

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF BRYAN, TEXAS, ESTABLISHING TAX ABATEMENT GUIDELINES AND CRITERIA FOR ECONOMIC DEVELOPMENT PROSPECTS IN THE CITY OF BRYAN; AND ELECTING TO BE ELIGIBLE TO PARTICIPATE IN TAX ABATEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Bryan (“City”) is committed to encouraging desirable and sustainable economic development; and

**WHEREAS**, successful economic development depends on a good working relationship between the public and private sectors; and

**WHEREAS**, the City Council has determined that it is in the best interest of the citizens of the City to provide these incentives to encourage continued economic development in our community; and

**WHEREAS**, Texas Tax Code Section 312.002 requires a taxing unit to adopt a resolution establishing guidelines and criteria governing tax abatement agreements and stating that the taxing unit elects to become eligible to participate in tax abatement; and

**WHEREAS**, the City Council of the City of Bryan has previously adopted resolutions expressing its intent to consider Tax Abatements and adopting Tax Abatement Guidelines and Criteria as required by the Texas Tax Code, Chapter 312; and

**WHEREAS**, these Tax Abatement Guidelines and Criteria were most recently adopted by Resolution No. 3264 on January 26, 2010; and

**WHEREAS**, the City Council of the City of Bryan desires to once again adopt Tax Abatement Guidelines and Criteria; and hereby elects to be eligible to participate in tax abatement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS THAT:**

Section 1.

The City of Bryan hereby adopts guidelines and criteria governing tax abatements for economic development prospects as set forth in Exhibit “A” attached hereto and made a part hereof.

Section 2.

That the City of Bryan, Texas, hereby elects to participate in tax abatement.

Section 3.

That this resolution shall be effective immediately upon its adoption.

APPROVED AND ADOPTED this 19<sup>th</sup> day of November, 2012.

**ATTEST:**

**CITY OF BRYAN:**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

\_\_\_\_\_  
Jason P. Bienski, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Janis K. Hampton, City Attorney

**EXHIBIT A:**

**GUIDELINES AND CRITERIA GOVERNING  
PROPERTY TAX ABATEMENT**

**CITY OF BRYAN, TEXAS**

**DEFINITIONS-SECTION 1**

- A. "Abatement" means the full or partial exemption from ad valorem taxes of certain real property and/or tangible personal property in a reinvestment zone designated by the City for economic development purposes.
- B. "Agreement" means a contractual agreement between a property owner and the City for abatement of taxes.
- C. "Base year value" means the assessed value of property within the Reinvestment Zone on January 1 preceding the execution of the Agreement plus the agreed upon value of the Eligible Property improvements and tangible personal property made after January 1 but before the execution of the Agreement.
- D. "City" means the City of Bryan, Texas.
- E. "Deferred Maintenance" means improvements necessary for continued operations which do not improve the productivity or alter the process technology.
- F. "Eligible Property" means real and tangible personal property for both new facilities and structures, and for the Expansion or Modernization of existing facilities and structures which are reasonably likely as a result of being granted 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 the economic development with the City of Bryan.
- G. "Expansion" means that addition of buildings, structures, machinery, equipment, tangible personal property, or payroll for purposes of increasing production capacity.
- H. "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.
- I. "Ineligible Property" means land, existing improvements, real property used primarily to provide retail sales or services to the public, real property used for residential purposes, real property with a productive life of less than 10 years, tangible personal property that the Brazos County Appraisal District classifies as inventory or supplies, real or tangible personal property located in the reinvestment zone prior to the effective date of the tax Abatement Agreement, or any other property for which Abatement is not allowed by law.
- J. "Modernization" means 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 buildings, structures, machinery, equipment, pollution control devices, or resource conservation equipment.

- K. “New Facility” means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.
- L. “Office Building” means a new office building, addition to an existing office building or build out of unoccupied space within an existing building.
- M. “Productive Life” means the number of years a property improvement is expected to be in service in a Facility.
- N. “Project” means any property improvement including expansion, modernizations, and new facilities; but excluding any deferred maintenance.
- O. “Real Property” means land or an improvement or other property classified as such under state law.
- P. “Reinvestment Zone” means a geographic area which meets the criteria of Section 312.202 of the Texas Tax Code.
- Q. “Tangible Personal Property” means tangible personal property classified as such under state law, but excluding inventory and/or supplies and tangible personal property that was located in the Reinvestment Zone at any time before the period covered by the Agreement with the City.

## **CRITERIA FOR TAX ABATEMENT-SECTION 2**

- A. 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 the City and the property owner, subject to such limitations as the City may require.
- B. New and Existing Facilities. Abatement may be granted for New Facilities and improvements to existing facilities for purposes of Modernization or Expansion.
- C. Eligible Property. Abatement may be extended to the value of Eligible Property.
- D. Ineligible Property. Ineligible Property shall be fully taxable and ineligible for tax abatement.
- E. Economic Qualification. In order to be eligible for designation as a Reinvestment Zone and receive tax abatement, the planned improvement:
  - (1) Must be expected to have an increased appraised ad valorem tax value of at least \$1,000,000 based upon the Brazos County Appraisal District’s assessment of the Eligible Property.
  - (2) Must be expected to prevent the loss of payroll or retain, increase or create a payroll on a permanent basis in Bryan, Texas.
- F. Standards for Tax Abatement. The following factors among others should be considered in determining whether to grant Tax Abatement and, if so, the percentage of value to be abated and the duration of the 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 of type of new jobs to be created by proposed improvements;
- (6) Amount of local payroll to be created;
- (7) Whether persons residing or projected to reside within the City will have the opportunity to fill the new jobs being created.
- (8) Amount of local taxes to be generated directly;
- (9) Amount of property tax base valuation which will be increased during term of abatement and after abatement, which shall include a definitive commitment that such valuation, shall not, in any case, be less than \$1,000,000;
- (10) The costs to be incurred by the City to provide facilities or services directly resulting from the new improvements;
- (11) The amount of ad valorem taxes to be paid to the City during the Abatement period considering
  - (a) the existing values,
  - (b) the percentage of new value abated,
  - (c) the abatement period, and
  - (d) the value after expiration of the abate period.
- (12) The population growth of the City that occurs directly as a result of new improvements;
- (13) The types of public improvements, if any, to be made by the applicant seeking abatement;
- (14) Whether the proposed improvements compete with existing businesses to the detriment of the local economy;
- (15) The impact on the business opportunities of existing businesses;
- (16) The attraction of other new businesses to the area;
- (17) The overall compatibility with the zoning ordinances and comprehensive plan for the area; and/or
- (18) Whether the project is environmentally compatible with no negative impact on quality of life perceptions.

G. Denial of Abatement. Requests for Abatement will not be considered if it is determined that:

- (1) There would be substantial adverse affect 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) Violation of other codes or laws;
- (5) Prior to the submission of an application, the project is already substantially underway or completed. A project will be considered to be substantially underway if actions such as, but not limited to, the following have occurred:
  - a. the demolition, site preparation, or the installation of new infrastructure has begun.
  - b. a building permit has been issued for construction not associated with mitigating an environmental hazard;
  - c. construction (including renovations or tenant finish-out) has begun; or
  - d. equipment, inventory, or employees have been relocated to the new site.

Execution of a lease, the mitigation of environmental problems, the purchase of land, the completion of an environmental assessment, or the preparation of architectural and engineering plans do not constitute a project being substantially underway.

- (6) Any other reason deemed appropriate by the City Council.

H. 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 shall be fully taxable; and
- (2) The Base Year Value of property in the Reinvestment Zone as determined each year shall be fully taxable. The additional value of new Eligible Property shall be fully taxable at the end of the abatement period.

### **DESIGNATION OF A REINVESTMENT ZONE-SECTION 3**

- A. The City Council may not approve an ordinance designating a Reinvestment Zone until it has held a public hearing at which interested parties are entitled to speak and present evidence for or against its designation. Notice of the hearing shall be published in a general circulation publication at least seven days prior to the hearing.
- B. Prior to entering into a tax Abatement Agreement, the City Council, may, at its option, hold a public hearing at which interested parties shall be entitled to speak and present written materials for or against the approval of the tax Abatement Agreement.

### **TAX ABATEMENT AGREEMENT-SECTION 4**

- A. Not later than the seventh day before the date on which the City enters into the Abatement Agreement, the City shall deliver to the presiding officer of the governing body of each other taxing unit in which the property is located a written notice that the City intends to enter into the Agreement. The notice shall include a copy of the prepared Agreement.
- B. Approval of an Agreement shall be by formal adoption of a resolution and execution of the Agreement with the owner of the Facility. The Agreement shall, but not be limited to the following:

- (1) Include a list of the kind, number, and location of all proposed improvements to the property;
- (2) Provide access to and authorize inspection of the property by the City to ensure compliance with the Agreement;
- (3) Limit the use of the property consistent with the City's development goals;
- (4) Provide for recapturing property tax revenues that are lost if the owner fails to make the improvements as provided by the Agreement;
- (5) Include each term that was agreed upon with the property owner;
- (6) Require the owner to annually certify compliance with the terms of the Agreement to the City; and
- (7) Allow the City to cancel or modify the Agreement at any time if the property owner fails to comply with the terms of the Agreement.

#### **RECAPTURE-SECTION 5**

Tax abatement agreements will provide for recapture of abated property taxes in the event that the company or individual (1) allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; or (2) violates any of the terms and conditions of the Agreement.

#### **SUNSET PROVISION-SECTION 6**

These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two years, unless amended by three quarters vote of the City Council, at which time all reinvestment zone and tax Abatement Agreements created pursuant to these provisions will be reviewed to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria may be modified, renewed, or eliminated.

#### **DISCRETION OF THE CITY-SECTION 7**

The adoption of these Guidelines and Criteria by the City does not;

- (a) Limit the discretion of the City Council to decide whether to enter into a specific Tax Abatement Agreement;
- (b) Limit the discretion of the City Council to delegate to its staff the authority to recommend whether or not the City Council should consider a request for tax Abatement;
- (c) Create any property, contract, or other legal right in any person to have the City Council consider or grant a specific request for tax Abatement; or
- (d) Limit the ability to deviate from these Guidelines and Criteria for good cause and as may be allowed by law.