

RESOLUTION

Adopting the Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones

Designated Within the Boundaries of the County of Fisher, Texas

On this the 26th day of July, 2017, the Commissioners Court of Fisher County, Texas convened in a regular session with the following members thereof present:

KEN HOLT, County Judge;

GORDON PIPPIN, Commissioner, Precinct 1;

BILLY HENDERSON, Commissioner, Precinct 2;

PRESTON MARTIN, Commissioner, Precinct 3;

SCOTT FEAGAN, Commissioner, Precinct 4;

When the following proceedings, among others, were had, to-wit:

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

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

WHEREAS, the County of Fisher must compete with other localities across the nation currently offering tax inducements to attract new businesses and industries and modernization projects; and

WHEREAS, any tax incentives offered in the County of Fisher would reduce needed tax revenue unless strictly limited in application to those new and existing businesses and industries that bring new wealth to the community; and

WHEREAS, the abatement of property taxes, when offered to attract new jobs created by additional industrial and business investments will enhance the local economy and provide a base to encourage improved diversification in the County of Fisher; and

WHEREAS, V.T.C.A., Tax Code § 312.002 requires the establishment of Guidelines and Criteria governing tax abatement agreements by the County before entering into a tax abatement agreement or designation of an area as a reinvestment zone and adoption of a resolution stating that the County elects to become eligible to participate in tax abatement; and

WHEREAS, to assure a common, coordinated effort to promote the economic development of the County of Fisher, Guidelines and Criteria should be in form and content acceptable to and in concert with the Guidelines and Criteria of governing bodies of every other taxing unit exercising ad valorem taxing authority within the County of Fisher.

Now therefore, the following Guidelines and Criteria for granting tax abatement in reinvestment zones designated within the County are hereby promulgated.

**GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS
IN REINVESTMENT ZONES**

FISHER COUNTY, TEXAS

I. Purpose

The County of Fisher is committed to the promotion of quality development in all areas of the county, as well as improving the quality of life for its citizens. In order to help meet these goals, will consider recommending tax phase-in, which includes the designation of reinvestment zones, application for tax abatements and entering into tax abatement agreements, to stimulate growth and development. It is the intent of Fisher County that such incentives will be provided in accord with the procedures and criteria outlined in this document. However, nothing in these Guidelines and Criteria shall imply or suggest to be construed to imply or suggest that tax entities are under any obligation to provide any incentives to any applicant. All such applicants for tax phase-in incentives shall be considered on an individual basis for both the qualification for abatement and the amount of any abatement. This policy is effective as of July 26, 2017, and shall at all times be kept current with regard to the needs of Fisher County and reflective of the official views of the County Commissioners Court and shall be reviewed every two years.

II. Definitions

The attached Glossary is a list of words with their definitions that are found in this document, and the Glossary is incorporated herein by reference.

III. Guidelines and Criteria

In order to be eligible for designation as a reinvestment zone and receive tax abatement, the planned improvement as a minimum must meet the following:

(A) Be an Authorized Facility. A facility may be eligible for abatement if it is a(n):

- Aquaculture/Agriculture Facility,
- Distribution Center Facility,
- Manufacturing Facility,
- Office Building,
- Regional Entertainment/Tourism Facility,
- Research Facility,
- Regional Service Facility,
- Wind Energy Facility, or
- Other Basic Industry.

- (B) Must be reasonably expected to have an increase in positive net economic benefit to Fisher County of at least \$1,000,000.00 over the life of the abatement, computed to include (but not limited to) new sustaining payroll and/or capital improvement. The creation of (number and type) new jobs will also factor into the decision to grant an abatement.

In addition to the criteria set forth above, the Fisher County Commissioners Court reserves the right to negotiate a tax abatement agreement in order to compete favorable with other communities.

In consideration of the request for designation as a reinvestment zone and to receive tax abatement, the following factors will also be considered:

- (1) Jobs. The projected new jobs created including the number of jobs, the retention of existing jobs, the type of jobs, the average payroll, the total payroll and the number of local persons hired.
- (2) Fiscal Impact. The amount of real and personal property value that will be added to the tax roll for both eligible and ineligible property, the amount of direct sales that will be generated, the infrastructure improvements by the City/County that will be required by the facility, the infrastructure improvements made by the facility, and the compatibility of the project with the City's/County's master plan for development.
- (3) Community Impact. The pollution, if any, as well as other negative environmental impacts affecting the health and safety of the community that will be created by the project:
 - The revitalization of a depressed area;
 - The business opportunities of existing local vendors;
 - The alternative development possibilities for proposed site;
 - The impact on other taxing entities; and/or
 - Whether the improvement is expected to solely or primarily have the effect of transferring employment from one part of Fisher County to another.

IV. Abatement Authorized

- (A) Authorized Date. A facility shall be eligible for tax abatement if it has applied for such abatement prior to the commencement of construction; provided, that such facility meets the criteria granting tax abatement in reinvestment zones created in Fisher County pursuant to these Guidelines and Criteria for a period not to exceed ten years.
- (B) Creation of New Value. Abatement may only be granted for the additional value of eligible property improvements made subsequent to the filing of an

application for tax abatement and specified in the abatement agreement between the County and/or City and the property owner or lessee (and lessor if required pursuant to IV(E), subject to such limitations as the Guidelines and Criteria may require.

(C) **New and Existing Facilities.** Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion. If the modernization project includes facility replacement, the abated value shall be the value of the new unit(s) less the value of the old unit(s).

(D) **Eligibly Property.** Abatement may be extended to the value of the following: new expanded or modernized building and structures, fixed machinery and equipment, site improvements plus that office space and related fixed improvements necessary to the operation and administration of the facility, and all other real and tangible personal property permitted by Chapter 312 of the Texas Tax Code.

(E) **Ineligible Property.** The following types of property shall be fully taxable and ineligible for abatement:

Land,
Animals,
Inventories,
Supplies,
Tools,
Furnishings and other forms of moveable property,
Vehicles,
Vessels,
Aircraft,
Housing or residential property,
Hotels/motels,
Fauna,
Flora,
Retail facilities,
Deferred maintenance investments, property to be rented or leased except as provided in Part IV (f), any improvements including those to produce, store or distribute natural gas or fluids that are not integral to the operation of the facility, property owned or used by the State of Texas or its political subdivision of the State of Texas.

(F) **Owned/Leased Facilities.** If a leased facility is granted an abatement, the agreement shall be executed with the lessor and lessee.

(G) Value and Term of Abatement. Abatement shall be granted effective with the January 1 valuation date immediately following the date of execution of the agreement. The value of the new eligible properties shall be abated according to the approved agreement between applicant and the governing body. The table in the attached Exhibit "A", incorporated herein by reference, shall be the maximum abatement available, the actual amount of abatement granted is in the sole discretion of the Fisher County Commissioner's Court, shall not exceed said maximum.

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

(H) Construction in Progress. If a qualifying facility has not been placed in service as of January 1 following execution of the abatement agreement, the taxpayer may apply for a one year extension of the term of abatement. Said extension must be applied for prior to the end of the calendar year which the abatement agreement is executed.

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

- (1) The value of ineligible property as provided in Part IV(e) shall be fully taxable.
- (2) The base year value of existing eligible property as determined each year shall be fully taxable.
- (3) The additional value of new eligible property shall be taxable in the manner described in Part IV(g).

V. Application for Tax Abatement

(A) Any present or potential owner or lessee of taxable property in Fisher County may request the creation of a reinvestment zone and tax abatement by filing written request either with Fisher County or applicable taxing entity.

(B) The application shall consist of a completed application form accompanied by:

- (1) A general description of the proposed use and the general nature and extent of the modernization, expansion or new improvements to be undertaken.
- (2) A descriptive list of the improvements which will be a part of the facility;
- (3) A map and property description or a site plan;
- (4) A time schedule for undertaking and completing the planned improvements;
- (5) In the case of modernizing existing facilities, 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; and,

- (6) The application form may require such financial and other information as deemed appropriate for evaluating the financial capacity and other factors of the applicant.
 - (7) The completed Application must be accompanied by the payment of a non-refundable application fee of one thousand and no/100 dollars (\$1,000.00) for administrative costs associated with the processing of the tax abatement request. A check in payment of the administrative fee shall be made payable to Fisher County.
- (C) Upon receipt of a completed application, the jurisdiction receiving such application shall notify in writing the presiding officer of the legislative body of each affected jurisdiction. Before acting upon the application, the jurisdiction receiving such application shall through public hearings afford the applicant and the designated representative of any affected jurisdiction the opportunity to show cause why the abatement should or should not be granted. Notice of the public hearing shall be clearly identified on an agenda of the legislative body of the jurisdiction receiving such application to be posted seven (7) days prior to the hearing.
- (D) The jurisdiction receiving the application shall approve or disapprove the application for tax abatement within forty-five (45) days after receipt of the application. The presiding officer of the legislative body of the jurisdiction receiving such application shall notify the applicant of the approval or disapproval promptly thereafter.
- (E) A request for reinvestment zone for the purpose of abatement shall not be granted if the jurisdiction receiving the application finds that the request was filed after the commencement of construction, alteration, or installation of improvements related to a proposed modernization expansion or new facility.
- (F) Variance. Request for variance from the provisions of Subsections (a) through (e) of Part V may be made in written form to the presiding officer of the jurisdiction receiving the application. Such request shall include a complete description of the circumstances explaining why the applicant should be granted a variance. Approval of a request for variance requires a three-fourths (3/4) vote of the governing body of the affected jurisdiction as provided in state statutes.

VI. Public Hearing

- (A) Should any affected jurisdiction be able to show cause in the public hearing why the granting of abatement will have a substantial adverse effect on its bonds, tax revenue, service incapacity or the provision of service, that showing shall be reason for the jurisdiction receiving the application to deny the granting of ad valorem tax abatement.

(B) Neither a reinvestment zone nor an abatement agreement shall be authorized if its determined that:

- (1) There would be a substantial adverse affect on the provision of a government service or tax base of an affected jurisdiction.
- (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) Planned or potential use of the property violates other governmental codes or laws.

VII. Agreement

(A) After approval of the tax abatement application, each affected jurisdiction shall formally pass a resolution and execute an agreement with the owner and/or lessee of the facility which shall include:

- (1) Estimated value to be abated and the base year value.
- (2) Percent of value to be abated each year as provided in Part IV(G) of these Guidelines and Criteria.
- (3) The commencement date and the termination date of abatement.
- (4) The proposed use of the facility, nature of construction, time schedule for the undertaking and completing the planned improvements, map, property description and improvements list as provided in Part V of these Guidelines and Criteria.
- (5) Contractual obligations in the event of default, violation 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.
- (6) Amount of investment and/or average number of jobs involved for the period of abatement.
- (7) Said contract shall meet all of the requirements of the Texas Tax Code Sed. 312 et seq
- (8) Owner or its construction contractor, if any, shall designate a coordinator of local services who will act as a liaison between any individuals, businesses, and contractors residing or doing business in Fisher County who are interested in obtaining information about providing goods or services related to the construction of the project. Additionally, owner or its construction contractor, if any, shall advertise in local newspapers in Fisher County for local contractors to perform work on the construction of the project.

(B) Such agreement shall be executed within thirty (30) days after the later of the date applicant has forwarded all necessary information to the jurisdiction receiving the application or the date of the approval of the application.

- (C) Each affected jurisdiction shall make its own determination of abatement which shall not bind any other affected jurisdiction.

VIII. Recapture

- (A) In the event that the facility is completed and begins producing product or service, but subsequently discontinues producing product or service for any reason excepting fire, explosion, or other casualty or accident or natural disaster for a period of more than one (1) year during the abatement period, then the agreement is terminated and so shall the abatement of taxes for the calendar year during which the agreement is terminated. The taxes otherwise abated for that calendar year shall be paid to each jurisdiction within the County within sixty (60) days from the date of termination.
- (B) Should the jurisdiction establishing a reinvestment zone and signing a tax abatement agreement determine that a company or individual is in default according to the terms and conditions of its agreement, the jurisdiction shall notify the company or individual in writing at the address stated in the agreement, and if such is not cured within sixty (60) days from the date of such notice ("Cure Period"), then the agreement shall be terminated. Further, it will be a default under a tax abatement granted pursuant to these Guidelines and Criteria if the owner of the eligible property subject to the abatement is delinquent in paying any disputed taxes to any taxing authority in Fisher County, Texas.
- (C) In the event that the company or individual:
 - (1) Allows its ad valorem taxes owed the County or an affected jurisdiction 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 same during the Cure Period; the agreement shall be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the termination.

IX. Administration

- (A) The Chief Appraiser of the Fisher County Appraisal District shall annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year the company or individual receiving abatement shall furnish assessor with such information as may be necessary for abatement, including the number of new or retained employees associated with the facility. Once value has been established, the Chief Appraiser shall notify the affected jurisdictions which levy taxes on the amount of the assessment.

- (B) The agreement shall stipulate that employees and/or designated representatives of the jurisdiction establishing the reinvestment zone and entering into a tax abatement agreement 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 the giving of twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the facility. All County inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.
- (C) Upon completion of construction the jurisdiction establishing the reinvestment zone and entering into a tax abatement agreement shall annually evaluate each facility and report possible violations of the contract and/or agreement to each affected jurisdiction.
- (D) All proprietary information acquired by any affected jurisdiction for the purposes of monitoring compliance with the terms and conditions of an abatement agreement shall be considered confidential.

X. Assignment

- (A) 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 each affected jurisdiction, subject to the financial capacity of the assignee and provided that all conditions and obligations in the abatement agreement are guaranteed by the execution of a new contractual agreement with each affected jurisdiction.
- (B) The contractual agreement with the new owner or lessee shall not exceed the termination date of the abatement agreement with the original owner and/or lessee.
- (C) No assignment or transfer shall be approved if the parties to the existing agreement, the new owner or new lessee are liable to any affected jurisdiction for outstanding taxes or other obligations.
- (D) Approval shall not be unreasonably withheld.

XI. Sunset Provision

- (A) These Guidelines and Criteria are effective upon the date of the adoption and will remain in force for two (2) years, at which time all reinvestment zones and tax abatement contracts created pursuant hereto will be reviewed by each affected jurisdiction to determine whether the goals have been achieved. Based

on that review, the Guidelines and Criteria may be modified, renewed or eliminated provided that such actions shall not affect existing contracts.

- (B) These Guidelines and Criteria do not amend any existing agreement contracts or agreements with the owners of real property in areas deserving of specific attention as agreed by the affected jurisdiction.
- (C) Prior to the date for review, as defined above, these Guidelines and Criteria may be modified by a two-thirds (2/3) vote of the affected taxing authorities, as provided for under the laws of the State of Texas.

XII. Severability and Limitations


- (A) In the event that any section, clause, sentence, paragraph or any part of these Guidelines and Criteria shall for any reason, be adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, impair, or invalidate the remainder of these Guidelines and Criteria.
- (B) Property that is in a reinvestment zone that is owned or leased by the following cannot benefit from a tax abatement:
 - (1) A member of the governing body of a municipality or by a member of a planning board or commission of the municipality; or
 - (2) A member of the commissioners court or commission of the County is excluded from property tax abatement.
- (C) If these Guidelines and Criteria have omitted any mandatory requirements of the applicable tax abatement laws of the State of Texas, then such requirements are hereby incorporated as a part of this Guideline Statement.

GLOSSARY

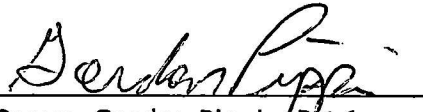
- (a) "Abatement" means the full or partial exemption from ad valorem taxes of certain real property in a reinvestment zone designated by the County or a City for economic development purposes.
- (b) "Aquaculture/Agriculture Facility" means buildings, structures and major earth structure improvements, including fixed machinery and equipment, the primary purpose of which is of food and/or fiber products in commercially marketable quantities.
- (c) "Affected Jurisdiction" means Fisher County and any municipality, or school district, the majority of which is located in Fisher County that levies ad valorem taxes upon and/or provides services to property located within the proposed or existing reinvestment zone designated by Fisher County or any municipality.
- (d) "Agreement" means a contractual agreement between property owner and/or lessee and the affected jurisdiction for the purpose of tax abatement.
- (e) "Base Year Value" means the assessed value of eligible property on January 1 preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1 but before the filing of an application for tax abatement.
- (f) "Deferred Maintenance" means improvements necessary for continued operations which do not improve productivity or alter the process technology.
- (g) "Distribution Center Facility" means building and structures, including machinery and equipment, used or to be primarily to receive, store, service or distribute goods or materials owned by the facility, from which a majority of revenues generated by activity at the facility are derived from outside of Fisher County.
- (h) "Expansion" means the addition of buildings, structures, machinery or 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) "Manufacturing Facility" means buildings and structures, including 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.
- (k) "Modernization" means the upgrading and or replacement of existing facilities which increases the productive input or output, updates the technology or substantially lowers

the unit cost of the operation. 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 or repairing.


- (l) "New Facility" means improvements to real estate previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- (m) "New Job(s)" means a newly created employment position on a full-time permanent basis. Two or more part-time permanent employees totaling an average of not less than 40 hours per week may be considered as on full-time permanent employee.
- (n) "Office Building" means a new office building.
- (o) "Other Basic Industry" means buildings and structures, including fixed machinery and equipment not elsewhere described, used or to be used for the production of products or services which serve a market primarily outside County and results in the creation of new permanent jobs and new wealth in the Count.
- (p) "Regional Entertainment/Tourism Facility" means buildings and structures, including fixed machinery and equipment, used or to be used to provide entertainment and/or tourism related services, from which a majority of revenues generated by activity at the facility are derived from outside Fisher County.
- (q) "Research Facility" means buildings and structures, including fixed machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.
- (r) "Regional Service Facility" means buildings and structures, including fixed machinery and equipment, used or to be used to provide a service from which a majority of revenues generated by activity at the facility are derived from outside Fisher County.
- (s) "Wind Energy Facility" means buildings and structures, including but not limited to wind energy generating turbines, electric transmission lines, electric power substations, electrical gathering equipment, communications systems and roads, fixed machinery and equipment, used or to be used to provide electrical energy.



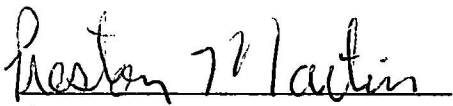
Judge Ken Holt



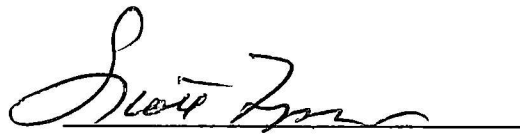
Comm. Gordon Pippin, Pct 1



Comm. Billy Henderson, Pct 2



Comm. Preston Martin, Pct 3



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