

ORDINANCE 9- 2012

AN ORDINANCE OF THE BOROUGH OF FRANKLIN, COUNTY OF SUSSEX, AND STATE OF NEW JERSEY ESTABLISHING THE ELIGIBILITY OF COMMERCIAL AND INDUSTRIAL STRUCTURES FOR THE FIVE YEAR TAX EXEMPTION AND ABATEMENT PURSUANT TO N.J.S.A. 40A: 21-1, ET SEQ.

WHEREAS, pursuant to N.J.S.A. 40A:21-1, et seq., a municipality having areas in need of rehabilitation may, by ordinance, provide for the exemption and/or abatement of real property taxes, to encourage and provide incentives for the construction and rehabilitation of industrial and commercial structures; and

WHEREAS, the Borough of Franklin desires to provide real estate tax incentives for commercial and industrial structures within said areas in need of rehabilitation as that term is defined in N.J.S.A. 40A:21-1, et seq.; and

WHEREAS, N.J.S.A. 40A:21-1, et seq. provides for the exemption of assessments on improvements for five years following completion of a project as defined in the statute and the exemption or abatement of property taxes for new construction for a five year period following completion of the project as defined in the statute;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Franklin as follows:

1. Definitions.

The definitions contained in N.J.S.A. 40A:21-3 are incorporated herein by reference as if set forth at length. As used in this Ordinance, words shall have the meanings as so defined unless a different meaning is expressed.

2. Tax Exemptions and Abatements Authorized.

The Borough hereby authorizes the utilization of tax exemption and abatement in accordance with Article VIII, Section I, Paragraph 6, of the New Jersey Constitution and establishes the eligibility of commercial and industrial structures for five-year tax exemptions and abatements in areas in need of rehabilitation as authorized by N.J.S.A. 40A:21-1, et seq.

3. Improvements to Commercial and Industrial Structures.

Improvements to commercial and industrial structures are eligible for a tax exemption and/or abatement for a period of five (5) years commencing with the completion of an improvement. The Tax Assessor's full and true value of the improvements shall be regarded as not increasing the value of the property notwithstanding that the value of the property to which the improvement is made is increased thereby. During the exemption and/or abatement period, the assessment on the property shall not be less than the assessment existing thereon immediately prior to the improvements, unless there is damage to the structure through action of the elements sufficient to warrant a reduction.

4. Construction of New Commercial and Industrial Structures.

Construction of new commercial and industrial structures shall be eligible for tax exemption and/or abatement commencing with completion of the project. Any such exemption and/or abatement shall be subject to the owner and Borough entering into a tax agreement as provided by N.J.S.A. 40A:21-10.

A. The applicant shall furnish to the municipality all the information required by N.J.S.A. 40A:21-9. In addition, every applicant shall file the application form prescribed by the Director of the New Jersey Division of Taxation in the Department of Treasury, with the Tax Assessor, as a condition to approval, within thirty (30) days, including Saturdays and Sundays, following the completion of the improvement. Every application for exemption and/or abatement so filed shall be approved and allowed by the Tax Assessor to the degree that the application is consistent with the provisions of this Ordinance or the tax agreement, provided that the improvement for which the application is made, qualifies as such, pursuant to the provisions of N.J.S.A. 40A:21-1, et seq. and the tax agreement. The granting of an exemption and/or abatement and tax agreement, if appropriate, shall be recorded and made a permanent part of the official tax records of the taxing district, which record shall contain a notice of termination date thereof.

B. No tax exemption and/or abatement shall be granted unless approved by resolution of the Borough Council on an individual basis after review, evaluation, and approval of each application for compliance with the terms of this Ordinance and the underlying statute, rules and regulations.

C. The tax agreement shall provide for the applicant to pay to the Borough in lieu of full property tax payments an amount annually to be computed by one, but in no case a combination, of the three formulas set forth in N.J.S.A. 40A:21-10, viz., the "Cost", "Gross revenue," or "Tax phase-in" basis.

5. Eligibility for Additional Construction or Improvement.

An additional improvement or construction, completed on a property granted a previous exemption and/or abatement during the period in which such previous exemption and/or abatement is in effect, shall be qualified for an exemption and/or abatement, just as if such property had not received a previous exemption and/or abatement. In such case, the additional improvement or construction shall be considered as separate for the purposes of calculating exemptions and/or abatements, except that the assessed value of any previous improvement or construction shall be added to the assessed valuation as it was prior to that improvement or construction for the purpose of determining the assessed valuation of the property from which any additional abatement is to be subtracted.

6. Applicability of Statutory Regulatory Provisions.

Every application for exemption and/or abatement and every exemption and/or abatement granted shall be subject to all the provisions of N.J.S.A. 40A:21-1, et seq., and all rules and regulations issued thereunder.

7. Applicability of Federal, State and Local Laws.

All tax abatement and/or exemption agreements shall provide that the applicant is subject to all federal, state, and local laws and regulations.

8. Cessation or Disposition of Property.

If during any tax year prior to the termination of the tax exemption and/or abatement agreement, the applicant ceases to operate or disposes of the property or otherwise fails to meet the conditions of eligibility, the tax otherwise due if there had been no exemption and/or abatement shall become due and payable by the property owner. The Tax Assessor shall notify the property owner and the 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 sale or other disposal of the property which it is determined that the new owner of the property will continue to use the property pursuant to the conditions which were set forth in the tax exemption and/or abatement agreement, the exemption and/or abatement shall continue.

9. Default in Tax Payments.

In the event of default by the applicant, including but not limited to the failure to make timely tax or in lieu of tax payments to the municipality, the municipality shall notify the applicant, in writing, of said default. The applicant shall have thirty days to cure any default. Following the thirty day cure period, the municipality shall have the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:4-1, et seq., and/or may cancel the tax agreement upon thirty days notice to the applicant.

10. Taxes Upon Termination.

At the termination of a tax exemption and/or abatement agreement, a project shall be subject to all applicable real property taxes as provided by state law and local ordinance.

11. Payment of Application Fees.

No application for tax exemption and/or abatement shall be accepted by the municipality unless accompanied by full payment of the required application fee. Such fees shall be based on total project cost as set forth in a schedule on file with the Office of the Municipal Clerk. These fees shall be received as compensation for the legal review and related work required by the municipality's departments and agencies.

12. Ordinance Sent to Department of Community Affairs.

The Municipal Clerk is hereby authorized and directed to forward a certified copy of this Ordinance to the State of New Jersey Department of Community Affairs.

13. Ineligibility.

No exemption and/or abatement shall be granted, or tax agreement entered into with respect to any property for which property taxes or any other municipal charges are delinquent or remain unpaid or for which penalties for nonpayment are due for a period of at least one year, or for any property not being used in conformance with local, state or federal ordinance, regulation or statute.

14. Appeal.

Appeal of any determination made by the municipality under the terms of this Ordinance shall be made to the Sussex County Board of Taxation.

15. Construction of Ordinance.

Where consistent with the context in which used in this ordinance, words importing the singular shall include the plural; words importing the plural shall include the singular; and, words importing one gender shall include all other genders.

16. Inconsistent Ordinances Repealed.

Should any provision of this Ordinance be inconsistent with the provisions of any prior ordinances, the inconsistent provisions of such prior ordinances are hereby repealed, but only to the extent of the inconsistencies.

17. Severability.

In the event that any provision of this Ordinance or the application thereof to any person or circumstance is declared invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other provision or application of this ordinance which may be given effect, and, to realize this intent, the provisions and applications of this ordinance are declared to be severable.

18. Captions.

Captions contained in this Ordinance have been inserted only for the purpose of facilitating reference to the various sections, and are not intended and shall not be utilized to construe the intent and meaning of the text of any section.

19. Application Fee Schedule.

The following fees are to be paid at the time that an application is submitted for tax exemption and/or exemption and abatement.

The following fees are based on the estimated cost of the improvement:

0 - \$50,000	1.0%
\$50,001 - \$150,000	1.2%
\$150,001 - \$300,000	1.4%
\$300,001 - \$500,000	1.6%
\$500,001 and above	1.8%

Paul B. Crowley, Mayor

ATTEST:

Robin Hough, Acting Borough Clerk

NOTICE

TAKE NOTICE that the above entitled Ordinance #9-2012 was introduced at a regular meeting of the Borough Council of the Borough of Franklin on October 23, 2012 and will be considered for final passage after public hearing at a regular meeting of the Borough Council of the Borough of Franklin to be held on November 27, 2012 at 7:00 p.m. in the Municipal Building, 46 Main Street, Franklin, New Jersey.

Robin Hough, Acting Borough Clerk