



2003
Tax Abatement
Policy
Guidelines & Criteria
City of Shenandoah, Texas

Adopted: May 27, 1993

Revised: May 28, 1997

Revised: March 26, 2003

Revised: May 14, 2003

SECTION I:

PREAMBLE

This Tax Abatement Policy is designed to stimulate continued economic growth in the City of Shenandoah, Texas, while preserving the values and existing assets that provide the quality of life our citizens have come to enjoy. It is hoped that businesses who avail themselves of the financial benefits of this policy will also join our community in all aspects of our civic life.

It seeks a balance between attracting new businesses that are seeking to relocate here, providing a friendly environment for new undertakings, promoting the expansion of existing businesses and economic resources already in place, and considering the effect of economic change upon existing economic assets that already have realized their potential.

It seeks to preserve the values of the past, stimulate and consider current economic opportunities, and plan for a future that includes a global economic marketplace and new and exciting economic endeavors.

It is the intent of the City of Shenandoah City Council to put in place a Tax Abatement Policy that will allow the City to be competitive in attracting economic growth and be of benefit to all the citizens of our Community.

City Council acknowledges that both the retention of economic assets and existing jobs and the creation of new jobs and economic endeavors have an important place in striking a positive economic balance in the City of Shenandoah. These Guidelines and Criteria for seeking a Tax Abatement from the City are intended to be flexible and special circumstances may lead City Council to tailor individual Tax Abatement Agreements to specific

circumstances.

This particular Tax Abatement Policy and Guidelines and Criteria apply to the granting of a Tax Abatement by the City of Shenandoah only. There are a number of other entities and bodies that can choose to abate or not abate taxes as well. We urge you to check with the appropriate agencies, and the Montgomery Central Appraisal District to determine the circumstances of your particular situation as far as determining the taxing entities that may affect your project.

Other taxing and abating entities can include (but are not limited to) school districts, emergency service districts, municipalities, MUDs, and the Montgomery County Hospital District.

SECTION II:

DEFINITIONS

(a) "**Abatement**" means the full or partial exemption from ad valorem taxes of certain real property and improvements thereon in a Reinvestment Zone designated by the City of Shenandoah for economic development purposes.

(b) "**Eligible Jurisdiction**" means the City of Shenandoah and any municipality, school district, college district or other taxing district eligible to abate its taxes according to Texas law that levies ad valorem taxes upon and provides services to property located within the proposed or existing Reinvestment Zone.

(c) "**Agreement**" means a contractual Agreement between a property owner and/or lessee and an eligible jurisdiction for the purposes of Tax Abatement.

(d) "**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.

(e) "**Economic Life**" means the number of years a property improvement is expected to be in service in a facility.

(f) "**Deferred Maintenance**" means improvements necessary for continued operations which do

not improve productivity or alter the process technology.

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

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

(i) "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.

(j) "New Facility" means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.

(k) "Manufacturing Facility" means buildings and structures, including fixed 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.

(l) "Regional Distribution Center Facility" 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.

(m) "Research Facility" means building and 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.

(n) "Office Building" means a new office building to be occupied 100% by one owner or one tenant, providing further that said office building and owner or tenant meet the other criteria set forth herein.

(o) "Fixed Personal Property" fixed personal property are fixtures/articles that were once personal property but has since been attached to land or improvements in a manner that;

1. Would cause damage to the property if the fixture were to be removed.
2. Renders use of the fixture essential to the use of the property.
3. Indicates that the party who installed the article intended for it to become a part of the real property.

SECTION III:

ABATEMENT AUTHORIZED

(a) "Eligible Facility." A facility may be eligible for abatement if it is a: Aviation Facility, Manufacturing Facility, Regional Distribution Center, Research Facility, or any other real property not excluded under Section III (e). That shall include an office building as defined in II(n).

(b) "Creation of New Value." Abatement may only be granted for the additional value of eligible property improvements made subsequent to and specified in an Abatement Agreement between the City and the property owner and lessee (if required), subject to such limitations as City Council may require.

(c) "New and Existing Facilities." Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.

(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 III; 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; 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.

Population-driven retail enterprises that reasonably can be expected to locate or stay in a community without Tax Abatement generally should be ineligible for consideration. This includes the following in most cases: retail business, hotel and motels, conference centers, restaurants, hospitals, banks and financial institutions.

(f) "Owned/Leased Facilities." If a leased facility is granted abatement, the Agreement shall

ordinarily be executed with the property owner (lessor) and the lessee. If the agreement relates solely to a separately taxable leasehold interest and the personal property of the leaseholder, then the joinder of the fee owner is not required.

(g) "Value and Term of Abatement." Abatement shall be granted effective with the January 1 valuation date immediately following the date of execution of the Agreement. Projects which meet the minimum employment and value guidelines set forth in Section III (h) are eligible for abatement of new value on a sliding scale.

(h) "Minimum Guidelines." The taxable value of new eligible improvements must be in excess of one million dollars (\$1,000,000.00) and must create or retain permanent jobs in order to be eligible for consideration for abatement.

(i) "Recommended Structure and Existing Enterprise Considerations."

(1) "Recommended Structure."

Total added Tax Value	and # of Full Time Jobs	Recommended Abatement Schedule
Applicant Category A: expansion to existing business only		
\$1,000,000 to \$3,000,000	10 - 20	Year 1: 100% (const) Year 2: 75% Year 3: 50% Year 4: 25%
Applicant Category B: expansion to existing business and/or new business		
\$2,000,000 to \$5,000,000	21 - 50	Year 1: 100% (const) Year 2: 100% Year 3: 80% Year 4: 60% Year 5: 40% Year 6: 20%
Applicant Category C: expansion to existing business and/or new business		
\$4,000,000 to \$10,000,000	51 - 150	Year 1: 100% (const) Year 2: 100% (const) Year 3: 100% Year 4: 80% Year 5: 60%

Year 6: 40%
Year 7: 20%

Applicant Category D: expansion to existing business and/or new business

\$10,000,000 or more 150 or more up to 10 yrs: Negotiable

(2) “Abatements Including Aircraft” Taxes may be abated on the taxable value of an 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 (1) above, however, at least 75% of the minimum added tax value must come from the new improvements.

(3) “Existing Enterprise Considerations.” City Council may, at its discretion, give any weight it feels appropriate to the granting or not granting of a tax abatement application, based upon their consideration of whether or not the potential beneficiary of an applied-for tax abatement would compete with an already existing business.

In general, the City Council takes the position it is not fair for an existing local tax paying business - operating in the same or a similar manner as far as type of product or products, scope of production and/or services, and the size of investment made -- to have to compete with a new business competitor whose taxes would be abated.

SPECIAL NOTE/SPECIAL CIRCUMSTANCES: Nothing contained in the City of Shenandoah, Texas Tax Abatement Guidelines and Criteria should be construed to limit or restrict City Council in the exercise of its discretion in setting term limits or percentages of reduction in any particular Abatement Application. The Abatement 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. If the period of construction exceeds two years, the facility shall be considered completed for purposes of abatement and in no case shall the period of abatement - inclusive of construction and completion - exceed ten years.

(j) “Reporting Requirements.” Semi-annual Status Reports (January 1 and July 1) along with the timely filing of renditions of value, and annual applications for abatement with the Montgomery Central Appraisal District are mandatory conditions of the Abatement.

(k) “Economic Qualification.” In order to be eligible to receive Tax Abatement the planned improvement:

- (1) Must be reasonably expected to increase taxable ad valorem tax value of at least \$1,000,000 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 the City.
- (3) Must not be expected to solely or primarily have the effect of transferring employment from one part of the City to another.
- (4) Must be necessary because capacity cannot be provided efficiently utilizing existing improved property.

(I) "Standards for Tax Abatement." The following factors, among others, shall be considered in determining whether to grant Tax 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 the City.
- (8) The amount of local sales taxes to be generated directly.
- (9) 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 \$1,000,000.
- (10) The costs to be incurred by the City to provide facilities or services directly resulting from the new improvements.
- (11) The amount of ad valorem taxes to be paid the City during the Abatement period - considering (a) the existing values, (b) the percentage of new value abated, (c) the Abatement period, and (d) the value after expiration of the Abatement period.
- (12) The population growth of the City that might occur as a direct result of new improvements.
- (13) The types and values of public improvements, if any, to be made by applicant seeking Abatement.
- (14) Whether the proposed improvements compete with existing businesses to the detriment of the local economy.
- (15) The impact on the business opportunities of existing businesses.

- (16) The attraction of other new businesses to the area.
- (17) Whether the project is environmentally compatible with the community, and has no negative impact on quality of life perceptions.
- (18) The company profile - when established - including business references, principal bank, audited financial statement and Business Plan.

Each Application shall be reviewed on its merit, utilizing the factors provided above. After such review, Abatement may be denied entirely or may be granted to the extent deemed appropriate after full evaluation.

(m) "Denial of Abatement." No Abatement Agreement shall be authorized if it is determined that:

- (1) There would be a substantial adverse affect on the tax base or costs associated with the providing of 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, health or morals.
- (4) Granting an Abatement might lead to the violation of other codes or laws.
- (5) For any other reason deemed appropriate by the City.

(n) "Taxability." From the execution of the Abatement, to the end of the Agreement period, property taxes shall be payable as follows:

- (1) The value of ineligible property as provided in Section III (e), 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 new, eligible property shall be fully taxable at the end of the Abatement period.

SECTION IV:

APPLICATION

(a) "**Submission.**" Any present or potential owner of taxable property in the City may request a Tax Abatement by following the City of Shenandoah Procedures for Tax Abatement.

(b) "**Review.**" All abatement application(s) shall be individually reviewed by the City's representative, the County Tax Assessor-Collector, the City Attorney, and the Chief Appraiser of the Montgomery Central Appraisal District. The City Council will approve or disapprove an agreement based on the merits of the Application and the guidelines and criteria set forth herein. In addition, in its discretion, City Council may appoint a Tax Abatement Review Board to review and make suggested recommendations to City Council regarding each Application. If appointed, that Board shall include: The City Administrator, the City Attorney, and the Mayor. It shall have no less than five and no more than seven members.

(c) "**Included Items.**" The Application shall consist of a completed application form which shall provide detailed information on the items described in Section III hereof; a map and property description; a time schedule for undertaking and completing the planned improvements. 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) "**Notice to be Given.**" Prior to the adoption of an order designating a Reinvestment Zone, the City's representative shall give notice as provided by the Tax Code, i.e., (1) written notice to the presiding officer of the governing body of each taxing unit in which the property to be subject to the Agreement is located not later than the seventh day before the public hearing and (2) publication in a newspaper of general circulation within such taxing jurisdiction not later than the seventh day before the public hearing. The City must designate a Reinvestment Zone every five (5) years.

(e) "**60-Day Time Period.**" Not more than 60 days after receipt of the completed Application, except in unusual circumstances, the City's representative shall by Resolution either approve or disapprove the Application for Tax Abatement. The City shall notify the applicant of such approval or disapproval. Failure to act by Resolution within 60 days shall not be construed as approval or Abatement, either expressed or implied.

(f) "**Timeliness of Actions.**" The City shall not enter into an Abatement Agreement if it finds that the request for the Abatement was filed after the commencement of construction, alteration, or 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 completion of an Abatement Agreement with the City.

(g) "Confidentiality Required." Information that is provided to the City in connection with an Application or request for Tax Abatement and 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 Tax Abatement is sought is confidential and not subject to public disclosure until the Tax Abatement Agreement is executed. That information in the custody of a taxing unit after the Agreement is executed is Public Record, and not confidential.

SECTION V:

AGREEMENT

(a) "Notice to Jurisdictions." Not later than the seventh day before the date on which the City enters into the Abatement Agreement, the City's representative shall notify the governing body of each of the other taxing units in which the property is located, a written notice that the City intends to enter into the Agreement.

(b) "Agreement Contents." The City shall formally execute an Agreement with the owner of the facility, and lessee as required, which shall include:

- (1) The estimated value to be abated and the base-year value.
- (2) The percent of value to be abated each year, as provided in Section III(I).
- (3) The commencement date and the termination date of Abatement.
- (4) The proposed use of the facility; nature of construction, time schedule, map, property description and improvement list - as provided for in the Application for Tax Abatement.
- (5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided under Sections III, VI, VII, and VIII.
- (6) The size of the investment, and the average number of jobs involved.

Such Agreement shall normally be executed within sixty (60) days after the applicant has forwarded all necessary information and documentation to the City.

SECTION VI

RECAPTURE

(a) "Termination." In the event that the company or individual (1) allows its ad valorem taxes owed

the City to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; or (2) violates any of the terms and conditions of the Abatement Agreement and fails to cure during the Cure Period, the Agreement then may be terminated and all taxes previously abated by virtue of the Agreement will be recaptured and paid within thirty (30) days of the termination.

(b) "Cure Notification." Should the City determine that the company or individual is in default according to the terms and conditions of its Agreement, the City shall notify the company or individual of such default in writing at the address stated in the Agreement, and if such is not cured within thirty (30) days from the date of such notice ("Cure Period"), then the Agreement may be terminated.

SECTION VII:

ADMINISTRATION

(a) "Assessment Determination." The Chief Appraiser of the Montgomery Central Appraisal District shall annually determine an assessment of the real 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 for the Abatement. Once value has been established, the Chief Appraiser shall notify the City of the amount of the assessment.

(b) "Access Guaranteed." The Abatement Agreement shall stipulate that employees and/or designated representatives of the City will have access to the abated 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 only 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 Tax Assessor-Collector has direct authority to act on behalf of the City with all inspections.

(c) "Annual Assessment Reports." Upon completion of construction, the designated representative of the City shall annually evaluate information received from the County Tax Assessor-Collector regarding abatements in the City and shall file said report to the City Council.

(d) "Timely Filing." The City shall timely file with the Texas Department of Commerce and the State Comptroller's Office all information required by the Tax Code. The County Tax Assessor-Collector has direct authority to act on behalf of the City with this requirement.

SECTION VIII:

ASSIGNMENT

An Abatement Agreement may not be transferred nor assigned by the holder to a new owner or lessee of the same facility without prior approval by resolution of the City Council of the City of Shenandoah. Any assignment shall provide that all conditions, terms and obligations in the original Abatement Agreement are guaranteed by the execution of an additional contractual Agreement with the City as an addendum to the Abatement Agreement. No assignment or transfer shall be approved if the parties to the existing Agreement (the new owner or new lessee) are liable to any jurisdiction for outstanding taxes or other obligations. Approval shall not be unreasonably withheld.

SECTION IX:

SUNSET PROVISION

These Guidelines and Criteria are effective upon the date of their adoption, and will remain in force for two years, unless amended by three-quarters vote of the City Council of the City of Shenandoah as so provided for in the Tax Code, at which time all Reinvestment Zones and Tax Abatement Agreements created pursuant to these provisions will be reviewed to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria may be modified, renewed or eliminated.

SECTION X:

DISCRETION OF THE CITY

The adoption of these guidelines and criteria by the City does not:

- (1) Limit the discretion of the City Council to decide whether to enter into a specific Tax Abatement Agreement.
- (2) Limit the discretion of the City Council to delegate to its employees the authority to determine whether or not the City Council should consider a particular Application or request for Tax Abatement.
- (3) Create any property, contract, or other legal right in any person, partnership, corporation or other entity to have the City Council consider or grant a specific Application or request for Tax Abatement.

PASSED, APPROVED and ADOPTED by the City Council of the City of Shenandoah, Texas on this the 14th day of May, 2003.

CITY OF SHENANDOAH

By: /s/David J. Vetter, Jr., Mayor

ATTEST:

By: Susan Hensley, City Secretary

APPROVED AS TO FORM:

By: R.A. Deison, City Attorney