

TYLER COUNTY TAX ABATEMENT GUIDELINES

1. Purpose

These Tax Abatement Guidelines repeal and replace any Tax Abatement Guidelines previously adopted by the Tyler County Commissioners Court.

The purpose of these Guidelines is to comply with §312.002 of the Tax Code, and to adopt guidelines and criteria governing tax abatement agreements entered into or participated in by Tyler County. Tax abatement under these Guidelines will be considered for both new structures and facilities and the expansion and modernization of existing structures or facilities.

2. Participation in Tax Abatement in Municipal Reinvestment or Enterprise Zones

2.1 Municipalities may create reinvestment zones in accordance with §312.201 of the Tax Code. Municipalities may enter into tax abatement agreements with the owner(s) of taxable real property ("Property Owner") within the reinvestment zone to exempt a portion of the taxable value of the real property, and personal property located on the real property. The term "municipal reinvestment zone" includes an "enterprise zone" designated under Chapter 2303 of the Government Code.

2.2 Pursuant to §312.206 of the Tax Code, the County may enter into a tax abatement agreement with the owner of real property within a municipal reinvestment zone when a municipality is entering into a tax abatement agreement with the owner. The terms of the County Agreement are not required to be identical to those in the municipal agreement.

2.3 The duration of any tax abatement may not exceed a period of ten (10) years, or the period allowed by applicable law.

3. County Reinvestment Zones

3.1 In accordance with Chapter 312, Subchapter C of the Tax Code, Tyler County may create its own reinvestment zones in the unincorporated areas of the County, including within the ETJ of a municipality. The term "county reinvestment zone" includes an "enterprise zone" designated under Chapter 2303 of the Government Code.

3.2 A County Reinvestment Zone shall only be created in accordance with §312.401 of the Tax Code.

3.3 A tax abatement agreement entered into in a County Reinvestment Zone must comply with §312.402 of the Tax Code.

3.4 The duration of any tax abatement may not exceed a period of ten (10) years, or the period allowed by applicable law.

3.5 Any abatement of County taxes does NOT apply to Farm to Market Lateral Road.

3.6 The County can provide tax abatement for the value of eligible property owned by the Lessee of real property upon which the eligible property is located. In such case, abatement is not granted to the owner of the leased real property.

3.7 For purposes of Municipal and County tax abatements, the term Property Owner includes an eligible Lessee of real property.

4. Application for Tax Abatement

4.1 The Property Owner must generally file an application for tax abatement with the County Judge for a tax abatement to be considered by the Commissioners Court.

4.1.1 For tax abatement in a municipal reinvestment zone, the Commissioners Court agrees to accept the application submitted to the municipality as compliance with the application requirement of these Guidelines if it is provided with a copy of the application submitted to the municipality at least ten (10) business days before the abatement is to be considered by the Commissioners Court on behalf of the County. Tyler County reserves the right to require additional information which is reasonably necessary to guide its consideration of whether or not to grant tax abatement.

4.1.2 An Application for County Tax Abatement must include the following:

- a) Applicant Name;
- b) Address and Telephone Number;
- c) Primary Contact, including name, address, telephone number, cell phone number, and e-mail address;
- d) Form of Business and State of Formation;
- e) Any parent company;
- f) Whether authorized to do business in the State of Texas;
- g) Whether in good standing with the Texas Comptroller;
- h) Project Summary;
- i) Summary of real property improvements and personal property additions to be provided by the project;
- j) Description with maps and (if necessary) survey of the land sought to be included in a Reinvestment Zone;
- k) Project concept drawings showing the location of the project within the proposed Reinvestment Zone;
- l) Estimated capital expenditure;
- m) Estimated taxable value in year one of the abatement period;
- n) Number of full-time employees to be maintained during the abatement period, plus estimated average wage, health benefits and other benefits if applicable;
- o) Estimated impact of the construction process on the local economy;
- p) Once operational, estimated direct and indirect benefits to the local economy;
- q) Estimated time for completion of the project;

- r) Estimated period after completion before Project will go into operation;
- s) Description of any discharge(s) of pollutants which are expected to accompany the Applicant's operations on the property, if any; Identification of any of the personal property additions or real property improvements that are exempt from property taxation by other law (such as pollution control devices);
- t) Statement whether there is or will be an adequate supply of water for potable use and fire protection and who will be the water supplier; and
- u) Statement whether the Applicant or its parent have constructed similar projects in any other Texas county; identification of the county, and contact information for the county.

4.2 Except as otherwise provided herein, before Tyler County enters into a tax abatement agreement for a property located within a reinvestment or enterprise zone, the following requirements must be shown to have been met:

4.2.1 The reinvestment zone or enterprise zone must have been created in compliance with the requirements of the Tax Code.

4.2.2 The term of the proposed abatement cannot exceed 10 years, or the period allowed by applicable law.

4.2.3 The application requirements of these Guidelines have been complied with by the property owner, unless exempted as set forth above.

4.2.4 The terms and conditions of the proposed abatement are found acceptable to the County and its legal counsel.

4.2.5 Sufficient public benefit in the form of improvements/additions to the property, and, if applicable, creation/retention of jobs in the County, is to be generated by the property for which tax abatement is granted.

4.2.6 The terms of the proposed tax abatement agreement must specify the obligations of the Property Owner to meet certain capital investment and, if applicable, employment standards, and must provide methods to audit compliance of the Property Owner, and to recover abated taxes, and/or penalties, interest, and/or attorney's fees from the Property Owner if the property owner fails to meet the obligations.

4.2.7 The Property Owner must not be currently delinquent on any County taxes.

5. Tax Abatement Agreements

5.1 Tax Abatement Agreements must, by statute (See §§312.205 and 312.206, Tax Code. See Also §312.402, Tax Code), contain the following terms and conditions:

- (a) list the kind, number, and location of all proposed improvements of the property;

- (b) provide access to and authorize inspection of the property by County employees to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement;
- (c) limit the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect;
- (d) provide for recapturing property tax revenue lost as a result of the agreement if the Property Owner fails to make the improvements or repairs as provided by the agreement;
- (e) contain each term agreed to by the owner of the property;
- (f) require the Property Owner to certify annually to the governing body of the County that the owner is in compliance with each applicable term of the agreement; and
- (g) provide that the governing body of the County may cancel or modify the agreement if the Property Owner fails to comply with the agreement.
- (h) require a Property Owner to stay current on the unabated portions of property taxes on the property. Failure to do so may result in termination of the Tax Abatement Agreement.

5.2 The Tax Abatement Agreement may contain other provisions as required by the County or its legal counsel.

5.3 The duration of a tax abatement shall not exceed ten (10) years.

5.4 The Base Year Value of the property, the percentage of abatement, and the length of abatement shall be clearly set forth in the Agreement.

5.5 The "Base Year Value" is the taxable value of the property for the tax year in which the Agreement is executed.

5.6 The abatement provided by a Tax Abatement Agreement is only for the increase of the taxable value over the Base Year Value caused by the improvements and additions made by the property owner to the property which are specifically set forth in the Agreement. The abatement shall not be applied to improvements or personal property located on the property before the Tax Abatement Agreement is executed, or which are not included in the improvements or additions expressly described in the Tax Abatement Agreement. The abatement provided by the Tax Abatement Agreement shall not apply to inventory or supplies.

5.7 A Tax Abatement Agreement will generally take effect on January 1 of the next year after the improvements and/or additions are completed. A certificate of completion must be provided to the County Judge upon (or the entity administering compliance) completion of the improvements/additions. "Completion" is subject to independent verification of completion by the County (and the municipality if in a municipal reinvestment zone).

5.8 For participation in municipal reinvestment zone tax abatement, the County may choose to use an abbreviated tax abatement agreement that adopts the terms of the municipal tax abatement agreement except as otherwise stated.

5.9 The Abatement Period may be started during construction if the parties so agree in the Tax Abatement Agreement.

5.10 The start of the Abatement Period may be deferred to a later year if the parties agree to such in the Tax Abatement Agreement.

5.11 Tax abatement compliance for a municipal reinvestment zone is generally monitored and administered by the city.

6. Guidelines of General Application

6.1 No member of the County Commissioners Court may have fill interest in property to be included in a reinvestment zone, or property for which a tax abatement is granted by the County.

6.2 No tax abatement agreement is effective until formally approved by the Commissioners Court and fully executed by all parties. **NO TAX ABATEMENT CAN BE GRANTED FOR PROPERTY THAT IS NOT LOCATED WITHIN A PROPERLY ESTABLISHED REINVESTMENT ZONE.**

6.3 Tax abatement will only be granted for increases in the taxable value of the property over the Base Year Value as defined in these Guidelines, and only for increases in value caused by improvements/additions identified in the applicable tax abatement agreement. The term improvements/additions includes both new structures and facilities and the expansion and modernization of existing structures or facilities. In some situations, involving leases-the applicable Base Year value may be zero, or may be the value of the leasehold, if any. According to Section 312.402 (a-3) of the Tax Code the value of fixtures and personal property placed on the leased property is what is considered for abatement.

6.4 There can be no implied promise to grant tax abatement, and tax abatement may only be granted by the Commissioners Court by formal action, taken by the Commissioners Court as a body, which approves the same.

6.5 Meetings at which a tax abatement is considered by the Commissioners Court must be posted and held in accordance with the Open Meetings Act (Chapter 551 of the Government Code). (added by H.B. 3143, 2019) The Commissioners Court must give the public notice of the meeting at which the Commissioners Court will consider approval of a Tax Abatement Agreement. The notice is posted for the meeting in the manner required by the Texas Open Meetings Act (Ch. 551, Texas Government Code) at least 30 days before the time of the meeting scheduled to consider the Tax Abatement Agreement. The Notice must contain:

- a) The name of the Property Owner and the name of the applicant for the Tax Abatement Agreement;
- b) The name and location of the Reinvestment Zone where the subject property is located;

- c) A general description of the improvements or repairs required to be made under the Tax Abatement Agreement; and
 - d) The estimated cost of the improvements or repairs.
- 6.6 The conflict of interest provisions of Chapter 171 of the Local Government Code apply to actions taken by the Commissioners Court on any tax abatement.

6.7 For tax abatement in a *municipal* reinvestment zone, the term and percentages of the abatement are the same as those provided for in the municipal tax abatement agreement, except that the County does not recognize or provide additional premium opportunities or additional abatement provided by a municipality (ex. Added % abatement if x number or percentage of employees reside within the municipality, etc.). If the Commissioners Court does not agree with the term or percentages contained in the municipal agreement, it can choose not to participate in the abatement. In determining whether to participate in tax abatement in a municipal reinvestment zone the County will apply a rational review of the proposed term and percentages versus the development and/or employment being provided to determine whether such adequately serves the public purpose of tax abatement and is in the public interest.

For *County* Reinvestment Zones, rational review of the proposed length and percentages of tax abatement shall be applied. The proposed term/percentages should primarily be a function of the level of improvements/additions and job creation/retention. Proposals which include job creation/retention shall generally have priority over those which involve only improvements/additions to property. Another factor shall be the quality of the jobs proposed. Generally, a proposed abatement involving creation of near minimum wage jobs should be accorded less favorable abatement than one involving provision of jobs having more attractive wages and benefits. Greater consideration may be given to an applicant that commits to use contractors, vendors and suppliers located in Tyler County for a substantial portion of its construction expenditures and annual supplies and service needs and presents the County with a plan to do so as part of its application. Greater consideration may be given to an applicant that commits to fill at least 2/3rds of the new employment positions created with persons who reside in Tyler County and presents the County with a plan to do so as part of its application. In addition, businesses having a regional or national impact will be given greater consideration. These are businesses that ship most of their production outside of the County. Other businesses may be given greater consideration because they draw consumers into the County to make purchases.

In addition, for some large retail additions, the sales tax revenue or occupancy tax revenue generated to the County will also be considered as a significant factor.

For profit hospitals are also a preferred project in that they create professional jobs and high paying non-professional jobs, and generally motivate the development of physicians' offices and other medical-based businesses near the hospital.

When a project provides for little job creation but significant capital investment, care must be taken to properly analyze the possible impacts to the tax valuation in the future from factors such as depreciation, market changes, regulatory changes, appraisal methodologies, tax exemptions, and

other relevant matters. The percentage and length of tax abatement must be carefully considered in view of the diminishing or fluctuating future value of the project. Rapid depreciation and unpredictable future valuations are factors that will be considered in setting abatement percentages and length on such projects, or in deciding not to provide tax abatement to such projects.

Other factors such as the infrastructure and utility requirements of the development, community impacts, direct and indirect economic impacts, environmental impacts, and the potential for future expansion may also be considered as part of the analysis.

6.8 In accordance with §312.002(d) of the Tax Code, Tyler County's adoption of these Guidelines does not:

- a) limit the discretion of the governing body to decide whether to enter into a specific tax abatement agreement;
- b) 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; or
- c) 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.

6.9 Sale, Lease or Allocation to Tax Exempt Entity.

- a) If a sale, lease, or allocation of the Project is made to an entity exempt from property taxation, and such results in a portion of the Project being exempt from property taxation, the County may terminate the Tax Abatement Agreement and the Abatement granted thereunder. If this occurs, the owner must repay any taxes abated related to the portion of the property that has become exempt from year 1 to when the portion of the property became tax exempt.
- b) Alternatively, to keep the tax abatement agreement in place for the rest of the property, the Property Owner shall pay in a lump sum the present value of taxes that will be lost to the County with regard to the exempt portion of the property using a calculation agreed to by the parties in writing, but if unable to be agreed to, resolved by binding mediation to take place in Tyler County, Texas before a mediator selected by the County from the approved list of mediators maintained by the nearest Federal District Court.

6.10 In the event of conflict between these Guidelines and a provision of Chapter 312 of the Tax Code, Chapter 312 of the Tax Code shall control.

6.11 These Guidelines must be re-evaluated and re-approved every two years.

6.12 THE MOST CURRENT VERSION OF THESE TAX ABATEMENT GUIDELINES MUST BE MADE AVAILABLE ON THE COUNTY WEBSITE.

7. Amendment or other Action. (added by H.B. 3143, 2019)

An adoption, re-adoption, amendment, repeal, or reauthorization of these Guidelines must only occur after a public hearing is held at which members of the public have the opportunity to be heard.

Approved and adopted on this the _____ day of _____, 20_____.

TYLER COUNTY, TEXAS

By:

County Judge

Commissioner, Precinct #1

Commissioner, Precinct #2

Commissioner, Precinct #3

Commissioner, Precinct #4

ATTEST:

County Clerk, Tyler County, Texas