

**GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT  
IN A REINVESTMENT ZONE CREATED IN CASS COUNTY**

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

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

**Whereas**, the communities within Cass County must compete with other localities across the nation currently offering tax inducements to attract jobs and investments; and

**Whereas**, any tax incentives offered in Cass County would reduce needed tax revenue unless strictly limited in the application to those new and existing industries that bring new wealth to the community; and

**Whereas**, any tax incentives should not have a substantial adverse effect on the competitive position of existing companies operating in Cass County; and

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

**Whereas**, the abatement of property taxes, when offered to attract primary jobs in industries which bring in money from outside a community instead of merely re-circulating dollars within a community, has been shown to be an effective method of enhancing and diversifying an area's economy; and

**Whereas**, Texas law requires any eligible taxing jurisdiction to establish Guidelines and Criteria as to eligibility for tax abatements prior to granting any tax abatement, said Guidelines and Criteria to be unchanged for a two-year period unless amended by a three-quarters vote; and

**Whereas**, to assure a common, coordinated effort to promote our communities' economic development, any such Guidelines and Criteria should be adopted only through the cooperation of municipalities, taxing jurisdictions, and Cass County; and

**Whereas**, Cass County Commissioners Court has approved the circulation of Guidelines and Criteria to affected taxing jurisdictions for consideration as a common policy for all jurisdictions choosing to participate in tax abatement agreements;

**Now**, therefore, be it resolved that Cass County does hereby adopt these Guidelines and Criteria for granting tax abatements within reinvestment zones created in Cass County.

## SECTION 1 DEFINITIONS

- a. **“Abatement”** means partial exemption from ad valorem taxes of certain real property (including fixed-in-place machinery and equipment) in a reinvestment zone designated for economic development purposes.
- b. **“Eligible Jurisdiction”** means Cass County (the County) and any municipality or other taxing jurisdiction eligible to abate its taxes according to Texas law that levies ad valorem taxes upon and provides services to property located within the proposed or existing reinvestment zone.
- c. **“Agreement”** means a contractual agreement between a property owner and/or lessee (the Owner) and an eligible jurisdiction for the purposes of tax abatement.
- d. **“Base Year Value”** means the appraised value in the reinvestment zone on January 1 preceding the effective date of the tax abatement agreement, plus the agreed upon value of eligible property improvements made after January 1 but before the effective date of the agreement, or the sales price if the property was conveyed subsequent to January 1, whichever is greater.
- e. **“Competitively-Sited Project”** means a project where the applicant has completed a written evaluation of competing locations for expansion, relocation, or new operations, including identification of specific sites in those locations.
- f. **“Economic Life”** means the number of years a property improvement is expected to be in service in a reinvestment zone.
- g. **“Employee”** means a person whose employment is both permanent and full-time, who works for and is an employee of the Owner or an employee of a contract provider to the Owner, who works a minimum of 1,750 hours per year exclusively within the reinvestment zone, who receives industry-standard benefits, and whose employment is reflected in the Owner's (and/or contract provider's, as applicable) quarterly report filed with the Texas Workforce Commission (TWC); but *excluding* any direct contract (seasonal, part-time, and full-time equivalent).
- h. **“Expansion”** means the addition of buildings, structures, or fixed-in-place machinery and equipment for purposes of increasing production capacity.
- i. **“Facility”** means property improvements completed or in the process of construction which together comprise an integral whole.
- j. **“Investment Period”** means the period of time during which a new business is being constructed or an existing business is being expanded, and new value is being added to the property.

- k. **“Manufacturing Facility”** means buildings and structures, including fixed-in-place machinery and equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.
- l. **“New Facility”** means a property, previously undeveloped, which is placed into service by means other than or in conjunction with expansion or modernization.
- m. **“Other Basic Industry Facility”** 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 which primarily serve a market in the creation of new permanent employment and bring in new wealth.
- n. **“Regional 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 owned by the facility operator where a majority of the goods or services are distributed to points at least 100 miles from any part of the County boundaries.
- o. **“Regional Entertainment 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 at least 100 miles from any part of the County boundaries.
- p. **“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 at least 100 miles from any part of the County boundaries.
- q. **“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.
- r. **“Research and Development Facility”** means buildings and structures, including fixed-in-place machinery and equipment, used or to be used entirely for research or experimentation to improve or develop current technology in biomedicine, electronics or pre-commercial emerging industries.

## SECTION 2 ABATEMENT AUTHORIZED

- a. **Authorized Facility.** A facility may be eligible for abatement if it is a: Manufacturing Facility, Research Facility, Regional Distribution Center Facility, Regional Service Facility, Regional Entertainment Facility, Research and Development Facility, or Other Basic Industry Facility.

- b. **Creation of New Value.** Abatement may only be granted for the additional value of eligible real property (including fixed-in-place machinery and equipment) listed in an agreement between the County and the property owner and/or lessee as applicable, subject to such limitations as Commissioners Court and the Texas Property Tax Code may require.
- c. **Eligible Property.** An abatement may be extended to the value of buildings, structures, fixed-in-place machinery and equipment, site improvements plus that office space and related fixed-in-place improvements necessary to the operation and administration of the facility. The value of all property shall be the Certified Appraised Value for each year, as finally determined by the Cass County Appraisal District (CCAD).
- d. **Ineligible Property.** The following types of property shall be fully taxable and ineligible for abatement: land; inventories; supplies; tools; furnishings, and other forms of movable personal property; vehicles; vessels; aircraft; housing; hotel accommodations; deferred maintenance investments; property to be rented or leased (except as provided in Leased Facilities below); property with an economic life of less than 15 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 property exempted by local, state or federal law. When such exempted property includes manufacturing machinery and equipment listed in the Investment Budget (as required in the Application), then the value of such property may not be included toward the achievement of investment or valuation thresholds set out in the Agreement.
- e. **Leased Facility.** If a leased facility is granted a tax abatement, then the Agreement shall be executed with both the lessor (property owner) and the lessee.
- f. **Value and Term of Abatement.** A tax abatement shall be granted in accordance with the terms of an Agreement as follows:
  - 1. Projects are eligible for abatement of new value during the Investment Period, subject to the following abatement caps based on Eligible Property:

<u>New Value Created</u>	<u>Abatement of New Value</u>
\$500,000 to \$1,000,000	Up to 50%
\$1,000,000 to \$2,000,000	Up to 60%
\$2,000,000 to \$3,000,000	Up to 70%
\$3,000,000 to \$4,000,000	Up to 80%
\$4,000,000 to \$5,000,000	Up to 90%
Over \$5,000,000	Up to 100%

Such cap shall not exceed the increased value requirement as set out in the Agreement and will be adjusted annually. To determine the amount of the abatement each year during the Investment Period, the Adjusted Cap shall be multiplied by the abatement percentage outlined herein above up to a total of 10 years. At the discretion of the County, the abatement percentage may be applied

outside the Investment Period, however, under no circumstance will any facility receive the benefit of a tax abatement for more than 10 years. The value of eligible property must remain greater than or equal to the contractually-defined minimum value requirement.

A non-exhaustive list of factors that may be considered by the County in extending the period of abatement beyond the Investment Period may include the following:

- a. Extent of creation of jobs for new business or extent of employment levels sustained for the expansion of existing business;
- b. Extent of monetary investment in new facility or expansion of existing facility;
- c. Environmental impact of project on County;
- d. Impact on existing businesses in County;
- e. Attraction of other businesses to area by new business or expansion of existing business; and
- f. Diversity of employment base and commitment of company to a diversified workforce.

2. No tax abatement shall be given in any year in which the facility fails to meet the contractually-defined minimum value requirement.
3. No tax abatement shall be given in any year in which the facility fails to meet the contractually-defined employment creation and retention requirement.
4. The Agreement shall set out in detail the exact method to be used in computing the tax abatement each year.

g. **Basic Qualifications for Tax Abatement.** To be eligible for designation as a reinvestment zone and receive tax abatement the planned improvement:

1. must be shown to increase the appraised value of the property at least \$1 million for new businesses or \$500,000 for expansion of existing businesses upon completion of the contractually-defined construction period;
2. must be shown to directly create or prevent the loss of permanent full-time employment for at least 10 people within the reinvestment zone upon completion of the contractually-defined employment period;
3. must be competitively-sited; and
4. must be shown not to solely or primarily have the effect of transferring employment from one part of the County to another.

h. **Taxability.** From execution to expiration of Agreement, taxes shall be payable as follows:

1. value of ineligible property in the reinvestment zone shall be fully taxable;
  2. non-abatable real property in the reinvestment zone shall be fully taxable each year;
  3. additional value of new eligible property shall be taxable in the manner described in Value and Term of Abatement;
  4. if Base Year Value decreases during the term of a tax abatement or if an additional exemption is granted by the state or federal government, then the maximum amount of abatable value to be used in abatement calculation (the Cap) may be reduced each year at the same rate; and
  5. each year the exemption will be computed by CCAD in the following manner:
    - (a) Current Property Value will be the current appraised value of all Eligible property and existing property within the reinvestment zone for the year in which the Abatement Agreement is executed.
    - (b) Base Year Value will be subtracted from the Current Property Value, the result to be called "Current Amount Eligible for Abatement," provided the result is greater than or equal to the value of Eligible property. In no case may this amount exceed the lower of the Cap (see h. 4.) or the Adjusted Cap (see f. 1.).
    - (c) Current Amount Eligible for Abatement is multiplied by the abatement percentage to determine the amount of exemption in each year, after adjustment is made to the Cap, if applicable.
- i. **Environmental and Worker Safety Qualification.** In determining whether to grant a tax abatement, consideration will be given to compliance with all state and federal laws designed to protect human health, welfare and the environment (environmental laws) that are applicable to all facilities in the state of Texas owned or operated by the owner of the facility or lessee, its parent, subsidiaries and every member of the joint venture or partnership, as applicable (applicants). Consideration may also be given to compliance with environmental and worker safety laws by applicants at other facilities within the United States.

### SECTION 3 APPLICATION

- a. **Timely application.** Any current or potential owner or lessee of taxable property in the County may request a tax abatement by filing a completed Application with the Cass County, County Clerk prior to any public expression of a siting decision or any

commitment (legal or financial) to the proposed project.

- b. **A complete application package** for consideration of a tax abatement shall consist of:
1. a completed County Application form;
  2. a non-refundable check in the amount of \$1,000 payable to Cass County;
  3. a completed narrative prepared in accordance with the template provided with the County Application and its instructions;
  4. an Investment Budget detailing components and costs of the real property improvements and fixed-in-place machinery and equipment improvements for which tax abatement is requested, including type, number, economic life, and eligibility for a tax exemption granted by the Texas Commission on Environmental Quality (TCEQ), if known;
  5. a map and legal description of the property;
  6. a time schedule for undertaking and completing the proposed improvements;
  7. a 10-year environmental and worker safety compliance history for all facilities located within the State of Texas and owned in whole or in part by applicants, as defined in the Environmental and Worker Safety Qualification;
  8. a copy of the evaluation of competing locations;
  9. information pertaining to the reasons that the requested tax abatement is necessary to ensure that the proposed project is built in the County (i.e., documentation supporting assertion that "but for" a tax abatement, the stated project could not be constructed in the County);
  10. copies of the immediately preceding four quarterly reports filed with TWC, documenting the current number of permanent full-time employees, and full-time contract provider's employees, as applicable, at the time the Application is submitted;
  11. financial and other information, as the County deems appropriate for evaluating the financial capacity and other factors of the applicant;
  12. statements prepared by the County Tax Assessor-Collector stating that none of the tax accounts have delinquencies within the County; and
  13. for a leased facility, the applicant shall provide, with the Application, the name and address of the lessor and a draft copy of the proposed lease, or option contract. In the event a lease or option contract has already been executed with the

owner of the site, the document must include a provision whereby abatement applicant may terminate such contract without penalty or loss of earnest money, in the event that the County does not grant a tax abatement.

- c. Upon receipt of a completed Application, the Cass County, County Judge (the County Judge) shall determine whether a project qualifies for a tax abatement under these guidelines and criteria. If County Judge determines that it qualifies, then County Judge shall submit a request to Commissioners Court to schedule a public hearing, request creation of a reinvestment zone, if necessary, and request approval of a tax abatement agreement in accordance with the Texas Property Tax Code.
- d. The County shall not establish a reinvestment zone or enter into a tax abatement agreement if it finds that an Application was received after a project commenced construction or installation of improvements. Property eligible for abatement includes only new improvements commencing after approval of an Agreement with the County.

#### **SECTION 4 PUBLIC HEARING AND APPROVAL**

- a. The Commissioners Court may not approve an order designating a reinvestment zone for the purpose of considering approval of a tax abatement Agreement until it has held a public hearing at which interested persons are entitled to speak and present evidence for, on, or against the designation. Notice of the hearing shall be clearly identified on the Commissioners Court agenda at least seven (7) days prior to the public hearing.
- b. At the public hearing, interested persons shall be entitled to speak and present written materials for, on, or against the approval of the proposed project or Agreement.
- c. Any variance to these guidelines must be approved by a vote of at least three-fourths of the Commissioners Court.
- d. In order to enter into a tax abatement agreement, Commissioners Court must find that the terms of the proposed agreement conform to these Guidelines and Criteria and that:
  - 1. there will be no substantial adverse effect on the provision of the jurisdictions' service or tax base; and
  - 2. the planned use of the property will not constitute a hazard to public safety, health or morals.

#### **SECTION 5 AGREEMENT**

After approval the County shall formally pass an order and execute an Agreement with the owner of the facility (and/or lessee, where applicable) as required which shall include:



- a. estimated value to be abated;
- b. percent of value to be abated each year as provided in Abatement Authorized;
- c. the commencement date and the termination date of abatement;
- d. the proposed use of the facility, nature of construction, time schedule, survey, property description, and improvement list;
- e. contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Abatement Authorized, Recapture, Administration, and Assignment, or other provisions that may be required for uniformity or by state law;
- f. amount of investment, increase in appraised value, and number of jobs involved, as provided in Abatement Authorized;
- g. a requirement that the applicant annually submit to CCAD and County Judge, a January employee count for the abated facility which corresponds to employee counts reported in the facility Employer's Quarterly Report to TWC for the quarter most recently ended at calendar year-end; a separate notarized letter certifying the number of jobs created or retained as a direct result of the abated improvements; the number of employees in other facilities located within the County; and compliance with the environmental and worker safety requirements in the Agreement for the preceding calendar year, as of January 1. Submission shall be used to determine abatement eligibility and shall be subject to audit if requested by the governing body. Failure to submit will result in the ineligibility to receive an abatement; and
- h. a requirement that the Owner will:
  - 1. obtain and maintain all required permits and other authorizations from the United States Environmental Protection Agency and the TCEQ for the construction and operation of its facility and for the storage, transport and disposal of solid waste; and
  - 2. seek a permit from the TCEQ for all grandfathered units on the site of the abated facility by filing with the TCEQ, within three years of receiving the abatement, a technically complete application for such a permit.

Such Agreement normally shall be executed within 60 days after the applicant has forwarded all necessary information and documentation to the County.

## **SECTION 6 RECAPTURE**

- a. If the facility is completed and begins producing product or service, but subsequently

discontinues producing product or service for any reason for a period of 90 days while the Agreement is active, or 180 days in the event of a natural disaster, 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 County within 60 days from the date of termination. The Owner shall notify the County in writing at the address stated in the Agreement within 10 days from any discontinuation, stating the reason for the discontinuation and the projected length of the discontinuation. If the County determines that such requirement has not been complied with, the Agreement may be terminated immediately and all taxes previously abated by virtue of the Agreement may be recaptured and paid within 60 days of the termination.

- b. If the Owner is in default according to the terms and conditions of its Agreement, the Owner shall notify the County in writing at the address stated in the Agreement within 10 days from the default, and cure such default within 60 days from the date of the default (Cure Period). If the County determines that such requirement has not been complied with, the Agreement may be terminated immediately and all taxes previously abated by virtue of the Agreement may be recaptured, together with interest at 6% per annum calculated from the effective date of the Agreement and paid within 60 days of the termination. If the County does not receive full payment within said 60 days, a penalty may be added, equal to 15% of the total amount abated.
- c. If the Owner allows its ad valorem taxes owed the County to become delinquent and fails to timely and properly follow the legal procedures for its protest and/or contest, the Agreement may be terminated, and all taxes previously abated by virtue of the Agreement may be recaptured and paid within 60 days of the termination, and penalties and interest may be assessed as set out in herein.

## **SECTION 7 ADMINISTRATION**

- a. CCAD annually shall determine an assessment of the real and personal property comprising the reinvestment zone. Each year, the Owner receiving a tax abatement shall furnish CCAD and County Judge with such information as may be necessary for the abatement. After value has been established, CCAD shall notify the affected taxing jurisdictions of the certified appraised value.
- b. The Agreement shall stipulate that employees and/or designated representatives of the County will have access to the reinvestment zone during the term of the abatement to inspect the facility to determine if the terms and conditions of the Agreement are being met. All inspections will be made only after giving 24 hours prior notice and will only be conducted in such 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 Owner and in accordance with the facility's safety standards.
- c. Upon completion of construction, CCAD and/or County Judge annually shall evaluate

each facility receiving an abatement to ensure compliance with its Agreement and report violations to the County Attorney, Commissioners Court, and affected taxing jurisdictions.

**SECTION 8  
ASSIGNMENT**

A tax abatement Agreement may be assigned to a new owner or lessee of a facility with the written consent of the Commissioners Court, which consent shall not be unreasonably withheld. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the Agreement. Any assignment shall be to an owner that continues the same improvements or repairs to the property except to the extent such improvements or repairs have been completed, and continues the same use of the facility as stated in the original Agreement with the Owner. No assignment shall be approved if the assignor or the assignee is indebted to the County for past due ad valorem taxes or other obligations.


**SECTION 9  
SUNSET PROVISION**

These Guidelines and Criteria are effective the 13 day of October 2020, and will remain in effect for a period of two (2) years thereafter at which time all tax abatement contracts 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 will be modified, renewed, or eliminated.


Adopted by Cass County Commissioners Court on October 13, 2020.


  
BECKY WILBANKS  
COUNTY JUDGE

  
BRETT FITTS  
COMMISSIONER, PRECINCT 1

  
PAUL COTHREN  
COMMISSIONER, PRECINCT 3

  
DANNY JOE SHADDIX  
COMMISSIONER, PRECINCT 2

  
DARRELL GODWIN  
COMMISSIONER, PRECINCT 4

Attest:  
  
AMY L. VARNELL  
CASS COUNTY CLERK

