

RESOLUTION NO. 2014-14



STATE OF TEXAS § IN THE COMMISSIONERS COURT
COUNTY OF COMAL §

ADOPTING GUIDELINES AND CRITERIA FOR TAX ABATEMENTS AND REBATES
AND APPOINTING MEMBERS TO COMAL COUNTY TAX COMPLIANCE COMMITTEE

WHEREAS, the Commissioners Court of Comal County has the authority pursuant to the Property Redevelopment and Tax Abatement Act, Chapter 312, Texas Tax Code, to adopt a tax abatement policy and enter into tax abatement agreements with eligible entities;

WHEREAS, the Commissioners Court of Comal County has the authority pursuant to Section 381.004, Texas Local Government Code to develop and administer a program in order to stimulate business and commercial activity in the county:

1. for state and local economic development;
2. for small or disadvantaged business development;
3. to stimulate, encourage, and develop business location and commercial activity in the county;
4. to promote or advertise the county and its vicinity or conduct a solicitation program to attract conventions, visitors, and business; and
5. other purposes as set out in the statute;

WHEREAS, the Commissioners Court may develop and administer a program for granting tax abatement and entering into a tax abatement agreement with an owner or lessee of a property interest subject to ad valorem taxation, the terms of a tax abatement agreement being governed by the provisions of Sections 312.204, 312.205, and 312.211, Texas Tax Code;

WHEREAS, the Commissioners Court may contract with another entity for the administration of the program or use county employees and funds to administer the program;

WHEREAS, the Commissioners Court finds that tax abatement within certain guidelines and criteria will attract and retain desirable commercial enterprises in Comal County with the result that existing jobs will remain in the county and new jobs will be created in the county;

WHEREAS, the Commissioners Court finds that tax abatement provides a valuable economic tool for use by the county and others interested in supporting and creating jobs in Comal County;

WHEREAS, the Commissioners Court finds that a tax abatement policy is in the public interest and will contribute to the economic development of the county;

WHEREAS, Comal County may not enter into a tax abatement agreement under Chapter 312 of the Texas Tax Code unless the Commissioners Court establishes guidelines and criteria governing tax abatement agreements and, by resolution, elects to become eligible to participate in tax abatement;

WHEREAS, in May 2001, by Resolution 2001-08, the Commissioners Court of Comal County adopted guidelines and criteria to tax abatement agreements in accordance with Texas Tax Code §312.002;

WHEREAS, on April 7, 2011, the Commissioners Court of Comal County approved an Application for Tax Abatement/Economic Development Incentives (“Application”) and amended the Resolution #2001-08 Adopting Guidelines and Criteria for Tax Abatements to assess an application fee of \$500.00;

WHEREAS, the guidelines and criteria adopted under this section are effective for two years from the date adopted; TEXAS TAX CODE §312.002; and

WHEREAS, the Commissioners Court of Comal County finds it to be in the public interest to adopt this tax abatement policy, including the Application, attached hereto and incorporated herein by reference, and application fee of \$1,000.00;

NOW, THEREFORE, BE IT RESOLVED that the Commissioners Court of Comal County, Texas, duly convened and acting in its capacity as the governing body of Comal County, hereby adopts Resolution 2014-14 which establishes the guidelines and criteria for tax abatements and rebates, including the Application, as amended, and application fee of \$1,000.00.

BE IT FURTHER RESOLVED THAT the Commissioners Court of Comal County hereby appoints to the Comal County Tax Abatement Compliance Committee: Scott Haag, Commissioner Precinct 2; Kevin Webb, Commissioner Precinct 3; David Renken, Comal County Auditor; Cathy C. Talcott, Comal County Tax Assessor-Collector; Curtis Koehler, Comal Appraisal District; Rusty Brockman, New Braunfels Chamber of Commerce Economic Development Director; Tiffany Leal, Chief Civil Assistant District Attorney; and Ramona Womack, Comal County Purchasing Director; or their respective successors.

IT IS ACCORDINGLY RESOLVED that the Commissioners Court of Comal County, Texas, hereby establishes a program to stimulate business and commercial activity in Comal County and adopts the following terms, conditions and requirements for such program:

Section 1. PURPOSE: The purpose of the program is to provide an incentive for current and future property owners and leaseholders to invest in Comal County and provide increased job opportunities in the county thereby contributing to responsible economic growth of the county. In the implementation and direction of this program, the Commissioners Court shall take into consideration any other incentives provided by the county in order to assure that the overall

incentive package offered to prospective beneficiaries achieves the objectives of the program and is in the best interests of the citizens of Comal County.

Nothing in this policy shall imply or suggest that Comal County is under any legal or equitable obligation to provide any incentive to any applicant. All applications for tax abatements and rebates shall be considered on an individual basis. The Commissioners Court of Comal County has final approval or disapproval of any application, at its discretion. Comal County has the option of having terms in any abatement agreement different from the terms in an abatement agreement with the initiating city. Comal County will exercise that option at its discretion.

Section 2. OBJECTIVE: The objective of this program is to encourage responsible economic development in the county to provide employment opportunities for the citizens of the county and tax relief to the residential and agrarian property owners in the county by increasing the amount of ad valorem and sales taxes contributed by business and commercial enterprises without adversely affecting the quality of life for current and future citizens of the county.

Section 3. DEFINITIONS:

1. "Abatement" as used herein means the exemption of a specified percentage from ad valorem taxes of certain real property and improvements and personal property located in Comal County as authorized by Chapter 312, Texas Tax Code.
2. "Base Year Value" as used herein means the assessed value of eligible property on the 1st of January, preceding execution of the tax abatement or rebate agreement.
3. "Criminal District Attorney" as used herein means the Comal County Criminal District Attorney or her duly appointed designee.
4. "Modernization" as used herein means the replacement or upgrading of existing facilities which increases the productive input or output, updates the technology, or substantially lowers the cost of operation. Modernization may result from the construction, alteration, or installation of buildings, structures, and fixed machinery, or equipment. It shall not include reconditioning, refurbishing, or repairing.
5. "Rebate" as used herein means the reimbursement of a specified percentage of ad valorem taxes of certain real property and improvements and personal property located in Comal County as authorized by Chapter 381, Local Government Code.
6. "Reinvestment Zone" as used herein means an area within Comal County that meets the criteria for municipal or county reinvestment zones and that has been formally designated a reinvestment zone following the procedures set out in Chapter 312, Texas Tax Code.

Section 4. LIMITATIONS:

1. Adoption of the guidelines and criteria does not:

- a. Limit the discretion of the Commissioners Court to decide whether to grant tax abatement or enter into a tax abatement or rebate agreement; or
 - b. Create new property, contract, or other legal right in any person or entity to have the Commissioners Court consider or grant a specific application or request for abatement or rebate.
2. Unless exemptions, variances or waivers are granted by the Commissioners Court or other appropriate authority, facilities approved for tax abatement must be in compliance and comply with all federal, state, county and municipal laws, rules and regulations, and other requirements approved by the Commissioners Court.
3. No tax abatement or rebate will be granted that will have the effect of reducing current ad valorem revenues.
4. The county shall not enter into a tax abatement or rebate agreement if the Commissioners Court finds that the application for tax abatement or rebate was filed after the commencement of construction, expansion or modernization.
5. Guidelines and criteria adopted herein shall be effective for two years from the date of adoption.

Section 5. CONTRACT WITH OTHER ENTITIES: Comal County has an existing contract with the Greater New Braunfels Chamber of Commerce (the "Chamber") and, consistent with that agreement, will use the services of the Chamber whenever feasible to assist the county with implementation of the program to achieve the objectives set out herein. However, the program will be administered by county officers and employees under the direction of the Commissioners Court.

Section 6. TAX ABATEMENT AND REBATE GUIDELINES AND CRITERIA:

1. The Commissioners Court may grant tax abatement to the owner of taxable real property located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds, to exempt from taxation a portion of the value of the real property or of tangible personal property, or both, for a period not to exceed ten years, on the condition that the owner of the property make specific improvements to the property subject to the guidelines and criteria set out herein.
2. The Commissioners Court may grant tax abatement to the owner of a leasehold interest in tax-exempt real property that is located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds, to exempt a portion of the value of property subject to ad valorem taxation, including the leasehold interest, improvements, or tangible personal property located on the real property, for a period not to exceed ten years, on the condition that the owner of the leasehold interest make specific improvements to the real property subject to the guidelines and criteria set out herein.

3. The Commissioners Court may grant tax rebate to the owner of taxable real property located in the county, but that is not in an improvement project financed by tax increment bonds, to exempt from taxation a portion of the value of the real property or of tangible personal property, or both, for a period not to exceed ten years, on the condition that the owner of the property make specific improvements to the property subject to the guidelines and criteria set out herein.
4. The Commissioners Court may grant tax rebate to the owner of a leasehold interest in tax-exempt real property that is located in the county, but that is not in an improvement project financed by tax increment bonds, to exempt a portion of the value of property subject to ad valorem taxation, including the leasehold interest, improvements, or tangible personal property located on the real property, for a period not to exceed ten years, on the condition that the owner of the leasehold interest make specific improvements to the real property subject to the guidelines and criteria set out herein.
5. Creation of New Value. Tax abatement or rebate may be granted for the additional value of eligible improvements subject to such limitations as the Commissioners Court may require and:
 - a. Shall increase the appraised value of the improved property;
 - b. Shall promote increased employment opportunities based on the number of permanent jobs created and sustained in each year of the abatement or rebate;
 - c. Shall not have the effect of merely transferring existing employment from one part of the county to another without demonstration of increased future investment or unusual circumstances whereby, without such a move, employment is likely to be reduced; and
 - d. No tax exemption shall be granted for tangible personal property located on the subject real property at any time prior to the effective date of the granting of tax abatement or rebate, including inventory and supplies.
6. Enterprises Eligible for Tax Abatement or Rebate. Tax abatement or rebate may be considered for the following types of enterprises, including but not limited to, if the location of a new enterprise or the expansion of an existing enterprise will create substantial capital improvements within the county and increase employment opportunities:
 - a. Manufacturing, Assembly and Processing facilities;
 - b. Corporate offices;
 - c. Research and Development industries;
 - d. Distribution/warehouse facilities;
 - e. Conference centers, hotels, motels, resort hotels, and other such facilities intended to provide locations for the conduct of conventions, seminars, and other such activities and provide lodging for persons attending such activities;
 - f. Advances technology/emerging technology facilities;
 - g. Medical care facilities, including hospitals, clinics, laboratories and other such facilities dedicated to providing for the care and treatment of the ill, elderly or disabled, or the improvement of the health and well-being of the residents of the county;

- h. Educational facilities including schools, training centers and other such facilities offering educational and training opportunities to residents of the county; and
- i. Retail developments will be considered on an individual basis - only retail developments that draw consumers from outside of the county or that provide needed public infrastructure will be considered for tax abatement or rebate.

7. **Priorities.** In determining whether to grant tax abatement or rebate, the Commissioners Court will consider the following priorities, including but not limited to:
- a. The location of the proposed development;
 - b. The development's provision for needed public infrastructure;
 - c. The number of new jobs created;
 - d. The expansion of businesses currently located in Comal County;
 - e. The increase to the appraised value of the improved property; and
 - f. The increased sales tax dollars generated by the development or property.

Applicants whose proposed developments are located in areas of the county not requiring incentives for additional business stimulation or added commercial activity, or with potential service needs that would drastically increase public services may have their application for tax abatement or rebate denied.

Section 7. ALLOWABLE TAX ABATEMENT OR REBATE: Commissioners Court will assess each application for abatement or rebate and determine the amount of abatement or rebate appropriate, if any. The percentage abated and the length of an abatement or rebate contract will vary. No tax abatement or rebate will be granted for a period exceeding ten (10) years. While each individual abatement or rebate application may vary, the standard tax abatement or rebate will be for a period not to exceed eight (8) years and will not exceed an average annual abatement of 54.375% of the qualified increase in value.

Standard 8-Year Tax Abatement/Rebate	
Years	Percentage
1-3	70%
4-6	55%
7-8	30%

Section 8. PROCEDURES FOR TAX ABATEMENT OR REBATE APPLICATIONS:

1. The applicant shall submit an application with all required information and supporting documentation to the County Judge.
2. The County Judge will provide the application to the Criminal District Attorney and County Auditor for review, and if appropriate to the Chamber representative. Any additional information, if necessary, will be requested from the applicant and must be submitted timely in accordance with the deficiency notice. Applicant shall allow county reasonable access to review and audit any records related to information provided in the application.

3. Once the application is complete, the applicant must submit 6 copies of the completed application. Each member of Commissioners Court will be given a copy of the completed application for review.
4. If permitted by the Open Meetings Act, some of the deliberation concerning the application may be discussed by Commissioners Court and staff in executive session.
5. Any and all tax abatement or rebate agreements must be approved by the Commissioners Court in open session.

Section 9. TAX ABATEMENT OR REBATE AGREEMENT:

1. Upon direction from any member of Commissioners Court, the Criminal District Attorney shall prepare an agreement with the applicant that shall include the following:
 - a. A description of the proposed improvements and an estimate of the total cost of said improvements;
 - b. The appraised value of the subject property without the proposed improvements – the base year value;
 - c. The projected value of the property with the improvements;
 - d. The abatement or rebate schedule, including the commencement date of abatement or rebate and termination date of abatement or rebate;
 - e. The construction or modernization time schedule;
 - f. A provision that the applicant will provide access to and authorize inspection by county officer and employees to insure that the improvements are being made according to the conditions and specifications of the agreement;
 - g. A provision that the applicant shall collect and maintain all relevant records related to information provided in the application and each of the economic development considerations and incentives and performance requirements, and allowing the County reasonable access to review and audit these records;
 - h. The proposed use of the facility and a provision limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the reinvestment zone during the time that property tax abatements are in effect;
 - i. A provision for recapturing property tax revenue lost as a result of the agreement if the applicant fails to make the improvements as provided by the agreement or otherwise violates the terms of the agreement;
 - j. A requirement that the applicant certify annually to the Commissioners Court that the applicant is in full compliance with the agreement;
 - k. A provision that the applicant must submit an Application for Property Tax Abatement Exemption to the Comal Appraisal District by April 30 of each year of the abatement period;
 - l. A provision that the Commissioners Court may cancel or modify the agreement if the applicant fails to comply with the agreement;
 - m. As an attachment, a map or approved plat of the subject property and a property description; and
 - n. Usual contract terms as conditions required for uniformity or by state law.

2. The Criminal District Attorney shall provide the tax abatement or rebate agreement to the applicant for review and execution prior to it being placed on the Commissioners Court agenda for approval. Any tax abatement or rebate agreement not finalized within thirty (30) calendar days after being provided to the applicant shall expire. Upon expiration, the applicant shall be required to submit a new application and application fee in order for the potential improvement project to be reconsidered for tax abatement or rebate.

Section 10. DEFAULT AND RECAPTURE:

1. In the event of default of any term or condition of the application for tax abatement or rebate of the tax abatement agreement by the applicant or the applicant's successor or assign of the applicant, the Commissioners Court shall have the right to terminate any agreement and cease the abatement of taxes. Taxes based on the appraised value of the subject property with improvements will be due and payable for the year in which tax abatement or rebate is terminated.
2. In the event that the facility is completed and begins producing products or services, but subsequently ceases to produce products or services for any reason (except for acts of God, war, riot, strike, or natural catastrophe), then tax abatement or rebate shall terminate and no amount of taxes shall be abated or rebated for any calendar year during which the facility does not produce goods and services.
3. In the event that the applicant fails to pay ad valorem taxes owed to Comal County or any other taxing entity located in the county when due, or violates any of the terms or conditions of the tax abatement and rebate policy; or is in default with any other county-sponsored program; then the county shall have the right to terminate the tax abatement or rebate, in which event, taxes based on the full value of the subject property with all improvements shall be immediately due and payable, including any amount of taxes abated or rebated during the calendar year in which the termination occurs and any amount of taxes abated or rebated during prior years.
4. In the event that the applicant, during the abatement or rebate period and for a period of four years following the abatement or rebate period, ceases to operate the facility for which abatement or rebate was granted, or moves the facility for which abatement or rebate was granted to a location outside of Comal County, the Commissioners Court shall have the right to capture taxes abated or rebated during any previous years.

Section 12. ASSIGNMENT OF TAX ABATEMENT OR REBATE OR AGREEMENT:

There shall be no assignment of tax abatement or rebate or such agreements unless such assignment is approved by the Commissioners Court.

Section 13. SUNSET PROVISION FOR TAX ABATEMENTS:

1. These guidelines and criteria are effective upon the date of adoption and remain in force for two years from the date of adoption. Prior to expiration, the Commissioners Court

shall review the guidelines and criteria and either adopt the guidelines and criteria for another two-year period, adopt revised guidelines and criteria, or terminate the tax abatement policy.

2. During the two-year period following adoption of these guidelines and criteria, the guidelines and criteria may be amended or repealed only by a vote of three-fourths of the members of the Commissioners Court.

PASSED AND APPROVED this 17th day of July, 2014.



SHERMAN KRAUSE, COUNTY JUDGE



DONNA ECCLESTON
COUNTY COMMISSIONER, PCT. #1



SCOTT HAAG
COUNTY COMMISSIONER, PCT. #2



KEVIN WEBB
COUNTY COMMISSIONER, PCT. #3



JAN KENNADY
COUNTY COMMISSIONER, PCT. #4



WITNESSED: 

JOY STREATER, COUNTY CLERK

by:  deputy