

RESOLUTION NO. 08 – 0225 – 01
CITY OF LORENA, TEXAS

GUIDELINES AND CRITERIA
FOR GRANTING TAX ABATEMENT

WHEREAS, the attraction of long-term investment and establishment of new jobs in the City would enhance the economic base of the City; and

WHEREAS, the City of Lorena has certain governmental powers that enable it to take affirmative and effective action to stimulate such growth; and

WHEREAS, tax abatement is one of the principal means by which the public sector and the private sector can forge a partnership to promote real economic growth within the community; and

WHEREAS, tax incentives offered must be strictly limited in application to those new or existing industries or commercial enterprises that bring new wealth into the community in order to avoid reducing the needed tax revenues of the City; and

WHEREAS, in addition to keeping the protection of the environment and other natural resources as high priority, any attempts to stimulate the economy should be relatively assured of eventual positive economic effects on the City of Lorena revenue raising capabilities; and

WHEREAS, the Property Redevelopment and Tax Abatement Act (the “Act”) Chapter 312 of the Texas Tax Code authorizes the City to provide property tax abatement for limited periods of time as an inducement for the development or redevelopment of a property; and

WHEREAS, effective September 1, 1987, the Act requires eligible taxing jurisdictions to establish Guidelines and Criteria as to eligibility for tax abatement agreements prior to granting any future tax abatement, said Guidelines to be unchanged for a two (2) year period unless amended or repealed by a three-fourths vote of the members of the City Council; and

WHEREAS, this document states guidelines and criteria that the City will utilize in attempts to assert positive economic development, but should not be read to imply or suggest that the City of Lorena, Texas is under an obligation to afford these opportunities to any applicant; and

WHEREAS, these Guidelines and Criteria are designed to allow maximum flexibility in addressing the unique concerns of each applicant while enabling the City to respond the changing needs of the community;

NOW, THEREFORE, BE IT RESOLVED, that the City of Lorena, Texas, acting by and through its duly elected City Council, that these Guidelines and Criteria for granting tax abatement in the City of Lorena, be and are hereby adopted.

I. DEFINITIONS

- A. “Abatement” means the full or partial exemption from ad valorem taxes of certain real and/or personal property in a Reinvestment Zone designated for economic development purposes pursuant to Chapter 312 of the Texas Tax Code.
- B. “Agreement” means a contractual agreement between a property owner and/or lessee and an eligible jurisdiction for the purposes of tax abatement.
- C. “Base Year Value” means the assessed value of eligible property January 1 preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1 but before the execution of the Agreement.
- D. “City” means the City of Lorena, Texas.
- E. “Commercial Enterprise” means the activity of providing goods or services involving financial, commercial or industrial aspects; or an enterprise connected with commerce.
- F. “Deferred Maintenance” means improvements necessary for continued operations which do not improve the productivity or alter the process technology.
- G. “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 primarily outside the City.
- H. “Expansion” means the addition of buildings, structures, fixed machinery, or equipment for purposes of increasing production capacity.
- I. “Facility” means property improvements completed or in the process of construction, which together comprise an integral whole.
- J. “Manufacturing Facility” means 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 assembly of goods and materials from multiple sources in order to create a finished or semi-finished product.

- K. “Modernization” means the replacement and upgrading of existing facilities which increases the productivity 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 machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing, or repairing except as may be integral to or in direct connection with an existing expansion.
- L. “New Facility” means a 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 or 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 City and result in the creation of new permanent jobs and create new wealth in the City. Corporate offices are included in this definition.
- N. “Personal Property” means tangible personal property located on the real property, excluding that personal property located on the real property prior to the period covered by the abatement with the City, other than inventory or supplies.
- O. “Productive Life” means the number of years a property improvement is expected to be in service.
- P. “Project” means any property improvement including expansion, modernizations, and new facilities, but excluding any deferred maintenance.
- Q. “Reinvestment Zone” means any area of the City which has been designated a reinvestment zone for tax abatement purposes and which is located within the taxing jurisdiction of the City. It is the intent of the City to designate reinvestment zones on a case-by-case basis in order to maximize the potential incentives for eligible enterprises to locate or expand within the City.
- R. “Regional Entertainment Facility” means buildings and structures, including machinery and equipment, used or to be used to provide entertainment through the admission of the general public where the majority of the users reside primarily outside the City.
- S. “Regional Service Facility” means buildings and structures, including machinery and equipment, used or to be used to provide services to the general public.
- T. “Research Facility” means buildings and structures, including 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.

- U. “Targeted Enterprise” means the following facilities: distribution center facility, manufacturing facility, regional entertainment facility, research facility, regional service facility, other basic industry, or any other commercial enterprise.

II. CRITERIA FOR TAX ABATEMENT

- A. General Criteria. All applications must meet the following general criteria before being considered for tax abatement:

1. The project expands the local tax base.
2. The project creates permanent full time employment opportunities.
3. The project would not otherwise be developed.
4. The project makes a contribution to enhancing further economic development.
5. The project must remain in good standing with all governmental and environmental regulations.
6. The project has not been started and no construction by the applicant has commenced at the time the application is approved.
7. The project must not have any of the following objections:
 - a. there would be substantial adverse effect on the provision of government services or tax base;
 - b. the applicant has insufficient financial capacity;
 - c. planned or potential use of the property would constitute a hazard to public safety;
 - d. planned or potential use of the property would create adverse impacts to adjacent properties;
 - e. any violation of laws of the United States or State of Texas or ordinances of the City of Lorena, Texas or orders of McLennan County, Texas would occur; or
 - f. it is in an improvement project financed with tax increment bonds.

- B. Specific Criteria. If the project in the application meets the general criteria, is a facility of a Targeted Enterprise and has a capital cost that exceeds Five Hundred Thousand and No/100 Dollars (\$500,000.00) then abatement of any or all of the increased value will be considered. In no case would tax abatement exceed the maximum allowed by state law, presently 100% for ten (10) years. Factors to be considered in determining the portion of the increased value to be abated and the duration of the abatement agreement include, but are not limited to:

1. Total amount of the increased value;
2. Total number of jobs created;
3. Type of jobs created;
4. Dollar Value of payroll created;

5. Other costs and revenues associated with the application.

III.

APPLICATIONS FOR REINVESTMENT ZONES AND TAX ABATEMENTS

- A. All requests for reinvestment zones and tax abatement in the jurisdiction of the City of Lorena, Texas, shall be made by filing a written application with the City Council after addressing all criteria established herein. An application for designation of a reinvestment zone and for tax abatement may be combined and submitted jointly. All applications shall be made on a form provided by the City and shall include the following unless the City has waived a requirement that it has deemed unnecessary to properly evaluate the request:
 1. A general description of the project including purpose and explanation of the kind, number and location of all proposed improvements as well as how the project will meet the criteria established herein.
 2. A plat showing the precise location of the property and all improvements thereon, all roadways within 500 feet of the site and all existing zoning and land uses within 500 feet of the site, (a complete legal description shall be provided if the property is described by metes and bounds).
 3. A complete estimated cost of the project by land, building, equipment, and personalty categories.
 4. A description of the methods of financing all estimated costs and the time when related costs or monetary obligations are to be incurred.
 5. Estimated number of employment opportunities the project creates over the period of the abatement, including gross annual payroll of permanent full time and part time employees remaining after construction is complete.
 6. A detailed time schedule for undertaking and completing the project.
 7. A fee in the amount of One Thousand and No/100 Dollars (\$1,000.00).
- B. After reviewing the application, if the City, its officials, staff, agent or representative finds the application to be complete and accurate and meets the criteria established herein, the City, its officials, staff, agent or representative may then do or cause to have done an impact study, which the applicant may be required to pay or participate in paying for, setting forth the impact of the proposed reinvestment zone and tax abatement agreement. This study shall include, but not be limited to, a cost benefit analysis of the creation of the reinvestment zone and the abatement of taxes.

- C. After establishing the benefits of the proposal, the City, its officials, staff, agent or representative may propose that the City offer a tax abatement agreement. The City will then meet with representatives of each governing body of every taxing unit that the proposed reinvestment zone involves. This is to determine each taxing unit's intentions of entering into a tax abatement agreement.
- D. The City, its officials, staff, agent or representative will then inform the applicant of the potential tax abatement agreement, the intentions of the other taxing units on tax abatement agreements, and what other incentives will be offered for the proposed project.
- E. Having completed all the required steps in the process, and having been assured by the applicant that it wishes to proceed, the City may then follow procedures in accordance with Texas Tax Code Chapter 312, as amended, and establish a reinvestment zone and tax abatement agreement.

IV.

DESIGNATION OF A REINVESTMENT ZONE AND TAX ABATEMENT

- A. Prior to granting tax abatement, the City of Lorena by ordinance must designate an area as a reinvestment zone. Prior to adopting such an ordinance, the City Council must conduct a public hearing on the designation that entitles all interested persons to speak and present evidence for or against the designation. Not later than the seventh day before the date of the hearing, notice of the hearing must be:
 - 1. Published in a newspaper having general circulation in the City; and delivered in writing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed reinvestment zone.
- B. The City by resolution may enter into a written tax abatement agreement. At least seven (7) days before entering into the agreement, the City will deliver to the presiding officer of the governing body of each other taxing unit in which the property to be subject to the agreement is located a written notice that the City intends to enter into the agreement. The notice shall include a copy of the proposed agreement.
 - 1. Any agreement will include, but not limited to, the following specific terms:
 - a. all appropriate stipulations included in the application, as outlined herein, for a reinvestment zone and tax abatement agreement;

- b. the amount and duration of the tax abatement;
 - c. a method for determining the qualifications of meeting the criteria and a warranty and guarantee to meet and maintain these qualifications over the term of the agreement; the City will be allowed, upon written request and reasonable notice, to inspect and audit such records of the applicant as are necessary to substantiate that the applicant is meeting criteria agreed upon during the term of the abatement;
 - d. a provision that in the event the agreement is terminated for whatever reason or the applicant fails to fulfill the terms and provisions thereof, the tax abatement agreement will be deemed null and void and all or some portions of abated taxes, as may be determined by the City Council in its sole discretion, shall be paid immediately to City;
 - e. access to and authorized inspection of the property by City employees, agents or representatives to ensure that the improvements or construction are made according to specifications and conditions of the agreement; and
 - f. the specific terms required by Chapter 312, Texas Tax Code, as amended.
- C. An agreement may be modified or terminated by the mutual consent of the parties in the same manner that the agreement was approved and executed; provided however, the agreement may not be altered to provide for tax abatement for a period of more than ten (10) years.

V. RECAPTURE

- A. In the event that any type of facility is completed and begins producing goods or services, but subsequently discontinues producing goods or services for any reason, excepting fire, explosion or other casualty or accident or natural disaster or other event beyond the reasonable control of applicant or owner for a period of 180 days during the term of a tax abatement agreement, then in such event the tax abatement agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to the City by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to the City within sixty (60) days of the date of termination. The burden shall be upon the applicant or owner to prove to the satisfaction of the City that the discontinuance of producing goods or services was as a result of fire, explosion, or other casualty or accident or natural disaster or other event beyond the control of applicant or owner. In the event the applicant or owner meets this burden and the City is satisfied that the discontinuance of the production of goods or services was the result of events beyond the control of the applicant or owner, then such applicant or owner shall have a period of one (1) year in which to resume the production of

goods and services. In the event that the applicant or owner fails to resume the production of goods or services within one (1) year, then the tax abatement agreement shall terminate and the abatement of all taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to the City by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to the City within sixty (60) days of the date of termination. The one (1) year time period, hereinabove mentioned, shall commence upon written notification from the City to the applicant or owner.

- B. In the event that the applicant or owner has entered into a tax abatement agreement to make improvements to a facility of any type described herein, but fails to undertake or complete such improvements, then in such event the City shall give the applicant or owner thirty (30) days notice of such failure. The applicant or owner shall demonstrate to the satisfaction of the City that the applicant or owner has commenced to cure such failure within the thirty (30) days above mentioned. In the event that the applicant or owner fails to demonstrate that he is taking affirmative action to cure his failure, then in such event the tax abatement agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to the City by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to the City within sixty (60) days of the date of termination.
- C. In the event that the City determines that the applicant or owner is in default of any of the terms or conditions contained in the tax abatement agreement, then in such event the City shall give the applicant or owner thirty (30) days written notice to cure such default. In the event such default is not cured to the satisfaction of the City within the thirty (30) days notice period, then the tax abatement agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to the City by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to the City within sixty (60) days of the date of termination.
- D. In the event that the applicant or owner allows ad valorem taxes on property ineligible for tax abatement owed to the City to become delinquent and fails to timely and properly follow the legal procedures for their protest or contest, then in such event the tax abatement agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination, under this subparagraph, takes place shall be payable to the City by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to the City within sixty (60) days of the date of termination.

- E. In the event that the an applicant or owner, who has executed a tax abatement agreement with the City, relocates the business, for which tax abatement has been granted, to a location outside of the designated reinvestment zone, then in such event, the tax abatement agreement shall terminate after thirty (30) days written notice by the City to the Owner/Applicant. Taxes abated during the calendar year in which termination, under this subparagraph takes place shall be payable to the City by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to the City within sixty (60) days of the date of termination.
- F. The date of termination as that term is used in this subsection shall, in every instance, be the 30th day after the day the City sends notice of default, in the mail to the address shown in the tax abatement agreement to the applicant or owner. Should the default be cured by the owner or applicant within the thirty (30) day notice period, the Owner/Applicant shall be responsible for so advising the City and obtaining a release from the notice of default from the City, failing in which, the abatement remains terminated and the abated taxes must be paid.
- G. In every case of termination set forth above, the City shall determine whether default has occurred by owner (applicant) in the terms and conditions of the tax abatement agreement and shall so notify all other affected jurisdictions.
- H. In the event that a tax abatement agreement is terminated for any reason whatsoever and taxes are not paid within the time period herein specified, then in such event, the provisions of V.T.C.A., Tax Code, Section 33.01 will apply.

VI. MISCELLANEOUS

- A. Any notice required to be given by these criteria or guidelines shall be given in the following manner:(a) To the owner or applicant: written notice shall be sent to the address appearing on the tax abatement agreement. (b) To the City: written notice shall be sent to the address appearing on the tax abatement agreement.
- B. The Chief Appraiser of the McLennan Central Appraisal District shall annually assess the real and personal property comprising the reinvestment zone. Each year, the applicant or owner receiving tax abatement shall furnish the Chief Appraiser with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser shall notify the City of the amount of assessment.
- C. Upon the completion of improvements made to facility as set forth in these criteria and guidelines an officer, employee(s) or agent of the City having executed a tax abatement agreement with applicant or owner shall have access to the facility to insure compliance with the tax abatement agreement.

- D. A tax abatement agreement may be assigned to a new owner, but only after written consent has been obtained from all affected jurisdictions which have executed such an agreement with the applicant or owner.
- E. These guidelines and criteria are effective upon the date of their adoption by the City and shall remain in force for two years. At the end of the two year period these guidelines and criteria may be readopted, modified, amended or re-written as the conditions may warrant.
- F. In the event of a conflict between these guidelines and criteria and V.T.C.A., Tax Code, Chapter 312, then in such event the Tax Code shall prevail and these guidelines and criteria interpreted accordingly.

RESOLVED on this _____ day of _____, 2008.

CITY OF LORENA, TEXAS

By: _____
Chuck Roper, Mayor

ATTEST:

Monica Hendrix, City Secretary