

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS
IN FORT BEND COUNTY DRAINAGE DISTRICT**

WHEREAS, taxing entities in the State of Texas are authorized to provide tax abatements for historic preservation and economic development, pursuant to Chapter 312 of the Property Tax Code;

WHEREAS, the creation and retention of job opportunities that bring new wealth is the highest civic priority; and,

WHEREAS, Fort Bend County Drainage District (hereinafter referred to as “District”) must compete with other localities across the region and the nation currently offering tax inducements to attract new industry, expand existing industry and develop new tax base; and,

WHEREAS, any tax incentives offered by the District would reduce needed tax revenue unless strictly limited in application to those new and existing industries that bring new wealth to the community; and,

WHEREAS, any tax incentives should not adversely affect the competitive position of existing companies operating in the District; and,

WHEREAS, the abatement of property taxes, when offered to attract primary jobs in industries which bring in money from outside a community instead of merely recirculating dollars within a community, has been shown to be an effective method of enhancing and diversifying an area’s economy; and,

WHEREAS, Texas law requires any eligible taxing jurisdiction to establish guidelines and criteria as to eligibility for tax abatement agreements prior to granting of any future tax abatement, said guidelines and criteria to be unchanged for a two-year period unless amended by a three-quarters vote; and,

WHEREAS, these guidelines and criteria shall not be construed as implying or suggesting that the District is under an obligation to provide tax abatement or other incentive to any applicant, and all applicants shall be considered on a case-by-case basis;

NOW, THEREFORE BE IT RESOLVED, that the District does hereby adopt these guidelines and criteria for granting tax abatements in reinvestment zones in the Fort Bend County Drainage District, Texas, and to provide consistency in the application and review process.

I. DEFINITIONS

- A. **“Abatement”** means the full or partial exemption from ad valorem taxes of certain real property and/or Tangible Personal Property in a reinvestment zone designated by the District for economic development purposes.
- B. **“Agreement”** means a contractual agreement between a property owner and / or Lessee and the District.
- C. **“Base Year Value”** means the assessed value of eligible property January 1 preceding the execution of the agreement plus the agreed upon value of eligible property improvements and Tangible Personal Property made after January 1 but before the execution of the Agreement.
- D. **“Deferred Maintenance”** means improvements necessary for continued operation which do not improve productivity, or alter the process technology, reduce pollution or conserve resources.
- E. **“Eligible Property”** Abatement may be extended to the value of buildings, structures, tangible personal property as defined in the Texas Tax Code including fixed machinery and equipment, site improvements, and related fixed improvements necessary to the operation and administration of the facility.
- F. **“Expansion”** means the addition of buildings, structures, machinery, tangible personal property, equipment or payroll for purposes of increasing production or regional capacity
- G. **“Facility”** means property improvements completed or in the process of construction which together comprise an integral whole.
- H. **“Hotel”** means a commercial structure which provides overnight accommodations to travelers and which contains 150 rooms or more.
- I. **“Ineligible Property”** The following types of property shall be fully taxable and ineligible for tax abatement: land, existing improvements, tangible personal property that the Fort Bend Central Appraisal District classifies as inventory or supplies, real property used primarily to provide retail sales or services to the public, real property used for residential purposes, tangible personal property classified as furnishings, tangible personal property located in the reinvestment zone prior to the effective date of the tax abatement agreement, real property with a productive life of less than 10 years, or any other property for which abatement is not allowed by state law.
- J. **“Modernization”** means a complete or partial demolition of facilities and the complete or partial reconstruction or installation of a facility of similar or expanded production capacity. Modernization may result from the construction, alteration, or installation of buildings, structures, machinery, equipment, pollution control devices or resource conservation equipment.
- K. **“New Facility”** means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.
- L. **“Commercial Building”** means a new facility; a new addition to an existing facility or build out of unoccupied space within an existing facility
- M. **“Productive Life”** means the number of years a property improvement is expected to being service in a facility.
- N. **“Real Property”** means: land or an improvement or other property classified as such under state law.

- O. **“Reinvestment Zone”** means a geographic area of the District which meets the criteria of §312.202 of the Property Tax Code.
- P. **“Tangible Personal Property”** means tangible personal property classified as such under state law, but excluding inventory and/or supplies and tangible personal property that was located in the investment zone at any time before the period covered by the agreement with the District.

II. ABATEMENT AUTHORIZED

- A. **Submission:** Upon submission of an Economic Impact Statement signed by the company and certified by the Greater Fort Bend Economic Development Council, (hereinafter referred to as (“GFBEDC”)) Eligible Property shall be considered for tax abatement as hereinafter provided.
- B. **Creation of New Value:** An abatement may only be granted for the additional value of eligible Improvements made subsequent to and specified in an abatement agreement between the District and the property owner or lessee, subject to such limitations as the District may require.
- C. **New and Existing Facilities:** An abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.
- D. **Economic Qualifications:** In order to be eligible for designation as a reinvestment zone and receive tax abatement the planned improvement:
 - 1. Must be expected to have an increased appraised ad valorem tax value of at least \$1,000,000 based upon the Fort Bend Central Appraisal District’s assessment of the eligible property; and
 - 2. Must be expected to prevent the loss of payroll or retain, increase or create payroll on a permanent basis in the District.
 - 3. Must not have the effect of transferring employment from one part of the District to another, unless there is a substantial threat of economic loss to the District.
- E. **Standards for Tax Abatement:** The following factors, among others, may be considered in determining whether to grant tax abatement; and, if so, the percentage of value to be abated and duration of the tax abatement:
 - 1. Value of land and existing improvements, if any;
 - 2. Type and value of proposed improvements;
 - 3. Productive life of proposed improvements;
 - 4. Number of existing jobs to be retained by proposed improvements;
 - 5. Number and type of new jobs to be created by proposed improvements;
 - 6. Amount of local payroll to be created;
 - 7. Whether persons residing, or projected to reside, within affected taxing jurisdictions will have the opportunity to fill the new jobs being created;
 - 8. Amount of local taxes to be generated directly;
 - 9. Amount that property tax base valuation will be increased during term of abatement and after abatement, which shall include a definitive commitment that such valuation shall not, in any case, be less than the economic qualifier stipulated in Section II(D)(1);
 - 10. The costs to be incurred by the District to provide facilities or services directly resulting from the new improvements;

11. The amount of ad valorem taxes to be paid to the District during the abatement period considering (a) the existing values; (b) the percentage of new value abated; (c) the abatement period; and (d) the value after expiration of the abatement period;
 12. The population growth of the District that occurs directly as a result of new improvements;
 13. The types and values of public improvements, if any, to be made by applicant seeking abatement;
 14. Whether the proposed improvements compete with existing businesses to the detriment of the local economy;
 15. The impact on the business opportunities of existing businesses;
 16. The attraction of the other new businesses to the area as a result of the project;
 17. The overall compatibility with the zoning ordinances and comprehensive plan for the area;
 18. Whether the project is environmentally compatible with no negative impact on quality of life perceptions;
 19. Whether the company has agreed to participate in the continuing economic development process in Fort Bend District by becoming a trustee member of the Greater Fort Bend Economic Development Council for a minimum period coinciding with the term of any abatement granted by District.
- F. **Applications:** Each application for tax abatement shall be reviewed on its merits utilizing the factors provided above. After such review, abatement may be denied entirely or may be granted to the extent deemed appropriate after full evaluation.
- G. **Denial of Abatement:** Neither a reinvestment zone nor abatement agreement shall be authorized if it is determined that:
1. There would be a substantial adverse effect on the provision of government service or tax base;
 2. The applicant has insufficient financial capacity;
 3. Planned or potential use of the property would constitute a hazard to public safety, health or morals;
 4. Violation of other codes or laws;
 5. The application was filed after the commencement of construction, alteration, or installation of improvements related to the project; or
 6. Any other reason deemed appropriate by the District.
- H. **Taxability:** From the execution of the abatement to the end of the agreement period, taxes shall be payable as follows:
1. The value of ineligible property as provided in Section I(I) shall be fully taxable; and
 2. The base year value of existing eligible property as determined each year shall be fully taxable. The additional value of new eligible property shall be fully taxable at the end of the abatement period.

III. APPLICATION

- A. Any present or potential owner of taxable property in the District may request the creation of a reinvestment zone and tax abatement by filing a written request with the Greater Fort Bend Economic Development Council for review and recommendation to the District for action on the application.

- B. The application shall consist of a completed application form which shall provide detailed information on the items described in Section II(E) hereof; a map and property description; a time schedule for undertaking and completing the planned improvements. In the case of modernization, a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form may require such financial and other information as may be deemed appropriate for evaluating the financial capacity and other factors of the applicant.
- C. Prior to the adoption of an ordinance designating a reinvestment zone, the District shall give notice and hold a public hearing as provided by the Section 312.201 of the TEXAS TAX CODE. Before acting upon the application, through public hearing, the District shall afford the applicant, the public, and the designated representative of any governing body referenced hereinabove opportunity to show cause why the abatement should or should not be granted.
- D. The District shall not establish a reinvestment zone for the purpose of abatement if it finds that the request for the abatement was filed after the commencement of construction, alteration, installation or improvements related to a proposed modernization, expansion or new facility.
- E. Information that is provided to the District in connection with an application or request for tax abatement and that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which tax abatement is sought is confidential and not subject to public disclosure until the tax abatement agreement is executed. That information in the custody of a taxing unit after the agreement is executed is not confidential.

IV. AGREEMENT

- A. Not later than the 7th day before the date on which the District enters into the abatement agreement, the District shall deliver to the presiding officer of the governing body of each taxing unit in which the property is located a written notice that the District intends to enter into the agreement. The notice shall include a copy of the prepared agreement.
- B. After approval, the District shall formally execute an Agreement with the owner of the facility and lessee as required, which shall include:
 - 1. Estimated value to be abated and the base year value;
 - 2. Percent of value to be abated each year as provided in Section II(D);
 - 3. The commencement date and the termination date of abatement;
 - 4. The proposed use of the facility, nature of construction, time schedule, map, property description and improvement list as provided in application, Section III(B);
 - 5. Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Sections II, V, VI and VII;
 - 6. Contractual obligation in the event of delinquent taxes on any property owned by the entity in the Fort Bend County Drainage District that the taxes must be brought current or the abatement will be terminated, even if the delinquent taxes are for a property not subject to an abatement;
 - 7. Size of investment and number of jobs involved in the project; and

8. Such agreement shall normally be executed within sixty (60) days after the applicant has forwarded all necessary information and documentation to the District.

V. RECAPTURE

- A. The agreement may be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within thirty (30) days of the termination in the event that the company or individual:
 1. Allows its ad valorem taxes owed the District to become delinquent and fails to timely and properly follow the legal procedures for their protest and /or contest;
 2. Violates any of the terms and conditions of the abatement agreement; or
 3. Vacates any of the improvements subject to the agreement before the term of the abatement; and fails to cure during the cure period.
- B. Should the District determine that the company or individual is in default according to the terms and conditions of its agreement, the District shall notify the company or individual of such default in writing at the address stated in the agreement; and if such is not cured within thirty (30) days from the date of such notice (“Cure Period”), then the agreement may be terminated.

VI. ADMINISTRATION

- A. The Chief Appraiser of the Fort Bend Central Appraisal District will annually determine an assessment of the real and personal property comprising the reinvestment zone. The market value will be determined before the appraisal roll is certified for each year. Each year, the company or individual receiving the abatement will render their property as set out by the guidelines of the TEXAS PROPERTY TAX CODE to the Chief Appraiser of the Fort Bend Central Appraisal District, and will furnish all other information as may be necessary for the abatement. Once value has been established, the Chief Appraiser will notify the District of the amount of the assessment.
- B. Each year, the company or individual receiving the abatement will inform the District by September 1st that the agreements have been met, and that they qualify for the abatement.
- C. The abatement agreement shall stipulate that the employees and/or designated representatives of the District will have access to the reinvestment zone during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twentyfour (24) hours prior notice and will only be conducted in such a manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.
- D. Upon completion of construction, the designated representative of the District shall annually evaluate each facility receiving abatement to insure compliance with the agreement, and a formal report shall be made to the District.
- E. The District shall timely file with the Texas Department of Commerce and the State Property Tax Board all information required by the Tax Code.

VII. ASSIGNMENT

The abatement may be transferred and assigned by the holder to a new owner or lessee of the same facility upon the approval by the Commissioners' Court; subject to the financial capacity of the assignee and provided that all conditions and obligations in the abatement agreement are guaranteed by the execution of the new contractual agreement with the District. No assignment or transfer shall be approved if the parties to the existing agreement, the new owner or new lessee are liable to any jurisdiction for outstanding taxes or other obligations. Approval shall not be unreasonably withheld.

VIII. SUNSET PROVISION

These guidelines and criteria are effective upon the date of their adoption and will remain in force for two years, unless amended by three-quarters of the Commissioners' Court at which time all reinvestment zones and tax abatement agreements created pursuant to these provisions will be reviewed to determine whether the goals have been achieved. Based on that review, the guidelines and criteria may be modified, renewed or eliminated.

IX. PUBLIC HEARINGS AND APPROVAL

- A. The Commissioners Court may not approve an order designating a reinvestment zone until it has held a public hearing at which interested parties are entitled to speak and present evidence for or against its designation. Notice of the hearing shall be published in a general circulation publication at least 7 days prior to the hearing.
- B. Prior to entering into a tax abatement agreement, the Commissioners Court may, at its option, hold a public meeting at which interested parties shall be entitled to speak and present written materials for or against the approval of the tax abatement agreement.

X. DISCRETION OF THE DISTRICT The adoption of these guidelines and criteria by the District does not:

- A. Limit the discretion of the District to decide whether to enter into a specific tax abatement agreement;
- B. Limit the discretion of the District to delegate to its employees the authority to determine whether or not the District should consider a particular application or request for tax abatement; or
- C. Create any property, contract, or other legal rights in any person to have the District consider or grant a specific application or request for tax abatement.
- D. Limit the ability to deviate from these guidelines and criteria for good cause.

Passed and Approved this ____ day of _____, 2017, to be effective February 25, 2017

Robert E. Hebert,
Fort Bend County Drainage District Chair

ATTEST:

Laura Richard, County Clerk

MTR/Tax/Abatements/Guidelines 02.13.17