



**FORT BEND COUNTY DRAINAGE DISTRICT BOARD
2023 TAX ABATEMENT GUIDELINES AND CRITERIA
FOR GRANTING TAX ABATEMENTS**

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 purpose and intent of these Guidelines and Criteria is to set forth the parameters under which Fort Bend County will generally operate a tax Abatement program in accordance with the Act;

WHEREAS, the Tax Abatement Program is intended to be an economic development tool to assist and encourage certain types of real and personal property investment within qualified Reinvestment Zones to benefit the residents of Fort Bend County;

WHEREAS, such investment is expected to result in the creation, retention and expansion of new full-time jobs while strengthening the tax base of Fort Bend County;

WHEREAS, all applications for Tax Abatement will be considered on a case-by-case basis, and the decision to approve or deny tax Abatement shall be at the discretion of the Fort Bend Drainage District Board;

WHEREAS the adoption of these Guidelines and Criteria does not imply or suggest that Fort Bend County is under any obligation to provide tax Abatement to any Applicant.

WHEREAS, before these GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN FORT BEND COUNTY, TEXAS were submitted to the Fort Bend County Drainage District Board, a public hearing was held in accordance with Texas Tax Code 312.002 (c-1).

NOW, THEREFORE BE IT RESOLVED, that Fort Bend County Drainage District Board elects to become eligible to participate in tax Abatement as described in Texas Tax Code 3(a) and does hereby adopt these GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN FORT BEND COUNTY, TEXAS to be effective as of the date executed.

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 Drainage District for economic development purposes.
- B. "Abatee" means a company or individual receiving a Tax Abatement from Fort Bend County.
- C. "Applicant" means company or individual who has made application for Tax Abatement with Fort Bend County.
- D. "Act" means the Property Redevelopment and Tax Abatement Act enacted as Chapter 312 of the Texas Tax Code, as amended.
- E. "Agreement" means a contractual Agreement between a property owner and/or Lessee and Drainage District.
- F. "Base Year Value" means the appraised value in the Reinvestment Zone on January 1 preceding the effective date of the tax abatement agreement, plus the agreed upon value of eligible property improvements made after January 1 but before the effective date of the agreement, or the sales price, if the property was conveyed subsequent to January 1, whichever is greater.
- G. "Commercial Building" means a new facility; a new addition to an existing facility or build-out of unoccupied space within an existing facility.
- H. "Commissioners Court" means the Commissioners Court of Fort Bend County, Texas.
- I. "Drainage District Board" means The Drainage District Board of Fort Bend County, Texas.
- J. "Deferred Maintenance" means improvements necessary for continued operation which do not improve productivity, or alter the process technology, reduce pollution, or conserve resources.
- K. "Employee" means a person whose employment is both permanent and full-time, who works for and is an employee of the Owner or an employee of a contract provider to the Owner, who works a minimum of 1,750 hours per year and whose employment is reflected in the Owner's (and/or contract provider's, as applicable) quarterly report filed with the Texas Workforce Commission (TWC); but excluding any direct contract (seasonal, part-time, and full-time equivalent).
- L. "Expansion" means the addition of buildings, structures, machinery, tangible personal property, equipment, or payroll for purposes of increasing production or regional capacity.
- M. "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.
- N. "Improvements" are as identified in the Texas Tax Code Chapter One.
- O. "Office of Economic Opportunity and Development" (EOD) means the Department of Economic Development and Opportunity, an internal County Department whose Director is an Executive Manager appointed by the Fort Bend County Commissioners Court.

- P. "Lessee" means the tenant who is occupying and operating or will occupy and operate an Eligible Facility under a legally binding lease Agreement with a Lessor. A Lessee of Real Property on which the Eligible Facility exists or is constructed may also own the Facility. "Lessee" means the tenant who is occupying and operating or will occupy and operate an Eligible Facility under a legally binding lease Agreement with a Lessor. A Lessee of Real Property on which the Eligible Facility exists or is constructed may also own the Facility.
- Q. "Lessor" means the owner of an Eligible Facility or of the Real property on which an Eligible Facility is located that has a binding lease with a Lessee who will occupy and operate the Facility.
- R. "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.
- S. "New Facility" means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.
- T. "Owner" means the owner of Real Property on which an Eligible Facility is or will be located, who may also be the Lessor. Where the context requires, "Owner" means the owner of the Eligible Facility, who is the Lessee of Real Property on which the Eligible Facility is or will be located, provided that a specific definition or other provision to the contrary in an Agreement controls over this sentence.
- U. "Personal Property" means property that is not Real Property and consists of intangible and tangible personal property. Intangible Personal Property means a claim, interest (other than an interest in tangible property), right, or other thing that has value but cannot be seen, felt, weighed, measured, or otherwise perceived by the senses, although its existence may be evidenced by a document. It includes a stock, bond, note or account receivable, certificate of deposit, share, account, share certificate account, share deposit account, insurance policy, annuity, pension, cause of action, contract, and goodwill. Tangible Personal Property means Personal Property that can be seen, weighed, measured, felt, or otherwise perceived by the senses, but does not include a document or other perceptible object that constitutes evidence of a valuable interest, claim, or right and has negligible or no intrinsic value.
- V. "Real Property" means land or an improvement, or other property classified as such under State Law.
- W. "Reinvestment Zone" means a geographic area of Drainage District designated as such for the purpose of Tax Abatement as authorized by Chapter 312 of the Texas Tax Code.
- X. "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 Drainage District.

- Y. "Taxing Unit" means the same as Texas Code Section 1.04 (12), for these Guidelines and Criteria Taxing Unit shall refer to Fort Bend County Drainage District a special; district created by statute authorized to impose and is imposing ad valorem taxes on property; governing body is the Fort Bend Drainage District Board.

II. GENERAL REQUIREMENTS/CONSIDERATIONS

- A. Fort Bend County Drainage District is authorized to provide Tax Abatement benefits in accordance with the State of Texas Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, as amended (the "Act"). Said Act requires the establishment of these Guidelines and Criteria for the governing of Tax Abatement Agreements between Fort Bend County Drainage District and eligible entities.
- 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 Drainage District and the property owner or lessee, subject to such limitations as the Drainage District may require the term of the Abatement shall not extend past ten (10) years.
- C. Projects seeking economic incentives must provide written assurance that 'but for' the incentive sought, the proposed project will not occur, or would otherwise be substantially altered so that the economic returns or other associated public purpose secured by the Drainage District's incentive would be reduced.
- D. Standards for Tax Abatement: It is within the sole discretion of Drainage District Board to grant an Abatement to an Applicant. The below standards will be considered in determining the percentage of value to be abated and the duration of the Agreement, unless otherwise required by Reinvestment Zone.
1. Size, scope, and location of the capital investment.
 2. Creation of new jobs or prevention of job loss; as well as improved working conditions for employees without simply transferring employment from one part of Drainage District to another.
 3. Impact on existing business and the local economy.
 4. Whether the business will provide a long-term source of revenue to local government when Abatement ends, and the business is subject to full taxation.
 5. Whether granting the Abatement will be an economic development tool anticipated to encourage infrastructure improvements or other building ventures in the area.
 6. How the area may benefit from community benefit programs that are identified by Drainage District Board for participant contribution under the Abatement program; and/or
 7. Any factor determined by the Drainage District (collectively or by Precinct) to be relevant to economic development in the Drainage District.

E. Eligible Property:

1. 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.
2. New and Existing Facilities: An Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.

F. Ineligible Property: Property that is fully Taxable and ineligible for Tax Abatement such as:

1. Land, existing improvements, tangible personal property that the Fort Bend central Appraisal District (FBCAD) 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; and
2. Property located on real property that owes or come to owe delinquent taxes. Otherwise, eligible property will be deemed ineligible if located on real property that is delinquent even if the Real Property Owner is not the Owner of the property for which the Abatement is requested.

G. Basic Qualifications: A planned improvement shall meet the following minimum requirements to be considered for Tax Abatement:

1. The company must offer a health benefit plan to its full-time employees which allows access to the plan by the employees' dependents; and Meet at Least One of the below business values:
 - a. Must have a minimum combined investment of \$10,000,000 in real and/or business personal property improvements (new projects) or \$5,000,000 (expansions). Or
 - b. Create and/or retain employment for at least 20 positions on a full-time equivalent in Fort Bend County for the duration of the Abatement period where the abated property is or will be located. These full-time jobs are required to pay at least \$18 per hour to be eligible.
2. The intent of the planned improvement must not solely or primarily lead to the transferring of employment from one part of Drainage District to another part of Drainage District.

H. An Applicant may seek a variance from a Basic Qualification by submitting a request in written form along with the required standard application. Such requests shall include a complete description of the circumstances explaining why the Applicant should be granted a variance. Approval of a request for variance requires a four-fifths vote of the Fort Bend Drainage District Board.

III. APPLICATION PROCESS

- A. The Application for Tax Abatement may be obtained online via Office of Economic Opportunity and Development webpage and will include instructions for submission of the completed application package.
- B. Applications shall include all supporting documentation. There will be no additional application fee if Applicant has paid the \$1,000.00 non- refundable application fee for the County General
- C. Supporting documentation shall include:
 - 1. A map and legal description (metes and bounds) of the facility site.
 - 2. CAD data or a shape file with the boundaries of the proposed facility site, and if the Reinvestment Zone and facility site are not the same, then also include CAD data or a shape file with the boundaries of the proposed Reinvestment Zone.
 - 3. A general description of the improvements for which the Abatement is sought and the extent of the modernization, expansion, or new improvement which will be part of the facility. 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.
 - 4. Financial and other information as Fort Bend County deems appropriate for evaluating the financial capacity and other factors of the Applicant.
 - 5. A time schedule for undertaking and completing the planned improvements; and
 - 6. Any additional information the Applicant deems helpful to the evaluation of the application.
 - 7. Written assurances why the requested Tax Abatement is necessary to ensure that the proposed project be located in Fort Bend County Drainage District and that 'but for' the incentive sought, the proposed project would not occur, or would otherwise be substantially altered so that the economic returns (or other associated public purpose) secured by Drainage District's incentive would be reduced.
- D. The application will become part of the Tax Abatement Agreement and kept on file as a record of the Drainage District. If granted, the Tax Abatement Agreement may be rescinded upon finding any representation made in the application and/or supporting documentation was incorrect or false.
- E. The Office of Economic Opportunity & Development shall confirm that the Applicant has submitted all required documents and confirm that the fee has been tendered by the Applicant before conducting an initial review of the Application.
- F. Submission of an Application is acknowledgement by the Applicant of familiarity and assumed compliance with GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN FORT BEND COUNTY DRAINAGE DISTRICT, TEXAS.

- G. If a proposed project's investment, job creation, wages or construction schedule change significantly following the submittal of a completed application and payment of the fee, or if an Agreement has not been finalized by the 364th day after application submission, Fort Bend County may close the pending application. Any submission of a new or subsequent application following such a closing will require another accompanying application fee.
- H. To the extent allowed by law, information that is provided in connection with an application or request for Tax Abatement 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. After execution of the Agreement, the information is not confidential.

IV. REINVESTMENT ZONES

- A. Tax Abatement Agreements may be executed regarding Eligible Property in a Reinvestment Zone located within the boundaries of:
 - 1. A single city or county zone.
 - 2. Contiguous county and/or city zones; or
 - 3. Overlapping city/county zones; but not overlapping county zones.
- B. The Commissioners Court must designate a Reinvestment Zone as a required part of the Tax Abatement process for property not already located in a Reinvestment Zone and in the unincorporated areas of the County. The Drainage District does not create Reinvestment Zones.
- C. Inquiries regarding Reinvestment Zones should be referred to the Office of Fort Bend County Economic Opportunity & Development. Creation of Zones will require coordination with other County Offices for the public notice, hearings, and orders for submission to Commissioners Court. At a minimum, the Applicant shall provide copies of the map and legal description (metes and bounds) of the property and the CAD data or a shape file with the boundaries of the proposed zone.
- D. Value Abated in the Reinvestment Zone:
 - 1. Base Value: Once a Reinvestment Zone is established, the portion of value abated for property and the duration of the exemption shall be the same for each owner that executes an Abatement Agreement in the same zone thereafter. However, Drainage District may assign different percentages of Abatement per project by the same Owner within the Zone.

2. Incremental Incentives: Any owner of property applying for Tax Abatement in a County created Reinvestment Zone may negotiate up to three additional percentage points to be added to the base Abatement percentage established for the Zone as a condition of agreeing to following business practices that have been determined to be of significant social value to the area in which the project will be located. S u c h an incentive must be clearly articulated in the Agreement and state with specificity the requirements that must be met in order to capture the incremental incentive as well as articulate what documentation will be required to verify compliance.
- E. Reinvestment Zone Creation Orders shall comply with the requirements of the Tax Code and shall set out the abatement percentage established for the Zone. In the event that a Property Owner receives abatement on additional projects in the Zone, the Order shall be appended to reflect a schedule of percentages that will likewise be available to other Abatees in the Zone.
- F. Having property located in a Reinvestment Zone does not result in a Tax Abatement unless and until a property owner has executed an Abatement Agreement with Drainage District.

V. AMENDMENTS TO AGREEMENTS

- A. Amendments to Executed Agreements (which includes any modification of Terms) may only be made by written request to the Director of Economic Opportunity and Development. Such requests shall include a complete and detailed description explaining why the amendment is necessary.
- B. An Abatee seeking Amendment to an Executed Agreement shall attend the meeting in which the item will be considered and be available to address the Court. Amendments will be approved only by a four-fifths vote of the Drainage District.
- C. A request for an Amendment to an Executed Agreement is considered a separate application from the original application seeking tax Abatement. The required application fee and notice requirements of Texas Tax Code Section 312.207 will apply to the Amendment request.
- D. The following apply to Assignments, which are a specific type of Amendment: 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 Drainage District Board; 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 Drainage District which is an amendment to the Agreement. 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. Assignee must swear and affirm in the Amendment that they are not in default with any taxing jurisdiction in the State of Texas.

VI. RECAPTURE

- A. **Failure to Commence Operation During Term of Agreement:** In the event that the facility is not completed and does not begin operation with the minimum number of permanent jobs by the January 1st following the completion of construction, no Tax Abatement shall be given for that tax year, and the full amount of taxes assessed against the property shall be due and payable for that tax year. In the event that the owner of such a facility fails to begin operation with the minimum number of permanent jobs by the next January 1st, Drainage District may terminate the Tax Abatement Agreement. If Drainage District sends Abatee notice of cancellation, all abated taxes must be recaptured and paid within sixty (60) days of such termination. If Drainage District does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated.
- B. **Discontinuance of Operations During Term of Agreement:** In the event the facility is completed and begins operation with the required minimum number of permanent jobs, but subsequently discontinues operations and/or the minimum number of permanent jobs is not maintained as of any January 1st during the term of the Agreement Drainage District may terminate the Tax Abatement Agreement. County may terminate under this Provision regardless of the reason Discontinuance of Operations or non-compliance with jobs; except when County has determined that such non-compliance was on a temporary basis due to fire, explosion or other casualty or accident or natural disaster, If Drainage District sends Abatee notice of cancellation, all abated taxes shall be recaptured and paid within sixty (60) days of such termination. If Drainage District does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated.
- C. **Delinquent Taxes:** In the event that the owner allows any ad valorem taxes to become delinquent on any property in Fort Bend County (whether on abated property or not) and fails to timely and properly follow the legal procedures for their protest and/or contest the Tax Abatement Agreement, Drainage District may terminate the tax Abatement Agreement. If Drainage District sends Abatee notice of cancellation, all abated taxes shall be recaptured and paid within sixty (60) days of such termination. If Drainage District does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated. The total taxes assessed without Abatement for that tax year, shall be paid within sixty (60) days from the date of the termination. If Drainage District does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated.
- D. **Performance Criteria:** In the event that the owner fails to meet any other performance criteria provided by the Tax Abatement Agreement, County may terminate the Tax Abatement Agreement. If County sends Abatee notice of cancellation, all abated taxes and paid within sixty (60) days of such termination. If Drainage District does not receive full payment within said 60 days, a penalty may

be added, equal to 15% of the total amount abated.

- E. Actual Capital Investment: Should Fort Bend County determine that the total level of capital investment in the eligible property is lower than provided in the Agreement, Drainage District, at its sole discretion, reserves the right to adjust the tax Abatement percentage to reflect the actual capital investment as determined or to terminate the Agreement. If County sends Abatee notice of cancellation, shall be recaptured, and paid within sixty (60) days of such termination. If Drainage District does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated.
- F. Notice of Default: Should Fort Bend County determine that the owner is in default, according to any other terms or conditions of its Agreement, it shall notify the owner in writing at the address stated in the Agreement that, if such default is not cured within sixty (60) days from the date of such notice (the "Cure Period"), then the Agreement may be terminated and the taxes abated by virtue of the Agreement may be recaptured and paid as provided herein.

VII. ADOPTION AND EXPIRATION OF GUIDELINES AND CRITERIA

- A. These Guidelines and Criteria shall apply upon adoption by Order of the Fort Bend County Commissioners Court and shall remain in effect with applicable amendments from time to time, for two years from the date adopted.
- B. During this period, these Guidelines and Criteria may be amended or repealed in accordance with state law. No extension of these Guidelines and Criteria is authorized except by amendment consistent with Chapter 312 of the Texas Tax Code.
- C. No Reinvestment Zone and/or Tax Abatement Agreement may be authorized in reliance upon these Guidelines and Criteria beyond May 11, 2025.
- D. Applications dated prior to the Adoption of these Guidelines and Criteria shall be governed by the Guidelines approved as of the date of the Application, subject to the limitation of time governing the time an application may be left pending and the requirements of law.
- E. The Adoption of these Guidelines and Criteria by Drainage District does not:
 - 1. Limit the discretion of Drainage District to decide whether to enter into a specific tax Abatement Agreement; or
 - 2. Limit the discretion of Drainage District to delegate to its employees the authority to determine whether or not Drainage District should consider a particular application or request for tax Abatement; or
 - 3. Create any property, contract, or other legal rights in any person to have Drainage District consider or grant a specific application or request for tax Abatement.
 - 4. Limit the ability to deviate from these guidelines and criteria for good cause.

- F. An executed copy of these approved guidelines and criteria governing tax abatement agreements for Fort Bend County Drainage District shall be posted on the Office of Economic Opportunity and Development website in compliance with the requirements of taxing units stated in Tax Code Section 312.002 (c-2).

APPROVED ON THE _____ DAY OF _____, 2023, BY FORT BEND COUNTY DRAINAGE DISTRICT.

AGENDA ITEM NUMBER 56631

Public Hearing Notices posted 04/25/2023 through 05/09/2023.

Posted under Legal Notices: Commissioners Court, Drainage District and General Public Notices

By: Fort Bend County Clerk, Laura Richards