

ORDINANCE NO. 05-2020

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES TO CREATE A NEW ARTICLE V ENTITLED “ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTIONS”; PROVIDING FOR SECTION 28-251, ENTITLED “TITLE”; PROVIDING FOR SECTION 28-252, ENTITLED “INTENT”; PROVIDING FOR SECTION 28-253, ENTITLED “DEFINITIONS”; PROVIDING FOR SECTION 28-254, ENTITLED “ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION ESTABLISHED”; PROVIDING FOR SECTION 28-255 ENTITLED “APPLICATION FOR EXEMPTION”; PROVIDING FOR SECTION 28-256, ENTITLED “CONSIDERATION OF APPLICATION”; PROVIDING FOR SECTION 28-257, ENTITLED “APPLICATION FEE”; PROVIDING FOR SECTION 28-258, ENTITLED “REVOCATION OF EXEMPTION; RECOVERY OF FUNDS”; PROVIDING FOR SECTION 28-259 ENTITLED “APPEALS”; PROVIDING FOR SECTION 28-260, ENTITLED “SURVIVAL”; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida (“Town”) is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, Article VII, Section 3, of the Constitution of the State of Florida and Florida Statutes §196.1995 empowers the municipality to grant economic development ad valorem tax exemptions provided the electors of the municipality, affirmatively vote in a referendum to authorize such exemptions; and

WHEREAS, in a referendum which was held on March 17, 2020, the electors of the Town authorized the Town Commission to grant economic development ad valorem tax exemptions provided a business qualifies for same and;

WHEREAS, It is the intent of the Town Commission by enacting this article to provide an incentive to those new or expanded businesses which, in accordance with the statute are eligible, and which would make a positive contribution to the economy of the Town by providing new jobs and improvements to real and personal property within the Town; and

WHEREAS, It is the intent of the Town Commission to promote the economy by creating jobs in the municipality in such a way so as not to disadvantage existing businesses while recognizing that productive competition assists in economic growth.

WHEREAS, the Town Commission desires to provide incentives to businesses of diverse industries which would have a positive impact on the economy of the Town; and

WHEREAS, the Town Commission declares that the provision of ad valorem tax exemptions pursuant to this article serves the public purpose of fostering economic growth in the Town which will benefit of the Town's residents and its business owners; and

WHEREAS, the Town Commission will consider applicants for exemptions in a rational, nondiscriminatory basis.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The whereas clauses are incorporated herein as true and correct and as the legislative findings of the Town Commission.

Section 2. Chapter 28, Article V, to be entitled "Economic Development Ad Valorem Tax Exemption" and Sections 28-251, 28-252, 28-253, 28-254, 28-255, 28-355, 28-256, 28-257, 28-258, 28-259, 28-260 and 28-262 of the Code of Ordinances of the Town of Lake Park, Florida are hereby created to read as follows:

ARTICLE V. ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION

Sec. 28-251. Title.

This article shall be known and cited as the "Economic Development Ad Valorem Tax Exemption Ordinance of Lake Park, Florida."

Sec. 28-252. Intent.

It is the intent of the Town Commission by enacting this article to provide an incentive which benefits a new business which agree to locate within the Town, or an existing business in the Town which expands, provided such business meets the statutory intent of Section 196.1995, F.S.

It is the intent of the Town Commission by enacting this article to promote the Town's economy by creating jobs in the Town.

It is the intent of the Town Commission by enacting this article to provide incentives to businesses of diverse industries which would have a positive impact on the Town's economy.

Sec. 28-253. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in current Florida Statutes and the Florida Administrative Code. Should any of these definitions contained in Florida Statutes, or the Florida Administrative Code be amended, the definitions herein shall be interpreted such that they conform to the amended definitions.

Applicant: Any person, firm, partnership, or corporation who files an application with the commission seeking an economic development ad valorem tax exemption.

Commission: The town commission of Lake Park, Florida.

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.

Department: The Florida Department of Revenue.

Enterprise zone: An area designated as an enterprise zone pursuant to F.S. 290.0065.

Expansion of an existing business: As defined in F.S. § 196.012(16), an expansion of an existing business means:

- (1)
 - a. A business establishing 10 or more jobs in the Town which would employ 10 or more full-time employees, 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 25 or more jobs in the Town which would employ 25 or more full-time employees, the sales factor of which, as defined by F.S. § 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 50 % inside the Town for each year the exemption is claimed; or
 - c. A business occupying office space in the Town which establishes 50 or more jobs employing 50 or more full-time employees; or
 - d. Any business located in an enterprise zone (pursuant to F.S. § 290.0065) which creates new full-time jobs in accordance with the business disciplines identified above.

(2) The expansion of an existing business, including a business located in an enterprise zone, which increases operations on a site which is co-located with a commercial or industrial operation owned by the same business, and which results in a net increase in employment of not less than 10 %

or an increase in productive output of not less than 10 %.

Goods: All personality when purchased primarily for personal, family, or household use, but not including personality sold for commercial or industrial use.

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

New business: As defined in F.S. § 196.012(15), a new business means:

- (1)
 - a. A business establishing 10% or more jobs to employ 10% or more full-time employees in the Town and 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 25 or more jobs and which employs 25 or more full-time employees in the Town, the sales factor of which, is defined by F.S. § 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 50% in the Town for each year the exemption is claimed; or
 - c. An office space in the Town which is leased or owned and used by a corporation newly domiciled in the Town; provided such office space houses 50 or more full-time employees of such corporation; or
 - d. Any business located in an enterprise zone (pursuant to F.S. § 290.0065) 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.

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.

Sales factor: As primarily defined in F.S. § 220.15(5), 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.

Sec. 28-254. 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 commission.

(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 subsection 28-257(g) herein.

(c) Eligible improvements. Any exemption granted by the Town may apply up to 100% of the assessed value of the improvements the business has made to real property for the use of by the business and all tangible personal property of such business, or up to 100% 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 the 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 1 of the year in which the application will be filed as provided in subsections 28-255(f)(1) and 28-257(g) herein; or

(2) After the effective date of the ordinance specifically granting a business an exemption as provided in subsections 28-255(f)(2) and 28-257(g) herein.

Property acquired to replace existing property shall not be considered to facilitate a business expansion.

(d) Exemption period. The exemption period may extend for up to 10 years from the date the commission adopts the ordinance granting an exemption.

(e) Land. No exemption shall be granted for the land upon which a new or an expanded businesses is 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 1 to December 31) preceding the date of an application.

(2) Planned improvements. The only exception to subsection (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 business unless it otherwise qualifies for an exemption as set forth in this article.

(h) Taxes applicable. The exemption applies only to taxes levied by the Town. The exemption does not apply to taxes levied by a county, school district, or water management district, stormwater district, or other special taxing districts 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) Business maintenance, annual report and annual exemption renewal application. The entitlement to an exemption for the period granted is conditioned upon:

(1) Business maintenance. The maintenance of the new business or the expansion of an existing business as defined in section 28-254 throughout the entire period of the exemption granted; and

(2) Annual report. The applicant shall annually submit to the commission a report which demonstrates that it remains eligible for the exemption. The report shall be submitted to the commission on or before March 1 for each year the exemption is in effect. The report shall be made in such form as prescribed by the Community Development Department. The Community Development Department shall provide the applicant with an annual report form no later than December 1.; and

(3) Annual renewal exemption application. The applicant shall submit an annual exemption renewal application and employee roster to the Property Appraiser on or before March 1 evidencing satisfaction of this condition. The renewal application shall be made in such form as prescribed by the Community Development Department.

(4) Continued performance. Any business granted an exemption shall furnish to the commission or

its designee, such information as the commission or its designee may reasonably deem necessary for the purpose of determining continued performance by the business of the conditions stated in this article and the representations made in the application process.

Sec. 28-255. Application for exemption.

(a) Application. Any eligible person, firm, partnership or corporation which desires an exemption shall file with the Town a written application on a form provided by the Community Development Department.

(b) Information required to evaluate the benefit to the Town. In order to evaluate the economic impact upon the town, the applicant shall, at a minimum, submit information regarding the following criteria:

- (1) The name and location of the new business or of an existing business which is proposing an expansion;
- (2) The name of the owner(s) of the eligible new or existing business;
- (3) A description of the improvements to the real property for which an exemption is requested and the date of the expected 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 expected to be purchased;
- (5) Proof, to the satisfaction of the commission, that the applicant meets the criteria for a new business or for the expansion of an existing business as defined in section 28-253 hereof;
- (6) 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;
- (7) The expected number of employees who will reside in the municipality;
- (8) The average annual wage of the new jobs, identifying the average annual salary with executives salaries included and with executives' salaries excluded;
- (9) A detailed description of the type of industry or business;
- (10) The environmental impact of the business;
- (11) The current and anticipated volume (in dollars) of business or production, and the percentage of total product sales outside of the municipality;
- (12) Whether relocation or expansion would occur without the exemption;
- (13) The cost and demand for services which are generated by the new business, or the expansion of the existing business;
- (14) The source of supplies (local or otherwise);
- (15) Whether the business will be/is located in a community redevelopment area and/or enterprise zone; and
- (16) The total length (number of years) of the exemption period being requested.
- (17) Other information deemed necessary by the Department to evaluate the applicant's economic impact upon the Town.

(c) Job creation and maintenance. In order to continue to be eligible for the exemption for the period the exemption has been granted, the business must commence the creation of full-time jobs within the period of the exemption and shall maintain those jobs created annually by the business throughout the period of exemption through its expiration. If a business requires time beyond the date of the expiration of the exemption to fulfill its representations regarding new jobs, and any other

criteria identified in the application and relied upon by the Town, the business may propose different terms which shall be reduced to a written agreement with the Town. The agreement will obligate the business to comply fully with those commitments.

(d) *Community redevelopment agency.* If a new business, or an existing business proposes an expansion in the Town's community redevelopment area, the community redevelopment agency shall be provided a copy of the application for its review and comment. The comments of the community redevelopment agency, if any, may be taken into consideration by the commission when deciding whether to grant an application. The comments of the community redevelopment agency may also be in the form of an objection to an application for an exemption.

(e) *Filing deadline.* Any applicant who is seeking an exemption shall file the application on or before March 1 of the year in which an exemption is requested.

(f) *Review.* Upon submittal of the application, the Department of Community Development shall provide an initial review within 10 business days of the applicant's submission of the application and shall notify the applicant of any deficiencies noted as part of its initial review.

(g) *Agreement.* A business will be required to enter into an agreement with the commission to ensure that the business will satisfy its job creation and maintenance obligations.

Sec. 28-256. Consideration of application.

(a) *Action within ninety-day period.* The commission shall consider all complete applications and may take action on an application, including the enactment of an ordinance to grant such applications as it determines to be eligible for an exemption, within 90 days of March 1. During this 90 day period, all interested agencies and parties shall have an opportunity to review and comment on any application under consideration for exemption.

(b) *Eligibility threshold.* The threshold for eligibility is whether the business meets the definition of a new business or for the expansion of an existing business as provided in section 28-253, and one which is not an ineligible business or industry as defined in subsection (d) herein below and subsection 28-255(g).

(c) *Economic benefit.* The next level to determine eligibility is the commission's consideration of the information in the application to determine whether the economic benefit test set forth in 28-255 of this Code has been met.

(d) *Environmental.* An existing business which is in violation of any federal, state, or Town law, rule or regulation governing environmental matters is not eligible for the exemption provided for herein.

(e) *Property appraiser review.* Before the commission takes action on an application, the commission shall deliver a copy of the application to the Palm Beach County Property Appraiser's review of the fiscal impact of the exemption, if granted. The Property Appraiser shall report to the commission the fiscal impact of granting the exemption Within 30 days

(f) *Property appraiser report.* The property appraiser's report shall include the following:

(1) The total revenue available to the Town 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 which would be lost to the Town for the current fiscal year for all 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 municipality 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 which is the subject of an application for exemption 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, the commission may adopt an ordinance granting the exemption. 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 Town from ad valorem tax sources for the current fiscal year, the total amount of the revenue lost to the Town 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) That the exemption expires on the 10 year anniversary date of the commission's enactment of 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 28-253.

(h) Ownership. Any business granted an exemption shall inform the commission in writing within 10 days as to any changes in ownership of the business granted an exemption. The failure of a business which has been granted an exemption to notify the commission in writing of a change 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 commission on a case-by case basis for each application, after consideration of the application and the Property Appraiser's report on the application.

Sec. 28-257. Application fee.

A nonrefundable fee in the amount of \$1,000.00 plus any additional expenses incurred by the Town which may include attorney's fees, ordinance advertising requirements, etc. shall be charged for processing the economic development ad valorem tax exemption application and preparing, implementing, and monitoring any exemption ordinance adopted by the commission.

Sec. 28-258. Revocation of exemption; recovery of funds.

(a) Commission. Should any new business or expansion of an existing business fail to file the annual report with the commission on or before March 1 of each year the exemption has been granted as required in sections 28-255(i)(1) and (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 commission 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," not set out herein, but on file in the office of the municipality clerk), the commission 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 article on March 9, 2030. The effective date for revocation of the exemption will be identified in the ordinance.

(c) *Notification.* Upon revocation, the commission shall immediately notify the property appraiser.

(d) *Recover taxes.* For any year that taxes may have been exempted and the commission finds that the business was not entitled to the exemption, such taxes may be recovered and the property appraiser will assist the commission 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 1 of each year the exemption has been granted as required in subsections 28-255(i)(3) and in accordance with F.S. § 196.011(1)(a), 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).

(f) *Reapply.* Nothing herein shall prohibit a business from reapplying for an ad valorem tax exemption pursuant to state law.

Sec. 28-259. Appeals.

The decision of the Town Commission denying an exemption to a particular business is subject only to judicial review based upon the record of the hearing wherein the application was considered.

Sec. 28-260. Survival.

For purposes of enforcement and revocation, this article shall survive the expiration date of March 17, 2030.

Section 3. 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.

Section 4. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Codification. The sections of the Ordinance may be made a part of the Town Code of Ordinances and may be renumbered or relettered to accomplish such, and the word “ordinance” may be changed to “section,” “article,” or any other appropriate word.

Section 6. Effective Date. This Ordinance shall take effect immediately upon adoption.

Upon First Reading this 6 day of May, 2020, the foregoing Ordinance was offered by Commissioner Flaherty, who moved its approval. The motion was seconded by Commissioner Michaud and being put to a vote, the result was as follows:

| | AYE | NAY |
|---------------------------------|----------|-------------|
| MAYOR MICHAEL O'ROURKE | <u>/</u> | <u> </u> |
| VICE-MAYOR KIMBERLY GLAS-CASTRO | <u>/</u> | <u> </u> |
| COMMISSIONER ERIN FLAHERTY | <u>/</u> | <u> </u> |
| COMMISSIONER JOHN LINDEN | <u>/</u> | <u> </u> |
| COMMISSIONER ROGER MICHAUD | <u>/</u> | <u> </u> |

PUBLISHED IN THE PALM BEACH POST THIS 9 DAY OF May, 2020

Upon Second Reading this 20 day of May, 2020, the foregoing Ordinance, was offered by Commissioner Michaud, who moved its adoption. The motion was seconded by Commissioner Linden and being put to a vote, the result was as follows:

| | AYE | NAY |
|---------------------------------|----------|-------------|
| MAYOR MICHAEL O'ROURKE | <u>/</u> | <u> </u> |
| VICE-MAYOR KIMBERLY GLAS-CASTRO | <u>/</u> | <u> </u> |
| COMMISSIONER ERIN FLAHERTY | <u>/</u> | <u> </u> |
| COMMISSIONER JOHN LINDEN | <u>/</u> | <u> </u> |
| COMMISSIONER ROGER MICHAUD | <u>/</u> | <u> </u> |

The Mayor thereupon declared Ordinance No. 05-2020 duly passed and adopted this 20 day of May, 2020.

TOWN OF LAKE PARK, FLORIDA

BY: [Signature]
Mayor, Michael O'Rourke

ATTEST:

[Signature]
Town Clerk, Vivian Mendez
(To Seal)

FLORIDA

Approved as to form and legal sufficiency:
[Signature]
Town Attorney, Thomas J. Baird