

AN ORDINANCE 2008-06-12-0509

APPROVING THE JOINT CITY/COUNTY TAX PHASE-IN GUIDELINES.

\* \* \* \* \*

**WHEREAS**, tax abatements are used by local governments to attract new companies and to encourage the retention and/or expansion of existing companies; and

**WHEREAS**, the statutes governing tax abatements are located in Chapter 312 of the Texas Tax Code and authorize, subject to guidelines approved by a city or county governing body, the abatement of taxes on real and personal property improvements for up to 10 years; and

**WHEREAS**, on June 15, 2006, the City Council revised and approved the current City/County Joint Tax Phase-In Guidelines (the "Guidelines") for tax abatement projects; and

**WHEREAS**, by statute, the Guidelines are only effective for a period of two years and the City Council wishes to approve the Guidelines for another two years; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Council approves the Joint City/County Tax Phase-In Guidelines, a copy of which is included as Attachment I.

**SECTION 2.** This ordinance shall be effective on the tenth (10th) day after passage.

PASSED AND APPROVED this 12<sup>th</sup> day of June, 2008.

  
M A Y O R  
**PHIL HARDBERGER**

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
for City Attorney

# **ATTACHMENT I**

# TAX PHASE-IN GUIDELINES

FOR

BEXAR COUNTY

AND

CITY OF SAN ANTONIO

*Effective June 12, 2008 through June 11, 2010*



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**TABLE OF CONTENTS**

Policy Statement .....5

Introduction.....5

SECTION I: Eligibility Criteria.....6

- Investment
- Employee Health Care Benefits
- Wage Requirement
- Targeted Industries
- Non-targeted Industry
- Targeted Areas for Investment and Job Creation
- Additional Terms and Conditions
- Recapture of Abated Taxes
- Non-Refundable Application Fee

SECTION II: Amount of County Abatement .....12

- Local Hire Incentive
- Hiring of Economically Disadvantaged or Dislocated Individuals Incentive
- Small, Minority, Women-owned Business Enterprise (SMWBE) Incentive
- Environmental Practices Incentive

Appendix A: Definitions.....14

Appendix B: Map of Targeted Areas.....17

Appendix C: Map of San Antonio Central City.....18

Appendix D: Map of Edwards Aquifer.....19

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## **Policy Statement**

The growth and diversity of a regional economy is critical to the long-term well being of a community and its citizens. Today, perhaps more than ever, communities must strategically plan and implement policies to achieve these goals. Through joint Tax Phase-in Guidelines for Bexar County and the City of San Antonio, the collaborative efforts of San Antonio's economic development partners are refining strategies to attract and grow targeted industries in order to increase employment, expand the tax base, and create long-term investment and new wealth opportunities in the community.

Both the Bexar County Commissioners Court and the City Council of the City of San Antonio will consider these guidelines to ensure that any abatement of property taxes achieves these community economic development goals. Since each jurisdiction will independently decide whether or not to abate taxes for any given project, approval from one entity does not guarantee approval from the other.

Bexar County will use these guidelines when considering abatements for any project within its jurisdictional boundaries, to include projects locating in municipalities other than the City of San Antonio.

## **Introduction**

Chapter 312 of the Texas Tax Code authorizes local governments to abate ad valorem property taxes on the value of new improvements to the property, including real property, tangible personal property, and inventory and supplies. Taxing jurisdictions (e.g., Bexar County and the City of San Antonio) are required by this statute to develop and periodically review guidelines every two years for the eligibility and award of this tax incentive.

State law further requires that each taxing jurisdiction enter into a Tax Abatement Agreement with each owner of property or the owner of a leasehold interest in real property receiving an abatement or portion thereof. These agreements are binding legal documents between all parties involved. Additional provisions and requirements are included in those agreements.

## **SECTION I: Eligibility Criteria**

Under these Guidelines, to be eligible for consideration by these jurisdictions for a tax abatement, a company or project must meet and/or exceed all of the criteria, as described below:

- Minimum amounts of real or personal property investment must be achieved
- Minimum levels of full-time job creation must be achieved
- Employee access to health care benefits must be provided
- Minimum wage requirements for employees must be achieved
- Applicant must be in a targeted industry, or non-targeted industry but meeting exceptional investment requirements

The amount and term of the tax abatement will also be impacted by:

- The location of facility
- Other incentives used for same project
- Overall benefit to the community

These eligibility criteria, with the exception of the requirement of employee access to health care, do not apply to central city multi-family rental only housing or mixed-use projects. The criteria for these projects can be found in Appendix A.

### ***Investment***

If the project meets the following investment criteria, as well as the other criteria in these Guidelines, the Applicant will be eligible for an abatement of taxes on either the real property improvements **AND/OR** the new personal property investment. **The following eligibility criteria do not apply to central city multi-family rental only housing or mixed-use projects.**

#### **Level 1 Project**

Should the project meet the following investment criteria:

1. Real property improvements of at least \$1,000,000 in the property of interest **OR**
2. Investment of at least \$10,000,000 in new tangible personal property located at the property of interest, **AND**
3. Creation and maintenance of at least 25 new, full-time, permanent jobs

The company will be eligible for an abatement on taxes of either:

1. Up to 100% (40% from the County, as provided in Section II herein) on the real property improvements **OR**

2. Up to 100% (40% from the County, as provided in Section II herein) on the new personal property investment.

### **Level 2 Project**

Should the project meet the following investment criteria:

1. Total capital investment (real property improvements and new personal property investment) of at least \$25,000,000 in the property of interest **AND**
2. Creation and maintenance of at least 250 new, full-time, permanent jobs at the property of interest

The company will be eligible for an abatement of taxes from one of the following categories, but not both:

1. Up to 100% (40% from the County, as provided in Section II herein) on the real property improvements **AND** up to 50% (20% from the County, as provided in Section II herein) on the new personal property improvements **OR**
2. Up to 100% (40% from the County, as provided in Section II herein) on the new personal property improvements **AND** up to 50% (20% from the County, as provided in Section II herein) on the real property improvements.

### **Level 3 Project**

A project will be considered an “exceptional investment” if the project meets the following criteria:

1. Total capital investment (real property improvements and new personal property investment) of at least \$50,000,000 in the property of interest **AND**
2. Creation and maintenance of at least 500 new, full-time, permanent jobs at the property of interest

Such projects will be eligible for an abatement of taxes of up to 100% (40% from the County, as provided in Section II herein) on the real property improvements **AND** the new personal property investment.

Additionally, a local company expanding its operations in Bexar County must hire at least 25% of its new employees from residents of Bexar County, regardless of the size of the project.

### *Employee Health Care Benefits*

The company seeking an abatement under these Guidelines must provide each full-time person employed at the project location and his or her dependents with access to affordable health insurance within a reasonably timely manner from the date the employee starts employment. **This criteria also applies to employees of central city multi-family rental only housing projects.**

### *Wage Requirement*

In order to be eligible for a tax abatement, companies must meet the following wage requirements:

1. Throughout the term of the abatement, all (100%) new and existing employees of the company requesting a tax abatement, **at the project location**, must earn a cash wage exceeding the poverty level for a family of four, as determined annually by the U.S. Department of Health and Human Services (HHS). Bexar County and the City of San Antonio use this annually adjusted HHS "living" wage to establish a minimum Wage Requirement for all existing and newly created full-time jobs covered under a tax phase-in agreement. As of January 2007, this minimum Wage Requirement was \$9.93 per hour.
2. Within one year of project location opening, 70 percent of all new and existing employees at the project location must earn a cash wage exceeding the average hourly durable goods or non-durable goods (which includes services) wage standard, depending on how the company's activities at the project location are categorized.
  - a. **Average Hourly Wage for Durable Goods**: This is the wage standard for those companies engaging in durable goods manufacturing at the project location, at the time the tax phase-in agreement is executed. As published by the Texas Workforce Commission, the wage standard is determined by the average annual hourly wage for durable goods manufacturers in the San Antonio Metropolitan Statistical Area. Bexar County and the City of San Antonio determine this average annual hourly wage over a 12 month period from May to April. As of April 2007, this average durable goods wage is \$11.92 per hour.
  - b. **Average Hourly Wage for Non-Durable Goods and Services**: This is the wage standard for those companies engaging in non-durable goods manufacturing and all other targeted industry business activities other than durable goods manufacturing at the project location, at the time the tax phase-in agreement is executed. As published by the Texas Workforce Commission, the wage standard is determined by the average hourly wage for non-durable goods manufacturers in the San Antonio Metropolitan Area. Bexar County and the City of San Antonio determine this average annual hourly wage over a 12 month period from May to April. As of April 2007, this average non-durable goods wage is \$11.45 per hour.

- c. **For small, minority, or women-owned businesses:** with 100 or fewer employees, the County and the City may consider abatements for firms whose wage levels may not meet the Average Hourly Wage for Durable Goods or the Average Hourly Wage for Non-durable Goods and Services (outlined above).

If the company does not meet and maintain this Wage Requirement for all new and existing employees going forward, the company will be in default of the tax abatement agreement, which will possibly result in termination of the agreement and invoke the recapture of all or portion of the prior abated property taxes.

### *Targeted Industries*

The majority of the company's business at the project location must be engaged in one of the following Targeted Industries, as defined in Appendix A:

- Agribusiness
- Aviation/Aerospace
- Biotechnology
- Creative Services
- Finance
- Information Technology and Security
- Logistics and Distribution
- Manufacturing
- Telecommunications

Additionally, the following projects, as defined in Appendix A, are also eligible for consideration:

- Corporate and Regional Headquarters
- Central City Multi-Family Rental Only Housing or Mixed-use Project

### *Non-targeted Industry*

Companies whose majority business is not in a Targeted Industry may still be eligible for a tax abatement only if they meet the criteria of a Level 3 Project as defined above.

**Regardless of the investment or jobs created, retail stores, retail centers, or businesses that competitively provide goods or services to consumers and multi-family "for sale" housing/mixed use projects, hotel or motel facilities are not eligible for an abatement. Furthermore, Neighborhood Empowerment Zones may not be used to grant abatements of sales taxes.**

### ***Targeted Areas for Investment and Job Creation***

Certain areas are targeted for job creation and investment. Depending on the location of the project, the term of the abatement will vary, as follows (see map in Appendix B):

#### **Areas eligible for a 10-year term:**

- Projects located within Loop 410, located south of U.S. Highway 90, or located within the boundaries of I-35 to the North, I-10 to the South, the County's jurisdictional line to the East, and Loop 410 to the West (includes areas near Windsor Park Mall and Walzem Road in Districts 2 and 10), will be eligible for an abatement term up to 10 years.
- Projects located within the Medical Center area, the boundaries of the San Antonio International Airport, or the Texas Research Park Foundation.

#### **Areas eligible for a 6-year term:**

- Projects located outside of Loop 410 and also located north of U.S. Highway 90 (to the extent not defined as a 10-year term area) will be eligible for an abatement term up to 6 years.

#### **Areas *not* eligible for a tax abatement:**

- Projects located in whole or in part over the Edwards Aquifer recharge zone, as defined in Appendix A, are not eligible for an abatement.

These criteria will not be used to favor one location over another in Bexar County, except as permitted by the Guidelines.

### ***Additional Terms and Conditions***

The applicant will enter into separate tax phase-in agreements with Bexar County and the City of San Antonio and these agreements will require separate approval by each governing authority. Consequently, each jurisdiction reserves the right to negotiate additional terms and conditions on a case-by-case basis.

Recipients of tax abatements will also agree to work with Alamo WorkSource to facilitate the posting and advertisement of new jobs at the property of interest, as well as for the recruitment of potential qualified applicants for these positions. Alamo WorkSource offers other employer services, such as assessment of basic skills and work aptitudes of potential employees, job matching services, labor market information, assistance in arranging workforce training, and outplacement services which the recipient may also access.

***Recapture of Abated Taxes***

Tax abatement agreements will provide for recapture of abated property taxes in the event contract requirements are not met. The following are the standard schedules that show what percentage of taxes abated will be recaptured (multiply the amount of taxes rebated by the percentage in the recapture period):

Term of Abatement Agreement

6-Years		10-Years	
Termination of Abatement	Recaptured Taxes	Termination of Abatement	Recaptured Taxes
During Phase-in Period	100%	During Phase-in Period	100%
Year 1 of Recapture Period	100%	Year 1 of Recapture Period	100%
Year 2 of Recapture Period	75%	Year 2 of Recapture Period	80%
Year 3 of Recapture Period	50%	Year 3 of Recapture Period	60%
Year 4 of Recapture Period	25%	Year 4 of Recapture Period	40%
		Year 5 of Recapture Period	20%
		Year 6 of Recapture Period	10%

***Non-Refundable Application Fee***

Upon submission of the application, companies will pay a separate non-refundable application fee to Bexar County and the City of San Antonio based on the following fee schedule:

Jurisdiction	# of Employees in Applicant Firm	Fee (\$)
Bexar County	One fee for all companies	\$1,000
City of San Antonio	0-19	\$0
	20-99	\$500
	100-499	\$1,000
	500+	\$1,500

All central city multi-family rental only housing or mixed-use projects will pay a fee of \$1,500 to the City of San Antonio and \$1,000 to Bexar County. Any projects that require an assignment or amendment will pay a fee of \$1,500 to the City of San Antonio.

## **SECTION II: Amount of Bexar County Abatement**

In addition to the eligibility criteria established through joint Tax Phase-in Guidelines for Bexar County and the City of San Antonio, the abatement on County ad valorem taxes takes into consideration other project criteria when determining the amount of abatement. Property taxes are the single largest source of operating funds for Bexar County (70% of its General Fund revenue), while they are the third largest source of operating revenue for the City of San Antonio. So, dollar for dollar, a tax abatement has a greater organizational impact on the County government than on the City government.

To help equitably invest in economic development projects using tax abatements, **the County may grant an abatement of taxes up to 40% on the qualified real property improvements and new personal property investment.** Applicants may, however, negotiate for additional County abatement participation if the project meets certain other criteria, as defined below. *Bexar County Commissioners Court will not grant a tax abatement for the Flood Control tax levied by the County or for taxes levied on behalf of the University Health System.*

Bexar County may increase the amount of the abatement **up to 80% of taxes** on qualified real property improvements and new personal property investment after considering these other project criteria:

- **Local Hire Incentive:** Applicant agrees to fill at least 25% of the employment positions created and maintained with individuals whose place of residence, for at least six months prior to employment with the applicant, is located in Bexar County.
- **Hiring of Economically Disadvantaged or Dislocated Individuals Incentive:** Applicant commits that at least 25% of the employment positions created will be filled with economically disadvantaged and/or dislocated individuals.
- **Small, Minority, Women-owned Business Enterprise (SMWBE) Incentive:** Applicant agrees, to the extent practical and consistent with standard and prudent industry practices, to divide contracted work and procurement opportunities into the smallest feasible portions to allow for maximum Small, Minority and Women-owned Business Enterprise (SMWBE) participation and make a good faith effort to award at least 20% of its contracted work to certified minority and women-owned businesses and a good faith effort to award at least 30% of its contracted work to certified small businesses. A good faith effort is defined as the applicant increasing involvement of SMWBEs in the project's procurement process within the areas of commodities, equipment, professional and personal services, maintenance and construction.
- **Environmental Practices Incentive:** Applicant commits to demonstrating sound environmental practices when designing, constructing, operating and maintaining the project. This includes, but is not limited to, the utilization of clean and renewable energies; the implementation of flood protection measures; the provision of incentives for mass transportation alternatives to employment positions created and maintained; the sponsorship of other innovative practices

that serve to minimize landfill impacts; and by registering the project with the US Green Building Council for LEED (Leadership in Energy and Environmental Design) Certification and complying with their standards until a certification is awarded. When a project is not feasible to obtain LEED Certification, the Applicant agrees to make a good faith effort to follow LEED practices when managing and administering the project.

Bexar County Commissioners Court may consider up to an additional 20% tax phase-in for a proposed project on a case-by-case basis. Final determinations and approval will be made by the Court.

In addition, nothing contained in these guidelines shall be construed to limit the Commissioners Court discretion to waive certain requirements contained herein on a case by case basis.

## APPENDIX A

### Definitions

**Agribusiness:** Businesses engaged in the research, development, manufacturing, or refining of agricultural products into foodstuffs or for use as intermediate products in the processing of other agricultural finished goods or products, including those related to defense operations.

**Aviation/Aerospace:** Companies primarily engaged in one or more of the following activities:

- (1) Manufacturing complete aircraft, missiles, or space vehicles
- (2) Manufacturing aerospace engines, propulsion units, auxiliary equipment or parts
- (3) Developing and making prototypes of aerospace products
- (4) Aircraft conversion (i.e., major modifications to systems)
- (5) Complete aircraft, missile, or space vehicle or propulsion systems maintenance, repair, overhaul and rebuilding (i.e., periodic restoration of aircraft to original design specifications)
- (6) Research and development
- (7) Defense-related operations
- (8) Regional air passenger operations

**Biotechnology:** This industry comprises establishments primarily engaged in conducting research, development, and manufacturing in the physical, bio-engineering, and life sciences, such as pharmaceutical, agriculture, environmental, biology, botany, biotechnology, chemistry, food, fisheries, forests, health, and defense-related operations.

**Central City Multi-family Rental Only Housing or Mixed-use Project:** Multi-family rental only housing project or mixed-use project, defined as a project with housing units constituting at least 75 percent of the usable enclosed space, located within boundaries of the Empowerment Zone. Any tax increment reinvestment zones or tax increment financing zones within the aforementioned areas are excluded. See map in Appendix C.

**Corporate and Regional Headquarters:** The firm's corporate or regional legal principal place of business is located in Bexar County, and its total assets will be at least \$500,000,000 and/or its total revenues will be at least \$500,000,000 for the corporate fiscal year preceding the date of the filing of its application for Tax Phase-In with the Bexar County or City of San Antonio. This does not include the corporation's retail outlets.

**Creative Services:** Includes businesses or divisions of corporations that are primarily engaged in the following sectors having general or specific activities and business efforts – printing, publishing, broadcasting, design services, advertising, public relations, architecture, digital media, and businesses involved in film and video production.

**Finance:** Includes companies whose main business is engaged in finance, accounting, insurance, and risk management. It does *not* include any retail component of these businesses.

**Information Technology and Security:** This industry comprises establishments primarily engaged in planning and designing computer systems that integrate computer hardware, software, and communication technologies. The hardware and software components of the system may be provided by this establishment or company as part of integrated services or may be provided by third parties or vendors. These establishments often design and develop software, install the system and train and support users of the system.

Companies in this industry are engaged in the following activities:

- (1) Producing and distributing information and cultural products
- (2) Providing the means to transmit or distribute these products as well as data or communications
- (3) Research and development
- (4) Defense-related operations
- (5) Processing data

**Logistics/Distribution:** Businesses involved in the receiving, storage, service, or distribution of goods or materials, where a majority of the goods or services are distributed to points outside the San Antonio metropolitan statistical area. This includes defense-related operations.

**Manufacturing:** Businesses engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products - includes related research and development, defense-related operations and renewable energy related operations.

**Medical Center Area:** The area bound by Louis Pasteur to the South, Babcock Road to the West, Fredericksburg Road to the East, and Huebner Road to the North.

**Recharge Zone:** That area where the stratigraphic units constituting the Aquifer crop out, including the outcrops of other geologic formations in proximity to the Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Aquifer. The recharge zone is identified as that area designated as such on official maps located at the Authority and in 30 TEX. ADMIN. CODE § 213.22. See map in Appendix D. (From Edwards Aquifer Authority rules, Chapter 713.1(45))

**San Antonio International Airport Area:** San Antonio International Airport is located in the north central portion of the city and is generally bounded by Wurzbach Parkway to the north, U.S. 281 to the west, Loop 410 to the south and Wetmore Road to the east.

**Telecommunications:** Businesses primarily engaged in research & development, regional distribution, defense-related operations and the manufacturing of telecommunication-related products and services. It does not include operations involved in the retail sale of telecommunications products and services.

**Texas Research Park:** The Texas Research Park is a 1,236-acre site, located in West Bexar County and connected to U.S. Highway 90 and Potranco Road (State Highway 1957). The Texas Research Park supports the development of a world-class center of bioscience research and medical education.

# APPENDIX B

## Tax Phase-In Terms by Targeted Areas





