

RESOLUTION NO. 22-356

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DENTON, TEXAS APPROVING THE ESTABLISHMENT OF POLICIES, GUIDELINES, AND CRITERIA GOVERNING TAX ABATEMENTS; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to promote economic development within Denton; and

WHEREAS, the Property Development and Tax Abatement Act (“the Act”), Chapter 312, Texas Tax Code allows the City to establish its own criteria for tax abatements; and

WHEREAS, the Act requires the City to establish guidelines and criteria prior to entering into a tax abatement agreement; and

WHEREAS, guidelines and criteria adopted under the Act are effective for two years from the date adopted; and

WHEREAS, on June 6, 2000, the City Council approved guidelines and criteria, known as the Denton Policy for Tax Abatements and Incentives (“Policy”); by passing Resolution No. R2000-28; and

WHEREAS, the City previously adopted, amended, and reauthorized guidelines and criteria for tax abatement by passing Resolution Nos. R90-18, R98-004, R2000-028, R2001-020, R2003-021, R2005-057, R2008-003, R2010-009, R2012-009, R2014-016, R2015-042, R2016-009; R2018-148 and

WHEREAS, on March 17, 2020, the City Council of the City of Denton approved the current Policy by passing Resolution No. R20-504; and

WHEREAS, the current Policy expired on March 17, 2022; and

WHEREAS, the City Council held a public hearing on April 5, 2022, as required by the Act, to receive public feedback regarding the proposed adoption of the Policy attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the City Council deems it in the public interest to continue to be eligible for participation in tax abatements and to adopt policies, guidelines, and criteria for tax abatements by adopting the Policy attached hereto as Exhibit A and incorporated herein for all purposes; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY RESOVLES:

SECTION 1. The policies, guidelines, and criteria, set forth in Exhibit A, which is made a part of this Resolution and incorporated herein for all purposes, is approved and adopted, and shall be known as the Denton Texas Abatement Policy.

SECTION 2. From and after the effective date of this Resolution, the attached Denton Tax Abatement Policy shall constitute the policies, guidelines, and criteria for tax abatement agreements for the City of Denton in accordance with Chapter 312 of the Texas Tax Code.

SECTION 3. Pursuant to Texas Tax Code Section 312.002(c), the Denton Tax Abatement Policy approved herein shall be effective for two (2) years from the date of the approval of this Resolution, during which time it may amended or repealed by a vote of $\frac{3}{4}$ of the members of Council.

SECTION 4. The City Council reasserts its decision to become eligible to participate in tax abatements. The City Council provides certain tax abatements to applicable business enterprises in various reinvestment zones which are established in the City in accordance with the applicable provisions of Chapter 312 of the Texas Tax Code and in accordance with the Denton Tax Abatement Policy.

SECTION 5. The Denton Tax Abatement Policy shall be filed in the official records with the City Secretary and posted on the City's website in accordance with Texas Tax Code Section 312.002(c-2).

SECTION 6. This resolution shall become effective immediately upon its passage and approval.

The motion to approve this resolution was made by Brian Beck and seconded by Jesse Davis, the resolution was passed and approved by the following vote [7 - 0]:

	Aye	Nay	Abstain	Absent
Mayor, Gerard Hudspeth:	<u>✓</u>	_____	_____	_____
Vicki Byrd, District 1:	<u>✓</u>	_____	_____	_____
Brian Beck, District 2:	<u>✓</u>	_____	_____	_____
Jesse Davis, District 3:	<u>✓</u>	_____	_____	_____
Alison Maguire, District 4:	<u>✓</u>	_____	_____	_____
Deb Armintor, At Large Place 5:	<u>✓</u>	_____	_____	_____
Paul Meltzer, At Large Place 6:	<u>✓</u>	_____	_____	_____

PASSED AND APPROVED this the 3rd day of May, 2022.


GERARD HUDSPETH, MAYOR

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: 



APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:  Digitally signed by Scott Bray
Date: 2022.04.26 11:10:38
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Deputy City Attorney

EXHIBIT A
Denton Tax Abatement Policy



City of Denton

Tax Abatement Policy

2022 - 2024



Statement of Policy

The City of Denton is committed to promoting economic growth and redevelopment that expands and diversifies the tax base; creates quality jobs; enhances the quality of life for residents; protects human health and the environment; and secures new customers for municipal utilities. The City is a national model for public power through Denton Municipal Electric (DME), which incorporates 100 percent renewable energy into its portfolio. Local economic development incentives serve as a tool for the City to accomplish those objectives. To provide a framework for the consideration of the use of public resources to stimulate economic activity, the City has established this policy to align the use of tax abatement incentives with the City's strategic focus areas and ensure a positive return on investment for the community. Tax incentives, as described in this policy, will be available for new and/or existing facilities and structures and for businesses wanting to locate, expand, upgrade or modernize existing or new facilities and structures in the City of Denton. These tax incentives, as described herein, are governed by Chapter 312 of the Texas Tax Code. This policy is adopted under the authority of the Constitution and Laws of the State of Texas and the City Charter of the City of Denton.

The City of Denton has adopted the core values of Integrity, Transparency, Inclusion, Fiscal Responsibility, and Outstanding Customer Service. These values are exemplified in our operations and are considered when contemplating any request for incentives.

The 2020 Economic Development Strategic Plan has five guiding principles that provide a framework for economic development in Denton: Core Resiliency, Future Focused, Inclusive Growth, Entrepreneurial Spirit and Cultural Vitality. The plan is also built around three major goals: Accelerate Recovery, Foster Growth, and Strengthen Community Inclusion.

Tax abatements offered by the City of Denton are not entitlement programs and the City is not under any obligation to provide an incentive to any applicant. The City considers incentives to be strategic investments in organizations, developments, or projects that benefit the community, are in alignment with the economic development strategic plan, and must comply with all program criteria, policies, and guidelines adopted by the City Council.

All applications or requests are considered on a case-by-case basis by the Economic Development Partnership Board (EDPB) and the City Council. The City will conduct significant due diligence when an application is submitted, which could include reviewing an applicant's submission, requesting information to verify any claims, reviewing any other incentives received by the applicant from other jurisdictions and conducting an independent economic and fiscal analysis for any proposed project. Incentives may not be considered if a building permit for new construction has been issued, a permit for commercial alterations has been issued, or purchase of an existing building has been executed (excluding existing businesses seeking to expand).

The City has strategic growth areas and related industries, organized by North American Industry Classification System (NAICS) codes. These industries have been identified in the Strategic Plan for cultivation and recruitment and will be given priority consideration. The strategic growth areas include: Connectivity, Creativity, Sustainability, and Competitiveness. Exhibit A provides additional information on the industry by strategic growth areas. While these growth area

ecosystems will be given priority consideration, not being in a strategic growth area or related industry does not disqualify a business from applying for an incentive if it meets other requirements under the policy.

All incentives offered will be evaluated through a cost-benefit analysis. The economic impacts evaluated may include net new jobs, wages, and contributions through property tax, sales taxes, hotel occupancy taxes, mixed beverage taxes, or other significant public benefit. Applicants for tax abatement must make specific repairs or improvements to the property that provide a benefit both to the property and City that will last beyond the expiration of a tax abatement agreement.

All agreements will be based on performance. Successful applicants must demonstrate performance with agreed upon metrics to continue to receive funding. Failure to meet performance standards will result in recapture, reduction of abatement(s), or termination of agreement(s). Grantees will also be responsible for making periodic reports on their investments, hiring and provide the City access to records to verify their reports.

Guidelines for various incentive programs have been adopted by the Denton City Council. These include objectives, qualification criteria, reporting requirements, and other key program elements. Grantees are responsible for ensuring they meet the requirements of the overall policy and the program guidelines.

The Denton County Tax Abatement Policy states that applicants whose projects will be located in or are currently located in a municipality within the county must have an approved and executed Tax Abatement Agreement with that municipality prior to applying for a Denton County tax abatement. Denton County will not utilize Chapter 381 of the Texas Local Government Code to administer a community and economic development program to provide grants as a form of economic development.

Definitions

“Agreement” means a contract between an Incentive recipient and the City clarifying the terms, performance measures, and obligations of the parties.

“Assessed Taxable Value” means the value of the real and business personal property, as appraised by the Denton Central Appraisal District (“DCAD”/or “District”), after any exemptions have been applied.

“Base Year Value” means the Assessed Taxable Value as of January 1 preceding the execution of the agreement, excluding land value, inventory, vehicles and supplies, as determined by the DCAD.

“Business Park” is defined as a multi-building, multi-tenant, master planned complex of approximately one million square feet or more under roof, constructed to house manufacturing, distribution, assembly, and office facilities.

“Business Personal Property” means property associated with a Project other than Real Property and excluding inventory, vehicles and supplies.

“Capital Investment” means the total actual capital cost to grantee for the acquisition of land, development, and construction of the Project, including a reasonable capital operating reserve, and the furniture and equipment installed at the Project.

“City” means the City of Denton, Texas, and its governing and operating bodies.

“Community Support and Involvement” may include but is not limited to monetary or active investment in local nonprofits, public institutions or community organizations.

“Council” is the City Council of the City of Denton, Texas.

“Default” is an event in which a party to an Agreement has failed to meet Performance Measures and to perform under prescribed cures.

“Ecosystem” incorporates a number of elements, which include: anchor institutions, major emerging players, competitions and events, building blocks, local capital and public awareness.¹

“Expansion” means an investment in fixed assets that will result in an increase in occupied building areas, increased employment, or higher Assessed Value of Real Property or Business Personal Property by a firm already located in the City.

“Facility” means combined Real and Business Personal Property Improvements that house an economically purposeful activity.

“Higher wage” means having an average annual wage of \$65,000 or greater for all positions or at least 25% of the positions have an annual wage of \$75,000 or greater.

“Improvement” means a building, structure, or fixture erected on or affixed to land.

“Incentive” means any inducement for economic activity given by the City such as a tax abatement or rebate or any other incentives not prohibited by state or federal law.

“Job” means a permanent, full-time employment position that has provided or will result in employment of at least 2,080 hours per position per year. Part-time positions may be aggregated to create a full-time position for consideration in this policy.

“Knowledge-based jobs” are defined as occupations which require specialized and theoretical knowledge, usually acquired through a college education or through work experience or other training which provides comparable knowledge; require some research, analysis, report writing and presentations; or require special licensing, certification, or registration to perform the job task.

¹ TIP Strategies. Economic Development Strategic Plan: City of Denton Texas. 2020.

“Leadership in Energy and Environmental Design” (LEED) certification is a voluntary internationally recognized green building certification system, with verification by a third party that a building or community was designed and built using strategies aimed at improving performance across the following metrics: energy savings, water efficiency, CO₂ emissions reduction, improved indoor environmental quality, and stewardship of resources.

“Living Wage” is the wage necessary to provide the basic family expenses “basic needs budget” plus all relevant taxes.²

“Local Contractors” and “Local Sub-Contractors” refers to vendors that have their “principal office or place of business,” as reported to the Texas Secretary of State Office, located within Denton City Limits or Extraterritorial Jurisdiction (ETJ).

“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 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.

“North American Industry Classification System (NAICS)” is the standardized system utilized for the publication of statistical data by the federal government and other entities to classify businesses by the type of economic activity.³

“Performance Measures” are the performance indicators for a Project established by Agreement and reported to the City annually using a certificate of compliance provided in the Agreement or as otherwise prescribed by the Agreement.

“Primary Employer” refers to employers that produce products or services which are sold outside of the community or region.

“Project” means the combination of proposed investment, improvements, and economic activity that is submitted in an application for an economic incentive.

“Real Property” means land or an improvement affixed thereto.

“Reinvestment Zone” is a geographic area designated as blighted and in need of revitalization for the purpose of granting incentives as authorized by law.

“Tax Abatement” means the full or partial exemption of ad valorem taxes for eligible properties in a reinvestment zone designated as such for economic development purposes for new or expanded business development for a period of up to 10 years. Abatement may be granted for real property improvements and/or business personal property.

² Online Internet. Massachusetts Institute of Technology’s (MIT) Living Wage Calculator for Denton County <https://livingwage.mit.edu/counties/48121>

³ Online Internet. NAICS Association. 2022. NAICS.com.

“Sustainable materials” or products related to manufacturing may include but are not limited to: biobased; recyclable; pollution reduction equipment or systems; and reclaimed goods.

Public Benefit

If, upon initial application, a project qualifies for tax abatement under the guidelines set forth in this Policy, the City may consider the following factors in evaluating its public benefit:

- Expands the tax base through property, sales, Hotel Occupancy Tax (HOT), or other taxes to the City, County, DISD, and DCTA through the development of property, facility or by making improvements to an existing property or facility, through the development of a new business or expansion of an existing business, through the development of a new multi-tenant complex where businesses can locate, or through the addition or increase in jobs available in the City.
- Community Investment demonstrates a commitment to community support or involvement through monetary or in-kind support of local nonprofits, public institutions, or community organizations;
- Public Private Partnerships include development of public infrastructure or public amenities that City deems beneficial, or developer assumes responsibility for development of infrastructure or other public facilities beyond what is required. Project will involve a significant relationship with a public school district or institution of higher education.
- 25% of local contractors used in construction or 25% of new jobs filled by Denton residents
- Other priorities or considerations as determined by City Council

Application Procedure

To ensure fairness, accountability, and compliance with all applicable regulations, every incentive request must proceed through a uniform application process. Nothing within these guidelines implies or suggests that the City is under any obligation to provide an incentive to any applicant.

1. Applicant shall complete the attached Incentive Application (Exhibit B). The application will not be considered until it is administratively complete. The Economic Development Director or the City Manager, or their designee, may amend the Application at their discretion from time to time. Applicant shall be responsible for obtaining and submitting the most recent Application form from the City.
2. Applicant shall prepare a map or other documents providing the following: precise location of the property and all roadways within 500 feet of the site; existing uses and conditions of real property; proposed improvements and uses; zoning changes; compatibility with the Denton 2040 Plan and applicable building codes and City ordinances; and a complete legal description as provided in the deed granting title to the owner of the property. This information will be submitted with the completed Incentive Application or the application may be considered incomplete.
3. Applicant shall provide metes and bounds, legal description and or plat information of the property in order for staff to prepare the reinvestment zone materials required under Chapter 312 of the Texas Tax Code.
4. Applicant shall complete a Due Diligence Form which authorizes the City to obtain and review any and all information needed to evaluate an application for an economic development incentive, including business financial statements, creation

documents, and credit rating. The City may request additional information related to the creditworthiness or financial position of a business in the process of reviewing and evaluating the application for economic development incentive.

5. Applicant shall complete all forms and information detailed in the Incentive Application and submit the Incentive Application and all additional required information to the Economic Development Department, City of Denton, 401 N. Elm Street, Denton, TX 76201.
6. All information in the application package detailed above will be reviewed for completeness and accuracy. Additional information may be requested as needed.
7. The application will be distributed to the appropriate City departments for internal review and comment. Additional information may be requested as needed.
8. Fiscal agents of the City may review the application for comment and recommendation. Additional information may be requested as needed.
9. The Denton Economic Development Partnership board (EDPB) serves as an advisory body, which makes recommendations to the City Council regarding whether economic development incentives should be offered in each individual case. Its recommendation shall be based upon an evaluation of information submitted in the incentive application and any additional information requested by the EDPB or presented to the EDPB. The EDPB will consider the application at a regular or special-called meeting(s). All meetings of the EDPB shall be held in compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code. Additional information may be requested as needed. The recommendation of the EDPB will be forwarded, with all relevant materials, to the City Council.
10. If the City Council decides to grant a tax abatement, it shall call a public hearing to consider establishment of a tax reinvestment zone in accordance with Section 312.201 of the Texas Tax Code. The reinvestment zone must meet one or more of the criteria of Section 312.202 of the Texas Tax Code.
11. The City Council may consider adoption of an ordinance or resolution approving the terms and conditions of a contract between the City and the applicant governing the provision of the tax abatement or incentive and the commitments of the applicant, including all the terms required by Section 312.205 of the Texas Tax Code and such other terms and conditions as the City Council may require.
12. The City reserves the authority to enter into tax abatement agreements at differing percentages and/or terms as set forth in the guidelines of this Policy, consistent with the requirements of Chapter 312 of the Texas Tax Code. The City also reserves the authority to enter into incentive agreements under Chapter 380 of the Texas Local Government Code. The City has a separate policy for Chapter 380 incentive programs.

Section 312.003 of the Texas Tax Code makes confidential information provided to the City as a part of this application that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property. This information is not subject to public disclosure until the incentive agreement is executed. Section 522.131 of the Texas Government Code (Texas Public Information Act) makes confidential information which relates to economic development negotiations between the City and a business prospect that the City seeks

to have locate, stay or expand in or near the territory of the City. The information must relate to a trade secret of the business prospect or commercial or financial information which the business prospect can demonstrate based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained or information about a financial or other incentive being offered to the business prospect by the City or by another person. Information about a financial or other incentive being offered to the business prospect is required to be disclosed when an agreement is made with a business prospect. The City will respond to requests for disclosure as required by law and will assert exceptions to disclosure as it deems relevant. The City will make reasonable attempts to notify the applicant of the request so it may assert its own objections to the Attorney General.

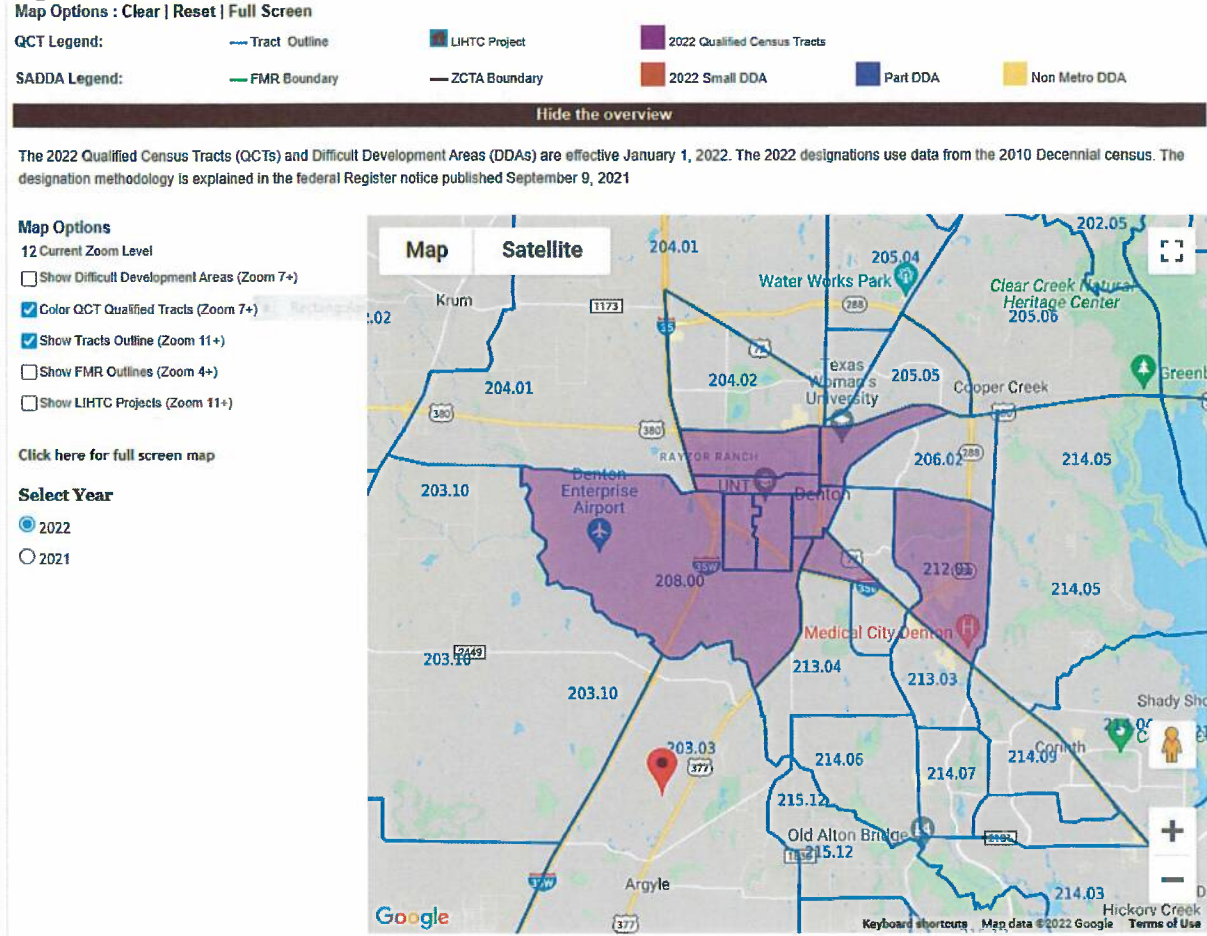
Any incentive agreement will address various issues, including but not limited to, the following:

1. General description of the project
2. Amount of the incentive and percent of value to be abated each year
3. Method of calculating the value of the abatement
4. Duration of the abatement, including commencement date and termination date
5. Complete legal description of the property as provided in the deed granting title to the owner of the property
6. Kind, number, location and timetable of planned improvement
7. Specific terms and conditions to be met by applicant, which will be based on the information submitted by the applicant in the Incentive Application and/or other appropriate criteria
8. The proposed use of the facility and nature of construction
9. Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, any decrease in valuation, administration and assignment.

Businesses receiving an incentive are asked to use diligent efforts to purchase all goods and services from Denton businesses whenever such goods and services are comparable in availability, quality and price. The City of Denton also encourages the use, if applicable, of qualified contractors, subcontractors and suppliers who are historically underutilized businesses based on information provided by the General Services Commission pursuant to Chapter 2161 of the Government Code. Businesses receiving an incentive are encouraged to use diligent efforts to hire local contractors and local subcontractors where possible during construction of the project.

Businesses receiving incentives are asked to endeavor to make available, or endeavor to cause lessees or assignees to make available full-time or part-time employment for Denton residents. In this effort, the business, lessee or assignee is encouraged to recruit from the low-moderate income Census tracts as further defined by the U.S. Department of Housing and Urban Development's (HUD) Qualified Census Tracts (QCT) map shown in Figure 1. HUD defines QCTs as "census tracts in which one-half or more of the households have incomes below 60 percent of the area median income or the poverty rate is 25 percent of [or] higher.

Figure 1: 2022 Qualified Census Tracts in Denton



Tax Abatement

New, expanding, and modernizing businesses may be considered for a tax abatement if a minimum threshold of \$5 million in ad valorem value will be created by the project. Once a determination has been made that a project is eligible for a tax abatement, the strategic growth areas, public benefit factors and considerations will serve as a basis for determining amount and term of abatement.

To qualify to receive the grant or rebate, companies must meet the minimum threshold of projected tax value for the project in the first 24 months from the execution of the agreement or as specified in the tax abatement agreement. The minimum threshold is at least 90% of the incentivized projected tax value for new projects and 75% of the tax value for expansion projects. Minimum job related thresholds, if applicable, will be at least 90% of the jobs in the application for that year, or as required by the agreement.

If, upon initial application, a project qualifies for tax abatement under the guidelines set forth in this Policy, the City may consider the following considerations in evaluating the project and the abatement percentage:

- Generates new utility customers (priority consideration for larger customers);
- Encourages new business markets/suppliers and entrepreneurship (the project is from an industry not significantly represented in the local economy or is a new business startup or entrepreneurial endeavor)
- Creates knowledge-based jobs, as documented by the applicant (An average wage that is above the average wage in Denton County or at least 25 percent of jobs requiring a college bachelor's degree);
- Increases higher wage jobs (includes an average annual wage of \$65,000 or greater for all positions or at least 25% of the positions have an annual wage of \$75,000 or greater);
- Pays a living wage for all new employees in accordance with the current "Living Wage" from the MIT Living Wage Calculator for Denton County;
- Engages in sustainable practices (Renewable energy will be generated, stored, or utilized for the project or the project incorporates significant environmentally sustainable practices that include: Leadership in Energy and Environmental Design (LEED) certification, recycling initiatives, the manufacture of sustainable materials or products that support sustainable industries, or the incorporation of clean technology);
- Spur infill development or redevelopment (Project is to develop/redevelop a property in a manner that reduces urban sprawl and or increases density in a desirable area; project includes use of existing facility that has been vacant for at least two years);
- The project is an international or national headquarters facility; and
- Provides child care assistance to employees that may include: on-site child care services; vouchers or other financial assistance for child care; backup or temporary child care services; flexible hours or remote work accommodations; and flexible spending accounts for child care expenses.

All abatements are subject to final approval of the City Council. Even though a project may meet the criteria as set forth in this Policy, an application may be denied at the discretion of the City. The incentive shall not apply to any portion of the land value of the project.

The City may consider the use of incentives to retain existing businesses, which propose to improve or redevelop property within the City limits. The City may also take into consideration the expansion/redevelopment of existing businesses that create new or additional higher wage or knowledge-based jobs. The incentive will only apply to the increased valuation of the improvements over the appraised value of the property prior to such improvements as same is established by the Denton Central Appraisal District the year in which the tax abatement agreement is executed. The City may also consider other tax incentives authorized by law.