



## **CITY COUNCIL AGENDA**

**February 15, 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. 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.

**V. 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 Schaumburg & Polk, Inc., and staff regarding the Water & Wastewater Infrastructure report.

**B.** Discussion with Pacheco Koch and staff regarding transportation impact fees.

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

**D.** Discussion with staff regarding a citizen survey.

**E.** Discussion with staff regarding the Council-Manager form of government.

- F. Discussion with staff regarding amending the language of the City Council Procedures and Decorum Policy: including, how items are added to the agenda, the order of business on the agenda, council communication, and other sections that may arise through discussion.
- G. Discussion with staff regarding the creation of a Municipal Development District (MDD).
- H. Discussion with staff regarding the annual calendar for Council meetings in 2021.
- I. Discussion with staff regarding ongoing projects.

**VI. EXECUTIVE SESSION:** The Council will conduct a closed session pursuant to Texas Government Code, annotated, Chapter 551, Subchapter D for the following:

- A. The Council will conduct a closed session pursuant to Texas Government Code, annotated, Chapter 551, Subchapter D for the following: Section 551.074 - Personnel Matters; (a) This chapter does not require a governmental body to conduct an open meeting: (1) to deliberate the appointment, employment, evaluation, reassignment, dues, discipline, or dismissal of a public officer or employee; or (2) to hear a complaint or charge against an officer or employee; (b) Subsection (a) does not apply if the officer or employee who is the subject of the deliberation or hearing requests a public hearing: City Administrator
- B. The Council will conduct a closed session pursuant to Texas Government Code, annotated, Chapter 551, Subchapter D for the following: Section 551.071 Consultation with Attorney, authorizing a governmental body to consult with its attorney in an executive session to seek his or her advice on legal matters; it provides as follows: A governmental body may not conduct a private consultation with its attorney except: (1) when the governmental body seeks the advice of its attorney about: (A) pending or contemplated litigation; or (B) a settlement offer; or (2) on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

**VII. 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 11th day of February 2021 at 7:00 PM at least 72 hours preceding the meeting.

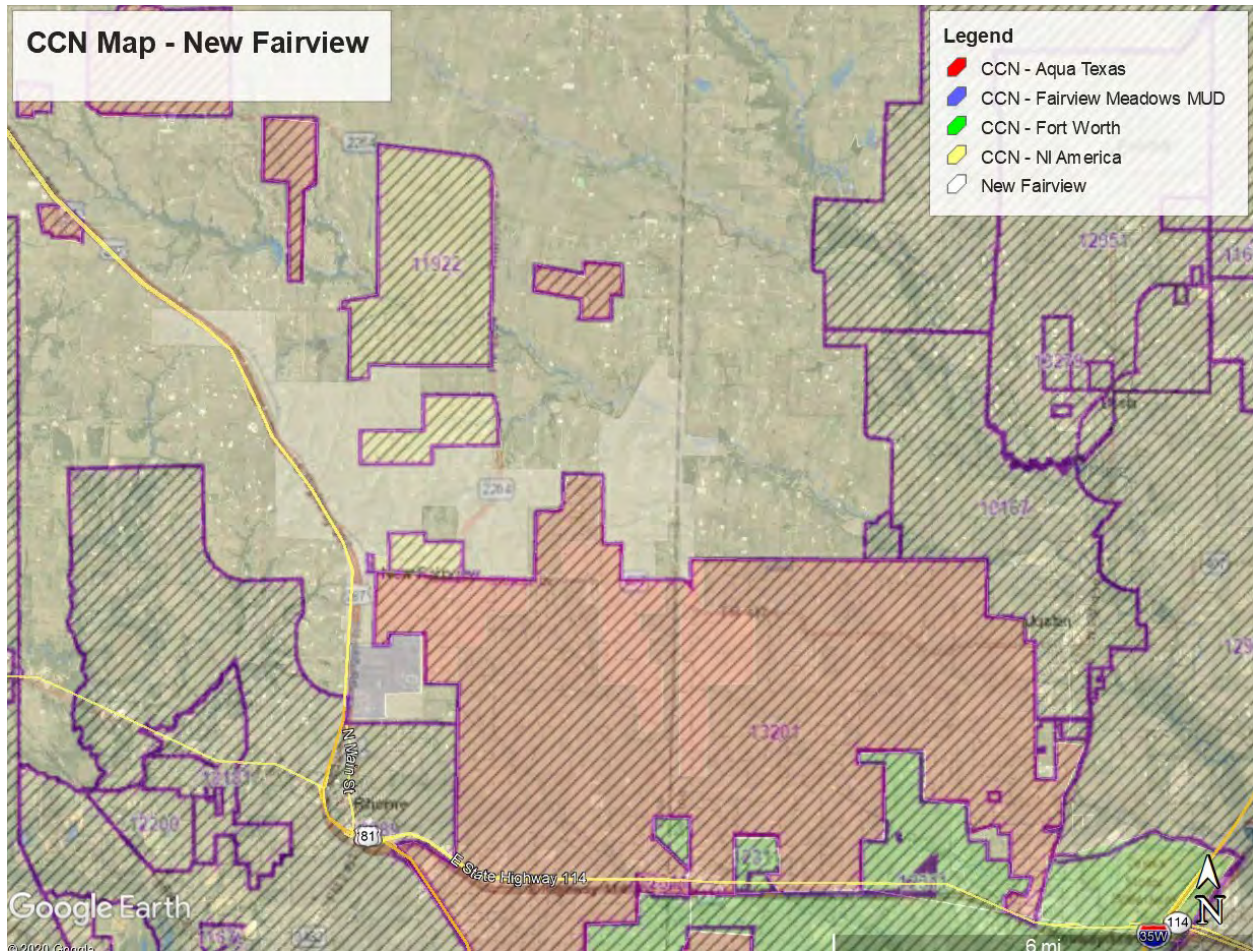
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**Monica Rodriguez, City Secretary**

**SEAL:**

This facility is wheelchair accessible; parking spaces are available. Requests for accommodations or interpreter 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](mailto:citysecretary@newfairview.org) for further information.





- (1) [TWDB Texas Aquifer Study](#)
- (2) [Water-Level Declines in the...Aquifers of North-Central Texas](#)
- (3) [Dallas Morning New Article](#)

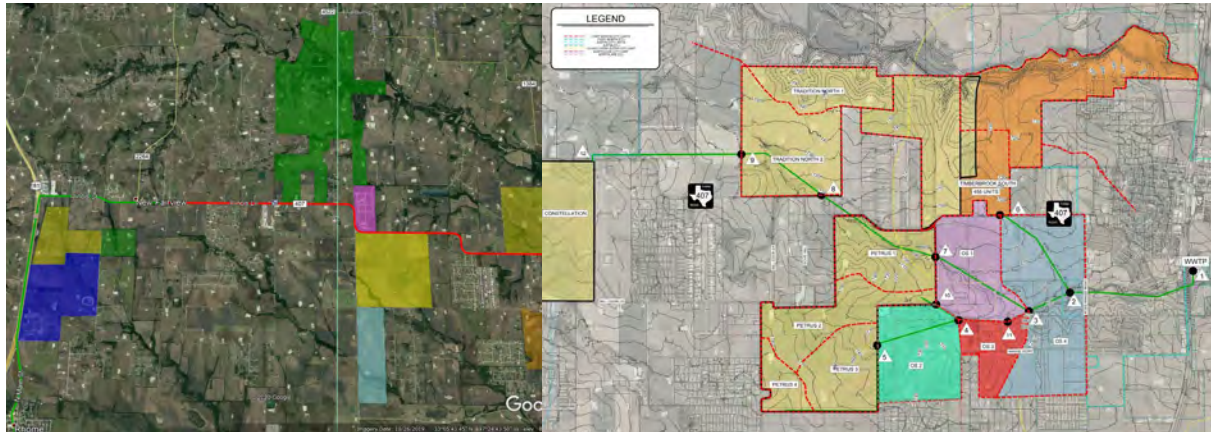
In September, 2020 the City Council approved a feasibility study to bring public water (surface water) and wastewater service to New Fairview. Staff partnered with two local developers, Bloomfield Homes (Constellation Lake) and Rockhill Investment & Capital (Shoop Ranch) to fund the feasibility study. The draft report was delivered to staff last week for comments.

### **Scope of the Feasibility Study**

Schaumburg & Polk, Inc (SPI) was selected to conduct the feasibility study, which included investigating all available options and cost estimates for establishing a public water and wastewater system in New Fairview. Further, they were asked to review the possibility of a regional solution for the southwest corner of Wise County and southeast corner of Denton County.

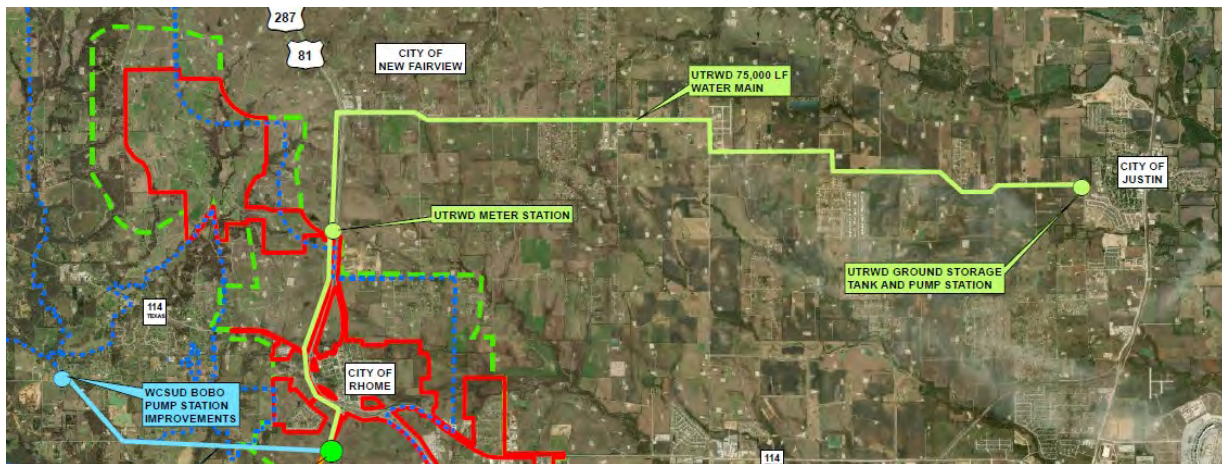
### **Initial Findings of the Feasibility Study**

In summary, the City of New Fairview is in a unique position to establish these systems with multiple partners at this time, which will drastically reduce the cost of extending the water lines as well as implementing a wastewater system. This is due to the fact that FM 407 has significant development east of New Fairview to Justin. Further, New Fairview currently has two large development projects that require both water and wastewater services, as well as the City of Rhome needing to establish a new source of water for their existing system. The confluence of these events is not likely to occur again in the future and creates this unique opportunity.



*Residential Development Activity on FM 407 from New Fairview to Justin*

Staff obtained the recently completed water study conducted by Rhome and is going to implement additional factors into our feasibility study. Further, staff met with the developers in New Fairview to share the draft report and receive input prior to the February 15th City Council worksession. We should have a final report completed and submitted to the Council in March.



*Proposed Water Main Map from the City of Rhome Water Study*

Feasible sources for surface water include the City of Fort Worth and the Upper Trinity Regional Water District. The cost of the line extension and distribution network is conservatively estimated to be around \$70 million from either source, while the wastewater treatment system is estimated to be around \$35 million.

Staff is still in conversation with the developers and the potential water providers to determine the best path forward. Staff is reviewing the options of obtaining surface water from both sources to provide a portion of the city's demand and establishing redundancy in our water network, improving our overall infrastructure.

**Financial Information:**

At this time, it is not known how much of the cost of the system may be born by the city. This should become more clear as we finalize the feasibility study and develop terms with the developers and the water sources.

**City Contact and Recommendation:**

Ben Nibarger, City Administrator

**Attachments:**

City of Rhome Water Study



NOVEMBER 12, 2020

# LONG-TERM WATER SUPPLY STUDY

PREPARED FOR



PREPARED BY







**Table of Contents**

**Executive Summary ..... 1**

**Introduction..... 1**

**Background and Location .....2**

**Existing and Projected Water Demand .....3**

**Existing Water Supply Assessment.....3**

**Future Water Supply Alternatives.....3**

**Future Water Supply Alternative – Groundwater.....4**

**Future Water Supply Alternative – Surface Water Treatment Plant .....4**

**Tarrant Regional Water District Wholesale Agreement to be  
Sole Provider of Raw Water ..... 4**

**Future Water Supply Alternative – Wholesale Agreement.....4**

**Update WCSUD Wholesale Agreement to be Sole Provider ..... 4**

**Upper Trinity Regional Water District Wholesale Agreement  
to be Sole Provider .....5**

**Form Wholesale Agreement with City of Fort Worth to be Sole Provider .....5**

**Future Water Supply Alternatives Analysis..... 5**

**Recommendation .....7**

**Appendix A – Opinion of Probable Construction Cost**

**Appendix B – Infrastructure Improvements Map**

**List of Figures**

**Figure 1: Location Map of the City of Rhome..... 2**

**Figure 2: Cumulative Cost Comparison of Water Supply Alternatives vs. Time ..... 6**

**Figure 3: Cumulative Cost Comparison for the Water Supply Alternatives vs. Flow .... 7**

**Figure 4: Recommended Water Supply Alternative ..... 8**

**List of Tables**

**Table 1: Water Demands from Water Master Plan .....3**

**Table 2: Cumulative Cost Comparison of Water Supply Alternatives vs.  
Time Summary. The Recurring Yearly Cost Listed was Assumed to  
Increase Annually by 3%..... 6**



## Executive Summary

Kimley-Horn and Associates, Inc. performed an in-depth study of The City of Rhome's long-term water supply options. Utilizing the adopted 2020 Water System Master Plan, five water supply alternatives were evaluated. The water supply alternatives studied are listed below with a brief summary of each option:

- Constructing new groundwater wells
  - Determined to be non-viable based on groundwater availability.
- Updating the current wholesale water agreement with Walnut Creek SUD for all future water needs
  - Viable - would require revised agreement with Walnut Creek to exceed existing 1.0 MGD contract at current contract price of \$6.10 per 1,000 gallons and other required capital improvements.
- A new wholesale water agreement with Tarrant Regional Water Supply District which would require permitting and designing a new surface water treatment facility
  - Viable - would require new agreement with Tarrant Regional Water Supply District at proposed contract price of \$1.25 per 1,000 gallons and would require construction of new water treatment facility, intake structure, and associated raw water mains.
- A new wholesale water agreement with Upper Trinity Regional Water District for all future water needs
  - Viable - would require new agreement with Upper Trinity Regional Water District at proposed contract price of \$2.50 per 1,000 gallons and other required capital improvements.
- A new wholesale water agreement with City of Fort Worth for all future water needs
  - Unable to provide water supply within Rhome's current timeframe.

A cost comparison scenario was conducted to determine the cost of these options over time and as water demand increases within the City. Utilizing Upper Trinity Regional Water District as the sole provider for all future water needs was determined to be the most economical option over time.

## Introduction

Kimley-Horn and Associates, Inc. (KHA) was tasked by the City of Rhome to analyze their long-term water supply needs and evaluate options available to the City to meet those needs. The water supply evaluation was based on projected demands from the Water System Master Plan adopted by the City in February 2020. Using the Water System Master Plan, the projected water demand for 10-year and ultimate build out was determined to calculate the additional water supply required for each timeframe. Five different water supply alternatives were evaluated to determine a recommendation for future water supply. The five water supply alternatives that were investigated were as follows:

- 1) Constructing new groundwater wells,
- 2) Updating the current wholesale water agreement with Walnut Creek SUD for all future water needs,
- 3) Beginning a new wholesale water agreement with Tarrant Regional Water District (TRWD) which would require permitting and designing a new surface water treatment facility,
- 4) Beginning a new wholesale water agreement with Upper Trinity Regional Water District (UTRWD) for all future water needs,
- 5) Beginning a new wholesale water agreement with City of Fort Worth for all future water needs.

## Background and Location

The City of Rhome is a community located in North Texas, within Wise County. The City currently provides water service to approximately 2,384 people through purchasing wholesale water from Walnut Creek Special Utility District (WCSUD) and through city-owned groundwater wells. The water demand within the City's current service area is projected to grow by over 600% in the next 10 years. The purpose of this project is to recommend the most feasible alternative to provide long term water to the City. **Figure 1** depicts the location map of the area taken from the Water System Master Plan adopted by the City in February 2020.

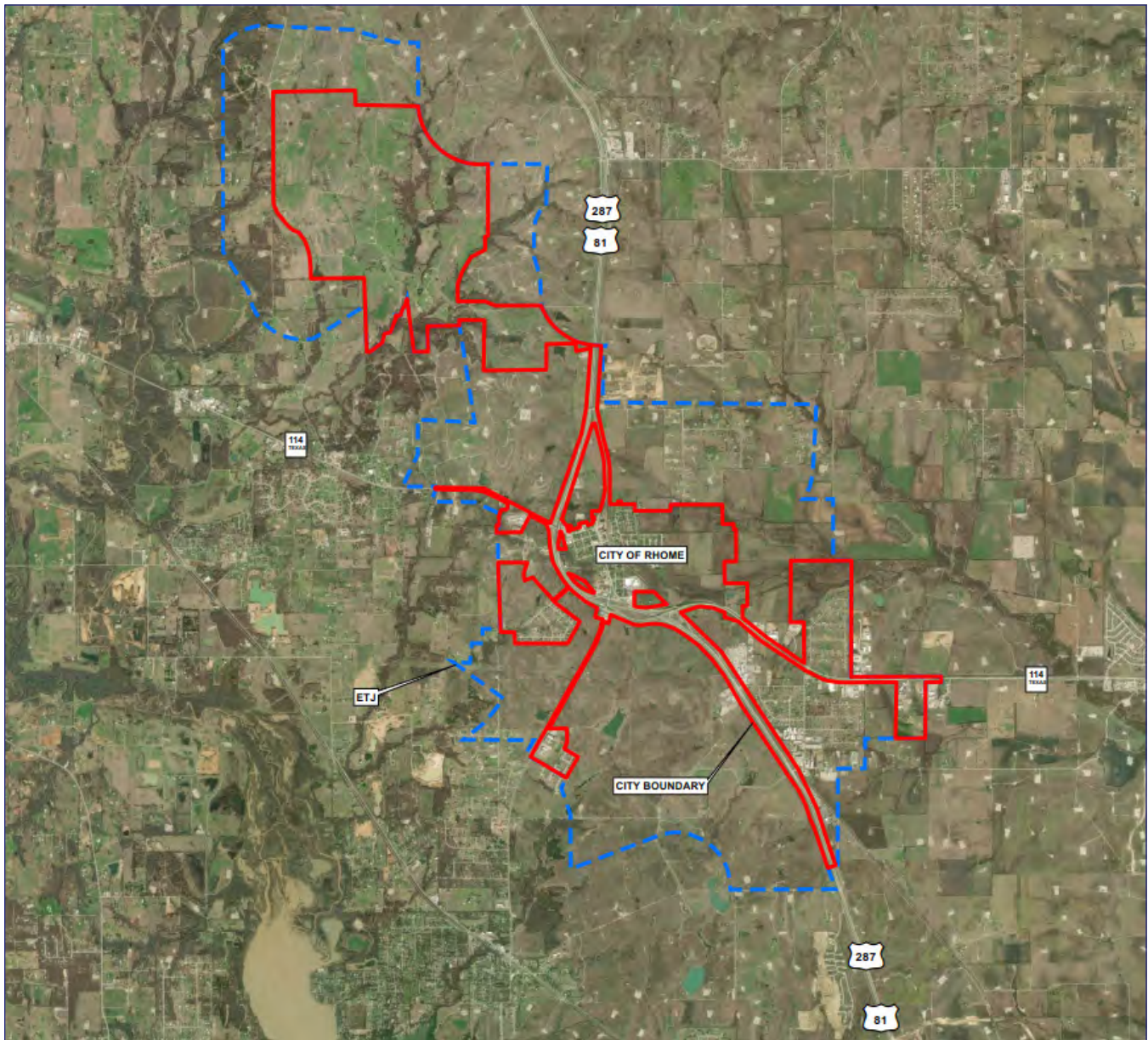


Figure 1: Location Map of the City of Rhome

## Existing and Projected Water Demand

In 2018 the annual usage of water in the City was measured to be 69,129,300 gallons. To analyze the future 10-year and ultimate projected water demand, the average day demand (ADD), maximum day demand (MDD), and peak hour demand (PHD) were calculated for Rhome utilizing land use water demands and connection counts in the Water System Master Plan. These 10-year and ultimate buildout water demands are summarized in **Table 1** along with the existing demand for reference.

**Table 1: Water Demands from Water Master Plan**

	2018 Demand (MGD)	10-Year 2030 Projected (MGD)	Ultimate Projected (MGD)
Average Day Demand (ADD)	0.35	1.45	14.54
Maximum Day Demand (MDD)	0.70	2.90	24.90
Peak Hour Demand (PHD)	1.25	5.13	44.07

## Existing Water Supply Assessment

The City purchases most of their water wholesale from WCSUD. The current water services agreement was executed October 12, 1999 and states that WCSUD agrees to sell and deliver to the City of Rhome all water needed and requested by the City up to, but not in excess of 700 gpm (1 MGD) at a price of \$6.10 per 1,000 gallons of water delivered. This water services agreement is currently set to expire in October 2024.

The City has four groundwater wells. Wells No. 3, 4, 5, and 6, which supplement water from WCSUD and have well capacities of 44 gpm, 22 gpm, 46 gpm, and 60 gpm, respectively. Well No. 6 is currently not in operation due to elevated radon concentrations. From both the water purchased from WCSUD and the operating groundwater wells, the City can supply water up to 812 gpm or 1.17 MGD.

## Future Water Supply Alternatives

Below are the five water supply alternatives described in detail and the infrastructure improvements necessary to accommodate the 10-year MDD of 2.9 MGD for each alternative. The improvements include infrastructure to deliver water to the 3433 Pump Station in the central part of the City’s distribution system and design fees, but do not include any property acquisition fees that would be required. The rate per 1,000 gallons was assumed to increase annually by 3% for each option. An opinion of probable cost (OPCC) for each alternative can be seen in **Appendix A** and a map of the infrastructure improvements needed for each alternative can be seen in **Appendix B**.



## Future Water Supply Alternative – Groundwater

The first option explored was utilizing groundwater wells for the future water supply. There are currently four groundwater wells in the City of Rhome that average 43 gpm of water per well and are all under jurisdiction of the Upper Trinity Groundwater Conservation District. All new wells drilled in the District must follow specific spacing requirements. Given that the MDD of 2.9 MGD would need to be serviced in approximately 10 years, 19 additional groundwater wells of approximately 100 gpm would be required. The Upper Trinity Groundwater Conservation District dictates that for any new well drilled greater than 100 gpm in well production, 3,250 feet of spacing from other well sites would be required. Due to this spacing requirement being unable to be met within Rhome's CCN, and the fact that drilling wells with less than 100 gpm in well production would require too many wells to be drilled cost-wise, groundwater was determined to be unfeasible for the City's future water needs.

## Future Water Supply Alternative – Surface Water Treatment Plant

### Tarrant Regional Water District Wholesale Agreement to be Sole Provider of Raw Water

Another alternative is securing a raw water contract with Tarrant Regional Water District. Raw water would be purchased from TRWD and require infrastructure to treat and pump water from Eagle Mountain Lake to the City. This alternative would require an intake structure, approximately 55,000 LF of 16-inch raw water main, a 3.0 MGD surface water treatment plant, and approximately 14,000 LF of 16-inch treated water main. The total cost of these infrastructure improvements and design fees are estimated at \$53,960,000. In addition, after the surface water plant is constructed, water would be purchased at \$1.25 per 1,000 gallons delivered and an additional \$1,300,000 buy in for every 1.0 MGD Rhome contracts for.

## Future Water Supply Alternative – Wholesale Agreement

### Update WCSUD Wholesale Agreement to be Sole Provider

As noted above, WCSUD supplies wholesale treated water up to 700 gpm at a price of \$6.10 per 1,000 gallons of water delivered. The first alternative is to expand the wholesale agreement with WCSUD. A new wholesale agreement needs to be negotiated for this alternative. In order to compare the water supply alternatives, it was assumed that the current contract price of \$6.10 per 1,000 gallons would be agreeable by both parties and that the City would be responsible for paying for any capital projects required. The terms of the agreement per WCSUD indicate that a 25-year contract length is typical for wholesale agreements.

Currently, Bobo Pump Station delivers water from WCSUD to the City of Rhome through an existing 12-inch water line and has an existing pump capacity of 2.0 MGD and an existing 0.4 MG ground storage tank. In order to meet



the demands of future growth, the Bobo pump station requires expansion along with several other improvements. These improvements include new booster pumps, electrical improvements, and a new 24-inch transmission main at a projected cost of \$8,836,000 including design fees. The improvements do not include costs associated with WCSUD owned infrastructure such as an expanded treatment plant or transmission main from the treatment plant.

## Upper Trinity Regional Water District Wholesale Agreement to be Sole Provider

Another wholesale treated water alternative is to buy treated water from Upper Trinity Regional Water District (UTRWD). UTRWD has treated water available near the City of Justin. with current contract rates for treated water at \$2.50 per 1,000 gallons. This alternative involves the City of Rhome building a meter station, 16-inch water main, a ground storage tank, and a 3.0 MGD pump station in order to serve the MDD of 2.9 MGD. The total cost of these infrastructure improvements is projected to be \$21,470,000. Current contract terms from UTRWD are for 25 years with the option of extending the agreement for 20 years through mutual agreement.

## Form Wholesale Agreement with City of Fort Worth to be Sole Provider

The City of Fort Worth is a large wholesale provider with an existing system near the City of Rhome. After discussions with the City of Fort Worth, it was determined that Fort Worth would be unable to provide water to the City of Rhome at this time. This option was deemed unviable as the City of Rhome's water demand timeline is more pressing than the City of Fort Worth can currently commit to.

## Future Water Supply Alternatives Analysis

A theoretical cumulative cost over time scenario for each viable alternative was run starting in the year 2020. Infrastructure capital costs were assumed to be spent to accommodate an MDD of 2.9 MGD in year 1 (2020) and 6.0 MGD in year 10 (2030). This theoretical cost-time analysis also assumes there is no switching between alternatives over time. The cumulative cost was plotted against both time and flow as shown in **Figure 2**. Both the capital costs and delivery contract costs were used along with a population growth rate to determine the most economical alternative.

The population projection for the City of Rhome was used from the impact fee analysis KHA completed in February 2020. This population projection assumed that there was a population of 2,384 in 2020, 10,277 in 2030, 11,286 in 2040, and 13,909 in 2050. Further, it was assumed by 2030 that the City of Rhome would need to supply 2.9 MGD, as indicated in the water masterplan. Finally, for this timing scenario it was assumed that the alternative chosen would go into effect immediately (2020) for comparison reasons.



**Figure 2: Cumulative Cost Comparison of Water Supply Alternatives vs. Time**

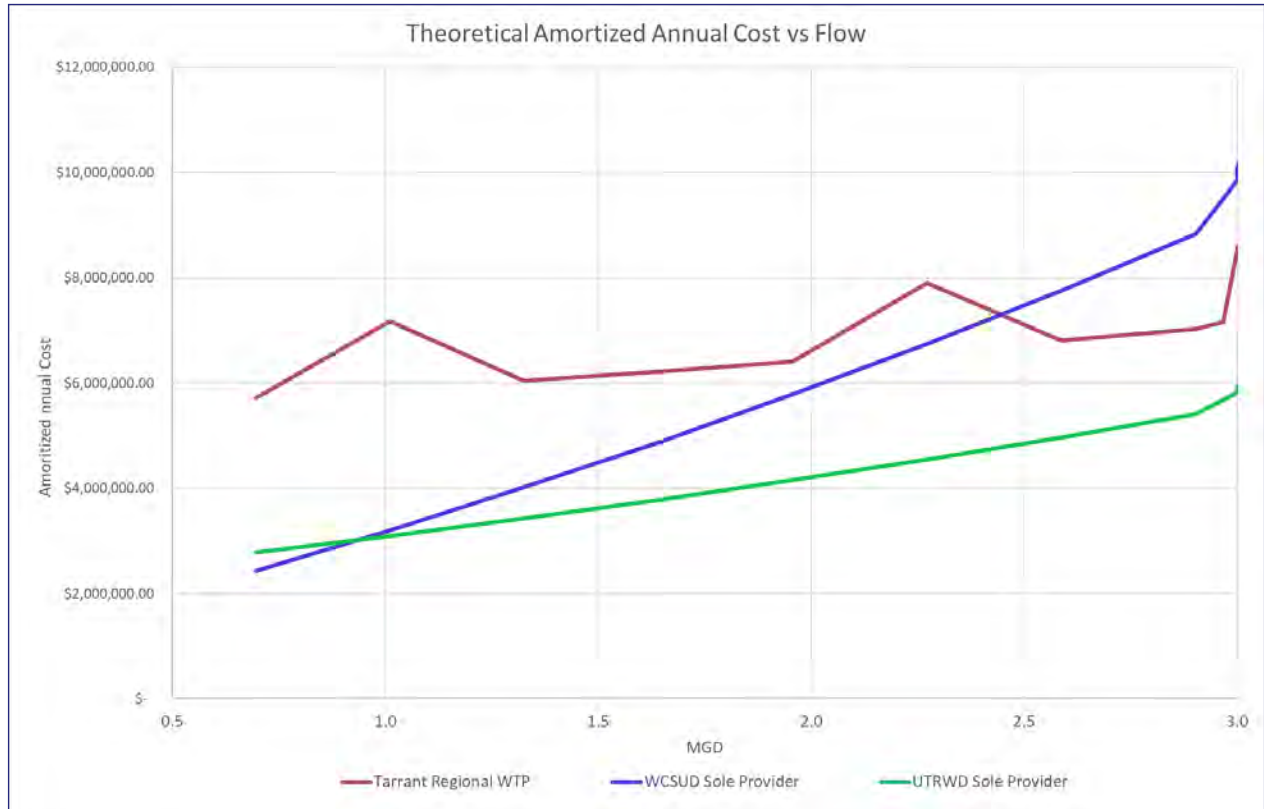
The data displayed in **Figure 2** is summarized below in **Table 2**.

**Table 2: Cumulative Cost Comparison of Water Supply Alternatives vs. Time Summary. The Recurring Yearly Cost Listed was Assumed to Increase Annually by 3%.**

Water Supply Alternative	Infrastructure Cost	Recurring Yearly Cost (per 1,000 gallons)	Cumulative Cost in 2030 (10 years)
Tarrant Regional WTP	\$53,960,000	\$1.25	\$130,500,000
WCSUD Sole Provider	\$8,836,000	\$6.10	\$82,300,000
UTRWD Sole Provider	\$21,470,000	\$2.50	\$74,000,000

The cumulative cost versus time data displayed above from the supply alternative scenario indicates that in the planning window shown the Upper Trinity Regional Water District as a sole provider provides the most economical option. This is due to the anticipated low initial capital along with the low recurring yearly cost for treated water. Staying with WCSUD as the sole provider, due to the high cost of \$6.10/1,000 gals, was found to be the most expensive option within the planning window shown. Constructing a new treatment plant in coordination with Tarrant Regional Water District had the highest initial infrastructure cost, but the lowest recurring yearly cost. While within the planning window shown in **Figure 2** the cumulative cost does not become cheaper than using UTRWD as a sole provider, the Tarrant Regional Water District WTP option does become cheaper approximately 30 years from the start date of this scenario.

**Figure 3** below depicts the amortized annual cost versus the flow in MGD. For this plot of the same data, the infrastructure costs were assumed to be paid over a 10-year load period instead of all at once as in **Figure 2**. Once again in this depiction of the scenario, the UTRWD sole provider option is seen as the most economical option within the planning window.

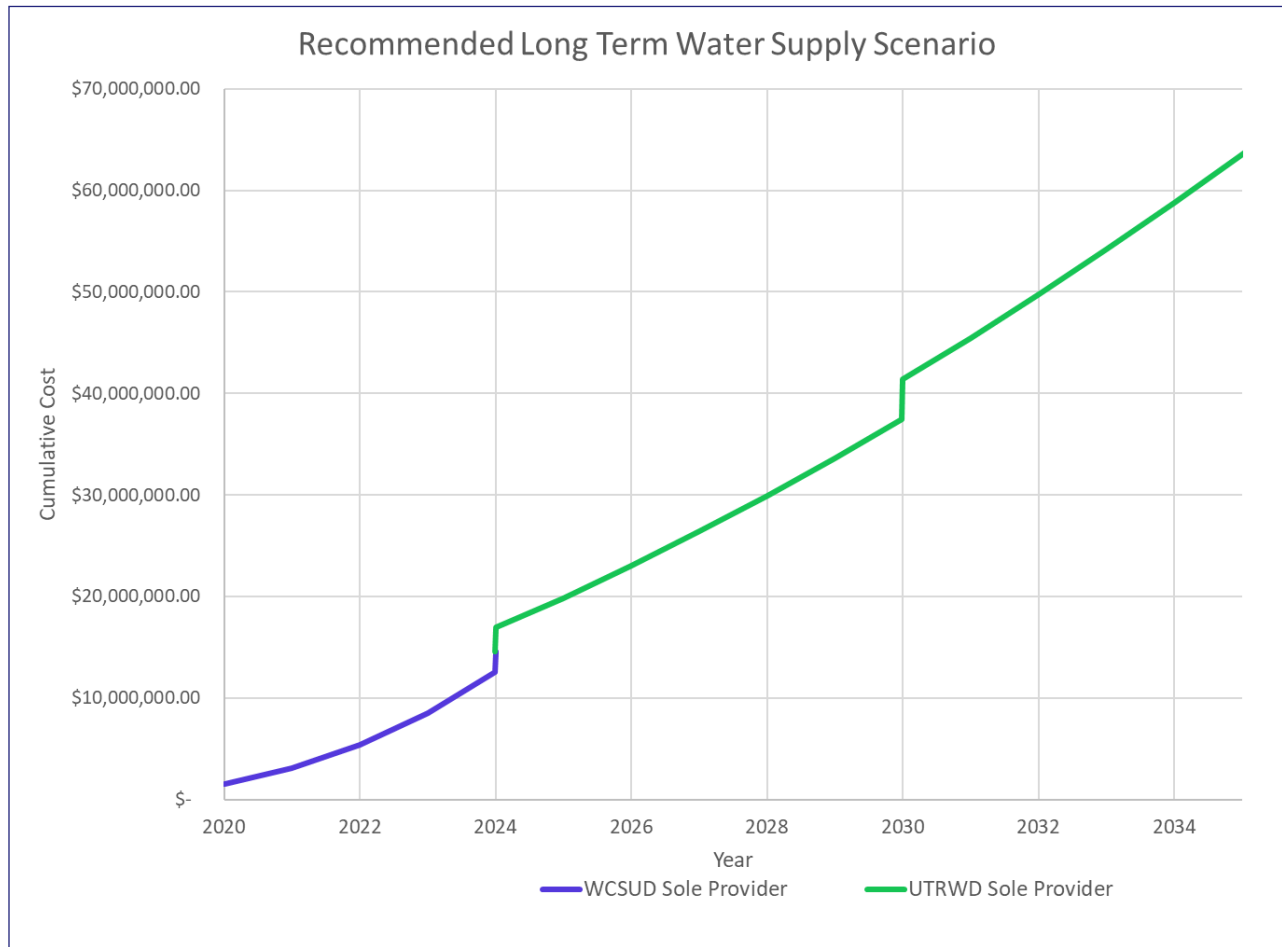


**Figure 3: Cumulative Cost Comparison for the Water Supply Alternatives vs. Flow**

## Recommendation

While in the long run the water supply alternative of working with Tarrant Regional Water District to construct a new water treatment plant is the least expensive option, Kimley-Horn recommends that a new contract be negotiated with the Upper Trinity Regional Water District to become the sole water provider for the City of Rhome. This option minimizes initial startup costs and results in the least expensive cumulative cost over time up until the Tarrant Regional Water District alternative’s cumulative cost intersects the UTRWD sole provider alternative’s cumulative cost in approximately 30 years. **Figure 4** shows the cumulative cost over time for the recommended water supply alternative if UTRWD became the sole provider of water in the year 2024. This accounts for the necessary time to plan, design and construct the facilities necessary to supply water from UTRWD, while the current contract with WCSUD is utilized to provide water in the interim.





**Figure 4: Recommended Water Supply Alternative**

We appreciate the opportunity to be of service to you on this project. Please do not hesitate to contact us if you have any questions.

Sincerely,

**KIMLEY-HORN AND ASSOCIATES, INC.**

Texas Registration No. F-928

Kyle Kubista, P.E.

Appendix A – Opinion of Probable Construction Cost

Appendix B – Infrastructure Improvements Map

**Appendix A – Opinion of Probable Construction Cost**

<b>Client:</b> City of Rhome	<b>Date:</b> 11/11/2020
<b>Project:</b> Long-Term Water Supply Study	<b>Prepared By:</b> AKK
<b>KHA No.</b> 061274208	<b>Checked By:</b> KPK

**Title: Update WCSUD Wholesale Agreement to be Sole Provider**

Item No.	Item Description	Quantity	Unit	Unit Price	Item Cost	
1	Upgrade Meter Station	1	LS	\$50,000	\$50,000	
2	Bobo Pump Station and Transmission Line Improvements	1	LS	\$6,495,000	\$6,495,000	
<i>Recurring Cost = \$6.10 per 1,000 gallons</i>					Subtotal:	\$6,545,000
					Conting. (%,+/-)	20 \$1,309,000
					Design Fee (%,+/-)	15 \$982,000
					<b>Total:</b>	<b>\$8,836,000</b>

**Title: Tarrant Regional Water District New Water Treatment Plant**

Item No.	Item Description	Quantity	Unit	Unit Price	Item Cost	
1	Intake Structure	1	LS	\$1,000,000	\$1,000,000	
2	16" Raw Water Main	55,000	LF	\$130	\$7,150,000	
3	3 MGD Surface Water Treatment Plant	1	LS	\$30,000,000	\$30,000,000	
4	16" Treated Water Main	14,000	LF	\$130	\$1,820,000	
<i>Recurring Cost = \$1.25 per 1,000 gallons</i>					Subtotal:	\$39,970,000
					Conting. (%,+/-)	20 \$7,994,000
					Design Fee (%,+/-)	15 \$5,995,500
					<b>Total:</b>	<b>\$53,960,000</b>




Item No.	Item Description	Quantity	Unit	Unit Price	Item Cost	
1	Install Meter Station	1	LS	\$750,000	\$750,000	
2	16" Water Main	75,000	LF	\$130	\$9,750,000	
3	Ground Storage Tank and 3 MGD Pump Station	1	LS	\$5,400,000	\$5,400,000	
<i>Recurring Cost = \$1.25 per 1,000 gallons and \$455,150 per year per MGD of Contracted Demand</i>					Subtotal:	\$15,900,000
					Conting. (%,+/-)	20 \$3,180,000
					Design Fee (%,+/-)	15 \$2,385,000
					<b>Total:</b>	<b>\$21,470,000</b>

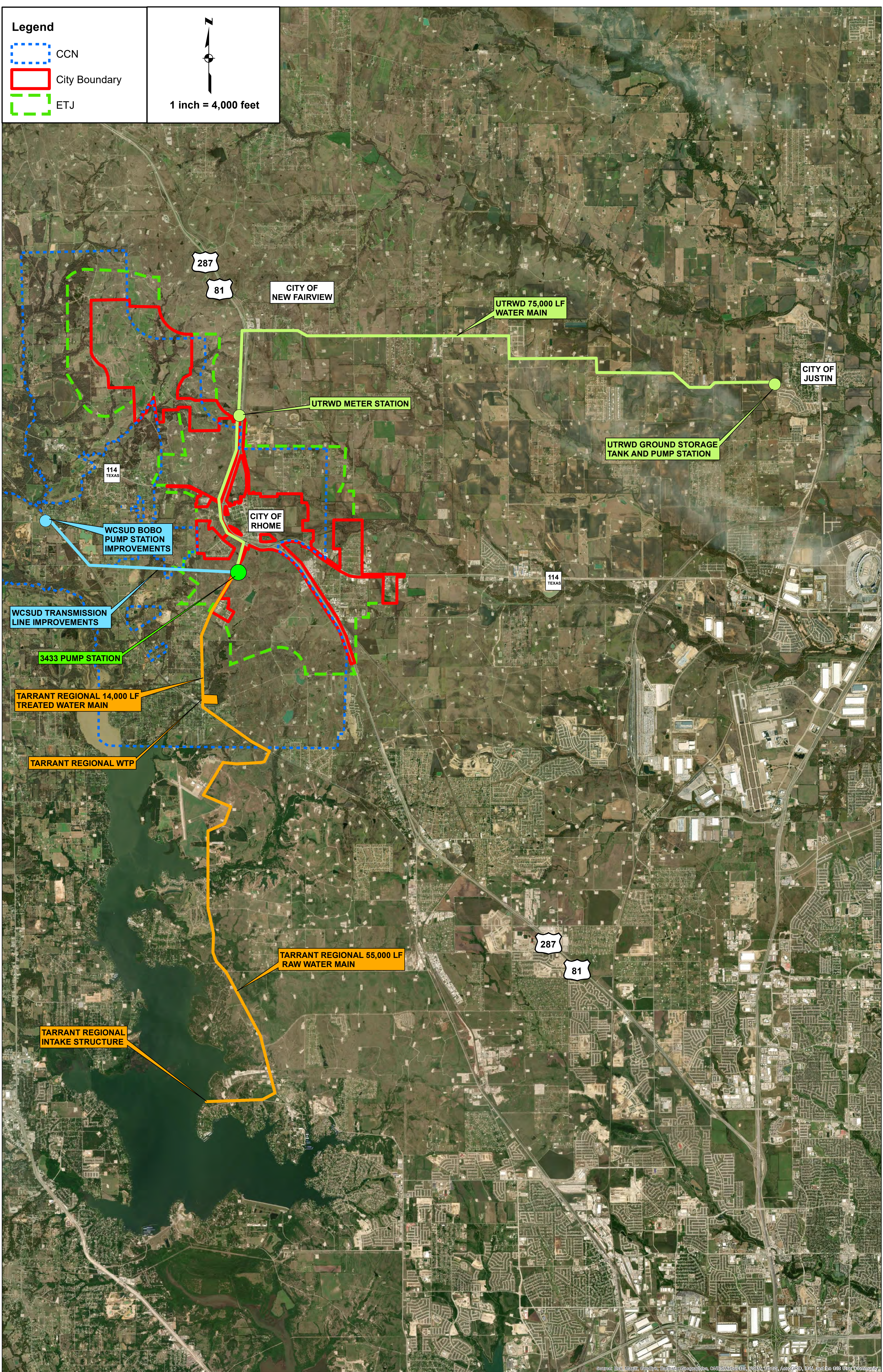
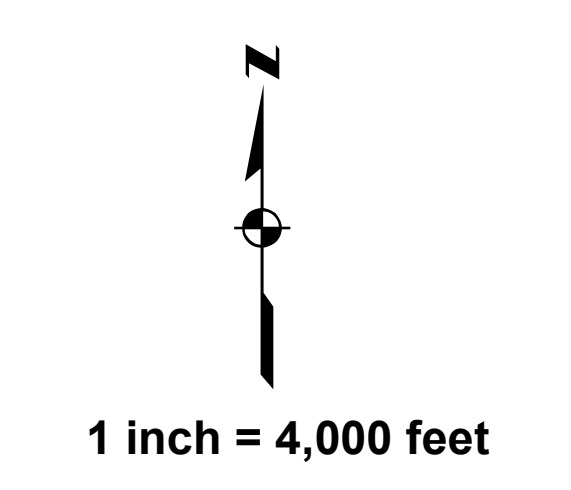
- No Design Completed
- Preliminary Design
- Final Design

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

These costs are expressed in 2020 dollars and appropriate escalation allowances should be added to reflect the actual year of construction of each phase.

**Appendix B – Infrastructure Improvements Map**

- Legend**
-  CCN
  -  City Boundary
  -  ETJ





**EXHIBIT 'A' – SCOPE OF SERVICES**

**NEW FAIRVIEW ROADWAY CAPITAL IMPROVEMENTS PLAN AND IMPACT FEE  
STUDY**

**PROJECT DESCRIPTION:**

The project consists of providing professional civil engineering services relating to the referenced project. It is our understanding the project consists of a Roadway Capital Improvements Plan and Impact Fee Study (Project) for the City of New Fairview (CITY) covering City Limits.

**BASIC SERVICES:**

- A. Project Management, Coordination & Permitting
1. Manage the Team:
    - Lead, manage and direct design team activities
    - Ensure quality control is practiced in performance of the work
    - Communicate internally among team members
    - Allocate team resources
  2. Communications and Reporting:
    - Attend a pre-design project kickoff meeting with OWNER staff to confirm and clarify scope, understand OWNER objectives, and ensure economical and functional designs that meet OWNER requirements.
    - Conduct review meetings with the OWNER at the end of each design phase.
    - Prepare and submit monthly invoices in the format acceptable to the OWNER.
    - Prepare and submit monthly progress reports.
    - Prepare and submit baseline Project Schedule initially and Project Schedule updates.
    - Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
    - With respect to coordination with permitting authorities, CONSULTANT shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. CONSULTANT shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements.

**EXHIBIT A** to Agreement between the  
City of New Fairview, Texas  
(OWNER) and Pacheco Koch  
Consulting Engineers, Inc.,  
(CONSULTANT) for Consulting  
Services

**B. Capital Improvement Plan**

CONSULTANT will develop the Capital Improvement Plan of the roadway infrastructure as follows.

1. CONSULTANT shall identify roadway improvements to be constructed within the 10-year period, including but not limited to the following:
  - a. Description of the project
  - b. Project opinion of probable construction cost in dollars valued at the time the opinions are generated and will include engineering and contingencies
  - c. Priority for construction including immediate needs of less than 2 years based on anticipated major construction projects in the area
  - d. Any portion of a project that may be required to relieve an existing deficiency
  - e. Any portion of a project's capacity to provide for growth in the 10-year planning period.
2. CONSULTANT shall prepare 10-year CIP Maps showing improvements to streets within the City.

**C. Roadway Impact Fee Study**

1. Utilizing the 10-year models and information developed in earlier tasks, CONSULTANT shall determine improvement eligibility for use in the impact fee.
2. CONSULTANT shall utilize project costs of roadway improvements and percent utilization of improvements to support growth over the next 10-year time period to calculate costs to be applied for impact fee analysis.
3. CONSULTANT shall develop maximum allowable roadway impact fees using existing and proposed capital improvement costs to support 10-year growth based on projected increase in SUEs over the next 10 year period.
4. CONSULTANT shall prepare a draft of the roadway impact fee study report including, but not limited to, the following:
  - Methodology
  - Traffic loadings
  - Utilization of roadway improvements
  - Impact fee calculations.
  - Roadway Improvement Maps showing the existing and proposed system improvements required to meet projected 10-year growth
  - Maximum allowable roadway impact fees.



**EXHIBIT A** to Agreement between the  
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Services

5. CONSULTANT shall meet with the City to discuss the report findings, impact fee calculations, and recommendations for setting the roadway impact fees. Following the meeting, CONSULTANT shall incorporate revisions into Impact Fee Study Report. Based on comments by City, CONSULTANT shall finalize the report and send ten (10) copies of the final Roadway Impact Fee Study to the City along with an electronic copy of files for graphs, forms and tables of the impact fee calculations including a PDF of the final report.
6. CONSULTANT shall attend up to two (2) Impact Fee Advisory Committee meetings to present the results of impact fee analysis.
7. CONSULTANT shall attend up to two (2) Public Hearings to review the results of impact fee analysis with the City Council. At these hearings, it is anticipated that CONSULTANT will present recommendations on the Adoption of the Impact Fees for Roadway Improvements to the City Council.

D. Direct Expenses

1. Included in this item are usual and customary expenses normally incurred during performance of the services described. These expenses could include courier delivery charges, copies of existing engineering plans and/or maps, printing and reproduction (either in-house or by reproduction company) and mileage.

Services not included in this contract:

- *Construction inspection services*
- *As-built surveys of constructed improvements*
- *Bidding, procurement or bid phase assistance*
- *Construction Administration*
- *Topographic Survey*
- *Subsurface Utility Engineering*
- *Geotechnical Investigation*
- *Water or wastewater construction plan design*
- *Record Drawings*
- *Utility coordination meeting(s) to start relocation process with affected franchise utilities.*
- *Reset property corner monumentation disturbed or removed during or after construction*
- *Required application and permitting fees (LOMR) or special insurance premiums are not included*
- *Phase I and II Environmental Site Assessments*

END OF EXHIBIT 'A'

**EXHIBIT B** to Agreement between the  
City of New Fairview, Texas  
(OWNER) and Pacheco Koch  
Consulting Engineers, Inc.,  
(CONSULTANT) for Consulting  
Services

**EXHIBIT 'B' – COMPENSATION AND METHOD OF PAYMENT**

**NEW FAIRVIEW ROADWAY CAPITAL IMPROVEMENTS PLAN AND IMPACT FEE  
STUDY**

**COMPENSATION:**

For all professional services included in EXHIBIT 'A', Scope of Services, the CONSULTANT shall be compensated a lump sum fee of \$14,800.00 as summarized below. The total lump sum fee shall be considered full compensation for the services described in EXHIBIT A, including all labor materials, supplies, and equipment necessary to deliver the services.

**Basic & Special Services**

A.	Project Management, Coordination & Permitting	\$1,000
B.	Capital Improvement Plan	6,000
C.	Roadway Impact Fee Study	7,000
D.	Direct Expenses	<u>800</u>

**TOTAL** **\$ 14,800.00**

**METHOD OF PAYMENT:**

The CONSULTANT shall be paid monthly payments as described in Article 3 of the AGREEMENT. The cumulative sum of such monthly partial fee payments shall not exceed the total current project budget including all approved Amendments. Each invoice shall be verified as to its accuracy and compliance with the terms of this Agreement by an officer of the CONSULTANT.

Monthly statements for reimbursable services performed by sub consultants will be based upon the actual cost to the CONSULTANT plus ten percent (10%). Direct expenses for services such as printing, express mail, fees, mileage and other direct expenses that are incurred during the progress of the project will be billed at 1.1 times the CONSULTANT'S cost.

END OF EXHIBIT 'B'

## **EXHIBIT 'A' – SCOPE OF SERVICES**

### **NEW FAIRVIEW THOROUGHFARE PLAN AND ORDINANCE UPDATE**

#### **PROJECT DESCRIPTION:**

The project consists of providing professional civil engineering services relating to the referenced project. It is our understanding the project consists of a Thoroughfare Plan and ordinance update to identify necessary roadway expansion due to growth (Project) for the City of New Fairview (CITY) covering City Limits.

#### **BASIC SERVICES:**

- A. Project Management, Coordination & Permitting
  1. Manage the Team:
    - Lead, manage and direct design team activities
    - Ensure quality control is practiced in performance of the work
    - Communicate internally among team members
    - Allocate team resources
  2. Communications and Reporting:
    - Attend a pre-design project kickoff meeting with OWNER staff to confirm and clarify scope, understand OWNER objectives, and ensure economical and functional designs that meet OWNER requirements.
    - Conduct review meetings with the OWNER at the end of each design phase.
    - Prepare and submit monthly invoices in the format acceptable to the OWNER.
    - Prepare and submit monthly progress reports.
    - Prepare and submit baseline Project Schedule initially and Project Schedule updates.
    - Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
    - With respect to coordination with permitting authorities, CONSULTANT shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. CONSULTANT shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements.

**EXHIBIT A** to Agreement between the  
City of New Fairview, Texas  
(OWNER) and Pacheco Koch  
Consulting Engineers, Inc.,  
(CONSULTANT) for Consulting  
Services

B. Roadway Improvement Map/Thoroughfare Plan Map

CONSULTANT will develop the Thoroughfare Plan of the roadway infrastructure as follows.

1. CONSULTANT shall identify roadway improvements to be constructed within the 10-year period, including but not limited to the following:
  - a. Description of the project
  - b. Project opinion of probable construction cost in dollars valued at the time the opinions are generated and will include engineering and contingencies
2. CONSULTANT shall prepare a Thoroughfare Map showing improvements to streets within the City.

C. Ordinance Update

1. CONSULTANT shall identify areas to update the City's Ordinance to provide sections within the Ordinance for participation in the expansion of the identified roadways in the Thoroughfare Plan by developments along these roadways.

D. Direct Expenses

1. Included in this item are usual and customary expenses normally incurred during performance of the services described. These expenses could include courier delivery charges, copies of existing engineering plans and/or maps, printing and reproduction (either in-house or by reproduction company) and mileage.

Services not included in this contract:

- *Construction inspection services*
- *Topographic Survey and/or As-built surveys of constructed improvements*
- *Bidding, procurement or bid phase assistance and or Construction Administration*
- *Capital Improvement Planning and Impact Fee Study*
- *Subsurface Utility Engineering*
- *Geotechnical Investigation*
- *Water or wastewater construction plan design*
- *Record Drawings*
- *Utility coordination meeting(s) to start relocation process with affected franchise utilities.*
- *Reset property corner monumentation disturbed or removed during or after construction*
- *Required application and permitting fees (LOMR) or special insurance premiums are not included*
- *Phase I and II Environmental Site Assessments*

END OF EXHIBIT 'A'

**EXHIBIT 'B' – COMPENSATION AND METHOD OF PAYMENT**

**NEW FAIRVIEW THOROUGHFARE PLAN AND ORDINANCE UPDATE**

**COMPENSATION:**

For all professional services included in EXHIBIT 'A', Scope of Services, the CONSULTANT shall be compensated a lump sum fee of \$4,200.00 as summarized below. The total lump sum fee shall be considered full compensation for the services described in EXHIBIT A, including all labor materials, supplies, and equipment necessary to deliver the services.

**Basic & Special Services**

A.	Project Management, Coordination & Permitting	\$600
B.	Capital Improvement Plan	2,000
C.	Ordinance Update	1,200
D.	Direct Expenses	<u>400</u>

**TOTAL**

**\$ 4,200.00**

**METHOD OF PAYMENT:**

The CONSULTANT shall be paid monthly payments as described in Article 3 of the AGREEMENT. The cumulative sum of such monthly partial fee payments shall not exceed the total current project budget including all approved Amendments. Each invoice shall be verified as to its accuracy and compliance with the terms of this Agreement by an officer of the CONSULTANT.

Monthly statements for reimbursable services performed by sub consultants will be based upon the actual cost to the CONSULTANT plus ten percent (10%). Direct expenses for services such as printing, express mail, fees, mileage and other direct expenses that are incurred during the progress of the project will be billed at 1.1 times the CONSULTANT'S cost.

END OF EXHIBIT 'B'



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.

The Shoop Ranch developers presented their concept plan to the Council on February 1, 2021. As proposed, the master planned community includes approximately 4,000 single family homes, 60 acres of mixed-use, 13 miles of trails, and over 700 acres of parks, sportsfields, and open space, including Oliver Creek.

Following the presentation to the Council on February 1st, staff has met with the developers and discussed several areas of concern that were gathered from Council members as well as community members, primarily related to the mixed-use area featuring multi-family, transportation, and public safety.

In these conversations, the developers have agreed to the following, in principle (we will continue to negotiate the details of the agreement and bring it to the Council for approval):

- Provide a site plan of the mixed-use section including the proposed multi-family
- Negotiate a financial agreement with the city to provide for the improvement of South County Line Road, south to the end of the city limits
- Negotiate a financial agreement with the city to provide funding for capital investments for public safety, such as facilities, equipment, etc.
- Negotiate a financial agreement with the city to provide funding for a Public Works Director to begin the process of engineering and designing a water/wastewater system in New Fairview

**Financial Information:**

N/A

**City Contact and Recommendation:**

Ben Nibarger, City Administrator

**Attachments:**

PPT Presentation from February 1, 2021 Council Meeting

# Shoop Ranch

New Fairview, Texas

*February 1<sup>st</sup>, 2021*





# Existing Conditions



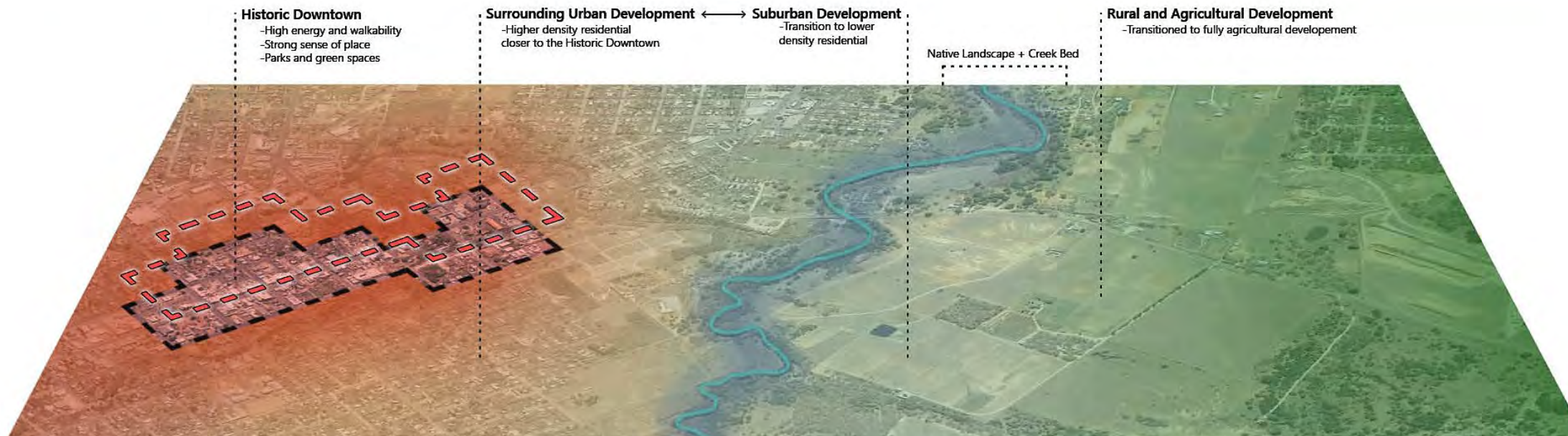
Historic Urban Corridor



View of Urban to Suburban Transition



View of Rural and Agricultural development



# New Texas Town - Fredericksburg



Town Square as an Activity Hub



View of Urban Core



View of Suburban to Rural Transition

**Historic Downtown**  
 -High energy and walkability  
 -Strong sense of place  
 -Local landmarks

**Surrounding Urban Development** ← **Suburban Development**  
 -Higher density residential closer to the Downtown district  
 -Transition to lower density residential

**Rural and Agricultural Development**  
 -Transitioned to fully agricultural development



# New Texas Town - Celina



Town Square as an Activity Hub



View of Urban Core + High Density Residential



View of Suburban to Rural Transition

**Historic Downtown**

- High energy and walkability
- Strong sense of place
- Courthouse and active town square

**Surrounding Urban Development**

- Higher density residential closer to the Downtown district

**Suburban Development**

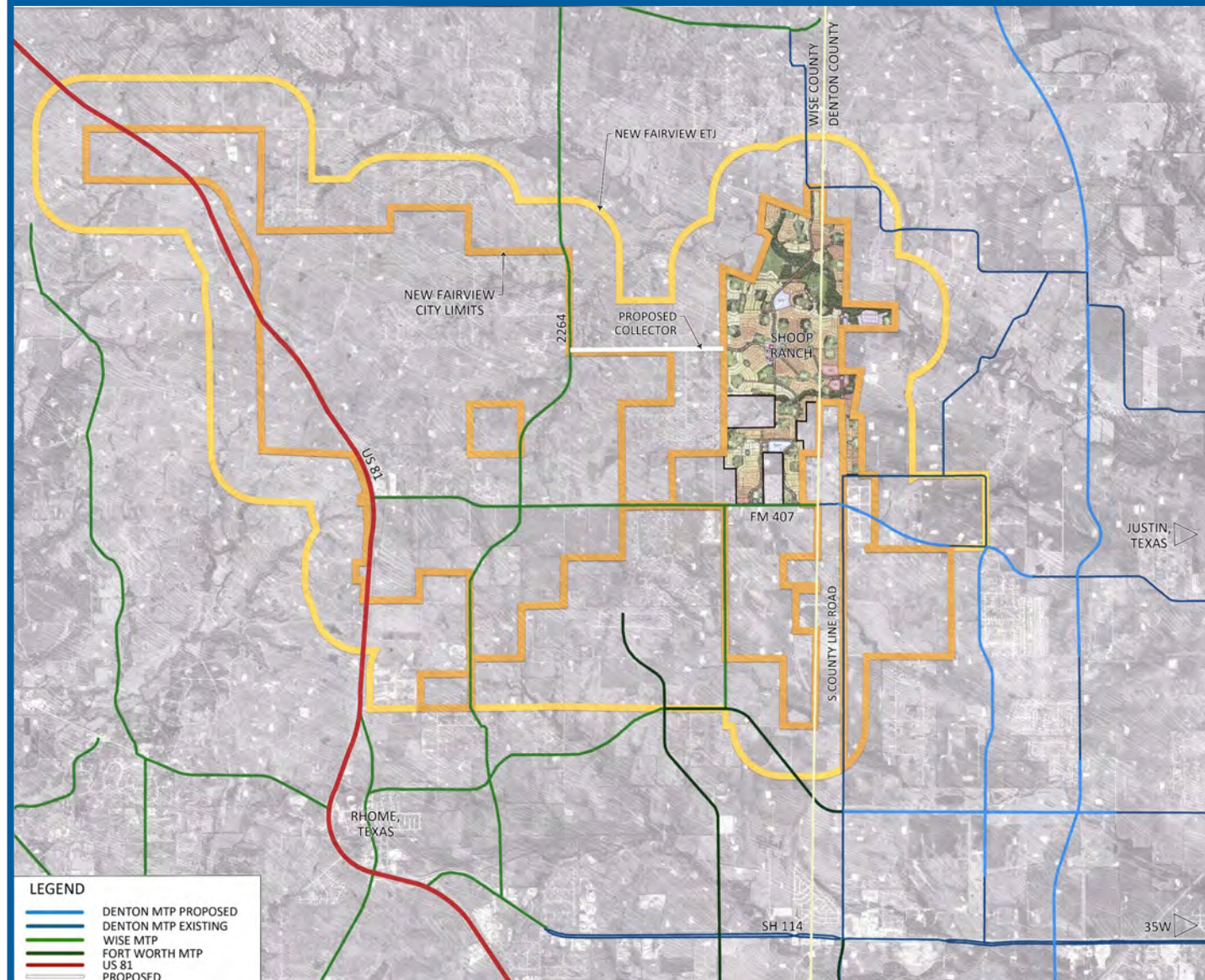
- Transition to lower density residential

**Rural and Agricultural Development**

- Transitioned to Native Landscape



# New Texas Town - Marfa



# New Fairview

# DISCOVERY TRACT W104

APPRX. 1,806 AC.  
NET DEVELOPABLE APPRX. 1242.0 AC.

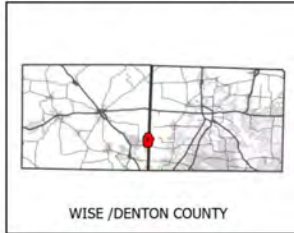
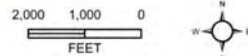
## NET DEVELOPABLE EXHIBIT

WISE COUNTY (APPRX. 1,351 AC.)  
DENTON COUNTY (APPRX. 454.9 AC.)  
CITY OF NEW FAIRVIEW  
DECATUR ISD (APPRX. 1078.8 AC.)  
NORTHWEST ISD (APPRX. 727.2 AC.)  
AQUA TEXAS INC WATER CCN (APPRX.37.7 AC.)

DECEMBER 2020

### Legend

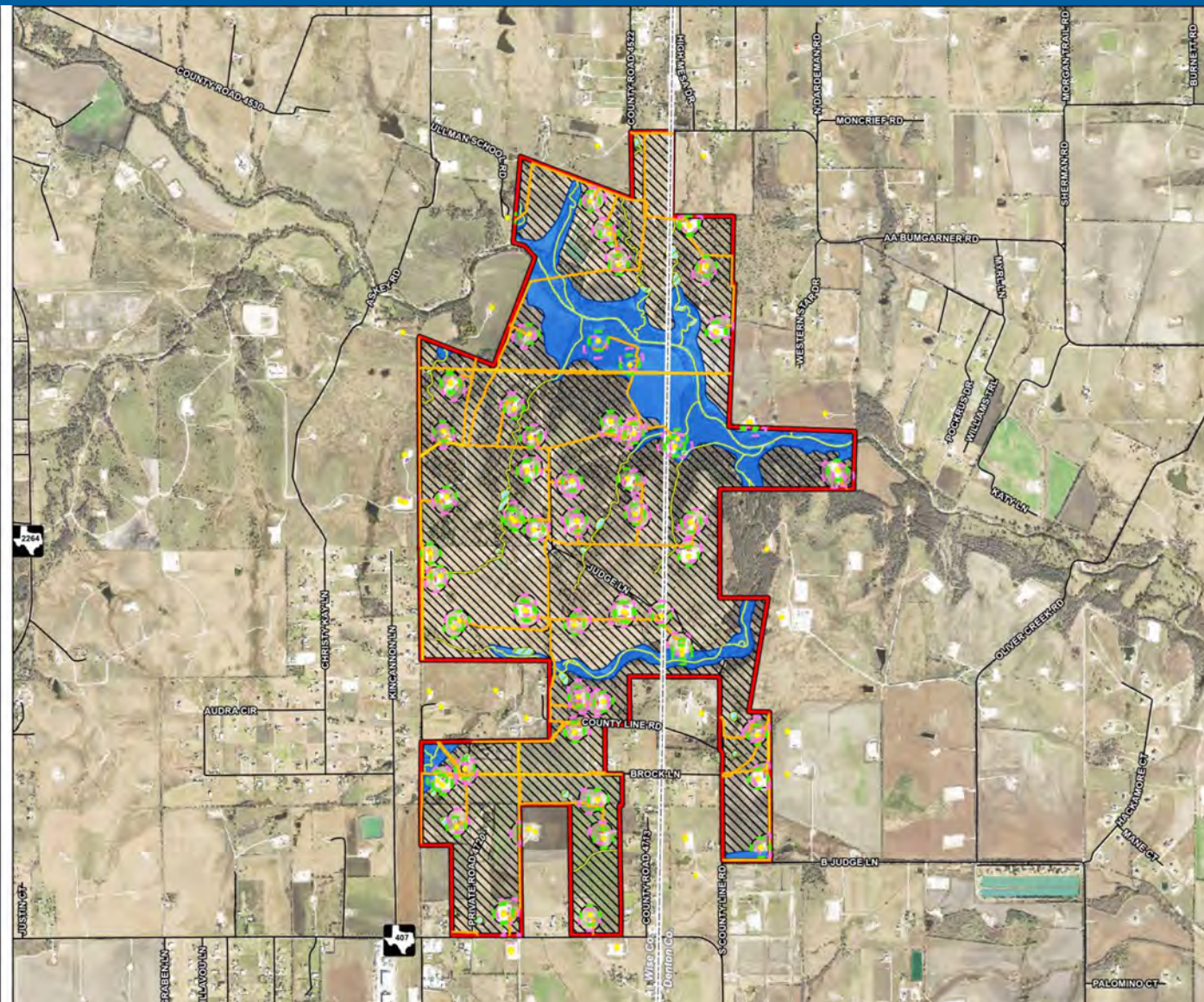
-  DISCOVERY TRACT
-  NET DEVELOPABLE (APPRX. 1242.0 AC.)
-  COUNTY LINE
-  POTENTIAL FLOODPLAIN (APPRX. 278.4 AC.)
-  POTENTIAL WETLANDS (APPRX. 35.9 AC.)
-  25' PIPELINE ESMT (APPRX. 60.4 AC.)
-  EQUIPMENT
-  200' GAS WELL SETBACK (APPRX. 202.8 AC.)
-  200' EQUIPMENT SETBACK (APPRX. 236.0 AC.)
-  SURFACE WELL



AERIAL PHOTOGRAPH DATE: NAIP 2018

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**LJA**  
LJA ENGINEERING  
6060 North Central Expressway, Suite 440  
Dallas, Texas 75206  
Phone 469.621.0710 TBP# F-1386  
LJA.com



# Property Constraints Map

# DISCOVERY TRACT W104

APPRX. 1,806 AC.

## VICINITY EXHIBIT

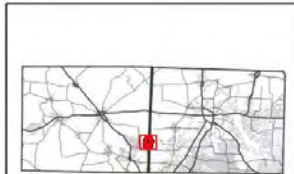
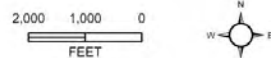
WISE COUNTY (APPRX. 1,351 AC.)  
DENTON COUNTY (APPRX. 454.9 AC.)  
CITY OF NEW FAIRVIEW  
DECATUR ISD (APPRX. 1078.8 AC.)  
NORTHWEST ISD (APPRX. 727.2 AC.)  
AQUA TEXAS INC WATER CCN (APPRX. 37.7 AC.)

NOVEMBER 2020

### Legend

- DISCOVERY TRACT
- County Line
- ISD BOUNDARY
- NEW FAIRVIEW CITY LIMITS
- NEW FAIRVIEW ETJ
- FT WORTH ETJ

DATA SOURCE: SCHOOL DISTRICTS - TEA, RAILROAD - NCTCOG, FWSD - TCEQ, CCN - PUC



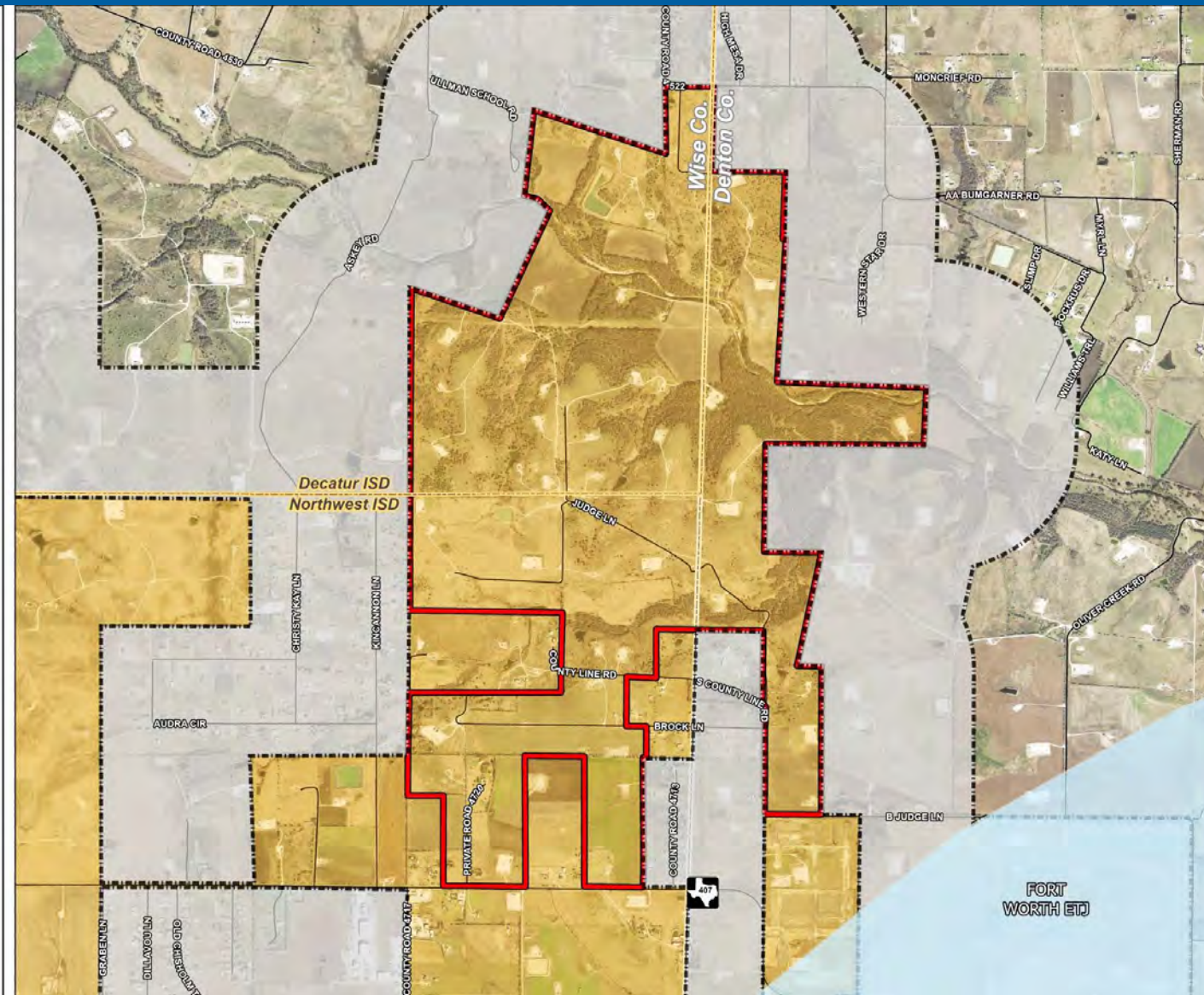
WISE /DENTON COUNTY

AERIAL PHOTOGRAPH DATE: NAIP 2018

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# New Fairview City Limits & ETJ



# DISCOVERY TRACT WI04

APPRX. 1,806 AC.

## ZONING EXHIBIT

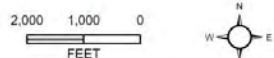
ZONE "A" AGRICULTURE

NOVEMBER 2020

### Legend

-  DISCOVERY TRACT
-  AGRICULTURAL
-  HUD-CODE MANUFACTURED HOUSING
-  PLANNED DEVELOPMENT DISTRICT
-  SINGLE FAMILY RESIDENTIAL

DATA SOURCE: ZONING - CITY OF NEW FAIRVIEW

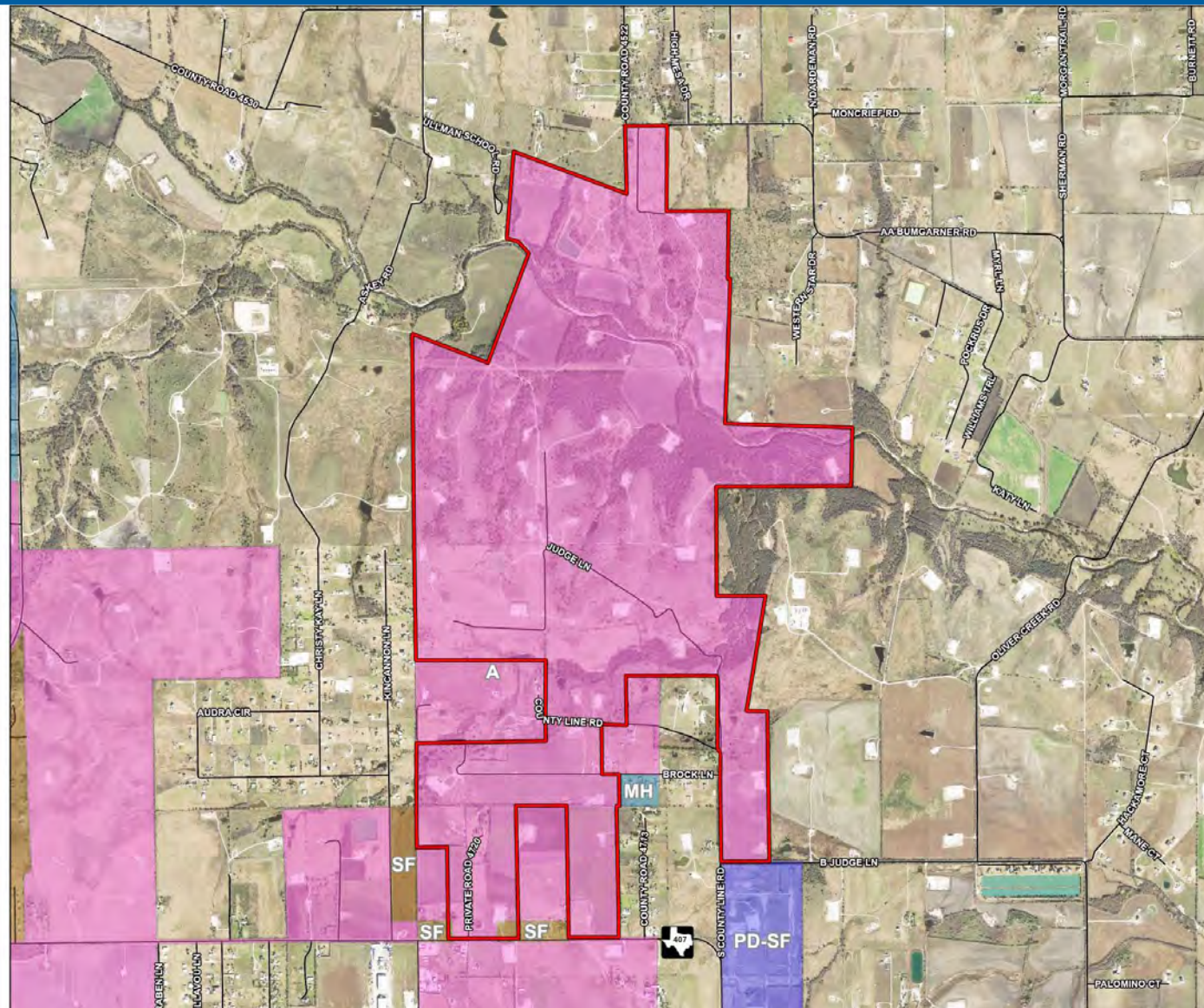


AERIAL PHOTOGRAPH DATE, NAIP 2018

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# Existing Zoning



# DISCOVERY TRACT WI04




APPRX. 1,806 AC.

## FUTURE LAND USE EXHIBIT

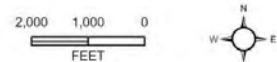
LOW DENSITY RESIDENTIAL

NOVEMBER 2020

### Legend

-  DISCOVERY TRACT
-  NEW FAIRVIEW CITY LIMITS
-  FORT WORTH MTP

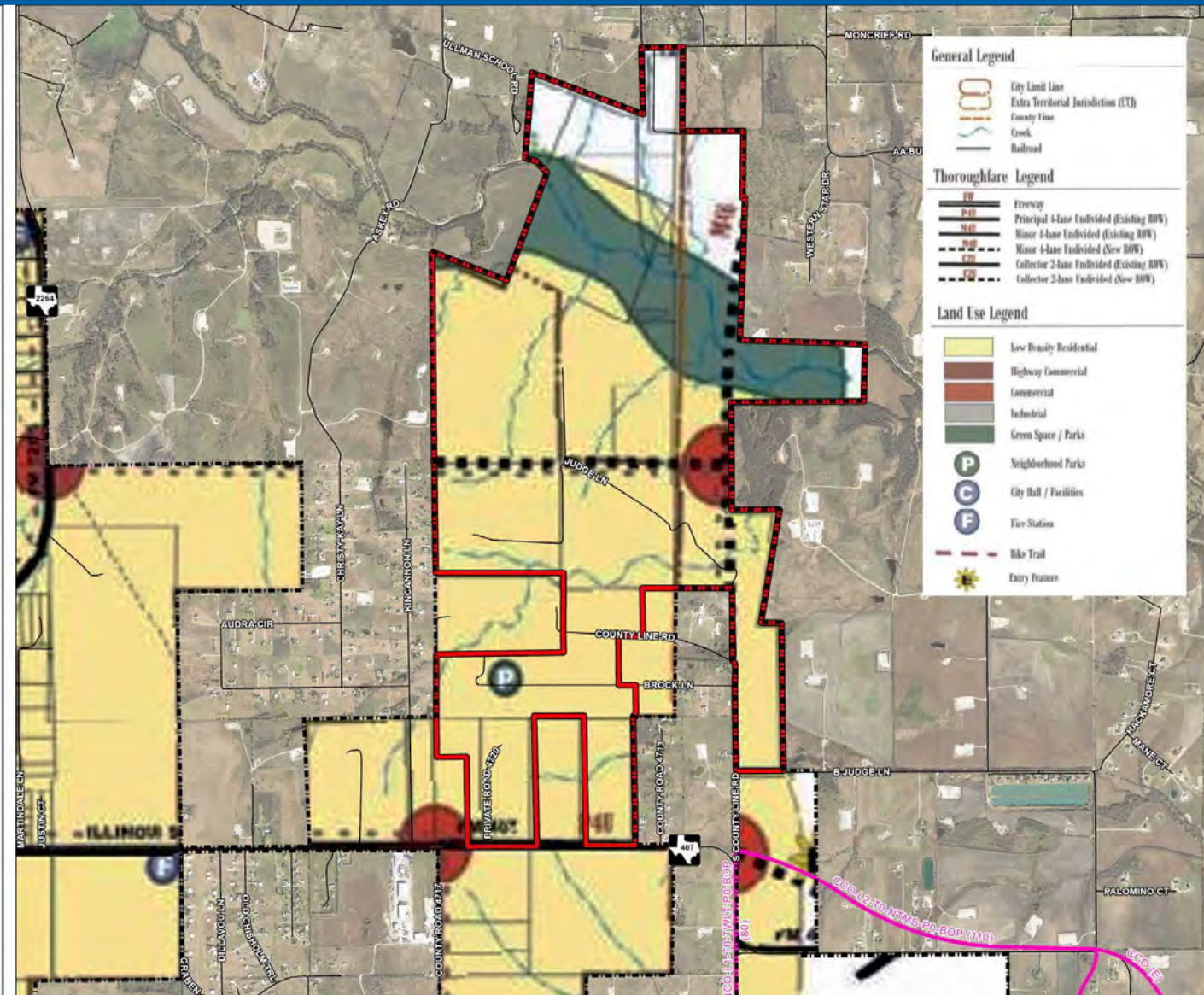
DATA SOURCE: FUTURE LAND USE - CITY OF NEW FAIRVIEW 2010



AERIAL PHOTOGRAPH DATE: NAIP 2018

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**LJA ENGINEERING**  
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 Dallas, Texas 75206  
 Phone 469.621.0730 TBP# F-1386  
 LJA.com



### General Legend

-  City Limit Line
-  Extra Territorial Jurisdiction (ETJ)
-  County Line
-  Creek
-  Railroad

### Thoroughfare Legend

-  Freeway
-  Principal 4-lane Undivided (Existing ROW)
-  Minor 4-lane Undivided (Existing ROW)
-  Minor 4-lane Undivided (New ROW)
-  Collector 2-lane Undivided (Existing ROW)
-  Collector 2-lane Undivided (New ROW)

### Land Use Legend

-  Low Density Residential
-  Highway Commercial
-  Commercial
-  Industrial
-  Green Space / Parks
-  Neighborhood Parks
-  City Hall / Facilities
-  Fire Station
-  Bike Trail
-  Dairy Feature

# Future Land Use Map


# DISCOVERY TRACT W104

APPRX. 1,806 AC.

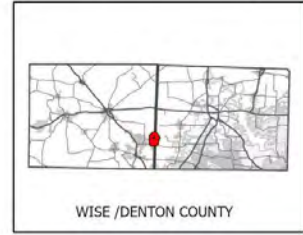
CCN EXHIBIT

NOVEMBER 2020

### Legend


-  DISCOVERY TRACT
-  CCN WATER
-  AQUA TEXAS INC (APPRX. 37.7 AC.)
-  CITY OF JUSTIN
-  CCN SEWER

DATA SOURCE: CCN - PUC

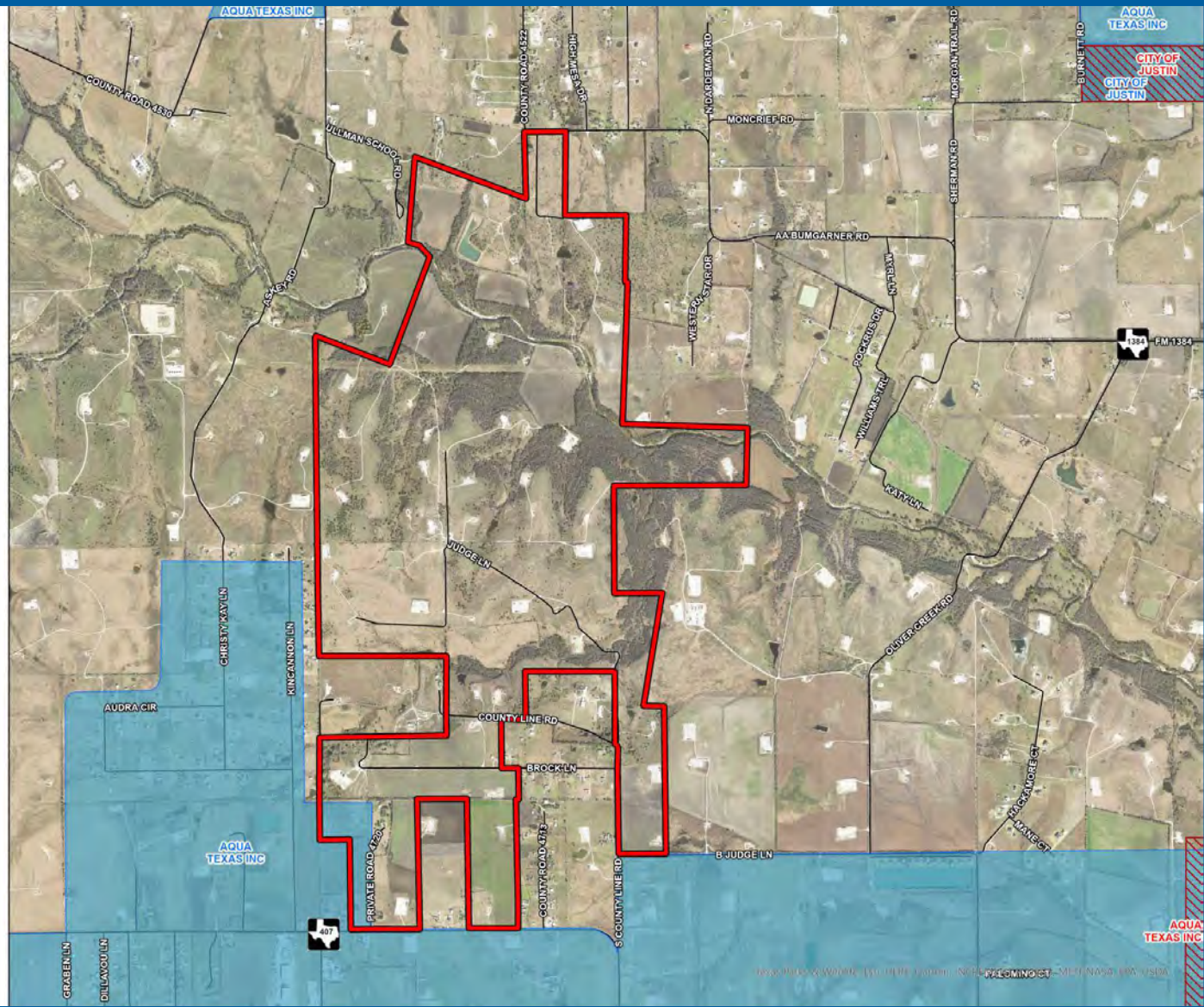


AERIAL PHOTOGRAPH DATE: NAIP 2018

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# Water Service CCN

# DISCOVERY TRACT WI04

APPRX. 1,806 AC.

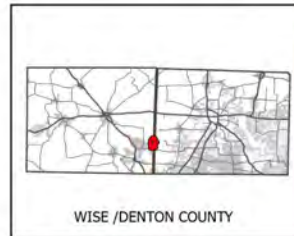
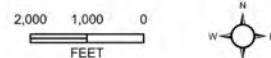
## FLOOD EXHIBIT

JANUARY 2021

### Legend

-  DISCOVERY TRACT
-  TOPOGRAPHY (5FT)
-  CHANNEL
-  WATERSHED BOUNDARY
-  POTENTIAL FLOODPLAIN (APPRX. 278.4 AC.)
  -  A
  -  AE
  -  AO

DATA SOURCE: EFFECTIVE: FLOODPLAIN DATA, CHANNELS, AND CROSS SECTIONS - FEMA, CONTOURS (5 FT) - (TNRS), WATERSHED - TNRS

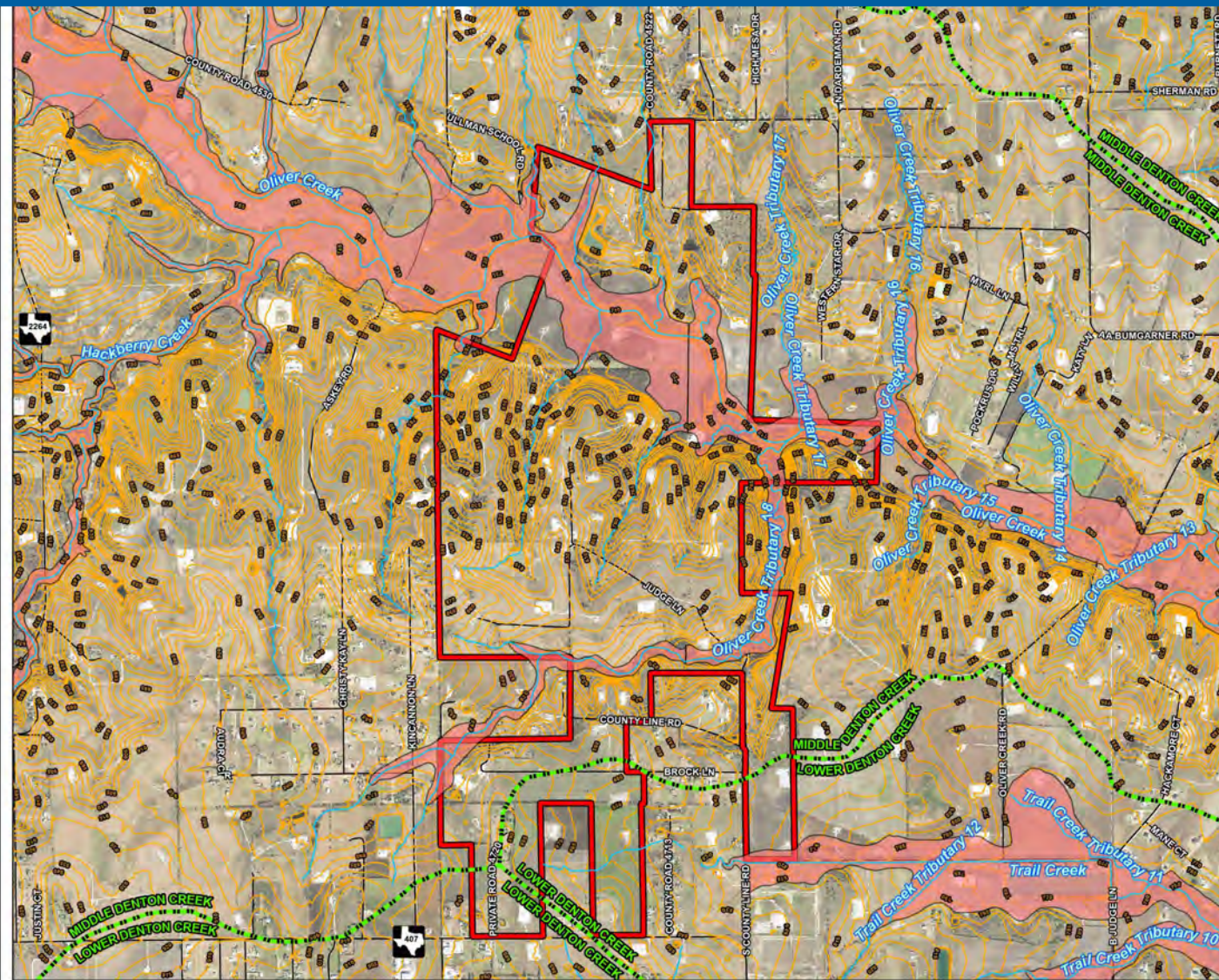


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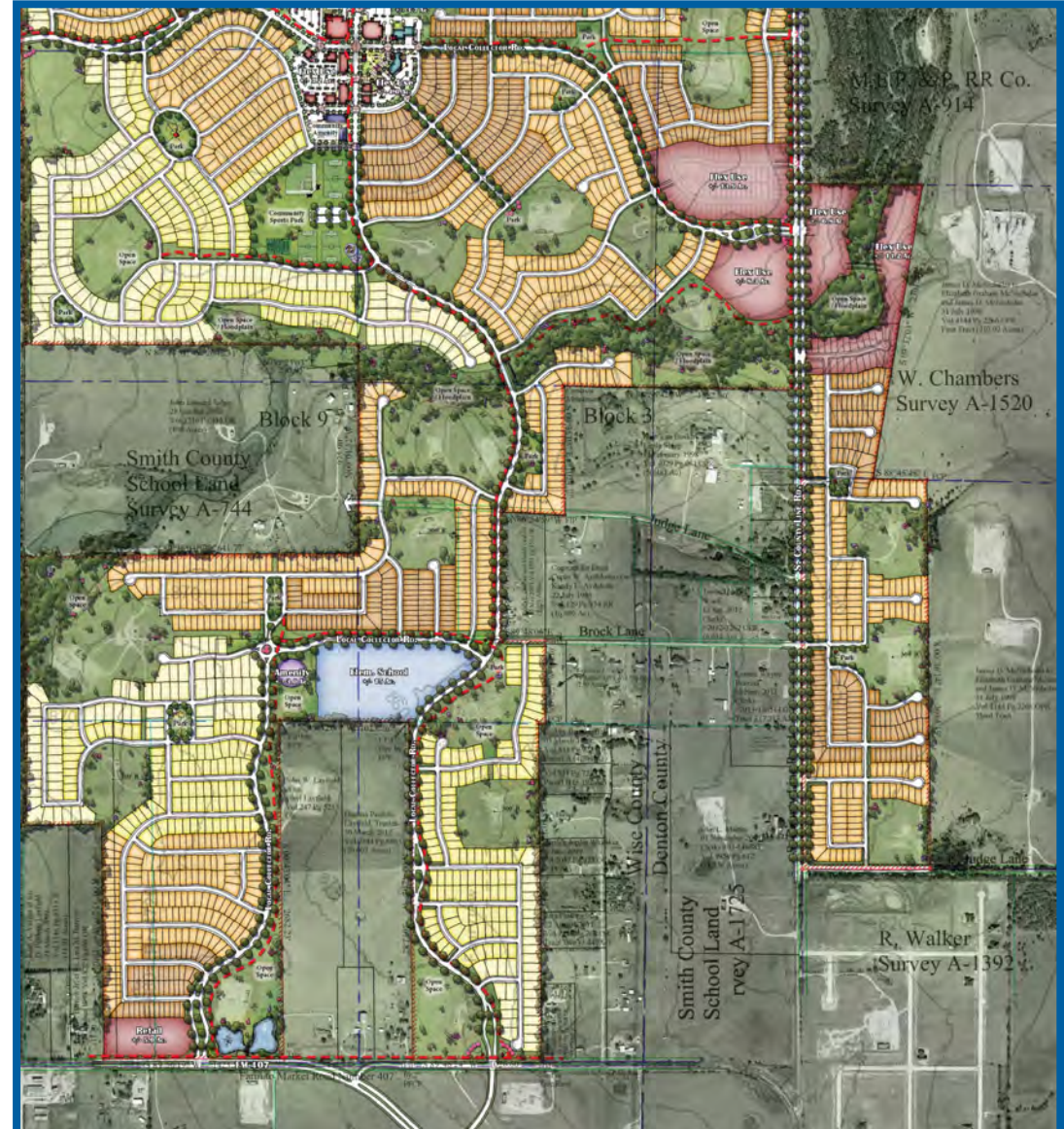
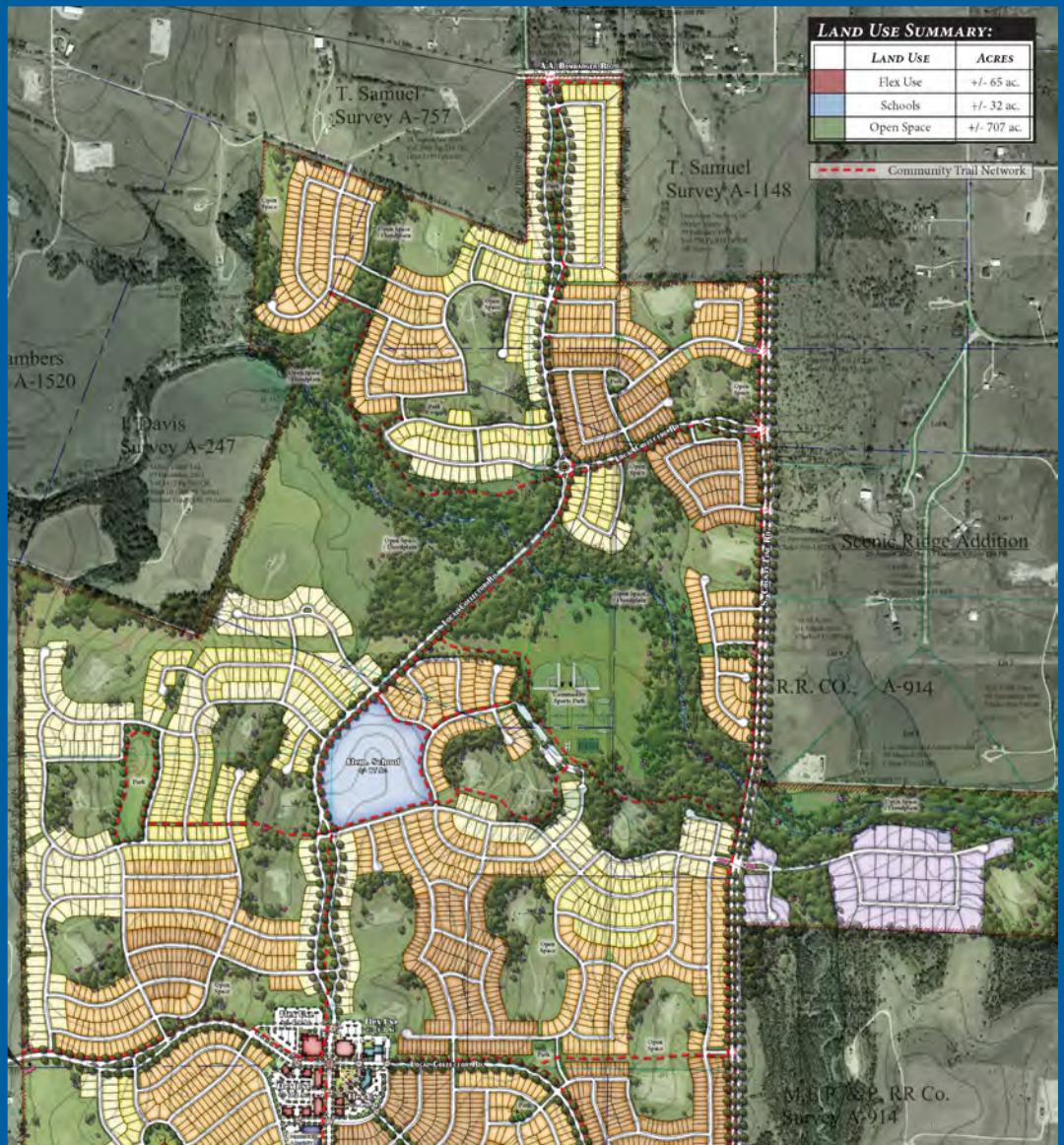
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# Topography & Floodplain





# Proposed Land Use

## DEVELOPMENT PROGRAM:

	<i>LAND USE</i>	<i>UNITS</i>	<i>ACREAGE</i>	<i>% OF AREA</i>
	Single-Family	+/- 4,140 un.	+/- 923.1 ac.	51%
	<u>Flex-Use</u>		+/- 64.5 ac.	3.5%
	Multi-Family		+/- 33.0 ac.	
	Retail/Commercial		+/- 27.5 ac.	
	Civic Uses		+/- 4.0 ac.	
	Schools		+/- 32.0 ac.	1.5%
	Thoroughfares		+/- 95.3 ac.	5%
	Amenity Areas		+/- 6.5 ac.	0.5%
	Community Parks		+/- 78.4 ac.	4%
	Open Space (Landscape reserves, floodplain, drill sites, pocket parks, etc.)		+/- 607.7 ac.	35%
	<b>Project Total</b>	<b>+/- 4,140 un.</b>	<b>+/- 1,807.46 ac.</b>	<b>100%</b>



Trails +/- 13 linear miles

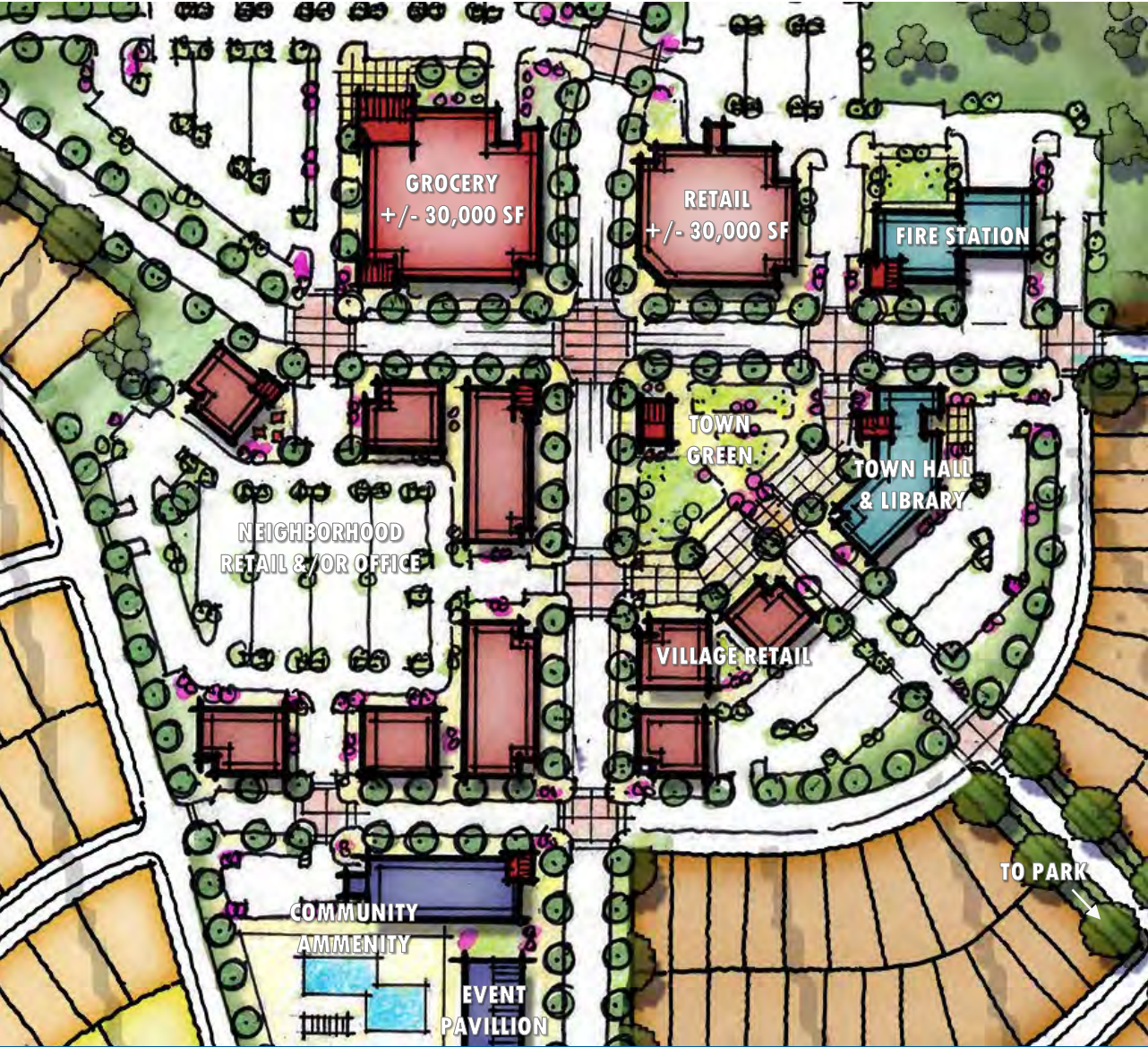
Gross SF Density +/- 2.29 un./ac.

**SHOOP RANCH**  
**PROPOSED DEVELOPMENT PROGRAM**

# Community Land Use Summary



# Town Center Concept

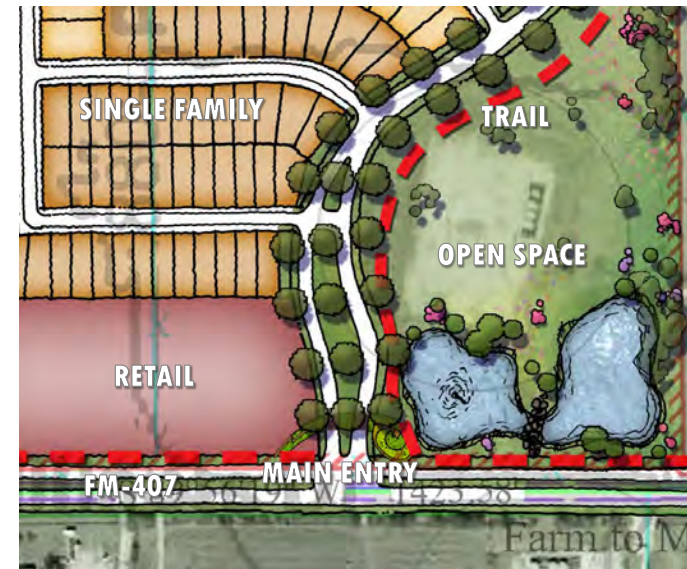


# Town Center Concept

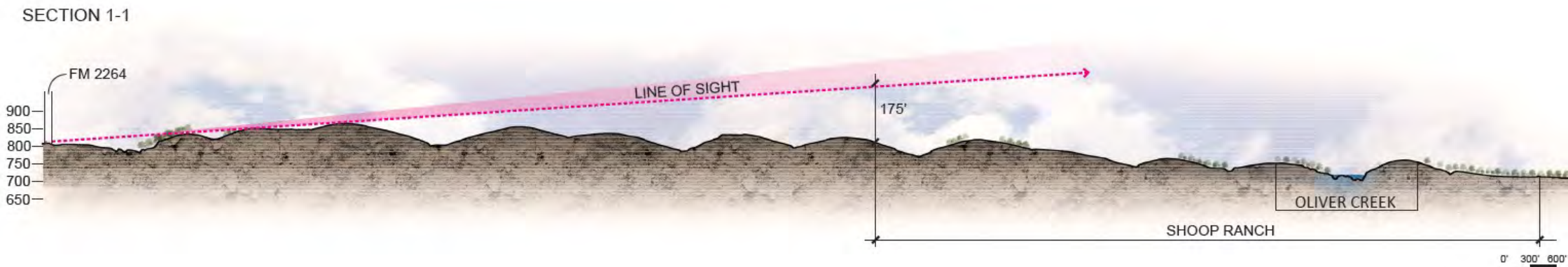
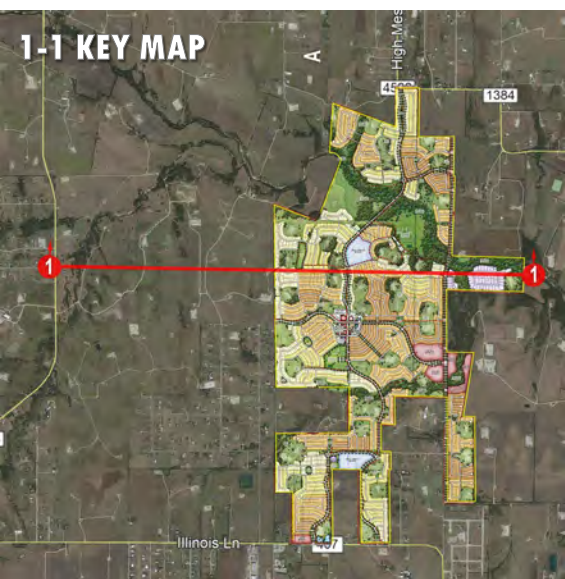
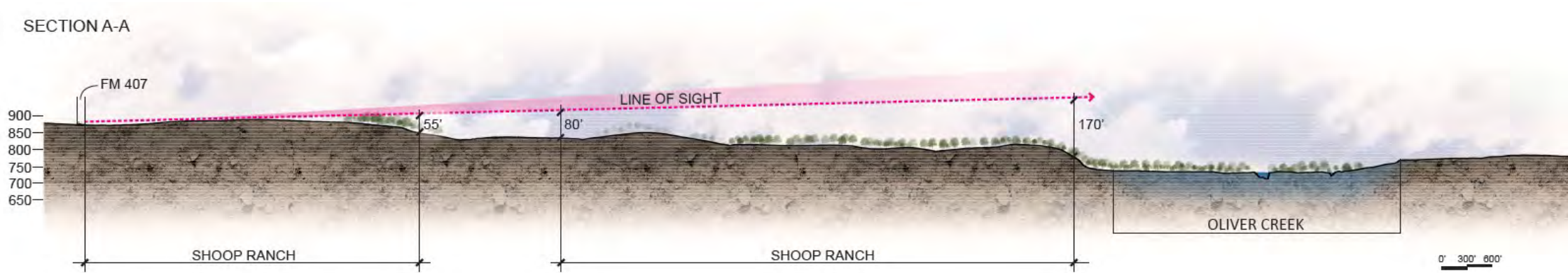


# Park Concepts





# Project Entry & Views from FM 407



# Line of Sight from FM 407 & FM 2264

<b>Residential</b>	<b>Lot Width</b>	<b>No. of Lots/Units</b>	<b>Finished Home Value</b>	<b>Total AV</b>	<b>Annual City Property Tax</b>
	40 ft lots	1,035	\$275,000.00	\$284,625,000.00	\$853,875.00
	50 ft lots	1,738	\$300,000.00	\$521,400,000.00	\$1,564,200.00
	60 ft lots	702	\$325,000.00	\$228,150,000.00	\$684,450.00
	70 ft lots	620	\$350,000.00	\$217,000,000.00	\$651,000.00
	Estate Lots	45	\$500,000.00	\$22,500,000.00	\$67,500.00
	Multifamily	800	\$75,000.00	\$20,000,000.00	\$180,000.00
<b>Total Residential</b>		<b>4940</b>		<b>\$1,333,675,000.00</b>	<b>\$4,001,025.00</b>

<b>Commercial</b>	<b>Land Area</b>	<b>Building SF</b>	<b>Value/SF Building</b>	<b>Total AV</b>	<b>Annual City Property Tax</b>
	27.5	239,580	\$150.00	\$35,937,000.00	\$107,811.00
<b>Total Commercial</b>		<b>239,580</b>		<b>\$35,937,000.00</b>	<b>\$107,811.00</b>

<b>Total Residential and Commercial</b>				<b>\$1,369,612,000.00</b>	<b>\$4,108,836.00</b>
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# Fiscal Impact Summary



**Thank you!**



## **City Council Agenda February 15, 2021**

**Agenda Item:** **Presentation** **(Discussion)**

### **Agenda Description:**

Discussion with staff regarding a citizen survey.

### **Background Information:**

The Council and staff have been in discussion regarding the desires of the community and the best way to determine if we are receiving input from the whole community or just a vocal minority. Staff recommended that the Council consider conducting an annual or semi-annual citizen survey that can scientifically assess our residents' satisfaction with existing services, identify areas where they wish to see improvement, and ensure that we are including input from a representative sample of the whole community.

Staff has worked with both of these vendors previously and each has some pros and cons. Both vendors conduct these types of surveys for hundreds of cities around the country. ETC's approach is more customizable and the development of the questionnaire is largely driven by us, while Polco focuses more on a standardized questionnaire. Each vendor has a large database to provide benchmarking data for comparison purposes. Polco has recently included a "snap" survey tool that allows for short surveys to be completed throughout the year, while ETC focuses on longitudinal data collection that provides trends, as well as identifying focus areas that are most likely to improve the residents overall satisfaction and experience.

### **Financial Information:**

ETC - Approximately \$9,000

Polco - Approximately \$13,000

### **City Contact and Recommendation:**

Ben Nibarger, City Administrator

### **Attachments:**

Proposals (Polco and ETC)

Sample Survey Results





**THE NCS**<sup>TM</sup>  
The National Citizen Survey<sup>TM</sup>

# Ramsey, MN

Community Livability Report

2018



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icma.org • 800-745-8780

# Contents

About..... 1

Quality of Life in Ramsey..... 2

Community Characteristics ..... 3

Governance ..... 5

Participation ..... 7

Special Topics..... 9

Conclusions ..... 16



The National Citizen Survey™  
© 2001-2018 National Research Center, Inc.

The NCS™ is presented by NRC in collaboration with ICMA.

NRC is a charter member of the AAPOR Transparency Initiative, providing clear disclosure of our sound and ethical survey research practices.



# About

The National Citizen Survey™ (The NCS) report is about the “livability” of Ramsey. The phrase “livable community” is used here to evoke a place that is not simply habitable, but that is desirable. It is not only where people do live, but where they want to live.

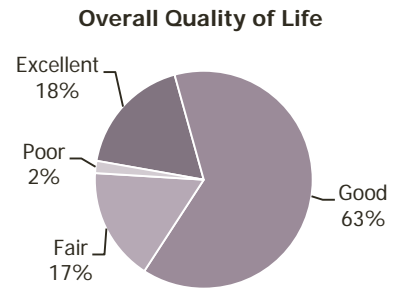
Great communities are partnerships of the government, private sector, community-based organizations and residents, all geographically connected. The NCS captures residents’ opinions within the three pillars of a community (Community Characteristics, Governance and Participation) across eight central facets of community (Safety, Mobility, Natural Environment, Built Environment, Economy, Recreation and Wellness, Education and Enrichment and Community Engagement).

The Community Livability Report provides the opinions of a representative sample of 465 residents of the City of Ramsey. The margin of error around any reported percentage is 5% for all respondents. The full description of methods used to garner these opinions can be found in the *Technical Appendices* provided under separate cover.



# Quality of Life in Ramsey

About 8 in 10 residents rated the quality of life in Ramsey as excellent or good. This was similar to ratings given in other communities across the nation (see Appendix B of the *Technical Appendices* provided under separate cover).



Shown below are the eight facets of community. The color of each community facet summarizes how residents rated it across the three sections of the survey that represent the pillars of a community – Community Characteristics, Governance and Participation. When most ratings across the three pillars were higher than the benchmark, the color for that facet is the darkest shade; when most ratings were lower than the benchmark, the color is the lightest shade. A mix of ratings (higher and lower than the benchmark) results in a color between the extremes.

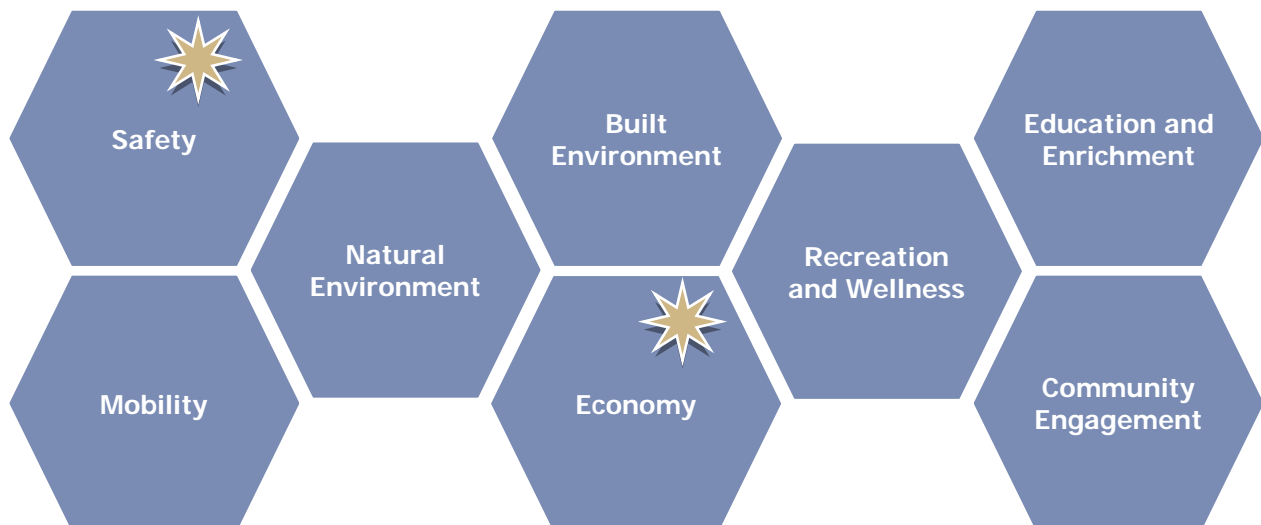
In addition to a summary of ratings, the image below includes one or more stars to indicate which community facets were the most important focus areas for the community. As in 2016, residents identified Safety and Economy as priorities for the Ramsey community in the coming two years. All facets of community livability were rated positively and similar to the national benchmark. This overview of the key aspects of community quality provides a quick summary of where residents see exceptionally strong performance and where performance offers the greatest opportunity for improvement. Linking quality to importance offers community members and leaders a view into the characteristics of the community that matter most and that seem to be working best.

Details that support these findings are contained in the remainder of this Livability Report, starting with the ratings for Community Characteristics, Governance and Participation and ending with results for Ramsey’s unique questions.

## Legend

- Higher than national benchmark
- Similar to national benchmark
- Lower than national benchmark

★ Most important



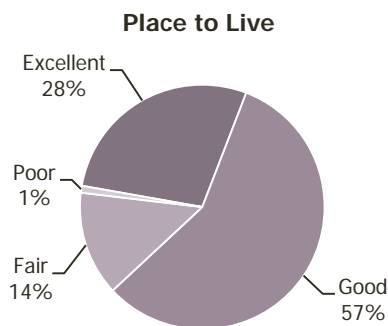
# Community Characteristics

*What makes a community livable, attractive and a place where people want to be?*

Overall quality of community life represents the natural ambience, services and amenities that make for an attractive community. How residents rate their overall quality of life is an indicator of the overall health of a community. In the case of Ramsey, 85% rated the city as an excellent or good place to live. Respondents' ratings of Ramsey as a place to live were similar to ratings in other communities across the nation.

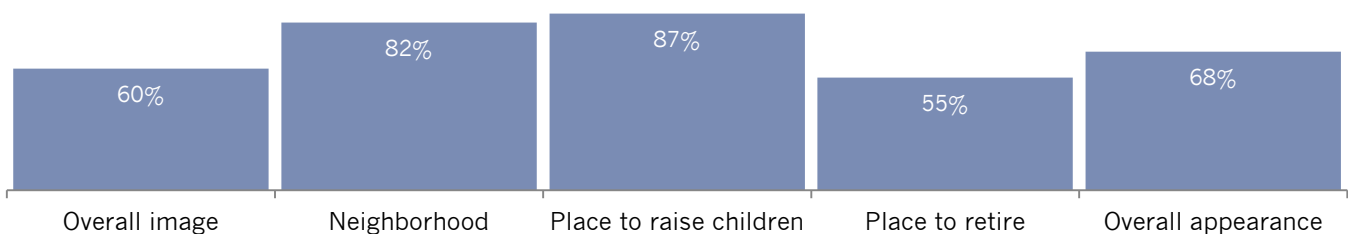
In addition to rating the city as a place to live, respondents rated several aspects of community quality including Ramsey as a place to raise children and to retire, their neighborhood as a place to live, the overall image or reputation of Ramsey and its overall appearance. While ratings for these aspects ranged from 55% to 87% excellent or good, all community quality ratings were similar to those given elsewhere.

Delving deeper into Community Characteristics, survey respondents rated over 40 features of the community within the eight facets of Community Livability. Resident evaluations within the facets of Safety, Mobility and Natural Environment were positive and similar to the benchmark. In Built Environment, the rating for affordable quality housing was more positive than seen in other communities, while the rating for public places where people want to spend time was perceived as less positive. Other aspects that received ratings lower than the benchmark were recreational, education/enrichment and volunteer opportunities as well as several aspects within the facet of Economy.



When compared to 2016, residents were more likely in 2018 to positively rate Ramsey as a place to retire, as well as employment and fitness opportunities and cultural/arts/music activities (for more information see the *Trends over Time* report under separate cover).

Percent rating positively (e.g., excellent/good)



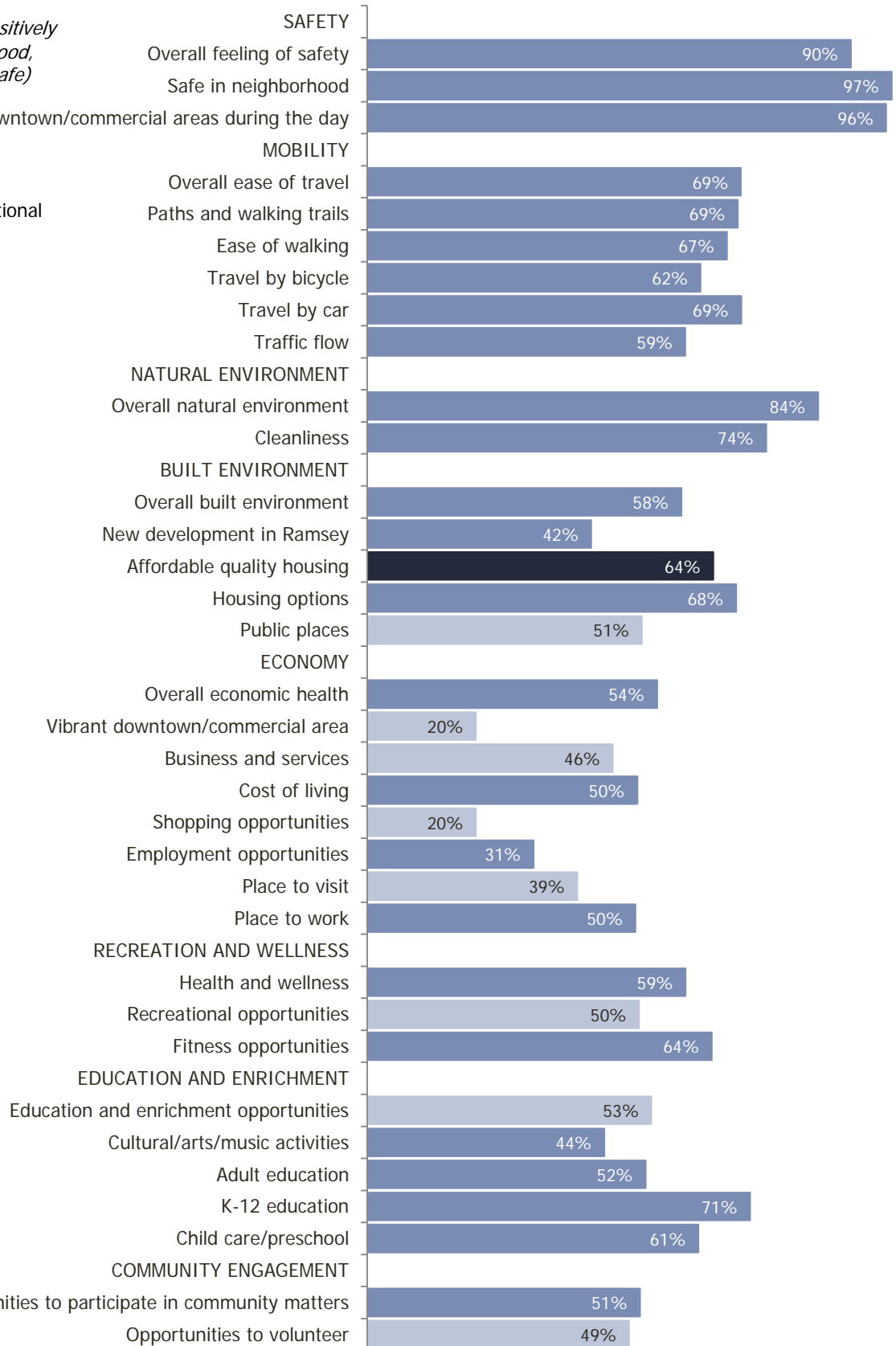
# The National Citizen Survey™

Figure 1: Aspects of Community Characteristics

Percent rating positively  
(e.g., excellent/good,  
very/somewhat safe)

Comparison to national  
benchmark

- Higher
- Similar
- Lower



# Governance

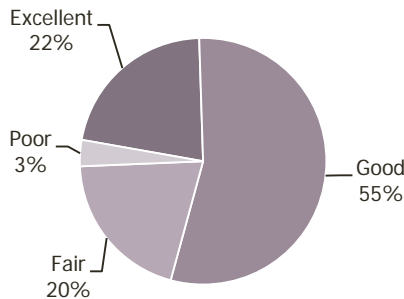
*How well does the government of Ramsey meet the needs and expectations of its residents?*

The overall quality of the services provided by Ramsey as well as the manner in which these services are provided is a key component of how residents rate their quality of life. About three-quarters of residents gave positive reviews to the overall quality of City services while about 4 in 10 favorably rated the services provided by the Federal Government; both of these evaluations were similar to those observed elsewhere across the country.

Survey respondents also rated various aspects of Ramsey’s leadership and governance. About 8 in 10 residents gave favorable marks to the customer service provided by the City, and roughly half were pleased with the remaining aspects of government performance. These ratings were all similar to the national benchmark and several trended up since 2016 (welcoming citizen involvement, confidence in City government, acting in the best interest of Ramsey and being honest).

Respondents evaluated over 30 individual services and amenities available in Ramsey. Most services were rated positively by a majority of respondents and were similar to ratings given in other communities. Several service evaluations improved from 2016 to 2018, including those for traffic signal timing, economic development and most aspects of Built Environment.

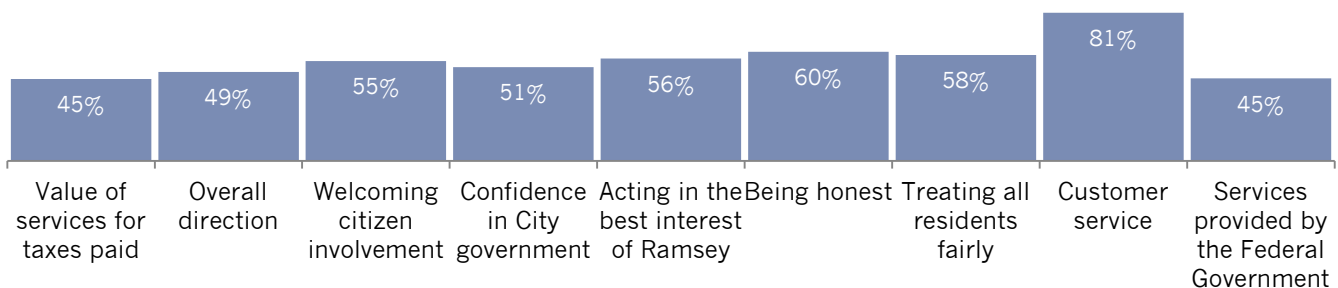
**Overall Quality of City Services**



*Percent rating positively (e.g., excellent/good)*

Comparison to national benchmark

■ Higher ■ Similar ■ Lower



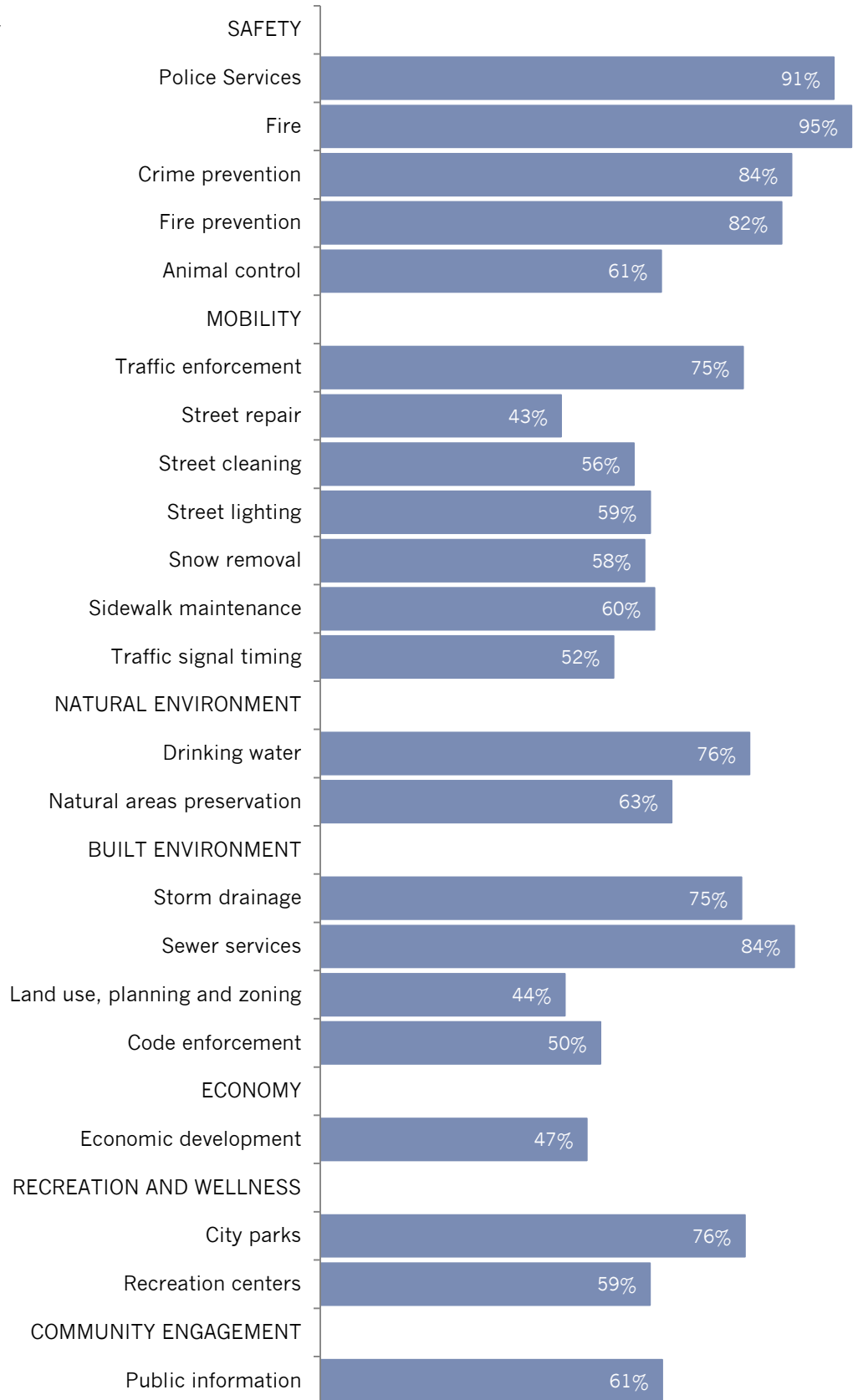
## The National Citizen Survey™

Figure 2: Aspects of Governance

Percent rating positively  
(e.g., excellent/good)

Comparison to national  
benchmark

- Higher
- Similar
- Lower

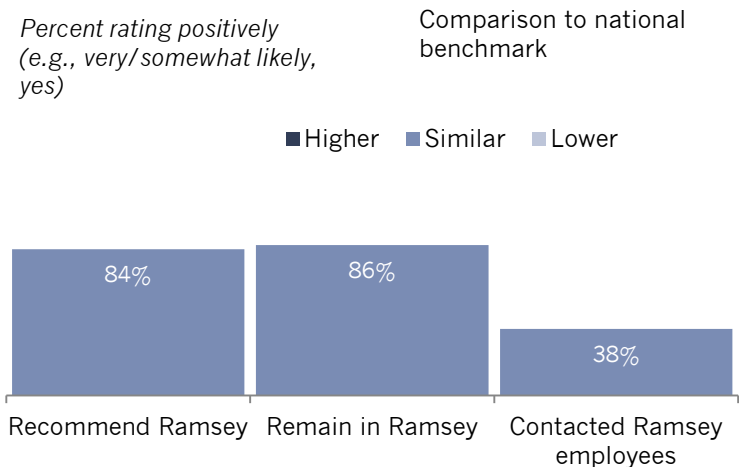
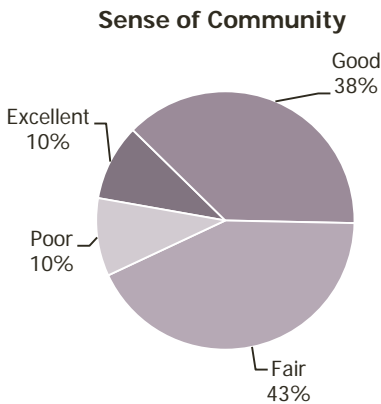


# Participation

*Are the residents of Ramsey connected to the community and each other?*

An engaged community harnesses its most valuable resource, its residents. The connections and trust among residents, government, businesses and other organizations help to create a sense of community, a shared sense of membership, belonging and history. About half of residents gave excellent or good marks to the sense of community in Ramsey, which was similar to ratings seen in other communities. More than 8 in 10 residents would recommend living in Ramsey to someone who asked and planned to remain there for the next five years; these ratings were also similar to the national benchmark.

The survey included over 30 activities and behaviors for which respondents indicated how often they participated in or performed each, if at all. Levels of participation tended to vary widely across the different facets, making the comparison to the benchmark (and to Ramsey's ratings over time) helpful for interpreting the results. Participation rates tended to be similar to the national benchmark for most items. However, Ramsey residents were more likely than those who lived in other communities to have recycled at home and to not feel they were under housing cost stress, but less likely to work in Ramsey, to have campaigned for an issue, cause or candidate or to have volunteered. Further, survey respondents were more likely in 2018 than in 2016 to believe the economy would positively impact their income and or to have attended a City-sponsored event.



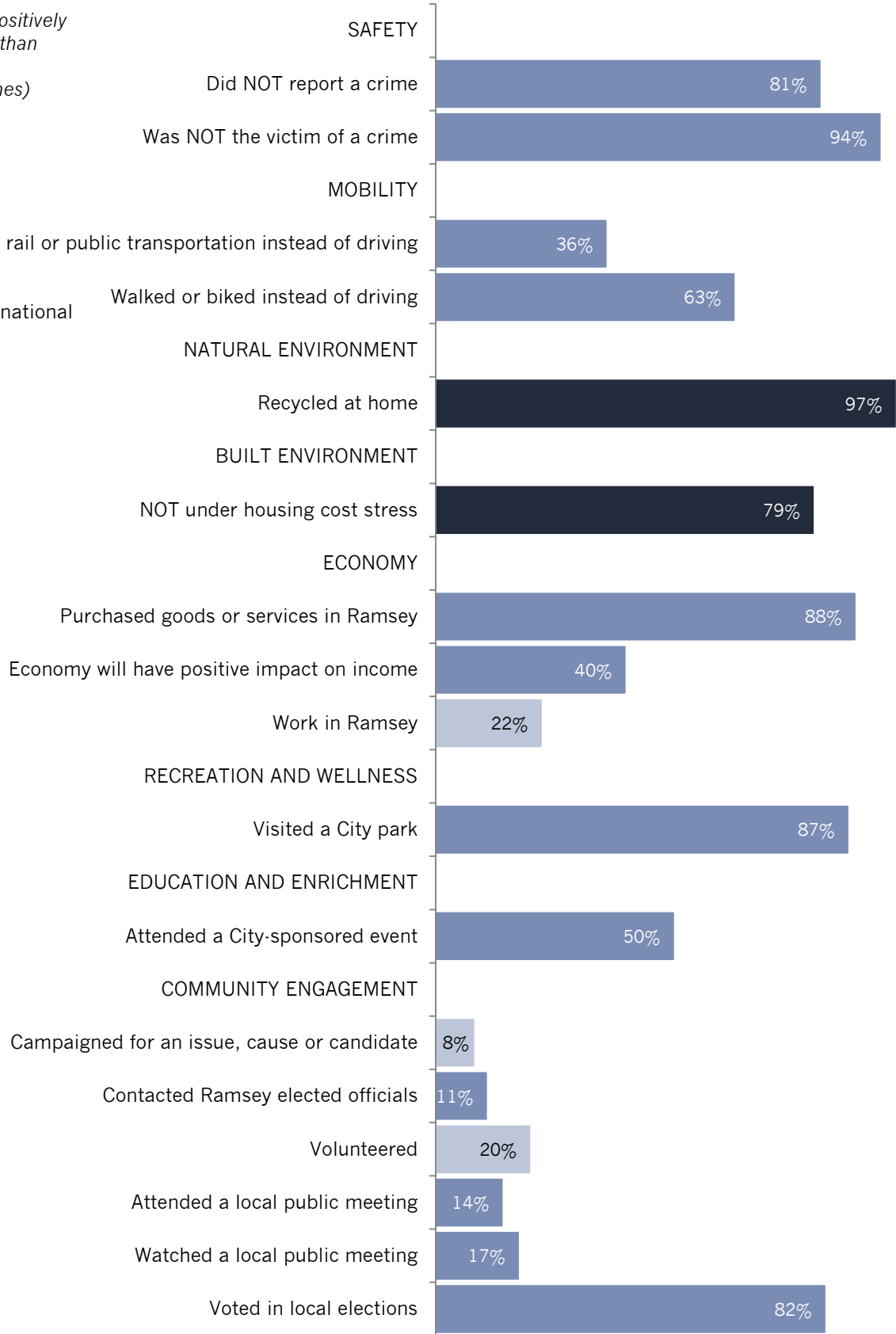
# The National Citizen Survey™

Figure 3: Aspects of Participation

Percent rating positively  
(e.g., yes, more than  
once a month,  
always/sometimes)

Comparison to national  
benchmark

- Higher
- Similar
- Lower



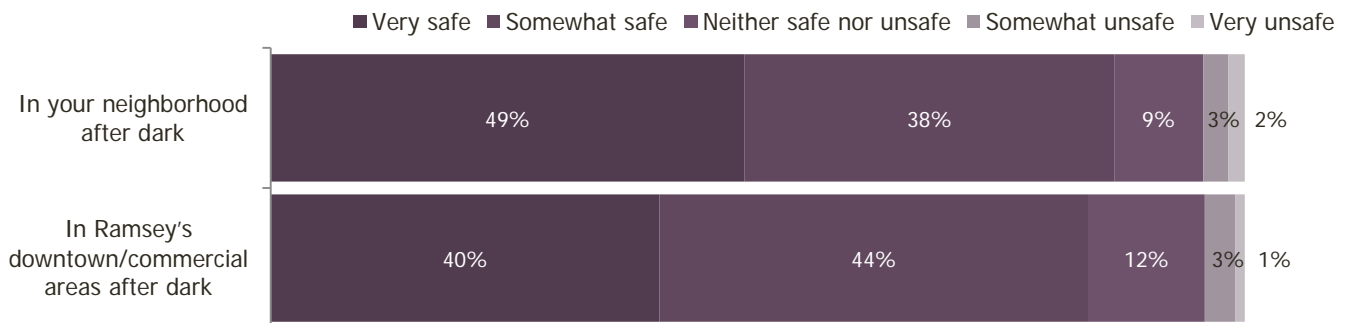


# Special Topics

The City of Ramsey included six questions of special interest on The NCS as well as several line additions to standard questions. Topic areas included sources of City information, changes to new or existing amenities, City priorities and funding options for street maintenance, among others.

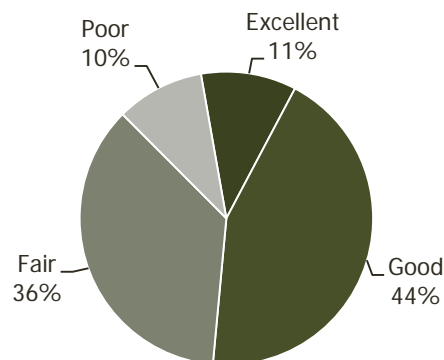
Thinking about their feelings of safety after dark, roughly 9 in 10 residents indicated that they felt safe in their neighborhoods or in Ramsey’s downtown/commercial areas after dark; very few residents felt unsafe in these areas.

Figure 4: Line Additions to Question 4  
Please rate how safe or unsafe you feel:



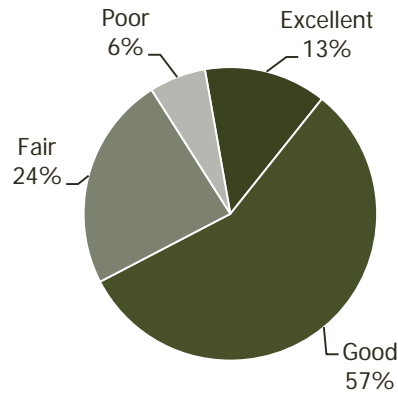
Slightly more than half of residents rated the overall condition of City maintained streets as excellent or good; about one-third thought the roads were in fair condition and 1 in 10 rated them as poor.

Figure 5: Line Addition to Question 5  
Please rate the overall condition of City maintained streets:



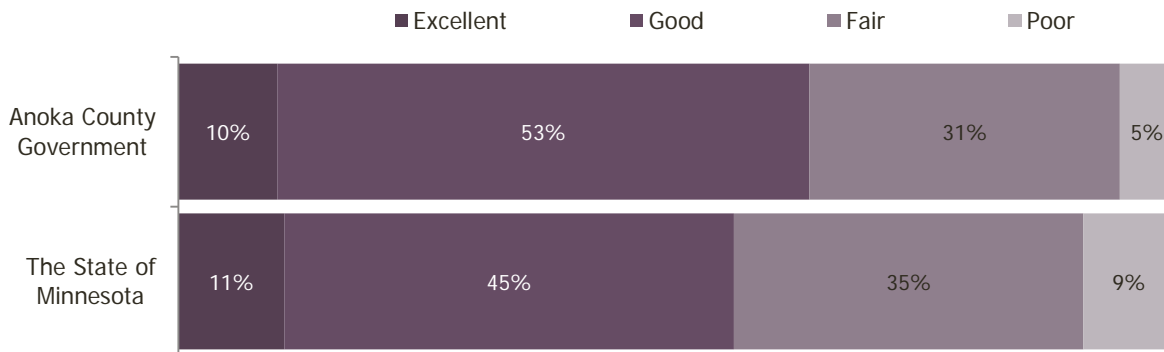
About 7 in 10 residents assessed the quality of Ramsey trail maintenance as excellent or good. About one-quarter rated the quality of the trails as fair and less than 1 in 10 thought it was poor.

Figure 6: Line Addition to Question 10  
Please rate the quality of trail maintenance in Ramsey:



Residents' sentiments toward the County and State governments were similar: about 6 in 10 thought each was excellent or good, 3 in 10 thought each was fair and 1 in 10 rated the governments as poor.

Figure 7: Line Additions to Question 11  
Overall, how would you rate the quality of the services provided by each of the following?

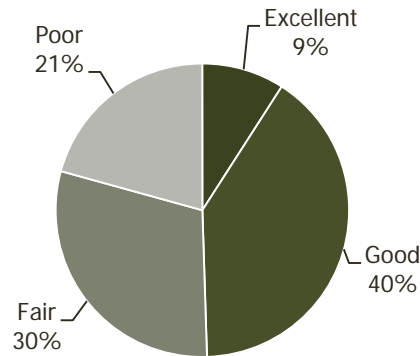


The National Citizen Survey™

When asked about the development and success of a Ramsey strategic plan, about half of residents thought that the Ramsey government had done an excellent or good job. Approximately 3 in 10 residents thought Ramsey had done a fair job on the plan and 2 in 10 rated it poorly.

Figure 8: Line Addition to Question 12

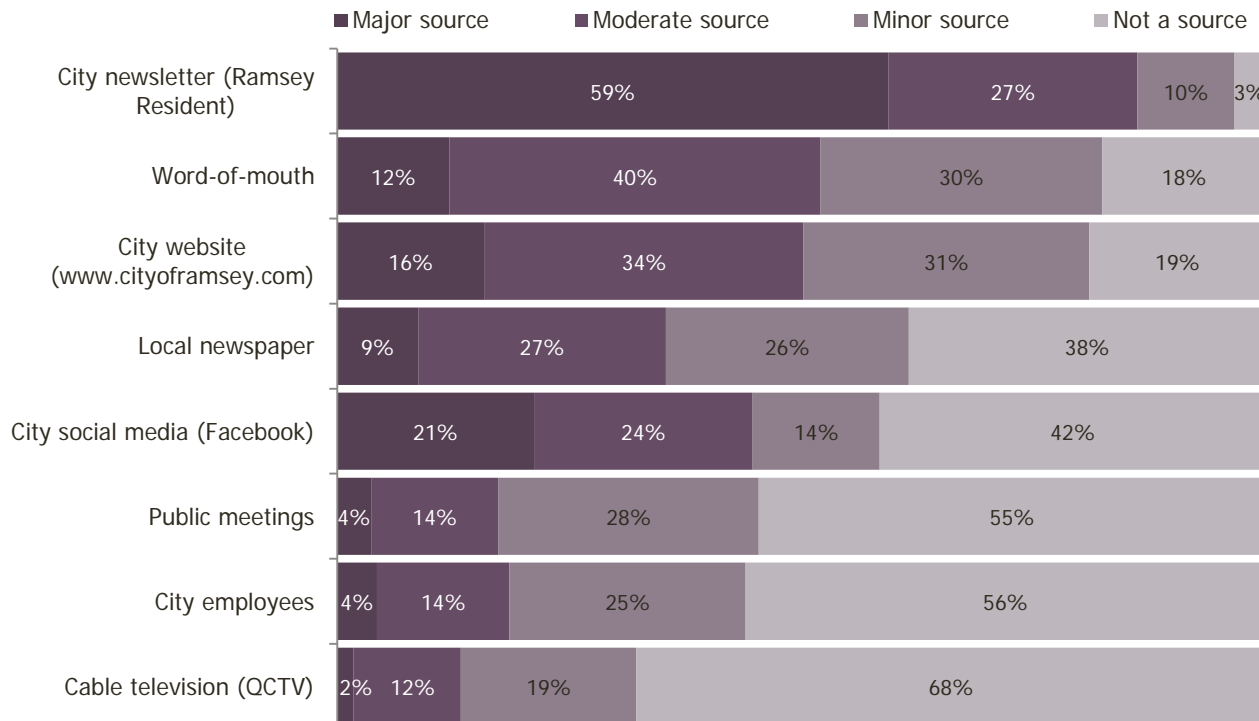
Please rate the following categories of Ramsey government performance: Development and success of a strategic action plan



Residents evaluated a list of sources of City information and indicated whether they considered each to be a major, moderate, minor or not a source of information. About 8 in 10 residents used the City newsletter as a major or moderate information source and another 1 in 10 considered it a minor source. About half of residents used word-of-mouth or the City website as major or moderate sources of information and another 3 in 10 used each of these as a minor source. The least-utilized sources of City information were public meetings, City employees and cable television; less than half of residents used any of these modes as an information source.

Figure 9: Sources of City Information

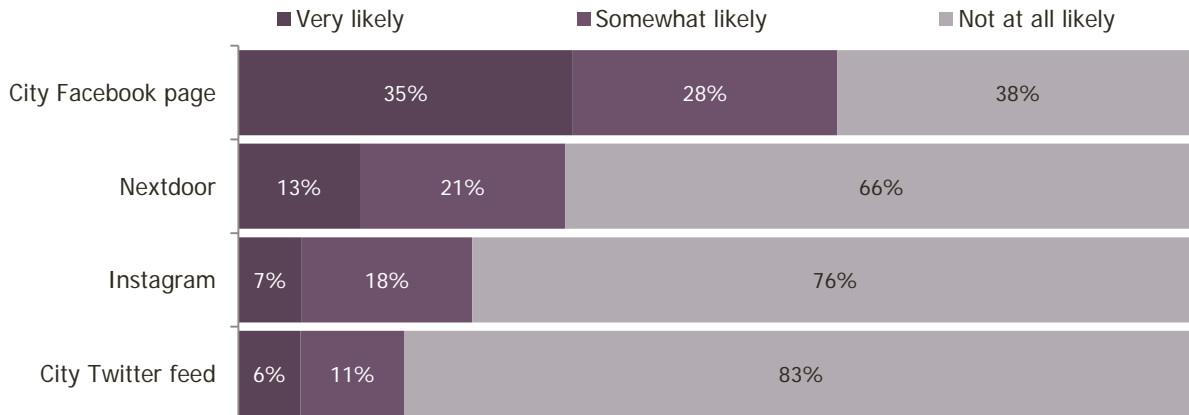
To what extent are each of the following a source of information for you about Ramsey city government and its activities?



When prompted about social media outlets, residents indicated they would be most likely to engage with the City in the future on Facebook (62% very or somewhat likely). In addition, about 4 in 10 would engage with the City on Nextdoor, one-quarter on Instagram and about 2 in 10 residents would be interested in engaging on the City Twitter feed.

Figure 10: Likelihood of Social Media Engagement

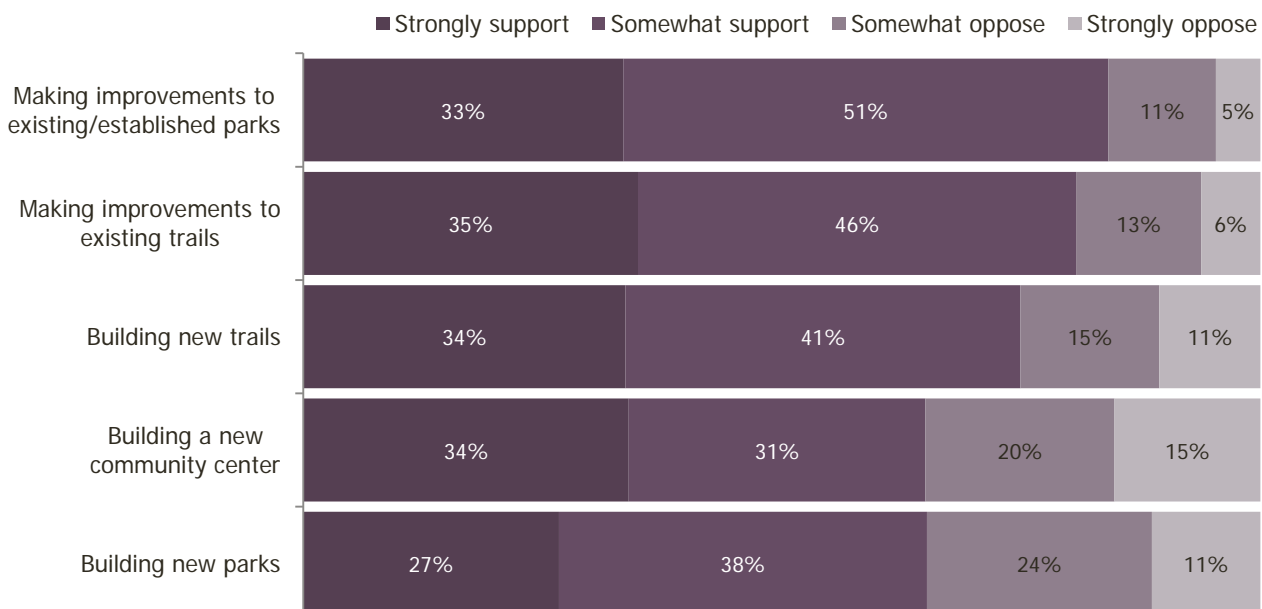
Please indicate how likely you would be, if at all, to engage with the City on the following social media platforms in the future:



Residents considered a list of City amenities and indicated the extent to which they would support or oppose the City investigating changes to each. Even though they were informed that changes to amenities could result in a tax increase, a strong majority of residents strongly or somewhat supported the City investigating each of the potential changes. Support was strongest for making improvements to existing/established parks and to existing trails as well as building new trails.

Figure 11: Support for Changes to City Amenities

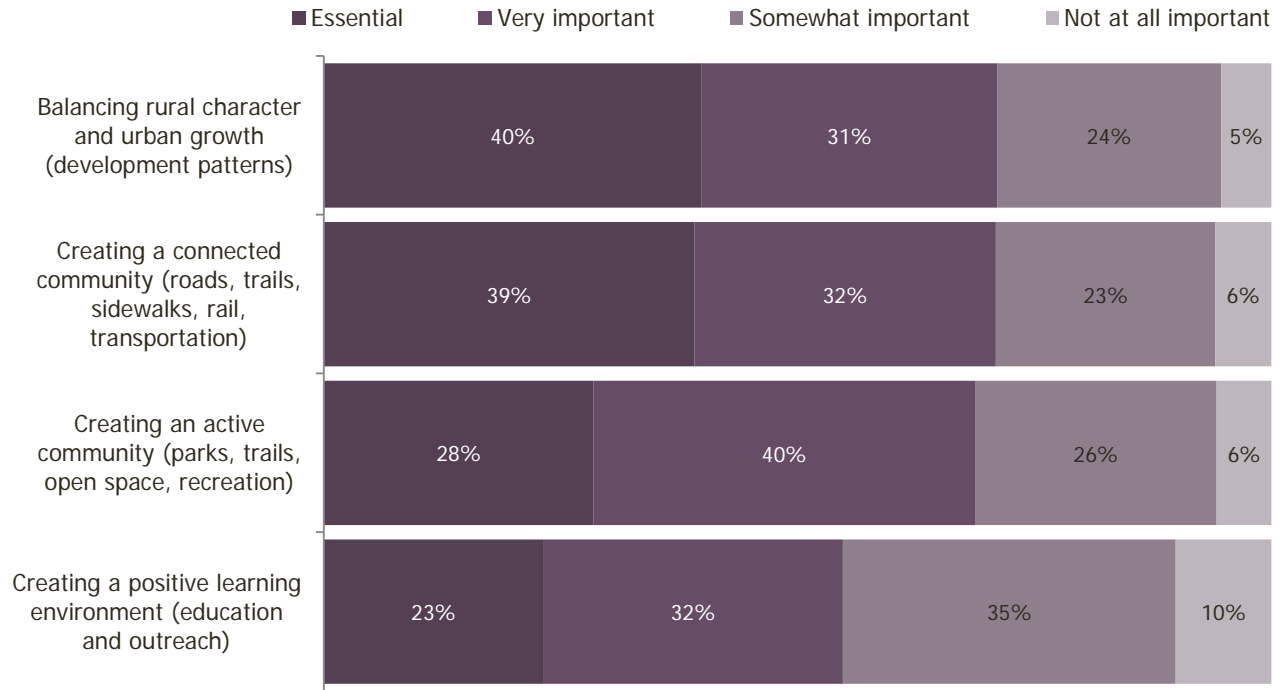
Please indicate to what extent you support or oppose the city investigating the following changes to new or existing amenities, each of which could accordingly result in an increase to the tax levy:



Thinking about the importance of four City priorities, about 7 in 10 residents thought that balancing rural character and urban growth, creating a connected community and creating an active community were each essential or very important. Creating a positive learning environment was rated as at least very important by a majority of Ramsey residents

Figure 12: Importance of City Priorities

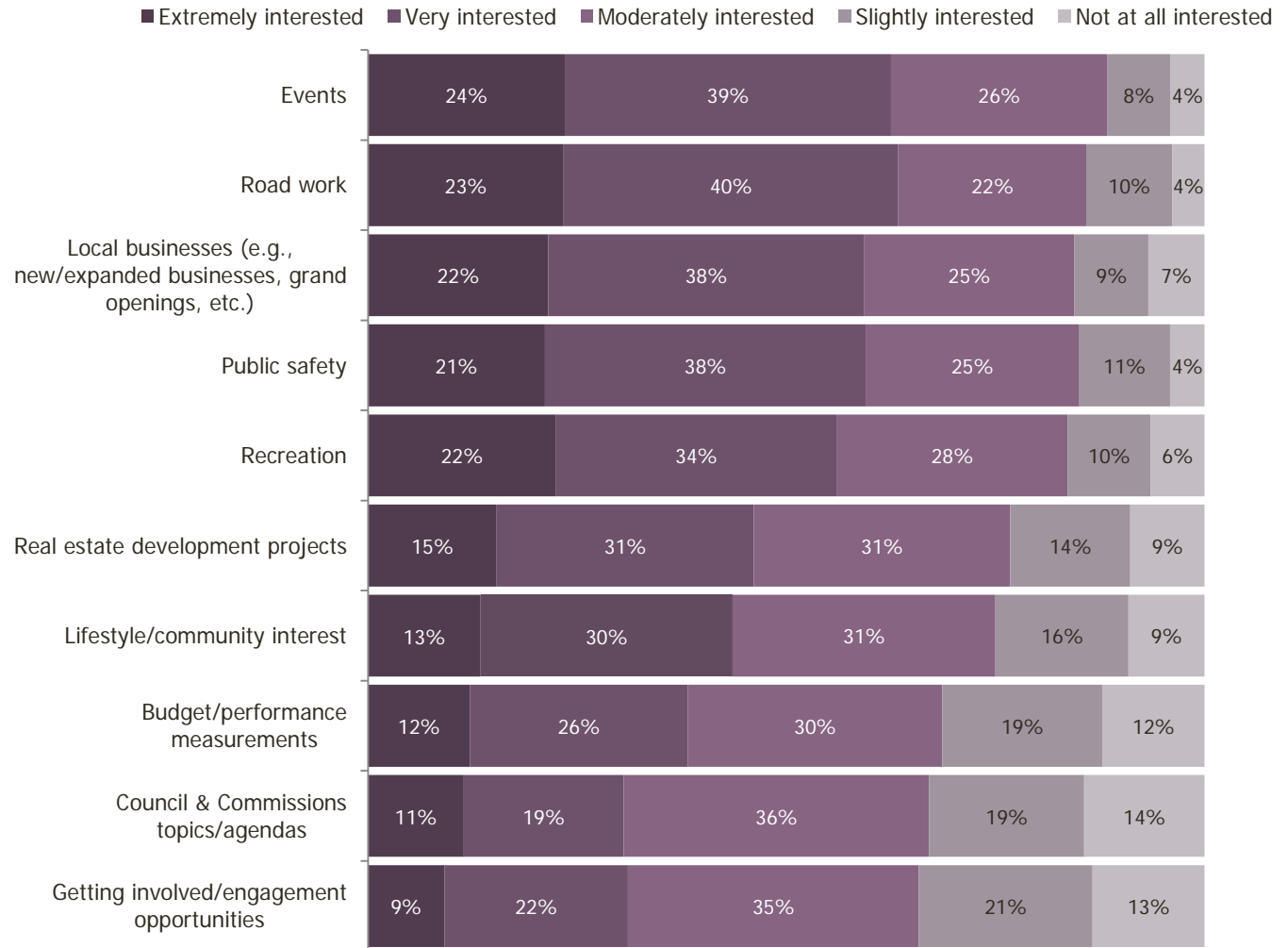
Please rate how important, if at all, you think each of the following priorities are for the City to focus on in the next five years:



Residents considered a list of news topics and indicated how interested they were in receiving information about each. About 8 in 10 residents were at least moderately interested in receiving information about events, road work, local business, public safety and recreation. Respondents were least interested in receiving information about Council and Commissions topics/agendas and getting involved/engagement opportunities; however, about 7 in 10 residents still expressed at least moderate interest in these topics.

Figure 13: Interest in City Information

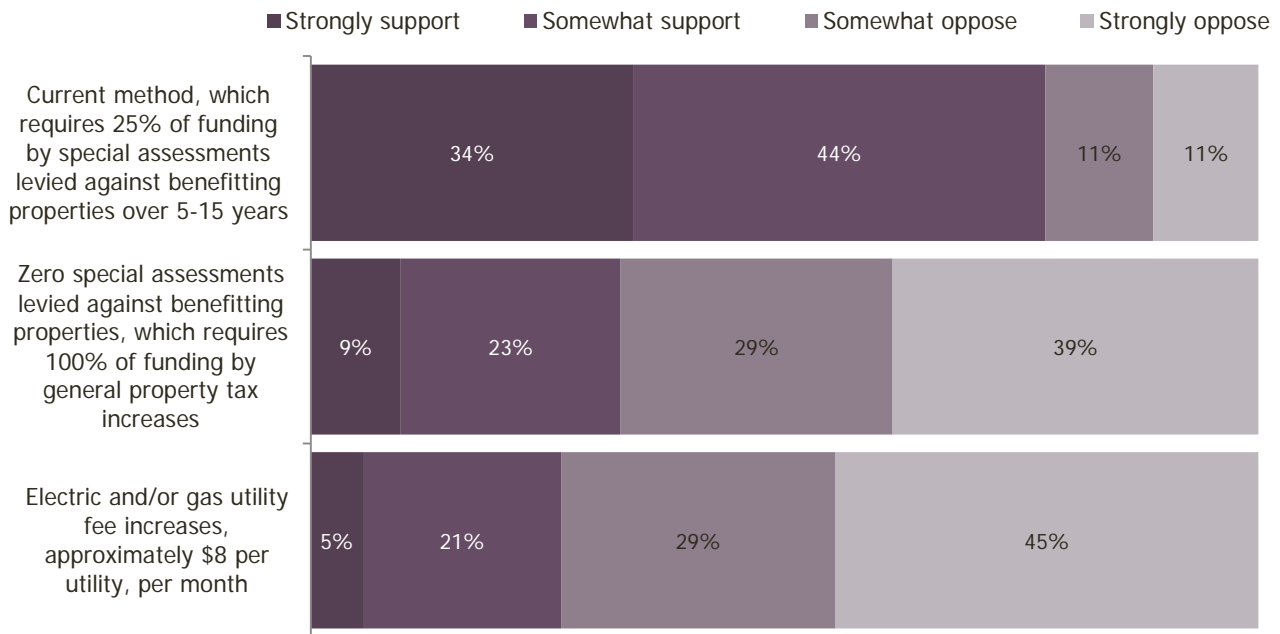
*How interested are you, if at all, in receiving information from the City about each of the following topics?*



For the final special interest question on the survey, residents indicated their level of support for three different funding options for City street maintenance. About 8 in 10 residents strongly or somewhat supported the current method of funding which requires 25% of funding by special assessments of benefitting properties. Residents indicated stronger opposition to the other two types of funding described (general property tax increases or utility fee increases).

Figure 14: Sources of Funding for City Street Maintenance

*The City employs a long-term maintenance program to cost-effectively maintain all 175-plus miles of City streets. Currently, street reconstruction projects are funded 25% by special assessments levied against benefitting properties, and 75% by street reconstruction bonds, which are paid back using general property taxes. The City periodically evaluates funding sources for this on-going program. Please indicate the extent to which you would support or oppose the following funding sources:*



# Conclusions

## Resident satisfaction with City services and government performance is on the upswing.

When presented with a series of questions about leadership and governance in Ramsey, about 8 in 10 residents gave favorable marks to the customer service provided by the City, and roughly half were pleased with items related to local government performance, including the value of services for taxes paid, the overall direction of the City and the job Ramsey government does at welcoming citizen involvement. These ratings were all similar to the national benchmark. Most notably, ratings for welcoming citizen involvement, overall confidence in City government, government acting in the best interest of Ramsey and being honest improved since 2016, demonstrating a positive increase in public trust. Further, ratings for select City services, such as traffic signal timing, land use, planning and zoning, and code enforcement also increased since the last survey iteration, and no services declined in ratings during that time.

## The Economy continues to be a priority for residents.

As in 2016, residents indicated that the facet of Economy would be an important focus area for the City to address in the next two years. About half of residents gave favorable marks to the overall economic health of Ramsey, cost of living, the city as a place to work and economic development and these ratings were all similar to those given elsewhere. Further, resident sentiment toward employment opportunities and economic development improved since 2016, and more residents in 2018 believed that the economy would have a positive impact on their income in the next six months. Also, about 8 in 10 residents were quite interested in receiving information from the City about local business (e.g., new/expanded businesses, grand openings, etc.).

However, ratings for vibrant downtown area, overall quality of business and service establishments, shopping opportunities and Ramsey as a place to visit were lower than those seen in other communities across the country. While these ratings might be indicative of community support for greater economic development, it is important to note that balancing rural character and urban growth was identified as a key priority for the City in the upcoming five years.

## Residents support improvements to Mobility.

About 6 in 10 residents or more gave positive ratings to most aspects of Mobility, including overall ease of travel, ease of travel by car, availability of paths and walking trails and traffic enforcement; these ratings were all similar to those given in other communities across the nation.

Road maintenance was important to residents with nearly 85% of respondents reporting they were interested in receiving information from the City about road work; the only type of information of greater interest related to community events. When asked about street maintenance funding, about 8 in 10 residents supported the current method of funding for City street maintenance, which requires 25% of funding by special assessments of benefitting properties.

Finally, connectivity is a priority for Ramsey residents. Seven in 10 residents thought that creating a connected community (roads, trails, sidewalks, rail, and transportation) was essential or very important to the future of the community. Further, when asked to consider a number of community enhancements (with a potential for a tax increase), a strong majority of residents supported the City making improvements to existing trails as well as building new trails.





**THE NCS**<sup>TM</sup>  
The National Citizen Survey<sup>TM</sup>

## Ramsey, MN

Trends over Time

2018



**NRC**

National Research Center Inc.

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**ICMA**

*Leaders at the Core of Better Communities*

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# Summary

The National Citizen Survey™ (The NCS™) is a collaborative effort between National Research Center, Inc. (NRC) and the International City/County Management Association (ICMA). The survey and its administration are standardized to assure high quality research methods and directly comparable results across The NCS communities. The NCS captures residents' opinions within the three pillars of a community (Community Characteristics, Governance and Participation) across eight central facets of community (Safety, Mobility, Natural Environment, Built Environment, Economy, Recreation and Wellness, Education and Enrichment and Community Engagement). This report discusses trends over time, comparing the 2018 ratings for the City of Ramsey to its previous survey results in 2014 and 2016. Additional reports and technical appendices are available under separate cover.

Trend data for Ramsey represent important comparison data and should be examined for improvements or declines. Deviations from stable trends over time, especially, represent opportunities for understanding how local policies, programs or public information may have affected residents' opinions.

Meaningful differences between survey years have been noted within the following tables as being "higher" or "lower" if the differences are greater than six percentage points between the 2016 and 2018 surveys, otherwise the comparisons between 2016 and 2018 are noted as being "similar." Additionally, benchmark comparisons for all survey years are presented for reference. Changes in the benchmark comparison over time can be impacted by various trends, including varying survey cycles for the individual communities that comprise the benchmarks, regional and national economic or other events, as well as emerging survey methodologies.

Overall, ratings in Ramsey for 2018 generally remained stable. Of the 94 items for which comparisons were available, 78 items were rated similarly in 2016 and 2018 and 16 showed an increase in ratings; no items showed a decrease in ratings. Notable trends over time included the following:

- No items trended down from 2016 to 2018.
- In the pillar of Community Characteristics, Ramsey residents were more likely in 2018 than in 2016 to give positive ratings to the city as a place to retire as well as to employment, fitness and cultural/arts/music activities.
- Residents in 2018 tended to give higher ratings to Built Environment-related services than in 2016.
- Survey respondents were more likely in 2018 to favorably rate aspects of government performance such welcoming citizen involvement and overall confidence in City government.
- Respondents were more likely in 2018 than in 2016 to believe the economy would positively impact their income. They were also more likely to have attended a City-sponsored event.

The National Citizen Survey™

Table 1: Community Characteristics General

	Percent rating positively (e.g., excellent/good)			2018 rating compared to 2016	Comparison to benchmark		
	2014	2016	2018		2014	2016	2018
Overall quality of life	72%	80%	81%	Similar	Similar	Similar	Similar
Overall image	51%	56%	60%	Similar	Lower	Lower	Similar
Place to live	82%	87%	85%	Similar	Similar	Similar	Similar
Neighborhood	84%	87%	82%	Similar	Similar	Similar	Similar
Place to raise children	83%	87%	87%	Similar	Similar	Similar	Similar
Place to retire	51%	48%	55%	Higher	Lower	Lower	Similar
Overall appearance	77%	73%	68%	Similar	Similar	Similar	Similar

Table 2: Community Characteristics by Facet

		Percent rating positively (e.g., excellent/good, very/somewhat safe)			2018 rating compared to 2016	Comparison to benchmark		
		2014	2016	2018		2014	2016	2018
Safety	Overall feeling of safety	90%	90%	90%	Similar	Similar	Similar	Similar
	Safe in neighborhood	94%	98%	97%	Similar	Similar	Similar	Similar
	Safe downtown/commercial areas	94%	96%	96%	Similar	Similar	Similar	Similar
Mobility	Overall ease of travel	68%	69%	69%	Similar	Similar	Similar	Similar
	Paths and walking trails	75%	68%	69%	Similar	Similar	Similar	Similar
	Ease of walking	70%	66%	67%	Similar	Similar	Similar	Similar
	Travel by bicycle	66%	60%	62%	Similar	Similar	Similar	Similar
	Travel by car	64%	67%	69%	Similar	Similar	Similar	Similar
	Traffic flow	55%	56%	59%	Similar	Similar	Similar	Similar
	Overall natural environment	84%	81%	84%	Similar	Similar	Similar	Similar
Natural Environment	Cleanliness	82%	80%	74%	Similar	Similar	Similar	Similar
	Overall built environment	56%	56%	58%	Similar	Similar	Similar	Similar
Built Environment	New development in Ramsey	48%	47%	42%	Similar	Similar	Similar	Similar
	Affordable quality housing	69%	67%	64%	Similar	Higher	Higher	Higher
	Housing options	75%	73%	68%	Similar	Higher	Similar	Similar
	Public places	50%	56%	51%	Similar	Similar	Similar	Lower
	Overall economic health	50%	51%	54%	Similar	Similar	Similar	Similar
	Vibrant downtown/commercial area	21%	20%	20%	Similar	Lower	Lower	Much lower
Economy	Business and services	49%	43%	46%	Similar	Lower	Lower	Lower
	Cost of living	49%	49%	50%	Similar	Similar	Similar	Similar
	Shopping opportunities	23%	20%	20%	Similar	Much lower	Much lower	Much lower
	Employment opportunities	27%	24%	31%	Higher	Similar	Similar	Similar
	Place to visit	35%	35%	39%	Similar	Lower	Lower	Lower

The National Citizen Survey™

		Percent rating positively (e.g., excellent/good, very/somewhat safe)			2018 rating compared to 2016	Comparison to benchmark		
		2014	2016	2018		2014	2016	2018
Recreation and Wellness	Place to work	42%	49%	50%	Similar	Lower	Similar	Similar
	Health and wellness	66%	63%	59%	Similar	Similar	Similar	Similar
	Recreational opportunities	53%	50%	50%	Similar	Similar	Similar	Lower
	Fitness opportunities	60%	55%	64%	Higher	Similar	Similar	Similar
Education and Enrichment	Education and enrichment opportunities	54%	52%	53%	Similar	Lower	Similar	Lower
	Cultural/arts/music activities	41%	37%	44%	Higher	Similar	Lower	Similar
	Adult education	54%	46%	52%	Similar	Similar	Similar	Similar
	K-12 education	75%	72%	71%	Similar	Similar	Similar	Similar
	Child care/preschool	69%	56%	61%	Similar	Similar	Similar	Similar
Community Engagement	Opportunities to participate in community matters	52%	47%	51%	Similar	Similar	Similar	Similar
	Opportunities to volunteer	55%	46%	49%	Similar	Lower	Lower	Lower

Table 3: Governance General

		Percent rating positively (e.g., excellent/good)			2018 rating compared to 2016	Comparison to benchmark		
		2014	2016	2018		2014	2016	2018
Services provided by Ramsey		74%	73%	76%	Similar	Similar	Similar	Similar
Customer service		79%	81%	81%	Similar	Similar	Similar	Similar
Value of services for taxes paid		44%	45%	45%	Similar	Similar	Similar	Similar
Overall direction		48%	46%	49%	Similar	Similar	Similar	Similar
Welcoming citizen involvement		48%	48%	55%	Higher	Similar	Similar	Similar
Confidence in City government		43%	45%	51%	Higher	Similar	Similar	Similar
Acting in the best interest of Ramsey		43%	48%	56%	Higher	Similar	Similar	Similar
Being honest		47%	50%	60%	Higher	Similar	Similar	Similar
Treating all residents fairly		52%	56%	58%	Similar	Similar	Similar	Similar
Services provided by the Federal Government		NA	37%	45%	Higher	NA	Similar	Similar

Table 4: Governance by Facet

		Percent rating positively (e.g., excellent/good)			2018 rating compared to 2016	Comparison to benchmark		
		2014	2016	2018		2014	2016	2018
Safety	Police	86%	90%	91%	Similar	Similar	Similar	Similar
	Fire	92%	93%	95%	Similar	Similar	Similar	Similar
	Crime prevention	80%	79%	84%	Similar	Similar	Similar	Similar
	Fire prevention	83%	81%	82%	Similar	Similar	Similar	Similar
	Animal control	60%	62%	61%	Similar	Similar	Similar	Similar
Mobility	Traffic enforcement	68%	76%	75%	Similar	Similar	Similar	Similar
	Street repair	45%	40%	43%	Similar	Similar	Similar	Similar

The National Citizen Survey™

		Percent rating positively (e.g., excellent/good)			2018 rating compared to 2016	Comparison to benchmark		
		2014	2016	2018		2014	2016	2018
	Street cleaning	57%	60%	56%	Similar	Similar	Similar	Similar
	Street lighting	55%	57%	59%	Similar	Similar	Similar	Similar
	Snow removal	55%	62%	58%	Similar	Similar	Similar	Similar
	Sidewalk maintenance	61%	65%	60%	Similar	Similar	Similar	Similar
	Traffic signal timing	42%	46%	52%	Higher	Similar	Similar	Similar
Natural Environment	Drinking water	72%	72%	76%	Similar	Similar	Similar	Similar
	Natural areas preservation	69%	57%	63%	Similar	Similar	Similar	Similar
Built Environment	Storm drainage	73%	71%	75%	Similar	Similar	Similar	Similar
	Sewer services	81%	78%	84%	Higher	Similar	Similar	Similar
	Land use, planning and zoning	43%	37%	44%	Higher	Similar	Similar	Similar
	Code enforcement	40%	44%	50%	Higher	Similar	Similar	Similar
Economy	Economic development	43%	41%	47%	Higher	Similar	Similar	Similar
Recreation and Wellness	City parks	75%	77%	76%	Similar	Similar	Similar	Similar
	Recreation centers	59%	53%	59%	Similar	Lower	Lower	Similar
Community Engagement	Public information	58%	57%	61%	Similar	Similar	Similar	Similar

Table 5: Participation General

	Percent rating positively (e.g., always/sometimes, more than once a month, yes)			2018 rating compared to 2016	Comparison to benchmark		
	2014	2016	2018		2014	2016	2018
Sense of community	45%	51%	48%	Similar	Lower	Similar	Similar
Recommend Ramsey	82%	86%	84%	Similar	Similar	Similar	Similar
Remain in Ramsey	85%	86%	86%	Similar	Similar	Similar	Similar
Contacted Ramsey employees	44%	40%	38%	Similar	Similar	Similar	Similar

Table 6: Participation by Facet

		Percent rating positively (e.g., always/sometimes, more than once a month, yes)			2018 rating compared to 2016	Comparison to benchmark		
		2014	2016	2018		2014	2016	2018
Safety	Did NOT report a crime	90%	85%	81%	Similar	Higher	Similar	Similar
	Was NOT the victim of a crime	94%	92%	94%	Similar	Similar	Similar	Similar
Mobility	Used public transportation instead of driving	38%	35%	36%	Similar	Similar	Similar	Similar
	Walked or biked instead of driving	56%	65%	63%	Similar	Similar	Similar	Similar
Natural Environment	Recycled at home	95%	96%	97%	Similar	Higher	Higher	Higher
Built Environment	NOT under housing cost stress	78%	80%	79%	Similar	Higher	Higher	Higher
Economy	Purchased goods or services in Ramsey	95%	90%	88%	Similar	Similar	Similar	Similar
	Economy will have positive impact on income	29%	29%	40%	Higher	Similar	Similar	Similar

The National Citizen Survey™

		Percent rating positively (e.g., always/sometimes, more than once a month, yes)			2018 rating compared to 2016	Comparison to benchmark		
		2014	2016	2018		2014	2016	2018
	Work in Ramsey	20%	24%	22%	Similar	Much lower	Lower	Lower
Recreation and Wellness	Visited a City park	83%	88%	87%	Similar	Similar	Similar	Similar
Education and Enrichment	Attended a City-sponsored event	53%	42%	50%	Higher	Similar	Lower	Similar
Community Engagement	Campaigned for an issue, cause or candidate	11%	6%	8%	Similar	Lower	Lower	Lower
	Contacted Ramsey elected officials	11%	10%	11%	Similar	Similar	Similar	Similar
	Volunteered	22%	17%	20%	Similar	Much lower	Much lower	Much lower
	Attended a local public meeting	14%	11%	14%	Similar	Lower	Lower	Similar
	Watched a local public meeting	26%	21%	17%	Similar	Similar	Similar	Similar
	Voted in local elections	83%	79%	82%	Similar	Similar	Similar	Similar



# Polco Performance Plan Quote for Ramsey, MN

2020





### **Moving Communities Forward**

Community perspectives that inspire change. National Research Center's gold-standard surveys and benchmarking data deliver reliable insights that guide you to action.

[n-r-c.com](http://n-r-c.com)



### **Let Every Voice Count**

Smarter, more connected communities. Polco's online civic engagement platform provides the tools you need to bring community members and leaders together.

[polco.us](http://polco.us)



Polco/National Research Center is excited to announce a new, innovative approach to surveying and community engagement since our 2019 merger. This guide is intended for clients who have previously conducted The National Community Survey™ (The NCS™).

The Polco Performance tier of services allows you to conduct one of our statistically sampled benchmarked surveys per 12-month period on a subscription basis. In addition to The NCS, our benchmark surveys include The National Employee Survey™, The National Business Survey™, The National Police Services Survey™, and others; more information on these products is provided later in this document.

If you want to conduct more than one benchmark survey in a 12-month period, we have discounted rates available.

**CONNECT WITH RESIDENTS  
MAKE DATA-DRIVEN DECISIONS**

The National Community Survey<sup>TM</sup> (The NCS<sup>TM</sup>) is the gold standard for gauging public opinion. Endorsed by ICMA, tested and trusted by hundreds of jurisdictions, The NCS provides an accurate assessment of quality of life, community livability and local government policies and services. We recently revamped the survey, using our extensive experience, and all the knowledge our clients have shared, to create an updated model of community livability.

The NCS allows you to compare your local results with benchmarks from hundreds of communities across the U.S. The best practices in scientific survey methods guarantee valid findings to produce the clear, unbiased and accurate results you need to take action. Bring the voice of the people into your decision-making processes.

- Evaluate services
- Measure quality of life
- Monitor performance
- Enhance communication
- Assist strategic planning
- Inform budgeting and plan capital investments
- Build trust

As always, The NCS<sup>TM</sup> Basic Service includes all aspects of conducting the survey

**Survey instrument**

**Sampling**

**Implementation**

**Weighting and analysis**

**Benchmark comparisons**

**Detailed reporting**

# Survey Instrument

## The NCS measures your community's livability.

NRC has conducted thousands of surveys for hundreds of jurisdictions in our 25-year history. In that process we have spent a lot of time thinking about local governments and their jurisdictions, talking with staff, residents and stakeholders, presenting survey results and facilitating discussions and strategic planning sessions. Combining this deep experience with extensive research on models of community livability, we have revised The NCS to focus on ten key facets of community livability:

- Economy
- Mobility
- Community Design
- Utilities
- Safety
- Natural Environment
- Parks and Recreation
- Health and Wellness
- Education, Arts and Culture
- Inclusivity and Engagement

## Custom questions: now available as an add-on

Standardization is required to allow benchmark comparisons to other communities, but most jurisdictions have a few unique topics, projects, policies or planning processes for which they would like resident input. If this add-on is selected, The NCS provides a space to add a few custom questions and the expert guidance from your project manager to ensure they are of the highest quality.

### The XYZ of ABC 2020 Community Survey

Please complete this survey if you are the adult (age 18 or older) in the household who most recently had a birthday (year of birth does not matter). Your responses are anonymous and will be reported in group form only.

#### 1. Please rate each of the following aspects of quality of life in ABC.

	Excellent	Good	Fair	Poor
ABC as a place to live .....	1	2	3	4
Your neighborhood as a place to live .....	1	2	3	4
ABC as a place to raise children .....	1	2	3	4
ABC as a place to work.....	1	2	3	4
ABC as a place to visit.....	1	2	3	4
ABC as a place to retire.....	1	2	3	4
The overall quality of life in ABC.....	1	2	3	4
Sense of community.....	1	2	3	4

#### 2. Please rate each of the following characteristics as they relate to ABC as a whole.

	Excellent	Good	Fair	Poor
Overall economic health of ABC .....	1	2	3	4
Overall quality of the transportation system (auto, bicycle, foot, bus) in ABC .....	1	2	3	4
Overall design or layout of ABC's residential and commercial areas (e.g., homes, buildings, streets, parks, etc.) .....	1	2	3	4
Overall quality of the utility infrastructure in ABC (water, sewer, storm water, electric/gas) .....	1	2	3	4
Overall feeling of safety in ABC.....	1	2	3	4
Overall quality of natural environment in ABC.....	1	2	3	4

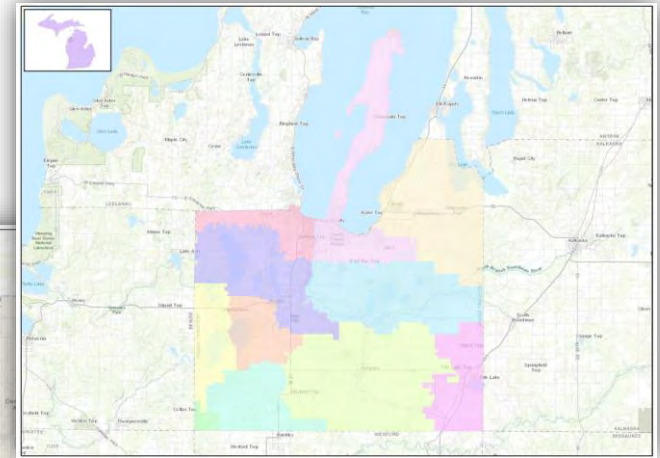
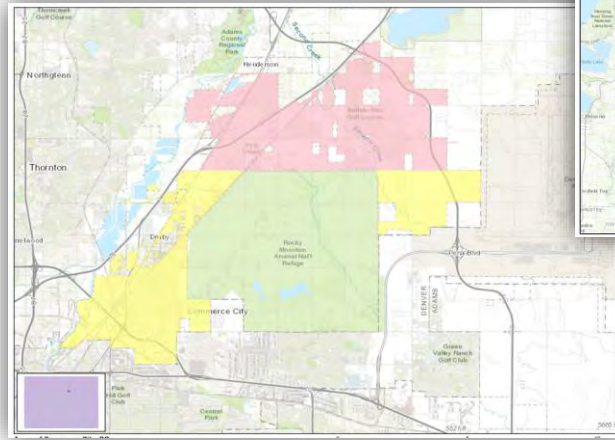
# Sampling

## Selecting households and residents

As in previous years, all households will be eligible for the survey. We have found that United States Postal Service (USPS) lists, updated quarterly,, provide the best representation of all households in a specific geographies. We geocode each address location to assure it is within your boundaries and identify each specified area for sub-sampling.

Multi-family housing units will be over-sampled as these residents typically respond to surveys at lower rates and we want to hear from them! To further support scientific results, we also use an unbiased procedure to select a single individual within the household.

Using unbiased methods helps ensure the attitudes expressed by our respondents closely approximate the attitudes of all adult residents living in your community.



## Selecting the right number

How many households we mail to is dependent on your budget, the level of precision you would like to see, the level of effort you expect to be able to dedicate to promotion and outreach, and our best estimates of expected response rates. We can't guarantee response numbers, but we work hard to maximize them.

Your program manager can discuss any questions you may have about sampling approaches, their associated costs, and pros and cons of each.

# Implementation

## Mailed surveys receive the highest response rates

Using best practices, each selected household will be contacted more than once.

- The NCS includes multi-contact mailed invitations to a selection of households to complete the survey online; paper surveys may be mailed for an additional cost
- The mailed materials will explain the importance of participation and give instructions on completing and/or returning the survey.
- To lend legitimacy, mailing materials use your letterhead and the signature of an official representative (e.g., mayor, councillor, board member, etc.).
- A web address and instructions allow for online completion.



## An additional opportunity for people to participate

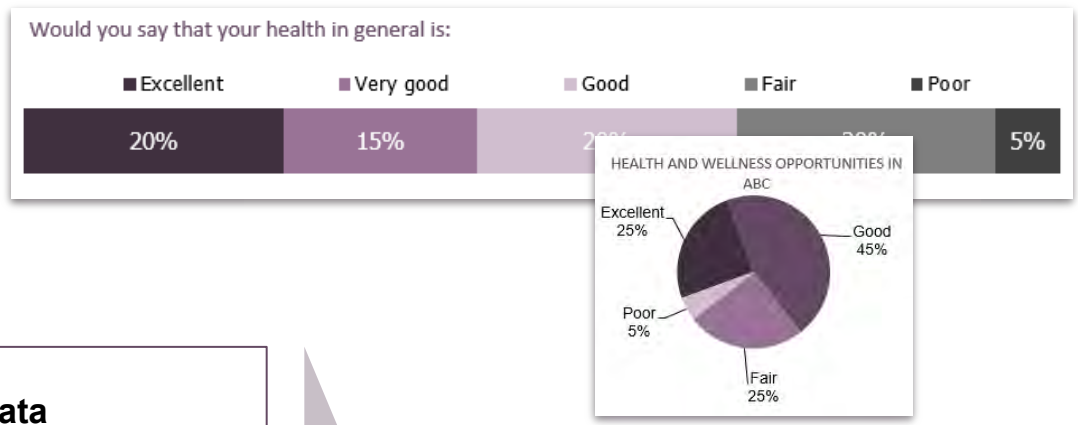


While the random sample helps ensure representativeness, you may have residents who were not chosen for the mailed survey who want to participate. NRC will host your survey on Polco, *and once the main mailed survey data collection window is closed*, you may choose to open a new window to wider public participation.

In Polco we will have set up a profile for your community and you can use the platform to connect the survey to your social media accounts to send invitations for more people to “opt-in” to provide input. We also have resources to guide you in sharing your survey through a variety of other communication channels.

Once a respondent has completed the survey on Polco, they can have the opportunity to join your panel of resident respondents. Clients on the Polco Performance subscription plan can continue to use Polco for no additional charge, in perpetuity, to ask residents follow up questions once this survey effort is complete. More info on this later in this guide!

# Weighting and Analysis



## Survey Processing

Data from the web surveys are automatically entered into an electronic dataset, downloaded, cleaned as necessary, and then merged with the data from the mailed surveys to create one complete dataset.

If mailing paper surveys is selected as an add-on, returned surveys are scanned electronically (and stored in case review is needed) and entered into an electronic dataset using “key and verify” to ensure accuracy. While we find little cleaning is needed due to our expertise in question construction and formatting, completed surveys are always reviewed for inconsistencies visually, through range checks and other quality controls.

## Weighting the Data

Weighting is a best practice in survey research which addresses the non-response bias. Over-sampling those who tend to under-respond helps ensure a diverse respondent base, but we will likely still hear from more women than men, more older adults than younger and more owners than renters.

Weighting increases or decreases the weight of each respondent to mimic as closely as possible your jurisdiction’s demographic profile as described by the US Census. The impact on most results are small, but where the opinions of subgroups differ, weighting is very important.

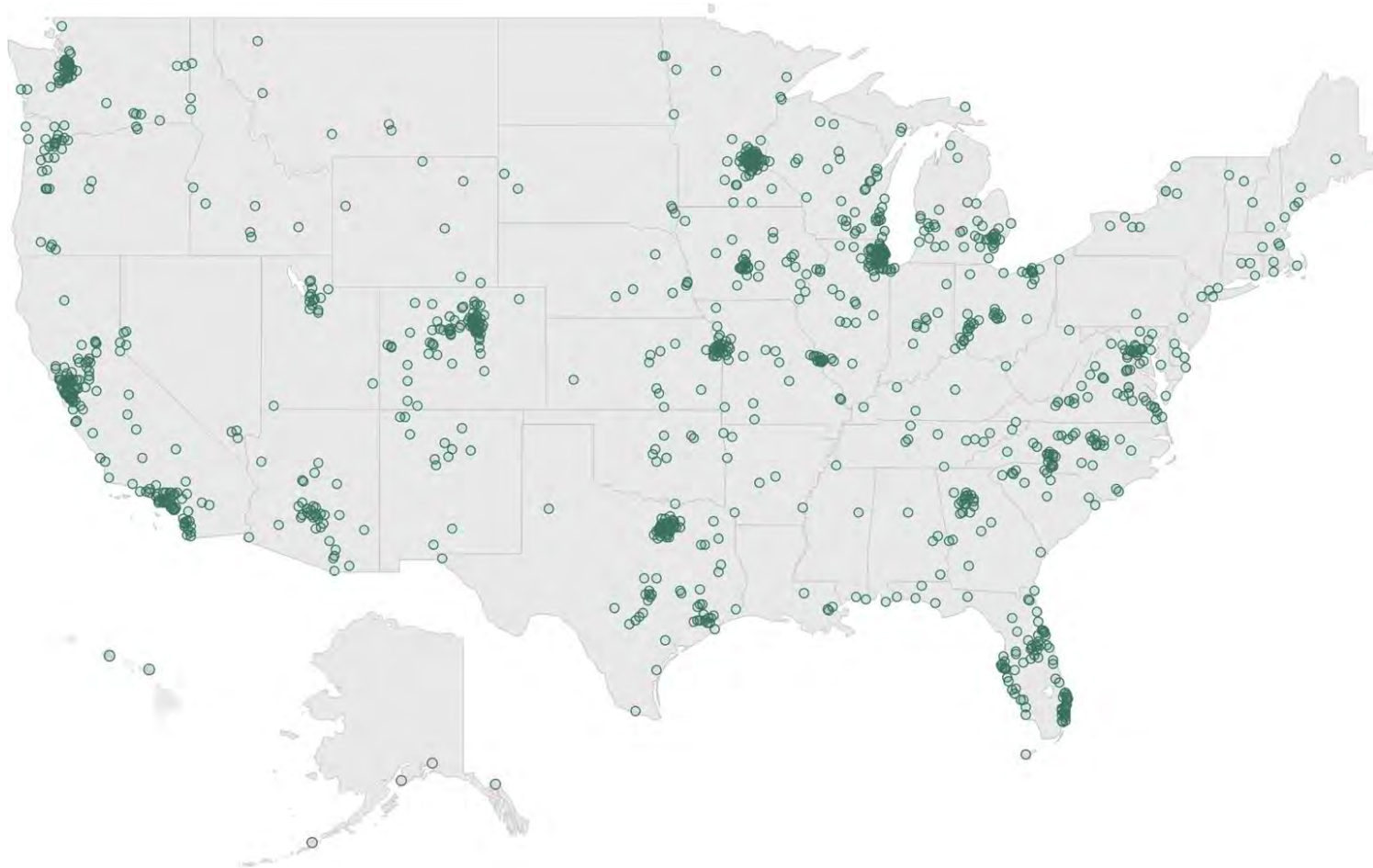
## Analyzing the Data

We use documented algorithms crafted and maintained by our team of professional, academically trained, and experienced survey and data scientists. Every command is retained in a syntax file, and available for audit and re-running, as necessary.

In addition to providing a full set of responses to each survey question, we will include comparisons to national benchmarks. As always, comparisons to a custom subset of communities are available as an add-on. Repeat clients also receive a report of trends over time.

## Benchmark comparisons

NRC has the largest database of resident opinion of any firm, containing over 600 comparison communities across the nation. We innovated a method to quantitatively integrate the results of surveys conducted by us and others. We maintain normative comparisons for over 120 services: police, fire, EMS, garbage collection and recycling, utilities and billing, library services, street maintenance and repair, water quality, code enforcement, senior services, transportation, city employee ratings, job opportunities, public safety, economic development, public trust and many others.





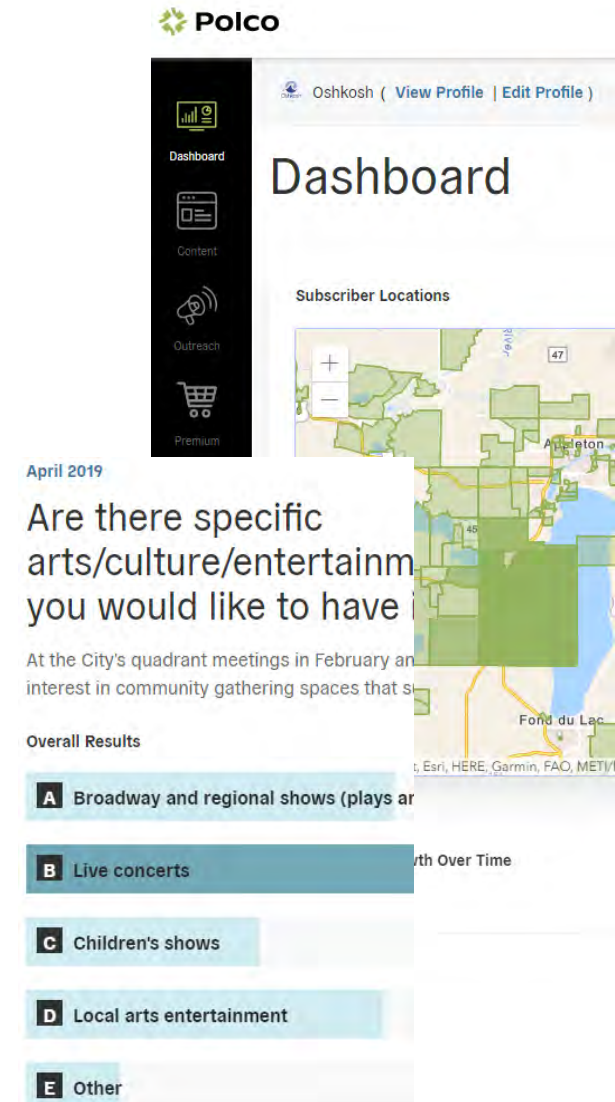
## Follow up with Polco

In 2019, NRC merged with Polco and now happily provides **the highest tier of services for our online community engagement platform** to our Polco Performance subscription clients!

The platform combines the ease of online polls/micro-surveys with the verification and reliability of in-person engagement. Polco lets you build a “standing panel” of residents who are available to give their perspective on any number of items whenever you want to ask a question and receive that input.

- The online version of The NCS will be hosted on Polco.
- After completing The NCS online, residents will be asked if they would like to join your Polco panel.
- You can use the Polco platform to ask follow-up questions to your community survey or ask about hot topics or other issues as they arise.
- Municipal staff or elected officials can post unlimited short surveys or single questions. Questions can include images (maps, pictures, and video) in addition to links to better inform respondents about more complex issues.
- To further build your panel, you can share new questions through social media, email, in-person events, local media, and other channels as appropriate (we can provide guidance on the best ways to communicate with residents about Polco).
- Polco responses are organized in visually compelling real-time dashboards and can be aggregated by districts.
- Polco is also able to provide aggregated demographic information (e.g., age, gender, etc.) for the majority of the verified response group.

Don't let the community input and dialogue conclude with the survey. On Polco you can continue to evolve highlighted areas for improvement through follow-up online verified surveys, policy polls and focus groups with real-time online dashboards which show the demographic/geographic variation of participation levels and resident opinion.





## Polco Performance (\$8300/year)

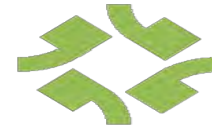
- One benchmark survey per 12 month period
- Advanced report for benchmark survey
- Program manager to implement your benchmark survey process and provide guidance on use of Polco

## Includes Premium Polco features

- Custom Profile
- Unlimited Content
- 10 Administrator Seats
- Resident Verification
- Guest Responses
- Demographic breakdowns
- Geographic Maps
- Access to Full Library of Polls and Surveys
- Results Filtered by Verification Status
- Advanced Survey Creation Options
- Custom Geographic Areas

→ Our program managers are analysts, survey scientists, and experts in using Polco. They are here to guide you!

- Choose one of our benchmark surveys, developed by our National Research Center experts
- We will mail two postcard (initial and reminder) invitations to up to 1,500 statistically sampled addresses.
- Data will be weighted to improve representativeness, when possible.
- The advanced online report includes national benchmark comparisons (when available) and an executive summary written by your program manager.



## A La Carte Options

- Mail to *additional* constituents -managed by us - to ensure representativeness for you community!
  - ☆ Mail two postcard invitations -initial and reminder (\$120 per 100)
  - ☆ Mail two paper surveys - initial and reminder with a prenotification postcard (\$3,500 per 1,000)
- Spanish translation for benchmark survey (\$945)
- Add custom questions to your benchmark survey: developed with guidance from your program manager (½ page \$1,600, full page \$2,380).
- Custom benchmark comparisons (*The NCS only*) by region, population size or other criteria, as available (\$1,120 per custom group)
- Presentation of results (\$3,605 in-person, \$2,170 online)
- Next Steps Workshop: NRC leads a workshop with four key activities: debriefing survey data, identifying areas of focus, identifying strategies and creating initial action plans. (\$5,670 in-person, \$4,235 online)

## CONNECT WITH RESIDENTS • MAKE DATA-DRIVEN DECISIONS



The National Community Survey™ (The NCS™) is the gold standard for gauging public opinion. Endorsed by ICMA, tested and trusted by hundreds of jurisdictions, The NCS provides an accurate assessment of quality of life, community livability and local government policies and services. The NCS allows you to compare your local results with benchmarks from hundreds of communities across the U.S. Talk to us about how to use scientific survey methods for the clear, unbiased and accurate results you need to take action.

- ▶ Evaluate services
- ▶ Enhance communication
- ▶ Inform budgeting
- ▶ Measure quality of life
- ▶ Build trust
- ▶ Plan capital investments
- ▶ Monitor performance
- ▶ Assist strategic planning

NRC has conducted thousands of surveys for hundreds of jurisdictions in our 25 year history. In that process we have spent a lot of time thinking about local governments and their jurisdictions, talking with staff, residents and stakeholders, presenting survey results and facilitating discussions and strategic planning sessions. Combining this deep experience with extensive research on models of community livability we have honed The NCS to focus on 10 key facets of community livability:

- Economy
- Mobility
- Community Design
- Natural Environment
- Safety
- Utilities
- Parks and Recreation
- Health and Wellness
- Education, Arts and Culture
- Inclusivity and Engagement

## SUPPORT LOCAL BUSINESS • STRENGTHEN YOUR ECONOMY



The National Business Survey™ (The NBS™) helps you assess the state of your business community. The NBS gives you the answers you need from business owners and managers to strengthen business development, retain employers, bolster the economy and track business expectations for the coming year.

- ▶ Attract and retain new and existing businesses
- ▶ Develop labor market programs
- ▶ Enact business-friendly policies

The NBS™ is the fastest and easiest way for you to stay in tune with the needs and demands of your local business owners. The NBS provides the reconnaissance local governments need to make informed choices and strengthen business development, retention and the community's economy.

The NBS tracks business expectations for the coming year, identifies characteristics of the business environment needed to enhance local economic vitality, monitors the kind of services and policy support that would allow local businesses to succeed, describes local companies and shows business owners' perceptions of the quality of current services and community life.

## PROMOTE SAFETY • BUILD POSITIVE COMMUNITY CONNECTIONS



The National Police Services Survey™ (The NPSS™) helps strengthen community relationships, aligns resident and government priorities and increases community safety. Talk to us about how to use scientific survey methods to provide an accurate picture of resident opinions related to community police services. Benchmark your local results comparing them to a national survey panel. The NPSS data can be used for:

- ▶ Communications and Engagement
- ▶ Evidence-based Decision-making and Innovation
- ▶ Disparity Analysis
- ▶ Strategic Planning and Performance Measurement
- ▶ Program and Capital Investment
- ▶ Budgeting and Fundraising
- ▶ Compliance with Public Feedback Requirements and Guidelines

The NPSS gathers the opinions of residents regarding their satisfaction with police services, covering areas that impact public safety and confidence in policing:

- Quality of Service
- Public Trust
- Communications
- Diversity and Inclusion
- Perceptions of Safety

## ENGAGE YOUR EMPLOYEES • EMPOWER YOUR ORGANIZATION



The National Employee Survey™ (The NES™) is a powerful tool that uses rigorous and statistically-valid methods of administration and analysis while sensitively ensuring employee anonymity to encourage candor. Results may be segmented by departments, tenure, exemption status and more, providing a comprehensive and specific picture of employee opinion. HR managers/senior staff use the The NES to:

- ▶ Show management interest in employee satisfaction
- ▶ Develop strategies to improve work conditions and employee engagement
- ▶ Identify areas for improvement
- ▶ Strengthen the connection of the local government workforce to residents
- ▶ Improve staff morale

The NES gathers the opinions of employees regarding their satisfaction on the job and other key characteristics of a quality work environment: communication, organizational ethics, employee fit, wages and benefits, the physical work space, supervisory relationships, the job feedback system, professional development and self-reported performance.

The NES covers six aspects of organizational climate:

- Job Satisfaction
- Supervisor and Work Group
- Executive Leadership
- Workplace
- External Customers
- Support Services

## PROMOTE SUCCESSFUL AGING • HELP YOUR COMMUNITY THRIVE



The Community Assessment Survey for Older Adults™ (CASOA™) helps you develop informed plans to support healthy aging and sustain a thriving, age-friendly community. CASOA assesses the strengths and needs of older adult residents and compares their perceptions of community livability to others across the country. Bring the voice of older adults into your decision-making processes!

- ▶ Evaluate services
- ▶ Assist strategic planning
- ▶ Monitor performance
- ▶ Promote inter-agency engagement
- ▶ Measure quality of life
- ▶ Enhance communication services
- ▶ Build trust
- ▶ Inform budgeting
- ▶ Plan capital investments

CASOA™ serves as a strategic planning and evaluation tool that clients (cities, counties, Area Agencies on Aging, etc.) use to develop their older adult service plans, determine how future resources will be allocated and evaluate their current service provision.

- Identify community strengths in serving older adults
- Articulate the specific needs of older adults in the community
- Estimate contributions made by older adults to the community
- Determine the connection of older adults to the community

## BUILD LOCAL RESOURCES • STRENGTHEN YOUR WORKFORCE



The Economic Development Workforce Survey™ (The EDWS™) was developed by research experts and economic development thought-leaders to produce clear, unbiased, actionable results that you can rely on. Communities across the nation use The EDWS data to:

- ▶ Assess employment opportunities
- ▶ Align workforce skills with existing jobs
- ▶ Identify training and education needs
- ▶ Plan the recruitment and retention of desirable businesses
- ▶ Assist business leaders to build capacity within the existing workforce
- ▶ Understand the relationship between jobs that pay a livable wage, community affordability and housing stress

The EDWS helps plan for growth by exploring a community's strengths and weaknesses related to economic development.

# Pricing for Ramsey NCS 2020

## **Polco Performance Package**

- One statistically sampled benchmark survey per year
- Polco premium features

**Subscription \$8,300/year**

## **Recommended Add-Ons - These reflect a similar scope of work to past survey years**

- Hybrid mailing approach: Multi-contact mailed invitations to 2,700 households (1,200 receive paper surveys with postage paid return envelopes, 1,500 receive postcard invitations to complete the survey online)  
**\$4,200/year**
- Half-page of custom questions: **\$1,600/year**
- Custom benchmark comparisons: **\$1,120 per group/year**

**2020 Total: \$15,220**



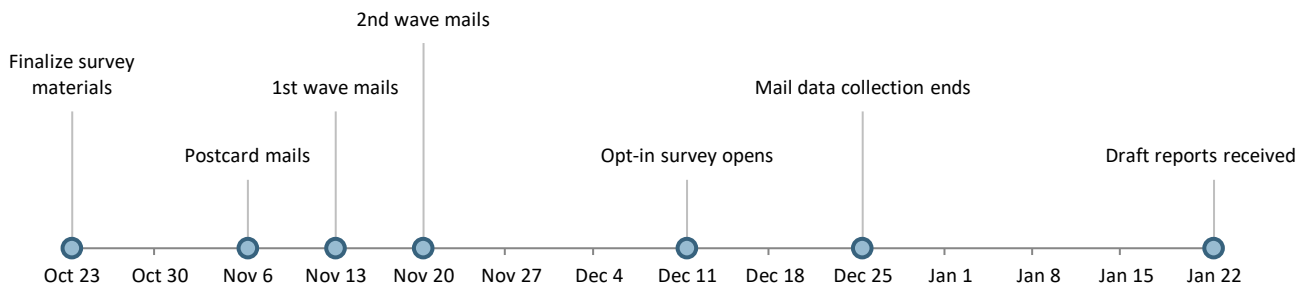
For further information:

Jade Arocha  
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[jade@polco.us](mailto:jade@polco.us)  
(303) 226-6987

Or [hello@polco.us](mailto:hello@polco.us)



## Timeline for The National Community Survey™

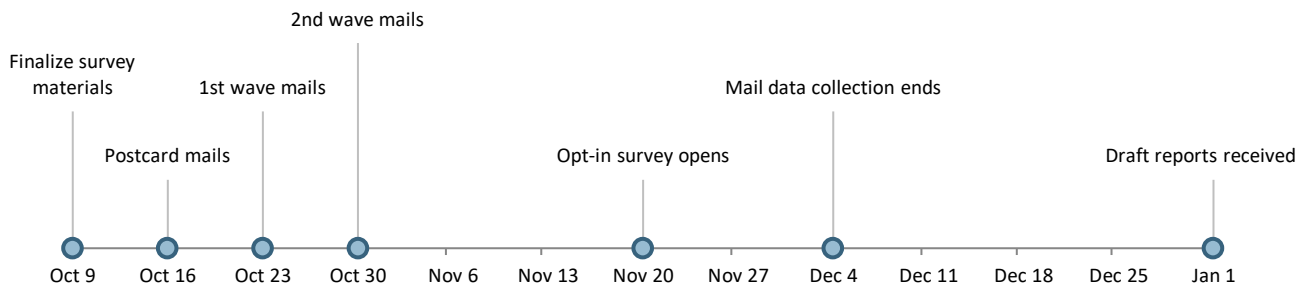


Item	Date
<b>Preparing for the Survey</b>	
⦿ The NCS survey process is initiated upon receipt of signed contract	Sep 25
← NRC emails you information to customize The NCS	Sep 25
→ Due to NRC: Selection of add-on options	Oct 2
→ Due to NRC: Drafts of the optional custom questions to be included in the survey	Oct 9
→ Due to NRC: Zip code information and GIS boundary data	Oct 9
⦿ NRC finalizes the survey instrument and mailing materials and sends .pdf samples for your records	Oct 23
⦿ NRC generates the sample of households in your community	Oct 23
⦿ NRC prints materials and prepares mailings	Oct 30
→ Due to NRC: Selection of custom benchmark profile(s) (if custom benchmark add-on selected)	Oct 30
<b>Conducting the survey</b>	
⦿ Survey materials are mailed	Nov 6 to Nov 20
⦿ Prenotification postcards sent	Nov 6
⦿ 1st wave of surveys sent	Nov 13
⦿ 2nd wave of surveys sent	Nov 20
→ Opt-in web survey link posted on your website (source link provided to you by NRC)	Dec 11
⦿ Data collection: surveys received and processed for your community	Nov 13 to Dec 25
→ Due to NRC: Final count of returned postcards	Dec 25
⦿ Survey analysis and report writing	Dec 25 to Jan 22
⦿ During this time, NRC will process the surveys, perform the data analysis, and produce a draft report for your community. The report of results will contain a description of the methodology, information on understanding the results, and graphs and tables of your results, as well as a description of NRC's database of normative data from across the U.S. and actual comparisons to your results, where appropriate.	
← NRC emails draft report (in PDF format) to you along with invoice for balance due on The NCS Basic Service and any additional add-on options	Jan 22
→ Due to NRC: community feedback on the draft report (most final reports are identical to the draft reports, except being labeled as final instead of draft)	Jan 29
← NRC emails final report to you	Feb 5

### Legend

← Indicates when items from NRC are due to you    → Indicates when items from you are due to NRC    ⦿ Indicates information items

## Timeline for The National Community Survey™



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→ Due to NRC: Zip code information and GIS boundary data	Oct 2
⦿ NRC finalizes the survey instrument and mailing materials and sends .pdf samples for your records	Oct 9
⦿ NRC generates the sample of households in your community	Oct 9
⦿ NRC prints materials and prepares mailings	Oct 9
→ Due to NRC: Selection of custom benchmark profile(s) (if custom benchmark add-on selected)	Oct 9
<b>Conducting the survey</b>	
⦿ Survey materials are mailed	Oct 16 to Oct 30
⦿ Prenotification postcards sent	Oct 16
⦿ 1st wave of surveys sent	Oct 23
⦿ 2nd wave of surveys sent	Oct 30
→ Opt-in web survey link posted on your website (source link provided to you by NRC)	Nov 20
⦿ Data collection: surveys received and processed for your community	Oct 23 to Dec 4
→ Due to NRC: Final count of returned postcards	Dec 4
⦿ Survey analysis and report writing	Dec 4 to Jan 1
During this time, NRC will process the surveys, perform the data analysis, and produce a draft report for your community. The report of results will contain a description of the methodology, information on understanding the results, and graphs and tables of your results, as well as a description of NRC's database of normative data from across the U.S. and actual comparisons to your results, where appropriate.	
← NRC emails draft report (in PDF format) to you along with invoice for balance due on The NCS Basic Service and any additional add-on options	Jan 1
→ Due to NRC: community feedback on the draft report (most final reports are identical to the draft reports, except being labeled as final instead of draft)	Jan 8
← NRC emails final report to you	Jan 15

### Legend

← Indicates when items from NRC are due to you    → Indicates when items from you are due to NRC    ⦿ Indicates information items



# The City of Ramsey 2020 Community Survey

Please complete this survey if you are the adult (age 18 or older) in the household who most recently had a birthday (the year of birth does not matter). Your responses are anonymous and will be reported in group form only.

## 1. Please rate each of the following aspects of quality of life in Ramsey.

	<u>Excellent</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>	<u>Don't know</u>
Ramsey as a place to live .....	1	2	3	4	5
Your neighborhood as a place to live .....	1	2	3	4	5
Ramsey as a place to raise children .....	1	2	3	4	5
Ramsey as a place to work.....	1	2	3	4	5
Ramsey as a place to visit.....	1	2	3	4	5
Ramsey as a place to retire .....	1	2	3	4	5
The overall quality of life in Ramsey .....	1	2	3	4	5
Sense of community.....	1	2	3	4	5

## 2. Please rate each of the following characteristics as they relate to Ramsey as a whole.

	<u>Excellent</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>	<u>Don't know</u>
Overall economic health of Ramsey.....	1	2	3	4	5
Overall quality of the transportation system (auto, bicycle, foot, bus) in Ramsey.....	1	2	3	4	5
Overall design or layout of Ramsey's residential and commercial areas (e.g., homes, buildings, streets, parks, etc.) .....	1	2	3	4	5
Overall quality of the utility infrastructure in Ramsey (water, sewer, storm water, electric/gas) .....	1	2	3	4	5
Overall feeling of safety in Ramsey .....	1	2	3	4	5
Overall quality of natural environment in Ramsey.....	1	2	3	4	5
Overall quality of parks and recreation opportunities.....	1	2	3	4	5
Overall health and wellness opportunities in Ramsey .....	1	2	3	4	5
Overall opportunities for education, culture and the arts.....	1	2	3	4	5
Residents' connection and engagement with their community .....	1	2	3	4	5

## 3. Please indicate how likely or unlikely you are to do each of the following.

	<u>Very likely</u>	<u>Somewhat likely</u>	<u>Somewhat unlikely</u>	<u>Very unlikely</u>	<u>Don't know</u>
Recommend living in Ramsey to someone who asks.....	1	2	3	4	5
Remain in Ramsey for the next five years.....	1	2	3	4	5

## 4. Please rate how safe or unsafe you feel:

	<u>Very safe</u>	<u>Somewhat safe</u>	<u>Neither safe nor unsafe</u>	<u>Somewhat unsafe</u>	<u>Very unsafe</u>	<u>Don't know</u>
In your neighborhood during the day.....	1	2	3	4	5	6
In Ramsey's downtown/commercial area during the day.....	1	2	3	4	5	6
From property crime.....	1	2	3	4	5	6
From violent crime.....	1	2	3	4	5	6
From fire, flood or other natural disaster .....	1	2	3	4	5	6

## 5. Please rate the job you feel the Ramsey community does at each of the following.

	<u>Excellent</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>	<u>Don't know</u>
Making all residents feel welcome .....	1	2	3	4	5
Attracting people from diverse backgrounds.....	1	2	3	4	5
Valuing/respecting residents from diverse backgrounds.....	1	2	3	4	5
Taking care of vulnerable residents (elderly, disabled, homeless, etc.).....	1	2	3	4	5

## 6. Please rate each of the following characteristics as they relate to Ramsey as a whole.

	<u>Excellent</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>	<u>Don't know</u>
Overall quality of business and service establishments in Ramsey.....	1	2	3	4	5
Variety of business and service establishments in Ramsey .....	1	2	3	4	5
Vibrancy of downtown/commercial area .....	1	2	3	4	5
Employment opportunities .....	1	2	3	4	5
Shopping opportunities.....	1	2	3	4	5
Cost of living in Ramsey .....	1	2	3	4	5
Overall image or reputation of Ramsey.....	1	2	3	4	5

**7. Please rate each of the following characteristics as they relate to Ramsey as a whole.**

	<u>Excellent</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>	<u>Don't know</u>
Traffic flow on major streets.....	1	2	3	4	5
Ease of public parking.....	1	2	3	4	5
Ease of travel by car in Ramsey .....	1	2	3	4	5
Ease of travel by public transportation in Ramsey .....	1	2	3	4	5
Ease of travel by bicycle in Ramsey .....	1	2	3	4	5
Ease of walking in Ramsey.....	1	2	3	4	5
Well-planned residential growth.....	1	2	3	4	5
Well-planned commercial growth.....	1	2	3	4	5
Well-designed neighborhoods .....	1	2	3	4	5
Preservation of the historical or cultural character of the community .....	1	2	3	4	5
Public places where people want to spend time .....	1	2	3	4	5
Variety of housing options.....	1	2	3	4	5
Availability of affordable quality housing.....	1	2	3	4	5
Overall quality of new development in Ramsey .....	1	2	3	4	5
Overall appearance of Ramsey.....	1	2	3	4	5
Cleanliness of Ramsey.....	1	2	3	4	5
Water resources (beaches, lakes, ponds, riverways, etc.) .....	1	2	3	4	5
Air quality.....	1	2	3	4	5
Availability of paths and walking trails.....	1	2	3	4	5
Fitness opportunities (including exercise classes and paths or trails, etc.) ...	1	2	3	4	5
Recreational opportunities.....	1	2	3	4	5
Availability of affordable quality food .....	1	2	3	4	5
Availability of affordable quality health care.....	1	2	3	4	5
Availability of preventive health services .....	1	2	3	4	5
Availability of affordable quality mental health care .....	1	2	3	4	5
Opportunities to attend cultural/arts/music activities .....	1	2	3	4	5
Community support for the arts.....	1	2	3	4	5
Availability of affordable quality childcare/preschool.....	1	2	3	4	5
K-12 education.....	1	2	3	4	5
Adult educational opportunities .....	1	2	3	4	5
Sense of civic/community pride.....	1	2	3	4	5
Neighborliness of residents in Ramsey .....	1	2	3	4	5
Opportunities to participate in social events and activities .....	1	2	3	4	5
Opportunities to attend special events and festivals.....	1	2	3	4	5
Opportunities to volunteer.....	1	2	3	4	5
Opportunities to participate in community matters .....	1	2	3	4	5
Openness and acceptance of the community toward people of diverse backgrounds.....	1	2	3	4	5

**8. Please indicate whether or not you have done each of the following in the last 12 months.**

	<u>No</u>	<u>Yes</u>
Contacted the City of Ramsey (in-person, phone, email or web) for help or information .....	1	2
Contacted Ramsey elected officials (in-person, phone, email or web) to express your opinion.....	1	2
Attended a local public meeting (of local elected officials like City Council or County Commissioners, advisory boards, town halls, HOA, neighborhood watch, etc.) .....	1	2
Watched (online or on television) a local public meeting.....	1	2
Volunteered your time to some group/activity in Ramsey .....	1	2
Campaigned or advocated for a local issue, cause or candidate .....	1	2
Voted in your most recent local election .....	1	2
Used bus, rail, subway or other public transportation instead of driving.....	1	2
Carpooled with other adults or children instead of driving alone.....	1	2
Walked or biked instead of driving.....	1	2

# The City of Ramsey 2020 Community Survey

## 9. Please rate the quality of each of the following services in Ramsey.

	<u>Excellent</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>	<u>Don't know</u>
Public information services.....	1	2	3	4	5
Economic development.....	1	2	3	4	5
Traffic enforcement.....	1	2	3	4	5
Traffic signal timing.....	1	2	3	4	5
Street repair.....	1	2	3	4	5
Street cleaning.....	1	2	3	4	5
Street lighting.....	1	2	3	4	5
Snow removal.....	1	2	3	4	5
Sidewalk maintenance.....	1	2	3	4	5
Bus or transit services.....	1	2	3	4	5
Land use, planning, and zoning.....	1	2	3	4	5
Code enforcement (weeds, abandoned buildings, etc.).....	1	2	3	4	5
Affordable high-speed internet access.....	1	2	3	4	5
Garbage collection.....	1	2	3	4	5
Drinking water.....	1	2	3	4	5
Sewer services.....	1	2	3	4	5
Storm water management (storm drainage, dams, levees, etc.).....	1	2	3	4	5
Power (electric and/or gas) utility.....	1	2	3	4	5
Utility billing.....	1	2	3	4	5
Police/Sheriff services.....	1	2	3	4	5
Crime prevention.....	1	2	3	4	5
Animal control.....	1	2	3	4	5
Ambulance or emergency medical services.....	1	2	3	4	5
Fire services.....	1	2	3	4	5
Fire prevention and education.....	1	2	3	4	5
Emergency preparedness (services that prepare the community for natural disasters or other emergency situations).....	1	2	3	4	5
Preservation of natural areas (open space, farmlands and greenbelts).....	1	2	3	4	5
Ramsey open space.....	1	2	3	4	5
Recycling.....	1	2	3	4	5
Yard waste pick-up.....	1	2	3	4	5
City parks.....	1	2	3	4	5
Recreation programs or classes.....	1	2	3	4	5
Recreation centers or facilities.....	1	2	3	4	5
Health services.....	1	2	3	4	5
Public library services.....	1	2	3	4	5
Overall customer service by Ramsey employees (police, receptionists, planners, etc.).....	1	2	3	4	5

## 10. Please rate the following categories of Ramsey government performance.

	<u>Excellent</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>	<u>Don't know</u>
The value of services for the taxes paid to Ramsey.....	1	2	3	4	5
The overall direction that Ramsey is taking.....	1	2	3	4	5
The job Ramsey government does at welcoming resident involvement.....	1	2	3	4	5
Overall confidence in Ramsey government.....	1	2	3	4	5
Generally acting in the best interest of the community.....	1	2	3	4	5
Being honest.....	1	2	3	4	5
Being open and transparent to the public.....	1	2	3	4	5
Informing residents about issues facing the community.....	1	2	3	4	5
Treating all residents fairly.....	1	2	3	4	5
Treating residents with respect.....	1	2	3	4	5

**11. Overall, how would you rate the quality of the services provided by each of the following?**

	<u>Excellent</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>	<u>Don't know</u>
The City of Ramsey.....	1	2	3	4	5
The Federal Government.....	1	2	3	4	5

**12. Please rate how important, if at all, you think it is for the Ramsey community to focus on each of the following in the coming two years.**

	<u>Essential</u>	<u>Very important</u>	<u>Somewhat important</u>	<u>Not at all important</u>
Overall economic health of Ramsey.....	1	2	3	4
Overall quality of the transportation system (auto, bicycle, foot, bus) in Ramsey.....	1	2	3	4
Overall design or layout of Ramsey's residential and commercial areas (e.g., homes, buildings, streets, parks, etc.).....	1	2	3	4
Overall quality of the utility infrastructure in Ramsey (water, sewer, storm water, electric/gas).....	1	2	3	4
Overall feeling of safety in Ramsey.....	1	2	3	4
Overall quality of natural environment in Ramsey.....	1	2	3	4
Overall quality of parks and recreation opportunities.....	1	2	3	4
Overall health and wellness opportunities in Ramsey.....	1	2	3	4
Overall opportunities for education, culture and the arts.....	1	2	3	4
Residents' connection and engagement with their community.....	1	2	3	4

xx. **Custom Question #1 Custom Question #1 Custom Question #1 Custom Question #1 Custom Question #1 Custom Question #1 Custom Question #1 Custom Question #1 Custom Question #1 Custom Question #1 Custom Question #1 Custom Question #1 Custom Question #1**  
 Scale point 1     Scale point 2     Scale point 3     Scale point 4     Scale point 5

xx. **Custom Question #2 Custom Question #2 Custom Question #2 Custom Question #2 Custom Question #2 Custom Question #2 Custom Question #2 Custom Question #2 Custom Question #2 Custom Question #2 Custom Question #2 Custom Question #2 Custom Question #2**  
 Scale point 1     Scale point 2     Scale point 3     Scale point 4     Scale point 5

xx. **Custom Question #3 Custom Question #3 Custom Question #3 Custom Question #3 Custom Question #3 Custom Question #3 Custom Question #3 Custom Question #3 Custom Question #3 Custom Question #3 Custom Question #3 Custom Question #3 Custom Question #3**  
 Scale point 1     Scale point 2     Scale point 3     Scale point 4     Scale point 5

xx. **OPTIONAL [See Worksheets for details and price of this option] Open-Ended Question Open-Ended Question Open-Ended Question Open-Ended Question Open-Ended Question Open-Ended Question Open-Ended Question Open-Ended Question Open-Ended Question Open-Ended Question Open-Ended Question Open-Ended Question Open-Ended Question**

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# The City of Ramsey 2020 Community Survey

Our last questions are about you and your household.  
 Again, all of your responses to this survey are completely anonymous and will be reported in group form only.

**D1. In general, how many times do you:**

	Several times a day	Once a day	A few times a week	Every few weeks	Less often or never	Don't know
Access the internet from your home using a computer, laptop or tablet computer .....	1	2	3	4	5	6
Access the internet from your cell phone.....	1	2	3	4	5	6
Visit social media sites such as Facebook, Twitter, WhatsApp, etc. ....	1	2	3	4	5	6
Use or check email.....	1	2	3	4	5	6
Share your opinions online.....	1	2	3	4	5	6
Shop online .....	1	2	3	4	5	6

**D2. Would you say that in general your health is:**

- Excellent   
  Very good   
  Good   
  Fair   
  Poor

**D3. What impact, if any, do you think the economy will have on your family income in the next 6 months?**

**Do you think the impact will be:**

- Very positive   
  Somewhat positive   
  Neutral   
  Somewhat negative   
  Very negative

**D4. How many years have you lived in Ramsey?**

- Less than 2 years  
 2-5 years  
 6-10 years  
 11-20 years  
 More than 20 years

**D5. Which best describes the building you live in?**

- One family house detached from any other houses  
 Building with two or more homes  
 (duplex, townhome, apartment or condominium)  
 Mobile home  
 Other

**D6. Do you rent or own your home?**

- Rent  
 Own

**D7. About how much is your monthly housing cost for the place you live (including rent, mortgage payment, property tax, property insurance and homeowners' association (HOA) fees)?**

- Less than \$500             \$2,000 to \$2,499  
 \$500 to \$999             \$2,500 to \$2,999  
 \$1,000 to \$1,499         \$3,000 to \$3,499  
 \$1,500 to \$1,999         \$3,500 or more

**D8. Do any children 17 or under live in your household?**

- No     Yes

**D9. Are you or any other members of your household aged 65 or older?**

- No     Yes

**D10. How much do you anticipate your household's total income before taxes will be for the current year? (Please include in your total income money from all sources for all persons living in your household.)**

- Less than \$25,000     \$75,000 to \$99,999  
 \$25,000 to \$49,999     \$100,000 to \$149,999  
 \$50,000 to \$74,999     \$150,000 or more

**D11. Are you Spanish, Hispanic or Latino?**

- No, not Spanish, Hispanic or Latino  
 Yes, I consider myself to be Spanish, Hispanic or Latino

**D12. What is your race? (Mark one or more races to indicate what race you consider yourself to be.)**

- American Indian or Alaskan Native  
 Asian, Asian Indian or Pacific Islander  
 Black or African American  
 White  
 Other

**D13. In which category is your age?**

- 18-24 years                             55-64 years  
 25-34 years                             65-74 years  
 35-44 years                             75 years or older  
 45-54 years

**D14. What is your gender?**

- Female  
 Male  
 Identify in another way

**Thank you!** Please return the completed survey in the postage-paid envelope to:  
**National Research Center, Inc., PO Box 549, Belle Mead, NJ 08502**

Topic	Recommended/Sample Questions
<p>COVID-19 Impacts (physical, emotional, economic)</p>	<p><b>How would you rate your household on the following:</b> [Excellent/Good/Fair/Poor/Don't know]</p> <p>Overall physical health Overall emotional/social health Overall economic health</p> <p><b>We know the COVID-19 pandemic is challenging in many ways. Please rate how much of a problem, if at all, the following are for your household CURRENTLY.</b> [Major problem, Moderate problem, Minor problem, Not a problem, Don't know]</p> <p>Household member(s) have COVID-19 or COVID-like symptoms (fever, shortness of breath, dry cough) Access to medical services (e.g., emergency care, basic medical care and needed prescriptions) A shortage of food A shortage of sanitation and cleaning supplies (e.g., toilet paper, disinfectants, etc.) Loss of employment income Loss of income from retirement savings Trouble paying for food or housing Not being able to exercise Feeling alone/isolated, not being able to socialize with other people Feeling nervous, anxious or on edge Boredom Not knowing when pandemic will end/not feeling in control Household members not getting along Lack of technology to perform online work (e.g., internet access, computer, tablet, etc.) Lack of technology to perform online schooling (e.g., internet access, computer, tablet, etc.) Helping my children with on-line schooling Not knowing if schooling will be on-line (virtual) Lack of skills to use technology to communicate Providing financial, emotional, or other support for extended family not living with you Lack of childcare/supervision Not knowing enough about COVID-19 testing locations, costs, or eligibility to be tested Long wait times at COVID-19 testing facilities Long wait times to get COVID-19 tests back Not knowing how safe it is for my household to participate in reopening activities</p>
<p>COVID prevalence and testing</p>	<p><b>Because COVID-19 test kits have not always been easily accessible, it is difficult to estimate our community's exposure. People who have had COVID-like symptoms may not have been tested and it can be hard to distinguish symptoms from the flu or common cold.</b></p> <p><b>Have you and/or other household members been tested for COVID-19 (viral test for people who actively have an infection)?</b> [Never tested, Not tested but presumed positive by medical professional, Tested and waiting results, Tested negative, Tested positive]</p> <p>Me Someone else in my household</p> <p><b>Have you and/or other household members been tested for COVID-19 antibodies (antibody test for people who have had COVID but are not actively infected)?</b> [Never tested, Not tested but presumed positive by medical professional, Tested and waiting results, Tested negative, Tested positive]</p> <p>Me Someone else in my household</p>

	<p><b>If you or someone in your household has experienced COVID-19-like symptoms or was likely exposed to COVID-19 and did not get tested in the last 30 days, what are the reason(s) you did not get tested?</b></p> <p>Not knowing enough about testing locations, costs, or eligibility to be tested          Long wait times at testing facilities          Long wait times to get tests back          Did not fit criteria (no symptoms, not enough exposure)          Didn't want to know results          Wanted to save tests for people of higher need          Other _____</p>
<p>Speed of Reopening</p>	<p><b>Thinking about government plans to lift restrictions on businesses and community gathering areas or venues, how would you rate the reopening at each of the following levels of government?</b></p> <p><i>Too fast, About right, Too slow, Don't know the plans, Not applicable</i></p> <p>Your city or town          Your county          Your state</p> <p><b>Which statement about reopening is closest to your thoughts?</b></p> <p><b>A. Most of us need to stay at home until we know about this virus and how to treat it or a vaccine is developed</b></p> <p><b>B. We need to open the economy now and deal with the health consequences as we build immunity and recover economically</b></p> <p>Strongly agree with A          Agree more with A than B          Agree more with B than A          Strongly agree with B          Cannot decide/need more information</p> <p><b>As your local community takes steps to resume normal activities, how concerned are you about the following:</b></p> <p><i>Very concerned, Moderately concerned, Slightly concerned, Not at all concerned, Don't know</i></p> <p>Overall health of you and your family          Likelihood that you or someone in your family will get COVID-19          Our community's medical facilities and resources being overwhelmed by COVID-19          Overall health and safety of vulnerable populations (e.g., older adults, those with chronic health issues)          Not having the right information to make good choices about going out          My behaviors impacting the health of vulnerable populations          People not wearing masks in public places          People not keeping physical distance in public places</p> <p><b>Thinking about the pace of reopening, how concerned are you about the following:</b></p> <p><i>Very concerned, Moderately concerned, Slightly concerned, Not at all concerned, Don't know</i></p> <p>Becoming, or continuing to be, unemployed          An economic recession          The loss of locally-owned or small businesses</p>

<p>Resident reengagement in the economy</p>	<p><b>Regardless of current restrictions in your area, would you feel comfortable or uncomfortable doing the following at this time?</b>  Very comfortable, Moderately comfortable, neither comfortable nor uncomfortable, Moderately uncomfortable, Very uncomfortable</p> <p>Going to a grocery store  Going to a retail store  Shopping outdoors at a pedestrian mall or on streets where merchants have outdoor/sidewalk tables and booths  Eating out in a restaurant indoors  Eating out in a restaurant on a patio or outdoors  Eating at an open area with food trucks  Using take-out/delivery service from restaurants  Going to parks and trails  Going to a bar  Going to a gym or other fitness center  Attending a large venue or event</p> <p><b>How important, if at all, are the following to make you feel comfortable enough to return to retail stores, restaurants, etc.?</b>  <i>Essential, Important, Moderately important, Slightly important, Not at all important, Don't know</i></p> <p>A "Seal of Safety" by a government agency  Enhanced cleaning/disinfecting  All employees wearing masks  All customers wearing masks, when possible  Limiting the number of people to ensure physical distance  Regular testing of employees for symptoms (and follow-up for COVID-19 tests)  Antibody testing to determine potential immunity  Contact tracing to track people who interacted with those with positive test results</p> <p><b>How much do you support or oppose the following changes to policies and zoning regulations that will allow allow businesses to operate differently in the post-COVID-19 recovery:</b>  Strongly support, somewhat support, somewhat oppose, Strongly oppose, Don't know</p> <p>The use of vacant lots for outdoor dining  Creating parklets or small areas on street where retail can sell outside  Enabling large vacant buildings to be converted into smaller retail/office space  Allowing businesses to sell liquor with to-go orders  Changing zoning requirements to create easier access for food trucks</p>
<p>Workforce impacts</p>	<p><b>How many adult members of your household currently work for pay?</b>  0  1  2  3 or more</p> <p><b>How much of a problem, if at all, are the following issues for the people in your household who work for pay as a result of the COVID-19 pandemic?</b> [major problem, moderate problem, minor problem, not a problem, not applicable (N/A)]</p> <p>Loss of job due to COVID-19  Reduced income from job due to COVID-19</p>



	<p>Uncertainty of job or income due to COVID-19  Daycare/child care/return to school challenges  Concern about being exposed to COVID-19 on the job  Concerns about infecting others in my workplace  Lack of technology to work from home  Missing work due to illness</p>
<p>Ratings of Government Response to Pandemic</p>	<p><b>Overall, please rate the response of the following government organizations to COVID-19?</b>  [Excellent, Good, Fair, Poor, Don't know]</p> <p>The Federal government  The State government  The local government</p>
<p>Priorities for local government budget recovery</p>	<p><b>We know the COVID-19 pandemic has caused significant economic impacts on our business community and our residents. Our local government also will be significantly affected by the pandemic due to decreased tax revenues and unanticipated expenses related to management of COVID-19.</b></p> <p><b>If the gap between costs and revenues widens, how much would you support or oppose your local government taking each of the following actions?</b>  (Strongly support, somewhat support, somewhat oppose, strongly oppose)</p> <p>A property tax increase  A sales tax increase  Raise fees for services  Cut or decrease services</p>



**THE NCS**<sup>TM</sup>  
The National Citizen Survey<sup>TM</sup>

# Ramsey, MN

Technical Appendices

2018



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icma.org • 800-745-8780

# Contents

Appendix A: Complete Survey Responses .....	1
Appendix B: Benchmark Comparisons .....	19
Appendix C: Detailed Survey Methods .....	31
Appendix D: Survey Materials .....	36



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The NCS™ is presented by NRC in collaboration with ICMA.

NRC is a charter member of the AAPOR Transparency Initiative, providing clear disclosure of our sound and ethical survey research practices.

# Appendix A: Complete Survey Responses

## Responses excluding “don’t know”

The following pages contain a complete set of responses to each question on the survey, excluding the “don’t know” responses. The percent of respondents giving a particular response is shown followed by the number of respondents (denoted with “N=”).

Table 1: Question 1

Please rate each of the following aspects of quality of life in Ramsey:	Excellent		Good		Fair		Poor		Total	
	%	N	%	N	%	N	%	N	%	N
Ramsey as a place to live	28%	N=130	57%	N=264	14%	N=64	1%	N=4	100%	N=462
Your neighborhood as a place to live	37%	N=172	45%	N=210	15%	N=67	3%	N=15	100%	N=463
Ramsey as a place to raise children	29%	N=118	58%	N=232	11%	N=45	2%	N=8	100%	N=402
Ramsey as a place to work	11%	N=30	39%	N=107	30%	N=83	20%	N=55	100%	N=276
Ramsey as a place to visit	11%	N=46	28%	N=122	39%	N=169	22%	N=95	100%	N=432
Ramsey as a place to retire	14%	N=52	41%	N=147	30%	N=109	14%	N=52	100%	N=360
The overall quality of life in Ramsey	18%	N=83	63%	N=293	17%	N=77	2%	N=8	100%	N=461

Table 2: Question 2

Please rate each of the following characteristics as they relate to Ramsey as a whole:	Excellent		Good		Fair		Poor		Total	
	%	N	%	N	%	N	%	N	%	N
Overall feeling of safety in Ramsey	29%	N=134	61%	N=280	10%	N=45	1%	N=3	100%	N=462
Overall ease of getting to the places you usually have to visit	19%	N=86	51%	N=235	23%	N=105	8%	N=38	100%	N=463
Quality of overall natural environment in Ramsey	24%	N=108	60%	N=272	14%	N=66	2%	N=9	100%	N=455
Overall "built environment" of Ramsey (including overall design, buildings, parks and transportation systems)	10%	N=48	48%	N=218	32%	N=144	10%	N=46	100%	N=455
Health and wellness opportunities in Ramsey	13%	N=56	46%	N=189	32%	N=133	9%	N=37	100%	N=415
Overall opportunities for education and enrichment	7%	N=28	45%	N=173	37%	N=141	10%	N=40	100%	N=381
Overall economic health of Ramsey	8%	N=29	46%	N=177	37%	N=142	9%	N=35	100%	N=383
Sense of community	10%	N=43	38%	N=170	43%	N=191	10%	N=44	100%	N=447
Overall image or reputation of Ramsey	11%	N=47	49%	N=216	32%	N=141	8%	N=36	100%	N=440

Table 3: Question 3

Please indicate how likely or unlikely you are to do each of the following:	Very likely		Somewhat likely		Somewhat unlikely		Very unlikely		Total	
	%	N	%	N	%	N	%	N	%	N
Recommend living in Ramsey to someone who asks	45%	N=206	39%	N=177	12%	N=55	4%	N=21	100%	N=459
Remain in Ramsey for the next five years	57%	N=257	29%	N=133	10%	N=46	4%	N=18	100%	N=454

Table 4: Question 4

Please rate how safe or unsafe you feel:	Very safe		Somewhat safe		Neither safe nor unsafe		Somewhat unsafe		Very unsafe		Total	
	%	N	%	N	%	N	%	N	%	N	%	N
In your neighborhood during the day	80%	N=372	17%	N=78	1%	N=4	1%	N=3	1%	N=6	100%	N=463
In Ramsey's downtown/commercial areas during the day	76%	N=329	20%	N=87	2%	N=10	1%	N=3	1%	N=4	100%	N=432
In your neighborhood after dark	49%	N=223	38%	N=174	9%	N=42	3%	N=12	2%	N=8	100%	N=459
In Ramsey's downtown/commercial areas after dark	40%	N=157	44%	N=173	12%	N=47	3%	N=12	1%	N=4	100%	N=394

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Table 5: Question 5

Please rate each of the following characteristics as they relate to Ramsey as a whole:	Excellent		Good		Fair		Poor		Total	
Traffic flow on major streets	11%	N=50	48%	N=223	27%	N=125	14%	N=65	100%	N=462
Ease of travel by car in Ramsey	17%	N=80	52%	N=242	23%	N=108	7%	N=34	100%	N=464
Ease of travel by bicycle in Ramsey	18%	N=65	44%	N=162	27%	N=99	11%	N=41	100%	N=367
Ease of walking in Ramsey	19%	N=83	48%	N=207	25%	N=109	8%	N=35	100%	N=435
Availability of paths and walking trails	22%	N=98	47%	N=208	23%	N=104	8%	N=35	100%	N=446
Cleanliness of Ramsey	19%	N=87	55%	N=254	23%	N=105	3%	N=16	100%	N=461
Overall appearance of Ramsey	15%	N=69	53%	N=242	29%	N=131	3%	N=14	100%	N=456
Public places where people want to spend time	10%	N=45	41%	N=182	35%	N=156	14%	N=63	100%	N=445
Variety of housing options	16%	N=67	53%	N=225	27%	N=114	5%	N=21	100%	N=426
Availability of affordable quality housing	12%	N=46	52%	N=196	26%	N=97	10%	N=38	100%	N=378
Fitness opportunities (including exercise classes and paths or trails, etc.)	12%	N=52	52%	N=227	27%	N=120	9%	N=38	100%	N=437
Recreational opportunities	8%	N=34	43%	N=185	38%	N=167	11%	N=48	100%	N=433
Overall condition of City maintained streets	11%	N=48	44%	N=201	36%	N=166	10%	N=45	100%	N=460

Table 6: Question 6

Please rate each of the following characteristics as they relate to Ramsey as a whole:	Excellent		Good		Fair		Poor		Total	
Availability of affordable quality child care/preschool	12%	N=24	49%	N=93	31%	N=60	7%	N=14	100%	N=190
K-12 education	18%	N=54	53%	N=163	21%	N=63	8%	N=26	100%	N=307
Adult educational opportunities	7%	N=20	45%	N=133	35%	N=104	13%	N=39	100%	N=296
Opportunities to attend cultural/arts/music activities	5%	N=19	39%	N=144	42%	N=155	14%	N=54	100%	N=372
Employment opportunities	4%	N=12	27%	N=76	42%	N=120	27%	N=77	100%	N=285
Shopping opportunities	2%	N=7	19%	N=83	35%	N=158	45%	N=200	100%	N=449
Cost of living in Ramsey	11%	N=49	39%	N=180	43%	N=196	7%	N=32	100%	N=457
Overall quality of business and service establishments in Ramsey	6%	N=25	40%	N=179	38%	N=170	17%	N=75	100%	N=449
Vibrant downtown/commercial area	3%	N=15	17%	N=73	40%	N=176	40%	N=175	100%	N=440
Overall quality of new development in Ramsey	6%	N=27	35%	N=151	40%	N=173	18%	N=77	100%	N=427
Opportunities to volunteer	5%	N=12	44%	N=103	39%	N=93	12%	N=29	100%	N=237
Opportunities to participate in community matters	7%	N=21	44%	N=132	42%	N=127	8%	N=23	100%	N=304

Table 7: Question 7

Please indicate whether or not you have done each of the following in the last 12 months.	No		Yes		Total	
Household member was a victim of a crime in Ramsey	94%	N=431	6%	N=30	100%	N=461
Reported a crime to the police in Ramsey	81%	N=373	19%	N=88	100%	N=461
Campaigned or advocated for an issue, cause or candidate	92%	N=424	8%	N=37	100%	N=461
Contacted the City of Ramsey (in-person, phone, email or web) for help or information	62%	N=286	38%	N=175	100%	N=461
Contacted Ramsey elected officials (in-person, phone, email or web) to express your opinion	89%	N=412	11%	N=49	100%	N=461

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Table 8: Question 8

In the last 12 months, about how many times, if at all, have you or other household members done each of the following in Ramsey?	2 times a week or more		2-4 times a month		Once a month or less		Not at all		Total	
	%	N	%	N	%	N	%	N	%	N
Visited a neighborhood park or City park	21%	N=96	30%	N=140	36%	N=164	13%	N=61	100%	N=461
Attended a City-sponsored event	1%	N=4	5%	N=22	44%	N=204	50%	N=230	100%	N=461
Used rail or other public transportation instead of driving	7%	N=30	4%	N=18	25%	N=117	64%	N=297	100%	N=463
Walked or biked instead of driving	7%	N=33	21%	N=96	35%	N=159	37%	N=171	100%	N=461
Volunteered your time to some group/activity in Ramsey	2%	N=9	6%	N=26	12%	N=56	80%	N=371	100%	N=463

Table 9: Question 9

Thinking about local public meetings (of local elected officials like City Council or County Commissioners, advisory boards, town halls, HOA, neighborhood watch, etc.), in the last 12 months, about how many times, if at all, have you or other household members attended or watched a local public meeting?	2 times a week or more		2-4 times a month		Once a month or less		Not at all		Total	
	%	N	%	N	%	N	%	N	%	N
Attended a local public meeting	0%	N=0	1%	N=5	13%	N=59	86%	N=396	100%	N=460
Watched (online or on television) a local public meeting	1%	N=3	2%	N=10	14%	N=67	83%	N=381	100%	N=461

Table 10: Question 10

Please rate the quality of each of the following services in Ramsey:	Excellent		Good		Fair		Poor		Total	
	%	N	%	N	%	N	%	N	%	N
Police services	44%	N=190	47%	N=201	7%	N=31	1%	N=6	100%	N=428
Fire services	45%	N=159	50%	N=177	5%	N=18	0%	N=1	100%	N=355
Crime prevention	26%	N=92	58%	N=209	14%	N=51	2%	N=6	100%	N=359
Fire prevention and education	32%	N=97	51%	N=155	16%	N=50	2%	N=5	100%	N=307
Traffic enforcement	19%	N=73	56%	N=215	18%	N=70	6%	N=24	100%	N=383
Street repair	6%	N=28	37%	N=164	39%	N=177	18%	N=79	100%	N=448
Street cleaning	9%	N=43	46%	N=208	32%	N=143	12%	N=55	100%	N=449
Street lighting	10%	N=45	49%	N=214	26%	N=115	15%	N=68	100%	N=442
Snow removal	13%	N=59	45%	N=203	26%	N=119	16%	N=72	100%	N=453
Sidewalk maintenance	11%	N=41	48%	N=173	27%	N=95	14%	N=50	100%	N=359
Traffic signal timing	8%	N=35	45%	N=202	31%	N=142	16%	N=74	100%	N=453
Storm drainage	14%	N=56	61%	N=236	22%	N=86	3%	N=12	100%	N=390
Drinking water	23%	N=80	53%	N=183	20%	N=69	4%	N=12	100%	N=345
Sewer services	20%	N=59	65%	N=192	14%	N=42	1%	N=4	100%	N=297
City parks	20%	N=86	56%	N=246	21%	N=91	4%	N=16	100%	N=440
Recreation centers or facilities	14%	N=48	45%	N=159	29%	N=102	12%	N=43	100%	N=352
Land use, planning and zoning	8%	N=29	35%	N=129	32%	N=117	24%	N=88	100%	N=363
Code enforcement (weeds, abandoned buildings, etc.)	9%	N=32	41%	N=143	30%	N=107	20%	N=70	100%	N=352
Animal control	15%	N=51	46%	N=161	29%	N=101	10%	N=36	100%	N=348
Economic development	10%	N=37	37%	N=138	33%	N=122	19%	N=72	100%	N=369
Public information services	12%	N=46	49%	N=182	34%	N=128	5%	N=17	100%	N=373
Preservation of natural areas such as open space, farmlands and greenbelts	13%	N=51	50%	N=199	26%	N=103	12%	N=46	100%	N=400
Overall customer service by Ramsey employees (police, receptionists, planners, etc.)	28%	N=110	54%	N=212	15%	N=61	3%	N=13	100%	N=396
Trail maintenance	13%	N=53	57%	N=224	24%	N=93	6%	N=25	100%	N=395

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Table 11: Question 11

Overall, how would you rate the quality of the services provided by each of the following?	Excellent		Good		Fair		Poor		Total	
The City of Ramsey	22%	N=92	55%	N=233	20%	N=85	3%	N=15	100%	N=425
The Federal Government	7%	N=26	38%	N=144	38%	N=144	17%	N=62	100%	N=376
Anoka County Government	10%	N=40	53%	N=215	31%	N=125	5%	N=22	100%	N=402
The State of Minnesota	11%	N=41	45%	N=176	35%	N=137	9%	N=36	100%	N=389

Table 12: Question 12

Please rate the following categories of Ramsey government performance:	Excellent		Good		Fair		Poor		Total	
The value of services for the taxes paid to Ramsey	6%	N=24	39%	N=167	40%	N=169	15%	N=66	100%	N=425
The overall direction that Ramsey is taking	7%	N=31	41%	N=173	33%	N=138	18%	N=76	100%	N=418
The job Ramsey government does at welcoming citizen involvement	11%	N=40	44%	N=156	33%	N=118	12%	N=44	100%	N=358
Overall confidence in Ramsey government	7%	N=29	44%	N=178	34%	N=136	15%	N=59	100%	N=402
Generally acting in the best interest of the community	9%	N=39	47%	N=191	31%	N=126	13%	N=54	100%	N=409
Being honest	12%	N=44	48%	N=170	29%	N=102	11%	N=41	100%	N=357
Treating all residents fairly	12%	N=42	46%	N=167	32%	N=116	10%	N=34	100%	N=359
Development and success of a strategic action plan	9%	N=31	40%	N=138	30%	N=101	21%	N=70	100%	N=340

Table 13: Question 13

Please rate how important, if at all, you think it is for the Ramsey community to focus on each of the following in the coming two years:	Essential		Very important		Somewhat important		Not at all important		Total	
Overall feeling of safety in Ramsey	50%	N=229	36%	N=163	14%	N=64	0%	N=2	100%	N=459
Overall ease of getting to the places you usually have to visit	29%	N=135	47%	N=214	21%	N=98	3%	N=12	100%	N=459
Quality of overall natural environment in Ramsey	31%	N=140	49%	N=225	17%	N=80	3%	N=14	100%	N=460
Overall "built environment" of Ramsey (including overall design, buildings, parks and transportation systems)	30%	N=137	45%	N=206	23%	N=107	2%	N=8	100%	N=458
Health and wellness opportunities in Ramsey	23%	N=106	39%	N=181	33%	N=150	5%	N=23	100%	N=460
Overall opportunities for education and enrichment	25%	N=115	36%	N=166	33%	N=151	6%	N=25	100%	N=457
Overall economic health of Ramsey	40%	N=184	45%	N=206	14%	N=64	1%	N=5	100%	N=458
Sense of community	23%	N=107	44%	N=201	31%	N=143	2%	N=7	100%	N=457

Table 14: Question 14

To what extent are each of the following a source of information for you about Ramsey city government and its activities?	Major source		Moderate source		Minor source		Not a source		Total	
City newsletter (Ramsey Resident)	59%	N=275	27%	N=124	10%	N=49	3%	N=15	100%	N=464
Local newspaper	9%	N=41	27%	N=123	26%	N=121	38%	N=178	100%	N=463
City website (www.cityoframsey.com)	16%	N=73	34%	N=157	31%	N=141	19%	N=87	100%	N=457
Word-of-mouth	12%	N=56	40%	N=184	30%	N=140	18%	N=81	100%	N=461
Cable television (QCTV)	2%	N=8	12%	N=53	19%	N=87	68%	N=311	100%	N=459
City employees	4%	N=20	14%	N=66	25%	N=117	56%	N=257	100%	N=459
Public meetings	4%	N=17	14%	N=63	28%	N=130	55%	N=252	100%	N=462
City social media (Facebook)	21%	N=98	24%	N=108	14%	N=63	42%	N=191	100%	N=460

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Table 15: Question 15

Please indicate how likely you would be, if at all, to engage with the City on the following social media platforms in the future:	Very likely		Somewhat likely		Not at all likely		Total	
	%	N	%	N	%	N	%	N
City Facebook page	35%	N=147	28%	N=117	38%	N=159	100%	N=423
City Twitter feed	6%	N=25	11%	N=42	83%	N=318	100%	N=385
Nextdoor	13%	N=44	21%	N=74	66%	N=229	100%	N=348
Instagram	7%	N=25	18%	N=68	76%	N=288	100%	N=381

Table 16: Question 16

Please indicate to what extent you support or oppose the city investigating the following changes to new or existing amenities, each of which could accordingly result in an increase to the tax levy:	Strongly support		Somewhat support		Somewhat oppose		Strongly oppose		Total	
	%	N	%	N	%	N	%	N	%	N
Making improvements to existing/established parks	33%	N=149	51%	N=226	11%	N=50	5%	N=21	100%	N=446
Building new parks	27%	N=117	38%	N=168	24%	N=103	11%	N=50	100%	N=438
Making improvements to existing trails	35%	N=155	46%	N=203	13%	N=58	6%	N=27	100%	N=444
Building new trails	34%	N=149	41%	N=182	15%	N=64	11%	N=47	100%	N=441
Building a new community center	34%	N=141	31%	N=129	20%	N=82	15%	N=63	100%	N=415

Table 17: Question 17

Please rate how important, if at all, you think each of the following priorities are for the City to focus on in the next five years:	Essential		Very important		Somewhat important		Not at all important		Total	
	%	N	%	N	%	N	%	N	%	N
Balancing rural character and urban growth (development patterns)	40%	N=183	31%	N=143	24%	N=109	5%	N=24	100%	N=460
Creating an active community (parks, trails, open space, recreation)	28%	N=131	40%	N=185	26%	N=117	6%	N=27	100%	N=460
Creating a connected community (roads, trails, sidewalks, rail, transportation)	39%	N=179	32%	N=146	23%	N=106	6%	N=27	100%	N=459
Creating a positive learning environment (education and outreach)	23%	N=106	32%	N=145	35%	N=161	10%	N=46	100%	N=459

Table 18: Question 18

How interested are you, if at all, in receiving information from the City about each of the following topics?	Extremely interested		Very interested		Moderately interested		Slightly interested		Not at all interested		Total	
	%	N	%	N	%	N	%	N	%	N	%	N
Council & Commissions topics/agendas	11%	N=52	19%	N=87	36%	N=167	19%	N=85	14%	N=66	100%	N=457
Lifestyle/community interest	13%	N=61	30%	N=137	31%	N=143	16%	N=73	9%	N=41	100%	N=456
Recreation	22%	N=103	34%	N=153	28%	N=127	10%	N=45	6%	N=30	100%	N=457
Local businesses (e.g., new/expanded businesses, grand openings, etc.)	22%	N=98	38%	N=173	25%	N=115	9%	N=40	7%	N=31	100%	N=457
Public safety	21%	N=96	38%	N=175	25%	N=116	11%	N=50	4%	N=19	100%	N=457
Events	24%	N=108	39%	N=179	26%	N=118	8%	N=35	4%	N=19	100%	N=458
Road work	23%	N=107	40%	N=183	22%	N=103	10%	N=47	4%	N=18	100%	N=458
Real estate development projects	15%	N=70	31%	N=140	31%	N=140	14%	N=66	9%	N=40	100%	N=456
Getting involved/engagement opportunities	9%	N=41	22%	N=100	35%	N=158	21%	N=94	13%	N=61	100%	N=454
Budget/performance measurements	12%	N=56	26%	N=119	30%	N=139	19%	N=87	12%	N=56	100%	N=456



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Table 19: Question 19

The City employs a long-term maintenance program to cost-effectively maintain all 175-plus miles of City streets. Currently, street reconstruction projects are funded 25% by special assessments levied against benefitting properties, and 75% by street reconstruction bonds, which are paid back using general property taxes. The City periodically evaluates funding sources for this on-going program. Please indicate the extent to which you would support or oppose the following funding sources:	Strongly support		Somewhat support		Somewhat oppose		Strongly oppose		Total	
Current method, which requires 25% of funding by special assessments levied against benefitting properties over 5-15 years	34%	N=132	44%	N=169	11%	N=44	11%	N=43	100%	N=390
Zero special assessments levied against benefitting properties, which requires 100% of funding by general property tax increases	9%	N=36	23%	N=89	29%	N=110	39%	N=148	100%	N=383
Electric and/or gas utility fee increases, approximately \$8 per utility, per month	5%	N=21	21%	N=82	29%	N=113	45%	N=175	100%	N=391

Table 20: Question D1

How often, if at all, do you do each of the following, considering all of the times you could?	Never		Rarely		Sometimes		Usually		Always		Total	
Recycle at home	2%	N=8	1%	N=7	4%	N=18	20%	N=90	73%	N=337	100%	N=460
Purchase goods or services from a business located in Ramsey	1%	N=5	11%	N=49	43%	N=197	33%	N=152	12%	N=57	100%	N=460
Vote in local elections	10%	N=46	8%	N=37	16%	N=72	27%	N=125	39%	N=176	100%	N=456

Table 21: Question D3

What impact, if any, do you think the economy will have on your family income in the next 6 months? Do you think the impact will be:	Percent	Number
Very positive	8%	N=38
Somewhat positive	32%	N=145
Neutral	50%	N=231
Somewhat negative	8%	N=37
Very negative	2%	N=8
Total	100%	N=459

Table 22: Question D4

What is your employment status?	Percent	Number
Working full time for pay	74%	N=339
Working part time for pay	6%	N=28
Unemployed, looking for paid work	2%	N=10
Unemployed, not looking for paid work	2%	N=11
Fully retired	16%	N=72
Total	100%	N=460

Table 23: Question D5

Do you work inside the boundaries of Ramsey?	Percent	Number
Yes, outside the home	15%	N=67
Yes, from home	7%	N=33
No	78%	N=352
Total	100%	N=452

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Table 24: Question D6

How many years have you lived in Ramsey?	Percent	Number
Less than 2 years	16%	N=72
2 to 5 years	25%	N=116
6 to 10 years	13%	N=60
11 to 20 years	20%	N=95
More than 20 years	26%	N=120
Total	100%	N=463

Table 25: Question D7

Which best describes the building you live in?	Percent	Number
One family house detached from any other houses	82%	N=377
Building with two or more homes (duplex, townhome, apartment or condominium)	18%	N=81
Mobile home	0%	N=0
Other	1%	N=3
Total	100%	N=462

Table 26: Question D8

Is this house, apartment or mobile home...	Percent	Number
Rented	6%	N=29
Owned	94%	N=432
Total	100%	N=461

Table 27: Question D9

About how much is your monthly housing cost for the place you live (including rent, mortgage payment, property tax, property insurance and homeowners' association (HOA) fees)?	Percent	Number
Less than \$300 per month	3%	N=11
\$300 to \$599 per month	6%	N=28
\$600 to \$999 per month	13%	N=58
\$1,000 to \$1,499 per month	34%	N=152
\$1,500 to \$2,499 per month	38%	N=173
\$2,500 or more per month	6%	N=27
Total	100%	N=450

Table 28: Question D10

Do any children 17 or under live in your household?	Percent	Number
No	54%	N=250
Yes	46%	N=212
Total	100%	N=463

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Table 29: Question D11

Are you or any other members of your household aged 65 or older?	Percent	Number
No	79%	N=362
Yes	21%	N=97
Total	100%	N=459

Table 30: Question D12

How much do you anticipate your household's total income before taxes will be for the current year? (Please include in your total income money from all sources for all persons living in your household.)	Percent	Number
Less than \$25,000	3%	N=13
\$25,000 to \$49,999	9%	N=42
\$50,000 to \$99,999	39%	N=171
\$100,000 to \$149,999	35%	N=154
\$150,000 or more	14%	N=62
Total	100%	N=443

Table 31: Question D13

Are you Spanish, Hispanic or Latino?	Percent	Number
No, not Spanish, Hispanic or Latino	98%	N=450
Yes, I consider myself to be Spanish, Hispanic or Latino	2%	N=7
Total	100%	N=457

Table 32: Question D14

What is your race? (Mark one or more races to indicate what race(s) you consider yourself to be.)	Percent	Number
American Indian or Alaskan Native	1%	N=5
Asian, Asian Indian or Pacific Islander	3%	N=14
Black or African American	1%	N=5
White	93%	N=428
Other	3%	N=15

Total may exceed 100% as respondents could select more than one option.

Table 33: Question D15

In which category is your age?	Percent	Number
18 to 24 years	2%	N=11
25 to 34 years	27%	N=125
35 to 44 years	23%	N=106
45 to 54 years	21%	N=96
55 to 64 years	11%	N=49
65 to 74 years	11%	N=52
75 years or older	4%	N=20
Total	100%	N=459

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Table 34: Question D16

What is your sex?	Percent	Number
Female	50%	N=225
Male	50%	N=226
Total	100%	N=451

Table 35: Question D17

Do you consider a cell phone or landline your primary telephone number?	Percent	Number
Cell	73%	N=337
Land line	12%	N=56
Both	15%	N=67
Total	100%	N=460

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Responses including “don’t know”

The following pages contain a complete set of responses to each question on the survey, including the “don’t know” responses. The percent of respondents giving a particular response is shown followed by the number of respondents (denoted with “N=”).

Table 36: Question 1

Please rate each of the following aspects of quality of life in Ramsey:	Excellent		Good		Fair		Poor		Don't know		Total	
Ramsey as a place to live	28%	N=130	57%	N=264	14%	N=64	1%	N=4	0%	N=1	100%	N=464
Your neighborhood as a place to live	37%	N=172	45%	N=210	14%	N=67	3%	N=15	0%	N=1	100%	N=465
Ramsey as a place to raise children	25%	N=118	50%	N=232	10%	N=45	2%	N=8	13%	N=61	100%	N=463
Ramsey as a place to work	7%	N=30	23%	N=107	18%	N=83	12%	N=55	40%	N=185	100%	N=461
Ramsey as a place to visit	10%	N=46	26%	N=122	36%	N=169	20%	N=95	7%	N=32	100%	N=464
Ramsey as a place to retire	11%	N=52	32%	N=147	24%	N=109	11%	N=52	22%	N=103	100%	N=462
The overall quality of life in Ramsey	18%	N=83	63%	N=293	17%	N=77	2%	N=8	1%	N=4	100%	N=465

Table 37: Question 2

Please rate each of the following characteristics as they relate to Ramsey as a whole:	Excellent		Good		Fair		Poor		Don't know		Total	
Overall feeling of safety in Ramsey	29%	N=134	60%	N=280	10%	N=45	1%	N=3	0%	N=2	100%	N=464
Overall ease of getting to the places you usually have to visit	19%	N=86	51%	N=235	23%	N=105	8%	N=38	0%	N=1	100%	N=464
Quality of overall natural environment in Ramsey	23%	N=108	59%	N=272	14%	N=66	2%	N=9	1%	N=5	100%	N=460
Overall “built environment” of Ramsey (including overall design, buildings, parks and transportation systems)	10%	N=48	47%	N=218	31%	N=144	10%	N=46	2%	N=7	100%	N=463
Health and wellness opportunities in Ramsey	12%	N=56	41%	N=189	29%	N=133	8%	N=37	10%	N=46	100%	N=461
Overall opportunities for education and enrichment	6%	N=28	37%	N=173	30%	N=141	9%	N=40	18%	N=82	100%	N=463
Overall economic health of Ramsey	6%	N=29	38%	N=177	31%	N=142	8%	N=35	17%	N=81	100%	N=464
Sense of community	9%	N=43	37%	N=170	42%	N=191	10%	N=44	2%	N=11	100%	N=458
Overall image or reputation of Ramsey	10%	N=47	47%	N=216	31%	N=141	8%	N=36	5%	N=22	100%	N=462

Table 38: Question 3

Please indicate how likely or unlikely you are to do each of the following:	Very likely		Somewhat likely		Somewhat unlikely		Very unlikely		Don't know		Total	
Recommend living in Ramsey to someone who asks	45%	N=206	38%	N=177	12%	N=55	4%	N=21	1%	N=3	100%	N=462
Remain in Ramsey for the next five years	56%	N=257	29%	N=133	10%	N=46	4%	N=18	1%	N=5	100%	N=459

Table 39: Question 4

Please rate how safe or unsafe you feel:	Very safe		Somewhat safe		Neither safe nor unsafe		Somewhat unsafe		Very unsafe		Don't know		Total	
In your neighborhood during the day	80%	N=372	17%	N=78	1%	N=4	1%	N=3	1%	N=6	0%	N=1	100%	N=464
In Ramsey's downtown/commercial areas during the day	71%	N=329	19%	N=87	2%	N=10	1%	N=3	1%	N=4	7%	N=31	100%	N=463
In your neighborhood after dark	48%	N=223	38%	N=174	9%	N=42	3%	N=12	2%	N=8	1%	N=4	100%	N=464
In Ramsey's downtown/commercial areas after dark	34%	N=157	37%	N=173	10%	N=47	3%	N=12	1%	N=4	15%	N=69	100%	N=463

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Table 40: Question 5

Please rate each of the following characteristics as they relate to Ramsey as a whole:	Excellent		Good		Fair		Poor		Don't know		Total	
	%	N	%	N	%	N	%	N	%	N	%	N
Traffic flow on major streets	11%	N=50	48%	N=223	27%	N=125	14%	N=65	0%	N=0	100%	N=462
Ease of travel by car in Ramsey	17%	N=80	52%	N=242	23%	N=108	7%	N=34	0%	N=0	100%	N=464
Ease of travel by bicycle in Ramsey	14%	N=65	35%	N=162	21%	N=99	9%	N=41	21%	N=96	100%	N=463
Ease of walking in Ramsey	18%	N=83	45%	N=207	24%	N=109	8%	N=35	5%	N=23	100%	N=458
Availability of paths and walking trails	21%	N=98	45%	N=208	23%	N=104	8%	N=35	4%	N=17	100%	N=463
Cleanliness of Ramsey	19%	N=87	55%	N=254	23%	N=105	3%	N=16	0%	N=2	100%	N=463
Overall appearance of Ramsey	15%	N=69	52%	N=242	28%	N=131	3%	N=14	1%	N=6	100%	N=462
Public places where people want to spend time	10%	N=45	39%	N=182	34%	N=156	14%	N=63	4%	N=18	100%	N=463
Variety of housing options	14%	N=67	49%	N=225	25%	N=114	4%	N=21	8%	N=36	100%	N=462
Availability of affordable quality housing	10%	N=46	43%	N=196	21%	N=97	8%	N=38	18%	N=82	100%	N=460
Fitness opportunities (including exercise classes and paths or trails, etc.)	11%	N=52	49%	N=227	26%	N=120	8%	N=38	6%	N=26	100%	N=463
Recreational opportunities	7%	N=34	40%	N=185	36%	N=167	10%	N=48	6%	N=29	100%	N=462
Overall condition of City maintained streets	10%	N=48	43%	N=201	36%	N=166	10%	N=45	1%	N=3	100%	N=463

Table 41: Question 6

Please rate each of the following characteristics as they relate to Ramsey as a whole:	Excellent		Good		Fair		Poor		Don't know		Total	
	%	N	%	N	%	N	%	N	%	N	%	N
Availability of affordable quality child care/preschool	5%	N=24	20%	N=93	13%	N=60	3%	N=14	58%	N=266	100%	N=457
K-12 education	12%	N=54	36%	N=163	14%	N=63	6%	N=26	33%	N=151	100%	N=458
Adult educational opportunities	4%	N=20	29%	N=133	23%	N=104	9%	N=39	35%	N=161	100%	N=457
Opportunities to attend cultural/arts/music activities	4%	N=19	31%	N=144	34%	N=155	12%	N=54	19%	N=88	100%	N=460
Employment opportunities	3%	N=12	17%	N=76	26%	N=120	17%	N=77	38%	N=174	100%	N=460
Shopping opportunities	1%	N=7	18%	N=83	34%	N=158	44%	N=200	2%	N=11	100%	N=460
Cost of living in Ramsey	11%	N=49	39%	N=180	42%	N=196	7%	N=32	1%	N=5	100%	N=462
Overall quality of business and service establishments in Ramsey	6%	N=25	39%	N=179	37%	N=170	16%	N=75	2%	N=11	100%	N=460
Vibrant downtown/commercial area	3%	N=15	16%	N=73	38%	N=176	38%	N=175	5%	N=23	100%	N=462
Overall quality of new development in Ramsey	6%	N=27	33%	N=151	37%	N=173	17%	N=77	8%	N=35	100%	N=462
Opportunities to volunteer	3%	N=12	23%	N=103	20%	N=93	6%	N=29	48%	N=217	100%	N=454
Opportunities to participate in community matters	5%	N=21	29%	N=132	27%	N=127	5%	N=23	34%	N=159	100%	N=462

Table 42: Question 7

Please indicate whether or not you have done each of the following in the last 12 months.	No		Yes		Total	
	%	N	%	N	%	N
Household member was a victim of a crime in Ramsey	94%	N=431	6%	N=30	100%	N=461
Reported a crime to the police in Ramsey	81%	N=373	19%	N=88	100%	N=461
Campaigned or advocated for an issue, cause or candidate	92%	N=424	8%	N=37	100%	N=461
Contacted the City of Ramsey (in-person, phone, email or web) for help or information	62%	N=286	38%	N=175	100%	N=461
Contacted Ramsey elected officials (in-person, phone, email or web) to express your opinion	89%	N=412	11%	N=49	100%	N=461

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Table 43: Question 8

In the last 12 months, about how many times, if at all, have you or other household members done each of the following in Ramsey?	2 times a week or more		2-4 times a month		Once a month or less		Not at all		Total	
	%	N	%	N	%	N	%	N	%	N
Visited a neighborhood park or City park	21%	N=96	30%	N=140	36%	N=164	13%	N=61	100%	N=461
Attended a City-sponsored event	1%	N=4	5%	N=22	44%	N=204	50%	N=230	100%	N=461
Used rail or other public transportation instead of driving	7%	N=30	4%	N=18	25%	N=117	64%	N=297	100%	N=463
Walked or biked instead of driving	7%	N=33	21%	N=96	35%	N=159	37%	N=171	100%	N=461
Volunteered your time to some group/activity in Ramsey	2%	N=9	6%	N=26	12%	N=56	80%	N=371	100%	N=463

Table 44: Question 9

Thinking about local public meetings (of local elected officials like City Council or County Commissioners, advisory boards, town halls, HOA, neighborhood watch, etc.), in the last 12 months, about how many times, if at all, have you or other household members attended or watched a local public meeting?	2 times a week or more		2-4 times a month		Once a month or less		Not at all		Total	
	%	N	%	N	%	N	%	N	%	N
Attended a local public meeting	0%	N=0	1%	N=5	13%	N=59	86%	N=396	100%	N=460
Watched (online or on television) a local public meeting	1%	N=3	2%	N=10	14%	N=67	83%	N=381	100%	N=461

Table 45: Question 10

Please rate the quality of each of the following services in Ramsey:	Excellent		Good		Fair		Poor		Don't know		Total	
	%	N	%	N	%	N	%	N	%	N	%	N
Police services	41%	N=190	44%	N=201	7%	N=31	1%	N=6	7%	N=34	100%	N=462
Fire services	34%	N=159	38%	N=177	4%	N=18	0%	N=1	23%	N=107	100%	N=462
Crime prevention	20%	N=92	45%	N=209	11%	N=51	1%	N=6	22%	N=103	100%	N=461
Fire prevention and education	21%	N=97	34%	N=155	11%	N=50	1%	N=5	33%	N=154	100%	N=461
Traffic enforcement	16%	N=73	47%	N=215	15%	N=70	5%	N=24	16%	N=70	100%	N=453
Street repair	6%	N=28	36%	N=164	38%	N=177	17%	N=79	3%	N=12	100%	N=461
Street cleaning	9%	N=43	45%	N=208	31%	N=143	12%	N=55	3%	N=13	100%	N=462
Street lighting	10%	N=45	47%	N=214	25%	N=115	15%	N=68	4%	N=19	100%	N=461
Snow removal	13%	N=59	44%	N=203	26%	N=119	16%	N=72	1%	N=5	100%	N=458
Sidewalk maintenance	9%	N=41	38%	N=173	21%	N=95	11%	N=50	22%	N=101	100%	N=460
Traffic signal timing	8%	N=35	44%	N=202	31%	N=142	16%	N=74	1%	N=7	100%	N=460
Storm drainage	12%	N=56	51%	N=236	19%	N=86	3%	N=12	15%	N=69	100%	N=459
Drinking water	17%	N=80	40%	N=183	15%	N=69	3%	N=12	25%	N=116	100%	N=461
Sewer services	13%	N=59	42%	N=192	9%	N=42	1%	N=4	35%	N=162	100%	N=459
City parks	19%	N=86	54%	N=246	20%	N=91	4%	N=16	4%	N=20	100%	N=460
Recreation centers or facilities	10%	N=48	35%	N=159	22%	N=102	9%	N=43	23%	N=106	100%	N=458
Land use, planning and zoning	6%	N=29	28%	N=129	26%	N=117	19%	N=88	21%	N=96	100%	N=459
Code enforcement (weeds, abandoned buildings, etc.)	7%	N=32	32%	N=143	23%	N=107	15%	N=70	23%	N=103	100%	N=454
Animal control	11%	N=51	35%	N=161	22%	N=101	8%	N=36	24%	N=112	100%	N=460
Economic development	8%	N=37	30%	N=138	27%	N=122	16%	N=72	20%	N=91	100%	N=460
Public information services	10%	N=46	40%	N=182	28%	N=128	4%	N=17	18%	N=83	100%	N=456
Preservation of natural areas such as open space, farmlands and greenbelts	11%	N=51	44%	N=199	23%	N=103	10%	N=46	12%	N=56	100%	N=456

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Please rate the quality of each of the following services in Ramsey:	Excellent		Good		Fair		Poor		Don't know		Total	
Overall customer service by Ramsey employees (police, receptionists, planners, etc.)	25%	N=110	48%	N=212	14%	N=61	3%	N=13	11%	N=50	100%	N=446
Trail maintenance	12%	N=53	49%	N=224	20%	N=93	5%	N=25	14%	N=62	100%	N=457

Table 46: Question 11

Overall, how would you rate the quality of the services provided by each of the following?	Excellent		Good		Fair		Poor		Don't know		Total	
The City of Ramsey	20%	N=92	51%	N=233	19%	N=85	3%	N=15	6%	N=29	100%	N=454
The Federal Government	6%	N=26	32%	N=144	32%	N=144	14%	N=62	17%	N=78	100%	N=454
Anoka County Government	9%	N=40	47%	N=215	28%	N=125	5%	N=22	12%	N=53	100%	N=455
The State of Minnesota	9%	N=41	39%	N=176	30%	N=137	8%	N=36	15%	N=66	100%	N=455

Table 47: Question 12

Please rate the following categories of Ramsey government performance:	Excellent		Good		Fair		Poor		Don't know		Total	
The value of services for the taxes paid to Ramsey	5%	N=24	37%	N=167	37%	N=169	14%	N=66	6%	N=28	100%	N=453
The overall direction that Ramsey is taking	7%	N=31	38%	N=173	30%	N=138	17%	N=76	8%	N=37	100%	N=455
The job Ramsey government does at welcoming citizen involvement	9%	N=40	34%	N=156	26%	N=118	10%	N=44	22%	N=98	100%	N=457
Overall confidence in Ramsey government	6%	N=29	39%	N=178	30%	N=136	13%	N=59	12%	N=54	100%	N=456
Generally acting in the best interest of the community	8%	N=39	42%	N=191	28%	N=126	12%	N=54	10%	N=47	100%	N=456
Being honest	10%	N=44	37%	N=170	22%	N=102	9%	N=41	21%	N=97	100%	N=454
Treating all residents fairly	9%	N=42	37%	N=167	25%	N=116	8%	N=34	21%	N=97	100%	N=456
Development and success of a strategic action plan	7%	N=31	30%	N=138	22%	N=101	15%	N=70	25%	N=115	100%	N=455

Table 48: Question 13

Please rate how important, if at all, you think it is for the Ramsey community to focus on each of the following in the coming two years:	Essential		Very important		Somewhat important		Not at all important		Total	
Overall feeling of safety in Ramsey	50%	N=229	36%	N=163	14%	N=64	0%	N=2	100%	N=459
Overall ease of getting to the places you usually have to visit	29%	N=135	47%	N=214	21%	N=98	3%	N=12	100%	N=459
Quality of overall natural environment in Ramsey	31%	N=140	49%	N=225	17%	N=80	3%	N=14	100%	N=460
Overall "built environment" of Ramsey (including overall design, buildings, parks and transportation systems)	30%	N=137	45%	N=206	23%	N=107	2%	N=8	100%	N=458
Health and wellness opportunities in Ramsey	23%	N=106	39%	N=181	33%	N=150	5%	N=23	100%	N=460
Overall opportunities for education and enrichment	25%	N=115	36%	N=166	33%	N=151	6%	N=25	100%	N=457
Overall economic health of Ramsey	40%	N=184	45%	N=206	14%	N=64	1%	N=5	100%	N=458
Sense of community	23%	N=107	44%	N=201	31%	N=143	2%	N=7	100%	N=457

Table 49: Question 14

To what extent are each of the following a source of information for you about Ramsey city government and its activities?	Major source		Moderate source		Minor source		Not a source		Total	
City newsletter (Ramsey Resident)	59%	N=275	27%	N=124	10%	N=49	3%	N=15	100%	N=464
Local newspaper	9%	N=41	27%	N=123	26%	N=121	38%	N=178	100%	N=463



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To what extent are each of the following a source of information for you about Ramsey city government and its activities?	Major source		Moderate source		Minor source		Not a source		Total	
City website (www.cityoframsey.com)	16%	N=73	34%	N=157	31%	N=141	19%	N=87	100%	N=457
Word-of-mouth	12%	N=56	40%	N=184	30%	N=140	18%	N=81	100%	N=461
Cable television (QCTV)	2%	N=8	12%	N=53	19%	N=87	68%	N=311	100%	N=459
City employees	4%	N=20	14%	N=66	25%	N=117	56%	N=257	100%	N=459
Public meetings	4%	N=17	14%	N=63	28%	N=130	55%	N=252	100%	N=462
City social media (Facebook)	21%	N=98	24%	N=108	14%	N=63	42%	N=191	100%	N=460

Table 50: Question 15

Please indicate how likely you would be, if at all, to engage with the City on the following social media platforms in the future:	Very likely		Somewhat likely		Not at all likely		Don't know		Total	
City Facebook page	32%	N=147	25%	N=117	34%	N=159	8%	N=38	100%	N=461
City Twitter feed	5%	N=25	9%	N=42	69%	N=318	16%	N=74	100%	N=459
Nextdoor	10%	N=44	16%	N=74	50%	N=229	24%	N=112	100%	N=459
Instagram	5%	N=25	15%	N=68	63%	N=288	17%	N=79	100%	N=460

Table 51: Question 16

Please indicate to what extent you support or oppose the city investigating the following changes to new or existing amenities, each of which could accordingly result in an increase to the tax levy:	Strongly support		Somewhat support		Somewhat oppose		Strongly oppose		Don't know		Total	
Making improvements to existing/established parks	32%	N=149	49%	N=226	11%	N=50	4%	N=21	3%	N=15	100%	N=461
Building new parks	25%	N=117	36%	N=168	22%	N=103	11%	N=50	5%	N=23	100%	N=461
Making improvements to existing trails	34%	N=155	44%	N=203	13%	N=58	6%	N=27	4%	N=17	100%	N=461
Building new trails	32%	N=149	40%	N=182	14%	N=64	10%	N=47	4%	N=18	100%	N=459
Building a new community center	31%	N=141	28%	N=129	18%	N=82	14%	N=63	10%	N=46	100%	N=461

Table 52: Question 17

Please rate how important, if at all, you think each of the following priorities are for the City to focus on in the next five years:	Essential		Very important		Somewhat important		Not at all important		Total	
Balancing rural character and urban growth (development patterns)	40%	N=183	31%	N=143	24%	N=109	5%	N=24	100%	N=460
Creating an active community (parks, trails, open space, recreation)	28%	N=131	40%	N=185	26%	N=117	6%	N=27	100%	N=460
Creating a connected community (roads, trails, sidewalks, rail, transportation)	39%	N=179	32%	N=146	23%	N=106	6%	N=27	100%	N=459
Creating a positive learning environment (education and outreach)	23%	N=106	32%	N=145	35%	N=161	10%	N=46	100%	N=459

Table 53: Question 18

How interested are you, if at all, in receiving information from the City about each of the following topics?	Extremely interested		Very interested		Moderately interested		Slightly interested		Not at all interested		Total	
Council & Commissions topics/agendas	11%	N=52	19%	N=87	36%	N=167	19%	N=85	14%	N=66	100%	N=457
Lifestyle/community interest	13%	N=61	30%	N=137	31%	N=143	16%	N=73	9%	N=41	100%	N=456
Recreation	22%	N=103	34%	N=153	28%	N=127	10%	N=45	6%	N=30	100%	N=457

The National Citizen Survey™

How interested are you, if at all, in receiving information from the City about each of the following topics?	Extremely interested		Very interested		Moderately interested		Slightly interested		Not at all interested		Total	
Local businesses (e.g., new/expanded businesses, grand openings, etc.)	22%	N=98	38%	N=173	25%	N=115	9%	N=40	7%	N=31	100%	N=457
Public safety	21%	N=96	38%	N=175	25%	N=116	11%	N=50	4%	N=19	100%	N=457
Events	24%	N=108	39%	N=179	26%	N=118	8%	N=35	4%	N=19	100%	N=458
Road work	23%	N=107	40%	N=183	22%	N=103	10%	N=47	4%	N=18	100%	N=458
Real estate development projects	15%	N=70	31%	N=140	31%	N=140	14%	N=66	9%	N=40	100%	N=456
Getting involved/engagement opportunities	9%	N=41	22%	N=100	35%	N=158	21%	N=94	13%	N=61	100%	N=454
Budget/performance measurements	12%	N=56	26%	N=119	30%	N=139	19%	N=87	12%	N=56	100%	N=456

Table 54: Question 19

The City employs a long-term maintenance program to cost-effectively maintain all 175-plus miles of City streets. Currently, street reconstruction projects are funded 25% by special assessments levied against benefitting properties, and 75% by street reconstruction bonds, which are paid back using general property taxes. The City periodically evaluates funding sources for this on-going program. Please indicate the extent to which you would support or oppose the following funding sources:	Strongly support		Somewhat support		Somewhat oppose		Strongly oppose		Don't know		Total	
Current method, which requires 25% of funding by special assessments levied against benefitting properties over 5-15 years	29%	N=132	37%	N=169	10%	N=44	9%	N=43	15%	N=68	100%	N=457
Zero special assessments levied against benefitting properties, which requires 100% of funding by general property tax increases	8%	N=36	19%	N=89	24%	N=110	32%	N=148	16%	N=74	100%	N=457
Electric and/or gas utility fee increases, approximately \$8 per utility, per month	5%	N=21	18%	N=82	25%	N=113	38%	N=175	14%	N=66	100%	N=457

Table 55: Question D1

How often, if at all, do you do each of the following, considering all of the times you could?	Never		Rarely		Sometimes		Usually		Always		Total	
Recycle at home	2%	N=8	1%	N=7	4%	N=18	20%	N=90	73%	N=337	100%	N=460
Purchase goods or services from a business located in Ramsey	1%	N=5	11%	N=49	43%	N=197	33%	N=152	12%	N=57	100%	N=460
Vote in local elections	10%	N=46	8%	N=37	16%	N=72	27%	N=125	39%	N=176	100%	N=456

Table 56: Question D3

What impact, if any, do you think the economy will have on your family income in the next 6 months? Do you think the impact will be:	Percent	Number
Very positive	8%	N=38
Somewhat positive	32%	N=145
Neutral	50%	N=231
Somewhat negative	8%	N=37
Very negative	2%	N=8
Total	100%	N=459

The National Citizen Survey™

Table 57: Question D4

What is your employment status?	Percent	Number
Working full time for pay	74%	N=339
Working part time for pay	6%	N=28
Unemployed, looking for paid work	2%	N=10
Unemployed, not looking for paid work	2%	N=11
Fully retired	16%	N=72
Total	100%	N=460

Table 58: Question D5

Do you work inside the boundaries of Ramsey?	Percent	Number
Yes, outside the home	15%	N=67
Yes, from home	7%	N=33
No	78%	N=352
Total	100%	N=452

Table 59: Question D6

How many years have you lived in Ramsey?	Percent	Number
Less than 2 years	16%	N=72
2 to 5 years	25%	N=116
6 to 10 years	13%	N=60
11 to 20 years	20%	N=95
More than 20 years	26%	N=120
Total	100%	N=463

Table 60: Question D7

Which best describes the building you live in?	Percent	Number
One family house detached from any other houses	82%	N=377
Building with two or more homes (duplex, townhome, apartment or condominium)	18%	N=81
Mobile home	0%	N=0
Other	1%	N=3
Total	100%	N=462

Table 61: Question D8

Is this house, apartment or mobile home...	Percent	Number
Rented	6%	N=29
Owned	94%	N=432
Total	100%	N=461

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Table 62: Question D9

About how much is your monthly housing cost for the place you live (including rent, mortgage payment, property tax, property insurance and homeowners' association (HOA) fees)?	Percent	Number
Less than \$300 per month	3%	N=11
\$300 to \$599 per month	6%	N=28
\$600 to \$999 per month	13%	N=58
\$1,000 to \$1,499 per month	34%	N=152
\$1,500 to \$2,499 per month	38%	N=173
\$2,500 or more per month	6%	N=27
Total	100%	N=450

Table 63: Question D10

Do any children 17 or under live in your household?	Percent	Number
No	54%	N=250
Yes	46%	N=212
Total	100%	N=463

Table 64: Question D11

Are you or any other members of your household aged 65 or older?	Percent	Number
No	79%	N=362
Yes	21%	N=97
Total	100%	N=459

Table 65: Question D12

How much do you anticipate your household's total income before taxes will be for the current year? (Please include in your total income money from all sources for all persons living in your household.)	Percent	Number
Less than \$25,000	3%	N=13
\$25,000 to \$49,999	9%	N=42
\$50,000 to \$99,999	39%	N=171
\$100,000 to \$149,999	35%	N=154
\$150,000 or more	14%	N=62
Total	100%	N=443

Table 66: Question D13

Are you Spanish, Hispanic or Latino?	Percent	Number
No, not Spanish, Hispanic or Latino	98%	N=450
Yes, I consider myself to be Spanish, Hispanic or Latino	2%	N=7
Total	100%	N=457

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Table 67: Question D14

What is your race? (Mark one or more races to indicate what race(s) you consider yourself to be.)	Percent	Number
American Indian or Alaskan Native	1%	N=5
Asian, Asian Indian or Pacific Islander	3%	N=14
Black or African American	1%	N=5
White	93%	N=428
Other	3%	N=15

Total may exceed 100% as respondents could select more than one option.

Table 68: Question D15

In which category is your age?	Percent	Number
18 to 24 years	2%	N=11
25 to 34 years	27%	N=125
35 to 44 years	23%	N=106
45 to 54 years	21%	N=96
55 to 64 years	11%	N=49
65 to 74 years	11%	N=52
75 years or older	4%	N=20
Total	100%	N=459

Table 69: Question D16

What is your sex?	Percent	Number
Female	50%	N=225
Male	50%	N=226
Total	100%	N=451

Table 70: Question D17

Do you consider a cell phone or landline your primary telephone number?	Percent	Number
Cell	73%	N=337
Land line	12%	N=56
Both	15%	N=67
Total	100%	N=460

## Appendix B: Benchmark Comparisons

### Comparison Data

NRC’s database of comparative resident opinion is comprised of resident perspectives gathered in surveys from over 500 communities whose residents evaluated the same kinds of topics on The National Citizen Survey™. The comparison evaluations are from the most recent survey completed in each community; most communities conduct surveys every year or in alternating years. NRC adds the latest results quickly upon survey completion, keeping the benchmark data fresh and relevant. The communities in the database represent a wide geographic and population range. The City of Ramsey chose to have comparisons made to the entire database and a subset of similar jurisdictions from the database (communities in Minnesota and Wisconsin with populations 10,000 to 50,000).

### Interpreting the Results

Ratings are compared when there are at least five communities in which a similar question was asked. Where comparisons are available, four columns are provided in the table. The first column is Ramsey’s “percent positive.” The percent positive is the combination of the top two most positive response options (i.e., “excellent” and “good,” “very safe” and “somewhat safe,” etc.), or, in the case of resident behaviors/participation, the percent positive represents the proportion of respondents indicating “yes” or participating in an activity at least once a month. The second column is the rank assigned to Ramsey’s rating among communities where a similar question was asked. The third column is the number of communities that asked a similar question. The final column shows the comparison of Ramsey’s rating to the benchmark.

In that final column, Ramsey’s results are noted as being “higher” than the benchmark, “lower” than the benchmark or “similar” to the benchmark, meaning that the average rating given by Ramsey residents is statistically similar to or different (greater or lesser) than the benchmark. More extreme differences are noted as “much higher” or “much lower.”

Benchmark Database Characteristics	
Region	Percent
New England	3%
Middle Atlantic	5%
East North Central	15%
West North Central	13%
South Atlantic	22%
East South Central	3%
West South Central	7%
Mountain	16%
Pacific	16%
Population	Percent
Less than 10,000	10%
10,000 to 24,999	22%
25,000 to 49,999	23%
50,000 to 99,999	22%
100,000 or more	23%

## National Benchmark Comparisons

Table 71: Community Characteristics General

	Percent positive	Rank	Number of communities in comparison	Comparison to benchmark
The overall quality of life in Ramsey	81%	297	476	Similar
Overall image or reputation of Ramsey	60%	263	363	Similar
Ramsey as a place to live	85%	259	408	Similar
Your neighborhood as a place to live	82%	169	324	Similar
Ramsey as a place to raise children	87%	204	397	Similar
Ramsey as a place to retire	55%	279	371	Similar
Overall appearance of Ramsey	68%	229	372	Similar

Table 72: Community Characteristics by Facet

		Percent positive	Rank	Number of communities in comparison	Comparison to benchmark
Safety	Overall feeling of safety in Ramsey	90%	153	347	Similar
	In your neighborhood during the day	97%	98	369	Similar
	In Ramsey's downtown/commercial areas during the day	96%	72	323	Similar
Mobility	Overall ease of getting to the places you usually have to visit	69%	177	250	Similar
	Availability of paths and walking trails	69%	141	324	Similar
	Ease of walking in Ramsey	67%	147	312	Similar
	Ease of travel by bicycle in Ramsey	62%	101	314	Similar
	Ease of travel by car in Ramsey	69%	136	313	Similar
	Traffic flow on major streets	59%	114	357	Similar
Natural Environment	Quality of overall natural environment in Ramsey	84%	142	285	Similar
	Cleanliness of Ramsey	74%	174	292	Similar
Built Environment	Overall "built environment" of Ramsey (including overall design, buildings, parks and transportation systems)	58%	156	239	Similar
	Overall quality of new development in Ramsey	42%	243	297	Similar
	Availability of affordable quality housing	64%	43	310	Higher
	Variety of housing options	68%	64	288	Similar
	Public places where people want to spend time	51%	194	232	Lower
	Overall economic health of Ramsey	54%	169	245	Similar
	Vibrant downtown/commercial area	20%	205	223	Much lower
	Overall quality of business and service establishments in Ramsey	46%	250	279	Lower
	Cost of living in Ramsey	50%	62	242	Similar
	Shopping opportunities	20%	288	303	Much lower
Economy	Employment opportunities	31%	210	319	Similar
	Ramsey as a place to visit	39%	231	261	Lower
	Ramsey as a place to work	50%	288	374	Similar
	Health and wellness opportunities in Ramsey	59%	187	240	Similar
	Recreational opportunities	50%	257	308	Lower
Recreation and Wellness	Fitness opportunities (including exercise classes and paths or trails, etc.)	64%	178	230	Similar
Education and Enrichment	Overall opportunities for education and enrichment	53%	194	242	Lower
	Opportunities to attend cultural/arts/music activities	44%	237	306	Similar
	Adult educational opportunities	52%	160	219	Similar
	K-12 education	71%	174	279	Similar
	Availability of affordable quality child care/preschool	61%	86	259	Similar
Community Engagement	Opportunities to participate in community matters	51%	231	280	Similar
	Opportunities to volunteer	49%	263	272	Lower

The National Citizen Survey™

Table 73: Governance General

	Percent positive	Rank	Number of communities in comparison	Comparison to benchmark
Services provided by the City of Ramsey	76%	196	449	Similar
Overall customer service by Ramsey employees (police, receptionists, planners, etc.)	81%	133	392	Similar
Value of services for the taxes paid to Ramsey	45%	289	418	Similar
Overall direction that Ramsey is taking	49%	245	329	Similar
Job Ramsey government does at welcoming citizen involvement	55%	148	328	Similar
Overall confidence in Ramsey government	51%	150	245	Similar
Generally acting in the best interest of the community	56%	135	245	Similar
Being honest	60%	122	237	Similar
Treating all residents fairly	58%	115	242	Similar
Services provided by the Federal Government	45%	62	254	Similar

Table 74: Governance by Facet

		Percent positive	Rank	Number of communities in comparison	Comparison to benchmark
Safety	Police services	91%	68	487	Similar
	Fire services	95%	170	407	Similar
	Crime prevention	84%	98	376	Similar
	Fire prevention and education	82%	115	296	Similar
	Animal control	61%	203	357	Similar
Mobility	Traffic enforcement	75%	95	389	Similar
	Street repair	43%	253	413	Similar
	Street cleaning	56%	238	333	Similar
	Street lighting	59%	217	344	Similar
	Snow removal	58%	218	305	Similar
	Sidewalk maintenance	60%	151	335	Similar
	Traffic signal timing	52%	149	270	Similar
	Drinking water	76%	123	332	Similar
Natural Environment	Preservation of natural areas such as open space, farmlands and greenbelts	63%	140	263	Similar
Built Environment	Storm drainage	75%	118	370	Similar
	Sewer services	84%	137	337	Similar
	Land use, planning and zoning	44%	216	315	Similar
	Code enforcement (weeds, abandoned buildings, etc.)	50%	214	404	Similar
Economy	Economic development	47%	191	295	Similar
Recreation and Wellness	City parks	76%	246	340	Similar
	Recreation centers or facilities	59%	228	285	Similar
Community Engagement	Public information services	61%	197	294	Similar

Table 75: Participation General

	Percent positive	Rank	Number of communities in comparison	Comparison to benchmark
Sense of community	48%	257	321	Similar
Recommend living in Ramsey to someone who asks	84%	198	293	Similar
Remain in Ramsey for the next five years	86%	116	284	Similar
Contacted Ramsey (in-person, phone, email or web) for help or information	38%	268	331	Similar



The National Citizen Survey™

Table 76: Participation by Facet

		Percent positive	Rank	Number of communities in comparison	Comparison to benchmark
Safety	Did NOT report a crime to the police	81%	110	237	Similar
	Household member was NOT a victim of a crime	94%	40	281	Similar
Mobility	Used rail or other public transportation instead of driving	36%	52	192	Similar
	Walked or biked instead of driving	63%	81	233	Similar
Natural Environment	Recycle at home	97%	41	265	Higher
Built Environment	NOT experiencing housing costs stress	79%	37	261	Higher
Economy	Purchase goods or services from a business located in Ramsey	88%	222	230	Similar
	Economy will have positive impact on income	40%	41	262	Similar
	Work inside boundaries of Ramsey	22%	222	231	Lower
Recreation and Wellness	Visited a neighborhood park or City park	87%	104	276	Similar
Education and Enrichment	Attended City-sponsored event	50%	158	233	Similar
Community Engagement	Campaigned or advocated for an issue, cause or candidate	8%	214	214	Lower
	Contacted Ramsey elected officials (in-person, phone, email or web) to express your opinion	11%	219	229	Similar
	Volunteered your time to some group/activity in Ramsey	20%	262	270	Much lower
	Attended a local public meeting	14%	242	270	Similar
	Watched (online or on television) a local public meeting	17%	174	231	Similar
	Vote in local elections	82%	164	264	Similar

Communities included in national comparisons

The communities included in Ramsey’s comparisons are listed on the following pages along with their population according to the 2010 Census.

Adams County, CO.....	441,603	Athens-Clarke County, GA .....	115,452
Airway Heights city, WA .....	6,114	Auburn city, AL .....	53,380
Albany city, OR .....	50,158	Augusta CCD, GA .....	134,777
Albemarle County, VA.....	98,970	Aurora city, CO .....	325,078
Albert Lea city, MN.....	18,016	Austin city, TX .....	790,390
Alexandria city, VA.....	139,966	Avon town, CO .....	6,447
Algonquin village, IL.....	30,046	Avon town, IN .....	12,446
Aliso Viejo city, CA .....	47,823	Avondale city, AZ .....	76,238
Altoona city, IA .....	14,541	Azusa city, CA.....	46,361
American Canyon city, CA.....	19,454	Bainbridge Island city, WA.....	23,025
Ames city, IA .....	58,965	Baltimore city, MD.....	620,961
Andover CDP, MA.....	8,762	Bartonville town, TX.....	1,469
Ankeny city, IA .....	45,582	Battle Creek city, MI.....	52,347
Ann Arbor city, MI.....	113,934	Bay City city, MI.....	34,932
Annapolis city, MD .....	38,394	Bay Village city, OH.....	15,651
Apache Junction city, AZ.....	35,840	Baytown city, TX.....	71,802
Arapahoe County, CO.....	572,003	Bedford city, TX.....	46,979
Arkansas City city, AR.....	366	Bedford town, MA .....	13,320
Arlington city, TX .....	365,438	Bellevue city, WA .....	122,363
Arvada city, CO.....	106,433	Bellingham city, WA .....	80,885
Asheville city, NC .....	83,393	Benbrook city, TX.....	21,234
Ashland city, OR .....	20,078	Bend city, OR.....	76,639
Ashland town, MA.....	16,593	Bethlehem township, PA.....	23,730
Ashland town, VA.....	7,225	Bettendorf city, IA.....	33,217
Aspen city, CO.....	6,658	Billings city, MT.....	104,170

The National Citizen Survey™

Blaine city, MN.....	57,186	Columbia city, MO.....	108,500
Bloomfield Hills city, MI.....	3,869	Columbia city, SC.....	129,272
Bloomington city, IN.....	80,405	Columbia Falls city, MT.....	4,688
Bloomington city, MN.....	82,893	Commerce City city, CO.....	45,913
Blue Springs city, MO.....	52,575	Concord city, CA.....	122,067
Boise City city, ID.....	205,671	Concord town, MA.....	17,668
Bonner Springs city, KS.....	7,314	Conshohocken borough, PA.....	7,833
Boone County, KY.....	118,811	Coolidge city, AZ.....	11,825
Boulder city, CO.....	97,385	Coon Rapids city, MN.....	61,476
Bowling Green city, KY.....	58,067	Copperas Cove city, TX.....	32,032
Bozeman city, MT.....	37,280	Coral Springs city, FL.....	121,096
Brentwood city, MO.....	8,055	Coronado city, CA.....	18,912
Brentwood city, TN.....	37,060	Corvallis city, OR.....	54,462
Brighton city, CO.....	33,352	Cottonwood Heights city, UT.....	33,433
Brighton city, MI.....	7,444	Creve Coeur city, MO.....	17,833
Bristol city, TN.....	26,702	Cross Roads town, TX.....	1,563
Broken Arrow city, OK.....	98,850	Cupertino city, CA.....	58,302
Brookfield city, WI.....	37,920	Dacono city, CO.....	4,152
Brookline CDP, MA.....	58,732	Dade City city, FL.....	6,437
Brooklyn Center city, MN.....	30,104	Dakota County, MN.....	398,552
Brooklyn city, OH.....	11,169	Dallas city, OR.....	14,583
Broomfield city, CO.....	55,889	Dallas city, TX.....	1,197,816
Brownsburg town, IN.....	21,285	Danville city, KY.....	16,218
Buffalo Grove village, IL.....	41,496	Dardenne Prairie city, MO.....	11,494
Burien city, WA.....	33,313	Darien city, IL.....	22,086
Burleson city, TX.....	36,690	Davenport city, FL.....	2,888
Burlingame city, CA.....	28,806	Davenport city, IA.....	99,685
Cabarrus County, NC.....	178,011	Davidson town, NC.....	10,944
Cambridge city, MA.....	105,162	Dayton city, OH.....	141,527
Cannon Beach city, OR.....	1,690	Dayton town, WY.....	757
Cañon City city, CO.....	16,400	Dearborn city, MI.....	98,153
Canton city, SD.....	3,057	Decatur city, GA.....	19,335
Cape Coral city, FL.....	154,305	Del Mar city, CA.....	4,161
Cape Girardeau city, MO.....	37,941	DeLand city, FL.....	27,031
Carlisle borough, PA.....	18,682	Delaware city, OH.....	34,753
Carlsbad city, CA.....	105,328	Delray Beach city, FL.....	60,522
Carroll city, IA.....	10,103	Denison city, TX.....	22,682
Cartersville city, GA.....	19,731	Denton city, TX.....	113,383
Cary town, NC.....	135,234	Denver city, CO.....	600,158
Castine town, ME.....	1,366	Derby city, KS.....	22,158
Castle Pines North city, CO.....	10,360	Des Moines city, IA.....	203,433
Castle Rock town, CO.....	48,231	Des Peres city, MO.....	8,373
Cedar Hill city, TX.....	45,028	Destin city, FL.....	12,305
Cedar Rapids city, IA.....	126,326	Dothan city, AL.....	65,496
Celina city, TX.....	6,028	Douglas County, CO.....	285,465
Centennial city, CO.....	100,377	Dover city, NH.....	29,987
Chandler city, AZ.....	236,123	Dublin city, CA.....	46,036
Chandler city, TX.....	2,734	Dublin city, OH.....	41,751
Chanhausen city, MN.....	22,952	Duluth city, MN.....	86,265
Chapel Hill town, NC.....	57,233	Durham city, NC.....	228,330
Chardon city, OH.....	5,148	Durham County, NC.....	267,587
Charles County, MD.....	146,551	Dyer town, IN.....	16,390
Charlotte city, NC.....	731,424	Eagan city, MN.....	64,206
Charlotte County, FL.....	159,978	Eagle Mountain city, UT.....	21,415
Charlottesville city, VA.....	43,475	Eagle town, CO.....	6,508
Chattanooga city, TN.....	167,674	East Grand Forks city, MN.....	8,601
Chautauqua town, NY.....	4,464	East Lansing city, MI.....	48,579
Chesterfield County, VA.....	316,236	Eau Claire city, WI.....	65,883
Citrus Heights city, CA.....	83,301	Eden Prairie city, MN.....	60,797
Clackamas County, OR.....	375,992	Eden town, VT.....	1,323
Clarendon Hills village, IL.....	8,427	Edgerton city, KS.....	1,671
Clayton city, MO.....	15,939	Edgewater city, CO.....	5,170
Clearwater city, FL.....	107,685	Edina city, MN.....	47,941
Cleveland Heights city, OH.....	46,121	Edmond city, OK.....	81,405
Clinton city, SC.....	8,490	Edmonds city, WA.....	39,709
Clive city, IA.....	15,447	El Cerrito city, CA.....	23,549
Clovis city, CA.....	95,631	El Dorado County, CA.....	181,058
College Park city, MD.....	30,413	El Paso de Robles (Paso Robles) city, CA.....	29,793
College Station city, TX.....	93,857	Elk Grove city, CA.....	153,015
Colleyville city, TX.....	22,807	Elko New Market city, MN.....	4,110

## The National Citizen Survey™

Elmhurst city, IL.....	44,121	Hooksett town, NH.....	13,451
Encinitas city, CA.....	59,518	Hopkins city, MN.....	17,591
Englewood city, CO.....	30,255	Hopkinton town, MA.....	14,925
Erie town, CO.....	18,135	Hoquiam city, WA.....	8,726
Escambia County, FL.....	297,619	Horry County, SC.....	269,291
Estes Park town, CO.....	5,858	Howard village, WI.....	17,399
Euclid city, OH.....	48,920	Hudson city, OH.....	22,262
Fairview town, TX.....	7,248	Hudson town, CO.....	2,356
Farmers Branch city, TX.....	28,616	Huntley village, IL.....	24,291
Farmersville city, TX.....	3,301	Hurst city, TX.....	37,337
Farmington Hills city, MI.....	79,740	Hutchinson city, MN.....	14,178
Farmington town, CT.....	25,340	Hutto city, TX.....	14,698
Fayetteville city, NC.....	200,564	Independence city, MO.....	116,830
Fernandina Beach city, FL.....	11,487	Indianola city, IA.....	14,782
Fishers town, IN.....	76,794	Indio city, CA.....	76,036
Flagstaff city, AZ.....	65,870	Iowa City city, IA.....	67,862
Flower Mound town, TX.....	64,669	Irving city, TX.....	216,290
Forest Grove city, OR.....	21,083	Issaquah city, WA.....	30,434
Fort Collins city, CO.....	143,986	Jackson city, MO.....	13,758
Fort Lauderdale city, FL.....	165,521	Jackson County, MI.....	160,248
Fort Smith city, AR.....	86,209	James City County, VA.....	67,009
Franklin city, TN.....	62,487	Jefferson County, NY.....	116,229
Fremont city, CA.....	214,089	Jefferson Parish, LA.....	432,552
Friendswood city, TX.....	35,805	Johnson City city, TN.....	63,152
Fruita city, CO.....	12,646	Johnston city, IA.....	17,278
Gahanna city, OH.....	33,248	Jupiter town, FL.....	55,156
Gaithersburg city, MD.....	59,933	Kalamazoo city, MI.....	74,262
Galveston city, TX.....	47,743	Kansas City city, KS.....	145,786
Gardner city, KS.....	19,123	Kansas City city, MO.....	459,787
Georgetown city, TX.....	47,400	Keizer city, OR.....	36,478
Germantown city, TN.....	38,844	Kenmore city, WA.....	20,460
Gilbert town, AZ.....	208,453	Kennedale city, TX.....	6,763
Gillette city, WY.....	29,087	Kennett Square borough, PA.....	6,072
Glen Ellyn village, IL.....	27,450	Kent city, WA.....	92,411
Glendora city, CA.....	50,073	Kerrville city, TX.....	22,347
Glenview village, IL.....	44,692	Kettering city, OH.....	56,163
Globe city, AZ.....	7,532	Key West city, FL.....	24,649
Golden city, CO.....	18,867	King City city, CA.....	12,874
Golden Valley city, MN.....	20,371	King County, WA.....	1,931,249
Goodyear city, AZ.....	65,275	Kirkland city, WA.....	48,787
Grafton village, WI.....	11,459	Kirkwood city, MO.....	27,540
Grand Blanc city, MI.....	8,276	Knoxville city, IA.....	7,313
Grants Pass city, OR.....	34,533	La Plata town, MD.....	8,753
Grass Valley city, CA.....	12,860	La Porte city, TX.....	33,800
Greeley city, CO.....	92,889	La Vista city, NE.....	15,758
Greenville city, NC.....	84,554	Lafayette city, CO.....	24,453
Greenwich town, CT.....	61,171	Laguna Beach city, CA.....	22,723
Greenwood Village city, CO.....	13,925	Laguna Niguel city, CA.....	62,979
Greer city, SC.....	25,515	Lake Forest city, IL.....	19,375
Gunnison County, CO.....	15,324	Lake in the Hills village, IL.....	28,965
Hailey city, ID.....	7,960	Lake Stevens city, WA.....	28,069
Haines Borough, AK.....	2,508	Lake Worth city, FL.....	34,910
Haltom City city, TX.....	42,409	Lake Zurich village, IL.....	19,631
Hamilton city, OH.....	62,477	Lakeville city, MN.....	55,954
Hamilton town, MA.....	7,764	Lakewood city, CO.....	142,980
Hampton city, VA.....	137,436	Lakewood city, WA.....	58,163
Hanover County, VA.....	99,863	Lancaster County, SC.....	76,652
Harrisburg city, SD.....	4,089	Lane County, OR.....	351,715
Harrisonburg city, VA.....	48,914	Lansing city, MI.....	114,297
Harrisonville city, MO.....	10,019	Laramie city, WY.....	30,816
Hastings city, MN.....	22,172	Larimer County, CO.....	299,630
Hayward city, CA.....	144,186	Las Cruces city, NM.....	97,618
Henderson city, NV.....	257,729	Las Vegas city, NM.....	13,753
Herndon town, VA.....	23,292	Las Vegas city, NV.....	583,756
High Point city, NC.....	104,371	Lawrence city, KS.....	87,643
Highland Park city, IL.....	29,763	Lawrenceville city, GA.....	28,546
Highlands Ranch CDP, CO.....	96,713	Lee's Summit city, MO.....	91,364
Holland city, MI.....	33,051	Lehi city, UT.....	47,407
Homer Glen village, IL.....	24,220	Lenexa city, KS.....	48,190
Honolulu County, HI.....	953,207	Lewis County, NY.....	27,087

## The National Citizen Survey™

Lewiston city, ID.....	31,894	Murphy city, TX.....	17,708
Lewisville city, TX.....	95,290	Naperville city, IL.....	141,853
Lewisville town, NC.....	12,639	Napoleon city, OH.....	8,749
Libertyville village, IL.....	20,315	Nederland city, TX.....	17,547
Lincoln city, NE.....	258,379	Needham CDP, MA.....	28,886
Lincolnwood village, IL.....	12,590	Nevada City city, CA.....	3,068
Lindsborg city, KS.....	3,458	Nevada County, CA.....	98,764
Little Chute village, WI.....	10,449	New Braunfels city, TX.....	57,740
Littleton city, CO.....	41,737	New Brighton city, MN.....	21,456
Livermore city, CA.....	80,968	New Hanover County, NC.....	202,667
Lombard village, IL.....	43,165	New Hope city, MN.....	20,339
Lone Tree city, CO.....	10,218	New Orleans city, LA.....	343,829
Long Grove village, IL.....	8,043	New Port Richey city, FL.....	14,911
Longmont city, CO.....	86,270	New Smyrna Beach city, FL.....	22,464
Longview city, TX.....	80,455	New Ulm city, MN.....	13,522
Lonsdale city, MN.....	3,674	Newberg city, OR.....	22,068
Los Alamos County, NM.....	17,950	Newport city, RI.....	24,672
Los Altos Hills town, CA.....	7,922	Newport News city, VA.....	180,719
Louisville city, CO.....	18,376	Newton city, IA.....	15,254
Lower Merion township, PA.....	57,825	Noblesville city, IN.....	51,969
Lynchburg city, VA.....	75,568	Nogales city, AZ.....	20,837
Lynnwood city, WA.....	35,836	Norcross city, GA.....	9,116
Macomb County, MI.....	840,978	Norfolk city, VA.....	242,803
Manassas city, VA.....	37,821	North Mankato city, MN.....	13,394
Manhattan Beach city, CA.....	35,135	North Port city, FL.....	57,357
Manhattan city, KS.....	52,281	North Richland Hills city, TX.....	63,343
Mankato city, MN.....	39,309	North Yarmouth town, ME.....	3,565
Maple Grove city, MN.....	61,567	Novato city, CA.....	51,904
Maplewood city, MN.....	38,018	Novi city, MI.....	55,224
Maricopa County, AZ.....	3,817,117	O'Fallon city, IL.....	28,281
Marion city, IA.....	34,768	O'Fallon city, MO.....	79,329
Mariposa County, CA.....	18,251	Oak Park village, IL.....	51,878
Marshfield city, WI.....	19,118	Oakland city, CA.....	390,724
Martinez city, CA.....	35,824	Oakley city, CA.....	35,432
Marysville city, WA.....	60,020	Oklahoma City city, OK.....	579,999
Matthews town, NC.....	27,198	Olathe city, KS.....	125,872
McAllen city, TX.....	129,877	Old Town city, ME.....	7,840
McKinney city, TX.....	131,117	Olmsted County, MN.....	144,248
McMinnville city, OR.....	32,187	Olympia city, WA.....	46,478
Menlo Park city, CA.....	32,026	Orange village, OH.....	3,323
Menomonee Falls village, WI.....	35,626	Orland Park village, IL.....	56,767
Mercer Island city, WA.....	22,699	Orleans Parish, LA.....	343,829
Meridian charter township, MI.....	39,688	Oshkosh city, WI.....	66,083
Meridian city, ID.....	75,092	Oshtemo charter township, MI.....	21,705
Merriam city, KS.....	11,003	Oswego village, IL.....	30,355
Mesa city, AZ.....	439,041	Otsego County, MI.....	24,164
Mesa County, CO.....	146,723	Ottawa County, MI.....	263,801
Miami Beach city, FL.....	87,779	Overland Park city, KS.....	173,372
Miami city, FL.....	399,457	Paducah city, KY.....	25,024
Middleton city, WI.....	17,442	Palm Beach Gardens city, FL.....	48,452
Midland city, MI.....	41,863	Palm Coast city, FL.....	75,180
Milford city, DE.....	9,559	Palo Alto city, CA.....	64,403
Milton city, GA.....	32,661	Palos Verdes Estates city, CA.....	13,438
Minneapolis city, MN.....	382,578	Papillion city, NE.....	18,894
Minnetrissa city, MN.....	6,384	Paradise Valley town, AZ.....	12,820
Missouri City city, TX.....	67,358	Park City city, UT.....	7,558
Modesto city, CA.....	201,165	Parker town, CO.....	45,297
Monterey city, CA.....	27,810	Parkland city, FL.....	23,962
Montgomery city, MN.....	2,956	Pasco city, WA.....	59,781
Montgomery County, MD.....	971,777	Pasco County, FL.....	464,697
Monticello city, UT.....	1,972	Payette city, ID.....	7,433
Montrose city, CO.....	19,132	Pearland city, TX.....	91,252
Monument town, CO.....	5,530	Peoria city, AZ.....	154,065
Mooresville town, NC.....	32,711	Peoria city, IL.....	115,007
Moraga town, CA.....	16,016	Pflugerville city, TX.....	46,936
Morristown city, TN.....	29,137	Phoenix city, AZ.....	1,445,632
Morrisville town, NC.....	18,576	Pinehurst village, NC.....	13,124
Morro Bay city, CA.....	10,234	Piqua city, OH.....	20,522
Mountain Village town, CO.....	1,320	Pitkin County, CO.....	17,148
Mountlake Terrace city, WA.....	19,909	Plano city, TX.....	259,841

The National Citizen Survey™

Platte City city, MO.....	4,691	Schertz city, TX.....	31,465
Pleasant Hill city, IA.....	8,785	Scott County, MN.....	129,928
Pleasanton city, CA.....	70,285	Scottsdale city, AZ.....	217,385
Plymouth city, MN.....	70,576	Seaside city, CA.....	33,025
Polk County, IA.....	430,640	Sedona city, AZ.....	10,031
Pompano Beach city, FL.....	99,845	Sevierville city, TN.....	14,807
Port Orange city, FL.....	56,048	Shakopee city, MN.....	37,076
Port St. Lucie city, FL.....	164,603	Sharonville city, OH.....	13,560
Portland city, OR.....	583,776	Shawnee city, KS.....	62,209
Post Falls city, ID.....	27,574	Shawnee city, OK.....	29,857
Powell city, OH.....	11,500	Sherborn town, MA.....	4,119
Prince William County, VA.....	402,002	Shoreline city, WA.....	53,007
Prior Lake city, MN.....	22,796	Shoreview city, MN.....	25,043
Pueblo city, CO.....	106,595	Shorewood village, IL.....	15,615
Purcellville town, VA.....	7,727	Shorewood village, WI.....	13,162
Queen Creek town, AZ.....	26,361	Sierra Vista city, AZ.....	43,888
Raleigh city, NC.....	403,892	Silverton city, OR.....	9,222
Ramsey city, MN.....	23,668	Sioux Center city, IA.....	7,048
Raymond town, ME.....	4,436	Sioux Falls city, SD.....	153,888
Raymore city, MO.....	19,206	Skokie village, IL.....	64,784
Redmond city, OR.....	26,215	Snellville city, GA.....	18,242
Redmond city, WA.....	54,144	Snoqualmie city, WA.....	10,670
Redwood City city, CA.....	76,815	Snowmass Village town, CO.....	2,826
Reno city, NV.....	225,221	Somerset town, MA.....	18,165
Reston CDP, VA.....	58,404	South Jordan city, UT.....	50,418
Richland city, WA.....	48,058	South Lake Tahoe city, CA.....	21,403
Richmond city, CA.....	103,701	Southlake city, TX.....	26,575
Richmond Heights city, MO.....	8,603	Spearfish city, SD.....	10,494
Rio Rancho city, NM.....	87,521	Spring Hill city, KS.....	5,437
River Falls city, WI.....	15,000	Springboro city, OH.....	17,409
Riverside city, CA.....	303,871	Springfield city, MO.....	159,498
Riverside city, MO.....	2,937	Springville city, UT.....	29,466
Roanoke city, VA.....	97,032	St. Augustine city, FL.....	12,975
Roanoke County, VA.....	92,376	St. Charles city, IL.....	32,974
Rochester Hills city, MI.....	70,995	St. Cloud city, FL.....	35,183
Rock Hill city, SC.....	66,154	St. Cloud city, MN.....	65,842
Rockville city, MD.....	61,209	St. Joseph city, MO.....	76,780
Roeland Park city, KS.....	6,731	St. Joseph town, WI.....	3,842
Rogers city, MN.....	8,597	St. Louis County, MN.....	200,226
Rohnert Park city, CA.....	40,971	State College borough, PA.....	42,034
Rolla city, MO.....	19,559	Steamboat Springs city, CO.....	12,088
Roselle village, IL.....	22,763	Sterling Heights city, MI.....	129,699
Rosemount city, MN.....	21,874	Sugar Grove village, IL.....	8,997
Rosenberg city, TX.....	30,618	Sugar Land city, TX.....	78,817
Roseville city, MN.....	33,660	Suisun City city, CA.....	28,111
Round Rock city, TX.....	99,887	Summit city, NJ.....	21,457
Royal Oak city, MI.....	57,236	Summit County, UT.....	36,324
Royal Palm Beach village, FL.....	34,140	Summit village, IL.....	11,054
Saco city, ME.....	18,482	Sunnyvale city, CA.....	140,081
Sacramento city, CA.....	466,488	Surprise city, AZ.....	117,517
Sahuarita town, AZ.....	25,259	Suwanee city, GA.....	15,355
Salida city, CO.....	5,236	Tacoma city, WA.....	198,397
Sammamish city, WA.....	45,780	Takoma Park city, MD.....	16,715
San Anselmo town, CA.....	12,336	Tamarac city, FL.....	60,427
San Diego city, CA.....	1,307,402	Temecula city, CA.....	100,097
San Francisco city, CA.....	805,235	Tempe city, AZ.....	161,719
San Jose city, CA.....	945,942	Temple city, TX.....	66,102
San Juan County, NM.....	130,044	Texarkana city, TX.....	36,411
San Marcos city, CA.....	83,781	The Woodlands CDP, TX.....	93,847
San Marcos city, TX.....	44,894	Thousand Oaks city, CA.....	126,683
San Rafael city, CA.....	57,713	Tigard city, OR.....	48,035
Sanford city, FL.....	53,570	Tracy city, CA.....	82,922
Sangamon County, IL.....	197,465	Trinidad CCD, CO.....	12,017
Santa Clarita city, CA.....	176,320	Tualatin city, OR.....	26,054
Santa Fe city, NM.....	67,947	Tulsa city, OK.....	391,906
Santa Fe County, NM.....	144,170	Twin Falls city, ID.....	44,125
Santa Monica city, CA.....	89,736	Tyler city, TX.....	96,900
Sarasota County, FL.....	379,448	Unalaska city, AK.....	4,376
Savage city, MN.....	26,911	University Heights city, OH.....	13,539
Schaumburg village, IL.....	74,227	University Park city, TX.....	23,068

## The National Citizen Survey™

Upper Arlington city, OH.....	33,771	Westlake town, TX.....	992
Urbandale city, IA.....	39,463	Westminster city, CO.....	106,114
Vail town, CO.....	5,305	Weston town, MA.....	11,261
Vancouver city, WA.....	161,791	Wheat Ridge city, CO.....	30,166
Ventura CCD, CA.....	111,889	White House city, TN.....	10,255
Vernon Hills village, IL.....	25,113	Wichita city, KS.....	382,368
Vestavia Hills city, AL.....	34,033	Williamsburg city, VA.....	14,068
Victoria city, MN.....	7,345	Willowbrook village, IL.....	8,540
Vienna town, VA.....	15,687	Wilmington city, NC.....	106,476
Virginia Beach city, VA.....	437,994	Wilsonville city, OR.....	19,509
Walnut Creek city, CA.....	64,173	Windsor town, CO.....	18,644
Warrensburg city, MO.....	18,838	Windsor town, CT.....	29,044
Washington County, MN.....	238,136	Winnetka village, IL.....	12,187
Washington town, NH.....	1,123	Winter Garden city, FL.....	34,568
Washoe County, NV.....	421,407	Woodbury city, MN.....	61,961
Washougal city, WA.....	14,095	Woodinville city, WA.....	10,938
Wauwatosa city, WI.....	46,396	Woodland city, CA.....	55,468
Waverly city, IA.....	9,874	Wrentham town, MA.....	10,955
Weddington town, NC.....	9,459	Wyandotte County, KS.....	157,505
Wentzville city, MO.....	29,070	Yakima city, WA.....	91,067
West Carrollton city, OH.....	13,143	York County, VA.....	65,464
West Chester borough, PA.....	18,461	Yorktown town, IN.....	9,405
West Des Moines city, IA.....	56,609	Yorkville city, IL.....	16,921
Western Springs village, IL.....	12,975	Yountville city, CA.....	2,933
Westerville city, OH.....	36,120		

### Peer Community Benchmark Comparisons

Table 77: Community Characteristics General

	Percent positive	Rank	Number of communities in comparison	Comparison to benchmark
The overall quality of life in Ramsey	81%	14	20	Similar
Overall image or reputation of Ramsey	60%	10	13	Similar
Ramsey as a place to live	85%	8	12	Similar
Your neighborhood as a place to live	82%	6	12	Similar
Ramsey as a place to raise children	87%	7	12	Similar
Ramsey as a place to retire	55%	11	12	Similar
Overall appearance of Ramsey	68%	12	16	Similar

Table 78: Community Characteristics by Facet

		Percent positive	Rank	Number of communities in comparison	Comparison to benchmark
Safety	Overall feeling of safety in Ramsey	90%	6	17	Similar
	In your neighborhood during the day	97%	4	12	Similar
	In Ramsey's downtown/commercial areas during the day	96%	3	12	Similar
Mobility	Overall ease of getting to the places you usually have to visit	69%	12	12	Lower
	Availability of paths and walking trails	69%	13	14	Similar
	Ease of walking in Ramsey	67%	11	14	Similar
	Ease of travel by bicycle in Ramsey	62%	9	14	Similar
	Ease of travel by car in Ramsey	69%	13	13	Similar
	Traffic flow on major streets	59%	13	15	Similar
Natural Environment	Quality of overall natural environment in Ramsey	84%	10	13	Similar
	Cleanliness of Ramsey	74%	12	14	Similar
Built Environment	Overall "built environment" of Ramsey (including overall design, buildings, parks and transportation systems)	58%	11	12	Similar
	Overall quality of new development in Ramsey	42%	11	12	Lower
	Availability of affordable quality housing	64%	6	14	Similar
	Variety of housing options	68%	5	14	Similar
	Public places where people want to spend time	51%	12	12	Lower
Economy	Overall economic health of Ramsey	54%	11	12	Lower
	Vibrant downtown/commercial area	20%	10	10	Lower

The National Citizen Survey™

		Percent positive	Rank	Number of communities in comparison	Comparison to benchmark
	Overall quality of business and service establishments in Ramsey	46%	12	13	Lower
	Cost of living in Ramsey	50%	2	12	Similar
	Shopping opportunities	20%	14	14	Much lower
	Employment opportunities	31%	12	13	Lower
	Ramsey as a place to visit	39%	11	11	Lower
	Ramsey as a place to work	50%	11	12	Lower
Recreation and Wellness	Health and wellness opportunities in Ramsey	59%	12	12	Lower
	Recreational opportunities	50%	15	15	Lower
	Fitness opportunities (including exercise classes and paths or trails, etc.)	64%	12	12	Lower
Education and Enrichment	Overall opportunities for education and enrichment	53%	11	12	Lower
	Opportunities to attend cultural/arts/music activities	44%	12	13	Similar
	Adult educational opportunities	52%	12	12	Similar
	K-12 education	71%	10	14	Lower
Community Engagement	Availability of affordable quality child care/preschool	61%	5	11	Similar
	Opportunities to participate in community matters	51%	10	12	Similar
	Opportunities to volunteer	49%	13	13	Lower

Table 79: Governance General

	Percent positive	Rank	Number of communities in comparison	Comparison to benchmark
Services provided by the City of Ramsey	76%	10	16	Similar
Overall customer service by Ramsey employees (police, receptionists, planners, etc.)	81%	6	17	Similar
Value of services for the taxes paid to Ramsey	45%	15	18	Similar
Overall direction that Ramsey is taking	49%	11	12	Similar
Job Ramsey government does at welcoming citizen involvement	55%	8	14	Similar
Overall confidence in Ramsey government	51%	10	12	Similar
Generally acting in the best interest of the community	56%	9	12	Similar
Being honest	60%	8	11	Similar
Treating all residents fairly	58%	9	12	Similar
Services provided by the Federal Government	45%	5	10	Similar

Table 80: Governance by Facet

	Percent positive	Rank	Number of communities in comparison	Comparison to benchmark	
Safety	Police services	91%	3	22	Similar
	Fire services	95%	6	22	Similar
	Crime prevention	84%	5	14	Similar
	Fire prevention and education	82%	7	13	Similar
	Animal control	61%	15	20	Similar
Mobility	Traffic enforcement	75%	6	15	Similar
	Street repair	43%	17	21	Similar
	Street cleaning	56%	13	14	Similar
	Street lighting	59%	16	17	Similar
	Snow removal	58%	23	25	Lower
	Sidewalk maintenance	60%	11	14	Similar
	Traffic signal timing	52%	11	13	Similar
	Drinking water	76%	7	16	Similar
Natural Environment	Preservation of natural areas such as open space, farmlands and greenbelts	63%	9	11	Similar
Built Environment	Storm drainage	75%	13	18	Similar

The National Citizen Survey™

		Percent positive	Rank	Number of communities in comparison	Comparison to benchmark
	Sewer services	84%	11	16	Similar
	Land use, planning and zoning	44%	14	15	Similar
	Code enforcement (weeds, abandoned buildings, etc.)	50%	13	17	Similar
Economy	Economic development	47%	13	14	Similar
Recreation and Wellness	City parks	76%	14	14	Similar
	Recreation centers or facilities	59%	13	13	Lower
Community Engagement	Public information services	61%	9	12	Similar

Table 81: Participation General

	Percent positive	Rank	Number of communities in comparison	Comparison to benchmark
Sense of community	48%	15	17	Lower
Recommend living in Ramsey to someone who asks	84%	12	13	Similar
Remain in Ramsey for the next five years	86%	7	12	Similar
Contacted Ramsey (in-person, phone, email or web) for help or information	38%	9	11	Similar

Table 82: Participation by Facet

		Percent positive	Rank	Number of communities in comparison	Comparison to benchmark
	Did NOT report a crime to the police	81%	6	11	Similar
Safety	Household member was NOT a victim of a crime	94%	3	12	Similar
	Used rail or other public transportation instead of driving	36%	1	10	Much higher
Mobility	Walked or biked instead of driving	63%	6	11	Similar
Natural Environment	Recycle at home	97%	5	12	Similar
Built Environment	NOT experiencing housing costs stress	79%	3	11	Similar
	Purchase goods or services from a business located in Ramsey	88%	11	11	Similar
	Economy will have positive impact on income	40%	2	12	Similar
Economy	Work inside boundaries of Ramsey	22%	10	11	Lower
Recreation and Wellness	Visited a neighborhood park or City park	87%	10	12	Similar
Education and Enrichment	Attended City-sponsored event	50%	8	10	Similar
	Campaigned or advocated for an issue, cause or candidate	8%	10	10	Lower
	Contacted Ramsey elected officials (in-person, phone, email or web) to express your opinion	11%	11	11	Similar
	Volunteered your time to some group/activity in Ramsey	20%	12	12	Lower
	Attended a local public meeting	14%	9	12	Similar
	Watched (online or on television) a local public meeting	17%	10	12	Similar
Community Engagement	Vote in local elections	82%	11	12	Similar



The National Citizen Survey™

Communities included in peer comparisons

The communities included in Ramsey’s custom comparisons are listed below along with their population according to the 2010 Census.

Albert Lea city, MN.....	18,016	Middleton city, WI.....	17,442
Brookfield city, WI.....	37,920	New Brighton city, MN.....	21,456
Brooklyn Center city, MN.....	30,104	New Hope city, MN.....	20,339
Chanhassen city, MN.....	22,952	New Ulm city, MN.....	13,522
Edina city, MN.....	47,941	North Mankato city, MN.....	13,394
Golden Valley city, MN.....	20,371	Prior Lake city, MN.....	22,796
Grafton village, WI.....	11,459	Ramsey city, MN.....	23,668
Hastings city, MN.....	22,172	River Falls city, WI.....	15,000
Hopkins city, MN.....	17,591	Rosemount city, MN.....	21,874
Howard village, WI.....	17,399	Roseville city, MN.....	33,660
Hutchinson city, MN.....	14,178	Savage city, MN.....	26,911
Little Chute village, WI.....	10,449	Shakopee city, MN.....	37,076
Mankato city, MN.....	39,309	Shoreview city, MN.....	25,043
Maplewood city, MN.....	38,018	Shorewood village, WI.....	13,162
Marshfield city, WI.....	19,118	Wauwatosa city, WI.....	46,396
Menomonee Falls village, WI.....	35,626		

## Appendix C: Detailed Survey Methods

The National Citizen Survey (The NCS™), conducted by National Research Center, Inc., was developed to provide communities an accurate, affordable and easy way to assess and interpret resident opinion about important local topics. Standardization of common questions and survey methods provide the rigor to assure valid results, and each community has enough flexibility to construct a customized version of The NCS.

Results offer insight into residents' perspectives about the community as a whole, including local amenities, services, public trust, resident participation and other aspects of the community in order to support budgeting, land use and strategic planning and communication with residents. Resident demographic characteristics permit comparison to the Census as well as comparison of results for different subgroups of residents. The City of Ramsey funded this research. Please contact Kurt Ulrich, Ramsey City Administrator at [kulrich@ci.ramsey.mn.us](mailto:kulrich@ci.ramsey.mn.us) if you have any questions about the survey.

### Survey Validity

The question of survey validity has two parts: 1) how can a community be confident that the results from those who completed the questionnaire are representative of the results that would have been obtained had the survey been administered to the entire population? and 2) how closely do the perspectives recorded on the survey reflect what residents really believe or do?

To answer the first question, the best survey research practices were used for the resources spent to ensure that the results from the survey respondents reflect the opinions of residents in the entire community. These practices include:

- Using a mail-out/mail-back methodology, which typically gets a higher response rate than phone for the same dollars spent. A higher response rate lessens the worry that those who did not respond are different than those who did respond.
- Selecting households at random within the community to receive the survey to ensure that the households selected to receive the survey are representative of the larger community.
- Over-sampling multi-family housing units to improve response from hard-to-reach, lower income or younger apartment dwellers.
- Selecting the respondent within the household using an unbiased sampling procedure; in this case, the "birthday method." The cover letter included an instruction requesting that the respondent in the household be the adult (18 years old or older) who most recently had a birthday, irrespective of year of birth.
- Contacting potential respondents three times to encourage response from people who may have different opinions or habits than those who would respond with only a single prompt.
- Inviting response in a compelling manner (using appropriate letterhead/logos and a signature of a visible leader) to appeal to recipients' sense of civic responsibility.
- Providing a pre-addressed, postage-paid return envelope.
- Offering the survey in Spanish or other language when requested by a given community.
- Weighting the results to reflect the demographics of the population.

The answer to the second question about how closely the perspectives recorded on the survey reflect what residents really believe or do is more complex. Resident responses to surveys are influenced by a variety of factors. For questions about service quality, residents' expectations for service quality play a role as well as the "objective" quality of the service provided, the way the resident perceives the entire community (that is, the context in which the service is provided), the scale on which the resident is asked to record his or her opinion and, of course, the opinion, itself, that a resident holds about the service. Similarly a resident's report of certain behaviors is colored by what he or she believes is the socially desirable response (e.g., reporting tolerant behaviors toward "oppressed groups," likelihood of voting for a tax increase for services to poor people, use of alternative modes of travel to work besides the single occupancy vehicle), his or her memory of the actual behavior (if it is not a question speculating about future actions, like a vote), his or her confidence that he or she can be honest without suffering any negative consequences (thus the need for anonymity) as well as the actual behavior itself.

How closely survey results come to recording the way a person really feels or behaves often is measured by the coincidence of reported behavior with observed current behavior (e.g., driving habits), reported intentions to behave with observed future behavior (e.g., voting choices) or reported opinions about current community quality

with objective characteristics of the community (e.g., feelings of safety correlated with rates of crime). There is a body of scientific literature that has investigated the relationship between reported behaviors and actual behaviors. Well-conducted surveys, by and large, do capture true respondent behaviors or intentions to act with great accuracy. Predictions of voting outcomes tend to be quite accurate using survey research, as do reported behaviors that are not about highly sensitive issues (e.g., family abuse or other illegal or morally sanctioned activities). For self-reports about highly sensitive issues, statistical adjustments can be made to correct for the respondents' tendency to report what they think the "correct" response should be.

Research on the correlation of resident opinion about service quality and "objective" ratings of service quality vary, with some showing stronger relationships than others. NRC's own research has demonstrated that residents who report the lowest ratings of street repair live in communities with objectively worse street conditions than those who report high ratings of street repair (based on road quality, delay in street repair, number of road repair employees). Similarly, the lowest rated fire services appear to be "objectively" worse than the highest rated fire services (expenditures per capita, response time, "professional" status of firefighters, breadth of services and training provided). Resident opinion commonly reflects objective performance data but is an important measure on its own. NRC principals have written, "If you collect trash three times a day but residents think that your trash haul is lousy, you still have a problem."

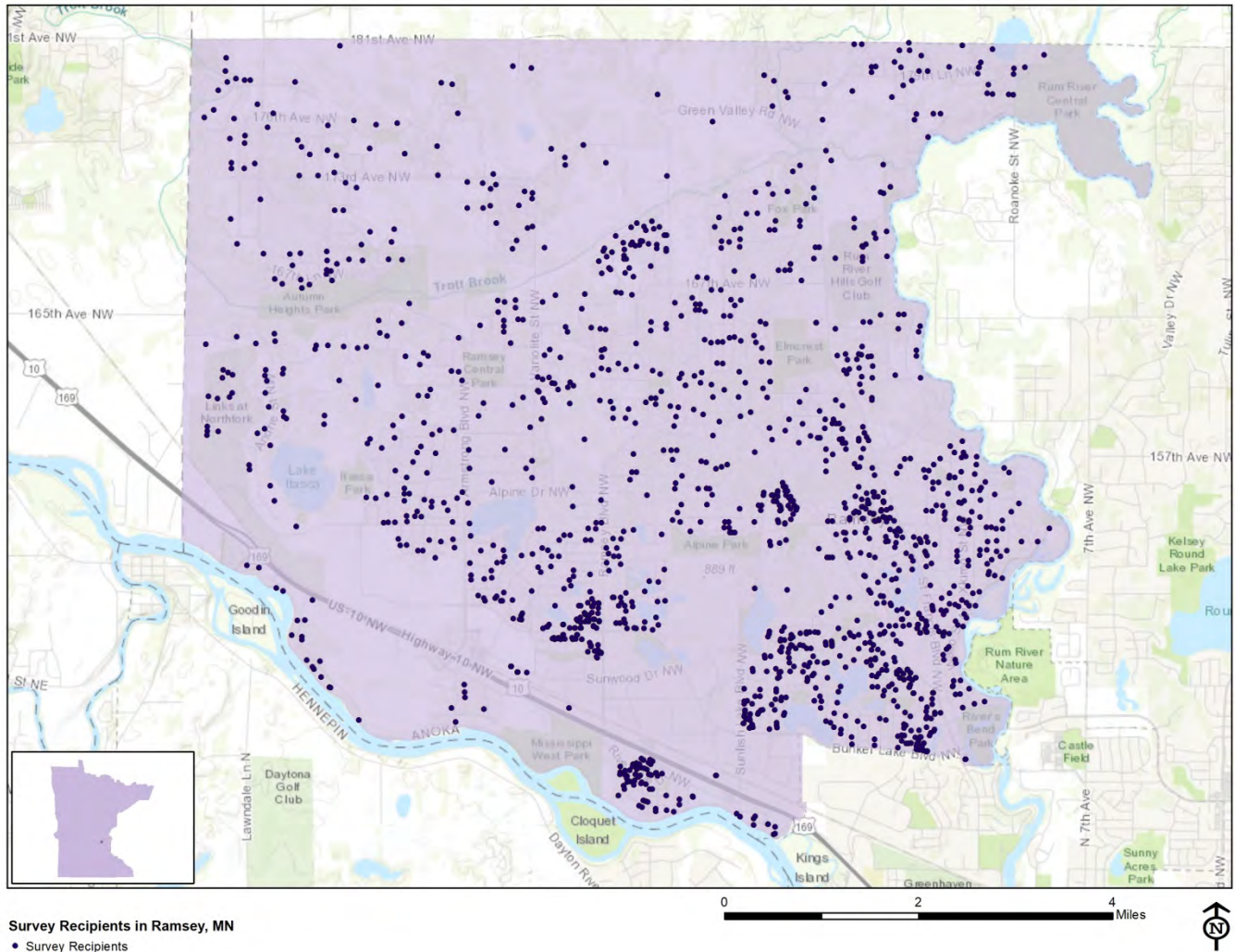
### Selecting Survey Recipients

"Sampling" refers to the method by which households were chosen to receive the survey. All households within the City of Ramsey were eligible to participate in the survey. A list of all households within the zip codes serving Ramsey was purchased from Go-Dog Direct based on updated listings from the United States Postal Service. Since some of the zip codes that serve the City of Ramsey households may also serve addresses that lie outside of the community, the exact geographic location of each housing unit was compared to community boundaries using the most current municipal boundary file (updated on a quarterly basis) and addresses located outside of the City of Ramsey boundaries were removed from consideration.

To choose the 1,600 survey recipients, a systematic sampling method was applied to the list of households previously screened for geographic location. Systematic sampling is a procedure whereby a complete list of all possible households is culled, selecting every *N*th one, giving each eligible household a known probability of selection, until the appropriate number of households is selected. Multi-family housing units were selected at a higher rate as residents of this type of housing typically respond at lower rates to surveys than do those in single-family housing units. Figure 1 displays a map of the households selected to receive the survey. In general, because of the random sampling techniques used, the displayed sampling density will closely mirror the overall housing unit density (which may be different from the population density). While the theory of probability assumes no bias in selection, there may be some minor variations in practice (meaning, an area with only 15% of the housing units might be selected at an actual rate that is slightly above or below that).

An individual within each household was selected using the birthday method. The birthday method selects a person within the household by asking the "person whose birthday has most recently passed" to complete the questionnaire. The underlying assumption in this method is that day of birth has no relationship to the way people respond to surveys. This instruction was contained in the cover letter accompanying the questionnaire.

Figure 1: Location of Survey Recipients



## Survey Administration and Response

Selected households received three mailings, one week apart, beginning on April 13, 2018. The first mailing was a prenotification postcard announcing the upcoming survey. The next mailing contained a letter from the Mayor inviting the household to participate, a questionnaire and a postage-paid return envelope. The final mailing contained a reminder letter, another survey and a postage-paid return envelope. The second cover letter asked those who had not completed the survey to do so and those who had already done so to refrain from turning in another survey. The survey was available in English. Completed surveys were collected over the following seven weeks.

About 1% of the 1,600 surveys mailed were returned because the housing unit was vacant or the postal service was unable to deliver the survey as addressed. Of the remaining 1,580 households that received the survey, 465 completed the survey, providing an overall response rate of 29%. The response rate was calculated using AAPOR's response rate #2<sup>1</sup> for mailed surveys of unnamed persons.

<sup>1</sup> See AAPOR's Standard Definitions here: [http://www.aapor.org/Standards-Ethics/Standard-Definitions-\(1\).aspx](http://www.aapor.org/Standards-Ethics/Standard-Definitions-(1).aspx) for more information

Table 83: Survey Response Rate

	Overall
Total sample used	1,600
I=Complete Interviews	463
P=Partial Interviews	2
R=Refusal and break off	0
NC=Non Contact	0
O=Other	0
UH=Unknown household	0
UO=Unknown other	1,115
Response rate: $(I+P)/(I+P) + (R+NC+O) + (UH+UO)$	29%

### Confidence Intervals

It is customary to describe the precision of estimates made from surveys by a “level of confidence” and accompanying “confidence interval” (or margin of error). A traditional level of confidence, and the one used here, is 95%. The 95% confidence interval can be any size and quantifies the sampling error or imprecision of the survey results because some residents’ opinions are relied on to estimate all residents’ opinions.<sup>2</sup>

The margin of error for the City of Ramsey survey is no greater than plus or minus five percentage points around any given percent reported for all respondents (465 completed surveys).

For subgroups of responses, the margin of error increases because the number of respondents for the subgroup is smaller. For subgroups of approximately 100 respondents, the margin of error is plus or minus 10 percentage points.

### Survey Processing (Data Entry)

Upon receipt, completed surveys were assigned a unique identification number. Additionally, each survey was reviewed and “cleaned” as necessary. For example, a question may have asked a respondent to pick two items out of a list of five, but the respondent checked three; in this case, NRC would use protocols to randomly choose two of the three selected items for inclusion in the dataset.

All surveys then were entered twice into an electronic dataset; any discrepancies were resolved in comparison to the original survey form. Range checks as well as other forms of quality control were also performed.

### Survey Data Weighting

The demographic characteristics of the survey respondents were compared to those found in the 2010 Census and American Community Survey estimates for adults in the City of Ramsey. The primary objective of weighting survey data is to make the survey respondents reflective of the larger population of the community. The characteristics used for weighting were sex and age. No adjustments were made for design effects. The results of the weighting scheme are presented in the following table.

<sup>2</sup> A 95% confidence interval indicates that for every 100 random samples of this many residents, 95 of the confidence intervals created will include the “true” population response. This theory is applied in practice to mean that the “true” perspective of the target population lies within the confidence interval created for a single survey. For example, if 75% of residents rate a service as “excellent” or “good,” then the 4% margin of error (for the 95% confidence interval) indicates that the range of likely responses for the entire community is between 71% and 79%. This source of uncertainty is called sampling error. In addition to sampling error, other sources of error may affect any survey, including the non-response of residents with opinions different from survey responders. Though standardized on The NCS, on other surveys, differences in question wording, order, translation and data entry, as examples, can lead to somewhat varying results.

The National Citizen Survey™

Table 84: Ramsey, MN 2018 Weighting Table

Characteristic	2010 Census	Unweighted Data	Weighted Data
<b>Housing</b>			
Rent home	9%	6%	6%
Own home	91%	94%	94%
Detached unit*	83%	84%	82%
Attached unit*	17%	16%	18%
<b>Race and Ethnicity</b>			
White	94%	94%	91%
Not white	6%	6%	9%
Not Hispanic	98%	99%	98%
Hispanic	2%	1%	2%
<b>Sex and Age</b>			
Female	50%	52%	50%
Male	50%	48%	50%
18-34 years of age	30%	10%	30%
35-54 years of age	44%	32%	44%
55+ years of age	26%	57%	26%
Females 18-34	15%	7%	15%
Females 35-54	22%	16%	22%
Females 55+	13%	30%	13%
Males 18-34	15%	4%	15%
Males 35-54	22%	16%	22%
Males 55+	13%	28%	13%

\* U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates

### Survey Data Analysis and Reporting

The survey dataset was analyzed using the Statistical Package for the Social Sciences (SPSS). For the most part, the percentages presented in the reports represent the “percent positive.” The percent positive is the combination of the top two most positive response options (i.e., “excellent” and “good,” “very safe” and “somewhat safe,” “essential” and “very important,” etc.), or, in the case of resident behaviors/participation, the percent positive represents the proportion of respondents indicating “yes” or participating in an activity at least once a month.

On many of the questions in the survey respondents may answer “don’t know.” The proportion of respondents giving this reply is shown in the full set of responses included in Appendix A. However, these responses have been removed from the analyses presented in the reports. In other words, the tables and graphs display the responses from respondents who had an opinion about a specific item. When a table for a question that only permitted a single response does not total to exactly 100%, it is due to the common practice of percentages being rounded to the nearest whole number.

## Appendix D: Survey Materials

Dear Ramsey Resident,

It won't take much of your time to make a big difference!

Your household has been randomly selected to participate in a survey about your community. Your survey will arrive in a few days.

Thank you for helping create a better city!

Sincerely,



Sarah Strommen  
Mayor


Dear Ramsey Resident,

It won't take much of your time to make a big difference!

Your household has been randomly selected to participate in a survey about your community. Your survey will arrive in a few days.

Thank you for helping create a better city!

Sincerely,



Sarah Strommen  
Mayor

Dear Ramsey Resident,

It won't take much of your time to make a big difference!

Your household has been randomly selected to participate in a survey about your community. Your survey will arrive in a few days.

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Sincerely,



Sarah Strommen  
Mayor

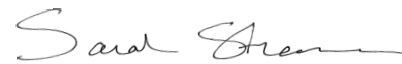
Dear Ramsey Resident,

It won't take much of your time to make a big difference!

Your household has been randomly selected to participate in a survey about your community. Your survey will arrive in a few days.

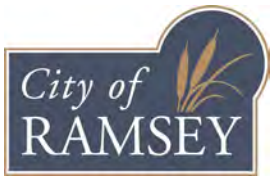
Thank you for helping create a better city!

Sincerely,



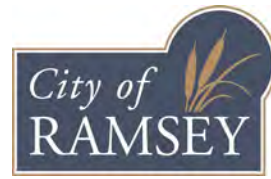
Sarah Strommen  
Mayor





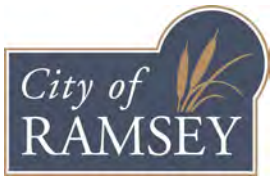
City of Ramsey  
7550 Sunwood Drive NW  
Ramsey, MN 55303

Presorted  
First Class Mail  
US Postage  
PAID  
Boulder, CO  
Permit NO. 94



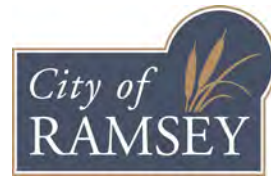
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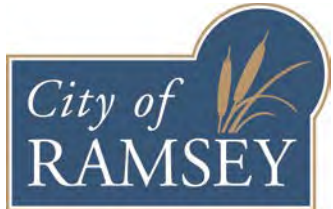
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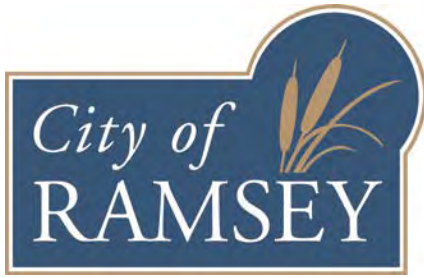
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Boulder, CO  
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7550 Sunwood Drive NW • Ramsey, MN 55303  
City Hall: 763-427-1410 • Fax: 763-427-5543  
[www.cityoframsey.com](http://www.cityoframsey.com)

April 2018

Dear City of Ramsey Resident:

Please help us shape the future of Ramsey! You have been selected at random to participate in the 2018 Ramsey Citizen Survey.

Please take a few minutes to fill out the enclosed survey. Your participation in this survey is very important – especially since your household is one of only a small number of households being surveyed. Your feedback will help Ramsey make decisions that affect our city.

**A few things to remember:**

- **Your responses are completely anonymous.**
- In order to hear from a diverse group of residents, the adult 18 years or older in your household who most recently had a birthday should complete this survey.
- **You may return the survey by mail in the enclosed postage-paid envelope.**

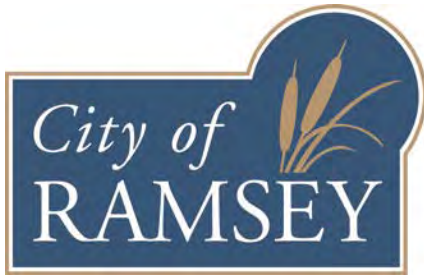
If you have any questions about the survey please call 763-433-9868.

Thank you for your time and participation!

Sincerely,

A handwritten signature in black ink that reads "Sarah Strommen". The signature is written in a cursive style.

Sarah Strommen  
Mayor



---

7550 Sunwood Drive NW • Ramsey, MN 55303  
City Hall: 763-427-1410 • Fax: 763-427-5543  
[www.cityoframsey.com](http://www.cityoframsey.com)

April 2018

Dear City of Ramsey Resident:

Here's a second chance if you haven't already responded to the 2018 Ramsey Citizen Survey! **(If you completed it and sent it back, we thank you for your time and ask you to recycle this survey. Please do not respond twice.)**

Please help us shape the future of Ramsey! You have been selected at random to participate in the 2018 Ramsey Citizen Survey.

Please take a few minutes to fill out the enclosed survey. Your participation in this survey is very important – especially since your household is one of only a small number of households being surveyed. Your feedback will help Ramsey make decisions that affect our city.

**A few things to remember:**

- **Your responses are completely anonymous.**
- In order to hear from a diverse group of residents, the adult 18 years or older in your household who most recently had a birthday should complete this survey.
- **You may return the survey by mail in the enclosed postage-paid envelope.**

If you have any questions about the survey please call 763-433-9868.

Thank you for your time and participation!

Sincerely,

Sarah Strommen  
Mayor

# The City of Ramsey 2018 Citizen Survey

Please complete this questionnaire if you are the adult (age 18 or older) in the household who most recently had a birthday. The adult's year of birth does not matter. Please select the response (by circling the number or checking the box) that most closely represents your opinion for each question. Your responses are anonymous and will be reported in group form only.

**1. Please rate each of the following aspects of quality of life in Ramsey:**

	<i>Excellent</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>	<i>Don't know</i>
Ramsey as a place to live .....	1	2	3	4	5
Your neighborhood as a place to live.....	1	2	3	4	5
Ramsey as a place to raise children .....	1	2	3	4	5
Ramsey as a place to work.....	1	2	3	4	5
Ramsey as a place to visit.....	1	2	3	4	5
Ramsey as a place to retire .....	1	2	3	4	5
The overall quality of life in Ramsey .....	1	2	3	4	5

**2. Please rate each of the following characteristics as they relate to Ramsey as a whole:**

	<i>Excellent</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>	<i>Don't know</i>
Overall feeling of safety in Ramsey.....	1	2	3	4	5
Overall ease of getting to the places you usually have to visit.....	1	2	3	4	5
Quality of overall natural environment in Ramsey .....	1	2	3	4	5
Overall "built environment" of Ramsey (including overall design, buildings, parks and transportation systems).....	1	2	3	4	5
Health and wellness opportunities in Ramsey .....	1	2	3	4	5
Overall opportunities for education and enrichment.....	1	2	3	4	5
Overall economic health of Ramsey.....	1	2	3	4	5
Sense of community.....	1	2	3	4	5
Overall image or reputation of Ramsey.....	1	2	3	4	5

**3. Please indicate how likely or unlikely you are to do each of the following:**

	<i>Very likely</i>	<i>Somewhat likely</i>	<i>Somewhat unlikely</i>	<i>Very unlikely</i>	<i>Don't know</i>
Recommend living in Ramsey to someone who asks.....	1	2	3	4	5
Remain in Ramsey for the next five years .....	1	2	3	4	5

**4. Please rate how safe or unsafe you feel:**

	<i>Very safe</i>	<i>Somewhat safe</i>	<i>Neither safe nor unsafe</i>	<i>Somewhat unsafe</i>	<i>Very unsafe</i>	<i>Don't know</i>
In your neighborhood during the day.....	1	2	3	4	5	6
In Ramsey's downtown/commercial areas during the day ..	1	2	3	4	5	6
In your neighborhood after dark .....	1	2	3	4	5	6
In Ramsey's downtown/commercial areas after dark .....	1	2	3	4	5	6

**5. Please rate each of the following characteristics as they relate to Ramsey as a whole:**

	<i>Excellent</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>	<i>Don't know</i>
Traffic flow on major streets .....	1	2	3	4	5
Ease of travel by car in Ramsey.....	1	2	3	4	5
Ease of travel by bicycle in Ramsey.....	1	2	3	4	5
Ease of walking in Ramsey .....	1	2	3	4	5
Availability of paths and walking trails .....	1	2	3	4	5
Cleanliness of Ramsey .....	1	2	3	4	5
Overall appearance of Ramsey.....	1	2	3	4	5
Public places where people want to spend time .....	1	2	3	4	5
Variety of housing options .....	1	2	3	4	5
Availability of affordable quality housing .....	1	2	3	4	5
Fitness opportunities (including exercise classes and paths or trails, etc.) .....	1	2	3	4	5
Recreational opportunities.....	1	2	3	4	5
Overall condition of City maintained streets .....	1	2	3	4	5

**6. Please rate each of the following characteristics as they relate to Ramsey as a whole:**

	<i>Excellent</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>	<i>Don't know</i>
Availability of affordable quality child care/preschool .....	1	2	3	4	5
K-12 education .....	1	2	3	4	5
Adult educational opportunities.....	1	2	3	4	5
Opportunities to attend cultural/arts/music activities .....	1	2	3	4	5
Employment opportunities .....	1	2	3	4	5
Shopping opportunities.....	1	2	3	4	5
Cost of living in Ramsey .....	1	2	3	4	5
Overall quality of business and service establishments in Ramsey .....	1	2	3	4	5
Vibrant downtown/commercial area .....	1	2	3	4	5
Overall quality of new development in Ramsey .....	1	2	3	4	5
Opportunities to volunteer.....	1	2	3	4	5
Opportunities to participate in community matters .....	1	2	3	4	5

**7. Please indicate whether or not you have done each of the following in the last 12 months.**

	<i>No</i>	<i>Yes</i>
Household member was a victim of a crime in Ramsey .....	1	2
Reported a crime to the police in Ramsey.....	1	2
Campaigned or advocated for an issue, cause or candidate .....	1	2
Contacted the City of Ramsey (in-person, phone, email or web) for help or information.....	1	2
Contacted Ramsey elected officials (in-person, phone, email or web) to express your opinion.....	1	2

**8. In the last 12 months, about how many times, if at all, have you or other household members done each of the following in Ramsey?**

	<i>2 times a week or more</i>	<i>2-4 times a month</i>	<i>Once a month or less</i>	<i>Not at all</i>
Visited a neighborhood park or City park .....	1	2	3	4
Attended a City-sponsored event.....	1	2	3	4
Used rail or other public transportation instead of driving.....	1	2	3	4
Walked or biked instead of driving .....	1	2	3	4
Volunteered your time to some group/activity in Ramsey.....	1	2	3	4

**9. Thinking about local public meetings (of local elected officials like City Council or County Commissioners, advisory boards, town halls, HOA, neighborhood watch, etc.), in the last 12 months, about how many times, if at all, have you or other household members attended or watched a local public meeting?**

	<i>2 times a week or more</i>	<i>2-4 times a month</i>	<i>Once a month or less</i>	<i>Not at all</i>
Attended a local public meeting .....	1	2	3	4
Watched (online or on television) a local public meeting.....	1	2	3	4

# The City of Ramsey 2018 Citizen Survey

## 10. Please rate the quality of each of the following services in Ramsey:

	<i>Excellent</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>	<i>Don't know</i>
Police services .....	1	2	3	4	5
Fire services.....	1	2	3	4	5
Crime prevention.....	1	2	3	4	5
Fire prevention and education.....	1	2	3	4	5
Traffic enforcement .....	1	2	3	4	5
Street repair .....	1	2	3	4	5
Street cleaning .....	1	2	3	4	5
Street lighting.....	1	2	3	4	5
Snow removal .....	1	2	3	4	5
Sidewalk maintenance .....	1	2	3	4	5
Traffic signal timing.....	1	2	3	4	5
Storm drainage .....	1	2	3	4	5
Drinking water .....	1	2	3	4	5
Sewer services .....	1	2	3	4	5
City parks.....	1	2	3	4	5
Recreation centers or facilities .....	1	2	3	4	5
Land use, planning and zoning.....	1	2	3	4	5
Code enforcement (weeds, abandoned buildings, etc.) .....	1	2	3	4	5
Animal control .....	1	2	3	4	5
Economic development .....	1	2	3	4	5
Public information services .....	1	2	3	4	5
Preservation of natural areas such as open space, farmlands and greenbelts.....	1	2	3	4	5
Overall customer service by Ramsey employees (police, receptionists, planners, etc.).....	1	2	3	4	5
Trail maintenance.....	1	2	3	4	5

## 11. Overall, how would you rate the quality of the services provided by each of the following?

	<i>Excellent</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>	<i>Don't know</i>
The City of Ramsey.....	1	2	3	4	5
The Federal Government .....	1	2	3	4	5
Anoka County Government .....	1	2	3	4	5
The State of Minnesota .....	1	2	3	4	5

## 12. Please rate the following categories of Ramsey government performance:

	<i>Excellent</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>	<i>Don't know</i>
The value of services for the taxes paid to Ramsey.....	1	2	3	4	5
The overall direction that Ramsey is taking .....	1	2	3	4	5
The job Ramsey government does at welcoming citizen involvement .....	1	2	3	4	5
Overall confidence in Ramsey government.....	1	2	3	4	5
Generally acting in the best interest of the community .....	1	2	3	4	5
Being honest.....	1	2	3	4	5
Treating all residents fairly .....	1	2	3	4	5
Development and success of a strategic action plan.....	1	2	3	4	5

## 13. Please rate how important, if at all, you think it is for the Ramsey community to focus on each of the following in the coming two years:

	<i>Essential</i>	<i>Very important</i>	<i>Somewhat important</i>	<i>Not at all important</i>
Overall feeling of safety in Ramsey.....	1	2	3	4
Overall ease of getting to the places you usually have to visit.....	1	2	3	4
Quality of overall natural environment in Ramsey .....	1	2	3	4
Overall “built environment” of Ramsey (including overall design, buildings, parks and transportation systems) .....	1	2	3	4
Health and wellness opportunities in Ramsey .....	1	2	3	4
Overall opportunities for education and enrichment.....	1	2	3	4
Overall economic health of Ramsey .....	1	2	3	4
Sense of community.....	1	2	3	4

**14. To what extent are each of the following a source of information for you about Ramsey city government and its activities?**

	<i>Major source</i>	<i>Moderate source</i>	<i>Minor source</i>	<i>Not a source</i>
City newsletter (Ramsey Resident).....	1	2	3	4
Local newspaper .....	1	2	3	4
City website (www.cityoframsey.com).....	1	2	3	4
Word-of-mouth.....	1	2	3	4
Cable television (QCTV) .....	1	2	3	4
City employees.....	1	2	3	4
Public meetings.....	1	2	3	4
City social media (Facebook) .....	1	2	3	4

**15. Please indicate how likely you would be, if at all, to engage with the City on the following social media platforms in the future:**

	<i>Very likely</i>	<i>Somewhat likely</i>	<i>Not at all likely</i>	<i>Don't know</i>
City Facebook page .....	1	2	3	4
City Twitter feed.....	1	2	3	4
Nextdoor.....	1	2	3	4
Instagram.....	1	2	3	4

**16. Please indicate to what extent you support or oppose the city investigating the following changes to new or existing amenities, each of which could accordingly result in an increase to the tax levy:**

	<i>Strongly support</i>	<i>Somewhat support</i>	<i>Somewhat oppose</i>	<i>Strongly oppose</i>	<i>Don't know</i>
Making improvements to existing/established parks.....	1	2	3	4	5
Building new parks.....	1	2	3	4	5
Making improvements to existing trails .....	1	2	3	4	5
Building new trails .....	1	2	3	4	5
Building a new community center .....	1	2	3	4	5

**17. Please rate how important, if at all, you think each of the following priorities are for the City to focus on in the next five years:**

	<i>Essential</i>	<i>Very important</i>	<i>Somewhat important</i>	<i>Not at all important</i>
Balancing rural character and urban growth (development patterns) .....	1	2	3	4
Creating an active community (parks, trails, open space, recreation).....	1	2	3	4
Creating a connected community (roads, trails, sidewalks, rail, transportation).....	1	2	3	4
Creating a positive learning environment (education and outreach).....	1	2	3	4

**18. How interested are you, if at all, in receiving information from the City about each of the following topics?**

	<i>Extremely interested</i>	<i>Very interested</i>	<i>Moderately interested</i>	<i>Slightly interested</i>	<i>Not at all interested</i>
Council & Commissions topics/agendas .....	1	2	3	4	5
Lifestyle/community interest.....	1	2	3	4	5
Recreation .....	1	2	3	4	5
Local businesses (e.g., new/expanded businesses, grand openings, etc.).....	1	2	3	4	5
Public safety.....	1	2	3	4	5
Events .....	1	2	3	4	5
Road work .....	1	2	3	4	5
Real estate development projects.....	1	2	3	4	5
Getting involved/engagement opportunities.....	1	2	3	4	5
Budget/performance measurements .....	1	2	3	4	5

**19. The City employs a long-term maintenance program to cost-effectively maintain all 175-plus miles of City streets. Currently, street reconstruction projects are funded 25% by special assessments levied against benefitting properties, and 75% by street reconstruction bonds, which are paid back using general property taxes. The City periodically evaluates funding sources for this on-going program. Please indicate the extent to which you would support or oppose the following funding sources:**

	<i>Strongly support</i>	<i>Somewhat support</i>	<i>Somewhat oppose</i>	<i>Strongly oppose</i>	<i>Don't know</i>
Current method, which requires 25% of funding by special assessments levied against benefitting properties over 5-15 years .....	1	2	3	4	5
Zero special assessments levied against benefitting properties, which requires 100% of funding by general property tax increases.....	1	2	3	4	5
Electric and/or gas utility fee increases, approximately \$8 per utility, per month.....	1	2	3	4	5



# The City of Ramsey 2018 Citizen Survey

**Our last questions are about you and your household. Again, all of your responses to this survey are completely anonymous and will be reported in group form only.**

**D1. How often, if at all, do you do each of the following, considering all of the times you could?**

	<i>Never</i>	<i>Rarely</i>	<i>Sometimes</i>	<i>Usually</i>	<i>Always</i>
Recycle at home.....	1	2	3	4	5
Purchase goods or services from a business located in Ramsey.....	1	2	3	4	5
Vote in local elections.....	1	2	3	4	5

**D3. What impact, if any, do you think the economy will have on your family income in the next 6 months? Do you think the impact will be:**

- Very positive     
  Somewhat positive     
  Neutral     
  Somewhat negative     
  Very negative

**D4. What is your employment status?**

- Working full time for pay  
 Working part time for pay  
 Unemployed, looking for paid work  
 Unemployed, not looking for paid work  
 Fully retired

**D5. Do you work inside the boundaries of Ramsey?**

- Yes, outside the home  
 Yes, from home  
 No

**D6. How many years have you lived in Ramsey?**

- Less than 2 years       11-20 years  
 2-5 years       More than 20 years  
 6-10 years

**D7. Which best describes the building you live in?**

- One family house detached from any other houses  
 Building with two or more homes (duplex, townhome, apartment or condominium)  
 Mobile home  
 Other

**D8. Is this house, apartment or mobile home...**

- Rented  
 Owned

**D9. About how much is your monthly housing cost for the place you live (including rent, mortgage payment, property tax, property insurance and homeowners' association (HOA) fees)?**

- Less than \$300 per month  
 \$300 to \$599 per month  
 \$600 to \$999 per month  
 \$1,000 to \$1,499 per month  
 \$1,500 to \$2,499 per month  
 \$2,500 or more per month

**D10. Do any children 17 or under live in your household?**

- No       Yes

**D11. Are you or any other members of your household aged 65 or older?**

- No       Yes

**D12. How much do you anticipate your household's total income before taxes will be for the current year? (Please include in your total income money from all sources for all persons living in your household.)**

- Less than \$25,000  
 \$25,000 to \$49,999  
 \$50,000 to \$99,999  
 \$100,000 to \$149,999  
 \$150,000 or more

**Please respond to both questions D13 and D14:**

**D13. Are you Spanish, Hispanic or Latino?**

- No, not Spanish, Hispanic or Latino  
 Yes, I consider myself to be Spanish, Hispanic or Latino

**D14. What is your race? (Mark one or more races to indicate what race you consider yourself to be.)**

- American Indian or Alaskan Native  
 Asian, Asian Indian or Pacific Islander  
 Black or African American  
 White  
 Other

**D15. In which category is your age?**

- 18-24 years       55-64 years  
 25-34 years       65-74 years  
 35-44 years       75 years or older  
 45-54 years

**D16. What is your sex?**

- Female       Male

**D17. Do you consider a cell phone or land line your primary telephone number?**

- Cell       Land line       Both

**Thank you for completing this survey. Please return the completed survey in the postage-paid envelope to: National Research Center, Inc., PO Box 549, Belle Mead, NJ 08502**

## City Custom Questions (proposed 2020)

**Table 49: Question 14**

<b>To what extent are each of the following a source of information for you about Ramsey city government and its activities?</b>
City newsletter (Ramsey Resident)
Local newspaper
City website ( <a href="http://www.cityoframsey.com">www.cityoframsey.com</a> )
Word-of-mouth
Cable television (QCTV)
City employees
Public meetings
City social media (Facebook)

**Table 50: Question 15**

<b>Please indicate how likely you would be, if at all, to engage with the City on the following social media platforms in the future:</b>
City Facebook page
City Twitter feed
Nextdoor
Instagram

ADD: Zoom, Microsoft Teams, or other video conference application

**Table 51: Question 16**

<b>Please indicate to what extent you support or oppose the city investigating the following changes to new or existing amenities, each of which could accordingly result in an increase to the tax levy:</b>
Making improvements to existing/established parks
Building new parks
Making improvements to existing trails
Building new trails
Building a new community center

**Table 52: Question 17**

<b>Please rate how important, if at all, you think each of the following priorities are for the City to focus on in the next five years:</b>
Balancing rural character and urban growth (development patterns)
Creating an active community (parks, trails, open space, recreation)
Creating a connected community (roads, trails, sidewalks, rail, transportation)
Creating a positive learning environment (education and outreach)

DELETE:

Creating a positive learning environment (education and outreach)

ADD:

Creating financial stability for the City.

Delivering quality cost-effective municipal services to residents.

**Table 54: Question 19**

<b>The City employs a long-term maintenance program to cost-effectively maintain all 175-plus miles of City streets. Currently, street reconstruction projects are funded 25% by special assessments levied against benefiting properties, and 75% by street reconstruction bonds, which are paid back using general property taxes. The City periodically evaluates funding sources for this on-going program. Please indicate the extent to which you would support or oppose the following funding sources:</b>
<b>Current method, which requires 25% of funding by special assessments levied against benefiting properties over 5-15 years</b>
<b>Zero special assessments levied against benefiting properties, which requires 100% of funding by general property tax increases</b>
<b>Electric and/or gas utility fee increases, approximately \$8 per utility, per month</b>

Proposed Revision:

Question 19

The City employs a long-term Pavement management Program to cost-effectively maintain all 180 miles of City streets. From 2015-2020 the City funded projects by assessing 25% to benefiting property owners and contributed 75% through bonded debt, paid with property taxes. The City Council recently passed an ordinance to collect a monthly franchise fee on gas and electric customers and dedicate this funding to the Pavement Management Program, and to eliminate the need for additional property taxes or assessments. The City periodically evaluates funding sources for this ongoing program. Please indicate the extent to which you would support or oppose the following funding sources:

- Assess 25% of street project cost to benefiting property owners and pay 75% through bonded debt, paid with city-wide property taxes.
- Eliminate special assessments and pay 100% with property taxes, resulting in an estimated 15% increase in tax levy.
- Collect a monthly franchise fee on gas and electric customers in the amount of \$7 per utility per month.



Helping Organizations Make Better Decisions

725 W. Frontier Lane, Olathe, Kansas 66061

Phone: (913) 829-1215

Fax: (913) 829-1591

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January 18, 2021

Ben Nibarger  
City Administrator  
City of New Fairview  
817-638-5366

**Subject: Proposal to Conduct a Community Survey for the City of New Fairview**

Dear Mr. Nibarger:

ETC Institute is pleased to submit a quote to conduct a community survey for the City of New Fairview, Texas. If selected for this project, ETC Institute will provide the following services:

**Task 1: Design the Survey and Prepare the Sampling Plan.** Task 1 will include the following services:

- Working with City staff to develop the content of the survey. Although ETC Institute will tailor the survey to the City's needs, our firm will provide sample questions from other communities to make the development of the survey instrument as easy as possible. It is anticipated that 3-4 drafts of the survey will be prepared before the survey is approved by the City. The survey will be up to 6 pages in length.
- Participating in meetings by phone to develop the survey.
- Conducting a pilot test of the survey to ensure the questions are understood by residents. Based on the results of the pilot test, ETC Institute will recommend changes (if needed) to the survey.

Deliverable Task 1. ETC Institute will provide a copy of approved survey instrument.

**Task 2: Administer the Survey.** Task 2 will include the following services:

- ETC Institute will administer the survey by a combination of mail, Internet and phone.
- ETC Institute will mail the survey and a cover letter (on City letterhead) to all households in the City. Only one survey per household will be sent. Postage-paid envelopes will be provided by ETC Institute for each respondent. The City will provide a cover letter for the mailed survey. The cover letter will contain a link to an online version of the survey.

Residents who receive the survey will have the option of returning the printed survey by mail or completing it on-line.

- The estimated number of households in New Fairview is approximately 500. ETC Institute will do everything possible to collect as many surveys from City residents as possible. Approximately 7-10 days after the surveys are mailed, ETC Institute will follow-up via e-mail and/or phone with households that received a mailed survey. ETC Institute will continue following up with households in an attempt to reach a minimum of 100 completed surveys. A sample of 100 completed surveys will provide results that have a margin of error of +/-8.8% at the 95% level of confidence at the City level. The results would be statistically valid City-wide. Because there are only 500 households in the City, ETC Institute may not reach the minimum goal of 100 completed surveys if residents are not willing to participate. However, ETC Institute will do everything possible to ensure the maximum number of surveys are collected from residents.
- ETC Institute will monitor the distribution of the sample to ensure that the sample reasonably reflects the demographic composition of the City with regard to age, geographic dispersion, gender, race/ethnicity and other factors.

Deliverable Task 2. ETC Institute will provide a copy of the overall results for each question on the survey.

**Task 3: Analysis and Final Report.** ETC Institute will submit a final report to the City. At a minimum, this report will include the following items:

- Formal report that includes an executive summary of the survey methodology and a description of major findings.
- Charts and graphs that show the overall results of each question on the survey.
- Benchmarking analysis showing how the City compares to residents in other communities.
- Importance-Satisfaction Analysis that will identify the areas where the greatest opportunities exist to enhance overall satisfaction with City services.
- Tabular data that shows the results for each question on the survey, including open ended questions.
- A copy of the survey instrument

Deliverable Task 3: ETC Institute will submit a final report in an electronic format. ETC Institute can also provide the raw data in an Excel database, or other format as requested by the City.

## ***Project Schedule***

Listed below is ETC Institute's typical timeline for administering a community survey. Since the surveys will be administered entirely in-house, the completion date for the project is completely within our control. We are available to start at a date most convenient for the City.

- **Month 1**  
Design survey instrument  
Finalize sampling plan
- **Month 2**  
Administer the survey
- **Month 3**  
Draft Report Submitted for review  
Prepare and Deliver the Final Report

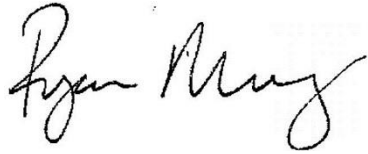
## ***Fee***

The table below shows a breakdown of the fees for the services described in this proposal.

<b>ETC Institute Community Survey Fees for New Fairview, Texas</b>	<b>Number of Completed Surveys</b>
<b>at 95% level of Confidence</b>	<b>100</b>
	<b>+/-8.8%</b>
Design Survey and Prepare Sampling Plan	\$2,000.00
Administration of 15-20 Minute Survey (Up to 6 pages)	\$3,000.00
Formal Report (summary, charts, benchmarking, I-S)	\$2,000.00
<b>Total</b>	<b>\$7,000.00</b>
<b>Optional Services</b>	
Crosstabulations of the results by key demographic variables	\$1,000.00
GIS Maps showing the results of the survey as maps of the community	\$1,000.00
Non-Random Sample Survey open to general public - deliver results in excel/tabular in PDF	\$ 500.00
On-Site Presentation of results	\$2,500.00
Webinar Presentation of results	\$ 500.00

**CLOSING:** We appreciate your consideration of this proposal, and look forward to your decision. If you have any questions, please do not hesitate to call me at (816) 809-7640.

Sincerely,

A handwritten signature in black ink that reads "Ryan Murray". The signature is fluid and cursive, with the first name "Ryan" and last name "Murray" clearly distinguishable.

Ryan Murray  
Assistant Director of Community Research  
ETC Institute  
725 W. Frontier Circle  
Olathe, KS 66061  
(913) 254-4598  
[Ryan.Murray@etcinstitute.com](mailto:Ryan.Murray@etcinstitute.com)

# Town of Westlake Resident Survey

*...helping organizations make better decisions since 1982*

Findings Report

**Submitted to the Town of Westlake, Texas**

ETC Institute  
725 W. Frontier Lane,  
Olathe, Kansas  
66061  
**May 2017**







# Contents

<b>Executive Summary</b> .....	i
<b>Section 1: Charts and Graphs</b> .....	1
<b>Section 2: Trend Analysis</b> .....	17
<b>Section 3: Importance-Satisfaction Analysis</b> .....	30
<b>Section 4: Tabular Data</b> .....	36
<b>Section 5: Survey Instrument</b> .....	72

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# *Town of Westlake*

## *2017 Resident Survey*

### Executive Summary

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#### **Purpose and Methodology**

During the spring of 2017, ETC Institute administered a Resident Survey for the Town of Westlake. The purpose of the survey was to gather input from citizens to help Town leaders make critical decisions concerning the allocation of Town resources, to measure the effectiveness of Town Services, and to help decide the future direction of the community. This was the sixth time the Town had administered the resident survey; the previous surveys were administered in 2009, 2010, 2011, 2013, and 2015.

The five-page survey, cover letter and postage paid return envelope were mailed to a random sample of households in the Town of Westlake. The cover letter explained the purpose of the survey and encouraged residents to either return their survey by mail or complete the survey online. At the end of the online survey, residents were asked to enter their home address, this was done to ensure that only responses from residents who were part of the random sample were included in the final survey database.

Ten days after the surveys were mailed, ETC Institute sent emails and placed phone calls to the households that received the survey to encourage participation. The emails contained a link to the on-line version of the survey to make it easy for residents to complete the survey. To prevent people who were not residents of Westlake from participating, everyone who completed the survey on-line was required to enter their home address prior to submitting the survey. ETC Institute then matched the addresses that were entered on-line with the addresses that were originally selected for the random sample. If the address from a survey completed on-line did not match one of the addresses selected for the sample, the on-line survey was not counted.

The five-page survey was administered to a random sample of 174 households in the Town. The results for the random sample of 174 households have a 95% level of confidence with a precision of at least +/- 5.7%.

This summary report contains:

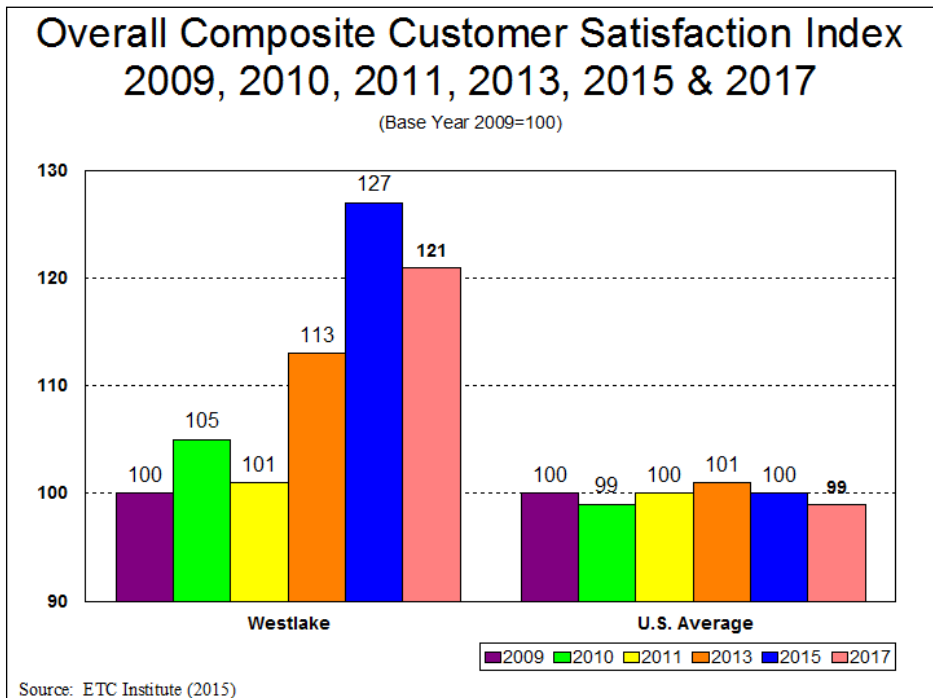
- a summary of the methodology for administering the survey and major findings
- charts showing the overall results for most questions on the survey
- trend analysis
- importance-satisfaction analysis
- tabular data that show the results for each question on the survey
- a copy of the survey instrument.

The percentage of “don’t know” responses has been excluded from many of the graphs shown in this report to facilitate valid comparisons of the results from Westlake with the results from other communities in ETC Institute’s *DirectionFinder*® database. Since the number of “don’t know” responses often reflects the utilization and awareness of Town services, the percentage of “don’t know” responses has been provided in the tabular data section of this report. When the “don’t know” responses have been excluded, the text of this report will indicate that the responses have been excluded with the phrase “who had an opinion.”

## Overall Satisfaction

Eighty-one percent (81%) of residents, who had an opinion, were “very satisfied” or “satisfied” with the overall quality of government services provided by Westlake; 11% were neutral and 7% were dissatisfied. The highest levels of satisfaction with Town services, based upon a combination of “very satisfied” and “satisfied” responses among residents who had an opinion, were: the overall quality of public safety services (94%), the Town’s emergency preparedness efforts (89%), and the overall quality of parks, trails, open spaces, streetscaping, and facilities (82%).

**Composite Customer Satisfaction Index.** To objectively assess the change in overall satisfaction with Town services from 2009, ETC Institute developed a Composite Customer Satisfaction Index for the Town. The Composite Satisfaction Index is derived from the mean rating given for all major categories of Town services that are assessed on the survey in 2009, 2010, 2011, 2013, 2015 and 2017. The index is calculated by dividing the mean rating for the current year by the mean rating for the base-year (year 2009) and then multiplying the result by 100. As the chart below shows, the **Composite Customer Satisfaction Index for Westlake has increased by 21 points since 2009 and has decreased by 6 points since 2015.** In comparison, the U.S. index has remained very stagnant, with a decrease of 1 point since 2015.



## Overall Priorities

The top three major Town services that residents felt were most important were: 1) public safety services (62%), 2) the overall quality of parks, trails, open spaces, streetscaping, and facilities (39%), and 3) the overall value of Westlake Academy to the Town (37%).

## Satisfaction with Specific Town Services

- **Police Services.** The police services that residents were most satisfied with, based upon a combination of “very satisfied” and “satisfied” responses among residents who had an opinion, were: the overall quality of local police protection (86%), how quickly police respond to emergencies (84%), and the visibility of police in neighborhoods (80%).
- **Fire and Emergency Medical Services.** Residents gave high satisfaction ratings to all three fire and emergency medical services that were rated. Based upon a combination of “very satisfied” and “satisfied” responses, among residents who had an opinion, ninety-one (91%) of Westlake residents were satisfied with the response time of fire and EMS personnel, 91% were satisfied with the quality of emergency medical services and 89% were satisfied with the overall quality of fire services.
- **Emergency Preparedness.** Eighty-one percent (81%) of the residents surveyed, who had an opinion, were “very satisfied” or “satisfied” with the Town staff response during extreme weather and 79% were satisfied with efforts by the Town staff to inform residents of hazardous road conditions, potential inclement weather and closures.
- **Transportation Services.** The transportation services that residents were most satisfied with, based upon a combination of “very satisfied” and “satisfied” responses among residents who had an opinion, were: the cleanliness of streets and other public areas (85%) and the condition of major streets in Westlake (81%).
- **Communication/Citizen Engagement.** The communication/citizen engagement services that residents were most satisfied with, based upon a combination of “very satisfied” and “satisfied” responses among residents who had an opinion, were: Town efforts to keep residents informed (82%), the timeliness of information provided by the Town (80%), and the completeness of information provided by the Town (80%).
- **Parks and Recreation Services.** The parks and recreation services that residents were most satisfied with, based upon a combination of “very satisfied” and “satisfied” responses among residents who had an opinion, were: the maintenance of streetscaping and open space (82%) and the number of publicly-accessible parks/trails (76%).
- **Utility Services.** The utility services that residents were most satisfied with, based upon a combination of “very satisfied” and “satisfied” responses among residents who had an opinion, were: residential trash collection services (83%), quality of drinking water utility services (77%), and the promotion of water conservation and the protection of resources (75%).

- **Customer Service.** The customer service items that residents were most satisfied with, based upon a combination of “very satisfied” and “satisfied” responses among residents who had an opinion, were the friendliness of Town staff (92%), participation of Town staff in community events/neighborhood meetings (83%) and the timeliness of Town Staff to concerns or issues (77%).
- **Code Enforcement.** Both code enforcement items saw high levels of overall satisfaction, based upon a combination of “very satisfied” and “satisfied” responses among residents who had an opinion. Eighty-one percent (81%) of respondents were satisfied with the enforcement of exterior maintenance and maintenance regulations for property and 80% were satisfied with the enforcement of sign regulations.

## Other Findings

- The most important reasons that residents indicated influenced their decision to move to Westlake were: 1) the quality of life (99%), 2) low crime rates and the quality of public safety (98%), 3) the aesthetic appeal and high development standards (97%), 4) quality of their subdivision (97%), and 5) the type of housing available (95%). The quality of life, Westlake Academy, and the aesthetic appeal and high development standards were the top three reasons that residents will stay in Westlake over the next five years.
- The types of Town information that residents were most familiar with, based upon the combined percentage of residents who indicated they were “very familiar” or “somewhat familiar” with the information, were: the Town’s Vision, Values, and Mission Statements (79%), the Town’s Comprehensive Plan (76%), zoning standards within the Town (75%), and the Town’s open space requirements for development (75%).
- Of the residents who had attended public meetings held in their neighborhood, 91% felt the meeting was informative and 91% felt they had the opportunity to discuss their ideas and concerns at the meeting.
- Of the residents who have not attended a public meeting, 72% indicated they would attend in the future, and 87% think the meetings are useful.
- Nearly half (47%) of respondents indicated they think neighborhood meetings should be held annually, 31% think they should be held twice a year, and 2% think they should be held every other year.
- Fifty-two percent (52%) of households surveyed have children in grades K-12 living in the home. Of those who have children two out of every three households indicated their children attend Westlake Academy. Twenty percent (20%) of respondents who indicated their child previously attended Westlake Academy would consider re-enrolling them in the future.
- Ninety-eight percent (98%) of the residents surveyed felt “very safe” or “safe” in the Town of Westlake, compared to only 2% who felt “unsafe” or “very unsafe”.

- Most (96%) of the residents surveyed thought Westlake was an “excellent” or “good” place to live; 3% felt it was an “average” place to live, only 1% felt it was a “poor” place to live.

## Investment Priorities

**Recommended Priorities for the Next Two Years.** In order to help the Town identify investment priorities for the next two years, ETC Institute conducted an Importance-Satisfaction (I-S) analysis. This analysis examined the importance residents placed on each Town service and the level of satisfaction with each service. By identifying services of high importance and low satisfaction, the analysis identified which services will have the most impact on overall satisfaction with Town services over the next two years. If the Town wants to improve its overall satisfaction rating, the Town should prioritize investments in services with the highest Importance Satisfaction (I-S) ratings. Details regarding the methodology for the analysis are provided in the Section 2 of this report.

**Overall Priorities for the Town by Major Category.** This analysis reviewed the importance of and satisfaction with major categories of Town services. This analysis was conducted to help set the overall priorities for the Town. Based on the results of this analysis, the major services that are recommended as the top priorities for investment over the next two years to raise the Town’s overall satisfaction rating are listed below:

- Overall value of Westlake Academy to the Town (IS Rating=0. 1017)

The table below shows the importance-satisfaction rating for all 11 major categories of Town services that were rated.

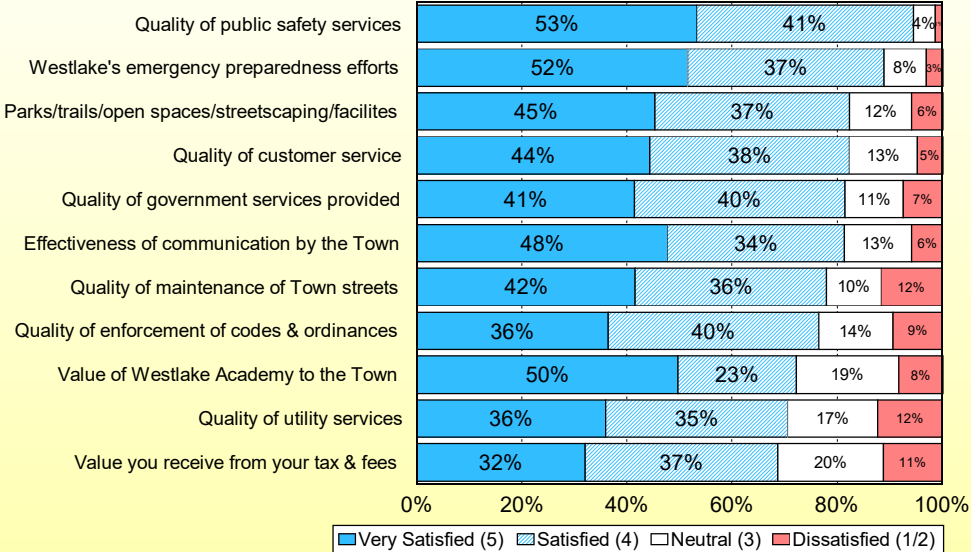
2017 Importance-Satisfaction Rating Town of Westlake Major Categories of City Services						
Category of Service	Most Important %	Most Important Rank	Satisfaction %	Satisfaction Rank	Importance-Satisfaction Rating	I-S Rating Rank
<b>High Priority (IS .10-20)</b>						
Overall value of Westlake Academy to the Town	37%	3	72%	9	0.1017	1
<b>Medium Priority (IS &lt;.10)</b>						
Overall value you receive from your tax & fees	30%	4	69%	11	0.0952	2
Overall quality of parks, trails, open spaces, streetscaping, & facilities	39%	2	82%	3	0.0688	3
Overall quality of maintenance of Town streets	30%	5	78%	7	0.0656	4
Overall quality of utility services	18%	7	71%	10	0.0523	5
Overall quality of public safety services (police, fire, & emergency medical)	62%	1	95%	1	0.0342	6
Overall quality of government services provided by the Town of Westlake	14%	8	82%	5	0.0255	7
Overall quality of enforcement of codes & ordinances	10%	9	77%	8	0.0230	8
Overall efforts by the Town to ensure the community is prepared for emergencies	19%	6	89%	2	0.0210	9
Overall effectiveness of communication by the Town	9%	10	81%	6	0.0162	10
Overall quality of customer service	8%	11	82%	4	0.0142	11

# Section 1: Charts and Graphs

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## Q1. Overall Satisfaction With Town Services by Major Category

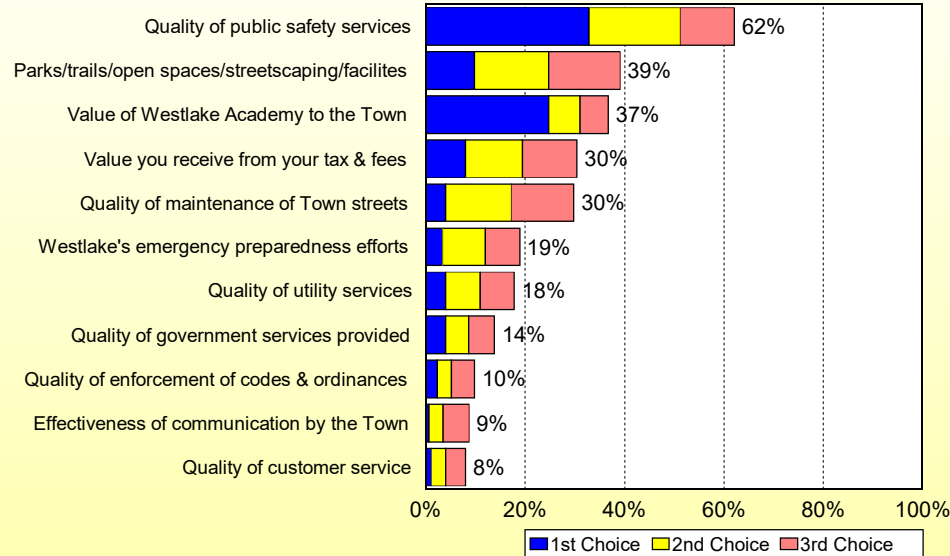
by percentage of respondents who rated the item as a 1 to 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

## Q2. Major Categories of Town Services That Residents Felt Were Most Important

by percentage of respondents who selected the item as one of their top three choices

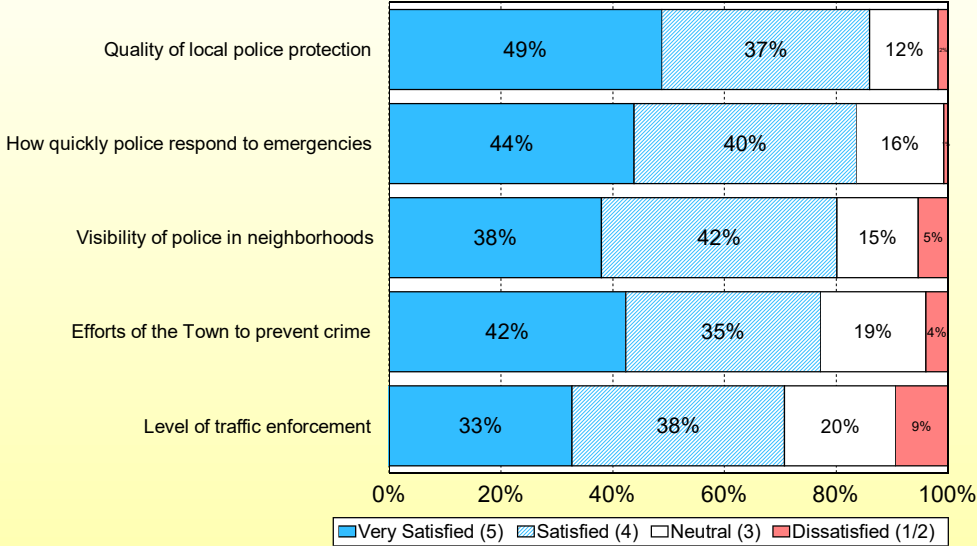


Source: ETC Institute DirectionFinder (2017 - Westlake, TX)



### Q3.1-5. Satisfaction with Police Services in the Town of Westlake

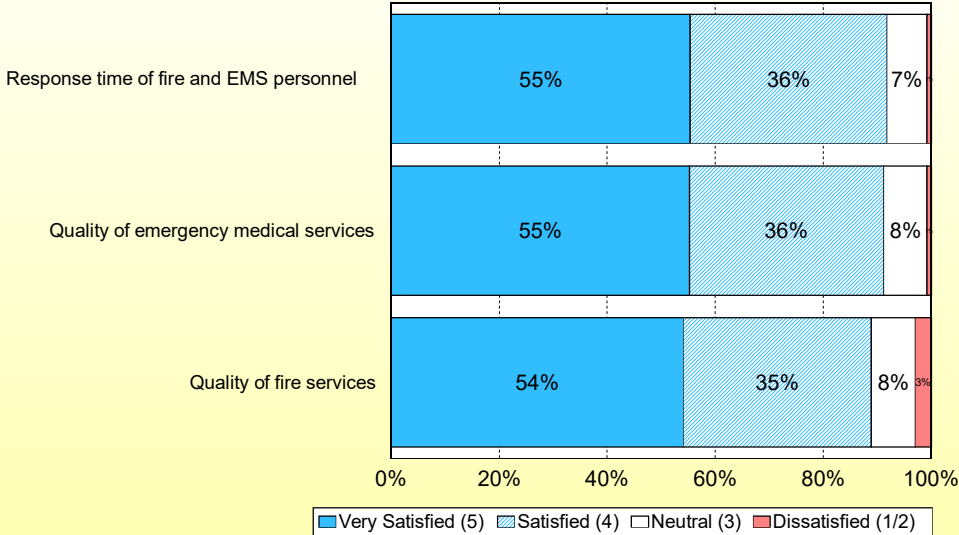
by percentage of respondents who rated the item as a 1 to 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q3.6-8. Satisfaction with Fire and Medical Services in the Town of Westlake

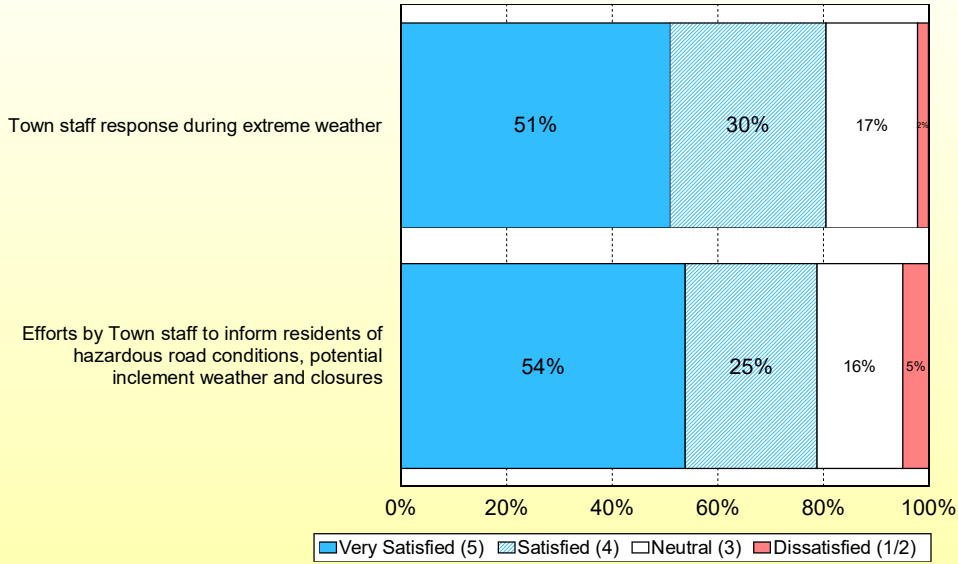
by percentage of respondents who rated the item as a 1 to 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q3.9-10. Satisfaction with Emergency Preparedness in the Town of Westlake

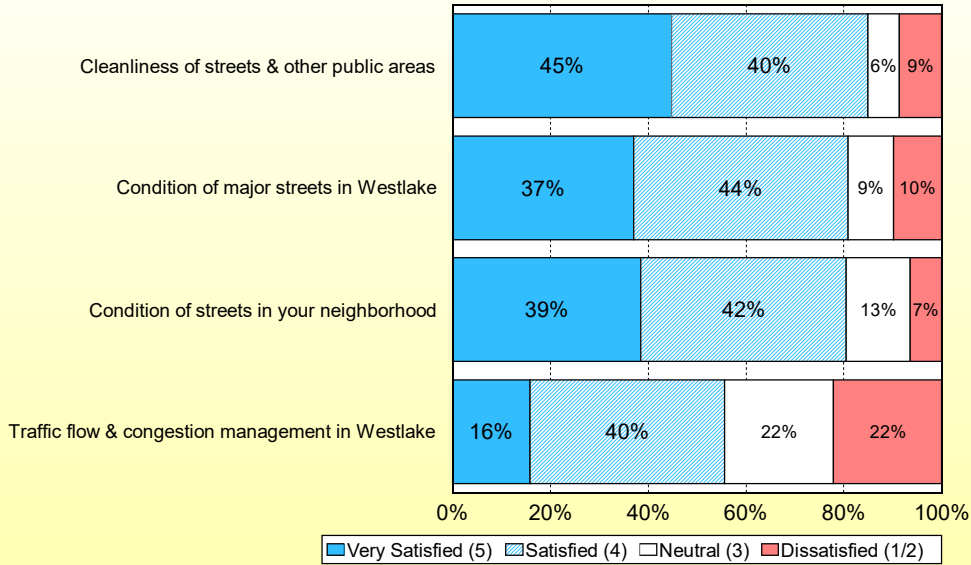
by percentage of respondents who rated the item as a 1 to 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q3.11-14. Satisfaction with Transportation Services in the Town of Westlake

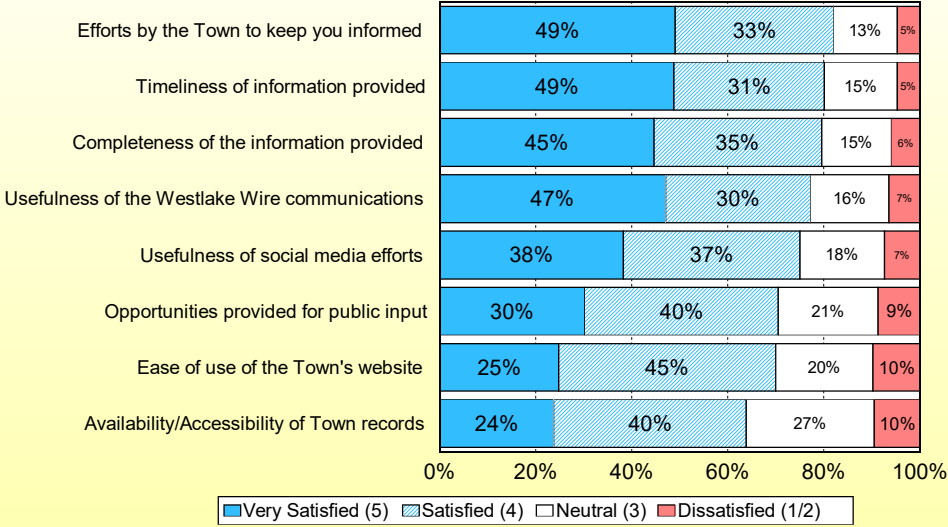
by percentage of respondents who rated the item as a 1 to 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q3.15-22. Satisfaction with Communication and Citizen Engagement in the Town of Westlake

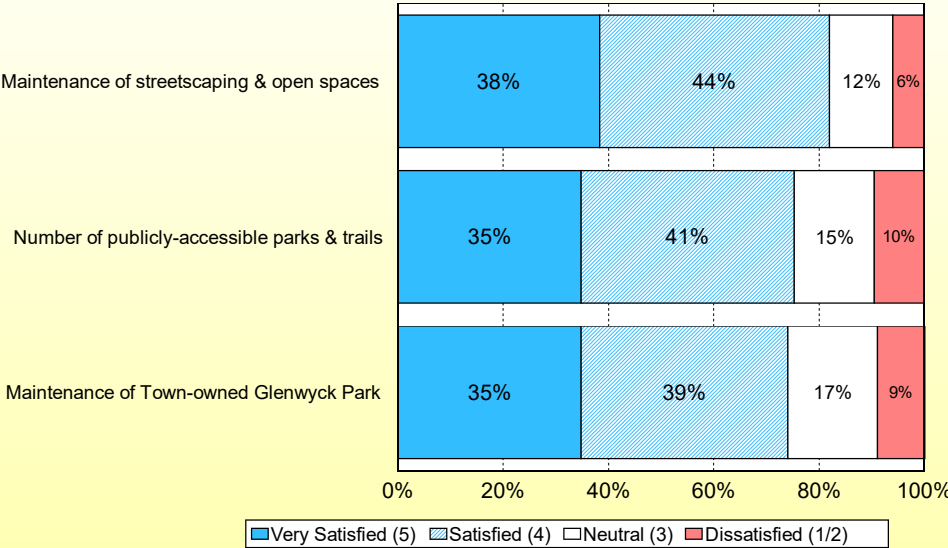
by percentage of respondents who rated the item as a 1 to 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q3.23-25. Satisfaction with Parks and Recreation Services in the Town of Westlake

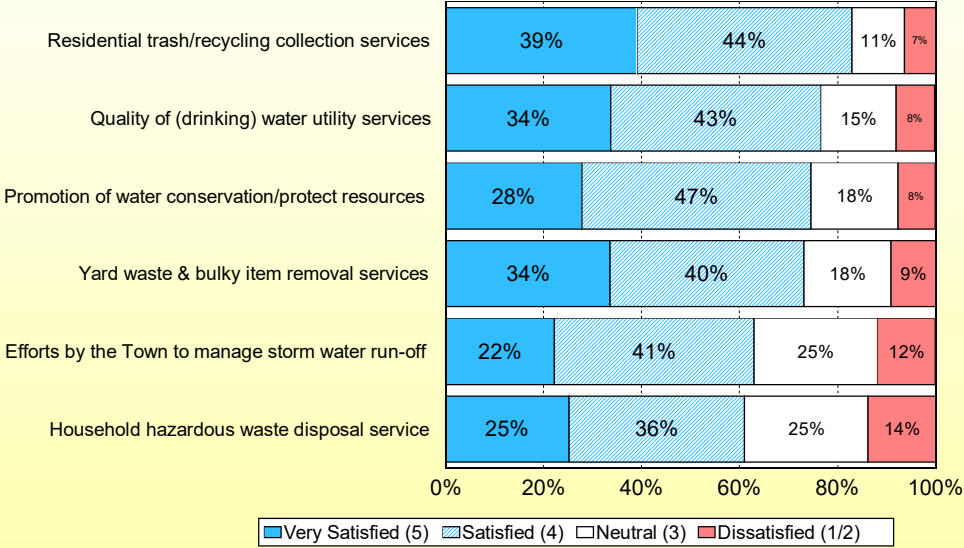
by percentage of respondents who rated the item as a 1 to 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q3.26-31. Satisfaction with Utility Services in the Town of Westlake

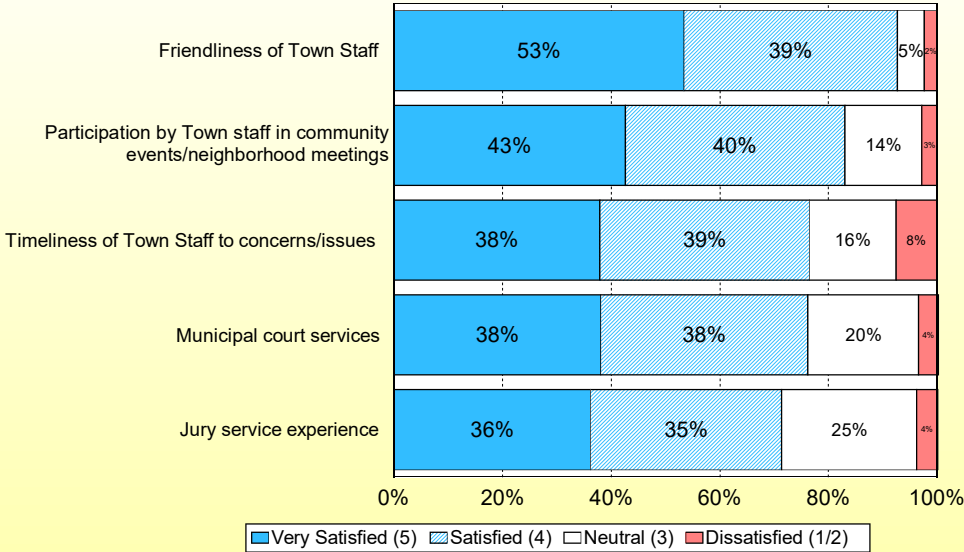
by percentage of respondents who rated the item as a 1 to 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q3.32-36. Satisfaction with Customer Service in the Town of Westlake

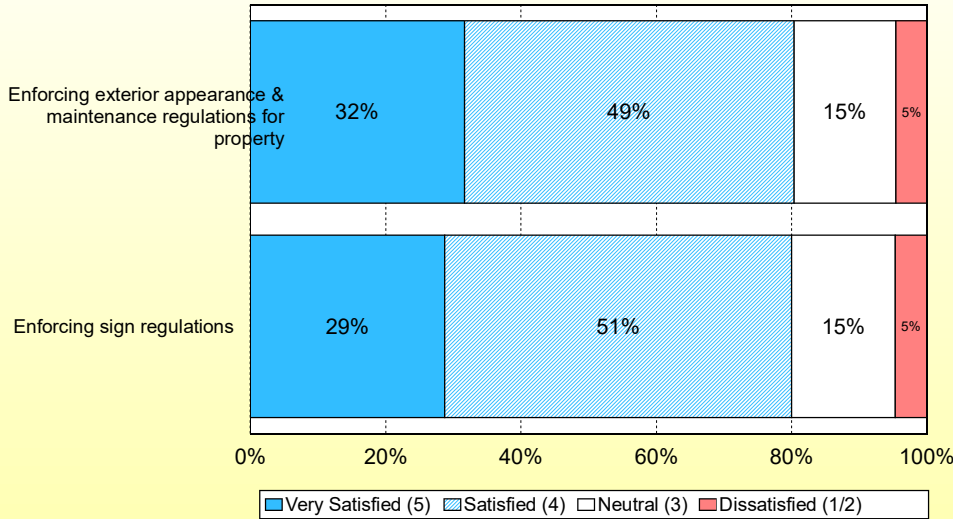
by percentage of respondents who rated the item as a 1 to 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q3.37-38. Satisfaction with Code Enforcement in the Town of Westlake

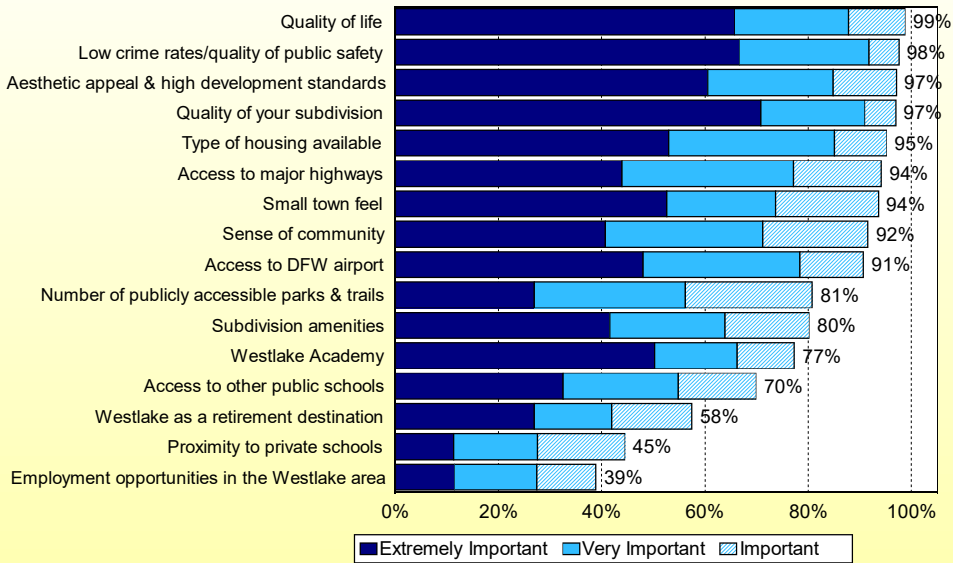
by percentage of respondents who rated the item as a 1 to 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q4. Importance of Various Reasons in the Decision to Move to Westlake

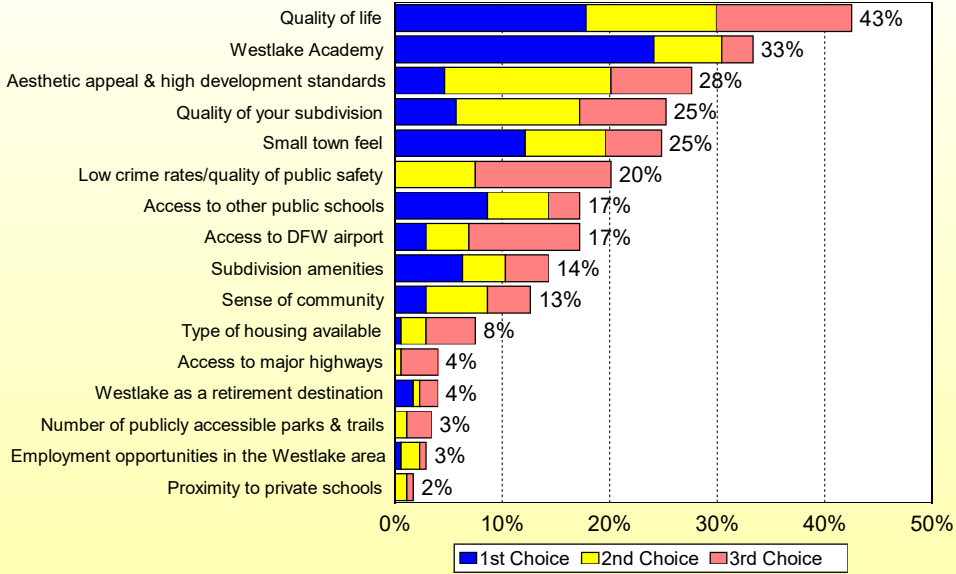
by percentage of respondents who felt the item was "extremely important," "very important" or "important"



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q5. Reasons Residents Will Stay in Westlake Over the Next Five Years

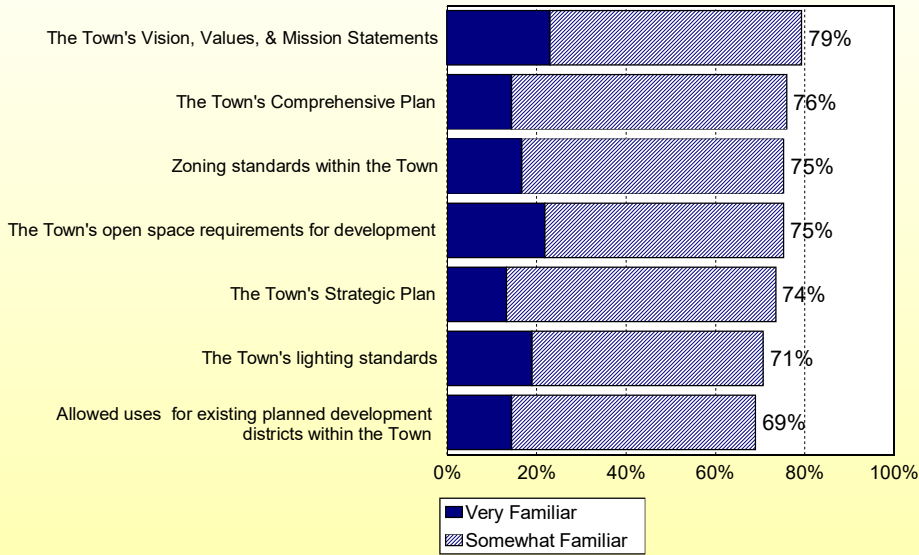
by percentage of respondents who selected the item as one of their top three choices



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q6. Town Information Residents Were Familiar With

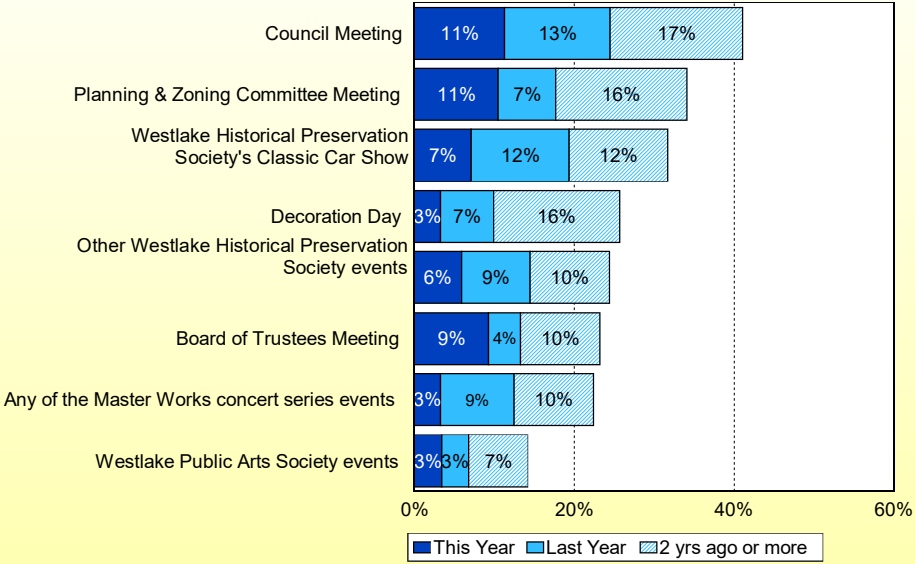
by percentage of respondents who indicated they were "very familiar" or "somewhat familiar" with the information



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q7. When did you most recently attend the following events?

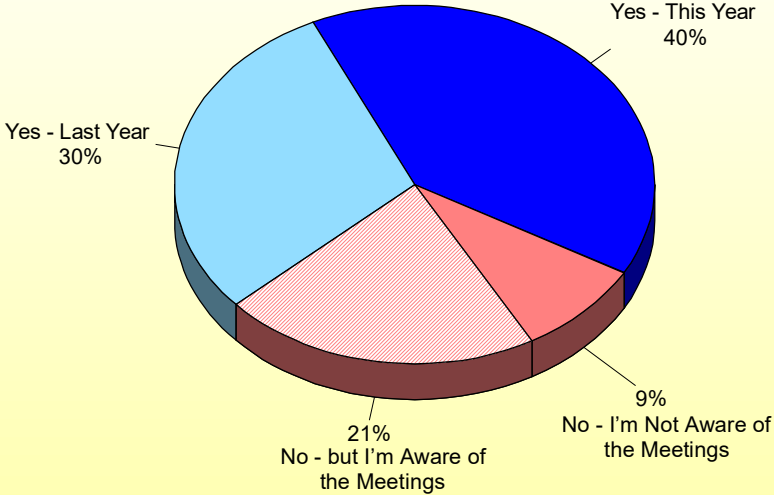
by percentage of respondents



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q8. Have you attended a public meeting in your neighborhood?

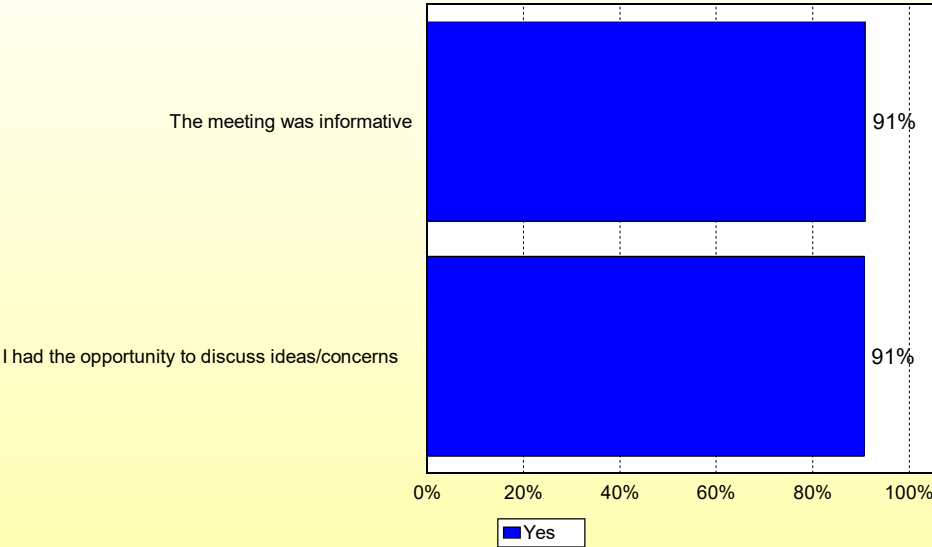
by percentage of respondents (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q8a-b. Perceptions of Public Meetings

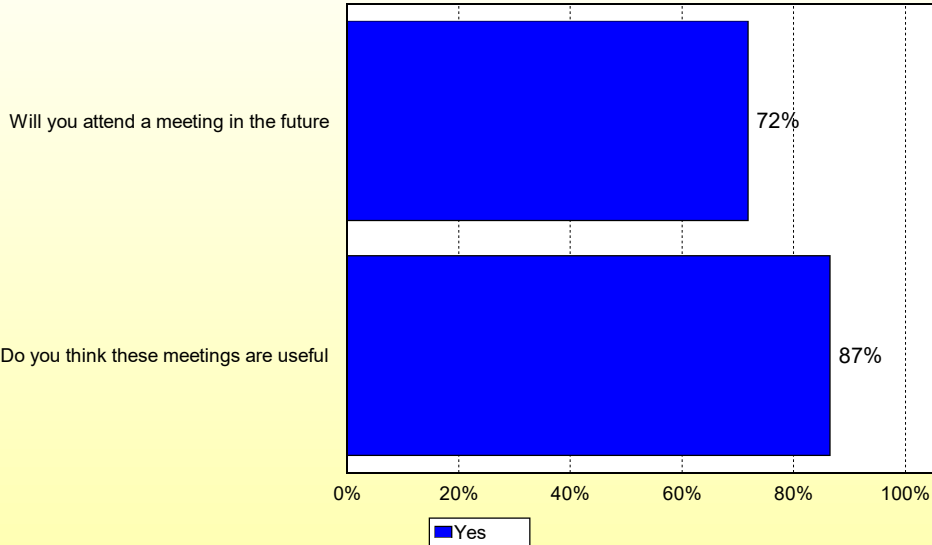
by percentage of respondents who indicated they have attended a public meeting in their neighborhood



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q8c-d Perceptions of Public Meetings

by percentage of respondents who indicated they have NOT attended a public meeting in their neighborhood

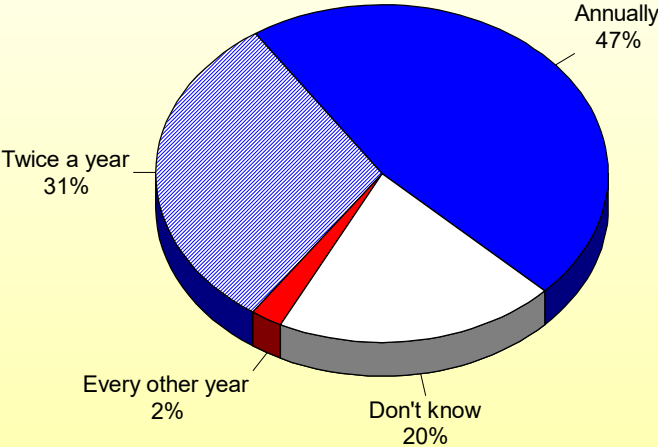


Source: ETC Institute DirectionFinder (2017 - Westlake, TX)



### Q9. In your opinion, how often should neighborhood meetings be held?

by percentage of respondents

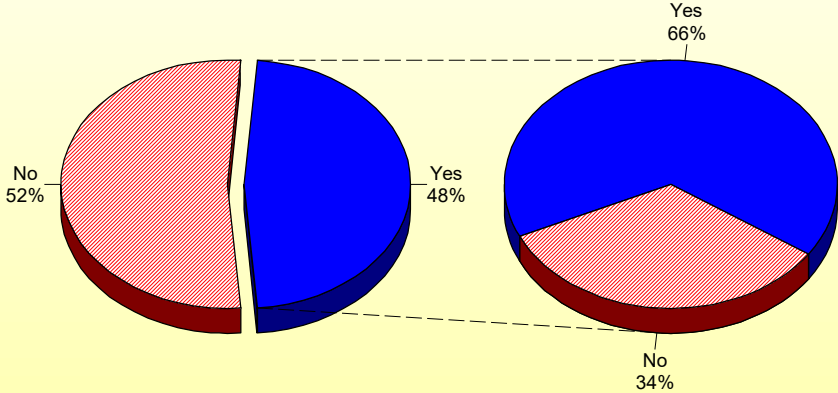


Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q10. Do any children in grades K-12 live in your home?

by percentage of respondents

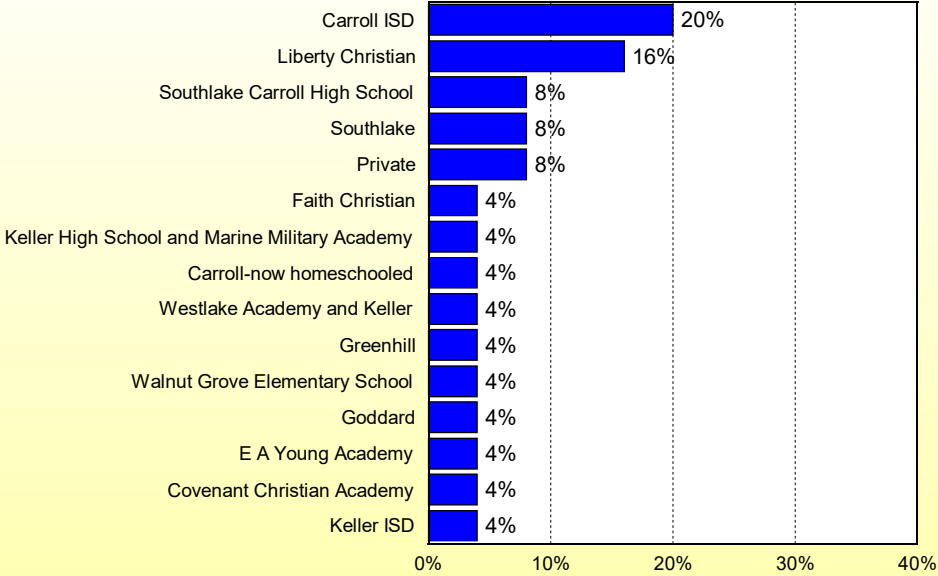
#### Q11a. If YES, do any of these children currently attend Westlake Academy?



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q11b. Where do you children go to school?

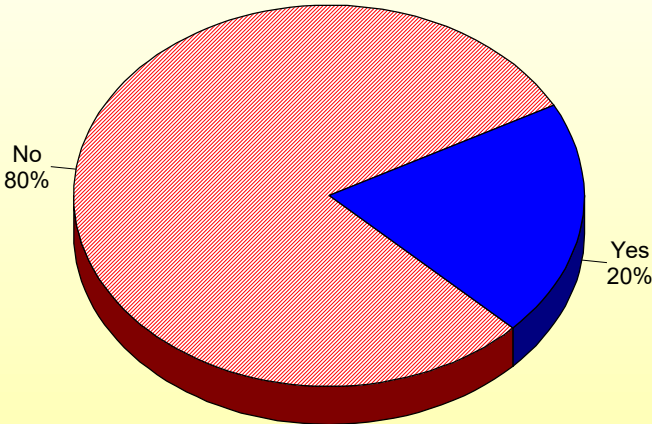
by percentage of respondents who indicated they have children in grades K-12 in their home



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q11d. If your child previously attended Westlake, are you considering re-enrolling them in the future?

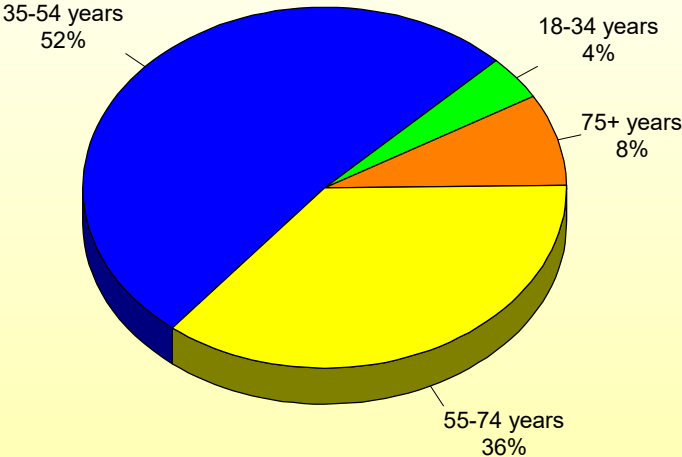
by percentage of respondents who had children in grades K-12 living in their home who were not attending Westlake Academy



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q12. Demographics: Age of Survey Respondents

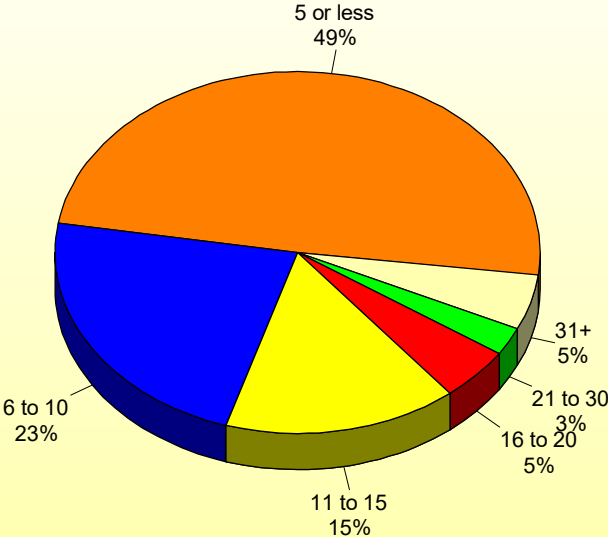
by percentage of respondents



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q12. Demographics: How many years have you lived in Westlake?

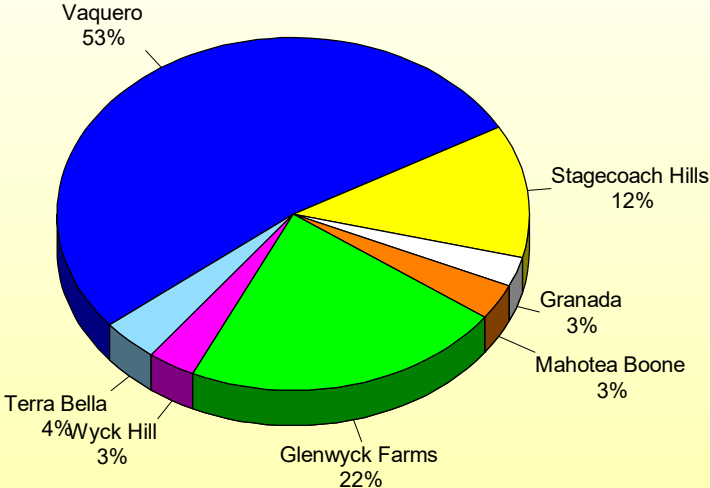
by percentage of respondents



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q14. Demographics: In which subdivision do you live?

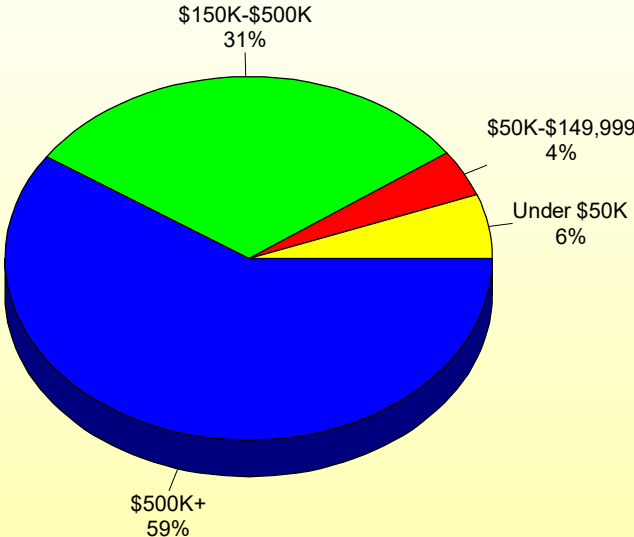
by percentage of respondents



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q15. Demographics: Household Income

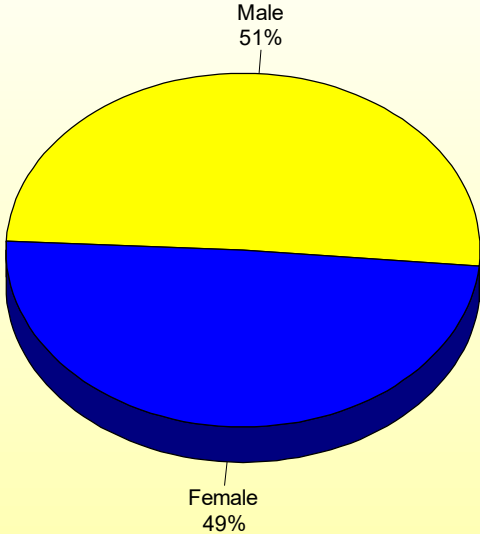
by percentage of respondents



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q16. Demographics: Respondents Gender

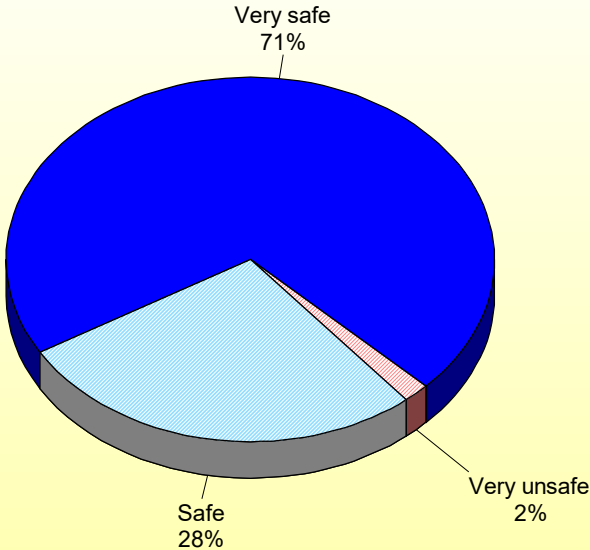
by percentage of respondents



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q17. Overall, how safe do you feel in the Town of Westlake?

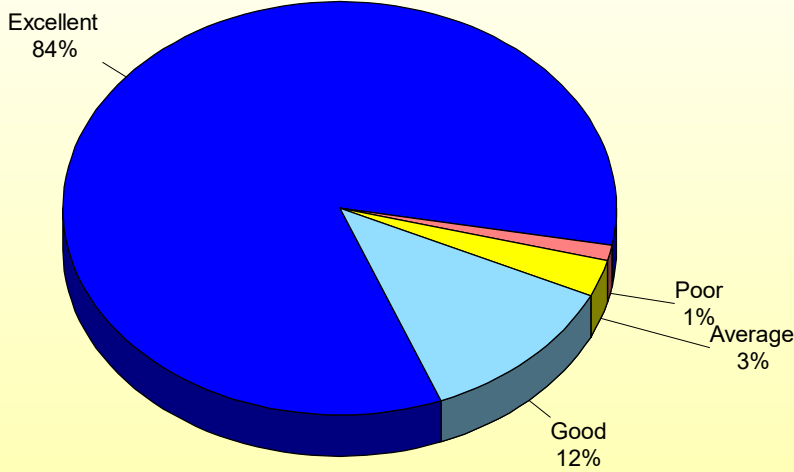
by percentage of respondents



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Q18. Overall, how would you rate the Town of Westlake as a place to live?

by percentage of respondents



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

**Section 2:**  
**Trend Analysis**

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# *Town of Westlake*

## *2017 Resident Survey*

### Trends Analysis

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#### Overview

In 2009, 2010, 2011, 2013, 2015, and 2017 the Town of Westlake conducted a resident survey to assess resident satisfaction with the delivery of major Town services. The charts on the following pages show how the results of the 2017 survey compare to the results from previous surveys. Significant changes in the survey results from 2015 to 2017 are highlighted below; given the sample size of both surveys, changes of 4.0% or more are considered statistically significant.

#### Significant Changes in Satisfaction Ratings

**Satisfaction with Major Categories of Town Services.** Among the 11 major categories of Town services that were rated in both 2015 and 2017, there were significant changes in four of the areas. The areas with significant decreases in satisfaction ratings are listed below:

- Satisfaction with the maintenance of Town streets decreased 4% from 82% in 2015 to 78% in 2017.
- Satisfaction with the towns emergency preparedness efforts decreased 7% from 96% in 2015 to 89% in 2017.
- Satisfaction with the overall customer services provided by Town employees decreased 8% from 92% in 2015 to 81% in 2017.
- Satisfaction with the effectiveness of Town communication decreased 11% from 92% in 2015 to 81% in 2017.

**Satisfaction with Police Services.** Among the 5 police services that were rated in both 2015 and 2017, there were increases in satisfaction ratings in two of the five areas and both were significant. There were also two areas which saw significant decreases. The areas with significant increases and decreases in satisfaction ratings are listed below:

- Satisfaction with the visibility of police in neighborhoods increased 10% from 70% in 2015 to 80% in 2017.
- Satisfaction with overall quality of local police protection increased 5% from 81% in 2015 to 86% in 2017.
- Satisfaction with how quickly police respond to emergencies decreased 5% from 89% in



2015 to 84% in 2017.

- Satisfaction with Town efforts to prevent crime decreased 6% from 83% in 2015 to 77% in 2017.

**Satisfaction with Fire and Emergency Medical Services.** Among the three fire and emergency medical services that were rated in both 2015 and 2017, there were increases in satisfaction ratings in all three areas, and significant changes in two areas.

- Satisfaction with the response time of fire and EMS personnel increased 7% from 85% in 2015 to 92% in 2017.
- Satisfaction with the overall quality of fire services increased 4% from 85% in 2015 to 89% in 2017.

**Satisfaction with Emergency Preparedness.** Among the two emergency preparedness services that were rated in both 2015 and 2017, there were significant decreases in both areas. The details are listed below:

- Satisfaction with efforts by the Town staff to inform residents of hazardous road conditions, potential inclement weather and closures decreased 7% from 86% in 2015 to 79% in 2017.
- Satisfaction with the response efforts by the Town staff during extreme weather conditions decreased 9% from 90% in 2015 to 81% in 2017.

**Satisfaction with Transportation Services.** Among the four transportation services that were rated in both 2015 and 2017, there were decreases in satisfaction ratings in all four areas, two of which were significant. The areas with significant decreases in satisfaction ratings are listed below:

- Satisfaction with the condition of major streets decreased 4% from 85% in 2015 to 81% in 2017.
- Satisfaction with the traffic flow and congestion management decreased 15% from 71% in 2015 to 56% in 2017.

**Satisfaction with Communications and Citizen Engagement.** Among the eight community and citizen engagement areas that were rated in both 2015 and 2017, there were increases in satisfaction ratings in one area. There were decreases in overall satisfaction in the remaining seven areas, six were significant. The areas with significant decreases in satisfaction ratings are listed below:

- Satisfaction with the completeness of information provided by the Town decreased 5% from 85% in 2015 to 80% in 2017.
- Satisfaction with the usefulness of the Westlake Wire communications decreased 8% from 85% in 2015 to 77% in 2017.

- Satisfaction with the availability/accessibility of Town records decreased 9% from 73% in 2015 to 64% in 2017.
- Satisfaction with the opportunities provided for public input decreased 10% from 81% in 2015 to 71% in 2017.
- Satisfaction with the timeliness of information provided by the Town decreased 11% from 91% in 2015 to 80% in 2017.
- Satisfaction with Town efforts to keep residents informed decreased 12% from 94% in 2015 to 82% in 2017.

**Satisfaction with Parks and Recreation Services.** Among the three parks and recreation services that were rated in both 2015 and 2017, there were two significant increases, as listed below:

- Satisfaction with the maintenance of Glenwyck Park increased 11% from 63% in 2015 to 74% in 2017.
- Satisfaction with the maintenance of streetscaping and open spaces increased 8% from 74% in 2015 to 82% in 2017.

**Satisfaction with Utility Services.** Among the six utility services that were rated in both 2015 and 2017, there were decreases in satisfaction ratings all six areas, five of which were significant. The areas with significant increases in satisfaction ratings are listed below:

- Satisfaction with household hazardous waste disposal services decreased 4% from 65% in 2015 to 61% in 2017.
- Satisfaction with efforts by the Town to manage storm water run-off decreased 6% from 63% in 2015 to 57% in 2017.
- Satisfaction with efforts by the Town to promote water conservation and protect water resources decreased 6% from 81% in 2015 to 75% in 2017.
- Satisfaction with yard waste and bulky item removal services decreased 7% from 80% in 2015 to 73% in 2017.
- Satisfaction with the quality of drinking water utility services decreased 8% from 85% in 2015 to 77% in 2017.

**Satisfaction with Customer Service.** Among the five customer service areas that were rated in both 2015 and 2017, there were decreases in satisfaction ratings in all five areas, two of which were significant. The areas with significant decreases in satisfaction ratings are listed below:

- Satisfaction with municipal court services decreased 10% from 86% in 2015 to 76% in 2017.
- Satisfaction with jury service experience decreased 11% from 82% in 2015 to 71% in 2017.

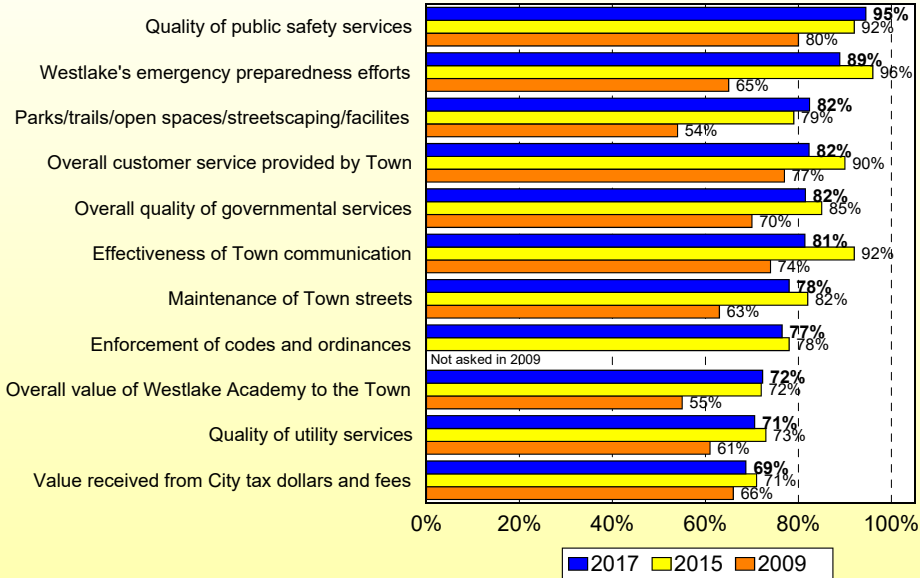
**Satisfaction with Code Enforcement.** Among the two code enforcement areas that were rated in both 2015 and 2017, there were no significant changes.

### **Significant Changes in Other Areas**

- Seventy-five percent (75%) of residents indicated they are familiar with the Town's open space requirements for development, which is a 10% increase from 65% in 2015.
- Seventy-five percent (75%) of residents indicated they are familiar with the Town's zoning standards in 2017, which is a 8% increase from 67% in 2015.
- Sixty-nine percent (69%) of residents indicated they are familiar with the allowed uses for planned development districts in 2017, which is a 4% increase from 65% in 2015
- Seventy-one percent (71%) of residents indicated they are familiar with the Town's lighting standards in 2017, which is a 4% increase from 67% in 2015
- Forty percent (40%) of residents attended a neighborhood meeting in 2017, which is an 9% decrease from 49% in 2015.

### Trends: Overall Satisfaction With Town Services by Major Category (2017 vs. 2015 vs. 2009)

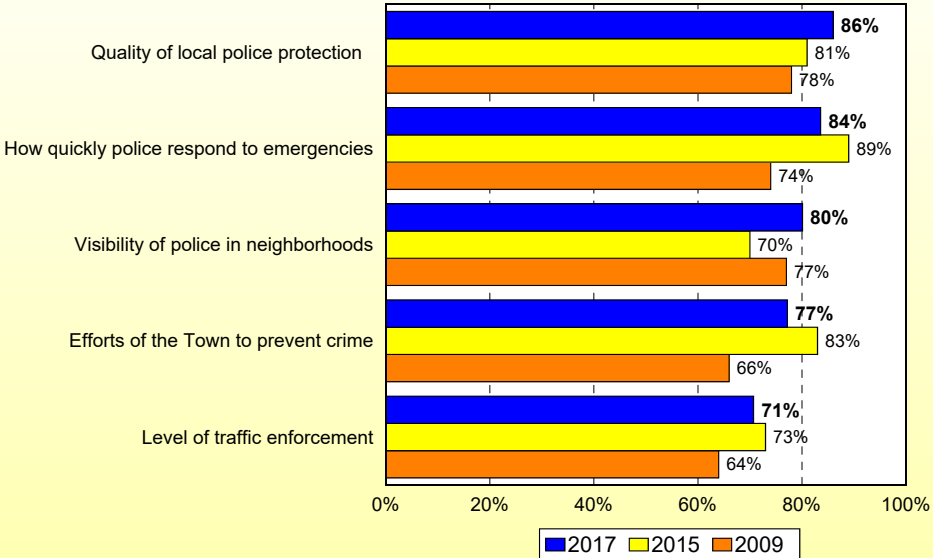
by percentage of respondents who rated the item as a 4 or 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Trends: Satisfaction with Police Services in the Town of Westlake (2017 vs. 2015 vs. 2009)

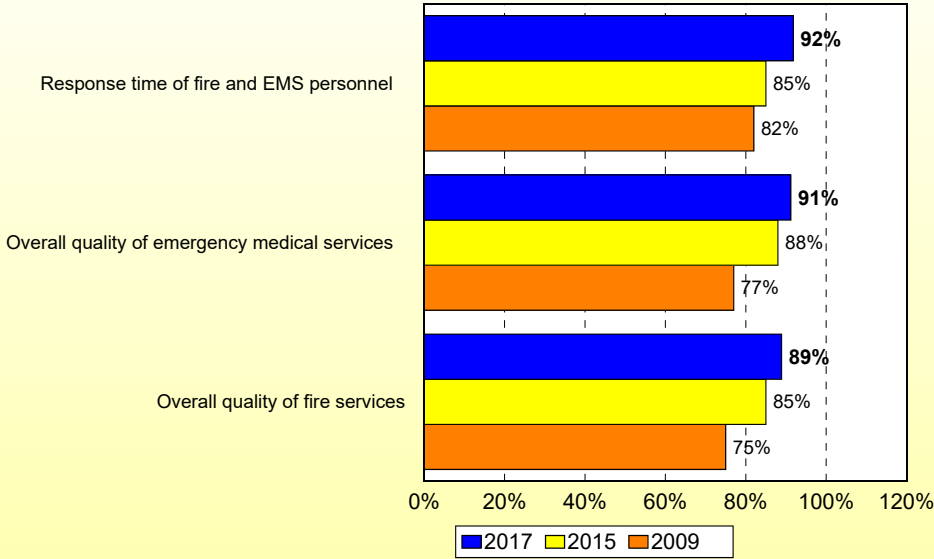
by percentage of respondents who rated the item as a 4 or 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Trends: Satisfaction with Fire and EMS Services in the Town of Westlake (2017 vs. 2015 vs. 2009)

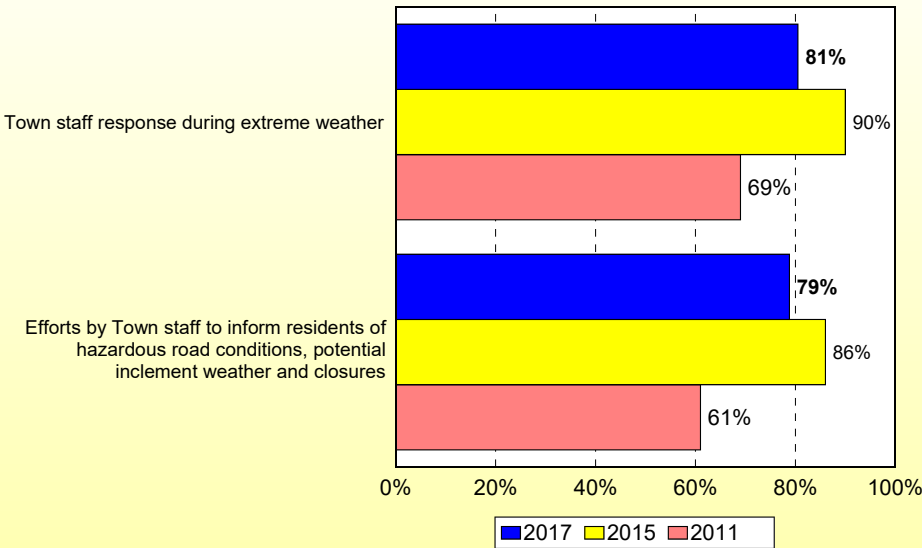
by percentage of respondents who rated the item as a 4 or 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Trends: Satisfaction with Emergency Preparedness in the Town of Westlake (2017 vs. 2015 vs. 2011)

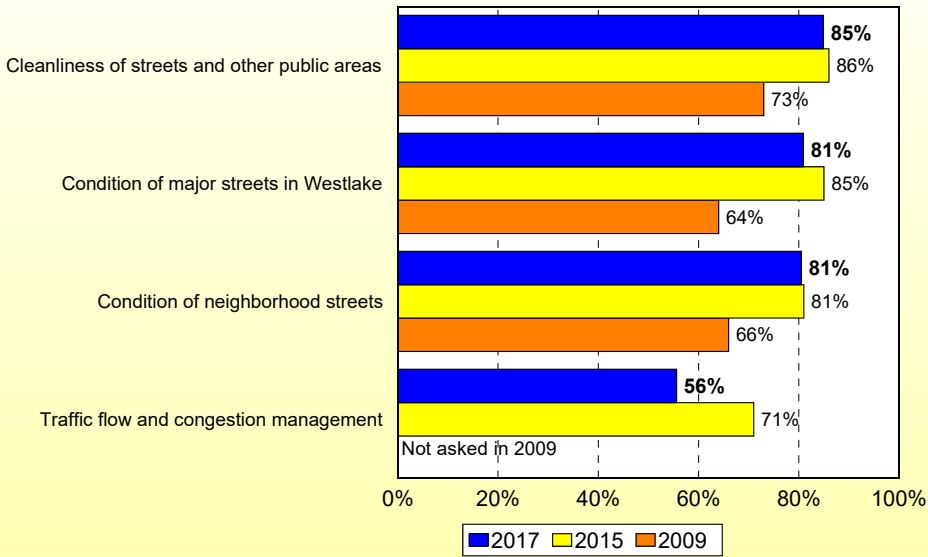
by percentage of respondents who rated the item as a 4 or 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Trends: Satisfaction with Transportation Services in the Town of Westlake (2017 vs. 2015 vs. 2009)

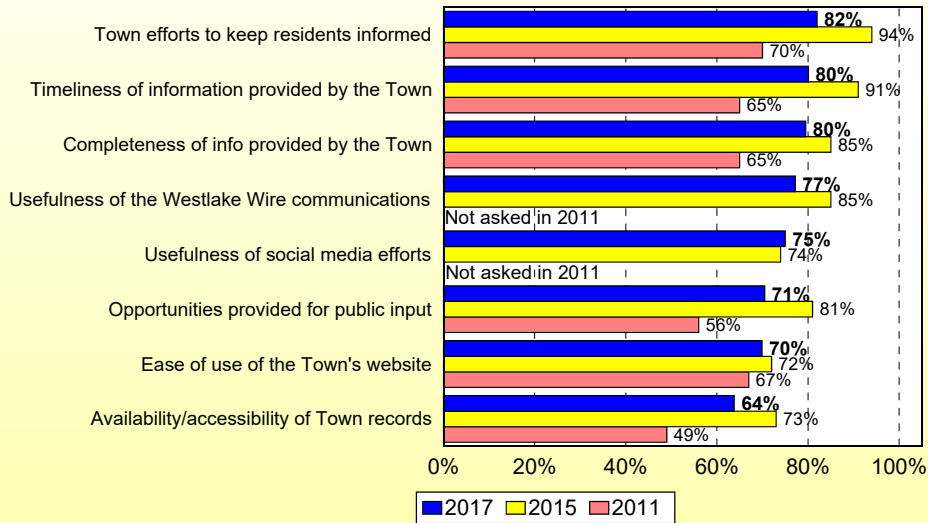
by percentage of respondents who rated the item as a 4 or 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Trends: Satisfaction with Communications and Citizen Engagement in the Town of Westlake (2017 vs. 2015 vs. 2011)

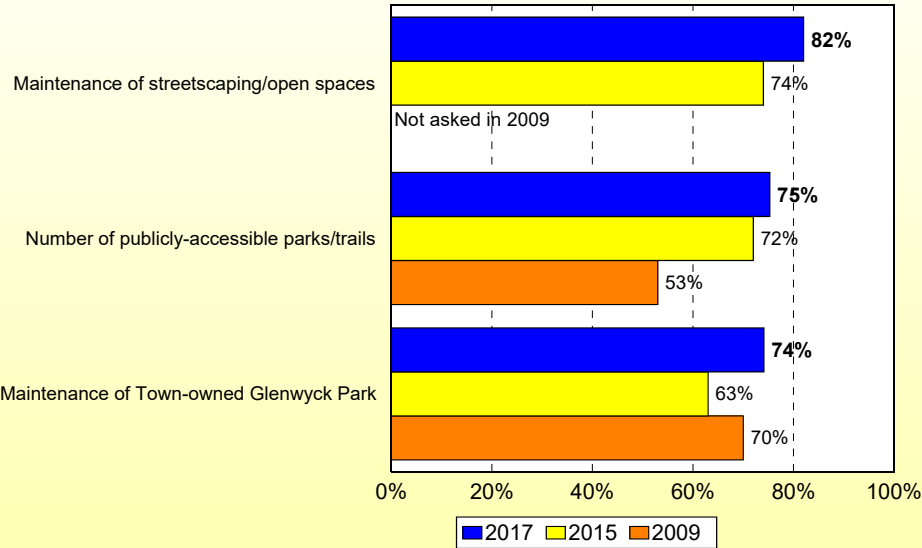
by percentage of respondents who rated the item as a 4 or 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Trends: Satisfaction with Parks and Recreation in the Town of Westlake (2017 vs. 2015 vs. 2009)

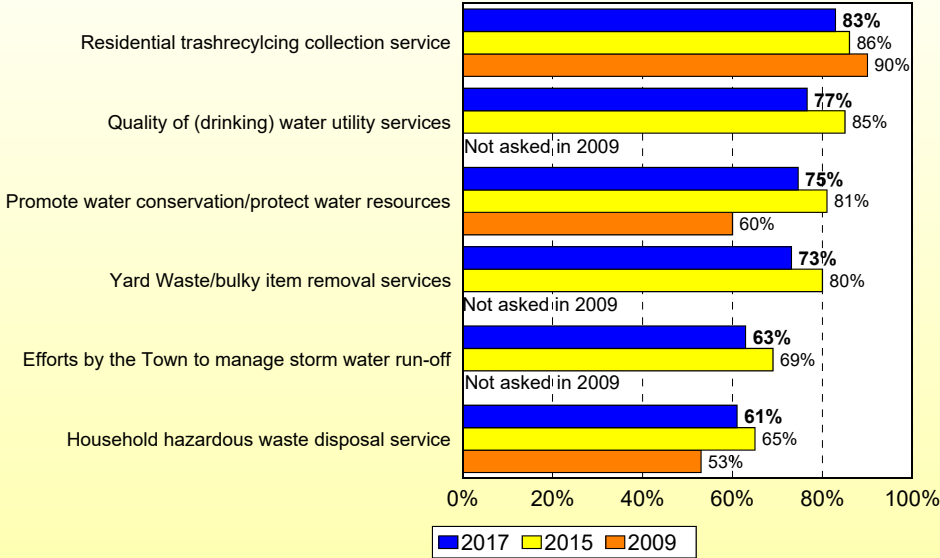
by percentage of respondents who rated the item as a 4 or 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Trends: Satisfaction with Utility Services in the Town of Westlake (2017 vs. 2015 vs. 2009)

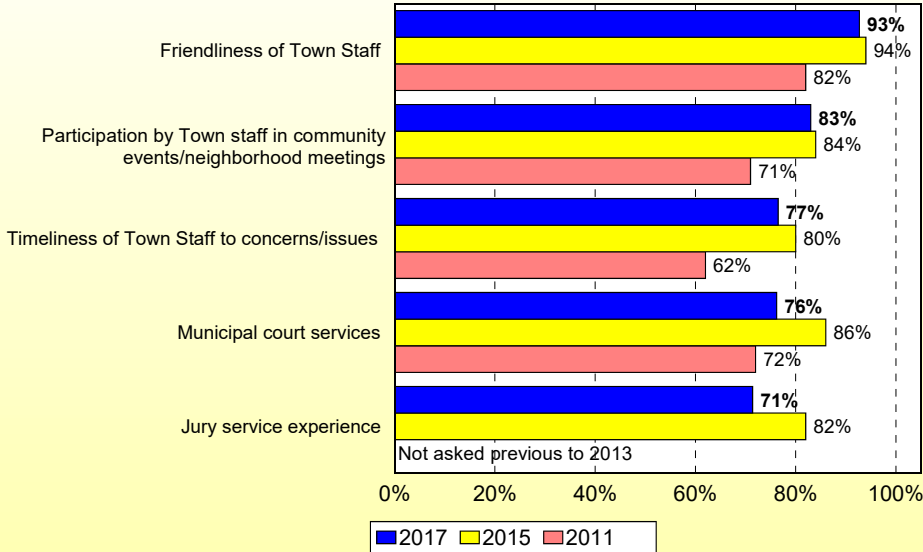
by percentage of respondents who rated the item as a 4 or 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Trends: Satisfaction with Customer Service in the Town of Westlake (2017 vs. 2015 vs. 2011)

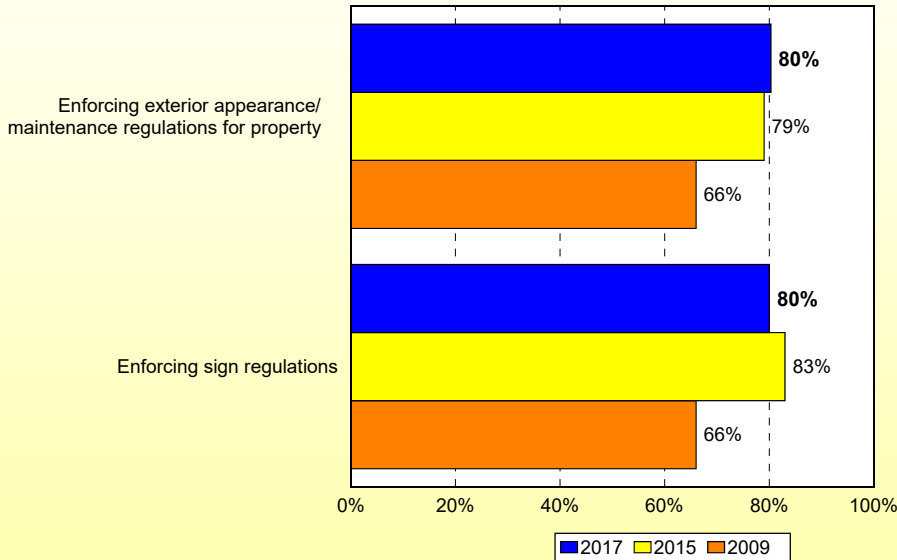
by percentage of respondents who rated the item as a 4 or 5 on a 5-point scale (excluding don't knows)



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Trends: Satisfaction with Code Enforcement in the Town of Westlake (2017 vs. 2015 vs. 2009)

by percentage of respondents who rated the item as a 4 or 5 on a 5-point scale (excluding don't knows)

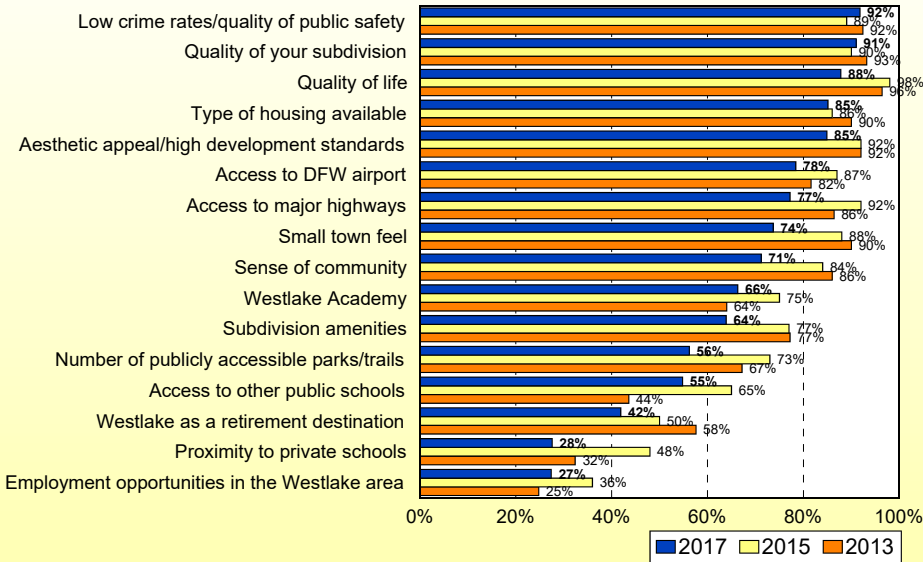


Source: ETC Institute DirectionFinder (2017 - Westlake, TX)



### Trends: Importance of Various Reasons in the Decision to Move to Westlake (2017 vs. 2015)

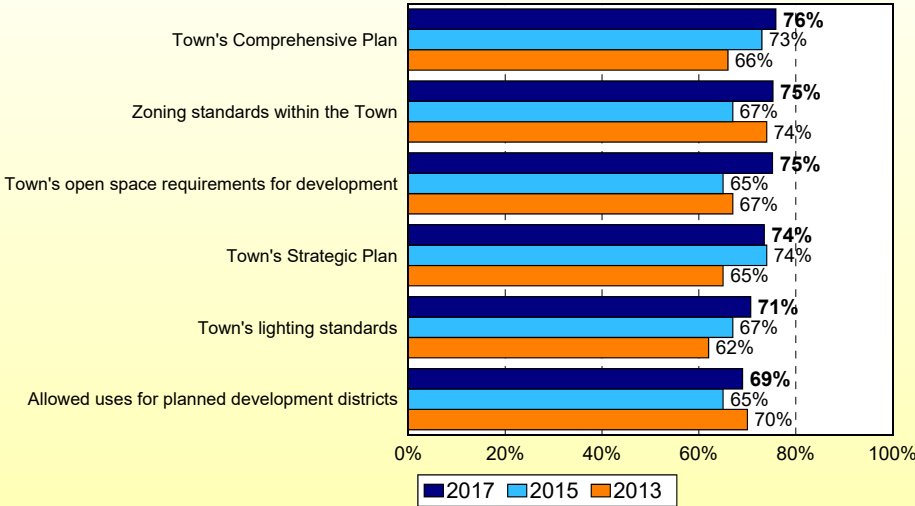
by percentage of respondents who felt the item was "extremely important," "very important" or "important"



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Trends: Town Information Residents Were Familiar With (2017 vs. 2015)

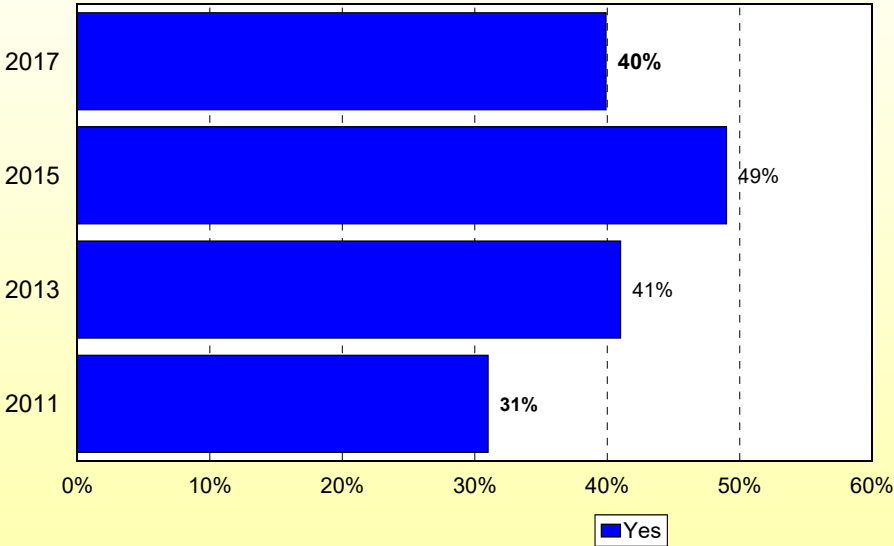
by percentage of respondents who indicated they were "very familiar" or "somewhat familiar" with the information



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Trends: Attended a Neighborhood Public Meeting During the Past Year (2017 vs. 2015 vs. 2011)

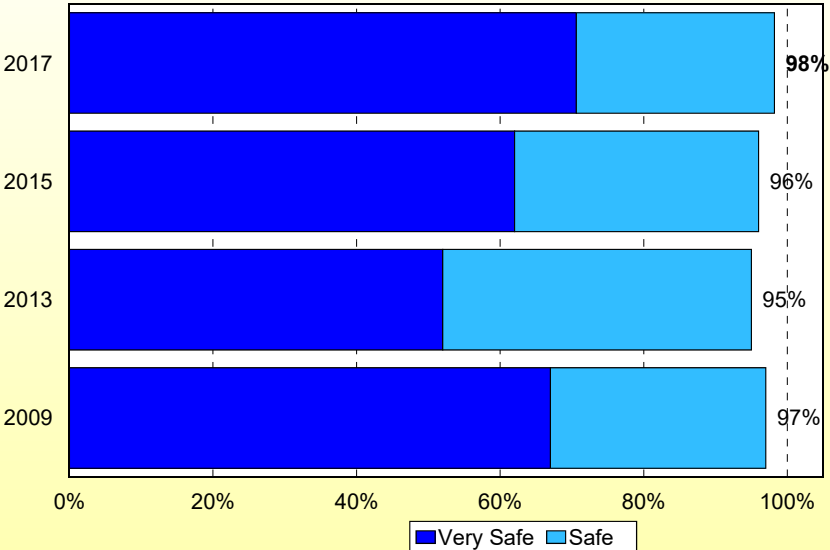
by percentage of respondents who said "Yes"



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Trends: Overall, how safe do you feel in Westlake? (2017 vs. 2015 vs. 2009)

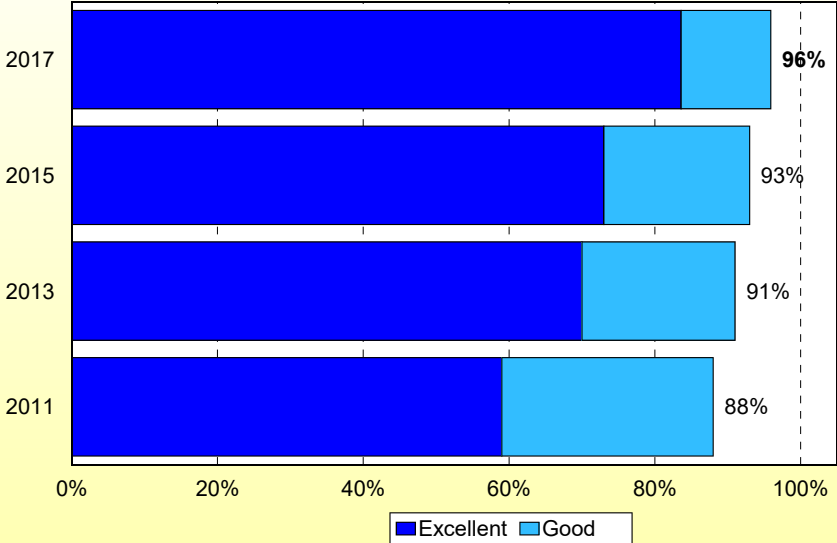
by percentage of respondents who feel "very safe" or "safe" in Westlake



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

### Trends: Overall Ratings of the Town of Westlake As a Place to Live (2017 vs. 2015 vs. 2011)

by percentage of respondents who rated the Town as an "excellent" or "good" place to live



Source: ETC Institute DirectionFinder (2017 - Westlake, TX)

**Section 3:**  
**Importance-Satisfaction**  
**Analysis**

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# Importance-Satisfaction Analysis

## Town of Westlake, Texas

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### Overview

Today, Town officials have limited resources which need to be targeted to activities that are of the most benefit to their citizens. Two of the most important criteria for decision making are (1) to target resources toward services of the highest importance to citizens; and (2) to target resources toward those services where citizens are the least satisfied.

The Importance-Satisfaction (IS) rating is a unique tool that allows public officials to better understand both of these highly important decision making criteria for each of the services they are providing. The Importance-Satisfaction rating is based on the concept that public agencies will maximize overall customer satisfaction by emphasizing improvements in those areas where the level of satisfaction is relatively low and the perceived importance of the service is relatively high.

The rating is calculated by summing the percentage of responses for items selected as the first, second, and third most important services for the Town to provide. The sum is then multiplied by 1 minus the percentage of respondents who indicated they were positively satisfied with the Town's performance in the related area (the sum of the ratings of 4 and 5 on a 5-point scale excluding "Don't Know" responses). "Don't Know" responses are excluded from the calculation to ensure the satisfaction ratings among service categories are comparable. [IS=Importance x (1-Satisfaction)].

**Example of the Calculation:** Respondents were asked to identify the major categories of Town services they thought should receive the most emphasis over the next two years. Thirty-seven percent (37%) of respondents selected *the overall value of Westlake Academy to the Town* as one of the most important services for the Town to provide. Regarding satisfaction, 72% of respondents surveyed rated the Town's overall performance in the *overall value of Westlake Academy to the Town* as a "4" or "5" on a 5-point scale (where "5" means "Very Satisfied") excluding "Don't Know" responses. The I-S rating for *overall value of Westlake Academy to the Town* was calculated by multiplying the sum of the most important percentages by 1 minus the sum of the satisfaction percentages. In this example 37% was multiplied by 28% (1-0.72). This calculation yielded an I-S rating of 0.1017 which ranked first out of 11 major service categories.

The maximum rating is 1.00 and would be achieved when 100% of the respondents select an item as one of their top three choices to emphasize over the next two years and 0% indicate they are positively satisfied with the delivery of the service.

The lowest rating is 0.00 and could be achieved under either of the following two situations:

- If 100% of the respondents were positively satisfied with the delivery of the service
- If none (0%) of the respondents selected the service as one for the three most important areas for the Town to emphasize over the next two years.



## Interpreting the Ratings

Ratings that are greater than or equal to 0.20 identify areas that should receive significantly more emphasis over the next two years. Ratings from 0.10 to 0.20 identify service areas that should receive increased emphasis. Ratings less than 0.10 should continue to receive the current level of emphasis.

- *Definitely Increase Emphasis* ( $IS \geq 0.20$ )
- *Increase Current Emphasis* ( $0.10 \leq IS < 0.20$ )
- *Maintain Current Emphasis* ( $IS < 0.10$ )

The results for the Town of Westlake are provided on the following pages.

## 2017 Importance-Satisfaction Rating Town of Westlake Major Categories of City Services

Category of Service	Most Important %	Most Important Rank	Satisfaction %	Satisfaction Rank	Importance-Satisfaction Rating	I-S Rating Rank
<b>High Priority (IS .10-.20)</b>						
Overall value of Westlake Academy to the Town	37%	2	72%	9	0.1017	1
<b>Medium Priority (IS &lt;.10)</b>						
Overall value you receive from your tax & fees	30%	4	69%	11	0.0952	2
Overall quality of parks, trails, open spaces, streetscaping, & facilities	39%	3	82%	3	0.0688	3
Overall quality of maintenance of Town streets	30%	5	78%	7	0.0656	4
Overall quality of utility services	18%	6	71%	10	0.0523	5
Overall quality of public safety services (police, fire, & emergency medical)	62%	1	95%	1	0.0342	6
Overall quality of government services provided by the Town of Westlake	14%	8	82%	5	0.0255	7
Overall quality of enforcement of codes & ordinances	10%	9	77%	8	0.0230	8
Overall efforts by the Town to ensure the community is prepared for emergencies	19%	7	89%	2	0.0210	9
Overall effectiveness of communication by the Town	9%	10	81%	6	0.0162	10
Overall quality of customer service	8%	11	82%	4	0.0142	11

**Note: The I-S Rating is calculated by multiplying the "Most Important" % by (1-'Satisfaction' %)**

**Most Important %:**

The "Most Important" percentage represents the sum of the first, second, and third most important responses for each item. Respondents were asked to identify the items they thought should be the City's top priorities.

**Satisfaction %:**

The "Satisfaction" percentage represents the sum of the ratings "5" and "4" excluding 'don't knows.' Respondents ranked their level of satisfaction with each of the items on a scale of 1 to 5 with "5" being Very Satisfied and "1" being Very Dissatisfied.

## Importance-Satisfaction Matrix Analysis.

The Importance-Satisfaction rating is based on the concept that public agencies will maximize overall customer satisfaction by emphasizing improvements in those areas where the level of satisfaction is relatively low and the perceived importance of the service is relatively high. ETC Institute developed an Importance-Satisfaction Matrix to display the perceived importance of major services that were assessed on the survey against the perceived quality of service delivery. The two axes on the matrix represent Satisfaction (vertical) and relative Importance (horizontal).

The I-S (Importance-Satisfaction) matrix should be interpreted as follows.

- **Continued Emphasis (above average importance and above average satisfaction).** This area shows where the Town is meeting customer expectations. Items in this area have a significant impact on the customer's overall level of satisfaction. The Town should maintain (or slightly increase) emphasis on items in this area.
- **Exceeding Expectations (below average importance and above average satisfaction).** This area shows where the Town is performing significantly better than customers expect the Town to perform. Items in this area do not significantly affect the overall level of satisfaction that residents have with Town services. The Town should maintain (or slightly decrease) emphasis on items in this area.
- **Opportunities for Improvement (above average importance and below average satisfaction).** This area shows where the Town is not performing as well as residents expect the Town to perform. This area has a significant impact on customer satisfaction, and the Town should DEFINITELY increase emphasis on items in this area.
- **Less Important (below average importance and below average satisfaction).** This area shows where the Town is not performing well relative to the Town's performance in other areas; however, this area is generally considered to be less important to residents. This area does not significantly affect overall satisfaction with Town services because the items are less important to residents. The agency should maintain current levels of emphasis on items in this area.

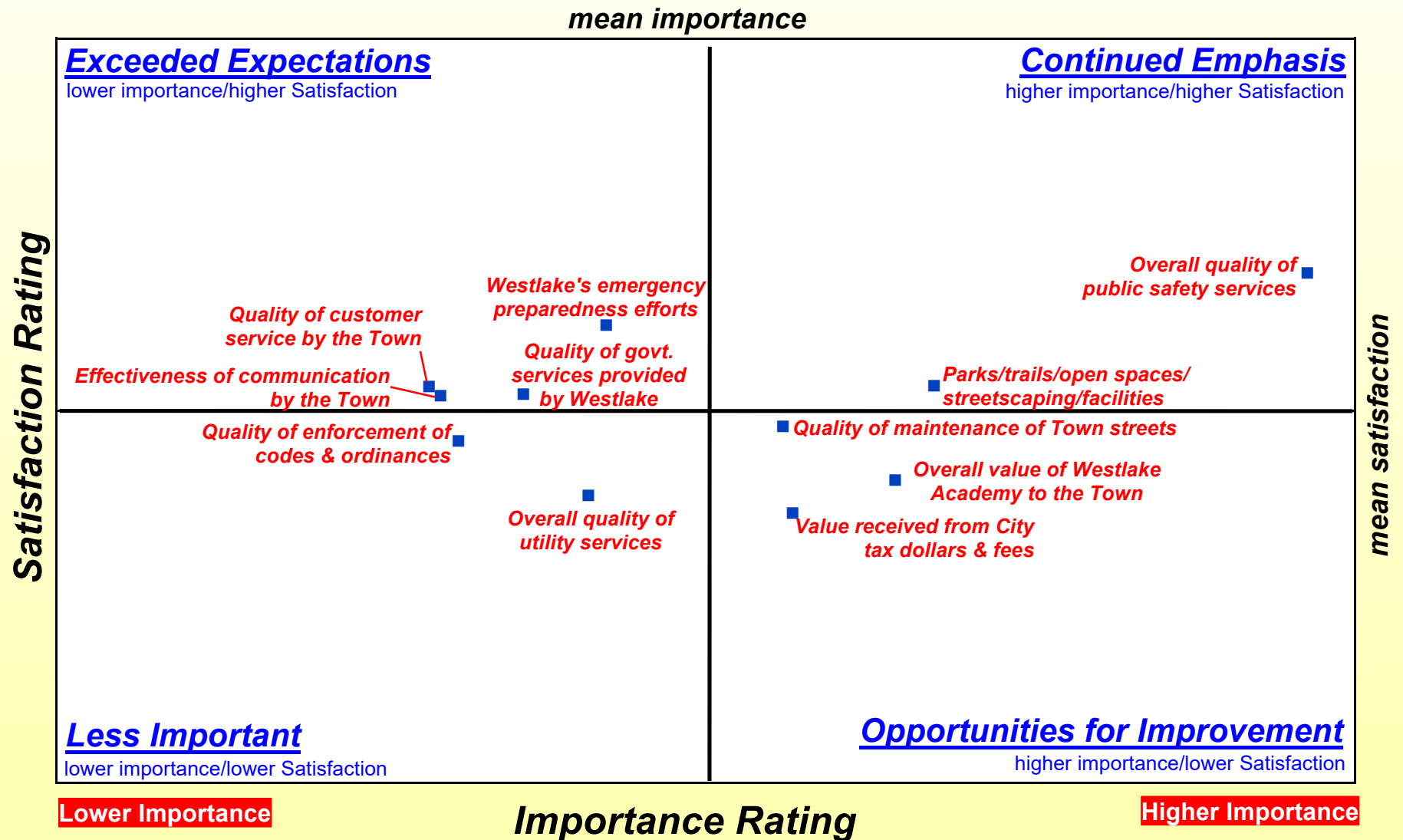
Matrices showing the results for Westlake are provided on the following pages.



# 2017 Town of Westlake Resident Survey Importance-Satisfaction Assessment Matrix

## -Major Categories of Town Services-

(points on the graph show deviations from the mean importance and Satisfaction ratings given by respondents to the survey)



Source: ETC Institute (2017)

# Section 4: Tabular Data

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**Q1. Satisfaction with Major Categories of Town Services. Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with the following services provided by the Town of Westlake.**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Don't Know
Q1-1. Overall quality of public safety services (police, fire, & emergency medical)	50.6%	39.1%	4.0%	0.6%	0.6%	5.2%
Q1-2. Overall efforts by the Town to ensure the community is prepared for emergencies	47.7%	34.5%	7.5%	2.9%	0.0%	7.5%
Q1-3. Overall quality of maintenance of Town streets	41.4%	36.2%	10.3%	6.9%	4.6%	0.6%
Q1-4. Overall effectiveness of communication by the Town	47.1%	33.3%	12.6%	2.3%	3.4%	1.1%
Q1-5. Overall quality of utility services	35.1%	33.9%	16.7%	7.5%	4.6%	2.3%
Q1-6. Overall quality of parks, trails, open spaces, streetscaping, & facilities	44.3%	36.2%	11.5%	3.4%	2.3%	2.3%
Q1-7. Overall quality of customer service	43.1%	36.8%	12.6%	2.3%	2.3%	2.9%
Q1-8. Overall quality of enforcement of codes & ordinances	33.9%	37.4%	13.2%	5.2%	3.4%	6.9%
Q1-9. Overall quality of government services provided by the Town of Westlake	38.5%	37.4%	10.3%	2.9%	4.0%	6.9%
Q1-10. Overall value you receive from your tax & fees	31.0%	35.6%	19.5%	6.3%	4.6%	2.9%
Q1-11. Overall value of Westlake Academy to the Town	44.3%	20.1%	17.2%	2.9%	4.6%	10.9%

**WITHOUT "DON'T KNOW"**

**Q1. Satisfaction with Major Categories of Town Services. Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with the following services provided by the Town of Westlake. (without "don't know")**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
Q1-1. Overall quality of public safety services (police, fire, & emergency medical)	53.3%	41.2%	4.2%	0.6%	0.6%
Q1-2. Overall efforts by the Town to ensure the community is prepared for emergencies	51.6%	37.3%	8.1%	3.1%	0.0%
Q1-3. Overall quality of maintenance of Town streets	41.6%	36.4%	10.4%	6.9%	4.6%
Q1-4. Overall effectiveness of communication by the Town	47.7%	33.7%	12.8%	2.3%	3.5%
Q1-5. Overall quality of utility services	35.9%	34.7%	17.1%	7.6%	4.7%
Q1-6. Overall quality of parks, trails, open spaces, streetscaping, & facilities	45.3%	37.1%	11.8%	3.5%	2.4%
Q1-7. Overall quality of customer service	44.4%	37.9%	13.0%	2.4%	2.4%
Q1-8. Overall quality of enforcement of codes & ordinances	36.4%	40.1%	14.2%	5.6%	3.7%
Q1-9. Overall quality of government services provided by the Town of Westlake	41.4%	40.1%	11.1%	3.1%	4.3%
Q1-10. Overall value you receive from your tax & fees	32.0%	36.7%	20.1%	6.5%	4.7%
Q1-11. Overall value of Westlake Academy to the Town	49.7%	22.6%	19.4%	3.2%	5.2%

**Q2. Which THREE of the services listed in Question 1 are MOST IMPORTANT to you?**

<u>Q2. Top choice</u>	<u>Number</u>	<u>Percent</u>
Overall quality of public safety services (police, fire, & emergency medical)	57	32.8 %
Overall efforts by the Town to ensure the community is prepared for emergencies	6	3.4 %
Overall quality of maintenance of Town streets	7	4.0 %
Overall effectiveness of communication by the Town	1	0.6 %
Overall quality of utility services	7	4.0 %
Overall quality of parks, trails, open spaces, streetscaping, & facilities	17	9.8 %
Overall quality of customer service	2	1.1 %
Overall quality of enforcement of codes & ordinances	4	2.3 %
Overall quality of government services provided by the Town of Westlake	7	4.0 %
Overall value you receive from your tax & fees	14	8.0 %
Overall value of Westlake Academy to the Town	43	24.7 %
<u>None chosen</u>	<u>9</u>	<u>5.2 %</u>
Total	174	100.0 %

**Q2. Which THREE of the services listed in Question 1 are MOST IMPORTANT to you?**

<u>Q2. 2nd choice</u>	<u>Number</u>	<u>Percent</u>
Overall quality of public safety services (police, fire, & emergency medical)	32	18.4 %
Overall efforts by the Town to ensure the community is prepared for emergencies	15	8.6 %
Overall quality of maintenance of Town streets	23	13.2 %
Overall effectiveness of communication by the Town	5	2.9 %
Overall quality of utility services	12	6.9 %
Overall quality of parks, trails, open spaces, streetscaping, & facilities	26	14.9 %
Overall quality of customer service	5	2.9 %
Overall quality of enforcement of codes & ordinances	5	2.9 %
Overall quality of government services provided by the Town of Westlake	8	4.6 %
Overall value you receive from your tax & fees	20	11.5 %
Overall value of Westlake Academy to the Town	11	6.3 %
<u>None chosen</u>	<u>12</u>	<u>6.9 %</u>
Total	174	100.0 %

**Q2. Which THREE of the services listed in Question 1 are MOST IMPORTANT to you?**

<u>Q2. 3rd choice</u>	<u>Number</u>	<u>Percent</u>
Overall quality of public safety services (police, fire, & emergency medical)	19	10.9 %
Overall efforts by the Town to ensure the community is prepared for emergencies	12	6.9 %
Overall quality of maintenance of Town streets	22	12.6 %
Overall effectiveness of communication by the Town	9	5.2 %
Overall quality of utility services	12	6.9 %
Overall quality of parks, trails, open spaces, streetscaping, & facilities	25	14.4 %
Overall quality of customer service	7	4.0 %
Overall quality of enforcement of codes & ordinances	8	4.6 %
Overall quality of government services provided by the Town of Westlake	9	5.2 %
Overall value you receive from your tax & fees	19	10.9 %
Overall value of Westlake Academy to the Town	10	5.7 %
<u>None chosen</u>	<u>22</u>	<u>12.6 %</u>
Total	174	100.0 %

**Q2. Which THREE of the services listed in Question 1 are MOST IMPORTANT to you? (top 3)**

<u>Q2. Sum of top 3 choices</u>	<u>Number</u>	<u>Percent</u>
Overall quality of public safety services (police, fire, & emergency medical)	108	62.1 %
Overall efforts by the Town to ensure the community is prepared for emergencies	33	19.0 %
Overall quality of maintenance of Town streets	52	29.9 %
Overall effectiveness of communication by the Town	15	8.6 %
Overall quality of utility services	31	17.8 %
Overall quality of parks, trails, open spaces, streetscaping, & facilities	68	39.1 %
Overall quality of customer service	14	8.0 %
Overall quality of enforcement of codes & ordinances	17	9.8 %
Overall quality of government services provided by the Town of Westlake	24	13.8 %
Overall value you receive from your tax & fees	53	30.5 %
Overall value of Westlake Academy to the Town	64	36.8 %
<u>None chosen</u>	<u>9</u>	<u>5.2 %</u>
Total	488	

**Q3. Police Services: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following.**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Don't Know
Q3-1. Quality of local police protection	46.0%	35.1%	11.5%	0.6%	1.1%	5.7%
Q3-2. Visibility of police in neighborhoods	37.4%	41.4%	14.4%	4.0%	1.1%	1.7%
Q3-3. How quickly police respond to emergencies	32.2%	29.3%	11.5%	0.0%	0.6%	26.4%
Q3-4. Efforts of the Town to prevent crime	36.2%	29.9%	16.1%	2.9%	0.6%	14.4%
Q3-5. Level of traffic enforcement	32.2%	37.4%	19.5%	5.2%	4.0%	1.7%

**WITHOUT "DON'T KNOW"**

**Q3. Police Services: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following. (without "don't know")**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
Q3-1. Quality of local police protection	48.8%	37.2%	12.2%	0.6%	1.2%
Q3-2. Visibility of police in neighborhoods	38.0%	42.1%	14.6%	4.1%	1.2%
Q3-3. How quickly police respond to emergencies	43.8%	39.8%	15.6%	0.0%	0.8%
Q3-4. Efforts of the Town to prevent crime	42.3%	34.9%	18.8%	3.4%	0.7%
Q3-5. Level of traffic enforcement	32.7%	38.0%	19.9%	5.3%	4.1%

**Q3. Fire & Medical Services: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following.**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Don't Know
Q3-6. Quality of fire services	42.0%	27.0%	6.3%	1.1%	1.1%	22.4%
Q3-7. Quality of emergency medical services	39.7%	25.9%	5.7%	0.0%	0.6%	28.2%
Q3-8. Response time of fire & emergency medical services personnel	38.5%	25.3%	5.2%	0.0%	0.6%	30.5%

**WITHOUT "DON'T KNOW"**

**Q3. Fire & Medical Services: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following. (without "don't know")**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
Q3-6. Quality of fire services	54.1%	34.8%	8.1%	1.5%	1.5%
Q3-7. Quality of emergency medical services	55.2%	36.0%	8.0%	0.0%	0.8%
Q3-8. Response time of fire & emergency medical services personnel	55.4%	36.4%	7.4%	0.0%	0.8%



**Q3. Emergency Preparedness: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following.**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Don't Know
Q3-9. Response efforts by the Town Staff during extreme weather conditions	43.7%	25.3%	14.9%	1.1%	0.6%	14.4%
Q3-10. Efforts by the Town Staff to inform residents of hazardous road conditions, potential inclement weather & closures	49.4%	23.0%	14.9%	2.3%	2.3%	8.0%

**WITHOUT "DON'T KNOW"**

**Q3. Emergency Preparedness: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following. (without "don't know")**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
Q3-9. Response efforts by the Town Staff during extreme weather conditions	51.0%	29.5%	17.4%	1.3%	0.7%
Q3-10. Efforts by the Town Staff to inform residents of hazardous road conditions, potential inclement weather & closures	53.8%	25.0%	16.3%	2.5%	2.5%

**Q3. Transportation Services: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following.**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Don't Know
Q3-11. Condition of major streets in Westlake	36.8%	43.7%	9.2%	7.5%	2.3%	0.6%
Q3-12. Condition of streets in your neighborhood	37.4%	40.8%	12.6%	4.0%	2.3%	2.9%
Q3-13. Cleanliness of streets & other public areas	44.3%	39.7%	6.3%	6.9%	1.7%	1.1%
Q3-14. Traffic flow & congestion management in Westlake	15.5%	39.1%	21.8%	15.5%	6.3%	1.7%

**WITHOUT "DON'T KNOW"**

**Q3. Transportation Services: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following. (without "don't know")**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
Q3-11. Condition of major streets in Westlake	37.0%	43.9%	9.2%	7.5%	2.3%
Q3-12. Condition of streets in your neighborhood	38.5%	42.0%	13.0%	4.1%	2.4%
Q3-13. Cleanliness of streets & other public areas	44.8%	40.1%	6.4%	7.0%	1.7%
Q3-14. Traffic flow & congestion management in Westlake	15.8%	39.8%	22.2%	15.8%	6.4%

**Q3. Communications & Citizen Engagement: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following.**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Don't Know
Q3-15. Efforts by the Town to keep you informed about Council meetings, Town projects, issues, & events	47.1%	31.6%	12.6%	2.3%	2.3%	4.0%
Q3-16. Timeliness of information provided by the Town	46.6%	29.9%	14.4%	2.3%	2.3%	4.6%
Q3-17. Completeness of the information provided by the Town	42.5%	33.3%	13.8%	3.4%	2.3%	4.6%
Q3-18. Usefulness of the Westlake Wire communications	41.4%	26.4%	14.4%	4.6%	1.1%	12.1%
Q3-19. Usefulness of social media efforts	29.9%	28.7%	13.8%	3.4%	2.3%	21.8%
Q3-20. Ease of use of the Town's website	21.8%	39.7%	17.8%	5.2%	3.4%	12.1%
Q3-21. Availability/Accessibility of Town records	14.4%	24.1%	16.1%	3.4%	2.3%	39.7%
Q3-22. Opportunities provided for public input	25.9%	34.5%	17.8%	5.2%	2.3%	14.4%

**WITHOUT "DON'T KNOW"****Q3. Communications & Citizen Engagement: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following. (without "don't know")**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
Q3-15. Efforts by the Town to keep you informed about Council meetings, Town projects, issues, & events	49.1%	32.9%	13.2%	2.4%	2.4%
Q3-16. Timeliness of information provided by the Town	48.8%	31.3%	15.1%	2.4%	2.4%
Q3-17. Completeness of the information provided by the Town	44.6%	34.9%	14.5%	3.6%	2.4%
Q3-18. Usefulness of the Westlake Wire communications	47.1%	30.1%	16.3%	5.2%	1.3%
Q3-19. Usefulness of social media efforts	38.2%	36.8%	17.6%	4.4%	2.9%
Q3-20. Ease of use of the Town's website	24.8%	45.1%	20.3%	5.9%	3.9%
Q3-21. Availability/Accessibility of Town records	23.8%	40.0%	26.7%	5.7%	3.8%
Q3-22. Opportunities provided for public input	30.2%	40.3%	20.8%	6.0%	2.7%

**Q3. Parks & Recreation Services: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following.**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Don't Know
Q3-23. Maintenance of Town-owned Glenwyck Park	22.4%	25.3%	10.9%	2.9%	2.9%	35.6%
Q3-24. Number of publicly-accessible parks & trails	31.6%	36.8%	13.8%	6.3%	2.3%	9.2%
Q3-25. Maintenance of streetscaping & open spaces	36.8%	42.0%	11.5%	2.3%	3.4%	4.0%

**WITHOUT "DON'T KNOW"**

**Q3. Parks & Recreation Services: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following. (without "don't know")**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
Q3-23. Maintenance of Town-owned Glenwyck Park	34.8%	39.3%	17.0%	4.5%	4.5%
Q3-24. Number of publicly-accessible parks & trails	34.8%	40.5%	15.2%	7.0%	2.5%
Q3-25. Maintenance of streetscaping & open spaces	38.3%	43.7%	12.0%	2.4%	3.6%

**Q3. Utility Services: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following.**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Don't Know
Q3-26. Residential trash/recycling collection services	37.9%	42.5%	10.3%	5.2%	1.1%	2.9%
Q3-27. Yard waste & bulky item removal services	29.3%	34.5%	15.5%	5.7%	2.3%	12.6%
Q3-28. Town efforts to promote water conservation & protect water resources	25.3%	42.5%	16.1%	4.6%	2.3%	9.2%
Q3-29. Household hazardous waste disposal service	17.8%	25.3%	17.8%	6.3%	3.4%	29.3%
Q3-30. Efforts by the Town to manage storm water run-off	17.2%	31.6%	19.5%	6.3%	2.9%	22.4%
Q3-31. Quality of (drinking) water utility services	31.6%	40.2%	14.4%	5.7%	1.7%	6.3%

**WITHOUT "DON'T KNOW"**

**Q3. Utility Services: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following. (without "don't know")**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
Q3-26. Residential trash/recycling collection services	39.1%	43.8%	10.7%	5.3%	1.2%
Q3-27. Yard waste & bulky item removal services	33.6%	39.5%	17.8%	6.6%	2.6%
Q3-28. Town efforts to promote water conservation & protect water resources	27.8%	46.8%	17.7%	5.1%	2.5%
Q3-29. Household hazardous waste disposal service	25.2%	35.8%	25.2%	8.9%	4.9%
Q3-30. Efforts by the Town to manage storm water run-off	22.2%	40.7%	25.2%	8.1%	3.7%
Q3-31. Quality of (drinking) water utility services	33.7%	42.9%	15.3%	6.1%	1.8%

**Q3. Customer Services: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following.**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Don't Know
Q3-32. Level of participation by Town Staff in community events/neighborhood meetings	34.5%	32.8%	11.5%	1.1%	1.1%	19.0%
Q3-33. Timeliness of Town Staff to concerns/issues (< 24 hours)	31.6%	32.2%	13.2%	4.6%	1.7%	16.7%
Q3-34. Friendliness of Town Staff	50.0%	36.8%	4.6%	0.6%	1.7%	6.3%
Q3-35. Municipal court services	24.7%	24.7%	13.2%	1.1%	1.1%	35.1%
Q3-36. Jury service experience	21.8%	21.3%	14.9%	1.7%	0.6%	39.7%

**WITHOUT "DON'T KNOW"**

**Q3. Customer Services: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following. (without "don't know")**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
Q3-32. Level of participation by Town Staff in community events/neighborhood meetings	42.6%	40.4%	14.2%	1.4%	1.4%
Q3-33. Timeliness of Town Staff to concerns/issues (< 24 hours)	37.9%	38.6%	15.9%	5.5%	2.1%
Q3-34. Friendliness of Town Staff	53.4%	39.3%	4.9%	0.6%	1.8%
Q3-35. Municipal court services	38.1%	38.1%	20.4%	1.8%	1.8%
Q3-36. Jury service experience	36.2%	35.2%	24.8%	2.9%	1.0%

**Q3. Code Enforcement: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following.**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Don't Know
Q3-37. Enforcing exterior appearance & maintenance regulations for property	27.6%	42.5%	13.2%	2.3%	1.7%	12.6%
Q3-38. Enforcing sign regulations	24.7%	44.3%	13.2%	2.9%	1.1%	13.8%

**WITHOUT "DON'T KNOW"**

**Q3. Code Enforcement: Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following. (without "don't know")**

(N=174)

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
Q3-37. Enforcing exterior appearance & maintenance regulations for property	31.6%	48.7%	15.1%	2.6%	2.0%
Q3-38. Enforcing sign regulations	28.7%	51.3%	15.3%	3.3%	1.3%



**Q4. Reasons for Moving to Westlake. Using a scale of 1 to 5, where 5 means "Extremely Important" and 1 means "Not Important," please indicate how important the following issues were in your decision to move to the Town of Westlake.**

(N=174)

	Extremely important	Very important	Important	Less important	Not important	Don't know
Q4-1. Sense of community	39.1%	29.3%	19.5%	5.7%	2.3%	4.0%
Q4-2. Quality of life	64.9%	21.8%	10.9%	1.1%	0.0%	1.1%
Q4-3. Small town feel	51.7%	20.7%	19.5%	4.6%	1.7%	1.7%
Q4-4. Aesthetic appeal & high development standards	59.8%	24.1%	12.1%	1.1%	1.7%	1.1%
Q4-5. Westlake Academy	47.1%	14.9%	10.3%	4.6%	16.7%	6.3%
Q4-6. Access to other public schools (Keller, Northwest or Carroll ISD)	31.0%	21.3%	14.4%	9.2%	19.5%	4.6%
Q4-7. Proximity to private schools	10.3%	14.9%	15.5%	17.2%	33.9%	8.0%
Q4-8. Low crime rates/quality of public safety	65.5%	24.7%	5.7%	0.6%	1.7%	1.7%
Q4-9. Employment opportunities in the Westlake area	10.3%	14.4%	10.3%	18.4%	36.8%	9.8%
Q4-10. Access to DFW airport	47.1%	29.9%	12.1%	4.0%	5.2%	1.7%
Q4-11. Access to major highways	43.1%	32.8%	16.7%	3.4%	2.3%	1.7%
Q4-12. Type of housing available	51.1%	31.0%	9.8%	2.9%	1.7%	3.4%
Q4-13. Quality of your subdivision	68.4%	19.5%	5.7%	1.1%	1.7%	3.4%
Q4-14. Westlake as a retirement destination	24.7%	13.8%	14.4%	12.6%	26.4%	8.0%
Q4-15. Number of publicly accessible parks & trails	25.9%	28.2%	23.6%	8.0%	10.3%	4.0%
Q4-16. Subdivision amenities (airpark, golf club, parks, etc.)	39.7%	21.3%	15.5%	12.1%	6.9%	4.6%

**WITHOUT "DON'T KNOW"****Q4. Reasons for Moving to Westlake. Using a scale of 1 to 5, where 5 means "Extremely Important" and 1 means "Not Important," please indicate how important the following issues were in your decision to move to the Town of Westlake. (without "don't know")**

(N=174)

	Extremely important	Very important	Important	Less important	Not important
Q4-1. Sense of community	40.7%	30.5%	20.4%	6.0%	2.4%
Q4-2. Quality of life	65.7%	22.1%	11.0%	1.2%	0.0%
Q4-3. Small town feel	52.6%	21.1%	19.9%	4.7%	1.8%
Q4-4. Aesthetic appeal & high development standards	60.5%	24.4%	12.2%	1.2%	1.7%
Q4-5. Westlake Academy	50.3%	16.0%	11.0%	4.9%	17.8%
Q4-6. Access to other public schools (Keller, Northwest or Carroll ISD)	32.5%	22.3%	15.1%	9.6%	20.5%
Q4-7. Proximity to private schools	11.3%	16.3%	16.9%	18.8%	36.9%
Q4-8. Low crime rates/quality of public safety	66.7%	25.1%	5.8%	0.6%	1.8%
Q4-9. Employment opportunities in the Westlake area	11.5%	15.9%	11.5%	20.4%	40.8%
Q4-10. Access to DFW airport	48.0%	30.4%	12.3%	4.1%	5.3%
Q4-11. Access to major highways	43.9%	33.3%	17.0%	3.5%	2.3%
Q4-12. Type of housing available	53.0%	32.1%	10.1%	3.0%	1.8%
Q4-13. Quality of your subdivision	70.8%	20.2%	6.0%	1.2%	1.8%
Q4-14. Westlake as a retirement destination	26.9%	15.0%	15.6%	13.8%	28.8%
Q4-15. Number of publicly accessible parks & trails	26.9%	29.3%	24.6%	8.4%	10.8%
Q4-16. Subdivision amenities (airpark, golf club, parks, etc.)	41.6%	22.3%	16.3%	12.7%	7.2%

**Q5. Which THREE of the reasons listed in Question 4 are the MOST IMPORTANT reasons why you will stay in Westlake for the next 5 years?**

Q5. Top choice	Number	Percent
Sense of community	5	2.9 %
Quality of life	31	17.8 %
Small town feel	21	12.1 %
Aesthetic appeal & high development standards	8	4.6 %
Westlake Academy	42	24.1 %
Low crime rates/quality of public safety	15	8.6 %
Employment opportunities in the Westlake area	1	0.6 %
Access to DFW airport	5	2.9 %
Type of housing available	1	0.6 %
Quality of your subdivision	10	5.7 %
Westlake as a retirement destination	3	1.7 %
Subdivision amenities (airpark, golf club, parks, etc.)	11	6.3 %
None chosen	21	12.1 %
Total	174	100.0 %

**Q5. Which THREE of the reasons listed in Question 4 are the MOST IMPORTANT reasons why you will stay in Westlake for the next 5 years?**

Q5. 2nd choice	Number	Percent
Sense of community	10	5.7 %
Quality of life	21	12.1 %
Small town feel	13	7.5 %
Aesthetic appeal & high development standards	27	15.5 %
Westlake Academy	11	6.3 %
Access to other public schools (Keller, Northwest or Carroll ISD)	10	5.7 %
Proximity to private schools	2	1.1 %
Low crime rates/quality of public safety	13	7.5 %
Employment opportunities in the Westlake area	3	1.7 %
Access to DFW airport	7	4.0 %
Access to major highways	1	0.6 %
Type of housing available	4	2.3 %
Quality of your subdivision	20	11.5 %
Westlake as a retirement destination	1	0.6 %
Number of publicly accessible parks & trails	2	1.1 %
Subdivision amenities (airpark, golf club, parks, etc.)	7	4.0 %
None chosen	22	12.6 %
Total	174	100.0 %

**Q5. Which THREE of the reasons listed in Question 4 are the MOST IMPORTANT reasons why you will stay in Westlake for the next 5 years?**

Q5. 3rd choice	Number	Percent
Sense of community	7	4.0 %
Quality of life	22	12.6 %
Small town feel	9	5.2 %
Aesthetic appeal & high development standards	13	7.5 %
Westlake Academy	5	2.9 %
Access to other public schools (Keller, Northwest or Carroll ISD)	5	2.9 %
Proximity to private schools	1	0.6 %
Low crime rates/quality of public safety	22	12.6 %
Employment opportunities in the Westlake area	1	0.6 %
Access to DFW airport	18	10.3 %
Access to major highways	6	3.4 %
Type of housing available	8	4.6 %
Quality of your subdivision	14	8.0 %
Westlake as a retirement destination	3	1.7 %
Number of publicly accessible parks & trails	4	2.3 %
Subdivision amenities (airpark, golf club, parks, etc.)	7	4.0 %
None chosen	29	16.7 %
Total	174	100.0 %

**Q5. Which THREE of the reasons listed in Question 4 are the MOST IMPORTANT reasons why you will stay in Westlake for the next 5 years? (top 3)**

Q5. Sum of top 3 choices	Number	Percent
Sense of community	22	12.6 %
Quality of life	74	42.5 %
Small town feel	43	24.7 %
Aesthetic appeal & high development standards	48	27.6 %
Westlake Academy	58	33.3 %
Access to other public schools (Keller, Northwest or Carroll ISD)	15	8.6 %
Proximity to private schools	3	1.7 %
Low crime rates/quality of public safety	50	28.7 %
Employment opportunities in the Westlake area	5	2.9 %
Access to DFW airport	30	17.2 %
Access to major highways	7	4.0 %
Type of housing available	13	7.5 %
Quality of your subdivision	44	25.3 %
Westlake as a retirement destination	7	4.0 %
Number of publicly accessible parks & trails	6	3.4 %
Subdivision amenities (airpark, golf club, parks, etc.)	25	14.4 %
None chosen	21	12.1 %
Total	471	

**Q6. Overall, how familiar are you with the following information?**

(N=174)

	Very familiar	Somewhat familiar	Not familiar
Q6-1. The Town's Comprehensive Plan	14.4%	61.5%	24.1%
Q6-2. The Town's Strategic Plan	13.2%	60.3%	26.4%
Q6-3. The Town's Vision, Values, & Mission Statements	23.0%	56.3%	20.7%
Q6-4. The Town's lighting standards	19.0%	51.7%	29.3%
Q6-5. The Town's open space requirements for development	21.8%	53.4%	24.7%
Q6-6. Zoning standards within the Town	16.7%	58.6%	24.7%
Q6-7. Allowed uses for existing planned development districts within the Town	14.4%	54.6%	31.0%

**Q7. Please indicate the last time you attended each of the following events or meetings.**

(N=174)

	This year	Last year	2 or more years ago	Never, but I am aware of event/ meeting	Never, & I am not aware of event/ meeting	Not provided
Q7-1. Decoration Day	2.9%	5.7%	13.8%	37.9%	27.0%	12.6%
Q7-2. Any of the Master Works concert series events	2.9%	8.0%	8.6%	46.0%	21.8%	12.6%
Q7-3. Other Westlake Historical Preservation Society events	5.2%	7.5%	8.6%	49.4%	16.7%	12.6%
Q7-4. Westlake Historical Preservation Society's Classic Car Show	6.3%	10.9%	10.9%	43.7%	16.7%	11.5%
Q7-5. Westlake Public Arts Society events	2.9%	2.9%	6.3%	48.9%	24.7%	14.4%
Q7-6. Council Meeting	9.8%	11.5%	14.4%	42.0%	9.2%	13.2%
Q7-7. Board of Trustees Meeting	8.0%	3.4%	8.6%	52.9%	13.8%	13.2%
Q7-8. Planning & Zoning Committee Meeting	9.2%	6.3%	14.4%	44.3%	13.2%	12.6%

**WITHOUT "NOT PROVIDED"****Q7. Please indicate the last time you attended each of the following events or meetings. (without "not provided")**

(N=174)

	This year	Last year	2 or more years ago	Never, but I am aware of event/meeting	Never, & I am not aware of event/meeting
Q7-1. Decoration Day	3.3%	6.6%	15.8%	43.4%	30.9%
Q7-2. Any of the Master Works concert series events	3.3%	9.2%	9.9%	52.6%	25.0%
Q7-3. Other Westlake Historical Preservation Society events	5.9%	8.6%	9.9%	56.6%	19.1%
Q7-4. Westlake Historical Preservation Society's Classic Car Show	7.1%	12.3%	12.3%	49.4%	18.8%
Q7-5. Westlake Public Arts Society events	3.4%	3.4%	7.4%	57.0%	28.9%
Q7-6. Council Meeting	11.3%	13.2%	16.6%	48.3%	10.6%
Q7-7. Board of Trustees Meeting	9.3%	4.0%	9.9%	60.9%	15.9%
Q7-8. Planning & Zoning Committee Meeting	10.5%	7.2%	16.4%	50.7%	15.1%

**Q8. Have you attended a public meeting in your neighborhood?**

Q8. Have you attended a public meeting in your neighborhood	Number	Percent
Yes, within the past 12 months	67	38.5 %
Yes, more than 12 months ago	50	28.7 %
No, but I am aware of the meetings	36	20.7 %
No, and I am not aware of the meetings	15	8.6 %
Not provided	6	3.4 %
Total	174	100.0 %

**WITHOUT "NOT PROVIDED"**

**Q8. Have you attended a public meeting in your neighborhood? (without "not provided")**

Q8. Have you attended a public meeting in your neighborhood	Number	Percent
Yes, within the past 12 months	67	39.9 %
Yes, more than 12 months ago	50	29.8 %
No, but I am aware of the meetings	36	21.4 %
No, and I am not aware of the meetings	15	8.9 %
Total	168	100.0 %

**Q8a. (If answered YES to Question 8) Was the meeting informative?**

Q8a. Was the meeting informative	Number	Percent
Yes	100	85.5 %
No	10	8.5 %
Not provided	7	6.0 %
Total	117	100.0 %

**WITHOUT "NOT PROVIDED"**

**Q8a. (If answered YES to Question 8) Was the meeting informative? (without "not provided")**

Q8a. Was the meeting informative	Number	Percent
Yes	100	90.9 %
No	10	9.1 %
Total	110	100.0 %



**Q8b. (If answered YES to Question 8) Did you have the opportunity to discuss your ideas/concerns?**

Q8b. Did you have the opportunity to discuss your ideas/concerns	Number	Percent
Yes	97	82.9 %
No	10	8.5 %
Not provided	10	8.5 %
Total	117	100.0 %

**WITHOUT "NOT PROVIDED"****Q8b. (If answered YES to Question 8) Did you have the opportunity to discuss your ideas/concerns? (without "not provided")**

Q8b. Did you have the opportunity to discuss your ideas/concerns	Number	Percent
Yes	97	90.7 %
No	10	9.3 %
Total	107	100.0 %

**Q8c. (If answered NO to Question 8) Will you attend a neighborhood meeting in the future?**

Q8c. Will you attend a neighborhood meeting in the future	Number	Percent
Yes	28	54.9 %
No	11	21.6 %
Not provided	12	23.5 %
Total	51	100.0 %

**WITHOUT "NOT PROVIDED"****Q8c. (If answered NO to Question 8) Will you attend a neighborhood meeting in the future? (without "not provided")**

Q8c. Will you attend a neighborhood meeting in the future	Number	Percent
Yes	28	71.8 %
No	11	28.2 %
Total	39	100.0 %

**Q8d. (If answered NO to Question 8) Do you think these types of meeting are useful? (without "not provided")**

Q8d. Do you think these types of meeting are useful	Number	Percent
Yes	32	86.5 %
No	5	13.5 %
Total	37	100.0 %

**Q9. In your opinion, how often should neighborhood meetings be held?**

Q9. How often should neighborhood meetings be held	Number	Percent
Annually	81	46.6 %
Twice a year	54	31.0 %
Every other year	4	2.3 %
Don't know	35	20.1 %
Total	174	100.0 %

**WITHOUT "DON'T KNOW"****Q9. In your opinion, how often should neighborhood meetings be held? (without "don't know")**

Q9. How often should neighborhood meetings be held	Number	Percent
Annually	81	58.3 %
Twice a year	54	38.8 %
Every other year	4	2.9 %
Total	139	100.0 %

**Q10. Do any children in grades K-12 live in your home?**

Q10. Do any children in grades K-12 live in your home	Number	Percent
Yes	80	46.0 %
No	88	50.6 %
Not provided	6	3.4 %
Total	174	100.0 %

**WITHOUT "NOT PROVIDED"**

**Q10. Do any children in grades K-12 live in your home? (without "not provided")**

Q10. Do any children in grades K-12 live in your home	Number	Percent
Yes	80	47.6 %
No	88	52.4 %
Total	168	100.0 %

**Q10a. (If answered YES to Question 10) Do any of these children currently attend Westlake Academy?**

Q10a. Do any of these children currently attend Westlake Academy	Number	Percent
Yes	53	66.3 %
No	27	33.8 %
Total	80	100.0 %

**Q10b. (If answered NO to Question 10a) Where do your children go to school?**

Q10b. Where do your children go to school	Number	Percent
Carroll ISD	5	20.0 %
Liberty Christian	4	16.0 %
Southlake Carroll High School	2	8.0 %
Southlake	2	8.0 %
Private	2	8.0 %
Faith Christian	1	4.0 %
Keller High School and Marine Military Academy	1	4.0 %
Carroll-now homeschooled	1	4.0 %
Westlake Academy and Keller	1	4.0 %
Greenhill	1	4.0 %
Walnut Grove Elementary School	1	4.0 %
Goddard	1	4.0 %
E A Young Academy	1	4.0 %
Covenant Christian Academy	1	4.0 %
Keller ISD	1	4.0 %
Total	25	100.0 %

**Q10d. (If answered NO to Question 10a) If your children previously attended Westlake Academy, are you considering re-enrolling them in the future?**

Q10d. Are you considering re-enrolling them in the future	Number	Percent
Yes	2	7.4 %
No	8	29.6 %
Not provided	17	63.0 %
Total	27	100.0 %

**WITHOUT "NOT PROVIDED"**

**Q10d. (If answered NO to Question 10a) If your children previously attended Westlake Academy, are you considering re-enrolling them in the future? (without "not provided")**

Q10d. Are you considering re-enrolling them in the future	Number	Percent
Yes	2	20.0 %
No	8	80.0 %
Total	10	100.0 %

**Q11. What is your age?**

<u>Q11. Your age</u>	<u>Number</u>	<u>Percent</u>
18-34 years	7	4.0 %
35-54 years	89	51.1 %
55-74 years	62	35.6 %
75+ years	14	8.0 %
Not provided	2	1.1 %
Total	174	100.0 %

**Q11. What is your age? (without "not provided")**

<u>Q11. Your age</u>	<u>Number</u>	<u>Percent</u>
18-34 years	7	4.1 %
35-54 years	89	51.7 %
55-74 years	62	36.0 %
75+ years	14	8.1 %
Total	172	100.0 %

**Q12. How many years have you lived in Westlake?**

<u>Q12. How many years have you lived in Westlake</u>	<u>Number</u>	<u>Percent</u>
5 or less	80	49.4 %
6 to 10	37	22.8 %
11 to 15	25	15.4 %
16 to 20	8	4.9 %
21 to 30	4	2.5 %
31+	8	4.9 %
Total	162	100.0 %



**Q13. In which subdivision do you live?**

<u>Q13. In which subdivision do you live</u>	<u>Number</u>	<u>Percent</u>
Stagecoach Hills	18	10.3 %
Vaquero	79	45.4 %
Terra Bella	6	3.4 %
Wyck Hill	5	2.9 %
Glenwyck Farms	33	19.0 %
Mahotea Boone	5	2.9 %
Granada	4	2.3 %
Not provided	24	13.8 %
Total	174	100.0 %

**WITHOUT "NOT PROVIDED"****Q13. In which subdivision do you live? (without "not provided")**

<u>Q13. In which subdivision do you live</u>	<u>Number</u>	<u>Percent</u>
Stagecoach Hills	18	12.0 %
Vaquero	79	52.7 %
Terra Bella	6	4.0 %
Wyck Hill	5	3.3 %
Glenwyck Farms	33	22.0 %
Mahotea Boone	5	3.3 %
Granada	4	2.7 %
Total	150	100.0 %

**Q14. Which of the following BEST describes your total annual household income?**

<u>Q14. Your total annual household income</u>	<u>Number</u>	<u>Percent</u>
Under \$50K	8	4.6 %
\$50K-\$149,999	6	3.4 %
\$150K-\$500K	44	25.3 %
\$500K+	85	48.9 %
Not provided	31	17.8 %
Total	174	100.0 %

**WITHOUT "NOT PROVIDED"****Q14. Which of the following BEST describes your total annual household income? (without "not provided")**

<u>Q14. Your total annual household income</u>	<u>Number</u>	<u>Percent</u>
Under \$50K	8	5.6 %
\$50K-\$149,999	6	4.2 %
\$150K-\$500K	44	30.8 %
\$500K+	85	59.4 %
Total	143	100.0 %

**Q15. Your gender:**

Q15. Your gender	Number	Percent
Male	87	50.0 %
Female	85	48.9 %
Not provided	2	1.1 %
Total	174	100.0 %

**WITHOUT "NOT PROVIDED"**

**Q15. Your gender: (without "not provided")**

Q15. Your gender	Number	Percent
Male	87	50.6 %
Female	85	49.4 %
Total	172	100.0 %

**Q16. Overall, how safe do you feel in the Town of Westlake?**

Q16. How safe do you feel in the Town of Westlake		
	Number	Percent
Very safe	120	69.0 %
Safe	47	27.0 %
Very unsafe	3	1.7 %
Don't know	4	2.3 %
Total	174	100.0 %

**WITHOUT "DON'T KNOW"****Q16. Overall, how safe do you feel in the Town of Westlake? (without "don't know")**

Q16. How safe do you feel in the Town of Westlake		
	Number	Percent
Very safe	120	70.6 %
Safe	47	27.6 %
Very unsafe	3	1.8 %
Total	170	100.0 %

**Q17. Overall, how would you rate the Town of Westlake as a place to live?**

Q17. How would you rate the Town of Westlake as a place to live	Number	Percent
Excellent	143	82.2 %
Good	21	12.1 %
Average	5	2.9 %
Poor	2	1.1 %
Don't know	3	1.7 %
Total	174	100.0 %

**WITHOUT "DON'T KNOW"****Q17. Overall, how would you rate the Town of Westlake as a place to live? (without "don't know")**

Q17. How would you rate the Town of Westlake as a place to live	Number	Percent
Excellent	143	83.6 %
Good	21	12.3 %
Average	5	2.9 %
Poor	2	1.2 %
Total	171	100.0 %

**Section 5:**  
**Survey Instrument**

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## Town of Westlake

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Dear Westlake Resident,

It is that time when the Town of Westlake is again seeking feedback about the quality of municipal services provided to our residents. We are proud to present to you the 2017 *DirectionFinder* survey. **The feedback received from your response is critical to the Town in shaping our goals, evaluating our services, and uncovering the most important issues for you and your family.**

We offer the survey every 2 years with the last survey information gathered in 2015. If you have not previously participated, we encourage you to take a moment to provide us with your responses. If you have completed this survey in years past, please know that we thank you for your continued participation in this effort and are looking forward to hearing from you again.

This year marks the sixth administration of this survey and you may notice some changes. Every time we conduct this process, we strive to improve it and help the response and feedback flow quickly and easily. Because we appreciate your time, we are also pleased to offer the survey in an online format for all residents. We hope this courtesy will provide our busy respondents with a convenient option for providing the Town with your input.

**Please take a few minutes to complete the enclosed survey.** Please answer any and all questions as accurately as possible and if you feel it is appropriate, use the comment space provided at the end of the survey for any further information you would like us to know.

If you would like to access the survey online in lieu of completing this paper copy, you can find it at:  
[www.westlake2017survey.org](http://www.westlake2017survey.org)

Please return your completed paper survey in the enclosed postage-paid envelope to:

**ETC Institute  
 725 W. Frontier Circle  
 Olathe, KS 66061**

If you have any questions, please contact Amanda DeGan, Assistant Town Manager, at (817) 490-5715, or via email at [adegan@westlake-tx.org](mailto:adegan@westlake-tx.org).

Thank you for helping to make Westlake a premier community!

Thomas E. Brymer  
 Town Manager/Superintendent Westlake Academy

# TOWN OF WESTLAKE 2017 RESIDENT SURVEY

1. **Satisfaction with Major Categories of Town Services.** Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with the following services provided by the Town of Westlake.

How satisfied are you with the:		Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Don't Know
01.	Overall quality of public safety services (police, fire, and emergency medical)	5	4	3	2	1	9
02.	Overall efforts by the Town to ensure the community is prepared for emergencies	5	4	3	2	1	9
03.	Overall quality of maintenance of Town streets	5	4	3	2	1	9
04.	Overall effectiveness of communication by the Town	5	4	3	2	1	9
05.	Overall quality of utility services	5	4	3	2	1	9
06.	Overall quality of parks, trails, open spaces, streetscaping, and facilities	5	4	3	2	1	9
07.	Overall quality of customer service	5	4	3	2	1	9
08.	Overall quality of enforcement of codes and ordinances	5	4	3	2	1	9
09.	Overall quality of government services provided by the Town of Westlake	5	4	3	2	1	9
10.	Overall value you receive from your tax dollars and fees	5	4	3	2	1	9
11.	Overall value of Westlake Academy to the Town	5	4	3	2	1	9

2. **Which THREE of the services listed in Question 1 are MOST IMPORTANT to you?** [Write-in your answers below using the numbers from the list in Question 1.]

1st: \_\_\_\_      2nd: \_\_\_\_      3rd: \_\_\_\_

3. **Satisfaction with Specific Types of Services Provided by the Town.** Using a scale of 1 to 5, where 5 means "Very Satisfied" and 1 means "Very Dissatisfied," please rate your level of satisfaction with each of the following.

How satisfied are you with the:		Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Don't Know
<b>Police Services</b>							
01.	Quality of local police protection	5	4	3	2	1	9
02.	Visibility of police in neighborhoods	5	4	3	2	1	9
03.	How quickly police respond to emergencies	5	4	3	2	1	9
04.	Efforts of the Town to prevent crime	5	4	3	2	1	9
05.	Level of traffic enforcement	5	4	3	2	1	9
<b>Fire &amp; Medical Services</b>							
06.	Quality of fire services	5	4	3	2	1	9
07.	Quality of emergency medical services	5	4	3	2	1	9
08.	Response time of fire and emergency medical services personnel	5	4	3	2	1	9
<b>Emergency Preparedness</b>							
09.	Response efforts by the Town Staff during extreme weather conditions	5	4	3	2	1	9
10.	Efforts by the Town Staff to inform residents of hazardous road conditions, potential inclement weather & closures	5	4	3	2	1	9



**(Question 3 continued)**

How satisfied are you with the:		Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	Don't Know
<b>Transportation Services</b>							
11.	Condition of major streets in Westlake	5	4	3	2	1	9
12.	Condition of streets in your neighborhood	5	4	3	2	1	9
13.	Cleanliness of streets and other public areas	5	4	3	2	1	9
14.	Traffic flow and congestion management in Westlake	5	4	3	2	1	9
<b>Communications &amp; Citizen Engagement</b>							
15.	Efforts by the Town to keep you informed about Council meetings, Town projects, issues, and events	5	4	3	2	1	9
16.	Timeliness of information provided by the Town	5	4	3	2	1	9
17.	Completeness of the information provided by the Town	5	4	3	2	1	9
18.	Usefulness of the Westlake Wire communications	5	4	3	2	1	9
19.	Usefulness of social media efforts	5	4	3	2	1	9
20.	Ease of use of the Town's website	5	4	3	2	1	9
21.	Availability/Accessibility of Town records	5	4	3	2	1	9
22.	Opportunities provided for public input	5	4	3	2	1	9
<b>Parks &amp; Recreation Services</b>							
23.	Maintenance of Town-owned Glenwyck Park	5	4	3	2	1	9
24.	Number of publicly-accessible parks and trails	5	4	3	2	1	9
25.	Maintenance of streetscaping and open spaces	5	4	3	2	1	9
<b>Utility Services</b>							
26.	Residential trash/recycling collection services	5	4	3	2	1	9
27.	Yard waste & bulky item removal services	5	4	3	2	1	9
28.	Town efforts to promote water conservation and protect water resources	5	4	3	2	1	9
29.	Household hazardous waste disposal service	5	4	3	2	1	9
30.	Efforts by the Town to manage storm water run-off	5	4	3	2	1	9
31.	Quality of (drinking) water utility services	5	4	3	2	1	9
<b>Customer Service</b>							
32.	Level of participation by Town Staff in community events/neighborhood meetings	5	4	3	2	1	9
33.	Timeliness of Town Staff to concerns/issues (<24 hours)	4	3	2	1	9	
34.	Friendliness of Town Staff	5	4	3	2	1	9
35.	Municipal court services	5	4	3	2	1	9
36.	Jury service experience	5	4	3	2	1	9
<b>Code Enforcement</b>							
37.	Enforcing the exterior appearance and maintenance regulations for property	5	4	3	2	1	9
38.	Enforcing sign regulations	5	4	3	2	1	9

**4. Reasons for Moving to Westlake.** Using a scale of 1 to 5, where 5 means "Extremely Important" and 1 means "Not Important," please indicate how important the following issues were in your decision to move to the Town of Westlake.

How important was:	Extremely Important	Very Important	Important	Less Important	Not Important	Don't Know
01. Sense of community	5	4	3	2	1	9
02. Quality of life	5	4	3	2	1	9
03. Small town feel	5	4	3	2	1	9
04. Aesthetic appeal & high development standards	5	4	3	2	1	9
05. Westlake Academy	5	4	3	2	1	9
06. Access to other public schools (Keller, Northwest or Carroll ISD)	5	4	3	2	1	9
07. Proximity to private schools	5	4	3	2	1	9
08. Low crime rates/quality of public safety	5	4	3	2	1	9
09. Employment opportunities in the Westlake area	5	4	3	2	1	9
10. Access to DFW airport	5	4	3	2	1	9
11. Access to major highways	5	4	3	2	1	9
12. Type of housing available	5	4	3	2	1	9
13. Quality of your subdivision	5	4	3	2	1	9
14. Westlake as a retirement destination	5	4	3	2	1	9
15. Number of publicly accessible parks & trails	5	4	3	2	1	9
16. Subdivision amenities (airpark, golf club, parks, etc.)	5	4	3	2	1	9

**5. Which THREE of the reasons listed in Question 4 are the MOST IMPORTANT reasons why you will stay in Westlake for the next 5 years? [Write-in your answers below using the numbers from the list in Question 4.]**

1st: \_\_\_\_ 2nd: \_\_\_\_ 3rd: \_\_\_\_

**6. Overall, how familiar are you with the following information?**

	Very Familiar	Somewhat Familiar	Not Familiar
1. The Town's Comprehensive Plan	3	2	1
2. The Town's Strategic Plan	3	2	1
3. The Town's Vision, Values, and Mission Statements	3	2	1
4. The Town's lighting standards	3	2	1
5. The Town's open space requirements for development	3	2	1
6. Zoning standards within the Town	3	2	1
7. Allowed uses (zoning entitlements) for existing planned development districts within the Town	3	2	1

**7. Please indicate the last time you attended each of the following events or meetings.**

		This year	Last year	2 or more years ago	Never, but I am aware of event/mtg.	Never, and I am not aware of event/mtg.
1.	Decoration Day	5	4	3	2	1
2.	Any of the Master Works concert series events	5	4	3	2	1
3.	Other Westlake Historical Preservation Society events	5	4	3	2	1
4.	Westlake Historical Preservation Society's Classic Car Show	5	4	3	2	1
5.	Westlake Public Arts Society events	5	4	3	2	1
6.	Council Meeting	5	4	3	2	1
7.	Board of Trustees Meeting	5	4	3	2	1
8.	Planning & Zoning Committee Meeting	5	4	3	2	1

**8. Have you attended a public meeting in your neighborhood?**

- (1) Yes, within the past 12 months *[Answer 8a-b.]*    
  (3) No, but I am aware of the meetings *[Answer 8c-d.]*  
 (2) Yes, more than 12 months ago *[Answer 8a-b.]*    
  (4) No, and I am not aware of the meetings *[Answer 8c-d.]*

**If "Yes" to Question 8:**

- 8a. Was the meeting informative?**    (1) Yes    (2) No  
**8b. Did you have the opportunity to discuss your ideas/concerns?**    (1) Yes    (2) No

**If "No" to Question 8:**

- 8c. Will you attend a neighborhood meeting in the future?**    (1) Yes    (2) No  
**8d. Do you think these types of meeting are useful?**    (1) Yes    (2) No

**9. In your opinion, how often should neighborhood meetings be held?**

- (1) Annually    
  (2) Twice a year    
  (3) Every other year    
  (9) Don't know

**10. Do any children in grades K-12 live in your home?**    (1) Yes *[Answer 11a.]*    (2) No *[Skip to 12.]*

**11a. Do any of these children currently attend Westlake Academy?**

- (1) Yes *[Skip to 12.]*    
  (2) No *[Answer 11b-d.]*

**11b. Where do your children go to school?**

\_\_\_\_\_

**11c. If any of your children previously attended Westlake Academy, why did they stop?**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**11d. If your children previously attended Westlake Academy, are you considering re-enrolling them in the future?**

- (1) Yes    
  (2) No

- 12. **What is your age?**    \_\_\_ (1) 18 – 34 years    \_\_\_ (2) 35 – 54 years    \_\_\_ (3) 55 – 74 years    \_\_\_ (4) 75+ years
- 13. **How many years have you lived in Westlake?**    \_\_\_\_\_ years
- 14. **In which subdivision do you live?**  
 \_\_\_ (1) Stagecoach Hills    \_\_\_ (3) Terra Bella    \_\_\_ (5) Glenwyck Farms    \_\_\_ (7) Granada  
 \_\_\_ (2) Vaquero    \_\_\_ (4) Wyck Hill    \_\_\_ (6) Mahotea Boone
- 15. **Which of the following BEST describes your total annual household income?**  
 \_\_\_ (1) Under \$50,000    \_\_\_ (3) \$150,000 - \$500,000  
 \_\_\_ (2) \$50,000 - \$149,999    \_\_\_ (4) Over \$500,000
- 16. **Gender:**    \_\_\_ (1) Male    \_\_\_ (2) Female
- 17. **Overall, how safe do you feel in the Town of Westlake?**  
 \_\_\_ (4) Very Safe    \_\_\_ (3) Safe    \_\_\_ (2) Unsafe    \_\_\_ (1) Very Unsafe    \_\_\_ (9) Don't Know
- 18. **Overall, how would you rate the Town of Westlake as a place to live?**  
 \_\_\_ (4) Excellent    \_\_\_ (3) Good    \_\_\_ (2) Average    \_\_\_ (1) Poor    \_\_\_ (9) Don't Know

**Optional:**

**If you have any other comments or a question you would like to see asked in a future survey, please write the information in the space provided below.**

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**The Town of Westlake thanks you for completing this survey.**  
 Please return your completed document in the enclosed postage-paid envelope, addressed to:  
 ETC Institute 725 W. Frontier Circle Olathe, KS 66061

Your response will remain completely confidential.  
 The address information printed to the right will ONLY be used to help identify areas with specific needs. If your address is not correct, please provide the correct information. Thank You.

# New Fairview, TX

## New Fairview, TX

999 Illinois Street  
 Rhome, TX 76078  
 United States

## Ben Nibarger

City Administrator  
 ben@newfairview.org  
 8176385366

## Reference: 20210125-204012869

Quote created: January 25, 2021  
 Quote expires: April 25, 2021  
 Quote created by: Lisa Dowling  
 Director of Sales  
 lisa@polco.us  
 +1 (858) 295-3872

## Products & Services

Item & Description	Quantity	Unit Price	Total
<p>Polco Performance Plan</p> <p>All Polco Premium Features are available to you during your subscription term to engage with your target audiences. Respondents answer questions via Polco's civic surveying and engagement platform which includes real time results and the option to have respondents verified against voter lists. As participants respond they become part of your community's digital panel available for follow up questions, surveys, polls, and other engagement.</p> <p>This plan includes 1 benchmark survey per year, with postcard invitations (initial and reminder) mailed to up to 1,500 randomly selected addresses to supplement your outreach. Your online report will include comparisons to our National Benchmarks, and demographic and geographic comparisons (if response is sufficient by subgroup). You will be assigned a Program Manager to implement your survey process and provide guidance on continued use of Polco with all the available premium features.</p>	1	\$8,300.00 / year	\$8,300.00 / year for 1 year
<p>+Mailed Paper Surveys - per 100 additional</p> <p>Add mailed paper surveys as a portion of the sample (three-part mailing to each household, with postage paid envelopes and cover letters that include the option to complete the survey online if preferred). This is in addition to the 1,500 households that will receive postcard</p>	5	\$350.00	\$1,750.00

invitations to complete the survey online, which is included with Polco Performance.

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Spanish Translation of a Benchmark Survey	1	\$945.00	\$945.00
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We will provide a Spanish translation of the survey (template and custom questions) and publish it online for Spanish speaking respondents. Survey invitations will provide a URL and Spanish language instructions for doing the Spanish survey online.

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The NCS - 1/2 page of custom Questions	1	\$1,600.00	\$1,600.00
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The NCS is a comprehensive community survey that covers a wide range of topics, and it is not necessary to include additional questions if you do not wish to do so. However, we recognize that while you are making this larger effort to get input from your residents, you may want to add a few custom items. On the paper survey there is room for approximately a half-page of custom questions. This is not included in the Polco Performance plan, but can be added.

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Remote Presentation of Results	1	\$2,170.00	\$2,170.00
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A senior Polco staff member will make one presentation of survey results to staff, Council, Boards, or other appropriate groups. This will be conducted on Zoom or another appropriate technology (that is feasible for both parties and suits the purpose). For this presentation, we use Microsoft® PowerPoint or Google Slides as a visual aid and a copy of the slideshow is shared with your staff for internal use.

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## Subtotals

Annual subtotal			\$8,300.00
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One-time subtotal			\$6,465.00
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## Other Fees

Postcard invites will be removed. One time credit back for postcard invitations			-\$1,800.00
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<b>Total</b>			<b>\$12,965.00</b>
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**Questions? Contact me**



Lisa Dowling

Director of Sales

[lisa@polco.us](mailto:lisa@polco.us)

+1 (858) 295-3872

Polco / NRC

8001 Terrace Ave, Ste 201

Middleton, WI 53562

US





The council-manager form is popular in large communities. Out of 199 cities with greater than 100,000 citizens, 112 use this form of government. Some examples include Phoenix; San Diego; Dallas; Cincinnati; San Antonio; Kansas Town, Missouri; and Mecklenburg County, North Carolina.

**Removing a Manager from Office**

Managers serve at the pleasure of the council or governing body. They can be terminated by a majority vote of the council, consistent with local laws, ordinances, or employment agreements they may have with the council. Control is always in the hands of the elected representatives of the people. According to the Texas City Managers' Association (TCMA), the average tenure for city managers that are TCMA members is about 6.4 years.

**Financial Information:**

N/A

**City Contact and Recommendation:**

Ben Nibarger, City Administrator

**Attachments:**

Council-Manager Brochure (ICMA)

# Council-Manager

## Form of Government



### Frequently Asked Questions

## **What is the council-manager form of government, which is used today by so many cities, towns, and counties?**

Council-manager government combines the strong political leadership of elected officials with the strong managerial experience of an appointed manager or administrator. All power and authority to set policy rests with an elected governing body, which includes a mayor or chairperson and members of the council, commission, or board. The governing body in turn hires a nonpartisan manager who has very broad authority to run the organization.

Born out of the U.S. progressive reform movement at the turn of the 20th century, the council-manager system was designed to combat corruption and unethical activity in local government by promoting effective management within a transparent, responsive, and accountable structure.

Since its establishment, the council-manager form has become the most popular structure of local government in the United States. The form is also widely used throughout the world in countries such as Canada, Australia, the Netherlands, New Zealand, and the United Kingdom.

## **How does council-manager government work?**

The elected council or board represent their community and develop a long-range vision for its future. They establish policies that affect the overall operation of the community and are responsive to residents' needs and wishes.

To ensure that these policies are carried out and that the entire community is equitably served, the governing body appoints a *highly trained professional manager* on the basis of his/her education, experience, skills, and abilities (and not their political allegiances). If the manager is not responsive to the governing body, it has the authority to terminate the manager at any time.

## **How can council-manager government benefit my community?**

A city, town, or county benefits from the council-manager form of government in a number of important ways:

1. Political power is concentrated in the *entire* governing body. The mayor and council share legislative functions
2. Policy making resides with elected officials, while oversight of the day-to-day operations of the community resides with the manager. In this way, the elected officials are free to devote time to policy planning and development

3. The manager carries out the policies established by the elected governing body with an emphasis on effective, efficient, and equitable service delivery
4. Because decisions on policy and the future of the community are made by the entire governing body rather than a single individual, council-manager governments more often engage and involve their residents in decision making. Residents guide their community by serving on boards and commissions, participating in visioning and strategic planning, and designing community-oriented local government services
5. The form is flexible enough to adapt to local needs and demands. For example, some communities elect their councils at large, while others elect them by district or by a combination of an at-large-and-by-district system. Also, the mayor can be directly elected by voters or selected by and from among the council.

### **What is the role of the manager under council-manager government?**

The manager is hired to serve the council and the community and brings to the local government the benefits of his/her training and experience in administering municipal or county projects and programs. The manager prepares a budget for the council's consideration; recruits, hires, terminates, and supervises government staff; serves as the council's chief advisor; and carries out the council's policies. Council members and residents count on the manager to provide complete and objective information about local operations, discuss the pros and cons of alternatives, and offer an assessment of the long-term consequences of their decisions.

Appointed managers serve at the pleasure of the governing body. They can be fired by a majority of the council, consistent with local laws, or any employment agreements they may enter into with the council. The manager makes policy recommendations to the council for consideration and final decision. The manager is bound by whatever action the council takes, and control is always in the hands of the elected representatives of the people.

### **What is the role of the council?**

The council is the community's legislative and policy-making body. Power is centralized in the elected council, which, for example, approves the budget and determines the tax rate. The council also focuses on the community's goals, major projects, and such long-term considerations

as community growth, land use development, capital improvement and financing, and strategic planning. The council hires a professional manager to implement the administrative responsibilities related to these goals and supervises the manager's performance.

### **What is the role of the mayor or chairperson?**

Mayors or chairpersons in council-manager communities are key political and policy leaders, and their specific duties, responsibilities, and authorities depend on the organization's charter. In council-manager communities, typically the mayor or chairperson is a voting member of the city council who presides at council meetings, represents the city in intergovernmental relationships, appoints members of citizen advisory boards and commissions (with the advice and consent of council), assigns agenda items to committees, facilitates communication and understanding between elected and appointed officials, and assists the council in setting goals and advocating policy decisions.

### **What value does a professional manager contribute to a community?**

Professional managers contribute value to a community because they:

- Work in partnership with elected officials to develop sound approaches to community challenges by bringing together resources to make the right things happen and produce results that matter
- Bring a community-wide perspective to policy discussions and strive to connect the past and future while focusing on the present. They help the governing body develop the long-term vision for the community that provides a framework for policy development and goal setting
- Promote ethical government through commitment to a set of ethical standards that goes beyond those required by law. Managers who are members of ICMA subscribe to the organization's Code of Ethics, which requires them to "affirm the dignity and worth of the services rendered by government and maintain...a deep sense of social responsibility as a trusted public servant"
- Encourage inclusion and build consensus among diverse interests (including those of elected officials, the business community, and citizens) by focusing on the entire community rather than the centralized interests of one or two individuals

- Promote equity and fairness by ensuring that services are fairly distributed and that administrative decisions (such as hiring and contracting) are based on merit rather than favoritism
- Develop and sustain organizational excellence and promote innovation. Professional managers focus relentlessly on efficient and equitable service delivery, policy implementation, and evaluation. They align the local government's administrative systems with the values, mission, and policy goals defined by the community and elected officials.

### **Does it cost more for a community to adopt the council-manager form and hire a professional manager?**

Many local governments have found that their overall costs are actually reduced under competent management. Savings can come from decreased operating costs, increased efficiency and productivity, improved revenue collection, and effective use of technology. The economic health of the community may also benefit from implementation of improved business development and retention strategies.

### **What kinds of communities use the council-manager form of government?**

In 2007, more than 3,500 (49 percent) of the 7,171 U.S. cities and towns with populations of 2,500 residents or more operated under the council-manager form. This structure is also used by more than 370 counties. More than 92 million people in the U.S. live in communities that operate under this form.

### **Is the council-manager form popular among larger communities?**

Of the 247 U.S. cities with populations greater than 100,000 residents, 144 (58 percent) use this form of government. Larger cities and counties that use the form include:

- Broward County, Florida (pop. 1,623,000)
- Charlotte, North Carolina (pop. 540,000)
- Dallas, Texas (pop. 1,188,000)
- Fairfax County, Virginia (pop. 969,000)
- Las Vegas, Nevada (pop. 535,000)
- Mecklenburg County, North Carolina (pop. 695,000)
- Oklahoma City, Oklahoma (pop. 506,000) *(continued)*

(continued)

- Phoenix, Arizona (pop. 1,321,000)
- San Antonio, Texas (pop. 1,144,000)
- San Jose, California (pop. 894,000)
- Virginia Beach, Virginia (pop. 425,000)
- Wichita, Kansas (pop. 344,000)

### **How can a community adopt the council-manager form of government?**

Most communities can adopt council-manager government through a charter, local ordinance, state enabling law, or by voter referendum. For information on how your community can adopt council-manager government, contact your state municipal league or association of counties. You can locate the addresses of these organizations on the Internet, or in the back section of ICMA's *Municipal Year Book*, which you may find in your local library.

### **Once a community adopts council-manager government, how does it choose a professional manager?**

The vacancy usually is announced in the *ICMA Newsletter*, and managers, assistants, and other individuals from across the country are invited to apply. Interested parties apply directly to the council, which reviews the applications and interviews qualified candidates. ICMA makes no recommendations regarding candidates. Additional information is available in ICMA's *Recruitment Guidelines Handbook*. To download a copy, visit <http://jobs.icma.org> and click on "Recruitment Guidelines Handbook" under "Resources."

### **What kind of educational and professional experience do professional local government managers possess?**

Nearly 67% of managers surveyed by ICMA in 2006 indicated that they had earned a master's (usually in public administration, business, or public policy), or other advanced degree. Respondents to the same survey said they had spent an average of 19 years in the local government management profession.

### **Do professional local government managers have a membership organization?**

Yes. ICMA (the International City/County Management Association) is the premier local government leadership and management organization that serves as the

professional and educational “home” for appointed professional managers and administrators. ICMA’s membership also includes directors of state associations of local governments, other local government employees, academics, students, and concerned citizens who share the goal of improving local government.

ICMA’s mission is to create excellence in local governance by developing and fostering professional local government management worldwide. To that end, the organization provides technical assistance and publications for management professionals to help them improve their skills and increase their knowledge. ICMA also serves as a clearinghouse for the collection, analysis, and dissemination of information and data about local government.

### **Why is membership in ICMA important for a professional local government manager?**

In addition to gaining access to valuable resources and lifelong professional development opportunities, managers who belong to ICMA are bound by its Code of Ethics, which states that every member of the organization shall act with integrity in all personal and professional matters so that they will merit the respect and trust of elected officials, employees, and the public. This stringently enforced Code specifies 12 ethical principles of personal and professional conduct, including dedication to the cause of good government.

ICMA members believe in the effectiveness of representative democracy and the value of government services provided equitably to residents within a community. ICMA members are also committed to standards of honesty and integrity that go beyond those required by the law. For more information, contact ICMA or visit <http://icma.org/ethics>.

Finally, ICMA defines professional management and recognizes individual members who are qualified by a combination of education and experience, adherence to high standards of integrity, and an assessed commitment to lifelong learning and professional development. ICMA members who meet these requirements may earn designation as an ICMA Credentialed Manager. For more information on ICMA’s Voluntary Credentialing Program, visit <http://icma.org/credentialing>.



## **Are there other, independent organizations that support council-manager government?**

The National Civic League (NCL) is America's original advocate for community democracy. This nonprofit, nonpartisan membership organization is dedicated to strengthening citizen democracy by transforming democratic institutions. NCL accomplishes its mission through technical assistance, training, publishing, research, and promoting the All-America City Awards, America's original and most prestigious community recognition program.

Founded in 1895, NCL serves as a clearinghouse for information on methods of improving state and local government. The League's *Model City Charter*, now in its eighth edition, has endorsed council-manager government since 1915.

## **For further information, contact**

**Jared M. Dailey**  
**Assistant Program Manager**  
**ICMA**

777 North Capitol Street, NE, Suite 500  
Washington, DC 20002-4201  
jdailey@icma.org  
202-962-3557  
202-962-3500 fax  
<http://icma.org/formofgovt>

**National Civic League**  
1445 Market Street, Suite 300  
Denver, Colorado 80202-1728  
303-571-4343  
303-571-4404 fax  
<http://www.ncl.org>



## **City Council Agenda February 15, 2021**

**Agenda Item:** **Presentation** **(Discussion)**

### **Agenda Description:**

Discussion with staff regarding amending the language of the City Council Procedures and Decorum Policy: including, how items are added to the agenda, the order of business on the agenda, council communication, and other sections that may arise through discussion.

### **Background Information:**

Several Council members have requested that this item be added to the agenda to discuss the following, as well as any other item that may come up during this discussion:

- Discuss amending Section 1-110 - City Council Agenda
  - how items are added to the agenda
- Discuss amending Section 1-120 - Types of Meetings
  - the day of the week meetings are held
- Discuss amending Section 1-140 - Order of Business
  - the order of items on the agenda
    - Public Forum
    - Worksession
    - Consent
    - Regular Meeting / New Business
    - Executive Session
- Discuss amending Section 1-160 - Decorum
  - review the language regarding professionalism of the elected officials
- Discuss amending Section 1-170 - Staff Relations
  - elected official's interaction with staff and residents
- Discuss amending Section 1-220 - Policy Enforcement
  - review what consequences are available for offenses

### **Financial Information:**

N/A

**City Contact and Recommendation:**

Ben Nibarger, City Administrator

**Attachments:**

Policy Document



# New Fairview City Council Procedures & Decorum Policy

*"I will never bring reproach upon my hallowed arms, nor will I desert the comrade at whose side I stand, but I will defend our altars and our hearths, alone or supported by many. My native land I will not leave a **diminished heritage, but greater and better than when I received it.** I will obey to the current statute and authorities and I am convinced of the institutions of the founding people, and so should the people of the world be founded in the same way. If anyone tries to overthrow the constitution or disobeys it, I will not permit him, but will come to its defense, alone or supported by many. I will honor the religion of my fathers. Let the gods be my witness: Agraulus, Enyalius, Ares, Zeus, Thallo, Auxo, Hegemone."*

***The Ephebic Oath was taken by the young men of ancient Athens when they became of age to assume the responsibility of citizenship***

# Introduction and Summary

The New Fairview City Council is the governing body for the City of New Fairview; therefore, they must bear the initial responsibility for the integrity of governance. The Council is responsible for its own development, both as a body and as individuals, its responsibilities, its own discipline, and its own performance. The policy that was developed and adopted was designed to ensure effective and efficient governance.

This policy will address Mayor and Council relations, Council and Staff relations, and Council and media relations. By adopting these guidelines for elected officials, we acknowledge our responsibility to each other, to our professional staff, and to the public. The Council will govern the City in a manner associated with a commitment to the preservation of the values and integrity of representative local government and democracy, and a dedication to the promotion of efficiency and effective governing. The following statements will serve as a guide and acknowledge the commitment being made in this service to the community:

1. The Council has as high priorities the continual improvement of the member's professional ability and the promotion of an atmosphere conducive to the fair exchange of ideas and policies among members.
2. The Council will endeavor to keep the community informed on municipal affairs; encourage communication between the residents and the Council; strive for strong working relationships among neighboring municipalities and elected officials.
3. In its governance role, the Council will continue to be dedicated to friendly and courteous relationships with Staff, other Council members, and the public, and seek to improve the quality and image of public service.
4. The Council will also strive to recognize its responsibility to future generations by addressing the interrelatedness of the social, cultural, and physical characteristics of the ties of the community when making policies.
5. Finally, each Council member will make a commitment to improving the quality of life for the individual and the community and to be dedicated to the faithful stewardship of the public trust.

**Sec. 1-100. – Authority.**

Pursuant to the provisions of the Ordinances of the City of New Fairview, Texas, the City Council shall enact rules of procedure for all meetings of the City Council of the City of New Fairview, Texas, which shall be in effect upon their adoption by the City Council and until such times as they are amended or new rules adopted. **These rules of procedures shall serve as general guidelines for Council conduct and meeting protocols.**

**Sec. 1-110. – City Council Agenda.**

- (a) The City Administrator is responsible for creating and processing the agenda and agenda materials for City Council meetings. The City Administrator will submit agenda materials as appropriate for review by the City Attorney. The City Secretary is responsible for preparing and posting the agenda and assembling and distributing the agenda packets.
- (b) The Mayor or two Council Members may direct the City Administrator in writing to place an item on an agenda for a regular City Council meeting, special meeting, or work session for discussion only. Items must be submitted to the City Administrator no later than noon on the Monday preceding the week of the City Council meeting.
- (c) The City Council, during any scheduled regular or special meeting or work session, may direct the City Administrator to place an item on a future agenda.
- (d) Any two Council Members may request an item to be placed on the agenda for discussion. Should extraordinary staff time be required to address a requested agenda item, the City Administrator will place the item on a future Council agenda for direction and discussion prior to investing the extraordinary amount of staff time and communicate this decision to those requesting the item.
- (e) Agenda items placed on the agenda by the Mayor or members of the City Council previously considered and whereby action was taken by the City Council may not be placed on a future agenda for reconsideration within six months of such action unless either: (1) directed by a majority of the City Council to the City Administrator during any scheduled regular or special meeting or work session; or (2) directed by the Mayor and one Council Member in writing to the City Administrator. In all cases, at least one member of the City Council who is requesting that the item be renewed on an agenda shall have been on the prevailing side of the previous vote on the item.

**Sec. 1-120. – Types of Meetings.**

- (a) *Regular Meetings:* The City of New Fairview regular City Council meetings are held on the first Monday of each month, at such time as may be set by the City Council, unless the meeting is rescheduled or canceled. All regular meetings of the City Council will be

held in New Fairview Town Hall at 999 Illinois Lane, New Fairview, Texas, or at such other locations as the City Council may, by motion, resolution or ordinance, designate.

- (b) *Work Session Meetings:* A work session is a meeting to discuss or explore matters of interest to the City, review and discuss agenda items, meet with City boards, commissions or committee members, City Staff or officers of civic organizations, governing bodies or individuals specifically invited to the session by the Mayor, City Administrator or the Council. These meetings are informational and no formal action shall be taken unless the posted agenda indicates otherwise. The Mayor may allow any citizen to participate in the discussion at a work session, but only as recognized by the Mayor. The Mayor may end citizen participation in a work session in order to allow the City Council to proceed with the discussion.

If necessary, a work session will normally be scheduled before a regular meeting of the City Council and will be known as the "Pre-Council meeting."

- (c) *Special Meetings:* Special meetings may be called by the Mayor, the City Administrator, or by any two (2) members of the City Council. The call for a special meeting shall be filed with the City Secretary in written form, and the City Secretary shall cause the posting of notice of the meeting as governed by applicable law. The Mayor, City Administrator, or two Council Members may designate a location for the special meeting other than Town Hall as long as the location is open to the public and in compliance with applicable law.
- (d) *Emergency Meeting:* In case of emergency or urgent public necessity, as defined by State law and confirmed by the City Attorney when practical, which shall be expressed in the notice of the meeting, an emergency meeting may be called by the Mayor, City Administrator or his/her designee, or two members of the City Council, and it shall be sufficient if the notice is posted at least two hours before the meeting is convened.
- (e) *Closed Meeting:* The City Council may meet in a closed meeting but only under conditions allowed by applicable law. Details discussed in closed meetings shall be considered confidential and shall not be discussed or disclosed outside the meeting.
- (f) *Recessed Meetings.* Any meeting of the City Council may be recessed to a later time provided that no recess shall be for a period longer than twenty-four hours from the time the meeting is recessed.

**Sec. 1-130. – Quorum.**

A quorum at a regular meeting of the City Council will be established by the presence of three members of the Council. A quorum at a special or emergency meeting of the City Council will be established by the presence of four members of the Council. The Mayor shall not count as a Council Member for the establishment of a quorum.

**Sec. 1-140. – Order of Business.**

The Regular City Council meeting will be generally conducted in the following order unless otherwise specified. If the Mayor or any member of Council wishes to change the order of business, a proper motion must be made followed by a second and then passed by the affirmative vote of a majority of the Council Members present and voting. An executive session may be held at any time during a meeting pursuant to applicable State law.

(a) *Executive Session:*

- (1) Conduct Executive Session – Items to be discussed in a closed meeting under conditions allowed by applicable law. The City Council may not take final action during Executive Session. It is understood and agreed that information discussed in Executive Session is considered confidential and should remain so until the Council takes action in public on the matter. Any final action resulting from an Executive Session discussion must be taken during the open public session.

(b) *Work Session Agenda (if necessary):*

- (1) Discussion of consent items – Council review and discussion of items that are by nature routine and typically require little or no Council deliberation.
- (2) Questions regarding regular agenda items – Council review and discussion of regular agenda items. The Council may ask questions of Staff, receive a brief presentation, and request additional information prior to consideration during the regular meeting.
- (3) Written or verbal presentations or discussions – Council updates and discussions regarding items, some of which may not be included as part of the regular meeting agenda.
- (4) Executive Session (if needed) - Items to be discussed in the closed meeting under conditions allowed by applicable law. The City Council may not take final action during executive session. It is understood and agreed that information discussed in Executive Session is considered confidential and should remain so. Any final action resulting from an Executive Session discussion must be taken during the open public session.
- (5) Adjourn

(c) *Regular Meeting Agenda:*

- (1) Call to Order – Chair officially calls the meeting to order.
- (2) Pledge of Allegiance – Each agenda of a regularly scheduled City Council meeting shall provide an item for the recital of the “Pledge of Allegiance” to both the United States flag and the Texas flag.



- (3) Presentations – The agenda shall provide a time when proclamations, recognitions, general reports, and updates may be presented to the City Council.
- (4) Public with Business – The time for the public to address the City Council on any subject. However, the City Council cannot discuss items presented under Public with Business nor take any action thereon other than consideration of the placement of the said item on a future agenda as a discussion item or refer the item to Staff for research and possible future action, unless the item presented is an item on the posted agenda for the meeting. Each speaker will be allowed three (3) minutes to speak. Speakers are not permitted to yield their time to others but are encouraged to inform the City Council if they are speaking on behalf of a larger group.
- (5) Consent agenda - Shall contain routine, non-controversial items that require City Council action but need little or no Council deliberation. An item can be removed from the consent agenda by the City Administrator, Mayor, or any member of the City Council and will be considered after approval of the consent agenda.
- (6) Old Business – Business items pending from previous City Council meetings. Members of the public may speak on any item under Old Business. They will be allowed three (3) minutes.
- (7) New Business – New or amended ordinances, resolutions, or policies that the Mayor, City Council Members or City Staff wish to have the City Council consider. Members of the public may speak on any item under New Business. They will be allowed three (3) minutes.
- (8) Discussion Items – Items to be presented or discussed with City Council in order to garner direction from City Council. No action shall be taken on discussion items. Members of the public may speak on any Discussion item. They will be allowed three (3) minutes.
- (9) Executive Session (if needed) – Items to be discussed in the closed meeting under conditions allowed by applicable law. The City Council may not take final action during the executive session. It is understood and agreed that information discussed in the Executive Session is considered confidential and should remain so. Any final action resulting from an Executive Session discussion must be taken during the open public session.
- (10) Adjourn

**Sec. 1-150. – General Procedures.**

- (a) *General Procedure:* General rules of parliamentary procedure as defined herein, consistent with state law and any applicable City ordinance, statute, or other legal requirements, shall govern the proceedings of the City Council. To the extent not inconsistent with these rules, the City Council shall use Robert’s Rules of Order as a general guideline for additional rules of the parliamentary procedure without being a procedural requirement. Notwithstanding the above, failure to abide by, or adhere to,

these rules shall not nullify or negate any action by the City Council. These rules of parliamentary procedure are intended solely as a guideline.

- (b) *Chair of Meeting:* The Mayor shall preside over all meetings of the City Council as the Chair and enforce these rules and procedures during a meeting. In the absence of the Mayor, the Pro Tempore shall assume the Chair's responsibility at the meeting. In the absence of the Pro Tempore, the Council will choose a Chair for the meeting.
- (c) *Authority of the Chair:* The Chairperson shall make decisions on questions of procedure subject to review respectively by the Council as a whole.
- (d) *Council Deliberations:* The Chair has the responsibility to control the discussion and the order of speakers. Council Members will generally be called upon in the order of the request to speak. Generally, a Council Member may not be recognized to speak subsequently until each Council Member has had an opportunity to obtain the floor. A Council Member holding the floor may address a question to another Council Member and that Council Member may, should they so choose, respond to the question while the floor is still held by the Council Member asking the question.
- (e) *Limits to Deliberations:* After an agenda item is announced by the Chair, the City Council may discuss the item without the need for a motion on the item. Council Members will limit their comments to the subject matter or motion currently being considered.
- (f) *Repetitious Comments Prohibited:* A speaker or Council Member shall not present the same or substantially the same items or arguments to the City Council repeatedly or be repetitious in presenting oral comments. A speaker or Council Member shall not present an argument on a matter previously considered by the City Council at the same session.
- (g) *Obtaining the Floor:* Any member of the Council wishing to speak shall first obtain the floor by making a request for the floor to the Chair. The Chair shall recognize any Council Member who seeks the floor when appropriately entitled to do so.
- (h) *Motions:* Motions may be made by any member of the Council including the Chair. Any member of the City Council may second a motion.
- (i) *Procedures for Motions:* The following is the general procedure for making motions:
  - (1) The item is presented by Staff or others followed by questions and discussion by Council Members.
  - (2) A Council Member who wishes to make a motion shall first obtain the floor.
  - (3) A Council Member who wishes to second a motion shall do so through a request to the Chair.

- (4) Before a motion can be discussed, it shall be seconded.
- (5) Once the motion has been properly made and seconded, the Chair shall open the matter for further discussion offering the first opportunity to the moving party and, thereafter, to any Council Member properly recognized by the Chair.
- (j) *Amendments to Motions:* When a motion is on the floor and an amendment is offered, the amendment shall be acted upon prior to acting on the main motion. No motion of a subject other than the agenda item under consideration shall be admitted as an amendment. A motion to amend an amendment shall be in order, but one to amend an amendment to an amendment shall not be in order. The action shall be taken on the amended amendment prior to any other action to further amend the original motion.
- (k) *Continuance of Discussion or Hearings:* Any item being discussed or any public hearing at a City Council meeting may, by order, notice, or motion, be continued or tabled to any subsequent meeting.
- (l) *Voting:* All Council Members must vote either “yea” in the affirmative or “nay” in the negative. A present member who does not vote will be officially recorded as a “nay” or negative vote. When a Council Member recuses oneself, that Council Member is not counted as present for quorum purposes and is not deemed to be “voting” for purposes of determining whether there has been a “majority vote of those voting and present”.
- (m) *Public Hearings:* The following is the general procedure for conducting public hearings:
  - (1) Staff presents a report.
  - (2) City Council Members may ask Staff questions.
  - (3) The applicant then has the opportunity to present comments, testimony, and/or oral arguments.
  - (4) City Council Members may ask questions of the applicant.
  - (5) The Chair opens the public hearing.
  - (6) Upon opening the public hearing, and before any motion is adopted related to the merits of the issue to be heard, the Chair shall inquire if there is anyone present who desires to speak on the matter which is to be heard or to present evidence regarding the matter.
  - (7) Members of the public are provided with the opportunity for comments and testimony in accordance with Section 1-160 (d) of the City Council Procedures and Decorum Policy.
  - (8) A vote by City Council to close the public hearing upon a motion and second.

- (9) The applicant may be given the opportunity to respond to questions from the City Council and for closing comments or rebuttal.
- (10) The City Council deliberates on the issue.
- (11) If the City Council raises new issues through deliberation and a majority of the City Council seeks additional public testimony, additional public comment and testimony are permitted in accordance with Section 1-160 (d) of the City Council Procedures and Decorum Policy.
- (12) The City Council deliberates and takes action as needed.
- (13) The Chair announces the final decision of the City Council as applicable.
- (n) *Call for Recess:* The Chair may call for a recess of up to fifteen (15) minutes at regular intervals at appropriate points in the meeting agenda, or if requested by any two (2) Council Members.

**Sec. 1-160. – Decorum.**

- (a) General: During Council meetings, Council Members shall preserve order and decorum, shall not interrupt or delay proceedings, and shall obey the rules of the Council. Council Members shall demonstrate respect and courtesy to one another, to City Staff, and to members of the public appearing before the Council. Council Members shall seek to phrase and communicate all writings, publications, and speeches in a professional and constructive manner.

Council Members may express differing ideas. Equitable representation helps promote the unity of purpose by allowing the public to be informed of each Member's position during his/her term of office and not only during an election campaign.

Members of the Council will not condone any unethical or illegal activity from any Council Member or members of the Staff. All members of the Council agree to uphold the intent of this policy and to govern their actions accordingly.

- (b) *Mayoral Responsibilities:*

- (1) The Mayor shall serve as the Chair of all meetings. The Mayor Pro Tempore shall preside in the absence of the Mayor.
- (2) The Mayor shall have a voice in all matters before the Council.
- (3) The Chair is responsible for preserving order and decorum and shall keep the meetings orderly by recognizing each Member for discussion, limiting speaking items, encouraging debate among Members, and keeping discussion limited to the agenda item being considered.

- (4) The Mayor is the official spokesperson for the Council on all matters unless absent, at which time the Mayor Pro Tempore or appropriate designee will assume the role. The views presented by the Mayor, or the Mayor Pro Tempore in his/her absence, should provide an equitable representation of all Council Members.
- (5) The Chair will encourage all Council Members to participate in Council discussion and give each Member an opportunity to speak before any Member can speak again on the same subject.
- (6) The Mayor is responsible for ensuring that an orientation of all Council Members is conducted following an election. The orientation shall include Council procedures, staff and media relations, current agenda items, municipal leadership training programs, and legal issues governing the behavior of elected officials, etc.

(c) Council Responsibilities

- (1) Each Council Member is responsible for being prepared to discuss the agenda.
- (2) Each Council Member is required to attend a Council Member Orientation and is encouraged to attend at least one Texas Municipal League-sponsored conference each year in order to stay informed on issues facing municipalities.
- (3) It is the responsibility of Council Members to be informed about the action taken by the Council in their absence. In the case of an absence from a work session, the Council Member is responsible for obtaining this information from the City Administrator prior to the Council meeting during which said item is to be voted upon.
- (4) When addressing an agenda item, the Council Member shall first be recognized by the Chair, confine comments to the question under debate, avoid reference to personalities, and refrain from impugning the integrity or motives of any other Council Member or Staff Member during debate or vote.
- (5) Any Council Member may appeal a ruling by the Chair to the Council as a whole. If the appeal is seconded, the person making the appeal may make a brief statement and the Chair may respond. An appeal may generally be debated by the Members, but each Member may speak only once. The affirmative vote of a majority of the Council Members present and voting shall be necessary to approve the motion.
- (6) Any Council Member may ask the Chair to enforce the policy established by the Council. Should the Chair fail to do so, a majority vote of the Council Members present shall require the Chair to enforce the policy.
- (7) When a Council Member is appointed to serve as a liaison to a board, committee or commission, the Council Member is responsible for keeping all Council Members informed of significant activities of that board, committee or

commission. The appointed Council Member should report the actions of the board, committee or commission during a work session of the City Council.

- (8) While a member of the Council is speaking, other members shall not hold private discourse or in any manner interrupt the speaker. In all discussions, disrespectful language and behavior shall be avoided.
- (9) Every member of the Council who shall be present at a meeting, when a vote is called for by the Chair shall vote thereon unless they have recused themselves due to a conflict of interest.
  - (a) If a Council member has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:
    - (1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
    - (2) in the case of a substantial interest in real property, it is reasonably foreseeable that action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.
  - (b) The affidavit must be filed with the City Secretary.
  - (c) If a Council member is required to file and does file an affidavit under Subsection (a), the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.
- (10) A Council Member may not represent any third party before any City board or commission.
- (11) All personal communication devices should be placed in a silent mode during any City Council meetings. Personal communication devices shall not be used for communicating City-related business during any City Council meetings.
- (d) *Citizens' participation:* The following rules shall be in force for persons in attendance at all meetings of Council:
  - (1) Persons wishing to address the Council during Public with Business or on a particular agenda item shall complete a Public Comment Form and present said form to the City Secretary up to the close of the comment period during which they choose to speak. Speakers shall approach the lectern and give his/her name and address before speaking. Speakers shall address the Mayor and Council with civility that is conducive to appropriate public discussion. All public

comments should be addressed to the City Council rather than to individual members. Each speaker will be allowed three (3) minutes to speak. Speakers are not permitted to yield their time to others but are encouraged to inform the City Council if they are speaking on behalf of a larger group. No person shall be allowed to address the Council more than once per agenda item unless called upon by a City Council Member to do so.

- (2) City Council Members cannot discuss items presented under Public with Business nor take any action thereon other than consideration of the placement of said item on a future agenda as a discussion item or refer the item to City Staff for research and possible future action, unless the item presented is an item on the posted agenda for the meeting.
- (3) Persons may not engage in discussions with the Council during Council deliberations unless specifically asked a question by a Council Member. Persons who have been asked a question by a Council Member must be recognized by the Chair before being allowed to speak. The Chair may end any question and answer session between Council Members and a member of the public in order to facilitate the order of business.
- (4) Persons may present printed material to be included in the Council agenda packets one week prior to a meeting. Persons may present printed material to the City Secretary to distribute to the Council during a meeting.
- (5) Persons may present electronic media during their comments provided that all materials are submitted to the City by 4:00 P.M. the day of the meeting. Files should be emailed to [citysecretary@NewFairview.org](mailto:citysecretary@NewFairview.org). Materials submitted after 4:00 p.m. will be forwarded to City Council following staff review but will not be available to present during the meeting. Any digital presentation material will be included in an individual's 3-minute time limit.
- (6) Persons attending Council meetings shall remain seated or may stand in the back and come and go so long as it does not disrupt the meeting. Persons in attendance shall not carry signs, placards or other items which could block the view of those behind them or be disruptive to the proceedings. No person attending any Council meeting shall delay the proceedings or refuse to obey the orders of the presiding officer.
- (7) Disturbances, transgressions of the rules or disorderly conduct in the Council chamber may cause the transgressor to be removed from the meeting. The Chair of the meeting, shall exercise control over persons who disrupt the meeting in the following ascending order of action:
  - a. Call the person to order, advising that person of the infraction.
  - b. Advise the person that the infraction must cease immediately or the person will be ordered to leave the meeting.
  - c. Order the person to leave the meeting. If the offending person is a member of Council, the Chair shall call for a vote on the expulsion of that member from the meeting, and such vote requires a majority for adoption.

A police officer may remove an individual or individuals for disrupting a meeting as authorized by Texas Penal Code Section 42.05.

- (8) Persons are encouraged to attend Council meetings. However, the number admitted shall be limited to the fire safety capacity of the Council chamber as determined by the fire chief or designee. If the capacity is surpassed the Council may adjourn the meeting and move its proceedings to a location that will accommodate a larger number of participants.

**Sec. 1-170 - Staff Relations**

- (a) In order to ensure proper presentation of agenda items by Staff, questions arising from Council Members after receiving their information packet should be, whenever possible, presented to the City Administrator for Staff consideration prior to the Council meeting. This allows Staff the time to address the Council Member's concern and provide all Council Members with additional information.
- (b) The City Administrator shall designate the appropriate Staff Member to address each agenda item and shall see that each presentation is prepared and presented in order to inform and educate the Council on the issues that require Council action. The presentation should be professional, timely and allow for discussion of options for resolving the issue. As a summary, the Staff Member making the presentation shall make it clear if no Council action is required or present the Staff recommendation as a part of the presentation, and/or present the specific options for Council consideration.
- (c) The City Administrator is directly responsible for providing information to all the Council concerning any inquiries by a specific Council Member that is significant in nature and would be beneficial to all Council Members. If the City Administrator or the Staff's time is being dominated or misdirected by a Council Member, it is the City Administrator's responsibility to inform the Mayor.
- (d) The City Administrator will exhibit the highest professional and ethical behavior. The City Administrator is responsible for the professional and ethical behavior and discipline of his/her Staff. The City Administrator is also responsible for ensuring that the Staff receives the training and information necessary to address the issues facing municipal government.
- (e) Any conflicts arising between the City Staff and the Council will be addressed by the Mayor and the City Administrator.
- (f) All Staff Members shall show one another, each Council Member, and the public, respect, and courtesy at all times. They are also responsible for making objective, professional presentations to ensure public confidence in the process.



- (g) The City Administrator, after an election, will make sure that the Staff has prepared the information needed for the orientation of new Council Members, and inform the Council of any available Texas Municipal League conferences and seminars. The City Administrator will also be responsible for meeting personally with new Members and informing them about City facilities, policies and procedures.

**Sec 1-180. – Council and Media Relations**

Since the democratic form of government is only successful when the citizens are kept informed and educated about the issues facing their municipality, it is imperative the media play an important role in the governmental process. It is through an informed public that progress is ensured and good government remains sensitive to its constituents. These guidelines are designed to help ensure fair relationships with all media reporters. The Council and the City Administrator recognize that the media provides an important link between the Council and the public. It is desired to establish a professional working relationship to help maintain a well informed and educated citizenry.

- (a) During the conduct of official business, the news media shall occupy places designated for them or the general public.
- (b) All reporters will have access to an agenda and will be furnished support materials needed for clarification if requested.
- (c) In order to preserve the decorum and professionalism of Council meetings, the media are requested to refrain from conversing privately with other people in the audience and to conduct any interview with the public outside the meeting room while the Council is in session.
- (d) Since each government body conducts business differently, it is requested that all reporters new to Council meetings meet with the City Administrator or the designated media relations representative prior to covering their first meeting to be informed of the policies and procedures to help foster a professional working relationship between the media reporter and the City.
- (e) On administrative matters, the City Administrator is the spokesperson, unless he/she has appointed a media relations person to present Staff information on the agenda.
- (f) The Mayor, or his/her designee, is the primary spokesperson for the City on matters regarding policy decisions or any Council information pertaining to issues on the agenda. In order to ensure fair treatment of an issue, any clarifications requested by the media on the issue should be addressed after the meeting. When opposing positions have been debated, regardless of the outcome, the public is better informed when all sides have adequate coverage by the media. This lets the public know that the item was seriously debated and options discussed before a vote was taken, and helps build confidence in

the democratic process. In respect to each Council Member and the citizens of the City, the views presented by each Council Member should provide equitable representation of all Members. Even though Council Members may express differing ideas, equitable representation helps promote unity of purpose by allowing the public to be informed of each Member's position during his/her term of office and not only during an election campaign.

***Sec. 1-190. – Statements by public officials regarding litigation.***

When the City of New Fairview is involved in litigation or a legal dispute, Council Members shall refrain from commenting on settlements, appeals or other issues related to the subject until the matter is resolved. The Mayor, City Administrator or City Attorney shall be authorized to provide any public responses or comments, as needed on matters involving litigation.

***Sec 1-200. - Non-Exclusive Rules***

The rules set forth are not exclusive and do not limit the inherent power and general legal authority of the City Council, or of its presiding officer, to govern the conduct of the City Council meetings as may be considered appropriate from time to time, or in particular circumstances, for purposes of orderly and effective conduct of the affairs of the City.

***Sec 1-210. – Disbursement of Council Requested Information***

As a general courtesy and to maintain equality in the disbursement of information, documentation or data requested by a Council Member from Staff shall be provided to all members of the Council.

***Sec. 1-220 – Policy Enforcement***

If a Member(s) of the City Council believes this policy has been violated, the topic shall be placed on a meeting agenda following proper procedure (by City Administrator, Mayor, or two members of the City Council).

A determination of violation shall be stated by the majority vote of those present during the deliberation.

If it is a Member of the Council who is determined to be in violation of this policy, a standard letter of violation signed by the Mayor (or Mayor Pro Tempore, if the letter is going to the Mayor) shall be issued to the person. A copy of the letter shall become a part of the Council Member's official file with the City.



**The Type B sales tax** may be used for any project eligible under Type A rules and several other project types, including quality of life improvements. Type B corporations may pay for land, buildings, equipment, facilities, targeted infrastructure and improvements for:

- professional and amateur sports and athletic facilities, tourism and entertainment facilities, convention facilities and public parks;
- related store, restaurant, concession, parking and transportation facilities;
- related street, water and sewer facilities; and
- affordable housing.

To promote and develop new and expanded business enterprises that create or retain primary jobs, a Type B EDC may fund:

- public safety facilities;
- recycling facilities;
- streets, roads, drainage and related improvements;
- demolition of existing structures;
- general municipally owned improvements; and
- maintenance and operating costs associated with projects.
- Type B EDCs also may seek voter approval to spend Type B sales tax funds for a water supply, water conservation program or cleanup of contaminated property.

**Municipal Development Districts (MDD)** may be created by a city comprising all or part of its city limits, all or part of its ETJ, or any combination of all or part of these areas. The sales tax rate adopted must be one-eighth, one-fourth, three-eighths, or one-half of one percent.

A MDD project may consist of a Type B project as defined by the Development Corporation Act. Type B EDCs created by cities with a population of 20,000 or less and those classified as landlocked communities may use sales tax proceeds to fund projects that promote new or expanded business development that do not create or retain primary jobs.

There are two primary benefits of an MDD:

1. it does not have to be levied across the entire city, and
2. it is the only sales tax that can be levied by a city in the ETJ.

You can read more about an MDD starting on page 196 of the attached 2020 Economic Development Handbook.

**Financial Information:**

Consultant quote to establish the MDD was \$5,000 to \$10,000

**City Contact and Recommendation:**

Ben Nibarger, City Administrator

**Attachments:**

2020 Economic Development Handbook

Menu of Services

# Texas Municipal League Economic Development Handbook



**2020 Editor**

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Assistant General Counsel  
Texas Municipal League

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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,

A handwritten signature in cursive script that reads "Neil Bennett Sandlin".

Bennett Sandlin  
Executive Director  
Texas Municipal League

## **Acknowledgments**

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## Table of Content

<b>I.</b>	<b>The Economic Development Sales Tax</b> .....	<b>1</b>
	Using Sales Tax to Promote Economic Development.....	1
	Differences Between Type A and Type B Sales Tax.....	2
	Type A and Type B Economic Development Sales Tax.....	5
<b>II.</b>	<b>Alternative Tax Initiatives for Local Development</b> .....	<b>42</b>
	City/County Venue Project Tax.....	42
	Additional Taxes and Fees that Voters Can Approve.....	51
	Chapter 335 Sports and Community Venue Districts.....	69
<b>III.</b>	<b>Local Property Tax Incentives</b> .....	<b>80</b>
	Property Tax Abatement.....	80
	Tax Increment Financing.....	93
	Texas Economic Development Act.....	114
	Adopting the Freeport and Goods-in-transit Exemptions.....	127
<b>IV.</b>	<b>Economic Development Through Tourism</b> .....	<b>132</b>
	The Local Hotel Occupancy Tax.....	132
	County Development District.....	148
<b>V.</b>	<b>City, County, Cooperative and Regional Efforts</b> .....	<b>160</b>
	A City's Authority to Make Grants and Loans.....	160
	Providing Land to Promote Economic Development.....	164
	Municipal Agreements Not to Annex.....	167
	Use of Interlocal Agreements.....	168
	Economic Development Activities by Councils of Government.....	170
	County Economic Development Powers.....	172
	County Ability to Provide Loans or Grants.....	174
<b>VI.</b>	<b>Issuing Debt to Finance Economic Development</b> .....	<b>176</b>
	Legal Authority to Issue Bonds.....	176
	Procedures for Issuing Bonds for Economic Development.....	178
	Other Instruments to Finance Infrastructure Improvements.....	179
<b>VII.</b>	<b>Other Economic Development Initiatives</b> .....	<b>180</b>
	Public Improvement Districts.....	180
	Municipal Management Districts.....	188
	Municipal Development Districts.....	196
	Neighborhood Empowerment Zones.....	199
	North American Free Trade Agreement Impact Zones.....	201
	Improvement Districts in Certain Counties.....	203
	County Assistance Districts.....	209
<b>VIII.</b>	<b>Public Disclosure of Economic Development Negotiations</b> .....	<b>216</b>
	Open Meetings and Public Information Acts.....	216

<b>IX.</b>	<b>Synopses of Attorney General Opinions on Economic Development .....</b>	<b>218</b>
	Type A Sales Tax.....	218
	Type B Sales Tax.....	223
	City/County Venue Project Tax.....	228
	Property Tax Abatement .....	230
	Tax Increment Financing.....	234
	Texas Economic Development Act .....	239
	Adopting the Freeport Exemption.....	239
	Local Hotel Occupancy Tax.....	240
	County Development District Tax.....	243
	Loans Under Local Government Code Chapter 380 .....	244
	Public Improvement Districts.....	245
	Municipal Management Districts .....	246
	County Economic Development Powers .....	248
	Public Disclosure of Economic Development Negotiations .....	249
	Miscellaneous Opinions Concerning Economic Development.....	249

## 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 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.<sup>1</sup>

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.<sup>2</sup> 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.

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<sup>1</sup> See Tex. Const. art. III, § 52.

<sup>2</sup> 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.<sup>3</sup> 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<sup>th</sup> Legislature authorized the recodification of several civil statute provisions by topic, including those pertaining to planning and development. Under H.B. 2278 (80<sup>th</sup> Leg., R.S.), the Act was codified in the Local Government Code and was renamed the “Development Corporation Act.”<sup>4</sup> 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

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<sup>3</sup> Tex. Loc. Gov’t Code § 505.002.

<sup>4</sup> *Id.* § 501.001.

economic development.<sup>5</sup> 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.<sup>6</sup> 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,<sup>7</sup> as well as eligible job training classes, certain career centers and certain infrastructural improvements which promote or develop new or expanded business enterprises.<sup>8</sup>

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,<sup>9</sup> eligible job training classes, certain career centers and certain infrastructural improvements that promote or develop new or expanded business enterprises.<sup>10</sup> 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.<sup>11</sup> Also, the Type B tax may be expended for the development

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<sup>5</sup> *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.

<sup>6</sup> *Id.* § 501.101.

<sup>7</sup> *Id.* § 504.103.

<sup>8</sup> *Id.* §§ 501.102-.104, .162.

<sup>9</sup> *Id.* § 501.101.

<sup>10</sup> *Id.* §§ 501.102-.104, .162.

<sup>11</sup> *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.<sup>12</sup> Additionally, certain Type B development corporations are allowed to do projects that promote new and expanded business development.<sup>13</sup>

### **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<sup>14</sup>, while a Type B board consists of seven members with certain statutory requirements.<sup>15</sup> 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:<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> Also with respect to Type B structure, no more than four of the seven Type B directors may also be city officers or employees.<sup>19</sup>

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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<sup>12</sup> *Id.* §§ 505.154, .304.

<sup>13</sup> *Id.* §§ 505.156-.158.

<sup>14</sup> *Id.* § 504.051(a).

<sup>15</sup> *Id.* § 505.051.

<sup>16</sup> *Id.* § 505.052.

<sup>17</sup> *Id.*

<sup>18</sup> *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.)

<sup>19</sup> *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 79<sup>th</sup> 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.<sup>20</sup>

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.<sup>21</sup> 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.<sup>22</sup> 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:<sup>23</sup>

- 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.<sup>24</sup>

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

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<sup>20</sup> Tex. Tax Code § 321.409.

<sup>21</sup> Tex. Loc. Gov't Code § 505.2566

<sup>22</sup> *Id.* § 505.351 - .352.

<sup>23</sup> *Id.* § 504.254.

<sup>24</sup> *Id.* § 504.002.

statutory cap for the local sales tax rate.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup>

### 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:<sup>28</sup>

- 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.<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup> 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.<sup>32</sup>

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<sup>25</sup> *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.”)

<sup>26</sup> Tex. Loc. Gov’t Code. § 504.252(b).

<sup>27</sup> *Id.* §§ 504.252(b), 504.254.

<sup>28</sup> *Id.* § 505.002.

<sup>29</sup> *Id.* §§ 504.002, 505.002.

<sup>30</sup> *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.”)

<sup>31</sup> 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.<sup>33</sup> 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”.<sup>34</sup>

### 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”.<sup>35</sup> 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).<sup>36</sup>

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

<sup>32</sup> *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).

<sup>33</sup> The definition of “project” was significantly amended in the 78<sup>th</sup> 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.

<sup>34</sup> 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).

<sup>35</sup> 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.)

<sup>36</sup> *Id.* § 501.002(12).

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.”<sup>37</sup> 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)<sup>38</sup>,
- Sewage or solid waste disposal facilities,<sup>39</sup>
- Air or water pollution control facilities,<sup>40</sup>
- Facilities for furnishing water to the public,<sup>41</sup>
  
- Public safety facilities,<sup>42</sup>
- Streets and roads,
- Drainage and related improvements,

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<sup>37</sup> *Id.* § 501.002(4).

<sup>38</sup> *Id.* § 501.101(2)(D). *See also id.* § 504.103 (Section 504.103 limits Type A corporation from doing certain projects.)

<sup>39</sup> *Id.* § 501.101(2)(E). *See also id.* § 504.103 (Section 504.103 limits Type A corporation from doing certain projects.)

<sup>40</sup> *Id.* § 501.101(2)(G). *See also id.* § 504.103 (Section 504.103 limits Type A corporation from doing certain projects.)

<sup>41</sup> *Id.* § 501.101(2)(H). *See also id.* § 504.103 (Section 504.103 limits Type A corporation from doing certain projects.)

<sup>42</sup> *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.<sup>43</sup>

**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.<sup>44</sup>

**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.<sup>45</sup> 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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<sup>43</sup> *Id.* § 501.162. *See id.* § 501.102.

<sup>44</sup> *Id.* § 501.163.

<sup>45</sup> *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.<sup>46</sup>

**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.<sup>47</sup>

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.<sup>48</sup>

**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.<sup>49</sup> 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.<sup>50</sup>

**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

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<sup>46</sup> *Id.* § 501.105.

<sup>47</sup> *Id.* § 502.052

<sup>48</sup> *Id.* §§ 501.106, 504.103(c).

<sup>49</sup> *Id.* § 501.107.

<sup>50</sup> *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.<sup>51</sup>

### **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.<sup>52</sup>

**Entertainment, tourist and convention facilities.** Entertainment, tourist, and convention facilities, including auditoriums, amphitheaters, concert halls, museums and exhibition facilities are permissible Type B projects.<sup>53</sup>

**Public parks and related open space improvements.** Public parks, park facilities and events, and open space improvements are permissible Type B projects.<sup>54</sup>

**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.<sup>55</sup>

**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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<sup>51</sup> *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.

<sup>52</sup> *Id.* § 505.152.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* § 505.153.

projects.<sup>56</sup> 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.<sup>57</sup> The ballot proposition for the election shall be printed to provide for voting for or against the proposition:<sup>58</sup>

**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.<sup>59</sup> 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.<sup>60</sup> The ballot proposition for the election shall be printed to provide for voting for or against the proposition.<sup>61</sup>

**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.<sup>62</sup>

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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<sup>56</sup> *Id.* § 505.154.

<sup>57</sup> *Id.* § 505.304.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* § 505.154.

<sup>60</sup> *Id.* § 505.304.

<sup>61</sup> *Id.*

<sup>62</sup> *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.<sup>63</sup>

**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.<sup>64</sup>

**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.<sup>65</sup>

## 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.<sup>66</sup> 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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<sup>63</sup> *Id.* § 505.156.

<sup>64</sup> *Id.* § 505.158.

<sup>65</sup> *Id.* § 505.157.

<sup>66</sup> *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.<sup>67</sup> 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.<sup>68</sup>

### 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.<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup> 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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<sup>67</sup> Tex. Loc. Gov't Code § 501.103.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* § 504.152.

<sup>70</sup> *Id.* § 504.153.

<sup>71</sup> *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.<sup>72</sup> 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.<sup>73</sup>

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.<sup>74</sup> 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 82<sup>nd</sup> 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.<sup>75</sup>

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.<sup>76</sup> 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:<sup>77</sup>

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<sup>72</sup> *Id.* § 504.152(c).

<sup>73</sup> *Id.* § 504.154.

<sup>74</sup> *Id.* § 504.156.

<sup>75</sup> *Id.* § 504.171.

<sup>76</sup> *Id.* §§ 504.152-.156, 505.201-.206.

<sup>77</sup> *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.<sup>78</sup> 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.<sup>79</sup> 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.<sup>80</sup> 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.<sup>81</sup> 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

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<sup>78</sup> *Id.* §§ 504.151(1), 505.201(1).

<sup>79</sup> *Id.* §§ 504.152(a), 505.202(a).

<sup>80</sup> *Id.* §§ 504.153, 505.203.

<sup>81</sup> *Id.* §§ 504.152(b), 505.202(b).

construction cost, etc.) of a “sports venue” project, then the ballot proposition must state that fact.<sup>82</sup>

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.<sup>83</sup> 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.<sup>84</sup>

### **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.<sup>85</sup> The officials must complete a seminar once every 24 months.<sup>86</sup> 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.<sup>87</sup>

The corporation is authorized to use Type A or Type B proceeds to pay for the costs of attending a seminar.<sup>88</sup> 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.<sup>89</sup> The comptroller’s office may impose an administrative penalty in an amount not to exceed \$1,000 for failure to attend the seminar.<sup>90</sup>

## **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.<sup>91</sup> 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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<sup>82</sup>

*Id.*

<sup>83</sup>

*Id.* §§ 504.152(c), 505.202(c).

<sup>84</sup>

*Id.* §§ 504.154, 505.204.

<sup>85</sup>

*Id.* § 502.101.

<sup>86</sup>

*Id.* § 502.101(a).

<sup>87</sup>

*Id.* § 502.101(a)(1)-(2).

<sup>88</sup>

*Id.* § 502.101(d).

<sup>89</sup>

*Id.* § 502.103(a).

<sup>90</sup>

*Id.* § 502.103(b).

<sup>91</sup>

*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.<sup>92</sup> 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.<sup>93</sup> 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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<sup>92</sup> *Id.* § 505.159(a).

<sup>93</sup> *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:<sup>94</sup>

**“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.<sup>95</sup> 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.<sup>96</sup> 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.<sup>97</sup> 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.<sup>98</sup> The Act does

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<sup>94</sup> *Id.* §§ 504.304, 505.305.

<sup>95</sup> *Id.* §§ 504.102, 505.102.

<sup>96</sup> *Id.* § 502.051.

<sup>97</sup> *Id.* §§ 504.302, 505.303.

<sup>98</sup> *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.”<sup>99</sup> 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.<sup>100</sup> Additionally, city council may disapprove a promotional expenditure.<sup>101</sup> 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.<sup>102</sup> 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.<sup>103</sup> 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.<sup>104</sup> 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.<sup>105</sup> 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.<sup>106</sup>

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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).

<sup>99</sup> Tex. Att’y Gen. Op. No. GA-0086 (2003) at 2.

<sup>100</sup> *Id.* at 6.

<sup>101</sup> *Id.* at 3-5.

<sup>102</sup> 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.)

<sup>103</sup> Tex. Loc. Gov’t Code §§ 501.155, .201, .214.

<sup>104</sup> *Id.* §§ 504.303, 505.104.

<sup>105</sup> *Id.* § 501.207.

<sup>106</sup> *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<sup>107</sup> or by a group of citizens.<sup>108</sup> 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)<sup>109</sup> 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.<sup>110</sup> 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.<sup>111</sup>

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.<sup>112</sup> The city may amend the certificate of formation at its sole discretion at any time.<sup>113</sup>

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.<sup>114</sup> The initial bylaws must also be approved by resolution of the governing body of the city.<sup>115</sup> 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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<sup>107</sup> *Id.* § 504.003(a).

<sup>108</sup> *Id.* § 501.051.

<sup>109</sup> *Id.* § 501.011.

<sup>110</sup> *Id.* § 504.004.

<sup>111</sup> *Id.* § 505.004.

<sup>112</sup> *Id.* § 501.051(b)(2).

<sup>113</sup> *Id.* § 501.302.

<sup>114</sup> *Id.* § 501.063.

<sup>115</sup> *Id.* § 501.064.



- city council approval of an ordinance calling for an election on the imposition of the tax<sup>116</sup>; 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.<sup>117</sup>

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.<sup>118</sup> 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.<sup>119</sup>

**Time Frame for Ordering the Election.** The city should order the election at least 78 days prior to the date of the election.<sup>120</sup> The Tax Code requires only that the city order the election at least 30 days before the date of the election.<sup>121</sup> 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."<sup>122</sup>

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<sup>116</sup> *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).

<sup>117</sup> *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).

<sup>118</sup> *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). Tex. Elec. Code § 41.0052.

<sup>120</sup> *Id.* § 3.005(c).

<sup>121</sup> Tex. Tax Code § 321.403.

<sup>122</sup> 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.<sup>123</sup> 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.<sup>124</sup> 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 60<sup>th</sup> day before the election.<sup>125</sup> Then, the county is required to post the notice to the county’s website not later than the 21<sup>st</sup> day before the election, if the county maintains a website.<sup>126</sup> 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.<sup>127</sup> The notice must also include the wording of all the ballot propositions.<sup>128</sup> The entire notice must generally be provided in both English and Spanish.<sup>129</sup>

## Ballot for Economic Development Corporations

**Type A Ballot:** The Act requires specific wording for a Type A sales tax proposition ballot, as follows:<sup>130</sup>

**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.<sup>131</sup> Cities

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<sup>123</sup> *Id.* § 4.003(a)(1), (c).

<sup>124</sup> *Id.* § 4.004(a).

<sup>125</sup> *Id.* § 4.008(a).

<sup>126</sup> *Id.* §§ 4.003(b), 4.008(a).

<sup>127</sup> *Id.* § 4.003(b).

<sup>128</sup> *Id.* § 4.004(b).

<sup>129</sup> *See id.* ch. 272.

<sup>130</sup> Tex. Loc. Gov’t Code § 504.256.

<sup>131</sup> *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.<sup>132</sup> 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:<sup>133</sup>

**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.<sup>134</sup>

### 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.<sup>135</sup> 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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<sup>132</sup> Tex. Loc. Gov't Code § 504.257(d).

<sup>133</sup> *Id.* § 504.257(a).

<sup>134</sup> *Id.* § 505.2565.

<sup>135</sup> *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:<sup>136</sup>

**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.<sup>137</sup> 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.<sup>138</sup>

## **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.<sup>139</sup> 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:<sup>140</sup>

**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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<sup>136</sup> *Id.* §§ 504.256, .260.

<sup>137</sup> *Id.* § 505.2575(a).

<sup>138</sup> *Id.* § 505.2575(b).

<sup>139</sup> *Id.* § 504.261.

<sup>140</sup> *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.<sup>141</sup>

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.<sup>142</sup> 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.<sup>143</sup> 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.<sup>144</sup>

#### **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.<sup>145</sup> 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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<sup>141</sup> 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).

<sup>142</sup> Tex. Loc. Gov’t Code § 505.255.

<sup>143</sup> *Id.*

<sup>144</sup> *See id.* § 505.256; Tex. Tax Code § 321.101(f).

<sup>145</sup> *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.<sup>146</sup> 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.<sup>147</sup>

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.<sup>148</sup> 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.

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<sup>146</sup> Tex. Loc. Gov’t Code § 504.258.

<sup>147</sup> *Id.*

<sup>148</sup> *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.<sup>149</sup> 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:<sup>150</sup>

### **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.<sup>151</sup> 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.<sup>152</sup> 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.<sup>153</sup> The corporation is required to notify the comptroller to cease collection of the tax once the corporation has satisfied all of its obligations.<sup>154</sup>

### 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.<sup>155</sup> 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

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<sup>149</sup> *Id.* § 504.351(a).

<sup>150</sup> *Id.* § 504.352.

<sup>151</sup> *Id.* § 504.353.

<sup>152</sup> Tex. Att’y Gen. Op. No. JC-0553 (2002) at 6.

<sup>153</sup> Tex. Loc. Gov’t Code § 504.353(a)(2).

<sup>154</sup> *Id.* § 504.353(c).

<sup>155</sup> *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.<sup>156</sup> At the election, the ballot must be printed to read as follows:<sup>157</sup>

**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.<sup>158</sup>

**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<sup>159</sup> 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:<sup>160</sup>

- 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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<sup>156</sup> *Id.* § 505.352(b).

<sup>157</sup> *Id.* § 505.353.

<sup>158</sup> *Id.* § 505.354.

<sup>159</sup> 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 11<sup>th</sup> 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).

<sup>160</sup> Tex. Tax Code. § 321.405.



If the election fails, the city must wait one full year before bringing the issue to the voters again.<sup>161</sup> 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.<sup>162</sup>

## 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).<sup>163</sup> 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.<sup>164</sup> 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 1<sup>st</sup> (assuming at least a complete calendar quarter has passed since the election).<sup>165</sup> If a

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

<sup>162</sup> Tex. Elec. Code § 41.0041(a).

<sup>163</sup> 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.)

<sup>164</sup> Tex. Tax Code § 321.102(b).

<sup>165</sup> *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 1<sup>st</sup>.

### **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.<sup>166</sup>

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.<sup>167</sup> 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.<sup>168</sup> 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.<sup>169</sup> 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.<sup>170</sup> However, the directors serve at the pleasure of the city council and may be removed by the city council at any time without cause.<sup>171</sup>

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.<sup>172</sup> The seven directors are appointed by a majority vote of the city council at an open meeting. Unlike Type A

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<sup>166</sup> Tex. Loc. Gov't Code §§ 504.255, 505.256.

<sup>167</sup> *Id.* §§ 504.301, 505.256.

<sup>168</sup> *Id.* § 504.051(a).

<sup>169</sup> *Id.* § 501.062(d).

<sup>170</sup> Tex. Att'y Gen. Op. No. JC-0349 (2001) at 3.

<sup>171</sup> Tex. Loc. Gov't Code §§ 504.051(b), 501.062 (Referring to the removal of directors).

<sup>172</sup> *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.<sup>173</sup> 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.<sup>174</sup>

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.<sup>175</sup> 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.<sup>176</sup> The directors serve without compensation but they must be reimbursed for actual expenses.<sup>177</sup> 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.<sup>178</sup>

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

A majority of the board constitutes a quorum.<sup>179</sup> The board of directors is subject to both the Open Meetings Act and the Public Information Act.<sup>180</sup> 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.<sup>181</sup> 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.<sup>182</sup> 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.<sup>183</sup> 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.<sup>184</sup>

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<sup>173</sup> *Id.* § 505.052(a).

<sup>174</sup> *Id.* § 505.052(b).

<sup>175</sup> *Id.* § 505.052(d).

<sup>176</sup> *Id.* § 505.052(c).

<sup>177</sup> *Id.* § 501.062(d).

<sup>178</sup> *Id.* § 501.062(c).

<sup>179</sup> *Id.* §§ 504.053, 505.054.

<sup>180</sup> *Id.* §§ 501.072, 505.054.

<sup>181</sup> *Id.* §§ 504.054, 505.055.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* §§ 504.052, 505.053.

<sup>184</sup> *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.<sup>185</sup>

## 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.<sup>186</sup> 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.”<sup>187</sup> 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.

**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.<sup>188</sup>

**Legal and Financial Transaction Powers.** The corporation shall have the power to sell and lease a project,<sup>189</sup> make secured and unsecured loans,<sup>190</sup> and to sue and be sued.<sup>191</sup> 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.<sup>192</sup> 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.<sup>193</sup>

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<sup>185</sup> *Id.* §§ 504.003(b), 505.003(b).

<sup>186</sup> *Id.* § 501.054(b)(2).

<sup>187</sup> Tex Att’y Gen. Op. No. JC-0488 (2002) at 3.

<sup>188</sup> Tex. Loc. Gov’t Code § 501.054(a).

<sup>189</sup> *Id.* §§ 501.153-.154, .159.

<sup>190</sup> *Id.* § 501.155(a).

<sup>191</sup> *Id.* § 501.060.

<sup>192</sup> Tex. Att’y Gen. Op. No. JC-109 (1999) at 2.

<sup>193</sup> Tex. Loc. Gov’t Code § 505.1041.

**Status as Non-stock Corporation.** The corporation is a nonprofit, nonmember, non-stock corporation.<sup>194</sup>

**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.<sup>195</sup> 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.<sup>196</sup>

**Limited Eminent Domain Power.** A Type A corporation may not exercise the power of eminent domain except by action of the city council.<sup>197</sup> 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.<sup>198</sup>

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<sup>194</sup> *Id.* § 501.052.

<sup>195</sup> Tex. Tax Code §§ 151.341, 171.074.

<sup>196</sup> Tex. Loc. Gov't Code § 501.072.

<sup>197</sup> *Id.* § 504.106.

<sup>198</sup> *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.<sup>199</sup> 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.<sup>200</sup>

**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.<sup>201</sup>

In 2001, the Texas Legislature created an exception to this general rule.<sup>202</sup> 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.”<sup>203</sup>

**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.<sup>204</sup> 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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<sup>199</sup> *Id.* §§ 504.107, 505.106.

<sup>200</sup> *Id.* § 501.160.

<sup>201</sup> Tex. Att’y Gen. Op. No. JC-109 (1999) at 3-5.

<sup>202</sup> Tex. Loc. Gov’t Code. § 501.007.

<sup>203</sup> *Id.* § 380.002(b).

<sup>204</sup> *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.<sup>205</sup> 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.<sup>206</sup> 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.

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<sup>205</sup> *Id.* § 253.011.

<sup>206</sup> *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:<sup>207</sup> 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.<sup>208</sup> 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.<sup>209</sup>

## 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.<sup>210</sup> 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.<sup>211</sup> 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

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<sup>207</sup> *Id.* § 501.067.

<sup>208</sup> Tex. Gov't Code § 2155.062(d).

<sup>209</sup> Tex. Loc. Gov't Code § 501.074.

<sup>210</sup> 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.

<sup>211</sup> 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.<sup>212</sup>

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 120<sup>th</sup> day after receiving notice of the violation from the public entity or economic development corporation.<sup>213</sup>

### **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.<sup>214</sup> 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.<sup>215</sup> Failure to enter into a written contract with a third party recruiter could result in a civil penalty up to \$10,000.<sup>216</sup> 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.<sup>217</sup>

### **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.<sup>218</sup> 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.<sup>219</sup>

### **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

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<sup>212</sup>

*Id.*

<sup>213</sup> Tex. Gov't Code § 2264.001 - .101.

<sup>214</sup> Tex. Loc. Gov't Code. § 502.051(a).

<sup>215</sup> *Id.*

<sup>216</sup> *Id.* § 502.051(b).

<sup>217</sup> *Id.* § 502.051(c).

<sup>218</sup> *Id.* § 501.161.

<sup>219</sup> *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.<sup>220</sup>

### **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.<sup>221</sup> Likewise, Chapter 272 of the Local Government Code, governing the city sale of real property, is not applicable to economic development corporations.<sup>222</sup> 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.<sup>223</sup> 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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<sup>220</sup> *Id.* § 501.062(c).

<sup>221</sup> Tex. Att'y Gen. Op. No. JC-338 (2001) at 2.

<sup>222</sup> Tex. Att'y Gen. Op. No. JC-109 (1999).

<sup>223</sup> 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<sup>224</sup>

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.<sup>225</sup> 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>.

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<sup>224</sup> Tex. Loc. Gov’t Code § 502.151(a).

<sup>225</sup> *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<sup>226</sup>, with certain special conditions set forth for certain specific political subdivisions.<sup>227</sup> 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,

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<sup>226</sup> Tex. Loc. Gov’t Code § 334.001(2). (Definition of “governing body”).

<sup>227</sup> *Id.* § 334.002.

## II. Alternative Tax Initiatives for Local Development

constructed, or renovated under this chapter.”<sup>228</sup> The term “venue” is defined as being one of the following:<sup>229</sup>

### **An arena, coliseum, stadium or other type of area or facility:**<sup>230</sup>

- 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<sup>231</sup>) 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;<sup>232</sup>

**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;<sup>233</sup>

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

<sup>229</sup> *Id.* § 334.001(4).

<sup>230</sup> *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.)

<sup>231</sup> *Id.* § 334.1015(b).

<sup>232</sup> *Id.* §§ 334.1015, .2515.

<sup>233</sup> 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 82<sup>nd</sup> Legislative Session, the reference to the civil statute will remain.

## II. Alternative Tax Initiatives for Local Development

**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.<sup>234</sup> 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.<sup>235</sup>

### 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.<sup>236</sup> 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.<sup>237</sup> This resolution must indicate each proposed project and each method of financing for the project.<sup>238</sup> 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.<sup>239</sup> 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.<sup>240</sup> If the comptroller fails to provide the required analysis in less than 30 days, the resolution is considered to be approved by the comptroller.<sup>241</sup>

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<sup>234</sup> Tex. Loc. Gov’t Code § 334.004.

<sup>235</sup> *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.)

<sup>236</sup> *Id.* §§ 334.021(a)(1), .024. *But see* Sections 7, 8 and 9 of Tex. H.B. 92, 75<sup>th</sup> 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).

<sup>237</sup> *Id.* § 334.022(a).

<sup>238</sup> *Id.* § 334.021(b).

<sup>239</sup> *Id.* § 334.022(b).

<sup>240</sup> *Id.* § 334.022(c).

<sup>241</sup> *Id.* § 334.022(d).

## *II. Alternative Tax Initiatives for Local Development*

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.<sup>242</sup> 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.<sup>243</sup> 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.<sup>244</sup> If the comptroller fails to provide the required analysis within 30 days, the resolution is automatically considered approved.<sup>245</sup> 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.<sup>246</sup>

### **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.<sup>247</sup> 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.<sup>248</sup> 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.<sup>249</sup> 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.<sup>250</sup> If the transit authority fails to provide this analysis within the required period, the authority is deemed to have approved the resolution.<sup>251</sup>

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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<sup>242</sup> *Id.* § 334.023(a).

<sup>243</sup> *Id.* § 334.023(b).

<sup>244</sup> *Id.* § 334.023(c).

<sup>245</sup> *Id.* § 334.023(d).

<sup>246</sup> *Id.* § 334.024.

<sup>247</sup> *Id.* §§ 334.021(a)(2); .0235(a).

<sup>248</sup> *Id.* § 334.021(b).

<sup>249</sup> *Id.* § 334.0235(b).

<sup>250</sup> *Id.* § 334.0235(c).

<sup>251</sup> *Id.* § 334.0235(d).

## *II. Alternative Tax Initiatives for Local Development*

county may appeal the negative ruling within 10 days.<sup>252</sup> 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.<sup>253</sup> 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.<sup>254</sup> If the transit authority fails to provide the required analysis within 10 days, the resolution is automatically considered approved.<sup>255</sup> 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.<sup>256</sup>

### **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.<sup>257</sup> The order calling the election must meet all of the following criteria:<sup>258</sup>

- 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:<sup>259</sup>

***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.***

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<sup>252</sup> *Id.* § 334.0236(a).

<sup>253</sup> *Id.* § 334.0236(b).

<sup>254</sup> *Id.* § 334.0236(c).

<sup>255</sup> *Id.* § 334.0236(d).

<sup>256</sup> *Id.* § 334.024.

<sup>257</sup> *Id.* *But see* Section 7, 8 and 9 of Tex. H.B. 92, 75<sup>th</sup> 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).

<sup>258</sup> *Id.* § 334.024(b).

<sup>259</sup> *Id.* § 334.024(c).



## II. Alternative Tax Initiatives for Local Development

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.<sup>260</sup>

**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.<sup>261</sup> 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.<sup>262</sup>

### 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.<sup>263</sup> 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.<sup>264</sup> 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.<sup>265</sup> 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.<sup>266</sup>

#### 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:<sup>267</sup>

**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.**

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<sup>260</sup> *Id.* § 334.024(d).

<sup>261</sup> *Id.* § 334.024(f).

<sup>262</sup> *Id.* § 334.024(e).

<sup>263</sup> *Id.* § 334.081(a)-(b).

<sup>264</sup> *Id.* § 334.081(c).

<sup>265</sup> *Id.* § 334.083.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.* § 334.081(c)(2) (Refers to tax being approved at an election held under Section 334.024).

## II. Alternative Tax Initiatives for Local Development

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.<sup>268</sup> 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:<sup>269</sup>

**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.<sup>270</sup> 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.<sup>271</sup> 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.<sup>272</sup> If the Chapter 334 sales tax is imposed by a county, Chapter 323 of the Tax Code generally governs the administration of the tax.<sup>273</sup>

### 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.<sup>274</sup> 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.<sup>275</sup>

### 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.<sup>276</sup> 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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<sup>268</sup> *Id.* § 334.084(a).

<sup>269</sup> *Id.* § 334.084(c).

<sup>270</sup> *Id.* § 334.084(b).

<sup>271</sup> *Id.*

<sup>272</sup> *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).

<sup>273</sup> *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).

<sup>274</sup> *Id.* § 334.087.

<sup>275</sup> *Id.* § 334.088.

<sup>276</sup> *Id.* § 334.089.

## *II. Alternative Tax Initiatives for Local Development*

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.<sup>277</sup> 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:<sup>278</sup>

- 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.<sup>279</sup> 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.<sup>280</sup> 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.<sup>281</sup>

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<sup>277</sup> *Id.* § 334.085.

<sup>278</sup> *Id.* § 334.085(a).

<sup>279</sup> *Id.* § 334.085(b).

<sup>280</sup> *Id.* § 334.085(d).

<sup>281</sup> *Id.* § 334.085(c).

## II. Alternative Tax Initiatives for Local Development

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.<sup>282</sup> 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.<sup>283</sup> 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.<sup>284</sup> 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.<sup>285</sup> 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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<sup>282</sup> Tex. Tax Code § 321.409.

<sup>283</sup> Tex. Loc. Gov't Code § 334.085(a)(1)-(2).

<sup>284</sup> *Id.* § 334.085(b-1).

<sup>285</sup> *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.<sup>286</sup> 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.<sup>287</sup> 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.<sup>288</sup> 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.<sup>289</sup> 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.<sup>290</sup> 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.<sup>291</sup>

#### 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:<sup>292</sup>

**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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<sup>286</sup> *Id.* § 334.102.

<sup>287</sup> *Id.* § 334.103(b).

<sup>288</sup> *Id.* § 334.112(b).

<sup>289</sup> *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]).

<sup>290</sup> *Id.* § 334.1015.

<sup>291</sup> *Id.* § 334.1015(b).

<sup>292</sup> *Id.* § 334.102(c)(2). (Referring to the tax being approved at an election under Section 334.024.)

## II. Alternative Tax Initiatives for Local Development

### 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.<sup>293</sup> The tax is on the gross receipts from the rental of a motor vehicle.<sup>294</sup> Its rate may be set only in increments of one-eighth of one percent, and in most cases may not exceed five percent.<sup>295</sup> All revenue from the tax must be deposited in the venue project fund.<sup>296</sup> 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.<sup>297</sup>

### 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.<sup>298</sup> 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.<sup>299</sup> At an election to increase the motor vehicle rental tax, the ballot must be worded to allow voting for or against the following proposition:<sup>300</sup>

**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.<sup>301</sup> The order or ordinance imposing the tax should specify how the rental tax is to be reported and remitted to the city or county.<sup>302</sup> 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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<sup>293</sup> *Id.* § 334.112.

<sup>294</sup> *Id.* § 334.109.

<sup>295</sup> *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%).

<sup>296</sup> *Id.* § 334.115.

<sup>297</sup> *Id.* § 334.112(b).

<sup>298</sup> *Id.* § 334.102(b).

<sup>299</sup> *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).

<sup>300</sup> *Id.* §§ 334.104(b), .1041(c).

<sup>301</sup> *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).”).

<sup>302</sup> *Id.* § 334.113.

## II. Alternative Tax Initiatives for Local Development

certificate.<sup>303</sup> 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.<sup>304</sup> These records must be kept for at least four years. Failure to keep such records is a misdemeanor offense.<sup>305</sup>

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.<sup>306</sup> 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.<sup>307</sup> 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.<sup>308</sup> 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.<sup>309</sup>

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.<sup>310</sup> 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.<sup>311</sup> 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.<sup>312</sup> 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.<sup>313</sup> 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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<sup>303</sup> *Id.* § 334.109.

<sup>304</sup> *Id.* § 334.110.

<sup>305</sup> *Id.* § 334.111.

<sup>306</sup> *Id.* § 334.114(a).

<sup>307</sup> *Id.* § 334.114(b).

<sup>308</sup> *Id.* § 334.114(c).

<sup>309</sup> *Id.* § 334.114(d).

<sup>310</sup> *Id.* § 334.1135(a).

<sup>311</sup> *Id.* § 334.1135(b).

<sup>312</sup> *Id.* § 334.107.

<sup>313</sup> *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.<sup>314</sup> 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.<sup>315</sup> The admission tax rate may not exceed 10 percent of the price of an admission ticket.<sup>316</sup>

### 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:<sup>317</sup>

**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.<sup>318</sup> 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.<sup>319</sup> Once the venue project’s bonds or other obligations are paid in full, the city or county can no longer impose an admissions tax.<sup>320</sup>

### 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.<sup>321</sup> The tax can be increased only if the increase is approved at an election and the

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<sup>314</sup> *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 [14<sup>th</sup> Dist.] 1994, pet. denied); *State v. Rope*, 419 S.W.2d 890, 897 (Tex. Civ. App.—Austin 1967, writ ref’d n.r.e.).

<sup>315</sup> Tex. Loc. Gov’t Code §§ 334.151(c), .152(c).

<sup>316</sup> *Id.* § 334.152(b).

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

<sup>318</sup> *Id.* § 334.155(a).

<sup>319</sup> *Id.* §§ 334.152(a), .157.

<sup>320</sup> *Id.* § 334.155(b).

<sup>321</sup> *Id.* § 334.152(d).



## II. Alternative Tax Initiatives for Local Development

resulting tax rate will not exceed 10 percent of the price of an admission ticket.<sup>322</sup> 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.<sup>323</sup> The order or ordinance imposing the admissions tax should specify how the tax is to be reported and remitted to the city or county.<sup>324</sup> 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.<sup>325</sup> 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.<sup>326</sup> 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.<sup>327</sup> 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.<sup>328</sup> 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.<sup>329</sup>

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.<sup>330</sup> However, the tax may not exceed \$3.00 per vehicle for a venue event.<sup>331</sup> 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

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<sup>322</sup> *Id.* § 334.153.

<sup>323</sup> *Id.* §§ 334.154(a), .156(a).

<sup>324</sup> *Id.* § 334.156(a).

<sup>325</sup> *Id.* § 334.156(b).

<sup>326</sup> *Id.* § 334.156(c).

<sup>327</sup> *Id.* § 334.201(a).

<sup>328</sup> *Id.* §§ 334.201(c), .202(c).

<sup>329</sup> *Id.* § 334.205(b).

<sup>330</sup> *Id.* § 334.202(a).

<sup>331</sup> *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).

## II. Alternative Tax Initiatives for Local Development

adjacent venue facilities.<sup>332</sup> 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:<sup>333</sup>

**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.<sup>334</sup> The tax may continue only until the venue project's bonds or other obligations have been fully paid.<sup>335</sup> As with the other taxes, all revenue from the parking tax must be deposited in the venue project fund.<sup>336</sup>

### 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.<sup>337</sup> The tax may be increased only if the increase is approved at an election and the resulting tax rate will not exceed \$3.00.<sup>338</sup> 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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<sup>332</sup> *Id.* § 334.201(b), (b-1).

<sup>333</sup> *Id.* § 334.201(c) (Referring to the tax being approved at an election under Section 334.024).

<sup>334</sup> *Id.* § 334.205.

<sup>335</sup> *Id.* § 334.205.

<sup>336</sup> *Id.* § 334.207.

<sup>337</sup> *Id.* § 334.202(d).

<sup>338</sup> *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).

## II. Alternative Tax Initiatives for Local Development

### 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.<sup>339</sup> The order or ordinance imposing the parking tax should specify how the tax is to be reported and remitted to the city or county.<sup>340</sup> 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.<sup>341</sup> 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.<sup>342</sup> 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.<sup>343</sup> 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.<sup>344</sup> If an additional hotel occupancy tax is approved, the voters can decide to use ad valorem (property) tax revenue for a venue project.<sup>345</sup>

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.<sup>346</sup> 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.<sup>347</sup> 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.<sup>348</sup>

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<sup>339</sup> *Id.* §§ 334.204, .206(a).

<sup>340</sup> *Id.* § 334.206(a)-(b).

<sup>341</sup> *Id.* § 334.206(c).

<sup>342</sup> *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).

<sup>343</sup> *Id.* §§ 334.252(b)(2), .254(b).

<sup>344</sup> *Id.* § 334.257(b).

<sup>345</sup> *Id.* § 334.0241.

<sup>346</sup> *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).

<sup>347</sup> *Id.* § 334.2517.

<sup>348</sup> *Id.* § 334.2515.

## II. Alternative Tax Initiatives for Local Development

### 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.<sup>349</sup> 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.<sup>350</sup> 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.<sup>351</sup>

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.<sup>352</sup> Also, the comptroller’s office has interpreted the statute to exclude recreational vehicles (RVs) and RV rental spaces from taxation.<sup>353</sup>

### 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:<sup>354</sup>

***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.***

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<sup>349</sup> *Id.* § 334.253(c).

<sup>350</sup> *Id.* § 334.254(a). *See also id.* § 334.254(c) (Authorized Dallas County to impose a three percent rate with voter approval).

<sup>351</sup> *Id.* § 334.254(d).

<sup>352</sup> *Id.* § 334.251 (Referring to the definition of hotel according to Section 156.001 of the Tax Code).

<sup>353</sup> However, RV’s may become taxable if they become fixed in place and lose their mobile nature.

<sup>354</sup> Tex. Loc. Gov’t Code § 334.252(b)(2) (Referring to the tax being approved at an election under Section 334.024).

## II. Alternative Tax Initiatives for Local Development

Additionally, the proposition must include the following language.<sup>355</sup>

**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.<sup>356</sup> 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.<sup>357</sup> All revenue from the tax must be deposited into the venue project fund.<sup>358</sup>

### 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.<sup>359</sup> 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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<sup>355</sup> *Id.* § 334.024(d-1).

<sup>356</sup> *Id.* § 334.257(a).

<sup>357</sup> *Id.* § 334.257(b).

<sup>358</sup> *Id.* § 334.258.

<sup>359</sup> *Id.* § 334.255.

## II. Alternative Tax Initiatives for Local Development

### 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.<sup>360</sup> 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.<sup>361</sup> 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.<sup>362</sup> Municipal courts may assess a fine not to exceed \$500 for any such offense.<sup>363</sup> 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:<sup>364</sup>

- 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.<sup>365</sup> 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 60<sup>th</sup> 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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<sup>360</sup> 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).

<sup>361</sup> *Id.* § 334.253. (Refers to Sections 351.004 and 352.004 of the Tax Code.)

<sup>362</sup> *Id.* (Refers to Section 351.004.)

<sup>363</sup> *Id.* § 54.001(b).

<sup>364</sup> *Id.* § 334.253. (Refers to Sections 351.004, 351.005 and 352.004 of the Tax Code.)

<sup>365</sup> *Id.* (Refers to Sections 351.0041 and 352.0041 of the Tax Code).

## II. Alternative Tax Initiatives for Local Development

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.<sup>366</sup> 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.<sup>367</sup>

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.<sup>368</sup> 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.<sup>369</sup> 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.<sup>370</sup> Additionally, the hotel occupancy tax does not apply to certain federal and other high-level officials traveling on federal or state business.<sup>371</sup> 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.<sup>372</sup>

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.<sup>373</sup> 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

<sup>366</sup> *Id.* (Refers to Sections 351.005 and 352.005 of the Tax Code).

<sup>367</sup> *Id.* (Refers to Section 351.005 of the Tax Code).

<sup>368</sup> *Id.* § 334.256(a).

<sup>369</sup> *Id.* § 334.253 (Refers to Sections 351.002(c), 351.006, 352.002(c) and 352.007 of the Tax Code).

<sup>370</sup> *Id.* (Refers to Sections 351.002(c) and 352.002(c) of the Tax Code).

<sup>371</sup> *Id.* (Refers to Sections 351.006 and 352.007 of the Tax Code). *See LaQuinta Inns, Inc. v. Sharp*, No. 95-15739 (53<sup>rd</sup> Dist. Ct., Travis County, Tex. April 30, 1996).

<sup>372</sup> *See* 34 Tex. Admin. Code § 3.161.

<sup>373</sup> Tex. Loc. Gov't Code § 334.253 (Refers to Sections 351.006 and 352.007 of the Tax Code).

## II. Alternative Tax Initiatives for Local Development

against each member of a major league team playing in the venue project.<sup>374</sup> 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.<sup>375</sup>

### 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:<sup>376</sup>

**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.<sup>377</sup> 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.<sup>378</sup> 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.<sup>379</sup> All revenue from the tax must be deposited in the venue project fund.<sup>380</sup>

### 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.<sup>381</sup> 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.<sup>382</sup> At an

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<sup>374</sup> *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 [14<sup>th</sup> Dist.] 1994, pet. denied); *State v. Rope*, 419 S.W.2d 890, 897 (Tex. Civ. App. — Austin 1967, writ ref'd n.r.e.).

<sup>375</sup> Tex. Loc. Gov't Code §§ 334.302, .303.

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

<sup>377</sup> *Id.* § 334.306(a).

<sup>378</sup> *Id.* § 334.303(a)-(b).

<sup>379</sup> *Id.* § 334.306(b).

<sup>380</sup> *Id.* § 334.308.

<sup>381</sup> *Id.* § 334.303(d).

<sup>382</sup> *Id.* § 334.304(a).



## II. Alternative Tax Initiatives for Local Development

election to increase the facility use tax, the ballot must be worded to allow voting for or against the following proposition:<sup>383</sup>

**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.<sup>384</sup> 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.<sup>385</sup> 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.<sup>386</sup> 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.<sup>387</sup> 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<sup>388</sup> at a designated facility.<sup>389</sup> 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.<sup>390</sup>

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<sup>383</sup> *Id.* § 334.304(b).

<sup>384</sup> *Id.* §§ 334.305(a), .307(a).

<sup>385</sup> *Id.* § 334.307(a).

<sup>386</sup> *Id.* § 334.307(b).

<sup>387</sup> *Id.* § 334.307(c).

<sup>388</sup> *Id.* § 334.401(3) (Definition of "stall or pen").

<sup>389</sup> *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.

<sup>390</sup> *Id.* §§ 334.403.

## II. Alternative Tax Initiatives for Local Development

### 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:<sup>391</sup>

**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.<sup>392</sup> 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<sup>393</sup> in the venue project.<sup>394</sup> The livestock facility use tax may be imposed only at a designated facility that is an approved the venue project.<sup>395</sup> 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.<sup>396</sup> All revenue from the tax must be deposited in the venue project fund.<sup>397</sup>

### 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.<sup>398</sup> The city or county can impose different tax rates based on the duration of an event.<sup>399</sup> 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.<sup>400</sup>

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.<sup>401</sup> At an election to increase the livestock facility use tax, the ballot must be worded to allow voting for or against the following proposition:<sup>402</sup>

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

<sup>392</sup> *Id.* § 334.408.

<sup>393</sup> *Id.* § 334.401(2) (Definition of “event”).

<sup>394</sup> *Id.* § 334.404(a)-(b).

<sup>395</sup> *Id.* § 334.403(b).

<sup>396</sup> *Id.* § 334.403(c)(1).

<sup>397</sup> *Id.* § 334.410.

<sup>398</sup> *Id.* § 334.404(e).

<sup>399</sup> *Id.* § 334.404(d).

<sup>400</sup> *Id.*

<sup>401</sup> *Id.* § 334.405(a).

<sup>402</sup> *Id.* § 334.405(b).

## II. Alternative Tax Initiatives for Local Development

**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.<sup>403</sup> 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.<sup>404</sup> 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.<sup>405</sup> 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.<sup>406</sup> 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.<sup>407</sup> 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.<sup>408</sup>

### 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.<sup>409</sup> 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.<sup>410</sup> 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.<sup>411</sup> At present, this provision applies only to the city of El Paso.

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<sup>403</sup> *Id.* § 334.409(a).

<sup>404</sup> *Id.* § 334.409(b).

<sup>405</sup> *Id.* § 334.409(c).

<sup>406</sup> *Id.* § 334.409(d).

<sup>407</sup> *Id.* § 334.407.

<sup>408</sup> *Id.* § 334.406.

<sup>409</sup> *Id.* §§ 334.352, .353.

<sup>410</sup> *Id.* §§ 334.351, .354.

<sup>411</sup> *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:<sup>412</sup>

**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.<sup>413</sup> 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.<sup>414</sup> However, the city or county may not contract with another entity to have that entity conduct a city or county election under Chapter 334.<sup>415</sup>

**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.<sup>416</sup> 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.<sup>417</sup> 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.<sup>418</sup>

**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.<sup>419</sup> 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.<sup>420</sup> At such an election, the ballot must be worded to allow voting for or against the following proposition:<sup>421</sup>

**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**

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<sup>412</sup> Generally *id.* § 334.041.

<sup>413</sup> *Id.* § 334.041(c).

<sup>414</sup> *Id.* § 334.041(d).

<sup>415</sup> *Id.* § 334.041(c)(2).

<sup>416</sup> *Id.* § 334.044(c).

<sup>417</sup> *Id.* § 334.044(d).

<sup>418</sup> *Id.* § 334.041(e).

<sup>419</sup> *Id.* § 334.041(f).

<sup>420</sup> *Id.* §§ 334.0241, .041(f)(2).

<sup>421</sup> *Id.* § 334.0241(b).

## II. Alternative Tax Initiatives for Local Development

**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.<sup>422</sup>

**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.<sup>423</sup>

**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.<sup>424</sup>

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

### Establishing the Venue Project Fund

A city or county must establish, by resolution, a “venue project fund.”<sup>426</sup> 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:<sup>427</sup>

- 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:<sup>428</sup>

- 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;

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<sup>422</sup> *Id.* § 334.041(b).

<sup>423</sup> *Id.* § 334.0425.

<sup>424</sup> *Id.* § 334.006.

<sup>425</sup> *Id.* § 334.045.

<sup>426</sup> *Id.* § 334.042(a).

<sup>427</sup> *Id.* § 334.042(b).

<sup>428</sup> *Id.* § 334.042(c).

## *II. Alternative Tax Initiatives for Local Development*

- 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.<sup>429</sup> Once funds are deposited into the venue project fund, the money may be used only for the following purposes:<sup>430</sup>

- 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.<sup>431</sup> 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.<sup>432</sup> 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).***

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<sup>429</sup> *Id.* § 334.042(e).

<sup>430</sup> *Id.* § 334.042(d).

<sup>431</sup> *Id.* § 334.043.

<sup>432</sup> *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.”<sup>433</sup> 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.<sup>434</sup> 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.”<sup>435</sup> A venue project is defined as a “venue and related infrastructure that is planned, acquired, established, developed, constructed or renovated under this chapter.”<sup>436</sup> The term “venue” is defined as being one of the following:<sup>437</sup>

**An arena, coliseum, stadium or other type of area or facility:**<sup>438</sup>

- 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;<sup>439</sup>

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<sup>433</sup> *Id.* § 335.021.

<sup>434</sup> *Id.* § 335.071(e).

<sup>435</sup> *Id.* § 335.051.

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

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

<sup>438</sup> *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).

<sup>439</sup> *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.

## II. Alternative Tax Initiatives for Local Development

**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;<sup>440</sup> 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.<sup>441</sup> 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.<sup>442</sup> 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.<sup>443</sup>

### Creating a Venue District

Two or more counties, two or more cities, or any combination of cities and counties may create a venue district.<sup>444</sup> 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.<sup>445</sup> The concurrent orders must meet all of the following criteria:<sup>446</sup>

- 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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<sup>440</sup> 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<sup>nd</sup> Legislative Session, the reference to the civil statute will remain.

<sup>441</sup> 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).

<sup>442</sup> *Id.* § 335.003.

<sup>443</sup> *Id.* § 335.002.

<sup>444</sup> *Id.* § 335.021.

<sup>445</sup> *Id.* § 335.022.

<sup>446</sup> *Id.*



## II. Alternative Tax Initiatives for Local Development

There must be at least four directors on the board.<sup>447</sup> 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.<sup>448</sup>

### 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.<sup>449</sup> 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).<sup>450</sup> 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.<sup>451</sup> Additionally, certain directors are required to file certain financial statements required of state officers under chapter 572 of the Government Code.<sup>452</sup> 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.<sup>453</sup>

The presiding officer of a venue district board of directors is designated as provided by the concurrent order.<sup>454</sup> 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<sup>455</sup> and all board meetings must be conducted within the boundaries of the venue district.<sup>456</sup>

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<sup>447</sup> *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).

<sup>448</sup> *Id.* § 335.031(b).

<sup>449</sup> *Id.* § 335.031(d).

<sup>450</sup> *Id.* § 335.031(c).

<sup>451</sup> *Id.* § 335.032.

<sup>452</sup> *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).

<sup>453</sup> *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).

<sup>454</sup> *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).

<sup>455</sup> *Id.* § 335.023(b).

<sup>456</sup> *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.<sup>457</sup> 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.<sup>458</sup> This resolution must indicate each proposed project and each method of financing for the project.<sup>459</sup> 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.<sup>460</sup> 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.<sup>461</sup> If the comptroller fails to provide the required analysis in less than 30 days, the resolution is considered to be approved by the comptroller.<sup>462</sup>

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.<sup>463</sup> 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.<sup>464</sup> 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.<sup>465</sup> If the comptroller fails to provide the required analysis within 30 days, the resolution is automatically considered approved.<sup>466</sup> 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.<sup>467</sup>

### 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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<sup>457</sup> *Id.* §§ 335.051, .054. *But see* Sections 7, 8 and 9 of Texas House Bill 92, 75<sup>th</sup> 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).

<sup>458</sup> Tex. Loc. Gov't Code § 335.052.

<sup>459</sup> *Id.* § 335.051(b).

<sup>460</sup> *Id.* § 335.052(b).

<sup>461</sup> *Id.* § 335.052(c).

<sup>462</sup> *Id.* § 335.052(d).

<sup>463</sup> *Id.* § 335.053(a).

<sup>464</sup> *Id.* § 335.053(b).

<sup>465</sup> *Id.* § 335.053(c).

<sup>466</sup> *Id.* § 335.053(d).

<sup>467</sup> *Id.* § 335.054.

## II. Alternative Tax Initiatives for Local Development

created under either Chapter 451 or Chapter 452 of the Transportation Code.<sup>468</sup> 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.<sup>469</sup> 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.<sup>470</sup> 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.<sup>471</sup> If the transit authority fails to provide this analysis within the required period, the authority is deemed to have approved the resolution.<sup>472</sup>

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.<sup>473</sup> 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.<sup>474</sup> 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.<sup>475</sup> If the transit authority fails to provide the required analysis within 10 days, the resolution is automatically considered approved.<sup>476</sup> 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.<sup>477</sup>

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<sup>468</sup> *Id.* §§ 335.051(a)(2), .0535(a).

<sup>469</sup> *Id.* § 335.051(b).

<sup>470</sup> *Id.* § 335.0535(b).

<sup>471</sup> *Id.* § 335.0535(c).

<sup>472</sup> *Id.* § 335.0535(d).

<sup>473</sup> *Id.* § 335.0536(a).

<sup>474</sup> *Id.* § 335.0536(b).

<sup>475</sup> *Id.* § 335.0536(c).

<sup>476</sup> *Id.* § 335.0536(d).

<sup>477</sup> *Id.* § 335.054.

## II. Alternative Tax Initiatives for Local Development

### 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.<sup>478</sup> The order calling the election must meet all of the following criteria:<sup>479</sup>

- 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:<sup>480</sup>

***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:<sup>481</sup>

***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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<sup>478</sup> *Id.* But see Sections 7, 8 and 9 of Tex. H. B. 92, 75<sup>th</sup> 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).

<sup>479</sup> Tex. Loc. Gov't Code. § 335.054(b).

<sup>480</sup> *Id.* § 335.054(c).

<sup>481</sup> *Id.* § 335.054(d).

## II. Alternative Tax Initiatives for Local Development

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.<sup>482</sup> 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.<sup>483</sup> 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.<sup>484</sup>

- **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.<sup>485</sup>

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.<sup>486</sup> 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.<sup>487</sup> 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.<sup>488</sup>
- **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.<sup>489</sup>

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<sup>482</sup> *Id.* § 335.054(f).

<sup>483</sup> *Id.* § 335.055.

<sup>484</sup> *Generally id.* § 335.071.

<sup>485</sup> *Id.* § 335.071(e).

<sup>486</sup> *See id.* § 334.253.

<sup>487</sup> *See id.* § 334.082.

<sup>488</sup> *Id.* § 335.071(h). *See 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).

<sup>489</sup> *Id.* § 335.071(a)(4)-(5).

## II. Alternative Tax Initiatives for Local Development

- **Inability to Adopt a Property Tax.** A venue district may not levy an ad valorem (property) tax.<sup>490</sup>
- **Acceptance of Donations.** The district may accept donations.<sup>491</sup>
- **Application of the Public Information Act.** The district is subject to the Public Information Act.<sup>492</sup>
- **Application of the Open Meetings Act.** The district is subject to the Open Meetings Act.<sup>493</sup>
- **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.<sup>494</sup>
- **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.<sup>495</sup> 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.<sup>496</sup> However, the district may not contract with another entity to have that entity conduct a district election under Chapter 335.<sup>497</sup>
- **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.<sup>498</sup> 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.<sup>499</sup> 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.<sup>500</sup>
- **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.<sup>501</sup>
- **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.<sup>502</sup>

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<sup>490</sup> *Id.* § 335.071(f).

<sup>491</sup> *Id.* § 335.071(a)(2).

<sup>492</sup> *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).

<sup>493</sup> *Id.* § 335.023(b).

<sup>494</sup> *Id.* § 335.023(a).

<sup>495</sup> *Id.* § 335.071(b).

<sup>496</sup> *Id.* § 335.071(c).

<sup>497</sup> *Id.* § 335.071(b)(2).

<sup>498</sup> *Id.* § 335.074(c).

<sup>499</sup> *Id.* § 335.074(d).

<sup>500</sup> *Id.* § 335.071(d).

<sup>501</sup> *Id.* § 335.071(a)(3).

<sup>502</sup> *Id.* § 335.005.

## II. Alternative Tax Initiatives for Local Development

- **Exemption from Construction Contracting Law.** Chapter 2267 of the Government Code does not apply to an approved venue project.<sup>503</sup>

### Establishing the Venue Project Fund

A venue district must establish, by resolution, a “venue project fund.”<sup>504</sup> 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:<sup>505</sup>

- 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:<sup>506</sup>

- 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.<sup>507</sup>

Once funds are deposited into the venue project fund, the money may be used only for the following purposes:<sup>508</sup>

- 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.<sup>509</sup> These bonds or other obligations must be

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<sup>503</sup> *Id.* § 335.077.

<sup>504</sup> *Id.* § 335.072.

<sup>505</sup> *Id.* § 335.072(b).

<sup>506</sup> *Id.* § 335.072(c).

<sup>507</sup> *Id.* § 335.072(e).

<sup>508</sup> *Id.* § 335.072(d).

## *II. Alternative Tax Initiatives for Local Development*

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.<sup>510</sup> 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.<sup>511</sup>

### **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.<sup>512</sup> 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.<sup>513</sup>

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").<sup>514</sup> A city may pledge its sales tax only if it is approved by the voters at an

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<sup>509</sup> *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).

<sup>510</sup> *Id.* § 335.075.

<sup>511</sup> *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).

<sup>512</sup> *Id.* § 321.508.

<sup>513</sup> *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).

<sup>514</sup> *Id.* § 321.508(a).



## *II. Alternative Tax Initiatives for Local Development*

election held on this issue. The ballot at this election must be printed to allow voting for or against the following proposition:<sup>515</sup>

**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.<sup>516</sup> 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.<sup>517</sup> The city may direct the comptroller to deposit the pledged money into a trust or account as required by the terms of the debt.<sup>518</sup>

### **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.<sup>519</sup> 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.

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<sup>515</sup> *Id.* § 321.508(b).

<sup>516</sup> *Id.* § 321.508(c).

<sup>517</sup> *Id.* § 321.508(d).

<sup>518</sup> *Id.* § 321.508(e).

<sup>519</sup> 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.<sup>520</sup> 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.<sup>521</sup> 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.<sup>522</sup>

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.<sup>523</sup> 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.***<sup>524</sup>

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

<sup>520</sup> Tex. Tax Code § 312.006.

<sup>521</sup> *Id.* § 312.002(f).

<sup>522</sup> *Id.* Ch. 313. The 83<sup>rd</sup> 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 (83<sup>rd</sup> R.S.)(2013)

<sup>523</sup> *See id.* §§ 312.204, .206, .401.

<sup>524</sup> *Id.* § 312.002(a).

### III. Local Property Tax Incentives

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.***<sup>525</sup>

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.<sup>526</sup> 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.<sup>527</sup> 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.<sup>528</sup> The guidelines and criteria may be amended or repealed only by a favorable vote of three-fourths of the members of the governing body.<sup>529</sup> 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.<sup>530</sup> Further, the guidelines and criteria adopted by a county may include a requirement of a tax abatement application fee not to exceed \$1000.<sup>531</sup>

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.<sup>532</sup> 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.<sup>533</sup>

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<sup>525</sup>

*Id.*

<sup>526</sup>

*Id.* § 312.002(c).

<sup>527</sup>

*Id.* § 312.002(a).

<sup>528</sup>

*Id.* § 312.002(c-1).

<sup>529</sup>

*Id.* § 312.002(c).

<sup>530</sup>

*Id.* § 312.002(d)(1), (3).

<sup>531</sup>

*Id.* § 312.002(e).

<sup>532</sup>

*Id.* § 312.002(c-2).

<sup>533</sup>

*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.

### III. Local Property Tax Incentives

#### 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.”***<sup>534</sup>

Incorporated cities or towns may designate reinvestment zones only within the city limits or within the city’s ETJ.<sup>535</sup> The designation of the reinvestment zone by a city must be made by ordinance.<sup>536</sup> 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.<sup>537</sup> Special districts and appraisal districts are not authorized to designate reinvestment zones.<sup>538</sup> 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.<sup>539</sup> 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.<sup>540</sup>

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.<sup>541</sup> Notice of the hearing must also be published at least seven days before the hearing in a newspaper of general circulation in the city.<sup>542</sup> 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.<sup>543</sup> Additionally, the governing body must find that the zone meets one of the applicable criteria for reinvestment zones.<sup>544</sup> The criterion usually cited is that the designation of the zone is reasonably likely to contribute to the retention or expansion of primary

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<sup>534</sup> Tex. Tax Code § 312.201.

<sup>535</sup> *Id.* § 312.201(a).

<sup>536</sup> *Id.*

<sup>537</sup> *Id.* § 312.401(a).

<sup>538</sup> *Id.* § 312.002(g).

<sup>539</sup> *Id.* § 312.0025.

<sup>540</sup> *See id.* § 313.021(2)(A)(i).

<sup>541</sup> *Id.* §§ 312.201(d)(2), .401(b).

<sup>542</sup> *Id.* §§ 312.201(d)(1), .401(b).

<sup>543</sup> *Id.* § 312.201(d).

<sup>544</sup> *Id.* § 312.202.

### III. Local Property Tax Incentives

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.<sup>545</sup> 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.<sup>546</sup> 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.<sup>547</sup> If the zone designation is approved, the designation lasts for five years and may be renewed for successive periods of up to five years.<sup>548</sup> 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.<sup>549</sup>

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.<sup>550</sup> 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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<sup>545</sup> *Id.* § 312.204(b).

<sup>546</sup> 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).

<sup>547</sup> Tex. Tax Code. §§ 312.201(d), .401(b).

<sup>548</sup> *Id.* §§ 312.203, .401(c).

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

<sup>550</sup> *Id.* §§ 312.2011, .4011.

### III. Local Property Tax Incentives

#### 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.***<sup>551</sup>

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.<sup>552</sup> The agreement may be for a period not to exceed 10 years.<sup>553</sup> 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.<sup>554</sup>

The tax abatement must be conditioned on the property owner making specific improvements or repairs to the property,<sup>555</sup> 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.<sup>556</sup> 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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<sup>551</sup> *Id.* § 312.2041.

<sup>552</sup> *Id.* §§ 312.204(a), .402(a), (a-1), (a-2).

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

<sup>554</sup> Tex. Tax Code § 312.007(b).

<sup>555</sup> *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).

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

### III. Local Property Tax Incentives

or commission.<sup>557</sup> 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.<sup>558</sup> 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.<sup>559</sup> 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)<sup>560</sup> 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.<sup>561</sup> 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.<sup>562</sup>

Certain information provided by a property owner regarding a request for tax abatement is considered confidential for a limited time period.<sup>563</sup> 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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<sup>557</sup> Tex. Tax Code § 312.204(d).

<sup>558</sup> *Id.* § 312.402(d).

<sup>559</sup> 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).

<sup>560</sup> Tex. Tax Code §§ 312.204(a), .402(a)..

<sup>561</sup> *Id.* §§ 312.204(a), .402(a-2).

<sup>562</sup> Tex. Att'y Gen. Op. No. GA-304 (2005).

<sup>563</sup> 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).

### III. Local Property Tax Incentives

#### 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.***<sup>564</sup>

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.<sup>565</sup>

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.<sup>566</sup>

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.<sup>567</sup> 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.<sup>568</sup>

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;

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<sup>564</sup> *Id.* § 312.207.

<sup>565</sup> *Id.* § 312.207(c).

<sup>566</sup> *Id.* § 312.207(d).

<sup>567</sup> *Id.* § 312.002(b).

<sup>568</sup> *Id.* § 312.207(b).



### III. Local Property Tax Incentives

- 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.<sup>569</sup>

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.<sup>570</sup> 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.<sup>571</sup>

#### 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.***<sup>572</sup>

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.<sup>573</sup>

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<sup>569</sup> See *id.* § 312.205 (Section 312.402(a-2) governs county tax abatement agreements).

<sup>570</sup> *Id.* § 312.0021

<sup>571</sup> *Id.*

<sup>572</sup> *Id.* §§ 312.206(a), .402(b).

<sup>573</sup> *Id.* § 312.206(a).

### III. Local Property Tax Incentives

Each taxing unit may adopt a tax abatement agreement with terms that differ from the agreement adopted by the city.<sup>574</sup>

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.<sup>575</sup> 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.<sup>576</sup> 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.<sup>577</sup> 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.<sup>578</sup>

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.<sup>579</sup> 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.<sup>580</sup> 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.<sup>581</sup> The terms of the agreement do not have to be identical to the terms of a municipal agreement.<sup>582</sup> 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 an 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.<sup>583</sup> 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.

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<sup>574</sup> *Id.* (“ . . . The agreement is not required to contain terms identical to those contained in the agreement with the municipality. . .”).

<sup>575</sup> *Id.* § 312.401(a).

<sup>576</sup> *Id.* §§ 312.206(a), .402(b).

<sup>577</sup> *Id.*

<sup>578</sup> *Id.* § 312.404. *See id.* § 312.207 (approval of agreement by city and other taxing units when city creates the reinvestment zone).

<sup>579</sup> *Id.* § 312.206(c).

<sup>580</sup> *Id.* § 312.204(c).

<sup>581</sup> *Id.* § 312.206(c).

<sup>582</sup> *Id.*

<sup>583</sup> *Id.* § 312.004(a).

### III. Local Property Tax Incentives

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.<sup>584</sup> 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.<sup>585</sup>

#### **School Districts**

A school district may not enter into a tax abatement agreement under chapter 312 of the Tax Code.<sup>586</sup> 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.<sup>587</sup>

#### **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.<sup>588</sup>

#### **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.<sup>589</sup> 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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<sup>584</sup> *Id.* § 312.005(a)(1)-(3).

<sup>585</sup> *Id.* § 11.43(d).

<sup>586</sup> *Id.* § 312.002(f).

<sup>587</sup> *Id.* Ch. 313.

<sup>588</sup> *Id.* §§ 312.204(a), .402 (a), (a-1), (a-3). *See also* Tex. Att'y Gen. Op. No. GA-0600 (2008).

<sup>589</sup> Tex. Tax Code. § 312.204(a).

### III. Local Property Tax Incentives

- both.<sup>590</sup>

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.<sup>591</sup> 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.<sup>592</sup> 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.<sup>593</sup>

The tax abatement agreement cannot exceed 10 years and the owner of the property must make specific improvements or repairs to the property.<sup>594</sup> 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.<sup>595</sup>

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.<sup>596</sup>

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<sup>590</sup> *Id.*

<sup>591</sup> *Id.*

<sup>592</sup> *Id.* § 312.402(a).

<sup>593</sup> *Id.*

<sup>594</sup> *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).

<sup>595</sup> *See Stanley Works v. Wichita Falls Indep. School Dist.*, 366 S.W.3d 816, 822-824 (Tex. App.— El Paso 2012)(pet. denied).

<sup>596</sup> *Id.* § 312.402(a-1).

### III. Local Property Tax Incentives

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.<sup>597</sup> 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.<sup>598</sup> 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.<sup>599</sup>

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.<sup>600</sup>

#### **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.<sup>601</sup> 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.<sup>602</sup> 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:<sup>603</sup>

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<sup>597</sup> *Id.* § 312.402(a-2).

<sup>598</sup> *Id.* § 312.402(a-3).

<sup>599</sup> *Id.*

<sup>600</sup> *Id.* § 312.402(a-2).

<sup>601</sup> *Id.* § 312.204(a).

<sup>602</sup> *Id.* §§ 312.402(a), (a-1).

<sup>603</sup> Tex. Tax Code § 312.211(a).

### III. Local Property Tax Incentives

- 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.<sup>604</sup>

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.<sup>605</sup> 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.<sup>606</sup> 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.<sup>607</sup> 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.<sup>608</sup> 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.<sup>609</sup> 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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<sup>604</sup> *Id.* § 312.211(a)(2).

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

<sup>606</sup> Tex. Tax Code § 312.211(b).

<sup>607</sup> *Id.* § 312.002(a).

<sup>608</sup> *Id.* § 312.211(b).

<sup>609</sup> *Id.* §§ 312.211(f), .401(a-2).

### III. Local Property Tax Incentives

enter into a regular tax abatement agreement for the same property.<sup>610</sup> School districts may not enter into a tax abatement agreement under Section 312.211.<sup>611</sup>

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.<sup>612</sup> 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 1<sup>st</sup> 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.<sup>613</sup> 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.<sup>614</sup> 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.<sup>615</sup> Also, the terms of such an abatement are subject to the same general rules as are the terms of a regular tax abatement.<sup>616</sup> 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.<sup>617</sup> Counties may initiate a Section 312.211 abatement in the same areas where they may initiate a regular tax abatement.<sup>618</sup>

## 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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<sup>610</sup> *Id.* §§ 312.211(g), .401(a-2).

<sup>611</sup> *Id.* § 312.211(h). *See also id.* § 312.002(f).

<sup>612</sup> *Id.* § 312.211(c).

<sup>613</sup> *Id.* § 312.211(d).

<sup>614</sup> *Id.* § 312.201.

<sup>615</sup> *Id.* § 312.206(a).

<sup>616</sup> *Id.* § 312.211(g).

<sup>617</sup> *Id.* § 312.205(a).

<sup>618</sup> *Id.* § 312.402.

### III. Local Property Tax Incentives

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.<sup>619</sup>

Tax increment financing may be initiated only by a city or county.<sup>620</sup> 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.<sup>621</sup>

Cities and counties may exercise any power that is necessary to carry out tax increment financing.<sup>622</sup> 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.<sup>623</sup> 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.<sup>624</sup> The power for cities and counties to acquire and sell real property prevails over any law or municipal charter to the contrary.<sup>625</sup> 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.<sup>626</sup> 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.<sup>627</sup>

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<sup>619</sup> Tex. Tax Code § 311.0123(b).

<sup>620</sup> *Id.* § 311.003 . *But see* Tex. Const. art VIII § 1-g(b).

<sup>621</sup> Tex. Tax Code § 311.013(f).

<sup>622</sup> *Id.* § 311.008(b).

<sup>623</sup> *Id.* § 311.008(b)(2).

<sup>624</sup> *Id.*

<sup>625</sup> *Id.* § 311.008(c).

<sup>626</sup> *Id.* § 311.008(b)(4)(C).

<sup>627</sup> *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:<sup>628</sup>

- 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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<sup>628</sup> *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.).

### III. Local Property Tax Incentives

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.<sup>629</sup>

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.<sup>630</sup>

A reinvestment zone for tax increment financing may not be created if:<sup>631</sup>

- More than 30% of the property in the proposed reinvestment zone (excluding publicly-owned property) is used for residential purposes;<sup>632</sup> 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,<sup>633</sup> 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.<sup>634</sup>

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.<sup>635</sup> 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.<sup>636</sup>

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<sup>629</sup> Tex. Tax Code § 311.005(a-1).

<sup>630</sup> See *Hardwicke v. City of Lubbock*, 150 S.W.3d 708, 716-17 (Tex. App. — Amarillo 2004, no pet.)

<sup>631</sup> Tex. Tax Code § 311.006.

<sup>632</sup> *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).

<sup>633</sup> *Id.* § 311.006(a)(2)(A).

<sup>634</sup> *Id.* § 311.006(a)(2)(B).

<sup>635</sup> *Id.* § 311.007.

<sup>636</sup> *Id.* § 311.006(b).

### III. Local Property Tax Incentives

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.<sup>637</sup> 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.<sup>638</sup> 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.<sup>639</sup>

#### **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.***<sup>640</sup>

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.<sup>641</sup> One of the items required in the reinvestment zone financing plan is a detailed list of the estimated

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<sup>637</sup> *Id.* § 311.013(k).

<sup>638</sup> *Id.* § 311.013(f).

<sup>639</sup> *Id.* § 311.007(c).

<sup>640</sup> *Id.* § 311.003(b).

<sup>641</sup> *See Id.* § 311.011(c).

### III. Local Property Tax Incentives

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.<sup>642</sup> “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.<sup>643</sup>

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

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<sup>642</sup> *Id.* § 311.002(1).

<sup>643</sup> *Id.* § 311.002(1)(A)-(L).

### III. Local Property Tax Incentives

While in the process of creating the preliminary financing plan, the city or county should also be preparing a proposed project plan.<sup>644</sup> 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.<sup>645</sup>

#### **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.***<sup>646</sup>

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.***<sup>647</sup>

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.<sup>648</sup> 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.<sup>649</sup>

#### **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.***<sup>650</sup>

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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<sup>644</sup> See *Id.* § 311.008(b)(1).

<sup>645</sup> *Id.* § 311.008(b)(4)(B).

<sup>646</sup> *Id.* § 311.003(c).

<sup>647</sup> *Id.*

<sup>648</sup> *Id.*

<sup>649</sup> *Id.* § 311.003(d).

<sup>650</sup> *Id.* § 311.003(a).

### III. Local Property Tax Incentives

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:<sup>651</sup>

- 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;<sup>652</sup>
- 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.<sup>653</sup>

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.<sup>654</sup>

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.<sup>655</sup> 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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<sup>651</sup> *Id.* § 311.004(a).

<sup>652</sup> *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).

<sup>653</sup> *Id.* § 311.004(b).

<sup>654</sup> *Id.* § 311.004(c).

<sup>655</sup> *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.)

### *III. Local Property Tax Incentives*

is not eligible for tax increment financing.<sup>656</sup> 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.<sup>657</sup>

#### **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.<sup>658</sup> 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.<sup>659</sup>

#### ***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.<sup>660</sup> 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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<sup>656</sup> *Id.* § 312.204(d).

<sup>657</sup> *Id.*

<sup>658</sup> *Id.* § 311.009(a).

<sup>659</sup> *Id.* § 311.009(e)(1).

<sup>660</sup> *Id.* § 311.009(b).

### III. Local Property Tax Incentives

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.<sup>661</sup> Not later than the 90<sup>th</sup> 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.<sup>662</sup> 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.<sup>663</sup> 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.<sup>664</sup>

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.<sup>665</sup>

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.<sup>666</sup>

#### Board Membership

Each year, the governing board of the city or county creating the zone appoints one member of the board to serve as chairman.<sup>667</sup> The chairman serves for a term of one year that begins on January 1<sup>st</sup> 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.<sup>668</sup>

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<sup>661</sup> *Id.* §§ 311.009(b), .0091(c).

<sup>662</sup> *Id.* § 311.0092(a).

<sup>663</sup> *Id.* § 311.0092(b).

<sup>664</sup> *Id.* §§ 311.009(b), .0091(c).

<sup>665</sup> *Id.*

<sup>666</sup> *Id.* § 311.009(e)(2).

<sup>667</sup> *Id.* § 311.009(f).

<sup>668</sup> *Id.* § 311.009(d).



### III. Local Property Tax Incentives

State law specifies that a member of the board of directors of a tax increment financing reinvestment zone is not considered a public official.<sup>669</sup> 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.<sup>670</sup> 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).<sup>671</sup>

#### 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.”***<sup>672</sup>

The project plan must include:<sup>673</sup>

- 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.<sup>674</sup>

The reinvestment zone financing plan must contain the following nine items:<sup>675</sup>

- 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;

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<sup>669</sup> *Id.* § 311.009(g)(1).

<sup>670</sup> Tex. Att’y Gen. Op. No. GA-0169 (2004).

<sup>671</sup> Tex. Tax Code § 311.009(g)(2).

<sup>672</sup> *Id.* § 311.011.

<sup>673</sup> *Id.* § 311.011(b).

<sup>674</sup> *Id.* § 311.011(f).

<sup>675</sup> *Id.* § 311.011(c).

### III. Local Property Tax Incentives

- 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.<sup>676</sup> 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.<sup>677</sup> 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.<sup>678</sup> 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.<sup>679</sup>

At any time after the zone is adopted, the board of directors may adopt an amendment to the project plan.<sup>680</sup> The amendment takes effect on approval of the change by ordinance

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<sup>676</sup> *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.").

<sup>677</sup> *Id.* § 311.015(l).

<sup>678</sup> *Id.* § 311.011(d).

<sup>679</sup> *Id.*

<sup>680</sup> *Id.* § 311.011(e).

### III. Local Property Tax Incentives

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.<sup>681</sup>

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).<sup>682</sup> The report must be submitted by April 1<sup>st</sup> 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.***<sup>683</sup>

The tax increment fund<sup>684</sup> 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.<sup>685</sup> Money in the tax increment fund can be transferred to an adjacent reinvestment zone if certain conditions are met.<sup>686</sup> The taxing units can determine the amount of their tax increment for a year either by:

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<sup>681</sup> *Id.* § 311.011(g).

<sup>682</sup> *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 82<sup>nd</sup> 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.).

<sup>683</sup> *Id.* § 311.013.

<sup>684</sup> *See id.* § 311.014. (Describes the tax increment fund's composition).

<sup>685</sup> *Id.* § 311.012(a).

<sup>686</sup> *See* § 311.014(f).

### III. Local Property Tax Incentives

- 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.<sup>687</sup> 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.<sup>688</sup> 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.<sup>689</sup> 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.<sup>690</sup> 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<sup>691</sup> attributable to the zone in the year the zone was created.<sup>692</sup> Cities may choose not to contribute sales tax

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<sup>687</sup> *Id.* § 311.013(f).

<sup>688</sup> *Id.* § 311.013(l). *See also id.* § 311.013(m) (For special rules for such reduction in the tax increment in certain populous counties).

<sup>689</sup> *Id.* § 311.013(f).

<sup>690</sup> *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).

<sup>691</sup> *Id.* § 311.0123(a).

<sup>692</sup> *Id.* § 311.0123(b).

### III. Local Property Tax Incentives

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.<sup>693</sup>

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.<sup>694</sup> 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.<sup>695</sup>

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 90<sup>th</sup> 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.<sup>696</sup> A delinquent payment incurs a penalty of 5% of the amount delinquent and accrues interest at an annual rate of 10%.<sup>697</sup> 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.<sup>698</sup>

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

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<sup>693</sup> *Id.* § 311.0123(c)(1)-(3).

<sup>694</sup> *Id.* § 311.0123(d).

<sup>695</sup> *Id.* § 311.0123(e).

<sup>696</sup> *Id.* § 311.013(c).

<sup>697</sup> *Id.* § 311.013(c-1).

<sup>698</sup> *Id.* § 311.013(i).

### III. Local Property Tax Incentives

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).<sup>699</sup> 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.<sup>700</sup> 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.<sup>701</sup>

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.<sup>702</sup> 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.<sup>703</sup>

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.<sup>704</sup>

#### 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.***<sup>705</sup>

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.<sup>706</sup> 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.<sup>707</sup> 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

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<sup>699</sup> *Id.* § 311.013(g).

<sup>700</sup> *Id.* § 311.0125.

<sup>701</sup> *Id.* §§ 311.013(g); .0125(b).

<sup>702</sup> *Id.* § 311.0125(c).

<sup>703</sup> *Id.* § 311.0125(d).

<sup>704</sup> *Id.* § 311.0125(e).

<sup>705</sup> *Id.* § 311.010(a).

<sup>706</sup> *Id.* § 311.010(e).

<sup>707</sup> *Id.* § 311.010(a).

### III. Local Property Tax Incentives

property.<sup>708</sup> 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.<sup>709</sup>

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.<sup>710</sup> 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.<sup>711</sup>

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.<sup>712</sup> 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.<sup>713</sup> If the zone was created by petition, the board, with the approval of the city, may impose certain zoning restrictions within the zone.<sup>714</sup>

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.<sup>715</sup> 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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<sup>708</sup> *Id.* § 311.010(d)(2), .008(b)(2).

<sup>709</sup> *Id.* § 311.010(d)(1).

<sup>710</sup> *Id.* § 311.010(f).

<sup>711</sup> *Id.* § 311.010(i).

<sup>712</sup> *Id.* § 311.010(b).

<sup>713</sup> *Id.* § 311.010(g).

<sup>714</sup> *Id.* § 311.010(c).

<sup>715</sup> *Id.* § 311.010(h).

### III. Local Property Tax Incentives

- 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.<sup>716</sup>

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.<sup>717</sup> 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.<sup>718</sup>

#### 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.***<sup>719</sup>

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.<sup>720</sup>

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<sup>716</sup> *Id.* § 311.01005.

<sup>717</sup> *Id.* § 311.0101.

<sup>718</sup> *Id.* § 311.0101(c).

<sup>719</sup> *Id.* § 311.016(a).

<sup>720</sup> *Id.* § 311.016(b).



## Central Registry

The comptroller shall maintain a central registry of:<sup>721</sup>

- 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:<sup>722</sup>

- 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 1<sup>st</sup> of the year following the year in which the plan was amended or modified.<sup>723</sup>

## 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.<sup>724</sup> 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.<sup>725</sup>

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<sup>721</sup> *Id.* § 311.019(a).

<sup>722</sup> *Id.* § 311.019(b).

<sup>723</sup> *Id.* § 311.019(c).

<sup>724</sup> *Id.* § 311.020(a).

<sup>725</sup> *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.<sup>726</sup> 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.<sup>727</sup> 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.<sup>728</sup> 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.<sup>729</sup>

## 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;<sup>730</sup> or
- 3) the date on which all project costs, tax increment bonds and interest on those bonds are paid in full.<sup>731</sup>

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

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<sup>726</sup> 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.

<sup>727</sup> See Tex. Gov’t Code § 403.302(d)-(e). See also Tex. Att’y Gen. Op. No. GA-549 (2007).

<sup>728</sup> Tex. Tax Code § 311.0085.

<sup>729</sup> *Id.* § 311.0085(c).

<sup>730</sup> *Id.* § 311.017(a)(1).

<sup>731</sup> *Id.* § 311.017(a)(2).

### III. Local Property Tax Incentives

created the zone.<sup>732</sup> Also, a city or county that created the zone can terminate the zone before all debts and obligations are paid in full.<sup>733</sup> 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 of 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.<sup>734</sup>

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 of this state or the United States, including Sections 1.06 or 109.57 of the Alcoholic Beverage Code; or

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<sup>732</sup> *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, 82<sup>nd</sup> 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 30<sup>th</sup> 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.).

<sup>733</sup> Tex. Tax Code § 311.017(b).

<sup>734</sup> *Id.* § 311.021(a).

### III. Local Property Tax Incentives

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.<sup>735</sup>

## 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.<sup>736</sup> 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:<sup>737</sup>

- manufacturing;<sup>738</sup>
- research and development;<sup>739</sup>
- 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;<sup>740</sup>
- electric power generation using integrated gasification combined cycle technology;<sup>741</sup>

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<sup>735</sup> *Id.* § 311.021(b).

<sup>736</sup> 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.”).

<sup>737</sup> *Id.* § 313.024(b).

<sup>738</sup> *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).

<sup>739</sup> *See Id.* § 313.024(e)(5) (Definition of “research and development”).

<sup>740</sup> *See Id.* § 313.024(e)(2) (Definition of “renewable energy electric generation”).

<sup>741</sup> *See Id.* § 313.024(e)(3) (Definition of “integrated gasification combined cycle technology”).

### III. Local Property Tax Incentives

- nuclear electric power generation;<sup>742</sup> or
- a computer center<sup>743</sup> 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.<sup>744</sup> 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.<sup>745</sup>

#### **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

#### Non-Rural School District Versus Rural School District

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;<sup>746</sup> or
- the school district is located in a county:<sup>747</sup>
  - 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.<sup>748</sup>

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<sup>742</sup> See *Id.* § 313.024(e)(4) (Definition of “nuclear electric power generation”).

<sup>743</sup> See *Id.* § 313.024(e)(6) (Definition of “computer center”).

<sup>744</sup> *Id.* § 313.0024(b-1).

<sup>745</sup> *Id.*

<sup>746</sup> *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>).

<sup>747</sup> *Id.* § 313.051(a-1).

<sup>748</sup> *Id.*

### III. Local Property Tax Incentives

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.<sup>749</sup> At least 80% of all the new jobs created must be “qualifying jobs.”<sup>750</sup> A “qualifying job” for a non-rural school district is defined to mean a permanent full-time job that:<sup>751</sup>

- 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<sup>752</sup> 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.<sup>753</sup>

In rural school districts, a property owner is required to create at least 10 new “qualifying jobs” on the owner’s qualified property.<sup>754</sup> 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.<sup>755</sup> A “qualifying job” for a rural school district has the same meaning as a qualifying job for a non-rural school district.<sup>756</sup>

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<sup>749</sup> Tex. Tax Code § 313.021(2)(A)(iv)(b).

<sup>750</sup> *Id.* § 313.024(d).

<sup>751</sup> *Id.* § 313.021(3).

<sup>752</sup> *See Id.* § 313.021(5) (Definition of “county average weekly wage for manufacturing jobs”).

<sup>753</sup> *Id.* §313.021(3)(F).

<sup>754</sup> *Id.* § 313.051(b).

<sup>755</sup> *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).)

<sup>756</sup> *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.<sup>757</sup> If the comptroller determines the number of qualifying jobs to be below the required threshold, it will issue an adverse determination.<sup>758</sup> 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.<sup>759</sup> 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.<sup>760</sup> This penalty can be doubled if a penalty has previously been enforced.<sup>761</sup> Each person may appeal the imposition of the penalty through a taxpayer lawsuit under Chapter 112 of the Tax Code.<sup>762</sup>

## 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<sup>763</sup>;
- 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.<sup>764</sup>

## 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

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<sup>757</sup> *Id.* § 313.0276(a).

<sup>758</sup> *Id.*

<sup>759</sup> *Id.* § 313.0276(b).

<sup>760</sup> *Id.* § 313.0276(c).

<sup>761</sup> *Id.* § 313.0276(d).

<sup>762</sup> *Id.* § 313.0276(i).

<sup>763</sup> *See id.* § 313.021(1) (Definition of "qualified investment").

<sup>764</sup> *Id.* § 313.024(c).

### III. Local Property Tax Incentives

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.<sup>765</sup> Non-rural school districts are categorized as follows:<sup>766</sup>

- 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.<sup>767</sup> Rural school districts are categorized as follows:<sup>768</sup>

- 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.

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<sup>765</sup> *Id.* § 313.022(b).

<sup>766</sup> *Id.*

<sup>767</sup> *Id.* § 313.052.

<sup>768</sup> *Id.*



## Minimum Amount of a Qualified Investment and Limitation on Appraised Values

### Non-Rural School Districts

The minimum amounts of qualified investment<sup>769</sup> and the minimum amounts of limitation<sup>770</sup> 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.<sup>771</sup>

### Rural School Districts

The minimum amounts of qualified investment<sup>772</sup> and minimum amounts of limitation on appraised values<sup>773</sup> 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.<sup>774</sup>

## 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.<sup>775</sup> The written agreement must describe with specificity the qualified investment that the person will make on or in

<sup>769</sup> *Id.* § 313.023.

<sup>770</sup> *Id.* § 313.027(b).

<sup>771</sup> *Id.* § 313.027(c).

<sup>772</sup> *Id.* § 313.053.

<sup>773</sup> *Id.* § 313.054(a)(increased minimum amounts of limitation on appraised values).

<sup>774</sup> *Id.* § 313.054(b).

<sup>775</sup> *Id.* § 313.027(d).

### III. Local Property Tax Incentives

connection with the person's qualified property that is subject to the limitation on appraised value.<sup>776</sup> 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:<sup>777</sup>

- 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<sup>778</sup> for the project is to commence, or an agreement may be amended to provide for such a deferral.<sup>779</sup> 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 may 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

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<sup>776</sup> *Id.* § 313.027(e).

<sup>777</sup> *Id.* § 313.027(f).

<sup>778</sup> *See id.* § 313.021(4) (Definition of qualified time period).

<sup>779</sup> *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.

### III. Local Property Tax Incentives

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 31<sup>st</sup> of the third tax year after the date the person’s eligibility for a limitation expires.<sup>780</sup>

#### **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.<sup>781</sup> 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:<sup>782</sup>

- 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.<sup>783</sup> 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:<sup>784</sup>

- **land:**

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<sup>780</sup> *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).

<sup>781</sup> *Id.* § 313.025(a).

<sup>782</sup> *Id.*

<sup>783</sup> *Id.* § 313.031(b).

<sup>784</sup> *Id.* § 313.021(2).

### III. Local Property Tax Incentives

- 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;<sup>785</sup>
- **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;<sup>786</sup> 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;<sup>787</sup> 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.<sup>788</sup>

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<sup>785</sup> *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.”).

<sup>786</sup> *Id.* §§ 313.021(2)(A)(ii), .021(2)(B).

<sup>787</sup> *Id.* § 313.021(2)(C)(i). *See also id.* § 312.002(f).

<sup>788</sup> *Id.* § 313.021(2)(C)(ii).

### III. Local Property Tax Incentives

#### Economic Impact Evaluation

As indicated earlier, an economic impact evaluation must accompany an application for limited appraisal value.<sup>789</sup> The school district must request this evaluation from the comptroller's office.<sup>790</sup> The economic impact evaluation must contain the following criteria:<sup>791</sup>

- 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.<sup>792</sup> 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.<sup>793</sup>

#### 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.<sup>794</sup> 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.<sup>795</sup>

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

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<sup>789</sup> *Id.* § 313.025(a)(3).

<sup>790</sup> *Id.* § 313.025(b).

<sup>791</sup> *Id.* § 313.026.

<sup>792</sup> *Id.* § 313.026(b).

<sup>793</sup> *Id.* § 313.026(c).

<sup>794</sup> *Id.* § 313.025(b).

<sup>795</sup> *Id.* § 313.025(a-1).

### III. Local Property Tax Incentives

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<sup>796</sup> and any other information available to the comptroller, including information provided by the school district.<sup>797</sup> 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.<sup>798</sup>

The school board must approve or disapprove the application not later than the 150<sup>th</sup> day after the date the application is filed, unless an extension is agreed to by the school board and the applicant.<sup>799</sup> 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.<sup>800</sup> 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.<sup>801</sup> 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.<sup>802</sup>

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:<sup>803</sup>

- 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.<sup>804</sup>

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<sup>796</sup> *Id.* § 313.025 (b);(b-1).

<sup>797</sup> *Id.* § 313.026(b).

<sup>798</sup> *Id.* § 313.025(d).

<sup>799</sup> *Id.* § 313.025(b).

<sup>800</sup> *Id.* § 313.025(e).

<sup>801</sup> *Id.* § 313.025(g).

<sup>802</sup> *Id.* § 313.025(c).

<sup>803</sup> *Id.* § 313.025(f).

<sup>804</sup> *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:<sup>805</sup>

- 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 <sup>806</sup>	Rural School Districts Minimum Amount Of Limitation <sup>807</sup>
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<sup>808</sup>.

The “qualifying time period” generally begins the date the school district approves an application, and ends December 31<sup>st</sup> of the second complete tax year following that date except for nuclear electric power generation facilities or advanced clean energy projects.<sup>809</sup>

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.<sup>810</sup>

<sup>805</sup> *Id.* § 313.027(a).

<sup>806</sup> *Id.* § 313.027(b).

<sup>807</sup> *Id.* § 313.054(a).

<sup>808</sup> *Id.* § 313.027(a-1).

<sup>809</sup> *Id.* § 313.021(4).

<sup>810</sup> *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.<sup>811</sup> 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.<sup>812</sup> However, if the person suffers a casualty loss on the property, the person may request a waiver of the penalty from the comptroller.<sup>813</sup> If the penalty is not waived by the comptroller and is not paid by February 1<sup>st</sup> of the following tax year, it becomes delinquent in accordance with Section 33.01 of the Tax Code.<sup>814</sup>

## Tax Credits<sup>815</sup>

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.<sup>816</sup>

## 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 15<sup>th</sup> day after the date the document or item of information is received or created.<sup>817</sup> 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:<sup>818</sup>

- 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.<sup>819</sup>

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<sup>811</sup> *Id.* § 313.0275(a).

<sup>812</sup> *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).

<sup>813</sup> *Id.* § 313.0275(d).

<sup>814</sup> *Id.* § 313.0275(c).

<sup>815</sup> 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), 83<sup>rd</sup> 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.

<sup>816</sup> *Id.* §313.171(b).

<sup>817</sup> *Id.* § 313.0265(a).

<sup>818</sup> *Id.* § 313.0265(b).

<sup>819</sup> *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.<sup>820</sup> 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.<sup>821</sup> Pursuant to Section 312.002(f) of the Tax Code, school districts are no longer authorized to enter into tax abatement agreements.<sup>822</sup>

## 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.<sup>823</sup>

## 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.”<sup>824</sup> Freeport property includes various types of goods that are detained in Texas for a short period of time (175 days or less).<sup>825</sup> 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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<sup>820</sup> *Id.* § 313.028.

<sup>821</sup> *Id.* § 313.030.

<sup>822</sup> *Id.* § 312.002(f).

<sup>823</sup> *Id.* § 313.006(b).

<sup>824</sup> Tex. Const. art. VIII, § 1-j.

<sup>825</sup> 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).

### III. Local Property Tax Incentives

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.”<sup>826</sup> 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.<sup>827</sup>

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.<sup>828</sup> 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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<sup>826</sup> Tex. Const. art. VIII § 1-n.

<sup>827</sup> Tex. Const. art VIII, § 1-j(b).

<sup>828</sup> Tex. Const. art. VIII, § 1-j(a).

### III. Local Property Tax Incentives

derivatives of the refining of oil or natural gas.”<sup>829</sup> 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.<sup>830</sup> 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.<sup>831</sup>

#### 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.<sup>832</sup> 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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<sup>829</sup> 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 [14<sup>th</sup> Dist.] 2014)(pet. filed and pending as of October 3, 2014.).

<sup>830</sup> *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).

<sup>831</sup> 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.).

<sup>832</sup> Tex. Tax Code § 11.253(j).

### III. Local Property Tax Incentives

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<sup>833</sup> 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.<sup>834</sup>

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.<sup>835</sup> 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.<sup>836</sup>

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 1<sup>st</sup> of the first tax year they intend to again tax the goods.<sup>837</sup>

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

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<sup>833</sup> *Id.* § 11.253(a)(6) (Definition of public warehouse operator). *See also id.* § 11.253(a)(5) (Definition of bailee and warehouse).

<sup>834</sup> *Id.* § 11.253(a)(2).

<sup>835</sup> *Id.* § 11.253(j-1).

<sup>836</sup> *Id.* § 11.253(j-2).

<sup>837</sup> *Id.* § 11.253(j).

### *III. Local Property Tax Incentives*

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.<sup>838</sup> It does not include oil, natural gas, and other petroleum products.<sup>839</sup> 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,<sup>840</sup> 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.<sup>841</sup>

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<sup>838</sup> Tex. Const. art. VIII, § 1-n(a), (b)(1).

<sup>839</sup> *Id.* art. VIII, § 1-n(a). See Tex. Tax Code § 11.253(a)(4) (Definition of “petroleum product”).

<sup>840</sup> Tex. Const. art. VIII, § 1-n(a)(3).

<sup>841</sup> 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.<sup>842</sup> 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.<sup>843</sup> A city with a population of under 35,000 may also adopt the hotel occupancy tax within that city's extraterritorial jurisdiction (ETJ).<sup>844</sup> 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.<sup>845</sup> 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.<sup>846</sup> Within the city limits, counties are generally capped at a county hotel tax rate of 2 percent.<sup>847</sup> The State of Texas also imposes a six percent hotel occupancy tax rate that applies throughout the state.<sup>848</sup>

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<sup>842</sup> Tex. Tax Code §§ 351.001 (Definition of "municipality"); .002 (Municipal hotel occupancy tax authorized).

<sup>843</sup> *Id.* § 351.003(a).

<sup>844</sup> *Id.* § 351.0025.

<sup>845</sup> *Id.* § 352.002.

<sup>846</sup> *Id.* § 352.003(a).

<sup>847</sup> *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).

<sup>848</sup> *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.<sup>849</sup>
- 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.<sup>850</sup> 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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<sup>849</sup> *Id.* § 351.101(a)-(b).

<sup>850</sup> *Id.* §§ 351.101(a)(1)-(12), .110.

#### IV. Economic Development Through Tourism

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.<sup>851</sup>

- 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<sup>852</sup> 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.<sup>853</sup>

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.<sup>854</sup> The price of the room does not include the cost of food served by the hotel or the cost of other personal services.<sup>855</sup> 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.”<sup>856</sup>

### 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<sup>857</sup>;
- 2) foreign diplomats with a tax exempt card issued by the U.S. Department of State<sup>858</sup>;

<sup>851</sup> *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).

<sup>852</sup> *See* Tex. Tax Code. § 152.001(20) (Definition of “oilfield portable unit”).

<sup>853</sup> *Id.* § 156.001(b).

<sup>854</sup> *Id.* § 351.002(a). *See* Tex. Gov’t Code. § 311.005(2) (Definition of “person” as used in any Texas code).

<sup>855</sup> 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.).

<sup>856</sup> *Id.* § 156.051(a).

<sup>857</sup> *Id.* §§ 351.006(a), 352.007(a), 156.103(a). *See also* 34 Tex. Admin. Code §3.161(b)(3).



#### IV. Economic Development Through Tourism

- 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)<sup>859</sup>; and
- 4) persons or businesses who have the right to use or possess a hotel room at least 30 consecutive days.<sup>860</sup>

Employees of Texas institutions of higher education (colleges) are exempt from the state hotel occupancy tax, but must pay local hotel occupancy tax.<sup>861</sup> 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.<sup>862</sup> 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.<sup>863</sup> 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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<sup>858</sup> 34 Tex. Admin. Code § 3.161(b)(4).

<sup>859</sup> *Id.* § 3.161(b)(2).

<sup>860</sup> Tex. Tax Code §§ 351.002(c), 156.101. *See also* 34 Tex. Admin. Code § 3.161(b)(6).

<sup>861</sup> 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).

<sup>862</sup> *See* 34 Tex. Admin. Code §§ 3.161(a)(2), (b)(1).

<sup>863</sup> Tex. Tax Code. § 351.006(b), 352.007(b), 156.103(b).

#### *IV. Economic Development Through Tourism*

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.<sup>864</sup> 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.<sup>865</sup> 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.<sup>866</sup> A city may contract with a third party to assist in the creation, maintenance, operation, or administration of the electronic tax administration system.<sup>867</sup> A city may not use revenue the city is authorized to spend on an electronic tax administration system to conduct an audit.<sup>868</sup> 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.<sup>869</sup>

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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<sup>864</sup> *Id.* § 111.006(d).

<sup>865</sup> *Id.* §§ 351.005(a), 352.005.

<sup>866</sup> *Id.* § 351.1012(a).

<sup>867</sup> *Id.* § 351.1012(b).

<sup>868</sup> *Id.* § 351.1012(a).

<sup>869</sup> *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.<sup>870</sup> 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.<sup>871</sup> 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.<sup>872</sup> 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.<sup>873</sup> 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.<sup>874</sup> 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.<sup>875</sup> 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.<sup>876</sup>

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;<sup>877</sup>
- bring a civil suit against the hotel operator for noncompliance;<sup>878</sup>
- 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.<sup>879</sup>

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

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<sup>870</sup> *Id.* §§ 351.004(a), 352.004.

<sup>871</sup> *Id.* § 351.004(a)(1), (3), and (4).

<sup>872</sup> *Id.* § 351.004(a-1)(1), (a-3).

<sup>873</sup> *Id.* § 351.004(a-3).

<sup>874</sup> *Id.* § 351.008.

<sup>875</sup> *Id.* § 351.004(a)(2). *See id.* §§ 156.2513, 351.008.

<sup>876</sup> *Id.* § 351.004(c).

<sup>877</sup> *Id.* § 351.005(b).

<sup>878</sup> *Id.* § 351.004(a).

<sup>879</sup> *Id.* § 351.004(d).

#### IV. Economic Development Through Tourism

tax becomes due.<sup>880</sup> 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.<sup>881</sup>

Also, counties can assess penalties against a hotel operator for failing to file the tax report or paying the taxes that are due.<sup>882</sup> 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.<sup>883</sup>

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.<sup>884</sup>

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.<sup>885</sup> 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.<sup>886</sup>

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.<sup>887</sup> The county shall provide 30 days' written notice to the person who was required to file the reports with the county.<sup>888</sup> 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.<sup>889</sup> 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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<sup>880</sup> *Id.* § 351.004(b).

<sup>881</sup> *Id.* § 351.004(b-1).

<sup>882</sup> *Id.* § 352.004(b).

<sup>883</sup> *Id.* § 352.004(c).

<sup>884</sup> *Id.* § 352.004(d).

<sup>885</sup> *Id.* § 352.004(d-1).

<sup>886</sup> *Id.* § 352.004(d-2).

<sup>887</sup> *Id.* §§ 352.004(e), .006(a).

<sup>888</sup> *Id.* § 352.004(e).

<sup>889</sup> *Id.* § 352.008.

#### IV. Economic Development Through Tourism

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.<sup>890</sup> 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.<sup>891</sup> 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.<sup>892</sup>

### 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.<sup>893</sup> 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.<sup>894</sup>

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:<sup>895</sup>

#### 1. Funding the establishment, improvement or maintenance of a convention center or visitor information center.<sup>896</sup>

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.<sup>897</sup> 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.<sup>898</sup> 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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<sup>890</sup> *Id.* §§ 351.0041, 352.0041.

<sup>891</sup> *Id.* §§ 351.0041(c); 352.0041(c).

<sup>892</sup> *Id.* §§ 351.0041(d); 352.0041(d).

<sup>893</sup> *Id.* § 351.101(a). *See* Tex. Att’y Gen. Op. No. GA-0124 (2003).

<sup>894</sup> Tex. Tax Code. § 351.101(b).

<sup>895</sup> *Id.* §§ 351.101(a), .0035 .110.

<sup>896</sup> *Id.* § 351.101(a)(1).

<sup>897</sup> *Id.* § 351.001(2).

<sup>898</sup> *Id.*

#### *IV. Economic Development Through Tourism*

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.<sup>899</sup> 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.<sup>900</sup>

#### **2. Paying the administrative costs for facilitating convention registration.**<sup>901</sup>

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.**<sup>902</sup>

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.<sup>903</sup> 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.**<sup>904</sup>

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.**<sup>905</sup>

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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<sup>899</sup> See Tex. Att'y Gen. Op. Nos. JM-184 (1984), JM-965 (1988).

<sup>900</sup> Tex. Tax Code § 351.102.

<sup>901</sup> *Id.* § 351.101(a)(2).

<sup>902</sup> *Id.* § 351.101(a)(3).

<sup>903</sup> 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).

<sup>904</sup> Tex. Tax Code § 351.101(a)(4).

<sup>905</sup> *Id.* § 351.101(a)(5).

#### *IV. Economic Development Through Tourism*

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.**<sup>906</sup>

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;<sup>907</sup>
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 least four million.<sup>908</sup>; 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.<sup>909</sup>

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.**<sup>910</sup>

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;<sup>911</sup> and 2) the sports facility or field

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<sup>906</sup> *Id.* § 351.101(a)(6).

<sup>907</sup> *Id.* § 351.101(a)(6)(A).

<sup>908</sup> *Id.* § 351.101(a)(6)(B).

<sup>909</sup> *Id.* § 351.101(a)(6)(C) (as added by S.B. 1262, 86<sup>th</sup> Leg., R.S. Effective September 1, 2019) (Note: Parts of S.B. 1262 was repealed by H.B. 4347, 86<sup>th</sup> Leg., R.S. This section is based on what that section would have said had it not been repealed.)

<sup>910</sup> *Id.* § 351.101(a)(7).

<sup>911</sup> *Id.* § 351.101(a)(7)(A).

#### *IV. Economic Development Through Tourism*

has been used in preceding calendar year a combined total of more than 10 times for district, state, regional, or national sports tournaments.<sup>912</sup> 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;<sup>913</sup>
- 13) those that have a population of not more than 1,500 and are located in a county that borders Arkansas and Louisiana;<sup>914</sup>
- 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;<sup>915</sup>

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<sup>912</sup> *Id.* § 351.101(a)(7)(C).

<sup>913</sup> *Id.* § 351.101(a)(7)(B)(i)-(xii). *See* fnt 909 concerning this specific section.

<sup>914</sup> *Id.* § 351.101(n).

<sup>915</sup> *Id.* § 351.101(o).



#### *IV. Economic Development Through Tourism*

- 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;<sup>916</sup>
- 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;<sup>917</sup>
- 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;<sup>918</sup> 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.<sup>919</sup>

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.<sup>920</sup> 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.<sup>921</sup> 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.<sup>922</sup> 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.**<sup>923</sup>

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.**<sup>924</sup>

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

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<sup>916</sup> *Id.* § 351.10711.

<sup>917</sup> *Id.* § 351.1068.

<sup>918</sup> *Id.* § 351.1079.

<sup>919</sup> *Id.* § 351.10712.

<sup>920</sup> *Id.* § 351.1076(a).

<sup>921</sup> *Id.*

<sup>922</sup> *Id.* § 351.1076(b).

<sup>923</sup> *Id.* § 351.101(a)(9).

<sup>924</sup> *Id.* § 351.110.

#### *IV. Economic Development Through Tourism*

- 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.<sup>925</sup> 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 its 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.<sup>926</sup>

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.<sup>927</sup> 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.<sup>928</sup> 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.<sup>929</sup>

- 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.<sup>930</sup>
- 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.

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<sup>925</sup> *Id.* § 352.1031(a) (This statute refers to Tax Code § 351.101).

<sup>926</sup> *Id.* § 352.1031(b).

<sup>927</sup> *Id.* §§ 352.101-.106; .108; .110; .111; .113.

<sup>928</sup> *Id.* §§ 351.101(e)-(f), 352.1015(c)-(d).

<sup>929</sup> *Id.*

<sup>930</sup> *Id.* §§ 351.001(5), (6), 352.001(3), (4).

#### *IV. Economic Development Through Tourism*

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.<sup>931</sup>

### **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.<sup>932</sup> 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.<sup>933</sup> The state tax revenues will be used to pay bonds, obligations, and contractual obligations issued or entered in connection with the qualified project<sup>934</sup> involving qualified convention center facilities and the qualified hotel.<sup>935</sup> 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.<sup>936</sup> 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.<sup>937</sup>

### **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.<sup>938</sup> 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.<sup>939</sup>

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<sup>931</sup> *Id.* §§ 351.101(e), 352.1015(c).

<sup>932</sup> *Id.* §§ 351.151 - .160.

<sup>933</sup> *Id.* §§ 351.151(3) (definition of “qualified hotel”); .151(2) (definition of “qualified convention center”).

<sup>934</sup> *Id.* § 351.151(4) (definition of “qualified project”).

<sup>935</sup> *Id.* § 351.155.

<sup>936</sup> *Id.* §§ 351.157(e); .158. *See id.* §§ 351.156; .157 (describes which certain tax revenue a city is entitled to for this subchapter).

<sup>937</sup> *Id.* §§ 351.159; .160.

<sup>938</sup> *Id.* § 351.103(a).

<sup>939</sup> *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

#### IV. Economic Development Through Tourism

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.<sup>940</sup> 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.<sup>941</sup> 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.<sup>942</sup>

#### 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.<sup>943</sup> 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.<sup>944</sup> 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.<sup>945</sup> 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.<sup>946</sup> 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).

<sup>940</sup> Tex. Tax Code § 351.103(a)(1).

<sup>941</sup> *Id.* § 351.103(a)(2).

<sup>942</sup> *Id.* § 351.103(b-1). *See* fnnt 909 concerning this specific section.

<sup>943</sup> *Id.* § 351.103(c).

<sup>944</sup> *Id.*

<sup>945</sup> *Id.* § 351.103(d).

<sup>946</sup> *Id.* §§ 351.101(c), 352.1015.

#### IV. Economic Development Through Tourism

delegation may be made to a person, another governmental entity, or to a private organization.<sup>947</sup> 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.<sup>948</sup> The entity is required to keep complete and accurate financial records of each expenditure of hotel occupancy tax revenue.<sup>949</sup> 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.<sup>950</sup>

#### 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.<sup>951</sup>

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.<sup>952</sup> For cities, this list of expenditures should be provided to the city secretary or the city secretary's designee.<sup>953</sup>

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<sup>947</sup> *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)).

<sup>948</sup> *Id.* §§ 351.101(c), 352.1015(a).

<sup>949</sup> *Id.* §§ 351.101(d), 352.1015(b).

<sup>950</sup> *Id.* §§ 351.101(c), 352.1015(a).

<sup>951</sup> *Id.* §§ 351.108(b), 352.109(b).

<sup>952</sup> *Id.* §§ 351.108(c), 352.109(c).

<sup>953</sup> *Id.* § 351.108(d).

## Local Hotel Occupancy Tax Reporting

Cities are required to annually report hotel occupancy tax information to the comptroller.<sup>954</sup> 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.<sup>955</sup>

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.<sup>956</sup>

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.<sup>957</sup>

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<sup>954</sup> *Id.* § 351.009

<sup>955</sup> *Id.* § 351.009(a).

<sup>956</sup> *Id.* § 351.009(b).

<sup>957</sup> 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.”).

#### *IV. Economic Development Through Tourism*

The statutes governing the creation and administration of county development districts are found in Chapter 383 of the Texas Local Government Code.<sup>958</sup>

### **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.<sup>959</sup>

**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.<sup>960</sup> 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.<sup>961</sup> 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,<sup>962</sup> 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).<sup>963</sup>

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<sup>958</sup> Tex. Loc. Gov't Code. §§ 383.001 *et seq.*

<sup>959</sup> *Id.* §§ 383.002, .105 *See also*, Tex. Att'y Gen. Op. No. JC-291 (2000).

<sup>960</sup> Tex. Tax Code § 352.107.

<sup>961</sup> Tex. Loc. Gov't Code § 383.004(8) ("Project" has the meaning assigned by Tex. Loc. Gov't Code §§ 505.151-.156).

<sup>962</sup> *Id.* § 383.111.

<sup>963</sup> *Id.* § 383.112.

#### *IV. Economic Development Through Tourism*

**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<sup>964</sup> 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.<sup>965</sup>

**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.<sup>966</sup>

**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.<sup>967</sup>

**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.<sup>968</sup>

**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.<sup>969</sup>

**Ability to Borrow.** The district can borrow money for purposes related to the district's functions.<sup>970</sup>

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.<sup>971</sup> Also, the district can use the same definition of what is a permissible "cost" that is used by a Type B development corporations.<sup>972</sup>

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.<sup>973</sup> 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.<sup>974</sup> 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.<sup>975</sup>

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<sup>964</sup> *Id.* § 383.061(b).

<sup>965</sup> *See* Tex. Att'y Gen. Op. No. JC-291 (2000) (Concluding county development districts do not have the power to levy ad valorem taxes).

<sup>966</sup> Tex. Loc. Gov't Code § 383.063.

<sup>967</sup> *Id.* § 383.064.

<sup>968</sup> *Id.* § 383.062.

<sup>969</sup> *See id.* § 383.003(c), Tex. Water Code §§ 49.001(a)(1), .002(a).

<sup>970</sup> Tex. Loc. Gov't Code § 383.065.

<sup>971</sup> *Id.* § 383.066.

<sup>972</sup> *Id.* § 383.004(4).

<sup>973</sup> *Id.* § 383.081.

<sup>974</sup> *Id.* § 383.082.

<sup>975</sup> *Id.* § 383.083.



#### *IV. Economic Development Through Tourism*

### **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.<sup>976</sup> 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.<sup>977</sup>

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.<sup>978</sup> 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.<sup>979</sup>

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.<sup>980</sup> 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.<sup>981</sup> 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.<sup>982</sup> Additionally, notice of the hearing must be mailed to all of the landowners in the proposed district and to the developer of the project.<sup>983</sup> 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.<sup>984</sup>

At the required public hearing, the commissioners court must examine the sufficiency of the petition requesting creation of the development district.<sup>985</sup> 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

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<sup>976</sup> *Id.* § 383.021(a).

<sup>977</sup> *Id.* § 383.106(a).

<sup>978</sup> *Id.* § 383.022.

<sup>979</sup> *Id.* § 383.023.

<sup>980</sup> *Id.* § 383.024.

<sup>981</sup> *Id.*

<sup>982</sup> *Id.* § 383.025.

<sup>983</sup> *Id.*

<sup>984</sup> Tex. Gov’t Code §§ 551.041, .043, .049, .056.

<sup>985</sup> Tex. Loc. Gov’t Code § 383.026.

#### *IV. Economic Development Through Tourism*

commissioners court should comply with all the requirements of the Texas Open Meetings Act.<sup>986</sup>

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.<sup>987</sup> 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.<sup>988</sup> 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.<sup>989</sup>

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.<sup>990</sup>

#### **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.<sup>991</sup> 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.<sup>992</sup> 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.<sup>993</sup> 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.<sup>994</sup> 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.<sup>995</sup>

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<sup>986</sup> Tex. Gov't Code §§ 551.001 *et seq.*

<sup>987</sup> Tex. Loc. Gov't Code § 383.027(a).

<sup>988</sup> *Id.* § 383.027(b).

<sup>989</sup> *Id.*

<sup>990</sup> *Id.* § 383.027(c).

<sup>991</sup> *Id.* §§ 383.027(a), .028(a).

<sup>992</sup> *Id.* § 383.030.

<sup>993</sup> *Id.* § 383.103.

<sup>994</sup> *Id.* § 383.106(a).

<sup>995</sup> *Id.* § 383.031.

#### IV. Economic Development Through Tourism

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 14<sup>th</sup> day before the election.<sup>996</sup> 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 60<sup>th</sup> day before the election.<sup>997</sup> Then, the county is required to post the notice to the county's website not later than the 21<sup>st</sup> day before the election, if the county maintains a website.<sup>998</sup> 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.<sup>999</sup> 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.<sup>1000</sup>

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.**<sup>1001</sup>

#### 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.<sup>1002</sup>

**Time Frame for Ordering the Election.** The district should order the election at least 78 days prior to the date of the election.<sup>1003</sup> Section 383 of the Local Government Code does not address how far in advance the election must be ordered by the board.<sup>1004</sup> Nonetheless, it is advisable to

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<sup>996</sup> *Id.* § 383.032.

<sup>997</sup> *Id.* § 4.008(a).

<sup>998</sup> *Id.* §§ 4.003(b), 4.008(a).

<sup>999</sup> *Id.* § 4.003(b).

<sup>1000</sup> *See* Tex. Elec. Code §§ 272.001 *et. seq.*

<sup>1001</sup> Tex. Loc. Gov't Code § 383.033(b).

<sup>1002</sup> Tex. Elec. Code § 41.001(a).

<sup>1003</sup> *Id.* § 3.005(c).

<sup>1004</sup> Tex. Loc. Gov't Code § 383.031.

#### *IV. Economic Development Through Tourism*

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."<sup>1005</sup>

**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<sup>1006</sup> 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.<sup>1007</sup> 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.<sup>1008</sup> 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.<sup>1009</sup>

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.<sup>1010</sup> 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.<sup>1011</sup>

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<sup>1005</sup> Tex. Elec. Code § 3.005(b).

<sup>1006</sup> Tex. Elec. Code § 67.003.

<sup>1007</sup> 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.

<sup>1008</sup> Tex. Loc. Gov't Code § 383.034(b).

<sup>1009</sup> *Id.*

<sup>1010</sup> *Id.* § 383.034(c).

<sup>1011</sup> *Id.*

#### *IV. Economic Development Through Tourism*

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.<sup>1012</sup>

#### **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.<sup>1013</sup> 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 1<sup>st</sup>, 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 1<sup>st</sup>, 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.<sup>1014</sup>

#### **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.<sup>1015</sup>

#### **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.<sup>1016</sup> 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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<sup>1012</sup> *Id.* § 383.102(a) (Excluding Section 323.406 of the Tax Code which imposed a one year waiting period between elections).

<sup>1013</sup> Tex. Tax Code § 323.102(c).

<sup>1014</sup> Tex. Loc. Gov't Code § 383.101(b).

<sup>1015</sup> *Id.* § 383.102(a).

<sup>1016</sup> *Id.* § 383.106(a).

#### IV. Economic Development Through Tourism

cap.<sup>1017</sup> 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.<sup>1018</sup> 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.<sup>1019</sup> 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.<sup>1020</sup>

### **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.<sup>1021</sup> Alternatively, the board may call for an election to increase, decrease or abolish the tax.<sup>1022</sup> The election must be conducted using the same procedures that were followed for the creation of the tax.<sup>1023</sup> 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."<sup>1024</sup>

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.<sup>1025</sup>

### **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.<sup>1026</sup>

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<sup>1017</sup> *Id.* § 383.106(b).

<sup>1018</sup> *Id.*

<sup>1019</sup> *Id.* § 383.106(c).

<sup>1020</sup> *Id.*

<sup>1021</sup> *Id.* § 383.104(a).

<sup>1022</sup> *Id.*

<sup>1023</sup> *Id.* § 383.104(b).

<sup>1024</sup> *Id.*

<sup>1025</sup> *Id.* § 383.104(c).

<sup>1026</sup> *Id.* § 383.041(a).

#### IV. Economic Development Through Tourism

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.<sup>1027</sup> 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.<sup>1028</sup>

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.<sup>1029</sup> 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.<sup>1030</sup> 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.<sup>1031</sup>

A quorum of the board consists of three members.<sup>1032</sup> 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.<sup>1033</sup> The board president presides at all meetings, with the vice president fulfilling this duty in the absence of the president.<sup>1034</sup> Regular meetings are held to conduct the business of the district,<sup>1035</sup> with notice of the meetings posted in accordance with the Open Meetings Act at an accessible place in the district.<sup>1036</sup> 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.<sup>1037</sup> 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,<sup>1038</sup> so long as that employment or appointment does not violate other provisions of law.<sup>1039</sup>

The board of directors may vote to adopt bylaws to govern the affairs of the board.<sup>1040</sup> 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.<sup>1041</sup> A contract entered into without disclosure of a director's financial interest is invalid.<sup>1042</sup> 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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<sup>1027</sup> *Id.* § 383.042.

<sup>1028</sup> *See Id.* § 383.043 [Note: this section refers to section 50.026 of the Water Code. However, section 50.026 was repealed during the 74<sup>th</sup> Legislature and was renumbered section 49.026 of the Water Code.].

<sup>1029</sup> *Id.* § 383.041(b).

<sup>1030</sup> *Id.* §§ 383.029(a), .046 (Section 383.046 refer to Local Government Code § 375.067).

<sup>1031</sup> *Id.* §§ 383.029(a), .046 (Section 383.046 refer to Local Government Code § 375.070).

<sup>1032</sup> *Id.* § 383.048(a).

<sup>1033</sup> *Id.* § 383.047.

<sup>1034</sup> *Id.* § 383.048(b).

<sup>1035</sup> *Id.* § 383.053(a).

<sup>1036</sup> *Id.* § 383.053(b)-(c).

<sup>1037</sup> *Id.* § 383.052.

<sup>1038</sup> *Id.* § 383.050.

<sup>1039</sup> *See, for example,* Ch. 573 of the Government Code (Nepotism) and Ch. 171 of the Local Government Code (Conflict of Interest).

<sup>1040</sup> *Tex. Loc. Gov't Code* § 383.049.

<sup>1041</sup> *Id.* § 383.051(a)-(b).

<sup>1042</sup> *Id.* § 383.051(c).

#### IV. Economic Development Through Tourism

contract. Board members must file disclosure statements if they have certain relationships with vendors that the district does business with,<sup>1043</sup> and must receive Public Information Act and Open Meetings Act training because they are local government officials.<sup>1044</sup>

Replacements to the board are made by appointment of the commissioners court.<sup>1045</sup> 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.<sup>1046</sup> 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.<sup>1047</sup> Also, an interested landowner may ask the commissioners court to approve such a change.<sup>1048</sup> 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.<sup>1049</sup> 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.<sup>1050</sup>

#### **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;<sup>1051</sup> 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.<sup>1052</sup>

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

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<sup>1043</sup> *Id.* §§ 176.001–.013.

<sup>1044</sup> Tex. Gov. Code. §§ 551.005, 552.012.

<sup>1045</sup> Tex. Loc. Gov't Code § 383.045.

<sup>1046</sup> *Id.* § 383.044.

<sup>1047</sup> *Id.* § 383.084(a).

<sup>1048</sup> *Id.*

<sup>1049</sup> *Id.* § 383.084(b).

<sup>1050</sup> *Id.* § 383.084(a).

<sup>1051</sup> *Id.* § 383.122(a).

<sup>1052</sup> *Id.* § 383.123.



#### *IV. Economic Development Through Tourism*

under Section 383.024 of the Local Government Code.<sup>1053</sup> 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.<sup>1054</sup>

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.<sup>1055</sup> 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.<sup>1056</sup>

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<sup>1053</sup> *Id.* § 383.122(b).

<sup>1054</sup> *Id.* § 383.122(c).

<sup>1055</sup> *Id.* § 383.123.

<sup>1056</sup> *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.

## V. City, County, Cooperative and Regional Efforts

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.”<sup>1057</sup>

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.<sup>1058</sup>

### **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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<sup>1057</sup> Tex. Loc. Gov’t Code § 380.002(b).

<sup>1058</sup> 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.).

## V. City, County, Cooperative and Regional Efforts

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.<sup>1059</sup>

### **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.<sup>1060</sup> 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

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<sup>1059</sup> 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).

<sup>1060</sup> 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).

## V. City, County, Cooperative and Regional Efforts

to buildings and institutions operated by the city.<sup>1061</sup> 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.<sup>1062</sup>

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.<sup>1063</sup> 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.<sup>1064</sup> 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

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<sup>1061</sup> 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).

<sup>1062</sup> 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).

<sup>1063</sup> Tex. Gov’t Code § 1331.052(b). See Tex. Att’y Gen. Op. No. DM-185 (1992).

<sup>1064</sup> Tex. Loc. Gov’t Code § 380.002(c).

## V. City, County, Cooperative and Regional Efforts

create an unconstitutional debt for purposes of the Texas Constitution.<sup>1065</sup> 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.<sup>1066</sup> 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.<sup>1067</sup>

### 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.<sup>1068</sup>

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<sup>1065</sup> Tex. Const. art. III, §52-a.

<sup>1066</sup> Tex. Loc. Gov't Code § 273.001.

<sup>1067</sup> *Id.* § 252.022(a)(6).

<sup>1068</sup> 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.

## V. City, County, Cooperative and Regional Efforts

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.”<sup>1069</sup>

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;<sup>1070</sup> or
- 8) land that is owned by a municipally owned utility (under certain circumstances).<sup>1071</sup>

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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<sup>1069</sup> *Id.* § 272.001(a).

<sup>1070</sup> *Id.* § 272.001(b).

<sup>1071</sup> *Id.* § 272.001(k).

## V. City, County, Cooperative and Regional Efforts

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.<sup>1072</sup>

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.<sup>1073</sup> 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.<sup>1074</sup> 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.<sup>1075</sup>

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.<sup>1076</sup> 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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<sup>1072</sup> *Id.* § 272.001(l).

<sup>1073</sup> *Id.* § 272.001(i).

<sup>1074</sup> *Id.* § 272.001(j).

<sup>1075</sup> *Id.* § 501.154.

<sup>1076</sup> *Id.* § 253.009.



## V. City, County, Cooperative and Regional Efforts

- 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.<sup>1077</sup> The consideration for this transfer is an agreement between the city and the economic development corporation.<sup>1078</sup> 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.<sup>1079</sup> However, if the city acquired the property through eminent domain, it may not transfer the property to an economic development corporation.<sup>1080</sup>

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.<sup>1081</sup> 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.<sup>1082</sup> Within an industrial district, the city may enter into written contracts to guarantee a business that its property will not be

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<sup>1077</sup> *Id.*, § 253.012(a)-(c).

<sup>1078</sup> *Id.*, § 253.012(d).

<sup>1079</sup> *Id.*, § 253.012(e).

<sup>1080</sup> *Id.*, § 253.012(f).

<sup>1081</sup> *Id.*, § 253.011.

<sup>1082</sup> *Id.*, § 42.044(a).

## V. City, County, Cooperative and Regional Efforts

annexed by the city for a period of up to 15 years.<sup>1083</sup> 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.<sup>1084</sup> 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.<sup>1085</sup> 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.<sup>1086</sup>

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.<sup>1087</sup> 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

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<sup>1083</sup> *Id.* § 42.044(c).

<sup>1084</sup> *Id.* § 42.044(d).

<sup>1085</sup> *Id.* § 42.044(e).

<sup>1086</sup> *Id.* § 42.044(f).

<sup>1087</sup> *Id.* § 42.045.

*V. City, County, Cooperative and Regional Efforts*

“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.<sup>1088</sup> The Act allows local governments to contract with the State or with other corporate entities organized under state law,<sup>1089</sup> 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.<sup>1090</sup> Within the Act, there is a category allowing the joint pursuit of “other governmental functions in which the contracting parties are mutually interested.”<sup>1091</sup> 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.<sup>1092</sup>

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;<sup>1093</sup>
- state the purpose, terms, rights and duties of the contracting parties;<sup>1094</sup>
- 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;<sup>1095</sup>
- fairly compensate the performing party for the services or functions performed under the contract;<sup>1096</sup> and
- may have a specified term of years that may be renewed.<sup>1097</sup>

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<sup>1088</sup> Tex. Gov’t Code § 791.001.

<sup>1089</sup> *Id.* § 791.003(4)-(5) (Defines “local government” and “political subdivision”).

<sup>1090</sup> *Id.* § 791.003(3) (Defines “governmental functions and services”).

<sup>1091</sup> *Id.* § 791.003(3)(N).

<sup>1092</sup> *Id.* § 791.011(c)(2).

<sup>1093</sup> *Id.* § 791.011(d)(1).

<sup>1094</sup> *Id.* § 791.011(d)(2).

<sup>1095</sup> *Id.* § 791.011(d)(3).

<sup>1096</sup> *Id.* § 791.011(e).

<sup>1097</sup> *Id.* § 791.011(f).

## V. City, County, Cooperative and Regional Efforts

Both parties to a contract under the Act must have specific and individual statutory authorization to perform for the contract to be valid.<sup>1098</sup>

The parties to an interlocal contract may create an administrative agency or designate an existing local government to supervise the performance of the contract.<sup>1099</sup> The agency or designated local government may employ personnel, perform administrative activities, and provide services necessary to perform the interlocal contract.<sup>1100</sup> Additionally, local governments may provide in an interlocal contract for the submission of disputes to alternative dispute resolution.<sup>1101</sup> 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.<sup>1102</sup>

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.<sup>1103</sup> 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.<sup>1104</sup> 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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<sup>1098</sup> *Id.* § 791.011(c)(2). See Tex. Att’y Gen. Op. No. GA-0917 (2012).

<sup>1099</sup> Tex. Gov’t Code § 791.013(a).

<sup>1100</sup> *Id.* § 791.013(b).

<sup>1101</sup> *Id.* § 791.015.

<sup>1102</sup> *Id.* § 791.011(j).

<sup>1103</sup> *Id.* § 791.013(c).

<sup>1104</sup> Tex. Loc. Gov’t Code § 391.001(a)(2)(C).

## V. City, County, Cooperative and Regional Efforts

1973.<sup>1105</sup> 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.<sup>1106</sup> 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.<sup>1107</sup> 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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<sup>1105</sup> 23 U.S.C.A. § 101, *et seq.*

<sup>1106</sup> 42 U.S.C.A. § 3121, *et seq.* (Public Works and Economic Development Act of 1965).

<sup>1107</sup> 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 assist 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](http://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."<sup>1108</sup> 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.<sup>1109</sup>

A county industrial commission consists of at least seven county residents appointed by the county judge.<sup>1110</sup> Members serve two-year terms without pay, although the county may pay for "necessary expenses."<sup>1111</sup>

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<sup>1108</sup> Tex. Loc. Gov't Code § 381.001(f).

<sup>1109</sup> *Id.* § 381.001(g).

<sup>1110</sup> *Id.* § 381.001(a)-(b).

<sup>1111</sup> *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.<sup>1112</sup> 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."<sup>1113</sup>

The fund is administered by a county board of development consisting of five members appointed to two-year terms by the commissioners court.<sup>1114</sup> 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.<sup>1115</sup> 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.<sup>1116</sup>

## 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;<sup>1117</sup>
- small or disadvantaged business development;<sup>1118</sup>
- development of business locations within the county;<sup>1119</sup>
- promotion or advertisement of the county and its vicinity to attract conventions, visitors and businesses;<sup>1120</sup>
- encouragement of county contract awards to businesses owned by women and minorities;<sup>1121</sup>
- support comprehensive literacy programs for the benefit of county residents;<sup>1122</sup> and

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<sup>1112</sup> *Id.* § 381.002(a).

<sup>1113</sup> *Id.* § 381.002(a)-(b).

<sup>1114</sup> *Id.* § 381.002(c).

<sup>1115</sup> *Id.* § 381.002(d).

<sup>1116</sup> *Id.* § 381.002(g).

<sup>1117</sup> *Id.* § 381.004(b)(1).

<sup>1118</sup> *Id.* § 381.004(b)(2).

<sup>1119</sup> *Id.* § 381.004(b)(3).

<sup>1120</sup> *Id.* § 381.004(b)(4).

<sup>1121</sup> *Id.* § 381.004(b)(5).

## V. City, County, Cooperative and Regional Efforts

- encouragement and promotion of the arts.<sup>1123</sup>

Section 381.004 allows the county to use county employees or funds to pursue the above programs.<sup>1124</sup> Additionally, the law allows counties to accept contributions, gifts or other resources.<sup>1125</sup> It should be noted that the County Purchasing Act allows the county to exempt these program contracts from competitive bidding requirements.<sup>1126</sup>

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.<sup>1127</sup> The commissioners court is authorized to make loans, grant public money, or provide county personnel and services to permissible Chapter 381 economic development programs.<sup>1128</sup>

Also, counties may form a county alliance corporation under state law through the Development Corporation Act.<sup>1129</sup> A county alliance corporation is simply a nonprofit corporation formed by a county alliance of two or more counties to pursue economic development.<sup>1130</sup> 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.<sup>1131</sup> 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”<sup>1132</sup>, unless the Legislature authorizes a county to undertake programs to provide for loans and grants of public money.<sup>1133</sup> 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.<sup>1134</sup> 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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<sup>1122</sup> *Id.* § 381.004(b)(6).

<sup>1123</sup> *Id.* § 381.004(b)(7).

<sup>1124</sup> *Id.* § 381.004(c)(3).

<sup>1125</sup> *Id.* § 381.004(c)(4).

<sup>1126</sup> *Id.* § 262.024(a)(10).

<sup>1127</sup> Tex. Att’y Gen. LO-98-007 (1998).

<sup>1128</sup> Tex. Loc. Gov’t Code § 381.004(h).

<sup>1129</sup> *See id.* §§ 506.001 *et seq.*

<sup>1130</sup> *Id.* §§ 506.001, .002.

<sup>1131</sup> *Id.* §§ 506.051, .053.

<sup>1132</sup> Tex. Const. art. III, § 52(a).

<sup>1133</sup> Tex. Const. art. III, § 52-a.

<sup>1134</sup> Tex. Loc. Gov’t Code § 381.004(h).



*V. City, County, Cooperative and Regional Efforts*

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.<sup>1135</sup>

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.<sup>1136</sup> 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.<sup>1137</sup> 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.<sup>1138</sup> 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

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<sup>1135</sup> *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).

<sup>1136</sup> Tex. Tax Code §§ 311.010(h), .015.

<sup>1137</sup> Tex. Gov't Code §§ 1509.001(a)(2), .003, .004.

<sup>1138</sup> *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).

## *VI. Issuing Debt to Finance Economic Development*

purpose.<sup>1139</sup> 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.<sup>1140</sup> 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.<sup>1141</sup> 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.<sup>1142</sup> 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.<sup>1143</sup> 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.<sup>1144</sup> 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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<sup>1139</sup> *Id.* § 1509.005.

<sup>1140</sup> Tex. Loc. Gov’t Code §§ 501.006, 504.303, 505.104, .302(2).

<sup>1141</sup> *Id.* § 501.207.

<sup>1142</sup> 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.

<sup>1143</sup> Tex. Gov’t Code § 1202.001(3).

<sup>1144</sup> *Id.* §1202.007.

## *VI. Issuing Debt to Finance Economic Development*

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

## *VI. Issuing Debt to Finance Economic Development*

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<sup>1145</sup> 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.”<sup>1146</sup> 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.

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<sup>1145</sup> *Id.* § 1202.006.

<sup>1146</sup> 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).<sup>1147</sup> 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.<sup>1148</sup> 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:<sup>1149</sup>

- 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,

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<sup>1147</sup> Tex. Loc. Gov't Code § 372.003(a).

<sup>1148</sup> *Id.* § 372.003(d).

<sup>1149</sup> *Id.* § 372.003(b).

## VII. Other Economic Development Initiatives

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;<sup>1150</sup> 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.***<sup>1151</sup>

The petition must state:<sup>1152</sup>

- 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.<sup>1153</sup> Second, the petition must also be signed by record owners of real property liable for assessment under the proposal who:<sup>1154</sup>

- 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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<sup>1150</sup> See *id.* § 372.003(b-1).

<sup>1151</sup> *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).

<sup>1152</sup> Tex. Loc. Gov’t Code § 372.005(a).

<sup>1153</sup> *Id.* § 372.005(b)(1).

<sup>1154</sup> *Id.* § 372.005(b)(2).

## VII. Other Economic Development Initiatives

The petition may be filed with the city secretary or an officer performing the city secretary's functions.<sup>1155</sup>

### 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.*<sup>1156</sup>

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.<sup>1157</sup> Second, it must include representation by record owners of real property liable for assessment under the proposal who:<sup>1158</sup>

- 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.*<sup>1159</sup>

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.*<sup>1160</sup>

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.<sup>1161</sup> 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.<sup>1162</sup> The notice must contain the following information:<sup>1163</sup>

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<sup>1155</sup> *Id.* § 372.005(c).

<sup>1156</sup> *Id.* § 372.008(a).

<sup>1157</sup> *Id.* § 372.008(b)(1)

<sup>1158</sup> *Id.* § 372.008(b)(2).

<sup>1159</sup> *Id.* § 372.007(a).

<sup>1160</sup> *Id.* § 372.009.

<sup>1161</sup> *Id.* § 372.009(c).

<sup>1162</sup> *Id.* § 372.009(d).

<sup>1163</sup> *Id.* § 372.009(c).



## VII. Other Economic Development Initiatives

- 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.<sup>1164</sup>

### Step Five:

***The governing body of the city or county must adopt a resolution by majority vote authorizing the creation of a PID.***<sup>1165</sup>

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.<sup>1166</sup>

### Step Six:

***Twenty days after authorization of the PID has taken effect, the city or county may begin construction of the improvements.***<sup>1167</sup>

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.***<sup>1168</sup>

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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<sup>1164</sup> *Id.* § 372.009(b).

<sup>1165</sup> *Id.* § 372.010(a).

<sup>1166</sup> *Id.* § 372.010(b).

<sup>1167</sup> *Id.* § 372.010(c).

<sup>1168</sup> *Id.* § 372.013.

## VII. Other Economic Development Initiatives

An assessment plan must be included in the annual service plan.<sup>1169</sup> The assessment plan is based upon the assessments made by the city or the county.<sup>1170</sup> 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.<sup>1171</sup> The city or county may establish by ordinance or order:<sup>1172</sup>

- 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 various classes of improvements.

Costs for improvements may be assessed either by:<sup>1173</sup>

- 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.<sup>1174</sup> 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.<sup>1175</sup> The city and county are responsible for payment of assessments against exempt municipal or county property within the district.<sup>1176</sup> 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.***<sup>1177</sup>

If the city forms the district, a copy of the proposed assessment roll must be filed with the city secretary.<sup>1178</sup> 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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<sup>1169</sup> *Id.* § 372.014(a).

<sup>1170</sup> *Id.* § 372.015(a).

<sup>1171</sup> *Id.*

<sup>1172</sup> *Id.* § 372.015(c).

<sup>1173</sup> *Id.* § 372.015(b).

<sup>1174</sup> *Id.* § 372.015(d).

<sup>1175</sup> *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).

<sup>1176</sup> *Id.* § 372.014(b).

<sup>1177</sup> *Id.* § 372.016.

<sup>1178</sup> *Id.* § 372.016(b).

## VII. Other Economic Development Initiatives

- 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.<sup>1179</sup> At the public hearing, the governing body must hear and rule on any objections that are raised.<sup>1180</sup> 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.***<sup>1181</sup>

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<sup>1182</sup> 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.<sup>1183</sup> 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.<sup>1184</sup>

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.<sup>1185</sup> 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.<sup>1186</sup> 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.<sup>1187</sup> 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.<sup>1188</sup> Foreclosure of accrued installments does not eliminate the outstanding principal balance of the

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<sup>1179</sup> *Id.* § 372.016(c).

<sup>1180</sup> *Id.* § 372.017(a).

<sup>1181</sup> *Id.* § 372.017(b).

<sup>1182</sup> *See id.* § 372.023(h).

<sup>1183</sup> *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).

<sup>1184</sup> *Id.* § 372.0175.

<sup>1185</sup> *Id.* § 372.018(a).

<sup>1186</sup> *Id.* § 372.018(b).

<sup>1187</sup> *Id.* § 372.018(c)-(d).

<sup>1188</sup> *Id.* § 372.018(e).

## VII. Other Economic Development Initiatives

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.<sup>1189</sup> The interest on any delinquent installment shall be added to each subsequent installment until all delinquent installments are paid.<sup>1190</sup> However, a special assessment is not considered a tax as that term is used in the Texas Constitution.<sup>1191</sup> 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.<sup>1192</sup>

### 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.***<sup>1193</sup>

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.<sup>1194</sup> 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.<sup>1195</sup> Cost that is payable from special assessments that have been paid in full must be paid from that assessment.<sup>1196</sup> Costs payable from a special assessment that is payable in installments may be paid by any combination of the following:<sup>1197</sup>

- 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.<sup>1198</sup>

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.<sup>1199</sup>

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<sup>1189</sup> *Id.* § 372.018(f).

<sup>1190</sup> *Id.* § 372.018(a).

<sup>1191</sup> Tex. Att'y Gen. Op. No. JC-386 (2001).

<sup>1192</sup> Tex. Att'y Gen. Op. No. GA-237 (2004). *See id.* at 2 n. 2.

<sup>1193</sup> Tex. Loc. Gov't Code § 372.019.

<sup>1194</sup> *Id.* § 372.023.

<sup>1195</sup> *Id.* § 372.023(b).

<sup>1196</sup> *Id.* § 372.023(c).

<sup>1197</sup> *Id.* § 372.023(d).

<sup>1198</sup> *See id.* § 372.024.

<sup>1199</sup> *Id.* § 372.023(d-1).

## VII. Other Economic Development Initiatives

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.<sup>1200</sup>

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.<sup>1201</sup> 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.<sup>1202</sup> 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.<sup>1203</sup>

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.<sup>1204</sup> 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.<sup>1205</sup>

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.<sup>1206</sup>

### **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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<sup>1200</sup> *Id.* § 372.023(g).

<sup>1201</sup> *Id.* § 372.022.

<sup>1202</sup> *Id.* § 372.0035.

<sup>1203</sup> *See* House Bill 1136, 86<sup>th</sup> Leg. R.S. (2019).

<sup>1204</sup> Tex. Loc. Gov't Code § 372.0035(b), (c).

<sup>1205</sup> *Id.* § 372.005(b-1).

<sup>1206</sup> *Id.* § 372.0035(d).

## VII. Other Economic Development Initiatives

PID.<sup>1207</sup> Public notice and a public hearing must be held in the same manner as those required to create a PID.<sup>1208</sup> 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.<sup>1209</sup>

A municipal management district is considered a governmental agency and a political subdivision of the state.<sup>1210</sup> 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.***<sup>1211</sup>

This petition must include:<sup>1212</sup>

- 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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<sup>1207</sup> *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.).

<sup>1208</sup> *Id.* § 372.011.

<sup>1209</sup> There are specific municipal management district that have there own statute. These statutes can be found in the Special District Local Law Code.

<sup>1210</sup> Tex. Loc. Gov’t Code. § 375.004(a).

<sup>1211</sup> *Id.* § 375.022(b).

<sup>1212</sup> *Id.* § 375.022(c).

## VII. Other Economic Development Initiatives

- 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.<sup>1213</sup> 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.<sup>1214</sup>

### Step Two:

***TCEQ, or a person authorized by the TCEQ, sets a date, time, and place for a public hearing to consider the petition.***<sup>1215</sup>

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.<sup>1216</sup> The first publication must occur not later than the 31<sup>st</sup> 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.<sup>1217</sup> Also, the city may request for TCEQ notice of creation of a district.<sup>1218</sup> 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.***<sup>1219</sup>

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.***<sup>1220</sup>

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

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<sup>1213</sup> *Id.* § 375.022(c)(1).

<sup>1214</sup> *Id.* § 375.022(a).

<sup>1215</sup> *Id.* § 375.023.

<sup>1216</sup> *Id.* § 375.024(a).

<sup>1217</sup> *Id.* § 375.024(b).

<sup>1218</sup> *Id.* § 375.024(c).

<sup>1219</sup> *Id.* § 375.024(e).

<sup>1220</sup> *Id.* § 375.025.

## VII. Other Economic Development Initiatives

the petition, TCEQ has to determine if the project is feasible, necessary, and a public benefit.<sup>1221</sup> 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<sup>1222</sup> and the boundaries of the district<sup>1223</sup>.

After granting the petition, TCEQ will appoint the initial board of directors.<sup>1224</sup> The board of directors is composed of at least five but not more than 30 directors who serve staggered four years.<sup>1225</sup> 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.<sup>1226</sup> To be qualified to serve as a director, a person must be 18 years of age and either:<sup>1227</sup>

- 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.***<sup>1228</sup>

Each of the appointed directors must execute a bond of \$10,000 and take a written and oral oath of office.<sup>1229</sup> 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.<sup>1230</sup> 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.<sup>1231</sup> 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.<sup>1232</sup>

Directors are not compensated for their service, but are reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a director.<sup>1233</sup> Also, the director's position is not considered a civil office of emolument.<sup>1234</sup>

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<sup>1221</sup> *Id.* § 375.025(c).

<sup>1222</sup> *Id.* § 375.026.

<sup>1223</sup> *Id.* § 375.041.

<sup>1224</sup> *Id.* § 375.026.

<sup>1225</sup> *Id.* § 375.061.

<sup>1226</sup> *Id.* § 375.062.

<sup>1227</sup> *Id.* § 375.063.

<sup>1228</sup> *Id.* § 375.068.

<sup>1229</sup> *Id.* § 375.067.

<sup>1230</sup> *Id.* § 375.068.

<sup>1231</sup> *Id.* § 375.071.

<sup>1232</sup> *Id.* § 375.072.

<sup>1233</sup> *Id.* § 375.070.



## VII. Other Economic Development Initiatives

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.<sup>1235</sup> 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.<sup>1236</sup> A vacancy is filled by the remaining members of the board for the unexpired term.<sup>1237</sup>

### 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.<sup>1238</sup> Specifically, the district has the power to impose an ad valorem tax to provide for a mass transit system.<sup>1239</sup> The district may do road projects.<sup>1240</sup> Also, a district may levy impact fees pursuant to the state impact fee act in Chapter 395 of the Local Government Code.<sup>1241</sup> 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.<sup>1242</sup>

Under certain circumstances, a district may levy special assessments against the benefitted property within the district.<sup>1243</sup> 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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<sup>1234</sup> *Id.* § 375.069.

<sup>1235</sup> *Id.* § 375.064.

<sup>1236</sup> *Id.* § 375.065.

<sup>1237</sup> *Id.* § 375.066.

<sup>1238</sup> *Id.* § 375.091. *See* Tex. Const. art. XVI, § 59.

<sup>1239</sup> 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).

<sup>1240</sup> Tex. Loc. Gov't Code § 375.0921(a). *See id.* § 375.0922 (Road standards and requirements for road projects).

<sup>1241</sup> *Id.* §§ 375.141-.142.

<sup>1242</sup> *Id.* § 375.071.

<sup>1243</sup> *Id.* §§ 375.111, .112.

## VII. Other Economic Development Initiatives

- 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.<sup>1244</sup>

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.<sup>1245</sup> 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.<sup>1246</sup>

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:<sup>1247</sup>

- 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.<sup>1248</sup> 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.<sup>1249</sup> 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.<sup>1250</sup> 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.<sup>1251</sup> The notice must include:<sup>1252</sup>

- 1) Time and place of the hearing;
- 2) General nature of the proposed improvement project or service;

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<sup>1244</sup> *Id.* § 375.112 (a)(1)-(2).

<sup>1245</sup> *Id.* § 375.112(a)(4).

<sup>1246</sup> *Id.* § 375.112(a)(3), (5). *See* Tex. Transp. Code chs. 365, 441, Tex. Water Code ch. 54 (Authorization to acquire real property).

<sup>1247</sup> Tex. Loc. Gov't Code § 375.114. *See id.* § 375.119(1).

<sup>1248</sup> *Id.* §§ 375.111, .117(a).

<sup>1249</sup> *Id.* §§ 375.113.

<sup>1250</sup> *Id.* § 375.115(a).

<sup>1251</sup> *Id.* § 375.115(c).

<sup>1252</sup> *Id.* § 375.115(b).

## VII. Other Economic Development Initiatives

- 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.<sup>1253</sup> Also, the board must hear and rule on all objections to each proposed assessment.<sup>1254</sup> 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.<sup>1255</sup>

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.<sup>1256</sup> Governmental entities may contract with the district to provide for the payment of assessments on publicly owned property.<sup>1257</sup> Certain residential properties of lesser density than large apartment complexes are exempt from assessments and impact fees.<sup>1258</sup>

A district may incur liabilities, borrow money, issue bonds and notes, and purchase, sell, or receive real and personal property.<sup>1259</sup> 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.<sup>1260</sup> Also, the approval of the governing body of the city must be obtained to issue bonds for an improvement project.<sup>1261</sup> Also, if the district is issuing bonds to provide water, sewage, or drainage facilities, the district must get the approval of TCEQ.<sup>1262</sup> 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.<sup>1263</sup>

A district may own and operate facilities inside or outside of the district, and may enter into contracts for joint use of district facilities.<sup>1264</sup> It may charge rents or fees for use of constructed improvements owned or operated by the district.<sup>1265</sup> The district may hire or dismiss employees and consultants necessary to conduct the affairs of the district.<sup>1266</sup> 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.<sup>1267</sup>

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<sup>1253</sup> *Id.* § 375.116.

<sup>1254</sup> *Id.* § 375.118(a).

<sup>1255</sup> *Id.* § 375.118(c).

<sup>1256</sup> *Id.* § 375.119.

<sup>1257</sup> *Id.* § 375.162.

<sup>1258</sup> *Id.* § 375.161.

<sup>1259</sup> *Id.* § 375.092(d)-(e).

<sup>1260</sup> *Id.* §§ 375.242-.243.

<sup>1261</sup> *Id.* § 375.207(a).

<sup>1262</sup> *Id.* § 375.208.

<sup>1263</sup> *Id.* § 375.207(c).

<sup>1264</sup> *Id.* § 375.092(f)-(g).

<sup>1265</sup> *Id.* § 375.092(h).

<sup>1266</sup> *Id.* § 375.096(a)(1)-(2).

<sup>1267</sup> *Id.* § 375.092(a), (o); .094. *See* Tex. Att'y Gen. Op. No. GA-268 (2004).

## VII. Other Economic Development Initiatives

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.<sup>1268</sup> 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.<sup>1269</sup> 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.<sup>1270</sup>

### 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.<sup>1271</sup> 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:<sup>1272</sup>

- 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;

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<sup>1268</sup> Tex. Loc. Gov't Code § 375.222.

<sup>1269</sup> *Id.* § 375.221.

<sup>1270</sup> *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).

<sup>1271</sup> Tex. Loc. Gov't Code § 375.351.

<sup>1272</sup> *Id.* § 375.352.

## VII. Other Economic Development Initiatives

- 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.<sup>1273</sup> 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.<sup>1274</sup>

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.<sup>1275</sup> 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.<sup>1276</sup>

### Dissolution of a District

The district may be dissolved in several ways:

- upon a majority vote of the board of directors;<sup>1277</sup>
- 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;<sup>1278</sup>
- 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.<sup>1279</sup>

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.<sup>1280</sup> The district

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<sup>1273</sup> *Id.* § 375.353.

<sup>1274</sup> *Id.* § 375.357.

<sup>1275</sup> *Id.* § 375.355.

<sup>1276</sup> *Id.* § 375.356.

<sup>1277</sup> *Id.* § 375.261.

<sup>1278</sup> *Id.* § 375.262(1).

<sup>1279</sup> *Id.* § 375.263(a).

<sup>1280</sup> *Id.* § 375.263(b).

## VII. Other Economic Development Initiatives

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.<sup>1281</sup>

### 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.<sup>1282</sup> To create a district, a city must call an election through an order that defines the proposed boundaries of the district.<sup>1283</sup> The ballot at this election must be printed to allow voting for or against the following proposition:<sup>1284</sup>

**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.<sup>1285</sup> 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.<sup>1286</sup>

### Sales Tax

Chapter 323 of the Tax Code generally governs the specifics of assessing and administering the tax.<sup>1287</sup> The district may not impose a sales and use tax that would result in a combined local tax

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<sup>1281</sup> *Id.* §§ 375.263(b), .264.

<sup>1282</sup> *Id.* § 377.002.

<sup>1283</sup> *Id.* § 377.021(a)-(b).

<sup>1284</sup> *Id.* § 377.021(c).

<sup>1285</sup> *Id.* § 377.021(g).

<sup>1286</sup> *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).

<sup>1287</sup> *Id.* § 377.102(a).

## VII. Other Economic Development Initiatives

rate of more than two percent in any location in the district.<sup>1288</sup> The sales tax rate adopted must be one-eighth, one-fourth, three-eighths, or one-half of one percent.<sup>1289</sup> The rate may be changed at a subsequent election.<sup>1290</sup> The ballot at this election must be printed to allow voting for or against the following proposition:<sup>1291</sup>

**The adoption of a sales and use tax at the rate of (*insert one-fourth, three-eighths, 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.<sup>1292</sup> Revenue from the sales tax must be deposited in the district's development project fund.<sup>1293</sup>

### 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.<sup>1294</sup> The district must deposit the sales tax proceeds and all revenue from the sale of bonds or other obligations into the fund.<sup>1295</sup> 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.<sup>1296</sup> A development project may consist of a Type B project as defined by the Development Corporation Act (see Chapter I of this handbook).<sup>1297</sup> Also, a project may include a convention center facility or related improvements, including parking facilities and civic center hotels.<sup>1298</sup>

The district may:<sup>1299</sup>

- 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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<sup>1288</sup> *Id.* § 377.101(c).

<sup>1289</sup> *Id.* § 377.103.

<sup>1290</sup> *Id.* § 377.104(a).

<sup>1291</sup> *Id.* § 377.104(c).

<sup>1292</sup> *Id.* § 377.106.

<sup>1293</sup> *Id.* § 377.108.

<sup>1294</sup> *Id.* § 377.072(a).

<sup>1295</sup> *Id.* § 377.072(b).

<sup>1296</sup> *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]).

<sup>1297</sup> *Id.* § 377.001(3)(A).

<sup>1298</sup> *Id.* § 377.001(3)(B).

<sup>1299</sup> *Id.* § 377.071(a)-(b).

## VII. Other Economic Development Initiatives

- perform any act necessary to the full exercise of the district's power.

It may not levy an ad valorem tax.<sup>1300</sup> It may issue bonds or other obligations to pay the costs of a development project after approval by the attorney general.<sup>1301</sup> 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.<sup>1302</sup> 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.<sup>1303</sup> 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.<sup>1304</sup> 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.<sup>1305</sup> Board members are not compensated, but may be reimbursed for actual and necessary expenses.<sup>1306</sup> Board meetings must be in the city that created the district, not in the ETJ or elsewhere.<sup>1307</sup>

### 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.<sup>1308</sup> The ballot at this election must be printed to allow voting for or against the following proposition:<sup>1309</sup>

**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.<sup>1310</sup> 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.<sup>1311</sup>

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<sup>1300</sup> *Id.* § 377.071(c).

<sup>1301</sup> *Id.* § 377.073.

<sup>1302</sup> *Id.* § 377.022.

<sup>1303</sup> *Id.* § 377.051.

<sup>1304</sup> *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).

<sup>1305</sup> *Id.* § 377.051(d).

<sup>1306</sup> *Id.* § 377.052.

<sup>1307</sup> *Id.* § 377.053.

<sup>1308</sup> *Id.* § 377.104(a).

<sup>1309</sup> *Id.* § 377.104(d).

<sup>1310</sup> *Id.* §§ 377.106, .107(c).

<sup>1311</sup> *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.<sup>1312</sup> 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:<sup>1313</sup>

- 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;<sup>1314</sup>
- 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:<sup>1315</sup>
  - 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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<sup>1312</sup> *Id.* § 378.002.

<sup>1313</sup> *Id.* § 378.003(a).

<sup>1314</sup> *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).

<sup>1315</sup> 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.).

### *VII. Other Economic Development Initiatives*

- 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.<sup>1316</sup> 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.<sup>1317</sup>

**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.<sup>1318</sup>

**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.<sup>1319</sup>

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<sup>1316</sup> Tex. Loc. Gov't Code § 378.003(b).

<sup>1317</sup> *Id.* § 378.004(1).

<sup>1318</sup> *Id.* § 378.004(2).

<sup>1319</sup> *Id.* § 378.004(3).

## VII. Other Economic Development Initiatives

**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.<sup>1320</sup>

### 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:<sup>1321</sup>

- 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;<sup>1322</sup> 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:<sup>1323</sup>
  - 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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<sup>1320</sup> *Id.* § 378.004(4).

<sup>1321</sup> *Id.* § 379.003(a)(1)-(3).

<sup>1322</sup> 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).

<sup>1323</sup> Tex. Tax Code § 312.202(a)(1) - (6).

## VII. Other Economic Development Initiatives

- 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.<sup>1324</sup>

### 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.<sup>1325</sup>

**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.<sup>1326</sup>

**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.<sup>1327</sup>

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<sup>1324</sup> Tex. Loc. Gov't Code § 379.003(b).

<sup>1325</sup> *Id.* § 379.004(1).

<sup>1326</sup> *Id.* § 379.004(2).

<sup>1327</sup> *Id.* § 379.004(3).

## VII. Other Economic Development Initiatives

**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.<sup>1328</sup>

### 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.<sup>1329</sup> 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.<sup>1330</sup>

### Improvement Districts in Certain Counties

Chapter 382 of the Local Government Code allows certain counties<sup>1331</sup> to engage in economic development projects or create a public improvement district to oversee and manage economic development projects for the county.<sup>1332</sup> 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.<sup>1333</sup> The petition must state:<sup>1334</sup>

- 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;

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<sup>1328</sup> *Id.* § 379.004(4).

<sup>1329</sup> *Id.* § 379.005(a).

<sup>1330</sup> *Id.* § 379.005(b).

<sup>1331</sup> *See id.* § 382.002.

<sup>1332</sup> *Id.* § 382.003(b); .004.

<sup>1333</sup> *Id.* §§ 382.006(a), .004.

<sup>1334</sup> *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).

## VII. Other Economic Development Initiatives

- 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.<sup>1335</sup> Second, the petition must also be signed by record owners of real property liable for assessment under the proposal who:<sup>1336</sup>

- 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:<sup>1337</sup>

- 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.<sup>1338</sup> The board of directors will consist of seven directors to serve staggered two-year terms, with three or four directors' terms expiring June 1<sup>st</sup> of each year. To serve as a director, a person must be at least 18 years old.<sup>1339</sup> However, if the population of the district is more than 1,000, to be eligible to be director, a person must:<sup>1340</sup>

- 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

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<sup>1335</sup> See *id.* § 372.005(b)(1).

<sup>1336</sup> See *id.* § 372.005(b)(2).

<sup>1337</sup> *Id.* § 382.006(c).

<sup>1338</sup> *Id.* § 382.051.

<sup>1339</sup> *Id.* § 382.052(a).

<sup>1340</sup> *Id.* § 382.052(b).

## VII. Other Economic Development Initiatives

- 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.<sup>1341</sup> 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 than \$50 a day for each day that the director performs the duties of a director.<sup>1342</sup> Vacancies on the board are filled by the county.<sup>1343</sup> If a conflict of interest arises, Chapter 171 of the Local Government Code governs.<sup>1344</sup>

The county may authorize the board to adopt rules<sup>1345</sup>:

- 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.<sup>1346</sup>

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.<sup>1347</sup>

### **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:<sup>1348</sup>

- 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.<sup>1349</sup>

<sup>1341</sup> *Id.* § 382.056. *See id.* § 375.067 (Refers to bond of the directors).

<sup>1342</sup> *Id.* § 382.055(b).

<sup>1343</sup> *Id.* § 382.053(a).

<sup>1344</sup> *Id.* § 382.054.

<sup>1345</sup> *Id.* § 382.106.

<sup>1346</sup> *Id.* § 382.108(a). *See id.* § 382.108(b)-(c) (Deals with conflict and providing safe and orderly use).

<sup>1347</sup> *Id.* § 382.107.

<sup>1348</sup> *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).

## VII. Other Economic Development Initiatives

The district may not exercise the power of eminent domain.<sup>1350</sup> Some districts may annex or exclude land from the district as provided by Subchapter J of Chapter 49 of the Water Code.<sup>1351</sup> 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.<sup>1352</sup> Also, the board is not granted any right-of-way management authority over public utilities.<sup>1353</sup> 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.<sup>1354</sup>

The district can only issue bonds or negotiable promissory notes with the approval of the commissioners court of the county that created the district.<sup>1355</sup> Bonds may only be issued with a majority vote of the voters of the district voting in an election held for that purpose.<sup>1356</sup> 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.<sup>1357</sup>

### Authority to Impose Assessments and Taxes

A county or district may accomplish its purposes and pay the cost of services and improvements by imposing:<sup>1358</sup>

- 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.<sup>1359</sup> 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.<sup>1360</sup>

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<sup>1349</sup> Tex. Loc. Gov't Code § 382.101(c). *See id.* § 382.109 (Dealing with the county delegating authorization of road projects to the district).

<sup>1350</sup> *Id.* § 382.112.

<sup>1351</sup> *Id.* § 382.113(a)-(b). *See id.* § 382.002(1) (Describes which districts are able to annex or exclude land).

<sup>1352</sup> *Id.* § 382.113(c).

<sup>1353</sup> *Id.* § 382.110.

<sup>1354</sup> *Id.* § 382.151.

<sup>1355</sup> *Id.* § 382.152(a)-(b).

<sup>1356</sup> *Id.* § 382.152(a).

<sup>1357</sup> *Id.* § 382.152(c).

<sup>1358</sup> *Id.* § 382.153(a).

<sup>1359</sup> *Id.* § 382.153(b).

<sup>1360</sup> *Id.* § 382.153(c).



## VII. Other Economic Development Initiatives

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.<sup>1361</sup> 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.<sup>1362</sup> 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.<sup>1363</sup> The ballot for a sales tax election shall be printed to provide for voting for or against the proposition:<sup>1364</sup>

**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.<sup>1365</sup>

If authorized by the county, a district shall impose a hotel occupancy tax as provided by Section 352.107 of the Tax Code.<sup>1366</sup> 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.<sup>1367</sup> Hotel occupancy taxes may be used for any purpose authorized by Chapter 382 of the Local Government Code if authorized by the county.<sup>1368</sup> 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.<sup>1369</sup>

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.<sup>1370</sup>

### 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,

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<sup>1361</sup> *Id.* § 382.157.

<sup>1362</sup> *Id.* § 382.156(b).

<sup>1363</sup> *Id.* § 382.156(a).

<sup>1364</sup> *Id.* § 382.156(c).

<sup>1365</sup> *Id.* § 382.156(d).

<sup>1366</sup> *Id.* § 382.155(b).

<sup>1367</sup> *Id.* § 382.155(d). *See id.* § 382.002(1) (Description of districts able to use hotel occupancy tax in the additional way).

<sup>1368</sup> *Id.* § 382.1555(a).

<sup>1369</sup> *Id.* § 382.1555(b).

<sup>1370</sup> *Id.* § 382.154.

## VII. Other Economic Development Initiatives

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.<sup>1371</sup>

A district, if authorized by the county, may order an election to approve a grant or loan agreement.<sup>1372</sup> 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.<sup>1373</sup> 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:<sup>1374</sup>

- 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.<sup>1375</sup>

### 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.<sup>1376</sup> The district will remain in existence, even after annexation by a city, in order to collect any taxes or assessments.<sup>1377</sup> The taxes and assessment that are collected

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<sup>1371</sup> *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).

<sup>1372</sup> *Id.* § 382.103(b).

<sup>1373</sup> *Id.* § 382.102.

<sup>1374</sup> *Id.* § 382.104.

<sup>1375</sup> *Id.* § 382.105.

<sup>1376</sup> *Id.* § 382.201(a).

<sup>1377</sup> *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).

## VII. Other Economic Development Initiatives

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.<sup>1378</sup> The commissioners court may create more than one county assistance district in a county. A district may consist of noncontiguous tracts.<sup>1379</sup>

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.<sup>1380</sup>

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.<sup>1381</sup> 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 60<sup>th</sup> 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 45<sup>th</sup> 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:

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<sup>1378</sup> *Id.* § 387.003(a).

<sup>1379</sup> *Id.*

<sup>1380</sup> *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).

<sup>1381</sup> Tex. Loc. Gov't Code § 387.003(b-1).

## VII. Other Economic Development Initiatives

**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.<sup>1382</sup>

**Time Frame for Ordering the Election.** The county should order the election at least 78 days prior to the date of the election.<sup>1383</sup> The Tax Code requires only that the county order the election at least 30 days before the date of the election.<sup>1384</sup> 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."<sup>1385</sup>

**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.<sup>1386</sup> 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.<sup>1387</sup> The county is required to post the notice to the county's website not later than the 21<sup>st</sup> day before the election, if the county maintains a website.<sup>1388</sup> 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.<sup>1389</sup> The notice must also include the wording of all the ballot propositions.<sup>1390</sup> The entire notice must generally be provided in both English and Spanish.<sup>1391</sup>

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<sup>1382</sup> Tex. Elec. Code § 41.001(a).

<sup>1383</sup> *Id.* § 3.005(c).

<sup>1384</sup> Tex. Tax Code § 323.403.

<sup>1385</sup> Tex. Elec. Code § 3.005(b).

<sup>1386</sup> *Id.* § 4.003(a)(1), (c).

<sup>1387</sup> *Id.* § 4.004(a).

<sup>1388</sup> *Id.* §§ 4.003(b).

<sup>1389</sup> *Id.*

<sup>1390</sup> *Id.* § 4.004(b).

<sup>1391</sup> *See id.* ch. 272.

## VII. Other Economic Development Initiatives

**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:<sup>1392</sup>

**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.<sup>1393</sup>

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.<sup>1394</sup> 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.<sup>1395</sup>

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<sup>1392</sup> Tex. Loc. Gov't Code. § 387.003(c).

<sup>1393</sup> *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).

<sup>1394</sup> 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).

<sup>1395</sup> 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).

## VII. Other Economic Development Initiatives

If a majority of votes received at the election are against the creation of the district, the district is not created.<sup>1396</sup> 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.<sup>1397</sup> 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).<sup>1398</sup>

### 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,<sup>1399</sup> 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.<sup>1400</sup>

### Board of Directors

The commissioners court can decide to appoint a governing body for the district.<sup>1401</sup> The board of directors shall consist of five directors who serve staggered terms of two years.<sup>1402</sup> To be

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<sup>1396</sup> Tex. Loc. Gov't Code § 387.003(e).

<sup>1397</sup> *Id.* § 387.012.

<sup>1398</sup> *Id.* § 387.008.

<sup>1399</sup> *Id.* § 387.005(a).

<sup>1400</sup> *Id.* § 387.003(a-1).

<sup>1401</sup> *Id.* § 387.005(a)(2).

## VII. Other Economic Development Initiatives

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.<sup>1403</sup>

### Powers of the District

A district is a political subdivision of the state.<sup>1404</sup> 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.<sup>1405</sup>

The district may contract with a public or private person to perform any act the district is authorized to perform.<sup>1406</sup> However, the district may not levy an ad valorem tax.<sup>1407</sup>

### 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.<sup>1408</sup> A majority of voters in the territory to be added must approve the expansion.<sup>1409</sup> 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.<sup>1410</sup>

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<sup>1402</sup> *Id.* § 387.005(c).

<sup>1403</sup> *Id.* § 387.005(b).

<sup>1404</sup> *Id.* § 387.004.

<sup>1405</sup> *Id.* § 387.006(a).

<sup>1406</sup> *Id.* § 387.006(b).

<sup>1407</sup> *Id.* § 387.006(c).

<sup>1408</sup> *Id.* § 387.003(f).

<sup>1409</sup> *Id.* § 387.003(g).

<sup>1410</sup> *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).

## VII. Other Economic Development Initiatives

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.<sup>1411</sup> 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.<sup>1412</sup>

### Decreasing, Repealing, or Increasing the Tax Rate

The district may decrease the tax or repeal the tax, by order.<sup>1413</sup> The tax rate can be reduced or repealed without an election.<sup>1414</sup> 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.<sup>1415</sup> 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.<sup>1416</sup> 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.<sup>1417</sup>

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.<sup>1418</sup> The ballot for an election to increase the tax shall be printed to permit voting for or against the proposition:<sup>1419</sup>

**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.<sup>1420</sup>

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<sup>1411</sup> Tex. Loc. Gov't Code § 387.003(i).

<sup>1412</sup> *Id.* § 387.003(j).

<sup>1413</sup> *Id.* § 387.010.

<sup>1414</sup> *Id.* § 387.010(a)(1)

<sup>1415</sup> *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).

<sup>1416</sup> *Id.* § 387.010(a)(2).

<sup>1417</sup> *Id.* § 387.010(a)(3).

<sup>1418</sup> *Id.* § 387.010(b).

<sup>1419</sup> *Id.* § 387.010(c).

<sup>1420</sup> *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.<sup>1421</sup> 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.<sup>1422</sup> Once the commissioners court receives a dissolution petition from the governing body of the district, or it makes a finding the district needs to be dissolved, the commissioners court must hold a public hearing on the dissolution of the district.<sup>1423</sup> The hearing must be held not later than the 61<sup>st</sup> day after the commissioners court receives the petition to dissolve or makes a finding to dissolve the district.<sup>1424</sup> 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.<sup>1425</sup> 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 district 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.<sup>1426</sup>

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<sup>1421</sup> *Id.* § 387.013(a).

<sup>1422</sup> *Id.* § 387.013(b)(2).

<sup>1423</sup> *Id.* § 387.013(b).

<sup>1424</sup> *Id.* § 387.013(c).

<sup>1425</sup> *Id.* § 387.013(d).

<sup>1426</sup> *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<sup>1427</sup> and the Public Information Act.<sup>1428</sup> 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.<sup>1429</sup> 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.<sup>1430</sup> 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.<sup>1431</sup> 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.<sup>1432</sup>

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<sup>1427</sup> *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).

<sup>1428</sup> Tex. Loc. Gov't Code § 501.072.

<sup>1429</sup> Tex. Gov't Code §§ 551.087, 552.131.

<sup>1430</sup> *Id.* § 551.087.

<sup>1431</sup> *Id.* § 552.131.

<sup>1432</sup> *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).

### VIII. Public Disclosure of Economic Development Negotiations

Once an agreement is made with the business prospect, information about the incentive becomes public.<sup>1433</sup> 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.<sup>1434</sup> All applicable exceptions must be asserted within ten business days. If the exceptions are not timely asserted, a governmental body could waive them.<sup>1435</sup>

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<sup>1433</sup> *Id.* § 552.131(c).

<sup>1434</sup> *Id.* § 552.301.

<sup>1435</sup> *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, 80<sup>th</sup> 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 Eules 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<sup>th</sup> 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, 80<sup>th</sup> 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 Than 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 Assessments 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.

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**City of New Fairview, Texas**

999 Illinois Lane  
New Fairview, TX 76078

**Ben Nibarger**

City Administrator

November 6, 2020

Dear Mr. Nibarger;

I'd like to thank you for reaching out to me regarding the prosperous growth that is headed to New Fairview, Texas, and what is on the horizon for the community as you embrace and navigate such change. There is little doubt, with you at the helm of this ship, that navigating these new waters will be an exciting and pivotal time of in the history of the City. It is, as well, a delight for me to be considered to assist you in these pursuits.

As we discussed in the course of our conversation earlier this week, it is my understanding that the immediate needs for the City of New Fairview include both an informational analysis of the commercial status of the community and related ETJ businesses who participate in the provision of local sales tax revenues, as well an upcoming presentation before the City Council to discuss the economic opportunities that may exist for the City as you look ahead. These items, as well as a handful of other services that may prove of interest to your efforts, I have included in the attached Menu of Services for your consideration. It would be a pleasure to schedule a follow-up meeting with you in the upcoming days to discuss these items in more depth and answer any questions you may have.

Local Economics, LLC is an economic development consulting firm like none other. Its mission is three-fold:

1. Provide communities of any size, any resource availability, and at any stage in their economic cultivation with highly professional services that seek to grow their local economic condition
2. Base pricing and service provision around meaningful, measurable deliverables and action items which are tied into primary strategic directives, based on accurate data, and are directly impactful to a local economy
3. Always operate in an ethical, transparent, and communicative manner adjacently aligned with those values of the field of public service, which should exude only the highest level of trustworthiness and integrity

In choosing Local Economics, LLC to serve your community's economic development initiatives, you are choosing a data-driven approach which uses a combination of best practices in the field and emerging trends to produce quality, meaningful deliverables. We believe that wisdom is the premise of progress and aim to provide that to client cities.

I look forward to discussing more with you soon regarding any deliverables of goals you may wish to pursue further.

Sincerely,

A handwritten signature in teal ink that reads "Alora Wachholz".

Alora M. Wachholz, CEED, MPEcD  
Chief Executive Officer  
Local Economics, LLC

**LOCAL economics**, LLC  
Clean. Professional. Data-Driven.



# Menu of Services: New Fairview, Texas

Local Economics, LLC  
 Fort Worth, TX 76179  
 (817) 676-2403  
[alora@localeconomics.com](mailto:alora@localeconomics.com)  
[www.localeconomics.com](http://www.localeconomics.com)



## Deliverable A:

### Community Information Report

- ❖ General demographic profile
- ❖ Major business listing
- ❖ Major business employee estimates
- ❖ General commercial development profile
- ❖ Available land maps

\$2,000.00  
 2-4 week turnaround

## Deliverable B:

### Commercial Property Report

- ❖ Full contact profiles for existing commercial properties
- ❖ Full contact profile for listed commercial property available
- ❖ Analysis of physical infrastructure and land maps

\$2,000.00  
 4-6 week turnaround

## Deliverable C:

### Retail Analysis Report

- ❖ Full contact profiles for existing retail properties
- ❖ Full contact profile for listed retail property available
- ❖ Gap analysis and retail trade area evaluation
- ❖ Listing of market opportunity brands
- ❖ \*May include cellular trade analysis report (\$2,000.00 cost difference)

\$3,000.00 - \$5,000.00\*  
 4-6 week turnaround

## Deliverable D:

### Educational Presentation

- ❖ Presentations may be up to 2 hours in length, public or private, and cover one or more topics
- ❖ Consultation, draft, presentation, question and answer session, follow-up included
- ❖ \*Requires completion of Community Information Report (\$2,000.00 cost difference)

\$1,000.00 - \$3,000.00\*  
 4-week advance notice

## Deliverable E:

### Educational Workshop

- ❖ Presentations may be from 2 to 4 hours in length, public or private, and cover one or more topics
- ❖ Consultation, draft, presentation, engagement exercise, question and answer session, follow-up, and final summary included
- ❖ \*Requires completion of Community Information Report (\$2,000.00 cost difference)

\$2,000.00 - \$4,000.00\*  
 4-week advance notice

## Deliverable F:

### Set up of Municipal Development District

- ❖ \*May include assistance with identifying, educating, and advising the creation of a Board of Directors, if one is not already in place

\$5,000.00 - \$10,000.00\*  
 3-6 month turnaround\*



## 2021 Council Meetings

February 1

February 15 – Presidents Day

March 1

March 15

April 5 – Easter Monday

April 19

May 3

May 17

June 7

June 21 – day after Father's Day

July 5 – Independence Day

July 19

August 2

August 16

September 6 – Labor Day

September 20

October 4

October 18

November 1

November 15

December 6

December 20



We held a pre-development meeting for the Phase II portion of Fairview Meadows and anticipate infrastructure construction to begin within a week.

Paloma Ranch is doing some initial dirt work in preparation and estimating an April start date for construction of the homes facing South County Line Road. Staff has been working with Paloma Ranch and the City of Fort Worth on the release of the final phases of the project, currently located in the Fort Worth ETJ, and petition of annexation into New Fairview. Bradley has prepared and Fort Worth has accepted the documents and they are preparing to put the item on the Fort Worth City Council meeting for action.

**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. We have completed the creation of the REST API for the CivicGOV integration. We are developing the checklists and documentation to provide for integration into CivicGOV.

### **Annual Safety Inspections**

Staff is still working out the details on the fee structure as well as the implementation of the inspection process. We anticipate bringing this forward in the March 1, 2021 meeting but it may be necessary to postpone this item to a later meeting.

### **Ready Mix Concrete Plant**

The owner has been reaching out to the neighboring property owners and staff has met/spoken with several concerned parties. We are seeking to put the concerned parties together with the concrete company representatives so that we can help facilitate and hopefully mitigate some of their concerns.

### **EMS Placement in New Fairview**

Staff has been in discussions with Wise County about placing an ambulance in the multi-purpose building and it appears that we will come to terms in the near future. Staff will be negotiating and bringing forward the proposed plan as quickly as possible, but the staffing component of the ambulance will be dependent on the Wise County budget. We would not anticipate seeing the ambulance operating from this location until the next fiscal year, or after October 2021. Staff believes that this will increase the response times for emergency medical events in our city substantially.

### **Financial Information:**

N/A

### **City Contact and Recommendation:**

Ben Nibarger, City Administrator

### **Attachments:**





Ben Nibarger <cityadministrator@newfairview.org>

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## Sunrise - Graham Rd

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**Brandon Smith** <bjs@preferredmtls.com>  
To: Ben Nibarger <cityadministrator@newfairview.org>

Wed, Jan 20, 2021 at 8:41 AM

Ben,

Below is the link to our dust collector manufacturer. We use the CP10000 on these size plants. Dust collectors are not required in Texas but we choose to utilize to reduce as much dust as possible. The unit is rated as 99.99% filtration efficiency.

[Central Dust Collector - Central Dust Collection System \(cwdusttech.com\)](http://cwdusttech.com)

Attached is Sunset's last DOT audit. The DOT simply rates as satisfactory or unsatisfactory. Their grade was satisfactory.

Let me know if there is anything else we should do to address questions from the Council.

Thanks,

Brandon

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 **SMS - 01-18-2021 - Satisfactory Rating.pdf**  
985K



### SUNSET LOGISTICS INC

U.S. DOT#: 904454  
 Address: 7200 MIDWAY ROAD  
 FORT WORTH, TX 76118  
 Number of Vehicles: 240  
 Number of Drivers: 232  
 Number of Inspections: 368

### Safety Rating & OOS Rates

(As of 01/18/2021 updated daily from [SAFER](#))

**SATISFACTORY**  
 (Rating Date: 01/23/2015)

### Out of Service Rates

Type	OOS %	National Avg %
Vehicle	21.3	20.7
Driver	0.3	5.1
Hazmat		4.4

### Licensing and Insurance

(As of 01/18/2021 updated hourly from [L&I](#))

Active For-Hire Authority		
Type	Yes/No	MC#/MX#
Property	Yes	MC-396118
Passenger	No	
Household Goods	No	
Broker	Yes	MC-396118

### BASIC Status (Public Property Carrier View) ?

Behavior Analysis & Safety Improvement Categories (BASICS)

Based on a 24-month record ending December 18, 2020

Unsafe Driving	Not Public Crash Indicator	Hours-of-Service Compliance	Vehicle Maintenance	Controlled Substances and Alcohol	Not Public Hazardous Materials Compliance	Driver Fitness

### On-Road Performance

0.24 Measure	<b>NOT PUBLIC</b>	0.02 Measure	5.91 Measure	0 Measure	<b>NOT PUBLIC</b>	0.01 Measure
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### On-Road Performance Detail



<b>Driver Inspections with Unsafe Driving Violations: 7</b> <b>Safety Event Group: 3-8 driver inspections with Unsafe Driving Violations</b> <b>Avg. PU × UF: 240</b> <b>Segment: Combination Carrier</b>	<b>NOT PUBLIC</b>	<b>Driver Inspections: 367 with HOS Compliance Violations: 8</b> <b>Safety Event Group: 101-500 relevant driver inspections</b>	<b>Vehicle Inspections: 355 with Vehicle Maint. Violations: 238</b> <b>Safety Event Group: 101-500 relevant vehicle inspections</b>	<b>Driver Inspections: 367 with Drugs/Alcohol Violations: 0</b> <b>Safety Event Group: No Safety Event Grouping</b>	<b>NOT PUBLIC</b>	<b>Driver Inspections: 367 with Driver Fitness Violations: 1</b> <b>Safety Event Group: 101-500 relevant driver inspections</b>
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### Investigation Results

No Acute/Critical Violations Discovered	<b>N/A</b>	No Acute/Critical Violations Discovered	No Acute/Critical Violations Discovered	No Acute/Critical Violations Discovered	<b>NOT PUBLIC</b>	No Acute/Critical Violations Discovered
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Select a BASIC icon above to get details, or view your [Complete SMS Profile](#).

### Summary of Activities

The summary includes information on the 5 most recent investigations and 24 months of inspections and crash history.

Most Recent Investigation:  
5/31/2018 (Non-Ratable Review)

Total Inspections: 368  
 Total Inspections without Violations used in SMS: 125  
 Total Inspections with Violations used in SMS: 243

Total Crashes\* : 20

\*Crashes listed represent a motor carrier's involvement in [reportable crashes](#), regardless of the carrier's or driver's role in the crash.  
[Continue for details.](#)

### Carrier Registration

Subject to General Threshold

### Enforcement Cases

(Six years as of 01/18/2021 updated monthly from [FMCSA](#))


No penalties found


### USE OF SMS DATA/INFORMATION

**FAST Act of 2015:**

Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system. Unless a motor carrier has received an UNSATISFACTORY safety rating under part 385 of title 49, Code of Federal Regulations, or has otherwise been ordered to discontinue operations by the Federal Motor Carrier Safety Administration, it is authorized to operate on the Nation's roadways.

### **Safety Measurement System:**

The data in the Safety Measurement System (SMS) is performance data used by the Agency and Enforcement Community. A  symbol, based on that data, indicates that FMCSA may prioritize a motor carrier for further monitoring.

The  symbol is not intended to imply any federal safety rating of the carrier pursuant to 49 USC 31144. Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system. Unless a motor carrier in the SMS has received an UNSATISFACTORY safety rating pursuant to 49 CFR Part 385, or has otherwise been ordered to discontinue operations by the FMCSA, it is authorized to operate on the nation's roadways.

Motor carrier safety ratings are available at <http://safer.fmcsa.dot.gov> and motor carrier licensing and insurance status are available at <http://li-public.fmcsa.dot.gov/>.



# CHAPTER 9

## PLANNING AND DEVELOPMENT REGULATIONS

Article 9.01	General Provisions.....	9-3
Article 9.02	Subdivision Ordinance .....	9-3
Article 9.03	Zoning Ordinance.....	9-3
Exhibit A	Subdivision Ordinance .....	9A-1
Exhibit B	Zoning Ordinance.....	9B-1

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**ARTICLE 9.01 GENERAL PROVISIONS\***

**(Reserved)**

**ARTICLE 9.02 SUBDIVISION ORDINANCE†**

**Sec. 9.02.001 Adopted**

The subdivision ordinance, Ordinance 2011-03-161, adopted by the city on June 21, 2011, as amended, is included at the end of this chapter as exhibit A. Due to the nature of the subdivision ordinance and the technicalities involved in adopting or amending it, such ordinance is printed herein as enacted, with only nonsubstantive formatting and style changes. Capitalization, punctuation and numbering of articles, sections and subsections have been retained as enacted. Subsequent amendments will be inserted in their proper place and denoted by a history note following the amended section. Obviously misspelled words have been corrected without notation. Any other material added for purposes of clarification is enclosed in brackets. (Ordinance adopting Code)

**ARTICLE 9.03 ZONING ORDINANCE\*\***

**Sec. 9.03.001 Adopted**

The comprehensive zoning ordinance, Ordinance 2010-01-149, adopted by the city on January 19, 2010, as amended, is included at the end of this chapter as exhibit B. Due to the nature of the zoning ordinance and the technicalities involved in adopting or amending it, such ordinance is printed herein as enacted, with only nonsubstantive formatting and style changes. Capitalization, punctuation and numbering of articles, sections and subsections have been retained as enacted. Subsequent amendments will be inserted in their proper place and denoted by a history note following the amended section. Obviously misspelled words have been corrected without notation. Any other material added for purposes of clarification is enclosed in brackets. (Ordinance adopting Code)

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\* **State law references**—Planning and zoning generally, V.T.C.A., Local Government Code, chs. 211, 212, 371; zoning commission, V.T.C.A., Local Government Code, sec. 211.007.

† **State law references**—Regulation of subdivision and property development, V.T.C.A., Local Government Code, ch. 212; extraterritorial jurisdiction of municipalities in counties that regulate subdivisions, V.T.C.A., Local Government Code, sec. 242.001; extension of subdivision rules to extraterritorial jurisdiction, V.T.C.A., Local Government Code, sec. 212.003; recording of plats, V.T.C.A., Property Code, sec. 12.002.

\*\* **State law reference**—Municipal zoning authority, V.T.C.A., Local Government Code, ch. 211.



**EXHIBIT A**

**SUBDIVISION ORDINANCE**

Article I.	General Procedures.....	9A-3
Article II.	Platting Procedures.....	9A-7
Articles III, IV.	Reserved.....	9A-19
Article V.	Construction.....	9A-19



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**EXHIBIT A**

**SUBDIVISION ORDINANCE**

**ORDINANCE NO. 2011-03-161\***

Section 1. That a new text document, being a new Subdivision Regulations for the City of New Fairview is adopted to replace Articles I, 2, 3, and 4 of Ordinance No. 1996-01-0005 with the new Subdivision Regulation being dated June 21, 2011 and provided herein as Exhibit “A,” Articles 1, 2, 3, and 4 of Ordinance No. 1996-01-0005 being repealed.

Section 2. That this Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance.

Section 3. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portion of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 4. Any violation of this ordinance is considered a class C misdemeanor punishable by a fine not to exceed two thousand dollars (\$2000.00) for each occurrence.

Section 5. This Ordinance shall take effect from and after its date of passage in accordance with law, and it is so ordained.

**Article I. General Procedures**

**Section 1-1. Authority, Applicability and Exemptions**

(a) Authority. These subdivision regulations are adopted under the authority of Tex. Loc. Gov’t Code Ch. 212, subchapters A and B, and the City’s charter. The subdivision regulations expressly extend to all areas inside the City limits and throughout the City’s extraterritorial jurisdiction.

(b) Applicability. The subdivision regulations apply to any non-exempt land division or development within the corporate boundaries of the City and within its extraterritorial jurisdiction. A final plat, a development plat or a minor plat shall be approved prior to any non-exempt land division or development.

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\* **Editor’s note**–The previous subdivision ordinance, Ordinance 1996-01-005 adopted 7/14/97, consisted of articles 1–7. Articles 1–4 were repealed by Ordinance 2011-03-161. At the direction of the city, article 5 (Construction) has been retained. Articles 6 (Design Criteria) and 7 (Construction Standards) have been omitted as replaced by the adopted TCSS Manual..

(c) Subdivision Plat Exemptions. The following land divisions are exempt from the requirements of the subdivision regulations applicable to subdivision plats:

- (1) Sale, inheritance, or gift of land by metes and bounds of tracts upon which no improvements, development, subdivision or alteration are intended;
- (2) Use of existing cemeteries complying with all State and local laws and regulations;
- (3) A division of land created by order of a court of competent jurisdiction;
- (4) A division of land that results in the creation of two or more parcels, each of which is greater than five acres inside the City limits, or each of which is greater than ten acres within the City's extraterritorial jurisdiction, when each parcel has direct access to an existing public street, and no dedication of public facilities is required under these subdivision regulations in connection with the division; and
- (5) Creation of a remainder tract.

(d) Development Plat Exemptions. The following land divisions are exempt from the requirements of the subdivision regulations applicable to development plats:

- (1) Any development activity associated with a subdivision plat that conforms to the requirements of these regulations applicable to such plats;
- (2) Sale, inheritance, or gift of land by metes and bounds of tracts upon which no improvements, development, subdivision or alteration are intended;
- (3) Use of existing cemeteries complying with all State and local laws and regulations;
- (4) Bona fide agricultural activities;
- (5) Construction of agricultural accessory structures and related development activities; and
- (6) Construction of a single-family dwelling and related accessory structures and development activities.

(e) Waiver of Regulations by Council. The City may waive any regulation contained herein upon determining, by the Council, that the observance of such regulation would create an unnecessary hardship and/or such regulation is not applicable to the development or current policies of the City.

(Ordinance 2011-03-161 adopted 6/21/11)

### **Section 1-2. Stages of Platting**

(a) Inside City. Within city limits, a subdivision plat may be approved in two stages:

- (1) Preliminary Plat; and
- (2) Final Plat.

(b) Within ETJ. Within the extraterritorial jurisdiction of the City, only a final plat is authorized, unless the land to be platted is subject to an approved development agreement, in which case a preliminary plat application may be submitted, as authorized by the agreement.

(c) Combined Plats Prohibited. An applicant may not submit applications for approval of a preliminary plat and a final plat simultaneously.

(d) Development Plats. A development plat shall be approved prior to development of any tract or parcel for which no subdivision plat is required, or prior to development of any lot in a subdivision for which dedication of any right-of-way for construction or maintenance of public improvements is required by these regulations. A development plat shall be required prior to approval of a manufactured home rental community.

(Ordinance 2011-03-161 adopted 6/21/11)

### **Section 1-3. Definitions**

For the purpose of interpreting these subdivision regulations, certain terms, phrases and words used herein shall have the meaning hereinafter as follows:

Alley: A minor public right-of-way, not intended to provide the primary means of access to abutting lots, which is used primarily for vehicular and utility service access to the back or side of properties otherwise abutting on a street.

Amending Plat: A revised plat correcting errors or making minor changes to the original recorded final plat.

Building Setback Line: the line on a plat delineating the nearest point to which buildings may be located to a street line, alley line or building lot line.

Commission: The planning and zoning commission of the city.

Dead-end street: A street, other than a cul-de-sac, with only one outlet.

Development Plat: A plat authorized under Tex. Loc. Gov't Code ch. 212, subchapter B, depicting a lay-out of development for a proposed tract or lot and providing for supporting public facilities.

Engineer: A person duly authorized under the provisions of the Texas Engineering Practice Act, as heretofore or hereafter amended, to practice the profession of engineering, and when reference is made to city engineer, the designation means either an engineer directly employed by the city or the city's engineering consultants, as the case may be.

Inspector: A person duly authorized by the city manager who may be employed by the city or by the city's engineering consultants, as the case may be, and designated to inspect any portion or all of the construction performed in the subdivision either on a part-time or full-time basis. His duties shall consist of inspecting all work during construction and/or after completion to determine compliance with the plans, specifications and subdivision regulations, with authority to stop the work during construction for noncompletion, if the work is defective.

Local residential or minor street: A public thoroughfare which is intended primarily to serve as access to residential property within a neighborhood interior or limited residential district and is not aligned or located to attract other than limited local traffic movements.

Lot: An undivided tract or parcel of land having frontage on a public street and which is, or in the future, may be offered for sale, conveyance, transfer or improvement as a building site; which is designated as a district and separate tract.

Minor Plat: A proposed plat with no more than four contiguous lots, with said lot or lots fronting on an existing street, and not requiring the creation of any new street or any public improvements.

Plat: the map, drawings or chart on which a subdivider's or developer's plan is presented and which he submits for approval. The term "plat" includes a preliminary plat, final plat, minor plat or development plat, as the context may indicate.

Replating (resubdivision): Replating is the rearranging of any part of a block, street, or alley of a previously platted subdivision.

Responsible Official: The official designated by the City Manager to process or make administrative decisions regarding the processing or application of standards to plat applications under these subdivision regulations.

Street width: Street width is the shortest distance between the lines which delineate the right-of-way of the street.

Subdivider: Any person or agent thereof, dividing or proposing to divide land so as to constitute a subdivision as that term is defined herein. In any event, the term "subdivider" shall be restricted to include only the owner, equitable owner or authorized agent of such owner, of the land sought to be subdivided.

Subdivision: A division of any tract of land situated within the corporate limits, or within the extraterritorial jurisdiction of the city, into two (2) or more parts for the purpose of laying out any subdivision of any tracts of land or any addition of any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys or parts or other portions intended for public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto for the purpose, whether immediate or future, of creating building sites. Subdivision, does not include the division of the land for agricultural purposes in parcels or tracts of five (5) acres or more which do not involve the creation of any new street, alley or easement of access.

Surveyor: A licensed state land surveyor or registered public surveyor as authorized by the state statutes to practice the profession of surveying.

TCSS Manual. The City of New Fairview's Technical Construction Standards and Specifications for the design and construction of subdivision improvements, a copy of which is maintained and available for inspection at the office of the City Secretary, and which is incorporated herein by reference. Until such TCSS Manual is prepared and adopted the engineering standards set forth in Articles 6 and 7 of the Subdivision Rules and Regulations (Ord. 96-01-0005), shall be effective.

(Ordinance 2011-03-161 adopted 6/21/11)

#### **Section 1-4. Annexation Regulations**

For newly annexed land, no plat or permits may be approved for any use or lot that is not in conformity with the use, use intensity, lot size and dimensional standards for the lowest intensity residential zoning district in the City's adopted zoning ordinance, until the annexed property has been permanently classified on the zoning district map. Following annexation, no plat application will be deemed complete for any uses, intensity of use, dimensions or lot sizes not authorized in the lowest intensity zoning district, until the annexed property has been permanently classified on the zoning district map. (Ordinance 2011-03-161 adopted 6/21/11)

#### **Section 1-5. Time for Decision**

(a) Time Period/or Action. All plat applications shall be acted upon within 30 days from the date the application is determined to be complete pursuant to section 2-1, unless a waiver is submitted in accordance with subsection (b) below.

(b) Waiver Requests. An applicant may request in writing a waiver of the decision time. The waiver request shall contain a statement of the reasons for the waiver and the time for which a waiver is sought. Waiver requests which have not been received by the responsible official on or before the fourth calendar day prior to the Commission meeting at which action is to be taken on the plat application shall be deemed denied and action shall be taken on the plat application at such meeting as scheduled.

(c) Action on the Waiver Request. The decision-maker shall take action on the waiver request within the 30-day period for acting on the plat. Where the Commission or the Council is the decision-maker, action on the waiver request shall be taken at the meeting at which the plat is scheduled for decision. If the waiver is granted, action on the plat application shall be tabled for a time certain consistent with the approved waiver.

(Ordinance 2011-03-161 adopted 6/21/11)

### **Article II. Platting Procedures**

#### **Section 2-1. Complete Application Required**

(a) Completeness Determination. Every application for approval of a preliminary plat, development plat, minor plat or final plat shall be subject to a determination of completeness by the responsible official. No application shall be accepted for processing unless it is accompanied by all documents required by and prepared in accordance with the requirements of these Subdivision Regulations. The responsible official from time to time may identify additional requirements for a complete application that are not contained within but are consistent with the application contents and standards set forth in the Subdivision Regulations. The responsible official also may promulgate a fee for review of the application for completeness.

(b) Incompleteness as Grounds for Denial. The processing of an application by any City official or employee prior to the time the application is determined to be complete shall not be binding on the City as the official acceptance of the application for filing, and the incompleteness of the application shall be grounds for denial or revocation of the application. A determination of completeness shall not constitute a determination of compliance with the substantive requirements of these Subdivision Regulations.

(c) Pre-application Conference. A property owner may request a pre-application conference with the responsible official for purposes of identifying requirements that are applicable to a proposed plat. The request shall be made in writing on a form prepared by the responsible official and shall state that any proposed development concept discussed at the pre-application conference is not intended as a plan of development or application for plat approval.

(d) Time for Making Determination. Following submission of a plan of development or plat application, the responsible official shall make a determination in writing whether the plan or application constitutes a complete application for a plat not later than the tenth business day after the date the application is submitted. The determination shall specify the documents or other information needed to complete the application and shall state the date the application will expire if the documents or other information is not provided.

(e) When Deemed Complete. An application for approval of a plat that is filed on or after the effective date of these subdivision regulations, or any subsequent plat application filed after approval of such initial plat, shall be deemed complete on the 11th business day after the application has been received, if the applicant has not otherwise been notified that the application is incomplete.

(f) Time for Completing Application. If an application is not completed on or before the 45th day after the application is submitted to the responsible official for processing the application in accordance with his or her written notification, the application will be deemed to have expired and it will be returned to the applicant together with any accompanying documents. Thereafter, a new application for approval of the plat must be submitted. The City may retain any fee paid for reviewing the application for completeness.

(g) Sequence of Applications. Notwithstanding any other provision of these subdivision regulations to the contrary, a plat application shall not be considered complete unless accompanied by a copy of the zoning ordinance or other certification verifying that the proposed use for which the application is submitted is authorized by the zoning district in which the property is located.

(h) Vested Rights. No vested rights accrue solely from the filing of an application that has expired pursuant to this section, or from the filing of a complete application that is subsequently denied.

(Ordinance 2011-03-161 adopted 6/21/11)

## **Section 2-2. Preliminary Plat**

(a) Applicability. A preliminary plat must be prepared for all subdivisions within the corporate limits of the City. A preliminary plat is neither authorized nor required in the City's extraterritorial jurisdiction, unless expressly authorized by a valid and approved development agreement.

(b) Application. An application for approval of a preliminary plat along with fifteen (15) prints of the proposed subdivision shall be filed with the responsible official at least fourteen (14) days prior to the meeting of the planning and zoning commission at which time approval is asked. The preliminary plat shall be submitted on standard twenty-two (22) inch by thirty-four (34) inch paper at a scale of one inch equals one hundred (100) feet by the subdivider or his agent prior to the sale, offering sale of any lots, tract or building site and prior to completion of final surveys of

streets or lots prior to the grading or construction work on any streets and before any map of such subdivision is prepared in form for recording. A digital file on PDF file shall also be submitted with the application. The preliminary plat application shall be submitted in accordance with and be accompanied by the following in accordance with the manual of standard design, manual of water distribution, and manual of street and drainage:

- (1) Location map: A vicinity sketch or key map at a scale of not more than four hundred (200) [sic] feet to the inch for all subdivision exceeding five (5) acres in size or containing ten (10) or more lots. Such sketch or map shall show existing subdivisions, streets, property lines and the recorded names of the owners of the adjoining parcels. It shall also show how the streets and alleys of the proposed subdivision connect or relate to streets and alleys in neighboring subdivisions or undeveloped property and the relationship of the development to existing or proposed major and secondary thoroughfares.
- (2) Names of owner, etc. The preliminary plat shall show the name or names of the owner and/or subdivider and the name of the engineer, land planner or surveyor responsible for the preparation of the plat.
- (3) Identification: The proposed name of the subdivision (which must not be as similar to that of an existing subdivision as to cause confusion) and names of adjacent subdivisions and landowners shall be shown on the plat.
- (4) Boundary lines, etc. Location of boundary lines and width and location of platted streets and alleys within, or adjacent to, the property; physical features of the property, including location of any existing utilities with the size of sewer and water mains. The outlines of the wooded areas or the location of important individual trees is required. For all plats, contours must be shown at the intervals of two (2) feet. All elevations shown shall be referred to mean sea level datum. The acreage of the property is to be indicated.
- (5) Location and width of the proposed streets and other features: The location and width of the proposed streets, roads, lots, alleys, easements, widening of existing thoroughfares, and other features, and their location in relation to platted streets, alleys and easements in adjacent subdivisions shall be shown consistent with the Thoroughfare Plan or other adopted plan for roads and streets. The street layout shall be in conformity with a plan for the most advantageous development of the entire neighborhood areas. Whenever the proposed subdivision contains or is adjacent, or parallel to a railroad right-of-way or a major thoroughfare or freeway or expressway standards, provision shall be made for a street approximately parallel to and on each side of such right-of-way to provide reasonable use of the intervening land. Proposed streets shall be adjusted to the contour of the land so as to produce usable lots and streets of reasonable gradient.
- (6) Preliminary Water and Sewer Layouts: The plan shall show the proposed location and size of the development's water distribution system and facilities, including valves, fittings, fire hydrants and line sizes. The plan shall also address the requirements for all off-site water lines and/or oversize requirements and shall conform to the City's Water Distribution System Master Plan. The Plan shall show the location of all proposed sanitary sewer collection lines and facilities, including manholes, lift stations and preliminary line sizes. The plan shall also address the



requirements of all off-site sanitary sewers and/or oversize requirements and shall conform to the City’s Wastewater Collection System Master Plan.

- (7) Phasing: If the preliminary plat is to serve for a series of final plats, the phasing lines must be clearly indicated on the drawing. Subsequent final plats must conform to the approved phasing lines. Non-substantive difference in the phase lines may be permitted upon approval by City Staff. However, substantive differences will require an amended preliminary plat to be approved. The measure of what is substantive shall rest totally on the opinion of the City Staff.
  
- (7) [(7.1)] Plat contents: The horizontal scale of the preliminary plat shall be not less than one hundred (100) feet to the inch and the plat shall also show:
  - a. North point, scale and date;
  - b. The boundary line, accurate in scale, of the tract to be submitted;
  - c. The names of all proposed streets;
  - d. The layout, number, and approximate dimension of all proposed lots or building tracts and the square feet of each;
  - e. All parcels of land intended to be dedicated to public use reserved for the common use of owners of lots or sites in the subdivision, and the acreage;
  - f. Any and all arrangement of lots, building lines or streets proposed;
  
- (8) Profiles and cross-sections: Profiles and cross-sections sufficient to ascertain that the preliminary plat proposals will function in accordance with the standards of the city.
  
- (9) Zoning information: A designation shall be shown of the proposed uses of land within the subdivision that is, the classified type of residential use by zoning ordinance, location of business or classification of industrial sites by zoning ordinance classification, and sites for churches, schools, parks, or other special uses, and their acreage.
  
- (10) Certificates: The following certifications shall be placed on the preliminary plat:
  - a. Review for Preliminary Approval:

_____	_____
Planning & Zoning Commission Chairman	Date
  
  - b. Approved for Preparation of Final Plat:

_____	_____
City Administrator, City of New Fairview, Texas	Date
  
- (11) Subdivider’s Statement: A preliminary plat application shall be accompanied by a written statement, signed by the subdivider stating the developer will comply with all the city requirements in the city requirements in the proposed subdivision and all

such proposals shall conform to or exceed the standards for such improvements prescribed by the city.

(12) Certification that all city taxes and fees have been paid.

(c) Procedures

(1) Planning and Zoning Commission Action. After review of the preliminary plat application by the responsible official and the city engineer, the application shall be scheduled for consideration by the Planning and Zoning Commission. The Commission shall decide whether to approve, approve with conditions or deny the preliminary plat application based on the criteria for approval in subsection (d).

(2) City Council Action. Following decision by the Planning and Zoning Commission, the City Council shall determine whether to approve, approve with conditions or deny the preliminary plat application, taking into consideration the action taken by the Commission, and the criteria for approval in subsection (d).

(3) Conditions. The Commission or the Council may impose such conditions to the approval of the preliminary plat application as are reasonably necessary to assure compliance with the criteria in subsection (d). Such conditions may address but are not limited to matters involving conformity with the City's zoning regulations, the availability and capacity of public improvements, or the phasing of development.

(d) Criteria for Decision. The following criteria shall be used to determine whether the application for a preliminary plat shall be approved, approved with conditions, or denied.

(1) The preliminary plat is consistent with the adopted Comprehensive Plan for New Fairview, including but not limited to the future land use map, the master thoroughfare plan and master facilities plans;

(2) The plat is consistent with all zoning requirements for the property, and any approved development agreement;

(3) The proposed provision and configuration of roads, water, wastewater, drainage and park facilities conform to the master facilities plans for the facilities, including without limitation the water facilities, wastewater facilities, transportation, drainage and other master facilities plans;

(4) The plat meets all other requirements of these subdivision regulations;

(5) The plat meets any county standards to be applied under an interlocal agreement between the City and a county under Tex. Loc. Gov't Code ch. 242, where the proposed development is located in whole or in part in the extraterritorial jurisdiction of the City and in the county.

(e) Effect of Approval. Approval of a preliminary plat shall authorize the subdivider to submit construction plans for approval by the City Engineer and, upon approval of such plans, to construct public improvements to serve the subdivision in accordance therewith. Approval of a preliminary plat also shall authorize the subdivider to seek approval of a final plat for the land subject to the preliminary plat. The responsible official shall not accept any engineering plans

until such preliminary plat has been approved by the city council. No excavation, grading, tree removal or site clearing activities shall occur prior to approval of the preliminary plat and the construction plans.

(f) Lapse and Extension.

(1) Expiration of plats. The applicant shall submit a final plat to the City for the entire area for which a preliminary plat has been approved, within nine (9) months of the date of approval or conditional approval of the preliminary plat. If the property owner fails to submit a final plat application within such period, the preliminary plat shall lapse and all further proceedings concerning the subdivision shall terminate. The applicant shall be required to submit a new preliminary plat, as required by this Chapter, subject to all zoning and subdivision standards then in effect.

(2) Extension and reinstatement procedure.

- a. Sixty days prior to the lapse of approval for a preliminary plat, the property owner may petition the Planning and Zoning Commission to extend or reinstate the approval. Such petition shall be considered at a public meeting of the Commission.
- b. In determining whether to grant such request, the Commission shall take into account the reasons for lapse, the ability of the property owner to comply with any conditions attached to the original approval, the extent to which the property owner agrees to abide by newly adopted subdivision regulations, and any changed conditions in the surrounding area which would make an extension undesirable. The Commission shall extend its approval of the plat, or deny the request. In the event the Commission denies extension of the preliminary plat, the property owner must submit a new application for approval.
- c. The Commission may specify a shorter time for lapse of the extended plat that is applicable to original approvals, but shall not extend the period that a preliminary plat approval is valid to more than two years from the date of original approval.
- d. At any time following the lapse of approval of a preliminary plat, a developer may request, and the Commission may approve, at its discretion, a reinstatement of such preliminary plat for the purpose of considering and approving a final plat for all or a portion of the area covered by the preliminary plat. The Commission shall reinstate a preliminary plat only when it determines that it would be in the public interest to do so to avoid unnecessary review of a new preliminary plat, and when the pattern of development proposed by the plat would not be to the detriment of any nearby area or the general development of the City. The Commission may establish such conditions on reinstatement as are necessary to ensure that the reinstated plat conforms to the City's comprehensive plan, including a requirement that the plat conform to the City's current subdivision standards.

(g) Revisions Following Approval of Preliminary Subdivision

- (1) Minor Changes. Minor changes in the design of the subdivision subject to a preliminary plat may be incorporated in an application for approval of a final plat without the necessity of filing a new application for approval of a preliminary plat. Minor changes shall include adjustment in street or alley alignments, lengths, and paving details, and adjustment of lot lines that do not result in creation of additional lots, provided that such changes are consistent with any approved priority applications.
- (2) Amendments. All other proposed changes to the design of the subdivision subject to an approved preliminary plat shall be deemed major amendments that require submittal and approval of a new application for approval of a preliminary plat before approval of a final plat[.]

(Ordinance 2011-03-161 adopted 6/21/11; Ordinance 2020-21-213, sec. 1, adopted 9/14/20)

**[Section 2-3. Reserved]**

**Section 2-4. Final Plat**

(a) Purpose, Applicability and Effect

- (1) Purpose. The purpose of a final plat is to assure that the division or development of the land subject to the plat is consistent with all standards of these subdivision regulations and all other City ordinances pertaining to the adequacy of public facilities, that public improvements to serve the subdivision or development have been installed and accepted by the City or that provision for such installation has been made, and that all other requirements and conditions have been satisfied or provided for to allow the plat to be recorded.
- (2) Applicability. Approval of a final plat shall be required prior to any non- exempt division of land and prior to any site preparation activities for a lot or tract of land that requires installation of public improvements on or adjacent thereto. A final plat application shall not be required for any land division that may be approved through the minor plat procedures in section 2-6 [sic].
- (3) Effect. Approval of a Final Subdivision Plat authorizes the responsible official to record the plat upon completion of public improvements or posting of security, and authorizes the subdivider to install any improvements in public rights-of-way under approved construction plans and a subdivision improvement agreement.
- (4) Phased Finals. Final plats of approved phases of a preliminary plat may be submitted for consideration and approval without each phase requiring a separate preliminary plat.

(b) Application. After the preliminary plat, where required, has been approved by the City Council, a final plat, in the form of a record, shall be prepared in accordance with the conditions of approval and submitted to the City’s engineer and responsible official for review and transmission to the City Planning and Zoning Commission. Where no preliminary plat is authorized, the final plat application must meet all the submittal requirements for a preliminary plat that are not included in the list of application requirements that follow. Fifteen (15) prints and three (3) mylars shall be filed in the office of the responsible official at least fourteen (14) days

prior to the meeting at which time final approval is asked. The mylar plat shall be submitted on a scale of one hundred (100) feet to one inch and one reduced print shall be of a size which will fit on an eighteen (18) inch by twenty-four (24) inch sheet for filing with the county. The final plat shall show, or be accompanied by the following information:

- (1) The names of the owner and/or subdivider and of the licensed state land surveyor, or registered engineer responsible for the plat.
- (2) The name of the subdivision and adjacent subdivisions, the names of streets (to conform whenever possible to existing street names) and numbers of lot and blocks, in accordance with alphabetical block arrangements and numerical lot arrangement. In case of branching streets, the lines of departure shall be indicated. (See general requirements)
- (3) An accurate boundary survey and description of the property, with bearings and distances referenced to survey lines and established subdivisions, and showing the lines of adjacent lands and the lines of adjacent streets and alleys, with their width and names. Streets, alley and lot lines in adjacent subdivisions shall be shown in dashed lines. North point, scale and date shall be shown.
- (4) Locations of proposed lots, streets, public highways, alleys, parks and other features, with accurate dimensions in feet and decimals fractions of feet, with the length of radii and of arcs of all curves, all angles, and with all other engineering information necessary to reproduce the plat on the ground. Dimensions shall be shown from all angle points. Contours, with a minimum of two (2) feet, shall be shown as light, dashed lines. All elevations shown shall be referred to sea level datum. All lots or building sites shall conform to the standards prescribed by the zoning ordinance for the district or districts in which the subdivision is located. All streets, alleys, drainage and public utilities shall conform to the specifications of the city.
- (5) The locations of building lines on front and side streets and the location of utility easements.
- (6) An instrument of dedication, signed and acknowledged by the owner or owners and by all other parties who have a mortgage or lien interest in the property, showing all restrictions, reservations, and/or easements, if any, to be imposed and reserved in connection with the addition. Such restrictions shall contain the following provisions, along with any other restrictions which may be imposed:

No house, dwelling unit or other structure shall be constructed on any lot in this addition by the owner or any other person until:

- a. Such time as the developer and/or owner has complied with all requirements of the Platting Ordinance of the City of New Fairview regarding improvements with respect to the entire block on the street and/or streets on which the property abuts (a corner lot shall be regarded as abutting on both intersection streets adjacent to such lot), including the actual installation of streets, water, sewer, drainage structures, and storm sewer and alleys, all according to the specifications of the City of New Fairview or

- b. Until the escrow deposit, sufficient to pay for the cost of such improvements, as determined by the city’s engineer and/or city administrator, computed on a private commercial rate basis, has been made with the city secretary, accompanied by an agreement signed by the developer and/or owner, authorizing the city to make such improvements at prevailing private commercial rates, or have the same made by a contractor and pay for the same out of the escrow deposit, should the developer and/or owner fail or refuse to install the required improvements within the time stated in such written agreement, but in no case the city be obligated to make such improvements itself. Such deposit may be used by the owner and/or developer as progress payments as the work progresses in making such improvements by making certified requisitions to the city secretary, supported by evidence of work done; or
- c. Until the developer and/or owner files a corporate surety bond with the city secretary in a sum equal to the cost of such improvements for the designated area, guaranteeing the installation thereof within the time stated in the bond, which time shall be fixed by the city council of the City of New Fairview.

These restrictions with respect to required improvements are made to ensure the installation of such required improvements and to give notice to each owner and to each prospective owner of lots in the subdivision until said required improvements are actually made or provided for on the entire block on the street and/or streets on which the property abuts as described herein and in compliance with the City of New Fairview requirements or TCSS Manual.

- (7) A certificate of dedication of all streets, public highways, alleys, parks and other land intended for public use, signed by the owner or owners and by all other parties who have mortgage or lien interests in the property and acknowledged before a notary public. All deed restrictions that are to be filed with the plat shall be shown or filed separately. The certificate of dedication shall be substantially in the following form:

STATE OF TEXAS  
 COUNTY OF \_\_\_\_\_

I (we) the undersigned owner(s) of the land shown on this plat, and designated herein as the \_\_\_\_\_ subdivision to the City of New Fairview, Texas, and whose name is subscribed hereto, hereby dedicate to the use of the public forever all streets, alleys, parks, water courses, drains, easements and public places thereon shown on the purpose and consideration therein expressed. I (we) further certify that all other parties who have a mortgage or lien interest in the \_\_\_\_\_ subdivision have been notified and signed this plat.

I (we) further acknowledge that the dedications and/or exactions made herein are proportional to the impact of the subdivision upon the public services required in order that the development will comport with the present and future growth needs of the City; I (we), my (our) successors and assigns hereby waive any claim, damage, or cause of action that I (we) may have as a result of the dedication of exactions made herein.

Owner  
Signature of Party with Mortgage or Lien Interest

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein stated.

Given upon my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires:

- (8) A waiver of claim for damages against the city occasioned by the establishment of grades or the alteration of the surface of any portion of existing streets and alleys to conform to the grades established in the subdivision.
- (9) Certification by a registered engineer or a licensed state land surveyor, duly licensed by the state, to the effect that the plan represents a survey made by him, and that all the necessary survey monuments are correctly shown thereon.
- (10) The following certificate shall be placed on the plat after it has been finally approved by the City Council:

I hereby certify that the above and foregoing plat of \_\_\_\_\_ Addition to the City of New Fairview, Texas, was approved by the City Council of the City of New Fairview on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

This approval shall be invalid unless the approved plat for such addition is recorded in the office of the County Clerk of \_\_\_\_\_, County, Texas, within one hundred eighty (180) days from said date of final approval. Said addition shall be subject to all the requirements of the Subdivision Regulations of the City of New Fairview.

WITNESS OUR HANDS, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

- (11) The following certificates shall be placed on the plat, in a manner that will allow the filing of the certificates by the proper party.
  - a. Recommended for final approval:

Planning & Zoning Commission	Date
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b. Approved:

City Administrator, City of New Fairview, Texas	Date
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- (12) Final plats shall be accompanied by plan-profile sheets, twenty-four (24) inches by thirty-six (36) inches and platted to a scale of forty (40) feet to one (1) inch horizontal and four (4) feet to one inch vertical, for each proposed street in the subdivision. These plan-profiles shall show the existing ground and the proposed grade at five (5) points of cross-section; that is, at the centerline, the back-of-curb lines, and the property lines. The plan portion shall show the size and locations of all drainage structures, storm drains, curb inlets, etc., and the direction of flow of all stormwater. Plans shall show all public utilities needed to service the subdivision and should accompany the final plat and be approved by the city planning and zoning commission and be in compliance with the city standards.
  
- (13) Typical cross-sections shall be shown of the type and width of paving proposed for all streets. Curbs and gutters, pavement types and drainage structure design standards of the city, in effect at the time of submission of the plat, shall be used, subject to the approval of the city’s engineer and/or city administrator and city council.

(c) Procedures.

- (1) The Planning and Zoning Commission shall take action on the final plat as within thirty (30) days of the official filing date unless the applicant requests and consents in writing to waive any time deadline for action upon the plat. If the final plat meets all the requirements of these subdivision regulations, the Planning and Zoning Commission shall approve the plat. If the plat does not meet the requirements of these subdivision regulations, the Planning and Zoning Commission shall disapprove the plat.
  
- (2) The City Council, following action by the Planning and Zoning Commission, shall finally decide whether to approve or deny the final plat application.

(d) Final Plat in ETJ. The only plat application authorized within the City’s extraterritorial jurisdiction is a final plat application. The applicant may propose a subdivision of land that creates a remainder tract, as defined in section 2-2(c). The applicant must submit the information required by the City for a remainder tract with the application for final plat approval. The Planning and Zoning Commission and the City Council may approve the proposed subdivision, or require that the remainder tract be included within the final plat. If the City allows the applicant to create the remainder tract, the provisions of section 2-2(c) shall apply. No conceptual plan of development may accompany a final plat application in the City’s extraterritorial jurisdiction where the final plat application does not contain all contiguous land in common ownership, unless the application also proposes a remainder tract. Where a conceptual plan of development is presented with a final plat application and designation of a proposed remainder tract, such conceptual plan shall be deemed denied with approval of the final plat application and designation of the remainder tract.



(e) Criteria for Decision. The following criteria shall be used to determine whether the application for a final plat shall be approved or denied.

- (1) The final plat conforms to the approved preliminary plat except for minor changes authorized under section 2-3(g) [2-2(g)] and that may be approved without the necessity of revising the approved preliminary plat. Where no preliminary plat is authorized, the final plat shall satisfy any criteria under section 2-3(d) [2-2(d)] for preliminary plat approval which are not identified below.
- (2) Where public improvements have been installed, the improvements conform to the approved construction plans and have been approved for acceptance by the City engineer.
- (3) Where the City Council has authorized public improvements to be deferred, the subdivision improvement agreement and surety have been executed and submitted by the property owner in conformity with section 2-6 [sic].
- (4) The final layout of the subdivision meets all standards for adequacy of public facilities contained in these subdivision regulations and City ordinances.
- (5) The plat meets any county standards to be applied under an interlocal agreement between the City and a county under Tex. Loc. Gov't Code ch. 242, where the proposed development is located in whole or in part in the extraterritorial jurisdiction of the City within the county.
- (6) The plat conforms to City's adopted comprehensive plan, including its future land use map (within city limits), the master plans for current and future streets, alleys, parks, playgrounds, and public utility facilities, as well as extension of the City's roads, streets, and public highways within its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities[.]
- (7) The plat conforms to the City's zoning regulations or regulations contained in an approved development agreement affecting the land, and all other applicable City ordinances and regulations.

(f) Expiration and Extension. The approval of a final plat application shall remain in effect for a period of two years from the date the application was approved by the City Council, during which period the applicant shall submit any required revisions for approval and record the plat. If the final plat has not been recorded within the two-year period, final plat approval shall expire and the applicable plat shall be deemed null and void.

(g) Recordation.

- (1) After approval of the final plat, the responsible official shall record the final plat with the county clerk of the county in which the land is located upon the subdivider's performance of one of the following:
  - (i) Completion of the construction of required improvements prior to recordation;  
or

- (ii) Filing of security in lieu of completing construction in accordance with section 2-6 [sic].

[(2), (3) Reserved]

- (4) Signing and Recording. Upon receipt of a complete record plat application, the responsible official shall procure the signature of the city administrator on the plat and shall promptly cause the plat to be recorded.

(Ordinance 2011-03-161 adopted 6/21/11; Ordinance 2020-21-213, secs. 2, 3, adopted 9/14/20)

**Articles III, IV. Reserved**

**Article V. Construction\***

**Section 5.01. General**

A. A Reconstruction [pre-construction] conference is required prior to start of any construction. The meeting shall include the Contractor, City Engineer, Developer’s Engineer, and the City Council. If the construction has been divided among multiple contractors, the Developer shall designate one representative for the entire development. Only one pre-construction meeting will be held.

B. If the Developer has divided the construction of the public improvements among more than one Contractor, the Developer shall designate one person to represent all of the construction for the development.

C. All required safety plans and barricade plans shall be submitted for approval by the City of Fairview prior to the start of any construction.

D. The Developer shall post a sign at the entrance to the subdivision which states that said subdivision has been approved for construction. The sign shall be clearly visible and shall be posted prior to construction. The Developer shall be responsible for maintaining the sign until the Maintenance Bond expires. See Article 7 - Construction Standards for sign details.

**Editor’s note**–Article 7 has been omitted as replaced by the TCSS Manual.

E. Prior to the construction of said improvements, the Developer, or the authorized agents thereof, shall be required to furnish to the City a good and sufficient Performance and Payment Bond or any other acceptable form of surety approved by the City and in an amount equal to the total cost of said improvements and guaranteeing their construction. The bonds or other acceptable surety shall be in accordance with Chapter 212 of the Texas Local Government Code.

(Ordinance 1996-01-0005 adopted 7/14/97)

**Section 5.02. Inspection**

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\* **Editor’s note**–At the direction of the city, article 5 (Construction) of the previous subdivision ordinance, Ordinance 1996-01-005 adopted 7/14/97, has been retained. Article 5 is included herein as article V.

A. All construction, such as: road grading, road paving, drainage structures, curb and gutter, and storm, may be subject to inspection during the construction period by the proper authorities of the City, and shall be constructed in accordance with the approved Construction Plans and Article 6, “Design Criteria”.

**Editor’s note**–Article 6 has been omitted as replaced by the TCSS Manual.

B. During the progress of the work, all materials, equipment and workmanship may be subjected to such inspections and tests as will assure conformance with the City requirements. All testing shall be done by a testing laboratory acceptable to the City and at the Developer’s expense. The City shall select the location of all testing. The Contractor is solely responsible for coordination with the testing laboratory, for scheduling of the tests, and for timely delivery of the results to the City of Fairview. The City may elect to perform additional testing above and beyond that required by the specifications. The Contractor shall reimburse the City for the cost of any failed test. All conformity inspection must be complete and reports presented to the City before final inspections.

(Ordinance 1996-01-0005 adopted 7/14/97)

**Section 5.03. Final Inspection**

A. The City Council, or a duly authorized representative, the City Engineer, and a Contractor’s representative shall perform a final inspection. If the Developer has divided the construction of the public improvements among more than one contractor, the Developer shall designate one person to represent all of the construction for the development. There will be only one final inspection of the development.

B. The City Representative shall prepare a list of items that need to be completed prior to the final acceptance of the project.

(Ordinance 1996-01-0005 adopted 7/14/97)

**Section 5.04. Record Drawings**

Upon completion of the construction, the Developer shall request a final inspection of the work. The Developer shall provide one (1) good quality reproducible mylar, and one (1) full-size blue line record drawing. The mylar must be revised by the Developer to reflect construction records prior to the final inspection. The record drawings must be approved by the City Engineer prior to the final acceptance of the subdivision. The record drawings shall include a copy of the approved Final Plat. (Ordinance 1996-01-0005 adopted 7/14/97)

**Section 5.05. Maintenance Bond**

All persons desiring to subdivide or resubdivide a tract of land within the limits of the City of Fairview shall be required to maintain all public improvements in such new subdivision at their own cost, and without cost to the City for a period of two (2) years from the date of the completion of said public improvements and their acceptance by the City, [and] the Developer, or the authorized agents thereof, shall be required to furnish to the City a good and sufficient Maintenance Bond or other acceptable surety approved by the City in an amount equal to the total

cost of said improvements and guaranteeing their maintenance for the period of time set forth in this Section. (Ordinance 1996-01-0005 adopted 7/14/97)

**Section 5.06. Acceptance by the City**

A. Once all the requirements of the City have been met, the City Engineer shall recommend acceptance of the subdivision in the form of a letter to the City Council.

B. Acceptance by the City shall be in the form of a letter from the City of Fairview. The letter shall state that inspections were conducted and that the facilities were completed in accordance with specifications and standards provided for herein or approved by the City Council at the time the Final Plat was approved for said subdivision.

(Ordinance 1996-01-0005 adopted 7/14/97)



**EXHIBIT B**

**ZONING ORDINANCE**

Article 1. General Provisions.....9B-3  
Article 2. Permitted Uses.....9B-8  
Article 3. Zoning Districts.....9B-18  
Article 4. Supplementary Regulations.....9B-29  
Article 5. Administration.....9B-71  
Article 6. Definitions .....9B-80

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**EXHIBIT B**

**ZONING ORDINANCE**

**ORDINANCE NO. 2010-01-149**

Section 1. That a new text document, being a new Zoning Ordinance for the City of New Fairview is adopted to replace Ordinance No. 1999-20-0047 with the new Zoning Ordinance being dated August 20, 2009 and provided herein as Exhibit “A,” Ordinance No. 1999-20-0047 being repealed in its entirety.

Section 2. That a new Zoning Map dated August 2009, as provided in Exhibit “B” is adopted to replace the existing Zoning Map previously existing.

Section 3. That this Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance.

Section 4. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portion of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 5. This Ordinance shall take effect from and after its date of passage in accordance with law, and it is so ordained.

**Article 1. General Provisions**

**Section 1 Title**

This ordinance shall be known as and may be cited and referred to as the “Zoning Ordinance of the City of New Fairview,” which includes narrative regulations and map. (Ordinance 2010-01-149 adopted 1/19/10)

**Section 2 Purpose**

The purpose of this ordinance is to establish zoning regulations and districts in accordance with the City of New Fairview Comprehensive Land Use Plan for the purpose of promoting health, safety, morals and general welfare of the City of New Fairview. They have been designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. They have been made with reasonable consideration, among other things, of the character of each district and its peculiar suitability for the particular uses specified, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the community consistent with the City of New Fairview Comprehensive Land



Use Plan. Nothing herein shall be construed to grant “permanent” zoning. (Ordinance 2010-01-149 adopted 1/19/10)

**Section 3            Establishment of Districts**

The City is hereby divided into five straight zoned districts and one special district. The use, height, and development regulations as established are uniform in each district. The districts established herein shall be known as follows;

<u>Abbreviated Designation</u>	<u>Straight Zoned Districts</u>
A	Agriculture District
SF	Single-Family District
C	Commercial District
M	Manufacturing District
MH	HUD-Code Manufactured Housing District
	<u>Special Districts</u>
PD	Planned Development District

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 4            Zoning District Map**

**4.1 BOUNDARIES**

The boundaries of the zoning districts are delineated on the zoning district map of the City, which is incorporated in and made a part of this ordinance for all purposes.

**4.2 ADOPTION**

Original, official, and identical copies of the zoning district map are hereby adopted and shall be identified by the signature of the mayor, attested by the City secretary, and bearing the seal of the City under the following words: “This is to certify that this is the official zoning map of the City of New Fairview, Texas,” together with the date of adoption. The zoning district map shall be filed and maintained as follows:

- A. One copy shall be filed with the City secretary and retained as the original record and shall not be changed in any manner. A second reproducible copy shall be filed with the City secretary and shall be the official zoning district map. This map shall be maintained by posting on the map all changes and subsequent amendments after their enactment for the use of the City Council.
- B. One copy shall be filed with the administrative official and shall be maintained by posting on the map all changes and subsequent amendments.
- C. Reproductions for information purposes may, from time to time, be made of the official zoning district map.

(Ordinance 2010-01-149 adopted 1/19/10)

## **Section 5 Rules for Interpretation of District Boundaries**

### **5.1 UNCERTAINTY OR CONFLICTS IN DISTRICT**

- A. Centerlines. Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed to follow such centerlines.
- B. Lot Lines. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- C. City Limits. Boundaries indicated as approximately following City limits shall be construed as following City limits.
- D. Railroads. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.
- E. Shorelines. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the centerlines of streams, drainage courses, creeks, canals, lakes, or other bodies of water shall be construed to follow such centerlines.
- F. Extensions of Features. Boundaries indicated as parallel to or extensions of features indicated in subsections A through B [A through E] above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.
- G. Vacated Public Way. Whenever any street, alley, or other public way is vacated by official action of the City Council, the zoning district line adjoining each side of the street, alley, or other public way shall be automatically extended to the centerline of the vacated street, alley, or way, and all area so involved shall be subject to regulations of the extended districts.
- H. Variance of Physical Features and Official Zoning Map. Where physical or cultural features existing on the ground are at variance with those shown on the official zoning map or when there arises a question as to how or whether a parcel of property is zoned and such question cannot be resolved by the application of subsections A through G above, the property shall be considered as classified in the "AG" Agriculture district, in the same manner as provided for newly annexed territory, and the issuance of a building permit and the determination of zoning shall be in accordance with the provisions provided in Section 6, Zoning Annexed Territory.

(Ordinance 2010-01-149 adopted 1/19/10)

## **Section 6 Zoning Annexed Territory**

### **6.1 CLASSIFICATION OF NEWLY ANNEXED TERRITORY**

All territory which hereafter is annexed to the City shall automatically be considered to be in the "A" Agricultural district. The procedure for establishing zoning on annexed territory shall conform to the procedure established by state law for the adoption of original zoning regulations.

### **6.2 ALTERNATIVE ZONING OF NEWLY ANNEXED TERRITORY**

The City Council or petitioners for annexation may request alternative zoning classifications in an area being considered for annexation. The City Council may hold public hearings on annexation and zoning simultaneously, and may approve the zoning of a newly annexed area at the time of annexation.

**6.3 CONSTRUCTION IN NEWLY ANNEXED TERRITORY**

No person shall erect, construct, or proceed or continue with the erection or construction of any building or structure, add to any building or structure, or cause the same to be done in any newly annexed territory without first applying for and obtaining a building permit or certificate of occupancy from the building official. No permit for construction of a building or use of land shall be issued by the building official other than a permit which will allow the construction of a building permitted in the “A” Agricultural district.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 7            Application of District Regulations**

**7.1 CONFORMANCE REQUIRED**

No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered unless in conformity with all of the regulations herein specified for the district in which it is located.

**7.2 PROVISIONS OF ORDINANCE ARE MINIMUM REQUIREMENTS**

In their interpretation and application, the provisions of this ordinance shall be construed to be the minimum requirements for the promotion of the public health, safety, convenience, comfort, morals, and general welfare. Wherever this ordinance imposes a greater restriction than imposed by other ordinances, laws, or regulations, the provisions of this ordinance shall govern.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 8            Building Permits and Certificates of Occupancy**

**8.1 BUILDING PERMIT REQUIRED**

No building or other structure shall be erected, moved, added to, or structurally altered without a building permit issued by the administrative official. No building permit shall be issued for any building or structure except in conformity with the provisions of this ordinance. No permit for the construction of a building or buildings upon any land shall be issued until a building site has been created by the land being a platted lot appearing on a plat properly approved by the City and filed in the records of the county clerk of Wise County.

- A. Application for building permit: All applications for building permits shall be accompanied by plans in triplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as

lawfully may be required by the administrative official, including existing or proposed building or alteration; existing or proposed uses of the building and land; housekeeping units or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this ordinance. One copy of the plans shall be returned to the applicant by the administrative official, that has markings on the copy either as approved or disapproved and attested to same by his signature on such copy. The original and one copy of the plans, similarly marked, shall be retained by the administrative official.

- B. Expiration of Building Permit: If the work described in any building permit has not begun within six calendar months from the date of issuance thereof, said permit shall expire, and work shall not proceed until a new building permit has been obtained.

### 8.2 CERTIFICATE OF OCCUPANCY REQUIRED

It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of occupancy shall have been issued therefor by the administrative official stating that the proposed use of the principal building or land conforms to the requirements of this ordinance.

- A. No permit for erection, alteration, moving or structural repair of any building shall be issued until an application has been made for a certificate of occupancy, and the certificate shall be issued in conformity with the provisions of this ordinance upon completion of the work.
- B. A temporary certificate of occupancy may be issued by the administrative official for a period not exceeding six months during alterations or partial occupancy of a building pending its completion, provided that said temporary certificate may include such conditions and safeguards as will protect the safety of the occupants and the public.
- C. The administrative official shall maintain a public record of all certificates of occupancy.
- D. Failure to obtain a certificate of occupancy shall be a violation of this ordinance and punishable under Section 40, Violations and Penalties of this ordinance.

### 8.3 CONFORMANCE REQUIRED

Building permits or certificates of occupancy issued on the basis of plans and applications approved by the administrative official authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement or construction at variance with that authorized shall be deemed violation of this ordinance, and punishable as provided by Section 40, Violations and Penalties hereof.

(Ordinance 2010-01-149 adopted 1/19/10)

## **Section 9            Platting of Property not Properly Zoned**

The City Council shall not approve any plat until the area covered by the proposed plat is or shall be zoned to the proper zoning classification by the City Council. (Ordinance 2010-01-149 adopted 1/19/10)

**Section 10      Pre-existing Uses, Lots, and Structures**

**10.1 PRE-EXISTING USES**

Uses, that are in existence prior to the effective date of this ordinance, shall be deemed to be legal nonconforming uses in accordance with Section 33, Nonconforming Uses, Lots, and Structures.

**10.2 PRE-EXISTING LOTS**

Lots and parcels of land, that are in existence prior to the effective date of this ordinance and do not meet the requirements provided herein, shall be deemed to be legal nonconforming lots and shall be exempt from the area requirements of the zoning districts. Lots or parcels having existing structures thereon prior to the effective date of this ordinance shall be exempt from the front, rear, and side yard setback requirements for all structures located thereon at that date. However, new construction for structures located thereon after the effective date of this ordinance shall be required to meet the setback requirements of the respective district applicable to that lot.

**10.3 PRE-EXISTING STRUCTURES**

Structures, that are in existence prior to the effective date of this ordinance and do not meet the requirements provided herein, shall be deemed to be legal nonconforming structures and shall be exempt from the area and height requirements of the zoning districts. Said structures shall be permitted to be expanded, repaired, and remodeled without meeting the area requirements for structures. However, said structures are not exempted from the height regulations for new construction after the effective date of this ordinance that exceeds the regulations provided in the respective district applicable to the property on which that structure is located.

(Ordinance 2010-01-149 adopted 1/19/10)

**Article 2. Permitted Uses**

**Section 11      Permitted Use Table**

**11.1 LAND USE TABLE LEGEND**

The following table presents the zoning district classifications and the permitted uses within those classifications. Uses are listed as being “Permitted”, permitted by “Specific Use Permit”, and prohibited uses as signified by blank cells. Conditions are provided in Section 12, Special Conditions for Listed Uses. Any use not expressly authorized and permitted herein is expressly prohibited.

P Permitted Use

S Specific Use Permit

Prohibited Use

**11.2 LAND USE TABLE**

P = Permitted Use      S = Specific Use Permit      Blank = Prohibited Use

**City of New Fairview Land Use Table**

Residential						Land Use Designation	Nonresidential				Special Conditions
			A	SF	MH		C	M			
<b>Residential Uses</b>											
			P	P	P	Agricultural Use	P	P			
						Apartment					
						Boarding House	P				
			P	P	P	Caretaker, Guard or Servant Residence or Garage Apartment	P	P			13
			P	P		Dwelling, Guesthouse					
			S	S		Convent, Rectory, Monastery	P				
						Dwelling, Assisted Living Facility	P				
			S		P	Dwelling, HUD-Code Manufactured Home					18
			P	P	P	Dwelling, Industrialized Housing					
						Dwelling, Mobile Home					
						Dwelling, Multi-family					
						Dwelling, Single-Family Attached					
			P	P	P	Dwelling, Single-Family Detached					13
						Dwelling, Two-Family					
			P	P		Group Home for the Disabled or Disadvantaged					
					P	Manufactured Housing Park or Subdivision					
<b>Public, Civic and Utility Uses</b>											
			S			Airport, Public/Private	P	P			2
			S			Animal Pound, Shelter	S	S			1
			S			Assembly Hall	P	P			
			S	S	S	Athletic Field and Play Field, Public					1
			S	S	S	Cemetery, Mausoleum, Crematorium	S	S			
			S	S		Community Center	P	P			2, 7
			P	P	P	Electrical Generating Station	P	P			
			P	P	P	Electrical Transmission Line	P	P			
						Garage, Public	S	P			2, 7, 9
			P	P	P	Gas Regulator Station	P	P			
			S	S	S	Golf course, Public	P	P			
			P	P	P	Governmental Administration Facility	P	P			22
			S			Library	P	P			
			S			Lodge, Fraternal, Sorority and Clubs	P	P			
						Museum	P	P			
			P	P	P	Park	P	P			
						Philanthropic and/or Charitable Use	P	P			

Residential						Land Use Designation	Nonresidential				Special Conditions
			S	S	S	Public Maintenance Building, Storage Yard	S	P			7, 9
			P	P	P	Public Safety Facility, Police and Fire	P	P			
			P	P	P	Public Utility	P	P			
			S	S	S	Religious Institution	P	P			2, 7
			P	P	P	Telephone Exchange, Switching or Relay	P	P			
<b>Educational Uses</b>											
						School, Business College	P				
						School, College or University	P				
						School, Commercial Instruction	P				
						School, Commercial Trade	P				
			P	P	P	School, Home					8
			P	P	P	School, Home Day					8
						School, Institution, Rehabilitation and Training Center	P	P			
			S	S	S	School, Nursery	P	P			8
			P	P	P	School, Primary or Secondary	P	P			1, 7
						School, Vocational	P	P			
<b>Amusement and Entertainment Uses</b>											
						Amusement Center, Indoor	P	P			7
						Amusement Center, Outdoor	S	P			1, 7
			S			Athletic Field and Play Field, Commercial	P	P			2, 7
						Auditorium	P	P			7
						Camp Ground and Related Facilities	P	P			
			S	S	S	Country Club	P	P			7
			S			Golf Course, Driving Range	S	P			2
						Golf Course, Miniature	P	P			
			S	S	S	Golf Course, Private	P	P			2, 7
						Go-Cart Track and Other Vehicular Track or Facility		S			1, 7, 14
						Gymnasium	P	P			
			P	P	P	Private Club	P	P			
			P			Recreational Ranch or Farm					
			S			Rodeo Ground/Fair Ground		P			2, 7, 5
						Skating Rink, Indoor	S	P			2
			S			Stable, Commercial		S			2
			P	S	S	Stable, Private	S	S			
						Swimming Pool, Commercial	P	P			
						Shooting Range, Indoor	S	P			2
						Shooting Range, Outdoor		S			2
						Theater, Indoor Motion Picture	P	P			7
						Water Park, Commercial	S	P			1, 7
<b>Medical Uses</b>											
						Clinic	P	P			
						Hospital	P	P			7
						Laboratory, Medical and/or Dental	S	P			2
						Medical, Dental and Optical Retail Sales	P	P			
						Medical, Dental Office	P	P			
						Medical Equipment Sales, Rental, and Leasing Service	P	P			
			S	S	S	Nursing Home	P	P			2, 7
						Optician Shop	P	P			
						Veterinary Hospital with Outside Pens		S			7, 16
						Veterinary Hospital without Outside Pens	S	P			2

Residential						Land Use Designation	Nonresidential				Special Conditions	
						Veterinarian Office, Small Animal Practice	P	P				
						Veterinarian Office, Large Animal Practice	S	P				2
<b>Automotive Uses</b>												
						Auto Auction		S				2, 7, 9
						Auto Car Wash	P	P				1, 7
						Auto Impound Lot/Wrecker Business						
						Auto Paint and Body Shop		S				2, 3, 7, 10
						Auto Parts and Accessory Sales	P	P				7
						Auto Rental (Car and Truck)	P	P				7, 11
						Auto Repair Garage	S	P				2, 7, 9, 10
						Auto Sales, New and Used	S	S				2, 7, 9, 10
						Auto Service Station	S	P				2, 7, 9
						Bus, Train and Taxi Station or Terminal	S	P				2
						Farm Machinery and Implement Sales and Service	S	P				2, 7, 11
						Heliport	S	P				2
						Helistop	S	P				2
						Motor Freight Terminal		S				2, 7
						Park and Ride Lots	P	P				
						Parking Lot, Commercial (Auto)	S	P				
						Parking Lot, Commercial (Truck)		S				
						Recreational Vehicle Storage (Commercial)		S				2, 7, 11
			S	S	S	Private Airstrip	S	S				2
<b>Professional Uses</b>												
						Bank, Savings and Loan Association, Financial Institution	P	P				7
						Office, Business	P	P				7
						Office, Professional	P	P				7
						Office, Real Estate Development Tract or Field Office	P	P				7
<b>Commercial, Retail, and Service Uses</b>												
						Ambulance Service	P	P				7
						Animal Grooming	P	P				7
						Antique Shop	P	P				7
						Apparel Alteration and Repair or Tailor Shop	P	P				7
						Appliance Repair, Household	P	P				7
						Art Gallery	P	P				7
						Arts, Crafts, and Hobby Shop	P	P				7
						Auction House, Indoor	S	P				2, 7
						Bakery, Retail Confectionery	P	P				7
						Bakery, Wholesale Candy	P	P				7
						Barber Shop, Beauty Salon, other Personal Shop	P	P				7
						Building Material Sales	S	P				2, 7
						Cabinet and/or Upholstery Shop	S	P				2, 7
						Catering Service	P	P				7
						Collectibles Shop	P	P				7
						Contractor, no Outside Storage Permitted	P	P				7
						Contractor, Outside Storage Permitted	S	P				2, 7, 11
						Contractor Storage or Equipment Yard		P				2, 7, 11
						Convenience Store, with or without Fuel Sales	P	P				7



Residential						Land Use Designation	Nonresidential				Special Conditions
						Copy Shop	P	P			7
						Cosmetic Tattoo Establishment					
						Day Care Center, Adult	P	P			
						Day Care Center, Child	P	P			
			P	P	P	Day Care, in the Home	P	P			
						Department Store	P	P			7
						Exterminating Service	S	P			2
						Factory Outlet, Retail or Wholesale Store	S	P			2, 7
			P			Farmer's Market, Outdoor		S			
						Flea Market					
						Funeral Home, Mortuary	S	P			
						Furniture, Fixture and Appliance Store	P	P			7
						Gift Shop	P	P			7
			S			Greenhouse or Plant Nursery		P			7
						Grocery Store	P	P			7
						Hardware Store	P	P			7
						Health Club, Recreation Facility	P	P			7
			P	P	P	Hobby Studio, Private	P	P			7
						Hotel, Motel	P	P			7
						Kennel	S	P			2, 7
			S			Landscape Service	S	P			2, 7
						Laundry, Dry Cleaning Full-Service	S	P			2, 7
						Laundry, Dry Cleaning Pickup and Receiving Station	P	P			7
						Laundry, Dry Cleaning Self-Service	P	P			7
						Lithography or Print Shop	P	P			7
						Locksmith Shop	P	P			7
						Machinery Sales or Repair	S	P			3, 7, 9
						Manufactured or Industrialized Home Sales or Rental		P			7
						Meat Market		S			2, 7
						Music Store	P	P			7
						Office Machine Sales and Service	P	P			7
						Office Supply Store	P	P			7
						Pawn Shop	P	P			7
						Pet Shop	P	P			7
						Pharmacy	P	P			7
						Photographic Equipment Sales and Service	P	P			7
						Photographic Service	P	P			7
						Radio, Television Studio	P	P			7
			P	S	S	Recycling Collection Center	S	P			2, 7, 19
						Rental Store	S	P			2, 7, 11
						Rental Yard, Commercial and Heavy Equipment	S	P			2, 3, 7, 9
						Restaurant	P	P			7
						Restaurant, Drive-in/Drive-thru	P	P			7
						Restaurant, Refreshment Stand (Temporary or Seasonal)	P	P			7
						Sexually Oriented Business					15
						Shoe Repair	P	P			7
						Sign Shop, Painted or Silk-screened	P	P			7
						Studio	P	P			7
						Stone Monument Sales	P	P			7
						Tattoo Parlor/Body Piercing Studio	P	P			7
						Taxidermist Studio	P	P			7
						Taxidermist Shop	S	P			2, 7

Residential						Land Use Designation	Nonresidential				Special Conditions
						Tobacco Shop	S	P			2, 7
						Video/Game Rental	P	P			7
						Watch and/or Jewelry Sales and Repair	P	P			7
<b>Manufacturing and Industrial Uses</b>											
						Assembly Plant		P			7
						Bottling Works		P			7
						Building Materials Manufacturing		P			7
						Dairy Processing		S			7
						Electronics Manufacturing		P			7
						Laundry, Dry Cleaning and Dyeing Plant		S			7
						Machine Shop		P			7
						Manufacturing Facility (Light)		P			7
						Meat Product Processing					
						Mini-warehouse		P			1, 3, 7, 9
						Pharmaceutical Plant					
			S	S	S	Oil and Gas drilling and production	P	P			
						Plastic Products Manufacturing					
						Wireless Transmission or Receiving Facility	(As regulated by Sec. 30)				
						Salvage Yard					
						Stockyard					
						Storage and Warehousing Establishment		P			7
						Storage Yard		P			7, 3
						Textile Manufacturing					
						Warehousing, Freight Office and/or Storage		P			7
						Welding or Machine Shop		P			7, 9
			P			Wind Generation Turbine, Large		P			21
			P	S	S	Wind Generation Turbine, Small	S	P			20
<b>Accessory Uses</b>											
			P	P	P	Accessory Building	P	P			
			P	P	P	Carport, Residential					
			S			Christmas Tree Sales	P	P			6
			P	P	P	Home Occupation					
			P	P	P	Temporary Construction Building	P	P			6
			P	P	P	Utility Buildings and Structures	P	P			

(Ordinance 2010-01-149 adopted 1/19/10; Ordinance 2012-05-167, sec. 1, adopted 10/16/12)

**Section 12 Special Conditions for Listed Uses**

**12.1 DESCRIPTION OF LAND USE TABLE CONDITIONS AND SPECIAL REGULATIONS**

The following describe conditions and special regulations for uses listed in the Permitted Use Table. Additional requirements may be added to these herein by the City Council as deemed necessary to protect the health, safety, and general welfare of the citizens of New Fairview. No construction or occupancy shall commence for any permitted use until the conditions herein stated or required by the City Council have been met.

1. A site plan will be required in accordance with Section 20, Site Plan Requirements.
2. A site plan, in accordance with Section 20, Site Plan Requirements, will only be required in districts which require a Specific Use Permit.

3. All storage shall be within completely enclosed buildings or effectively screened with screening not less than six feet nor more than eight feet in height, provided no storage located within 50 feet of such screening shall exceed the maximum height of such screening.
4. Temporary buildings for construction purposes for a period not to exceed the duration of such construction.
5. May not be located within 300 feet of any property zoned for a residential use or any property which is occupied by a church, public school, day care or nursing home. The measurement of distance shall be measured as a radius from the edge of the property line.
6. Permitted on a temporary basis only, in accordance with Section 26, Temporary Uses and Special Events.
7. All outdoor lighting, including parking lot lighting, shall be directed away from any property zoned or developed for residential uses.
8. A copy of the State Certification of licensing or registration as described in Section 42.052 of Chapter 42, Texas Human Resources Code must be provided to the City.
9. Shall not be used for the storage of wrecked vehicles, or the dismantling of vehicles or the storage of vehicle parts.
10. All vehicles being stored for repair shall be screened from all public rights-of-way.
11. All equipment shall be stored and displayed on a hard all-weather surface.
12. Antenna and towers shall be permitted and regulated in accordance with Section 30, Wireless Communications Facilities.
13. Accessory Dwelling/Garage Apartments are limited to a maximum of 500 square feet.
14. Any business which uses the operation of motor vehicles on-site, such as go-cart tracks, shall not be located within 500 feet from any residentially zoned property.
15. As regulated by Ordinance 2007-06-121 [article 5.05 of the Code of Ordinances]
16. Requires 20 acres for animal hospital in SF.
17. Must comply with Chapter 241 of the Texas Local Government Code
18. Except for the MH district, HUD-Code Manufactured housing is prohibited in any platted subdivision (either preliminary plat or final plat) platted after the effective date of this ordinance.
19. Shall be bundled and screened for outside storage

20. Small Wind Turbines shall meet the following standards:
- (a) Small Wind Turbine shall not be installed or located within one hundred (100) feet from any property line.
  - (b) A Small Wind Turbine shall not be installed within fifty (50) feet of another structure on site.
  - (c) A Small Wind Turbine shall not be located within 250 feet of a residential structure located upon an adjoining lot or recorded parcel.
  - (d) No portion of a Small Wind Turbine, including any blade, guy wire or supporting structure, shall exceed a height, at a required front, side, or rear setback line, of thirty-five (35) feet. However, an additional one foot of height may be permitted for each additional foot the Small Wind Turbine is set back from the front, side, or rear setback line, up to a height not to exceed sixty-five (65) feet. Any height over sixty-five (65) feet must be approved as a special exception by the ZBA.
  - (e) No Small Wind Turbine shall generate a sound level in excess of 50 dBA, as measured at the nearest property line, during the hours of 7:00 a.m. to 10:00 p.m., nor a level in excess of 40 dBA during the hours of 10:00 p.m. to 7:00 a.m.
  - (f) Each Small Wind Turbine shall be operated and maintained in sound working order in conformance with the manufacturer's specifications at all times. This maintenance shall include the physical appearance of the device so it does not present an unsightly appearance. A copy of the manufacturer's specifications and use instructions shall be submitted to the City with any application prior to issuance of a building permit and shall be retained within the public file for that application.
  - (g) Any Small Wind Turbine that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such Wind Turbine shall remove the same within ninety (90) days of receipt of written notice from the City notifying the owner of such abandonment. If the owner does not remove the equipment, along with all associated and ancillary equipment, devices, structures or support for that wind turbine, or does not request a hearing before the ZBA on the issue of whether the equipment is abandoned and subject to removal, the City may remove the equipment and store it in a secure location. The owner shall have thirty (30) days, from the date the City removes said equipment, to reclaim the equipment. If the equipment is not reclaimed in accordance with this section, the City may dispose of the equipment in accordance with the City's existing policy for disposal of abandoned or lost property.
  - (h) Failure to remove an abandoned Small Wind Turbine within the allotted time shall be grounds to remove the device at the owner's expense.
  - (i) A Building Permit, issued by the City of New Fairview, shall be obtained prior to the installation of a Small Wind Turbine system.

- (j) Every Small Wind Turbine shall be installed strictly per the Manufacturer's Installation specifications, or as modified and certified by a Registered Professional Engineer licensed by the State of Texas.
  - (k) No Small Wind Turbine, or associated and ancillary equipment, batteries, devices, structures or support(s) shall be located within any required front, side or rear yard setback area.
  - (l) No wiring between a Small Wind Turbine and another Wind Turbine, or the main or accessory structure on site, or any associated and ancillary equipment, batteries, devices, structures or support(s) for any wind turbine, shall be located above ground level.
  - (m) When a Small Wind Turbine system is removed from a site, all associated and ancillary equipment, batteries, devices, structures or support(s) for that system shall also be removed.
21. Large Wind Turbines shall meet the following standards:
- (a) A Large Wind Turbine shall not be installed or located within three hundred (300) feet from any property line.
  - (b) A Large Wind Turbine shall not be installed within one hundred fifty (150) feet of another structure on site, unless directly mounted upon that structure.
  - (c) A Large Wind Turbine shall not be located within 500 feet of a residential structure located upon an adjoining lot or recorded parcel.
  - (d) No portion of a Large Wind Turbine, including any blade, guy wire or supporting structure, shall exceed a height of sixty-five (65) feet. Additional height may be permitted by special exception upon approval of the ZBA.
  - (e) No Large Wind Turbine shall generate a sound level in excess of 50 dBA, as measured at the nearest property line, during the hours of 7:00 a.m. to 10:00 p.m., nor a level in excess of 40 dBA during the hours of 10:00 p.m. to 7:00 a.m.
  - (f) Each Large Wind Turbine shall be operated and maintained in sound working order in conformance with the manufacturer's specifications at all times. This maintenance shall include the physical appearance of the devices so that it does not present an unsightly appearance. A copy of the manufacturer's specifications and use instructions shall be submitted to the City with any application prior to issuance of a building permit and shall be retained within the public file for that application.
  - (g) Any Large Wind Turbine that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such Wind Turbine shall remove the same within ninety (90) days of receipt of written notice from the City notifying the owner of such abandonment. If the owner does not remove the equipment, along with all associated and ancillary

equipment, devices, structures or support for that wind turbine, or does not request a hearing before the ZBA on the issue of whether the equipment is abandoned and subject to removal, the City may remove the equipment and store it in a secure location. The owner shall have thirty (30) days, from the date the City removes said equipment, to reclaim the equipment. If the equipment is not reclaimed in accordance with this section, the City may dispose of the equipment in accordance with the City's existing policy for disposal of abandoned or lost property.

- (h) Failure to remove an abandoned Large Wind Turbine within the time allotted shall be grounds to remove the device at the owner's expense.
- (i) A Building Permit, issued by the City of New Fairview, shall be obtained prior to the installation of a Large Wind Turbine system.
- (j) Every Large Wind Turbine shall be installed strictly per the Manufacturer's Installation specification, or as modified and certified by a Registered Professional Engineer licensed by the State of Texas.
- (k) No Large Wind Turbine, or associated and ancillary equipment, batteries, devices, structures or support(s) shall be located within any required front, side or rear yard setback area.
- (l) No wiring between a Large Wind Turbine and another Wind Turbine, or the main or accessory structure on site, or any associated and ancillary equipment, batteries, devices, structures or support(s) for any wind turbine, shall be located above ground level.
- (m) When a Large Wind Turbine system is removed from a site, all associated and ancillary equipment, batteries, devices, structures or support(s) for that system shall also be removed.

22. Governmental Administrative facilities and/or Police and Fire Public Safety facilities are exempted from regulations and requirements contained herein.

(Ordinance 2010-01-149 adopted 1/19/10; Ordinance 2012-05-167, sec. 2, adopted 10/16/12)

### **Section 13      Classification of New and Unlisted Uses**

It is recognized that new types of land use may develop and forms of land use not anticipated herein may seek to locate in the City. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land use shall be made as follows:

#### **13.1 ADMINISTRATIVE OFFICIAL ACTION**

The administrative official shall refer the question concerning any new or unlisted use to the City Council requesting an interpretation as to the proper zoning classification into which such use should be placed. The use interpretation question shall be determined as to the nature of the use and whether it involves dwelling activity, sales, processing; type of product, storage and the amount and nature thereof (i.e., enclosed or open storage); anticipated employment;

transportation requirements; the general degree of noise, odor, fumes, dust, toxic material and vibration likely to be generated, if any; and the general requirements for public utilities such as water and sanitary sewer.

**13.2 CITY COUNCIL**

The City Council shall consider the nature and described performance of the proposed use and its compatibility with the uses permitted in the various zoning districts, and determine the zoning district or districts within which such use should be permitted. The City Council shall approve [such] use or make such other determination concerning the classification of such use as appropriate, based upon its findings of fact, and amend this ordinance to reflect said findings and decisions.

(Ordinance 2010-01-149 adopted 1/19/10)

**Article 3. Zoning Districts**

**Section 14 “A” Agriculture District**

**14.1 PURPOSE**

The purpose of the “A” Agriculture district is to provide for the continuance of farming, ranching, and gardening activities on land being utilized for these purposes. When land in an Agricultural district is needed for urban purposes, it is anticipated the zoning will be changed to the appropriate zoning district(s) to provide for the orderly growth and development in accordance with the comprehensive plan.

**14.2 PERMITTED USES**

Uses permitted in the “A” district shall be in accordance with Section 11.2, Permitted Use Table. However, the “A” district may have structures and uses that are customarily incidental to farming and ranching uses.

**14.3 DENSITY, AREA, YARD, HEIGHT, AND LOT COVERAGE REQUIREMENTS**

The requirements regulating the maximum permissible residential density, minimum lot size, minimum yard sizes, and maximum building height, as pertains to the “A” district, shall conform to the provisions provided in the Area Requirements for the “A” Zoning District table.

<b>“A” Zoning District Area Requirements</b>	
Maximum Density	1 unit per lot
Minimum Lot Area	2 Acres
Minimum Lot Width	100 ft.
Minimum Lot Depth	200 ft.
Minimum Front Yard	50 ft.
Minimum Side Yard	25 ft.
Minimum Side Yard adjacent to street (corner lot)	50 ft. (same as Front Yard)
Minimum Rear Yard	25 ft.
Maximum Building Height*	None
Minimum Dwelling Size	1,200 sq. ft.

**14.4 OFF-STREET PARKING AND LOADING REQUIREMENTS**

Off-street parking and loading requirements pertaining to uses allowed in the “A” district shall conform to the provisions of Section 27, Off-street Parking and Loading Requirements.

**14.5 ACCESSORY BUILDING AND STRUCTURE REGULATIONS**

Area regulations for accessory buildings or accessory structures shall be in compliance with Section 24, Accessory Buildings.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 15 “SF” Single-Family District**

**15.1 PURPOSE**

The purpose of the “SF” Single-Family district is designed to accommodate single-family residential developments on large lots. The district is appropriately located in proximity to agricultural uses.

**15.2 PERMITTED USES**

Uses permitted in the “SF” Single-Family district shall be in accordance with Section 11.2, Permitted Use Table.

**15.3 DENSITY, AREA, YARD, HEIGHT, AND LOT COVERAGE REQUIREMENTS**

The requirements regulating the maximum permissible residential density, minimum lot size, minimum yard sizes, and maximum building height, as pertains to the “SF” Single-Family district, shall conform to the provisions provided in the Area Requirements for the “SF” Single-Family Zoning District table.

<b>“SF” Zoning District Area Requirements</b>	
Maximum Density	1 unit per two gross acres*
Minimum Lot Area	1 Acre
Minimum Lot Width	100 ft. (at building line)
Minimum Lot Depth	100 ft.
Minimum Front Yard	35 ft.
Minimum Side Yard	25 ft.
Minimum Side Yard adjacent to street (corner lot)	35 ft.(same as Front Yard)
Minimum Rear Yard	25 ft.
Maximum Building Height	40 ft.
Minimum Dwelling Size	1,200 sq. ft.

\*d.u. = dwelling unit

**15.4 OFF-STREET PARKING AND LOADING REQUIREMENTS**

Off-street parking and loading requirements pertaining to uses allowed in the “SF” district shall conform to the provisions of Section 27, Off-street Parking and Loading Requirements.



15.5 MASONRY CONSTRUCTION

Masonry construction shall consist of a minimum of 60 percent of the total ground floor exterior wall surface (exclusive of opening for light, ventilation and access) of residential building structures, to be of brick, stone or combination thereof, or of an equivalent masonry material as approved by the City Council.

15.6 ACCESSORY BUILDING AND STRUCTURE REGULATIONS

Area regulations for accessory buildings or accessory structures shall be in compliance with Section 24, Accessory Buildings.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 16 “MH” HUD-Code Manufactured Housing Residential District**

16.1 PURPOSE

The purpose of the “MH” HUD-Code Manufactured Housing residential district is to provide adequate space and restrictions for the placement of HUD-Code manufactured homes in the City within designated subdivisions. This does not include mobile homes as defined in this ordinance. The “MH” district is also established to provide housing densities compatible with existing and proposed neighborhoods by providing alternative housing types both in construction and economy within the “MH” district. It is the intent of the “MH” district to provide the maximum amount of freedom possible in the design of such developments and the grouping and layout of homes within such developments in order to provide amenities normally associated with planned residential areas.

16.2 GENERALLY

Land within the “MH” district will be developed as a HUD-Code manufactured home subdivision. Lots within the “MH” district will be sold to private individuals in strict conformance with the terms and conditions under which the subdivision was approved by the City Council. All roadways within a HUD-Code manufactured home subdivision shall be dedicated to the public. Private interior drives must be approved by the City. Land zoned “MH” which is not developed as a HUD-Code manufactured home subdivision may be developed in accordance with “SF” zoning district regulations. In the “MH” district, no building or land shall be used and no building constructed, reconstructed, altered, or enlarged, unless otherwise provided in this ordinance.

16.3 PERMITTED USES

Uses permitted within the “MH” Manufactured Housing district shall be in accordance with Section 11.2, Permitted Use Table.

16.4 DENSITY, AREA, YARD, HEIGHT, AND LOT COVERAGE REQUIREMENTS

The requirements regulating the maximum permissible residential density, minimum lot size, minimum yard sizes, and maximum building height, as pertains to the “MH” district, shall

conform with the provisions provided in the Area Requirements for the “MH” Zoning District table.

<b>“MH” Zoning District Area Requirements</b>	
Maximum Density	1 dwelling unit per Acre*
Minimum Lot Area	1 Acre
Minimum Lot Width	100 ft. (at building line)
Minimum Lot Depth	100 ft.
Minimum Front Yard	35 ft.
Minimum Side Yard	25 ft.
Minimum Side Yard adjacent to street (corner lot)	35 ft. (same as Front Yard)
Minimum Rear Yard	25 ft.
Maximum Building Height	35 ft.
Minimum Dwelling Size	1,200 sq. ft.

\*d.u. = dwelling unit

**16.5 DEVELOPMENT AND INSTALLATION REGULATIONS**

Any property developed within the “MH” district as a HUD-Code Manufactured Home or as a manufactured housing subdivision shall meet the following requirements:

- A. HUD-Code Manufactured Homes shall have the axles, wheels, and tow bar or tongue removed and shall be secured to a permanent foundation or footing and piers, all in accordance with manufacturer’s specifications.
- B. HUD-Code Manufactured Homes must have a minimum of an eighteen-inch crawl space under all homes.
- C. A concrete or asphalt surface with good drainage shall cover the area where a home is to be sited.
- D. Each HUD-Code Manufactured Home site shall have a slab or patio not less than twenty feet in length and six feet in width, comprised of concrete, flagstone, or similar substance installed adjacent to each site.
- E. HUD-Code Manufactured Homes shall have permanent steps installed at all exits.
- F. Each HUD-Code Manufactured Home shall have two covered Parking Spaces. All carports shall be built in place. Fiberglass or metal roofs shall be permitted.
- G. Skirting shall be securely attached between the HUD-Code Manufactured home and the ground on all sides within thirty days of home installation. Skirting materials shall consist of materials which are compatible with the design of the home and enhance its appearance. Unpainted or untreated corrugated metal, screen or wire, fiberglass, or lattice-type skirting is prohibited.
- H. Construction, siting, and installation of the homes shall be in conformance with applicable federal, state, and local codes and standards, and each manufactured home shall have affixed a seal of the appropriate federal or state department.

- I. Sanitation, fire protection, and underground utility services shall be provided to each lot in accordance with the City ordinances and regulations.
- J. Driveways shall be all weather - dust free construction and shall extend from the right-of-way to the carport or garage. No parking will be permitted on any portion of the lot on any other surface than an all weather - dust free surface.
- K. Drainage and garbage collection right-of-way, fire lanes, and utility easements shall be provided as required by the City. Such can be accomplished by designating all private interior drives within the project as easements for vehicular access and service.
- L. Soil conditions, groundwater level, drainage, flooding, and topography shall not create hazards to the developed portion of the property or the health and safety of the residents.
- M. HUD-Code Manufactured Home subdivisions shall be developed at densities comparable to adjacent residential uses or have adequate landscape buffering or open space to provide transition of uses. Adequate landscape buffering or open space for transition purposes shall be determined on an individual site basis and shall be subject to the approval of the City.
- N. Any structural alteration or modification of a HUD-Code manufactured home after it is placed on the site must be approved by the building official of the City of New Fairview. All structural additions shall comply with the City's building codes and ordinances.

#### 16.6 SITE-BUILT ADDITIONS

The addition of peaked roof facades, atrium entrances, garages, porches, and patios are encouraged in order to increase the compatibility with conventional single-family housing in the City.

#### 16.7 ACCESSORY BUILDING AND STRUCTURE REGULATIONS

Area regulations for accessory buildings or accessory structures shall be in compliance with Section 24, Accessory Buildings.

#### 16.8 PARKING REQUIREMENTS

Parking requirements for the HUD-Code Manufactured Housing District shall be in compliance with Section 27, Off-street Parking and Loading Regulations.

#### 16.9 INTERIOR DRIVES

The use of private interior drives must be approved by the City.

- A. Such interior drives shall have a minimum easement width of fifty (50) feet and shall have a minimum paved roadway width of thirty-one feet (31') back-to-back.

- B. Public interior streets shall be located within dedicated rights-of-way, and shall have a minimum paved roadway width provided in accordance with the applicable standards in the City of New Fairview Subdivision Regulations.
- C. All private interior drives, entrances, and service drives shall be constructed in accordance with City design standards. The developer shall bear the total cost of construction and maintenance of all such improvements.
- D. All parking areas and public streets shall be of concrete or asphalt construction, as approved by the City engineer.

#### 16.10 UNDERGROUND UTILITIES

All utility lateral and service lines located within the “MH” District shall be installed underground.

#### 16.11 OPEN SPACE AREA

Open space designated for the use and enjoyment of all residents shall be provided within a HUD-Code Manufactured Home subdivision at the ratio of five hundred (500) square feet for each of the first twenty (20) units, and two hundred (200) square feet for each additional unit in excess of twenty (20). Designated open space shall be developed and maintained for recreational and leisure activities and shall be located within the subdivision being developed.

#### 16.12 SCREENING

A solid opaque screening wall or fence of not less than six (6) feet in height, measured at the highest finished grade, shall be provided along all perimeter property lines of a HUD-Code Manufactured Home subdivision which do not abut a dedicated street. Said screening wall or fence shall be masonry and of a decorative construction. This requirement can be waived or modified if natural or man-made physical features create an adequate separation or buffer from adjacent uses, as determined by the City. However, any request to waive this requirement shall be presented as an element of the site plan and shall be subject to approval at that time only.

#### 16.13 PRESERVATION OF SITE ASSETS

When developing a HUD-Code Manufactured Home Subdivision, the following steps shall be taken to preserve on-site assets:

- A. Suitable available topsoil and desirable existing trees.
- B. Shrubs and ground cover shall be preserved and protected where practicable.
- C. Topsoil which is suitable and needed for later use in finished grading shall be stripped from areas to be occupied by structures, parking areas, streets and driveways, and from areas to be regraded or disturbed. This topsoil shall be collected and stored on the site in convenient places for future use and shall be free of debris during construction.

#### 16.14 DRAINAGE

Engineering plans for drainage shall be submitted for review by the City at the time of site plan approval. All applicable requirements of the City shall be met.

**16.15 HUD-CODE MANUFACTURED HOME SALES**

HUD-Code Manufactured Home subdivisions shall be for residential purposes only. Sales of these homes shall be limited to those which become available on the market on an individual basis. Commercial sales and promotion are not permitted.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 17 “C” Commercial District**

**17.1 PURPOSE**

The purpose of the “C” Commercial district is to provide for compatible land, building, and structure uses primarily oriented to select retail convenience goods and services which supply the daily needs of residential neighborhoods, including neighborhood shopping centers, select low intensity office uses, and select community facility uses. The “C” Commercial district is most appropriately located at the intersection of collector streets and arterial streets and as a transition district between moderate and high density residential districts and higher intensity commercial and industrial districts.

**17.2 PERMITTED USES**

Uses permitted in the “C” Commercial district shall be in accordance with Section 11.2, Permitted Use Table.

**17.3 DENSITY, AREA, YARD, HEIGHT, AND LOT COVERAGE REQUIREMENTS**

The requirements regulating the minimum lot size, minimum yard sizes, maximum building height, and maximum percent of lot coverage by buildings, as pertains to the “C” district, shall conform with the provisions provided in the “C” Zoning District Area Requirements table.

<b>“C” Zoning District Area Requirements</b>	
Minimum Lot Area	0 sq. ft.
Minimum Lot Width	0 ft.
Minimum Lot Depth	0 ft.
Minimum Front Yard	25 ft.
Minimum Side Yard	None, except 35 ft. when adjacent to residential use
Minimum Side Yard adjacent to street (corner lot)	25 ft. (same as Front Yard)
Minimum Rear Yard	None, except 35 ft. when adjacent to residential use
Maximum Building Height	65 ft.

**17.4 OFF-STREET PARKING AND LOADING REQUIREMENTS**

Off-street parking and loading requirements pertaining to uses allowed in the “C” district shall conform with the provisions of Section 27, Off-street Parking and Loading Requirements.

**17.5 MASONRY CONSTRUCTION**

Masonry construction shall consist of a minimum of 65 percent of the total exterior wall surface (exclusive of opening for light, ventilation and access) of structures, to be of brick, stone or combination thereof, or of an equivalent masonry material as approved by the City Council.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 18 “M” Manufacturing District**

**18.1 PURPOSE**

The purpose of the “M” Manufacturing district is to provide for land, building, and structure uses encompassing a variety of mixed wholesale and warehousing activities, light manufacturing, processing, and assembly plants, general offices, and research and development laboratories. The “I” Manufacturing district is characterized by activities and facilities which are generally incompatible with residential areas by virtue of materials storage yards, truck traffic generation, noises, odors, flammable materials, etc., and rely on direct access to major thoroughfares and highways, and in many cases railroad facilities for the movement of raw supplies and finished products.

**18.2 PERMITTED USES**

Uses permitted in the “I” Manufacturing district shall be in accordance with Section 11.2, Permitted Use Table.

**18.3 DENSITY, AREA, YARD, HEIGHT, AND LOT COVERAGE REQUIREMENTS**

The requirements regulating the minimum lot size, minimum yard sizes, maximum building height, and maximum percent of lot coverage by buildings, as pertains to the “I” district shall conform with the provisions provided in the Area Requirements for the “M” Zoning District table.

<b>“M” Zoning District Area Requirements</b>	
Minimum Lot Area	None
Minimum Lot Width	None
Minimum Lot Depth	None
Minimum Front Yard	35 ft.
Minimum Side Yard	None, except 50 ft. when adjacent to residential use
Minimum Side Yard adjacent to street (corner lot)	35 ft.
Minimum Rear Yard	None, except 50 ft. when adjacent to residential use
Maximum Building Height	65 ft.

**18.4 OFF-STREET PARKING AND LOADING REQUIREMENTS**

Off-street parking and loading requirements pertaining to uses allowed in the “M” district shall conform to the provisions of Section 27, Off-street Parking and Loading Requirements.

**18.5 MASONRY CONSTRUCTION**

Masonry construction shall consist of a minimum of 65 percent of the total exterior wall surface (exclusive of opening for light, ventilation and access) of principal administrative structures, to be

of brick, stone or combination thereof, or of an equivalent masonry material as approved by the City Council.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 19 “PD” Planned Development District**

**19.1 PURPOSE**

The purpose of the “PD” Planned Development District is to encourage creative development of the land, provide locations for well-planned comprehensive developments, and provide for variety and flexibility in the development patterns of the City which promote the health, safety, morals, and general welfare of the community. A Planned Development may include a combination of different dwelling types and/or a variety of residential and nonresidential land uses which creatively complement each other and harmonize with existing and proposed land uses in the vicinity.

**19.2 PLANNED DEVELOPMENT USES**

In a Planned Development District, no building or land shall be used, and no building constructed, reconstructed, altered, or enlarged, unless otherwise provided in an approved Planned Development.

**19.3 CONDITIONS FOR PLANNED DEVELOPMENTS**

Planned Developments shall be considered appropriate where the following conditions prevail:

- A. The project is consistent with the Comprehensive Land Use Plan and the goals and objectives of the City,
- B. Dwelling units are situated in such a way that an appreciable amount of open space is available and is integrated throughout the planned development,
- C. The project utilizes an innovative approach in lot configuration and mixture of residential and commercial type land uses,
- D. Higher densities than conventional single-family projects of the same acreage are able to provide, with increased open space and appropriate buffering between existing conventional single-family developments,
- E. Nonresidential uses are situated such that an appreciable amount of land is available for open space or joint use as parking and public access space and is integrated throughout the planned development,
- F. Aesthetic amenities may be provided in the planned development design which are not economically feasible to provide in conventional residential and nonresidential projects, and
- G. The project provides a compatible transition, which may include buffer yards, thoroughfares, or transitional uses, between adjacent existing single-family

residential projects and provides a compatible transition for the extension of future single-family projects into adjacent undeveloped areas.

#### 19.4 DENSITY, AREA, AND HEIGHT REGULATIONS

In approving a Planned Development or a use designation in a Planned Development, the City Council shall specify density, area, height, screening, parking, landscaping, and other development criteria as may be required in Section 19.9, Development Plan Requirements. Such standards shall be indicated on the Development Plan and shall be made a part of the ordinance. No property located in a Planned Development shall be modified as to density, area, height, screening, parking, landscaping or other development criteria unless a Development Plan containing such revised development criteria is approved.

#### 19.5 OWNERSHIP

An application for approval of a use designation, Development Plan or Site Plan in the Planned Development may be filed by a person having a legal interest in the property. The application shall be filed in the name(s) of the record owner(s) of the site, which shall be included in the application. The applicant shall provide evidence, in a form satisfactory to the City attorney, prior to final approval, that the applicant has the authority to file the application on behalf of all owners of the site.

#### 19.6 DEVELOPMENT SCHEDULE

An application for a use designation for new construction or construction that increases the floor area of the principal structure(s) shall be accompanied by a development schedule indicating the approximate date on which construction is expected to begin and the rate of anticipated development to completion. The development schedule, if adopted and approved by the City Council shall become part of the Planned Development Ordinance and shall be adhered to by the owner, developer, and their assigns or successors in interest.

#### 19.7 REPORT

The City shall require the owner/developer of the Planned Development to submit a written report on a basis as determined by the City. Said written report shall describe the progress achieved towards the development schedule. In the event that the owner/developer neglects to provide a written report, as established and agreed to in the Planned Development ordinance, or if the owner/developer neglects to initiate any progress, the City may initiate proceedings to rezone the property to a zoning district deemed appropriate. However, no rezoning effort shall be initiated by the City prior to making an official inquiry of the owner/developer regarding the status of the Planned Development.

#### 19.8 PLATTING REQUIREMENTS

No application for a building permit for the construction of a building or structure shall be approved unless the property on which the proposed improvements are planned has been platted. The plat must meet all the requirements of the City of New Fairview, and must have been approved by the City Council and recorded in the official records of Wise County.

#### 19.9 DEVELOPMENT PLAN REQUIREMENT



An application for a Planned Development, or approval of a use designation in a Planned Development which will require new construction which increases the floor area of the principal structure(s) or a change in the development criteria applicable to the site shall include and be accompanied by a Development Plan, which shall become a part of the amending ordinance. The Development Plan shall include the following information:

- A. A scale drawing showing any proposed public or private streets and alleys; building sites or building lots; any areas proposed for dedication or reserved as parks, parkways, playgrounds, utility and garbage easements, school sites, street widening, street changes; the points of ingress and egress from existing public streets on an accurate survey of the boundary of tract and topography with a contour interval of not less than five feet, or spot grades where the relief is limited.
- B. Where multiple types of commercial land uses are proposed, a land use plan delineating the specific areas to be devoted to various commercial uses shall be required.
- C. A plan indicating the arrangement and provision of off-street parking and off-street loading where required. Such a plan may be presented as a ratio of off-street parking and off-street loading area to building area when accompanied by a typical example indicating the feasibility of the arrangement proposed and when the areas where the example would be applied are dimensioned on the drawing of the entire site. Any special traffic regulation facilities proposed or required to assure the safe function of the circulation plan shall also be shown.
- D. A designation of the maximum building coverage of the site shall be indicated upon the Development Plan. General footprint of buildings shall be indicated showing the approximate position and sizes of any proposed structures.
- E. Landscaping and screening shall be provided as required in Section 29, Landscape Regulations and shall be indicated on the Development Plan.
- F. Any or all of the required features may be incorporated on a single drawing if such drawing is clear and capable of evaluation by the administrative official and interpretation by the Building Inspector.

Any amendment to a Development Plan must be approved by ordinance following public notice and a public hearing meeting the requirements of Section 39.3, Procedure.

19.10 SITE PLAN REQUIREMENT

Prior to issuance of a building permit, for new construction or construction which increases the floor area of the principal structure(s) or construction that changes the development criteria for the site, a Site Plan in accordance with Section 20, Site Plan Requirements will be required. The Site Plan shall be presented for approval to the City Council. The Site Plan may be submitted concurrently with the Development Plan. If the Development Plan and the Site Plan are submitted separately, a separate public hearing and action shall be required for both submittals.

19.11 COMBINED AND ABBREVIATED DEVELOPMENT AND SITE PLAN SUBMITTAL

If application is made for a new use designation in a Planned Use Development on a site which contains existing improvements which are not proposed to be enlarged, the following combined and abbreviated Development and Site Plan shall be permitted in place of a Development Plan. A combined and abbreviated Development and Site Plan shall contain the following:

- A. A scale drawing showing existing building and proposed use designations, easements, points of ingress and egress from existing public streets, the arrangement and provision of off-street parking and off-street loading, and the location of landscaping and screening provided on site. These items shall be shown on an accurate survey of the boundary of the lot. All of the required features may be incorporated on a single drawing if such drawing is clear and capable of evaluation by the administrative official and interpretation by the building inspector.
- B. Combined and abbreviated Development and Site Plan must be approved by ordinance following public notice and a public hearing meeting the requirements of Section 39.3, Procedure.

**19.12 ADMINISTRATIVE APPROVAL OF DEVELOPMENT PLAN AND SITE PLAN**

A Development Plan and Site Plan may be approved by the administrative official without the approval of the City Council if said application is located within an existing structure and does not increase the floor area of the existing structure and does not change the existing use on the site. The administrative official may, for any reason, elect to present the Development Plan or Site Plan to the City Council for approval.

(Ordinance 2010-01-149 adopted 1/19/10)

**Article 4. Supplementary Regulations**

**Section 20 Site Plan Requirements**

**20.1 GENERALLY**

Whenever a site plan is required by this ordinance, such site plan must conform to the requirements of this section. Unless otherwise specified in this ordinance, all site plans must be approved by the City Council. The site plan submitted in support of an application shall satisfy the requirements for site plan submittals as set forth by the City staff. Site plans shall be reviewed by the City staff, and comments shall be returned within five working days after the review by the City staff. In no event shall the review process exceed 15 working days after submittal. The submittal date of the site plan shall be the date upon which the site plan is found to be in compliance with the provisions of the site plan application by the City staff.

**20.2 REQUIRED PRIOR TO BUILDING PERMIT**

When required by this ordinance, a site plan must be approved prior to the issuance of a building permit by the City.

**20.3 CHANGES TO THE SITE PLAN**

Changes to the site plan shall be processed in the same manner as the original approved site plan.

- A. Except as otherwise provided in paragraph C below, any site plan that is amended shall require approval of the City Council.
- B. Changes to the site plan which will affect the use of the land may require either an amendment to a Planned Development or a rezoning of property, whichever applies.
- C. Changes of details within a site plan which do not alter the basic physical relationship of the property to adjacent properties; do not alter the use permitted; and do not increase the density, floor area, height, or reduce the yards provided at the boundary of the site as indicated on the approved site plan, may be authorized by the administrative official or his/her designee. An aggrieved party may appeal the decision of the administrative official or his/her designee to the Zoning Board of Adjustment in accordance with the provisions of this ordinance.

#### 20.4 COUNCIL APPROVAL

Council approval of a site plan that accompanies a zoning change request shall become part of the amending ordinance.

#### 20.5 SITE PLAN CONTENT

The site plan shall contain the information listed below, and any or all of the required features may be incorporated on a single drawing if the drawing is clear and capable of evaluation by the City Council and the staff personnel required to enforce and interpret this ordinance.

- A. The boundary lines and dimensions of the property, existing subdivision lots, available utilities, easements, roadways, sidewalks, emergency access easements, and public rights-of-way.
- B. Topography of the property proposed for development in contours of not less than two feet, together with any proposed grade elevations, if different from existing elevations.
- C. Floodplains, watercourses, marshes, drainage areas, and other significant environmental features including, but not limited to, rock outcroppings and major tree groupings. Topographic and drainage map information provisions may be waived by the reviewing body when the inclusion of such data would not materially contribute to the necessary evaluation of the project petition.
- D. The location and use of all existing and proposed buildings or structures, including all refuse storage areas, and the minimum distance between buildings. Where building complexes are proposed, the location of each building and the minimum distances between buildings, and between buildings and the property line, street line, and/or alley.
- E. Total number, location, and arrangement of off-street parking and loading spaces, where required.

- F. All points of vehicular ingress, egress, and circulation within the property and all special traffic regulation facilities proposed or required to assure the safe function of the circulation plan.
- G. Setbacks, lot coverage, and when relevant, the relationship of the setbacks provided and the height of any existing or proposed building or structure.
- H. The location, size, and arrangement of all outdoor signs, exterior auditory speakers, and lighting.
- I. The type, location, and quantity of all plant material used for landscaping, and the type, location, and height of fences or screening and the plantings around them.
- J. If multiple types of land uses are proposed, a delineation of the specific areas to be devoted to various land uses.
- K. Vicinity map, north point, scale, name of development, name of owner, name of planner, total acreage of project, and street address or common description of the property.
- L. Current land uses and zoning district of the property and current land uses and zoning districts of contiguous properties.
- M. Buildings on the exterior of the site and within twenty-five feet of all property lines.
- N. The location and size of existing and proposed surface and subsurface drainage facilities, including culverts, drains, and detention ponds, showing size and direction of flow.
- O. The number of square feet of the property after construction which will constitute impervious area or impervious surface and vegetated areas.
- P. Architectural drawings, such as elevations, concept sketches or renderings depicting building types and other significant proposed improvements including the treatment and use of open spaces, etc., where the submission of such drawings would more clearly portray the nature and character of the applicant's land use and development proposals.
- Q. Legal description of the total site area proposed for rezoning, development or specific use permit.
- R. Signature, title and date of the applicant, at the conclusion of the written documents certifying the information presented in the plans, and supporting documents reflect a reasonably accurate portrayal of the general nature and character of the applicant's proposals.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 21      Specific Use Permits**

**21.1 PURPOSE**

Certain land uses, because of their nature and location, are not appropriate for categorizing into installations, such as colleges and universities, institutions, community facilities, zoos, cemeteries, country clubs, show grounds, drive-in theaters and other unusual land uses not specifically provided for in this chapter. To provide for the proper handling and location of such specific uses, provision is made for amending this chapter to grant a permit for a specific use in a specific location. This procedure for approval of a specific use permit includes a public hearing. The amending ordinance may provide for certain restrictions and standards for operation. The indication that it is possible to grant a specific use permit as noted elsewhere in this ordinance does not constitute a grant of privilege for such use, nor is there any obligation to approve a specific use permit unless it is the finding of the City Council that such a special use is compatible with adjacent property use and consistent with the character of the neighborhood.

**21.2 PERMIT REQUIRED**

No special use shall be erected, used, altered, occupied nor shall any person convert any land, building or structure to such a use unless a specific use permit has been issued by the City Council. The granting of a specific use permit shall be done in accordance with the provisions for amendment of this zoning ordinance.

**21.3 APPLICATION PROCEDURE**

An application for a special permit shall be filed with the administrative official on a form prepared by the City. The application shall be accompanied by the following:

- A. A completed application form signed by the property owner;
- B. An application fee as established by the City's latest adopted schedule of fees;
- C. A certificate stating that all City and school taxes have been paid to date;
- D. A property description of the area where the specific use permit is proposed to apply;
- E. A site plan complying with the requirements stated in this section which will become a part of the specific use permit, if approved; and
- F. Any other material and/or information as may be required by the City Council or the administrative official to fulfill the purpose of this subsection and to ensure that the application is in compliance with the ordinances of the City.

**21.4 SITE PLAN INFORMATION**

A site plan shall contain, at a minimum the following information, as provided in Section 20, Site Plan Requirements: [sic]

**21.5 ADDITIONAL INFORMATION**

The following additional information may also be required if deemed appropriate by staff or the City Council.

- A. Copies of studies or analyses upon which have been based projections for need or demand for the proposed facility.
- B. Description of the present use, assessed value and actual value of the land affected by the proposed facility.
- C. Description of the proposed use, anticipated assessed value and supporting documentation.
- D. A description of any long-term plans or master plan for the future use or development of the property.
- E. A description of the applicant's ability to obtain needed easements to serve the proposed use.
- F. A description of any special construction requirements that may be necessary for any construction or development on the subject property.
- G. A traffic impact analysis prepared by a qualified professional in the field of traffic evaluation and forecasting may be required.

**21.6 ADMINISTRATIVE RELIEF OF REQUIREMENTS**

The applicant may be granted relief from the site plan requirements upon showing justification that such requirements are not applicable or do not provide substantive information that impacts the project or surrounding land uses. Such relief may be granted administratively by the City staff upon their discretion and may submit the requirement to receive relief to the Planning and Zoning Commission if deemed appropriate by the City staff.

**21.7 CONDITIONS OF PERMIT APPROVAL**

A specific use permit shall not be recommended for approval by the City Council unless the Council finds that all of the following conditions have been found to exist:

- A. The proposed use complies with all the requirements of the zoning district in which the property is located.
- B. The proposed use as located and configured will contribute to or promote the general welfare and convenience of the City.
- C. The benefits that the City gains from the proposed use outweigh the loss of or damage to any homes, business, natural resources, agricultural lands, historical or cultural landmarks or sites, wildlife habitats, parks, or natural, scenic, or historical features of significance, and outweigh the personal and economic cost of any disruption to the lives, business and property of individuals affected by the proposed use.
- D. Adequate utilities, road access, drainage and other necessary supporting facilities have been or shall be provided.

- E. The design, location and arrangement of all public and private streets, driveways, parking spaces, entrances and exits shall provide for a safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments.
- F. The issuance of the specific use permit does not impede the normal and orderly development and improvement of neighboring vacant property.
- G. The location, nature and height of buildings, structures, walls and fences are not out of scale with the neighborhood.
- H. The proposed use will be compatible with and not injurious to the use and enjoyment of neighboring property, nor significantly diminish or impair property values within the vicinity.
- I. Adequate nuisance prevention measures have been or shall be taken to prevent or control offensive odors, fumes, dust, noise, vibration and visual blight.
- J. Sufficient on-site lighting is provided for adequate safety of patrons, employees and property, and such lighting is adequately shielded or directed so as not to disturb or adversely effect neighboring properties.
- K. There is sufficient landscaping and screening to ensure harmony and compatibility with adjacent properties.
- L. The proposed operation is consistent with the applicant's submitted plans, master plans, projections, or, where inconsistencies exist, the benefits to the community outweigh the costs.
- M. The proposed use is in accordance with the City of New Fairview Comprehensive Land Use Plan.

**21.8 ADDITIONAL CONDITIONS**

In authorizing a Specific Use Permit, the City Council may impose additional reasonable conditions necessary to protect the public interest and the welfare of the community.

**21.9 TIME LIMIT**

A Specific Use Permit issued under this division shall become null and void unless construction or use is substantially underway within one year of the granting of the permit, unless an extension of time is approved the City Council.

**21.10 REVOCATION OF PERMIT**

A Specific Use Permit may be revoked or modified, after notice and hearing, for either of the following reasons:

- A. The permit was obtained or extended by fraud or deception.

- B. One or more of the conditions imposed by the permit has not been met or has been violated.

**21.11 AMENDMENTS TO SPECIFIC USE PERMIT**

The procedure for amending a Specific Use Permit shall be the same as for a new application, provided the administrative official may approve minor variations from the original permit which do not increase density, change traffic patterns, or result in an increase in external impacts on adjacent properties or neighborhoods.

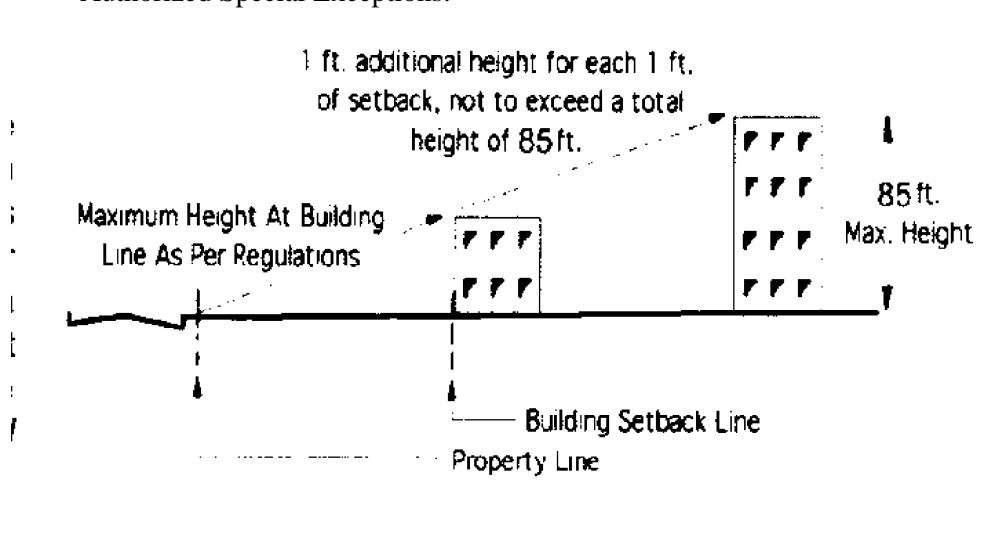
(Ordinance 2010-01-149 adopted 1/19/10)

**Section 22 General Height Requirements**

**22.1 NONRESIDENTIAL STRUCTURES**

A nonresidential building and structure located in any zoning district and may exceed the permitted height in a zoning district if the following conditions are met:

- A. A Site Plan is provided; and
- B. For every one foot exceeding the maximum permitted height, an additional one foot of setback is provided on the front, side, and rear yards. The maximum height of a building shall not exceed 85 feet without a special exception. See Section 36.7, Authorized Special Exceptions.



**22.2 EXCEPTIONS**

Height regulations do not apply to steeples, domes, cupolas, or other architectural design elements usually required to be placed above the roof level and not intended for human occupancy.

**22.3 ANTENNAS**

For antenna and tower height regulations see Section 30, Wireless Communications Facilities.



(Ordinance 2010-01-149 adopted 1/19/10)

**Section 23      General Yard Requirements**

The following general requirements provide additional criteria which apply to yard requirements in all zoning districts.

**23.1 PROJECTIONS OF STRUCTURAL FEATURES**

A. Ordinary sills, belt courses, cornices, chimneys, bay windows, buttresses and ornamental features may project not more than twelve inches into a required yard; and

B. Eaves may project not more than 36 inches into a required yard.

**23.2 CARPORTS**

A porte-cochere, carport or canopy may project into a required side yard, provided every part of such porte-cochere, carport or canopy is unenclosed except for necessary structural supports.

**23.3 GASOLINE FACILITIES**

Gasoline filling station pumps and pump islands may be located or project into a required yard provided they are not less than 15 feet distant from any street, highway or alley right-of-way line, and not less than 50 feet distant from any residential property line.

**23.4 DOUBLE FRONTAGE LOTS**

Where lots have double frontage, running through from one street to another, a required front yard shall be provided on both streets unless otherwise established by plat or by ordinance, in which case only one required front yard need be provided.

**23.5 SHARED YARDS PROHIBITED**

No part of a yard or other open space required about or in connection with any building for the purpose of complying with this ordinance shall be included as part of a yard, open space or off-street parking or loading space similarly required for any other building.

**23.6 CORNER LOTS**

For the purposes of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated in the appropriate zoning district area regulations.

**23.7 TWO OR MORE ZONING DISTRICTS**

Where the frontage on one side of the street between two intersecting streets is divided by two or more zoning districts, the front yard shall comply with the requirements of the most restrictive district for the entire frontage from one intersecting street to the other.

**23.8 ESTABLISHED BUILDING LINE**

Where a building line has been established by plat or previous ordinance, and the line requires a front yard setback greater or lesser in depth than is prescribed by this ordinance for the district in which the building line is located, the required front yard shall comply with the building line established by the previous ordinance or plat.

### 23.9 MEASUREMENT

The front yard shall be measured from the property line to the front face of the building, covered porch, covered terrace, or attached accessory building. Eave and roof extensions may project into the required front yard for a distance not to exceed twenty-four inches.

(Ordinance 2010-01-149 adopted 1/19/10)

## **Section 24      Accessory Buildings**

### 24.1 GENERAL PURPOSE AND DESCRIPTION

An accessory building is a subordinate building detached from the main building, without sleeping areas or kitchen facilities not used for commercial purposes, not rented, and not occupied for human habitation, except as otherwise allowed by City ordinance. No accessory building shall be constructed until a main building exists on the lot.

### 24.2 ACCESSORY BUILDING REGULATIONS

The following regulations shall govern the location, size and use of any accessory buildings, except for barns and farm buildings used for agricultural uses as defined in [Section 43.2]:

- A. Maximum height: A single story with a maximum height of 12 feet measured from the average grade at a point three feet out from the slab to the lowest point of overhang on the roof.
- B. No accessory building shall be erected in any required yard area, except for residential garages and carports as allowed in paragraphs C, D, and E below.
- C. No accessory building shall be erected within ten feet of any other building, except detached residential garages may be located within five feet of the main dwelling; and the provisions of paragraph E below are met.
- D. No detached residential garage or carport shall be erected or placed closer to any street than the minimum yard requirements (building setback line) governing the district in which such garage or carport is located.
- E. No detached residential garage or carport shall be erected or placed within eight feet from any side lot line, nor in a dedicated easement.
- F. Portable or storage buildings shall be not larger than 320 square feet of floor area, and a maximum height of 12 feet, and shall be metal, wood, stone, or masonry constructed; but shall not be of a metal commercial “kit” construction. A portable building less than 168 square feet may be of metal commercial “kit” construction and must be properly secured to prevent overturning with a method acceptable to the building official. No building may be located closer than five feet from any side or

rear property line, no closer than five feet from a principal building, nor in a dedicated easement.

- G. No accessory building shall be used for dwelling purposes other than by domestic servants employed on the premises, as stipulated in Section 11.2, Permitted Use Table.
- H. Residential greenhouses for domestic use shall conform with the requirements of paragraph 5 [sic] of this subsection; however, such greenhouses shall not exceed a total aggregate floor area of 500 square feet.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 25 Home Occupations**

The purpose of the home occupation provisions is to permit the conduct of home occupations which are compatible with the neighborhoods in which they are located.

25.1 REGULATIONS

Home occupations are a permitted accessory use in all residential districts and are subject to the requirements of the district in which the use is located, in addition to the following;

- A. Only the members of the immediate family occupying the dwelling shall be engaged in the home occupations.
- B. The home occupation shall be conducted only within the enclosed area of the dwelling unit or the garage.
- C. There shall be no exterior alterations which change the character thereof as a dwelling and/or exterior evidence of the home occupation.
- D. No storage or display of materials, goods, supplies, or equipment related to the operation of the home occupation shall be visible outside any structure located on the premises.
- E. No use shall create smoke, glare, noise, dust, vibration, fire hazard, small electrical interference or any other nuisance not normally associated with the average residential use in the district.
- F. The home occupation shall not create any greater vehicular traffic than normal for the district.
- G. No signs of any kind shall be allowed on premises advertising a home occupation or service.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 26 Temporary Uses and Special Events**

26.1 GENERALLY

Certain temporary uses of land are essential to the full development and utilization of the land and are deemed to promote the health, safety, and general welfare of the City. The temporary uses and special events hereinafter enumerated shall not be deemed violations of this ordinance when conducted under the conditions herein provided.

## 26.2 PERMITTED TEMPORARY USES

The permitted temporary uses, the conditions of use, the zoning districts wherein the same shall be permitted, and approvals required are as follows:

- A. Construction Office. Temporary field or construction offices and temporary building material storage areas to be used solely for on-premise construction purposes in connection with the property on which they are erected, or within the same platted subdivision may be permitted in all zoning districts when approved by the administrative official. The application for a temporary use permit shall include a scale drawing showing the location and size of the building(s), all outside storage areas, and proposed construction fencing. Such permit shall be issued for temporary buildings on construction sites for a period of six (6) months, with a renewal clause for a similar period. Such buildings must be removed within 30 days after substantial completion or abandonment of such new construction to which they are accessory, or upon the request of the administrative official or his/her designee.
- B. Temporary Construction Dwelling. An accessory building may be used as a temporary dwelling while the main/principal dwelling is being constructed. The time period for which the accessory building is used as a temporary dwelling shall not exceed six months. This period may be extended by an additional six months upon approval by the City Council upon recommendation by the Planning and Zoning Commission.
- C. Temporary outdoor sales on properties zoned “C” and “M” by the existing occupants of existing businesses of such properties, may be permitted by the City enforcement officer for a period not to exceed 30 days upon the application and granting of a temporary use permit.
  - a. In no event shall such temporary uses be allowed for more than 30 consecutive days or more than once per year. All sales shall meet the special conditions, if any, imposed by the City enforcement officer and/or fire marshal for the protection of public interest and the welfare of the community.
  - b. No tent or similar structure shall be erected in any required setback or designated easement. Tents shall conform to the Uniform Fire Code and no tent shall be erected without first obtaining a permit. No outside use of property for sales will be allowed except by the existing occupants of the property. This includes parking of vehicles for a purpose other than conducting business on the premises.
  - c. The temporary outdoor sale of Christmas trees may be permitted on those properties zoned “C” and “M” for a period of 40 days prior to Christmas Day. The administrative official may issue a permit for such sale when it is found that there is available adequate off-street parking area, either improved or

unimproved, as determined by the building official; and that location and layout of drives, parking areas, lighting, and sale signs will not constitute a hazard to public travel on the abutting public streets. Trees, stands, equipment, trash, signs, lighting and shelters shall be removed by the permit holder no later than January 4 following the Christmas holiday.

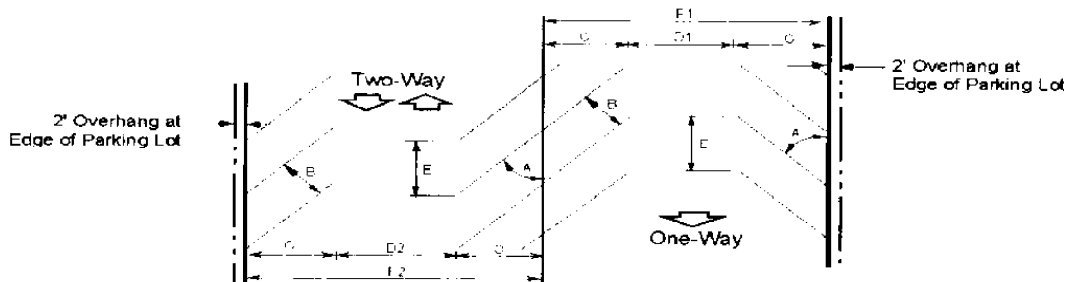
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on the lot adjacent to a public alley or private service drive to facilitate the movement of traffic on the public streets:

- a. When deliveries are made by truck more than once a day between the hours of 8:00 a.m. and 6:00 p.m.
- b. When the time of loading and unloading materials or goods exceeds ten (10) minutes between those hours
- B. Individual loading space dimensions shall be required as a minimum to be thirty-five feet (35') in length, twelve feet (12') width with a height clearance of fifteen feet (15').
- C. The number of off-street loading spaces shall be placed according to the following table:

Square Feet of Gross Floor Area in Structure	Maximum Required Spaces or Berths
0 to 10,000	None
10,000 to 50,000	1
50,000 to 100,000	2
100,000 to 200,000	3
Each additional 200,000	1 Additional

- D. Mixed Use Buildings: Where a building or a site contains two (2) or more uses, the off-street parking requirement shall be computed as the sum of the required off-street parking spaces for each individual use with the exception of shopping centers and multi-use purposes.
- E. Drive Lane Widths and Parking Space Sizes: Drive lanes and parking space sizes shall be required as shown in the following illustration. A driveway for access to any nonresidential, single parking space or to a parking lot shall not measure less than that shown in the parking layout illustration. All drive approach widths shall be no less than those indicated in the below graphic. All two-way drive lanes shall be a minimum of twenty-four (24) feet in width. Parking spaces shall be nine (9) feet wide by eighteen (18) feet deep for all ninety (90) degree parking spaces. Angled spaces shall be as shown in the graphic.



Parking Angle	Stall Width	Stall Depth	Min. Aisle Width		Aisle Length Per Stall	Module Width	
			One-Way	Two-Way		One-Way	Two-Way
(A)	(B)	(C)	(D1)	(D2)	(E)	(F1)	(F2)
Parallel	8.0	8.0	12.0	18.0	22.0	28.0	34.0
45	9.0	19.1	12.0	24.0	12.7	50.2	62.2
60	9.0	20.1	18.0	24.0	10.4	58.2	64.2
90	9.0	18.0	24.0	24.0	9.0	60.0	60.0

- F. On-Premise Parking Required: All required commercial and residential parking spaces shall be located on the premises to which such requirement applies or within an off-street space of which the distance is not more than three hundred feet (300') from such premises.
- G. Surface: The surface of parking spaces and aisles, truck standing spaces, and access driveways therefor shall be treated, prepared and maintained for adequate drainage and the elimination of dust, dirt, and mud, according to City specifications.
- H. Reduction: In cases where the applicant can provide documentation that parking spaces exceed the amount necessary for the use and that a reasonable alteration of spaces may be provided. Said reduction shall not represent more than fifteen percent (15%) of the total required spaces and shall require a special exception from the Zoning Board of Adjustment.
- I. Maintenance Requirements: To insure that all requirements set forth in this section are carried forward, it will be the responsibility of the owner of the parking area to maintain the facility. All off-street parking areas shall be kept free of trash, debris, vehicle repair operation or display and advertising uses. At no time after initial approval of the parking area layout can changes be made in the location and number of provided spaces without approval of the City inspector.

**27.3 RESIDENTIAL OFF-STREET PARKING**

- A. Purpose: It is recognized that uncontrolled residential off-street parking, specifically in residential front yards, is a public nuisance. The purpose of this subsection is to provide for the regulation of residential off-street parking and to specify the requirements for residential off-street parking as they pertain to the appearance and the health, safety, and welfare of the City.
- B. Surface: Driveways may be constructed of concrete, asphalt, or crushed rock. The driveway and parking surface must be clearly delineated from the yard area.
- C. Restrictions: It shall be illegal for any person to park or to allow to be parked on any property under his control any automobile, bus, truck, motorcycle, boat or recreational vehicle on any portion of a front yard or side yard of any area which is zoned SF - Single-Family Residential under the Comprehensive Zoning Ordinance or in any Commercial or Industrial Zone Area being used for residential purposes, unless:
  - a. Said area is a part of a gravel driveway bordered by concrete curbing or similar permanent border; and



- b. Said area is a part of a required hard-surface, all-weather driveway that provides access to a garage, carport or off-street parking area required by the Comprehensive Zoning Ordinance; or [sic]

D. Drive Width: A driveway for access to any single parking space or to a parking lot shall not be less than twenty feet (20') in width, nor more than thirty feet (30') in width, at the property line along the street[.]

#### 27.4 SPECIAL EVENTS AND OTHER ONE-TIME EVENTS

“Special event” means a festival, celebration, performance or other such special event which occurs no more frequently than once per year, and which will or should be reasonably anticipated to attract patrons or visitors in such numbers as to exceed the capacity of the permanent parking spaces required and provided under other provisions of this section for the property upon which the special event is to be held. Events which are conducted more frequently than once per year are not considered “special events” under the provisions of this subsection and the property upon which these events are conducted must conform to the other provisions of this Article concerning parking requirements.

- A. The persons or entities conducting any such special event shall submit to the administrative official at least forty-five (45) business days prior to said event a plan for the accommodation and parking of vehicles of persons reasonably expected to attend such event. The plan must include, at a minimum, the following information:
  - a. A description and the address of the premises where the event is to be held;
  - b. A description and the address of any property, other than the premises described in (a) above, where parking is to be provided for patrons or visitors to the event;
  - c. The name and address of the owner of the premises upon which parking for the event is to be provided, and a statement describing the terms and conditions of the agreement whereby the owner of such premises has authorized their use for parking;
  - d. The dates and times that the event is to be held;
  - e. The measures which will be taken by the persons or entities conducting the special event to ensure safe and orderly traffic flow to and from the event site and any parking area;
  - f. A plan or diagram of the proposed layout of the parking scheme upon the property to be used for parking for such event.
- B. All parking for any such special event shall be provided off-street and on an area and surface reasonably anticipated to be dry and safe for vehicular and pedestrian traffic. No public property or rights-of-way may be utilized or included in such parking areas except upon express, prior written permission by the City Council.
- C. Subject to the above requirements, the surface of such parking areas need not be paved or otherwise surfaced as required by the other provisions of this Article for

permanent parking areas, but it must be suitable for the type and amount of vehicular and pedestrian traffic reasonably anticipated for the special event at issue.

- D. Upon submittal of the required parking plan to the City, the administrative official shall review it and shall advise the applicants whether any changes or modifications to said plan will be required. The administrative official has the sole discretion to approve or reject, or require modifications to, any parking plan required hereunder. No vehicles may be parked in any location not otherwise allowed under other subsections of this section, in connection with any special event, unless and until the City Council has issued a written approval of the parking plan of the special event.
- E. Such written permission may be revoked at any time by the City Council if it is found that false or misleading information was contained in the proposed parking plan.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 28        Screening**

**28.1 PURPOSE**

Standards set forth in this section are intended to encourage the appropriate use of land and conserve and protect the privacy and value of adjacent permitted uses. Regulations are prescribed for the location and type of various screening devices to be used when required in the various zoning districts or in this section in accordance with the following standards.

**28.2 LOCATION OF REQUIRED SCREENING**

- A. When a boundary of a nonresidential use sides or backs upon an “SF” Districts, a solid screening wall or fence of not less than six (6) feet nor more than eight (8) feet in height shall be erected on the property line separating these districts. The purpose of the screening wall or fence is to provide a visual barrier between the properties.
- B. The owner of such property of the lesser restrictive use shall be responsible for and shall build the required wall or fence on his property line dividing his property from the more restrictive zoning district.
- C. Unless otherwise provided for herein, a screening wall or fence required under the provisions of this section shall be constructed of a permanent, solid material. Such wall or fence shall not contain openings constituting more than forty (40) square inches in each one square foot of wall or fence surface, and the surface of such wall or fence shall constitute a visual barrier. The fence or wall may be constructed of a combination of wood, masonry, decorative iron, or a combination thereof.
- D. All wall or fence openings shall be equipped with gates compatible in height and screening characteristics to the wall or fence.
- E. In cases where City Council finds this requirement to be better met by a screen of living, irrigated plant materials, a landscape plan may be submitted in lieu of a screening wall. Such landscape screening must be no less than four (4) feet deep and must demonstrate screening characteristics equal to that of a masonry screening wall.

- F. In cases where City Council finds this requirement better met by a decorative fence or a combination of decorative fence and masonry screening wall and/or living plant materials, the same may be submitted to the City for approval along with a landscape plan.
- G. All required screening walls shall be equally finished on both sides of the wall.
- H. Required walls or fences shall not be constructed of chain link, barbed wire or other similar materials.
- I. All required screening elements shall be permanently maintained by the nonresidential property owner.

**28.3 MISCELLANEOUS**

Dumpsters and trash receptacles located on non-residentially zoned property and on sites used for nonresidential purposes shall be located on a concrete pad constructed for that purpose. Said dumpsters and trash receptacles shall be screened on three sides by a masonry wall and shall contain a solid self-latching gate. The masonry wall shall be of similar construction as the principal building. Non-decorative concrete block shall not be permitted. A screening device shall be erected along side and rear property lines adjacent to residential districts. The screening device shall be a minimum height of eight (8) feet, unless otherwise approved by City Council.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 29      Landscaping**

**29.1 PURPOSE**

It is the purpose of this section to establish certain regulations pertaining to landscaping within the City. These regulations provide standards and criteria for new landscaping and the retention of existing trees which are intended to:

- A. Promote the value of property, enhance the welfare, and improve the physical appearance of the City;
- B. Is the intent of this section to reduce the negative effects of glare, noise, erosion and sedimentation caused by expanses of impervious and un-vegetated surfaces within the urban environment; and
- C. It is the intent of these landscape regulations to preserve and improve the natural and urban environment by recognizing that the use of landscaping elements and retention of existing trees can contribute to the processes of air purification, oxygen regeneration, groundwater recharge, abatement of noise, glare and heat, provision of habitats for wildlife, and enhance the overall beauty of the City of New Fairview.
- D. These landscape regulations establish requirements in the “C” and “M” zoning districts[.]
- E. Nonresidential uses located within the “A”, “SF”, and “MH” zoning districts, which consist of principal structures, parking areas, and signage, shall be required to comply with the requirements contained in this section.

## 29.2 LANDSCAPING DEFINITIONS

- a. Buffer Yard. A buffer yard is a unit of land, together with a specified amount of planting thereon, and any structures which may be required between, land uses to eliminate or minimize conflicts between them.
- b. Building Footprint. The area of the building in contact with the ground.
- c. Caliper. Diameter of the trunk measured one foot (1') above ground level. Diameter of the trunk measured one foot (1') above ground level. [sic]
- d. Canopy Trees. A perennial woody plant [with] single or multiple trunks, contributing to the uppermost spreading branch layer of a forest and may be commonly referred to as shade trees.
- e. Development. The changing of the existing topography in order to promote the construction of structures or infrastructure to accommodate any improvements necessary to erect facilities for dwelling or commercial or industrial uses resulting in developed property. The changing of the existing topography in order to promote the construction of structures or infrastructure to accommodate any improvements necessary to erect facilities for dwelling or commercial or industrial uses resulting in developed property. [sic]
- f. Enhanced Pavement. Any permeable or non-permeable decorative pavement material intended for pedestrian or vehicular use. Enhanced pavement includes brick or stone pavers, grass pavers and stamped and stained concrete.
- g. Ground Cover. Low growing, dense spreading plants typically planted from containers.
- h. Interior Lot Area. The area of the lot remaining after subtracting out the area included in the buffer yards.
- i. Landscape Architect. A person registered as a Landscape Architect in the State of Texas pursuant to state law.
- j. Landscape Area. An area covered by natural grass, ground cover, or other natural plant materials.
- k. Lawn Grasses. Thin bladed surface growing plants typically planted from seed, sprigs, or plugs.
- l. Licensed Irrigator. A person duly licensed by the State of Texas to design and install irrigation systems.
- m. Permeable Pavement. A paving material that permits water penetration.
- n. R.O.W. Parkway. That area within the public right-of-way (R.O.W.) between the back of curb or edge of pavement and the right-of-way line.
- o. Seasonal Color. Landscape areas used for annual and perennial flowers intended to maintain year-round color accents.

- p. Shrubs. Plants that grow vertically in a multi-branched growth pattern.
- q. Understory/Accent Trees. Small evergreen or deciduous perennial woody plants, which would grow below the top layer of the forest and typically has unique branching, textural or seasonal color characteristics.

### 29.3 EVENTS CAUSING COMPLIANCE

Land uses not previously subject to landscaping requirements may be required to comply with this section upon the occurrence of one of the following events:

- A. A change in zoning;
- B. Requirement of landscaping as conditions of a Specific Use Permit;
- C. Issuance of a building permit; or
- D. Loss of legal nonconforming status.

### 29.4 LANDSCAPING GENERALLY

- A. Landscape installation required
  - a. Twenty (20) percent of the total lot shall be required. Landscaping which includes the planting of new and the retention of existing shrubs, trees, and flowering plants, in addition to grass, may reduce the landscape requirement to 10 percent of the total lot area. Landscaping which consists of grass only will require 20 percent of the total area to be landscaped.
  - b. Twenty (20) percent of the total land area in any lot upon which development or construction occurs for any use after the effective date of this ordinance shall be landscaped in accordance with this section.
  - c. Where the construction is to be a single phase of a multi-phase development, only the area being constructed in the current phase need be subject to the landscape regulations. However, each phase will be required to meet the landscaping requirements as they are being developed.
- B. Landscaping Plan Required
- C. The landscape plan may be prepared by the applicant, or his/her designee. The landscape plan is not required to be prepared by a registered or certified professional.
- D. A landscaping plan shall be submitted to the city for approval. The landscape plan may be submitted as a part of the site plan or as a separate submittal. However, a landscape plan meeting the requirements of this ordinance shall be provided and approved prior to the issuance of a building permit.
- E. The landscape plan shall contain the following information:
- F. Drawn to scale; Minimum scale of one inch equal 50 feet;

- a. Location of all trees to be preserved, method of preservation during the construction phase of development shall be approved by the City Administrator or his/her designee.
- b. Location of all plants and landscaping material to be used including paving, benches, screens, fountains, statues, or other landscape features;
- c. Species of all plant material to be used;
- d. Size of all plant material to be used;
- e. Spacing of plant material where appropriate;
- f. Layout and description of irrigation, sprinkler or water system, including placement of water sources;
- g. Description of maintenance provisions of the landscape plan;
- h. Persons responsible for the preparation of the landscape plan.

**29.5 LOCATIONAL CRITERIA**

- A. Not less than 40 percent of the total landscaping shall be located in the designated front yard.
- B. In the “M” zoning district only the front yard 40 percent of the total 20 percent shall be required. The rear and side yard landscape requirements may be waived upon submittal of a landscape plan showing other requirements.
- C. All landscape material shall comply with visibility requirements of the New Fairview Subdivision Regulations.

**29.6 CREDITS TOWARD LANDSCAPING REQUIREMENTS**

- A. Grass is an appropriate landscape material. However, a variety of plan material is recommended. Credits toward the landscaping requirements may be granted in the following manner:
- B. Additional Enhancement Credit may be obtained by providing the following optional landscaping elements.

<b>Landscape Area Credit</b>	
<b>Landscape Element</b>	<b>Amount of Area Credit</b>
For each 3-inch tree	200 sq. ft.
For each 6-inch tree	400 sq. ft.
For each existing 6-inch tree protected and kept	800 sq. ft.
For each one-gallon shrub	10 sq. ft.
For each five-gallon shrub	25 sq. ft.
For each sq. ft. of flowering beds	2.5 sq. ft.

For each sq. ft. of xeriscape area	5 sq. ft.
For each sq. ft. of landscaped R.O.W.	0.5 sq. ft.

- C. In no instance shall the total amount of landscaping on a lot be reduced through credits by more than 50 percent of the landscaped area required by this ordinance.
- D. Xeriscaped area shall be clearly located and detailed on the site plan. In addition, the xeriscape methodology shall be detailed on the site plan.
- E. A flowering bed is any area where the soil has been specifically prepared for the planting of flowering plants. In addition in order to be considered for credit calculations, at least 80 percent of the prepared area must be covered with flowering plant material at the time of peak growth.
- F. Caliper of trees is to be measured at a point 12 inches above top of ground.
- G. In order to receive credit for protecting and keeping existing trees, the area within the dripline of the tree must be protected by fencing during grading and construction.

29.7 INSTALLATION AND MAINTENANCE

- A. All required landscaped area shall be permanently landscaped with living plant material, and shall have an irrigation system installed. Synthetic or artificial lawn or plant material shall not be used to satisfy the landscape requirements of this ordinance.
- B. Landscaped areas shall be kept free of trash, litter, weeds, and other such material or plants not a part of the landscaping.
- C. All plant materials shall be maintained in a healthy and growing condition as is appropriate for the season of the year. Maintenance shall include mowing, watering, trimming, pruning, etc.
- D. Plant materials which die shall be replaced with plant material of similar variety and size within 90 days period, with a one-time extension not exceeding 90 days being provided upon approval of the City Council.

29.8 LANDSCAPING OF PARKING LOTS

It is the intent of these landscape regulations to encourage design and construction of parking areas so that in a manner whereby areas within the parking lot are landscaped as well as areas considered unusable for parking or maneuvering space are landscaped. The following minimum requirements shall be observed:

- A. A minimum of 10 percent of the gross parking area shall be devoted to living plant material. Gross parking area shall be measured from the edge of the parking and/or driveway paving and sidewalks.
- B. Landscaped areas within parking lots shall be located so as to best relieve the expanse of paving.
- C. The placement of additional landscaped islands throughout the parking area in a manner which best relieve large expanses of paved area is encouraged.

- D. Landscape material which is located within the interior of a parking lot shall be surrounded by a curb of four inches in height.
- E. Landscaping within a parking lot shall not create a visibility obstruction. A visibility obstruction within a parking lot is defined as landscaping between 30 inches in height and seven feet in height. No shrubs shall exceed 30 inches in height. Tree canopies shall be at least seven feet in height.
- F. For large existing trees located in the parking area, which is being retained and incorporated into the landscaping plan, an appropriate aeration system or an alternative method of protecting the tree must be provided and detailed in the landscape plan.
- G. For each landscaped island of at least 10 feet by 20 feet located within a parking lot, credit for four parking spaces will be provided. Credit for parking spaces cannot reduce the overall parking requirement by more than 20 percent or to less than ten total spaces.

**29.9 LANDSCAPING AS RELATED TO CERTIFICATE OF OCCUPANCY**

- A. All landscaping shall be completed and installed in accordance with the approved landscape plan within 90 days of a certificate of occupancy being granted. A one-time extension not to exceed 90 days may be granted upon approval of the planning and zoning commission director of community development or his designee.
- B. If these landscaping requirements have not been satisfied within the 90 days six month [sic] period from when the certificate of occupancy is issued, the property owner shall be considered in violation of this the zoning ordinance of the City of New Fairview, and shall be subject to the penalties established herein. A one-time extension not to exceed six (6) months may be granted upon approval of the City Council.

**29.10 NONCONFORMING LANDSCAPING CONDITIONS**

Developments, structures, and uses that are in existence at the time of the adoption of this ordinance, which do not meet the landscape requirements provided herein, will be considered as being legal nonconforming. These nonconforming uses/structures will be subject to Section 33, Nonconforming Uses Lots and Structures of the New Fairview Zoning Ordinance, unless otherwise provided for in this section.

**29.11 RELIEF FROM LANDSCAPING REQUIREMENTS**

Upon completion of the following, relief from landscaping requirements may be granted in situations where the individual circumstances, such as the presence of existing facilities or unusual topography, limit the applicant’s ability to comply with the landscaping requirements of this ordinance:

- A. The applicant shall provide the City Council with an alternative landscape plan for review and approval.
- B. Said landscape plan will illustrate a plan to landscape area as available, provide for irrigation, and provide a phasing schedule for completing the plan.



- C. The installation of landscaping as indicated by the landscape plan is completed and approved by the City.

#### 29.12 APPROVED AND RECOMMENDED PLANT LIST

Common Name	Scientific Name
Ash, Texas	<i>Fraxinus texensis</i>
Cedar Elm	<i>Ulmus crassifolia</i>
Cedar, Eastern Red	<i>Juniperus virginiana</i>
Cypress, Bald	<i>Taxodium distichum</i>
Elm*, Lace Bark	<i>Ulmus parvifolia</i>
Magnolia, Southern	<i>Magnolia grandiflora</i>
Maple, Bigtooth	<i>Acer grandidentatum</i>
Maple, Caddo	<i>Acer saccharum</i>
Oak, Bur	<i>Quercus macrocarpa</i>
Oak, Chinquapin	<i>Quercus muhlenbergii</i>
Oak, Escarpment Live	<i>Quercus fusiformis</i>
Oak, Lacey	<i>Quercus glaucoides</i>
Oak, Live	<i>Quercus virginiana</i> (Escarpment)
Oak, Post	<i>Quercus stellata</i>
Oak, Red	<i>Quercus shumardi</i>
Oak, Texas Red	<i>Quercus texana</i>
Osage Orange	<i>Maclura pomifera</i> (thornless and fruitless)
Pecan (native)	<i>Carya illinoensis</i>
Pistache*, Chinese	<i>Pistacia chinensis</i>
Soapberry, Western	<i>Sapindus drummondii</i>
Walnut, Black	<i>Juglans nigra</i>
Buckeye, Mexican	<i>Ungnadia speciosa</i>
Buckeye, Texas	<i>Aesculus glabra</i> var. <i>arguta</i>
Buckthorn, Carolina	<i>Rhamnus caroliniana</i>
Chaste Tree*	<i>Vitex agnus-castus</i>
Crabapple, Prairie	<i>Pyrus ioensis</i>
Crape Myrtle*	<i>Lagerstroemia indica</i>
Eve's Necklace	<i>Sophora affinis</i>
Goldenball Leadtree	<i>Leucaena retusa</i>
Hawthorne*	<i>Crataegus phaenopyrum</i>
Hawthorne*	<i>Crataegus crus-galli</i>
Hawthorne*	<i>Crataegus reverchonii</i>
Holly, Possumhaw	<i>Ilex decidua</i>
Indigo, False	<i>Amorpha fruticosa</i> var. <i>angustifolia</i>
Mountain Laurel, Texas	<i>Sophora secundiflora</i>
Persimmon, Texas	<i>Diospyros texana</i>
Plum, Mexican	<i>Prunus mexicana</i>
Redbud	<i>Cercis canadensis</i>
Smoketree	<i>Cotinus obovatus</i>
Smoketree*	<i>Cotinus caggyria</i>

<b>Common Name</b>	<b>Scientific Name</b>
Sumac, Prairie Flame-leaf	<i>Rhus lanceolata</i>
Viburnum, Rusty Blackhaw	<i>Viburnum rufidulum</i>
Wax Myrtle	<i>Myrica cerifera</i>
Willow, Desert	<i>Chilopsis linearis</i>
Yaupon Holly	<i>Ilex vomitoria</i>
Agarita	<i>Berberis trifoliolata</i>
Althea	<i>Hibiscus syriacus</i>
American Beautyberry	<i>Callicarpa americana</i>
Aspidistra	<i>Aspidistra eliator</i>
Barberry, Red	<i>Berberis thunbergii</i>
Barberry, Texas	<i>Berberis thunbergii</i>
Bayberry	<i>Myrica pennsylvanica</i>
Bird of Paradise	<i>Caesalpinia gilliesii</i>
Burning Bush	<i>Euonymus alata compacta</i>
Butterfly Bush	<i>Buddleia sp.</i>
Cactus, Prickly Pear	<i>Opuntia phaceacantha</i>
Cenizo	<i>Leucophyllum frutescens</i>
Chokeberry, Red	<i>Aronia arbutifolia</i>
Coralberry	<i>Symphoricarpos obiculatus</i>
Dogwood, Rough Leaf	<i>Cornus drummondii</i>
Eleagnus	<i>Eleagnus macrophylla</i>
Forsythia	<i>Forsythia sp.</i>
Germander, Upright	<i>Teucrium chamaedrys</i>
Holly, Dazzler	<i>Ilex cornuta 'Dazzler'</i>
Holly, Dwarf Yaupon	<i>Ilex vomitoria</i>
Holly, Nellie R. Stevens	<i>Ilex x 'Nellie R. Stevens'</i>
Honeysuckle, Bush	<i>Lonicera fragrantissima</i>
Hydrangea, Oakleaf	<i>Hydrangea quercifolia</i>
Hypericum, Upright	<i>Hypericum patulum</i>
Jasmine, Italian	<i>Jasmine nudiflorum</i>
Lantana	<i>Lantana horrida</i>
Mahonia, Leatherleaf	<i>Mahonia bealeii</i>
Mimosa, Fragrant	<i>Mimosa borealis</i>
Nandina, Compact	<i>Nandina domestica compacta</i>
Nandina, Gulfstream	<i>N.d. 'Gulfstream'</i>
Nandina, Standard	<i>N. domestica</i>
Pavonia	<i>Pavonia lasiopetala</i>
Photinia, Chinese	<i>Photinia serrulata</i>
Privet, Southern River	<i>Ligustrum vulgare</i>
Privet, Variegated	<i>Ligustrum lucidum 'Variegata'</i>
Quince, Flowering	<i>Chaenomeles japonica</i>
Sage, Cherry	<i>Salvia greggii</i>
Spiraea, Bridal Wreath	<i>Spiraea sp.</i>
Spiraea, Anthony Waterer	<i>Spiraea x bumalda 'Goldflame'</i>
Spiraea, Goldflame	<i>Spiraea x bumalda 'Goldflame'</i>
Spiraea, Little Princess	<i>Spiraea x bumalda 'Little Princess'</i>
Spiraea, Shirobana	<i>Spiraea japonica 'Shirobana'</i>

Common Name	Scientific Name
Sumac, Aromatic	Rhus aromatica
Sumac, Evergreen	Rhus virens
Sumac, Smooth	Rhus glabra
Turk’s Cap	Malvaviscus drummondii
Viburnum, Cranberry Bush	Viburnum opulus
Viburnum, Small Leaf	Viburnum obavatum
Viburnum, Snowball	Viburnum opulus
Virginia Sweetspire	Ilea virginica
Wax Myrtle, Dwarf	Myrica pusilla
Yucca, Red	Hespenaloe parviflora

An \* indicates an approved street tree

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 30 Wireless Communication Facilities**

**30.1 PURPOSE**

Certain radio equipment used in transmitting and receiving signal energy are essential and are deemed to promote the health, safety, and general welfare of the citizens of the City. The placement of such equipment shall be located such that the health, safety, welfare, and aesthetic quality of the community shall not be compromised. Therefore the regulations governing the location of such equipment shall consider the aesthetic quality of the community equal to the health, safety, and general welfare of the community. The antennas, masts, and towers hereinafter enumerated shall not be deemed violations of this ordinance when made under the conditions herein provided.

**30.2 DEFINITIONS**

See Section 43.3 - Wireless Communications Facilities Definitions.

**30.3 RESIDENTIALLY ZONED DISTRICTS - AMATEUR RADIO EQUIPMENT AND TV ANTENNAS**

Amateur radio equipment, including ham radio and CB equipment and personal use TV antennas, shall be allowed in the A and SF zoning districts if they comply with the following regulations:

- A. Antenna facilities may be building attached, monopoles, or lattice towers;
- B. Up to 3 antenna facilities may be located on a lot of record, co-location is encouraged;
- C. An antenna facility, with the exception of ham radio, exclusive of the height of any antenna or mast, shall not exceed thirty-five (35) feet in height. Provided, however, that an antenna facility shall be permitted additional height at the ratio of one added foot in height for each additional foot of setback beyond the minimum setback required of an accessory building in the zoning district regulations contained in Section 24, Accessory Buildings. Regardless of the above, the maximum height for a

- tower permitted without a Special Exception in any residential district shall be 65 feet;
- D. The height of an antenna, including the height of any antenna facility to which they may be fastened or attached shall not exceed 65 feet in height without a Special Exception.
- E. An antenna not fastened to a antenna facility shall not exceed 50 feet without a Special Exception, except for an antenna which does not extend more than eight feet above a building on which it is mounted;
- F. A antenna facility shall be limited to having the number and size of antennas attached to it that are allowed by the antenna facility manufacturer's designs and specifications for maximum wind load requirements;
- G. Setbacks:
- a. Antennas and antenna facilities shall not be permitted in front or side yards. Guy wires are not permitted in front yards;
  - b. Guy wires are permitted in required side and rear yards;
  - c. Setback for antenna facilities shall be the same as is required for accessory buildings in residential districts;
- H. Separation: There shall be no minimum or maximum separation requirements for antenna facilities from other structures on the same lot of record;
- I. Antenna facilities shall not be permitted in any easement;
- J. Lights: No auxiliary or outdoor lighting shall be allowed on antenna facilities located on residentially zoned property except such lights or lighting as may be required by the Federal Aviation Authority or the Federal Communications Commission;
- K. Construction standards: A building permit must be obtained prior to the construction and/or installation of an antenna facility. Antenna facilities must be installed as per the manufacturer's recommendations or under the seal of a registered professional engineer of the State of Texas. Regardless of the above, all such antenna facilities must meet the Electronic Industries Association Standard EIA-222-D, Structural Standards for Steel Antenna Towers and Antenna Supporting Structures and the Building Code;
- L. Maintenance: Antennas and/or antenna facilities obviously not in use or obviously in need of maintenance as determined by the building official, shall be removed or brought into compliance within 30 days following notice given by the building official. This shall not preclude immediate action by the building official to safeguard life, limb, health, property, and public welfare;
- M. No part of an antenna facility or any attachment thereto may extend beyond the property lines of the owner of such antenna or antenna facility;

- N. No permit shall be issued for the installation of an antenna facility on a multi-family structure or property unless a notarized statement of permission from the owner is presented to the building department;
- O. All antenna facilities shall be subject to an inspection every five years by a qualified expert, such inspection to be conducted and charged for by the City in accordance with provisions in the building code;
- P. A Special Exception must be obtained in the residential zoning districts for any antenna facility which does not comply with the regulations specified hereinabove.

### 30.4 NONRESIDENTIAL DISTRICTS

Radio, television, microwave broadcast relay, receiving towers, transmission and re-transmission facilities, satellite receiving only earth stations (home dish antenna), and any electronic emission equipment of a commercial nature shall be allowed in the nonresidential zoning districts if it complies with the following regulations:

- A. Up to 3 antenna facilities may be located on a lot of record, co-location is encouraged;
- B. Antenna facilities shall be limited to building attached and monopoles only;
- C. An antenna facility, exclusive of the height of any attached antenna, shall not exceed 35 feet in height. Provided, however, that an antenna facility shall be permitted additional height at the ratio of one added foot in height for each additional foot of setback beyond the minimum setback required of a accessory building in the zoning district regulations herein. Regardless of the above, the maximum height for an antenna facility permitted without a Special Exception in any nonresidential district shall be 65 feet;
- D. With the exception of stealth facilities, the height of an antenna, including the height of any antenna facility to which they may be fastened or attached, shall not exceed 65 feet in height without a Special Exception;
- E. With the exception of stealth facilities, an antenna shall not extend more than eight feet above a building on which it is attached;
- F. An antenna facility shall be limited to having the number and size of antennas attached to it that are allowed by the antenna facility manufacturer's designs and specifications for maximum wind load requirements;
- G. Setbacks: With the exception of stealth facilities, antennas and antenna facilities shall not be permitted in front or side yards;
- H. Antenna facilities shall not be permitted in any easement;
- I. Lights: No auxiliary or outdoor lighting shall be allowed on antennas located on residentially zoned property except such lights or lighting as may be required by the Federal Aviation Authority or the Federal Communications Commission;

- J. **Construction standards:** A building permit must be obtained prior to the construction and/or installation of a tower, antenna, or mast. Antenna facilities must be installed as per the manufacturer’s recommendations or under the seal of a registered professional engineer of the State of Texas. Regardless of the above, all such antenna facilities and antennas must meet the Electronic Industries Association Standard EIA-222-D, Structural Standards for Steel Antenna Towers and Antenna Supporting Structures and the Building Code;
- K. **Maintenance:** Antenna facilities and antennas obviously not in use or obviously in need of maintenance as determined by the building official, shall be removed or brought into compliance within 30 days following notice given by the Building Official. This shall not preclude immediate action by the building official to safeguard life, limb, health, property, and public welfare;
- L. No part of an antenna facility and antennas or any attachment thereto may extend beyond the property lines of the owner of such antenna or antenna facility;
- M. No permit shall be issued for the installation of an antenna or antenna facility on a multi-family structure or property unless a notarized statement of permission from the owner is presented to the building department;
- N. All antennas, or antenna facilities shall be subject to an inspection every five years by a qualified expert, such inspection to be conducted and charged for by the City in accordance with provisions in the Building Code;
- O. A Specific use permit must be obtained in nonresidential zoning districts for any antenna or tower which does not comply with the regulations specified hereinabove.
- P. Stealth facilities, which meet the definition of stealth as provided in Section 43.3, Wireless Communications Facilities Definitions shall be exempt from the height and location requirements of this section. In addition, the City Manager or his designee shall be the final authority as to whether or not any facility meets the definition of “stealth”.

**30.5 WRITTEN REPORT UPON DENIAL OF REQUEST**

The City of New Fairview shall document any denial of a request to place, construct, or modify personal wireless service facilities in writing. Such documentation shall be supported by substantial evidence within the written record.

**30.6 SATELLITE RECEIVE-ONLY ANTENNAS GENERALLY**

Satellite receive-only antennas assist individuals in the receipt of satellite transmitted television signals. Satellite receive-only antennas shall not be deemed violations of this ordinance when made under the conditions herein provided. Such conditions are hereby found to be reasonable and clearly defined health, safety and aesthetic objectives.

**30.7 SATELLITE RECEIVE-ONLY ANTENNAS**

A satellite receive-only antenna shall be allowed if it complies with the following:

- A. The satellite receive-only antenna is two meters or less in diameter and is located or proposed to be located in any area where commercial or industrial uses are generally permitted by non federal land use regulations or;
- B. The satellite receive-only antenna is less than one meter in diameter in any residential zoning district.

### 30.8 LARGE SATELLITE RECEIVE-ONLY ANTENNAS

Satellite receive-only antennas that are greater than one meter in diameter in residential districts or greater than two meters in diameter in nonresidential districts shall be allowed in any zoning district if they comply with the following regulations:

- A. Only one satellite receive-only antenna per lot of record;
- B. A satellite receive-only antenna shall not exceed ten feet in height;
- C. Setbacks:
  - a. Front and side: Satellite receive-only antennas shall not be permitted in front or side yards;
  - b. Rear: Satellite receive-only antennas shall be permitted in rear yards provided they meet the minimum setback as is required for accessory buildings in residential districts and as for all buildings in nonresidential districts;
- D. Separation: There shall be no minimum or maximum separation requirements for satellite receive-only antennas from other structures on the same lot of record;
- E. Satellite receive-only antennas shall not be permitted in easements;
- F. Lights: No auxiliary or outdoor lighting shall be allowed on satellite receive-only antennas except such lights or lighting as may be required by the Federal Aviation Authority or the Federal Communications Commission;
- G. Construction standards: A building permit must be obtained prior to the construction and/or installation of a satellite receive-only antenna. Satellite receive-only antennas must be installed as per the manufacturer's recommendations or under the seal of a registered professional engineer of the State of Texas;
- H. Maintenance: Satellite receive-only antennas obviously not in use or obviously in need of maintenance as determined by the building official, shall be removed or brought into compliance within 30 days following notice given by the building official. This shall not preclude immediate action by the building official to safeguard life, limb, health, property, and public welfare;
- I. No part of a satellite receive-only antenna or any attachment thereto may extend beyond the property lines of the owner of such satellite receive-only antenna;

- J. No permit shall be issued for the installation of a satellite receive-only antenna on a multi-family structure or property unless a notarized statement of permission from the owner is presented to the Building Department;
- K. All satellite receive-only antennas shall be screened from view from adjoining properties by fencing or evergreen plants. A satellite receive-only antenna located within a fence surrounding the yard in which the satellite receive-only antenna is located shall be considered to be screened;
- L. A Special Exception must be obtained for any satellite receive-only antenna which does not comply with the regulations specified hereinabove.

### 30.9 SPECIAL EXCEPTION

A Special Exception must be obtained for any antenna, tower, and/or satellite receive-only antenna which does not comply with the regulations specified in this section, hereinabove. In considering whether to grant a Special Exception from the regulations specified above, the following shall be considered:

- A. The effect on the value of the surrounding property;
- B. The potential for interference with the enjoyment of the use of surrounding properties;
- C. Aesthetics;
- D. The necessity of the Special Exception for the public health, safety, and welfare of the citizens or for governmental purposes;
- E. The zoning district and the adjoining zoning districts of the property for which the Special Exception is sought;
- F. The provisions of 47 C.F.R. section 25.104 which preempt local zoning or other regulations that differentiate between satellite receive-only antennas and other types of antenna facilities unless such regulations:
  - a. Have a clearly defined health, safety or aesthetic objective; and
  - b. Further the stated health, safety, or aesthetic objective without unnecessarily burdening the federal interest in ensuring access to satellite services and in promoting fair and effective competition among competing communications service providers;
- G. The unique conditions that govern reasonable reception on any given lot;
- H. To properly evaluate all applications to locate commercial antennas or towers which do not comply with the regulations specified hereinabove the following information must be provided by the applicant:



- a. Describe the nature of the antenna site. Indicate whether the proposed structure is a monopole or mounted to a self-supporting structure. Indicate the proposed height;
- b. Provide photos or drawings of all equipment, structures and antenna;
- c. Describe why the antenna or tower is necessary;
- d. State the name(s) of the telecommunications providers or other users of the antenna or tower and describe the use to be made by each user;
- e. Indicate if this antenna or tower site is to be connected to other sites; and if so, describe how it will be connected and who will be the backhaul provider;
- f. The applicant must address whether or not they have made an effort to co-locate the facilities proposed for this antenna or tower on existing towers or facilities in the same general area. Please identify the location of these existing sites. If yes, please describe in detail these efforts and explain in detail why these existing sites were not feasible. Attach all studies or tests performed which demonstrate why the existing sites will not provide sufficient signal coverage. Provide written documentation from existing sites' owners and/or operators which confirm the statements provided. Indicate whether or not the existing sites allow/promote co-location and, if not, describe why not;
- g. Indicate whether or not co-location will be allowed to other telecommunications providers at the requested site. If they are not allowed, state every reason and the basis for each reason;
- h. If the requested location is in a residential district the applicant must address whether or not they have made an effort to locate the facility in a commercial or industrial district. Please identify the location of these commercial and/or industrial district sites. Please describe in detail these efforts and explain in detail why these commercial or industrial district sites were not feasible. Attach all studies or tests performed which demonstrate why the commercial or industrial sites will not provide sufficient signal coverage. Provide written documentation from commercial or industrial district sites' owners and/or operators which confirm the statements provided;
- i. Indicate the proposed provider's current coverage area for the City. Attach maps showing the areas the proposed provider's existing antenna currently cover, the areas the applicant's existing sites and other existing sites would cover, and the areas the applicant's existing sites and the requested site would cover.
- j. Describe the applicant's master antenna and tower plan for the City. Attach maps and other related documentation. Provide information indicating each phase of the plan.
- k. Describe the applicant's plan to minimize the number of telecommunications antenna and towers needed to cover the City.

- l. The City Council will approve a requested application subject to the finding that co-location of this facility with a nearby existing tower facility is technically not feasible and subject to the following conditions:
  - m. Applicant will permit co-location of others at the site;
  - n. Applicant will configure its antenna and other equipment to accommodate other providers;
  - o. Applicant will identify its backhaul provider connecting antenna sites; and
  - p. Applicant will give notice to the City identifying any providers who co-locates to the site and identify their backhaul provider.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 31 Outdoor Lighting**

**31.1 APPLICABILITY**

All outdoor electrically powered illuminating devices shall be installed in conformance with the provisions of this section, the Building Code and the Electrical Code as applicable and under appropriate permit and inspection. These lighting standards shall apply to all nonresidential uses in the City. Unless otherwise stated, this section does not regulate lighting in public road rights-of-way.

**31.2 OUTDOOR LIGHTING PLAN**

An Outdoor Lighting Plan must be submitted separately from any required site plan or landscape plan on all public or private properties, including rights-of-way, public easements, franchises and utility easements for approval by the Administrative Official. An Outdoor Lighting Plan shall be submitted prior to issuing a building permit. Plans shall include the following:

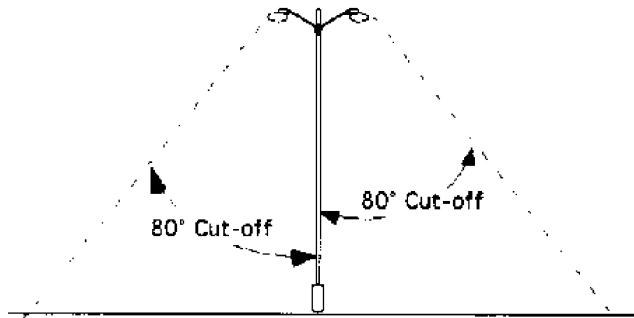
- A. A layout of the proposed fixture locations.
- B. The light source.
- C. The luminous area for each proposed light source with proposed footcandle measurements.
- D. The type and height of the light fixture or light source above grade.
- E. The type of illumination.

**31.3 GENERAL LIGHTING REQUIREMENTS**

A. Unless otherwise provided herein, illumination, where required by this section, shall have intensities and uniformity ratios in accordance with the current recommended practices of the Illuminating Engineering Society of North America (IESNA) as from time to time amended.

B. Unless otherwise provided herein, all building lighting for security or aesthetics will be fully-shielded type, not allowing any upward distribution of light. Wallpack type fixtures are acceptable only if they are fully shielded with 80° cut-off.

C. No use or operation in any district shall be located or conducted so as to produce glare, or either direct or indirect illumination across the bounding property line from a source of illumination into a residentially zoned property, nor shall any such light be of such intensity as to create a nuisance or detract from the use and enjoyment of adjacent property. For the purposes of this section, a nuisance shall be defined as more than [than] one-tenth (0.10) of one footcandle of light measured at the residential property line and twenty-five hundredths (0.25) of one footcandle at any adjoining nonresidential property line.



D. Shielding shall be required in all outdoor lighting installations as specified below.

Lamp type	Shielding
Low Pressure Sodium (LPS)	Fully Shielded, with 80° cut-off
High Pressure Sodium (HPS)	Fully Shielded, with 80° cut-off
Metal Halide	Fully Shielded, with 80° cut-off
Halogen	Fully Shielded, with 80° cut-off
Mercury Vapor	Fully Shielded, with 80° cut-off
Fluorescent	Fully Shielded, with 80° cut-off
Incandescent	Fully Shielded, with 80° cut-off
Any light source 50 watts and under	Unshielded, Permitted
Low intensity Neon, Krypton or Argon Discharge Tubes	Unshielded, Permitted

**31.4 ILLUMINATION**

A. Measurement: Illumination levels of outdoor lighting shall be measured by a qualified professional according to generally accepted IESNA methods.

B. Computation of Illumination: Illumination at a point may be computed in lieu of measurement. Computation methods shall consist of a generally accepted IESNA method, using certified photometric data furnished by the fixture manufacturer, lamp manufacturer, photometric laboratory, or other reliable authority satisfactory to the City. Computations shall be based on new, properly seasoned lamps, diffusers and other appurtenances in place, and with proper regard taken for mounting height, relative elevation, natural and man-made objects.

C. Limitations on Neighboring Property. The limit of illumination on neighboring property from an establishment shall be by zoning of the neighboring property. Maximum computed or measured footcandles at the neighboring property line shall not exceed:

<b>Measurement: Illumination levels of outdoor lighting shall be measured by a qualified professional</b>	
<b>Land Use Type</b>	<b>Horizontal Footcandles</b>
Single-family districts	0.25
Nonresidential districts	2.25

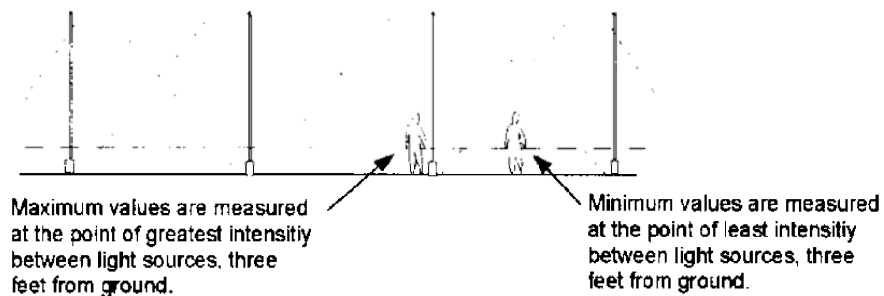
31.5 NONRESIDENTIAL LIGHTING PARAMETERS

A. All non-essential lighting shall be turned off after business hours, leaving only necessary lighting for site security in nonresidential districts.

B. Floodlights, accent, aesthetic and security lights must be fully shielded and no uplighting shall be permitted except that lighting of 75 watts or less are excepted if necessary for security purposes.

C. Parking lots and vehicle movement areas shall not exceed a maximum illumination value of 10 footcandles nor have a minimum illumination value of less than 1.0 footcandles. Lamps in decorative lantern type fixtures shall not exceed a maximum of 100 watts. Total pole and fixture height shall not exceed a maximum of 32 feet, measured from grade at the base. Taller poles may be considered in some situations upon approval of a Special Exception by the Board of Adjustments.

D. Display, building and aesthetic lighting must be externally lit from the top and shine downward. The lighting must be fully shielded to prevent direct glare and/or light trespass. The lighting must also be substantially contained to the target area.



31.6 PUBLIC AND SEMI-PUBLIC RECREATIONAL FACILITIES

A. Any illumination level exceeding a maximum of twenty (20) footcandles must receive prior approval by the Board of Adjustments by means of a Special Exception.

B. All fixtures used for event lighting shall be fully shielded, or be designed or provided with sharp cut-off capability, so as to minimize up-light, spill-light, and glare.

C. All events shall be scheduled so as to complete all activity before or as near to 10:30 p.m. as practical, but under no circumstances shall any illumination of the playing field, court, or track be permitted after 11:00 p.m. except to conclude a scheduled event that was in progress before 11:00 p.m. and circumstances prevented concluding before 11:00 p.m.

**31.7 PROHIBITED LIGHTING ELEMENTS**

Unless otherwise authorized, the following shall be prohibited, except upon prior approval of a Special Exception by the Board of Adjustments.

- A. Laser Source Light. The use of laser source light or any similar high intensity light for outdoor advertising or entertainment, when projected above the horizontal is prohibited.
- B. Searchlights: The operation of searchlights for advertising purposes is prohibited.

**31.8 EXEMPTIONS**

- A. All temporary emergency lighting needed by the Police or Fire Departments or other emergency services, as well as all vehicular luminaries.
- B. All hazard warning luminaries required by Federal regulatory agencies are exempt from the requirements of this section, except that all luminaries used must be red and must be shown to be as close as possible to the Federally required minimum lumen output requirement for the specific task.
- C. Any luminaire of 75 watts or less provided the accumulated illumination of 50 watt luminaries does not exceed 75 watts.
- D. Seasonal decorative lighting.
- E. Uplighting of any City of New Fairview, State of Texas or United States of America flag.

**31.9 TEMPORARY EXEMPTIONS**

- A. Upon approval by the Administrative Official, temporary exemptions from the requirements of this section may be granted for a period not to exceed 30 days may be approved.
- B. Any person may submit a written request, on a form prepared by the City for a temporary exemption request. The request shall contain the following information:
  - a. Specific exemption(s) requested;
  - b. Type/use of outdoor lighting fixture involved;
  - c. Duration of time requested;
  - d. Type of lamp and calculated footcandles;
  - e. Total wattage of lamp(s);

- f. Proposed location of fixtures;
- g. Previous temporary exemption requests;
- h. Physical size of fixtures and type of shielding provided; and
- i. Such other data or information as may be required by the Administrative Official.
- j. Requests for renewal of exemptions shall be processed in the same way as the original request. Each renewal shall be valid for not more than fourteen (14) days or a time period designated by the Administrative Official.

C. Approval for temporary exemptions will be based on the effect of location and use of outdoor lighting fixture.

### 31.10 NONCONFORMING LIGHTING

All luminaries lawfully in place prior to the date of the Ordinance shall be considered as having legal nonconforming status. However, any luminaire that replaces a legal nonconforming luminaire, or any legal nonconforming luminaire that is moved, must meet the standards of this section.

(Ordinance 2010-01-149 adopted 1/19/10)

## **Section 32      Cargo Containers**

### 32.1 PURPOSE

It is recognized that uncontrolled storage and placement of cargo containers may detract from the value of adjacent property, discourage commerce, and negatively impact the aesthetic quality of nonresidential property and adjacent residential property. The purpose of this section is to provide for regulations that protect the value of property and enhance the appearance, health, safety, and welfare of the City.

### 32.2 GENERAL REGULATIONS

- A. Cargo containers in residential districts may be permitted for a period of 30 days. The 30-day period may be extended for an additional 30 days upon approval of a Special Exception by the Board of Adjustment. Residential parcels that exceed two (2) acres shall be exempt from these regulations.
- B. Only one cargo container shall be permitted on any site in the “SF” and “MH” districts.
- C. Cargo containers located in all zoning districts shall be located on an all-weather, dust-free surface approved by the Administrative Official.
- D. Cargo containers located in the “SF”, and “MH” zoning districts shall not exceed sixteen (16) feet in length, eight (8) feet in width, and eight and one-half (8.5) feet in height.

E. Cargo containers shall be permitted in the all zoning district and shall not exceed two cargo containers on any site at any time, unless otherwise provided by this ordinance. All other applicable regulations contained herein shall apply.

F. Cargo containers shall not be stacked in any zoning district with the exception of the I, Industrial zoning district and shall not be stacked higher than two containers in such district.

G. Cargo containers shall not occupy any required off-street parking spaces, vehicular access, pedestrian facilities or landscape areas for the site.

H. Cargo containers shall be placed in a location that minimizes visual impact from surrounding streets and properties. For any site containing more than four cargo containers, a location plan shall be submitted and approved by the Administrative Official prior to locating the cargo containers on site. At such time all cargo containers shall be subject to the location plan.

I. Any cargo container located within one hundred (100) feet of a residential zoning district shall be no greater in size than ten (10) feet in width, twenty (20) feet in depth, and eight and a half (8.5) feet in height. And no cargo container may be stacked within 100 feet of a residential district.

J. Cargo containers shall not be used for a primary use without obtaining a Conditional Use Permit. Such Conditional Use Permit shall be accompanied with a detailed site plan of the entire site and must be approved by the City Council upon recommendation by the Planning and Zoning Commission.

K. Cargo containers located in any nonresidential zoning district shall not exceed a size of ten (10) feet in height, ten (10) feet in width, and thirty (30) feet in length, unless approved by the City Council upon recommendation of the Planning and Zoning Commission.

L. Areas utilized by cargo containers shall be included in the square foot requirement as a storage use and shall be considered in making the required parking calculations as set forth in Section 27, Off-Street Parking and Loading Requirements.

M. The number of cargo containers allowed in the “C” and “M” zoning districts, shall be determined by the total aggregate square foot of principal buildings according to the following rate:

0 to 35,000 sq. ft. of principal building	=	one cargo container
35,001 sq. ft. - 70,000 sq. ft.	=	two cargo containers
70,001 sq. ft. - 105,000 sq. ft.	=	three cargo containers
105,001 sq. ft. - 140,000 sq. ft.	=	four cargo containers
140,001 sq. ft. - 175,000 sq. ft.	=	five cargo containers
175,501 sq. ft. - 210,000 sq. ft.	=	six cargo containers
over 210,100 sq. ft.	=	number approved by the City Council

N. Cargo containers located within the “M” zoning district may exceed the above-listed numbers upon approval of a Special Exception by the [sic]

O. Board of Adjustment with a detailed site plan showing the proposed location and number of cargo containers.

P. Cargo containers shall not be allowed to be stored [on] public streets.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 33 Nonconforming Uses, Lots, and Structures**

**33.1 CATEGORIES OF NONCONFORMITIES**

Within the districts established by this ordinance, or amendments that may later be adopted, there exist

- A. Lots and uses of land,
- B. Buildings and structures,
- C. Uses of land and buildings in combination, and
- D. Characteristics of use which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments. It is the intent of this ordinance to permit these nonconformities to continue under regulations contained herein until they are removed, but not to encourage their survival. It is further the intent of this ordinance that such nonconformities shall not be enlarged upon, expanded or extended, nor be used as ground for adding other buildings and structures or uses prohibited elsewhere in the same district.

**33.2 NONCONFORMING USES REGULATED**

Nonconforming uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. No nonconforming use of land or buildings, nor any nonconforming structure shall be enlarged, changed, altered, or repaired except in conformance with the regulations contained in this section.

**33.3 NONCONFORMING STATUS**

Any use, lot, or structure which does not conform to the regulations of the zoning district in which it is located, is nonconforming when:

- A. The use, lot, or structure was in existence and lawfully operating on the date of the passage of this ordinance, and has since been in regular and continuous use; or
- B. The use, lot, or structure is lawful at the time of the adoption of any amendment to this ordinance, but because of the amendment, no longer complies with applicable regulations; or
- C. The use, lot, or structure was in existence at the time of annexation to the City and has since been in regular and continuous use.

**33.4 NONCONFORMING LOTS OF RECORD**



In any district in which residential, commercial, or industrial buildings are permitted, buildings may be erected on any single lot of record, or multiple lots of contiguous street frontage in the same ownership, which were recorded prior to the effective date of this ordinance. This provision shall apply even though such lot or lots fail to meet the minimum requirements for area, width, or both, as governed by the applicable area regulations for that particular zoning district; however, all other provisions of the applicable zoning district area regulations shall apply. Any required variances shall be obtained only through the Zoning Board of Adjustment.

**33.5 NONCONFORMING USES OF LAND**

Where at the time of passage of this ordinance lawful use of land exists which would not be permitted by the regulations imposed by this ordinance, the use may be continued so long as it remains otherwise lawful, provided:

- A. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.
- B. No such nonconforming use shall be moved, in whole or in part, to any portion of the same lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this ordinance.
- C. If any such nonconforming use of land is deemed to be abandoned for any reason for a period of more than 6 months, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.

**33.6 NONCONFORMING BUILDINGS**

Where a lawful building exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the building, such building may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No such nonconforming building may be enlarged or altered in a way which increases its nonconformity, but any building or portion thereof may be altered to decrease its nonconformity or to comply with City building codes.
- B. Should such nonconforming building or nonconforming portion of a building be destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance, or when approved by the Zoning Board of Adjustment, after public hearing thereon, when the Board's findings, having due regard for the property rights of persons affected, were considered in the light of public welfare and the character of the area surrounding the nonconforming building and the conservation and protection of property.
- C. Should such building be moved for any reason for any distance whatever, it shall thereafter conform to the regulations of the district in which it is located after it is moved.

**33.7 NONCONFORMING USES OF BUILDINGS**

If lawful use involving individual buildings exists at the effective date of adoption or amendment of this ordinance, that would not be allowed in a particular district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No existing building devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the building to a use permitted in the district in which it is located, or to comply with City building codes.
- B. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building.
- C. If no structural alterations are made, except as required by the City's building codes, any nonconforming use of a building, or building and premises, may be changed to another nonconforming use provided that the zoning board of adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the zoning board of adjustment may require appropriate conditions and safeguards in accord with the provisions of this ordinance.
- D. Any building in which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed.
- E. When a nonconforming use of a building is discontinued or abandoned for six consecutive months, the building shall not thereafter be used except in conformity with the regulations of the district in which it is located.
- F. Where nonconforming use status applied to a building and premises in combination, removal or destruction of the building shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than 50 percent of the replacement cost at time of destruction.
- G. Where nonconforming use status applies to a conforming building, such use shall be immediately terminated upon transfer to another ownership or lease.

**33.8 REPAIRS, AND MAINTENANCE**

On any nonconforming building or portion of a building containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding 50 percent of the current replacement cost of the nonconforming building or nonconforming portion of the building, as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.

If a nonconforming building or portion of a building containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized City official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

### 33.9 NONCONFORMING USES DISCONTINUED

A nonconforming use of any building or structure which has been discontinued shall not thereafter be returned to any nonconforming use. A nonconforming use shall be considered discontinued when:

- A. It has been replaced with a conforming use; or
- B. Such building or structure is or hereafter becomes vacant and remains unoccupied or out of use for a continuous period of six months, or the equipment and furnishings of the nonconforming use have been removed from the premises and have not been replaced within such six month period; or
- C. The intention of the owner to permanently discontinue the use is apparent.

### 33.10 CHANGES THAT LESSEN NONCONFORMITY

Changing to a more restricted or less intensive nonconforming use that lessens the extent of the original nonconformity may be permitted by the Zoning Board of Adjustment.

### 33.11 CERTIFICATE OF OCCUPANCY

No nonconforming building or use shall be maintained, renewed, changed or extended until a certificate of occupancy shall have been issued by the administrative official. The certificate of occupancy shall state specifically wherein the nonconforming use differs from the provisions of this ordinance, provided that upon enactment or amendment of this ordinance, owners or occupants of nonconforming uses or buildings shall have three months to apply for certificates of occupancy. Failure to make such application within three months shall be presumptive evidence that the property was in conforming use at the time of enactment or amendment of this ordinance.

(Ordinance 2010-01-149 adopted 1/19/10)

**Article 5. Administration**

**Section 34 Administration and Enforcement**

34.1 ADMINISTRATIVE OFFICIAL

An administrative official designated by the City Council shall administer and enforce this ordinance. Said person may be provided with the assistance of such other persons or consultants as the City Council may direct.

34.2 ENFORCEMENT

If the administrative official finds that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 35 Completion of Buildings Under Construction**

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently. (Ordinance 2010-01-149 adopted 1/19/10)

**Section 36 Zoning Board of Adjustment**

36.1 ESTABLISHMENT

A. A zoning board of adjustment is hereby established, which shall consist of five regular members and two alternate members, each to be appointed for a term of two years by the City Council. Alternate members shall serve in the absence of regular member(s) in keeping with rules and procedures adopted by the zoning board of adjustment. Members of the zoning board of adjustment may be removed from office by the City Council for cause upon written charges and after public hearing. Vacancies shall be filled by appointment of the City Council for the unexpired term of the member affected. All cases to be heard by the Zoning Board of Adjustment must be heard by a minimum number of four members.

B. If it is deemed necessary by the City Council, the City Council may serve as the Zoning Board of Adjustment, according to Section 211.008(9) of the Local Government Code.

36.2 TERMS OF OFFICE

The terms of three of the members shall expire on the first Monday in June of each odd-numbered year, and the terms of two of the members shall expire on the first Monday in June of each even-numbered year. The members of the board shall be identified by place numbers one through five. The odd-numbered places shall expire in the odd-numbered years; the even-numbered places shall expire in the even-numbered years.

### 36.3 PROCEDURE

The Zoning Board of Adjustment members shall select a chairman and vice-chairman from among its members.

- A. The board shall hold an organizational meeting on the first Monday in July of each year and shall elect a vice-chair from among its members before proceeding to any other matters of business.
- B. Officers will serve for a term of one year.
- C. Meetings shall be held at the call of the chairman and at such other times as the board may determine.
- D. All meetings shall be open to the public.
- E. The Zoning Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be public record and be immediately filed in the office of the board.
- F. The zoning board of adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this ordinance and state statutes.
- G. A quorum for the conduct of business shall consist of four members of the commission.
- H. The members of the commission shall regularly attend meetings and public hearings of the commission and shall serve without compensation. Three consecutive unexcused absences shall constitute grounds for dismissal.
- I. Duties of the officers shall be as follows:
  - a. Chairman. The chairman shall preside at all meetings and may administer oaths and compel the attendance of witnesses, and shall have the same subpoena powers as the municipal court.
  - b. Vice-chairman. The vice-chairman shall assist the chairman in directing the affairs of the Board and act in the absence of the chairman.

### 36.4 POWERS OF THE BOARD

The Board of Adjustment shall have the powers and exercise the duties of a Board of Adjustment in accordance with Section 211.008 of the Texas Local Government Code. The Board's

jurisdiction shall extend to and include the hearing and deciding of the following types of appeals and applications, and to that end shall have the necessary authority to ensure continuing compliance with its decision. The zoning board of adjustment shall have the following powers and duties:

- A. Interpretation. To render an interpretation of the zoning regulations or the manner of their application where it is alleged there is error in any order, requirement, decision, or determination made by the administrative official in the administration of this ordinance. In reaching its decisions the Board shall establish firm guidelines for future administrative action on like matters.
- B. Special exceptions. To hear and decide upon those applications for special exceptions when the same is authorized under this ordinance subject to Board approval. A special exception shall not be granted by the board of adjustment unless it finds:
  - a. That the use is specifically permitted under the ordinance; and
  - b. That the locations of proposed activities and improvements are clearly defined on the site plan filed by the applicant; and
  - c. That the exception will be wholly compatible with the use and permitted development of adjacent properties.
- C. Variances. To authorize upon appeal in specific cases such variance from the height, yard area, coverage, and parking regulations set forth in this ordinance as may be necessary to secure appropriate development of a parcel of land which differs from other parcels in the district by being of such restricted area, shape, or slope that it cannot be appropriately developed without such modification. A variance from the terms of this ordinance shall not be granted by the zoning board of adjustment unless and until it finds that:
  - a. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district; and
  - b. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
  - c. That the special conditions and circumstances do not result from the actions of the applicant;
  - d. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures or buildings in the same district.
  - e. The board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

- f. The zoning board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
- g. Under no circumstances shall the board grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

D. Nonconforming Uses.

- a. The Board may permit the reconstruction, extension, or enlargement of a building occupied by a nonconforming use on the lot or tract occupied by the building, and the addition of off-street parking or off-street loading to a nonconforming use.
- b. The Board may require the discontinuance of nonconforming uses of land or buildings under any plan whereby the full value of the buildings and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity of all property to conform to the regulations of this ordinance. All actions to discontinue a nonconforming use of land or structure shall be taken with due regard to the property rights of the persons affected, when considered in light of the public welfare and the character of the area surrounding the designated nonconforming use and the conservation and preservation of the property.
- c. The Board shall, from time to time, on its own motion or upon cause presented by interested property owners, inquire into the existence, continuation, or maintenance of any nonconforming use within the City.

### 36.5 APPEALS TO THE BOARD OF ADJUSTMENT

A. Interpretation. Appeals to the zoning board of adjustment concerning interpretation or administration of this ordinance may be taken by any person aggrieved or by any officer, agency, department or commission of the City affected by any decision of the administrative official. Such appeals shall be taken within 10 business days or such lesser period as may be provided by the rules of the board, by filing with the administrative official from whom the appeal is taken, and with the zoning board of adjustment a notice of appeal specifying the grounds for appeal. The administrative official shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.

B. Stay of proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certifies to the zoning board of adjustment after the notice of appeal is filed with him that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the zoning board of adjustment or by a court of record on application, and on due cause shown.

C. Special Exception Application. An application for a special exception to use or develop property as specifically authorized in district use regulations or in this section may be filed by any

person owning the affected property or by any tenant upon written authorization of the owner. Such application shall be filed with the Board, and a copy thereof with the administrative official.

D. Form of Appeal or Application. The appeal or application shall be in such form and contain such information as the Board may require under its rules of procedure. An incomplete appeal or application shall be deemed only to give notice of intent to appeal or apply to the Board, and shall not be reviewed or scheduled for hearing until brought to completion.

E. Notice of Hearing. Official written notice of public hearing on every application for a variance or special exception or for an interpretation of regulations applying solely to an individual property shall be sent to all owners of property, or to the person rendering the same for City taxes, affected by such application, located within 200 feet of any property affected thereby, within not less than 10 days before such hearing is held. Such notice shall be served by using the last known address as listed on the City tax roll and depositing the notice, postage paid, in the United States mail. Notice of hearings on requests for interpretation of regulations applying to more than one property and ownership shall be given by means of a general notice as provided below. In addition, a list of items on the agenda to be heard by the Board shall be posted at a public place in City Hall at least 72 hours before the hearing on said items, and a list of agenda items shall be published in a newspaper of general circulation in the City of New Fairview at least twenty-four (24) hours before the hearing at which action will be considered.

#### 36.6 HEARING AND DECISION

A. Generally. The board shall fix a reasonable time for the hearing of appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney. Evidence supporting the grant or denial of an appeal shall be submitted only through the administrative official or to the Board in public meeting. An appeal or application may be withdrawn upon written notice of the administrative official, but no appeal shall be withdrawn after posting of hearing notice and prior to board action thereon without formal consent of the Board.

B. Decision and Voting.

- a. Every decision of the Board shall be based upon findings of fact and every finding of fact shall be supported in the record of proceedings. The enumerated conditions required to exist on any matter upon which the Board is authorized to pass under this ordinance shall be construed as limitations on the power of the Board to act.
- b. Nothing herein contained shall be construed to empower the Board to change the terms of this ordinance, or to effect changes in the zoning districts. The powers of the Board shall be so applied that the terms of this ordinance will be strictly enforced.
- c. In exercising the above-mentioned powers, the zoning board of adjustment may, so long as such action is in conformity with the provisions of Section 211.008, Board of Adjustment through Section 211.013, Conflict with Other Laws, Exceptions, of the Texas Local Government Code, may modify in whole or in part any order, requirement, decision or determination appealed from and may make such order, requirements, decision or determination as ought to be made, and to that end shall have the powers of the administrative official from whom the appeal is taken.



- d. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in the application of this ordinance.
- C. Disqualification from voting.
- a. A member shall disqualify himself from voting whenever he finds that he has a personal or monetary interest in the property under appeal, or that he will be directly affected by the decision of the Board.
  - b. A member may disqualify himself from voting whenever any applicant, or his agent, has sought to influence the vote of the member on the appeal, other than in the public hearing.
- D. Approval of Request.
- a. In approving any request, the Board of Adjustment may designate such conditions in connection therewith in order to secure substantially the objectives of the regulations or provisions to which such variance is granted and to provide adequately for the maintenance of the integrity and character of the zone in which such permit is granted.
  - b. When necessary, the Board of Adjustment may require guarantees, in such form as it deems proper, to insure that conditions designated in connection therewith are being or will be complied with.
  - c. Unless a building permit or certificate of occupancy is obtained, appeal shall expire 60 days after the Board's decision unless a greater time is requested in the application and is authorized by the Board. Any approval may be granted one emergency extension of 60 days on written request filed with the Board before expiration of the original approval.
- E. Denial of Request. No appeal or application that has been denied shall be further considered by the Board under a subsequent request obtained by filing new plans and obtaining of a new decision from the administrative official unless:
- a. The new plans materially change the nature of the request; or
  - b. The permitted development of other nearby property in the same zone has been substantially altered or changed by a ruling of the Board, so as to support an allegation of changed conditions.
- F. Appeals of Zoning Board of Adjustment Action. Any person or persons, or any board, taxpayer, department, commission or agency of the City aggrieved by any decision of the zoning board of adjustment may seek review by a court of record a petition duly certified, setting forth that such decision is illegal in whole or in part, specifying the grounds of such illegality. Shall petition shall be presented to the court within ten days after the filing of the decision complained of in the office of the Board of Adjustment, and not thereafter.

36.7 AUTHORIZED SPECIAL EXCEPTIONS

The following privately owned or privately operated uses may be permitted as special exceptions by the Board of Adjustment in the districts indicated below, subject to full and complete compliance with any and all conditions listed, together with such other conditions as the Board may impose for protection of the public health or safety. In addition, provisions for special exceptions listed within the text of this document but not contained in the table herein shall be authorized and enforced with the same authority as those events and listings contained herein.

Special Exception	District Where Permitted
Shared [parking] of the same off-street parking areas by two or more uses as follows: a. When two or more uses, according to such approved plan, share the same off-street parking area, each may be considered as having provided such shared space individually. b. The land uses and common parking facility must be located in close proximity to one another. c. The land uses must be located not farther from the shared parking than a distance of 300 feet, measured by a straight line from the nearest point of the land on which the use is served is located to the nearest point of the separated off-street parking space.	C and M
Off-site parking when the following applies: a. Must be located not farther from the use served than a distance of 300 feet, measured by a straight line from the nearest point of the land on which the use is served is located to the nearest point of the separated off-street parking space. b. A written agreement shall be drawn to the satisfaction of the City attorney and executed by all parties concerned assuring the continued availability of the off-site parking facilities for the use they are intended to service.	C and M
Additional Height for Parking Lot Light Poles	All Districts
Exceed Illumination of 20 footcandles for Public and Semi-Public Facilities	All Districts
Permit Laser Source Lights, Searchlights, [sic]	All Districts
Reduction of required parking between 11% and 50%	C and M
Antenna facilities which do not meet the requirements of Section 30, Wireless Communication Facilities	See Section 30
Additional height over 60 feet	C and M
Percentage of Masonry Exterior Requirement may be established according to merit	All Districts

**36.8 FEES**

There shall be a fee assessed for each request for a variance to this ordinance, in accordance with the City of New Fairview fee schedule. Costs shall not be allowed against the Board unless it shall appear to the court that the Board acted with gross negligence or in bad faith, or with malice in making the decision appealed.

(Ordinance 2010-01-149 adopted 1/19/10)

**State law reference**—Establishment and authority of zoning board of adjustment, V.T.C.A., Local Government Code, sec. 211.008 et seq.

**Section 37        Duties of City Council**

The duties of the City Council in connection with this ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise. Under this ordinance the City Council shall have only the duties of considering and adopting or rejecting proposed amendments or the repeal of this ordinance, as provided by law, and, of establishing a schedule of fees and charges as stated in Section 38, Fee Schedule. (Ordinance 2010-01-149 adopted 1/19/10)

**Section 38        Fee Schedule**

The City Council shall establish a schedule of fees, charges and expenses and a collection procedure for the administration, review and processing of applications regarding the issuance of building permits, certificates of occupancy, zoning change requests, plats, zoning board of adjustment appeals and other matters pertaining to this ordinance. The schedule of fees shall be posted in the office of the zoning administrative official, and may be altered or amended only by action of the City Council. Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal. (Ordinance 2010-01-149 adopted 1/19/10)

**Section 39        Amendments**

39.1 GENERALLY

The regulations, restrictions, and district boundaries created by this ordinance may be amended from time to time by the City Council.

39.2 AMENDMENT INITIATION

An amendment to this ordinance may be initiated by the City Council on its own motion or an owner or agent having proprietary interest in any property.

39.3 PROCEDURE

Any amendment to this ordinance shall require public hearings to be held before the City Council.

39.4 NOTICE

When any amendment relates to a change in classification or boundary of a zoning district, written notice of all public hearings before the City Council on proposed changes and classifications shall be sent to owners of real property lying within 200 feet of the property on which the change in classification is proposed. Such notice will be given not less than ten days before the date set for hearing, to all owners as the ownership appears on the last approved City tax roll. Such notice may be served by depositing the same, properly addressed, postage paid, in the City post office. Notice shall also be posted along with the agenda for all hearings and related meetings in accordance with the applicable laws of the State of Texas.

When an amendment relates to a change of zoning classification or to the text of this ordinance not affecting specific property, notice of the public hearings before the City Council shall be given by publication in a newspaper of general circulation in the City without necessity of notifying property owners by mail. The notice shall state the time and place of the hearing and the

nature of the subject to be considered, which time shall not be earlier than 15 days from the date of publication.

**39.5 PROTEST**

In case the City Council does not approve the change, or in case of a written protest against such change, filed with the City secretary and signed by the owners of 20 percent or more, either of the area of the lots included in such proposed change, or of those lying within 200 feet of the property on which the change is requested, the amendment shall not be approved except by the favorable vote of three-fourths of all members of the City Council.

**39.6 FREQUENCY OF PETITION**

A property owner, lessee, developer or option holder may petition the City Council for an amendment to the text or district map of this ordinance, provided that before any action shall be taken as provided in the section, the party or parties petitioning for amendment shall deposit with the City secretary the fee amount stipulated by resolution of the City Council to cover the approximate cost of this procedure, and under no condition shall said sum or any part thereof be refunded for failure of such proposed amendment to be enacted into law. A party shall not initiate the same action for a zoning amendment or specific use permit affecting the same land more often than once every 12 months.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 40        Violations and Penalties**

**40.1 COMPLAINTS REGARDING VIOLATIONS**

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the administrative official. He shall record properly such complaint, immediately investigate, and take action thereon as provided by this ordinance.

**40.2 PENALTIES FOR VIOLATION**

Any person, firm, association of persons, corporation, or other organization who shall violate any provision of this ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined an amount not to exceed \$2,000.00. Each day a violation of this ordinance shall continue shall constitute a separate offense. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ordinance 2010-01-149 adopted 1/19/10)

**Section 41        Severability**

The sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the remaining phrases, clauses, sentences, paragraphs, or 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 or invalid phrase, clause, sentence, paragraph, or section. (Ordinance 2010-01-149 adopted 1/19/10)

## Article 6. Definitions

### Section 42 Rules for Words and Phrases

#### 42.1 GENERAL INTERPRETATION

For the purpose of this ordinance, certain terms and words are defined and shall have the meanings ascribed in this ordinance unless it is apparent from the context that different meanings are intended.

#### 42.2 TENSE AND NUMBER

Words used in the present tense include the future tense; words in the singular number include the plural number; and words in the plural number include the singular number.

#### 42.3 INTERPRETATION OF CERTAIN WORDS

The word “person” includes a firm, association, organization, partnership, trust, foundation, company, or corporation as well as an individual; the word “shall” is mandatory, not directory; the word “may” is permissive; the word “used” means “designed, intended, or arranged to be used”; “occupied” means “occupied or intended, designed, or arranged to be occupied.” The word “lot” includes the words “plot,” “parcel” or “tract of land”; the word “building” includes the word “structure”; the word “including” means “including but not limited to.”

(Ordinance 2010-01-149 adopted 1/19/10)

### Section 43 Definitions

#### 43.1 GENERAL DEFINITIONS

The following general definitions do not include the definitions of uses. Uses are defined in Section 43.2, Use Definitions and Explanations. The following words, when used in this ordinance, shall have the meaning respectively ascribed to them in this section, unless the context of this ordinance clearly indicates otherwise.

*Administrative Official.* The individual charged with the administration and enforcement of this ordinance, or his duly authorized representative.

*Alley.* A public minor way which is used primarily for secondary vehicular service access to the back or side of properties otherwise abutting on a street or highway.

*Basement.* A building story which is partly underground but having at least one-half of its height above the average level of the adjoining ground. A basement shall be counted as a story in computing building height.

*Block.* An area enclosed by streets and occupied by or intended for buildings; or if used as a term of measurement, it shall mean the distance along a side of a street between the nearest two streets which intersect said street on the said side.

*Board.* The Zoning Board of Adjustment.

*Breezeway.* A covered passage one story in height and six feet or more in width connecting a main structure and an accessory building. A breezeway shall be considered an accessory building.

*Building.* Any structure built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind. When subdivided in a manner sufficient to prevent the spread of fire each portion so subdivided may be deemed a separate building.

*Building Line.* A line parallel or approximately parallel to the street line at a specific distance therefrom marking the minimum distance from the street line that a building may be erected.

*Cellar.* A building story with more than one-half its height below the average level of the adjoining ground. A cellar shall not be counted as a story in computing building height.

*Certificate of Occupancy.* An official certificate issued by the City through the administrative official which indicates conformance with or approved conditional waiver from the building or zoning regulations and authorizes legal use and occupancy of the premises for which it is issued.

*City Council (Council).* The governing body of the City of New Fairview, Texas.

*Court.* An open, unoccupied space bounded on three or more sides by the walls of a building. An inner court is a court entirely surrounded by the exterior walls of a building. An outer court is a court having one side open to a street, alley, yard or other permanent space.

*Density.* The number of dwelling units permitted per net acre of land. A net acre of land does not include portions of streets or alleys.

*District.* A section of the City of New Fairview for which the regulations governing the area, height, or use of the land and buildings are uniform.

*Dwelling Unit.* A building or portion of a building which is arranged, occupied or intended to be occupied as living quarters for one family and including facilities for food preparation and sleeping.

*Easement.* A grant of one or more property rights by the owner to, or for the use by, the public, a corporation, or another person or entity.

*Family.* Any number of persons living together as a single nonprofit housekeeping unit in which not more than four individuals are unrelated by blood, marriage, or adoption.

Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include five or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, nonprofit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Such unrelated individuals shall have the right to occupy a dwelling in the same manner and to the same extent as any family unit as defined in the first paragraph of this definition.

Fence. An open or solid enclosure designed to contain or prevent intrusion. An open fence is one in which the vertical surface thereof is not less than 70 percent open. A solid fence is one in which the vertical surface thereof is not greater than 30 percent open, and may be considered as a screening element. (See also Screening element.)

Floodplain. Any land area susceptible to being inundated by water from any source.

Floodway. The channel, river, or other watercourse and the adjacent land area that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot at any point.

Floor Area. The total square feet of floor space within the outside dimensions of a building including each floor level, but excluding cellars, attics, carports, or garages.

Floor Area Ratio (FAR). An indicated ratio between the number of square feet of total floor area in the main building(s) on a lot and the total square footage of land in the lot; it is the number resulting from dividing the main building floor area by the lot area.

Glare. A sensation of brightness within the visual field that causes annoyance, discomfort, or loss in visual performance and visibility.

Grade. The average of the finished ground level at the center of all walls of a building. In cases where walls are parallel to and within five feet of a sidewalk, the ground level shall be measured at the sidewalk.

Height. The vertical distance of a building measured from the average established grade at the street line or from the average natural front yard ground level, whichever is higher, to:

- A. The highest point of the roof's surface if a flat surface;
- B. To the deck line of mansard roofs; or
- C. To the mean height level between eaves and ridge for hip and gable roofs and, in any event, excluding chimneys, cooling towers, elevator bulkheads, penthouses, tanks, water towers, radio towers, ornamental cupolas, domes or spires, and parapet walls not exceeding ten feet in height.

If the street grade has not been officially established, the average front yard grade shall be used for a base level.

Impervious Coverage. Any material that substantially reduces or prevents the infiltration of stormwater into previously undeveloped land.

Infrastructure. The essential facilities such as water, sewers, streets, highways, public utilities, libraries, parks, police and fire services, and other facilities related to the protection of the health, safety, and general welfare.

Landscaping. Live plant material including grass, shrubs, trees, and flowering plants as required by Section 29, Landscape Regulations.

Loading Space, Off-street. Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space.

Lot. A parcel of land which is shown on an approved plat recorded in the Wise County plat records.

Lot Area. The area of the horizontal plane bounded by the vertical planes through front, side, and rear lot lines.

Lot, Corner. A lot abutting upon two more streets at their intersection.

Lot Coverage. The percentage of the total area of a lot occupied by the base (first story or floor) of buildings located on the lot.

Lot Depth. The horizontal mean distance between the midpoint of the front and the midpoint of the rear lot lines.

Lot, Flag. A lot with access provided to the bulk of the lot by means of a narrow corridor.

Lot, Interior. A lot that is other than a corner lot.

Lot Lines. The property lines bounding a lot as defined herein.

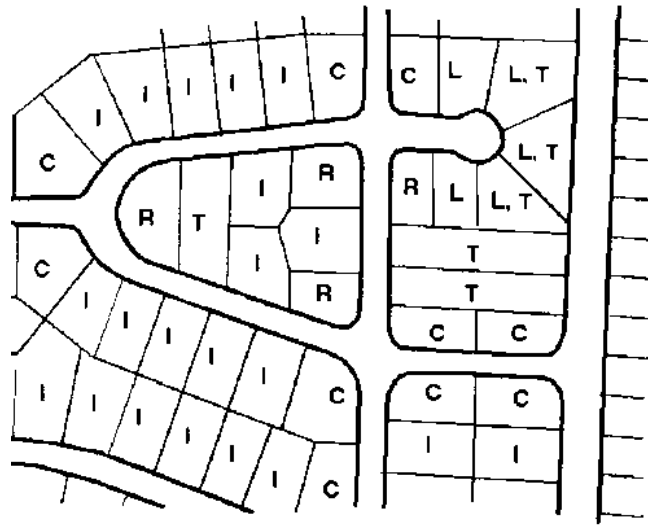
Lot Line, Front. The boundary between a lot and the street on which it fronts.

Lot Line, Rear. The boundary line not intersecting a front lot line which is most distant and most closely parallel to the front lot line.

Lot Line, Side. Any lot boundary line not a front or rear line thereof.

Lot, Through. A lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots. Such lot(s) shall provide a front yard on each street.





- Legend**
- |   |                    |   |                |
|---|--------------------|---|----------------|
| C | Corner Lot         | T | Through Lot    |
| I | Interior Lot       | L | Cul-de-Sac Lot |
| R | Reverse Corner Lot |   |                |

**Lot Width.** The width of a lot at the front building line.

**Main (Principal) Building.** The building or buildings on a lot which are occupied by the primary use.

**Masonry.** That form of construction composed of brick, stone, concrete, gypsum, hollow-clay tile, glass block, fiber-cement board, stucco or similar building units or materials or combination of these materials laid up unit by unit and set in mortar (Masonry does not include exterior insulated finish systems (EIFS).)

**Nonconforming Building.** A building which legally existed prior to the adoption, revision, or amendment of this ordinance but that does not meet the limitations on building size or location on a lot for the district in which the building is located, or for the use being made of the building.

**Nonconforming Lot.** A lot which was in compliance with applicable regulations prior to the adoption, revision, or amendment of this ordinance, but which fails by reason of adoption, revision, or amendment to conform to the lot requirements for the district in which it is located.

**Nonconforming Use.** A use of land which legally existed at the time of the effective date of this ordinance, or subsequent amendments thereto, which does not conform to the use regulations of the district in which it is situated.

**Occupancy.** The use or intended use of the land or buildings by proprietors or tenants.

**Open space.** Area included in any side, rear or front yard or any unoccupied space on the lot that is open and unobstructed to the sky except for the ordinary projections of cornices, eaves or porches.

Parking Space, Off-street. For the purposes of this ordinance, an off-street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room. Required off-street parking areas for three or more automobiles shall have individual spaces marked, and shall be so designed, maintained and regulated that no parking or maneuvering incidental to parking shall be within any public street, or alley, right-of-way, and so that any automobile may be parked and unparked without moving another. For purposes of rough computation, an off-street parking space and necessary access and maneuvering room shall be estimated at 300 square feet for residential uses and 400 square feet for nonresidential uses, but off-street parking requirements will be considered to be met only when actual spaces meeting the requirements in this ordinance are provided, maintained and improved in a manner appropriate to the circumstances of the case, and in accordance with all ordinances and regulations of the City. All required off-street parking spaces shall be provided and maintained wholly within private property lines and not within any public highway, street or alley right-of-way.

Plat. A plan of a subdivision of land creating building lots or tracts and showing all essential dimensions and other information essential to comply with the subdivision standards of the City and subject to approval by the City Council. Reference to a final plat in this ordinance means an official plat of record which has been approved by the City Council and filed in the plat records of Wise County.

Premises. Land together with any buildings or structures occupying all or any portion of the land.

Private Drive, Street, or Place. An open, unoccupied space, other than a street or alley, permanently established or reserved or dedicated in private ownership as the principal means of vehicular access to property abutting thereon.

Property line. (See lot line.)

Residence. Same as a dwelling; also when used with the word “district,” an area of residential regulations.

Room. A building or portion of a building which is arranged, occupied or intended to be occupied as living or sleeping quarters but not including toilet or cooking facilities.

Screening Element/Device. Screening element (device) or suitably screened as herein referred, shall mean any of the following:

- A. Any solid material constructed of brick, masonry, or of a concrete or metal frame, or wood, or base which supports a permanent type material, the vertical surface of which is not more than 30 percent open; or
- B. Any dense evergreen hedge or plant material suitable for providing a visual barrier, for which such material shall be maintained in a healthy growing condition;
- C. Landscaped earth berms may, when appropriate in scale, be considered and used as a screening element in lieu of a fence, wall, hedge or other dense planting material.

Semi-trailer. A vehicle designed or used with a motor vehicle so that part of the weight of the vehicle and its load rests on or is carried by another vehicle.

**Setback, Building.** The minimum horizontal distance between the front wall of any projection of the building (excluding steps) and the street line. (Same as Building line.)

**Special Exception.** A use that would not be generally appropriate without restriction throughout the zoning district but which, if controlled as to number, area, location, intensity or relation to the neighborhood, would or could be compatible therein and promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare. Such uses may be permitted as special exceptions by the zoning board of adjustment, after public hearing thereon. See Section 36, Zoning Board of Adjustment.

**Specific Use.** The use of any building, structure, or land not specifically allowed by district regulations, but permitted as a specific use in accordance with Section 21, Specific Use Permits.

**Story.** That part of a building included between the surface of one floor and the surface of the floor next above, or if there be no floor above, that part of the building which is above the surface of the highest floor thereof. A top story attic is a half story when the main line of the eaves is not above the middle of the interior height of such story. The first story is above the middle of the interior height of such story. The first story is the highest story having its interior floor surface not more than four feet above the curb level, established or mean street grade or average ground level.

**Street.** A public way between two right-of-way lines (other than an alley or private drive) which has been dedicated or deeded to the public for public use and affords a principal means of access (vehicular or otherwise) to property abutting thereon, as well as for utilities and sidewalks.

**Street Line.** The right-of-way line of a street.

**Structural Alterations.** Any change in the supporting members of a building, such as bearing walls, columns, beams or girders, or any substantial changes in the roofs or exterior walls, excepting such repair or replacement as may be required for the safety of the building, but not including openings in bearing walls as permitted by the City building code.

**Structure.** Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings and mobile homes.

**Thoroughfare.** Those public streets designated on the City of New Fairview Thoroughfare Plan as “thoroughfares.”

**Trailer.** A vehicle that is designed or used to carry a load wholly on its own structure; and is drawn or designed to be drawn by a motor vehicle.

**Variance.** A variance is a relaxation by the Board of Adjustment of the dimensional regulations of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions or the situation of the applicant, a literal enforcement of the zoning ordinance would result in unnecessary and undue hardship. See Section 36, Zoning Board of Adjustment.

**Vehicle.** As used herein shall include motor vehicle, motorcycle, trailer and semi-trailer.

*Yard, Front.* A yard across the full width of the lot extending from the building line to the front line of the lot abutting a street. Depth of required front yards shall be measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding.

*Yard, Rear.* A yard between the rear lot line and the rear line of the main building and the side lot lines. Depth of a required rear yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line.

*Yard, Side.* A yard between the building and the side line of the lot and extending from the front yard to the required minimum rear yard. Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.

*Zoning District Map.* The official certified map upon which the boundaries of the various zoning districts are drawn and which is an integral part of the zoning ordinance.

#### 43.2 LAND USE DEFINITIONS AND EXPLANATIONS

The following definitions and explanatory notes supplement, restrict, and define the meaning and intent of the uses listed in Section 11.2, Permitted Use Table.

*Accessory Building.* A subordinate building having a use customarily incident to the main building. A building housing an accessory use is considered an integral part of the main building when it has any part of a wall in common with the main building, or is under an extension of the main roof and designed as an integral part of the main building.

*Accessory Use.* A use customarily incidental to the main use of the property.

*Agricultural Use.* The use of a parcel of land for farming or ranching and shall include the structures that are normally associated with agricultural uses. However, this use shall not include commercial dairies, commercial dog kennels, commercial hatcheries, and commercial mink, fox, rat, or other fur-bearing animal farms, or the farming of swine or exotic animals.

*Ambulance Service.* An establishment which provides ambulatory transport of persons, to or from a medical facility, for a fee.

*Amusement Center, Indoor.* A facility providing game equipment for entertainment and amusement as its primary source of income. Games contained in the facility may include coin-operated machines utilizing balls, pins, and baskets, video equipment, and pinball. Other equipment may include skill games such as pool, billiards, bowling, shuffle board, darts, and batting cages. Any combination of these games may be used in the facility. Games of wagering and chance, including 8-liners, categorized as gambling are prohibited and not included in this use.

*Amusement Center, Outdoor.* An amusement enterprise offering entertainment or games of skill to the general public for a fee or charge wherein any portion of the activity takes place in the open.

*Animal Grooming.* An establishment that offers to the general public the service of animal grooming for domestic pets. No boarding or medical care is provided.

*Animal Pound, Shelter.* A facility used to house or contain stray, homeless, abandoned, or unwanted animals and that is owned, operated, or maintained by a public body, or other nonprofit organization devoted to the welfare, protection, and humane treatment of animals.

*Antique Shop.* An establishment offering for sale articles such as glass, china, furniture, or similar furnishings and decorations which have value and significance as a result of age, design, or sentiment.

*Apartment.* A room or suite of rooms arranged, designed, or occupied as a dwelling unit residence by a single family, individual, or group of individuals living together as a single housekeeping unit.

*Apparel Alteration and Repair or Tailor Shop.* An establishment offering individual alteration, repair, or creation of clothing apparel to the public.

*Appliance Repair, Household.* A shop specializing in repair of household appliances.

*Art Gallery.* An establishment offering works of art for viewing and sale to the general public.

*Arts, Crafts, and Hobby Shop.* An establishment offering for sale those items commonly associated with hobbies, including display areas for hobbies.

*Assembly Hall.* A building and associated facilities dedicated to social or recreational activities serving the City or a neighborhood.

*Assembly Plant.* A facility for the assembly of equipment including automobiles, trucks, farm machinery, railroad cars, engines, and appliances from components fabricated for the most part in other locations.

*Athletic Field and Play Field, Commercial.* An athletic field or stadium owned and operated privately, including a baseball field, golf course, football field, or stadium which may be lighted for night-time play.

*Athletic Field and Play Field, Public.* An athletic field or stadium owned and operated by a public agency for the general public, including a baseball field, golf course, football field, or stadium which may be lighted for night-time play.

*Auction House.* A place where objects of art, furniture, or other goods are offered for sale to persons who bid on the object in competition with each other.

*Auditorium.* A large building and associated facilities for gathering an audience for speeches and performances.

*Auto Auction.* An enclosure or area, including outside storage, designed for the sale of automobiles at auction or using other sales techniques.

*Auto Car Wash.* An area and/or structure with machine or hand operated facilities used principally for the cleaning, washing, polishing, or waxing of motor vehicles.

Auto Impound Lot/Wrecker Business. An establishment offering the service of towing, impounding, and temporary storage of vehicles either which have been in an accident or are illegally parked.

Auto Paint and Body Shop. An automotive shop with a primary purpose of repairing and painting the outside surfaces of automobiles, trucks, and vans, and repairing and replacing the upholstery of such vehicles.

Auto Parts and Accessory Sales. An automotive shop with a primary purpose of selling new parts and accessories for automobiles, trucks, and vans.

Auto Rental (Car and Truck). An establishment primarily engaged in the short-term rental or extended term leasing of automobiles and trucks, not including truck tractors or semi-trailers.

Auto Repair Garage. An enclosed facility designed for the repair and maintenance of automobiles, trucks, and vans with outside storage allowed but no outside repair or maintenance conducted.

Auto Sales, New and Used. An open area or lot used for the display or sale of automobiles, trucks, and vans, where no repair work is done except minor reconditioning of the cars to be displayed and sold on the premises, and no dismantling of cars for sale or keeping of used car parts or junk on the premises.

Auto Service Station. An establishment for the retail sales of petroleum products, automobile accessories, auto tune-up, muffler installation incidental to the primary use, tire installation or repair, oil change or other lubricate services in which all services provided and all storage, supplies, parts, equipment, and accessories are indoors, with the exception of fuel-dispensing operations.

Auto Service Station, Light Maintenance. A premises where gasoline and other petroleum products are sold and/or light maintenance activities such as engine tune-ups, lubrication, minor repairs, and carburetor cleaning are conducted. Service stations shall include automobile inspection services, but shall not include areas where heavy automobile maintenance activities such as engine overhauls, automobile painting, and body fender work are conducted.

Bakery, Retail Confectionery. A shop offering for sale on premises those baked goods or candies made on premises or off premises. No production for off-premise sale is allowed.

Bakery, Wholesale Candy. A manufacturing facility for either baked goods or candy with the purpose of selling the products at off-site retail locations.

Bank, Savings and Loan Association, Financial Institution. A building or premise offering banking, savings and loan, and other financial services, not including pawn shops as herein defined.

Barber Shop, Beauty Salon, other Personal Shop. An establishment which provides personal services including haircuts, perms, color treatments, manicures, pedicures, and other personal beauty services.

Boardinghouse. A building other than a hotel, where lodging and meals for five or more persons, not members of the principal family therein, are served for compensation.

Bottling Works. A facility for the bottling of products for off-site retail sales.

Building Materials Manufacturing. A facility for the production of building materials which include fiberglass, wallboard, shingles, etc.

Building Material Sales. A distribution and sales center for retail and wholesale hardware, plumbing, lumber, and other materials used in the building trade.

Bus, Train, and Taxi Station or Terminal. A facility that provides for regularly scheduled transit services, passenger lounges, ticketing, and customer parking.

Cabinet and Upholstery Shop. A shop for the assembly of cabinetry for domestic use and furniture repairing, refinishing, and upholstery.

Camp Ground and Related Facilities. An area that is occupied or intended or designed for occupancy by transients using recreational vehicles, tents, or other temporary dwellings for dwelling, lodging, or sleeping purposes. The use may also include cooking facilities, bath houses, and recreation areas. This does not include a manufactured housing community.

Caretaker's Residence, Guard's Residence, Servant's Quarters. A residence located on a premises with a main nonresidential or residential use occupied only by an employee of the principal use, and serviced through the same utility meters or connections as the principal use to which it is accessory. Manufactured homes are not permitted for this use.

Carport. A structure built and used for the shelter and protection of motor vehicles against the elements and consisting of a roof and supports, open on three sides from roof to adjacent ground level.

Catering Service. A facility where food is prepared in large quantities to be transported to, served, and consumed at an off-site location.

Cemetery, Mausoleum, Crematorium. An area or structure designed to contain the remains of humans or animals for permanent interment.

Clinic. A public or private, profit or nonprofit facility for the reception and treatment of outpatient persons physically or mentally ill, injured, handicapped, or otherwise in need of physical or mental diagnosis, treatment, care, or similar service.

Collectibles Shop. A retail establishment offering such collectible items as sports trading cards, comic books, and stuffed animals for sale to the general public.

Community Center. A building dedicated to social or recreational activities, serving the City or a neighborhood and owned and operated by the City, or by a nonprofit organization dedicated to promoting the health, safety, morals, or general welfare of the City.

Contractor, No Outside Storage Permitted. A business such as an electrician, mechanic, or plumber whose primary use provides a service by installing electrical, mechanical, or plumbing

systems; which also may have limited sales of electrical, mechanical, or plumbing supplies or equipment as a secondary use incidental to its primary use. No outside storage permitted.

Contractor, Outside Storage Permitted. A business such as an electrician, mechanic, or plumber whose primary use provides a service by installing electrical, mechanical, or plumbing systems; which also may have limited sales of electrical, mechanical, or plumbing supplies or equipment as a secondary use incidental to its primary use. Outside storage permitted.

Contractor's Storage or Equipment Yard. An area located on the same lot or separate lot as a principal use, used for outside storage of construction equipment, including vehicles and construction material.

Convenience Store, with or without Fuel Sales. A premise where gasoline and/or other petroleum products are sold as a principal use, and in connection with the principal use, a convenience store offering for sale prepackaged food products, household items, and other goods commonly associated with the same.

Convent, Rectory, Monastery. The building, buildings, or premises occupied by a religious community or association as a residence and a place of work and worship.

Copy Shop. A small commercial printing shop which sells on-site most of the items printed along with associated items.

Cosmetic Tattoo Establishment. An establishment where trained personnel apply micro-injections of pigment to the dermal layer of skin such that facial cosmetics are applied on a permanent basis. This does not include a tattoo parlor.

Country Club. An area containing a golf course and a clubhouse and available only to private specific membership. Such a club may contain adjunct facilities such as a private club (only in conformance with these regulations and applicable state statutes), dining room, swimming pool, tennis courts, and similar recreational or service activities.

Dairy Processing. A commercial plant for the storage and processing of milk and milk products.

Day Care Center, Adult. An agency at which six or more disabled or elderly adults not related to the proprietor, are left for care for a part of the 24 hours of the day.

Day Care Center, Child. An agency at which six or more children, under the age of 16 and not related to the proprietor, are left for care for a part of the 24 hours of the day.

Day Care, in the Home. A private residence where care, protection, and supervision are provided on a regular schedule, at least twice a week to no more than six children, including children of the adult provider.

Department Store. A store offering a variety of comparison and consumptive goods at retail price to the general public.

Dwelling, Assisted Living Facility. A facility intended to provide dwelling units for occupancy by persons requiring the level of care and support defined by the State of Texas as "supervised living."



*Dwelling, Guesthouse.* A residential dwelling, which may include living, sleeping, bathing, and kitchen facilities but is secondary to the main dwelling structure and is used solely for habitation of guests on a temporary basis and at no compensation.

*Dwelling, Industrialized Housing.* A detached residential building that is designed for the use and occupancy of one family, that is constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent residential site, and that is designed to be used as a permanent residential structure when the modules or modular components are transported to the permanent residential site and are erected or installed on a permanent foundation system. The term does not include any residential structure that is in excess of three (3) stories or forty-nine (49) feet in height as measured from the finished grade elevation at the building entrance to the peak of the roof. The term shall not mean nor apply to (i) housing constructed of sectional or panelized systems not utilizing modular components; or (ii) any ready-made home which is constructed so that the entire living area is contained in a single unit or section at a temporary location for the purpose of selling it and moving it to another location.

*Dwelling, Manufactured Housing or Mobile Home.* Shall be defined and differentiated by the following:

- A. *Mobile Home* is a structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length; or when erected on-site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.
- B. *HUD-Code Manufactured Home* is a structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length; or, when erected on-site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

*Dwelling, Multi-Family.* A residential building containing three or more dwelling units, with the number of families in residence not exceeding the number of dwelling units provided.

*Dwelling, Single-Family Attached.* An attached residential building, not including a mobile home or HUD-Code manufactured home, which contains not more than one dwelling unit per lot of record.

*Dwelling, Single-Family Detached.* A detached residential building, not including a mobile home or a HUD-Code manufactured home, which contains not more than one dwelling unit per lot of record.

*Dwelling, Two-family.* A residential building containing two dwelling units.

*Electrical Generating Station.* A facility designed to convert electrical current from other energy sources for consumption by dwellings and other structures.

Electrical Substation. A facility designed to convert electrical current to a different phase or voltage prior to consumption by dwellings and other structures.

Electrical Transmission Line. A high-voltage line used to transmit electrical current to or between electrical substations or long distances and customarily associated with towers.

Electronics Manufacturing. A facility for the production of printed circuit boards, microchips, and other electronic parts which may be assembled on-site into end products such as computers, televisions, radios, and communication equipment.

Exterminating Service. A business providing extermination services for household pests, including insects and rodents.

Factory Outlet, Retail or Wholesale Store. An establishment that offers goods and products to the public that are obtained direct from the manufacturer at prices that reflect savings due to the reduced cost of said direct distribution.

Farm Machinery and Implement Sales and Service. An enclosed area designed for sales and repair of farm machinery.

Farmer's Market. The offering for sale of fresh agricultural products directly to the consumer at an open air market, where the vendors are generally individuals who have raised the vegetables or produce or have taken the same on consignment for retail sale.

Flea Market (Swap meet). An outdoor commercial activity, not including shopping centers, individual retail operations, or sales conducted by a nonprofit or charitable organization, that is open to the general public and composed of semi-enclosed or outdoor stalls, rooms, stands, or spaces used for the purpose of display and sale, exchange, or barter of merchandise, which usually does not include foodstuffs. (Does not include informal garage or yard sales)

Funeral Home, Mortuary. A building or part thereof used for human funeral services. Such building may contain space and facilities for cremation facilities, embalming, and the performance of other services used in preparation of the dead for burial; the performance of autopsies and other surgical procedures; the storage of caskets, funeral urns, and other related supplies; and the storage of funeral vehicles. Where a funeral home is permitted, a funeral chapel shall also be permitted.

Furniture, Fixture, and Appliance Store. A retail establishment offering home furnishings, fixtures, and appliances to the general public.

Garage, Private. An enclosed two-car accessory building or portion of a main building on the same lot and used for the storage only of private passenger motor vehicles and recreational vehicles, owned and used by the owners or tenants of the premises.

Garage, Public. A building or portion thereof, except as herein defined as a private garage or as a repair garage, used for the storage of motor vehicles, or where any such vehicles are kept for remuneration or hire; in which any sale of gasoline, oil, and accessories is only incidental to the principal use. Facilities for washing may be provided.

Garage, Repair. A building or space for the repair or maintenance of motor vehicles, not including factory assembly of vehicles, auto wrecking establishments, or junkyards.

Gas Regulator Station. A station used to regulate the flow or pressure of gas in a pipeline.

Gift Shop. A shop offering gifts, souvenirs, and associated products for sale.

Go-Cart Track and Other Motor Vehicle Track or Facility. A private, commercial enterprise offering outdoor go-cart tracks to the general public for a fee or charge. A go-cart is a non-licensed motorized low horsepower vehicle powered by either a gas or electrical motor to be used for the purpose of entertainment, generally having the capacity of one driver/operator. Does not include remote control vehicles.

Golf Course, Driving Range. An establishment offering areas for driving of golf balls including “pitch and putt” facilities.

Golf Course, Miniature. An establishment offering facilities for miniature golf.

Golf Course, Private. Grounds and facilities used in the playing of the game golf, for use by private membership.

Golf Course, Public. Grounds and facilities used in the playing of the game golf, privately owned but open to the public for a fee and operated as a commercial venture.

Governmental Administration Facility. A building or structure owned, operated, or occupied by governmental agency to provide a governmental service to the public.

Greenhouse or Plant Nursery. An establishment operated for commercial purposes, offering plants grown on premises and off premises and associated products for sale for use in connection with home gardening activities.

Grocery Store. A retail store primarily engaged in the retail sales of all sorts of canned goods, dry goods, fresh fruits and vegetables, and fresh and prepared meats, fish, and poultry.

Group Home for the Disabled or Disadvantaged. A dwelling shared by four or more disabled persons, including resident staff, who live together as a single housekeeping unit and in a long-term, family-like environment in which staff persons provide care, education, and participation in community activities for the residents with the primary goal of enabling the resident to live as independently as possible in order to reach their maximum potential.

As used herein, the term “disabled” shall mean having (1) a physical or mental impairment that substantially limits one or more of the person’s major life activities so that such person is incapable of living independently; (2) a record of having such an impairment; or (3) being regarded as having such an impairment. However, “disabled” shall not include current illegal use of or addiction to controlled substance, nor shall it include any person whose residency in the home would constitute a direct threat to the health and safety of other individuals. The term “group home for the disabled” shall not include alcoholism or drug treatment center[s], work release facilities for convicts or ex-convicts, or other housing facilities serving as an alternative to incarceration.

Gymnasium. A building or room used for physical education and sports, which may be equipped with gymnastic or other sports related equipment and which may have seating in which spectators may view sports activities.

Hardware Store. An establishment offering hand tools, small building materials, and associated convenience items for sale to the general public.

Health Club, Recreation Facility. An indoor facility including uses such as game courts, exercise equipment, locker rooms, Jacuzzi, and/or sauna and pro shop, gymnasiums, private clubs (athletic, health, or recreational), reducing salons, and weight control establishments.

Heliport. A landing facility for rotary wing aircraft subject to regularly scheduled use and may include fueling or servicing facilities for such craft.

Helistop. A landing pad for occasional and infrequent use by rotary wing aircraft with no fueling facilities.

Hobby Studio, Private. An accessory activity area, used by the occupants of the premises purely for personal enjoyment, amusement, recreation, or cultivation of artistic talents.

Home Occupation. An occupation customarily conducted for gain or support entirely within a dwelling by a member or members of a family while residing therein, and which is clearly incidental and secondary to the residential use of the premises and does not change the character thereof. See Section 25, Home Occupations.

Hospital. An institution specializing in giving clinical, temporary, and emergency services of a medical or surgical nature to human patients and injured persons, and licensed by state law to provide facilities and services in surgery, obstetrics, and general medical practice including related facilities such as laboratories, outpatient departments, training facilities, central services facilities, and staff offices that are an integral part of the facilities. Hospitals may include supportive retail and personal service uses operated by or under the control of the hospital primarily for the convenience of patients, staff, and visitors.

Hotel, Motel. A building or portion thereof in which ten or more guest rooms are provided for occupancy for compensation by transient guests.

Junk. The term “junk” is defined to mean, and shall include, scrap iron, scrap tin, scrap brass, scrap copper, scrap lead, or scrap zinc and all other scrap metals and their alloys, and bones, rags, used cloth, used rubber, used rope, used tinfoil, used bottles, old cotton or used machinery, used tools, used appliances, used fixtures, used utensils, used boxes or crates, used pipe or pipe fittings, used automobile or airplane tires, and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition, subject to being dismantled for junk.

Kennel. A lot or premises on which four or more dogs, cats or other domestic animals at least four months of age are housed or accepted for boarding, trimming, grooming and/or bathing for which remuneration is received.

Laboratory, Medical and/or Dental. A facility with materials and scientific and technological equipment designed for scientific experimentation, examination, evaluation, and documentation for medical and other technologies.

Landscape Service. A business principally engaged in the decorative and functional alteration, planting, and maintenance of grounds. Such a business may engage in the installation and

construction of underground improvements necessary to support or sustain the landscaped surface of the ground.

Laundry, Dry Cleaning Full-Service. A retail establishment providing full service laundry and dry cleaning services to the general public.

Laundry, Dry Cleaning Pickup and Receiving Station. A retail establishment providing a drop-off and pickup point for customers to leave wearing apparel or other material in need of laundry and dry cleaning and pick up of items when laundered and/or dry cleaned.

Laundry, Dry Cleaning Self-Service. A retail establishment providing facilities for customers to launder or dry clean wearing apparel or other materials.

Library. Buildings and structures open for the general public, for which a fee may or may not be charged for the use of book and other media collections.

Lithography or Print Shop. A large commercial printing shop with multiple presses and capabilities.

Locksmith Shop. A shop that specializes in making, selling, and repairing keys, locks, and associated material.

Lodge, Fraternal, Sorority, and Clubs. An association of persons meeting regularly for their mutual benefit or for the promotion of some common purpose, supported jointly through payment of membership dues, all members having the right to vote on policies and business.

Machine Shop. A shop that manufactures metal products through the use of presses, stamps, and dyes.

Machinery Sales or Repair. A facility for the storage, repair, outside sales, or rental of heavy machinery or equipment.

Manufactured Housing Park or Subdivision. A parcel of land not less than three acres in size developed for rental or sale of lots for the installation for residential uses of HUD-Code manufactured Housing.

Manufactured or Industrialized Housing Sales or Rental. An area devoted to outside sales or rental of HUD-Code manufactured homes or industrialized housing. For off-premise residential use only.

Manufacturing Facility (Light). A facility used for sub-assembly, or assembly of sub-assemblies for industrial purposes, and may conduct manufacturing that does not emit noise, odor, dust, or other hazards.

Meat Market. A retail facility that offers meat, fish, and poultry products for sale to the public and shall include the sale of meat and meat products to restaurants, hotels, clubs, and other similar establishments when such sale is conducted as part of the retail business on the premises.

Meat Product Processing. A facility for processing cuts of meat from off-site into finished products.

Medical, Dental, and Optical Retail Sales. An establishment offering prescription and over-the-counter products for sale.

Medical, Dental Office. Offices for one or more physicians, surgeons, or dentists engaged in treating the sick or injured, but not including rooms for the abiding of patients.

Medical Equipment Sales, Rental, and Leasing Service. An establishment including offices, stores, and display rooms for the display, sale, rental, and leasing of medical equipment.

Mini-warehouse. A building or group of buildings in a controlled-access and fenced compound consisting of varying sized of individual, compartmentalized, and controlled-access, self-contained units that are leased or owned for the storage of business and household goods or contractor supplies.

Motor Freight Terminal. A facility with the capability of handling a large variety of goods involving various forms of transportation and providing multimodal shipping capabilities, such as rail to truck and truck to air.

Museum. An institution for the collection, display, and distribution of objects of art or science which is sponsored by or owned and operated by the City, a public or quasi-public agency, and which facility is open to the general public.

Music Store. An establishment offering music, musical instruments, and other related items for sale to the general public. Such establishment may offer repair services of musical instruments.

Nursing Home. A structure used for or occupied by persons recovering from illness or suffering from the infirmities of old age, including developments containing convalescent or nursing facilities.

Office, Business. An office in which chattels or goods, wares, or merchandise are not commercially displayed, created, sold, or exchanged.

Office Machine Sales and Service. A shop specializing in the sale and repair of office machinery.

Office, Professional. A building or portion of a building wherein services are performed involving predominantly administrative, professional, or clerical operations. Including but not limited to insurance broker, public stenographers, real estate broker, stock broker, doctor, dentist, and other persons who operate or conduct offices which do not require the stocking of goods for wholesale or retail sales.

Office, Real Estate Development Tract or Field Office. A temporary office for the purpose of selling real estate to the general public located on or adjacent to the real estate being offered for sale.

Office Supply Store. A store that specializes in office supplies.

Optician Shop. A shop that manufactures optical devices, especially eyeglasses.

Park. Public or private land available for recreational, educational, cultural, or aesthetic use.

Parking Area. An area for the driving, parking, display, or storage of motor vehicles.

Parking Lot, Commercial (Auto). A structure or lot devoted to the temporary parking of automobiles for a fee.

Parking Lot, Commercial (Truck). A facility for temporary parking of currently commercial licensed trucks in excess of one ton, for a fee.

Pawn Shop. A shop specializing in making small loans against personal property or buying used personal goods from individuals.

Pet Shop. A shop offering small animals for sale, with associated goods and services.

Pharmaceutical Plant. A facility for the production of drugs for medicine.

Pharmaceutical Products Manufacturing. A facility for the production of drugs for medicine.

Pharmacy. An establishment offering prescription and over-the-counter pharmaceuticals and other associated products for sale to the public.

Philanthropic and/or Charitable Use. A nonprofit organization supported mainly by charity and whose principal function is the performance of charitable work.

Photographic Equipment Sales and Service. A shop that specializes in the sale and repair of photographic equipment.

Photographic Service. An establishment offering drop-off of film for processing and pickup of developed photographs and related services.

Plastic Products Manufacturing. A facility for the production of molded products constructed out of plastic, fiberglass, or other composite material.

Private Club. An establishment providing social and dining facilities as well as alcoholic beverage service to an association of persons and otherwise falling within the definition of and permitted under the provisions of that portion of Title 3, Chapter 32, VTCA, Alcoholic Beverage Code, as hereafter amended and as it pertains to the operation of private clubs.

Public Maintenance Building, Storage Yard. A structure or yard that is used for storage of equipment, materials, or other property and that is owned and maintained by a governmental entity.

Public Safety Facility, Police and Fire. A facility designed to provide public protection from dangers of fire and crime, including civil defense, operational centers, police and fire stations, and training facilities.

Public Utility. A closely regulated enterprise with a franchise for providing to the public a utility service deemed necessary for the public health, safety, and welfare.

Radio, Television Studio. A facility designed to create and broadcast original source programming, or relay commercial programming from another source, including taped or pre-recorded materials for any part of the radio spectrum for commercial consumption.

*Railroad Freight Terminal.* A facility for the assembly or storage of freight to or from rail cars.

*Recreational Ranch or Farm.* An establishment incorporating a variety of rural uses, including sports arenas, rodeo grounds, pavilions, animal stables, and facilities which may be rented for private parties.

*Recreational Vehicle Storage (Commercial).* A facility or location which, upon payment of a fee, provides for the parking and storage of recreational vehicles.

*Recycling Collection Center.* A building in which used materials such as newspapers, glassware, and metal cans are separated and processed prior to shipment to others who will use those materials to manufacture new products.

*Religious Institution.* Facilities in which persons regularly assemble for religious worship and activities intended primarily for purposes connected with such worship or propagating a particular form of religious belief.

*Rental Store.* An establishment that provides equipment and goods for rent by the general public to be used off-site. All storage of rental equipment and goods shall be contained within the limits of the primary structure.

*Rental Yard, Commercial and Heavy Equipment.* An establishment that provides heavy equipment for rent to contractors or the general public to be used off-site. The storage of rental equipment or goods may occur either within the limits of the primary structure or may be displayed and stored outside of the primary structure. Areas reserved for repairs and maintenance of all equipment or goods must be within the primary structure.

*Restaurant.* A business establishment whose principal business is the selling of unpackaged food to the customer in a ready-to-consume state, in individual servings, or in non-disposable containers, and where the customer consumes these foods while seated at tables or counters located within the building. Such use includes cafes, lunch rooms, and tea rooms.

*Restaurant, Drive-in/Drive-thru.* Any place or premises used for sale, dispensing, or serving of food, refreshments, or beverages in automobiles, including those establishments where customers may serve themselves and may eat or drink the food, refreshments, or beverages on the premises.

*Restaurant, Refreshment Stand (Temporary or Seasonal).* Any place or premises used for sale, dispensing, or serving of food, refreshments, or beverages from a temporary or permanent building on a temporary or seasonal basis.

*Rodeo Ground/Fair Ground.* An outdoor entertainment area providing an arena for rodeo activities, including grandstands and bleachers for the viewing public, storage pens, and facilities for the caring and presentation of livestock, and open area for exhibits and carnival activities.

*Rooming house.* A building other than a hotel where lodging for three but not more than 12 persons is provided for definite periods for compensation pursuant to previous arrangement.

*Salvage Yard.* An area for salvage of metals, and/or other fabricated products, which may include a yard or building where automobiles or parts of automobiles or machinery are stored, dismantled and/or offered for sale in the open as whole units, as salvaged parts or as processed metal.



*School, Business College.* A facility that provides a curriculum limited to the teaching of office and business practices and skills.

*School, College or University.* An academic institution of higher learning, accredited or recognized by the State, and offering a program or series of programs of academic study leading to a recognized degree or advanced degree. Including junior and senior colleges, universities, conservatories and seminaries.

*School, Commercial Instruction.* A facility that instructs and trains students in the arts, such as of music, dance, gymnastics, or martial arts, and is primarily operated on a commercial basis.

*School, Commercial Trade.* A business organized to operate for a profit and offering instruction and training in a trade such as welding, brick laying, machinery operation, and similar manual trades.

*School, Home.* Educational activities consisting of a defined curriculum with the purpose of satisfying the state educational requirements and said educational activities being conducted in the home of a student living in the home. Said educational activities shall be considered to be a part of the housekeeping activities of a family.

*School, Home Day.* Educational activities consisting of a defined curriculum with the purpose of satisfying the state educational requirements and said educational activities being conducted in a home but not necessarily the home of the student living therein. There shall be no more than 6 unrelated students not living in the home in which the educational activities are being conducted. The total number of students living in the home in which the activities are being conducted shall not exceed 12 at any given time.

*School, Institution, Rehabilitation, and Training Center.* A facility that provides rehabilitation and training operated or sponsored by chartered educational, religious, or philanthropic organizations, but excluding uses such as trade schools, which are operated primarily on a commercial basis.

*School, Nursery.* An establishment providing for the care, supervision, and protection of children.

*School, Primary or Secondary.* A public or private facility that provides a curriculum of elementary or secondary academic instruction, including kindergartens, elementary schools, junior high schools, and high schools.

*School, Vocational.* A secondary or higher education facility primarily teaching usable skills that prepare students for jobs in a trade and meeting the state requirements of a vocational facility.

*Shoe Repair.* An establishment offering shoe repair service to the general public.

*Sign Shop, Painted or Silkscreened.* A retail business offering signs and banners for sale.

*Skating Rink.* An establishment that provides facilities for participant ice or roller skating.

*Stable, Commercial.* A building designed for the keeping of horses or mules used for pleasure riding or driving, for boarding, or for hire, including a riding track.

Stable, Private. A building designed for the keeping of horses or mules owned by the occupants of the premises and not kept for remuneration, hire, or sale.

Stockyard. An area designed to receive and transfer large quantities of livestock, containing a number of holding pens, loading and unloading areas, ramps, and other facilities required for the handling of large quantities of livestock.

Stone Monument Sales. A retail establishment offering for sale stone monuments produced off-premises, excluding cutting of slabs.

Storage and Warehousing Establishment. A facility that is constructed such that large quantities of products or goods may be stored for extended periods of time. Said facility may be equipped with loading ramps and docks that facilitate the loading and off-loading of semi-trailer vehicles.

Storage Yard. Facilities to store any equipment, machinery, building materials, or commodities, including raw, semi-finished, and finished materials outside at ground level.

Studio. A facility for professional work or teaching of any form of commercial or fine arts, photography, music, drama, dance, but not including commercial gymnasium or dance hall.

Swimming Pool, Water Park, Commercial. A swimming pool and accessory facilities, not part of the municipal or public recreation system, and not a private swim club, but where the facilities are available to the general public for a fee.

Swimming Pool, Private. A swimming pool and accessory facilities constructed for the exclusive use of the proprietor, when located in other than the minimum front yard.

Tattoo Parlor/Body Piercing Studio. An establishment whose principal business activity, either in terms of operation or as held out to the public, is the practice of one or more of the following: (1) placing of designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments designed to contact or puncture the skin; (2) creation of an opening in the body of a person for the purpose of inserting jewelry or other decoration.

Taxidermist Shop. An establishment offering the services of taxidermy.

Taxidermist Studio. A retail establishment offering for sale to the public the products produced by a taxidermist at a separate location.

Telephone Exchange, Switching, or Relay. A facility for the exchange, switching, relaying, or transmission of telephone services, not including public office facilities, storage, or repair facilities.

Textile Manufacturing. Includes knitting, weaving, printing, and finishing of textiles and fibers into fabric goods[.]

Theater, Indoor Motion Picture. An establishment offering motion pictures for viewing by the public.

Tobacco Shop. A retail establishment offering for sale to the public tobacco products and accessories.

Utility Building and Structures. Operations such as power substations, water tanks or reservoirs, water or sewage treatment plants, also including supportive structures such as pump and lift stations.

Veterinarian Office, Large Animal Practice. The offices of a doctor of veterinary medicine with on-site treatment of large domestic animals, which may consist of livestock and/or other farm animals and may include outside treatment pens, shelters, or barns.

Veterinarian Office, Small Animal Practice. The offices of a doctor of veterinary medicine with on-site treatment of small domestic animals, which consist primarily of household pets and animals that are not sheltered in pens or barns (excluding dog runs and pens).

Veterinary Hospital with Outside Pens. An office and clinic of a doctor of veterinary medicine for small domestic animal practice including outside treatment pens.

Veterinary Hospital without Outside Pens. An office and clinic of a doctor of veterinary medicine for small domestic animal practice, without outside treatment pens.

Video/Game Rental. A commercial establishment that provides as a service a library of video movies and video games which may be rented on a short-term basis and returned for reuse.

Warehousing and Freight Office and Storage. A use engaged in storage, wholesale sales, and distribution of manufactured products, supplies, and equipment, but excluding bulk storage of materials that are flammable or explosive or that create hazardous or commonly recognized offensive conditions.

Watch and/or Jewelry Sales and Repair. An establishment offering watches and jewelry for sale to the public, and offering repair services for jewelry, watches, and similar items.

Welding or Machine Shop. A facility for the machining and welding of metals, not including forging or structural welding.

Wind Turbine Generator: A tower, pylon, or other structure, including all accessory facilities, upon which any, all, or some combination of the following are mounted:

- (1) A wind vane, blade, or series of wind vanes or blades, or other devices mounted on a rotor for the purpose of converting wind kinetic energy into electrical energy
- (2) A shaft, gear, belt, or coupling device used to connect the rotor to a generator, alternator, or other electrical or mechanical energy-producing device.
- (3) A generator, alternator, or other device used to convert the mechanical energy transferred by the rotation of the rotor into electrical energy.

Wind turbine generator shall include:

Small Wind Turbine. A wind turbine device with a maximum output of 1,500 Watts, measuring no more than ten (10) feet in length, 100 pounds in weight and using individual blades of no m [no more] than six (6) feet in length.

Large Wind Turbine. A wind turbine device with a maximum output of more than 1,500 Watts, measuring more than ten (10) feet in length, 100 pounds in weight and using individual blades of greater than six (6) feet in length.

Wireless Transmission or Receiving Facility. A structure or structures supporting antennas and/or commercial satellite antenna dishes which are transmitting or receiving any portion of the radio spectrum including wireless communication facilities, but excluding noncommercial antenna installations for home use of radio or television. See Section 30, Wireless Communications Facilities.

### 43.3 WIRELESS COMMUNICATIONS FACILITIES DEFINITIONS

The following definitions shall apply.

Antenna: A device used in communications which transmits or receives radio signals.

Antenna, building attached: Antenna attached to existing structures in two general forms: (1) roof-mounted, in which antennas are placed on the roofs of buildings, or (2) building-mounted, in which antennas are mounted to the sides of buildings. These antennas can also be mounted on structures such as water tanks, billboards, church steeples, electrical transmission towers, etc.

Antenna facility: A building or independent support structure and the antennas mounted thereon, along with an associated and necessary equipment building.

Antenna, microwave: Also known as “dish” antenna. A dish-shaped antenna used to link communications sites together by wireless transmission of voice or data, utilizing electromagnetic radiation frequencies from 3 GHz to 300 GHz; and using relatively low transmitter power levels when compared to other forms of transmission.

Antenna, panel: Also known as “directional” antenna. An antenna or array of antennas designed to concentrate a radio signal in a particular area. Panel antenna are typically flat, rectangular devices approximately six square feet in size.

Antenna, whip: Also known as “omnidirectional antenna.” Shaped cylindrically, whip antennas have diameters between two and six inches, and measure between one and eighteen feet in height. They are used to emit signals in a 360-degree horizontal plane and a compressed vertical plane.

Co-location: The act of locating wireless communications equipment from more than one provider on a single antenna facility.

Equipment storage: A small unmanned, single-story equipment building less than 500 square feet in size used to house radio transmitters and related equipment.

Lattice tower: A tower having three or four support steel legs and holding a variety of antennas. These towers range from 60 to 200 feet in height and can accommodate a variety of users.

Monopole: An antenna facility composed of a single spire used to support communications equipment. No guy wires are used or permitted.

Satellite receive-only antenna: An antenna that enables the receipt of television signals transmitted directly from satellites to be viewed on a television monitor. Such antennas are

commonly known as a satellite dish, television receive-only antenna, dish antenna, parabolic antenna or satellite earth station antenna.

*Stealth Facility*: An antenna facility that is virtually transparent or invisible to the surrounding neighborhood. Stealth facilities may include totally enclosed antennas, wireless facilities that replicate or duplicate the construction of common structures such as flagpoles, and camouflaged wireless facilities that are constructed to blend into the surrounding environment.

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