

**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 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, Incentives, 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, have been shown to be an effective method of enhancing and diversifying the local economy; and

Whereas, 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 exclusive entity for the provision of professional services for qualifying Applicants 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 or Incentives agreement; (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 or Incentives.

Now, therefore, be it resolved, that Waller County Commissioners' Court does hereby adopt these Guidelines and Criteria for granting tax Abatement in reinvestment zones or Incentives 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 or Incentive 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. To keep the Abatement active, the applicant must file all appropriate forms with WCAD. The Abatement will terminate if the applicant fails to provide the appropriate forms annually to the WCAD.

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”** means 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 or Incentives.
- d. **“Applicant”** means the entity applying for Abatement or Incentives and, if successful, will be party to an Incentive or Abatement Agreement.
- 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 1, but before the execution of the Agreement.
- f. **“Competitively-Sited Project”** means a project where the applicant has completed an evaluation of competing locations, outside of Waller County, for expansion, relocation, or new operations, including identification of specific sites in those locations.
- g. **“Deferred maintenance”** means improvements necessary for continued operations which do not improve productivity or alter the process technology.

- h. **“Distribution Center Facility”** means buildings and structures, including fixed-in-place machinery and equipment, used or to be used primarily to receive, store, service or distribute goods or materials.
- i. **“Expansion”** means the addition of buildings, structures, fixed-in-place machinery or equipment for purposes of increasing production capacity.
- j. **“Facility”** means real property improvements completed or in the process of construction, and qualifying fixed-in-place machinery and personal equipment, which together comprise an integral whole.
- k. **“Hospital”** as defined in Texas Health & Safety Code Section 241.003.
- l. **“Incentive”** means a payment or concession to stimulate greater taxable value and capital investment.
- m. **“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.
- n. **“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.
- o. **“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.
- p. **“Other Basic Industry”** means buildings and structures including fixed-in-place 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.
- q. **“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.
- r. **“Productive Life”** means the number of years a property improvement is expected to be

in service in a Facility.

- s. **“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.
- t. **“Regional Entertainment/Tourism Facility”** means buildings and structures, including fixed-in-place 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.
- u. **“Research Facility”** means buildings and structures, including fixed-in-place 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.
- v. **“Regional Service Facility”** means buildings and structures, including fixed-in-place 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.
- w. **“Spec Building”** means the new building constructed to create an enclosed area of a commercial Facility, which would be used by a business that would normally qualify for Abatement or Incentives, built without an occupying tenant at the time the construction has started or is complete.
- x. **“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 AND INCENTIVES AUTHORIZED - Section II

- a. **Authorized Facility.** An applicant’s Facility may be eligible for Abatement or Incentives if it is one of the qualifying business types specified in Section I - Definitions.
- b. **Creation of New Value.** Abatement or Incentives may only be granted for the additional value of eligible property improvements made subsequent to and specified in an 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 or Incentives may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion. For spec buildings, 100% Abatement may be granted for up to two years or until occupied or sold, whichever occurs first.
- d. **Eligible Property.** Abatement or Incentives may be extended to the value of buildings,

structures, fixed-in-place machinery and equipment, site improvements, and related personal equipment necessary to the primary operation of the Facility.

- e. **Ineligible Property.** The following types of property shall be fully taxable and ineligible for Abatement or Incentives: 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 or Incentives is not allowed by state law.
- f. **Owned/Leased Facilities.** If a leased Facility is granted Abatement or Incentives, the Agreement may be executed with the lessor and/or the lessee.
- g. **Offer, Execution, Value, and Term of Agreement.** Abatement or Incentives 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 or Incentives. The term of any Abatement may not exceed ten (10) years.

The Abatement or Incentives may be extended through an initial Agreement and a subsequent Agreement as may be required to comply with state law.

- 1. **Offer** – During the initial negotiations with a prospect, a tentative offer for Incentives 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 for the extension 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 Incentive or Abatement Agreement, the applicant may apply for a one-year extension of the term, 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 Agreement.
 - i. **Projects within a corporate limits or special taxing district.** For projects located

within the jurisdiction of any incorporated city, town, or special taxing district, the applicant must first be approved for tax Abatement or Incentives by that respective city or town, or special taxing district, or an intent to participate in Incentives must be conveyed by a representative from the city, town, or special taxing district to the County, before the County can consider Incentives.

1. For projects located within the corporate limits of a city located in Waller County, Waller County will consider participating in Abatement or Incentives only if the city has approved and Abatement or Incentives, or an intent to participate in Incentives has been conveyed by a representative from the city to the County.
2. Waller County may participate with no more than a percentage match for only Abatement or Incentives offered by the city unless, by so doing, the amount under consideration produces a low return to the County (as the result of running an economic impact analysis). In cases where matching the city will create a low return for the County, the County will revise the percentage of its participation until a suitable return is obtained. It is the sole discretion of Waller County to participate and determine an adequate return as each prospect represents varying levels of risk.
3. For projects located within a special district, or areas within a limited purpose annexation that has the ability to provide tax Abatement or negotiate Incentives, the County will require similar participation to that of a city or town from that district or entity before considering any Incentives.

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

1. The applicant will contact the WCEDP and complete an economic impact analysis consistent with the requirements of the WCEDP and the County.
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 assessed value 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 Incentives or 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 conveying intent or the granting of such Abatement or Incentives.
 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. If the applicant receives Incentives or Abatement, and 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. When possible, the applicant agrees to hire Waller County citizens first in positions for which a citizen may be qualified.
- k. **Standards for Tax Abatement and Incentives.** The following factors, among others, shall be considered by the County in determining whether to grant tax Abatement or Incentives:
1. The increased value of land and existing improvements.
 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 increase in taxable value as a result of the Incentive(s).
 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 Incentive period - considering (a) existing values, (b) the percentage of new value abated, (c) the Incentive period, and (d) the value after expiration of the Incentive 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 willingness of the applicant to help offset any negative impact to public infrastructure as a result of the new Facility and the types and values of public improvements, if any, to be made by applicant seeking Incentives.
 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 the health, safety, and welfare of citizens.
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 individual merit, utilizing the factors provided above. After such review, Incentives may be denied entirely or may be granted to the extent deemed appropriate after full evaluation.

1. **Denial of Abatement or Incentives.** No Abatement or Incentives Agreement shall be authorized if:
 1. There would be substantial adverse effect on the tax base, health, safety, or welfare of the community, 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, welfare, or morals.
 4. The area considered for Incentives lies within the taxing jurisdiction of an incorporated city or town or a special taxing district, and applicant has been denied Abatement or Incentives 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.

- m. **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 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 or expansion, 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, risk, and other factors of the applicant; and
 6. Disclosure and copies of any environmental permits required or additional environmental impacts.
- c. Waller County shall not establish a reinvestment zone for the purpose of Abatement if it finds that the application 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.
- d. **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 four-fifths (4/5) 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.
- e. **Confidentiality Required.** Information that is provided to the County in connection with an application or request for tax Abatement or Incentives, 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 or Incentives 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 Incentive 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. The Applicant must understand that any information submitted to the County **may** be deemed public information pursuant to Chapter 552 of the Government Code and any relevant Attorney General opinions. The County will make good faith efforts to protect information marked as confidential or proprietary.

PUBLIC HEARING - Section IV

- a. Pursuant to Tax Code Chapter 312, Subchapter C, the County must hold a public hearing prior to designating an area as a reinvestment zone for Abatement. Should any affected

jurisdiction be able to show cause in the public hearing why the designation of a reinvestment zone will have a substantial adverse effect 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. Following the public hearing for designation of a reinvestment zone, 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 increased investment in the zone that would benefit the property within the zone; and/or
 - 3. Designation of the zone would contribute to the economic development of the County.

AGREEMENT - Section V

- a. After approval, Waller County shall execute an Agreement with the owner of the Facility, and/or lessee as required, which shall include:
 - 1. Estimated value to be abated;
 - 2. Percent of value to be abated each year as provided in Section II;
 - 3. The commencement date and the termination date of Agreement;
 - 4. The proposed use of the Facility; nature of construction, time schedule, map, property description, and improvements list;
 - 5. A list of the kind, number, and location of all proposed improvements to the property;
 - 6. Provisions providing access to and authorization for inspection of the property and documents by the taxing unit to ensure compliance with the Agreement;
 - 7. Limitations on the uses of the property, consistent with the County's development goals;
 - 8. Provisions providing 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;
 - 9. A provision allowing the taxing unit to cancel or modify the Agreement at any time if the applicant fails to comply with the terms of the Agreement;
 - 10. 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;
 - 11. 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
 - 12. Size of investment and number of jobs involved for the period of the Abatement or Incentives.

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 or fails to maintain the agreed upon number of jobs for any reason for a period of one year during the Agreement, 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 or Incentives for the calendar year during which the applicant's Facility no longer produces or does not maintain the jobs numbers. 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 an Abatement or Incentives 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 an Agreement and fails to cure during the Cure Period, the Agreement then may be terminated and all taxes previously abated or Incentives provided by virtue of the Agreement will be recaptured and paid within sixty (60) days of the termination.
- d. Payment in Lieu of Taxes Agreement (PILOT): If, during the Abatement period, any Federal or State law provides an additional tax exemption that may exclude paying taxes to the County (*i.e.*, for environmental or emissions improvements, or a Foreign Trade Zone) for the property that is already the subject of the Abatement Agreement, applicant may be required to agree with the County to decline that Federal or State tax exemption during the Abatement period. If applicant is unable to decline that Federal or State tax exemption, applicant shall 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 subject to Abatement or Incentives. Each year, the applicant receiving Abatement shall furnish the Appraiser with such information as may be required by law or the terms on an Agreement to determine compliance with the Agreement.
- b. The Agreement shall stipulate that employees and/or designated representatives of Waller

County will have access to the applicant's facilities and documents, including personal property tax renditions, during the term of the Incentives 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. An Agreement may be transferred and assigned to a new owner or lessee of the Applicant's Facility upon the prior written approval of Waller County Commissioners' Court, subject to the financial capacity of the assignee and provided that all conditions and obligations in the Agreement are guaranteed by the assignee.
- b. The Agreement with the new owner or lessee shall not exceed the termination date of the 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 are liable to Waller County or any 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 four-fifths (4/5) vote^a of the Commissioners' Court of Waller County as so provided for in the Tax Code, at which time all reinvestment zones and Incentive 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.

^a Pursuant to Tax Code Section 312.002 (c), a three-fourths (3/4) vote is required to amend or repeal the Guidelines and Criteria. This effectively is a 4/5 vote in Commissioners' Court.

- b. This policy is mutually exclusive of existing Special 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 31st day of July, 2019 and supersedes any previous policy on Abatements and Incentives. It will remain in effect until changed by court order.