

Guidelines & Criteria for Tax Abatement
Montgomery County, Texas
(Adopted and Effective October 13, 2020)

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Guidelines and Criteria for Tax Abatement By Montgomery County, Texas

Section 1: Preamble

The Commissioners Court of Montgomery County, Texas adopts these guidelines and criteria to stimulate continued economic growth in Montgomery County while preserving the values and existing assets that provide the quality of life our citizens have come to expect and to enjoy.

New and relocating businesses have many choices for business sites. Montgomery County adopts these guidelines to provide incentives for businesses to invest in Montgomery County. Montgomery County intends to be competitive in attracting businesses to locate, relocate and/or consolidate their facilities within the County without detrimentally affecting existing enterprises. .

These guidelines and criteria are intended to allow Commissioners Court discretion to structure individual tax abatement agreements to specific circumstances pursuant to the Property Redevelopment and Tax Abatement Act and other applicable laws. These guidelines and criteria apply solely to the granting of tax abatement by Montgomery County. Municipalities and other taxing entities with jurisdiction in Montgomery County may have discretion to abate taxes for the respective taxing entity however; each taxing jurisdiction acts independently and action by Commissioners Court on an application for abatement affects only taxes payable to Montgomery County. Montgomery County cooperates and coordinates with the municipalities and with the economic development efforts of the various taxing entities within the county. However, only Commissioners Court of Montgomery County can bind the County to the terms of a tax abatement.

Applicants may contact the Montgomery Central Appraisal District to determine the taxing entities that affect their proposed projects and whether abatement is available for any entity other than Montgomery County.

Section 2: Definitions

(a) “Abatement” means the full or partial exemption from ad valorem taxes of certain property in a reinvestment zone designated for economic development purposes.

(b) “Act” means the Property Redevelopment and Tax Abatement Act enacted as

Chapter 312 of the Texas Tax Code, as amended.

(c) “Agreement” means a contractual agreement between a property owner and/or lessee and an Eligible Jurisdiction for the purposes of Abatement.

(d) “Aviation Facility” means buildings and structures, including Fixed Personal Property, machinery, and equipment, the primary purpose of which is or will be the manufacture, service or supply of aviation related activities.

(e) “Base Year Value” means the taxable value of eligible property at the time of the execution of the Agreement plus the agreed-upon value of eligible property made after January 1 but before the execution of the Agreement.

(f) “Commissioners Court” means the Commissioners Court of Montgomery County, Texas.

(g) “Consolidating Facility” means a Facility resulting from the relocation or combining of operations and/or property into one or more locations within a reinvestment zone within Montgomery County from one or more locations outside of Montgomery County. “Consolidating Facility” includes a location existing in Montgomery County prior to the Effective Date of tax abatement so long as Eligible Property is included in the Consolidation.

(h) “Consolidation” means the relocation or combining of operations and/or property into one or more Consolidating Facilities located within a reinvestment zone within Montgomery County from one or more locations outside of Montgomery County.

(i) “County” or “Montgomery County” means Montgomery County, Texas, a political subdivision of the State of Texas.

(j) “Deferred Maintenance” means improvements necessary for continued operations which do not improve productivity or alter the process technology.

(k) “Economic Life” means the number of years a property improvement is expected

to be in service in a Facility.

(l) “Eligible Jurisdiction” means Montgomery County and any municipality, college district, or other taxing district eligible to enter into an Agreement under Texas law that levies ad valorem taxes upon and provides services to property located within the proposed or existing reinvestment zone.

(m) “Expansion” means the addition of buildings, structures, fixed machinery, or equipment for purposes of increasing production capacity.

(n) “Facility” means property improvements completed or in the process of construction, which together comprise an integral whole.

(o) “Fixed Personal Property” means personal property that has been attached to land or improvements in a manner that:

- Would cause damage to the property if the fixture were to be removed;
- Renders use of the fixture essential to the use of the property; or
- Is attached in such a manner as to indicate that the party who installed the article intended for it to become a part of the real property.

“Fixed Personal Property” includes all replacements and accessions to personal property otherwise qualifying as Fixed Personal Property.

(p) “Freeport Goods Exemption” means an exemption for personal property pursuant to Section 11.251 of the Texas Property Tax Code for “Freeport goods” (as defined therein).

(q) “Guidelines” means these *Guidelines and Criteria for Tax Abatement by Montgomery County, Texas*, as may be amended.

(r) “Manufacturing Facility” means buildings and structures, including fixed-in-place personal property such as machinery and equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.

(s) “Modernization” means the replacement and upgrading of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation. Modernization may result from the construction, alteration, or installation of buildings, structures, fixed machinery, or equipment. It shall not be for the purpose of reconditioning, refurbishing, or repairing.

(t) “New Facility” means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.

(u) “Office Building” means a new office building to be occupied 100% by one owner or one tenant, which office building and owner or tenant meet the other criteria set forth herein.

(v) “Regional Distribution Center” means buildings and structures, including fixed machinery and equipment, used or to be used primarily to receive, store, service, or distribute goods or materials owned by the Facility operator.

(w) “Research Facility” means buildings and/or structures, including fixed machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.

Section 3: Abatement Authorized

(a) Facility Eligible for Abatement. The following types of Facilities are eligible for Abatement: Aviation Facility, Consolidating Facility, Manufacturing Facility, New Facility, Regional Distribution Center, Research Facility, Office Building, or any other real property not excluded under Section 3(e).

(b) Creation of New Value. Abatement may be granted only for the additional value of eligible property improvements, as described in these Guidelines, made after execution of and specified in an Agreement with Montgomery County, subject to such limitations as Commissioners Court may require. Abatement may not be granted for a Facility’s Base Year

Value.

(c) New, Existing and Consolidating Facilities. Abatement may be granted for New Facilities and Consolidating Facilities and improvements to existing Facilities and/or Consolidating Facilities for purposes of Modernization, Expansion and/or Consolidation.

(d) Eligible Property. Abatement may be extended to the value of buildings, structures, site improvements plus that office space, and related Fixed Personal Property improvements necessary to the operation and administration of the Facility. Abatement may also be extended to the taxable value of aircraft, but only in conjunction with other eligible property and/or improvements that creates new value in addition to that of the aircraft.

(e) Ineligible Property. The following types of property shall be fully taxable and ineligible for Abatement: land; inventories; supplies, tools, furnishings, and other forms of movable personal property; vehicles; vessels; housing; hotel accommodations; Deferred Maintenance investments; property to be rented or leased except as provided in Section 3(g) of these Guidelines; on-site directly related improvements for the generation of transmission of electrical energy installed and/or used by the abatee but not wholly consumed by a New Facility or Expansion; property which has an Economic Life of less than 15 years (save and except Fixed Personal Property); 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; any property not using a 100% market value for ad valorem tax calculations; and any property (held by owner/lessee) using any other form of exemption/reduction that causes the taxable value to be less than the appraised full market value with regard to the taxes to be payable to County.

Population-driven retail enterprises that reasonably can be expected to locate or stay in a community without Abatement are usually ineligible for Abatement. This includes the following in most cases: retail businesses, hotels and motels, conference centers, restaurants, hospitals, banks, and other financial institutions.

(f) Freeport exemption: Notwithstanding Section 3(e) (Ineligible Property) or other section of these Guidelines, an abatement may be granted to a Facility for which a Freeport Goods Exemption is or may be applicable provided that the additional improvement's market value exceeds Eight million U.S. dollars (\$8,000,000), and the number of jobs created or to be created by the Facility that is the subject of the abatement is ten (10) full-time jobs.

(g) Owned/Leased Facilities. If a leased Facility is granted Abatement, the Agreement shall be executed with the real property owner (lessor) and the lessee. The property owner (lessor) will not be required to execute the Agreement if the abatement relates solely to a separately taxable leasehold interest and the Fixed Personal Property of the lessee.

(h) Effective date of Abatement. Abatement shall be granted effective with the January 1 valuation date immediately following the date of the Agreement's execution unless otherwise provided in the Agreement. The Agreement may provide that the commencement date of the abatement period is deferred until a date that is subsequent to January 1 following the date of Agreement's execution. Projects which meet the minimum employment and value guidelines set forth in Schedule "A" are eligible to be considered for Abatement of new value. The Abatement and Agreement may be extended through the initial Agreement, and a subsequent Agreement may be required if necessary to comply with state law regarding the term of the Reinvestment Zone. Generally if the period of construction exceeds two years, the facility will be considered completed for purposes of Abatement at the end of the second calendar year. In no case will the period of abatement, inclusive of construction and completion, exceed ten years.

(i) Minimum Guidelines. To be eligible for Abatement, the Facility or proposed project must meet the Economic Qualifications contained in Section 3(l) and the other provisions of these Guidelines. The Agreement shall provide and no tax abatement shall be given in any year in which the Facility (1) fails to meet the contractually-defined minimum value requirement or (2) fails to meet the contractually-defined employment creation and retention requirement. The Agreement shall provide and no tax abatement shall be given to a Facility or any owner of a Facility in any year for which all non-abated taxes on the Facility or any other property owned by the owner of the Facility payable to the County or any other taxing

jurisdiction located in Montgomery County were not paid before delinquency.

(j) Value and Term of Abatement. Abatement may be granted in accordance with the terms of an Agreement pursuant to the following guidelines:

(1) *Recommended Structure*. In considering a request for abatement, County will use the guidelines regarding total added tax value and the minimum number of full time jobs to be created with regard to the expansion of existing business and/or new business shown on Schedule "A" attached to these Guidelines and incorporated herein by reference for all purposes.

(2) *Abatements Including Aircraft*. Taxes may be abated on the taxable value of aircraft if the Agreement also requires the creation of additional new value through improvements to the property that is the taxable situs of the aircraft. The recommended Abatement schedule is determined as provided in Schedule "A", but at least 75% of the minimum added tax value must come from the new improvements.

(3) *Existing Enterprise Considerations*. Commissioners Court may choose to deny or reduce the Abatement to an applicant that would compete with an existing business.

(4) *Ten Year Abatement Limit*. In no case shall the period of Abatement on any particular eligible property exceed ten years.

Notwithstanding any other statement in these guidelines and criteria, nothing contained in these guidelines and criteria should be construed to limit or restrict Commissioners Court in the exercise of its discretion in setting a schedule or Abatement percentage in any particular Agreement to the extent allowed by applicable law.

(k) Reporting Requirements. Every Agreement will require the entity receiving abatement to timely file (1) annual status reports with the County by July 1 of each year and (2) annual renditions of value and annual applications for Abatement with the Montgomery Central Appraisal District by April 1 or by the date required by the Texas Tax Code, whichever is later.

(l) Economic Qualification. To be eligible for Abatement, the proposed project:

- (1) Must be reasonably expected to increase taxable ad valorem tax value of at least \$4,000,000 based upon the Montgomery Central Appraisal District's appraisal of the eligible property;
- (2) Must be expected to prevent the loss of jobs or retain, increase, or create jobs on a permanent basis in Montgomery County; and
- (3) Must not be expected to solely or primarily have the effect of transferring employment from one part of Montgomery County to another unless there is substantial threat of economic loss to the County.

(m) Standards for Abatement. The following factors, among others, shall be considered in determining whether to grant Abatement:

- (1) The value of land and existing improvement, if any.
- (2) The type and value of the proposed improvements.
- (3) The expected Economic Life of the proposed improvements.
- (4) The number of existing, permanent jobs to be retained by the proposed improvements.
- (5) The number of new permanent jobs to be created by the proposed improvements.
- (6) The amount of local payroll to be created or enhanced.
- (7) Whether the new jobs to be created will be filled by persons residing or projected to reside within Montgomery County.
- (8) The amount the property tax base valuation will be increased during the term of Abatement and after Abatement, which shall include a definitive commitment that such valuation shall not, in any case, be less than \$4,000,000.
- (9) The costs to be incurred by Montgomery County to provide facilities or services directly resulting from the new improvements.

(10) The amount of ad valorem taxes to be paid to Montgomery County 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.

(11) The population growth of the County that might occur as a direct result of the proposed new improvements.

(12) The types and values of public improvements, if any, to be made by applicant seeking Abatement.

(13) Whether the proposed improvements compete with existing businesses to the detriment of the local economy.

(14) The impact on the business opportunities of existing businesses.

(15) The attraction of other new businesses to the area.

(16) Whether the project is environmentally compatible with the community and whether the project could negatively impact residents' quality of life.

(17) The company profile, including business references, principal bank, audited financial statement, and business plan.

Each Application shall be reviewed on its merit, utilizing the factors listed above and any others deemed relevant by Commissioners Court. After such review, Abatement may be denied entirely or may be granted to the extent deemed appropriate after full evaluation.

(n) Denial of Abatement. No Agreement shall be executed and no Abatement granted if:

(1) There would be a substantial adverse effect on the tax base or costs associated with providing government services;

(2) The applicant has insufficient financial capacity which reasonably could be expected to jeopardize the success of the undertaking;

(3) The planned or potential use of the property would constitute a hazard to public safety or health;

- (4) The abatement would have the sole or primary effect of transferring employment from one part of Montgomery County to another unless there is substantial threat of economic loss to the County;
- (5) Granting Abatement might lead to the violation of other codes or laws; or
- (6) For any other reason deemed appropriate by Montgomery County.

Denial of an application for abatement is within the discretion of Commissioners Court and neither the Commissioners Court nor any other County official shall be required to give a reason or explanation for the reason(s) why any particular application for Abatement did not result in the granting of Abatement.

(o) Taxability. During the Abatement period, property taxes shall be payable as follows:

- (1) The value of ineligible property shall be fully taxable using 100% market value as determined by the Montgomery Central Appraisal District.
- (2) The Base Year Value of existing eligible property, as determined each year, shall be fully taxable.
- (3) The additional value of the property to which the abatement applies shall be fully taxable at the end of the Abatement period.

Section 4: Application

(a) Submission and Application Fee. Any present or potential owner of taxable property in the County may apply for Abatement by following the Montgomery County Procedures for Tax Abatement. At the time of filing an application for Abatement, an applicant must pay a non-refundable application fee of \$1,000. Existing businesses applying for Abatement under Category A are exempt from this application fee.

(b) Review. All Abatement applications may be reviewed by the Commissioner of the precinct in which the property is located, the County Tax Assessor-Collector and the County

Attorney. Commissioners Court will approve or disapprove an Agreement based on the merits of the application and these Guidelines.

(c) Included Items. The application shall consist of a completed application form which shall provide detailed information on the items described in Section 3 of these Guidelines; a map and property description; a time schedule for undertaking and completing the planned improvements; and any additional information the applicant determines is helpful to the determination of the application. In the case of Modernization, 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 may be deemed appropriate for evaluating the financial capacity and other factors of the applicant.

(d) Adherence to State Law. Montgomery County shall adhere to the requirements of the Act and the Texas Tax Code at all stages of the application, Abatement and Agreement process.

(e) 90-Day Time Period. The County shall by resolution either approve or disapprove the application for Abatement not more than 90 days after receipt of the completed application, except in unusual circumstances. The County shall notify the applicant of such approval or disapproval. The County's failure to act on the application or to notify the applicant of a decision on the application within 90 days shall not be construed as approval for Abatement, either expressed or implied. Any application not acted upon by the Commissioners Court within ninety (90) days from the date of the application shall be considered denied unless extended in writing by the Montgomery County Tax Assessor Collector.

(f) Timeliness of Actions. The County will not enter into an Agreement if it finds that the request for the Abatement was filed after the commencement of construction, alteration, installation, or improvements related to a proposed Modernization, Expansion, or New Facility. Property eligible for Abatement includes only the new improvements that occur after the execution of an Agreement with Montgomery County.

(g) Confidentiality Required. Information provided to Montgomery County in connection with an application for Abatement that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which Abatement is sought is confidential and not subject to public disclosure until after the Agreement is executed. Information in the custody of a taxing unit, including Montgomery County, after the Agreement is executed is public record and is not confidential. Generally, confidential information should not be submitted with an application for Abatement, but if doing so cannot be avoided, the confidential information should be clearly marked "CONFIDENTIAL." Notwithstanding the foregoing, Section 312.207 and Section 312.404 of the Texas Tax Code require Montgomery County to provide public notice at least thirty (30) days prior to the public meeting at which it will consider approval of a proposed tax abatement agreement which notice must contain (1) the name of the property owner and the name of the applicant for the tax abatement agreement; (2) the name and location of the reinvestment zone in which the property subject to the agreement is located; (3) a general description of the nature of the improvements or repairs included in the agreement; and (4) the estimated cost of the improvements or repairs.

Section 5: Agreement

(a) Notice to Jurisdictions. Not later than the seventh day before the date on which the County enters into an Agreement, the County shall notify in writing the governing body of each of the other taxing units in which the property is located that the County intends to enter into the Agreement.

(b) Agreement Contents. The County shall formally execute an Agreement with the owner (and/or lessee) of the Facility, which Agreement will include:

- (1) The estimated value to be abated and the property's Base Year Value.
- (2) The percent of value to be abated each year.
- (3) The beginning date and ending date of the Abatement period.
- (4) A description of the proposed use of the Facility; nature of construction,

time schedule, property description, and improvement list – as provided for in the application for Abatement.

- (5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration, and assignment.
- (6) The size of the investment and the average number of jobs involved during the Abatement period and which must be maintained for a period of time after the Abatement period expires.
- (7) Any other terms deemed necessary by County or required by the Act.

No Abatement will be effective unless the County and the owner (and/or lessee) of the Facility execute a written Agreement in accordance with this Section. The failure to include any information required by this section shall not invalidate a tax abatement agreement.

Section 6: Termination, Default and Recapture

(a) Termination. If the owner or operator of the facility (1) allows its ad valorem taxes owed to Montgomery County or any other taxing jurisdiction located in Montgomery County 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 and fails to cure during the Cure Period (as defined below), the Agreement may be terminated and all taxes previously abated by virtue of the Agreement will be recaptured and will be due and payable thirty (30) days after termination of the Agreement. The recapture of taxes must include all penalties, interest and attorney fees as if the taxes were delinquent from the date of the abatement unless the agreement provides for a grace period for the payment of the abated taxes only. The recaptured taxes, penalties, interest and attorney fees shall be a lien against the against the owner's and/or operator's property in the same manner as if the taxes on the property were not abated.

(b) Cure Notification. Should the County determine that the company or individual is in default according to the terms and conditions of its Agreement, the County shall notify

the company or individual of such default in writing at the address stated in the Agreement, and if the default is not cured within thirty (30) days from the date of such notice (such 30-day period to be known as the "Cure Period"), then the Agreement may be terminated.

Section 7: Administration

(a) Assessment Determination. The Chief Appraiser of the Montgomery Central Appraisal District shall annually appraise the property covered under the Abatement. Each year, the company or individual receiving Abatement shall furnish the Chief Appraiser with such information as may be necessary under the Agreement. Once value has been established, the Chief Appraiser will notify Montgomery County of the property's appraised value.

(b) Access Guaranteed. The Agreement shall stipulate that employees and/or designated representatives of Montgomery County and Montgomery Central Appraisal District will have access to the property during the term of the Abatement to inspect the Facility to determine if the terms and conditions of the Agreement are being met. All inspections will be made after the giving of prior notice, and will be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the Facility. All inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards. The County Judge, County Tax Assessor-Collector, and County Commissioner of the precinct in which the property is located or such Commissioner's designee each independently have direct authority to act on behalf of the County with regard to inspections.

(c) Timely Filing. The County will timely file all information required by the Texas Tax Code with the appropriate state agency. The County Tax Assessor-Collector has direct authority to act on behalf of the County in connection with these filings.

Section 8: Assignment

An Agreement may not be transferred or assigned by the holder to a new owner or lessee of the same Facility without prior written approval by Commissioners Court. No

assignment or transfer will be approved if the parties to the existing Agreement or the new owner or new lessee are liable to County or any other taxing jurisdiction located in Montgomery County for outstanding taxes or other obligations.

Section 9: Discretion of the County

The adoption of these Guidelines by the County does not:

(1) limit the discretion of the Commissioners Court to decide whether to enter into a specific Agreement;

(2) limit the discretion of the Commissioners Court to delegate to its employees the authority to determine whether or not the Commissioners Court should consider a particular application for Abatement; or

(3) create any property, contract, or other legal rights in any person, partnership, corporation, or other entity to have Commissioners Court consider or grant an application for Abatement.

By a four-fifths (4/5) vote, Commissioners Court may grant variances from any provision in these guidelines and criteria. A request for a variance from any provision herein must be written and included with the application for Abatement.

Section 10: Amendment

These Guidelines may be amended by a three-quarters vote of the Commissioners Court as provided by the Texas Tax Code.

Section 11: Sunset Provision

These Guidelines will remain in force for two years, unless amended as provided herein.

These Guidelines & Criteria for Tax Abatement for Montgomery County, Texas were adopted by the Commissioners Court of Montgomery County, Texas on October 13, 2020, to be effective on the date of adoption.

**SCHEDULE “A” to
Guidelines and Criteria for Tax Abatement by Montgomery County, Texas
(effective October 13, 2020)**

Total Added Tax Value and	Number of Minimum Full Time Jobs	Recommended Abatement Schedule
<i>Category A: Expansion to existing business and/or new business</i>		
\$4,000,000 to \$8,000,000	10	Year 1: 100% (construction) Year 2: not to exceed 100% Year 3: not to exceed 100% Year 4: not to exceed 75% Year 5: not to exceed 50% Year 6: not to exceed 25%
<i>Category B: Expansion to existing business and/or new business</i>		
\$8,000,000 to \$25,000,000	10	Year 1: 100% (construction) Year 2: not to exceed 100% Year 3: not to exceed 100% Year 4: not to exceed 100% Year 5: not to exceed 80% Year 6: not to exceed 60% Year 7: not to exceed 40% Year 8: not to exceed 20%
<i>Category C: Expansion to existing business and/or new business</i>		
Over \$25,000,000	10	Maximum 10 Years: % of abatement each year to be determined