

**GUIDELINES AND CRITERIA GOVERNING TAX ABATEMENT AGREEMENTS  
TO BE ENTERED INTO AND GRANTED BY FAYETTE COUNTY, TEXAS**

**STATE OF TEXAS**                    }  
  }  
**COUNTY OF FAYETTE**            }

**WHEREAS**, new improvements and investments, and new jobs, will benefit the area economy, provide needed opportunities, strengthen the real estate market, and generate tax revenue to support local services; and,

**WHEREAS**, building and installing new improvements, and the creation and retention of job opportunities, that bring substantial new wealth are among the highest civic priorities; and,

**WHEREAS**, Fayette County (the "County") must compete with other localities across the nation currently offering tax inducements to attract new and modernization projects; and,

**WHEREAS**, any tax incentives offered in Fayette County would reduce needed tax revenue unless these tax incentives are strictly limited in application to those new and existing industries that bring substantial new wealth to the community; and,

**WHEREAS**, the abatement of property taxes, when offered to attract new improvements and investments and/or primary jobs in industries that 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**, Chapter 312, the Property Redevelopment and Tax Abatement Act, Texas Tax Code, requires any eligible taxing jurisdiction, including Fayette County, to establish guidelines and criteria as to eligibility for tax abatement agreements prior to the granting of any future tax abatement, which guidelines and criteria are to remain unchanged for a two-year period unless amended by minimum votes, as provided by said state law; and,

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

**WHEREAS**, these guidelines and criteria are approved for circulation to all affected taxing jurisdictions for consideration as a common policy for all jurisdictions that choose to participate in tax abatement agreements; and

**WHEREAS**, the Commissioners Court of Fayette County, Texas (the "Commissioners Court") hereby adopts, approves, authorizes, and establishes these guidelines and criteria;

**NOW THEREFORE BE IT RESOLVED AND ORDERED THAT** Fayette County, Texas hereby adopts, approves, authorizes, and establishes the Guidelines and Criteria Governing Tax Abatement Agreements to be Entered into and Granted by Fayette County, Texas (the "Guidelines and Criteria") as follows:

**Sec. 1. Definitions**

- A. "Abatement" means the full or partial exemption from ad valorem taxes of certain real property, and certain personal property, in a reinvestment zone designated by Fayette County for economic development purposes.

- B. "Affected jurisdiction" or "taxing entity" means the County of Fayette, and any other taxing jurisdiction with any substantial parts of its area located in the County; and that levies ad valorem taxes and provides services to property located in said County; and that chooses to participate in Tax Abatement Agreements by, or pursuant to, these guidelines and criteria.
- C. "Agreement" or "Tax Abatement Agreement" means a contractual agreement between a property owner or lessee, or both, and an affected jurisdiction for the purposes of Abatement.
- D. "Base year value" means the assessed value of eligible property on the 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. "Deferred maintenance" means improvements necessary for continued operations that do not improve productivity or alter the process technology.
- F. "Distribution Center Facility" means permanent buildings and structures, including fixed machinery and equipment, used or to be used, primarily to receive, store, service, or distribute goods or materials owned by the facility operator.
- G. "Expansion" means the addition of permanent building and structures and/or fixed machinery and equipment, for purposes of increasing production capacity.
- H. "Facility" means property improvements completed or in the process of construction that together comprise an integral whole.
- I. "Manufacturing Facility" means permanent buildings and structures, including fixed 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.
- 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 permanent buildings and structures, and alteration, or installation of permanent buildings and structures, fixed machinery and equipment. Modernization shall include improvements for the purposes of increasing productivity or updating the technology of machinery or equipment or both.
- K. "Natural Gas Energy Resource" means a resource which produces energy derived from natural gas energy technologies.
- L. "New Facility" means a property previously undeveloped that is placed into service by means other than by, or in conjunction with, expansion or modernization.
- M. "Other basic industry" means permanent buildings and structures, including fixed machinery and equipment not elsewhere described, used or to be used, for the production of products or services that primarily serve a market, that result in the creation of new permanent jobs, and that bring in new wealth.

- N. "Productive life" means the number of years a property improvement is expected to be in service in a facility.
- O. "Regional entertainment facility" means permanent buildings and structures, including fixed machinery and equipment, used or to be used to provide entertainment through the admission of the general public.
- P. "Research facility" means permanent buildings and structures, including fixed machinery and equipment, used or to be used primarily for the research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.
- Q. "Regional service facility" means permanent buildings and structures, including fixed machinery and equipment, used or to be used, to service goods.
- R. "Renewable Energy Resource" means a resource which produces energy derived from renewable energy technologies, as defined in PUC Substantive Rule 25.5.

**Sec. 2. Criteria for Abatement and Designation a Reinvestment Zone.**

- A. Authorized facility. A facility may be eligible for Abatement if it is a manufacturing facility, natural gas energy resource, research facility, distribution center or regional service facility, regional entertainment facility, renewable energy resource, or other basic industry.
- B. Creation of new value. Abatement may be granted only for the additional value of eligible property improvements made subsequent to, and specified in, a Tax Abatement Agreement between the County and the property owner or lessee, subject to such limitation as the County may require.
- C. New and existing facilities. Abatement may be for new facilities and for improvements to existing facilities for the purposes of modernization or expansion.
- D. Eligible property. Abatement may be extended to the value of permanent buildings and structures, fixed machinery and equipment, and certain other personal property, site improvements, and office space and related fixed improvements necessary to the operation and administration of the facility.
- E. Ineligible property. The following types of property shall be fully taxable and ineligible for Abatement: land; inventories; supplies; housing; hotel accommodations; deferred maintenance investments; 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. Value and term of Abatement. A Tax Abatement Agreement granted by the County shall be up to but not exceeding ten (10) years in duration and up to but not exceeding 100% of the ad valorem property taxes assessed.
- G. Economic qualification. In order to be eligible to receive Abatement the planned improvement:
  - 1. Must be reasonably expected to have an increase in positive net benefit to the County of at least \$10,000,000 in the case of new businesses and \$2,000,000 in the case of existing businesses over the life of the Tax Abatement Agreement (such amounts

computed to include, but not limited to, new payroll and the cost of the new capital investment concerning the new facilities and/or the existing facilities);

2. must be expected to prevent the loss of employment, retain employment, or create employment on a permanent basis; and
  3. must not be expected to solely or primarily have the effect of transferring employment from one part of the County to another.
- H. Existing business. Recognizing the importance of improvements to the community of those existing businesses that modernize or expand over and above normal repair and upkeep, such existing businesses may be granted an Abatement in an amount and for a period of time determined by the County in its discretion based on the cost of the new improvements and/or the value added by the improvements.
- I. Taxability. From the execution of the Tax Abatement Agreement to the end of the Tax Abatement Agreement period taxes shall be assessed as follows:
1. the value of ineligible property as provided in Section 2E shall be fully taxable; and,
  2. the base year value of existing eligible property shall be fully taxable;
  3. ad valorem property taxes on the additional value of new eligible property at new facilities and/or at existing facilities shall be abated during the term of and in the manner provided in the Tax Abatement Agreement; and
  4. the additional value of new eligible property at new facilities and/or at existing facilities shall be fully taxable at the end of the Abatement period.

### **Sec. 3. Application and Hearing**

- A. Any present or potential owner of taxable property in the jurisdiction of the taxing entity of the County of Fayette, Texas may request tax abatement by filing a written application with the Commissioners Court.
- B. The application shall consist of a completed application form, such as the Application attached as Exhibit A, along with an Application Processing Fee of \$1,000 (nonrefundable) made payable to Fayette County, Texas, accompanied by:
  1. a general description of the proposed use and the general nature and extent of the modernization, expansion, or new improvements (at new facilities and/or at existing facilities) to be undertaken;
  2. a descriptive list of the improvements that will be a part of the facility, including a map and property description; and
  3. 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 any financial and other information that may be appropriate for evaluating the financial capacity of the applicant and any other factors.

- C. After receipt of an application, the Commissioners Court shall determine within forty-five (45) days how to proceed with the application. Within this time frame the Commissioners Court shall choose to deny the application, consider the application, or consider the application on an expedited basis.
- D. Consideration of Application.
  - 1. The Commissioners Court will consider the application at a meeting duly convened under the Texas Open Meetings Act. Additional information may be requested as needed.
  - 2. The Commissioners Court may consider an order calling a public hearing to consider the establishment of a reinvestment zone if needed. A public hearing requiring the designation of a reinvestment zone shall be called in the manner required by Texas Tax Code § 312.401 and § 312.201. At least thirty (30) days prior to the hearing, the County shall publish notice of the hearing time, place, and subject in the local newspaper.
  - 3. The Commissioners Court may not designate an area as a reinvestment zone until it holds a public hearing on the designation and finds that the designation would contribute to the retention or expansion of primary employment or would attract major investment in the zone that would be a benefit to the property to be included in the zone and would contribute to the economic development of the county". See Section 312.401(b), Texas Tax Code.
  - 4. The Commissioners Court may consider adoption of an order approving the items and conditions of an abatement agreement between the County and the applicant.
  - 5. The Commissioners Court may consider ratification of and participation in a tax abatement agreement between Fayette County and the applicant. As required by Texas Tax Code § 312.402 and § 312.2041, at least seven (7) days prior to entering into a tax abatement agreement, the Commissioners Court shall give written notice of its intent to do so to the presiding officers of all taxing units with jurisdiction over the property for which the abatement is sought along with a copy of the proposed tax abatement agreement.
- E. Expedited Consideration of Application. If the County determines that the application should receive expedited consideration, then the County Judge shall schedule an opportunity to obtain public input on the application at a Commissioners Court's meeting. At least thirty (30) days prior to the meeting, the County must publish notice of the hearing time, place, and subject in the local newspaper. Also, at this time, the County must give written notice of its intent to enter into a tax abatement agreement to the presiding officers of all taxing units with jurisdiction over the property for which the abatement is sought, along with a copy of the proposed tax abatement agreement. During the Commissioners Court meeting, the Commissioners Court shall evaluate the application against the criteria in Sections 2 and shall decide whether to designate the property for which the abatement is sought as a reinvestment zone. If the reinvestment zone is designated, the Commissioners Court shall pass an order to that effect and may then immediately consider for approval the tax abatement agreement between the applicant and the County. After consideration, the Commissioners Court may finally vote

by simple majority to enter into the tax abatement agreement, or to decline. An approved tax abatement agreement may be executed in the same manner as other contracts made by the County.

- F. Confidentiality. As required by Section 312.003 of the Texas Tax Code, information that is provided to the County in connection with an application or a request for a tax abatement under this chapter 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 the abatement is sought is confidential and not subject to public disclosure until the tax abatement is executed.
- G. When the abatement is disapproved, an applicant may be granted a review, or rehearing, in which a new application and hearing may be required.
- H. Tax abatement may not be approved if the County finds that the application was filed after the commencement of the construction, alteration, or installation of improvements related to a proposed modernization, expansion, or new facility.
- I. Request for variance from the provisions of Section 2 may be made in written form to the Commissioners Court. Such request shall include all the items listed in Section 3 (B) above, together with a complete description of the circumstances that prompt the applicant to request variance. The approval process for a variance shall be identical to that for a standard application and may be supplemented by such additional requirements as may be deemed necessary by the County.

#### **Sec. 4. Standards for Denying Approval of Abatement.**

- A. If any affected jurisdiction is able to conclusively show cause in the public hearing why the granting of the abatement will have a substantial adverse effect on its bonds, tax revenue, service capacity, or the providing of services, the County shall deny the approval of abatement.
- B. An abatement agreement shall not be granted if it is determined that:
  - 1. there would be substantial adverse effect on the providing of government services or tax bases;
  - 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; or,
  - 4. codes or laws would be violated.

#### **Sec. 5. Effect of Approval of Application**

The Commissioners Court acts only for the taxing entity of Fayette County and for no other taxing entity within the County. The Commissioners Court's approval or disapproval of an application has no effect on any other taxing entity within the jurisdiction or their right to approve or disapprove an application. Only the governing bodies of the affected jurisdictions may grant tax abatements, and enter into tax abatement agreements with applicants. The Commissioners Court retains the option of considering a proposed project for receipt of any application under these guidelines and criteria which do not meet certain requirements of these guidelines and criteria, as deemed necessary

by the Commissioners Court, so long as the Commissioners Court finds that the project as proposed will encourage, develop and stimulate economic development, producing additional tax revenue, job opportunities, or other business opportunities for the County.

## **Sec. 6. Tax Abatement Agreements**

The Commissioners Court after approval of an application may enter into an agreement with the applicant. Such agreements shall be executed with the owner of the facility, and with the lessee when required. Such agreements shall include:

1. the method for calculating value to be abated and the base year value;
2. the percentage of value to be abated each year as provided in Sec. 2 (F, G, H and I);
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 improvements;
5. contractual obligations in the event of default, violation of terms or conditions, delinquent taxes recapture, administration, and assignment.
6. size of investment and average number of jobs involved; and
7. the agreement shall stipulate that employees, or designated representatives, or both, of the County will have access to the reinvestment zone during the terms 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 24 hours prior notice and will be conducted in such a manner that they will not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made in the presence of one or more representatives of the company or individual and in accordance with the safety standards of the company or individual.

## **Sec. 7 Recapture**

- A. If the facility is completed and begins producing products or services, but subsequently discontinues producing products or services for any reason excepting fire, explosion, or other casualty or accident or natural disaster, for a period of one year during the abatement period, then the agreement shall terminate and so shall the abatement of the taxes for the calendar year(s) during which the facility no longer produces. The taxes otherwise abated for that calendar year(s) shall be paid to the affected jurisdiction within 60 days from the date of termination.
- B. If the Commissioners Court determines that the company or individual is in default according to the terms and conditions of its agreement, the Commissioners Court shall notify the company or individual in writing at the address stated in the agreement, and if such default is not cured within 60 days from the date of such notice ("cure period"), then the agreement may be terminated; provided, however if such failure cannot be cured within such sixty (60)-day period and the company or individual has commenced remedial action to cure such failure (and continued to diligently and timely

pursue the completion of such remedial action), the company or individual shall be entitled to a total of one hundred eighty (180) days after receipt of notice within which to cure such default.

- C. If the company or individual (1) allows its ad valorem taxes owed to the County, or any other taxing entity in the County, to become delinquent after all applicable notice and cure periods and fails to timely and properly follow the legal procedures for their protest or contest or both; or (2) violates any of the terms and conditions of the abatement agreement and fails to cure during the cure-period, the agreement may then be terminated, and all taxes previously abated by virtue of the agreement will be recaptured and paid within 60 days of the termination.

### **Sec. 8. Administration**

- A. The Chief Appraiser of the Fayette County Appraisal District shall annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year, any company or individual receiving abatement shall furnish the assessor with such information as may be necessary for the abatement. Once value has been established, the chief appraiser shall notify the affected jurisdictions that levy taxes of the amount of the assessment.
- B. Upon completion of construction, a designated representative of the County shall annually evaluate each facility receiving abatement to insure compliance with the agreement and shall make a report to the Commissioners Court regarding the findings of each evaluation

### **Sec. 9. Assignment**

Abatement may be transferred and assigned by the holder to a new owner or lessee of the same facility upon the approval by resolution of the affected jurisdiction, 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 a new contractual agreement with the affected jurisdiction. No assignment or transfer shall be approved if the parties to the existing agreement, the new owner, or the new lessee are liable to any taxing entity in the County for outstanding delinquent taxes or other obligations. Approval shall not be unreasonably withheld, conditioned or delayed.

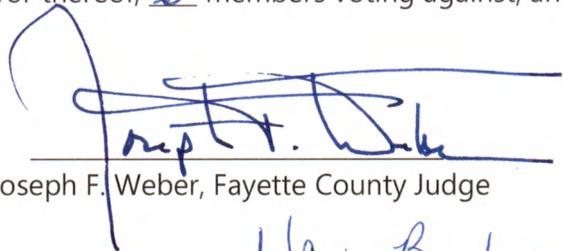
### **Sec. 10. Sunset Provision**

The guidelines and criteria are effective upon the date of their adoption by the Commissioners Court, and will remain in force for two years from the Effective Date (defined below) unless amended by a three-quarters vote of the Commissioners Court, at which time the tax abatement agreements created according to these provisions will be reviewed to determine whether or not the goals have been achieved. Based on that review, the guidelines and criteria may be further modified, renewed or eliminated.

### **Sec. 11. Variances from Guidelines and Criteria**

The Commissioners Court shall have the authority to enter into an abatement agreement with terms and conditions that vary from the terms and conditions in these guidelines and criteria so long as the Commissioners Court determines that such variances are in the best interests of the County. Any terms or conditions contained in an abatement agreement approved by the Commissioners Court that vary from the terms and conditions in these guidelines and criteria shall automatically be deemed to have been granted an approved variance by the Commissioners Court and shall be binding and enforceable as agreed to in the abatement agreement.

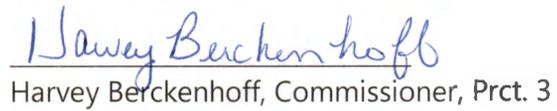
**CONSIDERED, ADOPTED, MADE, ESTABLISHED, ORDERED, SIGNED, AND DONE IN OPEN MEETING AND OPEN COURT** by vote of the Fayette County Commissioners Court on this the 27th day of February, 2020, upon motion of Commissioner Muras, seconded by Commissioner Berckenhoff, with 5 members of the Commissioners Court being present, 5 members of Commissioners Court voting in favor thereof, 0 members voting against, and 0 members abstaining.



Joseph F. Weber, Fayette County Judge



Jason McBroom, Commissioner, Prct. 1



Harvey Berckenhoff, Commissioner, Prct. 3



Tom Muras, Commissioner, Prct. 4

**ATTEST:**



Brenda Fietsam, Fayette County Clerk and Clerk of the Commissioners Court



## EXHIBIT A

### EXAMPLE OF FAYETTE COUNTY TAX ABATEMENT APPLICATION FOR ECONOMIC DEVELOPMENT INCENTIVES

#### PROPERTY/PROJECT DESCRIPTION

1. Property Owner  
  
Mailing Address  
  
  
Telephone
2. Project Sponsor  
(If different than property owner)  
Mailing address  
  
  
Telephone
3. Applicant's Representative  
Telephone
4. Property Address  
  
Legal Description  
  
  
(provide attachment if by metes and bounds)
5. Located within (School or other taxing district):
6. Description of Project (including the cost of the new capital investment concerning the new facilities and/or the existing facilities):

7. Date (s) projected for occupation of project/initiation of operations:
  
8. Employment Impact
  - a. How many jobs will be brought to Fayette County?
  - b. What types of jobs will be created?
  - c. What will the total annual payroll be?
  
9. Fiscal Impact
  - a. How much real and personal property value will be added to the tax roles?
  - b. How much direct sales tax will be generated?
  - c. How will this project affect existing business and/or office facilities?
  - d. What infrastructure construction would be required?
  - e. What is the total annual operation budget of this facility projected to be?
  
10. Community Impact
  - a. What effect would the project have on the local housing market?
  - b. What environmental impact, if any, will be created by the project?
  
11. Type and value of incentive requested: