

ORDINANCE NO. BL2011- 950

An ordinance authorizing The Industrial Development Board of The Metropolitan Government of Nashville and Davidson County to negotiate and accept payments in lieu of ad valorem taxes with respect to Standard Candy Company.

WHEREAS, The Metropolitan Government of Nashville and Davidson County (the "Metropolitan Government") is vitally interested in the economic welfare of its citizens and wishes to provide the necessary leadership to enhance this area's capabilities for growth and development; and,

WHEREAS, the provision of jobs to area citizens by local business is both necessary and vital to the economic well-being of the Metropolitan Government; and,

WHEREAS, pursuant to the Industrial Development Corporations Act, currently codified at Tenn. Code Ann. §§ 7-53-101-314 (such act, as heretofore or hereafter amended, the "Act"), the General Assembly of the State of Tennessee (the "General Assembly") has authorized the incorporation of public corporations known as "industrial development boards" in municipalities in the State of Tennessee (the "State"); and,

WHEREAS, The Industrial Development Board of The Metropolitan Government of Nashville and Davidson County (the "Board") has been duly organized and incorporated in compliance with the Act; and,

WHEREAS, the General Assembly has found and declared that the Board is performing a public function on behalf of the Metropolitan Government and that the Board is a public instrumentality of the Metropolitan Government; and,

WHEREAS, the Supreme Court of Tennessee (the "Supreme Court") has found that the Board is an agency or instrumentality of the Metropolitan Government; and,

WHEREAS, the Act expressly incorporates by reference the statement of public policy set forth in Section 3 of Chapter 209 of the Public Acts of 1955; and,

WHEREAS, Chapter 209 of the Public Acts of 1955 states that the declared purpose of the Act is to do that which the State welfare demands and that which the State public policy requires to alleviate the problems of unemployment, to raise family income, to provide a means by which the citizens of the community may promote and develop industry in their area so as to obtain a balanced economic development highly essential to the welfare of the State, and to promote the development of commercial, industrial, agricultural, and manufacturing enterprises by the several municipalities so as to be given local benefits peculiar to each and general benefits to the entire State; and

WHEREAS, the General Assembly also has declared that the purposes of the Act include maintaining and increasing employment opportunities by promoting industry, trade and commerce by inducing manufacturing, industrial, financial, service and commercial enterprises to locate or remain in the State; and,

WHEREAS, the Supreme Court has held that the purpose of the Act include the promotion of industry and the development of trade to provide against low wages and unemployment and that such purposes are public in nature; and,

WHEREAS, the Board is empowered pursuant to the Act to acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish, "projects" (as defined in the Act), and to lease such projects to others; and,

WHEREAS, Standard Candy Company ("Standard Candy") located at 715 Massman Drive in Nashville, Tennessee, in 2009 expanded its operations and facilities by adding fifteen thousand (15,000) square feet to the existing location ("the Project"); and,

WHEREAS, the Project resulted in an additional two hundred thirty seven (237) employees within the boundaries of the Metropolitan Government providing significant employment and other commercial opportunities for area citizens; and,

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305, all properties owned by the Board are exempt from ad valorem taxation in the State of Tennessee; and,

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305(b), the Metropolitan County Council (the "Council") has the power to delegate to the Board the authority to negotiate and accept from its lessees payments in lieu of ad valorem taxes, provided that such payments are in furtherance of the Board's public purposes; and,

WHEREAS, the benefits to the Metropolitan Government of the facilities and operations expansion within the boundaries of the Metropolitan Government will provide an opportunity for the Board to exercise its power, as enumerated above, to acquire, by purchase, exchange, gift or lease, real and personal property that will be used with respect to the expansion, lease that property to Standard Candy, and enter into one or more agreements with Standard Candy to accept payments in lieu of ad valorem taxes with respect to the property; and,

WHEREAS, the Board is not able to negotiate and accept payments in lieu of ad valorem taxes without authorization from the Council; and,

WHEREAS, it is in the interest and welfare of the citizens of the Metropolitan Government to delegate authority to the Board to negotiate and execute a payment-in-lieu-of-tax agreement with Standard Candy.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: That the Council of the Metropolitan Government finds that the Board's acceptance of payments in lieu of ad valorem taxes with respect to the Project is in furtherance of the Board's public purpose of maintaining and increasing employment opportunities, as set forth in Tenn. Code Ann. § 7-53-102 and the other public purposes described above.

Section 2: That the Metropolitan Government hereby delegates to the Board the authority to negotiate and accept payments in lieu of personal and real property taxes with respect to the Project for a period of up to six (6) years, beginning on the date that the Board enters into a lease with Standard Candy with respect to the Project. The amount of the payments in lieu of property taxes that shall be required with respect to that six-year period shall be as follows:

- (a) Payments in lieu of real property taxes shall be zero percent (0%) of the Standard Tax during the first year, fifty percent (50%) of the Standard Tax during each of years two through five and one hundred percent (100%) for the sixth year;
- (b) With respect to the capital investment of personal property, machinery, and equipment associated with the Project, the payments in lieu of personal property taxes shall be zero percent (0%) of the Standard Tax during the first year, fifty percent (50%) of the Standard Tax during each of years two through five and one hundred percent (100%) for the sixth year; and
- (c) With respect to the personal property located at and used in connection with the Standard Candy facilities immediately prior to the commencement of the Project, the payments in lieu of personal property taxes shall be one hundred percent (100%) of the Standard Tax during each of the six years.

Section 3: That the term "Standard Tax" shall mean the amount of ad valorem real and personal property tax that Standard Candy would be required to pay with respect to a given tax year with respect to the real and personal property that is then subject to the payment in lieu of tax arrangement authorized hereby if Standard Candy owned such property. Standard Candy shall be permitted to challenge the assessment of any real or personal property that is then subject to the payment in lieu of tax arrangement authorized hereby in the same manner as if Standard Candy owned such property.

Section 4: (a) That the payment in lieu of tax arrangement authorized by this Ordinance shall apply to all real property and personal property comprising a portion of, or used at or in connection with the facilities located on the property known as 715 Massman Drive, Nashville, TN 37210.

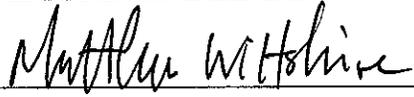
(b) That the payment in lieu of tax arrangement authorized by this Ordinance shall apply to all land, easements or other property rights, buildings, improvements, fixtures, construction in progress, equipment, furniture, and other properties of any nature comprising a portion of, or used in connection with, facilities located on the property described above. Such arrangement shall apply to such facilities and such properties in their current scope and configuration and to all replacements, enhancements, additions, expansions, and improvements to such properties and facilities.

Section 5: That the final version of the payment in lieu of tax agreement authorized by this Ordinance must be approved as to legality by the Director of Law, or her designee, of the Metropolitan Government prior to being executed by the Board.

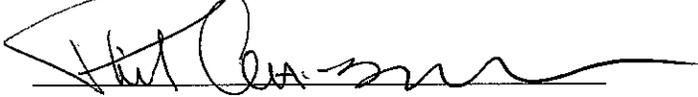
Section 6: That all ordinances or resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 7: That this Ordinance shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:

  
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Matthew A. Wiltshire  
Director of the Mayor's Office of  
Economic and Community Development

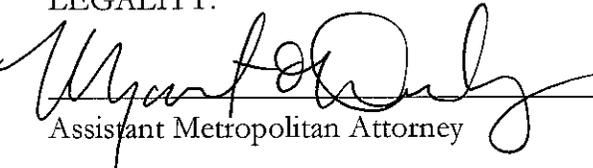
INTRODUCED BY:

  
\_\_\_\_\_  
\_\_\_\_\_  
Council Members

APPROVED AS TO AVAILABILITY  
OF FUNDS:

  
\_\_\_\_\_  
Richard M. Riebeling  
Director of Finance

APPROVED AS TO FORM AND  
LEGALITY:

  
\_\_\_\_\_  
Assistant Metropolitan Attorney