

RESOLUTION NO. 2023 – R48

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, ADOPTING A TAX ABATEMENT POLICY INCLUDING CRITERIA AND GUIDELINES FOR TAX ABATEMENT AGREEMENTS AS AUTHORIZED BY CHAPTER 312 OF THE TEXAS TAX CODE.

WHEREAS, Chapter 312 of the Texas Tax Code authorizes the City of New Braunfels, Texas to participate in tax abatement agreements;

WHEREAS, the City Council has determined that it is in the public interest to adopt guidelines and criteria to allow the City to consider requests for tax abatements;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS THAT:

SECTION 1: That the Guidelines and Criteria for Tax Abatement Agreements, which are attached hereto as “Exhibit A” and made a part here of for all legal purposes, are hereby approved and adopted as authorized by Chapter 312 of the Texas Tax Code.

SECTION 2: That this Resolution shall become effective from and after the date of its passage.

PASSED AND APPROVED by the City Council of the City of New Braunfels, Texas on this day ____ of August, 2023.

Neal Linnartz, Mayor
City of New Braunfels, Texas

ATTEST:

Gayle Wilkinson, City Secretary
City of New Braunfels, Texas

Exhibit "A"

City of New Braunfels

General Tax Abatement Policy

I. General Purpose and Objectives

Chapter 312 of the Texas Tax Code authorizes the City to grant tax abatements to promote and retain high quality development to the City and increase the quality of life for its citizens. To this end, the City will consider providing tax abatement as a stimulation for economic development. Said consideration will be provided in accordance with the procedures and criteria outlined in this document and nothing herein shall imply or suggest that the City of New Braunfels is under any obligation to provide tax abatement to any applicant. Tax Abatement Agreements will be recommended only with the completion of the City's General Application for Economic Development Incentives. All such applications shall be considered on a case-by-case basis.

State law requires the taxing jurisdiction to designate a Reinvestment Zone by Ordinance prior to entering into a Tax Abatement Agreement. The City will adhere to all procedural requirements for the establishment of Reinvestment Zones and the entering of Tax Abatement Agreements with property owners. The Tax Abatement Agreements are legally binding documents governing all provisions and requirements between parties.

II. Criteria

To be designated as a Reinvestment Zone under Chapter 312, an area must:

- (1) substantially arrest or impair the sound growth of the municipality creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:
 - a. a substantial number of substandard, slum, deteriorated, or deteriorating structures.
 - b. the predominance of defective or inadequate sidewalks or streets.
 - c. faulty size, adequacy, accessibility, or usefulness of lots.
 - d. unsanitary or unsafe conditions.
 - e. the deterioration of site or other improvements.
 - f. tax or special assessment delinquency exceeding the fair value of the land.
 - g. defective or unusual conditions of title.
 - h. conditions that endanger life or property by fire or other cause; or
 - i. any combination of these factors.
- (2) be predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality.

- (3) be in a federally assisted new community located in a home-rule municipality or in an area immediately adjacent to a federally assisted new community located in a home-rule municipality.
- (4) be located entirely in an area that meets the requirements for federal assistance under Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5318).
- (5) encompass signs, billboards, or other outdoor advertising structures designated by the governing body of the municipality for relocation, reconstruction, or removal for the purpose of enhancing the physical environment of the municipality, which the legislature declares to be a public purpose; or
- (6) be reasonably likely because of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the municipality.

All requests for tax abatement will include a subjective and qualitative review of the proposal's ability to address the criteria. The City Council may consider other factors in deliberating the application, including but not limited to the relative degree to which the project furthers the goals and objectives of the community or meets or compliments a special need identified by the City.

III. Value of Incentives

The City Manager's designee will review all completed applications for Economic Development Incentives. A Tax Abatement Agreement may be recommended as part of the entirety of the incentive recommendation to the appropriate governing body(s). The New Braunfels Economic Development Corporation Board will review the incentive recommendation and make a recommendation to the City Council on any proposed abatement. The City Council will make final determination on any consideration for a Tax Abatement Agreement. Tax abatements may be offered for any amount determined appropriate by City Council in accordance with state law, up to 100% of taxes for a maximum period of 10 years only to the extent the exemption of taxable real property or leasehold interests or improvements for that year exceeds its value for the year in which the Agreement is executed.

Business personal property abatements may be considered for applicants that pursue the occupation of a new or significantly improved existing facility. The abatement will apply to the assessed value of new business personal property brought into the taxing jurisdiction. Business personal property moved from another site within the City Limits can also be subject to abatement.

IV. Tax Abatement Categories

The City will offer tax abatement in two categories: Real Property and Business Personal Property. Real property tax abatement may be considered for any applicants pursuing a project that includes the construction of new, modified, or expanded facilities in which to house the proposed project.

V. Tax Abatement Applications

Tax abatements will be considered with the completion of the General Application for Economic Development Incentives ("General Application"). Consideration for tax abatements will be processed in accordance with the procedures outlined in the General Application.

Submission of Application

An application for any economic development incentive (including tax abatements) must be submitted to the City's Economic and Community Development Department. The Application must be complete before consideration.

Once a request is submitted to the City, it shall be regarded as public information and will be available for inspection by the public as allowed by the Texas Public Information Act. Any proprietary information included as part of the request should be so indicated, marked in advance, and supplied in a manner to be readily separated from the remainder of the materials.

Application Fee

Upon submission of the Application, an applicant must also pay an application fee in the amount of \$5,000 of which \$3,000 will be credited to any permit, impact, inspection, or other fee paid by the applicant and required by the City directly in connection with the proposed project, provided that substantive construction on the project has been undertaken on the property specified in the application within one year following the date of its submission. Substantive construction shall be determined by the City in its sole and reasonable discretion. The remaining \$2,000 application fee shall not be refundable.

After the development project is complete, should any application fees remain uncredited, the applicant may submit a written request to the City's Community and Economic Development department requesting a refund of remaining funds. These requests must be made within 90 days of the project's completion date. Any application fees remaining after 90 days will become property of the City and will not be eligible for refund.

Application Review and Evaluation

The Economic and Community Development Department will review the application for completeness and evaluate in accordance with the procedures and guidelines established in the General Application for Economic Development Incentives.

VI. Consideration by City Council

The City Council has sole authority to approve or deny any Tax Abatement Agreement and is under no obligation to approve any application or agreement.

VII. General Policies and Requirements

Exclusions

Regardless of the investment of the number of jobs created, the following types of projects are not eligible for abatement:

1. Projects in which a building permit application has been filed with the City prior to the submission of the General Incentive Application for the same project or substantially related project as determined by the City Manager or their designee.
2. Projects where the applicant cannot provide evidence that demonstrates that the abatement is necessary for the financial viability of the project.
3. Any business personal or real property value that is currently part of the existing tax base.

Agreement and Application Requirements

1. The owner of property for which abatement has been granted shall maintain the property to ensure the long-term economic viability of the project.
2. If the recipient of a tax abatement breaches any terms or conditions of the tax abatement agreement and fails to cure such a breach in accordance with the agreement, the City shall have the right to terminate the tax abatement agreement. In this event, the recipient will be required to pay the City any property taxes that were abated pursuant to the agreement prior to its termination.
3. As part of its consideration under all tax abatement agreements, the City shall have, without limitation, the right to review and verify the applicant's financial statements and records related to the development project and abatement in each year during the term of the tax abatement prior to issuing an abatement in any given year. Additionally, the City may conduct an on-site inspection of the development project in each year during the term of the tax abatement to verify compliance with the terms and conditions of the tax abatement agreement.
4. The recipient of the tax abatement may sell, assign, transfer, or otherwise convey any of its rights under a Tax Abatement Agreement to an affiliate of the recipient, as defined by the tax abatement agreements, or as security to a lender of the recipient, provided that the City, the assignor, and the assignee each execute a document acceptable to the City that outlines the roles and responsibilities of the parties in that event. Otherwise, a recipient of a tax abatement agreement may not sell, assign, transfer, or otherwise convey its rights under a tax abatement agreement unless specifically approved by City Council. Any sale, assignment, lease, transfer, or conveyance of real property that is subject to the tax abatement and is not permitted by the tax abatement agreement shall constitute a breach of the agreement and may result on termination of the tax abatement agreement and recapture of any taxes abated after the date of which the breach occurred.

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