

RESOLUTION NO. R2011-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRIENDSWOOD, TEXAS, ADOPTING GUIDELINES AND CRITERIA GOVERNING TAX ABATEMENT AGREEMENTS IN THE CITY OF FRIENDSWOOD.

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WHEREAS, Chapter 312 of the Texas Tax Code requires the City Council to adopt guidelines and criteria governing tax abatement agreements every two years if the council elects to be eligible to participate in tax abatement; and

WHEREAS, the guidelines and criteria may only be amended or repealed by a vote of three-fourths of the members of the City Council during the two year period; and

WHEREAS, the City Council wishes to adopt guidelines and criteria, as amended, to continue to provide for tax abatement; now therefore,

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

that it elects to readopt and be eligible to participate in tax abatement as provided for in Chapter 312 of the Texas Tax Code, as amended, by adoption of these guidelines and criteria and that it adopts the following guidelines and criteria for granting tax abatement in the City of Friendswood:

**Section 1
DEFINITIONS**

Sec. 1-01. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Abatement means full or partial exemption from ad valorem taxes of certain real property in a reinvestment zone designated for economic development purposes.

Agreement means a contractual agreement between the Applicant and the City for the purposes of tax abatement.

Applicant means the party submitting an application to the City for tax abatement and may be the property owner or lessee. If the Applicant is the lessee, then the application and any resulting contract shall be executed/acknowledged by the property owner(s).

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.

Basic industry means a business that primarily sells its products or services nationally or around the world bringing in new jobs and investments from outside the city, rather than providing products or services to the immediate Friendswood market area or servicing primarily the local population.

Corporate headquarters means the principal administrative offices for national, regional, or division business locations.

Deferred maintenance means improvements necessary for continued operations, which do not improve productivity or alter the process technology.

Expansion means the addition of buildings, structures, machinery, or equipment for purposes of increasing production capacity.

Facility or facilities means new commercial real and personal property improvements, machinery and equipment completed or installed and/or in the process of construction which together comprise an integral whole.

LEED Certification means a certification of the U.S. Green Building Council rating system (Certified, Silver, Gold or Platinum) for sustainable green building and development practices.

Manufacturing facility means facilities, 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.

Modernization means a complete or partial demolition of facilities and the complete or partial reconstruction or installation of a facility or similar or expanded production capacity. Modernization may result from the construction, alteration, or installation of facilities. Modernization shall include improvements for the purpose of increasing productivity or updating

the technology of machinery and equipment, or both. It shall not be for the purpose of reconditioning, refurbishing or repairing.

Primary (basic) jobs means new permanent jobs generated by basic industry, not including secondary jobs that primarily depend upon the local market area such as restaurants, grocery stores, residential real estate, retail, doctor's offices, etc. A permanent job is a full-time job comprising 2080 annual man hours after construction and during the abatement period.

Productive life means the number of years a property improvement is expected to be in service in a facility. Accounting depreciation schedules may be used to determine productive life.

Research facility means a facility used or to be used primarily for research or experimentation to improve tangible goods or materials or to improve or develop new production processes.

Regional service facility means a facility, used or to be used to service goods where a majority of the goods being serviced originate outside of the city.

Regional 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 where a majority of the goods or services are distributed to points at least one hundred (100) miles from any part of the city.

Sec. 1-02. Abatement authorized.

(a) **Reinvestment zone.** To be eligible for tax abatement, the Applicant must enter into a written agreement with the City, wherein the Applicant agrees to make specified improvements or repairs to the property in conformity with the city's comprehensive plan, where applicable; and the property must be within a reinvestment zone designated by city ordinance as allowed under section 312.202 of the Tax Code.

(b) **Authorized facility.** A facility may be eligible for tax abatement if it is a corporate headquarters, business or manufacturing facility, research facility, regional service facility, regional distribution center, a basic industry, or a facility that is deemed essential to the city's growth and that meets the guidelines of section 312.002 et seq. of the Tax Code.

(c) **Creation of new value.** Tax abatement may only be granted for the additional value of eligible improvements made subsequent to and specified in a tax abatement agreement between the City and the property owner, subject to such limitations as the city and state law may require.

(d) **New and existing facilities.** Tax abatement may be granted for new facilities or modernization.

(e) **Eligible property.** Tax abatement may be extended to the value of commercial buildings, structures, fixed machinery and equipment, site improvements plus the office space and related fix improvements necessary to the operation and administration of the facility.

(f) **Ineligible property.** The following types of property shall be fully taxable and ineligible for tax abatement: land; inventories, supplies, tools, furnishings and other forms of movable personal property when not used in conjunction with leased facilities; vehicles; vessels; aircraft, housing, furniture, deferred maintenance investments, property to be rented or leased (except as provided in section 1-02(g)), 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 productive life of less than fifteen (15) years; and property owned or used by the State of Texas. Nevertheless, the City Council can consider this property to be eligible upon a vote of three-fourths (¾) of the City Council.

(g) **Owned/leased facilities.** If a leased facility is granted tax abatement, both the Owner/lessor and the lessee shall execute the agreement.

(h) (1) **Value and term of tax abatement.** Tax abatement shall be granted effective with the January 1 valuation date immediately following the date of execution of the agreement. Abatement shall be granted on a sliding scale as follows:

<u>Year Abated</u>	<u>Percentage of Value</u>
1	100%
2	90%
3	80%
4	70%
5	60%
6	50%
7	40%
8	30%
9	20%
10	10%

No abatement shall be given in any year in which the facility fails to meet the employment minimum set forth in Section 1-02 (i);

(2) In the event the applicant plans the removal in whole or part of existing improvements in connection with the construction of new eligible facilities, tax abatement may be reduced from the one-hundred percent level provided for herein. The percentage to be abated may, at the City Council's discretion, be found as follows: ascertain the appraised value of the improvements to be removed as of January 1 immediately preceding the date of the application. Subtract the appraised value from the amount of the eligible facilities to be constructed. Divide the remainder by the valuation of eligible property to be

constructed to find the percentage of abatement of the value of such eligible properties.

(i) ***Economic qualifications.*** In order to be eligible for designation as a reinvestment zone and at the City Council's sole discretion to receive tax abatement, the Applicant shall:

(1) Create employment for at least **five** additional people on a permanent basis in the city or provide at least five retained jobs and the total cost and expenditures for the improvements of an eligible facility must exceed five-hundred thousand dollars (**\$500,000**).

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

- (1) The value of ineligible property as provided in section 1-02(f) 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 in the manner described in section 1-02(h).

(k) ***Alternative tax abatement for "Green" commercial building (LEED Certification).*** If the Applicant is the owner or lessee of a commercial facility registered with the U.S. Green Building Council (USGBC) seeking LEED (Leadership in Energy and Environmental Design) Certification, the Applicant may be eligible for alternative tax abatement for the incremental investment associated with obtaining LEED Certification. To qualify, no job creation target or competitive siting is required.

Eligibility Requirements:

(1) This alternative tax abatement may be granted for new facilities or modernization.

(2) The Applicant must register the project with USGBC seeking LEED certification prior to submitting an application for the alternative tax abatement to the City.

(3) The application, public hearing process, creation of reinvestment zone, and approval by the City Council must be complete before construction commences.

(4) To qualify for the alternative tax abatement, the minimum value of increase attributable to LEED certification must be at least \$100,000. Total investment must be at least:

\$10 Million for Basic Certification
\$4 Million for Silver

\$2 Million for Gold and
\$1 Million for Platinum

(5) Calculations for the LEED-based incremental value shall be based on the LEED certification level attained and the following formulas:

<u>Increment</u>	<u>LEED Certification</u>	<u>Imputed LEED-related value</u>
	Basic "Certified" Level	1.0%
	Silver	2.5%
	Gold	5.0%
	Platinum	10.0%

(6) The agreement shall become effective in the year the application is approved by City Council and effective up to 10 years. However, the tax abatement benefit (i.e. partial exemption of value from ad valorem taxes) shall not commence until a Certificate of Occupancy is issued by the building department and LEED certification from USGBC is obtained by the applicant.

(7) The value of the abatement shall be calculated based upon the appraised value after LEED Certification is obtained.

(8) This alternative is in lieu of, and an alternative to, the regular tax abatement. Applicant may not be awarded 100% tax abatement and the alternative green tax abatement incentives. Applicant may never be awarded more than 100% tax abatement.

Sec. 1-03. Application.

(a) Any owner and/or lessee of taxable property in the city may apply for the designation of a reinvestment zone and a tax abatement agreement by filing a written application to the City. There is no application fee.

(b) The Applicant shall sign the application and it shall be accompanied by a specific description of the proposed use and the specific nature and extent of the modernization, expansion, or new improvements which will be a part of the facility, an estimate of the cost of the improvements, the number of jobs that will likely be retained or created, the amount of local payroll that will be created, the amount of local sales taxes that will be generated, a map and metes and bounds or other valid legal property description of the property proposed as a reinvestment zone; and 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 shall provide such financial and other information as required by the city to enable it to evaluate the financial capacity of the applicant, including, but not limited to, a projection of the cost of city services to serve the projected development. In the

case of an application based on job retention, the applicant shall include sufficient information to verify the potential of job loss that would occur without abatement. The applications shall also identify any abatements, rebates or tax exemption that would pertain to the improvements (e.g. state tax exemption for pollution reducing devices).

(c) If the City intends to act favorably on the application and enter into an agreement, it shall do so in writing with the Applicant to exempt from taxation a percentage of the increase in the value of the property over its value in the year in which the agreement is executed, subject to the provisions of section 1-02(h)(2). Not later than the seventh day before the date on which the City enters into such an agreement, the mayor of the city, or an officer or employee of the city designated by him, shall deliver to the presiding officer of the governing body of each other taxing unit in which the property to be subject to the agreement is located a written notice that the City intends to enter into an agreement. The notice shall be placed in the mail, return receipt requested.

(d) An ordinance designating an area as a reinvestment zone may not be adopted by the City until the City has held a public hearing on the designation and has found that the improvements sought are feasible and practical and would be a benefit to the land to be included in the zone and to the city after the agreement entered with the owner has expired. It also must be found that the area of the proposed reinvestment zone is reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and would contribute to the economic development of the city or meets the other criteria of section 312.201 et seq. of the Tax Code. At the hearing, interested persons are entitled to speak and present evidence for or against the designation. Not later than the seventh day before the date of such hearing, notice of the hearing must be published in a newspaper having general circulation in the city; and said notice shall be 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. The notice shall be placed in the mail, postage prepaid, properly addressed, and sent by certified mail, return receipt requested.

(e) The City may deny an application for abatement if it finds that the request for the abatement was filed after a building permit for the improvements has been issued, or that commencement of construction, alteration, or installation of improvements related to a proposed modernization, expansion or new facility has begun.

Sec. 1-04. Objections to abatement.

(a) Neither a reinvestment zone nor a tax abatement agreement shall be authorized if it is determined that:

- (1) There would be a substantial adverse effect on the provisions 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) Violation of laws of the United States or State of Texas or policies of the city would occur;
- (5) The project has already commenced;
- (6) The Applicant has pending litigation against the City or CAD, or if the applicant is delinquent in city taxes; or

(b) The City shall make the determination of the validity of any objections to the project, if any, provided for in this section.

Sec. 1-05. Agreement.

After the hearing, the City of Friendswood shall adopt a resolution finding that the proposed agreement filed with the resolution, a copy of which is to be attached thereto, meets the applicable provisions of these "Guidelines and Criteria." The resolution may also authorize the execution of the agreement, to include provisions for:

- (1) The exemption from taxation of a percentage of the increases in value of the property, over its value in the year in which the agreement was executed for a period of time provided in section 1-02(h),
- (2) A listing of the kind, number, and location of all proposed improvements of the property;
- (3) The annual percentage of Abatement for property receiving Abatement and contain each term agreed to by the Owner of the property;
- (4) The duration of the agreement, but not exceeding ten years;
- (5) Access to and inspection of property by City employees to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement;
- (6) Limiting 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;
- (7) Recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement;

- (8) Requiring the Owner of the property to certify annually to the City Council that the Owner is in compliance with each applicable term of the agreement;
- (9) Canceling or modifying the agreement by the City Council if the property owner fails to comply with the agreement;
- (10) A map showing proposed improvements and uses in the reinvestment zone;
- (11) Total estimated cost of the improvements and employment estimates;
- (12) The commencement date and the termination date of the tax abatement;
- (13) The nature of the construction, time schedule, property description, and improvement list as provided in the application in accordance with section 1-03(b);
- (14) A provision that the agreement shall be effective when executed by all parties and upon the final passage of an ordinance designating the reinvestment zone;
- (15) A recapture provision if the cost of city services to the proposed project exceed the benefits to the community that such project poses; and
- (16) A provision providing for the repayment, with interest, of the abated taxes in the event the signatory party violates 8 U.S.C. §1324a(f) or other laws pertaining to the employment of undocumented workers.
- (17) Any other provisions required by State law or required by the City Council.

Sec. 1-06. Recapture.

(a) In the event that the facility is completed and begins producing products or services, but subsequently discontinues producing products or services for any reason except in fire, explosion, or other casualty or accident or natural disaster for a period of one (1) year during the abatement period, then 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 affected jurisdiction and other taxing agencies within sixty (60) days from the date of termination.

(b) Should the City determine that any of the signatory parties is in default according to the terms and conditions of its agreement, the city shall notify such party in writing at the address stated in the agreement, and if the default is not cured within sixty (60) days from the date of such notice (“cure period”), the agreement may be terminated.

(c) In the event that the signatory party (1) allows its ad valorem taxes owed the City or affected jurisdictions 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 any default within the cure period, the agreement then may be terminated and all taxes previously abated by virtue of the agreement shall be recaptured and paid within sixty (60) days of the termination.

Sec. 1-07. Administration.

(a) Each year, any person receiving abatement shall furnish the chief appraiser of Galveston/Harris County and the City of Friendswood with such information as may be necessary for the abatement, including immigration records. The chief appraiser will annually determine the assessment of the real and personal property comprising the reinvestment zone and notify the affected jurisdictions of the amount of the assessment.

(b) Upon completion of construction, the City shall annually evaluate each facility receiving abatement to ensure compliance with the agreement.

Sec. 1-08. Assignment.

Tax abatement may be transferred and assigned by the holder to a new owner or lessee of the same facility upon the approval by resolution of the City Council, subject to the financial capacity of the assignee, and provided all conditions and obligations in the tax abatement agreement are guaranteed by the execution of a new contractual agreement with the City. No assignment or transfer shall be approved if the parties to the existing agreement, the new owner or new lessee are liable to the City or any affected jurisdiction or other taxing agency for outstanding taxes or other obligations.

Sec. 1-09. Sunset provision.

These “guidelines and criteria” are effective for two (2) years from the date adopted. During that period, the “Guidelines and Criteria” may be amended or repealed only by a vote of three-fourths (¾) of the members of the City Council.

Sec. 1-10. Legal notice to potential applicants.

The adoption of these guidelines and criteria by the City do not:

- (1) Limit the discretion of the City to decide whether or not to enter into a specific tax abatement agreement;

- (2) Limit the discretion of the City to delegate to its employees the authority to determine whether or not the City should consider a particular application or request for tax abatement; or
- (3) Create any property, contract, or other legal right in any person to have the City consider or grant a specific application or request for tax abatement.

Sec. 1-11. Confidentiality.

Information that is provided to the City in connection with an application 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 is confidential and, to the fullest extent permitted by law, shall not subject to public disclosure until the tax abatement agreement is executed. Nevertheless, the City shall not be liable for any disclosure of the application. However, the City may take disciplinary action against the City employee who made an unauthorized disclosure of confidential information.

Sec. 1-12. State law controls.

This article shall not in any way limit the authority of the City to enter into a specific tax abatement agreement as authorized under section 312.002 et seq. of the Tax Code, as amended. These guidelines shall not in any way allow the City to enter into a specific tax abatement agreement that is contrary to the provisions of section 312.002 et seq. of the Tax Code, as amended.

PASSED, APPROVED AND RESOLVED on this 2nd day of May, 2011.



David J. H. Smith
Mayor

ATTEST:



Melinda Welsh, TRMC
City Secretary

