

SUBJECT: DENTON COUNTY TAX ABATEMENT POLICY
TITLE: DENTON COUNTY TAX ABATEMENT POLICY
EFFECTIVE: JANUARY 8, 2010 – JANUARY 7, 2012

I INTRO/GENERAL PURPOSE AND REQUIREMENTS

Taxing jurisdictions in Texas are authorized under Chapters 311 and 312 as well as Section 11.24 of the Texas Property Tax Code to provide tax abatements for historic preservation, housing, and economic development. Denton County is committed to the promotion of high quality development in all parts of the County 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, Denton County will, on a case-by-case basis, give consideration to providing tax abatements. Denton County will not utilize Chapter 381 of the Texas Local Government Code to administer a Community and Economic Development Program to provide grants as a form of economic development. To help ensure that all tax abatement requests are consistently reviewed and that only the most effective and appropriate tax abatement projects are undertaken, this Denton County Tax Abatement Policy has been developed.

- (a) It is the policy of Denton County that consideration of all abatement applications will be provided in accordance with the procedures and criteria outlined in this document. Nothing herein shall imply or suggest that Denton County is under any obligation to provide a tax abatement to any applicant.
- (b) Applicant and Municipalities shall adhere to all Denton County application procedures and requirements including Section III (d) for Municipality-Initiated Abatement Agreements and Section IV for County Initiated Abatement Agreements.
- (c) Requests for abatements will not be considered if, prior to the submission of an application, the project is already substantially underway or completed. A project will be considered to be substantially underway if actions such as, but not limited to, the following have occurred, (1) The demolition, site preparation, or the installation of infrastructure has begun; (2) A building permit has been issued for construction not associated with mitigating an environmental hazard; (3) Construction (including renovations or tenant finish-out) has begun; (4) Equipment, inventory, or employees have been relocated to the new site.

Execution of a lease, the mitigation of environmental problems, the purchase of land, the completion of an environmental assessment, or the preparation of architectural and engineering plans do not constitute a project being substantially underway.

- (d) Requests for an abatement will not be considered for property that will be used in whole or in part for a sexually-oriented business, including but not limited to condoning, legitimizing, or promoting obscene materials, nude or topless modeling or dancing, adult motel operations, escort services, sexual encounter centers, sex phone centers, or any other sexually-oriented business activity. Similarly, property receiving an existing abatement for another use cannot convert this property for use as a sexually-oriented business or an establishment and still retain this abatement.
- (e) Requests for an abatement will not be considered for an applicant with which the County is currently involved in or has within the past thirty-six months been involved in litigation, a pending claim, or unsatisfactory contractual performance, nor to any applicant indebted to the county for ad valorem taxes or other obligations.
- (f) The County Abatement Application must be submitted to the appropriate County Representative. The appropriate County Representative is defined as the Commissioners Court member in whose precinct the property that is the subject of the abatement application is located. Because the availability of abatement assistance can facilitate the selection of a specific site when numerous sites are under consideration, the appropriate County Representative may issue or instruct staff to issue verbal or written proposed terms for a particular abatement agreement. Proposed terms are non-binding. Denton County reserves the right to request other information deemed necessary for evaluating the application.
- (g) The County Abatement Application shall be completed and delivered to the appropriate County Representative along with payment of a non-refundable application fee in the amount of ONE THOUSAND AND 00/100 DOLLARS (\$1,000.00) for administrative costs associated with the processing of the tax abatement request. All checks in payment of the administrative fee should be made payable to the Denton County Treasurer.
- (h) The maximum term for any abatement agreement under this policy is ten years. An abatement agreement approved by the affirmative vote of a **majority** of the Commissioners Court in a regularly scheduled meeting shall consist of a percentage of the County Ad Valorem Tax obligation calculated as follows:

Creation of New Value	Abatement Amount
Less than \$10,000,000	-0-
Between \$10,000,000 and \$19,999,999	not to exceed 25% of the County Ad Valorem Tax Obligation
Between \$20,000,000 and \$29,999,999	not to exceed 30% of the County Ad Valorem Tax Obligation

Between \$30,000,000 and \$39,999,999	not to exceed 35% of the County Ad Valorem Tax Obligation
Between \$40,000,000 and \$49,999,999	not to exceed 40% of the County Ad Valorem Tax Obligation
More than \$50,000,000	such percentages of the County Ad Valorem Tax Obligations as may be deemed appropriate by the Commissioners Court of Denton County, Texas

- (i) An abatement agreement approved by the affirmative vote of a **super-majority** of the Commissioners Court in a regularly scheduled meeting may authorize a percentage of the County Ad Valorem Tax obligation other than that found in Section I (h).
- (j) In order to enter into a Tax Abatement Agreement, the Commissioners Court must find that the terms of the proposed agreement meet Guidelines and Criteria and that:
 - 1. There will be no substantial adverse effect on the provision of the jurisdiction’s service or tax base; and
 - 2. The planned use of the property will not constitute a hazard to public safety, health or morals.

II DEFINITIONS

- (a) “Abatement” means the full or partial exemption from ad valorem taxes of certain real property and personal property in a reinvestment zone designated for economic development purposes.
- (b) “Agreement” means a contractual agreement between a property owner and/or lessee and an eligible jurisdiction for the purposes of tax abatement.
- (c) “Applicant” means the firm, party, entity, or organization that would be receiving the tax abatement if granted.
- (d) “Authorized Facility” A facility may be eligible for abatement if it is a Manufacturing Facility, a Regional Distribution Center Facility, a Regional Service Facility, a Non-Manufacturing Facility, or Other Basic Industry as defined. The economic life of a facility and any improvements must exceed the life of the abatement agreement

- (e) “Base Year Value” means the certified 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.
- (f) “Creation of New Value” Abatement may only be granted for the additional value of eligible property improvements made subsequent to and listed in an abatement agreement between the County and the property owner and/or lessee, subject to such limitations as Commissioners Court may require.
- (g) “Economic Life” means the number of years a property improvement is expected to be in service in a facility.
- (h) “Eligible Jurisdiction” means Denton County and any municipality or other entity located in Denton County that levies ad valorem taxes upon and provides services to property located within the proposed or existing reinvestment zone.
- (i) “Eligible Property” Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, fixed personal property, and site improvements plus that office space and related fixed improvements necessary to the operation and administration of the facility.
- (j) “Expansion” means the addition of buildings, structures, fixed machinery and equipment, and fixed personal property for purposes of increasing production capacity.
- (k) “Facility” means property improvements completed or in the process of construction, which together comprise an integral whole.
- (l) “Fixed Machinery and/or Personal Property” means tangible machinery, equipment, and fixed personal property, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such good or materials by physical or chemical change.
- (m) “Ineligible Property” The following types of property shall be fully taxable and ineligible for abatement: land; inventories; supplies; tools; furnishings; and other forms of moveable personal property; vehicles; vessels; private aircraft; property to be rented or leased except as provided in the definition of II (i) above; and any property included in the calculation of base year value as defined.
- (n) “Manufacturing Facility” means buildings and structures, including fixed machinery and equipment, and fixed personal property, the primary purpose is to manufacture goods.

- (o) “Modernization” means the replacement and upgrading of existing facilities. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery and equipment and fixed personal property. It shall not be for the purpose of reconditioning, refurbishing or repairing.
- (p) “New Facility” means a property previously undeveloped that is placed into service by means other than or in conjunction with expansion or modernization.
- (q) “New and Existing Facilities” Abatement may be granted for new facilities and improvements to existing facilities for the purposes of modernization or expansion
- (r) “Non-Manufacturing Facilities” means building and structures used to service and/or house individuals on a permanent or temporary basis.
- (s) “Other Basic Industry” means buildings and structures including fixed machinery and equipment, and fixed personal property not elsewhere described, used or to be used for the production of products or services that result in the creation of new permanent jobs and bring new wealth into Denton County.
- (t) “Owned/Leased Facilities” If a leased facility is granted abatement, the agreement shall be executed with the lessor and the lessee.
- (u) “Regional Distribution Center Facility” means buildings and structures, including fixed machinery and equipment, and fixed personal, property, used or to be used, primarily to receive, store, service or distribute goods or materials owned by the facility operator.
- (v) “Regional Service Facility” means buildings and structures, including fixed machinery and equipment, and fixed personal property, used or to be used to service goods.
- (w) “Research Facility” means building and structures, including fixed machinery and equipment and fixed personal property, 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.
- (x) “Reinvestment Zone” means a geographical area of the County that meets the criteria of Chapters 311 or 312 of the Texas Property Tax Code.
- (y) “Taxability” From the execution of the abatement to the end of the agreement period taxes shall be payable as follows:
 - 1. The value of ineligible property shall be fully taxable;
 - 2. The base year value of existing eligible property shall be fully taxable;

3. The additional value of the eligible property shall be taxable in the manner and for the period provided for in the abatement agreement; and
4. The additional value of the new eligible property shall be fully taxable at the end of the abatement period.

III MUNICIPALITY-INITIATED ABATEMENT AGREEMENTS-ADDITIONAL CRITERIA/INFORMATION

- (a) The Denton County Commissioners Court recognizes that each municipality within the County has a different vision and goal for its economic development efforts. Denton County will endeavor to work in concert with other taxing authorities as part of an overall publicly supported incentive program designed to create job opportunities that bring new economic advantages or strengthen the current economic base of our community. The terms and conditions of a Tax Abatement Agreement entered into between a Municipality and an applicant are separate from the terms and conditions of the Tax Abatement Agreement entered into between said applicant and the County.
- (b) It is the intent of the Commissioners Court to consider granting an Abatement Agreement to an applicant that has a Tax Abatement Agreement with a Municipality, provided the County's Agreement:
 1. Does not exceed the equivalent abatement granted by the Municipality unless such action is contemplated by County Policy;
 2. May contain additional or differing terms and conditions that the Court may deem advisable pursuant to Denton County Tax Abatement Policy and all applicable law governing counties;
 3. Does not encourage an applicant to move from one Denton County municipality to another unless such agreement is acceptable to both municipalities, which have indicated their approval in writing; and
 4. Does not provide one Denton County municipality with a competitive advantage over another Denton County municipality seeking the same project.
- (c) In the case where the property is located within a Municipality's extraterritorial jurisdiction, the Municipality shall be the initiating taxing entity unless expressly deferred to the County.
- (d) Application Procedures. In addition to the general application requirements found in Section I, Municipality-Initiated Abatements will only be awarded when the following procedures have been followed:

1. Municipality in which the project is located makes County aware of applicant request for Municipality abatement and invites County comments during negotiation. County makes Municipality aware of concerns/changes prior to final action by Municipality.
2. Applicant makes application to appropriate County Representative for County Tax Abatement after applying with Municipality.
3. County Representative ensures County's Policy is met and makes a recommendation regarding proceeding with approval of a County Tax Abatement Agreement.
4. Commissioners Court shall not approve County Tax Abatement Agreement until Municipality Agreement has been approved and executed and applicant has signed a County Tax Abatement Agreement.

IV COUNTY-INITIATED ABATEMENT AGREEMENTS-ADDITIONAL CRITERIA/INFORMATION

For those areas within Denton County that are not located within the boundaries of an incorporated municipality or are within the extraterritorial jurisdiction of a municipality and the Municipality has deferred to the County, or are in unincorporated areas not located in a Municipality's extraterritorial jurisdiction, the following criteria contained in these guidelines will be applied by the Commissioners Court when considering the establishment of a reinvestment zone and adopting a County Tax Abatement Agreement.

- (a) Economic Qualification. In order to be eligible for designation as a reinvestment zone and receive a Tax Abatement, the planned improvement:
 1. Must be reasonably expected to have an increase in positive net economic benefit to Denton County as described in Section I (h) over the life of the Abatement, computed to include new sustaining payroll and/or capital improvements. The number and type of new jobs will also factor into the decision to grant an Abatement; and
 2. Must not be expected to solely or primarily have the effect of transferring employment from one part of Denton County to another without a super-majority vote of approval from the Commissioners Court.
 3. Must provide for a minimum of 25 jobs for new business and sustained employment levels for existing business expansions.

- (b) Application Procedures. In addition to the general application requirements found In Section I, County-Initiated Abatements will only be awarded when the provisions of Chapters 311 or 312 of the Texas Local Government Code have been met, including the following:
1. Any present or potential owner of taxable property in unincorporated Denton County may request the creation of a reinvestment zone and tax abatement by filing a written request with the appropriate County Representative as defined in Section I (f).
 2. All applications for creation of reinvestment zones and Abatements shall incorporate a feasibility study estimating the economic effect of the proposed reinvestment zone and Tax Abatement on Denton County, other eligible participating jurisdictions, and the applicant.
 3. Upon receipt of a completed application for creation of a reinvestment zone, the appropriate County Representative shall notify in writing and provide a copy of the application to the presiding officer of the governing body of each eligible jurisdiction.
 4. The Commissioners Court may not adopt a resolution creating a reinvestment zone until it has held a public hearing at which interested parties are entitled to speak and present evidence for or against its designation. Notice of the hearing shall be clearly identified on the Commissioners Court agenda at least 30 days prior to the hearing and a public notice shall be published in a general circulation publication at least 30 days prior to the hearing.

V ASSIGNMENT

Tax Abatement Agreements may be assigned to a new owner of the entire property with the written consent of the Commissioners Court, which consent shall not be unreasonably withheld. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the County Policy and Tax Abatement Agreement.

VI ADMINISTRATION AND EVALUATION

- (a) The County will have the right to inspect the facility to determine if the terms and conditions of the Tax Abatement Agreement are being met. All inspections will be made after the giving of twenty-four (24) hours notice and will be conducted in such a manner as to not unreasonably interfere with the construction or operation of the facility. All inspections will be made with one or more representatives of the recipient and in accordance with its safety standards.

- (b) The County shall annually evaluate each facility receiving a County Tax Abatement to ensure compliance with the County Tax Abatement Policy and Agreement. On or before April 30th of every year during the life of the County Tax Abatement Agreement, the recipient of said Agreement shall complete and file a Tax Abatement Evaluation Report with the appropriate County Representative detailing and certifying the recipient's compliance with the terms of said Agreement. Failure to provide information requested in the Tax Abatement Evaluation Report, or other requested information, by the prescribed deadline may result in previously abated taxes becoming being due and payable.

VII RECAPTURE

If a County Tax Abatement Agreement recipient is not in compliance with County Policy or said Agreement, then said Agreement shall not be in effect for the period of time during which non-compliance occurs. If a recipient's project is not completed as specified in the County Tax Abatement Agreement, the County has the right to modify or cancel said Agreement and determine which previously abated taxes are due to the County. The decision to seek full or partial recapture lies solely with the County.

VIII SUNSET PROVISION

This County Policy is effective upon the date of its adoption and will remain in force for two years, at which time all reinvestment zones and Tax Abatement Agreements 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 of this Policy will be modified, renewed or eliminated.

Approved by:
Denton County Commissioner's Court

Mary Horn
(Denton County Judge)