

**STATE OF TEXAS**

**KENDALL COUNTY**

**KENDALL COUNTY RESOLUTION AND ORDER NO. 07-27-2020**

**ELECTING TO BECOME ELIGIBLE TO PARTICIPATE IN TAX ABATEMENT,  
ADOPTING TAX ABATEMENT GUIDELINES AND CRITERIA, AND ESTABLISHING  
A PROGRAM TO STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN  
KENDALL COUNTY, TEXAS**

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

**WHEREAS**, tax abatement provides a valuable economic tool for use by the County and others interested in supporting and creating jobs in Kendall County; and

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

**WHEREAS**, pursuant to section 312.002, Texas Tax Code, Kendall County may not enter into a tax abatement agreement unless the Commissioners Court establishes guidelines and criteria governing tax abatement and tax abatement agreements and, by resolution, elects to become eligible to participate in tax abatement; and

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

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

**WHEREAS**, the Commissioners Court may develop and administer a program pursuant to Section 381.004, Texas Local Government Code to stimulate business and commercial activity by entering into a tax abatement agreement with an owner or lessee of a property interest subject to ad valorem taxation, the terms of a tax abatement agreement being governed by the provisions of Sections 312.204, 312.205, and 312.211, Texas Tax Code; and

**WHEREAS**, the Commissioners Court may develop and administer a program pursuant to Section 381.004, Texas Local Government Code to stimulate business and commercial activity by developing and administering a program for making loans and grants of public money and providing personnel and services of the County; and

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

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

**WHEREAS**, the Commissioners Court finds that making loans and grants of public money and providing personnel and services of the County within certain guidelines and criteria will attract and/or retain desirable commercial enterprises in Kendall County with the result that existing jobs will remain in the County and new jobs will be created in the County;

**NOW, THEREFORE BE IT RESOLVED** that the Commissioners Court of Kendall County, Texas hereby elects to become eligible to participate in tax abatement and hereby adopts the following guidelines and criteria for tax abatement and for tax abatement agreements in order to stimulate business and commercial activity in Kendall County, Texas; and

**BE IT FURTHER RESOLVED** that the Commissioners Court of Kendall County, Texas hereby elects to develop and administer a program for making loans and grants of public money and providing personnel and services of the County in order to stimulate business and commercial activity in the County and hereby adopts the following guidelines and criteria for loans and/or grants of public money and the providing of County personnel and/or County services:

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

**SECTION 1. Purpose:** The purpose of the program is to provide an incentive for current and future property owners and/or leaseholders to invest in Kendall County and provide increased job opportunities in the County thereby contributing to responsible economic growth of the County. In the implementation and direction of this program, the Commissioners Court shall take into consideration any other incentives provided by the County in order to assure that the overall incentive package offered to prospective beneficiaries achieves the objectives of the program and is in the best interests of the citizens of Kendall County.

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

**SECTION 3. DEFINITIONS:**

1. "Abatement" as used herein means the partial exemption from ad valorem taxes of certain real property and/or improvements and/or personal property located in Kendall County.
2. "Base Year Value" as used herein means the assessed value of eligible property on the 1st of January preceding the execution of a tax abatement agreement.
3. "Attorney Representing the Commissioners Court" as used herein means the County Attorney or duly appointed designee, the Criminal District Attorney or duly appointed designee, or other attorney designated by the Commissioners Court.
4. "Modernization" as used herein means the replacement or upgrading of existing facilities which increases the productive input or output, updates the technology or substantially lowers the cost of operation. Modernization may result from the construction, alteration, or installation of buildings, structures, fixed machinery, or equipment. It shall not include reconditioning, refurbishing, or repairing.
5. "Real Property" as used herein means land.
6. "Property rights subject to taxation" as used herein means any real or personal property subject to ad valorem taxes.
7. "Reinvestment Zone" as used herein means an area within the County that has been designated by a governmental entity as an enterprise zone under Chapter 2303, Government Code, or is designated as a reinvestment zone pursuant to the provisions of Chapter 312, Local Government Code.

**SECTION 4. Limitations:**

1. Adoption of the guidelines and criteria does not:
  - a. Limit the discretion of the Commissioners Court to decide whether to grant tax abatement and/or enter into a tax abatement agreement, or make loans, or grants, or authorize the use of County personnel or services; or
  - b. Create new property, contract, or other legal right in any person to have the Commissioners Court consider or grant a specific application or request.
2. Unless exemptions or waivers are granted by the Commissioners Court or other appropriate authority, facilities approved must be in compliance and comply with all federal, state, County and municipal laws, rules and regulations, and other requirements approved by the Commissioners Court.
3. No tax abatement, loan, or grant will be approved that will have the effect of reducing current ad valorem tax or sales tax revenues.
4. The County shall not grant tax abatement or enter into a tax abatement agreement if the Commissioners Court finds that the application for tax abatement was filed after the commencement of construction, expansion or modernization.

5. Guidelines and criteria adopted herein shall be effective for two years from the date of adoption or until July 27, 2022 unless amended or repealed by the Commissioners Court.

**SECTION 5. Contract with Other Entities:** Kendall County has an existing contract with the Boerne Kendall County Economic Development Corporation (hereinafter “BKCEDC”) and, consistent with that agreement, will use the services of BKCEDC whenever feasible to assist the County in implementation of the program to achieve the objectives set out herein. However, the program will be administered by County officers and employees under the direction of the Commissioners Court.

**SECTION 6. Tax Abatement Guidelines and Criteria:**

1. The Commissioners Court may grant tax abatement to the owner of taxable real property located in a reinvestment zone, but that is not an improvement project financed by tax increment bonds, to exempt from taxation a portion of the value of the real property or of tangible personal property, or both, for a period not to exceed seven years, on the condition that the owner of the property make specific improvements to the property subject to the guidelines and criteria set out herein.
2. The Commissioners Court may grant tax abatement to the owner of a leasehold interest in tax-exempt real property that is located in a reinvestment zone, but that is not an improvement project financed by tax increment bonds, to exempt a portion of the value of property subject to ad valorem taxation, including the leasehold interest, improvements, or tangible personal property located on the real property, for a period not to exceed seven years, on the condition that the owner of the leasehold interest make specific improvements to the real property subject to the guidelines and criteria set out herein.
3. The Commissioners Court may grant tax abatement to the owner of taxable real property located in the County, but that is not an improvement project financed by tax increment bonds, to exempt from taxation a portion of the value of the real property or of tangible personal property, or both, for a period not to exceed seven years, on the condition that the owner of the property make specific improvements to the property subject to the guidelines and criteria set out herein.
4. The Commissioners Court may grant tax abatement to the owner of a leasehold interest in tax-exempt real property that is located in the County, but that is not an improvement project financed by tax increment bonds, to exempt a portion of the value of property subject to ad valorem taxation, including the leasehold interest, improvements, or tangible personal property located on the real property, for a period not to exceed seven years, on the condition that the owner of the leasehold interest make specific improvements to the real property subject to the guidelines and criteria set out herein.
5. Creation of New Value. Tax abatement may be granted for the additional value of eligible improvements subject to such limitations as the Commissioners Court may require, and;
  - a. Shall be reasonably expected to increase the appraised value of the improved property; and

- b. Shall be expected to promote increased employment opportunities based on the number of permanent jobs created and sustained in each year of the abatement; and
  - c. Shall not have the effect of merely transferring existing employment from one part of the county to another without demonstration of increased future investment or unusual circumstances whereby, without such a move, employment is likely to be reduced; and
  - d. No tax exemption shall be granted for tangible personal property located on the subject real property at any time prior to the effective date of the granting of tax abatement, including inventory and supplies.
6. Enterprises Eligible for Tax Abatement: Tax abatement may be considered for the following types of enterprises if the location of a new enterprise or the expansion of an existing enterprise will create substantial capital improvements within the County and increase employment opportunities:
- a. Manufacturing Facilities;
  - b. Corporate Offices
  - c. Research Parks;
  - d. Conference centers, hotels, motels, resort hotels, and other such facilities intended to provide locations for the conduct of conventions, seminars and other such activities and provide lodging for persons attending such activities;
  - e. Advanced technology/emerging technology facilities;
  - f. Medical care facilities, including hospitals, clinics, laboratories and other such facilities dedicated to providing for the care and treatment of the ill, elderly or disabled , or the improvement of the health and well-being of the residents of the county;
  - g. Educational facilities including schools, training centers and other such facilities offering educational and training opportunities to residents of the county; and
  - h. Retail establishments and service centers provided the sale of goods and/or services at such establishments will result in substantial sales taxes being generated for the benefit of the County.
7. Minimum Investment Required. To be eligible for tax abatement, the proposed project must provide for capital expenditures of at least 2.5 million dollars (\$2,500,000) for a new business or for the expansion or modernization of an existing business.
8. Groundwater Usage. The Hill Country area, which includes Kendall County, has been designated as a "Primary Groundwater Management Area" by the Texas Commission on Environmental Quality. Consistent with this designation, an applicant's current water consumption, projected consumption and proposals directed at saving and recycling water will be a critical factor in evaluating an application for tax abatement.

**SECTION 7. Allowable Tax Abatement:** The allowable tax abatement shall be for a period of seven years as approved by the Commissioners Court and shall be based solely on the cost of capital improvements. Table 1 below establishes the level of capital improvements required and the abatement percentages to be allowed. No tax abatement shall exceed 50% of the appraised value of the improvements during any year.

**TABLE 1**

**Tax Abatement Schedule - Tier 1 New Business**

Allowable tax abatement based on new investment appraised values by the Kendall County Appraisal District from \$2,500,000 to 4,999,999.99 including land, equipment, and structures:

Year 1	50%	
Year 2	50%	
Year 3	40%	
Year 4	40%	Average percentage for 7 years is 35%
Year 5	30%	
Year 6	20%	
Year 7	15%	

**Tax Abatement Schedule - Tier 2 New Business**

Allowable tax abatement based on new investment appraised values by the Kendall County Appraisal District from \$5,000,000 to 14,999,999.99 including land, equipment, and structures:

Year 1	50%	
Year 2	50%	
Year 3	50%	
Year 4	40%	Average percentage on 7 years is 40%
Year 5	40%	
Year 6	25%	
Year 7	25%	

**Tax Abatement Schedule - Tier 3 New Business**

Allowable tax abatement based on new investment appraised values by the Kendall County Appraisal District from \$15,000,000 and above including land, equipment, and structures:

Year 1	50%	
Year 2	50%	
Year 3	50%	
Year 4	45%	Average percentage for 7 years is 45%
Year 5	45%	
Year 6	40%	
Year 7	35%	

**Tax Abatement Schedule – Business Expansion/Modernization**

Allowable tax abatement for expansion and/or modernization of an existing business based on expansion and/or modernization appraised values by the Kendall County Appraisal District of \$2,500,000 and above including additional land, equipment, and structures:

Year 1	50%	
Year 2	50%	
Year 3	50%	
Year 4	40%	Average percentage for 7 years 40%
Year 5	40%	
Year 6	25%	
Year 7	25%	

**SECTION 8. Application Procedures for Tax Abatement Consideration:**

1. The applicant shall submit an application to the office of the County Judge providing the following information:
  - a. Name of the enterprise seeking tax abatement, identifying whether the entity is a sole proprietorship, corporation, or partnership; the identity of the owners, (or if a public corporation, the names of the President and Secretary of the corporation); the principal office of the enterprise and the location in Kendall County where the enterprise does business or is planning to locate a business; and the primary business activities of the entity seeking tax abatement;
  - b. A general description of the project to be undertaken;
  - c. A description of the proposed construction and/or improvements for which tax abatement is requested, including estimated project costs;
  - d. A map or plat indicating the location or proposed location of the proposed project; and
  - e. The guidelines and criteria under which the tax abatement is requested - new construction or for expansion and/or modernization of an existing business.
  
2. The County Judge shall place the application on the agenda of a meeting of the Commissioners Court for consideration and action. If permitted by the Open Meetings Act, some of the deliberation concerning the application may be discussed in executive session. In order to grant tax abatement, the Commissioners Court of Kendall County must find that the application satisfies the guidelines and criteria set out herein and that:
  - a. There will be no adverse effect on the provision of County's services to the citizens of the county as the result of the granting of the tax abatement;
  - b. The planned use of the property will not constitute a hazard to public health, safety, or morals (Note: Tax abatement is not available to projects wherein the primary purpose of the business is serving alcoholic beverages or where a sexually oriented business is involved.); and
  - c. There will be no adverse effect on the financial condition of the County as the result of the granting of the tax abatement.

3. If the Commissioners Court determines that the application has merit, the Commissioners Court may approve the application for tax abatement as submitted or as modified by the Court and authorize the attorney representing the Commissioners Court to prepare an abatement agreement consistent with the Court's determination if an agreement is required.

**SECTION 9. Tax Abatement Agreement:**

1. After approval of an application for tax abatement by the Commissioners Court, if it is determined that a tax abatement agreement is required, the attorney representing the Commissioners Court shall prepare an agreement including the following provisions as applicable and as directed by the Commissioners Court:
  - a. A description of the proposed improvements and an estimate of the total cost;
  - b. The appraised value of the subject property without the proposed improvements - the base year value;
  - c. The projected value of the property with the improvements;
  - d. The abatement schedule, including the commencement date of abatement and the termination date of abatement;
  - e. The proposed construction/modernization time schedule;
  - f. A provision that the applicant will provide access to and authorize inspection by County officers and/or employees to insure that the improvements are being made according to the conditions and specifications of the agreement;
  - g. The proposed use of the facility and a provision limiting the use of the property consistent with the general purpose of encouraging development or redevelopment during the time that property tax abatements are in effect;
  - h. A provision for recapturing property tax revenue lost as a result of the agreement if the applicant violates the terms of the agreement;
  - i. A requirement that the applicant certify annually to the Commissioners Court that the applicant is in full compliance with the agreement;
  - j. A provision that the Commissioners Court may cancel or modify the agreement if the applicant fails to comply with the agreement;
  - k. As an attachment, a map or plat of the subject property and a property description; and
  - l. Usual contractual terms and conditions required for uniformity or by state law.
2. The County Judge shall provide the tax abatement agreement to the applicant for review and execution. Any tax abatement agreement not finalized within forty five (45) calendar days after being provided to the applicant shall expire and the Court's approval of tax abatement may be rescinded by order of the Court.

**SECTION 10. Default and Recapture:**

1. In the event of default of any term or condition of the application for tax abatement or of the tax abatement agreement by the applicant or the applicant's successor or assign of the applicant, the Commissioners Court shall have the right to terminate any agreement and/or terminate the abatement of taxes. Taxes based on the appraised value of the subject property with improvements will be due and payable for the year in which tax abatement is terminated.



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

**SECTION 11. General Administration:**

1. Following approval of tax abatement by the County, the County Judge shall provide a copy of the County Order granting abatement to the Chief Appraiser of the Kendall Appraisal District.
2. The County Judge with the assistance of the BKCEDC and the attorney representing the Commissioners Court shall retain administrative responsibility and control over all tax abatement agreements entered into by Kendall County.

**SECTION 12. Assignment of Tax Abatement and /or Tax Abatement Agreements:**  
There shall be no assignment of tax abatement and/or tax abatement agreements unless such assignment is approved by the Commissioners Court.

**SECTION 13. Application Procedures for Loans, Grants, Use of County Personnel and/or Services Consideration:**

1. The applicant shall submit an application to the office of the County Judge providing the following information:
  - a. Name of the enterprise seeking loans, grants, use of County personnel and/or services, identifying whether the entity is a sole proprietorship, corporation, or partnership; the identity of the owners, (or if a public corporation, the names of the President and Secretary of the corporation); the principal office of the enterprise and the location in Kendall County where the enterprise does business or is planning to locate a business; and the primary business activities of the entity;
  - b. A general description of the project to be undertaken;
  - c. A description of the proposed construction and/or improvements, including estimated costs;

- d. A map or plat with a property description indicating the location or proposed location of the proposed improvements; and
  - e. The guidelines and criteria under which the loan, grant, use of County personnel and/or services is requested - new construction or for expansion and/or modernization of an existing business.
2. The County Judge shall place the application on the agenda of a meeting of the Commissioners Court for consideration and action. If permitted by the Open Meetings Act, some of the deliberation concerning the application may be discussed in executive session. In order to approve a loan, grant, use of County personnel or services, the Commissioners Court must find that the application satisfies the guidelines and criteria set out herein and that:
- a. There will be no adverse effect on the provision of County's services to the citizens of the County as the result of the granting of the loan, grant, use of County personnel or services;
  - b. The planned use of the property will not constitute a hazard to public health, safety, or morals (Note: A loan, grant, use of County personnel or services is not available to projects wherein the primary purpose of the business is serving alcoholic beverages or where a sexually oriented business is involved.); and
  - c. There will be no adverse effect on the financial condition of the County as the result of the approval of the loan, grant, or use of County personnel or services.
3. If the Commissioners Court determines that the application has merit, the Commissioners Court may approve the application as submitted or as modified by the Court and authorize the attorney representing the Commissioners Court to prepare an agreement consistent with the Court's determination.

**SECTION 14. 381 AGREEMENT:**

1. After approval of an application for a loan, grant, use of County personnel or services by the Commissioners Court, the attorney representing the Commissioners Court shall prepare an agreement, including the following provisions as applicable and as directed by the Commissioners Court:
- a. A description of the proposed improvements and an estimate of the total cost;
  - b. The terms of the loan, grant, use of County personnel or services;
  - c. The proposed construction/modernization time schedule;
  - d. A provision that the applicant will provide access to and authorize inspection by County officers and/or employees to insure that the improvements are being made according to the conditions and specifications of the agreement;
  - e. The proposed use of the facility and a provision limiting the use of the property consistent with the general purpose of encouraging development or redevelopment;
  - f. A provision for recapturing County funds lost as a result of the agreement if the applicant violates the terms of the agreement;
  - g. A requirement that the applicant periodically certify to the Commissioners Court that the applicant is in full compliance with the agreement;

- h. A provision that the Commissioners Court may cancel or modify the agreement if the applicant fails to comply with the agreement;
    - i. As an attachment, a map or approved plat of the subject property and a property description; and
    - j. Usual contractual terms and conditions required for uniformity or by state law.
  2. The County Judge shall provide the agreement to the applicant for review and execution. Any agreement not finalized within forty five (45) calendar days after being provided to the applicant shall expire and the Court's approval may be rescinded by order of the Court.

**SECTION 15. Default and Recapture:**

1. In the event of default of any term or condition of the application for a loan, grant, use of County personnel or services, or the agreement by the applicant or the applicant's successor or assign of the applicant, the Commissioners Court shall have the right to terminate the agreement.
2. In the event that the facility is completed and begins producing products or services, but subsequently ceases to produce products or services for any reason, (except for acts of God, war, riot, strike or natural catastrophe), then the Commissioners Court shall have the right to terminate the agreement.
3. In the event that the applicant fails to pay sales taxes or ad valorem taxes owed to Kendall County or any other taxing entity located in the county when due, or violates any of the terms or conditions of this policy; or is in default with any other County-sponsored program; then the County shall have the right to terminate the agreement.
4. In the event that the applicant ceases to operate the facility or moves the facility for which a loan, grant, use of County personnel or services was granted to a location outside of Kendall County, the Commissioners Court shall have the right to capture the amount of any loan, grant, cost of County personnel, or services, together with attorney's fees and costs of court.

**SECTION 16. General Administration:** The County Judge with the assistance of the BKCEDC and the attorney representing the Commissioners Court shall retain administrative responsibility and control over all agreements entered into by Kendall County.

**SECTION 17. Assignment of Agreements:** There shall be no assignment of agreements unless such assignment is approved by the Commissioners Court.

**SECTION 18. Sunset Provision:**

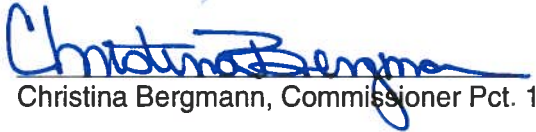
1. These guidelines and criteria are affective upon the date of their adoption and will remain in force for two years from the date of adoption. Prior to expiration of such two-year period, the Commissioners Court shall review the guidelines and criteria and either adopt the guidelines and criteria for another two-year period, adopt revised guidelines and criteria, or terminate the policy.

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

**ADOPTED AND EFFECTIVE THIS 27<sup>TH</sup> DAY OF JULY 2020.**



Darrel L. Lux, County Judge



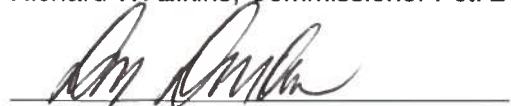
Christina Bergmann, Commissioner Pct. 1



Richard W. Elkins, Commissioner Pct. 2



Richard Chapman, Commissioner Pct. 3



Don Durden, Commissioner Pct. 4

Attest:   
Darlene Herrin, County Clerk

**APPLICATION FOR TAX ABATEMENT, LOAN, GRANT,  
USE OF COUNTY PERSONNEL OR SERVICES**

1. Name of the enterprise:

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2. Type of organization: (sole proprietorship, corporation, or partnership):

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3. Identity of the owners, (or if a public corporation, the names of the President and Secretary of the corporation):

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4. Location of the principal office of the organization:

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5. Location in Kendall County where the organization does business or is planning to locate a business:

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6. Primary business activities of the organization:

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7. General description of the project to be undertaken:

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8. A description of the proposed construction and/or improvements, including estimated costs:

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9. The guidelines and criteria under which the tax abatement, loan, grant, use of County personnel or services is requested - new construction or for expansion of an existing business:

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Attachments:

A map or plat with a property description indicating the location or proposed location of the proposed improvements.

Organizational Documents (Certificate to de business, Articles of Incorporation, By-Laws, and Certificate of Good Standing as appropriate).

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date of Submission

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

Title: \_\_\_\_\_

Contact Information:

Telephone (Business): \_\_\_\_\_ Home/Cell: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Other: \_\_\_\_\_

Received by the County Judge:

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

Signed: \_\_\_\_\_

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

Title: \_\_\_\_\_