

# **Type A and Type B Sales Tax**

**Texas Economic Development Council  
Economic Development Sales Tax Workshops  
2021-2022**

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## **General:**

### **1. What is Type A and Type B sales tax?**

Type A and Type B sales tax (formerly referred to as the Section 4A and Section 4B sales tax) are sales taxes which cities may impose for economic development. These sales taxes are authorized pursuant to the Development Corporation Act (also referred to as the “Act”).<sup>1</sup> Cities must hold a sales tax election to adopt either a Type A or Type B sales tax. If adopted, the city could not exceed the two percent (2%) local sales tax limit. The sales tax for economic development is one of the most popular tools used by cities to promote economic development.

### **2. How many cities have adopted a Type A or Type B sales tax?**

Currently, there are 211 Type A economic development corporations, and 515 Type B economic development corporations for a total of 726 corporations.<sup>2</sup>

## **Adoption of Tax:**

### **3. How are Type A or Type B sales tax adopted?**

To adopt either a Type A or Type B sales tax the voters must approve the sales tax at a sales tax election.<sup>3</sup>

### **4. Who can initiate a Type A or Type B sales tax election?**

Type A or Type B economic development sales tax may be initiated by city council approving an ordinance calling an election on the imposition of the sales tax; or by a petition signed by a number of qualified voters that equals at least twenty percent (20%) of the voters who voted in the most recent regular city election. If the city receives a petition signed by the required number of qualified voters then the city is required to pass an ordinance calling an election on the imposition of the tax.<sup>4</sup>

### **5. When must a Type A or Type B sales tax election be held?**

Type A or Type B sales tax election must be held on a uniform election date as provided by Chapter 41 of the Election Code. The uniform election dates are as follows: (1) the first Saturday in May in an odd-numbered year; (2) the first Saturday in May in an even-numbered year, for an election

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<sup>1</sup> TEX. LOC. GOV'T CODE Chapters 501 - 505 (formerly Art. 5190.6 of the Texas Revised Civil Statutes).

<sup>2</sup> TEXAS COMPTROLLER, ECONOMIC DEVELOPMENT CORPORATION REPORT, FISCAL YEARS 2018-2019.

<sup>3</sup> TEX. LOC. GOV'T CODE ANN. §§ 504.251 & 505.251.

<sup>4</sup> TEX. LOC. GOV'T CODE ANN. §§ 504.255 & 505.256.

held by a political subdivision other than a county; or (3) the first Tuesday after the first Monday in November.<sup>5</sup>

## **6. Can every city adopt a Type A or Type B sales tax?**

Not every city is authorized to adopt a Type A sales tax. Yet, it appears every Texas city could adopt a Type B sales tax provided the city does not exceed two percent (2%) in local sales tax.

Eligible Type A cities include a city located in a county with a population of 500,000 or fewer; a city which 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 County; or a city which is under 50,000 population and is within the San Antonio or Dallas Rapid Transit Authority territorial limits, but has not elected to become part of the transit authority.<sup>6</sup>

Eligible Type B cities include an eligible Type A city; a city located in a county with a population of 500,000 or more according to the most recent federal decennial census and the current combined sales tax rate does not exceed eight and one-quarter percent (8.25%) at the time the Type B tax is proposed; or a city which has a population of 400,000 or more according to the most recent federal decennial census, and is located in more than one county, and the combined state and local sales tax rate does not exceed eight and one-quarter percent (8.25%).<sup>7</sup> Given, an eligible Type A city is a city located in a county with a population under 500,000, and an eligible Type B city is a city located in a county with a population of 500,000 or more, it appears every Texas city is eligible to adopt the Type B sales tax provided the local sales tax rate does not exceed two percent (2%).<sup>8</sup>

## **7. If the Type A or Type B sales tax proposition fails at a sales tax election when could the city resubmit a Type A or Type B sales tax proposition to the voters for voter approval?**

If voters do not approve a Type A or Type B sales tax proposition, another election to adopt a Type A or Type B sales tax could not be held for one (1) year.<sup>9</sup> The Election Code allows a municipality to hold a subsequent election on the corresponding uniform election date that occurs approximately one (1) year later, even if the date falls several days before a full year has elapsed.<sup>10</sup>

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<sup>5</sup> TEX. ELEC. CODE ANN. § 41.001(a).

<sup>6</sup> TEX. LOC. GOV'T CODE ANN. § 504.002.

<sup>7</sup> TEX. LOC. GOV'T CODE ANN. § 505.002.

<sup>8</sup> TEX. LOC. GOV'T CODE ANN. §§ 504.002(1), 505.002(1), 505.002(3).

<sup>9</sup> TEX. LOC. GOV'T CODE ANN. §§ 504.255 and 505.256 and TEX. TAX CODE ANN. § 321.406.

<sup>10</sup> TEX. ELEC. CODE ANN. § 41.0041(a).

**Tax Rate:**

**8. What is the tax rate for a Type A or Type B sales tax?**

The sales tax rate for either a Type A or Type B sales tax is in increments of 1/8<sup>th</sup> of one percent which does not result in a combined rate that exceeds two percent (2%).<sup>11</sup>

**9. Can Type A or Type B increase/decrease a tax rate once it is adopted?**

The Type A sales tax may be increased or reduced if the proposition is approved by the voters at an election called and held for that purpose. A city which imposes a Type A tax may, on its own motion, call an election to increase or reduce the Type A sales tax. Further, on a petition signed by at least ten percent (10%) or more of the registered voters of the city, the city may be required to call an election on a proposed increase or decrease of the Type A tax rate.<sup>12</sup> In 2017, the Texas Legislature approved legislation which authorizes the voters on a petition signed by ten percent (10%) or more of the registered voters requesting an election to require the city council to order an election on whether to increase or reduce the Type B sales tax rate.<sup>13</sup>

**10. Can a city create more than one Type A or Type B corporation?**

A city cannot create two Type A or two Type B corporations. The Development Corporation Act specifically precludes the creation of more than one Type B corporation.<sup>14</sup> Likewise, Type A prohibits the creation of more than one Type A corporation.<sup>15</sup> Nevertheless, provided the total local sales and use taxes did not exceed two percent (2%), an eligible city could create one Type A corporation and one Type B corporation.

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<sup>11</sup> TEX. LOC. GOV'T CODE ANN. §§ 504.252(b) and 505.252(b).

<sup>12</sup> TEX. LOC. GOV'T CODE ANN. § 504.258.

<sup>13</sup> See, TEX. LOC. GOV'T CODE ANN. § 505.2566.

<sup>14</sup> TEX. LOC. GOV'T CODE ANN. § 505.003(b) (provides "[a] municipality may not authorize the creation of more than one Type B corporation.").

<sup>15</sup> TEX. LOC. GOV'T CODE ANN. § 504.003(b) (provides "[a] municipality may not authorize the creation of more than one Type A corporation.").

## **Permissible Expenditures of Sales Tax Proceeds:**

### **11. What are permissible Type A projects?**

#### **Type A Projects Which Must Create or Retain Primary Jobs**

In 2003, the Texas Legislature enacted a requirement that certain Type A projects create or retain primary jobs. The term “primary job” is defined further in the Act and is discussed below.<sup>16</sup> However, not all Type A projects are required to create or retain primary jobs. The Act requires the following Type A projects create or retain primary jobs:

- (1) Type A corporations may provide land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are for the creation or retention of primary jobs; and that are found by the board of directors to be required or suitable for the development, retention, or expansion of:<sup>17</sup>
  - (a) manufacturing and industrial facilities;
  - (b) research and development facilities;
  - (c) military facilities, including closed or realigned military bases;
  - (d) recycling facilities;
  - (e) distribution centers,
  - (f) small warehouse facilities capable of serving as decentralized storage and distribution centers;
  - (g) primary job training facilities for use by institutions of higher education; and
  - (h) regional or national corporate headquarters facilities.

#### **Type A Projects Which Are Not Required to Create or Retain Primary Jobs**

The following Type A projects are not required to create or retain primary jobs:

- (1) job training classes;<sup>18</sup>
- (2) certain targeted infrastructure projects necessary to promote or develop new or expanded business enterprises, limited to streets and roads, rail spurs, water and sewer utilities, and electric utilities, gas utilities, drainage, site improvements, and related improvements, telecommunications and Internet improvements, and beach remediation along the Gulf of Mexico;<sup>19</sup>

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<sup>16</sup> TEX. LOC. GOV'T CODE ANN. § 501.002(12).

<sup>17</sup> TEX. LOC. GOV'T CODE ANN. §§ 501.101(2)(A)-(L).

<sup>18</sup> TEX. LOC. GOV'T CODE ANN. §§ 501.102 and 501.162.

<sup>19</sup> TEX. LOC. GOV'T CODE ANN. § 501.103. *See also*, Op. Tex. Att'y Gen. No. KP-0065 (2016) (discussion on definition of “site improvements”).



- (3) land, buildings, equipment, facilities, improvements, and expenditures required or suitable for use for a career center if the area to be benefited by the career center is not located within the taxing jurisdiction of a junior college district;<sup>20</sup>
- (4) general aviation business service airport that is an integral part of an industrial park;<sup>21</sup>
- (5) port-related facilities to support waterborne commerce;<sup>22</sup> and
- (6) development, improvement, expansion, or maintenance of facilities relating to the operation of commuter rail, light rail, or motor buses.<sup>23</sup>

In addition, certain Type A corporations meeting the requisite revenue amounts, population, and other requirements specified in the Act, may assist with certain Type A projects without the creation or retention of primary jobs. These projects include the following:

- (1) Type A corporations located within twenty-five (25) miles of an international border, with a city 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 (12) month period may assist with land, buildings, facilities, infrastructure, and improvements required or suitable for the development or promotion of new or expanded business enterprises through transportation facilities including airports, hangars, railports, rail switching facilities, maintenance and repair facilities, cargo facilities, marine ports, inland ports, mass commuting facilities, parking facilities, and related infrastructure located on or adjacent to an airport or railport facility;<sup>24</sup> and
- (2) Type A corporations, located in Hidalgo county, may provide certain assistance with infrastructure necessary to promote or develop new or expanded business enterprises, including airports, ports, and sewer or solid waste disposal facilities, provided Type A sales tax revenue does not support the project.<sup>25</sup>

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<sup>20</sup> TEX. LOC. GOV'T CODE ANN. § 501.105.

<sup>21</sup> TEX. LOC. GOV'T CODE ANN. § 504.103(c)(1).

<sup>22</sup> TEX. LOC. GOV'T CODE ANN. § 504.103(c)(2).

<sup>23</sup> TEX. LOC. GOV'T CODE ANN. § 502.052.

<sup>24</sup> TEX. LOC. GOV'T CODE ANN. §§ 501.106 and 504.103(c)(3).

<sup>25</sup> TEX. LOC. GOV'T CODE ANN. § 501.107.

**12. What are permissible Type A projects for a Type A corporation located in a city with a population of less than 7,500, and which has a Type B corporation?**

In 2011, the Texas Legislature amended the statute by addressing the authority of a Type A corporation located within a city with a population of less than 7,500 and which also has a Type B corporation. The city council by ordinance may authorize a Type A corporation to undertake any project that a Type B corporation may undertake. The statute also provides that the city council by ordinance may also revoke the authority to pursue Type B projects. Yet, the revocation would not affect the authority of the Type A corporation to complete the project or to repay any debt incurred in connection with the project.<sup>26</sup>

**13. What are permissible Type B projects?**

**Type B Projects Which Must Create or Retain Primary Jobs**

Not all Type B projects are required to create or retain primary jobs. Nonetheless, certain sections of the Act require certain Type B projects create or retain primary jobs. Consequently, Type B corporations may assist with the following projects, provided the following projects create or retain a primary job:

- (1) Type B corporations may provide land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are for the creation or retention of primary jobs; and that are found by the board of directors to be required or suitable for the development, retention, or expansion of:<sup>27</sup>
  - (a) manufacturing and industrial facilities;
  - (b) research and development facilities,
  - (c) military facilities, including closed or realigned military bases;
  - (d) transportation facilities, including airports, hangars, railports, rail switching facilities, maintenance and repair facilities, cargo facilities, related infrastructure located on or adjacent to an airport or railport facility, marine ports, inland ports, mass commuting facilities, and parking facilities;
  - (e) sewage or solid waste disposal facilities;
  - (f) recycling facilities;
  - (g) air or water pollution control facilities;
  - (h) distribution centers;
  - (i) small warehouse facilities capable of serving as decentralized storage and distribution centers;
  - (j) primary job training facilities for use by institutions of higher education; and

<sup>26</sup> TEX. LOC. GOV'T CODE ANN. § 504.171.

<sup>27</sup> TEX. LOC. GOV'T CODE ANN. § 501.101.

- (k) regional or national corporate headquarters facilities.
- (2) 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:<sup>28</sup>
  - (a) public safety facilities;
  - (b) streets and roads;
  - (c) drainage and related improvements;
  - (d) demolition of existing structures;
  - (e) general municipally owned improvements; and
  - (f) any improvements or facilities that are related to a project described by this subsection; and any other project that the board of directors in its discretion determines promotes or develops new or expanded business enterprises that create or retain primary jobs.

#### **Type B Projects Which Are Not Required to Create or Retain Primary Jobs**

Not all Type B projects are required to create or retain primary jobs. The following Type B projects are not required to create or retain primary jobs:

- (1) job training classes;<sup>29</sup>
- (2) certain targeted infrastructure projects necessary to promote or develop new or expanded business enterprises, limited to streets and roads, rail spurs, water and sewer utilities, and electric utilities, gas utilities, drainage, site improvements, and related improvements, telecommunications and Internet improvements, and beach remediation along the Gulf of Mexico;<sup>30</sup>
- (3) land, buildings, equipment, facilities, improvements, and expenditures required or suitable for use for a career center if the area to be benefited by the career center is not located within the taxing jurisdiction of a junior college district;<sup>31</sup>
- (4) projects consisting of professional and amateur (including children's) sports, athletic, entertainment, tourist, convention, and public park purposes and events;<sup>32</sup>

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<sup>28</sup> TEX. LOC. GOV'T CODE ANN. § 505.155.

<sup>29</sup> TEX. LOC. GOV'T CODE ANN. §§ 501.102 and 501.162.

<sup>30</sup> TEX. LOC. GOV'T CODE ANN. § 501.103. *See also*, Op. Tex. Att'y Gen. No. KP-0065 (2016) (discussion on definition of "site improvements").

<sup>31</sup> TEX. LOC. GOV'T CODE ANN. § 501.105.

<sup>32</sup> TEX. LOC. GOV'T CODE ANN. § 505.152.

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- (5) affordable housing projects;<sup>33</sup>
- (6) water supply facilities projects, with the requisite voter approval;<sup>34</sup>
- (7) water conservation programs, with the requisite voter approval;<sup>35</sup>
- (8) development, improvement, expansion, or maintenance of facilities relating to the operation of commuter rail, light rail, or motor buses;<sup>36</sup> and
- (9) 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, if the project is undertaken by a Type B corporation and enters into a development agreement with an entity who acquires a leasehold or other possessory interest from the Type B corporation and is authorized to sublease the entity's interest for other authorized projects; and is approved by city council by resolution.<sup>37</sup>

In addition, certain Type B corporations meeting the requisite revenue amounts, population requirements, and other requirements specified in the Act, may assist with certain Type B projects without the creation or retention of primary jobs. These projects include the following:

- (1) Type B corporations located within twenty-five (25) miles of an international border, with a city 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 (12) month period may assist with land, buildings, facilities, infrastructure, and improvements required or suitable for the development or promotion of new or expanded business enterprises through transportation facilities including airports, hangars, railports, rail switching facilities, maintenance and repair facilities, cargo facilities, marine ports, inland ports, mass commuting facilities, parking facilities, and related infrastructure located on or adjacent to an airport or railport facility;<sup>38</sup>
- (2) Type B corporations, located in Hidalgo county, may provide certain assistance with infrastructure necessary to promote or develop new or expanded business enterprises, including airports, ports, and sewer or solid waste disposal facilities, provided Type B sales tax revenue does not support the project;<sup>39</sup>

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<sup>33</sup> TEX. LOC. GOV'T CODE ANN. § 505.153.

<sup>34</sup> TEX. LOC. GOV'T CODE ANN. §§ 505.154(1) and 505.304.

<sup>35</sup> TEX. LOC. GOV'T CODE ANN. §§ 505.154(2) and 505.304.

<sup>36</sup> TEX. LOC. GOV'T CODE ANN. § 502.052.

<sup>37</sup> TEX. LOC. GOV'T CODE ANN. § 505.1561.

<sup>38</sup> TEX. LOC. GOV'T CODE ANN. § 501.106.

<sup>39</sup> TEX. LOC. GOV'T CODE ANN. § 501.107.

- (3) Type B corporations, which have not generated more than \$50,000 in 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 city council authorizes the project by adopting a resolution following two (2) separate readings conducted at least one (1) week apart;<sup>40</sup>
- (4) Type B corporations with a population of 20,000 or less, may provide land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the board of directors to promote new or expanded business development, provided projects which require an expenditure of more than \$10,000 city council must adopt a resolution authorizing the project after giving the resolution at least two (2) separate readings;<sup>41</sup> and
- (5) Type B corporations located wholly or partly in Dallas or Harris county and has within its city limits and extraterritorial jurisdiction less 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 means Type B expenditures found by the board of directors to be required for the promotion of new or expanded business enterprises within the landlocked community.<sup>42</sup>

**14. What are permissible Type B projects for a Type B corporation which received less than \$50,000 in Type B sales tax revenue?**

Certain Type B corporations are authorized to use Type B sales tax revenue for 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. This broad use of sales tax revenue is available for Type B corporations which have not for each of the preceding two fiscal years received more than \$50,000 in Type B sales tax revenues, and the governing body of which has authorized the project has adopted a resolution only after giving the resolution at least two separate readings conducted at least one week apart.<sup>43</sup>

**15. What are permissible Type B projects for a Type B corporation located in a city with a population of 20,000 or less?**

Type B corporations located in a city with a population of 20,000 or less may rely on the various definitions of “project” contained within the statute. Yet, in 2005, the Texas Legislature made a

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<sup>40</sup> TEX. LOC. GOV'T CODE ANN. § 505.156.

<sup>41</sup> TEX. LOC. GOV'T CODE ANN. § 505.158.

<sup>42</sup> TEX. LOC. GOV'T CODE ANN. § 505.157.

<sup>43</sup> TEX. LOC. GOV'T CODE ANN. § 505.156.

significant revision affecting many Type B economic development corporations. This amendment authorizes a Type B corporation located in a city with a population of 20,000 or less to assist with land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements. Nonetheless, the board of directors must determine the assistance will promote new or expanded business development. If the assistance will promote new or expanded business development, the Type B corporation is authorized to fund the project. The statute requires the following of certain procedural requirements for expenditures exceeding \$10,000. The Type B corporation may not undertake a project authorized by this section that requires an expenditure of more than \$10,000 until city council adopts a resolution authorizing the project after giving the resolution at least two (2) separate readings.<sup>44</sup>

**16. What are permissible Type B projects for a Type B corporation located in a “landlocked community”?**

A “landlocked community” may rely on the various definitions of “project” contained in the Act. However, a landlocked community may also look only to a specific provision added recently by the Texas Legislature. In 2005 the Texas Legislature authorized a Type B corporation located in a “landlocked community” to use Type B sales tax revenue towards “expenditures found by the board of directors to be required for the promotion of new or expanded business enterprises within the landlocked community.”<sup>45</sup> The term “landlocked community” is defined to mean a city which is located wholly or partly located in a county with a population of 2 million or more and has within its city limits and extraterritorial jurisdiction less 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. Accordingly, this specific provision is limited to Type B corporations located wholly or partly within Harris or Dallas counties.

**17. Can Type A and Type B corporations assist with Hurricane Ike disaster relief projects?**

Type A and Type B economic development corporations located wholly or partly within the Hurricane Ike disaster area may provide assistance towards Hurricane Ike disaster area bonds. Corporations authorized to participate in Hurricane Ike disaster area bond projects must be located wholly or part in one of the following thirty-four (34) Texas counties: Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Greg, 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 Counties. 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 area bonds.<sup>46</sup> Accordingly, the corporation should consult their bond counsel regarding

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<sup>44</sup> TEX. LOC. GOV'T CODE ANN. § 505.158.

<sup>45</sup> TEX. LOC. GOV'T CODE ANN. § 505.157.

<sup>46</sup> TEX. LOC. GOV'T CODE ANN. § 501.452(1).

Hurricane Ike bond projects. The term “project” does not include qualified residential rental projects, or projects the costs of which are payable from qualified mortgage bonds.<sup>47</sup>

## **18. What is a “primary job”?**

In 2003, the Texas Legislature amended the Development Corporation Act to require certain Type A or Type B projects create or retain primary jobs. Yet, not all projects must create or retain primary jobs. The term primary job means “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” is included in one of nearly sixteen (16) different North American Industry Classification System (NAICS) sector codes.<sup>48</sup>

The NAICS sector code categories include: crop production; animal production; forestry and logging; commercial fishing; support activities for agriculture and forestry; mining; utilities; manufacturing; wholesale trade; transportation and warehousing; information (excluding movie theaters and drive-in theaters); securities, commodity contracts, and other financial investments and related activities; scientific research and development services; management of companies and enterprises; telephone call centers; and correctional institutions.<sup>49</sup> Further, a job included within the national security sector code classification for the armed forces, army, navy, air force, marine corps, and military bases meet the definition of “primary job.”

## **19. Can a Type A corporation fund a Type B project?**

Type A sales tax may be used to fund Type B projects with voter approval.<sup>50</sup> A public hearing must be conducted within the city to inform the residents of the city of the cost and impact of the project prior to the election.<sup>51</sup> Further, the city must publish notice of the hearing in a newspaper with general circulation in the city at least thirty (30) days before the date set for the hearing. The notice must include the date, time, place, and subject of the hearing and should be published on a weekly basis until the date of the hearing.<sup>52</sup> In addition, the Texas Legislature amended the statute in 2011 by addressing the authority of a Type A corporation located within a city with a population of less than 7,500 and which also has a Type B corporation. The city council by ordinance may authorize a Type A corporation to undertake any project that a Type B corporation may undertake.<sup>53</sup>

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<sup>47</sup> TEX. LOC. GOV'T CODE ANN. § 501.452(2).

<sup>48</sup> TEX. LOC. GOV'T CODE ANN. § 501.002(12).

<sup>49</sup> *Id.*

<sup>50</sup> TEX. LOC. GOV'T CODE ANN. § 504.152.

<sup>51</sup> TEX. LOC. GOV'T CODE ANN. § 504.153.

<sup>52</sup> *Id.*

<sup>53</sup> TEX. LOC. GOV'T CODE ANN. § 504.171.

**20. Can Type A or Type B corporations expend sales tax proceeds for promotional purposes?**

Both Type A and Type B corporations may spend no more than ten percent (10%) of the corporate revenues for promotional purposes.<sup>54</sup> Recently, the Texas Attorney General considered promotional expenditures and concluded a promotional purpose is a question of fact for the board of directors to resolve in the first instance, subject to judicial review and the supervisory authority of the city council.<sup>55</sup> Further, the city council could approve or disapprove of a particular promotional expenditure. The Attorney General noted a corporation may not spend more than ten percent (10%) of its current annual revenues for promotional purposes in any given year. Yet, unexpended revenues specifically set aside for promotional purposes in past years may be expended for such purposes.<sup>56</sup>

**21. Can Type A or Type B corporations expend sales tax proceeds for job training classes?**

A Type A or Type B corporation may spend sales tax proceeds for job training offered through a business enterprise under certain conditions. The business enterprise must commit in writing to create jobs which pay wages that are at least equal to the prevailing wage for the applicable occupation in the local market area, or increase its payroll to pay wages that are at least equal to the prevailing wage for the occupation in the local labor market area.<sup>57</sup>

In addition, Type A and Type B corporations in a city with a population of 10,000 or more, located in a county that borders the Gulf of Mexico or the Gulf Intracoastal Waterway or borders the United Mexican States and in which four municipalities with a population of 70,000 or more are located, and has, or is included in a metropolitan statistical area of this state that has, an unemployment rate that averaged at least two percent (2.0%) above the state average for the most recent two (2) consecutive years for which statistics are available, may spend sales tax revenue for job training that consists of: (1) providing job-related life skills sufficient to enable an unemployed individual to obtain employment; and (2) providing job training skills sufficient to enable an unemployed individual to obtain employment.<sup>58</sup>

**22. Can Type A or Type B corporations expend sales tax proceeds for training seminars?**

In the 2001 legislative session, the Texas Legislature amended the Development Corporation Act to require certain Type A and Type B economic development officials to complete a training

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<sup>54</sup> TEX. LOC. GOV'T CODE ANN. §§ 504.105(a) and 505.103.

<sup>55</sup> Op. Tex. Att'y Gen. No. GA-0086 (2003).

<sup>56</sup> *Id.*

<sup>57</sup> TEX. LOC. GOV'T CODE ANN. §§ 501.102 and 501.162.

<sup>58</sup> TEX. LOC. GOV'T CODE ANN. § 501.163.



seminar which ensures officials properly and legally operate the corporation and administer the tax imposed for the benefit of the Type A or Type B corporation.<sup>59</sup> One of the following three city officials are required to attend a seminar each twenty-four (24) month period: the city attorney, the city administrator, or city clerk. Further, the executive director or other person who is responsible for the daily administration of the corporation must attend a seminar in each twenty-four (24) month period.<sup>60</sup> The Development Corporation Act specifically authorizes to use of Type A or Type B sales tax proceeds to pay for the costs of attending the seminar.<sup>61</sup>

### **23. Can Type A or Type B corporations grant or gift Type A or Type B proceeds to a business entity without a performance agreement?**

In 2003, the Texas Legislature amended the Development Corporation Act to address business incentives and performance agreements. Type A and Type B corporations may not provide a direct incentive or make expenditures on behalf of a business enterprise unless the corporation enters into a performance agreement with the business enterprise.<sup>62</sup> The performance agreement at a minimum must provide for a schedule of additional payroll or jobs to be created or retained and the capital investment to be made as consideration for any incentives.<sup>63</sup> Further, the agreement must specify the terms for any repayment should the business fail to meet the performance requirements specified in the agreement.

### **24. Can Type A and Type B corporations hire an independent third party to conduct business recruitment or development?**

Type A and Type B corporations may hire a third party for the purposes of conducting business recruitment or development.<sup>64</sup> Nonetheless, the corporation must enter into a written contract approved by the corporation's board of directors in connection with the payment of a commission fee, or thing of value to a broker, agent, or third party who is involved in business recruitment or development. This requirement does not apply to the business recruitment or development activities conducted by the executive director or other employees of the Type A or Type B corporation. Should the corporation hire a third party for the purposes of business recruitment or development without a written contract approved by the board, the corporation could be liable to the State of Texas for a civil penalty in an amount not to exceed \$10,000. Further, the Texas Attorney General's office could bring an action to recover the penalty in Travis County District Court or the district court in the county in which the violation occurred.<sup>65</sup>

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<sup>59</sup> TEX. LOC. GOV'T CODE ANN. § 502.101.

<sup>60</sup> TEX. LOC. GOV'T CODE ANN. § 502.101(a)(1) & (2).

<sup>61</sup> TEX. LOC. GOV'T CODE ANN. § 502.101(d).

<sup>62</sup> TEX. LOC. GOV'T CODE ANN. § 501.158(a).

<sup>63</sup> TEX. LOC. GOV'T CODE ANN. § 501.158(b).

<sup>64</sup> TEX. LOC. GOV'T CODE ANN. § 502.051.

<sup>65</sup> TEX. LOC. GOV'T CODE ANN. § 502.051(c).

**25. Can Type A or Type B corporations use sales tax proceeds to cleanup contaminated property?**

Should the Texas Governor’s office or Texas Commission on Environmental Quality encourage or request a Type A or Type B corporation to use sales tax proceeds to cleanup contaminated property, the corporation may not undertake the project until the use is approved by a majority of the qualified voters of the city voting in an election called and held for that purpose. The ballot proposition is as follows:<sup>66</sup>

**“The use of sales and use tax proceeds for the cleanup of contaminated property.”**

**26. Can Type B corporations expend sales tax proceeds for water supply facility projects?**

A water supply facility is a permissible Type B project provided the voters approve the project in an election called and held for that purpose.<sup>67</sup> The term “water supply facility” includes dams, transmission lines, well field developments, and other water supply alternatives.<sup>68</sup> The ballot proposition which must be used to vote for or against the water supply facility is as follows:<sup>69</sup>

**“The use of sales and use tax proceeds for infrastructure relating to \_\_\_\_\_ (insert water supply facilities or water conservation programs, as appropriate).”**

**27. Can a Type B corporation expend sales tax proceeds for a water conservation program?**

Water conservation programs include 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.<sup>70</sup> These programs are permissible Type B projects provided the project is approved by a majority of the qualified voters in an election called held for that purpose. The ballot wording which must be used for such a proposition is as follows:<sup>71</sup>

**“The use of sales and use tax proceeds for infrastructure relating to \_\_\_\_\_ (insert water supply facilities or water conservation programs, as appropriate).”**

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<sup>66</sup> TEX. LOC. GOV’T CODE ANN. §§ 504.304 and 505.305.

<sup>67</sup> TEX. LOC. GOV’T CODE ANN. §§ 505.154 and 505.304.

<sup>68</sup> TEX. LOC. GOV’T CODE ANN. § 505.154(1).

<sup>69</sup> TEX. LOC. GOV’T CODE ANN. § 505.304(b).

<sup>70</sup> TEX. LOC. GOV’T CODE ANN. § 505.154(2).

<sup>71</sup> TEX. LOC. GOV’T CODE ANN. § 505.304(b).

**28. Can Type A or Type B corporations undertake projects which are located outside the city limits of the eligible city?**

An economic development corporation may undertake projects outside of the city limits with permission of the governing body that has jurisdiction over the property.<sup>72</sup> Consequently, should a Type A or Type B corporation decide to undertake a project located completely outside the city's extraterritorial jurisdiction or beyond it must get approval from the county commissioners court.

**Type A Ballot Wording:**

**29. Is there required ballot wording for the adoption of a Type A sales tax?**

The Development Corporation Act provides the ballot wording to adopt the Type A sales tax. The proposition must be worded as follows:<sup>73</sup>

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

**30. Is there required ballot wording to increase or decrease the Type A sales tax rate?**

A city may on its own motion or on the petition of at least ten percent (10%) or more of the registered voters of the city call an election to increase or reduce the Type A sales tax rate.<sup>74</sup> The Type A sales tax rate may be reduced or increased in one or more increments of one-eighth of one percent to a minimum of one-eighth of one percent and a maximum of one-half of one percent. Nevertheless, the Development Corporation Act does not provide the ballot wording for such a proposition. The Act simply provides that “[t]he ballot for an election under this section shall be printed in the same manner as the ballot under Section 504.256.” Section 504.256 of the Texas Local Government Code contains the wording to adopt the Type A sales tax.

**31. Is there required ballot wording to abolish a Type A sales tax?**

There is required ballot language a city must use for a ballot proposition to abolish a Type A sales tax. The Development Corporation Act provides that the proposition for termination must be worded as follows:<sup>75</sup>

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<sup>72</sup> TEX. LOC. GOV'T CODE ANN. § 501.159(a).

<sup>73</sup> TEX. LOC. GOV'T CODE ANN. § 504.256.

<sup>74</sup> TEX. LOC. GOV'T CODE ANN. § 504.258(b).

<sup>75</sup> TEX. LOC. GOV'T CODE ANN. § 504.352.

**“Termination of the \_\_\_\_\_ (name of the corporation).”**

**32. Is there required ballot wording if a city wished to impose a Type A sales tax for a certain time period?**

A city is authorized to limit the imposition of a Type A sales tax for a certain time period. If a city decides to impose the sales tax for a limited period, the required ballot wording is as follows:<sup>76</sup>

**“The adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of \_\_\_\_\_ of one percent (insert one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate) to be imposed for \_ years (the number of years to be inserted as appropriate).”**

**33. Is there required ballot wording should a city decide to limit the use of Type A sales tax proceeds to certain projects?**

A city is authorized to limit the use of Type A sales tax to a specific project or projects. Should a city decide to limit the uses of the tax, the ballot proposition is as follows:<sup>77</sup>

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

**34. Is there required ballot wording should a city which imposes a sales tax for property tax relief decide to reduce the tax to adopt a Type A sales tax?**

The Type A sales tax and the sales tax for property tax relief may appear as separate ballot propositions. Cities may also offer a joint ballot proposition on the sales tax for property tax relief and Type A sales tax. If a city offers a joint proposition, the ballot proposition is as follows:<sup>78</sup>

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

<sup>76</sup> TEX. LOC. GOV'T CODE ANN. §§ 504.256 and 504.257.

<sup>77</sup> TEX. LOC. GOV'T CODE ANN. § 504.260.

<sup>78</sup> TEX. LOC. GOV'T CODE ANN. § 504.261(b).

**35. Is there required ballot language should a Type A corporation choose to reduce or abolish their Type A sales tax to adopt a Type B sales tax?**

A city may offer a joint ballot proposition to reduce or abolish an existing Type A sales tax and at the same time adopt a Type B sales tax. However, the Development Corporation Act does not provide statutory ballot wording for such a proposition. Also, a city can still choose to have the voters vote on repealing or reducing a Type A tax and adopting a Type B tax as separate ballot propositions.<sup>79</sup> If the city separates the measures into separate ballot propositions, it is possible that one, both, or neither of the items would be approved at the election.

**36. Is there required ballot wording should a Type A corporation choose to use sales tax proceeds to cleanup contaminated property?**

A Type A corporation may use sales tax proceeds to undertake the cleanup of contaminated property if 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 wording which must be used is as follows:<sup>80</sup>

**“The use of sales and use tax proceeds for the cleanup of contaminated property.”**

**Type B Ballot Wording:**

**37. Is there required ballot wording for the adoption of a Type B sales tax?**

The Development Corporation Act does not contain mandatory ballot language to adopt a Type B sales tax. The Texas Election Code simply provides that the city has authority to frame the ballot proposition, unless a statute provides the wording.<sup>81</sup> The ballot proposition must indicate the rate proposed for the Type B sales tax. The voters then vote for or against the proposition.

**38. Is there required ballot wording to increase or reduce the Type B sales tax rate?**

In 2017, the Texas Legislature approved an amendment which provides that on a petition signed by ten percent (10%) or more of the registered voters of the city requesting an election to reduce or increase the Type B sales tax rate, the city council shall order an election on the issue. The tax rate may be reduced or increased to any rate that is an increment of one-eighth of one percent that the city determines is appropriate, and that would not result in a combined rate local sales tax rate

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<sup>79</sup> TEX. LOC. GOV'T CODE ANN. § 505.255.

<sup>80</sup> TEX. LOC. GOV'T CODE ANN. § 504.304(b).

<sup>81</sup> TEX. ELEC. CODE ANN. § 52.072(a).

exceeding the two percent (2.0%) maximum rate.<sup>82</sup> Yet, there is not statutory ballot wording to consider the matter.<sup>83</sup>

### **39. Is there required ballot wording to abolish a Type B sales tax?**

There is not ballot wording to abolish a Type B corporation created before September 1, 1999. The city, by resolution, could terminate or dissolve the Type B development corporation.<sup>84</sup> If the city passes such a resolution, the corporation and the tax would continue only for the time period necessary to pay off any outstanding debt.

The Act provides that a city must hold an election on dissolving a Type B corporation created on or after September 1, 1999, if a proper petition is submitted to the city council. The petition must be signed by at least ten percent (10%) of the registered voters of the city.<sup>85</sup> The ballot proposition to dissolve a Type B corporation created on or after September 1, 1999 is as follows:<sup>86</sup>

**“Termination of the \_\_\_\_\_ (name of the corporation).”**

### **40. Is there required ballot wording if a city wished to impose a Type B sales tax for a certain time period?**

There is not specified ballot wording which limits a Type B sales tax for a specified period of time. Nonetheless, the Development Corporation Act provides that an eligible city may allow the voters to vote on a ballot proposition that limits the length of time that a Type B sales and use tax may be imposed.<sup>87</sup> An eligible city that imposes a tax for a limited time 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.

### **41. Is there required ballot wording should a city decide to limit the use of Type B sales tax proceeds to certain projects?**

The Development Corporation Act does not specifically address Type B ballot wording for certain projects. Nonetheless, the Development Corporation Act provides that the city may allow the voters to vote on a ballot proposition that limits the use of the Type B sales and use tax to a specific project.<sup>88</sup> Further, a Type B corporation that has been created to perform a specific project as

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<sup>82</sup> See, TEX. LOC. GOV'T CODE ANN. § 505.2566.

<sup>83</sup> *Id.*

<sup>84</sup> TEX. LOC. GOV'T CODE ANN. § 501.401.

<sup>85</sup> TEX. LOC. GOV'T CODE ANN. § 505.352.

<sup>86</sup> TEX. LOC. GOV'T CODE ANN. § 505.353.

<sup>87</sup> TEX. LOC. GOV'T CODE ANN. § 505.2565(a).

<sup>88</sup> TEX. LOC. GOV'T CODE ANN. § 505.2575(a).

provided by this subsection may retain its corporate existence and perform other projects as may be approved by the voters of the city under an election called and held for that purpose in the same manner as Section 504.260 of the Texas Local Government Code.<sup>89</sup>

**42. Is there required ballot wording should a city which imposes a sales tax for property tax relief decide to reduce the sales tax for property tax relief to adopt a Type B sales tax?**

In 2005, the Texas Legislature amended chapter 321 of the Texas Tax Code by addressing combined municipal sales and use tax propositions.<sup>90</sup> The statute provides that a city may by a combined ballot proposition lower or repeal any municipal sales tax, including the additional sales tax for property tax relief, and by the same proposition raise or adopt any other municipal sales tax, including the additional sales tax for property tax relief. In addition, a city can still offer the propositions as separate ballot propositions.

**43. Is there required ballot language should a Type A city choose to reduce or abolish their Type A sales tax to adopt a Type B sales tax?**

A city is authorized to offer a joint ballot proposition to reduce or abolish an existing Type A sales tax and adopt a Type B sales tax.<sup>91</sup> Nonetheless, the Development Corporation Act does not provide ballot wording for a combined proposition. A city may still offer the propositions as separate measures.

**44. Is there required ballot wording should a Type B corporation choose to use sales tax proceeds to clean up contaminated property?**

A Type B corporation may use sales tax proceeds to undertake the cleanup of contaminated property if 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 wording which must be used is as follows:<sup>92</sup>

**“The use of sales and use tax proceeds for the cleanup of contaminated property.”**

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<sup>89</sup> TEX. LOC. GOV'T CODE ANN. § 505.2575(b).

<sup>90</sup> TEX. TAX CODE ANN. § 321.409.

<sup>91</sup> TEX. LOC. GOV'T CODE ANN. § 505.255.

<sup>92</sup> TEX. LOC. GOV'T CODE ANN. § 505.305.

**45. Can Type B corporations expend sales tax proceeds for water supply facility projects?**

A water supply facility is a permissible Type B project provided the voters approve the project in an election called and held for that purpose.<sup>93</sup> The term “water supply facility” includes dams, transmission lines, well field developments, and other water supply alternatives.<sup>94</sup> The ballot proposition which must be used to vote for or against the water supply facility is as follows:<sup>95</sup>

**“The use of sales and use tax proceeds for infrastructure relating to \_\_\_\_\_ (insert water supply facilities or water conservation programs, as appropriate).”**

**46. Can a Type B corporation expend sales tax proceeds for a water conservation program?**

Water conservation programs include 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.<sup>96</sup> These programs are permissible Type B projects provided the project is approved by a majority of the qualified voters in an election called and held for that purpose. The ballot wording which must be used for such a proposition is as follows:<sup>97</sup>

**“The use of sales and use tax proceeds for infrastructure relating to \_\_\_\_\_ (insert water supply facilities or water conservation programs, as appropriate).”**

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<sup>93</sup> TEX. LOC. GOV'T CODE ANN. §§ 505.154 and 505.304.

<sup>94</sup> TEX. LOC. GOV'T CODE ANN. § 505.154.

<sup>95</sup> TEX. LOC. GOV'T CODE ANN. § 505.304(b).

<sup>96</sup> TEX. LOC. GOV'T CODE ANN. § 505.154.

<sup>97</sup> TEX. LOC. GOV'T CODE ANN. § 505.304(b).



## **Administration of Sales Tax:**

### **General:**

#### **47. Who administers and oversees a Type A or Type B sales tax?**

Once the Type A or Type B sales tax is adopted, the sales tax revenues are administered by the corporations. Non-profit corporations must be created to administer these sales taxes. These corporations are governed by the Development Corporation Act, and Texas Non-Profit Corporation Act, as contained in the Texas Business Organizations Code.<sup>98</sup> The corporations determine which projects to fund, with city council retaining approval authority over all expenditures of the corporation.<sup>99</sup>

#### **48. If a city has both Type A and Type B sales tax must the city create separate corporations for administration of the Type A and Type B sales tax?**

The city must establish separate corporations and boards of directors to administer the Type A and Type B taxes.<sup>100</sup>

### **Role of City Council:**

#### **49. Does city council have to approve expenditures for permissible Type A and Type B projects?**

The development corporation has the power to expend the proceeds of the economic development sales tax for purposes authorized by the Development Corporation Act.<sup>101</sup> Nonetheless, city council retains authority to “approve all programs and expenditures of a corporation.”<sup>102</sup> City council’s oversight includes the authority to approve promotional expenditures as well.<sup>103</sup>

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<sup>98</sup> TEX. LOC. GOV’T CODE ANN. §§ 504.003, 505.003 & 501.054.

<sup>99</sup> TEX. LOC. GOV’T CODE ANN. § 501.073(a) (formerly § 21) (“The corporation’s authorizing unit [city council] will approve all programs and expenditures of a corporation and annually review any financial statements of the corporation.”)

<sup>100</sup> TEX. LOC. GOV’T CODE ANN. §§ 504.003 and 505.003.

<sup>101</sup> TEX. LOC. GOV’T CODE ANN. §§ 504.303 and 505.302.

<sup>102</sup> TEX. LOC. GOV’T CODE ANN. § 501.073(a).

<sup>103</sup> Op. Tex. Att’y Gen. No. GA-0086 (2003) at 3 – 5 (concluding city council may approve or disapprove a particular promotional expenditure).

**50. Can city council fund certain Type A or Type B projects on their motion?**

City council cannot expend Type A or Type B funds on their own initiative. Approval for funding of projects begins with the board of directors. Should the board of directors decide to fund a particular project, city council approval is required. Nonetheless, city council cannot fund a project on their initiative.<sup>104</sup> The board of directors must also approve the project.

**51. Can a quorum of city council attend a Type A or Type B corporation meeting?**

A quorum of city council could attend a Type A or Type B meeting. However, attendance by a quorum of city council would require compliance with the Open Meetings Act. Consequently, the city would want to post an agenda of the city council meeting for 72 hours prior to the meeting.<sup>105</sup> Further, recent amendments to the Open Meetings Act may require the agenda be posted on the city's Internet website.<sup>106</sup>

**52. Is city council entitled to the financial records of a Type A or Type B corporation?**

The Development Corporation Act provides that city council will annually review the financial records of the corporation and at all times will have access to the books and records of the corporation.<sup>107</sup>

**53. Does city council appoint the directors of the Type A and Type B corporation?**

The board of directors of a Type A corporation consists of at least five (5) directors who are appointed by city council.<sup>108</sup> Similarly, seven (7) directors appointed by city council serve on the Type B board.<sup>109</sup>

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<sup>104</sup> Op. Tex. Att'y Gen. No. JC-0488 (2002) at 3 ("Before addressing the City's principal concern, we address its assumption that the City, rather than its [Type B] development corporation, may expend the sales tax proceeds for the purposes authorized by the voters. This assumption is contrary to the Act.").

<sup>105</sup> TEX. GOV'T CODE ANN. §§ 551.041 and 551.043.

<sup>106</sup> TEX. GOV'T CODE ANN. § 551.056(b).

<sup>107</sup> TEX. LOC. GOV'T CODE ANN. § 501.073.

<sup>108</sup> TEX. LOC. GOV'T CODE ANN. § 504.051.

<sup>109</sup> TEX. LOC. GOV'T CODE ANN. § 505.051.

**54. Could city council discuss the appointment of the directors of the Type A or Type B corporation in executive session?**

A city council may only meet in executive session under the personnel exception if the person being discussed is an officer or employee of the city. Neither the appointment of advisory committee members nor the hiring of independent contractors are proper subjects for executive sessions under the personnel exception.<sup>110</sup> Whether a particular position is an officer or employee of the city is a question of fact.

In Texas Attorney General Letter Opinion 94-063 the Attorney General considered whether the Dallas City Council could deliberate in executive session the appointment of board members to the Dallas Area Rapid Transit Authority (DART). Although, the Attorney General noted factual determinations could not be resolved in the opinion process, the opinion concluded city council could discuss in executive session appointees to the Dallas Area Rapid Transit Authority. This conclusion was based on several factors, including: a public officer generally has a fixed term of office and could be removed only in accordance with law; public officers perform governmental functions “largely independent of the control of others;” and city council was authorized by state law to appoint members to the DART board.

**55. Can city council remove the directors of a Type A or Type B corporation?**

Type A board of directors serve terms not to exceed six (6) years and are subject to removal at any time by city council.<sup>111</sup> Type B board of directors serve two (2) year terms and are subject to removal at any time by city council.<sup>112</sup>

**56. Can the city provide services or money to a Type A or Type B corporation?**

The Development Corporation Act generally prohibits a city from lending its credit or granting any public money or thing of value to an economic development corporation. The city may not provide any funding or services to a development corporation unless the city is reimbursed for the expenditure.<sup>113</sup>

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<sup>110</sup> Op. Tex. Att’y Gen. No. DM-149 (1992) (members of advisory committee are not public officers or employees); *Board of Trustees v. Cox Enterprises*, 679 S.W.2d 86, 90 (Tex. App. – Texarkana 1984), *aff’d in part, rev’d in part on other grounds*, 706 S.W.2d 956 (Tex. 1986) (governing body may meet in executive session to discuss officers and employees only; independent contractors are not officers or employees).

<sup>111</sup> TEX. LOC. GOV’T CODE ANN. § 504.051(b) & (c). *See also*, Op. Tex. Att’y Gen. No. JC-0349 (2001).

<sup>112</sup> TEX. LOC. GOV’T CODE ANN. § 505.051(b) & (c).

<sup>113</sup> TEX. LOC. GOV’T CODE ANN. § 501.007 (“(a) Except as provided by Subsection (b), a unit may not lend its credit or grant public money or another thing of value in aid of a corporation. (b) A municipality may grant public money to a corporation under a contract authorized by Section 380.002 [of the Local Government Code]”). *See also*, Op. Tex. Att’y Gen. No. JC-0109 (1999) at 3-5.

In 2001, the Texas Legislature did create an exception to this general rule. A home rule city is now authorized to grant public money to a Type A or Type B corporation under a contract authorized by Section 380.002 of the Texas Local Government Code.<sup>114</sup> The Type A or Type B corporation is required to use the grant of city money for the “development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development and expansion of commerce in the state.”<sup>115</sup>

**57. Who receives the Type A or Type B sales tax proceeds?**

Once the Type A or Type B sales tax is effective, the sales tax is remitted to the State Comptroller who then remits the Type A and Type B sales tax proceeds to the city. The city upon receiving its local sales tax allotment from the Comptroller must remit the sales tax to the Type A or Type B corporation.<sup>116</sup>

**58. Can city council sell land held by a Type A or Type B corporation without the Type A or Type B board’s approval?**

In Texas Attorney General Opinion JC-0109 (1999), the Attorney General addressed land sales of a Type B corporation. The opinion noted, “the powers of the corporation are vested in the board of directors, . . . a [Type B] development corporation may not sell land without board approval. The board of directors of a development corporation is subject to the Open Meetings Act and therefore may not take final official action on a land sale except in an open meeting.”<sup>117</sup>

**Type A and Type B Board of Directors:**

**59. How many board members serve on a Type A and Type B board of directors?**

The board of directors of a Type A corporation consists of at least five (5) directors who are appointed by city council.<sup>118</sup> Seven (7) directors serve on the Type B board.<sup>119</sup>

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<sup>114</sup> TEX. LOC. GOV'T CODE ANN. § 501.007(b).

<sup>115</sup> TEX. LOC. GOV'T CODE ANN. § 380.002(b).

<sup>116</sup> TEX. LOC. GOV'T CODE ANN. §§ 504.301 & 505.301.

<sup>117</sup> Op. Tex. Att’y Gen. No. JC-0109 (1999) at 2&3.

<sup>118</sup> TEX. LOC. GOV'T CODE ANN. § 504.051(a).

<sup>119</sup> TEX. LOC. GOV'T CODE ANN. § 505.051(a).

**60. How long a term do Type A and Type B board of directors serve?**

Type A board of directors serve a term not to exceed six (6) years.<sup>120</sup> Type B board members serve a two (2) year term.<sup>121</sup>

**61. Can Type A and Type B board of directors be removed for any reason?**

Both Type A and Type B board of directors serve at the pleasure of city council and may be removed by city council at any time without cause.<sup>122</sup>

**62. Can a Type A or Type B director be reappointed to a subsequent term?**

The Attorney General concluded a Type A board member could be reappointed to a subsequent term, absent any contrary provision in the certificate of formation (formerly called articles of incorporation) or bylaws, or in a city charter, ordinance or resolution of the city.<sup>123</sup>

**63. Can the board of directors appoint someone to fill a vacancy when a board member resigns in the middle of his or her term?**

The Development Corporation Act provides that the board of directors “is appointed by the governing body of the authorizing municipality.”<sup>124</sup> Consequently, city council would fill any vacancy on the Type A or Type B board.

**64. Who determines which board members serve as President, Secretary and other officers of the corporation?**

The Type A and Type B board of directors appoint the president, secretary, and the other officers which the city council considers necessary.<sup>125</sup>

**65. How long is a term as President, Secretary or other officers?**

The Development Corporation Act provides that an officer of the corporation is elected or appointed at the time, in the manner, and for the term prescribed by the certificate of formation or bylaws. Yet, an officer’s term may not exceed three (3) years. In the absence of provisions in the certificate of formation or the bylaws prescribing the selection or terms of officers, the board of

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<sup>120</sup> TEX. LOC. GOV’T CODE ANN. § 504.051(c).

<sup>121</sup> TEX. LOC. GOV’T CODE ANN. § 505.051(b).

<sup>122</sup> TEX. LOC. GOV’T CODE ANN. §§ 504.051(b) & 505.051(c).

<sup>123</sup> Op. Tex. Att’y Gen. No. JC-0349 (2001).

<sup>124</sup> TEX. LOC. GOV’T CODE ANN. §§ 504.051(b) & 505.051(b).

<sup>125</sup> TEX. LOC. GOV’T CODE ANN. §§ 504.052 & 505.053.

directors shall annually elect or appoint officers.<sup>126</sup>

**66. Must a Type A board member be a resident of the city?**

The Development Corporation Act does not specify any residency requirement for a Type A board member. A Type A director is not required to be a resident of the city.

**67. Must a Type B board member be a resident of the city?**

In a city with a population of 20,000 or more, the Type B board of directors must be residents of the city.<sup>127</sup> In a city with a population of less than 20,000, each Type B director must be a resident of the municipality; a resident of the county in which the major part of the area of the municipality is located; or reside within ten (10) miles of the municipality's boundaries and is in a county bordering the county in which most of the area of the municipality is located.

Moreover, a person may serve on the Type B board if the person was a Type A director at the time the Type A corporation was dissolved, and replaced with a Type B corporation.<sup>128</sup> Since the directors of Type A corporations are not required to be residents of the city, a non-resident of the city could serve as a Type B director in this instance.

**68. Can city council members serve as directors on the Type A or Type B corporation?**

The Development Corporation Act limits the number of city officers or city employees who may serve as Type B directors. The Act provides that three (3) of the seven (7) directors may not be employees, officers, or members of the governing body of the eligible Type B city.<sup>129</sup>

The Development Corporation Act does not address whether council members may serve on the Type A board. Nonetheless, the Texas Attorney General noted service on the board of directors of a Type B board is not a "public officer" for the purposes of the common-law doctrine of incompatibility.<sup>130</sup> Accordingly, such dual service on the Type A board would not violate the common-law doctrine of incompatibility nor the Texas constitutional prohibition on holding two paid offices. However, such service could be prohibited by local ordinance or bylaws of the corporation.

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<sup>126</sup> TEX. LOC. GOV'T CODE ANN. § 501.065(b).

<sup>127</sup> TEX. LOC. GOV'T CODE ANN. § 505.052.

<sup>128</sup> TEX. LOC. GOV'T CODE ANN. § 505.052(d).

<sup>129</sup> TEX. LOC. GOV'T CODE ANN. § 505.052(c) ("Three directors of a Type B corporation must be persons who are not employees, officers, or members of the governing body of the authorizing municipality.")

<sup>130</sup> Op. Tex. Att'y Gen. No. JC-0547 (2002) at 3. ("As we have noted, an industrial development corporation, by statute, has none of the 'attributes of sovereignty,' and that, as a result, . . . a member of the board does not hold a 'public office.'")

**69. Could a mayor or council member serve for a Type A or Type B corporation in a paid capacity such as executive director of a Type A or Type B corporation?**

Recently, the Texas Attorney General concluded the mayor of an eligible Type B city could also serve as the paid executive director of the Type B corporation.<sup>131</sup> Although such dual service may not be prohibited, such dual service may implicate the conflict of interest provisions applicable to local public officials under chapter 171 of the Local Government Code. Accordingly, a mayor or council member with a “substantial interest” in the Type A or Type B corporation would have to file the required affidavit and abstain from voting or discussing matters of the corporation when the action contemplated will have an economic effect on the corporation that is different from its effect on the public.

**70. What constitutes a quorum of the Type A or Type B board of directors?**

A majority of the board constitutes a quorum. Consequently, three (3) members of a five (5) member Type A board constitute a quorum.<sup>132</sup> If a Type A corporation should increase their board membership, a quorum would be a majority of the number of board members. Four (4) members of the seven (7) member Type B board constitute a quorum.<sup>133</sup>

**71. Are Type A or Type B board of directors paid?**

Type A and Type B board members may not be paid. The directors serve without compensation but must be reimbursed for actual expenses.<sup>134</sup>

**72. Would the nepotism statute preclude city council from appointing family members or relatives to the Type A or Type B board of directors?**

The nepotism statute, Texas Government Code Chapter 573, prohibits a public official from appointing, confirming the appointment, or voting on the appointment of a “close relative” of certain city officials to paid positions.<sup>135</sup> Since, neither Type A nor Type B board members are paid, the state nepotism statute would not preclude such appointments.<sup>136</sup> Nonetheless, a home

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<sup>131</sup> Op. Tex. Att’y Gen. No. JC-0547 (2002).

<sup>132</sup> TEX. LOC. GOV’T CODE ANN. § 504.053.

<sup>133</sup> TEX. LOC. GOV’T CODE ANN. § 505.054.

<sup>134</sup> TEX. LOC. GOV’T CODE ANN. § 501.062(d).

<sup>135</sup> TEX. GOV’T CODE ANN. § 573.041.

<sup>136</sup> Tex. Att’y Gen. LO 96-010 (1996) (concluding because a member of the board of directors of an industrial development corporation, established under the Development Corporation Act of 1979, V.T.C.S. article 5190.6, receives only reimbursement for the member’s expenses, the member was not “directly or indirectly compensated from public funds or fees of office.” Thus, section 573.041 of the Government Code, which generally prohibits nepotistic appointments, was inapplicable).

rule city could enact more restrictive nepotism limitations and preclude such appointments.<sup>137</sup>

**73. Are the board meetings of Type A or Type B board subject to the Open Meetings Act?**

Type A and Type B corporations and the board of directors are subject to the Open Meetings Act.<sup>138</sup> Further, for most Type A or Type B boards meetings must occur within the city limits. Yet, in 2011, the Texas Legislature amended state law to allow Type A and Type B boards located within a county with a county population of less than 30,000 to conduct their meetings within the county.<sup>139</sup>

**74. Can the board of directors of Type A or Type B corporations take action without a meeting if the board of directors consents in writing?**

Section 501.071 of the Texas Local Government Code provides that “[a]n action that may be taken at a meeting of a board of directors, including an action required by this subtitle to be taken at a meeting, may be taken without a meeting if each director signs a written consent providing the action to be taken.” However, in 1983 the Development Corporation Act was amended by providing that the board of directors is subject to the Open Meetings Act.<sup>140</sup> Consequently, in Texas Attorney General Opinion JM-120 (1983), the Attorney General concluded the addition of section 11(b), now Section 501.072 of the Texas Local Government Code, subjecting the board of directors to the Open Meetings Act “impliedly repealed” section 14(c), now Section 501.071(a) of the Texas Local Government Code. As a result, the board of directors of Type A or Type B corporations may not take official action by written agreement without a meeting. All official actions of the Type A or Type B corporation must occur in a posted meeting in full compliance with the Texas Open Meetings Act.

**75. Are Type A and Type B corporations subject to the Public Information Act (formerly the Open Records Act)?**

Both Type A and Type B corporations are subject to the Public Information Act.<sup>141</sup>

**76. Are the Type A and Type B directors subject to the state conflicts of interest statute?**

Generally, directors of non-profit corporations do not constitute a “local public official” subject to the conflicts of interest statute. Consequently, absent a local provision to the contrary directors of

<sup>137</sup> See, Tex. Att’y Gen. LO 93-30 (1993).

<sup>138</sup> TEX. LOC. GOV’T CODE ANN. § 501.072.

<sup>139</sup> TEX. LOC. GOV’T CODE ANN. §§ 504.054 and 505.055.

<sup>140</sup> TEX. LOC. GOV’T CODE ANN. § 501.072.

<sup>141</sup> TEX. LOC. GOV’T CODE ANN. § 501.072.



a Type A or Type B corporation are not subject to chapter 171 of the Texas Local Government Code.<sup>142</sup> However, the Texas Non-Profit Corporation Act may prohibit certain transactions. In Texas Attorney General Opinion JC-338 (2001), the Attorney General noted the Texas Non-Profit Corporation Act prohibited the board of directors from approving a loan to a director of the Type B corporation.

### **Corporation Powers and Duties:**

#### **77. Once a Type A or Type B corporation is formed must city council approve articles of incorporation now referred to as certificate of formation?**

The certificate of formation for all development corporations must be approved by city council.<sup>143</sup> Further, the certificate of formation of a Type A or Type B corporation must state that the corporation is governed by either Chapter 504 or Chapter 505 of the Texas Local Government Code,<sup>144</sup> and must be filed in triplicate with the Secretary of State's Office.<sup>145</sup> Upon the issuance of the certificate of incorporation, the corporate existence begins. Once the certificate of incorporation is issued, the board of directors is required to hold an organizational meeting for the purposes of adopting the corporation's bylaws and to elect officers.<sup>146</sup>

#### **78. Who can amend the certificate of formation?**

The Development Corporation Act provides that the certificate of formation may be amended at any time by the board of directors or city council.<sup>147</sup> The board of directors is required to file with city council a written application requesting city council approve the amendments. The written application must specify the proposed amendments. If city council, by appropriate resolution, determines that it is advisable that the proposed amendments be made, authorizes the same to be made, and approves the form of the proposed amendment, the board of directors shall proceed to amend the certificate of formation.<sup>148</sup> The certificate of formation may also be amended at any time by city council by resolution.<sup>149</sup> Again, city council would be required to file the certificate of amendment with the Secretary of State.

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<sup>142</sup> Op. Tex. Att'y Gen. No. JC-0338 (2001) at 3 (concluding that a development corporation created under the Act is not a political subdivision nor any other "local governmental entity" subject to chapter 171 of the Local Government Code).

<sup>143</sup> TEX. LOC. GOV'T CODE ANN. § 501.051.

<sup>144</sup> TEX. LOC. GOV'T CODE ANN. §§ 504.004 and 505.004.

<sup>145</sup> TEX. LOC. GOV'T CODE ANN. § 501.057(b).

<sup>146</sup> TEX. LOC. GOV'T CODE ANN. § 501.063(a).

<sup>147</sup> TEX. LOC. GOV'T CODE ANN. § 501.301.

<sup>148</sup> *Id.*

<sup>149</sup> TEX. LOC. GOV'T CODE ANN. § 501.302.

**79. Must city council approve bylaws for the Type A or Type B corporation?**

City council must approve the initial bylaws. After the issuance of the certificate of formation, the board of directors is required to hold an organizational meeting to adopt the bylaws and to elect officers.<sup>150</sup> The initial bylaws must be adopted by the board of directors and approved by city council by resolution.<sup>151</sup>

**80. Can a Type A or Type B corporation amend its bylaws?**

A Type A or Type B corporation is authorized to adopt and amend bylaws not inconsistent with its certificate of formation or with state law. In addition, amendments to the bylaws must be approved by resolution of the city council.<sup>152</sup>

**81. Are Type A or Type B corporations governed by the Texas Non-Profit Corporation Act?**

Type A and Type B corporations are governed by the Development Corporation Act, chapters 501 to 505 of the Texas Local Government Code, and the Texas Non-Profit Corporation Act, as contained in the Texas Business Organizations Code. To the extent the provisions of the Texas Non-Profit Corporation Act conflict with the provisions of the Development Corporation Act, the Development Corporation Act prevails.<sup>153</sup>

**82. Can a Type A or Type B corporation assume a debt?**

A Type A economic development corporation is prohibited from assuming a debt or making “an expenditure to pay the principal of or interest on a debt that existed before the date” the city authorized the creation of the corporation.”<sup>154</sup> The Development Corporation Act does not address whether a Type B corporation is prohibited from paying principal or interest on a debt if the debt existed before the date the city creates a Type B corporation.

**83. When a Type A or Type B corporation sells real property must the corporation comply with certain notice and bidding requirements applicable to cities?**

The Texas Attorney General determined an economic development corporation who sells real property unrelated to a project is not required to comply with the notice and bidding procedures

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<sup>150</sup> TEX. LOC. GOV'T CODE ANN. § 501.063(a).

<sup>151</sup> TEX. LOC. GOV'T CODE ANN. § 501.064.

<sup>152</sup> TEX. LOC. GOV'T CODE ANN. § 501.064(c)(2).

<sup>153</sup> TEX. LOC. GOV'T CODE ANN. § 501.054(a).

<sup>154</sup> TEX. LOC. GOV'T CODE ANN. § 504.104.

applicable to Texas cities, chapter 272 of the Texas Local Government Code.<sup>155</sup> Nonetheless, a Type A or Type B corporation must obtain fair market value when selling real property unrelated to a project.<sup>156</sup>

#### **84. May a city convey real property to a Type A or Type B corporation?**

In 2009, the Texas Legislature approved a bill authorizing a city with a population of 20,000 or less to convey real property to a Type A or Type B corporation without complying with the notice bidding requirements of chapter 272 of the Texas Local Government Code.<sup>157</sup> The city may convey real property to the Type A or Type B corporation provided the economic development corporation agrees to use the property in a manner that primarily promotes a public purpose of the municipality. However, the city may not convey real property acquired through eminent domain. Further, should the economic development corporation at any time fail to use the property in that manner, ownership of the property automatically reverts to the city. The municipality shall transfer the property by an appropriate instrument of transfer. The instrument must include a provision that: (1) requires the economic development corporation to use the property in a manner that primarily promotes a public purpose of the municipality; 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.

#### **85. May a Type B corporation purchase real property with proceeds without an appraisal of the property's market value?**

In 2011, the Texas Legislature amended the statute to provide that a Type B corporation may not purchase real property for a project wholly or partly with bond proceeds until the Type B corporation obtains an independent appraisal of the property's market value.<sup>158</sup>

#### **86. Are purchases made by Type A and Type B corporations exempt from state sales and use taxes?**

An otherwise taxable item sold, leased, or rented to or stored, used, or consumed by a Type A or Type B corporation is exempt from sales and use taxes imposed by chapter 151 of the Texas Tax Code, provided the item is for the exclusive use and benefit of the corporation.<sup>159</sup> The exemption does not apply to an item that is a project or part of a project that is to be leased, sold, or lent by the Type A or Type B corporation.<sup>160</sup>

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<sup>155</sup> Op. Tex. Att'y Gen. No. JC-0109 (1999).

<sup>156</sup> *Id.* at 2.

<sup>157</sup> TEX. LOC. GOV'T CODE ANN. § 253.012.

<sup>158</sup> TEX. LOC. GOV'T CODE ANN. § 505.1041.

<sup>159</sup> TEX. TAX CODE ANN. § 151.341(a). *See also*, 34 Tex. Admin. Code. § 3.322(c)(7).

<sup>160</sup> TEX. TAX CODE ANN. § 151.341(b).

**87. Are Type A and Type B economic development corporations required to file with the Internal Revenue Service Form 990?**

An issue which occasionally comes up is whether a Type A or Type B corporation must file with the IRS Form 990. Form 990 is a form used by tax-exempt organizations to file annual information returns. There are however exceptions to the filing requirement. The Internal Revenue Service in Revenue Procedure 95-48, I.R.B. 1995-47, 13., (Nov. 20, 1995) concluded governmental units, and affiliates of governmental units are exempt from the Form 990 filing requirements. Accordingly, a corporation may wish to review this issue with their attorney. Further, a corporation could request from the IRS a determination whether their entity qualifies as an “affiliate of a governmental unit,” and exempt from the Form 990 filing requirements. The IRS in making the determination will want to review the corporation’s certificate of formation, bylaws, and there is a charge set by the IRS for the ruling.

**Role of Citizens:**

**88. Can citizens initiate Type A or Type B sales tax election?**

An election to adopt either the Type A or Type B sales tax may be initiated by citizens. If the city council receives a petition signed by a number of qualified voters that equals at least twenty percent (20%) of the voters who voted in the most recent city election, city council would be required to pass an ordinance ordering an election on the imposition of the tax.<sup>161</sup> Additionally, city council on its own initiative may approve an ordinance calling for an election to adopt either the Type A or Type B sales tax.<sup>162</sup>

**89. Can citizens object to Type A expenditures?**

When a Type A corporation pursues a project it is required to obtain city council approval of the project.<sup>163</sup> Generally, there is no additional requirement of notice or hearing for projects undertaken by Type A corporations. Nonetheless, citizen taxpayers through an action in district court could seek declaratory and or injunctive relief to prevent the funding of a particular project.<sup>164</sup>

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<sup>161</sup> TEX. LOC. GOV'T CODE ANN. §§ 504.255 and 505.256 (stating Chapter 321 of the Texas Tax Code governs the imposition, computation, administration of the Type A and Type B sales tax) and TEX. TAX CODE ANN. § 321.401(c) (requiring city council to pass an ordinance ordering an election on the Type A or Type B sales tax if a petition is presented).

<sup>162</sup> TEX. TAX CODE ANN. § 321.401(b).

<sup>163</sup> TEX. LOC. GOV'T CODE ANN. § 501.073(a) (“The corporation’s authorizing unit will approve all programs and expenditures of a corporation...”).

<sup>164</sup> See, *Gaut v. Amarillo Economic Development Corporation*, 921 S.W.2d 884 (Tex. App. – Austin 1996) (plaintiffs filed a petition seeking declaratory and injunctive relief to prevent Type A corporation’s performance of jet service contract with American Airlines for continued jet service for DFW Airport to the Amarillo airport).

## **90. Can citizens object to Type B expenditures?**

Generally, a Type B corporation must hold at least one (1) public hearing on a proposed project.<sup>165</sup> However, in 2007 the Texas Legislature approved legislation applicable to Type B cities with a population of less than 20,000.<sup>166</sup> A Type B corporation in a city with a population of less than 20,000 is not required to hold a public hearing if the proposed project is authorized by Subchapter C of Chapter 501 of the Texas Local Government Code. Subchapter C of Chapter 501 of the Texas Local Government Code is Sections 501.101 to 501.107 of the Texas Local Government Code. Any hearing must be held prior to the expenditure of any funds on the project. The Type B corporation may hold one (1) public hearing to consider one project or a group of projects. After the projects have been considered at a public hearing and sixty (60) days have passed since the first published notice of the project, the Type B corporation may make expenditures related to the project.<sup>167</sup>

Further, the public has a right to gather a petition to object to a particular expenditure.<sup>168</sup> The petition must be submitted within sixty (60) days following the first published notice of the project or categories of projects. This petition must be signed by ten percent (10%) or more of the registered voters of the city requesting an election be held before the project is undertaken. If the petition is submitted in a timely manner and is signed by the requisite number of voters, 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 the project. An election is not required to be held after the submission of a petition if the qualified citizens of the city have previously approved the undertaking of a specific project or projects.<sup>169</sup>

## **91. Can the citizens force the funding of a particular Type A or Type B project?**

The Development Corporation Act does not address the ability of citizens to force the directors of a Type A or Type B board to fund a particular project.

## **92. Can citizens seek to abolish a Type A sales tax?**

On a petition signed by at least ten percent (10%) 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. If the election for dissolution is approved, the Type A tax would continue to satisfy any remaining obligations that were executed prior to the date of the dissolution election. When the last of the obligations

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<sup>165</sup> TEX. LOC. GOV'T CODE ANN. § 505.159(a).

<sup>166</sup> TEX. LOC. GOV'T CODE ANN. § 505.159(b).

<sup>167</sup> TEX. LOC. GOV'T CODE ANN. § 505.160(a).

<sup>168</sup> *Id.*

<sup>169</sup> TEX. LOC. GOV'T CODE ANN. § 505.160(b).

are satisfied, any remaining assets of the corporation shall be transferred to the city, and the corporation is dissolved.<sup>170</sup>

### **93. Can citizens seek to abolish a Type B sales tax?**

An eligible Type B city must hold an election on the issue of dissolution of a Type B corporation created on or after September 1, 1999<sup>171</sup> if a proper petition is submitted to the city council.<sup>172</sup> The petition requesting the election on the dissolution of the Type B corporation must be signed by at least ten percent (10%) of the registered voters of the city. At the dissolution election, the ballot shall be printed to permit voting for or against the proposition. The ballot proposition to dissolve a Type B corporation created on or after September 1, 1999 is as follows:<sup>173</sup>

**“Termination of the \_\_\_\_\_ (name of the corporation).”**

For Type B corporations created prior to September 1, 1999, the city could pass a resolution to dissolve the corporation.<sup>174</sup> If the city passed the resolution, the tax would continue to pay off any outstanding obligations.

#### **Procedural Requirements:**

#### **Hearing Requirements:**

### **94. Must Type A corporations conduct hearings prior to funding Type A projects?**

Generally, when Type A corporations pursue projects they are required to obtain city council approval of the project.<sup>175</sup> Type A corporations generally do not have additional notice and hearings requirements on individual projects undertaken by the corporation. Nonetheless, there are exceptions requiring the Type A corporation to conduct a public hearing. If a Type A corporation desires to pursue a sports venue project, or a Type B project, a public hearing is required.<sup>176</sup>

<sup>170</sup> TEX. LOC. GOV'T CODE ANN. §§ 504.351 and 504.353. *See also*, Op. Tex. Att'y Gen. No. JC-0553 (2002).

<sup>171</sup> TEX. LOC. GOV'T CODE ANN. § 505.351. (formerly Texas Senate Bill 269, Section 2, 76<sup>th</sup> Legislature, Regular Session (1999)).

<sup>172</sup> TEX. LOC. GOV'T CODE ANN. § 505.352.

<sup>173</sup> TEX. LOC. GOV'T CODE ANN. § 505.353.

<sup>174</sup> TEX. LOC. GOV'T CODE ANN. § 501.401(c).

<sup>175</sup> TEX. LOC. GOV'T CODE ANN. § 501.073(a) (“The corporation’s authorizing unit [city council] will approve all programs and expenditures of a corporation and annually review any financial statements of the corporation.”)

<sup>176</sup> TEX. LOC. GOV'T CODE ANN. §§ 504.152 and 504.153.

**95. If Type A corporations pursue a Type B project must the Type A corporation conduct hearings?**

Type A corporations must conduct a public hearing prior to the Type B project.<sup>177</sup> If the economic development corporation desires to use Type A proceeds to undertake a Type B project, it is required to conduct a public hearing prior to the election. The hearing must be held in the city and must inform the residents of the cost and impact of the project or category of projects. Additionally, the city must publish notice of the hearing in a newspaper of general circulation in the city at least thirty (30) days prior to the hearing date. The notice must indicate the date, time, place and subject of the hearing. The notice should be published on a weekly basis until the date of the hearing.<sup>178</sup>

**96. Must Type B corporations conduct a public hearing prior to funding Type B projects?**

Generally, a Type B corporation must hold at least one (1) public hearing on a proposed project.<sup>179</sup> In 2007, the Texas Legislature amended the Development Corporation Act applicable to Type B cities with a population of less than 20,000.<sup>180</sup> A Type B corporation in a city with a population of less than 20,000 is not required to hold a public hearing if the proposed project is contained in Subchapter C of Chapter 501 of the Texas Local Government Code. Additionally, the Type B corporation must obtain city council approval of the expenditure.<sup>181</sup> When required a Type B corporations could conduct one (1) public hearing to consider several projects. Nonetheless, notice of the project or projects must be published in a newspaper of general circulation in the city. After the projects have been considered at a public hearing, as necessary, and once sixty (60) days have passed since the first published notice of the projects, the Type B corporation is authorized to make expenditures related to the projects.

**97. Can citizens object to Type B expenditures?**

The public has a right to gather a petition objecting to a particular Type B project.<sup>182</sup> The petition must be submitted within sixty (60) days of the first published notice of a specific project or type of project, and must be signed by more than ten percent (10%) of the registered voters of the city. If the governing body of the city receives a petition from more than ten percent (10%) of the registered voters of the city requesting an election be held before that specific project or the general type of project is undertaken, the corporation may not undertake the project until the voters approve the project at an election called and held to consider the proposed Type B project.<sup>183</sup> An election

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<sup>177</sup> TEX. LOC. GOV'T CODE ANN. § 504.153.

<sup>178</sup> *Id.*

<sup>179</sup> TEX. LOC. GOV'T CODE ANN. § 505.159(a).

<sup>180</sup> TEX. LOC. GOV'T CODE ANN. § 505.159(b).

<sup>181</sup> TEX. LOC. GOV'T CODE ANN. § 501.073(a).

<sup>182</sup> TEX. LOC. GOV'T CODE ANN. § 505.160(a).

<sup>183</sup> *Id.*

is not required to be held after the submission of a petition if the voters have previously approved the specific project at an election called for that purpose or in conjunction with another Type B election.

**98. Must a Type B corporation conduct a hearing to pursue a sports venue project?**

Type B corporations must conduct at least one public hearing to consider a sports venue project.<sup>184</sup> Initially, the city would have to call an election on a uniform election date to consider the sports venue project.<sup>185</sup> At the election, the voters of the city would vote on a ballot proposition authorizing the Type B corporation to use the sales and use tax, “including any amount previously authorized and collected, for a specific sports venue project.” The project or category of projects must be clearly described on the ballot proposition so that a voter will be able to discern the limits of the specific project or category of projects authorized by the proposition.<sup>186</sup> If maintenance and operating costs are to be paid from the sales or use tax, the ballot proposition must clearly state that fact. Again, a public hearing must be held within the city to inform the residents of the city of the cost and impact of the project prior to the election. At least thirty (30) days before the date set for the hearing, a notice of the date, time, place, and subject of the hearing must be published in a newspaper of general circulation within the city. The notice must be published on a weekly basis until the date of the hearing.<sup>187</sup>

**Publication of Notice:**

**99. Must Type A corporations publish notice of any hearings on proposed projects?**

Generally, there is not a requirement that a Type A corporation conduct public hearings. Consequently, Type A corporations generally do not have a publication requirement. When a Type A board pursues a particular project city council must approve the project.<sup>188</sup> Yet, there is no requirement for additional public notice on individual projects undertaken by the Type A corporations. Nonetheless, there are exceptions which require publishing notice for sports venue projects, pursuing Type B projects,<sup>189</sup> and maintenance and operating costs of a project.<sup>190</sup>

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<sup>184</sup> TEX. LOC. GOV'T CODE ANN. § 505.203.

<sup>185</sup> TEX. LOC. GOV'T CODE ANN. § 505.202(c)(2).

<sup>186</sup> TEX. LOC. GOV'T CODE ANN. § 505.202(b).

<sup>187</sup> TEX. LOC. GOV'T CODE ANN. § 505.203.

<sup>188</sup> TEX. LOC. GOV'T CODE ANN. § 501.073(a).

<sup>189</sup> TEX. LOC. GOV'T CODE ANN. §§ 504.152 and 504.153.

<sup>190</sup> TEX. LOC. GOV'T CODE ANN. § 504.302.



**100. Must a Type A corporation publish notice of their hearing for a sports venue project?**

Type A corporations must publish notice of their hearing to consider a sports venue project.<sup>191</sup> Initially, the city would have to call an election on a uniform election date to consider the sports venue project.<sup>192</sup> At the election, the voters of the city would vote on a ballot proposition authorizing the Type A corporation to use the sales and use tax, “including any amount previously authorized and collected, for a specific project or for a specific category of projects, . . . including a sports venue” project.<sup>193</sup> The project or category of projects must be clearly described on the ballot proposition so that a voter will be able to discern the limits of the sports venue project.<sup>194</sup> If maintenance and operating costs are to be paid from the sales or use tax, the ballot proposition must clearly state that fact. A public hearing must be held within the city to inform the residents of the city of the cost and impact of the project prior to the election. At least thirty (30) days before the date set for the hearing, a notice of the date, time, place, and subject of the hearing must be published in a newspaper of general circulation within the city. The notice should be published on a weekly basis until the date of the hearing.<sup>195</sup>

**101. Must a Type A corporation publish notice to expend sales tax proceeds on maintenance and operating costs of a Type A project?**

Type A corporations may use Type A sales tax proceeds on maintenance and operation expenses for a Type A project.<sup>196</sup> Yet, the voters of the city may petition for an election on the use of Type A proceeds for maintenance and operation costs of a particular project within sixty (60) days of the first published notice of the use of sales tax proceeds to pay maintenance and operating costs. This petition must be signed by at least ten percent (10%) of the registered voters of the city requesting that an election be held prior to tax proceeds being used to pay for the maintenance and operating costs of a project.<sup>197</sup>

**102. When must a Type B corporation publish notice of a proposed project?**

Type B corporations must publish notice of all projects.<sup>198</sup> Excluding sports venue projects and absent a local provision, there is not a requirement the published notice of the hearing be published a certain number of days prior to the hearing. Further, Type B corporations must conduct at least

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<sup>191</sup> TEX. LOC. GOV'T CODE ANN. § 504.153.

<sup>192</sup> TEX. LOC. GOV'T CODE ANN. § 504.152 (c)(2).

<sup>193</sup> TEX. LOC. GOV'T CODE ANN. § 504.152 (a).

<sup>194</sup> TEX. LOC. GOV'T CODE ANN. § 504.152(b).

<sup>195</sup> TEX. LOC. GOV'T CODE ANN. § 504.153.

<sup>196</sup> TEX. LOC. GOV'T CODE ANN. § 504.302(a).

<sup>197</sup> TEX. LOC. GOV'T CODE ANN. § 504.302(b).

<sup>198</sup> TEX. LOC. GOV'T CODE ANN. § 505.160(a).

one (1) public hearing on most projects. Yet, a Type B corporation in a city with a population of less than 20,000 is not required to hold a public hearing if the proposed project is authorized by Subchapter C of Chapter 501 of the Texas Local Government Code.<sup>199</sup> Further, Type B corporations must wait sixty (60) days after first publishing notice of the specific project or category of projects before expending any monies for the Type B project.<sup>200</sup>

**103. When must a Type B corporation publish notice of their hearing on a sports venue project?**

Type B corporations must conduct at least one public hearing on a proposed sports venue project.<sup>201</sup> The public hearing is required to be held in the city to inform the residents of the city of the cost and impact of the project or category of projects. “At least 30 days before the date set for the hearing, notice of the date, time, place, and subject of the hearing must be published each week until the date of the hearing in a newspaper with general circulation in the municipality in which the project is located.”<sup>202</sup>

**104. Must a Type B corporation publish notice to expend sales tax proceeds on maintenance and operating costs of a Type B project?**

After a public hearing has been held on the proposed project, Type B corporations must wait sixty (60) days after first publishing notice of the specific project or category of projects before expending any monies for the Type B project. This includes the maintenance and operating costs of a Type B project. The Development Corporation Act specifically provides that the voters may object to expenditures for maintenance and operating costs of Type B projects by submitting a petition signed by more than ten percent (10%) of the registered voters of the city.<sup>203</sup> The public has sixty (60) days from the date of the first published notice of the project to submit the petition.

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<sup>199</sup> TEX. LOC. GOV'T CODE ANN. § 505.159(b).

<sup>200</sup> TEX. LOC. GOV'T CODE ANN. § 505.160(a).

<sup>201</sup> TEX. LOC. GOV'T CODE ANN. §§ 505.159 and 505.203.

<sup>202</sup> TEX. LOC. GOV'T CODE ANN. § 505.203.

<sup>203</sup> TEX. LOC. GOV'T CODE ANN. § 505.160(a).