

**GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS
BY THE COUNTY OF WHARTON, TEXAS**

Section 1. Definitions

The following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. The Commissioners Court shall have the power from time to time to provide such additional and/or modified definitions that they may find desirable and necessary. The words and phrases as herein set out shall be deemed and understood to mean:

- (A) *Abatement* shall mean the full or partial exemption from ad valorem taxes of certain real property and certain limited types of tangible personal property, as herein after provided, located in a reinvestment zone designated by the County of Wharton for economic development purposes.
- (B) *Affected jurisdiction* shall mean any governmental, educational, or special purpose entity that levies ad valorem taxes upon and provides services to property located within a proposed or existing reinvestment zone.
- (C) *Agreement* shall mean a contractual agreement (Tax Abatement Agreement) between a property owner and/or lessee and the County of Wharton.
- (D) *Base year value* shall mean the assessed value of eligible property on January 1 preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1, but before the execution of the Agreement.
- (E) *County* shall mean the County of Wharton, Texas.
- (F) *Commissioners Court* shall mean the governing body of the County of Wharton, Texas.
- (G) *Deferred maintenance* shall mean improvements necessary for continued operation, which do not improve productivity or alter the process technology.
- (H) *Distribution facility* shall mean a facility used primarily to receive, store, and distribute goods or materials principally to points outside the County.
- (I) *Economic life* shall mean the number of years a property improvement is expected to be in service. Provided, however, that in no circumstance shall the number of years exceed the depreciation allowance specified in the United States Internal Revenue Code.
- (J) *Eligible facilities* shall mean new, expanded, or modernized buildings and structures, including fixed machinery and equipment, which are reasonably likely, as a result of granting abatement, to contribute to the retention or expansion of primary employment, or to attract major investment in the reinvestment zone that would be a benefit to the property, or that would contribute to economic development within the County. Eligible facilities may include, but shall not be limited to: retail sales establishments generating municipal sales taxes and providing goods and services to an intended wide distribution area, or that have the potential to stem the export of retail expenditures from the County, or have the potential to draw new retail expenditures into the

County; manufacturing facilities; office buildings; hotels/motels; distribution facilities; service facilities; tourism facilities; and other facilities not herein expressly deemed ineligible; which in the sole opinion of Commissioners Court will have a positive impact on the economic well-being of the County.

- (K) *Expansion* shall mean the addition of buildings, structures, fixed machinery, as that term is defined herein, equipment, or payroll for the purposes of increasing production, efficiency, services, or combination thereof.
- (L) *Facility* shall mean property improvements completed or in the process of construction which together comprise an integral whole.
- (M) *Fixed machinery* shall mean tangible machinery, equipment, or personal property, which is securely placed or fastened, and stationary within a building or structure, or permanently resides in the reinvestment zone.
- (N) *Hotel / motel* shall mean a commercial structure which provides overnight accommodations to travelers.
- (O) *Housing* shall mean facilities whose purpose is to accommodate shelter for one or more families in single or multiple units.
- (P) *Ineligible property* shall mean: land; supplies; inventory; tools; furnishings; other moveable personal property; rolling stock, railroad cars, trucks, aircraft, or other forms of transportation; housing; deferred maintenance; property to be rented or leased, except as provided in Section 2 (E).
- (Q) *Manufacturing facility* shall mean a facility with the primary purpose being the manufacture or whole or partial assembly of tangible goods or materials by physical or chemical change.
- (R) *Modernization* shall mean the complete or partial modification and/or replacement of existing facilities, which increases its productivity, efficiency, or ability to enhance trade volume.
- (S) *Office facility* shall mean a facility providing primarily office space which may be owner occupied and/or leased. Also included are corporate offices, which serve, as the principal office for a business enterprise, and from which orders for goods and billing for same may take place.
- (T) *On-Site Real Estate Improvements* - Generally, buildings, by may include any permanent structure or other development erected for use on-site in Wharton, Texas.
- (U) *On-Site Real Estate Fixtures and Equipment Improvements* - Personal Property and equipment which is attached to real property, and is legally treated as real property while it is so attached. Fixtures and equipment not specifically excepted from an accepted offer to purchase, pass with the real estate.
- (V) *Recipient* shall mean the company or individual being the beneficiary of a Tax Abatement Agreement.
- (W) *Reinvestment zone* shall mean any area of the County of Wharton, which Commissioners Court

has designated as such, a zone for the purpose of granting tax abatements. It is the intent of the County of Wharton to create reinvestment zones on a case-by-case basis, so long as the abatement contemplated conforms to the guidelines herein contained.

- (X) *Retail facility* shall mean a facility providing for the storage and sale of goods directly to the consumer.
- (Y) *Service facility* shall mean a facility whose primary purpose is to receive orders for, and/or provide services, and from which billing for same may take place.
- (Z) *Tourism facility* shall mean a facility which provides entertainment and/or tourism related services, and from which a majority of revenues generated are from outside the County of Wharton.

Section 2. Criteria for Granting

- (A) *Eligibility.* Upon application, eligible facilities may be considered for tax abatement as hereinafter provided. Abatement may only be granted for new or added value of eligible property improvements, subject to such limitations as the County may from time to time require, or as may be specified in the agreement between the parties. Existing value is not abatable.
- (B) *Ineligible Property.* Ineligible property may not be granted abatement.
- (C) *Authorized Date.* Abatement may only be granted for the new or added value of eligible property improvement that is created subsequent to the approval of the tax abatement application.
- (D) *Eligible New and Existing Facilities.* Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.
- (E) *Owned / Leased Facilities.* If a leased facility is granted abatement, the agreement shall be executed with the lessor and lessee.
- (F) *Economic Qualification.* In order to be eligible for designation as a Reinvestment Zone and receive tax abatement, the planned improvement must be expected to have an increased appraised ad valorem tax value of at least one hundred thousand dollars (\$100,000) upon completion of the anticipated improvements or expansion based upon the Wharton County Central Appraisal District assessment of the eligible property.
- (G) *Standards for Tax Abatement.* The following factors, among such other factors as determined necessary by the Commissioners Court, shall be considered in determining whether to grant 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;
 - (6) Number of new jobs to be filled by local residents, or by persons projected to reside in the County;
 - (7) Amount of local sales tax to be generated;
 - (8) The costs to be incurred by the County to provide facilities or services directly resulting from the new improvements;
 - (9) The amount of ad valorem taxes to be paid the County 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;
- (10) The population growth that occurs directly as a result of the improvements;
- (11) The values of public improvements, if any, to be made by applicant seeking abatement;
- (12) To what extent the proposed improvements compete with existing businesses to the detriment of the local economy;
- (13) The extent of business opportunities created by the proposed improvements for local businesses;
- (14) Impact on attracting other new businesses as a result of the improvements;
- (15) Impact the planned improvements may have on other taxing jurisdictions within the County;
- (16) Environmental compatibility, and amount, if any, of negative impact on quality of life perceptions; and
- (17) The ratio of real property value to personal property value being considered for abatement.

After a full evaluation and review utilizing some or all of the above factors, Commissioners Court may within the exercise of its full discretion either deny entirely the abatement, or may grant an abatement as deemed appropriate when the new value equals one million dollars (\$1,000,000) or greater, or as provided herein where the new value equals a minimum of one hundred thousand dollars (\$100,000), but is less than one million dollars (\$1,000,000).

- (H) *Denial of Abatement.* Neither a Reinvestment Zone nor an 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; or
 - (5) Any other reason deemed appropriate by the Commissioners Court.
- (I) (1) ***Amount of Abatement for On-site Real Estate Improvements.*** The percentage of value to be abated, and the duration of the tax abatement shall be determined as follows:
 - (a) For planned improvements valued at one million dollars (\$1,000,000) or greater, the percentage and duration of the tax abatement shall be determined by the Commissioners Court in the exercise of its absolute discretion on a case by case basis, taking into consideration, some or all of the factors listed above in subsection (G).
 - (b) For planned improvements valued a minimum of one hundred thousand dollars (\$100,000), but less than one million dollars (\$1,000,000), the percentage and duration of the tax abatement shall be as set out in Section (C) below, and likewise taking into consideration some or all of the factors listed above in subsection (G):
 - (c) In those cases where it is mutually agreeable to the parties to the Agreement, the annual percentages as well as the number of years that taxes are abated may be modified, but only to the extent that the years do not exceed ten (10), and the total percentage of abatement for each value category is not exceeded. That is:

\$100,000	-	\$250,000	=	Max. 250%
\$250,001	-	\$500,000	=	Max. 300%
\$500,001	-	\$750,000	=	Max. 375%

\$750,001 - \$999,999 = Max. 425%

(d) Commissioners Court reserves the right to adjust the term and percentage of abatement to the appropriate category should the taxable value of proposed improvements, as determined by the Chief Appraiser of the Wharton County Central Appraisal District, vary from the original estimated value to the extent that the original category selected for the term and percentage of the abatement is no longer applicable.

(2) ***On Site Real Estate Fixtures and Equipment Improvements.*** The percentage of value to be abated, and the duration of the tax abatement shall be determined as follows:

(a) For planned improvements valued at one million dollars (\$1,000,000) or greater, the percentage and duration of the tax abatement shall be determined by the Commissioners Court in the exercise of its absolute discretion on a case by case basis, taking into consideration, some or all of the factors listed above in subsection (G).

(b) For planned improvements valued a minimum of one hundred thousand dollars (\$100,000), but less than one million dollars (\$1,000,000), the percentage and duration of the tax abatement shall be as set out in Section (C) below, and likewise taking into consideration some or all of the factors listed above in subsection (G):

(c) In those cases where it is mutually agreeable to the parties to the Agreement, the annual percentages as well as the number of years that taxes are abated, as shown in the table above, may be modified, but only to the extent that the years do not exceed ten (10), and the total percentage of abatement for each value category is not exceeded. That is:

\$100,000	-	\$250,000	=	Max. 250%
\$250,001	-	\$500,000	=	Max. 300%
\$500,001	-	\$750,000	=	Max. 375%
\$750,001	-	\$999,999	=	Max. 425%

(d) Commissioners Court reserves the right to adjust the term and percentage of abatement to the appropriate category should the taxable value of proposed improvements, as determined by the Chief Appraiser of the Wharton County Central Appraisal District, vary from the original estimated value to the extent that the original category selected for the term and percentage of the abatement is no longer applicable.

(J) ***Taxability.*** From the execution of the Agreement to the end of the Agreement period, taxes shall be payable as follows:

(1) The value of ineligible property as provided in Section 1(p) shall be fully taxable;

(2) The base year value of existing eligible property as determined each year shall be fully taxable; and

(3) The additional value of new eligible property shall be fully taxable at the end of the abatement period.

Section 3. Application

- (A) Any present or potential owner of taxable property in the County of Wharton may request the creation of a Reinvestment Zone and property tax abatement by filing a written application with the County Judge. An application for tax abatement must be filed prior to the commencement of any construction, alteration, or installation of any improvements for which tax abatement is being requested. The applicant shall at no time acquire any rights, privileges or authority, either monetary or otherwise, by reason of filing any application, or providing any documentation in conjunction with an application filed herein. The County of Wharton is under no obligation to provide any abatement to any applicant even if certain criteria are met. The County of Wharton reserves the right to reject any application.
- (B) As part of the application process the following shall be provided:
- (1) Completed application form, or letter of request if form not available;
 - (2) Vicinity map along with a legal description of the property; and
 - (3) Such financial and other information as deemed appropriate by the County for purposes of evaluating the application.

Section 4. Action by Commissioners Court on application

- The Commissioners Court shall, within a reasonable time after completion of the review of all documents submitted by the applicant, and such other investigation and inquiry as shall be deemed appropriate, and upon receipt of a report and recommendation from the County Judge, by resolution exercise its absolute discretion, and either administratively approve or disapprove the application for tax abatement. The County shall notify the applicant of its decision to administratively approve or disapprove the application.
- (B) Action by Commissioners Court to administratively approve the application does not constitute authorization to execute an Agreement (Contract) with the applicant. It does constitute authorization to begin the process of creating a Reinvestment Zone and drafting of a proposed Agreement.

Section 5. Creation of a Reinvestment Zone.

- (A) Prior to the adoption of an Ordinance designating a Reinvestment Zone the County shall, through public hearing afford the applicant, designated representatives of any affected jurisdiction, and the general public opportunity to show cause why the abatement should or should not be granted.
- (1) The presiding officers of affected jurisdictions shall in writing be notified of the public hearing no later than the seventh (7th) day prior to the date of the public hearing.
 - (2) A notice of public hearing for the creation of a Reinvestment Zone shall be published in a newspaper of general circulation within the taxing jurisdiction no later than the seventh (7th) day prior to the date of the public hearing.

Section 6. Tax Abatement Agreement

- (A) After approval of the application for tax abatement, and adoption of an Ordinance creating a Reinvestment Zone, the County will pass a resolution authorizing the execution of an Agreement.

- (1) No later than the seventh (7th) day prior to taking action to authorize execution of an Agreement, the County shall notify in writing the presiding officers of each of the other taxing jurisdictions within which the property is located of its intention to enter into an Agreement.
- (B) The Agreement shall include among other provisions the following:
- (1) The estimated value to be abated and the base year value;
 - (2) The percentage of value to be abated each year and the number of years abatement will be granted as provided in Section 2 (I);
 - (3) The commencement and termination date of abatement;
 - (4) The commencement and completion date of proposed improvements;
 - (5) Size of investment and average number of jobs to be created;
 - (6) Right of County employees and/or designated representatives during the term of the Agreement to access to the Reinvestment Zone for the purpose of determining if terms and conditions of the Agreement are being met. Such inspections shall be in accordance with the provisions of Section 7(D);
 - (7) The responsibility of the recipient of tax abatement to file appropriate documents with the Chief Appraiser of the Wharton County Central Appraisal District; and
 - (8) Contractual obligations related to default, violation of terms or conditions, delinquent taxes, recapture, administration, and assignment.
- (C) Such Agreement shall be executed by the applicant in duplicate originals within a reasonable time after the same has been approved by Commissioners Court.

Section 7. Administration

- (A) The Chief Appraiser of Wharton County Central Appraisal District will annually determine an assessment of the taxable assessed value of the recipient's property, taking into consideration the terms of the Abatement Agreement relating to such real and personal property found within the Reinvestment Zone which is subject to terms and provisions of the Agreement.
- (B) Each year, the recipient shall furnish the Chief Appraiser with such information as may be necessary for the abatement.
- (C) It shall be the exclusive duty and responsibility of the recipient to comply with all requirements of the Wharton Central Appraisal District in order to secure and continue to receive the benefit of any approved Agreement. Failure to do so shall not be deemed the fault of the County of Wharton or any of its officers and employees.
- (D) Employees and/or designated representatives of the County during the term of the Agreement shall have the right of access to the Reinvestment Zone, facilities contained therein, and records related to real and personal property investments and employment, in order to determine if the terms and conditions of the Agreement are being met. All inspections will be made only after the giving of

twenty-four (24) hours prior notice, and will only be conducted in such 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 recipient present, and in accordance with the recipient's safety standards.

- (E) The recipient shall prepare at the request of the County, and on a frequency as stipulated by the County, reports as to the progress and status of all contemplated improvements, and upon completion of the anticipated improvements a final report shall be provided to the County, providing as a minimum the following information:
 - (1) A description of the improvements provided for in the Agreement, and the improvements actually completed;
 - (2) The date of commencement of improvements, significant progress dates, and actual or anticipated completion date;
 - (3) Investments made, including purpose, size, and date; and
 - (4) A disclosure and description of any and all changes, restructuring, or modifications that were made in the contemplated improvements.
- (F) Any required reporting by the recipient be in a form approved by the County, or on a form/forms as provided by the County if the County so elects to provide.
- (G) Upon completion of anticipated improvements, a designated representative of the County shall annually evaluate each facility receiving abatement to insure compliance with the Agreement, and a formal report shall be made to the Commissioners Court regarding the findings of each evaluation.
- (H) The recipient shall certify annually as to compliance with the terms and conditions of the Agreement.
- (I) The County shall file reports required of the County by State Law. Such reports being filed with the appropriate agency.

Section 8. Assignment

- (A) The rights granted under an Agreement may be transferred and assigned by the holder to a new owner or lessee of the same facility, or proposed facility only upon the approval by resolution of the Commissioners Court, and the execution of an Assignment Agreement between the County and the new owner or lessee. Such assignment shall be at the sole discretion of the County, and subject to the following conditions:
 - (1) Financial capacity of the assignee;
 - (2) Contemplated facility use, and proposed and/or completed improvements being as stated in the Agreement; and
 - (3) No outstanding taxes or other debts are owed to any governmental entity by the parties to the Agreement or the proposed Assignment Agreement.
 - (4) Approval of an Assignment Agreement shall not be unreasonably withheld.

Section 9. Default and Recapture

- (A) *Cause.* The Agreement may be terminated by the Commissioners Court for the following causes, which shall be considered a default of the Agreement:
- (1) Recipient allows the ad valorem taxes owed the County to become delinquent and fails to timely and properly follow the requirements of law for their protest and/or cure; or
 - (2) Recipient violates any of the terms and conditions of the Agreement, and fails to cure during the cure period described in this Section.
- (B) *Procedure.* Should the County determine that the recipient is in probable default of the Agreement, the following shall occur:
- (1) A Notice of Probable Default shall be delivered in writing to the recipient of tax abatement. Such notice shall identify the probable cause/causes for default, and afford the recipient an opportunity to request a hearing before Commissioners Court, who shall finally decide if a default has occurred.
 - (2) If no request for hearing is made within ten (10) days of receipt of the Notice of Probable Default, the Commissioners Court may confirm the existence of default.
 - (3) If default is determined either by hearing, or failure of recipient to request a hearing, the County shall deliver in writing to the recipient of tax abatement a Notice of Default.
 - (4) The recipient shall, within thirty (30) days of receipt of the Notice of Default, cure the cause/causes for default. Failure to do so will be cause for the County to terminate the Agreement without further notice.
 - (5) The Agreement shall be terminated by an ordinance duly passed and adopted by Commissioners Court.
- (C) *Recapture.*
- (1) Should the Agreement be terminated, all taxes previously abated prior to the termination shall be due and payable to the County within thirty (30) days.
 - (2) Should the recipient discontinue operations of improvements as stated in the application for abatement, or the Agreement, for reasons excepting fire, explosion, or other disaster, for a period of one year during the abatement period, then the Agreement shall be terminated, and all taxes abated prior to the termination of the Agreement shall be due and payable to the County within thirty (30) days.

Section 10. Concurrent Abatements

During the term of the Agreement, the Recipient is eligible to apply for additional abatements on proposed improvements subsequent to the original Agreement. Such additional applications and considerations shall be in accordance with the provisions contained herein.

Section 11. Confidentiality

The County will make every effort within the laws of the State of Texas to maintain confidentiality of information related to an application for abatement, and the granting or rejection of abatement.

- (A) Information that is provided to the County in connection with an application for abatement, and that describes the specific processes, or business activities to be conducted, 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 Agreement is executed. Any information remaining in the custody of the County after the Agreement is executed is no longer confidential.
- (B) The County may hold closed meetings to discuss or deliberate commercial or financial information it has received from a business prospect that the County seeks to have locate, stay, or expand in or near its jurisdiction.
- (C) The County may hold closed meetings to discuss or deliberate the offer of a financial or other incentive to a business prospect the County seeks to have locate, stay, or expand in or near its jurisdiction.
- (D) Upon execution of an Agreement, information about a financial or other incentive being offered to a business prospect is no longer confidential, and subject to public disclosure.
- (E) The following information is exempt from public disclosure:
 - (1) Trade secrets
 - (2) Commercial or financial information, for which it is demonstrated, based on specific factual evidence that disclosure would cause substantial competitive harm to the person or company from whom the information was obtained.

Section 12. Severability

In the event any section, clause, sentence, paragraph, or any part of these Guidelines and Criteria shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid such invalidity shall not affect, impair, or invalidate the remainder of these Guidelines and Criteria.

Section 13. Sunset Provision

- (A) These Guidelines and Criteria are effective upon the date of their adoption by the Commissioners Court, and will remain in force for two (2) years, at which time all Reinvestment Zones and Agreements created pursuant to its provisions will be reviewed by the Commissioners Court to determine whether the goals of the abatement program have been achieved. Based upon that review, the Guidelines and Criteria may be modified, renewed, or eliminated.
- (B) Prior to the date for review these Guidelines and Criteria may be modified by a three-fourths (3/4) vote of the entire membership of the Commissioners Court.

Section 14. Discretion of the County

The adoption of these Guidelines and Criteria by the County does not:

- (A) Limit the discretion of the Commissioners Court to decide whether to enter into a specific Agreement which absolute right of discretion the Commissioners Court reserves unto itself, whether or not such discretion may be deemed arbitrary, or without basis in fact;
- (B) Limit the discretion of the Commissioners Court to delegate to its employees or assigns the authority to determine whether or not the Commissioners Court should consider a particular application or request for tax abatement; or
- (C) Create any property, contract, or other legal rights in any person or entity to have the Commissioners Court consider or grant a specific application or request for tax abatement.

Adopted on December 9, 2019 by the Wharton County Commissioners Court.

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