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Second Reading/Public Hearing: 05/09/2022
Second Public Hearing: 06/06/2022
Adopted: 6/20/2022

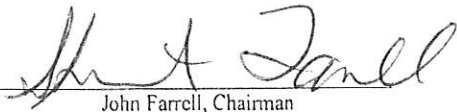
ORDINANCE #2022-05
***CREATING THE LONDONDERRY COMMERCIAL AND INDUSTRIAL
PROPERTY TAX INCENTIVE PROGRAM***

- WHEREAS*** RSA 72:81 permits a municipality to adopt a new construction property tax exemption (the "Incentive") for commercial or industrial uses, or both for the purpose of providing incentives to businesses to build, rebuild, modernize, or enlarge within the municipality; and
- WHEREAS*** The Town Council believes it is in the public benefit to enhance the Town of Londonderry's commercial/ industrial property tax base with respect to economic activity, cultural and historic character, and sense of community that contribute to economic and social vitality; and
- WHEREAS*** It is further declared to be a public benefit to encourage the rehabilitation of underutilized commercial/industrial structures in Londonderry as a means of encouraging growth of economic, residential, and municipal uses in accordance with RSA 9-B; and
- WHEREAS*** Short-term property assessment tax relief and a related covenant to protect the public benefit as provided under this article are considered to provide a demonstrated public benefit if the same encourages new construction, substantial rehabilitation and use of qualifying structures, or the replacement of a qualifying structure; and
- WHEREAS*** The Town Council determines that it is in the public benefit to make the Program available town-wide; and
- WHEREAS*** Pursuant to RSA 72:82, II, this Ordinance shall remain in effect until the earlier of: (A) its rescission by further action of the Town Council; or (B) the date which is twenty four (24) months after its adoption, provided, however, that for any application which has already been granted prior to rescission or expiration, as the case may be, the exemption shall continue to apply at the rate and for the duration in effect at the time it was granted.

NOW THEREFORE BE IT ORDAINED by the Town Council of the Town of Londonderry that the Londonderry Commercial and Industrial Property Tax Incentive Program is hereby adopted as set forth in Exhibit A attached hereto.


Sharon Farrell, Town Clerk

A TRUE COPY ATTEST:


John Farrell, Chairman
Town Council



LONDONDERRY COMMERCIAL AND INDUSTRIAL PROPERTY TAX INCENTIVE PROGRAM

§ 1. Adoption of program.

1.1 Pursuant to the authority granted by RSA 72:27-a, RSA 72:81, and RSA 72:82, and such other relevant authority bestowed upon it as a political subdivision of the State of New Hampshire, the Town of Londonderry ("Londonderry" or the "Town") through its legislative body, the Londonderry Town Council ("Town Council"), adopts the Londonderry Commercial and Industrial Property Tax Exemption Program for application within the geographical limits set forth below.

§ 2. Short title.

2.1 Londonderry Commercial and Industrial Property Tax Incentive Program (the "Program").

§ 3. Enabling statutes.

3.1 NH RSAs 72:27-a and 72:80-83.

§ 4. Purpose; declaration of public benefit.

4.1 It is declared to be beneficial to the public interest to enhance Londonderry's commercial and industrial property tax base to attract, promote and stimulate economic activity.

4.2 It is further declared to be beneficial to the public interest to encourage the rehabilitation of underperforming or underutilized commercial and industrial facilities in Londonderry as a means of encouraging smart growth of economic, residential, and municipal uses in accordance with RSA 9-B.

4.3 Short-term property tax relief and a related covenant to further public interest as described in this ordinance provide a demonstrated public benefit because the property tax relief and related covenant encourage new construction and use of Qualifying Structures, and replacement, substantial rehabilitation and use of Qualifying Structures. A Qualifying Structure is defined in Section 6.4 hereof.

4.4 The Town Council determines that it is in the public interest to make the Program available town wide for commercial and industrial uses as defined herein.

§ 5. Tax relief authority.

5.1 Londonderry, through the Town Council, hereby adopts RSA 72:80-83 in the manner specified under RSA 72:27-a and RSA 72:82. In addition, the Town may modify the incentive program in the same manner as hereby adopted to best suit the needs of the Town and its constituents.

§ 6. Definitions.

6.1 **Assessed Value:** The Assessed Value of the improvements and structures as of April 1 of the tax year to which the exemption pertains, pursuant to RSA 72:83.

6.2 **Commercial Uses:** All retail, wholesale, and service uses, including but not limited to: automobile and similar vehicle sales; automobile repair facility/garage; automobile service station; bank; brewery; brew pub; commercial performing and fine arts schools and studios; commercial service establishment; conference center; contractor; contractor's yard; funeral establishment; golf course/country club; grocery/convenience store; hospital; hotel; commercial service establishment; inn (motel); medical office; movie and recording studio; multiunit commercial establishment; nursery; office, pharmacy, printing; professional office; radio broadcasting facility; repairman; restaurant, drive-in restaurant; retail sales establishment; riding school; television broadcasting; transportation center; travel agent; tourist home, and wholesale business.

6.3 **Industrial Uses:** All manufacturing, production, assembling, warehousing, or processing of goods or materials for sale or distribution, research and development activities, or processing of waste materials, including but not limited to: bottling facility; building material storage yard; crematorium; equipment upfit (repair); industrial establishment; light industrial establishment; industrial repair garage; industrial supply; laboratory (medical/dental); laboratory: research, experimental, testing; light industry; light manufacturing; microbrewery; product assembly; publishing; research and development facility; research lab; sand/gravel pit; self-storage; truck terminal; warehouse, and wood/metal craft.

6.4 **Original Assessed Value:** The value of the Qualifying Structure assessed at the time that the governing body approves the application for Tax Relief and the owner grants to the municipality the covenant to protect public benefit as required in this ordinance.

6.5 **Qualifying Area:** The Qualifying Area is the Town of Londonderry.

6.6 **Qualifying Structure:** A structure located in the Qualifying Area built, rebuilt, modernized, or enlarged to be used for Commercial or Industrial Uses as defined in RSA 72:80 and described herein.

6.7 **Replacement:** The demolition or removal of a Qualifying Structure and the subsequent construction of a new structure on the same lot.

§ 7. Tax Relief.

7.1 The Tax Relief Period is the finite period of time during which the Tax Relief, as described in section 7.4 below, will be effective, and the percentage amount of new Assessed Value to be exempted, as determined by the Town Council based upon classification of the project by tier, pursuant to RSA 72:81, and in the further exercise of its discretion as set forth in sections 7.4 and 12, below.

7.2 A Tier One Project is a project in which the anticipated increase in valuation of the Qualifying Structure at the completion of construction is thirty million dollars (\$30,000,000) or more.

7.3 A Tier Two Project is a project in which the anticipated increase in valuation of the Qualifying Structure at the completion of construction is fifteen million dollars (\$15,000,000) or more.

7.4 Tier One and Two Projects shall be eligible for Tax Relief in the form of the exemption from taxation authorized pursuant to RSA 72:81, and more specifically defined as follows:

(1) For a Tier One Project:

- a. In the first full tax year for which an exemption is granted following completion of a Qualifying Structure (the “first tax year”), an exemption of between forty (40) and fifty (50) percent of the increase in Assessed Value attributable to construction of new structures, and additions, renovations, or improvements to existing structures (the “Exemption”), as determined by the Town Council.
- b. The duration of the Exemption shall be five (5) years.
- c. In the four (4) tax years immediately succeeding the first tax year for which an exemption is granted, the Exemption shall decrease annually by twenty (20), thirty (30), forty (40), and fifty (50) percent of the prior year’s Exemption, rounded to the nearest whole percent, as set forth in Attachment A.

(2) For a Tier Two Project:

- a. In the first full tax year for which an exemption is granted following completion of a Qualifying Structure (the “first tax year”), an exemption of between thirty (30) and forty (40) percent of the increase in Assessed Value attributable to construction of new structures, and additions, renovations, or improvements to existing structures (the “Exemption”), as determined by the Town Council.
- b. The duration of the Exemption shall be five (5) years.
- c. In the four (4) tax years immediately succeeding the first tax year for which an exemption is granted, the Exemption shall decrease annually by twenty (20), thirty (30), forty (40), and fifty (50) percent of the prior year’s Exemption, rounded to the nearest whole percent, as set forth in Attachment A.

§ 8. Public benefits.

8.1 In order to qualify for Tax Relief as set forth in section 7.4 above, the proposed new construction or rehabilitation must, in the reasonable discretion of the Town Council, provide one or more of the following public benefits, and the proposed Replacement must provide one or more of the same public benefits to a greater degree than would a rehabilitation of the same Qualifying Structure, as follows:

- It enhances the economic vitality of the Town;
- It promotes development of municipal centers, providing for efficiency, safety, and a greater sense of community, consistent with RSA 9-B; or
- It increases commercial and industrial activity in the Town, including job creation.
- It increases the Town's commercial or industrial tax base.

§ 9. Covenant to protect public benefit.

9.1 Tax Relief for the construction, rehabilitation or replacement of a Qualifying Structure shall be effective upon the property owner's grant to the municipality of a covenant ensuring that the Qualifying Structure shall be maintained and used in a manner that continues the public benefit for which the Tax Relief was granted and as otherwise provided in this ordinance.

9.2 This covenant shall be released upon the expiration of the Tax Relief Period.

9.2 The covenant shall include provisions requiring the property owner to obtain commercially reasonable casualty insurance, and flood insurance, if relevant. The covenant may include, at the Town Council's sole discretion, a lien against proceeds from casualty and flood insurance claims for the purpose of ensuring proper restoration or demolition of damaged structures and property. If the property owner has not begun the process of restoration, rebuilding, or demolition of such structure within one year following damage or destruction, the property owner shall be subject to the termination of the Tax Relief after notice and an opportunity to be heard.

9.3 The Town shall provide for the recording of the covenant to protect public benefit with the registry of deeds. It shall be a burden upon the property and shall bind all transferees and assignees of such property for the duration of the tax relief period, but shall thereafter expire without further affect.

§ 10. Application procedure.

10.1 An owner (or authorized agent, including a prospective purchaser and developer) of a Qualifying Structure who intends to construct, rehabilitate or replace such structure, may submit an application for the Tax Relief to the Town Manager's Office prior to construction, but not after December 31 before the beginning of the tax year for which the exemption is sought. In such cases, the Town Council may anticipatorily grant the exemption, subject to adjustment when the actual increase in Assessed Value becomes known. The applicant shall include the address of the property, a full description of the intended construction, rehabilitation or replacement, any changes in use of the property resulting from the rehabilitation or replacement, and an application fee. The application shall be on a preapproved application form provided by the Town Manager's Office.

10.2 The application for property tax exemption shall not be deemed to be complete and the governing body shall not schedule a hearing on the application as required under RSA 72:83 until all required information has been submitted.

§ 11. Application fees.

11.1 An application fee of \$150, or an amount subsequently adopted by the Town Council, shall be paid at the time of application submission to the Town Manager's Office, made payable to the "Town of Londonderry."

11.2 The applicant shall also be responsible for the reasonable expenses incurred by the municipality in the drafting, review, and recording of the covenant.

§ 12. Review and decision by Town officials.

12.1 Upon receipt of a complete application, the Town Council shall consider the application in the normal course of business and notify the applicant of its decision no later than February 28 before the beginning of the tax year for which the exemption is sought. The Town Council shall determine:

- Whether the structure will be in the Qualifying Area;
- Whether the structure at issue is a Qualifying Structure;
- Whether there is a public benefit to granting the Tax Relief;
- The classification of the project by tier; and
- Within the parameters specified in section 7, above, the specific Tax Relief, if any, to be awarded for the Qualified Structure. The Town Council shall base this determination upon the extent of public benefit demonstrated by the applicant, assigning a higher percentage amount to applicants demonstrating a greater public benefit, and vice versa.

12.2 In determining the existence and extent of a public benefit, the Town Council shall also identify the costs and detriments associated with the proposed development or project, and weigh such factors against any public benefit. Only if the public benefit is found to specifically outweigh any costs and detriments shall the Town Council grant the Exemption.

12.3 After determining the applicable tier, in setting the applicable percentage, the Town Council shall also factor the extent of the public benefit and the costs and detriments associated with the proposed development or project.

12.4 The Town Council may seek assistance from Town officials, legal counsel, boards or commissions in making its determinations, and shall conduct a public hearing.

12.5 After following the procedures established herein, the Town Council may grant the Tax Relief, provided:

- The Town Council finds a public benefit as defined herein; and
- The specific public benefit is preserved through a covenant as set forth above; and
- The Town Council finds that the proposed use is consistent with the applicable master plan, zoning ordinance or development regulations.

12.6 If the Town Council grants the Tax Relief, it shall identify the specific public benefit achieved as defined herein.

12.7 The burden of demonstrating the applicable tier and the public benefit shall be on the applicant. The Town Council or its agents may request such additional or updated information as is necessary to determine eligibility. Should the Town in its discretion determine that third party review or consultation is required, the applicant shall bear the associated cost. *See* RSA 72:83, III. If the Town Council determines that the applicant provided incorrect or false information during the application process or failed to provide information after such a request, the Town Council may refuse to grant the exemption without further inquiry.

12.8 If the Town Council, in its sole discretion, denies the application for Tax Relief, such denial shall be accompanied by a written explanation. The governing body's decision may be appealed either to the Board of Tax and Land Appeals or the Superior Court in the same manner as provided for appeals of current use classification pursuant to RSA 72:83; provided, however, that such denial shall be deemed discretionary and shall not be set aside by the Board of Tax and Land Appeals or the Superior Court except for errors of law or abuse of discretion.

12.9 For the purpose of determining the applicable tier for a Project, the Town Council may assign a reasonable value to factors not yet known or reflected directly in the anticipated valuation of the property after construction, including, but not limited to, significant job creation, and add such assigned value to the anticipated valuation after construction.

§ 13. Duration and limitations of property tax incentive program.

13.1 Pursuant to RSA 72:81, the exemption shall apply only to municipal and local school property taxes assessed by the municipality which shall exclude state education property taxes under RSA 76:3 and county taxes assessed against the municipality under RSA 29:11

13.2 If the municipality completes a revaluation during the period for which an exemption has been granted, the amount of the exemption shall be adjusted by the difference in equalization ratios applicable in the municipality before and after the revaluation. The amount and length of the property tax exemption shall be determined by the Town Council on a per-case basis, by categorizing the project by tier as set forth herein.

13.3 Tax Relief shall not be granted to an applicant who has begun construction. RSA 72:83, I.

13.4 The Town Council may grant waivers from this ordinance where not inconsistent with the purpose and intent of RSA 72:80-83, provided, however, that the Town Council may not waive a provision of this ordinance required by statute.

13.5 The Town may require the submission of an annual update to determine continued eligibility for, and the proper amount of, Tax Relief. The Town Council may conduct an annual hearing to review the update and may adjust the Tax Relief based upon changed conditions. If the Town Council determines that the applicant provided incorrect or false information in an annual update or failed to provide information necessary for an annual update after such a request, the Town Council may terminate the exemption upon notice and an opportunity for the applicant to be heard.

13.6 This ordinance shall expire twenty four (24) months after its passage, unless sooner terminated or extended by vote of the Town Council.

§ 14. Resumption of full tax liability.

14.1 Upon expiration of the Tax Relief Period, the property shall be taxed at its market value in accordance with RSA 75:1.

§ 15. Extent of Tax Relief.

15.1 Tax Relief granted under this ordinance shall be calculated on the Assessed Value at the time of the commencement of the Tax Relief Period in excess of the Original Assessed Value.

15.2 Tax Relief granted under this ordinance shall pertain only to assessment increases attributable to the construction, rehabilitation or replacement performed under the conditions approved by the Town Council and not to those increases attributable to other factors, including but not limited to market forces.

15.3 Nothing herein shall prohibit an owner from seeking an abatement of the original assessed value prior to any adjustment granted hereunder.

§ 16. Violations and penalties; enforcement.

16.1 If the property owner fails to maintain or utilize the building according to the terms of the covenant, or fails to restore, rebuild, or demolish the structure following damage or destruction as provided above, the Town Council shall, after notice and an opportunity to be heard, determine whether and to what extent the public benefit of the Qualified Structure has been diminished and may terminate or reduce the property tax exemption amount and period in accordance with such determination.

16.2 Any tax payment required under this section 16 shall be payable according to the following procedure:

16.2.1 The Commissioner of the Department of Revenue Administration shall prescribe and issue forms to the local assessing officials for the payment due, which shall provide a description of the property, the market value assessment according to RSA 75:1, and the amount payable.

16.2.2 The prescribed form shall be prepared in quadruplicate. The original, duplicate, and triplicate copy of the form shall be given to the collector of taxes for collection of the payment along with a special tax warrant authorizing the collector to collect the payment under the warrant. The quadruplicate copy of the form shall be retained by the local assessing officials for their records.

16.2.3 Upon receipt of the special tax warrant and prescribed forms, the tax collector shall mail the duplicate copy of the tax bill to the owner responsible for the tax as the notice of payment.

16.2.4 Payment shall be due not later than 30 days after the mailing of the bill. Interest at the rate of 18% per annum shall be due thereafter on any amount not paid within the thirty-day period. Interest at 12% per annum shall be charged upon all taxes that would have been due and payable on or before December 1 of each tax year as if no Tax Relief had been granted.

§ 17. Collection of unpaid taxes.

17.1 All taxes levied pursuant to RSA 72 which are not paid when due shall be collected in the same manner as provided in RSA 80.

ATTACHMENT A

TIER 1

| | | | | | | | | | | | |
|---|----|----|----|----|----|----|----|----|----|----|----|
| 1 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 |
| 2 | 32 | 33 | 34 | 34 | 35 | 36 | 37 | 38 | 38 | 39 | 40 |
| 3 | 22 | 23 | 24 | 24 | 25 | 25 | 26 | 26 | 27 | 27 | 28 |
| 4 | 13 | 14 | 14 | 14 | 15 | 15 | 15 | 16 | 16 | 16 | 17 |
| 5 | 7 | 7 | 7 | 7 | 7 | 8 | 8 | 8 | 8 | 8 | 8 |

TIER 2

| | | | | | | | | | | | |
|---|----|----|----|----|----|----|----|----|----|----|----|
| 1 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 |
| 2 | 24 | 25 | 26 | 26 | 27 | 28 | 29 | 30 | 30 | 31 | 32 |
| 3 | 17 | 17 | 18 | 18 | 19 | 20 | 20 | 21 | 21 | 22 | 22 |
| 4 | 10 | 10 | 11 | 11 | 11 | 12 | 12 | 12 | 13 | 13 | 13 |
| 5 | 5 | 5 | 5 | 6 | 6 | 6 | 6 | 6 | 6 | 7 | 7 |