

## CITY OF SOUTH PADRE ISLAND, TEXAS

### **Policy Statement for Tax Abatement**

#### I. General Purpose and Objectives

A. Tax Abatement (per Chapter 312, Subtitle B, Title 3, Texas Tax Code). The City of South Padre Island is committed to the promotion of high quality development in the City and to an ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the City of South Padre Island will, on a case-by-case basis, give consideration to providing tax abatement as stimulation for economic development in South Padre Island. It is the policy of the City of South Padre Island that said consideration will be provided in accordance with the guidelines and criteria outlined in this document, as well as the statutory criteria listed in Texas Tax Code Section 312. Nothing herein shall imply or suggest that the City of South Padre Island is under any obligation to provide tax abatement to any applicant. All applicants shall 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; however, the only way to qualify for a tax abatement is if the project will make a unique and unequalled contribution to the economy, development, redevelopment, tourism or employment opportunities within the City. Tax abatement agreements are made with the owners of real property to exempt from taxation a portion of the value of the real property or of tangible personal property, or both. The duration of an abatement may be for a period of time determined appropriate by the City Council, based on the economic life of the improvements and consistent with the provisions of this policy, but in no case for more than 10 years in accordance with state law. Special terms and conditions may be set in the agreement governing each specific tax abatement.

B. TIRZ (per Chapter 311, Subtitle B, Title 3, Texas Tax Code). The City Council has designated certain areas of the City as Tax Increment Reinvestment Zones ("TIRZ") by Ordinance No. 11-19. Property located within the TIRZ, is ineligible for a tax abatement to prevent the grant of double benefits.

#### II. Definitions

- A. "Abatement" means the full or partial exemption of ad valorem taxes for eligible properties in a tax abatement reinvestment zone designated as such for economic development purposes, other than property located within TIRZ. Abatement may be granted for the improved value of the real property or tangible personal property located on the real property, or both.
- B. "Agreement" means a contractual agreement between a property owner and a taxing authority for the purpose of tax abatement. In no event shall the duration of an abatement term exceed ten (10) years.

- C. "Base Year Value" means the taxable value of the applicant's real property and business personal property, including inventory and supplies, located in a designated tax abatement reinvestment zone on January 1 of the year of the execution of the agreement as determined by Cameron Appraisal District.
- D. "Added Taxable Value" means the value above the base year value of real property improvements and business personal property as appraised by the Cameron Appraisal District. The abatement may be granted for either the real property improvements or business personal property but not.
- E. "Economic Life" means the number of years a property qualifies for depreciation under the Internal Revenue Service Code (Section 168) Modified Accelerated Cost Recovery System.
- F. "Expansion" means the addition of buildings, structures, fixed machinery, or equipment for the purpose of increasing production capacity or revenues.
- G. "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.
- H. "Job" means a permanent, full-time employment position that has provided or will result in employment of at least 1,820 hours per position in a year. Part-time positions shall not be included in this definition.
- I. "Modernization" means the replacement and upgrading of existing facilities, which increase the productive input, or output, updates the technology, or substantially lowers the unit cost of operation, and extends the economic life of the facility. Modernization may result from the construction, alteration, or installation of buildings, structures, fixed machinery, or equipment. It shall not be for the sole purpose of renovating, reconditioning, refurbishing, repairing, or completing of deferred maintenance.
- J. "Tax Abatement Reinvestment Zone" is an area designated (by ordinance) as such for the purpose of tax abatement as authorized by Subchapter B, Municipal Tax Abatement, Title 3, Local Taxation, and Vernon's Texas Codes Annotated.
- K. "Tax Increment Reinvestment Zone (TIRZ)" is a special zones created by City Council to attract new investment to an area. TIRZ helps finance the cost of redevelopment and encourage development in an area that would otherwise not attract sufficient market development in a timely manner. Taxes attributable to new improvements (tax increments) are set-aside in a fund to finance public improvements within the boundaries of the zone.
- L. "Value," when used in this Policy, shall mean value as determined by an appraisal prepared by Cameron Appraisal District, unless otherwise specified. If a facility is damaged by an Act of God and an appraisal of the damaged facility is not available from Cameron Appraisal District, "decrease in value" may be determined by an independent appraiser agreed upon by the City and either the owner of a facility or applicant for tax abatement. The term "value added" means

increase in appraised value.

### III. Abatement Authorized

A. Eligible Facilities: Tax abatement may be granted only for (1) projects that make a unique and unequalled contribution to the economy, development, redevelopment tourism or employment opportunities within the City and (2) are not located within the TIRZ. The economic life of a facility, and/or eligible property must exceed the duration of the abatement.

B. Eligible Property: An applicant may apply for abatement on either the real property improvements or business personal property eligible for abatement in accordance with this agreement, whichever is higher, unless otherwise negotiated in accordance with this Policy. Tax abatement may not be granted for both real property improvements and business personal property

C. Business personal property tax abatement shall be limited to owner-occupied properties.

D. If the retail sale of merchandise is the primary use and purpose of a project, tax abatement may be granted for the project only upon a finding by the City Council that the project will make a unique and unequalled contribution to the economy, development, redevelopment, tourism or employment opportunities within the City of South Padre Island.

E. Criteria and Abatement Guidelines: Tax abatement may be granted for eligible facilities on all or a portion of the increased taxable value of eligible property over the Base Year Value. The percentage of taxes abated and the duration of the abatement, or any other limitation or condition included in this Policy and not required by state or federal law, may vary from these guidelines based on a determination by the City Council that granting tax abatement for a particular project is consistent with the economic development objectives of the City of South Padre Island. Any person, organization or corporation may request tax abatement by filing an Application for Incentives as described in Section IV. Consideration will be given to requests from applicants for the confidentiality of proprietary information, consistent with state law, Texas Tax Code, section 312.003.

The City Council has adopted these tax abatement guidelines and will evaluate and determine the minimum added taxable value, the maximum permissible percentage of taxes abated and the duration of the abatement agreement based upon the unique and unequalled contribution to the economy, development, redevelopment, tourism or employment opportunities that the project anticipates to provide to the City.

### IV. Application

A. Any person, organization or corporation may request tax abatement (so long as it is not within TIRZ and meets the "unique" guidelines listed above) by filing a written application with the City Manager of the City of South Padre Island. Consideration will be given to requests from applicants for the confidentiality of proprietary information, in accordance with the Texas Tax Code, section 312.003.

1. An Application for Incentives form must be completed and signed by an officer of the company with corporate signature authority. The Application must be submitted to the City of South Padre Island City Manager's Office prior to application for a building permit or issuance of a certificate of occupancy, whichever occurs first, for the project to which the incentive application pertains. The legal entity requesting the tax abatement must be properly formed prior to making an application. Section V outlines the process for consideration of an abatement request. In order to have an incentive agreement considered and executed in the same year application is made, a completed application should be submitted to the City of South Padre Island City Manager's Office by October 15th.

2. Applicant shall prepare a descriptive list of the improvements for which abatement is requested. This list shall include the class life of the improvements based on the Internal Revenue Service Code (Section 168) Modified Accelerated Cost Recovery System.

3. Applicant shall prepare a plat or map showing the precise location of the property, location of proposed improvements, all roadways within two hundred fifty feet (250') of the site, and all existing land uses and zoning within two-hundred fifty (250') of the site.

4. Applicant must establish how their project is unique and will provide unequaled contribution to the economy, development, redevelopment, tourism or employment opportunities to the City. In the case of a modernization or expansion, applicant shall also include a statement of the facility's current property value, stated separately for real property improvements and business personal property.

5. Applicant shall prepare a time schedule for undertaking and completing the planned improvements.

6. Applicant shall provide a tax certificate verifying that no taxes are past due on applicant's property located within the proposed tax abatement reinvestment zone.

7. Applicant shall disclose all insurance matters dealing with a loss of existing facilities, including, but not limited to: proceeds from any insured loss, denial of any claim, or such information as required by the City. Such disclosure shall be provided by the insurer through the applicant. The City Council shall consider such information in determining whether tax abatement is advisable to induce reconstruction of damaged property.

B. Upon receipt of a completed application, the City Manager, or his/her designee, shall distribute copies of the application to the appropriate City departments for internal review and comments. The City Manager or designee may request additional information as needed to determine applicant's eligibility for tax abatement according to this Policy.

## V. Procedural Guidelines

A. An applicant's request will be submitted to the City of South Padre Island Economic Development Corporation (EDC) whom is hereby designated to evaluate and make recommendations to the City Council of the City of South Padre Island. City Council will have final decision-making authority on a tax abatement request. When either the City Council or the

EDC considers a tax abatement request, it shall consider the feasibility and impact of the proposed tax abatement by making an estimate of the economic effect of the abatement of taxes and the benefit to the property to be covered by the abatement and to the taxing authorities involved.

The application shall require such financial and other information as may be deemed appropriate for evaluating the financial capacity of the applicant. This analysis may include an economic feasibility study, which requires data such as: estimated costs; methods of financing; historical financial statements and statements of revenues; and expenses, net income and cash flow for the first five years of the project which have been audited, reviewed or compiled by a certified public accountant.

B. Before entering into a tax abatement agreement, the following must occur:

1. The City must pass a resolution stating that the taxing unit elects to become eligible to participate in tax abatement.
2. The City must deliver in writing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed tax abatement reinvestment zone. The City must also publish in a newspaper of general circulation notice of the public hearing designating a tax abatement reinvestment zone. This notice must be delivered not later than the seventh (7<sup>th</sup>) day before the date of the public hearing.
3. The City must publish in a newspaper of general circulation notice of the public hearing designating a tax abatement reinvestment zone. This must be published not later than the seventh (7<sup>th</sup>) day before the date of the public hearing.
4. Following a public hearing, the city may designate an area within the taxing jurisdiction or ET J as a tax abatement reinvestment zone. The city must designate the reinvestment zone by ordinance. The ordinance must describe the boundaries of the zone and the eligibility of the zone for residential tax abatement or commercial-industrial tax abatement or tax increment financing as provided for in Chapter 311, Subtitle B, Title 3, Texas Tax Code.
5. Statutory criteria listed in Texas Tax Code Section 312.202, must be met before an area may be designated as a tax abatement reinvestment zone.
6. At least seven days before the date on which a city enters into a tax abatement agreement, the city must deliver to the presiding officer of the governing body of each other taxing unit, in which the property subject to the agreement is located. a written notice that the city intends to enter into a tax abatement agreement. The notice must include a copy of the proposed agreement.
7. The tax abatement agreement must be approved by the affirmative vote of a majority of the members of City Council at a regularly scheduled meeting.

## VI. Denial of Abatement

A. All eligible applications for tax abatement shall be considered on a case-by-case basis and except for the instances set forth in Paragraph VI.B. herein, the decision to approve or deny tax abatement shall be made at the discretion of the City Council in accordance with the City of South Padre Island Policy Statement for Tax Abatement.

B. Provided, however, neither a tax abatement reinvestment zone nor abatement agreement may be authorized if it is determined that:

1. There would be an adverse impact on the provision of government service or tax base;
2. The applicant has insufficient financial capacity to complete the project;
3. Planned or potential use of the property would constitute a hazard to public safety or health;
4. The proposed project is not unique or does not provide an unequalled contribution to the economy, development, redevelopment, tourism or employment opportunities to the City;
5. The property is located within the TIRZ; or
6. Violation of other codes or laws exists.

C. Nothing herein shall imply or suggest that the City of South Padre Island is under any obligation or duty to provide tax abatement to any eligible applicant, or that any applicant has an entitlement to tax abatement except as may be determined on a case-by-case basis by the City Council.

## VII. Taxability

From the execution of the abatement agreement to the end of the agreement period, taxes shall be payable as follows:

- A. The value of ineligible property shall be fully taxable;
- B. The base year value property shall be fully taxable;
- C. The additional value of eligible property shall be taxed in the manner and for the period provided for in the abatement agreement; and
- D. The additional value of eligible property shall be fully taxable at the end of the abatement period, and in subsequent tax years.

## VIII. Recapture

A. Should a project granted tax abatement cease to operate; or should the terms of the agreement not be satisfied, including projected Added Taxable; or should the ad valorem taxes on any property owed to the City of South Padre Island become delinquent; then in any such event the tax abatement agreement shall be subject to cancellation or modification as provided in the tax abatement agreement, and all or a portion of the abated taxes shall be subject to recapture. The amount of abated taxes to be recaptured shall be at the sole discretion of the City Council.

B. Each tax abatement agreement shall contain a provision indicating that the tax abatement agreement does not affect the lien for taxes against the property established by Section 32.01 of the Tax Code of the State of Texas. The tax abatement agreement shall state that the tax lien shall secure the payment of all taxes, penalties and interest ultimately imposed on the property, including any taxes abated and subject to recapture in accordance with the tax abatement agreement.

C. If the business or a branch, division, or department of the business, is convicted of a violation of knowingly employing an undocumented worker under 8 U.S.C. § 1324a(f), the business shall repay the amount of the incentive with interest, at the rate and according to the other terms provided by an agreement, not later than the 120th day after the date the City notifies the business of the violation.

## IX. Administration

A. Access to Facility: The agreement shall stipulate that employees and/or designated representatives of the taxing authorities will have access to the facility during the term of the agreement to inspect the facility during the term of the agreement to determine if the terms and conditions of the agreement are being met. All inspections shall be conducted in a manner as to not unreasonably interfere with the construction and/or operation of the facility; provided however, the City may conduct "spot" inspections requiring no advance notification to applicant. All inspections will be made with one or more representatives of the company or individual, and in accordance with its safety standards.

B. Reports, Audits and Inspections: Owners of facilities and/or other eligible property for which tax abatement is granted shall annually certify to City that they are in compliance with the terms of the agreement. In addition, owners shall provide reports and records reasonably necessary to support each year of the agreement. Such reports and records shall include information on property purchases, and status reports on the project's progress. Upon completion of a project that, in accordance with Article III of this Policy, meets the required criteria and thereby fits within a Level described as "Negotiable," property owners shall provide City with a final report describing all property for which tax abatement is granted.

This final report shall be accompanied by the opinion of an independent certified public accountant as to its accuracy and completeness. City periodically evaluate each facility receiving abatement to ensure compliance with the agreement and report possible violations of the agreement. City shall have the right to audit the books and records related to the eligible property and supporting the eligible property reports.

C. Transfer or Assignment: A contract for tax abatement may be transferred or assigned by the original applicant to a new owner upon the approval of the City Council of the City of South Padre Island.

#### X. Expiration

A. The designation of a reinvestment zone for tax abatement expires five years after the date of the designation and may be renewed for periods not to exceed five years. The expiration of the designation does not affect an existing tax abatement agreement.

B. Agreement made with the owners of property in a reinvestment zone may not exceed a duration of 10 years.

#### XI. Expiration Date of Chapter 312

If not continued in effect, Texas Tax Code Title 3, Subtitle B, Chapter 312 expires September 1, 2019.

#### XII. Saving Provision after Expiration of Chapter 312 (per Chapter 320, Subtitle B, Title 3, Texas Tax Code)

A. The expiration of Chapter 312 does not affect the validity of a reinvestment zone designated or a tax abatement agreement executed before the expiration of Chapter 312.

B. A reinvestment zone designated or a tax abatement agreement executed before the expiration of Chapter 312 is governed by the applicable law in effect immediately before the expiration of Chapter 312, except that the designation of an existing reinvestment zone may not be renewed after the expiration of Chapter 312.

C. A tax abatement agreement in effect when Chapter 312 expires may be extended as provided by the law in effect immediately before the expiration of Chapter 312. A tax abatement agreement executed after the expiration of Chapter 312 may not be extended.

## **Policy and Procedures for Economic Development Program**

(per Local Government Code Chapter 380)

### I. General Statement of Purpose and Policy

The City of South Padre Island is committed to the promotion of high quality development in the City and to an ongoing improvement in the quality of life for its citizens. Now the City of South Padre Island seeks to enhance its economic development efforts to attract and retain high quality development and jobs by establishing these Chapter 380 Economic Development Program Policies and Procedures.

These Policies and Procedures are established in an effort to develop and expand the local economy by promoting and encouraging development and redevelopment projects that enhance the City's economic base, and diversify and expand job opportunities or by promoting and encouraging projects that create additional revenue for the city without substantially increasing the demand on City services or infrastructure. The ultimate goal and public purpose of programs established hereunder is to protect and enhance the City's fiscal ability to provide high quality municipal services for the safety, comfort and enjoyment of South Padre Island residents. In furtherance of these objectives, the City of South Padre Island will, on a case-by-case basis, give consideration to providing economic incentives to applicants in accordance with these Policies and Procedures as authorized by Chapter 380 of the Texas Local Government Code, as amended from time to time.

Nothing in this document is intended to imply or suggest that the City of South Padre Island is under any obligation to provide economic incentives to any applicant. All applicants shall be considered on a case-by-case basis; however the applicant must show how their project is unique and will make an unequaled contribution to the economy, development, redevelopment, tourism or employment opportunities within the City. The decision to approve or deny economic incentives shall be at the discretion of the City Council. Each applicant granted economic incentives as a Chapter 380 Economic Development Program (also referred to as Program) under these Policies and Procedures must enter into an agreement with the City of South Padre Island containing all terms required by these Policies and Procedures and by state law to protect the public interest of receiving a public benefit in exchange for public funds, assets and services invested to stimulate economic development in South Padre Island. Each applicant may coordinate with the City Manager, or their respective designee, the participation of any taxing unit in the development of a multi-jurisdictional tax abatement.

### II. Mandatory Program Requirements

A. To be considered for incentives as a Chapter 380 Economic Development Program under these Policies and Procedures, a project must meet the following minimum requirements:

- a. must be unique and project an unequaled contribution to the economy, development, redevelopment, tourism or employment opportunity within the City. Any

contractual agreement must insure the public purpose is carried out; and

b. receive an affirmative recommendation from the Economic Development Corporation and be specifically determined by resolution of the South Padre Island City Council to bring benefit to the City consistent with the General Statement of Purpose and Policy as stated in Paragraph I above.

B. A project shall not be eligible for incentives under these Policies and Procedures if a building permit has been issued for the project prior to making application in accordance with these Policies and Procedures.

C. Incentives provided in accordance with these Policies and Procedures will be provided only to the extent that the revenue realized by the City and attributable to a project exceeds a minimum amount established by the Agreement. The public benefit or amount of revenue realized by the City and attributable to the project must be commensurate with value of any incentives granted under this Program.

### III. Additional Considerations

Additional factors that may be considered by the City Council in determining whether to authorize an Agreement for incentives as a Chapter 380 Economic Development Program (Program) are:

A. the use of local businesses and suppliers;

B the development of workforce housing units;

C. the financial capacity of the applicant to undertake and complete the proposed project;

D. other incentive programs for which the applicant has applied or is qualified;

E. the market conditions and growth potential for the business activity;

F. advances the pedestrian mobility goals, the Comprehensive Plan, and enhances the community's urban form in accordance with the Padre Boulevard and Entertainment District Form Based Code; and

G. any other factors the City Council finds helpful and relevant to accomplishing the City's economic development objectives.

### IV. Application Process

A. An application for consideration as a Program shall be made on forms supplied by the Economic Development Corporation. An applicant may be required to provide additional information to show compliance with minimum Program requirements.

B. The application for the Program shall be presented to the EDC for review and the

formulation of a recommendation by the EDC may be presented to City Council. The City Council may consider the recommendation and may take action on the proposal as it deems appropriate. Nothing in these Policies and Procedures and nothing in the application form and process shall create any property, contract, or other legal right in any person to have the City Council consider or grant incentives.

C. The City Council has the final authority to deny or approve an applicant's application. If approved, then a contractual agreement may be created with final approval by the City Attorney.

## V. Agreement Terms

An Agreement established for a Program must include:

A. a timetable and list of the kind of improvements or development that the Program will include, and conditions to assure that the Program meets or exceeds the City's requirements pertaining to property values and revenues, which in no event shall be less than the minimum Program requirements established in Paragraph II above;

B. a complete description of the location of the proposed Program or projects included in the Program;

C. a timetable and list of the kind and amount of property values, revenues, incomes or other public benefits that the proposed Program will provide;

D. a provision establishing the duration the Agreement;

E. a provision identifying the method for calculating and source of funding for any grant, loan or other incentives provided in the Agreement;

F. a provision providing a tangible means for measuring whether the applicant and other responsible parties have met their obligations under the Agreement;

G. a provision providing for access to and authorizing inspection of the property and applicant's pertinent business records by municipal employees in order to determine compliance with the Agreement;

H. a provision for cancellation of the Agreement and/or nonpayment of incentives if the Program is determined to not be in compliance with the Agreement;

I. a provision for recapturing City funds granted or loaned, or for recapturing the value of other public assets granted or loaned, if the applicant does not meet its duties and obligations under the terms of the Agreement;

J. a provision that allows assignment of the Agreement only with prior written approval of the City Council and review by the City Attorney.

K. provisions relating to administration, delinquent taxes, reporting requirements and indemnification;

L. a provision that the Agreement may be amended by the parties to the Agreement by using the same procedure for approval as is required for entering into the Agreement; and

M. such other provisions as the City Council shall deem appropriate.