

Chapter 19

DEVELOPMENT*

- | | |
|------------------|---|
| Art. I. | In General, §§ 19-1--19-15 |
| Art. II. | Community Revitalization Tax Relief Incentive, §§ 19-16--19-29 |
| Art. III. | Partial Tax Exemption for New Industrial and Commercial Construction |

* **Cross References:** Code enforcement division, § 2-250 et seq.; Buildings and building regulations, Ch. 4; Housing Ch. 8; Site plan review, Ch. 11.5; Zoning and land use, Ch. 17.

State Law References: Community Revitalization Tax Relief Incentive, RSA 79-E, State Economic Growth, Resource Protection and Planning Policy, RSA 9-B, Appraisal of Taxed Property, RSA 75:1, Collection of Taxes, RSA 80:1-80:42-a, and Administrative Procedure Act, RSA 541-A.

ARTICLE I.

IN GENERAL

Secs. 19-1--19-15. Reserved.

ARTICLE II.

COMMUNITY REVITALIZATION TAX RELIEF INCENTIVE

* **Cross References:** Code enforcement division, § 2-250 et seq.; buildings and building regulations, Ch. 4; Housing, Ch 8, Site plan review, Ch. 11.5; Zoning and land use, Ch. 17.
State Law References: Community Revitalization Tax Relief Incentive, RSA 79-E, State Economic Growth, Resource Protection and Planning Policy, RSA 9-B, Appraisal of Taxed Property, RSA 75:1, Collection of Taxes, RSA 80:1-80:42-a, and Administrative Procedure Act, RSA 541-A.

Sec. 19-16. Declaration of Public Benefit

(a) It is declared to be a public benefit to enhance Berlin's Downtown Zone with respect to economic activity, cultural and historic character, sense of community, and in-town residential uses that contribute to economic and social vitality.

(b) It is further declared to be a public benefit to encourage the rehabilitation of the many underutilized structures in the downtown as a means of encouraging growth of economic, residential, and municipal uses in a more compact pattern, in accordance with RSA9-B.

(c) Short-term property assessment tax relief and a related covenant to protect public benefit as provided under this ordinance are considered to provide a demonstrated public benefit if they encourage the substantial rehabilitation and use of qualifying structures as defined in this ordinance.

Sec. 19-17. Tax Relief Authority.

The City of Berlin hereby adopts RSA 79-E in the manner specified under RSA 79-E:3. In addition, the City has modified the incentive program to best suit the needs of the City and its constituents.

Sec. 19-18. Definitions.

In the interpretation and enforcement of this article, all words other than those defined specifically below shall have the meanings implied by their context in the ordinance or the ordinarily accepted meanings. For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Covenant. A formal and legally binding agreement or contract such as a lease, or one of the clauses in an agreement of this kind.

Qualifying Structure. A building located in the Downtown Zone District as depicted in the official Zoning Map of the City of Berlin which is incorporated in the Zoning Ordinance of Berlin, NH.

Substantial Rehabilitation. Rehabilitation of a qualifying structure which costs at least 15 percent of the pre-rehabilitation assessed valuation or at least \$75,000, whichever is less.

Tax Relief. A period of time, as determined by the Mayor and City Council in accordance with this ordinance, the property tax on a qualifying structure shall not increase as a result of the substantial rehabilitation thereof.

Tax Relief Period. The finite period of time during which the tax relief will be effective, as determined by the Mayor and City Council pursuant to Chapter 19, Sec. 19-20.

Sec. 19-19. Community Revitalization Tax Relief Incentive.

- 1) An owner of a qualifying structure who intends to substantially rehabilitate such structure may apply to the Mayor and City Council through the City Planning Department.
- 2) The applicant shall complete the application form including the address of the property, a description of the intended rehabilitation, any changes in use of the property resulting from the rehabilitation, and submit the required non-refundable application fee of \$50.
- 3) Upon receipt of an application, the application will be reviewed by the City Planner, Zoning Officer and Building Inspector for any compliance issues. The applicant must satisfactorily answer any questions they may have.
- 4) The Mayor and City Council will hold a duly noticed public hearing to take place no later than 60 days from receipt of the application, to determine whether the structure at issue is a qualifying structure; whether the proposed rehabilitation qualifies as substantial rehabilitation; and whether there is a public benefit to granting the requested tax relief and, if so, for what duration.
- 5) No later than 45 days after the public hearing, the Mayor and City Council shall render a decision granting or denying the requested tax relief and, if so granting, establishing the tax relief period.

6) The Mayor and City Council may grant the tax relief, provided:

- (a) The Mayor and City Council grant the request by a two thirds (2/3) majority vote; and
- (b) The Mayor and City Council find a public benefit under Chapter 19, Sec. 19-22; and
- (c) The specific public benefit is preserved through a covenant under Chapter 19, Sec. 19-23; and
- (d) The Mayor and City Council find that the proposed use is consistent with the municipality's master plan or development regulations.

7) If the Mayor and City Council grant the tax relief, they shall identify the specific public benefit achieved under Chapter 19, Sec. 19-22 and shall determine the precise terms and duration of the covenant to preserve the public benefit under Chapter 19, Sec. 19-23.

8) If the Mayor and City Council, in its discretion, denies the application for tax relief, such denial shall be accompanied by a written explanation. The Mayor and City Council'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 79-A:9 or 79-A:11 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 bad faith or discrimination.

Sec. 19-20. Duration of Tax Relief Period.

1) The Mayor and City Council may grant such tax assessment relief for a period of up to 5 years, beginning with the completion of the substantial rehabilitation.

2) The Mayor and City Council may, in its discretion, add up to an additional 2 years of tax relief for a project that results in new non-subsidized residential units if the rehabilitation is done in conjunction with the retail/commercial portion of the building.

Tax relief for the rehabilitation of upper floor non-subsidized residential units, as a stand alone project, will be eligible for tax relief for a period of 2 years.

3) The Mayor and City Council may, in its discretion, add up to an additional 4 years of tax relief for the substantial rehabilitation of a qualifying structure that is listed on or determined eligible for listing on the National Register of Historic Places, state register of historic places, or is located within and important to a locally designated historic district, provided that the substantial rehabilitation is conducted in accordance with the U.S. Secretary of Interior's Standards for Rehabilitation.

Sec. 19-21. Resumption of Full Tax Liability.

Upon expiration of the tax relief period, the property shall be taxed at its market value in accordance with RSA 75:1.

Sec. 19-22. Public Benefit.

The proposed substantial rehabilitation must provide at least one of the following public benefits in order to qualify for tax relief under this ordinance:

- 1) It enhances the economic vitality of the downtown;
- 2) It enhances and improves a structure that is culturally or historically important on a local, regional, state, or national level, either independently or within the context of an historic district in which the building is located;
- 3) It promotes development of municipal centers, providing for efficiency, safety, and a greater sense of community, consistent with RSA 9-B; or
- 4) It increases residential housing in the Downtown Zone.

Sec. 19-23. Covenant to Protect Public Benefit.

- 1) Tax relief for the substantial rehabilitation of a qualifying structure shall be effective only after a property owner grants to the municipality a covenant ensuring that the structure shall be maintained and used in a manner that furthers the public benefits for which the tax relief was granted.
- 2) The covenant shall be coextensive with the tax relief period. The covenant may, if required by the Mayor and City Council, be effective for a period of time up to twice the duration of the tax relief period.
- 3) The covenant shall include provisions requiring the property owner to obtain casualty insurance, and flood insurance if appropriate. The covenant may include, at the Mayor and City Council's sole discretion, a lien against proceeds from casualty and flood insurance claims for the purpose of ensuring proper restoration or demolition or 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 provisions set forth in Chapter 19, Sec. 19-24.
- 4) To protect public benefit, the Mayor and City Council shall provide for the recording of the covenant with the registry of deeds. It shall be a burden upon the property and shall bind all transferees and assignees of such property.
- 5) The applicant shall pay any reasonable expenses incurred by the municipality in the drafting, review, and/or execution of the covenant. The applicant also shall be responsible for the cost of recording the covenant.

Sec. 19-24. Termination of Covenant; Reduction of Tax Relief; Penalty.

1) If the 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 in Chapter 19, Sec. 19-23 paragraph 3, the Mayor and City Council shall, after a duly noticed public hearing, determine whether and to what extent the public benefit of the rehabilitation has been diminished and shall determine whether to terminate or reduce the tax relief period in accordance with such determination. If the covenant is terminated, the Mayor and City Council shall assess all taxes to the owner as though no tax relief was granted, with interest in accordance with paragraph 2.

2) Any tax payment required under paragraph 1 shall be payable according to the following procedure:

(a) 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.

(b) 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.

(c) 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.

(d) Payment shall be due not later than 30 days after the mailing of the bill. Interest at the rate of 18 percent per annum shall be due thereafter on any amount not paid within the 30-day period. Interest at 12 percent 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.

19-25. Lien for Unpaid Taxes.

The real estate of every person shall be held for the taxes levied pursuant to Chapter 19, Sec. 19-24.

19-26. Enforcement.

All taxes levied pursuant to Chapter 19, Sec. 19-24 which are not paid when due shall be collected in the same manner as provided in RSA 80:1-80:42-a.

Sec. 19-27. Rulemaking.

The City of Berlin will abide by any rules the commissioner of the department of revenue administration adopts, pursuant to RSA 541-A, relative to the payment and collection procedures under Chapter 19, Sec. 19-24 (RSA 79-E:9).

Sec. 19-28. Extent of Tax Relief.

- 1) Tax relief granted under this ordinance shall pertain only to assessment increases attributable to the substantial rehabilitation performed under the conditions approved by the Mayor and City Council and not to those increases attributable to other factors including but not limited to market forces; or
- 2) Tax relief granted under this ordinance shall be calculated on the value in excess of the original assessed value. Original assessed value shall mean the value of the qualifying structure assessed at the time the Mayor and City Council approves the application for tax relief and the owner grants to the municipality the covenant to protect public benefit as required in this ordinance. The amount of tax relief will not exceed the projected construction costs estimated at the time of application.

Sec. 19-29. Other Programs.

The provisions of this ordinance shall not apply to properties whose rehabilitation or construction is subsidized by state or federal grants or funds that do not need to be repaid totaling more than 50 percent of construction costs from state or federal programs.

Sec. 19-30-19-45. Reserved

ARTICLE III

**PARTIAL TAX EXEMPTION FOR NEW INDUSTRIAL AND COMMERCIAL
CONSTRUCTION**

Sec. 19-46. Declaration of Public Benefit

- (a) It is declared to be a public benefit to encourage commercial and industrial construction as a means add to and diversify the City's economic base. New or additional industrial business not only adds to the tax base of the City but also provides new employment and economic activity in the City.
- (b) Short-term property tax exemption is a means to encourage this type of added economic activity and employment growth in the City.

Sec. 19-47. Tax Exemption Authority.

The City of Berlin hereby adopts the provisions of RSA 72:76 in the manner specified under RSA 72:77 and in accordance with the procedures set forth in RSA 72:27-a and in the City's normal procedures.

Sec. 19-48. Definitions.

In the interpretation and enforcement of this article, all words other than those defined specifically below shall have the ordinarily accepted meanings. For the purpose of this Article, the following definitions from RSA 72:75 shall apply:

- a. "Commercial Uses" shall include all retail, wholesale, service, and similar uses.
- b. "Industrial Uses" shall include all manufacturing, production, assembling, warehousing, developing or processing of goods or materials for sale or distribution, research and development activities and processing of waste materials.
- c. "New Construction" shall mean construction of new structures and additions, renovations or improvements to existing structures.

Sec. 19-49. Tax Exemption.

Any owner of property who either is or will be engaged in new construction on his/her property which will be utilized for a commercial use and/or industrial use as defined herein may apply to the Board of Assessors for an exemption from municipal and local school property taxes (no exemption from county or state education property taxes for the increase in assessed value attributable to the new construction) in accordance with the following table:

% Tax Exemption of Increased Assessed Value from New Construction

	Tax Year 1	Tax Year 2	Tax Year 3	Tax Year 4	Tax Year 5
Downtown Zone Commercial Uses	50%	40%	30%	20%	10%
All Other Commercial Uses	25%	20%	15%	10%	5%
Industrial Uses	50%	40%	30%	20%	10%

Sec. 19-50. Application for Exemption.

1. An owner must apply for the exemption prior to construction, but not after December 31st before the beginning of the tax year for which the exemption is sought. The owner shall make such application on an application form provided by the BOA, signed by the applicant under penalty of perjury, which contains adequate information to demonstrate that the applicant is qualified for the exemption. The BOA may anticipatorily grant the exemption, subject to adjustment when the actual increase in assessed value becomes known. If construction is partially complete on April 1 of any year, the exemption for that year shall be based on the increased assessed value attributable to the partial construction, but the duration of the exemption shall be adjusted such that the cumulative amount of exemptions received, based on the construction as completed, is proportional to that received by other eligible properties.
2. The BOA shall notify the applicant of their decision on or before February 28th before the beginning of the tax year for which the exemption is sought. The decision shall specify the amount of the exemption that it is effective beginning with the new tax year and the number of years, not to exceed ten years, for which the exemption applies to qualified construction. The exemption for all years shall cumulatively not exceed 500% of the increased assessed value. The decision of the BOA may be appealed in the manner set forth in RSA 72:34-a.
3. The BOA may request such additional or updated information as is necessary to determine eligibility. If the BOA is satisfied that the applicant has willfully made any false statement, or has refused to provide information after such a request, the BOA may refuse to grant the exemption.
4. If the City 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 City before and after the revaluation.

Sec. 19-51. Resumption of Full Tax Liability.

Upon expiration of the tax exemption period, the property shall be taxed at its full market value in accordance with RSA 75:1.

Sec. 19-52. Sunset Provision.

In accordance with RSA 72:77-II., this Article will expire and become void after 5 tax years from the date of its adoption. However, any application for exemption which has already been granted prior to the expiration of such 5 tax year period will continue to apply at the rate and for the duration in effect at the time it was granted. (Ord. 12-5-2011)