

ORDINANCE 947

AN ORDINANCE ESTABLISHING GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT IN A REINVESTMENT ZONE CREATED WITHIN THE CITY OF WHITESBORO; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the creation and retention of job opportunities that bring new wealth is the highest civic priority; and

WHEREAS, new jobs and investment will benefit the area economy, provide needed opportunities, strengthen the real estate market and generate tax revenue to support local services; and

WHEREAS, the City of Whitesboro must compete with other localities across the nation currently offering tax inducements to attract new industry and industry modernization projects; and

WHEREAS, the abatement of property taxes, when offered to attract primary jobs in industries which bring dollars from outside the community instead of merely recirculating dollars within a community, has shown to be an effective method of enhancing and diversifying an area's economy; and

WHEREAS, Section 312.002 of the Texas Property Tax Code required any eligible taxing jurisdiction to establish Guidelines and Criteria as to eligibility for tax abatement agreements prior to the granting of any future tax abatement with said Guidelines and Criteria to be unchanged for a two-year period unless amended by a three-quarter (3/4) vote of the entity.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHITESBORO, MEETING IN REGULAR SESSION:

Section 1. The City Council of the City of Whitesboro hereby adopts the following Tax Abatement Guidelines and Criteria, attached as "Exhibit A", in accordance with Section 312.002 of the Texas Property Tax Code.

Section 2 Severability. That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 3. Conflicting ordinances repealed. All ordinances, or parts of ordinances, conflicting with any of the provisions of this ordinance are hereby repealed.

Section 4. Effective date. This ordinance shall be in full force and effect upon passage at a regular session of the Whitesboro City Council that is open to the public as required by law and that the time, place and purpose of said meeting was duly posted as required by law.

Passed and approved this 11th day of October, 2005.

W.D. Welch, Mayor

attest:

City Secretary

**GUIDELINES AND CRITERIA GOVERNING TAX ABATEMENT FOR
COMMERCIAL PROJECTS IN DESIGNATED ENTERPRISE ZONES
IN THE CITY OF WHITESBORO**

SECTION 1. General Purpose:

The City of Whitesboro is committed to the promotion of high quality commercial development in designated Enterprise Zones within the city; and to an ongoing improvement in the quality of life for citizens residing in designated Enterprise Zones. The City of Whitesboro recognizes that these objectives are generally served by enhancement and expansion of the local economy. The City will, on a case-by-case basis, give consideration to providing Tax Abatement, as authorized by V.T.C.A., Tax Code, Chapter 312, as stimulation for economic development within the designated Enterprise Zones in the City of Whitesboro. It is the policy of the City that said consideration will be provided in accordance with the guidelines and criteria herein set forth and in conformity with the Tax Code.

Nothing contained herein shall imply, suggest or be understood to mean that the City is under any obligation to provide tax abatement to any specific applicant (V.T.C.A., Tax Code, Section 312.002(d). With the above rights reserved, all applicants for tax abatement will be considered on a case-by-case basis.

SECTION II. Definitions:

As used within these guidelines and criteria, the following words or phrases shall have the following meaning:

1. *Abatement of Taxes:* To exempt from ad valorem taxation all or part of the value of certain improvements placed on land located in a designated Enterprise Zone for commercial development purposes for a period of time not to exceed ten (10) years.
2. *Abatement Agreement:* A contract between a property owner and the City of Whitesboro for the abatement of taxes on qualified property located within a designated Enterprise Zone as authorized by V.T.C.A., Tax Code, Section 312.204(a).
3. *Base Year Value:* The assessed value of property eligible for tax abatement as of January 1 preceding the execution of an Abatement Agreement as herein defined.
4. *Renovation of Existing Facilities or Structures:* The addition of buildings, structures, machinery or equipment to a Facility after the date of execution of an Abatement Agreement.
5. *Existing Facility or Structure:* A Facility as of the date of execution of the Tax Abatement.
6. *Facility:* The improvements made to Real Property eligible for tax abatement and including the building or structure erected on such Real Property and/or any Tangible Personal Property to be located in or on such property.
7. *Improvements to Real Property or Improvements:* Shall mean the construction, addition to, structural upgrading of, replacement of, or completion of any facility located upon, or to be located upon, Real property, as herein defined, or any Tangible Personal Property placed in or on said Real Property.
8. *New Facility:* The construction of a Facility on previously undeveloped real property eligible for tax abatement.
9. *Owner:* The record title owner of Real Property or the legal owner of Tangible Personal Property.
10. *Productive Life:* The number of years a Facility is expected to be in service.
11. *Real Property:* Land on which Improvements are to be made or fixtures placed.
12. *Tangible Personal Property:* Any Personal Property, not otherwise defined herein, and which is necessary for the proper operation of any type of Facility.

SECTION III. Intent of Criteria and Guidelines:

The intent of the criteria and guidelines, as herein set forth, is to establish the minimum standards which an applicant for tax abatement must meet in order to be considered for such status by the City of Whitesboro.

SECTION IV. Criteria and Guidelines for Tax Abatement:

1. Any type of Facility will be eligible for tax abatement consideration provided such Facility meets the following guidelines and criteria.
2. A business must clearly add to the Whitesboro economic base. Compliance with this criterion must show that additional jobs are being provided and the jobs being proposed will not simply displace other similar jobs in the community.
3. Creation of new value: Abatement may only be granted for the additional value resulting from any of the following:
 - (a) modernization of a facility of any type herein defined;
 - (b) construction of a new facility of any type herein defined;
 - (c) expansion of a facility of any type herein defined.
4. New or existing facilities, of any type herein defined, located in a reinvestment zone or upon Real Property eligible for such status will be eligible for consideration for tax abatement status provided all other criteria or guidelines are satisfied.
5. Improvements to Real Property are eligible for tax abatement status.
6. The following types of property shall be ineligible for tax abatement status and shall be fully taxed:
 - (a) Real Property;
 - (b) inventories or supplies;
 - (c) tools;
 - (d) furnishings and other forms of movable personal property;
 - (e) vehicles;
 - (f) aircraft;

- (g) housing;
 - (h) boats;
 - (i) hotel accommodations;
 - (j) motel accommodations;
 - (k) property owned by the State of Texas or any state agency; and,
 - (l) property owned or leased by the City of Whitesboro.
7. In order for a Facility to qualify for abatement, the following conditions must apply:
- (a) The Real Property and eligible improvements and Tangible Personal Property must be owned by the same person, corporation, partnership, or other business entity; or,
 - (b) In the case of leased Real Property, all improvements placed thereon together with all Tangible Personal Property used in conjunction with said improvements must be owned by the same person, corporation, partnership, or other business entity, and said owner must have a lease commitment of at least 15 years.
 - (c) Property must be properly zoned for the use stated by the owner in the application.
8. The amount and term of abatement shall be determined on a case-by-case basis, however, in no event shall taxes be abated for a term in excess of ten (10) years. The amount of the taxable value of Improvements to be abated and the term of the abatement shall be determined by the City of Whitesboro in all cases. The authority of all other taxing units shall be as set forth in V.T.C.A., Tax Code, Section 312.206.
9. No commercial property shall be eligible for tax abatement under these guidelines and criteria unless such property is located in a designated Enterprise Zone in accordance with V.T.C.A., Tax Code, Section 312.202.
10. The qualification for tax abatement shall be as follows:
- (a) 1st Year.....100% abatement of added value
 - 2nd Year..... 90% abatement of added value
 - 3rd Year..... 80% abatement of added value
 - 4th Year..... 70% abatement of added value
 - 5th Year..... 60% abatement of added value
 - 6th Year..... 40% abatement of added value
 - 7th-10th Year..... 20% abatement of added value

- (b) New Facility:
- (c) Renovation of Existing Facility:
- (d) Notwithstanding any of the requirements set forth in Section 9, the governing body of the City of Whitesboro, upon the affirmative vote of three- fourths of its members may vary any of the above requirements when variation is demonstrated by the applicant for Tax Abatement that variation is in the best interest of the City to do so, and will enhance the economic development of the City of Whitesboro. By way of example only, and not by limitation, the governing body of the City of Whitesboro may consider the following or similar terms in determining whether a variance shall be granted:
 - (1) That the increase in productivity of the Facility will be substantial and hence directly benefit the economy.
 - (2) That the increase of goods or services produced by the Facility will be substantial, and directly benefit the economy.
 - (3) That the employment maintained at the Facility will be increased.
 - (4) That the waiver of the requirement will contribute, and provide for the retention of existing jobs within the City of Whitesboro.
 - (5) That the applicant for tax abatement has demonstrated that if tax abatement is granted to his Facility, even though his Facility will not employ additional personnel that, nevertheless, due to the existence of said Facility, new jobs will be created as a direct result of his Facility in other facilities located within the City of Whitesboro.
 - (6) Any other evidence tending to show a direct economic benefit to the City of Whitesboro.

11. Taxability:

- (a) The portion of the value of Improvements to be abated shall be abated in accordance with the terms and provisions of a Tax Abatement Agreement executed between the City of Whitesboro and the owner of the Real Property and/or Tangible Personal Property, (which agreement shall be) in accord with the provisions of V.T.C.A., Tax Code, Section 312.205.
- (b) All ineligible property, if otherwise taxable as herein described, shall be fully taxed.

12. The governing body of City of Whitesboro shall have total discretion as to whether tax abatement is to be granted. Such discretion, as herein retained, shall be exercised on a case-by-case basis. The adoption of these guidelines and criteria by the governing body of City of Whitesboro does not:
 - (a) Limit the discretion of the governing body to decide whether to enter into a specific tax abatement 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 abatement; or,
 - (c) 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.
13. The burden to demonstrate that an application for tax abatement should be granted shall be upon the applicant. Each Affected Jurisdiction to which the application has been directed shall have full authority to request any additional information from the applicant that the governing body of City of Whitesboro deems necessary to assist it in considering such application.

SECTION V. Tax Abatement:

1. The Tax Abatement Agreement may be executed between the owner and the municipality. A Tax Abatement Agreement shall:
 - (a) Establish and set forth the Base Year assessed value of the property for which tax abatement is sought.
 - (b) Provide that the taxes paid on the Base Year assessed value shall not be abated as a result of the execution of said Tax Abatement Agreement.
 - (c) Provide that ineligible property as subscribed in Section IV, Subsection 6, herein above shall be fully taxed.
 - (d) Provide for the exemption of Improvements in each year covered by the agreement only to the extent the value of such Improvements for each such year exceeds the value for the year in which the agreement is executed.
 - (e) Fully describe and list the kind, number and location of all of the improvements to be made in or on the Real Property.

- (f) Set forth the estimated value of all improvements to be made in or on the Real Property.
- (g) Clearly provide that tax abatement shall be granted only to the extent:
 - (1) The improvements to Real Property increase the value of the Real Property for the year in which the Tax Abatement Agreement is executed; and,
 - (2) That the Tangible Personal Property improvements to Real Property were not located on the Real Property prior to the execution of the Tax Abatement Agreement.
- (h) Provide for the portion of the value of the improvements to Real Property or improvements to be abated. This determination is to be made consistent with the provisions of Section IV, Subsection 6, of these guidelines and criteria as herein above set forth.
- (i) Provide for the commencement date and the termination date. In no event shall said dates exceed a period of ten (10) years.
- (j) Describe the type and proposed use of the improvements to Real Property or improvements including:
 - (1) The type of facility.
 - (2) Whether the improvements are for a new facility or renovation of a facility.
 - (3) The nature of the construction, proposed time table of completion, a map or drawings of the improvements above mentioned.
 - (4) The amount of investment and the commitment for the creation of new jobs.
 - (5) A list containing the kind, number and location of all proposed improvements.
 - (6) Any other information required by the City of Whitesboro.
- (k) Provide a legal description of the Real Property upon which improvements are to be made.
- (l) Provide access to and authorize inspection of the Real Property or improvements by employees of the City of Whitesboro, who have executed a Tax Abatement Agreement with owner to insure improvements are made according to the specifications and conditions of the Tax Abatement Agreement.

- (m) Provide for the limitation of the uses of the Real Property or improvements consistent with the general purpose of encouraging development or redevelopment of the zone during the period covered by the Tax Abatement Agreement.
 - (n) Provide for contractual obligations in the event of default by owner, violation of the terms or conditions by owner, recapturing property tax revenue in the event owner defaults or otherwise fails to make improvements as provided in said Tax Abatement Agreement, and any other provision as may be required or authorized by State Law.
 - (o) Contain each term agreed to by the owner of the property.
 - (p) Require the owner of the property to certify annually to the governing body of each taxing unit that the owner is in compliance with each applicable term of the agreement.
 - (q) Provide that the governing body of the municipality may cancel or modify the agreement if the property owner fails to comply with the agreement.
2. Not later than the seventh day before the City of Whitesboro (as required by V.T.C.A., Tax Code, Section 312.2041 or Section 312.402) enters into an agreement for tax abatement under V.T.C.A., Tax Code, Section 312.204, the governing body or a designated officer or employee thereof shall deliver to the presiding officer of the governing body of each of the taxing units in which the property to be subject to the agreement is located, a written notice that the City intends to enter into the agreement. The notice must include a copy of the proposed Tax Abatement Agreement. 3. A notice, as above described in Subparagraph 2, is presumed delivered when placed in the mail, postage paid and properly addressed to the appropriate presiding officer. A notice properly addressed and sent by registered or certified mail for which a return receipt is received by the sender is considered to have been delivered to the addressee.
4. Failure to deliver the notice does not affect the validity of the agreement.

SECTION VII. Application:

- 1. Any present owner of taxable commercial property located within the designated Enterprise Zone of the City of Whitesboro may apply for tax abatement by filing an application with the City of Whitesboro.
- 2. The application shall consist of a completed application form accompanied by:
 - (a) A general description of the improvements to be undertaken.

- (b) A descriptive list of the improvements for which tax abatement is requested.
- (c) A list of the kind, number and location of all proposed improvements of the Real Property Facility or Existing Facility.
- (d) A map indicating the approximate location of improvements on the Real Property Facility or Existing Facility together with the location of any or all Existing Facilities located on the Real Property or Facility.
- (e) A list of any and all Tangible Personal Property presently existing on the Real Property or located in an existing facility.
- (f) A legal description of property.
- (g) Address of property.
- (h) A proposed time schedule for undertaking and completing the proposed improvements.
- (i) A general description stating whether the proposed improvements are in connection with:
 - (1) the renovation of a facility; or,
 - (2) construction of a new facility.
- (j) A statement of the additional value to the Real Property or Facility as a result of the proposed improvements.
- (k) A statement of the assessed value of the Real Property, Facility or Existing Facility for the Base Year.
- (l) Information concerning the number of new jobs that will be created or information concerning the number of existing jobs to be retained as result of the improvements undertaken.
- (m) Any other information which the City of Whitesboro deems appropriate for evaluating the financial capacity of the applicant and compatibility of the proposed improvements with these guidelines and criteria.
- (n) Information that is provided to City of Whitesboro in connection with an application or request for tax abatement and which describes the specific processes or business activity 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. Information in the custody of City of Whitesboro after the agreement is executed is not confidential. (V.T.C.A., Tax Code, Section 312.003).

- (o) The City of Whitesboro shall determine if the property described in said application is within a designated Enterprise Zone. If the City determines that the property described is not within a current Enterprise Zone then they shall so notify the applicant and said application shall then be returned to the applicant.

SECTION VIII. Recapture:

1. In the event that any type of facility, (as defined in Section II, Subparagraphs 5, 6, 7, 8, 9) is completed and begins producing goods or services, but subsequently discontinues producing goods or services for any reason, excepting fire, explosion or other casualty or accident or natural disaster or other event beyond the reasonable control of applicant or owner for a period of 180 days during the term of a tax abatement agreement, then in such event the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination. The burden shall be upon the applicant or owner to prove to the satisfaction of the City of Whitesboro to whom the application for tax abatement was directed that the discontinuance of producing goods or services was as a result of fire, explosion, or other casualty or accident or natural disaster or other event beyond the control of applicant or owner. In the event the applicant or owner meets this burden and the City of Whitesboro is satisfied that the discontinuance of the production of goods or services was the result of events beyond the control of the applicant or owner, then such applicant or owner shall have a period of one year in which to resume the production of goods and services. In the event that the applicant or owner fails to resume the production of goods or services within one year, then the Tax Abatement Agreement shall terminate and the Abatement of all taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination. The one year time period, herein above mentioned, shall commence upon written notification from the City of Whitesboro to the applicant or owner.
2. In the event that the applicant or owner has entered into a Tax Abatement Agreement to make improvements to a Facility of any type described in Section 1 above, but fails to undertake or complete such improvements, then in such event the City of Whitesboro to whom the application for Tax Abatement was directed shall give the applicant or owner sixty (60)

days notice of such failure. The applicant or owner shall demonstrate to the satisfaction of the City of Whitesboro, above mentioned, that the applicant or owner has commenced to cure such failure within the sixty (60) days above mentioned. In the event that the applicant or owner fails to demonstrate that he is taking affirmative action to cure his failure, then in such event the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination.

3. In the event that the City of Whitesboro to whom application for Tax Abatement was directed determines that the applicant or owner is in default of any of the terms or conditions contained in the Tax Abatement Agreement, then in such event the City of Whitesboro shall give the applicant or owner sixty (60) days written notice to cure such default. In the event such default is not cured to the satisfaction of the City of Whitesboro within the sixty (60) days notice period, then the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to City of Whitesboro by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination.
4. In the event that the applicant or owner allows ad valorem taxes on property ineligible for Tax Abatement owed to any Affected Jurisdiction, to become delinquent and fails to timely and properly follow the legal procedures for their protest or contest, then in such event the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination, under this subparagraph, takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination.
5. In the event that the applicant or owner, who has executed a Tax Abatement Agreement with any Affected Jurisdiction, relocates the business, for which tax abatement has been granted, to a location outside of the designated reinvestment zone, then in such event, the Tax Abatement Agreement shall terminate after sixty (60) days written notice by the City of Whitesboro to the Owner/Applicant. Taxes abated during the calendar year in which termination, under this subparagraph takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination.

6. The date of termination as that term is used in this Subsection VIII shall, in every instance, be the 60th day after the day the City of Whitesboro sends notice of default, in the mail to the address shown in the Tax Abatement Agreement to the Applicant or Owner. Should the default be cured by the Owner or Applicant within the sixty (60) day notice period, the Owner/Applicant shall be responsible for so advising the City of Whitesboro and obtaining a release from the notice of default from the City of Whitesboro, failing in which, the abatement remains terminated and the abated taxes must be paid.
7. In every case of termination set forth in Subparagraphs 1, 2, 3, 4 and 5 above, the City of Whitesboro to which the application for tax abatement was directed shall determine whether default has occurred by Owner (Applicant) in the terms and conditions of the Tax Abatement Agreement and shall so notify all other Affected Jurisdictions. Termination of the Tax Abatement Agreement by the City of Whitesboro to which the application for tax abatement was directed shall constitute simultaneous termination of all Tax Abatement Agreements of all other Affected Jurisdiction.
8. In the event that a Tax Abatement Agreement is terminated for any reason whatsoever and taxes are not paid within the time period herein specified, then in such event, the provisions of V.T.C.A., Tax Code, Section 33.01 will apply.

SECTION IX. Miscellaneous:

1. Any notice required to be given by these criteria or guidelines shall be given in the following manner:
 - (a) To the Owner or Applicant: written notice shall be sent to the address appearing on the Tax Abatement Agreement.
 - (b) To an Affected Jurisdiction: written notice shall be sent to the address appearing on the Tax Abatement Agreement.
2. The Chief Appraiser of the Grayson Central Appraisal District shall annually assess the Real and Personal Property comprising the reinvestment zone. Each year, the Applicant or Owner receiving tax abatement shall furnish the Chief Appraiser with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser shall notify the City of Whitesboro which levy taxes of the amount of assessment.
3. Upon the completion of improvements made to Facility as set forth in Section VIII, Subparagraph 1 of these criteria and guidelines a designated employee or employees of any Affected Jurisdiction having executed a Tax Abatement Agreement with Applicant or Owner shall have access to the Facility to insure compliance with the Tax Abatement Agreement.

4. A Tax Abatement Agreement may be assigned to a new owner, but only after written consent has been obtained from all Affected Jurisdictions which have executed such an agreement with the applicant or owner.
5. These guidelines and criteria are effective upon the date of their adoption by City of Whitesboro and shall remain in force for two years. At the end of the two year period these guidelines and criteria may be readopted, modified, amended or re-written as the conditions may warrant.
6. In the event of a conflict between these guidelines and criteria and V.T.C.A., Tax Code, Chapter 312, then in such event the Tax Code shall prevail and these guidelines and criteria interpreted accordingly.
7. The guidelines and criteria once adopted by City of Whitesboro may be amended or repealed by a vote of three-fourths of the members of the governing body of an City of Whitesboro during the two-year term in which these guidelines and criteria are effective.
8. The Property Re-development and Tax Abatement Act is subject to review as provided by the Texas Sunset Act (Section 325.0082 Government Code). If not continued in effect this statute expires January 7, 2005.

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3. *Base Year Value:* The assessed value of property eligible for tax abatement as of January 1 preceding the execution of an Abatement Agreement as herein defined.
4. *Renovation of Existing Facilities or Structures:* The addition of buildings, structures, machinery or equipment to a Facility after the date of execution of an Abatement Agreement.

5. *Existing Facility or Structure:* A Facility as of the date of execution of the Tax Abatement.
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7. *Improvements to Real Property or Improvements:* Shall mean the construction, addition to, structural upgrading of, replacement of, or completion of any facility located upon, or to be located upon, Real property, as herein defined, or any Tangible Personal Property placed in or on said Real Property.
8. *New Facility:* The construction of a Facility on previously undeveloped real property eligible for tax abatement.
9. *Owner:* The record title owner of Real Property or the legal owner of Tangible Personal Property.
10. *Productive Life:* The number of years a Facility is expected to be in service.
11. *Real Property:* Land on which Improvements are to be made or fixtures placed.
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The intent of the criteria and guidelines, as herein set forth, is to establish the minimum standards which an applicant for tax abatement must meet in order to be considered for such status by the City of Whitesboro.

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- (a) modernization of a facility of any type herein defined;
 - (b) construction of a new facility of any type herein defined;
 - (c) expansion of a facility of any type herein defined.
4. New or existing facilities, of any type herein defined, located in a reinvestment zone or upon Real Property eligible for such status will be eligible for consideration for tax abatement status provided all other criteria or guidelines are satisfied.
5. Improvements to Real Property are eligible for tax abatement status.
6. The following types of property shall be ineligible for tax abatement status and shall be fully taxed:
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 - (c) tools;
 - (d) furnishings and other forms of movable personal property;
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 - (k) property owned by the State of Texas or any state agency; and,
 - (l) property owned or leased by the City of Whitesboro.
7. In order for a Facility to qualify for abatement, the following conditions must apply:
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 - (b) In the case of leased Real Property, all improvements placed thereon together with all Tangible Personal Property used in

conjunction with said improvements must be owned by the same person, corporation, partnership, or other business entity, and said owner must have a lease commitment of at least 15 years.

- (c) Property must be properly zoned for the use stated by the owner in the application.
- 8. The amount and term of abatement shall be determined on a case-by-case basis, however, in no event shall taxes be abated for a term in excess of ten (10) years. The amount of the taxable value of Improvements to be abated and the term of the abatement shall be determined by the City of Whitesboro in all cases. The authority of all other taxing units shall be as set forth in V.T.C.A., Tax Code, Section 312.206.
- 9. No commercial property shall be eligible for tax abatement under these guidelines and criteria unless such property is located in a designated Enterprise Zone in accordance with V.T.C.A., Tax Code, Section 312.202.
- 10. The qualification for tax abatement shall be as follows:
 - (b) 1st Year.....100% abatement of added value
2nd Year..... 90% abatement of added value
3rd Year..... 80% abatement of added value
4th Year..... 70% abatement of added value
5th Year..... 60% abatement of added value
6th Year..... 40% abatement of added value
7th-10th Year..... 20% abatement of added value
 - (b) New Facility:
 - (c) Renovation of Existing Facility:
 - (d) Notwithstanding any of the requirements set forth in Section 9, the governing body of the City of Whitesboro, upon the affirmative vote of three- fourths of its members may vary any of the above requirements when variation is demonstrated by the applicant for Tax Abatement that variation is in the best interest of the City to do so, and will enhance the economic development of the City of Whitesboro. By way of example only, and not by limitation, the governing body of the City of Whitesboro may consider the following or similar terms in determining whether a variance shall be granted:
 - (1) That the increase in productivity of the Facility will be substantial and hence directly benefit the economy.
 - (2) That the increase of goods or services produced by the Facility will be substantial, and directly benefit the economy.

- (3) That the employment maintained at the Facility will be increased.
- (4) That the waiver of the requirement will contribute, and provide for the retention of existing jobs within the City of Whitesboro.
- (5) That the applicant for tax abatement has demonstrated that if tax abatement is granted to his Facility, even though his Facility will not employ additional personnel that, nevertheless, due to the existence of said Facility, new jobs will be created as a direct result of his Facility in other facilities located within the City of Whitesboro.
- (6) Any other evidence tending to show a direct economic benefit to the City of Whitesboro.

11. Taxability:

- (a) The portion of the value of Improvements to be abated shall be abated in accordance with the terms and provisions of a Tax Abatement Agreement executed between the City of Whitesboro and the owner of the Real Property and/or Tangible Personal Property, (which agreement shall be) in accord with the provisions of V.T.C.A., Tax Code, Section 312.205.
- (b) All ineligible property, if otherwise taxable as herein described, shall be fully taxed.

12. The governing body of City of Whitesboro shall have total discretion as to whether tax abatement is to be granted. Such discretion, as herein retained, shall be exercised on a case-by-case basis. The adoption of these guidelines and criteria by the governing body of City of Whitesboro does not:

- (a) Limit the discretion of the governing body to decide whether to enter into a specific tax abatement 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 abatement; or,
- (c) 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.

13. The burden to demonstrate that an application for tax abatement should be granted shall be upon the applicant. Each Affected Jurisdiction to

which the application has been directed shall have full authority to request any additional information from the applicant that the governing body of City of Whitesboro deems necessary to assist it in considering such application.

SECTION V. Tax Abatement:

1. The Tax Abatement Agreement may be executed between the owner and the municipality. A Tax Abatement Agreement shall:
 - (a) Establish and set forth the Base Year assessed value of the property for which tax abatement is sought.
 - (b) Provide that the taxes paid on the Base Year assessed value shall not be abated as a result of the execution of said Tax Abatement Agreement.
 - (c) Provide that ineligible property as subscribed in Section IV, Subsection 6, herein above shall be fully taxed.
 - (d) Provide for the exemption of Improvements in each year covered by the agreement only to the extent the value of such Improvements for each such year exceeds the value for the year in which the agreement is executed.
 - (e) Fully describe and list the kind, number and location of all of the improvements to be made in or on the Real Property.
 - (f) Set forth the estimated value of all improvements to be made in or on the Real Property.
 - (g) Clearly provide that tax abatement shall be granted only to the extent:
 - (1) The improvements to Real Property increase the value of the Real Property for the year in which the Tax Abatement Agreement is executed; and,
 - (2) That the Tangible Personal Property improvements to Real Property were not located on the Real Property prior to the execution of the Tax Abatement Agreement.
 - (h) Provide for the portion of the value of the improvements to Real Property or improvements to be abated. This determination is to be made consistent with the provisions of Section IV, Subsection 6, of these guidelines and criteria as herein above set forth.
 - (i) Provide for the commencement date and the termination date. In no event shall said dates exceed a period of ten (10) years.

- (j) Describe the type and proposed use of the improvements to Real Property or improvements including:
 - (1) The type of facility.
 - (2) Whether the improvements are for a new facility or renovation of a facility.
 - (3) The nature of the construction, proposed time table of completion, a map or drawings of the improvements above mentioned.
 - (4) The amount of investment and the commitment for the creation of new jobs.
 - (5) A list containing the kind, number and location of all proposed improvements.
 - (6) Any other information required by the City of Whitesboro.
- (k) Provide a legal description of the Real Property upon which improvements are to be made.
- (l) Provide access to and authorize inspection of the Real Property or improvements by employees of the City of Whitesboro, who have executed a Tax Abatement Agreement with owner to insure improvements are made according to the specifications and conditions of the Tax Abatement Agreement.
- (m) Provide for the limitation of the uses of the Real Property or improvements consistent with the general purpose of encouraging development or redevelopment of the zone during the period covered by the Tax Abatement Agreement.
- (n) Provide for contractual obligations in the event of default by owner, violation of the terms or conditions by owner, recapturing property tax revenue in the event owner defaults or otherwise fails to make improvements as provided in said Tax Abatement Agreement, and any other provision as may be required or authorized by State Law.
- (o) Contain each term agreed to by the owner of the property.
- (p) Require the owner of the property to certify annually to the governing body of each taxing unit that the owner is in compliance with each applicable term of the agreement.
- (q) Provide that the governing body of the municipality may cancel or modify the agreement if the property owner fails to comply with the agreement.

2. Not later than the seventh day before the City of Whitesboro (as required by V.T.C.A., Tax Code, Section 312.2041 or Section 312.402) enters into an agreement for tax abatement under V.T.C.A., Tax Code, Section 312.204, the governing body or a designated officer or employee thereof shall deliver to the presiding officer of the governing body of each of the taxing units in which the property to be subject to the agreement is located, a written notice that the City intends to enter into the agreement. The notice must include a copy of the proposed Tax Abatement Agreement. 3. A notice, as above described in Subparagraph 2, is presumed delivered when placed in the mail, postage paid and properly addressed to the appropriate presiding officer. A notice properly addressed and sent by registered or certified mail for which a return receipt is received by the sender is considered to have been delivered to the addressee.
4. Failure to deliver the notice does not affect the validity of the agreement.

SECTION VII. Application:

1. Any present owner of taxable commercial property located within the designated Enterprise Zone of the City of Whitesboro may apply for tax abatement by filing an application with the City of Whitesboro.
2. The application shall consist of a completed application form accompanied by:
 - (a) A general description of the improvements to be undertaken.
 - (b) A descriptive list of the improvements for which tax abatement is requested.
 - (c) A list of the kind, number and location of all proposed improvements of the Real Property Facility or Existing Facility.
 - (d) A map indicating the approximate location of improvements on the Real Property Facility or Existing Facility together with the location of any or all Existing Facilities located on the Real Property or Facility.
 - (e) A list of any and all Tangible Personal Property presently existing on the Real Property or located in an existing facility.
 - (f) A legal description of property.
 - (g) Address of property.
 - (h) A proposed time schedule for undertaking and completing the proposed improvements.

- (i) A general description stating whether the proposed improvements are in connection with:
 - (1) the renovation of a facility; or,
 - (2) construction of a new facility.
- (j) A statement of the additional value to the Real Property or Facility as a result of the proposed improvements.
- (k) A statement of the assessed value of the Real Property, Facility or Existing Facility for the Base Year.
- (l) Information concerning the number of new jobs that will be created or information concerning the number of existing jobs to be retained as result of the improvements undertaken.
- (m) Any other information which the City of Whitesboro deems appropriate for evaluating the financial capacity of the applicant and compatibility of the proposed improvements with these guidelines and criteria.
- (n) Information that is provided to City of Whitesboro in connection with an application or request for tax abatement and which describes the specific processes or business activity 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. Information in the custody of City of Whitesboro after the agreement is executed is not confidential. (V.T.C.A., Tax Code, Section 312.003).
- (o) The City of Whitesboro shall determine if the property described in said application is within a designated Enterprise Zone. If the City determines that the property described is not within a current Enterprise Zone then they shall so notify the applicant and said application shall then be returned to the applicant.

SECTION VIII. Recapture:

1. In the event that any type of facility, (as defined in Section II, Subparagraphs 5, 6, 7, 8, 9) is completed and begins producing goods or services, but subsequently discontinues producing goods or services for any reason, excepting fire, explosion or other casualty or accident or natural disaster or other event beyond the reasonable control of applicant or owner for a period of 180 days during the term of a tax abatement agreement, then in such event the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the

following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination. The burden shall be upon the applicant or owner to prove to the satisfaction of the City of Whitesboro to whom the application for tax abatement was directed that the discontinuance of producing goods or services was as a result of fire, explosion, or other casualty or accident or natural disaster or other event beyond the control of applicant or owner. In the event the applicant or owner meets this burden and the City of Whitesboro is satisfied that the discontinuance of the production of goods or services was the result of events beyond the control of the applicant or owner, then such applicant or owner shall have a period of one year in which to resume the production of goods and services. In the event that the applicant or owner fails to resume the production of goods or services within one year, then the Tax Abatement Agreement shall terminate and the Abatement of all taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination. The one year time period, herein above mentioned, shall commence upon written notification from the City of Whitesboro to the applicant or owner.

2. In the event that the applicant or owner has entered into a Tax Abatement Agreement to make improvements to a Facility of any type described in Section 1 above, but fails to undertake or complete such improvements, then in such event the City of Whitesboro to whom the application for Tax Abatement was directed shall give the applicant or owner sixty (60) days notice of such failure. The applicant or owner shall demonstrate to the satisfaction of the City of Whitesboro, above mentioned, that the applicant or owner has commenced to cure such failure within the sixty (60) days above mentioned. In the event that the applicant or owner fails to demonstrate that he is taking affirmative action to cure his failure, then in such event the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination.
3. In the event that the City of Whitesboro to whom application for Tax Abatement was directed determines that the applicant or owner is in default of any of the terms or conditions contained in the Tax Abatement Agreement, then in such event the City of Whitesboro shall give the applicant or owner sixty (60) days written notice to cure such default. In the event such default is not cured to the satisfaction of the City of Whitesboro within the sixty (60) days notice period, then the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which

- termination takes place shall be payable to City of Whitesboro by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination.
4. In the event that the applicant or owner allows ad valorem taxes on property ineligible for Tax Abatement owed to any Affected Jurisdiction, to become delinquent and fails to timely and properly follow the legal procedures for their protest or contest, then in such event the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination, under this subparagraph, takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination.
 5. In the event that the applicant or owner, who has executed a Tax Abatement Agreement with any Affected Jurisdiction, relocates the business, for which tax abatement has been granted, to a location outside of the designated reinvestment zone, then in such event, the Tax Abatement Agreement shall terminate after sixty (60) days written notice by the City of Whitesboro to the Owner/Applicant. Taxes abated during the calendar year in which termination, under this subparagraph takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within sixty (60) days of the date of termination.
 6. The date of termination as that term is used in this Subsection VIII shall, in every instance, be the 60th day after the day the City of Whitesboro sends notice of default, in the mail to the address shown in the Tax Abatement Agreement to the Applicant or Owner. Should the default be cured by the Owner or Applicant within the sixty (60) day notice period, the Owner/Applicant shall be responsible for so advising the City of Whitesboro and obtaining a release from the notice of default from the City of Whitesboro, failing in which, the abatement remains terminated and the abated taxes must be paid.
 7. In every case of termination set forth in Subparagraphs 1, 2, 3, 4 and 5 above, the City of Whitesboro to which the application for tax abatement was directed shall determine whether default has occurred by Owner (Applicant) in the terms and conditions of the Tax Abatement Agreement and shall so notify all other Affected Jurisdictions. Termination of the Tax Abatement Agreement by the City of Whitesboro to which the application for tax abatement was directed shall constitute simultaneous termination of all Tax Abatement Agreements of all other Affected Jurisdiction.

8. In the event that a Tax Abatement Agreement is terminated for any reason whatsoever and taxes are not paid within the time period herein specified, then in such event, the provisions of V.T.C.A., Tax Code, Section 33.01 will apply.

SECTION IX. Miscellaneous:

1. Any notice required to be given by these criteria or guidelines shall be given in the following manner:
 - (a) To the Owner or Applicant: written notice shall be sent to the address appearing on the Tax Abatement Agreement.
 - (b) To an Affected Jurisdiction: written notice shall be sent to the address appearing on the Tax Abatement Agreement.
2. The Chief Appraiser of the Grayson Central Appraisal District shall annually assess the Real and Personal Property comprising the reinvestment zone. Each year, the Applicant or Owner receiving tax abatement shall furnish the Chief Appraiser with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser shall notify the City of Whitesboro which levy taxes of the amount of assessment.
3. Upon the completion of improvements made to Facility as set forth in Section VIII, Subparagraph 1 of these criteria and guidelines a designated employee or employees of any Affected Jurisdiction having executed a Tax Abatement Agreement with Applicant or Owner shall have access to the Facility to insure compliance with the Tax Abatement Agreement.
4. A Tax Abatement Agreement may be assigned to a new owner, but only after written consent has been obtained from all Affected Jurisdictions which have executed such an agreement with the applicant or owner.
5. These guidelines and criteria are effective upon the date of their adoption by City of Whitesboro and shall remain in force for two years. At the end of the two year period these guidelines and criteria may be readopted, modified, amended or re-written as the conditions may warrant.
6. In the event of a conflict between these guidelines and criteria and V.T.C.A., Tax Code, Chapter 312, then in such event the Tax Code shall prevail and these guidelines and criteria interpreted accordingly.
7. The guidelines and criteria once adopted by City of Whitesboro may be amended or repealed by a vote of three-fourths of the members of the governing body of an City of Whitesboro during the two-year term in which these guidelines and criteria are effective.

8. The Property Re-development and Tax Abatement Act is subject to review as provided by the Texas Sunset Act (Section 325.0082 Government Code). If not continued in effect this statute expires January 7, 2005.