**NOTICE OF PUBLIC HEARING**
**ORDINANCE No. 1888, SERIES 2024**

**AN ORDINANCE AMENDING THE LOUISVILLE MUNICIPAL CODE TO ADD A NEW CHAPTER 3.25 REGARDING ENHANCED ASSISTANCE FOR TARGETED BUSINESSES**

**INTRODUCED, READ, PASSED ON FIRST READING AND ORDERED PUBLISHED** this 19th day of November 2024.

Christopher M. Leh, Mayor

ATTEST:
Genny Kline, Interim City Clerk

APPROVED AS TO FORM:
Kelly PC, City Attorney

**PASSED AND ADOPTED ON SECOND AND FINAL READING,** this 7th day of January 2025.

Christopher M. Leh, Mayor

ATTEST:
Genny Kline, Interim City Clerk

Published in the *Daily Camera* on January 12, 2025.

Full copies available in the City Clerk's Office, 749 Main Street, Louisville, CO 80027.

Second Reading Amendments

Ordinance No. 1888, Series 2024 is revised to read as follows (second reading amendments are shown in <u>**bold underline**</u> and ~~**bold strikeout**~~):

**ORDINANCE NO. 1888**
**SERIES 2024**

**AN ORDINANCE AMENDING THE LOUISVILLE MUNICIPAL CODE TO ADD A NEW CHAPTER 3.25 REGARDING ENHANCED ASSISTANCE FOR ~~TARGETED BUSINESSES~~ <u>CAPITAL INTENSIVE BUSINESSES</u>**

~~**WHEREAS, the Boulder Chamber Economic Council has identified certain targeted industries that provide significant economic benefits to local**~~

~~**communities, including creating high-paying employment opportunities, expanding the tax base, and enhancing the community's quality of life; and**~~

~~**WHEREAS, the targeted industries in Boulder County are currently aerospace, bioscience, cleantech, IT/software, natural products, and outdoor recreation; and**~~

WHEREAS, offering incentives to **capital intensive** businesses ~~**within these targeted industries**~~ is a way for the City to attract and retain businesses, to encourage business sustainability and growth, and to expand and support a robust and diverse economy; and

WHEREAS, the City Council previously adopted Chapter 3.24 of the Louisville Municipal Code, which established a Tax and Fee Business Assistance Program ("BAP") that authorizes the rebate of certain taxes and fees to businesses; and

WHEREAS, the City's practice under the BAP has been to rebate up to fifty (50%) of eligible taxes and fees, thus preserving the remainder for City purposes; and

WHEREAS, the City Council finds it appropriate to offer enhanced assistance to **capital intensive** ~~**targeted**~~ businesses in order to increase the probability such businesses will locate and keep their operations in Louisville; and

WHEREAS, the City Council further finds that the enhanced assistance for **capital intensive** ~~**targeted**~~ businesses should take the form of a rebate of sales and use tax collected on machinery, machinery tools, software, and property used in space flight due to the high-cost and specialized nature of these items; and

WHEREAS, the City Council, therefore, desires to amend Title 3 of the City Code to add a new Chapter 3.25 concerning enhanced assistance for **capital intensive** ~~**targeted**~~ businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO:

**Section 1.** Title 3 of the Louisville Municipal Code is hereby amended by the addition of a new Chapter 3.25 to read as follows:

**CHAPTER 3.25**
**ENHANCED ASSISTANCE FOR CAPITAL INTENSIVE ~~TARGETED~~ BUSINESSES**

Sec. 3.25.010. Established.
Sec. 3.25.020. Findings, intent, and purpose.
Sec. 3.25.030. Definitions.
Sec. 3.25.040. Basis for participation.

Sec. 3.25.050. Approval of agreement; conditions; term.
Sec. 3.25.060. EAP payments.
Sec. 3.25.070. Criteria for approval.
Sec. 3.25.080. Agreement with City; required contents.

**Sec. 3.25.010. Established.**

There is established within the City an Enhanced Assistance Program for ~~**Targeted**~~ **Capital Intensive** Businesses ("EAP").

**Sec. 3.25.020. Findings, intent, and purpose.**

A. The purpose of the EAP created by this chapter is to encourage the recruitment, retention, establishment, and/or substantial expansion within the City of certain **capital intensive** ~~**targeted**~~ businesses~~, including businesses in the industries of aerospace, bioscience, cleantech, IT/software, natural products, and outdoor recreation~~.

B. The City Council specifically finds and determines these **capital intensive** ~~**targeted**~~ businesses have a greater-than-average potential to create a large number of jobs with high earning potential for residents of the City and others, and to otherwise stimulate the City's economy, and following the period of assistance under this chapter, the potential to increase the taxes and fees collected by the City, which increased tax and fee collections will enable the City to provide expanded and improved municipal services to and for the benefit of the residents of the City.

C. The City Council further specifically finds and determines that creation of the EAP is consistent with the City's powers as a home rule municipal corporation, and that exercise of said powers in the manner set forth in this chapter is in furtherance of the public health, safety and welfare. Notwithstanding any provision of this chapter, the City shall never be a joint venturer in any private entity or activity which participates in the EAP, and the City shall never be liable or responsible for any debt or obligation of any participant in the EAP.

**Sec. 3.25.030. Definitions.**

As used in this chapter and all sections thereof, the following terms and phrases shall have the following meanings:

*Applicant* means the owner(s) of a **capital intensive** ~~**targeted**~~ business located or proposed to be located within the City.

***Capital intensive business* means a business that requires a large amount of upfront investment in fixed assets, such as land, buildings, machinery, tools, or software, to produce goods or services.**

*Enhanced assistance* means a rebate of up to one hundred percent (100%) of sales and use taxes on machinery, machinery tools, software, and property used in space flight collected by the City from a **capital intensive** ~~**targeted**~~ business. *Enhanced assistance* shall exclude all revenues derived from: (i) the City's temporary 0.375% sales and use tax for open space and parks approved at the November 7, 2023 election; (ii) the temporary 0.125% sales tax for historic preservation approved at the November 7, 2017 election; (iii) the temporary 0.125% sales and use tax for open space approved at the November 7, 2023 election; (iv) the 0.15% sales and use tax for the Louisville Recreation & Senior Center approved at the November 8, 2016 election; and (v) any future special sales or use taxes imposed following the effective date of the EAP agreement between the City and the applicant.

~~***Targeted business* means a business engaged in an industry identified as a key or targeted industry by the Boulder Chamber Economic Council. Currently, the targeted industries are aerospace, bioscience, cleantech, IT/software, natural products, and outdoor recreation, but the Boulder Chamber of Commerce may change its list of targeted industries from time to time without further action required by City Council.**~~

**Sec. 3.25.040. Basis for participation.**

A. Any owner of a proposed **capital intensive** ~~**targeted**~~, or the owner of an existing **capital intensive** ~~**targeted**~~ business which proposes to expand substantially, may apply to the City for inclusion within the EAP, provided that the proposed new or expanded business meets the eligibility criteria set forth in subsection B. Application for inclusion in the EAP must be made prior to the proposed opening, acquisition, or expansion.

B. To be eligible for enhanced assistance under this section, a **capital intensive** ~~**targeted**~~ business must meet the following criteria:

1. The average annual wage of the business's employees must be at least eighty percent (80%) of the annual average wage for Boulder County, not including the value of any employee benefits.

2. An expanding business must show expansion in terms of personnel, production, or product lines.

C. Enhanced assistance may be used by a **capital intensive** ~~targeted~~ business only for machinery, machinery tools, software, and property used in space flight.

D. Enhanced assistance may be provided to **capital intensive** ~~targeted~~ businesses meeting the above-listed criteria in lieu of or in addition to the BAP assistance authorized under chapter 3.24.

E. **Capital intensive** ~~Targeted~~ businesses not meeting the above-listed criteria are not eligible for enhanced assistance, but may apply for BAP assistance pursuant to chapter 3.24.

**Sec. 3.25.050. Approval of agreement; conditions; term.**

A. Execution of an agreement by the City and an applicant implementing the EAP shall entitle the applicant to enhanced assistance in an amount not to exceed the amount specified in the agreement required by section 3.25.080.

B. The time period for enhanced assistance shall not commence until all public or public-related improvements are completed and meet City standards (where applicable) and until the **capital intensive** ~~targeted~~ business has commenced its operations or completed its expansion within the City.

C. The time period for enhanced assistance shall be limited to a specified time set forth in the agreement or until a specified maximum amount is reached.

**Sec. 3.25.060. EAP payments.**

A. Enhanced assistance payments shall be made no less than annually and no more than quarterly, as the City and applicant shall agree.

B. Payments under this section shall commence no earlier than issuance of a certificate of occupancy or completion of a qualified expansion for the subject location and satisfaction of the requirements of this chapter and of the agreement.

C. No interest shall be paid on any enhanced assistance amounts.

**Sec. 3.25.070. Criteria for approval.**

Approval of an application for EAP incentives totaling $50,000.00 or more shall require the affirmative vote of four members of the City Council.

Incentives totaling less than $50,000.00 may be approved, and the agreement required by section 3.25.080 may be executed, by the City Manager. Whether approved by City Council or the City Manager, the decision to approve an EAP application shall be based upon consideration of the following criteria:

A. The applicant's total investment in its Louisville operation, including the cost of construction, expansion, and hiring;

B. The total number of jobs created over the five year period immediately following commencement of the **capital intensive** ~~**targeted**~~ business's operation in Louisville;

C. The average annual wage of the **capital intensive** ~~**targeted**~~ business's employees;

D. The quality of the proposed development;

E. Whether the proposal complements existing Louisville businesses (i.e. a buyer or supplier that serves an existing business in the City);

F. Whether the proposal represents job diversity in industry sectors and is part of a growing industry;

G. The proposal's contribution to the diversity of jobs or employment opportunities within the City;

H. Whether the proposal brings a value added result to the City or a development within the City (for example, by moving the company's corporate headquarters to the City);

I. The amount of the enhanced assistance as a percentage of new revenue anticipated to be created by the proposal (for example, by relocation of the company to the City);

J. The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances of the City; and

K. Whether a proposed agreement required by section 3.25.080 has been reached, which agreement shall contain and conform to all requirements of said section 3.25.080.

**Sec. 3.25.080. Agreement with City; required contents.**

Each application for inclusion in the EAP submitted to the City shall be considered solely on its own merits. Approval of an application shall require that an agreement be executed by the applicant and the City, which agreement shall, at a minimum, contain:

A. The maximum amount of enhanced assistance, the timing of payment of any enhanced assistance, and the maximum time during which the agreement shall continue, it being expressly understood that any such agreement shall expire and be of no further force and effect upon the occurrence of the earlier to be reached of the maximum time of the agreement (whether or not the maximum amount of enhanced assistance has been reached) or the maximum amount of enhanced assistance (whether or not the maximum time set forth has expired);

B. A statement that the agreement is a personal agreement which does not run with the land;

C. A statement that the agreement shall never constitute a multi-year fiscal obligation, debt or other obligation of the City within the meaning of any constitutional or statutory provision;

D. A provision that, in the event the applicant, and/or its successors and assigns, ceases business operations in the City within five (5) years after the certificate of occupancy has been received or the qualified expansion was completed for the business location, the applicant, or its permitted successors and assigns, shall pay to the City ten percent (10%) of the enhanced assistance rebated by the City under the EAP agreement for each full year that the applicant, and/or its successors and assigns, cease operations at the business location.

E. A provision that any enhanced assistance subject to sharing shall be escrowed in the event there is a legal challenge to the EAP or the approval of any application therefor;

F. An affirmative statement that the obligations, benefits and provisions of the agreement may not be assigned in whole or in any part without the express written authorization of the City Council, and further that no third party shall be entitled to rely upon or enforce any provision of the agreement;

G. A statement that the agreement shall be subject to the annual appropriation of sufficient funds for payments as provided in this chapter, pursuant to Section 20, Article X of the Colorado Constitution;

H. A statement that the applicant shall have no right, claim, lien or priority in or to the City's sales or use tax revenue superior to or on parity with the rights, claims or liens of the holders as any sales or use tax revenue bonds, notes, certificates or debentures payable from or secured by any sales or use taxes, existing or hereafter issued by the City; and that all rights of the successful applicant are, and at all times shall be, subordinate and inferior to the rights, claims and liens of the holders of any and all such existing or hereafter issued sales and use tax revenue bonds, notes, certificates or debentures, payable from or secured by any sales or use taxes issued by the City; and

I. Any other provisions agreed upon by the parties and approved by the City Council.

**Section 2.** If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares it would have passed and approved this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

**Section 3.** The repeal or modification of any provision of the Municipal Code of the City of Louisville by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

**Section 4.** All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

**INTRODUCED, READ, PASSED ON FIRST READING, AND ORDERED PUBLISHED** this 19th day of November 2024.

Christopher M. Leh, Mayor

ATTEST:
Genny Kline, Interim City Clerk

APPROVED AS TO FORM:
Kelly PC
City Attorney

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