

APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS

FEB 21 2012 CMS/LE

ORDINANCE NO. 2012-05

EFFECTIVE DATE

MAR 02 2012

AN ORDINANCE OF ORANGE COUNTY, FLORIDA, PERTAINING TO EXEMPTIONS FROM AD VALOREM TAXATION; AMENDING CHAPTER 25 OF THE ORANGE COUNTY CODE; ESTABLISHING AN EXEMPTION FROM CERTAIN AD VALOREM TAXATION FOR CERTAIN NEW BUSINESSES AND EXPANSIONS OF EXISTING BUSINESSES; PROVIDING A SHORT TITLE; PROVIDING FOR ENACTMENT AUTHORITY; PROVIDING FINDINGS OF FACT; PROVIDING FOR DEFINITIONS OF TERMS; PROVIDING FOR ESTABLISHMENT OF ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION; PROVIDING FOR AN APPLICATION FOR AN EXEMPTION; PROVIDING FOR BOARD CONSIDERATION OF SUCH APPLICATIONS; PROVIDING FOR AN APPLICATION FEE; PROVIDING FOR CONTINUING PERFORMANCE; PROVIDING FOR BOARD REVOCATION OF EXEMPTION; PROVIDING FOR APPLICABILITY; PROVIDING FOR A SUNSET DATE; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Board of County Commissioners of Orange County believes that local government should support economic growth by providing an incentive for job creation that will lead to the improvement of the quality of life of the residents of Orange 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 certain qualifying new businesses and expansions of existing businesses already situated in Orange County; and

**WHEREAS**, the granting of ad valorem tax exemptions to such businesses will provide Orange County with an additional economic development incentive and enhance the ability of Orange County to compete for new business development within Orange County and retain local businesses with planned expansions which will increase employment opportunities in Orange County; and

**WHEREAS**, local governments are authorized to grant such tax exemptions pursuant to Article VII, Section 3, of the Florida Constitution and Section 196.1995, Florida Statutes, upon the successful passage of an approving referendum; and

**WHEREAS**, the electors of Orange County have authorized the offering of ad valorem tax exemptions to qualified new and expanding businesses in a referendum held on January 31, 2012.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:**

**Section 1. Title.** This Ordinance shall be known as the “Orange County Economic Development Ad Valorem Tax Exemption Ordinance.”

**Section 2. Enactment Authority.** Article VII, Section 3, of the Constitution of the State of Florida and Section 196.1995, Florida Statutes, enable the County to grant economic development ad valorem tax exemptions to certain new businesses and expansions of existing businesses expected to create new jobs after the electors of the County, voting on the question in a referendum, authorize such exemptions. In a referendum held on January 31, 2012, the electors of Orange County authorized the Board to grant economic development ad valorem tax exemptions.

**Section 3. Findings of Fact; Declaration of Intent.**

A. It is a recognized function of local government to promote economic development within its jurisdiction by providing financial incentives that will encourage new businesses to relocate within its jurisdiction and existing businesses to expand, thereby creating employment opportunities that will benefit the entire community.

B. The current economic climate has resulted in a high unemployment rate in Orange County, impacting the quality of life for the citizens of Orange County and the sustainability of local businesses.

C. The Board determines that the granting of economic development ad valorem tax exemptions to new businesses locating in Orange County and to existing businesses expanding in Orange County that meet the guidelines provided in this Ordinance will promote and strengthen

the local economy, will enhance the health and welfare of the citizens of Orange County, and is in the best interests of the County and serves both a county and a public purpose.

D. The Board desires to provide incentives to businesses of diverse industries having a positive impact on the local economy through the creation of greater employment opportunities in Orange 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 Orange County, to the benefit of Orange County's residents and business owners.

E. The granting of or denial of exemptions should be conducted on a rational, non-arbitrary and non-discriminatory basis by the Board in furtherance of the economic development goals of Orange County. Exemptions shall be granted for the purpose of creating new jobs in and economic benefit to the County. To this end, prior to any grant of an exemption, the Board shall consider the factors set forth in this Ordinance. Applications for exemptions will be considered on a case-by-case basis in determining whether sufficient economic benefits are presented.

F. This Ordinance shall expire on January 31, 2022.

**Section 4. Definitions.** The following words, phrases, and terms shall have the meanings set forth below. Except where indicated otherwise, such words, phrases and terms shall have the same meanings attributed to them in the Florida Statutes and the Florida Administrative Code as amended from time to time:

**"Administrator"** means the Economic Development Administrator of the County or such other person designated by the County Administrator.

**"Applicant"** means any person, firm, partnership or corporation who files an Application with the Board seeking an Exemption.

***“Application”*** means a written application for an Exemption on the form prescribed by the Florida Department of Revenue, together with any supplemental form prescribed by the Administrator and such other certificates, representations, documents, data, or additional information requested by the Administrator or the Orange County Property Appraiser from time to time as may be reasonably necessary or useful for the determinations contemplated by this Ordinance.

***“Board”*** means the Board of County Commissioners of Orange County, Florida.

***“Brownfield Area”*** means an area designated as a Brownfield area pursuant to Section 376.80, Florida Statutes.

***“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.

***“Capital Investment”*** means any expenditure for an Expansion of an Existing Business or a New Business to be located in Orange County which can be capitalized under generally accepted accounting principles.

***“Change of Ownership or Control”*** means any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control of more than fifty percent (50%) of the legal entity that owned the property when it was most recently assessed at just value. A change of control is present when a change of a director or directors, general partner, or other controlling person or entity, results in a transfer of control to a successor, or when a lease, contract, or other arrangement transfers control to another person or entity.

**“Community Redevelopment Agency”** means the agency with jurisdiction over an area designated as a community redevelopment area pursuant to Part III, Chapter 163, Florida Statutes.

**“County”** means Orange County, Florida.

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

**“Exemption” or “Economic Development Ad Valorem Tax Exemption”** means an ad valorem tax exemption granted by the Board in its sole and absolute discretion to a Qualified Business pursuant to this Ordinance as authorized by Article VII, Section 3 of the Constitution of the State of Florida and Section 196.1995, Florida Statutes.

**“Exemption Criteria”** means the criteria to be applied by the Board in making its determination as to whether to grant an Exemption, as provided for in Subsection 7 of this Ordinance.

**“Expansion of an Existing Business”** means:

A. 1. A business or organization establishing ten (10) or more new jobs to employ ten (10) or more full-time employees in Orange County, paying an average wage for such new jobs that is above the average wage in the County which:

- a. principally 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. is a Target Industry Business.

2. A business or organization establishing 25 or more jobs to employ 25 or more full-time employees in this County, the sales factor of which for the facility with respect to

which it requests an Exemption is less than 0.50 for each year the Exemption is claimed; provided that such business increases operations on a site collocated with a commercial or industrial operation owned by the same business, or organization under common control with the same business or organization, resulting in a net increase in employment of not less than 10 percent or an increase in productive output of not less than 10 percent.

B. Any business or organization located in an Enterprise Zone or Brownfield Area that increases operations on a site located within the same zone or area collocated with a commercial or industrial operation owned by the same business or organization.

**“Goods”** means all personal property when purchased primarily for personal, family, or household use, but not including personal property sold for commercial or industrial use.

**“Improvements”** means physical changes made to raw land, and structures placed on or under the land surface.

**“New Business”** means:

A. A business or organization establishing ten (10) or more new jobs to employ ten (10) or more full-time employees in Orange County, paying an average wage for such new jobs that is above the average wage in the County which principally engages in any one or more of the following operations:

1. 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
2. is a Target Industry Business.

B. A business or organization establishing twenty-five (25) or more new jobs to employ twenty-five (25) or more full-time employees in Orange County, the sales factor of

which for the facility with respect to which it requests an Exemption is less than 0.50 for each year the Exemption is claimed; or

C. An office space in Orange County owned and used by a business or organization newly domiciled in Orange County; provided that such office space houses fifty (50) or more full-time employees of such business or corporation; provided that such business or organization office first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business or organization.

D. Any business located in an Enterprise Zone or Brownfield Area that first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business or organization.

E. A business that is situated on property annexed into a municipality and that, at the time of the annexation, is receiving an Exemption from the County.

**“Qualified Business”** means either a New Business or an Expansion of an Existing Business, as defined herein, that meets the criteria to be considered for an Exemption.

**“Sales Factor”** means 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.

**“Target Industry Business”** means an Expansion of an Existing Business or a New Business that is engaged in a Business designated, at the time of consideration of an application for Exemption, as a target industry business pursuant to Section 288.106, Florida Statutes.

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

A. **Incentive.** There is herein established an Economic Development Ad Valorem Tax Exemption for ad valorem taxes levied by the County. The Exemption is a local option tax incentive for a Qualified Business which may be granted or refused at the sole and absolute discretion of the Board.

B. **Ineligible Property.** The Exemption shall not apply to Improvements and Tangible Personal Property made or acquired by or for the use of a Qualified Business when such Improvements or Tangible Personal Property have been included on the tax roll prior to the effective date of the ordinance granting the Exemption.

C. **Eligible Property.** At the sole and absolute discretion of the Board, and except as otherwise provided for in this Ordinance, the Exemption may be granted for up to 100 percent of the assessed value of all Improvements made by or for the use of a qualifying New Business and of all Tangible Personal Property of such New Business, or up to 100 percent of the assessed value of all added Improvements made to facilitate the qualifying 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 day the ordinance granting the Exemption is adopted. Exemptions for less than 100 percent of such assessed values may be granted at the sole and absolute discretion of the Board. Property acquired to replace existing property shall not be eligible for the Exemption.

D. **Land.** Land is ineligible for the Exemption.



E. ***Duration of Exemption.*** Each Ordinance granting an Exemption shall state the period of time for which the Exemption shall remain in effect and the expiration date of the Exemption, which may be any period of time up to ten (10) years.

F. ***Applicable Taxes.*** The Exemption shall apply only to ad valorem taxes levied countywide by the County. The exemption shall not apply to taxes levied by a County municipal service taxing unit, municipality, school district, or water management district, or other special district or to taxes levied for the payment of bonds or taxes authorized by a vote of the electors pursuant to Section 9(b) or 12, Article VII of the Florida Constitution.

G. ***Maximum Amount of Annual Exemptions.*** Notwithstanding any other provision of this Ordinance, the total Exemptions granted by the Board for each fiscal year shall not result in an estimated aggregate annual amount of forgone ad valorem tax revenues in excess of two million dollars (\$2,000,000.00), or such other amount approved by a supermajority vote of the entire Board, which amount shall be determined by the Board based on estimates of the revenue lost to the County during the applicable fiscal year by virtue of Exemptions previously granted plus Exemptions under consideration in such applicable fiscal year.

***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. The Application must be filed no later than March 1<sup>st</sup> of the year the Exemption is desired to take effect.

B. ***Review.*** Upon submittal of the Application, the Administrator shall review same and, within 10 days of submission, notify the Applicant of any facial deficiencies. The Administrator shall promptly deliver a copy of the Application, to the Orange County Property Appraiser, who shall promptly notify the Applicant and the Administrator of any additional

information he or she determines to be necessary for adequate consideration of the Application. Complete Applications shall be scheduled for a public hearing before the Board no later than forty-five (45) days following receipt by the Administrator of the Property Appraiser's report provided for in this Ordinance. The Applicant shall be notified of the date and time of the public hearing.

C. ***Agreement.*** As a condition to receiving an Exemption, a Business will be required to enter into an agreement with the County to ensure that the Business satisfies all requirements associated with the creation of jobs in the County, the fulfillment of other representations made in applying for the Exemption and the granting of the Exemption by the Board.

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 Property Appraiser shall promptly so notify the Administrator and 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 by the Board in deciding whether an Exemption is to be granted. If such Community Redevelopment Agency objects to the granting of an Exemption, the Community Redevelopment Agency must submit an objection in writing to the Board for its consideration.

E. ***Additional Submission Requirements.*** An Application for an Exemption shall be submitted in advance of any necessary permit application changing the future land use or changing zoning for proposed sites. In the case of existing sites or facilities where adequate zoning and future land use is in place, an Application shall be submitted prior to application for building permits.

***Section 7. Application Process.***

A. ***Property Appraiser Review and Report.*** Before the Board takes action on an Application, a copy of the Application shall have been delivered to the Property Appraiser for review pursuant to Section 6 of this Ordinance. After receipt and analysis of the Application, and after receipt and analysis of such additional information as the Property Appraiser may have requested in connection with the Application, the Property Appraiser shall provide a report to the Board, which 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 revenue available cannot be determined;

2. The amount of any 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 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, or into neither, which determination the Property Appraiser shall also affix to the face of the Application.

5. Such additional information as the Property Appraiser may elect to submit, including (but not limited to) a description of the data, information, documents, certifications, opinions, and assumptions on which the report is based and on which the Property

Appraiser relied in reaching his/her determinations, the credibility and reliability (or lack thereof) of such data, information, certifications, opinions, and assumptions used by the Property Appraiser in reaching his/her determinations, and caveats that the Property Appraiser may deem important or relevant to the Board's consideration of the Application.

B. **Eligibility Threshold.** The threshold for eligibility is whether the Business meets the definition of New Business or of an Expansion of an Existing Business as provided in this Ordinance.

C. **Ineligible Business.** Any Business in violation of any federal, state, or local law or regulation, including but not limited to, environmental matters, will not be eligible for an Exemption.

D. **Exemption Criteria.** In considering an Application for an Exemption, the Board shall take into account the following factors:

1. the total number of net new jobs to be created by the Applicant;
2. the average annual wage of the new jobs to be created by the Applicant;
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;
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 County; and
7. Any other economic-related characteristics or criteria deemed necessary or relevant by the Board.

The Board may also implement additional criteria or guidelines for determining whether to grant Exemptions and the extent of such Exemptions.

E. **Board Ordinance.** After consideration of the Application, the Property Appraiser's report, input from a Community Redevelopment Agency, if applicable, and such other information it deems relevant, and the evaluation of the Exemption Criteria, the Board may choose in its sole and absolute discretion to enact an ordinance granting an Exemption to the Applicant. If the Board decides to enact such an ordinance, the ordinance shall be enacted in the same manner as any other general ordinance of the County, and shall include the following:

1. The name and address of the New Business or the Expansion of an Existing Business to which the Exemption is granted;
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 revenue lost to the County for the current fiscal year by virtue of Exemptions currently in effect, and the estimated revenue loss to the County for the current fiscal year attributable to the Exemption of the business named in the ordinance;
4. The percentage of assessed value of Improvements and Tangible Personal Property to be exempt from the County's ad valorem tax levies.
5. The period of time for which the Exemption will remain in effect and the expiration date of the Exemption; and
6. A finding that the Business named in the ordinance meets the requirements of Section 196.012(15) or (16), Florida Statutes.

7. A provision conditioning the Exemption upon the execution by the Business of, and the ongoing compliance with, an agreement setting forth, among other things, continuing performance obligations of the Business associated with the creation of jobs in the County, the fulfillment of other representations made in applying for the Exemption and the granting of the Exemption by the Board.

F. ***Precedent; Standard for Consideration of Applications.*** No precedent shall be implied or inferred by the granting of an Exemption. Each Application shall be considered by the Board in its legislative capacity on a case-by-case basis, after considering the Property Appraiser's report on the Application and the exemption criteria set forth herein.

***Section 8. Application Fees.*** By resolution, the Board may establish a nonrefundable fee for processing each Application and preparing, implementing and monitoring any implementing ordinance enacted by the Board.

***Section 9. Continuing Performance.***

A. ***Change in Ownership.***

1. 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. Moreover, the transferee Business shall continue to comply with all Exemption requirements and shall assume in writing all of the obligations of the transferor Business provided for in the agreement required pursuant to this Ordinance.

2. Failure of the Business granted an Exemption to notify the Board of any such changes in ownership is cause for revocation of the Exemption by adoption of an ordinance repealing the Exemption ordinance, at the Board's discretion.

B. **Annual Filings.** The ability to receive an Exemption for the period granted shall be conditioned upon the Applicant's ability to maintain the Qualified Business throughout the entire period. The Applicant shall be required to submit an annual renewal statement and an annual report to the Administrator on or before March 1<sup>st</sup> of each year for which the Exemption was granted. The Applicant shall also timely comply with all filing required pursuant to Section 196.011, Florida Statutes.

1. The annual renewal statement shall certify that the information provided in the original Application has not changed.

2. The annual report shall provide a report on the status of the business, evidencing satisfaction of the business maintenance and continued performance conditions set forth in the Application. The report shall be prepared in substantially the form approved by the Administrator and the Property Appraiser and shall contain such information as the Administrator and Property Appraiser may reasonably deem necessary for the purpose of determining continuing performance by the Business of the conditions provided for in this Ordinance, the ordinance specifically granting the Business an Exemption and the representations made in the Application.

**Section 10. Board Revocation.** Should any Business granted an Exemption pursuant to this Ordinance fail to file the annual renewal statement and/or annual report on or before March 1<sup>st</sup> of each year the Exemption has been granted as required by this Ordinance, fail to continue to meet the definition of a New Business or an Expansion of an Existing Business, fail to timely inform the Board of a change of ownership, fail to file a new Application upon any change in the information provided in the original Application, fail to fulfill any other representation made to the Board during the Application process, and/or fail to comply with any

other requirement provided for in this Ordinance, the Board, may, upon thirty (30) days written notice to the respective Business, adopt an ordinance revoking the Exemption or take such other action with respect to the Exemption as it deems appropriate.

A. **Notification.** Upon revocation, the Board shall immediately notify the Property Appraiser.

B. **Recovery of Taxes.** If it is determined that a Business was not in fact entitled to an Exemption in any year for which the Business received an exemption, the County, Property Appraiser or Tax Collector shall be entitled to recover all taxes not paid as a result of the Exemption for such year or years, plus interest at the maximum rate allowed by law, plus all costs of collection, including, without limitation, reasonable attorney's fees.

C. **Reapplication.** Nothing herein shall prohibit a Business from reapplying for an ad valorem tax exemption pursuant to state law.

**Section 11. Applicability.** This Ordinance shall be applicable in all areas of Orange County where Orange County is the taxing authority.

**Section 12. Review.** The decision of the Board not to grant an Exemption shall not be reviewable by the value adjustment board pursuant to Part I of Chapter 194 of Florida Statutes.

**Section 13. Conflicts.** All ordinances or parts of ordinances in conflict herewith are hereby superseded or repealed to the extent of such conflict.

**Section 14. Sunset Date.** Pursuant to Section 196.1995, Florida Statutes, the Board's authority to grant Exemptions shall expire on January 31, 2022. For purposes of enforcement and revocation of Exemptions, this Ordinance shall survive such expiration date. Such expiration date shall not affect the operation of any Exemption granted under this Ordinance prior to January 31, 2022.



**Section 15. Codification.** Sections 1 through 12 of this Ordinance shall be codified in Chapter 25 of the Orange County Code.

**Section 16. Effective Date.** This ordinance shall become effective as provided by general law.

**ADOPTED THIS 21<sup>st</sup> DAY OF FEBRUARY 2012.**

**ORANGE COUNTY, FLORIDA**  
By: Board of County Commissioners

By: *Teresa Jacobs*  
Teresa Jacobs, County Mayor

**ATTEST:** Martha O. Haynie, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Martha O. Haynie*  
Deputy Clerk

