

ORDINANCE NO.: 4757

A SECOND AMENDED ORDINANCE to create Section 2.23 of the Code of Ordinances of the City of La Crosse to create the Economic Development Commission and to establish standards for economic development incentives.

THE COMMON COUNCIL of the City of La Crosse do ordain as follows:

SECTION I: Section 2.23 is hereby created to read as follows:

2.23 ECONOMIC DEVELOPMENT COMMISSION, STANDARDS FOR ECONOMIC DEVELOPMENT INCENTIVES

(A) FINDINGS OF FACT, STATEMENT OF PURPOSE

(1) Findings of Fact. The City of La Crosse is essentially landlocked and the future economic prosperity of the City is primarily dependent on redevelopment of existing land uses. Redevelopment of sites, buildings and land typically has a higher up-front cost than "greenfield" suburban development as a result of potential environmental contamination, existing buildings that need to be removed or renovated, and smaller parcels that need to be assembled to create development sites. The Legislature has recognized this and has allowed cities to conduct economic development programs primarily through Tax Incremental Finance Districts (TID), the use of loans, grants, Industrial Revenue Bonds, land write downs, and provision of public infrastructure. A comprehensive program of economic development, including the prudent use of incentives, protects the public health, safety, convenience, general welfare and tax base of the City.

(2) Purpose and Intent. This ordinance is intended to regulate economic development programs and incentives to:

- a) Protect life, health, property and general welfare of the City;
- b) Minimize expenditures of public funds for development and redevelopment projects;
- c) Minimize business interruptions and other economic disruptions;
- d) Implement a high profile proactive approach to local economic development through public/private partnerships;
- e) Provide a range of development incentives, as needed, to retain local employers and to stimulate their expansion;
- f) Facilitate the redevelopment and revitalization of the downtown and older commercial areas;
- g) Attract a variety of manufacturing and regional office employers in business sectors with projected growth;
- h) Provide both existing and new employers with a consistent set of standards for the City's approach to incentive programs for projects located on private and/or publicly owned sites;

- i) To facilitate the use of federal and state development incentive programs and grants for local development projects.
- j) Maximize the effectiveness of the City's limited resources in stimulating job-creating development projects;
- k) Compete on an equal basis with other communities for an increased share of new development projects;
- l) Assist City in implementing its overall economic development goals.
- m) Enable the City to compete globally by actively creating and retaining an educated work force.

(B) ECONOMIC DEVELOPMENT COMMISSION.

The purpose of the Economic Development Commission is to act as an advisory body to the Common Council by implementing the Comprehensive Plan (primarily the Economic Development Element), the Economic Development Strategic Plan, Tax Increment District Project Plans, and the City Vision 2020 Downtown Master Plan. The Commission shall oversee the administration of the City's business assistance programs and address issues common to the City's economic vitality and viability.

(C) APPOINTMENT AND TERM OF OFFICE.

There shall be an Economic Development Commission consisting of nine (9) members, each for a term of two (2) years and shall include the Mayor, four (4) citizens representatives, four (4) council members including the Chair of the Finance and Personnel Committee and the Council President. Officers will be elected at the first meeting and then every two years following. The Common Council members and the citizen members shall be appointed by the Mayor subject to confirmation by the Common Council. No salary or compensation shall be paid to any member of said Commission for the member's services as Commissioner. Members who attain membership by designation shall require Council confirmation, shall serve for one year terms, may be a citizen or an elected official, and are full members and are not considered alternates. The two Common Council members and the four citizen members shall serve staggered terms with three serving a one year term and three serving two year terms. All members shall be residents of the City with the exception of the Local business person, who may not be a city resident, but must own a business within the city, and consist of:

- (1) The Mayor or designee
- (2) The Council President or designee
- (3) The Chair of the Finance and Personnel Committee or designee
- (4) Two Common Council Members
- (5) Four (4) City of La Crosse residents; with representatives recommended from these following areas of expertise:
 - a. Banker/Loan Officer
 - b. Certified Public Accountant
 - c. Local business person
 - d. Manufacturing representative

(D) POWERS AND DUTIES.

The Economic Development Commission shall;

- (1) Be responsible for implementing this economic development ordinance and provide the lead role in facilitating development projects and coordinating efforts with the private sector. As development projects arise, the Commission shall have the authority to negotiate the types and level of development incentives needed in accordance with the provisions of this ordinance. The City Administration, the Commission and the City Council shall maintain the confidentiality of all such negotiations. The City Council shall have the final authority to review and approve all negotiated agreements in accordance with Wisconsin State Statutes.
 - (2) Oversee the management of the City's economic development assistance programs as outlined herein, including the Small Business Development Loan Program/Commercial Rehabilitation Loan Program, Upper Floor Renovation Revolving Loan Program, Facade Improvement Programs, Tax Incremental District loans/grants, Industrial Revenue Bonds, LIPCO projects and loans, Industrial Park development and redevelopment, the Architectural and Engineering Analysis Program, and all other forms of economic development assistance using city funds. Final decisions on the city's Upper Floor Renovation Revolving Loan Program will be made at the Economic Development Commission level.
 - (3) Oversee the coordination of the preparation, implementation, annual monitoring and management of the City's Tax Incremental Financing Districts including negotiating, monitoring, management, and implementation of Development Agreements including any amendments, economic assistance such as loans/grants, carrying out the standards for financial assistance and TIF assistance contained in this Ordinance.
 - (4) Analyze economic development trends, review, develop and recommend economic development policies, ordinances and programs and facilitate activities to improve the economic climate of the City of La Crosse.
- (E) STANDARDS FOR ECONOMIC DEVELOPMENT ASSISTANCE.

- (1) The standards outlined herein are intended to provide clear direction and understanding to applicants, city staff, the Commission and Common Council for projects and developments needing City assistance including those within tax increment financing (TIF) districts and projects outside of TIF districts. These standards and requirements have been promulgated to protect the public's trust and resources and to ensure that City government treats all applicants fairly and equitably. Notwithstanding compliance with any or all of the standards herein, the provision of assistance is a policy choice to be evaluated on a case-by-case basis by the Common Council. The burden of establishing the public value of assistance shall be placed upon the applicant and the application must substantially meet the criteria contained herein. The Commission reserves the

right to bring any incentive proposal forward for Council consideration. Meeting statutory requirements, standards or other criteria listed herein does not guarantee the provision of TIF financial assistance nor does the approval or denial of one project set precedent for approval or denial of another project.

- (2) If the applicant is looking for funding from the city's established economic development loan programs: Small Business Development Loan Program/Commercial Rehabilitation Loan Program, Upper Floor Renovation Revolving Loan Program, Façade Improvement Programs, or the Architectural and Engineering Analysis Program, the applicant should follow the specific loan application process, and should expect a 60 day turnaround from the City. If however, the applicant is looking for assistance through Tax Incremental District loans/grants or other forms of assistance, the applicant should expect a 4-6 month turnaround from the City, depending on the scope of the project and type of assistance requested.

- (2) The City will consider using financial assistance to assist private development in those circumstances where the proposed private project shows a demonstrated financial gap and that the financial assistance request is the minimum necessary to make the project feasible. It is the Commission's discretion whether to require the developer to have exhausted every other financial alternative(s) prior to requesting the use of financial assistance, including equity participation, other federal and state funds, bonds, tax credits, loans, etc. It is the intent of the City to provide the minimum amount of assistance to make the project viable and not solely to increase a developer's profit margin on the project. As part of a formal request for assistance through a completed application, the City will undertake (at the requestor's cost) an independent analysis of the project to ensure the request for assistance is necessary and valid.

- (3) Each project is unique and therefore every proposal shall be evaluated on its individual merit, including its potential impact on city service levels, its overall contribution to the economy and its consistency with the Comprehensive Plan or other planning documents. Each project must demonstrate probability of financial success. The developer must demonstrate that there will be a substantial and significant public benefit to the community by achieving as many of the following public benefits as possible:
 1. Stimulating revitalization of the city, its older neighborhoods, industrial areas, commercial districts and Historic Downtown La Crosse by:
 - a. Improving infrastructure;
 - b. Job creation meeting the City's Living Wage Resolution as amended or superseded.
 - c. Retention of existing jobs;
 - d. Creating a variety of mixed-use commercial/housing opportunities to increase the number of downtown residents;
 - e. Attracting desirable businesses and retaining existing businesses.

- f. Encouraging development projects that enhance the streetscape and pedestrian experience and improve the vitality of the downtown area by adding interest and activity on the first floor of mixed-use buildings.
 - g. Promote use of Mass Transit by actively promoting and participating in the MTU Works pass program for employees.
 - 2. Promote efficient usage of land through elimination of blight and redevelopment of underutilized properties
 - 3. Strengthen the economic and employment base of the City and support Economic Development.
 - 4. Stabilize and upgrade targeted neighborhoods.
 - 5. Increase property values, tax base and tax revenues.
 - 6. Leveraging the maximum amount of non-city funds into a development and back into the community.
 - 7. Supporting an educated workforce.
 - 8. Contribute to other unique projects or programs not listed that provide public benefits.
- (4) The following standards shall be met in order for the applicant requesting public funding to demonstrate the financial need for public assistance.
- (a) "But for" Standard (i.e., demonstration of need for the public assistance). The fundamental principle and that which the City must determine through information provided by the developer is that the project would not occur "but for" the assistance provided through City financial assistance. The burden is on the developer to make its case to the City. City financial assistance will be provided solely to fill an identified financial "gap" and the City's assistance will be restricted to the minimum amount necessary to make a project financially feasible. It is at the Commission's discretion to define amount and form of financial assistance.
 - (b) Every other financial alternative is expected to be explored prior to the request for City assistance, including obtaining primary financing through conventional lenders, seeking additional investment and/or partners, and seeking other federal and state funds, bonds, tax credits, loans, etc. Developer shall provide copies of correspondence from lenders, business partners/investors and copies of applications (Prospect Data Sheet) for state assistance through the Wisconsin Economic Development Corporation or other state or federal agencies.
 - (d) Demonstration of need can be provided in the form of, but not limited to, personal financial statements, income tax returns, commitment letters, cash flow statements, project pro forma's, feasibility studies, industry data, and market demand studies, etc. Upon request, the City may permit these documents to be provided directly to the City's financial advisor or developer's financial advisor to protect proprietary or confidential information.
 - (e) To meet the public purpose doctrine, job creation and retention will be a requirement for economic assistance (with the exception of Upper Floor Loans or facade loans or other forms

of financial assistance that are not expected to create jobs) and the City may require job records and retention of jobs for a period of time. If the promised jobs are not created and retained for the agreed to period of time, then the City's financial assistance may become due and payable immediately. The City will not provide financial incentives for job creation on a per job basis and will work with the applicant to obtain State of Wisconsin and other job creation tax credits for which these programs are intended.

(f) Eligible Projects. In order for the project to receive financial assistance, the project shall consist of the following types of development projects:

- (i) Business development (attraction, retention, expansion) for basic industries (businesses that export products), assistance will be evaluated on its impact on existing local markets.
- (ii) Mixed-use developments that creatively integrate commercial and retail projects into a residential development.
- (iii) Revitalization of historically designated, significant or deteriorated buildings.
- (iv) Projects that promote downtown office and retail development.
- (v) Projects that promote neighborhood stabilization or revitalization.
- (vi) Projects that promote industrial development for export based industries.
- (vii) Projects consistent with approved TIF Project Plans.
- (viii) Projects that involve environmental clean-up, removal of slum and blighting conditions.
- (ix) Projects that contribute to the implementation of other public policies, as adopted by the city in its strategic plans such as affordable housing/workforce housing, mass transit, promotion of high quality architectural design, energy conservation (i.e. infrastructure, etc).
- (x) Projects that provide retail, housing and mixed uses in existing commercial nodes (e.g. Caledonia Street, I-90/Exit 3)

(g) Ineligible Projects. The following types of development projects are ineligible for City assistance including TIF:

- (i) Speculative office and retail development defined as projects that have not secured anchor tenants for at least the same percentage of pre-leased space as required by the developer's construction lender by a date set forth by the Common Council.
- (ii) Any development where a market study shows a demand for the project/product and/or such that there exists a long-term "bankable" lease of ten (10) or more years.
- (iii) Relocation (pirating) of tenants from another site within the city or region (offices, retail and/or other commercial uses) for the purpose other than retaining or substantially expanding said business.
- (iv) Office or retail development outside of Downtown unless within a redevelopment project that is targeting mixed-use

commercial/office and residential such as Caledonia Street and the I-90/Exit 3 commercial nodes.

- (v) Stand alone big box commercial.
 - (vi) Stand alone residential development projects unless limited by site and environmental conditions beyond which make the project financially infeasible including luxury housing or 100% market rate housing.
 - (vii) Stand alone student housing.
 - (viii) Projects not consistent with the Comprehensive Plan.
- ~~(h) Small Scale Projects. For projects where financial assistance is sought and granted in an amount less than \$100,000 and a development agreement is executed, the City shall use an abbreviated form of a development agreement.~~
- (5) Structure for Financing Assistance. The following parameters are established for providing financial assistance.
- (a) Financial assistance may be provided by the City in a form and method acceptable to the City. Requests for up-front financing may be considered on a case-by-case basis if increment generation is sufficient to meet initial financing and debt service costs and are not the first dollars spent on a project.
 - (b) For "pay-go" and reverse cash grant structured projects, the project owner shall agree to pay all other outstanding City of La Crosse property tax bills and special assessments prior to disbursement of any payments by the City.
 - (c) No Mortgage Guarantees. The City will not provide mortgage guarantees.
 - (d) Personal Guarantee(s). The City will require personal guarantees from the investor, borrower and members for receiving financial assistance. Amount and form shall be acceptable to the City.
 - (e) The City will retain an administrative fee of not less than 15% of any tax increment received from the project to reimburse for administrative costs. Until such time as the project generates positive tax increment, the City will charge an administrative fee directly to the developer to partially offset administrative and professional costs.
 - (f) When the project is intended as a for-sale development (i.e., office, mixed use retail/residential), the developer must retain ownership of the overall project until final completion; provided, however, that individual condominium units may be sold as they are completed. For all other projects, the developer must retain ownership of the project at least long enough to complete it, to stabilize its occupancy, to establish the project management and to initiate payment of taxes based on the increased project value. Transfer of ownership or the addition of owners/members or changes to ownership/member percentages shall first be approved as an amendment to the developer's agreement.

(g) Projects receiving assistance will be subject to a "look back" provision. The look back mandates a developer to provide the City or its financial advisor with evidence of its annualized cumulative internal rate of return on the investment (IRRI) at specified periods of time after project completion. The IRRI shall be calculated with equity, revenues, and expenses in accord with generally accepted accounting principles.

i. When the developer owns the subject property and rents space to tenants, supporting documentation shall include certified records of project costs and revenues including lease agreements and sales on a per square foot basis at no cost to the City. If the records indicate that the developer has received a higher return on equity, a higher return on cost, or a higher internal rate of return than originally proposed to the City at the time of development agreement, the developer and the City shall split, on a 50/50 basis, the increase above the originally projected rates of return.

ii. When the subject property is a for-sale development and the IRRI cannot be completed, the developer is to provide financial data after the project is completed at no cost to the City. This shall include a calculation of profit on total development costs minus the financial assistance. If the financial records indicate that the developer has received a higher return on equity, a higher return on cost, or a higher internal rate of return than originally contemplated at the time of development agreement approval, the developer and the City shall split, on a 50/50 basis, any increase at or above original projected rates of return.

(h) Loans using Federal or City funds (including State Trust Funds) shall generally follow the same underwriting standards and procedures as grants or other financing mechanisms contained herein. The City shall use its standard loan documents used for the Small Business Development Loan/Commercial Rehabilitation Loans for all development loans.

(6) All of the following financial criteria must be met in order to be considered for economic assistance.

(a) Equity Requirement. Developers must provide a minimum 15% equity of total project costs. Projects that exceed the 15% equity requirement will be looked upon favorably by the City. Equity is defined as cash or un-leveraged value in land or prepaid costs attributable to the project. City assistance shall not exceed the amount of equity provided by the developer. Donated developer or construction management fees shall not be considered as equity investment.

(b) Payback Period. 20 year maximum payback period. Preference will be given to projects with payback periods of ~~10~~ 12 years or less ~~under~~.

- (c) TIF Cap. The total amount of TIF assistance should not exceed 10% of total project costs. This limitation may be waived if the project involves redevelopment of existing structures or the assembly and clearance of land upon which existing structures are located.
- (d) Land Assembly Cap. Assistance for land/property assembly costs will not be provided in an amount exceeding 10% of the fair market value of the land. The fair market value will be determined by an independent appraiser contracted by the City with the cost of appraisal paid for by developer.
- (e) Sale of City-owned Land. For projects involving the sale of city-owned land, the property must first be declared "surplus" by the Board, Committee, or Commission overseeing such land and the Common Council and shall be advertised for sale via public bidding through sealed bids, request for proposals or public auction. The sales price for the sale of City-owned land shall be determined using the "residual land value" method. Redevelopment Authority properties are presumed "surplus" and shall be sold in the manner outlined herein.
- (f) Internal Rate of Return. The amount of assistance provided to a developer will be limited to the amount necessary to provide the developer a reasonable rate of return on investment in the project and the subject site. A developer's return on equity, return on cost or internal rate of return will be based on current market conditions as determined by the City or City's financial advisor. In no case shall the internal rate of return exceed 30%.
- (g) Taxable Increase. The project should result in an increase in taxable valuation of at least 20% upon project completion.
- (h) Living Wage Requirements. The City has adopted, by Resolution, a policy that developments that are provided City assistance must pay their employees a "living wage." Any agreement for financial assistance shall include provisions that ensure the publicly assisted projects pay a living wage to their employees.
- (i) PILOT Payment. In the event that some or all of the property, developments, improvements, personal property, or Real Estate becomes exempt from general property taxes the Developer shall make a payment to the City in lieu of taxes (the "PILOT").

(7) Eligible Costs. The following are typical eligible costs.

- (a) Capital costs, including actual costs of:
 - (i) Construction of public works or improvements;
 - (ii) Construction new buildings, structures, and fixtures;
 - (iii) Demolition, alteration, rehabilitation, repair or reconstruction of existing buildings, structures and

fixtures, other than historic buildings and structures.

- (iv) Acquisition of equipment to service the district;
 - (v) Restoration of soil or groundwater affected by, environmental pollution; and
 - (vi) Clearing and grading of land.
- (b) Real property assembly costs.
 - (c) Professional service costs (planning, architectural, engineering, and legal).
 - (d) Relocation costs.
 - (e) Environmental remediation.
 - (f) Organizational costs (environmental and other studies, publication and notification costs).

(8) Special Consideration. Special or additional consideration, and/or better terms may be considered for projects that exceed certain standards such as:

- (a) Use of higher quality building materials;
- (b) Demonstration of a higher standard of urban design (e.g., mixed use, add vitality to commercial districts by adding interest and activity on the first floor of mixed use buildings, etc.);
- (c) Promotion of sustainable practices in their construction and operation such as meeting LEED certification requirements;
- (d) Providing environmental sensitivity or protection of natural resources; or
- (e) Any additional performance standards which enhances the overall quality of life.
- (f) Demonstrable efforts to increase the percentage of newly hired and retained employees who reside within the City limits of the City of La Crosse.
- (g) Support an educated workforce.
- (h) Projects that have a payback in fewer than 12 10 years or less.

(9) Pay Its Way. Each for-profit project demonstrating a need for TIF assistance must generate sufficient tax increment to cover or repay both the TIF contribution to the project, administrative and professional costs and a portion of the planned public infrastructure costs within the tax incremental district.

- i. The City will expend an appropriate amount for public infrastructure and improvements that will be paid back through the TIF. These improvements include but are not limited to streetscaping, pedestrian enhancements, etc.
- ii. No increment from other private development projects within the district may be used to supplement another project's

inability to generate sufficient tax increment to cover project costs.

(10) Clawback. If the developer does not meet the minimum standards or requirements contained within the developer's agreement, then the City's financial assistance will become immediately due and payable.

(11) Application and Review Procedure:

- (a) The following information is required of all applicants for any type of incentive. Application for financial assistance shall include a cover letter and shall be made on the forms provided by the City and include all of the information requested on the form. An initial non-refundable fee of one percent (1%) of the requested assistance or \$10,000, whichever is greater, shall accompany any financial assistance request involving a grant. For loan requests, the fee shall be one percent (1%) of the requested amount. This fee shall be used to partially cover the City's legal, professional, administrative, and planning costs. Outside consultants hired by the City to analyze funding requests including evaluating the gap and/or determination of financial need and the project's return on investment (ROI) shall be paid for by the applicant and will not be considered part of the fee. If an additional amount of money is required to reimburse the City of its reasonable costs, the applicant shall be responsible for those costs. The applicant shall, at a minimum, provide the following information:
 - (i) A detailed project plan, timetable including plans and/or drawings for the project, architectural analysis, phase I environmental assessment, appraisals, and evidence of site control.
 - (ii) A business plan created in conjunction with the UW-La Crosse Small Business Development Center or reviewed by an entity determined by the City. If the business is not following traditional business planning models, initial planning document acceptable to the City will be submitted. A business plan will be submitted to the City within one-year of business start-up.
 - (iii) Background information on the developer, complete listing (name and address) of all investors in the project and specify each individual's ownership interest.
 - (iv) The articles of incorporation for the business, borrowing resolutions, operating agreements, and other applicable documents verifying that the entity is in good standing.
 - (v) A current balance sheet.
 - (vi) The operating (profit/loss) statements for the last three years.

- (vii) The five-year projected cash flow statement for expansion of existing businesses. If the business is a start-up, two-year projected cash flow statements will be required.
 - (viii) The previous year's personal and the business Federal Income Tax Return.
 - (ix) The developer shall submit audited financial statements for the last three (3) years. If the audited statements are comparative, only two (2) years are needed. If audited statements are not available, the developer shall provide three years of annual financial statements and summary schedules for other projects completed or started within the three (3) timeframe covered by the financial statement for the current year. Upon request, the City may permit these documents to be provided directly to the City's financial advisor or developer's financial advisor to protect proprietary or confidential information.
 - (x) Personal financial statements of the officers (To be provided only to Finance Director or financial consultant for review).
 - (xi) A preliminary financial commitment from a financial institution
 - (xii) A list of current employees, their job titles and benefits and a list of titles and descriptions, with benefit package of projected jobs.
 - (xiii) A detailed pro forma showing income and expenses for the project including a feasibility analysis justifying why assistance is necessary.
 - (iv) Market studies, signed letters of intent from prospective tenants, any market or feasibility analysis, appraisals, and all information provided to private lenders for the project as well as any other information or data which the City, or its financial consultants may require in order to review the need for financing assistance.
- (b) Once an application is deemed complete and the City staff conducts its due diligence, the Applicant shall meet with the Economic Development Commission or its staff to develop the appropriate term sheet and/or development agreement.
- (c) The Economic Development Commission shall issue a report and recommendation to the Common Council including a draft term sheet or development agreement for action.
- (d) Criteria for Funding

Project applications will be scored based on criteria found in this ordinance and the results of the scoring will be presented to the Commission and used as part of the deliberation and due diligence process. The Commission shall develop a point system for the

evaluation of development projects to include (A) (2) Purpose and Intent and (E) Standards for Economic Development Assistance.

(e) The City reserves the right to accept or reject any application for economic assistance as determined in its sole discretion.

SECTION II: This ordinance shall take effect and be in force from and after its passage and publication.

SECTION III: This ordinance shall not apply to any projects that have permission to negotiate a development agreement, loan or other economic incentive prior to its publication.

SECTION IV: This ordinance shall supersede any previous Resolution regarding development incentives or process to negotiate a development agreement.

_____/s/_____
Mathias Harter, Mayor

_____/s/_____
Teri Lehrke, City Clerk

Passed: 5/9/2013
Approved: 5/13/2013
Published: 5/18/2013