

**TAX ABATEMENT AND INCENTIVES POLICY
GUIDELINES & CRITERIA
FOR WALLER COUNTY**

Whereas, the creation and retention of job opportunities that bring new wealth into Waller County is a high priority; and

Whereas, new jobs and investments will benefit the area economy, provide needed economic opportunities, and generate tax revenue to support local services; and

Whereas, the communities within Waller County must compete with other localities across the nation currently offering tax incentives to attract new plant and modernization projects; and

Whereas, any tax incentives offered in Waller County would be strictly limited in application to those new and existing industries that bring new capital investment to the community; and

Whereas, the abatement of property taxes, when offered to attract primary jobs in industries which bring in revenue from outside the county instead of merely re-circulating dollars within the county, has been shown to be an effective method of enhancing and diversifying the local economy; and

Whereas, tax incentives should not be used to attract those industries that have demonstrated a lack of commitment to protect the environment; and

Whereas, the Waller County Commissioners' Court contracts with the Waller County Economic Development Partnership ("WCEDP"), considers WCEDP to be the primary entity for the provision of professional services for qualifying prospective projects seeking County assistance; and

Whereas, effective September 1, 1987, Texas law, pursuant to Chapter 312 of the Texas Tax Code, 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, said guidelines and criteria to be unchanged for a two year period unless amended by a three-quarters vote of Commissioners' Court; and

Whereas, these guidelines and criteria do not: (1) limit the discretion of Waller County to decide whether to enter into a specific tax abatement agreement or incentives; (2) limit the discretion of Waller County to delegate to its employees or to the WCEDP the authority to determine whether or not the governing body should consider a particular application or request for tax abatement or other incentives; or (3) create any property, contract, or other legal right in any applicant to have the governing body consider or grant a specific application or request for tax abatement.

Now, therefore, be it resolved, that Waller County Commissioners' Court does hereby adopt

these Guidelines and Criteria for granting tax abatement in reinvestment zones in Waller County, Texas.

ADMONITORY PROVISIONS

The final determination of value to be abated is vested with the Waller County Appraisal District (“WCAD”), an agency autonomous from Waller County.

Tax Abatement and incentives provided by the county are subject to an economic impact analysis. Applicants scoring well will be encouraged to apply for incentives. First priority for providing incentives to any applicant are given to projects that are located within areas of economic interest to Waller County and that conform to Waller County’s overall development objectives.

Applicants applying for tax abatement with Waller County are advised that any agreement with Waller County applies only to taxes assessed by Waller County. Any abatement agreement with other taxing entities must be negotiated directly with such entities. In addition, each applicant receiving tax abatement retains the responsibility for annually applying to the WCAD for recognition and implementation of their abatement agreement.

DEFINITIONS - Section I

- a. **“Abatement”** means the full or partial exemption from qualifying ad valorem taxes of certain real and personal property, including fixed-in-place machinery and equipment, in a reinvestment zone or enterprise zone, designated by Waller County, for economic development purposes.
- b. **“Affected jurisdiction”** The County of Waller
- c. **“Agreement”** means a contractual agreement between an applicant (property owner and/or lessee) and Waller County for the purposes of tax abatement.
- d. **“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 1, but before the execution of the Agreement.
- e. **“Competitively-Sited Project”** means a project where the applicant has completed a written evaluation of competing locations, outside of Waller County, for expansion, relocation, or new operations, including identification of specific sites in those locations.
- f. **“Deferred maintenance”** means improvements necessary for continued operations which do not improve productivity or alter the process technology.
- g. **“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. .

- h. **“Expansion”** means the addition of buildings, structures, fixed machinery or equipment for purposes of increasing production capacity.
- i. **“Facility”** means real property improvements completed or in the process of construction, and qualifying fixed-in-place machinery and equipment, which together comprise an integral whole.
- j. **“Hospital”** as defined in Texas Health & Safety Code Section 241.003.
- k. **“Manufacturing Facility”** means products, buildings and structures, including machinery and equipment, the primary purpose of which is or will be the manufacturing of tangible goods or materials or the processing of such goods or materials by physical or chemical change.
- l. **“Modernization”** means a complete or partial demolition of facilities and/or the completion of partial construction, reconstruction, or installation of a facility or facilities of similar or expanded production capacity. Modernization may result from the construction, alteration, or installation of buildings, structures, machinery or equipment. Modernization shall include improvements for the purpose of increasing productivity or updating the technology of machinery and equipment, or both.
- m. **“New Facility”** means the construction of a qualifying facility on previously undeveloped real property, or property changing use to commercial / industrial and eligible for tax abatement or incentives.
- n. **“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 resulting in the creation of new permanent jobs bringing in new wealth.
- o. **“Personal Property”** means personal property, as designated by the Waller County Appraisal District, which includes, but is not limited to, any tangible thing (including gasses, steams, and other non-solid state things) that can be removed from real property without destroying or changing such real property. Personal Property also includes, for example, any machinery or equipment that may be bolted to the floor, but has a shorter life than the building and is used in the primary line of business.
- p. **“Productive Life”** means the number of years a property improvement is expected to be in service in a facility.
- q. **“Real Property”** means real property improvements, as designated by the Waller County Appraisal District, which includes, but is not limited to, any buildings, buildings built on skids, portable buildings, parking areas, and fences attached to land.

- r. **“Regional Entertainment/Tourism 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 where the majority of users reside outside any part of Waller County.
- s. **“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.
- t. **“Regional Service Facility”** means buildings and structures, including fixed machinery and equipment, used or to be used to service goods where a majority of the goods being serviced originate outside any part of Waller County.
- u. **“Spec Building”** means the new building construction to create an enclosed area of a commercial facility, which would be used by a business that would normally qualify for abatement, built without an occupying tenant at the time the construction has started or is complete.
- v. **“Urgent Care Facility”** a facility dedicated to the delivery of unscheduled, walk-in diagnosis and treatment of acute, but non-life threatening injuries and illnesses, outside of a hospital emergency department or doctor's office.

ABATEMENT AUTHORIZED - Section II

- a. **Authorized Facility.** An applicant’s facility may be eligible for abatement if it is one of the qualifying business types specified in Section I - Definitions.
- 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 Waller County and the applicant (property owner and/or lessee), subject to such limitations as Waller County Commissioners’ Court 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. For spec buildings, 100% abatement for up to two years or until occupied or sold, whichever occurs first.
- d. **Eligible Property.** Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements and related fixed improvements necessary to the primary operation of the facility.
- 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; housing; hotels; retail facilities; deferred maintenance; property to be rented or leased except as provided in Section II (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 a productive life of less than 10 years; 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 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. **Offer, Execution, 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, or as agreed by Waller County. The value of new eligible properties shall be abated according to the approved Agreement between applicant and Waller County. Waller County, in its sole discretion, shall determine the amount of any abatement. The term of any abatement may not exceed ten (10) years.

The abatement may be extended through an initial agreement and a subsequent agreement as may be required to comply with state law regarding the term of the reinvestment zone.

1. **Offer** – during the initial negotiations with a prospect, a tentative offer for abatement may be made on behalf of Waller County. This initial offer will expire after 90 days. Applicants can extend this, if needed, by providing written justification within the 90 day period.
 2. **Execution** – Once accepted by Waller County Commissioners Court, the agreement must be executed within 10 days, unless otherwise agreed by Waller County.
- h. **Construction in Progress.** If a qualifying facility has not been placed in service within one year after execution of the Abatement Agreement, the applicant may apply for a one year extension of the term of abatement, to be granted or denied in accordance with the Agreement. Said extension must be applied for prior to the expiration of the one year anniversary of execution of the Abatement Agreement.
 - i. **Projects within a corporate limits.** For projects located within the jurisdiction of any incorporated city or town, the applicant must first be approved for tax abatement by that respective city or town , or an intent to participate in incentives be conveyed by a representative from the city to the county, before the County can provide assistance. If the

incorporated city or town does not have an organization authorized by that respective city or town to act on its behalf, the WCEDP will be available to facilitate applications for assistance.

1. For projects located within the corporate limits of a city located in Waller County, Waller County will consider participating in an abatement only if the city has approved, or an intent to participate in incentives be conveyed by a representative from the city to the county.
2. Waller County will participate with a value match for abatement (only) offered by the city unless, by so doing, the abatement amount under consideration produces a negative economic impact (as the result of running the economic impact analysis). In cases where matching the city will create negative impact for the County, the County will revise the value of its participation until a suitable positive impact is obtained in the economic impact analysis.

j. **Economic Qualification.** In order to be eligible for designation as a reinvestment zone and receive tax abatement for planned improvements:

1. The applicant will contact the WCEDP and complete an economic impact analysis consistent with the requirements of the WCEDP.
2. For projects located within the unincorporated areas of Waller County, the applicant must work with the WCEDP, and the WCEDP will be the primary organization facilitating projects seeking County assistance.
3. The applicant's facility must be expected to have an increased appraised ad valorem tax value of at least \$500,000 for expanding existing qualifying facilities or \$1,000,000 for new qualifying facilities, based upon the Waller County Appraisal District's assessment of the eligible property.
4. The applicant's facility must be expected to retain or create employment on a permanent basis in Waller County.
5. The applicant's facility must not be expected to solely or primarily have the effect of transferring employment from one part of Waller County to another.
6. The applicant's facility must be necessary because capacity cannot be provided efficiently by utilizing existing improved property when reasonable allowance is made for necessary improvements.
7. The applicant's facility must have no serious adverse effect on other jurisdictions.
8. The applicant's facility must be in an area outside of the taxing jurisdiction of an incorporated city or town, unless the city or town has granted a tax abatement for the planned improvements, or has conveyed intent to participate in an abatement or incentives, and ninety (90) days have not passed since the granting of such abatement.
9. The applicant's facility must have a significantly positive result from the economic

impact analysis performed as part of the application process (*i.e.*, the local economic benefit must significantly exceed the amount of anticipated tax revenue foregone by the Agreement).

10. All things being equal, preferential treatment shall be given to hiring operators and construction workers residing in Waller County, not only in the construction phase, but also during operations thereafter. The applicant agrees to hire Waller County citizens first in positions for which a citizen may be qualified.

j. **Standards for Tax Abatement.** The following factors, among others, shall be considered by the County in determining whether to grant Tax Abatement:

1. The value of land and existing improvements, if any.
2. The type and value of the proposed improvements.
3. The expected economic life of the proposed improvements.
4. The number and quality of existing, permanent jobs to be retained by the proposed improvements.
5. The number of new permanent jobs to be created by the proposed improvements.
6. The amount of local payroll to be created or enhanced.
7. Whether the new jobs to be created will be filled by persons residing or projected to reside in the County.
8. The amount the property tax base will be increased during the term of Abatement and after Abatement.
9. The costs to be incurred by the County to provide facilities or services directly resulting from the new improvements. The amount of ad valorem taxes to be paid to the County during the Abatement period - considering (a) existing values, (b) the percentage of new value abated, (c) the Abatement period, and (d) the value after expiration of the Abatement period.
10. The amount of local taxes to be generated directly as a result of the applicant's facility.
11. The population growth of the County that might occur as a direct result of new improvements.
12. The types and values of public improvements, if any, to be made by applicant seeking Abatement.
13. The impact on the business opportunities of existing businesses, including whether local labor, local subcontractors, and local vendors/suppliers will be used in the construction phase of the project.
14. The attraction of other new businesses to the area.
15. Whether the proposed improvements compete with existing businesses to the detriment of the local economy.
16. Whether the project is compatible with the community, particularly with respect to any environmental concerns and any zoning concerns.
17. The applicant's company profile, including business references, principal bank, audited financial statement and Business Plan.

18. The overall economic impact to Waller County.

Each application shall be reviewed on its merit, utilizing the factors provided above. After such review, Abatement may be denied entirely or may be granted to the extent deemed appropriate after full evaluation.

- k. **Denial of Abatement.** No Abatement Agreement shall be authorized if:
1. There would be substantial adverse affect on the tax base or costs associated with the providing of government services.
 2. The applicant has insufficient financial capacity, which reasonably could be expected to jeopardize the success of the undertaking.
 3. The planned or potential use of the property would constitute a hazard to public safety, health or morals.
 4. The area considered for abatement lies within the taxing jurisdiction of an incorporated city or town, and applicant has been denied abatement by that city or town.
 5. Granting abatement might lead to the violation of other codes or laws.
 6. For any other reason deemed appropriate by Commissioners' Court.
- k. **Taxability.** From the execution of the Agreement to the end of the Agreement, taxes shall be payable as follows:
1. The value of ineligible property as provided in Section II (e) shall be fully taxable;
 2. The base year value of existing eligible property as determined each year shall be fully taxable; and
 3. The additional value of new eligible property shall be taxable pursuant to the Agreement.

APPLICATION - Section III

- a. Any present or potential owner of taxable property in Waller County may request the creation of a reinvestment zone and tax abatement by filing an application, along with the application processing fee set forth in the application form, to the County Judge of Waller County (checks should be made payable to Waller County).
- b. The application shall consist of a completed application form accompanied by:
1. A copy of the executive overview from the economic impact analysis.
 2. A general description of the proposed use and the general nature and extent of the modernization, expansion or new improvements to be undertaken.
 3. A descriptive list of the improvements which will be a part of the facility;
 4. A site map and property description;
 5. A time schedule for undertaking and completing the planned improvements. 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 the County deems appropriate for evaluating the financial capacity and other factors of the applicant.

6. Disclosure of any environmental permits required or additional environmental impacts.
- c. Upon receipt of a completed application, and prior to acting on the application, the County Judge shall (1) notify in writing the presiding officer of the legislative body of each taxing unit in which the property subject to the Agreement is located not later than the seventh day before the public hearing and (2) publish in a newspaper of general circulation within such taxing jurisdiction not later than the seventh day before the public hearing. Before acting upon the application, Waller County shall through public hearing afford the applicant and the designated representative of any affected jurisdiction, and any other interested person, opportunity to show cause why the abatement should or should not be granted. Notice of the public hearing shall be clearly identified on Commissioners' Court agenda to be posted at least seven (7) days prior to the hearing.
- d. Waller County, not more than 60 days after receipt of the application, shall by order either approve or disapprove the application for tax abatement at a regularly scheduled meeting by a majority vote. The county judge shall notify the applicant of approval or disapproval. If disapproved, a Commissioner may request a second review, in which case a new application and hearing shall be required.
- e. Waller County shall not establish a reinvestment zone for the purpose of abatement if it finds that the request for the abatement was filed after the commencement of construction, alteration, or installation of improvements related to a proposed modernization, expansion, or construction of new facility.
- f. **Variance.** Requests for variance from the provisions of Section II may be made in written form to the Commissioners' Court. Such request shall include all the items listed in Section III (b), together with a complete description of the circumstances which prompt the applicant to request a variance. The approval process for a variance request requires a three-fourths (3/4) vote of the governing body and shall be identical to that for a standard application and may be supplemented by such additional requirements as may be deemed necessary by the Commissioners' Court.
- g. **Confidentiality Required.** Information that is provided to the County in connection with an application or request for Tax Abatement, and that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which Tax Abatement is sought, may be deemed **confidential and proprietary, and not subject to public disclosure, if it is properly labeled as such, unless**

it becomes part of the executed Tax Abatement Agreement. To the extent provided by law, Waller County will protect any properly labeled confidential and proprietary information and return it only at the request of the applicant. That information remaining in the custody of the County after the Agreement is executed is Public Record, subject to open records requests, and no longer considered confidential.

PUBLIC HEARING - Section IV

- a. Should any affected jurisdiction be able to show cause in the public hearing why the granting of abatement will have a substantial adverse affect on its bonds, tax revenue, service capacity or the provision of service, that showing shall be reason for the Commissioners' Court to deny any designation of the reinvestment zone, the granting of abatement, or both.
- b. Neither a reinvestment zone nor Abatement Agreement shall be authorized if it is determined that:
 1. There would be a 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; or,
 4. Planned or potential use of the property violates other codes or laws.
 5. Use of the property as planned does not comply with the overall developmental goals of the county.
- c. Following the public hearing, the Commissioners' Court must make affirmative findings in the minutes of the Court that:
 1. Designation of the reinvestment zone would contribute to the retention or expansion of primary employment.
 2. Designation of the zone would attract major investment in the zone that would benefit the property within the zone.
 3. Designation of the zone would contribute to the economic development of the county.

AGREEMENT - Section V

- a. **Notice to Jurisdictions.** Not later than the seventh day before the date on which Waller County enters into the Abatement Agreement, the County may 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 County intends to enter into the Agreement, along with a copy of the proposed agreement.

- b. After approval, Waller County shall formally pass an order and execute an Agreement with the owner of the facility and lessee as required which shall include:
 - 1. Estimated value to be abated and the base year value;
 - 2. Percent of value to be abated each year as provided in Section II ;
 - 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 improvements list as provided in the abatement application.
 - 5. Provision for access to and authorization for inspection of the property by Waller County to ensure that the improvements or repairs are made according to the specifications and conditions of the Agreement.
 - 6. Limitations on the uses of the property, consistent with the general purpose of encouraging development or redevelopment of the zone during the abatement period.
 - 7. Contractual obligations in the event of default, violations of terms or conditions, delinquent taxes, recapture, administration and assignment as provided herein and other provisions that may be required for uniformity or by State law and;
 - 8. Size of investment and average number of jobs involved for the period of Abatement.

- c. Such agreement shall be executed within sixty (60) days after the later of the date applicant has forwarded all necessary information and documentation to Waller County or the date of the approval of the application.

- d. **Mandatory Contract Provisions.** Any tax abatement entered into by the County must:
 - 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 taxing unit to ensure compliance with the agreement.
 - 3. Limit the use of the property consistent with the taxing unit's development goals.
 - 4. Provide for recapturing property tax revenues that are lost if the applicant fails to make the improvements or create the jobs as provided by the application/agreement.
 - 5. Include each term that was agreed upon with the applicant and require the applicant to annually certify compliance with the terms of the agreement to each taxing unit.
 - 6. Allow the taxing unit to cancel or modify the agreement at any time if the applicant fails to comply with the terms of the agreement.

RECAPTURE - Section VI

- a. In the event that the applicant's facility is completed and begins producing products or services, but subsequently discontinues producing products or services for any reason for a period of one year during the abatement period, other than because of fire, explosion, or other casualty, accident, or natural disaster, then the agreement shall terminate and so shall

the abatement of the taxes for the calendar year during which the applicant's facility no longer produces. The taxes otherwise abated for that calendar year shall be paid to the County within sixty (60) days from the date of termination.

- b. Should the County determine that the applicant is in default according to the terms and conditions of its agreement, the County shall notify the applicant in writing at the address stated in the agreement, and if such default is not cured within sixty (60) days from the date of such notice ("Cure Period"), then the agreement may be terminated.
- c. In the event that the applicant: (1) allows its ad valorem taxes owed the County or affected jurisdiction to become delinquent (taxes that are not covered by the abatement agreement) 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.
- d. Payment in Lieu of Taxes: If, during the abatement period, any Federal or State law provides an additional tax exemption (*i.e.*, for environmental or emissions improvements) for the property that is already the subject of the Abatement Agreement, applicant may be required to agree with the County to decline that tax exemption during the abatement period. If applicant is unable to decline that tax exemption, applicant may be required to agree to pay the taxes, or payment in lieu of taxes, on the reduction of property tax revenue to Waller County that is the result of said exemption.

ADMINISTRATION - Section VII

- a. The Chief Appraiser of Waller County shall annually determine an assessment of the real and personal property within the reinvestment zone. Each year, the applicant receiving abatement shall furnish the Appraiser with such information as may be necessary to determine compliance with the Agreement, including but not limited to the number of new or retained employees associated with the applicant's facility. Once value has been established, the Chief Appraiser shall notify the affected jurisdictions which levy taxes of the amount of the assessment.
- b. The Agreement shall stipulate that employees and/or designated representatives of Waller County will have access to the applicant's facilities within 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 reasonable notice and will only be conducted in a 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 applicant, and in accordance with its safety standards.

- c. Upon completion of construction, the Waller County Appraisal District shall annually evaluate each facility receiving abatement to insure compliance with the Agreement and report possible violations of the Agreement to the Commissioner's Court.
- d. **Timely Filing.** The County shall timely file, with the appropriate person, agency, department, or board of the State of Texas, all information required by the Tax Code.

ASSIGNMENT - Section VIII

- a. Abatement may be transferred and assigned to a new owner or lessee of the applicant's facility upon the approval by resolution of Waller County Commissioners' Court, 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 Agreement with the County.
- b. The Agreement with the new owner or lessee shall not exceed the termination date of the Abatement Agreement with the original applicant.
- c. No assignment or transfer shall be approved if the parties to an existing Agreement, the new owner, or the new lessee is liable to Waller County or any affected jurisdiction for outstanding taxes or other obligations.
- d. Approval shall not be unreasonably withheld.

SUNSET PROVISION - Section IX

- a. These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two (2) years, unless amended by three-quarters (3/4) vote of the Commissioners' Court of Waller County as so provided for in the Tax Code, at which time all Reinvestment Zones and Tax Abatement Agreements, created pursuant to these provisions will be reviewed by the County to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria may be modified, renewed or eliminated.
- b. This policy is mutually exclusive of existing Industrial District Contracts and owners of real property in areas deserving of special attention as agreed by the affected jurisdictions.
- c. This policy is effective this 22nd Day of July, 2015 and supersedes any previous policy on Tax Abatement. It will remain in effect until changed by court order.