

ORDINANCE NO. 2018-08

AN ORDINANCE OF THE COUNTY OF PINELLAS AMENDING PINELLAS COUNTY CODE SECTION 118-181 ET SEQ., TITLED THE ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION PROCESS, TO REFLECT CHANGES IN THE LAW RELATED TO DATA CENTERS AND ENTERPRISE ZONES, AND OTHER CLERICAL CHANGES; PROVIDING FOR RENUMBERING; PROVIDING FOR ENACTMENT AUTHORITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida has provided for the Economic Development Ad Valorem Tax Exemption program pursuant to Article VII, Section 3, of the Constitution of the State of Florida and Section 196.1995, Florida Statutes, upon the successful passage of a referendum; and

WHEREAS, by a referendum held on August 26, 2014 the electors of Pinellas County have authorized the granting of ad valorem tax exemptions, which may be renewed for a subsequent ten year period if approved by subsequent referendum; and

WHEREAS, subsequent to the referendum Pinellas County amended its Code by creating new sections 118-181 through 118-190 under Chapter 118 Article VI known as the “Pinellas County Economic Development Ad Valorem Tax Exemption Ordinance Process.”

WHEREAS, the Florida Legislature amended § 196.1995, Florida Statutes, to authorize an increased in the length of an economic development ad valorem tax exemption for Data Centers and eliminating references to Enterprise Zones, which change should be reflected in the Code;

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

**Section 1.** TITLE. The Pinellas County Code is hereby amended by creating new sections 118-181 through 118-191 under Chapter 118 Article VI known as the “Pinellas County Economic Development Ad Valorem Tax Exemption Ordinance Process.”

**ARTICLE VI. - PINELLAS COUNTY ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION PROCESS**

**Section 118-181.** ENACTMENT AUTHORITY. Article VII, Section 3, of the Constitution of the State of Florida and Section 196.1995, Florida Statutes, empower Pinellas County to grant Economic Development Ad Valorem Tax Exemptions to New Businesses and Expansions of Existing Businesses after the electors of the County authorize such exemptions. In a referendum held on August 26, 2014, the electors of Pinellas County authorized the Board to grant Economic Development Ad Valorem Tax Exemptions.

Section 118-182. 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 chief administrative officer of Pinellas County, or such person’s designee.

**“Applicant”** means any person, firm, partnership or corporation who files an Application with Pinellas County seeking an Economic Development Ad Valorem Tax Exemption.

**“Application”** means a written application for an Economic Development Ad Valorem Tax Exemption on the form prescribed by the Department, together with any supplemental form prescribed by the Administrator and any additional information requested by the Administrator.

**“Average Annual Employment”** means the sum of the number of Full-Time Equivalent Employees as of the last day of each month of the preceding calendar year divided by twelve (12).

**“Average Annual Wage”** means the sum of the Wages paid to Full-Time Equivalent Employees included in the Average Annual Employment, divided by the Average Annual Employment.

**“Board”** means the Board of County Commissioners of Pinellas 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 Pinellas County which can be capitalized under generally accepted accounting principles.

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

**“Community Redevelopment Area”** means an area designated as a community redevelopment area pursuant to Part III, Chapter 163, Florida Statutes.

**“Data Center”** means a facility that is used exclusively to house and operate equipment that receives, stores, aggregates, manages, processes, transforms, retrieves, researches, or transmits data; or that is necessary for the proper operation of equipment that receives, stores, aggregates, manages, processes, transforms, retrieves, researches, or transmits data.

**“Department”** means the Florida Department of Revenue.

**“Economic Development Ad Valorem Tax Exemption”** or **“Exemption”** means an ad valorem tax exemption granted by the Board in its sole and absolute discretion to a Qualified Business pursuant to this Article 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 this Article.

**“Exemption Ordinance”** means the ordinance adopted by the Board for each Exemption granted.

**“Exemption Resolution”** means the resolution adopted by the Board approving an Exemption subject to adoption of an Exemption Ordinance.

**“Expansion of an Existing Business”** means as set forth in the chart provided in this Article.

**“Full-Time Equivalent Employee”** means a person who is employed by a Business that works at least 35 hours per week and is eligible to receive benefits, including health benefits, through their employer, subject to any eligible vesting periods.

**“High Impact Office Business”** means a business constructing an office space that is expected to have a significant effect on a Brownfield area as a result of its unique or substantial redevelopment impact.

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

**“Manufacturing Business”** means a business or organization which 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.

**“MSTU”** means Municipal Services Taxing Unit.

**“New Business”** means as set forth in the chart provided in this Article.

**“New Job”** means a Full-Time Equivalent Employee which is new to the State of Florida.

**“Property Appraiser”** means the Pinellas County Property Appraiser.

**“Qualifying Average Annual Wage”** means an average annual wage greater than the average annual wage of Pinellas County, as provided annually by the State of Florida.

**“Sales Factor”** means, as defined in 220.15(5), Florida Statutes, 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, Florida Statutes.

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

**“Wages”** means all compensation including salaries, bonuses, commissions and the value of exercised stock options subject to federal income tax, but excluding fringe benefits; provided, stock options shall be included in the calculation of wages in a manner consistent with the program established pursuant to Section 288.106, Florida Statutes.

**“Written Tax Exemption Agreement”** means the agreement executed between the Applicant and the County upon approval of the Board's granting of an Exemption.

Section 118-183. ESTABLISHMENT OF ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION PROCESS.

(A) Incentive. There is herein established an Economic Development Ad Valorem Tax Exemption Process from certain ad valorem taxes levied by the County, specifically County General Fund and/or MSTU taxes, as authorized by law. The Exemption is a local option tax incentive for a qualified New Business or Expansion of an Existing Business which may be granted or refused at the sole and absolute discretion of the Board.

(B) Ineligible Improvements. The Exemption shall not apply to Improvements made by or for the use of a qualified New Business or Expansion of an Existing Business when such Improvements have been included on the tax rolls prior to the effective date of an Exemption Ordinance specifically granting such New Business or Expansion of an Existing Business an Exemption. Improvements made or Tangible Personal Property added or increased before the Exemption Ordinance specifically granting an Exemption is adopted are ineligible, unless they are added or increased following an Exemption Resolution of the Board specifically authorizing such additions subject to an Exemption Ordinance adoption.

(C) Eligible Improvements. At the sole and absolute discretion of the Board, the Exemption may be granted for up to one hundred percent (100%) of the assessed value of all Improvements made by or for the use of a qualifying New Business and/or of all Tangible Personal Property of such New Business, or up to one hundred percent (100%) of the assessed value of all added Improvements made to facilitate the qualifying Expansion of an Existing Business and/or of the net increase in all Tangible Personal Property acquired to facilitate such Expansion of an Existing Business. To qualify for this Exemption, the improvements to real property must be made or the tangible personal property must be added or increased after approval of an Exemption Resolution of the Board, subject to Exemption Ordinance adoption or

on or after the day the Exemption Ordinance is adopted. Property acquired to replace existing property shall not be construed to facilitate a business expansion.

(D) Land. No exemption shall be granted for the land upon which a New Business and/or Expansion of an Existing Business is to be located.

(E) Exemption Period. The Exemption may be for a period of up to ten (10) years, or up to twenty (20) years for a Data Center from the effective date of the Exemption Ordinance specifically granting an Exemption.

(F) Taxes Applicable. The Exemption shall apply only to eligible ad valorem taxes levied by the County, specifically County General Fund and/or MSTU taxes. The Exemption shall not apply to taxes levied by other taxing authorities, 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) Exemption Non-Transferable. Any Exemption granted for a New Business or Expansion of an Existing Business is non-transferable between businesses; provided, however, if the only change to the Business is ownership and all other provisions of the original Application remain in effect, the Exemption may be transferred subject to compliance with this Article. The County shall make the determination of whether an Exemption qualifies as transferable and shall notify the Property Appraiser of any changes in exempt status for a property.

#### Section 118-184. REQUEST FOR EXEMPTION RESOLUTION

(A) Prior to making any improvements, an eligible business that desires an Exemption may file with the County a written request for an Exemption Resolution. The request shall be made in the form prescribed by the County. If the Administrator determines that the business meets the criteria set forth in the Article to be granted an Exemption, an Exemption Resolution shall be scheduled before the Board. The Board may choose in its sole and absolute discretion to adopt an Exemption Resolution.

#### Section 118-185. APPLICATION FOR EXEMPTION ORDINANCE

(A) Application. Any Applicant that desires an Exemption shall file with the County an Application by February 1<sup>st</sup> of the year the Exemption is desired to take effect.

(B) Application Requirements. The Application shall request the adoption of an ordinance granting an exemption from ad valorem taxation pursuant to Section 196.1995, Florida Statutes, and shall include the following information:

1. The name and location of the New Business or the Expansion of an Existing Business;
2. A description of the Improvements to real property for which an Exemption is requested and the date of commencement of construction of such Improvements;

3. A description of the Tangible Personal Property for which an Exemption is requested and the dates when such property was or is to be purchased;

4. Proof, to the satisfaction of the Board, that the Applicant is a New Business or an Expansion of an Existing Business, as defined in Section 196.012, Florida Statutes;

5. The number of jobs the Applicant expects to create along with the Average Annual Wage of the jobs and whether the jobs are for Full-Time Equivalent Employees;

6. The expected time schedule for job creation;

7. Proof of ownership of the improvements to the real property and/or tangible personal property subject to ad valorem taxation must be demonstrated. If the Applicant is not the property owner, proof of liability for the ad valorem taxation on the improvements to the real property and/or tangible personal property must be demonstrated;

8. Other information deemed necessary or appropriate by the County.

(C) Review. Upon submittal of the Application, the County shall notify the Applicant of any insufficient information or deficiencies in the Application. Once the Application is completed, the County shall make an initial determination of whether to recommend to the Board that the Applicant qualifies as a New Business or Expansion of an Existing Business and provide the Application to the Property Appraiser. Applications shall be scheduled for a public hearing before the Board following receipt by the County of the Property Appraiser's report provided for in this Article. The Applicant shall be notified of the date and time of the public hearings(s).

(D) Agreement. As a condition precedent to receiving an Exemption, a Business will be required to enter into a Written Tax Exemption Agreement with the County to ensure that the Business satisfies all requirements associated with the granting and continuation of the Exemption.

#### Section 118-186. CONSIDERATION OF APPLICATIONS.

(A) Property Appraiser Review and Report. Before the Board takes action on an Application a copy of the Application deemed complete by the County shall be delivered to the Property Appraiser. 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 available revenue 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.

(B) Ineligibility Criteria.

1. Any Business, Business owner, officer, partner or principal actor acting on behalf of the Business or Applicant, that has been convicted of a felony or released from custody (within the last ten years) or a misdemeanor involving crimes of violence, dishonesty or false statement (within the last five years) of any federal or state law or regulation is not eligible for an Exemption.

2. For those qualifying Businesses located within those portions of Pinellas County comprising a Tax Increment Finance District for which County General Fund and/or MSTU ad valorem revenues have been pledged, the Board shall only consider applications for a tangible personal property tax Exemption, as allowed by law.

3. Any Business in violation of any federal, state, or local law or regulation, including, but not limited to, environmental laws or regulations, will not be eligible for an exemption.

(C) Exemption Criteria.

1. In making its determination as to whether to grant an Exemption, the County shall consider New Businesses or the Expansion of Existing Businesses, as set forth in the chart below:

**New Business**

<b>Manufacturing</b> A business or organization establishing <b>10 or more</b> New Jobs to employ 10 or more Full-Time Equivalent Employees in this County, paying a Qualifying Average Annual Wage, which 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.
<b>Targeted Industry</b> A business or organization establishing <b>10 or more</b> New Jobs to employ 10 or more Full-Time Equivalent Employees in this County, paying a Qualifying Average Annual Wage, which is a Target Industry Business as defined in 288.106 Florida Statutes.
<b>Business with Out-Of-State Sales</b> A business or organization establishing <b>25 or more</b> New Jobs to employ 25 or more Full-Time Equivalent Employees in this County, the Sales Factor of which, as defined by 220.15(5) Florida Statutes, for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed.

**Office**

An office space in this County owned and used by a business or organization newly domiciled in this State; provided such office space houses **50 or more** Full-Time Equivalent Employees of such business or organization; 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.

**Brownfield Area**

A Manufacturing Business, a Target Industry Business, a Business with a Sales Factor of less than 0.50 or a High Impact Office 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 organization and meets the following criteria:

- Has a minimum Capital Investment in eligible improvements of \$100,000, excluding land; and
- Any New Jobs created have an Average Annual Wage of at least 75% of the Qualifying Average Annual Wage.

### **Expansion of Existing Businesses**

**Manufacturing**

A business or organization establishing **10 or more** New Jobs to employ 10 or more Full-Time Equivalent Employees in this County, paying a Qualifying Average Annual Wage, which 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.

**Targeted Industry**

A business or organization establishing **10 or more** New Jobs to employ 10 or more Full-Time Equivalent Employees in this County, paying a Qualifying Average Annual Wage, which is a Target Industry Business as defined in 288.106, Florida Statutes.

**Business with Out-Of-State Sales**

A business or organization establishing **25 or more** New Jobs to employ 25 or more Full-Time Equivalent Employees in this County, the Sales Factor of which, as defined by as defined by 220.15(5) Florida Statutes, for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; provided that such business increases operations on a site located within the County co-located 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 or sales of not less than 10 percent.

**Brownfield Area**

A Manufacturing Business, a Target Industry Business, or a Business with Sales Factor of less than 0.50 or a High Impact Office Business located in a Brownfield Area, that increases operations on a site located within the same Brownfield Area collocated with a commercial or industrial operation owned by the same business or organization under common control with the same business or organization and meets the following criteria:

- Has a minimum capital investment in eligible improvements of \$100,000, excluding land; and



- Any New Jobs created for Full-Time Equivalent Employees have an Average Annual Wage of at least 75% of the Qualifying Average Annual Wage.

2. In considering any Application for an Exemption, the Board shall take into account the following:

- i. Total number of net new jobs to be created by the Applicant;
- ii. The Average Annual Wage of the new jobs;
- iii. The Capital Investment to be made by the Applicant;
- iv. The type of business or operation and whether it qualifies as a targeted industry;
- v. The environmental impact of the proposed business or operation;
- vi. The extent of commitment to local procurement by Applicant;
- vii. The project being located in a Brownfield Area;
- viii. Any other economic-related characteristics or criteria deemed necessary by the Board.

(D) Exemption Ordinance. After consideration of the Application, the Property Appraiser's report, the Exemption Criteria and such other information it deems relevant, the Board may choose in its sole and absolute discretion to adopt an ordinance granting an Exemption to the Applicant. If the Board decides to adopt such an ordinance, the ordinance shall be adopted 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 Expansion of an Existing Business to which the Exemption is granted;
2. The name of the owners of the New Business or the Expansion of an Existing Business;
3. The total amount of revenue available to the County from the 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 lost to the County for the current fiscal year attributable to the Exemption of the Business named in the Exemption Ordinance;
4. The period of time for which the Exemption will remain in effect and the expiration date of the Exemption, which may be any period of time up to ten (10) years, or up to twenty (20) years for a Data Center;
5. A finding that the Business named in the Exemption Ordinance meets the requirements of Section 196.012, Florida Statutes; and
6. Provisions for transferability of the Exemption.

(E) 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 Applicant, Property Appraisers report, the Exemption Criteria and such other information it deems relevant.

Section 118-187. APPLICATION FEES. By resolution, the Board may establish fees for processing Applications and preparing, implementing and monitoring any Exemption Ordinance enacted by the Board.

Section 118-188. CONTINUING PERFORMANCE.

(A) Change in Ownership. The Business granted the Exemption shall be required to inform the Board in writing within ten days as to any changes in ownership of the Business granted an Exemption. The transferee Business shall comply with all Exemption requirements and shall assume in writing all of the obligations the originating Business provided in the Written Tax Exemption Agreement.

(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.

1. The Applicant shall be required to submit an annual renewal statement and an annual report to the County on or before February 1<sup>st</sup> of each year during the period for which the Exemption was granted.

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

3. 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 Exemption Ordinance and Written Tax Exemption Agreement. The report shall be prepared in a form approved by the County and shall contain information the County may reasonably deem necessary for the purpose of determining continuing performance by the Business.

(C) The Applicant shall comply with all filings required pursuant to Section 196.011, Florida Statutes.

Section 118-189. COUNTY REVOCATION.

(A) Should any Business granted an Exemption pursuant to this Article fail to comply with one or more items below, the County, 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.

1. Fail to file the annual renewal statement and/or annual report on or before February 1<sup>st</sup> of each year during the period for which the Exemption has been granted as required by this Article;

2. Fail to continue to meet the definition of a New Business or an Expansion of an Existing Business;

3. Fail to timely inform the County of a change of ownership;
4. Fail to file a new Application upon any change in the information provided in the original Application;
5. Fail to fulfill any other representation made to the County during the Application process; and/or
6. Fail to comply with any other requirement provided for in this Article.

(B) Notification. Upon revocation of the Exemption, the County shall immediately notify the Property Appraiser.

(C) 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, plus interest at the maximum rate allowed by law, plus all costs of collection, including, without limitation, reasonable attorney's fees.

(D) Reapplication. Nothing herein shall prohibit a Business from reapplying for an Economic Development Ad Valorem Tax Exemption pursuant to state law and this Article.

Section 118-190. APPLICABILITY. This Article shall be applicable in all areas within incorporated and unincorporated Pinellas County.

Section 118-191. SUNSET DATE. Pursuant to Section 196.1995, F.S., this Article shall expire at 12:01 am on August 27, 2024, which is ten (10) years after the effective date such authority to grant Economic Development Ad Valorem Tax Exemptions was approved by the electors of the County voting on the question in a referendum; provided that for purposes of enforcement and revocation, the terms herein shall survive such expiration date. No Business shall be allowed to begin receiving an Exemption after that date; however, the expiration shall not affect the operation of any Exemption for which a Business has qualified under this Article prior to August 27, 2024.

**Section 2.** SEVERABILITY. If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

**Section 3.** INCLUSION IN THE PINELLAS COUNTY CODE. The provisions of this Ordinance shall be included and incorporated in the Pinellas County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Pinellas County Code.

**Section 4.** AMENDMENT OF PROPOSED ORDINANCE AT PUBLIC HEARING. Any section, subsection, sentence, clause, phrase, or provision of this Ordinance as proposed by amended, added, or deleted by majority vote of the Board of County Commissioners as a result

of matters raised at the public hearing or in consultation with responsible authorities, and in such event, the amendments, additions or deletions shall be validly adopted without additional advertisement or hearing.

**Section 5.** FILING OF ORDINANCE; EFFECTIVE DATE. Pursuant to Section 125.66, Florida Statutes, a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after the enactment by the Board of County Commissioners. This Ordinance shall become effective upon filing of the Ordinance with the Department of State.

APPROVED AS TO FORM

By:   
\_\_\_\_\_  
Office of the County Attorney