

RESOLUTION NO. 2019-385

A RESOLUTION OF THE COMMISSIONERS COURT OF THE COUNTY OF HARRISON, TEXAS,
ADOPTING A TAX ABATEMENT POLICY

WHEREAS, the County of Harrison wished to adopt a tax abatement policy; and

WHEREAS, the County of Harrison believes it to be in the public interest to institute such a policy; and as a result job retention and expansion of primary employment and attraction of major investment would occur and contribute to the economic development of the County; and

WHEREAS, a tax abatement policy provides a valuable economic tool for use by the County and others interested in supporting and creating jobs in the Harrison County area;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS' COURT OF THE COUNTY OF HARRISON, TEXAS that the Commissioners' Court of the County of Harrison, Texas hereby adopts the following:

TAX ABATEMENT POLICY ATTACHED AS "EXHIBIT A"

MEMBERS OF COMMISSIONER'S COURT VOTING:

FOR:

AGAINST:

Chad Sims, County Judge <u>Chad Sims</u>	Chad Sims, County Judge _____
William Hatfield, Pct. 1 <u>William Hatfield</u>	William Hatfield, Pct. 1 _____
Zephaniah Timmins, Pct. 2 <u>Zephaniah Timmins</u>	Zephaniah Timmins, Pct. 2 _____
Phillip Mauldin, Pct. 3 <u>Phillip Mauldin</u>	Phillip Mauldin, Pct. 3 _____
Jay Ebarb, Pct. 4 <u>Jay Ebarb</u>	Jay Ebarb, Pct. 4 _____

PASSED AND APPROVED THIS 16 day of October, 2019.

COUNTY OF HARRISON, TEXAS

BY: Chad Sims
CHAD SIMS, COUNTY JUDGE

EXHIBIT

OCT 16 2019

APPROVED /cg

EXHIBIT "A"

HARRISON COUNTY TAX ABATEMENT POLICY HARRISON COUNTY TAX ABATEMENT POLICY EFFECTIVE: 10-16-2019

I. INTRO/GENERAL PURPOSE AND REQUIREMENTS

Taxing jurisdictions in Texas are authorized under Chapter 312 as well as Section 11.28 of the Texas Tax Code to provide tax abatements for economic development. Harrison County is committed to the promotion of high quality development in all parts of the County and to an ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, Harrison County will, on a case-by-case basis, give consideration to providing tax abatements. Harrison County will not utilize Chapter 381 of the Texas Local Government Code to administer a Community and Economic Development Program to provide grants as a form of economic development. To help ensure that all tax abatement requests are consistently reviewed and that only the most effective and appropriate tax abatement projects are undertaken, this Harrison County Tax Abatement Policy has been developed.

- (a) It is the policy of Harrison County that consideration of all abatement applications will be provided in accordance with the procedures and criteria outlined in this document. Nothing herein shall imply or suggest that Harrison County is under any obligation to provide tax abatement to any applicant.
- (b) Applicant shall adhere to all Harrison County application procedures and requirements including Section III (d) for Municipality-Initiated Abatement Agreements and Section IV for County Initiated Abatement Agreements.
- (c) Requests for abatements will not be considered if, prior to the submission of an application, the project is already underway or completed. A project will be considered to be underway if actions such as, but not limited to, the following have occurred, (1) The demolition, site preparation, or the installation of infrastructure has begun; (2) A building permit has been issued for construction not associated with mitigating an environmental hazard; (3) construction (including renovations or tenant finish-out) has begun; and (4) Equipment, inventory or employees have been relocated to the new site. The completion of an environmental assessment or the preparation of architectural engineering plans does not constitute a project being substantially underway.
- (d) Requests for abatement will not be considered for property that will be used in whole or in part for a sexually-oriented business, including but not limited to condoning, legitimizing, or promoting obscene materials, nude or topless modeling or dancing, adult motel operations, escort services, sexual encounter centers, sex phone centers, or any other sexually-oriented business activity. Similarly, property receiving an existing abatement for another use cannot convert this property for use as a sexually-oriented business or an establishment and still retain this abatement.

(e) Requests for abatement will not be considered for an applicant with whom the County is currently involved in or has within the past thirty-six months been involved in litigation, a pending claim, or unsatisfactory contractual performance, not to any applicant indebted to the county for ad valorem taxes or other obligations.

(f) The County abatement application must be submitted to the County Judge and the TARC. Because the availability of abatement assistance can facilitate the selection of a specific site when numerous sites are under consideration, the County Judge may issue or instruct staff to issue verbal or written proposed terms for a particular abatement agreement. Proposed terms are non-binding. Harrison County reserves the right to request other information deemed necessary for evaluating the application.

(g) The County abatement application shall be completed and delivered to the County Judge along with payment of a non-refundable application fee in the amount of FIVE HUNDRED AND 00/100 DOLLARS (\$500.00) for administrative costs associated with the processing of the tax abatement request. All checks in payment of the administrative fee should be made payable to the Harrison County Treasurer.

(h) The maximum term for any abatement agreement under this policy is ten years. An abatement agreement approved by the affirmative vote of a majority of the Commissioners' Court in a regularly scheduled meeting shall consist of a percentage of the County Ad Valorem Tax obligation calculated as follows:

Tax Abatement may be available only to businesses located in reinvestment zones. The minimum capital expenditure to be eligible is \$4,000,000.00 in additional ad valorem tax value. The minimum of 50 full time jobs must be created during the time period negotiated for the tax abatement.

ADDITIONAL VALUE	JOBS CREATED	POSSIBLE ABATEMENT
\$4,000,000-4,500,000	50-150	30%
4,500,001-6,000,000	151-300	40%
6,000,001-7,500,000	301-400	50%
7,500,001-9,000,000	401-500	60%
9,000,001-10,500,000	501-600	70%
10,500,001 & higher	601 & over	80%

(i) An abatement agreement approved by the affirmative vote of four-fifths of the Commissioners' Court in a regularly scheduled meeting may authorize a percentage of the County Ad Valorem Tax obligation other than that found in Section 1 (h).

(j) In order to enter into a Tax Abatement Agreement, the Commissioners' Court must find that the terms of the proposed agreement meet Guidelines and Criteria and that:
 - There will be no substantial adverse effect on the provision of the jurisdiction's service or tax base; and
 - The planned use of the property will not constitute a hazard to public safety, health or morals.

II. DEFINITIONS

- (a) "Abatement" means the full or partial exemption from ad valorem taxes of certain real property and personal property in a reinvestment zone designated for economic development purposes.
- (b) "Agreement" means a contractual agreement between a property owner and/or lessee and an eligible jurisdiction for the purposes of tax abatement.
- (c) "Applicant" means the firm, party, entity, or organization that would be receiving the tax abatement if granted.
- (d) "Authorized Facility" A facility may be eligible for abatement if it is a Manufacturing Facility, a Regional Distribution Center Facility, a Regional Service Facility, a Non-Manufacturing Facility, or Other Basic Industry as defined. The economic life of a facility and any improvements must exceed the life of the abatement agreement.
- (e) "Base Year Value" means the appraised value of eligible property certified by the Harrison Central Appraisal District as of January 1st immediately preceding the execution of the tax abatement agreement plus the agreed upon value of eligible property improvements made after January 1st but before the execution of the abatement agreement.
- (f) "Creation of New Value" Abatement may only be granted for the additional value of eligible property improvements made subsequent to and listed in an abatement agreement between the County and the property owner and/or lessee, subject to such limitations as Commissioners' Court may require.
- (g) "Economic Life" means the number of years a property improvement is expected to be in service in a facility.
- (h) "Eligible jurisdiction" means Harrison County and any municipality or other entity located in Harrison County that levies ad valorem taxes upon and provides services to property located within the proposed or existing reinvestment zone.
- (i) "Eligible Property" Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, fixed personal property, and site improvements plus that office space and related fixed improvements necessary to the operation and administration of the facility.

- (j) "Expansion" means the addition of buildings, structures, fixed machinery and equipment, and fixed personal property for purposes of increasing production capacity.
- (k) "Facility" means property improvements completed or in the process of construction, which together comprise an integral whole.
- (l) "Fixed Machinery and/or Personal Property" means tangible machinery, equipment, and fixed personal property, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such good or materials by physical or chemical change.
- (m) "Ineligible Property" The following types of property shall be fully taxable and ineligible for abatement: land; inventories; supplies; tools; furnishings; and other forms of moveable personal property; vehicles; vessels; private aircraft; property to be rented or leased except as provided in the definition of II (i) above; and any property included in the calculation of base year value as defined.
- (n) "Manufacturing Facility" means buildings and structures, including fixed machinery and equipment, and fixed personal property, the primary purpose is to manufacture goods.
- (o) "Modernization" means the replacement and upgrading of existing facilities. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery and equipment and fixed personal property. Modernization is not the maintenance, reconditioning, refurbishing or repairing of existing facilities.
- (p) "New Facility" means a property previously undeveloped that is placed into service by means other than or in conjunction with expansion or modernization.
- (q) "New and Existing Facilities" Abatement may be granted for new facilities and improvements to existing facilities for the purposes of modernization or expansion.
- (r) "Non-Manufacturing Facilities" means buildings and structures used to service and/or house individuals on a permanent or temporary basis.
- (s) "Other Basic Industry" means buildings and structures including fixed machinery and equipment, and fixed personal property not elsewhere described, used or to be used for the production of products or services that result in the creation of new permanent jobs and bring new wealth into Harrison County.
- (t) "Owned/Leased Facilities" If a leased facility is granted abatement, the agreement shall be executed with the lessor and the lessee.
- (u) "Regional Distribution Center Facility" means buildings and structures, including fixed machinery and equipment, and fixed personal property, used or to be used, primarily to receive, store, service or distribute goods or materials owned by the facility operator.
- (v) "Regional Service Facility" means buildings and structures, including fixed machinery and equipment, and fixed personal property, used or to be used to service goods.
- (w) "Research Facility" means building and structures, including fixed machinery and equipment and fixed personal property, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials, or to improve or develop the production processes thereto.

- (x) "Reinvestment Zone" means a geographical area of the County that meets the criteria of Chapter 312 of the Texas Tax Code.
- (y) "Taxability" From the execution of the abatement to the end of the agreement period taxes shall be payable as follows:
1. The value of ineligible property shall be fully taxed;
 2. The base year value of existing eligible property shall be fully taxable;
 3. The additional value of the eligible property shall be taxable in the manner and for the period provided for in the abatement agreement; and
 4. The additional value of the new eligible property shall be fully taxable at the end of the abatement period.
- (z) TARC – Tax Abatement Review Committee (see Section VI (d) of this Tax Abatement Policy)

III MUNICIPALITY-INITIATED ABATEMENT AGREEMENTS- ADDITIONAL CRITERIA/INFORMATION

- (a) The Harrison County Commissioners' Court recognizes that each municipality within the County has a different vision and goal for its economic development efforts. Harrison County will endeavor to work in concert with other taxing authorities as part of an overall publicly supported incentive program designed to create job opportunities that bring new economic advantages or strengthen the current economic base of our community. The terms and conditions of a Tax Abatement Agreement entered into between a Municipality and an applicant are separate and may differ from the terms and conditions of the Tax Abatement Agreement entered into between said Applicant and the County.
- (b) It is the intent of the Commissioners' Court to consider granting an Abatement Agreement to an applicant that has a Tax Abatement Agreement with a Municipality, provided the County's Agreement:
- Does not exceed the equivalent abatement granted by the Municipality unless such action is contemplated by County Policy;
 - May contain additional or differing terms and conditions that the Commissioners' Court may deem advisable pursuant to Harrison County Tax Abatement Policy and all applicable law governing counties;
 - Does not encourage an applicant to move from one Harrison County municipality to another unless such agreement is acceptable to both municipalities, which have indicated their approval in writing; and
 - Does not provide one Harrison County municipality with a competitive advantage over another Harrison County municipality seeking the same project.

- (c) In the case where the property is located within a Municipality's extraterritorial jurisdiction, the Municipality shall be the initiating taxing entity unless expressly deferred by the Municipality to the County.
- (d) Application Procedures. In addition to the general application requirements found in Section I, Municipality-Initiated Abatements will only be awarded when the following procedures have been followed:

- 1 The Municipality in which the project is located has notified the County in writing of an applicant's request for a Municipal tax abatement and invites the County to comment during the negotiation of the Municipal Tax Abatement Agreement. The County may communicate any concerns regarding the proposed terms of the Municipal Tax Abatement Agreement and/or any suggested changes the proposed Municipal Tax Abatement Agreement prior to final action by the Municipality on the Tax Abatement Agreement.
- 2 Applicant makes application to County Judge and TARC for a County Tax Abatement after applying with Municipality.
- 3 The County Judge and the TARC is satisfied that the application is in compliance with the provisions of this County Tax Abatement Policy and makes a recommendation regarding proceeding with approval of a County Tax Abatement Agreement.
- 4 The Commissioners' Court shall not approve a County Tax Abatement Agreement until a Municipal Tax Abatement Agreement has been approved and executed and the Applicant has signed a County Tax Abatement Agreement.

IV COUNTY-INITIATED ABATEMENT AGREEMENTS-ADDITIONAL CRITERIA/INFORMATION

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

1. (a) Economic Qualification. In order to be eligible for designation as a reinvestment zone and receive a Tax Abatement, the planned improvement:
 - i. Must be reasonably expected to have an increase in positive net economic benefit to Harrison County as described in Section I (h) over the life of the Abatement, computed to include new sustaining payroll and/or capital improvements. The number and type of new jobs will also factor into the decision to grant an Abatement; and

- ii. **Must not be expected to solely or primarily have the effect of transferring employment from one part of Harrison County to another without a four-fifths vote of approval from the Commissioners' Court.**

(b) Application Procedures. In addition to the general application requirements found in Section I, County-Initiated Abatements will only be awarded when the provisions of Chapter 312 of the Texas Tax Code have been met.

2. (a) **The application for designation of reinvestment zone and/or tax abatement may be obtained from the County Judge's Office. Applicant may contact the County Judge's Office at (903) 935-8401.**

(b) Any present or potential owner of taxable property in Harrison County may request the designation of a reinvestment zone and/or a tax abatement by delivering (12) copies or an electronic version and five (5) copies of the application to the County Judge of Harrison County. Along with the application, the Applicant shall provide an economic impact analysis report, in a format comparable to the Texas Governor's economic impact analysis report, to the County Judge's Office prior to the TARC meeting on the Applicant's tax abatement application.

(c) The Application shall consist of a completed application form accompanied by a general description of the proposed use and the general nature and extent of the modernization, expansion or new improvements which will be a part of the facility; a map and property description; a time schedule for undertaking and completing the planned improvements. In the case of modernizing, 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 shall require such financial and other information as the Commissioners' Court and/or the TARC deems necessary for evaluating the financial condition of the Applicant and the impact of the Applicant's business on the County.

(d) Upon receipt of a completed application for the designation of reinvestment zone and/or tax abatement, the County Judge shall deliver copies of the Application to the presiding officer of the governing body of each eligible jurisdiction and the members of the TARC. The TARC will consider the Application and recommend approval if the Application is satisfactory and meets the criteria established in this County Tax Abatement Policy. Approval requires a majority vote of the membership of the TARC. The Applicant shall be notified within (5) five working days of approval by the TARC. After approval by the TARC, the Applicant must prepare the Tax Abatement Agreement for consideration and action of the Commissioners' Court. Before consideration and action by the Court, the County Judge and Commissioner of the Precinct where the property lies shall negotiate the specific terms of the Tax Abatement Agreement to ensure the Agreement complies with this County Tax Abatement Policy along with other applicable laws and regulations.

(e) Accompanying an Application for creation of a reinvestment zone and application for a tax abatement, the Applicant shall prepare a feasibility study setting out the impact of the proposed reinvestment zone and tax abatement. The feasibility study shall include information that establishes that the designation of a reinvestment zone or granting of tax abatement would contribute to the retention or expansion of primary employment, attract major investment in the reinvestment zone that would be a benefit to the property included in the reinvestment zone, and contribute to the economic development of the County. In addition, the feasibility study shall provide an estimate of the total amount of tax for each eligible jurisdiction which would be abated for each tax year during the term of the proposed tax abatement agreement. The Applicant shall attach the feasibility study to the Applicant's application for designation of a reinvestment zone and/or tax abatement.

(f) Before acting upon the Application for designation of a reinvestment zone, the Harrison County Commissioners' Court shall hold a public hearing at which interested parties shall be entitled to speak and present written materials for or against the designation of a reinvestment zone. The public hearing shall also afford the Applicant or the designated representative of any eligible jurisdiction an opportunity to comment on the establishment of a reinvestment zone. In addition to the posting of the notice of hearing required by the Texas Open Meetings Act, not later than the seventh day before the date of the hearing, notice of the hearing shall be published in a newspaper of general circulation in the County and written notice of the hearing shall be delivered to the presiding officer of the governing body of each jurisdiction that includes within its boundaries the real property that is the subject of the proposed reinvestment zone. At the conclusion of the hearing, the Commissioners' Court may only approve the designation of a reinvestment zone if the Commissioners' Court finds that the designation will contribute to the retention or expansion of primary employment, or will attract major investment in the reinvestment zone that will be of benefit to the property included in the reinvestment zone, and will contribute to the economic development of the

County.
(g) Before acting upon a proposed tax abatement agreement, the Harrison County Commissioners' Court shall hold a public hearing at which interested parties shall be entitled to speak and present written materials for or against the approval of the proposed tax abatement agreement. The public hearing shall also afford the Applicant or the designated representative of any eligible jurisdiction an opportunity to comment on the proposed tax abatement agreement. In addition to the posting of the notice of a public hearing required by the Texas Open Meetings Act, not later than the seventh day before the date of the hearing, a written notice of the hearing, along with a copy of the proposed tax abatement agreement, shall be delivered to the presiding officer of the governing body of each jurisdiction that includes within its boundaries the real

property that is the subject of the proposed tax abatement agreement that the Commissioners' Court intends to enter into the proposed tax abatement agreement.

(h) At any time, the Commissioners' Court may request a legal opinion to determine if the proposed tax abatement agreement complies with this County Tax Abatement Policy. If the opinion is unfavorable, the Applicant shall be given an opportunity to supplement or amend the proposed tax abatement agreement.

(i) The Commissioners' Court shall not establish a reinvestment zone for the purpose of tax abatement if it finds that the application for the tax abatement was filed after the commencement of construction, alteration, or installation of improvements related to a proposed modernization, expansion or new facility.

(j) Variance. Requests for variance from the provisions of Subsections (a) (b) or (e) of Section IV.2 may be made in written form to the County Judge with a copy forwarded to the TARC. Such requests shall include a complete description of the circumstance explaining why the Applicant should be granted a variance. Approval of a request for variance requires a four-fifths (4/5) vote of the Commissioners' Court.

V ASSIGNMENT

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

VI ADMINISTRATION AND ANNUAL REVIEW OF TAX ABATEMENTS

(a) The Chief Appraiser of the County shall annually determine the appraised value of the real and personal property located within reinvestment zones. Each year, the company or individual receiving tax abatement shall furnish the Chief Appraiser with such information that, in the opinion of the Chief Appraiser, is necessary to determine if the recipient of the tax abatement is in compliance with the terms of the Tax Abatement Agreement regarding the creation of new value. Once the appraised value has been established for each tax year, the Chief Appraiser shall notify the eligible jurisdictions of the amount of the appraised value of the real and personal property located within reinvestment zones. All recipients of tax abatements shall comply with all the provisions of the Texas Tax Code including, but not limited to, Section 11.43, Texas Tax Code.

(b) The Tax Abatement Agreement shall stipulate that the TARC will have access to the reinvestment zone during the term of the abatement to inspect the facility to determine if the terms and conditions of the Tax

Abatement Agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such a 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 their safety standards.

(c) Tax Abatement Review Committee (TARC):

The Commissioners' Court shall appoint a standing Tax Abatement Review Committee (TARC) for purposes of (i) reviewing the tax abatement application and; (ii) conducting annual inspections and/or evaluations of the abated facilities to insure compliance with the terms/conditions of the tax abatement agreement.

(d) The Tax Abatement Review Committee shall be comprised of the County Judge, the Commissioner of the precinct where the subject property lies, a representative of the District Attorney's Office, one MEDCO employee, one LEDCO employee, two Harrison County residents appointed for six year terms by a majority of the Commissioners' Court, and County Tax Assessor Collector who shall serve as an ex-officio member of the Committee to advise on abatement qualifications and procedures. The County Judge and the Commissioner of the precinct in which a proposed abated facility will be located will serve on the Committee during the period when the Committee is considering the application and during inspection and/or evaluation of the facility.

(e) Upon completion of construction, the owner of an abated facility must submit a written report/statement of compliance annually during the term of the Tax Abatement Agreement to the Harrison County Commissioners' Court and the Tax Abatement Review Committee clearly detailing the status of the facility and how it is complying with the provisions of the Tax Abatement Agreement. The TARC shall annually evaluate each abated facility and report possible non-compliance with the Tax Abatement Agreement to the Harrison County Commissioners' Court. A form of annual report that may be used by the owner is attached as Attachment A to these Guidelines & Criteria, and the owner's annual report shall, at a minimum contain the information shown in the Attachment A form. The TARC or the Commissioners' Court may request from the owner any additional information which may be necessary to determine compliance with a Tax Abatement Agreement.

(f) The County shall timely file with the Texas Department of Commerce and the Property Tax Division of the State Comptroller's office all information required by the Tax Code.

VII RECAPTURE

If a County Tax Abatement Agreement recipient is not in compliance with the terms of a Tax Abatement Agreement, the Agreement shall be subject to cancellation by the Commissioners' Court. Instead of cancellation, the Commissioners' Court may elect to modify or amend the Tax Abatement Agreement if, and only if, the Commissioners' Court determines that the amendment to the Tax Abatement Agreement is in the best interest of the County and the public. If a Tax Abatement Agreement is cancelled, the Commissioners' Court shall determine the amount of property tax revenue lost as a result of the failure of the property owner to comply with the terms of the Tax Abatement Agreement. The decision to seek full or partial recapture of the lost property tax revenue from the recipient of the cancelled Tax Abatement Agreement lies solely with the Commissioners' Court.

VIII SUNSET PROVISION

This County Tax Abatement Policy is effective upon the date of its adoption and will remain in force for two years, at which time all reinvestment zones and Tax Abatement Agreements created pursuant to its provisions will be reviewed by the Commissioners' Court to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria of this Policy will be modified, renewed or eliminated.

Approved by: Harrison County Commissioners' Court


Chad Sims, County Judge

DATE: October 16, 2019