of the signing of the Agreement.

The Agreement shall further provide that, if a company close its operations in Durham County or reduces the number of employees by more than 10% below the number agreed to in the incentive contract after initially hiring at least 90% of the number of employees agreed to in the incentive contract within 10 years of the date of the signing of the Agreement; or if a developer closes the facility which is the subject of the appropriation within ten years of signing of the Agreement, the company and/or the developer shall repay the County any appropriation based off the following schedule:

- (i) if the closing or reduction occurs in year six after signing the contract, the company and/or developer shall repay the County an amount equal to 80% of the total appropriation paid;
- (ii) if the closing or reduction occurs in years seven through ten after the Agreement is signed, starting with year six, a declining amount of 20% per year of the total appropriation shall be repaid to the County with 0% of the amount of the appropriation to be repaid in year ten and thereafter. i.e. 60% in year seven, 40% in year eight, etc.

The Company shall not be entitled to receive incentive grants after any public announcement by Company of its plan to cease operations at the Facility. For any year in which a Payment is due, no payment shall be made unless the Company operated the Facility continuously throughout the applicable Payment Year with the exception of brief periods necessary for maintenance or repair, facility closures due to adverse weather or other conditions beyond the Company's reasonable

control. In the event that performance criteria are not met, a request to review conditions explaining performance may be submitted to the Board of County Commissioners.

Payment requests must be submitted within annual schedule of payments or forfeited. The County and the Company respectively bind themselves in respect to covenants, agreements and obligations contained herein. Company shall not assign, transfer, sell or convey any of its rights to incentive payments contemplated by this Agreement, except in the event of a corporate name change or merger, and then only upon the written prior approval of County.

15. The provisions of this policy do not create and are not intended to create any property interest or legal expectation by any developer or company. Additionally, this policy is not intended to limit the discretion given to the Board of Commissioners for the promotion of local economic development under applicable laws. Any assistance provided to a company or developer will be limited to the availability of funds by Durham County.

This the 14th day of October 2019.