

## **Howard County**

### **TAX ABATEMENT GUIDELINES AND CRITERIA**

The purpose of this document is to establish guidelines, criteria, and a uniform policy of tax abatement for owners or lessees of eligible facilities willing to execute tax abatement contracts designed to provide long-term significant positive economic impact to the community by utilizing the area contractors and work force to the maximum extent feasible, and by developing, redeveloping, and improving property. Except as otherwise provided herein, all tax abatement contracts shall be identical.

Notwithstanding the criteria set forth herein, County Commissioners of Howard County reserves the right to negotiate the terms of any Tax Abatement Agreement in order to compete favorably with other communities and may include provisions, more, or less restrictive than these Guidelines and Criteria if deemed necessary.

Only that increase in the fair market value of the property that directly results from the development, redevelopment, and improvement specified in the contract will be eligible for abatement and then only to the extent that such increase exceeds any reduction in the fair market value of the other property of the applicant located within the jurisdiction creating the Reinvestment Zone.

This policy is effective as of January 27, 2020 and shall at all times be kept current with, regard to the needs of the County and reflective of the official views of the County Commissioners.

#### **TAX ABATEMENT COMMITTEE-SECTION 1**

A Tax Abatement Advisory Committee exists which is composed of at least, but not limited to, one representative of the City of Big Spring City Council, one representative of the Howard County Commissioner's Court, one representative of Howard College Board of Trustees, and three members appointed by the Big Spring Economic Development Corporation which shall include a Certified Public Accountant, a Developer, and a representative of the financial community. The Chief Appraiser of the Howard County Tax Appraisal District and the Executive Director of Big Spring Economic Development Corporation serve as ex-officio members of the Committee. Members are appointed for terms of one year to run from July 1 to June 30. The Committee will make recommendations regarding contract terms and adoption or rejection of all tax abatement applications that are submitted to the County.

It is within the purview of Howard County to grant tax abatement on the same or similar terms and conditions as the other taxing units having jurisdiction over a property. However, nothing herein shall limit the discretion of the Howard County Commissioners to consider, adopt, modify or decline any tax abatement request.

The adoption of these guidelines and criteria by Howard County 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 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.

## **DEFINITIONS-SECTION 2**

- (a) **"Abatement"** means the full or partial exemption from ad valorem taxes of certain property in a reinvestment zone designated by Howard County or the City of Big Spring for economic development purposes.
- (b) **"Agreement"** means a contractual agreement between a property owner and/or lessee and Howard County.
- (c) **"Base year value"** means the assessed value of any eligible Real Property or Tangible Personal Property as of January 1 of the year in which an Abatement Agreement for that Real Property or Tangible Personal Property is executed.
- (d) **"Deferred maintenance"** means improvements necessary for continued operation which do not improve productivity or alter the process technology.
- (e) **"Eligible Facilities"** means new, expanded, or modernized facilities and structures, including fixed machinery and equipment and other forms of tangible personal property, that 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 applicable Reinvestment Zone that would be a benefit to the property and that would contribute to the economic development of Howard County.
- (f) **"Expansion"** means the addition of buildings, structures, machinery, equipment, Tangible Personal Property, or payroll for purposes of increasing production capacity.
- (g) **"Facility"** means property improvement completed or in the process of construction which together comprise an integral whole.



- (h) **"Hotel"** means a commercial structure which provides overnight accommodation to travelers.
- (i) **"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 capacity. Modernization may result from the construction, alteration, or installation of buildings, structures, machinery, or equipment, or both.
- (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) **"Office Building"** means a new office building to be occupied at least 50% by one owner or one tenant.
- (l) **"Productive Life"** means the number of years a property improvement is expected to be in service.
- (m) **"Real Property"** means any piece of land or condominium interest.
- (n) **"Reinvestment Zone"** is Real Property designated as a Reinvestment Zone under the provisions of V.T.C.A., Tax Code, Section 312.202.
- (o) **"Tangible Personal Property"** is any personal property, including, without limitation, any piece of machinery or equipment or any appliance that is used in any improvements or placed on any Real Property.

### ABATEMENT AUTHORIZED - SECTION 3

- (a) **Eligible Facilities.** Upon application, Eligible Facilities shall be considered for Tax Abatement as hereinafter provided.
- (b) **Creation of New Values.** Abatement may only be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between Howard County and the property owner or lessee, subject to such limitations as Howard County may require.
- (c) **New and Existing Facilities.** Abatement may be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between Howard County and the property owner or lessee, subject to such limitations as Howard County may require.
- (d) **Eligible Property.** Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements, related fixed improvements and other

forms of Tangible Personal Property necessary to the operation and administration of the Facility.

- (e) **Ineligible Property.** The following types of property shall be fully taxable and ineligible for Tax Abatement: Deferred Maintenance; property to be rented or leased except as provided in Section [3](f); and property which has a productive life of less than two times the term of the Abatement Agreement.
- (f) **Owned/Leased Facilities.** If a leased Facility is granted abatement the agreement shall be executed by both the lessor and lessee. This does not apply to the lease of individual units of a multi-family residence or a shopping center.
- (g) **Economic Qualification.** In order to be eligible for designation as a Reinvestment Zone and receive tax abatement, the planned improvement:
  - 1. Must be reasonably expected to have an increase in positive net economic benefit to Howard County over the life of the abatement. This includes but is not limited to new payroll and/or capital improvements. The creation of new jobs will also factor into the decision to grant an abatement; and
  - 2. Must not be expected to solely or primarily have the effect of transferring employment from one part of Howard County to another without a super-majority vote of approval from the Howard County Commissioners.
- (h) **Standards for Tax Abatement.** The following factors, among others, shall be considered in determining whether to grant Tax Abatement:
  - (1) Value of existing improvements, if any;
  - (2) Type and value of proposed improvements;
  - (3) Productive Life of proposed improvements;
  - (4) Number and term of existing jobs to be retained by proposed improvements;
  - (5) Number, term and type of new jobs to be created by proposed improvements;
  - (6) Amount of local payroll 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) Amount of local sales taxes and/or hotel-motel taxes to be generated directly;



- (9) Amount that the property tax base valuation will be increased during term of Abatement and after Abatement;
- (10) The costs to be incurred by Howard County to provide facilities or services directly resulting from the new improvements;
- (11) The amount of ad valorem taxes to be paid to Howard County 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 Howard County that occurs directly as a 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 business;
- (16) The attraction of other new businesses to the area;
- (17) The overall compatibility with the zoning ordinances and comprehensive plan for the area;
- (18) Whether the project obtains all necessary permits from the applicable environmental agencies.
- (19) Whether the requesting entity is receiving federal or state tax credits or subsidies.
- (20) The abatement would establish a competitive disadvantage to existing businesses in the taxing area.

All Eligible Property 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.

- (i) **Denial of Abatement.** Neither a reinvestment zone nor Abatement Agreement shall be authorized if it is determined that:

- (1) There would be substantial adverse effect on the provision of government services or tax base;

- (2) The applicant has insufficient financial capacity;
  - (3) The planned or potential use of the property would constitute a hazard to public safety, health, or morals;
  - (4) The planned or potential use of the property would be likely to cause a violation of any local, state or federal code or law; or
  - (5) Any other reason deemed appropriate by Howard County.
- (j) **Taxability.** Notwithstanding any abatement agreement taxes shall be payable as follows:
- (1) The value of any Real Property or Tangible Personal Property not subject to abatement and ineligible property as provided in Section [3](e) 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 beginning of the first tax year after the Abatement ends.

The Howard County Commissioners Court, as a part of the approval of abatement or during the duration of abatement, may at its discretion require the entity or entities requesting or receiving abatements to provide a performance bond naming the county as the recipient. Should the entity or entities requesting or receiving abatements default on its contractual obligation to perform as agreed in the contract the county will use the performance bond to offset any or all property taxes that would have been collected had the abatement not been in place.

#### **REINVESTMENT ZONE - SECTION 4**

No Real Property or Tangible Personal Property is eligible for Abatement of Taxes unless such Real Property or Tangible Personal Property is located, in a Reinvestment Zone designated in accordance with V.T.C.A., Tax Code, and Section 312.202.

#### **APPLICATION - SECTION 5**

- (a) **Applicant.** Any present or potential owner or lessee of taxable property in Howard County may request the creation of a Reinvestment Zone and/or tax abatement by filing a written application with the County Judge.



- (b) **Application.** The application shall consist of: a general description of the new improvements to be undertaken; a descriptive list of the improvements for which tax abatement is requested; a list of the kind, number and location of all proposed improvements of the property; a map and property description; a time schedule for undertaking and completing the proposed 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. Howard County may require such financial and other information as deemed appropriate for evaluating the financial capacity and other factors pertaining to the applicant, to be attached to the application. The completed application must be accompanied by the payment of a non-refundable application fee for administrative costs associated with the processing of the tax abatement request which can be waived by the governmental body. All checks in payment of the administrative fee should be made payable to Howard County. For abatement requests for improvements the fee shall be ONE THOUSAND AND 00/100 DOLLARS (\$1,000).
- (c) **Notice.** Howard County shall give notice as provided by the Property Tax Code, i. e., 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 thirty days before the public hearing and (2) publication in a newspaper of general circulation within such taxing jurisdiction not later than the thirtieth day before the public hearing. Before acting upon the application, the County shall through public hearing, afford the applicant and the designated representative of any governing body referenced hereinabove opportunity to show cause why the Abatement should or should not be granted.
- (d) **Joint Application.** If any other taxing entity within Howard County designates a reinvestment zone within its boundaries and enters into or proposes to enter into an Abatement Agreement with a present or potential owner of a taxable property, such present or potential owner of taxable property may request Tax Abatement by the County by following the same application process described in Section [5] (a) hereof. No other notice or hearing shall be required except compliance with the Open Meetings Act, unless the County Commissioners deem them necessary in a particular case.

## **AGREEMENT - SECTION 6**

After approval, County Commissioners shall formally pass a resolution and execute an Agreement with the owner of the Facility and lessee as required which shall:

- (1) include a list of the kind, number, and location of all proposed improvements to the property;
- (2) provide access to and authorize inspection of the property by the taxing unit to ensure compliance with the agreement;



- (3) limit the use of the property consistent with the taxing unit's development goals;
- (4) provide for recapturing property tax revenues that are lost if the owner fails to make the improvements as provided by the agreement;
- (5) include each term that was agreed upon with the property owner and require the owner to annually certify compliance with the terms of the agreement to each taxing unit; and
- (6) allow the taxing unit to cancel or modify the agreement at any time if the property owner fails to comply with the terms of the agreement.

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

#### **RECAPTURE - SECTION 7**

- (a) In the event that a company or individual that receives tax abatement allows its ad valorem taxes owed to the County or any other taxing entity to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest, or violates any of the terms and conditions of the Abatement Agreement and fails to cure during the cure period of the Agreement, then the County may terminate the Agreement and all taxes previously abated by virtue of the Agreement will be recaptured and the recipient must repay such recaptured taxes within sixty (60) days of the termination.
- (b) Should the County determine that the company or individual is in default according to the terms and conditions of its Agreement, the County shall notify the company or individual in writing at the address stated in the Agreement, and if such is not cured within sixty (60) days from the date of such notice ("Cure Period"), then the Agreement may be terminated.

#### **ADMINISTRATION - SECTION 8**

- (a) The Chief Appraiser of the Howard County Appraisal District will annually determine an assessment of the real and personal property comprising the reinvestment zone. 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 County Commissioners of the amount of the assessment.
- (b) The County may execute a contract with any other jurisdiction(s) to inspect the Eligible Property to determine if the terms and conditions of the Abatement Agreement are being met. The Abatement Agreement shall stipulate that employees and/or designated representatives of the County 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 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 or more representatives of the company or individual and in accordance with its safety standards.

- (c) Upon completion of construction a designated representative of the County shall annually evaluate each Facility receiving Abatement to ensure compliance with the agreement.
- (d) Howard County shall notify the Chief Appraiser of Howard County of the establishment of any Reinvestment Zone or approval of any Abatement Agreement.
- (e) The Chief Appraiser of Howard County shall deliver to the State Comptroller before July 1 of the year following the year in which a Reinvestment Zone is created or an Abatement Agreement is executed a general description of the zone, and the Guidelines and Criteria established for the Reinvestment Zone under Section 312.202 of the Tax Code and a copy of each Abatement Agreement to which the County is a party.
- (f) For each of the first three tax years following the expiration of a tax abatement agreement executed under this chapter, the chief appraiser shall deliver to the comptroller a report containing the appraised value of the property that was the subject of the agreement under Section 312.005 of the Tax Code

#### **ASSIGNMENT - SECTION 9**

Abatement may be transferred and assigned by the holder to a new owner or lessee of the same Eligible Property only upon the approval by resolution of the County Commissioners subject to the financial capacity of the assignee and provided that all conditions and obligations in the Abatement Agreement are guaranteed by the execution of a new contractual Agreement with the County. 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 delayed or withheld.

#### **SUNSET PROVISION - SECTION 10**

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 Commissioners of Howard County, 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 will be modified, renewed, or eliminated.

Adopted January 27, 2020

Howard County Commissioners

  
OSCAR GARCIA-COMMISSIONER PCT. 1

  
CRAIG BAILEY-COMMISSIONER PCT. 2

  
JIMMIE LONG-COMMISSIONER, PCT. 3

  
JOHN CLINE-COMMISSIONER PCT. 4

  
KATHRYN G. WISEMAN, HOWARD COUNTY JUDGE

ATTEST:

  
BRENT ZITTERKOPF, COUNTY CLERK