

CITY OF GENOA  
DEKALB COUNTY, ILLINOIS

---

ORDINANCE NO. 2023 - 06

---

ADOPTED BY  
THE MAYOR AND  
CITY COUNCIL  
OF THE  
CITY OF GENOA

---

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN ECONOMIC  
INCENTIVE AGREEMENT AND IMPLEMENTING THE PROVISIONS OF  
AN ADOPTED ECONOMIC INCENTIVE AGREEMENT BETWEEN THE  
CITY OF GENOA AND MALCOUR DEVELOPMENT LLC

---

Adopted May 17, 2023, by the Mayor and City Council of the City of Genoa,  
DeKalb County, Illinois, and approved and published in pamphlet from this 17<sup>th</sup>  
day of May 2023.

# CITY OF GENOA

## ORDINANCE NO. 2023 - 06

### *An Ordinance Authorizing the Execution of an Economic Incentive Agreement between the City of Genoa and Malcour Development LLC*

WHEREAS, the City of Genoa, a municipal corporation located within the County of DeKalb, and the State of Illinois, has determined that it is in the best interests of the citizens of the City of Genoa to stimulate commercial and industrial development within the City of Genoa; and

WHEREAS, Section 18-165 of the Illinois Property Tax Code, 35 ILCS 200/18-165, a municipal corporation may abate property tax for a commercial property that will expand a facility or expand the number of employees; and

WHEREAS, Malcour Development LLC desires to expand its existing HVAC and Plumbing business by constructing a new building at 402 South Centre Drive located along the west side of South Centre Drive, south of Pearson Drive and north of Derby Line Road in the jurisdiction of the City of Genoa, which in turn will create additional jobs, and has requested economic assistance in the form of a property tax abatement to help defray the costs of same; and

WHEREAS, since Malcour Development LLC is the private property owner which will construct and own the new building housing and will be responsible for the payment of real estate taxes for the land and building.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the CITY or GENOA, DeKalb County, Illinois, as follows:

SECTION 1: Pursuant to 35 ILCS 200/18-165, the Economic Incentive Agreement between Malcour Developments LLC and the City of Genoa, attached hereto and made a part hereof as Exhibit A, is hereby approved and the City Mayor and City Clerk are hereby authorized and directed to execute same. The partial, temporary abatement of taxes as outlined in Exhibit A shall be calculated by the County Clerk in each of the first five full tax assessment years following occupancy after the County Clerk has determined the value of the proper % and the County Clerk is hereby directed to abate said taxes in accordance with this Ordinance.

SECTION 2: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4: This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

Alderman Name	Aye	Nay	Abstain	Absent
Pam Wesner				✓
Christopher Pulley	✓			
Melissa Freund	✓			
Walter Stage				✓
Courtney Winter				✓
Kendra Braheny				✓
Gary Roca	✓			
Gregg Hughes	✓			
Mayor Jonathon Brust	✓			

PASSED by the City Council of the City of Genoa, DeKalb County, Illinois this 17<sup>th</sup> day of May, 2023.  
 Approved by me this 17<sup>th</sup> day of May, 2023.



(SEAL)

*[Signature]*  
 Jonathon Brust, Mayor

ATTESTED and filed in my office this 17 day of May, 2023.

*[Signature]*  
 Becca Stevenson, City Clerk

ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF GENOA AND MALCOUR  
DEVELOPMENTS LLC

This Agreement ("Agreement") is entered into this 17<sup>th</sup> day of May 2023, by and between the City of Genoa, an Illinois Municipal Corporation (hereinafter referred to as the "City") and Malcour Developments LLC, (hereinafter referred to as "Malcour Developments"), an Illinois Corporation with offices at PO Box 277 Genoa, Illinois 60135 (hereinafter referred to collectively as the "Parties").

PREAMBLE

WHEREAS, the City is an Illinois Municipal Corporation under and by virtue of the Constitution and laws of the State of Illinois; and

WHEREAS, Section 18-165 of the Illinois Property Tax Code, 35 ILCS 200/18-165, a municipal corporation may abate property tax for a commercial property that will expand a facility or expand the number of employees;

WHEREAS, the City desires to increase the number of businesses in the City that generate Non-Residential Property Taxes; and

WHEREAS, Malcour Developments LLC will expand its operations into a new commercial/industrial building that Malcour Developments would construct at 402 South Centre Drive on Lot 11 PIN 0329154004, (the "Subject Property") in the Pearson South Centre Subdivision, said building comprising approximately 7,200 square feet, which use conforms with the zoning ordinances of the City of Genoa (the "Building"); and

WHEREAS, as an economic incentive for Malcour Developments LLC to generate the new business in the City, Malcour Developments LLC and the City have agreed to share in the new municipal property tax revenue generated by the City portion of Property taxes from the new Commercial/Industrial Building on South Centre Drive, and but for this sharing arrangement, Malcour Developments would not construct the new building and Malcour Developments would not expand its operations in the City.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the City and Malcour Developments agree as follows:

SECTION 1  
INCORPORATION OF PREAMBLE AND EXHIBITS

That the Preambles to this Agreement are hereby declared to be the findings of the Parties and that said Preamble and all exhibits, if any, referred to in the Preamble and this Agreement are incorporated herein as if fully set forth in this Section 1.

SECTION 2  
CONDITIONS PRECEDENT TO THE UNDERTAKING ON THE PART OF THE CITY

All undertakings on the part of the City pursuant to this Agreement are subject to the satisfaction of the following conditions precedent by Malcour Developments LLC on or before the date of the initial incentive by the City provided for in Section 3 below, or as otherwise specifically hereinafter stated:

- A. Occupancy and operation of the Building on the Subject Property, as evidenced by a Certificate of Occupancy by the City to serve as an expansion of the existing HVAC and Plumbing Service business within the City of Genoa which will be no later than December 31, 2023 and will continue throughout the length of this Agreement. Time is of the essence.

SECTION 3  
UNDERTAKINGS ON THE PART OF THE CITY

Upon satisfaction of all conditions precedent described in Section 2 of this Agreement:

- A. The City shall abate 67% of its municipal property tax levy, alone, relative to the Subject Property only, for each of the first 5 years following the completion of construction of the Building on the Subject Property, its occupancy as an HVAC and plumbing service business, and issuance of a Certificate of Occupancy by the City. Any City obligation to abate its municipal property tax levy shall terminate if the Subject Property is sold or conveyed or if the Building suffers any casualty rendering it uninhabitable.

SECTION 4  
DEFAULT

- A. Malcour Developments LLC shall be considered in default of this Agreement for:
  - i. Failure to comply with any material term, provision or condition of this Agreement, including but not limited to failing to occupy the Building at the Subject Property and maintain employment of at least 16 persons for five years from the first anniversary of occupancy of the building; or
  - ii. Materially misrepresenting or warranting in bad faith any information contained in this Agreement.

B. The City shall be considered in default of this Agreement for failure to comply with any material term, provision or condition of this Agreement.

SECTION 7  
REMEDIES FOR A BREACH OR DEFAULT

In the event of a breach or default of this Agreement, the Parties agree that the Party alleged to be in breach or default shall have thirty (30) days after written notice of said breach to correct the same prior to the non-breaching Party's seeking to any remedy provided for herein. Following the expiration of the cure period described above, the non-breaching Party may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation set forth in this Agreement or may terminate this Agreement without penalty. The failure of any Party to insist upon the strict and prompt performance of any of the terms, covenants, agreements and conditions herein contained shall not constitute or be construed as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenant, agreement or condition.

In accordance with Section 18-183 of the Illinois Property Tax Code, 35 ILCS 200/18-183, Malcour Developments LLC. shall pay the abated taxes if the City finds that Malcour Developments is in default of this Agreement.

SECTION 8  
LIABILITY

The Parties acknowledge and agree that (i) no individual, partner, member, shareholder, owner, officer, director, employee, affiliate, beneficiary, or elected or appointed public official of either Party, including corporate authorities of the City, shall be personally liable to the other Party for any judgments, monetary damages, payments, obligations or performance of either Party hereunder, (ii) the sole recourse for performance of the obligations hereunder shall be against the Parties themselves and each of their respective assets and not against any other person and shall be limited only to the amount of money that has actually been or was meant to be collected under this Agreement, (iii) the provisions of this Agreement do not constitute indebtedness or a loan of credit of either Party within the meaning of any constitutional or statutory provision.

SECTION 9  
NO THIRD PARTY RIGHTS CREATED

The City and Malcour Developments LLC agree that this Agreement is for the benefit of the Parties hereto and not for the benefit of any third party beneficiaries. No third parties shall have any rights or claims against the City arising from this Agreement. There shall be no assignment of any rights set forth in this Agreement to any third party.

SECTION 10  
GOVERNING  
LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

SECTION 11  
INDEMNIFICATIONS

The City and Malcour Developments agrees to indemnify the City relative to any claims regarding the City portion of property taxes.

SECTION 12  
AMENDMENT

This Agreement may be amended only by the mutual consent of the Parties, or their successors and assigns, by written instrument specifically referencing this Agreement.

SECTION  
13  
NOTICES

All notices, elections and other communications between the Parties shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, or delivered personally, to the Parties at the following addresses, or at such other addresses as the Parties may, by written notice, designate:

If to the City:                      City of Genoa  
   Attention: Mayor  
   333 East First Street  
   Genoa, Illinois 60135

With Copies to:                      Kelly Cahill  
   Zukowski, Rogers, Flood and McArdle  
   50 Virginia Street  
   Crystal Lake, Illinois 60014

If to Malcour Developments:

Malcour Developments LLC  
Attention: President  
PO Box 277  
Genoa, Illinois 60135

Notices shall be deemed received on the third business day following the day of

deposit in the U.S. Mail, if given by certified mail as aforesaid, and upon receipt or refusal, if personally delivered.

Any changes regarding any future mailing addresses or contacts will be amended through written correspondence between the City and Malcour Developments.

SECTION 14  
TERM

This Agreement shall be effective for 6 years following the date of this Agreement..

SECTION 15  
SEVERABILITY

If any provision, covenant or portion of this Agreement is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement.

SECTION 16  
ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, negotiations and exhibits between the Parties and constitutes the entire agreement of the Parties with respect to the subject matter covered in the Agreement.

SECTION 17  
BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the Parties.

SECTION 18  
COUNTERPARTS

This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

SECTION 20  
APPROVALS

The Parties hereby represent that they have obtained all necessary authorizations and approvals, including, without limitation, the enactment of ordinances and resolutions, if applicable, that are necessary to enable each party to comply with the terms and provisions of this Agreement and perform their obligations hereunder.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.



City of Genoa

By: 

Its: Mayor

ATTEST:

By: Rebecca Stevenson

Its: City Clerk

Malcour Developments LLC

By: 

Its: President