

**POLICY, GUIDELINES AND CRITERIA FOR GRANTING TAX
ABATEMENT IN ENTERPRISE OR REINVESTMENT ZONE
WALKER COUNTY, TEXAS**

I. INTRODUCTION

WHEREAS, the attraction of long term investment and the creation of new jobs in Walker County (the “County”) would enhance the economic base of the County; and

WHEREAS, the County has certain governmental powers that enable it to take affirmative and effective action to stimulate economic growth; and

WHEREAS, the County has adopted an Economic Development Policy in furtherance of its goal to attract long term investment and promote economic growth and development; and

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

WHEREAS, tax incentives offered must be strictly limited in application to those new or existing industries that bring new wealth into the community in order to avoid reducing the needed tax revenues of the County; and

WHEREAS, the Property Redevelopment and Tax Abatement Act (the “Act”) Chapter 312 of the Texas Tax Code authorizes the County to provide property tax abatement for limited periods of time as an inducement for the development or redevelopment of a property; and

WHEREAS, the County intends to make available the use of tax abatements to industrial and commercial facilities, either new or existing, which intend to make certain capital expenditures for the purpose of creating or expanding their business in order to expand the local tax base and/or create new jobs; and

WHEREAS, the Act requires eligible *taxing jurisdictions* to establish guidelines and criteria as to eligibility for tax abatement agreements prior to granting any future tax abatement, said guidelines to be unchanged for a two (2) year period unless amended or repealed by a three-fourths (3/4) vote of the County’s Commissioners Court; and

WHEREAS, the County hereby establishes this Policy, Guidelines and Criteria for Granting Tax Abatement in Enterprise or Reinvestment Zone (the “Policy”); and

WHEREAS, said Policy states guidelines and criteria that the County will utilize in attempts to promote positive economic development, but should not be read to imply or suggest that the County is under an obligation to afford these opportunities to any applicant; and

WHEREAS, the County may not enter into a tax abatement agreement unless it finds that the terms of the agreement and the property subject to the agreement meet the applicable guidelines and criteria contained herein and adopted by the County under the Act; and

WHEREAS, the adoption of said Policy does not: limit the discretion of the County to decide whether to enter into a specific tax abatement agreement; limit the discretion of the County to delegate to its employees the authority to determine whether or not the County should consider a particular application or request for tax abatement; or create any property, contract, or other legal right in any person to have the County consider or grant a specific application or request for tax abatement; and

WHEREAS, said Policy is designed to allow maximum flexibility in addressing the unique concerns of each applicant while enabling the County to respond to the changing needs of the community.

NOW, THEREFORE, BE IT RESOLVED, that Walker County, Texas, acting by and through its duly elected Commissioners Court, hereby adopts these guidelines and criteria for granting abatement in Walker County, Texas.

II. DEFINITIONS

The definitions set forth in the Texas Tax Code, as amended, shall apply to Tax Abatement Agreements and Reinvestment Zones.

“Abatement” means the full or partial exemption from ad valorem taxes of the Improvements on certain property in a zone designated for economic development purposes pursuant to the Act.

“Added Value” means the increase in the assessed value of the Eligible Property as a result of “expansion” or “modernization” of an existing facility or construction of a “new facility” including environmental improvements required by the Environmental Protection Agency or Texas Commission on Environmental Quality. It does not mean or include “deferred maintenance”.

“Agreement,” “Abatement Agreement,” and “Tax Abatement Agreement” as used herein, shall mean county tax abatement agreement as described and required by Chapter 312 of the Texas Tax Code.

“Base Year Value” means the assessed value of the eligible property as certified by the Walker County Appraisal District on January 1 preceding the execution of the Agreement.

“Commercial Office Facility” means office buildings rented to non-retail users. These buildings are designed as garden, mid-rise or high-rise structures.

“Commissioners Court” mean the Commissioners Court of Walker County.

“County” means Walker County, Texas.

“Deferred Maintenance” means improvements necessary for continued operations, which do not improve productivity or alter process technology.

“Distribution Facility” means buildings and structures including fixed machinery, equipment, and personal property used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility.

“Entertainment/Tourism Facility” means building and structures including fixed machinery, equipment, and personal property used or to be used primarily to provide entertainment and/or tourism related services.

“Expansion” means the addition of buildings, structure, fixed machinery, or equipment for purposes of increasing production capacity including environmental improvements required by the Environmental Protection Agency or Texas Commission on Environmental Quality.

“Facility” means property improvements completed or in the process of construction which together comprise an integral whole.

“Full Time Equivalent” (FTE) means the total number of Full-time Employees added to the number of Part-Time Employee hours paid divided by the standard forty (40) hours per week for Full-Time Employment.

“Improvements” means the new or expanded buildings or portions thereof and other improvements used for commercial or industrial purposes on the property.

“Ineligible Property” means 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; retail facilities deferred maintenance; investments; property to be rented or leased.

“Job” as used herein shall be a paid, permanent position of employment, in which the employee works on average 40 hours per every seven day work period as defined by the employer, excluding employee vacations and holidays as determined by the employer.

“Manufacturing Facility” means building, structures, fixed machinery, equipment and personal property, the primary purpose of which is or will be the manufacturer of tangible goods or materials or the processing of such goods or materials by physical or chemical change.

“Modernization” means the upgrading of existing facilities, which increase the productive input or output, update the technology or substantially lower the unit cost of the operation; modernization may result from the construction, alteration, or installation of buildings, structures, fixed machinery, equipment or personal property. It shall not be for the purpose of reconditioning, refurbishing or repairing including environmental improvements required by the Environmental Protection Agency or Texas Commission on Environmental Quality.

“New Facility” means a property previously undeveloped that is placed in service by means other than or in conjunction with expansions or modernization.

“New Machinery and Equipment and/or Personal Property” means tangible machinery, equipment, or personal property that is securely fastened and stationary within a building or structure or permanently resides in the County.

“Other Basic Industry” means buildings and structures including fixed machinery, equipment, and personal property not elsewhere described, used or to be used for the production of products or services.

“Office Building” means a new office building to be occupied by one owner or one tenant, providing further that said office building and owner or tenant meet the other criteria set forth herein.

“Part-Time Employees” means employees who work less than the standard forty (40) hours per week. Excluded are full-time temporary or seasonal employees who are working the number of hours that represent full-time employment. Included are part-time temporary or seasonal employees.

“Personal Property” means tangible personal property such as machinery, equipment, or personal property that is securely fastened and stationary within a building or structure or permanently resides in the County. This definition excludes personal property located on real property prior to the period covered by the abatement with the County and inventory or supplies.

“Productive Life” means the number of years a property improvement is expected to be in service in a facility. Provided, however, that in no circumstances shall the number of years exceed the depreciation allowance specified in the United States Internal Revenue Code.

“Project” means any property improvement including expansion, modernizations, and new facilities, but excluding any deferred maintenance.

“Reinvestment Zone” means the geographical specific location on which the proposed improvements will be constructed and abated which has been designated a reinvestment zone for tax abatement purposes and which is located within the taxing jurisdiction of the County.

“Research Facility” means buildings and structures including fixed machinery, equipment, and personal property used or to be used primarily for research and experimentation to improve or develop the production process.

“Service Facility” means buildings and structures including fixed machinery, equipment and personal property used or to be used primarily to provide a service.

III. WALKER COUNTY ECONOMIC DEVELOPMENT GOALS

The County will consider applications for tax abatements that support the following economic development goals:

Protect and enhance the great quality of life for Walker County citizens by engaging in economic development activities that:

- Promote and support the overall sound fiscal condition of the County by increasing the tax base and considering the impact on cost of service thereby resulting in increased revenue to the County in the foreseeable future;
- Encourage the development of industrial and housing uses;
- Create and retain good paying jobs (in excess of \$40K annually) in Walker County;
- Contribute to the ability of the County to improve public infrastructure;
- Contribute to the ability of the County to improve its services and to attract retain staff with competitive pay and benefits;
- Create economic opportunities and life style amenities valued by the citizens of Walker County;
or
- Diversify the economy of Walker County, while protecting the environment and natural resources

IV. TAX ABATEMENT CRITERIA AND CONSIDERATIONS

Applications for tax abatements must meet the following criteria and considerations:

A. Abatement Criteria and Considerations

1. All applications for abatements must meet *all of the following criteria and considerations* before being considered for abatement of any or all of the increased or added value of the property:
 - a. The project expands the local tax base;
 - b. The project meets the purposes of the County's Economic Development Policy and supports the goals contained therein;
 - c. The project will invest a minimum capital costs of \$250,000;
 - d. The project will directly create or prevent the loss of 5 permanent full-time employment;
 - e. The project will not have a substantial adverse effect on the provision of government service, tax base, or budget if the proposal amount was granted;
 - f. The planned or potential use of the property will not constitute a hazard to public safety, health or morals;
 - g. The planned or potential use of the property will not create any adverse impacts on adjacent properties; and

- h. The project must remain in good standing with all governmental and environmental regulations.

2. Schedule of Abatement

Project Costs	Minimum Jobs	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year	6 th Year	7 th Year
\$250,000 - \$500,000	5 or more	80%	60%	40%	20%	0%	0%	0%
\$250,001- \$1,000,000	8 or more	100%	80%	60%	40%	20%	0%	0%
\$1,000,001- \$3,000,000	12 or more	100%	100%	80%	60%	40%	20%	0%
\$3,000,001- \$10,000,000	15 or more	100%	100%	100%	80%	60%	40%	20%

Any project with costs greater than \$10,000,000 or which creates more than 50 new jobs will be individually negotiated. Only projects with costs greater than \$10,000,000 will be considered for 10 year abatements. The County retains the right to deviate from this schedule. All projects will be considered on a case-by-case basis.

3. Requests for abatements will not be considered if prior to the submission of an application, the project is already substantially underway or completed. A project will be considered to be substantially underway if actions such as, but not limited to, the following have occurred:
 - a. The demolition, site preparation, or the installation of infrastructure has begun;
 - b. A building permit has been issued for construction not associated with *mitigating an environmental hazard*;
 - c. Construction (including renovations or tenant finish-out) has begun; or
 - d. Equipment, inventory, or employees have been relocated to the new or existing facility.
4. Execution of a lease, the mitigation of environmental problems, the purchase of land, the completion of an environmental assessment, or the preparation of architectural and engineering plans do not constitute a project being substantially underway.
5. The project must be shown not to solely or primarily have the effect of transferring employment from one part of the County to another.
6. The Commissioners Court has discretion to determine under what circumstances it will consider an applicant with which the County or any other jurisdiction is currently involved or has been involved within the past thirty-six (36) months in litigation, a pending claim, or unsatisfactory contractual performance, or to any applicant indebted to the County or any other jurisdiction for ad valorem taxes or other obligations.

7. The Commissioners Court has discretion to give any weight it feels appropriate to the granting or not granting of a tax abatement application based upon its consideration of whether or not the potential beneficiary of the tax abatement would compete with an existing business.

In general, the Commissioners Court takes the position it is not fair for an existing local tax paying business operating in the same or similar manner as the type of product or products, scope of production and/or services, and the size of the investment made to have to compete with a new business competitor whose taxes would be abated.

V. GUIDELINES FOR USE OF TAX ABATEMENTS

- A. **Economic Development Policy.** This Policy is intended to be used in conjunction with the County's Economic Development Policy.
- B. **Authorized Facility.** The types of facilities that may be eligible for abatement include but are not limited to: Distribution Center Facility, Entertainment Facility, Office Building, Manufacturing Facility, Service Facility, Research Facility, Research and Development Facility, or Other Basic Facility.
- C. **Reinvestment or Enterprise Zone Created.** Prior to the granting tax abatement, the County, by Order, shall designate an area as a reinvestment or enterprise zone in accordance with applicable State law unless such zone has previously been established by a municipality within the County.
- D. **Term of Abatement.** The Act limits the period of abatement to ten (10) years. Generally, the County will seek to limit the period of abatement to seven (7) years.
- E. **Project Costs.** Only costs of buildings, structures, fixed machinery and equipment, site improvements plus office space and related fixed improvements necessary to the operation and administration of the facility will be considered "project costs" for purposes of determining the amount of tax abatement for which an applicant is eligible. The costs of land, inventories, supplies, tools, furnishings and other forms of movable personal property acquired by the applicant shall not be included as "project costs."
- F. **Assessed Value.** Tax abatement shall only be made on the assessed value of eligible property.
- 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 Abatement Agreement.
- H. **Percentage of Taxes Abated.** The percentage of taxes abated will be considered on a sliding scale basis depending upon the overall benefits of the project to the County.
- I. **Added Value.** Abatement may only be granted for additional or added value of eligible property listed in an Abatement Agreement between the property owner and/or the lessee.

- J. **Performance Standards.** No abatement shall be given in any year in which the facility fails to meet the value, amount of investment, or employment minimums set forth in Section IV, "Criteria and Considerations."
- K. **Leased Facilities.** If a leased facility is granted a tax abatement, then the Abatement Agreement shall be executed with both the owner and the lessee.
- L. **Commissioners Court Discretion.** The Commissioners Court reserves the right to deviate from this Policy under certain extraordinary circumstances linked to demonstrative benefits to the County.
- M. **Case-by-Case Consideration.** It is the intent of the County to offer economic development incentives on a case-by-case basis. The customized design of a total incentive package is intended to allow maximum flexibility in addressing unique concerns of each applicant while enabling the County to respond to the changing needs of the community.
- N. **Additional Requirements.** Applicant entities which are granted tax abatements must comply with the following requirements:
 - 1. Development Plans must be submitted to Walker County Planning and Development Department as part of the application process;
 - 2. The applicant entity shall not be eligible for water and/or wastewater refund contract; and
 - 3. The applicant entity must sign an Abatement Agreement and conform to its terms and provision upon Commissioner Court approval and execution.

VI. APPLICATIONS FOR REINVESTMENT ZONES AND TAX ABATEMENT

All requests for reinvestment zones and tax abatement in the County shall be made by filing a *written application with the County Judge and must contain responses to all application requirements and criteria contained in this document. All applications must include the following:*

- A. General Application Information
 - 1. Applicant contact information
 - 2. Applicant Background
 - a. Company overview including legal status
 - b. Previous similar project experience, location, cost, etc.
 - c. Litigation history
 - d. Evidence of no delinquent taxes or fees due in the County or any other jurisdiction where the applicant owns property, if applicable
 - e. Most recent *financial statements and/or banking references(confidential)*
 - f. References
 - 3. Project Background
 - a. Description of proposed project
 - b. Description of county goals, needs, or values furthered by the project
 - c. Description of how project meets criteria for tax abatement
 - d. Business Plan and/or pro-forma (confidential)

- e. Third-Party market study or opinion for projects new to the County
- f. Proposed project schedule
- g. Long term project ownership plan

4. Other Participants Background

- a. List of other governmental entities from which incentives have or will be requested
- b. Description of the terms and conditions of that participation
- c. Analysis of the County's investment and retained revenues in relation to the other entities

B. Additional Information

- 1. List all taxing jurisdictions overlapping the proposed facility
- 2. Type of business activity (manufacturing, distribution, etc.)
- 3. Current value of land and existing improvements, if any
- 4. Type and value of proposed improvements subject to abatement (buildings, tangible personal)
- 5. Type and value of proposed improvements not subject to abatement (personal property)
- 6. Productive life of proposed improvements
- 7. Number and type of existing jobs to be retained by proposed improvements
- 8. Number and type of type of net new jobs to be created by proposed improvements
- 9. Number of new jobs that will be filled by persons residing or expected to reside within County.
- 10. Amount of local payroll to be created
- 11. A plat showing the precise location of the property and all improvements thereon, all roadways within 500 feet of the site and all existing zoning and land uses within 500 feet of the site (a complete legal description shall be provided if the property is described by metes and bounds).
- 12. Any additional information pertinent or relevant to the proposed project.

C. Application Review Process

- 1. Prior to the submission of any proposal for economic development assistance, the applicant must schedule an informal pre-application meeting with the County Judge and the County Commissioner for the precinct within which the proposed project will be located. The County Judge and Commissioner may choose to involve other County staff members as needed. For projects within the corporate limits or ETJ of a municipality, the applicant should meet with that City prior to meeting with the County and a representative from that City is encouraged to attend the meeting with the County.
- 2. Completed applications should be submitted to the County Judge.
- 3. The County Judge will refer the application to the appointed Economic Development Application Review Committee and County Auditor for review.
- 4. The Economic Development Application Review Committee will evaluate the completeness of the application, utilizing additional County staff as needed, and contact the applicant if additional information is required. Applications will not be processed

until all information is provided. In the event that consultants are needed to assist in the review process, those costs are expected to be paid by the applicant.

5. The goal for the initial review of application completeness is no more than 14 calendar days.
6. After the application has been accepted as complete, the chair of the Economic Development Application Review Committee will coordinate an evaluation of the application based on the goals and evaluation criteria and prepare an evaluation report and findings. In the preparation of this report, the chair of the Economic Development Application Review Committee may consult with County elected officials, staff, consultants, and other agencies, as appropriate, for their input regarding the proposal and its impacts on, and costs and benefits to the County.
7. The goal for completing the evaluation report and findings is no more than 60 calendar days after the date of acceptance of the application as complete.
8. During the 60-day review period, the County may initiate interim requests for additional information and the applicant may update the application in response to such requests.
9. Following the review and evaluation process, the chair of the Economic Development Application Review Committee will deliver the evaluation report and findings to the Commissioners Court for review and questions.
10. Following review by the Commissioners Court, the chair of the Economic Development Application Review Committee will deliver a copy of the evaluation report and findings to the applicant.
11. Within 14 calendar days of receipt of the report, the applicant should notify the County Judge if they wish to proceed with consideration of the application.
12. Upon notification by the applicant, the County will proceed with the consideration and adoption process as expeditiously as possible in accordance with Chapter 312 of the Texas Tax Code and establish a reinvestment zone and execute a tax abatement agreement.
13. No application for Reinvestment Zone and Tax Abatement shall be granted if the Commissioners Court determines that:
 - a. The applicant has insufficient financial capacity;
 - b. The applicant has a verifiable history of violation of other codes or laws;
 - c. The application was filed after the commencement of construction, alteration, or installation of improvements related to the project;
 - d. Any violation of laws of the United States or State of Texas, ordinances, or deed restrictions of the cities of Huntsville, New Waverly, or Riverside or orders of the County would occur; or
 - e. The applicant failed to meet the County's goals and criteria contain in this Policy, or any other reason deemed pertinent and relevant to the project by the Commissioners Court.

VII. TAX ABATEMENT AGREEMENT

A. Tax Abatement Agreement Required

Before any tax abatement can be effective, the County and the owner of the facility and, if different than the owner of the facility, the owner of the property, shall execute an Tax Abatement

Agreement in form and substance as required by and in accordance with the requirements of the Texas Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code.

B. Recapture

In the event that the facility is completed and begins producing products or services, but subsequently discontinues producing products or services for any reason for a period of one (1) year during the term of the Tax Abatement Agreement, any further abatement of taxes shall terminate. The taxes otherwise abated for the calendar year in which operations terminated shall be paid to the County not later than sixty (60) days after the date of termination. This paragraph shall not apply to the cessation of operations resulting from damage to the facility caused by fire, explosion or other casualty, accident or natural disaster that reasonably prevents the continuation of operation of the facility.

Should it be determined by the County that the other party to a Tax Abatement Agreement is in default according to the provisions of said Abatement Agreement, the County shall notify the party in default in writing at the address stated in the Abatement Agreement, and if such default is not cured within sixty (60) days after the date of such notice of default ("Cure Period"), then the Agreement may be terminated by the County any time after the end of the Cure Period and all taxes previously abated by virtue of the Agreement will be recaptured and become due and payable not later than sixty (60) days after the date of termination.

In the event that the other party to said Agreement allows any ad valorem taxes owed to the County to become delinquent and fails to timely and properly follow the legal procedures for protesting and/or contesting such taxes, or violates any of the provisions or conditions of the Agreement and fails to cure during the Cure Period, the Agreement may be immediately terminated by the County and all taxes previously abated by virtue of the Agreement will be recaptured and become due and payable not later than sixty (60) days after the date of termination.

The provisions of State law regarding tax liens and personal liability for taxes are applicable to all taxes ultimately imposed pursuant to an Abatement Agreement or upon default or recapture as described above.

C. Severability

If any provision of the Tax Abatement Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective while said Agreement is in effect, such provisions shall be automatically deleted from said Agreement and the legality, validity and enforceability of the remaining provisions shall not be affected thereby, and in lieu of such deleted provision, there shall be added automatically as part of said Agreement a provision that is similar in terms and substance to such deleted provision as may be possible and yet be legal, valid and enforceable.

D. Assignment

The Tax Abatement Agreement may not be assigned to a new owner or lessee without written consent of the County secured in advance. 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 Abatement Agreement. Any assignment of a Tax Abatement

Agreement shall be to an owner that continues the same improvements or repairs to the property, (except to the extent such improvements and repairs have been completed), and continues the same use of the facility.

A transfer, sale, merger or other transaction in the capital stock of Owner or lessee resulting, in the opinion of the County, in a change in management of the Owner or lessee shall be considered and is hereby defined as a sale. Should Owner sell the business to a new owner, lease the facility, or engage in a defined stock transaction, in any event without the written consent of the County procured in advance, the Tax Abatement Agreement will immediately terminate. Such termination shall be considered an event of default and the recapture provisions shall apply, along with all rights and remedies for any default, including the provisions for recapture. No assignment shall be approved if the assignor or assignee is indebted to the County for ad valorem taxes or other obligations.

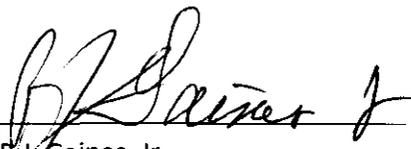
E. Sunset Provision

This Policy shall remain in force for two (2) years from the effective date at which time all Reinvestment Zones and Tax Abatement Agreements created pursuant to these provisions will be reviewed by the County to determine whether the goals have been achieved. Based on that review, this Policy will be modified, renewed, or eliminated.

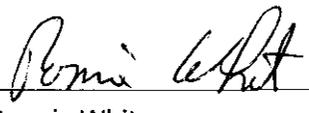
Approved this 24th day of September 2012.



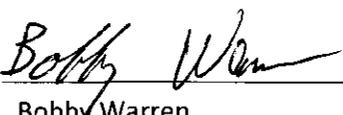
Danny Pierce
County Judge



Bill Gaines, Jr.
Commissioner, Precinct 1



Ronnie White
Commissioner, Precinct 2



Bobby Warren
Commissioner, Precinct 3



Tim Paulsel
Commissioner, Precinct 4