



## PERMANENT ADMINISTRATIVE ORDER

### OBDD 14-2020

CHAPTER 123  
OREGON BUSINESS DEVELOPMENT DEPARTMENT

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#### RULES:

123-623-1100, 123-623-1400, 123-623-1700, 123-623-2000, 123-623-3000, 123-623-3200, 123-623-4200

AMEND: 123-623-1100

RULE TITLE: Definitions

NOTICE FILED DATE: 06/18/2020

RULE SUMMARY: Specify basis for population measure of rural v. urban SIP and clean up definition existing property that cannot be part of SIP project

#### RULE TEXT:

For the purposes of this division of administrative rules additional definitions are found in OAR 123-001 (Procedural Rules). As used in these rules, the following terms have the meanings set forth below, unless the context demands otherwise.

- (1) Abatement means the taxation and assessment of property comprising an eligible project under ORS 307.123.
- (2) Applicant means a business firm, including but not limited to a privately or publicly held corporation, other for-profit company, people's utility district, or a joint operating agency under ORS 262.005, seeking approval from the Commission for Abatement.
- (3) Application means the Department-prescribed form described in OAR 123-623-1400, which is available at and submitted to: Incentives – Economic Development, Business Oregon, State Lands Building Suite 200, 775 Summer Street NE, Salem OR 97301-1280, see [www.oregon4biz.com](http://www.oregon4biz.com), as well as all supplemental attachments, exhibits and so forth that the Applicant completes or furnishes to the Department for the Strategic Investment Program.
- (4) Approved Project means an investment or investments in taxable property that:
  - (a) Is not Existing Property;
  - (b) The Applicant owns or leases;
  - (c) The Commission has determined shall receive Abatement; and
  - (d) Conforms to the project definition established with the determination of the Commission according to OAR 123-623-1700.
- (5) County means the government of the county in which the Approved Project is located. ("County" instead refers to the tribe/tribal government, if the Approved Project is anywhere on the reservation of a federally recognized Indian

Tribe, except with an SIZ)

(6) Existing Property means any property, including but not limited to portions or incremental units of property, that:

(a) Comprises all or part of a prior Approved Project, unless the property was never actually subject to Abatement.

(b) At the time of the Department's receipt of the Application, is already:

(A) Owned or leased by the Applicant regardless of location, including but not limited to previously acquired land or other property at the Approved Project's site;

(B) Physically in the process construction, reconstruction, improvement, modification or installation; or

(C) Located in an SIZ if the SIZ is the basis of Abatement under ORS 285C.606(2) and 285C.626, irrespective that the property is subsequently modified, refurbished, remodeled, renovated, retrofitted or upgraded consistent with OAR 123-623-1700(3).

(7) Retained Jobs means the Total Jobs that existed some time before the Approved Project became fully operational, or that are associated with later, intra-firm transfer of operations within this state, according to OAR 123-623-4200.

(8) SIZ means a strategic investment zone designated by the Commission at the request of the County according to OAR 123-623-3000 to 123-623-3400.

(9) Total Cost means the cumulative amount spent on real and personal property comprising the Approved Project and subject to the Abatement, adjusting only for property retired and removed from the project's location(s).

(10) Total Jobs means the total number of hours, for which relevant jobs, employees or hires were paid over a year's time, divided by 2,080, consistent with OAR 123-623-4200.

(11) Urban Project means an Approved Project located entirely outside a "rural area" as defined under ORS 285C.600, and hence, at least partially inside the urban growth boundary—as acknowledged and in effect on the date of the Department's receipt of the Application:

(a) Of the Portland metropolitan region, aside from the exceptions in OAR 123-632-1115; or

(b) That surrounds any city outside that region, for which the population equals or exceeds 40,000 based on the most recent decennial U.S. Census count (which currently consists of Albany, Bend, Corvallis, Eugene, Medford, Salem–Keizer and Springfield).

STATUTORY/OTHER AUTHORITY: ORS 285A.075, 285C.615(7)

STATUTES/OTHER IMPLEMENTED: ORS 285C.600 – 285C.635, 307.123

AMEND: 123-623-1400

RULE TITLE: Making Application

NOTICE FILED DATE: 06/18/2020

RULE SUMMARY: Clean up stray character and improve writing, as well as disallow early application before local approval in strategic investment zones and specify out limit for completing an application.

RULE TEXT:

- (1) An Applicant seeking the Commission's determination of an eligible project for Abatement must submit an Application to the Department.
- (2) In addition to what is required by the Application or in this division of administrative rules, the Applicant shall submit any information requested by the Department for purposes of evaluating the Application.
- (3) Not less than 21 days after having received a complete Application, as described in OAR 123-623-1500, the Department shall arrange for the Commission to initially consider it at a regular or special meeting. Under extenuating circumstances, the Department may dispense with this minimum period.
- (4) The Application form is available from and submitted to: Incentives – Economic Development, Business Oregon, State Lands Building Suite 200, 775 Summer Street NE, Salem OR 97301, see [www.oregon4biz.com](http://www.oregon4biz.com).
- (5) An Applicant may submit an Application that is incomplete for lack of local agreement/approval, which the Department effectively receives and holds pending completion, in order that subsequently acquired, constructed or installed property avoids classification as Existing Property or for other reasons, so long as the Application includes:
  - (a) The fee described in OAR 123-623-1800(1);
  - (b) All required information or documentation currently available to the Applicant; and
  - (c) What the Department deems to be sufficient evidence that the Applicant has been in contact with the County to initiate steps under ORS 285C.609, including but not limited to local submission of a formal application if the County has previously established such procedures.
- (6) Section (5) of this rule is not applicable to proposed investments using an SIZ. All local processing and approval of such a project must be completed before submission of an Application.
- (7) No later than 30 days after the County has approved the project, the Applicant and County shall ensure that the Department is in receipt of a complete Application with all of the pertinent materials or evidence described in this rule and OAR 123-623-1500 or 123-623-1550.

STATUTORY/OTHER AUTHORITY: ORS 285A.075, 285C.615(7)

STATUTES/OTHER IMPLEMENTED: ORS 285C.600 – 285C.635

AMEND: 123-623-1700

RULE TITLE: Establishment of Exempt Property

NOTICE FILED DATE: 06/18/2020

RULE SUMMARY: Improve drafting of language that differentiates how improvements to existing property are treated inside or outside an strategic investment zone.

RULE TEXT:

(1) The Commission's determination pursuant to OAR 123-623-1600 needs to define the Approved Project for purposes of the Abatement, consistent with the Application and the agreement between the Applicant and local government(s).

(2) Such a definition shall employ one or more of the following examples or a comparable method that:

(a) Stipulates the site(s) or overall facility at which applicable property must be located, used and occupied for commercial purposes;

(b) Delimits what the Abatement covers in terms of total investment cost or property value, or the specific period, in which construction/installation needs to commence, or in which property must be placed in service; or

(c) Identifies applicable real and personal property, including but not limited to portions or incremental units of property, by:

(A) Referencing or incorporating the description of investment(s) in the Application or further information from the Applicant (whether requested or not by the Department or Commission);

(B) Delineating improvements or property items (or representative examples thereof) that the Applicant will acquire, construct or install, or for which the assessed value would increase as a result of additions, reconstruction, modifications, refurbishment, remodeling, renovation, retrofitting or upgrades; or

(C) Specifying improvements or property items that are not part of the Approved Project subject to Abatement, including but not limited to Existing Property.

(3) The Abatement may include an increase in the assessed value of Existing Property that results, as part of the Approved Project, from:

(a) A new addition to or comprehensive reconstruction of an existing building or structure, whether inside an SIZ or not.

(b) Modification, remodeling, refurbishment, renovation, retrofitting or upgrade of any Existing Property, except inside any SIZ where only newly constructed or newly installed property qualifies for Abatement.

(4) As otherwise allowed under the project definition described in this rule, the Abatement shall cover any property comprising the Approved Project, for which construction, installation, modification or the like occurs during or after the first year of Abatement, but only for the remainder of the 15-year period.

(5) If another business firm acquires the Applicant or the Approved Project, the ongoing Abatement shall continue as authorized, such that continuously exempt property is not Existing Property, provided that:

(a) The acquiring firm complies with all terms and conditions under the Application, its approval, and the corresponding local agreement in OAR 123-623-1525 or 123-623-1550, as well as applicable requirements of law and this division of administrative rules, as if the acquiring firm were the Applicant; and

(b) The owner or chief executive officer of the acquiring firm furnishes and authorizes a formal statement to the Department and the parties to the agreement, attesting to the firm's full assumption of relevant obligations and requirements formerly incumbent on the Applicant.

STATUTORY/OTHER AUTHORITY: ORS 285A.075, 285C.615(7)

STATUTES/OTHER IMPLEMENTED: ORS 285C.600, 285C.606, 285C.626, 307.123

AMEND: 123-623-2000

RULE TITLE: Confidential Records

NOTICE FILED DATE: 06/18/2020

RULE SUMMARY: Statutory updates and public notice language update.

RULE TEXT:

As provided under ORS 192.345, 192.355 and 285C.620:

(1) The Department shall not release any information identifying or pertaining to an expected Applicant, or to discussions among it, local governments, or the Department and members of the Commission, before:

(a) Finalization of local approval for the proposed investment based on its being inside an SIZ; or

(b) The County governing body issues a public notice for the public hearing under ORS 285C.609(4), if not using an SIZ.

(2) The Department shall not release any Application materials submitted by an expected Applicant that specifically describe investment plans, before the Department's deems the received Application to be complete.

(3) The department shall seek to keep confidential certain sensitive records or communications obtained in association with an Application or OAR 123-623-4000 to 123-623-4200, as otherwise allowable under ORS 192.311 to 192.478, including but not limited to the following:

(a) Reports and analyses of reports bearing on the Applicant's character, finances, management ability and reliability, as obtained in confidence from persons or firms not required by law to submit them, including but not limited to the Applicant, and for which the Department obliged itself in good faith to not disclose;

(b) Financial statements, tax returns, business records, employment history, personnel files and comparable data submitted by or for an Applicant, or analysis of such data;

(c) Intra-departmental advisory memoranda based on or providing preliminary information;

(d) Formulas, plans, designs and related information that constitute trade secrets under ORS Chapter 192;

(e) Personal financial statements;

(f) Information of an Applicant pertaining to litigation that has not concluded, to which the Applicant is a party if the complaint has been filed, or if not, that the Applicant shows is reasonably likely to occur (Nothing in this section shall limit any right or opportunity granted by discovery or deposition statutes to a litigant or defendant);

(g) Production, sales or cost data, customer lists, or detailed descriptions or identifications of business property; or

(h) Marketing strategy information that relates to an Applicant's plan to address specific markets and the Applicant's strategy regarding specific competitors.

(4) Subject to sections (1), (2) and (3) of this rule, the Department shall provide records pertaining to the Strategic Investment Program upon written request, as described in OAR 123-005.

STATUTORY/OTHER AUTHORITY: ORS 285A.075, 285C.615(7)

STATUTES/OTHER IMPLEMENTED: ORS 285C.615, 285C.620

AMEND: 123-623-3000

RULE TITLE: S.I. ZONES — Geography, Duration and Jurisdictions

NOTICE FILED DATE: 06/18/2020

RULE SUMMARY: Population data source clarification

RULE TEXT:

- (1) There is no limit to the number of SIZs under ORS 285C.623, for which any County may seek designation on one or multiple occasions.
- (2) The Commission may designate an SIZ that is entirely or partially inside one or more cities that also seek designation as parties with the County to a joint request. The County and any such city do thereby jointly cosponsor the SIZ and are its "sponsor" or "cosponsors."
- (3) An SIZ may cover the entire (unincorporated) territory of the County, or it may be as small as a single parcel of land, on which development of an eligible project can feasibly take place, but any SIZ must:
  - (a) Be entirely contiguous;
  - (b) Consist of area only in the territory of a single County;
  - (c) Encompass land exclusive of land inside any other existing SIZ; and
  - (d) Contain only rural area if including any rural area under ORS 285C.600(5) and section 2, chapter 518, Oregon Laws 2015, consistent with OAR 123-623-1100(11) and 123-623-1115.
- (4) Once designated, an SIZ does not expire and may be neither terminated nor geographically amended.
- (5) In determining the area to include in a proposed SIZ, local governments shall consider plans and potentialities for city annexations and projections for city population growth, in order to minimize the probability of the following occurrences, which would nevertheless not interrupt the existence or operation of the SIZ:
  - (a) A city that does not sponsor the SIZ annexes territory inside of it; or
  - (b) A city, whose urban growth boundary (UGB) crosses the area of the SIZ, increases in population to 40,000 or more, in the case of an otherwise rural SIZ. (An Approved Project, for example, inside such an UGB is an Urban Project, if official release of the latest decennial U.S. Census count occurs before the Department receives the Application)

STATUTORY/OTHER AUTHORITY: ORS 285A.075, 285C.615(7)

STATUTES/OTHER IMPLEMENTED: ORS 285C.623, 285C.626

AMEND: 123-623-3200

RULE TITLE: Department's Receipt of County Request

NOTICE FILED DATE: 06/18/2020

RULE SUMMARY: Clarify population matter with strategic investment zone consideration.

RULE TEXT:

The Department shall report to the Commission on any complete request that it receives from a County for designation of a proposed SIZ that satisfies OAR 123-623-3000 and 123-623-3100, after concluding that the request contains the following:

- (1) Identification of any requisite city that also sponsors the SIZ;
- (2) The map and other geographic data establishing the SIZ area and boundary;
- (3) Evidence that the SIZ area will conform to OAR 123-623-3000(3);
- (4) Information pertaining to the SIZ's inclusion, adjacency and proximity to any current city limit or urban growth boundary and to any urban growth boundary of a city with a population that equals or exceeds 40,000 or that likely will with the next decennial U.S. Census count;
- (5) The agenda, minutes and so forth demonstrating that the County held a public hearing concerning the SIZ;
- (6) A copy of the intergovernmental agreement between the County and any and all city cosponsors, as executed on or after the date of the public hearing;
- (7) A summary of the locally established objectives for the SIZ;
- (8) Documentation of the local program described in OAR 123-623-3100(3), including but not limited copies of policies, rules, procedural guidelines or administrative plans, but especially, a sample standardized agreement; and
- (9) A record that the County governing body took the official action requesting designation of the SIZ with an affirmative vote by a majority of its members (not merely those present) at a regular or duly called special meeting that occurs after the execution or conclusion of material efforts described in sections (1) to (8) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 285A.075, 285C.615(7)

STATUTES/OTHER IMPLEMENTED: ORS 285C.623

AMEND: 123-623-4200

RULE TITLE: Applicable Employees and Payroll

NOTICE FILED DATE: 06/18/2020

RULE SUMMARY: Recognize that tips and gratuities may be accounted for as part of taxable income business's payroll.

RULE TEXT:

For purposes of OAR 123-623-4100(4):

(1) With respect to Total Jobs, the report shall include each of the following totals for the preceding calendar year:

- (a) Hours paid;
- (b) Taxable income; and
- (c) Compensation.

(2) Relevant jobs, hires or employees are persons, regardless of residency in this state:

(a) For whom their employer under ORS chapter 316 is:

- (A) The benefiting business firm (or a commonly controlled business firm); or
- (B) A general operator, if any, who manages the entire Approved Project for the firm; but
- (C) Not any other type of contractor, subcontractor, vendor or supplier of the firm or of such a general operator; and

(b) Who:

- (A) Regularly work at a site or location containing property of the Approved Project; and
- (B) Are engaged in or directly support business operations of the Approved Project, such that other operations represent not more than 25 percent of the person's time spent performing work for the employer.

(3) Retained Jobs consist of relevant existing jobs, hires or employees described in section (2) of this rule, who:

- (a) Were already at the existing site, facility or operations, to which the Applicant makes the investments that comprise the Approved Project, consistent with sections (4) or (5) of this rule; or
- (b) Are associated with the transfer of operations from elsewhere in this state to the Approved Project, after the Application was received by the Department and before the final year of Abatement, in terms of any increase in Total Jobs that relates to the permanent curtailment of full-time equivalent employment at the former location of the transferred operations.

(4) Pursuant to an Application received by the Department on or after January 1, 2016, the first report shall establish total hours with respect to Retained Jobs already at the Approved Project over:

- (a) The 12 months before the Application's receipt, accounting for any modification from the Application in terms of OAR 123-623-1500(2)(a); or
- (b) The calendar year ending 30 months before the first tax year of the Abatement, if that is more recent than the period in subsection (a) of this section.

(5) In the case of Approved Projects, for which Applications were received before January 1, 2016, the Department shall seek to establish with the first such report in or after 2016, the applicable number of Retained Jobs based on information that is or has been submitted by the firm in that or prior reports or upon request of the Department.

(6) Subject to section (4) or (5) of this rule, the number of Retained Jobs becomes fixed and need not be re-reported, but the benefiting business firm shall revise or update it with subsequent reports to:

- (a) Correct errors and omissions, if any; or
- (b) Account for operations of the firm (or a commonly controlled business firm) that are transferred during the preceding calendar year, in accordance with subsection (3)(b) of this rule, even if the operations became part of the firm through merger or acquisition after the Department received the Application.

(7) The amount of hours assigned to salaried positions is 2,080, or a lower amount as prorated to account for less than full-time or year-round employment.

(8) Taxable income equates to the wages that the employer used in calculating amounts withheld under ORS chapter 316 for Oregon personal income taxes during the calendar year.

(9) Compensation includes total calendar-year remuneration (whether taxable or not) in the form of wages, salary,



overtime pay, shift differential, profit-sharing, bonuses, commissions, paid vacation, and associated fringe or financial benefits such as life insurance, medical coverage and retirement plans, but excluding:

- (a) Free meals, club membership or comparable workplace amenities;
- (b) Payroll-based tax or cost mandated by federal, state or local law, such as worker's compensation, unemployment insurance or the employer's share under FICA; and
- (c) Gratuities or tips, other than what is anyways part of taxable income for purposes of employee withholding.

STATUTORY/OTHER AUTHORITY: ORS 285A.075, 285C.615(7)

STATUTES/OTHER IMPLEMENTED: ORS 285C.615