**CITY COUNCIL AGENDA**
**February 1, 2021**
**7:00 P.M.**
New Fairview City Hall
999 Illinois Ln.
New Fairview TX 76078

**AGENDA**

**I. CALL MEETING TO ORDER:**

**II. ROLL CALL:**

**III. PLEDGE TO FLAGS**

**A.** United States of America

**B.** Texas Flag Honor the Texas Flag, I pledge allegiance to thee, Texas, one state under God, one and indivisible

**IV. WORK SESSION:** No action will be taken during the work session; the work session provides the Council an opportunity to discuss consent items, receive and provide information regarding regular agenda items, and presentations from staff.

**A.** Discussion with staff and presentation regarding economic development by Glacier Commercial.

**B.** Discussion with staff and presentation of the proposed concept plan for the 1,806 acre Shoop Ranch has been requested by Rockhill Capital & Investment.

**C.** Discussion with staff regarding the streets improvement project.

**D.** Discussion with staff regarding the City of New Fairview revenues, expenditures, property tax rate, and exemptions.

**E.** Discussion with staff regarding public safety services in New Fairview through the introduction of annual safety inspections.

**F.** Discuss with staff the workload and utilization of consultants (requested by the Mayor).

**G.** Discuss with staff the city website (requested by the Mayor).

**H.** Discuss with staff the agenda format, links to items (requested by the Mayor).

**I.** Discuss with staff the monthly financial report (requested by the Mayor).

**J.** Discuss with staff Items requested by a Council member for upcoming agendas: speed limits within New Fairview; changing the meeting date from Monday to an alternative day.

**V. CONSENT AGENDA:** All matters listed as Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. There will not be a separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately.

**A.** Acceptance of the January 11th, 2021 City Council minutes.

**VI. OPEN FORUM:** The City Council invites persons with comments or observations related to city issues, projects, or policies to briefly address the City Council. Anyone wishing to speak should sign-in with the City Secretary before the beginning of the City Council Meeting. In order to expedite the flow of business and to provide all citizens the opportunity to speak, there is a three-minute limitation on any person addressing the City Council. State law prohibits the City Council from discussing or taking action on any item not listed on the posted agenda.

**VII. NEW BUSINESS:**

**A.** Discuss, consider, and act on an ordinance of the City of New Fairview, Texas Combination Tax and Revenue Certificates of Obligation, Series 2021"; providing for the payment of said certificates of obligation by the levy of an ad valorem tax upon all taxable property within the City and a limited pledge of the net revenues of the City's solid waste disposal system; providing the terms and conditions of such certificates of obligation and resolving other matters incident and relating to the issuance, payment, security, sale and delivery of said certificates of obligation, including the approval and execution of a Paying Agent/Registrar Agreement and the approval and distribution of a Preliminary Official Statement and an Official Statement pertaining thereto; and providing an effective date.

**B.** Discuss, consider, and act on a resolution approving a reimbursement agreement with Rockhill Capital & Investments regarding professional fees for the Shoop Ranch development; authorizing the City Administrator to negotiate an agreement for presentation to the Council regarding the establishment of an public improvement district (PID), a zoning ordinance to create a planned district (PD), a development agreement, as well as resolving other matters incident and related thereto.

**C.** Discuss, consider, and act on an ordinance of the City of New Fairview, Texas adopting a general residential homestead exemption for residential homesteads located within the city in accordance with the TexasTax Code; establishing the amount of such exemption; providing that this ordinance shall be cumulative of all ordinances; providing a severability clause; and providing an effective date.

**D.** Discuss, consider, and act on an ordinance of the City of New Fairview, Texas adopting an annual safety inspection program to require an annual safety inspection for operations that present a risk of dangerous incidents and establishing a fee for the inspection; providing that this ordinance shall be cumulative of all ordinances; providing a savings clause; providing a severability clause; providing for a penalty; providing a publication clause; and providing an effective date.

**E.** Discuss, consider, and act on a resolution engaging William C. Spore, P.C. to provide annual auditing services for the fiscal years ending in September 30, 2021, 2022, and 2023 for a fixed rate of $3,000 per year.

**F.** Discuss, consider, and act on a resolution calling a general election for the office of Mayor and City Members Place 2 and Place 4 to be held May 1, 2021, as well as a special election for an unexpired term for City Council Member Place 5 to be held May 1, 2021; authorizing execution of a joint election agreement with the Wise County Elections Administration and Denton County Administration to conduct the election; and provide procedures to conduct the election as well as resolving other matters incident and related thereto.

**VIII. ADJOURN**:

I, the undersigned authority, do hereby certify the above notice of the meeting of the City Council of New Fairview, is a true and correct copy of the said notice that I posted on the official posting place at New Fairview City Hall, FM 407, New Fairview, Texas, a place of convenience and readily accessible to the general public at all times, and said notice posted this 29th day of January 2021 at 7:00 PM at least 72 hours proceeding the meeting time.

________________________________

**Monica Rodriguez, City Secretary** **SEAL:**

This facility is wheelchair accessible; parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary at city hall 817-638-5366 or fax 817-638-5369 or by email at citysecretary@newfairview.org for further information.

**City Council Agenda**
**February 1, 2021**

## Agenda Item: Presentation (Discussion)

## Agenda Description:
Discussion with staff and presentation regarding economic development by Glacier Commercial.

## Background Information:
Local governments, including municipalities, counties, school districts, and special districts all have a vested interest in encouraging private persons and businesses to generate new and support existing business ventures in our area. These economic opportunities should align with the values and characters the community wishes to maintain as it continues to grow and develop. Economic partnerships are strategic and happen at different times in the development stages of a community. There are numerous stakeholders, including residents, property owners, businesses, and multiple levels of government agencies.

**Why should a community focus on economic development?**

- There's a need for good jobs, with good wages. These directly impact the quality of life of our residents, visitors, and success of local businesses.

- A city's primary sources of revenue, include property taxes, sales and use taxes, and user fees and charges. Dependence upon anyone of the primary revenue sources creates a significant weakness in the financial stability of the city and its ability to function as needed. As seen in New Fairview in 2013, a change in the law regarding sales taxes on gas well production, decreased the only significant source of revenue the city had by 86%.

- Commercial entities, retail operations, and other businesses are significant economic resources. City's have tools to help attract and retain local businesses. When they do well, it benefits everyone in the city.

## Financial Information:

N/A

## City Contact and Recommendation:
Ben Nibarger, City Administrator
Discussion item only

## Attachments:
TML Economic Development Handbook

# Texas Municipal League
# Economic Development Handbook

**2020 Editor**

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Updated January 2020

Dear City Officials:

Fostering a vibrant, thriving economy is critical to the future of our great state. All across Texas, cities and other local governments are working to nurture small business, encourage entrepreneurship, advance commerce, and create jobs.

Fortunately, Texas law offers many tools for local leaders seeking to generate economic development and opportunity. As a service to those leaders and other interested parties, the Texas Municipal League has assumed publication of this Economic Development Handbook, which compiles the state's economic development laws. This Handbook is intended to inform Texas cities about the wide-range of legal tools that are available to local communities.

Thank you for your interest in economic development and the laws that help foster financial growth and opportunity. Together, local leaders can ensure our great state is ripe with economic opportunity for all Texans.

Sincerely,

Bennett Sandlin
Executive Director
Texas Municipal League

# Acknowledgments

A number of individuals made this publication possible by contributing their time, expertise, and support. First, the members of former Attorney General John Cornyn's Municipal Advisory Committee provided the oversight for the original handbook. The mayors, council members, and appointed city officials from across Texas who volunteered their time to serve on this committee played an invaluable role in the production of this publication and in the ability of this agency to address the concerns of Texas cities.

This publication was originally published by the Office of the Attorney General and has been developed with substantial assistance from many sources inside and outside of the Texas Municipal League. The League would like to specifically recognize the following people and organizations:

**Office of the Attorney General**
Zindia Thomas, Julian Grant, Stephanie Leibe, and Marc Druck

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Jennifer Storm

**Texas Municipal League**
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**Brown and Hofmeister**
Jeff Moore

**Messer, Rockefeller, & Fort, PLLC**
Julie Fort

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# I. The Economic Development Sales Tax

## Using Sales Tax to Promote Economic Development

The use of the sales tax for economic development purposes has been one of the most popular and effective tools used by cities to promote economic development. Since the authorization for the local option tax took effect in 1989, more than 586 cities have levied an economic development sales tax. These cities have cumulatively raised in excess of $573 million annually in additional sales tax revenue dedicated to the promotion of local economic development. Of these cities, 101 have adopted a Type A economic development sales tax, 367 cities have adopted a Type B economic development sales tax, and 118 cities have adopted both a Type A and a Type B sales tax.

### History of the Economic Development Sales Tax

In 1979, the Texas Legislature passed the Development Corporation Act of 1979 (Texas Revised Civil Statutes Article 5190.6). The Development Corporation Act of 1979 (the "Act") allowed a municipality to create nonprofit development corporations that could promote the creation of new and expanded industry and manufacturing activity within the municipality and its vicinity. The development corporations operated separately from the municipalities, with boards of directors that would oversee their efforts. These corporations, in conjunction with industrial foundations and other private entities, worked to promote local business development. However, prior to 1987, the efforts of these entities were dependent on funding from private sources, which was often was difficult to obtain. At that time, development corporations could not legally receive funding from the state or local governments because of a Texas constitutional prohibition against the expenditure of public funds to promote private business activity.[1]

In November 1987, the voters of Texas approved an amendment to the Texas Constitution providing that expenditures for economic development could serve a public purpose and were therefore permitted under Texas law.[2] This amendment states in pertinent part:

> **Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money . . . for the public purposes of development and diversification of the economy of the state.**

Pursuant to this constitutional amendment, the Texas Legislature has enacted several laws that would allow state and local government funds to be used to promote economic development.

First, in 1989, the Texas Legislature amended the Act by adding Section 4A, which allowed the creation of a new type of development corporation. The legislation provided that a Section 4A development corporation could be funded by the imposition of a local sales and use tax dedicated to economic development. The tax could be levied only after its approval by the voters of the city at an election on the issue.

1 *See* Tex. Const. art. III, § 52.
2 Tex. Const. art. III, § 52-a.

The proceeds of the Section 4A sales tax were dedicated by statute to economic development projects primarily to promote new and expanded industrial and manufacturing activities. This authority became popularly referred to as the Section 4A economic development sales tax. The Section 4A tax was generally available to cities that were located within a county of fewer than 500,000 and that had room within the local sales tax cap to adopt an additional one-half cent sales tax.

In 1991, the Texas Legislature made a number of changes to the Section 4A sales tax authorization. The new law allowed the tax to be adopted at any rate between one-eighth and one-half of one percent (in one-eighth percent increments). It additionally allowed cities to offer a joint proposition to be voted on that would authorize both a Section 4A economic development sales tax and a sales tax for property tax relief.

Also in the 1991, the Legislature authorized a new type of sales tax, a Section 4B sales tax. This legislation authorized a one-half cent sales tax to be used by certain cities to promote a wide range of civic and commercial projects. The legislation authorized 73 Texas cities to propose a Section 4B sales tax. Between 1991 and 1993, 19 cities adopted the new Section 4B sales tax.

The popularity of the Section 4B sales tax led the Texas Legislature in 1993 to broaden its availability to any city that was eligible to adopt a Section 4A sales tax. In other words, most cities in a county of less than 500,000 could adopt either the Section 4A or the Section 4B sales tax if they had room in their local sales tax. Until recently, only cities within El Paso County and Travis County were ineligible by statute to adopt either the Section 4A or the Section 4B tax. Now, cities located within El Paso County and Travis County are authorized to adopt a Section 4B tax.[3] As of this publication, at least 586 cities have either a Section 4A or a Section 4B sales tax for economic development.

Historically the Act had been located in the Texas Revised Civil Statutes Article 5190.6, and the identification of "4A" and "4B" sales tax structures were in fact references to Sections 4A and 4B of the Act. In 2007, the 80$^{th}$ Legislature authorized the recodification of several civil statute provisions by topic, including those pertaining to planning and development. Under H.B. 2278 (80$^{th}$ Leg., R.S.), the Act was codified in the Local Government Code and was renamed the "Development Corporation Act."[4] As of April 1, 2009, which was the effective date of this change, economic development corporations adopting what was formally known as a "4A" or "4B" sales tax have come to be referred to as "Type A" or "Type B" corporations, as appropriate.

## Differences Between Type A and Type B Sales Tax

There are a number of important differences between Type A and Type B sales taxes for

3 Tex. Loc. Gov't Code § 505.002.
4 *Id.* § 501.001.

economic development.[5] In broad terms, Type A and Type B taxes can be distinguished on the following grounds: 1) the authorized use of the tax proceeds; 2) the oversight procedure regarding project expenditures; and 3) the means for adopting and altering the tax by election. These general differences are outlined below. Further distinctions are covered throughout this chapter of this handbook.

## Differences in the Authorized Use of the Tax Proceeds

The Type A tax is generally considered the more restrictive of the two taxes in terms of authorized types of expenditures. The types of projects permitted under Type A include the more traditional types of economic development initiatives that facilitate manufacturing and industrial activity. For example, the Type A tax can be used to fund the provision of land, buildings, equipment, facilities, expenditures, targeted infrastructure and improvements that are for the creation or retention of primary jobs for projects such as manufacturing and industrial facilities, research and development facilities, military facilities, including closed or realigned military bases, recycling facilities, distribution centers, small warehouse facilities, primary job training facilities for use by institutions of higher education, and regional or national corporate headquarters facilities.[6] The Type A sales tax may also fund business-related airports, port-related facilities, and certain airport-related facilities 25 miles from an international border,[7] as well as eligible job training classes, certain career centers and certain infrastructural improvements which promote or develop new or expanded business enterprises.[8]

The Type B tax also can be used to fund the provision of land, buildings, equipment, facilities, expenditures, targeted infrastructure and improvements that are for the creation or retention of primary jobs for projects such as manufacturing and industrial facilities, research and development facilities, military facilities, including closed or realigned military bases, transportation facilities, sewage or solid waste disposal facilities, recycling facilities, air or water pollution control facilities, distribution centers, small warehouse facilities, primary job training facilities for use by institutions of higher education, regional or national corporate headquarters facilities,[9] eligible job training classes, certain career centers and certain infrastructural improvements that promote or develop new or expanded business enterprises.[10] However, unlike the Type A tax, the Type B tax can additionally fund projects that are typically considered to be community development initiatives. For example, authorized categories under Type B include, among other items, land, buildings, equipment, facilities, expenditures, and improvements for professional and amateur sports facilities, park facilities and events, entertainment and tourist facilities, and affordable housing.[11] Also, the Type B tax may be expended for the development

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5 *But see id.* §§ 504.101, 505.101. Section 505.101 states that a Type B corporation "has the powers granted by this chapter and by other chapters of this subtitle and is subject to the limitations of a corporation created under another provision of this subtitle. To the extent of a conflict between this chapter and another provision of this subtitle, this chapter prevails." Section 504.101 contains similar language that applies to Type A corporations.

6 *Id.* § 501.101.

7 *Id.* § 504.103.

8 *Id.* §§ 501.102-.104, .162.

9 *Id*. § 501.101.

10 *Id.* §§ 501.102-.104, .162.

11 *Id.* §§ 505.152-.153.

of water supply facilities or water conservation programs. In order to undertake a water supply facility or water conservation program, the facility or program has to be approved by a majority of the qualified voters of the city voting in an election called and held for that purpose.[12] Additionally, certain Type B development corporations are allowed to do projects that promote new and expanded business development.[13]

## Differences in the Oversight Structure and Procedures

Although both Type A and Type B monies are overseen by the development corporation's board of directors and by the city council, they differ in the structure and type of oversight required for each.

With regard to structure, the Type A board has at least five members with no statutory criteria for their selection[14], while a Type B board consists of seven members with certain statutory requirements.[15] For instance, Type B board members have a residency requirement in the Act. A city council may place certain individuals who are not city residents onto Type B boards in two (2) very limited instances:[16] first, in a city of fewer than 20,000 in population, a Type B director may either be a resident of the city, a resident of the county in which the major part of the area of the city is located, or reside in a place that is within 10 miles of the city's boundaries and is in a county bordering the county in which a major portion of the city is located.[17] Second, a person may serve on a Type B board if that person was a Type A director at the time that a Type A corporation was dissolved, and the Type A corporation was replaced with a Type B corporation.[18] Also with respect to Type B structure, no more than four of the seven Type B directors may also be city officers or employees.[19]

Regarding oversight procedures, both Type A and Type B boards pursuing projects are required to obtain city council approval of the project. There is no requirement for additional public notice or a public hearing on individual projects undertaken by the Type A corporation, but Type B corporations are subject to certain additional procedural requirements: they must provide public notice of the project and hold a public hearing prior to pursuing a project and the public has 60 days to petition for an election to be called on whether to pursue the project.

## Differences in the Means for Adopting and Altering the Tax

Finally, there are differences in how Type A and Type B taxes may be created or altered by election. A Type A tax is authorized by an election that has mandatory statutory wording for the

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12 *Id.* §§ 505.154, .304.
13 *Id.* §§ 505.156-.158.
14 *Id.* § 504.051(a).
15 *Id.* § 505.051.
16 *Id.* § 505.052.
17 *Id.*
18 *Id.* § 505.052(d). (Since the directors of a Type A corporation are not required to be residents of the city, this change in the law would allow a non-resident to serve as a Type B director in this limited circumstance. However, in a city with a population greater than 20,000, the Type B board member must be a resident of the city.)
19 *Id.* § 505.052(c).

ballot proposition. There is also authority for a Type A tax to be adopted in conjunction with a sales tax for property tax relief under one combined proposition at the same election. Once adopted, the Type A tax continues in existence until repealed by action of the voters. The Type A tax can be increased, reduced, or repealed at subsequent elections within the statutory range provided for the tax.

Conversely, the Type B tax has no required statutory wording for the ballot proposition. It can be adopted by a general ballot proposal for the adoption of a Type B sales tax for economic development. In most cases, however, cities place a long list of the authorized categories for expenditure in the ballot wording that adopts the Type B tax. Before the 79th legislative session, there was no authorization for a Type B tax to be combined onto one ballot proposition with a sales tax for property tax relief. If the voters wanted both taxes, they had to approve the items as separate ballot propositions. As of September 1, 2005, a Type B tax can be combined into one ballot proposition with a sales tax for property relief or any other special purpose municipal sales tax.[20]

Up until 2017, there was no authorization for a Type B tax rate to be increased or reduced at subsequent elections. However, legislation passed in 2017 that authorizes a Type B tax to be increased or reduced by election within the statutory range provided for the tax.[21] For corporations created on or after September 1, 1999, the Type B corporation may also be dissolved by petition of the voters and an election on the issue.[22] In that case, the Type B tax would continue until the prior debt obligations of the Type B corporation had been paid in full.

# Type A and Type B Economic Development Sales Tax

## Eligibility to Adopt a Type A Tax

A city is eligible to adopt the Type A tax, with voter approval, if the new combined local sales tax rate would not exceed two percent and:[23]

- the city is located in a county with a population of fewer than 500,000; or
- the city has a population of less than 50,000 and is located within two or more counties, one of which is Bexar, Dallas, El Paso, Harris, Hidalgo, Tarrant, or Travis; or
- the city has a population of less than 50,000 and is within the San Antonio or Dallas Rapid Transit Authority territorial limits but has not elected to become part of the transit authority.[24]

It should be noted that participation in a rapid transit authority does not invalidate a city's ability to adopt a Type A tax if adoption of the tax would not place the area within the city above its

20 Tex. Tax Code § 321.409.
21 Tex. Loc. Gov't Code § 505.2566
22 *Id.* § 505.351 - .352.
23 *Id.* § 504.254.
24 *Id.* § 504.002.

statutory cap for the local sales tax rate.[25]

If a city is eligible to adopt a Type A tax, the city council may propose any sales tax rate that is an increment of one-eighth of one percent.[26] The city may not adopt a sales tax rate that would result in a combined rate of all local sales taxes that would exceed two percent.[27]

## Eligibility to Adopt a Type B Tax

A city may impose the Type B tax, with voter approval, if the new combined local sales tax rate would not exceed 2 percent and if the city fits into one of the following categories:[28]

- the city would be eligible to adopt a Type A sales tax (see earlier section on Eligibility to Adopt a Type A Tax);
- the city is located in a county with a population of 500,000 or more and the current combined sales tax rate does not exceed 8.25 percent at the time the Type B tax is proposed; or
- the city has a population of 400,000 or more and is located in more than one county, and the combined state and local sales tax rate does not exceed 8.25 percent.

An eligible Type B city includes a city "that is located in a county with a population of 500,000 or more," and the Act also provides that an eligible city includes a city "located in a county with a population of 500,000 or fewer." Consequently, every Texas city appears to be eligible to adopt a Type B sales tax provided the city's combined local sales tax rate does not exceed two percent.[29] Further, it should be noted that participation in a rapid transit authority does not invalidate a city's ability to adopt a Type B tax if adoption of the tax would not place the city above its statutory cap for the local sales tax rate.[30]

If the city is eligible to adopt a Type B tax, the city council may propose any sales tax rate that is an increment of one-eighth of one percent.[31] The city may not adopt a sales tax rate that would result in a combined rate of all local sales taxes that would exceed two percent.[32]

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25 *Id.* § 504.259. *See also* Tex. Transp. Code § 452.6025. (Allowing a city located in a county in which a chapter 452 regional transportation authority has territory to call an election to be added to the transit authority provided a majority of the votes cast in the election favor the proposition. If the proposition is approved, the Type A sales tax can be reduced "to the highest rate that will not impair the imposition of the [regional transportation] authority's sales and use tax.")

26 Tex. Loc. Gov't Code. § 504.252(b).

27 *Id.* §§ 504.252(b), 504.254.

28 *Id.* § 505.002.

29 *Id.* §§ 504.002, 505.002.

30 *Id.* § 505.257. *See also* Tex. Transp. Code § 452.6025. (Allowing a city located in a county in which a chapter 452 regional transportation authority has territory to call an election to be added to the transit authority provided a majority of the votes cast in the election favor the proposition. If the proposition is approved, the Type B sales tax can be reduced "to the highest rate that will not impair the imposition of the [regional transportation] authority's sales and use tax.")

31 Tex. Loc. Gov't Code § 505.252(b).

## Economic Development Corporation Projects

The Development Corporation Act provides a wide variety of purposes for which Type A and Type B tax proceeds may be expended. Some of these projects require the creation or retention of primary jobs.[33] Other statutory provisions require that the Type A and Type B corporations meet the requisite revenue amounts, population, and other requirements specified by the Act without having to create or retain primary jobs. A few projects do not require either the creation or retention of primary jobs or that certain criteria be met. It is important to emphasize that any activities of an economic development corporation must always be in furtherance, and attributable to, a "project".[34]

### Type A and Type B Projects Which Must Create or Retain Primary Jobs

In 2003, the Texas Legislature amended the definition of "project" to require that certain projects result in the "creation or retention of primary jobs".[35] Accordingly, most Type A and Type B projects must now create or retain primary jobs. Yet, not all projects contain this requirement. "Primary job" is defined to mean a job that is "available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy" and that meets any one of a specific list of sector numbers of the North American Industry Classification System (NAICS).[36]

The enumerated sector numbers are:

| | |
|---|---|
| 111 | Crop Production |
| 112 | Animal Production |
| 113 | Forestry and Logging |
| 11411 | Commercial Fishing |
| 115 | Support Activities for Agriculture and Forestry |
| 211 to 213 | Mining |
| 221 | Utilities |
| 311 to 339 | Manufacturing |
| 42 | Wholesale Trade |
| 48 and 49 | Transportation and Warehousing |

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32 *Id*., Tex. Tax Code. § 321.101(f), Tex. Loc. Gov't Code § 505.256 (Making Chapter 321 of the Tax Code applicable to a Type B tax).

33 The definition of "project" was significantly amended in the 78th Legislative Session. Changes made applied only to projects that were undertaken or approved after June 20, 2003. Any projects undertaken or approved before June 20, 2003 are governed by the law that was in effect on the date the project was undertaken or approved.

34 Tex. Att'y Gen. Op. No. JC-0118 (1999) (Ruling under the former statute, Sales and use taxes levied under Section 4B of the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. art. 5190.6 (Vernon 1987 & Supp. 1999), may only be used for project costs; they may not be used for "promotional" costs unrelated to projects).

35 Tex. Loc. Gov't Code. §§ 501.101, 505.155. (Section 505.151 incorporates Type A projects under Chapter 501 as authorized projects for Type B corporations.)

36 *Id.* § 501.002(12).

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|---|---|
| 51 (excluding 512131 and 512132) | Information (excluding movie theaters and drive-in theaters) |
| 523-525 | Securities, Commodity Contracts, and Other Financial Investments and Related Activities; Insurance Carriers and Related Activities; Funds, Trusts, and Other Financial Vehicles |
| 5413, 5415, 5416, 5417, and 5419 | Scientific Research and Development Services |
| 551 | Management of Companies and Enterprises |
| 56142 | Telephone Call Centers |
| 922140 | Correctional Institutions; |
| 928110 | National Security and for corresponding index entries for Armed Forces, Army, Navy, Air Force, Marine Corps, and Military Bases. |

For more information on the North American Industry Classification System, please visit: http://www.census.gov/eos/www/naics/.

Section 501.101 of the Act specifically allows funding for the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are for the creation or retention of primary jobs that are found by the board of directors of the Type A and Type B corporation to be required or suitable for the development, retention, or expansion of the following eight types of projects:

**Manufacturing and industrial facilities.** A primary purpose of the economic development sales tax is to promote the expansion and development of manufacturing and industrial facilities which create or retain primary jobs.

**Research and development facilities.** Economic development corporations can help provide research and development facilities which create or retain primary jobs.

**Military facilities.** Economic development corporations can help promote or support an active military base, attract new military missions to a military base in active use; or redevelop a military base that has been closed or realigned.

**Recycling facilities.** With the recent federal and state statutory encouragement of recycling enterprises, a growing number of businesses are emerging to meet these needs, and cities will be competing to attract these businesses. Recycling facilities which create or retain primary jobs are permissible projects.

**Distribution centers.** In cities with access to major airports or ports, and in areas that have passed the Freeport exemption, the environment is often favorable for the location of distribution centers. Funding distribution centers which create or retain primary jobs is allowable under the Act.

**Small warehouse facilities.** Again, in cities with access to major airports or ports, and in areas that have passed the Freeport exemption, the environment is often favorable for the location of warehouse facilities capable of serving as decentralized storage and distribution centers. Small warehouse facilities projects which create or retain primary jobs are permissible projects.

**Primary job training facilities for use by institutions of higher education.** The Development Corporation Act allows the funding for "primary job training facilities for use by institutions of higher education". The term "institution of higher education" is defined under Section 61.003 of the Texas Education Code to include any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined under Section 61.003.

**Regional or national corporate headquarters facilities.** "Corporate headquarters facilities" is defined to mean "buildings proposed for construction or occupancy as the principal office for a business enterprise's administrative and management services."[37] Accordingly, Type A and Type B corporations may fund corporate headquarter facilities, provided the facilities create or retain primary jobs.

Additionally, only Type B corporations may provide land, buildings, equipment, facilities and improvements found by the board of directors to promote or develop new or expanded business enterprises that create or retain primary jobs, including a project to provide:

- Transportation facilities (including but not limited to airports, hangars, airport maintenance and repair facilities, air cargo facilities, related infrastructure located on or adjacent to an airport facility, ports, mass commuting facilities and parking facilities)[38],
- Sewage or solid waste disposal facilities,[39]
- Air or water pollution control facilities,[40]
- Facilities for furnishing water to the public,[41]
- Public safety facilities,[42]
- Streets and roads,
- Drainage and related improvements,

[37] *Id.* § 501.002(4).
[38] *Id.* § 501.101(2)(D). *See also id.* § 504.103 (Section 504.103 limits Type A corporation from doing certain projects.)
[39] *Id.* § 501.101(2)(E). *See also id.* § 504.103 (Section 504.103 limits Type A corporation from doing certain projects.)
[40] *Id.* § 501.101(2)(G). *See also id.* § 504.103 (Section 504.103 limits Type A corporation from doing certain projects.)
[41] *Id.* § 501.101(2)(H). *See also id.* § 504.103 (Section 504.103 limits Type A corporation from doing certain projects.)
[42] *Id.* § 505.155.

- Demolition of existing structures,
- General municipally owned improvements,
- Any improvements or facilities that are related to any of those projects and any other projects that the board in its discretion determines promoted or develops new or expanded business enterprises that create or retain primary jobs.

**Type A and Type B Projects Which Are Not Required to Create Primary Jobs**

The following categories are authorized Type A and Type B projects that are not conditioned upon the creation or retention of primary jobs.

**Job training classes.** Certain job training required or suitable for the promotion or development and expansion of business enterprises can be a permissible project. Type A and Type B corporations may spend tax revenue for job training classes offered through a business enterprise only if the business enterprise agrees in writing to certain conditions. The business enterprise must agree to create new jobs that pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area, or agree to increase its payroll to pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area.[43]

**Job-Related Skills Training for Certain Cities.** Type A and Type B corporations located in a city with a population of 10,000 or more, and that are located in a county that borders the Gulf of Mexico or the Gulf Intracoastal Waterway or the United Mexican States and in which four cities with a population of 70,000 or more are located, and has or is included in a metropolitan statistical area of this state that has an unemployment rate that averaged at least two percent (2%) above the state average for the most recent two (2) consecutive years, may spend Type A or Type B sales tax revenue for job training that consists of providing job-related life skills sufficient to enable an unemployed individual to obtain employment; and providing job training skills sufficient to enable an unemployed individual to obtain employment.[44]

**Certain infrastructural improvements which promote or develop new or expanded business enterprises.** "Project" also includes expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises. However, the infrastructure improvements are limited to streets and roads, rail spurs, water and sewer utilities, electric utilities, gas utilities, drainage, site improvement, and related improvements, telecommunications and Internet improvements, and beach remediation along the Gulf of Mexico.[45] Accordingly, Type A and Type B corporations may assist with limited infrastructural improvements that the board finds will promote or develop new or expanded business development.

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43 *Id.* § 501.162. *See id.* § 501.102.

44 *Id.*§ 501.163.

45 *Id.* § 501.103.

**Career Centers.** Certain career centers can be provided land, buildings, equipment, facilities, improvements and expenditures found by the board of directors to be required or suitable for use if the area to be benefited by the career center is not located in the taxing jurisdiction of a junior college district.[46]

**Commuter Rail, Light Rail or Motor Buses.** A Type A and Type B corporation, as authorized by the corporation's board of directors, may spend tax revenue received under the Act for the development, improvement, expansion or maintenance of facilities relating to the operation of commuter rail, light rail, or motor buses.[47]

In addition, there are three categories that are not required to create or retain primary jobs, but for which there are revenue amount, population and other requirements specified in the Act:

**Airport Facilities.** Type A and Type B corporations located wholly or partly within twenty-five miles of an international border, in a city with population of less than 50,000 or an average rate of unemployment that is greater than the state average rate of unemployment during the preceding twelve month period, may assist with land, buildings, facilities, infrastructure and improvements required or suitable for the development or promotion of new or expanded business enterprises through transportation facilities including airports, hangars, railports, rail switching facilities, maintenance and repair facilities, cargo facilities, marine ports, inland ports, mass commuting facilities, parking facilities, and related infrastructure located on or adjacent to an airport or railport facility.[48]

**Infrastructure for Airports, Ports, and Sewer or Solid Waste Disposal Facilities.** Type A and Type B corporations located in a city wholly or partly in a county that is bordered by the Rio Grande with a county population of at least 500,000, and having wholly or partly within its boundaries at least four cities that each have a population of at least 25,000, may provide certain assistance with infrastructure necessary to promote or develop new or expanded business enterprises, including airports and port facilities, provided Type A or Type B sales tax revenues do not support the project.[49] This provision also allows for providing assistance for sewer facilities and solid waste facilities. However, only Type B corporations can provide assistance to these facilities because Type A corporations are not allowed to do those types of projects.[50]

**Hurricane Ike Disaster Relief.** Type A and Type B corporations located wholly or partly within the Hurricane Ike disaster area may provide assistance towards Hurricane Ike disaster area bonds. Type A and Type B corporations authorized to participate in Hurricane Ike disaster area bond projects must be located wholly or partly in one of thirty-four Texas counties. (See footnote, below.) For these eligible corporations, the

46 *Id.* § 501.105.
47 *Id.* § 502.052
48 *Id.* §§ 501.106, 504.103(c).
49 *Id.* § 501.107.
50 *Id*. § 504.103.

term "project" is defined to mean the undertaking of costs which are eligible to be paid from the proceeds of qualified Hurricane Ike disaster bonds. The term "project" does not include qualified residential rental projects, or projects the costs of which are payable from qualified mortgage bonds.[51]

**Type A Only Projects Which Are Not Required to Create Primary Jobs**

Section 504.103 of the Local Government Code specifically allows economic development corporations to undertake two categories of projects without the requirement of creating or retaining primary jobs. The primary purpose of these projects is to provide:

**Business airports** (general aviation business service airports that are an integral part of an industrial park); and

**Port-related facilities** (port-related facilities to support waterborne commerce).

**Type B Only Projects Which Are Not Required to Create Primary Jobs**

Sections 505.152 through 505.154 of the Act specifically permit expenditures of Type B tax proceeds for land, buildings, equipment, expenditures and improvements suitable for the following types of projects:

**Professional and amateur sports and athletic facilities**. Professional and amateur sports and athletics facilities, including stadiums and ballparks, are permissible Type B projects.[52]

**Entertainment, tourist and convention facilities.** Entertainment, tourist, and convention facilities, including auditoriums, amphitheaters, concert halls, museums and exhibition facilities are permissible Type B projects.[53]

**Public parks and related open space improvements.** Public parks, park facilities and events, and open space improvements are permissible Type B projects.[54]

**Affordable housing.** Projects required or suitable for the development and expansion of "affordable housing" as defined by federal law (42 United States Code Section 12745) are permissible Type B projects.[55]

**Water supply facilities.** Any water supply facilities, including dams, transmission lines, well field developments, and other water supply alternatives can be permissible Type B

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51 *Id*. § 501.452. The 34 counties that are subject to this section are: Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Gregg, Grimes, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Trinity, Tyler, Walker, Waller, and Washington.

52 *Id.* § 505.152.

53 *Id.*

54 *Id.*

55 *Id.* § 505.153.

projects.[56] Nonetheless, to undertake a water supply facility project, a majority of the qualified voters of the city voting in an election called and held for that purpose must approve the water supply project.[57] The ballot proposition for the election shall be printed to provide for voting for or against the proposition:[58]

> **The use of sales and use tax proceeds for infrastructure relating to (*insert description of water supply facility*).**

**Water conservation programs.** Water conservation programs, including incentives to install water-saving plumbing fixtures, educational programs, brush control programs, and programs to replace malfunctioning or leaking water lines and other water facilities can be permissible Type B projects.[59] As with water supply facilities, to undertake a water conservation program a majority of the qualified voters of the city voting in an election called and held for that purpose must approve the water conservation program.[60] The ballot proposition for the election shall be printed to provide for voting for or against the proposition:[61]

> **The use of sales and use tax proceeds for infrastructure relating to (*insert description of water conservation program*).**

**Airport Facilities.** Type B corporations may undertake a project which is required or suitable for the development or expansion of airport facilities, including hangars, airport maintenance and repair facilities, air cargo facilities, and related infrastructure located on or adjacent to an airport facility, if the project is undertaken by a corporation created by an eligible city: (i) that enters into a development agreement with an entity in which the entity acquires a leasehold or other possessory interest from the corporation and is authorized to sublease the entity's interest for other projects authorized by this subdivision; and (ii) the governing body of which has authorized the development agreement by adopting a resolution at a meeting called as authorized by law.[62]

Additionally, certain Type B corporations have been given more latitude in deciding what types of projects that they can do without the requirement of creating or retaining primary jobs but they must meet the requisite conditions.

**Revenue Requirement.** Type B corporations in cities that have not generated more than $50,000 in sales and use tax revenues in the preceding two (2) fiscal years may provide land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for the development, retention, or expansion of business

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[56] *Id.* § 505.154.
[57] *Id.* § 505.304.
[58] *Id.*
[59] *Id.* § 505.154.
[60] *Id.* § 505.304.
[61] *Id.*
[62] *Id.* § 505.1561.

enterprises, provided the city council authorizes the project by adopting a resolution following two (2) separate readings conducted at least one (1) week apart.[63]

**Population Requirement.** A Type B corporation in a city with a population of 20,000 or less may provide land, building, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the board of directors to promote new or expanded business development provided that, for projects which require an expenditure of more than $10,000, the city council adopts a resolution authorizing the project after giving the resolution at least two (2) separate readings.[64]

**Landlocked Communities.** For Type B corporations located wholly or partly in a county with a population of two million or more that has within its city limits and extraterritorial jurisdiction fewer than 100 acres that can be used for the development of manufacturing or industrial facilities in accordance with the zoning laws or land use restrictions of the city, the term "project" also includes expenditures found by the board of directors to be required for the promotion of new or expanded business enterprises within the landlocked community.[65]

## Undertaking Projects Located Outside of the City

Section 501.159(a) of the Local Government Code provides that an economic development corporation may undertake projects outside of the city limits with permission of the governing body that has jurisdiction over the property. If the project is located completely within the jurisdiction of another municipality, the corporation would need approval of the city council for that municipality.

## Uses of Type A and Type B Taxes

### Use of a Type A Tax for Infrastructural Improvements

Type A tax proceeds are not intended to fund the general infrastructural needs of a city.[66] For example, Section 504.103 of the Act states that Type A tax proceeds cannot be used to undertake a project the primary purpose of which is to provide transportation facilities, solid waste disposal facilities, sewage facilities, facilities for furnishing water to the general public or air or water pollution control facilities. Section 504.103 further states that Type A tax proceeds may be used for these types of facilities only if the expenditure would "benefit property acquired for a project having another primary purpose."

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63 *Id.* § 505.156.

64 *Id.* § 505.158.

65 *Id.* § 505.157.

66 *See* Tex. Att'y Gen. LO-95-072 (1995) (V.T.C.S. article 5190.6, Section 4B authorizes the board of directors of a development corporation organized under V.T.C.S. article 5190.6 to determine whether the construction of sanitary sewer lines in an existing residential subdivision would promote or develop new or expanded business enterprises. Although it seems unlikely that the construction of sewer facilities in a residential subdivision would promote or develop new or expanded business enterprises, this office cannot exclude the possibility as a matter of law. The board's determination would be reviewed under an abuse of discretion standard.)

In 2003, the Texas Legislature amended the Act to allow Type A corporations to expend sales tax proceeds for specific infrastructural improvements necessary to promote or develop new or expanded business enterprises.[67] This provision authorizes and limits expenditures for streets and roads, rail spurs, water and sewer utilities, electric utilities, gas utilities, drainage, site improvements and related improvements, telecommunications and Internet improvements, and beach remediation along the Gulf of Mexico.[68]

**Use of Type A Tax for Type B Projects**

In 1997, the Texas Legislature amended the Development Corporation Act to allow the voters of an area to approve at an election the use of Type A economic development sales tax funds for a project authorized under Type B.[69] This alternative was authorized to allow cities with a Type A tax to propose Type B projects to the voters without having to repeal or reduce the Type A tax and adopt a Type B tax.

As noted, any use of Type A funds for a Type B project must be approved by the city's voters at an election held on the issue and a public hearing must be conducted before the city holds the election. If the city already has a Type A tax, it only needs to have the voters approve at the election the use of Type A tax proceeds for a particular Type B project or a category of Type B projects. The city would need to list each project or category of projects on a separate ballot proposition for the voters' approval. Unfortunately, state law does not define what constitutes a separate category of projects. A city should consult with its local legal counsel before it drafts its ballot wording for such an election.

If the city chooses to propose the use of Type A funds for Type B purposes, it must hold a public hearing prior to the election.[70] At the public hearing, the city's residents must be informed of the estimated cost and impact of the proposed project or category of projects. The city must publish notice of the hearing in a newspaper of general circulation in the city at least 30 days before the date set for the hearing. The notice must include the time, date, place and subject of the hearing and must be published on a weekly basis until the date of the hearing.

In an election to approve the use of Type A funds for a Type B purpose, the law requires that a specific Type B project or category of projects be clearly described on the ballot.[71] The ballot proposition must be clear enough for the voters to discern the limits of the specific project or category of projects to be authorized. State law does not indicate what type of limits must be identified. At a minimum, the proposition should clearly identify what types of project are anticipated. Additionally, if Type A funds are to be used to pay maintenance and operating costs (and not just initial construction cost, etc.) of a Type B project, then the ballot proposition must state that fact.

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67 Tex. Loc. Gov't Code § 501.103.
68 *Id.*
69 *Id.* § 504.152.
70 *Id.* § 504.153.
71 *Id*. § 504.152(b).

A city may ask the voters to consider the use of Type A funds for a Type B purpose at the same election in which the voters are considering the creation of the Type A tax itself.[72] The city would use one ballot proposition for the adoption of the Type A tax and a separate ballot proposition to approve the use of Type A funds for a Type B purpose. A city may also have the voters consider authorizing the use of Type A funds for several different Type B projects or categories of projects at the same election. As noted earlier, each project or category of projects would need to be placed on a separate ballot proposition for the voters' approval. There does not seem to be any authorization for a city to have the voters consider the use of Type A funds for several different Type B projects or categories of projects within one ballot proposition, unless the city proposes a combined ballot proposition to repeal or reduce the Type A tax and in the same proposition adopt a Type B tax. If an election on a Type B project or category of projects fails to win voter approval, the city must wait at least one year before holding another election on that particular project or category.[73]

Additionally, even when undertaking a properly authorized Type B project, a Type A corporation is governed by all the normal rules applicable to Type A corporations.[74] For instance, if the ballot proposition originally authorizing the Type A tax contained an expiration date for the tax, voter authorization of the use of Type A funds for a Type B purpose would not eliminate the expiration date of the tax.

During the 82nd Legislative Session, the Legislature passed a bill that would allow Type A corporations to do Type B projects if:

- The city that created the Type A corporation also has a Type B corporation; and
- The population of the city is 7,500 or less.[75]

The city will have to pass an ordinance allowing the Type A corporation to do Type B projects. These Type A corporations would not have to have an election to do Type B projects. Also, by ordinance, the city may revoke the Type A corporation's ability to do Type B projects under this bill.

### Use of Type A Tax and Type B Tax for "Sports Venue" Facilities

Type A and Type B funds may be used to fund "sport venue" projects.[76] Special statutory provisions apply to "sports venue" projects. A project qualifies as a "sports venue" if it is an arena, coliseum, stadium, or other type of area or facility that meets both of the following criteria:[77]

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72 *Id*. § 504.152(c).
73 *Id*. § 504.154.
74 *Id*. § 504.156.
75 *Id*. § 504.171.
76 *Id.* §§ 504.152-.156, 505.201-.206.
77 *Id.* §§ 504.151(2), 505.201(2). (Note that the definition of "sports venue" in Section 505.201 of the Local Government Code differs from that contained in 504.151 of this Act. Type B corporations have an additional limitation within its definition of "sports venue". Type B corporations cannot fund arena, coliseum, stadium, or other type of area or facility that is or will be owned and operated by a state-supported institution of higher education.)

- The primary use or primary planned use is for one or more professional or amateur sports or athletics events; and
- A fee for admission to the sports or athletics events is charged or is planned to be charged, except that a fee need not be charged for occasional civic, charitable or promotional events.

Texas law specifies that any funds authorized by the voters to be spent on a "sports venue and related infrastructure" may be spent on any on-site or off-site improvements that relate to a sports venue and that enhance the use, value, or appeal of the sports venue, including areas adjacent to it. Eligible expenditures would include any costs that are reasonably necessary to construct, improve, renovate, or expand the sports venue. The law specifically lists the following uses as examples of permissible "related infrastructure": stores, restaurants, concessions, on-site hotels, parking facilities, area transportation facilities, roads, water or sewer facilities, parks, and environmental remediation.[78] However, each of these facilities must relate to and enhance the sports venue.

In order for a Type A or Type B corporation to do a "sports venue" project, both the Type A and Type B corporations must follow certain procedures. A city may submit to its voters a ballot proposition that would authorize the use of Type A or Type B funds for a specific "sports venue" project or category of projects, including any infrastructure related to that project or category.[79] Such a ballot proposition could contain language enabling the Type A or Type B corporation to use any Type A or Type B funds already collected to support the "sports venue" project. Before an election to authorize the use of the Type A or Type B tax for a sports venue, a public hearing must be conducted.[80] At that hearing, the city's residents must be informed of the cost and impact of the proposed project or category of projects. The city is required to publish notice of the hearing in a newspaper of general circulation in the city at least 30 days before the date set for the hearing. The notice must include the time, date, place, and subject of the hearing and must be published on a weekly basis until the date of the hearing. Accordingly, the city will need to schedule its public hearing early enough so that it can provide at least 30 days notice of the hearing.

In an election to approve the use of Type A or Type B funds for a "sports venue" project, the law requires that a specific "sports venue" project or category of projects be clearly described on the ballot. [81] The description must be clear enough for the voters to discern the limits of the specific project or category of projects to be authorized. State law does not indicate what constitutes a clear description or how to indicate the limits of the specific project. At a minimum, the ballot proposition should clearly indicate the types of projects anticipated. Additionally, if Type A or Type B funds are to be used to pay the maintenance and operating costs (and not just initial

[78] *Id.* §§ 504.151(1), 505.201(1).
[79] *Id.* §§ 504.152(a), 505.202(a).
[80] *Id.* §§ 504.153, 505.203.
[81] *Id*. §§ 504.152(b), 505.202(b).

construction cost, etc.) of a "sports venue" project, then the ballot proposition must state that fact.[82]

A city may have the voters consider the use of Type A or Type B funds for a "sports venue" project at the same election in which the voters are considering the creation of the Type A or Type B tax itself.[83] A city that pursues such a combined proposition should consult with its local legal counsel and the comptroller's office on this issue. State law requires that any "sports venue" election be held on a uniform election date. If a "sports venue" project or category of projects fails to win voter approval, the city must wait at least one year before holding another election on that particular project or category.[84]

### Use of Type A and Type B Tax Proceeds for Training Seminars

Certain Type A and Type B economic development corporation officers and city officials are required to complete a training seminar.[85] The officials must complete a seminar once every 24 months.[86] At least one person from each of the following is required to attend a seminar each 24-month period:

- the city attorney, the city administrator or city clerk; and
- the executive director or other person who is responsible for the daily administration of the corporation.[87]

The corporation is authorized to use Type A or Type B proceeds to pay for the costs of attending a seminar.[88] The certificates of completion are issued by the person, entity, or organization providing the training seminars on a form approved by the comptroller's office.[89] The comptroller's office may impose an administrative penalty in an amount not to exceed $1,000 for failure to attend the seminar.[90]

## Specific Procedural Requirements Before a Type B Corporation Can Expend Type B Tax Proceeds

### Public Notice Requirement and the 60-Day Right to Petition

A Type B corporation must publish notice of the Type B projects it plans to undertake. This is because the public has a right to submit a petition objecting to a particular Type B project.[91] The petition must be submitted within 60 days of the first published notice of a specific project or type of project and must be signed by more than 10 percent of the registered voters of the city.

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82 *Id*.
83 *Id*. §§ 504.152(c), 505.202(c).
84 *Id*. §§ 504.154, 505.204.
85 *Id.* § 502.101.
86 *Id.* § 502.101(a).
87 *Id.* § 502.101(a)(1)-(2).
88 *Id.* § 502.101(d).
89 *Id.* § 502.103(a).
90 *Id.* § 502.103(b).
91 *Id*. §§ 505.160, .303.

If a petition is pursued by the public, the petition can ask that the city hold an election on the issue before that specific project or type of project is undertaken. If the petition is submitted in a timely manner and an election is required, the corporation may not undertake the project until the voters approve the project at an election on the issue. If the voters disapprove the project at the election, the Type B tax proceeds may not be used for that purpose. It is important to note that a petition cannot force an election on a project if the voters have previously approved the specific project or that general category of projects at an earlier election called under the Act.

### Public Hearing Requirement for Expending Type B Tax Proceeds

A Type B corporation is required to hold at least one public hearing on any proposed project, including a proposal to expend funds on maintenance and operating expenses of a project.[92] However, a corporation created by an eligible city with a population of less than 20,000 is not required to hold a public hearing if the proposed project is defined by Sections 501.101 through 501.107 of the Act.[93] If a public hearing is required, the hearing must be held before the corporation expends any Type B funds on the project. There is nothing in the Act that prohibits the Type B corporation from holding one public hearing to consider a group of Type B projects. After the projects have been considered at a public hearing and 60 days have passed since the first public notice of the nature of the projects, the development corporation is free to make expenditures related to the projects pursuant to the adopted budget, subject to other applicable requirements.

## Specific Costs of a Type A and Type B Project That May be Funded

Cities need to know what types of specific expenditures are contemplated within each category available for expenditure of Type A and Type B tax proceeds. For assistance in understanding what is permitted under the Act, cities should review the definition of the term “cost” under Section 501.152 of the Act. Section 501.152 defines what costs may be applied to a Type A or Type B. It states, in pertinent part, that costs for a project may include:

> **Land and facility improvements:** the cost of acquisition, construction, improvement and expansion of land and buildings.
>
> **Machinery and supplies:** the cost of machinery, equipment, inventory, raw materials and supplies.
>
> **Financial transaction costs:** the cost of financing charges, interest prior to and during construction, and necessary reserve funds.
>
> **Planning costs:** the cost of research and development, legal services, development of plans and specifications, surveys, and cost estimates; and other expenses necessary or incident to determining the feasibility and practicability of undertaking the project.

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92 *Id*. § 505.159(a).
93 *Id*. § 505.159(b).

**Brownfield Clean-up costs:** Should the Texas Governor's office or the Texas Commission on Environmental Quality encourage or request that a Type A or Type B corporation use sales tax proceeds to clean up contaminated property, the corporation may not undertake the project until the use is approved by a majority of the qualified voters of the city voting in an election called and held for that purpose. The ballot proposition is as follows:[94]

> **"The use of sales and use tax proceeds for the cleanup of contaminated property."**

## Administrative Expenses of a Type A and Type B Project

Section 501.152 of the Act also states that the cost of a project may include the administrative expenses and other expenses that are incident to placing a project into operation. The law states that these expenses could include "the administrative expenses for the acquisition, construction, improvement, and financing of any project." Additionally, Type A and Type B corporations are permitted to contract with other private corporations to carry out industrial development programs.[95] Also, should a Type A or Type B corporation contract with a broker, agent or other third party for business recruitment, a written contract approved by the board of directors is required for any payment of a commission, fee, or other thing of value to the third party.[96] Failure to enter into a written contract could result in a civil penalty not to exceed $10,000.

## Maintenance and Operating Expenses of a Type A and Type B Project

It should be noted that there is a difference between "administrative expenses that are necessary to put a project into operation" and the "maintenance and operating expenses" of an ongoing project. Type A and Type B corporations have statutory authority to spend Type A and Type B funds on maintenance and operation expenses for a Type A or Type B project.[97] However, the voters are allowed to petition for an election on the issue of whether to prohibit the Type A or Type B corporation from expending Type A or Type B funds for the maintenance and operation costs of a particular project. Such a petition must be signed by 10 percent of the registered voters of the city. The petition must be presented within 60 days after the city first publishes notice that the tax proceeds are going to be used for maintenance and operations of a specific project. However, an election is not required if the voters has previously approved the use of Type A or Type B proceeds for this purpose at an earlier election under the Act.

## Promotional Expenses and Prior Debts

The Act limits Type A and Type B corporations to spending no more than 10 percent of the corporate revenues (Type A and Type B tax proceeds) for promotional purposes.[98] The Act does

94 *Id.* §§ 504.304, 505.305.
95 *Id.* §§ 504.102, 505.102.
96 *Id.* § 502.051.
97 *Id.* §§ 504.302, 505.303.
98 *Id.* §§ 504.105, 505.103. *See* Tex. Att'y Gen. LO-94-037 (Ruling under the former statute, this opinion concluded the Development Corporation of Abilene, which operated under Section 4A of the Development Corporation Act, could spend proceeds of the sales and use tax imposed under Section 4A for "promotional purposes," subject to the proviso of subsection (b)(1) that no more than 10 percent of corporation revenue

not define the term "promotional purposes." However, the Texas Attorney General has concluded that a promotional expenditure "must advertise or publicize the city for the purpose of developing new and expanded business enterprises."[99] Further, a corporation is limited to spending not more than 10 percent of its current annual revenues for promotional purposes in any given year. Nonetheless, unexpended revenues specifically set aside for promotional purposes in past years may be expended along with 10 percent of current revenues without violating the cap.[100] Additionally, city council may disapprove a promotional expenditure.[101] If there is some question as to whether a particular expenditure should be considered a promotional expense, the development corporation should consult with its local legal counsel.

A Type A corporation is prohibited from assuming a debt or paying the principal or interest on a debt if the debt existed before the date when the city created the development corporation.[102] This limitation does not prevent a development corporation from undertaking or making future expenditures toward a project that is already in operation. It means that the corporation could not reimburse that project for its prior debts. However, the legislature has not addressed whether a Type B corporation is prohibited from paying principal or interest on a debt if the debt existed before the city created the Type B corporation.

## Issuance of Bonds for a Type A or Type B Project

A Type A and Type B corporations may issue bonds, notes and other contractual obligations to fund its projects.[103] The sales tax proceeds received by the corporation may be used to pay the principal and interest on the bonds and any other costs related to the bonds.[104] For example, the Texas Attorney General concluded in Letter Opinion 92-86 that a Section 4A (now Type A) development corporation may finance bonds for the start-up costs of a technical college if the funds are used solely for vocational training purposes. Any bond or debt instrument of the corporation remains an obligation of the corporation and is not an obligation of the city, nor is it backed by the city ad valorem tax rate.[105] The city and the development corporation staff will want to visit with local bond counsel prior to the imposition of any debt obligation or debt instrument. All such bonds would need to receive approval by the Public Finance Division of the Office of the Attorney General.[106]

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could be spent for such purposes, and so long as the expenditures were otherwise consistent with the provisions of the act and state law generally).

99 Tex. Att'y Gen. Op. No. GA-0086 (2003) at 2.

100 *Id.* at 6.

101 *Id.* at 3-5.

102 Tex. Loc. Gov't Code § 504.104. *But see* Tex. Att'y Gen. Op. No. DM-299 (1994). (Ruling under the former statute, this opinion indicates that Tex. Rev. Civ. Stat. art. 5190.6, § 4A(q) is not retroactive. A 4A corporation can, therefore, continue to make payments on any obligation that the corporation entered into before the enactment date of 4A(q) (in 1993). This would be true even if the obligation entered into before the enactment of 4A(q) was one that existed before the creation of the 4A corporation.)

103 Tex. Loc. Gov't Code §§ 501.155, .201, .214.

104 *Id.* §§ 504.303, 505.104.

105 *Id.* § 501.207.

106 *Id.* § 501.201 (States that a development corporation may issue bonds obtaining the consent of any state department, division or agency, "other than the attorney general under chapter 1202, Government Code.")

## Creating a Type A or Type B Economic Development Corporation

Creation of a Type A or Type B economic development corporation may be initiated either by the city[107] or by a group of citizens.[108] For citizens to initiate the creation of an economic development corporation, a group of three or more individuals who are qualified voters of the city must file a written application with the city requesting approval of an economic development corporation. The city may not charge a fee for consideration of the application. If the city determines that the corporation should be created, the city must approve the corporation's certificate of formation (formerly known as articles of incorporation)[109] by ordinance or resolution. The ordinance or resolution must indicate what purposes the corporation can further on the city's behalf. The purposes shall be limited to the promotion and development of industrial and manufacturing enterprises to encourage employment and the public welfare. The Type A economic development certificate of formation must state that the corporation is to be governed by Chapter 504 of the Local Government Code.[110] The Type B economic development certificate of formation must state that the corporation is to be governed by Chapter 505 of the Local Government Code.[111]

The certificate of formation for all development corporations must contain the items required under Section 501.056 of the Act and must be approved by the municipality's governing body.[112] The city may amend the certificate of formation at its sole discretion at any time.[113]

The certificate of formation must be filed in triplicate with the secretary of state's office pursuant to Section 501.057 of the Act. Upon the issuance of the certificate of incorporation, the corporate existence begins. After the issuance of the certificate evidencing the filing of the certificate of formation, the board of directors must hold an organizational meeting to adopt the bylaws of the corporation and to elect officers.[114] The initial bylaws must also be approved by resolution of the governing body of the city.[115] The first meeting of the board of directors of the corporation should be held pursuant to the requirements under Section 501.063 of the Act.

A city can create an economic development corporation without having an election to create a sales tax. However if the city wants the economic development corporation to receive sales tax funds, then there has to be an election to adopt a Type A or Type B economic development sales tax.

## Initiating an Election to Adopt a Type A or Type B Sales Tax

An election to adopt a Type A or Type B economic development sales tax may be initiated either by:

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107 *Id.* § 504.003(a).
108 *Id.* § 501.051.
109 *Id.* § 501.011.
110 *Id.* § 504.004.
111 *Id.* § 505.004.
112 *Id.* § 501.051(b)(2).
113 *Id.* § 501.302.
114 *Id.* § 501.063.
115 *Id.* § 501.064.

- city council approval of an ordinance calling for an election on the imposition of the tax[116]; or
- a petition signed by a number of qualified voters that equals at least 20 percent of the voters who voted in the most recent regular city election. If the city council receives such a petition, it is required to pass an ordinance to call an election on the imposition of the tax.[117]

Most cities pass the ordinance calling for a Type A or Type B sales tax election on their own motion and do not wait for the election to be initiated by a petition of the voters. If a city orders an election on the sales tax for economic development, it must follow all applicable requirements for elections contained in the Election Code, the Municipal Sales and Use Tax Act (Chapter 321 of the Tax Code), and other Texas statutes relating to elections.[118] Notably, the following requirements must be met:

**Potential Election Dates**. The election must be held on a uniform election date as provided by Chapter 41 of the Election Code. There are uniform election dates in May and November. The current uniform election dates are:

- the first Saturday in May in an odd-numbered year;
- the first Saturday in May in an even-number year, for an election held by a political subdivision other than a county; or
- the first Tuesday after the first Monday in November.[119]

**Time Frame for Ordering the Election.** The city should order the election at least 78 days prior to the date of the election.[120] The Tax Code requires only that the city order the election at least 30 days before the date of the election.[121] Nonetheless, it is advisable to provide at least 78 days' notice, since this is the requirement applicable to most other special elections in Texas and it allows time to comply with other Election Code requirements, such as early voting. In addition, the Election Code provision governing time frames for ordering an election "supersedes a law outside this code to the extent of any conflict."[122]

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116 *Id.* §§ 504.255, 505.256 (Stating that chapter 321 of the Texas Tax Code governs the imposition of a Type A or Type B tax), and Tex. Tax Code § 321.401(a) (An election may be called by the adoption of a city ordinance by city council.).

117 *See* Tex. Loc. Gov't Code §§ 504.255, 505.256 (Stating that chapter 321 of the Tax Code governs the imposition of a Type A or Type B tax) and Tex. Tax Code § 321.401(c) (Requiring that the city council pass an ordinance calling for a sales tax election if a petition is presented). *See* Tex. Elec. Code ch. 277 (Requirements for petition signatures).

118 *See* Tex. Loc. Gov't Code § 504.255, 505.256 (Stating that chapter 321 of the Tax Code governs elections under chapter 504 and 505 of the Local Government Code) and Tex. Tax Code § 321.403 (stating that an election held under chapter 321 of the Tax Code must be held on the next available uniform election date).

119 Tex. Elec. Code § 41.0052.

120 *Id.* § 3.005(c).

121 Tex. Tax Code § 321.403.

122 Tex. Elec. Code § 3.005(b).

**Notice to be Provided of Election.** The city must publish notice of the election at least once in a newspaper of general circulation in the city.[123] The notice must be published not more than 30 days and not less than 10 days before the date of the election. The notice must state the nature and date of the election, the location of each polling place, hours that the polls will be open, and any other election-related information required by law.[124] Also, the city is required to deliver notice of their election to the county clerk and voter registrar of each county in which the city is located not later than the 60th day before the election.[125] Then, the county is required to post the notice to the county's website not later than the 21st day before the election, if the county maintains a website.[126] If the county does not maintain a website, then the city must post notice of the election on the bulletin board used to post the city's meeting notices.[127] The notice must also include the wording of all the ballot propositions.[128] The entire notice must generally be provided in both English and Spanish.[129]

## Ballot for Economic Development Corporations

**Type A Ballot**: The Act requires specific wording for a Type A sales tax proposition ballot, as follows:[130]

> **The adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of (*insert appropriate rate*) of one percent.**

The actual wording used on the ballot must indicate what rate is proposed for the Type A sales tax. The voters then vote for or against the proposition.

**Type B Ballot**: Current law does not provide any required wording for the ballot for a Type B sales tax for economic development. Before the Development Act was codified, cities would use great care to include wording that described all of the categories of projects that the city would want to have the Type B corporation to pursue. [131] Cities

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123 *Id.* § 4.003(a)(1), (c).
124 *Id.* § 4.004(a).
125 *Id*. § 4.008(a).
126 *Id*. §§ 4.003(b), 4.008(a).
127 *Id*. § 4.003(b).
128 *Id*. § 4.004(b).
129 *See id.* ch. 272.
130 Tex. Loc. Gov't Code § 504.256.
131 *See* Tex. Att'y Gen. Op. No. JC-400 (2001) (The city of Sonora's ballot adopting the 4B sales tax read as follows: "The adoption of an additional one-half of one percent sales and use tax within the City pursuant to the provisions of Article 5190.6, V.A.T.C., with the proceeds thereof to be used and applied in the manner and *to the purposes authorized by Section 4B of the Act, including but not limited* to public facility improvements, commercial facilities, infrastructural improvements, new and expanded business enterprises, and other related improvements, facilities to furnish water to the general public, sewage and solid waste disposal facilities and maintenance and operating costs associated with all of the above projects." JC-400 at 4).

should be sure to have their legal counsel review any proposed ballot wording prior to its use in an election proposition.

## Setting a Limited Time Period for a Type A or Type B Tax

A Type A tax that is approved without a time limit is effective until repealed by election.[132] However, a city may include in the wording of the ballot proposition a limitation on the length of time in years that a Type A tax may be imposed. For example, a city could limit the time period during which a Type A tax is imposed to four years. Once such a limit is approved by the voters, the tax may be extended beyond this time limit or reimposed only if the city has an election at which the voters authorize the extension or reimposition of the tax. If a city decides to include such a time limitation, the required ballot wording is as follows:[133]

> **The adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of (*insert appropriate rate*) of one percent to be imposed for (*insert number of years that the tax would be imposed*) years.**

The actual wording used on the ballot must indicate what rate is proposed for the Type A sales tax and the number of years that the tax would be in effect. The voters then vote for or against the proposition.

As noted earlier, there is no required wording for a Type B tax ballot. However, an eligible city may allow the voters to vote on a ballot proposition that limits the length of time that a sales and use tax may be imposed. An eligible city that imposes a tax for a limited time under this subsection may later extend the period of the tax's imposition or reimpose the tax only if the extension or reimposition is authorized by a majority of the qualified voters of the city voting in an election called and held for that purpose in the same manner as an election held under Section 505.2565 of the Act.[134]

## Limiting the Types of Projects for a Type A or Type B Tax

On a ballot to adopt the Type A tax or on a ballot to increase or reduce a Type A tax, a city may also limit the use of the tax to a specific project.[135] For example, a city could limit the use of the Type A tax to a project for a specific manufacturing entity or to a specific type of project such as expenditures for an industrial park. If such a limit is approved by the voters, the city may not broaden the purposes for which the Type A tax may be used unless it holds another election. Any desired change would have to go back to the voters for approval at an election on the issue. Once the obligations for the specific project have been satisfied, the corporation is required to notify the Texas comptroller to cease collecting the Type A tax. To date, no city has limited the use of a

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132 Tex. Loc. Gov't Code § 504.257(d).
133 *Id.* § 504.257(a).
134 *Id.* § 505.2565.
135 *Id.* § 504.260.

Type A tax to a specific project. If a city decides to include such a limitation, the required wording of the ballot is as follows:[136]

> **The adoption of a sales and use tax for the promotion and development of (*insert description of the project*) at the rate of (*insert appropriate rate*) of one percent.**

The actual wording used on the ballot must indicate what rate is proposed for the Type A sales tax and must include a description of the project. The voters then vote for or against the proposition.

A city may limit the use of the Type B tax to a specific project.[137] However, as noted earlier, there is no required wording for a Type B tax ballot. Accordingly, there is no special wording that must be used to limit the use of the Type B tax to certain projects. If a city wants to limit the use of Type B tax proceeds to certain projects, it may choose to list only the types or categories of projects it desires on the ballot. Also, the Act provides certain authorization to expand the types of projects undertaken if subsequently approved by the eligible voters.[138]

## Various Joint Ballot Proposition for a Type A or a Type B Tax

### Joint Ballot Proposition for a Type A Tax and a Sales Tax for Property Tax Relief

A city may include the Type A sales tax and the sales tax for property tax relief as separate ballot propositions at the same election. In 1991, the Texas Legislature allowed cities to offer the voters a joint ballot proposition on a sales tax for property tax relief and a Type A sales tax for economic development.[139] In this scenario, the voters would vote for or against one ballot proposition that covers the adoption of both taxes.

Under this joint ballot proposition, the voters are not able to pass the property tax relief sales tax without also passing the Type A sales tax for economic development. Either both taxes pass or both taxes fail. If a city decides to use such a joint proposition, the required wording on the ballot is as follows:[140]

> **The adoption of a sales and use tax within the city for the promotion and development of new and expanded business enterprises at the rate of (*insert appropriate rate*) of one percent and the adoption of an additional sales and use tax within the city at a rate of (*insert appropriate rate*) of one percent to be used to reduce the property tax rate.**

The actual wording used on the ballot must indicate what rate is proposed for the Type A sales tax and what rate is proposed for the sales tax for property tax relief. The voters then vote for or

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136 *Id.* §§ 504.256, .260.
137 *Id.* § 505.2575(a).
138 *Id.* § 505.2575(b).
139 *Id.* § 504.261.
140 *Id.*

against the proposition. If the total local sales tax has reached the legal maximum of two percent, a city may attempt simultaneously to reduce the sales tax for property tax relief and impose the Type A economic development sales tax in one ballot proposition. The city would still use the above-noted ballot wording.[141]

There is nothing that stops a city from using separate ballot items for the passage of a sales tax for property tax relief and a Type A sales tax for economic development. In this case, the voters would vote for or against the adoption of each of the two taxes and the passage of one would not influence the passage of the other. Cities, however, have historically preferred the incentive value of joining the two items onto one ballot proposition. If a city uses separate ballot propositions, it should be noted that it is not possible to make one ballot proposition dependent on the passage of a separate ballot proposition. In other words, the city could choose to offer one proposition proposing a reduction of the sales tax for property tax and a separate proposition for the adoption of a sales tax for economic development. Making the adoption of one of the propositions dependent on the passage of the other can be accomplished only where the legislature has authorized a joint proposition as described earlier.

### Joint Proposition to Reduce or Abolish a Type A Tax and Adopt a Type B Tax

A city may offer a joint ballot proposition that would reduce or abolish an existing Type A tax and at the same time approve the creation of a Type B tax.[142] That is, the city can have the voters approve or reject both items together by one "yes" or "no" vote. However, a city is not required to combine these two issues into one ballot proposition.

A city can still choose to have the voters vote on repealing or reducing a Type A tax and adopting a Type B tax as separate ballot propositions.[143] If the city places the items on separate ballot propositions, it is possible that one, both, or neither of the items would be approved at such an election. A city that chooses to provide these options to the voters would use the ballot wording suggested earlier for each of these items. In no case may a city offer ballot propositions that, if passed, would cause the city to exceed its two percent local sales tax cap.[144]

### Joint Proposition of a Type A or Type B Tax and Other Municipal Sales Tax

Cities are allowed to have joint ballot propositions to lower, repeal, raise or adopt municipal sales taxes.[145] This would include the Type A and Type B tax. If a city wants to lower the Type A or Type B tax and create a street maintenance tax, the city could combine the ballot

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141 Tex. Att'y Gen. LO-93-104 (1993) (For a simultaneous election on the imposition, under Section 4A, V.T.C.S. article 5190.6, of a sales and use tax of one-fourth of one percent for economic development and the reduction of its previously adopted additional sales and use tax for the reduction of property taxes under Tax Code Section 321.101(b) from a rate of one-half of one percent to one-quarter of one percent, the city should use the proposition language set out in Section 4A(p), as follows: The adoption of a sales and use tax within the city for the promotion and development of new and expanded business enterprises at the rate of one-fourth of one percent and the adoption of an additional sales and use tax within the city at the rate of one-fourth of one percent to be used to reduce the property tax rate).

142 Tex. Loc. Gov't Code § 505.255.

143 *Id.*

144 *See id.* § 505.256; Tex. Tax Code § 321.101(f).

145 *See* Tex. Tax Code § 321.409.

propositions instead of having separate ballot propositions. If the joint ballot proposition does not pass, then there will be no effect on those sales taxes.

## Proposition to Increase or Reduce a Type A or Type B Tax

*Type A Sales Tax*

A city that has imposed a Type A tax may, on its own, motion call for an election to approve an increase or a reduction of the Type A tax rate.[146] The election would be administered by the same procedure that was used to originally adopt the tax. The Type A tax rate would be reduced or increased if the proposition were approved by a majority of the qualified voters who voted at an election held on the issue. The rate may be reduced or increased to any rate that is an increment of one-eighth of one percent that the authorizing municipality determines is appropriate, and that would not result in a combined rate that exceeds two percent. Also, on petition of at least 10 percent of the registered voters of the city, the city may be compelled to order an election on a proposed increase or decrease of the Type A tax rate.[147]

It should be noted that the attorney general has concluded in Attorney General Opinion DM-137 (1992) that if there is an election to reduce the Section 4A (now Type A) sales tax or to limit the length of time of its collection, the reduction or limitation may not be applied to any bonds issued prior to the date of the election.

It is not clear what ballot wording would be required for a proposition to increase or reduce a Type A tax rate. Section 504.258 of the Local Government Code states that "the ballot shall be printed in the same manner as the ballot under Section 504.256." Section 504.256 contains the regular wording on the ballot to adopt a Type A sales tax. The ballot wording to adopt the Type A tax is as follows: "The adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of (insert appropriate rate) of one percent." A city should consult with its legal counsel, in conjunction with the comptroller's office, if it decides to ask the voters to reduce or increase an existing Type A tax.

*Type B Sales Tax*

Up until 2017, there was no express statutory authority for a Type B tax to be increased or decreased after its initial adoption. The legislature passed H.B. 3045 in 2017 to authorize a Type B tax to be increased or reduced by election within the statutory range provided for the tax. The new statute is nearly identical to the statute for increasing or reducing the Type A tax.[148] The statute for increasing or reducing a Type B tax does not, however, contain a provision addressing ballot language for such an election, primarily because, unlike a Type A corporation, there is no required ballot language for the initial adoption of a Type B tax. A city should consult with its legal counsel, in conjunction with the comptroller's office, if it decides to ask the voters to reduce or increase an existing Type B tax.

146 Tex. Loc. Gov't Code § 504.258.
147 *Id.*
148 *Id.* § 504.2566

## Proposition to Abolish the Type A or Type B Tax

*Type A Sales Tax*

On petition of 10 percent or more of the registered voters of the city, the city can be required to order an election on the dissolution of the Type A corporation.[149] If the corporation is dissolved, the Type A tax may not be collected except to pay off any remaining obligations that were executed before the date of the dissolution election. The ballot for the election shall be printed to provide for voting for or against the proposition:[150]

**Termination of the (*insert name of the corporation*).**

The election must be held on a uniform election date and the election is subject to all the applicable requirements under law for elections.

If a majority of the voters voting on the issue approve the dissolution, the corporation continues its operations only long enough to pay off any bonds that were issued before the date of the election and to the extent necessary to dispose of its assets.[151] The Attorney General has concluded that a corporation that is dissolving is required to submit its dissolution plan to city council for its review and approval.[152] However, city council may not use this approval power to prevent the corporation from performing its statutory duty to, "to the extent practicable…dispose of its assets and apply the proceeds to satisfy" the corporation's obligations. The assets are used to pay off any liabilities, and any remaining assets are transferred to the city.[153] The corporation is required to notify the comptroller to cease collection of the tax once the corporation has satisfied all of its obligations.[154]

***Type B Sales Tax Created before September 1, 1999***

For a Type B corporation created before September 1, 1999, there is no statutory authority that allows a Type B tax to be abolished after its initial adoption. The city could use its power by resolution under Section 501.401 of the Act to terminate or dissolve the development corporation. If the city takes such an action, the corporation and the tax would continue only for the time period necessary to pay off any outstanding debt.

***Type B Sales Tax Created on or after September 1, 1999***

For a Type B corporation created on or after September 1, 1999, the Act provides that a city must hold an election on the issue of dissolving the corporation if a proper petition is submitted to the city council.[155] Such a petition must request an election on the dissolution of the Type B corporation and be signed by at least 10 percent of the registered voters of the city. The petition must also meet any other legal requirements that may be applicable, including the general

149 *Id.* § 504.351(a).
150 *Id.* § 504.352.
151 *Id.* § 504.353.
152 Tex. Att'y Gen. Op. No. JC-0553 (2002) at 6.
153 Tex. Loc. Gov't Code § 504.353(a)(2).
154 *Id.* § 504.353(c).
155 *Id.* § 505.352 (Provides that the municipality shall hold the election on the next uniform election date as required by Section 3.005 of the Election Code).

petition requirements found in Chapter 277 of the Election Code. The election must be held on the first regular uniform election date that falls more than 77 days after the petition is filed with the city.[156] At the election, the ballot must be printed to read as follows:[157]

**Termination of the (*name of corporation*).**

If a Type B corporation is dissolved pursuant to an election of this nature, the corporation will continue to operate long enough to pay off all its debts and obligations.

Once the corporation's debts and obligations are paid off, the corporation is dissolved and its property must be transferred to the city. The city must then notify the comptroller, who must stop collecting the Type B sales tax by the last day of the first calendar quarter that begins after the city has notified the comptroller.[158]

## Reporting Election Results of a Type A and Type B Tax

The Election Code requires that, no earlier than the third day and no later than the eleventh day[159] after the election, the governing body of the city must canvass the ballots and enter the resolution or ordinance declaring the results of the election into the minutes of a meeting. The resolution or ordinance must include the following:[160]

- The date of the election;
- The proposition for which the vote was held;
- The total number of votes cast for and against the proposition; and
- The number of votes by which the proposition was approved.

If the proposed change in the tax rate is approved by a majority of the qualified voters of the city voting at an election on the issue, the city may levy the approved tax. The city secretary must, by certified or registered mail, send the comptroller a certified copy of the resolution or ordinance and must include a map of the city clearly showing the city's boundaries. After receiving the documents, the comptroller has 30 days to notify the city secretary that the comptroller's office will administer the tax.

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156 *Id.* § 505.352(b).

157 *Id.* § 505.353.

158 *Id.* § 505.354.

159 Tex. Elec. Code § 67.003(b). *But see* Tex. Tax Code § 321.405 (Which gives the city 10 days to canvass an election on the proposed adoption of a Type A sales tax. It is not clear whether the Election Code provision or the Tax Code provision is controlling on this issue. Therefore, it is recommended that cities follow the stricter provisions of the Election Code and canvass the election between 3 and 11 days after it has taken place. Note that the Election Code may require a city to wait longer than three days to canvass, as it provides that the city must canvas not later than the 11th day after election day and not earlier than the later of: (1) the third day after election day; (2) the date on which the early voting ballot board verified and counted all provisional ballots, if a provisional ballot has been cast in the election; or (3) the date on which all timely received ballots cast from addresses outside of the United States are counted, if a ballot to be voted by mail in the election was provided to a person outside of the United States).

160 Tex. Tax Code. § 321.405.

If the election fails, the city must wait one full year before bringing the issue to the voters again.[161] However, the Election Code allows the city to hold a subsequent election on the corresponding uniform election date that occurs approximately one year later, even if the date falls several days before a full year has elapsed.[162]

## Effective Date of Type A or Type B Tax

### Effective Date of Type A or Type B Sales Tax Election Only

The change in the sales tax rate becomes effective one full calendar quarter after notice of the election has been provided to the comptroller. The new tax rate applies to purchases on or after the first day of that calendar quarter as provided under Section 321.102(a) of the Tax Code.

> **May Election**: Send notice to the comptroller no later than the last week in June. On October 1st, the new tax rate will take effect. The city will receive its first payment in December.
>
> **November Election**: Send notice to the comptroller no later than the last week in December. On April 1st, the new tax rate will take effect. The city will receive its first payment in June.

### Effective Date for Type A Sales Tax and Additional Municipal Sales Tax Election

At the same election, if the city adopts a Type A sales tax and adopts an additional municipal sales taxes, such as a sales tax for property tax relief, the city has two options with regard to the effective date of the tax. The city may opt to have the taxes take effect at the same time (the following October 1st if a full calendar quarter has passed since the election).[163] Or, alternatively, the city may choose to have the Type A tax take effect as soon as one calendar quarter has passed after the election, and have the sales tax for property tax relief take effect the following October 1st (after which a full calendar quarter has passed since the election). In this scenario, the Type A tax would generally take effect before the sales tax for property tax relief.[164] Some cities choose this option to maximize revenues from the tax; other cities choose to make it easier on retailers and allow both taxes to take effect at the same time in October.

### Effective Date for Type B Sales Tax and Additional Municipal Sales Tax Election

At the same election, if the city adopts a Type B sales tax and an additional municipal sales tax, such as a sales tax for property tax relief, both taxes will not take effect until the following October 1st (assuming at least a complete calendar quarter has passed since the election).[165] If a

161 *Id.* § 321.406. *But see* Tex. Loc. Gov't Code §§ 504.255, .351, 505.256.

162 Tex. Elec. Code § 41.0041(a).

163 Tex. Loc. Gov't Code § 504.255, Tex. Tax Code § 321.102(b) (While the option to have both taxes take effect on October 1 is not expressly set out in state statute, it has been the interpretation of the comptroller's office that such an option is allowed. Thus, it is currently comptroller's policy to give cities a choice with regard to the date of implementation for a Type A or Type B sales tax as outlined in this section.)

164 Tex. Tax Code § 321.102(b).

165 *Id.*, Tex. Loc. Gov't Code § 505.256.

complete calendar quarter has not passed since the election, the tax would not take effect until the following October 1st.

## Allocation of the Sales Tax Proceeds by the comptroller

Once the sales tax is effective, the comptroller remits the sales tax proceeds from the increase in the rate to the municipality with its other local sales tax proceeds. The Municipal Sales and Use Tax Act (Chapter 321 of the Tax Code) governs the imposition, computation, administration, abolition, and use of the tax except where it is inconsistent with the statutory provisions within the Development Corporation Act.[166]

The city, upon receiving its local sales tax allotment from the comptroller, must remit the sales tax for economic development to the economic development corporation responsible for administering the tax.[167] The proceeds of a sales tax for property tax relief would remain with the city.

## Directors of a Economic Development Corporation

### Board of Directors of a Type A Economic Development Corporation

A Type A corporation is governed by at least a five-member board of directors.[168] The directors are appointed by a majority vote of the city council at an open meeting. The Act does not specify any qualifying criteria for a person who serves as a director on the Type A board. A Type A director is not required to be a city resident or a property owner. The directors serve without compensation but must be reimbursed for actual expenses.[169] The directors are appointed to a term not to exceed six years. Further, should the certificate of formation or the bylaws not address a term of office, then the Type A directors have a six-year term of office.[170] However, the directors serve at the pleasure of the city council and may be removed by the city council at any time without cause.[171]

In JC-349, ruling under the former statute, the attorney general concluded that a Section 4A director could be appointed to a subsequent term. The opinion noted that neither the Development Corporation Act nor the Texas Non-Profit Corporation Act barred such reappointment. Accordingly, a city council may reappoint a director to a subsequent term, provided there is not a contrary provision in the articles of incorporation, bylaws, city charter, city ordinance or resolution.

### Board of Directors of a Type B Economic Development Corporation

A Type B corporation is governed by a seven-member board of directors.[172] The seven directors are appointed by a majority vote of the city council at an open meeting. Unlike Type A

166 Tex. Loc. Gov't Code §§ 504.255, 505.256.
167 *Id.* §§ 504.301, 505.256.
168 *Id.* § 504.051(a).
169 *Id.* § 501.062(d).
170 Tex. Att'y Gen. Op. No. JC-0349 (2001) at 3.
171 Tex. Loc. Gov't Code §§ 504.051(b), 501.062 (Referring to the removal of directors).
172 *Id.* § 505.051(a).

corporation boards, the Act does place qualifying criteria for a person who serves as a director on a Type B board. If the Type B corporation is located in a city with a population of 20,000 or more, the Type B director must be a resident of the city.[173] If a Type B corporation is located in a city with a population of less than 20,000, the Type B director must:

1) be a resident of the city;
2) be a resident of the county in which the major part of the area of the city is located; or
3) resides in a place that is within 10 miles of the city's boundaries and is in a county bordering the county in which a major portion of the city is located.[174]

If a city dissolves a Type A corporation and creates a Type B corporation, the Act provides that a person serving as a Type A director at the time that the Type A corporation was dissolved may serve on the newly created Type B board.[175] Since the directors of a Type A corporation are not required to be residents of the city, this change in the law would allow a non-resident to serve as a Type B director in this limited circumstance.

State law limits the number of Type B directors who are also city officers or employees: it states that three of the seven positions must be persons who are not city officials or city employees.[176] The directors serve without compensation but they must be reimbursed for actual expenses.[177] A director serves at the pleasure of the city council for a term of two years; however, the city council may vote to remove a director at any time without having to specify a cause.[178]

## General Provisions Regarding Type A and Type B Board of Directors

A majority of the board constitutes a quorum.[179] The board of directors is subject to both the Open Meetings Act and the Public Information Act.[180]. Additionally, the Development Corporation Act requires the board to conduct all of its meetings within the city limits, unless the city is located in a county with a population of less than 30,000.[181] If the city's Type A or Type B corporation is located in a county with a population of less than 30,000, then the board of directors may conduct a board meeting within the county.[182]At one of its first meetings, the board is required to elect a president, a secretary and any other officers that the governing body of the city considers necessary.[183] The corporation's registered agent must be a resident of Texas and the corporation's registered office must be within the boundaries of the city.[184]

173 *Id*. § 505.052(a).
174 *Id*. § 505.052(b).
175 *Id*. § 505.052(d).
176 *Id*. § 505.052(c).
177 *Id*. § 501.062(d).
178 *Id*. § 501.062(c).
179 *Id*. §§ 504.053, 505.054.
180 *Id*. §§ 501.072, 505.054.
181 *Id*. §§ 504.054, 505.055.
182 *Id*.
183 *Id*. §§ 504.052, 505.053.
184 *Id*. §§ 504.055, 505.056.

If a city collects both a Type A and a Type B sales and use tax, the city must create separate corporations and boards of directors for the Type A and Type B taxes. However, the board members of one corporation may serve on the board of the other corporation. A city may not create more than one corporation to oversee the Type A tax or more than one corporation to oversee the Type B tax.[185]

## General Powers and Duties of Type A and Type B Development Corporations

Type A and Type B economic development corporations have the following general powers and duties:

> **Power to Expend Tax Proceeds.** The development corporation has the power to expend the proceeds of the economic development sales tax for purposes authorized by the Act. All actions of the development corporation are pursuant to a majority vote of the governing body of the board and subject to oversight by the city.[186] In Texas Attorney General Opinion JC-0488 (2002), ruling under the former statute, the Attorney General noted that the city's spending of sales tax proceeds was "contrary to the Act."[187] Rather, the opinion noted, it was for the corporation to expend the Section 4B (now Type B) tax proceeds for the purposes authorized by the Act subject to city council approval.
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> **Powers of a Nonprofit Corporation.** The corporation shall have and exercise all powers and rights of a nonprofit corporation under the Texas Non-Profit Corporation Act (Chapter 22 of the Texas Business Organization Code), except to the extent such powers would be in conflict or inconsistent with the Development Corporation Act.[188]
>
> **Legal and Financial Transaction Powers.** The corporation shall have the power to sell and lease a project,[189] make secured and unsecured loans,[190] and to sue and be sued.[191] Further, in Texas Attorney General Opinion JC-109 (1999), ruling under the former statute, it was noted that when an economic development corporation sells real property, the corporation is not required to comply with the notice and bidding requirements contained in Chapter 272 of the Local Government Code. Nonetheless, the economic development corporation must obtain fair market value when selling real property.[192] If a Type B corporation wants to purchase property for a project wholly or partly with bond proceeds, the Type B corporation is required to obtain an independent appraisal of the property's market value.[193]

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185 *Id*. §§ 504.003(b), 505.003(b).
186 *Id.* § 501.054(b)(2).
187 Tex Att'y Gen. Op. No. JC-0488 (2002) at 3.
188 Tex. Loc. Gov't Code § 501.054(a).
189 *Id.* §§ 501.153-.154, .159.
190 *Id.* § 501.155(a).
191 *Id.* § 501.060.
192 Tex. Att'y Gen. Op. No. JC-109 (1999) at 2.
193 Tex. Loc. Gov't Code § 505.1041.

**Status as Non-stock Corporation.** The corporation is a nonprofit, nonmember, non-stock corporation.[194]

**Exemption from Federal, State and Local Taxation.** In terms of state taxation, Section 501.075 of the Local Government Code provides that economic development corporations are considered public charities within the tax exemption of Article VIII, Section 2, of the Texas Constitution. Whether the corporation is exempt from various state and local taxes depends on the statutory provisions applicable to that tax. For example, the comptroller's office has treated economic development corporations as exempt from state and local sales taxes and the state franchise tax.[195] In order to claim these exemptions, corporations submit a copy of the corporation's certificate of formation to the Exempt Organizations Section of the comptroller's office. If a development corporation has qualified for federal tax exempt status prior to applying for state exemptions, a copy of the determination letter from the Internal Revenue Service should be sent to the comptroller at the time the corporation applies for exemption from the state sales tax and franchise tax. It should be noted that development corporations are exempt from state and local sales and state franchise taxes regardless of their tax exempt status with the Internal Revenue Service. The certificate of formation, and any IRS determination letter, should be submitted with a cover letter containing the development corporation's daytime phone number, charter number and tax identification number.

Projects owned by Type B economic development corporations are exempt from local property taxation under Section 11.11 of the Tax Code, pursuant to Section 505.161 of the Local Government Code. It is currently unclear whether the property owned by Type A economic development corporations is exempt from local property taxation. To determine whether property taxes or other state or local taxes are applicable, a development corporation may wish to visit with its legal counsel and its appraisal district.

**Duty to Comply with Open Meetings Act and Public Information Act.** The corporation and its board of directors are subject to the Open Meetings Act and the Public Information Act.[196]

**Limited Eminent Domain Power.** A Type A corporation may not exercise the power of eminent domain except by action of the city council.[197] However, a Type B corporation may exercise the power of eminent domain only:

1. With approval of the action by the city; and
2. In accordance with and subject to the laws applicable to the city.[198]

[194] *Id.* § 501.052.
[195] Tex. Tax Code §§ 151.341, 171.074.
[196] Tex. Loc. Gov't Code § 501.072.
[197] *Id.* § 504.106.
[198] *Id.* § 505.105.

**Limited Tort Claims Act Protection.** The corporation and its directors and employees are not liable for damages arising out of the performance of governmental functions of the corporation.[199] The corporation is considered a governmental entity for purposes of the Texas Tort Claims Act.

**Limited Power to Own or Operate Project.** Generally, the corporation does not have the power to own or operate any project as a business entity other than as a lessor, seller, or lender. However, the corporation does have all the powers necessary to own and operate a project as a business if the project is part of a military installation or military facility that has been closed or realigned, including a military installation or facility closed or realigned under the Defense Base Closure and Realignment Act of 1990 (10 United States Code Section 2687), or if the project is authorized by Local Government Code Section 501.106.[200]

**Ability of a Home Rule City to Provide an Economic Grant of Money to the Development Corporation.** The Act generally prohibits a city from lending its credit or granting any public money or thing of value to an economic development corporation. In other words, a city may not generally provide any funding or services to a development corporation unless the city is fully reimbursed for the value of the expenditure. If a city and an economic development corporation enter into a contract for the provision of city services, such as accounting services, the economic development corporation must provide consideration in exchange for city services.[201]

In 2001, the Texas Legislature created an exception to this general rule.[202] Certain home rule cities are authorized to grant public money to a Type A or Type B corporation under a contract authorized by Section 380.002 of the Local Government Code. The Type A or Type B corporation is required to use the grant of city money for the "development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development and expansion of commerce in the state."[203]

**Ability of a City to Convey Real Property to an Economic Development Corporation.** There are only a few ways a city can convey real property to an economic development corporation. First, if it's the case that the real property was conveyed to the city by gift or as part of a legal settlement and the real property is adjacent to an area designated for development by the Type A or Type B corporation, then Section 253.009 of the Local Government Code would allow the property to be conveyed.[204] Under that provision, the city would have to convey the property to the economic development corporation "for any fair consideration" approved by the city, and the city would have to adopt an ordinance that:

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199 *Id.* §§ 504.107, 505.106.
200 *Id.* § 501.160.
201 Tex. Att'y Gen. Op. No. JC-109 (1999) at 3-5.
202 Tex. Loc. Gov't Code. § 501.007.
203 *Id.* § 380.002(b).
204 *Id*. § 253.009.

1. describes the property being conveyed;
2. states that the conveyance complies with the requirements of Section 5.022 of the Property Code; and
3. states the consideration paid.

A conveyance under this provision does not have to comply with notice and bidding laws, including Chapter 272 of the Local Government Code.

Second, a city with a population of less than 1.9 million can convey real property or an interest in real property to a nonprofit organization under Section 253.011 of the Local Government Code. [205] The term "nonprofit organization" is defined as an organization exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986. If an economic development corporation is covered by Section 501(c)(3) of the Internal Revenue Code, then the city can convey real property to an economic development corporation without complying with the notice and bidding requirements of Chapter 272 of the Local Government Code. The city can convey the property to the economic development corporation provided the development corporation agrees to use the property in a manner that primarily promotes a public purpose of the city. Further, should the development corporation at any time fail to use the property in that manner, ownership of the property would automatically revert to the city. The city shall transfer the property by an appropriate instrument of transfer. The instrument must include a provision that: (1) requires the development corporation to use the property in a manner that primarily promotes a public purpose of the city; and (2) indicates that ownership of the property automatically reverts back to the city should the corporation at any time fail to use the property in that manner.

In 2009, the Texas Legislature approved a bill authorizing a city with a population of 20,000 or less to convey real property to an economic development corporation without complying with the notice and bidding requirements of Chapter 272 of the Local Government Code.[206] The city may convey real property to the economic development corporation provided the development corporation agrees to use the property in a manner that primarily promotes a public purpose of the city. Further, should the development corporation at any time fail to use the property in that manner, ownership of the property would automatically revert to the city. The city shall transfer the property by an appropriate instrument of transfer. The instrument must include a provision that : (1) requires the development corporation to use the property in a manner that primarily promotes a public purpose of the city; and (2) indicates that ownership of the property automatically reverts back to the city should the corporation at any time fail to use the property in that manner.

[205] *Id.* § 253.011.
[206] *Id.* § 253.012.

**Ability of a City to Provide City Insurance Coverage and Retirement Benefits to Development Corporation Staff/Officers.** An economic development corporation may participate in the following types of insurance coverage from the city:[207] health benefits coverage, liability coverage, workers' compensation coverage, and property coverage. These coverages can be obtained under the city's insurance policies, the city's self-funded coverage, or the coverage provided under an interlocal agreement with other political subdivisions. Health benefits coverage may be extended to the economic development corporation's directors and employees and their dependents. Workers' compensation benefits may be extended to the corporation's directors, employees and volunteers. Liability coverage may be extended to protect the corporation and its directors and employees. Also, the law allows economic development corporations to obtain retirement benefits under the city's retirement program and extend those benefits to the corporation's employees. An economic development corporation may not obtain any of these insurance coverages or retirement benefits unless the city consents.

**Reverse Auction Procedures for Purchasing.** A reverse auction procedure is a method of purchasing where suppliers of services or goods, anonymous to each other, submit bids to provide their services or goods. The bidding is a real-time process usually lasting either one hour or two weeks. The bidding takes place at a previously scheduled time period and at a previously scheduled Internet location.[208] Economic development corporations are authorized to use reverse auction procedures, as defined by Section 2155.062 (d) of the Government Code, for the purchase of goods or services.[209]

## Performance Agreements

Economic development corporations cannot simply provide gifts of sales tax proceeds. The attorney general has noted that expenditures of sales tax proceeds must be made pursuant to a contract or other arrangement sufficient to ensure that the funds are used for the intended and authorized purposes.[210] An economic development corporation is required to enter into a written performance agreement with a business enterprise when the corporation provides funding or makes expenditures on behalf of the business enterprise in furtherance of a permissible economic development project.[211] This performance agreement between the corporation and the business enterprise at a minimum must contain the following:

1. a schedule of additional payroll or jobs to be created or retained;

2. the capital investment to be made by the business enterprise; and

[207] *Id.* § 501.067.
[208] Tex. Gov't Code § 2155.062(d).
[209] Tex. Loc. Gov't Code § 501.074.
[210] Tex. Att'y Gen. Op. No. JC-118 (1999) at 9 ("Expenditures for even project costs must be pursuant to a contractual or other arrangement sufficient to ensure that the funds are used for the purposes authorized."); Tex. Att'y Gen. LO-97-061 at 4-5; LO-94-037 (1994) at 3.
[211] Tex. Loc. Gov't Code § 501.158.

3. the terms under which repayment must be made by the business enterprise to the economic development corporation should the business fail to meet the performance requirements specified in the agreement.[212]

Also, the Texas Legislature requires that both governmental entities and economic development corporations put certain language in any written agreement involving public subsidies to businesses, which would include those given by economic development corporations. The language must specify that the business does not and will not knowingly employ an undocumented worker (which statement must also be in any application for the subsidy). The language also must require repayment of the subsidy at specified rates and terms of interest if the business is convicted of federal immigration violations under 8 U.S. Code Section 1324a(f) not later than the 120th day after receiving notice of the violation from the public entity or economic development corporation. [213]

## Requirement for Third-Party Contracts for Business Recruitment

Additionally, Type A and Type B corporations are required to enter into written contracts approved by the board of directors when the corporation uses a third party for certain business recruitment efforts. The written contract requirement does not apply to the payment of an employee of the Type A or Type B corporation.[214] Nonetheless, should the corporation pay a commission, fee, or other thing of value to a broker, agent, or other third party for business recruitment or development, a written contract is required.[215] Failure to enter into a written contract with a third party recruiter could result in a civil penalty up to $10,000.[216] The Texas Legislature has authorized the attorney general to commence an action to recover the penalty in Travis County district court or in the county district court where the violation occurs.[217]

## Incentives to Purchasing Companies

In 2003, the Texas Legislature addressed purchasing companies and their ability to receive an incentive from a Type A or Type B corporation.[218] Type A and Type B corporations may not offer to provide economic incentives to businesses whose business consists primarily of purchasing taxable items using resale certificates and then reselling those same items to a related party. A related party means a person or entity which owns at least 80 percent of the business enterprise to which sales and use taxes would be rebated as part of an economic incentive.[219]

## Oversight of a Economic Development Corporation

Section 501.073 of the Act provides that the city shall approve all programs and expenditures of the development corporation and shall annually review any financial statements of the

212 *Id.*
213 Tex. Gov't Code § 2264.001 - .101.
214 Tex. Loc. Gov't Code. § 502.051(a).
215 *Id.*
216 *Id.* § 502.051(b).
217 *Id.* § 502.051(c).
218 *Id.* § 501.161.
219 *Id.* § 501.161(a).

corporation. It further provides that at all times the city will have access to the books and records of the development corporation. Additionally, Section 501.054(b)(2) of the Act states that the powers of the corporation shall be subject at all times to the control of the city's governing body. Also, Section 501.401 of the Act gives the city authority to alter the structure, organization, programs or activities of the development corporation at any time. This authority is limited by constitutional and statutory restrictions on the impairment of existing contracts. Additionally, bond covenants may restrict the restructuring or dissolution of an economic development corporation. Finally, the city council retains a certain degree of control over the corporation by virtue of its power at any time to replace any or all of the members of the board of directors of the development corporation.[220]

## Economic Development Corporation Is Not Considered a Political Subdivision

State law typically imposes certain requirements or conditions upon political subdivisions such as cities. A frequent concern is whether state law requirements imposed upon cities also applies to Type A or Type B economic development corporations. Section 501.055(b) of the Local Government Code states that an economic development corporation "is not a political subdivision or political corporation for purposes of the laws of this state", including Section 52, Article III of the Texas Constitution. Accordingly, a statute's reference to the term "political subdivision" does not include a Type A or Type B economic development corporation.

The attorney general has considered whether certain statutes apply to economic development corporations. The Attorney General has concluded that Chapter 171 of the Local Government Code, governing conflicts of interest, does not apply to an economic development corporation.[221] Likewise, Chapter 272 of the Local Government Code, governing the city sale of real property, is not applicable to economic development corporations.[222] Nor is the prevailing wage law contained in Chapter 2258 of the Government Code applicable to a worker employed by or on behalf of an economic development corporation.[223] Economic development corporations should consult their legal counsel when considering the application of a particular statute.

## Annual Reporting Requirement for Economic Development Corporations

Section 502.151 of the Development Corporation Act requires both Type A and Type B economic development corporations to submit an annual, one-page report to the comptroller's office. The report must be submitted by April 1st of each year and must be in the form required by the comptroller.

The report must include the following:

- A statement of the corporation's primary economic development objectives
- A statement of the corporation's total revenues for the preceding fiscal year

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220 *Id.* § 501.062(c).
221 Tex. Att'y Gen. Op. No. JC-338 (2001) at 2.
222 Tex. Att'y Gen. Op. No. JC-109 (1999).
223 Tex. Att'y Gen. Op. No. JC-032 (1999).

- A statement of the corporation's total expenditures for the preceding fiscal year
- A statement of the corporation's total expenditures during the preceding fiscal year in each of the following categories:
    - administration
    - personnel
    - marketing or promotion
    - direct business incentives
    - job training
    - debt service
    - capital costs
    - affordable housing
    - payments to taxing units, including school districts
- A list of the corporation's capital assets, including land and buildings (for example, industrial parks, recreation and sports facilities, etc.)
- Any other information required by the comptroller[224]

If a corporation fails to file the required report or include all the required information, the comptroller may impose an administrative penalty against the corporation of $200.[225] However, before imposing such a penalty, the comptroller must provide written notice to the corporation of its error or omission in filing the report. That notice must include information on how to correct the error. Once it has received notice, the corporation has 30 days to correct its reporting error before the comptroller may impose the $200 penalty. The form may be submitted to the comptroller's office by mail or through the comptroller's office website at https://comptroller.texas.gov/economy/local/type-ab/report.php.

[224] Tex. Loc. Gov't Code § 502.151(a).
[225] *Id.* § 502.152.

# II. Alternative Tax Initiatives for Local Development

## City/County Venue Project Tax

Chapters 334 and 335 of the Local Government Code provide cities and counties the authority to finance a wide array of economic development projects called sports and community venue projects ("venue projects"). Cities and counties are authorized to propose at an election both the approval of venue projects and the revenue sources that would fund those projects. Cities and counties may choose to propose a venue project tax if they are interested in diversifying the sources of revenue they have to promote a venue project. The venue project revenue sources that can be adopted include a sales tax, a hotel occupancy tax, a short-term motor vehicle rental tax, an event parking tax, an event admissions tax, and a venue facility use tax. Additionally, the venue sales tax can be proposed in certain limited cases even if the city is already at its maximum sales tax rate.

A city or county may undertake a venue project under Chapter 334 of the Local Government Code if it receives voter approval of the venue project and its financing. At this election, the city or county must specifically indicate which of six different taxes or fees it will use to pay for the costs of the project.

Alternatively, two or more cities, two or more counties, or a combination of cities and counties may create a "sports and community venue district" under Chapter 335 of the Local Government Code. Subject to voter approval, such a district may carry out the same type of projects and propose the same financing methods as an individual city or county can under Chapter 334.

Finally, Section 321.508 of the Tax Code allows a city to call an election on the dedication of up to 25 percent of its existing sales tax to pay off debt issued to finance one or more venue projects located in the city.

### Eligibility to Undertake a Venue Project

Chapter 334 of the Local Government Code applies to all cities and counties in Texas[226], with certain special conditions set forth for certain specific political subdivisions.[227] Even cities and counties that already participate in a rapid transit authority or are currently at their limit for the local sales tax can utilize this chapter. In the case of an entity that is at its maximum local sales tax rate, the ballot would have to indicate which sales tax would be reduced to accommodate the newly proposed sales tax to fund the venue project.

### Permissible Projects Under Chapter 334

Chapter 334 allows a city or county to undertake a "venue project." The term "venue project" is defined as a "venue and related infrastructure that is planned, acquired, established, developed,

[226] Tex. Loc. Gov't Code § 334.001(2). (Definition of "governing body").
[227] *Id.* § 334.002.

constructed, or renovated under this chapter."[228] The term "venue" is defined as being one of the following:[229]

**An arena, coliseum, stadium or other type of area or facility**:[230]

- that is used or will be used for professional or amateur sports, or for community and civic and charitable events, provided that a facility financed wholly or partly with revenue from the hotel occupancy tax is not, or will not be, primarily used for community, civic, and charitable events that are attended only by residents of the community; and
- where a fee for admission to these events will be charged;

**A convention center, convention center facility, or related improvement** that is located in the vicinity of the convention center. The term "related improvement" is used rather broadly and includes such things as a civic center hotel, theater, opera house, music hall, rehearsal hall, park, zoo, museum, aquarium, or plaza;

**A tourist development area**;

**A municipal parks and recreation system**, improvements or additions to a parks and recreation system, or an area or facility, including an area or facility for active transportation use, that is part of a municipal parks and recreation system. However, neither the motor vehicle rental tax (except in cities located on the international border[231]) nor the local hotel occupancy tax authorized by Chapter 334 may be used as a revenue source to pay for a venue project of this nature;[232]

**An economic development project** authorized by Section 4A or Section 4B of the Development Corporation Act of 1979, Article 5190.6 of Texas Revised Civil Statutes, as that Act existed on September 1, 1997;[233]

**A watershed protection and preservation project; a recharge, recharge area, or recharge feature protection project; a conservation easement; or an open-space preservation program intended to protect water**; or

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228 *Id.* § 334.001(5). *See id*. §§ 334.0082, .0083 (Certain cities and counties are allowed to do additional venue projects).

229 *Id.* § 334.001(4).

230 *See id.* § 334.0415. (It should be noted that a city or county would not be able to use the provisions of Chapter 334 to finance a professional sports stadium if the city or county had already contracted with a professional sports team prior to November 1, 1998, for the team to relocate and play in the stadium. This prohibition only applies if the team is already playing under an existing contract in a stadium owned by another Texas city or county. Even in this circumstance, a stadium may be financed under Chapter 334 if the other city or county (where the team is currently playing) consents.)

231 *Id.* § 334.1015(b).

232 *Id.* §§ 334.1015, .2515.

233 The Development Act of 1979 was codified on April 1, 2009 and is now located in Chapters 501 through 507 of the Local Government Code. Since there was not a change of this section during the 82nd Legislative Session, the reference to the civil statute will remain.

**An airport facility** in a city located on the international border.

Section 334.001(3) defines the term "related infrastructure" to include any on-site or off-site improvements that relate to and enhance the use, value or appeal of a venue, and any other expenditure that is reasonably necessary to construct, improve, renovate or expand a venue. The statute lists the following examples of improvements that would qualify as related infrastructure: stores, restaurants, on-site hotels, concessions, parking, transportation facilities, roads, water or sewer facilities, parks or environmental remediation.

A city or county may use Chapter 334 only to construct a project that falls within the definition of the term "venue" or the term "related infrastructure." However, once the venue facility is constructed, state law permits the facility to be used for an event that is not related to one of the above-described venue purposes, such as a community-related event.[234] Also, if an already existing facility would qualify as a venue project under Chapter 334, a city or a county may use the authority granted under Chapter 334 to aid that facility even though it was originally constructed or undertaken under the authority of other law.[235]

## Procedure for Authorizing a Venue Project

**Step One:**

***The city or county must obtain approval for the project from the comptroller's office.***

Before a city or county may have an election to undertake a venue project, it must obtain approval of the project from the comptroller's office.[236] The comptroller reviews the project to determine whether the proposed financing would "have a significant negative fiscal impact on state revenue." To obtain this approval, the city or county must send to the comptroller a copy of the resolution proposing the venue project.[237] This resolution must indicate each proposed project and each method of financing for the project.[238] Within 14 days of the comptroller's receipt of the resolution, it must perform the required state fiscal impact analysis and provide the city or county with written notice of its decision.[239] If the comptroller determines that the resolution would have a significant negative impact on state revenue, the comptroller must indicate in writing how the local government could change the resolution so that there would not be such a negative impact.[240] If the comptroller fails to provide the required analysis in less than 30 days, the resolution is considered to be approved by the comptroller.[241]

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234 Tex. Loc. Gov't Code § 334.004.

235 *Id.* § 334.003. (Note that the venue revenues under this section cannot be used for the demolition of the venue nor the subsequent construction of a new venue.)

236 *Id.* §§ 334.021(a)(1), .024. *But see* Sections 7, 8 and 9 of Tex. H.B. 92, 75th Leg., R.S. (1997) (Excepting certain cities, counties and venue districts from the requirements of holding an election and obtaining Comptroller approval if their voters had already approved certain sports facilities in an election held before the effective date of this legislation).

237 *Id.* § 334.022(a).

238 *Id.* § 334.021(b).

239 *Id.* § 334.022(b).

240 *Id.* § 334.022(c).

241 *Id.* § 334.022(d).

If the comptroller finds that a venue project resolution will have a negative fiscal impact on state revenue, the city or county has 10 days to appeal the comptroller's decision.[242] The appeal is made to the comptroller, and the comptroller has another 10 days to provide a new analysis and written notice to the city or county.[243] If the comptroller's ruling is still negative, the analysis must again include information on how the local government could change the resolution so that there would not be such a negative impact on state revenue.[244] If the comptroller fails to provide the required analysis within 30 days, the resolution is automatically considered approved.[245] If the comptroller continues to hold that the venue project would have a negative impact on state revenue, the city or county would be unable to order the required election on the venue project.[246]

**Step Two:**

***Certain cities or counties must also obtain approval from the local transit authority.***

If a venue project resolution contains a proposed sales tax, the city or county must determine whether that tax would result in the reduction of a sales tax rate that funds a transit authority created under either Chapter 451 or Chapter 452 of the Transportation Code.[247] This issue would arise only if the area was subject to a transit authority sales tax and if the adoption of a venue project sales tax would place the city or county beyond the two percent cap for the local sales tax. If these circumstances would arise because of the proposed venue project, the city or county must send the transit authority a copy of the venue resolution for approval by the authority. This resolution must designate each venue project and each method of financing that the city or county proposes to use to finance the project.[248] If the proposed financing for the venue project would not cause a reduction in the transit authority sales tax, this approval from the transit authority is not required.

Within 30 days of the transit authority's receipt of the resolution, it must determine whether the reduction in the transit authority's tax rate would have a significant negative impact on its ability to provide services or would impair any existing contracts.[249] The transit authority must also provide the written results of its analysis to the city or county within this 30 day period. If the transit authority's ruling is negative, it must state how the city or county could change the venue project resolution so that there would not be a negative impact on the transit authority's ability to provide transit service or fulfill existing contracts.[250] If the transit authority fails to provide this analysis within the required period, the authority is deemed to have approved the resolution.[251]

If the transit authority finds that a venue project resolution would have a significant negative impact on the authority's ability to provide service or would impair existing contracts, the city or

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[242] *Id.* § 334.023(a).
[243] *Id.* § 334.023(b).
[244] *Id.* § 334.023(c).
[245] *Id.* § 334.023(d).
[246] *Id.* § 334.024.
[247] *Id.* §§ 334.021(a)(2); .0235(a).
[248] *Id.* § 334.021(b).
[249] *Id.* § 334.0235(b).
[250] *Id.* § 334.0235(c).
[251] *Id.* § 334.0235(d).

county may appeal the negative ruling within 10 days.[252] The appeal is made to the transit authority, and the authority must provide a new analysis and written notice to the city or county within 10 days of its receipt of the appeal.[253] If the transit authority's ruling is still negative, the analysis must include information on how the local government could change the resolution so that there would not be a negative impact on the authority's ability to provide service or fulfill existing contracts.[254] If the transit authority fails to provide the required analysis within 10 days, the resolution is automatically considered approved.[255] If the transit authority continues to find that the venue project would have a negative impact, the city or county will be unable to hold the required election to approve the proposed venue project.[256]

**Step Three:**

***The city or county must hold an election on the venue project.***

Once the city or county has received the required approvals from the comptroller and, if necessary, from the transit authority, the city or county may order an election on the proposed venue project.[257] The order calling the election must meet all of the following criteria:[258]

- Allow the voters to vote separately on each venue project;
- Designate the venue project(s);
- Designate each method of financing authorized by Chapter 334 that the city or county wants to use to finance the venue project and designate the maximum rate for each method; and
- Allow the voters to vote, in the same proposition or in separate propositions, on each method of financing authorized by Chapter 334 that the city or county wants to use to finance the project and the maximum rate of each method.

In addition to the above requirements for the election order, there is required wording for the ballot proposition. The ballot must be printed to allow voting for or against the following proposition:[259]

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to (insert "impose a new" or "authorize the use of the existing") tax at the rate of *(insert the maximum rate of the tax)* for the purpose of financing the venue project.**

252 *Id.* § 334.0236(a).
253 *Id.* § 334.0236(b).
254 *Id.* § 334.0236(c).
255 *Id.* § 334.0236(d).
256 *Id.* § 334.024.
257 *Id. But see* Section 7, 8 and 9 of Tex. H.B. 92, 75th Leg., R.S. (1997) (Excepting certain cities, counties and venue districts from the requirements of holding an election and of obtaining Comptroller approval if their voters had already approved certain sports facilities in an election held before effective date of this legislation).
258 *Id.* § 334.024(b).
259 *Id.* § 334.024(c).

If more than one method of financing is to be voted on in one proposition, the ballot must be printed to permit voting for or against the proposition:[260]

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to impose a *(insert each type of tax)* tax at the rate of *(insert the maximum rate of each tax)* for the purpose of financing the venue project.**

If the venue project is for improvements or additions to an existing park or recreation facility, then the description of the project in the ballot proposition must identify each park or recreation facility by name or location. [261] If the venue project is for the acquisition or improvement of a new park or recreation facility, then the description of the project in the ballot must specify the general location where the new park, recreational system or facility will be located. If the venue project includes improvements and/or additions to all parks and/or recreation facilities of the city, then the ballot proposition description need not contain the name or location of the facilities.

The Election Code governs the procedure for holding an election under Chapter 334.[262]

## Imposing a Sales Tax Under Chapter 334

### General Authority to Impose a Venue Project Sales Tax

A city (by ordinance) or a county (by order) may impose, reduce, or repeal a sales tax under the authority of Chapter 334.[263] As indicated earlier, the venue project and the sales tax have to be approved by the voters at an election in order for the city or county to impose this tax.[264] A county may adopt a sales tax rate of one-eighth, one-fourth, three-eighths, or one-half of one percent and the ballot must specify which tax rate will be adopted.[265] A city may adopt any rate that is an increment of one-eighth of one percent and that would not result in a combined local sales tax rate of two percent.[266]

### Ballot Proposition to Adopt a Venue Project Sales Tax

The adoption of the venue project sales tax may be included in the same ballot proposition that proposes the venue project. The ballot must be printed to allow voting for or against the following proposition:[267]

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to (insert "impose a new" or "authorize the use of the existing") tax at the rate of *(insert the maximum rate of the tax)* for the purpose of financing the venue project.**

260 *Id.* § 334.024(d).
261 *Id.* § 334.024(f).
262 *Id.* § 334.024(e)
263 *Id.* § 334.081(a)-(b).
264 *Id.* § 334.081(c).
265 *Id.* § 334.083.
266 *Id*.
267 *Id.* § 334.081(c)(2) (Refers to tax being approved at an election held under Section 334.024).

If more than one method of financing is to be voted on in one proposition, the ballot must be printed to permit voting for or against the proposition:

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to impose a *(insert each type of tax)* tax at the rate of *(insert the maximum rate of each tax)* for the purpose of financing the venue project.**

### Increasing the Venue Project Sales Tax

A sales tax that was adopted under Chapter 334 to benefit a venue project may be increased if the increase is approved at an election.[268] If there is an election to approve an increase in the sales tax to fund a venue project, the ballot wording must permit voting for or against the following proposition:[269]

> **The adoption of a sales and use tax for the purpose of financing *(insert description of venue project)* at the rate of *(insert rate)* of one percent.**

The rate of the county sales tax increased under Chapter 334 can be one-eighth, one-fourth, three-eighths, or one-half of one percent.[270] The city tax may be increased in one or more increments of one-eighth of one percent to any rate that the city determines is appropriate that would not result in a combined rate that exceeds two percent.[271] With certain exceptions, other issues concerning administration of a Chapter 334 sales tax by a city are governed by the provisions of Chapter 321 of the Tax Code.[272] If the Chapter 334 sales tax is imposed by a county, Chapter 323 of the Tax Code generally governs the administration of the tax.[273]

### Effective Date of Venue Project Sales Tax

A sales tax imposed under Chapter 334 cannot take effect until at least one full quarter after the city or county has sent notice to comptroller of the election results.[274] After one full quarter has expired, the tax will then take effect on the first day of the next calendar quarter. The comptroller is responsible for collecting the sales tax and remitting it to the city or county, which must then deposit the money into the venue project fund.[275]

### Termination of Venue Project Sales Tax

When all bonds and obligations payable from money in the venue project fund are paid, the venue project sales tax must be abolished.[276] Alternatively, if the full amount of money needed to pay these obligations, excluding guaranteed interest, has been set aside in a trust account dedicated to pay these obligations, the sales tax must be ended. Additionally, a city or county

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268 *Id.* § 334.084(a).
269 *Id.* § 334.084(c).
270 *Id.* § 334.084(b).
271 *Id*.
272 *Id*. § 334.082(a), (d). *See id.* § 334.082(c) (Sections 321.101(b) and 321.506 of the Tax Code are not applicable to sales taxes authorized under Chapter 334).
273 *Id.* § 334.082(b), (d). *See id.* § 334.082(c) (Section 323.101(b) of the Tax Code is not applicable to sales taxes authorized under Chapter 334).
274 *Id.* § 334.087.
275 *Id.* § 334.088.
276 *Id.* § 334.089.

may abolish the Chapter 334 sales tax on its own motion. Regardless of the cause for the termination of the sales tax, the city or county must notify the comptroller of the tax's abolition no later than 60 days before the date on which the tax is set to expire.

### Application of Two Percent Local Sales Tax Cap to Chapter 334 Sales Tax

Generally, state law requires that all local sales taxes, when combined, not exceed a total rate of two percent in any area. However, a city or county is not automatically forbidden from adopting or increasing a sales tax to pursue a Chapter 334 venue project merely because the adoption of the tax would cause the combined local sales taxes in an area to exceed this two percent cap. Instead, state law allows the adoption of the venue sales tax to cause the local sales tax rate of one of the other taxing authorities in the area to be automatically reduced or require the city or county to withdraw from the other taxing authority.[277] There are four taxing authorities that are affected by the adoption of a venue project sales tax if the adoption would cause the maximum sales tax rate to exceed two percent:[278]

1) a rapid transit authority created under Chapter 451 of the Transportation Code;
2) a regional transportation authority created under Chapter 452 of the Transportation Code;
3) a crime control district created under Chapter 363 of the Local Government Code; or
4) an economic development corporation created under Chapter 504 or 505 of the Local Government Code.

#### *Automatic Reduction of Sales Tax Rate to Adopt a Venue Project Sales Tax*

If an area is already at its maximum local sales tax rate of two percent and a proposed venue project election would place the locality beyond the maximum local sales tax rate, the venue project sales tax election is also to be treated as an election to reduce the tax rate of another taxing authority.[279] Only two of the taxing authorities above would have their sales tax rate automatically reduced in this manner: the crime control district and the economic development corporation. If there is only one such authority whose sales tax is affected, the ballot proposition for the adoption of the Chapter 334 sales tax must clearly state that the affected taxing authority's tax rate will be reduced. If more than one such taxing authority's tax rate is affected, the Chapter 334 sales tax election must allow voters to choose which authority's tax will be reduced. The sales tax rate of the chosen taxing authority is then reduced to the highest rate that would allow the locality not to exceed the two percent cap.

If another taxing entity's sales tax rate is reduced automatically at such an election, the taxing entity's sales tax rate is reduced throughout the entity's jurisdiction.[280] A taxing authority does not have the power to reduce its sales tax rate only in one part of its jurisdiction. The rate must be uniform throughout its jurisdiction. However, the taxing authority's sales tax would automatically increase if the Chapter 334 rate is later reduced or later expires, but only if the tax was reduced originally by the adoption of a venue project sales tax.[281]

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[277] *Id.* § 334.085.
[278] *Id.* § 334.085(a).
[279] *Id.* § 334.085(b).
[280] *Id.* § 334.085(d).
[281] *Id.* § 334.085(c).

Voters may adopt or raise any dedicated or special purpose municipal sales tax on a combined ballot proposition that also lowers or repeals any such tax.[282] The language in the ballot must contain the language appropriate for such changes to the tax as required in any stand-alone election. A negative vote on the combined ballot would leave the sales tax situation unchanged. This would not apply to counties wishing to adopt or to raise a venue project sales tax.

***Required Withdrawal from a Transit Authority To Adopt a Venue Project Sales Tax***

If the enactment or increase of a Chapter 334 sales tax would cause the combined local sales tax rate to exceed two percent and the taxing authority whose sales tax would have to be reduced is a transit authority, the city or county imposing the tax must withdraw from the transit authority. As indicated above, there are two types of transit authorities to which this rule applies: a rapid transit authority and a regional transportation authority.[283] The rules are slightly different for each type of transit authority and are discussed separately below:

> **Chapter 451 Rapid Transit Authority**. If the transit authority is organized under Chapter 451 of the Transportation Code, a separate election first must be held on the issue of withdrawing the affected cities from the transit authority.[284] The Chapter 334 sales tax may not be imposed in a city unless the voters of that city have previously approved their city's withdrawal from the transit authority. Once a city has voted to withdraw from the transit authority, the transit authority no longer has any duty to provide services within the city unless required to do so by federal law. In conducting an election to decide whether a city will withdraw from a Chapter 451 transit authority, a city must follow the requirements of Subchapter M in Chapter 451 of the Transportation Code.
>
> **Chapter 452 Regional Transportation Authority**. If the transportation authority is organized under Chapter 452 of the Texas Transportation Code, an election to approve or increase the Chapter 334 venue sales tax is treated as an election to withdraw from the transportation authority.[285] The ballot language at this election must clearly state that the adoption of the Chapter 334 sales tax will result in automatic withdrawal of the county or city from the transportation authority. Even if the voters choose to withdraw from the transportation authority by approving the Chapter 334 tax, the city or county still may not impose the Chapter 334 sales tax until the county or city's financial obligations to the transportation authority are satisfied in accordance with Subchapter Q of Chapter 452 of the Transportation Code. Also, in conducting an election on whether to withdraw from a Chapter 452 transportation authority, a city or county must follow the requirements of Subchapter Q in Chapter 452 of the Transportation Code.

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282 Tex. Tax Code § 321.409.
283 Tex. Loc. Gov't Code § 334.085(a)(1)-(2).
284 *Id*. § 334.085(b-1).
285 *Id*. § 334.0855 (West 2005).

# Additional Taxes and Fees that Voters Can Approve

## 1. Short-Term Motor Vehicle Rental Tax

### Authority to Adopt the Motor Vehicle Rental Tax

With permission of the voters, a city or a county may fund venue projects within its jurisdiction by imposing a tax on the rental of a motor vehicle within the city or county.[286] Any such tax must be approved at an election held in accordance with the rules of Chapter 334. The ballot language for the motor vehicle rental tax must specify the maximum rate of the rental tax that can be adopted.[287] In addition, the rental tax may only be imposed if the city or county issues bonds or other obligations for the venue project within one year of imposing the rental tax.[288] The tax would apply only to agreements to rent a motor vehicle to another for consideration for a period of not longer than 30 days.[289] It is important to note that the motor vehicle rental tax may not be imposed to fund a venue project that is an area or facility that is part of a municipal parks and recreation system, with one exception.[290] In 2017, legislation passed authorizing a city located on the international border to finance a city parks and recreation system, or improvements or additions to a city parks and recreation system, or an area or facility (including an area or facility for active transportation use) that is part of a city parks and recreation system, using vehicle rental tax revenue.[291]

### Ballot Proposition to Adopt a Motor Vehicle Rental Tax

The adoption of the motor vehicle rental tax may be included in the same ballot proposition that proposes the venue project. The ballot must be printed to allow voting for or against the following proposition:[292]

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to (insert "impose a new" or "authorize the use of the existing") tax at the rate of *(insert the maximum rate of the tax)* for the purpose of financing the venue project.**

If more than one method of financing is to be voted on in one proposition, the ballot must be printed to permit voting for or against the proposition:

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to impose a *(insert each type of tax)* tax at the rate of *(insert the maximum rate of each tax)* for the purpose of financing the venue project.**

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286 *Id.* § 334.102.
287 *Id.* § 334.103(b).
288 *Id.* § 334.112(b).
289 *See id.* § 334.101(a)(2) (Defining the term "rental" to mean an agreement by an owner of a vehicle authorizing exclusive use of that vehicle by another for consideration *for 30 days or less* [emphasis added]).
290 *Id.* § 334.1015.
291 *Id.* § 334.1015(b).
292 *Id.* § 334.102(c)(2). (Referring to the tax being approved at an election under Section 334.024.)

### Effective Date and Ending Date of the Motor Vehicle Rental Tax

After approval by the voters, the motor vehicle rental tax becomes effective on the date prescribed by the ordinance or order imposing the tax.[293] The tax is on the gross receipts from the rental of a motor vehicle.[294] Its rate may be set only in increments of one-eighth of one percent, and in most cases may not exceed five percent.[295] All revenue from the tax must be deposited in the venue project fund.[296] Additionally, the city or county cannot continue to impose a motor vehicle rental tax once the bonds or other obligations for the project have been paid in full.[297]

### Ability to Decrease, Abolish or Increase the Motor Vehicle Rental Tax

Once in place, the motor vehicle rental tax may be decreased or abolished, by ordinance or order, on the city or county's own motion.[298] However, the tax may be increased only if the increase is approved at an election on the issue and the resulting tax rate will not in most cases exceed five percent.[299] At an election to increase the motor vehicle rental tax, the ballot must be worded to allow voting for or against the following proposition:[300]

> **The increase of the motor vehicle rental tax for the purpose of financing (*insert description of venue project*) to a maximum rate of (*insert new maximum rate*) percent.**

### Collection and Enforcement of the Motor Vehicle Rental Tax

The comptroller's office is not involved in the collection of the motor vehicle rental tax. Instead, the tax is collected by the owner of the motor vehicle rental agency and remitted to the city or county.[301] The order or ordinance imposing the tax should specify how the rental tax is to be reported and remitted to the city or county.[302] Additionally, the order or ordinance may also prescribe penalties for the failure to keep the required records, report when required, or pay the tax when due. Finally, the city or county attorney is empowered to bring a lawsuit to collect the rental tax.

All the gross receipts of an entity that rents motor vehicles are presumed to be subject to the motor vehicle rental tax, except for those receipts for which the entity can provide an exemption

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293 *Id.* § 334.112.

294 *Id.* § 334.109.

295 *Id.* § 334.103(a). *See also id.* § 334.103(c). (Providing that a county with a population of 2 million or more that is adjacent to a county with a population of more than 1 million may by order impose the rate to a maximum of 6%).

296 *Id.* § 334.115.

297 *Id.* § 334.112(b).

298 *Id.* § 334.102(b).

299 *Id.* § 334.104(a). *See also id.* § 334.1041 (Allowing a county with a population of 2 million or more that is adjacent to a county with a population of more than 1 million may by order increase the rate to a maximum of 6% if the increase is approved by the voters).

300 *Id.* §§ 334.104(b), .1041(c).

301 *Id.* §§ 334.105(a), .113(a). *See Id.* § 334.108. (State law requires that each bill or other receipt for a taxed rental contain the following language in a conspicuous location: "____ (insert name of taxing county or city) requires that an additional tax of ___ percent (insert tax rate) be imposed on each motor vehicle rental for the purpose of financing ____ (describe venue project).").

302 *Id.* § 334.113.

certificate.[303] In addition to any local record-keeping requirements, state law requires motor vehicle rental agencies to keep records reflecting the gross receipts from motor vehicle rentals and the tax paid on each rental.[304] These records must be kept for at least four years. Failure to keep such records is a misdemeanor offense.[305]

State law also requires that persons buying a motor vehicle rental business withhold an amount sufficient to cover any delinquent motor vehicle rental taxes that are due to the city or county out of the purchase price.[306] The buyer must withhold this amount until the seller provides a proper receipt from the city or county showing that the tax has been paid or that no tax is due. If the buyer does not withhold the required amount, the buyer becomes liable for any delinquent rental taxes owed by the purchased motor vehicle rental business.[307] The buyer of a motor vehicle rental business may request that the city or county provide a receipt showing that no motor vehicle rental tax is due from the business to be purchased or, if tax is due, what amount of tax is owed.[308] The city or county is then required to issue the statement not later than the 60th day after receipt of the request. If the city or county fails to issue the statement within this period, the purchaser is released from the obligation to withhold the amount due from the purchase price.[309]

Cities and counties are required to allow a person who is required to collect and remit the motor vehicle rental tax to retain one percent of the amount collected as reimbursement for the costs of collecting the tax.[310] Nonetheless, a person required to collect and remit the motor vehicle rental tax is not entitled to the one percent reimbursement if the person fails to remit the tax to the city or county within 15 days of the end of the collection period.[311] The date postmarked by the United States Postal Service is considered to be the date of receipt by the city or county.

### Exemptions from the Motor Vehicle Rental Tax

Certain entities (primarily public entities) are exempt from a motor vehicle rental tax imposed under Chapter 334.[312] The city or county should consult Subchapter E in Chapter 152 of the Tax Code to discern which entities are exempt from the rental tax.

Additionally, certain types of vehicles do not fall within the definition of "motor vehicle" under Chapter 334 and cannot be taxed.[313] For instance, the rental of trailers, road-building machines, trucks with a rating of more than one-half ton, trains, farm machines or bicycles is not taxable.

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303 *Id.* § 334.109.
304 *Id.* § 334.110.
305 *Id.* § 334.111.
306 *Id.* § 334.114(a).
307 *Id.* § 334.114(b).
308 *Id.* § 334.114(c).
309 *Id.* § 334.114(d).
310 *Id.* § 334.1135(a).
311 *Id.* § 334.1135(b).
312 *Id.* § 334.107.
313 *Id.* § 334.101(a)(1). (Definition of "motor vehicle").

## 2. Admissions Tax on Tickets Sold at a Venue Project

If a city or county has issued bonds for a venue project, the city or county may impose a tax on each admission ticket sold for an event at the venue project.[314] The admissions tax must have been approved at an election held in accordance with the rules of Chapter 334, and the ballot language must specify the maximum rate of the tax being adopted.[315] The admission tax rate may not exceed 10 percent of the price of an admission ticket.[316]

### Ballot Proposition to Adopt an Admissions Tax

The adoption of the admissions tax may be included in the same ballot proposition that proposes the venue project. The ballot must be printed to allow voting for or against the following proposition:[317]

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to (insert "impose a new" or "authorize the use of the existing") tax at the rate of *(insert the maximum rate of the tax)* for the purpose of financing the venue project.**

If more than one method of financing is to be voted on in one proposition, the ballot must be printed to permit voting for or against the proposition:

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to impose a *(insert each type of tax)* tax at the rate of *(insert the maximum rate of each tax)* for the purpose of financing the venue project.**

### Effective Date and Ending Date of Admissions Tax

After approval by the voters, the venue project admissions tax becomes effective on the date prescribed by the ordinance or order imposing the tax.[318] The admissions tax is imposed only on tickets sold as admission to an event held at the venue project, and all revenue from the tax must be deposited into the venue project fund.[319] Once the venue project's bonds or other obligations are paid in full, the city or county can no longer impose an admissions tax.[320]

### Decrease, Abolition or Increase of the Admissions Tax

Once in place, the admissions tax may be decreased or abolished on the city or county's own action.[321] The tax can be increased only if the increase is approved at an election and the

314 *Id.* § 334.151(a). *But see* Tex. Const. art. VIII, § 1 (f); *Hoefling v. City of San Antonio*, 20 S.W. 85, 88 (Tex. 1892); *City of Houston v. Harris County Outdoor Advertising Association,* 879 S.W.2d 322, 326-327 (Tex. App. — Houston [14th Dist.] 1994, pet. denied); *State v. Rope*, 419 S.W.2d 890, 897 (Tex. Civ. App.—Austin 1967, writ ref'd n.r.e.).

315 Tex. Loc. Gov't Code §§ 334.151(c), .152(c).

316 *Id.* § 334.152(b).

317 *Id*. § 334.151(c)(2). (Referring to the tax being approved at an election under Section 334.024).

318 *Id.* § 334.155(a).

319 *Id.* §§ 334.152(a), .157.

320 *Id.* § 334.155(b).

321 *Id.* § 334.152(d).

resulting tax rate will not exceed 10 percent of the price of an admission ticket.[322] At an election to increase the admissions tax, the ballot must be worded to allow voting for or against the following proposition:

> **The increase of the admissions tax for the purpose of financing *(insert description of venue project)* to a maximum rate of (*insert new percentage rate*) percent of the price of each ticket sold as admission to an event held at an approved venue.**

**Collection and Enforcement of the Admissions Tax**

The comptroller's office is not involved in the collection of the admissions tax. Instead, the tax is collected by the owner or lessee of the venue project and remitted to the city or county.[323] The order or ordinance imposing the admissions tax should specify how the tax is to be reported and remitted to the city or county.[324] Additionally, the order or ordinance may prescribe penalties for the failure to keep the required records, report when required, or pay the tax when due.[325] Finally, the city or county attorney is empowered to bring a lawsuit to collect the admissions tax.

A county or city may allow the lessee or owner of the venue project to retain a percentage of the admission taxes collected as reimbursement for the costs of collecting the tax.[326] The ordinance or order may also provide that the venue project owner or lessee may retain this reimbursement only if the owner or lessee meets the local requirements for paying the tax and filing the reports.

## 3. Tax on Event Parking at a Venue Project

A city or a county may impose a tax for each motor vehicle that parks in a parking facility of a venue project.[327] As with other taxes imposed under Chapter 334, the parking tax must have been approved at an election and the ballot language must specify the maximum rate of the tax being adopted.[328] Also, the city or county is authorized to impose the parking tax only if bonds or other obligations have been issued under Chapter 334 for the venue project.[329]

The tax rate may be designated as a percentage of the price charged for event parking by the owner or lessee of the venue project or as a flat amount on each parked motor vehicle.[330] However, the tax may not exceed $3.00 per vehicle for a venue event.[331] This tax applies to parking that occurs during a period beginning three hours before and ending three hours after an event at a venue project, unless the approved venue project consists of three or more separate but

322 *Id.* § 334.153.
323 *Id.* §§ 334.154(a), .156(a).
324 *Id.* § 334.156(a).
325 *Id.* § 334.156(b).
326 *Id.* § 334.156(c).
327 *Id.* § 334.201(a).
328 *Id.* §§ 334.201(c), .202(c).
329 *Id.* § 334.205(b).
330 *Id.* § 334.202(a).
331 *Id*. § 334.202(b). *See also id.* § 334.202(b-1) (Allows a city with a population of more than 700,000 within a county with a population of more than one million adjacent to a county with a population of more than two million to impose a parking tax rate not to exceed $5 for each motor vehicle).

adjacent venue facilities.[332] If the approved venue does consists of three or more separate but adjacent venue facilities, then the tax can apply during any hours.

**Ballot Proposition to Adopt an Event Parking Tax**

The adoption of the event parking tax may be included in the same ballot proposition that proposes the venue project. The ballot must be printed to allow voting for or against the following proposition:[333]

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to (insert "impose a new" or "authorize the use of the existing") tax at the rate of *(insert the maximum rate of the tax)* for the purpose of financing the venue project.**

If more than one method of financing is to be voted on in one proposition, the ballot must be printed to permit voting for or against the proposition:

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to impose a *(insert each type of tax)* tax at the rate of *(insert the maximum rate of each tax)* for the purpose of financing the venue project.**

**Effective Date and Ending Date for Event Parking Tax**

After approval by the voters, the parking tax becomes effective on the date prescribed by the ordinance or order imposing the tax.[334] The tax may continue only until the venue project's bonds or other obligations have been fully paid.[335] As with the other taxes, all revenue from the parking tax must be deposited in the venue project fund.[336]

**Decrease, Abolition or Increase of the Event Parking Tax**

The parking tax may be decreased or abolished, by ordinance or order, on the city or county's own motion.[337] The tax may be increased only if the increase is approved at an election and the resulting tax rate will not exceed $3.00.[338] At an election to increase the parking tax, the ballot must be worded to allow voting for or against the following proposition:

> **The increase of the parking tax for the purpose of financing (*insert description of venue project*) to a maximum rate of (*insert new rate*).**

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332 *Id.* § 334.201(b), (b-1).
333 *Id.* § 334.201(c) (Referring to the tax being approved at an election under Section 334.024).
334 *Id*. § 334.205.
335 *Id.* § 334.205.
336 *Id*. § 334.207.
337 *Id*. § 334.202(d).
338 *Id*. § 334.203. *See also id*. § 334.2031 (Allows a city with a population of more than 700,000 within a county with a population of more than one million adjacent to a county with a population of more than two million ability to increase a parking tax rate not to exceed $5 for each motor vehicle).

**Collection and Enforcement of the Event Parking Tax**

The comptroller's office is not involved in the collection of the event parking tax. Instead, the tax is collected by the owner or lessee of the venue project and remitted to the city or county.[339] The order or ordinance imposing the parking tax should specify how the tax is to be reported and remitted to the city or county.[340] Additionally, the order or ordinance may prescribe penalties for the failure to keep the required records, report when required, or pay the tax when due. Finally, the city or county attorney is empowered to bring a lawsuit to collect the parking tax.

By order or ordinance, a county or city may allow the lessee or owner of the venue project to retain a percentage of the parking taxes collected as reimbursement for the costs of collecting the tax.[341] The ordinance or order may also provide that the venue project owner or lessee may retain this reimbursement only if the owner or lessee meets the local requirements for paying the tax and filing reports.

## 4. Imposing an Additional Hotel Occupancy Tax

Another way to fund a venue project within its boundaries is for a city (by ordinance) or a county (by order) to impose an additional hotel occupancy tax of up to two percent on the use of a hotel room.[342] This additional hotel occupancy tax must be approved at an election and the ballot language must specify the maximum rate of the tax being adopted.[343] The additional hotel occupancy tax may be imposed only if the city or county issues bonds or other obligations for a venue project within one year of imposing the tax.[344] If an additional hotel occupancy tax is approved, the voters can decide to use ad valorem (property) tax revenue for a venue project.[345]

However, the additional local hotel occupancy tax may not be imposed to fund a venue project that is an area or facility that is part of a municipal parks and recreation system or that is a certain Type A or Type B economic development project.[346] Nor may the hotel occupancy tax be imposed to finance a watershed protection and preservation project, recharge protection project, conservation easement or open space preservation program.[347] Legislation passed in 2017 clarifying that the additional local hotel occupancy tax may be used for tourist development areas, and, in cities located on the international border, airport facilities.[348]

339 *Id.* §§ 334.204, .206(a).
340 *Id.* § 334.206(a)-(b).
341 *Id.* § 334.206(c).
342 *Id.* § 334.254(a). *See also id.* § 334.254(c) (Dallas County is authorized to impose an additional hotel occupancy tax of up to three percent of the price paid for a room in a hotel).
343 *Id.* §§ 334.252(b)(2), .254(b).
344 *Id.* § 334.257(b).
345 *Id.* § 334.0241.
346 *Id.* § 334.2515. *See also id*. 334.2516 (Authorizing additional hotel occupancy tax revenue being used by the city of Grand Prairie for a convention center facility or related infrastructure to be constructed on certain park property acquired by purchase or lease).
347 *Id.* § 334.2517.
348 *Id.* § 334.2515.

### Application of the Additional Hotel Occupancy Tax

If approved by the voters, the Chapter 334 hotel occupancy tax is in addition to any local hotel occupancy tax that the city or county may impose under Chapter 351 or 352 of the Tax Code.[349] The rate of a hotel occupancy tax imposed under Chapter 334 of the Local Government Code may be set at any percentage that was approved by the voters, but generally may not exceed two percent of the price of a hotel room.[350] A city or county may not propose a hotel occupancy tax rate that would cause the combined hotel occupancy tax rate imposed from all sources at any location in the city or county to exceed 17 percent of the price paid for a room in a hotel. Not included in the calculation of the combined hotel occupancy tax rate are: (1) an assessment for an improvement project under Local Government Code Sec. 372.0035; (2) an assessment imposed by a Municipal Management District pursuant to Local Government Code Chapter 375; or (3) a fee collected by a hotel to recover the cost of an assessment described by (1) or (2), above.[351]

1. meets the definition of "hotel" under Section 156.001 of the Tax Code;
2. costs at least $2.00 per night; and
3. is ordinarily used for sleeping.

Certain types of accommodations do not fall within the definition of the term "hotel" for purposes of the Chapter 334 hotel occupancy tax. For instance, hospitals, sanitariums, nursing homes, and dormitories or other non-hotel housing facilities owned by institutions of higher education may not charge the tax.[352] Also, the comptroller's office has interpreted the statute to exclude recreational vehicles (RVs) and RV rental spaces from taxation.[353]

### Ballot Proposition to Adopt an Additional Hotel Occupancy Tax

The adoption of the additional hotel occupancy tax may be included in the same ballot proposition that proposes the venue project. The ballot must be printed to allow voting for or against the following proposition:[354]

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to (insert "impose a new" or "authorize the use of the existing") tax at the rate of *(insert the maximum rate of the tax)* for the purpose of financing the venue project.**

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to (insert "impose a new" or "authorize the use of the existing") tax at the rate of *(insert the maximum rate of the tax)* for the purpose of financing the venue project.**

349 *Id*. § 334.253(c).
350 *Id.* § 334.254(a). *See also id.* § 334.254(c) (Authorized Dallas County to impose a three percent rate with voter approval).
351 *Id*. § 334.254(d).
352 *Id.* § 334.251 (Referring to the definition of hotel according to Section 156.001 of the Tax Code).
353 However, RV's may become taxable if they become fixed in place and lose their mobile nature.
354 Tex. Loc. Gov't Code § 334.252(b)(2) (Referring to the tax being approved at an election under Section 334.024).

Additionally, the proposition must include the following language:[355]

> **If approved, the maximum hotel occupancy tax rate imposed from all sources in (*insert name of city or county*) would be *(insert the maximum combined hotel occupancy tax rate that would be imposed from all sources at any location in the city or county, as applicable, if the rate proposed in the ballot proposition is adopted*) of the price paid for a room in a hotel.**

If more than one method of financing is to be voted on in one proposition, the ballot must be printed to permit voting for or against the proposition:

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to impose a *(insert each type of tax)* tax at the rate of *(insert the maximum rate of each tax)* for the purpose of financing the venue project.**

### Effective Date and Ending Date of the Additional Hotel Occupancy Tax

Once approved, the hotel occupancy tax becomes effective on the date prescribed by the ordinance or order imposing the tax.[356] A city or county is not authorized to impose or continue a venue project hotel occupancy tax if the bonds or obligations for the venue project have been paid in full or if no such obligations were issued.[357] All revenue from the tax must be deposited into the venue project fund.[358]

### Decreasing, Abolishing or Increasing the Additional Hotel Occupancy Tax

Unlike the other taxes discussed above, Chapter 334 does not provide any authority for a city or county to decrease or abolish the additional hotel occupancy tax. However, Chapter 334 expressly states that the additional hotel occupancy tax may only be increased if the increase is approved at an election on the issue and the resulting additional tax rate will not exceed two percent.[359] At an election to increase the hotel occupancy tax, the ballot must be worded to allow voting for or against the following proposition:

> **The increase of the hotel occupancy tax for the purpose of financing (*insert description of venue project*) to a maximum rate of (*insert new rate*) percent. If approved, the maximum hotel occupancy tax rate imposed from all sources in (*insert name of city or county*) would be (*insert the maximum combined hotel occupancy tax rate that would be imposed from all sources at any location in the city or county, as applicable, if the rate proposed in the ballot proposition is adopted*) of the price paid for a room in a hotel.”**

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355 *Id*. § 334.024(d-1).
356 *Id*. § 334.257(a).
357 *Id*. § 334.257(b).
358 *Id*. § 334.258.
359 *Id*. § 334.255.

**Collection of the Additional Hotel Occupancy Tax**

The comptroller's office is not involved in the collection of any local hotel occupancy tax. Instead, the tax is collected by the local hotels and remitted to the city or county.[360] The order or ordinance imposing the hotel occupancy tax should specify how the tax is to be reported and remitted to the city or county. Section 334.253 of the Local Government Code makes certain provisions of the Tax Code applicable to the imposition, computation, administration, collection and remittance of the Chapter 334 hotel tax. These tax statutes provide for specific penalties which may be assessed against hotel operators who file late or false tax returns.[361] For instance, a city ordinance may include a provision that makes it a criminal misdemeanor offense to fail to collect the tax, fail to file a return, file a false return, or fail to timely make the remittances.[362] Municipal courts may assess a fine not to exceed $500 for any such offense.[363] Under the applicable sections of the Tax Code, counties do not have the authority to criminalize the failure to comply with local hotel occupancy tax requirements. However, cities and counties are given the authority to take the following actions against a hotel operator who fails to report or collect the local hotel occupancy tax:[364]

- require the forfeiture of any revenue the city allowed the hotel operator to retain for its cost of collecting the tax (only a city can do this, not a county);
- bring a civil suit against the hotel operator for noncompliance;
- ask the district court to enjoin operation of the hotel until the report is filed and/or the tax is paid; and
- any other remedies provided under Texas law.

The most noteworthy of these remedies is the ability to request that the district court close down the hotel if the hotel occupancy taxes are not turned over. Often, a city or county has gained compliance simply by informing the hotel operator of the possibility of such a closure.

The hotel occupancy tax ordinance or order may also require that persons buying a hotel retain out of the purchase price an amount sufficient to cover any delinquent hotel occupancy taxes that are due to the city or county.[365] If the buyer does not remit to the city or county such amount or show proof that the hotel is current in remitting its hotel occupancy taxes, the buyer becomes liable for any delinquent hotel occupancy taxes due on the purchased hotel. The buyer of a hotel may request that the city or county provide a receipt showing that no hotel occupancy tax is due on the property to be purchased. The city or county is then required to issue the statement not later than the 60th day after the request. If the city or county fails to issue the statement within the deadline, the purchaser is released from the obligation to withhold the amount due from the purchase price.

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[360] *See id.* § 334.253 (making parts of Chapters 351 and 352 of the Tax Code applicable to a hotel occupancy tax imposed under Chapter 334 of the Local Government Code).

[361] *Id.* § 334.253. (Refers to Sections 351.004 and 352.004 of the Tax Code.)

[362] *Id.* (Refers to Section 351.004.)

[363] *Id.* § 54.001(b).

[364] *Id.* § 334.253. (Refers to Sections 351.004, 351.005 and 352.004 of the Tax Code.).

[365] *Id.* (Refers to Sections 351.0041 and 352.0041 of the Tax Code).

Cities or counties may allow hotel operators to retain up to one percent of the amount of hotel occupancy taxes collected as reimbursement for the costs of collecting the tax.[366] Cities and counties are not themselves permitted to retain any of the collected tax to cover costs of imposing or collecting the tax. Cities, but not counties, may also require that such reimbursement will automatically be forfeited by a hotel that fails to pay tax or file a report as required by the city.[367]

Hotel owners should note that each bill or receipt for a hotel charge that is subject to the Chapter 334 hotel occupancy tax must contain a statement listing the applicable hotel occupancy tax rate collected by the hotel from the customer.[368] This statement must list the State of Texas and the State's rate (6%), as well as all other taxing authorities and the hotel occupancy rate they impose.

**Exemptions from the Chapter 334 Hotel Occupancy Tax**

Certain entities are exempt from the hotel occupancy tax imposed under Chapter 334 of the Local Government Code.[369] Texas statutes allow an exemption from the hotel occupancy tax for persons who have contracted to use a hotel room for more than 30 consecutive days.[370] Additionally, the hotel occupancy tax does not apply to certain federal and other high-level officials traveling on federal or state business.[371] Rather than paying the hotel tax, federal employees, foreign diplomatic personnel and certain high-level state employees simply present a tax exemption certificate to the hotel.[372]

officers or employees of a state agency, institution, board or commission who are traveling on official business must pay the hotel occupancy tax but are entitled to a refund from the involved governmental taxing entities. [373] The state and local governments refund the hotel occupancy tax to the exempt employee through a separate process. A city or county may want to request a copy of the comptroller's refund application form for the state hotel occupancy tax and adapt that form for handling refunds of the municipal or county hotel occupancy tax.

City and county officers and employees are not exempt from the state or local hotel occupancy tax even if the officers or employees are traveling on official business. Further, cities may not authorize additional exemptions from the hotel occupancy tax. For example, with regard to a hotel tax imposed under Chapter 351 of the Tax Code, the Attorney General ruled in JM-865 (1988) that cities could not grant an exception to the tax for religious, charitable or educational organizations without new constitutional or statutory authority to do so.

## 5. Facility Use Tax on Members of a Major League Team

If bonds have been issued under Chapter 334 of the Local Government Code by a county or city for a venue project within the city or county, the city or the county may impose a tax per game

[366] *Id.* (Refers to Sections 351.005 and 352.005 of the Tax Code).
[367] *Id.* (Refers to Section 351.005 of the Tax Code).
[368] *Id.* § 334.256(a).
[369] *Id.* § 334.253 (Refers to Sections 351.002(c), 351.006, 352.002(c) and 352.007 of the Tax Code).
[370] *Id.* (Refers to Sections 351.002(c) and 352.002(c) of the Tax Code).
[371] *Id.* (Refers to Sections 351.006 and 352.007 of the Tax Code). *See LaQuinta Inns, Inc. v. Sharp*, No. 95-15739 (53rd Dist. Ct., Travis County, Tex. April 30, 1996).
[372] *See* 34 Tex. Admin. Code § 3.161.
[373] Tex. Loc. Gov't Code § 334.253 (Refers to Sections 351.006 and 352.007 of the Tax Code).

against each member of a major league team playing in the venue project.[374] The facility use tax must have been approved at an election held in accordance with the rules of Chapter 334, and the ballot language must specify the maximum rate of the tax being adopted.[375]

### Ballot Proposition to Adopt a Facility Use Tax

The adoption of the facility use tax may be included in the same ballot proposition that proposes the venue project. The ballot must be printed to allow voting for or against the following proposition:[376]

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to (insert "impose a new" or "authorize the use of the existing") tax at the rate of *(insert the maximum rate of the tax)* for the purpose of financing the venue project.**

If more than one method of financing is to be voted on in one proposition, the ballot must be printed to permit voting for or against the following proposition:

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to impose a *(insert each type of tax)* tax at the rate of *(insert the maximum rate of each tax)* for the purpose of financing the venue project.**

### Effective Date and Ending Date of the Facility Use Tax

After approval by the voters, the facility use tax becomes effective on the date prescribed by the ordinance or order imposing the tax.[377] The tax rate may be set at any uniform monetary amount but may not exceed $5,000 per game per member of a professional sports team playing in the venue project.[378] The facility use tax may be imposed only on games actually held in the venue project. The city or county is not authorized to collect such a facility use tax if the venue project bonds have been paid in full or if no such bonds are issued.[379] All revenue from the tax must be deposited in the venue project fund.[380]

### Decrease, Abolition, or Increase of Facility Use Tax

Once in place, the facility use tax may be decreased or abolished, by ordinance or order, on the city or county's own motion.[381] The tax may be increased only if the increase is approved at an election and the resulting tax rate would not exceed $5,000 per member per game.[382] At an

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374 *Id.* §§ 334.302, .306. *See* Tex. Const. art. VIII, Section 1 (f); *Hoefling v. City of San Antonio*, 20 S.W. 85, 88 (Tex. 1892); *City of Houston v. Harris County Outdoor Advertising Association*, 879 S.W.2d 322, 326-327 (Tex. App. — Houston [14th Dist.] 1994, pet. denied); *State v. Rope*, 419 S.W.2d 890, 897 (Tex. Civ. App. — Austin 1967, writ ref'd n.r.e.).

375 Tex. Loc. Gov't Code §§ 334.302, .303.

376 *Id.* § 334.302(c)(2) (Referring to the tax being approved at an election under Section 334.024).

377 *Id.* § 334.306(a).

378 *Id.* § 334.303(a)-(b).

379 *Id.* § 334.306(b).

380 *Id.* § 334.308.

381 *Id.* § 334.303(d).

382 *Id.* § 334.304(a).

election to increase the facility use tax, the ballot must be worded to allow voting for or against the following proposition:[383]

> **The increase of the facility use tax for the purpose of financing (*insert description of venue project*) to a maximum rate of (*insert new rate*) a game.**

**Collection and Enforcement of the Facility Use Tax**

The comptroller's office is not involved in the collection of the facility use tax. Instead, the tax is collected by the owner or lessee of the venue project and remitted to the city or county.[384] The order or ordinance imposing the facility use tax should specify how the tax is to be reported and remitted to the city or county.[385] Additionally, the order or ordinance may prescribe penalties for the failure to keep the required records, to report when required, or to pay the tax when due.[386] Finally, the city or county attorney is empowered to bring a lawsuit to collect the facility use tax.

By order or ordinance, a county or city may allow the lessee or owner of the venue project to retain a percentage of the facility use taxes collected as reimbursement for the costs of collecting the tax.[387] The ordinance or order may also provide that the venue project owner or lessee may retain this reimbursement only if the owner or lessee meets the local requirements for paying the tax and filing reports.

It is important to note that the facility use tax may be collected only from members of a "major league team" as defined by Section 334.301 of the Local Government Code. That section defines this term to include a team that is a member of the National Football League, the National Basketball Association or the National Hockey League. The term also includes a major league baseball team or any other professional team.

## 6. Livestock Facility Use Tax in Certain Cities and Counties

If bonds have been issued under Chapter 334 of the Local Government Code by a certain county or city for a venue project within the city or county, the city or the county may impose a livestock facilities tax for the use or occupancy by livestock of a stall or pen[388] at a designated facility.[389] The livestock facility use tax must have been approved at an election held in accordance with the rules of Chapter 334, and the ballot language must specify the maximum rate of the tax being adopted.[390]

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383 *Id.* § 334.304(b).
384 *Id.* §§ 334.305(a), .307(a).
385 *Id.* § 334.307(a).
386 *Id.* § 334.307(b).
387 *Id.* § 334.307(c).
388 *Id.* § 334.401(3) (Definition of "stall or pen").
389 *Id.* §§ 334.401(1) (Definition of "designated facility"); .402 (This subchapter applies to (1) a county in which the majority of the population of two or more cities with a population of 300,000 or more are located or (2) a city for which the majority of the population is located in a county described in (1)); .403.
390 *Id.* §§ 334.403.

**Ballot Proposition to Adopt a Livestock Facility Use Tax**

The adoption of the livestock facility use tax may be included in the same ballot proposition that proposes the venue project. The ballot must be printed to allow voting for or against the following proposition:[391]

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to (insert "impose a new" or "authorize the use of the existing") tax at the rate of *(insert the maximum rate of the tax)* for the purpose of financing the venue project.**

If more than one method of financing is to be voted on in one proposition, the ballot must be printed to permit voting for or against the following proposition:

> **Authorizing *(insert name of city or county)* to *(insert description of venue project)* and to impose a *(insert each type of tax)* tax at the rate of *(insert the maximum rate of each tax)* for the purpose of financing the venue project.**

**Effective Date and Ending Date of the Livestock Facility Use Tax**

After approval by the voters, the livestock facility use tax becomes effective on the date prescribed by the ordinance or order imposing the tax.[392] The tax rate may be set at any uniform monetary amount but may not exceed $20 for each stall or pen used or occupied at a designated facility for each event[393] in the venue project.[394] The livestock facility use tax may be imposed only at a designated facility that is an approved the venue project.[395] The city or county is not authorized to collect such a livestock facility use tax if the venue project bonds have been paid in full or if no such bonds are issued.[396] All revenue from the tax must be deposited in the venue project fund.[397]

**Decrease, Abolition, or Increase of Livestock Facility Use Tax**

Once in place, the livestock facility use tax may be decreased or abolished, by ordinance or order, on the city or county's own motion.[398] The city or county can impose different tax rates based on the duration of an event.[399] However, the rate must be uniform for each event of similar duration and the rate may not exceed the maximum rate adopted by the voters.[400]

The tax may be increased only if the increase is approved at an election and the resulting tax rate would not exceed $20 for each event.[401] At an election to increase the livestock facility use tax, the ballot must be worded to allow voting for or against the following proposition:[402]

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391 *Id.* § 334.403(c)(2) (Referring to the tax being approved at an election under Section 334.024).

392 *Id.* § 334.408.

393 *Id.* § 334.401(2) (Definition of "event").

394 *Id.* § 334.404(a)-(b).

395 *Id.* § 334.403(b).

396 *Id.* § 334.403(c)(1).

397 *Id.* § 334.410.

398 *Id.* § 334.404(e).

399 *Id.* § 334.404(d).

400 *Id.*

401 *Id.* § 334.405(a).

402 *Id.* § 334.405(b).

> **The increase of the facility use tax for the purpose of financing (*insert description of the designated facility*) to a maximum rate of (*insert new maximum rate not to exceed $20*) per event.**

**Collection, Enforcement and Exemption of the Livestock Facility Use Tax**

The comptroller's office is not involved in the collection of the livestock facility use tax. Instead, the tax is collected by the owner or lessee of a designated facility and remitted to the city or county.[403] The order or ordinance imposing the livestock facility use tax should specify how the tax is to be reported and remitted to the city or county.[404] Additionally, the order or ordinance may prescribe penalties for the failure to keep the required records, to report when required, or to pay the tax when due.[405] Finally, the city or county attorney is empowered to bring a lawsuit to collect the livestock facility use tax.

By order or ordinance, a county or city may allow the lessee or owner of a designated facility to retain a percentage of the livestock facility use taxes collected as reimbursement for the costs of collecting the tax.[406] Also, the ordinance or order may provide that the owner or lessee of a designated facility may retain this reimbursement only if the owner or lessee meets the local requirements for paying the tax and filing reports.

It is important to note that the livestock facility use tax is a debt owed to the owner or lessee of the designated facility by the user or sublessee of the designated facility.[407] This tax is not considered an occupation tax imposed on the owner or lessee of the designated facility, the user or the sublessee of the designated facility or the owner of the livestock. Also, the city or county by ordinance or order may exempt county junior livestock shows from paying the livestock facility use tax.[408]

## 7. Special Motor Vehicle Tax Authorized in Certain Cities

A city with a population of more than 500,000 that is located in a county bordering Mexico has special authority to impose a tax on the rental of motor vehicles.[409] Unlike the previously discussed motor vehicle rental tax, this tax may be used only to pay for the costs associated with an annual post-season college bowl game held in the city.[410] Otherwise, this tax is governed by the same provisions that govern the previously discussed motor vehicle rental tax, including the requirement that the tax be approved at an election.[411] At present, this provision applies only to the city of El Paso.

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403 *Id.* § 334.409(a).
404 *Id.* § 334.409(b).
405 *Id.* § 334.409(c).
406 *Id.* § 334.409(d).
407 *Id.* § 334.407.
408 *Id.* § 334.406.
409 *Id.* §§ 334.352, .353.
410 *Id.* §§ 334.351, .354.
411 *Id.* § 334.353(b)-(c).

## General Powers and Duties of the City or County Undertaking a Venue Project

Once a venue project has been approved by the voters, the city or county has the following general powers and duties with regard to that project:[412]

**Delegation of Management of Project**. A city or county may contract with a public or private entity, including a sports team, to develop the venue project or to perform any other action that the city or county could do under Chapter 334.[413] If such a contract is with a school district, junior college, or institution of higher education (as defined in the Education Code), the contract may provide for joint ownership and operation or for joint use of the venue project.[414] However, the city or county may not contract with another entity to have that entity conduct a city or county election under Chapter 334.[415]

**Property Tax Exemption for Venue Project Property**. A venue project is exempt from taxation under Section 11.11 of the Tax Code while the city or county owns the project.[416] However, each year the operators of a venue project must pay to a school district an amount equal to the taxes that would have been paid on the unimproved real property if the real property was removed from the school district's property tax rolls.[417] This requirement does not apply if the venue project operator is a political subdivision of the state.

**Exemption from Competitive Bidding**. Competitive bidding laws do not apply to an approved venue project.[418]

**Limitation on Use of Property Taxes**. A city or county generally may not use property taxes to construct, operate, maintain or renovate a venue project.[419] However, the voters of a city or county that imposes an additional hotel occupancy tax described above may approve the use of a specific percentage or a fixed amount of the revenue derived from property taxes for that entity.[420] At such an election, the ballot must be worded to allow voting for or against the following proposition:[421]

> **Authorizing *(insert name of municipality or county)* to use an amount not to exceed *(insert percentage of property tax revenue or dollar amount to be used)* of the revenue derived from the *(insert "county" or "municipal")* property tax, in addition to the hotel occupancy tax and**

412 *Generally id.* § 334.041.
413 *Id.* § 334.041(c).
414 *Id.* § 334.041(d).
415 *Id.* § 334.041(c)(2).
416 *Id.* § 334.044(c).
417 *Id.* § 334.044(d).
418 *Id.* § 334.041(e).
419 *Id.* § 334.041(f).
420 *Id.* §§ 334.0241, .041(f)(2).
421 *Id.* § 334.0241(b).

**any other applicable taxes, for the purpose of financing the *(describe the venue project)*.**

**Ability to Dispose of Property**. A city or county may acquire or dispose of an interest in property, including a venue project, under the terms and conditions that seem advisable to the city or county.[422]

**Application of Public Information Act**. Any records of a city or county that relate to an approved venue project or its financing are subject to the Public Information Act.[423]

**Harris County Exception**. In a county with a population of over 2.8 million, no tax on real or personal property may be used for any venue authorized by an election on November 5, 1996, and constructed after that date.[424]

**Sale of Park**. Voters need not approve sale or lease of a public square or municipal park related to an approved venue project.[425]

## Establishing the Venue Project Fund

A city or county must establish, by resolution, a "venue project fund."[426] The fund must have a separate account for each of the various revenue sources for the venue project. The city or county must then deposit the following monies into the fund:[427]

1) the proceeds of any tax imposed by the city or county under authority of Chapter 334 of the Local Government Code;
2) all revenue from the sale of bonds or other obligations under Chapter 334; and
3) any other money required by law to be deposited into the fund.

A city or county is not required to deposit money into the venue project fund unless it falls into one of the above three categories. However, if a city or county wishes to do so, it may also deposit the following monies into the fund:[428]

1) money received from innovative funding concepts such as the sale or lease of luxury boxes or the sale of licenses for personal seats;
2) any other revenue received by the city or county from the venue project (e.g., stadium rental payments and revenue from parking and concessions);
3) if not otherwise dedicated, revenue from bonuses, royalties, and other payments from ownership of oil, gas, and other mineral rights;

[422] *Id.* § 334.041(b).
[423] *Id.* § 334.0425.
[424] *Id.* § 334.006.
[425] *Id.* § 334.045.
[426] *Id.* § 334.042(a).
[427] *Id.* § 334.042(b).
[428] *Id.* § 334.042(c).

4) if not otherwise dedicated, revenues from any fees, payments, or charges imposed by a joint operating board involving the entity or a nonprofit corporation acting on behalf of the entity; and
5) any revenue the entity determines is appropriately used on behalf of the venue project fund.

Any money deposited into the venue project fund is considered the property of the city or county that deposited it.[429] Once funds are deposited into the venue project fund, the money may be used only for the following purposes:[430]

1) paying or reimbursing the costs of planning, acquiring, developing, establishing, constructing or renovating a venue project in the city or the county;
2) paying costs related to bonds and other obligations issued by the city or county for the project; or
3) paying the costs of operating or maintaining the venue projects.

## Authority to Issue Bonds

Once a venue project is approved by the voters, the city or county may issue bonds and other obligations to pay for the costs of the project.[431] These bonds or other obligations must be payable from and secured by the revenues in the venue project fund and must mature within 30 years of the date on which they are issued. Additionally, any such obligations must be approved by the Public Finance Division of the attorney general's office. Bonds or other obligations issued under Chapter 334 are not a debt of the city or county. Such obligations do not create a claim against city or county tax revenue or property other than against the revenue sources that are specifically pledged and the venue project for which the bonds are issued.

## Uses of Venue Revenues for a Related Venue Project

A city or a county already imposing taxes to fund a venue project may call an election to approve the use of revenue from those taxes (excluding hotel occupancy taxes) to finance a "related" venue project.[432] This allows the use of revenue to support the improvement and maintenance of a facility not originally funded by the venue tax or specified in the original election, but still related to the facility first funded by these taxes. The city or county may not change the rate of the tax or the method of financing that was already authorized. The language in the ballot must read:

> **Authorizing *(insert name of municipality or county)* to use an amount not to exceed *(insert percentage of tax revenue or dollar amount of revenue to be used for each type of tax)* of the revenue derived from the *(insert each type of tax)* tax, to finance the *(describe the related venue project and its relation to the previously approved venue project)*.**

[429] *Id.* § 334.042(e).
[430] *Id.* § 334.042(d).
[431] *Id.* § 334.043.
[432] *Id.* § 334.0242.

# Chapter 335 Sports and Community Venue Districts

Chapter 335 of the Local Government Code authorizes cities and counties to join together as a group to undertake community and sports venue projects. Under this chapter, any city or county may join with any other city and/or county to form a "venue district."[433] There is no limit to the number of cities and/or counties that may join to form a single venue district. Once formed, the district is vested with all the powers that an individual city or county would have under Chapter 334.[434] The formation of such venue districts may be of particular use for communities that are too small to individually handle or fund a venue project.

## Permissible Projects Under Chapter 335

If approved in an election held according to Chapter 335, a venue district may undertake a "venue project".[435] A venue project is defined as a "venue and related infrastructure that is planned, acquired, established, developed, constructed or renovated under this chapter."[436] The term "venue" is defined as being one of the following:[437]

**An arena, coliseum, stadium or other type of area or facility**:[438]

- that is used or will be used for professional or amateur sports, or for community civic and charitable events; and
- where a fee for admission to these events will be charged;

**A convention center, convention center facility, or related improvement** that is located in the vicinity of the convention center. The term "related improvement" is used rather broadly and includes such things as a civic center hotel, theater, opera house, music hall, rehearsal hall, park, zoo, museum, aquarium, or plaza;

**A tourist development area along an inland waterway**;

**A municipal parks and recreation system**, improvements or additions to a park and recreation system, or an area or facility that is part of a municipal parks and recreation system. However, neither the motor vehicle rental tax nor the local hotel occupancy tax authorized by Chapter 335 may be used as a revenue source to pay for a venue project of this nature;[439]

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433 *Id.* § 335.021.

434 *Id.* § 335.071(e).

435 *Id.* § 335.051.

436 *Id.* § 335.001(6) (Refers to the definition of venue project as defined in Section 334.001(1) of the Local Government Code).

437 *Id.* § 335.001(5) (Refers to the definition of venue as defined in Section 334.001(4) of the Local Government Code).

438 *See Id.* § 335.0715 (It should be noted that a district would not be able to use the provisions of Chapter 335 to finance a professional sports stadium if the district, city or county had already contracted with a professional sports team prior to November 1, 1998, for the team to relocate and play in the stadium. This prohibition only applies if the team is already playing under an existing contract in a stadium owned by another Texas city or county. Even in this circumstance, a stadium may be financed under Chapter 335 if the other city or county (where the team is currently playing) consents).

439 *Id.* § 335.071(e) (Venue district may impose any tax authorized by Chapter 334 and must impose the tax in the same manner as a city or county would under that chapter). *See id.* §§ 334.1015, 334.2515.

**An economic development project** authorized by Section 4A or Section 4B of the Development Corporation Act of 1979, Article 5190.6 of Texas Revised Civil Statutes, as that Act existed on September 1, 1997;[440] or

**A watershed protection and preservation project; a recharge, recharge area, or recharge feature protection project; a conservation easement; or an open-space preservation program intended to protect water.**

Section 335.001(4) defines the term "related infrastructure" to include any on-site or off-site improvements that relate to and enhance the use, value or appeal of a venue, and any other expenditure that is reasonably necessary to construct, improve, renovate or expand a venue.[441] The statute lists the following examples of improvements that would qualify as related infrastructure: stores, restaurants, on-site hotels, concessions, parking, transportation facilities, roads, water and sewer facilities, parks or environmental remediation.

A district may use Chapter 335 only to construct a project that falls within the definition of the term "venue" or within the definition of the term "related infrastructure". However, once the venue facility is constructed, state law permits the facility to be used for an event that is not related to one of the above-described venue purposes, such as a community-related event.[442] Also, if an existing facility would qualify as a venue project under Chapter 335, a district may use the authority granted under Chapter 335 to aid that facility even though it was originally constructed or undertaken under the authority of other law.[443]

## Creating a Venue District

Two or more counties, two or more cities, or any combination of cities and counties may create a venue district.[444] In order to do this, each of the cities and/or counties that wish to join in the creation of the district must adopt a concurrent order.[445] The concurrent orders must meet all of the following criteria:[446]

- contain identical provisions;
- define the boundaries of the venue district to be coextensive with the combined boundaries of each of the cities and/or counties creating the district;
- designate the number of directors and the manner of appointment of the directors. Also, designate the manner in which the chair of the board will be appointed.

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440 The Development Act of 1979 was codified on April 1, 2009 and is now located in Chapter 501 through 507 of the Local Government Code. Since there was not a change of Section 334.001(4)(E) of the Local Government Code in the 82*nd* Legislative Session, the reference to the civil statute will remain.

441 Tex. Loc. Gov't Code § 335.001(4) (Refers to the definition of related infrastructure as defined in Section 334.001(3) of the Local Government Code).

442 *Id.* § 335.003.

443 *Id.* § 335.002.

444 *Id.* § 335.021.

445 *Id.* § 335.022.

446 *Id.*

There must be at least four directors on the board.[447] The directors are appointed by the county judges (if only counties are forming the district), the mayors (if only cities are forming the district), or the county judges and mayors (if both cities and counties are forming the district) as specified in the concurrent order.[448]

## Directors of a Venue District

To be eligible for service on the board of directors of a venue district, the person must be a resident of the appointing political subdivision. [449] If an officer, employee or member of a city or county governing body serves as a director, that person may not have any personal interest in a contract executed by the district.

Directors of a venue district board serve staggered two-year terms, and their successors are appointed in the same manner as the original appointees (according to the concurrent orders).[450] A director may be removed by the appointing mayor or county judge at any time without cause. Directors are not entitled to any compensation other than reimbursement for actual expenses.[451] Additionally, certain directors are required to file certain financial statements required of state officers under chapter 572 of the Government Code.[452] The financial statements must be filed with the board of directors and with the Texas Ethics Commission. A director commits a Class B misdemeanor if the director fails to file the financial statement. Also, directors and employees of certain venue district must follow additional requirements concerning codes of conducts.[453]

The presiding officer of a venue district board of directors is designated as provided by the concurrent order.[454] Also, the directors must designate a secretary from among the board's members and any other officers the board considers necessary. The board of directors is subject to the Texas Open Meetings Act[455] and all board meetings must be conducted within the boundaries of the venue district.[456]

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447 *Id*. § 335.031(a). *See id* § 335.035 (There are additional requirements for a board of a district located in whole or part in a county with a population of 3.3 million or more).

448 *Id.* § 335.031(b).

449 *Id.* § 335.031(d).

450 *Id.* § 335.031(c).

451 *Id.* § 335.032.

452 *Id.* § 335.1085. *See id*. § 335.102 (Makes Subchapter F of Chapter 335 of the Local Government Code only applicable to venue districts located in a county with a population of 3.3 million or more).

453 *See id*. §§ 335.101 - .110 (Makes Subchapter F of Chapter 335 of the Local Government Code only applicable to venue districts located in a county with a population of 3.3 million or more).

454 *Id.* § 335.034. *See id* § 335.035 (There are additional requirements for a board of a district located in whole or part in a county with a population of 3.3 million or more).

455 *Id.* § 335.023(b).

456 *Id.* § 335.033.

## Procedure for Authorizing a Venue Project

**Step One:**

***The venue district must obtain approval for the project from the comptroller's office.***

Before a venue district may have an election to undertake a venue project, it must obtain approval of the project from the comptroller's office.[457] The comptroller reviews the project to determine whether the proposed financing would "have a significant negative fiscal impact on state revenue." To obtain this approval, the district must send to the comptroller a copy of the resolution proposing the venue project.[458] This resolution must indicate each proposed project and each method of financing for the project.[459] Within less than 15 days of the comptroller's receipt of the resolution, it must perform the required state fiscal impact analysis and provide the district with written notice of its decision.[460] If the comptroller determines that the resolution would have a significant negative impact on state revenue, the comptroller must indicate in writing how the district could change the resolution so that there would not be such a negative impact.[461] If the comptroller fails to provide the required analysis in less than 30 days, the resolution is considered to be approved by the comptroller.[462]

If the comptroller finds that a venue project resolution will have a negative fiscal impact on state revenue, the district has 10 days to appeal the comptroller's ruling.[463] The appeal is made to the comptroller, and the comptroller has another 10 days to provide a new analysis and written notice to the city or county.[464] If the comptroller's ruling is still negative, the analysis must again include information on how the district could change the resolution so that there would not be a negative impact on state revenue.[465] If the comptroller fails to provide the required analysis within 30 days, the resolution is automatically considered approved.[466] If the comptroller continues to hold that the venue project would have a negative impact on state revenue, the venue district will not be able to hold the required election on the approval of the venue project.[467]

**Step Two:**

***Certain venue districts must also obtain approval from the local transit authority.***

If a venue project resolution contains a proposed sales tax, the venue district must determine whether that tax would result in the reduction of a sales tax rate that funds a transit authority

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457 *Id*. §§ 335.051, .054. *But see* Sections 7, 8 and 9 of Texas House Bill 92, 75th Legislature, Regular Session (1997) (Excepting certain cities, counties and venue districts from the requirements of holding an election and of obtaining Comptroller approval if their voters had already approved certain sports facilities in an election held before the effective date of the legislation).

458 Tex. Loc. Gov't Code § 335.052.

459 *Id.* § 335.051(b).

460 *Id.* § 335.052(b).

461 *Id.* § 335.052(c).

462 *Id.* § 335.052(d).

463 *Id.* § 335.053(a).

464 *Id.* § 335.053(b)

465 *Id.* § 335.053(c).

466 *Id.* § 335.053(d).

467 *Id.* § 335.054.

created under either Chapter 451 or Chapter 452 of the Transportation Code.[468] This issue would arise only if the area was subject to a transit authority sales tax and if the adoption of a venue project sales tax would place the district beyond the two percent cap for the local sales tax. If these circumstances would arise because of the proposed venue project, the district must send the transit authority a copy of the venue resolution for approval by the authority. The resolution must designate each venue project and each method of financing that the district proposes to use to finance the project.[469] If the proposed financing for the venue project would not cause a reduction in the transit authority sales tax, approval from the transit authority is not required.

Within 30 days of the transit authority's receipt of the resolution, it must determine whether the reduction in the transit authority's tax rate would have a significant negative impact on its ability to provide services or would impair any existing contracts.[470] The transit authority must also provide the written results of its analysis to the district within this period. If the transit authority's ruling is negative, it must state how the district could change the venue project resolution so that there would not be a negative impact on the transit authority's ability to provide transit service or fulfill existing contracts.[471] If the transit authority fails to provide this analysis within the required period, the authority is deemed to have approved the resolution.[472]

If the transit authority finds that a venue project resolution would have a significant negative impact on the authority's ability to provide service or would impair existing contracts, the district may appeal the negative ruling within 10 days.[473] The appeal is made to the transit authority, and the authority must provide a new analysis and written notice to the district within 10 days of its receipt of the appeal.[474] If the transit authority's ruling is still negative, the analysis must include information on how the district could change the resolution so that there would not be a negative impact on the authority's ability to provide service or fulfill existing contracts.[475] If the transit authority fails to provide the required analysis within 10 days, the resolution is automatically considered approved.[476] If the transit authority continues to find that the venue project would have a negative impact, the district will be unable to hold the required election for the approval of the venue project.[477]

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[468] *Id.* §§ 335.051(a)(2), .0535(a).
[469] *Id.* § 335.051(b).
[470] *Id.* § 335.0535(b).
[471] *Id.* § 335.0535(c).
[472] *Id.* § 335.0535(d).
[473] *Id.* § 335.0536(a).
[474] *Id.* § 335.0536(b).
[475] *Id.* § 335.0536(c).
[476] *Id.* § 335.0536(d).
[477] *Id.* § 335.054.

**Step Three:**

***The venue district must hold an election on the venue project.***

Once the district has received the required approvals from the comptroller and, if necessary, from the transit authority, the venue district may order an election on the proposed venue project.[478] The order calling the election must meet all of the following criteria:[479]

- Allow the voters to vote separately on each venue project;
- Designate the venue project(s);
- Designate each method of financing authorized by Chapter 335 that the district wants to use to finance the venue project and designate the maximum rate for each method; and
- Allow the voters to vote, in the same proposition or in separate propositions, on each method of financing authorized by Chapter 335 that the district wants to use to finance the project and the maximum rate of each method.

In addition to the above requirements for the election order, there is required wording for the ballot proposition. The ballot must be printed to allow voting for or against the following proposition:[480]

> **Authorizing (*insert name of the venue district*) to (*insert description of venue project*) and to impose a *(insert the type of tax)* tax at the rate of *(insert the maximum rate of the tax*) for the purpose of financing the venue project.**

If more than one method of financing is to be voted on in one proposition, the ballot must be printed to permit voting for or against the proposition:[481]

> **Authorizing (*insert name of the venue district*) to (*insert description of venue project*) and to impose a *(insert each type of tax)* tax at the rate of *(insert the maximum rate of each tax*) for the purpose of financing the venue project.**

If the proposition authorizes a hotel occupancy tax to fund the venue project, the ballot must include the following language:

> **If approved, the maximum hotel occupancy tax rate imposed from all sources in (*insert name of district*) would be (*insert the maximum combined hotel occupancy tax rate that would be imposed from all sources at any location in the district if the rate proposed in the ballot proposition is adopted*) of the price paid for a room in a hotel.**

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478 *Id. But see* Sections 7, 8 and 9 of Tex. H. B. 92, 75th Leg., R.S. (1997) (Excepting certain cities, counties and venue districts from the requirements of holding an election and of obtaining Comptroller approval if their voters had already approved certain sports facilities in an election held before effective date of this legislation).

479 Tex. Loc. Gov't Code. § 335.054(b).

480 *Id.* § 335.054(c).

481 *Id.* § 335.054(d).

If the venue project is for improvements or additions to an existing park or recreation facility, the description of the project in the ballot proposition must identify each park or recreation facility by name or location. If the venue project is for the acquisition or improvement of a new park or recreation facility, the description of the project in the ballot must specify the general location where the new park, recreational system or facility will be located.

The Election Code governs the procedure for holding an election under Chapter 335.[482] An individual may not print, broadcast, or publish, or cause to be printed, broadcast or published, campaign material that contain false and misleading information concerning the authorization of a venue project.[483] The Ethics Commission will investigate any complaints and impose penalties in accordance with Chapter 571 of the Government Code.

## General Powers and Duties of a Venue District

Once a venue project has been approved by the voters, the venue district has the following general powers and duties with regard to that project:[484]

- **Imposition of Taxes and Fees**. Subject to the approval of the district voters, a venue district may impose any tax that a city or county can impose under Chapter 334 of the Local Government Code. The district must follow all the rules set forth for such taxes in Chapter 334.[485]

  Under Chapter 334 of the Local Government Code, there are slightly different regulations governing the imposition of an additional hotel occupancy tax by a city and the imposition of such a tax by a county.[486] The conservative course would be to follow the rules set out for a county since these rules are slightly more restrictive than those applicable to cities.

  Similarly, under Chapter 334, there are different regulations governing the imposition of a city sales tax for a venue project and the imposition of a county sales tax for a venue project, and it is currently unclear which rules a venue district should follow.[487] A venue district wishing to impose either a sales tax or a hotel occupancy tax should discuss this issue with legal counsel.

- **Eminent Domain.** Subject to the requirements of Chapter 21 of the Property Code, a venue district has the power of eminent domain. Additionally, there are special provisions for a venue district involved in the appeal of an eminent domain proceeding.[488]

- **Employment of Staff and Adoption of Rules.** The district may employ the necessary personnel and adopt rules to govern the operation of the district and its employees and property.[489]

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482 *Id.* § 335.054(f).
483 *Id.* § 335.055.
484 *Generally id.* § 335.071.
485 *Id.* § 335.071(e).
486 *See id.* § 334.253.
487 *See id.* § 334.082.
488 *Id.* § 335.071(h). Se*e also id.* § 335.0711 (Limits the power to own or acquire real property by eminent domain for districts located in a county with a population of 3.3 million or more).
489 *Id.* § 335.071(a)(4)-(5).

- **Inability to Adopt a Property Tax.** A venue district may not levy an ad valorem (property) tax.[490]
- **Acceptance of Donations.** The district may accept donations.[491]
- **Application of the Public Information Act.** The district is subject to the Public Information Act.[492]
- **Application of the Open Meetings Act.** The district is subject to the Open Meetings Act.[493]
- **Status as Political Subdivision.** A venue district is considered to be a political subdivision of the state and of the cities and counties that created it.[494]
- **Delegation of Project Management.** A venue district may contract with a public or private entity, including a sports team, to develop the venue project or to perform any other action that the district could do under Chapter 335.[495] If such a contract is with a school district, junior college or institution of higher education (as defined in the Education Code), the contract may provide for joint ownership and operation or for joint use of the venue project.[496] However, the district may not contract with another entity to have that entity conduct a district election under Chapter 335.[497]
- **Property Tax Exemption for Venue District Property.** A venue project is exempt from taxation under Section 11.11 of the Tax Code while the venue district owns the project.[498] However, each year the operators of a venue project must pay to a school district an amount equal to the taxes that would have been paid on the unimproved real property if the real property was removed from the school district's property tax rolls.[499] This requirement does not apply if the venue project operator is a political subdivision of the state.
- **Exemption from Competitive Bidding.** Competitive bidding laws do not apply to an approved venue project.[500]
- **Ability to Dispose of Property.** A venue district may acquire or dispose of an interest in property, including a venue project, under the terms and conditions that seem advisable to the district board.[501]
- **Sue and be Sued.** A venue district, through its board, may sue and be sued in any state court in the name of the district.[502]

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490 *Id.* § 335.071(f).
491 *Id.* § 335.071(a)(2).
492 *Id.* §§ 335.023(c), .0725 (Specifying that the Public Information Act applies to district records related to an approved venue project and the revenue used to finance the project).
493 *Id.* § 335.023(b).
494 *Id.* § 335.023(a).
495 *Id.* § 335.071(b).
496 *Id.* § 335.071(c).
497 *Id.* § 335.071(b)(2).
498 *Id.* § 335.074(c).
499 *Id.* § 335.074(d).
500 *Id.* § 335.071(d).
501 *Id.* § 335.071(a)(3).
502 *Id.* § 335.005.

- **Exemption from Construction Contracting Law.** Chapter 2267 of the Government Code does not apply to an approved venue project.[503]

## Establishing the Venue Project Fund

A venue district must establish, by resolution, a "venue project fund."[504] The fund must have a separate account for each of the various revenue sources for the venue project. The district must then deposit the following monies into the fund:[505]

1) the proceeds of any tax imposed by the district under authority of Chapter 335;
2) all revenue from the sale of bonds or other obligations under Chapter 335;
3) money received under Section 335.075 of the Local Government Code from a political subdivision that created the district; and
4) any other money required by law to be deposited into the fund.

A district is not required to deposit money into the venue project fund unless it falls into one of the above four categories. However, if a district wishes to do so, it may also deposit the following monies into the fund:[506]

1) money received from innovative funding concepts such as the sale or lease of luxury boxes or the sale of licenses for personal seats; and
2) any other revenue received by the district from the venue project (e.g., stadium rental payments and revenue from parking and concessions).

Any money deposited into the venue project fund is considered the property of the district that deposited it.[507]

Once funds are deposited into the venue project fund, the money may be used only for the following purposes:[508]

1) paying or reimbursing the costs of planning, acquiring, developing, establishing, constructing, or renovating a venue project in the venue district;
2) paying costs related to bonds and other obligations issued by the district for the project; or
3) paying the costs of operating or maintaining the venue projects.

## Authority to Issue Bonds

Once a venue project is approved by the voters, the venue district may issue bonds and other obligations to pay for the costs of the project.[509] These bonds or other obligations must be

503 *Id.* § 335.077.
504 *Id.* § 335.072.
505 *Id.* § 335.072(b).
506 *Id.* § 335.072(c).
507 *Id.* § 335.072(e).
508 *Id.* § 335.072(d).

payable from and secured by the revenues in the venue project fund and must mature within 30 years of the date on which they are issued. Additionally, any such obligations must be approved by the Public Finance Division of the Attorney General's office. Bonds or other obligations issued under Chapter 335 are not a debt of the venue district. Such obligations do not create a claim against district tax revenue or property other than against the revenue sources that are specifically pledged and the venue project for which the bonds are issued.

It is important to note that a venue district has the authority to issue short-term obligations and enter into credit agreements under Chapter 1371 of the Government Code. For purposes of that statute, a district is considered to be a "public utility" and an approved venue project is an "eligible project."

## Contributions from Other Political Subdivisions

If a political subdivision receives sales tax revenue from businesses operating in a venue project sponsored by a venue district, the political subdivision may voluntarily contribute part or all of those sales tax revenues to the venue district.[510] To contribute sales tax revenue to the district, the governing body of the political subdivision must find that the venue project which generated the sales tax will add to the economic, cultural or recreational development or well-being of the political subdivision's residents. Additionally, if the sales tax revenue is contributed to assist the district in securing debt that was issued to fund a venue project, then such contributions must stop as soon as the debt is paid off. As with tax money raised by the venue district, sales tax contributions from other political subdivisions must be deposited into the venue project fund. However, such contributions from a political subdivision are not considered to be methods of financing of the district and thus appear not to need voters' approval.[511]

## Pledge of Existing City Sales Tax Revenue for Venue Projects

A city may pledge up to 25 percent of its existing sales tax to pay off debt issued for one or more venue projects located in the city.[512] Section 321.508 of the Tax Code is separate from and in addition to any authority a city may have under Chapters 334 or 335 of the Local Government Code. The term "venue project" has the same definition as it does in Chapter 334 of the Local Government Code.[513]

The only types of sales tax that may be pledged for a venue project are the general city sales tax ("municipal sales and use tax") and the sales tax for property tax relief ("additional municipal sales and use tax").[514] A city may pledge its sales tax only if it is approved by the voters at an

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509 *Id.* § 335.073 (Note that if a district is created in Harris County and the City of Houston, then any bonds or other obligations issued by the district are subject to prior approval by Harris County and the City of Houston).

510 *Id.* § 335.075.

511 *Id.* § 335.075(d) (States that such contributions are not to be considered a "method of financing" for purposes of Subchapter D of Chapter 335. That subchapter (Section 335.051) requires that the voters approve all the Chapter 335 "methods of financing" used by a venue district).

512 Tex. Tax Code § 321.508.

513 *Id.* § 321.508(g) (Referring to the definition of sport and community venue project as defined by Section 334.001(1) of the Local Government Code).

514 *Id.* § 321.508(a).

election held on this issue. The ballot at this election must be printed to allow voting for or against the following proposition:[515]

> **Authorizing the City of (*insert name of city*) to pledge not more than (*insert percentage of sales tax to be pledged*) percent of the revenue received from the (*insert "municipal sales and use tax," "additional municipal sales and use tax," or both*) previously adopted in the city to the payment of obligations issued to pay all or part of the costs of *(insert description of each venue project*).**

If the voters approve the pledge of the sales tax, the city may issue bonds and other forms of debt that are payable from and secured by the pledged sales tax revenue.[516] The money from this debt may be used only to pay for the costs of the venue projects described in the ballot proposition. This pledge of the sales tax continues only until the debt is paid off.[517] The city may direct the comptroller to deposit the pledged money into a trust or account as required by the terms of the debt.[518]

## Dissolution of Certain Venue Districts

Venue districts wholly located in a county with a population of less than 15,000 may be dissolved by the governing body of each political subdivision that created the district.[519] Each of the governing bodies would adopt a concurrent order dissolving the venue district. Once the district is dissolved, the assets and liabilities of the venue district would be transferred to the county in which the district was located. After the county has paid all the districts liabilities, the county shall use the remaining assets for an approved venue project of the county.

515 *Id.* § 321.508(b).
516 *Id.* § 321.508(c).
517 *Id.* § 321.508(d).
518 *Id.* § 321.508(e).
519 Tex. Loc. Gov't Code §§ 335.151 - .153.

# III. Local Property Tax Incentives

## Property Tax Abatement

Local governments often use tax abatements to attract new industry and commercial enterprises and to encourage the retention and development of existing businesses. In 2019, the Texas Legislature re-authorized local governments to continue using property tax abatements until September 1, 2029.[520] The statutes governing tax abatement are located in Chapter 312 of the Tax Code.

Incorporated cities, counties, and special districts are allowed to enter into tax abatement agreements. However, school districts may not enter into tax abatement agreements under Chapter 312 of the Tax Code.[521] Instead, a school district's ability to limit appraised values on certain property is found in the Texas Economic Development Act, Chapter 313 of the Tax Code.[522]

Whether a city or a county may initiate a tax abatement agreement depends upon the location of the property that would be subject to the tax abatement.[523] If the property subject to abatement is located within the city limits, the city would be the lead party in the tax abatement. If the property to be abated is located within the extraterritorial jurisdiction (ETJ) of the city, either the city or the county may serve as the lead party. If the property is located outside the city's boundaries and outside the city's ETJ, the county must serve as the lead party for tax abatement.

Tax abatement involves six steps for any participating taxing unit:

**Step One:**

***Each taxing unit that wants to consider tax abatement proposals must adopt a resolution indicating its intent to participate in tax abatement.[524]***

The resolution can be a mere statement indicating the local government's "intent" to consider providing tax abatements. The resolution does not bind the government to grant approval of any proposed agreements. The resolution must be adopted at an open meeting

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520 Tex. Tax Code § 312.006.

521 *Id.* § 312.002(f).

522 *Id.* Ch. 313. The 83rd Legislature amended the Texas Economic Development Act to, among other things:

- Extend the expiration date of the Act from December 31, 2014 to December 31, 2024
- Eliminate the subchapter on school tax credits
- Change the definition of "qualified investment" and "qualified job"
- Require certain conditions before the comptroller can issue a certificate of limitation
- Establishes a 'Texas Priority Project' for qualified investments of at least $1 billion
- Modifies the content of economic evaluation reports compiled by the comptroller
- Broadens what constitutes a "strategic investment area"

H.B. 3390 (83rd R.S.)(2013)

523 *See id*. §§ 312.204, .206, .401.

524 *Id.* § 312.002(a).

by a simple majority vote of the taxing unit's governing body. If the entity is a home rule city, it is possible that the city's charter may require more than a simple majority for approval for the abatement.

**Step Two:**

***Each taxing unit must adopt tax abatement guidelines and criteria.***[525]

The guidelines and criteria are a set of conditions that any tax abatement proposal must meet in order to be eligible for tax abatement by the involved taxing unit. Some taxing units adopt very general guidelines and criteria in order to have flexibility in the types of proposals they may consider. Other local governments prefer to include very specific criteria that must be met in order to limit the number of requests for tax abatement.

The guidelines and criteria are effective for a period of two years.[526] They must provide for the availability of tax abatement to both new facilities and structures and for the expansion or modernization of existing facilities and structures.[527] Before the governing body of a taxing unit adopts, amends, repeals or reauthorizes its guidelines and criteria, the governing body must hold a public hearing regarding the guidelines and criteria.[528] The guidelines and criteria may be amended or repealed only by a favorable vote of three-fourths of the members of the governing body.[529] However, it is important to note that these guidelines do not limit a governing body's discretion to choose whether or not to enter into any particular abatement agreement, and they do not give any person a legal right to require the governing body to consider or grant a specific application for tax abatement.[530] Further, the guidelines and criteria adopted by a county may include a requirement of a tax abatement application fee not to exceed $1000.[531]

Each taxing unit may have a different set of guidelines and criteria that it adopts. The current version of those guidelines and criteria are required to be posted on the taxing unit's website if the taxing unit maintains a website.[532] However, local governments such as the city, county, and other districts frequently will adopt similar (and sometimes identical) guidelines and criteria to make participation in tax abatement more convenient for businesses. The comptroller's office acts as the state registry for all tax abatement documents.[533]

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525 *Id.*
526 *Id.* § 312.002(c).
527 *Id.* § 312.002(a).
528 *Id*. § 312.002(c-1).
529 *Id*. § 312.002(c).
530 *Id.* § 312.002(d)(1), (3).
531 *Id.* § 312.002(e).
532 *Id*. § 312.002(c-2).
533 *Id.* § 312.005(a). *See* Biennial Registries of Reinvestment Zones for Tax Abatements and Tax Increment Financing 2018, published by Texas Comptroller of Public Accounts.

**Step Three:**

***After holding a public hearing and providing notice, the taxing unit that is the lead party in the tax abatement must designate an area as a "reinvestment zone."***[534]

Incorporated cities or towns may designate reinvestment zones only within the city limits or within the city's ETJ.[535] The designation of the reinvestment zone by a city must be made by ordinance.[536] A county may designate a reinvestment zone only within an area outside the taxing jurisdiction of an incorporated city, and must make such a designation by order.[537] Special districts and appraisal districts are not authorized to designate reinvestment zones.[538] Only one taxing unit (city or county) needs to designate a reinvestment zone.

School districts may designate reinvestment zones only when the area is entirely within the territory of the school district for purposes of Subchapter B or C of Chapter 313 of the Tax Code.[539] This authority supersedes any tax abatement restrictions placed on school districts by other sections of Chapter 312 of the Tax Code. Since a school district may designate a reinvestment zone only for the purposes of Chapter 313 of the Tax Code, a city or county may not use a school district-designated reinvestment zone to offer a tax abatement to a property owner. However, a school district may use a reinvestment zone designated by a city or county.[540]

The designation of the reinvestment zone must be preceded by a public hearing. Seven days' written notice of the hearing must be given to the presiding officer of each of the other taxing units that has taxing jurisdiction over real property within the zone.[541] Notice of the hearing must also be published at least seven days before the hearing in a newspaper of general circulation in the city.[542] There is no statutorily required wording that must be used for either of the above notices.

At the public hearing on the reinvestment zone, the governing body that is designating the reinvestment zone (city, county, or school district) must make several findings. First, the governing body must find that the improvements sought are feasible and practical and would be a benefit to the zone after the expiration of the tax abatement agreement.[543] Additionally, the governing body must find that the zone meets one of the applicable criteria for reinvestment zones.[544] The criterion usually cited is that the designation of the zone is reasonably likely to contribute to the retention or expansion of primary

534 Tex. Tax Code § 312.201.
535 *Id.* § 312.201(a).
536 *Id.*
537 *Id.* § 312.401(a).
538 *Id.* § 312.002(g).
539 *Id.* § 312.0025.
540 *See id*. § 313.021(2)(A)(i).
541 *Id.* §§ 312.201(d)(2), .401(b).
542 *Id.* §§ 312.201(d)(1), .401(b).
543 *Id.* § 312.201(d).
544 *Id*. § 312.202.

employment or to attract major investment to the zone. The above findings should be approved by the governing body at an open meeting and should be noted in the minutes for that meeting.

If a zone includes several properties, each property owner has a right to ask for the same terms in any tax abatement agreement that is executed. The taxing unit is not obligated to grant a tax abatement to the property owner. However, if a tax abatement is provided, it must be on, at least, the same terms (number of years and percentage of abatement) as the other agreements within that zone.[545] Some taxing units make the boundaries of the zone contiguous with the property that is subject to the tax abatement. By limiting the zone to the involved property, the taxing unit is not obligated to use the same terms or percentage of tax abatement for other properties that are located outside of the zone. A larger reinvestment zone is often adopted by a taxing unit that wants to target a particular area of the city or of the county for development.

A reinvestment zone may be almost any shape or size. However, the attorney general has concluded that such a zone must be contiguous and must include some portion of the earth's surface. For instance, a tax abatement reinvestment zone cannot be confined to one floor of a multistory building.[546] Also, whatever shape and size a reinvestment zone does finally take, once the zone is officially designated there is no authority to modify its boundaries.

Any interested person is entitled to speak and present evidence for or against the designation of a reinvestment zone at the public hearing.[547] If the zone designation is approved, the designation lasts for five years and may be renewed for successive periods of up to five years.[548] The term of a tax abatement agreement may continue for up to 10 years, even if the reinvestment zone is not renewed after the initial five-year term.[549]

It should be noted that designation of an area as an enterprise zone under the Texas Enterprise Zone Act (Government Code Chapter 2303) would also constitute designation of the area as a reinvestment zone.[550] Reinvestment zones that are enterprise zones are effective for the duration of the enterprise zone (seven years). Participants would still need to execute the tax abatement agreement according to the rest of the administrative requirements contained in chapter 312 of the Tax Code (outlined below).

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545 *Id.* § 312.204(b).

546 Tex. Att'y Gen. Op. No. DM-456 (1997) (A county is not authorized to amend a Tax Code Chapter 312 tax abatement agreement by deleting land from an existing reinvestment zone. A county reinvestment zone under chapter 312 must be contiguous and may not consist of only a portion of a building. The Texas Legislature intended to leave the substance of criteria for tax abatement agreements to the discretion of each county commissioners court, subject to very general constraints and certain specific limitations imposed by Chapter 312).

547 Tex. Tax Code. §§ 312.201(d), .401(b).

548 *Id.* §§ 312.203, .401(c).

549 *Id.* §§ 312.203, .204(a), .401(c), .402(a-2).

550 *Id.* §§ 312.2011, .4011.

**Step Four:**

***At least seven days before the lead taxing unit grants a tax abatement, it must deliver written notice of its intent to enter into the agreement to the presiding officer of each of the other taxing units in which the property is located. The notice must include a copy of the proposed tax abatement agreement.***[551]

A tax abatement agreement may exempt from taxation all or part of the increase in the value of the real property for each year covered by the agreement.[552] The agreement may be for a period not to exceed 10 years.[553] There is a trend toward tax abatements with shorter time periods. While the median time frame for tax abatement agreements has historically been seven years, many new tax abatement agreements are for terms of three to five years.

A provision authorized by the Texas Legislature in 2009 allows a taxing unit and a property owner to defer the beginning of the abatement period until a date in the future other than the January following the execution of the agreement. The duration of the abatement period still may not exceed 10 years.[554]

The tax abatement must be conditioned on the property owner making specific improvements or repairs to the property,[555] and only the increase in the value of the property may be exempted. The real property's current value may not be exempted. The current value of real property is the taxable value of the real property and of any fixed improvements as of January 1 of the year in which the tax abatement agreement is executed. For example, consider a business that has a property site valued at $500,000 as of January 1 of the year of the tax abatement agreement. If the business agrees to significantly enlarge the facility, resulting in its valuation increasing to $800,000, the taxing units may abate from taxation up to $300,000 of the property value (the portion of the value that exceeds the base value of $500,000).

Property within the zone that is owned or leased by a member of the governing body of the city or by a member of a zoning or planning board or commission of the city is not eligible for tax abatement.[556] However, if the property owner's property is subject to a tax abatement agreement when the owner becomes a member of the governing body or zoning or planning commission, the property owner would not lose the benefit of the tax abatement agreement due to the person's new membership on the governing body, board

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551 *Id*. § 312.2041.

552 *Id.* §§ 312.204(a), .402(a), (a-1), (a-2).

553 *Id.* §§ 312.204(a), .402(a-2). *See also* Tex. Att'y Gen. Op. No. JC-133 (1999).

554 Tex. Tax Code § 312.007(b).

555 *Id.* §§ 312.204(a), .402(a-2). *See also* Tex. Att'y Gen. Op. No. JC-106 (1999) (The movement of a structure from one location on a piece of property in a reinvestment zone to another location on the property may constitute a "specific improvement or repair" to the property for purposes of a tax abatement agreement under Property Redevelopment and Tax Abatement Act, chapter 312 of the Tax Code, if it improves or repairs the property in the ordinary sense and if the improvement or repair is consistent with the purpose of the reinvestment zone designation).

556 Tex. Tax Code § 312.204(d). *See also* Tex. Att'y Gen. Op. No. GA-0600 (2008).

or commission.[557] Similarly under Section 312.402(d) of the Tax Code, property owned or leased by a member of the commissioners court may not be subject to a tax abatement agreement by a county. But again, should the property owner become a member of the county commissioners court, the member would not lose the benefit of a tax abatement agreement already in effect due to the person's new membership on the commissioners court.[558] The tax abatement laws do not address similar conflicts with other taxing entities. However, regardless of what taxing unit is involved, a attorney general's opinion indicates that the Tax Code does not preclude a governing body from entering into a tax abatement agreement with a corporation merely because a member of the governing body owns a very small percentage of shares in that corporation.[559] If a governing body is considering granting a tax abatement to a corporation in which one of the governing body's members has a financial interest, the governing body will want to consult with legal counsel regarding the possible application of these and other laws.

The tax abatement agreement may also abate all or part of the value of tangible personal property (including inventory or supplies)[560] that is brought onto the site after the execution of the tax abatement agreement. A taxing unit may not abate the value of personal property that was already located on the real property at any time before the period covered by the tax abatement agreement.[561] The abatement for personal property cannot be for a term that exceeds 10 years. A 2005 attorney general's opinion found that a prior tax abatement agreement concerning specific property does not preclude a municipality from agreeing to abate taxes on different business personal property at the same location.[562]

Certain information provided by a property owner regarding a request for tax abatement is considered confidential for a limited time period.[563] The confidentiality of the information continues until the tax abatement agreement is executed. This confidentiality may be, and often is, waived by the mutual consent of both the taxing unit and the property owner.

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557 Tex. Tax Code § 312.204(d).

558 *Id.* § 312.402(d).

559 Tex. Att'y Gen. LO-98-001 (Tax Code Section 312.402(d) does not preclude a commissioners court from entering into a tax abatement agreement with a corporation merely because a commissioners court member owns a very small percentage of shares in the corporation or the corporation's parent or because a commissioners court member invests in the corporation by way of a mutual fund).

560 Tex. Tax Code §§ 312.204(a), .402(a)..

561 *Id.* §§ 312.204(a), .402(a-2).

562 Tex. Att'y Gen. Op. No. GA-304 (2005).

563 Tex. Tax Code § 312.003; Tex. Att'y Gen. OR2014-06964 (2014)(concluding that the confidentiality of the information is limited to proprietary aspects of the property owner's prospective business, not all records related to the agreements).

**Step Five:**

***To adopt the tax abatement agreement, the taxing unit must approve the agreement by a majority vote of its governing body at its regularly scheduled meeting.[564]***

It is important to note that the approval of the agreement by the taxing unit must occur at a "regularly scheduled meeting." The statute does not define the term "regularly scheduled meeting." It may be advisable to schedule the adoption of an agreement only at a regular meeting of the governmental body (not specially called or emergency meetings.)

In the public notice of a regularly scheduled meeting where a city or other taxing unit will consider the approval of a tax abatement agreement with a property owner, the notice must contain:

1. The name of the property owner and the name of the applicant for the tax abatement;
2. The name and location of the reinvestment zone in which the property subject to the agreement is located;
3. A general description of the nature of the improvements or repairs included in the agreement; and
4. The estimated cost of the improvements or repairs.[565]

This public notice of a regularly scheduled meeting must follow the requirements of the Open Meeting Act except instead of the public notice being posted 72 hours before the meeting, the public notice must be posted at least 30 days before the schedule time of the meeting.[566]

At the meeting to consider approval of the tax abatement agreement, the governing body of the taxing unit must make a finding that the terms of the agreement and the property subject to the agreement meet the applicable guidelines and criteria.[567] Upon approval of the agreement by the governing body, the agreement is executed in the same manner as other contracts entered into by the applicable taxing unit.[568]

Section 312.205(a) of the Tax Code sets out certain mandatory provisions for a tax abatement agreement. A tax abatement agreement must:

- list the kind, number and location of all proposed improvements to the property;

[564] *Id.* § 312.207.
[565] *Id*. § 312.207(c).
[566] *Id*. § 312.207(d).
[567] *Id.* § 312.002(b).
[568] *Id*. § 312.207(b).

- provide access to and authorize inspection of the property by the taxing unit to ensure compliance with the agreement;
- limit the use of the property consistent with the taxing unit's development goals;
- provide for recapturing property tax revenues that are lost if the owner fails to make the improvements as provided by the agreement;
- include each term that was agreed upon with the property owner;
- require the owner to annually certify compliance with the terms of the agreement to each taxing unit; and
- allow the taxing unit to cancel or modify the agreement at any time if the property owner fails to comply with the terms of the agreement.[569]

Section 312.205(b) of the Tax Code contains a list of optional provisions that may be included in the abatement agreement including a tax revenue recapture provision. The lead entity executing the agreement may want to incorporate any desired provisions from this list and include any other provisions that may be beneficial.

In 2017, legislation passed that prohibits a city or county from entering into a tax abatement agreement with the owner or lessee of property located wholly or partly in a reinvestment zone if, on or after September 1, 2017, a wind-powered energy device is installed or constructed on the same parcel of real property at a location that is within 25 nautical miles of the boundaries of a military aviation facility in the state.[570] The prohibition does not apply if the wind-powered energy device is installed or constructed as part of an expansion or repowering of an existing project.[571]

**Step Six:**

***The other taxing units may enter into an abatement agreement or choose not to provide an abatement. There is no penalty for choosing not to abate.[572]***

As mentioned earlier, if the property subject to abatement is located within the city limits, the city must be the lead party in the tax abatement. If the property to be abated is located within the ETJ of the city, either the city or the county may serve as the lead party. If the property is located outside the city's boundaries and outside the city's ETJ, the county must serve as the lead party for tax abatement.

Should a city execute a tax abatement agreement pertaining to property located within the city, the remaining taxing units may execute a written tax abatement agreement. There is no deadline for the remaining taxing units to execute their tax abatement agreement.[573]

569 *See id*. § 312.205 (Section 312.402(a-2) governs county tax abatement agreements).
570 *Id*. § 312.0021
571 *Id*.
572 *Id.* §§ 312.206(a), .402(b).
573 *Id.* § 312.206(a).

Each taxing unit may adopt a tax abatement agreement with terms that differ from the agreement adopted by the city.[574]

A county may be the first taxing entity to grant a tax abatement only if the property was located outside of the taxing jurisdiction of an incorporated city or town.[575] If the county is the first to adopt the abatement, the other eligible taxing units may either grant a tax abatement agreement or choose not to participate in the tax abatement.[576] Again, there is no deadline for the other taxing units to execute their abatement agreement. Further, the other taxing units have the option of granting a tax abatement with terms that differ from the abatement granted by the county.[577] If the county grants a tax abatement in a county reinvestment zone, then the tax abatement agreement must be approved by the county or other taxing unit in the same manner that a city is required to authorize its tax abatement agreement.[578]

If a property subject to abatement is located within the ETJ of the city, once the city or the county designates the reinvestment zone, any taxing unit may initiate a tax abatement agreement.[579] If the city adopts a tax abatement agreement in its ETJ, the agreement takes effect upon the later annexation of the property by the city.[580] If a city designates a reinvestment zone that includes property within the ETJ of the city, but does not execute an abatement agreement, the governing bodies of the other taxing units (the county and certain special districts) may initiate a tax abatement agreement.[581] The terms of the agreement do not have to be identical to the terms of a municipal agreement.[582] Further, a taxing unit may execute an agreement even if the city does not execute an agreement for the property. However, if the governing body of another eligible taxing unit has previously executed as agreement to exempt all or part of the value of the property and that agreement is still in effect, the terms of the subsequent agreement relating to the share of the property that is to be exempt in each year that the existing agreement remains in effect must be identical to those of the existing agreement.

A county commissioners court may, but is not required to, enter into a tax abatement agreement on behalf of a district that by statute has its tax rate set or levied by the county.[583] Before the county may enter into an agreement on behalf of such a district, the county itself must have entered into a tax abatement agreement for the same property.

574 *Id.* (" . . .The agreement is not required to contain terms identical to those contained in the agreement with the municipality. . .").
575 *Id.* § 312.401(a).
576 *Id.* §§ 312.206(a), .402(b).
577 *Id*.
578 *Id*. § 312.404. *See id*. § 312.207 (approval of agreement by city and other taxing units when city creates the reinvestment zone).
579 *Id*. § 312.206(c).
580 *Id.* § 312.204(c).
581 *Id*. § 312.206(c).
582 *Id.*
583 *Id.* § 312.004(a).

However, the agreement on behalf of the district need not contain the same terms as the agreement entered into by the county.

The chief appraiser of each appraisal district that appraises property for a taxing unit that has designated a reinvestment zone or has executed a tax abatement agreement must deliver to the comptroller's office a report describing the zone, its size, types of property located on it, its duration, the guidelines and criteria, terms of any abatement agreements, and any other information required by the comptroller.[584] Also, to be sent to the comptroller is a copy of the resolution or order designating the reinvestment zone and a copy of the executed tax abatement. These reports must be submitted by June 30 of the year following the designation of a zone or the execution of a tax abatement agreement. To facilitate the required reporting process, the comptroller's office has standard reporting forms that can be used to remit this information.

The taxing units will also want to advise any property owner who is given an abatement to be timely in filing an exemption application for the tax abatement each year with the appraisal district. An application must be filed by April 30 for each tax year that the abatement is in effect.[585]

## School Districts

A school district may not enter into a tax abatement agreement under chapter 312 of the Tax Code.[586] A school district's ability to limit appraised property values is governed by the Texas Economic Development Act found in Chapter 313 of the Tax Code.[587]

## Owners & Lessees of Real Property and Tax Abatement Agreements

Certain eligible taxing units may enter into a tax abatement agreement with the owner of taxable real property, the owner of a leasehold interest on tax exempt real property, or lessees of taxable real property. [588]

### Cities, Owners of Real Property, Owners of Leasehold Interest in Real Property and Lessees of Real Property

Cities are eligible to enter into a tax abatement agreement with the owner of taxable real property that is located in a reinvestment zone, but that is not in an improvement project that is financed by tax increment bonds.[589] The tax exemption can include a portion of:

- the real property's value,
- the tangible personal property's value that is located on the real property, or

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584 *Id.* § 312.005(a)(1)-(3).
585 *Id.* § 11.43(d).
586 *Id.* § 312.002(f).
587 *Id.* Ch. 313.
588 *Id*. §§ 312.204(a), .402 (a), (a-1), (a-3). *See also* Tex. Att'y Gen. Op. No. GA-0600 (2008).
589 Tex. Tax Code. § 312.204(a).

- both.[590]

The tax abatement agreement cannot exceed 10 years and the owner of the property must make specific improvements or repairs to the property.

Also, cities are eligible to enter into a tax abatement agreement with the owner of a leasehold interest in tax-exempt real property that is located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds.[591] The tax exemption includes a portion of the value of property subject to ad valorem (property) taxes, including leasehold interest, improvements, or tangible personal property located on the real property. As above, the tax abatement cannot exceed 10 years and the owner of the leasehold interest must make specific improvements or repairs to the real property.

Cities are not eligible to enter into a tax abatement agreement with lessees of taxable real property.

**Counties, Owners of Real Property, Owners of Leasehold Interest in Real Property and Lessees of Real Property**

Counties, like cities, are eligible to enter into a tax agreement with the owner of taxable real property that is located in a reinvestment zone.[592] The tax exemption can include a portion of:

- the real property's value,
- the tangible personal property's value that is located on the real property, or
- both.[593]

The tax abatement agreement cannot exceed 10 years and the owner of the property must make specific improvements or repairs to the property.[594] If the property owner fails to make those improvements, the taxing authority may bring suit to enforce the agreement. These lawsuits are not barred by the four year statute of limitations relating to lawsuits on the collection of delinquent taxes by Section 33.05(A)(1) of the Tax Code, but are evaluated by courts on a traditional breach of contract analysis.[595]

Also, counties are eligible to enter into a tax abatement agreement with the owner of a leasehold interest in tax-exempt real property that is located in a reinvestment zone.[596]

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590 *Id*.
591 *Id.*
592 *Id.* § 312.402(a).
593 *Id.*
594 *Id*. § 312.402(a-2) (This section states that the execution, duration and other terms of an agreement entered into under this section are governed by the provisions of Sections 312.204, 312.205, and 312.211).
595 *See Stanley Works v. Wichita Falls Indep. School Dist.*, 366 S.W.3d 816, 822-824 (Tex. App.— El Paso 2012)(pet. denied).
596 *Id.* § 312.402(a-1).

The tax exemption includes a portion of the value of property subject to ad valorem (property) taxes, including leasehold interest, improvements, or tangible personal property located on the real property.[597] As above, the tax abatement cannot exceed 10 years and the owner of the leasehold interest must make specific improvements or repairs to the real property.

Counties, unlike cities, are eligible to enter into a tax abatement agreement with the lessee of taxable real property located in a reinvestment zone.[598] The tax exemption can include:

- all or a portion of the value of the fixtures, improvements, or other real property owned by the lessee and located on the property that is subject to the lease,
- all or portion of the value of tangible personal property owned by the lessee and located on the real property that is the subject of the lease, or
- all or a portion of the value of both the fixtures, improvements, or other real property and the tangible personal property owned by the lessee and located on the property that is subject to the lease.[599]

Again, the tax abatement cannot exceed 10 years and the lessee of taxable real property must make specific improvements or repairs to the real property.[600]

### Tangible Personal Property Located on Real Property

Both cities and counties are eligible to enter into a tax abatement agreement concerning tangible personal property located on real property. Cities can enter a tax abatement concerning tangible personal property located on taxable or tax-exempt real property.[601] Also, counties can enter a tax abatement with the owner of tangible personal property located on real property in a reinvestment zone, the owner of tangible personal property or an improvement located on tax-exempt real property.[602] Cities and counties need to follow all the same procedures for giving a tax abatement agreement for tangible personal property that they would with a tax abatement agreement for real property.

## Special Tax Abatement Provisions to Encourage Voluntary Cleanup

Section 312.211 of the Tax Code allows a special type of tax abatement when a property owner voluntarily agrees to clean up contaminated property. In order to qualify for this special treatment, a property must meet all of the following criteria:[603]

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597 *Id.* § 312.402(a-2).
598 *Id.* § 312.402(a-3).
599 *Id.*
600 *Id.* § 312.402(a-2).
601 *Id.* § 312.204(a).
602 *Id*. §§ 312.402(a), (a-1).
603 Tex. Tax Code § 312.211(a).

- The real property must be located in a reinvestment zone;
- The real property cannot be an improvement project financed by tax increment bonds; and
- The real property must be subject to a voluntary cleanup agreement under Section 361.606 of the Health and Safety Code.

This tax abatement agreement may also include tangible personal property located on the real property described above.[604]

There are several important differences between the traditional tax abatement and Section 312.211 voluntary cleanup tax abatement. Unlike regular tax abatement, the city or county may abate more than just the increase in value that takes place after the abatement agreement is signed. If a voluntary cleanup property meets the above criteria, a city or county may agree to abate up to 100% of the total value of the property during the first year of the agreement. During the second year of the agreement, a city or county may agree to abate up to 75% of the property's total value. Up to 50% of the property's total value may be abated in the third year and up to 25% in the fourth year.[605] In other words, the tax abatement may include abatement of not only the increase in value, but also a percentage of the original value of the property.

Also in contrast to regular tax abatement, an agreement under this section may not last longer than four years.[606] Finally, a city or county must establish guidelines for a Section 312.211 tax abatement that are separate from the city's guidelines for a traditional tax abatement. Unlike the guidelines that a city or county must establish for regular tax abatements, the guidelines for a Section 312.211 tax abatement are not required to make tax abatement available for both new facilities and for the expansion or modernization of existing facilities.[607] Rather, the guidelines for a Section 312.211 tax abatement must base the granting of a tax abatement on successful cleanup of the property involved.

In order for an agreement under Section 312.211 to take effect, the property owner must first receive a certificate of completion for the property under Section 361.609 of the Health and Safety Code.[608] The city or county may cancel or modify an agreement under Section 312.211 if the use of the land changes from what was specified in the certificate of completion and the city or county determines that the new use may result in an increased risk to human health or to the environment.[609] If a city or county enters into an abatement agreement under Section 312.211, the city or county may not simultaneously

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604 *Id*. § 312.211(a)(2).

605 *Id.* §§ 312.211(b), .402(a-2). *See* Tex. Health & Safety Code § 361.609 (For requirements for a certificate of completion).

606 Tex. Tax Code § 312.211(b).

607 *Id.* § 312.002(a).

608 *Id.* § 312.211(b).

609 *Id.* §§ 312.211(f), .401(a-2).

enter into a regular tax abatement agreement for the same property.[610] School districts may not enter into a tax abatement agreement under Section 312.211.[611]

Before the property owner may receive a voluntary cleanup tax abatement, he or she must submit a copy of the certificate of completion to the chief appraiser of the appraisal district where the property is located.[612] The certificate should be submitted to the chief appraiser with an application for an exemption under Section 11.28 of the Tax Code. The abatement agreement takes effect on January 1st of the next tax year after the certificate is received by the chief appraiser. Once the proper certificate is submitted, the property owner will not need to submit it again each year.[613] Of course, the appraisal district can approve a tax exemption for a tax abatement only if the local governments have already approved the abatement by vote of their governing bodies.

In all other respects, a tax abatement under Section 312.211 of the Tax Code functions like any other tax abatement. For instance, all the normal public hearing and notice requirements apply to a reinvestment zone and to a tax abatement established under this section.[614] Other taxing units, with the exception of school districts, may join in the Section 312.211 abatement subject to the same procedural rules as apply to a regular abatement.[615] Also, the terms of such an abatement are subject to the same general rules as are the terms of a regular tax abatement.[616] Those terms must include a recapture provision, list the proposed improvements to the property, and provide access to the property so that city employees, among others, may ensure compliance.[617] Counties may initiate a Section 312.211 abatement in the same areas where they may initiate a regular tax abatement.[618]

## Tax Increment Financing

Tax increment financing is a tool that local governments can use to publicly finance needed structural improvements and enhanced infrastructure within a defined area. These improvements usually are undertaken to promote the viability of existing businesses and to attract new commercial enterprises to the area. The statutes governing tax increment financing are located in Chapter 311 of the Tax Code.

The cost of improvements to the area is repaid by the contribution of future tax revenues by each taxing unit that levies taxes against the property. Specifically, each taxing unit can choose to dedicate all, a portion, or none of the tax revenue that is attributable to the

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610 *Id.* §§ 312.211(g), .401(a-2).
611 *Id.* § 312.211(h). *See also id.* § 312.002(f).
612 *Id.* § 312.211(c).
613 *Id.* § 312.211(d).
614 *Id.* § 312.201.
615 *Id.* § 312.206(a).
616 *Id.* § 312.211(g).
617 *Id.* § 312.205(a).
618 *Id.* § 312.402.

increase in property values due to the improvements within the reinvestment zone. The additional incremental tax revenue that is received from the affected properties is referred to as the tax increment. Each taxing unit determines what percentage of its tax increment, if any, it will commit to repayment of the cost of financing the public improvements. In addition, the governing body of a city may determine, in an ordinance designating an area as a reinvestment zone or in an ordinance adopted subsequent to the designation of a zone, the portion or amount of tax increment generated from municipal sales and use taxes attributable to the zone, above the sales tax base, to be deposited into the tax increment fund.[619]

Tax increment financing may be initiated only by a city or county.[620] Once a city or county has begun the process of establishing a tax increment financing reinvestment zone, other taxing units are allowed to consider participating in the tax increment financing agreement.[621]

Cities and counties may exercise any power that is necessary to carry out tax increment financing.[622] They may acquire real property through purchase or condemnation, or other means, enter into necessary agreements, and construct or enhance public works facilities and other public improvements.[623] In addition, cities and counties may sell real property on the terms and conditions and in the manner they consider advisable to implement the project plan.[624]The power for cities and counties to acquire and sell real property prevails over any law or municipal charter to the contrary.[625] The use of tax increment financing for improvements to educational facilities in a city is prohibited unless those facilities are located in a reinvestment zone created on or before September 1, 1999.[626] However, the cost of school buildings, other educational buildings, other educational facilities, or other buildings owned by or on behalf of a school district, community college district, or other political subdivision of the state is part of the definition of project costs.[627]

619 Tex. Tax Code § 311.0123(b).
620 *Id.* § 311.003 . *But see* Tex. Const. art VIII § 1-g(b).
621 Tex. Tax Code § 311.013(f).
622 *Id.* § 311.008(b).
623 *Id.* § 311.008(b)(2).
624 *Id.*
625 *Id.* § 311.008(c).
626 *Id.* § 311.008(b)(4)(C).
627 *Id*. § 311.002(1)(K). *Compare* § 311.008(b)(4)(C), "A municipality or count may exercise any power necessary and convenient to carry out [Chapter 311 of the Tax Code], including the power to[,] consistent with the project plan for the zone[,] in a reinvestment zone created on or before September 1, 1999, *acquire, construct, or reconstruct education facilities*[.]" *to* § 311.002(1)(K) which defined "project cost" to include "the costs of school buildings, other educational buildings, other educational facilities, or other buildings owned by or on behalf of a school district, community college district, or political subdivision of this state[.] (emphasis added).

## Initiating the Process

As mentioned above, tax increment financing may be initiated only by a city or county. An area may be considered for tax increment financing only if it meets at least one of the following criteria:[628]

- The area's present condition must substantially impair the city or county's growth, retard the provision of housing, or constitute an economic or social liability to the public health, safety, morals or welfare. Further, this condition must exist because of the presence of one or more of the following conditions:
    - a substantial number of substandard or deteriorating structures,
    - inadequate sidewalks or street layout,
    - faulty lot layouts,
    - unsanitary or unsafe conditions,
    - deterioration of site or other improvements,
    - a tax or special assessment delinquency that exceeds the fair market value of the land,
    - defective or unusual conditions of title,
    - conditions that endanger life or property by fire or other cause, or,
    - if the city has a population of 100,000 or more, structures (which are not single-family residences) in which less than 10 percent of the square footage has been used for commercial, industrial, or residential purposes during the preceding 12 years;
- The area is predominantly open or undeveloped and, because of obsolete platting, deteriorating structures or other factors, it substantially impairs the growth of the city or county;
- The area is in or adjacent to a "federally assisted new community" as defined under Tax Code Section 311.005(b); or
- The area is described in a petition requesting that the area be designated as a reinvestment zone. The petition must be submitted by the owners of property constituting at least 50 percent of the appraised property value within the proposed zone.

In addition, if the proposed project plan for a potential zone includes the use of land in the zone in connection with the operation of an existing or proposed regional commuter

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628 *Id.* § 311.005(a). *See* Tex. Att'y Gen. Op. No. GA-0514 (2007) (A city may not designate an area as a reinvestment zone under Tax Code Section 311.005(a)(5) unless the area is "unproductive, underdeveloped, or blighted" within the meaning of article VIII, section 1-g(b) of the Texas Constitution, even if the area's plan of tax increment financing does not include issuance of bonds or notes.).

or mass transit rail system, or for a structure or facility that is necessary, useful, or beneficial to such a regional rail system, the governing body of a city may designate an area as a reinvestment zone.[629]

Within developed areas of the city or county, the criterion usually cited to justify a reinvestment zone is that the area's present condition substantially impairs the local government's growth because of a substantial number of substandard or deteriorating structures. If the area is not developed, the city or county often cites the criterion that the area is predominantly open, or undeveloped, and that it substantially impairs the growth of the city or county because of obsolete platting, deteriorating structures or other factors.

A decision by a local government that an area meets the first or second criteria to become a reinvestment zone will be given much deference by a reviewing court should that decision be challenged by a private lawsuit. Unless the decision is arbitrary or capricious, willful and unreasoning, taken without consideration and in disregard of the facts and circumstances, it will be upheld.[630]

A reinvestment zone for tax increment financing may not be created if:[631]

- More than 30% of the property in the proposed reinvestment zone (excluding publicly-owned property) is used for residential purposes;[632] or
- The total appraised value of taxable real property in the proposed reinvestment zone and in the existing reinvestment zones exceed either:
  - For cities with a population of 100, 000 or more: 25% of the total appraised value of taxable real property within the city and its industrial districts,[633] or
  - For cities with a population of less than 100,000: 50% of the total appraised value of taxable real property within the city and its industrial districts.[634]

The boundaries of an existing reinvestment zone for tax increment financing may be reduced or enlarged by ordinance or resolution of the governing body that created the zone.[635] There are limitations if a city makes any changes to an existing reinvestment zones boundaries. A city may not change the boundaries to include property in excess of the restrictions listed above.[636]

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629 Tex. Tax Code § 311.005(a-1).
630 *See Hardwicke v. City of Lubbock*, 150 S.W.3d 708, 716-17 (Tex. App. — Amarillo 2004, no pet.)
631 Tex. Tax Code § 311.006.
632 *Id.* § 311.006(a)(1). See also *id.* § 311.006(e) (Does not apply if the district is created pursuant to a petition of the landowners).
633 *Id.* § 311.006(a)(2)(A).
634 *Id.* § 311.006(a)(2)(B).
635 *Id.* § 311.007.
636 *Id*. § 311.006(b).

If the boundaries of a tax increment reinvestment zone are enlarged, a school district is not required to pay into the tax increment fund any of the district's tax increment produced from property located in the added area.[637] However, the school district may voluntarily enter into an agreement with the city or county that created the zone to contribute all or part of the district's tax increment from such an area. The school district may enter into such an agreement at any time before or after the reinvestment zone is created or enlarged. The agreement may include conditions for payment of the tax increment into the fund and must specify the portion of the tax increment to be paid into the fund and the years for which the tax increment is to be paid into the fund.

The other taxing units are also not required to pay into the tax increment fund any of its tax increment produced if the boundaries of a tax increment reinvestment zone are enlarged.[638] Like the school districts, the other taxing units voluntarily enter into an agreement with the city or county that created the zone to contribute all or part of the district's tax increment from the enlarged area. The other taxing units may enter into such an agreement at any time before or after the reinvestment zone is enlarged. The agreement may include conditions for payment of the tax increment into the fund and must specify the portion of the tax increment to be paid into the fund and the years for which the tax increment is to be paid into the fund. Also, the agreement may specify the projects to which the taxing unit's tax increment will be dedicated.

The city or county that designated a reinvestment zone by ordinance or resolution or by order or resolution, respectively, may extend the term of all or a portion of the reinvestment zone after notice and hearing in the manner provided for the designation of the zone. A taxing unit other than the city or county that designated the zone is not required to participate in the zone or portion of the zone for the extended term unless the taxing unit enters into a written agreement to do so.[639]

## Procedure for Designating a Reinvestment Zone

If an area qualifies for tax increment financing, the process involves eight steps. The eight steps are as follows:

**Step One:**

***The governing body must prepare a preliminary reinvestment zone financing plan.[640]***

The Tax Code does not specify what the preliminary financing plan must contain. However, it may be prudent to include each of the items that are required for the final reinvestment zone financing plan discussed in Step Five of this section.[641] One of the items required in the reinvestment zone financing plan is a detailed list of the estimated

637 *Id.* § 311.013(k).
638 *Id*. § 311.013(f).
639 *Id*. § 311.007(c).
640 *Id.* § 311.003(b).
641 *See Id*. § 311.011(c).

project costs of the zone, including administrative expenses. "Project costs" are the expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the reinvestment zone that are listed in the project plan as the cost of public works, public improvements, programs, or other projects benefiting the zone, including other cost incidental to those expenditures and obligations.[642] "Project Cost" includes:

- Capital cost, including the actual cost of:
  - the acquisition and construction of public works, public improvements new buildings, structures, and fixtures;
  - the acquisition, demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures, and fixtures;
  - the remediation of conditions that contaminate public or private land or building;
  - the preservation of the façade of a public or private building;
  - the demolition of public or private buildings;
  - the acquisition of land and equipment and the clearing and grading of land;
- Financing cost;
- Real property assembly cost;
- Professional service cost;
- Imputed administrative cost;
- Relocation cost;
- Organizational cost;
- Interest before and during construction and for one year after completion of construction, whether or not capitalized;
- Cost of operating the reinvestment zone and project facilities;
- Amount of any contributions made by the city or county from general revenue for the implementation of the project plan;
- Cost of school building, other educational buildings, other educational facilities, or other buildings owned by or on behalf of a school district, community college district, or other political subdivision of this state; and
- Payments made at the discretion of the governing body of the city or county that the governing body finds necessary or convenient to the creation of the zone or to the implementation of the project plans for the zone.[643]

Project costs may also include the cost of economic development programs authorized by Section 311.010(h) of the Tax Code.

[642] *Id.* § 311.002(1).
[643] *Id.* § 311.002(1)(A)-(L).

While in the process of creating the preliminary financing plan, the city or county should also be preparing a proposed project plan.[644] The proposed project plan should also include the necessary terms as discussed in Section Five. Through the process of creating the reinvestment zone, the city or county will have to describe their tentative plan for the development of the zone. As part of the proposed project plan, the city or the county can acquire, construct, reconstruct, or install public works, facilities, or sites or other public improvements, including utilities, streets, street lights, water and sewer facilities, pedestrian malls and walkways, parks, flood and drainage facilities, or parking so long as it is consistent with the project plan for the zone.[645]

**Step Two:**

***The governing body must publish notice of a public hearing at least seven days before the hearing on the creation of the reinvestment zone.[646]***

Not later than the seventh day before the date of the hearing, notice of the hearing must be published in a newspaper having general circulation in the city or county on the creation of the reinvestment zone.

**Step Three:**

***The governing body must hold a public hearing on the creation of the reinvestment zone.[647]***

Before adopting an ordinance or order providing for a reinvestment zone, the city or county must hold a public hearing on the creation of the zone and its benefits to the city or county and to property in the proposed zone. At the hearing an interested person may speak for or against the creation of the zone, its boundaries, or the concept of tax increment financing.[648] Owners of property that is located within a proposed zone must be given a reasonable opportunity to object to the inclusion of their property within the proposed zone.[649]

**Step Four:**

***After the public hearing, the governing body of the city or county may, by ordinance or order, designate a contiguous area as a reinvestment zone for tax increment financing purposes and create the board of directors for the reinvestment zone.[650]***

Cities can also designate a noncontiguous geographic area within the city limits, in the extraterritorial jurisdiction of the city or in both as a reinvestment zone. The ordinance or

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644 *See Id*. § 311.008(b)(1).
645 *Id.* § 311.008(b)(4)(B).
646 *Id.* § 311.003(c).
647 *Id*.
648 *Id*.
649 *Id*. § 311.003(d).
650 *Id.* § 311.003(a).

order must be adopted by a simple majority vote of the governing body at an open meeting. Home rule cities may have a higher voting contingent required by the city charter. The adopted ordinance or order should include a finding that development of the area would not occur in the foreseeable future solely through private investment. Also, the ordinance or order must contain a number of other provisions concerning the reinvestment zone. These provisions include:[651]

- a description of the boundaries of the zone with sufficient detail to identify the territory within the zone.;
- a designation of the board of directors for the zone and an indication of the number of directors of the board;[652]
- a provision that the zone will take effect immediately on passage of the ordinance;
- an indication of the date for termination of the zone;
- a name for the zone as provided under Section 311.004(a)(5) of the Tax Code;
- a provision establishing a tax increment fund for the zone; and
- findings that the improvements within the zone will significantly enhance the value of the taxable property within the zone and will be of general benefit to the city or county, and that the area meets the criteria for designation of a reinvestment zone under Section 311.005 of the Tax Code. This finding does not have to identify the specific parcels of real property.[653]

If designating a reinvestment zone pursuant to a petition of the property owners, the city or county must specify in its ordinance that the reinvestment zone is designated pursuant to Section 311.005(a)(4) of the Tax Code.[654]

It should be noted that designation of an area as an enterprise zone under the Texas Enterprise Zone Act (Government Code Chapter 2303) would also constitute designation of the area as a reinvestment zone for tax increment financing purposes.[655] Such a designation would eliminate further public hearing requirements other than those provided under the Texas Enterprise Zone Act. Participants would still need to execute the tax increment "project" and "financing" plan according to the requirements contained in Chapter 311 of the Tax Code (outlined in Step Seven).

Also, property within the zone that is owned or leased by a member of the governing body of the city or by a member of a zoning or planning board or commission of the city

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651 *Id.* § 311.004(a).

652 *See id.* §§ 311.009, .0091 (Addresses cities with a population of 1.1 million or more that are located wholly or partially in a county with a population of less than 1.8 million).

653 *Id*. § 311.004(b).

654 *Id.* § 311.004(c).

655 *Id.* § 311.0031. (Please note that Chapter 2303 of the Government Code sets out the qualifications to be designated an enterprise zone, but does not set out procedures for designation.)

is not eligible for tax increment financing.[656] However, if the property owner's property is subject to a tax increment financing agreement when the owner becomes a member of the governing body or of the zoning or planning commission, the property owner would not lose the benefit of the tax increment financing agreement due to the person's new membership on the governing body, board or commission.[657]

## Board of Directors

The size, composition and qualifications of the board of directors depend on whether the reinvestment zone was initiated by the city or county or by petition of the property owners.

### *Zones Initiated by Governing Body*

If the zone was created by the governing body on its own initiative, the board of directors consists of at least five and not more than 15 members, unless more than 15 members are required under Section 311.009 of the Tax Code. The board is composed of one appointee from each taxing unit that levies taxes on real property in the zone if the taxing unit has approved the payment of all or part of the tax increment produced by the unit into the tax increment fund for the zone. A taxing unit may waive its right to appoint a member. The governing body of the city or county that designated the zone may appoint not more than ten directors to the board; except that if there are fewer than five directors appointed by taxing units other than the city or county, the governing body of the city or county may appoint more than ten members as long as the total membership of the board does not exceed 15 members.[658] The board members appointed by the governing board that created the zone must be:

- at least 18 years of age, and
- be a resident of:
  - the county in which the zone is located,
  - a county adjacent to the county in which the zone is located, or
  - own real property in the zone, whether or not the individual resides in the county in which the zone is located or a county adjacent to that county.[659]

### *Zones Initiated by Petition of Property Owners*

If the reinvestment zone was created pursuant to a petition of the property owners, the board of directors must consist of nine members.[660] Each taxing unit, other than the city or county that designated the zone, that levies taxes on real property in the zone may appoint one member of the board if the taxing unit has approved the payment of all or part of the tax increment produced by the unit into the tax increment fund for the zone.

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656 *Id.* § 312.204(d).
657 *Id.*
658 *Id.* § 311.009(a).
659 *Id.* § 311.009(e)(1).
660 *Id.* § 311.009(b).

The local state senator and representative in whose districts the zone is located are each members of the board, or they may appoint a substitute to serve for them.[661] Not later than the 90th day after the date a member of the Texas Senate or Texas House of Representatives is elected, the board of the tax increment reinvestment zone must send written notice by certified mail informing the senator or representative of the person's membership on the board.[662] The senator or representative may elect not to serve on the board or designate another individual to serve in the member's place. If the senator or representative elects not to serve on the board or designate another individual to serve in the member's place, the senator or representative must notify the board in writing as soon as practicable by certified mail after receipt of the notice and may not be counted as a member of the board for voting or quorum purposes.[663] If the zone is located in more than one senate district or house district, then the senator or representative in whose district a larger portion of the zone is located is the member of the zone's board.[664]

If fewer than seven taxing units, other than the city or county that designated the zone, are eligible to appoint members of the board of directors of the zone, the city or county may appoint a number of members of the board such that the board comprises nine members. If at least seven taxing units, other than the city or county that designated the zone, are eligible to appoint members of the board of directors of the zone, the city or county may appoint one member.[665]

To be eligible for appointment to the board by the governing body of the city or county that designated the zone, an individual must be at least 18 years of age, and own real property in the zone or be an employee or agent of a person who owns real property in the zone.[666]

<u>Board Membership</u>

Each year, the governing board of the city or county creating the zone appoints one member of the board to serve as chairman.[667] The chairman serves for a term of one year that begins on January 1st of the following year. The board of directors may also elect a vice-chair to preside in the absence or vacancy of the chairman. The board may elect other officers as it considers appropriate. A vacancy on the board is filled by appointment of the governing body of the taxing unit that appointed the director.[668]

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661 *Id.* §§ 311.009(b), .0091(c).
662 *Id.* § 311.0092(a).
663 *Id.* § 311.0092(b).
664 *Id.* §§ 311.009(b), .0091(c).
665 *Id*.
666 *Id.* § 311.009(e)(2).
667 *Id*. § 311.009(f).
668 *Id.* § 311.009(d).

State law specifies that a member of the board of directors of a tax increment financing reinvestment zone is not considered a public official.[669] Because of this provision, the attorney general has held that a city council member is not prohibited from simultaneously serving as a member of the board of directors of a tax increment reinvestment zone created by his or her municipality.[670] In addition, state law clarifies that such a director may be appointed to serve on the board of directors of a local government corporation created under the Texas Transportation Corporation Act (Transportation Code Chapter 431, Subchapter D).[671]

**Step Five:**

***After the city or county has adopted the ordinance or order creating the zone, the board of directors of the zone must prepare both a "project plan" and a "reinvestment zone financing plan."***[672]

The project plan must include:[673]

- a description and map showing existing uses and condition of real property within the zone and proposed uses of that property;
- proposed changes to zoning ordinances, the master plan of the city, building codes or other municipal ordinances or subdivision rules and regulations of the county;
- a list of estimated non-project costs; and
- a statement of the method for relocating persons who will be displaced, if any, as a result of implementation of the plan.

If a zone is created pursuant to petition in a county that has a population in excess of 3.3 million, there are certain special requirements of the project plan involving residential housing that must be observed.[674]

The reinvestment zone financing plan must contain the following nine items:[675]

1) a detailed list of the estimated project costs of the zone, including administrative expenses;
2) a statement listing the proposed kind, number and location of all public works or public improvements to be financed by the zone;

[669] *Id.* § 311.009(g)(1).
[670] Tex. Att'y Gen. Op. No. GA-0169 (2004).
[671] Tex. Tax Code § 311.009(g)(2).
[672] *Id.* § 311.011.
[673] *Id.* § 311.011(b).
[674] *Id.* § 311.011(f).
[675] *Id.* § 311.011(c).

3) a finding that the plan is economically feasible and an economic feasibility study;
4) the estimated amount of bonded indebtedness to be incurred;
5) the estimated time when related costs or monetary obligations are to be incurred;
6) a description of the methods for financing all estimated project costs and the expected sources of revenue to finance or pay project costs, including the percentage of tax increment to be derived from the property taxes of each taxing unit anticipated to contribute tax increment to the zone that levies taxes on real property within the zone;
7) the current total appraised value of taxable real property in the zone;
8) the estimated captured appraised value of the zone during each year of its existence; and
9) the duration of the zone.

The financing plan may provide that the city or county will issue tax increment bonds or notes, the proceeds of which are used to pay project costs for the reinvestment zone.[676] Any such bonds or notes are payable solely from the tax increment fund and must mature on or before the date by which the final payments of the tax increment into the tax increment fund are due.[677] Tax increment bonds are issued by ordinance of the city or order of the county without any additional approval required, other than that of the Public Finance Section of the attorney general's office. The characteristics and treatment of these obligations is covered in detail in Section 311.015 of the Tax Code.

After both the project plan and the financing plan are approved by the board of directors of the zone, the plans must also be approved by ordinance or order of the governing body that designated the zone.[678] The ordinance or order must be adopted at an open meeting by a simple majority vote of the governing body, unless the city is a home rule city and a higher voting contingent is required by the city charter. The ordinance or order must find that the plans are feasible.[679]

At any time after the zone is adopted, the board of directors may adopt an amendment to the project plan.[680] The amendment takes effect on approval of the change by ordinance

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676 *Id*. § 311.015 (It should be noted that this section of the Tax Code does not include a county as having the ability to issue tax increment bonds or notes. However, Section 311.008 does give counties "any power necessary and convenient to carry out" Chapter 311, including entering into agreements with bondholders). ) *But, cf.* Tex. Att'y Gen. Op. No. GA-0953 (2012)(concluding that "a county may not issue tax increment finance bonds or unilaterally pledge any part of the tax increment fund.").

677 *Id*. § 311.015(l).

678 *Id.* § 311.011(d).

679 *Id*.

680 *Id.* § 311.011(e).

by the city or order by the county that created the zone and in certain cases may require an additional public hearing. A school district that participates in a zone is not required to increase the percentage or amount of the tax increment to be contributed by the school district because of an amendment to the project plan or reinvestment zone financing plan for the zone unless the governing body of the school district by official action approves the amendment.[681]

Finally, once a city or county designates a tax increment financing reinvestment zone or approves a project plan or financing plan, the city or county must deliver to the comptroller's office a report containing: a general description of each reinvestment zone, a copy of each project plan or financing plan adopted, and "any other information required by the comptroller" that helps in the administration of the central registry and tax refund for economic development (Tax Code, Chapter 111, subchapter F).[682] The report must be submitted by April 1st of the year following the year the zone is designated or plan is approved.

**Step Six:**

***After the project plan and the reinvestment zone financing plan are approved by the board of directors and by the city or county's governing body, the other taxing units with property within the zone must collect the percentage of their increased tax revenues that will be dedicated to the tax increment fund.[683]***

The tax increment fund[684] is made up of the contributions by the respective taxing units of a portion of their increased tax revenues that are collected each year under the plan.[685] Money in the tax increment fund can be transferred to an adjacent reinvestment zone if certain conditions are met.[686] The taxing units can determine the amount of their tax increment for a year either by:

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681 *Id.* § 311.011(g).

682 *Id.* § 311.019(b) (Note: This section still refers to Subchapter F, Chapter 111 of the Tax Code. Subchapter F was repealed by S.B. 1, Art. 3 during the 82nd Legislative Session, First Called Session. However, the repeal of Subchapter F by S.B. 1, Art. 3 does not affect an eligible person's right to claim a refund of state sales and use and state franchise taxes that was established under Section 111.301 of the Tax Code in relation to taxes paid before the effective date of Art. 3 (October 1, 2011) in a calendar year for which the person paid ad valorem taxes to a school district as provided by Section 111.301, Tax Code, before the effective date of Art. 3 (October 1, 2011). An eligible person's right to claim a refund of state sales and use and state franchise taxes that was established under Section 111.301 of the Tax Code in relation to taxes paid before the effective date of Art. 3 (October 1, 2011) in a calendar year for which the person paid ad valorem taxes to a school district as provided by Section 111.301 of the Tax Code before the effective date of Art. 3 (October 1, 2011) is governed by the law in effect on the date the right to claim the refund was established, and the former law is continued in effect for that purpose. Therefore, the reference to Subchapter F will remain.).

683 *Id.* § 311.013.

684 *See id.* § 311.014. (Describes the tax increment fund's composition).

685 *Id.* § 311.012(a).

686 *See* § 311.014(f).

- the amount of property tax levied and *assessed* by the unit for that year on the captured appraised value of real property that is taxable and located in the reinvestment zone; or
- the amount of property taxes levied and *collected* by the unit for that year on the captured appraised value of real property taxable and located in the reinvestment zone.

In practice, taxing units have generally committed in early negotiations with the city or county as to what portion of the tax increment they will contribute to the tax increment fund for the zone.

For example, consider a city that as part of its tax increment project plan has agreed to put in improved sidewalks throughout the zone at a cost of $20,000. If the property values in the district are projected to increase by 2% after the sidewalk improvements, each of the affected taxing units may choose to dedicate all, a portion of, or none of the property taxes that are due to the 2% increase in property values within the zone. The decision as to what percentage of the increased tax revenues to contribute to the tax increment fund is entirely discretionary with the governing bodies of each of the taxing units.[687] The city itself has the flexibility to determine its portion of the tax increment produced by the city that must be paid into the tax increment fund.[688] However, if the city does not make a determination of its portion of the tax increment produced by the city that must be paid into the tax increment fund, then the city is required to pay into the fund the entire tax increment produced.

Any agreement to contribute must indicate the portion of the tax increment to be paid into the fund and the years for which the tax increment will be paid. In addition to any other terms to which the parties may agree, the agreement may specify the projects to which a participating taxing unit's tax increment will be dedicated and that the taxing unit's participation may be computed with respect to a base year later than the original base year of the zone.[689] The agreement may also include other conditions for payment of the tax increment. Only property taxes attributable to real property within the zone are eligible for contribution to the tax increment fund.[690] Property taxes on personal property are not eligible for contribution into the tax increment plan.

Cities are allowed to deposit the amount of sales tax attributable to reinvestment zone into the tax increment fund, in an increment above the sales tax base[691] attributable to the zone in the year the zone was created. [692] Cities may choose not to contribute sales tax

[687] *Id*. § 311.013(f).
[688] *Id.* § 311.013(l). *See also id.* § 311.013(m) (For special rules for such reduction in the tax increment in certain populous counties).
[689] *Id.* §311.013(f).
[690] *See id.* § 311.012 ("[T]ax increment," "captured appraised value," and "tax increment base" all defined with reference to the taxable real property within the reinvestment zone).
[691] *Id*. § 311.0123(a).
[692] *Id.* § 311.0123(b).

increment into a tax increment fund. Before the issuance of a bond, note, or other obligation that pledges the payments of sales tax increment into the tax increment fund, the governing body of the city may enter into an agreement to authorize and direct the comptroller to:

1. Withhold from any payment to which the city may be entitled the amount of the payment into the tax increment fund;
2. Deposit that amount into the tax increment fund; and
3. Continue withholding and making additional payments into the tax increment fund until an amount sufficient to satisfy the amount due has been met.[693]

Also, a local government corporation created under Chapter 431 of the Transportation Code, that has contracted with a reinvestment zone and the city may be a party to an agreement with the comptroller's office as referenced above. This agreement may provide for payments to be made to a paying agent of the local government corporation.[694] The sales tax to be deposited into the tax increment fund may be disbursed from the fund only to:

1. Satisfy claims of holders of tax increment bonds, notes, or other obligations issued or incurred for the reinvestment zone;
2. Pay project costs for the zone; and
3. Make payments in accordance with an agreement dedicating revenue from the tax increment fund made pursuant to Section 311.10(b) of the Tax Code.[695]

Unless otherwise specified by an agreement between the taxing unit and the city or county that created the zone, payment of the taxing unit's increment to the fund must be made by the 90th day after the later of: (1) the delinquency date for the unit's property taxes; or (2) the date the city or county that created the zone submits to the taxing unit an invoice specifying the tax increment produced by the taxing unit and the amount the taxing unit is required to pay into the tax increment fund for the zone.[696] A delinquent payment incurs a penalty of 5% of the amount delinquent and accrues interest at an annual rate of 10%.[697] It is important to note, however, that a taxing unit is not required to pay into the tax increment fund the portion of a tax increment that is attributable to delinquent taxes until those taxes are actually collected.[698]

In lieu of permitting a portion of its tax increment to be paid into the tax increment fund, a taxing unit, including a city, may elect to offer the owners of taxable real property in

[693] *Id*. § 311.0123(c)(1)-(3).
[694] *Id*. § 311.0123(d).
[695] *Id*. § 311.0123(e).
[696] *Id.* § 311.013(c).
[697] *Id*. § 311.013(c-1).
[698] *Id.* § 311.013(i).

the zone an exemption from ad valorem taxation for any increase in the property value as provided under the Property Redevelopment and Tax Abatement Act (Tax Code, Chapter 312).[699] Alternatively, a taxing unit, other than a school district, may offer a tax abatement to the property owners in the zone and enter into an agreement to contribute a tax increment into the fund.[700] In either case, any agreement to abate taxes on real property within a tax increment reinvestment zone must be approved both by the board of directors of the zone and by the governing body of each taxing unit that agrees to deposit any of its tax increment into the tax increment fund.[701]

In any contract entered into by the tax increment zone's board of directors with regard to bonds or other obligations, the board may promise not to approve any such tax abatement agreement.[702] If a taxing unit enters into a tax abatement agreement within a tax increment reinvestment zone, the taxes that are abated will not be considered in calculating the tax increment of the abating taxing unit or that taxing unit's deposit into the tax increment fund.[703]

The Governor's Office of Texas Economic Development and Tourism may recommend that a taxing unit enter into a tax abatement agreement. The board of directors of the zone and the taxing unit's governing body must consider any recommendations made by the Governor's Office of Texas Economic Development and Tourism.[704]

**Step Seven:**

***Once the reinvestment zone is established, the board of directors must make recommendations to the governing body of the city or county on the implementation of the tax increment financing.***[705]

Once the city, by ordinance, or the county, by order, has created the reinvestment zone, the board of directors may exercise any power granted to them by the Tax Increment Financing Act.[706] By ordinance, resolution or order, the city or county may authorize the board of directors of the reinvestment zone to exercise any of the city or county's powers with respect to the administration, management or operation of the zone or the implementation of the project plan for the zone.[707] However, the city or county may not authorize the board of directors to issue bonds, impose taxes or fees, exercise the power of eminent domain, or give final approval to the project plan. The board of directors may exercise any of the powers granted to the city or county under Section 311.008 of the Tax Code, except that the city or county must approve any acquisition or sale of real

699 *Id.* § 311.013(g).
700 *Id.* § 311.0125.
701 *Id*. §§ 311.013(g); .0125(b).
702 *Id*. § 311.0125(c).
703 *Id*. § 311.0125(d).
704 *Id.* § 311.0125(e).
705 *Id.* § 311.010(a).
706 *Id.* § 311.010(e).
707 *Id*. § 311.010(a).

property.[708] Also, the city or county, by ordinance, resolution or order, may choose to restrict any power granted to the board of directors by Chapter 311 of the Tax Code.[709]

The board of directors and the city or county can contract with a local government corporation created under the Texas Transportation Corporation Act (Transportation Code Chapter 431, Subchapter D) or a political subdivision to manage the reinvestment zone and/or implement the project or financing plan.[710] The board, the local government corporation or political subdivision administering the zone can contract with the city to pay for city services in the zone out of the portion of the tax increment fund produced by the city, regardless of whether the service or their cost is identified in the project or financing plan.[711]

Either the board of directors, city or county may enter into agreements that are necessary or convenient to implement the project plan and the reinvestment zone financing plan.[712] Such agreements can pledge or provide for the use of revenue from the tax increment fund and/or provide for the regulation or restriction of land use. These agreements are not subject to the competitive bidding requirements in Chapter 252 of the Local Government Code.[713] If the zone was created by petition, the board, with the approval of the city, may impose certain zoning restrictions within the zone.[714]

With the approval of the city or county that designated the reinvestment zone, the board of directors may establish and provide for the administration of programs for a public purpose of developing and diversifying the economy, eliminating unemployment and underemployment, and developing or expanding transportation, business and commercial activity in the zone.[715] This power includes but is not limited to, programs to make grants and loans from the tax increment fund. Also, the board has all the powers of a city under Chapter 380 of the Local Government Code with the approval of the city or the county. This approval may be granted in an ordinance by a city, or in an order by the county, approving a project plan or reinvestment zone financing plan or approving an amendment to a project plan or reinvestment financing plan.

If the board is pursuing a project to construct public right-of-ways or infrastructure within the zone, the board may enter into an agreement to pledge tax increment fund revenue to pay for land and easements located outside the zone if:

- the zone is or will be served by the rail transportation or bus rapid transit project;

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708 *Id.* § 311.010(d)(2), .008(b)(2).
709 *Id*. § 311.010(d)(1).
710 *Id.* § 311.010(f).
711 *Id.* § 311.010(i).
712 *Id.* § 311.010(b).
713 *Id.* § 311.010(g).
714 *Id.* § 311.010(c).
715 *Id*. § 311.010(h).

- the land or the development rights or conservation easements in the land are acquired for the purpose of preserving the land in its natural or undeveloped condition; and
- the land is located in the county in which the zone is located.[716]

Also, the board is required to implement a program to enhance the participation of "disadvantaged businesses" in the procurement process in a zone created by petition.[717] The program shall make information concerning the procurement process and the opportunities within the zone available to disadvantage businesses. The board is required to compile an annual report listing the numbers and dollar amounts of contracts awarded to disadvantaged businesses during the previous year as well as the total number and dollar amount of all contracts awarded.[718]

**Step Eight:**

***The city or county must submit an annual report to the chief executive officer of each taxing unit that levies taxes on property within the zone.***[719]

The report must be provided within 150 days of the end of the city's or county's fiscal year. The report must include the following items:

- the amount and source of revenue in the tax increment fund established for the zone;
- the amount and purpose of expenditures from the fund;
- the amount of principal and interest due on outstanding bonded indebtedness;
- the tax increment base and current captured appraised value retained by the zone;
- the captured appraised value shared by the city or county and other taxing units;
- the total amount of tax increments received; and
- any additional information necessary to demonstrate compliance with the tax increment financing plan adopted by the city or county.

A copy of the above report must be sent to the comptroller's office.[720]

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716 *Id*. § 311.01005.
717 *Id*. § 311.0101.
718 *Id*. § 311.0101(c).
719 *Id*. § 311.016(a).
720 *Id.* § 311.016(b).

## Central Registry

The comptroller shall maintain a central registry of:[721]

- reinvestment zones designated under the Tax Increment Financing Act;
- project plans and reinvestment zone financing plans adopted pursuant to the Tax Increment Financing Act; and
- the annual reports the city or county submitted to the chief executive officer of each taxing unit that levies taxes on property within the zone.

A city or county that designates a reinvestment zone or approves a project plan or reinvestment zone financing plan must deliver to the comptroller's office a report containing the following information:[722]

- a general description of each reinvestment zone. This description must include the size of the zone, the types of property located in the zone, the duration of the zone, and the guidelines and criteria established for the zone under Section 311.005 of the Tax Code;
- a copy of each project plan or reinvestment zone financing plan adopted; and
- "any other information required by the comptroller" that helps in the administration of the central registry and tax refund for economic development (Tax Code Chapter 111, subchapter F).

The plan must be delivered before April 1 of the year following the year the zone is designated or the plan is approved. A city or county that amends or modifies a project plan or reinvestment zone financing plan must deliver a copy of the amendment or modifications to the comptroller before April 1st of the year following the year in which the plan was amended or modified.[723]

## State Assistance

Cities and counties with concerns about the tax increment financing laws can seek assistance from the state. The comptroller's office will provide assistance regarding the administration of the Tax Increment Financing Act upon request of the governing body or the presiding officer.[724] Further, the Governor's Office of Texas Economic Development and Tourism and the comptroller's office may provide technical assistance to a city or county regarding the designation of a tax increment financing reinvestment zone or the adoption and execution of project plans or reinvestment zone financing plans.[725]

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721 *Id.* § 311.019(a).
722 *Id.* § 311.019(b).
723 *Id.* § 311.019(c).
724 *Id.* § 311.020(a).
725 *Id*. § 311.020(b).

## School Districts

Until September 1, 1999, school districts were able to reduce the value of taxable property reported to the state to reflect any value lost due to tax increment financing participation by the district.[726] The ability of the school district to deduct the value of the tax increment that it contributed prevented the school district from being negatively affected in terms of state school funding. However, the situation is different for tax increment reinvestment zones created after that date. The comptroller is statutorily prohibited from reducing taxable property value for school districts to reflect tax increment financing losses for zones that are proposed on or after May 31, 1999.[727] This statutory prohibition affects any amendments to or new tax increment financing agreements the school districts make with cities or counties after September 1, 1999.

Additionally, some cities may enter into tax increment financing agreements with school districts for certain limited purposes.[728] Cities with a population of less than 130,000 that have territory in three counties may enter into new tax increment financing agreements or may amend existing agreements with a school district located wholly or partially within the reinvestment zone. However, the agreement must be for the dedication of revenue from the tax increment fund to the school district for the purpose of acquiring, constructing or reconstructing an educational facility located inside or outside the tax increment financing reinvestment zone.[729]

## Termination of Reinvestment Zone

A tax increment financing reinvestment zone terminates on the earlier of:

1) the termination date designated in the original ordinance or order designating the zone;
2) the earlier or later termination date designated by a subsequent ordinance or order adopted under Section 311.007(c) of the Tax Code;[730] or
3) the date on which all project costs, tax increment bonds and interest on those bonds are paid in full.[731]

If the city or county that created the zone designate a later termination date through a subsequent ordinance or order, the other contributing taxing units are not required to pay any of their tax increment after the original termination date unless those taxing units enter into an agreement to continue to pay their tax increment with the city or county that

[726] In tax increment financing, value is not actually "lost." Rather, some of the land's increase in value is classified as "captured appraised value" so that an amount of taxes can be forwarded to the tax increment financing board. Such taxes are, in effect, "lost" to the school district because they must be contributed to the tax increment fund and cannot be used for school programs.

[727] *See* Tex. Gov't Code § 403.302(d)-(e). *See also* Tex. Att'y Gen. Op. No. GA-549 (2007).

[728] Tex. Tax Code § 311.0085.

[729] *Id.* § 311.0085(c).

[730] *Id.* § 311.017(a)(1).

[731] *Id.* § 311.017(a)(2).

created the zone.[732] Also, a city or county that created the zone can terminate the zone before all debts and obligations are paid in full.[733] The city or county would have to deposit an amount that would suffice to pay the principal of, premium, and interest on all bonds issued with a trustee or escrow agent. The amount deposited would also have to cover any other amounts that may become due to the trustee or escrow agent, including compensation of the trustee or escrow agent.

## Validation Statute

A governmental act or proceeding of a city or county, the board of directors of a reinvestment zone, or an entity acting under Section 311.010(f) of the Tax Code relating to the designation, operation, or administration or a reinvestment zone financing plan is conclusively presumed, as of the date it occurred, valid and to have occurred in accordance with all applicable statutes and rules if:

1. the third anniversary of the effective date of the act or proceeding has expired; and
2. a lawsuit to annul or invalidate the act or proceeding has not been filed on or before the later of that second anniversary or August 1, 2011.[734]

However, the validation of an action as to the designation, operation, or administration of a reinvestment zone or the implementation of a project plan or reinvestment zone financing plan does not apply to the following:

1. An act or proceeding that was void at the time it occurred;
2. An act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;
3. A rule that, at the time it was passed, was preempted by a statute or this state or the United States, including Sections 1.06 or 109.57 of the Alcoholic Beverage Code; or

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[732] *Id.* § 311.017(a-1). *See id.* 311.017(a-1) (Different terminations dates for a city that has a population of more than 220, 000 but less than 235,000 or more and is the county seat of a county that has a population of 280,000 or less). *See also* Tex. H.B. 2853 § 22, 82nd Leg., R.S. (2011) (The legislature validates and confirms all governmental acts and proceedings of a city or county, the board of directors of a reinvestment zone, or an entity acting under Section 311.010(f) of the Tax Code that were taken before the effective date of this Act and relate to or are associated with the designation, operation, or administration of a reinvestment zone or the implementation of a project plan or reinvestment zone financing plan under Chapter 311 of the Tax Code including the extension of the term of a reinvestment Zone, as of the dates on which they occurred. The acts and proceedings may not be held invalid because they were not in accordance with Chapter 311 of the Tax Code, or other law. This section does not apply to any matter that on the 30th day after the effective date of this Act: (1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or (2) has been held invalid by a final judgment of a court.).

[733] Tex. Tax Code § 311.017(b).

[734] *Id.* § 311.021(a).

4. A matter that as of the effective date of Section 311.021 of the Tax Code (June 17, 2011): (a) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or (b) has been held invalid by a final judgment of a court.[735]

# Texas Economic Development Act

The Texas Economic Development Act ("the Act"") is another economic development tool used to attract new industries and commercial enterprises. Chapter 313 of the Tax Code authorizes certain property tax incentives for economic development provided by school districts. School districts have the ability to provide tax credits and an eight-year limitation on appraised value of a property for the maintenance and operations portion of the school district property tax to eligible corporations and limited liability companies. The property remains fully taxable or the purpose of any school district debt service tax.

## Eligibility Requirements for Limitation on Appraised Values

The Act provides that only particular entities are eligible for limitations on appraised property values. Limitations on appraised values are available to property owned by a corporation or a limited liability company to which a franchise tax pursuant to Section 171.001 of the Tax Code applies.[736] These eligible corporations or limited liability companies are required to make investments that create jobs within the state. Further, these corporations and limited liability companies must use the property for:[737]

- manufacturing;[738]
- research and development;[739]
- clean coal project as defined by Section 5.001 of the Water Code;
- advanced clean energy project as defined by Section 382.003 of the Health & Safety Code;
- renewable energy electric generation;[740]
- electric power generation using integrated gasification combined cycle technology;[741]

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735 *Id.* § 311.021(b).

736 Tex. Tax Code § 313.024(a). ("This subchapter [subchapter B] and Subchapters C and D apply only to property owned by a corporation or limited liability company to which Section 171.001 applies.").

737 *Id.* § 313.024(b).

738 *See Id.* § 313.024(e)(1) (Definition of manufacturing); *See also Southwest Royalties v. Comptroller of Public Accounts of the State of Texas*, 501 S.W.3d 95 (Tex. App. — Austin Aug. 13, 2014, pet. granted)(excluding extraction of oil and natural gas from manufacturing definition); *Southwest Royalties v. Hegar*, 500 S.W.3d 400 (Tex. 2016)(Affirmed lower court ruling).

739 *See Id.* § 313.024(e)(5) (Definition of "research and development").

740 *See Id.* § 313.024(e)(2) (Definition of "renewable energy electric generation").

741 *See Id.* § 313.024(e)(3) (Definition of "integrated gasification combined cycle technology").

- nuclear electric power generation;[742] or
- a computer center[743] primarily used in connection with one or more activities described above.

Additionally, in 2017 legislation passed prohibiting a limitation on appraised value for wind-powered energy devices under certain circumstances.[744] Specifically, the law now provides that an owner of a parcel of land that is located wholly or partly in a reinvestment zone, a new building constructed on the parcel of land, a new improvement erected or affixed on the parcel of land, or tangible personal property placed in service in the building or improvement or on the parcel of land may not receive a limitation on appraised value under an agreement that is entered into on or after September 1, 2017, if, on or after that date, a wind-powered energy device is installed or constructed on the same parcel of land at a location that is within 25 nautical miles of the boundaries of a military aviation facility located in this state.[745]

## Creation of Qualifying Jobs

In order for the eligible property of these corporations or limited liability companies to receive a limitation of appraised values, the recipient must make a commitment to create a specified number of new jobs and "qualifying jobs." The number of new jobs and "qualifying jobs" required to be created depends upon whether the school district is considered a non- rural school district or a rural school district

<u>Non-Rural School District Versus Rural School District</u>

The Act has created different investment requirements and minimum limitation requirements for owners of qualified property in rural school districts as opposed to non-rural school districts. A school district is considered a rural school district if:

- the school district has territory in a strategic investment area as determined by the comptroller;[746] or
- the school district is located in a county:[747]
  - with a population of less than 50,000; and
  - in which, from 2000 – 2010, according to the federal decennial census, the population either remained the same, decreased, or increased at a rate not greater than the average rate of increase in the state during that period.[748]

742 *See Id.* § 313.024(e)(4) (Definition of "nuclear electric power generation").
743 *See Id.* § 313.024(e)(6) (Definition of "computer center").
744 *Id*. § 313.0024(b-1).
745 *Id*.
746 *Id*. § 313.051(a-1) (Note: A list of counties designated as strategic investment areas can be found at: https://comptroller.texas.gov/economy/local/ch313/values.php).
747 *Id* § 313.051(a-1).
748 *Id.*

If a school district qualifies as a rural school district, then that school district can utilize Subchapter C of Chapter 313 of the Tax Code which allows differing amounts with regard to the categorization of rural school districts, minimum amounts of qualified investments, and minimum limitations on appraised values requirements on qualified property. The non-rural school district can utilize Subchapter B.

In non-rural school districts, a property owner is required to create "at least 25 new jobs" on the owner's qualified property.[749] At least 80% of all the new jobs created must be "qualifying jobs."[750] A "qualifying job" for a non-rural school district is defined to mean a permanent full-time job that:[751]

- requires at least 1,600 hours of work a year;
- is not transferred from one area in this state to another area in this state;
- is not created to replace a previous employee;
- is covered by a group health benefit plan for which the business offers to pay at least 80% of the premiums or other charges assessed for employee-only coverage under the plan, regardless of whether an employee may voluntarily waive the coverage; and
- pays at least 110% of the county average weekly wage for manufacturing jobs[752] in the county or region where the job is located.

To determine whether a property owner has created a sufficient number of qualifying jobs, operations, services, and other related jobs can be considered for the project if the Texas Workforce Commission determines that the cumulative economic benefits of these jobs is the same or greater than that associated with the minimum number of qualified jobs required to be created.[753]

In rural school districts, a property owner is required to create at least 10 new "qualifying jobs" on the owner's qualified property.[754] The average weekly wage for all jobs created by the property owner that are not "qualifying jobs" must exceed the county average weekly wage for all jobs in the county where the job is located.[755] A "qualifying job" for a rural school district has the same meaning as a qualifying job for a non-rural school district.[756]

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749 Tex. Tax Code § 313.021(2)(A)(iv)(b).

750 *Id.* § 313.024(d).

751 *Id.* § 313.021(3).

752 *See Id*. § 313.021(5) (Definition of "county average weekly wage for manufacturing jobs").

753 *Id.* §313.021(3)(F).

754 *Id.* § 313.051(b).

755 *Id.* § 313.024(d). (Note also that to determine whether a property owner has created the required number of "qualifying jobs," those jobs created in connection with a project that the Texas Economic Development and Tourism Office determines is a "unified project" are "qualified." § 313.024(d-2).)

756 *See id.* § 313.021(3) (Definition of "qualified jobs").

## Penalty for Failing to Create Required Number of Qualifying Jobs

To ensure compliance by the property owner for the creation of a sufficient amount of qualifying jobs, the comptroller is required to conduct an annual review.[757] If the comptroller determines the number of qualifying jobs to be below the required threshold, it will issue an adverse determination.[758] The person receiving the adverse determination must submit a compliance plan for remedying the deficiency by not later than December 31 of the year that the comptroller made the determination.[759] If the person is still out of compliance with the plan, the comptroller will impose a penalty by subtracting the number of qualifying jobs actually created from the number of qualifying jobs required to be created and multiply that amount by the average annual wage for all jobs in the county for the most recent four quarters.[760] This penalty can be doubled if a penalty has previously been enforced.[761] Each person may appeal the imposition of the penalty through a taxpayer lawsuit under Chapter 112 of the Tax Code. [762]

## Other Eligibility Considerations

In determining an applicant's eligibility for a property limitation, whether located in a non-rural school district or a rural school district, other eligibility considerations are taken into account. These other considerations are:

- land on which a building or component of a building described by Section 313.021(1)(E) of the Tax Code is located is not considered a qualified investment[763];
- property that is leased under a capitalized lease may be considered a qualified investment;
- property that is leased under an operating lease may not be considered a qualified investment; and
- property that is owned by a person other than the applicant and that is pooled or proposed to be pooled with property owned by the applicant may not be included in determining the amount of the applicant's qualifying investment.[764]

## Categorization of School Districts

The Act authorizes school districts to make limitations on appraised property values, provided the eligible entity makes qualified investments on qualified property. Non-rural school districts and rural school district are sorted into five categories to determine the

757 *Id.* § 313.0276(a).
758 *Id.*
759 *Id.* § 313.0276(b).
760 *Id.* § 313.0276(c).
761 *Id.* § 313.0276(d).
762 *Id.* § 313.0276(i).
763 *See id.* § 313.021(1) (Definition of "qualified investment").
764 *Id.* § 313.024(c).

minimum amount of qualified investment the entity must make and the minimum amount of limitation the school district may provide on appraised property values. The comptroller's website has a complete listing of school district classifications, minimum amounts of qualified investments, and limitations on appraised values at: https://comptroller.texas.gov/economy/local/ch313/values.php.

**Non-Rural School Districts**

Non-rural school districts are categorized according to the taxable value of property within the district in the preceding tax year as determined by Chapter 403 of the Government Code.[765] Non-rural school districts are categorized as follows:[766]

| | |
|---|---|
| I | $10 billion or more of taxable property |
| II | $1 billion or more but less than $10 billion of taxable property |
| III | $500 million or more but less than $1 billion of taxable property |
| IV | $100 million or more but less than $500 million of taxable property |
| V | less than $100 million of taxable property. |

**Rural School Districts**

Likewise, rural schools districts are categorized according to the taxable value of *industrial* property within the district in the preceding tax year as determined by Chapter 403 of the Government Code.[767] Rural school districts are categorized as follows:[768]

| | |
|---|---|
| I | $200 million or more of taxable industrial property |
| II | $90 million or more but less than $200 million of taxable industrial property |
| III | $1 million or more but less than $90 million of taxable industrial property |
| IV | $100,000 or more but less than $1 million of taxable industrial property |
| V | less than $100,000 of taxable industrial property. |

[765] *Id.* § 313.022(b).
[766] *Id.*
[767] *Id.* § 313.052.
[768] *Id.*

## Minimum Amount of a Qualified Investment and Limitation on Appraised Values

### Non-Rural School Districts

The minimum amounts of qualified investment[769] and the minimum amounts of limitation[770] for each category of non-rural school districts are as follows:

| Category | Minimum Amounts Of Qualified Investment | Minimum Amounts Of Limitation on Appraised Values |
|---|---|---|
| I | $100 million | $100 million |
| II | $ 80 million | $ 80 million |
| III | $ 60 million | $ 60 million |
| IV | $ 40 million | $ 40 million |
| V | $ 20 million | $ 20 million |

A Non-rural school district, regardless of category, may agree to limitations greater than the minimum amounts.[771]

### Rural School Districts

The minimum amounts of qualified investment[772] and minimum amounts of limitation on appraised values [773] for each category of rural school districts are as follows:

| Category | Minimum Amounts Of Qualified Investment | Minimum Amounts Of Limitation on Appraised Values |
|---|---|---|
| I | $ 30 million | $ 30 million |
| II | $ 20 million | $ 20 million |
| III | $ 10 million | $ 10 million |
| IV | $ 5 million | $ 5 million |
| V | $ 1 million | $ 1 million |

Again, a rural school district, regardless of category, may agree to limitations greater than the minimum amounts.[774]

## Limitation Agreement

Any limitation agreement between the school board or a non-rural or a rural school district and the property owner must be in writing.[775] The written agreement must describe with specificity the qualified investment that the person will make on or in

769 *Id.* § 313.023.
770 *Id.* § 313.027(b).
771 *Id.* § 313.027(c).
772 *Id.* § 313.053.
773 *Id.* § 313.054(a)(increased minimum amounts of limitation on appraised values).
774 *Id.* § 313.054(b).
775 *Id.* § 313.027(d).

connection with the person's qualified property that is subject to the limitation on appraised value.[776] Other property of the person that is not specifically described in the agreement is not subject to the limitation agreement unless the school board, by official action, provides that the other property is subject to the limitation. Additionally, the agreement:[777]

- must incorporate each relevant provision of subchapter B of Chapter 313 of the Tax Code and, to the extent necessary, include provisions for the protection of future school district revenues through the adjustment of the minimum valuations, the payment of revenue offsets, and other mechanisms agreed to by the property owner and the school district;
- may provide that the property owner will protect the school district in the event the district incurs extraordinary education-related expenses related to the project that are directly funded in state aid formulas, including expenses for the purchase of portable classrooms and the hiring of additional personnel to accommodate a temporary increase in student enrollment attributable to the project;
- must require the property owner to maintain a viable presence in the school district for at least five years after the expiration of the limitation agreement;
- must provide for the termination of the agreement, the recapture of ad valorem tax revenue lost as a result of the agreement if the owner of the property fails to comply with the terms of the agreement, and payment of penalty, interest or both on the recaptured ad valorem tax revenue;
- may specify any conditions that will require the district and the property owner to renegotiate all or any part of the agreement; ; and
- must be in a form approved by the comptroller.

A limitation agreement may provide for a deferral of the date on which the qualifying time period[778] for the project is to commence, or an agreement may be amended to provide for such a deferral.[779] A subsequent agreement amending the deferral date may not be construed to permit a qualifying time period that has commenced to continue for more than the number of years applicable to the project.

A limitation agreement many not be entered into under which a person agrees to provide supplement payments to a school district in an amount that exceeds an amount equal to

776 *Id.* § 313.027(e).

777 *Id.* § 313.027(f).

778 *See id.* § 313.021(4) (Definition of qualified time period).

779 *Id.* § 313.027(h). However, the agreement may not provide for the deferral of the date on which the qualifying time period is to start on a date later than January 1 of the fourth tax year that begins after the date the application is approved, except that if the agreement is one in a series of agreements related to the project, the agreement may not provide for a deferral of the date on which the qualifying period is to start not later than January 1 of the sixth tax year that begins after the date that the application is approved.

the greater of $100 per student per year in average daily attendance, or $50,000 per year, for a period that exceeds the period beginning with the qualified time period and ending December 31st of the third tax year after the date the person's eligibility for a limitation expires.[780]

## Application for Property Limitation

The owner of qualified property may apply to the school district's board of trustees in which the property is located for a limitation on the appraised value for school district maintenance and operations ad valorem tax purposes of the person's qualified property.[781] An application must be made on the form prescribed by the comptroller. A copy of this application may be obtained from the comptroller's website at: https://comptroller.texas.gov/economy/local/ch313/forms.php.

Additionally, the application must be accompanied by: [782]

- the application fee established by the school board of trustees;
- information sufficient to show that the real and personal property identified in the application meets the definition of "qualified property"; and
- any information relating to each economic impact evaluation criterion.

Application fee, qualified property and economic impact evaluation criterion are discussed below.

### Application Fee

The school board by official action shall establish a reasonable, nonrefundable application fee to be paid by property owners who apply to the district for a limitation on the appraised value of the person's qualified property. [783] The amount of an application fee must be reasonable and may not exceed the estimated cost to the district of processing and acting on application, including any cost to the school district associated with the economic impact evaluation.

### Qualified Property

As mentioned above, jobs and qualified jobs have to be created on qualified property. "Qualified property" is defined to mean:[784]

- **land**:

780 *Id.* § 313.027(i) (Note: This limitation does not apply to the amounts described in Section 313.027(f)(1) or (2) of the Tax Code).
781 *Id.* § 313.025(a).
782 *Id.*
783 *Id.* § 313.031(b).
784 *Id.* § 313.021(2).

   - that is located in an area designated as a tax increment financing reinvestment zone under Chapter 311 of the Tax Code, a tax abatement reinvestment zone under Chapter 312 of the Tax Code, or an enterprise zone under Chapter 2303 of the Government Code;
   - on which a person proposes to construct a new building or erect or affix a new improvement that does not exist before the date the owner submits a complete application
   - a limitation on appraised value;
   - that is not subject to a tax abatement agreement entered into by a school district under Chapter 312 of the Tax Code; and
   - on which, in connection with the new building or new improvement described above, the owner of the land proposes to:
     - make a qualified investment in an amount equal to at least the minimum amount required by Section 313.023 of the Tax Code; and
     - create at least 25 new qualifying jobs;[785]
- **a new building or other new improvement** that a person proposes to construct or affix that does not exist before the date the owner submits a complete application for a limitation on appraised value;[786] or
- **tangible personal property** that:
   - is not subject to a tax abatement agreement entered into by a school district under Chapter 312 of the Tax Code;[787] and
   - except for new equipment described in Sections 151.318(q) (semiconductor fabrication cleanrooms and equipment) or 151.318(q-1) (pharmaceutical biotechnology cleanrooms and equipment) of the Tax Code, is first placed in service:
   - in the new building or in or on the new improvement that a person proposes to construct or affix that does not exist before the date the owner applies for a limitation on appraised value, or
   - on the land on which that new building, in the newly expanded building or new improvement is located, if the personal property is ancillary and necessary to the business conducted in the new building or in or on the new improvement.[788]

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785 *Id.* § 313.021(2)(A)(iv)(b). *But see id.* § 313.051(b) (property owner located in rural school district subject to Subchapter C is "required to create only at least 10 new jobs on the owner's qualified property.").

786 *Id.* §§ 313.021(2)(A)(ii), .021(2)(B).

787 *Id.* § 313.021(2)(C)(i). *See also id.* § 312.002(f).

788 *Id.* § 313.021(2)(C)(ii).

**Economic Impact Evaluation**

As indicated earlier, an economic impact evaluation must accompany an application for limited appraisal value.[789] The school district must request this evaluation from the comptroller's office.[790] The economic impact evaluation must contain the following criteria:[791]

1) any information the comptroller determines is necessary or helpful to the governing body of the school district in determining whether to approve the application; and
2) any information the comptroller determines is necessary or helpful to the comptroller in determining whether to issue a certificate for a limitation on appraised value of the property.

The comptroller's recommendation is based on the criteria list above and any other information available to the comptroller.[792] The comptroller may not issue a certificate of limitation on appraised value unless the comptroller determines that:

- the project proposed by the applicant is reasonably likely to generate, before the 25th anniversary of the beginning of the limitation period, tax revenue, including state tax revenue, school district maintenance and operations ad valorem tax revenue attributable to the project, and any other tax revenue attributable to the effect of the project on the economy of the state, in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost as a result of the agreement; and
- the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in this state.[793]

**Approval Process for Application for Property Limitation**

The school district board of trustees is not required to consider an application for a limitation on appraised value.[794] Should the school board elect to consider the application, the school district must submit a copy of the application to the comptroller's office within seven days of receiving each document and request an economic impact evaluation of the application.[795]

Upon receipt of the application from the school district, the comptroller shall conduct an economic impact evaluation and provide a copy of it to the school district as soon as practicable. The school district will provide a copy of the economic impact evaluation to

789 *Id.* § 313.025(a)(3).
790 *Id.* § 313.025(b).
791 *Id.* § 313.026.
792 *Id*. § 313.026(b).
793 *Id.* § 313.026(c)
794 *Id.* § 313.025(b).
795 *Id.* § 313.025(a-1).

the applicant on request. The comptroller will make a recommendation to the school district on whether to accept or reject the application, based on the criteria in the economic impact evaluation, input for the Texas Education Agency[796] and any other information available to the comptroller, including information provided by the school district.[797] The comptroller has no more than 91 days to review and give a recommendation concerning the approval or disapproval of an application after receiving it from the school district.[798]

The school board must approve or disapprove the application not later than the 150th day after the date the application is filed, unless an extension is agreed to by the school board and the applicant.[799] The school district must make a written finding as to any criterion considered by the comptroller in conducting the economic impact evaluation before approving or disapproving the application. Further, the school board is required to deliver a copy of those findings to the applicant.[800] Also, in determining whether to grant an application, the school board must consider any recommendations made by the Governor's Office of Texas Economic Development and Tourism.[801] The Governor's Office of Texas Economic Development and Tourism is authorized to recommend that a school district grant a person a limitation on appraised values. Further, the school board is entitled to request and receive assistance in deciding whether to approve an application from: (1) the comptroller; (2) the Governor's Office of Texas Economic Development and Tourism; (3) the Texas Workforce Investment Council; and (4) the Texas Workforce Commission.[802]

Once the school district has received its recommendations from the comptroller and any other recommendations concerning the application for limitation on the appraised value of the person's qualified property, the school board may approve an application only if the school board finds that: [803]

- the information in the application is true and correct;
- the applicant is eligible for the limitation on the appraised value of the person's qualified property; and
- determine that granting the application is in the best interest of the school district and the State of Texas.

The school district may not approve an application unless the comptroller submits to the school district board a certificate of limitation for appraised value on the property.[804]

796 *Id.* § 313.025 (b);(b-1).
797 *Id*. § 313.026(b).
798 *Id*. § 313.025(d).
799 *Id*. § 313.025(b).
800 *Id.* § 313.025(e).
801 *Id*. § 313.025(g).
802 *Id.* § 313.025(c).
803 *Id.* § 313.025(f).
804 *Id.* § 313.025(d-1).

## Limitation on Appraised Values

If a person's application is approved by the school board, for each of the first eight tax years that begin after the applicable qualifying time period, the appraised value of the person's qualified property, as described in the agreement may not exceed the lesser of:[805]

- the market value of the property; or
- an amount agreed to by the school board of trustees, in accordance with the following:

| Category | Non-Rural School Districts Minimum Amount Of Limitation [806] | Rural School Districts Minimum Amount Of Limitation[807] |
|---|---|---|
| I | $100 million | $ 30 million |
| II | $ 80 million | $ 20 million |
| III | $ 60 million | $ 10 million |
| IV | $ 40 million | $5 million |
| V | $ 20 million | $ 1 million |

Additionally, the agreement must provide that the limitations period applies for a period of 10 years and specify that the beginning date of the limitation, which must be January 1 of the first year that begins after:

- the application date;
- the qualifying time period; or
- the date commercial operations begin at the site of the project[808].

The "qualifying time period" generally begins the date the school district approves an application, and ends December 31st of the second complete tax year following that date except for nuclear electric power generation facilities or advanced clean energy projects.[809]

When appraising a person's qualified property that is subject to a limitation on appraised value, the chief appraiser of the appraisal district where the qualified property is located shall determine the market value of the property and include in the appraisal records both the market value and the appropriate value agreed to by the school board subject to the minimum limitation amounts listed above.[810]

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805 *Id.* § 313.027(a).
806 *Id.* § 313.027(b).
807 *Id.* § 313.054(a).
808 *Id.* § 313.027(a-1).
809 *Id.* § 313.021(4).
810 *Id.* § 313.027(g).

## Recapture of Lost Revenue of Ad Valorem Taxes

A person with whom the school district enters into an agreement of limitation on appraised value of qualified property must make the minimum amount of qualified investment during the qualifying time period. [811] If in any tax year a property owner fails to meet the obligations of the agreement, the property owner is liable to the state for a penalty for a certain amount.[812] However, if the person suffers a casualty loss on the property, the person may request a waiver of the penalty from the comptroller.[813] If the penalty is not waived by the comptroller and is not paid by February 1st of the following tax year, it becomes delinquent in accordance with Section 33.01 of the Tax Code.[814]

## Tax Credits[815]

Subchapter D of Chapter 313, Texas Tax Code previously contained provisions for tax credits. Subchapter D was repealed by H.B. 3390 in 2013. If a property owner qualified for a tax credit before the repeal of Subchapter D, the repeal does not affect the property owner's entitlement to the credit.[816]

## Disclosure of Appraised Value Limitation Information

The comptroller shall post on the comptroller's website each document or item of information the comptroller designates as substantive before the 15th day after the date the document or item of information is received or created.[817] Each document or item of information must continue to be posted until the appraised value limitation expires. The comptroller shall designate the following as substantive:[818]

- Each application requesting a limitation on appraised value; and
- The economic impact evaluation made in connection with the application.

If the school district maintains a generally accessible website, the district shall maintain a link on its website to the area of the comptroller's website where the information on each district's agreements to limited appraised value is maintained.[819]

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811 *Id*. § 313.0275(a).

812 *Id*. § 313.0275(b) (The penalty is the amount computed by subtracting from the market value of the property for that tax year the value of the property as limited by the agreement and multiplying the difference by the maintenance and operations tax rate of the school district for that tax year).

813 *Id*. § 313.0275(d).

814 *Id.* § 313.0275(c).

815 Subchapter D of Chapter 313, Texas Tax Code previously contained provisions for tax credits. Subchapter D was repealed by H.B. 3390, Section 22(2), 83rd R.S. (2013). If a property owner qualified for a tax credit before the repeal of Subchapter D, the repeal does not affect the property owner's entitlement to the tax credit.

816 *Id*. §313.171(b).

817 *Id*. § 313.0265(a).

818 *Id.* § 313.0265(b).

819 *Id.* § 313.0265(c).

### Confidentiality of Business Information

Information provided to a school district in connection with an application for a limitation on appraised value that describes the specific processes or business activities to be conducted or the specific tangible personal property to be located on real property covered by the application shall be segregated in the application from the other information in the application and is confidential and not subject to public disclosure unless the school board approves the application.[820] Other information in the custody of the school district or the comptroller in connection with the application, including information related to the economic impact of a project or the essential elements of eligibility under this Act, such as the nature and amount of the projected investment, employment, wages, and benefits, may not be considered confidential business information if the school board agrees to consider the application. Information in the custody of the school district or the comptroller is not confidential if the school district approves the application.

### Tax Abatement Agreements

Section 313.030 of the Tax Code provides that if property receives a limitation on appraised value in a particular tax year then the property is not eligible for a tax abatement agreement by the school district under Chapter 312 of the Tax Code in the same tax year.[821] Pursuant to Section 312.002(f) of the Tax Code, school districts are no longer authorized to enter into tax abatement agreements.[822]

### Impact Fees

A city or county may impose and collect from the owner of a qualified property a reasonable impact fee to pay for the cost of providing improvements associated with or attributable to property that receives a property tax limitation.[823]

## Adopting the Freeport and Goods-in-transit Exemptions

### Introduction

A constitutional amendment authorizes a type of property tax exemption for items classified as "Freeport property."[824] Freeport property includes various types of goods that are detained in Texas for a short period of time (175 days or less).[825] The goods must be in Texas only for a limited purpose, such as storage or factory processing. This exemption was proposed to enhance the ability of certain areas to attract warehouse and

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[820] *Id.* § 313.028.
[821] *Id.* § 313.030.
[822] *Id.* § 312.002(f).
[823] *Id.* § 313.006(b).
[824] Tex. Const. art. VIII, § 1-j.
[825] *See* Tex. Const. art VIII, § 1-j(d) (allows a political subdivision to extend storage of aircraft parts in its jurisdiction for up to 730 days from the date of importation instead of the standard 175 days).

distribution center facilities by offering a special property tax exemption for the goods they typically handle.

Another constitutional amendment authorizes an additional type of property tax exemption for items classified as "Goods-in-transit property."[826] The Goods-in-transit exemption is similar to the Freeport exemption with two key differences:

1) the Goods-in-transit exemption may apply to goods traveling inside the state; and
2) the Goods-in-transit exemption is only available for goods stored at locations, typically warehouses, owned by someone other than the owner of the goods themselves.

## Freeport Exemption

The constitutional amendment was unusual from the standpoint that no action was necessary by taxing units that wanted to exempt Freeport property from taxation. The exemption was self-enacting unless the taxing units took specific action to continue to tax the property. If a city decided to override the Freeport exemption and continue taxing the property, the governing body of the city had to take official action to tax the property by April 1, 1990. The official action that was required was not defined under the law. It would likely have been in the form of a resolution, order or ordinance of the taxing unit to retain its right to tax Freeport property. Most cities and other taxing units took the necessary action at that time to continue to be able to tax the Freeport property.

A taxing unit is free to change its decision and choose to exempt Freeport property in order to promote economic development. Such a decision would be made by the governing body of the taxing unit by repealing the original resolution or ordinance to tax Freeport property. It must be emphasized, however, that if a taxing unit such as a city now chooses to exempt Freeport property, the exemption may not be repealed later. In other words, once the taxing unit chooses to exempt Freeport property, this type of property remains exempt from property taxation by that taxing unit forever.[827]

The Freeport exemption, if adopted, applies throughout the local taxing entity's jurisdiction. For example, if a city adopts the Freeport exemption, it applies throughout the entire city. Similarly, if a county or school district adopts the Freeport exemption, it applies throughout the entire taxing jurisdiction of that county or school district. A local government may not choose to exempt Freeport property in only a portion of its territory.

Freeport property includes goods, wares, merchandise, ores, and certain aircraft and aircraft parts.[828] It does not include oil, natural gas and other petroleum products. Petroleum products are defined as "liquid and gaseous materials that are the immediate

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826 Tex. Const. art. VIII § 1-n.
827 Tex. Const. art VIII, § 1-j(b).
828 Tex. Const. art. VIII, § 1-j(a).

derivatives of the refining of oil or natural gas."[829] Freeport property qualifies for an exemption from ad valorem taxation only if it has been detained in the state for 175 days or less for the purpose of assembly, storage, manufacturing, processing or fabricating.[830]. Some types of companies currently receiving Freeport tax exemptions include auto makers, computer manufacturers, beverage producers, iron works, warehousing and distribution facilities, and medical supply companies.

Even when goods are sold to an in-state purchaser rather than shipped directly out of state, they may qualify for the Freeport exemption. To receive the exemption in such a case, the property must qualify under the above requirements as Freeport property and must be transported out of the state within 175 days after it was first acquired in or imported into the state.[831]

## Goods-in-transit Exemption

Like the Freeport exemption, the Goods-in-transit exemption is self-enacting unless taxing units hold a hearing and then take official action to tax the goods prior to January 1 of the first tax year in which the unit wishes to tax the goods. Unlike the Freeport exemption, taxing units are free to postpone their decision to tax Goods-in-transit goods until any future tax year.[832] For example, if a taxing unit failed to act to tax Goods-in-transit goods prior to January 1, 2008 (the first tax year the exemption went into effect), they could act again prior to January 1, 2009, to tax goods in that tax year, or likewise in any future year.

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[829] Tex. Tax Code § 11.251(j) (Note that motor oil, grease, and gear oil have been found to be Freeport property because they are distinct from base oil. *See Ashland Inc. v. Harris County Appraisal Dist.*, 437 S.W.3d 50, 59-62 (Tex. App—Houston [14th Dist.] 2014)(pet. filed and pending as of October 3, 2014.).

[830] *Id.* § 11.251(e); Tex. Const. art. VIII. § 1-j(a). *See* Tex. Const. art VIII, § 1-j(d); Tex.Tax Code § 11.251(l) (Except for aircraft parts, which may be stored for up to 730 days if authorized by the political subdivision in which the parts are stored).

[831] Tex. Att'y Gen. Op. No. DM-463 (1997) (Article VIII, section 1-j of the Texas Constitution establishes an exemption from ad valorem tax for "freeport" goods, that is, certain property destined for shipment out-of-state within 175 days after the date the property was acquired in or imported into the state. The freeport exemption is available to property where it is acquired or imported in this state by a person who detains it in the state "for assembling, storing, manufacturing, processing, or fabricating purposes," even though the property is not sold or transported out of the state by that person, but is instead sold to an in-state purchaser who uses the property in manufacturing other items which are then transported out of state within 175 days of the time the first owner acquired it.).

[832] Tex. Tax Code § 11.253(j).

Goods-in-transit means tangible personal property that:

- is acquired in or imported into this state to be forwarded to another location in this state or outside the state;
- is stored under a contract of bailment by a public warehouse operator[833] at one or more public warehouse facilities in this state that are not in any way owned or controlled by the owner of the personal property for the account of the person who acquired or imported the property;
- is transported to another location in this state or outside this state not later than 175 days after the date the person acquired the property in or imported the property into this state; and
- does not include oil, natural gas, petroleum products, aircraft dealer's motor vehicle inventory, dealer's vessel and outboard motor inventory, dealer's heavy equipment inventory, or retail manufactured housing inventory.[834]

Additionally, if a taxing unit wants to tax Goods-in-transit on or after January 1, 2012, the taxing unit must take action to continue to tax on or after October 1, 2011 in the manner required for official action by the governing body.[835] The official action to tax the Goods-in-transit must be taken before January 1 of the first tax year in which the taxing unit proposes to tax Goods-in-transit. Before acting to tax the exempt property, the governing body of the taxing unit must conduct a public hearing as required by Section 1-n(d) of Article VIII of the Texas Constitution. If the governing body of a taxing unit provides for the taxation of the Goods-in-transit, the exemption does not apply to that unit unless the governing body by official action rescinds or repeals its previous action to tax Goods-in-transit. Also, if the governing body that took action to provide for the taxation of Good-in-transit and pledged the taxes imposed for payment of a debt of the taxing unit, the tax official of the taxing unit may continue to impose the taxes against the good-in-transit until the debt is discharged, if cessation of the imposition would impair the obligation of the contract by which the debt was created.[836]

Also, unlike the Freeport exemption, taxing units that repeal the decision to continue taxing Goods-in-transit goods (reinstating the exemption, in other words) apparently may choose to again tax the goods at some time in the future, provided they do so prior to January 1st of the first tax year they intend to again tax the goods.[837]

The Goods-in-transit exemption, if applicable, applies throughout the local taxing entity's jurisdiction. For example, if the Goods-in-transit exemption applies to a city, it applies throughout the entire city. Similarly, if a Goods-in-transit exemption applies to a county

833 *Id.* § 11.253(a)(6) (Definition of public warehouse operator). *See also id*. § 11.253(a)(5) (Definition of bailee and warehouse).
834 *Id*. § 11.253(a)(2).
835 *Id.* § 11.253(j-1).
836 *Id*. § 11.253(j-2).
837 *Id*. § 11.253(j).

or school district, it applies throughout the entire taxing jurisdiction of that county or school district. A local government may not choose to exempt Freeport property in only a portion of its territory.

Goods-in-transit property includes goods, wares, merchandise, ores, and certain aircraft and aircraft parts.[838] It does not include oil, natural gas, and other petroleum products.[839] The constitutional amendment that authorized the Goods-in-transit exemption would have permitted legislation allowing the goods to remain at a location for up to 270 days tax-free,[840] but the enabling legislation adopted a narrower, 175-day window that mirrors the Freeport exemption, except for aircraft parts if the taxing unit authorizes a longer time period.[841]

838 Tex. Const. art. VIII, § 1-n(a), (b)(1).

839 *Id.* art. VIII, § 1-n(a). *See* Tex. Tax Code § 11.253(a)(4) (Definition of "petroleum product").

840 Tex. Const. art. VIII, § 1-n(a)(3).

841 Tex. Tax Code § 11.253(a)(2)(C); Tex. Const. art VIII, § 1-j.

# IV. Economic Development Through Tourism

## The Local Hotel Occupancy Tax

Economic development for many Texas cities and some counties is a matter of tourism. Texas consistently ranks along with California and Florida as one of the top three destinations for U.S. travelers. To fund the promotion of tourism, more than 500 Texas cities and 60 counties levy a local hotel occupancy tax generating over a billion dollars per year in revenue for these cities and counties. It is clear that the amount of money spent on tourism in Texas is growing and communities are increasingly looking to tourism for much needed revenue. The local hotel occupancy tax can provide an important source of funding for maintenance of a city's and county's tourism program and can translate into economic development for the entire area.

### Authorized Entities and Procedures

Both general law cities and home rule cities are authorized to adopt a hotel occupancy tax ("HOT") within the city boundaries.[842] Implementing such a tax is optional. A city may implement a hotel occupancy tax by adopting an ordinance calling for the levy of the tax. The ordinance needs to be approved by a simple majority of the members of the governing body at an open meeting. Unlike a local sales tax, the adoption of a local hotel occupancy tax does not require voter approval. Although not mandated by state statute, a city may hold a public hearing to give the public an opportunity to express its views regarding the implementation and potential uses of the tax. Home rule cities (cities over 5,000 population that have adopted a home rule charter) should check their city charter for any additional requirements that the charter may impose.

Most cities are eligible to adopt a hotel occupancy tax rate of up to seven percent of the consideration paid for the use of a hotel room. [843] A city with a population of under 35,000 may also adopt the hotel occupancy tax within that city's extraterritorial jurisdiction (ETJ).[844] If a city adopts the hotel occupancy tax within its ETJ, the combined state, county, and municipal hotel occupancy tax rate may not exceed 15%.

Some counties have received legislative approval to adopt a county hotel occupancy tax.[845] Generally, counties are authorized to adopt a rate not to exceed seven percent of the consideration paid for a hotel room for areas outside of the jurisdiction of a city.[846] Within the city limits, counties are generally capped at a county hotel tax rate of 2 percent.[847] The State of Texas also imposes a six percent hotel occupancy tax rate that applies throughout the state.[848]

842 Tex. Tax Code §§ 351.001 (Definition of "municipality"); .002 (Municipal hotel occupancy tax authorized).
843 *Id.* § 351.003(a).
844 *Id.* § 351.0025.
845 *Id.* § 352.002.
846 *Id.* § 352.003(a).
847 *Id.* § 352.003(b) (Note: County hotel occupancy tax can range from one percent to seven percent within a city. Counties that are authorized to have hotel occupancy tax should check Section 352.003 of the Tax Code for the exact percentage rate that can be charged).
848 *Id.* § 156.052.

## Issues to Consider before Adopting the Tax

A local government will want to consider a number of issues before it implements a local hotel occupancy tax. These concerns include:

- Would the expenditure of hotel occupancy tax be likely to attract out-of-town tourists that would stay overnight or otherwise conduct business at area lodging facilities? Hotel occupancy tax revenues may not be used to establish or enhance facilities or programs that would not attract out-of-town visitors and directly promote the hotel and convention industry.[849]
- How does the proposed hotel occupancy tax rate compare to the hotel occupancy tax rates of neighboring communities? Will the proposed rate be above, in line with, or below nearby areas that compete for available tourism business?
- What revenues can be expected by the imposition of a hotel occupancy tax? Projected revenues can be roughly estimated by applying the proposed local hotel occupancy tax rate against the taxable revenues of the hotels in the locale during prior years. Hotels report their taxable revenues each year to the comptroller when they submit the state hotel occupancy tax. The information from this report to the comptroller can be adjusted to get a basic estimate of the amount of revenue a city could anticipate if it adopted a local hotel occupancy tax.
- How would the proposed tax fit into the city's future plans and goals? What types of programs and improvements that are authorized under the hotel tax laws will be possible with the anticipated revenues? Would the proposed programs and expenditures be possible without the imposition of a hotel occupancy tax and how soon would they be possible? What existing or new facilities and programs would qualify for funding? To qualify for funding, each of the facilities or programs must fit into one of the statutory categories for expenditures which are discussed in detail later in this chapter.[850] Each expenditure also must be likely to result in increased tourism by out-of-town visitors to the city and must have some impact on hotel and/or convention activity.
- How will the city measure the benefits of expenditures of the hotel occupancy tax? For example, a city could ask recipients of hotel occupancy tax proceeds to keep a log of out-of-town visitors or business transactions that took place after the enhancement of their program or facility with hotel occupancy tax money. Many visitor centers and tourist attractions have a guest book that out-of-town visitors are encouraged to sign. The visitor logs could include a box to check if the visitor is "staying at an area hotel." The city could use this information later to estimate the effectiveness of the various expenditures at promoting increased tourism and hotel activity.
- What local entities would be encouraged to participate in the decisions regarding administration of a local hotel occupancy tax? Will the city involve local citizens, the chamber of commerce, and representatives of the local hotels to review potential uses of the hotel occupancy tax proceeds? Involving area hotel representatives in the allocation decisions has helped many communities avoid opposition to the types of programs that

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[849] *Id.* § 351.101(a)-(b).

[850] *Id.* §§ 351.101(a)(1)-(12), .110.

are ultimately funded. Area hoteliers can also help the community accurately assess how much of an impact the hotel tax funded programs have on area hotel activity.

## Who Charges the Tax

The following businesses are considered "hotels" and are required to charge the tax:[851]

- a hotel,
- motel,
- tourist home,
- tourist court
- lodging house,
- inn,
- rooming house, or
- bed and breakfast.

Hospitals, sanitariums, nursing homes, dormitories and other non-hotel housing facilities owned by institutions of higher education, and oilfield portable units[852] may not charge the tax. While recreational vehicles (RVs) and RV rental spaces are not expressly listed in the statute, the comptroller's office has interpreted the statute to exclude RVs and RV lots from taxation. In 2015, legislation passed clarifying that the definition of "hotel" includes a residential short-term rental property for purposes of the imposition of hotel occupancy taxes.[853]

The hotel occupancy tax may be imposed against any "person" (including corporations and other legal entities) who pays for the use of a hotel room that is ordinarily used for sleeping.[854] The price of the room does not include the cost of food served by the hotel or the cost of other personal services.[855] Unlike the state hotel occupancy tax, local hotel occupancy tax does not apply to the cost of renting meeting rooms, banquet or event space within a hotel since these rooms are not considered "sleeping rooms."[856]

## Exemptions From the Tax

State law exempts the following individuals from payment of the state and local hotel occupancy tax, if they are traveling on official business:

1) federal employees[857];
2) foreign diplomats with a tax exempt card issued by the U.S. Department of State[858];

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851 *Id.* § 351.001(4), 352.001(1). *See id*. § 156.001(a) (The term "hotel" has the meaning assigned by Section 156.001 of the Tax Code which is defined as "a building in which members of the public obtain sleeping accommodations for consideration."). *See also* 34 Tex. Admin. Code § 3.161(a)(3).

852 *See* Tex. Tax Code. § 152.001(20) (Definition of "oilfield portable unit").

853 *Id*. § 156.001(b).

854 *Id.* § 351.002(a). *See* Tex. Gov't Code. § 311.005(2) (Definition of "person" as used in any Texas code).

855 Tex. Tax Code §§ 351.002(b), 156.051(b) (Note: The price of a room could also not include the cost of beverages. However, if the food and beverages prices are not separately stated from the room rental prices, those costs could be included in the price of the room. This is often demonstrated when a hotel has a single "package" price that includes room and food/services.).

856 *Id*. § 156.051(a).

857 *Id.* §§ 351.006(a), 352.007(a), 156.103(a). *See also* 34 Tex. Admin. Code §3.161(b)(3).

3) a very limited number of state officials with a hotel tax exemption card (heads of state agencies, state legislators and legislative staff, members of state boards and commissions, and state judges)[859]; and
4) persons or businesses who have the right to use or possess a hotel room at least 30 consecutive days.[860]

Employees of Texas institutions of higher education (colleges) are exempt from the state hotel occupancy tax, but must pay local hotel occupancy tax.[861] Additionally, employees of secondary schools (grade schools and high schools) from Texas and outside of Texas are exempt from state hotel occupancy tax, but must pay local hotel tax.[862] All individuals claiming one of the above exemptions are required to show appropriate identification and to fill out a Hotel Occupancy Tax Exemption Certificate. A certificate form that can be used for this purpose is available on the comptroller's website at https://comptroller.texas.gov/forms/12-302.pdf. Lodging operators and other interested parties can also access an internet searchable list of all of the entities that have been granted a letter of exemption from the state hotel occupancy tax.  This site can be accessed at: https://comptroller.texas.gov/taxes/hotel/.

Officers or employees of a state agency, institution, board or commission who are traveling on official business must pay the tax, but are entitled to a refund from the involved governmental taxing entities.[863] The state and the local government refund the hotel occupancy tax to the exempt employee through a separate process. A city or county may want to request a copy of the comptroller's refund application form for the state hotel occupancy tax and adapt that form for handling refunds of the municipal or county hotel occupancy tax.

City and county officers and employees are not exempt from the state or local hotel occupancy tax even if the officers or employees are traveling on official business. Further, cities may not authorize additional exemptions from the hotel occupancy tax. For example, the attorney general ruled in JM-865 (1988) that neither cities nor counties have the authority to grant an exception to the hotel occupancy tax for religious, charitable, or educational organizations without new constitutional or statutory authority to do so. It is important to reiterate that there are many entities, including educational, charitable, and religious entities, that are or may be exempt from the state hotel occupancy tax, but must pay the city and county hotel occupancy tax.

## How the City or County Receives the Tax

The local hotel occupancy tax is paid by the hotel customer to the hotel. The tax is then remitted by the hotel to the city or county on a regular basis, to be established by the city or county. The comptroller's office is not involved in the collection of the local hotel occupancy tax. The state requires hotels to turn over collected hotel occupancy taxes on a monthly basis. Some hotels in smaller communities, however, petition the comptroller for permission to turn over the tax

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858 34 Tex. Admin. Code § 3.161(b)(4).
859 *Id.* § 3.161(b)(2).
860 Tex. Tax Code §§ 351.002(c), 156.101. *See also* 34 Tex. Admin. Code § 3.161(b)(6).
861 Tex. Tax Code §§ 156.102(b)(2), .103(b), 351.006(b), 352.007(b). *See also* 34 Tex. Admin. Code §§ 3.161(a)(2), (b)(1).
862 *See* 34 Tex. Admin. Code §§ 3.161(a)(2), (b)(1).
863 Tex. Tax Code. § 351.006(b), 352.007(b), 156.103(b).

proceeds on a quarterly basis. For the convenience of hotel operators, many cities and counties use the same reporting and collection schedule used by the state for collection of the state hotel occupancy tax.

Cities and counties that levy the hotel occupancy tax should send a tax return form to each hotel operator two to four weeks before the taxes are due. Regardless of the reporting period used, cities and counties should require hotels to include as part of their report a copy of the hotel's tax report done for the comptroller. The state report data can be used to check the completeness of the local report provided by the hotel to the city or county. Cities and counties should be aware that, in certain cases, the state and local tax are subject to different exemptions and, as a result, the revenues may not exactly coincide.

A city or county may request hotel occupancy tax audit information from the comptroller.[864] However, the city or county must keep such information confidential and use the information only for enforcement or administration of the city's or county's hotel tax.

Cities and counties can also obtain from the comptroller's office a copy of the latest quarterly state report listing all of the hotels that currently remit state hotel occupancy taxes. This information can be found at: https://comptroller.texas.gov/taxes/hotel/.

## Reimbursement for Collection Expenses

Cities by ordinance or counties by order or resolution may allow hotel operators to retain up to one percent of the amount of hotel occupancy taxes collected as reimbursement for the costs of collecting the tax.[865] A city may spend each year not more than the lesser of one percent or $75,000 of the revenue derived from the tax during that year for the creation, maintenance, operation, and administration of an electronic tax administration system.[866] A city may contract with a third party to assist in the creation, maintenance, operation, or administration of the electronic tax administration system.[867] A city may not use revenue the city is authorized to spend on an electronic tax administration system to conduct an audit.[868] If a city uses revenue derived from its tax to create, maintain, operate, or administer an electronic tax administration system, the city shall permit a person who is required to collect and pay over to the city the tax to withhold not more than one percent of the amount of the tax collected and required to be reported as reimbursement to the person for the cost of collecting the tax.[869]

Cities or counties that undertake responsibility for administering a facility or event funded by the local hotel occupancy tax may be reimbursed from the tax revenues for actual expenses incurred in operating the facility or event, if the expenditure directly promotes tourism and local convention and hotel activity.

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864 *Id.* § 111.006(d).
865 *Id.* §§ 351.005(a), 352.005.
866 *Id.* § 351.1012(a).
867 *Id.* § 351.1012(b).
868 *Id.* § 351.1012(a).
869 *Id.* § 351.005(b).

## Penalties and Enforcement for Failure to Report or Collect the Tax

The local hotel occupancy tax statutes provide for specific penalties that may be assessed against hotel operators who fail to file a tax report or pay the tax when due.[870] A city may impose a 15% penalty if the tax has been delinquent for at least one complete city fiscal quarter and collect interest and reasonable attorney's fees against any hotel operator who does not file their report or pay the taxes due.[871] The city can conduct an audit of each hotel for which a tax report was not filed to determine the amount of taxes that are due.[872] The city shall provide at least 30 days' written notice to the person who is required to collect the tax with respect to a hotel before conducting an audit of the hotel.[873] If, as a result of an audit, the city obtains documentation or other information showing a failure to collect or pay city and state hotel occupancy tax when due, the city shall notify and submit the relevant information to the comptroller.[874] The comptroller shall review the information submitted by the city and determine whether to proceed with collection and enforcement efforts. If the information results in the collection of delinquent state hotel occupancy tax and the assessment has become administratively final, the comptroller shall distribute a percentage of the amount collected to the city to defray the cost of the city audit. The city can charge for the cost of the audit but only if the tax has been delinquent for at least two complete municipal fiscal quarters at the time that the audit was conducted and the city has not received a disbursement from the comptroller in accordance with an audit of concurrent tax delinquency.[875] The city can adopt a hotel occupancy tax ordinance that includes a provision that makes it a misdemeanor offense if the hotel operator fails to file the tax report or remit the taxes.[876]

Additionally, cities are given the authority to take the following actions against a hotel operator who fails to report or collect the local hotel occupancy tax:

- require the forfeiture of any revenue the city allowed the hotel operator to retain for its cost of collecting the tax;[877]
- bring a civil suit against the hotel operator for noncompliance; [878]
- ask the district court to enjoin operation of the hotel until the report is filed and/or the tax is paid; and
- any other remedies provided under Texas law.[879]

The most noteworthy of these remedies is the ability of the city to request that the district court close down the hotel if the hotel occupancy taxes are not paid. Often, a city can gain compliance simply by informing the hotel operator of the possibility of such a closure. A city must typically bring a suit against a hotel under this authority no later than the fourth anniversary of the date the

870 *Id.* §§ 351.004(a), 352.004.
871 *Id.* § 351.004(a)(1), (3), and (4).
872 *Id.* § 351.004(a-1)(1), (a-3).
873 *Id*. § 351.004(a-3).
874 *Id*. § 351.008.
875 *Id.* § 351.004(a)(2). *See id*. §§ 156.2513, 351.008.
876 *Id.* § 351.004(c).
877 *Id*. § 351.005(b).
878 *Id.* § 351.004(a).
879 *Id*. § 351.004(d).

tax becomes due.[880] However, a city may bring a suit any time if a person files a false or fraudulent report with the city or does not file a report for the tax with the city.[881]

Also, counties can assess penalties against a hotel operator for failing to file the tax report or paying the taxes that are due.[882] If the hotel operator fails to file the report or pay the taxes due, the county shall be paid a penalty of five percent of the amount of the taxes due. Thirty days after the date the report should have been filed or taxes should have been paid and the hotel operator still has failed to do either, the county can add another penalty of five percent of the amount of the taxes due. If the taxes are not paid within 60 days, delinquent taxes and accrued penalties draw interest at a rate of ten percent a year.[883]

Counties have the authority to take certain actions against a hotel operator who fails to report or collect the local hotel occupancy tax. These actions include:

- bring a civil suit against the hotel operator for noncompliance;
- ask the district court to enjoin operation of the hotel until the report is filed and/or the tax is paid; and
- any other remedies provided under Texas law.[884]

Just like a city, the county can request the district court to close down the hotel if the hotel occupancy taxes are not paid. A county must typically bring a suit against a hotel under this authority no later than the fourth anniversary of the date the tax becomes due.[885] However, a county may bring a suit any time if a person files a false or fraudulent report with the city or does not file a report for the tax with the county.[886]

Counties can perform an audit on each hotel in relation to the person who did not file their reports in order to determine the amount of tax due.[887] The county shall provide 30 days' written notice to the person who was required to file the reports with the county.[888] If as a result of the audit, the county obtains documentation or other information showing the failure to collect or pay county and state hotel occupancy tax when due, the county shall notify and submit the relevant information to the comptroller.[889] The comptroller shall review the information submitted by a county and determine whether to proceed with collection and enforcement efforts. If the information results in the collection of delinquent state hotel occupancy taxes and the assessment becomes administratively final, the comptroller shall distribute a percentage of the amount collected to the county to defray the cost of the county audit.

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880 *Id*. § 351.004(b).
881 *Id*. § 351.004(b-1).
882 *Id.* § 352.004(b).
883 *Id.* § 352.004(c).
884 *Id*. § 352.004(d).
885 *Id*. § 352.004(d-1).
886 *Id*. § 352.004(d-2).
887 *Id*. §§ 352.004(e), .006(a).
888 *Id*. § 352.004(e).
889 *Id*. § 352.008.

A city and county may also require that persons buying a hotel retain out of the purchase price an amount sufficient to cover any delinquent hotel occupancy taxes that are due to the city.[890] If the buyer does not remit such amount to the city and county (where applicable) or show proof that the hotel is current in remitting its hotel occupancy taxes, the buyer becomes liable for any delinquent hotel occupancy taxes due on the purchased hotel.

The purchaser of a hotel may request that the city and county provide a receipt showing that no hotel occupancy tax is due (a "Letter of No Tax Due") on the property to be purchased.[891] The city and county are required to issue the statement not later than the 60th day after the request. If the city or county fails to issue the statement within the deadline, the purchaser is released from the obligation to withhold the amount due from the purchase price for that local governmental entity.[892]

## Use of Local Hotel Occupancy Tax Revenues for Cities

There is a two-part test that every expenditure of local hotel occupancy tax revenue must pass to be valid. First, the expenditure must directly enhance and promote tourism and the convention and hotel industry.[893] In other words, the expenditure must be likely to attract visitors from outside the city into the city or its vicinity and must have some impact on convention and hotel activity. If the expenditure is not reasonably likely to accomplish this result, it cannot be funded by hotel occupancy tax revenues. The hotel occupancy tax may not be used for general revenue purposes or to pay for governmental expenses not directly related to increasing tourism.[894]

Second, every expenditure must clearly fit into one of the statutory categories for the expenditure of local hotel occupancy tax revenues. These categories are as follows:[895]

**1. Funding the establishment, improvement or maintenance of a convention center or visitor information center.[896]**

Simply naming a facility a convention center or visitor information center does not bring it under this section. State law specifies that the facility must be one that is primarily used to host conventions and meetings.[897] The term "convention center" is defined to include civic centers, auditoriums, exhibition halls, and coliseums that are owned by the city or another governmental entity or that are managed in whole or in part by the city and that are used primarily to host conventions and meetings. "Meetings" means gatherings of people that enhance and promote tourism and the convention and hotel industry.[898] It also includes parking areas in the immediate vicinity of other convention center facilities. It does not include facilities that are not of the same general characteristics as the structures listed above.

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890 *Id.* §§ 351.0041, 352.0041.
891 *Id.* §§ 351.0041(c); 352.0041(c).
892 *Id.* §§ 351.0041(d); 352.0041(d).
893 *Id.* § 351.101(a). *See* Tex. Att'y Gen. Op. No. GA-0124 (2003).
894 Tex. Tax Code. § 351.101(b).
895 *Id.* §§ 351.101(a), .0035 .110.
896 *Id.* § 351.101(a)(1).
897 *Id.* § 351.001(2).
898 *Id.*

The attorney general has specifically ruled against the expenditure of local hotel occupancy taxes for a city recreational facility such as a golf course or a tennis court.[899] However, the legislature has provided additional statutory authority that allows the use of local hotel occupancy tax for certain sporting related expenses if they meet certain criteria discussed below. It is possible that facilities that are not considered convention centers may still be able to receive funding if the expenditure can be justified under the categories described below for promotion of the arts or for historical preservation or restoration projects. A city may pledge the hotel occupancy tax revenue for the payment of bonds that are issued under Chapter 1504 of the Government Code for convention center facilities, as authorized under the hotel occupancy tax law.[900]

**2. Paying the administrative costs for facilitating convention registration.**[901]

This provision applies only to administrative costs that are actually incurred for assisting in the registration of convention delegates or attendees. It may include covering the facility costs, personnel costs, and costs of materials for the registration of convention delegates or attendees.

**3. Paying for tourism-related advertising and promotion of the city or its vicinity.** [902]

This provision is strictly limited to expenditures for a solicitation or promotional program or advertising which is directly related to attracting conventions or tourism. The attorney general has ruled that this provision does not authorize advertising to attract new businesses or permanent residents to a city.[903] Again, the purpose of the expenditure must be directly related to increasing tourism and the convention and hotel industry.

**4. Funding programs that enhance the arts.** [904]

This section authorizes the expenditure of hotel occupancy tax revenues for a variety of arts-related programs. It allows funding for the encouragement, promotion, improvement, and application of the arts including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms. The fact that a program directly promotes the arts is not in itself sufficient to justify expenditure of the local hotel tax. The funded event/facility must also have the impact of directly promoting both tourism and the hotel and convention industry.

**5. Funding historical restoration or preservation programs.** [905]

This category allows a city to spend its hotel occupancy tax revenues to enhance historical restoration and preservation projects or activities that encourage tourists and convention delegates to visit the city's preserved historic sites or museums. This funding can include the costs for rehabilitation or preservation of existing historic structures. Also, the costs of advertising, conducting solicitations, and promotional programs to encourage tourists and

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899 *See* Tex. Att'y Gen. Op. Nos. JM-184 (1984), JM-965 (1988).

900 Tex. Tax Code § 351.102.

901 *Id.* § 351.101(a)(2).

902 *Id.* § 351.101(a)(3).

903 *See* Tex. Att'y Gen. Op. No. JM-690 (1987) ( [Chapter 351 of the Tax Code] does not authorize the use of hotel/motel occupancy tax funds for advertising which is not related to attracting conventions, visitors or tourists).

904 Tex. Tax Code § 351.101(a)(4).

905 *Id.* § 351.101(a)(5).

convention delegates to visit such preserved historic structures or museums can be funded under this category. The tax can be used on historic sites or museums that are in the immediate vicinity of the convention center facilities or visitor information centers, or anywhere else in the city where tourist and convention delegates frequently visit. The fact that a program results in historical restoration or preservation is not in itself sufficient to justify expenditure of the local hotel tax. The funded event/facility must also have the impact of directly promoting both tourism and the hotel and convention industry.

**6. Funding costs to hold sporting events in certain municipalities.**[906]

Certain cities may use hotel occupancy tax proceeds for expenses, including promotional expenses, directly related to sporting events in which the majority of participants are tourists. These cities are:

1. cities located in a county with a population of one million or less; [907]
2. a city with a population of more than 67,000 that is located in two counties with 90 percent of the city's territory located in a county with a population of at least 580,000, and the remaining territory located in a county with a population of at lest four million.[908]; or
3. a city with a population of at least 200,000 and shares a border with:
   a. a city with the population of at least 56,000 that borders Lake Ray Hubbard and is located in two counties, one of which has a population of less than 80,000, and
   b. Lake Ray Hubbard.[909]

Such funding is permissible provided the sporting event substantially increases economic activity at hotels and motels within the city or its vicinity. This provision is intended to allow communities to fund the event costs for sporting tournaments that result in substantial hotel activity. For example, if a city had to pay an application fee to seek a particular sporting event or tournament, it could use this authority if the event would substantially increase economic activity at hotels and the city was within a county of one million or less population. The requirement that a majority of the participants must be "tourists" is included to prohibit the use of local hotel tax for sporting related facilities or events that are purely local (e.g., local recreation centers, local little league and parks events, etc.).

**7. Enhancing and upgrading existing sport facilities or fields for certain municipalities.**[910]

This expenditure authorizes certain cities to use hotel occupancy tax revenue to upgrade certain existing sports facilities. Existing sports facilities or fields may be upgraded with hotel occupancy tax revenue if the facility is: 1) owned by the city;[911] and 2) the sports facility or field

[906] *Id.* § 351.101(a)(6).
[907] *Id.* § 351.101(a)(6)(A).
[908] *Id.* § 351.101(a)(6)(B).
[909] *Id.* § 351.101(a)(6)(C) (as added by S.B 1262, 86th Leg., R.S. Effective September 1, 2019) (Note: Parts of S.B. 1262 was repealed by H.B. 4347, 86th Leg., R.S. This section is based on what that section would have said had it not been repealed.)
[910] *Id.* § 351.101(a)(7).
[911] *Id.* § 351.101(a)(7)(A).

has been used in preceding calendar year a combined total of more than 10 times for district, state, regional, or national sports tournaments.[912] The cities that are authorized to use hotel occupancy tax revenue for this expenditure are:

1) those with a population of 80,000 or more that are located in a county with a population of 350,00 or less;
2) those with a population of between 75,000 and 95,000 that are located in a county with a population of less than 200,000 but not more than 160,000;
3) those with a population of between 36,000 and 39,000 that are located in a county with a population of 100,000 or less that is not adjacent to a county with a population of more than 2 million;
4) those with a population of at least 13,000 but less than 39,000 and is located in a county that has a population of at least 200,000;
5) those with a population of at least 70,000 but less than 90,000 and no part of the city is located in a county with a population greater than 150,000;
6) those located in a county that has a population of at least 500,000, adjacent to the Texas-Mexico border and the county does not have a city with a population greater than 500,000;
7) those with a population of at least 25,000 but not more than 26,000 and is located in a county that has population of 90,000 or less;
8) those located in a county that has a population of not more than 300,000 and in which a component university of the University of Houston System is located;
9) those with a population of at least 40,000 and the San Marcos River flows through the municipality;
10) those with a population of more than 67,000 that are located in two counties with 90 percent of the city's territory located in a county with a population of at least 580,000, and the remaining territory located in a county with a population of at least four million;
11) those that contain an intersection of Interstates 35E and 35W and at least two public universities;
12) a city with a population of at least 200,000 and shares a border with a city with the population of at least 56,000 that borders Lake Ray Hubbard and is located in two counties, one of which has a population of less than 80,000, and Lake Ray Hubbard; [913]
13) those that have a population of not more than 1,500 and are located in a county that borders Arkansas and Louisiana;[914]
14) those with a population of not more than 10,000, that contain an outdoor gear and sporting goods retailer with retail space larger than 175,000 square feet, and that host an annual wiener dog race;[915]

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912 *Id.* § 351.101(a)(7)(C).
913 *Id.* § 351.101(a)(7)(B)(i)-(xii). *See* ftnt 909 concerning this specific section.
914 *Id.* § 351.101(n).
915 *Id.* § 351.101(o).

15) those in the county seat of a county that has a population of more than 10,000 and contains a portion of Mound Lake;[916]

16) those that are the county seat of a county that is located on the Texas-Mexico border, have a population of 500,000 or more, and are adjacent to two or more counties, each of which have a population of 50,000 or more;[917]

17) those that have a population of at least 6,000 and that are the county seat of a county that borders Louisiana, is bisected by a United States highway, and has a population of 75,000 or less;[918] or

18) A city with a population of at least 95,000 that is located in a county that is bisected by United States Highway 385 and has a population of not more than 140,000.[919]

If hotel tax revenues are spent on enhancing or upgrading a sports facility, the city must determine the amount of "area hotel revenue" that was generated by hotel activity from sports events that were held at the hotel tax funded facility for five years after the upgrades to the sport facility are complete.[920] The area hotel revenues that were generated from sports events at the hotel tax-funded facility over that five year period must at least equal the amount of hotel tax that was spent to upgrade the sports facility.[921] If the amount of hotel tax that was spent on the facility upgrades exceeds hotel revenue attributable to the enhancements over that five-year period, the city must reimburse the hotel occupancy tax revenue fund any such difference from the city's general fund.[922] For example, if a city spent $400,000 on improvements to its soccer fields, it would have to show at least $400,000 in hotel night revenue, including hotel banquet revenue, directly attributable to events held at that soccer field over the five year period after the soccer field improvements were completed. If the city could only show $300,000 in hotel industry revenue due to events held at that soccer field, the city would have to reimburse the city hotel tax for the $100,000 difference from the city's general fund.

### 8. Signage to sights and attractions.[923]

Cities are allowed to use hotel occupancy tax to erect signage to direct the public to sights and attractions that are visited frequently by hotel guests in the city.

### 9. Funding transportation systems for tourists.[924]

With conventions and large meetings, there is often a need to transport the attendees to different tourism venues. Cities are allowed to use of hotel occupancy tax to cover the costs for transporting tourists from hotels in and near the city to any of the following destinations:

- the commercial center of the city;
- a convention center in the city;
- other hotels in or near the city; and

916 *Id.* § 351.10711.
917 *Id.* § 351.1068.
918 *Id.* § 351.1079.
919 *Id.* § 351.10712.
920 *Id.* § 351.1076(a).
921 *Id.*
922 *Id.* § 351.1076(b).
923 *Id.* § 351.101(a)(9).
924 *Id.* § 351.110.

- tourist attractions in or near the city.

The reimbursed transportation system must be owned and operated by the city, or privately owned and operated and financed in part by the city. The law specifically prohibits the use of the local hotel occupancy tax to cover the costs for transporting the general public by any such system.

## Use of Local Hotel Occupancy Tax Revenues for Counties

Just like cities, counties that are authorized to impose hotel occupancy tax have to follow a two-part test to determine that every expenditure of the tax is valid.[925] First, the expenditure must directly enhance and promote tourism and the convention and hotel industry. The expenditure must be likely to attract visitors from outside the county into the county or it vicinity and must have some impact on convention and hotel activity. If the expenditure is not reasonably likely to accomplish this result, it should not be funded by hotel occupancy tax revenues. The hotel occupancy tax may not be used for general revenue purposes or general governmental operations of a county.[926]

Second, a county can only spend hotel occupancy tax revenue on those categories of expenditures that the county has specifically been given permission by statute to do so.[927] Usually, this depends on either the population of the county or where the county is geographically located or both.

## Use of Tax Proceeds to Cover Administrative Expenses

The implementation of programs or improvements under the above categories may involve certain administrative costs. State law allows proceeds of the tax to be used to cover the portion of administrative costs that are directly attributable to work on facilities or events that may be funded by the tax.[928] For example, efforts to promote the city or county as a tourist and convention locale often involve some travel expenses. There are two circumstances under which cities or counties may spend hotel occupancy tax revenues for travel-related expenditures.[929]

- First, tax revenues may be spent to pay for travel to attend an event or to conduct an activity that is directly related to the promotion of tourism and the convention and hotel industry. "Tourism" is defined in the Tax Code as guiding or managing the travel of individuals from their residence to a different city or county for pleasure, recreation, education, or culture.[930]
- Second, local hotel occupancy tax revenues may be spent on travel that is directly related to the performance of the person's job in an efficient and professional manner. This travel should facilitate the acquisition of skills and knowledge which will promote tourism and the convention and hotel industry.

925 *Id.* § 352.1031(a) (This statute refers to Tax Code § 351.101).
926 *Id.* § 352.1031(b).
927 *Id.* §§ 352.101-.106; .108; .110; .111; .113.
928 *Id.* §§ 351.101(e)-(f), 352.1015(c)-(d).
929 *Id.*
930 *Id.* §§ 351.001(5), (6), 352.001(3), (4).

Entities that manage activities funded by the hotel occupancy tax may spend some of the tax for certain day-to-day operational expenses. These expenses may include supplies, salaries, office rental, travel expenses, and other administrative costs. These costs can be reimbursed if they are incurred directly in the promotion and servicing of expenditures authorized under the hotel occupancy tax laws. The portion of the administrative costs that are covered may not exceed the percentage of the cost that is attributable to the activity funded by the hotel occupancy tax. In other words, administrators who spend 33 percent of their time overseeing hotel occupancy tax funded programs could seek funding for no more than 33 percent of their salary or 33 percent of other related overhead costs.[931]

## Use of State Tax Revenue for Qualified Hotel Projects by Certain Cities

Certain cities can receive certain state tax revenues for a qualified hotel project or other ancillary facilities of a qualified project.[932] Generally, the hotel will be located on city-owned land that is connected to or within 1,000 feet of a qualified convention center facility.[933] The state tax revenues will be used to pay bonds, obligations, and contractual obligations issued or entered in connection with the qualified project[934] involving qualified convention center facilities and the qualified hotel.[935] A city will be able to pledge this revenue for 10 years following the date a qualified hotel was open for initial occupancy and would not be entitled to pledge or receive this revenue unless a qualified project was commenced before September 1, 2023.[936] The comptroller would deposit revenue collected by or forwarded to the comptroller that had been pledged by the city in a separate account outside of the state treasury and pay the revenue to the city at least quarterly.[937]

## Additional Limits on Expenditures

Texas statutes provide certain additional rules regarding the percentage of hotel occupancy tax revenues that may be spent on each of the categories of expenditures discussed above. The rules differ according to the population of the city or the description of the county in the Tax Code.

## General Rules of Allocation of Hotel Occupancy Tax Revenue

### Minimum Expenditure That Must be Spent on Advertising and Promotion

A city with a population of 200,000 or greater is required to spend at least 50 percent of the hotel occupancy tax collected by the city on advertising and conducting solicitations and promotional programs to attract tourists to the city or its vicinity.[938] However, it should be noted that if a city takes in over $2 million annually in hotel taxes, it is not subject to this 50 percent requirement.[939]

931 *Id.* §§ 351.101(e), 352.1015(c).
932 *Id*. §§ 351.151 - .160.
933 *Id*. §§ 351.151(3) (definition of "qualified hotel"); .151(2) (definition of "qualified convention center").
934 *Id*. § 351.151(4) (definition of "qualified project").
935 *Id*. § 351.155.
936 *Id*. §§ 351.157(e); .158. *See id*. §§ 351.156; .157 (describes which certain tax revenue a city is entitled to for this subchapter).
937 *Id*. §§ 351.159; .160.
938 *Id.* § 351.103(a).
939 *Id*. § 351.103(b). *See also* Tex. Att'y Gen. Op. No. JC-105 (1999) (Pursuant to Section 351.103(b) of the Texas Tax Code, the allocation restriction of Section 351.103(a) of the Tax Code does not apply to a

If the city has a population of less than 200,000, the amount that the city can spend on advertising and conducting solicitations and promotional programs depends on the hotel occupancy tax rate adopted by the city. If the city adopted a hotel occupancy tax rate of not more than three percent, at least one-half of one percent of the rate must be spent on advertising and promotion of the city and its vicinity.[940] If the city adopted a hotel occupancy tax rate that exceeds three percent, at least one percent of the rate must be spent on advertising and promotion of the city and its vicinity. [941] For example, if a city has a seven percent hotel occupancy tax rate, at least one-seventh of the hotel occupancy tax proceeds must be spent on advertising and promoting the city and its vicinity to attract tourists and hotel and convention activity. Also, a city with a population of at least 200,000 and shares a border with a city with the population of at least 56,000 that borders Lake Ray Hubbard and is located in two counties, one of which has a population of less than 80,000, and Lake Ray Hubbard must spend 30 percent of the tax collected on advertising and conducting solicitations and promotional programs to attract tourists to the city or its vicinity.[942]

### Maximum Expenditure for the Arts

Generally, cities with populations of less than 1.6 million are limited to a set percentage with regard to art programs. Such cities may not spend on art programs more than 15 percent of their hotel occupancy tax revenues or no more than the amount of tax generated by the city at the tax rate of one percent of the cost of a room, whichever is greater.[943] If the city has a population of more than 1.6 million (Houston), then not more than 19.30 percent of hotel occupancy tax revenue or no more than the amount of tax generated by the city at the tax rate of one percent of the cost of a room, whichever is greater, can be spent on art programs.

### Maximum Expenditure for Historical Restoration and Preservation

Cities with a population of more than 125,000 may not spend more than 15 percent of their tax revenue for historical restoration and preservation projects and activities.[944] If a city fails to allocate money for a convention center purpose, the Tax Code prohibits that city from allocating more than 50 percent of its hotel occupancy tax for historical restoration or preservation projects.[945] If a city with a population under 125,000 does spend some of its hotel occupancy tax on a convention center, there is no statutory limitation on expenditures for historic preservation and restoration.

## Delegating the Management of Funded Activities

The governing body of a city and county may, by written contract, delegate the management or supervision of programs and activities funded with revenue from the hotel occupancy tax.[946] This

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municipality which has collected in excess of $2 million in hotel occupancy tax revenue in the most recent calendar year).

940 Tex. Tax Code § 351.103(a)(1).
941 *Id.* § 351.103(a)(2).
942 *Id.* § 351.103(b-1). *See* ftnt 909 concerning this specific section.
943 *Id.* § 351.103(c).
944 *Id.*
945 *Id.* § 351.103(d).
946 *Id.* §§ 351.101(c)), 352.1015.

delegation may be made to a person, another governmental entity, or to a private organization.[947] The delegation of this authority is often made to the local chamber of commerce or to the convention and visitor bureau.

There are a number of procedural requirements that the legislature has imposed on entities that undertake management of these funds. For example, a city or county is required to approve in writing the portion of an entity's annual budget that involves expenditure of hotel occupancy tax funds. This approval must be sought in advance of the expenditures. Hotel tax funded entities also must submit at least quarterly reports to the city council or the commissioners court on their expenditures of the tax revenues. The reports must list all expenditures made by the entity from the hotel occupancy taxes provided by the city or county.[948] The entity is required to keep complete and accurate financial records of each expenditure of hotel occupancy tax revenue.[949] These records must be made available for inspection and review upon the request of the governing body or upon a request from any other person.

The entity delegated authority to manage these funded programs undertakes a fiduciary duty with respect to this revenue. Such entities are required to maintain the city hotel occupancy tax revenue in a separate bank account established for that purpose. This account may not be commingled with any other account.[950]

### Documenting Activities Funded by the Hotel Occupancy Tax

Before making a hotel occupancy tax expenditure, a city, county, or other hotel occupancy tax funded entity must specify each scheduled activity, program, or event that is directly funded by hotel occupancy tax proceeds or has its administrative costs funded in whole or in part by the tax. The activity or program must directly relate to enhancing and promoting tourism and the convention and hotel industry.[951]

If the city or county delegates to another entity the management or supervision of an activity or event funded by the local hotel occupancy tax, each entity that is funded by the tax shall, before making an expenditure, specify each scheduled activity, program, or event that is directly funded by the tax or has its administrative costs funded in whole or in part by the tax. Further, the list must indicate the activities and programs that are directly enhancing and promoting tourism and the convention and hotel industry.[952] For cities, this list of expenditures should be provided to the city secretary or the city secretary's designee.[953]

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947 *Id.* (Please note that a legislative body such as a city council is limited in the degree to which it may delegate its authority to another entity. See, for example, *Texas Boll Weevil Eradication Foundation, Inc. v. Lewellen*, 952 S.W.2d 454 (Tex. 1997). *See also Andrews v. Wilson*, 959 S.W.2d 686 (Tex. App. -- Amarillo, 1998)).

948 *Id*. §§ 351.101(c), 352.1015(a).

949 *Id.* §§ 351.101(d), 352.1015(b).

950 *Id.* §§ 351.101(c), 352.1015(a).

951 *Id.* §§ 351.108(b), 352.109(b).

952 *Id.* §§ 351.108(c), 352.109(c).

953 *Id.* § 351.108(d).

## Local Hotel Occupancy Tax Reporting

Cities are required to annually report hotel occupancy tax information to the comptroller.[954] Not later than February 20 of each year, a city that imposes a hotel occupancy tax must submit to the comptroller:

(1) the rate of the city's hotel occupancy tax and, if applicable, the rate of the city's hotel occupancy tax supporting a venue project;

(2) the amount of revenue collected during the city's preceding fiscal year from the city's hotel occupancy tax and, if applicable, the city's hotel occupancy tax supporting a venue project; and

(3) the amount and percentage of hotel occupancy tax revenue allocated by the city for certain categories of expenditure during the city's preceding fiscal year.[955]

Cities must comply with the annual reporting requirements by either submitting the report to the comptroller on a form prescribed by the comptroller, or alternatively providing the comptroller a direct link to, or a clear statement describing the location of, the information required to be reported that is posted on the city's website.[956]

More information on reporting through the comptroller's office can be found at: https://comptroller.texas.gov/transparency/local/hotel-receipts/.

# County Development District

The Texas Legislature has recognized that it is sometimes advantageous to pursue economic development at the county level. The County Development District Act provides counties that have a population of 400,000 or less with a means to generate sales tax funds for local economic development and tourism-related projects. Such districts are initiated by a petition of landowners in the proposed district. Upon approval of the petition by the county, an election is called to gain the voters' consent to create the district and to levy a sales tax to fund district projects. A county development district may acquire or dispose of the same sorts of projects and pay the same sorts of costs as a Type B economic development corporation. However, a county development district project must promote and develop tourism within the county.[957]

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954 *Id*. § 351.009

955 *Id* § 351.009(a).

956 *Id*. § 351.009(b).

957 *See* Tex. Loc. Gov't Code §§ 383.002 ("This chapter furthers the public purpose of developing and diversifying the economy of this state by providing incentives for the location and development of projects in certain counties to **attract visitors and tourists**."); 383.003(a) ("[s]mall and medium-sized counties in this state need incentives for the development of public improvements to **attract visitors and tourists** to those counties..."); 383.003(b) ("[t]he means and measures authorized by this chapter are in the public interest and serve a public purpose of this state ... by providing incentives for the location and development in certain counties of this state of projects that **attract visitors and tourists** ..."); 383.023(5) (a petition proposing a county development corporation must state that the district "will serve the public purpose of **attracting visitors and tourists** to the county.")(emphasis added). *See also,* Tex. Att'y Gen. Op. No. JC-291 (2000) at 7 - 10 (A county development district created under Chapter 383 of the Local Government Code is not authorized to levy ad valorem taxes. A county development district may undertake a project only if it is consistent with the purpose of Chapter 383 – "providing incentives for the location and development of projects in certain counties to attract visitors and tourists.").

The statutes governing the creation and administration of county development districts are found in Chapter 383 of the Texas Local Government Code.[958]

## Powers and Duties of a County Development District

A county development district has broad authority to establish projects related to economic development and promotion of tourism in the district. Unlike economic development corporations, which are ultimately overseen by the city or county's governing body, Texas law does not require a county development district to get approval from the county before it commits to various projects or expenditures.

The district has the following general powers and duties:

**Expenditure of Tax Proceeds.** If a sales and use tax was approved by the voters in the district and is being collected, the district can use the tax for projects that promote and develop tourism within the county and to pay bonds issued by the district. [959]

**Power of the County to Adopt a Hotel Occupancy Tax and of the District to Expend Hotel Occupancy Tax Revenue.** A commissioners court may impose a hotel occupancy tax of up to seven percent within the boundaries of a county development district.[960] The tax can only be imposed outside of the city limits. Such a tax would be collected by the hotel operators and remitted to the county. Within 10 days of its receipt of such tax proceeds, the county must remit the proceeds to the development district. Such hotel tax money may be used by a county development district for any purpose for which the district may use its sales tax proceeds. The county is not authorized to retain a portion of the tax revenues. This tax is in addition to the state hotel occupancy tax.

**Ability to Pursue Type B Projects that Promote Tourism.** The district may acquire and dispose of projects consistent with the purpose of the district. The definition of "project" in this chapter refers to the same types of projects available to Type B economic development corporations under the Development Corporation Act.[961] Such projects could include athletic facilities, tourism and entertainment facilities, parks and certain public facility and public space improvements, improvements related to commercial businesses, and related transportation and infrastructure improvements that promote tourism.

**Limited Application of Competitive Bidding Laws.** Competitive bidding provisions apply to county development district contracts,[962] unless the contract is with a governmental entity or a nonprofit corporation created under the Development Corporation Act (Type A and Type B economic development corporations).[963]

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[958] Tex. Loc. Gov't Code. §§ 383.001 *et seq.*

[959] *Id.* §§ 383.002, .105 *See also,* Tex. Att'y Gen. Op. No. JC-291 (2000).

[960] Tex. Tax Code § 352.107.

[961] Tex. Loc. Gov't Code § 383.004(8) ( "Project" has the meaning assigned by Tex. Loc. Gov't Code §§ 505.151-.156).

[962] *Id.* § 383.111.

[963] *Id.* § 383.112.

**Ability to Exercise Powers of Municipal Management District.** The district has and may exercise all powers and rights of a municipal management district under Chapter 375 of the Local Government Code [964] except the power to impose ad valorem taxes, unless such a power or right would be inconsistent with Chapter 383 of the Local Government Code. [965]

**Limited Eminent Domain Power.** A district located outside of a municipality may exercise the power of eminent domain to acquire land or interests in land for water or sewer purposes.[966]

**Financial Transaction Powers.** The district may disburse money by check, draft, order or other instrument. Disbursement requires the signature of three board directors unless the board has adopted an agreement that the signature of a specific employee or other officer is sufficient. [967]

**Ability to Sue or be Sued.** The district may sue or be sued in the name of the district in any court in the state. [968]

**Application of reporting, disclosure, and ethics requirements.** Chapter 49 of the Water Code applies in part to county development districts. A district must adopt an ethics policy, must conduct an annual audit, must file certain reports at the Texas Commission on Environmental Quality, and appoint an investment officer.[969]

**Ability to Borrow.** The district can borrow money for purposes related to the district's functions.[970]

The directors may pay all necessary costs and expenses that were incurred in the creation and organization of the district. The district can also pay the cost related to the district's investigation of and planning for district projects, the cost of an engineer's report, project design fees, legal fees and other necessary expenses.[971] Also, the district can use the same definition of what is a permissible "cost" that is used by a Type B development corporations.[972]

If a district decides to issue bonds, the bonds can be used to defray all or part of the costs of the district's projects.[973] To pay the principal and interest on the bonds, the district may use its sales tax revenue, designated project revenues, or any grants, donations or other funds.[974] Bond proceeds can be used by the district to pay interest on the bonds during the acquisition or construction of a project, to pay administrative and operating expenses of a project, to create a reserve to repay the bonds, and to pay all expenses that were incurred during the issuance, sale and delivery of the bonds.[975]

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964 *Id.* § 383.061(b).

965 *See* Tex. Att'y Gen. Op. No. JC-291 (2000) (Concluding county development districts do not have the power to levy ad valorem taxes).

966 Tex. Loc. Gov't Code § 383.063.

967 *Id.* § 383.064.

968 *Id.* § 383.062.

969 *See id.* § 383.003(c), Tex. Water Code §§ 49.001(a)(1), .002(a).

970 Tex. Loc. Gov't Code § 383.065.

971 *Id.* § 383.066.

972 *Id.* § 383.004(4).

973 *Id.* § 383.081.

974 *Id.* § 383.082.

975 *Id.* § 383.083.

**Eligibility and Procedure to Create a County Development District**

A county development district can be created only in a county with a population of 400,000 or less.[976] Also, a county development district sales tax cannot be imposed if the combined sales tax rate in any part of the proposed district would exceed the two percent statutory cap for local sales tax.[977]

A county cannot initiate a county development district on its own motion. Rather, establishment of a district must be requested by a petition filed with the commissioners court of the county in which all of the land in the proposed district is located. The petition must include a sworn statement by all of the landowners indicating consent to the creation of the proposed district.[978] The petition must also meet the following requirements:

- describe the boundaries of the proposed district by metes and bounds or by lot and block number if there is a recorded map or plat survey of the area;
- name of the district, which must include the name of the county followed by "Development District No. ______";
- name five persons who will serve on a temporary board of directors;
- state the general nature of work to be done and provide a current estimate of the cost of the project; and
- state the necessity and feasibility of the proposed district and indicate whether the district will take actions that will attract visitors and tourists to the county and the district.[979]

Once a petition requesting the creation of the district is submitted to the commissioners court, a public hearing must be scheduled to allow testimony for or against the proposed district.[980] The date, time and place of this hearing must be set by the county within 60 days of the county's receipt of the petition.[981] The county must publish notice of the hearing in a newspaper of general circulation in the county no later than 30 days before the hearing.[982] Additionally, notice of the hearing must be mailed to all of the landowners in the proposed district and to the developer of the project.[983] Finally, notice of the meeting must be properly posted at the county courthouse and on the county's website, if the county maintains a website, 72 hours in advance in compliance with the Texas Open Meetings Act.[984]

At the required public hearing, the commissioners court must examine the sufficiency of the petition requesting creation of the development district.[985] Also, any interested person who wishes to speak about the sufficiency of the petition or about whether the district should be created must be allowed to do so. Lastly, in conducting the required public hearing, the

976 *Id.* § 383.021(a).
977 *Id.* § 383.106(a).
978 *Id.* § 383.022.
979 *Id.* § 383.023.
980 *Id.* § 383.024.
981 *Id.*
982 *Id.* § 383.025.
983 *Id.*
984 Tex. Gov't Code §§ 551.041, .043, .049, .056.
985 Tex. Loc. Gov't Code § 383.026.

commissioners court should comply with all the requirements of the Texas Open Meetings Act.[986]

After the required public hearing, the commissioners court must make two findings regarding the petition. First, it must determine whether the petition meets statutory requirements. Second, the commissioners court must find that the district and its proposed projects would be feasible, necessary, and serve the public purpose of attracting visitors or tourists to the county.[987] If the commissioners court grants the petition, the order creating the district may specify that the cost to the county of publishing notice, conducting the hearings for the creation of the district, and conducting the sales and use tax election are to be borne by the district.[988] Further, the county may require the petitioner to pay to the county the amounts specified in the order creating the district at the time the order becomes final.[989]

If the commissioners court finds that the petition does not meet statutory requirements, it must enter an order denying the petition. The petition must also be denied if the commissioners court finds that the creation of the district and the proposed project is not feasible and necessary and would not serve the purpose of attracting visitors and tourists to the county.[990]

## Initiating an Election to Adopt a County Development District

If the commissioners court finds that the petition meets statutory requirements and that the district would promote the required public purposes, it must approve the petition and appoint five temporary directors to the board for the proposed district.[991] This temporary board then must call an election on the creation of the district and the adoption of a sales tax to fund district projects.[992] The permissible rates for a local sales tax under this authority are one-fourth of one percent, three-eighths of one percent, or one-half of one percent.[993] In no case may the sales tax be imposed if the combined local sales tax rate in any part of the district would exceed the two percent statutory cap for local sales tax.[994] The order calling for an election on the district and on the imposition of a sales tax to fund district projects (a combined proposition) must include the following information:

- the nature of the election, including the proposition that is to appear on the ballot;
- the date of the election;
- the hours during which the polls will be open;
- the location of the polling places; and
- the proposed rate of the sales and use tax for the district.[995]

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986 Tex. Gov't Code §§ 551.001 *et seq*.
987 Tex. Loc. Gov't Code § 383.027(a).
988 *Id.* § 383.027(b).
989 *Id.*
990 *Id*. § 383.027(c).
991 *Id*. §§ 383.027(a), .028(a).
992 *Id*. § 383.030.
993 *Id*. § 383.103.
994 *Id*. § 383.106(a).
995 *Id*. § 383.031.

The temporary directors of the development district must publish a substantial copy of the election order for two consecutive weeks in a newspaper with general circulation in the county. The first notice must be published prior to the 14th day before the election. [996] Also, the temporary board is required to deliver notice of their election to the county clerk and voter registrar of each county in which the development district is located not later than the 60th day before the election.[997] Then, the county is required to post the notice to the county's website not later than the 21st day before the election, if the county maintains a website.[998] If the county does not maintain a website, then the temporary board must post notice of the election on the bulletin board used to post the district's meeting notices.[999] The notice must also include the wording of all the ballot propositions. The entire notice must generally be provided both in English and in Spanish. [1000]

The election ballot must give the voters the opportunity to approve or reject the proposed development district. The ballot must use the following wording:

> **The creation of _____________ County Development District No. ______ and the adoption of a proposed local sales and use tax rate of (*the rate specified in the election order*) to be used for the promotion and development of tourism.** [1001]

## Conducting an Election to Approve a County Development District

When the board of a county development district orders an election for the levy of a sales tax, it must follow all applicable requirements for special elections contained in the Election Code, the County Sales and Use Tax Act (Chapter 323 of the Tax Code), and any other Texas statutes regarding elections. Specifically, the following requirements must be met:

**Potential Dates for the Election.** The election must be held on a uniform election date as provided by Chapter 41 of the Election Code. There are uniform election dates in May and November. The current uniform election dates are:

- the first Saturday in May in an odd-numbered year;
- the first Saturday in May in an even-numbered year, for an election held by a political subdivision other than a county; or
- the first Tuesday after the first Monday in November.[1002]

**Time Frame for Ordering the Election.** The district should order the election at least 78 days prior to the date of the election.[1003] Section 383 of the Local Government Code does not address how far in advance the election must be ordered by the board.[1004] Nonetheless, it is advisable to

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996 *Id.* § 383.032.
997 *Id*. § 4.008(a).
998 *Id*. §§ 4.003(b), 4.008(a).
999 *Id*. § 4.003(b).
1000 *See* Tex. Elec. Code §§ 272.001 *et. seq*.
1001 Tex. Loc. Gov't Code § 383.033(b).
1002 Tex. Elec. Code § 41.001(a).
1003 *Id.* § 3.005(c).
1004 Tex. Loc. Gov't Code § 383.031.

provide at least 78 days' notice, since this is the requirement applicable to most other special elections in Texas, and it allows time to comply with other Election Code requirements, such as early voting. Also, the Legislature added a provision noting the Election Code provision "supersedes a law outside this code to the extent of any conflict."[1005]

**Joint Elections.** Chapter 271 of the Election Code allows two or more political subdivisions to enter into an agreement to hold the elections jointly in the election precincts that can be served by common polling places, subject to certain other provisions in the Election Code. This provision allows small governmental units, including county development districts, to share the costs of conducting elections, which can otherwise be a fiscal burden. For example, a county development district can pay a fee to the county in which it is located to pay for the use of the election personnel at the polling place closest to the district.

**Other Procedural Requirements.** The board must follow all other applicable procedural requirements under the Election Code for special elections. For further information about the requirements contained in the Election Code, contact the Secretary of State's office, Elections Division, at (800) 252-8683.

## Reporting Results of a County Development District Election

The Election Code requires that, no earlier than the third day and no later than the eleventh day[1006] after an election, the temporary board of the county development district must canvass the ballots and enter the results of the election into the minutes of a meeting.[1007] If a majority of the votes cast are in favor of the district, the temporary board, by order, declares the district created and the amount of the tax adopted and enters the results in the minutes.[1008] If the outcome is the opposite, then the temporary board, by order, declares the proposition to create the district failed and enter the results in the minutes.[1009]

Whether the results of the election create the district or not, the board must send a certified copy of the order by certified or registered mail to the commissioners court, the comptroller, and to any other taxing entity with jurisdiction over the property within the district.[1010] The order must include the following:

- the date of the election;
- the proposition on which the vote was held;
- the total number of votes cast for and against the proposition; and
- the number of votes by which the proposition was approved.[1011]

1005 Tex. Elec. Code § 3.005(b).
1006 Tex. Elec. Code § 67.003.
1007 In contrast to the Election Code, Section 383.034 of the Local Government Code does not address the time limit the development district's temporary board has to canvass an election to confirm the district and to adopt the sales tax. It is recommended that district boards follow the provisions of the Election Code and canvass the election between 3 and 11 days after it has taken place.
1008 Tex. Loc. Gov't Code § 383.034(b).
1009 *Id.*
1010 *Id.* § 383.034(c).
1011 *Id.*

In addition to the certified copy of the order, the board must send the comptroller a map of the district clearly showing the district's boundaries. After receiving the documents, the comptroller has 30 days to notify the board that the comptroller's office will administer the tax.

Unlike economic development corporations, which must wait one year between holding certain elections, the board of a county development district may call for another election at any time if the election should fail.[1012]

## Effective Date of County Development District Sales Tax

The change in the sales tax rate becomes effective on the first day of the first calendar quarter after the expiration of the first complete calendar quarter occurring after notice of the election has been provided to the comptroller.[1013] The new tax rate applies to purchases on or after the effective date as provided under Section 323.102(c) of the Tax Code.

> **May Election:** Send notice to the comptroller no later than the last week in June. On October 1st, the new tax rate will take effect. The district will receive its first payment in December.
>
> **November Election:** Send notice to the comptroller no later than the last week in December. On April 1st, the new tax rate will take effect. The district will receive its first payment in June.

If adopted, the sales tax would apply to the retail sale of all sales taxable items within the district after the effective date of the tax.[1014]

## Allocation of the Sales Tax Proceeds by the Comptroller

Once the sales tax is effective, retailers collect it along with any other applicable sales taxes including the state sales tax, and remit the revenues to the comptroller. The comptroller remits the proceeds to the district. The County Sales and Use Tax Act (Chapter 323 of the Tax Code) governs the imposition, computation, administration and use of the tax, except where it is inconsistent with the County Development District Act.[1015]

## Limitations on District Sales Tax Rates

A county development district may levy a sales tax only if the combined sales tax rate in any part of the proposed district would not exceed the two percent statutory cap for local sales tax. [1016] Other factors also may influence the rate at which a development district can impose a sales tax. For example, if the city in which a district is located imposes or increases its sales tax rate, the county development district's tax rate is automatically reduced to stay below the two percent

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1012 *Id.* § 383.102(a) (Excluding Section 323.406 of the Tax Code which imposed a one year waiting period between elections).
1013 Tex. Tax Code § 323.102(c).
1014 Tex. Loc. Gov't Code § 383.101(b).
1015 *Id.* § 383.102(a).
1016 *Id.* § 383.106(a).

cap.[1017] If a city annexes a district and this results in the combined local sales tax climbing over two percent, the district's tax rate is also reduced to stay under the local sales tax limit. [1018] In either circumstance, the city must reimburse the development district the difference in the amount of taxes the district would have collected before the tax rate was reduced and the amount the district is able to charge after the reduction. [1019] The city has 10 days to reimburse the development district after the city receives its funds from the comptroller, and the city must reimburse the district as long as the district has outstanding bonds to pay. [1020]

## Power of the District to Increase, Decrease or Abolish the County Development District Sales Tax

In addition to the automatic sales tax reductions discussed above, a county development district may increase, decrease or abolish its sales tax in two ways. First, the district's board, on its own motion, may vote to decrease or abolish the tax. [1021] Alternatively, the board may call for an election to increase, decrease or abolish the tax. [1022] The election must be conducted using the same procedures that were followed for the creation of the tax. [1023] The ballots must read as follows:

> **To Increase or Decrease the Tax:** "The increase (decrease) in the local sales and use tax rate of (*name of district*) to (*percentage*) to be used for the promotion and development of tourism;" or
>
> **To Abolish the Tax:** "The abolition of the district sales and use tax used for the promotion and development of tourism." [1024]

There is no statutory authorization for a voter-initiated petition to decrease or abolish the tax. An election on these issues is called at the discretion of the county development district board of directors.

Additionally, the county development district's sales and use tax will automatically discontinue by operation of law if no sales tax revenue is collected within the district before the first anniversary of the date the sales tax took effect.[1025]

## Board of Directors of a County Development District

The operation of the county development district is managed by its board of directors. Upon voter approval of the district, the temporary board of directors automatically becomes the district's permanent board of directors.[1026]

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1017 *Id.* § 383.106(b).
1018 *Id.*
1019 *Id.* § 383.106(c).
1020 *Id.*
1021 *Id.* § 383.104(a).
1022 *Id.*
1023 *Id.* § 383.104(b).
1024 *Id.*
1025 *Id.* § 383.104(c).
1026 *Id.* § 383.041(a).

To be qualified to serve on the board, a director must be at least 21 years of age, a resident citizen of Texas, and a registered voter in the county in which the district is located. [1027] A developer of property within the district, as well as certain relatives, employees and independent contractors of that developer, may be disqualified from serving on the board.[1028]

The directors of a county development district serve staggered terms of four years, with two or three board position terms expiring on September 1 of every other year.[1029] Each director, whether temporary or permanent, must execute a bond in the amount of $10,000 and take the oath of office required for public officers under the Texas Constitution.[1030] Temporary and permanent board members are not entitled to compensation for their service. The board members, however, are entitled to be reimbursed by the district for their actual expenses.[1031]

A quorum of the board consists of three members.[1032] Once the directors have taken their oaths of office, the board votes to elect a president, a vice president, a secretary and any other officer the board considers necessary.[1033] The board president presides at all meetings, with the vice president fulfilling this duty in the absence of the president.[1034] Regular meetings are held to conduct the business of the district,[1035] with notice of the meetings posted in accordance with the Open Meetings Act at an accessible place in the district.[1036] The county clerk also must post a copy of the notice in the county courthouse. The board is required to establish a district office in the county in which the district is located.[1037] The board has control over the management of the district and has the authority to employ any person or any company that the board deems necessary to conduct district business,[1038] so long as that employment or appointment does not violate other provisions of law.[1039]

The board of directors may vote to adopt bylaws to govern the affairs of the board.[1040] Any director who has an interest in a contract with the district, or who is employed by a company that has a financial interest must disclose this interest to the board. An interested board member can neither discuss nor vote on acceptance of such a contract.[1041] A contract entered into without disclosure of a director's financial interest is invalid.[1042] The County Development District Act does not specify whether a contract would be invalidated if a board member with an interest in the contract disclosed that interest to the board but then proceeded to discuss or vote on the

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1027 *Id.* § 383.042.

1028 *See Id.* § 383.043 [Note: this section refers to section 50.026 of the Water Code. However, section 50.026 was repealed during the 74th Legislature and was renumbered section 49.026 of the Water Code.].

1029 *Id.* § 383.041(b).

1030 *Id.* §§ 383.029(a), .046 (Section 383.046 refer to Local Government Code § 375.067).

1031 *Id.* §§ 383.029(a), .046 (Section 383.046 refer to Local Government Code § 375.070).

1032 *Id.* § 383.048(a).

1033 *Id.* § 383.047.

1034 *Id.* § 383.048(b).

1035 *Id.* § 383.053(a).

1036 *Id.* § 383.053(b)-(c).

1037 *Id.* § 383.052.

1038 *Id.* § 383.050.

1039 *See, for example*, Ch. 573 of the Government Code (Nepotism) and Ch. 171 of the Local Government Code (Conflict of Interest).

1040 Tex. Loc. Gov't Code § 383.049.

1041 *Id.* § 383.051(a)-(b).

1042 *Id.* § 383.051(c).

contract. Board members must file disclosure statements if they have certain relationships with vendors that the district does business with,[1043] and must receive Public Information Act and Open Meetings Act training because they are local government officials.[1044]

Replacements to the board are made by appointment of the commissioners court.[1045] If a majority of the other board directors petition the court for removal of a board member, the commissioners court may remove a director after notice and a hearing.[1046] There is no statutory authority for the commissioners court to remove a director except pursuant to a request by a majority of the existing board members.

## Approval of an Expansion or Decrease in the Area of the District

The board of directors for the district may ask the commissioners court to add or exclude land from the district.[1047] Also, an interested landowner may ask the commissioners court to approve such a change.[1048] It is then within the discretion of the commissioners court whether to approve the proposed expansion or decrease in the area. Any such approval must be by a unanimous vote of approval by the commissioners court.[1049] There is no statutory requirement for a public vote to either increase or decrease the size of the district. However, the size of the district can only be expanded or reduced prior to the issuance of any bonds.[1050]

## Dissolution of a County Development District

There are three ways in which a county development district can be dissolved. Those three ways are either:

1) a petition from the board to the commissioners court asking to dissolve the district because the majority of the board has found the proposed projects cannot be accomplished and no bonds or credit have been issued;

2) a petition from the board to the commissioner court asking to dissolve the district because the majority of the board has found that all bonds or other debts of the district have been paid and the purpose of the district have been accomplished; [1051] or

3) an agreement to dissolve the district between the board and a city because the district is located wholly within the city or is wholly annexed by the city.[1052]

If the dissolution is being done by a petition of the board because of either the first or second reasons above, the commissioners court must provide notice and a public hearing as required

1043 *Id.* §§ 176.001–.013.
1044 Tex. Gov. Code. §§ 551.005, 552.012.
1045 Tex. Loc. Gov't Code § 383.045.
1046 *Id.* § 383.044.
1047 *Id.* § 383.084(a).
1048 *Id.*
1049 *Id.* § 383.084(b).
1050 *Id.* § 383.084(a).
1051 *Id.* § 383.122(a).
1052 *Id.* § 383.123.

under Section 383.024 of the Local Government Code.[1053] At the public hearing, the commissioners court must determine whether it is in the best interests of the county and the district landowners to dissolve the district. If the commissioners court unanimously finds dissolution is in the best interest of the county, the finding is entered in the court records, and all funds and property of the district are transferred to the commissioners court.[1054]

As mentioned above, dissolution of the district can be accomplished by an agreement between the district and a city if the district is located wholly within or is wholly annexed by the city. This form of dissolution requires the district to turn over to the city all money, property and other assets of the district.[1055] In turn, the city is required to assume all contracts, debts, bonds and other obligations of the district. If such an agreement is made to dissolve the district, the taxes levied by the district end at the same time the district is dissolved.

There is not a provision for dissolution of the district pursuant to a petition and/or election of the landowners.[1056]

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[1053] *Id.* § 383.122(b).
[1054] *Id.* § 383.122(c).
[1055] *Id.* § 383.123.
[1056] *Id.* § 383.121.

# V. City, County, Cooperative and Regional Efforts

## A City's Authority to Make Grants and Loans

Chapter 380 of the Local Government Code provides significant legislative authority for Texas municipalities in the area of economic development. When a city wants to provide a grant or a loan of city funds or services in order to promote economic development, it generally cites its powers under Chapter 380. Cities have utilized provisions under this law to provide a myriad of incentives that have drawn businesses and industries to locales throughout Texas. The text of Chapter 380 is very short but its importance to economic development cannot be overstated. Provided below is the text of its main provision, Section 380.001.

LOCAL GOVERNMENT CODE
TITLE 12. PLANNING AND DEVELOPMENT
SUBTITLE A. MUNICIPAL PLANNING AND DEVELOPMENT

CHAPTER 380. MISCELLANEOUS PROVISIONS RELATING TO MUNICIPAL PLANNING AND DEVELOPMENT

Sec. 380.001. ECONOMIC DEVELOPMENT PROGRAMS.

(a) The governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality. For purposes of this subsection, a municipality includes an area that:

  (1) has been annexed by the municipality for limited purposes; or

  (2) is in the extraterritorial jurisdiction of the municipality.

(b) The governing body may:

  (1) administer a program by the use of municipal personnel;

  (2) contract with the federal government, the state, a political subdivision of the state, a nonprofit organization, or any other entity for the administration of a program; and

  (3) accept contributions, gifts, or other resources to develop and administer a program.

(c) Any city along the Texas-Mexico border with a population of more than 500,000 may establish not-for-profit corporations and cooperative associations for the purpose of creating and developing an intermodal transportation hub to stimulate economic development. Such intermodal hub may also function as an international intermodal transportation center and may be collocated with or near local, state, or federal facilities and facilities of Mexico in order to fulfill its purpose.

What this statute allows is the provision of loans and grants of city funds, as well as the use of city staff, city facilities, or city services, at minimal or no charge. Whether a city provides any such incentive is completely discretionary. The provision of grants and loans should be used with caution and with attention to necessary safeguards.

A home rule city may grant public money from authorized sources to a Type A or Type B economic development corporation under a contract authorized by Section 380.002 of the Local Government Code. The Type A or Type B economic development corporation is required to use the money for "the development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development and expansion of commerce in the state."[1057]

To establish a loan or grant, or to offer discounted or free city services, a city must meet the requirements contained in the Texas Constitution and in applicable Texas statutes. Additionally, a city must review its city charter and any other local provisions that may limit the city's ability to provide such a grant or loan. A discussion of these issues follows.

## Ensuring that a Public Purpose is Served by the Incentive

First, any expenditure in the form of a grant, loan or provision of city services at less than fair market value involves a donation of public property. Article III, Section 52-a of the Texas Constitution sets up the constitutional framework for public funding of economic development efforts. It provides that economic development is a public purpose. However, a city may not simply write out checks to interested businesses in order to promote economic development. The city should ensure that the public purpose of economic development will be pursued by the business. For example, if a city provides a grant or a loan to an industry, the city should enter into a binding contract with the funded industry that outlines what steps the business will take that justify the provision of public funding (creation of jobs, expansion of the tax base by construction or enhancement of the physical facilities, etc.). The city should include a recapture provision in the agreement so that if the business does not fulfill its promises, the city will have a right to seek reimbursement of the incentives that were provided. Any such agreement should also include tangible means for measuring whether the industry has met its obligations under the contract. Without these safeguards and a demonstrable benefit to the municipality, such incentives may not pass constitutional muster for serving a public purpose.[1058]

## Requirements Under the Local Government Code

Any grant or loan must also meet certain statutory requirements. Chapter 380 of the Local Government Code requires that in order for a city to provide a grant or a loan, it must "establish a program" to implement the incentive. The program may be administered by city personnel, by contract with the federal government, the state, or a political subdivision or by contract with any other entity. The applicable statutes do not indicate specifically how such a program is to be administered. It is safe to expect that the program should be planned and outlined in a written document that includes, at a minimum, the safeguards discussed above.

Additionally, any such grant or loan must meet the requirements under the budget law contained in Chapter 102 of the Local Government Code. Specifically, any economic development-related

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[1057] Tex. Loc. Gov't Code § 380.002(b).

[1058] *See* Tex. Att'y Gen. Op. No. GA-529 (2007) (City may fund housing project if it finds the project will promote economic development). *See also* Tex. Att'y Gen. LO-94-037 at 3, LO-97-061 at 4 (These two opinions do not concern the establishment of economic development programs under the authority of Local Government Code Chapter 380. However, their reasoning applies to any grant or loan of public money for economic development, regardless of the authority under which such a grant or loan is made.).

expenditure of city funds must be made pursuant to consideration and approval of the item at an open meeting of the city council. If the expenditure was not included within the original budget, the city council would need to pursue a budget amendment.[1059]

## Compliance with Applicable City Charter Provisions and Local Policies

Home rule cities (cities with a population of over 5,000 that have adopted a city charter) generally may take any actions that are authorized by their city charter and that are not inconsistent with the Texas Constitution, Texas statutes, or federal law.[1060] A home rule city must always review its city charter to determine whether it contains any limitations on the ability of the city to make various expenditures. Sometimes a city charter will be more restrictive than state law or will require a super-majority vote for the approval of certain types of expenditures.

Cities with a population of 5,000 or less are usually general law cities. General law cities do not have a city charter and are limited by state law in terms of what expenditures may be made and how to approve them. Accordingly, general law cities must be able to cite a statute that authorizes the type of expenditure or action they are contemplating as part of their economic development program. In certain circumstances, Chapter 380 of the Local Government Code may provide that authority. If a general law city cannot find any statutory authority for the action it wants to take, it does not have authority to take the action. Of course, the city council of a general law city may impose additional local restrictions on the ability of the city to expend money for certain purposes. The city would then have to comply with any such self-imposed limitations or rights.

## Review for Conflict with City Bond and Grant Documents

If a city endeavors to offer its city services on a reduced or no-cost basis, the city must review any bond documents that may have been executed with regard to those services. The bond documents must be analyzed to ensure that providing reduced or no-cost service is permitted. For example, if a city has issued bonds to fund a municipal utility system or to fund some other type of public facility, the bond documents may prohibit the city from giving away its utility services or otherwise limiting any other revenue stream until the bonds are fully repaid. Before the city agrees to any type of incentive that involves a gift of public services or funds, it should have its bond counsel and local city attorney review any existing bond and other debt instruments in this regard. This type of limitation may also be part of the conditions placed on a city if it is a recipient of a state or federal grant. Accordingly, the city should review any grant documents it has in its possession to determine if there is any such limitation.

With regard to utility service in particular, Chapter 1502 of the Government Code generally prohibits city-owned utilities from providing free utility services except to city public schools or

[1059] *See* Tex. Loc. Gov't. Code § 102.009 (Authorizes an amendment to the original city budget only in the case of "grave public necessity."). *See Rains v. Mercantile National Bank of Dallas*, 188 S.W.2d 798, 803 (Tex. Civ. App. - El Paso 1945), aff'd on other grounds, 191 S.W.2d 850 (Tex. 1946); *Bexar County v. Hatley*, 150 S.W.2d 980 (Tex. 1941).

[1060] *See generally, Dallas Merchant's and Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex.1993); *City of Richardson v. Responsible Dog Owners*, 794 S.W.2d 17, 19 (Tex.1990).

to buildings and institutions operated by the city.[1061] Also, that chapter requires that the rates charged for utility services be equal and uniform.

## Executing Debt Versus Using Current Funds

It is clear from Chapter 380 of the Local Government Code that a city may provide "loans and grants of public money" from the city's current funds. However, Chapter 380 does not provide any express authorization for the city to finance such a program through the issuance of debt or bonds. Texas courts have long required a city to cite specific legal authority for the issuance of any debt instrument. Debt is defined as any obligation that is not completely paid within the current fiscal year from budgeted revenue.[1062]

If the city is a home rule city, it can look to the provisions of its city charter for authority to issue debt as long as those provisions are not inconsistent with state law. A home rule city has the power to issue bonds to the extent provided in the city charter, assuming that the bonds have first been authorized by voters at an election held on the issue.[1063] Often, however, a city charter is silent as to the authority of the city to issue bonds or other debt instruments to promote economic development. If this is the case, the city will need to find other authority within Texas statutes that allows for the issuance of bonds or debt to finance economic development.

If the city is a general law city, it may not issue debt except when there is specific statutory authority that permits the issuance of debt for that purpose. A general law city is limited to taking only those actions that are specifically authorized under the general statutes of Texas. Accordingly, a general law city may be able to fund economic development programs with current city funds under Chapter 380 of the Local Government Code. However, such cities cannot issue debt or bonds without finding specific legislative authority for that type of transaction. For further discussion on the ability of general law cities and home rule cities to issue debt, see the chapter in this handbook titled "Issuing Debt To Finance Economic Development."

## Use of Dedicated Tax Funds for Economic Development

A home rule city may grant public money to a Type A or Type B economic development corporation under a contract authorized by Section 380.002 of the Local Government Code. However, as the statute provides, the funds granted by the city to the Type A or Type B corporation must be derived from any source lawfully available to the municipality under its charter or other law other than from the proceeds of bonds or other obligations of the municipality payable from ad valorem taxes.[1064] Creating a program or making a loan or grant through Chapter 380 that is not secured by a pledge of ad valorem taxes or financed by the issuance of bonds or other obligations payable from ad valorem taxes does not constitute or

1061 Tex. Gov't Code § 1502.057(b) (Which prohibits a city from providing free electric, water, sewer or other utility system services except for municipal public buildings, or buildings and institutions operated by the city).

1062 *See McNeill v. City of Waco*, 89 Tex. 83, 33 S.W. 322 (1895) (Long term debt is any contractual obligation that creates a liability that cannot be paid out of current budget year revenues).

1063 Tex. Gov't Code § 1331.052(b). *See* Tex. Att'y Gen. Op. No. DM-185 (1992).

1064 Tex. Loc. Gov't Code § 380.002(c).

create an unconstitutional debt for purposes of the Texas Constitution.[1065] If a city is using funds other than the property tax, care must be taken to ensure that the city is complying with any limitations imposed on the use of such funds by statute (e.g., statutory provisions relating to dedicated funds, such as the economic development sales tax, hotel occupancy tax, etc., that limit the purposes for which those funds may be used). A city should consult any applicable law to be certain the revenues are used as permitted.

# Providing Land to Promote Economic Development

Often, cities try to obtain sites that they can show to businesses that may relocate to the area. Such a site may be a tract of land that is ready for development. In certain cases, a city may find it beneficial to construct a basic structure that can be altered or developed to meet the new business' needs. There are certain legal requirements regarding the procedure for a city to acquire such real property and limitations on the city's ability to sell or grant the land to a business entity.

## Procedures for Acquiring Real Property

Chapter 273 of the Local Government Code provides a list of purposes for which a city may purchase property.[1066] A local government could certainly facilitate economic development by purchasing property for one of the uses set forth in Chapter 273. Some of the permissible purposes for the purchase of property under that statute include purchases for municipal water systems, sewage plants and systems, municipal airports, and city streets. For instance, if the roads leading to the industrial park needed to be widened, a city could purchase the necessary right-of-way for such an improvement. However, there is no authority in Chapter 273 for a city to purchase land for use by a private entity. Economic development itself is not one of the listed purposes.

Eminent domain may also be an option for acquiring real property. A local government should consult with its legal counsel and any affected landowners before pursuing this course of action.

Finally, if a city decides to purchase real property; it must follow the applicable budgetary laws contained in Chapter 102 of the Local Government Code. A home rule city must also comply with any further requirements contained in the city charter. Unlike the purchase of personal property or the purchase of certain services, expenditures by a city for real property are not required to be competitively bid.[1067]

## Procedure for the Sale of Real Property by a City

Once a city has obtained a piece of real property, Chapter 272 of the Local Government Code controls how that property may be sold or transferred.[1068]

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1065 Tex. Const. art. III, §52-a.

1066 Tex. Loc. Gov't Code § 273.001.

1067 *Id.* § 252.022(a)(6).

1068 Note that Tex. Loc. Gov't Code § 263.007 allows for counties to establish a sealed-bid procedure that has certain procedural restrictions. *See also Killam Ranch Properties, Ltd. v. Webb County*, 376 S.W.3d 146, 152-157 (Tex. App.—San Antonio 2012)(en banc)(pet. denied)(finding that if a county fails to establish a clear sealed-bid procedure, the minimum provisions of Tex. Loc. Gov't Code § 272.001 will prevail.

Chapter 272 states that the sale of real property owned by a city must be accomplished through advertisement of the property and acceptance of competitive bids. Accordingly, if a city wants to sell or transfer a property to a business to promote economic development, the city needs to comply with the requirements of Chapter 272. Specifically, Section 272.001(a) states that, with certain exceptions:

> ". . . before land owned by a political subdivision of the state may be sold or exchanged for other land, notice to the general public of the offer of the land for sale or exchange must be published in a newspaper of general circulation in either the county in which the land is located or, if there is no such newspaper, in an adjoining county. The notice must include a description of the land, including its location, and the procedure by which the sealed bids to purchase the land or offers to exchange the land may be submitted. The notice must be published on two separate dates and the sale or exchange may not be made until after the 14th day after the date of the second publication."[1069]

There are certain exceptions to the sale-by-bid requirement. Sale of real property by bid is not required if the real property fits into any of the following categories:

1) narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or development control ordinances;
2) streets or alleys owned in fee or used by easement;
3) land or a real property interest originally acquired for streets' right-of-way, or easements that the political subdivision chooses to exchange for other land to be used for streets, right-of-ways, easements, or other public purposes, including transactions partly for cash;
4) land that the political subdivision wants to have developed by contract with an independent foundation;
5) a real property interest conveyed to a governmental entity that has the power of eminent domain;
6) city land that is located in a reinvestment zone that has been designated as provided by law and that the city desires to have developed under a project plan adopted by the city for the zone;
7) a property interest owned by a defense base development authority established under Chapter 378 of the Local Government Code;[1070] or
8) land that is owned by a municipally owned utility (under certain circumstances).[1071]

If real property fits into one of the above categories, it does not have to be sold pursuant to notice and competitive bids. These parcels may be sold through a private sale agreement between the city and an interested buyer. Additionally, property under either of the first two categories may be sold to the abutting property owners only as provided under Section 272.001(c) of the Local Government Code, and the city is not required to receive fair market value for the property.

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1069 *Id*. § 272.001(a).
1070 *Id*. § 272.001(b).
1071 *Id*. § 272.001(k).

Also, a city can donate or sell property for less than fair market value, without following the notice and bidding process, to another political subdivision if:

1) The land or interest will be used by the political subdivision to which it is donated or sold in carrying out a purpose that benefits the public interest of the city;
2) The donation or sale is made under terms that effect and maintain the public purpose for which the donation or sale is made; and
3) The title and right to possession of the land or interest reverts to the city if the acquiring political subdivision ceases to use the land or interest in carrying out the public purpose.[1072]

Additionally, there is a special statutory exception allowing a private sale of city-owned property if the real property is acquired by the city with economic development funds from the community development block grant nonentitlement program. Land acquired with these funds may be leased or conveyed without the solicitation of bids. To convey the land in this manner, the city must adopt a resolution stating the conditions for the conveyance and the public purpose that will be achieved.[1073] If the city exercises this option, the land may be leased or sold to a private for-profit entity or to a nonprofit entity that is a party to a contract with the political subdivision. The land must be used by the receiving entity to carry out the purpose of the entity's grant or contract as provided under Section 272.001(i) of the Local Government Code.

Texas law allows a political subdivision of the state, including a city, to convey an interest in real property to an institution of higher education to promote a public purpose related to higher education.[1074] Under this statutory provision, a city may donate, exchange, sell or lease land or improvements to an institution of higher education, as that term is defined by Section 61.003 of the Education Code. The city conveying the land must determine the conditions and terms of the conveyance so as to ensure that the desired public purpose is served and that it meets the constitutional requirements of article III, sections 51 and 52, of the Texas Constitution. A conveyance of land is not required to comply with the normal competitive bidding and notice requirements of Chapter 272 of the Local Government Code. In addition, the city (or other political subdivision) is not required to receive fair market value for the land. An economic development corporation also may convey property to an institution of higher education.[1075]

Under certain circumstances, a city may convey land to an economic development corporation created by the city without complying with the notice and bidding requirements of Chapter 272.[1076] Under this provision of the law, city land may be sold to a city-created economic development corporation for fair market value if the land meets both of the following criteria:

1) the land was a gift to the city or was received by the city as part of a legal settlement; and

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1072 *Id*. § 272.001(l).
1073 *Id.* § 272.001(i).
1074 *Id.* § 272.001(j).
1075 *Id.* § 501.154.
1076 *Id*. § 253.009.

2) the land is adjacent to an area designated for development by the economic development corporation.

In order to sell land under this provision, the city must adopt an ordinance describing the property to be conveyed and must require that the conveyance comply with Section 5.022 of the Property Code (except that a covenant of general warranty is not required) and must state the consideration paid by the corporation for the land.

Also, a city with a population under 20,000 or less may transfer real property or an interest in real property to and economic development corporation governed by Chapter 504 or 505 of the Local Government Code without complying with the notice and bidding requirements of Chapter 272.[1077] The consideration for this transfer is an agreement between the city and the economic development corporation.[1078] The economic development corporation will agree to use the property that promotes a public purpose of the city. If, at any time, the economic development corporation fails to use the property in accordance with the agreement, the property will automatically revert to the city. These provisions shall be in the appropriate instrument that transfers the property to the economic development corporation.[1079] However, if the city acquired the property through eminent domain, it may not transfer the property to an economic development corporation.[1080]

Finally, for cities under 1.9 million, a transfer of title or interest in land to a federally-exempt nonprofit organization is also exempt from the notice and bidding requirements of Chapter 272 of the Local Government Code.[1081] An agreement with the nonprofit organization must require use of the land in a manner that primarily promotes a public purpose of the city. Failure to use the property in this manner results in reversion of the property to the city. These two provisions of public use and reversion must be included in the legal instrument of transfer.

## Municipal Agreements Not to Annex

To attract a business into an area, a city may choose to encourage the business to locate in the city's extraterritorial jurisdiction. If the business locates in the city's extraterritorial jurisdiction, the city may enter into an agreement not to annex the business property for a set period of time. In this way, the city gets the benefit of having the business locate in the area and the creation of additional jobs. The business in turn is freed from ad valorem taxation of its property by the city for the designated period of time. This approach is termed an "agreement not to annex" and is authorized under Section 42.044 of the Local Government Code.

Section 42.044 allows the governing body of any city to designate a portion of its extraterritorial jurisdiction as an industrial district. The statute does not define the phrase "industrial district" except to indicate that the term has the "customary meaning" and to specify that it includes an area where tourist-related businesses and facilities are located.[1082] Within an industrial district, the city may enter into written contracts to guarantee a business that its property will not be

[1077] *Id*, § 253.012(a)-(c).
[1078] *Id*. § 253.012(d).
[1079] *Id*. § 253.012(e).
[1080] *Id*. § 253.012(f).
[1081] *Id*. § 253.011.
[1082] *Id*. § 42.044(a).

annexed by the city for a period of up to 15 years.[1083] Also, any such agreement may contain other lawful terms and considerations that the parties agree to be reasonable, appropriate and not unduly restrictive of business activities.

The parties to such a contract may renew or extend the agreement not to annex for successive periods not to exceed 15 years for each extension.[1084] In the event any owner of land in an industrial district is offered an opportunity to renew or extend a contract, then all owners of land within the district must be offered the same opportunity to renew or extend the agreement.

A city is permitted to provide fire-fighting services within an industrial district that is subject to an agreement not to annex the area.[1085] The services can be performed directly by the city and paid for by the property owners of the district. Alternatively, the city may contract for the provision of the fire-fighting services by an outside source. However, if certain property owners contract to provide their own fire-fighting services, they may not be required to pay any part of the cost of the fire-fighting services provided by the city within the district.[1086]

The law provides several other protections to the city and to the business during the time a property is subject to an agreement not to annex. It provides that a political subdivision may not be created within an industrial district designated under Section 42.044 unless the city gives its written consent by ordinance or resolution.[1087] The city is required to give or deny its consent within 60 days of receiving such a written request. Failure to give or deny consent within the allotted time constitutes the city's consent to the initiation of that political subdivision's creation proceedings. If the city gives its consent or its consent is presumed by the city's failure to act, the political subdivision must initiate its creation within six months and must be finally completed within 18 months. Failure of the proposed political subdivision to comply with these time requirements terminates the consent for the proceedings.

## Use of Interlocal Agreements

All levels of local government are interested in securing a stable tax base and sound economic growth for their residents. The ability of local governments to participate in economic development varies according to the statutes that control their operations. Currently, cities and counties are the only types of local governments that are authorized to undertake economic development programs. Accordingly, city and county leaders have often used their respective powers to work together to try to attract and retain business development within their regions.

This regional approach is prevalent in both the rural areas of Texas, where communities may not have the funds to do a great deal of individual marketing of their locales, and the most populous areas of Texas, where a regional approach can maximize the efforts to recruit larger businesses to an urban area. In certain cases, this cooperation is formalized into a written agreement that outlines each of the governmental entities' respective duties. This type of agreement is termed an

[1083] *Id.* § 42.044(c).
[1084] *Id.* § 42.044(d).
[1085] *Id.* § 42.044(e).
[1086] *Id.* § 42.044(f).
[1087] *Id.* § 42.045.

"interlocal agreement" and is authorized under the Interlocal Cooperation Act contained in Chapter 791 of the Government Code.

The purpose of the Interlocal Cooperation Act is to increase the efficiency and effectiveness of local governments by authorizing them to be able to contract with one another to accomplish their mutual goals.[1088] The Act allows local governments to contract with the State or with other corporate entities organized under state law,[1089] such as development corporations, councils of government (also known as COGs or regional councils), or industrial commissions, to accomplish shared goals. The subject of an interlocal contract must be to perform a "governmental function or services" as outlined under the Act.[1090] Within the Act, there is a category allowing the joint pursuit of "other governmental functions in which the contracting parties are mutually interested."[1091] It is this category that is usually cited as authority for interlocal agreements regarding economic development. However, any contract that is executed by a governmental entity may only require the performance of functions or services that each of the entities would be authorized to perform individually under state law.[1092]

If a city and a county enter into an interlocal agreement regarding economic development efforts, the agreement must meet the applicable requirements under the Act and any requirements under other laws or restrictions that apply to that type of governmental entity. For example, each entity would need to follow the applicable budget laws for that type of governmental entity. Additionally, a home rule city would need to be sure that any agreement that is adopted is consistent with the city's charter.

The Interlocal Cooperation Act contains a number of requirements. It states that any contract under the Act must:

- be authorized by the governing body of each party to the contract;[1093]
- state the purpose, terms, rights and duties of the contracting parties;[1094]
- specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party;[1095]
- fairly compensate the performing party for the services or functions performed under the contract;[1096] and
- may have a specified term of years that may be renewed.[1097]

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[1088] Tex. Gov't Code § 791.001.
[1089] *Id.* § 791.003(4)-(5) (Defines "local government" and "political subdivision").
[1090] *Id.* § 791.003(3) (Defines "governmental functions and services").
[1091] *Id.* § 791.003(3)(N).
[1092] *Id.* § 791.011(c)(2).
[1093] *Id.* § 791.011(d)(1).
[1094] *Id.* § 791.011(d)(2).
[1095] *Id.* § 791.011(d)(3).
[1096] *Id.* § 791.011(e).
[1097] *Id.* § 791.011(f).

Both parties to a contract under the Act must have specific and individual statutory authorization to perform for the contract to be valid.[1098]

The parties to an interlocal contract may create an administrative agency or designate an existing local government to supervise the performance of the contract.[1099] The agency or designated local government may employ personnel, perform administrative activities, and provide services necessary to perform the interlocal contract.[1100] Additionally, local governments may provide in an interlocal contract for the submission of disputes to alternative dispute resolution.[1101]Local governments cannot enter into a cooperative purchasing agreement for construction-related goods or services in an amount greater than $50,000 unless the project does not require engineering or architecture plans or such plans have already been prepared as required by Chapters 1001 or 1051 of the Texas Occupations Code.[1102]

If the contract involves construction or other public works-type activities by a county, it must be given specific written approval by the commissioners court of the county, as provided under Section 791.014 of the Government Code. Any property that is held and used for a public purpose under an interlocal agreement is exempt from taxation in the same manner as if the property were held and used by the participating political subdivisions.[1103] An interlocal agreement, like any contract, should be produced in consultation with local legal counsel for each of the governmental entities.

## Economic Development Activities by Councils of Government

A council of governments is a voluntary association of local governments formed under Chapter 391 of the Local Government Code and constitutes a political subdivision of the state. These associations are also known as COGs, regional councils, development councils or regional planning commissions. Currently, Texas is divided into 24 state planning regions, and each region has a corresponding regional council. All 254 Texas counties and most Texas cities are members of their local regional council.

### Technical Assistance by Councils of Government

Councils of government are authorized by statute to undertake a number of functions, including assisting local governments in their planning efforts so that the needs of agriculture, business and industry are recognized.[1104] Because of the myriad functions that COGs are authorized to undertake, they can be indirectly and directly helpful in economic development efforts. For instance, COGs can provide technical assistance to local governments by training officials on economic development issues and providing help in the preparation of related grant applications. COGs may also help local government with funding for certain infrastructure needs that would certainly impact economic development. For example, at least seven COGs have received designation as Metropolitan Planning Organizations under the Federal Aid Highway Act of

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1098 *Id.* § 791.011(c)(2). *See* Tex. Att'y Gen. Op. No. GA-0917 (2012).
1099 Tex. Gov't Code § 791.013(a).
1100 *Id.* § 791.013(b).
1101 *Id.* § 791.015.
1102 *Id.* § 791.011(j)
1103 *Id.* § 791.013(c).
1104 Tex. Loc. Gov't Code § 391.001(a)(2)(C).

1973.[1105] This designation allows the COG to receive federal funds to help in planning and implementing responses to local transportation needs.

## Economic Development District Designation; Planning and Revolving Loan Fund Resources

Councils of government have also undertaken other types of economic development initiatives. Perhaps the most common of such initiatives involves gaining designation of the local COG region as an "economic development district" (EDD) under federal law.[1106] Such districts help local governments combine their resources in planning and developing programs to improve the region's economic conditions, primarily by developing strategies and implementing programs that combat high unemployment and increase the per capita income of the region's workforce. Additionally, an EDD is eligible for technical assistance from the regional office of the federal Economic Development Administration. Of the 24 councils of government in Texas, 23 have gained designation as EDDs.

Upon designation as an EDD, certain federal funds become available to aid these districts in their planning efforts to develop and administer a Comprehensive Economic Development Strategy, which is a 5-year plan developed by the EDD that acts as a road map for achieving the region's economic goals and objectives. An effort to digitize the strategy is underway by each EDD.

Also, councils of government develop and administer revolving loan funds provided by the federal Economic Development Administration and can leverage these funds with both private and other public financing resources in order to maximize the public benefit and return on investment to the region.

## Support to Texas Workforce Development

Councils of government are eligible for federal funds that are administered by the Texas Workforce Commission. These funds are used primarily for employment and training programs through participation in the Workforce Innovation & Opportunity Act of 2014.[1107] The COGs may provide administrative support to the region's Workforce Development Board and/or staff to the Workforce Development Centers to provide planning, implementation and program administration services to the Workforce Development Board and the region's workforce constituents.

## Small Business Administration Certified Development Corporations and 504 Loan Program

Some councils of government have formed Small Business Administration (SBA) Certified Development Corporations. These corporations are authorized to make long-term financing available through SBA's 504 Loan Program which allows eligible businesses to construct and/or acquire commercial real estate with favorable interest rates, long-term financing and low down payments. For more information on Certified Development Corporation and 504 Loans: https://www.sba.gov/offices/headquarters/ofa/resources/4049#.

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1105 23 U.S.C.A. § 101, *et seq.*

1106 42 U.S.C.A. § 3121, *et seq.* (Public Works and Economic Development Act of 1965).

1107 29 U.S.C.A.§ 3101, *et seq*.

### Regional Reviews and Texas Community Development Block Grant Program

Councils of government have helped local governments obtain Community Development Block Grant funds from the Texas Community Development Block Grant Program administered by the Texas Department of Agriculture. Some COGs facilitate the regional review committees that develop application scoring criteria and conduct application reviews. Others regions provide technical assistance and grant administration for their communities. Councils of government ensure that applications are ranked and funded based on funding allocations to each of the 24 COGs.

### Competitive Grant Activities

Councils of government can assist local jurisdictions in obtaining competitive grants under the Brownfields Program administered by the U.S. Environmental Protection Agency, the Weatherization Assistance Program and the Energy Efficiency and Renewable Energy programs both funded by the U.S. Department of Energy, the Texas Department of Housing and Community Affairs, and the State Energy Conservation Office. Councils of government may assistant jurisdictions to find targeted funding opportunities that maximize regional impact and avoid duplication.

To obtain more information about COGs and their role in economic development, contact your local COG or contact the Texas Association of Regional Councils (TARC) at (512) 478-4715. Also, you may want to visit the TARC website at: txregionalcouncil.org.

## County Economic Development Powers

County governments are limited to the statutory powers given to them by the Texas Legislature. In order for a county to take an action, it must be able to cite a statute that authorizes the type of initiative that is being pursued. There are several statutes that provide counties with methods for facilitating economic development initiatives.

### County Industrial Commissions

Section 381.001 of the Local Government Code specifically authorizes counties to promote economic development through county industrial commissions. The commission's aims are to "investigate and undertake ways of promoting the prosperous development of business, industry, and commerce in the county."[1108] It may assist in the location, development and expansion of business enterprises, and is required to cooperate with the Governor's Division of Texas Economic Development and Tourism.[1109]

A county industrial commission consists of at least seven county residents appointed by the county judge.[1110] Members serve two-year terms without pay, although the county may pay for "necessary expenses."[1111]

1108 Tex. Loc. Gov't Code § 381.001(f).
1109 *Id.* § 381.001(g).
1110 *Id.* § 381.001(a)-(b).
1111 *Id.* § 381.001(d)-(e).

## County Boards of Development

Section 381.002 of the Local Government Code authorizes counties to create county boards of development to promote the growth and development of the county. These boards are created only if county residents have voted at an election to dedicate a portion of the property tax for this purpose.[1112] If a majority of the voters approve such a dedication at an election on the issue, the commissioners court may set aside part of the county's ad valorem tax revenue (a maximum of five cents per $100 assessed valuation) as a board of development fund. This money is to be used to "advertise and promote the growth and development of the county."[1113]

The fund is administered by a county board of development consisting of five members appointed to two-year terms by the commissioners court.[1114] As with the county industrial commission, the members are unpaid. The board is responsible for preparing and submitting a budget for the ensuing year to the commissioners court in the same manner that county budgets are administered.[1115] Although a county may operate under another law authorizing the appropriation of money or the levy of a tax for advertising and promotion purposes, the county may not appropriate more funds for those purposes than the five cent per $100 assessed valuation permitted under Chapter 381 of the Local Government Code.[1116]

## Direct County Economic Development Efforts

Another provision in Chapter 381 of the Local Government Code authorizes counties to contract with a broad range of entities, including state and federal agencies, cities, school districts, nonprofit organizations and even "any other person," to stimulate business and commercial activity. Under Section 381.004, a commissioners court may develop and administer programs in several areas:

- state or local economic development;[1117]
- small or disadvantaged business development;[1118]
- development of business locations within the county;[1119]
- promotion or advertisement of the county and its vicinity to attract conventions, visitors and businesses;[1120]
- encouragement of county contract awards to businesses owned by women and minorities;[1121]
- support comprehensive literacy programs for the benefit of county residents;[1122] and

1112 *Id*. § 381.002(a).
1113 *Id.* § 381.002(a)-(b).
1114 *Id.* § 381.002(c).
1115 *Id*. § 381.002(d).
1116 *Id.* § 381.002(g).
1117 *Id.* § 381.004(b)(1).
1118 *Id.* § 381.004(b)(2).
1119 *Id.* § 381.004(b)(3).
1120 *Id.* § 381.004(b)(4).
1121 *Id.* § 381.004(b)(5).

- encouragement and promotion of the arts.[1123]

Section 381.004 allows the county to use county employees or funds to pursue the above programs.[1124] Additionally, the law allows counties to accept contributions, gifts or other resources.[1125] It should be noted that the County Purchasing Act allows the county to exempt these program contracts from competitive bidding requirements.[1126]

The attorney general has concluded that Section 381.004 does not authorize a county to simply provide funds to existing non-county programs, even if those programs are directed at economic development. Rather, any program funded under this section must be initiated by the county and must be administered either by the county or by an entity under contract with the county.[1127] The commissioners court is authorized to make loans, grant public money, or provide county personnel and services to permissible Chapter 381 economic development programs.[1128]

Also, counties may form a county alliance corporation under state law through the Development Corporation Act.[1129] A county alliance corporation is simply a nonprofit corporation formed by a county alliance of two or more counties to pursue economic development.[1130] The corporation is governed by a board of directors who are appointed by and serve at the pleasure of the commissioners court of each county in the alliance.[1131] Unlike cities with economic development corporations, counties do not have the authority to levy a sales tax for economic development for the corporation's use.

## County Ability to Provide Loans or Grants

Counties are constitutionally prohibited from granting "public money or any thing of value in aid of, or to any individual, association or corporation whatsoever"[1132], unless the Legislature authorizes a county to undertake programs to provide for loans and grants of public money.[1133] The purpose of these programs can be for the: development and diversification of the state's economy, elimination of unemployment, stimulation of agricultural innovation, and development of transportation or commerce.

Chapter 381 of the Local Government Code allows counties to make loans or grant public monies for permissible Chapter 381 economic development programs.[1134] Like cities, counties must maintain sufficient control over the way these funds are spent. To ensure such control, a county would be well advised to execute a formal contract between the county and the entity that spends the funds, outlining the respective rights and duties under the agreement. Additionally,

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1122 *Id.* § 381.004(b)(6).
1123 *Id.* § 381.004(b)(7).
1124 *Id.* § 381.004(c)(3).
1125 *Id.* § 381.004(c)(4).
1126 *Id.* § 262.024(a)(10).
1127 Tex. Att'y Gen. LO-98-007 (1998).
1128 Tex. Loc. Gov't Code § 381.004(h).
1129 *See id.* §§ 506.001 *et seq*.
1130 *Id*. §§ 506.001, .002.
1131 *Id.* §§ 506.051, .053.
1132 Tex. Const. art. III, § 52(a).
1133 Tex. Const. art. III, § 52-a.
1134 Tex. Loc. Gov't Code § 381.004(h).

the county would want to include a recapture provision outlining how the county would be reimbursed for any incentives it provided if the funded entity is ultimately unable to meet its commitments.

# VI. Issuing Debt to Finance Economic Development

## Legal Authority to Issue Bonds

Occasionally, cities may not have sufficient current funds to pay for certain economic development incentives. Consequently, the city may look to its ability to issue debt to finance such incentives. The power to issue debt, however, is quite different for home rule cities than it is for general law cities. Either type of city will want to be certain that it has the authority to issue bonds or other forms of indebtedness before it commits itself to such an incentive. Provided below is a discussion of the basic authority for cities to issue debt to finance economic development projects.

### Legal Authority to Issue Bonds for Economic Development

Even though a city has the power to generally manage its own financial affairs, Texas courts have held that cities do not have an inherent right to issue bonds. In order to issue bonds, a city must be able to point to a statute or city charter provision which specifically authorizes the issuance of bonds for the proposed purpose. A statute or charter provision that gives a city the power to borrow money does not in itself provide the city with the authority to issue bonds.[1135]

Presently, there are several sources of statutory authority which provide for the issuance of bonds for economic development purposes. Chapter 311 of the Tax Code allows the issuance of tax increment bonds to finance a tax increment economic development project.[1136] Chapter 1509 of the Government Code allows cities to finance certain manufacturing and commercial facilities, and Chapters 501–507 of the Local Government Code (the Development Corporation Act) authorize development corporations to issue bonds for economic development under certain circumstances.

### Bonds for Certain Commercial Projects

Under Chapter 1509 of the Government Code, a city may issue revenue or general obligation bonds to finance the construction or purchase of a facility for the purpose of leasing the facility to a private entity for use in a manufacturing or another commercial activity.[1137] A city may also issue these bonds to obtain a building or other facility that subsequently will be leased to a political subdivision of the state or to a state agency for public use.[1138] For example, a city could issue bonds to finance the construction of a facility to house a regional state office in order to bring government jobs to a particular area. In this circumstance, the bonds would be payable from the lease revenue. Additionally, a city could provide that such bonds are payable from ad valorem taxes if the bonds are approved by a majority of the voters at an election held for that

1135 *City of Brenham v. German-American Bank*, 144 U.S. 173, 12 S. Ct. 559 (1892) (The city charter of Brenham, which allowed the city to borrow money for general purposes on the credit of the city, only included authority to borrow money for ordinary governmental purposes; this did not include the power to issue bonds).

1136 Tex. Tax Code §§ 311.010(h), .015.

1137 Tex. Gov't Code §§ 1509.001(a)(2), .003, .004.

1138 *Id.* § 1509.001(a)(1). *Also see id*. § 1509.001(a)(3) (allows leasing to the federal government to enhance the military value of a military facility located in or near a municipality that is a defense community under Section 397.001 of the Local Government Code).

purpose.[1139] A city that utilizes this authority will want to visit with its local bond counsel to determine the applicable legal requirements.

## Economic Development Corporation Bonds

Under the Development Corporation Act, bonds can be issued to finance certain economic development projects authorized by that statute.[1140] These bonds are issued by the economic development corporation (not by the city) and are payable from the economic development sales tax proceeds or lease revenues which the corporation receives from the user of the financed project. The city is not the issuer of the debt and cannot be held liable for any obligations of this corporation.[1141] The types of projects that may be funded by the economic development sales tax are covered in detail in Chapter I of this handbook addressing Type A and Type B sales tax.

## Which Obligations Must Receive Attorney General Approval

Section 1202.003(a) of the Government Code requires that public securities and the record of proceedings relating to the authorization of public securities must be submitted to the Office of the Attorney General (hereinafter, the "OAG") for review and approval.[1142] With limited exceptions, public securities must be approved by the OAG before they can be issued.

Public securities are defined to mean certain instruments, including bonds, notes, certificates of obligation, certificates of participation, or other instruments evidencing a proportionate interest in payment due by an issuer that are incurred under the issuer's borrowing power and are in the appropriate form.[1143] Exempted from the approval requirement are certain time warrants, leases, lease-purchase agreements, installment sale contracts, and bonds that are payable only from current revenues or taxes collected in the year of issuance.[1144] However, it is important to note that each of these obligations may be required to receive approval under other law. Notes given to banks to evidence a commercial bank loan are not generally considered securities that have to be approved by the OAG and, in most instances, cannot be approved by the OAG even if such approval is desired. As discussed later in this handbook, however, there is no clear general authorization to execute such notes.

## Authority under Local Government Code Chapter 380

Many cities cite Section 380.001 of the Local Government Code for their authority to offer grants or loans of city funds as an incentive to new or expanding businesses. Although Chapter 380 allows the provision of city grants and loans to promote economic development, this chapter does not specifically authorize the issuance of any type of bonds or other long term general or special obligations to finance such a program.

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1139 *Id.* § 1509.005.

1140 Tex. Loc. Gov't Code §§ 501.006, 504.303, 505.104, .302(2).

1141 *Id.* § 501.207.

1142 In addition to the requirements for Attorney General's approval contained in Chapter 1202 of the Texas Government Code, a number of statutes contain their own requirements for Attorney General approval. A local government should always consult the specific statute which it cites as authorization to issue debt for any restrictions or requirements relating to that debt.

1143 Tex. Gov't Code § 1202.001(3).

1144 *Id.* §1202.007.

Attorney General Opinion DM-185 (1992) concluded that Section 380.001 did not specifically authorize the issuance of bonds to fund city grant and loan programs. Such authorization, however, may be contained in a city charter of a home rule city. Accordingly, a home rule city can issue general obligation bonds to provide grants or loans under its economic development program if two conditions are met. First, there must be a specific provision in the city charter that allows the issuance of bonds for that purpose. Second, the voters must approve the bond issuance at an election held on the issue. Attorney General Opinion DM-185 does not address what specific charter language would be necessary to authorize bonds to fund a loan or grant program.

Attorney General Opinion DM-185 also concluded that any grant of funds made under the authority of Chapter 380 must comply with the constitutional requirement that public resources be used for the direct accomplishment of a public purpose. Thus, any program to provide grants or loans under Chapter 380 must contain sufficient controls to ensure that the funds involved are actually used to carry out the intended public purpose.

## Procedures for Issuing Bonds for Economic Development

If an economic development project involves the issuance of bonds, a city may obtain for assistance from experts on the financial and legal aspects of a bond financing. With regard to the financial implications, a city usually hires a financial advisor who is available through any of a number of investment banking firms in Texas. For assistance in complying with the legal requirements of a bond financing, bond counsel should be hired.

The chosen financial advisor and bond counsel will review the proposed structure of the bond financing. If there are unusual legal issues associated with the issuance of the bonds, bond counsel may contact the Public Finance Division of the OAG to resolve these issues. Ordinarily, these issues will be settled prior to submission of the financing instrument to the OAG for approval. If bond counsel is satisfied with the legal aspects of the proposed financing, the financial advisor can complete the analysis of the financial feasibility of the financing. Financial issues could include consideration of the likely market reaction to the proposed bonds and the strength of the sources of repayment of the bonds.

When bond counsel and the financial advisor are satisfied that all legal requirements have been met and that the bonds will be marketable at a reasonable price, the bonds are sold. The bond sale can be made pursuant to competitive bids or through a negotiated sale with a preselected "underwriter," as provided by law. The financial advisor is responsible for advising the city as to the best approach for selling the bonds. The financial advisor, in conjunction with bond counsel, must also determine that all federal regulations are met regarding the issuance of the bonds.

The OAG's review of public securities is strictly a legal one, not a financial one, though the OAG does review whether the public securities can apparently be paid within any statutory or constitutional limits on taxation or historical or reasonable projected revenues. The OAG approval does not address the wisdom or advisability of the financing techniques employed or the expenditures which the bonds are intended to finance.

The minimum time requirement for the review of bonds by the OAG is 10 to 12 working days, depending upon the type of issuer, for economic development-related financing. Additional time will be required if all of the necessary documentation is not provided at the time the bonds are submitted. In a complex financing, the OAG may require certain revisions to the documents or may seek the resolution of legal issues that arise. If so, the review process may take substantially longer than the minimum time period. Once the attorney general has approved the bonds, they are registered with the comptroller and can then be delivered to the purchaser in return for the purchase price. The financing then "closes" and the bond proceeds are considered available for the construction or acquisition of the facilities.

If questions arise concerning the constitutionality of a transaction or the legal basis upon which a transaction is predicated, the OAG will require that a formal OAG opinion be obtained or that a bond validation judgment be sought by the filing of a bond validation lawsuit pursuant to Chapter 1205 of the Government Code. Once the OAG has approved the bonds, they are registered with the comptroller and can then be delivered to the purchaser in return for the purchase price.

### Effect of Attorney General Approval of Bonds

The significance of OAG approval of bonds is that once bonds are approved, they are incontestable for any reason[1145] except for unconstitutionality.

## Other Instruments to Finance Infrastructure Improvements

There are a number of financial instruments other than bonds that are typically used by cities to finance public improvements. Whether such instruments may be used to fund economic development-related expenditures depends on the relevant statutory authority and any authorization provided by the city charter. The OAG has promulgated rules requiring a public entity to demonstrate coverage for its debt from a portion of the entity's constitutional tax limit, described as the "bond allowable."[1146] Those rules prevent most local governments from incurring debt that would require more than two-thirds of the issuer's property tax rate to be dedicated to debt service. Further, under the OAG's rules, a home rule city with the maximum legal property tax rate of $2.50 per $100 of valuation may not incur an amount of debt that would require more than $1.50 of that rate for debt service. Occasionally, other law, such as the city charter of a home rule city, may place stricter limits on the amount of debt that a city may incur.

1145 *Id.* § 1202.006.

1146 1 Tex. Admin. Code § 53.5 (2017).

# VII. Other Economic Development Initiatives

## Public Improvement Districts

Cities and counties often need to make certain improvements to their infrastructure to facilitate economic growth within an area. New businesses may choose not to locate where there are inadequate streets, substandard utility services, or other public facilities or services that are inferior. It is also difficult for existing businesses to prosper in areas that have poor public infrastructure. Texas law provides a number of ways to finance needed public improvements, including the use of special assessments. Public Improvement Districts (PIDs) offer cities and counties a means for undertaking such projects.

The Public Improvement District Assessment Act allows any city to levy and collect special assessments on property that is within the city or within the city's extraterritorial jurisdiction (ETJ).[1147] Further, counties may levy and collect special assessments on property located within the county unless, within 30 days of a county's action to approve the public improvement district, a home rule city objects to its establishment within the home rule city's corporate limits or ETJ.[1148] The statute authorizing the creation of PIDs is found in Chapter 372 of the Local Government Code. The public improvement district may be formed to accomplish any of the following improvements:[1149]

1) landscaping;
2) erection of fountains, distinctive lighting and signs;
3) acquiring, constructing, improving, widening, narrowing, closing or rerouting sidewalks, streets or any other roadways or their rights-of-way;
4) construction or improvement of pedestrian malls;
5) acquisition and installation of pieces of art;
6) acquisition, construction or improvement of libraries;
7) acquisition, construction or improvement of off-street parking facilities;
8) acquisition, construction, improvement or rerouting of mass transportation facilities;
9) acquisition, construction, or improvements of water, wastewater or drainage improvements;
10) the establishment or improvement of parks;
11) projects similar to 1 through 10 listed above;
12) acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;
13) special supplemental services for improvement and promotion of the district, including services relating to advertising, promotion, health and sanitation, water and wastewater,

1147 Tex. Loc. Gov't Code § 372.003(a).
1148 *Id.* § 372.003(d).
1149 *Id.* § 372.003(b).

public safety, security, business recruitment, development, recreation, and culture enhancement;

14) payment of expenses incurred in the establishment, administration, and operation of the district, including expenses related to the operation and maintenance of mass transportation facilities; [1150] and

15) the development, rehabilitation, or expansion of affordable housing.

Below are the ten steps necessary to create a public improvement district and levy assessments.

**Step One:**

***The governing body or a group of the affected property owners must initiate a petition that calls for a defined area of the city or county to be declared a public improvement district.***[1151]

The petition must state:[1152]

- the general nature of the proposed improvements;
- the estimated cost of the improvements;
- the boundaries of the proposed assessment district;
- the proposed method of assessment, which may specify included or excluded classes of assessable property;
- the proposed apportionment of costs between the public improvement district and the municipality or county as a whole;
- whether the district will be managed by the municipality or county, by the private sector, or by a partnership of the two;
- that the persons signing the petition request or concur with the establishment of the district; and
- that an advisory board may be established to develop and recommend an improvement plan to the governing body of the municipality or the county.

The petition is sufficient if it meets two conditions. First, it must be signed by owners of more than 50 percent of the appraised value of taxable real property subject to assessment under the proposal.[1153] Second, the petition must also be signed by record owners of real property liable for assessment under the proposal who:[1154]

- Constitute more than 50 percent of all record owners of property that is liable for assessment under the proposal; or
- own taxable real property that constitutes more than 50 percent of the area of all taxable real property that is liable for assessment under the proposal.

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1150 *See id.* § 372.003(b-1).

1151 *Id.* § 372.002. *See also* Tex. Att'y Gen. LO-96-129 (Concluding a petition is a prerequisite for the establishment of a public improvement district).

1152 Tex. Loc. Gov't Code § 372.005(a).

1153 *Id.* § 372.005(b)(1).

1154 *Id.* § 372.005(b)(2).

The petition may be filed with the city secretary or an officer performing the city secretary's functions.[1155]

**Step Two:**

***After receiving a petition to establish a public improvement district, the governing body of the city or county may appoint an advisory board to develop and recommend an improvement plan for the PID.*[1156]**

The membership of the board must be sufficient to meet the same criteria that made the petition sufficient. First, the board must be composed of owners of more than 50 percent of the appraised value of taxable real property subject to assessment under the proposal.[1157] Second, it must include representation by record owners of real property liable for assessment under the proposal who:[1158]

- Constitute more than 50 percent of all record owners of property that is liable for assessment under the proposal; or
- own taxable real property that constitutes more than 50 percent of the area of all taxable real property that is liable for assessment under the proposal.

**Step Three:**

***After receiving a petition to establish a public improvement district, the governing body of the city or county should prepare a feasibility report.* [1159]**

The purpose of the report is to determine whether an improvement should be made as proposed by the petition, or in combination with other improvements authorized under Chapter 372 of the Local Government Code. The report may be conducted using the services of municipal employees, county employees, or outside consultants.

**Step Four:**

***A public hearing on the advisability of the improvements must be conducted after meeting statutory notice requirements*.[1160]**

After the feasibility report is completed, a public hearing must be held by the governing body of the city or county to determine the advisability of the proposed improvements. Notice of the public hearing must be published in a newspaper of general circulation in the city, or county and the city's extraterritorial jurisdiction where the district is to be located.[1161] Notice must be published more than 15 days prior to the date of the hearing. Additionally, notice of the PID must be mailed more than 15 days prior to the date of the hearing to the owners of property within the proposed PID.[1162] The notice must contain the following information:[1163]

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1155 *Id.* § 372.005(c).
1156 *Id.* § 372.008(a).
1157 *Id.* § 372.008(b)(1)
1158 *Id.* § 372.008(b)(2).
1159 *Id.* § 372.007(a).
1160 *Id.* § 372.009.
1161 *Id.* § 372.009(c).
1162 *Id.* § 372.009(d).
1163 *Id.* § 372.009(c).

1) the time and place of the hearing;
2) the general nature of the proposed improvements;
3) the estimated cost of the improvements;
4) the boundaries of the proposed assessment district;
5) the proposed method of assessment; and
6) the proposed apportionment of cost between the improvement district and the municipality or county as a whole.

By resolution, the city or county must make findings regarding the advisability of the proposed improvements—and Items 2 through 6, above—based on the public hearing.[1164]

**Step Five:**

***The governing body of the city or county must adopt a resolution by majority vote authorizing the creation of a PID.***[1165]

The authorization of the PID must be done within six months of the public hearing on the PID. The authorization is effective once notice of the resolution is published in a newspaper of general circulation in the city or county and the city's ETJ where the district is to be located.[1166]

**Step Six:**

***Twenty days after authorization of the PID has taken effect, the city or county may begin construction of the improvements.***[1167]

If within the 20 day period, a protest petition is filed, construction may not begin. Such a petition must be signed by owners representing at least two-thirds of total area of the district or by two-thirds of all the land owners in the district. However, the statute does not set out a procedure for cities or counties to follow once they have received this protest petition.

**Step Seven:**

***A five-year on-going service plan and assessment plan must be developed.***[1168]

The on-going service plan must define the annual indebtedness and projected costs of the improvements for the PID. The plan may be prepared by the PID advisory board or another entity, if an advisory board is not appointed. The plan must be reviewed and approved by the city or county. Also, the service plan must be reviewed and updated annually for purposes of determining an annual budget for improvements.

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1164 *Id.* § 372.009(b).
1165 *Id.* § 372.010(a).
1166 *Id.* § 372.010(b).
1167 *Id.* § 372.010(c).
1168 *Id.* § 372.013.

An assessment plan must be included in the annual service plan.[1169] The assessment plan is based upon the assessments made by the city or the county.[1170] The city or county shall apportion the cost of the improvements assessed against the property in the PID. The apportionments are based upon the special benefits that accrue to the property because of an improvement.[1171] The city or county may establish by ordinance or order:[1172]

1) Reasonable classification and formulas for the apportionment of the cost between the city or county and the area to be assessed; and
2) The methods of assessing the special benefits for carious classes of improvements.

Costs for improvements may be assessed either by:[1173]

1) Equally per front foot or square foot;
2) According to the value of the property as determined by the city or county, with or without regard to improvements on the property; or
3) In any other manner that results in imposing equal shares of the cost on similarly benefitted properties within the PID.

Assessments may be adjusted annually upon review of the service plan.[1174] Also after the findings of the city or the county, the area of the PID to be assessed can be less than the area described in the proposed boundaries on the original notice.[1175] The city and county are responsible for payment of assessments against exempt municipal or county property within the district.[1176] Payment of assessments by other tax exempt jurisdictions must be established by contract.

**Step Eight:**

***The city or county must prepare a proposed assessment roll and provide notice and a hearing on the proposed assessment roll.***[1177]

If the city forms the district, a copy of the proposed assessment roll must be filed with the city secretary. [1178] If the county forms the district, the proposed assessment roll must be filed with the county tax assessor-collector. Notice of a public hearing on the proposed assessment roll must be published in the newspaper of general circulation at least 10 days before the date of the hearing. The notice must state:

1) the date, time, and place of the hearing;

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1169 *Id.* § 372.014(a).
1170 *Id.* § 372.015(a).
1171 *Id.*
1172 *Id.* § 372.015(c).
1173 *Id.* § 372.015(b).
1174 *Id.* § 372.015(d).
1175 *Id.* § 372.012. (Note: the city or county cannot assess property that was not in the original proposed boundaries. This can only be allowed if notice and a hearing to include that property is done in accordance with Section 372.009).
1176 *Id.* § 372.014(b).
1177 *Id.* § 372.016.
1178 *Id.* § 372.016(b).

2) the general nature of the improvement;
3) the cost of the improvement;
4) the boundaries of the assessment district; and
5) that written or oral objections will be considered at the hearing.

Also, notice of the public hearing on the roll must be mailed to affected property owners.[1179] At the public hearing, the governing body must hear and rule on any objections that are raised.[1180] Also, the governing body may amend a proposed assessment on any parcel.

**Step Nine:**

***After all the objections have been heard and considered, the governing body may levy, by ordinance or order, the special assessment against the taxable properties within the district.***[1181]

The ordinance or order must include the method of payment and may provide for installment payments. The city or county must approve an interest rate and a period of time for the installment payments. Also, the installment payments must be an amount necessary to meet annual costs[1182] and must continue for a period that either retires the indebtedness for the improvements within the district or is the period that was approved by the city or county for the payment of installments. Also, the city or county may defer an assessment until a date specified in the ordinance or order.[1183] Additionally, the city or the county can contract with another taxing unit or the board of directors of the appraisal district to collect the special assessments.[1184]

As mentioned above, the city or county specifies the interest rate in the installment payments on assessments. If the city or county issue general obligation bonds, revenue bonds, time warrants or temporary notes to finance the improvements, the interest rate may not exceed a rate that is one-half of one percent higher than the actual rate paid on the debt.[1185] Also, the interest that accrues between the effective date of the assessment ordinance or order and the payment of the first installment must be added to the first installment payment.

The assessment is a first and prior lien against the property; superior to all other liens and claims except liens for state, county, school district, or city ad valorem taxes; and is a personal liability of a charge against the owners of the property regardless of whether the owners are named.[1186] The assessment lien is effective from the date of the assessment ordinance or order until the assessment is paid and it runs with the land.[1187] The lien may be enforced by the city or the county in the same manner that an ad valorem tax lien against real property may be enforced.[1188] Foreclosure of accrued installments does not eliminate the outstanding principal balance of the

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[1179] *Id.* § 372.016(c).
[1180] *Id*. § 372.017(a).
[1181] *Id*. § 372.017(b).
[1182] *See id*. § 372.023(h).
[1183] *See id*. § 372.0055 (If the proposed improvement includes a deferred assessment, the city or county must estimate the appraised value of taxable real property liable for assessment in the district; and the cost of improvement before holding the public hearing).
[1184] *Id*. § 372.0175.
[1185] *Id*. § 372.018(a).
[1186] *Id*. § 372.018(b).
[1187] *Id*. § 372.018(c)-(d).
[1188] *Id*. § 372.018(e).

assessment and any foreclosure purchaser of the property is subject to the assessment lien and any associated obligations.

Delinquent installments of assessments shall incur interest, penalties and attorney's fees in the same manner as delinquent ad valorem taxes.[1189] The interest on any delinquent installment shall be added to each subsequent installment until all delinquent installments are paid.[1190] However, a special assessment is not considered a tax as that term is used in the Texas Constitution.[1191] Thus, the attorney general held that a homestead may not be subjected to forced sale for nonpayment of a public improvement district assessment. However, the attorney general then qualified that conclusion by stating that an assessment may be enforced by foreclosure provided that the statutory lien associated with the assessment attached to the real property prior to the date the property became a homestead.[1192]

**Step Ten:**

***The governing body may make additional assessments against property within the district to correct omissions or mistakes regarding the costs of the improvements*.[1193]**

Before such an additional assessment may be made, the city or county must provide the same type of notice and public hearing that was required for the original assessment.

## Payment of Costs of Improvements

Costs of improvements must be paid in specified ways.[1194] If the cost is payable by the city or county, the city or county may use general funds available for the purpose of improvement or other available general funds.[1195] Cost that is payable from special assessments that have been paid in full must be paid from that assessment.[1196] Costs payable from a special assessment that is payable in installments may be paid by any combination of the following:[1197]

1) under an installment sales contract or a reimbursement agreement between the city or county and the person who acquires, installs, or constructs the improvement;
2) as provided by a temporary note or time warrant issued by the city or county and payable to the person that acquires, installs, or constructs the improvement; or
3) by the issuance and sale of revenue or general obligation bonds.[1198]

An installment sales contract, reimbursement agreement, temporary note, or time warrant may be assigned by the payee without consent of the city or the county.[1199]

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[1189] *Id.* § 372.018(f).
[1190] *Id.* § 372.018(a).
[1191] Tex. Att'y Gen. Op. No. JC-386 (2001).
[1192] Tex. Att'y Gen. Op. No. GA-237 (2004). *See id.* at 2 n. 2.
[1193] Tex. Loc. Gov't Code § 372.019.
[1194] *Id*. § 372.023.
[1195] *Id*. § 372.023(b).
[1196] *Id.* § 372.023(c).
[1197] *Id*. § 372.023(d).
[1198] *See id.* § 372.024.
[1199] *Id*. § 372.023(d-1).

The cost of more than one improvement may be paid either: (1) from a single issue and sale of bonds without other consolidation proceedings before the bond issue; or (2) under a single installment sales contract, reimbursement agreement, temporary note, or time warrant.[1200]

If bonds are issued, the city or county must create a separate PID fund in the treasury to which the proceeds from the sale of bonds, temporary notes, time warrants or other sums appropriated are credited.[1201] The fund may be used solely to pay cost incurred in making an improvement. When an improvement is completed, the balance of the part of the assessment that is for improvements must be transferred to the fund established for the retirement of bonds.

## Tourism Public Improvement District

A tourism public improvement district (PID) is designed to encompass one or more hotels and collect an assessment from hotels in the district to be used for advertising, promotion, and business recruitment directly related to hotels.[1202] The concept of a tourism PID was first introduced in Texas in 2011 when legislation passed authorizing a tourism PID only in the City of Dallas. Legislation passed in 2019 allowing any city in Texas to create a tourism PID.[1203]

A tourism PID can include noncontiguous areas so long as the areas consist of one or more hotels and share a common characteristic or use.[1204] Further, a city council may later include additional property in a tourism PID if: (1) the property is a hotel; and (2) the property could have been included in the district without violating the petition process when the district was created regardless of whether the record owners of the property signed the original petition.

Unlike with a traditional PID, the petition for the establishment of a tourism PID is sufficient only if signed by record owners of taxable real property constituting: (1) more than 60 percent of the appraised value of taxable real property liable for assessment under the proposed tourism PID; and (2) either more than 60 percent of all record owners of taxable real property liable for assessment or more than 60 percent of the area of all taxable real property liable for assessment.[1205]

A city that creates a tourism PID may adopt procedures for the collection of assessments that are consistent with the city's procedures for the collection of a local hotel occupancy tax and pursue remedies for failure to pay an assessment that are available to the city for failure to pay a hotel occupancy tax.[1206]

## Dissolution of a Public Improvement District

A public improvement district may be dissolved if a petition requesting dissolution is filed and contains the signatures of at least the same number of property owners required to create the

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[1200] *Id.* § 372.023(g).
[1201] *Id.* § 372.022.
[1202] *Id*. § 372.0035.
[1203] *See* House Bill 1136, 86th Leg. R.S. (2019).
[1204] Tex. Loc. Gov't Code § 372.0035(b), (c).
[1205] *Id*. § 372.005(b-1).
[1206] *Id*. § 372.0035(d).

PID.[1207] Public notice and a public hearing must be held in the same manner as those required to create a PID.[1208] If the district is dissolved, the PID stays in effect until it has paid off any indebtedness that remains for the improvements.

## Municipal Management Districts

Municipal management districts allow commercial property owners to enhance a defined business area. The districts, also called downtown management districts, are created within an existing commercial area to finance facilities, infrastructure, and services beyond those already provided by individual property owners or by the municipality. The improvements may be paid for by a combination of self-imposed property taxes, special assessments, and impact fees, or by other charges against property owners within the district. The creation of such a district does not relieve a city from providing basic services to an area included within the district. A district is created to supplement, not to supplant, the municipal services available to the area. A number of Texas cities have used municipal management districts to provide much-needed funding to enhance the economic vitality of the business centers within the municipality.

The general statutes governing municipal management districts are located in Chapter 375 of the Local Government Code.[1209]

A municipal management district is considered a governmental agency and a political subdivision of the state.[1210] The creation of a municipal management district within an eligible commercial area involves five steps.

**Step One:**

***The owners of a majority of the assessed value of the real property in the proposed district that would be subject to assessment by the district must sign a petition asking for the creation of a district.[1211]***

This petition must include:[1212]

1) the proposed district boundaries;
2) specific purposes for which the district will be created;
3) general nature of the work, projects or services to be provided, the necessity for those services, and the estimated cost;
4) name of the district which must start with a general description of the location of the district followed by the term "Management District" or "Improvement District";

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1207 *Id.* §§ 372.011. *See id.* 372.005 (Section 372.005(c) of the Local Government Code provides that the "petition may be filed with the municipal secretary or other officer performing the functions of the municipal secretary." This section does not note the county official with whom a petition to dissolve a county PID should be filed with.).

1208 *Id.* § 372.011.

1209 There are specific municipal management district that have there own statute. These statutes can be found in the Special District Local Law Code.

1210 Tex. Loc. Gov't Code. § 375.004(a).

1211 *Id.* § 375.022(b).

1212 *Id.* § 375.022(c).

5) names of the proposed initial directors that include the directors' experience and length of initial service; and
6) resolution of the city in support of the creation of the district.

The description of the boundary of the proposed district must be by metes and bounds, verifiable landmarks, or by lots and block numbers if there is a recorded map or plat and survey of the area.[1213] All of these documents, along with the petition requesting creation of the district, must be submitted to the Texas Commission on Environmental Quality (TCEQ) for approval of the district.[1214]

**Step Two:**

***TCEQ, or a person authorized by the TCEQ, sets a date, time, and place for a public hearing to consider the petition.***[1215]

The notice must state that each person has a right to appear and present evidence and testify for or against the allegations in the petition, the form of the petition, the necessity and feasibility of the district's project, and the benefits to accrue.

TCEQ must publish notice of the hearing once a week for two consecutive weeks in a newspaper of general circulation in the city in which the district is to be located.[1216] The first publication must occur not later than the 31st day before the date on which the hearing will be held. TCEQ must mail the notice to the county where the district is proposed if the county has requested notice.[1217] Also, the city may request for TCEQ notice of creation of a district.[1218] A city may make such a request in January of each year to receive these notices by mail.

**Step Three:**

***The petitioner has a duty to send a notice of the public hearing to each property owner in the proposed district who did not sign the petition.***[1219]

The notice must be sent at least 30 days prior to the hearing. The petitioner must send the notice by certified mail with return receipt requested. The notice must include all of the information noted in the Step Two.

**Step Four:**

***TCEQ must hold the public hearing and consider the need for the district and the sufficiency of the underlying documentation.***[1220]

At the hearing, TCEQ examines the petition and hears testimony from any interested person on the sufficiency of the petition, whether the district is feasible and necessary, and whether the district would be a benefit to all or any part of the land to be included. Also, while considering

1213 *Id.* § 375.022(c)(1).
1214 *Id.* § 375.022(a).
1215 *Id.* § 375.023.
1216 *Id.* § 375.024(a).
1217 *Id.* § 375.024(b).
1218 *Id.* § 375.024(c).
1219 *Id.* § 375.024(e).
1220 *Id.* § 375.025.

the petition, TCEQ has to determine if the project is feasible, necessary, and a public benefit.[1221] TCEQ considers the availability of comparable services from other systems and the reasonableness of the proposed public projects and services when making that determination. If after the hearing, TCEQ finds that the district is feasible, necessary, and a public benefit, TCEQ, by order, shall make that finding and grant the petition. The order must state the specific purpose for the district is created[1222] and the boundaries of the district[1223].

After granting the petition, TCEQ will appoint the initial board of directors.[1224] The board of directors is composed of at least five but not more than 30 directors who serve staggered four years.[1225] TCEQ will divide the initial board into two groups where one group will serve four-year terms and the other group will serve two-year terms.[1226] To be qualified to serve as a director, a person must be 18 years of age and either:[1227]

- own property within the district;
- own stock of a corporate entity within the district;
- be the beneficiary of a trust that owns property in the district; or
- be an agent, employee, or tenant of any of the aforementioned entities.

**Step Five:**

***Upon approval of the petition by TCEQ, the municipal management district board appoints its officers.***[1228]

Each of the appointed directors must execute a bond of $10,000 and take a written and oral oath of office.[1229] Once the directors are appointed and qualified by executing a bond and taking the oath, the board members themselves must elect a president, a vice-president, a secretary and any other officers the board considers necessary.[1230] One-half of the serving directors constitutes a quorum, and a concurrence of a majority of a quorum of directors is required for any official action of the district.[1231] However, if the board wants to authorize the levy of assessments, the levy of taxes, the imposition of fees, or the issuance of bonds, the board must have the written consent of two-thirds of the board.  Generally, a director may not vote on matters that affect property owned by the director or that affects the director's employer.[1232]

Directors are not compensated for their service, but are reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a director.[1233] Also, the director's position is not considered a civil office of emolument.[1234]

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1221 *Id.* § 375.025(c).
1222 *Id.* § 375.026.
1223 *Id.* § 375.041.
1224 *Id.* § 375.026.
1225 *Id.* § 375.061.
1226 *Id.* § 375.062.
1227 *Id.* § 375.063.
1228 *Id.* § 375.068.
1229 *Id.* § 375.067.
1230 *Id.* § 375.068.
1231 *Id.* § 375.071.
1232 *Id.* § 375.072.
1233 *Id.* § 375.070.

The initial and succeeding board of directors must and the owners of a majority of the assessed value of property subject to assessment by the district may recommend to the governing body of the city persons to serve on subsequent boards.[1235] The city will review the recommendations and will approve or disapprove the recommendations. If the city is not satisfied with the recommendations, the city can request the board to submit additional recommendations.

Directors may serve successive terms. After public notice and a public hearing, a director may be removed by the governing body of the city for misconduct or for failure to carry out duties on petition by a majority of the board of directors.[1236] A vacancy is filled by the remaining members of the board for the unexpired term.[1237]

## Rights and Powers of the District

To accomplish its purposes, the district has the rights, powers, privileges, authority, and functions of a conservation and reclamation district, and those conferred by Chapter 54 of the Water Code.[1238] Specifically, the district has the power to impose an ad valorem tax to provide for a mass transit system.[1239] The district may do road projects.[1240] Also, a district may levy impact fees pursuant to the state impact fee act in Chapter 395 of the Local Government Code.[1241] As mentioned above, to authorize the levy of property taxes or impact fees, or to propose the issuance of bonds, the board must obtain the written consent of at least two-thirds of the number of directors of the district.[1242]

Under certain circumstances, a district may levy special assessments against the benefitted property within the district.[1243] Special assessments may be used to pay for all or part of the construction or maintenance of the following types of improvements:

- landscaping;
- lighting, banners, and signs;
- streets and sidewalks;
- pedestrian skywalks, crosswalks, and tunnels;
- seawalls;
- marinas;
- drainage and navigation improvements;
- pedestrian malls;
- solid waste, water, sewer, and power facilities;
- parks, plazas, lakes, rivers, bayous, ponds, and recreation and scenic areas;

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1234 *Id.* § 375.069.
1235 *Id.* § 375.064.
1236 *Id.* § 375.065.
1237 *Id.* § 375.066.
1238 *Id.* § 375.091. *See* Tex. Const. art. XVI, § 59.
1239 Tex. Loc. Gov't Code § 375.0921(b). *See* Tex. Const. art. III, §§ 52, 52-a (Limitations on imposed ad valorem taxes for mass transit systems).
1240 Tex. Loc. Gov't Code § 375.0921(a). *See id*. § 375.0922 (Road standards and requirements for road projects).
1241 *Id.* §§ 375.141-.142.
1242 *Id.* § 375.071.
1243 *Id.* §§ 375.111, .112.

- historic areas;
- works of art;
- off-street parking facilities, bus terminals, heliports, and mass transit systems;
- theatres, studios, exhibition halls, production facilities and ancillary facilities in support of the foregoing;
- cost of any demolition in connection with providing any of the improvement projects; and
- other similar improvements.[1244]

The assessments may fund supplemental services for advertising, economic development, business recruitment, promotion of health and sanitation, public safety, traffic control, recreation and cultural enhancement.[1245] Also, these assessments may fund buying real property or an interest in real property in connection with an improvement, project or service associated with the district and any expenses in the establishment, administration, maintenance, and operation of the district or any improvement, project, or service.[1246]

In order to use special assessments to finance a project or service, the district must receive a petition to make such improvements that is signed by: [1247]

- the owners of  a majority of the assessed value of the property in the district subject to assessment, according to the most recent certified county property tax rolls, or
- for a proposed assessment to be apportioned equally by front foot or by square foot of land area against all property in the district, the owners of a majority of the surface area of the real property subject to assessment by the district, according to the most recent certified county property tax rolls.

The area to be assessed may be the entire district or any part of the district.[1248] Before levying a special assessment, the district must provide notice of a public hearing on the proposed improvements and a public hearing on the advisability of the improvements and services and the proposed assessments.[1249] The notice must be published at least 30 days before the hearing in a newspaper with general circulation in the county in which the district is located.[1250] Also, notice must be sent by certified mail, return receipt requested or other method approved by the board to the owners subject to the assessment at least 30 days before the hearing.[1251] The notice must include:[1252]

1) Time and place of the hearing;
2) General nature of the proposed improvement project or service;

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1244 *Id.* § 375.112 (a)(1)-(2).
1245 *Id.* § 375.112(a)(4).
1246 *Id.* § 375.112(a)(3), (5). *See* Tex. Transp. Code chs. 365, 441, Tex. Water Code ch. 54 (Authorization to acquire real property).
1247 Tex. Loc. Gov't Code § 375.114. *See id* § 375.119(1).
1248 *Id.* §§ 375.111, .117(a).
1249 *Id.* §§ 375.113.
1250 *Id.* § 375.115(a).
1251 *Id.* § 375.115(c).
1252 *Id.* § 375.115(b).

3) Estimated cost of the improvement, including interest during construction and associated financing costs; and
4) Proposed method of assessment.

At the conclusion of the hearing, the board must make a finding by resolution or order concerning the advisability and nature of the project or service, estimated cost, method of assessment and method and time for assessment payments.[1253] Also, the board must hear and rule on all objections to each proposed assessment.[1254] Once all objections are heard and action taken with regards to those objections, the board shall levy the special assessment, specify the method of payment of the assessment, and may provide those assessment be paid in installments with interest.[1255]

The cost of the improvements shall be apportioned by any reasonable assessment plan that bases the assessment on the special benefits that accrue to the property because of the improvement or service.[1256] Governmental entities may contract with the district to provide for the payment of assessments on publicly owned property.[1257] Certain residential properties of lesser density than large apartment complexes are exempt from assessments and impact fees.[1258]

A district may incur liabilities, borrow money, issue bonds and notes, and purchase, sell, or receive real and personal property.[1259] The board may call a bond election on the written petition of the owners of a majority of the assessed value of the property subject to assessment or taxation by the district as determined from the more recent certified county property tax rolls.[1260] Also, the approval of the governing body of the city must be obtained to issue bonds for an improvement project.[1261] Also, if the district is issuing bonds to provide water, sewage, or drainage facilities, the district must get the approval of TCEQ.[1262] Additionally, if a project involves the right-of-way of streets or the use of city land or easements, the district must receive the city's approval before undertaking such a project.[1263]

A district may own and operate facilities inside or outside of the district, and may enter into contracts for joint use of district facilities.[1264] It may charge rents or fees for use of constructed improvements owned or operated by the district.[1265] The district may hire or dismiss employees and consultants necessary to conduct the affairs of the district.[1266] Also, the district may do all things necessary to carry out the purpose of the district, except that a district may not exercise the powers of eminent domain.[1267]

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1253 *Id*. § 375.116.
1254 *Id.* § 375.118(a).
1255 *Id*. § 375.118(c).
1256 *Id*. § 375.119.
1257 *Id*. § 375.162.
1258 *Id*. § 375.161.
1259 *Id.* § 375.092(d)-(e).
1260 *Id.* §§ 375.242-.243.
1261 *Id.* § 375.207(a).
1262 *Id*. § 375.208.
1263 *Id*. § 375.207(c).
1264 *Id*. § 375.092(f)-(g).
1265 *Id*. § 375.092(h).
1266 *Id*. § 375.096(a)(1)-(2).
1267 *Id*. § 375.092(a), (o); .094. *See* Tex. Att'y Gen. Op. No. GA-268 (2004).

A district has an obligation to attempt to stimulate the growth of disadvantaged businesses inside its boundaries by encouraging participation of these businesses during procurement and other district activities.[1268] The district is required to establish programs to increase the participation of disadvantaged business in public contract awards. The district must review its disadvantaged business programs and determine if each of those programs is the most effective method for remedying historical discriminatory actions and if disparities exist between the disadvantaged business qualified to undertake district work and the percentage of total district funds that are awarded to disadvantaged businesses.

The district must follow Subchapter I of Chapter 49 of the Water Code when entering into contracts for construction work, equipment, materials, or machinery.[1269] The board may adopt rules governing the receipt of bids and the award of the contract and provide a waiver of the competitive bid requirement if:

1. There is an emergency;
2. The needed materials are available from only one source;
3. In a procurement requiring design by the supplier, competitive bidding would not be appropriate and competitive negotiation, with proposals solicited from an adequate number of qualified sources, would permit reasonable competition consistent with the nature and requirements of the procurement; or
4. After solicitation, it is ascertained that there will be only one bidder.

Because the district is a political subdivision, it is subject to the Open Meetings Act, the Public Information Act, and Tort Claims Act.[1270]

**Consolidation of Two or More Districts**

Two or more districts may consolidate if none of the districts has issued bonds or notes secured by assessments or ad valorem taxes or has levied taxes.[1271] Consolidation is initiated when the district adopts a resolution proposing consolidation and delivers a copy of the resolution to the board of each district with which it proposed to consolidate. The districts become consolidated when each district adopts a resolution containing the terms and conditions for the consolidation. The terms and conditions of the consolidation must include:[1272]

1) adoption of a name for the consolidated district;
2) the number and apportionment of directors to serve on the board of the consolidated district;
3) effective date of the consolidated district;

[1268] Tex. Loc. Gov't Code § 375.222.
[1269] *Id.* § 375.221.
[1270] *Id.* § 375.004(a). *See* Tex. Gov't Code chs. 551 (Open Meetings Act), 552 (Public Information Act), Tex. Civ. Prac. & Rem. ch. 101 (Tort Claims Act).
[1271] Tex. Loc. Gov't Code § 375.351.
[1272] *Id.* § 375.352.

4) an agreement on finances for the consolidated district, including disposition of funds, property, and other assets of each district; and
5) an agreement on governing the districts during the transition period, including selection of officers.

Each district must publish notice and hold a public hearing on the terms and conditions for consolidation.[1273] The notice of the hearing must be published once in a newspaper of general circulation in the area of each district at least seven days before the date of the hearing. After the hearing, each board by resolution may approve the terms and conditions of consolidation and enter an order consolidating the districts. The consolidation order shall be kept in the records of the consolidated district, filed with the county clerk in each of the counties in the consolidated district, and filed with the executive director of TCEQ.[1274]

Once the districts are consolidated, the debt of the original districts shall be protected and assured that it will not be impaired by the consolidated district.[1275] If the consolidated district has the taxing authority, it can pay the original debts of the original districts by levying taxes on the land in the original districts as if they were not consolidated or from contributions from the consolidated districts as agreed in the consolidation terms. Also, if the consolidated district has taxing authority and assumes the bonds, notes, and other obligations of the original districts, taxes may be levied uniformly throughout the consolidated district. Also, a consolidated district with taxing authority must assess and collect taxes uniformly throughout the district for maintenance and operation of the district.[1276]

**Dissolution of a District**

The district may be dissolved in several ways:

- upon a majority vote of the board of directors;[1277]
- upon a petition of the owners of at least two-thirds of the assessed value of the property subject to assessment or taxation by the district based on the most recent certified county property tax rolls;[1278]
- or
- upon a two-thirds vote of the governing body of a city in which the whole district is located adopting an ordinance dissolving the district.[1279]

If the dissolution is done by city ordinance, the city succeeds to the property and assets of the district and assumes all bonds, debts, obligations and liabilities of the district.[1280] The district

[1273] *Id*. § 375.353.
[1274] *Id*. § 375.357.
[1275] *Id*. § 375.355.
[1276] *Id*. § 375.356.
[1277] *Id*. § 375.261.
[1278] *Id*. § 375.262(1).
[1279] *Id*. § 375.263(a).
[1280] *Id*. § 375.263(b).

may be dissolved by the board only after any remaining bonded indebtedness has been repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds.[1281]

# Municipal Development Districts

In 2005, the Texas Legislature passed legislation enabling all cities to establish municipal development districts, which are governed by Chapter 377 of the Local Government Code. Prior to 2005, only cities which were located in two neighboring counties could take advantage of Chapter 377. These districts are financed through an additional sales tax approved by the city's voters, a tax which is similar to the economic development sales tax discussed in Chapter I of this handbook.

There are two possible advantages of a municipal development district sales tax over an economic development sales tax: (1) the municipal development district tax need not be levied over the entire city, which is useful for cities that are at the two-percent sales tax "cap" in some portion of the city but not in others; and (2) it is the only municipal sales tax that may be levied in a city's extraterritorial jurisdiction (ETJ).

## Creation of a Municipal Development District

A city may create a municipal development district comprising all or part of its city limits, all or part of its ETJ, or any combination of all or part of these areas.[1282] To create a district, a city must call an election through an order that defines the proposed boundaries of the district.[1283] The ballot at this election must be printed to allow voting for or against the following proposition:[1284]

> **Authorizing the creation of the *(insert name of district)* Municipal Development District and the imposition of a sales and use tax at the rate of *(insert one-eighth, one-fourth, three-eighths, or one-half, as appropriate)* of one percent for the purpose of financing development projects beneficial to the district.**

In the order calling the election, the city may provide that the district boundaries will automatically conform to future changes in the city's boundaries, as when increased through annexation, and also to future changes in the city's ETJ, through annexation and population growth.[1285] If the voters turn down creation of the district, a subsequent election to establish a district may not be held within a year of the first election.[1286]

## Sales Tax

Chapter 323 of the Tax Code generally governs the specifics of assessing and administering the tax.[1287] The district may not impose a sales and use tax that would result in a combined local tax

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1281 *Id.* §§ 375.263(b), .264.
1282 *Id.* § 377.002.
1283 *Id.* § 377.021(a)-(b).
1284 *Id.* § 377.021(c).
1285 *Id.* § 377.021(g).
1286 *Id.* § 377.021(e) (Currently, this means that cities will have to wait through one election date, either in May or November, as there are only two uniform election dates).
1287 *Id.* § 377.102(a).

rate of more than two percent in any location in the district.[1288] The sales tax rate adopted must be one-eighth, one-fourth, three-eighths, or one-half of one percent.[1289] The rate may be changed at a subsequent election.[1290] The ballot at this election must be printed to allow voting for or against the following proposition:[1291]

**The adoption of a sales and use tax at the rate of *(insert one-fourth, three-eights, or one-half, as appropriate)* of one percent .**

The adoption of the tax or a change in its rate takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date the comptroller receives notice of the election's results.[1292] Revenue from the sales tax must be deposited in the district's development project fund.[1293]

## Rights and Powers of the District and its Board

The district must establish a development project fund, which may have separate accounts within the fund.[1294] The district must deposit the sales tax proceeds and all revenue from the sale of bonds or other obligations into the fund.[1295] The money in the fund may be used to pay costs associated with development projects in the district, including maintenance and operation costs, as well as to pay costs relating to bonds or other obligations.[1296] A development project may consist of a Type B project as defined by the Development Corporation Act (see Chapter I of this handbook).[1297] Also, a project may include a convention center facility or related improvements, including parking facilities and civic center hotels.[1298]

The district may: [1299]

- accept grants or loans;
- buy, sell, and lease property;
- employ necessary personnel;
- enter into contracts with public and private parties;
- adopt rules to govern its operation; and

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1288 *Id.* § 377.101(c).
1289 *Id.* § 377.103.
1290 *Id.* § 377.104(a).
1291 *Id.* § 377.104(c).
1292 *Id.* § 377.106.
1293 *Id.* § 377.108.
1294 *Id.* § 377.072(a).
1295 *Id.* § 377.072(b).
1296 *Id.* § 377.072(c)-(e) (A district located in a county with a population of 3.3 million or more [Harris County] may spend money on development projects in the ETJ of the city where the district is located. Also, a district that is located in a municipality with a population of more than 5,000 and less than 6,000 and that is located wholly in a county with a population of more than 20,000 and less than 25,000 and that borders the Brazos River [Rockdale])).
1297 *Id.* § 377.001(3)(A).
1298 *Id.* § 377.001(3)(B).
1299 *Id.* § 377.071(a)-(b).

- perform any act necessary to the full exercise of the district's power.

It may not levy an ad valorem tax.[1300] It may issue bonds or other obligations to pay the costs of a development project after approval by the attorney general.[1301] The district is a political subdivision of Texas and the city that created it which makes it subject to the Open Meetings Act and the Public Information Act.[1302] The district must comply with other laws that are generally applicable to political subdivisions, as well. This includes Chapter 272 of the Local Government Code, which establishes a notice and bidding process for the sale of real property by a political subdivision.

The district is governed by a board of at least four directors, although it would be best to have an odd number of directors to prevent tie votes.[1303] The board is appointed by the district-creating city council. Directors serve staggered two-year terms, so the initial terms must have about half the directors serving two-year terms and about half serving one- or three-year terms. Directors may be removed by the city council without cause. Directors must reside in the city or its ETJ.[1304] An employee or officer of the city or a member of the city council may serve as a director, but this person may not have a personal interest in a contract executed by the district.[1305] Board members are not compensated, but may be reimbursed for actual and necessary expenses.[1306] Board meetings must be in the city that created the district, not in the ETJ or elsewhere.[1307]

## Repeal of the Sales Tax

By order, the district can repeal the sales tax if a majority of the registered voters in the district vote at an election to repeal the sales tax.[1308] The ballot at this election must be printed to allow voting for or against the following proposition:[1309]

> **The repeal of the sales and use tax for financing development projects in the *(insert name of district)* Municipal Development District.**

The repeal of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date the comptroller receives notice of the election's results.[1310] However, if the district has outstanding bonds or obligations at the time of the election, then the district continues to collect the tax until these bonds or obligations are paid, at which time the district should notify the comptroller.[1311]

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1300 *Id.* § 377.071(c).
1301 *Id.* § 377.073.
1302 *Id.* § 377.022.
1303 *Id.* § 377.051.
1304 *See id*. § 377.051(e) (Rockdale MDD is allowed to appoint directors that resides in the independent school district that serves the majority of the district).
1305 *Id*. § 377.051(d).
1306 *Id.* § 377.052.
1307 *Id.* § 377.053.
1308 *Id.* § 377.104(a).
1309 *Id.* § 377.104(d).
1310 *Id.* §§ 377.106, .107(c).
1311 *Id.* § 377.107(a)-(b).

# Neighborhood Empowerment Zones

A potential vehicle for economic development in Texas cities is a designated area within a city that is created to promote certain economic development activities.[1312] These designated areas are called neighborhood empowerment zones. Neighborhood empowerment zones are governed by Chapter 378 of the Local Government Code.

## Creation of a Neighborhood Empowerment Zone

To establish a neighborhood empowerment zone, a city council must adopt a resolution containing the following:[1313]

1) a determination that the neighborhood empowerment zone will promote:
    a. the creation of affordable housing, including manufactured housing within the zone;
    b. an increase in economic development within the zone;
    c. an increase the quality of social services, education or public safety provided to residents within the zone; or
    d. the rehabilitation of affordable housing within the zone;
2) a legal description that sufficiently describes the boundaries of the zone;[1314]
3) a finding by the city council that the creation of the zone benefits and is for the public purpose of increasing the public health, safety and welfare of the persons within the city; and
4) a finding by the city council that the zone satisfies the requirements contained in Section 312.202 of the Tax Code. This section lists the criteria to create a tax abatement reinvestment zone. To be designated a neighborhood empowerment zone, the area must either be:[1315]
    a. an area whose present condition substantially arrests or impairs the city's growth, retards the provision of housing, or constitutes an economic or social liability to the public health, safety, morals or welfare because of one or more of the following conditions:
        i. a substantial number of substandard or deteriorating structures,
        ii. inadequate sidewalks or street layout,
        iii. faulty lot layouts,

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[1312] *Id.* § 378.002.

[1313] *Id.* § 378.003(a).

[1314] *See Parker v. Harris County Drainage Dist. No. 2*, 148 S.W. 351, 353 (Tex. Civ. App. — Galveston 1912, writ ref'd) (County line used as boundary line in petition was held sufficient. Petition need only contain a sufficient definite description of the boundaries of the proposed district to notify landowners that their lands were included within the district).

[1315] Tex. Tax Code § 312.202(a)(1)-(6) (Lists the tax abatement reinvestment zone criteria. To create a neighborhood empowerment zone the area must meet one of these six conditions contained in Section 312.202 of the Tax Code.).

iv. unsanitary or unsafe conditions,

v. a tax or special assessment delinquency that exceeds the fair market value of the land,

vi. defective or unusual conditions of title, or

vii. conditions that endanger life or property by fire or other cause;

b. an area that is predominately open, and because of obsolete platting, deteriorating structures or other factors, substantially impairs or arrests the growth of the city;

c. an area that is in a federally assisted new community located in a home rule city or in the area immediately adjacent to a federally assisted new community in a home rule city;

d. entirely in an area that meets the requirements for federal assistance under Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5318);

e. encompass signs, billboards, or other outdoor advertising structures designated by the city for relocation, reconstruction, or removal for the purpose of enhancing the physical environment of the city, which the legislature has declares to be public purpose; or

f. reasonably likely as a result of the designation as a neighborhood empowerment zone to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the city.

A city is authorized to create more than one neighborhood empowerment zone.[1316] Further, an area may be included in more than one neighborhood empowerment zone.

## Municipal Powers Within the Zone

Creation of a neighborhood empowerment zone vests a city with various development powers within the designated area. These powers include:

**Building Fee Waiver**: The power to waive or adopt fees related to the construction of buildings in the zone, including impact fees and fees for the inspection of buildings.[1317]

**Municipal Sales Tax Refunds**: For the purpose of benefitting the zone, the power to enter into municipal sales tax refund agreements. These agreements may be for a term not to exceed 10 years, and apply to municipal sales taxes on sales made within the zone.[1318]

**Property Tax Abatement**: The power to enter into agreements abating municipal property taxes on property in the zone, subject to the 10 year duration limit for tax abatement agreements under Section 312.204 of the Tax Code.[1319]

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1316 Tex. Loc. Gov't Code § 378.003(b).
1317 *Id.* § 378.004(1).
1318 *Id.* § 378.004(2).
1319 *Id.* § 378.004(3).

**Environmental Goals**: The power to set baseline performance standards, such as the Energy Star Program as developed by the Department of Energy, to encourage the use of alternative building materials that address concerns relating to the environment or to building costs, maintenance or energy consumption.[1320]

# North American Free Trade Agreement Impact Zones

General law cities and home rule cities are allowed to establish North American Free Trade Agreement (NAFTA) Impact Zones. The statute governing NAFTA Impact Zones is found in Chapter 379 of the Local Government Code. The permissible agreements and mechanics in creating these zones are very similar to those found in neighborhood empowerment zones (discussed above).

## Creation of NAFTA Impact Zone

To establish a NAFTA Impact Zone, a city council must adopt a resolution containing the following:[1321]

1) a determination that the NAFTA Impact Zone will promote:
    a. business opportunities for local businesses within the zone;
    b. an increase in economic development within the zone; or
    c. employment opportunities for residents within the zone;
2) a legal description that sufficiently describes the boundaries of the zone;[1322] and
3) a finding by the city council that the zone satisfies the requirements contained in Section 312.202 of the Tax Code. Section 312.202 of the Tax Code lists the criteria to create a tax abatement reinvestment zone. To be designated a NAFTA Impact Zone, the area must either be: [1323]
    a. an area whose present condition substantially arrests or impairs the city's growth, retards the provision of housing, or constitutes an economic or social liability to the public health, safety, morals or welfare because of one or more of the following conditions:
        i. a substantial number of substandard or deteriorating structures,
        ii. inadequate sidewalks or street layout,
        iii. faulty lot layouts,
        iv. unsanitary or unsafe conditions,

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1320 *Id.* § 378.004(4).

1321 *Id.* § 379.003(a)(1)-(3).

1322 *See Parker v. Harris County Drainage Dist. No. 2,* 148 S.W. 351, 353 (Tex. Civ. App. - Galveston 1912, writ ref'd) (County line used as boundary line in petition was held sufficient. Petition need only contain a sufficient definite description of the boundaries of the proposed district to notify landowners that their lands were included within the district).

1323 Tex. Tax Code § 312.202(a)(1) - (6).

v. a tax or special assessment delinquency that exceeds the fair market value of the land,

vi. defective or unusual conditions of title, or

vii. conditions that endanger life or property by fire or other cause;

b. an area that is predominately open, and because of obsolete platting, deteriorating structures or other factors, substantially impairs or arrests the growth of the city;

c. an area that is in a federally-assisted new community located in a home rule city or in the area immediately adjacent to a federally assisted new community in a home rule city;

d. entirely in an area that meets the requirements for federal assistance under Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5318);

e. encompass signs, billboards, or other outdoor advertising structures designated by the city for relocation, reconstruction, or removal for the purpose of enhancing the physical environment of the city, which the legislature has declares to be public purpose; or

f. reasonably likely as a result of designation as a NAFTA Impact Zone to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the city.

A city is authorized to create more than one NAFTA Impact Zone. Further, an area may be included in more than one NAFTA Impact Zones.[1324]

## Permissible NAFTA Impact Zone Agreements

Once property is located within a NAFTA Impact Zone, a city is granted certain powers. These powers include:

**Building Fee Waiver:** The city is authorized to waive or adopt fees related to the construction of buildings in the zone, including inspection and impact fees.[1325]

**Municipal Sales Tax Refund and Abatement Agreements**: For the purpose of benefitting the zone, the power to enter into municipal sales tax refund agreements. These agreements may be for a term not to exceed 10 years, and apply to municipal sales taxes on sales made within the zone.[1326]

**Property Tax Abatement**: The city can abate municipal property taxes on property located within the zone subject to the ten-year duration limit contained in Section 312.204 of the Tax Code.[1327]

[1324] Tex. Loc. Gov't Code § 379.003(b).
[1325] *Id.* § 379.004(1).
[1326] *Id.* § 379.004(2).
[1327] *Id.* § 379.004(3).

**Environmental Goals**: The city may set baseline performance standards, such as the Energy Star Program as developed by the Department of Energy, to encourage the use of alternative building materials to address concerns related to the environment or to building costs, maintenance, or energy consumption.[1328]

### NAFTA Displaced Workers

If a business operating within a NAFTA Impact Zone enters into an agreement with the city for the waiver or adoption of building fees, inspection fees or impact fees, that business must make a good faith effort to hire individuals receiving NAFTA transitional adjustment assistance under 19 U.S.C. Section 2331.[1329] Similarly, if the business enters into an agreement with the city for a municipal sales tax refund, municipal sales tax abatement or municipal property tax abatement, the business must make a good faith effort to hire individuals receiving NAFTA transitional adjustment assistance. The business must report to the city council annually the percentage of the total number of individuals hired by the business who are receiving NAFTA transitional adjustment assistance.[1330]

## Improvement Districts in Certain Counties

Chapter 382 of the Local Government Code allows certain counties[1331] to engage in economic development projects or create a public improvement district to oversee and manage economic development projects for the county.[1332] Upon the receipt of a proper petition, the commissioners court of an eligible county may establish by order either a project in a designated portion of the county, or, if the county determines it is in the best interest of the county, a district, but only in an area located in the extraterritorial jurisdiction of a city of that county.[1333] The petition must state:[1334]

1) the general nature of the proposed improvements;
2) the estimated cost of the improvements;
3) the boundaries of the proposed assessment district;
4) the proposed method of assessment, which may specify included or excluded classes of assessable property;
5) the proposed apportionment of cost between the public improvement district and the county as a whole;
6) whether the management of the district is to be by the county, private sector, or a partnership between the county and the private sector;

1328 *Id.* § 379.004(4).
1329 *Id.* § 379.005(a).
1330 *Id.* § 379.005(b).
1331 *See id.* § 382.002.
1332 *Id.* § 382.003(b); .004.
1333 *Id.* §§ 382.006(a), .004.
1334 *Id.* § 382.006(a) (Refers to Section 372.005 of the Local Government Code for the requirements of the petition). *See id.* § 382.006(a)-(b) (Specific requirements if a district is created under Section 382.002(2) of this chapter).

7) that the persons signing the petition request or concur with the establishment of the district; and
8) that an advisory body may be established to develop and recommend an improvement plan to the county.

The petition is sufficient if it meets two conditions. First, it must be signed by owners of more than 50 percent of the appraised value of taxable real property subject to assessment under the proposal.[1335] Second, the petition must also be signed by record owners of real property liable for assessment under the proposal who:[1336]

- Constitute more than 50 percent of all record owners of property that is liable for assessment under the proposal; or
- own taxable real property that constitutes more than 50 percent of the area of all taxable real property that is liable for assessment under the proposal.

The order must:[1337]

- Describe the territory in which the project is to be located or the boundaries of a district;
- Specifically authorize the district to exercise the powers of the district if the county has determined that creating a district is in the county's best interest; and
- State whether the petition requests improvements to be financed and paid for with taxes authorized by this law instead of or in addition to assessments.

## Board of Directors

If the county elects to delegate its authority, it shall establish a board of directors to manage the project or to govern the district.[1338] The board of directors will consist of seven directors to serve staggered two-year terms, with three or four directors' terms expiring June 1st of each year. To serve as a director, a person must be at least 18 years old.[1339] However, if the population of the district is more than 1,000, to be eligible to be director, a person must:[1340]

1) be at least 18 years old;
2) a resident of the district; and
3) either be:
   a) an owner of property in the district;
   b) an owner of stock, whether beneficial or otherwise, or a corporate owner of property in the district;
   c) an owner of a beneficial interest in a trust that owns property in the district; or

[1335] *See id.* § 372.005(b)(1).
[1336] *See id.* § 372.005(b)(2).
[1337] *Id.* § 382.006(c).
[1338] *Id.* § 382.051.
[1339] *Id.* § 382.052(a).
[1340] *Id.* § 382.052(b).

d) an agent, employee, or tenant of a person covered by a, b or c above.

Each director shall execute a $10,000 bond payable to the district and conditioned on the faithful performance of the director's duties.[1341] Once the bond is approved by the board, the director shall take the oath of office prescribed by the constitution for public officers. The bond and the oath shall be filed with the district and retained in the records. Directors are compensated not more that $50 a day for each day that the director performs the duties of a director.[1342] Vacancies on the board are filled by the county.[1343] If a conflict of interest arises, Chapter 171 of the Local Government Code governs.[1344]

The county may authorize the board to adopt rules[1345]:

- To administer and operate the district;
- For the use, enjoyment, availability, protection, security, and maintenance of district property, including facilities;
- To provide public safety and security in the district; or
- To regulate the private use of public roadways, open spaces, parks, sidewalks, and similar public areas in the district, if the use is for a public purpose.[1346]

Also, the county may authorize a board to establish, revise, repeal, enforce, collect, and apply the proceeds from user fees or charges for the enjoyment, sale, rental, or other use of its facilities or other property, or for services or improvement projects.[1347]

## Powers and Duties of the County or the District

The county or the board of directors of the district can exercise the powers and duties to operate the district set forth by the following:[1348]

- A county development district under Chapter 383 of the Local Government Code;
- A road district created by a county under Section 52, Article III of the Texas Constitution; and
- A city or county under Chapters 380 or 381, or under 372.003(b)(9) of the Local Government Code.

However, a county cannot delegate to a district the powers and duties of a road district or the power to provide water, wastewater, or drainage facilities unless both the city and county consent by resolution.[1349]

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1341 *Id.* § 382.056. *See id.* § 375.067 (Refers to bond of the directors).
1342 *Id.* § 382.055(b).
1343 *Id.* § 382.053(a).
1344 *Id.* § 382.054.
1345 *Id.* § 382.106.
1346 *Id.* § 382.108(a). *See id.* § 382.108(b)-(c) (Deals with conflict and providing safe and orderly use).
1347 *Id.* § 382.107.
1348 *Id.* § 382.101(a). *See* Chapter 4 of this handbook for information on County Development Districts, Chapter 5 for information on Chapter 380. *Also, see* Tex. Loc. Gov't Code § 372.003(b)(9) (Deals with the acquisition, construction, or improvement of water, wastewater, or drainage facilities or improvements that are authorized improvement projects for public improvement districts).

The district may not exercise the power of eminent domain.[1350] Some districts may annex or exclude land from the district as provided by Subchapter J of Chapter 49 of the Water Code.[1351] The district must obtain the consent of the county that created the district by a resolution of the commissioners court and the consent of a city in whose extraterritorial jurisdiction the district is located by a resolution adopted by the city council.[1352] Also, the board is not granted any right-of-way management authority over public utilities.[1353] To the extent that a project requires the relocation or extension of public utility facilities, the district shall reimburse the public utility for the all of the costs associated with the relocation, or extension of the facility. As for tax abatements, a county may not grant a tax abatement or enter into a tax abatement agreement for a district.[1354]

The district can only issue bonds or negotiable promissory notes with the approval of the commissioners court of the county that created the district.[1355] Bonds may only be issued with a majority vote of the voters of the district voting in an election held for that purpose.[1356] If the commissioners court grants approval for bonds, notes or other district obligations, then the district may use district revenues, taxes or assessments, or any combination of taxes and revenue pledged to the payment of bonds to secure them.[1357]

## Authority to Impose Assessments and Taxes

A county or district may accomplish its purposes and pay the cost of services and improvements by imposing:[1358]

- An assessment;
- An ad valorem tax;
- A sales and use taxes; or
- A hotel occupancy tax.

A district may impose an ad valorem tax, hotel occupancy tax, or sales and use tax to accomplish the economic development purposes prescribed by Article III, Section 52a of the Texas Constitution, if the tax is approved by the commissioners court of the county that created the district and a majority of the voters of the district voting at an election held for that purpose.[1359] The county must adopt an order providing to the district the authority to impose these taxes and provide the rate at which the district may impose the tax.[1360]

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1349 Tex. Loc. Gov't Code § 382.101(c). *See id.* § 382.109 (Dealing with the county delegating authorization of road projects to the district).
1350 *Id.* § 382.112.
1351 *Id*. § 382.113(a)-(b). *See id*. § 382.002(1) (Describes which districts are able to annex or exclude land).
1352 *Id.* § 382.113(c).
1353 *Id.* § 382.110.
1354 *Id.* § 382.151.
1355 *Id.* § 382.152(a)-(b).
1356 *Id.* § 382.152(a).
1357 *Id.* § 382.152(c).
1358 *Id.* § 382.153(a).
1359 *Id*. § 382.153(b).
1360 *Id.* § 382.153(c).

If the district imposes an ad valorem tax on property in the district, then it must do so in accordance with Chapter 257 of the Transportation Code.[1361] If the district imposes a sales and use tax, it must generally do so in accordance with Chapter 383 of the Local Government Code or Chapter 323 of the Tax Code.[1362] The rate of the sales and use tax may be imposed in increments of one-eighth of one percent up to a rate of two percent.[1363] The ballot for a sales tax election shall be printed to provide for voting for or against the proposition: [1364]

> **A sales and use tax at a rate not to exceed *(insert percentage rate)* in the *(insert name of district).***
>
> **or**
>
> **The adoption of a *(insert percentage rate)* sales and use tax in the *(insert name of district).***

A tax authorized at a sales and use tax election may be imposed at a rate less than or equal to the rate printed in the ballot proposition.[1365]

If authorized by the county, a district shall impose a hotel occupancy tax as provided by Section 352.107 of the Tax Code.[1366] However, some districts that imposed a hotel occupancy tax may use it for a purpose described by Chapter 352 of the Tax Code or to encourage the development or operation of a hotel in the district, including economic development programs for or a grant, loan, service, or improvement to a hotel in the district.[1367] Hotel occupancy taxes may be used for any purpose authorized by Chapter 382 of the Local Government Code if authorized by the county.[1368] However, hotel occupancy taxes can only be imposed if the owner of the hotel agrees to the imposition. Once an owner agrees, the agreement may not be revoked by the owner or any subsequent owners of the hotel.[1369]

Any tax authorized by a county to be imposed in the district may be used to accomplish any improvement project or road project, or to provide any service authorized by this chapter, or Chapter 372, 380, 381 or 383 of the Local Government Code.[1370]

## Agreements and Contracts

There are various agreements or contracts that the county or the district may make to promote an economic development project. A county may enter into an economic development agreement,

[1361] *Id.* § 382.157.
[1362] *Id.* § 382.156(b).
[1363] *Id.* § 382.156(a).
[1364] *Id.* § 382.156(c).
[1365] *Id.* § 382.156(d).
[1366] *Id.* § 382.155(b).
[1367] *Id*. § 382.155(d). *See id*. § 382.002(1) (Description of districts able to use hotel occupancy tax in the additional way).
[1368] *Id*. § 382.1555(a).
[1369] *Id*. § 382.1555(b).
[1370] *Id*. § 382.154.

only on terms and conditions that the commissioners court and a board consider advisable, to make a grant or loan of public money to promote state or local economic development and to stimulate business and commercial activity in the area where the economic development project is located or in the district.[1371]

A district, if authorized by the county, may order an election to approve a grant or loan agreement.[1372] The grant or loan may be payable over a term of years and be enforceable on the district under the terms of the agreement and the conditions of the election. The terms of the agreement may include the irrevocable obligation to impose an ad valorem tax, sales and use tax, or hotel occupancy tax for a term not to exceed 30 years. If the voters approve the agreement, then the board may contract to pay the taxes to the recipient of the grant or loan in accordance with the agreement.

A county may enter into a development agreement with an owner of land in the territory designated for an economic development project or district.[1373] The terms of the development agreement may not exceed 30 years on any terms and conditions the county or the board consider advisable. The parties may amend the agreement.

A district may contract with any person or political subdivision to:[1374]

- accomplish any district purpose; and
- receive, administer, and perform the county's or district's duties and obligations under an improvement project or proposed improvement project.

This includes contracts to pay, repay or reimburse from tax proceeds or another specified source of money any costs, including reasonable interest, incurred by a person on the county's or the district's behalf, including all or part of the costs of an improvement project. State agencies, cities, counties, other political subdivisions, corporations or other persons may contract with the county or district to carry out the purposes of this law. Also, a district may contract for materials, supplies, and construction in accordance with the law applicable to counties or in the same manner as local government corporations created under Chapter 431 of the Transportation Code.[1375]

## Annexation by a City

If a city annexes the entire territory of a district, the city assumes that district's assets, but not the district's debt or obligations.[1376] The district will remain in existence, even after annexation by a city, in order to collect any taxes or assessments.[1377] The taxes and assessment that are collected

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1371 *Id.* § 382.103(a) (This includes grants or loans to induce the construction of a tourist destination or attraction in accordance with Chapter 380 or 381 of the Local Government Code).
1372 *Id.* § 382.103(b).
1373 *Id.* § 382.102.
1374 *Id.* § 382.104.
1375 *Id.* § 382.105.
1376 *Id.* § 382.201(a).
1377 *Id.* § 382.201(b). *See id.* § 382.202 (Deals with imposition of taxes in a district that is wholly or partly annexed by a city and how the legislature intends that the level of taxation of areas where the district and the city overlap do not exceed the level of taxation of fully annexed areas).

will be used solely for the purpose of satisfying any preexisting debt or obligation. After the debt or obligations have been discharged, or two years have expired since the date of the annexation, the district is dissolved and any outstanding debt or obligations are extinguished.

# County Assistance Districts

County assistance districts are another tool for counties to use to fund economic development programs. Chapter 387 of the Local Government Code governs the creation of the district and the sales tax and the permissible uses of the sales tax revenue.

## Initiating an Election for the Creation of a County Assistance District

The commissioners court of a county may call an election for the creation of a county assistance district.[1378] The commissioners court may create more than one county assistance district in a county. A district may consist of noncontiguous tracts.[1379]

The election order must:

- define the boundaries of the district to include any portion of the county in which the combined tax rate of all local sales and use taxes imposed, including the rate to be imposed by the district if approved at the election, would not exceed the maximum combined rates of sales and use taxes imposed by political subdivisions of this state that is prescribed by Sections 321.101 and 323.101 of the Tax Code; and
- call the election to be held within those boundaries.[1380]

If the proposed district includes any territory of a city, the commissioners court shall send notice by certified mail to the city's governing body of its intent to create the district.[1381] If the city has created a Type A or Type B economic development corporation under the Development Corporation Act, the commissioners court shall also send the notice to the board of directors of the economic development corporation. The commissioners court must send the notice by the 60th day before the date the commissioners court orders the election. The governing body of the city may exclude the city's territory from the proposed district by sending notice of its desire to have the territory excluded to the commissioners court by certified mail no later than the 45th day after the city received the original notice from the commissioners court. City territory excluded in this manner may later be included in:

- the district in an election held by the commissioners court with the city's consent; or
- another district after complying with the notice requirements and after an election held by the commissioners court.

In addition, the following requirements must be met:

1378 *Id.* § 387.003(a).
1379 *Id.*
1380 *Id.* § 387.003(b). *See* Tex. Tax Code §§ 321.101, 323.101 (Defines which taxes are authorized by the municipal sales and use tax act and county sales and use tax act, respectfully).
1381 Tex. Loc. Gov't Code § 387.003(b-1).

**Potential Election Dates**. The election must be held on a uniform election date as provided by Chapter 41 of the Election Code. There are uniform election dates in May and November. The current uniform election dates are:

- the first Saturday in May in an odd-numbered year;
- the first Saturday in May in an even numbered year, for an election held by a political subdivision other than a county; or
- the first Tuesday after the first Monday in November.[1382]

**Time Frame for Ordering the Election.** The county should order the election at least 78 days prior to the date of the election.[1383] The Tax Code requires only that the county order the election at least 30 days before the date of the election.[1384] Nonetheless, it is advisable to provide at least 78 days' notice, since this is the requirement applicable to most other special elections in Texas and it allows time to comply with other Election Code requirements, such as early voting. In addition, the Election Code provision governing time frames for ordering an election "supersedes a law outside this code to the extent of any conflict."[1385]

**Notice to be Provided of Election.** The city must publish notice of the election at least once in a newspaper published in the territory that is covered by the election and is in the jurisdiction of the county for giving notice; or a newspaper of general circulation in the county.[1386] The notice must be published not more than 30 days and not less than 10 days before the date of the election. The notice must state the nature and date of the election, the location of each polling place, hours that the polls will be open, and any other election-related information required by law.[1387] The county is required to post the notice to the county's website not later than the 21st day before the election, if the county maintains a website.[1388] If the county does not maintain a website, then the county must post notice of the election on the bulletin board used to post the county's meeting notices.[1389] The notice must also include the wording of all the ballot propositions.[1390] The entire notice must generally be provided in both English and Spanish.[1391]

1382 Tex. Elec. Code § 41.001(a)..
1383 *Id.* § 3.005(c).
1384 Tex. Tax Code § 323.403.
1385 Tex. Elec. Code § 3.005(b).
1386 *Id.* § 4.003(a)(1), (c).
1387 *Id*. § 4.004(a).
1388 *Id*. §§ 4.003(b).
1389 *Id*.
1390 *Id*. § 4.004(b).
1391 *See id.* ch. 272.

**Required Ballot Wording for County Assistance District Ballot.** There is statutorily required wording for a county assistance district and sales tax proposition ballot. The wording that must be used is as follows:[1392]

> **Authorizing the creation of the *(insert name of district)* County Assistance District No.__ and the imposition of a sales and use tax at the rate of *(insert appropriate rate)* of one percent for the purpose of financing the operations of the district.**

The actual wording used on the ballot must indicate what rate is proposed for the county assistance district's sales tax. The voters then vote for or against the proposition.

## Reporting Election Results of a County Assistance District's Tax

If a majority of the voters approve the district and adopt the sales tax, the commissioners court by resolution entered in the minutes of the proceedings, must declare the results of the election. The order or the resolution should include statements showing:

- the date of the election;
- the proposition on which the vote was held;
- the total number of votes cast for and against the proposition; and
- the number of votes by which the proposition was approved.[1393]

If the election results change the application of the local sales tax, the county judge should send a certified copy of the order or the resolution, by U.S. certified or registered mail, to the Revenue Accounting, Tax Allocation Section of the comptroller's office.[1394] The order or resolution should also include a map showing the boundaries of the district.

If more than one election to authorize a sales tax is held on the same day in the area of a proposed district and if the resulting approval by the voters would cause the imposition of a local sales tax in any area to exceed the maximum combined rate of sales taxes imposed by political subdivisions of this state that is prescribed by Sections 321.101 and 323.101 of the Tax Code, then only the county assistance sales tax can be imposed.[1395]

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1392 Tex. Loc. Gov't Code. § 387.003(c).

1393 *Id*. §§ 387.003(d), Tex. Tax Code § 323.405. *See* Tex. Loc. Gov't Code § 387.008 (Making Chapter 323 of the Tax Code applicable to county assistance district except where inconsistent with Chapter 387 of the Local Government Code).

1394 Tex. Tax Code § 323.405(b). *See* Tex. Loc. Gov't Code § 387.008 (Making Chapter 323 of the Tax Code applicable to county assistance district except where inconsistent with Chapter 387 of the Local Government Code).

1395 Tex. Loc. Gov't Code § 387.003(h). *See* Tex. Tax Code §§ 321.101, 323.101 (Defines which taxes are authorized by the Municipal Sales and Use Tax Act and County Sales and Use Tax Act, respectfully).

If a majority of votes received at the election are against the creation of the district, the district is not created.[1396] The county has the authority to call one or more elections to create one or more county assistance districts at any time after the failure of creating a district.

## Effective Date of County Assistance District Sales Tax

After the voter approval of the district and adoption of the sales tax, the sales tax becomes effective on the first day of the first calendar quarter occurring after one complete calendar quarter has elapsed after the comptroller received a copy of the order of the district's governing body adopting the tax.[1397] For example, if the county was to hold a successful election in May 2018 and the comptroller received a copy of the order by June 2018, the sales tax would take effect October 1, 2018. The district would begin receiving sales tax allocations from the comptroller starting in December 2018.

## Allocation of the Sales Tax Proceeds by the Comptroller

Once the sales tax is effective, retailers collect it along with any other applicable sales taxes including the state sales tax, and remit the revenues to the comptroller. The comptroller remits the proceeds to the district. The County Sales and Use Tax Act (Chapter 323 of the Tax Code) governs the imposition, computation, administration and use of the tax, except where it is inconsistent with the County Assistance District Act (Chapter 387 of the Local Government Code).[1398]

## Use of Revenue

The district, which is governed by either the commissioners court of the county or a governing body appointed by the commissioners court,[1399] may use the sales tax revenues to perform the following functions of the district:

- the construction, maintenance, or improvement of roads or highways;
- the provision of law enforcement and detention services;
- the maintenance or improvement of libraries, museums, parks, or other recreational facilities;
- the provision of services that benefit the public welfare, including the provision of firefighting and fire prevention services; or
- the promotion of economic development and tourism.[1400]

### Board of Directors

The commissioners court can decide to appoint a governing body for the district.[1401] The board of directors shall consist of five directors who serve staggered terms of two years.[1402] To be

[1396] Tex. Loc. Gov't Code § 387.003(e).
[1397] *Id*. § 387.012.
[1398] *Id*. § 387.008.
[1399] *Id*. § 387.005(a).
[1400] *Id*. § 387.003(a-1).
[1401] *Id*. § 387.005(a)(2).

eligible to serve as a director, a person must be at least 18 years of age and a resident of the county in which the district is located. The initial directors shall draw lots to achieve staggered terms, with three of the directors serving one-year terms and two of the directors serving two-year terms. The members of the district's governing body are not entitled to compensation for service on the governing body of the district, but are entitled to reimbursement for actual and necessary expenses.[1403]

**Powers of the District**

A district is a political subdivision of the state.[1404] The district may:

- perform any act necessary to the full exercise of the district's functions;
- accept a grant or loan from the United States, state agencies, political subdivisions, or public or private persons;
- acquire, sell, lease, convey, or otherwise dispose of property under terms determined by the district;
- employ necessary personnel;
- adopt rules to govern the operation of the district and its employees and property; and
- enter into agreements with cities necessary or convenient to achieve the district's purposes, including agreements regarding the duration, rate, and allocation between the district and the city of sales and use taxes.[1405]

The district may contract with a public or private person to perform any act the district is authorized to perform.[1406] However, the district may not levy an ad valorem tax.[1407]

## Expanding the District and Excluding Area from the District

After creation of the district, it can be expanded if the commissioners court calls and holds an election for that purpose in the territory to be added to the district.[1408] A majority of voters in the territory to be added must approve the expansion.[1409] If more than one election to authorize a sales tax is held on the same day in an area proposed to be added to a district and if the resulting approval by the voters would cause the imposition of a local sales tax in any area to exceed the maximum combined rate of sales and use taxes imposed by political subdivisions on this state that is prescribed by Sections 321.101 and 323.101 of the Tax Code, then only the county assistance sales tax can be imposed.[1410]

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1402 *Id*. § 387.005(c).
1403 *Id.* § 387.005(b).
1404 *Id.* § 387.004.
1405 *Id.* § 387.006(a).
1406 *Id.* § 387.006(b).
1407 *Id.* § 387.006(c).
1408 *Id.* § 387.003(f).
1409 *Id*. § 387.003(g).
1410 *Id*. § 387.003(h). *See* Tex. Tax Code §§ 321.101, 323.101 (Defines which taxes are authorized by the Municipal Sales and Use Tax Act and County Sales and Use Tax Act, respectfully).

Also, the expanding of the district can be initiated by a petition or petitions signed by the owners or owners of the majority of the land in the area to be included in the district.[1411] Once the district receives the petition, the district, by order, will include the area after an election is held in that area approving the inclusion of the area into the district. However, if there are not registered voters in the area to be included, then an election is not required.

The commissioners court by order may exclude an area from the district if the district has no outstanding bonds payable wholly or partly from the sales and use taxes and the exclusion does not impair any outstanding district debt or contractual obligations.[1412]

## Decreasing, Repealing, or Increasing the Tax Rate

The district may decrease the tax or repeal the tax, by order.[1413] The tax rate can be reduced or repealed without an election.[1414] However, the repeal or reduction of the tax cannot be below the amount pledged to secure payment of an outstanding district debt or contractual obligation. There is no statutory authorization for a voter-initiated petition to decrease or repeal the tax.

Also, the district can increase the tax by order and as long as the increase of the tax will not result in a combined tax rate of all local sales and use taxes that would exceed the maximum combined rate prescribed by Sections 321.101 and 323.101 of the Tax Code, in any location in the district.[1415] If the increased tax rate will not exceed the rate approved at the initial election, then the district can increase the rate without an election.[1416] If the increased tax rate would exceed the rate approved at the initial election, then the tax rate can only be increased after it is approved by a majority of the votes received in the district at an election held for that purpose.[1417]

The tax may be changed in one or more increments of one-eighth of one percent to a maximum of one-half of one percent.[1418] The ballot for an election to increase the tax shall be printed to permit voting for or against the proposition:[1419]

> **The increase of a sales and use tax for the *(insert name of district)* County Assistance District No.__ from the rate of *(insert appropriate rate)* to the rate of *(insert appropriate rate)*.**

If the voters approve the increase, then the increase will become effective on the first day of the first calendar quarter occurring after one complete calendar quarter has elapsed after the comptroller received a copy of the order of the district's governing body increasing the tax.[1420]

1411 Tex. Loc. Gov't Code § 387.003(i).
1412 *Id*. § 387.003(j).
1413 *Id*. § 387.010.
1414 *Id.* § 387.010(a)(1)
1415 *Id*. § 387.010(a)(2)-(3). *See* Tex. Tax Code. §§ 321.101, 323.101 (Defines which taxes are authorized by the municipal sales and use tax act and county sales and use tax act, respectfully).
1416 *Id*. § 387.010(a)(2).
1417 *Id*. § 387.010(a)(3).
1418 *Id*. § 387.010(b).
1419 *Id*. § 387.010(c).
1420 *Id*. § 387.012.

## Dissolution of the District

The district can be dissolved by the governing body of the district petitioning the commissioners court of the county in which the district was created to dissolve the district if a majority of the governing body finds the performance of the district's function cannot be accomplished to the benefit of the residents and owners of land in the district.[1421] Also, if the commissioners court acts as the governing body of the district, the commissioners court can dissolve the district if the majority of the commissioners court finds that the performance of the district's functions cannot be accomplished to the benefit of the residents and the owners of land in the district.[1422] Once the commissioners court receives a dissolution petition from the governing body of the district, or it makes a finds the district needs to be dissolved, the commissioners court must hold a public hearing on the dissolution of the district.[1423] The hearing must be held not later than the 61st day after the commissioners court receives the petition to dissolve or makes a finding to dissolve the district.[1424] The commissioners court must provide notice of the hearing as required by law and the notice must include information regarding the right of the residents and owners of land in the district to appear and present evidence for or against the district's dissolution.[1425] After the public hearing, the commissioners court must order the dissolution of the district and the district's assets transferred to the county if:

- the commissioners court unanimously votes that dissolution of the districe is in the best interests of the district, the county in which it is located, and the residents and owners of land in the district; and
- the district has no outstanding bonds payable wholly or partly from district revenue and the dissolution does not impair any outstanding district debt or contractual obligation.[1426]

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1421 *Id*. § 387.013(a).
1422 *Id*. § 387.013(b)(2).
1423 *Id*. § 387.013(b).
1424 *Id*. § 387.013(c).
1425 *Id*. § 387.013(d).
1426 *Id*. § 387.013(e).

# VIII. Public Disclosure of Economic Development Negotiations

## Open Meetings and Public Information Acts

Local governments must comply with the requirements of both the Open Meetings Act and the Public Information Act in their quest to promote economic development. Economic development corporations, pursuant to a provision in the Development Corporation Act, are also subject to the requirements of the Open Meetings Act[1427] and the Public Information Act.[1428] Accordingly, cities, counties and development corporations must consider applicable open meetings and open records requirements when they deal with companies that request that certain financial information and the company's intent to relocate be kept confidential.

The Open Meetings Act and the Public Information Act permit certain economic development-related issues to be discussed in an executive session and provide a limited time period during which certain records regarding economic development prospects would be considered confidential.[1429] The Open Meetings Act allows a governmental body to conduct a closed session to discuss commercial or financial information that the governmental body has received from a business prospect.[1430] In order to hold a closed session under this exception, the business prospect must be one that the governmental body is seeking to have locate, stay, or expand in or near the governmental body's territory. In addition, the business prospect must be one with which the governmental body is conducting economic development negotiations. If a business prospect meets both of these requirements, then the governmental body will also be authorized to conduct a closed session to deliberate the offer of an incentive to the business prospect.

The Public Information Act authorizes a governmental body to withhold information relating to economic development negotiations involving a governmental body and a business prospect.[1431] In order to be eligible for this exception, the business prospect must be one that the governmental body is seeking to have locate, stay, or expand in or near the governmental body's territory. In addition, in order to be withheld, the information must relate to either: (1) a trade secret of the business prospect; or (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. Information about a financial or other incentive being offered to the business prospect is also excepted from required public disclosure unless and until an agreement is made with the business prospect. Also, the economic development entity whose mission or purpose is to develop or promote the economic growth of a political subdivision with which the entity contracts may assert this exception as a third party whose information involves privacy or property rights that is in the economic development entity's custody or control.[1432]

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1427 *Id.* § 501.072. *See also*, Tex. Att'y Gen. LO-96-104. *But see*, Tex. Att'y Gen. Op. No. JC-327 (2001) (As ruled under the former statute, the board of the Bryan - College Station Economic Development Corporation, formed under the Texas Non-Profit Corporation Act and not the Development Corporation Act of 1979, was held not to be subject to the Open Meetings Act).

1428 Tex. Loc. Gov't Code § 501.072.

1429 Tex. Gov't Code §§ 551.087, 552.131.

1430 *Id.* § 551.087.

1431 *Id.* § 552.131.

1432 *Id*. § 552.131(b-1). *See id*. § 552.305(b) (Information involving privacy or property interests of third party being able to submit in writing reasons for information to be withheld to the attorney general's office).

Once an agreement is made with the business prospect, information about the incentive becomes public.[1433] Even if an incentive is offered by a person other than the governmental body, information regarding that incentive would generally be open to the public if the incentive may directly or indirectly result in the expenditure of public funds by a governmental body or in the reduction of revenue received by a governmental body. Finally, it is important to note that, when submitting its request for a ruling, a governmental body should assert all applicable exceptions to disclosure.[1434] All applicable exceptions must be asserted within ten business days. If the exceptions are not timely asserted, a governmental body could waive them.[1435]

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1433 *Id*. § 552.131(c).
1434 *Id*. § 552.301.
1435 *Id*. § 552.302.

# IX. Synopses of Attorney General Opinions on Economic Development

Readers should be certain to check for any opinions issued by the Attorney General after the publication of this handbook and also make certain that the opinions mentioned below have not been overruled by legislative change, subsequent opinions or court cases.

Legislative Effect will be indicated by ► and will generally include a reference to the Legislative Bill.

## Type A Sales Tax

*Please note that the Development Corporation Act was codified as of April 1, 2009 and can be found in the Local Government Code, Chapters 501 – 507.*

**KP-0209: Right of Reverter Enforceable against State Agency**

A state agency's ownership of a fee simple determinable interest in real property conveyed to it by deed can terminate and title revert to the grantor according to the terms of the deed.

**KP – 0065: Definition of "Site Improvement"**

Under Subsection 501.103(1) of the Local Government Code, the term "site improvement" should be construed to mean an improvement or permanent enhancement that relates to the development of an area of ground on which a town, building, or monument is constructed. The question whether any particular expenditure constitutes a project under Section 501.103 is a question in the first instance for the board of the economic ·development corporation to determine.

**GA-0990: Health Benefits for EDC Employees**

To the extent permitted by Section 501.067 of the Local Government Code, an economic development corporation may obtain health benefits for its employees through a risk pool.

**GA-0819: Type A Sales Tax and Affordable Housing**

It is for the board of directors of a development corporation to determine, in the first instance, whether a project or expenditure is authorized under the Development Corporation Act.

**GA-0320: Infrastructure Expenses Allowed**

An expenditure for road construction may qualify as a "project" under Section 2(11)(A) of the Development Corporation Act of 1979, provided the board of directors of an industrial development corporation finds that the expenditure is "required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises." *Tex. Rev. Civ. Stat. Ann. art. 5190.6, § 2(11)(A) (Vernon Supp. 2005)*. Section 4(A)(i) of the Act does not preclude a 4A corporation from providing a transportation facility that benefits property acquired for another authorized project.

**GA-0264: House Bill 2912 and Grandfathered Projects**

House Bill 2912 significantly amended the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. art. 5190.6, but contained a grandfather provision continuing former law for a project undertaken or approved before the bill's June 20, 2003 effective date. The Port Arthur Economic Development Corporation is now authorized to grant funds and refund sales taxes to a private corporation to promote economic development if former law authorized it to do so and if paying these funds constitutes a "project" "undertaken or approved" before June 20, 2003. The development corporation's board of directors must demonstrate that a project was "undertaken or approved" either by reference to some final official action taken by the board in an open meeting prior to June 20, 2003, or by reference to the terms of an election held under Section 4A(r)-(s) of the Act prior to that date. The grant and sales tax refund were not a "project" under former law. Moreover, because development corporation's board of directors did not vote to make the grant or sales tax refund at an open meeting prior to June 20, 2003, it would not fall within the House Bill 2912 grandfather provision.

**GA-0086: Section 4A Sales Tax and Promotional Expenditures**

Whether a hippopotamus statue would serve a Hutto Economic Development Corporation ("HEDC") promotional purpose is a question of fact for the HEDC board of directors to resolve in the first instance, subject to judicial review and the supervisory authority of the Hutto City Council. The City Council may disapprove an HEDC expenditure for the statue. The HEDC may not spend more than 10% of its current annual revenues for promotional purposes in any given year. In addition, unexpended revenues specifically set aside for promotional purposes in past years may be expended for such purposes.

**JC-0553: City Council Retains a Degree of Control over Disposition of Section 4A Assets Upon Dissolution**

An industrial development corporation that is dissolving under article 5190.6, Section 4A(k) of the Revised Civil Statutes must submit its dissolution plan to the corporation's creating unit for its review and approval. *See Tex. Rev. Civ. Stat. Ann. art. 5190.6, § 4A(k) (Vernon Supp. 2005)*. But the creating unit may not use its approval power to prevent the development corporation from performing its statutory duty to, "to the extent practicable, . . . dispose of its assets and apply the proceeds to satisfy" the corporation's obligations. *Id*. Neither article 5190.6 nor the Non-Profit Corporation Act preclude an industrial development corporation from establishing an escrow account to meet calculable future financial commitments.

**JC-0547: Mayor May Simultaneously Serve as Paid Executive Director of EDC Corporation**

Under current law, a mayor of a city that creates an industrial development corporation pursuant to article 5190.6, Revised Civil Statutes, is not prohibited from serving as a salaried executive director of the corporation. If, however, he receives more than ten percent of his gross income from his compensation as executive director, he must disclose that interest whenever the city council considers any matter involving the industrial development corporation, so long as the action contemplated will have an economic effect on the industrial development corporation that is different from its effect on the public. In such instance, he must file "an affidavit stating the nature and effect of the interest" and he must "abstain from further participation in the matter."

**JC-0362: Section 4A Funds for Job Training**

The City of Port Arthur Economic Development Corporation is authorized to expend sales and use tax proceeds to finance the Port Cities Rescue Mission's "rehabilitation and job training/educational facility" only if the Corporation's board of directors reasonably finds that such a facility promotes business development and otherwise complies with the Development Corporation Act of 1979, article 5190.6 of the Revised Civil Statutes. The Act does not expressly authorize a "grant" for the Mission's facility. Instead, any sales tax expenditure for such a facility must be made pursuant to a contract or other arrangement that ensures that the funds will be used for the authorized purpose and otherwise be in compliance with the Act.

► In 2003, the Texas Legislature amended Sections 2(11)(A) and 38 of the Development Corporation Act of 1979. These sections address projects and job training. Consequently, primary job training facilities for use by institutions of higher education are an authorized project. Further, certain job training classes are permissible provided the business enterprise commits in writing to create new jobs that pay wages at least equal to the prevailing wage for the applicable occupation in the local labor market area. *See Tex. H.B. 2912, 78th Leg., R.S. (2003)*.

**JC-0349: Section 4A Board of Directors May be Reappointed to Subsequent Term**

Directors of a corporation created under Section 4A of article 5190.6, Revised Civil Statutes, serve a six-year term pursuant to Section 11 of article 5190.6, subject to removal at any time by the governing body of the city that created the corporation, unless the articles of incorporation or bylaws of the corporation establish a shorter term of service. Neither article 5190.6 nor the Texas Non-Profit Corporation Act, article 1396 of the Revised Civil Statutes, bars a director of a corporation created under article 5190.6, Section 4A from being reappointed as director. The governing body of the City of Copperas Cove may reappoint a director of the corporation to subsequent service as director, absent any contrary provision in the articles of incorporation or bylaws of the Copperas Cove Economic Development Corporation, or in the city charter, an ordinance, or a resolution of the City of Copperas Cove. Whether or not the city reappoints a particular individual as director is a matter for the governing body of the city, in the exercise of its reasonable discretion.

**JC-0032: Prevailing Wage Law and Development Corporations**

Chapter 2258 of the Government Code applies to a worker employed on a public work "by or on behalf of the state or a political subdivision of the state." *Tex. Govt. Code Ann. § 2258.021(a) (Vernon 2000).* Because a development corporation created under the Development Corporation Act of 1979 is not a political subdivision for purposes of the laws of this state, *see Tex. Rev. Civ. Stat. Ann. art. 5190.6, § 22 (Vernon Supp. 2005)*, chapter 2258 does not apply to a worker employed by or on behalf of a development corporation. Chapter 2258 will apply to a worker on a project undertaken by a development corporation only if the development corporation undertakes the project on behalf of the state or a political subdivision of the state. In order for the project to be undertaken on behalf of the state or a political subdivision, the state or political subdivision must be a party to the construction contract.

**LO-97-061: Donation of Section 4A Funds to Local College**

Given the information provided, it appears that the board of directors of the Pampa Economic Development Corporation would have no basis on which to conclude that an expenditure of Section 4A tax proceeds to support a Clarendon College center in Pampa, Texas would be consistent with the purposes of the Development Corporation Act of 1979. Furthermore, the act does not permit a Section 4A development corporation to make gifts of public funds.

► In 2003, the Texas Legislature amended Section 2(11)(A) of the Development Corporation Act of 1979 by removing "educational facilities" from the definition of project. Further, the Act was amended to allow funding of "primary job training facilities for use by institutions of higher education". *See Tex. H.B. 2912, 78th Leg., R.S. (2003).*

**LO-96-104: Economic Development Corporation is Subject to Open Meetings Act**

The board of directors of the Beeville-Bee County Redevelopment Authority Corporation is subject to the Open Meetings Act, Gov't Code ch. 551, by virtue of Section 11(b) of the Development Corporation Act of 1979, V.T.C.S. art. 5190.6.

**LO-96-010: No Nepotism Prohibition**

Because a member of the board of directors of an industrial development corporation, established under the Development Corporation Act of 1979, V.T.C.S. article 5190.6, receives only reimbursement for the member's expenses, the member is not "directly or indirectly compensated from public funds or fees of office." Thus, Section 573.041 of the Government Code, which generally prohibits nepotistic appointments, is inapplicable.

No statute precludes one member of a city council from voting on removal of a member of the board of directors of an industrial development corporation, even where the city council member and director of the industrial development corporation are related within the second degree by affinity.

**DM-0299: Industrial Development Corporations and Debt Prior to Restriction**

Section 4A(q) of the Development Act of 1979, V.T.C.S. art. 5190.6, would violate article I, section 16 of the Texas Constitution if applied retroactively. A court would construe Section 4A(q) only to apply to debts assumed by a development corporation after its enactment date.

**LO-94-037: Section 4A Economic Development Sales Tax & Promotional Expenses**

The Development Corporation of Abilene, which operates under Section 4A of the Development Corporation Act, V.T.C.S. article 5190.6, may spend proceeds of the sales and use tax imposed under Section 4A for "promotional purposes," subject to the proviso of subsection (b)(1) that no more than 10 percent of corporation revenue may be spent for such purposes, and so long as the expenditures are otherwise consistent with the provisions of the act and state law generally.

**LO-93-104: Combined Proposition/Sales Tax for Property Tax Relief**

For a simultaneous election on the imposition, under Section 4A, V.T.C.S. article 5190.6, of a sales and use tax of one-fourth of one percent for economic development and the reduction of its previously adopted additional sales and use tax for the reduction of property taxes under Tax Code Section 321.101(b) from a rate of one-half of one percent to one-quarter of one percent, the city should use the proposition language set out in Section 4A(p), as follows:

The adoption of a sales and use tax within the city for the promotion and development of new and expanded business enterprises at the rate of one-fourth of one percent and the adoption of an additional sales and use tax within the city at the rate of one-fourth of one percent to be used to reduce the property tax rate.

**LO-92-086: Use of Section 4A Tax Money for Technical College**

The Marshall Economic Development Corporation may use proceeds of a sales and use tax collected pursuant to article 5190.6, Section 4A, to finance bonds for the start-up costs of the Texas State Technical College System Extension Center in Marshall, Texas, so long as the funds are used solely for technical-vocational training purposes.

► In 2003, the Texas Legislature amended Section 2(11)(A) of the Development Corporation Act of 1979 by removing “educational facilities” from the definition of project. Further, the Act was amended to allow funding of “primary job training facilities for use by institutions of higher education”. *See Tex. H.B. 2912, 78th Leg., R.S. (2003).*

**DM-0137: Economic Development Tax Reduction Application to Bonds Issued**

Where, pursuant to subsections (n) and (o) of Section 4A, article 5190.6, V.T.C.S., an election is held to reduce the sales and use tax rate collected by a municipality on behalf of an industrial development corporation, or to limit the length of time during which the tax may be collected, such reduction or limitation may not be applied to any bonds issued prior to the date of the election.

**DM-0080: Economic Development Corporation Could Not Fund a Hospital**

Hospitals are not "manufacturing or industrial facilities" or facilities "required or suitable for the promotion of commercial development" and may not be financed by bonds issued by industrial development corporations created pursuant to the Development Corporation Act of 1979, as amended.

# Type B Sales Tax

*Please note that the Development Corporation Act was codified as of April 1, 2009 and can be found in the Local Government Code Chapters 501 – 507.*

**GA-1066: Type B Funds for City's Comprehensive Plan**

To the extent an expenditure of Type B sales tax proceeds for the services involved in the preparation of a municipal comprehensive plan by an independent contractor is within the scope of Sections 501.101 or 501.103 of the Local Government Code, it may be an authorized project under the statute. It is, however, for the board of directors of the economic development corporation to determine, in the first instance and subject to judicial review, whether an expenditure is authorized under the statute.

**GA-1050: Entertainment Projects**

A court could conclude that funding for a private radio station's building renovations and equipment upgrades is not of the same kind or class of project as those projects expressly authorized in Section 505.152 of the Local Government Code and that Section 505.152 therefore does not authorize an economic development corporation to fund that proposed project. The Legislature granted the board of directors of an economic development corporation broad discretion in determining whether a specific project is "required or suitable for use for ... entertainment," and it is for the board to decide in the first instance. A court would likely conclude that funding for a city owned pavilion is of the same kind or class of project as those projects expressly authorized in Section 505.152.

### GA-0990: Health Benefits for EDC Employees

To the extent permitted by Section 501.067 of the Local Government Code, an economic development corporation may obtain health benefits for its employees through a risk pool.

### GA-0522: Tax Exemption for Private Businesses May Be Unconstitutional

Under the terms of Section 4B(k) of article 5190.6, Texas Revised Civil Statutes (the "Act"), land and improvements for the specifically listed purposes in Section 4B(a)(2) of the Act constitute projects eligible for tax exemptions. Additionally, any other land and improvements that the Westworth Redevelopment Authority's (the "Authority") board of directors determines promote or develop business enterprises in accordance with Section 4B(a)(3) of the Act are such eligible projects. But whether a particular property or improvement constitutes a "project" under the Section 4B(a) standards is a question of fact. The Act grants the Authority's board of directors the discretion to make that determination in the first instance subject to judicial review for abuse of discretion. Under the terms of Section 4B(k) of the Act, projects used for private commercial purposes would be eligible for tax exemption. A court could determine that Section 4B(k), when applied to exempt from ad valorem taxes such projects that do not meet the established public purpose use test, is unconstitutional as applied. The Tax Code permits the Tarrant County Appraisal District and a taxing unit in which a particular property designated by the Authority as a Section 4B(k) project is located to challenge the property's tax-exempt status.

► In 2007, the Texas Legislature, addressed the authority of an entity that acquires a leasehold interest from a development corporation to enter into subleases if it has an agreement with the development corporation that authorizes such subleases. *See Tex. H.B. 3440, 80th Leg., R.S. (2007).*

### GA-0265: Voter Approval Allows 4B Funding of Youth Football Field

Consistent with the election proposition approved by the voters in 1997, the sales taxes collected in Gun Barrel City under Section 4B of the Development Corporation Act of 1979 may be used to fund facilities for amateur sports, including children's sports, athletic, and public park purposes. The legislature has determined that Section 4B(a)(2)(A) projects accomplish public purposes relating to economic development and the board of an economic development corporation is not required to make this finding for individual projects within this provision. Attorney General Opinion JC-0494 (2002), which was based on incorrect facts, is overruled to the extent it is inconsistent with this opinion.

**GA-0004: Section 4B Corporation is Not Governmental Entity for Purposes of Section 272.001 (b)(5) of Local Government Code**

Section 272.001(b)(5) of the Local Government Code exempts "a real property interest conveyed to a governmental entity that has the power of eminent domain" from the public notice and bidding requirements generally applicable to the sale or exchange of land owned by a political subdivision. The Euless Economic Development Corporation, a nonprofit industrial development corporation created under the Development Corporation Act of 1979, article 5190.6 of the Revised Civil Statutes, is not a "governmental entity" for the purposes of Section 272.001(b)(5) of the Local Government Code. Furthermore, Section 272.001(b)(5) does not authorize a political subdivision to transfer land to a private party by using a "governmental entity" as a pass-through.

**JC-0547: Mayor May Simultaneously Serve as Paid Executive Director of EDC Corporation**

Under current law, a mayor of a city that creates an industrial development corporation pursuant to article 5190.6, Revised Civil Statutes, is not prohibited from serving as a salaried executive director of the corporation. If, however, he receives more than ten percent of his gross income from his compensation as executive director, he must disclose that interest whenever the city council considers any matter involving the industrial development corporation, so long as the action contemplated will have an economic effect on the industrial development corporation that is different from its effect on the public. In such instance, he must file "an affidavit stating the nature and effect of the interest" and he must "abstain from further participation in the matter."

**JC-0494: Consistent with Particular Ballot Proposition Section 4B Proceeds Could Only be Used for Projects Which Promote Business Development (overruled by GA-0265 due to new facts presented)**

Consistent with the particular 1997 voter-approved election proposition, the sales taxes collected in Gun Barrel City under Section 4B of the Development Corporation Act of 1979 may be used only for projects that promote business development. The Board of Directors of the Gun Barrel City Economic Development Corporation may not use the sales tax proceeds to fund a project that does not promote business development. This opinion, which was based on incorrect facts, is overruled to the extent it is inconsistent with GA-0265 (2004).

**JC-0488: Section 4B Proceeds Could be Used for Access Road to Undeveloped Commercially Zoned Property**

Under Section 4B of the Development Corporation Act of 1979, the sales and use tax is levied for the benefit of the Lake Jackson Development Corporation established by the City of Lake Jackson under Section 4B; and the Corporation, rather than the City, is authorized to expend the tax proceeds for authorized projects.

The 1995 sales and use tax election proposition approved by the voters of the City of Lake Jackson pursuant to Section 4B does not prohibit the Lake Jackson Development Corporation from using the sales tax proceeds to build an access road to service undeveloped commercially zoned property that fronts a state highway if the expenditure will promote development of new or expanded business enterprises.

**JC-0400: Section 4B Ballot Language and Use of Proceeds for Public Park or Nature/Birding Center**

The Industrial Development Corporation of the City of Sonora, Texas is not precluded, as a matter of law, from using sales and use tax proceeds for a "nature/birding center" or a public park project that was not specifically approved by the voters when they authorized collection of the tax because it was within the scope of the purposes for which the voters approved the sales and use tax. The particular tax election ballot language submitted to the voters indicated that the tax proceeds would be used for projects authorized by Section 4B of the Development Corporation Act of 1979; and, on the date of the tax election, the statute authorized public park projects. Additionally, the city published notice of the proposed project as required by Section 4B, and no subsequent voter petition requesting an election on the project was submitted.

**JC-0338: Section 4B May Not Approve Loan to Section 4B Director**

The board of an economic development corporation may not approve a loan to a director of the corporation. An economic development corporation is not prohibited by law from entering into other transactions with a member of the board or with an entity in which a board member is interested if it complies with the provisions of the Texas Non-Profit Corporation Act governing transactions between corporations and directors, or, in the event the corporation bylaws impose a stricter standard, with the bylaws.

**JC-0118: All Section 4B Incidental Costs Must be Related to a Project /May Not Expend Section 4B Sales Tax Proceeds for Promotional Purposes**

Sales and use taxes levied under Section 4B of the Development Corporation Act of 1979, TEX. REV. CIV. STAT. ANN. art. 5190.6 (Vernon Supp. 2005), may only be used for project costs; they may not be used for "promotional" costs unrelated to projects.

► In 2001, the Texas Legislature amended Section 4B(b) of the Development Corporation Act of 1979 to allow 4B corporations to spend up to 10 percent of the sales tax revenue for "promotional purposes." *See Tex. H.B. 3298, 77th Leg., R.S. (2001)*.

**JC-0109: Section 4B Corporations Not Subject to Chapter 272 Sale of Property Requirements**

A development corporation established under Section 4B of article 5190.6 of the Revised Civil Statutes is not subject to Section 272.001 of the Local Government Code, which establishes procedures political subdivisions must follow to sell land. However, a development corporation must ensure that it receives fair market value for any land, purchased with sales and use tax proceeds, that the development corporation sells for non-project purposes. Although article 5190.6 prohibits a city from granting a development corporation public money or free services, the Act does not preclude a city from providing funds or services to a development corporation in exchange for consideration from the development corporation, within certain limitations.

► In 2001, the Texas Legislature amended Section 21 of the Development Corporation Act of 1979 to allow a home-rule city to grant public money to a 4A or 4B corporation under a contract authorized by Section 380.002 of the Local Government Code. *See Tex. H.B. 782, 77th Leg., R.S. (2001)*.

### JC-0032: Prevailing Wage Law and Development Corporations

Chapter 2258 of the Government Code applies to a worker employed on a public work "by or on behalf of the state or a political subdivision of the state." Tex. Govt. Code Ann. § 2258.021(a) (Vernon 1999). Because a development corporation created under the Development Corporation Act of 1979 is not a political subdivision for purposes of the laws of this state, see Tex. Rev. Civ. Stat. Ann. art. 5190.6, § 22 (Vernon Supp. 1987), chapter 2258 does not apply to a worker employed by or on behalf of a development corporation. Chapter 2258 will apply to a worker on a project undertaken by a development corporation only if the development corporation undertakes the project on behalf of the state or a political subdivision of the state. In order for the project to be undertaken on behalf of the state or a political subdivision, the state or political subdivision must be a party to the construction contract.

### LO-98-062; Section 4B Proceeds to Fund Maintenance and Operating Costs of a Project

Under V.T.C.S. article 5190.6, Section 4B(a-2), Section 4B tax proceeds may not be used to pay for maintenance and operating costs of a project unless the city publishes notice of this proposed use. If the proposed use is challenged by a petition of more than 10% of the voters within 60 days of the notice, the City of League City will be required to hold an election to obtain voter approval of the proposed use because such use has not been approved in a prior election.

### LO-96-110; Joint Propositions for Economic Development Sales Tax

A city is not authorized to combine in a single proposition proposals for voting on adoption of an economic development tax under Section 4B, V.T.C.S. article 5190.6, and a sales and use tax for property tax relief under Tax Code Section 321.101(b).

► In 2005, the Texas Legislature enacted Section 321.409 of the Texas Tax Code, which enables a city to use a combined ballot proposition to lower or repeal any dedicated or special purpose sales tax and simultaneously raise or adopt another such tax, including the sales tax for property tax relief. *See Tex. H.B. 3195, 79th Leg., R.S. (2005)*.

### LO-96-104: Economic Development Corporation is Subject to Open Meetings Act

The board of directors of the Beeville-Bee County Redevelopment Authority Corporation is subject to the Open Meetings Act, Gov't Code ch. 551, by virtue of Section 11(b) of the Development Corporation Act of 1979, V.T.C.S. art. 5190.6.

### LO-96-010: No Nepotism Prohibition

Because a member of the board of directors of an industrial development corporation, established under the Development Corporation Act of 1979, V.T.C.S. article 5190.6, receives only reimbursement for the member's expenses, the member is not "directly or indirectly compensated from public funds or fees of office." Thus, Section 573.041 of the Government Code, which generally prohibits nepotistic appointments, is inapplicable.

No statute that precludes one member of a city council from voting on removal of a member of the board of directors of an industrial development corporation, even where the city council member and director of the industrial development corporation are related within the second degree by affinity.

### LO-95-072: Construction of Residential Sewer Lines

V.T.C.S. article 5190.6, Section 4B authorizes the board of directors of a development corporation organized under V.T.C.S. article 5190.6 to determine whether the construction of sanitary sewer lines in an existing residential subdivision would promote or develop new or expanded business enterprises. Although it seems unlikely that the construction of sewer facilities in a residential subdivision would promote or develop new or expanded business enterprises, this office cannot exclude the possibility as a matter of law. The board's determination would be reviewed under an abuse of discretion standard.

## City/County Venue Project Tax

### GA-0602: Venue Project Fund Money May Be Used To Pay Cost of Approved Venue Projects

A county, such as Terrell County, may use money in its venue project fund to pay any of the costs of constructing an approved venue project. The county may borrow money to pay such costs, to be repaid from the venue project fund, only by the "issuance of bonds… or other obligations."

### GA-0156: City Must Spend Funds Consistent With Voter Approval

The terms of the election pursuant to which the Terrell County voters approved the venue-project tax for park improvements constitute a contract with the voters, and Terrell County is authorized to use venue-project funds for improvements outlined in the current Expenditure Plan only if the improvements are consistent with the election orders.

Improvements proposed by Terrell County constitute a "venue project," as defined by Local Government Code Section 334.001(3), (4)(B), and (5), only if Terrell County intends to develop and construct a convention center facility and to undertake other improvements and infrastructure in conjunction with the development and construction of the convention center facility, and if the other improvements are related improvements located in the convention center facility's vicinity or infrastructure that relate to and enhance the convention center facility.

**LO-98-074: City May Not Hold a Sales Tax Election Earlier Than One Year From Date of Previous Sales Tax Election**

Section 321.406, Tax Code, which limits the frequency of sales tax elections held by a municipality, is applicable to elections held under chapter 334, Local Government Code. Thus, the city of Arlington may not hold a sales tax election under chapter 334 earlier than one year from the date of any previous sales tax election.

**DM-0455: Houston's Ability to Participate in Sports Authority**

The City of Houston is authorized to participate in the Harris County-Houston Sports Authority created pursuant to House Bill 92, Act of May 22, 1997, 75th Leg., ch. 551, 1997 Tex. Sess. Law Serv. 1929.

**DM-0454: Houston's City Council Limited Authority over Harris County-Houston Sports Authority**

The Houston City Council does not have either the formal power of appointment or the right of confirmation of directors of the Houston-Harris County Sports Authority (the "authority"). The city council is not empowered to approve change orders for authority contracts or to place restrictions on lease agreements negotiated by the authority, nor does it have general oversight responsibilities over the authority beyond the right to approve the issuance of bonds and other obligations.

**DM-0453: Harris County Not Required to Hold a Second Election to Impose Hotel Occupancy and Short Term Car Rental Taxes**

Harris County is not required to hold an election under the provisions of House Bill 92, Act of May 22, 1997, 75th Leg., R.S., ch. 551, 1997 Tex. Sess. Law Serv. 1929, 1929. The imposition of hotel occupancy and short-term car rental taxes does not, in the absence of a second election, contravene the due process clauses of the federal or state constitutions. Neither does House Bill 92 unconstitutionally discriminate against residents of Harris County on equal protection grounds. Section 7 of the bill is not a "local or special law" in contravention of article III, section 56, Texas Constitution.

# Property Tax Abatement

### GA-0734: Tax Abatement Period May Start In a Year After the Year the Tax Abatement Agreement Is Entered

The maximum ten-year abatement period authorized under Tax code Section 312.204(a) may commence in a year subsequent to the year in which an agreement providing for the tax abatement is entered into by the taxing unit and the owner of the property subject to the agreement.

### GA-0600: Abatement for Improvements Allowed if Governing Body Members Owns Only Real Property

A county may enter into a tax abatement agreement with the owner of taxable real property located in a reinvestment zone, and with the owner of a leasehold interest in or improvements on tax-exempt property located in a reinvestment zone. Assuming that the "fixtures and improvements" owned by a wind turbine company constitute "improvements on tax-exempt real property that is located in a reinvestment zone" under Section 312.402 of the Tax Code, the mere fact that a member of a commissioners court owns the real property on which the fixtures and improvements will be located does not prohibit fixtures and improvements from being the subject of a tax abatement agreement.

A member of a commissioners court generally must abstain from a vote on a matter if it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property distinguishable from its effect on the public. Whether a vote on a particular tax abatement agreement will have such a special economic effect is generally a question of fact that cannot be resolved in an attorney general opinion.

► In 2009, the Texas Legislature amended Section 312.402 of the Tax Code to clarify a county's authority to enter into a tax abatement agreement, including the authority to enter into an abatement agreement with an owner of personal property located on real property, or an individual with a leasehold interest in or owner of personal property located on tax-exempt real property, even if that individual did not own the real property. Tex. S.B. 1458, 81st Leg., R.S. (2009); Tex. H.B. 3896, 81st Leg., R.S. (2009).

### GA-0304: Successive Tax Abatements for Personal Property on Same Real Property Parcel Allowed

Under the Property Redevelopment and Tax Abatement Act, chapter 312 of the Tax Code, a prior tax abatement agreement concerning specific property does not preclude a municipality from agreeing to abate taxes on different business personal property at the same location. A new abatement agreement must fully comply with chapter 312 requirements.

**GA-0134: Tax Abatement Agreements May Not Retroactively Extinguish Existing Tax Liability**

Section 312.208 of the Tax Code, permitting amendment of tax abatement agreements, does not modify the rule established by Section 11.42(a) of the Tax Code that a "person who does not qualify for an exemption on January 1 of any year may not receive the exemption that year." Tex. Tax Code Ann. §11.42(a) (Vernon Supp. 2005). In addition, a retroactive amendment of a tax abatement agreement that extinguishes an existing tax liability violates article III, section 55 of the Texas Constitution.

**JC-0300: Tax Abatement Agreements Must be Executed With Owner of Real Property**

Section 312.206(a) of the Tax Code authorizes a commissioners court to enter into a tax abatement agreement only with the "owner of taxable real property." The owner of a leasehold interest in tax-exempt real property is not such an "owner of taxable property."

► In 2001, Sections 312.204(a) and 312.402 (a) of the Tax Code were amended to allow taxing units to also enter into tax abatement agreements with "the owner of a leasehold interest" in real property. *See Tex. H.B. 1448, 77th Leg., R.S. (2001) and Tex. S.B. 985, 77th Leg., R.S. (2001)*.

**JC-0236: Newly Elected Councilmember Loses Benefit of Tax Abatement Agreement on Date Councilmember Assumes Office**

Attorney General Opinion JC-0155 (1999) determined that property owned or leased by a member of a municipality's governing body is not eligible for a tax abatement agreement authorized by the Property Redevelopment and Tax Abatement Act, chapter 312 of the Tax Code. Attorney General Opinion JC-0155 is clarified by determining when the property loses the tax exemption granted by the tax abatement agreement.

If the owner of property subject to the tax abatement agreement is elected to the municipality's governing body, the tax exemption created by the agreement is lost on the date the property owner assumes office as a member of the governing body. The tax due on the property for the year is determined according to the method set out in Section 26.10 of the Tax Code.

► In 2001, Section 312.204 (d) of the Tax Code was amended to allow a tax abatement agreement to continue in effect if the property owner becomes a member of city council or a member of the zoning or planning commission. *See Tex. H.B. 1194, 77th Leg., R.S. (2001)*.

**JC-0155: Property Owner Subject to Tax Abatement Agreement Becomes Ineligible to Continue to Receive Tax Abatement Once Elected to City Council**

The Property Redevelopment and Tax Abatement Act, chapter 312 of the Tax Code, does not bar a property owner from serving on the city council that granted a municipal tax abatement to the property owner. However, the owner's position on the council makes his property ineligible to continue to receive a tax abatement. Section 171.004 of the Local Government Code bars him from participating in a vote on a matter involving the property if he has a substantial interest in the property or in the business that owns the property, and if it is reasonably foreseeable that an action on the matter would confer a special economic benefit on the property that is distinguishable from the effect on the public. Votes made in violation of Section 171.004 of the Local Government Code are voidable only if the measures on which the property owner voted would not have passed without his vote. This opinion was clarified in JC-0236 (2000).

► In 2001, Section 312.204 (d) of the Tax Code was amended to allow a tax abatement agreement to continue in effect if the property owner becomes a member of city council or a member of the zoning or planning commission. *See Tex. H.B. 1194, 77th Leg., R.S. (2001).*

**JC-0133: Tax Abatement Agreements May Not Exceed Ten Years**

A tax abatement agreement made pursuant to chapter 312 of the Tax Code, the Property Redevelopment and Tax Abatement Act, may not exceed ten years. A governmental entity may not grant a tax abatement for property that previously received a ten-year tax abatement. In order for property to receive more than ten years of tax abatement, the agreement for the abatement must have been made prior to September 1, 1989.

► In 2001, Section 312.204 (a) of the Tax Code was amended to allow a tax abatement agreement to take effect on January 1 of the next tax year after the date the improvements or repairs are substantially completed. *See Tex. H.B. 3001, 77th Leg., R.S. (2001).*

**JC-0106: Tax Abatement May Apply to Relocated Beach Property**

The movement of a structure from one location on a piece of property in a reinvestment zone to another location on the property may constitute a "specific improvement or repair" to the property for purposes of a tax abatement agreement under Property Redevelopment and Tax Abatement Act, chapter 312 of the Tax Code, if it improves or repairs the property in the ordinary sense and if the improvement or repair is consistent with the purpose of the reinvestment zone designation.

**JC-0092: County Provision of an Economic Development Grant to a Private Company**

Chapter 312 of the Tax Code neither precludes nor authorizes a commissioners court agreement to make payments of county funds to a private company that are the economic equivalent of an abatement of real property taxes. However, Section 381.004 of the Local Government Code, which Dallas County cites as the basis for its authority to make such payments, neither expressly or impliedly authorizes a commissioners court to enter into an agreement of this kind. The legislative history indicates that the legislature did not intend Section 381.004 to implement article III, section 52-a of the Texas Constitution and, moreover, confirms that the legislature did not intend Section 381.004 to authorize county economic development loans and grants.

► In 2001, the Texas Legislature added subsection 381.004(g) of the Local Government Code. This subsection now allows the county commissioners court to develop and administer a permissible Chapter 381 program that includes entering into a tax abatement agreement with an owner or lessee of a property interest. *See Tex. H.B. 2870, 77th Leg., R.S. (2001).*

**LO-98-001: Commissioners Court May Enter Into Tax Abatement Agreement Despite Ownership Interest**

Tax Code Section 312.402 (d) does not preclude a commissioners court from entering into a tax abatement agreement with a corporation merely because a commissioners court member owns a very small percentage of shares in the corporation or the corporation's parent or because a commissioners court member invests in the corporation by way of a mutual fund.

**LO-97-096: City Cannot Meet in Executive Session to Discuss a Tax Abatement Agreement**

A city council or county commissioners court is not authorized to meet in executive session under the Open Meetings Act to discuss a proposed city or county property tax abatement for an existing industry.

► In 1999, the Texas Legislature added Section 551.086 of the Texas Government Code, now renumbered to Section 551.087 of the Texas Government Code. This section allows governmental bodies to meet in executive session to deliberate or discuss certain commercial or financial information or to deliberate the offer of a financial or other incentive to a business prospect.

**DM-0456: County Not Authorized to Delete Land From Existing Reinvestment Zone**

A county is not authorized to amend a Tax Code chapter 312 tax abatement agreement by deleting land from an existing reinvestment zone. A county reinvestment zone under chapter 312 must be contiguous and may not consist of only a portion of a building. The legislature intended to leave the substance of criteria for tax abatement agreements to the discretion of each county commissioners court, subject to very general constraints and certain specific limitations imposed by chapter 312.

**LO-95-090: City Cannot Abate Delinquent Taxes**

Neither Local Government Code Section 380.001 nor Tax Code Section 312.204 authorizes a municipality to abate delinquent taxes owed by a taxpayer who participates in the municipality's enterprise zone. Moreover, article III, section 55 of the Texas Constitution expressly forbids the abatement of delinquent taxes.

**DM-0090: Day Opt in Period for Tax Abatement Agreements**

The authority of the Chambers-Liberty Counties Navigation District to enter into a tax abatement agreement pertaining to land that is the subject of a county tax abatement agreement expired 90 days after the date of the execution of the county agreement.

► In 2001, the Texas Legislature amended Section 312.206(a) of the Tax Code removing the 90-day period for other tax entities to enter into a tax abatement agreement on property located within a city. *See Tex. S.B. 1710, 77th Leg., R.S. (2001).*

## Tax Increment Financing

**KP-0026: Charter Provisions and the Tax Increment Reinvestment Zone Board**

The question whether the City of Galveston's Charter applies to a board of a tax increment reinvestment zone created by the City under chapter 311 of the Tax Code is outside the purview of an attorney general opinion.

As a general matter, however, a charter provision allowing only city residents to serve on a tax increment reinvestment zone board is inconsistent with Tax Code subsection 311.009(e) and is likely void. Similarly, a charter provision limiting the number of terms a tax increment reinvestment zone board member may serve where subsection 311.009(c) would permit the board member to serve an unlimited number of terms likely renders such a charter provision void.

**KP-0004: County Formation of County Energy Transportation Reinvestment Zones, Tax Increment Reinvestment Zones, or Transportation Reinvestment Zones**

Absent a constitutional amendment, it is likely a court would conclude that a county may not form and operate a county energy transportation reinvestment zone, a tax increment reinvestment zone, or a transportation reinvestment zone, to the extent that doing so utilizes a captured increment of ad valorem taxes to fund a county-created tax increment reinvestment zone.

**GA-1076: County Energy Transportation Reinvestment Zones**

A county's use of tax increment financing to fund transportation projects in a county energy transportation reinvestment zone could be subject to challenge under the equal and uniform taxation requirement in article VIII, section 1(a) of the Texas Constitution. A county creating a county energy transportation reinvestment zone under Section 222.1071 of the Transportation Code may not place general revenue funds into the tax increment account.

**GA-0981: County Issuance of Tax Increment Financing Bonds Secured By Ad Valorem Tax Increment is Subject to Constitutional Challenge**

A county's issuance of tax increment financing bonds secured by a pledge of the county's ad valorem tax increment would be subject to constitutional challenge as violating the equal and uniform taxation requirements of article VIII, section 1(a) of the Texas Constitution.

**GA-0953: County Not Authorized to Issue Tax Increment Financing Bonds or Pledge Tax Increment Fund**

The Legislature has not authorized a county to issue tax increment financing bonds as a city may under chapter 311 of the Tax Code. A county qualifies as a "political subdivision" as that term is used in article VIII, section 1-g(b). A municipality has exclusive authority to pledge all or part of a tax increment fund, including any tax increments deposited by a county, for payment of tax increment bonds or notes. A county may not issue tax increment financing bonds or unilaterally pledge any part of the tax increment fund.

**GA-0725: Council Member's Reservation In Conveyed Property Does Not Exclude Property From Tax Increment Financing**

Tax Code Section 312.204(d) excludes real property owned by a member of a city's governing body from tax increment financing. It is unlikely that a city council member who in a deed conveying real property reserves to himself the sale proceeds of the property, if and when the property is sold, is the owner of the property under Section 312.204(d) by virtue of the reservation. Thus, such a reservation does not by itself appear to operate to exclude property from tax increment financing under Section 312.204(d).

**GA-0549: School Value to Deduct Includes Only Increment Actually Paid**

Section 403.302(d)(4) of the Government Code requires the Texas comptroller of Public Accounts to deduct the total dollar amount of only the percentage of the captured appraised value of school district property located in a tax increment reinvestment zone that corresponds to the percentage of the tax increment actually paid into the tax increment fund by the school district.

► In 2007, the Texas Legislature changed how to determine the total dollar amount of the captured appraised value of the school district property located in a tax increment reinvestment zone. *See Tex. S. B. 1908, 80$^{th}$ Leg., R.S. (2007).*

**GA-0514: TIF Area Must Be Blighted Despite No Use of Bonds**

A city may not designate an area as a reinvestment zone under Tax Code Section 311.005(a)(5) unless the area is "unproductive, underdeveloped, or blighted," within the meaning of article VIII, section 1-g(b) of the Texas Constitution, even if the area's plan of tax increment financing does not include issuance of bonds or notes.

**GA-0474: Homestead Preservation District Anomalies**

Local Government Code chapter 373A enacted in 2005 provides for the creation of homestead preservation districts and homestead reinvestment zones. Section 373A.108's tax exemption applies to land trust real property owned by a community housing organization or a housing finance corporation operating as a land trust in a homestead preservation district only if the real property is inside the district. The exemptions provided by Tax Code Sections 11.182 and 11.1825 and by Local Government Code Section 394.905 do not apply to such property inside the district.

A city creating a homestead reinvestment zone is not authorized to establish a termination date for the zone. Additionally, a city and a participating county are not authorized to execute an agreement that requires the county to deposit its tax increments into the zone's tax increment fund for a period exceeding one year and under which the county does not have the right to annually reconsider its participation in the zone. Finally, the tax increment fund revenues may be used only to purchase real property, construct or rehabilitate housing units in the zone, and pay zone and housing-related administrative expenses.

A family's income eligibility to receive a benefit from a homestead preservation reinvestment zone tax increment fund under Local Government Code Section 373A.157(b) may be determined in accordance with the United States Department of Housing and Urban Development's family income eligibility rules codified at part 5 of title 24 of the Code of Federal Regulations. Additionally, the Section 373A.157(b) median family income eligibility determination is required only for the year in which the family is granted a housing benefit from the tax increment fund.

► In 2007, the Texas Legislature passed legislation that addressed the issue discussed in this opinion. *See Tex. H.B. 470, 80th Leg., R.S. (2007).*

**GA-0305: Competitive Bidding Statute Applies to Increment Fund Expenditures**

A city may use a Tax Code chapter 311 tax increment fund to pay a private developer for environmental remediation, renovation, or facade preservation costs if the costs constitute "project costs" within the scope of Section 311.002(1). A tax increment fund is a municipal fund within the meaning of chapter 252 of the Local Government Code, and chapter 252's competitive bidding requirements may apply to expenditures from the tax increment fund. Whether a particular expenditure is subject to competitive bidding will depend upon whether the expenditure falls within the terms of Section 252.021 and whether the expenditure is exempt from chapter 252 under Section 252.022. If a municipal expenditure is subject to chapter 252, the city would be precluded from reimbursing a person for costs incurred for work not performed pursuant to a competitively bid contract.

► In 2005, the Texas Legislature amended Section 311.010(g) to except any dedications, pledges, or other uses of revenue in the increment fund from chapter 252.

**GA-0276; City May Not Extend Original Termination Date of Reinvestment Zone**

A home-rule city may not extend a Tax Code, chapter 311 reinvestment zone's termination date beyond the date provided in the ordinance designating the zone.

►In 2011, Sections 311.007 and 311.017 of the Tax Code were amended to provide that the governing body of the municipality or county that designated a reinvestment zone by ordinance or resolution or by order or resolution, respectively, may extend the term of all or a portion of the zone after notice and hearing in the manner provided for the designation of the zone. Tex. H.B. 2853, 82d Leg., R.S., (2011).

**GA-0169: Councilmember May Serve on Reinvestment Zone Board**

A city council member is not prohibited from simultaneously serving as a member of the board of directors of a tax increment reinvestment zone created by his or her municipality under chapter 311 of the Tax Code.

**JC-0373: Tax Increment Financing Under The Texas Urban Renewal Law**

Section 403.302 of the Government Code requires the comptroller to conduct annual studies to determine the total value of taxable property within Texas school districts. Subsection 403.302(d)(8) of the Government Code requires the comptroller to deduct from the market value of property taxable by a school district any property value that is subject to a tax increment financing agreement entered into under Local Government Code, chapter 374, subchapter D. The deduction is not optional, but is required by statute.

The predecessor of Local Government Code, chapter 374, subchapter D was unconstitutional when adopted. It was not impliedly validated by the 1981 adoption of article VIII, section 1-g of the Texas Constitution authorizing tax increment financing, but it was validated in 1987 when the predecessor statute was reenacted in the codification of laws relating to local government. A municipality may not adopt tax increment financing under Local Government Code, chapter 374, subchapter D unless it holds an election as required by Section 374.031(a) of that statute.

**JC-0152: Petitioned-For Tax Increment Financing Reinvestment Zones Must Also be Unproductive, Underdeveloped or Blighted**

A city may not designate an area as a tax increment financing reinvestment zone, including an area subject to a petition under Section 311.005(a)(5) of the Tax Code, unless the area is "unproductive, underdeveloped, or blighted" within the meaning of article VIII, section 1-g(b) of the Texas Constitution. An area that satisfies the criteria of

Section 311.005(a)(1), (a)(2), or (a)(3) comports with this constitutional requirement. A city must determine that an area subject to a petition under Section 311.005(a)(5) is "unproductive, underdeveloped, or blighted" either according to the criteria set forth in subsection (a)(1), (a)(2), or (a)(3) of Section 311.005 or according to its own, similar criteria. This determination is for the city to make in the first instance, in good faith, exercising reasonable discretion, subject to judicial review.

Section 403.302 of the Government Code defines the "taxable value" of school district property for purposes of school-finance funding equalization formulas. Subsections (d) and (e) of Section 403.302, which exclude from the definition of "taxable value" the value of property located within certain chapter 311 reinvestment zones, do not as a matter of law violate the constitutional mandate that the legislature establish and maintain an "efficient system of public free schools," Tex. Const. art. VII, § 1.

**JC-0141: City May Not Use Unexpended Tax Increment Funds After Termination of Reinvestment Zone For Improvements Outside of Reinvestment Zone**

Under chapter 311 of the Tax Code, a city is not authorized to undertake or complete a reinvestment zone project in a manner that is not consistent with the reinvestment zone board of directors' project and financing plans, which must provide for projects within the zone. Therefore, as a general matter, a city may not use unexpended tax increment fund money after termination of a reinvestment zone to build an improvement outside the zone. The city may do so only if, prior to the zone's termination, the reinvestment zone board of directors agreed to dedicate revenue from the tax increment fund to replace areas of public assembly, and if construction of the improvement is a cost of replacing an area of public assembly under Section 311.010(b) of the Tax Code, as added by, Act of May 24, 1989, 71st Leg., R.S., ch. 1137, § 22, sec. 311.010, 1989 Tex. Gen. Laws 4683, 4690.

**DM-0390: City Which Terminates a Tax Increment Financing Reinvestment Zone May Create a New Reinvestment Zone With Identical Geographic Boundaries**

A municipality that terminates a reinvestment zone by ordinance pursuant to Section 311.017(a) of the Tax Code may then create a new reinvestment zone with geographic boundaries identical to those of the original zone. A municipality's loan to the first reinvestment zone may not be treated as a "project cost" of the second reinvestment zone pursuant to Section 311.002(1) of the act, nor may such a loan be assumed by the second reinvestment zone. There is no mechanism for adjusting the tax increment base of a reinvestment zone to account for a severe decrease in the total appraised value of the real property in the reinvestment zone. See Tax Code § 311.012(c).

**LO 96-138: City May Be Permitted to Condemn Property in a Reinvestment Zone as a Group**

Section 311.008(a) of the Tax Increment Financing Act authorizes but does not require a city to exercise the powers listed, including the power to condemn property, to implement a reinvestment zone redevelopment plan. A city may be permitted to condemn property as a group under certain circumstances at the discretion of the court.

# Texas Economic Development Act

### GA-0686: comptroller May Include More Information Then Required in its Value Limitation Agreement Report

In preparing the report on limitation agreements under the Texas Economic Development Act, the comptroller of Public Accounts may include more information than is required by Sections 313.008 and 313.032 of the Tax Code if the information is reasonably necessary to assess the progress of such agreements.

The comptroller may use in the report information provided by recipients of limitations, regardless of whether the information is marked as confidential by the recipients, so long as the information is not confidential by law. The comptroller must, in the first instance, determine whether information is confidential by law.

### GA-0665: Owner of Qualified Property Is Eligible To Apply for a Limitation on Appraised Value

Tax Code Section 313.025(a) authorizes "the owner of qualified property" to apply to a school district for a limitation on the appraised value of the qualified property for the purposes of school district-imposed maintenance and operation property taxes. Under Tax Code Section 313.021(2), land, a building or other improvement, and tangible personal property each constitute "qualified property." Accordingly, a person that owns a building or other improvement or tangible personal property is an "owner of qualified property" under Section 313.025(a). Thus, a person meeting the other requirements of chapter 313 who owns such qualified property—building or other improvement or tangible personal property—is eligible to apply for a limitation on the appraised value of the person's qualified property irrespective of whether the person owns or leases the land on which the qualified property is to be placed.

► Section 313.021(2)(A) of the Tax Code was subsequently amended, and this opinion is thereby superseded.

# Adopting the Freeport Exemption

### DM-0463: Freeport Exemption for Component Parts

Article VIII, section 1-j of the Texas Constitution establishes an exemption from ad valorem tax for "freeport" goods, that is, certain property destined for shipment out-of-state within 175 days after the date the property was acquired in or imported into the state. The freeport exemption is available to property where it is acquired or imported in this state by a person who detains it in the state "for assembling, storing, manufacturing, processing, or fabricating purposes," even though the property is not sold or transported out of the state by that person, but is instead sold to an in-state purchaser who uses the property in manufacturing other items which are then transported out of state within 175 days of the time the first owner acquired it.

Whether the freeport exemption applies to specific property owned by one person and sold to another involves questions of fact, which cannot be addressed in the opinion process.

## Local Hotel Occupancy Tax

### KP-0131: Use of Local Hotel Occupancy Tax Revenue on a Feasibility Study and Construction, Operation, and Maintenance of a Performing Arts Center

Under Section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue in the direct promotion of tourism and the convention and hotel industry, provided that the expenditure is for one of the specified uses listed in the statute. It is for a municipal governing body to determine in the first instance whether an expenditure of hotel occupancy tax revenue is proper under Section 351.101.

### GA-0851: Restrictions on Use of Reserve Funds Originally Generated from Hotel Occupancy Tax

Hotel occupancy tax revenues collected under chapter 351, Tax Code, must be expended only as authorized by the chapter. Chapter 351 prohibits hotel occupancy tax revenues, including any surplus funds, from being expended for general city purposes.

### GA-0682: Hotel Occupancy Tax Revenue Can Pay for Administrative Cost if they Are Incurred Directly From Authorized Promotion and Servicing Expenditures

Tax Code Section 352.1015(c) allows hotel occupancy tax revenue to be expended for administrative costs only if they are incurred directly for the promotion and servicing expenditures authorized by the provision applicable to the particular county, and the expenditure is otherwise consistent with chapter 352 of the Code. Whether expenditures for "key person insurance" premiums constitute an authorized administrative cost is for the commissioners court to determine in the first instance, subject to judicial review.

### GA-0408: Tax in Extraterritorial Jurisdiction May Cause Total Tax to Exceed 15 Percent if Adopted Before County Tax

Section 351.0025(b) of the Tax Code prohibits a municipality with a population of fewer than 35,000 from adopting and imposing a hotel occupancy tax in its extraterritorial jurisdiction when the combined rate of state, county, and municipal taxes would exceed 15 percent. The section does not, however, prohibit a municipality from imposing its tax if the combined rate did not exceed 15 percent when the municipality adopted its tax but exceeds that rate after the county adopts a county tax.

**GA-0124: Use of Hotel Occupancy Tax Revenue Towards County Senior Center**

Under Section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue "only to promote tourism and the convention and hotel industry" and only for the specific uses listed in the statute. *Tex. Tax Code Ann. § 351.101(a) (Vernon Supp. 2004)*. Whether a particular proposed expenditure of municipal hotel occupancy tax revenue is a permissible use and will "directly enhanc[e] and promot[e] tourism and the convention and hotel industry" is for a municipality's governing body to determine in the first instance.

**JC-0105: City Which Collected More Than $2 Million in Hotel Occupancy Tax Revenue in Calendar Year Is Not Bound By Allocation Formula of Section 351.103(a) of the Tax Code**

Pursuant to Section 351.103(b) of the Tax Code, the allocation restriction of Section 351.103(a) of the Tax Code does not apply to a municipality that has collected in excess of $2 million in hotel occupancy tax revenue in the most recent calendar year.

**LO 97-005: City May Not Collect a Municipal Hotel Occupancy Tax in a Municipal Utility District Annexed For Limited Purposes**

A city may not collect a municipal hotel occupancy tax in a municipal utility district annexed for limited purposes pursuant to a strategic partnership agreement under Local Government Code Section 43.0751. A city with a population of less than 35,000, however, may impose a hotel occupancy tax in the city's extraterritorial jurisdiction pursuant to Tax Code Section 351.0025 irrespective of city annexation of the area.

**LO 96-113: Committee of Chamber of Commerce Not Subject to Open Meetings Act**

A committee of the chamber of commerce that is expending funds raised by the local hotel tax under contract with the city is not a governmental body under the Open Meetings Act.

**DM-0394: Use of Hotel Occupancy Tax Funds as Proposed for George Bush Presidential Library Was Impermissible**

The City of College Station may, without violating article III, section 52 of the Texas Constitution, spend public funds on the George Bush Library to be established by Texas A&M University only if there is a city purpose for the expenditure, if the city receives adequate consideration for the expenditure, and if sufficient controls are attached to the transaction to ensure that the public purpose will be carried out. Hotel-motel occupancy taxes raised by the city under chapter 351 of the Tax Code may be spent only for the purposes expressly set out in Section 351.101 of the code. No showing has been made that the tax funds proposed for allocation to the George Bush Library will be used for any purpose stated in Section 351.101.

**LO 93-55: Convention and Visitors Bureau Funded with Hotel Tax Monies Not Subject to Open Meetings Act**

Neither the Greater San Marcos Chamber of Commerce, the Greater San Marcos Economic Development Council, nor the San Marcos Convention and Visitors Bureau are governmental bodies subject to the Texas Open Meetings Act, V.T.C.S. article 6252-17.

**LO 92-51: City May Expend Municipal Hotel Tax Funds to Improve Visitors Information Center**

A city may expend municipal hotel tax funds for the improvement of a visitors information center. The city must insure that the expenditure fulfills one or more of the specific purposes authorized by Section 351.101 of the Tax Code. Section 351.103 of the Tax Code governs the allocation of tax receipts.

**LO 92-16: Municipal Hotel Tax Funds Generally May Not be Used for General Landscaping and Sidewalk Improvements**

Hotel occupancy tax funds may only be expended in conformity with chapter 351 of the Tax Code.

**LO 89-103: City May Not Use Municipal Hotel Occupancy Tax for Reconstruction of Municipal Tennis Courts**

Of the purposes for which Clarendon hotel tax funds may be spent under the applicable provisions, we think only that of “improvement” or “equipping” of a convention center facility under Section 351.101(a)(1) might conceivably include reconstruction of municipal tennis courts. We assume from your letter that the courts are not part of a convention center. Therefore, we think that the city of Clarendon lacks authority to spend municipal hotel tax funds on tennis court reconstruction.

**JM-1080: Federal Employee Travelling on Official Business is Not Exempt From Local Hotel Occupancy Tax**

A federal employee travelling on official business whose travel expenses are reimbursable by his employer, either on a per diem or actual expenses basis, is not exempt from a local hotel occupancy tax imposed under chapters 351 or 352 of the Tax Code when he rents hotel accommodations.

► Sections 156.103(a) and 351.006(a) of the Tax Code now exempt federal employees from payment of the local hotel occupancy tax “when traveling on or otherwise engaged in the course of official duties” for the governmental entity.

### JM-0972: State Officials Traveling on State Business Are Not Exempt from Local Hotel Occupancy Tax

State officials or employees traveling at state expense on state business are not exempt from the hotel occupancy tax provided for in chapters 156, 351 and 352 of the Tax Code.

► Sections 156.103(b), (c), (d) and 351.006 (b), (c), (d) of the Tax Code now exempt certain state officials from payment of the local hotel occupancy tax. Other state employees must still pay the hotel occupancy tax when paying their bill, but the state agency may request a refund from the city.

### JM-0965: Municipality May Not Use Hotel Tax to Supplement Recreational Budget

Section 351.101 of the Tax Code sets out the exclusive purposes for which the municipal hotel tax may be used. The tax may not be used for the operation of general recreational facilities.

### JM-0865: No Authority for Exemptions from Hotel Occupancy Tax

Neither a county nor a home rule city possesses the authority to grant an "exception" for religious, charitable or educational purposes from the hotel occupancy tax absent constitutional and statutory authority to do so.

### JM-0690: Limited Use of Hotel and Motel Tax

Subsection 3c(a)(3) of article 1269j-4.1, V.T.C.S., does not authorize the use of hotel/motel occupancy tax funds for advertising which is not related to attracting conventions, visitors, or tourists..

### JM-0184: Hotel Occupancy Tax May Not Be Used for Golf Course

The county of El Paso may not use revenues from a county hotel occupancy tax collected pursuant to article 2372-8, V.T.C.S., to purchase golf carts or finance general improvements for a county-operated golf course.

## County Development District Tax

### JC-0291: County Development District Not Authorized to Levy Ad Valorem Taxes

A county development district created under chapter 383 of the Local Government Code is not authorized to levy ad valorem taxes. A county development district may undertake a project only if it is consistent with the purpose of chapter 383 - "providing incentives for the location and development of projects in certain counties to attract visitors and tourists." *Tex. Loc. Gov't Code Ann. § 383.002 (Vernon 1999) (statement of legislative intent).*

# Loans Under Local Government Code Chapter 380

### GA–0529: City May Fund Housing that Promotes Economic Development

Texas Constitution article III, section 52-a and Local Government Code Section 380.001 authorize a city to make a loan for a housing project if the project will promote economic development within the meaning of these provisions.

### GA-0137: Municipal Sales Tax Agreements

House Bill 3534, which amended Sections 321.002(a)(3) and 321.203 of the Tax Code, prevents certain outlets, offices, facilities or locations from qualifying as a "place of business of the retailer" for municipal sales tax purposes. House Bill 3534 does not invalidate existing municipal sales tax rebate contracts nor prohibit municipalities and businesses from executing new contracts.

### GA-0071: Municipal Sales Tax Rebates

If a business collects and remits municipal sales taxes as required by law, the city's rebate of those taxes to the business does not violate article III, section 55 of the Texas Constitution. *See* Tex. Const. art. III, § 55 (prohibiting the legislature and political subdivisions from "releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual" to the state or political subdivision).

### LO 95-090: City Cannot Abate Delinquent Taxes

Neither Local Government Code Section 380.001 nor Tax Code Section 312.204 authorizes a municipality to abate delinquent taxes owed by a taxpayer who participates in the municipality's enterprise zone. Moreover, article III, section 55 of the Texas Constitution expressly forbids the abatement of delinquent taxes.

### DM-0185: Economic Development Program

Section 380.001 of the Local Government Code, which the legislature enacted pursuant to article III, section 52-a of the Texas Constitution, is constitutional. The legislature intended Section 380.001 to authorize municipalities to offer a range of incentives designed to promote state or local economic development. It is outside the scope of the opinion process to determine, however, whether a particular incentive or combination of incentives constitutes a "program . . . to promote state or local economic development" for purposes of Section 380.001 of the Local Government Code.

A home-rule municipality may issue bonds to fund an economic development program that the municipality has established in accordance with Section 380.001, but only if two conditions are met.

First, the bonds must be in an amount and to the extent allowed by the city charter. Second, a majority of the duly qualified property tax-paying voters must approve the bond issuance at an election held to consider the issue.

# Public Improvement Districts

### GA-0724: City Can Contract with Another Local Government to Collect Special Assessment s Imposed by the Public Improvement District

A special assessment to finance a public improvement is imposed only upon the property that is specially benefitted by the improvement, and its amount is based on the special benefits accruing to the property. A special assessment is imposed under the taxing power, but it is not an ad valorem property tax within the Texas Constitution, nor does the term "taxation" in statutes ordinarily include special assessments.

Tax Code Section 6.24 authorizes contracts between a municipal governing body and another taxing unit or an appraisal district board to collect ad valorem taxes, but it does not authorize contracts to collect special assessments imposed under the Public Improvement District Assessment Act, Local Government Code chapter 372, subchapter A.

Pursuant to the Interlocal Cooperation Act, a municipal governing body may contract for the collection of a special assessment it imposes in a public improvement district with another local governmental entity that is authorized to collect assessments for public improvements.

### GA-0528: City Must Have Interest in Land it Funds

Texas Constitution article III, section 52(a) requires a city that builds a seawall on privately-owned land to maintain sufficient control over it to ensure that the public purpose is accomplished and to protect the public's interest in it. To carry out this duty, a city must have an appropriate interest in the land on which a seawall funded from assessments levied pursuant to Local Government Code, chapter 372, subchapter A or B will be located.

### GA-0237: Homestead is Subject to Forced Sale for Nonpayment of Public Improvement District Assessments Relating to Lien Created Before Property Used as Homestead

A public improvement district assessment may be enforced by foreclosure of a homestead provided that the statutory lien created by Section 372.018(b) of the Local Government Code predates the date the property became a homestead and the amounts to be collected fall within the lien's scope.

**JC-0386: Homestead is Not Always Subject to Forced Sale for Nonpayment of Public Improvement District Assessment**

Chapter 372 of the Local Government Code authorizes a city to levy special assessments on real property to aid in funding improvements in public improvement districts. The municipal governing body is authorized by statute to collect these assessments according to the procedures for collecting an ad valorem tax on real property, except for procedures applicable to the forced sale of homestead property to collect ad valorem taxes.

Assessments are not “taxes” as that term is used in the Texas Constitution, and a homestead may not be subjected to forced sale for nonpayment of a public improvement district assessment under the “taxes due thereon” clause of article XVI, section 50 of the Texas Constitution.

A homestead may not be subjected to forced sale for nonpayment of a public improvement district assessment under the “improvement thereon” clause of article XVI, section 50, absent a written, signed contract between the owner of the homestead property and the supplier of materials and labor for an improvement on the homestead property.

**LO 96-129: City Must Receive a Petition From Property Owners First to Establish a Public Improvement District**

The petition referenced in Section 372.002 of the Local Government Code and described in Section 372.005 of the Local Government Code is a prerequisite for the establishment of a public improvement district.

## Municipal Management Districts

**KP-0227: Clarification Concerning Member of Legislature May Not Be District Employee**

To the extent the president of a municipal management district is a nontemporary, salaried employee of the district, he or she is prohibited by article XVI, section 40(d) of the Texas constitution from also serving as a state legislator.

Article XVI, section 40(d) does not prohibit an individual who works as an independent contractor from also serving as a state legislator. The Texas Supreme Court's right-to-control test to determine whether an individual is an independent contractor is fact intensive, and a mere affirmation or joint statement without factual support is likely insufficient to establish an individual as an independent contractor.

Though generally a state legislator may accept a fee for work performed in a capacity other than as a legislator, provisions in chapter 572 of the Government Code limit a legislator's private employment. Penal Code chapter 36 contains criminal provisions potentially applicable to a legislator's private compensation. A violation of these provisions is determined based on relevant facts and outside the purview of an attorney general opinion. Instead, the Texas Ethics Commission may issue opinions on ethical questions or bring civil charges for a violation of chapter 572, and local prosecutors may bring any criminal charges warranted by particular circumstances.

**GA-0386: Member of Legislature May Not Be District Employee**

Article XVI, section 40(d) of the Texas Constitution prohibits an employee of a municipal management district operating under chapter 375 of the Local Government Code from simultaneously serving as a member of the Texas Legislature. This constitutional provision does not prohibit an individual who works as an independent contractor for a municipal management district from simultaneously serving as a member of the Legislature. Attorney General Letter Opinion 90-55A is overruled.

**GA-0307: Dual Office Holding Forbids Holding Two Board Positions**

Under the conflicting loyalties aspect of the common-law doctrine of the incompatibility, an individual may not simultaneously serve as trustee of the New Caney Independent School District and director of the East Montgomery County Improvement District.

**GA-0268: Municipal Management Districts Generally Do Not Have Power of Eminent Domain**

A municipal management district (MMD) created under chapter 375 of the Local Government Code has no power of eminent domain. A municipal management district created under chapter 376 has eminent domain power only if the power is conferred expressly or implicitly. Those districts whose enabling statutes expressly withhold eminent domain power do not have such power. Harris County Improvement District No. 3 does not have eminent domain power. The enabling statute of any other municipal management district must be analyzed to consider whether the statute confers expressly or implicitly the power of eminent domain. A municipal management district with the power of eminent domain may use the power to acquire property for a use consistent with the district’s legitimate purposes even if exercise of the eminent domain power may interfere with a transaction between private parties. Whether property is being condemned, in any particular circumstance, for a legitimate purpose of the condemning municipal management district is a question of fact.

► SB 224 (2005) clarified that most MMD’s have no eminent domain power.

### GA-0150: Special Districts with Municipal Management District Powers May Not Provide General Law Enforcement Services

The Town Center Improvement District of Montgomery County (with powers of a MMD) may not enter into a contract with a city to provide general law enforcement services outside the city's jurisdiction in unincorporated areas of Montgomery County.

## County Economic Development Powers

### KP-0261: Durational or Amount Limitations on Chapter 381 Economic Development Programs

With respect to specified programs authorized by section 381.004 of the Local Government Code for stimulating business and commercial activity in a county, the limitations on tax abatement agreements stated in subsection 381.004(g) do not apply to loans and grants made pursuant to subsection 381.004(h).

Loan and grants authorized by subsection 381.004(h) must comply with sections 52(a) and 52-a of article III of the Texas Constitution. Section 7 of article XI of the Texas Constitution may also impact how such loans and grants are structured, depending on the circumstances.

Subject to these constitutional limitations, subsection 381.004(h) leaves the duration and amount of economic development loans and grants to the commissioners court's budgetary discretion in the first instance.

### JC-0092: County Provision of an Economic Development Grant to a Private Company

Chapter 312 of the Tax Code neither precludes nor authorizes a commissioners court agreement to make payments of county funds to a private company that are the economic equivalent of an abatement of real property taxes. However, Section 381.004 of the Local Government Code, which Dallas County cites as the basis for its authority to make such payments, neither expressly or impliedly authorizes a commissioners court to enter into an agreement of this kind. The legislative history indicates that the legislature did not intend Section 381.004 to implement article III, section 52-a of the Texas Constitution and, moreover, confirms that the legislature did not intend Section 381.004 to authorize county economic development loans and grants.

► In 2001, the Texas Legislature added subsection 381.004 (g) of the Local Government Code. This subsection allows the county commissioners court to develop and administer a permissible Chapter 381 program, which includes entering into a tax abatement agreement with an owner or lessee of a property interest. *See Tex. H.B. 2870, 77th Leg., R.S. (2001).*

### LO 98-007: County Lacks Authority to Fund Small Business Development Program

Section 381.004 of the Local Government Code does not authorize a commissioners court to appropriate funds to a small business development program that was not developed by the county and is not administered either by the county or by another entity under contract with the county.

### LO 96-035: Donation of County Tax Funds to a Nonprofit Organization

Article III, section 52 of the Texas Constitution prohibits a county commissioners court from making a donation of county tax funds pursuant to Local Government Code Section 381.001(f) to a nonprofit organization whose purpose is to assist industrial development.

## Public Disclosure of Economic Development Negotiations

### ORD-639: Adopting Two-Prong Test for Confidentiality of Commercial or Financial Information; Overruling Open Records Decision No. 592

*National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), which established a two-prong test for the confidentiality of commercial or financial information, is a "judicial decision" for the purpose of Section 552.110 of the Government Code. Information is confidential if disclosure is likely to either impair the government's ability to obtain necessary information in the future or cause substantial harm to the competitive position of the person from whom the information was obtained.

## Miscellaneous Opinions Concerning Economic Development

### GA-1058: Authority to Fund Senior Center Operated by a Nonprofit

Whether any particular project of a municipal development district ("MDD") meets the statutory requirements in order to be funded as a development project involves questions of fact that cannot be determined through the opinion process. A court would likely conclude that chapter 377 of the Local Government Code authorizes a MDD to contract with a private, nonprofit organization to operate a civic center.

### GA-1052: Major Events Trust Fund

While the comptroller of public accounts is expressly authorized by article 5190.14, section 5A(v) of the Revised Civil Statutes to adopt rules to implement the Major Events Trust Fund statute, such authority does not include authority to adopt a rule that is contrary to the language of the statute.

### GA-0687: TxDOT Does Not Have Authority to Transfer Trust Money to Subaccount

Section 228.012 of the Transportation Code does not provide authority for the Texas Department of Transportation to transfer monies held in trust in a particular subaccount of the state highway fund to a regional transportation authority.

### GA-0653: Regional Transportation Authority's Different Tax Rates for Different Subregions Could Be Constitutional

Article VIII, section 1(a) of the Texas Constitution, requires that all taxation be equal and uniform. Article VIII, section 1(a) authorizes the classification of persons and property for taxation when the tax classification is not unreasonable, arbitrary, or capricious and when the tax operates equally on all persons or property within the class.

Chapter 452 of the Transportation Code authorizes a Regional Transportation Authority ("RTA") consisting of more than one subregion to collect a sales and use tax at different rates in the different subregions. For any RTA organized under chapter 452 that has more than one subregion and that collects the sales and use tax at different rates from the different subregions, the difference in tax rates could be upheld under article VIII, section 1(a) if the tax falls equally on people and property within each subregion and the different tax treatment by each subregion is reasonable.

### GA-0634: "Fair Market Value" Does Include the Values of a Lease

The Brazos River Authority (the "Authority"), a special law conservation and reclamation district under Texas Constitution article XVI, section 59, owns real property surrounding Possum Kingdom Lake that is leased to private parties at below-market lease rates. The Authority is formulating procedures to offer to sell the property to the lessees of the property.

The first question presented is whether the leased property must be valued as unencumbered by the leases or encumbered by the unexpired terms of the existing leases for the purposes of determining the sales price if the property is offered for sale to the lessees. If the property is offered for sale to the lessees, the Authority would sell the property pursuant to Section 49.226 of the Water Code. Section 49.226(a) generally provides that surplus real or personal property owned by a water district may be sold in a private or public sale or be exchanged. Section 49.226(a) requires that the surplus property be exchanged for "like fair market value." The Authority and the lessees assume that this fair market provision applies to the sale of the Authority's property. The lessees contend that the fair market value provision in Section 49.226 requires the Authority to value the property as encumbered by the leases. Because Section 49.226(a) does not explicitly state that a lease may not be considered, fair market value as used in the statute has the meaning established by the Texas courts, which meaning includes the value of a lease. Thus, application of the established judicial definition of fair market value requires the Authority to value the property as encumbered by the leases.

The second question presented is whether using the discounted sales price resulting from valuing the Authority's property as encumbered by the leases would violate Texas Constitution article III, section 52(a), which prohibits gratuitous transfers of public funds to individuals or private parties. Using a discounted sales price--resulting in this particular instance from valuing the property as encumbered by the existing leases--would not violate article III, section 52(a).

**GA-0603: Private Entity that is Supported or Spends Public Funds is Subject to the Public Information Act**

A private entity that is supported in whole or in part by public funds or that spends public funds is in whole or in part a governmental body subject to the Public Information Act. Whether a private entity, such as a non-profit economic development foundation that receives partial funding from "quasi-public" utilities, is a governmental body requires a determination regarding the public nature of the funds and whether the public funds are spent or received by the entity in return for specific, measurable services or as general support. Such a determination involves the resolution of facts and is inappropriate for the attorney general opinion process.

Private entities that are in whole or in part governmental bodies under Section 552.003 of the Government Code are subject to the Public Information Act and must make public information available to the public. Whether information is public information required to be disclosed or information otherwise excepted from disclosure is a matter for an attorney general decision under the Public Information Act.

►In 2019, the Texas Legislature amended the Public Information Act concerning the disclosure of certain contracting information. Including describing those private entities required to provide contracting information. *See Tex. S.B. 943, 86th Leg., R.S. (2019)*.

**GA-0472: Hospital District Status Defined**

The Sabine County Hospital District, which intends to maintain an ambulance only for transporting patients between hospitals, is not required by law to dispatch its ambulances for emergency calls, even if there are no other ambulances operating within the District.

The District may provide financial incentives in a contract to induce a doctor to move to the District so long as the District finds that such an incentive is necessary for the direct accomplishment of a legitimate public purpose, that the District receives adequate consideration for its expenditure, and that appropriate controls are in place to assure that the public purpose will be carried out. Furthermore, the Professional Services Procurement Act, Government Code chapter 2254, which governs a hospital district’s contract for professional services, requires that payment for services rendered under the contract be fair and reasonable, that they be consistent with and not higher than the recommended practices and fees published by the applicable professional associations, and that they not exceed any maximum provided by law. The act does not permit the contract to be competitively bid.

The District may meet under Government Code Section 551.071 in a closed meeting to discuss legal issues raised in connection with the contract for the doctor's professional services. The District may not meet under Government Code Section 551.087 in a closed meeting to deliberate economic development negotiations.

**GA-0206: Business Council Not Subject to Open Meetings Act**

The Bryan Business Council, Inc. is not a "governmental body" within the terms of the Open Meetings Act, chapter 551 of the Government Code.

**JC-0567: Enterprise Zone May Not Receive an Additional Designation**

Under chapter 2303 of the Government Code and Section 151.429 of the Tax Code, a business entity located in an enterprise zone and presently designated an "enterprise project" and allocated the maximum jobs and related tax benefits may not receive an additional and concurrent enterprise project designation in the same enterprise zone and an additional maximum job allocation and the related tax benefits.

► In 2003, the Texas Legislature added Section 2303.406(e) to the Government Code. This section allows the "department [to] designate multiple concurrent enterprise projects in the same enterprise zone. . ." *See, Tex. H.B. 2424, § 92, 78th Leg., R.S. (2003)*. Additionally, the Texas Legislature amended Section 151.429 of the Tax Code. This section now allows a maximum refund of $500,000 to a "double jumbo enterprise project" and a maximum refund of $750,000 to a "triple jumbo enterprise project" in each state fiscal year. *See Tex. S.B. 275, §§ 3.51 to 3.53, 78th Leg., R.S. (2003)*.

**JC-0327: Non Profit Corporation Not Subject to Open Meetings Act**

The board of the Bryan-College Station Economic Development Corporation, an EDC organized under the Texas Non-Profit Corporation Act and not incorporated under the Development Corporation Act of 1979, is not subject to the Open Meetings Act.

**LO 98-082: Meaning of the Phrase "Fair Market Value of the Land"**

Under Local Government Code Section 272.001(h), the fair market value of a municipality's interest in land is the amount that a willing buyer, who desires but is not obligated to buy, would pay a willing seller, who desires but is not obligated to sell. Unless evidence to the contrary is produced, the leasehold estate merges into the fee simple estate when the lessee purchases the land he or she currently leases. A lessee who purchases the whole of the city's interest in a lakeside lot under Section 272.001(h) must pay for both the city's right to future rent payments and the city's reversionary interest.

A municipality may not instruct an appraiser as to whether to value the land as encumbered or unencumbered.

**LO 96-073: Withdrawing from Transit Tax to Adopt Sales Tax for Economic Development**

Should the City of Richardson decide by election to withdraw from the Dallas Area Rapid Transit (DART), it would be able--presuming it met the qualifications of article V.T.C.S. 5190.6, Section 4B and Tax Code Section 321.101(f) for the ceiling on its sales and use taxes--to adopt a Section 4B sales and use tax. However, the city would not be eligible to adopt a sales and use tax under V.T.C.S. article 5190.6, Section 4A, or the "additional sales and use tax" created by Tax Code Section 321.101(b).

**LO 95-085: Private Entity Included in Qualified Hotel Project**

The term "qualified hotel project," as defined by House Bill 2282, Act of May 11,1993, 73rd Leg., R.S., ch. 231, 1993 Tex. Gen. Laws 480, includes a private entity selected by a municipality.

**DM-0188: Public Property Leases and Taxation**

Property owned by the City of Amarillo consisting of an airport maintenance hangar that is leased to a private party for operation is exempt from ad valorem taxation if the property is used in direct support of the operation of the airport by the city. Buildings that are owned by the city are not tax-exempt if they are owned purely for the purpose of renting them to private commercial interests. An office complex owned by the Amarillo Independent School District and partially leased to private parties and other political subdivisions remains tax-exempt if the facility was acquired in its entirety for the purpose of conserving school district funds. Property acquired by the Amarillo Junior College District for purposes of future expansion and temporarily leased to private persons for storage units is tax-exempt. Property rented to students and employees of the junior college for residential housing also remains tax-exempt, but property rented for these purposes to persons who are not students or employees is subject to property taxation.

**City Council Agenda**
**February 1, 2021**

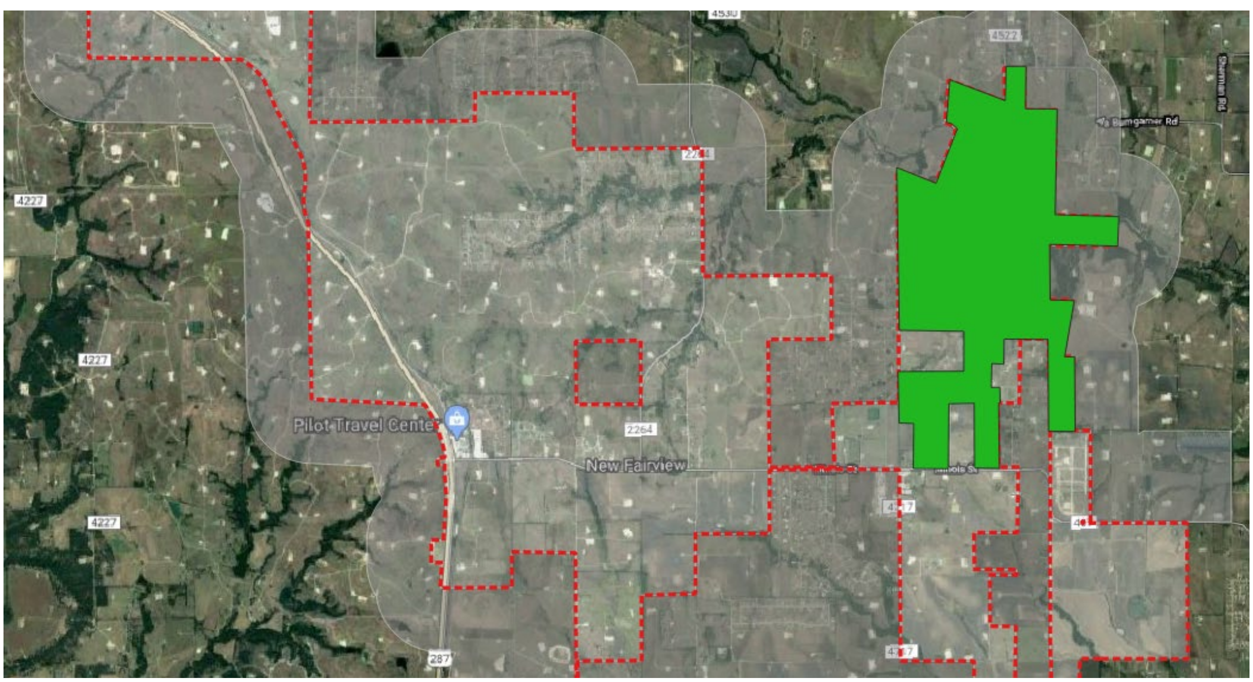
**Agenda Item:** **Presentation** **(Discussion)**

## Agenda Description:

Discussion with staff and presentation of the proposed concept plan for the 1,806 acre Shoop Ranch has been requested by Rockhill Capital & Investment.

## Background Information:

Rockhill Capital & Investments has been in discussion with the city staff regarding the potential development of the 1,806 acre Schoop Ranch which is generally located at FM 407 and South County Line Road heading north for approximately two-and-one-half miles to AA Bombarger Rd and west approximately one-mile on FM 407. The map below provides a visual representation, in green, of the location and size of the property under discussion.



Rockhill Capital & Investments has expressed an interest in utilizing some form of an improvement district, such as the Public Improvement District (PID) used with Constellation Lake, or a Municipal Management District (MMD) that operates in a similar fashion but is created legislatively. There are several examples of an MMD in Dallas, Arlington, Denton, etc.

The developers have already participated in the cost of the water/sewer feasibility study as well as the annual fee for the transportation consulting services.

## Financial Information:
N/A

## City Contact and Recommendation:
Ben Nibarger, City Administrator
Discussion item only

## Attachments:

**City Council Agenda**
**February 1, 2021**

**Agenda Item:** **Presentation** **(Discussion)**

## Agenda Description:
Discussion with staff regarding the streets improvement project.

## Background Information:
In my weekly update with our engineering firm, Pacheco Koch, they informed me that the survey is now behind schedule due to several of their employees being out with Covid. They estimated this would lead to a 30+ day delay in deliverables.

This means that we may have a push in the start of streets construction from the March/April time frame to potentially May. They recommended that we could start to bid out the projects in pieces but that would potentially cost the city hundreds of thousands of dollars in mobilization fees and reduce our ability to maximize the impact on fixing the streets. I've asked them to come up with other solutions, adding additional people working on the documents following the completion of the survey. I've asked them to update their projections on when we will be getting the documents ready for bid after they have developed solutions to mitigate this delay.

Staff will update the Council and the city website regarding the timing as soon as we have better information.

Here is a brief outline of the timeline on the streets project to date. The items in red are tasks that are part of the critical path, meaning that their successful completion impacts the ability of future tasks to begin.

**March 2020**

- Engagement of PK to provide engineering and repair estimates for the roads

**April 2020**

- Implemented an interim road maintenance and repair program, to mitigate the worst of the potholes and failing roads; approximately 30 tons of asphalt was used to patch the worst sections of the road (still in progress; lost contract employee but have another starting early February 2021)
- Engagement of an auditor for the last five-years financials; required for the city to consider issuing debt as the funding source

**May 2020**

- PK provides engineering and repair estimates for the roads

**July 2020**

- Budget development that provides the funding necessary for the operations of the city as well as payment of debt for a potential bond issue to fix the roads
- Initiated a Pavement Condition Index (PCI) of all the City-owned roads and create a GIS layer, containing information on each road section
- Development of a plan to complete the maintenance and reconstruction of the City's roads in a short time-frame to minimize further road degradation

**August 2020**

- Budget development and work with Council
- Completed a Pavement Condition Index (PCI) of all the City-owned roads and developed a GIS layer, containing information on each road section
- Renegotiated the fee schedule of the city's Financial Advisor (Hilltop Securities), saving the city 15% in the fee structure
- Renegotiated the fee schedule for the professional service providers (i.e. city attorney, planner, etc.)

**September 2020**

- Budget development and work with Council
- Council approves and adopts a budget with a supporting tax rate that funds city operations as well as the debt payment for the streets repair project
- Received final audit reports for the last five fiscal years; the audit "presented fairly", meaning there were no material deficiencies in the financial records of the city
- Engagement of an auditor for the fiscal year ending September 30, 2020; this is the first fiscal-year showing property tax revenue and a strong fund-balance
- Began working with Financial Advisor and Bond Counsel on the potential sale of bonds to fund the streets project

**October 2020**

- Work on drainage and water flow issues, an underlying cause of the escalating failure of existing roads in the city, and something that must be repaired prior to installation of new roads (still in progress)
- Requested proposals from engineering firms for the streets improvement project; received quotes from PK, Gresham & Smith, and discussion with Freeman-Millican, Inc.

**November 2020**

- Election of new Council
- Presented staff's recommendation of PK to complete the survey, design, and engineering of the project; estimated time of completion is 90 to 120 days dependent upon weather
- Council approves the agreement and PK is engaged to complete the survey, design, and engineering for the initial road project, approximately $300,000

**December 2020**

- Received final audit reports for the fiscal year ending September 30, 2020; the audit "presented fairly", meaning there were no material deficiencies in the financial records of the city; this is the first audit showing financial strength and extremely important to our bond rating and ability to obtain the necessary funding
- Financial Advisor presented a proposed timeline for the sale of bonds; Council approved the Notice of Intent to sell bonds to pay for the streets project; statutory timeline requirements for public notification and review of the proposed bond sale
- Published the Notice of Intent to sell bonds in the Wise County Messenger; two-week requirement
- Engagement of S&P to provide a bond rating for the city
- Engagement of PK to complete the survey, design, and engineering for Graham Rd, City Administrator negotiated this work for no additional charge, approximately $40,000 of savings (December 2020 with estimated delivery of products by February 2021)
- Engagement of PK to complete the survey, design, and engineering for Pioneer Rd, paid for by the Fairview Meadows development, a savings of $40,000 to $160,000 (est. February 2021)
- Council adopted amended financial policies to strengthen our position for the S&P ratings call (December 2020)

**January 2021**

- Completed the S&P interview and received an A+ bond rating; primarily due to the dedicated funding source (property tax), intentional management of the project (City Management), and adoption of financial policies (City Council) (January 2021)
- PK updated city staff that there has been a delay in the survey due to Covid illness on their team. The estimated impact on the timeline is 30+ days. Staff has asked them to come up with solutions to mitigate the delay.

**February 2021**

- Council will receive the competitive bid for the bonds on February 1, 2021, and choose to accept or refuse the bids; read more about this below
- If the Council accepts the bids, then we will complete the sale of the bonds and receive the funds in March 2021

**March 2021**

- PK provides the final drawings for the streets project and lets the plans out for competitive bids on the streets work (March/April 2021)
- If the Council refuses the bids in February, then we will look at a negotiated sale of the bonds and present the terms to the Council
- If the Council refuses all offers for the bonds, the city will not have sufficient financial resources to complete the streets project
- If the city has funding for the roads, we will review the bids, select the contractor and begin construction (est. March or April 2021)

**April 2021**

- Receive competitive bids from contractors for the streets project and select the successful contractor
- Receive funds from the negotiated bond sale, we will complete the sale of the bonds and receive the funds (est. April 2021)

**May 2021**

- Start construction on the streets project.

**Financial Information:**
N/A

**City Contact and Recommendation:**
Ben Nibarger, City Administrator
Discussion item only

**Attachments:**

**City Council Agenda**
**February 1, 2021**

## Agenda Item: Presentation (Discussion)

## Agenda Description:

Discussion with staff regarding the City of New Fairview revenues, expenditures, property tax rate, and exemptions.

## Background Information:

Currently, the city has adopted ordinances for a tax freeze (ceiling) for over 65 and disabled, a $10,000 exemption for over 65 and disabled, as well as a tiered exemption for disabled veterans:

- $5,000 of assessed value for 10% but less than 30% disabled; or
- $7,500 of assessed value for 30% but less than 50% disabled; or
- $10,000 of assessed value for 50% but less than 70% disabled; or
- $12,000 of assessed value for 70% or greater disability.

The Council has requested that the staff prepare and present an ordinance that would provide a general homestead exemption. The statute governing a municipality's ability to offer this type of exemption allows for an exemption of up to 20% of the assessed value, but no less than $5,000.

**What are homestead exemptions used for?**

Homestead exemptions are generally used as a tool to shift the cost of city operations from defined groups, such as elderly, disabled, or residential homeowners, to business and commercial properties. Due to the lack of business and commercial entities in New Fairview, there is no real shift of the cost, just reducing overall revenue to the city.

A general homestead exemption would effectively reduce residential homeowners' property tax rate from $0.30 to around $0.24 per $100 of valuation at the full 20% exemption level.

**How much would this save the average household?**
The average assessed value of a property in New Fairview is just under $100,000. With a property tax rate of $0.30 per $100 valuation, that means that the average tax bill for residents in New Fairview is around $300 per year. Further, this means that if the Council chooses to offer the full 20% exemption, the average taxpayer in New Fairview would see a savings of around $60 per year, or $5 per month.

**How does this impact the budget?**
Using the current year's assessed value, approximately $140 million, this exemption would reduce the city's annual property tax revenue by approximately $80,000, over half the streets repair program's annual cost, for the first three years.

**How does this impact the street's improvement?**
The streets program is budgeted to cost the city around $0.10 of the $0.30 property tax rate in the first three years. Currently, the cities revenues and expenditures are fairly evenly matched. If the city increases revenue in other areas, offsetting the loss of this revenue, it will have little impact.

Currently, it appears that building permits and other revenues may exceed the budget. Still, these are one-time revenues and as a best practice, cities should not generally consider one-time revenues when taking on long-term financial obligations.

If the other revenues do not materialize, the city would have to reduce services levels to offset the loss of revenue, or the most conservative approach would be to proactively reduce the scope of the streets project by around 60% to match revenues to expenditures.

**How does this impact the city financially?**
The city adopted a budget that adds money to the General Fund balance. This was intentional, as it impacts our bond rating, making the cost of borrowing money go down as we issue debt to reconstruct streets or do other capital projects. One of the big items that the rating agencies look at is trends in the city's financials.

While there may be enough excess revenue coming into the budget from other sources, such as new home building permits, as well as increased tax base revenue in future years, from new home construction, it is in the best interest of the city to slightly increase the fund balance each year to establish a positive trend.

Finally, the General Fund balance acts as a "shock fund," allowing the city to tackle tough financial years if something happens in the future that reduces city revenues, such as when the legislature changed the sales tax laws on natural gas production.

**How does this impact the city long-term?**
The legislature passed a law that did not allow a taxing entity to change/repeal this optional homestead exemption once adopted. This expired in 2019, but there is a very good chance that this will be addressed or renewed in the current legislative session that just started, meaning that if the Council adopts this, then it may become permanent.

**Financial Information:**
If adopted, it could reduce the city revenues by as much as $85,000

**City Contact and Recommendation:**
Ben Nibarger, City Administrator

**Attachments:**
Ordinance

**City Council Agenda**
**February 1, 2021**

**Agenda Item:** **Presentation** **(Discussion)**

## Agenda Description:

Discussion with staff regarding public safety services in New Fairview through the introduction of annual safety inspections.

## Background Information:

Municipalities are granted regulatory authority to ensure public health and safety. Certain business and commercial operations in the City, due to the nature of the operation, carry with them particular risks for the occurrence of dangerous incidents, including fire, explosion, nuisance or other catastrophe, and for that reason present a threat to the health and safety of the city.

The city is not currently enforcing safety inspections to ensure that commercial entities within the city limits are in compliance with applicable federal, state and local regulations to protect the health, safety, and welfare of the city. Staff is recommending that the Council adopt an ordinance that implements an Annual Safety Inspection Program to ensure that business and commercial operations within the City are operating in compliance with these regulations.

Staff is working with counterparts in the different commercial establishments within the city limits to discuss the implementation of this ordinance and how it will impact their operations. Staff will bring forward an updated fee schedule at a future meeting that establishes the fees, timelines, checklists, and documentation for implementing the annual safety inspections.

**Financial Information:**

This revenue estimate is early, but it could generate as much as $400,000 in annual revenue that would be targeted for improvement of public safety, i.e. fire, EMS, and police.

**City Contact and Recommendation:**

Ben Nibarger, City Administrator

**Attachments:**

Ordinance

**City Council Agenda**
**February 1, 2021**

**Agenda Item:** **Presentation** **(Discussion)**

## Agenda Description:

Discuss with staff the workload and utilization of consultants (requested by the Mayor).

## Background Information:

This item was requested to be added to the agenda by the Mayor. His email outlines what he wishes to discuss regarding this issue:

> *Make sure you use the professionals --- most of their work is paid for by developers - or from bond money to make sure the road projects are done correctly -*
>
> *You may need several additional professionals in the near future to do some of the request in this letter.*
>
> *Ben - all the council members see how hard you and the office staff are working. We see all the different tasks piling up on you.*
> *It is easy to make a list of all the different projects you, Monica, and Brooke are working on. You also provided a flow chart earlier.*
> *It takes hours just to meet with different people. Time Management issues.*
> *During my career, many days I would have to attend meetings all day and then do the paperwork after everyone left the building. It was amazing how much work you could accomplish without people in the building after work. It was unfortunate that you had to work many twelve plus hour days.*
>
> *Spreading yourself to thin can lead to negative side effects. We all know what these can be. Burnout can happen quickly. Mistakes and neglect with projects begin. Then poor performance. Frustration. Stress...*
>
> *The City Council needs to be aware of the workload increasing in our city.*

*When citizens come and city contractors come to the office - You, Monica, and Brooke must speak with them and help them with their issues. The citizens, contractors, businesses evaluate so much about our city with these unannounced meetings. It takes away from your work but the staff has to do it.*

*We all have been hearing great reports with your interactions with the public - but it adds to your load and it only takes a few bad encounters or a few bad phone calls to damage the city reputation. What do they say - it take ten good responses to make up for one bad encounter?*

*Saying we can do it -- we can do it all --- is a hole that gets deeper and deeper. Use the professionals.... You have also brought in other companies to take care of many projects -- the professionals.*

**Financial Information:**
Undetermined, if the Council directs additional consultant work, it will increase expenditures.

**City Contact and Recommendation:**
Ben Nibarger, City Administrator

**Attachments:**
N/A

**City Council Agenda**
**February 1, 2021**

**Agenda Item:** **Presentation** **(Discussion)**

## Agenda Description:
Discuss with staff the city website (requested by the Mayor).

## Background Information:
This item was requested to be added to the agenda by the Mayor. His email outlines what he wishes to discuss regarding this issue:

> *It sounded like at our last meeting we needed to move forward with purchasing new WEB site software. The present Website software was very limiting and difficult to use.*
> *Please present what you would like the city council to consider purchasing.*
> *A plan to do the information transferring and updating? Another part time employee to do this work that has much experience with working with websites.*

**Financial Information:**
Undetermined at this time.

**City Contact and Recommendation:**
Ben Nibarger, City Administrator

**Attachments:**
N/A

**City Council Agenda**
**February 1, 2021**

**Agenda Item:** **Presentation** **(Discussion)**

## Agenda Description:

Discuss with staff the agenda format, links to items (requested by the Mayor).

## Background Information:

This item was requested to be added to the agenda by the Mayor. His email outlines what he wishes to discuss regarding this issue:

> *Please put a link by each agenda item that can be used to get to the information for that agenda item.*
>
> *The last meetings had a tremendous amount of information that we had to spin through to find the agenda information. That was difficult and frustrating.*
>
> *Next*
> *If at all possible - group the speakers - those making presentations - together where they can speak and leave.*
>
> *In our last agenda, and in past agendas, you have tried to do this.... --- but maybe you could find an even better order to make the agenda accomplish this flow. It is difficult to do this.*

**Financial Information:**
Undetermined at this time.

**City Contact and Recommendation:**
Ben Nibarger, City Administrator

**Attachments:**
N/A

**City Council Agenda**
**February 1, 2021**

## Agenda Item: Presentation (Discussion)

## Agenda Description:

Discuss with staff the agenda format, links to items (requested by the Mayor).

## Background Information:

This item was requested to be added to the agenda by the Mayor. His email outlines what he wishes to discuss regarding this issue:

> *We see our budget expenditures in our meeting packets at the beginning of each month.*
> *This tells the city council what the yearly total for each budget allocation is, what was spent the prior month, and what the remaining funds in that budget are.*
>
> *During the last nine months, after the new bookkeeping software was purchased to replace the quicken software by the interim city manager, CPA Kim Wilson from Granbury who worked as a City CPA in Rowlett, set up the bookkeeping with the bookkeeping software representatives and Monica.*
> *Three individuals were putting this bookkeeping system together. Budget Categories.*
> *CPA Kim Wilson charged New Fairview 800 dollars a day, one day a week, for ten weeks to complete this task. $8000.00*
> *I understand the software representative is still working with our city office to make sure the software is functioning properly.*
>
> *At our city council meeting the auditor made a presentation about the bookkeeping for the six prior years and said the bookkeeping was good.*
>
> *At another city council meeting the auditor made a presentation about the bookkeeping for the last year and said the bookkeeping was good.*

*Individual expenditures are posted into the computer program software in order to show how the budget categories are being utilized.*

*I think it would be extremely wise for the city council to get an expanded copy of the itemized item expenditures in each of the categories.*
*This should be easy to provide with the touch of a button on the keyboard. The bookkeeping program should easily provide this information to the city council.*
*But*
*The interim city manager said this was not really any of our business and he didn't have to and wouldn't show the city council the items from each budget categories. This seemed strange. Cities, Churches, Schools, Businesses request and demand to be able to see the itemized expenditures.*
*Checks and Balances. Protection for the City Council and the City Offices.*

*1.*
*This would provide the City Council members a better understanding of what the expenditures are in each of the budget categories.*
*With all the money that was spent on the computer software and for the CPA to set up the bookkeeping system, it should be very simple to provide this information in our city council packet.*

***Please provide November and December in the next packet.***
***If February is ready please provide this month to.***

*2.*
*Please also provide Credit Card expenditures and Amazon expenditures -- these expenditures should be broken into the correct categories.*

*3.*
*It will also be interesting to see how much the different developers and individuals are paying our attorneys - TOASE, [http://www.toase.com/](http://www.toase.com/)*

*TOASE | Home*

*Main Office - 6000 Western Place, Ste 200 | Fort Worth, Texas 76107 | 817-332-2580 | Fax 817-332-4740 San Antonio Office - 13750 San Pedro Ave Ste 555 | San Antonio, Texas 78232 | 210-546-2122 | Fax 210-546-2130*

*www.toase.com*

*Our plat and design professional - Dunnaway*
*https://www.esri.com/partners/dunaway-associates-a2Tf20000056ivQEAQ*

DUNAV

*Dunaway Associates | Esri Partner*

*Contact us. Dunaway Associates LP. 550 Bailey Ave Ste 400. Fort Worth TX 76107-2100. United States. T: (817) 335-1121. www.dunawayassociates.com Program Specialties*

*www.esri.com*

*Our Engineers Pacheco Koch*

*http://www.pkce.com/* *We use the Fort Worth Office.*

*Multi-disciplined civil engineering firm in Dallas, Texas*

*We are Pacheco Koch We are a multi-disciplined firm providing a range of services to clients including civil engineering, land surveying, landscape architecture, traffic engineering, utilities infrastructure and more.*

*www.pkce.com*

*, and others.*

*The city / expenses for - attorney fees - should also be available -- and for what work -- we are receiving several legal interpretation from them that we must have.*

*4.*
*The city also should have separate categories for the police department and the fire hall. Finding out what the electric bills are for the Multipurpose building will*

*be interesting. More use - more expenditures. Even if the firehall expenditures are paid by grants or other methods discussed in council meetings - the grants will want to know where the money was spent. The city council will want to know what the city is responsible for.*

*5.*
*Ben - all the council members see how hard you and the office staff are working.*
*We see all the different tasks piling up on you.*
*It is easy to make a list of all the different projects you are working with.*
*It takes hours to meet with different people.*

*Spreading yourself to thin can lead to negative side effects. We all know what these can be. Burnout can happen quickly. Mistakes and neglect with projects can begin.*

*6.*
*The city should strongly consider to have a CPA or ask the CPA that did our audits (he is familiar with our books) to spend at least two days a month making sure the books are being done correctly by the software company representatives and our office staff.*

*7.*
*The city is dealing with a tremendous amount of money. The City Council and Citizens are very interested in expense accountability.*
*How is the money being spent in each category? Itemized input.*
*Do we have enough categories to clearly explain the flow of money? Auditors - CPA's making sure the books are correct.*
*Many churches, cities, schools, businesses have had hundreds of thousands of dollars of mistakes - even millions of dollars of mistakes.*

*8.*
*For the protection of the city council members and for the City Office. This should be immediately done.*

*It's the price of taking care of the citizens money.*

*Please provide this information in the packet and we can discuss and ask questions when we look at the monthly financial report.*

**Financial Information:**
Undetermined at this time.

**City Contact and Recommendation:**
Ben Nibarger, City Administrator

**Attachments:**
N/A

**City Council Agenda**
**February 1, 2021**

## Agenda Item: Presentation (Discussion)

## Agenda Description:
Discuss with staff Items requested by a Council member for upcoming agendas: speed limits within New Fairview; changing the meeting date from Monday to an alternative day.

## Background Information:
This item was requested to be added to the agenda by a member of the Council.

**Financial Information:**
N/A

**City Contact and Recommendation:**
Ben Nibarger, City Administrator

**Attachments:**
N/A

NEW FAIRVIEW
THE CITY WITH A VIEW

**City Council Agenda**
**January 11, 2021**

**Agenda Item:** **(Consent Item)**

**Agenda Description:**
The minutes of the January 11, 2021 City Council meeting.

**Background Information:**
N/A

**Financial Information:**
N/A

**City Contact and Recommendation:**
Ben Nibarger, City Administrator
Staff recommends approval as submitted.

**Attachments:**
January 11, 2021 Minutes

**MINUTES**
**CITY COUNCIL**
**January 11, 2021**

**STATE OF TEXAS**
**COUNTY OF WISE**
**CITY OF NEW FAIRVIEW**

**THE CITY COUNCIL CONVENED INTO A CITY COUNCIL MEETING THE SAME BEING OPEN TO THE PUBLIC, THE 11TH DAY OF JANUARY IN THE NEW FAIRVIEW CITY HALL AND NOTICE OF SAID MEETING GIVING THE TIME PLACE AND SUBJECT THEREFORE HAVING BEEN POSTED AS PRESCRIBED BY ARTICLE 5 OF THE TEXAS GOVERNMENT CODE WITH THE FOLLOWING MEMBERS PRESENT:**

**CITY COUNCIL**
**Mayor Joe Max Wilson**
**Councilman Walter Clements**
**Councilwoman Julie Burger**
**Councilman Steve Misner**
**Councilman Patrick Gunter**

**PRESENT**
**City Administrator Ben Nibarger**
**City Secretary Monica Rodriguez**
**City Clerk Brooke Boller**

**ITEM NUMBER l. CALL MEETING TO ORDER:**
Mayor Wilson called the meeting to order at 7:04 P.M.

**ITEM NUMBER II. ROLL CALL:**
Roll call with the above-mentioned names present.

**ITEM NUMBER III. PLEDGE TO FLAGS**
**A.** United States of America

**B.** Texas Flag Honor the Texas Flag, I pledge allegiance to thee, Texas, one state under God, one and indivisible.

**ITEM NUMBER IV. WORK SESSION:** No action will be taken during the work session; the information regarding regular agenda items, and presentations from staff.
Mayor Wilson asked City Administrator Nibarger if we need to go in order or maybe have some of the presenters go first. City Administrator said there was a few changes. The Shoop property will be on the February agenda. Two months ago, Cecil stopped in and talked to me about a Redi Mix concrete plant. Already zoned manufactured. A 5-acre lot on Graham Rd. This is only for discussion. This group has 18 plants in Texas, and they are wanting to put one here. They are putting one in Ponder right now. The plant here will be the major dispatch center and create 18 to

20 jobs. Councilman Clements asked about the trucks and there will be 15 trucks. No fumes are going to be produced. Everything will be regulated with TCEQ. Councilman Clements asked what the weight of the trucks were, and he got his response was $68,000 to $70,000 with a 3 axle. It will generate sales tax money for the sale of concrete. The closest resident is 150 yards to the east to Skyview according to Scott Johnson. All safety and regulations are taken seriously. City Admin said that there is not much process. This year we were anticipating $150,000 and with this business coming in will generate about $600,000 per year in sales tax. Graham Rd. will need to be improved by the businesses on that road or city or some type of agreement will have to be made. Mayor Wilson asked City Admin if there was a packet for council to look at since he was home. City Admin said no because this is just discussion. City Admin asked council for their input. Mayor Wilson said then we will come back at the next meeting and discuss the business and process. City Admin said that they might not need zoning. Councilwoman Burger said that she would like to know more about the water. Graham Rd will be paved. City Admin has been talking with Fairview Meadows and this company will be working on getting Graham Rd paved and also the Dollar General and Alpha Tanks have agreements in place. The mayor would have information on those agreements. Texas Pistals is also on Graham Rd. City Admin said the city is going to have about 5 business.

**A. <u>Discussion with staff regarding the City of New Fairview revenues, expenditures, property tax rate, and exemptions.</u>**

Councilman Misner said that the taxes have to be addressed either for increasing or decrease taxes. Councilman Misner said that in the private group on Facebook only 3 people are for taxes. Councilman Misner said that 70% of the people live in the Chisholm Hills area and they need to know how much their taxes are going to be. Councilwoman Burger said that there is no reason to keep bringing up the taxes. The taxes have already been approved. City Admin said that the budget needs to be approved by September 28 and the council will start working on the budget in April. At that time, we will discuss the taxes and tax rate. Tax rate cannot be changed until the next budget. That will be up to the council. City Admin answered Councilman Misner regarding the $300,000 for road money. City Admin said that was correct if we sell the bonds. Councilman Misner said that he thought the city already had that money put aside for roads. City Admin presented information regarding the city's revenue, expenditures, tax rate, and tax exemptions as requested by several recently elected Council members requested that staff prepare a presentation with numbers associated with the adopted FY 2020-2021 annual budget, which was built upon maintaining the current $0.30 per $100 of valuation, followed by the adopted exemptions. Councilwoman Burger said that some of the people rather have the roads fixed and do not mind paying taxes. Mayor Wilson said that next month we are going to vote on the sales bonds and at the time we decide if we raise taxes or not. City Admin said that the money for the roads depend on the bond and some are 7 years to 20 years. City Admin said that the majority of the people that live in that area pay about $150 and the rest of the people are paying anywhere from $150 to $300 in taxes.

The city's revenue sources, budgeted at $1,079,708, are primarily generated through ad valorem (property) taxes (44.2%), building permit fees (32.4%), sales and use taxes (12.0%), and franchise fees (4.4%). There are additional revenue sources from municipal court for citations (speeding) and development agreements for specific purposes, such as the $84,000 of matching funds for the parks grant, etc. (7.0%).

The city's expenditures, budgeted at $937,45, are broken down into payroll (28.6%), contract labor (36.3%), supplies and services (19.1%), and a transfer out, ultimately the cost of paying for the bond issue for streets (16.0%). The city adopted four ordinances (Ord. 2019-08-195, 2020-11-101, 2020-12-102, 2020-13- 103) that provide for tax exemptions to residents of New Fairview, including: Disabled Veteran or Surviving Spouse Exemption, Homestead Exemption, $10,000 of assessed value for disabled or 65 years of age or Over 65 or disabled Tax Freeze. **Councilman Misner made a motion to bring this up at the next agenda. Mayor Pro Tem Gunter seconded the motion. Motion passed unanimously.**

**B. <u>Discussion with staff regarding the City of New Fairview hydrocarbon well setbacks.</u>**
The city adopted ordinance 2003-02-088, which establishes guidelines for oil and gas companies operating in the city limits. This ordinance has been amended twice by ordinance 2007-03-118 and 2007-11-126, "prohibiting building within 200 feet" of an existing well. Further, the city has adopted the 2009 International Fire Code which provides a minimum setback of 150' for the construction of an occupied building. The ordinance clearly establishes protected uses which provide a setback of 200' from a new well being drilled, including: "a fresh water well, dwelling or other building used, or designed and intended to be used, for human occupancy without the unanimous consent of the property owners within 200' radius. City Admin said we are now having developers come in and we will have some discussion on this.

At this point, exploration for oil and gas within the city limits will most likely be limited to adding additional wells to existing pad sites, which can be seen by viewing a map of the wells within the city limits and ETJ below.

City Admin said an individual came in and wants to put her house next to the oil well. She cant get closer then 150ft to 200ft to the head. International fire code says the set back is 150ft, the city is 250ft and other cities have different setbacks.

City Admin said that the oil and gas company will want 200ft which is the same as the city. City Admin said that the ordinance is 600ft. setback to drill a residential. The gas well company and the city will work together to come up with a setback and fee. Councilman Clements agreed with 300ft. City Admin said that he was going to meet with the Gas well company and go from there.

**C. <u>Discussion with staff regarding public safety services in New Fairview.</u>**
The city has contracted with the Wise County Sheriff's Office for residential deputies to patrol in their off-duty hours, with East Wise Fire Rescue (EWFR) for fire protection services and use the Wise County EMS services for medical emergencies. I presented to them the same slide with the difference in getting an ambulance in City Admin has meet with the fire department since he got here. The City Admin would be in charge to a degree. We are working on grants to bring in additional revenue for them department. We would provide training and initiative. City Admin would work with the department on the budget. These comes back to setbacks. One of the fees charged on the gas wells would go toward the fire department for extra revenue. The type of fees that he is talking are in place at the City of Decatur, Boyd, Bridgeport and others around. The regulation over the last six-month period, the staff and Council have been discussing possible paths forward to improve service levels to our residents in these areas and we have been successful in the following:

Police Services-We have analyzed the locations, day, and time of the week where the majority of criminal activity is occurring within the city working on scheduling program to make sure that we are actively seeking coverage from our residential deputies during the peak hours of need.

Fire Services-We have executed an agreement with EWFR to provide $1,000 in annual funding as well as funding modifications for the utilization of two-bays, an office, common space in the multi-purpose building, and access to the water tanks. Following the installation of fire equipment at the multi-purpose building, the response times have decreased from an average of 20 minutes to 10 minutes. There are 440 wells within the city limits and 611 wells within the ETJ; the fees charged by other municipalities in the area range from $750 to over $1,200 per individual well. Ben asked the council if they would consider meeting with us. The same people in the oil and gas are adding on to the fee to cover the extra fee. This inspection will be done by the fire department and that revenue goes to the department. They will have a checklist and if needed fix and repair. With the revenue the department can go buy equipment they need.with the development of Constellation Lake, Shoop Ranch, Fairview Meadows, Falcon Ridge,Paloma Ranch, as well as the currently existing residential and businesses located in close proximity to hydrocarbon wells, staff believes that it is time for the city to consider.implementing an annual safety inspection of the hydrocarbon wells within the city limits, that will be developed in collaboration with a consultant who has decades of experience working for the oil and gas industry as well as conducting hydrocarbon well inspections for cities in both Wise and Denton County.

**D. Discussion with staff regarding the City of New Fairview City Council agenda, including wording, sections, invocation, work sessions, etc.**

Process for meetings have been outlined and adopted through the New Fairview City Council Procedures & Decorum Policy

Council discussed having a workshop and then a meeting. Mayor Pro Tem Gunter would like to leave them separate. Because we can have our regular meetings and not waste the people's time. Councilman Misner said that if we have someone here with a presentation its ridiculous to make them wait and waste their time. Councilman Misner and Mayor Wilson talked about the possibility to appoint another person to council. Clements Walter did not agree. City Admin said its an appointment of an elected official. It would be different if it was an employee. Mayor Wilson asked why the professional consultants were not at the meetings because they should be because they know about developments and spend their time on what they need to present to council. It will not cost the city any money to have them attend the meetings because their fees are paid by the developers.Mayor Wilson asked the council if they knew who Barry Hudson was, Who the engineers were, the attorney. City Admin said that he was directed by council not to have them at the meetings unless needed to. Mayor Wilson said the professionals know all the answers. City Admin told Mayor Wilson that they are not always right because when he first got here he was told by the city planner that no RVs were allowed. When someone came in and asked about putting in an RV Park he told them no and it was wrong. RVS are allowed. This is not the only time this has happened that I was given wrong information from the professionals.

**E. Discussion and presentation of the proposed concept plan of the 1,806-acre Shoop Ranch has been requested by the development company.**

Discussion and presentation of the proposed concept plan of the 1,806 acre Schoop Ranch has been requested by the development company. Background Information: Rockhill Capital &

Investments has been in discussion with the city staff regarding the potential development of the 1,806 acre Schoop Ranch which is generally located at FM 407 and South County Line Road heading north for approximately two-and-one-half miles to AA Bombarger Rd and west approximately one-mile on FM 407. The map below provides a visual representation, in green, of the location and size of the property under discussion. Rockhill Capital & Investments has expressed an interest in utilizing some form of an improvement district, such as the Public Improvement District (PID) used with Constellation Lake, or a Municipal Management District (MMD) that operates in a similar fashion but is created legislatively. There are several examples of an MMD in Dallas, Arlington, Denton, etc. The developers have already participated in the cost of the water/sewer feasibility study as well as the annual fee for the transportation consulting services.

**F. Discussion and presentation of the proposed Ready Mix concrete plant located on Graham Road.**

Agenda Description: Discussion and presentation of the proposed Ready Mix concrete plant located on Graham Road. Background Information: Staff has been in conversation and negotiation with Preferred Materials, LLC regarding the construction of a Ready Mix concrete plant on Graham Rd, which is currently zoned Manufacturing. It will generate about 15 jobs and estimated sales tax of $600,000

**G. Discussion with staff regarding applications for the planning and zoning commission.**

The Council suspended the Planning and Zoning Commission due to the inability to maintain adequate volunteers on both the City Council and the Planning and Zoning Commission. The Planning and Zoning Activities are currently being taken directly to the City Council for review and approval. It is the staff's desire to see the Council reinstate the Planning and Zoning Commission so that they may begin working on several of the ordinances that impact developing within the city. Following the most recent election, the Place 5 City Council member resigned their position leaving a single vacancy on the City Council. State law provides Type A General Law cities the authority to fill a single vacancy, appointing a qualified resident of the city, through a majority vote of the remaining Council. The appointee council member will serve until the next regularly scheduled election. Staff has received five applications for the City Council vacancy and seven applications to serve on the city's Planning and Zoning Commission

**H. Discussion with staff regarding ongoing projects.**

Streets - Pacheco Koch (PK) has almost completed the surveying of the streets in New Fairview.They are currently working on the design of the roads. We are on track to have completed the construction documents for the bid process in early 2021 but Covid-19 may impact the time of the deliverables. The engineers updates are below Graham & Chisholm Hills Roadways: Field Survey is still in progress and should finish up around the 22nd this month. Will take them about 2-2.5 weeks to input data into the computer, and get me the information. I would put another 3.5 weeks for an internal review, and then 3.5 weeks for a final design on the end of that. Once we have Survey and Pioneer completed, a much more accurate schedule can be forecasted. Pioneer Update (paid for by Fairview Meadows Development): Survey is finished and I have begun design this week. I have a current schedule to get this done for an internal review to check my design for 1/27. Depending on the amount of comments, and issues that may come up throughout design, I would expect another 3.5 weeks ± a couple days landing near the middle of February 22nd week to get final design of Pioneer. Would you like the city to have a submission when we do an internal review for an update? Also I just want to bring up with COVID still being an issue, PK has transitioned most of the office back to working at home so we are hoping this will not be a factor in upcoming schedules, but it is an obstacle we are having to work with these days. So I would put being completed at the first week of March as some hazard time in case some of the people helping me on this end up being out sick. pay for the streets improvements, during the December 14th Council meeting. The City Administrator completed the interview with our bond rating agency, Standards & Poors, on January 5th. We expect to receive the bond rating on January 13th. The Council will receive the bids from the bond sale on February 1, 2021. At this time, they may choose to accept the bond terms or reject them. Water/Sewer Feasibility Study - SPI, the engineering firm developing the feasibility study, should have the initial draft to the city by February 2021. Staff will review the study, come back with questions and comments and then present the findings to the Council. The Council may wish to hold a special meeting regarding this or we can add the item to the March Council meeting. Ordinance Codification - Franklin Legal has provided the initial draft of the code of ordinances. They are now doing a review of the ordinances and will come back with comments. Staff will work with Franklin Legal to complete the updates and bring a redlined version of the document to the Council for review and adoption. We hope to have this process completed within the next two-months. Following adoption, this will be added to our website and people will be able to easily access and find our current ordinances. Electronic Records - We are approximately 5% completed on scanning historical city records and all new applications and records are being obtained electronically or immediately being digitized. It will likely take 2021 to complete the digitization of the balance of the city records. Upon completion of this process, the documents will be key word searchable PDFs. This will allow for the city to be more compliant in open records requests as well as finding and accessing documents for internal use. Development Activity - The city has received approximately $184,000 in building permit revenues through December 2020. If the current pace of building is maintained, the city will anticipate an estimated $725,000 in permit revenues, up from approximately $450,000 in permit revenue in the prior fiscal year. Municipal management Software - We are working on the implementation of this system. Currently, we are developing the GIS resources required to integrate with the system. The GIS resources will most likely replace or at minimum supplement the current GIS resources on our website.

**I. Discussion amongst the Council regarding the application and accountability of following the Procedures and Decorum Policy.**

**Councilman Clements made a motion to appoint Taylor and Associates Incorporated to act as our community development fund administrator. Motion seconded by Mayor Pro Tem Gunter. Motion passed unanimously.**

**Resolution No.**

**A RESOLUTION OF THE CITY OF NEW FAIRVIEW, TX APPOINTING TRAYLOR AND ASSOCIATES AS THE CITIES GRANTS ADMINISTRATOR FOLLOWING A REQUEST FOR QUALIFICATIONS FOR PARTICIPATION IN THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.**

WHEREAS the City of Fairview is an incorporated city in the State of Texas; and

WHEREAS the City of New Fairview is a General Law city as classified by the Texas Municipal Code; and

WHEREAS the City desires to participate in the Texas Department of Agriculture, Community Development Block Grant Program, 2021-2022 Community Development Fund Administrative Services.

**J. <u>Discussion with the staff to implement face mask requirements when conducting business in city hall.</u>**

This item was requested to be on agenda by Mayor Wilson. Councilman Misner wears his for his own safety. City Admin says he enforce force it. Mayor Wilson said that he wants a sign at the door saying. Masks are mandatory. Mayor Wilson wants to make sure the employees are safe.

**ITEM NUMBER V. CONSENT AGENDA: All matters listed as Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. There will not be a separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately.**

**A. <u>Acceptance of the December 14th, and 28th, 2020 City Council Minutes</u>.**

**B. <u>Acceptance of the December 2020 Financial Report.</u>**

**C. <u>Adopt an ordinance of the City of New Fairview, Texas, reinstating the Planning and Zoning Commission; providing a cumulative clause; providing a savings clause; and providing an effective date.</u>**

**D. <u>Act on a resolution updating the signature card on the city bank account.</u>**

Act on a resolution updating the signature card on the city bank account. Background Information: Following the election, the city needs to update the signers on the city's bank account to reflect the new Council members and remove all previous Council member signatories from the city's bank account. Following this action, the city's bank account should reflect the following signatories. 1. Monica Rodriguez, City Secretary 2. Ben Nibarger, City Administrator 3. Joe Max Wilson, Mayor 4. Patrick Gunter, Mayor Pro Tim 5. Julie Burger, Council Member,

**Resolution**

**A RESOLUTION OF THE CITY OF NEW FAIRVIEW, TX APPROVING THE REMOVAL AND ADDITION OF SIGNATORIES ON THE CITY OF NEW FAIRVIEWS BANK ACCOUNT.**

**WHEREAS the City of Fairview is an incorporated city in the State of Texas; and**

**WHEREAS the City of New Fairview is a General Law city as classified by the Texas Municipal Code; and**

**Councilman Misner made a motion to approve consent items. Motion seconded by Councilwoman Burger. Motion passed unanimously.**

**E. <u>Act on a submission of the final plat for Phase I of the Paloma Ranch Estates; including 28 single family residential lots on 32.628 acres, generally located at the southeast corner of Dove Hollow Lane and South County Line Road; submitted by Dove Hollow Development, LLC.</u>**

Act on a submission of the final plat for Phase II of the Paloma Ranch Estates; including 66 single family residential lots on 92.068 acres, generally located at the southeast corner of Dove Hollow Lane and South County Line Road; submitted by Dove Hollow Development, LLC. Background Information: The City of New Fairview entered into a development agreement with Dove Hollow Development, LLC., regarding the development of approximately 320 acres on

South County Line Road in Denton County. Dove Hollow Development, LLC. has submitted the final plat. The final plat conforms to the preliminary plat and has been reviewed by the city's engineering and planning consultants and their comments have been addressed. The submission meets the requirements outlined in the city ordinances and the development agreement. Dove Hollow Development, LLC has provided the covenants, conditions, and restrictions.

**F. Act on a submission of the final plat for Phase II of the Paloma Ranch Estates; including 66 single family residential lots on 92.068 acres, generally located at the southeast corner of Dove Hollow Lane and South County Line Road; submitted by Dove Hollow Development, LLC.**

Act on a submission of the final plat for Phase II of the Paloma Ranch Estates; including 66 single family residential lots on 92.068 acres, generally located at the southeast corner of Dove Hollow Lane and South County Line Road; submitted by Dove Hollow Development, LLC. Background Information: The City of New Fairview entered into a Development Agreement.

**ADJOURN:**

**Mayor Wilson adjourned the meeting at 11:30PM**

**APPROVED:**

___________________________

**Mayor Joe Max Wilson**

___________________________

**Mayor Pro Tem Patrick Gunter**

__________________________

**Councilman Steve Misner**

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**Councilman Walter Clements**

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**Councilwoman Julie Burger**

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**Councilman Nolan Shoonmaker**

**ATTEST:**

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**City Secretary Monica Rodriguez**

‘.

?with Dove Hollow Development, LLC., regarding the development of approximately 320 acres on South County Line Road in Denton County. Dove Hollow Development, LLC. has submitted the final plat. The final plat conforms to the preliminary plat and has been reviewed by the city's engineering and planning consultants and their comments have been addressed. The submission meets the requirements outlined in the city ordinances and the development agreement. Dove Hollow Development, LLC has provided the covenants, conditions, and restrict

**ITEM NUMBER VI. OPEN FORUM: The City Council invites persons with comments or observations related to city issues, projects, or policies to briefly address the City Council. Anyone wishing to speak should sign-in with the City Secretary before the beginning of the City Council Meeting. In order to expedite the flow of business and to provide all citizens the opportunity to speak, there is a three-minute limitation on any person addressing the City Council. State law prohibits the City Council from discussing or taking action on any item not listed on the posted agenda.**

**ITEM NUMBER VII. NEW BUSINESS**:

**A. Discuss, consider, and act to appoint a New Fairview resident for the Place 5 vacancy on the New Fairview City Council**

Discuss, consider, and act to appoint a New Fairview resident for the Place 5 vacancy on the New Fairview City Council. Background Information: The Place 5 City Council member has resigned from the Council, leaving a single vacancy. As a Type A General Law city, the Council is authorized to fill this vacancy through the appointment of a qualified citizen until the next election, which will be in May 2021.

> City of New Fairview, Texas Resolution No. 2020101-04-146 A RESOLUTION OF THE CITY OF NEW FAIRVIEW, TX APPOINTING A QUALIFIED RESIDENT TO FILL THE PLACE 5 CITY COUNCIL VACANCY. WHEREAS, the City of Fairview is an incorporated city in the State of Texas; and WHEREAS, the City of New Fairview is a General Law city as classified by the Texas Municipal Code; and WHEREAS, the City desires to have all City Council seats filled to ensure the Council has a quorum to conduct ongoing city business; and WHEREAS, their are volunteers that meet the requirements to serve on the City Council. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY NEW FAIRVIEW: 1. That, all matters stated in the recitals h

**B. Discuss, consider, and act to appoint five commissioners to the planning and zoning commission and two alternate commissioners.**

**The new members are John Taylor Harvey Burger, Rebecca McPherson, Robin Craig Don Duval Alisa Scheps**

**Alternates David Randolph and Marissa Randolph**

CITY OF NEW FAIRVIEW, TEXAS ORDINANCE NO. ___ AN ORDINANCE OF THE CITY OF NEW FAIRVIEW, TEXAS, REINSTATING THE PLANNING AND ZONING COMMISSION; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE. WHEREAS, the City is authorized by Section 211.007 of the Texas Local Government Code to create a planning and zoning commission; and WHEREAS, the City adopted Ordinance No. 2019-03-190 repealing Ordinance No. 2004-01-096 and Ordinance No. 2005-06-106, repealing the planning and zoning commission for the City; and WHEREAS, the City's adoption of Ordinance No. 2019-03-190 had the effect of repealing numerous other ordinances amending the terms and the rules for the commission, including Ordinance No. 2008-05-135, Ordinance No. 2009-01-140, and

Ordinance No. 2010- 06-154; and WHEREAS, the City Council now desires to reinstate the planning and zoning c

**C. Discuss, consider, and act on a resolution authorizing the City Administrator to select Traylor & Associates, Inc., for administrative services provided that the city will not be billed for any professional services unless successful in obtaining grant funding.**

The previous city council directed staff to participate in the State administered community Development Block Grant program. This grant provides $350,000 of state funds that are r in the are required to be utilized in the community that are a low to moderate income. The city has been pursuing residents to participate in the HUD development. If the city gets the additional $ 350,000 of funding that could be used for streets improvements in the low to moderate incoe neighborhood. The city will not be billed for any professional service unless successful in obtaining grant funding. Council made a motion to all authorize city adnmin too select

**D. Discuss, consider, and act on a resolution authorizing the City Administrator to purchase equipment and software, including (2) radar guns, (1) software site license, (2) electronic ticket writers and accessory equipment to improve the effectiveness of patrolling activities; provided that the City Administrator provide the council, an ordinance amending the adopted budget to reflect the actual cost of the project, as well as resolving other matters incident and related thereto.**

**E. Discuss, consider, and act on a resolution authorizing the City Administrator to purchase and install an electronic monument sign at FM 407 and the city hall; provided that the City Administrator provide the Council, an ordinance amending the adopted budget to reflect the actual cost of the project, as well as resolving other matters incident and related thereto.**

Discuss, consider, and act on a resolution authorizing the City Administrator to purchase and install an electronic monument sign at FM 407 and the city hall; provided that the City Administrator provide the Council an ordinance amending the adopted budget to reflect the actual cost of the project, as well as resolving other matters incident and related thereto. Background Information: Several Council members have asked about the possibility of installing a sign to provide another medium to inform residents about events and issues in the city. This was discussed at the previous Council meeting and price quotes were shared with the Council.

Staff is seeking direction on whether the Council wishes to authorize the expenditure of funds to move forward with this project. Financial Information: The estimated equipment and installation expenditure is $20,000.

City of New Fairview, Texas Ordinance No. O202101-04-_____ A RESOLUTION OF THE CITY OF NEW FAIRVIEW, TX AUTHORIZING THE CITY ADMINISTRATOR TO PURCHASE POLICE PATROL EQUIPMENT AND PRESENT A BUDGET AMENDMENT TO THE CITY COUNCIL FOR THE FINAL EXPENDITURE AMOUNT. WHEREAS, the City of Fairview is an incorporated city in the State of Texas; and WHEREAS, the City of New Fairview is a General Law city as classified by the Texas Municipal Code; and WHEREAS, the city desires to seek additional forms of communication with the residents in New Fairview; and WHEREAS, the many of the city residents travel on FM 407 throughout the week; and WHEREAS, the city has obtained multiple quotes for the necessary equipment. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL

**ITEM NUMBER VIII. ADJOURN:**

**City Council Agenda**
**January 11, 2021**

**Agenda Item:** **Ordinance** **(Action Item)**

## Agenda Description:

Discuss, consider, and act on an ordinance of the City of New Fairview, Texas Combination Tax and Revenue Certificates of Obligation, Series 2021"; providing for the payment of said certificates of obligation by the levy of an ad valorem tax upon all taxable property within the City and a limited pledge of the net revenues of the City's solid waste disposal system; providing the terms and conditions of such certificates of obligation and resolving other matters incident and relating to the issuance, payment, security, sale and delivery of said certificates of obligation, including the approval and execution of a Paying Agent/Registrar Agreement and the approval and distribution of a Preliminary Official Statement and an Official Statement pertaining thereto; and providing an effective date.

## Background Information:

The city has completed all the necessary public notifications and preparatory work to issue the Texas Combination Tax and Revenue Certificates of Obligations, Series 2021 (CO Bonds) to fund the streets improvement project.

The following table provides an estimate of the cost of this bond issue. A more detailed version of this chart is included as an attachment to this item as well.

Preliminary

**City of New Fairview, Texas**

$2,930,000

Combination Tax & Revenue Certificates of Obligation, Series 2021

## Debt Service Schedule

| Date | Principal | Coupon | Interest | Total P+I |
|---|---|---|---|---|
| 09/30/2021 | 115,000.00 | 2.000% | 31,477.50 | 146,477.50 |
| 09/30/2022 | 85,000.00 | 2.000% | 67,650.00 | 152,650.00 |
| 09/30/2023 | 95,000.00 | 2.000% | 65,950.00 | 160,950.00 |
| 09/30/2024 | 115,000.00 | 2.000% | 64,050.00 | 179,050.00 |
| 09/30/2025 | 125,000.00 | 3.000% | 61,750.00 | 186,750.00 |
| 09/30/2026 | 130,000.00 | 3.000% | 58,000.00 | 188,000.00 |
| 09/30/2027 | 135,000.00 | 3.000% | 54,100.00 | 189,100.00 |
| 09/30/2028 | 140,000.00 | 3.000% | 50,050.00 | 190,050.00 |
| 09/30/2029 | 145,000.00 | 3.000% | 45,850.00 | 190,850.00 |
| 09/30/2030 | 150,000.00 | 3.000% | 41,500.00 | 191,500.00 |
| 09/30/2031 | 155,000.00 | 3.000% | 37,000.00 | 192,000.00 |
| 09/30/2032 | 155,000.00 | 3.000% | 32,350.00 | 187,350.00 |
| 09/30/2033 | 160,000.00 | 2.000% | 27,700.00 | 187,700.00 |
| 09/30/2034 | 165,000.00 | 2.000% | 24,500.00 | 189,500.00 |
| 09/30/2035 | 170,000.00 | 2.000% | 21,200.00 | 191,200.00 |
| 09/30/2036 | 170,000.00 | 2.000% | 17,800.00 | 187,800.00 |
| 09/30/2037 | 175,000.00 | 2.000% | 14,400.00 | 189,400.00 |
| 09/30/2038 | 180,000.00 | 2.000% | 10,900.00 | 190,900.00 |
| 09/30/2039 | 180,000.00 | 2.000% | 7,300.00 | 187,300.00 |
| 09/30/2040 | 185,000.00 | 2.000% | 3,700.00 | 188,700.00 |
| **Total** | **$2,930,000.00** | **-** | **$737,227.50** | **$3,667,227.50** |

### Yield Statistics

| | |
|---|---|
| Bond Year Dollars | $32,253.50 |
| Average Life | 11.008 Years |
| Average Coupon | 2.2857287% |
| Net Interest Cost (NIC) | 1.7866742% |
| True Interest Cost (TIC) | 1.7349262% |
| Bond Yield for Arbitrage Purposes | 1.6408801% |
| All Inclusive Cost (AIC) | 2.0413470% |

### IRS Form 8038

| | |
|---|---|
| Net Interest Cost | 1.6162121% |
| Weighted Average Maturity | 10.846 Years |

## Financial Information:

N/A

## City Contact and Recommendation:

Ben Nibarger, City Administrator

Staff recommends that Council not implement the general homestead exemption.

**Attachments:**
Ordinance
Certificate Draft
Updated Numbers

ORDINANCE NO. __________

AN ORDINANCE authorizing the issuance of "CITY OF NEW FAIRVIEW, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2021"; providing for the payment of said certificates of obligation by the levy of an ad valorem tax upon all taxable property within the City and a limited pledge of the net revenues of the City's solid waste disposal system; providing the terms and conditions of such certificates of obligation and resolving other matters incident and relating to the issuance, payment, security, sale and delivery of said certificates of obligation, including the approval and execution of a Paying Agent/Registrar Agreement and the approval and distribution of a Preliminary Official Statement and an Official Statement pertaining thereto; and providing an effective date.

WHEREAS, notice of the intention of the City Council (the "Council") of the City of New Fairview, Texas (the "City") to issue certificates of obligation in the maximum principal amount not to exceed $3,200,000 for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: (a) constructing and improving streets, including drainage, landscaping, streetscaping, retaining walls, curbs, gutters, sidewalks, signage, traffic signalization, street noise abatement, and utility system relocation incidental thereto and the acquisition of land and rights-of-way therefor, (b) acquiring, constructing, reconstructing, improving, installing, and equipping existing municipal facilities and the acquisition of land and rights-of-way therefor, (c) acquiring, constructing, reconstructing, improving, installing, and equipping park facilities and the acquisition of land and rights-of-way therefor, and (ii) professional services rendered in connection with the acquisition, construction and financing of such projects was (a) published in the *Wise County Messenger,* a newspaper of general circulation in the City, on December 16, 2020 and December 23, 2020 and (b) duly published continuously on the City's website for at least forty-five (45) days before the tentative date stated therein for the passage of the ordinance authorizing the issuance of such certificates; and

WHEREAS, no petition protesting the issuance of the certificates of obligation described in the aforesaid notice, signed by at least 5% of the qualified voters of the City, has been presented to or filed with the City Secretary on or prior to the date of the passage of this Ordinance; and

WHEREAS, the Council hereby finds and determines that $___________ in total principal amount of the certificates of obligation described in such notice should be authorized, issued, and sold at this time in the amount and manner as hereinafter provided; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS:

SECTION 1: Authorization, Designation, Principal Amount, Purpose. Certificates of obligation of the City shall be and are hereby authorized to be issued in the aggregate principal amount of $____________, to be designated and bear the title "CITY OF NEW FAIRVIEW, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2021" (hereinafter referred to as the "Certificates"), for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: (a) constructing and improving streets, including drainage, landscaping, streetscaping, retaining walls, curbs, gutters, sidewalks, signage, traffic signalization, street noise abatement, and utility system relocation incidental thereto and the acquisition of land and rights-of-way therefor, (b) acquiring, constructing, reconstructing, improving, installing, and equipping existing municipal facilities and the acquisition of land and rights-of-way therefor, (c) acquiring, constructing, reconstructing, improving, installing, and equipping park facilities and the acquisition of land and rights-of-way therefor, and (ii) professional services rendered in connection with the acquisition, construction and financing of such projects, pursuant to authority conferred by, and in conformity with, the Constitution and laws of the State of Texas, including Texas Local Government Code, Subchapter C of Chapter 271, as amended, and Texas Government Code, Subchapter B of Chapter 1502, as amended.

SECTION 2: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates - Certificate Date. The Certificates are issuable in fully registered form only; shall be dated February 1, 2021 (the "Certificate Date"); and shall be in denominations of $5,000 or any integral multiple thereof (within a stated maturity), and the Certificates shall become due and payable on August 15 in each of the years and in principal amounts (the "Stated Maturities") and bear interest at the per annum rates in accordance with the following schedule:

| Year of Stated Maturity | Principal Amount ($) | Interest Rates (%) |
|---|---|---|

The Certificates shall bear interest on the unpaid principal amounts from the date of their delivery to the initial purchasers at the rates per annum shown in the above schedule (calculated on the basis of a 360-day year of twelve 30-day months). Interest on the Certificates shall be payable each February 15 and August 15, commencing August 15, 2021, until maturity or prior redemption.

SECTION 3: Payment of Certificates - Paying Agent/Registrar. The principal of, premium, if any, and interest on the Certificates due and payable by reason of maturity, redemption, or otherwise shall be payable without exchange or collection charges to the registered owner thereof, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

The selection and appointment of BOKF, NA, Dallas, Texas to serve as Paying Agent/Registrar for the Certificates is hereby approved and confirmed and the City agrees and covenants to cause to be kept and maintained at the Designated Payment/Transfer Office of the Paying Agent/Registrar, books and records (the "Security Register") for the registration, payment, and transfer of the Certificates, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement", substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe; and the Mayor or Mayor Pro Tem and City Secretary are authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Certificates. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Certificates are paid, and any successor Paying Agent/Registrar shall be a bank, trust company, financial institution, or other entity duly qualified and legally authorized to act as and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Certificates, the City agrees to promptly cause a written notice thereof to be sent to each registered owner of the Certificates by United States mail, first-class, postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Principal of, premium, if any, and interest on the Certificates, due and payable by reason of maturity or otherwise, shall be payable only to the registered owners of the Certificates (hereinafter referred to as the "Holder" or "Holders") appearing on the Security Register and, to the extent permitted by law, neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary.

Principal of and premium, if any, on the Certificates shall be payable at the Stated Maturities or upon prior redemption thereof, only upon presentation and surrender of the Certificates to the Paying Agent/Registrar at its designated offices, initially in St. Paul, Minnesota, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"). Interest on the Certificates shall be paid to the Holders whose names appear in the Security Register at the close of business on the Record Date (the last business day of the month next preceding the interest payment date) and shall be paid by the Paying Agent/Registrar (i) by check sent by United States mail, first-class, postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when such banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class, postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 4: Redemption.

(a) Optional Redemption. The Certificates having Stated Maturities on and after August 15, 2030, shall be subject to redemption prior to maturity, at the option of the City, in whole or in part, in principal amounts of $5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on August 15, 2029 or on any date thereafter at the redemption price of par plus accrued interest to the date of redemption.

At least forty-five (45) days prior to an optional redemption date for the Certificates (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the City shall notify the Paying Agent/Registrar of the decision to redeem Certificates, the principal amount of each Stated Maturity to be redeemed, and the date of redemption therefor. The decision of the City to exercise the right to redeem Certificates shall be entered in the minutes of the governing body of the City.

(b) Mandatory Redemption. The Certificates having Stated Maturities of August 15 in each of the years _______ and ______ (collectively, the "Term Certificates") shall be subject to mandatory redemption in part prior to maturity at the redemption price of par and accrued interest to the date of redemption on the respective dates and in principal amounts as follows:

Term Certificates due August 15, _____

| Redemption Date | Principal Amount ($) | Redemption Date | Principal Amount ($) |
|---|---|---|---|

Term Certificates due August 15, _____

| Redemption Date | Principal Amount ($) | Redemption Date | Principal Amount ($) |
|---|---|---|---|

*maturity

At least forty-five (45) days prior to each mandatory redemption date for the Term Certificates, the Paying Agent/Registrar shall select by lot the numbers of the Term Certificates to be redeemed on the next following August 15 from moneys set aside for that purpose in the Certificate Fund (as hereinafter defined). Any Term Certificate not selected for prior redemption shall be paid on the date of its Stated Maturity.

The principal amount of the Term Certificates for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the City, by the principal amount of Term Certificates of like Stated Maturity which, at least fifty (50) days prior to the mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Certificates plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions set forth in paragraph (a) of this Section and not theretofore credited against a mandatory redemption requirement.

(c) Selection of Certificates for Redemption. If less than all Outstanding Certificates of the same Stated Maturity are to be redeemed on a redemption date, the Paying Agent/Registrar shall treat such Certificates as representing the number of Certificates Outstanding which is obtained by dividing the principal amount of such Certificates by $5,000 and shall select the Certificates to be redeemed within such Stated Maturity by lot.

(d) Notice of Redemption. Not less than thirty (30) days prior to a redemption date for the Certificates, a notice of redemption shall be sent by United States mail, first-class, postage prepaid, in the name of the City and at the City's expense, to each Holder of a Certificate to be redeemed in whole or in part at the address of the Holder appearing on the Security Register at the close of business on the business day next preceding the date of mailing such notice, and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether or not received by the Holder.

All notices of redemption shall (i) specify the date of redemption for the Certificates, (ii) identify the Certificates to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Certificates, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, and (v) specify that payment of the redemption price for the Certificates, or the principal amount thereof to be redeemed, shall be made at the Designated Payment/Transfer Office of the Paying Agent/Registrar only upon presentation and surrender thereof by the Holder. If a Certificate is subject by its terms to prior redemption and has been called for redemption and notice of redemption thereof has been duly given as hereinabove provided, such Certificate (or the principal amount thereof to be redeemed) shall become due and payable and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys sufficient for the payment of such Certificate (or of the principal amount thereof to be redeemed) at the then applicable redemption price are held for the purpose of such payment by the Paying Agent/Registrar.

(e) Conditional Notice of Redemption. With respect to any optional redemption of the Certificates, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

SECTION 5: Registration - Transfer - Exchange of Certificates - Predecessor Certificates. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each Holder of the Certificates issued under and pursuant to the provisions of this Ordinance, or, if appropriate, the nominee thereof. Any Certificate may, in accordance with its terms and the terms hereof, be transferred or exchanged for Certificates of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Certificate to the Paying Agent/Registrar at the Designated Payment/Transfer Office for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon the surrender for transfer of any Certificate at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Certificates, executed on behalf of, and furnished by, the City, of authorized denominations and having the same Stated Maturity and of a like aggregate principal amount as the Certificate or Certificates surrendered for transfer.

At the option of the Holder, Certificates may be exchanged for other Certificates of authorized denominations and having the same Stated Maturity, bearing the same rate of interest, and of like aggregate principal amount as the Certificates surrendered for exchange upon the surrender of the Certificates to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Certificates are so surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Certificates, executed on behalf of, and furnished by the City, to the Holder requesting the exchange.

All Certificates issued upon any transfer or exchange of Certificates shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent by United States mail, first-class, postage prepaid, to the Holders and, upon the registration and delivery thereof, the same shall be valid obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Certificates surrendered in such transfer or exchange.

All transfers or exchanges of Certificates pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Certificates canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Certificates," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Certificate or Certificates registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Certificates" shall include any mutilated, lost, destroyed, or stolen Certificate for which a replacement Certificate has been issued, registered and delivered in lieu thereof pursuant to Section 22 hereof, which shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Certificate.

Neither the City nor the Paying Agent/Registrar shall be required to issue or transfer to an assignee of a Holder any Certificate called for redemption, in whole or in part, within 45 days of the date fixed for the redemption of such Certificate; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Certificate called for redemption in part.

SECTION 6: Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained in this Ordinance relating to the payment and transfer/exchange of the Certificates, the City hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement and transfer system provided by The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC"), in accordance with the requirements and procedures identified in the current DTC Operational Arrangements memorandum, as amended, the Blanket Issuer Letter of Representations, by and between the City and DTC, and the Letter of Representations from the Paying Agent/Registrar to DTC (collectively, the "Depository Agreement") relating to the Certificates.

Pursuant to the Depository Agreement and the rules of DTC the Certificates shall be deposited with DTC who shall hold said Certificates for its participants (the "DTC Participants"). While the Certificates are held by DTC under the Depository Agreement, the Holder of the Certificates on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Certificate (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Certificates or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the City decides to discontinue the use of the system of book-entry-only transfers through DTC, the City covenants and agrees with the Holders of the Certificates to cause Certificates to be printed in definitive form and provide for appropriate Certificate certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Certificates in definitive form shall be assigned, transferred, and exchanged on the appropriate Security Register maintained by the Paying Agent/Registrar, and payment of such Certificates shall be made in accordance with the provisions hereof other than this Section.

SECTION 7: Execution - Registration. The Certificates shall be executed on behalf of the City by the Mayor or Mayor Pro Tem under its seal reproduced or impressed thereon and countersigned by the City Secretary. The signatures of said officers on the Certificates may be manual or facsimile. Certificates bearing the manual or facsimile signatures of said individuals who are or were the proper officers of the City on the Certificate Date shall be deemed to be duly executed on behalf of the City, notwithstanding that any of such individuals shall no longer hold such offices prior to the delivery of the Certificates to the initial purchaser(s), and with respect to Certificates delivered in subsequent exchanges and transfers, all as authorized and provided in Texas Government Code, Chapter 1201, as amended.

No Certificate shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Certificate either a certificate of registration substantially as set forth in the form of the Initial Certificate provided in Section 9(b), manually executed by the Comptroller of Public Accounts of the State of Texas or his or her duly authorized agent, or a certificate of registration substantially as set forth in the form of the definitive Certificates provided in Section 9(c), manually executed by an authorized officer, employee, or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly certified, registered, and delivered.

SECTION 8: Initial Certificate. The Certificates herein authorized shall be initially issued as a single, fully-registered Certificate in the total principal amount as provided in Section 1 hereof with the principal amount to become due and payable as provided in Section 2 hereof and numbered T-1 (hereinafter referred to as the "Initial Certificate") and the Initial Certificate shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Certificate shall be the Certificate submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas, and delivered to the initial purchaser(s). Any time after the delivery of the Initial

Certificate, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Certificate delivered hereunder and exchange therefor definitive Certificates of authorized denominations, Stated Maturity, principal amounts, and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9: Forms.

(a) Forms Generally. The Certificates, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of Registration of the Paying Agent/Registrar, and the form of Assignment to be printed on the Certificates, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends on any insured Certificates and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or be determined by the officers executing such Certificates as evidenced by their execution thereof. Any portion of the text of any Certificate may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Certificate.

The definitive Certificates shall be printed, lithographed, typewritten, engraved or produced in any other similar manner, all as determined by the officers executing such Certificates as evidenced by their execution thereof, but the Initial Certificate submitted to the Attorney General of Texas may be typewritten or photocopied or otherwise reproduced.

The City may provide (i) for issuance of one fully registered Certificate for the Stated Maturity in the aggregate principal amount of such Stated Maturity and (ii) for registration of such Certificate in the name of a securities depository, or the nominee thereof. While any Certificate is registered in the name of a securities depository or its nominee, references herein and in the Certificates to the holder or owner of such Certificate shall mean the securities depository or its nominee and shall not mean any other person.

(b) Form of Initial Certificate.

| | |
|---|---|
| REGISTERED<br>NO. T-1 | PRINCIPAL AMOUNT<br>$____________ |

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF NEW FAIRVIEW, TEXAS,
COMBINATION TAX AND REVENUE
CERTIFICATES OF OBLIGATION, SERIES 2021

Certificate Date: February 1, 2021

Registered Owner: _________________________

Principal Amount: ______________________________

The City of New Fairview (hereinafter referred to as the "City"), a body corporate and municipal corporation in the Counties of Wise and Denton, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, the Principal Amount hereinabove stated, on August 15 in each of the years and in principal installments in accordance with the following schedule:

| YEAR | PRINCIPAL INSTALLMENTS ($) | INTEREST RATE (%) |
|---|---|---|

(Information to be inserted from Section 2 hereof)

(or so much principal thereof as shall not have been redeemed prior to maturity) and to pay interest, computed on the basis of a 360-day year of twelve 30-day months, on the unpaid principal amounts hereof from the date of delivery to the initial purchasers at the per annum rates of interest specified above; such interest being payable on February 15 and August 15 in each year, commencing August 15, 2021, until maturity or prior redemption. Principal installments of this Certificate are payable on the Stated Maturity dates or on a redemption date to the registered owner hereof by BOKF, NA, Dallas, Texas (the "Paying Agent/Registrar"), upon presentation and surrender at its designated offices, initially in St. Paul, Minnesota, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Certificate whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last business day of the month next preceding each interest payment date hereof, and interest shall be paid by the Paying Agent/Registrar by check sent United States mail, first-class, postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when such banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Certificate is issued in the aggregate principal amount of $___________for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: (a) constructing and improving streets, including drainage, landscaping, streetscaping, retaining walls, curbs, gutters, sidewalks, signage, traffic signalization, street noise abatement, and utility system relocation incidental thereto and the acquisition of land and rights-of-way therefor, (b) acquiring, constructing, reconstructing, improving, installing, and equipping existing municipal facilities and the acquisition of land and rights-of-way therefor, (c) acquiring, constructing, reconstructing, improving, installing, and equipping park facilities and the acquisition of land and rights-of-way therefor, and (ii) professional services rendered in connection with the acquisition, construction and financing of such projects, pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, particularly Texas Local

Government Code, Subchapter C of Chapter 271, as amended, and Texas Government Code, Subchapter B of Chapter 1502, and pursuant to an ordinance adopted by the governing body of the City (hereinafter referred to as the "Ordinance").

The Certificates maturing on the dates shown below (collectively, the "Term Certificates") are subject to mandatory redemption prior to maturity with funds on deposit in the Certificate Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the mandatory redemption date on the respective dates and in principal amounts as follows:

Term Certificates due August 15, ____

| Redemption Date | Principal Amount ($) | Redemption Date | Principal Amount ($) |
|---|---|---|---|

Term Certificates due August 15, ____

| Redemption Date | Principal Amount ($) | Redemption Date | Principal Amount ($) |
|---|---|---|---|

*maturity

The particular Term Certificates to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Certificates for a stated maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the City, by the principal amount of Term Certificates of like stated maturity which, at least fifty (50) days prior to the mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Certificates plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.

The Certificates having Stated Maturities on and after August 15, 2030, shall be subject to redemption prior to maturity, at the option of the City, in whole or in part, in principal amounts of $5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on August 15, 2029, or on any date thereafter at the redemption price of par plus accrued interest to the date of redemption.

At least thirty (30) days prior to a redemption date, the City shall cause a written notice of such redemption to be sent by United States mail, first-class, postage prepaid, to the Registered Owners of the Certificates to be redeemed and subject to the terms and provisions relating thereto contained in the Ordinance. If this Certificate (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date this Certificate (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor, provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event a portion of the principal amount of a Certificate is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Certificate to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Certificate or Certificates of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Certificate is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer such Certificate to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Certificate redeemed in part.

With respect to any optional redemption of the Certificates, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received or such prerequisites are not satisfied, such notice shall be of no force and effect, the City shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

This Certificate is payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City and is additionally payable from and secured by a lien on and limited pledge of $1,000 of the surplus Net Revenues of the City's solid waste disposal system (the "System"), such lien and pledge, however, being junior and subordinate to the lien on and pledge of the Net Revenues securing the payment of the Prior Lien Obligations (identified and defined in the Ordinance). In the Ordinance, the City reserves and retains the right to issue Prior Lien Obligations while the Certificates are outstanding without limitation as to principal amount but subject to any terms, conditions, or restrictions as may be applicable thereto under law or otherwise and additional certificates equally and ratably secured with the Certificates by a parity lien on and pledge of the Net Revenues.

Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the Registered Owner by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of this Certificate; the properties constituting the System; the Net Revenues pledged to the payment of the principal of and interest on this Certificate; the nature, extent, and manner of enforcement of the pledge; the terms and conditions relating to the transfer or exchange of this Certificate; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Registered Owners; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which the tax levy and the liens, pledges, charges, and covenants made therein may be discharged at or prior to the maturity of this Certificate, and this Certificate is deemed to be no longer Outstanding thereunder; and for the other terms and provisions thereof. Capitalized terms used herein have the meanings assigned in the Ordinance.

This Certificate, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by the Registered Owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Certificates of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, may treat the Registered Owner hereof whose name appears on the Security Register (i) on the Record Date as the owner entitled to the payment of the interest hereon, (ii) on the date of surrender of this Certificate as the owner entitled to the payment of the principal hereof at its Stated Maturity or upon its prior redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class, postage prepaid, to the address of each Registered Owner appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and covenanted that the City is a duly organized and legally existing municipal corporation under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Certificates is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Certificates to render the same lawful and valid obligations of the City have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Certificates do not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Certificates by the levy of a tax and a limited pledge of and lien on the Net Revenues of the System as aforestated. In case any provision in this Certificate or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Certificate and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Certificate to be duly executed under the official seal of the City as of the Certificate Date.

CITY OF NEW FAIRVIEW, TEXAS

______________________________________

[Mayor][Mayor Pro Tem]

COUNTERSIGNED:

______________________________________

City Secretary

(City Seal)

REGISTRATION CERTIFICATE OF
THE COMPTROLLER OF PUBLIC ACCOUNTS

| | | |
|---|---|---|
| OFFICE OF THE COMPTROLLER | ) | |
| OF PUBLIC ACCOUNTS | ) | REGISTER NO. ______________________ |
| THE STATE OF TEXAS | ) | |

I HEREBY CERTIFY that this Certificate has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this ______________________.

______________________________________
Comptroller of Public Accounts
of the State of Texas

(SEAL)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee:) ________________________________
________________________________________________________________________________
(Social Security or other identifying number: ____________________________________) the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints
________________________________________________________________________________
attorney to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

DATED:______________________________

Signature guaranteed:

______________________________

______________________________________
NOTICE: The signature on this assignment must correspond with the name of the Registered Owner as it appears on the face of the within Certificate in every particular.

(c) Form of Definitive Certificates.

REGISTERED
NO. R- __

REGISTERED
$____________

UNITED STATES OF AMERICA
STATE OF TEXAS

CITY OF NEW FAIRVIEW, TEXAS,
COMBINATION TAX AND REVENUE
CERTIFICATES OF OBLIGATION, SERIES 2021

| Certificate Date: | Interest Rate: | Stated Maturity: | CUSIP No.: |
|---|---|---|---|
| February 1, 2021 | _______% | August 15, 20___ | _________ |

Registered Owner:

Principal Amount: DOLLARS

The City of New Fairview (hereinafter referred to as the "City"), a body corporate and municipal corporation in the Counties of Wise and Denton, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, the Principal Amount hereinabove stated, on August 15 in each of the years and in principal installments in accordance with the following schedule:

| YEAR | PRINCIPAL INSTALLMENTS ($) | INTEREST RATE (%) |
|---|---|---|

(Information to be inserted from Section 2 hereof)

(or so much principal thereof as shall not have been redeemed prior to maturity) and to pay interest, computed on the basis of a 360-day year of twelve 30-day months, on the unpaid principal amounts hereof from the date of delivery to the initial purchasers at the per annum rates of interest specified above; such interest being payable on February 15 and August 15 in each year, commencing August 15, 2021, until maturity or prior redemption. Principal installments of this Certificate are payable on the Stated Maturity dates or on a redemption date to the registered owner hereof by BOKF, NA, Dallas, Texas (the "Paying Agent/Registrar"), upon presentation and surrender at its designated offices, initially in St. Paul, Minnesota, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Certificate whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last business day of the month next preceding each interest payment date hereof, and interest shall be paid by the Paying Agent/Registrar by check sent United States mail, first-class, postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when such banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Certificate is issued in the aggregate principal amount of $___________for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: (a) constructing and improving streets, including drainage, landscaping, streetscaping, retaining walls, curbs, gutters, sidewalks, signage, traffic signalization, street noise abatement, and utility system relocation incidental thereto and the acquisition of land and rights-of-way therefor, (b) acquiring, constructing, reconstructing, improving, installing, and equipping existing municipal facilities and the acquisition of land and rights-of-way therefor, (c) acquiring, constructing, reconstructing, improving, installing, and equipping park facilities and the acquisition of land and rights-of-way therefor, and (ii) professional services rendered in connection with the acquisition, construction and financing of such projects, pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, particularly Texas Local Government Code, Subchapter C of Chapter 271, as amended, and Texas Government Code, Subchapter B of Chapter 1502, and pursuant to an ordinance adopted by the governing body of the City (hereinafter referred to as the "Ordinance").

The Certificates maturing on the dates shown below (collectively, the "Term Certificates") are subject to mandatory redemption prior to maturity with funds on deposit in the Certificate Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the mandatory redemption date on the respective dates and in principal amounts as follows:

Term Certificates due August 15, ____

| Redemption Date | Principal Amount ($) | Redemption Date | Principal Amount ($) |
|---|---|---|---|

Term Certificates due August 15, ____

| Redemption Date | Principal Amount ($) | Redemption Date | Principal Amount ($) |
|---|---|---|---|

*maturity

The particular Term Certificates to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Certificates for a stated maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the City, by the principal amount of Term Certificates of like stated maturity which, at least fifty (50) days prior to the mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Certificates plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.

The Certificates having Stated Maturities on and after August 15, 2030, shall be subject to redemption prior to maturity, at the option of the City, in whole or in part, in principal amounts of $5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on August 15, 2029, or on any date thereafter at the redemption price of par plus accrued interest to the date of redemption.

At least thirty (30) days prior to a redemption date, the City shall cause a written notice of such redemption to be sent by United States mail, first-class, postage prepaid, to the Registered

Owners of the Certificates to be redeemed and subject to the terms and provisions relating thereto contained in the Ordinance. If this Certificate (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date this Certificate (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor, provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event a portion of the principal amount of a Certificate is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Certificate to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Certificate or Certificates of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Certificate is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer such Certificate to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Certificate redeemed in part.

With respect to any optional redemption of the Certificates, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received or such prerequisites are not satisfied, such notice shall be of no force and effect, the City shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

This Certificate is payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City and is additionally payable from and secured by a lien on and limited pledge of $1,000 of the surplus Net Revenues of the City's solid waste disposal system (the "System"), such lien and pledge, however, being junior and subordinate to the lien on and pledge of the Net Revenues securing the payment of the Prior Lien Obligations (identified and defined in the Ordinance). In the Ordinance, the City reserves and retains the right to issue Prior Lien Obligations while the Certificates are outstanding without limitation as to principal amount but subject to any terms, conditions, or restrictions as may be applicable thereto under law or otherwise and additional certificates equally and ratably secured with the Certificates by a parity lien on and pledge of the Net Revenues.

Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the Registered Owner by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of this Certificate; the properties constituting the System; the Net Revenues pledged to the payment of the principal of and interest on this Certificate; the nature, extent, and manner of enforcement of the pledge; the terms and conditions relating to the transfer or exchange of this Certificate; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Registered Owners; the rights, duties, and obligations of the City and the Paying Agent/Registrar;

the terms and provisions upon which the tax levy and the liens, pledges, charges, and covenants made therein may be discharged at or prior to the maturity of this Certificate, and this Certificate is deemed to be no longer Outstanding thereunder; and for the other terms and provisions thereof. Capitalized terms used herein have the meanings assigned in the Ordinance.

This Certificate, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by the Registered Owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Certificates of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, may treat the Registered Owner hereof whose name appears on the Security Register (i) on the Record Date as the owner entitled to the payment of the interest hereon, (ii) on the date of surrender of this Certificate as the owner entitled to the payment of the principal hereof at its Stated Maturity or upon its prior redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class, postage prepaid, to the address of each Registered Owner appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and covenanted that the City is a duly organized and legally existing municipal corporation under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Certificates is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Certificates to render the same lawful and valid obligations of the City have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Certificates do not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Certificates by the levy of a tax and a limited pledge of and lien on the Net Revenues of the System as aforestated. In case any provision in this Certificate or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Certificate and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Certificate to be duly executed under the official seal of the City as of the Certificate Date.

CITY OF NEW FAIRVIEW, TEXAS

____________________________________
[Mayor][Mayor Pro Tem]

COUNTERSIGNED:

____________________________________
City Secretary

(City Seal)

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Certificate has been duly issued and registered under the provisions of the within mentioned Ordinance; the Certificates of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated offices of the Paying Agent/Registrar located in St. Paul, Minnesota, is the "Designated Payment/Transfer Office" for this Certificate.

BOKF, NA,
Dallas, Texas,
Paying Agent/Registrar

By: ____________________________________
Authorized Signature

Registered this date:

________________

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee:) ______________________________
________________________________________________________
(Social Security or other identifying number: ____________________________________) the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints
________________________________________________________
attorney to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

DATED:______________________________

Signature guaranteed:

______________________________

______________________________

NOTICE: The signature on this assignment must correspond with the name of the Registered Owner as it appears on the face of the within Certificate in every particular.

SECTION 10: Definitions. For purposes of this Ordinance and for clarity with respect to the issuance of the Certificates herein authorized, and the levy of taxes and appropriation of Net Revenues therefor, the following words or terms, whenever the same appear herein without qualifying language, are defined to mean as follows:

(a) The term "Certificates" shall mean the $__________ "City of New Fairview, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2021" authorized by this Ordinance.

(b) The term "Certificate Fund" shall mean the special Fund created and established under the provisions of Section 11 of this Ordinance.

(c) The term "Collection Date" shall mean, when reference is being made to the levy and collection of annual ad valorem taxes, the date the annual ad valorem taxes levied each year by the City become delinquent.

(d) The term "Fiscal Year" shall mean the annual financial accounting period used with respect to the System now ending on September 30th of each year; provided, however, the Council may change, by ordinance duly passed, such annual financial accounting period to end on another date if such change is found and determined to be necessary for accounting purposes and to be consistent with the ordinances authorizing the additional obligations of the City.

(e) The term "Government Securities" shall mean (i) direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iv) any other then authorized securities or obligations that may be used to defease obligations such as the Certificates under the then applicable laws of the State of Texas.

(f) The term "Gross Revenues" shall mean, with respect to the System and for any defined period, all income and revenues derived from the operation and ownership of the System, excluding, however, gifts, grants in aid of construction, and similar kinds of receipts and moneys restricted as to use or expenditure.

(g) The term "Net Revenues" shall mean, with respect to the System and for any defined period, the Gross Revenues of the System after deducting the System's Operating and Maintenance Expenses.

(h) The term "Operating and Maintenance Expenses" shall mean, for any defined period, all current expenses and costs of operating and maintaining the System, including all salaries, labor, materials, and repairs and extensions necessary to render efficient service; provided, however, that only such repairs and extensions, as in the reasonable judgment of the City Council, are necessary to keep the System in operation and render adequate service to the City and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair the security of any Certificates or obligations payable from and secured by a lien on the Net Revenues of the System, shall be treated as "Operating and Maintenance Expenses" in determining Net Revenues. Depreciation and payments into and out of the funds maintained for the payment of the Prior Lien Obligations and similar funds maintained for the payment of obligations payable from and secured by a lien on and pledge of the Net Revenues shall never be considered as Operating and Maintenance Expenses.

(i) The term "Outstanding" when used in this Ordinance with respect to Certificates means, as of the date of determination, all Certificates theretofore issued and delivered under this Ordinance, except:

(1) those Certificates theretofore canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Certificates for which payment has been duly provided by the City in accordance with the provisions of Section 24 hereof; and

(3) those Certificates that have been mutilated, destroyed, lost, or stolen and for which (i) replacement Certificates have been registered and delivered in lieu thereof or (ii) have been paid, all as provided in Section 22 hereof.

(j) The term "Prior Lien Obligations" shall mean (A) all revenue bonds or other obligations hereafter issued, payable solely from and secured only by a lien on and pledge of the Net Revenues of the System, and (B) obligations hereafter issued which, by the terms of this Ordinance and the ordinances authorizing their issuance, have a prior right and claim on the Net Revenues of the System to the claim and right securing the payment of the Certificates.

(k) The term "Similarly Secured Obligations" shall mean all tax and revenue obligations hereafter issued which, by their terms, are payable from ad valorem taxes and additionally payable from and secured by a parity lien on and pledge of the Net Revenues of the System of equal rank and dignity with the lien and pledge securing the payment of the Certificates.

(l) The term "System" shall mean the City's solid waste disposal system, together with all future improvements, extensions, enlargements and additions thereto and replacements thereof, whether situated within or without the limits of the City.

SECTION 11: <u>Certificate Fund</u>. The City covenants that for the purpose of paying the interest on and providing a sinking fund for the payment and retirement of the Certificates, there shall be and is hereby created a special fund to be designated "Special 2021 Combination Tax and Revenue Certificate of Obligation Fund" (hereinafter, the "Certificate Fund") which Certificate Fund shall be kept and maintained at the City's depository bank, and moneys deposited in the Certificate Fund shall be used for no other purpose. The Mayor, Mayor Pro Tem, City Administrator, and City Secretary of the City, individually or jointly, are hereby authorized and directed to make withdrawals from said fund sufficient to pay the principal of and interest on the Certificates as the same become due and payable, whether by reason of maturity or otherwise, and, shall cause to be transferred to the Paying Agent/Registrar from moneys on deposit in the Certificate Fund (on or prior to the due date thereof) an amount sufficient to pay the amount of principal and/or interest then coming due on the Certificates.

Pending the transfer of funds to the Paying Agent/Registrar, money in the Certificate Fund may, at the option of the City, be invested in obligations identified in, and in accordance with the provisions of the "Public Funds Investment Act" (Texas Government Code, Chapter 2256, as amended) relating to the investment of "bond proceeds"; provided that all such investments shall be made in such a manner that the money required to be expended from the Certificate Fund will be available at the proper time or times. All interest and income derived from deposits and investments in the Certificate Fund shall be credited to, and any losses debited to, the Certificate Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Certificates.

SECTION 12: Tax Levy. To provide for the payment of the "Debt Service Requirements" on the Certificates being (i) the interest on the Certificates and (ii) a sinking fund for their payment at maturity or redemption or a sinking fund of 2% (whichever amount shall be the greater), there shall be and there is hereby levied a sufficient tax on each one hundred dollars' valuation of taxable property in the City, within the limitations prescribed by law, adequate to pay such Debt Service Requirements while the Certificates remain Outstanding, full allowance being made for delinquencies and costs of collection; said tax shall be assessed and collected each year and applied to the payment of the Debt Service Requirements, and the same shall not be diverted to any other purpose. The taxes so levied and collected shall be paid into the Certificate Fund. The Council hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay the said Debt Service Requirements, it having been determined that the existing and available taxing authority of the City for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding indebtedness.

The amount of taxes to be provided annually for the payment of the principal of and interest on the Certificates shall be determined and accomplished in the following manner:

(a) Prior to the date the Council establishes the annual tax rate and passes an ordinance levying ad valorem taxes each year, the Council shall determine:

(1) The amount on deposit in the Certificate Fund after (a) deducting therefrom the total amount of Debt Service Requirements to become due on the Certificates prior to the Collection Date for the ad valorem taxes to be levied and (b) adding thereto the amount of the Net Revenues and any other lawfully available funds which are appropriated and allocated to pay such Debt Service Requirements prior to the Collection Date for the ad valorem taxes to be levied.

(2) The amount of Net Revenues and any other lawfully available funds which are appropriated and to be set aside for the payment of the Debt Service Requirements on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(3) The amount of Debt Service Requirements to become due and payable on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(b) The amount of taxes to be levied annually each year to pay the Debt Service Requirements on the Certificates shall be the amount established in paragraph (3) above less the sum total of the amounts established in paragraphs (1) and (2), after taking into consideration delinquencies and costs of collecting such annual taxes.

The City has sufficient current funds available to pay the payment to become due on the Certificates on August 15, 2021 and there will be deposited in the Certificate Fund such amount of current funds which will be sufficient to pay the amounts to become due on the Certificates on August 15, 2021.

SECTION 13: Pledge of Net Revenues. The City hereby covenants and agrees that Net Revenues of the System in the amount of $1,000 are hereby irrevocably pledged to the payment of the principal of and interest on the Certificates, and the pledge of Net Revenues herein made for the payment of the Certificates shall constitute a lien on the Net Revenues of the System, until such time as the City shall pay all of such $1,000, after which time the pledge shall cease, all in accordance with the terms and provisions hereof. The pledge of Net Revenues herein made shall be on a parity in all respects with the lien on the Net Revenues securing the payment of the Similarly Secured Obligations, such lien and pledge, however, being junior and subordinate to the lien on and pledge of the Net Revenues securing the payment of the Prior Lien Obligations hereafter issued by the City. Furthermore, such lien on and pledge of the Net Revenues securing the payment of the Certificates shall be valid and binding and fully perfected from and after the date of adoption of this Ordinance without physical delivery or transfer or transfer of control of the Net Revenues, the filing of this Ordinance, or any other act; all as provided in Texas Government Code, Chapter 1208, as amended.

Texas Government Code, Chapter 1208, as amended, applies to the issuance of the Certificates and the pledge of the Net Revenues of the System granted by the City under this Section 13, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the Certificates are Outstanding such that the pledge of the Net Revenues of the System granted by the City under this Section 13 is to be subject to the filing requirements of Texas Business and Commerce Code, Chapter 9, as amended, then in order to preserve to the Holders of the Certificates the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Texas Business and Commerce Code, Chapter 9, as amended, and enable a filing to perfect the security interest in said pledge to occur.

SECTION 14: System Fund. The City hereby covenants and agrees that all Gross Revenues (excluding earnings from the investment of money held in any funds or accounts created for the payment and security of the Prior Lien Obligations) shall be deposited as collected into a fund maintained at an official depository of the City and known on the books of the City as the "System Fund". All moneys deposited to the credit of the System Fund shall be allocated, dedicated and disbursed to the extent required for the following purposes and in the order of priority shown, to wit:

First: To the payment of all necessary and reasonable Operating and Maintenance Expenses of the System as defined herein or required by statute to be a first charge on and claim against the revenues thereof.

Second: To the payment of all amounts required to be deposited in any special funds created and established for the payment, security, and benefit of any Prior Lien Obligations in accordance with the terms and provisions of any ordinance(s) authorizing the issuance of any Prior Lien Obligations.

Third: To the payment, equally and ratably, of the amounts pledged to the payment of the Certificates and Similarly Secured Obligations, if any.

Any Net Revenues remaining in the System Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other City purpose now or hereafter permitted by law.

SECTION 15: Deposits to Certificate Fund. Subject to the provisions of Section 13 hereof, the City hereby covenants and agrees to cause to be deposited in the Certificate Fund from the pledged Net Revenues of the System in the System Fund, the amount of Net Revenues pledged to the payment of the Certificates.

The City covenants and agrees that the amount of pledged Net Revenues, $1,000, together with other lawfully available revenues appropriated by the City for payment of the Debt Service Requirements on the Certificates and ad valorem taxes levied, collected, and deposited in the Certificate Fund for and on behalf of the Certificates, will be an amount equal to one hundred percent (100%) of the amount required to fully pay the interest and principal due and payable on the Certificates. In addition, any surplus proceeds from the sale of the Certificates not expended for authorized purposes shall be deposited in the Certificate Fund, and such amounts so deposited shall reduce the sums otherwise required to be deposited in the Certificate Fund from ad valorem taxes and the Net Revenues.

SECTION 16: Security of Funds. All moneys on deposit in the funds for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested) shall be secured in the manner and to the fullest extent required by the laws of Texas for the security of public funds, and moneys on deposit in such funds shall be used only for the purposes permitted by this Ordinance.

SECTION 17: Special Covenants. The City hereby covenants as follows:

(i) It has the lawful power to pledge the Net Revenues to the payment of the Certificates in the manner contemplated herein and has lawfully exercised said power under the Constitution and laws of the State of Texas, including said power existing under Texas Government Code, Chapter 1502, as amended, and Texas Local Government Code, Subchapter C of Chapter 271, as amended.

(ii) Other than for the payment of any Prior Lien Obligations or any Similarly Secured Obligations hereafter issued and the Certificates, the Net Revenues of the System have not in any manner been pledged to the payment of any debt or obligation of the City or of the System.

SECTION 18: Issuance of Prior Lien Obligations and Similarly Secured Obligations. The City hereby expressly reserves the right to hereafter issue Prior Lien Obligations, without limitation as to principal amount, but subject to any terms, conditions or restrictions applicable thereto under law or otherwise, payable, in whole or in part, from the Net Revenues (without impairment of the obligation of contract with the Holders of the Certificates) upon such terms and conditions as the Council may determine. Additionally, the City hereby expressly reserves the right to hereafter issue, without any limitations, restrictions or conditions precedent, except as may be prescribed by law, Similarly Secured Obligations payable from and secured by a lien on and pledge of the Net Revenues of equal rank and dignity, and on a parity in all respects, with the lien on and pledge of the Net Revenues securing the payment of the Certificates.

SECTION 19: Application of Prior Lien Obligations Covenants and Agreements. It is the intention of this governing body and accordingly hereby recognized and stipulated that the provisions, agreements, and covenants contained herein bearing upon the management and operations of the System, and the administering and application of revenues derived from the operation thereof, shall to the extent possible be harmonized with like provisions, agreements, and covenants contained in any ordinance authorizing the issuance of any Prior Lien Obligations, and to the extent of any irreconcilable conflict between the provisions contained herein and in any ordinance(s) authorizing the issuance of any Prior Lien Obligations, the provisions, agreements, and covenants contained therein shall prevail to the extent of such conflict and be applicable to this Ordinance, but in all respects subject to the priority of rights and benefits, if any, conferred thereby to the holders of any Prior Lien Obligations.

SECTION 20: Sale of the Certificates - Official Statement. Pursuant to a public sale for the Certificates, the bid submitted by __________________ (herein referred to as the "Purchaser") is declared to be the best bid received producing the lowest true interest cost rate to the City, and the sale of the Certificates to the Purchaser at the price of par plus premium in the amount of $______ is hereby determined to be in the best interests of the City and is approved and confirmed. Delivery of the Certificates to the Purchaser shall occur as soon as possible upon payment being made therefor in accordance with the terms of sale. The Initial Certificate shall be registered in the name as provided in the winning bid.

Furthermore, the use of the Preliminary Official Statement in connection with the public offering and sale of the Certificates is hereby ratified, confirmed, and approved in all respects. The final Official Statement reflecting the terms of sale (together with such changes approved by the Mayor, Mayor Pro Tem, City Administrator, or City Secretary, any one or more of said officials), shall be and is hereby in all respects approved and the Purchaser is hereby authorized to use and distribute said final Official Statement, dated February 1, 2021 in the reoffering, sale, and delivery of the Certificates to the public. The Mayor or Mayor Pro Tem and City Secretary are further authorized and directed to cause to be delivered for and on behalf of the City copies of said Official Statement in final form as may be required by the Purchaser, and such final Official Statement shall be deemed to be approved by the Council and constitute the Official Statement authorized for distribution and use by the Purchaser.

SECTION 21: Cancellation. All Certificates surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Certificates previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Certificates so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Certificates held by the Paying Agent/Registrar shall be returned to the City.

SECTION 22: Mutilated, Destroyed, Lost, and Stolen Certificates. In case any Certificate shall be mutilated or destroyed, lost, or stolen, the Paying Agent/Registrar may execute and deliver a replacement Certificate of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Certificate, or in lieu of and in substitution for such destroyed, lost, or stolen Certificate, only upon the approval of the City and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss, or theft of such Certificate, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Certificate shall be borne by the Holder of the Certificate mutilated or destroyed, lost, or stolen.

Every new Certificate issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Certificate shall constitute a replacement of the prior obligation of the City and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Certificates, whether or not the mutilated, destroyed, lost, or stolen Certificate shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Certificates.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Certificates.

SECTION 23: Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms shall have the following meanings:

"Closing Date" means the date on which the Certificates are first authenticated and delivered to the initial purchasers against payment therefor.

"Code" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Gross Proceeds" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Certificates.

"Investment" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Nonpurpose Investment" means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Certificates are invested and which is not acquired to carry out the governmental purposes of the Certificates.

"Rebate Amount" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Regulations" means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Certificates. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"Yield" of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations; and (2) the Certificates has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Certificate to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Certificate, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Certificates:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Certificates, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Certificates or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Certificates to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Certificates directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Certificates.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Certificates to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038 G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Certificate is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Certificates with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Certificates until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Certificates by the Purchaser and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States from the general fund, other appropriate fund, or if permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the Certificate Fund, the amount that when added to the future value of previous rebate payments made for the Certificates equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Certificates, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Certificates not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the Mayor, Mayor Pro Tem, City Administrator, and/or City Secretary, either or any combination of them, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Certificates, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

(k) Qualified Tax-Exempt Obligations. In accordance with the provisions of paragraph (3) of subsection (b) of Section 265 of the Code, the City hereby designates the Certificates to be "qualified tax-exempt obligations" in that the Certificates are not "private activity bonds" as defined in the Code and the reasonably anticipated amount of "qualified tax-exempt obligations" to be issued by the City (including all subordinate entities of the City) for the calendar year in which the Certificate are issued will not exceed $10,000,000.

SECTION 24: Satisfaction of Obligations of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Certificates, at the times and in the manner stipulated in this Ordinance, then the pledge of taxes levied under this Ordinance and the lien on and pledge of the Net Revenues of the System (to the extent such pledge of Net Revenues shall not have been discharged or terminated by prior payment of principal of or interest on the Certificates) under this Ordinance and all covenants, agreements and other obligations of the City to the Holders shall thereupon cease, terminate and be discharged and satisfied.

The Certificates, or any principal amount(s) thereof, shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (a) money sufficient to pay in full such Certificates or the principal amount(s) thereof at maturity or the redemption date thereof, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (b) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting or consulting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Certificates, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The City covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Certificates to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which are not required for the payment of the Certificates, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Certificates and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Certificates for which such moneys were deposited and are held in trust to pay, shall upon the request of the City be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

SECTION 25: Ordinance a Contract - Amendments. This Ordinance shall constitute a contract with the Holders from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Certificate remains Outstanding except as permitted in this Section and in Section 36 hereof. The City, may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the written consent of Holders owning a majority in aggregate principal amount of the Certificates then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Holders of Outstanding Certificates, no such amendment, addition, or rescission shall (a) extend the time or times of payment of the principal of, premium, if any, and interest on the Certificates, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Certificates, (b) give any preference to any Certificate over any other Certificate, or (c) reduce the aggregate principal amount of Certificates required to be held by Holders for consent to any such amendment, addition, or rescission.

SECTION 26: Control and Custody of Certificates. The Mayor or Mayor Pro Tem of the City shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, including the printing and supply of definitive Certificates, and shall take and have charge and control of the Initial Certificate pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts, and the delivery thereof to the Purchaser.

SECTION 27: Notices to Holders - Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first-class, postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Certificates. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 28: Bond Counsel's Opinion. The Purchaser's obligation to accept delivery of the Certificates is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Attorneys, Dallas, Texas, approving such Certificates as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for such Certificates. A true and correct reproduction of said opinion or an executed counterpart thereof is hereby authorized to be either printed on definitive printed obligations or deposited with DTC along with the global certificates for the implementation and use of the Book-Entry-Only System used in the settlement and transfer of the Certificates. The City confirms the continuation of the engagement of Norton Rose Fulbright US LLP as the City's bond counsel.

SECTION 29: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Certificates shall be of no significance or effect as regards the legality thereof and neither the City nor the attorneys approving said Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Certificates.

SECTION 30: Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar, and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar, and the Holders.

SECTION 31: Inconsistent Provisions. All ordinances, orders, or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 32: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 33: Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

SECTION 34: Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance or the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 35: Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551 of the Texas Government Code, as amended.

SECTION 36: Continuing Disclosure Undertaking.

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

"Financial Obligation" means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

"MSRB" means the Municipal Securities Rulemaking Board.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

(b) Annual Reports. The City shall provide annually to the MSRB (1) within six months after the end of each fiscal year ending in or after 2021, financial information and operating data with respect to the City of the general type including the Official Statement under Tables 1 through 5 and 7 through 10, and (2) if not provided as part of such financial information and operating data, audited financial statements of the City within 12 months after the end of each fiscal year ending in or after 2021, if available. Any financial statements so provided shall be (i) prepared in accordance with the accounting principles described in Appendix B to the Official Statement, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation and (2) audited, if the City commissions an audit of such financial statements and the audit is completed within the period during which they must be provided. If audited financial statements are not available within 12 months after the end of any fiscal year, the City will provide unaudited financial statements within such 12-month period and audited financial statements for the applicable fiscal year, when and if such audited financial statements become available.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the SEC.

(c) Notice of Certain Events. The City shall provide notice of any of the following events with respect to the Certificates to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
7. Modifications to rights of holders of the Certificates, if material;
8. Certificate calls, if material, and tender offers;
9. Defeasances;

10. Release, substitution, or sale of property securing repayment of the Certificates, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
15. Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding subsection (c)12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City, and (b) the City intends the words used in the immediately preceding subsections (c) (15) and (16) in this Section to have the meanings ascribed to them in SEC Release No. 34-83885, dated August 20, 2018.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB. All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers, and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an "obligated person" with respect to the Certificates within the meaning of the Rule, except that the City in any event will give the notice required by subsection (c) of this Section of any Certificate calls and defeasance that cause the City to be no longer such an "obligated person."

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Certificates, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Certificates. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent an underwriter of the initial public offering of the Certificates from lawfully purchasing or selling Certificates in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with Section 36(b) an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 37: <u>Proceeds of Sale</u>. The proceeds of sale of the Certificates, excluding amounts to pay costs of issuance, shall be deposited in a fund maintained at a depository bank of the City and used to finance the projects described in Section 1. Pending expenditure for authorized projects and purposes, such proceeds of sale may be invested in authorized investments in accordance with the provisions of Texas Government Code, Chapter 2256, as amended, including specifically guaranteed investment contracts permitted thereunder and the

City's investment policies and guidelines, any investment earnings realized may be expended for such authorized projects and purposes or deposited in the Certificate Fund as shall be determined by the Council. The premium received from the Purchaser (to the extent it is not used to finance the projects described in Section 1 hereof) will be applied to the payment of the costs of issuing the Certificates. All surplus proceeds of sale of the Certificates, including investment earnings, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Certificate Account.

SECTION 38: Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, City Administrator, and City Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the City all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance, sale and delivery of the Certificates. In addition, prior to the initial delivery of the Certificates, the Mayor, Mayor Pro Tem, City Administrator, or Bond Counsel to the City are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance: (i) in order to cure any ambiguity, formal defect, or omission in this Ordinance or such other document, or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Certificates by the Attorney General. In the event that any officer of the City whose signature shall appear on any document shall cease to hold such office before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 39: Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 40: Incorporation of Findings and Determinations. The findings and determinations of the Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 41: Effective Date. This Ordinance shall take effect and be in full force from and after its adoption on the date shown below in accordance with Texas Government Code, Section 1201.028, as amended.

*[Remainder of page left blank intentionally]*

PASSED AND APPROVED, this February 1, 2021.

CITY OF NEW FAIRVIEW, TEXAS

________________________________________

Mayor

ATTEST:

__________________________________

City Secretary

(City Seal)

# EXHIBIT A

PAYING AGENT/REGISTRAR AGREEMENT

# **PAYING AGENT/REGISTRAR AGREEMENT**

THIS AGREEMENT is entered into as of February 1, 2021 (this "Agreement"), by and between BOKF, NA, a banking association duly organized and existing under the laws of the United States of America, or its successors (the "Bank") and the City of New Fairview, Texas (the "Issuer"),

## RECITALS

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "City of New Fairview, Texas Combination Tax and Revenue Certificates of Obligation, Series 2021" (the "Securities"), dated February 1, 2021, such Securities scheduled to be delivered to the initial purchasers thereof on or about March 3, 2021; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

## ARTICLE ONE
## APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR

**Section 1.01 Appointment**. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

**Section 1.02 Compensation**. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto; provided however, notwithstanding anything herein or in Annex A to the contrary, the aggregate value of this agreement shall be less than the dollar limitation set forth in Section 2271.002(a)(2) of the Texas Government Code, as amended.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

## ARTICLE TWO
## DEFINITIONS

**Section 2.01 Definitions**. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

"Acceleration Date" on any Security means the date, if any, on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

"Authorizing Document" means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

"Bank Office" means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

"Holder" and "Security Holder" each means the Person in whose name a Security is registered in the Security Register.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

"Predecessor Securities" of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

"Redemption Date", when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

"Responsible Officer", when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Security Register" means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

"Stated Maturity" means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

**Section 2.02** **Other Definitions**. The terms "Bank," "Issuer," and "Securities (Security)" have the meanings assigned to them in the recital paragraphs of this Agreement.

The term "Paying Agent/Registrar" refers to the Bank in the performance of the duties and functions of this Agreement.

## ARTICLE THREE
## PAYING AGENT

**Section 3.01** **Duties of Paying Agent**. As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

BOKF, NA Corporate Trust Services
111 Fillmore Avenue East
St. Paul, Minnesota 55107-1402

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first-class, postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder's risk and expense.

**Section 3.02** **Payment Dates**. The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

## ARTICLE FOUR
## REGISTRAR

**Section 4.01** **Security Register - Transfers and Exchanges**. The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the "Security Register") for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such other information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the Financial Industry Regulatory Authority, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

**Section 4.02 Securities**. The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

**Section 4.03 Form of Security Register**. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

**Section 4.04 List of Security Holders**. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

**Section 4.05 Return of Cancelled Securities**. The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

**Section 4.06** **Mutilated, Destroyed, Lost or Stolen Securities**. The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

**Section 4.07** **Transaction Information to Issuer**. The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

## ARTICLE FIVE
## THE BANK

**Section 5.01** **Duties of Bank**. The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

**Section 5.02** **Reliance on Documents, Etc.**

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, Issuer's financial advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

**Section 5.03** **Recitals of Issuer**. The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

**Section 5.04** **May Hold Securities**. The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

**Section 5.05** **Moneys Held by Bank - Paying Agent Account/Collateralization**. A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

**Section 5.06** **Indemnification**. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

**Section 5.07** **Interpleader**. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

**Section 5.08** **DTC Services**. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for “Depository Trust Company” services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the “Operational Arrangements”, which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

## ARTICLE SIX
## MISCELLANEOUS PROVISIONS

**Section 6.01** **Amendment**. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

**Section 6.02** **Assignment**. This Agreement may not be assigned by either party without the prior written consent of the other.

**Section 6.03** **Notices**. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page(s) hereof.

**Section 6.04** **Effect of Headings**. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

**Section 6.05** **Successors and Assigns**. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

**Section 6.06 Severability**. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Section 6.07 Merger, Conversion, Consolidation, or Succession.** Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

**Section 6.08 Benefits of Agreement**. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

**Section 6.09 Entire Agreement**. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

**Section 6.10 Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

**Section 6.11 Termination**. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

**Section 6.12 Iran, Sudan or Foreign Terrorist Organizations**. The Bank represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf,
https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or
https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Bank and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Bank understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Bank and exists to make a profit.

**Section 6.13** **Governing Law**. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

*[The remainder of this page intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BOKF, NA

By:____________________________________

Title:___________________________________

Address: 5956 Sherry Lane, Suite 1201
Dallas, Texas 75225

CITY OF NEW FAIRVIEW, TEXAS

By: ______________________________
Mayor

Address: 999 Illinois Lane
New Fairview, Texas 76078

Attest:

______________________________
City Secretary

# ANNEX A

# GENERAL CERTIFICATE

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | |
| | § | |
| COUNTIES OF WISE AND DENTON | § | |
| | § | |
| CITY OF NEW FAIRVIEW | § | |

We, the undersigned, City Administrator and City Secretary, respectively, of the City of Celina, Texas, DO HEREBY CERTIFY, with respect to the proposed "CITY OF NEW FAIRVIEW, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2021" dated February 1, 2021 (the "Certificates") as follows:

1. Relative to Nonencumbrance.

Save and except for the pledge of the income and revenues of the City's combined Solid Waste Disposal System (the "System") to the payment of the proposed Certificates, said income and revenues of the System have not been pledged or hypothecated in any other manner or for any other purpose; and that the above-mentioned contracts and the Certificates evidence the only liens, encumbrances or indebtedness of the System or against the income and revenues of the System.

2. Relative to Income and Revenues.

The following is a schedule of the gross receipts, operating expenses and net revenues of the Solid Waste Disposal System for the years stated:

| Fiscal Year Ending 9-30 | Gross Receipts ($) | Operating Expenses ($) | Net Revenues ($) |
|---|---|---|---|
| 2016 | | | |
| 2017 | | | |
| 2018 | | | |
| 2019 | | | |
| 2020 | | | |

3. Relative to Rates and Charges.

The current monthly rates and charges for services provided by the System are as shown in **Exhibit A** attached hereto and incorporated herein by reference as a part of this certificate for all purposes.

4. Relative to Tax Supported Indebtedness.

The total principal amount of indebtedness of the City, including the proposed Certificates, payable from ad valorem taxes levied and collected by the City is as follows:

| | |
|---|---|
| OUTSTANDING INDEBTEDNESS* | $0 |
| THE CERTIFICATES | $__________ |
| TOTAL INDEBTEDNESS | $__________ |

5. Relative to Debt Service Schedule.

A debt service requirement schedule for the City's outstanding indebtedness payable in whole or in part from ad valorem taxes, including the Certificates, is attached hereto as **Exhibit B** and made a part of this certificate for all purposes.

6. Relative to Taxable Values.

The current assessed value of all taxable property (net of exemptions) in the City, as shown by the tax rolls for the year 2020/2021, and which has been duly approved and is the latest official assessment of taxable property in the City, is $156,573,319.

7. Relative to City Officials.

Certain duly qualified and acting officials of the City are as follows:

| | |
|---|---|
| JOE MAX WILSON | MAYOR |
| MONICA RODRIGUEZ | CITY SECRETARY |
| BEN NIBARGER | CITY ADMINISTRATOR |
| BROOKE BOLLER | CITY CLERK |

8. Relative to Incorporation.

The City was incorporated as a Type B general law municipality by action of the Wise County Commissioners Court at its May 21, 1973 meeting following an election held May 19, 1973 at which 32 votes were cast in favor of the incorporation of the City and 8 votes were cast against the incorporation. The initial Mayor and Alderman were elected at an election held within the City on June 16, 1973 which election results were canvassed by action of the Wise County Commissioners Court on June 18, 1973. The actions of the Wise County Commissioners Court are reflected in **Exhibit C**, which is attached hereto and incorporated herein for all purposes. The City changed its name to the City of New Fairview, Texas by action of the City Council on _______________, a copy of which is attached hereto as **Exhibit D**, which is incorporated herein for all purposes. On July 15, 2019, the City Council, by Resolution 2019-R004-090, a copy of which is attached hereto as **Exhibit E**, which is incorporated herein for all purposes, by a vote of more than two-thirds of its governing body, changed the City of New Fairview to a Type A general law municipality in accordance with the authority provided in Subchapter B of Chapter 6 of the Texas Local Government Code, as amended.

The City is a Type A general law municipality pursuant to Texas Local Government Code, Section 5.001(3) operating under the aldermanic form of government and the City's population as of the most recent federal census was 1,258, with an estimated current population of 1,575.

9. Relative to No Petition.

No petition of any kind or character, signed by at least 5% of the qualified electors of the City, has been filed with or presented to the Mayor, City Secretary or any other official of the City protesting the issuance of the Certificates.

10. Relative to No Free Services.

Except for city buildings and institutions operated by the City, no free services of the System shall be allowed, and rates charged for services furnished by the System shall be equal and uniform as required by law.

11. Relative to Land Acquisition.

To the extent any Certificate proceeds are used to acquire real property, the City has satisfied or will satisfy the appraisal requirements of Section 252.051 of the Texas Local Government Code, as amended.

12. Relative to Contracts.

Prior to the execution of certain contracts related to the issuance of the Certificates, if applicable, the City received a completed disclosure of interested parties form and certification of filing (collectively a "Form 1295") from the business entity contracting with the City pursuant to the requirements of Texas Government Code Section 2252.908 and rules promulgated thereunder by the Texas Ethics Commission (the "TEC"). Not later than the 30th day after the date the contract for which a required Form 1295 was received by the City, the City has or will notify the TEC, in an electronic format prescribed by the TEC, of the receipt of such Form 1295.

13. Relative to No Prior Bond Propositions. A bond proposition to authorize the issuance of bonds for the same purpose as that for which the Certificates are being issued has not been submitted to, and failed to be approved by, the voters of the City during the preceding three years.

*[Remainder of page left blank intentionally]*

WITNESS OUR HANDS AND THE SEAL OF THE CITY OF CELINA, TEXAS, this the 1st day of February, 2021.

CITY OF NEW FAIRVIEW, TEXAS

______________________________________
City Administrator

______________________________________
City Secretary

(City Seal)

# EXHIBIT A

RATES AND CHARGES

## EXHIBIT B

DEBT SERVICE SCHEDULE

**EXHIBIT C**

CERTIFICATION OF INCORPORATION

## EXHIBIT D

Name Change Resolution

**EXHIBIT E**

TYPE A RESOLUTION

Preliminary

## City of New Fairview, Texas

$2,930,000

Combination Tax & Revenue Certificates of Obligation, Series 2021

# Sources & Uses

**Dated 03/03/2021 | Delivered 03/03/2021**

### Sources Of Funds

| | |
|---|---|
| Par Amount of Bonds | $2,930,000.00 |
| Reoffering Premium | 190,262.55 |
| **Total Sources** | **$3,120,262.55** |

### Uses Of Funds

| | |
|---|---|
| Total Underwriter's Discount (1.000%) | 29,300.00 |
| Costs of Issuance | 72,000.00 |
| Gross Bond Insurance Premium | 16,502.53 |
| Deposit to Project Construction Fund | 3,000,000.00 |
| Rounding Amount | 2,460.02 |
| **Total Uses** | **$3,120,262.55** |

Preliminary

**City of New Fairview, Texas**

$2,930,000

Combination Tax & Revenue Certificates of Obligation, Series 2021

# Debt Service Schedule

| Date | Principal | Coupon | Interest | Total P+I |
|---|---|---|---|---|
| 09/30/2021 | 115,000.00 | 2.000% | 31,477.50 | 146,477.50 |
| 09/30/2022 | 85,000.00 | 2.000% | 67,650.00 | 152,650.00 |
| 09/30/2023 | 95,000.00 | 2.000% | 65,950.00 | 160,950.00 |
| 09/30/2024 | 115,000.00 | 2.000% | 64,050.00 | 179,050.00 |
| 09/30/2025 | 125,000.00 | 3.000% | 61,750.00 | 186,750.00 |
| 09/30/2026 | 130,000.00 | 3.000% | 58,000.00 | 188,000.00 |
| 09/30/2027 | 135,000.00 | 3.000% | 54,100.00 | 189,100.00 |
| 09/30/2028 | 140,000.00 | 3.000% | 50,050.00 | 190,050.00 |
| 09/30/2029 | 145,000.00 | 3.000% | 45,850.00 | 190,850.00 |
| 09/30/2030 | 150,000.00 | 3.000% | 41,500.00 | 191,500.00 |
| 09/30/2031 | 155,000.00 | 3.000% | 37,000.00 | 192,000.00 |
| 09/30/2032 | 155,000.00 | 3.000% | 32,350.00 | 187,350.00 |
| 09/30/2033 | 160,000.00 | 2.000% | 27,700.00 | 187,700.00 |
| 09/30/2034 | 165,000.00 | 2.000% | 24,500.00 | 189,500.00 |
| 09/30/2035 | 170,000.00 | 2.000% | 21,200.00 | 191,200.00 |
| 09/30/2036 | 170,000.00 | 2.000% | 17,800.00 | 187,800.00 |
| 09/30/2037 | 175,000.00 | 2.000% | 14,400.00 | 189,400.00 |
| 09/30/2038 | 180,000.00 | 2.000% | 10,900.00 | 190,900.00 |
| 09/30/2039 | 180,000.00 | 2.000% | 7,300.00 | 187,300.00 |
| 09/30/2040 | 185,000.00 | 2.000% | 3,700.00 | 188,700.00 |
| **Total** | **$2,930,000.00** | **-** | **$737,227.50** | **$3,667,227.50** |

## Yield Statistics

| | |
|---|---|
| Bond Year Dollars | $32,253.50 |
| Average Life | 11.008 Years |
| Average Coupon | 2.2857287% |
| Net Interest Cost (NIC) | 1.7866742% |
| True Interest Cost (TIC) | 1.7349262% |
| Bond Yield for Arbitrage Purposes | 1.6408801% |
| All Inclusive Cost (AIC) | 2.0413470% |

## IRS Form 8038

| | |
|---|---|
| Net Interest Cost | 1.6162121% |
| Weighted Average Maturity | 10.846 Years |

Preliminary

**City of New Fairview, Texas**

$300,000

Combination Tax & Revenue Certificates of Obligation, Series 2021

$300K over 5 Years

# Debt Service Schedule

| Date | Principal | Coupon | Interest | Total P+I |
|---|---|---|---|---|
| 09/30/2021 | 60,000.00 | 2.000% | 2,970.00 | 62,970.00 |
| 09/30/2022 | 60,000.00 | 2.000% | 5,400.00 | 65,400.00 |
| 09/30/2023 | 60,000.00 | 2.000% | 4,200.00 | 64,200.00 |
| 09/30/2024 | 60,000.00 | 2.000% | 3,000.00 | 63,000.00 |
| 09/30/2025 | 60,000.00 | 3.000% | 1,800.00 | 61,800.00 |
| **Total** | **$300,000.00** | **-** | **$17,370.00** | **$317,370.00** |

## Yield Statistics

| | |
|---|---|
| Bond Year Dollars | $735.00 |
| Average Life | 2.450 Years |
| Average Coupon | 2.3632653% |
| Net Interest Cost (NIC) | 0.9182041% |
| True Interest Cost (TIC) | 0.8920423% |
| Bond Yield for Arbitrage Purposes | 1.6408801% |
| All Inclusive Cost (AIC) | 2.1014096% |

## IRS Form 8038

| | |
|---|---|
| Net Interest Cost | 0.4793389% |
| Weighted Average Maturity | 2.494 Years |

Preliminary

## City of New Fairview, Texas

$2,630,000

Combination Tax & Revenue Certificates of Obligation, Series 2021

$2.7 mil over 20 years

# Debt Service Schedule

| Date | Principal | Coupon | Interest | Total P+I |
|---|---|---|---|---|
| 09/30/2021 | 55,000.00 | 2.000% | 28,507.50 | 83,507.50 |
| 09/30/2022 | 25,000.00 | 2.000% | 62,250.00 | 87,250.00 |
| 09/30/2023 | 35,000.00 | 2.000% | 61,750.00 | 96,750.00 |
| 09/30/2024 | 55,000.00 | 2.000% | 61,050.00 | 116,050.00 |
| 09/30/2025 | 65,000.00 | 3.000% | 59,950.00 | 124,950.00 |
| 09/30/2026 | 130,000.00 | 3.000% | 58,000.00 | 188,000.00 |
| 09/30/2027 | 135,000.00 | 3.000% | 54,100.00 | 189,100.00 |
| 09/30/2028 | 140,000.00 | 3.000% | 50,050.00 | 190,050.00 |
| 09/30/2029 | 145,000.00 | 3.000% | 45,850.00 | 190,850.00 |
| 09/30/2030 | 150,000.00 | 3.000% | 41,500.00 | 191,500.00 |
| 09/30/2031 | 155,000.00 | 3.000% | 37,000.00 | 192,000.00 |
| 09/30/2032 | 155,000.00 | 3.000% | 32,350.00 | 187,350.00 |
| 09/30/2033 | 160,000.00 | 2.000% | 27,700.00 | 187,700.00 |
| 09/30/2034 | 165,000.00 | 2.000% | 24,500.00 | 189,500.00 |
| 09/30/2035 | 170,000.00 | 2.000% | 21,200.00 | 191,200.00 |
| 09/30/2036 | 170,000.00 | 2.000% | 17,800.00 | 187,800.00 |
| 09/30/2037 | 175,000.00 | 2.000% | 14,400.00 | 189,400.00 |
| 09/30/2038 | 180,000.00 | 2.000% | 10,900.00 | 190,900.00 |
| 09/30/2039 | 180,000.00 | 2.000% | 7,300.00 | 187,300.00 |
| 09/30/2040 | 185,000.00 | 2.000% | 3,700.00 | 188,700.00 |
| **Total** | **$2,630,000.00** | **-** | **$719,857.50** | **$3,349,857.50** |

### Yield Statistics

| | |
|---|---|
| Bond Year Dollars | $31,518.50 |
| Average Life | 11.984 Years |
| Average Coupon | 2.2839206% |
| Net Interest Cost (NIC) | 1.8069266% |
| True Interest Cost (TIC) | 1.7564317% |
| Bond Yield for Arbitrage Purposes | 1.6408801% |
| All Inclusive Cost (AIC) | 2.0397962% |

### IRS Form 8038

| | |
|---|---|
| Net Interest Cost | 1.6431061% |
| Weighted Average Maturity | 11.779 Years |

**City Council Agenda**
**January 11, 2021**

**Agenda Item:** **Resolution** **(Action Item)**

## Agenda Description:

Discuss, consider, and act on a resolution approving a reimbursement agreement with Rockhill Capital & Investments regarding professional fees for the Shoop Ranch development; authorizing the City Administrator to negotiate an agreement for presentation to the Council regarding the establishment of an public improvement district (PID), a zoning ordinance to create a planned district (PD), a development agreement, as well as resolving other matters incident and related thereto.

## Background Information:

In the worksession, the Council received a presentation from Rockhill Investments & Capital regarding a proposed master planned community on the Shoop Ranch. Staff has prepared an agreement with Rockhill that provides for reimbursement of professional service fees generated by the city in reviewing the proposed development, including attorney, planner, and engineering fees. Rockhill has executed the agreement and presented the city with a $50,000 deposit for the city expenditures upon approval of this agreement.

Further, staff is asking for the authorization of the Council to enter into negotiations regarding the Shoop Ranch development, including: a planned district zoning ordinance (PD), a public improvement district (PID), and a development agreement that will be presented to the Council in future meetings for input and possible action.

## Financial Information:

N/A

## City Contact and Recommendation:

Ben Nibarger, City Administrator
Staff recommends that Council approve the agreement.

## Attachments:

Resolution

Agreement

**City of New Fairview, Texas**
**Resolution No. 202102-09-151**

**A RESOLUTION OF THE CITY OF NEW FAIRVIEW, TX APPROVING A PROFESSIONAL SERVICES REIMBURSEMENT AGREEMENT WITH ROCKHILL INVESTMENT & CAPITAL REGARDING THE SHOOP RANCH DEVELOPMENT.**

**WHEREAS,** the City of Fairview is an incorporated city in the State of Texas; and

**WHEREAS,** the City of New Fairview is a General Law city as classified by the Texas Municipal Code; and

**WHEREAS,** the City desires to obtain reimbursement for professional service fees regarding for the review of the Shoop Ranch master planned development; and

**WHEREAS,** Rockhill Capital & Investment desires to provide a deposit in the amount of $50,000 for this purpose.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY NEW FAIRVIEW:**

1. That, all matters stated in the recitals herein above are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

2. That the City Council does hereby approve the professional services reimbursement agreement and accept the deposit of $50,000.

3. That the City Council does hereby authorize the City Administrator to direct and work with the city's consultants to prepare the necessary zoning ordinances as well as any other documents or agreements, regarding the Shoop Ranch project, for presentation to the City Council.

4. That, if any portion of this resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council hereby determined that it would have adopted this Resolution

without the invalid provision.

5. That this Resolution shall become effective from and after its date of passage.

PRESENTED AND PASSED on this **1st day of February, 2021**, at a meeting of the New Fairview City Council.

APPROVED: ATTESTED:

______________________ ______________________

Joe Max Wilson
Mayor

Monica Rodriguez
City Secretary

## PRE-DEVELOPMENT AND PROFESSIONAL SERVICES AGREEMENT

**STATE OF TEXAS** §

**COUNTY OF WISE** §

This Pre-Development and Professional Services Agreement (this "Agreement"), executed this ____ day of __________, 20___, is made and entered into by and between the CITY OF NEW FAIRVIEW, TEXAS, a Type A general law municipality (the "City"), and ROCKHILL CAPITAL & INVESTMENTS, LLC, a Texas limited liability company (the "Developer") potential buyer of that certain tract of land comprising approximately 1807 acres northeast of the City, as described on **Exhibit A** attached hereto (the "Development Area").

WHEREAS, the Developer seeks to develop the Development Area as a master planned community, subject to and conditioned on the execution of a development agreement between the City and the Developer and creation of a public improvement district;

WHEREAS, the City and the Developer hereby recognize and agree that issues associated with and necessitated by developing the Development Area, including drafting, negotiating and executing a development agreement (and other agreements referred to therein, herein collectively referred to as a "Development Agreement") and creating a public improvement district (which may or may not include issuance of bonds), will require the City to obtain professional services from independent, third-party consultants including, but not limited to: (i) engineering services to identify infrastructure needs; (ii) planning services; (iii) financial advisory services; and (iv) legal services (collectively, "Professional Services");

WHEREAS, the Developer recognizes that the City has limited financial resources to expend for professional services and without the financial assistance from the Developer, the City may be unable to expeditiously process and assist the Developer with developing the Development Area;

WHEREAS, as a result and in consideration of the foregoing, the Developer desires and hereby agrees to pay for Professional Services rendered to the City in accordance with the terms of this Agreement; and

WHEREAS, this Agreement replaces all other professional services agreements between Developer, Owner and the City; and

WHEREAS, the City Council of the City, by and through this Agreement, shall maintain sufficient controls to ensure that the public purpose and best interest of the City are carried out.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer agree as follows:

1. Recitals. The representations, covenants, and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby adopted as findings of the City Council.

2. Exhibits. All Exhibits referenced in this Agreement, and listed below, are incorporated herein for all purposes; specifically:

Exhibit A –Legal Description of Development Area.

3. Delivery of Cash Escrow Deposit. Upon execution of this Agreement, the Developer shall deposit $50,000.00 with the City for deposit in an escrow account ("Escrow Account"), which shall be used for the sole purpose of making payment for Professional Services rendered to the City in accordance with this Agreement.

4. Payment for Professional Services.

(a) The Developer agrees to pay for Professional Services related to the Development Area rendered to the City by outside engineers as designated by the City (engineering), planning consultants as designated by the City (planning), financial specialists as designated by the City (financial advisors), public improvement district specialists as designated by the city (PID consultants), and attorneys as designated by the City (legal) in accordance with this Agreement.

(b) The following consultants of the City are pre-approved by the Developer for use by the City for Professional Services rendered in accordance with this Agreement:

i. City Engineer, Pacheco Koch;
ii. City Attorney, Taylor, Olson, Adkins, Sralla & Elam, L.L.P.;
iii. City Planner, Dunaway Associates, L.P.;
iv. PID Consultant, P3Works, LLC;
v. Bond Counsel, Norton Rose Fulbright US LLP; and
vi. Financial Advisor, Hilltop Securities Inc.

(c) The City shall have the sole discretion to select and employ the number of legal and other professional consultants it deems necessary.

(d) The Developer shall only be obligated to pay the actual costs and expenses billed by the provider of Professional Services as set forth in this Agreement up to a total combined billing to be paid by the Developer of $50,000.00. The Developer shall have the right to review and pre-authorize billings. If total billings reach $50,000, both parties shall agree in writing to amend this Agreement.

(e) The process for pre-authorizing billings will be as follows. After the City receives an invoice from any provider of Professional Services, the City will forward a copy to the Developer for payment in accordance with this Agreement. The Developer shall have ten

(10) days after the receipt of each invoice during which to object to any portion thereof (which objection shall be in writing and shall set forth in detail the basis for the objection). If the Developer fails to object within such 10-day period, the Developer shall be deemed to have approved the invoice. If the Developer objects to any portion of an invoice, the City, the Developer, and the service provider shall attempt to resolve the dispute within a reasonable period of time; however, if notwithstanding their collective good faith efforts the dispute cannot be timely resolved, then the Developer shall pay all or such portion of the disputed amount that the City certifies to the Developer, in writing, is due and payable or that it has paid to such service provider for such Professional Services related to the Development Area.

(f) The City shall direct payment in full to be made from the Escrow Account within thirty (30) days after receipt by the City, of: (1) the full amount of any invoice to which the Developer has not timely objected; or (2) the portion of any disputed invoice to which the Developer has not objected. The City shall direct payment to be made from the Escrow Account of any disputed amount that has not been paid by the Developer within ten (10) days after written certification from the City that the amount is due and payable or that it has been paid by the City to such service provider for such Professional Services related to the Development Area.

(g) If requested by the Developer, the City agrees to provide further information as reasonably necessary to explain and detail any invoice for Professional Services; however, the City shall not be required to provide any information that is privileged.

(h) The City may utilize funds from the Escrow Account to pay for any legal or other professional consulting fees incurred to date by the City for work related to developing the Development Area, including attendance at city council meetings related to the Development Area, and drafting and negotiation of this Agreement unless such invoices have already been paid for by Developer pursuant to any prior pre-development and professional services agreements.

(i) The City and the Developer will agree to amounts and/or percentages of participation on items, fees and expenditures that are partially or indirectly associated with the Development Area by independent letter agreement or other means mutually acceptable to both parties on a case by case basis.

5. City's Obligations. In utilizing Professional Services, the City shall act in good faith and shall not incur costs unnecessarily and arbitrarily. The parties agree that nothing in this Agreement obligates the City to enter into a Development Agreement, approve creation of a public improvement district or otherwise approve any particular project proposed by the Developer and that the City retains its authority to approve, deny, or approve in part, any project or public improvement district in accordance with state law and the City's adopted regulations.

6. City's Right to Information. Promptly on request by the City or any of the City's professional consultants providing Professional Services in accordance with this

Agreement, the Developer agrees to provide such non-privileged information relating to development of the Development Area, including financial information, as the City or its consultants may in their discretion reasonably determine is necessary for their evaluation of the feasibility or advisability of the development, or of the creation or use of a particular district in furtherance of the Development Area. The City shall direct its City Attorney and other legal counsel retained not to release any data or information provided by the Developer to a third party, unless either the Developer provides written consent for such release or the City is otherwise directed to release the information by the Office of the Texas Attorney General ("OAG"). In addition, absent the Developer's authorization for the release of the Developer's data and information, the City shall direct the City Attorney to diligently seek approval of the OAG to withhold proprietary and confidential information subject to a request for public information pursuant to Chapter 552 of the Texas Government Code.

7. City Attorney's Obligations. Notwithstanding anything to the contrary contained herein, the Developer acknowledges that the City Attorney shall exclusively represent the legal interest of the City of New Fairview, Texas, and that no attorney-client privilege between the Developer and the offices of the City Attorney, or any of its attorneys, shall be established by virtue of this Agreement.

8. Termination.

(a) Unless earlier terminated as provided in Section 8(b) below, this Agreement shall terminate when the City receives payment of the first assessment of the public improvement district on the Property.

(b) Either party may, in its sole judgment, terminate this Agreement upon delivery of written notice to the other party.

(c) Upon any termination of this Agreement pursuant to Section 8(b), the City shall direct payment of: (i) all remaining invoices for Professional Services that are outstanding and are unpaid as of the date notice of termination is delivered to the city, provided that such invoices were incurred and performed in accordance with the terms of this Agreement; and (ii) all invoices for Professional Services incurred and performed in accordance with this Agreement prior to the date notice of termination is delivered to the City but not yet billed to the City. Any remaining balance in the Escrow Account after all invoices have been paid in accordance with the terms of this Agreement shall be refunded to the Developer.

9. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the obligation of the Developer to pay for Professional Services incurred by the City.

10. Amendment. This Agreement may only be amended or altered by written instrument signed by the Developer and the City.

11. Successors and Assigns. Neither the City nor the Developer may assign or transfer this Agreement or any interest in this Agreement without prior written consent of the other party. This Agreement is binding upon, and inures to the benefit of the City and the Developer and their permitted assigns; however, this Agreement confers no rights or benefits on any third parties and, in particular, no rights or benefits on any provider of Professional Services other than for payment of services rendered.

12. Notice. Any notice required or contemplated by this Agreement shall be deemed given: (a) if mailed via U.S. Mail, Certified Mail Return Receipt Requested, on the earlier of the date actually received at the delivery address or five business days after mailed; (b) if deposited with a private delivery service (such as U.P.S. or FedEx), when delivered, as evidenced by a receipt signed by a person at the delivery address; and (c) if otherwise given (including by FAX or E-mail), when actually received at the delivery address. All notices shall be addressed as set forth below; however, any party may change its address for purposes of this Agreement by giving notice of such change as provided by this Section 12.

The address for the City is:
City of New Fairview
999 Illinois Lane
New Fairview, TX 76078
Email: ben@newfairview.org

The address for Developer is:
Rockhill Capital & Investments, LLC
9550 John W. Elliott Drive
Suite 106
Frisco TX 75033
Email: jalexander@rockhillinvestments.com; and
rgriffin@rockhillinvestments.com

13. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against either party.

14. Applicable Law. This Agreement is made, and shall be construed in accordance with the laws of the State of Texas and venue for any dispute arising out of this Agreement shall lie in Wise County, Texas.

15. Severability. In the event any portion or provision of this Agreement is illegal, invalid, or unenforceable under present or future law, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby; and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

16. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

17. Sovereign Immunity. The parties agree that the City has not waived its sovereign immunity by entering into and performing its respective obligations under this Agreement.

18. Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

19. Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

20. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed herein.

21. Attorney's Fees. In any legal proceeding brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorneys fees from the non-prevailing party.

**CITY OF NEW FAIRVIEW, TEXAS**

______________________________

Joe Max Wilson, Mayor

Attest:

______________________________

Monica Rodriguez, City Secretary

**ROCKHILL CAPTIAL & INVESTMENTS, LLC**

Ryan Griffin

Ryan Griffin, Manager

STATE OF TEXAS §
COUNTY OF WISE §

This instrument was acknowledged before me on the 25 day of January, 2021, by Ryan Griffin, Manager of Rockhill Capital Investments, LLC, a Texas limited liability company.

CLOREECE R. POWRIE
My Notary ID # 6154092
Expires February 20, 2021

Cloreece R. Powrie

(city seal) Notary Public, State of Texas

Exhibit "A"

Legal Description of Development Area

All that certain 1807.46 acre tract or parcel of land situated in the I Davis Survey, Abstract Number 247, the J. Beebe Survey, Abstract Number 56 and the J. C. Bateman Survey, Abstract Number 1154 in the County of Wise, State of Texas, the J. Brumley Survey, Abstract Number 1581, the M.E.P. & P. Railroad Survey, Abstract Number 914, the W. Chambers Survey, Abstract Number 1520, and the A. Pulen Survey, Abstract Number 10574 in the County of Denton, State of Texas, and the T. Samuel Survey, Abstract Number 757 in said Wise County, same being Abstract Number 1148 in said Denton County, and the Smith County School Land Survey, Abstract Number 744 in said Wise County, same being Abstract Number 1725 in said Denton County,said tract being all of Tract One and Tract Two a called 143 acre tract, as described in deed to Merilou Shoop Love, Trust, Glenn Paul Shoop, Trust, Nancy Shoop Caver Trust, filed 06 July 1993, and recorded in volume 502 page 904 of the Deed Records of said Wise County, and said tract being all of Tract No.1 a called 50 acre tract, all of Tract No.2 a called 88.39 acre tract, all of Tract No.3 a called 142 acre tract, Tract No.4 a called 150.3 acre tract and all of Tract No.5 a called 23.5 acre tract as described in deed to Glenn P. Shoop, Trustee of the Merilou Shoop Love Trust, the Glenn Paul Shoop Trust, and the Nancy Shoop Caver Trust, filed 21 February 1997, and recorded in volume 704 page 103 of the Real Records of said Wise County, and said tract being all of a called 73.187 acre tract as described in deed to Glenn P. Shoop et ux, Louise V. Shoop, filed 13 November 1996, and recorded in County Clerks Number 96-R00080985 of the Official Public Records of said Denton County, and said tract being all of Tract I, a called 37.434 acre tract, and all of Tract II, a called 58.138 acre tract as described in deed to Glen Paul Shoop Trust, Nancy Shoop Caver Trust and Merilou Shoop Love Trust, filed 14 February 2005, and recorded in volume 1520 page 530 of the Official Records of said Wise County, and said tract being all of a called 7.995 acre tract as described in deed to Glenn Paul Shoop Trust, Nancy Shoop Caver Trust and Merilou Shoop Love Trust, filed 19 October 2011, and recorded in volume 2295 page 213 of said official records of said Wise County, and said tract being all of Tract I a called 18.75 acre tract, all of Tract II a called 17.59 acre tract, all of Tract III a called 62.86 acre tract, and all of Tract IV a called 62.509 acre tract as described in deed to Glenn and Louise Shoop Family Partnership, Ltd., filed 14 February 2005, and recorded in volume 1520 page 523 of said official records of said Wise County, said tract also being all of a called 62.954 acre tract as described in deed to Glenn P.Shoop, Trustee of the Merilou Shoop Love Trust, the Glenn Paul Shoop Trust and the Nancy Shoop Caver Trust, filed 18 October 2002, and recorded in volume 1213 page 747 of said official records of said Wise County, and being more particularly described as follows;

BEGINNNING for an angle point in the west line of the tract being described herein at set 1\2 inch rebar, said rebar having NAD83 NCTZ Grid Coordinates of N-7092306.12, E-2301891.86, and said rebar being the southwest corner of said Tract One, same being the northwest corner of said Tract Two, same being the southeast corner of Tract II as described in deed to Miller Valley Ltd, filed 07 December 2001, and recorded in volume 1112 page 599 of said official records of said Wise County, said rebar also being the northeast corner of Highland Meadows, a subdivision to said Wise County, according to plat of the same filed 26 August 1991, and recorded in Cabinet B Slide 402 of the Plat Records of said Wise County, Texas;

THENCE: North 00 degrees 34 minutes 13 seconds West, with the west line of said Tract One, same being the east line of said Miller Valley Tract II, and along and near a barbed wire fence, a distance of 4314.10 feet to a fence corner post for a northwest corner of this tract, same being the south line of Tract III a called 290.39 acre tract as described in said Miller Valley deed;

THENCE: South 69 degrees 07 minutes 40 seconds East, with the north line of said Tract One, and with the south line of said Miller Valley Tract III, and along and near a barbed wire fence, a distance of 1664.03 feet to a Found "set stone" by a fence corner post for an ell corner of this tract, same being the southeast corner of said Miller Valley Tract III;

THENCE: North 21 degrees 11 minutes 40 seconds East, with the west line of said Tract One, and with the east line of said Miller Valley Tract III, and along and near a barbed wire fence, and passing at 2266.61 feet a found "Set Stone" on the south side of Oliver Creek, and continuing on said course a total distance of 2401.71 feet to a point in the center of said Creek for an ell corner of this tract, same being a corner of said Miller Valley Tract III
THENCE: With the center of said creek the following four (4) calls:

1. North 89 degrees 35 minutes 20 seconds West, a distance of 238.90 feet,
2. North 59 degrees 40 minutes 21 seconds West, a distance of 118.26 feet,
3. North 83 degrees 06 minutes 23 seconds West, a distance of 81.10 feet,
4. South 84 degrees 58 minutes 57 seconds West, a distance of 83.88 feet to a point for a corner of this tract, same being a corner of said Miller Valley Tract III;

THENCE: North 04 degrees 02 minutes 06 seconds East, with the west line of said Tract One, and with the east line of said Miller Valley Tract III, and passing at 93 feet a fence corner post on the north side of said creek and continuing on said course and along and near a barbed wire fence, a distance of 1791.57 feet to a fence corner post for a northwest corner of said Tract One, same being the most northerly northeast corner of said Miller Valley Tract III, and said post being on the south line of Tract I, a called 101 acre tract as described in deed to Whatzit Land Co. Ltd, filed 24 September 2009, and recorded in volume 2088 page 216 of said official records of said Wise County;

THENCE: South 69 degrees 12 minutes 33 seconds East, with the north line of said Tract One, and with the south line of said Whatzit Tract I, and along and near a barbed wire fence, a distance of 2420.10 feet to a 3 inch pipe fence corner post for the northeast corner of said Tract One, same being the southeast corner of said Whatzit Tract I, said post also being on the west line of said Shoop Trustee Tract No.1 (50 acres);

THENCE: North 00 degrees 10 minutes 02 seconds East, with the west line of said Tract No.1, and with the east line of said Whatzit Tract I, and along and near a barbed wire fence, and passing at 1359.26 feet a fence corner post on the south side of AA Bumgarner Road, and continuing on said course leaving said fence, a total distance of 1427.96 feet to a set 1\2 inch rebar on the north side of said road for the northwest corner of said Tract No.1, said rebar being on the south line of Lot 40 of High Mesa Estates, according to plat of the same filed 19 November 1984, and recorded in Cabinet D Slide 308 of the Plat Records of said Denton County;

THENCE: North 89 degrees 39 minutes 43 seconds East, with the south line of said High Mesa Estates, along the north side of said road, a distance of 829.04 feet to a set 1\2 inch rebar for the northeast corner of said Shoop Trustee Tract No.5 (23 acres), same being the northwest corner of a called 68 acre tract as described in deed to Don Astor Neely et ux, Shirley Neely, filed 27 February 1975, and recorded in volume 736 page 818 of the Deed Records of said Denton County;

THENCE: South 00 degrees 50 minutes 36 seconds West, with the east line of said Tract No.5 and the west line of said Neely tract, and passing at 55.8 feet a fence corner post on the south side of said road, and continuing on said course along and near a barbed wire fence, a total distance of 1782.41 feet to a found 1\2 inch rebar for an ell corner of this tract, same being the southeast corner of said said Tract No.5, same being the southwest corner of said Neely tract, and said rebar being the most easterly northeast corner of said Shoop Trustee Tract No.1 (50 acres), said rebar also being the northwest corner of said Shoop Trustee Tract No.4 (150.3 acres);

THENCE: North 89 degrees 59 minutes 01 seconds East, with the north line of said Tract No.4 and with south line of said Neely tract, and along and near a barbed wire fence, a distance of 1278.67 feet to a fence corner post for the most northerly northeast corner of said Tract No.4, same being the northwest corner of the First Tract a called 49.55 acre tract as described in deed to Kenneth D. Sorg et ux, Joan Sorg, filed 20 August 1969, and recorded in volume 590 page 135 of said Denton County deed records;

THENCE: South 00 degrees 58 minutes 16 seconds West, with the east line of said Tract No.4, and with the west line of said Sorg tract and along and near a barbed wire fence, a distance of 1421.12 feet to a found 3\8 inch rebar for an ell corner of said Tract No.4, same being the most westerly southwest corner of said Sorg tract;

THENCE: South 83 degrees 17 minutes 14 seconds East, with the north line of said Tract No.4, and with the south line of said Sorg tract, and along and near a barbed wire fence, a distance of 47.54 feet to a found 3\8 inch rebar for the most easterly northeast corner of said Tract No.4, same being an ell corner of said Sorg tract;

THENCE: South 01 degrees 44 minutes 40 seconds West, with the east line of said Tract No.4 and with the west line of said Sorg tract, and along and near a barbed wire fence, a distance of 152.00 feet to a set 1\2 inch rebar for the southernmost southwest corner of said Sorg tract, same being the western most northwest corner of Scenic Ridge Addition, a subdivision to the County of Denton, according to plat of the same filed 20 August 2003, and recorded in Cabinet V Slide 188 of said Denton County Plat records;

THENCE: South 02 degrees 05 minutes 20 seconds West, with the west line of said Scenic Ridge Addition and along and near a barbed wire fence, a distance of 2750.68 feet to a set 1\2 inch rebar for the southwest corner of Lot 4 of said addition, said rebar being an ell corner of this tract, and said rebar being the northwest corner of said Shoop 73.187 acre tract;

THENCE: South 88 degrees 09 minutes 17 seconds West, with the south line of said Scenic Ridge Addition, and passing at 99.55 feet the southeast corner of said Lot 4, same being the southwest corner of Lot 3, and continuing on said course and passing at 2346.31 feet a fence corner post being the southeast corner of said Lot 3, same being the southwest corner of Lot 2, and continuing on said course a total distance of 2607.64 feet to a set 1\2 inch rebar for the southeast corner of said Lot 2, same being the southeast corner of said Scenic Ridge Addition, same being the northeast corner of said Shoop 73.187 acre tract;

THENCE: South 01 degrees 55 minutes 33 seconds West, with the east line of said Shoop 73.187 acre tract, and along and near a barbed wire fence, a distance of 1234.73 feet to a found 1\2 inch rebar by a fence corner post for the southeast corner of said Shoop 73.187 acre tract, same being a corner of the Second Tract a called 252 2\3 acre tract as described in deed to Elizabeth Graham McNicholas and James D. McNicholas, filed 31 July 1998, and recorded in volume 4144 page 2266 of the Official Public records of said Denton County;

THENCE: North 88 degrees 01 minutes 42 seconds West, with the south line of said Shoop 73.187 acre tract, and with the north line of said McNicholas Second Tract, and along and near a barbed wire fence, a distance of 2611.98 feet to a fence corner post for the southwest corner of said Shoop 73.187 acre tract, same being the southeast corner of said Tract No.4 called 150.3 acre tract;

THENCE: North 86 degrees 34 minutes 54 seconds West, with the south line of said Tract No.4, and with a barbed wire fence, a distance of 146.75 feet to a fence corner post for the southwest corner of said Tract No.4, same being the northwest corner of said McNicholas Second Tract, said post being on the east line of said Tract No.2 called 88.39 acre tract;

THENCE: South 00 degrees 19 minutes 01 seconds West, with the east line of said Tract No.2, and the west line of said McNicholas Second Tract, and along and near a barbed wire fence, a distance of 1259.90 feet to a fence corner post for the southeast corner of said Tract No.2, same being a northeast corner of said Tract One;

THENCE: South 00 degrees 26 minutes 46 seconds East, with the east line of said Tract One, and the west line of said McNicholas Second Tract, and along and near a barbed wire fence, a distance of 1027.13 feet to a fence corner post for an ell corner of said Tract One, same being the southwest corner of said McNicholas Second Tract;

THENCE: South 89 degrees 17 minutes 49 seconds East, with the north line of said Tract One, and with the south line of said McNicholas Second tract, and along and near a barbed wire fence, a distance of 984.60 feet to a fence corner post for a northeast corner of said Tract One, same being the northwest corner of the First Tract a called 210.92 acre tract of said McNicholas deed;

THENCE: South 09 degrees 32 minutes 03 seconds West, with the east line of said Tract One and with the west line of said McNicholas First Tract, and along and near a barbed wire fence, a distance of 2361.24 feet to a fence corner post for an ell corner of said Tract One, same being the southwest corner of said McNicholas First Tract;

THENCE: South 88 degrees 45 minutes 45 seconds East, with the north line of said Tract One, and with the south line of said McNicholas First Tract, and along and near a barbed wire fence, a distance of 422.62 feet to a fence corner post for a northeast corner of said Tract One, same being the northwest corner of the Third Tract of said McNicholas deed;

THENCE: South 00 degrees 36 minutes 14 seconds East, with the east line of said Tract One, and with the west line of said McNicholas Third Tract, and along and near a barbed wire fence, and passing at 3052.79 feet a fence corner post on the north side of B. Judge Lane, and continuing on said course a total distance of 3084.19 feet to a set 1\2 inch rebar in the center of said road for the for the most southerly southeast corner of said Tract One, same being the southwest corner of said McNicholas Third Tract, and said rebar being on the south line of said Pulen Survey;

THENCE: South 89 degrees 54 minutes 46 seconds West, with the south line of said Tract One, and with the center of said road, a distance of 1019.69 feet to a set 1\2 inch rebar at the intersection of said B. Judge Lane and S. County Line Road for the southern most southwest corner of said Tract One, same being the southwest corner of said Pulen Survey, said rebar also being on the east line of said Smith County School Land Survey;

THENCE: North 00 degrees 13 minutes 16 seconds West, with the west line of said Tract One, and with the east line of said Smith County School Land Survey, and with said County Line Road, a distance of 3795.80 feet to a set 1\2 inch rebar for an ell corner of said Tract One

THENCE: North 88 degrees 56 minutes 42 seconds West, with the south line of said Tract One, and passing at 20.6 feet a fence corner post being the northeast corner of a called 50.481 acre tract as described in deed to Kim Van Buskirk and Linda Shipp, filed 12 February 1998, and recorded in volume 4029 page 961 of said official public records of said Denton County, and continuing on said course along and near a barbed wire fence, a total distance of 1882.80 feet to a concrete monument for an ell corner of this tract, said monument being the northwest corner of said Buskirk tract, same being the northeast corner of said Shoop Trust Tract I called 37.434 acre tract;

THENCE: South 00 degrees 35 minutes 08 seconds East, with the east line of said Shoop Trust Tract I, and with the west line of said Buskirk tract, and along and near a barbed wire fence, a distance of 1024.17 feet to a found 1\2 inch rebar on the south side of Judge Lane for the southeast corner of said Shoop Trust Tract I, same being the most westerly southwest corner of said Buskirk tract, said rebar also being on the north line of a called 16.000 acre tract as described in Contract for Deed to Curtis W. Aydelotte et ux, Kandy L. Aydelotte, filed 22 July 1985, and recorded in volume 129 page 854 of the Real Records of said Wise County;

THENCE: North 86 degrees 54 minutes 59 seconds West, with the south line of said Shoop Trust Tract I, and with the south side of said Judge Lane, and along and near a barbed wire fence, a distance of 500.29 feet to a found 1\2 inch rebar for an ell corner f this tract, same being the northeast corner of said Shoop 7.995 acre tract, same being the north west corner of a called 7.995 acre tract as described in deed to Erich E. Graben and Micah Graben, filed 30 May 2001, and recorded in volume 1051 page 150 of the official public records of said Wise County;

THENCE: South 00 degrees 04 minutes 16 seconds East, with the east line of said Shoop 7.995 acre tract, and with the west line of said Graben tract, and along and near a barbed wire fence, and passing at 980.72 feet a fence corner post on the north side of Brock Lane, and continuing on said course a total distance of 1013.22 feet to a set 1\2 inch rebar in the center of said road for the for an ell corner of this tract, said rebar being the southeast corner of said Shoop 7.995 acre tract, same being the southwest corner of said Graben tract, and said rebar being on the north line of said Shoop Trust Tract II called 58.138 acre tract;

THENCE: South 89 degrees 48 minutes 06 seconds East, with the north line of said Shoop Trust Tract II, and with the south line of said Graben tract, and with the center of said Brock Lane, a distance of 347.85 feet to a set 1\2 inch rebar for the most easterly northeast corner of said Shoop Trust Tract II, same being the northwest corner of a called 2.50 acre tract as described in deed to Raymond J. Taylor, filed 16 August 1993, and recorded in volume 508 page 1 of the said deed records of said Wise County;

THENCE: South 00 degrees 02 minutes 27 seconds West, with the east line of said Shoop Trust Tract II, and with the west line of said Taylor tract, a distance of 656.10 feet to a fence corner post for the southeast corner of said Shoop Trust Tract II, same being the southwest corner of said Taylor tract, said post also being on the north line of Parcel A, a called 4.201 acre tract as described in deed to Rickey Benningfield, filed 03 March 1999, and recorded in volume 851 page 723 of said official public records of said Wise County;

THENCE: North 89 degrees 51 minutes 58 seconds West, with the south line of said Shoop Trust Tract II, and with the north line of said Benningfield tract, and along and near a barbed wire fence, a distance of 53.86 feet to a fence corner post for an ell corner of this tract, same being the northwest corner of said Benningfield tract, same being the northeast corner of said Shoop 62.954 acre tract;

THENCE: South 00 degrees 38 minutes 50 seconds East, with the east line of said Shoop 62.954 acre tract, and along and near a barbed wire fence, a distance of 2660.39 feet to a found 60d nail in a tree root on the north line of Farm to Market Road Number 407 for the southeast corner of said Shoop 62.954 acre tract, same being the southwest corner of a called 3.578 acre tract as described in deed to Antonio Garcia et ux, Maria Ernestina Garcia, filed 05 November 2008, and recorded in volume 1998 page 364 of said official records of said Wise County;

THENCE: North 00 degrees 37 minutes 27 seconds West, with the west line of said Shoop Family Tract II, and with the east line of said Barrow tract, and along and near a barbed wire fence, a distance of 1862.41 feet to a found 1\2 inch rebar for an ell corner of said Shoop Family Tract II, same being the northeast corner of said Barrow Tract;

THENCE: South 89 degrees 48 minutes 24 seconds West, with the north line of said FM 407, a distance of 1026.60 feet to a found 1\2 inch rebar by a 2 inch pipe fence corner post for the southwest corner of said Shoop 62.954 acre tract, same being the southeast corner of a called

29.002 acre tract as described in deed to Deanna Paulette Layfield, Trustee, filed 30 March 2012, and recorded in volume 2344 page 686 of the official records of said Wise County;

THENCE: North 00 degrees 42 minutes 02 seconds West, with the west line of said Shoop 62.954 acre tract, and with the east line of said Layfield tract, and along and near a barbed wire fence, a distance of 2672.82 feet to a found 1 1\4 inch pipe by a fence corner post for an ell corner of this tract, said pipe being the northwest corner of said Shoop 62.954 acre tract, same being the northeast corner of said Layfield tract, said pipe also being on the south line of said Shoop Trust Tract II called 58.138 acre tract;

THENCE: North 89 degrees 32 minutes 06 seconds West, with the south line of said Shoop Trust Tract II, and along and near a barbed wire fence, a distance of 1023.76 feet to a found 1\2 inch rebar by a fence corner post for an ell corner of this tract, said rebar being the northeast corner of said Shoop Family Partnership Tract III called 62.86 acre tract, same being the northwest corner of a tract as described in deed to John W. Layfield et ux, Sibyl Layfield, and recorded in volume 247 page 525 of the official records of said Wise County;

THENCE: South 00 degrees 43 minutes 04 seconds East, with the east line of said Shoop Family Tract III, and with the west line of said John Layfield tract, and along and near a barbed wire fence, a distance of 2682.23 feet to a 10 inch tree on the north line of said Farm to Market Road Number 407 for the southeast corner of said Shoop Family Tract III, same being the southwest corner of said John Layfield tract;

THENCE: South 89 degrees 56 minutes 19 seconds West, with the north line of said FM 407, a distance of 1423.58 feet to a found 1\2 inch rebar for the most southerly southwest corner of said Shoop Family Tract II called 17.59 acres, same being the southeast corner of a called 11.30 acre tract as described in deed to Terry W. Barrow Jr. et ux, Lisa M. Barrow, filed 22 October 1998, and recorded in volume 822 page 668 of the official records of said Wise County;

THENCE: North 00 degrees 37 minutes 27 seconds West, with the west line of said Shoop Family Tract II, and with the east line of said Barrow tract, and along and near a barbed wire fence, a distance of 1862.41 feet to a found 1\2 inch rebar for an ell corner of said Shoop Family Tract II, same being the northeast corner of said Barrow Tract;

THENCE: South 89 degrees 00 minutes 01 seconds West, with the north line of said Barrow tract, and along and near a barbed wire fence, a distance of 264.48 feet to a found 1\2 inch rebar for the northwest corner of said Barrow tract, same being the northeast corner of a called 11.91 acre tract as described in deed to Raul A. Vargas et ux, D. Paulette Layfield, filed 21 March 2002, and recorded in volume 1146 page 831 of the official records of said Wise County;

THENCE: South 89 degrees 09 minutes 37 seconds West, with the north line of said Vargas tract, and along and near a barbed wire fence, a distance of 357.31 feet to a 2 inch pipe fence corner post for the northwest corner of said Vargas tract, same being the southwest corner of said Shoop Family Tract II;

THENCE: North 00 degrees 27 minutes 27 seconds East, with the west line of said Shoop

Family Tract II, and along and near a barbed wire fence, a distance of 830.21 feet to a fence corner post for the northwest corner of said Shoop Family Tract II, same being the southwest corner of said Shoop Family Tract IV called 62.509 acres, said post also being the southeast corner of Lot 1 of said Highland Meadow Subdivision;

THENCE: North 00 degrees 03 minutes 51 seconds East, with the west line of said Shoop Family Tract IV, and with the east line of said Highland Meadows Subdivision, and along and near a barbed wire fence, a distance of 1294.30 feet to a fence corner post for the northwest corner of said Shoop Family Tract IV, same being the southwest corner of a called 100 acre tract as described in deed to John Edward Judge, filed 28 October 2002, and recorded in volume 1216 page 415 of said official records of said Wise County;

THENCE: North 89 degrees 26 minutes 03 seconds East, with the north line of said Shoop Family Tract IV, and with the south line of said Judge tract and along and near a barbed wire fence, a distance of 2641.77 feet to a fence corner post for the northeast corner of said Shoop Family Tract IV, same being the southeast corner of said Judge tract, and said post being on the west line of said Shoop Trust Tract II called 58.138 acre tract;

THENCE: North 00 degrees 24 minutes 25 seconds East, with the west line of said Shoop Trust Tract II, and with the east line of said Judge tract and along and near a barbed wire fence, a distance of 385.22 feet to a fence corner post for the northwest corner of said Shoop Trust Tract II, same being the southwest corner of said Shoop Trust Tract I called 37.34 acre tract;

THENCE: North 00 degrees 01 minutes 52 seconds West, with the west line of said Shoop Trust Tract I, and with the east line of said Judge tract and along and near a barbed wire fence, a distance of 975.90 feet to a fence corner post for the northwest corner of said Shoop Trust Tract I, same being a southwest corner of said Tract One;

THENCE: North 00 degrees 23 minutes 03 seconds East, with the west line of said Tract One, and with the east line of said Judge Tract, and along and near a barbed wire fence, a distance of 290.95 feet to a fence corner post for an ell corner of this tract, said post being the northeast corner of said Judge tract and the southeast corner of said Tract Two per Boundary Line Agreement and Conveyance, filed 26 June 1996, and recorded in volume 662 page 552 of the Real Records of said Wise County;

THENCE: North 89 degrees 44 minutes 51 seconds West, with the common line between said Tract Two and said Judge tract per said agreement and along and near a barbed wire fence, a distance of 2642.31 feet to a set 1\2 inch rebar for the southwest corner of said Tract Two and the northwest corner of said Judge tract per said agreement, said rebar being on the east line of said Highland Meadows Subdivision;

THENCE: North 00 degrees 35 minutes 26 seconds West, with the west line of said Tract Two, and with the east line of said Subdivision, and passing at 582.31 feeet a found 1\2 inch rebar with a plastic cap marked Steadham 4251 being the northeast corner of Lot 9B-R, same being the southeast corner of Lot 9A-R of the Replat of Lot 9 of Highland Meadows, filed 08

December 2000, and recorded in Cabinet B Slide 188 of said plat records, and continuing on said course and passing at 1159.96 feet a found 1\2 rebar being the northeast corner of Lot 10 same being the southeast corner of Lot 11 of said Highland Meadows Subdivision, and continuing on said course a total distance of 2322.98 feet to the POINT OF BEGINNING and containing 1807.46 acres of land.

**City Council Agenda**
**January 11, 2021**

**Agenda Item:** **Ordinance** **(Action Item)**

## Agenda Description:

Discuss, consider, and act on an ordinance of the City of New Fairview, Texas adopting a general residential homestead exemption for residential homesteads located within the city in accordance with the TexasTax Code; establishing the amount of such exemption; providing that this ordinance shall be cumulative of all ordinances; providing a severability clause; and providing an effective date.

## Background Information:

Currently, the city has adopted ordinances for a tax freeze (ceiling) for over 65 and disabled, a $10,000 exemption for over 65 and disabled, as well as a tiered exemption for disabled veterans:

- $5,000 of assessed value for 10% but less than 30% disabled; or
- $7,500 of assessed value for 30% but less than 50% disabled; or
- $10,000 of assessed value for 50% but less than 70% disabled; or
- $12,000 of assessed value for 70% or greater disability.

The Council has requested that the staff prepare and present an ordinance that would provide a general homestead exemption. The statute governing a municipality's ability to offer this type of exemption allows for an exemption of up to 20% of the assessed value, but no less than $5,000.

**What are homestead exemptions used for?**

Homestead exemptions are generally used as a tool to shift the cost of city operations from defined groups, such as elderly, disabled, or residential homeowners, to business and commercial properties. Due to the lack of business and commercial entities in New Fairview, there is no real shift of the cost, just reducing overall revenue to the city.

A general homestead exemption would effectively reduce residential homeowners' property tax rate from $0.30 to around $0.24 per $100 of valuation at the full 20% exemption level.
**How much would this save the average household?**

The average assessed value of a property in New Fairview is just under $100,000. With a property tax rate of $0.30 per $100 valuation, that means that the average tax bill for residents in New Fairview is around $300 per year. Further, this means that if the Council chooses to offer the full 20% exemption, the average taxpayer in New Fairview would see a savings of around $60 per year, or $5 per month.

**How does this impact the budget?**
Using the current year's assessed value, approximately $140 million, this exemption would reduce the city's annual property tax revenue by approximately $80,000, over half the streets repair program's annual cost, for the first three years.

**How does this impact the street's improvement?**
The streets program is budgeted to cost the city around $0.10 of the $0.30 property tax rate in the first three years. Currently, the cities revenues and expenditures are fairly evenly matched. If the city increases revenue in other areas, offsetting the loss of this revenue, it will have little impact.

Currently, it appears that building permits and other revenues may exceed the budget. Still, these are one-time revenues and as a best practice, cities should not generally consider one-time revenues when taking on long-term financial obligations.

If the other revenues do not materialize, the city would have to reduce services levels to offset the loss of revenue, or the most conservative approach would be to proactively reduce the scope of the streets project by around 60% to match revenues to expenditures.

**How does this impact the city financially?**
The city adopted a budget that adds money to the General Fund balance. This was intentional, as it impacts our bond rating, making the cost of borrowing money go down as we issue debt to reconstruct streets or do other capital projects. One of the big items that the rating agencies look at is trends in the city's financials.

While there may be enough excess revenue coming into the budget from other sources, such as new home building permits, as well as increased tax base revenue in future years, from new home construction, it is in the best interest of the city to slightly increase the fund balance each year to establish a positive trend.

Finally, the General Fund balance acts as a "shock fund," allowing the city to tackle tough financial years if something happens in the future that reduces city revenues, such as when the legislature changed the sales tax laws on natural gas production.

**How does this impact the city long-term?**
The legislature passed a law that did not allow a taxing entity to change/repeal this optional homestead exemption once adopted. This expired in 2019, but there is a very good chance that this will be addressed or renewed in the current legislative session that just started, meaning that if the Council adopts this, then it may become permanent.

## Financial Information:
N/A

## City Contact and Recommendation:
Ben Nibarger, City Administrator
Staff recommends that Council not implement the general homestead exemption.

## Attachments:
Ordinance

# ORDINANCE ________

**AN ORDINANCE OF THE CITY OF NEW FAIRVIEW, TEXAS ADOPTING A GENERAL RESIDENTIAL HOMESTEAD EXEMPTION FOR RESIDENTIAL HOMESTEADS LOCATED WITHIN THE CITY IN ACCORDANCE WITH THE TEXAS TAX CODE; ESTABLISHING THE AMOUNT OF SUCH EXEMPTION; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the City of New Fairview, Texas is a Type A general-law municipality located in Wise and Denton Counties, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

**WHEREAS,** Section 11.13(n) of the Texas Tax Code provides that the City Council may adopt an exemption from taxation of a portion of the appraised value of the residence homestead of an individual located within the City; and

**WHEREAS,** the City Council now desires to adopt a residential homestead exemption for property located within the City of New Fairview pursuant to Section 11.13(n) of the Texas Tax Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS:**

## SECTION 1.

(a) Pursuant to Section 11.13(n) of the Texas Tax Code, from and after January 1, 2021, an individual is entitled to an exemption from taxation by the City of New Fairview of ________ percent (___ %) of the assessed value of a residence homestead, as defined by law, that is located within the City of New Fairview.

(b) If the application of the above exemption in a tax year produces an exemption of less than $5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of $5,000 of the appraised value.

**SECTION 2.**

This ordinance shall be cumulative of all provisions of ordinances of the City of New Fairview, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

**SECTION 3.**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 4.**

This ordinance shall be in full force and effect from and after its passage by the City Council.

**PASSED AND APPROVED on this ___ day of ______________, 2021.**

______________________________

Joe Wilson, Mayor

ATTEST:

______________________________

City Secretary

**City Council Agenda**
**January 11, 2021**

**Agenda Item:** **Ordinance** **(Action Item)**

## Agenda Description:

Discuss, consider, and act on an ordinance of the City of New Fairview, Texas adopting an annual safety inspection program to require an annual safety inspection for operations that present a risk of dangerous incidents and establishing a fee for the inspection; providing that this ordinance shall be cumulative of all ordinances; providing a savings clause; providing a severability clause; providing for a penalty; providing a publication clause; and providing an effective date.

## Background Information:

Municipalities are granted regulatory authority to ensure public health and safety. Certain business and commercial operations in the City, due to the nature of the operation, carry with them particular risks for the occurrence of dangerous incidents, including fire, explosion, nuisance or other catastrophe, and for that reason present a threat to the health and safety of the city.

The city is not currently enforcing safety inspections to ensure that commercial entities within the city limits are in compliance with applicable federal, state and local regulations to protect the health, safety, and welfare of the city. Staff is recommending that the Council adopt an ordinance that implements an Annual Safety Inspection Program to ensure that business and commercial operations within the City are operating in compliance with these regulations.

Staff is working with counterparts in the different commercial establishments within the city limits to discuss the implementation of this ordinance and how it will impact their operations. Staff will bring forward an updated fee schedule at a future meeting that establishes the fees, timelines, checklists, and documentation for implementing the annual safety inspections.

**Financial Information:**
This revenue estimate is early, but it could generate as much as $400,000 in annual revenue that would be targeted for improvement of public safety, i.e. fire, EMS, and police.

## City Contact and Recommendation:
Ben Nibarger, City Administrator
Staff recommends that Council adopt the ordinance.

## Attachments:
Ordinance

**CITY OF NEW FAIRVIEW, TEXAS**

**ORDINANCE NO. _______**

**AN ORDINANCE OF THE CITY OF NEW FAIRVIEW, TEXAS, ADOPTING AN ANNUAL SAFETY INSPECTION PROGRAM TO REQUIRE AN ANNUAL SAFETY INSPECTION FOR BUSINESS AND COMMERCIAL OPERATIONS THAT PRESENT A RISK OF DANGEROUS INCIDENTS AND ESTABLISHING A FEE FOR THE INSPECTION; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING A PUBLICATION CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of New Fairview, Texas, is a Type A general law municipality located in Wise and Denton Counties, created in accordance with Chapter 6 of the Local Government Code, and operating pursuant to the enabling legislation of the State of Texas; and

**WHEREAS**, the City Council finds that there is a need to work to protect the City from the danger presented by the occurrence of fires, explosions, nuisances, and other catastrophes within the City; and

**WHEREAS**, the City Council finds that certain business and commercial operations in the City, due to the nature of the operation, carry with them particular risks for the occurrence of dangerous incidents, including fire, explosion, nuisance or other catastrophe, and for that reason present a threat to the health and safety of the City; and

**WHEREAS**, the City Council finds that performing annual inspections to ensure that those operations that carry with them particular risks for dangerous incidents are operating in compliance with applicable federal, state, and local regulations will reduce the likelihood of the occurrence of these incidents; and

**WHEREAS**, the City Council finds that this safety inspection program is necessary to prevent the imminent destruction of property or injury to persons; and

**WHEREAS**, the City Council finds that it is necessary to adopt an annual safety inspection program to reduce the risk of the occurrence of dangerous incidents, including fires, explosions, nuisances or other catastrophes, and that the adoption of this program will protect the health, safety and welfare of the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS:**

## SECTION 1.
## *Annual Safety Inspection Program*

### A. Purpose

The purpose of the Annual Safety Inspection Program is to ensure that business and commercial operations within the City are operating in compliance with applicable federal, state and local regulations to protect the health, safety, and welfare of the City by reducing the risk of the occurrence of dangerous incidents, including fires, explosions, nuisances, and other catastrophes.

### B. Annual Safety Inspections

The following business and commercial operations within the City, including those currently existing and new operations, shall be subject to an annual inspection by the inspection official to ensure the operation is in compliance with the applicable federal, state, and local regulations that govern the operation:

(i.) Hydrocarbon Well Operations.
(ii.) Commercial Business Operations.
(iii.) Food Establishment Operations.
(iv.) Rental Properties.

### C. Inspection Fees

The operator of an operation subject to an inspection under this ordinance shall pay an inspection fee as prescribed in the Fee Schedule adopted by the City Council and amended from time to time.

### D. Penalty

Failure to pay the fee required for an inspection under this ordinance shall be a violation. A violation under this section shall be an offense punishable by a fine of not more than Two Thousand Dollars ($2,000.00).

## SECTION 2.

This Ordinance shall be cumulative of all provisions of ordinances of the City of New Fairview, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

## SECTION 3.

All rights and remedies of the City of New Fairview are expressly saved as to any and all violations of the provisions of ordinances of the City of New Fairview, Texas, relating to nuisances which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**SECTION 4.**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 5.**

Any person, firm, or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined not more than Two Thousand Dollars ($2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

**SECTION 6.**

The City Secretary of the City of New Fairview, Texas, is hereby directed to publish in the official newspaper of the City of New Fairview, the caption, penalty clause, publication clause, and effective date clause of this Ordinance for two (2) days as required by section 52.012 of the Texas Local Government Code.

**SECTION 7.**

This Ordinance shall be in full force and effect after its passage and publication.

**PASSED AND APPROVED ON THIS _____ DAY OF _______________, 2021.**

_______________________________
Joe Max Wilson, Mayor

ATTEST:

_______________________________
Monica Rodriguez, City Secretary

**City Council Agenda**
**January 11, 2021**

**Agenda Item:** **Resolution** **(Action Item)**

## Agenda Description:
Discuss, consider, and act on a resolution engaging William C. Spore, P.C. to provide annual auditing services for the fiscal years ending in September 30, 2021, 2022, and 2023 for a fixed rate of $3,000 per year.

## Background Information:
The Local Government Code requires that municipalities conduct an annual audit and prepare financial statements from an outside independent accountant. The audits review the accounts and financial activities of the City as well as review the controls, policies, and procedures in place to mitigate the possibility of theft and/or mismanagement of public funds.

William C Spore PC provides audit services to several of our neighboring cities and completed the financial audits and financial statements for the previous five fiscal years.

**Financial Information:**
$3,000 per fiscal year.

## City Contact and Recommendation:
Ben Nibarger, City Administrator
Staff recommends that Council approve the resolution.

## Attachments:
Proposal
Resolution

**City of New Fairview, Texas**
**Resolution No. 202102-10-152**

**A RESOLUTION OF THE CITY OF NEW FAIRVIEW, TX APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH WILLIAM C. SPORE, P.C. TO PROVIDE AUDITING SERVICES FOR THE FISCAL YEARS ENDING SEPTPEMBER 30 2021, 2022, AND 2023 FOR $3,000 PER YEAR.**

**WHEREAS,** the City of Fairview is an incorporated city in the State of Texas; and

**WHEREAS,** the City of New Fairview is a General Law city as classified by the Texas Municipal Code; and

**WHEREAS,** Section 103.001 of the Local Government Code requires a municipality to have its records and accounts audited annually and prepare an annual financial statement based upon the audit; and

**WHEREAS**, Section 10.002 of the Local Government Code requires that a municipality shall employ at its own expense a certified public accountant who is licensed in this state or a public accountant who holds a permit to practice from the Texas State Board of Public Accountancy to conduct an annual audit and prepare the financial statements; and

**WHEREAS**, the City of New Fairview desires to enter into an agreement with William C Spore PC to audit and prepare the annual financial statements based upon the audit findings; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY NEW FAIRVIEW:**

1. That, all matters stated in the recitals herein above are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

2. That the City Council does hereby accept the agreement and authorize the Mayor to sign the professional services agreement for the fiscal years ending September 30, 2021, 2022, and 2023.

3. That, if any portion of this resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council hereby determined that it would have adopted this Resolution without the invalid provision.

4. That this Resolution shall become effective from and after its date of passage.

PRESENTED AND PASSED on this **1st day of February, 2021**, at a meeting of the New Fairview City Council.

APPROVED: ATTESTED:

______________________

Joe Max Wilson
Mayor

______________________

Monica Rodriguez
City Secretary

**WILLIAM C. SPORE, P.C.**
**Certified Public Accountants**
**200 N. Rufe Snow Dr., Ste 116**
**Keller, TX 76248**
**817-421-6619**

Honorable Mayor and City Council

City of New Fairview

I am pleased to confirm my understanding of the services I am to provide the City of New Fairview for the years ended September 30, 2021, 2022 and 2023 (three-year agreement). I will audit the financial statements of the governmental activities, each major fund, and the aggregate remaining fund information, which collectively comprise the entity's basic financial statements, of the City of New Fairview as of and for the years ended September 30, 2021, 2022 and 2023. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI) to accompany the City of New Fairview's basic financial statements. As part of my engagement, I will apply certain limited procedures to the City of New Fairview's RSI's. These procedures will consist primarily of inquiries of management regarding methods of measurement and presentation, which management is responsible for affirming in its representation letter. Unless we encounter problems with the presentation of the RSI or with procedures relating to it, we will disclaim an opinion on it. The following RSI is required by generally accepted accounting principles and will be subjected to limited procedures, but will not be audited:

1) Management's Discussion and Analysis.
2) Budgetary Comparison Schedule
3) Changes in Net Pension Liability and Related Ratios
4) Pension Contributions
5) Changes in OPEB Liability

**Audit Objectives**

The objective of my audit is the expression of an opinion as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the additional information referred to in the first paragraph when considered in relation to the financial statements taken as a whole. My audit will be conducted in accordance with generally accepted auditing standards established by the Auditing Standards Board (United States) and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and will include tests of the accounting records of the City of New Fairview and other procedures I consider necessary to enable us to express such an opinion. If my opinion on the financial statements is other than unqualified, I will fully discuss the reasons with you in advance. If, for any reason, I am unable to complete the audit or are unable to form or have not formed an opinion, I may decline to express an opinion or to issue a report as a result of this engagement.

I will also provide a report (that does not include an opinion) on internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements as required by *Government Auditing Standards*. This report will include a statement that the report is intended solely for the information and use of management, the body or individuals charged with governance, others within the entity, and specific legislative or regulatory bodies and are not intended to be and should not be used by anyone other than these specified parties. If during my audit I become aware that the City of New Fairview is subject to an audit requirement that is not encompassed in the terms of this engagement, I will communicate to management and those charged with governance that an audit in accordance with U.S. generally accepted auditing standards and the standards for financial audits contained in *Governmental Auditing Standards* may not satisfy the relevant legal, regulatory, or contractual requirement.

**Management Responsibilities**

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. As part of the audit, we will prepare a draft of your financial statements and related notes. You are responsible for making all management decisions and performing all management functions relating to the financial statements and related notes and for accepting full responsibility for such decisions. You will be required to acknowledge in the management representation letter that you have reviewed and approved the financial statements and related notes prior to their issuance and have accepted responsibility for them. Further, you are required to designate an individual with suitable skill, knowledge, or experience to oversee any nonaudit services I provide and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; and for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, each major fund, and the remaining aggregate fund information of the City of New Fairview and the respective changes in financial position and cash flows, where applicable, in conformity with U.S. generally accepted accounting principles.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and for confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud, or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud, or illegal acts affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws and regulations and for taking timely and appropriate steps to remedy any fraud, illegal acts, violations of contracts or grant agreements, or abuse that I may report.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous audits or other engagements or studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits or other engagements or studies. You are responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions.

**Audit Procedures—General**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, my audit will involve judgment about the number of transactions to be examined and the areas to be tested. I will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because an audit is designed to provide reasonable, but not absolute assurance and because I will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, I will inform you of any material errors that come to my attention, and I will inform you of any fraudulent financial reporting or misappropriation of assets that comes to my attention. I will also inform you of any violations of laws or governmental regulations that come to my attention, unless clearly inconsequential. My responsibility as auditors are limited to the period covered by my audit and does not extend to matters that might arise during any later periods for which I am not engaged as auditor.

My procedures will include tests of documentary evidence supporting the transactions recorded in the accounts and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, creditors, and financial institutions. I will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of my audit, I will also require certain written representations from you about the financial statements and related matters.

**Audit Procedures—Internal Controls**

My audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that I consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing sand detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. My tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies. However, during the audit, I will communicate to management and those charges with governance internal control related matters that are required to be communicated under AICPA professional standards and *Governmental Auditing Standards.*

**Audit Procedures – Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatements, we will perform tests of the City of New Fairview's compliance with the provisions of applicable laws, regulations, contracts, agreements, and grants. How ever the objective of our audit will not be to provide an opinion on overall compliance, and we will not express such an opinion in our report on compliance issued pursuant to *Governmental Auditing Standards*.

**Audit Administration, Fees, and Other**

I understand that your employees will prepare all cash or other confirmations I request and will locate any documents selected by us for testing.

I will provide copies of the reports to the City of New Fairview; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of my reports are to be made available for public inspection.

The audit documentation for this engagement is the property of William C. Spore, PC and constitutes confidential information. However, pursuant to authority given by law or regulation, I may be requested to make certain audit documentation available to Cognizant or Grantor agencies, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. I will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of William C. Spore, PC personnel. Furthermore, upon request, I may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by Cognizant or Grantor agencies. If I become aware that a federal awarding agency or auditee is contesting an audit finding, I will contact the party contesting the audit finding for guidance prior to destroying the audit documentation.

My fee for these services will be at my standard hourly rates plus out-of-pocket costs (such as report reproduction, word processing, postage, travel, copies, telephone, etc.) except that I agree that my gross fee, including expenses, will not exceed $3,000 per year ($9,000 total all three years). An invoice will be submitted upon completion of each annual audit and delivery of the final reports. In accordance with my firm policies, work may be suspended if your account becomes 30 days or more overdue and may not be resumed until your account is paid in full. If I elect to terminate my services for nonpayment, my engagement will be deemed to have been completed upon written notification of termination, even if I have not completed my report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, I will discuss it with you and arrive at a new fee estimate before I incur the additional costs. *Government Auditing Standards* require that I provide you with a copy of my most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of the contract. My 2018 peer review report accompanies this letter.

I appreciate the opportunity to be of service to City of New Fairview and believe this letter accurately summarizes the significant terms of my engagement. If you have any questions, please let us know. If you agree with the terms of my engagement as described in this letter, please sign the enclosed copy, and return it to us.

WILLIAM C. SPORE

January 19, 2021

This letter correctly sets forth the understanding of the City of New Fairview:

Signature________________________________

Title ________________________________ Date ____________________________

MWH GROUP
CERTIFIED PUBLIC ACCOUNTANTS
CONSULTANTS

## Report on the Firm's System of Quality Control

April 10, 2019

To the Owner
William C. Spore, P.C.
and the Texas Society of CPAs Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of William C. Spore, P.C. (the firm) in effect for the year ended May 31, 2018. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitation of, and the procedures performed in a System Review as described in the standards may be found at www.aicpa.org/prsummary. The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

**Firm's Responsibility**

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

**Peer Reviewer's Responsibility**

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

**Required Selections and Considerations**

Engagements selected for review included Engagements performed under Government Auditing Standards, including a compliance audit under the Single Audit Act. As part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

**Opinion**

In our opinion, the system of quality control for the accounting and auditing practice of William C. Spore, P.C., in effect for the year ended May 31, 2018, has been suitable designed or complied with to provide the firm with reasonable assurance of performing the reporting in conformity with applicable standards in all material respects. Firms can receive a rating of *pass, pass with deficiency(ies)*, or *fail*. William C. Spore, P.C. has received a peer review rating of *pass*.

MWH Group, P.C.

MWH Group, PC

**City Council Agenda**
**January 11, 2021**

**Agenda Item:** **Resolution** **(Action Item)**

## Agenda Description:

Discuss, consider, and act on a resolution calling a general election for the office of Mayor and City Members Place 2 and Place 4 to be held May 1, 2021, as well as a special election for an unexpired term for City Council Member Place 5 to be held May 1, 2021; authorizing execution of a joint election agreement with the Wise County Elections Administration and Denton County Administration to conduct the election; and provide procedures to conduct the election as well as resolving other matters incident and related thereto.

## Background Information:

The City of New Fairview has received applications to run for the Council and/or Mayor necessitating the city to call an election and prepare a ballot for May 1, 2021. Staff has worked with the Wise and Denton County elections offices to develop several options. Wise County has agreed to absorb the residents residing in Denton County and prepare an appropriate ballot that does not require them to travel to Justin to vote for Denton ballot initiatives and Wise County locations for New Fairview ballot issues.

1. New Fairview residents vote at the Wise County early voting locations and an election day voting station at city hall; this will cost the city approximately $800.

2. New Fairview city hall would conduct its own election, renting the equipment from Wise County and staffing the voting location during business hours and from 7 am to 7 pm on one day during early election as well as election day; this will cost the city approximately $6,000 for the rental of equipment and $9,000 to staff the voting location.

**Financial Information:**

Estimated cost is from $800 upto $15,000.

## City Contact and Recommendation:

Ben Nibarger, City Administrator
Staff recommends that Council use the Wise County voting locations.

**Attachments:**

Resolution

**City of New Fairview, Texas**

**RESOLUTION NO. 202102-10-152**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS, CALLING A GENERAL ELECTION FOR THE OFFICE OF MAYOR AND CITY COUNCIL MEMBERS, PLACE 2 AND PLACE 4 TO BE HELD MAY 1, 2021 AND A SPECIAL ELECTION FOR AN UNEXPIRED TERM FOR CITY COUNCIL MEMBER PLACE 5 TO BE HELD MAY 1, 2021; AUTHORIZING EXECUTION OF A JOINT ELECTION AGREEMENT WITH THE WISE COUNTY ELECTION ADMINISTRATION AND DENTON COUNTY ADMINISTRATION TO CONDUCT THE ELECTION; AND PROVIDING PROCEDURES TO CONDUCT THE ELECTION**

**WHEREAS**, the City of New Fairview, Texas ("City") is a Type A general law municipality governed by Chapter 6 of the Texas Local Government Code; and

**WHEREAS**, the Texas Election Code establishes May 1, 2021, as the uniform election date for the general election for the City; and

**WHEREAS**, it is the City Council's intent that the election be conducted jointly with other political subdivisions of Wise County and Denton County and be administered by the Wise County and Denton County Elections Administrator in accordance with the provisions of the Texas Election Code; and

**WHEREAS**, it is City Council's intent that the City accept the Wise County and Denton County Election Administration's use of the direct recording electronic voting system, which has been certified by the Secretary of State in accordance with the Texas Election Code and approved by the United States Department of Justice; and

**WHEREAS**, the meeting at which this Resolution is considered is open to the public as required by law, and public notice of the time, place and purpose of said meeting was given as required by Section 551.043 of the Texas Government Code.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS:**

1. **ORDER FOR GENERAL ELECTION.** The City Council hereby calls and orders a General Municipal Election to be held on May 1, 2021 between the hours of 8:00 a.m. to 5:00 p.m. for the purpose of electing mayor and two (2) persons to serve on City Council, Place 2 and Place 4 to serve from May 2021 until May 2023, or until their successors are duly elected and qualified.

2. **ORDER FOR SPECIAL ELECTION.** The City Council hereby calls and orders a Special Municipal Election to be held on May 1, 2021, between the hours of 8:00 a.m. to 5:00 p.m. for the purpose of one (1) person to fill unexpired terms for City Council, Place 5, from May 2021 until May 2023, or until their successor is duly elected and qualified.

3. **FILING FOR OFFICE**. Qualified persons may file as candidates for the general election by filing applications each weekday in the office of the City Secretary during regular office hours of 9:00 a.m. to 5:00 p.m. beginning January 13, 2021 and ending February 12, 2021. Qualified persons may file as candidates for the special election by filing applications each weekday in the office of the City Secretary during regular office hours of 9:00 a.m. to 5:00 p.m. beginning January 25, 2021 and ending March 1, 2021.

4. **MAIL BALLOTS.** Applications requesting a ballot by mail for either early voting or election day voting shall be mailed to: Sabra Srader, Election Administrator, at 200 S. Trinity or P.O. Box 1597, Decatur, Texas 76234. Applications for early voting ballot by mail must be received no later than the close of business on April 20, 2021.

5. **EARLY VOTING**. Early voting by personal appearance will be conducted on the following dates and times beginning April 19, 2021 and ending April 27, 2021. The main early voting location is the Elections Office, 200 S. Trinity Street, Decatur, TX 76234.

| | | |
|---|---|---|
| 1. April 19, 2021 | Monday | 8:00 a.m.-5:00 p.m. |
| 2. April 20, 2021 | Tuesday | 7:00 a.m.-7:00 p.m. |
| 3. April 21, 2021 | Wednesday | 8:00 a.m.-5:00 p.m. |
| 4. April 22, 2021 | Thursday | 8:00 a.m.-5:00 p.m. |
| 5. April 23, 2021 | Friday | 8:00 a.m.-5:00 p.m. |
| 6. April 26, 2021 | Monday | 8:00 a.m.-5:00 p.m. |
| 7. April 27, 2021 | Tuesday | 7:00 a.m-7:00 p.m. |

6. **ELECTION DAY.** The elections shall be held jointly with other political subdivisions of Wise County on Saturday, May 1, 2021,between the hours of 7:00 a.m.and 7:00 p.m.

7. **JOINT ELECTION CONTRACT.** Prior to the election, the City anticipates that it will enter into an agreement for election services with the Wise County Elections Administrator and Denton County Administration. The Mayor is hereby authorized to execute a Joint Election Contract with the Denton County Election and Wise County Elections

Administrator for the conduct of a joint election to be held on May 1, 2021, and to execute any amendments.

8. **ELECTION NOTICES.** The City Secretary is hereby authorized and instructed to file, publish and/or post, in the time and manner prescribed by law all notices required to be so filed, published, or posted in connection with these elections and to provide and furnish ballot wording to the County election officials.

9. **APPOINTMENT OF ELECTION OFFICIALS.** All election officials, including but not limited to the Early Voting Clerk and election judges, shall be the officials appointed to such positions by Wise County, and to the extent required by law, are hereby so appointed.

10. **DIRECT RECORDING SYSTEM.** In accordance with Section 123.001 of the Texas Election Code, the Direct Recording Electronic Voting Systems approved by the Secretary of State are hereby adopted for the election on May 1, 2021.

11. **ACCESSIBLE VOTING SYSTEM.** Section 61.012 of the Code requires that the City must provide at least one accessible voting system in each polling place used in Texas election on or after January 1, 2006. The City shall use, in Early Voting and Election Day Voting, a voter assist terminal as approved by the Secretary of State.

12. **ELECTION MATERIALS.** The election materials specified in the Texas Election Code shall be printed in both English and Spanish for use at the polling places and for early voting for the election and provisions shall be made for oral assistance to Spanish speaking voters.

13. **ELECTION RESPONSIBILITY**. The City shall contract with the Wise County Elections Administrators and Denton County Administrators to perform all duties normally performed by the City Secretary in regular elections with respect to early voting, election day voting, and preparing the official ballots.

14. The election shall be conducted in accordance with the Texas Election Code and the Constitution of the State of Texas.

**PASSED AND APPROVED** this 1st day of February 2021, by a vote of _____ayes ____nays and ___abstentions, at a regular meeting of the City Council of the City of New Fairview, Texas.

| APPROVED: | ATTESTED: |
|---|---|
| _____________________ | _____________________ |
| Joe Max Wilson<br>Mayor | Monica Rodriguez<br>City Secretary |