

**RESOLUTION NO. 2008-R-6A**

**A RESOLUTION OF THE CITY OF ANGLETON, TEXAS ADOPTING  
GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS  
IN A REINVESTMENT ZONE CREATED IN THE CITY OF ANGLETON**

**WHEREAS**, the creation and retention of job opportunities that bring new wealth are the highest civic priority; and

**WHEREAS**, new jobs and investment will benefit the area economy, provide needed opportunities, strengthen the real estate market and generate tax revenue to support local services; and

**WHEREAS**, the City of Angleton must compete with other localities across the nation currently offering tax inducements to attract new plant and modernization projects; and

**WHEREAS**, any tax incentives offered in the City of Angleton would reduce needed tax revenue unless strictly limited in application to those new and existing industries that bring new wealth to the community; and

**WHEREAS**, the abatement of property taxes, when offered to attract primary jobs in industries which bring in money from outside a community instead of merely re-circulating dollars within a community, has been shown to be an effective method of enhancing and diversifying an area of economy; and

**WHEREAS**, Texas law requires any eligible taxing jurisdiction to establish Guidelines and Criteria as to eligibility for tax abatement agreements prior to granting of any future tax abatement, and said Guidelines and Criteria to be unchanged for a two year period unless amended by a three-quarters (3/4) vote; and

**NOW, THEREFORE, BE IT RESOLVED** that the City of Angleton does hereby adopt the attached Guidelines and Criteria for granting tax abatements in reinvestment zones in the City of Angleton; with the addition of the following provision:

**“In the event the only “Eligible Jurisdiction” that the applicant is requesting tax abatement from is the City of Angleton; all notice and posting requirements for public hearings, or council action, shall be the same as the normal notice and posting requirements are for a regular agenda item, i.e.: 72 hours.”**

**PASSED AND ADOPTED** by the City Council of the City of Angleton, Texas on the 24th day of June 2008.

**J. PATRICK HENRY, MAYOR**

**ATTEST:**

**Amanda Davenport, City Secretary**

**APPROVED AS TO FORM:**

**KEITH VAUGHAN, CITY ATTORNEY**

**GUIDELINES AND CRITERIA FOR GRANTING**

## **TAX ABATEMENT IN A REINVESTMENT ZONE CREATED IN THE CITY OF ANGLETON**

### **DEFINITIONS Section 1**

(a) "Abatement" means the full or partial exemption from ad valorem taxes on certain real property in a reinvestment zone designated by the City of Angleton for economic development purposes.

(b) "Eligible Jurisdiction" means the City of Angleton, Brazoria County and any school district or other local taxing jurisdictions eligible to abate taxes according to Texas law, the majority of which is located in the City of Angleton that levies ad valorem taxes upon and provides services to a reinvestment zone designated by the City of Angleton.

(c) "Agreement" means a contractual agreement between a property owner and/or lessee and the City of Angleton for the purpose of tax abatement.

(d) "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.

(e) "Deferred Maintenance" means the 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 fifty (50) miles from its location in the City of Angleton.

(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 comprise an integral whole.

(i) "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.

(j) "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.

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

(l) "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 City of Angleton.

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

(n) "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 users reside at least fifty (50) miles from its location in the City of Angleton.

(o) "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.

(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 originate at least fifty (50) miles from the facility's location in the City of Angleton.

(q) "Commercial Facility" means buildings and structures for service related industries and certain retail establishments as deemed appropriate by the City Council where a minimum of five (5) new jobs and/or pay role exceeding one hundred thousand dollars (\$100,000) and investment of seven hundred and fifty thousand dollars (\$750,000) or more in new buildings will be made.

(r) "Economic Development" means participation in or support of an organized program or entity which for the purpose of its mission, engages in activities designed to encourage employment opportunities development/commercial and manufacturing business/industry to locate and/or expand in the City of Angleton, thus expanding and diversifying the tax base as well as increasing the economic strength and stability of the City of Angleton.

(s) "Qualified Vendors and Services" means those vendors and services that meet the company's individual stated requirements, which can include but are not limited to safety, financial condition, environmental record, quality or ability to perform.

(t) "The City of Angleton Vendor and Services" means a company that employs the City of Angleton residents and pays the City of Angleton taxes.

## **ABATEMENT AUTHORIZED Section 2**

(a) Authorized Facility. A facility may be eligible for abatement if it is a Manufacturing Facility, Research Facility, Distribution Center or Regional Service Facility, Regional Entertainment Facility, Approved "Commercial Facility" or Other Basic Industry.

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

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

(d) 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.

(e) Ineligible Property. The following type of property shall be fully taxable and ineligible for abatement: land, inventories, supplies, tools, furnishings, and other forms of movable personal property; vehicles, vessels, aircraft, housing, hotel accommodations, retail facilities (except as approved under Section 1 [q]) deferred maintenance investments, property to be rented or leased (except as provided in Section 2 [f]), property owned or used by the State of Texas or its political subdivisions or by any organizations owned, operated or directed by a political subdivision of the State of Texas.

(f) Owned/Leased Facilities. If a leased facility is granted abatement, the agreement shall be executed with the lessor and the lessee. Publicly owned land leased to private entities shall be eligible if otherwise qualified.

(g) 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. On a Scale as follows:

<u>Investment</u>	<u>Year</u>	<u>Maximum Abatement</u>
\$750,000 - \$2,000,000	1	80%
	2	50%
	3	25%
	4	0%
\$2,000,001 - \$4,000,000	1-2	90%
	3	60%
	4	50%
	5	25%
	6-7	0%
\$4,000,001 - \$10,000,000	1-2	100%
	3-4	75%
	5-6	50%
	7	25% or as negotiated.
\$10,000,001 and up	negotiable up to 7	negotiable

Notwithstanding any other provision of the guidelines and criteria the City Council has the authority to negotiate with applicant the term of years and percentage of abatement.

Such percentage of value that shall be set by City Council order of new eligible properties shall be abated for up to seven years or one-half (1/2) the productive life of the improvement whichever is less. The abatement may be extended through an initial agreement and a subsequent agreement may be required to comply with state law regarding the term of the reinvestment zone. If a modernization project includes facility replacement, the abated value shall be the value of the new unit(s) less the value of the old unit(s).

(h) Economic Qualification. In order to be eligible for designation as a reinvestment zone and to qualify for tax abatement, the planned improvement:

(1) Must be reasonably expected to increase the value of the property in the amount of \$750,000 or more;

(2) Must prevent the loss of employment and create employment for at least five additional (5) people (meaning a net gain of five [5] full time employees) on a full-time (forty [40] hours per week equivalent) basis in the City of Angleton for the duration of the abatement period; and

(3) Must be necessary because capacity cannot be provided efficiently utilizing existing improved property;

Additionally, the owner of the project:

(4) Must provide for and pay, at the time of filing an application for tax abatement, a non-refundable application fee of one thousand dollars (\$1,000). A part of the application fee will be dedicated by the City of Angleton to economic development programs authorized by Local Government Code, Section 381.004.

(5) Must file a plan statement with application demonstrating willingness and planned efforts to use qualified City of Angleton vendors and services where applicable in the construction and operations of the facility. The City of Angleton vendors and services must be competitive with non-county vendors and services regarding price, quality, safety, availability and ability to perform.

(i) Taxability. From the execution of the abatement contract to the end of the agreement period, taxes shall be payable as follows:

- (1) The value of ineligible property as provided in Section 2(e) shall be fully taxable;
- (2) The base year value of existing eligible property as determined each year shall be fully taxable; and
- (3) The additional value of new eligible property shall be taxable in the manner described in Section 2(g).

### **APPLICATION Section 3**

- (a) Any present or potential owner of taxable property in the City of Angleton may request the creation of a reinvestment zone and tax abatement by filing a written request with the City of Angleton. The application shall be filed with the administrative head of the governing body and the applicant shall furnish a copy to each member of the governing body.
- (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 which will be a part of the facility; a map and property description; 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 require such financial and other information, as the City of Angleton deems appropriate for evaluating the financial capacity and other factors of the applicant.
- (c) Upon receipt of a completed application, the Mayor shall notify in writing the presiding officer of the legislative body of each eligible jurisdiction. Before acting upon the application, the City of Angleton City Council shall hold a public hearing at which interested parties shall be entitled to speak and present written materials for or against the approval of the tax abatement. The public hearing shall also afford the applicant and the designated representative of any eligible jurisdiction opportunity to show cause why the abatement should or should not be granted. Notice of the public hearing shall be clearly identified on a City of Angleton agenda to be posted at least seven (7) days prior to the hearing.

(d) After receipt of an application for creation of a reinvestment zone and application for abatement, the Tax Abatement Review Committee (TARC) shall prepare a feasibility study setting out the impact of the proposed reinvestment zone and tax abatement. The feasibility study shall include, but not be limited to, an estimate of the economic effect of the creation of the zone and the abatement of taxes and the benefit to the eligible jurisdiction and the property to be included in the zone. The cost of said feasibility study shall be paid by the applicant.

(e) If upon written request for a legal opinion or interpretation from the City Council or its members, the legal counsel for the City of Angleton determines that the application does not appear to comply with the written language of the Guidelines and Criteria, a public hearing on said application, if already set, shall be postponed for a period of at least thirty days from the scheduled date of public hearing to allow time for further review by the City Council or any duly appointed review committee, or if an initial setting has not been made, the hearing on such application shall be set on the City Council agenda no sooner than sixty (60) days from the time the Court enters an order to set the public hearing date. The applicant shall file a supplement or addendum to its application to show cause why the application should be approved and shall present reasons at the public hearing on the same. Provided that any final decision or interpretation as to the intent and meaning or policy of any provision or its written language; any final decision as to whether or not an application complies or does not comply with the guidelines and criteria; and any final decision as to whether to grant or deny tax abatement shall be made by the City Council at its sole discretion.

(f) The City of Angleton shall not establish a reinvestment zone for the purpose of abatement if it finds that the request for the abatement was filed after the commencement of construction, alteration, or installation of improvements related to a proposed modernization, expansion or new facility.

(g) Variance. Requests for variance from the provisions of Subsection (a) of Section 1 and/or (h)(2) of Section 2 may be made in written form to the Mayor with a copy forwarded to the TARC. Said variance will only be considered if it is requested for a project valued at less than seven hundred and fifty thousand dollars (\$750,000). Such requests shall include a complete description of the circumstances explaining why the applicant should be granted a variance. Approval of a request requires a three-fourth (3/4) vote of the governing body.

(h) Special Variance: Air Carriers. A special variance from all applicable provisions of these guidelines and criteria, with the exception of Section 2 (h)(4) and (h)(5) may be granted allowing abatement or partial abatement of ad valorem taxes on the personal property of a certificated or non-certificated air carrier that owns or leases taxable real property in the City of Angleton provided that the personal property has a value of at least ten million dollars (\$10,000,000). Approval of a request for this variance requires a three-fourth (3/4) vote of the City Council.

#### **PUBLIC HEARING Section 4**

(a) Neither a reinvestment zone nor abatement 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 the property would constitute hazard to public safety, health or morals; or,

(4) Violation of other codes or laws.

#### **AGREEMENT Section 5**

(a) After approval, the City of Angleton City Council shall formally pass a resolution and negotiate and execute a mutually acceptable agreement with the owner of the facility and/or lessee as required, 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 abatement;

(4) The proposed use of the facility; nature of construction, time schedule, map, property description and improvement list as provided in Application, 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 2(a), 2(f), 2(g), 2(h) 6, 7, and 8;

(6) Size of investment and average number of jobs involved for the period of abatement; and

(7) Provision that Owner shall annually furnish information necessary for the City of Angleton's evaluation of Owner's compliance with the terms and conditions of the tax abatement agreement and these guidelines and criteria (in the form of an annual report/statement of compliance), together with an additional provision that the City of Angleton may, at its election, request and obtain information from Owner as is necessary for the city's evaluation of Owner's compliance with the terms and conditions of the tax abatement agreement and these guidelines and criteria.

If the parties successfully negotiate an agreement, such agreement shall be executed within sixty (60) days after the applicant has forwarded all necessary information and documentation to the City of Angleton.

## **RECAPTURE Section 6**

(a) In the event that the facility is completed and begins producing products or service but subsequently discontinues producing products or service for any reason except fire, explosion or other casualty or accident or natural disaster for a period of six months during the abatement period, then the agreement shall terminate and so shall the abatement of the taxes for the calendar year during which the facility no longer produces. The taxes otherwise abated for that calendar year and all taxes previously abated by virtue of this agreement will be reconstructed and shall be paid to the City of Angleton within sixty (60) days from the date of termination.

(b) Should the City of Angleton determine that the company or individual is in default according to the terms and conditions of its agreement, the City of Angleton shall notify the company or individual in writing at the address stated in the agreement and if such is not cured within sixty (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 ad valorem taxes owed the City 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.

(d) Any amount to be recaptured under this section shall be a lien on all real and personal property of the owner, the company and/or individual receiving the abatement.

#### **ADMINISTRATION Section 7**

(a) The Chief Appraiser of the Brazoria County Appraisal District 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 city with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser shall notify the eligible jurisdictions, which levies taxes on the amount of the assessment.

(b) The agreement shall stipulate that TARC of the City of Angleton will have access to the reinvestment zone during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such a 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 their safety standards.

(c) Tax Abatement Review Committee. The City Council shall appoint a standing Tax Abatement Review Committee (TARC) for purposes of (1) reviewing the tax abatement application and preparing or having prepared the feasibility study report required by Section 3(d) of these guidelines; (2) conducting annual inspections and/or evaluations of the abated facilities to insure compliance with the terms/conditions of the tax abatement agreement.

- (d) The Tax Abatement Review Committee shall be comprised of the following persons:
- (1) Mayor of the City of Angleton;
  - (2) City Administrator of the City of Angleton;
  - (3) One council member of the City Council of the City of Angleton, to be approved by a majority vote of the City Council of the City of Angleton;
  - (4) Three persons who are residents of the City of Angleton or who engage in business in the City of Angleton. Said persons shall be appointed by a majority vote of the City Council.
  - (5) The City Attorney, who shall serve as an ex-officio member of the committee and render advice on abatement qualifications and procedures.
  - (6) The Economic Development Director or other person from said department will act as the administrator of the TARC and serve as an ex-officio member of the committee.

The appointed members shall serve for two year terms and are eligible for reappointment by the City Council.

(e) Upon completion of construction, the owner of an abated facility must submit a written report/statement of compliance annually during the life of the abatement to the City of Angleton City Council and the Tax Abatement Review Committee clearly detailing the status of the facility and how it is complying with the abatement guidelines. The Committee shall annually evaluate each abated facility and report possible violations to the contract and agreement to the City of Angleton City Council.

(f) The City of Angleton shall timely file with the Texas Department of Commerce and the Property Tax Division of the State Comptroller's office all information required by the Tax Code.

## **ASSIGNMENT Section 8**

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 City of Angleton 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 contractual agreement with the City of Angleton. No assignment or transfer shall be approved if the new parties to the existing agreement, the new owner or new lessee are liable to the City of Angleton or any eligible jurisdiction for delinquent taxes or other obligations. Approval shall not be unreasonably withheld.

### **SUNSET PROVISION Section 9**

(a) These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two (2) years, at which time all reinvestment zones and tax abatement contracts created, pursuant to its provisions, will be reviewed by the City of Angleton 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 or applications for tax abatement filed prior to the expiration of said Guidelines and Criteria shall be governed by the provisions of these Guidelines and Criteria regardless of any subsequent modification or amendment.

(b) This policy is mutually exclusive of existing Industrial District Contracts and owners of real property in areas deserving of special attention as agreed by the eligible jurisdictions.

(c) These guidelines and policies for Tax Abatement shall be effective June 27, 2006 and shall remain in force until June 27, 2008, unless amended or superseded, modified, renewed, or eliminated by City Council prior to that date.