

AN ORDINANCE SUPERSEDING AND AMENDING CHAPTER 22, TAXATION, SUBSECTION 1, FIVE-YEAR TAX EXEMPTION FOR CERTAIN IMPROVEMENTS TO RESIDENTIAL AND COMMERCIAL STRUCTURES, OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE

BE IT ORDAINED, by the Township Council of the Township of West Orange, in the County of Essex, State of New Jersey as follows:

Section 1. Chapter 22, Taxation, Subsection 1, Five-Year Tax Exemption For Certain Improvements To Residential And Commercial Structures, of the Revised General Ordinances of the Township of West Orange is hereby deleted and replaced in its entirety with the following:

§22-1 FIVE-YEAR TAX EXEMPTION FOR IMPROVEMENTS TO RESIDENTIAL AND CERTAIN COMMERCIAL STRUCTURES AND PROVIDING FOR AGREEMENTS FOR PAYMENTS IN LIEU OF TAXES FOR CERTAIN COMMERCIAL AND MULTIFAMILY CONSTRUCTION

§22-1.1 Policy.

The Township of West Orange recognizes that there are residential and commercial areas within its boundaries that are threatened with economic decline. There are, however, various New Jersey statutes which enable municipalities to encourage property owners to improve their properties by offering them temporary relief from a portion of their real estate taxes and to offer incentives to encourage construction of certain commercial and multifamily uses through tax exemptions and payments in lieu of taxes. One such statute is N.J.S.A. 40A:21-1 *et seq.*, the Five-Year Exemption And Abatement Law. This legislation encourages municipalities to offer certain tax incentives to property owners as a means of addressing local problems associated with areas in economic decline. The within section is adopted pursuant to the authority granted by N.J.S.A. 40A:21-1 *et seq.*

§22-1.2 Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

ABATEMENT — Shall mean that portion of the assessed value of a property as it existed prior to construction, improvement or conversion of a building or structure thereon, which is exempted from taxation pursuant to this chapter.

AREA IN NEED OF REHABILITATION — Shall mean all of the Township which has been determined to be an area in need of rehabilitation or redevelopment pursuant to the “Local Redevelopment and Housing Law”, P.L. 1992, c. 79 (C. 40A:12A-1 *et seq.*). Pursuant to Resolution #323-21, adopted December 14, 2021, the entire Township has been designated as an area in need of rehabilitation, pursuant to N.J.S.A. 40A:12A-14.

ASSESSOR — Shall mean the officer of the Township of West Orange charged with the duty of assessing real property for the purpose of general taxation.

COMMERCIAL OR INDUSTRIAL STRUCTURE — Shall mean a structure or part thereof used for the manufacturing, processing or assembling of material or manufactured products, or for research, office, industrial, commercial, retail, recreational, hotel or motel facilities, or warehousing purposes, or for any combination thereof, which the governing body determines will tend to maintain or provide gainful employment within the Township, assist in the economic development of the Township, maintain or increase the tax base of the Township and maintain or diversify and expand commerce within the Township.

COMPLETION — Shall mean substantially ready for the intended use for which a building or structure is constructed, improved or converted.

CONDOMINIUM — Shall mean a property created or recorded as a condominium pursuant to the 'Condominium Act,' P.L.1969, c. 257 (C. 46:8B-1 et seq.).

CONSTRUCTION — Shall mean the provision of a new dwelling, multiple dwelling or commercial or industrial structure, or the enlargement of the volume of an existing multiple dwelling or commercial or industrial structure by more than thirty (30%) percent, but shall not mean the conversion of an existing building or structure to another use.

CONVERSION OR CONVERSION ALTERATION — Shall mean the alteration or renovation of a nonresidential building or structure, or hotel, motel, motor hotel or guesthouse, in such manner as to convert the building or structure from its previous use to use as a dwelling or multiple dwelling.

COOPERATIVE — Shall mean a housing corporation or association, wherein the holder of a share or membership interest thereof is entitled to possess and occupy for dwelling purposes a house, apartment, or other unit of housing owned by the corporation or association, or to purchase a unit of housing owned by the corporation or association.

COST — Shall mean, when used with respect to abatements for dwellings or multiple dwellings, only the cost or fair market value of direct labor and materials used in improving a multiple dwelling, or of converting another building or structure to a multiple dwelling, or of constructing a dwelling, or of converting another building or structure to a dwelling, including any architectural, engineering, and contractor's fees associated therewith, as the owner of the property shall cause to be certified to the governing body by an independent and qualified architect, following the completion of the project.

DWELLING OR DWELLING UNIT — Shall mean a building or a part of a building used, to be used or held for use as a home or residence, including accessory buildings located on the same premises, together with the land upon which such building or buildings are erected and which may be necessary for the fair enjoyment thereof, but shall not mean any building or part of a building, defined as a "multiple dwelling" pursuant to the "Hotel and Multiple Dwelling Law," P.L. 1967, c. 76 (C. 55:13A-1 et seq.). A dwelling shall include, as they are separately conveyed

to individual owners, individual residences within a cooperative, if purchased separately by the occupants thereof, and individual residences within a horizontal property regime or a condominium, but shall not include “general common elements” or “common elements” of such horizontal property regime or condominium as defined pursuant to the “Horizontal Property Act,” P.L.1963, c. 168 (C. 46:8A-1 *et seq.*), or the “Condominium Act,” P.L.1969 c. 257 (C. 46:8B-1 *et seq.*), or of a cooperative, if the residential units are owned separately.

EXEMPTION — Shall mean that portion of the assessor’s full and true value of any improvement, conversion alteration, or construction not regarded as increasing the taxable value of a property pursuant to this chapter.

HORIZONTAL PROPERTY REGIME — Shall mean a property submitted to a horizontal property regime pursuant to the “Horizontal Property Act,” P.L.1963, c. 168 (C. 46:8A-1 *et seq.*).

IMPROVEMENT — Shall mean a modernization, rehabilitation, renovation, alteration or repair which produces a physical change in an existing building or structure that improves the safety, sanitation, decency or attractiveness of the building or structure as a place for human habitation or work, and which does not change its permitted use. In the case of a multiple dwelling, it includes only improvements which affect common areas or elements, or three or more dwelling units within the multiple dwelling. In the case of a multiple dwelling or commercial or industrial structure, it shall not include ordinary painting, repairs and replacement of maintenance items, or an enlargement of the volume of an existing structure by more than thirty (30%) percent. In no case shall it include the repair of fire or other damage to a property for which payment of a claim was received by any person from an insurance company at any time during the three (3) year period immediately preceding the filing of an application pursuant to this ordinance.

MULTIPLE DWELLING — Shall mean a building or structure meeting the definition of “multiple dwelling” set forth in the “Hotel and Multiple Dwelling Law,” P.L.1967, c. 76 (C. 55:13A-1 *et seq.*), and means for the purpose of rehabilitation, improvement or construction the “general common elements” and “common elements” of a condominium, a cooperative, or a horizontal property regime.

§22-1.3 Tax Exemption and Abatement Program For Improvements to Residential Properties, Conversion to Residential Uses and Improvements to Certain Commercial Properties.

- a. There is hereby adopted and provided in the Township of West Orange a five-year tax exemption program pursuant to N.J.S.A. 40A:21-1, *et seq.*, as amended. This program shall apply to all dwellings in the Township and provide for the exemption from real property taxation of the aggregate first twenty-five thousand (\$25,000.00) dollars in Assessor’s full and true value of improvements for each dwelling unit primarily and directly affected by an improvement in any dwelling as defined in this chapter more than twenty (20) years old, as not increasing the value of such property for a period of five (5) years, notwithstanding that value of the dwelling to which such improvements are made is increased thereby. Provided, however, that during the exemption period, the assessment on said dwelling shall not be less than the assessment thereon existing

immediately prior to such improvements, unless an abatement is granted pursuant to subsection b. of this section or there is damage to a dwelling through action of the elements sufficient to warrant a reduction.

- b. Properties for which an exemption for improvements to dwellings is granted pursuant to Section “a” above shall also receive an abatement of seven thousand five hundred dollars (\$7,500) of the assessed value of property receiving the exemption as it existed immediately prior to the improvement for a period of five (5) years.
- c. The program shall also include exemptions for a portion of the assessed valuation of construction of new dwellings or of conversions of other buildings and structures, including underutilized public buildings to dwelling use, or both. In determining the value of real property covered by such an exemption, the Township shall regard thirty (30%) percent of the Assessor's full and true value of the dwelling constructed, or conversion alterations made, as not increasing the value of the property for five (5) years, notwithstanding that the value of the property upon which the construction or conversion occurs is increased thereby.
- d. This program shall also include an exemption for improvements to commercial or industrial structures, which shall be requested on an individual basis for review, evaluation and approval or disapproval by the governing body. In the case of approved exemptions for improvements to commercial or industrial structures, the Assessor shall regard the full and true value of the improvements as not increasing the value of the property for a period of five (5) years, notwithstanding that the value of the property to which the improvements are made is increased thereby. However, during this exemption period the assessment on the property shall not be less than the assessment thereon existing immediately prior to the improvements unless there is damage to the structure through action of the elements sufficient to warrant an exemption.
- e. The program shall also provide for an exemption for improvements to multiple dwellings, or of conversions of other buildings and structures, including underutilized public buildings, to multiple dwelling use, or both, which shall be requested on an individual basis for review, evaluation and approval or disapproval by the governing body. In the case of approved exemptions, in determining the value of real property the Township shall regard up to the Assessor’s full and true value of the improvements or conversion alterations as not increasing the value of the property for a period of five (5) years, notwithstanding that the value of the property to which the improvements or conversion alterations are made is increased thereby. During the exemption period, the assessment on the property shall not be less than the assessment thereon existing immediately prior to the improvements or conversion alterations, unless there is damage to the multiple dwelling through action of the elements sufficient to warrant a reduction.

§22-1.4. Application Procedure.

Applicants for tax exemptions for improvements to commercial or industrial structures or to multiple dwellings, or conversion of other buildings to multiple dwelling use, shall provide the municipal governing body with a completed application setting forth the following:

- a. A general description of the project for which exemption is sought;
- b. A legal description of all real estate necessary for the project;
- c. Plans, drawings and other documents as may be required by the governing body to demonstrate the structure and design of the project;
- d. A statement of the reasons for seeking tax exemption on the project, and a description of the benefits to be realized by the applicant if a tax exemption is granted;
- e. Estimates of the cost of completing such project, which shall include, at a minimum, all items required to accompany an application for a construction permit under the Uniform Construction Code, pursuant to Paragraph 4 of N.J.A.C. 5:23-2;
- f. A statement showing (1) the real property taxes currently being assessed at the project site; (2) estimated tax payments that would be made annually by the applicant on the project during the period of the exemption, and (3) estimated tax payments that would be made by the applicant on the project during the first full year following the termination of the tax exemption;
- g. A description of any lease agreements between the applicant and proposed users of the project, and a history and description of the users' businesses; and
- h. Such other pertinent information as the governing body may require, or as may be required by the assessor.
- i. Such exemptions shall be reviewed, evaluated and approved on an individual basis by the governing body.

§22-1.5. Applications for Tax Exemption and Abatement for New Construction of Commercial and Multifamily Uses.

There is hereby adopted a tax exemption and abatement program pursuant to N.J.S.A. 40A:21-1, *et seq.*, as amended, for construction of commercial or industrial structures and/or multiple dwellings. Such exemptions and abatements shall only be granted after the filing of an application containing all of the information below and the approval of such application by the governing body. All applications pursuant to this subsection 1.5 shall be subject to an agreement to be approved and executed by the governing body. All tax agreements shall be applied for and granted on an individual or project basis, after review, evaluation and approval of each application by the governing body.

Applicants for tax exemption and abatement for new construction of commercial or industrial structures or multiple dwellings shall provide the municipal governing body with a completed application setting forth:

- a. A general description of a project for which exemption and abatement is sought;
- b. A legal description of all real estate necessary for the project;
- c. Plans, drawings and other documents as may be required by the governing body to demonstrate the structure and design of the project;
- d. A description of the number, classes and type of employees to be employed at the project site within two (2) years of completion of the project;
- e. A statement of the reasons for seeking tax exemption and abatement on the project, and a description of the benefits to be realized by the applicant if a tax agreement is granted;
- f. Estimates of the cost of completing such project;
- g. A statement showing (1) the real property taxes currently being assessed at the project site; (2) estimated tax payments that would be made annually by the applicant on the project during the period of the agreement, and (3) estimated tax payments that would be made by the applicant on the project during the first full year following the termination of the tax agreement;
- h. If the project is a commercial or industrial structure, a description of any lease agreements between the applicant and proposed users of the project, and a history and description of the users' businesses;
- i. If the project is a multiple dwelling, a description of the number and types of dwelling units to be provided, a description of the common elements or general common elements, and a statement of the proposed initial rentals or sales prices of the dwelling units according to type and of any rental lease or resale restrictions to apply to any dwellings' units to be restricted for occupancy of low or moderate income housing; and
- j. Such other pertinent information as the governing body may require, or as may be required by the assessor.

§22-1.6. Payment In Lieu of Taxes: Duration of Tax Exemption and Abatement Agreements; Application of Other Laws To Projects; Valuation of Tax-Abated Property For County Tax Apportionment; Copy of Agreement Forwarded To Director of Division of Local Government Services.

- a. During the term of the exemption and abatement granted pursuant to a tax agreement entered under subsection 1.5 hereof, the applicant shall pay the municipality in lieu of full

property tax payments an amount equal to a percentage of taxes otherwise due, according to the following schedule:

1. In the first full year after completion, no payment in lieu of taxes otherwise due;
 2. In the second full year after completion, twenty (20%) percent of taxes otherwise due;
 3. In the third full year after completion, forty (40%) percent of taxes otherwise due;
 4. In the fourth full year after completion, sixty (60%) percent of taxes otherwise due;
 5. In the fifth full year after completion, eighty (80%) percent of taxes otherwise due.
- b. All tax exemptions and abatements approved by the Township of West Orange shall be in effect for no more than the five (5) full tax years next following the date of completion of the project. No tax exemption or abatement shall be granted to become effective after the tax year 2032, unless this chapter is readopted by the governing body.
- c. All projects subject to tax exemption and/or abatement as provided herein shall be subject to all applicable Federal, State and local laws and regulations on pollution control, worker safety, discrimination in employment, housing provision, zoning, planning and building code requirements.
- d. That percentage which the payment in lieu of taxes for a property bears to the property tax which would have been paid had an exemption and/or abatement not been granted for the property shall be applied to the valuation of the property to determine the reduced valuation of the property to be included in the valuation of the Township for determining equalization for County tax apportionment and school aid during the term of the tax agreements covering the properties, and at the termination of an agreement for a property the reduced valuation procedure required under this section shall no longer apply.
- e. Within thirty (30) days after the execution of a tax agreement, the Township of West Orange shall forward a copy of the agreement to the Director of the Division of Local Government Services in the Department of Community Affairs.

§22-1.7. Tax Payments Due Upon Disqualification of Property Owner Prior To Termination of Agreement; Termination of Agreement.

- a. If during any tax year prior to the termination of the tax agreement, the property owner ceases to operate or disposes of the property, or fails to meet the conditions for qualifying, then the tax which would have otherwise been payable for each tax year shall become due and payable from the property owner as if no exemption and abatement had been granted. The governing body of the Township of West Orange shall notify the

property owner and Tax Collector forthwith and the Tax Collector shall within fifteen (15) days thereof notify the owner of the property of the amount of taxes due.

However, with respect to the disposal of the property, where it is determined that the new owner of the property will continue to use the property pursuant to the conditions which qualified the property, no tax shall be due, the exemption and the abatement shall continue, and the agreement shall remain in effect.

- b. At the termination of a tax agreement, a project shall be subject to all applicable real property taxes as provided by State law and regulation and local ordinance; but nothing herein shall prohibit a project, at the termination of an agreement, from qualifying for and receiving the full benefits of any other tax preferences provided by law.

§22-1.8. Determination of Tax Due Upon Completion of Improvement, Conversion or Construction.

The Assessor shall determine, on October 1 of the year following the date of the completion of an improvement, conversion or construction, the true taxable value thereof. Except for projects subject to a tax agreement, pursuant to subsection 1.5, the amount of tax to be paid for the first full tax year following completion shall be based on the assessed valuation of the property for the previous year, minus the amount of the abatement, if any, allowed pursuant to this chapter, plus any portion of the assessed valuation of the improvement, conversion or construction not allowed as an exemption under this chapter. Subject to the provisions of this chapter, the property shall continue to be treated in the appropriate manner for each of the five full tax years subsequent to the original determination by the Assessor.

§22-1.9. Additional Improvement, Conversion or Construction; Eligibility for Exemption and Abatement.

Any additional improvement, conversion or construction, completed on a property granted a previous exemption or abatement pursuant to this chapter during the period in which such previous exemption or abatement is in effect, shall be qualified for an exemption, or exemption and abatement, just as if such property had not received a previous exemption or abatement. In such case, the additional improvement, conversion or construction shall be considered as separate for the purposes of calculating exemptions and abatements pursuant to this chapter, except that the assessed value of any previous improvement, conversion or construction shall be added to the assessed valuation as it was prior to that improvement, conversion alteration or construction for the purpose of determining the assessed valuation of the property from which any additional abatement is to be subtracted. Unless provided by ordinance, no additional exemption or abatement shall be allowed unless a new application is submitted to the governing body and a new agreement has been executed.

§22-1.10. Ineligibility of Property for Which Property Taxes or Penalties Are Due.

No exemption or abatement shall be granted, or tax agreement entered into, pursuant to this chapter with respect to any property for which property taxes are delinquent or remain unpaid, or for which penalties for nonpayment of taxes are due.

§22-1.11. Application; Approval; Recording As Part of Tax Records.

No exemption or abatement shall be granted pursuant to this chapter except upon written application therefor filed with and approved by the Assessor of the Township of West Orange. Every application shall be on a form prescribed by the Director of the Division of Taxation in the Department of the Treasury, and provided for the use of claimants by the governing body of the Township of West Orange, and shall be filed with the Assessor within thirty (30) days, including Saturdays, Sundays and holidays, following the completion of the improvement, conversion alteration or construction. Every application for exemption, or exemption and abatement, within the Township of West Orange which is filed within the time specified, shall be approved and allowed by the Assessor to the degree that the application is consistent with the provision of this chapter or the tax agreement, provided that the improvement, conversion, alteration or construction for which the application is made qualifies as an improvement, a conversion, alteration or construction pursuant to the provisions of this chapter. Such approval of an abatement is subject to the approval of the governing body where required by this chapter, and also subject to approval by them of a tax agreement where required. The granting of an exemption, or exemption and abatement, or tax agreement shall be recorded and made a permanent part of the official tax records of the taxing district, which record shall contain a notice of the termination date thereof.

§22-1.12. Property Taxes Subject To Exemption and Abatement Provisions.

The exemption and abatement of real property taxes provided by the Township of West Orange pursuant to this chapter shall apply to property taxes levied for municipal purposes, school purposes, County government purposes and for the purposes of funding any other property tax exemptions or abatements.

§22-1.13 Notice To Taxpayers of Adoption of Chapter Establishing Exemptions and Abatements Included With Property Tax Bills.

The Tax Collector or other responsible officer designated by the governing body shall include a notice in the mailing of annual property tax bills to each owner of a dwelling located within the Township of West Orange of the availability of the exemptions and abatements that are allowed pursuant to the chapter during the first year following adoption of the chapter.

§22-1.14. Annual Report; Total Amounts of Tax Exempted and Abated.

The governing body shall report, on or before October 1 of each year, to the Director of the Division of Local Government Services in the Department of Community Affairs and to the Director of the Division of Taxation in the Department of the Treasury the total amount of real property taxes exempted and the total amount abated within the municipality in the current tax year for each of the following:

- a. Improvements of dwellings;
- b. Construction of dwellings;
- c. Improvements and conversions of multiple dwellings;
- d. Improvements of commercial or industrial structures;
- e. Construction of multiple dwellings under tax agreements; and
- f. Construction of commercial or industrial structures under tax agreements.

In the case of paragraphs e and f above, the report shall state instead the total amount of payments made in lieu of taxes according to the formula utilized by the municipality, and the difference between that total amount and the total amount of real property taxes which would have been paid on the project had the tax agreement not been in effect, for the current tax year.

Section 2. If any provision of this Ordinance or application thereof, under any circumstances, is held invalid, the invalidity shall not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision(s) or application(s) and to this end the provisions of this Ordinance are severable.

Section 3. All other Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed.

Section 4. This Ordinance shall take effect upon final passage and publication in accordance with law.

ROBERT D. PARISI, MAYOR

**SUSAN McCARTNEY,
COUNCIL PRESIDENT**

**KAREN J. CARNEVALE, R.M.C.
MUNICIPAL CLERK**

INTRODUCED: April 5, 2022

ADOPTED: April 26, 2022