

**GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN
REINVESTMENT ZONES
CITY OF SULPHUR SPRINGS, TEXAS**

I. PURPOSE

City of Sulphur Springs, Texas, hereinafter referred to as “City” is committed to the promotion of quality development in all parts of City and to improving the quality of life for its citizens. In order to help meet these goals, City will consider recommending tax incentives, which may include the designation of reinvestment zones, accepting applications for tax abatement, and entering into tax abatement agreements to stimulate growth and development.

It is the intent of City that such incentives will be provided in accordance with the procedures and criteria in this document and in Chapter 312 of the Texas Tax Code. However, nothing in these Guidelines and Criteria shall imply or suggest to be construed to imply or suggest that tax entities are under any obligation to provide any incentives to any applicant. All such applicants for tax incentives shall be submitted to City and/or the Sulphur Springs Hopkins County Economic Development Corporation (“SS-HC EDC”) and will be considered on an individual basis for both the qualification for tax abatement and the amount of any tax abatement. The adoption of these Guidelines and Criteria shall not create any property, contract, or other legal right in any person to have the governing body consider or grant a specific application or request for tax abatement.

Only that increase in the fair market value of the property directly resultant from the development, redevelopment, and improvement specified in the contract will be eligible for abatement. All abatement contracts will be for a term no longer than allowed by law. Additionally, City Council reserves the right to negotiate a tax abatement agreement in order to compete favorably with other communities.

II. DEFINITIONS

The attached Glossary is a list of words with their definitions that are found in this document, and the Glossary is incorporated herein by reference.

III. GUIDELINES AND CRITERIA

In order to be eligible for designation as a reinvestment zone and to receive tax abatement, the planned improvement at a minimum must meet the following:

- (a) Be an authorized Facility. A Facility may be eligible for abatement if it is a(n):
 - Aquaculture/Agriculture Facility
 - Data Center Facility
 - Distribution Center Facility
 - Manufacturing Facility

Office Building
Corporate Headquarters
Regional Entertainment/Tourism Facility
Research Facility
Regional Service Facility
Historic Building in designated area
Renewable Energy Facility
Energy Storage Facility
Other Basic Industry

(b) The project must be reasonably expected to have an increase in positive net economic benefit to City of at least \$ 15,000,000 over the life of the abatement, computed to include (but not limited to) new sustaining payroll and capital improvement. In consideration of the request for designation as a reinvestment zone and to receive tax abatement, the following factors will also be considered:

- (1) Jobs. The projected New Jobs created including the number of jobs, the retention of existing jobs, the type of jobs, the average payroll, the total payroll and the number of local persons hired.
- (2) Fiscal Impact. The amount of real and personal property value that will be added to the tax roll for both eligible and ineligible property, the amount of direct sales tax that will be generated, the infrastructure improvements by City that will be required by the facility, the infrastructure improvements made by the facility, and the compatibility of the project with City's development goals.
- (3) Community Impact, including:
 - i. The pollution, if any as well as other negative environmental impacts affecting the health and safety of the community that will be created by the project;
 - ii. The revitalization of a depressed area;
 - iii. The business opportunities of existing local vendors;
 - iv. The alternative development possibilities for proposed site;
 - v. The impact on other taxing entities, including the use of City infrastructure; and/or
 - vi. Whether the improvement is expected to solely or primarily have the effect of transferring employment from one part of City to another.

IV. ABATEMENT AUTHORIZED

(a) Authorized Date. A facility may be eligible for tax abatement for a period not to exceed 10 years or one-half of the productive life of the improvement, whichever is less. The "productive life" will be calculated from the effective date of the tax abatement and the date the equipment ceases to be in service. If an application for abatement is submitted prior to

the commencement of construction, the facility must meet the criteria granting tax abatement in reinvestment zones created in City pursuant to these Guidelines and Criteria.

- (b) Creation of New Value. Abatement may only be granted for the additional value of eligible property improvements made subsequent to the filing of an application for tax abatement and specified in the abatement agreement between City and the owner or lessee (and lessor if required pursuant to IV(f)) of the facility or improvements receiving the abatement, all subject to such limitations as the Guidelines and Criteria may require.
- (c) New and Existing Facilities. Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion. If the modernization project includes facility replacement, the abated value shall be the value of the new unit(s) less the value of the old unit(s).
- (d) Eligible Property. Abatement may be extended to the value of the following: new, expanded, replaced or modernized buildings and structures; fixed machinery and equipment; site improvements; office space and related fixed improvements necessary to the operation and administration of the facility; and all other real and tangible personal property as permitted by Chapter 312 of the Texas Tax Code.
- (e) Ineligible Property. The following types of property shall be fully taxable and ineligible for abatement:
 - i. Land
 - ii. Animals
 - iii. Inventories
 - iv. Supplies
 - v. Tools
 - vi. Furnishings and other forms of movable personal property other than machinery and equipment that are in essential part of the facility or improvements receiving abatement
 - vii. Vehicles
 - viii. Vessels
 - ix. Aircraft
 - x. Housing or residential property
 - xi. Fauna
 - xii. Flora
 - xiii. Deferred Maintenance investments
 - xiv. Property to be rented or leased (except as provided in Part IV(f),
 - xv. Property owned or used by the State of Texas or its political subdivision or by any organization owned, operated or directed by a political subdivision of the State of Texas.

(f) Owned/Leased Facilities. If a leased facility or leased improvements are granted an abatement, the agreement shall be executed with the lessor and lessee of the facility or improvements. The owner of the real property where the facility or improvements are located is not required to execute the abatement agreement if it is not the lessor or lessee of the facility or improvements.

(g) Value and Term of Abatement

(1) Abatement shall be granted effective no earlier than the January 1 valuation date immediately following the date of execution of the agreement. The agreement may provide that the period for which the abatement applies will commence on a later date. The value of new eligible property shall be abated according to the approved agreement between applicant and the governing body. City Council, in its sole discretion, shall determine the amount of any abatement.

(h) Economic Qualification. In order to be eligible for designation as a reinvestment zone and to qualify for tax abatement the planned improvement:

(1) Must create employment for at least 10 people on a full-time (40 hours per week equivalent) basis in City for the duration of the abatement period at the abated facility site described in the tax abatement application; or alternatively, must retain and prevent the loss of employment of 10 employees or fifty percent (50%) of the existing facility containing the abated facility site described in the tax abatement application whichever is greater, for the duration of the abate period. The following is applicable to the employment retention/preventing loss of employment requirement:

(a) "Existing facility" is a Manufacturing Facility, Research Facility, Distribution Center or Regional Facility, Regional Entertainment Facility, Other Basic Industry, or a facility the Council determines would enhance job creation and the economic future of City. The facility must be expanded or modernized and contain the proposed improvements to be abated. A manufacturing or processing unit or units of a larger plant complex that separately comprise a manufacturing or production sub-unit of the larger plant shall be considered the existing facility for the purposes of Section 2(h)(1) employment retention requirement (that the planned improvements cause the retention or prevention of loss of employment of 10 employees or 50% of the employees of the existing facility, whoever is greater). For example, if a large plant complex has a sub-unit that produces chlorine and 100 employees are employed at or in connection with that unit, an expansion or modernization of all or part of that facility must result in the retention of at least 50 employees employed at or in connection with the expanded or modernized "existing facility" in order for the facility improvements to qualify for abatement.

(b) Employees of a larger plant until transferred or assigned to and employed at or in connection with a new sub-unit containing the planned improvements, constructed on

underdeveloped land constituting the proposed abated facility site/reinvestment zone shall be considered “created” employment for purposes of this sub-section.

(c) The proposed number of employees to be employed at the abatement facility as stated in the abatement application for the property that is the subject of the tax abatement agreement (including the projected creation or retention of employment) must be maintained for the duration of the abatement period at the abated facility site. For purposes of this subsection, in order for a planned improvement to be considered as preventing the loss of employment or retaining employment, the abated facility/project must be necessary in order to retain or keep employment at levels as indicated in the application and in order to retain the proposed number of employees at the abated facility as indicated in the application. The owner/Applicant seeking to qualify on the basis of retention or preventing loss of employment must provide a detailed statement as an attachment to its application affirmatively representing compliance with this sub-subsection and explaining the necessity of this project to prevent loss of employment. Any variance from the requirements of this sub-section is subject to approval of Council in accordance with the variance section of these Guidelines & Criteria.

(d) Full-time employee creation requirements for Data Center Facilities, Energy Generation, and Energy Storage Facilities shall be determined on a case-by-case basis by the Council.

- (2) Must be not expected to solely or primarily have the effect of transferring employment from one part of City to another part of City. A variance may be requested relative to this provision which approval shall be at the sole discretion of City.
- (3) Must be necessary because capacity cannot be provided efficiently utilizing existing improved property.

Additionally, the owner of the project:

- (4) Will be wholly responsible for all City streets and right-of-way (including bridges, culverts, ditches, etc.) and damage caused thereto as a result of the construction of or of an on-going maintenance and operations of the Abated Facility Site as well as associated facilities to the Abated Facility Site, including but not limited to, the following:
 - a. Cost to maintain the roads, if needed, utilized for construction of the Abated Facility Site in an effort to keep the road safe for the traveling public will be tracked by the City and invoiced on a regular basis to the Abatee.
 - b. Cost to reconstruct the roadway, if needed, will be actual costs to repair City streets and right-of-way incurred by City and invoiced to the Abatee. These costs will include all construction costs as well as all related professional services for the repair work.
- (i) Taxability. From the execution of the abatement contract to the end of the prior during which the abatement applies, taxes shall be payable as follows:
 - (1) The value of ineligible property as provided in Part IV(e) 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 taxable in the manner described in the abatement agreement.

V. APPLICATION FOR TAX ABATEMENT

(a) Any present or potential owner, assignee, or lessee of taxable property in City may request the creation of a reinvestment zone and the consideration of a tax abatement agreement by filing a written request with City and/or the SS-HC EDC. The completed Application must be accompanied by the payment of a one thousand dollar (\$1,000) non-refundable application fee for administrative costs with the processing of the tax abatement request. Additional fees may be assessed for more complex requests at the discretion of City Council. All checks in payment of the administrative fee shall be made payable to City.

(b) The completed application must contain the following information/attachments:

- (1) A general description of the proposed use and the general nature and extent of the modernization, expansion, or new improvements to be undertaken;
- (2) A descriptive list of the improvements which will be part of the facility.
- (3) A map and list of parcel id's
- (4) A time schedule for undertaking and completing the planned improvements
- (5) In the case of modernizing or replacing existing facilities in whole or in part, a statement of the assessed value of the facility separately stated for real and personal property for the tax year immediately preceding the year in which the application is filed.

City may require that the application be supplemented with such financial and other information as deemed appropriate for evaluating the financial capacity and other factors of the applicant.

- (c) Upon receipt of a completed application, City shall, through public hearings, afford the applicant and the designated representative of any Affected Jurisdiction the opportunity to show cause why the abatement should or should not be granted. Notice of the public hearing shall be clearly identified on an agenda of City Council to be posted at least (30) days prior to the hearing.
- (d) City shall consider the application for tax abatement after the application has been reviewed and required public notices have been posted. City shall notify the applicant of the approval or disapproval promptly after the corresponding hearing of the Council.
- (e) A request for reinvestment zone for the purpose of abatement shall not be granted by City if City finds that the request for the abatement was filed after the commencement of construction, alteration, or installation of taxable improvements related to a proposed modernization expansion or new facility. Before City Council holds a public hearing to designate a reinvestment zone it shall do the following:

- (1) Not later than the seventh day before the date of the hearing, publish notice of the hearing in a newspaper having general circulation in City; and
 - (2) Not later than the seventh day before the date of the hearing, deliver written notice of the hearing to the presiding officer of the governing body of each taxing unit that includes in its boundaries any real property that is to be included in the proposed reinvestment zone.
- (f) Requested Variances. Requests for variance from any provision of these Guidelines and Criteria may be made in written form to City Council. Such request 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 three-fourths (3/4) vote of City Council.
- (g) Deemed Variances. City Council may approve a tax abatement agreement that varies from any requirement in these Guidelines and Criteria so long as such variance is permitted by Chapter 312 of the Texas Tax Code. Any aspect of a tax abatement agreement duly authorized and approved by City Council that varies in any respect from any requirement in these Guidelines and Criteria shall be deemed to have been granted a variance from the Guidelines and Criteria by the Council. It is the express intention of City Council that no tax abatement agreement that has been duly authorized and approved by City Council shall be challenged or held to be invalid because such authorized and approved tax abatement agreement varies from any requirement contained in these Guidelines and Criteria.

VI. PUBLIC HEARING

- (a) Should any Affected Jurisdiction be able to show cause in the public hearing why the granting of abatement by City will have a substantial adverse effect on its bonds, tax revenue, service incapacity or the provision of service, that showing shall be considered by City Council when deciding to approve or disapprove of the application for tax abatement.
- (b) Neither a reinvestment zone nor an abatement shall be authorized if it is determined that:
- (1) There would be a substantial adverse effect on the provision of a government service or the tax base of an Affected Jurisdiction;
 - (2) The applicant has insufficient financial capacity to construct and operate the proposed facility or improvements;
 - (3) The planned or potential use of the property would constitute a hazard to public safety, health, or morals; or
 - (4) The planned or potential use of the property violate other governmental codes or laws.

VII. AGREEMENT

- (a) If an application for tax abatement is approved by City Council, City shall formally pass a resolution and execute an agreement with the owner and/or lessee of the facility which shall include:

- (1) The percentage of value to be abated each year as provided in Part IV(g) of these Guidelines and Criteria.
 - (2) The commencement date and the termination date of abatement.
 - (3) The proposed use of the facility, nature of construction, time schedule for undertaking completing the planned improvements, map, property description, and improvements list as provided in Part V of these Guidelines and Criteria.
 - (4) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes recapture, administration and assignment (as provided in the agreement), and other provision that may be required for uniformity or by state law or that are mutually agreed to by City and the applicant.
 - (5) Amount of investment, forecast depreciation over abatement period, and/or average number of jobs applicant commits to create for the period of abatement.
 - (6) Any other provisions required by Chapter 312 of the Texas Tax Code.
- (b) City will use its best efforts to cause such agreement to be executed within forty-five (45) days after the later of the date applicant has forwarded all necessary information to the jurisdiction receiving the application or the date of the approval of the application. Prior to the execution of the Agreement, City will comply with the following notice requirement in Tax Code § 312.2041(a):
- Not later than the seventh day before the date on which a City enters into an abatement agreement, the governing body of City or a designated officer or employee of City shall deliver to the presiding officer of the governing body of each other taxing unit in which the property to be subject to the agreement is located, a written notice that City intends to enter into the agreement. The notice must include a copy of the proposed agreement.
- (c) Each other taxing unit that has jurisdiction over the facility or improvements for which City approves or disapproves an application for tax abatement shall make its own determination of abatement (if requested by the applicant) which shall not bind any other Affected Jurisdiction.

VIII. RECAPTURE

- (a) In the event that the facility or improvements are completed and begin operating but subsequently discontinue operating for any reason excepting a force majeure event (as such event may be more specifically defined in the tax abatement) for a period of more than one (1) year during the abatement period, then the abatement agreement shall terminate along with the abatement of taxes for the calendar year during which the agreement is terminated. The taxes otherwise abated for that calendar year shall be paid to City within sixty (60) days from the date of termination. City is permitted to enter into a tax abatement agreement that varies from the provisions of this paragraph without being deemed to be in violation of the Guidelines and Criteria so long as the agreement provides for the recapture of property taxes in the event that the approved facility or improvements discontinue operations during the period of tax abatement.

- (b) If City determines that a party to a tax abatement agreement is in default according to the terms and conditions of its agreement, City shall notify the party in writing at the address stated in the agreement, and if such is not cured within (60) days from the date of such notice, then the agreement shall be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the termination. Further, it will be a default under a tax abatement granted pursuant to these Guidelines and Criteria if the owner of the eligible property subject to the abatement is delinquent in paying any undisputed taxes to any taxing authority in City. City is permitted to enter into a tax abatement agreement that varies from the provision of this paragraph without being deemed to be in violation of these Guidelines and Criteria so long as the agreement provides for the recapture of property tax in the event that the applicant named in the tax abatement agreement defaults in its obligations under the agreement.

IX. ADMINISTRATION

- (a) The Chief Appraiser of the County Appraisal District shall annually determine an assessment of any real and/or personal property that is the subject of a tax abatement agreement. Each party to a tax abatement agreement shall be required to furnish the assessor with such information as may be necessary to determine an assessment. Once a value has been established, the Chief Appraiser shall notify the Affected Jurisdictions of the appraised value.
- (b) The abatement agreement shall stipulate that employee and/or designated representatives of City will have access to the facility or improvements that are the subject of the agreement during the term of the abatement to inspect the facility or improvements to determine if the terms and conditions of the agreement are being met. The terms, guidelines, and requirements concerning inspections shall be set forth in the abatement agreement.
- (c) After the period of abatement begins, City shall annually evaluate each facility receiving abatement and report possible violations of the abatement agreement to City Council. The abatement agreement will require the party receiving the abatement to file annual certifications with City.
- (d) All proprietary information acquired by City for purposes monitoring compliance with the terms and conditions of an abatement agreement shall be considered confidential.
- (e) “Buy Local” Provision. Each recipient of property tax abatement shall additionally agree to give preference and priority to local manufacturers, suppliers, contractors and labor, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency.

- (f) Right to Modify or Cancel. Notwithstanding anything herein, City may cancel or modify Guidelines and Criteria for Granting Tax Abatements in Reinvestment Zones if an owner fails to comply with the Guidelines and Criteria for Granting Tax Abatements in Reinvestment Zones.

X. ASSIGNMENT

- (a) Except as otherwise provided in the abatement agreement, an abatement agreement may be transferred and assigned by the holder to a new owner or lessee of the same facility upon the approval by resolution of City Council, 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 an assignment and assumption agreement between the holder of the agreement and the assignee. Approval shall not be unreasonably withheld.
- (b) No assignment or transfer shall be approved if the party/parties to the existing agreement or the proposed assignee is liable to any taxing jurisdiction for outstanding taxes or other obligations.

XI. SUNSET PROVISION

- (a) These Guidelines and Criteria are effective upon the date of the adoption and will remain in force for two (2) years unless amended by three quarters vote of City Council, at which time all reinvestment zones and tax abatement contracts created pursuant hereto will be reviewed by each Affected Jurisdiction to determine whether the goals have been achieved. Based on that review, these Guidelines and Criteria may be modified, renewed, or not renewed, providing that such actions shall not affect existing abatement agreements.
- (b) These Guidelines and Criteria do not amend any existing Industrial District Contracts or agreements with the owners of real property in areas deserving of specific attention as agreed by the Affected Jurisdiction.

XII. SEVERABILITY AND LIMITATIONS

- (a) In the event that 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.
- (b) Property that is located in a reinvestment zone and that is owned or leased by a person who is a member of the Council may not be subject to a tax abatement agreement entered into with City.

- (c) If these Guidelines and Criteria have omitted any mandatory requirements of the applicable tax abatement laws of the State of Texas, then such requirements are hereby incorporated as a part of these Guidelines and Criteria.

XIII. TAX ABATEMENT DETERMINATION

- (a) Nothing herein shall imply or suggest City is under any obligation or duty to provide tax abatement to any applicant, and reserves the right to make exceptions, approve, and deny based on concerns including, however not limited to environmental and quality of life issues and/or compatibility with the economic goals and objectives of City.

GLOSSARY:

- (a) “Abatement” means the full or partial exemption from ad valorem taxes of certain real or tangible personal property in a reinvestment zone designated by City for economic development purposes.
- (b) “Aquaculture/Agriculture Facility” means building, structures and major earth structure improvements, including fixed machinery and equipment, the primary purposes of which is of food and/or fiber products in commercially marketable quantities.
- (c) “Affected Jurisdiction” means the County and any other taxing, the majority of which is located in City that levies ad valorem taxes upon and/or provides services to property located within the proposed or existing reinvestment zone designated by City.
- (d) “Agreement” means a contractual agreement between a property owner and/or lessee and City for the purpose of tax abatement.
- (e) “Base year value” means 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 filing of an application.
- (f) “Deferred maintenance” means improvements necessary for continued operations which do not improve productivity or alter the process of technology.
- (g) “Distribution Center Facility” means building and structures, including machinery and equipment, used or to be used primarily to receive, store, service, or distribute goods or materials owned by the facility from which a majority of revenue generated by activity at the facility are derived from outside of City.
- (h) “Expansion” means the addition of buildings, structures, machinery or equipment for purposes of increasing production capacity.

- (i) "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.
- (j) "Manufacturing Facility" means buildings and structures, including machinery and equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.
- (k) "Modernization" means the upgrading and or replacement of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing or repairing.
- (l) "New Facility" means improvements to real estate previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- (m) "New Jobs" means a newly created employment position on a full-time permanent basis. Two or more part-time permanent employees totaling an average of not less than 40 hours per week may be considered as one full-time permanent employee.
- (n) "Office Building" means a new office building or corporate headquarters.
- (o) "Other Basic Industry" means buildings and structures, including fixed machinery and equipment not elsewhere described used or to be used for the production of products or services which serve a market primarily outside City and results in the creation of new permanent jobs and new wealth in City.
- (p) "Regional Entertainment/Tourism Facility" means buildings and structures, including fixed machinery and equipment, used or to be used to provide entertainment and/or tourism related services, from which a majority of revenues generated by activity at the facility are derived from outside City.
- (q) "Research Facility" means buildings and structures, including fixed machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production process thereto.
- (r) "Regional Service Facility" means buildings and structures, including fixed machinery and equipment, used or to be used to provide a service from which a majority of revenues generated by activity at the facility are derived from outside City.
- (s) "Energy Facility" means buildings and structures, including but not limited to generating equipment, electric transmission lines, electric power substations, electrical gathering

equipment, communications systems and roads, fixed machinery and equipment, used or to be used to provide electrical energy

- (t) “Energy Storage Facility” means buildings and structures, including but not limited to improvements for the storage and dispatch electricity and provision of other functions related to the storage, distribution, and transmission of electrical power, or that is otherwise related to the storage and sale of electricity.
- (u) “Data Center Facility” means a building or facility that houses IT infrastructure for building, running, and delivering applications and services, and for storing and managing the data associated with those applications and services.