

RESOLUTION NO. 2002- 9 R

A RESOLUTION ADOPTING GUIDELINES AND CRITERIA FOR TAX ABATEMENT AGREEMENTS ENTERED INTO BY THE CITY OF VICTORIA; AND DECLARING AN EFFECTIVE DATE.

The City of Victoria desires to participate in tax abatement programs as provided for in the Texas Property evelopment and Tax Abatement Act of 1987, and the City's current Guidelines and Criteria for entry into tax abatement ements expired on November 2, 2001;

Section 312.002 of the Texas Tax Code provides:

Texas Tax Code § 312.002. Eligibility of Taxing Unit to Participate in Tax Abatement

- (a) A taxing unit may not enter into a tax abatement agreement under this chapter and the governing body of a municipality or county may not designate an area as a reinvestment zone unless the governing body has established guidelines and criteria governing tax abatement agreements by the taxing unit and a resolution stating that the taxing unit elects to become eligible to participate in tax abatement. The guidelines applicable to property other than property described by Section 312.211(a) must provide for the availability of tax abatement for both new facilities and structures and for the expansion or modernization of existing facilities and structures.
- (b) The governing body of a taxing unit may not enter into a tax abatement agreement under this chapter unless it finds that the terms of the agreement and the property subject to the agreement meet the applicable guidelines and criteria adopted by the governing body under this section.
- (c) The guidelines and criteria adopted under this section are effective for two years from the date adopted. During that period, the guidelines and criteria may be amended or repealed only by a vote of three fourths of the members of the governing body.
- (d) The adoption of the guidelines and criteria by the governing body of a taxing unit does not:
 - (1) limit the discretion of the governing body to decide whether 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; or
 - (3) create 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.

THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City of Victoria hereby elects to continue being eligible to participate in tax abatement.

2.

The Guidelines and Criteria for Tax Abatement in the City of Victoria, Texas, attached as **Exhibit "A"** are hereby blished and adopted.

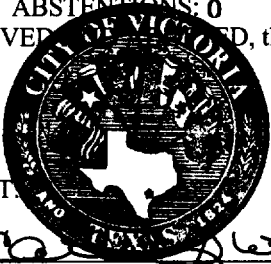
3.

This resolution shall become effective immediately upon adoption.

SED, this the 2nd day of January, 2002.

AYES: 6
NAYS: 0
ABSTENTIONS: 0

ROVED, this the 2nd day of January, 2002.



EST
[Signature]
RJET SWOBODA, City Secretary
tribution: City Manager
Victoria Economic Development Corporation

[Signature]
GARY MIDDLETON, Mayor of the
City of Victoria, Texas
APPROVED AS TO LEGAL FORM:
[Signature]
DAVID ATMAR SMITH, City Attorney
Copies Sent: JANUARY 4, 2002

GUIDELINES AND CRITERIA
Tax Abatement in
City of Victoria and/or Victoria County, Texas

DEFINITIONS - Section 1

"Abatement" means the full or partial exemption from ad valorem taxes of certain real property in a Reinvestment Zone designated by an affected jurisdiction for economic development purposes.

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

"Agreement" means written contractual agreement between a property owner and/or lessee and an affected jurisdiction for the purposes of tax abatement.

"Base Year Value" means the assessed value of eligible property January 1 preceding the execution of the agreement plus (if applicable) the agreed upon value of eligible property improvements made after January 1 but before the execution of the agreement.

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

"Distribution Center Facility" means buildings and structures, including machinery and equipment, used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility operator where a majority of the goods or services are distributed to points at least 25 miles from its location in Victoria County.

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

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

"Initiating Governing Body" shall be either the Victoria City Council or the Victoria County Commissioner's Court depending on whether Applicant's project is located in the City of Victoria or within Victoria County but outside the City of Victoria.

"Manufacturing Facility" means buildings and structures, including fixed in place 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.

"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, alteration or installation of buildings, structures, fixed in place machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing or repairing.

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

"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 the Victoria Metropolitan Statistical Area (VMSA) and result in the creation of new permanent jobs and create

new tax base in the VMSA.

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

"Regional Service Facility" means buildings and structures, including machinery and equipment, used or to be used to service goods where a majority of the goods being serviced are domiciled at least 25 miles from the facility's location in Victoria County.

"Reinvestment Zone" is a specific parcel of property designated by the City or the County (as applicable) within which a tax abatement can be granted.

"Research Facility" means buildings and structures, including fixed in-place machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.

STATEMENT AUTHORIZED - Section 2

Authorized Facility. A facility may be eligible for abatement if it is located in a designated Reinvestment Zone and is a: Manufacturing Facility, Research Facility, Distribution Center or Regional Service Facility, or Other Basic Industry.

Creation of New Value. Abatement may only be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between the affected jurisdiction and the property owner or lessee, subject to such limitations as governing body may require.

Economic Qualification. In order to be eligible for designation as a Reinvestment Zone and receive tax abatement, the planned improvement: (1) must be reasonably expected to increase the value of the property and (2) must not be expected to solely or primarily have the effect of transferring employment from one part of Victoria County to another.

Eligible Property. Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements plus that office space and related fixed improvements necessary to the operation and administration of the facility.

Ineligible Property. 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; housing; hotel accommodation; retail facilities; deferred maintenance investments; property to be rented or leased to third parties except as provided in Section 2 f); 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; and property in a Reinvestment Zone that is owned or leased by a member of the governing body creating the Reinvestment Zone, or a member of the Victoria Planning Commission for a City-created Reinvestment Zone.

Lease Facilities. If a new facility is to be constructed by a third party owner for lease to an Applicant otherwise eligible for abatement, then the building owner may also be eligible for abatements. To calculate the applicable category for abatement, the investment of both entities will be added and each shall be eligible to receive abatement at the same rate as would have been available if the entire project were being accomplished by one owner.

Economic Qualifications. In order to be eligible to receive tax abatement, the planned new facility or planned expansion to modernization of an existing facility must meet the following qualifications:

- 1.) Be reasonably expected to increase the appraised value of the property in the amount of not less than Five Hundred Thousand (\$500,000) dollars after construction is completed.
- 2.) For new construction projects, be expected to create employment for not less than ten (10) persons associated with the production of goods, and services at the authorized facility on a full-time permanent basis in the City of Victoria or Victoria County.
- 3.) Companies seeking to qualify for tax abatement on the basis of job retention shall document that without the creation of a reinvestment zone and/or tax abatement, the company will either reduce or cease operations.

Maximum Available Abatements Per Year *

Investment (Millions)	Year								Total
	1	2	3	4	5	6	7	8	
up to .50	---	---	---	---	---	---	---	---	-----
.50 to 1.99	90	80	60	40	---	---	---	---	270%
.0 to 3.99	90	90	75	60	45	---	---	---	360%
.0 to 7.99	90	90	80	70	60	50	---	---	440%
.0 to 15.99	90	90	85	75	65	55	45	---	505%
.0 or more	90	90	85	80	75	65	55	45	585%

Affected jurisdictions reserve the right to grant abatements less than the maximum stated above.

New and Existing Facilities. Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.

Non-Transferability. In the event, property is sold which is under a tax abatement agreement, said agreement shall terminate immediately and the said property shall become taxable for the year in which the sale is consummated and all subsequent years. This provision does not apply to transfers of title between corporate entities that have common ownership.

Partially Eligible. Partially eligible for abatements are modernization projects and manufacturing facilities which are intended to replace existing equipment or facilities when the existing equipment and facilities will be removed thus eliminating existing value from the tax rolls. In this event, the value of the existing facility and equipment shall be frozen at the time of the abatement agreement and shall remain frozen throughout the abatement period. The eligible abatable value of the new project shall be the difference between the total new investment amount and the existing tax value of the equipment and/or facility to be removed.

Taxability. From the execution of the abatement contract to the end of the agreement period, taxes shall be payable as follows: (1) the value of ineligible property as provided in Section 2 e.) shall be fully taxable; (2) the base year value of existing eligible property as determined each year shall be fully taxable; and, (3) the additional value of new eligible and partially eligible property shall be taxable in the manner described in Section 2 g.).

Term of Abatement. Abatement shall be granted effective with the January 1

valuation date immediately following the date of execution of the agreement. The term shall be no longer than as set out in the schedule shown in paragraph 2 h.) for each stated range of investment.

APPLICATION - Section 3

Any present or potential owner of taxable property in an affected jurisdiction may request the creation of a Reinvestment Zone and tax abatement by filing a written request with the affected jurisdictions and attaching a plat and metes and bounds description effectively describing said Reinvestment Zone.

The application shall consist of a completed application form accompanied by: a general description of the proposed use and the general nature and extent of the modernization, expansion or new improvements to be undertaken; a descriptive list of the improvements which will be a part of the facility; a map and property description; and a time schedule for undertaking and completing the planned improvements. In the case of modernizing, 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 shall also include such financial and other information necessary for the governing body to evaluate the financial capacity and other factors of the applicant.

The initial application for the creation of a "Reinvestment Zone" and tax abatement shall be made to Victoria's Mayor if the project is to locate within the incorporated territory of the City of Victoria. If the project is to be located within Victoria County but outside of the incorporated territory of the City of Victoria, then the initial application shall be made to the Victoria County Judge. Upon receipt of a completed application, the Mayor or County Judge, as applicable, shall notify in writing the presiding officer of the legislative body of each affected jurisdiction and provide each presiding officer with a copy of the application. The Mayor or County Judge as applicable, shall then set a public hearing before the "Initiating Governing Body" to afford the Applicant an opportunity to request that a Reinvestment Zone be designated and to describe the project and request the tax abatement. All interested parties will have the opportunity to publicly state why the abatement should or should not be granted at this hearing. Notice of the Public Hearing shall be clearly identified on a governing body agenda and be timely posted as provided by law. After, the Initiating Governing Body creates the Reinvestment Zone, the other affected jurisdictions may set their public meetings in the same manner as described above to grant or not grant the applied for abatement.

After receipt of an application for creation of a Reinvestment Zone and application for abatement, Victoria Economic Development Corporation shall provide the affected jurisdictions a feasibility study setting out the impact of the proposed Reinvestment Zone and tax abatement. The feasibility study shall include, but not be limited to, an estimate of the economic impact on each jurisdiction of the creation of the Zone and the abatement of taxes on the property to be included in the Zone.

The governing body shall not establish a Reinvestment Zone for the purpose of abatement if it finds that the request for the abatement was filed after the commencement of construction, alteration, or installation of improvements related to a proposed modernization, expansion or new facility.

PUBLIC HEARING - Section 4

The adoption of the guidelines and criteria by the governing body of a taxing unit does not:

calendar year shall be paid to the affected jurisdictions within 60 days from the date of termination.

- b.) Should the governing body determine that the company or individual is in default according to the terms and conditions of its agreement, the governing body shall notify the company or individual in writing at the address stated in the agreement, and if such is not cured within 60 days from the date of such notice ("Cure Period"), then the agreement may be terminated.
- c.) In the event that the company or individual (1) allows its unabated ad valorem taxes owed any of the affected jurisdictions 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 with any of the affected jurisdictions and fails to cure during the Cure Period, the agreement then may be terminated by every affected jurisdiction and all taxes previously abated by virtue of every agreement will be recaptured by each affected jurisdiction and shall be paid by Applicant to each affected jurisdiction within 60 days of the termination.

ADMINISTRATION - Section 7

- a.) The Chief Appraiser of the County shall annually determine an assessment of the real and personal property comprising the Reinvestment zone. Each year, the company or individual receiving abatement shall furnish the assessor with such information as may be necessary for abatement. Once value has been established, the Chief Appraiser shall notify the affected jurisdictions which levies taxes on the amount of the assessment.
- b.) The agreement shall stipulate that employees and/or designated representatives of the affected jurisdictions will have access to the Reinvestment Zone during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty -four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.
- c.) Upon completion of construction, the affected jurisdictions shall annually evaluate each facility and report possible violations to the contract and agreement to the governing body and its attorney.

SUNSET PROVISION - Section 8

- a.) These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two years, at which time all Reinvestment Zones and tax abatement contracts created pursuant to its provisions will be reviewed by the governing body to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria will be modified, renewed or eliminated providing that such actions shall not affect existing contracts.
- b.) These Guidelines and Criteria do not apply to Industrial District Contracts entered into in accordance with Chapter 42 of the Texas Local Government Code.

Revised 6/10/99

Re-adopted by Victoria County Commissioners' Court, October 22, 2001