

ENTERPRISE ZONE ADMINISTRATION

Enterprise Zone Manager

Within the petition for Enterprise Zone Certification, the local government sponsoring the request (MSA Principal City or County Board of Commissioners) designates an Enterprise Zone Manager. This individual serves as the contact for ODOD. Materials concerning the Ohio Enterprise Zone Program will be forwarded to the Enterprise Zone Managers. The manager is responsible for distributing copies of the materials to each participating local jurisdiction and interested local officials. Care should be taken to ensure that ODOD is formally notified of any change to the Enterprise Zone Manager position.

The Enterprise Zone Manager should not be an elected official since the duties are substantially administrative and clerical. ODOD recommends that someone who is involved in the local economic development process act as the Enterprise Zone Manager. The Enterprise Zone Manager's responsibilities include:

1. Maintaining and updating Enterprise Zone distress documentation;
2. Filing the appropriate formal notices required by the Ohio Enterprise Zone Program;
3. Ensuring that copies of all Enterprise Zone Agreements are filed with ODOD, the Ohio Department of Taxation and the County Auditor;
4. Staffing the Tax Incentive Review Council by scheduling the required meetings and gathering appropriate data;
5. Compiling and submitting the Enterprise Zone Annual Report by March 31 of each year; and
6. Other such duties as designated by the local jurisdiction or guidelines.

In many cases, the Enterprise Zone Manager will act as the first point of contact for businesses considering an investment in the local jurisdiction.

Negotiation Team

Each local government participating in the Enterprise Zone Program should appoint an individual or individuals to represent that community in negotiations with businesses requesting Enterprise Zone incentives. Please note that in all county-designated Enterprise Zones the authorizing legislation states whether the county, city, village or township will take the lead role in the negotiations. If there is a conflict between the various pieces of authorizing legislation, an Enterprise Zone will not be certified.

In many communities, the Mayor or Development Director acts as the negotiation representative. This is acceptable. However, ODOD recommends a team approach to ensure that a balance of opinions and viewpoints are represented. ODOD suggests a team of no more than three individuals -- one representing the local city, village or township, one representing the affected board of education and one representing the county. This depends on the board of education's willingness to be involved at that level and sufficient interest by the other local governments. Note that having two County Commissioners or Township Trustees serve on the negotiation team would most likely evoke the open meeting requirements. Since it is recommended that negotiations be conducted in private, having multiple elected members from the source group should be avoided. Care and consideration should be taken to ensure an appropriate individual or team is designated to conduct the negotiations.

Whatever the makeup of the negotiating team, the individual(s) should be formally appointed by the local governments and should be identified within the local guidelines or informational materials distributed to business clients. The Enterprise Zone Manager should maintain a close relationship with the negotiating team.

Remember that it is not only the percentage and term of the exemption package offered, but also many other possible items that can be negotiated. Care should be taken to ensure the business is fully aware of all clauses required under ORC Section 5709.631 and any provisions considered critical to the package (i.e. local hiring commitments) by the local governments. Once the negotiating team develops a package considered to be favorable in the light of the local government, the team should make a formal recommendation (which includes the written proposal and any project analysis which may have been completed) to the City or Village Council (acting through a committee if necessary) or Township Trustees. Be sure that the appropriate notice is given the board of education. Coordination with Enterprise Zone Managers is crucial. The local council or board then reviews the recommendation of the negotiation team. It is recommended that the business then have a representative present to answer any questions that may arise.

If the project is approved, a MSA Principal City can proceed to execute an Enterprise Zone Agreement. All other cities, villages and townships must then forward a copy of the recommendations and the local approval legislation to the County Commissioners for review. Remember again, the board of education notice provisions apply. Upon county review and approval, a final Enterprise Zone Agreement can be executed. Copies must be sent to ODOD and the Ohio Department of Taxation within 15 days of finalization.

If a project is rejected at any level, no incentives can be granted. Further negotiations can occur at the discretion of the local negotiation team. If a project is conditioned upon an element(s) requiring further negotiations, then the negotiation process must begin anew. Special attention to meet the notice requirements must be paid.

Strict adherence to the Enterprise Zone Agreement review process is critical to ensure the incentive agreements that result are valid. Officials involved in the process should be sure to follow the requirements set forth in the Enterprise Zone law.

Tax Incentive Review Council

The Tax Incentive Review Council (TIRC) is an inter-jurisdictional body created to review and evaluate the performance of each Enterprise Zone Agreement. This body is advisory in nature and cannot directly impact an existing Enterprise Zone Agreement. The TIRC is charged to annually review each Enterprise Zone Agreement, determine whether or not the business has complied with the terms and conditions of the agreement, and make a formal recommendation to the local legislative authority no later than September 1st of each year as to whether each agreement should be continued, modified or cancelled.

Remember that only a jurisdiction that is a party to the Enterprise Zone Agreement can take action to enforce that agreement. Local jurisdictions that approve a project by resolution only cannot initiate a contract action for non-performance. Again, the TIRC cannot take direct action on the Enterprise Zone Agreement.

ORC Section 5709.85 sets forth the composition of the TIRC. Municipalities designated as MSA Principal Cities and certified under ORC Section 5709.62 shall include the following:

1. The Chief Executive Officer or designee;
2. A member of the legislative authority of the municipal council appointed by the president or president pro tempore of the legislative authority;
3. The County Auditor or designee;
4. The Chief Financial Officer of the municipal corporation or designee;
5. An individual appointed by the Board of Education of each City, Local, Exempted Village, and Joint Vocational School District with jurisdiction in the Enterprise Zone; and,
6. Two members of the public appointed by the Chief Executive Officer of the municipal corporation and approved by the legislative council.

Note that at least four members of the TIRC must be residents of the municipal corporation and that at least one of the two public members must be a minority.

The TIRC in county-designated Enterprise Zones must be composed of:

1. Three members appointed by the Board of County Commissioners;
2. Two members from each municipal corporation appointed by the Chief Executive Officer and approved by the local legislative authority;
3. Two members from each township appointed by the Board of Township Trustees;

4. The County Auditor or designee; and
5. An individual appointed by the Board of Education of each City, Local, Exempted Village and Joint Vocational School District with the jurisdiction in the Enterprise Zone.

***Note** that at least two members of the council must be residents of the municipality or township approving the exemption.

The County Auditor or Auditor's designee must serve as Chairman (ORC 5709.633). Meetings of the TIRC are to be called by the chairman; at the first meeting, the council shall select a vice-chairperson. A majority of the membership (note a majority of the members who have jurisdiction over a particular project to be reviewed) constitutes a quorum.

The Enterprise Zone Manager shall staff the TIRC. The TIRC should be provided a copy of a current project status report. ODOD recommends information similar to Section C of the Enterprise Zone Annual Report. The business being reviewed should be invited to appear before the TIRC (particularly in cases where compliance is in question). Note that the TIRC may request any documentation reasonably related to verification of compliance including business tax records. The County Auditor cannot divulge specific business personal property tax information unless the business supplied that information to the TIRC or Auditor either voluntarily or in compliance with a contract provision.

The TIRC may consider fluctuations in business cycles and general economic conditions relating to the project when making a compliance determination. The TIRC must make a formal written recommendation to the legislative authority that approved the agreement as to whether the agreement should be continued, modified or cancelled. This must be done annually for each Enterprise Zone Agreement in effect. The TIRC should specify the reasons for the specific recommendation. The recommendation from the TIRC must also include a determination regarding compliance with all nondiscriminatory hiring policies instituted by the local government(s). A copy of the written TIRC recommendations shall be forwarded to the Director of Development as required by Administrative Rule 122: 4-1-08. Within sixty days of receiving the recommendations, the local legislative authority shall meet and vote to accept, reject, or modify all or any portion of the TIRC recommendation.