

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH FLORIDA ESTABLISHING AN ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION PROGRAM; PROVIDING A CONFLICTS CLAUSE, A CODIFICATION CLAUSE AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of West Palm Beach finds that economic development tools are needed to meet the goals of attracting, retaining, and growing business within the City; and

WHEREAS, to assist in developing economic development tools the City called a referendum on the question of whether the City should grant property tax exemptions to new businesses and expansions of existing businesses that are expected to create new full-time jobs in the City; and

WHEREAS, the referendum was held on March 15, 2016 and was approved by the voters; and

WHEREAS, the City, finding that economic development serves a valid public purpose, desires to establish an Economic Development Ad Valorem Tax Exemption Program to aid in achieving that purpose.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH FLORIDA THAT:

SECTION 1. *Title.* This Ordinance shall be known as the "Economic Development Ad Valorem Tax Exemption Ordinance of the City of West Palm Beach."

SECTION 2. *Enactment Authority.* Article VII, Section 3, of the Constitution of the State of Florida and F.S. § 196.1995 empower the City to grant Economic Development Ad Valorem Tax Exemptions after the electors of the City, voting on the question in a referendum, authorize such exemptions. In a referendum held on March 15, 2016, the voters of the City of West Palm Beach authorized the City Commission to grant Economic Development Ad Valorem Tax Exemptions.

SECTION 3. *Intent and Declaration.* It is the intent of the City Commission of the City of West Palm Beach to provide an incentive for new businesses to locate in the City and for existing business to grow and expand thereby increasing employment and contributing to the overall economic development of the City. The City Commission declares that the provision of ad valorem tax exemptions pursuant to this Ordinance serves the public purpose of fostering economic growth in the City' which benefits the City's residents and business owners. This article shall expire on March 15, 2026 unless renewed as provided by law.

SECTION 4. *Definitions.*

- a. *Applicant.* Any person, firm, partnership, or corporation who files an application with the Board seeking an economic development ad valorem tax exemption.
- b. *Agreement.* The Tax Exemption Agreement between the City and the Applicant.
- c. *Business.* Any activity engaged in by any person, firm, partnership, corporation, or other business organization or entity, with the object of private or public gain, benefit, or advantage, either direct or indirect.

- d. *City*. The City of West Palm Beach, Florida.
- e. *City Commission*. The City Commission of the City of West Palm Beach, Florida.
- f. *Department*. The Florida Department of Revenue.
- g. *Enterprise Zone*. As defined in F.S. § 196.012.
- h. *Exemption Agreement*. A written agreement entered into between the city and an applicant receiving an exemption pursuant to this Ordinance.
- i. *Expansion of an Existing Business*. As defined in F.S. § 196.012 as may be amended.
- j. *Goods*. All personalty when purchased primarily for personal, family, or household use, but not including personalty sold for commercial or industrial use.
- k. *Grantee*. An individual, firm or corporation whose application has been approved.
- l. *Improvements* means physical changes made to real property consisting of structures or other improvements placed on or under the land surface.
- m. *New Business*. As defined in F.S. § 196.012 as may be amended.
- n. *Real Property*. As defined in F.S. § 196.012 as may be amended.
- o. *Retail Operation*. A business regularly engaged in, and whose business consists to a substantial extent of, selling goods to a buyer, not principally for the purpose of resale.
- p. *Sales Factor*. As primarily defined in F.S. § 220.15(5).
- q. *Tangible Personal Property*. As defined in F.S. § 196.012 as may be amended.

SECTION 5. *Establishment of Economic Development Ad Valorem Tax Exemption.*

- a. *Establishment*. There is herein established an Economic Development Ad Valorem Tax Exemption (hereinafter the "exemption"). The exemption is a local option tax incentive for new or expanding businesses which may be granted or refused at the sole discretion of the City Commission
- b. *Eligibility*.
 - 1. New businesses locating in the City and expansions of existing businesses presently located in City are eligible for exemptions.
 - 2. Individuals, firms or corporations are eligible for consideration for exemptions.
 - 3. Land upon which new or expanded businesses are to be located; applicants who are in violation of any federal, state, or local law or regulation, including but not limited to, environmental matters; and property acquired to replace existing property are ineligible for exemptions.
- c. *Exemption Period*. The exemption may be for a period up to ten (10) years from the date the City Commission adopts an ordinance granting the exemption.
- d. *Taxes Subject to Exemption*. The exemption applies only to taxes levied by the City of West Palm Beach. The exemption does not apply to the following:
 - 1. Taxes levied by a school district, or water management district; or
 - 2. Taxes levied for the payment of bonds or taxes authorized by a vote of the electors pursuant to Section 9 and Section 12, Article VII of the State Constitution; or
 - 3. Tax Increment Finance Funds pledged to the payment of debt service on bonds.
- e. *Percentage of Exemption*.

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1. New Businesses. The City may exempt up to 100 percent of the assessed value of all improvements to real property made by or for the use of a new business and of all tangible personal property of such new business; and/or
2. Existing Businesses. The City may exempt up to 100 percent of the assessed value of all added improvements to real property made to facilitate the expansion of an existing business and of the net increase in all tangible personal property acquired to facilitate such expansion of an existing business.

SECTION 6. *Approval Process.* Any eligible person, firm, partnership, or corporation which desires an exemption shall file a good faith written application on a form prescribed by the City and shall pay the applicable application fee.

- a. *Filing.* Applications along with the application fee shall be filed with City's Director of Economic Development. The application must be filed no later than January 31st of the year in which the exemption is desired to take effect.
- b. *Review.* Within fifteen (15) calendar days of receipt of a complete application, the Director of Economic Development, or designee, shall perform an initial review in order to determine if the application facially meets all requirements to qualify for an exemption.
 1. If the Director of Economic Development, or designee, determines that the application does not facially qualify for an exemption, the Director shall so notify the applicant in writing, and the applicant shall have thirty (30) calendar days from the date of such notice to correct the application or appeal the Director's determination to the city commission.
 2. If the Director of Economic Development, or designee, determines that the application facially satisfies all requirements to qualify for an exemption, the completed application shall be referred to the property appraiser within fifteen (15) calendar days for evaluation and issuance of a report.
- c. *Property Appraiser Review.* The Palm Beach County Property Appraiser shall review the application and report the following information to the City Commission:
 1. The total revenue available to the city for the current fiscal year from ad valorem tax sources, or an estimate of such revenue if the actual total revenue available cannot be determined;
 2. Any revenue lost to the city for the current fiscal year by virtue of exemptions previously granted under FS 196.1995, or an estimate of such revenue if the actual revenue lost cannot be determined;
 3. An estimate of the revenue which would be lost to the city during the current fiscal year if the exemption applied for were granted had the property for which the exemption is requested otherwise been subject to taxation; and
 4. A determination as to whether the property for which an exemption is requested is to be incorporated into a new business or the expansion of an existing business, as defined in s. 196.012, Florida Statutes or into neither, which determination the property appraiser shall also affix to the face of the application. Upon the request of the property appraiser, the city shall provide to him or her such information as it may have available to assist in making such determination.
- d. *Community Redevelopment Agency Review.* If a new business is locating to, or an expansion of an existing business is occurring in, a community redevelopment area,

the West Palm Beach Community Redevelopment Agency shall be provided a copy of the application for review and comment. Input from the community redevelopment agency shall be in writing to the City Commission and will be considered in deciding whether an exemption is to be granted.

- e. *Annual Renewal Application.* In accordance with F.S. § 196.011(1) (a), Grantees shall file an annual renewal application on a form prescribed by the City with the Director of Economic Development and provide an original copy to the Property Appraiser.

SECTION 7. *City Commission Review.*

- a. *Public Hearing.* Within sixty (60) calendar days of receipt of the property appraiser's report, the City Commission shall hold public hearings on the enactment of an ordinance granting or denying the exemption. At the public hearing the City Commission must consider the application, the Director of Economic Development's recommendation, the Community Redevelopment Agency's recommendation, the report of the property appraiser and the following criteria:
 - 1. The total number of net new jobs to be created by the applicant;
 - 2. The average wage of the new jobs;
 - 3. The capital investment to be made by the applicant;
 - 4. The type of business or operation and whether it qualifies as a targeted industry as may be identified from time to time by the City Commission;
 - 5. The environmental impact of the proposed business or operation;
 - 6. The extent to which the applicant intends to source its supplies and materials within the city or Palm Beach county; and
 - 7. Any other economic-related characteristics or criteria deemed necessary by the City Commission.
- b. *Ordinance and Standards for Review.* Exemptions shall be granted by ordinance. The granting of, or the denial of exemptions will be based upon a rational, nonarbitrary, nondiscriminatory review by the city Commission of the application and the information required by Section (a) above in furtherance of the economic development goals of City and a determination as to whether any and all exemptions granted will result in an economic benefit to the City. Ordinances granting exemptions shall include the following:
 - 1. The name and address of the new business or expansion of an existing business to which the exemption is granted;
 - 2. The total amount of revenue available to the city from ad valorem tax sources for the current fiscal year, the total amount of revenue lost to the city for the current fiscal year by virtue of economic development ad valorem tax exemptions currently in effect, and the estimated revenue loss to the city for the current fiscal year attributable to the exemption of the business named in the ordinance;
 - 3. The period of time for which the exemption will remain in effect, and the expiration date of the exemption, which may be any period of time up to 10 years, or up to 20 years for a data center and annual renewal requirements; and
 - 4. A finding that the business named in the ordinance meets the requirements of s. 196.012(14) or (15), Florida Statutes, defining "New Business" or "Expansion of an Existing Business".

5. A provision authorizing the Mayor to execute, on behalf of the city, a Tax Exemption Agreement consistent with the provisions of the ordinance.
- c. *Tax Exemption Agreement.* After approval of an application for a tax exemption, no exemption granted hereunder shall be effective unless and until the business enters into an exemption agreement with the city. The agreement shall be consistent with section 196.1955, Florida Statutes, and shall include, but not be limited to, the following:
 1. Performance criteria;
 2. Reporting requirements to include the number of new, full-time jobs created _ and their actual average wage;
 3. Annual renewal requirements;
 4. Default and termination provisions.

SECTION 8. *Revocation of Exemption.* The City Commission may, in its sole discretion, revoke an exemption at a public hearing in accordance with the following:

- a. The grounds for revocation of an exemption include but is not limited to the following:
 1. Failure of the City and the Grantee to enter into a tax exemption agreement within Sixty (60) calendar days of approval;
 2. Upon the occurrence of a default under the Agreement;
 3. The City Commission finds that the Grantee no longer meets all of the exemption requirements;
 4. The City Commission finds that the application or any annual report contains materially false information such that the exemption likely would not have been granted or continued if the true facts had been known;
 5. The Grantee is found guilty of a violation of law; or
 6. The Grantee ceases to exist as the business entity to which the exemption was granted.
- b. *Ordinance and Notification.* The City Commission may, by ordinance, revoke the tax exemption effective on the date specified in the revoking ordinance. The Grantee shall be given the opportunity to be heard at the public hearing where the ordinance is being considered. Upon revocation, the City shall immediately notify the Property Appraiser.
- c. *Remedies.*
 1. *Recovery of Taxes.* After an exemption has been granted, for any year that taxes were exempted and the City Commission finds that the business was not entitled to the exemption, such taxes may be recovered. The Property Appraiser and the Tax Collector will assist the City to recover any taxes exempted.
 2. *Pro rata Rebate.* Upon the occurrence of a default under the Tax Exemption Agreement, other than ineligibility, Grantee shall pay taxes, on a pro rata basis, for the period of time beginning on the date of occurrence of the ineligibility and ending at the end of the tax year.
 3. *Property Appraiser.* Should a Grantee fail to file the annual exemption renewal application with the Property Appraiser within the time provided in F.S. § 196.011(1)(a), as amended, or fail to continue to meet the definition of a new business or an expansion of an existing business, the Property Appraiser may deny the exemption in accordance with F.S. § 196.193(5).

4. Reapply. A Grantee may reapply for an ad valorem tax exemption pursuant to State law.

SECTION 9. *General Provisions.*

- a. *Appeals.* The decision of the City Commission is subject only to judicial review.
- b. *Applicability.* This Ordinance shall be applicable in all areas of the City.
- c. *Severability.* If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.
- d. *Conflicts.* All ordinances or parts of ordinances in conflict herewith are hereby repealed.
- e. *Codification.* Specific authority is hereby granted to codify this ordinance.
- f. *Expiration of Authority.* The authority to grant exemptions under this section expires 10 years after the date such authority was approved by the referendum, but such authority may be renewed for subsequent 10-year periods if each 10-year renewal is approved in a referendum called and held pursuant to this section. For purposes of enforcement, this Ordinance shall survive such expiration date. No business shall be allowed to commence receiving an exemption after the expiration date; however the Expiration of Authority shall not affect the operation of any Exemption granted prior to said Expiration.
- g. *Effective Date.* This Ordinance shall take effect in ten days, in accordance with law.

[SIGNATURES ON FOLLOWING PAGE]

**FIRST READING THIS 30TH DAY OF JANUARY, 2017.
SECOND READING AND PASSAGE THIS 27TH DAY OF FEBRUARY, 2017.**



ATTEST:

X *Hazeline F. Carson*

CITY CLERK
Signed by: Hazeline Carson

**CITY OF WEST PALM BEACH BY
ITS CITY COMMISSION:**

X *Geraldine Muoio*

PRESIDING OFFICER
Signed by: Geraldine Muoio

**APPROVED AS TO FORM AND
LEGALITY:**

2/21/2017

X *Samuel A. Thomas*

CITY ATTORNEY
Signed by: SThomas