

GUIDELINES AND CRITERIA

FOR

GRANTING TAX ABATEMENTS

CITY OF SWEENY

**GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS
BY THE CITY OF SWEENY**

Section I. 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 City Council shall have the power from time to time to provide such additional and/or modified definitions that they find desirable and necessary. The words and phrases as herein set out shall be deemed and understood to me:

- A. **Abatement** shall mean the full or partial exemption from ad valorem taxes of certain real property and certain limited types of tangible property, as hereinafter provided, located in a Reinvestment Zone designated by the City of Sweeny 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 City of Sweeny.
- D. **Base Year Value** shall mean the assessed value of eligible property on January 1st preceding the execution of the Tax Abatement Agree plus the agreed upon value of eligible property improvements made after January 1, but before the execution of the Tax Abatement Agreement.
- E. **City** shall mean the City of Sweeny Texas.
- F. **Council** shall mean the governing body (City Council) of the City of Sweeny 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 City of Sweeny.
- 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 man new, expanded, or modernized buildings and structures, and fixed machinery and equipment, which are reasonably likely, as a result of granting, to contribute to the retention or expansion of primary employment or to attract major investment to the Reinvestment Zone, or that would contribute to the economic development of the City of Sweeny Texas. Eligible facilities may include, but shall not be limited to; retail sales establishments generating municipal sales tax, or having the potential to stem the export of retail expenditures from the City of Sweeny Texas, or having the potential to draw new retail expenditures into the City of Sweeny Texas; manufacturing facilities; office building; hotels/motels; distribution facilities service facilities; tourism facilities; multifamily housing; and other facilities not herein expressly deemed ineligible, which in the sole opinion of the City Council will have a positive impact on the economic well-being of the City of Sweeny Texas.
- K. **Expansion** shall mean the addition of buildings, structures, fixed machinery, as that term is defined herein, equipment, or payroll for the purposed of increasing production, efficiency, services, or a 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 within the Reinvestment Zone.
- N. **Hotel / Motel** shall mean a commercial structure which provides overnight accommodations to travelers.
- O. **Housing** shall mean new construction facilities whose purpose is to provide shelter for one family in a single freestanding unit.
- P. **Ineligible property** shall mean; land; supplies; inventory; tools; furnishings; other movable personal property; rolling stock; railroad cars; trucks; aircraft; or other forms of transportation; housing; deferred maintenance; and any property owned in whole or in part or leased by a member of the City Council or the City of Sweeny's Zoning Commission, or Zoning Board of Adjustment.
- Q. **Manufacturing facility** shall mean a facility with the primary purpose being the manufacture, or whole or partial assembly of tangible goods or materials.
- R. **Multi-family housing** shall mean facilities consisting of more than one unit in a single structure with each unit designed to provide independent living quarters for an individual family.
- S. **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.
- T. **Office facility** shall mean a facility providing primary office space which may be owner-occupied and/or leased. Also included are corporate offices which serve as the principal office for business enterprise, and from which orders for goods and billing for same may take place.
- U. **Recipient** shall mean the company or individual being the beneficiary of a Tax Abatement Agreement.
- V. **Reinvestment Zone** shall mean any area of the City of Sweeny which City Council has formally designated as such a zone for the purpose of granting tax abatements, the creation of such zones being a requirement of State law related to the granting of tax abatements. It is the intent of the City of Sweeny to create reinvestment zones on a case-by-case basis, so long as the abatement contemplated conforms to the guidelines herein contained.
- W. **Retail facility** shall mean a facility providing for the storage and sale of goods directly to the consumer.
- X. **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.
- Y. **Tourism facility** shall mean a facility which provides entertainment and/or tourism-related goods or services, and from which a majority of revenue generated are from outside the City of Sweeny.

Section II. 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 Council may from time-to-time require, or as may be specified in the agreement between parties. Existing value may not be abated.

- B. Ineligible property.** Ineligible property may not be granted abatement.
- C. Authorized date.** Abatement may only be granted for new or added value of an eligible property improvement that is created for purposes of modernization or expansion.
- 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. Economic qualifications.** 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 fifty thousand (\$50,000.00) dollars upon completion of the anticipated improvements based upon the Brazoria County Appraisal District assessment of the eligible property.
- F. Owned / leased facilities.** If a leased facility is granted abatement, the Agreement shall be executed with the lessor and lessee.
- G. Standards for Tax Abatements.** The following factors, among such other factors as deemed necessary by the Council, 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 created.
 6. Number of new jobs to be filled by local residents, or by persons projected to reside in the City.
 7. Amount of local sales tax to be generated.
 8. The costs to be incurred by the City to provide facilities or services directly resulting from the new improvements.
 9. The amount of ad valorem taxes to be paid the City during the abatement period considering the existing values, the percentage of new value abated, the abatement period, and 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 the 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 City.
16. Environmental compatibility, and amount, if any, of negative impact on quality of life perceptions.
17. 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, the Council may, within the exercise of its full discretion, either deny entirely the abatement, or may grant abatement as deemed appropriate.

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. Planned or potential use of the property would constitute a violation of other codes or laws.
5. Any other reason Council may deem appropriate.

I. Amount of abatement. The percentage of value to be abated and the duration of the tax abatement shall be determined as follows:

1. For planned improvements valued at fifty thousand (\$50,000.00) or greater, the percentage and duration of the tax abatement shall be determined by the Council in the exercise of its absolute discretion on a case-by-case basis, taking into consideration some or all of the factors listed in subsection G.

J. Taxability. From the execution of the Agreement to the end of the Agreement periods, 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.
3. The additional value of new eligible property shall be fully taxable at the end of the abatement period.

Section III. Application

A. Any present or potential owner of taxable property in the City may request the creation of a Reinvestment Zone and property tax abatement by filing a written application with the City Secretary in a form prescribed by the City. The applicant shall at no time acquire any rights, privileges or authority, monetary or otherwise, by reason of filing an application, or providing any documentation in conjunction with an application filed herein. The City reserves the right to reject any application.

- B.** As a part of the application process the following shall be provided:
 - 1. Completed application form.
 - 2. Vicinity map along with a legal description to be a metes and bounds survey, or other survey prepared by a registered Texas Engineer or a licensed Texas surveyor.
 - 3. Such financial and other information as deemed appropriate by the City for the purposes of evaluating the application.

Section IV. Action by the Council on Application

- A.** The Council, within a reasonable time after completion of the review of all documents submitted by the applicant, and such other investigation and inquiry as may be deemed appropriate, shall, through the exercise of its absolute discretion either preliminarily approve or disapprove the application.
- B.** Preliminary application approval does not constitute Council's approval of the creation of a Reinvestment Zone, nor the approval of an agreement. Such approval does constitute Council's authorization to consider such actions.

Section V. Creation of a Reinvestment Zone.

- A.** Prior to the adoption of an Ordinance designating a Reinvestment Zone, the Council 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. The City may require the applicant to pay for costs associated with such publishing.
- B.** The Council reserves the right to not establish a Reinvestment Zone for tax abatement if it finds that construction, alteration, or the installation of improvements being considered for abatement commenced prior to the submission of a tax abatement application.

Section VI. Agreement

- A.** After approval of the application for tax abatement, and adoption of an Ordinance creating a Reinvestment Zone, the Council may pass a resolution authorizing the execution of the Agreement.
 - 1. No later than the seventh (7th) day prior to taking action to authorize execution of an Agreement, the Council 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 of abatement will be granted as provided in Section II, 1.
 3. The commencement and termination date of the abatement.
 4. The commencement and completion date of the proposed improvements.
 5. Size of investment and average number of jobs to be created, if any.
 6. The right of the City employees and/or designated representatives during the term of the Agreement of access to the Reinvestment Zone for the purpose of determining if the terms and conditions of the Agreement are being met. Such inspections shall be in accordance with the provisions of Section VII, D.
 7. The responsibility, of the, recipient, of tax abatement to file appropriate documents with the Chief Appraiser of the Brazoria County Appraisal District.
 8. Contractual obligation related to default, violation of terms or conditions, delinquent taxes, recapture administration, amendment, and assignment.
- C.** Such Agreement shall be executed in duplicate originals by both parties to the Agreement.

Section VII. Administration

- A.** The Chief Appraiser of the Brazoria County Appraisal District will annually determine an assessment of the taxable assessed value of the recipient's property, taking into consideration the terms of the Agreement relating to such real and personal property found within the Reinvestment Zone which is subject to the terms and provisions of the Agreement.
- B.** Each year, the recipient shall furnish the Chief Appraiser such information as may be necessary for receipt of the abatement.
- C.** It shall be the exclusive duty and responsibility of the recipient to comply with all requirements of the Brazoria County 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 City or any of its officers, employees, or agents.
- D.** Employees and/or designated representatives of the City, 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 Agree are being met. All inspections will be mad only after the giving of twenty four (24) hours prior notice, and will only be conducted in such manner as to not unreasonable 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.** During the construction, install, or modification of abated improvements the recipient may be required to provide to the City reports on the progress and status of such improvements. Such reports shall be on a schedule as requested by the City, and would require as a minimum the following:

1. The date of commencement of improvement, significant progress dates, and actual as well anticipated completion dates.
 2. Expenditures made to date.
 3. A disclosure and description of any and all changes or modifications that were made in the contemplated improvements.
- F.** Upon completion of all contemplated improvements the recipient may be required to provide the City a final report, such report containing as a minimum the following:
1. Improvement completion dates.
 2. Actual improvement costs.
 3. A disclosure and description of any and all changes or modifications that were made in the contemplated improvement.
- G.** Any required reporting by the recipient shall be in a form approved by the City, or on a form(s) as provided by the City.
- H** Upon completion of anticipated improvements, a designated representative of the City may annually evaluate each facility receiving abatement to insure compliance with the agreement, and a formal report of such evaluations shall be made to the Council regarding the findings.
- I.** The recipient shall be required to provide the City with an annual certificate as to compliance with the terms and conditions of the Agreement.
- J.** The City shall file reports required of the City by State law, such reports being filed with the appropriate agency.

Section VIII. Assignment

- A.** The rights granted under an Agreement may be transferred and assigned by the recipient to a new owner or lessee of the subject facility only upon the approval by Resolution of the Council, and the execution of an Assignment Agreement between the City and the new owner or lessee. Such assignment shall be at the sole discretion of the Council, 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.
 3. No outstanding taxes or other debts are owed to any governmental entity by the parties to the Agreement or the proposed Assignment Agreement.

Section IX. Default and Recapture

- A. Cause.** The Agreement may be terminated by the Council for any of the following causes which shall be considered a default of the Agreement:

1. Recipient allows the ad valorem taxes owed the City or other affected jurisdictions to become delinquent and fails to timely and properly follow the requirements of law for their protest and/or cure.
2. Recipient violates any of the terms and conditions of the Agreement, and fails to cure during the cure period described elsewhere in this Section.

B. Procedure. Should the City 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(s) for default, and afford the recipient an opportunity to request a hearing before the Council, 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 Council may confirm the existence of default.
3. If default is determined either by hearing, or failure of recipient to request a hearing, the City shall deliver to the recipient of tax abatement, in writing, a Notice of Default.
4. The recipient shall, within thirty (30) days of receipt of a Notice of Default, cure the cause(s) for default. Failure to do so will be cause for the City to terminate the Agreement without further notice.
5. The Agreement shall be terminated by an Ordinance duly passed and adopted by the Council.

C. Recapture.

1. Should the Agreement be terminated, all taxes previously abated prior to the termination shall be due and payable to the City within thirty (30) days.
2. Should the recipient discontinue operations of improvements as stated in the application for abatement or the Agree, for reasons excepting fire, explosion, or other disaster, for a period of one (1) year during the abatement period, then the Agreement shall be considered terminated, and all taxes abated prior to the termination of the Agreement shall be due and payable to the City within thirty (30) days.

Section X. Confidentiality

- A.** The City 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.
- B.** Information which is provided to the City in connection with a tax abatement application that describes the specific processes or business activities to be conducted or the equipment or property to be located on the property for which tax abatement is sought is confidential and not subjected to public disclosure until the Agreement is executed. Any information remaining in the custody of the City after the Agreement is executed is no longer confidential. Upon request, the City will return such information to the provider prior to the execution of an agreement.

- C. In accordance with current State law, the following information is exempt from public disclosure:**
- 1. Trade secrets.**
 - 2. Commercial or financial information for which a demonstration can be made based upon specific factual evidence that disclosure would cause substantial competitive harm to the person or company from whom the information was obtained.**
- D.** In accord with current State law, the City may hold closed meetings to discuss or deliberate commercial or financial information it has received from a business prospect that the City seeks to have locate, stay, or expand in or near its jurisdiction, and with which the City is conducting economic development negotiations.
- E.** In accord with current State law, the City may hold closed meetings to discuss or deliberate the offer of a financial or other incentive to a business prospect the City seeks to have locate, stay, or expand in or near its jurisdiction, and with which the City is conducting economic development negotiations.
- F.** Upon execution of an Agreement, information about a financial or other incentive being offered to a business prospect is no longer confidential, and is subject to public disclosure.

Section XI. Severability. In the event any section, clause, sentence, paragraph, or any part of these Guidelines and Criteria shall, for any reason, be adjusted by any court of competent jurisdiction to be invalid shall not affect, impair, or invalidate the remained of these Guidelines and Criteria.

Section XII. Sunset Provision.

- A.** These Guidelines and Criteria are effective upon the date of their adoption by the Council, 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 Council 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 Council.

Section XIII. Discretion of the City.

- A.** The adoption of these Guidelines and Criteria by the City does not:
1. Limit the discretion of the Council to decide whether to enter into a specific Agreement, which absolute right of discretion the Council reserves to itself, whether or not such discretion may be deemed arbitrary, or without basis in fact.
 2. Limit the discretion of the Council to delegate to its employees or assigns the authority to determine whether or not the Council should consider a particular application or request for tax abatement.
 3. Create any property, contract, or other legal rights in any person or entity to have the Council consider or grant a specific application or request for tax abatement.