

Sponsor: Councilman Rasmussen
First Reading: 09/21/20
Second Reading: 10/05/20
Third Reading: 10/19/20
Ord. No.: 020-20

**AN ORDINANCE AMENDING THE TOWN CODE OF THE TOWN OF SMYRNA,
CHAPTER 18 (BUILDING AND BUILDING REGULATIONS), ARTICLE XXII
(DEVELOPMENT INCENTIVES), TO REVISE AND CLARIFY THE TOWN'S
ECONOMIC DEVELOPMENT INCENTIVES REGULATIONS**

WHEREAS, the Town Council of the Town of Smyrna is authorized pursuant to section 4.2.25 of the Town Charter to “provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants;”

WHEREAS, the Town Council has determined that in order to increase investment in key areas of the Town, and in order to effectively compete with other local governments to attract businesses to the Town of Smyrna, it is in the best interest of the public health, safety, and welfare to create incentives for individuals and entities who are interested in investing in the Town of Smyrna;

WHEREAS, the Town Council has previously adopted economic development incentives and now believes it to be in the best interest of the public health, safety, and welfare to revise and clarify those incentives in order to make the economic development incentives regulations more effective to accomplish the Town’s economic development goals and objectives.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that the Town Code of the Town of Smyrna be and hereby is amended as follows:

Section 1. Amend Chapter 18 (Building and Building Regulations), by making insertions as shown by underline and deletions as shown by strike through as follows:

Sec. 18-1701. – Definitions

- (a) For purposes of this article, the following words and phrase shall have the meanings respectively ascribed to them as follows:

~~*Central highway commercial* means the investment district for those properties zoned Highway Commercial (HC) that are situated either adjacent to Route 13 between Duck Creek and Lake Como or adjacent to Route 300.~~

~~*DDD Downtown* means the area of land the investment district that encompasses all those properties situated in the area designated by the Governor of the State of Delaware as a downtown development district~~ Downtown Development District.

~~*Downtown commercial* means the investment district for those properties situated within the DDD, the historic preservation overlay district, and/or the Opportunity~~

~~Zone, which are not used exclusively for residential purposes and are zoned either Highway Commercial (HC), Central Commercial (CC), Manufacturing (M), Local Commercial (LC), or Limited Manufacturing (LM).~~

~~*Downtown residential* means the investment district for those properties situated within the DDD, the historic preservation overlay district, and/or the Opportunity Zone, which are used exclusively for residential purposes and are zoned either Residential (R-2), Residential (R-2A), Residential (R-3), or Central Commercial (CC).~~

~~*Highway commercial* means the investment district for those commercial properties zoned Highway Commercial (HC) that are situated adjacent to Route 13 and which are located either north of Duck Creek or south of Lake Como. HC - Highway Commercial, LC - Limited Commercial, SC - Shopping Center, NC - North Corridor, or SCZ - South Corridor. Expressly excluded from this investment district are mixed-use buildings that do not have at least thirty percent of the gross floor area dedicated towards a non-residential use and residential dwellings (including apartment buildings and townhouse dwellings).~~

~~*Historic preservation overlay district* means an area of land officially designated by the town council under the town zoning code with its boundaries being depicted on the town zoning map.~~

~~*Industrial* means the investment district ~~for~~ that encompasses those properties zoned IORP - Industrial/Office/Research Park (IORP), M - Manufacturing, or LM - Limited Manufacturing.~~

~~*Investment incentives* include the waiver, in whole or in part, of one or more of the following: town impact fees, utility impact fees, utility tapping fees, building permit fees, rezoning fees, variance fees, conditional use fees, special exception fees, demolition permit fees, certificate of occupancy fees, sign permit fees, taxes, delayed tax reassessments, or utility user fees or charges as authorized in this article.~~

~~*Opportunity Zone* means any census tract situated entirely or partially within the Town of Smyrna that has been designed as an Opportunity Zone by the U.S. Department of the Treasury.~~

~~*Qualifying improvements* means all renovations, restorations, rehabilitation, reconstruction, or new construction to a building or structure on property located within one of the investment districts outlined herein, the value of which are equal to or greater than the minimum investment amounts outlined in this article. Permanent improvements to the exterior of a property, such as to a driveway or sidewalk, shall be considered qualifying improvements, but the addition of furnishings or temporary fixtures to the interior or exterior of a property or building shall not be considered qualifying improvements. Stand-alone residential decks and residential accessory structures shall not be included as qualifying improvements in any investment district.~~

~~*Qualifying property* means a property situated within the municipal boundaries of the Town that has had qualifying improvements that meet or exceed the minimum investment thresholds for the investment district in which the property is located.~~

Town impact fees mean all those impact fees identified in the Town Code in Sections 32-9(a) through (d) of Chapter 32 (Impact Fees).

Utility impact fees mean all those impact fees identified in the Town Code in Sections 32-9(e) and (i) of Chapter 32 (Impact Fees).

Utility tapping fees means those fees identified in the Town Code in Chapter 70 (Utilities), Art. II (Water and Sewer System), Division 3 (Connections).

Sec. 18-1702. – Minimum Qualifications

(a) *Minimum investment required.* In order to qualify for the incentives outlined in this article, a minimum investment shall be expended on qualifying improvements for a property after the effective date of this article. The minimum investment thresholds for qualifying improvements for the different investment districts are as follows:

- (1) ~~Downtown commercial: \$15,000~~ Downtown: \$25,000
- (2) ~~Downtown residential: \$15,000~~
- (3) ~~Central highway commercial: \$100,000~~
- (4) (2) Highway Commercial: \$200,000
- (5) (3) Industrial: \$200,000

~~(b) *Minimum ownership time period; lien.* Any property owner receiving investment incentives under this article shall be required to maintain ownership of the corresponding property for a minimum of two years from the date the certificate of occupancy was issued for the qualifying improvements. If title to the property is transferred to another owner prior to the expiration of the two-year time period, all investment incentives granted for the property shall be repaid to the Town. The Town may record a lien against any such qualifying property with the Office of the Recorder of Deeds in and for the county in which the property is located. The lien amount shall be equal to the value of the investment incentives granted for the qualifying property. If all investment incentives are not realized at the same time, more than one lien may be recorded as additional investment incentives are granted.~~

(b) *Minimum ownership time period; lien.* Any investment incentives granted pursuant to this article shall be repaid to the Town if any of the following occur:

(1) Ownership of the property receiving the investment incentives is transferred within two years from the date the certificate of occupancy was issued for the qualifying improvements or, in the case of Section 18-703(b), from the date the property was acquired by first-time homebuyers.

(2) A tenant receiving investment incentives vacates the qualifying property prior to the expiration of two years from the date the certificate of occupancy was issued for the qualifying improvements.

(3) A residential property owner receiving investment incentives under Section 18-703(b) rents the property prior to the expiration of two years from the date the certificate of occupancy was issued for the qualifying improvements or from the date the property was acquired by first-time homebuyers.

The Town may record a lien against any such qualifying property with the Office of the Recorder of Deeds in and for the county in which the property is located. The lien amount shall be equal to the value of the investment incentives granted for the qualifying property. If all investment incentives are not realized at the same time, more than one lien may be recorded as additional investment incentives are granted. If the Town is unable to record a lien because the recipient of the investment incentives is a tenant, the Town may require a signed personal guarantee from all tenants, or individuals with an ownership interest in the tenant, in an amount equal to the investment incentives granted.

- (c) ~~DDD: In order to qualify for any investment incentives as a qualifying property, a property located within the DDD must obtain all pre-approvals required by the State of Delaware as a result of being located within the DDD.~~

Sec. 18-1703 – Tax Incentives

- (a) *Downtown Property Tax Reassessment Waiver*: Commencing with the date of the issuance of the certificate of occupancy and continuing for 60 months thereafter, qualifying properties located in the downtown ~~commercial, downtown residential, and central highway commercial~~ investment districts shall not be required to pay any increase in taxes resulting from a supplemental assessment for the qualifying improvements. If a town-wide reassessment occurs during this 60-month period, the property tax bill for a qualifying property shall be discounted after the reassessment such that the property owner will be paying property taxes on the same percentage of the assessed value that the property owner was paying on prior to the town-wide reassessment. At the conclusion of the 60-month period, the property owner shall be required to pay taxes on the full assessed value of the property commencing with the next tax bill that ~~becomes~~ comes due.
- (b) ~~Property Tax Abatement.~~ *Downtown Property Tax Abatement*: For properties located in the downtown ~~residential~~ investment district, if (a) qualifying improvements are performed that result in the converting of a rental property into an owner-occupied dwelling that remains owner-occupied for a minimum of two years, or (b) an otherwise non-qualifying property is purchased by first-time homebuyers for use as their primary residence, the property owners shall be eligible for the following property tax abatement beginning with the first full annual tax bill that becomes due after a certificate of occupancy has been issued for the qualifying improvements, or in the case of first-time homebuyers, the purchasing of the property: 100% abatement for year one; 75% abatement for year two; 50% abatement for year three; and 25% abatement for year four.
- (c) *Industrial Property Tax Reassessment Waiver*: For qualifying properties located within the industrial investment district, property tax increases resulting from a supplemental assessment for the qualifying improvements shall be waived based on the following schedule. During years 1 through 5, 100% of the incremental tax assessment increase based upon the qualifying improvement is abated. In subsequent years, the incremental tax assessment increase shall be waived by 80% in year 6, 60% in year 7, 40% in year 8, 20% in year 9, and all waivers shall conclude by year 10. If a town-wide reassessment

occurs during the waiver period, the property tax bill for a qualifying property shall be discounted after the reassessment such that the property owner will be paying property taxes on the same percentage of the assessed value that the property owner was paying on prior to the town-wide reassessment.

~~(d)~~ ~~(e)~~ *Termination of Tax Incentives.* The property tax incentives outlined in sections ~~(a)~~ and ~~(b)~~ ~~(a)~~, ~~(b)~~ and ~~(c)~~ herein shall not run with the land. If property is transferred to another owner prior to the full realization of the property tax incentives, any unrealized property tax reassessment waiver or property tax abatement incentive shall be forfeited, and the full amount of the property taxes shall be owed commencing with the next tax bill. ~~Furthermore, reimbursement of investment incentives may also apply pursuant to Sec. 18-702(b).~~ Additionally, when applicable, repayment of investment incentives as outlined in Section 18-702(b) shall also apply.

Sec. 18-1704. – Waiver of Town Fees

(a) ~~*Downtown Investment District Fee Waivers Full Waiver of Fees:*~~

- ~~(1) Qualifying properties in the downtown commercial, downtown residential, and central highway commercial investment district shall have waived in full all town impact fees, building permit fees, utility impact fees, conditional use fees, special exception fees, demolition permit fees, sign permit fees, utility tapping fees, rezoning fees, variance fees, and certificate of occupancy fees. Fees associated with residential decks and accessory structures shall not qualify for these town fee waivers.~~
- ~~(2) Qualifying properties in the downtown commercial investment district shall have sign permit fees waived in full.~~

(b) ~~*Industrial Investment District Fee Waivers Partial Waiver of Fees:*~~ Qualifying properties in the ~~highway commercial~~ and industrial investment district shall have all town impact fees, utility impact fees, ~~utility tapping fees~~ building permit fees, rezoning fees, conditional use fees, special exception fees, demolition permit fees ~~variance fees~~, certificate of occupancy fees, and sign permit fees waived pursuant to the following schedule of tiered investment levels. ~~The different tiers of waivers shall be cumulative and shall include all waivers qualified for from lower tiered investment levels.~~ Qualifying properties in the industrial investment district shall have all town impact fees and utility impact fees waived subject to the following tiered level of investment:

- (1) Tier 1: Minimum investment of \$200,000, a 10% waiver;
- (2) Tier 2: For each additional \$100,000 of investments in excess of \$200,000 but less than or equal to \$1,700,000, an additional 1% waiver, up to a total 15% waiver for tier 2 investments and a maximum 25% cumulative waiver for tier 1 and 2 investments;
- (3) Tier 3: For each additional \$100,000 of investments in excess of \$1,700,000 but less than or equal to \$4,700,000, a 0.5% waiver, up to a total 15% waiver for tier 3 investments and a maximum 40% cumulative waiver for tier 1, 2, and 3 investments;
- (4) Tier 4: For each additional \$100,000 of investments in excess of \$4,700,000, a 0.1% waiver, up to a maximum total waiver of 10% for tier 4 investments and a maximum 50% cumulative waiver for tier 1, 2, 3, and 4 investments.

(c) Impact fees for fire protection, ambulance service, and school construction, as further detailed in Sec. 32-9(f) - (h) of the Town Code, shall not be waived at any time.

(d) Business License Fee Waiver: New businesses that occupy a qualifying property for the first time after the certificate of occupancy is issued for the qualifying improvements shall have their business license fee waived for the first three (3) years they are located within the Town of Smyrna.

Section 4. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Town Council's intent.

Section 5. Effective Date. This Ordinance shall become effective immediately upon its adoption by the Town Council.

SYNOPSIS

This ordinance simplifies and consolidates the various investment districts into three districts: downtown, highway commercial, and industrial. This ordinance clarifies which zoning districts are included in each investment district and expands the definition of investment incentives to include conditional use fees, special exception fees, and demolition permit fees. The minimum investment threshold for the downtown investment district is increased to \$25,000. This ordinance clarifies that personal guarantees may be required for tenants receiving investment incentives. Property tax incentives are added for industrial properties, and the ordinance clarifies which investment incentives are available for the three investment districts. Under certain circumstances, business license fees may be waived for three years.

This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on _____, 2020.

ATTEST:

Council Secretary

Mayor

This shall certify that the title and synopsis of this Ordinance was published in the "Smyrna/Clayton Sun Times" on _____, 2020 and posted at the Town Hall on _____, 2020.

So Certifies:

Town Clerk