



**CITY COUNCIL
REGULAR SESSION MINUTES
OCTOBER 7, 2020**

The meeting was live streamed on Manor Facebook Live beginning at 7:00 p.m.
<https://www.facebook.com/cityofmanor/>

PRESENT:

Dr. Larry Wallace Jr., Mayor

COUNCIL MEMBERS:

Emily Hill, Place 1
Maria Amezcua, Place 2
Dr. Christopher Harvey, Place 3
Danny Scarbrough, Place 4 (Absent)
Deja Hill, Mayor Pro Tem, Place 5
Vacant, Place 6

CITY STAFF:

Thomas Bolt, City Manager
Lluvia T. Almaraz, City Secretary
Scott Dunlop, Assistant Development Services Director
Tracey Vasquez, HR Manager
Frank Phelan, P.E., City Engineer
Bryan Estrada, Manor Police Officer

REGULAR SESSION – 7:00 P.M.

With a quorum of the Council Members present, the regular session of the Manor City Council was called to order by Mayor Wallace Jr. at 7:00 p.m. on Wednesday, October 7, 2020, in the Council Chambers of the Manor City Hall, 105 E. Eggleston St., Manor, Texas.

PLEDGE OF ALLEGIANCE

At the request of Mayor Wallace Jr., Council Member Amezcua led the Pledge of Allegiance.

PROCLAMATION

A. Declaring September 15 – October 15, 2020, as “*National Hispanic Heritage Month*”

Mayor Wallace Jr. read and presented a proclamation declaring September 15 – October 15, 2020, as “*National Hispanic Heritage Month*” to Council Member Amezcua.

PUBLIC COMMENTS

No one appeared to speak at this time.

REPORTS

Reports about item of community interest on which no action was taken.

A. Economic Development Report

Mayor Wallace Jr. discussed the attached TML Economic Development Report regarding Hotel Occupancy Tax Revenues for Cities.

City Manager Bold discussed the projects completed within the City of Manor with the use of HOT Funds.

The discussion was held regarding future projects for the City of Manor.

PUBLIC HEARING

1. Consideration, discussion, and possible action on the addition of land to the Manor Heights Public Improvement District (PID).

The City staff recommended that the City Council conduct the public hearing.

Mayor Wallace Jr. opened the public hearing.

City Manager Bolt discussed the addition of land to the Manor Heights Public Improvement District (PID).

MOTION: Upon a motion made by Council Member Amezcua and seconded by Council Member Dr. Harvey, to close the Public Hearing.

Mayor Wallace Jr. open the floor for any questions to the motion.

There was no discussion.

Motion to close carried 5-0

CONSENT AGENDA

2. **Consideration, discussion, and possible action to approve the City Council Minutes of the September 16, 2020, Regular Meeting.**
3. **Consideration, discussion, and possible action on an ordinance rezoning twenty (20) acre, more or less, out of the James Manor Survey No. 40, and being located at 10507 US Hwy 290 E, Manor, TX from Single Family (SF-1) and Light Commercial (C-1) to Medium Commercial (C-2).**

Ordinance No. 582: An Ordinance of the City of Manor, Texas, Amending the Zoning Ordinance by Rezoning a Parcel of Land From Single Family (SF-1) and Light Commercial (C-1) to Medium Commercial (C-2); Making Findings of Fact; and Providing for Related Matters.

4. **Consideration, discussion, and possible action on an ordinance rezoning 0.36 acres, more or less, Lots 11-15 & East ½ of Lot 16, Block 29, Town of Manor, and being located at 109 North Lexington Street, Manor, TX from Single Family (SF-1) to Downtown Business (DB).**

Ordinance No. 583: An Ordinance of the City of Manor, Texas, Amending the Zoning Ordinance by Rezoning a Parcel of Land From Single Family (SF-1) to Downtown Business (DB); Making Findings of Fact; and Providing for Related Matters.

5. **Consideration, discussion, and possible action on an ordinance rezoning 0.91 acres, more or less, out of the James Manor Survey No. 40, Abstract No. 546, and being located near US Hwy 290 E and Gregg Manor Road, Manor, TX from Light Commercial (C-1) to Multi-Family 25 (MF-2).**

Ordinance No. 584: An Ordinance of the City of Manor, Texas, Amending the Zoning Ordinance by Rezoning a Parcel of Land From Light Commercial (C-1) to Multi-Family 25 (MF-2); Making Findings of Fact; and Providing for Related Matters.

6. **Consideration, discussion, and possible action on an ordinance rezoning 50.32 acres, more or less, out of the Greenbury Gates Survey, and being located near N. FM 973 and Johnson Road, Manor, TX from Agricultural (A) to Two-Family (TF) and Medium Commercial (C-2).**

Ordinance No. 585: An Ordinance of The City of Manor, Texas, Amending the Zoning Ordinance by Rezoning a Parcel of Land From Agricultural (A) to Two-Family (TF) and Medium Commercial (C-2); Making Findings of Fact; and Providing for Related Matters.

MOTION: Upon a motion made by Council Member Dr. Harvey and seconded by Council Member Emily Hill, to approve and adopt all items on the Consent Agenda.

Mayor Wallace Jr. open the floor for any questions to the motion.

There was no discussion.

Motion to approve carried 5-0

REGULAR AGENDA

7. Consideration, discussion, and possible action on a resolution authorizing the addition of land to the Manor Heights Public Improvement District (PID).

The City staff recommended that the City Council approve and adopt Resolution No. 2020-11 authorizing the addition of land to the Manor Heights Public Improvement District (PID) and direct the City Secretary to publish a copy of the resolution adopted.

Talley Williams with Metcalfe Wolff Stuart & Williams LLP, 221 W. 6th Street, Suite 1300, Austin Texas, submitted a speaker card in support of this item; however, she did not wish to speak but was available to answer any questions posed by the City Council.

Resolution No. 2020-11: A Resolution of the City Council of the City of Manor, Texas, Authorizing the Addition of Land to the Manor Heights Public Improvement District.

MOTION: Upon a motion made by Council Member Dr. Harvey and seconded by Council Member Amezcua, to approve Resolution No. 2020-11 authorizing the addition of land to the Manor Heights Public Improvement District (PID) and direct the City Secretary to publish a copy of the resolution adopted.

Mayor Wallace Jr. open the floor for any questions to the motion.

There was no discussion.

Motion to approve carried 5-0

8. Consideration, discussion, and possible action on an award of a Master Services Agreement and Statement of Work to George Butler Associates, Inc. for engineering services for the 2020 Capital Metro BCT Paving Improvements Project.

The City staff recommended that the City Council approve the Master Services Agreement and Statement of Work to George Butler Associates, Inc. for engineering services for the 2020 Capital Metro BCT Paving Improvement Project.

City Engineer Phelan discussed the award of a Master Services Agreement for engineering services to George Butler Associates, Inc.

MOTION: Upon a motion made by Mayor Pro Tem Deja Hill and seconded by Council Member Amezcua, to approve the Master Services Agreement and Statement of Work to George Butler Associates, Inc. for engineering services for the 2020 Capital Metro BCT Paving Improvement Project.

Mayor Wallace Jr. open the floor for any questions to the motion.

The discussion was held regarding the clarification of the 2020 Capital Metro BCT Paving Improvement Project.

There was no further discussion.

Motion to close carried 5-0

9. Consideration, discussion, and possible action to approve a Purchase Contract with Dutch Clean Storage, Inc. for a wastewater easement with temporary construction easement.

The City staff recommended that the City Council approve the purchase contract with Dutch Clean Storage, Inc. for a wastewater easement with temporary construction easement.

City Engineer Phelan discussed the Purchase Contract with Dutch Clean Storage, Inc.

MOTION: Upon a motion made by Council Member Dr. Harvey and seconded by Council Member Amezcua, to approve a Purchase Contract with Dutch Clean Storage, Inc. for a wastewater easement with temporary construction easement.

Mayor Wallace Jr. open the floor for any questions to the motion.

The discussion was held regarding clarification on funding and the wastewater easement.

There was no further discussion.

Motion to close carried 5-0

10. Consideration, discussion, and possible action on consent to approve the assignment and transfer of the City of Manor's Professional Services Agreement for engineering services plus work as authorized by addendum.

The City staff recommended that the City Council consent and approve the assignment and transfer of the Professional Services Agreement with Jay Engineering Company, Inc. to George Butler Associates, Inc. and direct the Mayor or the City Manager to execute the Approval of Engineering Services Transfer for City of manor and George Butler Associates, Inc.

City Engineer Phelan explained the transfer of engineering services to George Butler Associates, Inc.

MOTION: Upon a motion made by Council Member Dr. Harvey and seconded by Council Member Emily Hill, to approve the assignment and transfer of the Professional Services Agreement with Jay Engineering Company, Inc. to George Butler Associates, Inc. and direct the Mayor or the City Manager to execute the Approval of Engineering Services Transfer for City of Manor and George Butler Associates, Inc.

Mayor Wallace Jr. open the floor for any questions to the motion.

There was no further discussion.

Motion to close carried 5-0

11. Consideration, discussion, and possible action on an ordinance closing, vacating, and abandoning a 20' alley crossing Block 10, Town of Manor.

The City staff recommended that the City Council approve Ordinance No. 586 closing, vacating, and abandoning a 20' alley crossing Block 10, Town of Manor and directing the Mayor to execute the Special Warranty Deed.

Scott Dunlop, Asst. Development Services Director was available to address any questions posed by the City Council.

City Manager Bolt discussed the ordinance.

Ordinance No. 586: An Ordinance of The City of Manor, Texas, Closing, Vacating, and Abandoning a 20' Alley Crossing Block 10, Town of Manor Recorded in Volume V, Page 796 of the Deed Records of Travis County, Texas; Authorizing Conveyance to Abutting Property Owners in Proportion to Abutting Ownership; Providing Findings of Fact; Authorizing Conveyance of Such Abandoned Alley By Special Warranty Deed; Providing Severability, Effective Date And Open Meetings Clauses; And Providing For Related Matters.

MOTION: Upon a motion made by Council Member Dr. Harvey and seconded by Council Member Amezcua, to approve Ordinance No. 586 closing, vacating, and abandoning a 20' alley crossing Block 10, Town of Manor and directing the Mayor to execute the Special Warranty Deed.

Mayor Wallace Jr. open the floor for any questions to the motion.

The discussion was held regarding the abandonment of the alley.

There was no further discussion.

Motion to close carried 5-0

12. Consideration, discussion, and possible action on an ordinance authorizing the suspension of the maximum period a temporary sign may be displayed.

The City staff recommended that the City Council approve Ordinance No. 587 authorizing the suspension of the maximum period a temporary sign may be displayed.

Asst. Development Services Director Dunlop discussed the temporary sign suspension.

Ordinance No. 587: An Ordinance of the City of Manor, Texas, Authorizing the Suspension of The Maximum Time Period a Temporary Sign May be Displayed; Making Findings of Fact; Providing a Savings Clause; Providing an Effective Date; and Providing for Certain Related Matters.

MOTION: Upon a motion made by Council Member Dr. Harvey and seconded by Council Member Amezcua to approve Ordinance No. 587 authorizing the suspension of the maximum period a temporary sign may be displayed until December 31, 2020.

Mayor Wallace Jr. open the floor for any questions to the motion.

The discussion was held regarding local food trucks signs.

The discussion was held regarding current restrictions on signs per city code.

There was no further discussion.

Motion to close carried 5-0

Mayor Wallace Jr. adjourned the regular session of the Manor City Council into Executive Session at 8:03 p.m. on Wednesday, October 7, 2020, in accordance with the requirements of the Open Meetings Law.

EXECUTIVE SESSION

The Manor City Council convene into executive session pursuant to Section 551.071, Texas Government Code, in accordance with the authority in *Section 551.074 Personnel Matters - Job Descriptions* at 8:03 p.m. on Wednesday, October 7, 2020.

The Executive Session was adjourned at 10:02 p.m. on Wednesday, October 7, 2020.

OPEN SESSION

The City Council reconvened into Open Session pursuant to the provisions of Chapter 551 Texas Government Code and took action on item(s) discussed during Closed Executive Session at 10:02 p.m. on Wednesday, October 7, 2020.

Mayor Wallace Jr. opened the floor for action to be taken on the items discussed in the Executive Session.

There was no action taken.

ADJOURNMENT

The Regular Session of the Manor City Council Adjourned at 10:02 p.m. on Wednesday, October 7, 2020.

These minutes approved by the Manor City Council on the 21st day of October 2020.

APPROVED:

Dr. Larry Wallace Jr.
Mayor

ATTEST:

Lluvia T. Almaraz, TRMC
City Secretary

Texas Municipal League Economic Development Handbook



2020 Editor

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Updated January 2020

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A city and county may also require that persons buying a hotel retain out of the purchase price an amount sufficient to cover any delinquent hotel occupancy taxes that are due to the city.⁸⁹⁰ If the buyer does not remit such amount to the city and county (where applicable) or show proof that the hotel is current in remitting its hotel occupancy taxes, the buyer becomes liable for any delinquent hotel occupancy taxes due on the purchased hotel.

The purchaser of a hotel may request that the city and county provide a receipt showing that no hotel occupancy tax is due (a “Letter of No Tax Due”) on the property to be purchased.⁸⁹¹ The city and county are required to issue the statement not later than the 60th day after the request. If the city or county fails to issue the statement within the deadline, the purchaser is released from the obligation to withhold the amount due from the purchase price for that local governmental entity.⁸⁹²

Use of Local Hotel Occupancy Tax Revenues for Cities

There is a two-part test that every expenditure of local hotel occupancy tax revenue must pass to be valid. First, the expenditure must directly enhance and promote tourism and the convention and hotel industry.⁸⁹³ In other words, the expenditure must be likely to attract visitors from outside the city into the city or its vicinity and must have some impact on convention and hotel activity. If the expenditure is not reasonably likely to accomplish this result, it cannot be funded by hotel occupancy tax revenues. The hotel occupancy tax may not be used for general revenue purposes or to pay for governmental expenses not directly related to increasing tourism.⁸⁹⁴

Second, every expenditure must clearly fit into one of the statutory categories for the expenditure of local hotel occupancy tax revenues. These categories are as follows:⁸⁹⁵

1. Funding the establishment, improvement or maintenance of a convention center or visitor information center.⁸⁹⁶

Simply naming a facility a convention center or visitor information center does not bring it under this section. State law specifies that the facility must be one that is primarily used to host conventions and meetings.⁸⁹⁷ The term “convention center” is defined to include civic centers, auditoriums, exhibition halls, and coliseums that are owned by the city or another governmental entity or that are managed in whole or in part by the city and that are used primarily to host conventions and meetings. “Meetings” means gatherings of people that enhance and promote tourism and the convention and hotel industry.⁸⁹⁸ It also includes parking areas in the immediate vicinity of other convention center facilities. It does not include facilities that are not of the same general characteristics as the structures listed above.

⁸⁹⁰ *Id.* §§ 351.0041, 352.0041.

⁸⁹¹ *Id.* §§ 351.0041(c); 352.0041(c).

⁸⁹² *Id.* §§ 351.0041(d); 352.0041(d).

⁸⁹³ *Id.* § 351.101(a). *See* Tex. Att’y Gen. Op. No. GA-0124 (2003).

⁸⁹⁴ Tex. Tax Code. § 351.101(b).

⁸⁹⁵ *Id.* §§ 351.101(a), .0035 .110.

⁸⁹⁶ *Id.* § 351.101(a)(1).

⁸⁹⁷ *Id.* § 351.001(2).

⁸⁹⁸ *Id.*

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The attorney general has specifically ruled against the expenditure of local hotel occupancy taxes for a city recreational facility such as a golf course or a tennis court.⁸⁹⁹ However, the legislature has provided additional statutory authority that allows the use of local hotel occupancy tax for certain sporting related expenses if they meet certain criteria discussed below. It is possible that facilities that are not considered convention centers may still be able to receive funding if the expenditure can be justified under the categories described below for promotion of the arts or for historical preservation or restoration projects. A city may pledge the hotel occupancy tax revenue for the payment of bonds that are issued under Chapter 1504 of the Government Code for convention center facilities, as authorized under the hotel occupancy tax law.⁹⁰⁰

2. Paying the administrative costs for facilitating convention registration.⁹⁰¹

This provision applies only to administrative costs that are actually incurred for assisting in the registration of convention delegates or attendees. It may include covering the facility costs, personnel costs, and costs of materials for the registration of convention delegates or attendees.

3. Paying for tourism-related advertising and promotion of the city or its vicinity.⁹⁰²

This provision is strictly limited to expenditures for a solicitation or promotional program or advertising which is directly related to attracting conventions or tourism. The attorney general has ruled that this provision does not authorize advertising to attract new businesses or permanent residents to a city.⁹⁰³ Again, the purpose of the expenditure must be directly related to increasing tourism and the convention and hotel industry.

4. Funding programs that enhance the arts.⁹⁰⁴

This section authorizes the expenditure of hotel occupancy tax revenues for a variety of arts-related programs. It allows funding for the encouragement, promotion, improvement, and application of the arts including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms. The fact that a program directly promotes the arts is not in itself sufficient to justify expenditure of the local hotel tax. The funded event/facility must also have the impact of directly promoting both tourism and the hotel and convention industry.

5. Funding historical restoration or preservation programs.⁹⁰⁵

This category allows a city to spend its hotel occupancy tax revenues to enhance historical restoration and preservation projects or activities that encourage tourists and convention delegates to visit the city's preserved historic sites or museums. This funding can include the costs for rehabilitation or preservation of existing historic structures. Also, the costs of advertising, conducting solicitations, and promotional programs to encourage tourists and

⁸⁹⁹ See Tex. Att'y Gen. Op. Nos. JM-184 (1984), JM-965 (1988).

⁹⁰⁰ Tex. Tax Code § 351.102.

⁹⁰¹ *Id.* § 351.101(a)(2).

⁹⁰² *Id.* § 351.101(a)(3).

⁹⁰³ See Tex. Att'y Gen. Op. No. JM-690 (1987) ([Chapter 351 of the Tax Code] does not authorize the use of hotel/motel occupancy tax funds for advertising which is not related to attracting conventions, visitors or tourists).

⁹⁰⁴ Tex. Tax Code § 351.101(a)(4).

⁹⁰⁵ *Id.* § 351.101(a)(5).

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convention delegates to visit such preserved historic structures or museums can be funded under this category. The tax can be used on historic sites or museums that are in the immediate vicinity of the convention center facilities or visitor information centers, or anywhere else in the city where tourist and convention delegates frequently visit. The fact that a program results in historical restoration or preservation is not in itself sufficient to justify expenditure of the local hotel tax. The funded event/facility must also have the impact of directly promoting both tourism and the hotel and convention industry.

6. Funding costs to hold sporting events in certain municipalities.⁹⁰⁶

Certain cities may use hotel occupancy tax proceeds for expenses, including promotional expenses, directly related to sporting events in which the majority of participants are tourists. These cities are:

1. cities located in a county with a population of one million or less;⁹⁰⁷
2. a city with a population of more than 67,000 that is located in two counties with 90 percent of the city's territory located in a county with a population of at least 580,000, and the remaining territory located in a county with a population of at least four million.⁹⁰⁸; or
3. a city with a population of at least 200,000 and shares a border with:
 - a. a city with the population of at least 56,000 that borders Lake Ray Hubbard and is located in two counties, one of which has a population of less than 80,000, and
 - b. Lake Ray Hubbard.⁹⁰⁹

Such funding is permissible provided the sporting event substantially increases economic activity at hotels and motels within the city or its vicinity. This provision is intended to allow communities to fund the event costs for sporting tournaments that result in substantial hotel activity. For example, if a city had to pay an application fee to seek a particular sporting event or tournament, it could use this authority if the event would substantially increase economic activity at hotels and the city was within a county of one million or less population. The requirement that a majority of the participants must be "tourists" is included to prohibit the use of local hotel tax for sporting related facilities or events that are purely local (e.g., local recreation centers, local little league and parks events, etc.).

7. Enhancing and upgrading existing sport facilities or fields for certain municipalities.⁹¹⁰

This expenditure authorizes certain cities to use hotel occupancy tax revenue to upgrade certain existing sports facilities. Existing sports facilities or fields may be upgraded with hotel occupancy tax revenue if the facility is: 1) owned by the city;⁹¹¹ and 2) the sports facility or field

⁹⁰⁶ *Id.* § 351.101(a)(6).

⁹⁰⁷ *Id.* § 351.101(a)(6)(A).

⁹⁰⁸ *Id.* § 351.101(a)(6)(B).

⁹⁰⁹ *Id.* § 351.101(a)(6)(C) (as added by S.B. 1262, 86th Leg., R.S. Effective September 1, 2019) (Note: Parts of S.B. 1262 was repealed by H.B. 4347, 86th Leg., R.S. This section is based on what that section would have said had it not been repealed.)

⁹¹⁰ *Id.* § 351.101(a)(7).

⁹¹¹ *Id.* § 351.101(a)(7)(A).

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has been used in preceding calendar year a combined total of more than 10 times for district, state, regional, or national sports tournaments.⁹¹² The cities that are authorized to use hotel occupancy tax revenue for this expenditure are:

- 1) those with a population of 80,000 or more that are located in a county with a population of 350,00 or less;
- 2) those with a population of between 75,000 and 95,000 that are located in a county with a population of less than 200,000 but not more than 160,000;
- 3) those with a population of between 36,000 and 39,000 that are located in a county with a population of 100,000 or less that is not adjacent to a county with a population of more than 2 million;
- 4) those with a population of at least 13,000 but less than 39,000 and is located in a county that has a population of at least 200,000;
- 5) those with a population of at least 70,000 but less than 90,000 and no part of the city is located in a county with a population greater than 150,000;
- 6) those located in a county that has a population of at least 500,000, adjacent to the Texas-Mexico border and the county does not have a city with a population greater than 500,000;
- 7) those with a population of at least 25,000 but not more than 26,000 and is located in a county that has population of 90,000 or less;
- 8) those located in a county that has a population of not more than 300,000 and in which a component university of the University of Houston System is located;
- 9) those with a population of at least 40,000 and the San Marcos River flows through the municipality;
- 10) those with a population of more than 67,000 that are located in two counties with 90 percent of the city's territory located in a county with a population of at least 580,000, and the remaining territory located in a county with a population of at least four million;
- 11) those that contain an intersection of Interstates 35E and 35W and at least two public universities;
- 12) a city with a population of at least 200,000 and shares a border with a city with the population of at least 56,000 that borders Lake Ray Hubbard and is located in two counties, one of which has a population of less than 80,000, and Lake Ray Hubbard;⁹¹³
- 13) those that have a population of not more than 1,500 and are located in a county that borders Arkansas and Louisiana;⁹¹⁴
- 14) those with a population of not more than 10,000, that contain an outdoor gear and sporting goods retailer with retail space larger than 175,000 square feet, and that host an annual wiener dog race;⁹¹⁵

⁹¹² *Id.* § 351.101(a)(7)(C).

⁹¹³ *Id.* § 351.101(a)(7)(B)(i)-(xii). *See* fnnt 909 concerning this specific section.

⁹¹⁴ *Id.* § 351.101(n).

⁹¹⁵ *Id.* § 351.101(o).

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- 15) those in the county seat of a county that has a population of more than 10,000 and contains a portion of Mound Lake;⁹¹⁶
- 16) those that are the county seat of a county that is located on the Texas-Mexico border, have a population of 500,000 or more, and are adjacent to two or more counties, each of which have a population of 50,000 or more;⁹¹⁷
- 17) those that have a population of at least 6,000 and that are the county seat of a county that borders Louisiana, is bisected by a United States highway, and has a population of 75,000 or less;⁹¹⁸ or
- 18) A city with a population of at least 95,000 that is located in a county that is bisected by United States Highway 385 and has a population of not more than 140,000.⁹¹⁹

If hotel tax revenues are spent on enhancing or upgrading a sports facility, the city must determine the amount of “area hotel revenue” that was generated by hotel activity from sports events that were held at the hotel tax funded facility for five years after the upgrades to the sport facility are complete.⁹²⁰ The area hotel revenues that were generated from sports events at the hotel tax-funded facility over that five year period must at least equal the amount of hotel tax that was spent to upgrade the sports facility.⁹²¹ If the amount of hotel tax that was spent on the facility upgrades exceeds hotel revenue attributable to the enhancements over that five-year period, the city must reimburse the hotel occupancy tax revenue fund any such difference from the city’s general fund.⁹²² For example, if a city spent \$400,000 on improvements to its soccer fields, it would have to show at least \$400,000 in hotel night revenue, including hotel banquet revenue, directly attributable to events held at that soccer field over the five year period after the soccer field improvements were completed. If the city could only show \$300,000 in hotel industry revenue due to events held at that soccer field, the city would have to reimburse the city hotel tax for the \$100,000 difference from the city’s general fund.

8. Signage to sights and attractions.⁹²³

Cities are allowed to use hotel occupancy tax to erect signage to direct the public to sights and attractions that are visited frequently by hotel guests in the city.

9. Funding transportation systems for tourists.⁹²⁴

With conventions and large meetings, there is often a need to transport the attendees to different tourism venues. Cities are allowed to use of hotel occupancy tax to cover the costs for transporting tourists from hotels in and near the city to any of the following destinations:

- the commercial center of the city;
- a convention center in the city;
- other hotels in or near the city; and

⁹¹⁶ *Id.* § 351.10711.

⁹¹⁷ *Id.* § 351.1068.

⁹¹⁸ *Id.* § 351.1079.

⁹¹⁹ *Id.* § 351.10712.

⁹²⁰ *Id.* § 351.1076(a).

⁹²¹ *Id.*

⁹²² *Id.* § 351.1076(b).

⁹²³ *Id.* § 351.101(a)(9).

⁹²⁴ *Id.* § 351.110.

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- tourist attractions in or near the city.

The reimbursed transportation system must be owned and operated by the city, or privately owned and operated and financed in part by the city. The law specifically prohibits the use of the local hotel occupancy tax to cover the costs for transporting the general public by any such system.

Use of Local Hotel Occupancy Tax Revenues for Counties

Just like cities, counties that are authorized to impose hotel occupancy tax have to follow a two-part test to determine that every expenditure of the tax is valid.⁹²⁵ First, the expenditure must directly enhance and promote tourism and the convention and hotel industry. The expenditure must be likely to attract visitors from outside the county into the county or its vicinity and must have some impact on convention and hotel activity. If the expenditure is not reasonably likely to accomplish this result, it should not be funded by hotel occupancy tax revenues. The hotel occupancy tax may not be used for general revenue purposes or general governmental operations of a county.⁹²⁶

Second, a county can only spend hotel occupancy tax revenue on those categories of expenditures that the county has specifically been given permission by statute to do so.⁹²⁷ Usually, this depends on either the population of the county or where the county is geographically located or both.

Use of Tax Proceeds to Cover Administrative Expenses

The implementation of programs or improvements under the above categories may involve certain administrative costs. State law allows proceeds of the tax to be used to cover the portion of administrative costs that are directly attributable to work on facilities or events that may be funded by the tax.⁹²⁸ For example, efforts to promote the city or county as a tourist and convention locale often involve some travel expenses. There are two circumstances under which cities or counties may spend hotel occupancy tax revenues for travel-related expenditures.⁹²⁹

- First, tax revenues may be spent to pay for travel to attend an event or to conduct an activity that is directly related to the promotion of tourism and the convention and hotel industry. “Tourism” is defined in the Tax Code as guiding or managing the travel of individuals from their residence to a different city or county for pleasure, recreation, education, or culture.⁹³⁰
- Second, local hotel occupancy tax revenues may be spent on travel that is directly related to the performance of the person’s job in an efficient and professional manner. This travel should facilitate the acquisition of skills and knowledge which will promote tourism and the convention and hotel industry.

⁹²⁵ *Id.* § 352.1031(a) (This statute refers to Tax Code § 351.101).

⁹²⁶ *Id.* § 352.1031(b).

⁹²⁷ *Id.* §§ 352.101-.106; .108; .110; .111; .113.

⁹²⁸ *Id.* §§ 351.101(e)-(f), 352.1015(c)-(d).

⁹²⁹ *Id.*

⁹³⁰ *Id.* §§ 351.001(5), (6), 352.001(3), (4).

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Entities that manage activities funded by the hotel occupancy tax may spend some of the tax for certain day-to-day operational expenses. These expenses may include supplies, salaries, office rental, travel expenses, and other administrative costs. These costs can be reimbursed if they are incurred directly in the promotion and servicing of expenditures authorized under the hotel occupancy tax laws. The portion of the administrative costs that are covered may not exceed the percentage of the cost that is attributable to the activity funded by the hotel occupancy tax. In other words, administrators who spend 33 percent of their time overseeing hotel occupancy tax funded programs could seek funding for no more than 33 percent of their salary or 33 percent of other related overhead costs.⁹³¹

Use of State Tax Revenue for Qualified Hotel Projects by Certain Cities

Certain cities can receive certain state tax revenues for a qualified hotel project or other ancillary facilities of a qualified project.⁹³² Generally, the hotel will be located on city-owned land that is connected to or within 1,000 feet of a qualified convention center facility.⁹³³ The state tax revenues will be used to pay bonds, obligations, and contractual obligations issued or entered in connection with the qualified project⁹³⁴ involving qualified convention center facilities and the qualified hotel.⁹³⁵ A city will be able to pledge this revenue for 10 years following the date a qualified hotel was open for initial occupancy and would not be entitled to pledge or receive this revenue unless a qualified project was commenced before September 1, 2023.⁹³⁶ The comptroller would deposit revenue collected by or forwarded to the comptroller that had been pledged by the city in a separate account outside of the state treasury and pay the revenue to the city at least quarterly.⁹³⁷

Additional Limits on Expenditures

Texas statutes provide certain additional rules regarding the percentage of hotel occupancy tax revenues that may be spent on each of the categories of expenditures discussed above. The rules differ according to the population of the city or the description of the county in the Tax Code.

General Rules of Allocation of Hotel Occupancy Tax Revenue

Minimum Expenditure That Must be Spent on Advertising and Promotion

A city with a population of 200,000 or greater is required to spend at least 50 percent of the hotel occupancy tax collected by the city on advertising and conducting solicitations and promotional programs to attract tourists to the city or its vicinity.⁹³⁸ However, it should be noted that if a city takes in over \$2 million annually in hotel taxes, it is not subject to this 50 percent requirement.⁹³⁹

⁹³¹ *Id.* §§ 351.101(e), 352.1015(c).

⁹³² *Id.* §§ 351.151 - .160.

⁹³³ *Id.* §§ 351.151(3) (definition of “qualified hotel”); .151(2) (definition of “qualified convention center”).

⁹³⁴ *Id.* § 351.151(4) (definition of “qualified project”).

⁹³⁵ *Id.* § 351.155.

⁹³⁶ *Id.* §§ 351.157(e); .158. *See id.* §§ 351.156; .157 (describes which certain tax revenue a city is entitled to for this subchapter).

⁹³⁷ *Id.* §§ 351.159; .160.

⁹³⁸ *Id.* § 351.103(a).

⁹³⁹ *Id.* § 351.103(b). *See also* Tex. Att’y Gen. Op. No. JC-105 (1999) (Pursuant to Section 351.103(b) of the Texas Tax Code, the allocation restriction of Section 351.103(a) of the Tax Code does not apply to a

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If the city has a population of less than 200,000, the amount that the city can spend on advertising and conducting solicitations and promotional programs depends on the hotel occupancy tax rate adopted by the city. If the city adopted a hotel occupancy tax rate of not more than three percent, at least one-half of one percent of the rate must be spent on advertising and promotion of the city and its vicinity.⁹⁴⁰ If the city adopted a hotel occupancy tax rate that exceeds three percent, at least one percent of the rate must be spent on advertising and promotion of the city and its vicinity.⁹⁴¹ For example, if a city has a seven percent hotel occupancy tax rate, at least one-seventh of the hotel occupancy tax proceeds must be spent on advertising and promoting the city and its vicinity to attract tourists and hotel and convention activity. Also, a city with a population of at least 200,000 and shares a border with a city with the population of at least 56,000 that borders Lake Ray Hubbard and is located in two counties, one of which has a population of less than 80,000, and Lake Ray Hubbard must spend 30 percent of the tax collected on advertising and conducting solicitations and promotional programs to attract tourists to the city or its vicinity.⁹⁴²

Maximum Expenditure for the Arts

Generally, cities with populations of less than 1.6 million are limited to a set percentage with regard to art programs. Such cities may not spend on art programs more than 15 percent of their hotel occupancy tax revenues or no more than the amount of tax generated by the city at the tax rate of one percent of the cost of a room, whichever is greater.⁹⁴³ If the city has a population of more than 1.6 million (Houston), then not more than 19.30 percent of hotel occupancy tax revenue or no more than the amount of tax generated by the city at the tax rate of one percent of the cost of a room, whichever is greater, can be spent on art programs.

Maximum Expenditure for Historical Restoration and Preservation

Cities with a population of more than 125,000 may not spend more than 15 percent of their tax revenue for historical restoration and preservation projects and activities.⁹⁴⁴ If a city fails to allocate money for a convention center purpose, the Tax Code prohibits that city from allocating more than 50 percent of its hotel occupancy tax for historical restoration or preservation projects.⁹⁴⁵ If a city with a population under 125,000 does spend some of its hotel occupancy tax on a convention center, there is no statutory limitation on expenditures for historic preservation and restoration.

Delegating the Management of Funded Activities

The governing body of a city and county may, by written contract, delegate the management or supervision of programs and activities funded with revenue from the hotel occupancy tax.⁹⁴⁶ This

municipality which has collected in excess of \$2 million in hotel occupancy tax revenue in the most recent calendar year).

⁹⁴⁰ Tex. Tax Code § 351.103(a)(1).

⁹⁴¹ *Id.* § 351.103(a)(2).

⁹⁴² *Id.* § 351.103(b-1). *See* fnt 909 concerning this specific section.

⁹⁴³ *Id.* § 351.103(c).

⁹⁴⁴ *Id.*

⁹⁴⁵ *Id.* § 351.103(d).

⁹⁴⁶ *Id.* §§ 351.101(c), 352.1015.

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delegation may be made to a person, another governmental entity, or to a private organization.⁹⁴⁷ The delegation of this authority is often made to the local chamber of commerce or to the convention and visitor bureau.

There are a number of procedural requirements that the legislature has imposed on entities that undertake management of these funds. For example, a city or county is required to approve in writing the portion of an entity's annual budget that involves expenditure of hotel occupancy tax funds. This approval must be sought in advance of the expenditures. Hotel tax funded entities also must submit at least quarterly reports to the city council or the commissioners court on their expenditures of the tax revenues. The reports must list all expenditures made by the entity from the hotel occupancy taxes provided by the city or county.⁹⁴⁸ The entity is required to keep complete and accurate financial records of each expenditure of hotel occupancy tax revenue.⁹⁴⁹ These records must be made available for inspection and review upon the request of the governing body or upon a request from any other person.

The entity delegated authority to manage these funded programs undertakes a fiduciary duty with respect to this revenue. Such entities are required to maintain the city hotel occupancy tax revenue in a separate bank account established for that purpose. This account may not be commingled with any other account.⁹⁵⁰

Documenting Activities Funded by the Hotel Occupancy Tax

Before making a hotel occupancy tax expenditure, a city, county, or other hotel occupancy tax funded entity must specify each scheduled activity, program, or event that is directly funded by hotel occupancy tax proceeds or has its administrative costs funded in whole or in part by the tax. The activity or program must directly relate to enhancing and promoting tourism and the convention and hotel industry.⁹⁵¹

If the city or county delegates to another entity the management or supervision of an activity or event funded by the local hotel occupancy tax, each entity that is funded by the tax shall, before making an expenditure, specify each scheduled activity, program, or event that is directly funded by the tax or has its administrative costs funded in whole or in part by the tax. Further, the list must indicate the activities and programs that are directly enhancing and promoting tourism and the convention and hotel industry.⁹⁵² For cities, this list of expenditures should be provided to the city secretary or the city secretary's designee.⁹⁵³

⁹⁴⁷ *Id.* (Please note that a legislative body such as a city council is limited in the degree to which it may delegate its authority to another entity. See, for example, *Texas Boll Weevil Eradication Foundation, Inc. v. Lewellen*, 952 S.W.2d 454 (Tex. 1997). See also *Andrews v. Wilson*, 959 S.W.2d 686 (Tex. App. -- Amarillo, 1998)).

⁹⁴⁸ *Id.* §§ 351.101(c), 352.1015(a).

⁹⁴⁹ *Id.* §§ 351.101(d), 352.1015(b).

⁹⁵⁰ *Id.* §§ 351.101(c), 352.1015(a).

⁹⁵¹ *Id.* §§ 351.108(b), 352.109(b).

⁹⁵² *Id.* §§ 351.108(c), 352.109(c).

⁹⁵³ *Id.* § 351.108(d).

Local Hotel Occupancy Tax Reporting

Cities are required to annually report hotel occupancy tax information to the comptroller.⁹⁵⁴ Not later than February 20 of each year, a city that imposes a hotel occupancy tax must submit to the comptroller:

- (1) the rate of the city’s hotel occupancy tax and, if applicable, the rate of the city’s hotel occupancy tax supporting a venue project;
- (2) the amount of revenue collected during the city’s preceding fiscal year from the city’s hotel occupancy tax and, if applicable, the city’s hotel occupancy tax supporting a venue project; and
- (3) the amount and percentage of hotel occupancy tax revenue allocated by the city for certain categories of expenditure during the city’s preceding fiscal year.⁹⁵⁵

Cities must comply with the annual reporting requirements by either submitting the report to the comptroller on a form prescribed by the comptroller, or alternatively providing the comptroller a direct link to, or a clear statement describing the location of, the information required to be reported that is posted on the city’s website.⁹⁵⁶

More information on reporting through the comptroller’s office can be found at: <https://comptroller.texas.gov/transparency/local/hotel-receipts/>.

County Development District

The Texas Legislature has recognized that it is sometimes advantageous to pursue economic development at the county level. The County Development District Act provides counties that have a population of 400,000 or less with a means to generate sales tax funds for local economic development and tourism-related projects. Such districts are initiated by a petition of landowners in the proposed district. Upon approval of the petition by the county, an election is called to gain the voters’ consent to create the district and to levy a sales tax to fund district projects. A county development district may acquire or dispose of the same sorts of projects and pay the same sorts of costs as a Type B economic development corporation. However, a county development district project must promote and develop tourism within the county.⁹⁵⁷

⁹⁵⁴ *Id.* § 351.009

⁹⁵⁵ *Id.* § 351.009(a).

⁹⁵⁶ *Id.* § 351.009(b).

⁹⁵⁷ See Tex. Loc. Gov’t Code §§ 383.002 (“This chapter furthers the public purpose of developing and diversifying the economy of this state by providing incentives for the location and development of projects in certain counties to **attract visitors and tourists.**”); 383.003(a) (“[s]mall and medium-sized counties in this state need incentives for the development of public improvements to **attract visitors and tourists** to those counties...”); 383.003(b) (“[t]he means and measures authorized by this chapter are in the public interest and serve a public purpose of this state ... by providing incentives for the location and development in certain counties of this state of projects that **attract visitors and tourists** ...”); 383.023(5) (a petition proposing a county development corporation must state that the district “will serve the public purpose of **attracting visitors and tourists** to the county.”)(emphasis added). See also, Tex. Att’y Gen. Op. No. JC-291 (2000) at 7 - 10 (A county development district created under Chapter 383 of the Local Government Code is not authorized to levy ad valorem taxes. A county development district may undertake a project only if it is consistent with the purpose of Chapter 383 – “providing incentives for the location and development of projects in certain counties to attract visitors and tourists.”).