

Ordinance No. 2024-4805

An ordinance of the City of Sanford, Florida repealing Ordinance Number 2021-4580 which implemented an award under the provisions of Part II, Chapter 2 – Administration, Article V. - Economic Development, Division 3. Supplemental Economic Or Tourism Development Program of the *Code of Ordinances of the City of Sanford (City Code)*; further repealing and rescinding any implementing agreements; providing for legislative findings and intent; providing for implementing administrative actions; providing for a savings provision; providing for conflicts; providing for severability; providing for codification and the correction of scrivener's errors and providing for an effective date.

Be it enacted by the People of the City of Sanford:

Section 1. Legislative Findings And Intent.

(a). The City Commission of the City of Sanford hereby adopts and incorporates into this Ordinance the provisions of the City Commission agenda memorandum relating to the provisions of this Ordinance and its enactment by the City Commission.

(b). This Ordinance is enacted pursuant to the home rule powers of the City of Sanford as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*; Chapter 166, *Florida Statutes*, and other applicable controlling law; and is consistent with the provisions of Section 1.4 of the *Seminole County Home Rule Charter* pertaining to that document's relation to municipal ordinances, which provides that "[e]xcept as otherwise provided by this Charter, municipal ordinances shall prevail over County ordinances to the extent of any conflict."

(c). The City Commission of the City of Sanford has deemed approval of this Ordinance to be in the best interest of the residents and citizens of the City of Sanford and to further the public health, safety and welfare.

(d). The City Commission of the City of Sanford has complied with all procedural and substantive requirements of controlling law in enacting this Ordinance.

(e). Section 2-381 of the *City Code*, part of the *City Code* which provides for awards under the Supplemental Economic Or Tourism Development Program, requires that a business granted a rebate must inform the City Commission in writing within 10 days as to any changes in ownership of the business granted a rebate and it is prohibited and unlawful to fail to do so. Further, failure of the business granted a rebate award to notify the City Commission of any such changes in ownership is cause for revocation of the ordinance granting the rebate, at the City Commission's discretion. Section 2-382 of the *City Code* provides that should a business granted an award fail to comply with any requirement of the *City Code*, the City Commission may, upon 30 days' written notice to the respective business, adopt an ordinance revoking the rebate or take such other action with respect to the rebate as it deems appropriate. The City Commission, has provided more than due and appropriate notice as required by the *City Code*.

(f). The City Commission of the City of Sanford desires to repeal Ordinance Number 2021-4580.

Section 2. Repealer; Ordinance Number 2021-4580; Supplemental Economic Or Tourism Development Award.

(a). Ordinance Number 2021-4580 is hereby repealed.

(b). Any and all agreements implementing the provisions of Ordinance Number 2021-4580 are hereby repealed and rescinded.

Section 3. Implementing Administrative Actions.

The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to bring into effect the provisions of this Ordinance.

Section 4. Savings.

The prior actions of the City of Sanford relating are hereby ratified and affirmed with regard to matters consistent with the action taken herein.

Section 5. Severability.

If any section or portion of a section of this Ordinance proves to be invalid, unlawful or unconstitutional, it shall not be held to impair the validity, force or effect of any other section or part of this Ordinance.

Section 6. Conflicts.

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 7. Non-Codification; Scrivener's Errors.

- (a). The provisions of this Ordinance shall not be codified.
- (b). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the authorization of the City Manager, or designee, without the need for a public hearing.

Section 8. Effective Date.

This ordinance shall become effective and be enacted immediately upon its passage and adoption; provided, however, that the rights granted in Ordinance Number 2021-4580 shall extend only until September 30, 2024 and shall terminate and be of no further force or effect as of that date.

Passed and adopted this ___ day of _____, 2024.

Attest:

**City Commission of the City of
Sanford, Florida**

Traci Houchin, MMC, FCRM
City Clerk

Art Woodruff
Mayor

For use and reliance of the Sanford
City Commission only. Approved as to
form and legality.

William L. Colbert, City Attorney



Business Impact Estimate

This form should be included in agenda packet for the item under which the proposed ordinance is to be considered, and must be posted on the City's website by the time notice of the proposed ordinance is published.

An ordinance of the City of Sanford, Florida repealing Ordinance Number 2021-4580 which implemented an award under the provisions of Part II, Chapter 2 – Administration, Article V. - Economic Development, Division 3. Supplemental Economic Or Tourism Development Program of the *Code of Ordinances of the City of Sanford (City Code)*; further repealing and rescinding any implementing agreements; providing for legislative findings and intent; providing for implementing administrative actions; providing for a savings provision; providing for conflicts; providing for severability; providing for codification and the correction of scrivener's errors and providing for an effective date.

The City is of the view that the following exception(s) to the Business Impact Estimate requirement, that are checked off in a box below, apply to the above-referenced proposed ordinance. Although, the City is implementing the procedure required by statutory law to ensure that no inadvertent procedural issue could impact the enactment of the proposed ordinance.

- The proposed ordinance is required for compliance with Federal or State law or regulation;
- The proposed ordinance relates to the issuance or refinancing of debt;
- The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the
- The proposed ordinance is an emergency ordinance;
- The ordinance relates to procurement; or
- The proposed ordinance is enacted to implement the following:

- a. Part II of Chapter 163, *Florida Statutes*, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
- b. Sections 190.005 and 190.046, *Florida Statutes*, regarding community development districts;
- c. Section 553.73, *Florida Statutes*, relating to the *Florida Building Code*; or
- d. Section 633.202, *Florida Statutes*, relating to the *Florida Fire Prevention Code*.

In accordance with the provisions of controlling law, even notwithstanding the fact that, an exemption noted above may apply, the City hereby publishes the following information:

1. Summary of the proposed ordinance (must include statement of the public purpose, such as serving the public health, safety, morals, and welfare):

In 2019, the City Commission enacted the "Supplemental Economic or Tourism Development Incentive Program Ordinance" (Ordinance No. 2019-4526). That Ordinance was codified in Chapter 2, Division 3 of the Code of Ordinances of the City of Sanford and was entitled "Supplemental Economic Or Tourism Development Program". The City's Supplemental Economic or Tourism Development Incentive Program provided that the City Commission, at its discretion and on a case-by-case basis, could enter into an incentive agreement with a person, firm, or corporation providing for incentives in order to encourage and support the development of real property within the City. Each incentive agreement was subject to approval by the City Commission by means of the enactment of an ordinance. This was a program of legislative grace and discretion that was put into place not as an entitlement for property owners to implement, but as an opportunity to be awarded funds based upon ad valorem tax revenues collected, subject to the conditions and restrictions imposed by the City. The funds could be awarded to applicants if the public interest was benefitted and the awardee adhered to the requirements and conditions of the award.

In 2021, DK Sanford, LLC a Florida limited liability company, applied for an incentive award under the provisions of the City's Supplemental Economic Or Tourism Development Program. Debartolo Development, LLC, of Tampa, was the sole manager of the entity at the time. Edward M. Kobel, also of Tampa, was the sole manager and member of that entity. Transit Properties LLC was the owner of the property that was the subject of the application. The sole manager of the property owner was Kevin M. Wydra. There were various organizational structures and interests relative to the applicant presented by the applicant.

On July 15, 2024, Brady Lessard, the City's Economic Development Director, issued a notice letter to the following person and entities:

Mr. James D. Palermo
15436 North Florida Avenue
Suite 200

Tampa, Florida 33613

DK Sanford, LLC
3820 Northdale Boulevard
Suite 100B
Tampa, Florida 33624

Transit Properties LLC
624 Long Lake Drive
Oviedo, Florida 32765

Railside Loop Owner LLC
11 East 44th Street
Suite. 503
New York, New York 10017

The notice letter advised the above of the fact that the Ordinance being considered by the City Commission would be considered as well as the date and time of the hearing of the City Commission. Further, Mr. Lessard stated as follows:

You are further advised that Section 2-381 of the *City Code* relates to continuing performance under the tax rebate program and states as follows:

(a) ***Change in ownership.*** The business granted a rebate shall inform the City Commission in writing within ten days as to any changes in ownership of the business granted a rebate and it is prohibited and unlawful to fail to do so. Moreover, the transferee business shall continue to comply with all rebate requirements and shall assume in writing all of the obligations of the transferor business provided for in the agreement required by this division. Failure of the business granted a rebate to notify the City Commission of any such changes in ownership is cause for revocation of the ordinance granting the rebate, at the City Commission's discretion.

(b) ***Annual filings.*** The ability to receive a rebate for the period granted shall be conditioned upon the applicant's ability to maintain the development giving rise to the award of the rebate throughout the entire period. The applicant shall be required to submit an annual renewal statement and an annual report to the City Manager, or designee, on or before March 1 of each year for which the rebate

was granted. The annual renewal statement shall certify that the information provided in the original application has not changed. 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 application. The report shall be prepared in substantially the form approved by the City Manager, or designee, and shall contain such information as the City Manager, or designee, may reasonably deem necessary for the purpose of determining continuing performance by the business of the conditions provided for in this division, the ordinance specifically granting the business an (sic) rebate and the representations made in the application.

As you know, the City was not notified of the change in property ownership relating to the real property or the business granted the award, which is the subject of the Agreement and Ordinance Number 2021-4580.

Section 2-382 of the *City Code* provides as follows

Should any business granted a rebate pursuant to this division fail to file the annual renewal statement and/or annual report on or before March 1 of each year the rebate has been granted as required by this division, fail to continue to meet the definition of a new business or an expansion of an existing business, fail to timely inform the City Commission of a change of ownership, fail to file a new application upon any change in the information provided in the original application, fail to fulfill any other representation made to the City Commission during the application process, and/or fail to comply with any other requirement provided for in this division, the City Commission may, upon 30 days' written notice to the respective business, adopt an ordinance revoking the rebate or take such other action with respect to the rebate as it deems appropriate.

This letter is was issued after it became clear that a transfer of ownership occurred without the City being notified as required to be accomplished. As a result of that failure by the awardee, which is cause for revocation of the ordinance granting the rebate (Ordinance No. 2021-4580), at the City Commission's discretion.

The City's Supplemental Economic Or Tourism Development Program provided that the City Commission, at its discretion and on a case-by-case basis, may enter into an incentive agreement with a person, firm, or corporation providing for incentives in order to encourage and support the development of real property within the City. Likewise, if an awardee failed to adhere to the conditions of the award, the award could be revoked at the City Commission's discretion

Incentives could be granted in the form of payments of amounts up to, but in no event in the amount in excess of equal to, the sums paid in fees and taxes that have been duly paid to the City during a specified period of time. The applicant, in this case, was granted the following conditional and discretionary award:

- (1), 70% of an amount equal to the sums paid in ad valorem taxes that have been duly paid to the City during the first 5 years in which the incentivized development is placed on the tax rolls of Seminole County; and, thereafter;
- (2), 50% of an amount equal to the sums paid in ad valorem taxes that have been duly paid to the City during the second 5 years in which the incentivized development is placed on the tax rolls of Seminole County;

The grant was calculated on new ad valorem tax revenues.

Accordingly, based upon the foregoing, City staff recommended revocation of the award for failure to notify the City of a change in ownership of the real property and the enactment of the subject Ordinance which actions are clearly within the discretionary powers of the City Commission.

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2. Estimate of direct economic impact of the proposed ordinance on private, for-profit businesses in the City:

Under the provisions of the "City of Sanford Supplemental Economic or Tourism Development Incentive Program Ordinance" which was codified as Sections 2-373 through 2-385 of the City Code within Part II, Chapter 2 – Administration, Article V. - Economic Development, Division 3. Supplemental Economic Or Tourism Development Program of the City Code, since the award under that Program, the awardee has paid approximately 70% less than it would have without the award by the City. The City will, with approval of Ordinance No. 2024-4805, receive the full tax revenue as apportioned to the City based on the assessment value assigned by the office of the Seminole County Property Appraiser, David Johnson.

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3. Estimate of direct compliance costs that businesses may reasonably incur:

None.

4. Any new charge or fee imposed by the proposed ordinance:

None. The funds that were paid to the awardee each year were paid as a matter of legislative grace. The awardee did not have a vested right. It had a contingent award and the awardee failed to perform the basic contingency of notifying the City when a change in real property ownership occurred.

5. Estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs:

None. There are no new regulatory costs being incurred by the and there are no revenues deriving from charges that would be assessed to cover such costs.

6. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

The owner of the subject real property unless there is liability to another business for failure to provide the required notice of change of ownership to the City.

7. Additional information

Reference to the City staff report/agenda memorandum and the public hearings on the proposed Ordinance may be of assistance.