



**AS ADOPTED BY THE COMMISSIONERS COURT
OF POLK COUNTY, TEXAS**
November 24, 2020

GUIDELINES & CRITERIA

Effective December 11, 2020 through December 10, 2022

Polk County, Texas

Tax Abatement Guidelines and Criteria

1. **Introduction.** These Guidelines and Criteria Governing Tax Abatement Agreements (“the Guidelines”) by Polk County, Texas (“the County”), support Polk County’s priority of implementing policies and incentives to attract, retain and expand industries, increase employment and wages, expand the tax base, and create new economic opportunities within the County. The County is authorized to abate property taxes in accordance with the Property Redevelopment and Tax Abatement Act, which is codified as chapter 312 of the Texas Tax Code (“the Act”). These guidelines have been reviewed to help ensure that any abatement of property taxes achieves the County’s economic development goals.
2. **Resolution.** In accordance with the Act, the Commissioners’ Court, by resolution passed on December 12, 1988 and attached hereto as Exhibit "A", has elected to become eligible to participate in tax abatement, and to that end, has adopted these guidelines governing tax abatement agreements which supersede any previously adopted, renewed or amended guidelines.
3. **Effective Period.** These guidelines are and shall be effective on January 1, 2021 through December 31, 2022, unless repealed or further amended during the interim period by action of the Commissioners’ Court of Polk County, Texas.
4. **Approval by Governing Body.** Before the County may adopt, amend, repeal, or reauthorize guidelines and criteria, the Commissioners Court must hold a public hearing regarding the proposed adoption, amendment, repeal, or reauthorization at which members of the public are given the opportunity to be heard. The notice of a meeting required by section 312.002(c-1) will be posted in a newspaper of general circulation in the County, on the public notification board in the Courthouse, and on the County website at least seven days prior to the hearing. Following the public hearing, pursuant to the Act, these guidelines may be amended, repealed or reauthorized only by a vote of, at minimum, three-fourths of the members of the Commissioners Court.
4. **No Property Right Created/Discretion Retained.** The adoption of these guidelines does not limit the discretions of the County to decide whether to enter into a specific tax abatement agreement; does not limit the discretion of the County to delegate to its employee(s) the authority to determine whether or not the County should consider a particular application or request for tax abatement; does not limit the discretion of the County to determine the proportion of value to be abated; and does not create any property, contract, or other legal rights in any person to have the County consider or grant a specific application or request for tax abatement.
5. **Definitions.** The following words and terms, when used in these Guidelines, shall have the meanings set forth below unless the context *clearly* indicates otherwise:
 - a. **Abatement** means the full or partial exemption from ad valorem taxes of certain real property in a reinvestment zone designated for economic development purposes.
 - b. **Affected jurisdiction** means Polk County, Texas, and every other taxing unit within Polk County, Texas that includes within its boundaries real property that is to be included in a proposed or existing reinvestment zone.
 - c. **Agreement** means a contractual agreement between a property owner and/or lessee and the County of Polk for the purposes of tax abatement.

- d. **Base year value** means the assessed value of eligible property as of the January 1st 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.
- 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.
- g. **Economic Life** means the number of years a property is expected to be in service in a facility.
- h. **Eligible Facilities** means new, expanded, or modernized buildings and structures, including fixed machinery and equipment, which is 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 and that would contribute to the economic development of Polk County, but does not include facilities which are intended to be primarily to provide goods or services to residents for existing businesses located in Polk County, such as, but not limited to, restaurants and retail sales establishments, eligible facilities may include, but shall not be limited to hotels and office buildings.
- i. **Expansion** means the addition of buildings, structures, machinery or equipment for purposes of increasing production capacity.
- j. **Facility** means property improvements completed or in the process of construction which together comprise an integral whole.
- k. **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.
- l. **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 machinery, or equipment. It shall not be for the purpose of reconditioning, refurbishing or repairing.
- m. **New Facility** means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- n. **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. Other Basic Industry shall also include retail and wholesale sales facilities.
- o. **Productive Life** means the number of years a property improvement is expected to be in service.
- p. **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.
- q. **Research Facility** means building 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.
- r. **Regional Service Facility** means buildings and structures, including machinery and equipment, used or to be used to service goods.

6. **Eligibility.**

- a. **Reinvestment Zone.** To be eligible for tax abatement, the owner must own taxable real property which is the subject of the tax abatement which is located within a reinvestment zone designated by the governing body of a municipality or the County in accordance with the Act and must enter

into a written agreement with the County wherein the owner agrees to make specified improvements or repairs to the property and, if applicable, that such specified improvements or repairs to the property are being made in conformity with the municipality's comprehensive plan.

- b. **Authorized facility.** A facility may be eligible for tax abatement if it is a Manufacturing Facility, Research Facility, Distribution Center or Regional Service Facility, Regional Entertainment Facility, or Other Basic Industry.
- c. **Creation of new value.** Abatement may only be granted for the increase in appraised value of eligible property improvements located in the reinvestment zone made subsequent to, and specified in, an abatement agreement between the County and the owner or lessee, subject to such limitations as the County may require.
- d. **New and existing facilities.** Abatement may be granted for both new facilities and structures, and for the expansion or modernization of existing facilities and structures, unless the property is property described by section 312.211(a) of the Texas Tax Code, in which event requirements must conform with section 312.211.
- e. **Leased facilities.** If a leased facility is granted tax abatement, then the agreement authorizing such abatement shall be executed by both the lessor (owner) and the lessee, and the term of abatement that may be granted shall be no more than ten (10) years or the term of the lease between lessor and lessee, whichever is less. Publicly owned land leased to private entities shall be eligible for abatement if otherwise qualified.
- f. **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, subject to the discretion of the County. The value of the property shall be the certified appraised value for each year, as finally determined by the County's appraiser.
- g. **Ineligible property.** The following types of property shall be fully taxable and are ineligible for tax abatement: land, inventories, supplies, tools, furnishings and other forms of movable personal property, vehicles, vessels, aircraft, housing, hotels accommodations, furniture, deferred maintenance investments, property to be rented or leased (except as provided in Leased facilities above), property which has a productive life of less than fifteen (15) years, any improvements, including those to produce, store or distribute natural gas, fluids or gasses, which are not integral to the operation of the facility, 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, or any property exempted by local, state or federal law.
- h. **Forego protest.** Any applicant for tax abatement shall agree to forego any protest, application, negotiations, or other procedures available to taxpayers that would challenge or dispute the assessed value of the property subject to the proposed abatement that is annually determined by the County's appraiser.
- i. **Basic qualifications.** To be eligible for designation as a reinvestment zone and be eligible for tax abatement, the planned improvement:
 - 1. Must be shown to directly create employment for ten (10) additional permanent full time employees or prevent the loss of at least ten (10) permanent full time employees, wherein the worksite for the employees is within the reinvestment zone;
 - 2. Must be shown not the solely or primarily have the effect of transferring employment from one part of the County to another part of the County;
 - 3. The total expenditure for the construction and addition of eligible, taxable property must meet or exceed \$10,000,000.00, upon completion of the contractually defined construction period. However, in the event a facility for which tax abatement has already been granted, and for

which the owner and the County have in place a tax abatement agreement, is expanded, and the owner applies for additional tax abatement for the increased value of the expansion, the County may, at its discretion, waive the minimum dollar valuation requirement and/or the required number of new employees stated herein. Any such waiver may be contained in the original tax abatement agreement, or in the resolution authorizing a new or amended tax abatement with the owner; and

4. Must be necessary because capacity cannot be provided efficiently utilizing existing improved property.
7. **Value and Term of Abatement.** Abatement shall be granted effective with the January 1 valuation date immediately following the date of execution of the Agreement. A maximum of one hundred percent (100%) of the value of new eligible properties may be abated for a maximum period of ten (10) years. The abatement may be extended through an initial agreement between the owner and the County, and/or a subsequent agreement as may be required to comply with state law regarding the term of a reinvestment zone, for any period authorized by law.
8. **Joining Municipal Tax Abatement.**
- a. **Term.** Polk County may consider joining in approved municipal abatements for an abatement period of up to ten (10) years, inclusive of construction, upon application by the municipality to the Commissioners Court.
 - b. **Application by municipality.** In making such application to the Commissioners Court, the municipality must include a certified copy of the tax abatement application that the applicant submitted to the municipality and a certified copy of the tax abatement agreement entered into between the municipality and the applicant.
 - c. **Eligibility.** To be eligible for abatement by the County, the requested tax abatement must be eligible and conform to the requirements of these Guidelines.
 - d. **Agreement.**
 1. The County may participate in the abatement through the vehicle of an amendment to the municipal tax abatement agreement, or through a separate agreement entered into between the County and the applicant. The terms of the County's agreement to participate in the abatement are not required to contain terms identical to those contained in the agreement with the municipality.
 2. In the event of an amendment to the municipal tax abatement agreement, the amendment shall, at a minimum, include a specification of the term of the County's participation, the proportion of value to be abated, the date upon which abatement commences (for the municipality and for the County), the date upon which the abatement ends (for the municipality and for the County), and the date that taxes shall be due and payable. The County's participation in an abatement on property within the taxing jurisdiction of a municipality remains subject to these Guidelines.
9. **Taxability.** Subsequent to full execution of the Agreement and for the duration of the abatement period specified within the Agreement, taxes shall be payable as follows:
- a. The value of ineligible property shall be fully taxable;
 - b. The base year value of existing eligible property as determined each year shall be fully taxable;
 - c. The additional value of new eligible property shall be taxable in the manner described hereinabove in section 8; and

- d. If the base year value decreases during the term of tax abatement or if an additional exemption is granted by the State or Federal government, then the maximum amount of abatable value to be used in an abatement calculation will be reduced each year by the same rate.

10. Application for Abatement.

- a. **Written application.** Any current or potential owner or lessee of taxable property in the County may request tax abatement by filing a written application with the County. The Commissioners Court has adopted an application for this purpose, which is attached to these Guidelines as Exhibit “B”. A completed application must be submitted to the County, along with required supporting documentation and fee payment.
- b. **Contents of application.** The application shall be signed by the owner or lessee, as applicable, and shall be accompanied by:
 - 1. A general description of the proposed use and the general nature and extent of the modernization, expansion, or new improvements to be undertaken;
 - 2. A non-refundable application fee of \$500, payable to Polk County;
 - 3. A descriptive list of the improvements which will be part of the facility;
 - 4. An estimate of the cost of the improvements which will be part of the facility;
 - 5. A map and metes and bounds description of the property;
 - 6. A time schedule for undertaking and completing the proposed improvements;
 - 7. A certification prepared by the Tax Assessor-Collector of Polk stating that all of applicant’s tax accounts with the County are paid and current; and
 - 8. Any financial and other information the County deems necessary for evaluating the financial capacity of the applicant.
- c. **Modernization.** In the case of modernization, applicant shall include a statement of the assessed value of the facility separately stated for real and personal property for the tax year immediately preceding the application.
- d. Upon receipt of a completed application, the County Judge of Polk County shall notify in writing the presiding officer of the governing body of each taxing jurisdiction directly affected by the proposed abatement. Before acting on the application, the County shall afford the applicant and the designated representative of each affected taxing jurisdiction the opportunity, via public hearing before the Commissioners Court, to show why the abatement should or should not be granted. However, should any other taxing entity for which abatement has been requested have already been afforded a public hearing on such abatement, the requirement of a public hearing may be waived at the discretion of the County.
- e. After receipt of a completed application for tax abatement, the County shall prepare a feasibility study setting out the potential impact of the requested abatement will have on the economic stability of the County and its citizens.
- f. The County shall not grant the request for tax abatement if it finds that the request for abatement was filed after the commencement of construction, alteration or installation of improvements related to a proposed modernization, expansion or new facility.
- g. Requests for variance from the above provisions shall be made in writing to the County Judge of Polk County, Texas. Said written request shall include a complete description of the circumstances why the application should be granted a variance. Approval of a request for variance requires a three-fourths (3/4) vote of the Commissioners Court, and their determination of whether or not to grant the variance shall be final.

11. Public Hearing.

- a. **Public Hearing for Reinvestment Zone Required.** Before the County may designate a Reinvestment Zone, the Commissioners Court must hold a public hearing on the designation and find that the designation would contribute to the economic development of the county. At the hearing, interested persons are entitled to speak and present evidence for or against the designation.
 - 1. Notice of the hearing must be published at least seven days prior to the hearing in a newspaper of general circulation within the County, as well as posted on the Courthouse Public Notice Board and on the County Website for the same time period, and delivered in writing to the presiding officer of the governing body of each taxing unit that includes its boundaries real property that is to be included in the Reinvestment Zone.
- b. **Public Hearing for Tax Abatement Agreement Required.** Before the County may agree to a Tax Abatement, the Commissioners Court must hold a public hearing.
 - 1. Notice of public hearing for tax abatement must be published at least thirty days prior to the hearing in a newspaper of general circulation within the County, as well as posted on the Courthouse Public Notice Board and on the County Website for the same time period, and must contain:
 - a. the name of the property owner and the name of the applicant for the tax abatement agreement
 - b. the name and location of the reinvestment zone in which the property subject to the agreement is located;
 - c. A general description of the nature of the improvements or repairs included in the agreement, and
 - d. The estimated cost of the improvements or repair.
 - 2. Should any affected jurisdiction be able to show good cause in the public hearing why the granting of abatement shall have a substantial adverse impact on the bonds, tax revenue, or general economic wellbeing of the affected jurisdiction, that showing may form a basis for the County denying the request for abatement. Request for tax abatement shall not be granted if it is shown that:
 - a. there would be substantial adverse effect on the provision of County services or on the overall well-being of the County's tax base;
 - b. the applicant has insufficient financial capacity;
 - c. the planned or potential use of the property would constitute an encroachment on the County's public safety, health or morals, when applying standards currently prevalent in the community; or
 - d. the agreement would in any way result in a violation of local, state or federal regulations and/or laws.

12. Agreement.

- a. **Approval by Commissioners Court required.** To be effective, an agreement for tax abatement must be approved by the affirmative vote of a majority of the members of the Commissioners Court at a regularly scheduled meeting thereof. After the public hearing, the Commissioners Court shall adopt a resolution finding that the proposed agreement filed with the resolution, a copy of which must be attached thereto, meets the applicable provisions of these Guidelines and Criteria. The resolution shall also authorize the execution of the agreement with the owner of the facility or, if applicable, the lessee.
- b. **Statutory mandatory requirements.** The execution, duration and other terms of the agreement are governed by chapter 312 of the Texas Tax Code. Accordingly, the agreement shall:
 - 1. List the kind, number, and location of all proposed improvements to the property;

2. Provide access to and authorize inspection of the property by County employees to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement;
 3. Limit the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that the property tax exemptions are in effect;
 4. Provide 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 by the agreement;
 5. Contain each term agreed to by the owner of the property;
 6. Require the owner of the property to certify annually to the governing body of each taxing unit that the owner is in compliance with each applicable term of the agreement; and
 7. Provide that the Commissioners Court may cancel or modify the agreement if the property owner fails to comply with the agreement.
- c. **Additional mandatory requirements.** The agreement shall also include:
1. a map showing existing uses and conditions of real property in the reinvestment zone;
 2. a map showing proposed improvements and uses in the reinvestment zone;
 3. the estimated value to be abated and the base year value;
 4. the percent of value to be abated each year as provided herein;
 5. the commencement date and the termination date of abatement;
 6. the proposed use of the facility, the nature and type of construction, a time schedule, and a property description and improvement list as provided herein.
 7. contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided herein, and;
 8. the size of investment and average number of jobs involved for the period of the abatement.
- d. **Execution time frame.** Such agreement shall be executed within 60 days after the applicant has forwarded all necessary information and documentation to the County of Polk.
- e. **Mandatory terms are not limitations.** The Commissioners Court retains the right to require additional terms and conditions for abatement and the listing of mandatory provisions specified above is not a limitation on the terms and conditions that may be required by the Commissioners Court.

13. Recapture.

- a. In the event that the facility is completed and begins operations or producing products or services, but subsequently discontinues or significantly reduces producing product or service for any reason for a period of 180 days while the agreement is active, or for one year in the event of a declared disaster under the Texas Disaster Act of 1975 in which the disaster is the cause for the discontinuation, then the agreement shall terminate and so shall the abatement of the taxes for the calendar year during which the facility no longer produces or significantly reduces production. The taxes otherwise abated for that calendar year shall be paid to the County of Polk within sixty (60) days from the date of termination. Any reduction of 50% or more from the estimated production/service listed in the application shall constitute a significant reduction in the production of product or service. The company or individual shall notify the County in writing at the address stated within the agreement within ten (10) business days from any discontinuation or significant reduction, stating the reason for the discontinuation or significant reduction, stating the reason for the discontinuation or significant reduction, and the projected length of the discontinuation or significant reduction. If the County, in its sole discretion, determines that this requirement for notification has not been complied with, the agreement may be terminated immediately and all taxes previously abated by virtue of the agreement shall be recaptured and must be paid within sixty (60) calendar days.
- b. Should the County determine that the owner or lessee is in default according to the terms and conditions of the agreement, the County shall notify the owner or lessee in writing at the address

stated in the agreement, and if such default is not cured within sixty (60) days from the date of such notice ("Cure Period"), then the agreement may be terminated, and all taxes previously abated by virtue of the agreement shall be recaptured and must be paid within sixty (60) calendar days.

- c. In the event that the owner or lessee (1) allows its ad valorem taxes owed to the County or other affected jurisdiction 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 and fails to cure during the Cure Period, the agreement then may be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the termination.

14. Administration.

- a. The Chief Appraiser as designated by the County shall annually determine an assessment of the real and personal property for which tax abatement has been granted. Each year, the owner or lessee receiving the abatement shall furnish the assessor with such information as may be necessary for administration of the abatement. Once the value has been established, the Chief Appraiser shall notify the affected jurisdictions which levy taxes of the amount of the assessed value.
- b. The agreement shall stipulate that employees and/or designated representatives of the County will have access to the property and facilities thereon during the term of the abatement in order 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 prior notice to the facility of not less than twenty-four (24) hours, and shall 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 owner or lessee and in accordance with its safety standards.
- c. Upon completion of construction, the County shall annually evaluate each facility and report possible violations of the agreement to the County and its attorney.
- d. For each of the first three tax years following the expiration of a tax abatement agreement executed under this chapter, the Chief Appraiser shall deliver to the comptroller a report containing the appraised value of the property that was the subject of the agreement.

15. Assignment. Abatement may be transferred and assigned by the holder to a new owner or lessee of the same facility upon the approval by resolution of the County, subject to the financial capacity of the assignee, and provided that all conditions and obligations in the abatement agreement are guaranteed by the execution of a new agreement with the County. No assignment or transfer shall be approved if the parties to the existing agreement, the new owner, or new lessee are liable to the County of Polk, or any affected jurisdiction, for outstanding taxes or other obligations. Approval shall not be unreasonably withheld.

16. Sunset Provision. These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two years, at which time all tax abatement contracts created pursuant to its provisions will be reviewed by the County to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria may be modified, renewed or eliminated, providing that such actions shall not affect existing agreements.

17. Severability. If any provision of the Guidelines and Criteria is held invalid by a court of competent jurisdiction, the invalidity shall not affect the other provisions of these Guidelines and Criteria that can be given effect without the invalid provision, and to this end the provisions of these Guidelines and Criteria are severable.

A RESOLUTION

OF THE COMMISSIONER'S COURT OF POLK COUNTY, TEXAS,
ADOPTING A COMPREHENSIVE POLICY OF GUIDELINES AND
CRITERIA FOR GRANTING TAX ABATEMENT AND GOVERNING
TAX ABATEMENT AGREEMENTS, WITHIN THE COUNTY

WHEREAS, the Commissioner's Court of Polk County, Texas, desires to promote economic development within its territory; and

WHEREAS, the existence of certain economic development incentives in the form of tax abatement may encourage prospective businesses and companies to locate in the County, or existing businesses and companies to expand; and

WHEREAS, the creation and retention of job opportunities that bring new wealth to the County is of the highest civic priority; and

WHEREAS, new jobs and investments will benefit the County economy, provide needed opportunities, and generate tax revenue to support local services; and

WHEREAS, the County of Polk must compete with other counties across the State and Nation currently offering tax inducements to attract new retail and industrial projects; and

WHEREAS, the establishment of specific guidelines, criteria, and procedures is necessary to insure that tax abatement incentives are given and administered effectively; and

WHEREAS, the adoption of guidelines and criteria is required by the Property Redevelopment and Tax Abatement Act, as amended, before tax abatement may be granted:

NOW THEREFORE: BE IT RESOLVED BY THE COMMISSIONER'S COURT OF POLK COUNTY, TEXAS:


SECTION ONE: That the County of Polk hereby establishes and adopts certain guidelines and criteria, attached hereto and made a part hereof, governing the granting of tax abatements and tax abatement agreements, within the County of Polk and its jurisdiction, and such guidelines and criteria shall expressly govern all subsequent tax abatement agreements.

SECTION TWO: That such guidelines and criteria shall be effective for two (2) years from the date of adoption and may only be amended or repealed by a vote of three-fourths (3/4) of the Commissioner's Court.

PASSED and APPROVED this 12th day of December, 1988.


WAYNE R. BAKER, County Judge

ATTEST:


MARTHA JOHNSON, County Clerk

APPLICATION FORM