



## ORDER

### OF THE POLK COUNTY COMMISSIONERS COURT

Approving Polk County's Tax Abatement Criteria & Guidelines

**WHEREAS**, The Polk County Commissioners Court met in a regularly called session on December 11, 2007 and where among other business found that the "*Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones Created in the County of Polk, State of Texas*," as amended April 25, 1994, have been reviewed; and

**WHEREAS**, This Court wishes to renew the Criteria and Guidelines for the purpose of making tax abatement incentives available within the County and to amend the existing Criteria and Guidelines, as follows;

To adopt a Policy of Guidelines and Criteria for Granting Tax Abatement within the Livingston Main Street District as set out by the City of Livingston Resolution No. 481 which is attached hereto and made a part of the "*Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones Created in the County of Polk, State of Texas*".

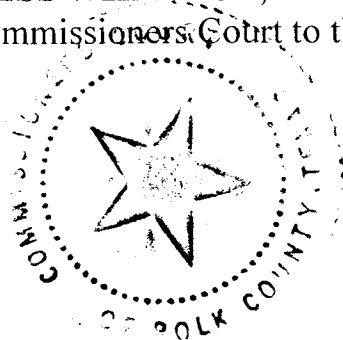
**Now, Therefore, be it ordered by the Commissioners Court of Polk County, Texas**, that the "*Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones Created in the County of Polk, State of Texas*," as amended April 25, 1994 and as amended hereto are hereby approved and renewed for a period of two years.

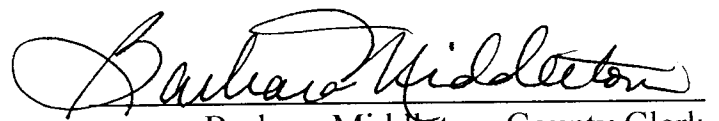
Ordered and adopted on this, the 11<sup>th</sup> day of December, 2007.

  
John P. Thompson, County Judge

**IN WITNESS WHEREOF**, I have affixed my signature and the official seal of the Polk County Commissioners Court to this certification.

(Seal)



  
Barbara Middleton, County Clerk  
Polk County, Texas

**RESOLUTION NO. 481****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON, TEXAS ADOPTING A POLICY OF GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT WITHIN THE LIVINGSTON MAIN STREET DISTRICT AND GOVERNING TAX ABATEMENT AGREEMENTS THEREFOR**

**WHEREAS**, the City Council of the City of Livingston, Texas desires to promote economic development within the City; and

**WHEREAS**, the City of Livingston must compete with other municipalities across the State of Texas and the United States currently offering tax inducements to attract new development; and

**WHEREAS**, the existence of certain economic development incentives in the form of tax abatement may encourage prospective businesses and companies to locate in Livingston, Texas, or may encourage existing businesses and companies to expand; and

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

**WHEREAS**, tax abatement will encourage economic development and provide incentive for property owners within the Livingston Main Street District to preserve, restore or repair their property, and will provide incentive for new prospective businesses to locate within the Livingston Main Street District; and

**WHEREAS**, investment in the Livingston Main Street District and preservation or creation of jobs will benefit the community economy, provide needed opportunities and generate tax revenue to support local services; and

**WHEREAS**, the establishment of specific guidelines, criteria and procedures is necessary to ensure that tax abatement incentives within the Livingston Main Street District are given and administered effectively; and

**WHEREAS**, the adoption of guidelines and criteria is required by the Property Redevelopment and Tax Abatement Act, as amended, before an area may be established as a reinvestment zone within the meaning of the Act, for the purpose of granting tax abatement,

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF  
THE CITY OF LIVINGSTON, TEXAS:**

**SECTION 1.** That the City of Livingston hereby establishes and adopts certain guidelines and criteria, attached hereto and made a part hereof, governing the granting of tax abatement and tax abatement agreements within the Livingston Main Street District of the City of Livingston, and such guidelines and criteria shall expressly govern all subsequent tax abatement agreements within the Livingston Main Street District.

**SECTION 2.** That such guidelines and criteria shall be effective for two (2) years from the date of adoption, and may be amended or repealed within that two (2) year period only by vote of three-fourths (3/4) of the City Council.

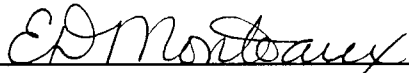
**PASSED and APPROVED** this 13<sup>th</sup> day of November, 2007.

**SIGNED:**



**Ben R. Ogletree, Jr., MAYOR**

**ATTEST:**



**Ellie Monteaux, City Secretary**

**GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT  
IN THE  
LIVINGSTON MAIN STREET DISTRICT  
CITY OF LIVINGSTON, TEXAS**

**Section 1: DEFINITIONS**

- (a) "Abatement" means the full or partial exemption from ad valorem taxes of certain real property in the Livingston Main Street District for economic development purposes, including preservation and restoration incident thereto.
- (b) "Affected jurisdiction" means the City of Livingston and any taxing authority located in the City of Livingston, that levies ad valorem taxes upon and provides services to property located within the reinvestment zone proposed to be designated by the City of Livingston within the Livingston Main Street District.
- (c) "Agreement" means a contractual agreement between a property owner and the City of Livingston for the purposes of tax abatement.
- (d) "Base year value" means the value of eligible property assessed on January 1 preceding the execution of an agreement plus the agreed upon value of eligible property improvements made after January 1 but before the execution of the agreement.
- (e) "Construction" means improvements made to a building on eligible real property under the terms of a tax abatement agreement, including repair or renovation of the property, performed in accordance with building and construction codes of the City of Livingston, and in accordance with recommendations of the Livingston Main Street Advisory Board.
- (f) "Deferred maintenance" means improvements necessary for continued operation of a business which do not primarily benefit the property or contribute to the economic development of the City of Livingston.
- (f) "Historical building" means any building within the Livingston Main Street District that is 30 years old or older.
- (g) "Livingston Main Street District" means that area encompassing ten

blocks, being blocks 2, 3, 14, 15, 16, 17, 20, 21, 22 and 23 within the historical downtown area of the City of Livingston and bounded by Beatty Avenue, West Church Street, North Jackson Avenue, East Calhoun Street, North Tyler Avenue and East Abbey Street.

(h) "Two Year Tax Abatement" means abatement beginning January 1 of the tax year next following completion of approved construction. Upon payment of taxes assessed on the base year value of the property, the following percentages of taxes attributable to increase in appraised value shall be entitled to abatement as a result of the approved construction:

(i) 1st Year: 100% abatement of any ad valorem tax then levied by the City of Livingston and attributable to increase in appraised value over the base year value;

(ii) 2nd Year: 50% abatement of any ad valorem tax the levied by the City of Livingston and attributable to increase in appraised value over the base year value; and

(iii) Each year thereafter: 0% abatement of taxes attributable to increase in appraised value over the base year value.

(i) "Three Year Tax Abatement" means abatement beginning January 1 of the tax year next following completion of approved construction. Upon payment of taxes assessed on the base year value of the property, the following percentages of taxes attributable to increase in appraised value shall be entitled to abatement as a result of the approved construction:

(i) 1st Year: 100% abatement of any ad valorem tax then levied by the City of Livingston and attributable to increase in appraised value over the base year value;

(ii) 2nd Year: 66% abatement of any ad valorem tax then levied by the City of Livingston and attributable to increase in appraised value over the base year value;

(iii) 3<sup>rd</sup> Year: 33% abatement of any ad valorem tax then levied by the City of Livingston and attributable to increase in appraised value over the base year value; and

- (iv) Each year thereafter: 0% abatement of taxes attributable to increase in appraised value over the base year value.
- (j) "Five Year Tax Abatement" means abatement beginning January 1 of the tax year next following completion of approved construction. Upon payment of taxes assessed on the base year value of the property, the following percentages of taxes attributable to increase in appraised value shall be entitled to abatement as a result of the approved construction:
- (i) 1st Year: 100% abatement of any ad valorem tax then levied by the City of Livingston and attributable to increase in appraised value over the base year value;
- (ii) 2nd Year: 80% abatement of any ad valorem tax then levied by the City of Livingston and attributable to increase in appraised value over the base year value;
- (iii) 3<sup>rd</sup> Year: 60% abatement of any ad valorem tax then levied by the City of Livingston and attributable to increase in appraised value over the base year value;
- (iv) 4<sup>th</sup> Year: 40% abatement of any ad valorem tax then levied by the City of Livingston and attributable to increase in appraised value over the base year value;
- (v) 5<sup>th</sup> Year: 20% abatement of any ad valorem tax then levied by the City of Livingston and attributable to increase in appraised value over the base year value; and
- (vi) Each year thereafter: 0% abatement of taxes attributable to increase in appraised value over the base year value.
- (k) "Undocumented worker" means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States.

### **Section 2: ELIGIBILITY FOR TAX ABATEMENT**

- (a) Tax abatement shall be available as required by law for both new

facilities and structures and for expansion or modernization of existing facilities and structures, including renovation and repair of historical buildings within the Livingston Main Street District. Abatement may be granted only for the additional value of eligible improvements to real property made subsequent to and specified in an abatement agreement between the City of Livingston and the property owner, subject to such limitations as the City of Livingston may require. To receive tax abatement, the property owner must demonstrate that the planned improvement is expected to prevent loss of employment, retain or create employment on a full time permanent basis in the City of Livingston. Only construction for which a building permit, electrical permit, plumbing permit, or other project permit has been issued by the City of Livingston and which is undertaken in compliance with said permit will be eligible for abatement. The following minimum amounts in construction costs will qualify for abatement:

- (i) A minimum of \$25,000.00 must be invested in construction cost and creation or retention of a minimum of one job must be demonstrated to qualify for a two year tax abatement;
  - (ii) A minimum of \$50,000.00 must be invested in construction cost and creation or retention of a minimum of two jobs must be demonstrated to qualify for a three year tax abatement; and
  - (iii) A minimum of \$100,000.00 must be invested in construction cost and creation or retention of a minimum of three jobs must be demonstrated to qualify for a five year tax abatement.
- (b) The following types of property shall be fully taxable, and ineligible for abatement: land, inventories, supplies, tools, furnishings, and other forms of movable personal property; vehicles; vessels; aircraft; housing; deferred maintenance investments; 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.
- (c) In compliance with Section 312.204(d) of the Texas Tax Code, property that is in a reinvestment zone and that is owned or leased by a person

- who is a member of the Livingston City Council or a member of a zoning or planning board or commission of the City of Livingston is excluded from property tax abatement.
- (d) Any tax abatement agreement shall be subject to the rights of holders of outstanding bonds of the City of Livingston.
  - (e) The decision whether to enter into any specific tax abatement agreement, or to transfer or assignment thereof, shall be discretionary with the City Council of the City of Livingston, upon such factors as may be determined relevant by the City Council, and the City Council may delegate to its employees the authority to determine whether or not the City Council should consider any particular application or request for tax abatement or subsequent transfer or assignment of any tax abatement granted.
  - (f) No person shall be considered to have any property, contract or other legal right to have the City Council consider or grant any specific application or request for tax abatement, or to have the City Council approve the transfer or assignment of a tax abatement granted, or in the modification or cancellation of any tax abatement granted.
  - (g) Abatement shall not be authorized if it is determined by the City Council, in its sole discretion, that there would be substantial adverse effect on the provision of government service, service capacity, bonds, tax revenue or tax base; the applicant has insufficient financial capacity; the planned or potential use of the property would constitute a hazard to public safety or public health; or the planned or potential construction or use of the property would violate any statute, ordinance or other governmental regulation.
  - (h) The City Council may cancel or modify any agreement for tax abatement, without recourse against the City of Livingston, its officers, employees or representatives, if the property owner fails to comply with the terms of the tax abatement agreement. For purposes of cancellation or modification, the agreement will be reviewed at the close of the first year of abatement, and at such other times as the City Council may, in its discretion, determine.
  - (i) Upon sale of property subject to a tax abatement agreement, abatement may be transferred and assigned to the new owner of the



property upon approval by the City Council by its resolution, subject to the financial capacity of the assignee and such other factors as may be determined relevant by the City Council, and provided that all conditions and obligations in the tax abatement agreement are guaranteed by execution of a new tax abatement agreement with the City of Livingston. No assignment or transfer shall be approved if a party to the existing agreement or the new owner is liable to the City of Livingston or any governmental entity with taxing jurisdiction over the property for outstanding taxes or other obligation.

### **Section 3: APPLICATION FOR TAX ABATEMENT**

- (a) Any present or potential owner of taxable property in the Livingston Main Street District in the City of Livingston may request tax abatement by filing a written request by completed application form with the City of Livingston. The application shall be accompanied by:
- (i) a legal description and map depicting the property to be improved;
  - (ii) a general description of the proposed use and general nature of the improvements to be undertaken on the property and benefit to the eligible taxing jurisdictions and the property;
  - (iii) a description of methods to be used for prevention of loss of employment by retention or creation of full time, permanent employment which details the number of jobs available at time of application and the estimated numbers of jobs to be retained or created within the City of Livingston during the term of abatement;
  - (iv) a list of the kind, number and location of all proposed improvements on the property, together with detailed plans and documents describing the proposed construction in conformance with recommendation of the Livingston Main Street Advisory Board;
  - (v) a time schedule detailing the complete undertaking and completion of the proposed construction;
  - (vi) a statement of the value of the property, separately calculated

for real estate and personal property as assessed by the Central Appraisal District of Polk County for the tax year immediately preceding the date of application;

- (vii) in compliance with Section 2264.001, et seq of the Texas Government Code, as it may be amended, a statement certifying that the applicant's business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker, and that if, after receiving the benefit of any abatement of tax on the property, the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. 1324a(f), the business shall repay the amount of the tax abatement received, with interest, at the rate provided by the terms of the tax abatement agreement entered into between applicant and the City of Livingston, not later than the 120<sup>th</sup> day after the date the City of Livingston notifies the business of the violation; and
  - (viii) such other information as may be required by the City of Livingston for evaluation of the financial capacity of the applicant or other factors related to the applicant, the property, or the proposed construction.
- (b) To the extent allowed by law, information provided by an applicant to the City of Livingston in connection with an application for tax abatement which describes specific processes or business activities to be conducted or equipment or other property to be located on the property for which tax abatement is sought shall be considered confidential if specifically requested by the applicant, and not subject to public disclosure until the tax abatement agreement is executed.
  - (c) The application may be accompanied by written request for variance from the provisions governing eligibility for tax abatement or the application for tax abatement. In no event, however, shall the total duration of abatement exceed five years. A written request for variance shall include a complete description of the circumstances explaining why the applicant should be granted a variance. Approval of a request for variance requires an affirmative vote of three-fourths (3/4) of the City Council.
  - (d) Upon receipt of a completed application, and no later than the seventh

day before the date on which the City of Livingston enters into an agreement for tax abatement, the City Manager of the City of Livingston shall notify the presiding officer of the governing body of each other taxing unit in which the property to be subject to the agreement is located a written notice that the City intends to enter into the agreement, and shall provide a copy of the proposed agreement with the notice. The notice required by this section shall be presumed to be delivered when placed in the mail postage paid and properly addressed to the appropriate presiding officer. A notice properly addressed and sent by certified mail for which a return receipt is received by the sender is considered to have been delivered to the addressee.

- (e) If required by law, or otherwise in the discretion of the City Council, before acting upon an application, the City Council may through public hearing afford the applicant, the designated representative of any affected taxing jurisdiction and any interested person the opportunity to show cause why abatement should or should not be granted. Notice of any such public hearing shall be published in the designated official newspaper of the City of Livingston and delivered in writing to the presiding officer of the governing body of each taxing unit that includes in its boundaries the property subject to the proposed tax abatement agreement and shall be made no later than the seventh day before the date of the hearing.

#### **Section 4: AGREEMENT**

- (a) After approval by affirmative vote of a majority of the members of the City Council of the City of Livingston at a regularly scheduled meeting, the City Council shall by its resolution approve execution of a tax abatement agreement, which agreement shall include:
- (i) the size of investment involved for the period of abatement, the estimated value to be abated and the base year value;
  - (ii) the percent of value to be abated each year as provided by these guidelines;
  - (iii) the commencement date and termination date of the abatement;

- (iv) the proposed use of the property; nature of construction, time schedule, map, property description and a list of the kind, number and location of all proposed improvements of the property as required by Application and as provided in these guidelines;
- (v) provision of access to and authorized inspection of the property by employees of the City of Livingston upon twenty-four (24) hours notice, to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement and that there are no violations of the agreement during period of abatement;
- (vi) limitation on the uses of the property consistent with the general purpose of encouraging development or redevelopment of the Livingston Main Street District;
- (vii) each term agreed to by the owner of the property;
- (viii) contractual obligations in the event of default, violations of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in these guidelines, including provision that the City Council of the City of Livingston may cancel or modify the agreement if the property owner fails to comply with the agreement;
- (ix) in compliance with Section 2264.001, et seq of the Texas Government Code, as it may be amended, if a business is operated on the property, a statement certifying that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker, and that if, after receiving the benefit of any abatement of tax on the property, the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. 1324a(f), the business shall repay the amount of the tax abatement received, with interest, at the highest rate then allowed by law, not later than the 120<sup>th</sup> day after the date the City of Livingston notifies the business of the violation; and
- (x) requirement that the owner of the property certify annually to the governing body of each taxing unit that the owner is in

compliance with each applicable term of the agreement;

- (b) Exemption of taxable interests in each year covered by an agreement may be only to the extent the value for that year exceeds the value for the year in which the agreement is executed.
- (c) The agreement shall be executed within 60 days after the applicant has forwarded all necessary information and documentation to the City of Livingston.

#### **Section 5: RECAPTURE**

- (a) In the event that construction on the property is completed, but the improvements are subsequently demolished or destroyed for any reason excepting fire, explosion or other casualty or natural disaster for a period of one year during the abatement period, then the agreement shall terminate and so shall the abatement of the taxes for the calendar year during which the demolition or destruction occurred. The taxes otherwise abated for that calendar year shall be paid to the collecting entity within sixty days from the date of termination.
- (b) Should the City of Livingston determine that the owner is in default of the terms and conditions of the agreement, or has failed to make the improvements or repairs as provided by the agreement, the City of Livingston shall notify the owner in writing at the address stated in the agreement, and if such default is not cured within sixty (60) days from the date of such notice ("Cure Period"), then the agreement may be terminated.
- (c) In the event the owner (1) allows ad valorem taxes owed to any affected jurisdiction on the property to become delinquent and fails to timely or properly follow the legal procedures for their protest or contest, or (2) violates any of the terms and conditions of the abatement agreement and fails to cure during the Cure Period, the agreement may then be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the termination, or the City, at its option, may provide in the agreement that taxes for the year of default and subsequent years shall not be abated, but shall not recapture taxes for prior but previously abated years.

- (d) In compliance with Section 2264.101, et seq of the Texas Government Code, the City of Livingston may bring a civil action to recover any amounts owed to the City of Livingston under chapter 2264 of the Texas Government Code, including recovery of court costs and attorney's fees incurred in an action brought under Section 2264.101(a) of the Texas Government Code.

#### **Section 6: ADMINISTRATION**

- (a) The Chief Appraiser of the Polk County Central Appraisal District shall annually determine an assessment of the property comprising Reinvestment Zone 3 (Livingston Main Street), and shall deliver to the Comptroller of Public Accounts for the State of Texas a report describing the reinvestment zone, including its size, types of property located in it, its duration, and the guidelines and criteria for the reinvestment zone, a copy of each tax abatement agreement, and any other information required by the Comptroller to administer its accounts for the reinvestment zone.
- (b) Each year, any property owner receiving abatement shall furnish the appraiser with such information as may be necessary for the assessment and report.
- (c) Upon establishing the value of the property, the Chief Appraiser shall notify the affected jurisdictions levying taxes on the property of the amount of the assessment.

#### **Section 7: SUNSET PROVISION**

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 abatement contracts created pursuant to its provisions will be reviewed by the City of Livingston to determine whether the goals have been achieved. Based upon that review, the Guidelines and Criteria will be modified, renewed or eliminated providing that such actions shall not affect existing agreements. Within two years from date of adoption, the guidelines and criteria may be amended or repealed only by a vote of three-fourths of the members of the City Council.