

Guidelines & Criteria for Granting Tax Abatements in Reinvestment Zones  
Upton County, Texas

**Preamble**

Pursuant to Chapter 312 of the Texas Tax Code, Upton County may consider an application for tax abatement, designate a reinvestment zone and enter into a tax abatement agreement as provided for in these Guidelines and Criteria.

**I. Abatement Application Procedure**

(a) Who may apply any present or potential owner or lessee of taxable property in Upton County may submit an application for tax abatement conforming to the requirements outlined herein.

Abatement may only be granted for the following property constructed or otherwise put in place after the effective date of the tax abatement agreement: new, expanded or modernized buildings and structures, fixed machinery and equipment; site improvements; related fixed improvements; other tangible items necessary to the operation and administration of the project or facility; and all other real and tangible personal property permitted by Chapter 312 of the Texas Tax Code.

(c) Application provisions. The application shall consist of a completed Upton County Tax Abatement Application Form, which shall contain the following:

- (1) information showing how the project meets the requirements of the criteria outlined in Section II below;
- (2) a map and description of the property;
- (3) a time schedule for completing the planned improvements;
- (4) the estimated taxable value or range of values of the project or facility; and
- (5) basic financial information about the principles sufficient to enable evaluation of the applicant's financial capacity;
- (6) and a \$1000.00 application fee.

(d) Procedure for Application Consideration. The procedure for consideration by the County of a Tax Abatement Application is as follows.

(1) An applicant may request the Guidelines and Criteria for a Tax Abatement from the County Judge's Secretary.

(2) After an applicant builds an Application based on the Tax Abatement Guidelines and Criteria, applicant provides a copy to each member to the Upton County Commissioners Court and the County Judge's Secretary.

(3) After receipt of an application, the Commissioners Court determines within forty-five (45) days how to proceed with the application. The Commissioners Court shall choose either to deny the application, consider the application, or consider the application on an expedited basis.

**(A) Denial of application.** If the Commissioners Court chooses to deny the application, it shall make a finding by majority vote at a regularly scheduled meeting that the application does not meet the requirements of the criteria provided below in Section II,

**(B) Consideration of application.** If the County determines that the application should be further considered, the County Judge shall schedule a hearing to obtain public input on the application. At least (45) days prior to the hearing, the County must send written notice to the presiding officers of all taxing units with jurisdiction over the property for which an abatement is sought and must publish notice of the hearing time, place and subject in the local newspaper. At the hearing, the Commissioners Court evaluates the application against the criteria in Section II and decides whether to designate the property for which the abatement is sought as a reinvestment zone. If the reinvestment zone is not designated, the application fails, although it may be amended and resubmitted. If the reinvestment zone is designated, the Commissioners Court shall pass an order to that effect and may then arrange to consider for approval the tax abatement agreement between the applicant and the county at its next regularly scheduled meeting. At least seven days prior to entering into a tax abatement agreement, the County must give written notice of its intent to do so to the presiding officers of all taxing units with jurisdiction over the property for which an abatement is sought, along with a copy of the proposed tax abatement agreement. At the regularly scheduled meeting, the Commissioners Court may finally vote by simple majority to enter into the tax abatement agreement or to decline. An approved tax abatement agreement may be executed in the same manner as other contracts made by the county.

**(C) Expedited consideration of application.** If the County determines that the application should receive expedited consideration, the County Judge shall schedule an opportunity to obtain public input on the application at the Commissioners Court next meeting. At least thirty (30) days prior to the meeting, the County must send written notice to the presiding officers of all taxing units with jurisdiction over the property for which an abatement is sought and must publish notice of the hearing time, place and subject in the local newspaper. Also at this time, the County must give written notice of its intent to enter into a tax abatement agreement to the presiding officers of all taxing units with jurisdiction over the property for which an abatement is sought, along with a copy of the proposed tax abatement agreement. During the regularly scheduled meeting, the Commissioners Court evaluates the application against the criteria in Section II and decides whether to designate the property for which the abatement is sought as a reinvestment zone. If the reinvestment zone is not designated, the application fails, although it may be amended and resubmitted. If the reinvestment zone is designated, the Commissioners Court shall pass an order to that effect and may then immediately consider for approval the tax abatement agreement between the applicant and the county. After consideration, the Commissioners Court may finally vote by simple majority to enter into the tax abatement agreement, or to decline. An approved tax abatement agreement may be executed in the same manner as other contracts made by the county.

**(e) Confidentiality.** As required by Section 312.003 of the Texas Tax Code, information that is provided to Upton County in connection with an application or request for tax abatement under this chapter and that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which tax abatement is sought is confidential and not subject to public disclosure until the tax abatement agreement is executed.

## **II. Criteria for Designating a Reinvestment Zone**

**(a) Minimum requirement.** To be designated a reinvestment zone, County Commissioners must find by majority vote that:

**(1)** The property for which the abatement is sought will be reasonably likely as a result of the

designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the county, or meet one or more of the other requirements provided in Section 312.202 of the Texas Tax Code; and

(2) that the improvements sought are feasible and practical and would be a benefit to the land to be included in the zone and to the county after expiration of the tax abatement agreement.

(b) Criteria. In determining whether to designate a reinvestment zone and whether to enter into a tax abatement agreement, the Commissioners Court shall consider the following factors, among others determined appropriate by the Court:

- (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, if any, to be created by proposed improvements;
- (6) costs to be incurred by Upton County, if any, to provide facilities or services directly resulting from the new improvements;
- (7) types and values of public improvements, if any, to be made by applicant seeking abatement;
- (8) the amount of ad valorem property taxes to be paid to Upton County after expiration of the abatement agreement;
- (9) the impact on the business opportunities of existing businesses and the attraction of new businesses to the area, if any; and
- (10) the overall compatibility with the zoning ordinances and comprehensive plan, if any, for the area.

### **III. Format for Tax Abatement Agreement**

(a) Required provisions. If the Upton County Commissioners Court designates a reinvestment zone, it may consider and execute a tax abatement agreement with the owner of the designated property and lessee, as appropriate, as outlined above. Any tax abatement agreement shall include at least the following:

- (1) the kind, number and location of all proposed improvements of the property;
- (2) provisions allowing for reasonable access to the property for initial and intermittent inspection purposes by County employees or designated representatives to ensure improvements are made in compliance with the agreement;
- (3) provisions limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the area during the period of abatement;
- (4) provisions for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided in the agreement;
- (5) each term agreed to by the recipient of the abatement;
- (6) a requirement that the abatement recipient certify its compliance with the agreement annually to the County; and
- (7) provisions allowing the County to cancel or modify the agreement if the recipient is out of compliance with the agreement.

**(b) Optional provisions.** The tax abatement agreement may also contain any or all of the following items, in addition to any others deemed appropriate by the contracting parties;

- (1) the estimated taxable value or range of values for which taxes are to be abated;
- (2) percent of value to be abated or payment in-lieu-of tax amount each year;
- (3) the commencement and termination dates of the abatement;
- (4) proposed use of the property;
- (5) nature of construction, time schedule, map, and property description;
- (6) contractual obligations in the event of default or violation of terms or conditions;
- (7) size of investment and number of temporary and permanent jobs involved, if any;
- (8) provisions for dispute resolution.

**(c) Duration and portion of abatement.** A tax abatement granted by Upton County may be up to, but shall not exceed, ten (10) years in duration and up to but not exceeding 100% in portion of ad valorem property taxes abated.

**(d) Time limit.** Such agreement shall be executed within 30 days after passage of the resolution approving the agreement, unless the County and the applicant mutually agree otherwise.

#### **IV. Administration of Tax Abatement Agreement**

**(a) Inspections.** County employees or their designated representatives shall have reasonable access to the property for initial and intermittent inspection purposes in order to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement.

**(b) Cure provisions.** Should Upton County determine that the company or individual receiving the abatement is in default of the tax abatement agreement, it shall notify the company or individual of such default in writing at the address specified in the agreement, and if such is not cured within sixty (60) days of notice, the agreement may be terminated by the County.

**(c) Modification and termination.** At any time before the expiration of a tax abatement agreement, an agreement may be modified by the parties to include other provisions that could have been included in the original agreement or to delete provisions that were not necessary to the original agreement. The modification must be made by the same procedure by which the original agreement was made. An agreement may also be terminated by the mutual consent of the parties in the same way the agreement was made, or by other means as agreed by the parties according to the provisions of the agreement.

#### **V. Assignment**

An abatement granted by Upton County may be transferred and assigned by the holder to a new owner or lessee of the same property upon the approval by resolution of Upton County subject to the financial capacity of the assignee and provided that all conditions and obligations in the tax abatement agreement are guaranteed by the execution of a new contractual agreement with Upton County. Approval shall not be unreasonably withheld by Upton County.

**VI. Sunset and Amendment of Guidelines and Criteria**

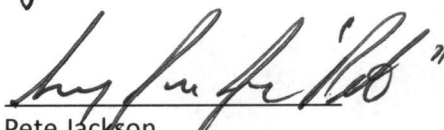
**VII. Variance**

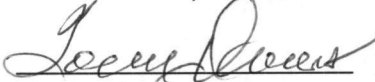
The Commissioner's Court shall have the authority to grant a variance from the terms and conditions of these Guidelines and Criteria.

These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two years, unless amended by three-fourths vote of the Upton County Commissioners Court.

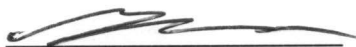
Passed and approved at a regular meeting of the Upton County Commissioners' Court, at which a quorum was present on the 3 day of August, 2020.

  
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Dusty W. Kilgore  
Upton County Judge

  
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Pete Jackson  
Commissioner, Precinct 1

  
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Tommy Owens  
Commissioner, Precinct 2

Not Present  
\_\_\_\_\_  
Mike Smart  
Commissioner, Precinct 3

  
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Gary Wolfe  
Commissioner, Precinct 4