

**ORDINANCE
No. 2010-10**

AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, PROVIDING FOR THE ESTABLISHMENT OF AN ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION; PROVIDING FOR RATIFICATION; PROVIDING FOR AUTHORITY; PROVIDING FOR DEFINITION OF TERMS; PROVIDING FOR ESTABLISHMENT OF ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION; PROVIDING FOR APPLICATION FOR EXEMPTION; PROVIDING FOR CONSIDERATION OF APPLICATION; PROVIDING FOR ORDINANCE GRANTING EXEMPTION; PROVIDING FOR EXEMPTION AGREEMENT; PROVIDING FOR CONTINUING PERFORMANCE; PROVIDING FOR REVOCATION OF EXEMPTION; PROVIDING FOR APPLICABILITY; PROVIDING FOR A SUNSET DATE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE UPON APPROVAL OF THE ELECTORS OF THE CITY OF FELLSMERE.

WHEREAS, pursuant to Article VII, Section 3 of the State Constitution and in accordance with Chapter 166 and Section 196.1995, Florida Statutes municipalities are authorized and empowered to adopt an ordinance relating to economic development ad valorem tax exemptions, after the electors of the municipality, voting on the question in a referendum, authorize the adoption of such ordinance; and

WHEREAS, an important function of local government is the promotion of a strong local economy by providing financial incentives that will encourage new businesses to locate and existing businesses to expand within its jurisdiction, thereby creating new jobs, improvements to real property, and additions to tangible personal property; and

WHEREAS, the health, welfare and general well-being of the citizens of the City of Fellsmere, Florida (“City”) will be enhanced by the location of new businesses and the expansion of existing businesses within the City; and

WHEREAS, the City Council determines that the granting of economic development ad valorem tax exemptions to new businesses locating in the City and to existing businesses expanding in the City will promote and strengthen the local economy and thereby enhance the health, welfare and general well-being of the citizens of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. RATIFICATION. The above recitals are hereby ratified, adopted and incorporated herein as legislation findings of the City Council.

SECTION 2. AUTHORITY. This Ordinance is being adopted pursuant to Article VII, Section 3, Constitution of the State of Florida, Chapter 166, Part I, and Section 196.1995 Florida Statutes (2009 as amended).

SECTION 3. DEFINITION OF TERMS. The following words, phrases, and terms shall have the meanings set forth below. To the extent that such meanings incorporate provisions of Florida Statutes, such meanings are intended to incorporate the provisions of Florida Statutes, as amended from time to time.

- a. Applicant – Any person or entity who files an application requesting an Economic Development Ad Valorem Tax Exemption pursuant to this Ordinance.
- b. Application – A written application on the form prescribed by the Department, together with any supplemental form prescribed by the City of Fellsmere and any additional information requested by the City.
- c. Brownfield Area – An area designated as a brownfield area pursuant to section 376.80, Florida Statutes.
- d. Business – An activity engaged in by any person or entity, with the object of private or public gain, benefit or advantage, either direct or indirect.
- e. City – City of Fellsmere, Florida.
- f. Council – The City Council of the City of Fellsmere, Florida.
- g. Department – The Florida Department of Revenue.
- h. Director – The City of Fellsmere Community Development Director, or his/her designee.
- i. Exemption or Economic Development Ad Valorem Tax Exemption – An ad valorem tax exemption granted by the Council in its discretion to a qualifying New Business or Expansion of an Existing Business pursuant to this Ordinance, and as authorized by Article VII, Section 3 of the Constitution of the State of Florida and Section 1961995, Florida Statutes.
- j. Expansion of an Existing Business –
 - 1) A Business establishing ten (10) or more jobs to employ ten (10) or more full-time employees in the City, 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
 - 2) A Business establishing twenty-five (25) or more jobs to employ twenty-five (25) or more full-time employees in the City, the sales factor of which, as defined in section 220.15(5), Florida Statutes, 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, 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; or
 - 3) Any business located within a Brownfield Area that increases operations on a site collocated with a commercial or industrial operation owned by the same Business.
- k. Exemption Agreement – A written agreement entered into between the City and an Applicant receiving an Exemption pursuant to this Ordinance, as described more fully in Section 8 below.
- l. Exemption Ordinance – An ordinance granting an Exemption as described more fully in Section 7 below.
- m. Exemption Requirements – All requirements and conditions that must be satisfied for the granting and continuation of an Exemption, including those set forth in general law, this Ordinance, the Exemption Ordinance, and the Exemption Agreement.
- n. Improvements – Physical changes made to real property consisting of structures or other improvements placed on or under the land surfaces.

- o. New Business –
 - 1) A Business establishing ten (10) or more jobs to employ ten (10) or more full-time employees in the City, 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
 - 2) A Business establishing twenty-five (25) or more jobs to employ twenty-five (25) or more full-time employees in the City, the sales factor of which, as defined in section 220.15(5), Florida Statutes, for the facility with respect to which it requests an Exemption is less than 0.50 for each year the Exemption is claimed; or
 - 3) An office space in this state owned and used by a corporation newly domiciled in this state; provided such office space houses 50 or more full-time employees of such corporation; provided that such Business or office first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same Business; or
 - 4) Any Business located in a Brownfield Area that first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same Business; or
 - 5) A Business that is situated on property annexed into the City and that, at time of the annexation, is receiving an economic development ad valorem tax exemption from the county under Section 196.1995, Florida Statutes.
- p. Real Property – Shall have the meaning set forth in section 192.001(12), Florida Statutes.
- q. Sales Factor – The sales factor is a fraction the numerator of which is the total sales of the Applicant in this State during the taxable year or period and the denominator of which is the total sales of the Applicant everywhere during the taxable year or period, as defined in section 220.15(5), Florida Statutes.
- r. Tangible Personal Property – Shall have the meaning set forth in section 192.001(11)(d), Florida Statutes.
- s. Violation of Law – A violation of any federal, state, or local law that, in the sole discretion of the Council, is sufficiently serious that it would not be in the best interests of the citizens of the City that the Business be granted or continue to receive the benefits of an Exemption.

SECTION 4. ESTABLISHMENT OF ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION.

- a. Subject to the remaining provisions of this Ordinance, there is hereby established an Economic Development Ad Valorem Tax Exemption for certain ad valorem taxes levied by the City. The Exemption is a local option tax incentive for a qualifying New Business or Expansion of an Existing Business that may be granted or refused at the sole discretion of the Council.
- b. At the sole discretion of the Council, the Exemption may be granted for (i) 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, and (ii) up to one hundred (100%) percent of the assessed value of all added improvements to Real Property made to facilitate Expansion of an Existing Business and 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 Exemption

Ordinance is adopted.

- c. The term of the Exemption shall be up to ten (10) years, as set forth in the Exemption Ordinance; provided, however, that the continuation of the Exemption from year to year shall be contingent upon the Applicant's continued compliance with the Exemption Requirements.
- d. The Exemption shall not apply to improvements to Real Property or to Tangible Personal Property that were included on the tax rolls prior to the effective date of the Exemption Ordinance.
- e. Property acquired to replace existing property shall not be considered to facilitate an Expansion to an Existing Business.
- f. No exemption shall be granted for the land upon which a New Business or Expansion to an Existing Business is to be located.
- g. Any Exemption granted for a New Business or Expansion to an Existing Business is transferable between businesses, provided, the transferee Business (i) continues to comply with all Exemption Requirements; and (ii) assumes in writing all of the obligations of the transferor Business under the Exemption Agreement.
- h. The Exemption shall apply only to taxes levied by the City, except that the Exemption shall not apply to taxes levied for the payment of bonds, or to taxes authorized by a vote of the electors pursuant to Section 9(b) or Section 12 of Article VII of the Constitution of the State of Florida.
- i. The Exemption shall not be available to any Business that, 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.
- j. The decision of the 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.

SECTION 5. APPLICATION FOR EXEMPTION.

- a. Any Business requesting an Exemption shall file an Application with the City of Fellsmere Community Development Department.
- b. The Application must be filed no later than March 1 of the year in which the Exemption is desired to take effect.
- c. There shall be no fee for filing the Application.
- d. At a minimum, the Application shall contain 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 and cost estimate of the Improvements to the Real Property for which an Exemption is required, and the date of intended or actual commencement of construction of such Improvements;
 - 3) A description and estimated cost 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 Council, that the Applicant meets the criteria for a New Business or Expansion of an Existing Business as defined herein.
 - 5) Other information as deemed necessary by the Council or the City Manager or his/her designee.

SECTION 6. CONSIDERATION OF APPLICATION.

- a. Within ten (10) days of receipt of a complete Application, the Director shall review the Application and determine whether it facially meets all requirements to qualify for an Exemption. If the Director determines that the Application facially does not meet all requirements to qualify for an Exemption, the Director shall notify the Applicant in writing and the Applicant will have thirty (30) days from the date of such notice to appeal the Director's determination directly to the Council.
- b. If the Director determines that the Application facially does meet all requirements to qualify for an Exemption, the Director shall promptly deliver a copy of the Application to (1) the Property Appraiser who, within thirty (30) days of receipt, shall provide a report as set forth in subsection (c) below, (2) the Indian River County Economic Development Council which, within thirty (30) days of receipt, shall provide written comments, if any, (3) Indian River County Community Development Department which, within thirty (30) days of receipt, shall provide written comments, if any, and (4) if applicable, any Community Development or Redevelopment Agency, Brownfield Area Advisory Committee, or other such agency or committee having jurisdiction with respect to the subject real property. Within thirty (30) days of receipt, such agency or committee shall provide written comments, if any, to the Director. Within sixty (60) days of receipt of the completed Application, the Director, consulting with other Departments of the City as necessary, shall conduct an analysis of the Application and prepare a written recommendation to the Council.
- c. The Property Appraiser's report 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 revenue available cannot be determined;
 - 2) Any revenue lost to the City for the current fiscal year by virtue of exemptions previously granted under this section, or an estimate of such revenue if the actual revenue lost cannot be determined;
 - 3) An estimate of the revenue which would be lost to the City during the current fiscal year if the Exemption applied for were granted had the property from which the Exemption is requested otherwise been subject to taxation; and
 - 4) A determination as to whether the property for which an Exemption is requested is to be incorporated into a New Business or the Expansion of an Existing Business, as defined in Section 196.012(15) or (16), Florida Statutes, or into neither, which determination the Property Appraiser shall also affix to the face of the Application. Upon the request of the Property Appraiser, the Department shall provide to him/her such information as it may have available to assist in making such determination.
- d. Within thirty (30) days of completion of the reports or comments set forth in subsections (b) and (c) above, the Director shall present the Application to the Council together with the Property Appraiser's report, the Director's analysis and recommendation, and any written comments received. Based upon the materials received, and applying the guidelines set forth in subsection (e) below, the Council shall decide in its sole discretion either to proceed forward toward the adoption of an ordinance granting the Exemption, or to deny the Application.
- e. Any recommendation of the Director or decision of the Council shall take into consideration the following factors:
 - 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 Council, or (iii) a business that 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 local businesses
- 6) The net positive contribution to the local economy.

In addition to the above factors, the Council may consider any other activity or factor that relates to economic development within the City.

SECTION 7. 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 Business or Expansion of an Existing 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 revenues lost to the City for the current fiscal year by virtue of Exemptions currently in effect, and the estimated revenue loss to the City for the current fiscal year attributable to the Exemption of the Business named in the ordinance;
- 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.

SECTION 8. 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 acknowledgement by the Business that the Exemption shall continue to exist only for so long as the Business continues to meet all of the Exemption Requirements, and (2) such other matters required by the City.

SECTION 9. 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 Director which shall certify and, if requested by the Director, contain satisfactory proof that the Business continues to meet all Exemption Requirements.
- 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.

SECTION 10. REVOCATION OF EXEMPTION.

- a. The Council may revoke or revise the Exemption at any time if the Council determines in its sole discretion that (1) the Business no longer meets all of the Exemption Requirements, (2) the Application or any Annual Report contains a material false statement, such that the Exemption likely would not have been granted or continued if the true facts had been known, or (3) the Business is found guilty of a Violation of Law; and
- b. If it is determined that the Business was not in fact entitled to an Exemption in any year for which the Business received and 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.

SECTION 11. APPLICABILITY. This Ordinance shall be applicable throughout the incorporated area of the City.

SECTION 12. SUNSET DATE. Pursuant to Section 196.1995, Florida Statutes, this Ordinance shall expire on November 2, 2020, ten (10) years after the date such authority to grant Exemptions was submitted to the electors of the City voting in a referendum, unless renewed by referendum at a general or special election held as provided in Section 196.1995(7), Florida Statutes. The expiration of the Ordinance shall not affect the continued existence of any Exemption granted prior to November 2, 2020.

SECTION 13. SEVERABILITY. If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall for any reason be held to be unconstitutional, inoperative, or void by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinances, which shall continue in full force and effect; it shall be construed that it is the legislative intent to adopt this Ordinance without the unconstitutional, inoperative or void section, subsection, paragraph, sentence, clause, or phrase. Furthermore, if any provision of this Ordinance is held unconstitutional , inoperative, or void as applied to any person or property, such decision shall not apply to any other person or property.

SECTION 14. CODIFICATION. The provision of this Ordinance may be incorporated into the Code of Ordinances of the City of Fellsmere, Florida, and the word “ordinance” may be changed to “section” , “article”, “chapter”, or other appropriate work, and the sections of the Ordinance may be re-titled, re-numbered or re-lettered, to accomplish such condition.

SECTION 15. EFFECTIVE DATE. This Ordinance shall become effective on November 2, 2010 only if a majority vote “yes” in favor of the authority of the Council to grant property tax exemptions to new businesses and expansions of existing businesses, at the referendum scheduled for November 2, 2010. If a majority vote “no” against such authority, this Ordinance shall be null and void.

The foregoing Ordinance was moved for adoption by Council Member _____ . The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Mayor, Susan P. Adams _____

Council Member Fernando Herrera _____
 Council Member Joel Tyson _____
 Council Member Sara J. Savage _____
 Council Member Daniel Naranjo _____

The Mayor thereupon declared this Ordinance fully passed and adopted this _____ day of _____, 2010.

CITY OF FELLSMERE, FLORIDA

ATTEST:

 Susan P. Adams, Mayor

 Deborah C. Krages, City Clerk

I HEREBY CERTIFY that Notice of the public hearing on this Ordinance was published in the Press Journal, as required by State Statute, that the foregoing Ordinance was duly passed and adopted on the _____ day of _____, 2010, and the first reading was held on the _____ day of _____, 2010, and the public hearing was held on the _____ day of _____, 2010, and the second and final reading was held on the _____ day of _____, 2010.

 Deborah C. Krages, City Clerk