

## MCLENNAN COMMUNITY COLLEGE TAX ABATEMENT GUIDELINES AND CRITERIA

1. Purpose. To serve as a guide to the McLennan Community College Board of Trustees and Administration in complying with the required procedures for participation in tax abatement under Chapter 312 of the Tax Code and to establish criteria and standards for tax abatement agreements entered into by McLennan Community College.

2. Reinvestment Zones.

2.1 General. Tax abatement can ONLY be granted with regard to property located within a properly designated Reinvestment Zone. Thus, as an initial matter it must be confirmed that the property is within a Reinvestment Zone. If it is not, a Reinvestment Zone must be created before any tax abatement agreement is reached.

2.2 Criteria for Reinvestment Zone. The statutory criteria for an area to be designated as a Reinvestment Zone are listed in Section 312.202 of the Tax Code. The listed criteria that will normally be applicable is that the area must “be reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the municipality.” However, in some cases other criteria may be applicable, such as the area being in need of Reinvestment due to urban blight. Residential tax abatement is also provided for in Chapter 312 under certain conditions. The term “reinvestment zone” includes an “enterprise zone” designated under Chapter 2303 of the Government Code.

2.3 Process for Designating a Reinvestment Zone.

A. Designation of a Reinvestment Zone is by Ordinance. The ordinance designating a reinvestment zone must: Describe the boundaries of the zone; Find that the property meets the criteria for a zone (Section 312.202, Tax Code); State that the property within the zone is eligible for commercial-industrial tax abatement; and Make the findings required to be made after the public hearing (discussed below).

The property description must be a legal description. In most cases a zone will be designated that is coextensive with the property for which tax abatement is sought rather than designating an area wherein multiple properties are located.

The specific criteria under which the zone is being created must be stated.

B. Published Notice and Public Hearing Required. To be eligible for designation as a reinvestment zone, McLennan Community College must hold a public hearing on the designation. At the hearing, interested persons are entitled to speak and present evidence for or against the designation. See § 312.201, Property Tax Code. Not later than the 7<sup>th</sup> day before the

date of the hearing, notice of the hearing must be published in a newspaper of general circulation in the municipality; written notice must be given to the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed reinvestment zone. Notice to the presiding officer of the governing body is considered notice to the governing body. After holding the public hearing, McLennan Community College must make a finding that the improvements sought are feasible and practical and would be a benefit to the land included in the zone and to McLennan Community College after the expiration of any tax abatement agreement. This finding will be contained in the Designation Ordinance.

3. Tax Abatement. Tax abatement can only be granted to an eligible property under a written Tax Abatement Agreement approved by the McLennan Community College Board of Trustees. The abatement granted is only with regard to a percentage of the added taxable value (per the appraised value assigned by the McLennan County Appraisal District) created by the real property improvements and/or personal property additions on the land within the zone. The increase is calculated by reference to the Base Year, which is the year in which the Tax Abatement Agreement is entered into by the City and the Owner. The Base Year Value is based on the appraised value assigned by the McLennan County Appraisal District. Tax abatement is available with regard to qualifying projects for both new facilities and structures and for the expansion or modernization of existing facilities and structures. The term of a Tax Abatement Agreement cannot exceed 10 years. The City can provide tax abatement for the value of personal property, equipment or fixtures on Owned by the Lessee of the property upon which the personal property, equipment or fixtures are located. Abatement is not granted to the owner of the leased property.

4. Application for Tax Abatement

4.1 The property owner must generally file an application for tax abatement with the McLennan Community College President for a tax abatement to be considered by the McLennan Community College Board of Trustees.

4.1.1 Exception. The McLennan Community College Board of Trustees may consider as a tax abatement application a submittal which contains a description of the property, the proposed improvements and additions, any employment positions to be created or maintained, abatement terms, percentages and conditions, and other information included therein based on negotiations by McLennan College President and legal counsel with the business, in lieu of requiring an application.

4.1.3 An Application for Tax Abatement must include the following:

- a. a legal description and common description of the real property for which tax abatement is sought;
- b. a description of any personal property for which tax abatement is sought;

c. the proposed capital improvements to the property and any proposed additions of personal property thereon over and above what exists on the property at the date of the Application and any proposed increases in employment or retention of jobs which the Applicant is proposing as incentive for the grant of the tax abatement. This shall include the number of jobs, average wage of jobs, employment benefits to be provided, and a commitment to retain the jobs throughout the abatement period;

d. the name, address, and telephone number of the applicant;

e. if the applicant is other than a natural person, identification of the form of the entity and a copy of the articles of incorporation, partnership agreement, or other document establishing the entity must be provided. Where the applicant is other than a natural person, a certificate of good standing from the State Comptroller shall be provided, and a verification of the entity's status from the State Secretary of State shall be provided where applicable;

f. the applicant must provide a current tax certificate showing that all property taxes due on the property have been paid;

g. the applicant must provide a statement of the taxable value of the property and personal property thereon as shown on the assessment for the year of the application, and must state the estimated increase in the taxable value from its project;

h. the Application must disclose any discharges of pollutants which are expected to accompany the Applicant's operations on the property; and

i. the applicant shall provide a map showing the property, and the location of proposed improvements.; and

j. estimated water and sewer requirements for the project shall be identified.

## 5. Tax Abatement Agreements

5.1 Tax Abatement Agreements must, by statute, contain the following terms and conditions:

(a) list the kind, number, and location of all proposed improvements of the property;

(b) provide access to and authorize inspection of the property to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement;

(c) limit the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect;

- (d) provide for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement;
- (e) contain each term agreed to by the owner of the property;
- (f) require the owner of the property to certify annually to the governing body of each taxing unit that the owner is in compliance with each applicable term of the agreement; and
- (g) provide that the McLennan Community College Board of Trustees may cancel or modify the agreement if the property owner fails to comply with the agreement.

*See §§312.205 and 312.206, Tax Code. See Also §312.402, Tax Code.*

5.2 An Owner must stay current on the unabated portions of property taxes on the property. Failure to do so may result in termination of the Tax Abatement Agreement.

5.3 The Tax Abatement Agreement will contain other provisions as required by the City or its legal counsel.

5.4 The duration of a tax abatement shall not exceed ten (10) years.

5.4 The Base Year Value of the property, the percentage of abatement, and the length of abatement shall be clearly set forth in the Agreement.

5.4 The “Base Year Value” is the taxable value of the property for the tax year in which the Agreement is executed.

5.5 The abatement provided by a Tax Abatement Agreement is only for the increase of the taxable value over the Base Year Value caused by the improvements and additions made by the property owner to the property which are specifically set forth in the Agreement. The abatement shall not be applied to improvements or personal property located on the property before the Tax Abatement Agreement is executed, or which are not included in the improvements or additions expressly described in the Tax Abatement Agreement. The abatement provided by the Tax Abatement Agreement shall not apply to inventory or supplies.

5.6 A Tax Abatement Agreement will generally take effect on January 1 of the next year after the improvements and/or additions are completed. A certificate of completion must be provided to the McLennan Community College President upon (or the entity administering compliance) completion of the improvements/additions. “Completion” is subject to independent verification of completion by McLennan Community College.

5.7 The Abatement Period may be started during construction if the parties so agree in the Tax Abatement Agreement.

5.8 The start of the Abatement Period may be deferred to a later year if the parties agree to such in the Tax Abatement Agreement.

5.9 All Tax Abatement Agreements must be approved by the McLennan Community College Attorney.

## 6. Guidelines of General Application

6.1 No member of the McLennan Community College Board of Trustees may have an interest in property to be included in a reinvestment zone, or property for which a tax abatement is granted by McLennan Community College.

6.2 No tax abatement agreement is effective until formally approved by the McLennan Community College Board of Trustees and fully executed by all parties. NO TAX ABATEMENT CAN BE GRANTED FOR PROPERTY THAT IS NOT LOCATED WITHIN A PROPERLY ESTABLISHED REINVESTMENT ZONE.

6.3 Tax abatement will only be granted for increases in the taxable value of the property over the Base Year Value as defined in these Guidelines and Criteria, and only for increases in value caused by improvements/additions identified in the applicable tax abatement agreement. The term improvements/additions include both new structures and facilities and the expansion and modernization of existing structures or facilities. In some situations, involving leases—the applicable Base Year value may be zero. According to Section 312.402 (a-3) of the Tax Code the value of fixtures and personal property placed on the leased property is what is considered for abatement.

6.4 There can be no implied promise to grant tax abatement, and tax abatement may only be granted by the McLennan Community College Board of Trustees by formal action, taken as a body, which approves the same.

6.5 Meetings at which a tax abatement is considered by the McLennan Community College Board of Trustees must be posted and held in accordance with the Open Meetings Act (Chapter 551 of the Government Code). (added by H.B. 3143, 2019) The McLennan Community College Board of Trustees must give the public notice of the meeting at which the McLennan Community College Board of Trustees will consider approval of a Tax Abatement Agreement. The notice is posted for the meeting in the manner required by the Texas Open Meetings Act (Ch. 551, Texas Government Code) at least 30 days before the time of the meeting scheduled to consider the Tax Abatement Agreement. The 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 where the subject property is located;
- 3) A general description of the improvements or repairs required to be made under the Tax Abatement Agreement; and

4) The estimated cost of the improvements or repairs.

6.6 The conflict of interest provisions of Chapter 171 of the Local Government Code apply to actions taken by the McLennan Community College Board of Trustees on any tax abatement.

6.7 The term and percentages of tax abatement for a project are based on rational review of the economic development benefits received, and other factors.

The proposed term/percentages should primarily be a function of the level of improvements/additions and job creation/retention. Proposals which include significant job creation/retention shall generally have priority over those which involve only improvements/additions to property. Another factor shall be the quality of the jobs proposed. Generally, a proposed abatement involving creation of near minimum wage jobs should be accorded less favorable abatement than one involving provision of jobs having more attractive wages and benefits.

Projects that serve targeted development goals in McLennan County are accorded more favorable treatment.

Other matters, such as whether the project will serve as an anchor for other development or is likely to create additional development are important factors. Whether the project and potential other development stimulated by the project serves a growth plan. Generation of sales tax revenues and the levels thereof are a consideration.

Businesses having a regional or national impact will generally be given greater consideration. These are businesses that ship most of their production outside of the McLennan County.

When a project provides for little job creation but significant capital investment, care must be taken to properly analyze the possible impacts to the tax valuation in the future from factors such as depreciation, market changes, regulatory changes, appraisal methodologies, tax exemptions, and other relevant matters. The percentage and length of tax abatement must be carefully considered in view of the diminishing or fluctuating future value of the project. Rapid depreciation and unpredictable future valuations are factors that will be considered in setting abatement percentages and length on such projects.

Other factors such: as public infrastructure and utility requirements of the development, community impacts, direct and indirect economic impacts, environmental impacts, and the potential for future expansion may also be considered as part of the analysis.

6.8 In accordance with §312.002(d) of the Tax Code, the McLennan Community College Board of Trustee's adoption of these Guidelines and Criteria does not:

- (1) limit the discretion of the governing body to decide whether to enter into a specific tax abatement agreement;
- (2) limit the discretion of the governing body to delegate to its employees the authority to determine whether or not the governing body should consider a particular application or request for tax abatement; or
- (3) create any property, contract, or other legal right in any person to have the governing body consider or grant a specific application or request for tax abatement.

6.9 Sale, Lease or Allocation to Tax Exempt Entity. If a sale, lease, or allocation of the Project or its output is made to an entity exempt from property taxation, and such results in a portion of the Project being exempt from property taxation, the McLennan Community College Board of Trustees may terminate the Tax Abatement Agreement and the Abatement granted thereunder. If this occurs, the owner must repay any taxes abated related to the portion of the property that has become exempt from year 1 to when the portion of the property became tax exempt.

6.10 Alternatively, to keep the tax abatement agreement in place for the rest of the property, the Owner shall pay in a lump sum the present value of taxes that will be lost to McLennan Community College with regard to the exempt portion of the property over the next 20 years using a calculation agreed to by the parties in writing, but if unable to be agreed to, resolved by binding mediation to take place in McLennan County, Texas before a mediator selected by McLennan Community College from the approved list of mediators maintained by the Federal District Court in Waco..

6.11 In the event of conflict between these Guidelines and Criteria and a provision of Chapter 312 of the Tax Code, Chapter 312 of the Tax Code shall control.

6.12 These Guidelines and Criteria must be re-evaluated and re-approved every two years.

## 7. Notice Requirements.

To adopt or amend guidelines and criteria, notice of public hearing and public hearing held before adoption.

To designate a Reinvestment zone Published Notice of Public Hearing at least 7 days before hearing [Also sent to the presiding officer of the governing body of each taxing entity that includes boundaries within the reinvestment zone at least 7 days before hearing]. Public hearing held. At the end, after approving the ordinance creating the Reinvestment Zone, approve intent to enter into a proposed tax abatement Agreement. Send copy of notice of Intent and copy of proposed Tax Abatement Agreement to the presiding officer of the governing body of each

taxing entity that includes boundaries within the reinvestment zone at least 7 days before meeting at which adopt Tax Abatement Agreement.

The McLennan Community College Board of Trustees must give the public notice of the meeting at which the Board of Trustees will consider approval of a Tax Abatement Agreement. The notice is posted for the meeting in the manner required by the Texas Open Meetings Act (Ch. 551, Texas Government Code) at least 30 days before the time of the meeting scheduled to consider the Tax Abatement Agreement. The 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 where the subject property is located;
- 3) A general description of the improvements or repairs required to be made under the Tax Abatement Agreement; and
- 4) The estimated cost of the improvements or repairs.

8. Amendment or other Action. (added by H.B. 3143, 2019) An adoption, re-adoption, amendment, repeal, or reauthorization of these Guidelines and Criteria must only occur after a public hearing is held at which members of the public have the opportunity to be heard.