Passed 9-0

RESOLUTION 11-01

TO APPROVE "THE CITY OF BLOOMINGTON TAX ABATEMENT PROGRAM GENERAL STANDARDS" WHICH AMENDS AND SUPERSEDES ALL FORMER VERSIONS OF THE CITY'S TAX ABATEMENT PROGRAM CRITERIA AND PROCEDURES

WHEREAS, the Indiana Code at 6-1.1-12.1 et. seq. authorizes the Common Council to establish areas within the corporate boundaries as "Economic Revitalization Areas" (ERAs) as well as Economic Development Target Areas (EDTAs) within which property taxes may be abated on real property as well as eligible new equipment (personal property); and

WHEREAS, I.C. 6-1.1-12.1-2 authorizes the Common Council to adopt a resolution establishing general standards to be used in finding an area to be an ERA; and

WHEREAS, in an ERA or EDTA, an applicant for tax abatement must receive Common Council approval of the Statement of Benefits resulting from a proposed project; and

WHEREAS, the Common Council of the City of Bloomington in Ordinance 97-06 gave to the Economic Development Commission, a statutory commission established by the Council pursuant to IC 36-7-12-5 and Bloomington Municipal Code Section 2.30, the responsibility for making recommendations to the Council regarding requests for tax abatement; and

WHEREAS, the Economic Development Commission, recently adopted amendments to the general standards of the tax abatement program and procedures and recommends that the Common Council enact those amendments, which are included in "Exhibit A", which is entitled "City of Bloomington Tax Abatement Program General Standards" and is attached hereto and incorporated herein;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. The Common Council approves the attached document entitled the "City of Bloomington Tax Abatement Program General Standards" in its entirety as an amendment to the guidelines and procedures for administration of the program. These general standards supersede any previous version of the guidelines and procedures, and shall remain in effect until amended or superseded by another version of the general standards.

SECTION 2. This resolution shall be effective from and after passage and execution by the Mayor and until rescinded or amended by the Council.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 19th day of JANUARY, 2011.

Susan Sandberg

SUSAN SANDBERG, President
Bloomington Common Council

ATTEST:

Regina Moore

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 20th day of January, 2011.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 20th day of January, 2011.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This resolution amends the general standards of the Tax Abatement program of the City of Bloomington. Based upon the recommendation of the City's Economic Development Commission, this resolution amends the general standards by which the affirmative designation of an economic revitalization area or economic development target area may be made as well as subsequent approval of tax abatement deductions on real or personal property within those areas.

Signed Copies To:

Controller
Legal
Sustainable Ec Dev
MC Auditor
MC Treasurer
Clerk
Council

City of Bloomington
Tax Abatement Program: General Standards

This document sets forth the General Standards under which the City of Bloomington may authorize deductions on the rehabilitation of real and personal property (also known as tax abatement), as allowed under Indiana law.

Program Description:

The City of Bloomington recognizes tax abatement as a useful economic development tool which can be implemented to improve the overall economic lives of citizens and to aid in achieving the Administration's vision of a strong and diverse economy, with an eye toward sustainability and balance. City of Bloomington tax abatements allow taxes on real estate improvements or eligible equipment installation to be phased in over a period of time, thus promoting new business and agencies and initiatives that improve the overall quality of life in our community. New construction, rehabilitation of existing buildings or installation of eligible equipment within designated ERAs receives tax abatement through a reduced assessed valuation on those improvements over a specified period of time.

Indiana Law (I.C. 6-1.1-12.1 *et. seq*) allows up to ten year abatement on the increased assessed valuation due to construction or rehabilitation improvements in the areas of the city where development needs to be encouraged. I.C. 6-1.1-12.1 also allows a one- to ten-year abatement on "new manufacturing equipment." The equipment must be used in "the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining or finishing or other tangible personal property; and never before used by its owner for any purpose in Indiana." Further, "enterprise information technology equipment" purchased after June 30, 2009 may also be eligible for abatement if the project is approved prior to January 1, 2013. See IC 6-1.1-10-44 for the statutory definitions of "enterprise information technology equipment" and eligibility requirements.

The rate at which the new assessed valuation will be phased in for approved abatements is set forth by Indiana law (I.C. 6-1.1-12.1-3 for real property; I.C. 6-1.1-12.1-4.5 for eligible equipment or personal property). The City of Bloomington Economic Development Commission shall recommend a term of abatement for each project, which shall be authorized by the City Council in the process outlined below and allowed for by Indiana law. With respect to new construction and personal property, the City Council may choose to limit the dollar amount of the deduction that will be allowed.

Project Eligibility:

In order for a project to be eligible for tax abatement, the area in which it is located must be designated as an Economic Revitalization Area (ERA) by the City of Bloomington. Decisions to designate areas as ERAs are determined on a project-by-project basis for any project located within the corporate limits of the City of Bloomington.

An Economic Revitalization Area (ERA) must have "...become undesirable for or impossible of, normal development and occupancy," because of such factors as "a lack of development, cessation of growth, deterioration of improvements or character of occupancy, age, obsolescence, substandard buildings, or other factors which have impaired values or prevent a normal development of property or use of property," and "includes any area where a facility or a group of facilities that are technologically, economically, or energy obsolete are located and where the obsolescence may lead to a decline in employment and tax revenues." (IC 6-1.1-12.1-1)

Review Criteria:

Each project is reviewed on its own merits, and the effect of each project on the revitalization of the surrounding areas and employment is considered. Basic eligibility is achieved through demonstrating the following:

- Creation of full-time, permanent living-wage jobs[1]
- Creation of capital investment as an enhancement to the tax base

In addition, other qualifying and evaluative criteria will be considered. The following page provides a general list of such criteria and their definitions. It is intended to be neither exhaustive nor definitive, and applicants are encouraged to submit proposals of projects that may not be found on this list but make a significant positive contribution to overall economic vitality and quality of life in the City of Bloomington.

Projects must be in accordance with the current City of Bloomington Unified Development Ordinance (UDO) and should be located within current areas of economic development focus.

[1] In accordance with Chapter 2.28 (Bloomington Living Wage Ordinance) of the City of Bloomington Municipal Code.

Additional Evaluative Criteria:

In addition to the creation of full-time, living wage employment and capital investment enhancements to the tax base, other evaluative criteria will be considered in the review of tax abatement applications, outlined below. This list is neither exhaustive nor definitive, and applicants are encouraged to submit proposals of projects that may not be found on this list but make a significant positive contribution to overall economic vitality and quality of life in the City of Bloomington.

Criteria	Definition
Quality of Life and Environmental/Sustainability	A project which is consistent with or advances principles found in the Redefining Prosperity report (2009); and/or a project which results in responsible sustainable development; and/or a project that results in environmental remediation or protection which makes a positive contribution to the overall quality of life within the City of Bloomington.
Affordable Housing	Residential developments with a recorded restriction that requires the housing for a certain number of years to be rented or owned by qualified very low and low-income households are considered affordable housing. Projects of this nature may be directed toward specified individuals, for example, first-time homebuyers and persons with disabilities.
Community Service	Volunteerism and civic engagement, such as serving on and working with boards, commissions and foundations, in the Bloomington community.
Community Character	A project that preserves and/or enhances the unique character of the city of Bloomington.

A list of examples for all criteria is provided in Appendix 1.

Ineligible Projects:

Facilities as listed in Indiana Code 6-1.1-12.1-3 are ineligible. Some facilities which are generally prohibited under this law (such as retail or residential) may be eligible to apply under these General Standards for abatement if the area of the project is designated by the City Council as an Economic Development Target Area (EDTA), as allowed by I.C. 6-1.1-12.1-7.

Other factors which may render a project ineligible for designation by the City of Bloomington include the following:

- A building permit has been obtained or construction has been initiated prior to final approval.
- The petitioner holds outstanding obligation or debt to the City which is in default or arrears, or is currently in litigation with the City.
- The project involves the demolition or removal of structures that are listed on the local Historic Register, that are eligible for individual listing on the National Historic Register or that are contributing structures within a nationally or locally designated historic district.
- The project requires major public infrastructure improvements at additional cost to the City of Bloomington.
- The project is not consistent with the City's long-range plans for the area in question.

The City Council may void the tax abatement designation awarded to a project if the project has not been initiated within twelve (12) months of the date of the confirmatory resolution (final approval) of the tax abatement, or if the actual use is different than that approved.

Application Procedure and Review:

IC 6-1.1-12.1 *et seq.* requires an applicant to file a Statement of Benefits. The Economic Development Commission shall develop and implement, with the City of Bloomington Economic & Sustainable Development Department, application and Commission review procedures to ensure consistency with Indiana statutory requirements as set forth in IC 6-1.1-12.1-1 and to fulfill the purpose of these General Standards.

Each application shall be reviewed by the Economic Development Commission and any other City commission as may be required by law. The Economic Development Commission shall make the final recommendation regarding designation to the City Council, based upon criteria in these General Standards and according to Indiana Code.

A non-refundable $100.00 application fee shall be required for each application.

The Economic Development Commission's recommendation shall be submitted to the City Council, along with all application and supplementary documents as necessary for the designating body's review.

The City Council's determination of whether the area shall be designated as an Economic Revitalization Area shall be based on procedures and the following findings as set forth in Indiana Code (IC 6-1.1-12.1 *et seq.*):

- Whether the estimate of the value of the redevelopment or rehabilitation is reasonable for the projects of that nature.
- Whether the estimate of the number of individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described redevelopment or rehabilitation.
- Whether the estimate of the annual salaries of these individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described redevelopment or rehabilitation.
- Whether any other benefits about which information was requested are benefits that can be reasonably expected to result from the proposed described redevelopment or rehabilitation.
- Whether the totality of the benefits is sufficient to justify the deduction.

If the City Council makes the above findings in the affirmative, it shall pass a declaratory resolution to designate an area an Economic Revitalization Area, approve a Statement of Benefits and authorize the term of abatement. As allowed under IC 6-1.1-12.1-2, the declaratory resolution may include the dollar amount of the deduction and may impose reasonable conditions which are related to the purpose of these General Standards.

If the Council recommends designation of an ERA and approval thereof, the City Clerk shall:

A. Certify a copy of the resolution and the application to the Monroe County Assessor and Auditor's Office;
B. Publish a legal notice to inform interested parties that the tax abatement application is available for inspection at the Assessor's Office;
C. Set a meeting date, at which time the Common Council shall hear all remonstrance and objections to the area being designated an "Economic Revitalization Area."

The Common Council shall subsequently hold a regular meeting and vote on a resolution confirming, modifying, or rescinding the earlier resolution recommending designation and approval.

Memorandum of Agreement:

Upon approval by the Common Council of a confirmatory resolution:

A. The applicant will sign a Memorandum of Agreement with the City of Bloomington, thereby agreeing to all terms set forth by the Common Council approval and as required by the City of Bloomington.
B. The City Clerk shall certify a copy of the confirming resolution and the application to the Applicant, the Monroe County Assessor and Auditor's Office.

Compliance Procedures and Annual Review:

The Department of Economic & Sustainable Development will compile a yearly compliance report related to all active tax abatement projects to present to the Economic Development Commission. The Commission will forward the report to the City Council. The report will be based upon Compliance with Statement of Benefits Forms (CF-1s) as submitted by property owners receiving tax abatement. The annual compliance process for the property owner is set forth in IC 6-1.1-12.1-5.1 and additional terms may be set forth in the Memorandum of Agreement.

If the CF-1 is not filed, the benefits promised are not materialized, or other terms of the Memorandum of Agreement are not fulfilled, the Council may find the property owner not in Substantial Compliance as described below, and may act to rescind the remaining term of abatement, or enforce similar penalties as set forth in the Memorandum of Agreement.

Substantial Compliance Requirements:

In addition to terms set forth in IC 6-1.1-12.1-5.9, the Memorandum of Agreement may set forth additional terms related to what may constitute substantial compliance or noncompliance.

Noncompliance occurs when the designating bodies (Economic Development Commission and City Council) determine that the property owner has not made reasonable efforts to comply with the Statement of Benefits. Noncompliance may not result from factors beyond the control of the property owner, such as declining demand for the owner's products or services. If factors beyond the property owner's control do not cause noncompliance, the termination of deduction procedure will be implemented as prescribed by IC 6-1.1-42-30.

Factors within the control of the property owner that may contribute to noncompliance may include, but are not limited to, the following:

- Failure to comply with any terms set forth in the Memorandum of Agreement;
- An incomplete, inaccurate, or missing CF-1;
- Petitioner vacates the city of Bloomington during the term of abatement;
- Fraud on the part of petitioner;
- Initiation of litigation with the City of Bloomington.

The City Council may void the tax abatement designation awarded to a project if the project has not been initiated within twelve (12) months of the date of the confirmatory resolution (final approval) of the tax abatement, or if the actual use is different than that approved.

Appendix 1:
Project Eligibility Criteria Examples

The following is a list of general examples. It is not intended to be exhaustive nor definitive. The Department of Economic and Sustainable Development will assist potential applicants with understanding project eligibility on a case-by-case basis.

-- Job creation

- Full-time, living-wage jobs are created for Bloomington residents – from new business or expansion of existing employee base
- Compensation may include wages and benefits such as childcare.

-- Creation of capital investment as enhancement to the tax base

- Projects that provide a major private infrastructure improvement paid by the developer
- Includes real property investment – new and existing buildings
- Includes eligible manufacturing and other eligible equipment

-- Quality of Life and Environmental/Sustainability

- Urban infill redevelopment and/or brownfield remediation[1]
- Green building according to "Leadership in Energy and Environmental Design" (LEED)[2] or other commonly accepted green building standards
- A business engaged in research and development of alternative energy production or other methods to build community resilience in a volatile energy market
- A social enterprise or business helping formerly incarcerated persons re-enter the workforce
- A business specializing in fine arts/crafts (bolstering the arts sector and assisting with diversifying the local economy).

-- Affordable Housing

- A housing development sets aside 50% of the units to be affordable (at, e.g., HUD Fair Market rent) for low income to moderate income individuals
- Housing units for workforce housing
- Housing stipulated for sale to first-time homebuyers
- Affordable housing with handicap-accessible units, and/or the units are designed for occupancy by senior citizens.

-- Community Service

- Volunteering labor, materials, money, or a combination of the three to charitable organizations and non-profit agencies that make a significant impact in Bloomington.
- Serving on boards, commissions, and/or foundations whose mission involves community service and the betterment of Bloomington.

-- Community Character

- Art space and art studio expansion and development
- Petitioner is a local home-grown business, headquartered in and/or unique to Bloomington
- Rehabilitation, preservation, and renovation of historic properties according to Secretary of the Interior Standards in consultation with the City Historic Preservation Officer.

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[1] By definition, a brownfield site is real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant (Public Law 107-118 (H.R. 2869) – "Small Business Liability Relief and Brownfields Revitalization act" – signed into law Jan. 11, 2002).

[2] www.usgbc.org

Appendix 2:

Excerpt from IC 6-1.1-12.1-5.9: Determination of substantial compliance with statement of benefits; notice of noncompliance; hearing; resolution; appeal

(a) This section does not apply to:
  (1) a deduction under section 3 of this chapter for property located in a residentially distressed area; or
  (2) any other deduction under section 3 or 4.5 of this chapter for which a statement of benefits was approved before July 1, 1991.

(b) Not later than forty-five (45) days after receipt of the information described in section 5.1, 5.3(j), or 5.6 of this chapter, the designating body may determine whether the property owner has substantially complied with the statement of benefits approved under section 3, 4.5, or 4.8 of this chapter. If the designating body determines that the property owner has not substantially complied with the statement of benefits and that the failure to substantially comply was not caused by factors beyond the control of the property owner (such as declines in demand for the property owner's products or services), the designating body shall mail a written notice to the property owner. The written notice must include the following provisions:
  (1) An explanation of the reasons for the designating body's determination.
  (2) The date, time, and place of a hearing to be conducted by the designating body for the purpose of further considering the property owner's compliance with the statement of benefits. The date of the hearing may not be more than thirty (30) days after the date on which the notice is mailed.

(c) On the date specified in the notice described in subsection (b)(2), the designating body shall conduct a hearing for the purpose of further considering the property owner's compliance with the statement of benefits. Based on the information presented at the hearing by the property owner and other interested parties, the designating body shall again determine whether the property owner has made reasonable efforts to substantially comply with the statement of benefits and whether any failure to substantially comply was caused by factors beyond the control of the property owner. If the designating body determines that the property owner has not made reasonable efforts to comply with the statement of benefits, the designating body shall adopt a resolution terminating the property owner's deduction under section 3, 4.5, or 4.8 of this chapter. If the designating body adopts such a resolution, the deduction does not apply to the next installment of property taxes owed by the property owner or to any subsequent installment of property taxes.

(d) If the designating body adopts a resolution terminating a deduction under subsection (c), the designating body shall immediately mail a certified copy of the resolution to:
  (1) the property owner;
  (2) the county auditor; and
  (3) the county assessor.
  The county auditor shall remove the deduction from the tax duplicate and shall notify the county treasurer of the termination of the deduction. If the designating body's resolution is adopted after the county treasurer has mailed the statement required by IC 6-1.1-22-8.1, the county treasurer shall immediately mail the property owner a revised statement that reflects the termination of the deduction.

(e) A property owner whose deduction is terminated by the designating body under this section may appeal the designating body's decision by filing a complaint in the office of the clerk of the circuit or superior court together with a bond conditioned to pay the costs of the appeal if the appeal is determined against the property owner. An appeal under this subsection shall be promptly heard by the court without a jury and determined within thirty (30) days after the time of the filing of the appeal. The court shall hear evidence on the appeal and may confirm the action of the designating body or sustain the appeal. The judgment of the court is final and conclusive unless an appeal is taken as in other civil actions.

(f) If an appeal under subsection (e) is pending, the taxes resulting from the termination of the deduction are not due until after the appeal is finally adjudicated and the termination of the deduction is finally determined.

As added by P.L.14-1991, SEC.6. Amended by P.L.90-2002, SEC.124; P.L.256-2003, SEC.7; P.L.193-2005, SEC.5; P.L.154-2006, SEC.30; P.L.3-2008, SEC.37; P.L.146-2008, SEC.128..