

FARMERSVILLE ECONOMIC DEVELOPMENT CORPORATION

AGENDA

May 15th, 2014, 7:00 P.M.

City Hall Council Chambers

- I. Call to Order**
- II. Recognition of Citizens and Visitors**
- III. Business Items for Discussion and Possible Action**
 - A. Receive report on status of State Highway 380 reconstruction project from Lake Lavon to the Collin/Hunt county line.
 - B. Update regarding Collin College
 - C. Update regarding Electrical System.
 - D. Discuss and review letter received by Doug and Lori Laube on request to extend Façade Grant Completion Date.
 - E. Discussion and possible action for defining and designating the Towne Centre zone and accomplishing the corresponding master plan.
 - F. Discussion and possible action regarding Real Estate acquisition strategy by the EDC 4A Board
 - G. Discussion and possible action regarding a work-session on reviewing the current law and regulations for the EDC 4A Board
 - H. Discussion and review current 2013-2014 budget and goals and proposed 2014-2015 budget and goals
 - I. Consideration and possible action regarding financial statements for March 2014, April 2014 and required budget amendments.
 - J. Consideration and possible approval of the minutes of the March 20th, 2014 meeting.
- IV. Discussion in Contemplation of Placing Items on Future Agenda**
- V. Adjournment**
 - No action may be taken on comments received under "Recognition of Visitors".
 - The Board may vote and/or act upon each of the items listed in the Agenda.
 - As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed executive session for the purpose of seeking confidential legal advice from the City attorney on any item covered by such section on any Agenda item listed herein.

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive service must be made 48 hours prior to this meeting. Please contact City Hall at 972/782-6151 or FAX 972/782-6604 for further information.

I, Daphne Hamlin, Finance Director certify that the above Agenda for May 15th, 2014 was posted in the regular posting place of the City of Farmersville on the 12th day of May, 2014 at 5:00 p.m.


Daphne Hamlin/EDC Liaison



TO: Economic Development Corporation
FROM: Daphne Hamlin, Finance Director
DATE: May 15th, 2014
SUBJECT: Receive report on status of the State Highway 380

Receive report on status of the State Highway 380 reconstruction project from Lake Lavon to the Collin/Hunt County Line.



TO: Economic Development Corporation
FROM: Daphne Hamlin, Finance Director
DATE: May 15th, 2014
SUBJECT: Collin College

Receive update regarding Collin College Farmersville Campus



TO: Economic Development Corporation
FROM: Daphne Hamlin, Finance Director
DATE: May 15th, 2014
SUBJECT: Electrical System Acquisition

Receive update regarding Electrical System Acquisition



TO: Economic Development Corporation
FROM: Daphne Hamlin, Finance Director
DATE: May 15th, 2014
SUBJECT: Façade Grant

Discuss and review letter sent in regards to the Façade Grant extension
Granted to Doug and Lori Laube.

**Douglas & Lori Laube
13162 CR 550
Farmersville, TX 75442**

March 18, 2014

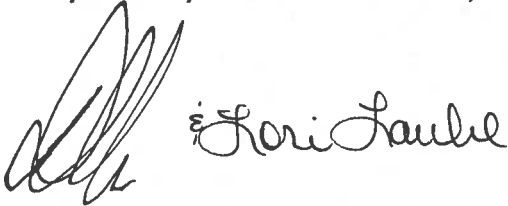
Attn: Daphne Hamlin
Economic Development Board 4A
205 S. Main St.
Farmersville, TX 75442

To: Robert Collins

Dear Sir,

We request to extend our facade grant date of completion. We are in the process of interior reconstruction prior to completing the facade grant for installing the new doors and windows. Our grant was approved Sept. 19, 2013. Our objective is to have the grant improvements completed by September 2014.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Lori Laube", is written over a stylized, abstract graphic element that resembles a large, flowing letter 'L' or a signature flourish.

Douglas and Lori Laube



TO: Economic Development Corporation
FROM: Daphne Hamlin, Finance Director
DATE May 15th, 2014
SUBJECT: Towne Centre Zone

Discussion and possible action for defining and designating the Towne Centre Zone and accomplishing the corresponding master plan



TO: Economic Development Corporation
FROM: Daphne Hamlin, Finance Director
DATE: May 15th, 2014
SUBJECT: Real Estate Acquisition

Discussion and possible action regarding Real Estate acquisition strategy
by the EDC 4A Board



TO: Economic Development Corporation
FROM: Daphne Hamlin, Finance Director
DATE: May 15th, 2014
SUBJECT: EDC 4A Law and Regulations

Discuss and possible action regarding a work-session on reviewing the current law and regulations for the EDC 4A Board



ECONOMIC DEVELOPMENT 2013



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

Dear City and County Officials:

Fostering a vibrant, thriving economy is critical to the future of our great state. All across Texas, cities and counties 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 Office of the Attorney General publishes this Economic Development Handbook, which compiles the state's economic development laws. This Handbook is intended to inform Texas cities and counties 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, state and local leaders can ensure our great state is ripe with economic opportunity for all Texans.

Sincerely,

Greg Abbott
Attorney General of Texas

Acknowledgments

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

This publication was developed with substantial assistance from many sources inside and outside of the Office of the Attorney General (OAG). The OAG would like to specifically recognize the following people and organizations:

Office of the Attorney General

Zindia Thomas, Julian Grant, Stephanie Leibe and Marc Druck

Texas Comptroller of Public Accounts

Roger Wood, Russell Gallahan, Sarah Hall and Ty Myrick

Texas Hotel & Lodging Association

Scott Joslove

Texas Association of Regional Council

Jennifer Storm

Attorney at Law

Jeff Moore

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I. The Economic Development Sales Tax

Using Sales Tax to Promote Economic Development

The use of the sales tax for economic development purposes has been one of the most popular and effective tools used by cities to promote economic development. Since the authorization for the local option tax took effect in 1989, more than 583 cities have levied an economic development sales tax. These cities have cumulatively raised in excess of \$538 million annually in additional sales tax revenue dedicated to the promotion of local economic development. Of these cities, 108 have adopted a Type A economic development sales tax, 361 cities have adopted a Type B economic development sales tax, and 114 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.¹

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

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

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

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

¹ See TEX. CONST. art. III, § 52.

² TEX. CONST. art. III, § 52-a.

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

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

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

The popularity of the Section 4B sales tax led the Texas Legislature in 1993 to broaden its availability to any city that was eligible to adopt a Section 4A sales tax. In other words, most cities in a county of less than 500,000 could adopt either the Section 4A or the Section 4B sales tax if they had room in their local sales tax. Until recently, only cities within El Paso County and Travis County were ineligible by statute to adopt either the Section 4A or the Section 4B tax. Now, cities located within El Paso County and Travis County are authorized to adopt a Section 4B tax.³ As of this publication, at least 583 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 80th Legislature authorized the recodification of several civil statute provisions by topic, including those pertaining to planning and development. Under H.B. 2278 (80th Leg., R.S.), the Act was codified in the Local Government Code and was renamed the “Development Corporation Act.”⁴ As of April 1, 2009, which was the effective date of this change, economic development corporations adopting what was formally known as a “4A” or “4B” sales tax have come to be referred to as “Type A” or “Type B” corporations, as appropriate.

Differences Between Type A and Type B Sales Tax

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

³ TEX. LOC. GOV'T CODE ANN. § 505.002 (West Supp. 2011).

⁴ *Id.* § 501.001.

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

Differences in the Authorized Use of the Tax Proceeds

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

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

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

⁶ *Id.* § 501.101.

⁷ *Id.* § 504.103.

⁸ *Id.* §§ 501.102-.104, .162.

⁹ *Id.* § 501.101.

¹⁰ *Id.* §§ 501.102-.104, .162.

¹¹ *Id.* §§ 505.152-.153.

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

Differences in the Oversight Structure and Procedures

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

With regard to structure, the Type A board has at least five members with no statutory criteria for their selection¹⁴, while a Type B board consists of seven members with certain statutory requirements.¹⁵ For instance, Type B board members have a residency requirement in the Act. A city council may place certain individuals who are not city residents onto Type B boards in two (2) very limited instances:¹⁶ first, in a city of fewer than 20,000 in population, a Type B director may either be a resident of the city, a resident of the county in which the major part of the area of the city is located, or reside in a place that is within 10 miles of the city's boundaries and is in a county bordering the county in which a major portion of the city is located.¹⁷ Second, a person may serve on a Type B board if that person was a Type A director at the time that a Type A corporation was dissolved, and the Type A corporation was replaced with a Type B corporation.¹⁸ Also with respect to Type B structure, no more than four of the seven Type B directors may also be city officers or employees.¹⁹

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

Differences in the Means for Adopting and Altering the Tax

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

¹² *Id.* §§ 505.154, .304.

¹³ *Id.* §§ 505.156-.158.

¹⁴ *Id.* § 504.051(a).

¹⁵ *Id.* § 505.051.

¹⁶ *Id.* § 505.052.

¹⁷ *Id.*

¹⁸ *Id.* § 505.052(d). (Since the directors of a Type A corporation are not required to be residents of the city, this change in the law would allow a non-resident to serve as a Type B director in this limited circumstance. However, in a city with a population greater than 20,000, the Type B board member must be a resident of the city.)

¹⁹ *Id.* § 505.052(c).

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

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

However, there is no authorization for a Type B tax rate to be increased or reduced at subsequent elections. 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.²¹ 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:²²

- 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.²³

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 statutory cap for the local sales tax rate.²⁴ If a city is not certain whether it fits into one of the

²⁰ TEX. TAX CODE ANN. § 321.409 (West 2008).

²¹ TEX. LOC. GOV'T CODE ANN. § 505.351 - .352 (West Supp. 2011).

²² *Id.* § 504.254.

²³ *Id.* § 504.002.

²⁴ *Id.* § 504.259. *See also* TEX. TRANSP. CODE ANN. § 452.6025 (West Supp. 2011). (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

above categories, the city can call the Economic Development and Analysis Division of the Comptroller's Office at (800) 531-5441, ext. 3-4679, for a confirmation of its eligibility.

If a city is eligible to adopt a Type A tax, it may propose a sales tax rate equal to one-eighth, one-fourth, three-eighths, or one-half of one percent.²⁵ 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.²⁶

Cities That Have Adopted a Type A Tax (108 Cities)

<i>Abilene</i>	<i>Crowell</i>	<i>Hillsboro</i>	<i>Nash</i>	<i>Seguin</i>
<i>Alton</i>	<i>De Kalb</i>	<i>Hitchcock</i>	<i>New Boston</i>	<i>Shamrock</i>
<i>Amarillo</i>	<i>De Leon</i>	<i>Hooks</i>	<i>Odessa</i>	<i>Sherman</i>
<i>Athens</i>	<i>Decatur</i>	<i>Hutto</i>	<i>Olney</i>	<i>Silsbee</i>
<i>Baird</i>	<i>Denison</i>	<i>Jarrell</i>	<i>Ore City</i>	<i>Slaton</i>
<i>Belton</i>	<i>Denver City</i>	<i>Jasper</i>	<i>Overton</i>	<i>Snyder</i>
<i>Big Spring</i>	<i>Early</i>	<i>Kaufman</i>	<i>Palmview</i>	<i>Sour Lake</i>
<i>Booker</i>	<i>Eastland</i>	<i>Kilgore</i>	<i>Panhandle</i>	<i>South Padre Island</i>
<i>Borger</i>	<i>Edgewood</i>	<i>Kountze</i>	<i>Paris</i>	<i>Stamford</i>
<i>Brady</i>	<i>Edinburg</i>	<i>La Marque</i>	<i>Penitas</i>	<i>Sulphur Springs</i>
<i>Bridgeport</i>	<i>El Campo</i>	<i>Lamesa</i>	<i>Perryton</i>	<i>Sweetwater</i>
<i>Brownfield</i>	<i>Fairfield</i>	<i>Lindale</i>	<i>Pharr</i>	<i>Tatum</i>
<i>Brownwood</i>	<i>Gilmer</i>	<i>Longview</i>	<i>Plains</i>	<i>Taylor</i>
<i>Burnet</i>	<i>Gladewater</i>	<i>Lubbock</i>	<i>Port Arthur</i>	<i>Terrell</i>
<i>Canadian</i>	<i>Graham</i>	<i>Marshall</i>	<i>Princeton</i>	<i>Texas City</i>
<i>Childress</i>	<i>Greenville</i>	<i>Maud</i>	<i>Prosper</i>	<i>Tolar</i>
<i>Clarksville</i>	<i>Hale Center</i>	<i>Memphis</i>	<i>Quanah</i>	<i>Vernon</i>
<i>Comanche</i>	<i>Hamlin</i>	<i>Menard</i>	<i>Ranger</i>	<i>Waller</i>
<i>Commerce</i>	<i>Haskell</i>	<i>Mercedes</i>	<i>Raymondville</i>	<i>Wellington</i>
<i>Copperas Cove</i>	<i>Henderson</i>	<i>Monahans</i>	<i>Rockwall</i>	<i>Westlaco</i>
<i>Corpus Christi</i>	<i>Hereford</i>	<i>Mount Pleasant</i>	<i>Rotan</i>	<i>Wills Point</i>
<i>Crockett</i>	<i>Hidalgo</i>	<i>Muleshoe</i>	<i>Rusk</i>	

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:²⁷

- 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.

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.”)

²⁵ TEX. LOC. GOV'T CODE ANN. § 504.252(b) (West Supp. 2011).

²⁶ *Id.* § 504.254.

²⁷ *Id.* § 505.002.

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.²⁸ 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.²⁹ If the city is not certain whether it fits into one of the above categories, the city can call the Economic Development and Analysis Division of the Comptroller’s Office at (800) 531-5441, ext. 3-4679 for a confirmation of its eligibility.

If the city is eligible to adopt a Type B tax, it may propose a tax rate equal to one-eighth, one-fourth, three-eighths or one-half of one percent.³⁰ 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.³¹

Cities that have Passed a Type B Tax (361 Cities)

Alamo	Columbus	Haltom City	Lockhart	Paradise	Snook
Alba	Conroe	Hamilton	Lockney	Pasadena	Sonora
Aledo	Converse	Hart	Lorena	Pearland	South Houston
Alto	Coppell	Hawkins	Los Fresnos	Pecos	Southlake
Alvarado	Corinth	Hawley	Lott	Pflugerville	Spearman
Alvord	Corral City	Helotes	Lufkin	Pilot Point	Spur
Angleton	Cotulla	Henrietta	Luling	Pittsburg	Stafford
Archer City	Crandall	Hickory Creek	Lumberton	Point	Stanton
Arcola	Crawford	Hico	Mabank	Ponder	Sterling City
Argyle	Cross Plains	Higgins	Malakoff	Port Aransas	Stinnett
Aubrey	Crowley	Highland Village	Malone	Port Isabel	Stockdale
Avinger	Cuero	Hill Country Village	Manvel	Port Neches	Stratford
Balmorhea	Cuney	Hollywood Park	Marble Falls	Portland	Strawn
Bandera	Dalhart	Hondo	Marfa	Post	Sudan
Bangs	Dalworthington Gdns	Howe	Marquez	Poth	Sullivan City
Bartonville	Dayton	Hubbard	Mathis	Prairie View	Sundown
Bastrop	Dickinson	Hudson	Maypearl	Presidio	Sweeny
Bay City	Domino	Hughes Springs	McAllen	Princeton	Taft
Bedford	Douglasville	Huntington	McCamey	Queen City	Tahoka
Bee Cave	Driscoll	Hurst	McGregor	Quinlan	Teague
Beeville	Dublin	Hutchins	McLean	Quitaque	Thorndale
Bellmead	Dumas	Idalou	Meadows Place	Quitman	Throckmorton
Bellville	Duncanville	Industry	Meridian	Rankin	Tomball
Benbrook	East Tawakoni	Ingleside	Merkel	Redwater	Trenton
Benjamin	Eden	Iraan	Mesquite	Refugio	Trinidad
Bertram	Electra	Italy	Mexia	Richland Hills	Trinity
Big Lake	Elgin	Itasca	Miles	Richmond	Troup
Big Sandy	Emory	Jacksboro	Mineola	Rio Grande City	Turkey
Bishop	Encinal	Jacksonville	Mission	Rio Vista	Tyler
Bonham	Ennis	Jefferson	Montgomery	Rising Star	Uhlard
Bovina	Eules	Jewett	Morgan’s Point	River Oaks	Universal City
Breckenridge	Everman	Junction	Morgan’s Point Resort	Robstown	Van

²⁸ *Id.* §§ 504.002, 505.002.

²⁹ *Id.* § 505.257. *See also* TEX. TRANSP. CODE ANN. § 452.6025 (West Supp. 2011). (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.”)

³⁰ TEX. LOC. GOV’T CODE ANN § 505.252(b) (West Supp. 2011).

³¹ TEX. TAX CODE ANN. § 321.101(f) (West 2008), TEX. LOC. GOV’T CODE ANN. § 505.256 (West Supp. 2011) (Making Chapter 321 of the Tax Code applicable to a Type B tax).

I. The Sales Tax for Economic Development

Brenham	Fate	Karnes City	Morton	Rocksprings	Van Horn
Brookshire	Flower Mound	Keller	Mount Vernon	Rollingwood	Venus
Brownsboro	Floydada	Kemah	Muenster	Roma	Victoria
Buda	Forest Hill	Kemp	Nassau Bay	Ropesville	Wake Village
Buffalo	Forney	Kenedy	Navasota	Rosebud	Wallis
Buffalo Gap	Frankston	Kennedale	Nederland	Rosenberg	Watauga
Bullard	Freeport	Kerens	Needville	Round Rock	Waxahachie
Burkburnett	Friona	Kerrville	Nevada	Round Top	Webberville
Caddo Mills	Fritch	Krum	New Braunfels	Royce City	Webster
Cameron	Gainesville	La Grange	New Deal	Runaway Bay	Weimar
Caney City	Galveston	La Joya	Nolanville	Sachse	West Columbia
Canton	Ganado	La Porte	North Richland Hills	San Angelo	West Tawakoni
Canyon	Giddings	Laguna Vista	Oak Leaf	San Benito	Westlake
Carmine	Glen Rose	Lake Jackson	Old Point	San Juan	Westworth Village
Centerville	Godley	Lake Worth	Oak Ridge	San Saba	Wharton
Chandler	Goldthwaite	Lakewood Village	Oak Ridge North	Sansom Park	Wheeler
Chico	Gonzales	Lampasas	Odem	Santa Anna	White Deer
Cibolo	Gordon	Lavon	Old River-Winsfree	Santa Fe	White Oak
Clarendon	Grand Saline	League City	Olmos Park	Savoy	White Settlement
Clear Lake Shore	Grapeland	Leon Valley	Olton	Schertz	Whiteface
Cleburne	Grapevine	Leonard	Orange	Schulenburg	Windcrest
Cleveland	Groesbeck	Lewisville	Ovilla	Seabrook	Windthorst
Clifton	Groom	Lexington	Oyster Creek	Seagoville	Winnsboro
Clute	Groves	Liberty	Palacios	Sealy	Winona
Clyde	Gruver	Liberty Hill	Palestine	Seminole	Wolforth
Coahoma	Gun Barrel City	Lincoln Park	Palmer	Seven Points	Yantis
Coffee City	Gunter	Live Oak	Pampa	Shepherd	Yoakum
Colleyville	Gustine	Llano	Pantego	Silverton	Yorktown

Cities that have passed both a Type A and a Type B Tax (114 Cities)

Albany	Cedar Park	Fulshear	Knox City	Newton	Somerset
Allen	Celina	Georgetown	Krugerville	Nocona	Southmayd
Alton	Center	Goree	La Feria	Northlake	Sugar Land
Anna	Cisco	Gorman	Lake Dallas	Orchard	Sunnyvale
Anson	Coleman	Grandfalls	Lancaster	Paducah	The Colony
Aspermont	Collinsville	Grandview	Levelland	Pottsboro	Tioga
Atlanta	Crystal City	Groveton	Linden	Primera	Tom Bean
Balch Springs	DeSoto	Hallettsville	Little Elm	Progreso	Trophy Club
Beasley	Donna	Harlingen	Littlefield	Red Oak	Tye
Bells	Edcouch	Haslet	Magnolia	Rio Hondo	Van Alstyne
Blue Ridge	Elsa	Hearne	Mansfield	Roanoke	Von Ormy
Bowie	Escobares	Heath	Matador	Roaring Springs	Whitesboro
Bremond	Fairview	Hempstead	McKinney	Robert Lee	Whitewright
Bronte	Farmersville	Iowa Park	Melissa	Roscoe	Wichita Falls
Brownsville	Ferris	Joaquin	Miami	Saint Jo	Willis
Burleson	Floresville	Joshua	Midland	Sanger	Wilmer
Calvert	Fort Stockton	Justin	Midlothian	Seagraves	Wolfe City
Carthage	Franklin	Keene	Munday	Simonton	Wortham
Cedar Hill	Frisco	Knollwood	Murphy	Sinton	Wylie

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.³² Other statutory provisions require that the Type A and Type B corporations

³² The definition of “project” was significantly amended in the 78th Legislative Session. Changes made applied only to projects that were undertaken or approved after June 20, 2003. Any projects undertaken or approved

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”.³³

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”.³⁴ 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).³⁵

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
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

before June 20, 2003 are governed by the law that was in effect on the date the project was undertaken or approved.

³³ Op. Tex. Att’y Gen. 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).

³⁴ TEX. LOC. GOV’T CODE ANN. §§ 501.101, 505.155 (West Supp. 2011). (Section 505.151 incorporates Type A projects under Chapter 501 as authorized projects for Type B corporations.)

³⁵ *Id.* § 501.002(12).

I. The Sales Tax for Economic Development

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.”³⁶ 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)³⁷,
- Sewage or solid waste disposal facilities³⁸
- Air or water pollution control facilities³⁹,
- Facilities for furnishing water to the public⁴⁰,
- Public safety facilities⁴¹,
- Streets and roads,
- Drainage and related improvements,
- 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.

³⁶ *Id.* § 501.002(4).

³⁷ *Id.* § 501.101(2)(D). *See also id.* § 504.103 (Section 504.103 limits Type A corporation from doing certain projects.)

³⁸ *Id.* § 501.101(2)(E). *See also id.* § 504.103 (Section 504.103 limits Type A corporation from doing certain projects.)

³⁹ *Id.* § 501.101(2)(G). *See also id.* § 504.103 (Section 504.103 limits Type A corporation from doing certain projects.)

⁴⁰ *Id.* § 501.101(2)(H). *See also id.* § 504.103 (Section 504.103 limits Type A corporation from doing certain projects.)

⁴¹ *Id.* § 505.155.

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.⁴²

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.⁴³ 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.

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.⁴⁴

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.⁴⁵

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,

⁴² *Id.* § 501.162. *See id.* § 501.102.

⁴³ *Id.* § 501.103.

⁴⁴ *Id.* § 501.105.

⁴⁵ *Id.* § 502.052

buildings, facilities, infrastructure and improvements required or suitable for the development or expansion of airport facilities.⁴⁶

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.⁴⁷ 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.⁴⁸

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 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.⁴⁹

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:

⁴⁶ *Id.* §§ 501.106, 504.103(c).

⁴⁷ *Id.* § 501.107.

⁴⁸ *Id.* § 504.103.

⁴⁹ *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.

Professional and amateur sports and athletic facilities. Professional and amateur sports and athletics facilities, including stadiums and ballparks, are permissible Type B projects.⁵⁰

Entertainment, tourist and convention facilities. Entertainment, tourist, and convention facilities, including auditoriums, amphitheaters, concert halls, museums and exhibition facilities are permissible Type B projects.⁵¹

Public parks and related open space improvements. Public parks, park facilities and events, and open space improvements are permissible Type B projects.⁵²

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.⁵³

Water supply facilities. Any water supply facilities, including dams, transmission lines, well field developments, and other water supply alternatives can be permissible Type B projects.⁵⁴ 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.⁵⁵ The ballot proposition for the election shall be printed to provide for voting for or against the proposition.⁵⁶

**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.⁵⁷ 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.⁵⁸ The ballot proposition for the election shall be printed to provide for voting for or against the proposition.⁵⁹

⁵⁰ *Id.* § 505.152.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* § 505.153.

⁵⁴ *Id.* § 505.154.

⁵⁵ *Id.* § 505.304.

⁵⁶ *Id.*

⁵⁷ *Id.* § 505.154.

⁵⁸ *Id.* § 505.304.

⁵⁹ *Id.*

**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.⁶⁰

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 enterprises, provided the city council authorizes the project by adopting a resolution following two (2) separate readings conducted at least one (1) week apart.⁶¹

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.⁶²

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.⁶³

⁶⁰ *Id.* § 505.1561.

⁶¹ *Id.* § 505.156.

⁶² *Id.* § 505.158.

⁶³ *Id.* § 505.157.

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.⁶⁴ 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.”

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.⁶⁵ 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.⁶⁶

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.⁶⁷ 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

⁶⁴ 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.)

⁶⁵ TEX. LOC. GOV’T CODE ANN. § 501.103 (West Supp. 2011).

⁶⁶ *Id.*

⁶⁷ *Id.* § 504.152.

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.⁶⁸ 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.⁶⁹ 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.

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.⁷⁰ 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.⁷¹

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.⁷² 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.

⁶⁸ *Id.* § 504.153.

⁶⁹ *Id.* § 504.152(b).

⁷⁰ *Id.* § 504.152(c).

⁷¹ *Id.* § 504.154.

⁷² *Id.* § 504.156.

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

- The city that created the Type A corporation also has a Type B corporation; and
- The population of the city is 7,500 or less.⁷³

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.⁷⁴ 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:⁷⁵

- 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.⁷⁶ 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

⁷³ *Id.* § 504.171.

⁷⁴ *Id.* §§ 504.152-.156, 505.201-.206.

⁷⁵ *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.)

⁷⁶ *Id.* §§ 504.151(1), 505.201(1).

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.⁷⁷ 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.⁷⁸ 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.⁷⁹ 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 construction cost, etc.) of a “sports venue” project, then the ballot proposition must state that fact.⁸⁰

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.⁸¹ 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.⁸²

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.⁸³ The officials must complete a seminar once every 24 months.⁸⁴ At least one person from each of the following is required to attend a seminar each 24-month period:

⁷⁷ *Id.* §§ 504.152(a), 505.202(a).

⁷⁸ *Id.* §§ 504.153, 505.203.

⁷⁹ *Id.* §§ 504.152(b), 505.202(b).

⁸⁰ *Id.*

⁸¹ *Id.* §§ 504.152(c), 505.202(c).

⁸² *Id.* §§ 504.154, 505.204.

⁸³ *Id.* § 502.101.

⁸⁴ *Id.* § 502.101(a).

- 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.⁸⁵

The corporation is authorized to use Type A or Type B proceeds to pay for the costs of attending a seminar.⁸⁶ 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.⁸⁷ The Comptroller's office may impose an administrative penalty in an amount not to exceed \$1,000 for failure to attend the seminar.⁸⁸

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.⁸⁹ 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.

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.⁹⁰ 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.⁹¹ 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

⁸⁵ *Id.* § 502.101(a)(1)-(2).

⁸⁶ *Id.* § 502.101(d).

⁸⁷ *Id.* § 502.103(a).

⁸⁸ *Id.* § 502.103(b).

⁸⁹ *Id.* §§ 505.160, .303.

⁹⁰ *Id.* § 505.159(a).

⁹¹ *Id.* § 505.159(b).

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.

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:⁹²

“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.⁹³ 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

⁹² *Id.* §§ 504.304, 505.305.

⁹³ *Id.* §§ 504.102, 505.102.

required for any payment of a commission, fee, or other thing of value to the third party.⁹⁴ 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.⁹⁵ 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.⁹⁶ The Act does 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.”⁹⁷ 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.⁹⁸ Additionally, city council may disapprove a promotional expenditure.⁹⁹ 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.¹⁰⁰

⁹⁴ *Id.* § 502.051.

⁹⁵ *Id.* §§ 504.302, 505.303.

⁹⁶ *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 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).

⁹⁷ Op. Tex. Att’y Gen. No. GA-0086 (2003) at 2.

⁹⁸ *Id.* at 6.

⁹⁹ *Id.* at 3-5.

¹⁰⁰ TEX. LOC. GOV’T CODE ANN. § 504.104 (West Supp. 2011). *But see* Op. Tex. Att’y Gen. 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

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.¹⁰¹ 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.¹⁰² 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.¹⁰³ 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.¹⁰⁴

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 city¹⁰⁵ or by a group of citizens.¹⁰⁶ 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)¹⁰⁷ 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.¹⁰⁸ The Type B economic development

obligation entered into before the enactment of 4A(q) was one that existed before the creation of the 4A corporation.)

¹⁰¹ TEX. LOC. GOV'T CODE ANN. §§ 501.155, .201, .214 (West Supp. 2011).

¹⁰² *Id.* §§ 504.303, 505.104.

¹⁰³ *Id.* § 501.207.

¹⁰⁴ *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.")

¹⁰⁵ *Id.* § 504.003(a).

¹⁰⁶ *Id.* § 501.051.

¹⁰⁷ *Id.* § 501.011.

¹⁰⁸ *Id.* § 504.004.

certificate of formation must state that the corporation is to be governed by Chapter 505 of the Local Government Code.¹⁰⁹

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.¹¹⁰ The city may amend the certificate of formation at its sole discretion at any time.¹¹¹

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.¹¹² The initial bylaws must also be approved by resolution of the governing body of the city.¹¹³ 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.

For copies of sample certificates of formation or bylaws, a city may want to contact one of the cities noted in this handbook as having already adopted the Type A or Type B economic development corporation.

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:

- city council approval of an ordinance calling for an election on the imposition of the tax¹¹⁴; 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.¹¹⁵

¹⁰⁹ *Id.* § 505.004.

¹¹⁰ *Id.* § 501.051(b)(2).

¹¹¹ *Id.* § 501.302.

¹¹² *Id.* § 501.063.

¹¹³ *Id.* § 501.064.

¹¹⁴ *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 ANN. § 321.401(a) (West 2008) (An election may be called by the adoption of a city ordinance by city council.).

¹¹⁵ *See* TEX. LOC. GOV'T CODE ANN. §§ 504.255, 505.256 (West Supp. 2011) (Stating that chapter 321 of the Tax Code governs the imposition of a Type A or Type B tax) and TEX. TAX CODE ANN. § 321.401(c) (West 2008) (Requiring that the city council pass an ordinance calling for a sales tax election if a petition is

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.¹¹⁶ 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 second Saturday in May in an odd-numbered year;
- the second 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.¹¹⁷

Time Frame for Ordering the Election. The city should order the election at least 71 days prior to the date of the election, unless the election is the general election for state and county officers.¹¹⁸ If the election is the general election for state and county officers, then the city should order the election at least 78 days prior to the date of the election.¹¹⁹ The Tax Code requires only that the city order the election at least 30 days before the date of the election.¹²⁰ Nonetheless, it is advisable to provide at least 71 or 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."¹²¹

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.¹²² 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

presented). See TEX. ELEC. CODE ANN. ch. 277 (West 2008 & Supp. 2011) (Requirements for petition signatures).

¹¹⁶ See TEX. LOC. GOV'T CODE ANN. § 504.255, 505.256 (West Supp. 2011) (Stating that chapter 321 of the Tax Code governs elections under chapter 504 and 505 of the Local Government Code) and TEX. TAX CODE ANN. § 321.403 (West 2008) (stating that an election held under chapter 321 of the Tax Code must be held on the next available uniform election date).

¹¹⁷ TEX. ELEC. CODE ANN. § 41.0052 (West Supp. 2011).

¹¹⁸ *Id.* § 3.005(c).

¹¹⁹ *Id.*

¹²⁰ TEX. TAX CODE ANN. § 321.403 (West 2008).

¹²¹ TEX. ELEC. CODE ANN. § 3.005(b) (West Supp. 2011).

¹²² *Id.* § 4.003(a)(1), (c) (West 2010).

law.¹²³ The notice must also include the wording of all the ballot propositions.¹²⁴ The entire notice must generally be provided in both English and Spanish.¹²⁵

Other Procedural Requirements. The city must follow all other applicable procedural requirements under the Election Code for 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.

Ballot for Economic Development Corporations

Type A Ballot: The Act requires specific wording for a Type A sales tax proposition ballot, as follows:¹²⁶

The adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of (insert one-eighth, one-fourth, three-eighths, or one-half, as appropriate) 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.¹²⁷ Cities 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.¹²⁸ 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

¹²³ *Id.* § 4.004(a) (West Supp. 2011).

¹²⁴ *Id.* § 4.004(b).

¹²⁵ *See id.* ch. 272 (West 2010 & Supp. 2011).

¹²⁶ TEX. LOC. GOV'T CODE ANN. § 504.256 (West Supp. 2011).

¹²⁷ *See* Op. Tex. Att'y Gen. 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).

¹²⁸ TEX. LOC. GOV'T CODE ANN. § 504.257(d) (West Supp. 2011).

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:¹²⁹

The adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of *(insert one-eighth, one-fourth, three-eighths, or one-half, as appropriate)* 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.¹³⁰

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.¹³¹ 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 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:¹³²

The adoption of a sales and use tax for the promotion and development of *(insert description of the project)* at the rate of *(insert one-eighth, one-fourth, three-eighths, or one-half, as appropriate)* 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.

¹²⁹ *Id.* § 504.257(a).

¹³⁰ *Id.* § 505.2565.

¹³¹ *Id.* § 504.260.

¹³² *Id.* §§ 504.256, .260.

A city may limit the use of the Type B tax to a specific project.¹³³ 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.¹³⁴

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.¹³⁵ 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:¹³⁶

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 one-eighth, one-fourth, three-eighths, or one-half, as appropriate*) of one percent and the adoption of an additional sales and use tax within the city at a rate of (*insert one-eighth, one-fourth, three-eighths, or one-half, as appropriate*) 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 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.¹³⁷

¹³³ *Id.* § 505.2575(a).

¹³⁴ *Id.* § 505.2575(b).

¹³⁵ *Id.* § 504.261.

¹³⁶ *Id.*

¹³⁷ 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).

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.¹³⁸ 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 that pursues such a combined proposition should consult with its legal counsel and with the Comptroller’s Office on this issue.

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.¹³⁹ 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.¹⁴⁰

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 various municipal sales taxes.¹⁴¹ 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 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.¹⁴² 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

¹³⁸ TEX. LOC. GOV’T CODE ANN. § 505.255 (West Supp. 2011).

¹³⁹ *Id.*

¹⁴⁰ *See id.* § 505.256; TEX. TAX CODE ANN. § 321.101(f) (West 2008).

¹⁴¹ *See* TEX. TAX CODE ANN. § 321.409 (West 2008).

¹⁴² TEX. LOC. GOV’T CODE ANN. § 504.258 (West Supp. 2011).

an election held on the issue. The rate may be reduced or increased in one or more increments of one-eighth of one percent with a minimum rate of one-eighth of one percent and a maximum rate of one-half of one 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.¹⁴³

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 one-eighth, one-fourth, three-eighths, or one-half, as appropriate) of one percent.” A city should consult with its legal counsel, in conjunction with the Local Assistance section of the Comptroller’s Office, if it decides to ask the voters to reduce or increase an existing Type A tax. The Economic Development and Analysis Division of the Comptroller’s Office can be reached by phone at (800) 531-5441, ext. 3-4679. Prior to the election, the city should also check with the Elections Division of the Secretary of State’s Office to determine whether this type of special election would require pre-clearance from the U.S. Department of Justice. The Elections Division can be reached by phone at (800) 252-8683.

Type B Sales Tax

For a Type B corporation, there is no statutory authority that allows a Type B tax to be increased or decreased after its initial adoption.

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.¹⁴⁴ 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:¹⁴⁵

Termination of the (insert name of the corporation).

¹⁴³ *Id.*

¹⁴⁴ *Id.* § 504.351(a).

¹⁴⁵ *Id.* § 504.352.

The election must be held on a uniform election date and the election is subject to all the applicable requirements under law for elections. Prior to the election, the city should check with the Elections Division of the Secretary of State's Office to determine whether this type of election would require pre-clearance from the U.S. Department of Justice. The Elections Division can be reached by phone at (800) 252-8683.

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.¹⁴⁶ 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.¹⁴⁷ 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.¹⁴⁸ The corporation is required to notify the Comptroller's Office to cease collection of the tax once the corporation has satisfied all of its obligations.¹⁴⁹

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.¹⁵⁰ 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 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 61 days after the petition is filed with the city. At the election, the ballot must be printed to read as follows:¹⁵¹

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.

¹⁴⁶ *Id.* § 504.353.

¹⁴⁷ Op. Tex. Att'y Gen. No. JC-0553 (2002) at 6.

¹⁴⁸ TEX. LOC. GOV'T CODE ANN. § 504.353(a)(2) (West Supp. 2011).

¹⁴⁹ *Id.* § 504.353(c).

¹⁵⁰ *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).

¹⁵¹ *Id.* § 505.353.

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.¹⁵²

Reporting Election Results of a Type A and Type B Tax

The Election Code requires that, no earlier than the eighth day and no later than the eleventh day¹⁵³ 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:¹⁵⁴

- 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.

If the election fails, the city must wait one full year before bringing the issue to the voters again.¹⁵⁵ 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.¹⁵⁶

¹⁵² *Id.* § 505.354.

¹⁵³ TEX. ELEC. CODE ANN. § 67.003(a) (West 2010). *But see* TEX. TAX CODE ANN. § 321.405 (West 2008) (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 8 and 11 days after it has taken place. Also, the Election Code allows the city to canvass the May election results as early as three days after the election, but only if there are no outstanding mail or provisional ballots).

¹⁵⁴ TEX. TAX CODE ANN. § 321.405 (West 2008).

¹⁵⁵ *Id.* § 321.406. *But see* TEX. LOC. GOV'T CODE ANN. §§ 504.255, .351, 505.256 (West Supp. 2011).

¹⁵⁶ TEX. ELEC. CODE ANN. § 41.0041(a) (West 2010).

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).¹⁵⁷ 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.¹⁵⁸ Some cities choose this option to maximize revenues from the tax; other cities choose to make it easier on retailers and allow both taxes to take effect at the same time in October.

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

At the same election, if the city adopts a Type B sales tax and an additional municipal sales tax, such as a sales tax for property tax relief, both taxes will not take effect until the following October 1st (assuming at least a complete calendar quarter has passed since the election).¹⁵⁹ If a complete calendar quarter has not passed since the election, the tax would not take effect until the following October 1st.

Allocation of the Sales Tax Proceeds by the Comptroller

Once the sales tax is effective, the Comptroller remits the sales tax proceeds from the increase in the rate to the municipality with its other local sales tax proceeds. The Municipal Sales and Use

¹⁵⁷ TEX. LOC. GOV'T CODE ANN. § 504.255 (West Supp. 2011), TEX. TAX CODE ANN. § 321.102(b) (West 2008) (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.)

¹⁵⁸ TEX. TAX CODE ANN. § 321.102(b) (West 2008).

¹⁵⁹ *Id.*, TEX. LOC. GOV'T CODE ANN. § 505.256 (West Supp. 2011).

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.¹⁶⁰

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.¹⁶¹ 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.¹⁶² 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.¹⁶³ 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.¹⁶⁴ However, the directors serve at the pleasure of the city council and may be removed by the city council at any time without cause.¹⁶⁵

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.¹⁶⁶ The seven directors are appointed by a majority vote of the city council at an open meeting. Unlike Type 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.¹⁶⁷ If a Type B corporation is located in a city with a population of less than 20,000, the Type B director must:

¹⁶⁰ TEX. LOC. GOV'T CODE ANN. §§ 504.255, 505.256 (West Supp. 2011).

¹⁶¹ *Id.* §§ 504.301, 505.256.

¹⁶² *Id.* § 504.051(a).

¹⁶³ *Id.* § 501.062(d).

¹⁶⁴ Op. Tex. Att'y Gen. No. JC-0349 (2001) at 3.

¹⁶⁵ TEX. LOC. GOV'T CODE ANN. §§ 504.051(b), 501.062(c) (West Supp. 2011) (Referring to the removal of directors).

¹⁶⁶ *Id.* § 505.051(a).

¹⁶⁷ *Id.* § 505.052(a).

- 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.¹⁶⁸

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.¹⁶⁹ 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.¹⁷⁰ The directors serve without compensation but they must be reimbursed for actual expenses.¹⁷¹ 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.¹⁷²

General Provisions Regarding Type A and Type B Board of Directors

A majority of the board constitutes a quorum.¹⁷³ The board of directors is subject to both the Open Meetings Act and the Public Information Act.¹⁷⁴ 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 30,000.¹⁷⁵ 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.¹⁷⁶ 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.¹⁷⁷ 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.¹⁷⁸

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.¹⁷⁹

¹⁶⁸ *Id.* § 505.052(b).

¹⁶⁹ *Id.* § 505.052(d).

¹⁷⁰ *Id.* § 505.052(c).

¹⁷¹ *Id.* § 501.062(d).

¹⁷² *Id.* § 501.062(c).

¹⁷³ *Id.* §§ 504.053, 505.054.

¹⁷⁴ *Id.* §§ 501.072, 505.054.

¹⁷⁵ *Id.* §§ 504.054, 505.055.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* §§ 504.052, 505.053.

¹⁷⁸ *Id.* §§ 504.055, 505.056.

¹⁷⁹ *Id.* §§ 504.003(b), 505.003(b).

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.¹⁸⁰ 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."¹⁸¹ 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.¹⁸²

Legal and Financial Transaction Powers. The corporation shall have the power to sell and lease a project,¹⁸³ make secured and unsecured loans,¹⁸⁴ and to sue and be sued.¹⁸⁵ 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.¹⁸⁶ 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.¹⁸⁷

Status as Non-stock Corporation. The corporation is a nonprofit, nonmember, non-stock corporation.¹⁸⁸

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

¹⁸⁰ *Id.* § 501.054(b)(2).

¹⁸¹ Op. Tex. Att'y Gen. No. JC-0488 (2002) at 3.

¹⁸² TEX. LOC. GOV'T CODE ANN. § 501.054(a) (West Supp. 2011).

¹⁸³ *Id.* §§ 501.153-.154, .159.

¹⁸⁴ *Id.* § 501.155(a).

¹⁸⁵ *Id.* § 501.060.

¹⁸⁶ Op. Tex. Att'y Gen. No. JC-109 (1999) at 2.

¹⁸⁷ TEX. LOC. GOV'T CODE ANN. § 505.1041 (West Supp. 2011).

¹⁸⁸ *Id.* § 501.052.

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.¹⁸⁹ 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's Office 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. The Comptroller's address is: Office of the Texas Comptroller, Exempt Organizations Section, P.O. Box 13528, Austin, TX 78711-3528.

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. For more information about tax exemptions, contact the Comptroller's Office Tax Assistance line at (800) 252-5555.

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.¹⁹⁰

Limited Eminent Domain Power. A Type A corporation may not exercise the power of eminent domain except by action of the city council.¹⁹¹ 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.¹⁹²

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.¹⁹³ The corporation is considered a governmental entity for purposes of the Texas Tort Claims Act.

¹⁸⁹ TEX. TAX CODE ANN. §§ 151.341, 171.074 (West 2008).

¹⁹⁰ TEX. LOC. GOV'T CODE ANN. § 501.072 (West Supp. 2011).

¹⁹¹ *Id.* § 504.106.

¹⁹² *Id.* § 505.105.

¹⁹³ *Id.* §§ 504.107, 505.106.

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).¹⁹⁴

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.¹⁹⁵

In 2001, the Texas Legislature created an exception to this general rule.¹⁹⁶ 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.”¹⁹⁷

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.¹⁹⁸ 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:

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.

¹⁹⁴ *Id.* § 501.160.

¹⁹⁵ Op. Tex. Att’y Gen. No. JC-109 (1999) at 3-5.

¹⁹⁶ TEX. LOC. GOV’T CODE ANN. § 501.007 (West Supp. 2011).

¹⁹⁷ *Id.* § 380.002(b).

¹⁹⁸ *Id.* § 253.009.

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.¹⁹⁹ 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.²⁰⁰ 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.

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:²⁰¹ 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

¹⁹⁹ *Id.* § 253.011 (West 2005).

²⁰⁰ *Id.* § 253.012 (West Supp. 2011).

²⁰¹ *Id.* § 501.067.

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.²⁰² 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.²⁰³

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.²⁰⁴ 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.²⁰⁵ 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
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.²⁰⁶

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

²⁰² TEX. GOV'T CODE ANN. § 2155.062(d) (West 2008).

²⁰³ TEX. LOC. GOV'T CODE ANN. § 501.074 (West Supp. 2011).

²⁰⁴ Op. Tex. Att'y Gen. 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.

²⁰⁵ TEX. LOC. GOV'T CODE ANN. § 501.158 (West Supp. 2011).

²⁰⁶ *Id.*

later than the 120th day after receiving notice of the violation from the public entity or economic development corporation.²⁰⁷

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.²⁰⁸ 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.²⁰⁹ Failure to enter into a written contract with a third party recruiter could result in a civil penalty up to \$10,000.²¹⁰ 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.²¹¹

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.²¹² 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.²¹³

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 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.²¹⁴

²⁰⁷ TEX. GOV'T CODE ANN § 2264.001 - .101 (West 2008).

²⁰⁸ TEX. LOC. GOV'T CODE ANN. § 502.051(a) (West Supp. 2011).

²⁰⁹ *Id.*

²¹⁰ *Id.* § 502.051(b).

²¹¹ *Id.* § 502.051(c).

²¹² *Id.* § 501.161.

²¹³ *Id.* § 501.161(a).

²¹⁴ *Id.* § 501.062(c).

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.²¹⁵ Likewise, Chapter 272 of the Local Government Code, governing the city sale of real property, is not applicable to economic development corporations.²¹⁶ 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.²¹⁷ 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 February 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
- 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

²¹⁵ Op. Tex. Att’y Gen. No. JC-338 (2001) at 2.

²¹⁶ Op. Tex. Att’y Gen. No. JC-109 (1999).

²¹⁷ Op. Tex. Att’y Gen. No. JC-032 (1999).

- 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 Comptroller²¹⁸

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 \$200.²¹⁹ 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 <http://www.texasahead.org/lga/econdev.html>.

For more information on filing the required form, contact the Comptroller's Office at (800) 531-5441, extension 3-4679.

²¹⁸ TEX. LOC. GOV'T CODE ANN. § 502.151(a) (West Supp. 2011).

²¹⁹ *Id.* § 502.152.



TO: Economic Development Corporation
FROM: Daphne Hamlin, Finance Director
DATE: May 15th, 2014
SUBJECT: 2013-2014 Budget and Goals/2014-2015 Budget and Goals

Discussion and review current 2013-2014 budget and goals and proposed
2014-2015 budget and goals

Farmersville Economic Development Corp 4A

Exhibit "A"		
REVENUE	2013-2014 BUDGET	PROPOSED 2014-2015 BUDGET
Sales Tax	\$160,000.00	
Interest Earned	\$1,100.00	
Total Revenue:	\$161,100.00	
Expenses		
Administration	\$1,000.00	
Meeting Expenses	\$1,000.00	
Dues/School/Travel	\$500.00	
Office Supplies	\$200.00	
Marketing/Promotion Expenses/Adv	\$7,110.00	
Chamber Sponsorship	\$1,000.00	
Rotary Sponsorship	\$500.00	
Collin College Sponsorship	\$7,500.00	
Legal	\$2,500.00	
Small Business Conference	\$500.00	
Total Expenses:	\$21,810.00	
Development		
Collin College Project (sewer/street)	\$100,000.00	
NTMWD Regional Waste Water	\$150,000.00	
Electrical Study	\$125,000.00	
Facade Grant Program	\$50,000.00	
Total Development Cost:	\$425,000.00	
Total Expenditures	\$446,810.00	
Revenue vs. Expenditures	\$(285,710.00)	
From Reserves	\$285,710.00	
Balance Budget		\$-

2013-2014 Goals and Specified Projects Economic Development Corporation

Goals:

1. Create a business atmosphere in Farmersville that supports:
 - a. Retention and expansion of existing businesses,
 - b. Attracting new or relocating businesses that will increase the quality and quantity of primary jobs
 - c. Working with regional coalitions to address infrastructure, transportation, education and quality of life issues,
 - d. Recruiting at least one new employer per year.
2. Improve communication with the community and communicate accomplishments of the Economic Development Corporation
3. Enhance and promote the quality of life of the community and the crossroads significance of the city.
4. Partner with Collin College for a functional college by 2015.
5. Work with the City of Farmersville and the North Texas Municipal Water District (NTMWD) to establish a regional wastewater treatment plant (WWTP) servicing the area.
6. Support the City of Farmersville in retaining, upgrading, and establishing operation of the electric utility system.
7. Promote and support implementation of the 2013 Comprehensive Plan as appropriate.

Projects: Specific funding activities to achieve stated goals:

1. Regional wastewater infrastructure design
2. Planning and establishment of electric utility system operation
3. Funding Collin College and/or City of Farmersville requests as they pertain to the college's eastern county campus.
4. Locate property for an EDC investment for future projects.

FARMERSVILLE ECONOMIC DEVELOPMENT CORPORATION (4A)

FARMERSVILLE FACADE GRANT APPLICATION

Date of Application: _____, 20____

Applicant

Name: _____

Business Name: _____

Business Street Address: _____

City: _____ **State:** _____ **Zip Code:** _____

Telephone: _____ **Cell Phone:** _____

Email Address: _____

Business Owner (if different than above):

Name: _____

Business Name: _____

Business Street Address: _____

City: _____ **State:** _____ **Zip Code:** _____

Business Telephone: _____ **Cell Phone:** _____

Email Address: _____

Property Owner (if different than above):

Name: _____

Business Name: _____

Street Address: _____

City: _____ **State:** _____ **Zip Code:** _____

Business Telephone: _____ **Cell Phone:** _____

Email Address: _____

FARMERSVILLE ECONOMIC DEVELOPMENT CORPORATION (4A)

FACADE GRANT POLICY AND GUIDELINES

Program Overview

The Farmersville Economic Development Corporation (FEDC) introduces the Farmersville Facade Grant Program as a way to stimulate commercial investment and development in Farmersville. This program is sponsored, funded, and monitored by the FEDC Board of Directors who may amend or eliminate this program at any time, for any reason.

Program Goal

The Facade Grant Program is intended to enhance the economic development of the City of Farmersville by offering matching grant funds for façade or exterior improvements to the building, signage or other approved exterior property improvements.

Scope of Program

This program is limited to businesses located in the city limits of the City of Farmersville. The FEDC has budgeted \$50,000 for the 2011 – 2012 fiscal year for the Facade Grant Program. The grant award decisions of the FEDC Board of Directors are final.

Type of Improvements allowed by Grant

Façade Improvement – Improvements to storefronts including, but not limited to, painting, reconstruction, replacement, or remodeling.

Signage Improvement – New signs, replacement, and/or renovation, or the removal of existing signs.

Property Improvement – Items such as but not limited to: landscaping, parking lot resurfacing, striping, driveway improvements, and lighting.

Grant Award

The maximum size of the Grant award shall be \$25,000, with a required 50% match from the property owner.

Eligibility

Any existing businesses located in the City of Farmersville shall be eligible for this program.

Guidelines

(A) Proof of applicant's ownership of the subject business or businesses.

(B) The owner of a business to be operated within a leased facility and the owner of such leased facility must apply jointly for the program. Copies of a valid lease agreement, written permission of the owner(s), and proof of ownership of the leased facility shall be required.

(C) The applicant shall provide at least one (1) cost estimate from a bona fide contractors/suppliers of all proposed improvements.

(D) The applicant shall provide "before" photos of the building/property that is proposed to be improved/renovated. The applicant shall provide "after" photos of the building/property after improvements and/or renovations have been completed.

(E) The applicant shall provide verification and compliance with City Zoning requirements.

(F) The applicant shall provide a true copy of relevant proposed building/construction and/or site plans.

(G) The applicant must provide a current tax certificate demonstrating that all property taxes are currently paid and that there are no back taxes owed to any taxing entities.

(H) A business may only apply for one (1) of the grants set forth herein within any calendar year. A business that receives grant funding during a calendar year shall not be prohibited from making subsequent applications for funding in following years.

(I) The maximum amount of funding available to any one applicant or business establishment shall be \$25,000 per calendar year.

(J) All grants are reimbursement grants, and will only be funded after completion of the project in accordance with drawings and specifications approved by the FEDC and after the applicant submits to FEDC proof of paid receipts for all applicable labor and/or materials. Photographs of the completed work shall also be required.

(K) Reimbursement grants are a cash match for funds disbursed by the applicant and are not to exceed the limits set forth in the Type and Amount of Grant Section above. In-kind contributions may not be used as any part of the applicant's match. Only cash matches of the applicant's expenditures may be used.

(L) The applicant shall be obligated to make the improvements in accordance with the application submitted to and approved by the FEDC Board of Directors. Thereafter, any modifications must first receive the written approval of the FEDC Board of Directors. Failure to obtain such written approval prior to making any such modifications shall render the applicant ineligible to receive grant funding.

(M) The applicant shall be responsible for all applicable permits related to the improvement project, and failure to do so will render the applicant ineligible to receive grant funding.

(N) The improvements, as presented in the application, must be completed in their entirety. Failure to complete all of the stated improvements shall render the applicant ineligible to receive grant funding.

(O) Upon approval of a grant application, and during the construction of the improvements, a representative or representatives of the FEDC shall have the right, at all reasonable times, to have access to and inspect the work in progress.

(P) The applicant shall not begin any improvements prior to receiving written approval of grant funding from the FEDC.

(Q) The applicant must begin the improvement project within three (3) months and complete the improvement project within six (6) months of receiving written approval therefore from the FEDC. Failure to complete the improvements within the required time period may result in the loss of the grant funds allocated for the project unless the FEDC Board of Directors approves an extension.

(R) Applicant certifies that applicant shall comply with Chapter 2264, Texas Government Code. Applicant further certifies that in the event that applicant is convicted of a violation under 8 U.S.C. Section 1324a(f), applicant shall repay the amounts previously paid to or otherwise granted to the applicant by the FEDC pursuant to this program.

Application and Approval

(A) Applications filed with the FEDC shall be considered at the next regular FEDC Board meeting.

(B) Applications must be made on a form provided by the FEDC, which form shall be made available at the Farmersville City Offices located at 205 S. Main, Farmersville, Texas.

(C) All applications must be approved by a majority vote of the Board of Directors of the FEDC.

(D) An applicant shall be notified in writing of the FEDC's decision to approve or disapprove the application.

(E) The FEDC may award grant funds to an applicant, with certain provisions, conditions, or other requirements the FEDC deems necessary or appropriate.

Funding of Grant

(A) Upon written notification to the FEDC by the applicant that a project has been completed, an inspection by an FEDC representative or representatives shall be made to confirm that such project has been completed in accordance with the application, or any approved modifications thereto. Such notification shall include, but not be limited to, documentation of paid receipts for materials, labor, permits, inspection reports, or any other item that the FEDC may reasonably deem necessary for determining the project's completion.

(B) Upon completion and verification of the project funding authorization shall take place at the next regular FEDC Board meeting where the Board shall consider the funding approval.

(C) Within fifteen (15) days following an FEDC inspection and the presentation of the receipts by the applicant, a determination is made by the FEDC's representative that the project has not been completed in accordance with the application, or any approved modifications thereof, the FEDC shall issue a letter to the applicant indicating all areas of non-compliance. The applicant shall then have sixty (60) days, from the date of the FEDC letter, to make the modifications necessary to bring the project into compliance. Failure to complete such modifications within said sixty (60) day period shall be deemed a default of applicant's obligations under the grant.

(D) Available funding: The FEDC has currently budgeted a total of \$50,000 per year to fund this grant program. Grant applications received after the available funding has been exhausted may be considered the following fiscal year. The FEDC retains sole discretion to accept or reject applications either received before or after the available funding has been exhausted. The FEDC reserves the right to discontinue this program at any time.

Notice

(A) THE FARMERSVILLE 4A ECONOMIC DEVELOPMENT CORPORATION MAY DELIVER A COPY OF THESE GUIDELINES TO ANY APPLICANT FOR HIS/HER REVIEW, BUT THE DELIVERY HEREOF DOES NOT CONSTITUTE AN OFFER OF A BUSINESS IMPROVEMENT GRANT TO THE APPLICANT.

(B) THE LAWS OF THE STATE OF TEXAS SHALL GOVERN THE INTERPRETATION, VALIDITY, PERFORMANCE, AND ENFORCEMENT OF THIS FAÇADE GRANT PROGRAM. IF ANY PROVISION OF THIS BUSINESS IMPROVEMENT GRANT PROGRAM IS HELD TO BE INVALID OR UNENFORCEABLE, THE VALIDITY AND ENFORCEABILITY OF THE REMAINING PROVISIONS SHALL NOT BE AFFECTED THEREBY.



TO: Economic Development Corporation
FROM: Daphne Hamlin, Finance Director
DATE: May 15th, 2014
SUBJECT: March and April 2014 Financial Statements

Consideration and possible action regarding financial statements for
March and April 2014 and budget amendments.

Farmersville Economic Development Corp 4A
Investment and Budget Report

March 2014

Prepared by: Daphne Hamlin

Farmersville Economic Development Corp 4A
March 2014

Statement Balance 3-1-2014	\$200,602.48
Deposits:	
Sales Tax:	\$15,596.41
Cking Int .05%	\$8.40
CD Interest	\$67.12
Transfer to Texpool	
Transfer from Texpool	\$-
Checks 1098-1099,1101-1102	<u>\$(36,811.00)</u>
Statement balance 3-31-14	\$179,463.41

Outstanding Transactions

Sales Tax	
Transfer to Texpool	
CD Interest	
Checks 1100	\$(500.00)

Balance 4-4-2014	<u>\$178,963.41</u>
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Farmersville Economic Development Corp 4A
Investment and Budget Report

April 2014

Prepared by: Daphne Hamlin

Farmersville Economic Development Corp 4A
April 2014

Statement Balance 4-1-2014	\$179,463.41
Deposits:	
Sales Tax:	\$15,764.39
Cking Int .05%	\$7.53
CD Interest	\$74.32
Transfer to Texpool	
Transfer from Texpool	\$-
Checks 1100	<u>\$(500.00)</u>
Statement balance 4-30-14	\$194,809.65

Outstanding Transactions

Sales Tax
Transfer to Texpool
CD Interest

Balance 5-6-2014	<u><u>\$194,809.65</u></u>
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Farmersville Economic Development Corporation
Cumulative Income Statement
For the 12 Months Ended, September 30, 2014

	FY 2014 Budget	October	November	December	January	February	March	April	May	June	July	August	September	YTD
Beginning Bank Balance														
Deposits		\$145,798.94	\$160,436.50	\$182,136.79	\$200,540.72	\$178,678.30	\$200,602.48	\$178,963.41						
Sales Tax Collections	\$160,000.00	\$21,637.54	\$21,587.41	\$18,324.23	\$13,763.51	\$21,842.95	\$15,596.41	\$15,764.39						\$128,516.44
Interest Income cking	\$1,100.00	\$7.28	\$6.72	\$7.78	\$8.06	\$6.91	\$8.40	\$7.53						\$52.68
Transfer from Texpool to First Bank														\$-
Transfer funds to CD														\$-
Transfer to Texpool														\$-
CD Interest Earned		\$102.74	\$106.16	\$71.92	\$74.32	\$74.32	\$67.12	\$74.32						\$570.90
Total Revenue	\$161,100.00	\$167,546.50	\$182,136.79	\$200,540.72	\$214,386.61	\$200,602.48	\$216,274.41	\$194,809.65	\$-	\$0.00	\$-	\$-	\$-	\$129,140.02
Expenses:														
Administration	\$1,000.00													\$-
Meeting Expenses	\$1,000.00	\$-												\$-
Dues/School/Travel	\$500.00													\$-
Office Supplies	\$200.00													\$-
Marketing/promotion Expenses														
Marketing/Promotion Expenses/Advertising	\$7,110.00	\$7,110.00												\$-
Collin College Sponsorship	\$7,500.00		\$7,500.00											\$7,110.00
Small Business Entrepreneurship Conf	\$500.00						\$500.00							\$7,500.00
Legal Service	\$2,500.00													\$500.00
Farmersville Chamber	\$1,000.00						\$1,000.00							\$1,000.00
Farmersville Rotary	\$500.00						\$500.00							\$500.00
Total Expenditures	\$21,810.00	\$7,110.00	\$-	\$-	\$7,500.00	\$-	\$2,000.00	\$-	\$-	\$-	\$-	\$-	\$-	\$16,610.00
Directive Business Incentives														
Collin College Project(sewer/street/electric)	\$100,000.00													\$-
NTMWD Regional WW Treatment	\$150,000.00													\$-
Electrical Study	\$125,000.00				\$28,208.31		\$35,311.00							\$28,208.31
Façade Grant Program	\$50,000.00													\$35,311.00
Total Development Cost	\$425,000.00			\$-	\$28,208.31	\$-	\$35,311.00	\$-	\$-	\$-	\$-	\$-	\$-	\$63,519.31
Total Expenditures	\$446,810.00	\$7,110.00	\$-	\$-	\$35,708.31	\$-	\$37,311.00	\$-	\$-	\$-	\$-	\$-	\$-	\$80,129.31
Revenue vs Expenditures	(\$285,710)													\$-
From Reserves	\$285,710.00													\$-
Balance Budget	\$-													\$-
Total Expenditures														
Ending Bank Balance		\$160,436.50	\$182,136.79	\$200,540.72	\$178,678.30	\$200,602.48	\$178,963.41	\$194,809.65	\$-	\$-	\$-	\$-	\$-	\$80,129.31
CD Investment		\$250,000.00	\$250,000.00	\$250,000.00	\$250,000.00	\$250,000.00	\$250,000.00	\$250,000.00	\$-	\$-	\$-	\$-	\$-	\$-
Texpool Balance		\$366,517.59	\$366,531.07	\$366,542.62	\$366,551.14	\$366,559.13	\$366,568.45	\$366,578.58						
Interest Earned		\$15.52	\$13.48	\$11.55	\$8.52	\$7.99	\$9.32	\$10.13						
Total Available Funds		\$776,954.09	\$798,667.86	\$817,083.34	\$795,229.44	\$817,161.61	\$795,531.86	\$811,388.23	\$-	\$-	\$-	\$-	\$-	\$-



TO: Economic Development Corporation
FROM: Daphne Hamlin, Finance Director
DATE: May 15th, 2014
SUBJECT: Meeting minutes for March 20th, 2014

Consideration and possible approval of the minutes of March 20th, 2014 meeting.

FARMERSVILLE ECONOMIC DEVELOPMENT CORPORATION
MEETING MINUTES
March 20th, 2014

The Farmersville EDC met in regular session on March 20th, 2014, at 5:30 p.m. at the City Council Chambers with the following members present: Bob Collins, Chris Lair, Kris Washam, Robbie Tedford and Kevin Meguire. Staff members present were City Manager Ben White, City Accountant Daphne Hamlin and Mayor Joseph Helmberger. Special guest recognized Rob Rae with Kimley Horn.

CALL TO ORDER

Bob Collins convened the meeting at 5:30 p.m. and announced that a quorum was present.

RECOGNITION OF CITIZENS/VISITORS

Special guest recognized Rob Rae with Kimley Horn Engineering.

DISCUSSION FOR TOWNE CENTRE PLANNING

Rob Rae with Kimley Horn Engineering was asked to present and discuss with the EDC 4A Board on developing a Towne Centre Plan for the City of Farmersville. Mr. Rae discussed how the City of Bedford planning was compiled. First step is to review existing conditions, a location analysis of existing connections, conditions of land use, and the economy assessment. Public outreach and staff would develop a vision. Another step would be to review current housing, and plans for developing different housing options. Also, a review of cultural additions, example Plaza Pavilion. Along with developing standards, form base code, overlay, plan development, etc.

Mr. Rae said you would need a characteristic review of what citizens will do and how far they would go to make certain purchases. Mr. Tedford said he is interested in what kind of commercial types Farmersville could attract.

Mr. McGuire asked if this data came across into the comprehensive plan. Mr. White stated the comprehensive plan addressed the City as a whole and this is very focused on a particular part.

Mrs. Washam and Mr. Lair wanted to see more of the economic part and impact it would have on a City.

Mr. Collins said this is something to look at during the budget process of 2014-2015 if the EDC 4A board wants to pursue a Towne Centre Plan. Mr. McGuire asked the cost of having an economic analysis. Mr. Rae stated approximately 10K.

RECEIVE REPORT ON STATUS OF STATE HIGHWAY 380 RECONSTRUCTION PROJECT FROM LAKE LAVON TO THE COLLIN/HUNT COUNTY LINE

City Manager Ben White updated the EDC 4A board on the progress of the Highway 380 Project. Mr. White stated concrete was poured to re-open ramp off Hwy 380 onto Main

Street Bridge will be a two way ramp. The first Rail Road Bridge is scheduled to begin construction May 2014.

UPDATE REGARDING COLLIN COLLEGE

Bob Collins stated nothing new to report. Mr. White advised the EDC 4A Board the City was applying for the Tiger Grant to help assist with road construction in front of the proposed Collin College. Grant is scheduled to be awarded end of 2014

UPDATE REGARDING ELECTRICAL SYSTEM ACQUISITION.

Mr. White updated the 4A EDC Board in regards to the Electrical System Acquisition. Mr. White stated in process of getting all the ordinances in place and will go before City Council on the next scheduled meeting. Mr. White stated that April 16th, 2014 City will take control of the electrical system. Digger Truck and spares are ordered. Mr. White stated having a few I.T. issues developing an on-line billing system.

DISCUSSION AND POSSIBLE ACTION REGARDING FAÇADE GRANT AWARDED TO DOUG AND LORI LAUBE.

Mr. Laube addressed the EDC 4A Board requesting an extension on the façade grant awarded on September 19th, 2013. On a motion by Mr. Tedford and a second by Mr. Lair, the EDC 4A Board approved the façade grant extension for (6) six months, upon an agreement letter received by Doug and Lori Laube. Motion carried unanimously.

CONSIDERATION AND POSSIBLE ACTION REGARDING FINANCIAL STATEMENTS FOR JANUARY AND FEBRUARY 2014, AND REQUIRED BUDGET AMENDMENTS

On a motion by Mrs. Washam and a second by Mr. McGuire, the Board approved the financial statements for January and February 2014. Motion carried unanimously.

DISCUSSION AND POSSIBLE ACTION REGARDING ITEMS FOR PAYMENTS

On a motion by Mr. Tedford and a second by Mr. McGuire, the Board approved the items listed for payment. Motion carried unanimously.

CONSIDERATION AND POSSIBLE APPROVAL OF THE MINUTES OF THE JANUARY 16TH, 2014 MEETING

On a motion by Mr. Lair and a second by Mr. Tedford, the Board approved the meeting minutes of the January 16th, 2014 meeting. Motion carried unanimously.

DISCUSSION ON CONTEMPLATION OF PLACING ITEMS ON FUTURE AGENDA

ADJOURNMENT

On a motion by Mr. Tedford and a second by Mr. McGuire, the Board adjourned at 7:15p.m.

Bob Collins, President

ATTEST:

Kris Washam, Secretary

DRAFT