

ORDINANCE NO. _____

**REAFFIRMING THE REINVESTMENT ZONES AND TAX ABATEMENT PROGRAM
PASSED BY ORDINANCE 3862 OF THE CODE OF ORDINANCES OF THE CITY OF DEER
PARK; AND DECLARING AN EMERGENCY.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEER PARK:

I.

Reaffirming Ordinance 3862 regarding the Reinvestment Zones and Tax Abatement Program of the Code Of Ordinances of the City of Deer Park are hereby reaffirmed as follows:

Section 102-121: Reinvestment zones.

- (a) Tax abatement shall only be allowed in a reinvestment zone.
- (b) Reinvestment zones in the City for this purpose will be considered for designation by City Council upon the recommendation of the City Manager. The City Council may approve the creation of these reinvestment zones on a zone-by-zone basis after a public hearing before the City Council. Following the public hearing the City Council may consider the ordinance creating a new reinvestment zone in the proposed area.
- (c) The City Council may not adopt an ordinance designating a reinvestment zone until it has held a public hearing at which interested persons are entitled to speak and present evidence for or against the designation. Notice of the hearing shall be given at least seven days prior to the hearing. The presiding officers of eligible jurisdictions shall be notified in writing at least seven days prior to the hearing. A notice of the public hearing shall be given to other affected taxing jurisdictions published in the legal classified section of the official city newspaper and posted in other places as deemed appropriate, at least seven days prior to the hearing. The notice shall contain the location, time and place of the public hearing and a description of the proposed boundaries of the reinvestment zone.
- (d) The designation of such a zone by ordinance shall constitute an affirmative finding by the City Council that the improvements sought to be constructed or repairs to be made within the

zone are feasible and practical and would be of benefit to the land to be included within a zone and to the City.

(e) In determining whether an area qualifies as a reinvestment zone for the property tax abatement program, the City Council shall use any one or more of the following criteria as guidelines:

- (1) The area substantially impairs or arrests the sound growth of the City; retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present conditions and use by reasons of the presence of substantial number of substandard, slum, deteriorated, or deteriorating structures, predominance of defective or inadequate sidewalks or street layout; faulty lot layout in relation to size, accessibility, or usefulness, unsanitary or unsafe conditions;
- (2) deterioration of site or other improvements; tax or special assessment delinquency exceeds the fair value of the land; defective or unusual conditions of title; the existence of conditions that endanger life or property by fire or other cause; or any combination of these factors or conditions.
- (3) The area is predominantly open and, because of obsolete platting or deterioration of structures or site improvements or other factors, substantially impairs or arrests the sound growth of the City.
- (4) The area has been designated a local or state-federal enterprise zone under the Texas Enterprise Zone Act.
- (5) The area is located wholly within an eligible blighted area, as identified from time to time by City Council.
- (6) There has been a demonstration of community interest and there is evidence that substantial number of owners of taxable real property in the reinvestment zone will participate in such a program.

- (7) Be reasonably likely as a result 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 City.
- (f) The goals and objectives expressed above and the standards and restrictions expressed in V.T.C.A., Tax Code § 312.001 et seq., are not exhaustive and shall be supplemented by such further and additional goals, objectives, rules, standards and restrictions as the City Council may from time to time impose.
- (g) The designation of a reinvestment zone hereunder shall expire five years after the date of its designation and may be renewed for periods not to exceed five years.

Section 102-122: Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abatement means the full or partial exemption from ad valorem taxes of certain real and/or personal property in a reinvestment zone designated for economic development purposes.

Agreement means a contractual agreement between a property owner and/or lessee and an eligible jurisdiction for the purpose of tax abatement.

Base year value means the assessed value of eligible property January 1, preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1, but before the execution of the agreement.

Competitively-sited project means a project where the applicant has studied competing locations for expansion, relocation, or new operations to evaluate operating cost differentials and incentives available.

Contract employee means a person who is not an employee of the abatement recipient, but who works for the abatement recipient in the reinvestment zone on a contract basis, either on a full-or part-time basis.

Deferred maintenance means improvements necessary for continued operations which do not improve productivity or alter the process technology.

Economic life means the number of years a property improvement is expected to be in service in a facility.

Eligible jurisdiction means any county, municipality, school district or college district, that levies ad valorem taxes upon and provides services to property located within the proposed or existing reinvestment zone.

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

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

Full-time equivalent job means a job that is equal to 1,750 hours of work annually performed in the reinvestment zone by contract employees or part-time employees.

Manufacturing facility means buildings and structures, including fixed machinery and equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.

Modernization means the replacement and upgrading of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation. Modernization may result from the construction, alteration, or installation of buildings, structures, or fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing, or repairing to meet local, state, or federal regulations.

New facility means improvements on a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.

Other basic industry facility means buildings and structures, including fixed machinery and equipment not elsewhere described, used or to be used for the production of products or services which

primarily serve a market outside the Houston Consolidated Metropolitan Statistical Area and resulting in the creation of new permanent jobs and additional investment.

Part-time employee means a person, who works for, and is an employee of, the abatement recipient in the reinvestment zone, but is not a permanent employee. Permanent employee means a person who works for, and is an employee of, the abatement recipient and works a minimum of 35 hours in a seven-day period, and reports to work in the reinvestment zone. A permanent employee does not include a contract employee, seasonal employee, or part-time employee.

Regional distribution center facility means buildings or structures, including fixed machinery and equipment, used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility operator where a majority of the goods or services are distributed to points at least 100 miles from any part of the county, unless there is no facility in the county that receives, services, or distributes such goods and services to businesses and residents of the county.

Regional entertainment facility means buildings and structures, including fixed machinery and equipment, used or to be used to provide entertainment through the admission of the general public where the majority of users reside at least 100 miles from any part of the county, unless there is no facility providing the same or similar entertainment in the county.

Regional service facility means buildings and structures, including fixed machinery and equipment, used or to be used to service goods where a majority of the goods being serviced originate at least 100 miles from any part of the county, unless there is no facility in the county where businesses and residents of the county can obtain such service.

Research and development facility means buildings and structures, including machinery and equipment, used or to be used primarily for research or experimentation to improve or develop current technology in bio-medicine, electronics or pre-commercial emerging industries.

Research facility means buildings and structures, including fixed machinery and equipment, used or to be used primarily for research or experimentation to improve or develop the production processes thereto.

Restaurant facility means a business establishment that primarily (defined as 51% or greater) in total food sales.

Retail facility means buildings and structures used or to be used for the conducting and management of business, including the storing and selling of goods directly to the customer.

Section 102-123: Application.

- (a) Any present or potential owner of taxable property in the City may request tax abatement by filing a written request with the City Manager or the City Manager's designee.
- (b) The application shall consist of a completed application form accompanied by: a general description of the new improvements to be undertaken; a descriptive list of the improvements for which abatement is requested; a list of the kind, number and location of all proposed improvements of the property; a map and legal description of the property; a time schedule for undertaking and completing the proposed improvements. The application shall also include a certification of the current number of permanent, part-time and contract employees of the applicant, by category, at the time of the application, and information regarding the project's competitive siting. In the event the project is to be located in a leased facility, the applicant shall provide with the application the name and address of the lessor and, if executed, a copy of the lease. In the case of modernization, the application shall include a statement of the assessed value of the existing facility for the tax year immediately proceeding the application year, separately stated for real and personal property. The application form may require such financial and other information as the City deems appropriate for evaluating the financial capacity and other factors of the applicant.
- (c) Upon receipt of the completed application, the City Manager shall notify in writing and provide a copy of the application to the presiding officer of the governing body of each eligible jurisdiction.
- (d) After receipt of an application for abatement, the City shall prepare a cost/benefit impact analysis setting out the impact of the proposed tax abatement. The cost/benefit impact shall

- include but not be limited to an estimate of the economic effect of the abatement of taxes and the benefit to the City and the property to be included in the zone, and any other pertinent measures of the project's overall impact on the City's revenue stream both during and after the abatement period.
- (e) The City shall not enter into an abatement agreement if it finds that the request for the abatement was filed after the commencement of construction, alteration, or installations of improvements related to a proposed modernization, expansion or new facility. An applicant is ineligible for abatement if a decision to commence a modernization, expansion or new facility in the City has been formally announced on or before an application for abatement has been filed with the City.
 - (f) Variance. Requests for a variance from the provision of subsections 102-125(a), (b), (e), (g) and (h) shall be made in writing to the City Manager; provided however, the total duration of an abatement authorized shall in no instance exceed five years. Such request shall include a complete description of the circumstances explaining why the applicant should be granted a variance and how the grant of abatement will lead to the creation or retention of job opportunities and new investment in the zone. Approval of a request for variance requires a majority vote of the City Council Members present.

Section 102-124: Public hearing and approval.

- (a) Prior to entering into a tax abatement agreement the City Council may, at its option, hold a public hearing at which interested persons shall be entitled to speak and present written materials for or against the approval of the tax abatement agreement. Notice of the public hearing shall be published in the official city newspaper not later than the seventh day before the date of the hearing. Notice of the public hearing may be given, posted or published in other places or by other means as the director deems appropriate.
- (b) In order to enter into a tax abatement agreement, the City Council must find that the terms of the proposed agreement meet these guidelines and criteria and that:

- (1) There will be no substantial potential adverse impact on the provision of city services or tax base; and
- (2) The planned use of the property will not constitute a hazard to public safety, health or morals.

Section 102-125: Economic development abatement authorized.

- (a) *Authorized facility.* A facility may be eligible for economic development abatement if it is a manufacturing facility, regional distribution facility, regional service facility, research facility, research and development facility or other basic industry facility, a regional entertainment facility, retail facility or restaurant facility.
- (b) *Creation of new value.* Abatement may only be granted for the additional value of eligible property improvements made subsequent to and listed in an abatement agreement between the City and the property owner and lessee (if required), subject to such limitations as the City Council may require.
- (c) *New and existing facilities.* Abatement may be granted for new facilities or the expansion of existing facilities. Improvements to existing facilities for purposes of modernization may receive abatement if proven to be essential to the entity's economic survival.
- (d) *Eligible property.* Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements, plus that office space and related fixed improvements necessary to the operation and administration of the facility, or tangible personal property when in conjunction with leased facilities.
- (e) *Ineligible property.* The following types of property shall be ineligible for abatement land; inventory; supplies; tools; vehicles; vessels; aircraft; housing; hotel accommodations; tangible personal property when not in conjunction with leased facilities; deferred maintenance investments; property to be rented or leased except as provided in subsection (f) of this section; improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion; any improvements, including those to

produce, store or distribute natural gas, fluids or gases, that are not integral to the operation of the facility; property owned or used by the state or its political subdivisions or by an organization owned, operated or directed by a political subdivision of the state; and property that is owned or leased by a member of City Council or by a member of the City Planning Commission.

(f) *Owned and leased facilities.* If an authorized facility located on leased real property is granted abatement, the abatement agreement shall be executed by the City, the lessor and the lessee. If the real property is leased from a municipal corporation, the municipality shall not be required to execute the agreement in its capacity as a lessor.

(g) *Value and term of the abatement.* Abatement shall be granted effective upon the January 1 valuation date immediately following the effective date of the agreement. Projects (other than modernizations) which meet these guidelines and criteria are eligible for abatement on the value of the new properties on a sliding scale as follows:

Basic Industry

New Value Minimum: \$5,000,000 Job Creation Minimum: 50 Employees

FACILITY TYPE	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Manufacturing, Regional Distribution, Regional Service, Research, Research & Development, Other Basic Industry	100%	100%	50%	25%	25%	0%	0%	0%	0%	0%

Retail/Entertainment

New Value Minimum: \$5,000,000 Job Creation Minimum: To be determined by City Council based on the economic impact of proposed project

FACILITY TYPE	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Retail and Regional Entertainment SIZE: 80,000 square feet or larger	TBD%*	TBD%*	TBD%*	TBD%*	TBD%*	TBD%*	TBD%*	TBD%*	TBD%*	TBD%*

*abatment to be determined by City Council based on the economic impact of proposed project

Retail/Entertainment

New Value Minimum: \$5,000,000 Job Creation Minimum: 20 Employees

FACILITY TYPE	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Retail and Regional Entertainment SIZE: 50,000 sf – 80,000 sf	50%	35%	30%	25%	20%	0%	0%	0%	0%	0%

Retail/Entertainment

New Value Minimum: \$5,000,000 Job Creation Minimum: 20 Employees

FACILITY TYPE	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Retail and Regional Entertainment SIZE: 5,000 sf – 50,000 sf	25%	20%	15%	10%	5%	0%	0%	0%	0%	0%

Restaurants Only**New Value Minimum: \$2,000,000****Job Creation Minimum: 20 Employees**

FACILITY TYPE	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Restaurants SIZE: 5,000 sf - \$50,000 sf	20%	20%	15%	10%	5%	0%	0%	0%	0%	0%

Provided, however that no abatement shall be given in the year when the facility fails to meet the employment minimum set forth in subsection 102-125(h)(4), except where the jurisdiction has determined that employment falls below minimum due to accident, casualty, fire, explosion, or natural disaster.

(1) If the period of construction exceeds two years, the facility shall be considered complete for purposes of abatement and in no case shall the period of abatement inclusive of construction and completion exceed five years.

(2) If a modernization project includes facility replacement, the value upon which abatement shall be determined shall be the value of the new unit less the value of the old unit. Modernization projects are eligible for abatement according to the above formula with the exception that abatement shall not exceed 80 percent in any year.

(h) *Economic qualifications.* To be eligible for tax abatement, the planned improvement:

- (1) Should provide an economic benefit to the City, taking all relevant factors into consideration, including (i) size of the abatement, (ii) income from sales tax and franchise fees generated by the planned improvement, and (iii) any additional expense to the City in providing city services as a result of the improvement; and
- (2) Must be necessary because capacity cannot be provided efficiently utilizing existing improved property when reasonable allowance is made for necessary improvements; and
- (3) Must be reasonably expected to increase the value of the property in the amount of \$5,000,000.00 upon completion of construction for manufacturing, regional distribution, regional service, research, research and development, other basic industry, retail, and regional entertainment facilities; or \$2,000,000.00 for restaurants.

- (4) Must be expected to create permanent employment for at least 50 people on a permanent basis in the designated zone for manufacturing, regional distribution, regional service, research, research and development and other basic industry. Retail and regional entertainment facilities 80,000 square feet or larger will have their minimum job creation thresholds determined by City Council based on the economic impact of the proposed project. Retail, regional entertainment and restaurant facilities under 80,000 square feet are expected to create permanent employment for at least 20 people on a permanent basis in the designated zone. This employment qualification shall take effect three years after the effective date of abatement and continue through the remaining term of the agreement; or
- (5) An abatement may be granted for a maximum investment of \$500,000.00 per job created or retained.
- (i) *Taxability.* From the date of execution of the abatement agreement to the end of the abatement period, taxes shall be payable as follows:
- (1) The value of ineligible property as provided in section 102-125(e) of this section shall be fully taxable;
- (2) The base year value of existing eligible property as determined each year shall be fully taxable; and
- (3) The additional value of new eligible property shall be taxable in the manner described in subsection 102-125(g) of this section, except as provided in subsection 102-125(h)(5) of this section.

Section 102-126: Agreement for economic development abatement.

After approval, the City shall enter into an agreement with the owner of the facility and lessee (as required), which agreement shall include:

- (1) Estimated value to be abated and the base year value;
- (2) Percent of value to be abated each year as provided in this article;

- (3) The commencement date and the termination date of abatement;
- (4) The proposed use of the facility; nature of construction, time schedule, map, property description and improvement list as provided in this article;
- (5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration, and assignment as provided in this article and other provisions that may be required for uniformity or by state law;
- (6) Amount of investment and total permanent employees to be retained or created and total full-time equivalent jobs to be retained or created;
- (7) A requirement that the company, on or before February 1 of each year the tax abatement agreement is in effect, provide the City Manager a sworn statement that includes a delineation of the number of permanent employees, contract employees and part-time employees of the applicant company as of the immediately preceding January 1, who report to work in the reinvestment zone at each site covered by the agreement;
- (8) A requirement that the company annually file the form 11.28 with the appropriate county appraisal district to qualify for the abatement;
- (9) A provision that contract employees and part-time employees may be used to comply with the company's contractual obligation to create/retain jobs on a full-time equivalency basis for any number of jobs; provided that full-time equivalents shall only be used to satisfy the company's contractual obligation if the company maintains a minimum of 25 permanent employees who work on the project within the reinvestment zone; restaurant facilities must maintain a minimum of 15 permanent employees who work on the project within the reinvestment zone.
- (10) A requirement that property in a reinvestment zone that is owned or leased by a member of the City Council or by a member of the City Planning Commission is excluded from tax abatement.

Section 102-127: Recapture.

- (a) If the facility is completed and begins producing the product or service delineated in the agreement, but subsequently discontinues producing the product or service for any reason excepting fire, explosion, or other casualty or accident or natural disaster for a period of one year during the abatement period, then the agreement shall be terminated and the abatement of taxes for the calendar year during which the facility no longer produces the product or service also shall be terminated. The taxes otherwise abated for the calendar year in which the facility discontinued production or services specified in the agreement shall be paid to the City within 60 days from the date of the termination of the agreement.
- (b) Should the City determine that the company or individual is in default according to the terms and conditions of the agreement, the City shall notify the company or individual in writing at the address stated in the agreement, and if such condition of default is not cured within the 60 days from the date of such notice (“cure period”), then the agreement may be terminated.
- (c) The company or individual shall be in default of the agreement in the event the company or individual:
- (1) Allows its ad valorem taxes owed the City to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; or
 - (2) Violates any of the terms and conditions of the abatement agreement and fails to cure during the cure period.
- In the event of default, the agreement may be terminated and upon the termination all or a pro rata portion of the taxes previously abated by virtue of the agreement shall be recaptured and paid within 60 days of the termination. The pro rata recapture of abated taxes shall be based on the number of years that the company was out of compliance and the degree to which the company was out of compliance, with equal weight being given to job creation and investment.
- (d) If the company defaults on any of the terms and conditions of the agreement, the company shall notify the City within 90 days of such default.

- (e) Notwithstanding the foregoing, the City Manager and the City Attorney are hereby authorized to negotiate and recommend to the City Council amendments to tax abatement agreements subject to termination under this section in lieu of termination.

Section 102-128: Administration.

- (a) The chief appraiser of the county appraisal district shall annually determine the value of the real and personal property comprising the reinvestment zone. Each year, the company or individual receiving abatement shall furnish the City with such additional information applicable to the tax abatement as may be necessary for the administration of the abatement. Once the value of the real and personal property has been established, the chief appraiser shall notify the affected jurisdiction which levies taxes of the amount of the assessment.
- (b) The agreement shall stipulate that employees and/or designated representatives of the City will have access to the reinvestment zone during the term of the abatement to inspect the facility and all company records related to the abatement agreement and the project to determine if the company is in compliance with the agreement. All inspections will be made only after the giving of 24 hours notice and will only be conducted in such a manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.
- (c) Upon completion of construction, the City shall annually evaluate each facility receiving abatement to ensure compliance with the agreement and report possible violations to the contract and agreement.

Section 102-129: Assignment.

The abatement agreements may be assigned to a new owner or lessee of the facility with the written consent of the City Council, which consent shall not be unreasonably withheld. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the agreement. Any assignment of a tax

abatement agreement shall be to an entity that contemplates the same improvements or repairs to the property, except to the extent such improvements or repairs have been completed. No assignment shall be approved if the assignor or the assignee is indebted to the City for ad valorem taxes or other obligations.

II.

It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551 of the Government Code of the State of Texas.

III.

The City Council finds that this Ordinance relates to the immediate preservation of the public peace, health, safety and welfare, in that it is necessary that the Tax Abatement Program be reaffirmed and corrected in its final form so that new business and jobs may be attracted to Deer Park, raising additional revenue for the City, thereby creating an emergency, for which the Charter requirement providing for the reading of Ordinances on three (3) several days should be dispensed with, and this Ordinance be passed finally on its introduction; and, accordingly such requirement is dispensed with, and this Ordinance shall take effect upon its passage and approval by the Mayor.

In accordance with Article VIII, Section 1 of the City Charter, this Ordinance was introduced before the City Council of the City of Deer Park, Texas, **passed, approved and adopted** on this the ____ day of _____, 2018 **by a vote of** _____ **“Ayes” and** _____ **“Noes”.**

MAYOR, City of Deer Park, Texas

ATTEST:

City Secretary

APPROVED:

City Attorney