

Memorandum

To: Honorable Mayor Shetter and members of the Burleson City Council

From: Shai Roos, AICP Director of Community and Economic Development

Date: August 17, 2009

Subject: Resolution R-1093-07(A0809), adopting guidelines and criteria for the economic development incentives program.

Council Action Requested:

Approve Resolution R-1093-07(A0809), adopting guidelines and criteria for the economic development incentives program.

Background Information:

In August 2007, the City of Burleson City Council adopted a revised version of the Guidelines and Criteria for the Economic Development Incentives program approved in November 2006. The primary reasons for this revision were to aid in the development of the Sphinx at Alsbury project (or any other eligible housing project) and to eliminate the mandatory review of all cases by the Economic Development Incentive Review Committee.

These Guidelines and Criteria set policy by which the Council will consider applications for abatements and incentives. A policy must be in place in order for the City Council to abate taxes according to Chapter 312 of the Texas Tax Code and the abatement policy must be adopted every two years.

The current guidelines and criteria were adopted in August 2007 and must be re-adopted by City Council this month. This resolution does not include any revisions to the existing policy; it only continues what was already adopted by City Council in August 2007.

According to Section 312.002(d) of the Tax Code, the adoption of the guidelines and

criteria by the governing body of a taxing unit 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 or not 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.

Board /Citizen Input:

This information has been reviewed by members of the Economic Development Incentives Review Committee on August 3, 2009.

Financial Considerations:

There is no expenditure of municipal funds associated with this item.

Attachments:

1. Resolution R-1093-07(A0809)
2. Guidelines and Criteria for the Economic Development Incentives Program

Staff Contact:

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Attachment 1

RESOLUTION R-1093-07(A0809)

**A RESOLUTION REVISING AND ADOPTING THE GUIDELINES AND CRITERIA FOR
THE ECONOMIC DEVELOPMENT INCENTIVES PROGRAM**

WHEREAS, The City Council of the City of Burleson, on May 27, 1993, initially adopted the Guidelines and Criteria for the Economic Development Incentives Program by RESOLUTION 583; and

WHEREAS, The City of Burleson desires to continue the Burleson Economic Development Incentives Program which includes provisions for granting tax abatements according to Chapter 312 of the Texas Tax Code, and other incentives according to Chapter 380 of the Texas Local Government Code; now therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS:

That the City Council hereby adopts *The City of Burleson Guidelines and Criteria for the Economic Development Incentives Program* for granting a tax abatement in reinvestment zones or any other economic development incentives within the City of Burleson, Texas and the Guidelines and Criteria hereby adopted are effective for two years from the date adopted and may be amended or repealed by a vote of three-fourths of the members of the City Council.

PASSED AND APPROVED this the 17th day of August, 2009.

Ken Shetter, Mayor

ATTEST:

Amanda McCrory, City Secretary

Attachment 2

Guidelines and Criteria for the Economic Development Incentives Program

CITY OF BURLESON

GUIDELINES AND CRITERIA FOR THE

ECONOMIC DEVELOPMENT INCENTIVES PROGRAM

**CITY OF BURLESON
GUIDELINES AND CRITERIA FOR THE
ECONOMIC DEVELOPMENT INCENTIVES PROGRAM**

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SECTION I PURPOSE

The City of Burleson is committed to the promotion and retention of high quality development within the City of Burleson and to better the quality of life for its citizens. These objectives can often be attained by the enhancement and expansion of the local economy. To meet these objectives, the City of Burleson will, on a case-by-case basis, consider providing tax abatements or other economic development incentives to aid in the stimulation of economic development in Burleson. The City of Burleson will give said consideration in accordance with this Guidelines and Criteria document. Nothing herein shall imply or suggest that the City of Burleson is under any obligation to provide tax abatements or incentives to any applicant. All applicants shall be considered on a case-by-case basis. Tax abatements and other economic incentives will be measured against the same criteria.

Participation in an abatement or incentive agreement does not remove any obligation to satisfy all codes and ordinances issued by the City or any other affected taxing jurisdiction that may be in effect and applicable at the time the project is implemented.

SECTION II DEFINITIONS

1. "Abatement" means the full or partial exemption from ad valorem taxes of certain eligible property in a Reinvestment Zone designated for economic development purposes pursuant to Chapter 312 of the Texas Tax Code.
2. "Agreement" means a contractual agreement between a property owner and/or lessee and an eligible jurisdiction for the purposes of tax abatements.
3. "Base Year Value" means the assessed value of eligible property 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.
4. "City" means the City of Burleson, Texas.
5. "Deferred Maintenance" means improvements necessary for continued operations which do not improve the productivity or alter the process technology.
6. "Distribution Center Facility" means buildings and structures, including machinery and equipment, 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 outside the city limits of Burleson.
7. "Eligible Property" means property that may be extended an abatement. Eligible property includes buildings, structures, fixed machinery and equipment, site improvements plus

office space and related fixed improvements necessary to the operation and administration of the facility.

8. "Expansion" means the addition or enlargement of buildings, structures, fixed machinery, or equipment for purposes of increasing production capacity and creating new full-time permanent jobs.
9. "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.
10. "Ineligible Property" means property that shall be fully taxable and ineligible for abatement. Ineligible property includes land, inventories, supplies, furnishings or other forms of movable personal property, vehicles, deferred maintenance investments and residential property.
11. "Manufacturing Facility" means buildings and structures including machinery and equipment, the primary purpose of which is, or will be, the manufacture of tangible goods or material or the processing of such goods or materials by physical or chemical change, including the assembly of goods and materials from multiple sources, in order to create a finished or semi-finished product.
12. "Modernization" means the replacement and upgrading of existing facilities which increases the productivity 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 except as may be integral to, or in direct connection with, an existing expansion.
13. "New Facility" means a property previously undeveloped which is placed into service by means other than, or in conjunction with, expansion or modernization.
14. "Other Basic Industry" means buildings or 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 City and result in the creation of new permanent jobs and create new wealth in the City.
15. "Productive Life" means the number of years a property improvement is expected to be in service.
16. "Project" means any property improvement including expansions, modernization, and new facilities; but excluding any deferred maintenance.
17. "Qualified Housing Development" means a multi-family residential development which (a) reserves a percentage of the residential units in such development as affordable housing units as such is defined by the Department of Housing and Urban Development and (b) receives financial support (tax credits, loan guarantees, or grants) from the

Department of Housing and Urban Development or Texas Department of Housing and Community Affairs.

18. "Reinvestment Zone" means any area of the City which has been designated a reinvestment zone for tax abatement purposes and which is located within the taxing jurisdiction of the City. It is the intent of the City to designate reinvestment zones on a case-by-case basis to maximize the potential incentives for eligible enterprises to locate or expand within the City.
19. "Regional Entertainment Facility" means buildings and structures, including machinery and equipment, used, or to be used, to provide entertainment through the admission of the general public where a significant portion of the users reside outside of the city limits of Burleson.
20. "Regional Retail Facility" means buildings and structures, including fixed machinery and equipment, used, or to be used, to provide retail services from which a majority of revenues generated by activity at the facility are derived from outside of Burleson.
21. "Regional Service Facility" means buildings and structures, including machinery and equipment, used, or to be used, to provide services where a majority of the individuals serviced are outside of the city limits of Burleson.
22. "Research Facility" means buildings and structures, including 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.
23. "Targeted Enterprise" includes, but is not limited, to the following facilities: distribution center facility, manufacturing facility, regional entertainment facility, research facility, regional retail facility, regional service facility, or any other basic industry.
24. "Employment on a full-time permanent basis" means employment of at least 35 hours per week with full benefits, including at a minimum, health and disability insurance and retirement plan options. This does not include seasonal employment.

SECTION III ELIGIBLE FACILITIES

The City Council may enter into tax abatement or incentive agreements with landowners with projects demonstrating an increased investment in buildings and fixed assets, increased employment, or an increase in the City's sales tax.

The value of the abatement shall not exceed 500 percent of investment by the business in eligible property as defined in Section II. The City Council, or its designated

representative, shall work with the applicant prior to the execution of an abatement agreement to determine the abatement schedule. For qualifying facilities, the City Council may approve abatement agreements lasting no longer than ten years. However, the length of the abatement agreement shall not exceed one-half of the estimated economic life of the facility, as determined by the City Council. Each year's abatement shall not exceed 100 percent.

SECTION IV

The following are the guidelines and criteria to be considered in determining eligibility for economic development incentives. The City Council retains the right to, on a case-by-case basis, consider an abatement or incentive which may not specifically comply with these guidelines and criteria.

A. GUIDELINES AND CRITERIA- EXCLUDING QUALIFIED HOUSING DEVELOPMENTS

1. For a new facility (with the exception of a regional retail facility), invest not less than one million dollars (\$1,000,000) in the facility (including eligible and ineligible property) within three years from the commencement of construction, and create employment for not less than 10 persons associated with the production of goods and services at the authorized facility on a full-time, permanent basis.
2. For an expanded or modernized facility (excluding regional retail facilities), invest not less than seven hundred fifty thousand dollars (\$750,000) in the facility (including both eligible and ineligible property) within three years from the commencement of construction, and create or retain employment for not less than 10 persons associated with the production of goods and services at the authorized facility on a full-time, permanent basis.
3. For regional retail facilities, invest not less than two million, five hundred thousand dollars (\$2,500,000) in the facility (including both eligible and ineligible property) within three years from the commencement of construction, and create employment for not less than 10 persons associated with the production of goods and services at the authorized facility on a full-time permanent basis.
4. Companies seeking to qualify for a tax abatement or incentive on the basis of job retention shall document that without the abatement or incentive the company will either reduce or cease operations.

B. GUIDELINES AND CRITERIA- QUALIFIED HOUSING DEVELOPMENTS

To be eligible for property tax abatement, a Qualified Housing Development must:

1. result in a minimum taxable value, upon completion, of at least \$5 million dollars; and

2. designate and reserve at least 30 percent or more of the residential units in such development as both rent restricted and occupied by individuals whose income is 50 percent or less of area median gross income; and
 3. includes additional amenities beyond the minimum requirements established by the United States Department of Housing and Urban Development (HUD) or the Texas Department of Housing and Community Affairs (TDHCA) for eligibility in the housing tax credit program, HOME, or other programs targeted to affordable housing.
- B. General Criteria - all applications should meet the following general criteria before being considered for a tax abatement or incentive.
1. The project expands the local tax base.
 2. The project creates permanent full time employment opportunities.
 3. The project in all likelihood would not otherwise be developed.
 4. The project makes a contribution to enhancing further economic development.
 5. The project will not result in any unreasonable aesthetic and/or environmental concerns.
 6. The project has not been started and no construction has commenced at the time the application is approved.
 7. The project should not have any of the following objections:
 - a. There would be substantial adverse affect on the provision of government service or tax base.
 - b. The applicant has insufficient financial capacity.
 - c. Planned or potential use of the property would constitute a hazard to public safety.
 - d. Planned or potential use of the property would give adverse impacts to adjacent properties; or
 - e. Any violation of laws of the United States, State of Texas, or ordinances of the City of Burleson would occur.
 - f. Give unfair competitive advantages for one business over another local business.

C. Specific Criteria - If the project in the application meets the general criteria, then abatement or incentive will be considered. Factors to be considered in determining the portion of the increased value to be abated and the duration of the abatement agreement or the type of incentive given include, but are not limited to:

1. Employment Impact
 - a. How many permanent full-time positions will be brought to Burleson?

- b. What types of employment will be created?
 - c. What will the total annual payroll be?
 - d. What benefits will be provided to employees?
2. Fiscal Impact
- a. How much real and personal property value will be added to the tax rolls?
 - b. How much direct sales tax will be generated?
 - c. How will this project affect existing businesses and/or facilities?
 - d. What infrastructure construction will be required?
 - e. What is the total annual operating budget of this facility projected to be?
3. Community Impact
- a. What impact will the project have on the local housing market?
 - b. What environmental impact, if any, will be created by the project?
 - c. How compatible is the project with the City's comprehensive plan?

SECTION V PROCEDURAL GUIDELINES

Any person, organization or corporation desiring a tax abatement or incentive to encourage location or expansion of operations within the city limits of Burlison shall be required to comply with the following procedural guidelines. Nothing within these guidelines shall imply or suggest that Burlison is under any obligation to provide tax abatement or incentive in any amount or value to any applicant.

Requests for tax abatement or incentive shall be reviewed by the City Council or, when requested by the City Council, by the Economic Development Incentive Review Committee. The Committee is comprised of three City Council members. The City Manager, or the City Manager's designee, shall serve as an ex officio member of the committee. The Economic Development Incentive Review Committee serves as the recommending body to the City Council. The City Council as a whole, shall vote on the approval of the abatement or incentive.

A. Preliminary Application Steps

1. Complete the attached "Application for Tax Abatement or Economic Development Incentive".
2. Address in narrative form, all criteria questions outlined in Section IV.
3. A plat showing the precise location of the property, all roadways within 500 feet of the site and all existing zoning and land uses within 500 feet of the site, (a

complete legal description shall be provided if the property is described by metes and bounds).

4. A complete estimated cost of the project by "line item" approach.
5. A description of the methods of financing all estimated costs and the time when related costs or monetary obligations are to be incurred.
6. A detailed time scheduled for undertaking and completing the project.
7. Complete all forms and information detailed in items 1 through 6 above and submit them to:

Office of Economic Development

141 West Renfro

Burleson, Texas 76028

B. Application Review Steps

1. All information in the application package detailed above will be reviewed for completeness and accuracy. Additional information may be requested as needed.
2. The application may be distributed to the appropriate City departments for internal review and comments. Additional information may be requested as needed.
3. Copies of the complete application package and staff comments will be forwarded to the City Council, or, when requested by the City Council, to the Economic Development Incentive Review Committee.

C. Consideration of the Application

1. When requested by the City Council, the Economic Development Incentive Review Committee will consider the application at a regular or called meeting(s). Additional information may be requested as needed. The Committee will then inform the applicant of their recommendation to the City Council.
2. The City Council by ordinance must designate an area as a reinvestment zone to be eligible for a tax abatement. Prior to adopting such an ordinance, the City Council must conduct a public hearing on the designation that entitles all interested persons to speak and present evidence for or against the designation.
3. The City Council has sole and exclusive authority to choose whether or not to grant any tax abatement.
4. The governing bodies of Johnson County and/or Tarrant County may consider a tax abatement agreement with the applicant.

5. Information provided to the Economic Development Incentive Review Committee or the City Council in connection with an application or request for tax abatement or incentive is confidential and not subject to public disclosure until the tax abatement or incentive agreement is executed.

D. Tax Abatement Agreement – Once authorized by the City Council, the City Manager may execute a tax abatement agreement with the applicant on behalf of the City. At least seven days before entering into the agreement, the City will deliver written notice of its intent to each taxing unit that is included in the reinvestment zone. The tax abatement agreement will include specific terms and conditions of the abatement, including, but not limited to, the amount and duration of the tax abatement. The tax abatement agreement shall not commence until the development has received a certificate of occupancy from the City.

E. Economic Development Incentives - The City by resolution may enter into an economic development incentive agreement. An incentive may include but is not limited to:

1. Loans and grants - The City may provide subsidized loans or grants upon approval of the City Council.
2. Provide personnel - The City may provide personnel and services of the municipality upon approval of the City Council.
3. Waiver of fees - Permit application, utility tap and similar fees may be waived upon approval of the City Council.
4. Infrastructure - Extension, construction or reconstruction of infrastructure necessary for the development of a targeted enterprise may be made upon approval of the City Council.
5. Utility rates - The City Council may consider additional utility rate classes for targeted enterprises that require larger amounts of municipal utilities. Any classification established will be available to all utility users meeting the minimum usage requirements for that group. Consideration will be given to capital improvements required to provide utility service.
6. Any agreement will include, but not be limited to, the following specific items:

- a. All appropriate stipulations included in the application as outlined by the document for an economic development incentive agreement.
- b. The amount and type of incentive.
- c. A method for determining the qualifications of meeting the criteria and applicant's promise to meet and maintain these qualifications over the term of the agreement. This may require the submission of an annual report to the City Manager demonstrating that the terms and conditions required to receive a tax incentive have been met, and the City will be allowed, upon written request and reasonable notice, to inspect and audit such records of the applicant as are necessary to substantiate that the applicant is meeting criteria agreed upon during the term of the incentive.
- d. A provision that, in the event the agreement is not kept, the incentive will be determined null and void and all actual and planned City expenditures and/or cost of labor will be paid immediately to the City.

**APPLICATION FOR TAX ABATEMENT
OR ECONOMIC DEVELOPMENT INCENTIVE**

1. Property Owner _____

Contact phone # _____

Email address _____

Mailing Address _____

2. Property Owner's Representative _____

Contact phone # _____

Email address _____

Mailing Address _____

3. Property Address _____

Property Legal Description _____

(Provide attachment if by metes and bounds)

4. Located Within: City of Burleson _____

Johnson County _____

Tarrant County _____

Burleson ISD _____

Joshua ISD _____

5. Description of Project: _____

6. If requesting incentive, describe incentive, reason for requesting incentive, and impact on the project if incentives are not granted:

7. Date projected for occupation of project/initiation of operations:

8. Narrative response to criteria questions in Section IV: attached additional sheets if necessary.
