

**GUIDELINES AND CRITERIA FOR GRANTING
TAX ABATEMENT IN A REINVESTMENT ZONE**

Ward County, Texas

September 23, 2024

Commissioners Court:

Greg M. Holly

County Judge

Tino Sanchez

Commissioner, Precinct 1

Larry Hanna

Commissioner, Precinct 2

Dexter Nichols

Commissioner, Precinct 3

Eddie Nelms

Commissioner, Precinct 4

The purpose of this document is to establish guidelines, criteria, and a uniform policy of tax abatement for owners or lessees of eligible facilities willing to enter into tax abatement contracts designed to provide long-term, significant, positive economic impact to the community by utilizing area contractors and work force to the maximum extent feasible, and by developing, redeveloping and improving property.

WHEREAS, the purpose of tax abatement is to provide a financial incentive offered by Ward County, to attract investments that lead to better quality of life and economic opportunity for area residents. The wealth created by these enterprises leads to more services and businesses, which in addition to improving quality of life, increases the tax base. By giving incentive in terms of tax abatement, the citizens agree to forgo short term tax benefits to gain long term economic benefits; and

WHEREAS, new investment and industrial diversification will benefit the area economy, provide needed opportunities, and generate tax revenue to support local services; and

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

WHEREAS, the abatement of property taxes, when offered to attract capital investment in industries which bring economic activity to the community, has been shown to be an effective method of enhancing and diversifying an area of economy; and

WHEREAS, the approval of a property tax abatement increases the competitiveness and attractiveness of the community to targeted industries, and relative to other communities or areas of direct competition that are vying for a company's investment in real or personal property and corresponding job creation, creates a significant advantage in economic development for Ward County; and

WHEREAS, Texas law requires any eligible taxing jurisdiction to establish Guidelines and Criteria as to eligibility for tax abatement agreements prior to granting of any future tax abatement, and said Guidelines and Criteria to be unchanged for a two-year period unless amended by a three-quarters vote;

Now, therefore, be it resolved that Ward County does hereby state it elects to participate in property tax abatement and does hereby propose for consideration and adoption these Guidelines and Criteria for granting tax abatement in reinvestment zones in Ward County.

Section 1 - DEFINITIONS

- (a) **"Abatement"** means the full or partial exemption from ad valorem taxes on certain real or personal property in a reinvestment zone designated by Ward County for economic development purposes.
- (b) **"Abatement Period"** means the period during which all or a portion of the value of real property or tangible personal property that is the subject of a tax abatement agreement is exempt from taxation.
- (c) **"Agreement"** means a contractual agreement between a property owner and/or lessee and Ward County for the purpose of tax abatement.
- (d) **"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 execution of the agreement.

- (e) **"Deferred Maintenance"** means improvements necessary for continued operation, which do not improve productivity or alter the process technology.
- (f) **"Eligible Facilities"** means new, expanded or modernized buildings and structures, including fixed machinery and equipment, that is 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 and that would contribute to economic development within Ward County.
- (g) **"Economic Development"** means participation in or support of an organized program or entity which for the purpose of its' mission, engages in activities designed to encourage business, commercial development, manufacturing, or industry to locate and/or expand in Ward County, thus increasing and diversifying the tax base, as well as enhancing the economic strength and stability of Ward County.
- (h) **"Eligible Jurisdiction"** means Ward County and any municipality or school district or other local taxing jurisdiction eligible to abate taxes according to Texas law, the majority of which is located in Ward County that levies ad valorem taxes upon and provides services to a reinvestment zone designated by Ward County.
- (i) **"Expansion"** means the addition of buildings, structures, machinery or equipment for purposes of increasing production capacity.
- (j) **"Facility"** means property improvements completed or in the process of construction which together comprise an integral whole.
- (k) **"New Facility"** means a property which is placed into service by means other than or in conjunction with expansion.
- (l) **"Modernization"** means a complete or partial demolition of facilities and complete or partial reconstruction of or installation within a Facility of similar or expanded production capacity. Modernization may result from the construction, alteration or installation of buildings, structures, machinery or equipment, or both.
- (m) **"Office Building"** means a new commercial structure to be leased or otherwise occupied by an anchor tenant or multiple tenants.
- (n) **"Productive Life"** means the number of years a property improvement is expected to be in service or produce economic activity in a facility.
- (o) **"Tangible Personal Property"** means tangible personal property classified as such under state law, but excludes inventory and/or supplies, ineligible property as defined herein and tangible personal property that was located in the investment zone at any time before the period covered by the agreement with Ward County.

Section 2- ABATEMENT AUTHORIZED

An owner or lessee of property requesting tax abatement within a reinvestment zone must, prior to the commencement of project(s) construction, subject to an abatement contract, agree to invest a minimum amount of capital and/or create and/or retain a certain number of jobs, as follows:

Level	Capital Investment	Net New Jobs	Max Abatement %	Maximum Term
Level I	\$0 - \$500,000	1	65% Real or BPP	7 Years
Level II	\$500,000 - \$1,000,000	5	75% Real or BPP	7 Years
Level III	\$1,000 000 - \$5,000,000	5	85% Real or BPP	7 years
Level IV	\$5,000,000 - \$10,000,000	10	95% Real or BPP	10 years
Level V	\$10,000,000+	10	1 00% Real or BPP	10 years

For instances where the Capital Investment requirement is met for a particular level, but the minimum number of Net New Jobs requirement is not met, the company may qualify for the percentage abatement authorized at the next lower level, or otherwise authorized by discretion of the Ward County Commissioners Court. Terms of an abatement for projects that invest at least \$10 million dollars in capital or employ at least 10 people are open to negotiation, and eligible for terms appropriate for and consistent with the extent to which they exceed the Level V thresholds of capital investment and/or job creation, at the discretion of the Ward County Commissioners Court. Maximum years of abatement shall not exceed the maximum number of years according to state law.

The County Judge may create a tax abatement advisory committee composed of one member representing each affected taxing jurisdiction, to inform and concur with applicants for tax abatement. The Judge will recommend contract terms and adoption or rejection of all such applications to the Commissioners Court. This policy is effective as of the approval of these guidelines and shall at all times be kept current with regard to the needs of Ward County and reflective of the official views of the Commissioners Court and shall be reviewed every two years. The adoption of the guidelines and criteria by Ward County does not:

- (1) Limit the discretion of the governing body to decide whether to enter into a specific tax abatement agreement.
- (2) Limit the discretion of the governing body to delegate to its employees the authority to determine whether or not the governing body should consider a particular application or request for tax abatement.
- (3) 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.

Notwithstanding the investment schedule above, Ward County may grant a tax abatement if it finds that the abatement is in the public interest because it will facilitate at least one of the following objectives:

- (1) Augment or maintain the tax base
- (2) Finance or otherwise improve public infrastructure
- (3) Provide meaningful, permanent employment opportunities in the county, or improve the skills of existing employees to facilitate their promotion to higher-wage jobs
- (4) Provide or help acquire or construct public facilities
- (5) Contribute to the redevelopment or renewal of particularly distressed areas
- (6) Contribute to the diversity, strength, and/or quality of Ward County's industry base

Authorizations

- (a) **Eligible Facilities:** Upon application, Eligible Facilities shall be considered for tax abatement as hereinafter provided.
- (b) **Creation of New Value:** Abatement may only be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between Ward County and the property owner or lessee, subject to such limitations as Ward County may require.
- (c) **New and Existing Facilities:** Abatement may only be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between Ward County and the real property owner, tangible property owner, leasehold interest owner, and/or lessee, subject to such limitations as Ward County may require.
- (d) **Eligible Property:** Abatement may be granted for new facilities, or improvements, including expansion, modernization, and reconstruction of existing facilities. Abatement may be extended to the value of buildings, structures, tangible personal property as defined in the tax code, including machinery and equipment, site improvements, 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 tax abatement: land; existing improvements; supplies; tools; furnishings; inventory; housing; deferred maintenance; property to be rented or leased except as provided in Section 2 (f); property owned or used by the State of Texas or its political subdivisions or by any organizations owned, operated or directed by a political subdivision of the State of Texas, and any other property for which abatement is not allowed by state law.
- (f) **Owned/Leased Facilities:** If a Leased Facility is granted abatement, the agreement shall be executed with the lessor and the lessee.
- (g) **Real and Personal Property:** Abatement may be granted with the owner of eligible personal property located on real property in a reinvestment zone to exempt from taxation (1) all or a portion of the value of the real property, (2) all or a portion of the value of the eligible personal property located on the real property, or (3) all or a portion of the value of both, in any percentage combination deemed appropriate by county authorities, at the discretion of and subject to approval by the Commissioners Court.
- (h) **Terms:** Abatement shall be granted effective the January 1 valuation date immediately following the date of the Commissioners Court order granting the abatement. A maximum of one hundred (100) percent of the value, or such percentage of value that shall be set by Commissioners' Court order, of new eligible property shall be abated for up to ten (10) years.
- (i) **Deferral:** If it is determined that the abatement period would be more beneficial to the Applicant by deferring the commencement date beyond January 1, following the Commissioners Court order granting the abatement and approving the abatement application, the Applicant may defer the commencement date of the abatement period to a future date certain. The deferral of the commencement date will not allow the duration of the abatement period to extend beyond four (4) years unless approved by a majority vote of the Commissioners Court.

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

- (1) Must meet or exceed the capital investment threshold for the corresponding Level (I-V) of abatement percentage and term; and
- (2) Must create at least the number of new, full-time jobs specified by the corresponding Level (I-V) of abatement percentage and term; and
- (3) Must, in instances where the corresponding Level of both capital investment and job creation requirements are not met, demonstrate other project merits to such an extent that, at the discretion of the Ward County Commissioners Court, an exemption from the abatement guidelines is warranted; and
- (4) Must be expected to prevent the loss of payroll or retain, increase or create payroll on a permanent basis in Ward County; and
- (5) Must, during the construction period, create a substantial number of jobs related to the construction of new facilities, installation of machinery and equipment, and/or performance of related work at the reinvestment zone site; and
- (6) Must not be expected to solely or primarily have the effect of transferring employment from one part of Ward County to another.

(k) **Standards for Tax Abatement:** The following factors, among others, shall be considered in determining whether to grant tax abatement:

- (1) Value of existing improvements, if any;
- (2) Type and cost 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 by proposed improvements;
- (6) Amount of local payroll to be created;
- (7) Amount of local sales taxes to be generated directly;
- (8) Costs to be incurred by Ward County to provided facilities or services directly resulting from the proposed improvements;
- (9) Population growth of Ward County that occurs directly as a result of new improvements;
- (10) Types and values of public improvements, if any, to be made by applicant seeking abatement;
- (11) Whether the proposed improvements compete with existing businesses to the detriment of the local economy;
- (12) Impact on the operations and opportunities of existing businesses;
- (13) Attraction of other new businesses to the area;
- (14) Overall compatibility with the zoning ordinances and comprehensive plan for the area;
- (15) Whether the project obtains all necessary permits from the applicable environmental agencies.

(l) **Denial of Abatement:** Neither a reinvestment zone nor abatement agreement shall be authorized if it is determined that:

- (1) There would be substantial adverse effect on the provision of government service or tax base;
- (2) The applicant has insufficient financial capacity to fully complete and/or responsibly operate the real and/or personal improvements;
- (3) Planned or potential use of the property would constitute a hazard to public safety, health, or morality;
- (4) Violation of other codes or laws; or
- (5) Any other reason deemed appropriate by the authorities of Ward County.

(m) **Taxability:** From the execution of the abatement to the end of the agreement period, taxes shall be payable as follows:

- (1) The value of ineligible property as provided in Section 2(e) shall be fully taxable; and
- (2) The base year value of existing eligible property as determined each year shall be fully taxable; and
- (3) The additional value of new 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 Ward County may request the creation of a reinvestment zone and tax abatement by filing a written request with Ward County.
- (b) The application shall consist of a completed form, providing detailed information on the project parameters, including but not limited to job creation, capital investment, salary, employee benefits, business operations, financing, and competition between other governments. The application shall also include supplemental documents and information, including but not limited to maps and property description; schedule for undertaking and completing the planned improvements, and property ownership. 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 such financial and other information as may be deemed appropriate for evaluating the financial capacity and other factors of the applicant.
- (c) Ward County shall give notice as provided by the property tax code, i.e.
 - (1) Written notice to the presiding officer of the governing body of each taxing unit in which the property to be subject to the agreement is located, not later than the seventh (7th) day before the public hearing; and
 - (2) Publication in a local newspaper of general circulation within such taxing jurisdiction not later than the seventh (7th) day before the public hearing. Before acting upon the application, Ward County shall, through public hearing, afford the applicant and the designated representative of any governing body referenced herein above opportunity to demonstrate support for why the abatement should or should not be granted. Ward County, after receipt of the application, shall by resolution either approve or reject the application for tax abatement and notify the applicant of approval or rejection by certified mail.

Section 4 - AGREEMENT

- (a) After officially approving the application, the Ward County Commissioners Court shall formally pass a resolution designating the project reinvestment zone, in which all property eligible for abatement shall reside, and subsequently execute an agreement with the applicant as required, which shall include:
 - (1) Estimated investment to be abated and the base year value; and
 - (2) Percent of investment to be abated each year; and
 - (3) The commencement and termination date of abatement; and
 - (4) Proposed use of the facility, nature of the construction, time schedule, map, property description, and improvement list as provided in application; and

- (5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in sections 2, 5, 6, 7, and 8; and
- (6) Amount of capital to be invested and number of new and/or retained jobs to be created.

(b) Such agreement shall be executed within ninety (90) days after the Applicant has forwarded all necessary information and documentation to Ward County.

Section 5 - RECAPTURE

- (a) Should Ward County determine that the company or individual is in default according to the terms and conditions of its agreement, Ward County shall notify the company or individual in writing at the address stated in the agreement and if such is not cured within sixty (60) days from the date of such notice ("Cure Period"), then the agreement may be terminated.
- (b) In the event that the company or individual allows its ad valorem taxes owed the County to become delinquent or 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. Taxes owed in the year in which the company failed to comply with the investment and/or employment terms of the abatement agreement and became delinquent will be recaptured and paid within sixty (60) days of the notification of delinquency, subject to the discretion of the Ward County Commissioners Court.

Section 6- ADMINISTRATION

- (a) The Chief Appraiser of the County shall annually determine an assessment of the real and personal property comprising the reinvestment zone. Once value has been determined, the Chief Appraiser shall notify the eligible jurisdiction which levies taxes on the amount of the assessment.
- (b) The County shall timely file with the Property Tax Division of the State Comptroller's Office all information required by the tax code.

Section 7- 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 Ward County, 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 Ward County. No assignment or transfer shall be approved if the new parties to the existing agreement, the new owner or new lessee are liable to Ward County or any eligible jurisdiction for delinquent taxes or other obligations. Approval shall not be unreasonably withheld.

Section 8 - SUNSET PROVISION

These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two (2) years, at which time all reinvestment zones and tax abatement contracts created pursuant to its provisions will be reviewed by Ward County to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria will be modified, renewed, or eliminated, provided that such actions shall not affect existing contracts or applications for tax abatement filed prior to the expiration of said Guidelines and Criteria. Applications for abatement filed prior to the expiration of the Guidelines and Criteria shall be governed by the provisions of these Guidelines and Criteria regardless of any subsequent modification or amendment.