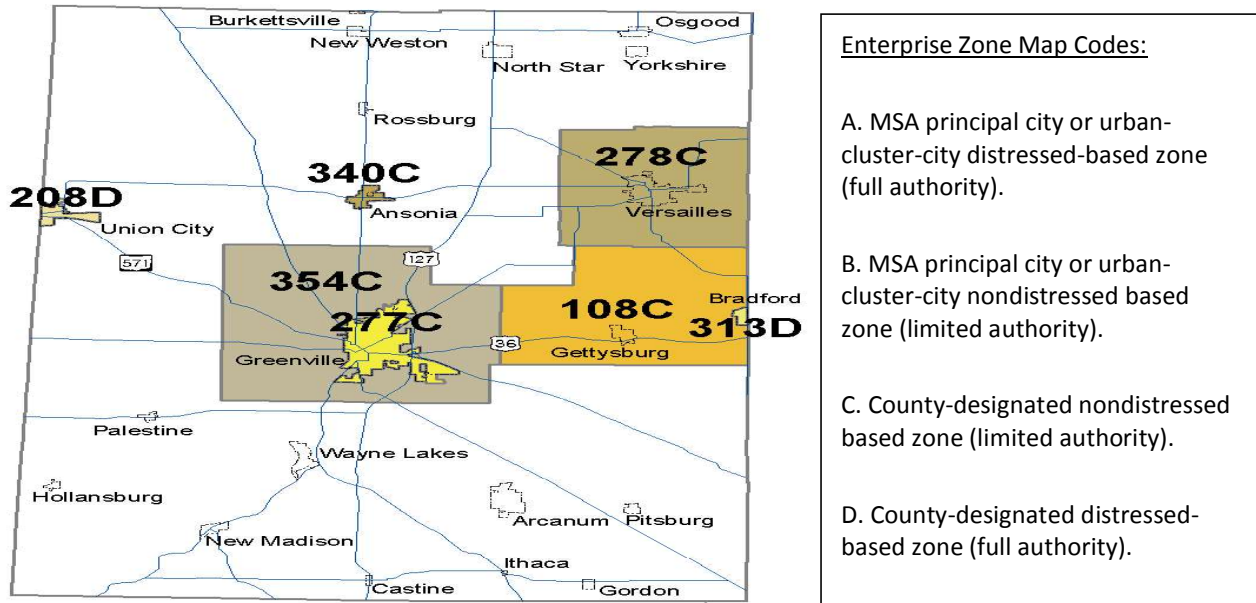


Darke County, Ohio Enterprise Zones⁶⁰³



Darke County is a rural Ohio county in far Western Ohio on the border of Indiana. Darke County, as the map above illustrates, has multiple enterprise zones designated across the county. At least two companies have enterprise zone agreements filed with the ODSA. The Andersons Marathon Ethanol, LLC facility gains tax advantages from its location in the Greenville, Ohio enterprise zone #277.⁶⁰⁴ The Andersons Marathon Ethanol, LLC is a manufacturing facility with \$28 million real property and \$85 million personal property investments.⁶⁰⁵ The enterprise zone agreement provided a 2-year, 75% tax abatement for the real-property investment and a 10-year, 75% tax abatement for the personal-property investment.⁶⁰⁶ Thirty-five full-time, permanent jobs providing over \$1.6 million in payroll resulted from this Darke County 2006 enterprise zone agreement.⁶⁰⁷

Community Reinvestment Area

The Ohio Community Reinvestment Area (“CRA”) program provides a real property tax exemption for businesses who commit to renovate existing or construct new buildings and

⁶⁰³ Ohio Development Services Agency, Business/Tax Incentives, Darke County, <http://development.ohio.gov/OTEISearch/ez/selection.aspx?County=Darke>.

⁶⁰⁴ Ohio Development Services Agency, Business/Tax Incentives, The Andersons Marathon Ethanol LLC, <http://development.ohio.gov/OTEISearch/ez/agreement.aspx?Agreement=277-06-02>.

⁶⁰⁵ *Id.*

⁶⁰⁶ *Id.*

⁶⁰⁷ *Id.*

develop housing.⁶⁰⁸ Local municipalities or counties may use the Ohio CRA program to designate areas in order to encourage revitalization of the existing housing stock and development of new structures.⁶⁰⁹ A “community reinvestment area” is defined as:

an area within a municipal corporation or unincorporated area of a county for which the legislative authority of the municipal corporation or, for the unincorporated area, of the county, has adopted a resolution under Ohio law describing the boundaries of the area and containing a statement of finding that the area included in the description is one in which housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged.⁶¹⁰

Ohio CRAs are in two distinct categories: Pre-1994 and Post-1994.⁶¹¹ Pre-1994 Ohio CRAs provide a 100% real-property tax exemption for residential, commercial, or industrial projects and do not require approval for this abatement from the local school board.⁶¹² Pre-1994 CRA’s were established directly by municipalities or counties and did not need the director of ODSA’s authorization at that time. In these types of CRAs, local jurisdictions do not have the flexibility to restrict the type of projects - residential, commercial, or industrial - eligible under the program, nor does it grant local jurisdictions the ability to grant an exemption of less than 100%. Pre-1994 Ohio CRAs can be amended only twice after July 1994 to retain operation under the old legislation—any additional amendments will invoke the Post-1994 CRA rules.⁶¹³

Post-1994 CRA’s require the exemption percentage and term for commercial and industrial projects to be negotiated on a project specific basis (residential percentages are set when the CRA is established).⁶¹⁴ If the proposed real-property tax exemption is greater than 50%, it requires local school district approval unless the local legislative authority decides that at least 50% of the amount of the taxes “lost” by the school district will be made up by other taxes or payments available to the school district.⁶¹⁵ As of July 2015, Ohio local governments

⁶⁰⁸ Ohio Development Services Agency, Business/Business Grants, Loans and Tax Credits, The Ohio Community Reinvestment Area, http://development.ohio.gov/bs/bs_comreinvest.htm.

⁶⁰⁹ R.C. 3735.66.

⁶¹⁰ R.C. 3735.65(A).

⁶¹¹ Ohio Development Services Agency, Business/Business Grants, Loans and Tax Credits, The Ohio Community Reinvestment Area, http://development.ohio.gov/bs/bs_comreinvest.htm.

⁶¹² *Id.*

⁶¹³ *Id.*

⁶¹⁴ R.C. 3735.66.

⁶¹⁵ R.C. 3735.671.

have 818 active CRA areas in place.⁶¹⁶ About 40% of these agreements are Pre-1994 agreements.⁶¹⁷

As detailed in the following chart, the tax-abatement term of an Ohio CRA varies depending upon the type of project involved:

Ohio CRA Tax Abatement Term by Project Type⁶¹⁸

Residential Remodeling (2 units or less; minimum \$2500)	Up to 10 years as defined in CRA legislation
Residential Remodeling (more than 2 units; minimum \$5000)	Up to 12 years as defined in CRA legislation
Commercial and Industrial Remodeling (minimum \$5000)	Up to 12 years as defined in CRA legislation
Residential New Construction	Up to 15 years as defined in CRA legislation
Commercial and Industrial New Construction	Up to 15 years as defined in CRA legislation

Much like the Ohio enterprise zone program, the Ohio CRA program results in an exemption from real-property taxation of all or a portion of the assessed valuation of select parcels of land in a geographically distressed area for an agreed-upon term negotiated on a project-specific basis. Ohio law:

- (1) authorizes municipalities and counties to negotiate Ohio CRA agreements with companies,
- (2) requires ODSA to review the negotiated agreement to ensure compliance,

⁶¹⁶ Ohio Development Services Agency, Business/Tax Incentives, <http://development.ohio.gov/oteisearch/CRA/selection.aspx?County=All&Company>.

⁶¹⁷ *Id.*

⁶¹⁸ R.C. 3735.67(D).

- (3) requires local governments to file annual reports of CRA use with ODSA and the board of education in each school district where the agreement applies,
- (4) requires a company to give notice when it plans to relocate from an existing Ohio site to a CRA where the company is seeking an incentive, and
- (5) permits the local government to revoke an Ohio CRA tax abatement if the company in question fails to fulfill its agreed-upon economic commitments (or if ODSA notifies the local government of a violation of the agreement following its review).⁶¹⁹

The development of housing is the primary difference between an Ohio CRA and an Ohio Enterprise Zone property-tax exemption. Retail or other nonmanufacturing projects are eligible for the Ohio CRA program.⁶²⁰ Therefore, the Ohio CRA program can be used to address larger quality of life issues related to neighborhood development such as restaurant and housing development strategies.

To form an Ohio CRA, the legislative authorities of municipalities and counties may survey housing within their jurisdictions and after the survey may adopt resolutions describing the boundaries of the CRA. These resolutions must contain the conditions required by Revised Code 3735.65(B), *i.e.*, a statement of finding that (1) the area included in the CRA boundary description has housing facilities or structures of historical significance and (2) new housing construction and repair of existing facilities or structures are discouraged.⁶²¹ Following this survey, the legislative authorities of municipalities or counties must adopt resolutions describing the boundaries of CRA meeting the statutory conditions.⁶²² When a CRA is properly established under Revised Code 3735.66, it will continue to exist despite changes in conditions in the area that occur after it is established.⁶²³ The legislative authority may require that only new structures or remodeling classified as to use as commercial, industrial, residential, or some combination are eligible for the tax abatement offered through the CRA, but if it does not include that stipulation, all new structures and remodeling are eligible.⁶²⁴ The legislative authority's CRA resolution must be published in a newspaper of general circulation in the municipality or county once a week for two consecutive weeks.⁶²⁵ These local governments need to appoint a housing officer to coordinate the CRA and petition the director of the ODSA for the CRA certification.⁶²⁶ A community-reinvestment-area housing council must also be

⁶¹⁹ See generally R.C. 3735.65, 3735.66, 3735.671, 3735.672, 3735.673, and 3735.68.

⁶²⁰ R.C. 3735.66.

⁶²¹ R.C. 3735.66.

⁶²² *Id.*

⁶²³ 1987 Ohio Atty.Gen.Ops. No. 87-047 at 1.

⁶²⁴ R.C. 3735.66.

⁶²⁵ *Id.*

⁶²⁶ *Id.*

appointed by local government officials and make annual inspections of the local Ohio CRA properties. The council is required to submit an annual report to the ODSA director summarizing the activities and projects for which an exemption has been granted in that area.⁶²⁷

A critical issue is the relocation of existing Ohio companies from one location in Ohio to another location with an established CRA where the company requests a tax abatement. ODSA adopted regulations pertaining to companies that relocate within state boundaries.⁶²⁸ A “relocation” is defined as “the transfer by a business entity of employment positions or taxable personal tangible property assets from one Ohio political subdivision to another” and includes the transfer of jobs or taxable personal tangible property assets from one political subdivision to another in Ohio.⁶²⁹ But, several actions by companies do not constitute a “relocation,” including when:

- Jobs are transferred from one Ohio site to another but are replaced within three years;
- Taxable personal tangible property assets are transferred from one Ohio facility to another Ohio facility, but the business installs replacement assets of equal or greater value and of compatible type;
- Jobs or taxable personal tangible property assets are transferred within the same political jurisdiction; and
- Jobs or taxable personal tangible property assets are transferred from one Ohio jurisdiction without a CRA to a second site with CRA benefits.

Ohio is full of examples of CRAs. Lake County, Ohio is bounded on the north by Lake Erie. Lake County has 16 CRAs throughout the county in cities and townships. Only six of these CRAs are Post-1994 in nature. Many cities and townships in Lake County have multiple CRAs within their jurisdiction. There are multiple active CRAs in Lake County and the Niyati Enterprise, LLC is an example of an active Lake County CRA Agreement. The Niyati Enterprise, LLC CRA agreement was reached in 2014 and is not set to expire until December 31, 2025. Niyati Enterprise, LLC’s CRA agreement anticipates investments just under \$1 million and the creation of nearly 50 full-time and part-time jobs. This CRA provides a 50% real-property tax abatement for 10 years.⁶³⁰

⁶²⁷ R.C. 3735.69.

⁶²⁸ Ohio Adm. Code 122:9-1-02.

⁶²⁹ *Id.*

⁶³⁰ Ohio Development Services Agency, Business/Tax Incentives, Niyati Enterprise LLC Agreement #14-100, CRA # 085-85512-01, Agreement Information, https://development.ohio.gov/oteisearch/CRA/agreement.aspx?AgmntNo=085-85512-01_14-100.

Ohio Enterprise Zone v. Community Reinvestment Area Program Comparison

<u>Element</u>	<u>Ohio Enterprise Zone</u>	<u>Ohio CRA</u>
Tax Incentive Type	Property Tax Abatement on parcels of land	Property Tax Abatement on parcels of land
Industry Focus	Industrial & Office	Industrial, Office, Retail, and Housing
Governing Law	Ohio Revised Code 5709.61-.69	Ohio Revised Code 3735.65-.70
Administered	Local Political Jurisdiction	Local Political Jurisdiction
Term	Up to 15 Years	Up to 10-15 Years
Incentive Granted	Up to 75% tax abatement without school board approval Up to 100% tax abatement with school board approval	Up to 100% tax abatement with Pre-1994 CRA without school board approval Up to 50% tax abatement with Post-1994 CRA without school board approval and 100% with school board approval
Relocation of Jobs	Notice to and Waivers from ODSA Required	Notice to ODSA Required
Process	Local Government Ordinance Creating EZ, Certification of EZ by ODSA, and Agreement with Company	Housing Study, Local Government Ordinance Creating CRA, Eligibility Determination of CRA by ODSA and Agreement with Company if for commercial or industrial property.