

# Mt. Vernon Economic Development Corporation

City of Mt. Vernon

# Texas Local Government Code Chapters 501 & 505

## Economic Development Corporations

- “Authorizing Municipality” – City Council has the authority to create the economic development corporation.
- City Council appoints the Board of Directors
  - 7 directors
  - 2 year term
  - May remove director at anytime without cause.
  - Must be resident of municipality or county in which most areas of municipality is located.
  - 3 directors must be persons who are not employees, officers or members of the governing body of the municipality.
- Board of directors shall appoint president, secretary and other officers the City Council deems necessary.

# Texas Local Government Code Chapters 501 & 505

## General EDC Powers, Duties, & Liability

- May contract with other private corporations to:
  - Carry out an industrial program or objective, and
  - Assist with the development or operation of an economic development program or objective consistent with the purposes and duties specified by this subtitle.
- Limitation on revenues spent for promotional purposes – 10% cap.
- EDC may issue bonds (Chapter 501) to finance economic development projects and may use EDC revenues to pay for bond finance (Chapter 505).
  - Bonds are not a debt nor give rise to a claim against the city, except for the city sales tax granted to the EDC.
- Appraisal required before purchase of property with bond proceeds.
- EDC may exercise eminent domain power only:
  - With approval and action by the city
  - In accordance with and subject to the laws applicable to the city.
- Liability – the following are not liable for damages arising from the performance of a governmental function of the EDC or city:
  - Corporation
  - Director of the corporation
  - Municipality
  - A member of the governing body of the municipality; or
  - An employee of the municipality or corporation.

# Texas Local Government Code Chapters 501 & 505

## Authorized Projects

- Definition: "project" means land, buildings, equipment, facilities, expenditures, and improvements included in the definition of "project" under Chapter 501.
  - Projects related to recreational or community facilities.
  - Projects related to affordable housing.
  - Projects related to water supply facilities and water conservation programs.
  - Projects related to business enterprises which create or retain primary jobs. *(A primary job is a job that produces goods and/or services for customers that are predominantly outside the community. This creates new "outside" dollars for the community).*
- Projects related to airport facilities in certain municipalities - "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for the development or expansion of airport or railport facilities, including hangars, maintenance and repair facilities, cargo facilities, and related infrastructure located on or adjacent to an airport or railport facility.
  - Requires 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 Sections 505.151 through 505.156; and
  - Requires the governing body of which has authorized the development agreement by adopting a resolution at a meeting called as authorized by law.

# Texas Local Government Code Chapters 501 & 505

## Authorized Projects

- Projects related to business development in certain small municipalities
  - (a) For a Type B corporation authorized to be created by a municipality with a population of 20,000 or less, "project" also includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the corporation's board of directors to promote new or expanded business development.
  - **(b) A Type B corporation may not undertake a project authorized by this section that requires an expenditure of more than \$10,000 until the governing body of the corporation's authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings.**
- Hearing required to undertake a project
  - (a) **Except as provided by Subsection (b), a Type B corporation shall hold at least one public hearing on a proposed project before spending money to undertake the project.**
  - (b) A Type B corporation the creation of which was authorized by a municipality with a population of less than 20,000 is not required to hold a public hearing under this section if the proposed project is defined by Subchapter C, Chapter 501.
    - Creation of primary jobs
    - Job training
    - Certain infrastructure improvements
    - Projects related to certain military bases or missions
    - Career center projects outside a Junior College

# Texas Local Government Code Chapters 501 & 505

## EDC Powers and Limitations – Projects

- Authority to finance projects
- Lease or sell a project to a user
- Convey property to an institution of higher education
- Make loans to user to finance a project
- Agreements must benefit corporation
- Default on agreement –enforcement (claw-back provision)
- **Performance agreements**
  - (a) A corporation **may not provide** a direct incentive to or make an expenditure on behalf of a business enterprise under a project as defined by Subchapter C of this chapter or by Subchapter D , Chapter 505, unless the corporation enters into a performance agreement with the business enterprise.
  - (b) A performance agreement between a corporation and business enterprise must:
    - (1) provide, at a minimum, for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by the corporation under the agreement; and
    - (2) specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement.

# Texas Local Government Code Chapters 501 & 505

## EDC Finance – Sales and Use Tax

- Tax Authorized - The governing body of the authorizing municipality by ordinance may adopt a sales and use tax for the benefit of a Type B corporation if the tax is approved by a majority of the voters of the municipality voting at an election held for that purpose in accordance with Chapter 321 , Tax Code.
  - ½ cent to fund EDC
- Tax Uses:
  - Payment of project costs
  - Payment of interest and principal on bonds or other obligations used to fund the project
  - Payment of maintenance and operational costs for projects

# Texas Local Government Code Chapters 501 & 505

## EDC Board Obligations

- 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.



# Texas Local Government Code Chapters 501 & 505

## EDC Oversight

- **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 anytime. 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.

# Texas Local Government Code Chapters 501 & 505

## Public Hearings on Projects

- 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.

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.

**If a public hearing is required, the hearing must be held before the corporation expends any Type B funds on the project.** There is nothing in the Act that prohibits the Type B corporation from holding one public hearing to consider a group of Type B projects. After the **projects have been considered at a public hearing and 60 days have passed since the first public notice of the nature of the projects, the development corporation is free to make expenditures** related to the projects pursuant to the adopted budget, subject to other applicable requirements.

# Texas Local Government Code Chapters 501 & 505

## Public Hearings on Projects

- A Type B corporation may not undertake a project authorized by this section that requires an expenditure of more than \$10,000 until the governing body of the corporation's authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings.

# Texas Local Government Code Chapters 501 & 505 Timeline

- Incentive Process and Timeline:
  - Completed application must be returned to the EDC office at Mt. Vernon City Hall prior to work commencing.
  - For projects involving incentives between \$1.00 - \$4,999.00 the EDC must hold a public hearing on the project and allow 60 days to pass since the first public notice of the project prior to expending funds.
  - For projects from \$5,000 - \$9,999, the EDC must hold a public hearing on the project and allow 60 days to pass since the first notice of the project, and the City Council must approve the project and incentives, prior to expending EDC funds on the project.
  - For projects \$10,000 and above, the EDC must hold a public hearing on the project and allow 60 days to pass since the first notice of the project, and the City Council adopts a resolution authorizing the project after giving it two separate readings, prior to expending EDC funds on the project.

# Resources for Further Information

- LOCAL GOVERNMENT CODE TITLE 12. PLANNING AND DEVELOPMENT  
SUBTITLE C1. ADDITIONAL PLANNING AND DEVELOPMENT  
PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL  
GOVERNMENT CHAPTER 501. PROVISIONS GOVERNING  
DEVELOPMENT CORPORATIONS  
<https://statutes.capitol.texas.gov/Docs/LG/htm/LG.501.htm>
- LOCAL GOVERNMENT CODE TITLE 12. PLANNING AND DEVELOPMENT  
SUBTITLE C1. ADDITIONAL PLANNING AND DEVELOPMENT  
PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL  
GOVERNMENT CHAPTER 505. TYPE B CORPORATIONS  
<https://statutes.capitol.texas.gov/Docs/LG/htm/LG.505.htm>

# Resources for Further Information

- Texas Municipal League Economic Development Handbook  
2022 Edition  
<https://www.tml.org/185/Economic-Development-Handbook-2022>
- Texas Comptroller's Office: TYPE A AND B ECONOMIC DEVELOPMENT  
CORPORATIONS OVERVIEW  
<https://comptroller.texas.gov/economy/local/type-ab/>
- Texas Economic Development Council  
<https://texasedc.org/>  
<https://texasedc.org/programs/order-webinars-1>

# Questions?



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