

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE enacting sections 1074., 1075., 1076., 1077., 1078., and 1079., Jackson County Code, 1984, relating to County development incentives and responsible bidding on County projects.

ORDINANCE NO. 5825, December 29, 2023

INTRODUCED BY Manuel Abarca IV, Venessa Huskey, Jalen Anderson, and
Donna Peyton, County Legislators

WHEREAS, the County has numerous boards and entities incentivizing development and construction including but not limited to Tax Increment Financing ("TIF"), Community Improvement Districts ("CID"); Sales Tax Rebate and Development Agreements per RSMo Ch. 70; Transportation Development Districts ("TDD"); Special Business Districts ("SBD"); Neighborhood Improvement Districts ("NID"), Property Tax Abatement per RSMo Ch. 353; Property Tax Abatement per RSMo Ch. 100; Land Clearance Redevelopment Authorities ("LCRA"); Local Options Economic Development Sales Tax ("LOEDST"); and Brownfields found inside and outside of the Code of County; as well as all County procurement on any public works project, and other bonding, taxing, financing, granting, and incentivizing developments not through boards and entities (hereinafter all referred to as "incentivizing vehicles"; and,

WHEREAS, the County also has an interest in leveraging, to the greatest extent possible, the funds that it spends and foregoes, either by taxes or fees, by contracting with private firms or other public or quasi-public firms for services, infrastructure, and construction to and for the County's benefit, as well as to benefit its residents and business community; and,

WHEREAS, the County has a further interest in ensuring there are adequate skilled and trained individuals available to perform the work necessary in every aspect of the heavy, building and construction trades so that the County can meet its needs now and in the future with the most up-to-date and safe practices available; and,

WHEREAS, the County seeks to assure the greatest level of competition possible within the County, decrease local unemployment, and increase County revenues through an expanded tax base; and,

WHEREAS significant benefits are associated with incentivizing vehicles, be they TIF programs or other financial incentive programs including but not limited to tax abatements, fee abatement, low or frozen loan programs, or government bonding, Brownfields, and other economic incentive programs; and,

WHEREAS the misuse of incentivizing vehicles and other financial programs do not serve the public purposes and fail to properly invest in the community; and,

WHEREAS, the County further seeks to ensure that the levying, foregoing, and collection of taxes, as well as the County's bonding and economic abilities are used to the fullest extent possible to support communities within the County; now therefore,

BE IT ORDAINED by the County Legislature of Jackson County, Missouri, as follows:

Section A. Enacting Clause.

Sections 1074. 1075., 1076., 1077., 1078., and 1079., Jackson County Code, 1984, are hereby enacted, to read as follows:

1074. Definitions.

For the purposes of sections 1074. – 1079. of this chapter, the following definitions shall apply:

1074.1 County -Jackson County, Missouri, and any of its departments, boards, commissions, employees, agencies, and/or fully or partially owned corporate body(s).

1074.2 Directly Engaged in Construction- work performed in and for work site preparation, including utility and excavation, erection of a structure or completion of an improvement, as well as employees working at nearby facilities used by an Independent Contractor or Subcontractor on an Incentivized Project. Persons engaged solely in the transportation of materials, fuel, or equipment to a site shall not be deemed to be Directly Engaged in Construction for the purposes of this subsection only, but should not be read as to not require payment of prevailing wages for these persons if otherwise required.

1074.3 Incentive - economic value provided, authorized, or approved in any manner by the County (directly or through its departments, boards, commissions, employees,

agencies, and/or County owned bodies corporate) whether by direct expenditure, grant, or a foregoing of collecting taxes, fees, or other revenue, including, but not limited to:

- (1) tax increment financing under sections 99.800 through 99.866, RSMO.
- (2) tax abatements under Sections 447.700 through 447.718 RSMO.
- (3) tax abatement under Sections 353.010 through 353.190, RSMO.
- (4) tax abatement under Sections 100.010 through 100.200, RSMO.
- (5) low or frozen loan programs, or County bonding requiring the County or any of its public or publicly owned or affiliated entities to expend or refrain from collecting monies or property otherwise due but for the Incentive.
- (6) a transportation development district under Sections 238.200 through 238.280, RSMO; or
- (7) a community improvement district under Sections 67.1401 through 67.1574; or
- (8) any incentivizing vehicle as described in the preamble or its functional equivalent.

1074.4 *Incentivized Project-* any development or redevelopment plan, development or redevelopment project, improvement, or project of any kind for which an engineer's estimate or the bid accepted for the total project cost is over two thousand dollars

(\$2,000.00) and for which the County has approved an Incentive for such plan, project, or improvement.

1074.5 *Independent Contractor* -a self-employed worker or business entity hired to perform services, that controls the manner and means of the services performed, is responsible for its own taxes, is engaged in a business, and is not serving at the direction of another person or entity engaged in the same or like work or profession.

1074.6 *On-site Employee*-any laborer, worker, driver, equipment operator, or craft person employed by an Independent Contractor or Subcontractor to be Directly Engaged in Construction at the site of an Incentivized Project.

1074.7 *Receiving Entity* -any natural person, business entity (whether for, or not-for, profit), or political subdivision (including quasi-public entities) approved to receive an Incentive.

1074.8 *Subcontractor*-A person or business entity that enters into a subcontract with an Independent Contractor for construction of an Incentivized Project and employs On-site Employees for performance of the subcontract.

1074.9 *Supervisor*-A foreman, project manager, safety director, or lead tradesman employed on an Incentivized Project.

1075. Incentives and Incentivized Projects, Provisions Governing.

In addition to other applicable requirements, the County shall not approve any Incentive or any Incentivized Project unless the Receiving Entity ensures in writing that the following conditions are met:

1075.1 The Receiving Entity, its contractor(s), and subcontractor(s) performing construction, as defined and understood in 290.210 RSMo (2018), for any Incentivized Project will not pay less than prevailing wages per occupational title in 8 CSR 30-3.060, (2018) as defined in Section 290.210(7) RSMo. (2018) to any workers, as defined and understood in 290.210 RSMo (2018), performing construction on such project at the prevailing wage rate per occupational title determined as the relevant occupational title's rate in effect at the time the physical work begins on the project.

1075.2 The Receiving Entity, its contractor(s), and subcontractor(s) performing construction, as defined and understood in 290.210 RSMo (2018), for any Incentivized Project will abide by a ratio of not more than one (1) non-journeyman worker for one (1) journeyman worker per occupational title in 8 CSR 30-3.060.

1075.3 The Receiving Entity, its contractor(s), and subcontractor(s) will keep full and accurate records clearly indicating the names, addresses, occupations, and crafts of every worker employed by them or any contractor or subcontractor in connection with the Incentivized Project together with an accurate record of the number of hours worked by each worker and the wages paid thereof per occupational title. Such records shall be kept for a period of one year following the completion of the Incentivized Project.

1075.4 The Receiving Entity shall permit the County's designee to inspect such books or records as deemed appropriate to determine compliance with this section and upon completion of an Incentivized Project, the Receiving Entity shall execute and file with the County an affidavit stating the provisions of this section have been fully complied with and shall further specify that the County may, upon written notice to the Receiving Entity, suspend any Incentives pertinent to such plan or project in the event the Receiving Entity's contractors or Subcontractors fail to pay the applicable prevailing wages or abide by the appropriate journeyman ratio; and shall further specify that Receiving Entity shall have five (5) business days to cure the defect noted in the written notice; and

1075.5 The Receiving Entity, its contractor(s), or Subcontractor(s) that does not cure a violation of the contract within five (5) business days from receiving a defect notice; or any developer, contractor or Subcontractor found to have violated this section after the plan or project in question is complete and/or when suspending the County's Incentive is not a practicable cure for the violation, shall be liable to the applicable worker(s) in an amount of not less than three (3) times the difference between the amount paid to said laborer or worker and that should have been paid to and on their behalf under this section together with market rate attorney fees and costs. The entity receiving the Incentive is deemed jointly and severely liable for its contractor's and Subcontractor's violations of this section. A contractor is deemed jointly and severely liable for its Subcontractor's violations of this section. The entity that has committed the violation may be subject to any or all of the following penalties, at the discretion of the County:

- a. Termination of the contract or subcontract, or suspension of work on the project until compliance is obtained.

- b. Withholding of payment due under contract or subcontract until compliance is obtained.
- c. Request revocation of permit and or license.
- d. Debarment from future bidding opportunities and contracts for the County for a period of up to three years.

1076. Construction Projects, Responsible Bidders Only Eligible for Award.

No person or entity shall be awarded any contract on any RSMo Ch. 290 Public Work, County equivalent, or public procurement project of any kind unless such entity is deemed by the County to be a “responsible bidder” as herein described:

1076.1 The term “responsible bidder” shall require, except as to federal or state projects if prohibited as a condition of funding, only those bidders who certify by notarized statement that:

- a. they have not been barred from bidding on any federal or State projects within the last year.
- b. neither they, nor any entity any of the natural person owners of the bidder has a direct ownership stake in, has had any State or County-issued business, trade, or contracting license suspended or revoked within the last year.
- c. they have and enforce a drug-testing policy for all employees in the field.
- d. they show proof of employer-provided healthcare benefits.
- e. they prove their employees receive actual healthcare benefits equal to or greater than the minimum healthcare required by federal Public Law 111-148, approved March 23, 2010, as amended from time to time.

- f. they participate in or maintain an apprentice program that is approved by and registered with the United States Department of Labor and is compliant with 29 CFR Part 29 and 29 USC Sec. 50 for each craft that the bidder employs, the program has active and registered apprentices for each craft for which it is established and complies with all required United States Department of Labor regulations including affirmative action obligations described in 29 CFR Part 30.
- g. the apprenticeship program that the bidder participates in or maintains has graduated at least one apprentice to journeyman status in the last three years for each craft for which the apprenticeship program is established.
- h. all On-site Employees on the project will be employees and that there will be no use of Independent Contractors, nonpermanent employees, or “leased employees” for on-site work.
- i. all employees will be licensed with the appropriate licensing authority.
- j. No less than the equivalent to the prevailing wages will be paid to all employees per occupational title in 8 CSR 30-3.060, (2018) as defined in Section 290.210(7) RSMo. (2018) to workers, as defined and understood in 290.210 RSMo (2018), performing construction on such project at the prevailing wage rate per occupational title determined as the relevant occupational title’s rate in effect at the time the physical work begins on the project.
- k. all employees and Supervisors will be OSHA-certified and in compliance with then-current OSHA safety requirements prior to working on the project; and
- l. all Supervisors will be thirty-hour OSHA-certified.

m. Nothing in this section shall be interpreted as precluding an action for enforcing this section as to any contractor or sub-contractor by any citizen or interested party. Such action shall be against the contractor and/or sub-contractor. Any citizen or interested party who prevails in a legal action to enforce this section shall be entitled to reasonable attorneys' fees and costs.

n. For any project for which either an engineer's estimate or the bid accepted by the public body for the total project cost is in the amount of seventy-five thousand dollars or less that becomes subject to a change order that increases the total project cost in excess of seventy-five thousand dollars, the provisions of this section shall apply only to that portion of the project that was in excess of seventy-five thousand dollars. However, the project shall not be separated into sections in a manner that circumvents this threshold.

o. This section shall not apply if its application would disqualify the County from receiving monies from any external public source.

p. If implementing the above provisions disqualifies the County from receiving monies from any public external source for a specific project, then any Receiving Entity that voluntarily agrees to implement the above provisions in its contract with the County will receive the same Incentive plus 5% of the total Incentive promised provided this provision does not otherwise disqualify the County from receiving monies from the public external source for the project or Incentive in question.

1077. Expenditures for Redevelopment Plans and Projects.

Under no circumstances shall purchases or purchasing-related expenditures be made in relation to any redevelopment plan, redevelopment project, improvement, or project of any kind for which an engineer's estimate or the bid accepted for the total project cost is over seventy-five thousand dollars (\$75,000.00) and the entity receiving or otherwise benefiting from the purchase or purchasing related expenditure has not fully complied with Sec. 33.142 of this Code.

1078. Sale or Transfer of County-owned Land.

Under no circumstances shall County land be sold or otherwise transferred to a private person or entity without an agreement that any construction project other than a single-family residence commenced within three years of the sale or transfer which would otherwise be subject to Missouri's prevailing wage laws had the County remained the owner thereof. The purchaser or transferee, and any subsequent purchaser or transferee would further agree to be subject to Missouri's prevailing wage laws for such initial three-year term.

1079. Enforcement.

1079.1 Construction Workforce Development and Compliance Fee.

- a. The County shall determine the incremental costs associated with implementation of monitoring and compliance efforts on County incentivized plans and projects and will establish appropriate fees and other funding sources to cover the costs of monitoring and compliance efforts on such plans and projects to

support workforce development, diversity and inclusion initiatives including pre-apprenticeship programs and prevailing wage compliance.

b. In order to monitor and ensure compliance, the County shall have either adequate staffing by its employees; or the County may sub-contract monitoring and compliance to a non-profit entity capable of performing such work as required.

1079.2 Penalties for False, Deceptive, or Fraudulent Statements/Information.

a. Any bidder or Subcontractor that willfully makes or willfully causes to be made a false, deceptive, or fraudulent statement, or willfully submits false, deceptive, or fraudulent information in connection with any submission made to the County shall be disqualified from bidding or working on all County projects for a period of three (3) years.

b. Such bidder or Subcontractor shall be liable for civil damages to the County for violations of this Chapter, and for its costs of monitoring such information, such other costs and penalties as are set forth in this Chapter, together with attorney fees.

1079.3 Prosecution.

Violations of this Chapter shall be referred to the Jackson County Prosecuting Attorney.

The Prosecuting Attorney may engage private attorneys to handle such matters.

Section B. Severability Clause.

If any provision of this Ordinance is found invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this Ordinance which can be implemented without the invalid provision and, to this end, the provisions of this Ordinance are declared to be severable. The Legislature hereby declares that it would have adopted this Ordinance and each provision hereof irrespective of whether any one or more provisions are found invalid or otherwise unenforceable.

Effective Date: This ordinance shall be effective immediately upon its signature by the County Executive.

APPROVED AS TO FORM:

Bryan D. Wonsky

County Counselor

I hereby certify that the attached ordinance, Ordinance No. 5825 introduced on December 29, 2023, was duly passed on January 8, 2024 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 9

Nays 0

Abstaining 0

Absent 0

This Ordinance is hereby transmitted to the County Executive for his signature.

1-8-2024
Date

Mary Jo Spino
Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance No. 5825.

**APPROVED AS IF SIGNED - RETURNED
UNSIGNED BY THE COUNTY EXECUTIVE
JANUARY 18, 2024**

Date

Frank White, Jr., County Executive