

ORDINANCE NO. 2005 - 004

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ESTABLISHING AN EXEMPTION FROM CERTAIN AD VALOREM TAXATION FOR CERTAIN NEW AND EXPANDING BUSINESS PROPERTIES TO ENCOURAGE ECONOMIC DEVELOPMENT IN THE COUNTY; PROVIDING FOR TITLE; PROVIDING FOR ENACTMENT AUTHORITY; PROVIDING FOR INTENT AND DECLARATION; PROVIDING FOR DEFINITION OF TERMS; PROVIDING FOR AN APPLICATION; PROVIDING FOR APPLICATION CONSIDERATION; PROVIDING FOR APPLICATION FEE; PROVIDING FOR REVOCATION OF EXEMPTION/RECOVERY OF FUNDS; PROVIDING FOR APPEALS; PROVIDING FOR APPLICABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners believes that local government should support economic growth by providing an incentive for employment opportunities that will lead to the improvement of the quality of life of the residents of Palm Beach County and the positive expansion of the economy; and

WHEREAS, to this end, the Board of County Commissioners desires to offer ad valorem tax exemptions to new businesses relocating to Palm Beach County and to expansions of businesses already situated in Palm Beach County; and

WHEREAS, the granting of ad valorem tax exemptions to businesses will provide Palm Beach County with an additional economic development incentive which will enhance the ability of Palm Beach County to be competitive when trying to encourage new business development in Palm Beach County and retain local businesses with planned expansions; and

WHEREAS, such exemptions are authorized pursuant to Article VII, Section 3, of the Constitution of the State of Florida and Section 196.1995, Florida Statutes, upon the successful passage of a referendum; and

WHEREAS, the electors of Palm Beach County desire to authorize the offering of ad valorem tax exemptions as evidenced by the successful passage of a referendum held on this issue on August 31, 2004.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

SECTION 1. Title

This Ordinance shall be known as the "Economic Development Ad Valorem Tax Exemption Ordinance of Palm Beach County, Florida."

SECTION 2. Enactment Authority

Article VII, Section 3, of the Constitution of the State of Florida and Section 196.1995, Florida Statutes, empowers the County to grant economic development ad valorem tax exemptions after the electors of the County, voting on the question in a referendum, authorize such exemptions. In a referendum held on August 31, 2004, the voters of Palm Beach County authorized the Board of County

Commissioners to grant economic development ad valorem tax exemptions.

SECTION 3. Intent and Declaration

It is the intent of the Board of County Commissioners of Palm Beach County (hereinafter the "Board") in enacting this Ordinance to provide an incentive to those new or expanded businesses which make a positive contribution to the economy of Palm Beach County in terms of new jobs and improvements to real and personal property.

The intent of the Board is to promote the economy by creating jobs in Palm Beach County in such a way so as not to disadvantage existing businesses while recognizing that productive competition assists in economic growth.

The Board desires to provide incentives to businesses of diverse industries, with the exception of retail operations, having a positive impact on the economy of Palm Beach County. The Board declares that the provision of ad valorem tax exemptions pursuant to this Ordinance serves the public purpose of fostering economic growth in Palm Beach County, all to the benefit of Palm Beach County's residents and business owners.

The granting of, or the denial of exemptions will be conducted on a rational, nonarbitrary, nondiscriminatory basis by the Board, in furtherance of the economic development goals of Palm Beach County. Any and all exemptions granted must result in an economic benefit to the County. To this end, prior to any grant of an exemption, the Board will take into full consideration the factors set forth in Section 6.B. of this Ordinance. Since the intent of the Board is to promote economic growth through attracting businesses and encouraging expansions that support Palm Beach County and its existing businesses, these factors will be considered on a case-by-case basis to determine that the economic benefit test is met. In addition to these factors, the Board is interested in the purchasing power created by the new business as it desires to prompt other sales in the County resulting in an increase in income, all to the benefit of the public of Palm Beach County.

Based on Section 196.1995, Florida Statutes, this Ordinance shall expire ten (10) years after the date such authority to grant exemptions was approved by the electors of the County voting on the question in a referendum. The referendum was held on August 31, 2004. This Ordinance shall expire on August 31, 2014.

SECTION 4. Definition of Terms

The following words, phrases, and terms shall have the same meanings attributed to them in current Florida Statutes and the Florida Administrative Code, except where the context clearly indicates otherwise:

- A. **Applicant** - Any person, firm, partnership, or corporation who files an application with the Board seeking an economic development ad valorem tax exemption.
- B. **Board** - The Board of County Commissioners of Palm Beach County.
- 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. Department - The Florida Department of Revenue.

E. Enterprise Zone - An area designated as an enterprise zone pursuant to Section 290.0065, Florida Statutes.

F. Expansion of an Existing Business - As primarily defined in Section 196.012(16), Florida Statutes, an expansion of an existing business means:

1. (a) A business establishing ten (10) or more jobs to employ ten (10) or more full-time employees in this County, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or
 - (b) A business establishing twenty-five (25) or more jobs to employ twenty-five (25) or more full-time employees in this County, 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 fifty (50%) percent inside this County for each year the exemption is claimed; or
 - (c) A business occupying office space in this County and establishing fifty (50) or more jobs to employ fifty (50) or more full-time employees; or
 - (d) Any business located in an enterprise zone (pursuant to Section 290.0065, Florida Statutes) and creating new full-time jobs in accordance with the business disciplines identified above.
2. Any expansion of an existing business, including a business located in an enterprise zone, must increase operations on a site colocated with a commercial or industrial operation owned by the same business, resulting in a net increase in employment of not less than ten (10%) percent or an increase in productive output of not less than ten (10%) percent.

G. Goods - All personalty when purchased primarily for personal, family, or household use, but not including personalty sold for commercial or industrial use.

H. Improvements - Physical changes made to raw land, and structures placed on or under the land surface.

I. New Business - As primarily defined in Section 196.012(15), Florida Statutes, a new business means:

1. (a) A business establishing ten (10) or more jobs to employ ten (10) or more full-time employees in this County which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or
- (b) A business establishing twenty-five (25) or more jobs to employ twenty-five (25)

or more full-time employees in this County, 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 fifty (50%) percent inside this County for each year the exemption is claimed; or

- (c) An office space in this County leased or owned and used by a corporation newly domiciled in this County; provided such office space houses fifty (50) or more full-time employees of such corporation; or
- (d) Any business located in an enterprise zone (pursuant to Section 290.0065, Florida Statutes) and creating new full-time jobs in accordance with the business disciplines identified above.

2. Any new business, including a business located in an enterprise zone, must first begin operation on a site clearly separate from any other commercial or industrial operation owned by the same business.

J. 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.

K. Sales Factor - As primarily defined 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 County 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.

SECTION 5. Economic Development Ad Valorem Tax Exemption Established

A. Incentive - 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 Board.

B. Ineligible Improvements - The exemptions 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 the ordinance specifically granting a business an exemption as provided in Section 7.G. herein.

C. Eligible Improvements - Any exemption granted may apply up to one hundred (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 under either of the following two conditions: (1) by **January 1st** of the year in which the application will be filed as provided in Sections 5.F.1. and 7.G herein; or (2) after the effective date of the ordinance specifically granting

a business an exemption as provided in Sections 5.F.2 and 7.G. herein. Property acquired to replace existing property shall not be considered to facilitate a business expansion.

D. Exemption Period - The exemption may be for a period up to ten (10) years from the date the Board adopts the ordinance granting the exemption.

E. Land - No exemption shall be granted for the land upon which new or expanded businesses are to be located.

F. Completed or Planned Improvements - A business may file an exemption under either of the following two conditions:

1. Completed Improvements - No exemption shall be granted to any existing building or an addition to an existing building unless such building or addition was completed within the 12-month period (**January 1st to December 31st**) preceding the date of application.

2. Planned Improvements - The only exception to Section 5.F.1. above is when a business submits an application and the building 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 the filing of 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 the adoption of the ordinance granting the exemption.

G. Retail - No exemption shall be granted to any retail operation.

H. Taxes Applicable - The exemption applies only to taxes levied by Palm Beach County. The exemption does not apply to taxes levied by a municipality, 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 State Constitution.

I. Business Maintenance, Annual Report & Annual Exemption Renewal Application - The ability to receive an exemption for the period granted is conditioned upon:

1. Business Maintenance - The applicant's ability to maintain the new business or the expansion of an existing business as defined in Section 4 of this Ordinance throughout the entire period; and

2. Annual Report - The Applicant shall be required to submit a report on an annual basis to the Board evidencing satisfaction of this condition. The report shall be submitted to the Board on or before **March 1st** for each year the exemption is in effect. The report shall be made in such form as attached hereto and made a part hereof as Exhibit "B". The Board or its designee shall provide the applicant with a blank copy of the annual report no later than **December 1st**, which will be ninety (90) days prior to the **March 1st** filing deadline; and

3. Annual Renewal Exemption Application - The applicant shall be required to submit an annual exemption renewal application and employee roster to the Property Appraiser on

or before **March 1st** of each year for which the exemption was granted evidencing satisfaction of this condition. The renewal application shall be made in such form as attached hereto and made a part hereof as Exhibit "C".

4. Continued Performance - Any business granted an exemption shall furnish to the Board or its designee, such information/report as the Board or its designee may reasonably deem necessary for the purpose of determining continued performance by the business of the conditions stated in this Ordinance and the representations made in the application process.

SECTION 6. Application for Exemption

- A. Application - Any eligible person, firm, partnership or corporation which desires an exemption shall file with the Board a written application prescribed by the Department (DR-418), a copy of which is attached hereto and incorporated herein as Exhibit "A".
- B. Required Information - The application shall request that the Board adopt an ordinance granting the applicant the exemption and shall include, at a minimum, the following:
 1. The name and location of the new business or the expansion of an existing business;
 2. The name of the owner(s) of the new business or the expansion of an existing business;
 3. A description of the improvements to the real property for which an exemption is requested and the date of commencement of construction of such improvement;
 4. 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;
 5. Proof, to the satisfaction of the Board, that the applicant meets the criteria for a new business or for an expansion of an existing business as defined in Section 4 hereof;
 6. The following information:
 - (a) the current number of full-time/equivalent (FTE) and seasonal employees of the expanding business; the total number of FTE and seasonal jobs to be created and maintained by the new or expanding business, and the period (total number of years) needed to fill all of the new jobs;
 - (b) the expected number of employees who will reside in Palm Beach County;
 - (c) the average annual wage of the new jobs, identifying the average annual salary with executives salaries included and with executives salaries excluded;
 - (d) the type of industry or business;
 - (e) the environmental impact of the business;
 - (f) the current and anticipated volume (in dollars) of business or production, and the percentage of total product sales outside Palm Beach County;
 - (g) whether relocation or expansion would occur without the exemption;
 - (h) the cost and demand for services;
 - (i) the source of supplies (local or otherwise);

(j) whether the business will be/is located in a community redevelopment area and/or enterprise zone; and

(k) the total length (number of years) of the exemption period being requested.

7. Other information deemed necessary by the Board.

- C. Job Creation & Maintenance – A business will be required to commence the creation of full-time jobs within the period of the exemption and to maintain any newly filled jobs for its facility in Palm Beach County at minimum through to the expiration of the exemption granted by the Board. If a business requires additional time beyond the date of the expiration of the exemption to satisfy all new job creation, maintenance and salary commitments identified in the application, it will be necessary for the business and the County to enter into a separate agreement which will obligate the business to comply fully with those commitments.
- D. Community Redevelopment Agency - 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 overseeing such area shall be provided a copy of the application for review and comment. Input from the community redevelopment agency will be considered in deciding whether an application is to be granted. Should a community redevelopment agency object to the grant of an exemption, the agency may submit said objection in the form of a duly adopted resolution to the Board for its consideration.
- E. Filing Deadline - The application shall be filed on or before **March 1st** of the year in which an exemption is requested.
- F. Review - Upon submittal of the application, the County Administrator or his designee shall review same and, within ten (10) days of submission, notify the applicant of any facial deficiencies.
- G. Agreement – A business will be required to enter into an agreement with the Board to ensure that the business will satisfy its job creation and maintenance obligations.

SECTION 7. Board of County Commissioners Consideration of Application

- A. Action Within 90-Day Period - The Board shall take action on the application, including the enactment of the required ordinance should the Board decide to grant the application, within ninety (90) days of **March 1st**. During this 90-day period, interested agencies and parties shall have an opportunity to review and comment on the application. Time is of the essence in consideration of the application.
- B. Eligibility Threshold - The threshold for eligibility is whether the business meets the definition of a new business or of an expansion of an existing business as provided in Section 4 of this Ordinance, and one which is not an ineligible business or industry as defined in Paragraph D. of this Section and Section 5.G. of this Ordinance.
- C. Economic Benefit - The next level to determine eligibility is the Board's consideration of the information in the application to determine whether the economic benefit test is met.
- D. Environmental - Any existing business in violation of any federal, state, or local law or regulation

governing environmental matters is not eligible for an exemption.

E. Property Appraiser Review - Before the Board takes action on an application, the Board shall deliver a copy of same to the Property Appraiser for review. After careful consideration, the Property Appraiser shall report to the Board the fiscal impact of granting the exemption.

F. Property Appraiser Report - The Property Appraiser's report shall include the following:

1. The total revenue available to the County 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 revenue lost to the County 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 County 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. Ordinance - After consideration of the application and the report of the Property Appraiser on the application, the Board may choose to adopt an ordinance granting the exemption to a new or expanding business. If a community redevelopment agency submits a resolution objecting to the granting of an application, adoption of an ordinance granting an exemption in the objecting community redevelopment area shall require an extraordinary vote of the Board. If granted, the ordinance shall include the following information:

1. The name and address of the new business or the expansion of an existing business;
2. The name of the owner(s) of the new business or the expansion of an existing business;
3. The total amount of revenue available to the County from ad valorem tax sources for the current fiscal year, the total amount of the revenue lost to the County for the current fiscal year by virtue of exemptions currently in effect, and the estimated amount of revenue attributable to the exemption granted to the new or expanding business;
4. The expiration date of the exemption, which is (10) ten years or less (depending upon the duration of the exemption granted) from the date the Board enacts the ordinance granting the exemption; and
5. A finding that the business meets the definition of a new business or an expansion of an existing business as set forth in Section 4 herein.

H. Ownership - The business granted an exemption shall be required to inform the Board in writing

within ten (10) days as to any changes in ownership of the business granted an exemption.

Failure of the business granted an exemption to notify the Board in writing of any such changes in ownership is cause for revocation of the ordinance granting the exemption.

- I. Precedent - 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 Board on a case-by case basis for each application, after consideration of the application and the Property Appraiser's report on the application.

SECTION 8. Application Fee

A non-refundable fee in the amount of \$1,000.00 shall be charged for processing the Economic Development Ad Valorem Tax Exemption Application and preparing, implementing, and monitoring any Exemption Ordinance adopted by the Board.

SECTION 9. Revocation of Exemption/Recovery of Funds

- A. Board - Should any new business or expansion of an existing business fail to file the annual report with the Board on or before **March 1st** of each year the exemption has been granted as required in Sections 5. 1.1. and 5.1.2., 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 Board during the application process, including the creation and maintenance of the total number of new jobs identified by a business in the application (Exhibit "A"), the Board may adopt an ordinance revoking the ad valorem tax exemption.
- B. Revocation - The revocation of an ordinance may occur for a business that fails to fulfill its obligations as provided for under the ordinance granting the business an exemption after the expiration of this Ordinance on August 31, 2014. The effective date for revocation of the exemption will be identified in the ordinance.
- C. Notification - Upon revocation, the Board shall immediately notify the Property Appraiser.
- D. Recover Taxes - For any year that taxes may have been exempted and the Board finds that the business was not entitled to the exemption, such taxes may be recovered and the Property Appraiser will assist the Board to recover any taxes exempted.
- E. Property Appraiser - Should any new business or expansion of an existing business fail to file the annual exemption renewal application with the Property Appraiser on or before **March 1st** of each year the exemption has been granted as required in Sections 5. 1.3. and in accordance with Chapter 196.011(1)(a), Florida Statutes, 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 Chapter 196.193(5), Florida Statutes.
- F. Reapply - Nothing herein shall prohibit a business from reapplying for an ad valorem tax exemption pursuant to State law.

SECTION 10. Appeals

The decision of the Board not to grant an exemption to a particular business is subject only to

judicial review.

SECTION 11. Applicability

This Ordinance shall be applicable in all areas of Palm Beach County where Palm Beach County is the taxing authority. For purposes of enforcement and revocation, this Ordinance shall survive the expiration date of August 31, 2014.

SECTION 12. Inclusion in the Code of Laws and Ordinances

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

SECTION 13. Severability

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.

SECTION 14. Repeal of Laws in Conflict

All local ordinances in conflict with any provision of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 15. Effective Date

The provisions of this Ordinance shall become effective upon filing with the Secretary of State .

APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach County, on

the 15th day of February, 2005.

ATTEST:
CLERK & COMPTROLLER OF PALM BEACH COUNTY, FLORIDA
SHARON R. BOCK BY: [Signature] BOARD OF COUNTY COMMISSIONERS

BY: Judith Crockett Deputy Clerk BY: Tony Masilotti Chairman

APPROVED AS TO TERMS AND CONDITIONS: APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: Veronica Baker Director of Economic Development By: [Signature] Assistant County Attorney

EFFECTIVE DATE: Filed with the Department of State on the 21st day of February, 2005.