

RESOLUTION NO. 2007- 23 R

A resolution adopting guidelines and criteria for Tax Abatement agreements entered into by the City of Victoria; and declaring an effective date.

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 During that period, the guidelines and criteria may be amended or repealed only by a vote of three-fourths of the members of the governing body.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.

The City of Victoria desires to participate in tax abatement programs as provided for in the Texas Property Redevelopment and Tax Abatement Act of 1987, and the City's current Guidelines and Criteria for entry into tax abatement agreements are more than two years old; therefore, they have expired.

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 or Phase-In**, attached hereto and incorporated herein are hereby established and adopted.

3.

This resolution shall become effective immediately upon adoption.

PASSED, this the 20th day of February, 2007.

AYES: 7

NAYS: 0

ABSTENTIONS: 0


APPROVED AND ADOPTED, this the 20th day of February, 2007.

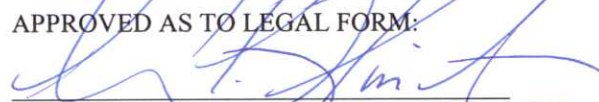
ATTEST:


SCARLET SWOBODA, City Secretary

Distribution: City Manager
Victoria Economic Development Corporation




WILL ARMSTRONG, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:

DAVID ATMAR-SMITH, City Attorney
Copies Sent: FEBRUARY 21, 2007

**Guidelines and Criteria for
Tax Abatement or Phase-In
The City of Victoria and/or Victoria County Texas**

Definitions - Section 1

- a.) **"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.
- b.) **"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.
- c.) **"Agreement"** means written contractual agreement between a property owner and/or lessee and an affected jurisdiction for the purposes of tax abatement.
- d.) **"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.
- e.) **"Deferred Maintenance"** means improvements necessary for continued operations, which do not improve productivity or alter the process technology.
- f.) **"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.
- g.) **"Expansion"** means the addition of buildings, structures, machinery or equipment for purposes of increasing production capacity.
- h.) **"Facility"** means property improvements completed or in the process of construction which together compromise an integral whole.
- i.) **"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.
- j.) **"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.
- k.) **"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.
- l.) **"New Facility"** means a property previously undeveloped that 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 the Victoria Metropolitan Statistical Area (VMSA) and result in the creation of new permanent jobs and create new tax base in the VMSA.
- n.) **"Phase In"** means the incremental increase of taxes over a period of four to eight years until full local taxation is reached, according to the schedule found in Section 2, h. It has been determined that this terminology more accurately reflects the practice of abatement for the City and County of Victoria, Texas.
- o.) **"Productive Life"** means the number of years a property improvement is expected to be in service.

- p.) **"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 Victoria County location.
- q.) **"Reinvestment Zone"** is a specific parcel of property designated by the City or the County (as applicable) within which tax abatement can be granted.
- r.) **"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.

Requirements for Phase-In - Section 2

- a.) **Authorized Facility.** A facility may be eligible for phase-in 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.
- b.) **Creation of New Value.** Phase-in may only be granted for the additional value of eligible property improvements made subsequent to and specified in a phase-in agreement between the affected jurisdiction and the property owner or lessee, subject to such limitations as governing body may require.
- c.) **Employee Origin.** In order to be eligible for designation as a Reinvestment Zone and receive tax phase-in, the planned improvement must not be expected to solely or primarily have the effect of transferring employment from one part of Victoria County to another.
- d.) **Eligible Property.** Phase-in 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.
- e.) **Ineligible Property.** The following types of property shall be fully taxable and ineligible for phase-in: 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.
- f.) **Lease Facilities.** If a new facility is to be constructed by a third party owner for lease to an Applicant otherwise eligible for tax phase-in, then the building owner may also be eligible for phase-ins. To calculate the applicable category for phase-in, the investment of both entities will be added and each shall be eligible to receive phase-in at the same rate as would have been available if one owner was accomplishing the entire project.
- g.) **Economic Qualifications.** In order to be eligible to receive tax phase-in, 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 \$500,000 after construction is completed.
 - 2.) For new construction projects, be expected to create employment for not less than 10 persons associated with the authorized facility on a full-time permanent basis in the City of Victoria or Victoria County within one year of production start-up. These jobs:
 - a. Must be dependent upon the proposed project (i.e. the positions would not exist if the project is not completed) **and**;
 - b. Must NOT simply relocate current employees within the company without the employee's previous position being filled. (i.e. Company employment 1 year from start-up must be equal to or greater than the current employment listed on the application + 10.)

- 3.) Companies seeking to qualify for tax phase-in on the basis of job retention shall document that without the creation of a reinvestment zone and/or tax phase-in, the company will either reduce or cease operations.

h.) Maximum Available Abatements Per Year *

Taxable Investment (Millions)	Year							
	1	2	3	4	5	6	7	8
Up to .50	---	---	---	---	---	---	---	---
.50 to 1.99	90	80	60	40	---	---	---	---
2.0 to 3.99	90	90	75	60	45	---	---	---
4.0 to 7.99	90	90	80	70	60	50	---	---
8.0 to 15.99	90	90	85	75	65	55	45	---
16.0 and over	90	90	85	80	75	65	55	45

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

** For eligible investments in excess of \$100 million, the affected jurisdictions reserve the right to grant abatements up to the state maximum of 100% for 10 years.

- i.) **New and Existing Facilities.** Tax phase-in may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.
- j.) **Transferability.** A tax abatement agreement may only be assigned to a new owner or lessee of a facility with the written consent of the governmental entity that granted the abatement, which may be withheld at said governmental entity's discretion.
- k.) **Partially Eligible.** Partially eligible for phase-ins 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 phase-in agreement and shall remain frozen throughout the phase-in 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.
- l.) **Taxability.** From the execution of the phase-in 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 h.
- m.) **Term of Phase-in.** 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

- a.) Any present or potential owner of taxable property in an affected jurisdiction may request the creation of a Reinvestment Zone and tax phase-in by filing a written request with the affected jurisdictions and attaching a plat and metes and bounds description effectively describing said Reinvestment Zone.
- b.) 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.
- c.) The initial application for the creation of a "Reinvestment Zone" and tax phase-in 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 phase-in. All interested parties will have the opportunity to publicly state why the phase-in 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.

- d.) After receipt of an application for creation of a Reinvestment Zone and application for phase-in, Victoria Economic Development Corporation shall provide the affected jurisdictions a feasibility study setting out the impact of the proposed Reinvestment Zone and tax phase-in. 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 amount of taxes on the property to be included in the Zone.
- e.) The governing body shall not establish a Reinvestment Zone for the purpose of abatement if it finds that the request for the phase-in 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

- a.) The adoption of these 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 phase-in 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 phase-in; or
 - (3) create any property, contract, or other legal right in any person or entity to have the governing body consider or grant a specific application or request for tax phase-in.
- b.) Should any affected jurisdiction be able to make findings during its public hearing that the granting of abatement will have a substantial adverse effect on its bonds, tax revenue, service capacity or the provision of service, that finding shall be a reason for the governing body to deny any designation of the Reinvestment Zone, the granting of abatement, or both. Additionally, the initiating governing body reserves the right to grant less than the abatement percentages shown in Section 2, paragraph h., or deny all phase-ins if the governing body, in its sole discretion, determines that Applicants' investment will not meet the community enhancement goals of said governing body.
- c.) Neither a Reinvestment Zone nor phase-in agreement shall be authorized if it is determined that: (1) there would be a substantial adverse affect on the provision of government service or tax base; (2) the applicant has insufficient financial capacity; (3) planned or potential use of property would constitute a hazard to public safety, health or morals; or, (4) violation of other codes or law.

Agreement - Section 5

- a.) The initiating governing body of a taxing unit may not enter into a Tax Phase-in Agreement unless it finds that the terms of the Agreement and the property subject to the Agreement meet these Guidelines and Criteria.
- b.) After approval, the governing body shall formally pass a resolution and execute an agreement with the Applicant, and if applicable, the owner of the facility which shall include: (1) estimated value to be abated and the base year value; (2) percent of value to be abated each year as provided in Section 2 g.); (3) the commencement date and the termination date of phase-in; (4) the proposed use of the facility; nature of construction, time schedule, map, property description and improvement list as provided in, Section 3 b.; (5) contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Sections 6 and 7, or other provisions that may be required for uniformity or State law. Such agreement shall be executed within 60 days after the applicant has forwarded all necessary information and documentation to the governing body, or at such later date as may be agreed between applicant and the governing body.

Recapture - Section 6

- a.) In the event that the facility is completed and begins producing product or service, but subsequently discontinues producing product or service for any reason excepting fire, explosion or other casualty or accident or natural disaster for a period of one year during the phase-in period, then the phase-in agreement shall terminate and so shall the abatement of the taxes for the current and any future calendar year during which the facility no longer produces. The taxes, which were to be abated for that 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 properly follow the legal procedures for their protest and/or contest in a timely manner, or (2) violates any of the terms and conditions of the phase-in 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 appraiser with such information as may be necessary for abatement, including changes in appraised value of property and verification of full-time equivalent positions as required by the Agreement. Once value has been established, the Chief Appraiser shall notify the affected jurisdictions that 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 phase-in 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 phase-in 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.