

**RESOLUTION NO. 21-070R**

**A RESOLUTION OF THE CITY OF RED OAK, TEXAS, ADOPTING GUIDELINES AND CRITERIA FOR TAX ABATEMENT AGREEMENTS WITHIN THE CITY OF RED OAK; PROVIDING THE CITY OF RED OAK ELIGIBLE IN GRANTING TAX ABATEMENT; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, economic development through the creation of a new industry and expansion of existing industry that results in new wealth and/or job opportunities is important for the well-being of the local economy; and

**WHEREAS**, tax abatement is one of the principal means by which the public sector and the private sector can forge a partnership to promote real economic growth within the community; and

**WHEREAS**, the City of Red Oak must compete with other localities throughout the United States currently offering tax incentives to attract new facilities and plant modernization projects; and

**WHEREAS**, the abatement of property taxes, when offered to attract new and expanded businesses has been shown to be an effective method of enhancing and diversifying City economy and creating community and area wealth; and

**WHEREAS**, 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 the granting of any future tax abatement or creation of a reinvestment zone; and

**WHEREAS**, the City Council desires to adopt new guidelines for tax abatement criteria; and

**WHEREAS**, these Guidelines and Criteria shall not be construed as implying or suggesting the City of Red Oak is under obligation to provide tax abatements or other incentives to any applicant; and all applicants shall be considered on a case-by-case basis.

**WHEREAS**, the city council has previously adopted appropriate guidelines, which are due to expire; and

**WHEREAS**, Chapter 312 of the TEXAS TAX CODE requires that a taxing unit that enters into a tax abatement agreement to adopt a resolution stating that it elects to become eligible to participate in tax abatement; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RED OAK, ELLIS COUNTY, TEXAS, THAT:**

**SECTION 1.** That the City Council hereby adopts guidelines and criteria governing property tax abatement agreements as set forth on **Exhibit A**, which is attached hereto and incorporated herein, as the "City of Red Oak Tax Abatement Guidelines and Criteria." The City of Red Oak Tax Abatement Guidelines and Criteria shall be adopted herein effective for two (2) years from the date of adoption; and, may only be amended or repealed by a three-fourths (3/4) vote of the city council as provided by law.

**SECTION 2.** That the City Council hereby continues to become eligible to participate in tax abatements and to create reinvestment zones, in accordance with Chapter 312 of the TEXAS TAX CODE, and directs city staff to actively pursue economic development opportunities for the City of Red Oak, Texas.

**SECTION 3.** All provisions of resolutions of the City of Red Oak, Texas, in conflict with the provisions of this resolution be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this resolution shall remain in full force and effect.

**SECTION 4.** This resolution shall take effect immediately from and after its passage, as the law and charter in such cases provide.

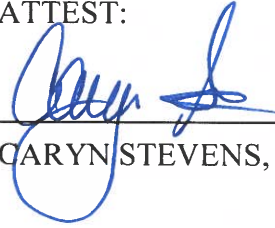
**DULY PASSED** by the City Council of the City of Red Oak, Texas, on the 9<sup>th</sup> day of August, 2021.



APPROVED

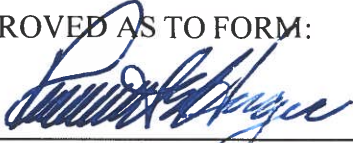
  
MARK L. STANFILL, DVM, MAYOR

ATTEST:



\_\_\_\_\_  
CARYN STEVENS, CITY SECRETARY

APPROVED AS TO FORM:



\_\_\_\_\_  
ROBERT E. HAGER, CITY ATTORNEY

**EXHIBIT A**

**CITY OF RED OAK  
TAX ABATEMENT GUIDELINES AND CRITERIA  
POLICY STATEMENT**

**CITY OF RED OAK  
TAX ABATEMENT GUIDELINES AND  
CRITERIA POLICY STATEMENT**

The City of Red Oak is committed to the promotion of quality development in all parts of the City and to the ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the City of Red Oak will, on a case-by-case basis, give consideration to providing tax abatement as a stimulation for economic development in Red Oak. It is the policy of the City that said consideration will be provided in accordance with the procedures and criteria outlined in this document. However, nothing herein shall imply or suggest that the City is under obligation to provide any incentive to any applicant. All applications shall be considered on a case-by-case basis.

**DEFINITIONS - Section 1.**

(a) "Abatement" means the full or partial exemption from ad valorem taxes of certain improvements on real property and/or tangible personal property in a reinvestment zone designated by the City of Red Oak for economic development purposes.

(b) "Agreement" means a contractual agreement between a property owner and a taxing jurisdiction for the purpose of tax abatement

(c) "Base Year Value" means the assessed value of either the applicant's subject real property and improvements on January 1 of the year of the execution of the agreement plus the agreed upon value of any property improvements made after January 1 but before execution of the agreement, and/or the assessed value of any tangible personal property located on the owner's real property at any time prior to the abatement period covered by the agreement.

(d) "Deferred Maintenance" means improvements necessary for the continued operation which do not improve productivity or alter the process technology.

(e) "Economic Life" means the number of years a property improvement is expected to be in service in a Facility.

(f) "Enterprise Zone" means an area designated pursuant to the Texas Enterprise Zone Act (Chapter 2303, Government Code).

(g) "Expansion" means the addition of buildings, structures, fixed machinery, equipment, or tangible personal property for the purpose of increasing production capacity.

(h) "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.

(i) "Lease" means a relationship whereby the business applying for a tax abatement has a contract for exclusive possession of either the real property on which improvements are to be made and/or moveable personal property to be used for the operation of the business for a defined period of time.

(j) "Modernization" means the replacement and upgrading of existing facilities which increase the productive input or output, updates the technology, or substantially lowers the unit cost of operation and/or extends the economic life of the facility. 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, repairing, or completion of Deferred Maintenance.

(k) "New Facility" means a property previously undeveloped which is placed into service by means other than, or in conjunction with, Expansion or Modernization.

(l) "Personal Property" means equipment and/or tools, used or bought or leased for use, in the operation of the business applying for tax abatement, other than that which was located on the real property at any time before the period covered by the tax abatement agreement, and other than inventory, supplies, and/or office equipment.

(m) "Real Property" means the area of land defined by legal description as being owned or leased by the business applying for a tax abatement, including any improvements thereto, which is to be improved and valued for property tax purposes, and which is to be included in the Reinvestment Zone.

(n) "Reinvestment Zone" means an area designated as such for the purposes of tax abatement as authorized by the City in accordance with The Property Tax Code Annotated Chapter 312.201 et seq (of Subchapter B) (Vernon 1992) and (Supp. 1995), as amended.

#### **ABATEMENT AUTHORIZED - Section 2**

(a) Eligible Facilities. Upon application, eligible facilities shall be considered for Tax Abatement as hereinafter provided.

(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 the City of Red Oak and the property owner or lessee, subject to such limitations as the City of Red Oak may require.

(c) New and Existing Facilities. Abatement may be granted to the taxable value of the New Facilities and improvements to existing Facilities for the purpose of Modernization or Expansion.

(d) Eligible Property. Abatement may be extended to the value of buildings, structures, fixed machinery and equipment site improvements, related fixed improvements, tangible personal property, and the increased value of the Real Property.

(e) Ineligible Property. The following types of property shall be fully taxable and ineligible for Tax Abatement: supplies; inventory; Deferred Maintenance; property to be rented or leased except as provided in Section (f); and property that is associated with any activity which is illegal under federal, state and local law.

(f) Owned/Leased Facilities. If a Leased Facility is granted abatement, the agreement shall be executed with the owner and lessee. Prior to any tax abatement agreement being executed, a copy of the lease shall be provided to the City.

(g) Economic Qualification. In order to be eligible for designation as a reinvestment zone and receive value added tax abatement, the planned improvement:

- (1) must be expected to have an increased appraised ad valorem tax value of at least \$500,000 based upon the Ellis County Appraisal District's assessment of eligible property. However, this requirement may be waived at the discretion of City Council; or
- (2) must be expected to prevent the loss of payroll, or retain, increase, or create payroll in Red Oak, Texas.

(h) Standards for Tax Abatement. Any request for tax abatement may be reviewed by the City Council appointed Board of the City of Red Oak Industrial Development Corporation. This committee may serve as a recommending body to the City Council whether tax abatement should be offered in each individual case. A determination for a tax abatement shall be based upon a subjective evaluation of the following criteria, as well as others, to determine whether to grant tax abatement and, if so, the percentage of value to be abated and the duration of the tax abatement:

- (1) value of land and existing improvements, if any;
- (2) type and value of proposed improvements;
- (3) Economic Life of proposed investments;
- (4) number of existing jobs to be retained by proposed improvements;
- (5) number of type of new jobs to be created by proposed improvements;
- (6) amount of local payroll to be created;
- (7) whether the new jobs to be created will be filled by persons residing or projected to reside within the City of Red Oak;
- (8) amount of local sales taxes to be generated directly ;
- (9) amount property tax base valuation will be increased during the term of Abatement and after the expiration of the Abatement;
- (10) whether the applicant is qualified for the Freeport Exemption, and if so, what percentage of inventory valuations qualify and the dollar value of exemption each year for each taxing entity;
- (11) the costs to be incurred by the City of Red Oak to provide infrastructure or services directly resulting from the new improvements;

- (12) the amount of ad valorem taxes to be paid to the City of Red Oak during the abatement period considering (a) the existing valued base year; (b) the percentage of new value abated ; (c) the abatement period ; and (d) the value after expiration of the abatement period;
- (13) the population growth of the City of Red Oak that occurs directly as a result of the proposed improvements and how this will effect the Red Oak ISD and infrastructure needs of the City;
- (14) the types and values of public improvements, if any, to be made by applicant seeking abatement;
- (15) whether the proposed improvements compete with existing businesses to the detriment of the local economy;
- (16) the impact on the business opportunities of existing businesses;
- (17) the attraction of other new businesses to the area;
- (18) the overall compatibility with the zoning ordinance and comprehensive plan for the City Council;
- (19) whether the project is environmentally compatible with no negative impact on quality of life perceptions;
- (20) any other factor(s) related to the proposed improvements that may have an effect, positive or negative, on the City of Red Oak and other affected taxing entities.

Each application shall be reviewed on its merits 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.

- (i) Denial of Abatement. Neither a reinvestment zone nor abatement agreement shall be authorized if it is determined that:
  - (1) there would be a substantial adverse effect on the provision of government service or tax base;
  - (2) the applicant has insufficient financial capacity;
  - (3) planned or potential use of the property would constitute a hazard to public safety, health or morals;
  - (4) violation of other codes or laws; or
  - (5) any other reason deemed appropriate by the City Council of the City of Red Oak.
- (j) Taxability. From the execution of the Abatement to the end of the Agreement period taxes shall be payable as follows:



- (1) the value of the ineligible property as provided in Section 2(e) shall be fully taxable; and
- (2) the base year value of existing eligible property as determined each year shall be fully taxable.
- (k) The additional value of new eligible property shall be fully taxable at the end of the Abatement period.
- (l) The adoption of these guidelines and criteria for tax abatement shall not limit the discretion of the City Council to decide whether to enter into a specific tax abatement agreement and shall not create any property, contract or other legal right in any person to have the City Council consider or grant a specific application or request for tax abatement.
- (m) Property that is in a Reinvestment Zone and that is owned or leased by a member of the City Council or planning and zoning commission is excluded from property tax abatement.

**APPLICATION - Section 3.**

- (a) Any present or potential owner of taxable property in Red Oak, Texas may request the creation of a reinvestment zone and tax abatement by filing a written request with the City of Red Oak. The application may then be forwarded to the City of Red Oak Industrial Development Corporation for review and possible recommendation to the City Council of the City of Red Oak for that final disposition.
- (b) The application shall consist of a completed application form which shall provide detailed information on the items described in Section 2(h) hereof, a map and legal description 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 form may require such financial and other information as may be deemed appropriate for evaluating the financial capacity and other factors of the applicant.
- (c) The applicant shall state the value and account numbers used by the Ellis County Appraisal District as of the January 1 valuation date prior to the date of the execution of a Tax Abatement Agreement as follows:

Account Number: \_\_\_\_\_

Personal Property \$ \_\_\_\_\_

Account Number: \_\_\_\_\_

Land \$ \_\_\_\_\_

Improvements \$ \_\_\_\_\_

- (b) The City of Red Oak shall give notice as provided by the Texas Property Tax Code.

#### **AGREEMENT - Section 4.**

After approval, the City of Red Oak shall formally pass a resolution and execute an Agreement with the owner of the Facility and/or lessee, in full compliance with Chapter 312 of the Texas Tax Code.

#### **ADMINISTRATION -Section 5**

a) The Chief Appraiser for the Ellis County Appraisal District will annually determine an appraised value of the real and personal property comprising the reinvestment zone. Each year, the company or individual receiving Abatement shall furnish the Appraiser and the City of Red Oak with such information as may be necessary for the Abatement. Once value has been established, the Chief Appraiser will notify the City of Red Oak of the amount on the assessment.

(b) Upon completion of construction, the designated representative of the City of Red Oak shall annually evaluate each Facility receiving Abatement to insure compliance with the Agreement, and a formal report shall be made to the City Council of Red Oak regarding the findings of each evaluation.

#### **STATE ADMINISTRATION -Section 6**

Pursuant to Chapter 312 of the Texas Tax Code, as amended, the City is required to deliver to the Texas Department of Commerce or its successor and the State Comptroller before April 1<sup>st</sup> of the year following which a Reinvestment Zone is designated or a tax abatement agreement is executed a report providing all of the information required by Chapter 312. The Director of Economic Development for the City is established as the City Liaison with the State for this purpose.

**House Bill 3143**, which went into effect September 1, 2019, added additional public notice, hearing and reporting requirements for certain tax abatement agreements.

#### **Requirements for Delivering a Report on Appraised Value of Property with an Expired Abatement**

(a) For each of the first three years following the expiration of a tax abatement agreement, the chief appraiser of each appraisal district delivers a report to the Comptroller's office containing the appraised value of the property that was subject to the agreement. To meet this requirement and to make sure that all property values are finalized, fill out [form 50-278](#), and submit it to the Comptroller's office by Sept. 1 or the first business date thereafter if September 1 falls on a weekend or a federal holiday.

(b) This report applies to all tax abatement agreements that expire on or after September 1, 2019

#### **SUNSET PROVISIONS - Section 7.**

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