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THE COUNCIL

BRIEFING PAPER OF THE INFRASTRUCTURE DIVISION

COMMITTEE ON ECONOMIC DEVELOPMENT

Hon. Thomas White, Jr., Chair

August 20, 2009

PROPOSED INT. NO. 890-A

By: Council Members White, Comrie, James
and Palma

TITLE:

A Local Law to amend the administrative
code of the City of New York, in relation to
regionally significant projects and empire
zones.

ADMINISTRATIVE CODE:

Adds a new section 22-719 to chapter 7 of
title 22

I. Introduction

On August 18, 2009, the Committee on Economic Development, chaired by Council Member Thomas White Jr., will hold a hearing on Proposed Int. No. 890-A, "A Local Law to amend the administrative code of the City of New York, in relation to regionally significant projects and empire zones." Proposed Int. No. 890-A (a copy of which is annexed) would, if enacted, authorize submission of an application by Flying Food Group LLC, a manufacturer of prepared food for airlines airport restaurants and the "on-the-go" market, to the Empire State Development Corporation for designation as a "Regionally Significant Project" in accordance with the State's Empire Zone Program. A hearing on this bill was previously held on June 25, 2009. Flying Food Group LLC (FFG) is relocating its operation from an area adjacent to John F. Kennedy International Airport (JFK), in Queens, to the airport itself.

II. Background

In 1986 New York State established the Empire Zone Program (formerly known as the Economic Development Zone Program) through which a variety of tax benefits are offered to companies who move into or expand their operations within prescribed geographic areas known as Empire Zones. There are eleven (11) such zones in New York City.

In 2005, the New York State Legislature enacted legislation that significantly restructured the Empire Zone Program. This legislation created the concept of a "regionally significant project," a business enterprise that could be associated with an Empire Zone so as to be eligible for benefits, although not physically located within a zone, if it is consistent with that Empire Zone's business plan. In order to qualify different types of businesses would be expected to create a certain net number of new jobs. A manufacturing company would have to have an estimate of creating 50 or more net new jobs.

The following incentives are available to businesses taking part in the Program:¹

Wage Tax Credit

Employee Wage Tax Credits are applied against a business's state tax liability. An Empire Zone employer, paying employees at least 135 percent of minimum wage, may be entitled to a \$3,000 credit for targeted employees or \$1,500 credit for all non-targeted employees. Both credits may be taken for up to five consecutive years, beginning with the first tax year in which Empire Zone wages are paid. An additional \$500 credit is available in investment zones for jobs paying \$40,000 or greater.

Targeted Employee

A targeted employee is a New York State resident who receives Empire Zone wages and who is eligible under the federal Work Opportunity Tax Credit “WOTC” program, (the WOTC program was designed to promote the hiring of individuals who qualify as a member of a target group while simultaneously providing a federal tax credit to employers who hire these individuals) or is eligible for benefits under the Workforce Investment Act as a dislocated worker or a low-income individual, or has received public assistance benefits anytime within the previous two years (e.g. cash payments including Temporary Assistance to Needy Families (TANF), Safety Net, Medicaid, Food Stamps), or has income below the United States Commerce Department's established poverty level, or is a member of a family whose income is below poverty level or is an honorably discharged veteran from any branch of the United States Armed Forces.

Based on the number of jobs created, the company's assets in the Zone and income taxes owed by the company, Qualified Empire Zones Enterprises (QEZE) are eligible to receive the following tax credits and exemptions:

QEZE Sales Tax Exemptions:

¹Information available at <http://www.tax.state.ny.us/sbc/qeze.htm> Accessed June 24, 2009.

Qualified Empire Zone Enterprises (QEZE) are granted a 10-year exemption from State sales tax on purchases of goods and services (including utility services) used predominantly in an Empire Zone.

QEZE Credit for Real Property Taxes:

Qualified Empire Zone Enterprises are allowed a refundable credit against business or income tax equal to a percentage of real property taxes paid in the zone (effective for taxable years beginning on or after January 1, 2001).

QEZE Tax Reduction Credit:

Qualified Empire Zone Enterprises are allowed a credit against business or income tax equal to a percentage of taxes attributable to the zone enterprise (effective taxable years beginning on or after January 1, 2001).

EZ Wage Tax Credit:

This credit is available for up to five consecutive years for companies hiring full-time employees in newly created jobs. For employees in special targeted groups, this credit equals \$3,000 per year, with a credit of \$1,500 per year effective 1/1/2001, for all other new hires.

EZ Investment Tax and Employment Incentive Credits:

Businesses that create new jobs and make new investments in production, property and equipment may qualify for tax credits of up to 19% of the company's eligible investment.

New Business Refund:

Businesses new to New York State are entitled to a 50% cash refund of unused EZ-WTC and ITC amounts. Other businesses may carry forward unused credits indefinitely.

Utility Rate Savings:

Special reduced electric and gas rates may be available through investor-owned utilities in New York State. Businesses that locate or expand their operations in an EZ may receive significantly reduced rates.

Zone Capital Credit:

A 25% tax credit against personal or corporate income taxes is available for contributing or purchasing shares in a zone capital corporation; or for a direct equity investment in a certified zone business; or for contributions to approved community development projects within an EZ. A Zone Capital Corporation is an entity incorporated for the purpose of raising funds through private and public grants, donations or investments, to be used in making investments in and loans to certified zone businesses to encourage the establishment or expansion of such businesses, thereby providing new job opportunities within an economic development zone.²

Sales Tax Refund or Credit:

Purchases of building materials to be used for commercial or industrial real property located in an EZ are eligible for a refund or credit of NYS sales taxes. A similar refund or credit of local sales tax may also be available from the locality.

Real Property Tax Abatement:

EZs may offer tax abatements from an increased assessment, with the abatement value based on improvements to real property for up to 10 years. This holds true for up to seven years at 100%, decreasing over the last three years of the exemption.

Technical Assistance:

Each local zone office is staffed with professionals qualified to assist businesses locating or expanding in an EZ.

² 5 NYCRR 10.2(n).

Businesses which receive Empire Zone benefits and fail to meet their job creation projection may have their certification revoked pursuant to Title 5 of the Official Compilation of the New York Codes, Rules and Regulations, Part 11.9 (5 NYCRR §11.9).

III. Regionally Significant Projects

According to General Municipal Law § 957(d)(i), a regionally significant project means, (1) a manufacturer projecting the creation of fifty or more jobs, (2) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more jobs, (3) a financial or insurance services or distribution center creating three hundred or more jobs, (4) a clean energy research and development enterprise shall be eligible as a regionally significant project as determined by the local zone administrative board and the commissioner, and (5) other projects may be considered by the zone designation board.

Because it is a state-wide program, a broad array of commercial activities were identified for inclusion as types of businesses from which a “regionally significant project” could be designated. However, it is critical that such designations, if they are to be made, focus strategically on those types of businesses that best advance the intentions and goals of the Empire Zones Program and not companies and types of commercial activities that already receive the bulk of the City’s economic development benefits. Thus, it is anticipated that designations of “regionally significant projects” will be directed at those types of businesses that are most likely to promote economic development which will benefit the people who were intended to be assisted through the creation of Empire Zones.

A manufacture is defined as a taxpayer which during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing or a

business engaged in emerging technologies pursuant to section 3201-e of the Public Authorities Law.³

A business wishing to become a regionally significant project (RSP) must apply to a local Zone Administrative Board (ZAB) for a resolution by which the ZAB finds that the proposed RSP will create the requisite number of jobs, that the proposed RSP's operations are consistent with the Zone's business plan, and that the company is within New York City but is outside the boundaries of a designated zone. Upon receipt of the resolution from the ZAB, the business must then submit an application package to the New York State Empire State Development Corporation (ESDC) for a "determination of eligibility."

If the project is deemed eligible by ESDC, there will be a formal application for designation of the proposed location as being within a Zone Administrative Board's Empire Zone.

The New York City Council must pass a local law permitting the business to make the formal application for designation to ESDC. If the proposed location is designated for a company, the company must complete the EZ-1 Application of Joint Certification as an Empire Zone Enterprise.

IV. Flying Food Group LLC

The Zone Administrative Board (ZAB) of the South Jamaica Empire Zone passed a resolution on June 30, 2008 in which it reviewed the operations of a food manufacturing company, Flying Food Group LLC (FFG), which already has operations in Southeast Queens but wishes to expand its operations and was negotiating with the Port Authority of New York and New Jersey (Port Authority) for space at John F. Kennedy International Airport (JFK). In its resolution, the ZAB agreed that making the Empire Zone benefits available to FFG would be "in

³ Tax Law §14(k)(1).

the best interests of South Jamaica and the local community.”⁴ (A copy of that Resolution is annexed as Exhibit A).

On August 28, 2008, ESDC issued a letter to the City’s Department of Small Business Services in which it determined that “...this project meets the criteria of §957(d) of the general municipal law as a regionally significant project.” That letter established a schedule for new net job creation that FFG must meet in order to maintain eligibility to receive benefits:

- By year end 2009 16 full-time equivalent positions
- By year end 2010 34 full-time equivalent positions
- By year end 2011 50 full-time equivalent positions⁵

In order for the State’s Empire Zone Designation Board of ESDC to authorize the benefits, the local government must enact a local law authorizing such application within 180 days of the preliminary determination of eligibility. A bill to accomplish that, Int. No. 890, was introduced in the New York City Council. However, because of difficulties that FFG had in completing negotiations with the Port Authority, on April 8, 2009, ESDC issued an extension of time for approval of FFG’s application to September 18, 2009. (A copy of that letter is annexed as Exhibit C).

FFG is a subsidiary of Flying Food Fare, Inc, a Chicago-based company founded in 1983 to provide prepared food to Midway Airlines at Chicago’s Midway Airport. It has been represented that this larger corporate enterprise has 3500 employees world-wide with annual revenues in excess of \$300 million and that in addition to its Chicago and New York City operations, it currently provides food service to airlines and airports in Atlanta, Dallas-Ft. Worth, Los Angeles, Miami, Newark, Orlando, Phoenix, San Francisco, Seattle and Washington, D.C. It has also been represented that FFG’s New York operation, which arose from the purchase of an

⁴ South Jamaica Empire Zone Administrative Board Resolution Relating to Flying Food Group LLC, June 30, 2008.

existing business, is about 12 years old and that annual revenues have increased during that time from \$12 million to \$45 million, that its customer base has increased from 15 to 25, that FFG had increased the number of employees from 125 to 515 at the time the initial application to ESDC for preliminary designation was made, and that it was expected that 210 new jobs would be created.

However, it has also been reported to Committee staff that as a result of current economic conditions the number of employees has declined to 436 and the projection for new jobs has declined to 189, but that because of increases in costs, FFG's investment in developing its new space, relocation costs, furniture and equipment costs, costs for machinery and employee training will increase from approximately \$22.5 million to approximately \$25 million. Representations have been made on behalf of FFG that at the time of application it was a "union shop" and that 93% of their employees (483 jobs) resided in New York City, 70% of their employees (367 jobs) resided in Queens and that 47% of their employees (245 jobs) resided in Southeast Queens. Representations were also made that of their then current employees, 37% of their employees (193 hourly jobs) were production workers, 25% (131 hourly jobs) were transportation workers, 17% were ("indirect" workers), 11% (58 hourly jobs) were sanitation workers and 8% (41 salaried jobs) were corporate management workers.⁶

V. Conclusion

At the hearing on June 25, the members of the Economic Development Committee heard testimony on Int. No. 890 from a variety of witnesses with different perspectives, including representatives of the Mayor's Office of Industrial and Manufacturing Businesses, Flying Food Group, LLC, the Greater Jamaica Development Corp. and GoodJobs NY, and inquired as to

⁵ Empire State Development letter to Commissioner Leslie Torres, New York City Department of Small Business Services, August 25, 2008 (Attached as Exhibit B).

elements of the application by Flying Food Group LLC for designation as a Regionally Significant Project under the State Empire Zone Program.

VI. Update

On August 18, 2009, the Committee on Economic Development passed Proposed Int. No. 890-A by a vote of seven in the affirmative, none in the negative, with no abstentions.

JH
Committee Report – RSP – Flying Food Group 8-18-09
8-14-09

⁶ This adds up to only 512 jobs, not 515.

Proposed Int. No. 890-A

By Council Members White Jr., Comrie, James and Palma

A Local Law

To amend the administrative code of the city of New York, in relation to regionally significant projects and empire zones.

Be it enacted by the Council as follows:

Section 1. Statement of legislative findings and intent. Under Section 957(d)(i) of the General Municipal Law, certain business enterprises located outside the boundaries of an Empire Zone may still be eligible for Empire Zone benefits as a "regionally significant project" because the economic activity of such enterprise is of a nature that is encouraged by the State, and the Administrative Board of such Empire Zone authorizes the designation of such business as a regionally significant project. The New York State Department of Economic Development and the South Jamaica Empire Zone Administrative Board have determined that Flying Food Group LLC, a manufacturer and food processing and packaging company serving 85 airlines and nationally known retail food chains is projected to create more than 100 new jobs and has been provisionally approved for Empire Zones benefits as a regionally significant project under Section 957(d)(i) of the General Municipal Law.

§2. Chapter 7 of title 22 of the administrative code of the city of New York is amended by adding new section 22-719 to read as follows:

§22-719 Authorization for the designation of a regionally significant project. a. Pursuant to the provisions of article 18-B of the general municipal law, a business enterprise may be designated as a regionally significant project if the criteria set forth in paragraph i of subdivision d of section 957 of such article are met.

b. By a resolution of the South Jamaica empire zone administrative board, dated June 30, 2008, such administrative board, in accordance with the provisions of article 18-B of the general municipal law, supported the designation of Flying Food Group LLC, having federal employer identification number 36-4331472 and located at building 146, JFK International Airport, in the borough of Queens, as a regionally significant project.

c. Pursuant to the provisions of article 18-B of the general municipal law, such regionally significant project shall be as set forth as follows:

Flying Food Group LLC, having federal employer identification number 36-4331472 and at building 146, JFK International Airport, in the borough of Queens also known as Block: 14260 Lot: 1, in the borough of Queens.

§3. This local law shall take effect immediately.

LS 6586 Flying Foods RSP
7-21-09

ATTACHMENT A

EMPIRE ZONE ADMINISTRATIVE BOARD

RESOLUTION RELATING TO FLYING FOOD GROUP, LLC

WHEREAS, the New York State Empire Zones Program (the "Program") authorizes, under certain qualifying facts and circumstances, the certification of companies for benefits under the Program if located within New York City, but outside the boundaries of the eleven areas designated as the New York City Empire Zone;

WHEREAS, such companies are referred to under the Program as "Regionally Significant Projects" and in order to qualify must meet certain application and qualification requirements, including County and municipal legislative approvals, environmental confirmations, and approvals by New York State Empire State Development Corporation ("ESDC") and this Board;

WHEREAS, Flying Food Group, LLC has been successfully engaged in the business of manufacturing prepared food for airlines and "on the go" markets;

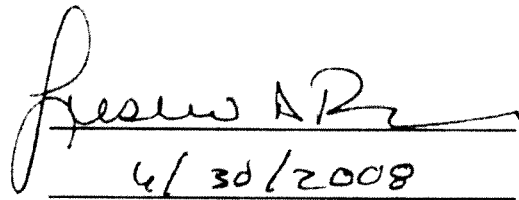
WHEREAS, Flying Food Group, LLC is located at Building 146, JFK International Airport, Jamaica, NY 11430 and plans to hire 210 people over the next 3 years and to invest \$22,465,000 in production equipment;

WHEREAS, this board and the South Jamaica Empire Zone staff have reviewed the operations and plans of Flying Food Group, LLC and have concluded that it meets all of the requirements for the Program and that the expansion and increased employment at Flying Food Group, LLC would be in the best interest of South Jamaica and the local community;

NOW, THEREFORE, be it hereby resolved that the Application of Flying Food Group, LLC as a Regionally Significant Project be continued and pursued through all necessary and appropriate requirements and phases, in coordination with all necessary governmental entities in order to qualify Flying Food Group, LLC as a Regionally Significant Project and to include within the acreage of South Jamaica's Empire Zone is that property located at Building 146, JFK International Airport, Jamaica, NY 11430, it being expressly acknowledged and understood that the final determination and certificates of Flying Food Group, LLC as a Regionally Significant Project shall be made by this Board at a subsequent meeting following completion of all such action.

Approved by ZAB Chair/Designee

Date


4/30/2008

ATTACHMENT B

Empire State Development

August 25, 2008

Leslie Ramos
Executive Director
Mayor's Office of Industrial and Manufacturing Businesses
110 William St, 7th Fl
New York, NY 10038

Dear Ms. Ramos:

This letter is in response to your request to include Flying Food Group LLC into the South Jamaica Empire Zone as a "regionally significant manufacturing" project.

According to the information you provided us, Flying Food Group LLC (311991) is a manufacturer AND will be *undertaking a project that would create fifty or more net new jobs*. Flying Food Group LLC is projected to employ 725 employees in three years.

Based on this information, we have determined that this project meets the eligibility requirements as a regionally significant project pursuant to §957 (d) of the general municipal law and is eligible to apply for inclusion within the South Jamaica Empire Zone in an area that is outside of the distinct and separate contiguous areas as identified and approved by the Empire Zone Designation Board. If approved, the acreage associated with this project will not be counted against the two square mile limitation of available acreage. Please be advised, however, that approval of designation of lands does not ensure that the company meets the eligibility requirements for certification nor is it indicative of whether the company qualifies for any specific tax credits pursuant to the Tax Law.

In order for Empire State Development to approve this project for designation in the South Jamaica Empire Zone, your application packet must be submitted to our office for review within 180 days of being deemed eligible. Please refer to the attached checklist for items that must be included in your application.

Please be advised that pursuant to Section 959 (a) (iii) of the General Municipal Law, if Flying Food Group LLC will be shifting some, or some portions thereof, of its operations from an area within New York State not designated as an Empire Zone to the location of this regionally significant project, then approval from the local governing body of the municipality from which such shift of operations will occur must be obtained before Flying Food Group LLC can be certified.

New York State Department of Economic Development
30 South Pearl Street Albany New York 12245 Tel 518 292 5100
Website www.empire.state.ny.us

Leslie Ramos
August 25, 2008
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Finally, also please be advised that, assuming Flying Food Group LLC is designated as a regionally significant project in 2008 and is subsequently certified, the company would be required to meet the following minimum net new job targets by the dates indicated below in order to maintain its status as a regionally significant project. Net new jobs are considered full time equivalent employees beginning on the date of designation of the project as a regionally significant project.

- | | | |
|--------------------|----|--------------------------------|
| ▪ By year end 2009 | 16 | full-time equivalent positions |
| ▪ By year end 2010 | 34 | full-time equivalent positions |
| ▪ By year end 2011 | 50 | full-time equivalent positions |

The above dates would be adjusted based on a later date of designation. Please submit your application packet within 180 days.

Failure to meet these employment targets would result in the decertification of the company pursuant to Title 5 of the New York Code of Rules and Regulations §11.9 (5 NYCRR 11.9). Should the company be decertified for failure to achieve these net new job targets, it could appeal the decision pursuant to Section 12 of the regulations (5 NYCRR 12).

If you have any additional questions about this matter, please feel free to call.

Sincerely,



Randal Coburn
Director
Empire Zones Program

cc: B.Ansari
K.Castle
J.Tazewell
Flying Food Group

ATTACHMENT C

Empire State Development

April 8, 2009

Richard Werber
Director, Business Services Group
Greater Jamaica Development Corporation
90-04 161st Street
Jamaica, NY 11432

Dear Mr. Werber:

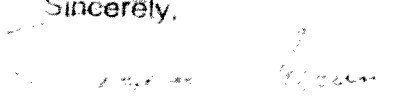
This letter is in response to your email communication of March 18, 2009, requesting an extension of the 180 days for submission of the designation package for Flying Food Group status as an eligible regionally significant manufacturing project in the South Jamaica Empire Zone.

Please be advised that your request for extension has been granted by an additional 180 days until September 18, 2009. However, should the project and/or company change prior to the submission of the designation packet, it may be necessary to begin the process anew.

Also please be advised that in the event any legislative or regulatory changes to the program are implemented between now and September 18, 2009, such changes could impact pending projects. The submission may be evaluated and reviewed against the company's projections and claims originally submitted for determination of eligibility and any new program rules.

If you have any questions, please contact Brian Ansari at (518) 292-5264.

Sincerely,


Randal Coburn
Director, Empire Zones Program

cc: Tom Dien Wu

