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46 47 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM BEACH GARDENS, FLORIDA AMENDING CHAPTER 66. TAXATION. BY CREATING A NEW ARTICLE VI. ENTITLED ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION; 66-301 THROUGH INCLUSIVE. SECTIONS 66-311, ESTABLISH AN ECONOMIC DEVELOPMENT AD VALOREM TAX PROVIDING **DEFINITIONS: EXEMPTION:** PROVIDING AN APPLICATION CRITERIA; PROVIDING A SUNSET DATE. A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City Council of the City of Palm Beach Gardens desires to support economic growth by providing financial incentives that will encourage new businesses to relocate within its jurisdiction and existing businesses to expand, creating employment opportunities that will benefit the entire community; and

WHEREAS, the City Council of the City Palm Beach Gardens has determined that the granting of economic development ad valorem tax exemptions to new businesses relocating to the City of Palm Beach Gardens and to businesses already located in the City that are expanding in order to foster economic growth and increase employment as allowed by state law is likely to encourage growth and further economic development; and

WHEREAS, in accordance with state law, Ordinance 21, 2012 was submitted to the voters for referendum on November 6, 2012 and was approved by the voters, thereby authorizing the City Council to grant Economic Development Ad Valorem Tax Exemptions for qualifying new businesses; and

WHEREAS, the City Council of the City of Palm Beach Gardens deems approval of this Ordinance to be in the best interests of the health, safety, and welfare of the residents and citizens of the City of Palm Beach Gardens and the public at large.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM BEACH GARDENS, FLORIDA that:

SECTION 1. Chapter 66. TAXATION. of the Code of Ordinances of the City of Palm Beach Gardens is hereby amended to create a new Article VI. Economic Development Ad Valorem Tax Exemption, and new Sections 66-301 through 66-311, inclusive; providing that Article VI. shall hereafter read as follows:

ARTICLE VI. ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION

Sec. 66-301. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means any person, firm, partnership, or corporation that files an application with the city seeking an economic development ad valorem tax exemption.

Business means 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.

Department means the Florida Department of Revenue.

Enterprise zone means an area designated as an Enterprise Zone pursuant to Section 290.0065, Florida Statutes.

Expansion of an existing business means:

- (1) As defined in Section 196.012(16), *Florida Statutes*, an expansion of an existing business means:
 - a. A business establishing ten (10) or more jobs to employ ten (10) or more full-time employees in the city; provided that such business falls into the following industry clusters: medical and pharmaceutical; aerospace and engineering; information technology; business and financial services; research and development; or any other industry cluster or company headquarters determined to be a targeted industry and approved by the city council;
 - b. Any business establishing twenty-five (25) or more jobs to employ twenty-five (25) or more full-time employees in the city, whose sales factor of which, as defined by Section 220.15(5), Florida Statutes, for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; provided that such business falls into the following industry clusters: medical and pharmaceutical; aerospace and engineering; information technology; business and financial services; research and development; and any other industry cluster or company headquarters determined to be a targeted industry and approved by the city council; or
 - c. Any business located in an enterprise zone.

(2) Any expansion of an existing business must increase operations on a site collocated with a commercial or industrial operation owned by the same business that results in a net increase of employment of not less than ten (10) percent. The ten (10) percent requirement does not apply to enterprise zones.

Exemption Agreement means a written agreement entered into between the City and an Applicant receiving an Exemption pursuant to this article, as described more fully hereinbelow.

Improvements means physical changes made to real property consisting of structures or other improvements placed on or under the land surface.

New business means:

- (1) As defined in Section 196.012(5), *Florida Statutes*, a new business means:
 - a. A business establishing ten (10) or more jobs to employ ten (10) or more full-time employees in the city provided that such business falls into the following industry clusters: medical and pharmaceutical; aerospace and engineering; information technology; business and financial services; research and development; and any other industry cluster or company headquarters determined to be a targeted industry and approved by the city council;
 - b. A business establishing twenty-five (25) or more jobs to employ twenty-five (25) or more full-time employees in this state, the sales factor of which, as defined by Section 220.15(5), Florida Statutes, for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; provided that such business falls into the following industry clusters: medical and pharmaceutical; aerospace and engineering; information technology; business and financial services; research and development; and any other industry cluster or company headquarters determined to be a targeted industry and approved by the city council;
 - c. An office space in this state owned and used by a corporation newly domiciled in the city; provided such office space houses fifty (50) or more full-time employees of such corporation; and
 - d. Any business located in an enterprise zone.
- (2) Any new business must first begin operation on a site clearly separate from any other commercial or industrial operation owned by the same business.

Real property shall have the meaning set forth in Section 192.001(12), Florida Statutes, or any successor or amended version of that statute.

Sales factor shall be defined as set forth in Section 220.15(5), Florida Statutes. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year or period, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year or period.

Tangible personal property shall have the meaning set forth in Section 192.001(11)(d), Florida Statutes, or any successor or amended version of that statute.

Violation of Law shall mean a violation of any federal, state, or local law which, in the sole discretion of the city council, is sufficiently serious that it would not be in the best interest of the citizens of the City of Palm Beach Gardens that the violator be granted or continue to receive the benefits of an exemption.

Sec. 66-302. Economic development ad valorem tax exemption established.

- (a) 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 discretion of the city council.
- (b) The exemption shall not accrue to improvements to real property made by or for the use of new or expanding businesses when such improvements have been included on the tax rolls prior to the effective date of this article specifically granting a business an exemption as provided in this article.
- (c) An exemption granted may apply up to one (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, or up to one hundred (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; provided that the improvements to real property are made or the tangible personal property is added or increased on or after the effective date of this article or an ordinance specifically granting a business an exemption as provided in this article.
- (d) Property acquired to replace existing property shall not be considered to facilitate a business expansion.
- (e) No exemption will be granted for the land upon which a new or expanding business is to be located.

- (f) Any exemption granted for a new or expanding business is transferable between businesses; provided the transferee business complies with the following:
 - (1) Continues to comply with all exemption requirements and conditions;
 - (2) Assumes in writing all of the obligation of the transferor business under the exemption agreement; and
 - (3) Must receive the written approval of the subject transfer by city council prior to transfer.
- (g) The exemption shall not be available to any business which, at any time within two (2) years prior to filing of the application, or at any time subsequent to filing of the application but prior to adoption of the exemption ordinance, was found guilty of a violation of law.
- (h) The exemption shall be granted by ordinance for every eligible project, as determined by the city council at its discretion. The exemption may be granted for a period up to ten (10) years from the date of adoption of this article granting the exemption.
- (i) No exemption shall be granted for the land upon which new or expanded businesses are to be located.
- (j) Completed or Planned Improvements A business may file under one of the following two conditions:
 - (1) Completed Improvements No exemption shall be granted to any existing improvement or to an addition to an existing improvement unless such improvement or addition was completed within the 12-month period (January 1st to December 31st) preceding the application.
 - (2) Planned Improvements The only exception to (j)(1) above is when a business submits an application and the improvement or addition was not completed within the 12-month period preceding the date of the application and/or all tangible personal property improvements are not in the building or addition at the time of filing the application, but the application identifies all planned improvements, including the total estimated amount of such improvements, none of which can be changed or increased following adoption of the ordinance granting the exemption.

- (k) The exemption shall apply only to taxes levied by the city. The exemption shall not apply to taxes levied by the county, school district, or water management district, or to 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 Florida Constitution.
- (I) The ability to receive an exemption for the period granted shall be conditioned upon the applicant's ability to maintain the new business or the expansion of an existing business as defined by the conditions of this application throughout the entire exemption period.
- (m) The decision of the city council to grant or deny an exemption shall be a legislative decision. No precedent shall exist by reason of any decision to grant or deny an exemption.

Sec. 66-303. Application for exemption.

- (a) Any eligible person, firm, partnership, or corporation which desires an exemption shall file with the city manager, or his designee, a good faith written application prescribed by the department (DR-418) and shall pay the applicable application fee as set forth in the city's fees and charges schedule.
- (b) The public hearing on the exemption ordinance will be held within sixty (60) days of receipt of the property appraiser's report.
- (c) The application must be filed no later than March 1st of the year in which the exemption is desired to take effect.
- (d) Within fifteen (15) days of receipt of a complete application, the city manager, or designee, shall perform an initial screening of same in order to determine if it facially meets all requirements to qualify for an exemption.
- (e) If the city manager, or designee, determines that the application does not facially qualify for an exemption, the city manager shall so notify the applicant in writing, and the applicant shall have thirty (30) days from the date of such notice to appeal the city manager's determination to the city council.
- (f) If the city manager, 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) days for evaluation and issuance of a report which shall include the following:

- (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 available revenue cannot be determined:
- (2) The amount of any revenue lost to the city for the current fiscal year by virtue of exemptions previously granted, or an estimate of such revenue if the actual revenue lost cannot be determined:
- (3) An estimate of the amount of revenue which would be lost to the city for the current fiscal year if the exemption applied for was 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, or into neither, which determination the property appraiser shall also affix to the face of the application. Upon request, the department will provide the property appraiser such information as it may have available to assist in making this determination.
- (g) The application shall request that the city council adopt an exemption ordinance granting the applicant the exemption and shall include the following:
 - (1) The name and location of the new business or the expansion of an existing business;
 - (2) A legal description of the real property, a description of the improvements to the real property for which an exemption is requested, and the date of intended or actual commencement of construction of such improvements;
 - (3) A description of the tangible personal property for which an exemption is requested and the dates when such property was or is to be purchased;
 - (4) Proof, to the satisfaction of the city council, that the applicant meets the criteria for a new business or for an expansion of an existing business as defined in this article;
 - (5) The following information:
 - a. The anticipated number of existing and new employees;
 - b. The expected number of employees that will reside in the city;

- c. The percentage of employees who have resided in the city for a period of more than two (2) years;
- d. The average wage of the employees;
- e. The type of industry or business;
- f. The environmental impact of the business;
- g. The anticipated volume of business or production;
- h. Whether the relocation or expansion would occur without the exemption;
- i. The cost and demand for services;
- j. The sources of supplies (local or otherwise);
- k. Whether the business is or will be located in a community redevelopment area; and
- I. The net positive contribution to the city's economy;
- (6) Any other information deemed necessary by the city manager, or designee.
- (h) If a new business is locating to, or an expansion of an existing business is occurring in, a community redevelopment area, the community redevelopment agency advisory committee overseeing such area shall be provided a copy of the application for review and comment. Such comments shall be completed and provided to the city council within thirty (30) days of receipt of the application by the community redevelopment agency.
- (i) The city manager, or designee, shall review the application based upon the criteria set forth in this article. The review shall include, but not be limited to, impact analysis, including the number of jobs generated, wage rates, and capital investments.
- (j) Prior to the public hearing on the ordinance required under this article, the city manager, or designee, will provide a recommendation to the city council as to approval or denial, and degree and length of the exemption.
- (k) All degrees and length of exemption recommendations should be based the overall projected economic impact to the city.

Sec. 66-304. City council consideration of application.

- (a) Within sixty (60) days of receipt of the property appraiser's report, the city council shall hold public hearings on the enactment of an ordinance granting the exemption. During the time period between submittal of the application to the property appraiser and the public hearing on the exemption ordinance, interested agencies and parties shall have an opportunity to review and comment on the application.
- (b) The threshold for consideration of approval shall be a determination as to whether the business meets the definition of a new business or of an expansion of an existing business as defined in this article, and whether the business is a business which is not ineligible as defined in paragraph (d) of this section.
- (c) The next levels for consideration of approval shall be:
 - (1) To determine whether the economic benefit test is met;
 - (2) To determine that the improvements or tangible personal property are not currently on the tax roll; and
 - (3) To determine that the improvements or tangible personal property are not already substantially complete and usable for their intended purpose.
- (d) Any existing business in violation of any federal, state, or local law or regulation governing environmental matters may not be eligible for an exemption.
- (e) The city council recognizes that a community redevelopment area's funding may be impacted should an exemption be granted in such an area. Therefore, should the council receive an objection to the exemption from a community redevelopment agency advisory committee, the council may consider the objection in their deliberations.
- (f) When considering the adoption of an ordinance granting the exemption, the city council shall consider the city manager's recommendation, the application, and the report of the property appraiser on the application, and the following criteria:
 - (1) The number of new jobs projected to be established in the city;
 - (2) The average wage paid with respect to the new jobs;

- (3) The estimated amount of capital investment to be made by the business in the city;
- (4) The extent to which the business may qualify as (i) an innovation business, as defined in Section 288.1089(2)(j), Florida Statutes, (ii) a business in a targeted industry as identified from time to time by the city council, or (iii) a business which may otherwise encourage the location or expansion of other businesses in the city;
- (5) The extent to which the business is likely to procure materials or supplies from other local businesses; and
- (6) The net positive contribution to the local economy.
- (g) No precedent shall be implied or inferred by the granting of an exemption to a new or expanding business. Applications for exemptions shall be considered by the city council on a case-by-case basis for each application, after consideration of the application, the property appraiser's report on the application, and where appropriate, objections from a community redevelopment agency advisory committee.

Sec. 66-305. Ordinance granting exemption.

An exemption ordinance shall be adopted in the same manner as any other ordinance of the city and shall include the following:

- (a) The name and address of the new or expanding business to which the exemption is granted;
- (b) 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 the exemptions currently in effect, and the total estimated revenue loss to the city for the current fiscal year attributable to the exemption of the business named in the ordinance;
- (c) The amount of the exemption, stated as a percentage of the assessed value of all improvements or tangible personal property subject to the exemption;
- (d) The period of time for which the exemption will remain in effect and the expiration date of the exemption; and
- (e) A finding that the business named in the exemption ordinance meets the requirements of section 196.012(15) or (16), *Florida Statutes*.

Sec. 66-306. Exemption agreement.

No exemption granted hereunder shall be effective until the business enters into an exemption agreement with the City. The exemption agreement shall contain (1) a clear acknowledgment by the business that the exemption shall continue to exist only for so long as the business continues to meet all exemption requirements, and (2) such other matters that may required by the city.

Sec. 66-307. Revocation of exemption/recovery of funds.

Should any new business or expansion of an existing business fail to file the annual report or any other report required in this article, or fail to continue to meet the definition of a new business or an expansion of an existing business, and/or fail to fulfill any other representation made to the city council during the application process, the city council may adopt an ordinance revoking the ad valorem tax exemption. An ordinance revoking the ad valorem tax exemption may provide that the city recover any taxes waived during the exemption period. Nothing herein shall prohibit a business from reapplying for an ad valorem tax exemption pursuant to state law and this chapter.

Sec. 66-308. Continuing performance.

- (a) The business shall continue to meet all exemption requirements during the term of the exemption;
- (b) No later than March 1 of each year during the term of the exemption, the business shall provide an annual report to the city manager, or designee, which shall certify and contain satisfactory proof, that the business continues to meet all exemption requirements as set forth in this chapter, the ordinance granting the exemption, the exemption agreement and the representations made in the application process;
- (c) The business shall timely comply with all requirements of Section 196.011, *Florida Statutes*, during the term of the exemption; and
- (d) The business shall immediately advise the city of any failure by the business to meet all exemption requirements.

Sec. 66-309. Revocation of exemption.

(a) The city council may revoke or revise the exemption at any time if the city council determines in its sole discretion that (i) the business no longer meets all of the exemption requirements; (ii) the application of any annual report contains a materially false statement, such that the exemption likely would not have been granted or continued if the true facts had been known; or (iii) the business is found guilty of a violation of law; and

Page 11 of 13

(b) If it is determined that the business was not in fact entitled to an exemption in any year for which the business received an exemption, the city, property appraiser or tax collector shall be entitled to recover all taxes not paid as a result of the exemption, plus interest at the maximum rate allowed by law, plus all costs of collection, including, without limitation, reasonable attorney's fees.

Sec. 66-310. Sunset provision.

This article shall stand repealed effective November 6, 2022, unless renewed by a referendum at a general or special election held upon, prior to, or in the same month as that date, as is authorized under the provisions of Section 196.1995(1)(2) and (6), *Florida Statutes*, or any successor or amended version of that statute.

Sec. 66-311. Severability.

If any provision of this Article VI is held invalid, the invalidity shall not affect other provisions which shall be given effect without the invalid provision. To this end, the provisions of this Article VI are declared to be severable.

- **SECTION 2.** Each and every other section and subsection of Chapter 66. TAXATION. shall remain in full force and effect as previously enacted.
- **SECTION 3.** All ordinances or parts of ordinances in conflict be and the same are hereby repealed.
- <u>SECTION 4.</u> Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.
 - **SECTION 5.** Specific authority is hereby granted to codify this Ordinance.
 - **SECTION 6.** This Ordinance shall take effect immediately upon adoption.

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