

ORDINANCE NO. 2535

AN ORDINANCE AMENDING ORDINANCE 2350 AND SECTION 37 OF THE ERLANGER CODE OF ORDINANCES ESTABLISHING AN ECONOMIC INCENTIVE FOR THE DEVELOPMENT OF JOBS AND EMPLOYMENT IN THE CITY AND THE QUALIFICATIONS FOR THAT INCENTIVE

WHEREAS, Erlanger Ordinance 2350 (Section 37 of the Erlanger Code of Ordinances), establishes economic incentives for the development of jobs and employment in the City and the qualifications for that incentive; and

WHEREAS, the City is desirous of amending the economic incentives and the qualifications of that incentive.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ERLANGER, IN KENTON COUNTY, KENTUCKY, AS FOLLOWS:

(Strikethrough portions are to be deleted, underlined portions are to be added as required by KRS 83A.060(3))

Section 1.0

That the Erlanger City Council amends Ordinance No. 2350 and Section 37 of the Erlanger Code of Ordinances, as follows:

(Section References)

37.01 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ANNUAL PERIOD. The initial period of 12 consecutive calendar months after the commencement date designated in an application for the EDGE incentive established by this chapter, and each period of 12 consecutive months thereafter.

COMMENCEMENT DATE. The day designated in an application for the EDGE incentive established by this chapter as the day of the beginning of the first annual period.

ELIGIBLE BUSINESS ACTIVITIES. Any franchise, trade, occupation, profession or other business within the meaning and context of KRS 92.280, 92.281 and § 181 of the Kentucky Constitution, other than:

(1) Those business activities of sexually oriented businesses or sexual encounter establishments as elsewhere defined and regulated in other ordinances of the city; and

(2) Those business activities which receive incentives from the Commonwealth that involve occupational license fees for which the City already is contributing to those incentives. Those jobs not incentivized through a Commonwealth incentive package, such as Ohio or Indiana resident jobs, may be offered an additional EDGE incentive.

EDGE. An acronym for the words “Erlanger Development Growth and Employment”.

EMPLOYER. Anybody who compensates anybody else to provide work or labor to or for the employer.

EXISTING EMPLOYER. An employer who has employed others for work in any eligible business activity in the city for a continuous period of more than 12 consecutive calendar months before the month of an application by that employer for an EDGE incentive pursuant to the provisions of this chapter.

NEW EMPLOYER. Anybody who does not employ others for any work in any eligible business activity in the city at the time of an application for an EDGE incentive pursuant to the provisions of this chapter.

OCCUPATIONAL LICENSE FEES. Those occupational license fees levied and imposed by other ordinances of the city on those who provide work, labor or services in the city through their employment by others.

Section 37.02 ESTABLISHMENT OF EDGE INCENTIVE

In order to promote and induce new and existing employers to engage in new or expanded eligible business activities in the city that increase the number of employees working in those activities in the city, there is hereby established the EDGE incentive described in this chapter for new or existing employers who engage in eligible business activities in the city that have been certified by the Economic Development Director, as qualified for the EDGE incentive in conformity with the provisions of this chapter.

Section 37.03 DESCRIPTION OF EDGE INCENTIVE

The EDGE incentive established by this chapter is an authorization for a new or existing employer who is engaged in a new or expanded eligible business

activity that remains qualified for the EDGE incentive after the certification thereof by the Economic Development Director. After certification, the Economic Development Director shall reimburse the business for to retain and not pay to the city during up to ten annual periods after the commencement date while the qualification continues, up to one-third of the total amount of those occupational license fees withheld by the employer from the gross wages of the employees thereof engaged in the ~~new or expanded eligible business activity~~ in the city ~~that are in excess of the amount of those gross wages that qualify the new or expanded eligible business activities for the EDGE incentive pursuant to Section 37.04, which the employer would be otherwise obligated to pay to the city.~~ For businesses with gross annual wages exceeding \$20,000,000, the Economic Development Director may provide an enhanced incentive of up to two-thirds of the total amount of those occupational license fees withheld by the employer.

Section 37.04 EDGE INCENTIVE QUALIFICATIONS AND CERTIFICATION

(A) No employer shall be eligible for the EDGE incentive established by this chapter without a valid certification by the Economic Development Director that the proposed new or expanded eligible business activity is qualified for it.

(B) A new or existing employer who is proposing to engage in any new or expanded eligible business activity in the city may qualify for the EDGE incentive established in this chapter by submitting a written application for it to the city with all of the information required by the city, which shall include, without limitation:

(1) Information about the organizational structure of the employer and the owners thereof;

(2) The business history of the employer;

(3) A description of the proposed new or expanded eligible business activity, including, without limitation, the location of it, along with the plans and anticipated cost of any new construction;

(4) An explanation of how the proposed new or expanded eligible business activity will promote the public purpose of relieving unemployment through new jobs and employment in the city that would not exist but for the EDGE incentive;

(5) A description of the functions and duties of each proposed position of employment in the proposed new or expanded eligible business activity, along with the number of those positions and range of compensation for each of them; and

(6) An explanation for how the business and the proposed new or expanded business activity meets any of the following factors:

- a) Directly increase future revenue/job creation in the City of Erlanger.
- b) Significantly decrease blight within the City of Erlanger.
- c) The businesses proposed new or expanded capital improvement will significantly increase the property tax value.
- d) The businesses proposed new or expanded capital improvement will significantly improve previously documented environmental hazards contained/contaminated on the property.

(7) A commencement date for the proposed new or expanded capital improvement or increase in payroll.

(C) An application for the EDGE incentive established in this chapter shall be reviewed by the Mayor, City Administrative Officer, and the Economic Development Director of the city for completeness, accuracy and compliance with this chapter; but the Economic Development Director, shall not certify that the proposed new or expanded eligible business activities qualify for the EDGE incentive unless it is reasonable to believe from the information provided in the application and the Economic Development Director believes and is satisfied that:

(1) The proposed new or expanded eligible business activity proposed in the application will promote the public purpose of relieving unemployment through new jobs and employment in eligible business activities in the city that would not exist but for the EDGE incentive; and

(2) In the new jobs and employment developed in the new eligible business activity proposed in the application, the employer will actually pay during each annual period total gross wages for work and labor of employees engaged in eligible business activities in the city in excess of Seven Hundred and Fifty Thousand (\$750,000) dollars for those employed in an area of the city. An Existing Employer may also qualify if it has Seven Hundred And Fifty Thousand (\$750,000) in total gross wages AND has incurred either Five Hundred Thousand (\$500,000) in capital improvements within twelve (12) months of the application- OR has increased the total annual gross wages, above Seven Hundred and Fifty Thousand (\$750,000) dollars by at least Five Hundred Thousand (\$500,000) and added a minimum of 10 new jobs within twelve (12) months of the application.

(3) The proposed new or expanded business activity and/or capital improvements meet at least one (1) of the following factors:

- a) Directly increase future revenue/job creation in the City of Erlanger.
- b) Significantly decrease blight within the City of Erlanger.
- c) The businesses proposed new or expanded capital improvement will significantly increase the property tax value.
- d) The businesses proposed new or expanded capital improvement will significantly improve previously documented environmental hazards contained/contaminated on the property.

(D) In the event that it is reasonable to believe and the Economic Development Director does believe and is satisfied from the information provided in the application that the new or expanded eligible business activity proposed in the application will conform to the requirements in divisions (C)(1), (C)(2) and (C)(3) above, the Economic Development Director may certify in writing to the employer that the proposed new or expanded eligible business activities qualify for the EDGE incentive established in this chapter. The Economic Development Director shall look at the provisions of (C)(1), (C)(2) and (C)(3) and shall consider all other incentives previously or currently offered to the Employer prior to approving the Application.

(E) In determining of the amount of incentive offered to each applicant, the Economic Development Director shall consider the following factors:

- a) The number of new jobs added by the proposed new or expanded business activity.
- b) The number of high quality jobs, including those with an average weekly wage that meets or exceeds the most recently reported average weekly wage for Kenton County, KY, as reported by the Quarterly Census of Employment and Wages by the Bureau of Labor Statistics.
- c) The likelihood of any adverse impacts to the community created by the business activity, such as potential environmental or safety impacts.
- d) The potential use of public services by the business activity, such as police, fire or emergency services.
- e) Any additional investments and incentives associated with the development of the property, such as infrastructure investments or incentives such as TIF (Tax Increment Financing) districts or IRBs (Industrial Revenue Bonds).

Section 37.05 RECORDS AND REPORTS.

During the ten annual periods after the commencement date, while the employer remains qualified for the EDGE incentive, the employer shall:

(A) At the times and in the manner determined by the city, report to the city all information relevant to the continued qualification of the new or expanded eligible business activity of the employer for the EDGE incentive, including, without limitation, the names, addresses, rates of compensation and the total compensation of each employee of the employer for each period of the work, labor or services of that employee in eligible business activities in the city; and

(B) Allow the city to inspect all of the employment records of the employer at all reasonable times.

Section 37.06 TERMINATION OF EDGE INCENTIVE

Upon the occurrence of any of the following events, in any annual period of an employer who has qualified for an EDGE incentive, the EDGE incentive shall terminate and the employer shall pay to the city all of the occupational license fees withheld by the employer during that annual period; and, thereafter, the employer shall no longer be eligible or qualified for any EDGE incentive for the new or expanded eligible business activity by which the employer was qualified for it:

(A) The employer fails to comply with any of the requirements of Section 37.05 or any other provision of this chapter;

(B) The employer reports to the city or actually pays to the city gross wages to all of the employees of that employer for work in the new or expanded eligible business activity in the city that is less than the amounts of gross wages required by the chapter to qualify for the Edge Ordinance;

(C) The employer engages in any sexually oriented business activities, including, without limitation, those of sexually oriented businesses or sexual encounter establishments as elsewhere defined and regulated in other ordinances of the city; or

(D) The employer receives incentives from the Commonwealth that involve occupational license fees; for which the City is contributing to those incentives. Those jobs not incentivized through a Commonwealth incentive package, such as Ohio or Indiana resident jobs, may be offered an additional EDGE incentive.

Section 2.0

The provisions of this ordinance are severable; and the invalidity of any provision of this ordinance shall not affect the validity of any other provision thereof; and such other provisions shall remain in full force and effect as long as they remain valid in the absence of those provisions determined to be invalid.

Section 3.0

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4.0

This ordinance shall be effective as soon as possible according to law.

Section 5.0 - Publication

This ordinance shall be published in summary pursuant to K.R.S. 83A.060 (9).

Adopted this 1st day of March, 2022.

First Reading- February 1, 2022

Second Reading- March 1, 2022 Votes Cast 11 Yes, 0 No

JESSICA FETTE, Mayor