

CITY OF SEALY  
TAX INCENTIVES POLICY  
TAX ABATEMENT  
PROCEDURES & CRITERIA



ADOPTED  
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# **CITY OF SEALY, TEXAS POLICY FOR TAX INCENTIVES**

## **I. The City of Sealy**

The City of Sealy is located approximately 50 miles west of Houston, 150 miles east of San Antonio, and 120 miles southeast of Austin, in the southeastern region of Texas. It was founded in 1879 by George Sealy of Galveston and incorporated on August 16, 1949. A Sealy pioneer patented one of the first mattresses. A blend of Anglo-Saxon, German, and Czech cultures is seen in architecture, food, and customs. The population in Sealy increased 15.6% from 1990 to 2000. In 1990, the population was 4,541, but by 2000, it had increased to 5,248. In 2007, the U.S. Census Bureau estimates the population at 6,208.

Sealy is traversed by Interstate Highway 10, State Highway 36 and farm-to-market roads. Commercial passenger airport service is available 63 miles away at Houston Intercontinental and Houston Hobby Airports.

With its small town charm and location, Sealy is a great place to work and call home.

## **II. General Purpose and Objectives**

The City of Sealy is committed to the promotion of quality development in all parts of the city and to improving the quality of life for its citizens. In order to help meet these goals, the City will consider providing incentives to stimulate economic development within the city. It is the policy of the City of Sealy that such incentives will be provided to appropriate business and property owners in accord with the procedures and criteria outlined in this document. Nothing herein shall imply or suggest that the City of Sealy is under any obligation to provide economic incentives to any applicant. All applicants shall be considered on a case-by-case basis.

## **III. Criteria for Economic Development Incentives**

### **A. Minimum Requirements for Business**

1. The proposed development, redevelopment and/or expansion must create or maintain jobs within the city, and provide taxable property improvements within the city.
2. The project must meet the overall development goals, building codes and other applicable ordinances of the city.

- B. In addition to the minimum requirements stated above, the following criteria will be considered in determining what level of economic incentives will be provided to the applicant:
1. Expansion of the local tax base.
  2. Creation of permanent full-time employment opportunities.
  3. The types and cost of public improvements (e.g., drainage, streets, water, sewer) and service (e.g., police, fire) that the city would be required to provide.
  4. The type and value of public improvements which will be made by the applicant.
  5. The method or methods which will be available to recapture property tax revenue lost as a result of entering into an economic incentive agreement with the applicant, if the applicant fails to fulfill its responsibilities under the agreement.
  6. The amount of time necessary to complete the project and create the jobs which are to be provided by the applicant.
- C. Preference will be given to businesses which use local suppliers, contractors, and labor force.

#### **IV. Types of Incentives**

##### **A. Tax Abatement**

The City of Sealy will, on a case-by-case basis, give consideration to providing tax abatements as a stimulation for economic development. All applications for tax abatement must be for commercial and/or industrial improvements. For commercial and industrial projects, tax abatements may apply to both new facilities and structures and for the expansion or modernization of existing facilities and structures. The tax abatement will apply only to the increase in the value of the property due to improvements. The property's current value may not be exempted.

The minimum, as well as the criteria listed in Section III, B of this policy will be used by the city to determine whether it is in the best interest of the city to provide tax abatements to a particular applicant. The degree to which the purpose and objectives of the city, as well as, the relative value of other incentives, will be used to determine the total value and duration of the tax abatement provided to any applicant.

The complete City of Sealy Tax Abatement Policy is attachment 1 to this document.

## B. Texas Leverage Fund

The Texas Leverage Fund is an “economic development bank” that can loan money up to 15 years at Wall Street Journal prime floating interest rates. The maximum amount of loans is dependent upon the city’s sales tax collection.

This fund can be utilized for local businesses and for the recruitment of new businesses.

## C. Industrial Revenue Bonds

The City of Sealy may issue Industrial Revenue Bonds (I.R.B.) for economic development projects. The Development Corporation Act allows the city to form non-profit industrial development corporations or authorities on their behalf. The purpose is to issue taxable and tax-exempt bonds for eligible projects in their jurisdictions.

The industrial development corporation acts as a conduit through which all monies are channeled. Generally, all debt services on the bonds are paid by the business under the terms of a lease, sale, or loan agreement. As such, it does not constitute a debt or obligation of the governmental unit, the industrial development corporation, or the State of Texas.

One of the major advantages of an I.R.B. financing is lower interest rates based on the tax exempt status of the interest on the bonds. Depending upon each company’s goals and priorities, various financing structures may also provide the company with other advantages such as off balance sheet financing.

In order for bonds to be issued on a tax exempt basis for a manufacturing facility, the bonds must receive a volume cap allocation in the amount of the bonds issued.

In analyzing whether tax exempt I.R.B. financing can be utilized, there are a number of federal tax law rules and guidelines that must be reviewed.

## **V. Value of Incentives Provided**

The subjective criteria outlined in Section III, B will be used by the City Council in determining whether or not it is in the best interest of the city to recommend that tax abatements or other economic development incentives will be offered to a particular applicant. Specific consideration will include the degree to which the project furthers the goals and objectives of the community, as well as, the relative impact of the project. Once a determination has been made that a tax abatement would be offered, the terms of the abatement will be worked out between the City and the applicant as outlined in the City's Tax Abatement Policy (Attachment 1).

## **VI. Procedural Guidelines**

Any person, organization or corporation desiring that the City of Sealy consider providing economic development incentives shall comply with the following procedural guidelines.

### **A. Preliminary Application Steps**

1. Applicant shall file an application on a form provided by the city.
2. Applicant should address all subjective criteria listed in Section III, B of this policy.
3. Applicant should provide a plat showing the precise location of the property, all roadways within 200 feet of the site, all existing land use on the site, and all existing land use within 50 feet of the site.
4. A complete legal description of the property.
5. A time schedule of the planned improvements.
6. A summary description of the new facility or expansion.
7. Applicant should complete all forms and information detailed in items 1 to 6 above and submit to the City Manager.

### **B. Application Review Steps**

1. All information submitted as detailed above will be reviewed for completeness, accuracy, and the rationale for the projection made. Additional information may be requested as needed.
  2. The application will be reviewed in light of the criteria for considering economic development by the City.
- C. Consideration of the Application
1. The City Council will discuss the application with city staff at a work session.
  2. At a subsequent City Council meeting, all necessary legal documents will be considered for approval following the evaluation of all relevant staff recommendations.
  3. If the economic development incentive under consideration is a tax abatement, additional steps, including a public hearing may be required.

## **VII. Execution of Agreements**

Should the City Council determine that it is in the best interest of the City of Sealy to provide economic development incentives to a particular applicant, a resolution shall be adopted declaring that under the guidelines and criteria established herein, the application is eligible for economic development incentives. The resolution shall further authorize the Mayor to execute a contract with the applicant governing the provision of the incentives.

Any agreement so adopted must include at least the following specific items:

1. A list of the kind, number, and location of all proposed improvements of the property;
2. A provision for access and authorization to City employees to inspect the property to ensure that the improvements or repairs are made according to the specification and conditions of the agreement;
3. A limit on uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect;
4. A provision for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement;
5. Each term agreed to by the owner of the property;
6. A requirement that the owner of the property certify annually to the City Council that the owner is in compliance with each applicable term of the agreement; and
7. A provision that the City Council of the City may cancel or modify the agreement if the property owner fails to comply with the agreement.

An agreement may include, at the option of the City Council, provisions for:

1. Improvements or repairs by the City Council to streets, sidewalks, and utility services or facilities associated with the property, except that the agreement may not provide for lower charges or rates than are made for other services or properties of a similar character;
2. An economic feasibility study, including a detailed list of estimated improvement costs, a description of the methods of financing all estimated costs, and the time when related costs or monetary obligations are to be incurred;
3. A map showing existing uses and conditions of real property in the reinvestment zone;
4. A map showing proposed improvements and uses in the reinvestment zone;
5. Proposed changes of the master plan, the map, building codes, and city ordinances; and
6. The recapture of all or a portion of property tax revenue lost as a result of the agreement if the owner of the property fails to create all or a portion of the number of new jobs provided by the agreement, if the appraised value of the property subject to the agreement does not attain a value specified in the agreement, or if the owner fails to meet any other performance criteria provided by the agreement, and payment of a penalty or interest, or both, on that recaptured property tax revenue.

### **VIII. Confidentiality of Proprietary Information**

Information that is provided to the City of Sealy in connection with an application or request for economic incentives in accordance with the above criteria and guidelines and which describes the specific process or business activities to be conducted or equipment or other property to be located on the property for which the economic incentives are sought is confidential and not subject to public disclosure until the economic incentives agreement is executed. The information in the custody of the City of Sealy after the agreement is executed is not confidential and would be required to be released under the Texas Open Records Act.

### **IX. Event of Default**

During the time period covered by the terms of the agreement, the city must declare a default hereunder by the owner if the owner fails to commence construction of the new facility covered under the agreement within two (2) years from the date the agreement is executed, fails to construct the facility as described, or refuses or neglects to comply with any of the terms of this agreement, or if any representation made by the owner in this agreement is raised or misleading, in any material respect, or the constructed facility fails to meet the economic qualifications as outlined within the agreement. Should the city determine the owner to be in default of the agreement, the city shall notify the owner in writing prior to the end of the abatement period, and if such default is not cured within sixty (60) days from the date of such notice (“cure period”), then the agreement may be terminated; provided, however, that in the case of a default that for causes beyond the owner’s reasonable control cannot with due diligence be cured within such sixty (60) day period, the cure period shall

be deemed extended if owner (1) shall immediately, upon receipt of such notice, advise the city of the owner's intention to institute all steps necessary to cure such default, and (2) shall institute and thereafter proceed to completion with reasonable dispatch all steps necessary to cure same.

In the event the owner allows its ad valorem taxes owed the city to become delinquent and fails to timely and properly follow the legal procedures for their agreement and fails to cure during the cure period, the agreement may then be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of termination. In the same event the facility contemplated herein is completed and begins producing product or service but subsequently discontinues producing product or service for any reason excepting fire, explosion or other casualty, accident or natural disaster, for a period of one year during the agreement period, then the agreement shall terminate. In the event of termination pursuant to the provisions of its paragraph, any abatement of the taxes for the calendar year during which the facility no longer produces shall terminate, but there shall be no recapture of prior years' taxes abated by virtue of the agreement. Any taxes otherwise abated for the calendar year during which the facility no longer produces shall be paid to the city prior to the delinquency date for such year; provided, however, that in no event shall the owner be required to pay such taxes within less than sixty (60) days of the termination.

*“ATTACHMENT 1”*

**CITY OF SEALY, TEXAS  
TAX ABATEMENT PROCEDURES & CRITERIA**

**SECTION 1 – DEFINITIONS**

**Abatement** means the full or partial exemption from ad valorem taxes of certain new improvements of real and/or personal property for economic development purposes.

**Agriculture facility** means buildings, structures and major earth structure improvements, including fixed machinery and equipment, the primary purpose of which is processing, refining, packaging, and distributing food and/or fiber products in commercially marketable quantities.

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

**Base Year Value** means the assessed value of eligible property on 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.

**Commercial Office Facility** means office buildings rented to non-retail users. These buildings are designed as garden, mid-rise or high-rise structures.

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

**Economic life** means the number of years a property improvement is expected to be in service in a facility. Provided, however, that in no circumstance shall the number of years exceed the depreciation allowance specified in the United States Internal Revenue Code.

**Eligible Jurisdiction** means the City of Sealy.

**Expansion** means the addition of building, structures, fixed machinery, equipment, and personal property for the purpose of increasing production capacity.

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

**Housing** means new housing designed to accommodate shelter and living quarters for one or a few families in separate units, including new single-or multi-family housing projects or apartments, but excluding hotels and motels.

**Manufacturing Facility** means building, structures, fixed machinery, equipment and personal property, the primary purpose of which is or will be the manufacturer of tangible goods or materials or the processing of such goods or materials by physical or chemical change.

**Modernization** means the upgrading of existing facilities, which increase the productive input or output, update the technology or substantially lowers the unit cost of the operation; modernization may result from the construction, alternation, or installation of buildings, structures, fixed machinery, equipment and personal property. It shall not be for the purpose of reconditioning, refurbishing or repairing.

**New Facility** means a property previously undeveloped that is placed in service by means other than or in conjunction with expansions or modernization.

**New Machinery and Equipment and/or Personal Property** means tangible machinery, equipment, or personal property that is securely placed or fastened and stationary within a building or structure or permanently resides in the City of Sealy.

**Other Basic Industry** means buildings and structures including fixed machinery, equipment, and personal property not elsewhere described, used or to be used for the production of products or services, from which a majority of revenues generated by the facility are derived from outside the City of Sealy.

**Regional Distribution Facility** means buildings and structures including fixed machinery, equipment, and personal property used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility, from which a majority of revenues generated by the activity at the facility are derived from outside the City of Sealy.

**Regional Entertainment/Tourism Facility** means buildings and structures, including fixed machinery, equipment, and personal property used or to be used to provide lodging (hotel/motel), entertainment and/or tourism related services, from which a majority of revenues generated by the activity at the facility are derived from outside the City of Sealy.

**Regional Service Facility** means buildings and structures, including fixed machinery, equipment, and personal property used or to be used to provide a service, from which a majority of revenues generated by activity at the facility are derived from outside the City of Sealy.

**Research Facility** means buildings and structures, including fixed machinery, equipment, and personal property used or to be used primarily for research and experimentation to improve or develop the production process.

**Retail Facility** means space provided for the conducting and management of business, and the storing and selling of goods directly to the customer.

## **SECTION 2 – ABATEMENT AUTHORIZED**

- (A) Authorized Tax Abatement Categories. The following categories may be eligible for abatement.

- Manufacturing Facility
- Research Facility
- Agriculture Facility
- Regional Distribution Facility
- Regional Service Facility
- Regional Entertainment/Tourism Facility
- Commercial Office Facility
- Retail Facility
- Other Basic Industry

- (B) Authorized Date. A facility shall be eligible for tax abatement if it has applied for such abatement prior to the commencement of construction.

- (C) Creation of New Value. Abatement may be granted for the additional value of eligible property improvement made subsequent to and in an abatement agreement between the City of Sealy and the property owner and/or lessee, subject to such limitations as the City Council may require.

- (D) New and Existing Facilities. Abatement may be granted to new facilities and improvements to existing facilities for the purpose of modernization and expansion.

- (E) Eligible Property. Abatement may be extended to the value of buildings, structures, fixed machinery, equipment, personal property, site improvements plus the office space, related fixed improvements, and personal property must exceed the life of the abatement agreement.

- (F) Ineligible Property. The following classes of property shall be fully taxable and ineligible for abatement:

- Land
- Inventories
- Supplies
- Deferred maintenance investments
- Property that is associated with any activity that is illegal under federal, state, or local law
- Property owned or used by the State of Texas or its political subdivisions

Property owned by any organization, which is owned, operated or directed by a political subdivision  
Housing

- (G) Leased Facilities. If an authorized facility eligible for tax abatement is leased, the agreement shall be executed with both the lessor and the lessee.
- (H) Value and Term of Abatement. Abatement shall be granted effective with the January 1 valuation date immediately following the date of execution of the agreement. The value and term of abatement on new eligible property shall be determined in accordance with the following: The objective and premium criteria listed in the City of Sealy's Policy Statement on Economic Development Incentives. The total value of the tax abatement provided would depend upon the degree to which the specific project furthers the goals and objectives of the City of Sealy, and the relative impact of the project. Tax abatement will be subject to the following guidelines:
  - (1) As a general rule, no tax abatements will be granted in an amount which exceeds the estimated costs to the City of Sealy for support of the project. To determine these costs, a fiscal model analysis will be used.
  - (2) When an applicant project meets the eligible criteria specified in the economic qualification (K) and achieves a score of at least 50 points, that project may be granted tax abatement on real property. The length of time and the percentage of tax abatement will be determined according to the scoring scale found in Section 3: Point Criteria.
  - (3) When an applicant project meets the eligibility criteria in the economic qualification (K) and achieves a score of at least 350 points, that project may be granted tax abatement on both real and personal property. The length of time and the percentage of tax abatement will be determined according to the scoring scale found in Section 3: Point Criteria.
  - (4) In some special instances, projects that meet the economic qualifications for tax abatement may be considered for premium points for tax abatement if they cannot meet the 50 point score. These instances include:
    - (a) Projects that contribute significantly to specific economic development goals but which may be small scale.
    - (b) Small scale development, redevelopment or expansion projects in the city that make a significant impact on the area.
    - (c) Retention of existing industry where companies are making a significant investment in new machinery and equipment in an effort to update their current technology which does not result in significant new construction to existing facility, but where the new machinery and equipment will assist in maintaining or improving their

competitive advantage in the market place, thus retaining current employment levels and/or additional employees while maintaining existing tax to the city.

- (I) Tax abatement formulas appropriate to the nature and scale of these projects may be negotiated if the percentage and term guidelines do not adequately meet the objectives of the project.
- (J) The duration of an abatement agreement shall not exceed 10 years or one-half of the economic life of the eligible property, whichever is less. Further, under no circumstances shall the value of the abatement exceed 100 percent of the eligible property in a single year.
- (K) Economic Qualifications. In order to be eligible to receive tax abatement, the planned expansion or modernization of an existing enterprise or the planned new facility must meet the following qualifications:
  - (1) Be expected to prevent the loss of employment or create employment for not less than 1 person associated with the production of goods and services at the authorized facility on a full-time basis, permanent employees totaling an average of not less than 40 hours per week may be considered as one full-time employee.
  - (2) Companies seeking to qualify for tax abatements on the basis of job retention shall document that without the tax abatement, the company will either reduce staff or cease operations.
  - (3) Not be expected to solely and primarily have the effect of transferring employment from one part of the city to another.
  - (4) Companies must make every effort to use local resources (employees, materials, services, etc.)
- (L) Other Qualifications. The applicant must certify that the applicant does not employ nor will it employ any undocumented workers (an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or, authorized under law to be employed in that manner in the United States). The applicant must agree that if it is convicted of a violation under 8 U.S.C. Section 1324a(f) after receiving a tax abatement, applicant shall repay the amount of the tax abatement with interest, at the rate of 12% per annum, within 120 days after the City notifies the applicant of the violation. The City shall have the authority to bring a civil action to recover any amounts which the applicant must repay the City under this provision, and in such action may recover court costs and reasonable attorneys fees.

- (M) Taxability. From the execution of the abatement agreement to the end of the agreement period, taxes shall be payable as follows.
- (1) The value of the ineligible property as provided in Section 2(F), above, shall be taxable, and
  - (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 accordance with the terms of the tax abatement agreement, and
  - (4) The additional value of new eligible property shall be taxable at the end of the abatement period.
- (N) Tax Abatement Review. The City Staff and City Council will review all tax abatement requests. The City Council will have final approval of all tax abatements.
- (O) Conflict of Interest. Except as hereinafter provided, property that is owned or leased by a person who is a member of the City Council or the planning board or commission of the City is excluded from property tax abatement. Property that is subject to a tax abatement agreement in effect when the person becomes a member of the City Council or the planning board or commission does not cease to be eligible for property tax abatement under that agreement because of the person's membership on the City Council, board, or commission.

### **SECTION 3 – POINT CRITERIA**

The following is an objective scoring scale designed to evaluate a number of specific components common to all applicants. Applicants are assigned points based upon comparable economic impact.

- (A) How many new jobs will be created? (Assign 50 points for the first job that meets the minimum requirements and 10 points for all additional ones.)
- (B) How many existing jobs will be retained? (Assign 50 points for the first job that meets the minimum requirement and 10 points for all additional ones.)
- (C) How much new local annual payroll will be created? (Assign 10 points per \$25,000 of payroll.)
- (D) How much existing payroll will be retained? (Assign 10 points per \$25,000 of payroll.)
- (E) How much real property tax base valuation will be added? (Assign 10 points per \$25,000 in real property up to 1 million and one-half point per \$25,000 above 1 million.)
- (F) How much personal property tax base valuation will be added? (Assign 10 points per \$25,000 in personal property up to 1 million and one-half point per \$25,000 above 1 million.)

<b>POINTS</b>	<b>REAL PROPERTY</b>	<b>PERSONAL PROPERTY</b>
	Abatement per year	Abatement per year
20-49	35%-25%-10%	
50-149	75%-50%-35%-25%-10%	
150-199	75%-50%-50%-25%-10%	
200-249	75%-50%-50%-50%-10%	
250-299	75%-50%-50%-50%-50%	
300-349	75%-65%-50%-50%-50%	
350-399	75%-65%-65%-50%-50%	50%-35%-25%-15%-10%
400-449	75%-65%-65%-65%-50%	50%-50%-25%-15%-10%
450-499	75%-65%-65%-65%-65%	50%-50%-50%-15%-10%
500-600	75%-75%-75%-65%-65%	50%-50%-50%-50%-10%

Special tax abatement formulas may be negotiated for projects meeting the standard for tax abatement, which achieve a point score that exceeds 600 points. Projects may be granted a tax abatement on both real and personal property of up to 100% for a period of years.

In addition to the objective criteria for which specific point values can be assigned/subtracted, several additional considerations must be evaluated to obtain premium/penalty points of up to ten points per item listed below. The applicant is asked to respond in written narrative format to the items listed below:

- (A) Is the project sponsor a local company?
- (B) What types and values of public improvements, if any, will be made by the applicant?
- (C) Will the occupants of the project be owners or lessees? If lessees, are occupancy commitments already existing?
- (D) What positive impact will the project have on other taxing entities?
- (E) Are the new jobs to be created likely to be filled from the City of Sealy labor pool?
- (F) Will the project substantially increase business opportunities for existing local suppliers and contractors?
- (G) will the project compete with existing businesses to the detriment of the local economy?
- (H) Does the project pose any negative environmental, operational, visual or other impacts?