

City of Houston, Texas, Ordinance No. 2020-1091

**AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 44 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO TAX ABATEMENT AND RELATED FEES; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

\* \* \* \* \*

**WHEREAS**, a municipality that desires to become eligible to participate in tax abatement must, pursuant to Section 312.002(a) of the Texas Tax Code, establish guidelines and criteria governing tax abatement agreements and elect to become eligible to participate in tax abatement; and

**WHEREAS**, Section 312.002(c) of the Texas Tax Code provides that the guidelines and criteria adopted by a municipality are effective for two years from the date adopted; and

**WHEREAS**, City Council last adopted tax abatement guidelines and criteria on May 13, 2020, approved by Ordinance No. 2020-424, which tax abatement guidelines and criteria became effective on May 19, 2020, and will expire on May 19, 2022, as provided in section 44-137 of the Code of Ordinances, Houston, Texas; and

**WHEREAS**, City Council desires to adopt certain amendments to the tax abatement guidelines and criteria codified in Article IV of Chapter 44 of the City Code (the "Tax Abatement Ordinance") to create a new tax abatement incentive for qualified projects that incorporate green stormwater infrastructure, to modify the criteria for a LEED tax abatement, and to make conforming amendments to certain other sections of the Tax Abatement Ordinance; and

**WHEREAS**, the City incurs administrative costs associated with the processing of applications for tax abatement; and

**WHEREAS**, the City Council finds it is appropriate to assess application fees to recoup a portion of the costs incurred by the City in administering the tax abatement program; and

**WHEREAS**, pursuant to Section 312.002(c-1) of the Texas Tax Code, before City Council can consider the adoption, amendment, repeal, or reauthorization of the Tax Abatement Ordinance, City Council must hold a public hearing regarding the proposed adoption, amendment, repeal, or reauthorization at which members of the public are given the opportunity to be heard; and

**WHEREAS**, City Council held a public hearing on these proposed amendments to the Tax Abatement Ordinance on December 9, 2020; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON,  
TEXAS:**

**Section 1.** That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

**Section 2.** That Section 44-121 of the Code of Ordinances, Houston, Texas, is hereby amended by adding, in the appropriate alphabetical order, new definitions to read as follows:

*“Conventional stormwater detention* means stormwater detention that does not meet the applicable design criteria for a low impact development design approach described in chapter 9 of the design manual.”

*“Design manual* has the meaning ascribed in section 42-1 of this Code.”

*“Green stormwater infrastructure* means infrastructure designed and constructed for stormwater management to minimize the downstream impacts of development while providing additional environmental, social, or ecosystem benefits or services, which may include mitigating risk of flooding, reducing heat island effect or other climate-related hazards, improving water quality, sequestering carbon, encouraging water conservation, restoring native ecosystems, creating economic growth, or addressing quality of life challenges.”

*“LEED* means Leadership in Energy and Environmental Design, a green building rating system developed by the USGBC that provides a framework and standard for green building design, construction, operations, and performance.”

*“LEED certification* means a Silver, Gold, or Platinum rating level certification obtained from USGBC.”

*“New commercial facility* means a new facility, other than a residential facility that consists of one structure containing four or fewer dwelling units, that is an authorized facility described in section 44-127(a) of this Code.”

*“Total green stormwater infrastructure cost* means, with respect to a facility that is eligible for a green stormwater

infrastructure tax abatement, the total cost to the owner for the construction of green stormwater infrastructure, including soft costs, such as planning and design, and, for green stormwater infrastructure described in subsection (c)(ii) of section 44-132, two years of maintenance costs, but excluding the costs associated with construction of conventional stormwater detention.”

“*Total project cost* means, with respect to a facility that is eligible for a LEED tax abatement or a green stormwater infrastructure tax abatement, the total cost of construction to the owner, including soft costs such as planning and design, but excluding the costs of the acquisition of land.”

“*USGBC* means the U.S. Green Building Council.”

**Section 3.** That Section 44-122(f) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(f) The designation of a reinvestment zone hereunder shall expire five years after the date of its designation and may be renewed for periods not to exceed five years. The expiration of a designation, however, shall not affect any existing agreement entered into pursuant to this article.”

**Section 4.** That Section 44-123 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**“Sec. 44-123. Abatement application.**

- (a) Any present or potential owner in the city may request tax abatement by filing a written request with the director.
- (b) The application shall consist of a complete application form accompanied by a nonrefundable application fee in the amount stated for the applicable provision in the city fee schedule, subject to subsection (k) of this section, and, unless otherwise provided herein:
  - (1) A general description of the new improvements to be undertaken;
  - (2) A descriptive list of the improvements for which abatement is requested;
  - (3) A list of the kind, number and location of all proposed improvements of the property;

- (4) A map and legal description of the property;
  - (5) A time schedule for undertaking and completing the proposed improvements;
  - (6) Financial information including but not limited to items (i) demonstrating the role of property tax costs in the economics of the proposed improvements; (ii) stating concisely the amounts and sources of financing for the proposed improvements, including all sources and terms of debt and equity financing; and (iii) demonstrating the overall financial impact of the proposed improvements on the local and regional economy, using reliable economic forecast modeling tools in such form as approved by the director;
  - (7) If the applicant is considering a location outside the city for the proposed improvements, evidence of abatement or other financial incentive from other local, state, or federal governmental entities; and
  - (8) A statement describing how the proposed improvements are consistent with the general policy stated in section 44-120 of this Code.
- (c) The complete application for an economic development abatement shall consist of a complete application form accompanied by a nonrefundable application fee in the amount stated for this provision in the city fee schedule and:
- (1) A certification of the current number of permanent, part-time, and contract employees of the applicant, by category, at the time of the application;
  - (2) If the applicant is considering a location outside the city for the project, information regarding the project's competitive siting, including written evaluation of competing locations for expansion, relocation, or new operations, including identification of specific sites in those locations;
  - (3) For a project located in a leased facility, the name and address of the lessor and, if executed, a copy of the lease; and
  - (4) For modernization, a statement of the assessed value of the existing facility for the tax year immediately preceding the application year, separately stated for real and tangible personal property.

- (d) The complete application for a brownfield development abatement shall consist of a complete application form accompanied by a nonrefundable application fee in the amount stated for this provision in the city fee schedule and:
  - (1) A description of the intended use of the proposed brownfield facility; and
  - (2) A copy of a voluntary cleanup agreement with the TCEQ for the proposed brownfield facility or a certificate of completion for the property issued by TCEQ for the proposed brownfield facility.
  
- (e) The complete application for a deteriorated/demolished property abatement shall consist of a complete application form accompanied by a nonrefundable application fee in the amount stated for this provision in the city fee schedule and
  - (1) The information required by items (1) through (5) of subsection (b) of this section;
  - (2) A copy of the order;
  - (3) A copy of the demolition permit issued by the city for the demolition of the improvements subject to the order; and
  - (4) Photographs showing the current conditions of the deteriorated/demolished property.
  
- (f) The complete application for a LEED tax abatement shall consist of a complete application form accompanied by a nonrefundable application fee in the amount stated for this provision in the city fee schedule and:
  - (1) The information required by items (1) through (5) of subsection (b) of this section;
  - (2) The total project cost; and
  - (3) Documentation that the applicant has registered with USGBC seeking LEED certification for the new commercial facility for which it is seeking a tax abatement.
  
- (g) The complete application for a green stormwater infrastructure tax abatement shall consist of a complete application form accompanied by a nonrefundable application fee in the amount stated for this provision in the city fee schedule and:

- (1) The information required by items (1) through (5) of subsection (b) of this section;
  - (2) Proposed strategy to obtain all required plans and approvals to construct the green stormwater infrastructure;
  - (3) Proposed strategy to maintain, during the abatement period, the green stormwater infrastructure in accordance with the applicable detention volume or stormwater quality design criteria from the design manual;
  - (4) The total project cost;
  - (5) The total green stormwater infrastructure cost; and
  - (6) An analysis that indicates that the green stormwater infrastructure will mitigate risk of flooding, reduce heat island effect or other climate-related hazards, improve water quality, sequester carbon, encourage water conservation, or restore native ecosystems through green stormwater infrastructure. The analysis must demonstrate how the green stormwater infrastructure of the facility for which the applicant is seeking a tax abatement provides (i) hazard mitigation and additional environmental, social, or ecosystem benefits or services, and (ii) a net public benefit. The analysis must use a methodology that (i) is promoted or utilized by federal agencies, or (ii) has otherwise been peer-reviewed and is academically-accepted in the field of green infrastructure and stormwater management.
- (h) The application form may require such financial and other information as the director deems appropriate for evaluation of the financial capacity and other factors of the applicant.
- (i) The city shall not enter into an agreement if it finds that the request for the abatement was filed after the commencement of construction, alteration, or installation of improvements related to a proposed modernization, expansion or new facility. An applicant is ineligible for abatement if a decision to commence a modernization, expansion or new facility in the city has been formally announced on or before an application for abatement has been filed with the city.
- (j) Upon receipt of a complete application for abatement, the director shall notify in writing the presiding officer of the governing body of each eligible jurisdiction of the abatement application, which notice shall include a copy of the application.

- (k) An applicant who submits an application for more than one type of tax abatement shall only be required to submit one nonrefundable application fee, which, if applicable, shall be in the amount stated for the type of tax abatement with the highest application fee.
- (l) The application fees established in this section shall not be subject to the annual adjustment provided for in section 1-13 of this Code."

**Section 5.** That Items (7) and (14) of Section 44-128 of the Code of Ordinances, Houston, Texas, are hereby amended to read as follows:

"(7) A requirement that the abatement recipient, on or before February 1 of each year the tax abatement agreement is in effect, provide the director an affidavit that includes a delineation of the number of permanent employees, contract employees and part-time employees of the abatement recipient as of the immediately preceding December 1, who report to work in the reinvestment zone at each site covered by the agreement;"

"(14) A provision that the city may amend the agreement in lieu of termination pursuant to section 44-135(d) of this Code."

**Section 6.** That Item (11) of Section 44-130 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(11) A provision that the city may amend the agreement in the event of default or in lieu of termination pursuant to section 44-135(d) of this Code."

**Section 7.** That Section 44-131 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**"Sec. 44-131. LEED tax abatement.**

- (a) *Authorized facility.* A facility is eligible for a LEED tax abatement if:
  - (1) It is a new commercial facility whose owner has registered with USGBC to apply for LEED certification for the facility;
  - (2) Construction of the facility has not commenced prior to the application for abatement; and

- (3) The total project cost is reasonably expected by the applicant to be at least \$3,000,000.

This type of tax abatement may be a stand-alone abatement or part of a standard economic development abatement.

- (b) *Value and term of abatement.* Abatement shall be granted effective upon the January 1 valuation date immediately following the date that both of the following events have occurred: (i) construction of the facility has been completed in accordance with the terms of the agreement, and (ii) a LEED certification has been obtained for the facility. The abatement may remain in effect for up to ten years. A facility described in subsection (a) of this section is eligible for abatement for the percentage of the increase in the facility's value over the base year value that corresponds to the applicable LEED certification level obtained for the facility according to the following sliding scale:

	<b>LEED Certification Level</b>	<b>Percentage of Increase Over Base Year Value Abated</b>
(1)	Silver	5%
(2)	Gold	10%
(3)	Platinum	15%

- (c) *Agreement.* Upon designation of a reinvestment zone, the city may enter into an abatement agreement that shall include:

- (1) The items listed in items (3) – (5), (7), (8), and (10) – (14) of section 44-128 of this Code;
- (2) The estimated value to be abated and the base year value;
- (3) The percentage of value abated based upon the applicable LEED certification level;
- (4) The total project cost; and
- (5) A requirement that the facility be constructed pursuant to and in compliance with all applicable permitting requirements.

- (d) *Taxability.* From the date of the city's execution of the abatement agreement to the end of the abatement period, the value of a facility



described by subsection (a) of this section shall be taxable in the manner described in subsection (b) of this section.”

**Section 8.** That Article IV of Chapter 44 of the Code of Ordinances, Houston, Texas, is hereby amended by inserting a new Section 44-132 that reads as follows and renumbering the subsequent Sections accordingly:

**“Sec. 44-132. Green stormwater infrastructure tax abatement.**

(a) *Authorized facility.* A facility is eligible for a green stormwater infrastructure tax abatement if:

- (1) It is either an authorized facility as described in section 44-127(a) of this Code or a brownfield redevelopment facility;
- (2) Construction or alteration of the facility has not commenced prior to the application for abatement; and
- (3) The total project cost is reasonably expected to be at least \$3,000,000, with a minimum total green stormwater infrastructure cost of \$100,000.

This type of tax abatement may be a stand-alone abatement or part of a standard economic development abatement.

(b) *Value and term of abatement.* Abatement shall be granted effective upon the January 1 valuation date immediately following the date that both of the following events have occurred: (i) all permits required by the design manual for the green stormwater infrastructure have been obtained, and (ii) the construction or alteration of the facility has been completed under the terms of the agreement. The abatement may remain in effect for up to ten years. A facility described in subsection (a) of this section is eligible for abatement for 100 percent of the increase in facility's value over the base year value; provided, however, that the amount of abatement shall not exceed the total green stormwater infrastructure cost.

(c) *Eligible green stormwater infrastructure.* To be eligible for abatement, a facility described in subsection (a) of this section must include at least one type of green stormwater infrastructure that either (i) meets the applicable design criteria for a low impact development design approach described in chapter 9 of the design manual; or (ii) involves urban forestry and native ecosystem

restoration through the planting of trees or shrubs listed in appendices A-1, A-2 and D of chapter 33 of this Code.

(d) *Qualifications.* To be eligible for abatement, a facility described in subsection (a) of this section must:

- (1) Include green stormwater infrastructure that is (i) expected to mitigate risk of flooding, reduce heat island effect or other climate-related hazards, improve water quality, sequester carbon, encourage water conservation, or restore native ecosystems, and (ii) designed in accordance with the design manual and the applicable water quantity and stormwater quality design criteria from the design manual;
- (2) Provide an economic benefit to the city, taking into consideration all relevant factors, including the size of the abatement, income from sales tax and franchise fees generated by the planned improvement, and any additional expense to the city in providing city services as a result of the improvement; and
- (3) Be reasonably expected to increase the value of the real or tangible personal property within the reinvestment zone.

(e) *Agreement.* Upon designation of a reinvestment zone, the city may enter into an abatement agreement that shall include:

- (1) The items listed in items (3) – (5), (7), (8), and (10) – (14) of section 44-128 of this Code;
- (2) The estimated value to be abated and the base year value, provided that the amount of the abatement may not exceed the total green stormwater infrastructure cost;
- (3) The total project cost and the total green stormwater infrastructure cost;
- (4) A requirement that the facility and the green stormwater infrastructure be constructed pursuant to and in compliance with all applicable permitting requirements;
- (5) A requirement that the green stormwater infrastructure is maintained in compliance with the applicable design manual requirements, including annual stormwater quality permits and annual certification requirements;

- (6) A requirement that the owner maintain, and provide to the city for inspection, records with respect to the stormwater quality and water quantity benefits of the green stormwater infrastructure, such as mitigating risk of flooding, reducing heat island effect or other climate-related hazards, improving water quality, sequestering carbon, encouraging water conservation, or restoring native ecosystems; and
  - (7) A requirement that the green stormwater infrastructure be made accessible to others for purposes of study and education regarding best practices for design, construction and maintenance of green stormwater infrastructure.
- (f) *Taxability.* From the date of execution of the abatement agreement to the end of the abatement period, the value of a facility described by subsection (a) of this section shall be taxable in the manner described in subsection (b) of this section."

**Section 9.** That the City Attorney is hereby authorized to direct the publisher of the Code of Ordinances, Houston, Texas (the "Code"), to make such nonsubstantive changes to the Code as are necessary to conform to the provisions adopted in this Ordinance, and to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions of the published Code.

**Section 10.** That the City Council hereby approves the new fees established in Section 44-123 of the Code of Ordinances, Houston, Texas, in the amounts shown below:

<b>Name</b>	<b>Description</b>	<b>Statutory Authority</b>	<b>Amount</b>
Economic Development Abatement	Application Fee	Sec. 44-123(c)	\$3,000
Brownfield Development Abatement	Application Fee	Sec. 44-123(d)	\$3,000
Deteriorated/Demolished Property Abatement	Application Fee	Sec. 44-123(e)	\$3,000
LEED Abatement	Application Fee	Sec. 44-123(f)	\$3,000
Green Stormwater Infrastructure Abatement	Application Fee	Sec. 44-123(g)	\$3,000


The Chief Development Officer shall ensure that a copy of this Ordinance is provided to the Director of Finance, who shall incorporate the new fees in the City Fee Schedule as soon as possible.

**Section 11.** That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 12.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 16th day of December, 2020.

APPROVED this 16th day of December, 2020.

  
\_\_\_\_\_  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is \_\_\_\_\_.

\_\_\_\_\_  
City Secretary

Prepared by Legal Dept. Mary Buzale  
MFB:mfb December 12, 2020 Senior Assistant City Attorney  
Requested by: Andrew F. Icken, Chief Development Officer  
L.D. File No. 0421800021003

AYE	NO	
✓		<b>MAYOR TURNER</b>
••••	••••	<b>COUNCIL MEMBERS</b>
✓		PECK
✓		DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
	✓	TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
	✓	KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT  
REVIEW  
DATE: **DEC 2 2 2020**

Rev. 5/18