

RESOLUTION NO. 2570

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, ELECTING TO BECOME ELIGIBLE TO PARTICIPATE IN TAX ABATEMENT PURSUANT TO THE PROPERTY REDEVELOPMENT AND TAX ABATEMENT ACT; ADOPTING GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS IN A REINVESTMENT ZONE CREATED IN HARRIS COUNTY OR CHAMBERS COUNTY; ADOPTING SUCH GUIDELINES AND CRITERIA; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

WHEREAS, the creation and retention of job opportunities that bring new wealth is the highest civic priority; and

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

WHEREAS, the City of Baytown must compete with other localities across the nation currently offering tax inducements to attract jobs and investments; and

WHEREAS, any tax incentives offered in the City of Baytown 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, any tax incentives should not have a substantial adverse effect on the competitive position of existing companies operating in the City of Baytown; and

WHEREAS, tax incentives should not be used to attract those industries that have demonstrated a lack of commitment to protecting our environment, but should be used to encourage projects designed to protect our environment; and

WHEREAS, the abatement of property taxes, when offered to attract primary jobs in industries which 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, Texas law requires any eligible taxing jurisdiction to establish Guidelines and Criteria as to eligibility for tax abatement agreements prior to granting any tax abatement, said Guidelines and Criteria to be unchanged for a two-year period unless amended by a three-quarters vote; and

WHEREAS, to assure a common, coordinated effort to promote our communities' economic development, any such guidelines and criteria should be adopted only through the cooperation of affected school districts, counties, and the City of Baytown; and

WHEREAS, the attached guidelines, adopted by the City Council in December 1989, and amended in July 1990, July 1992, September 1995, September 1997, September 1999, February 12, 2004, February 9, 2006, January 8, 2009, March 10, 2011, March 14, 2013, March

12, 2015, and March 9, 2017, have been reviewed by the City Council and it has determined that progress towards the goals therein stated has been made; NOW THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS:

Section 1: That the findings of the City Council of the City of Baytown contained in the recitals of this resolution are hereby approved and adopted.

Section 2: That the City Council of the City of Baytown elects to become eligible to participate in tax abatement pursuant to the Property Redevelopment and Tax Abatement Act.

Section 3: That the City of Baytown hereby adopts the Guidelines and Criteria for granting tax abatements in a reinvestment zone, which are attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

Section 4: This resolution shall take effect immediately from and after its passage by the City Council of the City of Baytown.

INTRODUCED, READ and PASSED, by the affirmative vote of the City Council of the City of Baytown this the 28th day of February, 2019.


BRANDON CAPETILLO, Mayor

ATTEST:


LETICIA BRYSCH, City Clerk



APPROVED AS TO FORM:


IGNACIO RAMIREZ, SR., City Attorney

Exhibit "A"

TAX ABATEMENT GUIDELINES SUMMARY

OBJECTIVES	Primary job creation -- target industries. Encourage LEED development. Amount of abatement -- minimum to be competitive. Fair to taxing jurisdictions -- It is a local option. Fair to existing business -- modernization, expansion. Regional cooperation -- similar abatements. Flexibility -- toughly enforced variance procedure.
TERMS	Year 1 100% Year 2 100% Year 3 80% Year 4 60% Year 5 50% Year 6 0%
FACILITIES THAT QUALIFY	Manufacturing. Service & distribution. LEED® certified office building. Regional entertainment. Research and development. Other basic industry. Class "A" office.
AUTHORIZED INVESTMENTS	New facilities. Expansion. Modernization.
ABATED	Buildings and structure. Fixed machinery and equipment. Site improvements. Office space to administer plant.
NOT ABATED	Land. Existing improvements. Construction-in-progress. Personal property. Hotels. Housing. Pipelines. Gas and fluid storage. Electrical generating facilities. Deferred maintenance. Property with useful life less than fifteen (15) years.
ECONOMIC CRITERIA	Minimum one million dollar (\$1,000,000) investment. Retain or create at least five (5) jobs. No serious adverse effect on jurisdictions.

GUIDELINES AND CRITERIA FOR REINVESTMENT ZONES

SECTION 1 DEFINITIONS

- (a) "Abatement" means the full or partial exemption from ad valorem taxes of certain real property in a reinvestment zone designated for economic development purposes.
- (b) "Class A Office" is characterized as buildings that have excellent location and access, attract high-quality tenants, and are managed professionally. Building materials are high quality and rents are competitive with other new buildings. Examples are the office buildings that are found in the heart of the business or financial district with lots of brass and glass fixtures and huge, expensive lobbies; and they are usually steel-framed and tall. They are often occupied by banks, law firms, investment banking companies, and other high-profile companies.
- (c) "Eligible Jurisdiction" means any county, municipality, school district or college district that levies ad valorem taxes upon and provides services to property located within the proposed or existing reinvestment zone.
- (d) "Agreement" means a contractual agreement between a property owner and/or lessee and an eligible jurisdiction for the purposes of tax abatement.
- (e) "Base Year Value" means the assessed value of eligible property January 1 preceding the execution of the Agreement plus the agreed upon value of eligible property improvements made after January 1st but before the execution of the Agreement, or the sales price, if the property was conveyed subsequent to January 1st, plus the agreed upon value of eligible property improvements made after January 1st, whichever is greater.
- (f) "Deferred Maintenance" means an improvement necessary for continued operations which do not improve productivity or alter the process technology.
- (g) "Economic Life" means the number of years a property improvement is expected to be in service in a facility.
- (h) "Expansion" means the addition of buildings, structures, fixed machinery or equipment for purposes of increasing production capacity.
- (i) "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.

- (j) "Manufacturing Facility" means 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.
- (k) "Modernization" means the replacement and upgrading of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing or repairing.
- (l) "New Facility" means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or Modernization.
- (m) "Other Basic Industry" means buildings and structures, including fixed machinery and equipment not elsewhere described, used or to be used for the production of products or services which primarily serve as a market outside the Houston Consolidated Metropolitan Statistical Area and result in the creation of new, permanent jobs and bring in new wealth.
- (n) "Distribution Center Facility" means 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.
- (o) "Regional Entertainment Facility" means buildings and structures, including fixed machinery and equipment, used or to be used to provide entertainment through the admission of the general public.
- (p) "Service Facility" means buildings and structures, including fixed machinery and equipment, used or to be used to service goods.
- (q) "Research Facility" means buildings and structures, including fixed machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.
- (r) "LEED®" means Leadership in Energy and Environmental Design (LEED®), which encourages the use of certifiable systems, materials and practices designed to reduce energy consumption and utilize recycled material.

SECTION 2 ABATEMENT AUTHORIZED

- (a) Authorized Facility. A facility may be eligible for abatement if it is a Manufacturing Facility, Research Facility, Distribution Center Facility, Class A Office, Service Facility,

Regional Entertainment Facility, Research and Development Facility, or LEED® certified office building.

- (b) **Creation of New Value.** Abatement may only be granted for:
1. the additional value of eligible property improvements made subsequent to and listed in an abatement agreement between the City of Baytown and the property owner and lessee (if required), or
 2. the marginal costs to secure LEEDS® certification for the building,
- subject to such limitations as City Council and the property tax code may require.
- (c) **New and Existing Facilities.** Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.
- (d) **Eligible Property.** Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements plus that office space and related fixed improvements necessary to the operation and administration of the facility or LEED certified building. The value of all property shall be the appraised value for each year, as finally determined by the applicable appraisal district.
- (e) **Ineligible Property.** The following types of property shall be fully taxable and ineligible for abatement: land; inventories; supplies; tools; furnishings; and other forms of movable personal property; vehicles; vessels; aircraft; housing; hotel accommodations; deferred maintenance investments; property to be rented or leased except as provided in Section 2 (f); improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion; any improvements, including those to produce, store or distribute natural gas, fluids or gases, which are not integral to the operation of the facility; property which has an economic life of less than fifteen (15) years; and property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated or directed by a political subdivision of the State of Texas, or any property exempted by local, state or federal law. When such exempted property includes manufacturing machinery and equipment listed in the Investment Schedule (as required in Section 3(b)), then the value of such property may not be included toward the achievement of the investment or valuation thresholds set out in the abatement agreement.
- (f) **Owned/Leased Facilities.** If a leased facility is granted abatement, the agreement shall be executed with the lessor and the lessee.
- (g) **Value and Term of Abatement.** Abatement shall be granted effective with the January 1 valuation date immediately following the date of execution of the agreement. One hundred percent (100%) of the value of new eligible properties shall be abated for the first two (2) years, followed by eighty percent (80%) abatement for the third year, sixty percent (60%)

abatement for the fourth year and fifty percent (50%) for the fifth year. In no case shall the period of abatement exceed five (5) years.

If a Modernization project includes facility replacement, the abated value shall be the value of the new unit(s) less the value of the old unit(s).

- (h) **Economic Qualification.** In order to be eligible for designation as a reinvestment zone and receive tax abatement, the planned improvement:
 - (1) must be reasonably expected to increase the appraised value of the property in the amount of one million dollars (\$1,000,000) after the period of abatement has expired;
 - (2) must be expected to directly create or prevent the loss of permanent full-time employment, retain or create employment for at least five (5) people reasonably required in order to operate the facility in an efficient manner, provided that this employment qualification shall be satisfied on January 1 of the fourth year of the abatement agreement and continue through the term of the abatement;
 - (3) must not be expected to solely or primarily have the effect of transferring employment from one part of the City of Baytown to another. Competitive siting analysis may satisfy this requirement; and
 - (4) must be necessary because capacity cannot be provided efficiently utilizing existing improved property when reasonable allowance is made for necessary improvements.
- (i) **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.
 - (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 taxable in the manner described in Section 2(g).

SECTION 3 APPLICATION

- (a) Any present or potential owner of taxable property in the City of Baytown may request the creation of a reinvestment zone or tax abatement by filing a written request with the City of Baytown.

- (b) The application shall consist of a completed application form accompanied by a general description of the new improvements to be undertaken; a descriptive list of the improvements for which an abatement is requested, a list of the kind, number and location of all proposed improvements of the property, including the economic life of each and its eligibility for a TCEQ exemption (if known); a map and legal description of the property; and a time schedule for undertaking and completing the proposed improvements. The applicant shall also include information pertaining to the reasons the abatement is necessary in order to have the project undertaken in the City of Baytown. The applicant shall also include a certification of the current number of permanent full-time, part-time and contract employees of the applicant, by category, employed in the City of Baytown at the time of the application. In the event the project is to be located in a leased facility, the applicant shall provide with the application the name and address of the lessor and a copy of the lease, if executed, or option contract. In the case of Modernization, a statement of 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 the City Council deems appropriate for evaluating the financial capacity and other factors of the applicant.
- (c) Upon receipt of a completed application, the City Manager of the City of Baytown or his designee shall notify in writing the presiding officer of the governing body of each eligible jurisdiction.
- (d) After receipt of an application for creation of a reinvestment zone and application for tax abatement, the City Council, through its designated officer or employee, shall determine whether the application qualifies for an abatement under the terms of these guidelines and criteria. Such determination may be delegated to an employee or City department. If it is determined that an application qualifies for abatement, it shall be recommended to the City Council that the applicant be notified in writing that subject to a public hearing, if applicable, and approval of a contract by the City Council, the project qualifies for abatement.
- (e) The City Council shall not establish a reinvestment zone or enter into an abatement agreement if it finds that the request of the abatement was filed after the commencement of earthwork, site preparation, construction, alteration, or installation of improvements related to a proposed Modernization, expansion or new facility.
- (f) Variance. Requests for variance from the provisions of Subsections (a), (e) and (g) of Section 2 may be made in written form to the City Manager, provided, however, the total duration of an abatement shall in no instance exceed five (5) years. Such request shall include a complete description of the circumstances explaining why the applicant should be granted a variance. Approval of a request for variance requires a three-fourths ($\frac{3}{4}$) vote of the City Council.

**SECTION 4
PUBLIC HEARING AND APPROVAL**

- (a) The City Council may not adopt an ordinance designating a reinvestment zone until it has held a public hearing at which interested persons are entitled to speak and present evidence for or against the designation. Not later than the seventh (7th) day before the date of the hearing, notice of the hearing must be published in a newspaper having general circulation in the municipality; and delivered in writing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed reinvestment zone.
- (b) Prior to entering into a tax abatement agreement, the City Council may, at its own option, hold a public hearing at which interested persons shall be entitled to speak and present written materials for or against the approval of the tax abatement agreement.
- (c) In order to enter into a tax abatement agreement, the City Council must find that the terms of the proposed agreement meet these Guidelines and Criteria and that:
 - (1) there will be no substantial adverse effect on the provision of the jurisdiction's service or tax base; and
 - (2) the planned use of the property will not constitute a hazard to public safety, health or morals.
- (d) Any applicant requesting a variance under Section 3(f) shall be approved by a vote of at least three-fourths ($\frac{3}{4}$) of the City Council. No application which deviates from the requirements of these Guidelines and Criteria shall be approved unless accompanied by a request for variance as provided under Section 3(f).

**SECTION 5
AGREEMENT**

After approval, the City Council shall formally pass an ordinance and execute an agreement with the owner of the facility and lessee as required which shall include:

- (1) the estimated value to be abated and the base year value;
- (2) the percent of value to be abated each year as provided in Section 2(g);
- (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 improvement list as provided in Application Section 3(b);
- (5) the contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Section 2(a), 2(f), 2(g), 6, 7 and 8, or other provisions that may be required for uniformity or compliance with state law;
- (6) the amount of investment, increase in assessed value and the average number of jobs involved as provided in Section 2(h)(2); and
- (7) a requirement that the applicant annually submit to the appraisal district and the City, a January employee count for the abated facility which corresponds to employment counts reported in the facility's Employer's Quarterly Report to the Texas Workforce Commission, and a separate notarized letter certifying the number of jobs created or retained as a direct result of the abated improvements and the number of employees in other facilities located within the City of Baytown. Submission shall be used to determine abatement eligibility for that year and shall be subject to audit if requested by the governing body. Failure to submit may result in the ineligibility to receive an abatement for that year and the termination of the tax abatement agreement and subject any abated taxes to recapture pursuant to Section 6 hereof.

Such agreement normally shall be executed within sixty (60) days after the application and all necessary information and documentation have been forwarded to the City Council.

SECTION 6 RECAPTURE

- (a) In the event that the facility is completed and begins producing product or service, but subsequently discontinues producing product or service for any reason excepting fire, explosion or other casualty or accident or natural disaster of a period of one year during the abatement period, the agreement shall terminate, and so shall the abatement of the taxes for the calendar year during which the facility no longer produces. The taxes otherwise abated for that calendar year shall be paid to the City of Baytown within sixty (60) days from the date of termination. The company or individual shall notify the City in writing at the address stated in the agreement within ten (10) days from any discontinuation, stating the reason for the discontinuation and the projected length of the discontinuation. If the City determines that this subsection has not been complied with, the agreement may be terminated immediately, and all taxes previously abated by virtue of the agreement may be recaptured and paid within sixty (60) days of the termination.
- (b) If the company or individual is in default according to the terms and conditions of its agreement, the company or individual shall notify the City in writing at the address stated in

the agreement within ten (10) days from the default and cure such default within sixty (60) days from the date of such default ("Cure Period"). If the City determines that this subsection has not been complied with, the agreement may be terminated immediately and all taxes previously abated by virtue of the agreement may be recaptured, together with interest at 6% per annum calculated from the effective date of the agreement and paid within sixty (60) days of the termination. If the City does not receive full payment within said sixty (60) days, a penalty may be added equal to 15% of the total amount abated.

- (c) If the company or individual (1) allows its ad valorem taxes owed the City of Baytown 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 abatement agreement and fails to cure during the Cure Period, the agreement then may be terminated, and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the termination, and penalties and interest may be assessed as set out in Section 6(b).

SECTION 7 ADMINISTRATION

- (a) The Chief Appraiser of the applicable appraisal district shall annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year, the company or individual receiving the 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 which levy taxes on the amount of the assessment.
- (b) The agreement shall stipulate that employees and/or designated representatives of the City of Baytown will have access to the reinvestment zone during the term 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 twenty-four (24) hours' prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the company or individual and in accordance with the facility's safety standard.
- (c) The City shall evaluate annually each facility receiving abatement to ensure compliance with the agreement and report possible violations of the contract and agreement to the City Council.

**SECTION 8
ASSIGNMENT**

Tax abatement agreements may be assigned to a new owner or lessee of facility with the written consent of the City Council, which consent shall not be unreasonably withheld. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the agreement. Any assignment of a tax abatement agreement shall be to an entity that contemplated the same improvements or repairs to the property, except to the extent such improvements or repairs have been completed. No assignment shall be approved if the assignor or the assignee is indebted to the City of Baytown for ad valorem taxes or other obligations.

**SECTION 9
SUNSET PROVISION**

These Guidelines and Criteria are effective March 14, 2019, and will remain in force through March 13, 2021, at which time all reinvestment zones and tax abatement contracts created pursuant to these provisions will be reviewed by the City to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria will be modified, renewed or eliminated.