

RESOLUTION NO. _____

RESOLUTION OF THE CITY OF PFLUGERVILLE, TEXAS, UPDATING ITS TAX ABATEMENT GUIDELINES UNDER TEXAS TAX CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Pflugerville has previously adopted resolutions electing to become eligible to participate in Tax Abatement, establishing its intent to consider Tax Abatements, and adopting Tax Abatement Guidelines as required by the Texas Tax Code, Chapter 312; and

WHEREAS, pursuant to Texas Tax Code Section 312.002 these guidelines need to be readopted every two (2) years; and

WHEREAS, these Tax Abatement Guidelines were most recently updated and adopted in Resolution No. 1621-18-03-0502 on March 13, 2018; and

WHEREAS, these Tax Abatement Guidelines were considered and Resolution No.1814-20-11-24-0788 was approved on November 24, 2020 but without the benefit of the required public hearing; and

WHEREAS, a public hearing regarding the proposed update to the Tax Abatement Guidelines and Criteria for the implementation of the City's Tax Abatement Program at which members of the public were given the opportunity to be heard was held on _____, 2020, pursuant to Texas Tax Code, Section 312.002 (c-1) ; and

WHEREAS, the Pflugerville City Council desires to update the Tax Abatement Guidelines and Criteria for the implementation of the City's Tax Abatement Program, as authorized by the Texas Tax Code, Chapter 312.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS:

Section 1: That the City hereby finds the recitals stated above are true and correct and are incorporated herein for all purposes, including, without limitation, for the purposes of evidencing the City's updated Guidelines and Criteria for Tax Abatements, which are attached hereto and incorporated herein as **Exhibit "A,"** that are the policies that the City of Pflugerville will follow in considering and approving Tax Abatement Agreements with property owners within the City Limits.

This Resolution shall take effect immediately from and after its passage and publication as required by law.

ADOPTED THIS ____ DAY OF _____, 2021.

CITY OF PFLUGERVILLE, TEXAS

By: _____

Victor Gonzales, Mayor

ATTEST:

Karen Thompson
City Secretary

Approved as to Form:

City Attorney
Denton Navarro Rocha Bernal & Zech, P.C

EXHIBIT A

CITY OF PFLUGERVILLE

GUIDELINES AND CRITERIA FOR TAX ABATEMENTS

Adopted by Resolution Number _____

Section 1. Purpose.

A statutory prerequisite to entering into a tax abatement agreement is the adoption of Guidelines and Criteria governing such agreements. To the extent that these Guidelines and Criteria may conflict with Chapter 312 of the Texas Tax Code, the latter shall govern. Based on Res. No. _____, City desires to consider the provision of tax abatements to qualified properties, as expressed under these Guidelines.

Section 2. Definitions.

- a) Act - means the Property Redevelopment and Tax Abatement Act, Texas Tax Code Ann. § 312.001 et. seq., as amended from time to time.
- b) Agreement - means a contractual agreement not to exceed ten (10) years between a property owner and a lessee (if necessary) and the City for the purposes of tax abatement.
- c) Applicant - means an owner of real property located in a Reinvestment Zone who requests tax abatement in accordance with these guidelines.
- d) City - means the City of Pflugerville.
- e) Eligible Property - means real property located within a Reinvestment Zone and/or tangible personal property located on the real property which is eligible for tax abatement under the Act. The Eligible Property may not be in an improvement project financed by tax increment bonds.
- f) Expansion - means the addition or enlargement of buildings, structures, fixed machinery or equipment for the purposes of increasing production capacity.
- g) Ineligible Property - means property not eligible for tax abatement under the Act, including without limitation inventories, supplies, or property owned or leased by a member of the City Council of the City or by a member of any other zoning or planning board or commission of the City.
- h) Modernization - means the replacement and upgrading 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, alternation or installation

of buildings, structures, fixed machinery or equipment, but shall not include reconditioning, refurbishing or repairing.

- i) Reinvestment Zone - means an area designated in accordance with the Act by the City, Section 3. Availability of Tax Abatements.

Section 3. Availability of Tax Abatements.

- a) Tax abatement is available for both new facilities, structures, and equipment and for the Expansion or Modernization of existing facilities and structures.
- b) As provided in the Act, abatement may only be granted for the value of Eligible Property listed in an Agreement between the City and the property owner and lessee (if required), subject to such limitations as the City may require and to the following limitations. In the case of real property that is Eligible Property, an Agreement may provide for exemption of the real property in each year covered by the Agreement only to the extent its value for that year exceeds its value for the year in which the Agreement is executed. In the case of tangible personal property that is Eligible Property, an Agreement may not provide for the exemption of tangible personal property that is located on the real property at any time before the period covered by the Agreement.
- c) Tax abatement is not available for Ineligible Property.
- d) Upon determination that a tax abatement should be offered to the Applicant, the value and terms of the abatement will be determined by the City on a case-by-case basis.
- e) Abatement will be granted on a case-by-case basis effective with the first valuation date immediately following the date of execution of the Agreement. The period of abatement may not exceed ten (10) years including the construction period.

Section 4. Tax Abatement Agreements.

- a) The City Council 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 these Guidelines and Criteria.
- b) An Agreement must contain the following provisions:
 - 1) List the kind, number and location of all proposed improvements of the Eligible Property

- 2) Provide access to and authorize inspection of the Eligible Property by municipal employees to ensure compliance with the specifications and conditions of the Agreement;
 - 3) Limit the uses of the Eligible Property consistent with the general purpose of encouraging development or redevelopment of the Reinvestment Zone during the period that property tax exemptions are in effect;
 - 4) Provide for recapturing property tax revenue lost if the owner of the Eligible Property fails to make the improvements or repairs as provided by the Agreement;
 - 5) The term that was agreed upon with the property owner and requires the owner to annually certify compliance with the terms of the Agreement;
 - 6) Provide the taxing unit the ability to cancel or modify the Agreement at any time should the owner fail to comply with the terms of the Agreement;
 - 7) At its option, the City may include the following provisions in an Agreement:
 - a. A map showing existing and proposed improvements and uses in the Reinvestment Zone; or
 - b. Improvements or repairs by the City to streets, sidewalks, utility services or facilities associated with the Eligible Property, except that the Agreement will not provide for lower charges or rates that are made for other services or properties of a similar character; or
 - c. The recapture of all or a portion of property tax revenue lost as a result of the Agreement if the owner of the Eligible Property fails to create all or a portion of the number of new jobs provided by the Agreement. If the appraised value of the Eligible Property subject to the Agreement does not obtain a value specified in the Agreement, or if the owner fails to meet any other performance criteria provided by the Agreement, and payment of a penalty or interest, or both, on that recaptured property tax revenue; or
 - d. The foregoing options do not in any way limit the City from including additional criteria permissible under § 312.205 of the Texas Tax Code, as it may be amended.
- c) If a leased Facility is granted abatement, the Agreement must be executed with the City, the lessor, and the lessee.

- d) To be effective, an Agreement must be approved by the affirmative vote of a majority of the members of the City Council at a regularly scheduled meeting of the City Council.
- e) In addition to any other requirement of law, the public notice of a meeting at which the City Council will consider the approval the Agreement with a property owner must contain:
 - 1) the name of the property owner and the name of the applicant for the tax abatement agreement;
 - 2) the name and location of the reinvestment zone in which the property subject to the agreement is located;
 - 3) a general description of the nature of the improvements or repairs included in the agreement; and
 - 4) the estimated cost of the improvements or repairs.
- f) The notice of a meeting required by this section must be given in the manner required by Chapter 551, Government Code, except that the notice must be provided at least 30 days before the scheduled time of the meeting.
- g) At any time before its expiration, an Agreement may be modified by the parties to the Agreement to include other provisions that could have been included in the original agreement or to delete provisions that are not necessary to the original agreement. The modification must be made by the same procedure by which the original agreement was approved and executed. The original agreement may not be modified to extend beyond 10 years from the date of the original agreement.
- h) An Agreement may be terminated by the mutual consent of the parties in the same manner that the Agreement was approved and executed.
- i) Improvements, repairs, development and re-development under an Agreement must conform with the City's Comprehensive Zoning Ordinance.

Section 5. Application and Approval Procedures

- a) Any person, partnership, organization, corporation or other entity desiring that the City consider providing tax abatement to encourage location or expansion of operations within the City must comply with the following procedural guidelines;
 - 1) Applicant must submit an application for tax abatement, pay a filing fee of \$1000.00, and pay for all costs incurred by the City in processing the application, including but not limited to, publication cost, notice cost and staff time to review and process the application. If the application is supported by a majority vote of the Pflugerville Community Development Corporation board of directors, its successors or assigns, the Pflugerville Community Development Corporation, its successors or assigns, may elect to pay the application fees to the City of Pflugerville for the applicant.
 - 2) Applicant must address in narrative form all criteria questions outlined below

Employment Impact.

- a. How many jobs will be brought to the City?
- b. What type of jobs will be created?
- c. What will the total annual payroll be? Include current and increase factors.

Fiscal Impact.

- a. How much real and personal property value will be added to the tax rolls?
- b. What is the economic life of the personal property?
- c. How much direct sales tax will be generated?
- d. How will this project affect existing businesses and/or office facilities?
- e. What infrastructure construction would be required?
- f. What is the total annual operating budget of this facility projected to be? (For expansion state current and project increase.)

Community Impact.

- a. What effect would the project have on the local housing market?
 - b. How compatible is the project with the City's comprehensive plan?
 - c. What environmental impact, if any, will be created by the project?
- 3) Applicant must prepare a survey map showing the precise location of the property, all roadways within 500 feet of the site, all existing land uses and zoning within 500 feet of the site and the kind, number and location of all proposed improvements.
 - 4) The City may request Applicant to provide substantiation of the economic feasibility of the overall project to assist in determining the long-term benefit to the City.
 - 5) The real property's complete legal description must be provided.

- 6) All information in the application package detailed above will be reviewed for completeness and accuracy. Additional information may be requested as needed.
 - 7) Applicant will meet with City personnel to discuss details of application. Additional meetings and proposal presentations may be scheduled as necessary.
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- b) If information provided to the City by Applicant that describes the specific process or business activities to be conducted or the equipment or other property to be located on the property for which tax abatement is sought, it is confidential and not subject to public disclosure until the tax abatement agreement is executed. Information in the custody of the City after the tax abatement agreement is executed is not confidential.

Section 6. Effective Period, Amendment, Repeal, Effect.

- a) These Guidelines and Criteria are effective for two (2) years from the date adopted. During that period, these Guidelines and Criteria may be amended or repealed only by a vote of three-fourths of the members of the City Council.
- b) The adoption of these Guidelines and Criteria does not:
 - 1) Limit the discretion of the City Council to decide whether to enter into a specific tax abatement agreement.
 - 2) Limit the discretion of the City Council to delegate to its employees the authority to determine whether or not the City Council should consider a particular application or request for tax abatement; or
 - 3) 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.

Section 7. State Administration.

On July 1 of the year following the year in which the Reinvestment Zone is designated or the Agreement is executed, a report providing the following information shall be delivered to the State Comptroller:

- a) For a Reinvestment Zone, a general description of the zone, including its size, the types of property located in it, its duration, and the guidelines and criteria established for the Reinvestment Zone under § 312.002 of the Texas Tax Code, including subsequent amendments and modifications;

- b) A copy of each Agreement to which the City is a party; and
- c) Any other information required by the State Comptroller to administer its administrative duties.