

## AGENDA

Port Freeport  
Finance Advisory Committee  
Special Meeting  
Wednesday, August 24, 2022, 2:45 pm - 3:45 pm  
In Person & Videoconference - Administration Building - 1100 Cherry Street - Freeport

This meeting agenda with the agenda packet is posted online at [www.portfreeport.com](http://www.portfreeport.com)

The meeting will be conducted pursuant to Section 551.127 of the Texas Government Code titled "Videoconference Call." A quorum of the Finance Advisory Committee, including the presiding officer, will be present at the Commissioner Meeting Room located at 1100 Cherry Street, Freeport, Texas. The public will be permitted to attend the meeting in person or by videoconference.

The videoconference is available online as follows:

Join Zoom Meeting

<https://us02web.zoom.us/j/87112143924?pwd=UmFvdHRlQnBWRUxYTnpnbUwwZz09>

Meeting ID: 871 1214 3924

Passcode: 489375

Dial by your location

1 346 248 7799 US (Houston)

Meeting ID: 871 1214 3924

Find your local number: <https://us02web.zoom.us/j/kcNE5sh9q1>

1. Committee Members: Croft (Chairman), Pirtle, Giesecke
2. CONVENE OPEN SESSION in accordance with Texas Government Code Section 551.001, et. seq., to review and consider the following:
3. Roll Call.
4. Public Comment. (Public comment on any matter not on this Agenda will be limited to 5 minutes per participant and can be completed in person or by videoconference)
5. Public Testimony. (Public testimony on any item on this Agenda will be limited to 3 minutes per agenda item to be addressed per participant and can be completed in person or by videoconference. The participant shall identify in advance the specific agenda item or items to be addressed.
6. Discussion and review of Port Freeport Tax Abatement Guidelines.
7. Discussion regarding proposed changes to the Port Freeport Tariff No. 005.
8. EXECUTIVE SESSION in accordance with Subchapter D of the Open Meetings Act, Texas Government Code Section 551.001, et. seq., to review and consider the following:
  - A Under authority of Section 551.072 (Deliberation of Real Property Matters) for discussion regarding:
    1. The potential purchase, exchange, lease or value of real property located at Port Freeport, including but not limited to the real property located at and contiguous to Berths 1, 2, 5 and 7.
9. RECONVENE OPEN SESSION:
10. Adjourn.

***The Committee does not anticipate going into a closed session under Chapter 551 of the Texas Government Code at this meeting for any other items on the agenda, however, if necessary, the Committee may go into a closed session as permitted by law regarding any item on the agenda.***



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Phyllis Saathoff, Executive Director/CEO  
**PORT FREEPORT**

*In compliance with the Americans with Disabilities Act, the District will provide for reasonable accommodations for persons attending its functions. Requests should be received at least 24 hours in advance.*



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**TO:** Port Commissioners  
Executive Director/CEO

**FROM:** Rob Lowe

**DATE:** August 24, 2022

**SUBJECT:** Tax Abatement Guidelines

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Under Tax Code Chapter 312, tax abatement guidelines are effective for two years from the date adopted. The current Port Freeport guidelines were adopted on July 23, 2020 and thus need to be updated to consider new applications going forward. Applications submitted prior to the expiration of the current guidelines will be considered under the existing guidelines. Staff has reviewed the guidelines and state statute along with legal counsel and has suggested updates aimed at providing administrative and process clarity. Staff presented to the proposed updated guidelines to the Finance Advisory Committee on 7/21/22 and would recommend adopting of the guidelines as presented.

Below is a recap of key updates to the previous guidelines:

- Updates throughout the guidelines aimed at providing more clarity to Port Freeport as an individual entity separate entity from Brazoria County. Port Freeport guidelines remain closely aligned with Brazoria County guidelines with language simply added to show applicants that the district and approvals within are specific to the port.
- Abatement Authorized – Section 2
  - Subsection (g) – language expanded to emphasize the Port Commission’s determination of percent of value and term of abatement will include consideration of the project value and number of jobs along with other factors emphasizing local economic impact. This aligns with changes made by Brazoria County.
  - Brazoria County guidelines also reference a new exhibit in their guidelines which is a table titled Tax Abatement Graduated Scale. The table contains recommendations on the number of years and percentage of abatement per year of abatement based on the value of the project. Staff is not recommending the adoption of a table as staff believes our guidelines already provide for flexibility in determining these assignments.
- Application – Section 3
  - Subsection (e) – language was added to allow the Port Commission to approve an abatement prior to Brazoria County approving their application contingent upon Brazoria County subsequently approving within 60 days. An abatement agreement would not be executed by the Chairman in this situation until the county requirements were met and the intent is to provide flexibility should the timing be critical.

[PORT COMMISSION](#)

JOHN HOSS, CHAIRMAN; RUDY SANTOS, VICE CHAIRMAN; DAN CROFT, SECRETARY; ROB GIESECKE, ASST. SECRETARY;  
RAVI K. SINGHANIA, COMMISSIONER; SHANE PIRTLE, COMMISSIONER; PHYLLIS SAATHOFF, EXECUTIVE DIRECTOR/CEO

- Administration – Section 7
  - Subsection (c) expands the language to state that the port will utilize either a Port Tax Abatement Review Committee or the Brazoria County Tax Abatement Review Committee.
  - Subsection (d) Add a subsection stating the utilization of the Finance Advisory Committee to review tax abatement applications prior to the approval of an abatement. This conforms to existing practice.
- Provisions Regarding City Initiated Abatements – Section 9
  - (e) language was added to allow the Port Commission to approve an abatement prior to a city approval contingent upon the city subsequently approving their application within 60 days. An abatement agreement would not be executed by the Chairman in this situation until the city requirements were met and the intent is to provide flexibility should the timing be critical.
  - (f) language was added to allow the Port Commission to approve a city initiated abatement prior to Brazoria County contingent upon Brazoria County subsequently approving their application within 60 days. An abatement agreement would not be executed by the Chairman in this situation until the county requirements were met and the intent is to provide flexibility should the timing be critical.

**GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT  
IN A REINVESTMENT ZONE CREATED IN  
PORT FREEPORT  
IN BRAZORIA COUNTY, TEXAS**

*(Effective ~~August 1~~ July 21, 2020 to July ~~31~~ 20, 2022)*

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**WHEREAS**, the creation, retention and diversification of job opportunities that bring new wealth are among the highest civic priority; and

**WHEREAS**, the purpose of tax abatement is to provide an incentive offered by the tax-payers, i.e. citizens within the Port Freeport's district, to attract investments, that lead to better quality of life and better services. The wealth created by these enterprises leads to more service and retail businesses, which in addition to improving quality of life, increases the tax base. In summary, by giving incentive in terms of tax abatement, the citizens agree to give up short term tax benefits, for long-term benefits; and

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

**WHEREAS**, the communities within the Port Freeport (~~“the Port”~~) district must compete with other localities across the nation currently offering tax inducements to attract new plant and modernization projects; and

**WHEREAS**, any tax incentives offered in the Port's Freeport district would reduce needed tax revenue unless strictly limited in application to those new and existing industries that bring new wealth to the community; and

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

**WHEREAS**, Texas law requires any eligible taxing ~~jurisdiction~~ unit to establish Guidelines and Criteria as to eligibility for tax abatement agreements prior to granting of any future tax abatement, and said Guidelines and Criteria to be unchanged for a two-year period unless amended by a three-quarters vote of the governing body of the taxing unit;

**WHEREAS**, Texas law requires a public hearing regarding the proposed adoption, amendment, repeal, or reauthorization of tax abatement guidelines and criteria;

**WHEREAS**, a public hearing was held and ~~the~~ these Guidelines and Criteria for Granting Tax Abatement in a Reinvestment Zone in the Port Freeport district ~~was~~ were approved by the Port Commission of Port Freeport by Resolution and dated July ~~23~~ 21, 2020.

Now, therefore, be it resolved that Port Freeport does hereby adopt these Guidelines and Criteria for granting tax abatement in reinvestment zones in the Port's Freeport district.

## DEFINITIONS - Section 1

- (a) “Abatement” means the full or partial exemption from ad valorem taxes on certain real property in a reinvestment zone designated by ~~the Port~~ Brazoria County or a municipality located within Brazoria County for economic development purposes.
- (b) “Abatement Period” means the period during which all or a portion of the value of real property or tangible personal property that is the subject of a tax abatement agreement is exempt from taxation.
- (c) “Abated Facility Site” (or “proposed abated facility site”) means the tract(s) or area of land underlying the proposed improvements to be abated.
- (d) “Agreement” means a contractual agreement between a property owner and/or lessee and ~~the Port~~ Freeport for the purpose of tax abatement.
- (e) “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.
- ~~(f) “Brazoria County Vendor and Services” means a company that employs Brazoria County residents and pays Brazoria County taxes.~~
- (~~g~~f) “Deferred Maintenance” means the improvements necessary for continued operations, which do not improve productivity or alter the process technology.
- (~~h~~g) “Distribution Center Facility” means buildings and structures, including machinery and equipment, used or to be used primarily to receive, store, service, or distribute goods or materials owned by the facility operator where seventy percent (70%) of the goods or services are distributed outside the Port~~’s~~ Freeport district.
- (~~i~~h) “Economic Development” means participation in or support of an organized program or entity which for the purpose of its mission, engages in activities designed to encourage employment opportunities development/commercial and manufacturing business/industry to locate and/or expand in the Port~~’s~~ Freeport district, thus expanding and diversifying the tax base as well as increasing the economic strength and stability of ~~Brazoria County~~ Port Freeport.
- (~~j~~i) “Eligible Jurisdiction” means ~~the Port~~ Freeport, Brazoria County and any municipality or other local taxing ~~jurisdictions~~ units eligible to abate taxes according to Texas law, the majority of which is located in the Port~~’s~~ Freeport district that levies ad valorem taxes upon and provides services to reinvestment zones designated by ~~the Port~~ Brazoria County or any municipality located within Brazoria County.
- (~~k~~j) “Employee” for the purposes of the economic qualifications of Section 2(h) (2) of these Guidelines and Criteria shall include all persons directly employed by the owner of the planned improvement at the abated facility site/reinvestment zone together with any independent contractor or employee of independent contractors employed on a full-time

(40 hours per week equivalent) basis at the facility site/reinvestment zone continuously for the duration of the abatement agreement.

- (k) “Existing Facility” is the facility described in Section 2 (a) that will be expanded or modernized and which contains the proposed improvements to be abated. A manufacturing or processing unit or units of a larger plant complex that separately comprise a manufacturing or production sub-unit of the larger plant shall be considered the existing facility for purposes of the Section 2 (h) (2) employment retention requirement (that the planned improvements cause the retention or prevention of loss of employment of 10 employees or 50% of the employees of the existing facility, whichever is greater). For example, if an existing facility has 100 employees, an expansion or modernization of all or part of that facility must result in the retention of at least 50 employees employed at or in connection with the expanded or modernized “existing facility” in order for the facility improvements to qualify for abatement.
- (m) “Expansion” means the addition of buildings, structures, machinery or equipment for purposes of increasing production capacity.
- (n) “Facility” means property improvements completed or in the process of construction which together comprise an integral whole.
- (o) “Manufacturing Facility” means buildings and structures, including 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.
- (p) “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, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing, or repairing.
- (q) “New Facility” means a property previously undeveloped, which is placed into service, by means other than or in conjunction with expansion or modernization.
- (r) “Other Basic Industry” 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 serve a market primarily outside the Port’s Freeport district.
- (r) “Port Freeport Vendors and Service Providers” means a company that employs residents who live in the Port Freeport district and pay Port Freeport taxes.
- (s) “Productive Life” means the number of years a property improvement is expected to be in service. After a cessation of production, the productive life of property improvements may be deemed to end, at the Port Freeport’s election, on the date of cessation of production either upon (1) a determination by the Port Freeport that it is unlikely the improvement(s) will be reactivated as an integral part of a producing facility, and/or (2) the expiration of eighteen (18) continuous or non-consecutive months of non-production in any twenty-four (24) month period following the date the property improvement(s) cease to be in active service as part of a facility operating in a producing capacity. Upon

cessation of production and for calculation of the recapture amount of taxes, the “productive life” will be determined to begin on the effective date of the tax abatement as set forth in the Agreement.

- (t) “Qualified Vendors and Services” means those vendors and services that meet the company’s individual state requirements, which can include but are not limited to: safety, financial condition, environmental record, quality or ability to perform.
- (u) “Regional Entertainment Facility” means buildings and structures, including machinery and equipment, used or to be used to provide entertainment through the admission of the public where seventy percent (70%) of users reside ~~outside~~ at least 50 miles from its location in the Port’s Freeport district.
- (v) “Research Facility” means buildings and structures, including machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.
- (w) “Regional Service Facility” means buildings and structures, including machinery and equipment, used or to be used to service goods where seventy percent (70%) of the goods being serviced originate outside the Port’s Freeport district.
- (x) “Tangible Personal Property” means tangible personal property classified as such under state law, but excludes inventory and/or supplies, ineligible property as defined herein, and tangible personal property that was located in the investment zone at any time before the period covered by the agreement with ~~the~~ Port Freeport.

## **ABATEMENT AUTHORIZED - Section 2**

- (a) Authorized Facility. A facility may be eligible for abatement if it is a: Manufacturing Facility, Research Facility, Distribution Center or Regional Service Facility, Regional Entertainment Facility, Other Basic Industry, or a facility that the Port Commission determines would enhance job creation and the economic future of ~~Brazoria County~~ Port Freeport.
- (b) Creation of New Value. Abatement may only be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between ~~the~~ Port Freeport and the real property owner, Tangible Personal Property owner, leasehold interest, and/or lessee, subject to such limitations as ~~the~~ Port Freeport may require.
- (c) New and Existing Facilities. Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.
- (d) Eligible Property. Abatement may be extended to the value of buildings, structures, tangible personal property as defined in the Tax Code including fixed machinery and equipment, site improvements and related fixed improvements necessary to the operation and administration of the facility.



Tangible Personal Property: Abatement may be granted to the owner of tangible personal property located on real property in a reinvestment zone to exempt from taxation (1) all or a portion of the value of the real property, (2) all or a portion of the value of the tangible personal property located on the real property, or (3) all or a portion of the value of both.

An abatement may be granted to the owner of tangible personal property or an improvement located on tax-exempt real property that is located in a designated reinvestment zone to exempt all or a portion of the value of the tangible personal property or improvement located on the real property.

(e) Ineligible Property. The following type of property shall be fully taxable and ineligible for abatement: land, existing improvements, tangible personal property that the Brazoria County Appraisal District classifies as inventory or supplies, tools, furnishings, and other forms of movable personal property, vehicles, watercraft, aircraft, housing, convalescent homes, assisted living homes/centers, hotel accommodations, retail facilities, deferred maintenance investments, property to be rented or leased except as provided in Section 2 (f), tangible personal property located in the reinvestment zone prior to the effective date of the tax abatement agreement, property already subject to real or personal property tax(es) moved from one location in Brazoria County to the reinvestment zone, real property with a productive life of less than 10 years, property owned or used by the State of Texas or its political subdivisions or by any organizations owned, operated or directed by a political subdivision of the State of Texas, or any other property for which abatement is not allowed by state law.

(f) Leased Facilities. Leasehold Interest: 1) Abatement may be granted ~~with~~to the owner of a leasehold interest in tax-exempt real property located in a reinvestment zone designated to exempt all or a portion of the value of the leasehold interest in the real property ; or 2) Abatement may be granted ~~with~~to the owner of improvements even if said owner does not own fee simple title to the real property upon which the improvements are built.

Lessee Interest: Abatement may be granted ~~with~~to a lessee of taxable real property located in a reinvestment zone to exempt from taxation (1) all or a portion of the value of the fixtures, improvements, or other real property owned by the lessee and located on the property that is subject to the lease, (2) all or a portion of the value of tangible personal property owned by the lessee and located on the real property that is the subject of the lease, or (3) all or a portion of the value of both the fixtures, improvements, or other real property and the tangible personal property defined herein.

Leasehold Interest/Lessee shall be required to ~~submit with~~certify in its application ~~a copy of that~~ the ~~executed~~ lease agreement between lessor/lessee ~~demonstrating a minimum~~has (or, when executed, will have) a remaining lease term ~~double~~of at least twice the abatement term ~~granted~~requested.

(g) Value and Term of Abatement. Abatement shall be granted effective with the January 1 valuation date immediately following the date of ~~execution~~the Port Commission's Resolution granting the abatement and approving the abatement application. The Port Commission shall determine the percent of value and the agreement. One term of the abatement based upon the overall value of the project, the number and types of new jobs

being created, the extent to which local labor or local subcontractors will be used in the construction phase, the types and values of public improvements to be made, and the extent to which local vendors and suppliers will be used during the productive life of the project. The Port Commission may vary the length and abatement percentage on a case by case basis upon consideration of the factors above and any other relevant factors. The amount of the abatement may be one hundred percent of the value (or such other percentage of value that shall be set forth in the Port Commission's order) of new eligible properties shall Resolution. The term of abatement may be ~~abated~~ for up to seven (7) years; or up to ten (10) years if the ~~facility is anticipated to increase the property by more than~~ value of the proposed improvements exceeds \$1 billion; or one-half (1/2) of the productive life of the improvement, whichever is less. The "productive life" will be calculated from the effective date of the tax abatement and the date the equipment ceased to be in service. The abatement may be extended through an initial agreement and a subsequent agreement may be required to comply with state law regarding the term of the reinvestment zone.

If it is determined that the abatement period would better benefit ~~the~~ Port Freeport and the Applicant by deferring the commencement date beyond the January 1<sup>st</sup> following the date of ~~execution of the resolution~~ granting the abatement and approving the abatement application, ~~the~~ Port Freeport may defer the commencement date of the abatement period to a future date certain. The deferral of the commencement date will not allow the duration of the abatement period to extend beyond the authorized number of years. However, in no event shall the abatement begin later than January 1 following the commencement of construction.

If a modernization project includes facility replacement, the abated value shall be the value of the new unit(s) less the value of the old unit(s).

New eligible properties must be in active service and operation as part of a facility operating in a producing capacity for a period equal to double the abatement period (*i.e.* ten-year abatement, then in producing capacity for 20 years) in order to receive the full term of the abatement granted and not be subject to the term reduction and recapture/payment obligation provisions.

- (h) Economic Qualification. In order ~~to be eligible for designation as a reinvestment zone and~~ to qualify for tax abatement, the planned improvement:
- (1) Must be reasonably expected to increase and must actually increase the value of the property in the amount of \$1 million or more;
  - (2) Must create employment for at least 10 people on a full-time (40 hours per week equivalent) basis in the Port Freeport district for the duration of the Abatement Period at the abated facility site described in the tax abatement application; or alternatively, must retain and prevent the loss of employment of 10 employees or fifty percent (50%) of the existing number of employees, at the time of application, employed at or in connection with the existing facility containing the abated facility site described in the tax abatement application, whichever is greater, for the duration of the Abatement Period. The following is applicable to the employment retention/preventing loss of employment requirement:

- a. “Existing ~~facility~~Facility” is the facility described in Section 2(a) that will be expanded or modernized and which contains the proposed improvements to be abated. A manufacturing or processing unit or units of a larger plant complex that separately comprise a manufacturing or production sub-unit of the larger plant shall ~~consider~~be considered the existing facility for purposes of the Section 2(h)(2) employment retention requirement (that the planned improvements cause the retention or prevention of loss of employment of 10 employees or 50% of the employees of the existing facility, whichever is greater). For example, if a large plant complex has a sub-unit that produces chlorine and 100 employees are employed at or in connection with that unit, an expansion or modernization of all or part of that facility must result in the retention of at least 50 employees employed at or in connection with the expanded or modernized “existing facility” in order for the facility improvements to qualify for abatement.
- b. Employees of a larger plant unit transferred or assigned to and employed at or in connection with a new sub-unit containing the planned improvements, constructed on undeveloped land constituting the proposed abated facility site/~~reinvestment zone~~ shall be considered “created” employment for purposes of this sub-section.

The proposed number of employees to be employed at the abated facility as stated in the abatement application for the property that is the subject of the tax abatement agreement (including the projected creation or retention of employment) must be maintained for the duration of the abatement period at the abated facility site. For purposes of this sub-section, in order for a planned improvement to be considered as preventing the loss of employment or retaining employment, the abated facility/project must be necessary in order to retain or keep employment at levels as indicated in the application and in order to retain the proposed number of employees at the abated facility as indicated in the application. The owner/applicant seeking to qualify on the basis of retention or preventing loss of employment must provide a detailed statement as an attachment to its application affirmatively representing compliance with this sub-section and explaining the necessity of this project to prevent loss of employment. Any variance from the requirements of this sub-section is subject to approval of the Port Commission in accordance with the variance section of these Guidelines and Criteria.

- (3) Must not be expected to solely or primarily have the effect of transferring employment from one part of the Port~~'s~~ Freeport district to another part of the Port~~'s~~ Freeport district. A variance may be requested relative to this provision which approval shall be at the sole discretion of ~~the~~-Port Freeport.
- (4) Must be necessary because capacity cannot be provided efficiently utilizing existing improved property;

Additionally, the owner of the project:

- (5) Must provide for and pay, at the time of filing an application for tax abatement, a non-refundable application fee of \$1,000.
  - (6) Must file a plan statement with application demonstrating willingness and planned efforts to use qualified ~~Brazoria County~~ Port Freeport vendors and service providers where applicable in the construction and operations of the facility. ~~Brazoria County~~ Port Freeport vendors and service providers must be competitive with non-county vendors and service providers regarding price, quality, safety, availability and ability to perform. It is preferred that applicant seek qualified workers who are United States citizens and veterans and also legal residents prior to seeking workers from other countries.
  - (7) Must not file with the Brazoria County Appraisal District a valuation or taxpayer protest or notice of protest pursuant to the Texas Property Tax Code during the abatement period legally protesting the valuation of the abated improvements of a manufacturing facility pursuant to an appraisal method that produces a valuation of improvements based on each improvement's value as a separate item of personal property rather than the improvements value as integral fixtures of a producing manufacturing facility. An owner's legal protest to the improvements' value pursuant to the Texas Property Tax Code must be based on and use accepted appraisal methods and techniques allowed by law (Texas Property Tax Code) and uniform standards of professional appraisal practice. The filing of a valuation protest or notice of protest contrary to this standard shall cause the tax abatement agreement to be subject to termination and recapture of all previously abated taxes.
  - (8) Must not be defendant in any litigation by ~~the~~ Port Freeport seeking recovery or recapture of previously abated taxes.
- (i) Taxability. From the execution of the abatement contract to the end of the agreement period, taxes shall be payable as follows:
- (1) The value of ineligible property as provided in Section 2(e) 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 Section 2(g).

### **APPLICATION - Section 3**

- (a) The Application for tax abatement may be obtained from the Port Freeport Administration Office or on the Port Freeport website at www.portfreeport.com. Applicant may contact the Chief Financial Officer at (979) 233-2667, ext. 4366.
- (b) Any present or potential owner of taxable property in the Port's Freeport district may request ~~the creation of a reinvestment zone and~~ a tax abatement by filing a tax abatement

application with ~~the~~ Port [Freeport](#). The application shall be filed with the Chief Financial Officer, or in the absence of a Chief Financial Officer the Chief Executive Officer, by providing an electronic version and two (2) copies. After filing the application, the owner/applicant shall provide an economic impact analysis report, in a format comparable to the Texas Governor's economic impact analysis report to the Chief Financial Officer prior to the Port Commission meeting on the applicant's tax abatement application.

- (c) The application shall consist of a completed application form accompanied by:
- a general description of the proposed use and the general nature and extent of the modernization;
  - expansion or new improvements which will be a part of the facility;
  - a map and property description;
  - CAD data or a shapefile with the boundaries of the reinvestment zone;
  - a time schedule for undertaking and completing the planned improvements

In the case of modernizing, a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form shall require such financial and other information as ~~the~~ Port [Freeport](#) deems appropriate for evaluating the financial capacity and other factors of the applicant. Applicant should not submit confidential information as part of the application. If doing so cannot be avoided, a general description in non-confidential terms should be included on the application, along with a sealed document containing the confidential information as an attachment and clearly marked "CONFIDENTIAL".

- (d) ~~The application must include a copy of the Court Order from Brazoria County Commissioners' Court granting the Abatement.~~ Before ~~acting~~ the Port Commission acts upon ~~the~~an application, [the applicant must have filed an application for tax abatement with Brazoria County.](#) [After an applicant has filed an application for tax abatement with Brazoria County,](#) the Port Commission shall hold a public hearing at which interested parties shall be entitled to speak and present written materials for or against the approval of the tax abatement. The public hearing shall also afford the applicant and the designated representative of any eligible jurisdiction opportunity to show cause why the abatement should or should not be granted. Notice of the public hearing shall be ~~clearly identified on a Port Freeport notice to be posted~~ given in the manner provided for under Chapter 551 of the Texas Government Code at least 30 days prior to the hearing.

- (e) Port Freeport will not enter into or execute a tax abatement agreement unless and until a valid Court Order granting the abatement application has been issued by the Brazoria County Commissioners Court. Any approval of an abatement application by the Port Commission prior to approval of the application by the Brazoria County Commissioners Court is and will be expressly contingent upon approval by the Brazoria County Commissioners Court and, if Port Freeport does not receive a correct copy of the Brazoria County Commissioners' Court Order approving the application within sixty (60) days following approval by the Port Commission, the approval granted by the Port Commission will automatically be revoked

(e) ~~Provided that any~~ Any final decision or interpretation as to the intent and meaning or policy of any provision or its written language; any final decision as to whether or not an application complies or does not comply with ~~the guidelines~~ these Guidelines and ~~criteria~~; Criteria, and any final decision as to whether to grant or deny tax abatement shall be made by the Port Commission at its sole discretion.

~~(f) The Port may not establish a reinvestment zone for the purpose of abatement if it finds that the request for the abatement was filed with Brazoria County after the commencement of construction, alteration, or installation of improvements related to a proposed modernization, expansion or new facility.~~

(g) Variance. Requests for variance from the provisions of Subsections (a) (b) (e) (g), (h) (1), (h) (2) and/or (h) (3) of Section 2 may be made in written form to the Chief Financial Officer, or in the absence of a Chief Financial Officer the Chief Executive Officer. Such requests shall include a complete description of the circumstances explaining why the applicant should be granted a variance. Approval of a request requires a three-fourths (3/4) vote of the members of the governing body.

#### **PUBLIC HEARING - Section 4**

If Brazoria County holds a public hearing and determines ~~a reinvestment zone or~~ an abatement agreement should not be authorized due to (1) a substantial adverse effect on the provision of government ~~services~~ services or tax base, (2) the applicant has insufficient financial capacity, (3) planned or potential use of the property would constitute hazard to public safety, health or morals, (4) violation of other codes or laws ~~and, or~~ (5) any other permissible reason, then ~~the~~ Port Freeport will follow the County's determination from the hearing to not approve the ~~zone or~~ abatement. However, approval by Brazoria County does not obligate ~~the~~ Port Freeport to likewise approve the ~~reinvestment zone or~~ abatement; rather, the Port's Commission retains full discretion and authority to grant any ~~reinvestment zone or~~ abatement on behalf of ~~the~~ Port Freeport.

#### **AGREEMENT - Section 5**

(a) After approval, the Port ~~Commissioners~~ Commission shall formally pass a resolution and execute an agreement with the Applicant as required which 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 Section 2 (g);
- (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 Application, Section II and III;
- (5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Sections 2(a), 2(f), 2(g), 2(h), 6, 7, and 8



- (6) Size of investment and average number of jobs involved for the period of abatement; and
  - (7) Provision that Applicant shall annually furnish information necessary for the Port's Freeport evaluation of Applicant's compliance with the terms and conditions of the tax abatement agreement and these guidelines and criteria (in the form of an annual report/statement of compliance), together with an additional provision that ~~the~~ Port Freeport may, at its election, request and obtain information from Applicant as is necessary for the Port's Freeport evaluation of Applicant's compliance with the terms and conditions of the tax abatement agreement and these guidelines and criteria. See Attachment A.
  - (8) Provision that, upon expiration of the tax abatement agreement, Applicant shall begin annually reporting the status of the abated improvements regarding active service and operation as part of a facility operating in a producing capacity. Reporting will be for the same amount of years as the tax abatement period (*i.e.* ten-year abatement, then follow-up reporting for ten more years). See Attachment B.
- (b) Such agreement shall be executed within sixty (60) days after the Port Commission has approved the abatement application and the applicant has ~~forwarded~~provided all necessary information and documentation to ~~the Port~~ and a public hearing has been held by the Port Commission Freeport (including a copy of the Order granting the tax abatement that was adopted by the Commissioners Court of Brazoria County).

## **RECAPTURE - Section 6**

- (a) In the event the facility contemplated herein is completed and begins producing product or service, but the company fails to maintain the level of employment (including the projected creation or retention of employment) stated in the abatement application for the property that is the subject of the abatement agreement, ~~the~~ Port Freeport may elect to:
  - (1) Declare a default and terminate the abatement agreement without recapturing prior years' abated taxes; (2) Declare a default, terminate the agreement and order a recapture of all or part of previous years' abated taxes; or (3) Set specific terms and conditions for the continuation of the abatement exemption for the duration of the term of the agreement under its present terms or alter the amount of the abatement for the remaining term of the agreement.
- (b) Should ~~the~~ Port Freeport determine that the company or individual is in default according to the terms and conditions of its agreement, ~~the~~ Port Freeport shall notify the company or individual in writing at the address stated in the agreement and if such 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 that the company or individual (1) allows its ad valorem taxes owed ~~the~~ Port Freeport 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", the agreement

then may be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the termination.

- (d) Failure to provide any requested statement or information pursuant to the provisions described in Section 5(a)(7) without just cause within sixty (60) days of the request for the information or the presentation of any false or misleading statement may, at the Port's Freeport option, be construed as a default by the company or individual and cause for immediate termination of the tax abatement agreement and recapture of all previously abated taxes, if after written notice of default, the company or individual has not cured such default prior to the expiration of thirty (30) days from such written notice. The cure period provisions of sub-sections (b) and (c) above are not applicable to a default and termination under this paragraph.

### ADMINISTRATION - Section 7

- (a) The Chief Appraiser of the County shall annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year, the company or individual receiving abatement shall furnish the assessor with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser shall notify the eligible jurisdictions, which levies taxes on the amount of the assessment.
- (b) The agreement shall stipulate that representatives of Port ~~Representatives~~ Freeport will have access to the reinvestment zone during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior 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 their safety standards.
- (c) Tax Abatement Review Committee: The Port Commission may appoint a ~~standing~~ Port Tax Abatement Review Committee (PTARC) or, if a PTARC is not appointed, shall utilize and rely on the Brazoria County Tax Abatement Review Committee (TARC) for purposes of (i) reviewing the tax abatement application and preparing a feasibility study setting out the impact of the proposed ~~reinvestment zone and~~ tax abatement ; (ii) conducting annual inspections and/or evaluations of the abated facilities to ~~insure~~ ensure compliance with the terms/conditions of the tax abatement agreement. ~~The Tax Abatement~~
- (d) Finance Advisory Committee Review-~~Committee~~: The Port Commission shall be comprised of such members as the Commission may from time to time designate utilize and rely upon the Port Freeport Finance Advisory Committee for purposes of reviewing all tax abatement applications. Prior to approval of an abatement application, the Chairman of the Finance Advisory Committee shall report to the Port Commission on the completeness of the abatement application, compatibility with best interests of Port Freeport and the community, and compliance with these Guidelines and Criteria.
- (~~e~~) Upon completion of construction, the owner of an abated facility must submit a written report/statement of compliance annually ~~to the Chief Financial Officer, or in the absence~~



~~of a Chief Financial Officer the Chief Executive Officer,~~ during the life of the abatement to the Chief Financial Officer of Port Freeport, clearly detailing the status of the facility and how it is complying with the abatement guidelines. A form of annual report that may be used by the owner is attached as Attachment A to these Guidelines & Criteria, and the owner's annual report shall, at a minimum, contain the information shown in the Attachment A form.

- (e) Upon expiration of the Tax abatement term, the owner of the abated improvements must submit a written report/statement of compliance annually, beginning January 1 after the expiration of the tax abatement term, documenting that the abated improvements remain in active service and operation as part of a facility operating in a producing capacity for an additional period equal to the abatement period granted and completed in order to receive the full term of the abatement granted and not be subject to the term reduction and recapture/payment obligation provisions. The Report shall be delivered to the Chief Financial Officer. The ~~Port~~PTARC or ~~Committee~~, if a PTARC is not formed, the Chief Financial Officer shall ~~annually evaluate each abated facility and~~ report ~~possible~~identified violations to the contract and agreement to the Port Commission. A form of annual report that may be used by the owner is attached as Attachment B to these Guidelines & Criteria, and the owner's annual report shall, at a minimum, contain the information shown in the Attachment B form.

### **ASSIGNMENT AND MODIFICATION - Section 8**

Abatement may be transferred and assigned by the holder to a new owner or lessee of the same facility upon the approval by resolution of ~~the~~Port Freeport subject to the financial capacity of the assignee and provided that all conditions and obligations in the abatement agreement are guaranteed by the execution of a new contractual agreement with ~~the~~Port Freeport. Assignee shall submit a tax abatement application, including financial information to ~~the~~Port Freeport prior to consideration of assignment. Full assignment of the abatement requires approval ~~through a public hearing~~ of the Port Commission. No assignment or transfer shall be approved if the new parties to the existing agreement, the new owner or new lessee are liable to ~~the~~Port Freeport of any ~~eligible jurisdiction~~other taxing unit for delinquent taxes or other obligations. Approval shall not be unreasonably withheld.

Abatement may be modified or amended. A modification or amendment, except those that change the commencement date, correct clerical errors, or make administrative changes (including changes to the notification section or the company name) requires approval ~~through a public hearing~~ of the Port Commission.

### **PROVISIONS REGARDING CITY-INITIATED ABATEMENTS – Section 9**

- (a) This section is applicable to tax abatement applications for property located in a reinvestment zone designated by a city and applications by applicants who have previously entered into a tax abatement agreement with a city regarding that property.
- (b) All provisions of these Guidelines & Criteria are applicable to city-initiated reinvestment zones and abated areas within a city's territorial limits unless otherwise stated herein or provided by law.

- (c) An applicant shall file a tax abatement application on the Port's Freeport application form together with all attachments and statements described in the application instructions and in subsection (d) herein below.
- (d) Upon receipt of a tax abatement application applicable to property within a city-designated reinvestment zone ~~subject to a city's tax abatement agreement~~, the application shall be reviewed for approval as to (a) correct application form, (b) represented compliance with economic value estimates and employment criteria of Section 2(h) of ~~the~~these Guidelines & Criteria, (c) legal description requirements, and (d) attachment of a correct copy of the city's ordinance designating the area as a reinvestment zone ~~and granting abatement and (e) attachment of a correct copy of the fully executed tax abatement agreement between the city and the applicant.~~
- (e) Before the Port ~~acts upon the application, an application for tax abatement must be filed with Brazoria County and a public hearing must be held by Brazoria County at which interested parties shall be entitled to speak and present written materials for or against the approval of the tax abatement. The public hearing shall also afford the applicant and the designated representative of any eligible jurisdiction opportunity to show cause why the abatement should or should not be granted.~~ Commission acts upon an abatement application under this Section, the applicant must have filed an application for tax abatement with the city. Port Freeport will not enter into a tax abatement agreement under this Section until Port Freeport has received (i) a correct copy of the city's ordinance approving the abatement application, and (ii) a correct copy of the tax abatement agreement between the city and the applicant. Any approval of an abatement application by the Port Commission prior to approval of the application by the city is and will be expressly contingent upon approval by the city and, if Port Freeport does not receive a correct copy of the city's ordinance approving the application within sixty (60) days following approval by the Port Commission, the approval granted by the Port Commission will automatically be revoked.
- (f) ~~The~~ Port Freeport will not ~~consider~~enter into or ~~approve an~~execute a tax abatement application under this section ~~agreement~~ unless and until the applicant has filed an application has been reviewed by for tax abatement with Brazoria County and a valid Court Order granting the abatement application has been issued by the Brazoria County Commissioners' Court ~~granting the~~. Any approval of an abatement is included application by the Port Commission prior to approval of the application by the Brazoria County Commissioners Court is and will be expressly contingent upon approval by the Brazoria County Commissioners Court and, if Port Freeport does not receive a correct copy of the Brazoria County Commissioners Court Order approving the application within sixty (60) days following approval by the Port Commission, the approval granted by the Port Commission will automatically be revoked.
- (g) The percentage of property value abated and the term of abatement shall be the same as that stated in the city's tax abatement agreement unless otherwise specified by ~~the~~ Port Freeport.

## SUNSET PROVISION – Section 10

- (a) 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~~ Port Freeport to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria will be modified, renewed or ~~eliminated~~repealed provided that such actions shall not affect existing contracts or applications for tax abatement filed prior to the expiration of ~~said these~~ Guidelines and Criteria. Applications for abatement filed prior to the expiration of ~~the these~~ Guidelines and Criteria shall be governed by the provisions of these Guidelines and Criteria regardless of any subsequent modification or amendment.
- (b) This policy is mutually exclusive of existing Industrial District Contracts and owners of real property in areas deserving of special attention as agreed by the ~~eligible jurisdiction~~taxing units.
- (c) Subject to Section 10(a) above, the Guidelines and Criteria for Tax Abatement that were adopted by Port Freeport on July 23, 2020 are hereby repealed. These ~~guidelines~~Guidelines and ~~policies~~Criteria for Tax Abatement shall be effective ~~August 1st~~ as of July 21, 2020~~2022~~ and shall remain in force until July ~~31~~20, 2022~~2024~~ unless amended or superseded, modified, renewed, or eliminated by the Port Commission of Port Freeport prior to that date.

(TO THE PORT FREEPORT GUIDELINES &  
CRITERIA FOR GRANTING TAX ABATEMENT)

ANNUAL REPORT FORM

**ANNUAL REPORT**  
PURSUANT TO SECTION 5(a)(7) AND 7(e) OF  
THE PORT FREEPORT  
GUIDELINES & CRITERIA ON TAX ABATEMENT

RE: TAX ABATEMENT AGREEMENT

\_\_\_\_\_ (Company/Owner Name)

REINVESTMENT ZONE (RZ) NO. \_\_\_\_\_ (Number of RZ, if applicable)

1. Commencement and/or completion date of the contemplated improvements described in the tax abatement agreement.

Date of commencement of construction: \_\_\_\_\_

Date of completion all contemplated improvements: \_\_\_\_\_

2. Number of permanent employees, contract employees and temporary contract employees currently employed by you at the tax abated facility location or construction site as of the date of this Report. (See definitions below).

Permanent Employees: \_\_\_\_\_

\* Permanent Contract Employees \_\_\_\_\_

(\* List contract employees employed on a full-time, 40 hours per week equivalency basis and who are expected to be employed on a full-time basis for the duration of the abatement period. Do not include temporary contract employees.)

\*\*Temporary Contract Employees \_\_\_\_\_

(\*\*List temporary contract employees who are employed for a temporary period ending prior to expiration of the tax abatement term)

3. Status of construction of the contemplated improvements, percentage of construction completed and Owner's estimate of taxable value of constructed improvements on the date of the Report.

Percentage of construction completed: \_\_\_\_\_

Estimated value of Improvements: \_\_\_\_\_  
As of \_\_\_\_\_

4. Status of production of the completed facility and the productive service capacity of the improvements. (*only applicable to a completed facility that has previously commenced production*)

Is the abated facility currently producing the product or similar product described in the tax abatement agreement? **Check One**  
( ) Yes or ( ) No

If the answer to the above question is “No”, please state the date or time period when production ceased and attach a narrative explanation of the reason for cessation of production as Attachment B. \_\_\_\_\_

If production at this abated facility is shut down, please state the expected date or time period, if any, at which/during which you expect the facility to resume production operations. If you do not expect to resume production at this abated facility, please state “plant closed” in the blank space. \_\_\_\_\_

State your estimate of the expected productive life of the abated facility and its improvements as measured from the beginning date of production until the expected permanent cessation of production (*or in other words*, the total number of years, if any, that you expect the abated facility improvements to be in service as part of the operations of a producing facility, including in your total any previous years of production prior to the date of this report.) \_\_\_\_\_

5. Include a list of Brazoria County vendors and services that you have used and attach the same as Attachment A to this Report.

Is the list of Brazoria County vendors and Services attached? **Check One**  
( ) Yes or ( ) No

To the best of my knowledge, the above information and estimates are true and correct.

Owner: \_\_\_\_\_

By: \_\_\_\_\_

Printed \_\_\_\_\_ Name: \_\_\_\_\_

Title/Position \_\_\_\_\_

Date: \_\_\_\_\_

(TO THE PORT FREEPORT GUIDELINES & CRITERIA  
FOR GRANTING TAX ABATEMENT)

REPORT FORM  
After the initial term of the  
Tax Abatement Agreement

**PRODUCTIVE LIFE REPORT**  
**TAX ABATEMENT TERM COMPLETED**  
PURSUANT TO SECTION 5(a)(8) AND 7(f) OF  
THE PORT FREEPORT GUIDELINES &  
CRITERIA ON TAX ABATEMENT

RE: TAX ABATEMENT AGREEMENT

\_\_\_\_\_ (Company/Owner Name)

REINVESTMENT ZONE (RZ) NO. \_\_\_\_\_ (Number of RZ, if applicable)

Effective Date of Tax Abatement: \_\_\_\_\_

1. Status of production of the completed facility and the productive service capacity of the improvements.

Is the abated facility currently producing the product or similar product described in the tax abatement agreement? **Check One**  
( ) Yes or ( ) No

If the answer to the above question is “No”, please state the date or time period when production ceased and attach a narrative explanation of the reason for cessation of production as Attachment A. \_\_\_\_\_

If production at this abated facility is shut down, please state the expected date or time period, if any, at which/during which you expect the facility to resume production operations. If you do not expect to resume production at this abated facility, please state “plant closed” in the blank space. \_\_\_\_\_

State your estimate of the expected productive life of the abated facility and its improvements as measured from the beginning date of production until the expected permanent cessation of production (*or in other words*, the total number of years, if any, that you expect the abated facility improvements to be in service as part of the operations of a producing facility, including in your total, any previous years of production prior to the date of this report.) \_\_\_\_\_



To the best of my knowledge, the above information and estimates are true and correct.

Owner: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title/Position: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A  
TAX ABATEMENT GRADUATED SCALE**

Tier 1 \$1,000,000 - \$100,000,000		Tier 2 \$100,000,001 - \$300,000,000		Tier 3 \$300,000,001 - \$500,000,000	
Year	Abatement Amount	Year	Abatement Amount	Year	Abatement Amount
1	100%	1	100%	1	100%
2	100%	2	100%	2	100%
3	80%	3	90%	3	90%
4	80%	4	90%	4	90%
5	70%	5	80%	5	90%
6	70%	6	80%	6	80%
7	70%	7	70%	7	80%
				8	70%

Tier 4 \$500,000,001 - \$1,000,000,000		Tier 5 \$1,000,000,001+		NOTES:
Year	Abatement Amount	Year	Abatement Amount	
1	100%	1	100%	Commissioners Court shall determineconsider the percent of value and the term of the abatement based upon the overall value of the project, and the number and types of new jobs being created, the extent to which local labor or local subcontractors will be used in the construction phase, the types and values of public improvements to be made, and the extent to which local vendors and suppliers will be used during the productive life of the project. Commissioners Court may vary the length and abatement percentage on a case by case basis upon consideration of the factors above and any other relevant factors. <i>[Guidelines and Criteria for Granting Tax Abatement in a Reinvestment Zone Created in Brazoria County, Page 5, Paragraph (g)]</i>
2	100%	2	100%	
3	100%	3	100%	
4	90%	4	100%	
5	90%	5	100%	
6	80%	6	80%	
7	80%	7	80%	
8	70%	8	80%	
		9	80%	
		10	80%	