

**GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS  
BY THE CITY OF WHARTON, TEXAS**

**Section 1. Definitions**

**The following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. The Wharton City Council shall have the power from time to time to provide such additional and/or modified definitions that they may find desirable and necessary. The words and phrases as herein set out shall be deemed and understood to mean:**

- (A) *Abatement* shall mean the full or partial exemption from ad valorem taxes of certain real property and certain limited types of tangible personal property, as herein after provided, located in a reinvestment zone designated by the City of Wharton for economic development purposes.
- (B) *Affected jurisdiction* shall mean any governmental, educational, or special purpose entity that levies ad valorem taxes upon and provides services to property located within a proposed or existing reinvestment zone.
- (C) *Agreement* shall mean a contractual agreement (Tax Abatement Agreement) between a property owner and/or lessee and the City of Wharton.
- (D) *Base year* shall mean the January 1<sup>st</sup> of the year following the anticipated completion of the eligible property as determined by the recipient.
- (E) *City* shall mean the City of Wharton, Texas.
- (F) *City Council* shall mean the governing body of the City of Wharton, Texas.
- (G) *Deferred maintenance* shall mean improvements necessary for continued operation, which do not improve productivity or alter the process technology.
- (H) *Distribution facility* shall mean a facility used primarily to receive, store, and distribute goods or materials principally to points outside the City.
- (I) *Economic life* shall mean the number of years a property improvement is expected to be in service. Provided, however, that in no circumstance shall the number of years exceed the depreciation allowance specified in the United States Internal Revenue Code.
- (J) *Eligible facilities* shall mean new, expanded, or modernized buildings and structures, including fixed machinery and equipment, which are 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, or that would contribute to economic development within the City. Eligible facilities may include, but shall not be limited to: retail sales establishments generating municipal sales taxes and providing goods and services to an intended wide distribution area, or that have the potential to stem the export of retail expenditures

from the City, or have the potential to draw new retail expenditures into the City; manufacturing facilities; office buildings; hotels/motels; distribution facilities; service facilities; tourism facilities; and other facilities not herein expressly deemed ineligible; which in the sole opinion of City Council will have a positive impact on the economic well-being of the City.

- (K) *Eligible property* shall mean the eligible facilities that are specifically noted in the tax abatement agreement and are constructed or created subsequent to the approval of the tax abatement agreement.
- (L) *Established Business* shall mean any business that has been in existence for at least three years from the date of application.
- (M) *Existing property* shall mean the property that is in place prior to the execution of the agreement.
- (N) *Expansion* shall mean the addition of buildings, structures, fixed machinery, as that term is defined herein, equipment, or payroll for the purposes of increasing production, efficiency, services, or combination thereof.
- (O) *Facility* shall mean property improvements completed or in the process of construction which together comprise an integral whole.
- (P) *Fixed machinery* shall mean tangible machinery, equipment, or personal property, which is securely placed or fastened, and stationary within a building or structure, or permanently resides in the reinvestment zone.
- (Q) *Hotel / motel* shall mean a commercial structure which provides overnight accommodations to travelers.
- (R) *Housing* shall mean facilities whose purpose is to accommodate shelter for one or more families in single or multiple units.
- (S) *Ineligible property* shall mean: land; supplies; inventory; tools; furnishings; other moveable personal property; rolling stock, railroad cars, trucks, aircraft, or other forms of transportation; housing; deferred maintenance; property to be rented or leased, except as provided in Section 2 (E).
- (T) *Manufacturing facility* shall mean a facility with the primary purpose being the manufacture or whole or partial assembly of tangible goods or materials by physical or chemical change.
- (U) *Maximum value abated* shall be the lesser of the abatement value approved in the abatement agreement or the taxable value of the eligible property in the base year.
- (V) *Modernization* shall mean the complete or partial modification and/or replacement of existing facilities, which increases its productivity, efficiency, or ability to enhance trade volume.



- (W) *Office facility* shall mean a facility providing primarily office space which may be owner occupied and/or leased. Also included are corporate offices, which serve, as the principal office for a business enterprise, and from which orders for goods and billing for same may take place.
- (X) *On-site real estate improvements* shall mean generally, buildings, may include any permanent structure or other development erected for use on-site in Wharton, Texas.
- (Y) *On-site real estate fixtures and equipment improvements* shall mean personal property and equipment which is attached to real property, and is legally treated as real property while it is so attached. Fixtures and equipment not specifically excepted from an accepted offer to purchase, pass with the real estate.
- (Z) *Recipient* shall mean the company or individual being the beneficiary of a Tax Abatement Agreement.
- (AA) *Reinvestment zone* shall mean any area of the City of Wharton, which City Council has designated as such, a zone for the purpose of granting tax abatements. It is the intent of the City of Wharton to create reinvestment zones on a case-by-case basis, so long as the abatement contemplated conforms to the guidelines herein contained.
- (BB) *Retail facility* shall mean a facility providing for the storage and sale of goods directly to the consumer.
- (CC) *Service facility* shall mean a facility whose primary purpose is to receive orders for, and/or provide services, and from which billing for same may take place.
- (DD) *Tourism facility* shall mean a facility which provides entertainment and/or tourism related services, and from which a majority of revenues generated are from outside the City of Wharton.
- (EE) *Value or taxable value* shall mean the appraised value as determined by the Wharton County Central Appraisal District.

## **Section 2. Criteria for Granting**

- (A) *Eligibility.* Upon application, eligible facilities may be considered for tax abatement as hereinafter provided. Abatement may only be granted for eligible property, subject to such limitations as the City may from time to time require, or as may be specified in the agreement between the parties. Existing property is not abatable. Improvements or expansion to existing property are eligible.
- (B) *Ineligible Property.* Ineligible property may not be granted tax abatement.
- (C) *Authorized Date.* Tax abatement may only be granted for the eligible property that is created subsequent to the approval of the tax abatement agreement.
- (D) *Eligible New and Existing Facilities.* Tax abatement may be granted for new eligible facilities and improvements to existing facilities for purposes of modernization or expansion.
- (E) *Owned / Leased Facilities.* If a leased facility is granted tax abatement, the agreement shall be executed with the lessor and lessee.

- (F) *Economic Qualification.* In order to be eligible for designation as a Reinvestment Zone and receive tax abatement, the planned improvement must be expected to have an increased appraised ad valorem tax value of at least one hundred thousand dollars (\$100,000) upon completion of the anticipated improvements or expansion based upon the Wharton County Central Appraisal District assessment of the eligible property.
- (G) *Standards for Tax Abatement.* The following factors, among such other factors as determined necessary by the City Council, shall be considered in determining whether to grant tax abatement:
- (1) Value of land and existing improvements, if any;
  - (2) Type and value of proposed improvements;
  - (3) Productive life of proposed improvements;
  - (4) Number of existing jobs to be retained by proposed improvements;
  - (5) Number and type of new jobs to be created;
  - (6) Number of new jobs to be filled by local residents or by persons projected to reside in the City;
  - (7) Amount of local sales tax to be generated;
  - (8) The costs to be incurred by the City to provide facilities or services directly resulting from the new improvements;
  - (9) The amount of ad valorem taxes to be paid the City during the abatement period considering (a) the values of existing property, (b) the percentage of eligible property abated, (c) the abatement period, and (d) the value after expiration of the abatement period;
  - (10) The population growth that occurs directly as a result of the improvements;
  - (11) The values of public improvements, if any, to be made by applicant seeking abatement;
  - (12) To what extent the proposed improvements compete with existing businesses to the detriment of the local economy;
  - (13) The extent of business opportunities created by the proposed improvements for local businesses;
  - (14) Impact on attracting other new businesses as a result of the improvements;
  - (15) Impact the planned improvements may have on other taxing jurisdictions within the City;
  - (16) Environmental compatibility, and amount, if any, of negative impact on quality of life perceptions; and
  - (17) The ratio of real property value to personal property value being considered for abatement.
  - (18) Impact the improvements would have on water quality or how the improvement projected water use may effect historical water users in the county.
  - (19) Term shall not be longer than 10 years

After a full evaluation and review utilizing some or all of the above factors, City Council may within the exercise of its full discretion either deny entirely the abatement, or may grant an abatement as deemed appropriate when the value of the eligible property equals a minimum of one hundred thousand dollars (\$100,000).

- (H) *Denial of Abatement.* Neither the creation of a Reinvestment Zone, if required, nor the Tax Abatement Agreement shall be authorized if it is determined that:
- (1) There would be a substantial adverse effect on the provision of government service or tax base;



- (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) Violation of other codes or laws; or
- (5) Any other reason deemed appropriate by the City Council.

(I) (1) ***Amount of Abatement for On-site Real Estate Improvements.*** The percentage of value to be abated, and the duration of the tax abatement shall be determined by the Wharton City Council as follows:

- (a) For planned improvements valued at five million dollars (\$5,000,000) or greater, the percentage and duration of the tax abatement shall be determined by the City Council in the exercise of its absolute discretion on a case by case basis, taking into consideration, some or all of the factors listed above in subsection (G).
- (b) For planned improvements valued at a minimum of one hundred thousand dollars (\$100,000), but less than five million dollars (\$5,000,000), the percentage and duration of the tax abatement shall also take into consideration some or all of the factors listed above in subsection (G), shall not exceed fifty-percent (50%) in any given year and shall be limited to the following percentages based on the value of the eligible property in the base year:

\$100,000	-	\$250,000	=	Maximum of 250%
\$250,001	-	\$500,000	=	Maximum of 300%
\$500,001	-	\$750,000	=	Maximum of 350%
\$750,001	-	\$999,999	=	Maximum of 400%
\$1,000,000	-	\$4,999,999	=	Maximum of 500%

- (c) If the eligible property is improvements or expansion to existing property, the abated value shall be the difference between the value of the completed improvement or expansion in the base year less the value of the existing property prior to the agreement.
- (d) City Council reserves the right to adjust the percentage of abatement to the appropriate category should the taxable value of the eligible property in the base year, as determined by the Chief Appraiser of the Wharton County Central Appraisal District, be less than the original estimated value to the extent that the original category selected for the percentage of the abatement is no longer applicable. Once the total percentage of abatement is determined in the base year, that percentage shall remain in effect for the life of the abatement.
- (e) The maximum value abated shall be the lesser of the abatement value included in the abatement agreement or the taxable value of the eligible property in the base year. The maximum value abated as determined in the base year shall remain the maximum value abated for the life of the abatement.

(f) In the event that the value of eligible property subject to the abatement is assessed at less than \$100,000 in the base year, then the abatement agreement shall be null and void, and no abatement shall be granted.

(2) ***On Site Real Estate Fixtures and Equipment Improvements.*** The percentage of value to be abated, and the duration of the tax abatement shall be determined by the Wharton City Council as follows:

(a) For planned improvements valued at five million dollars (\$5,000,000) or greater, the percentage and duration of the tax abatement shall be determined by the City Council in the exercise of its absolute discretion on a case by case basis, taking into consideration, some or all of the factors listed above in subsection (G).

(b) For planned improvements valued at a minimum of one hundred thousand dollars (\$100,000), but less than five million dollars (\$5,000,000), the percentage and duration of the tax abatement shall also take into consideration some or all of the factors listed above in subsection (G), shall not exceed fifty-percent (50%) in any given year and shall be limited to the following percentages based on the value of the eligible property in the base year:

\$100,000	-	\$250,000	=	Maximum of 250%
\$250,001	-	\$500,000	=	Maximum of 300%
\$500,001	-	\$750,000	=	Maximum of 350%
\$750,001	-	\$999,999	=	Maximum of 400%
\$1,000,000	-	\$4,999,999	=	Maximum of 500%

(c) The duration of the tax abatement should be limited to the economic life of the fixtures and/or equipment improvements being abated. The duration of the abatement shall not exceed the economic life of the fixtures and/or equipment improvements or 10 years whichever is less.

(d) City Council reserves the right to adjust the percentage of abatement to the appropriate category should the taxable value of the eligible property in the base year, as determined by the Chief Appraiser of the Wharton County Central Appraisal District, be less than the original estimated value to the extent that the original category selected for the percentage of the abatement is no longer applicable. Once the total percentage of abatement is determined in the base year, that percentage shall remain in effect for the life of the abatement.

(e) The maximum value abated shall be the lesser of the abatement value included in the abatement agreement or the taxable value of the eligible property in the base year. The maximum value abated as determined in the base year shall remain the maximum value abated for the life of the abatement.

(f) In the event that the value of eligible property subject to the abatement is assessed at less than \$100,000 in the base year, then the abatement agreement shall be null and void, and no abatement shall be granted.



(3) **Amount of Abatement for On-site Real Estate Improvements for Established Businesses.** The percentage of value to be abated, and the duration of the tax abatement shall be determined by the Wharton City Council as follows:

(a) For planned improvements valued at one million dollars (\$1,000,000) or greater, the percentage and duration of the tax abatement shall be determined by the City Council in the exercise of its absolute discretion on a case by case basis, taking into consideration, some or all of the factors listed above in subsection (G).

(b) For planned improvements valued at a minimum of one hundred thousand dollars (\$100,000), but less than one million dollars (\$1,000,000), the percentage and duration of the tax abatement shall also take into consideration some or all of the factors listed above in subsection (G), shall not exceed fifty-percent (50%) in any given year and shall be limited to the following percentages based on the value of the eligible property in the base year:

\$100,000	-	\$250,000	=	Maximum of 300%
\$250,001	-	\$500,000	=	Maximum of 350%
\$500,001	-	\$750,000	=	Maximum of 400%
\$750,001	-	\$999,999	=	Maximum of 500%

(c) The abated value shall be the difference between the value of the completed improvement or expansion in the base year less the value of the existing property prior to the agreement.

(d) City Council reserves the right to adjust the percentage of abatement to the appropriate category should the taxable value of the eligible property in the base year, as determined by the Chief Appraiser of the Wharton County Central Appraisal District, be less than the original estimated value to the extent that the original category selected for the percentage of the abatement is no longer applicable. Once the total percentage of abatement is determined in the base year, that percentage shall remain in effect for the life of the abatement.

(e) The maximum value abated shall be the lesser of the abatement value included in the abatement agreement or the taxable value of the eligible property in the base year. The maximum value abated as determined in the base year shall remain the maximum value abated for the life of the abatement.

(f) In the event that the value of eligible property subject to the abatement is assessed at less than \$100,000 in the base year, then the abatement agreement shall be null and void, and no abatement shall be granted.

(2) **On Site Real Estate Fixtures and Equipment Improvements for Established Businesses.** The percentage of value to be abated, and the duration of the tax abatement shall be determined by the Wharton City Council as follows:

- (a) For planned improvements valued at one million dollars (\$1,000,000) or greater, the percentage and duration of the tax abatement shall be determined by the City Council in the exercise of its absolute discretion on a case by case basis, taking into consideration, some or all of the factors listed above in subsection (G).
- (b) For planned improvements valued at a minimum of one hundred thousand dollars (\$100,000), but less than one million dollars (\$1,000,000), the percentage and duration of the tax abatement shall also take into consideration some or all of the factors listed above in subsection (G), shall not exceed fifty-percent (50%) in any given year and shall be limited to the following percentages based on the value of the eligible property in the base year:
 

\$100,000	-	\$250,000	=	Maximum of 300%
\$250,001	-	\$500,000	=	Maximum of 350%
\$500,001	-	\$750,000	=	Maximum of 400%
\$750,001	-	\$999,999	=	Maximum of 500%
- (c) The duration of the tax abatement should be limited to the economic life of the fixtures and/or equipment improvements being abated. The duration of the abatement shall not exceed the economic life of the fixtures and/or equipment improvements or not longer than 10 years whichever is less.
- (d) City Council reserves the right to adjust the percentage of abatement to the appropriate category should the taxable value of the eligible property in the base year, as determined by the Chief Appraiser of the Wharton County Central Appraisal District, be less than the original estimated value to the extent that the original category selected for the percentage of the abatement is no longer applicable. Once the total percentage of abatement is determined in the base year, that percentage shall remain in effect for the life of the abatement.
- (e) The maximum value abated shall be the lesser of the abatement value included in the abatement agreement or the taxable value of the eligible property in the base year. The maximum value abated as determined in the base year shall remain the maximum value abated for the life of the abatement.
- (f) In the event that the value of eligible property subject to the abatement is assessed at less than \$100,000 in the base year, then the abatement agreement shall be null and void, and no abatement shall be granted.

(J) *Taxability.* From the execution of the Agreement to the end of the Agreement period, taxes shall be payable as follows:

- (1) The value of ineligible property as provided in Section 1(R) shall be fully taxable;
- (2) The value of existing property as determined each year shall be fully taxable;
- (3) The value of eligible property shall be abated as set forth by the agreement, and
- (4) The value of 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 the City of Wharton may request the creation of a Reinvestment Zone, if required, and property tax abatement by filing a written application with the City Manager. An application for tax abatement must be filed prior to the commencement of any construction, alteration, or installation of any improvements for which tax abatement is being requested. The applicant shall at no time acquire any rights, privileges or authority, either monetary or otherwise, by reason of filing any application, or providing any documentation in conjunction with an application filed herein. The City of Wharton is under no obligation to provide any tax abatement to any applicant even if certain criteria are met. The City of Wharton reserves the right to reject any application.
- (B) As part of the application process the following shall be provided:
  - (1) Completed application form, or letter of request if form not available;
  - (2) Vicinity map along with a legal description of the property; and
  - (3) Such financial and other information as deemed appropriate by the City for purposes of evaluating the application.

### **Section 4. Action by City Council on application**

- (A) The City Council shall, within a reasonable time after completion of the review of all documents submitted by the applicant, and such other investigation and inquiry as shall be deemed appropriate, and upon receipt of a report and recommendation from the City Manager, by resolution exercise its absolute discretion, and either administratively approve or disapprove the application for tax abatement. The City shall notify the applicant of its decision to administratively approve or disapprove the application.
- (B) Action by City Council to administratively approve the application does not constitute authorization to execute an Agreement (Contract) with the applicant. It does constitute authorization to begin the process of creating a Reinvestment Zone, if required, and drafting of a proposed Agreement.

### **Section 5. Creation of a Reinvestment Zone.**

- (A) If the subject property is located within an area of the City of Wharton that the City Council has previously, during the tax abatement process, designated such area as a Reinvestment Zone, the steps to create a reinvestment zone for the subject property shall not be necessary. If the subject property is not located in a previously designated reinvestment zone the steps in Item (B) shall apply.
- (B) Prior to the adoption of an Ordinance designating a Reinvestment Zone the City shall, through public hearing afford the applicant, designated representatives of any affected jurisdiction, and the general public opportunity to show cause why the reinvestment zone should or should not be created and why the abatement agreement should or should not be considered.

- (1) The presiding officers of affected jurisdictions shall, in writing, be notified of the public hearing no later than the seventh (7<sup>th</sup>) day prior to the date of the public hearing.
- (2) A notice of public hearing for the creation of a Reinvestment Zone shall be published in a newspaper of general circulation within the taxing jurisdiction no later than the seventh (7<sup>th</sup>) day prior to the date of the public hearing.

## **Section 6. Tax Abatement Agreement**

- (A) After approval of the application for tax abatement, and adoption of an Ordinance creating a Reinvestment Zone (if required), the City will pass a resolution authorizing the execution of a Tax Abatement Agreement.
  - (1) No later than the seventh (7<sup>th</sup>) day prior to taking action to authorize execution of an Agreement, the City shall notify, in writing, the presiding officers of each of the other taxing jurisdictions within which the property is located of its intention to enter into an Agreement.
- (B) The Agreement shall include among other provisions the following:
  - (1) A clear definition of the proposed eligible property;
  - (2) The value of the abatement as requested by the recipient based on the recipient estimated cost for the eligible property;
  - (3) The base year as determined by the recipient estimated completion date;
  - (4) The percentage of value to be abated each year and the number of years abatement will be granted as provided in Section 2 (I);
  - (5) The commencement and termination date of abatement;
  - (6) The commencement and completion date of proposed improvements;
  - (7) Size of investment and average number of jobs to be created;
  - (8) Right of City employees and/or designated representatives during the term of the Agreement access to the Reinvestment Zone for the purpose of determining if terms and conditions of the Agreement are being met. Such inspections shall be in accordance with the provisions of Section 7(D);
  - (9) The responsibility of the recipient of tax abatement to file appropriate documents with the Chief Appraiser of the Wharton County Central Appraisal District; and
  - (10) Contractual obligations related to default, violation of terms or conditions, delinquent taxes, recapture, administration, and assignment.



- (C) Such Agreement shall be executed by the applicant in duplicate originals within a reasonable time after the same has been approved by City Council.

**Section 7. Administration**

- (A) The Chief Appraiser of Wharton County Central Appraisal District will annually determine an assessment of the taxable assessed value of the recipient's property, taking into consideration the terms of the Abatement Agreement relating to such real and personal property found within the Reinvestment Zone which is subject to terms and provisions of the Agreement.
- (B) Each year, the recipient shall furnish the Chief Appraiser with such information as may be necessary for the abatement.
- (C) It shall be the exclusive duty and responsibility of the recipient to comply with all requirements of the Wharton Central Appraisal District in order to secure and continue to receive the benefit of any approved Agreement. Failure to do so shall not be deemed the fault of the City of Wharton or any of its officers and employees.
- (D) The City Manager or his designee, during the term of the Agreement, shall have the right of access to the Reinvestment Zone, facilities contained therein, and records related to real and personal property investments and employment, in order 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 inspections will be made with one or more representatives of the recipient present, and in accordance with the recipient's safety standards.
- (E) The recipient shall prepare at the request of the City, and on a frequency as stipulated by the City, reports as to the progress and status of all contemplated improvements, and upon completion of the anticipated improvements a final report shall be provided to the City, providing as a minimum the following information:
  - (1) A description of the improvements provided for in the Agreement, and the improvements actually completed;
  - (2) The date of commencement of improvements, significant progress dates, and actual or anticipated completion date;
  - (3) Investments made, including purpose, size, and date; and
  - (4) A disclosure and description of any and all changes, restructuring, or modifications that were made in the contemplated improvements.
- (F) Any required reporting by the recipient be in a form approved by the City, or on a form/forms as provided by the City if the City so elects to provide.
- (G) Upon completion of anticipated improvements, a designated representative of the City shall annually evaluate each facility receiving abatement to insure compliance with the Agreement, and

a formal report shall be made to the City Council regarding the findings of each evaluation.

- (H) The recipient shall certify annually as to compliance with the terms and conditions of the Agreement.
- (I) The City shall file reports required of the City in accordance with State Law. Such reports shall be filed with the appropriate agency.

### **Section 8. Assignment**

- (A) The rights granted under an Agreement may be transferred and assigned by the holder to a new owner or lessee of the same facility, or proposed facility only upon the approval by resolution of the City Council, and the execution of an Assignment Agreement between the City and the new owner or lessee. Such assignment shall be at the sole discretion of the City, and subject to the following conditions:
  - (1) Financial capacity of the assignee;
  - (2) Contemplated facility use, and proposed and/or completed improvements being as stated in the Agreement;
  - (3) No outstanding taxes or other debts are owed to any governmental entity by the parties to the Agreement or the proposed Assignment Agreement.
  - (4) Approval of an Assignment Agreement shall not be unreasonably withheld.

### **Section 9. Default and Recapture**

- (A) *Cause.* The Agreement may be terminated by the City Council for the following causes, which shall be considered a default of the Agreement:
  - (1) Recipient allows the ad valorem taxes owed the City to become delinquent and fails to timely and properly follow the requirements of law for their protest and/or cure; or
  - (2) Recipient violates any of the terms and conditions of the Agreement, and fails to cure during the cure period described in this Section.
- (B) *Procedure.* Should the City determine that the recipient is in probable default of the Agreement, the following shall occur:
  - (1) A Notice of Probable Default shall be delivered in writing to the recipient of tax abatement. Such notice shall identify the probable cause/causes for default, and afford the recipient an opportunity to request a hearing before City Council, who shall finally decide if a default has occurred.
  - (2) If no request for hearing is made within ten (10) days of receipt of the Notice of Probable



Default, the City Council may confirm the existence of default.

- (3) If default is determined either by hearing, or failure of recipient to request a hearing, the City shall deliver in writing to the recipient of tax abatement a Notice of Default.
- (4) The recipient shall, within thirty (30) days of receipt of the Notice of Default, cure the cause/causes for default. Failure to do so will be cause for the City to terminate the Agreement without further notice.
- (5) The Agreement shall be terminated by an ordinance duly passed and adopted by City Council.

(C) *Recapture.*

- (1) Should the Agreement be terminated, all taxes previously abated prior to the termination shall be due and payable to the City within thirty (30) days.
- (2) Should the recipient discontinue operations of improvements as stated in the application for abatement, or the Agreement, for reasons excepting fire, explosion, or other disaster, for a period of one year during the abatement period, then the Agreement shall be terminated, and all taxes abated prior to the termination of the Agreement shall be due and payable to the City within thirty (30) days.

**Section 10. Concurrent Abatements**

During the term of the Agreement, the Recipient is eligible to apply for additional abatements on proposed improvements subsequent to the original Agreement. Such additional applications and considerations shall be in accordance with the provisions contained herein.

**Section 11. Confidentiality**

The City will make every effort within the laws of the State of Texas to maintain confidentiality of information related to an application for abatement, and the granting or rejection of abatement.

- (A) Information that is provided to the City in connection with an application for abatement, and that describes the specific processes, or business activities to be conducted, the equipment, or other property to be located on the property for which tax abatement is sought, is confidential, and not subject to public disclosure until the Agreement is executed. Any information remaining in the custody of the City after the Agreement is executed is no longer confidential.
- (B) Effective December 1, 2018, the City may hold closed meetings to discuss or deliberate commercial or financial information it has received from a business prospect that the City seeks to have located, retained, or expanded in or near its jurisdiction.
- (C) Effective December 1, 2018, the City may hold closed meetings to discuss or deliberate the offer of a financial or other incentive to a business prospect the City seeks to have located, retained, or expanded in or near its jurisdiction.

- (D) Upon execution of an Agreement, information about a financial or other incentive being offered to a business prospect is no longer confidential, and subject to public disclosure.
- (E) Effective December 1, 2018, the following information is exempt from public disclosure:
  - (1) Trade secrets
  - (2) Commercial or financial information, for which it is demonstrated, based on specific factual evidence that disclosure would cause substantial competitive harm to the person or company from whom the information was obtained.

### **Section 12. Severability**

In the event 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.

### **Section 13. Sunset Provision**

- (A) These Guidelines and Criteria are effective upon the date of their adoption by the City Council, or on a date as designated by the City Council, and will remain in force for two (2) years, at which time all Reinvestment Zones and Agreements created pursuant to its provisions will be reviewed by the City Council to determine whether the goals of the abatement program have been achieved. Based upon that review, the Guidelines and Criteria may be modified, renewed, or eliminated.
- (B) Prior to the date for review these Guidelines and Criteria may be modified by a three-fourths (3/4) vote of the entire membership of the City Council.

### **Section 14. Discretion of the City**

The adoption of these Guidelines and Criteria by the City does not:

- (A) Limit the discretion of the City Council to decide whether to enter into a specific Agreement which absolute right of discretion the City Council reserves unto itself, whether or not such discretion may be deemed arbitrary, or without basis in fact;
- (B) Limit the discretion of the City Council to delegate to its employees or assigns the authority to determine whether or not the City Council should consider a particular application or request for tax abatement; or
- (C) Create any property, contract, or other legal rights in any person or entity to have the City Council consider or grant a specific application or request for abatement.