

Brown County State of Texas

Tax Abatement Guidelines and Criteria

The purpose of this document is to reauthorize and establish previously adopted guidelines and criteria for purposes of adopting a uniform policy of tax abatement for owners or lessees of eligible facilities willing to execute tax abatement contracts designed to provide long term significant positive economic impact to the community by utilizing the area contractors and work force to the maximum extent feasible, and by developing, redeveloping, and improving property.

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

1. Must be reasonably expected to have an increase in positive net economic benefit to Brown County of at least Ten Million Dollars (\$10,000,000.00) over the life of the abatement, computed to include (but not limited to) new sustaining payroll and /or capital improvement. The creation of new jobs (identify number and type) will also factor into the decision to grant an abatement; and
2. Must not be expected to solely or primarily have the effect of merely transferring employment from one area of Brown County to another.

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

Only projects that increase in the fair market value of the property directly resultant from the development, redevelopment, and improvement specified in the contract will be eligible for abatement and then only to the extent that such increase exceeds any reduction in the fair market value of the other property of the Applicant located within the jurisdiction creating the reinvestment zone.

All abatement contracts will be for a term no longer than allowed by law.

It is the goal of Brown County to grant tax abatements on terms and conditions beneficial to the economic interests of the residents of Brown County and to other taxing units having jurisdiction of the property. However, nothing herein shall limit the discretion of the Brown County Commissioners Court to consider, adopt, modify or decline any tax abatement request.

This policy is effective on the date subscribed below, and shall at all times be kept current with regard to the needs of Brown County and reflective of the official views of the County Commissioners Court and shall be reviewed every two years.

February 8, 2021
(Exhibit #21)

The adoption of these guidelines and criteria by the Brown County Commissioners Court does not:

1. Limit the discretion of the governing body to decide whether or not to enter into a specific tax abatement agreement;
2. Limit the discretion of the governing body to delegate to its employees the authority to determine whether or not the governing body should consider a particular application or request for tax abatement;
3. Create or deny any property, contract, or other legal right in any person to have the governing body consider or grant a specific application or request for tax abatement;

Section 1

Definitions

A. "Abatement" means the full or partial exemption from ad valorem taxes of certain property in a reinvestment zone designated by Brown County for economic development purposes.

B. "Affected jurisdiction" means Brown County and any municipality or school district, the majority of which is located in Brown County that levies ad valorem taxes upon and provides services to property located within the proposed or existing reinvestment zone designated by Brown County.

C. "Agreement" means a contractual agreement for tax abatement between a Property Owner and/or Lessee and Brown County.

D. "Base year value" means the assessed value on the eligible property as of January 1 preceding the execution of the agreement, plus any agreed upon value of eligible property improvements made after January 1, but before the execution of the Agreement.

E. "Economic Life" means the number of years a property is expected to be in service in a facility.

F. "Eligible facilities" means new, expanded, or modernized buildings and structures, including fixed machinery and equipment, which is reasonably likely as a result of granting abatement to contribute to the retention or expansion of primary employment or to attract major investment in the reinvestment zone that would be a benefit to the property and that would contribute to the economic development of Brown County, but does not include facilities which are intended to be primarily to provide goods or services to residents for existing businesses located in Brown County, such as, but not limited to, restaurants and retail sales establishments, eligible facilities may include, but shall not be limited to hotels and office buildings.

G. "Expansion" means the addition of building structures, machinery, equipment, or payroll for purposes of increasing production capacity.

H. "Deferred maintenance" means improvements necessary for continued operation which do not improve productivity or alter the process technology."

I. "Facility" means property improvement completed or in process of construction which together comprise an interregional whole.

J. "Manufacturing Facility" means products, 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, including the generation of electrical energy.

K. "Modernization" means a complete or partial demolition of facilities and the complete or partial reconstruction or installation of a facility of similar or expanded production capacity. Modernization may result from the construction, alteration, or installation of buildings, structures, machinery, or equipment, or both.

L. "New facility" means property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.

M. "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 of Brown County, resulting in the creation of new permanent jobs bringing in new wealth.

N. "Productive life" means the number of years a property improvement is expected to be in service in a facility.

Section 2

Abatement Authorized for Development Goals

A. Eligible facilities: Upon application, eligible facilities as defined herein shall be considered for tax abatement as hereinafter provided.

B. Creation of New Values: Abatement may only be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between Brown County and the property owner or applicant, including a Lessee, subject to such limitations as Brown County may require.

C. New and existing facilities: Abatement may be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between Brown County and the Property Owner or Lessee, subject to such limitations as Brown County may require.

D. Eligible property: Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements and related fixed improvements necessary to the operation and administration of the facility.

E. Ineligible Property: The following types of property shall be fully taxable and ineligible for tax abatement: land, supplies, tools, furnishings, and other forms of movable personal property, housing, deferred maintenance, property to be rented or leased except as provided in Section 2 F, property which has a productive life of less than ten years, but does not include spare parts associated with eligible facilities; 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 other property for which abatement is not allowed by state law.

F. Owned / leased facilities: If a leased facility is permitted by state law to be granted abatement, the abatement agreement shall be applicable to the taxable value of the leased improvement, and where appropriate, shall be executed with both the Lessor and the Lessee.

G. Economic Qualifications: In order to be eligible for designation as a reinvestment zone and receive tax abatement, the planned improvement:

1. Must be reasonably expected to have an increase in positive net benefit to Brown County of at least Ten Million Dollars (\$10,000,000.00) over the life of the abatement, computed to include (but not limited to) new sustaining payroll and / or capital improvement. The creation of new jobs (identify number and type) will also factor into the decision to grant an abatement; and

2. Must not be expected to solely or primarily have the effect of merely transferring employment from one area of Brown County to another.

H. Standards for Tax Abatement/Development Goals: The following factors, among other, shall be considered in determining whether to grant tax abatement:

1. Value of existing improvements, if any;
2. Type and value of proposed improvements;
3. Productive life of proposed improvements; Number of existing jobs to be retained by proposed improvements;
4. Number and type of new jobs to be created by proposed improvements;
5. Amount of local payroll to be created;
6. Whether the new jobs to be created will be filled by persons residing or projected to reside within affected taxing jurisdiction;
7. Amount which property tax base valuation will be increased during term of abatement and after abatement, which shall include a definitive commitment that such valuation shall not, in any case, be less than Ten Million Dollars (\$10,000,000.00.)

8. The costs to be incurred by Brown County to provide facilities directly resulting from the new improvements;
9. The amount of ad valorem taxes to be paid to Brown County during the abatement period considering:
 - a. the existing values;
 - b. the percentage of new value abated;
 - c. the abatement period; and
 - d. the value after expiration of the abatement period.
10. The population growth of Brown County that occurs directly as a result of new improvements;
11. The types and values of public improvements, if any, to be made by Applicant seeking abatement;
12. Whether the proposed improvements compete with existing businesses to the detriment of the local economy;
13. The impact on the business opportunities of existing businesses;
14. The attraction of other new businesses to the area;
15. The overall compatibility with the zoning ordinances and comprehensive plan for the area;
16. Whether the project obtains all necessary permits from the applicable environmental agencies.

Each eligible facility shall be reviewed on its merits utilizing the factors provided above. After such review, abatement may be denied entirely or may be granted to the extent deemed appropriate after full evaluation.

Construction in Progress. If a qualifying facility has not been placed in service within one year after execution of the abatement Agreement, the applicant may apply for a one-year extension of the term of abatement, to be granted or denied in accordance with the Agreement. Said extension must be applied for prior to the expiration of the one-year anniversary of execution of the abatement Agreement.

I. Denial of Abatement: Neither a reinvestment zone nor abatement agreement shall be authorized if it is determined that:

1. There would be substantial adverse effect on the provision of government services or tax base;
2. The applicant has insufficient financial capacity to perform the obligations of an abatement agreement;
3. Planned or potential use of the property would constitute a hazard to public health, safety or morals;
4. Violation of other codes or laws; or
5. Any other reason deemed appropriate by Brown County.

J. Taxability: From the execution of the abatement to the end of the agreement period, taxes shall be payable as follows:

1. The value of ineligible property as provided in Section 2 E shall be fully taxable; and
2. The base year value of existing eligible property as determined each year shall be fully taxable.

The additional value of new eligible property shall be fully taxable at the end of the abatement period.

Section 3 Application

- A. Any present or potential owner of taxable property in Brown County may request the creation of a reinvestment zone and tax abatement by filing a written application with the County Judge.
- B. The application shall consist of a written request for tax abatement, accompanied by:
 1. An analysis of the economic impact such an abatement will have on Brown County, including:
 - a. Estimated tax revenues annually for the term of the requested abatement, taking into account any requested abatement.
 - b. A comparison between an abatement of taxes and any requested "payment in lieu of taxes" (PILOT) in terms of benefit to the County over the proposed term of the abatement period.

- c. A statement of the expected residual taxable value of the proposed project at the end of the abatement term requested, and the remaining taxable life expectancy of the proposed project.
 - d. A statement that at the conclusion of the useful life of the project, that remediation of the property to its former state has been anticipated, and that such remediation will not result in the imposition of recovery costs upon the County or underlying land owners where the project is based upon a leasehold interest.
2. A general description of the proposed use and the general nature and extent of the modernization, expansion or new improvements to be undertaken.
 3. A descriptive list and approximate taxable value of the improvements which will be a part of the facility;
 4. A site map and property description, including a complete legal description of the property, and a map/property description of any requested reinvestment zone;
 5. A time schedule for undertaking and completing the planned improvements. In the case of modernization, a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form may require such financial and other information as the County deems appropriate for evaluating the financial capacity and other factors of the applicant.
 6. Certification from the Brown County Appraisal District verifying that no taxes are past due on applicant's property located in the proposed reinvestment zone
 7. Disclosure of any environmental permits required or additional environmental impacts.
 8. A \$1,000.00 non-refundable application fee.
- C. In the case of modernization, a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the Application. The County may require such financial and other information as deemed appropriate for evaluating the financial capacity and other factors pertaining to the Applicant, to be attached to the Application.
- D. All checks in payment of the administrative fee shall be made payable to Brown County. In addition to the application fee, which shall be applied to any fee charged by legal or financial analysis of the application, the applicant shall also agree to pay reasonable consulting and attorney fees as may be incurred by Brown County in the examination of

the application as well as the preparation and negotiation of any tax abatement agreement. Such fee reimbursement shall not exceed \$10,000.00.

- E. Brown County shall give notice as provided by the Property Tax Code, i.e. written notice, to the presiding officer of the governing body of each taxing unit in which the property to be subject of the agreement is located not later than the seventh day before the public hearing and publication in a newspaper of general circulation within such taxing jurisdiction not later than the seventh day before the public hearing. Before acting upon Application, Brown County shall, through public hearing, afford the Applicant and the designated representative of any governing body referenced hereinabove opportunity to show cause why the abatement should or should not be granted.
- F. If a city within Brown County designates a reinvestment zone within its corporate limits and enters into or proposes to enter into an abatement agreement with a present or potential owner of taxable property, such present or potential owner of taxable property may request tax abatement by Brown County, but shall follow the same application process described in Section 3(A), *et seq.*, hereof. No other notice or hearing shall be required except compliance with the Open Meetings Act, unless the Commissioners Court deems them necessary in a particular case.
- G. Variance. Although a variance is not favored, exceptional circumstances may support a request for variance from the provisions of Section II, in which case such request for a variance may be made in an application or other written form to the Commissioners' Court. Such request shall include all the items listed in Section 3(B) and may include a complete description of the circumstances which prompt the applicant to request a variance. The approval process for a variance request shall be identical to that for a standard application and may be supplemented by such additional requirements as may be deemed necessary by the Commissioners' Court. To the full extent permitted by applicable law, the Commissioners' Court shall have the authority to enter into an abatement agreement with terms and conditions that vary from the terms and conditions in these Guidelines, but only so long as the Commissioners' Court determines that such variances are in the best interests of Brown County. Any terms or conditions contained in an abatement Agreement approved by the Commissioners' Court that vary from the terms and conditions in these Guidelines shall automatically be deemed to have been granted an approved variance by the Commissioners' Court, shall be binding and enforceable as agreed to in the abatement Agreement, and shall control in the event of any inconsistency or conflict with these Guidelines. A variance granted to any applicant shall not be deemed a variance for any subsequent applicant.
- H. Confidentiality Required. Information that is provided to the County in connection with an application or request for Tax Abatement and that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which Tax Abatement is sought may be deemed as confidential and not subject to public disclosure only if specifically identified by the Applicant, and segregated from the remaining portions of the Application. Once the Tax Abatement Agreement is executed, all attachments to the Abatement Agreement shall become public. All

information in the custody of a taxing unit after the Agreement is executed is Public Record, and not confidential.

Section 4 Agreement

- A. After approval, the Commissioners Court of Brown County shall formally pass a Resolution and execute an agreement with the owner of the facility and Lessee as required which shall:
1. Include a list of the kind, number, location of all proposed improvements to the property and if this is not defined at the time of the agreement, then to be supplemented after construction of the facilities;
 2. Provide access to and authorize inspection of the property by the taxing unit to ensure compliance with the agreement
 3. Limit the use of the property consistent with the taxing unit's developmental goals as stated in Section 2H of the Brown County Tax Abatement Guidelines and Criteria;
 4. Provide for recapturing property tax revenues that are lost if the owner fails to make improvements as provided by the agreement;
 5. Include each term that was agreed upon with the property owner and require the owner of the facility to annually certify compliance with the terms of the agreement to each taxing unit; and
 6. Allow the taxing unit to cancel the agreement after notice of default and opportunity to cure if the property owner fails to comply with the terms of the agreement.
- B. The owner of the facility and Lessee shall also agree to the following:
1. A specified number of permanent full-time jobs at facility shall be created, and the owner and Lessee shall make reasonable efforts to employ persons who are residents of Brown County in such jobs provided, however, that there shall be no obligation to employ residents who are not:
 - a. equally or more qualified than nonresident applicants;
 - b. available for employment on terms and / or salaries comparable to those required by nonresident applicants; or
 - c. able to become qualified with 72 hours training provided by Owner.
 2. Each person employed in such job shall perform a portion, if not all, of their work in Brown County.

3. Owner shall agree that it and its contractors, if any, will use reasonably commercial efforts to maximize its use of goods and services available through Brown County businesses in the construction, operation, and maintenance of the improvements and the project; provided, however, that there shall be no requirement to use goods and services provided by Brown County residents that are not:
 - a. of similar quality to those provided by nonresidents; or
 - b. made available on terms and conditions (including pricing) comparable to those offered by nonresidents. Comparable price shall be defined as less than or equal to 105% of the nonresident price for equivalent quality, conditions and terms.
 4. Owner or its construction contractor, if any, shall designate a coordinator of local services who will act as liaison between any individuals, businesses, and contractors residing or doing business in Brown County who are interested in obtaining information about providing goods or services related to the construction of the project.
 5. Additionally, Owner or its construction contractor, if any, shall advertise in local newspapers in Brown County for local contractors to perform work on the construction of the project.
 6. Owner shall agree to maintain a viable presence (as below defined) within the reinvestment zone for a period of time, as set by the Brown County Commissioners Court, not to exceed twenty (20) years from the date that the abatement agreement first takes effect. For purposes hereof, "Maintain a Viable Presence" means (i) the operation of the Eligible Facilities, as the same may from time to time be expanded, upgraded, improved, modified, changed, remodeled, repaired, restored, reconstructed, reconfigured and/or reengineered, and (ii) the retention of not fewer the number of Qualifying Jobs as defined by Texas Tax Code Section 313.021(3)(E) to be located and performed, in part, within Brown County.
 7. On May 1st of each year that the agreement shall be in effect, Owner shall certify to the County Judge of Brown County, and to the governing body of each taxing unity, that Owner is in compliance with each applicable term set forth above.
- C. Such agreement shall normally be executed within sixty (60) days after the Applicant has forwarded all necessary information and documentation to the Commissioners Court.

Section 5
Recapture

- A. In the event that the company or individual:
 - 1. Allows its ad valorem taxes owed Brown County 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 during the cure period;
 - 3. The agreement then may be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within thirty (30) days of the termination.
- B. Should Brown County determine that the company or individual is in default according to the terms and conditions of its agreement, Brown County shall notify the company or individual in writing at the address stated in the agreement, and if such is not cured within thirty (30) days from the date of such notice (cure period) then the agreement may be terminated.
- C. In the event that the applicant's facility is completed and begins producing products or services, but subsequently discontinues producing a product or service for any reason for a period of one year during the abatement period, other than because of fire, explosion, or other casualty, accident, or natural disaster, then the agreement shall terminate and so shall the abatement of the taxes for the calendar year during which the applicant's facility no longer produces. The taxes otherwise abated for that calendar year shall be paid to the County within sixty (60) days from the date of termination.

Section 6
Administration

- A. The Chief Appraiser of the Brown County Appraisal District will annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year, the company or individual receiving abatement shall furnish the Appraiser with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser will notify the Commissioners Court of Brown County of the amount of the assessment.
- B. The Agreement shall stipulate that employees and/or designated representatives of Brown County will have access to the applicant's facilities within 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 reasonable notice and will only be conducted in 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 applicant, and in accordance with its safety standards.

- C. Upon completion of construction, the designated representative of Brown County shall annually evaluate each facility receiving abatement to ensure compliance with the agreement. A formal report shall be made to the Commissioners Court.
- D. Timely Filing. The County shall timely file, with the appropriate person, agency, department, or board of the State of Texas, all information required by the Tax Code.

Section 7
Assignment

- A. Abatement may be transferred and assigned by the holder to a new owner or lessee of the same facility only upon the approval by resolution of the Commissioners Court of Brown County 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 Brown County. No assignment or transfer shall be approved if the parties to the existing agreement, the new owner or new lessee, are liable to any jurisdiction for outstanding taxes or other obligations.
- B. An assignment shall not serve to extend the termination date of the abatement Agreement with the original Applicant, owner or lessee. An assignment may not alter venue provisions of the original agreement
- C. Approval of an assignment in conformity with this section shall not be unreasonably withheld.

Section 9
Venue

Any abatement agreement shall be conditioned upon venue for any disputes which may arise under the abatement agreement to be retained in courts of appropriate jurisdiction within Brown County, Texas, or appeals to Texas courts of appellate jurisdiction, or the United States District Court having jurisdiction in Brown County, Texas.

Section 10
Sunset Provision

These guidelines and criteria are effective upon the date of their adoption and will remain in force for two years unless amended by three quarters vote of the Commissioners Court of Brown County, at which time all reinvestment zones and tax abatement agreements created pursuant to these provisions will be reviewed to determine whether the goals have been achieved. Based on the review, the guidelines and criteria will be modified, renewed, or eliminated.

GUIDELINES ADOPTED 2/8, 2020

BROWN COUNTY COMMISSIONERS' COURT

COUNTY JUDGE

Gay Worky

PRECINCT 1 COMMISSIONER

Paul H. H.

PRECINCT 2 COMMISSIONER

Wynne She

PRECINCT 3 COMMISSIONER

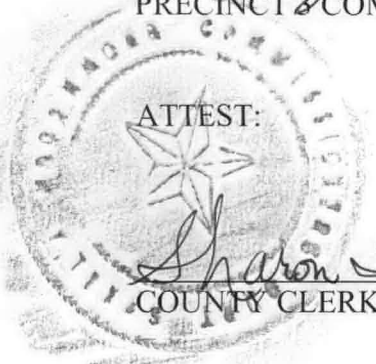
Sam L...

PRECINCT 4 COMMISSIONER

ATTEST:

Sharon Ferguson

COUNTY CLERK



Brown County
APPLICATION FOR TAX ABATEMENT

Name of Applicant: _____

Date: / /

Address of Applicant: _____ E-mail: _____

City/State/Zip: _____ Phone: _____

Name of Representative/Agent: _____

Representative/Agent E-Mail: _____ Phone: _____

Proposed Name for Reinvestment Zone: _____

1. Please state the approximate current ad valorem tax value of the real property within the proposed reinvestment zone: \$ _____.
2. Please attach a map of the proposed Reinvestment Zone, .JPG format, with sufficient detail to locate the reinvestment zone in relation to highways or county roads that will access the zone, with sufficient contrast to make publication in a newspaper generally legible at a scale of not more than ¼ page, and contain an “inset” map locating the proposed reinvestment zone within the county.
3. Please provide a list of the properties that will be located within the proposed reinvestment zone, by Ad Valorem Parcel ID numbers utilized by the County Appraisal District, and the current registered owner of each such parcel.
4. Please provide a general description of the nature of the proposed project, the types of infrastructure that will be constructed or installed within the proposed reinvestment zone, and a statement as to what improvements will be subject to the abatement and any exclusions from abatement the applicant expects to construct or install within the proposed reinvestment zone. Please state the Applicant’s best estimate of the taxable value of all such improvements.
\$ _____
5. Please state the number and duration of temporary jobs that will be generated by the proposed project, together with the anticipated temporary payroll for the duration of the construction phase of the project.

6. State the number of permanent jobs that will be created. In relation to job creation, please state the anticipated annual payroll for permanent jobs.
7. Please identify any incentives the applicant will make available to attract and retain permanent residential employees to construct, maintain or operated the resulting facilities within the proposed reinvestment zone, such as housing allowances for location of permanent jobs in Brown County, scholarships, etc.
8. Please state whether or not the Applicant intends to seek a reduction in the initial ad valorem tax basis by deducting any federal tax credits from the cost basis or value of the proposed improvements, and if so, the resulting cost basis or value of the improvements for purposes of county ad valorem taxation in the first year such improvements will be taxable by the county.
9. Please state the estimated tax revenues the county can expect to receive during each year of any requested abatement, and the method by which this revenue is calculated.
10. Please state the remaining useful life of the proposed project at the conclusion of the abatement period. Please attach a spreadsheet to your application with this calculation, showing the formula used in the calculation. This spreadsheet should show expected revenues to the County both during the requested abatement period, as well as for each subsequent year after the expiration of the abatement period for the duration of the expected useful life of the facilities constructed or installed within the proposed reinvestment zone.
11. Remediation provisions as required by Section 3(d) of the Guidelines.
12. Please provide a comparison between any proposed abatement of taxes based upon a percentage of abatement and the resulting PILOT (Payment in Lieu of Taxes) that might result from the County approving the requested abatement.
13. Please provide a time schedule for undertaking and completing the planned improvements. This timeline should include an anticipated commencement of construction, commercial operations commencement date, and date of first payment of any PILOT or ad valorem tax payment.
14. Please provide certification from the County Appraisal District that any property owned by the Applicant is current in ad valorem tax obligations.

15. Please attach a non-refundable application fee of \$1,000.00 to the completed application.

Date:

Authorized Representative or Agent

