

**CITY OF EL PASO, TEXAS  
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Economic Development  
**AGENDA DATE:** November 11, 2008 - Regular Agenda  
**CONTACT PERSON/PHONE:** Kathryn Dodson, Ph.D., Director 541-4670  
**DISTRICT(S) AFFECTED:** ALL

**SUBJECT:**

Discussion and Action on a Resolution to adopt the City of El Paso Guidelines and Criteria for Tax Abatement Assistance.

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**BACKGROUND/DISCUSSION:**

The Tax Abatement Guidelines and Criteria were previously approved by Council in August of 2006. The Tax Abatement Guidelines and Criteria expired on August 31, 2008 and require reauthorization.

**PRIOR COUNCIL ACTION:**

Has the Council previously considered this item or a closely related one?

Yes. Council approved Aug 8, 2006.

**AMOUNT AND SOURCE OF FUNDING:**

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

General Funds

**BOARD/COMMISSION ACTION:**

Enter appropriate comments or N/A.

July 27, 2006 - the Econ Dev & Com Dev LRC recommended the Tax Abatement Guidelines and Criteria be presented to the Mayor and Council.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

(Example: If RCA is initiated by Purchasing, client department should sign also). *Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

# RESOLUTION

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City of El Paso Guidelines & Criteria for Tax Abatement Assistance attached hereto as Exhibit "A" be adopted as the City of El Paso tax abatement policy.

ADOPTED this 11th day of November, 2008.

THE CITY OF EL PASO

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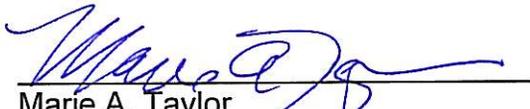
John F. Cook  
Mayor

ATTEST:

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Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Marie A. Taylor  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Kathryn B. Dodson, Ph.D., Director  
Economic Development Department

**EXHIBIT "A"**

**City of El Paso Guidelines and Criteria  
For  
Tax Abatement Assistance  
November 2008**

**I. AUTHORIZATION**

The City of El Paso is authorized to provide tax abatement benefits in accordance with the State of Texas Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, as amended (the "Act"). Said Act requires the establishment of these Guidelines and Criteria for the governing of tax abatement agreements between the City of El Paso and eligible entities. The Act furthermore permits the designation of "reinvestment zones" in accordance with specific criteria.

**II. GENERAL PURPOSE AND INTENT**

The purpose and intent of these Guidelines and Criteria is to set forth the parameters under which the City of El Paso will generally operate a tax abatement program in accordance with the Act. The Tax Abatement Program is intended to be an economic development tool to assist and encourage certain types of real and personal property investment within qualified reinvestment zones. Such investment is expected to result in the creation, retention and expansion of new full-time jobs while strengthening the tax base of the City of El Paso.

All applications for tax abatement benefits will be considered on a case-by-case basis, and the decision to approve or deny tax abatement shall be at the discretion of the City Council. Nothing herein shall imply or suggest that the City of El Paso is under any obligation to provide tax abatement to any applicant.

**III. REINVESTMENT ZONES**

Reinvestment zones are designated from time to time through Texas State Procedures and/or by action of the City Council in accordance with the criteria as set forth in the Act and as applicable to the City of El Paso. In order for a geographic area to be designated as a reinvestment zone, an area must:

A. Be designated as an "Enterprise Zone" pursuant to Chapter 2303 of the Texas Government Code, as amended, and/or

B. Through City Council action be found to:

1. Substantially arrest or impair the sound growth of the municipality creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:
  - a. A substantial number of substandard, slum, deteriorated, or deteriorating structures;
  - b. The predominance of defective or inadequate sidewalks or streets;
  - c. Faulty size, adequacy, accessibility, or usefulness of lots;
  - d. Unsanitary or unsafe conditions;
  - e. The deterioration of site or other improvements;
  - f. Tax or special assessment delinquency exceeding the fair value of the land;
  - g. Defective or unusual conditions of title;
  - h. Conditions that endanger life or property by fire or other cause; or
  - i. Any combination of these factors;
2. Be predominantly open and, because of obsolete platting, deterioration of structure or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality;
3. Be in a federally assisted new community located in a home-rule municipality or in an area immediately adjacent to a federally assisted new community located in a home-rule municipality;
4. Be located entirely in an area that meets the requirements for federal assistance under Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5318);
5. Encompass signs, billboards, or other outdoor advertising structures designated by the governing body of the municipality for relocation, reconstruction, or removal for the purpose of enhancing the physical environment of the municipality, which the legislature declares to be a public purpose; or
6. 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 municipality.

**Designation of Zone:** A resolution designating a reinvestment zone for tax abatement under the Act may not be adopted by the City until a public hearing has been held at which interested persons are entitled to speak and present evidence for or against the designation. Notice of the hearing shall be provided to each taxing entity and to the public in the manner required by the Act.

#### IV. ELIGIBILITY CRITERIA

In order to be eligible for tax abatement incentives, a proposed project must meet all of the general and qualifying criteria in the City's Incentive Policy and;

1. Be located within a reinvestment zone.
2. Provide "Added Value" to a property in an amount of at least \$2.5 million.

#### V. DEFINITIONS

- A. **Abatement:** means the temporary, full or partial exemption from ad valorem taxes of certain added value to real and personal property in a reinvestment zone designated for economic development purposes pursuant to the Act.
- B. **Added Value:** means the increase in the assessed value of an eligible property as a result of "expansion" or "modernization" of an existing facility or construction of a "new facility." It does not mean or include "deferred maintenance."
- C. **Agreement:** means a contractual agreement between a property owner and/or lessee and the City of El Paso for the purposes of tax abatement.
- D. **Base Year Value:** means the assessed value of eligible property as of the January 1<sup>st</sup> preceding the execution of an agreement plus the agreed upon value of eligible property improvements made after January 1<sup>st</sup> 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. **Economic Impact:** is derived from the evaluation of the number of jobs created, wages paid, employee benefit package, and capital investment.

- G. **Economic Life:** means the number of years a property improvement is expected to be in service in a facility.
- H. **Expansion:** means the addition of buildings, structures, fixed machinery or equipment for the purposes of increasing capacity.
- I. **Facility:** means property improvements completed or in the process of construction which together comprise an integral whole.
- 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, and extends the economic life of the facilities. 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, repairing or completion of deferred maintenance.
- K. **New Facility:** means a property previously undeveloped, which is placed into service, by means other than, or in conjunction with, an expansion or modernization.
- L. **Owner:** means the owner of a facility subject to tax abatement. If the facility is constructed on a leased property, the owner shall be the party which owns the property subject to tax abatement. The other party to the lease shall join in the execution of the agreement but shall not be obligated to assure performance of the party receiving the tax abatement.

## VI. ABATEMENT AUTHORIZED

- A. **Creation of New Value:** A tax abatement may only be granted for the additional value of eligible property improvements made subject to and listed in a tax abatement agreement between the City of El Paso and the property owner and lessee (if required), subject to such limitations as said jurisdiction may require. The economic life of the improvements must exceed the term of the tax abatement agreement.
- B. **Eligible Property:** A tax abatement may be extended to the value of the improvements to real property, including buildings, structures, fixed machinery and equipment, and site improvements, plus that office space and related fixed improvements necessary for the operation and administration of the Facility.
- C. **Ineligible Property:** The following types of property shall be fully taxable and ineligible for a tax abatement: land; inventories; supplies; tools; furnishings and other forms of movable personal property;

vehicles; vessels; aircraft; housing; deferred maintenance investments; improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion; any improvements, including those to produce, store or distribute natural gas, fluids or gases, which are not integral to the operation of the facility; improvements to real property which have an economic life of less than fifteen (15) years; 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; unless any of the above types of property are specifically authorized by the City Council.

**D. Completion of Construction:** The completion of construction shall be deemed to occur upon the earliest of one of the following events:

1. when a certificate of occupancy is issued for the project,
2. when commercial production of a product or provision of a service is achieved at the Facility,
3. when the architect or engineer supervising construction issues a certificate of substantial completion, or some similar instrument, or
4. two (2) years after the date of the Agreement.

The above determination, of the completion of construction, shall be made by the City of El Paso in its sole and absolute discretion, based upon the above criteria and such other factors as deemed relevant. The determination of the completion of construction shall be conclusive, and any judicial review of such determination shall be governed by the substantial evidence rule.

## **VII. APPLICATION**

**A. Written Application:** Any present lessee, tenant or owner of taxable property may request tax abatement by filing the City's Comprehensive Incentives Application with the City of El Paso Economic Development Department. A non-refundable filing fee of \$750.00 is required at the time of filing.

**B. Contents of Application:** The application shall consist of a completed application form accompanied by a general description of the new improvements to be undertaken; a descriptive list of the improvements for which a tax abatement is requested; a list of the kind, number and location of all proposed improvements of the property; a map and property description (metes and bounds); and a time schedule for undertaking and completing of the proposed

improvements. In the case of a modernization or expansion project, 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 may require such financial and other information, as the City deems appropriate for evaluating the financial capacity and other relevant factors of the applicant.

- C. **Feasibility:** After receipt of an application for a tax abatement, the City shall consider the feasibility and the impact of the proposed project. The study of feasibility shall include, but not be limited to, an estimate of the economic effect of the abatement of taxes and the benefit to the City of El Paso and the property to be covered by such abatement. All projects must demonstrate financial feasibility to the satisfaction of the City of El Paso.

## VIII. FINDINGS AND RESERVATION OF RIGHTS

- A. **Required Findings:** In order to enter into a tax abatement agreement, the City Council must find that the terms of the proposed agreement meet their Guidelines and Criteria.
- B. **Reservation of Rights:** Nothing herein shall be construed to limit the authority of the City to examine each application for tax abatement before it on a case-by-case basis and determine in its sole and absolute discretion whether or not the proposed project should be granted a tax abatement and whether or not it complies with these Guidelines and Criteria, is feasible, and whether or not the proposed abatement of taxes will inure to the long-term benefit of such taxing entity.

## IX. AGREEMENT

- A. **Contents of Tax Abatement Agreement:** The tax abatement agreement with the owner of the facility shall include but not limited to:
  - 1. The estimated value to be subject to abatement and the base year value;
  - 2. The percentage of value to be abated each year;
  - 3. The commencement date and termination date of abatement;
  - 4. A provision that the term of the agreement shall extend until eighteen (18) months after the expiration of the period of tax abatement;

5. The proposed use of the facility, nature of construction, time schedule, map, property description, and improvements list as provided in the application as required;
6. The contractual obligations in the event of default, delinquent taxes, recapture, administration and assignment as provided in these Guidelines and Criteria or other provisions that may be required for uniformity or by state law; and
7. The amount of added value and/or required number of permanent jobs.

B. **Time of Execution:** After the applicant provides all necessary information and documentation, and upon receiving preliminary approval, the tax abatement agreement is normally executed within sixty (60) days.

## X. RECAPTURE

- A. **Failure to Commence Operation During Term of Agreement:** In the event that the facility is not completed and does not begin operation with the minimum number of permanent jobs by the January 1<sup>st</sup> following the completion of construction, no tax abatement shall be given for that tax year, and the full amount of taxes assessed against the property shall be due and payable for that tax year. In the event that the owner of such a facility fails to begin operation with the minimum number of permanent jobs by the next January 1<sup>st</sup>, then the tax abatement agreement shall terminate and all abated taxes during the period of construction shall be recaptured and paid within sixty (60) days of such termination.
- B. **Discontinuance of Operations During Term of Agreement:** In the event the facility is completed and begins operation with the required minimum number of permanent jobs, but subsequently discontinues operations and the minimum number of permanent jobs is not maintained on any January 1<sup>st</sup> during the term of the agreement after the completion of construction, for any reason except on a temporary basis due to fire, explosion or other casualty or accident or natural disaster, the agreement may be terminated by the City of El Paso and all taxes previously abated by virtue of the agreement shall be recaptured and paid within sixty (60) days from the date of termination.
- C. **Delinquent Taxes:** In the event that the owner allows any ad valorem taxes to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, the tax abatement agreement shall terminate and so shall the abatement of the taxes for the tax year of the delinquency. The total taxes assessed without

abatement for that tax year, shall be paid within sixty (60) days from the date of the termination.

- D. **Notice of Default:** Should the City of El Paso determine that the owner is in default, according to the terms and conditions of its agreement, it shall notify the owner in writing at the address stated in the agreement that, if such default is not cured within sixty (60) days from the date of such notice (the "Cure Period"), then the agreement may be terminated and the taxes abated by virtue of the agreement will be recaptured and paid as provided herein.
- E. **Actual Capital Investment:** Should the City of El Paso determine that the total level of capital investment in the eligible property is lower than provided in the agreement, the City, at its sole discretion, reserves the right to adjust the tax abatement percentage to reflect the actual capital investment as determined.

## XI. ADMINISTRATION

- A. **Annual Assessment:** The El Paso Central Appraisal District shall annually determine an assessment of the real and personal property subject to an agreement. Each year, the owner shall furnish the appraisal district with such information as may be necessary for the abatement. Once value has been established, the Appraisal District shall notify the affected jurisdictions, which levy taxes, of the amount of the assessment and the abatement.
- B. **Access to Facility:** The agreement shall stipulate that employees and/or designated representatives of the City of El Paso will have access to the facility during the term of the agreement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after giving at least 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 owner and in accordance with its safety standards.
- C. **Annual Evaluation:** Upon completion of construction, the City of El Paso, individually or in conjunction with other taxing entities, shall annually evaluate each facility receiving a tax abatement to ensure compliance with the agreement and report possible violations of the agreement.
- D. **Quarterly/Annual Reports:** The company shall report to the City of El Paso, on a quarterly basis, its employment level, distributed by wage brackets, the addition or deletion of capital assets in excess of

\$25,000, and any other pertinent information that would affect the ability of the local operation to maintain its status as a going concern. Such reports shall be prepared on a quarterly basis and shall be submitted to the City of El Paso, Economic Development Department, no later than thirty (30) days following the end of each calendar quarter. In addition, on an annual basis, the owner shall certify its compliance with each applicable term of the agreement. Such annual report shall be prepared on a calendar year basis and shall be submitted to the City of El Paso, Economic Development Department, no later than ninety (90) days following the end of each such calendar year. It will be the responsibility of the owner to provide the reports as requested; the City is not obligated to request said reports and will not certify the owner's eligibility to receive any tax abatement without the reports. Failure to provide these required reports in a timely manner shall constitute grounds for termination of the agreement.

E. **“Buy Local” Provision:** Each recipient of property tax abatement shall additionally agree to give preference and priority to local manufacturers, suppliers, contractors and labor, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency.

F. **Right to Modify or Cancel:** Notwithstanding anything herein or in any agreement to the contrary, the governing body of the City of El Paso may cancel or modify the agreement if the owner fails to comply with the agreement.

G. **Transfer or Assignment:** A tax abatement agreement may be assigned to a new owner but only after written consent has been obtained from the City of El Paso.

## **XII. TAX ABATEMENT DETERMINATION**

Nothing herein shall imply or suggest that the City of El Paso is under any obligation or duty to provide tax abatement to any applicant, and reserves the right to make exceptions, approve, and deny based on concerns including, however not limited to environmental and quality of life issues and/or compatibility with the economic goals and objectives of the City.

However, neither a reinvestment zone nor tax abatement agreement may be authorized if it is determined that:

- A. There would be an adverse impact on the provision of government service or tax base;
- B. The applicant has insufficient financial capacity to undertake and complete the project;

- C. Planned or potential use of the property would constitute a hazard to public safety or health;
- D. Violation of other codes or laws exists;
- E. Any construction has commenced with regard to a proposed project prior to the execution of a City Council authorized Tax Abatement Agreement, except in the event that any previously authorized City Council Tax Abatement Agreement is determined to be invalid and the applicant has received no benefit pursuant to the invalid agreement.

### **XIII. CONFIDENTIALITY**

Information that is provided to a taxing unit in connection with an application or request for tax abatement under these Guidelines and Criteria shall be kept confidential and not be subjected to public disclosure until the tax abatement agreement is executed, except as required by law or by an order of a court. This shall include all information, whether transmitted orally or in writing which is of such a nature that it is not a matter of public record or public knowledge, that is received, created or discussed in connection with an application or request to include but not be limited to information that describes the identity of a business, its specific processes or business activities to be conducted, the location of potential real estate acquisition of a business, the number of or work skills sought from the labor market, or the equipment or property be located on the property for which tax abatement is sought. Nevertheless, the City shall not be liable for any disclosures of the application. The City may, nevertheless, take disciplinary or other appropriate action against the officer or city employee who made an authorized disclosure of information that is confidential under these Guidelines and Criteria.

Written information shall be released pursuant to a request under the Public Information Act, Chapter 552 of the Texas Government Code, as amended, by the officer for public information or his or her designee in accordance with the standards established under that act for confidentiality and closed records.

All financial, proprietary and trade secret information received by the City for purposes of processing a tax abatement application or monitoring compliance by a company with the terms and conditions of a tax abatement agreement shall remain at all times confidential unless the disclosure is required by law or by an order of a court.

### **XIV. EXPIRATION OF GUIDELINES AND CRITERIA**

These Guidelines and Criteria shall apply upon adoption by resolution of City Council and shall remain in effect with applicable amendments from time to time, until September 30, 2010. During this period, these Guidelines and Criteria may

be amended or repealed only by a vote of three-fourths of the members of the City Council of the City of El Paso. No extension of these Guidelines and Criteria is authorized except by amendment consistent with Chapter 312 of the Texas Tax Code. No reinvestment zone and/or tax abatement agreement may be authorized in reliance upon these Guidelines and Criteria beyond September 30, 2010.