

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: September 8, 2015		DATE SUBMITTED: August 31, 2015	
DEPARTMENT OF ORIGIN: Eco Development		SUBMITTED BY: Kevin Russell	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consideration of a resolution to adopt guidelines and criteria governing future property tax abatement agreements in the City of Bryan.			
SUMMARY STATEMENT: On November 19, 2012, the City Council adopted Resolution No. 3462, establishing "Guidelines and Criteria Governing Tax Abatements" in the City of Bryan. As per State law, Resolution No. 3462 contained a sunset date two years from the date of adoption, expiring on November 19, 2014. In order for the City to consider new tax abatement agreements, the City Council must adopt a new resolution, which will be in effect for another two year period.			
<p>It is not unusual to allow the old guidelines to expire as most cities do not adopt new criteria until there is a business seeking to locate in the city or there is an effort to retain the business. The proposed "Guidelines and Criteria Governing Tax Abatements" will provide the City Council the ability to consider and offer economic incentives to a new business or for business retention.</p> <p>The proposed resolution includes the following changes or additions to the last set of guidelines:</p> <ol style="list-style-type: none"> 1. Section 2 Criteria for Tax Abatement, G) Denial of Abatement 5a: This section was clarified to allow for the demolition or clearing of land and remain eligible for tax abatement. 2. Section 3 Tax Abatement Application: This section was added and requires that a written application be filed with the City and lists necessary application information. In the future, tax abatement will not be considered until a complete application is received by the City of Bryan. 3. Section 6 Reporting Requirements: This section was added and requires bi-annual status reports of employment data. This data gives staff the ability to verify employment compliance within an agreement. Annual compliance certification also will require the applicant to certify they comply with every benchmark included in the agreement. 4. Section 7 Confidentiality: This section was added and states that the information will be treated as confidential until the agreement is executed. Upon the agreement being executed, the information will be treated as confidential to the extent allowed by law. 5. Section 8 Administration: This section was added and states that the Brazos Central Appraisal District will determine the value of the real and personal property subject to an agreement. In addition, the City Manager or his designee shall, individually or in conjunction with the Research Valley Partnership, annually evaluate each facility receiving tax abatement to ensure compliance with the agreement and report possible violations to the City Council. <p>The Economic Qualification required for eligibility for tax abatement remains at a minimum requirement of \$1,000,000 for added improvement value (Sections 2.E.1 and 2.F.9). The planned improvement must not cause the loss of payroll. Additional payroll, if created, must be permanently situated within the City of Bryan, Texas.</p>			

STAFF ANALYSIS AND RECOMMENDATION: By approving this resolution to adopt a new set of guidelines and criteria governing property tax abatement, the City Council will have the ability to direct staff to negotiate incentives on their behalf. The City Council retains authority to approve future agreements. However, the City Council must adopt guidelines in order to consider a tax abatement agreement.

The proposed guidelines are written sufficiently broad to allow the City Council the ability to consider many types of improvements that could result in tax abatement agreements. By adopting this resolution, the City Council may impact a business decision to locate to and/or expand and remain in the City of Bryan.

Staff recommends approving the resolution.

OPTIONS (In Suggested Order of Staff Preference):

1. Approve the resolution.
2. Modify the resolution, which may require consideration at a future City Council meeting.
3. Deny the resolution.

ATTACHMENTS:

1. Resolution
2. Guidelines and Criteria Governing Property Tax Abatement
3. Owner's Certification of Compliance Document

FUNDING SOURCE: NA

APPROVALS: Joey Dunn, 8-31-15; Hugh R. Walker, 09/01/2015

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 9/1/2015

APPROVED FOR SUBMITTAL: CITY ATTORNEY

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF BRYAN, TEXAS ELECTING TO PARTICIPATE IN TAX ABATEMENT AGREEMENTS, AND ESTABLISHING GUIDELINES AND CRITERIA GOVERNING TAX ABATEMENT FOR ECONOMIC DEVELOPMENT PROSPECTS IN THE CITY OF BRYAN.

WHEREAS, §312.002, Texas Tax Code, requires a taxing unit to adopt a resolution establishing guidelines and criteria governing tax abatement agreements and stating that the taxing unit elects to become eligible to participate in tax abatement; and

WHEREAS, the City Council of the City of Bryan has previously expressed its intent to consider tax abatements and adopted Tax Abatement Guidelines and Criteria; and

WHEREAS, these Tax Abatement Guidelines and Criteria were most recently adopted on January 24, 2012; and

WHEREAS, PURSUANT TO §312.002, the Tax Abatement Guidelines and Criteria are effective for two years unless amended or repealed by a vote of three-fourths of the City Council; and

WHEREAS, the Bryan City Council desires to once again adopt Tax Abatement Guidelines and Criteria; and,

WHEREAS, the Bryan City Council elects to continue to be eligible to participate in tax abatement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BRYAN, TEXAS:

PART 1: The City of Bryan elects to participate in tax abatement agreements pursuant to Chapter 312 of the Texas Tax Code, that the guidelines and criteria for granting tax abatements adopted in 2012 are hereby amended, and that the amended Guidelines and Criteria attached as Exhibit "A" to this resolution for granting tax abatements in designated Tax Abatement Reinvestment Zones are hereby adopted.

PART 2: That this resolution shall be effective immediately from and after its passage.

APPROVED AND ADOPTED at a Regular Council Meeting, this 8th day of September, 2015

ATTEST:

APPROVED:

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

EXHIBIT A:

**GUIDELINES AND CRITERIA GOVERNING
PROPERTY TAX ABATEMENT**

CITY OF BRYAN, TEXAS

SECTION 1 – DEFINITIONS

- A. “Abatement” means the full or partial exemption from ad valorem taxes of certain real property and/or tangible personal property in a reinvestment zone designated by the City for economic development purposes.
- B. “Agreement” means a contractual agreement between a property owner and the City for abatement of taxes.
- C. “Base year value” means the assessed value of property within the reinvestment zone on January 1 preceding the execution of the Agreement plus the agreed upon value of the eligible property improvements and tangible personal property made after January 1 but before the execution of the Agreement.
- D. “City” means the City of Bryan, Texas.
- E. “Eligible Property” means real and tangible personal property for both new facilities and structures, and for the expansion or modernization of existing facilities and structures which are reasonably likely as a result of being granted abatement to contribute to the retention or expansion of primary employment or to attract major investment in the reinvestment zone that would be a benefit to the property and that would contribute to the economic development within the City of Bryan.
- F. “Expansion” means that addition of buildings, structure, machinery, equipment, tangible personal property, or payroll for purposes of increasing production capacity.
- G. “Facility” means property improvements completed or in the process of construction which together comprise an integral whole.
- H. “Ineligible Property” means land, existing improvements, real property and used primarily to provide retail sales or services to the public, real property used for residential purposes, real property with a productive life of less than 10 years, tangible personal property that the Brazos Central Appraisal District classifies as inventory or supplies, real or tangible personal property located in the reinvestment zone prior to the effective date of the tax abatement agreement, or any other property for which abatement is not allowed by law.
- I. “Modernization” means complete or partial demolition of facilities and the complete or partial reconstruction or installation of a facility of similar or expanded production capacity. Modernization may result from the construction, alteration, or installation of buildings, structures, machinery, equipment, pollution control devices, or resource conservation equipment.

- J. "New Facility" means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- K. "Productive Life" means the number of years a property improvement is expected to be in service in a facility.
- L. "Real Property" means land or an improvement or other property classified as such under State law.
- M. "Reinvestment Zone" means a geographic area which meets the criteria of Section 312.202 of the Texas Tax Code.
- N. "Tangible Personal Property" means tangible personal property classified as such under State law, but excluding inventory and/or supplies and tangible personal property that was located in the reinvestment zone at any time before the period covered by the Agreement with the City.

SECTION 2 - CRITERIA FOR TAX ABATEMENT

- A. 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 and the property owner, subject to such limitations as the City may require.
- B. New and Existing Facilities. Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.
- C. Eligible Property. Abatement may be extended to the value of eligible property, as defined in Section 1(E) above.
- D. Ineligible Property. Ineligible Property, as defined in Section 1(H) above, shall be fully taxable and ineligible for tax abatement.
- E. Economic Qualification. In order to be eligible for designation as a reinvestment zone and receive tax abatement, the planned improvement:
 - 1) Must be expected to have an increased appraised ad valorem tax value of at least \$1,000,000 based upon the Brazos Central Appraisal District's assessment of the Eligible Property.
 - 2) Must be expected to prevent the loss of payroll or retain, increase or create a payroll on a permanent basis in Bryan, Texas.
- F. Standards for Tax Abatement. The following factors among others should be considered in determining whether to grant tax abatement and, if so, the percentage of value to be abated and the duration of the tax abatement:
 - 1) Value of land and existing improvements, if any;
 - 2) Type and value of proposed improvements;
 - 3) Productive life of proposed improvements;

- 4) Number of existing jobs to be retained by proposed improvements;
- 5) Number of type of new jobs to be created by proposed improvements;
- 6) Amount of local payroll to be created;
- 7) Whether persons residing or projected to reside within the City will have the opportunity to fill the new jobs being created;
- 8) Amount of local taxes to be generated directly;
- 9) Amount of property tax base valuation which will be increased during term of abatement and after abatement, which shall include a definitive commitment that such valuation, shall not, in any case, be less than \$1,000,000;
- 10) The costs to be incurred by the City to provide facilities or services directly resulting from the new improvements;
- 11) The amount of ad valorem taxes to be paid to the City during the Abatement period considering: (a) the existing values, (b) the percentage of new value abated, (c) the abatement period, and (d) the value after expiration of the abatement period;
- 12) The population growth of the City that occurs directly as a result of new improvements;
- 13) The types of public improvements, if any, to be made by the applicant seeking abatement;
- 14) Whether the proposed improvements compete with existing businesses to the detriment of the local economy;
- 15) The impact on the business opportunities of existing businesses;
- 16) The attraction of other new businesses to the area;
- 17) The overall compatibility with the zoning ordinances and comprehensive plan for the area; and/or
- 18) Whether the project is environmentally compatible with no negative impact on quality of life perceptions.

G. Denial of Abatement. Requests for Abatement will not be considered if it is determined that:

- 1) There would be substantial adverse effect 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 a hazard to public safety, health or morals;

- 4) Violation of other codes or laws;
- 5) 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:
 - a. Site preparation (other than demolition or the clearing of land) or the installation of new infrastructure has begun;
 - b. A building permit has been issued for construction not associated with mitigating an environmental hazard;
 - c. Construction (including renovations or tenant finish-out) has begun; or
 - d. 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.

- 6) Any other reason deemed appropriate by the City Council.

H. 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; and
- 2) The Base Year Value of property in the Reinvestment Zone as determined each year shall be fully taxable. The additional value of new Eligible Property shall be fully taxable at the end of the abatement period.

SECTION 3 – TAX ABATEMENT APPLICATION

A. Submission of Application. All requests for tax abatement in the City of Bryan, Texas, shall be made by filing a written application with the City. The application shall include:

- 1) A completed application form accompanied by a general description of the project to be undertaken;
- 2) A map and a legal description of the property (metes and bounds);
- 3) A list of the kind, number and location of all improvements on the property;
- 4) A descriptive list of the proposed improvements for which tax abatement is requested;
- 5) A time schedule for undertaking and completing the proposed improvements;

- 6) In the case of a modernization or expansion project, a statement of the assessed value of the property, separately stated for real and tangible personal property, shall be given for the tax year immediately preceding the application; and
 - 7) Such financial and other information, as the City deems appropriate for evaluating the financial capacity and other relevant factors of the applicant.
- B. Application Review and Evaluation. The City Manager or his designee shall review all applications for accuracy and completeness. No request for tax abatement shall be considered by the City until a complete application has been received by the City, as determined by the City Manager.

SECTION 4 - DESIGNATION OF A REINVESTMENT ZONE

- A. The City Council may not approve an ordinance designating 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 published in a general circulation publication at least seven days prior to the hearing.
- B. Prior to entering into a Tax Abatement Agreement, the City Council, may, at its option, 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 Agreement.

SECTION 5 - TAX ABATEMENT AGREEMENT

- A. Not later than the seventh day before the date on which the City enters into the Abatement Agreement, the City shall deliver to the presiding officer of the governing body of each other taxing unit in which the property is located a written notice that the City intends to enter into the Agreement. The notice shall include a copy of the prepared Agreement.
- B. Approval of an Agreement shall be by formal adoption of a resolution and execution of the Agreement with the owner of the Facility. The Agreement shall, but not be limited to the following:
 - 1) Include a list of the kind, number, and location of all proposed improvements to the property;
 - 2) Provide access to and authorize inspection of the property by the City to ensure compliance with the Agreement;
 - 3) Limit the use of the property consistent with the City's development goals;
 - 4) Provide for recapturing property tax revenues that are lost if the property owner fails to make the improvements as provided by the Agreement;
 - 5) Include each term that was agreed upon with the property owner;
 - 6) Require the owner to comply with the reporting requirements set forth in Section 6, below; and

- 7) Allow the City to cancel or modify the Agreement at any time if the property owner fails to comply with the terms of the Agreement.

SECTION 6 – REPORTING REQUIREMENTS

- A. Bi-Annual Status Reports. The owner shall provide to the City copies of the “Reimbursing Employer’s Quarterly Report” (or similar report by whatever name) required to be filed with the Texas Workforce Commission (or successor agency) for purposes of administering the Texas Unemployment Compensation Act. (Tex. Labor Code, Chapter 201 et. seq.); and report to the City its employment level, distributed by wage brackets, and the addition or deletion of capital assets in excess of \$25,000, and any other pertinent information requested by the City that would affect the ability of the local operation to maintain its status as a going concern. The reports shall be prepared on a bi-annual basis (January 1 and July 1) and shall be submitted to the City Manager or his designee no later than 30 days following the end of each six month calendar period.
- B. Annual Compliance Certification. 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 Manager or his designee in the form attached hereto as “Attachment 1”, 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. Annual certificates of compliance shall be filed with the City Secretary.

SECTION 7 – CONFIDENTIALITY

- A. Subject to the provisions and limitations of Chapter 552 of the Texas Government Code, information provided to the City of Bryan in connection with an application for a tax abatement or request for the creation of a reinvestment zone for the purposes of tax abatement in accordance with these Guidelines and Criteria, and which describes the specific process or business activities to be conducted or equipment or other property to be located on the property for which the tax abatement is sought, is confidential and not subject to public disclosure until the tax abatement agreement is executed. Texas Tax Code § 312.003. The information in the custody of the City of Bryan after the agreement is executed will be treated as confidential to the extent allowed by law.

SECTION 8 – ADMINISTRATION

- A. Annual Assessment. The Brazos Central Appraisal District annually determines an assessment of the real and personal property subject to a tax abatement agreement. Each year, the owner shall timely file renditions of value and annual applications for abatement with the appraisal district as may be necessary for the abatement.
- B. Annual Evaluation. Upon completion of construction, the City Manager and/or his designee, individually or in conjunction with the Research Valley Partnership and/or other taxing entities, shall annually evaluate each facility receiving tax abatement to ensure compliance with the Agreement and report to the City Council possible violations of the Agreement.

SECTION 9- RECAPTURE

Tax abatement agreements will provide for recapture of abated property taxes in the event that the company or individual (1) allows its ad valorem taxes owed to 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 Agreement.

SECTION 10 - SUNSET PROVISION

These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two years, unless amended by three quarters vote of the City Council, at which time all reinvestment zone and tax abatement agreements created pursuant to these provisions will be reviewed to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria may be modified, renewed, or eliminated.

SECTION 11 - DISCRETION OF THE CITY

A. The adoption of these Guidelines and Criteria by the City does not:

- a) Limit the discretion of the City Council to decide whether to enter into a specific tax abatement agreement;
- b) Limit the discretion of the City Council to delegate to its staff the authority to recommend whether or not the City Council should consider a request for tax abatement;
- c) Create any property, contract, or other legal right in any person to have the City Council consider or grant a specific request for tax abatement; or
- d) Limit the ability to deviate from these Guidelines and Criteria for good cause and as may be allowed by law.

ATTACHMENT 1

STATE OF TEXAS §

CITY OF BRAZOS §

**ANNUAL STATEMENT OF COMPLIANCE WITH
TAX ABATEMENT AGREEMENT BETWEEN THE
CITY OF BRYAN, TEXAS, AND [OWNER]**

_____ ("Owner") hereby certifies to the City Council of the City of Bryan, Texas ("City") that Owner is in compliance with the terms of the Agreement with the City, entered into on the ___ day of _____, 20__.

Attached to this statement of compliance are true and correct copies of documents that establish Owner's compliance with the terms of the Agreement (e.g. receipt from Brazos County Tax Office).

Signed this _____ **day of** _____, **20**__.

_____	_____	_____
Print Name	Signature	Title

ACKNOWLEDGMENT

This instrument was acknowledged before me on the _____ day _____, 20__, by _____, as the _____ of [Owner] on behalf of said company.

Notary Public, State of Texas