

Sponsor: Councilman Rasmussen
First Reading: 11/18/19
Second Reading: _____
Third Reading: _____
Ord. No.: 010-19

**AN ORDINANCE TO AMEND THE TOWN CODE OF THE TOWN OF SMYRNA TO
CREATE INCENTIVES FOR ECONOMIC DEVELOPMENT IN THE TOWN OF
SMYRNA AND TO ELIMINATE CONFLICTING PROVISIONS FROM THE TOWN
CODE**

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.

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 adding a new Article XXII (Development Incentives) as follows:

ARTICLE XXII. DEVELOPMENT INCENTIVES

Sec. 18-1700. – Purpose and Intent.

The purpose and intent of this article is to increase investment in commercial and residential properties in the Town of Smyrna and to incentivize additional businesses and individuals to relocate to the Town of Smyrna by creating a comprehensive and competitive system of fee abatements, utility rebates, and tax abatements and waivers for businesses and individuals. Additionally, it is intended that investors will have a clear understanding of those requirements that must be satisfied in order to qualify for the development incentives outlined herein. The development incentives are not intended to be an exhaustive list, and additional incentives may be granted where authorized by the Town Code or Town Charter.

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:

- (1) *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.
- (2) *DDD* means the area of land designated by the Governor of the State of Delaware as a downtown development district.
- (3) *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).
- (4) *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).
- (5) *Highway commercial* means the investment district for those 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.
- (6) *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.
- (7) *Industrial* means the investment district for those properties zoned Industrial/Office/Research Park (IORP).
- (8) *Investment incentives* include the waiver, in whole or in part, of town impact fees, utility impact fees, utility tapping fees, building permit fees, rezoning fees, variance fees, certificate of occupancy fees, sign permit fees, taxes, delayed tax reassessments, or utility user fees or charges as authorized in this article.
- (9) *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.
- (10) *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.
- (11) *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.
- (12) *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).
- (13) *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).

(14) *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
 - (2) Downtown residential: \$15,000
 - (3) Central highway commercial: \$100,000
 - (4) Highway commercial: \$200,000
 - (5) 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 Kent County Recorder of Deeds Office. 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.
- (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) 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 tax bill for a qualifying property shall be discounted after the reassessment such that the property owner will be paying 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 due.
- (b) 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) Termination of Tax Incentives. The property tax incentives outlined in sections (a) and (b) 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).

Sec. 18-1704. – Waiver of Town Fees

- (a) Full Waiver of Fees:
- (1) Qualifying properties in the downtown commercial, downtown residential, and central highway commercial investment districts shall have waived in full all town impact fees, building permit fees, utility impact fees, utility tapping fees, rezoning fees, variance fees, and certificate of occupancy fees.
 - (2) Qualifying properties in the downtown commercial investment district shall have sign permit fees waived in full.
- (b) Partial Waiver of Fees: Qualifying properties in the highway commercial and industrial investment districts shall have all town impact fees, utility impact fees, utility tapping fees, building permit fees, rezoning 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.
- (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.

Sec. 18-1705. – Utility Rebates

- (a) If all electric, sewer, and/or water fees and charges are paid on or prior to the monthly due date for each of the twelve months following the issuance of a certificate of occupancy for a qualifying property located in the downtown commercial investment district, the Town shall issue a one-time rebate for utility charges as follows:
 - (1) \$600 if the aggregate square footage for all buildings on the property is less than 5,000 sq. ft.
 - (2) \$1,000 if the aggregate square footage for all buildings on the property is equal to or greater than 5,000 sq. ft. but less than 10,000 sq. ft.
 - (3) \$2,000 if the aggregate square footage for all buildings on the property is equal to or greater than 10,000 sq. ft.

Sec. 18-1706. – General Provisions

- (a) The owners of any project qualifying for investment incentives by virtue of being situated in more than one investment district may select which investment district their property shall be considered a part of for purposes of determining which investment incentives their property qualifies to receive.
- (b) In order to be eligible to receive investment incentives, a property owner must file an application with the town for the investment incentives at the time the property owner applies to receive a building permit from the Town. Additionally, all utility rebates and property tax abatements shall be issued on a reimbursement basis. A property owner shall be required to apply for the utility rebate within 90 days of becoming eligible to receive the utility rebates and shall apply for the tax abatement within 90 days of the property tax due date. Any tax abatement or utility rebate for which a reimbursement application was not timely filed by a property owner shall be forfeited.
- (c) Any property receiving investment incentives shall not be eligible to receive additional investment incentives for a period of ten years following the issuance of a certificate of occupancy for the qualifying improvements, provided, however, that if such a property remains vacant for more than one year prior to the expiration of the ten-year period and the vacant property is transferred to another property owner, the property shall become eligible for additional investment incentives pursuant to the terms of this article. The limitation provided for herein shall not apply to first-time homebuyers who have only received a property tax abatement and have not yet received other investment incentives as a result of making qualifying improvements to their property.
- (d) No property located within the town's historic zoning overlay district shall be entitled to receive any investment incentives unless the qualifying improvements are undertaken and completed in strict compliance with all design and construction requirements recommended by the town's historic preservation review board.

- (e) The value of all qualifying investments shall be calculated based on the estimated construction costs submitted to the town as part of a building permit application. If the Town subsequently discovers that a property did not qualify for some or all the investment incentives received, the property owner shall reimburse the town for all the unearned investment incentives. The Town may enforce this article by any legal means necessary, including but not limited to the withholding of a certificate of occupancy until all amounts owed to the Town have been paid in full.

Section 2. Amend Chapter 18 (Buildings and Building Regulations), Article I (In General), Division 2 (Permits and Fees), Sec. 18-28.1 (Cap on permit fees for qualifying projects) by making insertions as shown by underline and deletions as shown by strike through as follows:

Sec. 18-28.1. – Reserved. ~~Cap on permit fees for qualifying projects.~~

~~Qualifying projects in commercially zoned areas or in the historic preservation overlay district.~~

- (1) ~~Cap on building permit fees.~~ Subject to (3), (4) and (5) hereafter, for a "qualifying project", the maximum building permit fee shall be \$40.00 for the first \$1,000.00 of value and \$11.00 per each additional \$1,000.00 of value, not to exceed \$1,129.00 regardless of the total cost of the project.
- (2) ~~"Qualifying project" defined.~~ A "qualifying project" is the rehabilitation, renovation, reconstruction, or restoration of a building or structure located in a commercially zoned area of the town (i.e. local commercial, central commercial, and highway commercial) or in the historic preservation overlay district, which as of December 19, 2003:
- a. ~~Is currently vacant;~~
 - b. ~~Is determined by the code official to have been vacant for at least the immediately previous 24 months; and~~
 - c. ~~Is reasonably anticipated to contribute to the revitalization of that area and/or community in general, as reasonably determined by the town manager.~~
- A "qualifying project" shall also include the replacement of a former building or structure on its site, which, in addition to the aforementioned criteria of paragraph "2 (i-iii)", the replacement is the substantially same size, scale, footprint, appearance and configuration as the previously existing building or structure.
- (3) ~~Projects not qualifying.~~ The cap on building permit fees provided for under this section shall not apply to the value of any improvements which extend a building or structure beyond its existing "footprint" or which results in a net increase in the total floor area of an existing building by the addition of floors, porches, or decks; nor to the replacement of any building or structure which is not substantially the same size, scale, footprint, appearance, and configuration as the previously existing building or structure. The value of any such improvements and/or replacements shall be subject to the standard building permit fees.
- (4) ~~Limitation on cap.~~ No qualifying project shall be entitled to the cap on building permit fees under this section more than once in any consecutive ten year period.
- (5) ~~Qualified projects within the historic preservation overlay district.~~ No qualified project located within the town's historic preservation overlay district shall be entitled to the cap

~~on building permit fees provided for under this section unless the improvements made to rehabilitate, renovate, reconstruct, restore, and/or replace the building or structure are undertaken and completed in strict compliance with all design and construction requirements recommended by the town's historic preservation overlay district review board.~~

Section 3. Amend Chapter 32 (Impact Fees), by making insertions as shown by underline and deletions as shown by strike through as follows:

Secs. 32-3 – 32-7. - Reserved

~~Sec. 32-3. — Waiver of impact fees for qualifying projects.~~

~~Subject to sections 32-5, 32-6, and 32-7 hereafter, for a "qualifying project", the impact fees shall be fully waived (which would otherwise apply pursuant to this chapter); provided that the rehabilitation, renovation, reconstruction, restoration or replacement of the existing building or structure is (1) similar in kind, use or intensity; and (2) does not cause a significant increase in "municipal and/or public services" as defined in section 32-2, as reasonably determined by the town manager.~~

~~(Ord. No. 032-03, § 2, 11-17-03)~~

~~Sec. 32-4. — "Qualifying project" defined.~~

~~A "qualifying project" is the rehabilitation, renovation, reconstruction, or restoration of a building or structure located in a commercially-zoned within the town's incorporated municipal limits (i.e. local commercial, central commercial, and highway commercial) or located in the historic preservation overlay district which, as of the effective date of the ordinance from which this section is derived (12/03/03):~~

- ~~(1) — Is currently vacant;~~
- ~~(2) — Is determined by the building inspector to have been vacant for at least the immediately-previous 24 months; and~~
- ~~(3) — Is reasonably anticipated to contribute to the revitalization of that area and/or community in general, as reasonably determined by the town manager.~~

~~A "qualifying project" shall also include the replacement of a former building or structure on its site, which, in addition to the aforementioned criteria of this section, the replacement is the substantially same size, scale, footprint, appearance, and configuration as the previously-existing building or structure.~~

~~(Ord. No. 032-03, § 3, 11-17-03; Ord. No. 020-04, § 3, 10-18-04)~~

~~Sec. 32-5. — Projects not qualifying for full waiver.~~

~~The waiver of impact fees provided for under section 32-3 shall not apply to the following:~~

- ~~(1) — Any improvement which extends a building or structure beyond its existing "footprint" or which results in a net increase in the total floor area of an existing building by the addition of floors, porches, or decks; or the replacement of any building or structure which is not substantially the same size, scale, footprint, appearance, and configuration as the previously-existing building or structure. The impact of any such improvements and/or replacements shall subject the complete project to the impact fees provided for under this chapter.~~
- ~~(2) — Any improvement and/or replacement which causes a significant increase in "municipal and/or public services" by either using up existing capacity or by causing the need to expand existing capacity, as reasonably determined by the Town manager and supported~~

by analysis. "~~Municipal and/or public services~~" includes, but is not limited to, ~~electricity, water, sanitary sewer, storm sewer and drainage, street lighting and signage, traffic control devices, streets, curbs, sidewalks, gutters, and police, fire, code enforcement, emergency protection, and general administrative services to the residents and properties of the town or served by the town's electric distribution system, sanitary sewage collection facilities and/or water treatment and distribution system. The additional impact upon the "municipal and/or public services" only shall be subject to the impact fees provided for under this chapter.~~

~~(Ord. No. 032-03, § 4, 11-17-03; Ord. No. 020-04, § 4, 10-18-04)~~

~~Sec. 32-6. Limitation on waiver.~~

~~No qualifying project shall be entitled to the waiver of impact fees provided for under section 32-3 more than once in any consecutive ten-year period.~~

~~(Ord. No. 032-03, § 5, 11-17-03)~~

~~Sec. 32-7. Qualified projects within the historic zoning overlay district.~~

~~No qualified project located within the town's historic zoning overlay district shall be entitled to the waiver of impact fees provided for under section 32-3 unless the improvements made to rehabilitate, renovate, reconstruct, restore, and/or replace the building or structure are undertaken and completed in strict compliance with all design and construction requirements recommended by the town's historic preservation review board.~~

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 amends the Town Code of the Town of Smyrna to establish and define different investment districts throughout the town. This ordinance outlines the standards that must be met for properties to qualify to receive investment incentives, including the minimum investment amounts that must be made for properties in the different investment districts. The investment incentives offered in different investment districts under this ordinance include tax reassessment waivers, property tax abatements, and waivers of impact fees, building permit fees, utility tapping fees, rezoning fees, variance fees, certificate of occupancy fees, and sign permit fees. Additionally, utility rebates are offered in the downtown commercial district for properties that pay their utilities on time for the first twelve months after the qualifying improvements have been completed. The investment incentives authorized are contingent on the property owner not transferring the property within two years of the completion of the improvements, and an owner

who transfers property shall reimburse the town for the investment incentives received. The Town may record a lien against a property to ensure repayment of the investment incentives if the property is transferred within the prescribed two-year time period. Investment incentives shall not run with the land, and any investment incentives that are unrealized at the time the property transfers ownership shall be forfeited. This ordinance includes various other miscellaneous provisions pertaining to the town granting investment incentives to property owners.

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 _____, 2019.

ATTEST:

Council Secretary

Mayor

This shall certify that the title and synopsis of this Ordinance was published in the "Smyrna/Clayton Sun Times" on _____, 2019 and posted at the Town Hall on _____, 2019.

So Certifies:

Town Clerk