

**GUIDELINES AND CRITERIA**  
**Tax Abatement or Phase-In**  
**Victoria County Texas**

WHEREAS, Victoria County recognizes that an active program of economic development is necessary to the economic welfare of the community and its citizens; and

WHEREAS, Victoria County recognizes that abatement or phase-in of certain taxes can be an effective economic incentive to attract or retain businesses to the community; and

WHEREAS, the Texas Property Redevelopment and Tax Abatement Act provides that a taxing unit may not enter into a tax abatement agreement, and the governing body of a municipality or county may not designate an area as a reinvestment zone unless the governing body has established guidelines and criteria governing tax abatement agreements by the taxing unit, and

WHEREAS, the Texas Property Redevelopment and Tax Abatement Act further provides that the guidelines and criteria adopted by a city or county are effective for two years from the date adopted and may be amended within that period by a 3/4ths vote of the governing body.

NOW THEREFORE Victoria County sets forth the guidelines and criteria for tax abatement or tax phase-in within its respective jurisdiction as follows:

**Section 1**  
**Definitions**

The following defined terms shall have the following definitions when capitalized herein:

**1.1 "Abatement"** means the full or partial exemption from ad valorem taxes of certain real property in a Reinvestment Zone designated by an Affected Jurisdiction for economic development purposes.

**1.2 "Affected Jurisdiction"** means Victoria County and any taxing entity located in Victoria County that levies ad valorem taxes upon and provides services to property located within the proposed or existing Reinvestment Zone designated by Victoria County.

**1.3 "Agreement"** means written contractual agreement between a property owner and/or lessee and an Affected Jurisdiction for the purposes of tax abatement.

**1.4 "Base Year Value"** means the assessed value of eligible property January 1 preceding the execution of the Agreement plus (if applicable) the agreed-upon value of eligible property improvements made after January 1 but before the execution of the Agreement.

**1.5 "Deferred Maintenance"** means improvements necessary for continued operations, which do not improve productivity or alter the process technology.

**1.6 "Distribution Center Facility"** means buildings and structures, including machinery and equipment, used or to be used primarily to receive, store, service, or distribute goods or materials owned by the facility operator where a majority of the goods or services are distributed to points at least 25 miles from its location in Victoria County.

**1.7 "Expansion"** means the addition of buildings, structures, machinery, or equipment for purposes of increasing production capacity.

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

**1.9 "Initiating Governing Body"** means the Victoria County Commissioners Court.

**1.10 "Manufacturing Facility"** means buildings and structures, including fixed in-place 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.

**1.11 "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 in-place machinery, or equipment. It shall not be for the purpose of reconditioning, refurbishing, or repairing.

**1.12 "New Facility"** means a property previously undeveloped that is placed into service by means other than or in conjunction with expansion or modernization.

**1.13 "New Jobs"** means employees associated with the authorized facility on a full-time permanent basis in Victoria County within one year of production start-up. These jobs:

- a. Must be dependent upon the proposed project (i.e. the positions would not exist if the project is not completed) **AND**;
- b. Must NOT simply relocate current employees within the company without the employee's previous position being filled. (i.e. Company employment 1 year from start-up must be equal to or greater than the current employment listed on the application plus the number of new jobs).

**1.14 "Other Basic Industry"** means buildings and structures including fixed machinery and equipment not elsewhere described, used, or to be used for the production of products or services which serve a market primarily outside the Victoria Metropolitan Statistical Area (VMSA) and result in the creation of new permanent jobs and create new tax base in the VMSA.

**1.15 "Phase In"** means the incremental increase of taxes over a period of years until full local taxation is reached, according to the schedule found in Section 2.8. It has been determined that this terminology more accurately reflects the practice of abatement for the County of Victoria, Texas.

**1.16 "Productive Life"** means the number of years a property improvement is expected to be in service.

**1.17 "Regional Service Facility"** means buildings and structures, including machinery and equipment, used or to be used to service goods where a majority of the goods being serviced are domiciled at least 25 miles from the facility's Victoria County location.

**1.18 "Reinvestment Zone"** is a specific parcel of property designated by Victoria County (as applicable) within which tax abatement can be granted.

**1.19 "Research Facility"** means buildings and structures, including fixed in-place 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.

## **Section 2** **Requirements For Phase-In**

**2.1 Authorized Facility.** A facility may be eligible for phase-in if it is located in a designated Reinvestment Zone and is a Manufacturing Facility, Research Facility, Distribution Center, Regional Service Facility, or Other Basic Industry.

**2.2 Creation of New Value.** Phase-in may only be granted for the additional value of eligible property improvements made subsequent to and specified in a phase-in Agreement between the Affected Jurisdiction and the property owner or lessee, subject to such limitations as governing body may require.

**2.3 Employee Origin.** In order to be eligible for designation as a Reinvestment Zone and receive tax phase-in, the planned improvement must not be expected to solely or primarily have the effect of transferring employment from one part of Victoria County to another.

**2.4 Eligible Property.** Phase-in may be extended to the value of buildings, structures, fixed machinery, equipment, and site improvements plus that office space and related fixed improvements necessary to the operation and administration of the facility.

**2.5 Ineligible Property.** The following types of property shall be fully taxable and ineligible for phase-in: land; inventories; supplies; tools; furnishings and other forms of movable personal property; vehicles; vessels; aircraft; housing; hotel accommodation; retail facilities; Base Year Value investments; property to be rented or leased to third parties except as provided in

Section 2.6; 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; and property in a Reinvestment Zone that is owned or leased by a member of the governing body creating the Reinvestment Zone, or property that is owned or controlled by an entity prohibited from governmental contracts under Texas Government Code Section 2275.0102.

**2.6 Lease Facilities.** If a new facility is to be constructed by a third party owner for lease to an Applicant otherwise eligible for tax phase-in, then the building owner may also be eligible for phase-ins. To calculate the applicable category for phase-in, the investment of both entities will be added and each shall be eligible to receive phase-in at the same rate as would have been available if one owner was accomplishing the entire project.

**2.7 Economic Qualifications.** In order to be eligible to receive tax phase-in, the planned new facility or planned expansion to modernization of an existing facility must meet the following qualifications:

- a. Be reasonably expected to increase the appraised value of the property in the amount of not less than Ten Million (\$10,000,000) dollars after construction is completed.
- b. For new construction projects expected to create less than ten (10) New Jobs, pay employees in New Jobs an aggregate base weekly wage equal to ten (10) times the average weekly wage across all sectors for Victoria County for the most recent calendar quarter reported by the Texas Workforce Commission as of the date of the application.
- c. Companies seeking to qualify for tax phase-in on the basis of job retention shall document that without the creation of a Reinvestment Zone and/or tax phase-in the company will either reduce or cease operations.

**2.8 Maximum Available Abatements Per Year \***

<b>Taxable Investment</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Year 6</b>	<b>Year 7</b>	<b>Year 8</b>	<b>Year 9</b>	<b>Year 10</b>
\$10 Million- \$100 Million	70%	60%	50%							
\$100 Million - \$250 Million	60%	60%	50%	50%	50%					
\$250 Million - \$500 Million	80%	80%	80%	60%	60%	50%	50%			
\$500 Million or More	100%	100%	100%	75%	75%	75%	50%	50%	50%	50%

Victoria County reserves the right to grant abatements less than the maximums stated above. Commissioners Court shall determine the percent of value and the term of the abatement based upon the overall value of the project, the number and types of new jobs being created, the extent

to which the labor or local subcontractors will be used in the construction phase, the types and values of public improvements to be made, and the extent to which local vendors and suppliers will be used during the productive life of the project. Commissioners Court may vary the length and abatement percentage on a case by case basis upon consideration of the factors above and any other relevant factors. An abatement granted differing from the above terms shall require a Payment in Lieu of Taxes (PILOT) and/or a Community Interest Project. For Eligible Property investments in excess of \$1,000,000,000 or 100 New Jobs, Victoria County reserves the right to grant abatements up to the state maximum of 100% for 10 years.

**2.9 New and Existing Facilities.** Tax phase-in may be granted for new facilities, and improvements to existing facilities for purposes of modernization or expansion.

**2.10 Transferability.** A tax abatement Agreement may only be assigned to a new owner or lessee of a facility with the written consent of the governmental entity that granted the abatement, which may be withheld at said governmental entity's discretion.

**2.11 Partially Eligible.** Partially eligible for phase-ins are modernization projects and manufacturing facilities which are intended to replace existing equipment, or facilities when the existing equipment and facilities will be removed thus eliminating existing value from the tax rolls. In this event, the value of the existing facility and equipment shall be frozen at the time of the phase-in Agreement and shall remain frozen throughout the phase-in period. The eligible abatable value of the new project shall be the difference between the total new investment amount and the existing tax value of the equipment and/or facility to be removed.

**2.12 Taxability.** From the execution of the phase-in contract to the end of the Agreement period, taxes shall be payable as follows: (1) The value of ineligible property as provided in Section 2.5. shall be fully taxable; (2) The Base Year Value of existing eligible property as determined each year shall be fully taxable; and (3) The additional value of new eligible and partially eligible property shall be taxable in the manner described in Section 2.8.

**2.13 Term of Phase-in.** The term shall be no longer than as set out in the schedule shown in Section 2.8 for each stated range of investment.

### **Section 3** **Application**

**3.1 Written Request.** Any present or potential owner of taxable property in an Affected Jurisdiction may request the creation of a Reinvestment Zone and tax phase-in by filing a written request and application with Victoria County and attaching a plat plus metes and bounds description effectively describing said Reinvestment Zone.

**3.2 Contents of Application.** 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 to be undertaken; a descriptive list of the

improvements which will be a part of the facility; a map and property description, and 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 also include such financial and other information necessary for the governing body to evaluate the financial capacity and other factors of the applicant.

**3.3 Filing the Application.** The initial application for the creation of a Reinvestment Zone and tax phase-in shall be made to the Victoria County Judge with payment of a non-refundable application fee of \$1,000. Upon receipt of a completed application, the County Judge shall notify in writing the presiding officer of the legislative body of each Affected Jurisdiction and provide each presiding officer with a copy of the application. The County Judge shall then set a public hearing before the Commissioners Court to afford the Applicant an opportunity to request that a Reinvestment Zone be designated, and to describe the project and request the tax phase-in. All interested parties will have the opportunity to publicly state why the phase-in should or should not be granted at this hearing. Notice of the Public Hearing shall be clearly identified on the Commissioners Court agenda, and be timely posted as provided by law. After the Commissioners Court creates the Reinvestment Zone, the other Affected Jurisdictions may set their public meetings in the same manner as described above to grant or not grant the applied-for abatement.

**3.4 Feasibility Study.** After receipt of an application for creation of a Reinvestment Zone and application for phase-in, the Victoria Economic Development Corporation shall provide a feasibility study setting out the impact of the proposed Reinvestment Zone and tax phase-in. The feasibility study shall include, but not be limited to, an estimate of the economic impact of the creation of the Zone and the abatement amount of taxes on the property to be included in the Zone.

**3.5 Timeliness.** The Commissioners Court shall not establish a Reinvestment Zone for the purpose of abatement if it finds that the request for phase-in was filed after the commencement of construction, alteration, or installation of improvements related to a proposed modernization, expansion, or new facility.

## **Section 4** **Public Hearing**

**4.1 No Obligation.** The adoption of these guidelines and criteria by the governing body of Victoria County does not:

- a. Limit the discretion of the governing body to decide whether to enter into a specific tax phase-in Agreement;
- b. Limit the discretion of the governing body to delegate to its employees the authority to determine whether or not the governing body should consider a particular application or request for tax phase-in; or

- c. Create any property, contract, or other legal right in any person or entity to have the governing body considers or grant a specific application or request for tax phase-in.

**4.2 Adverse Effects.** Should Victoria County make findings during its public hearing that the granting of abatement will have a substantial adverse effect on its bonds, tax revenue, service capacity, or the provision of service, that finding shall be a reason for the governing body to deny any designation of the Reinvestment Zone, the granting of abatement, or both. Additionally, the Commissioners Court reserves the right to grant less than the abatement percentages shown in Section 2.8, or deny all phase-ins if the governing body, in its sole discretion, determines that Applicants' investment will not meet the community enhancement goals of said governing body.

**4.3 Additional Conditions to Approval.** Neither a Reinvestment Zone nor phase-in Agreement shall be authorized if it is determined that: (1) There would be a substantial adverse affect on the provision of government service or tax base; (2) The applicant has insufficient financial capacity; (3) Planned or potential use of property would constitute a hazard to public safety, health, or morals; or (4) Violation of other codes or law.

## **Section 5** **Agreement**

**5.1 Compliance with Guidelines and Criteria.** The Commissioners Court may not enter into a tax phase-in Agreement unless it finds that the terms of the Agreement and the property subject to the Agreement meet these Guidelines and Criteria.

**5.2 Contents of Agreement.** After approval, the governing body shall formally execute an Agreement with the Applicant, and if applicable, the owner of the facility which shall include: (1) Estimated value to be abated and the Base Year Value; (2) Percent of value to be abated each year as provided in Section 2.7; (3) The commencement date and the termination date of phase-in; (4) The proposed use of the facility, nature of construction, time schedule, map, property description, and improvement list as provided in Section 3.2; (5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration, and assignment as provided in Sections 6 and 7 or other provisions that may be required for uniformity or State law. Such Agreement shall be executed by the Applicant within 60 days after approval by the governing body, or at such later date as may be agreed between applicant and the governing body.

## **Section 6** **Recapture**

**6.1 Discontinuation of Service.** In the event that the facility is completed and begins producing product or service, but subsequently discontinues producing product or service for any reason excepting fire, explosion, or other casualty or accident or natural disaster for a period of one year during the phase-in period, then the phase-in Agreement shall terminate and so shall the abatement of taxes for the current and any future calendar year during which the facility no longer

produces. The taxes which were to be abated for that calendar year shall be paid to the Affected Jurisdictions within 60 days from the date of termination.

**6.2 Default and Cure.** Should Victoria County determine that the company or individual is in default according to the terms and conditions of its Agreement, Victoria County shall notify the company or individual in writing at the address stated in the Agreement, and if such is not cured within 60 days from the date of such notice ("Cure Period"), then the Agreement may be terminated.

**6.3 Termination of Agreement.** In the event that the company or individual (1) Allows its unabated ad valorem taxes owed any of the Affected Jurisdictions to become delinquent and fails to properly follow the legal procedures for their protest and/or contest in a timely manner, or (2) Violates any of the terms and conditions of the phase-in Agreement with any of the Affected Jurisdictions and fails to cure during the Cure Period, the Agreement then may be terminated by each Affected Jurisdiction and all taxes previously abated by virtue of the Agreement will be recaptured by each Affected Jurisdiction and shall be paid by Applicant to each Affected Jurisdiction within 60 days of the termination.

## **Section 7** **Administration**

**7.1 Informed Appraisal.** The Chief Appraiser of the Victoria Central Appraisal District shall 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 Chief Appraiser with such information as may be necessary for abatement, including changes in appraised value of property and verification of full-time equivalent positions as required by the Agreement. Once value has been established, the Chief Appraiser shall notify the Affected Jurisdictions that levy taxes on the amount of the assessment.

**7.2 Periodic Inspections.** The Agreement shall stipulate that employees and/or designated representatives of the Affected Jurisdictions will have access to the Reinvestment Zone during the term of the phase-in 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.

**7.3 Annual Evaluation.** Upon completion of construction, the Affected Jurisdictions shall annually evaluate each facility, and report possible violations to the contract and Agreement to the governing body and its attorney.

## **Section 8** **Sunset Provision**

**8.1 Biannual Review.** These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two years, at which time all Reinvestment Zones and tax phase-in contracts created pursuant to its provisions may be reviewed by the governing body to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria may be modified, renewed, or eliminated providing that such actions shall not affect existing contracts.