

ORDINANCE NO. 2018-43

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ROSENBERG, TEXAS, BY DELETING ARTICLE III OF CHAPTER 26 THEREOF, AND SUBSTITUTING THEREFOR A NEW ARTICLE III OF CHAPTER 26, ENTITLED "PROPERTY TAX ABATEMENT GUIDELINES AND CRITERIA"; PROVIDING FOR SEVERABILITY; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the attraction of long-term investment and the establishment of new jobs in the City of Rosenberg enhances the economic base of area taxing entities; and

WHEREAS, the City wishes to be competitive with other communities across the region currently offering tax inducements and incentives to attract industrial expansion, modernization, commercial and tourism projects; and

WHEREAS, tax abatement is one of the demonstrated means by which the public sector and the private sector can forge a partnership to promote real economic growth within a community; and

WHEREAS, the Texas Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, authorizes taxing jurisdictions to provide property tax abatement for limited periods of time as an inducement for the development or redevelopment of property; and

WHEREAS, the City Council recognizes the benefits of establishing guidelines and criteria governing tax abatement agreements by the City of Rosenberg; and,

WHEREAS, the City of Rosenberg desires to continue to participate in a tax abatement program by amending, and renewing, its ordinance; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The Code of Ordinances of the City of Rosenberg, Texas, is hereby amended by deleting Article III of Chapter 26 thereof, and substituting therefor a new Article III of Chapter 26 to provide as follows:

"ARTICLE III. – PROPERTY TAX ABATEMENT GUIDELINES AND CRITERIA

Sec. 26-51. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. The city council shall have the power from time to time to provide such additional and/or modified definitions that they may find desirable and necessary. The words and phrases as herein set out shall be deemed and understood to mean:

Abatement means the full or partial exemption from ad valorem taxes of certain real property and certain limited types of tangible personal property, as hereinafter provided, located in a reinvestment zone designated by the City of Rosenberg for economic development purposes.

Agreement means a contractual agreement between a property owner and/or lessee and the city.

Base year value means the assessed value of eligible property on January 1 preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1 but before the execution of the agreement.

Deferred maintenance means improvements necessary for continued operation which do not improve productivity or alter the process technology, reduce pollution or conserve resources.

Eligible facilities means new, expanded or modernized buildings and structures, including fixed machinery and equipment, which are reasonably likely, as a result of granting abatement, to contribute to the retention or expansion of primary employment or to attract major investment in the reinvestment zone that would be a benefit to the property and that would contribute to the economic development within the city. Eligible facilities do not include facilities which, in the determination of the office of the city manager or the city council, are intended primarily to provide goods or services to residents or existing businesses located in the city. Eligible facilities may include, but shall not be limited to, retail sales establishments generating municipal sales taxes and providing goods or services with an intended wide distribution area, industrial buildings, hotels, office buildings or property owned or leased by a certified air carrier, on the condition that the certified air carrier make specific real property improvements or lease for a term of ten (10) years or more within the reinvestment zone. Eligible facilities shall not include rolling stock, railroad cars, trucks, aircraft, or any other vehicle(s) that are intended to be means of transportation of equipment, raw materials or any other products or services whatsoever.

Expansion means the addition of buildings, structures, fixed machinery, as that term is defined herein, equipment, or payroll for purposes of increasing production, services, or a combination thereof.

Facility means property improvements completed or in the process of construction which together comprise an integral whole.

Fixed machinery includes any machinery permanently installed or attached to realty, buildings, or any permanently constructed improvement upon real property.

Hotel means a commercial structure which provides overnight accommodations to travelers and which contains one hundred fifty (150) rooms or more.

Modernization means a complete or partial demolition of a facility and the complete or partial reconstruction or installation of a facility of similar or expanded production or service capacity. Modernization may result from the construction, alteration, or installation of buildings, structures, fixed machinery, as that term is herein defined, equipment or pollution control devices, or resource conservation equipment.

New facility means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.

Office building means a new office building, addition to existing office buildings or build out of unoccupied space within existing buildings.

Productive life means the number of years a property improvement is expected to be in service in a facility.

Tangible personal property means tangible personal property classified as such under state law, but excluding inventory and/or supplies and tangible personal property that was located in the investment zone at any time before the period covered by the agreement with the city.

Sec. 26-52. - Application.

- (a) Any present or potential owner of taxable property in the city may request the creation of a reinvestment zone and property tax abatement by filing a written request with the city and providing such disclosures and supporting documents that may from time to time be requested by the city. The city may at any time require the applicant to submit a metes and bounds survey or other survey prepared by a registered Texas engineer or a licensed Texas surveyor of the realty subject to the proposed abatement. Prior to the consideration of any application for creation of a reinvestment zone or an abatement agreement, the applicant shall deposit with the city an application fee that is refundable upon the successful completion of the proposed abated improvements, in such amount as shall be established from time to time by city council, to cover administrative expenses incurred by the city in considering and processing such application, including, but not limited to, costs for publication of notices, legal and appraisal services, and in-house staff services. The amount of such application fee shall be one thousand dollars (\$1,000.00) for all abatement applications. The application shall be forwarded to the office of the city manager for review and recommendation to the city council of the city for final disposition.

- (b) The application shall consist of a completed economic impact questionnaire, as may be prescribed from time to time by the City of Rosenberg, which shall provide detailed information on the items described in section 26-55(g) hereof; a map and property description; and 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 of the applicant as to the ability of the applicant to successfully utilize the anticipated investment in land, buildings and non-moveable tangible personal property and other factors and information concerning the applicant that the office of the city manager or the city council may find appropriate. The applicant shall at no time acquire any rights, privileges or authority, either monetary or otherwise, by reason of filing any application or providing any documentation in conjunction with an application filed herein. Applicant shall, as a part of the application process, sign and execute a statement which shall provide:

I (We), the undersigned applicant(s), certify that all requirements of the Code of Ordinances of the City of Rosenberg have been met in relation to the application filed herein and further acknowledge that no rights or privileges may be relied on as a part of any application. In addition, it is acknowledged that the city council may or may not grant any application or request hereunder purely as a matter of discretion and that there is no legal right to rely on any previous actions taken in same or similar applications nor in previous actions taken on another application concerning the same or similar property.

Sec. 26-53. - Action by city council on application.

- (a) The city council shall, within a reasonable time after completion of the review of all documents submitted by the applicant and such other investigation and inquiry as shall be deemed appropriate by the office of the city manager or the city council and upon receipt of a report and recommendation from the office of the city manager, proceed to call and hold all required public hearings. Unless otherwise required by law, no formal action by the city council shall at any time be necessary. Unless otherwise directed, the city manager may expedite such procedures and practices as shall be necessary to expedite all required approvals.
- (b) 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 not confidential. If the city should exercise its absolute discretion and fail to approve a tax abatement

agreement, then all information submitted by the applicant shall be returned by the city.

Sec. 26-54. - Procedure to establish a reinvestment zone.

- (a) Prior to the adoption of an ordinance designating a reinvestment zone, the city may require the applicant to pay all costs and shall require the applicant to provide all appropriate information so that the city can give all notices required by applicable law, including, but not limited to, (i) 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 no later than the seventh day before the date of the public hearing for the creation of the reinvestment zone, and (ii) publication in a newspaper of general circulation within such taxing jurisdiction no later than the seventh day before the date of the public hearing for the creation of the reinvestment zone, to provide all interested parties the opportunity to present all relevant information.
- (b) The city shall not establish a reinvestment zone for the purpose of abatement 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.
- (c) Information that is provided to the city in connection with an application or request for tax abatement, including the creation of a reinvestment zone, 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 not confidential. If the city should exercise its absolute discretion and fail to approve a tax abatement agreement, then all information submitted by the applicant shall be returned by the city and shall not be available for public inspection.

Sec. 26-55. - Criteria for granting.

- (a) *Eligible facilities.* Upon application, eligible facilities, as defined and described in this chapter, shall be considered for the tax abatement as hereinafter provided.
- (b) *Creation of new value.* Abatement may only be granted for the additional value of eligible property improvements expended subsequent to the creation of the reinvestment zone and approval of the reinvestment agreement as specified in the reinvestment agreement between the city and the property owner or lessee, subject to such limitations as the city may from time to time require or as may be specified in the agreement between the parties.

- (c) *Eligible new and existing facilities.* Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.
- (d) *Ineligible property.* The following types of property shall be fully taxable and ineligible for tax abatement: land; supplies; inventory; tools; furnishing; and other forms of movable personal property; housing, including apartment complexes; deferred maintenance; property to be rented or leased, except as provided in subsection (e) of this section; and property which has a productive life of less than ten (10) years. In addition, rolling stock, railroad cars, trucks, aircraft or any other vehicle(s) that are intended to be means of transportation of equipment, raw materials or any other products or services whatsoever shall be fully ineligible.
- (e) *Owned/leased facilities.* If a leased facility is granted abatement, the agreement shall be executed with the lessor and the lessee.
- (f) *Economic qualification.* In order to be eligible for designation as a reinvestment zone and receive tax abatement, the planned improvement:
 - (1) Must be expected to have an increased appraised ad valorem tax value of at least one million dollars (\$1,000,000.00) upon completion of the anticipated improvements or expansion based upon the Fort Bend Central Appraisal District's assessment of the eligible property; and
 - (2) Must be expected to prevent the loss of payroll or retain, increase or create payroll on a permanent basis in the city.
- (g) *Standards for tax abatement.* The following factors, among such other factors as determined necessary by the city council, shall be considered in determining whether to grant tax abatement:
 - (1) Value of land and existing improvements, if any;
 - (2) Type and value of proposed improvements;
 - (3) Productive life of proposed improvements;
 - (4) Number of existing jobs to be retained by proposed improvements;
 - (5) Number of type of new jobs to be created by proposed improvements;
 - (6) Amount of local payroll and the wage rates to be created;
 - (7) Whether the new jobs to be created will be filled by persons residing or projected to reside within affected taxing jurisdictions;
 - (8) Type of benefits the employer provides its employees;

- (9) Amount of local sales taxes to be generated directly;
- (10) 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 one million dollars (\$1,000,000.00) upon the completion of the anticipated improvements;
- (11) The costs to be incurred by the city to provide facilities or services directly resulting from the new improvements;
- (12) 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;
- (13) The population growth of the city that occurs directly as a result of new improvements;
- (14) The types of values of public improvements, if any, to be made by applicant seeking abatement;
- (15) Whether the proposed improvements compete with existing businesses to the detriment of the local economy;
- (16) The impact on the business opportunities of existing businesses;
- (17) The attraction of other new businesses to the area;
- (18) The overall compatibility with the zoning ordinances and comprehensive plan for the area;
- (19) Whether the project is environmentally compatible with no negative impact on quality of life perceptions; and
- (20) The relationship of the value of real estate to personal property being considered for abatement.

Each eligible facility shall be reviewed on its merits 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 by the city council in the exercise of their absolute discretion.

- (h) *Amount of abatement.* The percentage of value to be abated and the duration of the tax abatement shall be determined as follows:

- (1) For all planned improvements valued at more than one million dollars (\$1,000,000.00), the percentage and duration of the tax abatement shall be determined by the city council in the exercise of its absolute discretion on a case by case basis, taking into consideration the factors listed above in subsection (g).
- (i) *Denial of abatement.* Neither a reinvestment zone nor abatement agreement shall be authorized if it is determined that:
- (1) There would be a substantial adverse effect on the provision of government service or tax base;
 - (2) The applicant has insufficient financial capacity;
 - (3) Planned or potential use of the property would constitute a hazard to public safety, health, or morals;
 - (4) Violation of other codes or laws; or
 - (5) Any other reason deemed appropriate by the city council.
- (j) *Taxability.* From the execution of the abatement agreement to the end of the agreement period, taxes shall be payable as follows:
- (1) The value of ineligible property as provided in subsection (d) of this section shall be fully taxable; and
 - (2) The base year value of existing eligible property as determined each year shall be fully taxable.

The additional value of new eligible property shall be fully taxable at the end of the abatement period.

Sec. 26-56. - Agreement.

- (a) Not later than the seventh day before the date on which the city enters into the abatement agreement, the city will deliver to the presiding officer of the governing body of each other taxing unit in which the property is located a written notice that the city intends to enter into the agreement. The notice shall include a copy of the prepared agreement.
- (b) After approval of the application for tax abatement pursuant to this article and the creation of a reinvestment zone, the city will formally pass a resolution to execute an agreement with the owner and/or lessee of the facility, 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 26-55(h);
 - (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 in application, section 26-52(b);
 - (5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided for herein;
 - (6) Size of investment and average number of jobs involved;
 - (7) A requirement that owner and/or lessee certify to city, and to the governing body of each taxing unit, on September 1 of each year, that owner/lessee is in compliance with each applicable term of the agreement.
- (c) Such agreement shall be executed by the applicant within one hundred eighty (180) days after the same has been approved by the city council.

Sec. 26-57. – Administration.

- (a) The chief appraiser of the Fort Bend Central Appraisal District will annually determine an assessment of the taxable assessed value of the property taking into consideration the terms of the abatement agreement relating to such real and personal property found within the reinvestment zone and subject to abatement under the terms and provisions of the reinvestment agreement. Each year, the company or individual receiving abatement shall furnish the appraiser with such information as may be necessary for the abatement. Once value has been established, the chief appraiser will notify the city of the amount of the assessment. It shall be the exclusive duty and responsibility of each company and/or individual receiving the benefit of an exemption to comply with all requirements of the Fort Bend Central Appraisal District in order to secure and continue to receive the benefit of any approved tax abatement agreement. Failure to do so shall not be deemed the fault of the City of Rosenberg or any of its officers and employees.
- (b) The abatement agreement shall stipulate that employees and/or designated representatives of the city will have access to the reinvestment zone, to books and records reflecting expenditures and investment during the term of the abatement, and 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 twenty-four (24) hours' prior notice and will only 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 (1) or more representatives of the company or individual receiving the benefit of the abatement agreement present and in accordance with the company's or individual's safety standards.

- (c) The designated representative of the entity receiving the benefit of the abatement shall prepare at the request of the city's representative reports as to the progress and status of all construction and shall, upon the completion of all anticipated construction, prepare and file a final report of completion in a form as shall be from time to time promulgated by the city. Such report(s) shall be at no cost to the city and provide the following minimum information:
 - (1) A description of the work and construction that was contemplated when the abatement was approved by the city and the work and/or improvements actually completed;
 - (2) The date of commencement of construction, significant progress dates, and the date of final construction;
 - (3) The amount of investment including actual cash and/or non-cash investment with a description of the type of investment and when the investment was actually made; and
 - (4) A disclosure of any and all changes, restructuring, or modifications that were made in the finally constructed improvements.
- (d) Upon completion of construction, the designated representative of the city shall annually evaluate each abatement agreement to insure compliance, and a formal report shall be made to the city council regarding the findings of each evaluation. If the evaluation determines the finished facility did not meet the terms of the abatement agreement, then the city will initiate section 26-59(b) together with all other remedies provided by law.
- (e) The city shall timely file with the Texas Department of Commerce and the State Property Tax Board all information required by the tax code.

Sec. 26-58. - Assignment.

The rights granted under an abatement agreement may be transferred and assigned by the holder to a new owner or lessee of the same facility or proposed facility upon the approval by resolution of the city council of the City of Rosenberg and the execution of an assignment agreement subject to the city council's approval, all of which shall be subject to the financial capacity of the assignee. The city reserves the right to approve or reject an assignment in the exercise of its absolute discretion and no holder of any abatement

rights shall ever have a legal right to the approval of an assignment. All conditions, duties and obligations of the assignor in the abatement agreement, upon discretionary approval of the city council, shall be irrevocably and unconditionally assumed by the assignee upon the same terms and conditions as set out in such abatement agreement. Any assignment shall be to an entity which contemplates the same improvements to the property as set forth in an original abatement agreement, except to the extent such improvements have been completed. No assignment shall ever be approved if the parties to any existing agreement owe outstanding taxes or other debts to any governmental entity.

Sec. 26-59. - Procedure for determining default and recapture.

- (a) If the company or individual (i) allows the ad valorem taxes owed the city to become delinquent and fails to timely and properly follow the requirements of law for their protest and/or contest or (ii) violates any of the terms and conditions of the abatement agreement and fails to cure during the cure period described in this section, the agreement made pursuant to the provisions of this article then may be terminated, at the discretion of the city council, and if terminated, all taxes previously abated by virtue of the agreement will be recaptured and shall be paid within thirty (30) days of final termination as shall be ordered by the city council of the City of Rosenberg by ordinance duly passed and adopted.
- (b) Should the city determine that the company or individual is in probable default according to the terms and conditions of the agreement, the city shall notify the company or individual of such default in writing at the address stated in the agreement, and shall provide the company or individual believed to be in probable default an opportunity to request a hearing before the city council, who shall finally determine whether a default has occurred. If no request for hearing is made within ten (10) days from the date of the receipt of a notice of probable default, the city council may confirm the existence of an event of default and shall cause a final notice of default to be sent to the company or individual to whom the agreement has been assigned or is the holder thereof.

If a default is determined to exist and is not cured within thirty (30) days, the agreement may be terminated by the city without further notice and the city shall be entitled to recover all costs associated with the default, including attorney's fees and costs.

Sec. 26-60. - Time limitation; review.

The guidelines and criteria of this article are effective upon the date of adoption and will remain in force for two (2) years, unless amended by three-fourths ($\frac{3}{4}$) vote of the entire membership of the city council, at which time all reinvestment zones and tax abatement agreements created pursuant to this article will be reviewed to determine whether the goals have been achieved. Based on that review, the guidelines and criteria of this article may be modified, renewed or eliminated. Any modification, amendment, or

elimination that may occur as a result of this review process shall not affect abatement agreements approved prior to the date of such modification, amendment or elimination.

Sec. 26-61. - Discretion of 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 which absolute right of discretion the city council reserves unto itself, whether or not such discretion may be deemed arbitrary or without basis in fact;
- (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; or
- (3) Create any property, contract, or other legal rights in any person to have the city council consider or grant a specific application or request for tax abatement.

Sec. 26-62. - Abatement guidelines re-adopted.

The tax abatement guidelines as herein set out are hereby adopted and approved as to their validity and effectiveness for a period of two (2) years commencing on the date of final passage and approval of Ordinance No. 2018-43 adopting this section for a period of two (2) years thereafter.

Secs. 26-63—26-70. - Reserved.”

Section 2. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 3. This Ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

PASSED AND APPROVED by a vote of 7 "ayes" in favor and 0 "noes" against on this first and final reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on the 4 day of December 2018.

ATTEST:



Danyel Swint, **City Secretary**

APPROVED:



William Benton, **Mayor**

APPROVED AS TO FORM:



Cynthia Trevino, **City Attorney**
Denton Navarro Rocha Bernal & Zech, P.C.



