

AN ORDINANCE PROVIDING FOR THE IMPLEMENTATION IN THE BOROUGH OF WHARTON OF THE “FIVE YEAR TAX EXEMPTION AND ABATEMENT LAW” PURSUANT TO N.J.S.A. 40A:21-1 ET SEQ.

WHEREAS, pursuant to the Five-Year Exemption and Abatement Law (P.L. 1991, c. 441), codified at N.J.S.A. 40A:21-1 et seq. (the “Exemption Law”), a municipality having within its corporate limits areas in need of rehabilitation or redevelopment may, by ordinance, provide for the exemption and/or abatement of real property taxes, to encourage and provide incentives for the construction, redevelopment and rehabilitation of industrial and commercial structures; and

WHEREAS, on July 9, 2015, the Borough of Wharton (“Borough”) adopted a Redevelopment Plan, entitled the Green Tent Company Redevelopment Plan (“Redevelopment Plan”) for the redevelopment of an approximate 1.5 acre parcel designated as Block 1319, Lots 1 and 1.01, on the Borough’s tax map, and bounded by North Main Street, Kossuth Street and Washington Street and located within the Borough’s under-laying Central Business District Zone (hereinafter the “Port Oram Village Rehabilitation Area”); and

WHEREAS, pursuant to the relevant provisions of the Local Housing and Redevelopment Law, N.J.S.A. 40A:12A-1 et seq. (the “Redevelopment Law”), the Port Oram Village Rehabilitation Area was designated by the Borough Council as an area in need of rehabilitation; and

WHEREAS, the Borough desires to provide for real estate tax incentives for improvements constructed and/or altered within the boundaries of the Port Oram Village Rehabilitation Area; and

WHEREAS, N.J.S.A. 40A:21-1 et seq. provides for the exemption of assessments for five years following completion of a project as defined in the Exemption Law, 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 Exemption Law.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and the Borough Council of the Borough of Wharton, in the County of Morris, State of New Jersey as follows:

Section 1. Intent.

The Borough of Wharton, pursuant to N.J.S.A. 40A:21-1 et seq., makes known its intention to utilize the tax exemption and abatement provision enacted by the New Jersey Legislature to authorize five-year exemptions and/or abatements for dwellings within the Port Oram Village Rehabilitation Area.

Section 2. 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 Chapter, words shall have the meanings as so defined unless a different meaning is expressed.

Section 3. Eligible property.

Developers of property located in any area within the Port Oram Village Rehabilitation Area in the Borough of Wharton may avail themselves of the opportunity to receive a five-year tax exemption and/or abatement as provided in this Chapter.

Section 4. Tax Exemptions and Abatements Authorized.

The Borough hereby authorizes the utilization of tax exemption and/or abatement in accordance with Article VIII, Section I, Paragraph 6, of the New Jersey Constitution and establishes the eligibility of five-year tax exemptions and/or abatements for new construction, rehabilitation or conversion of dwellings as authorized by N.J.S.A. 40A:21-1 et seq., within the boundaries of the Port Oram Village Rehabilitation Area, but only to the extent set forth herein.

Section 5. Application for Exemption and/or Abatement.

No exemption and/or abatement shall be granted nor any agreement considered unless the developer shall first have filed an original and seven (7) copies of an application with the Borough Tax Assessor, along with an application fee as set forth in this Chapter.

A. Contents of application. At a minimum, an application for an exemption and/or abatement shall provide the Borough Council with the following information:

- i. A general description of a project for which exemption and/or abatement is sought, a finding that the project accords with the applicable redevelopment plan and Master Plan of the Borough and an estimated schedule of completion for the project;
- ii. A legal description of all real estate necessary for the project;
- iii. Plans, drawings and other documents as may be required by the governing body to demonstrate the structure and design of the project;
- iv. A statement of the reasons for seeking an exemption and/or abatement on the project, and a description of the benefits to be realized by the developer if an exemption and/or abatement is granted;

- v. **Estimates of the cost of completing the project;**

- vi. **A statement showing the real property taxes currently being assessed at the project site; estimated tax payments that would be made annually by the developer on the project during the period of the agreement; and estimated tax payments that would be made by the developer on the project during the first full year following the termination of the agreement;**

- vii. **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 of the dwelling units according to type; and any rental lease or resale restrictions that will apply to dwellings units in regard to low- and moderate-income housing;**

- viii. **Such other pertinent information as the Borough Administrator may require.**

Section 6. Review and Approval.

A. Distribution of Application. Upon receipt of the application, the Borough Tax Assessor shall provide one copy of same to the Borough Clerk, one copy to the Borough Business Administrator and Chief Financial Officer, one copy to the Borough Tax Collector, one copy to the Borough Land Use Secretary, one copy to the Borough Council, one copy to the Mayor's Office and one copy to the Borough's Counsel. The original of the application shall be retained by the Assessor and shall be placed on permanent file within that office.

B. Department Review.

i. Land Use. Upon receipt of an application the Land Use Secretary shall ask the Borough Engineer to conduct a complete review of the proposed project. Based upon the review, the Land Use Secretary shall submit the Engineer's recommendation as to the approval or disapproval of the application to the Borough Counsel.

ii. Financial. Upon receipt of an application, the Borough Administrator and Chief Financial Officer shall conduct a financial review of the application, including a cost and benefit analysis of the proposed project. Based upon the review, the Borough Administrator and Chief Financial Officer shall submit a recommendation as to the approval or disapproval of the application to the

Borough Counsel. In reviewing the application, the Chief Financial Officer shall obtain verification of the information set forth in the application, specifically:

a. Certification of the Assessor as to the taxes levied on the real property included within the project in both the year in which the application was filed and the immediately preceding year.

b. Certification of the Tax Collector as to the current status of payments due for property taxes and/or municipal liens of any type arising from real property included within the project.

iii. Legal. Based upon receipt of the application, the Borough Counsel shall conduct a review as to the form and legality of the application, and shall make a determination as to the propriety of the application. In those cases where the application is deemed proper, the Borough Counsel shall prepare an ordinance in the form necessary to authorize the exemption and/or abatement and shall prepare the form of agreement to be submitted for consideration by the Borough Council. The ordinance shall be signed by the Borough Counsel as to form and legality and submitted, together with the form of agreement, the original application, the certifications and the recommendations of the various Borough departments to the Borough Clerk for consideration by the Borough Council.

C. Approval. An application shall be approved by adoption of a municipal ordinance, which shall authorize the execution of the tax agreement setting forth the payments in lieu of taxes that will be paid. Approval of the ordinance shall take place within thirty (30) days of receipt of a complete application. The tax agreement shall be held on file in the office of the Tax Assessor.

Section 7. Tax Agreements.

A. Form of agreement. All agreements for an exemption and/or abatement shall be in the form appropriate to the nature of the proposed project. Such agreements shall at a minimum set forth the identification of the affected property, the nature and magnitude of the improvements to be constructed thereon, the consideration to be paid to the Borough and the conditions thereon, the duration of the agreement and the grounds for its termination. The agreement shall in all cases further provide that any change made in the ownership of the project or which would materially change the terms of the agreement shall under the agreement be void unless approved by the Borough Council by ordinance. Agreements shall require timely payment of all municipal taxes, fees and charges arising out of the agreement or in any way arising out of the affected property. The agreement shall provide that the

failure to comply with the payment requirements or with any material condition of the agreement shall permit the Borough to unilaterally terminate the agreement and/or to exercise such other remedies as may be provided by statute, this Chapter or the agreement.

B. The tax agreement shall provide for the applicant to pay to the Township in lieu of full property tax payments an amount annually to be computed on a Cost Basis, Gross Revenue Basis or Tax Phase-In Basis in accordance with the provisions of N.J.S.A. 40A:21-10.

C. Execution of agreement. Upon authorization by the Borough Council, it shall be the responsibility of the Borough Clerk to insure that the agreement is fully executed. No agreement shall be considered to be in force and effect unless and until it has been signed by the developer and the Mayor, after which it shall be dated and certified by the Borough Clerk by her/his signature and the affixing of the Borough seal.

D. Division of Local Government Services. Within 30 days after the execution of any such tax agreement, the Borough Clerk shall forward a copy of the agreement to the Director of the Division of Local Government Services in the Department of Community Affairs.

E. Completion of Improvements. In addition, every applicant shall file the application form prescribed by the Director of the New Jersey Division of Taxation in the Department of the Treasury, with the Tax Assessor, as a condition to approval within thirty (30) days, including Saturdays and Sundays, following the completion of the improvement, conversion and construction. The granting of an exemption or exemption and 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.

Section 8. Real property taxes.

In addition to the payments required in lieu of property taxes pursuant to this Chapter, the developer or owner of property which has qualified for an exemption and/or abatement shall be liable for all real estate taxes assessed and levied against the land on which the exempt and/or abated improvements are located.

Section 9. Tax delinquency.

No exemption and/or abatement shall be granted pursuant to this Chapter with respect to any property for which real estate taxes or other municipal charges are delinquent or remain unpaid, or for which penalties and interest for nonpayment of taxes are due.

Section 10. Conformance with statutory and regulatory requirements.

All projects subject to tax agreements 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.

Section 11. Inspection.

Any property which is granted an exemption and/or abatement pursuant to this Chapter shall be subject to an inspection by the Borough on an annual basis to ensure that the property is in compliance with all ordinances, regulations, and safety codes of the Borough. Any property which is determined to be in violation of any ordinance, regulation, and/or safety code of the Borough shall be subject to any penalties and fines or any other remedial action permitted by state law.

Section 12. 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 payments to the Borough, the Borough Tax Assessor shall notify the applicant, in writing, of said default. The applicant shall have thirty (30) days to cure any default. Following the thirty (30) day cure period, the Borough 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 (30) days' notice to the applicant.

Section 13. Ineligibility.

No exemptions shall be granted for any property for which 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. In addition, one and two family structures which contain home-based businesses are ineligible for the tax exemption or abatement programs described herein.

Section 14. Taxes upon Termination.

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

Section 15. Severability.

If any provision of this Chapter is legally invalid or is hereafter found to be legally invalid, the remainder of the Chapter shall remain in full force and effect.

Section 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 any inconsistencies.

Section 17. Invalidation.

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.

Section 18. Effective date.

This Chapter shall take effect upon final passage and publication and in accordance with the laws of the state.

First Reading: September 12, 2016

Second Reading: October 3, 2016

ATTEST:

BOROUGH OF WHARTON

Robin Ghebreal,
Deputy Borough Clerk

WILLIAM J. CHEGWIDDEN,
MAYOR