

## **CHAPTER 35: TAXATION**

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***Cross-reference:***

*Affirmative action, see § 36.16*

## **GENERAL PROVISIONS**

### **§ 35.01 LEGISLATIVE FINDINGS.**

(A) The County Council (“Council”) finds that there is a need to develop tax abatement procedures which set forth the philosophy, regulations, procedures and general standards, and which the county believes are necessary to encourage economic development within the county’s boundaries.

(B) The Council, therefore, declares that the tax abatement procedures and general standards set forth in this chapter shall govern tax abatement requests filed for its consideration.

(C) The tax abatement procedures and general standards set forth in this chapter are promulgated pursuant to the Home Rule powers vested in the county pursuant to I.C. 36-1-3-1 *et seq.*, and the “Deduction for Rehabilitation or Redevelopment of Real Property in Economic Revitalization Areas” statute set forth in I.C. 6-1.1-12.1-1 *et seq.* All persons who desire to seek real or personal property tax abatement consideration have the duty to comply with the applicable provision set forth in this chapter, as well as all state law requirements.

(Ord. 24-09, passed 5-12-2009)

### **§ 35.02 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***COUNCIL.*** The County Council of St. Joseph County, Indiana.

***COUNTY.*** St. Joseph County, Indiana.

***COUNTY ASSESSOR.*** The Assessor of St. Joseph County, Indiana.

***COUNTY AUDITOR.*** The Auditor of St. Joseph County, Indiana.

***DESIGNATING BODY.*** The County Council of St. Joseph County, Indiana.

***ECONOMIC REVITALIZATION AREA (ERA).*** The meaning set forth in I.C. 6-1.1-12.1-1 *et seq.*

***ECONOMICALLY DISTRESSED AREA.*** Those census tracts in the county that the Council determines have the highest levels of poverty and unemployment, and the lowest levels of median income. According to the 2000 Census, these are currently tracts 20, 21, 23, 19, 6, 29, 10, 27, 17, 1, 30, 22, 24, 5 and 4.

***HARD-DOLLAR COSTS.*** Expenses directly related to the proposed new construction or rehabilitation excluding costs of land, financing, architect, engineering and attorney fees.

**INDUSTRIAL DEVELOPMENT.** The economic activities described in major groups 31 through 33 of the North American Industry Classification System, United States, 2002 manual published by the United States Office of Management and Budget's Economic Classification Policy Committee, which manual is hereby incorporated by reference, with copies being maintained in the office of the County Council.

**LOCAL COMPANY.** A legal entity that the Council deems to have an existing substantial place of business located in the county.

**MINORITY.**

(1) Black (i.e., all persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (i.e., all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);

(3) Asian and Pacific Islander (i.e., all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); or

(4) American Indian or Alaskan Native (i.e., all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

**NEW INFORMATION TECHNOLOGY EQUIPMENT.** The meaning set forth in I.C. 6-1.1-12.1-1 *et seq.*

**NEW LOGISTICAL DISTRIBUTION EQUIPMENT.** The meaning set forth in I.C. 6-1.1-12.1-1 *et seq.*

**NEW MANUFACTURING EQUIPMENT.** The meaning set forth in I.C. 6-1.1-12.1-1 *et seq.*

**NEW PERSONAL PROPERTY.** Includes new manufacturing equipment, new research and development equipment, new logistical distribution equipment and new information and technology equipment, all having the meaning set forth in I.C. 6-1.1-12.1-1 *et seq.*

**NEW RESEARCH AND DEVELOPMENT EQUIPMENT.** The meaning set forth in I.C. 6-1.1-12.1-1 *et seq.*

**PROPERTY.** The meaning set forth in I.C. 6-1.1-12.1-1 *et seq.*

**REDEVELOPMENT.** The meaning set forth in I.C. 6-1.1-12.1-1 *et seq.*

**REHABILITATION.** The meaning set forth in I.C. 6-1.1-12.1-1 *et seq.*

**RELATED PARTY.** Any person who is related within the meaning of § 267 of the Internal Revenue Code (i.e., 26 U.S.C. Subtitle A, Chapter 1, Subchapter B, Part IX, § 267), except that individual members of an applicant's family are explicitly excluded from the definition of **RELATED PARTY**.

**TAX INCREMENT ALLOCATION AREAS (TIAA).** The meaning set forth in I.C. 36-7-14-39(a).

**WAREHOUSE DEVELOPMENT.** The economic activities described in major groups 421, 422, and 493 of the North American Industry Classification System, United States, 2002 manual published by the United States Office of Management and Budget's Economic Classification Policy Committee, which manual is hereby incorporated by reference with copies being maintained in the office of the County Council.

(Ord. 24-09, passed 5-12-2009)

### **§ 35.03 INTERPRETATIONS.**

(A) Any term not otherwise defined in this chapter has the meaning ascribed to it in I.C. 6-1.1-12.1-1 *et seq.*

(B) All defined terms are to be interpreted that the singular includes the plural and vice versa as indicated by the context.

(C) The terms “including”, “such as” and similar terms, when used as part of a phrase containing one or more specific items, are to be interpreted as being used by way of example and not of limitation.

(D) All references to provisions of the Indiana Code, this code and the United States Code are to be interpreted as meaning these provisions as they exist on the effective date of the ordinance from which this chapter derives and as they may be amended in the future.

(Ord. 24-09, passed 5-12-2009)

### **§ 35.04 ABATEMENT TIERS.**

The Council in its discretion may grant tax abatements in tiers. As provided in § 35.05, the first tier is a base abatement. To qualify for a base abatement, property investors must meet certain minimum requirements. As provided in § 35.06, the second tier is an add-on abatement which the Council intends to provide an incentive for property investors to execute certain actions that the Council believes will foster economic development and other public benefits in the community.

(Ord. 24-09, passed 5-12-2009)

### **§ 35.05 BASE ABATEMENT.**

(A) A base abatement is an abatement for three years in the case of real property other than single-family residential, and five years in the case of personal property.

(B) The Council may grant a base abatement to an applicant who fulfills the following requirements:

(1) The applicant’s proposed project meets the requirements set forth in §§ 35.15 through 35.17 for real property or § 35.18 for personal property;

(2) The Council deems the applicant’s proposed project likely to generate within a ten-year period financial returns (i.e., revenue from sources such as new real or personal property taxes, additional or retained county option income taxes, payments in lieu of taxes, private contributions and public user fees) and other economic and social benefits to the community sufficient to justify the costs that would be incurred by the county for municipal infrastructure improvements (including water, sewer and drainage facilities; wastewater treatment facilities; road, street and alley improvements; street lighting; and traffic control) and

additional municipal services needed to enable or directly benefit the project;

(3) The applicant has executed a memorandum of agreement. The memorandum of agreement is a legally binding agreement representing a contractual relationship between the applicant and the Council. It may become effective upon the Council granting the abatement, which includes provisions setting forth:

(a) The tax abatement recipient's agreement to fulfill the conditions upon which the tax abatement is based ("conditions of abatement");

(b) The time within which the tax abatement recipient must comply with the conditions of abatement;

(c) The tax abatement recipient's obligation to respond to periodic surveys regarding compliance with the conditions of abatement;

(d) The tax abatement recipient's obligation to allow representatives of the county to have access to the project premises and to perform inspections and audits as necessary to verify compliance with the conditions of abatement; and

(e) The events which:

1. Shall entitle the Council to terminate the tax abatement in whole or in part; and

2. Shall cause the tax abatement recipient to be obligated to repay all or a portion of the property tax savings received.

(4) Neither the applicant nor any related party of the applicant is delinquent or in default with respect to any property tax payment in the county;

(5) Neither the applicant nor any related party of the applicant has a record of violations of local, state or federal laws or regulations over a period of time that, in the opinion of the Council, tends to show a consistent pattern;

(6) The applicant must pay all company employees at least a poverty wage. The **POVERTY WAGE** is defined as the wage rate that provides a full-time worker an income at the government-defined poverty level. It is calculated as follows.

(a) Step 1: Determine the poverty annual income level for a household of size three, as listed in the annual Federal Poverty Guidelines. Data for these income levels are published at <http://aspe.hhs.gov/poverty/index.shtml>.

(b) Step 2: Divide the poverty annual income level by 2,080 hours, the number of hours for full-time work in a year, to get the **POVERTY WAGE**.

(c) The **POVERTY WAGE** until March 1, 2010, is the amount set out in the Appendix: Schedule of Fines and Fees. The **POVERTY WAGE** shall be recalculated annually on March 1 using the calculation described above.

(7) The applicant maintains a written affirmative action plan. The plan must indicate the positive steps being taken to encourage the hiring, promotion, and retention of qualified members of historically disadvantaged groups, such as minorities, women and the disabled; and

(8) The construction contractors for the applicant maintain a written affirmative action plan. The plan must conform to those required of federal contractors, as specified in Executive Order 11246 and the

Code of Federal Regulations at:

[http://www.dol.gov/dol/allcfr/ESA/Title\\_41/Part\\_60-4/41CFR60-4.3.htm](http://www.dol.gov/dol/allcfr/ESA/Title_41/Part_60-4/41CFR60-4.3.htm).

(Ord. 24-09, passed 5-12-2009)

### **§ 35.06 ADD-ON ABATEMENT.**

(A) An add-on abatement is available only for real property other than single-family residential construction and may be from one to seven years of abatement in addition to the base abatement. Hence, an applicant for real property tax abatement who is granted both a base abatement and an add-on abatement may receive in total from four to ten years of abatement.

(B) To qualify for years of abatement beyond the base abatement, construction contractors must pay all construction employees 100% of the total wage package of the most recent wage adopted by a Common Construction Wage Committee, as defined by I.C. 5-16-7, for county building projects. This Common Construction Wage setting can be found at [www.in.gov/2596.htm](http://www.in.gov/2596.htm). The requirement to pay the Common Construction Wage Package does not apply to construction projects of less than the amount set out in the Appendix: Schedule of Fines and Fees in total construction cost.

(C) The Council may, in its discretion and in light of its evaluation of the public benefits produced by the applicant's proposed project, grant an add-on abatement to any applicant for real property tax abatement who qualifies for a base abatement under the provisions of § 35.05 and whose proposed project is not single-family residential construction. As a guide to its deliberations regarding an add-on abatement, the Council may consider, among other things: the number of public benefit points awarded to the applicant including in the memorandum of agreement commitments to execute one or more of the public benefit actions described in division (C)(1) below; and the total number of public benefit points awarded in relation to the threshold numbers of public benefit points required to earn consideration for additional years of abatement set forth in division (C)(2) below.

(1) *Public benefit actions and public benefit points.* The public benefit actions for which public benefit points may be awarded are as set forth below. The number of public benefit points that may be awarded is set forth in square brackets following the description of each public benefit action.

(a) *Project related actions.* The applicant will:

1. *Redevelop a site.* Redevelop a site that has special needs by one of the following actions [25 public benefit points]:

a. *Convert an eligible building to residential.* Convert to residential use a commercial building that has been designated an eligible building ("eligible building"). The Council intends generally that an eligible building shall be a building identified as an important element in achieving the goals and objectives of a formally adopted plan (such as a neighborhood revitalization plan) or a building of such magnitude (as determined by its context) that it is considered critical to the success of efforts to enhance, improve, revitalize or preserve the surrounding area;

b. *Rehabilitate an historic building.* Rehabilitate and reuse a building that is on the National Register of Historic Places, a locally designated historic landmark, located in a National Register or local landmark district, eligible for nomination as a National Register or local landmark, or rated as Outstanding (O/13) or Significant (S/12 or S/11) in the most recent Historic Preservation Commission county-wide survey;

c. *Rehabilitate a problem property.* Rehabilitate and reuse a property that has been designated a problem property. The Council intends generally that a problem property shall be a building, facility or complex that has been cited by a county agency, or a difficult-to-adapt building or facility that was constructed and used for a single, unique purpose (such as a school building), or a building of the magnitude (as determined by its context) that it is considered critical to the success of efforts to enhance, improve, revitalize or preserve the surrounding area; or

d. *Clean up a brownfield.* Pay the cost of cleaning up a brownfield, which is any site, building, facility or complex that has been designated a brownfield.

2. *Develop a business based on local university research.* Develop a commercial product or enterprise that is based upon licensing intellectual property arising from research conducted at a public or private university, college or community college within the county [25 public benefit points];

3. *Meet energy-efficient building standards.* Meet energy-efficient building standards at the silver level or higher, as prescribed by the U.S. Green Building Council’s current Leadership in Energy and Environmental Design (LEED) rating system and reference guide, published at [www.usgbc.org](http://www.usgbc.org) [50 public benefit points]; and

4. *Promote green technology.* Develop a business whose primary function is the manufacture, distribution or installation of renewable energy products and materials, including solar, wind and/or geothermal [50 public benefit points].

(b) *“Super-size” project development actions.* Produce new construction or rehabilitation that exceeds either the number of square feet or the amount of hard-dollar cost that is required to qualify under the applicable provisions of §§ 35.15 through 35.17 by 100% or more [100 public benefit points awarded in cumulative increments based on the percentage by which the number of square feet or the amount of hard-dollar cost that is required to qualify, as follows]:

|               |                                     |
|---------------|-------------------------------------|
| 100% to 199%  | 25 public benefit points            |
| 200% to 299%  | 25 additional public benefit points |
| 300% to 399%  | 25 additional public benefit points |
| 400% and over | 25 additional public benefit points |

(c) *Construction related actions.* The applicant will:

1. *Employ local companies.* Employ local companies for at least 75% of the cost of construction work associated with the project, except for the cost of any construction work that is not reasonably available from a local company [25 public benefit points];

2. *Employ local construction workers.* Fifty percent of construction workers on abated project reside in the county [25 public benefit points]; and

3. *Require employees instead of independent contractors.* Require the companies performing construction work associated with the project to hire 100% of the workers (except for any person who is operating as a business that has its own taxpayer identification number) on the project as employees instead of as independent contractors [25 public benefit points].

(d) *Wages and benefits related actions.* The applicant will:

1. *Pay self-sufficiency wage levels.* Pay to all company employees self-sufficiency wages. A **SELF-SUFFICIENCY WAGE** is defined as the wage rate that provides a full-time worker an income sufficient to meet basic needs without subsidies of any kind. It is calculated as follows:

a. Step 1: Determine the self-sufficiency annual income level. Average the self-sufficiency annual income levels for a household of size three calculated by the State Coalition for Housing and Homeless Issues for the county at:

<http://www.region4workforceboard.org/calculator/selfsuffcalc.cfm>;

b. Step 2: Divide the self-sufficiency annual income level by 2,080 hours, the number of hours for full-time work in a year, to get the self-sufficiency wage;

c. The self-sufficiency wage until March 1, 2010, is the amount set out in the Appendix: Schedule of Fines and Fees. The self-sufficiency wage shall be recalculated annually on March 1 using the calculation described above;

d. Included are: base rate; cost-of-living allowances; guaranteed pay; hazardous-duty pay; incentive pay including commissions and production bonuses; on-call pay; and tips; and

e. Excluded are: back pay; jury duty pay; overtime pay; severance pay; shift differentials; non-production bonuses; and tuition reimbursements [100 public benefit points awarded in cumulative increments based on the extent to which all company employees are paid a wage above the poverty wage, as follows]:

|  |                                     |
|--|-------------------------------------|
| 10% to 33% of the difference between the poverty and self-sufficiency wage | 25 public benefit points            |
| 34% to 66% of the difference between the poverty and self-sufficiency wage | 25 additional public benefit points |
| 67% to 99% of the difference between the poverty and self-sufficiency wage | 25 additional public benefit points |
| Self-sufficiency wage or higher  | 25 additional public benefit points |

2. *Pay above-average wages.* Pay average wages (total wage bill divided by number of employees) greater than the mean hourly wage rate for all occupations for the South Bend-Mishawaka Metropolitan Statistical Area. Published at [http://www.bls.gov/oes/current/oes\\_43780.htm#b00-0000](http://www.bls.gov/oes/current/oes_43780.htm#b00-0000) [50 public benefit points]. The mean hourly wage rate for all occupations for the South Bend-Mishawaka Metropolitan Statistical Area until March 1, 2010, is the amount set out in the Appendix: Schedule of Fines and Fees. The mean hourly wage rate shall be determined annually on March 1 by referencing the source listed above;

3. *Provide health benefits.* Make a contribution to a standard health plan for regular full- and part-time employees equal to at least 85% of the premium costs of the plan. The plan includes coverage for at least 80% of medical services paid by the plan, with no more than the amount set out in the Appendix: Schedule of Fines and Fees for out-of-pocket costs for a family, as well as prescription drugs and mental health services with affordable co-pays [50 public benefit points];

4. *Provide pension benefits.* Make a contribution to a retirement plan, available to all

regular full- and part-time employees, of 50% of employee contributions, up to 5% of total wages, [50 public benefit points];

5. *Provide training.* Provide training to employees, which consists of certified training or educational courses equal to at least the amount set out in the Appendix: Schedule of Fines and Fees per employee [50 public benefit points];

6. *Provide day care.* Provide an on-site child care center and/or a flexible spending account providing for before-tax payments of dependent care expenses, with an annual limit as set out in the Appendix: Schedule of Fines and Fees, per employee [25 public benefit points];

7. *Provide transportation assistance.* Provide transportation assistance to lower income employees such as using public transportation, subsidized public transportation or special van services as set out in the Appendix: Schedule of Fines and Fees, per employee [25 public benefit points]; and

8. *Provide employer-assisted housing program.* Provide an employer-assisted home ownership program as set out in the Appendix: Schedule of Fines and Fees, per employee [25 public benefit points].

(e) *Workforce related actions.* The applicant will:

1. *Create new jobs.* Create at least a specified number of new jobs [100 public benefit points awarded in cumulative increments based on the number of new jobs created, as follows]:

|                   |                                     |
|-------------------|-------------------------------------|
| 1 to 25 jobs      | 25 public benefit points            |
| 26 to 50 jobs     | 25 additional public benefit points |
| 51 to 75 jobs     | 25 additional public benefit points |
| More than 75 jobs | 25 additional public benefit points |

2. *Retain existing jobs.* Retain at least the present level of existing jobs [25 public benefit points]; and

3. *Employ residents of Census tracts in economically distressed areas.* Employ residents of Census tracts in economically distressed areas, as a percentage of total company employees, [100 public benefit points awarded in cumulative increments based on the number of economically distressed area residents employed as a percentage of total company employees, as follows]:

|                            |                                     |
|----------------------------|-------------------------------------|
| 1% to 10% of employees     | 25 public benefit points            |
| 11 % to 20% of employees   | 25 additional public benefit points |
| 21% to 30% of employees    | 25 additional public benefit points |
| More than 30% of employees | 25 additional public benefit points |

(2) *Public benefit points thresholds and additional abatement years.* The threshold number of public benefit points required to earn consideration by the Council of each additional year of abatement shall be as set forth below:

- (a) Zero through 199 public benefit points earns consideration of zero additional years of abatement;
- (b) Two hundred through 299 public benefit points earns consideration of one additional year of abatement;
- (c) Three hundred through 399 public benefit points earns consideration of two additional years of abatement;
- (d) Four hundred through 499 public benefit points earns consideration of three additional years of abatement;
- (e) Five hundred through 599 public benefit points earns consideration of four additional years of abatement;
- (f) Six hundred through 699 public benefit points earns consideration of five additional years of abatement;
- (g) Seven hundred through 799 public benefit points earns consideration of six additional years of abatement; and
- (h) Eight hundred or more public benefit points earns consideration of seven additional years of abatement:

| <i>Public Benefits Points</i> |          | Abatement<br>Additional Years |
|-------------------------------|----------|-------------------------------|
| From                          | To       |                               |
| 0                             | 199      | 0                             |
| 200                           | 299      | 1                             |
| 300                           | 399      | 2                             |
| 400                           | 499      | 3                             |
| 500                           | 599      | 4                             |
| 600                           | 699      | 5                             |
| 700                           | 799      | 6                             |
| 800                           | and over | 7                             |

(Ord. 24-09, passed 5-12-2009)

## **PROPERTY TAX ABATEMENTS**

### **§ 35.15 INDUSTRIAL DEVELOPMENT GENERAL STANDARDS.**

(A) *Generally.* The Council believes that the following general standards have a reasonable relationship to the development objectives for industrial development, and would warrant tax abatement consideration as set forth herein.

(B) *Base abatement general standards.*

(1) *New construction.* Proposed industrial developments which incorporate new construction of not less than 10,000 square feet may be considered for a base abatement consisting of three years' real property tax abatement.

(2) *Rehabilitation.* Proposed rehabilitation of existing structures for industrial developments and which propose rehabilitation of not less than 10,000 square feet may be considered for a base abatement consisting of three years' real property tax abatement.

(C) *Add-on abatement general standards.* Proposed industrial developments, which qualify to be considered for a base abatement under the provisions of division (B) above, may be considered for an add-on abatement consisting of from one to seven years' real property tax abatement.

(D) *Compliance with state law.* All applicants seeking real property tax abatement consideration under this section must also comply with all applicable regulations set forth in I.C. 6-1.1-12.1-1 *et seq.*

(Ord. 24-09, passed 5-12-2009)

#### **§ 35.16 WAREHOUSE DEVELOPMENT REAL PROPERTY TAX ABATEMENT.**

(A) *Generally.* The Council believes that the following general standards have a reasonable relationship to the development objectives for warehouse development, and would warrant tax abatement consideration as set forth herein.

(B) *Base abatement general standards.* Proposed warehouse development of new construction or rehabilitation of not less than 25,000 square feet per project may be considered for a base abatement consisting of three years' real property tax abatement.

(C) *Add-on abatement general standards.* Proposed warehouse development, which qualifies to be considered for a base abatement under the provisions of division (B) above, may be considered for an add-on abatement consisting of from one to seven years' real property tax abatement.

(D) *Compliance with state law.* All applicants seeking real property tax abatement consideration under this section must also comply with all applicable regulations set forth in I.C. 6-1.1-12.1-1 *et seq.*

(Ord. 24-09, passed 5-12-2009)

#### **§ 35.17 MISCELLANEOUS REAL PROPERTY TAX ABATEMENT GUIDELINES.**

(A) The Council believes, pursuant to the Home Rule authority set forth in I.C. 36-1-3-1 *et seq.*, and the authority granted to it under I.C. 6-1.1-12.1-1 *et seq.*, that it, as the ultimate designating authority, has the authority to declare areas within the county, other economic revitalization areas which do not meet the general standards for real property tax abatement set forth in §§ 2-77 through 2-83.3.

(B) The Council, therefore, declares that individuals who desire to petition for real property tax abatement which do not meet all of the general standards set forth herein, may do so by filing proper petitions and forms of declaratory and confirmatory resolutions with the office of the County Council. The forms shall set forth in detail the substantive reasons why they believe that they should be considered for the abatement and declared an economic revitalization area.

(C) The Council as the designating body shall review the matters on a project-by-project basis.

(D) The Council shall make specific written findings supporting its determination.

(E) Real property tax abatement granted under this section shall be limited to the specific number of years determined by the Council to be appropriate under the circumstances.

(Ord. 24-09, passed 5-12-2009)

### **§ 35.18 PERSONAL PROPERTY TAX ABATEMENT.**

(A) *Generally.* The Council believes that the following general standards have a reasonable relationship to the development objectives of promoting the installation of new personal property within the county, and would warrant tax abatement consideration as set forth herein.

(B) *Base abatement general standards.*

(1) An applicant seeking personal property tax abatement must comply with all of the provisions of I.C. 6-1.1-12.1-4.5, and the provisions of this chapter that are applicable.

(2) An applicant complying with the provisions may be considered for a base abatement consisting of five years' personal property tax abatement. In the case of exceptional developments that create significant employment and tax revenues, such as I/N Tek, I/N Kote and the AM General H2 project, the County Council may consider a personal property tax abatement of up to ten years.

(C) *Certification of new manufacturing equipment, new research and development equipment, new logistical distribution equipment and new information technology equipment.* An applicant seeking personal property tax abatement must certify that it will use the new manufacturing equipment, new research and development equipment, new logistical distribution equipment and new information technology equipment in one or more of the uses listed within the definition of new manufacturing equipment, new research and development equipment, new logistical distribution equipment and new information technology equipment set forth in I.C. 6-1.1-12.1 *et seq.*

(D) *No add-on abatement.* No add-on abatement will be granted for personal property.

(Ord. 24-09, passed 5-12-2009)

## **REQUIRED INFORMATION; APPLICATIONS**

### **§ 35.30 INFORMATION REQUIRED OF APPLICANT SEEKING TAX ABATEMENT.**

(A) *Owners must file.* Owners of real property or new manufacturing equipment located within the

county may petition the Council on forms provided by the County Council and/or the state for real or personal property tax abatement consideration. All information and attachments required by the designation application must be completed and filed with the County Council together with a filing fee to cover review, processing and administrative costs.

(B) *Schedule of fees.* A check made payable to the County Auditor in the amount applicable must be submitted with the application. An annual processing fee will also be assessed as a part of the annual review required for approved projects. These fees are set forth in the Appendix: Schedule of Fines and Fees.

(C) *Petition information.* Property owners petitioning for tax abatement shall provide the following information on the petition to enable the Council to consider their request:

(1) The name(s) and address(es) of the real property owner(s) (and personal property owner(s), in the case of the request for personal property tax abatement), and any other person(s) leasing, intending to lease, or having an option to purchase the property, and a brief description of the business;

(2) If the business organization is publicly held, the name of the corporate parent and the name under which the corporation is filed with the Securities and Exchange Commission;

(3) The legal description and commonly known address of the real property for which real property tax abatement is being petitioned; or the legal description and commonly known address of the facility at which the new personal property for which tangible personal property tax abatement is being petitioned will be located;

(4) A map and/or plat describing the area where tax abatement is being requested;

(5) The current assessed valuation of the real property improvement before rehabilitation, redevelopment, economic revitalization or improvement; or the current valuation of the tangible personal property to be replaced by new personal property;

(6) Photographs of the location taken within two weeks of the filing of the petition;

(7) The real and personal property taxes paid at the location during the previous five years, whether paid by the current owner or a previous owner;

(8) The commitment made within the past five years to hiring minority persons including number of minority persons employed during each of the past five years, specifying whether full-time or part-time and whether permanent or temporary employees. The petitioner shall also list the current number of total employees (full- and part-time) and the current number of minority persons (full- and part-time);

(9) An estimate of the after-rehabilitation market value of the real property or an estimate of the market value of the new personal property after installation;

(10) The commitment to minority employment during the first five years of tax abatement;

(11) A description of the proposed project (whether rehabilitation, new construction or installation of new personal property), including information about physical improvements to be made or the new personal property to be installed, an estimate of the cost of the project, the amount of land to be used, the proposed use of the improvements, and a general statement as to the value of the project to the business;

(12) An estimate of the number of new permanent jobs to be created by the project within two years, a statement of the current number of permanent and part-time jobs at the location and the impact on those current jobs to be caused by the project, and the projected annual salaries for each position to be created;

(13) Certification that no building permit has been issued for construction on the property for the improvement proposed or verification that the new personal property has not been installed;

(14) The North American Industry Classification System (NAICS) major group within which the proposed project would be classified, by number and description;

(15) The Internal Revenue Service Code of principal business activity by which the proposed project would be classified, by number and description;

(16) A description of on-site child care or day care facilities, services or benefits currently offered or proposed to be offered by the petitioner for children of employees;

(17) Certified payrolls to document the payment of employee wage rates (identifying individual information should be withheld);

(18) Certified payrolls to document the payment of wage rates, residency and employment status of construction workers employed on the abated project (identifying individual information should be withheld);

(19) A written affirmative action plan for company employees, which indicates the positive steps being taken to encourage the hiring, promotion and retention of qualified members of historically disadvantaged groups, such as people of color, women and the disabled;

(20) A written affirmative action plan maintained by construction contractors, which conforms to those required of federal contractors, as specified in Executive Order 11246 and the Code of Federal Regulations;

(21) Written documentation to support all claims for public benefit points made in connection with their abatement;

(22) Other anticipated public financing for the project, including, if any, industrial revenue bonding to be sought or already authorized; assistance through the United States Department of Housing and Urban Development funds from the City of South Bend, Small Business Administration §504; financing through the Business Development Corporation of South Bend, Mishawaka, and the county; financing through the Industrial Development Revolving Fund; financing through the Corporation for Entrepreneurial Development; or other public financial assistance, including public works improvements;

(23) For real property tax abatement, a description of how the property in question has become undesirable for or impossible of normal development and occupancy because of lack of development, cessation of growth, deterioration of improvements, or character of occupancy, age, obsolescence, substandard buildings or other factors which have impaired values and prevent a normal development of the property or property use;

(24) For personal property tax abatement, a description of why the facility or group of facilities to be replaced are technologically, economically or energy obsolete, whereby the obsolescence may lead to a decline in employment and tax revenues; together with a verification that the new personal property will be used and that the new in one or more of the uses listed within the definitions of new manufacturing equipment, new research and development equipment, new logistical distribution equipment and new information and technology equipment, all as set forth in I.C. 6-1.1-12.1 *et seq.*, was never before used by its owner for any purpose in the state; and

(25) The name, address, telephone number, facsimile number, email address and web address of the person to contact regarding notice of Council meetings and public hearings concerning the petition.

(D) *Power of attorney.* If a person other than the person signing the application is to represent the applicant at any meeting of the Council, a duly executed power of attorney authorizing the representation must be on file with the County Council.

(Ord. 24-09, passed 5-12-2009)

### **§ 35.31 STATEMENT OF BENEFITS; DECLARATORY AND CONFIRMATORY RESOLUTIONS REQUIRED.**

(A) In addition to the completed petition, filing fee and related documents required by §35.30, the owners of real property or new personal property must file a completed statement of benefits form at the time of filing the petition.

(B) Proposed forms of declaratory and confirmatory resolutions are also required of the owner at the time of filing the petition.

(C) Petitioners must agree to work with the Council or its duly appointed representatives in providing it with any additional information required for their review.

(D) The provisions of I.C. 6-1.1-12.1-3 shall be followed by the designating body when reviewing the documents required by this section.

(Ord. 24-09, passed 5-12-2009)

### **§ 35.32 COUNCIL'S REVIEW OF DECLARATORY RESOLUTION.**

(A) The Council shall hold a public hearing on the petitioner's declaratory resolution pursuant to I.C. 6-1.1-12.1-2.5.

(B) The petitioner and/or its representative shall present evidence to the Council as to why it believes it qualifies for the requested abatement.

(C) If it finds that the property qualifies as an economic revitalization area under the terms of this chapter and I.C. 6-1.1-12.1-1(1), the Council may adopt a resolution declaring the property as an economic revitalization area for purposes of tax abatement. The resolution shall specify whether the abatement is for real property tax deduction or for personal property tax deduction, the length of time during which the area shall be so designated, and the general boundaries of the area shall be so designated, and the general boundaries of the area by describing its location in relation to public ways. If the abatement is for real property taxes, the Council shall specify a number of years, not exceeding ten, for the abatement. Upon the adoption of the declaratory resolution, the County Council shall file the resolution with the County Assessor, together with supporting data required by I.C. 6-1.1-12.1-2.5.

(D) Upon adoption of the declaratory resolution, the County Council shall cause notice of the adoption to be published pursuant to I.C. 5-3-1, and shall include in the notice information about the adoption of the declaratory resolution, the substance of the resolution, that a description of the affected area is available and can be inspected in the County Assessor's office, the date when the Council will receive and hear all remonstrances and objections from interested persons, and any other information required by I.C. 6-1.1-12.1-2.5.

### **§ 35.33 CONFIRMATORY RESOLUTION.**

(A) Following the legal publication and on the date published in the legal notice, a public hearing on the confirmatory resolution shall be held by the Council. The petitioner and/or its representative shall be present and shall be required to present evidence why it believes the tax abatement requested should be granted, at which time the Council shall receive and hear all remonstrances and objections from interested persons pertaining to the petition. At the public hearing, the Council shall determine whether the petition complies with this chapter and with I.C. 6-1.1-12.1 *et seq.*, and shall consider all pertinent requirements for economic revitalization areas prior to taking final action determining whether the petition meets qualifications for an economic revitalization area and confirming, modifying and confirming, or rescinding the declaratory resolution. The determination of Council is final except that an appeal may be taken and heard as provided by I.C. 6-1.1-12.1-2.5(d) and (e).

(B) The Council must make a determination as to whether the deductions shall be allowed and made specific findings pursuant to I.C. 6-1.1-12.1-3. The Council must further comply with I.C. 6-1.1-12.1-4.5 and make specific finding thereto when considering personal property tax abatement requests.

(C) In declaring an area an economic revitalization area, the designating body may:

(1) Limit the time period to a certain number of calendar years during which the area shall be so designated;

(2) Limit the type of deductions that will be allowed within the economic revitalization area to either the deduction allowed under I.C. 6-1.1-12.1-3, or the deduction allowed under I.C. 6-1.1-12.1-4.5;

(3) Limit the dollar amount of the deduction that will be allowed with respect to new personal property if a deduction had not been filed before July 1, 1987 for that equipment;

(4) Limit the dollar amount of the deduction that will be allowed with respect to redevelopment and rehabilitation occurring in areas that are designated as economic revitalization areas on or after September 1, 1988; or

(5) Impose reasonable conditions related to the purpose of state law or to the general standards adopted herein for allowing the deduction for the redevelopment or rehabilitation of the property or the installation of the new personal property.

(D) To exercise one or more of the above-described powers, the Council must include this fact in the resolutions adopted.

(E) Prior to the Council taking final action on a confirmatory resolution which involved public benefit points being awarded for construction jobs, a list of contractors which are intended to be used must be filed by the petitioner with the Council or its duly appointed representative for verification purposes. Receipt of the information will trigger the confirmatory resolution being placed on a County Council agenda.

## **§ 35.45 REQUIREMENT TO APPEAR AND UPDATE INFORMATION.**

(A) All property owners who receive approval of their real and/or personal property tax abatement requests as a result of the Council's action under this chapter shall be required to appear before the Council or one of its committees. The appearances shall take place at a committee meeting following the petitioner's filing of the first certified declaration application with the County Auditor, required by the State Board of Tax Commissioners pursuant to I.C. 6-1.1-12.1-5.

(B) Additionally, the petitioner shall file with the Council its annual report on forms previously sent to it by the Council. The mailing shall be done annually to each petitioner on or before February 1, by certified mail, and shall provide notice that, if the property owner fails to comply, he or she may be subject to fines as set forth in this chapter. Petitioners must return their completed annual report within 30 days from receipt with the date being calculated from the returned receipt mail card date.

(C) The annual report shall include but not be limited to the following information:

- (1) The name and address of the person(s) filing the report;
- (2) The amount of real and/or personal property taxes paid for the property during the year before the property was declared as an economic revitalization area and during the most recent tax year;
- (3) The current number of part-time and full-time jobs, specifying whether permanent or temporary, and the number of the jobs as of the end of the year immediately prior to receiving tax abatement;
- (4) The names of local company and/or minority contractors used during the renovation of the real property and/or installation of new personal property for which tax abatement was received;
- (5) The number of minority persons hired for full-time and part-time jobs, specifying whether the jobs are permanent or temporary, since the completion of the project for which tax abatement was given;
- (6) Updated certified payrolls to document the payment of employee wage rates (identifying individual information should be withheld);
- (7) Updated certified payrolls to document the payment of wage rates, residency and employment status of construction workers employed on the abated project, if the construction project is still ongoing; and
- (8) Written documentation to demonstrate that the petitioner is still in compliance with the commitments made to receive public benefit points.

(D) The Council shall review the material presented by the petitioner in comparison to the information published by the County Auditor as required by I.C. 6-1.1-12.1-8.

(E) The Council shall specifically advise each property owner in writing as to whether subsequent appearances before the Council shall be necessary. If the additional appearances are not required, the property owner shall be duly advised that his or her future annual reports may be mailed.

(Ord. 24-09, passed 5-12-2009)

## **§ 35.46 FAILURE OF PETITIONER TO COMPLY MAY RESULT IN FINES BEING IMPOSED, TERMINATION OF ECONOMIC REVITALIZATION DESIGNATION AND/OR REPAYMENT OF TAXES PREVIOUSLY ABATED.**

(A) The Council believes that the granting of a request for real and/or personal property tax abatement under the terms and conditions of this chapter and the memorandum of agreement constitutes a contractual arrangement between the Council and the property owner granted abatement.

(B) During the term of the abatement, the Council may annually request information from the applicant concerning the nature of the project, the approved capital expenditures for the project, the number of full-time permanent positions newly created by the project, the wage rates and benefits associated with the positions, and any other information necessary to determine compliance with the terms of the abatement, and the applicant shall provide adequate written evidence thereof within 15 days of the request. The Council shall utilize this information and the information required to be filed by the applicant in the CF-1 compliance with statement of benefits form to verify that the applicant has complied with the commitments contained in the memorandum of agreement at all times after the memorandum of agreement date and during the duration of the abatement. The applicant further agrees to provide any additional information requested by the Council related to the information provided in the annual survey and the CF-1 form within a reasonable time following any such additional request.

(C) The county, by and through the Council, reserves the right to terminate the economic revitalization area designation and associated property tax abatement deductions if it determines that the applicant has not made reasonable efforts to substantially comply with all of the commitments.

(1) If the Council terminates the economic revitalization area designation and associated tax abatement deductions, it may require the applicant to repay all or a portion of the tax abatement savings received through the date of the termination. The County Legal Department is hereby authorized to pursue all legal actions necessary in the event of the noncompliance or failure by the applicant to perform other duties and responsibilities arising when it agreed to certain contractual obligations by signing the memorandum of agreement.

(2) If at any time during the term of the agreement, whether before or after the commitment date, the applicant shall cease operations at the facility for which the tax abatement was granted; or announce the cessation of operations at the facility, then the Council may immediately terminate the economic revitalization area designation and associated tax abatement deductions, and upon the termination, require applicant to repay all of the tax abatement savings received through the date of the termination.