

ORDINANCE NO. 303

AN ORDINANCE OF THE TOWN OF WESTLAKE, TEXAS, ADOPTING A TAX ABATEMENT POLICY AND AN ECONOMIC DEVELOPMENT INCENTIVE POLICY FOR THE TOWN; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the attraction of long term investment and the establishment of new jobs in the Town of Westlake ("Town") by virtue of the creation and adoption of an economic development incentive policy would enhance and promote local economic development and will stimulate business and commercial activity in the Town and enhance the economic base of area taxing entities; and

WHEREAS, the creation and adoption of a tax abatement policy will contribute to the retention or expansion of primary employment and will attract major investment in the Town's reinvestment zones, will benefit property located within those zones and will contribute to economic development and will stimulate business and commercial activity in the Town; and

WHEREAS, the Town must compete with other communities across the nation currently offering tax inducements to attract new plant and development projects; and

WHEREAS, the grant of economic incentives including tax abatements and refunds is one of the principal means by which the public sector and the private sector can forge a partnership to promote real economic growth within a community; and

WHEREAS, any economic development incentives offered must be strictly limited in application to those new and existing industries and operations that bring new wealth to the community in order to avoid reducing the needed tax revenues of area taxing jurisdictions; and

WHEREAS, Chapter 380 of the *Texas Local Government Code* authorizes municipalities to provide economic development programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, as an inducement for the development or redevelopment of property within the municipality; and

WHEREAS, Chapter 312 of the *Texas Tax Code* authorizes municipalities to adopt guidelines and criteria for granting tax abatements; and

WHEREAS, the Board of Aldermen of the Town of Westlake, Texas desire to establish guidelines and criteria for tax abatements and other economic development incentive programs; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF WESTLAKE, TEXAS:

SECTION 1: That the facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct and are incorporated herein in their entirety.

SECTION 2: That the Tax Abatement Policy attached hereto as Exhibit "1" and incorporated herein is hereby adopted as the Tax Abatement Policy for the Town of Westlake, Texas.

SECTION 3: That the Economic Development Incentive Policy attached hereto as Exhibit "2" and incorporated herein is hereby adopted as the Economic Development Incentive Policy for the Town of Westlake, Texas.

SECTION 4: That the terms and provisions of this Ordinance shall be deemed to be severable and that if the validity of any section, subsection, sentence, clause or phrase of this Ordinance should be declared invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, subsection, sentence, clause or phrase of this Ordinance.

SECTION 5: This ordinance shall become effective from and after its date of passage.

PASSED AND APPROVED BY THE BOARD OF ALDERMEN OF THE TOWN OF WESTLAKE, TEXAS ON THIS 3rd DAY OF AUGUST, 1998.


SCOTT BRADLEY, MAYOR

ATTEST:


Ginger Crosswy, Town Secretary

APPROVED AS TO FORM:


Paul C. Isham, Town Attorney

TOWN OF WESTLAKE
ECONOMIC DEVELOPMENT POLICY

WHEREAS, the attraction of long term investment and the establishment of new jobs in the Town of Westlake (“Town”) would enhance the economic base of area taxing entities; and

WHEREAS, the Town must compete with other communities across the nation currently offering tax inducements to attract new plant and development projects; and

WHEREAS, the grant of economic incentives including tax abatements and refunds is one of the principal means by which the public sector and the private sector can forge a partnership to promote real economic growth within a community; and

WHEREAS, any economic development incentives offered must be strictly limited in application to those new and existing industries that bring new wealth to the community in order to avoid reducing the needed tax revenues of area taxing jurisdictions; and

WHEREAS, Chapter 380 of the *Texas Local Government Code* authorizes municipalities to provide economic development programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, as an inducement for the development or redevelopment of property within the municipality; NOW, THEREFORE, the following is the “Economic Development Incentive Policy” for the Town of Westlake, Texas:

SECTION I: Definitions

- A. “Abatement” means the full or partial exemption from ad valorem taxes of certain properties for economic development purposes pursuant to the Act.
- B. “Agreement” means a contractual agreement between a property owner and the Town for the purpose of providing one or more economic development programs. Sometimes referred to as a “380 Agreement”.
- C. “Expansion” means the addition of buildings, structures, fixed equipment or machinery for the purpose of increasing production capacity.
- D. “Facility” means property improvements completed or in the process of construction which together comprise an integral whole.
- E. “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, and extends the economic life of the facility. 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, repairing, or completion of deferred maintenance.

- F. “New Facility” means a property previously undeveloped which is placed into service by means other than, or in conjunction with, expansion or modernization.
- G. “Program” means the “Economic Development Program” established by the Town by the adoption of these guidelines and criteria.
- H. “Program Payment” means the amount paid by the Town to a property owner pursuant to the Program.
- I. “Property Tax Revenues” means the amount of property tax collected by the Town on real and personal property owned or leased by a property owner entering into an Agreement.
- J. “Sales Tax Revenues” means the amount of sales tax collected by the Town as a direct result of property owner’s location in the Town, and consists of two specific components:
 - (a) The Town’s share of all sales tax collected by property owner, whether or not the sale resulting in the tax was made by property owner (“Sales Tax Collected”), and
 - (b) The Town’s share of sales and use tax paid by property owner, including sales/use tax paid directly by property owner under its direct pay permit, excluding the amount of sales/use tax paid on utilities used by property in its facilities, and any other sales/use tax paid by property owner which property owner is able to document results in sales/use tax revenue to the Town (“Sales/Use Tax Paid”).

SECTION 2: Economic Development Program Authorized

- A. Authorized Facilities: A facility may be eligible for the Town’s Economic Development Program if it will be occupied by a business or industry given priority by the Town, and results in new facilities, expansion of existing facilities, or modernization of existing facilities.
- B. Eligible Property: The Economic Development Program may be applied to improvements to real property including buildings, structures, fixed equipment, site improvements, and office space and personal property that will be owned by the applicant.

- C. Ineligible Property: Land, inventory and supplies shall be ineligible for the Economic Development Program except that land may be eligible for an ad valorem tax abatement pursuant to the terms of the Agreement.
- D. Minimum Capital Investment: In order to be eligible for the Economic Development Program, the total investment shall not be less than \$75,000,000.
- E. Period of the Economic Development Program: The Board of Aldermen of the Town may agree to exempt from taxation the value of the real property or tangible personal property and refund sales/use taxes for a period of time which is appropriate to the investment and other contributions being made in the community by the applicant.
- F. Tax Abatement Percentage: An abatement from ad valorem property taxes may be granted for up to 90% of the value of Eligible Property and land. Such percentage and term of the abatement will be determined by the following criteria:
1. Capital investment in Eligible Property.
 2. Number of jobs created.
 3. Sales tax, hotel taxes or other incomes that would be generated by the project to the benefit of the Town and other governmental entities.
 4. Off site infrastructure investment by applicant.
 5. Off site infrastructure investment by Town in order to serve the project.
 6. Public amenities provided by the applicant.

The Board of Aldermen shall have the authority to determine the percentage and term of the tax abatement according to the above criteria in order to:

1. Accomplish the Town's economic goals.
 2. Insure that the Town and other governmental entities are not hampered in their delivery of services; and
 3. Insure that a property tax burden is not shifted to present residents of the Town.
- G. Sales/Use Tax Refund: A refund of the Sales Tax Collected and/or Sales/Use Tax Paid may be granted up to a maximum of the local sales and use tax rate (presently two (2%) percent) applicable to sales within the Town. Such percentage will be determined by applying the criteria listed in E. above as well as considering the amount of local sales and use tax generated by the Eligible Property. In considering the percentage of refund, the Board will also recognize that one (1%) percent of the local two (2%) is restricted by Sections 4A and 4B of the Development Act of 1979, as amended, art. 5190, V.T.C.S.

- H. Employment Qualifications: In order to be eligible for the Economic Development Program, the planned improvement must create and maintain for the term of the Agreement, employment for at least 1000 people on a permanent basis within the Town of Westlake.
- I. Master Planned Development: The Town may enter into an Economic Development Program Agreement with an applicant developing an area in excess of 2,000 acres of land which includes the construction of public improvements and amenities without requiring the applicant to meet the Minimum Capital Investment or Employment Qualifications.

SECTION 3: Application

- A. Written Request: Any present or potential owner of property may request participation in the Economic Development Program by submitting a written request to the Town of Westlake. Westlake's determination shall be based upon an evaluation of the following "Contents of Request" and any other information and material, which each applicant may be requested to provide to the Town. In submitting the following information, the applicant should indicate the appropriate time frames in which the proposed events and/or resulting impacts will occur, where applicable. Additionally, it is understood that the information contained in the request will be, out of necessity, estimates only, but the applicant will endeavor to provide the most accurate estimates possible based upon available information. The applicant may be requested by the Town to describe the methodologies utilized to respond to the questions and to supply supporting documents.
- B. Contents of Request: The request shall include the following information:
 - 1. Employee Impact
 - a. Number of jobs to be created in Westlake.
 - b. Percentage of new employees coming from (i) outside of Westlake and (ii) outside of the State of Texas.
 - c. Types of jobs being created.
 - d. The total projected annual payroll of the newly created jobs.
 - 2. Proposed Improvements
 - a. Description of the kind, number and location of all proposed improvements to the property and the estimated development schedule of the proposed improvements.

- b. Describe the infrastructure improvements that will be required to serve the proposed project and the estimated construction cost for the infrastructure improvements.

3. Fiscal Impact

- a. Amount of real and personal property value added to the tax roll.
- b. Estimated amount of sales/use tax generated by the improvements both as to Sales Tax Collected and Sales/use Tax Paid.
- c. Impact of the proposed improvements on existing business and/or office facilities.
- d. Estimated cost to the Town to provide municipal services to the proposed project.

4. Community Impact

- a. Projected or anticipated impact of the project on (i) local housing market, (ii) local school districts, (iii) county government(s) and other taxing entities, (iv) the environment, and (v) the Town of Westlake.
- b. Compatibility of the proposed project with the Town's Comprehensive Plan, Thoroughfare Plan, and Open Space Plan.
- c. Requirements for rezoning and platting/replatting.

- C. Feasibility: Upon receipt of the request and all necessary information, the Town shall consider the feasibility and the impact of the proposed Economic Development Program. The study of feasibility shall include, but not be limited to, an estimate of the economic and aesthetic effects of the proposed improvements and the benefits to the governmental jurisdictions in the area as compared to the incentives granted in the Economic Development Program.

SECTION 4: Approval

In order to enter into an Economic Development Program Agreement, the Town must find that the terms of the proposed Agreement meet these guidelines and criteria. Nothing herein shall be construed to limit the authority of the Town to examine each request on a case by case basis and determine whether or not the proposed project and improvements comply with the intent of these guidelines and criteria. Nothing herein shall be construed as to require the Board of Aldermen to approve any request for benefits under the Economic Development Program, and the Board of Aldermen may reject any request without cause. Requests for the Town to provide economic development incentives shall be considered on a case-by-case basis. If the Board of Aldermen approve a request for participation in the Economic Development Program, an Agreement pursuant to Section 5 will be entered into between the Town and the property owner.

SECTION 5: Agreement

The Economic Development Program Agreement with the owners of the property shall include, but not be limited to, the following:

1. The proposed use of the property, nature of construction, time schedule, map property description and improvements list, and other information contained in the request.
2. The amount of capital investment and minimum number of jobs created by the project.
3. The economic development incentives or benefits granted by the Town, the submission of data to support Program payments, and the mechanism for making Program payments.
4. The term of the Agreement.
5. The contractual obligations in the event of default.
6. Reporting requirements for confirming the capital investment and jobs created.

Nothing in this policy shall prevent the Town of Westlake and an applicant from including terms and provisions in an Economic Development Program Agreement that are in addition to the provisions of this policy.

SECTION 6: Administration

- A. Access to Improvements: The Agreement shall stipulate that employees and/or designated representatives of the Town will have access to the improvements during the term of the Agreement to inspect the improvements and facilities to determine if the terms and conditions of the Agreement are being met. All inspections shall be conducted in a manner as to not unreasonably interfere with the construction and/or operation of the facilities. All inspections shall be made with one or more representatives of the property owner or lessee, and in accordance with its safety standards.
- B. Annual Evaluation: Upon completion of construction, or phase of construction, the Town shall annually evaluate each facility participating in the Economic Development Program and report possible violations of the Agreement to the Board of Aldermen.
- C. Transfer or Assignment: A Economic Development Program Agreement may provide for the assignment or transfer of the Program incentives or benefits provided that the it involves the same property that is the subject of the Agreement.

TOWN OF WESTLAKE
TAX ABATEMENT POLICY

WHEREAS, the attraction of long term investment and the establishment of new jobs in the Town of Westlake (“Town”) would enhance the economic base of area taxing entities; and

WHEREAS, the Town must compete with other communities across the nation currently offering tax inducements to attract new plant and development projects; and

WHEREAS, the grant of economic incentives including tax abatements and refunds is one of the principal means by which the public sector and the private sector can forge a partnership to promote real economic growth within a community; and

WHEREAS, any economic development incentives offered must be strictly limited in application to those new and existing industries that bring new wealth to the community in order to avoid reducing the needed tax revenues of area taxing jurisdictions; and

WHEREAS, Chapter 312 of the *Texas Tax Code* authorizes municipalities to provide ad valorem property tax abatements as an inducement for the development or redevelopment of property within the municipality; NOW, THEREFORE, the following is the “Tax Abatement Policy” for the Town of Westlake, Texas:

SECTION 1: Definitions

- A. “Abatement” means the full or partial exemption from ad valorem taxes of certain properties for economic development purposes pursuant to the Act.
- B. “Agreement” means a contractual agreement between a property owner and the Town for the purpose of providing a tax abatement.
- C. “Expansion” means the addition of buildings, structures, fixed equipment or machinery for the purpose of increasing production capacity.
- D. “Facility” means property improvements completed or in the process of construction which together comprise an integral whole.
- E. “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, and extends the economic life of the facility. 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, repairing, or completion of deferred maintenance.

- F. “New Facility” means a property previously undeveloped which is placed into service by means other than, or in conjunction with, expansion or modernization.
- G. “Property Tax Revenues” means the amount of property tax collected by the Town on real and personal property owned or leased by a property owner entering into an Agreement.

SECTION 2: Tax Abatement Program Authorized

- A. Authorized Facilities: A Facility may be eligible for the Town’s Tax Abatement Program if it will be occupied by a business or industry given priority by the Town, and results in new facilities, expansion of existing facilities, or modernization of existing facilities.
- B. Eligible Property: The Tax Abatement Program may be applied to improvements to real property including buildings, structures, fixed equipment, site improvements, and office space and personal property that will be owned by the applicant.
- C. Ineligible Property: Land, inventory and supplies shall be ineligible for the Tax Abatement Program.
- D. Minimum Capital Investment: In order to be eligible for the Economic Development Program, the total investment shall not be less than \$75,000,000.
- E. Period of the Tax Abatement Program: The Board of Aldermen of the Town may agree to exempt from taxation the value of the real property and/or tangible personal property for a period of time not to exceed ten (10) years.
- F. Tax Abatement Percentage: An abatement from ad valorem property taxes may be granted for up to 90% of the value of Eligible Property. Such percentage and term of the abatement will be determined by the following criteria:
 - 1. Capital investment in Eligible Property.
 - 2. Number of jobs created.
 - 3. Sales tax, hotel taxes or other incomes that would be generated by the project to the benefit of the Town and other governmental entities.
 - 4. Off site infrastructure investment by applicant.

5. Off site infrastructure investment by Town in order to serve the project.
6. Public amenities provided by the applicant.

The Board of Aldermen shall have the authority to determine the percentage and term of the tax abatement according to the above criteria in order to:

1. Accomplish the Town's economic goals.
 2. Insure that the Town and other governmental entities are not hampered in their delivery of services; and
 3. Insure that a property tax burden is not shifted to present residents of the Town.
- G. Employment Qualifications: In order to be eligible for the Tax Abatement Program, the planned improvement must create and maintain for the term of the Agreement, employment for at least 1000 people on a permanent basis within the Town of Westlake.

SECTION 3: Application

- A. Written Request: Any present or potential owner of property may request participation in the Tax Abatement Program by submitting a written request to the Town of Westlake. Westlake's determination shall be based upon an evaluation of the following "Contents of Request" and any other information and material, which each applicant may be requested to provide to the Town. In submitting the following information, the applicant should indicate the appropriate time frames in which the proposed events and/or resulting impacts will occur, where applicable. Additionally, it is understood that the information contained in the request will be, out of necessity, estimates only, but the applicant will endeavor to provide the most accurate estimates possible based upon available information. The applicant may be requested by the Town to describe the methodologies utilized to respond to the questions and to supply supporting documents.
- B. Contents of Request: The request shall include the following information:
1. Employee Impact
 - a. Number of jobs to be created in Westlake.
 - b. Percentage of new employees coming from (i) outside of Westlake and (ii) outside of the State of Texas.
 - c. Types of jobs being created.
 - d. The total projected annual payroll of the newly created jobs.
 2. Proposed Improvements

- a. Description of the kind, number and location of all proposed improvements to the property and the estimated development schedule of the proposed improvements.
- b. Describe the infrastructure improvements that will be required to serve the proposed project and the estimated construction cost for the infrastructure improvements.

3. Fiscal Impact

- a. Amount of real and personal property value added to the tax roll.
- b. Estimated amount of sales/use tax generated by the improvements both as to Sales Tax Collected and Sales/use Tax Paid.
- c. Impact of the proposed improvements on existing business and/or office facilities.
- d. Estimated cost to the Town to provide municipal services to the proposed project.

4. Community Impact

- a. Projected or anticipated impact of the project on (i) local housing market, (ii) local school districts, (iii) county government(s) and other taxing entities, (iv) the environment, and (v) the Town of Westlake.
- b. Compatibility of the proposed project with the Town's Comprehensive Plan, Thoroughfare Plan, and Open Space Plan.
- c. Requirements for rezoning and platting/replatting.

- C. Feasibility: Upon receipt of the request and all necessary information, the Town shall consider the feasibility and the impact of the proposed tax abatement. The study of feasibility shall include, but not be limited to, an estimate of the economic and aesthetic effects of the proposed improvements and the benefits to the governmental jurisdictions in the area as compared to the incentives granted by the tax abatement.

SECTION 4: Approval

In order to enter into an Tax Abatement Agreement, the Town must find that the terms of the proposed Agreement meet these guidelines and criteria. Nothing herein shall be construed to limit the authority of the Town to examine each request on a case by case basis and determine whether or not the proposed project and improvements comply with the intent of these guidelines and criteria. Nothing herein shall be construed as to require the Board of Aldermen to approve any request for benefits under the Tax Abatement Program, and the Board of Aldermen may reject any request without cause. Requests for the Town to provide economic development incentives shall be considered on a case-by-case basis. If the Board of Aldermen approve a request for participation in the Tax Abatement Program, an Agreement pursuant to Section 5 will be entered into between the Town and the property owner.

SECTION 5: Agreement

The Tax Abatement Agreement with the owners of the property shall include, but not be limited to, the following:

1. The proposed use of the property, nature of construction, time schedule, map property description and improvements list, and other information contained in the request.
2. The amount of capital investment and minimum number of jobs created by the project.
3. The tax abatement granted by the Town and the submission of data to support the abatement.
4. The term of the Agreement.
5. The contractual obligations in the event of default including the recapture of abated taxes.
6. Reporting requirements for confirming the capital investment and jobs created.
7. Reporting requirements to the tax appraisal district(s).

Nothing in this policy shall prevent the Town of Westlake and an applicant from including terms and provisions in an Tax Abatement Agreement that are in addition to the provisions of this policy.

SECTION 6: Administration

- A. Access to Improvements: The Agreement shall stipulate that employees and/or designated representatives of the Town will have access to the improvements during the term of the Agreement to inspect the improvements and facilities to determine if the terms and conditions of the Agreement are being met. All inspections shall be conducted in a manner as to not unreasonably interfere with the construction and/or operation of the facilities. All inspections shall be made with one or more representatives of the property owner or lessee, and in accordance with its safety standards.
- B. Annual Evaluation: Upon completion of construction, or phase of construction, the Town shall annually evaluate each facility participating in the Tax Abatement and report possible violations of the Agreement to the Board of Aldermen.

- C. Transfer or Assignment: The Tax Abatement Agreement may provide for the transfer or assignment of the abatement to a new property owner provided that the abatement involves the same property that is the subject of the Agreement.