



LOCAL ECONOMIC DEVELOPMENT GUIDE BOOK



TEXAS ECONOMIC DEVELOPMENT COUNCIL

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Forward

For more than 60 years, the Texas Economic Development Council (TEDC) has provided information, resources, educational and legislative services on economic development issues to nearly 900 members from across the state. These members represent more than 500 public and private economic development organizations, in nearly 400 cities. The TEDC's objective is to support the economic growth of Texas and develop strategies that promote a positive business climate in our state.

The Development Corporation Act of 1979 established economic development as a public purpose and allowed cities to create non-profit corporations to support economic development efforts. Later, in 1989, the legislature created a local option to publicly fund these organizations through the imposition of a sales tax dedicated to economic development.

Since 1989 Texas communities have created more than 700 sales tax funded EDCs which support more than \$1 billion annually in funds for economic development at the local level.

By virtue of these measures, Texas's economic development efforts are decidedly local in nature and require the guidance and support of local elected officials and their boards. This publication is meant to be a handy reference guide to anyone interested in local economic development programs in our state. We encourage its use as an overview of who, what, when, where, why and how we do economic development in Texas. The Texas way is a truly local approach to economic development.

Thanks for your interest in economic development in our great state.

Carlton Schwab

President/CEO

Texas Economic Development Council

Section 1

The ABC's and 123's of Local Economic Development

What is a Texas economic development corporation (EDC)?

An Economic Development Corporation (EDC) is a powerful sales tax funded vehicle by which communities can engage in economic and community development activities. Among other things, EDCs are empowered to create economic development programs, build infrastructure related to economic and community development efforts, train and educate the local workforce, foster partnerships with other government entities and undertake projects that improve the quality of life of a community's residents.

In 1989, the Texas legislature passed a statute enabling communities to levy an additional sales tax percentage for economic development purposes. Since that time, those statutes grew into broader and more detailed laws. Texas now categorizes EDCs into two types of corporations depending on the size of the community and the ways each community wishes to use its sales tax revenues. These entities are referred to as Type A and Type B economic development corporations or EDCs.

The difference between a Type A and Type B corporation is explained in more detail in this guide book. In summary, Type A EDCs are more restricted in the kinds of projects they can fund compared to their Type B counterparts. A Type B EDC is more loosely defined and expands the uses of the economic development sales tax to include a wide array of economic development projects, infrastructure improvements, and quality of life initiatives.

Why form an EDC?

EDCs drive growth and community investment. The Texas Economic Development Council (TEDC) commissioned a study in 2020 showing the impact EDCs are making in Texas. That study, conducted by The Perryman Group, found twenty percent (20%) of the new jobs created in Texas over the past thirty (30) years are the result of projects facilitated by local EDCs. The State of Texas as a whole receives approximately \$7.1 billion per year from these economic development projects, and local communities are receiving an additional \$4.9 billion in economic activity per year. For each \$1 of sales tax collected and utilized for EDC projects, the return to the communities of the state is just over \$82.00.

The type of tax used by EDCs is a sales tax on goods sold within a community's city limits. The source of the sales tax collected varies. The tax can be on items sold at a gas station, a sweater from Old Navy, camping gear sold at the local Wal-Mart ...just a few examples of the many sources of sales tax revenue.

How does a community establish an EDC?

An election and approval by the voters are required to establish a Type A or Type B EDC. The tax rate to be levied and the type of corporation to be formed is described in the ballot language. The city council or twenty percent (20%) of the registered voters by a petition can request a ballot initiative and an election for either type of EDC to be created. *Texas Tax Code Chapter 321, Elections Code Chapter 67, and Texas Local Government Code Chapters 501 & 504* outline in detail the requisites to holding either a Type A or Type B EDC election.

Both A and B EDCs can also be combined in the election with property tax relief initiatives. This means an EDC can be formed in conjunction with a special purpose district (explained further in Section 4 below) and various property tax incentives. Both A and B EDCs can use a minimum rate of a 1/8th of one percent (1%) increment for voter approval. Both A and B EDCs can be amended in both scope and tax rates in subsequent elections. Both A and B EDCs can be repealed and dissolved by a subsequent action of voters. This is where their similarities end.

A Type A EDC may only be formed in counties that are less than 500,000 people (or are going to be formed in a city less than 50,000 population that is in a larger county (Bexar, Dallas, El Paso, Harris, Hidalgo, Tarrant, or Travis). Type A EDC elections require very specific election language to be placed on the ballot.

A Type B EDC can be formed in any city in Texas, regardless of size or location. Type B EDC elections do not require specific statutory language for the ballot.

Eligible communities may elect to have both a Type A EDC and a Type B EDC and the vote to create both can be considered at the same election. However, the combined local sales tax for either type of EDC cannot exceed a total of two percent (2%). These rates must also be included in the two percent (2%) sales tax cap. See *Texas Local Government Code § 504.254*.

Who collects the taxes?

Texas' statewide sales tax is currently 6.250%. The tax is collected by the Texas Comptroller of Public Accounts. This money is not used by local EDCs. Local communities and EDCs can elect to add an additional sales tax of up to two percent (2%) for a total sales tax of 8.250%. A portion of this additional two percent (2%) is what EDCs use to fund allowable projects and operating expenses. No city, town or county can levy a total sales tax rate more than 8.250% by law.

The Texas Comptroller of Public Accounts collects all the sales taxes for taxing jurisdictions in the State. The Comptroller then distributes the proper percentage of taxes collected to the governing authority or EDC for their revenue fund.

EDCs can vote to have their revenues controlled and managed by the city/governing authority, or they can hire an independent accountant to manage their revenues and balance sheet(s). Both options require a contract for professional services.

It is typically more cost effective and expedient to have the city/governing authority manage the revenues of the EDC. The reason is the governing authority is required by law to approve of the EDC's budget and project expenditures. Under *TLCG 501.073* the governing unit is also entitled to review and access the EDC's financial records.

By statute, the city/governing authority acts as an overseer of the EDC's revenues, expenditures and each project; therefore, it makes reasonable sense to have the governing authority manage the revenue and expenditures of the EDC. Also, financial oversight prevents any miscommunications or violations of local policies and state law.

What's happens after the election?

It's time to get all the legal paperwork filed and appoint a board of directors. Once a governing body (the municipality/city council) has conducted an election and voted to approve the formation of an EDC, it is a best practice to hire an attorney to form the entity as a non-profit corporation with the Texas Secretary of State. The governing body will need to have articles of incorporation, now referred to as a certificate of formation, drafted and filed with the Texas Secretary of State and the Texas Comptroller of Public Accounts. The EDC will need to file non-profit designations with the Texas Secretary of State and perhaps with the United States Internal Revenue Service. These filings will also need to be kept on file with the governing body who voted and enacted the EDC.

Next, the governing body will need to appoint the board of directors to oversee the EDC. The number of directors who can serve and their eligibility depends on the type of EDC created. Type A and Type B corporations each have specific laws that differ on the number of directors and their qualifications of “who” is eligible to be a director. The details of these differences are outlined in Section 2 of this guide book.

Both A and B EDCs are required to have an organizational meeting soon after filing the articles of formation. The purpose of this meeting is to approve the corporate bylaws that serve as the governing rules of the EDC. The EDC cannot act as a legal entity until these bylaws are approved by both the EDC board and subsequently by the city council through a resolution. The EDC will also need a registered agent (usually the governing authority or attorney) and will need to appoint officers of the organization at this initial meeting. The officers are the president, vice president, secretary, treasurer, and other officers or assistant officers considered necessary. The officers are required to be voted on at this meeting and their information needs to be kept on file with both the governing authority, as well as the Texas Secretary of State and Texas Comptroller of Public Accounts. All Texas SOS filings can be made at: <https://comptroller.texas.gov/economy/local/type-ab>.

The officers of the corporation are elected at the time, in the manner, and for the term prescribed by the certificate of formation or bylaws, except that an officer’s term may not exceed three years. In the absence of provisions in the certificate of formation or the bylaws prescribing the selection or terms of officers, the board of directors shall annually elect officers. The bylaws may be amended at anytime by the EDC. Any amendments to the bylaws must be approved by the board of directors and the city council by a resolution. Neither Type A nor B EDCs may have officers serve longer than three years in that position as an officer. *Texas Local Government Code § 501.062-065*. It is recommended EDCs employ a municipal attorney to draft ballot language, articles of formation, bylaws and amendments, and attend in the organizational meetings that are subject to the Open Meetings Act.

Section 2

Type A and Type B: The Differences

What are the key differences between Type A and Type B?

The three main differences are: (1) size and location of your community, (2) types of eligible projects, and (3) the oversight of the EDC and its project approval.

Location and Size

The size and location of your community depends on the Type of EDC you have, need or use. Type A EDCs are generally located in counties with less than 500,000 people, or in cities located within or adjacent to Bexar, Dallas, El Paso, Harris, Hidalgo, Tarrant, or Travis counties.

Type B EDCs can be formed anywhere in Texas, regardless of the community's size and location.

Type B EDCs located within communities of less than 20,000 people enjoy a wide-range of allowable expenditures. These corporations can fund land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the board of directors to promote new or expanded business development (with no "primary job" requirement). Any project under \$10,000 for a Type B EDC of this size does not require approval by the city council or governing authority. Any project over \$10,000 requires a resolution and at least two separate readings by the city council. Typically, this is accomplished by a council reading the resolution approving of the project at back-to-back council meetings.

Projects and Publishing

What kinds of projects can our EDC undertake? This is the biggest question each EDC must answer on a routine basis. The type of project and use of EDC funds depends on the Type of EDC in your community and on the goals and aspirations of your community. Or, it depends on the type of business and industry your community wishes to attract.

Examples of EDC money at work are visible in most city and town in Texas. Type A EDCs are limited in their scope and use of funds. Type B EDCs are unlimited in their use of funds so long as their projects promote some form of economic enterprise, business growth & primary jobs, or enhance the quality of life of the community. To be sure your projects follow the law, here is the list of permissible projects.

For a Type A EDC: Primary Job and Non-Primary Job Projects include

Primary Job projects include land, buildings, equipment, facilities, improvements, and expenditures that are for the creation and retention of "primary jobs" and suitable for the development, retention, or expansion of the following types of projects:

- Manufacturing
- Industrial
- Research and Development
- Recycling
- Small Warehouses
- Distribution Centers
- Regional or National Corporate Headquarters
- Closed or Realigned Military Bases, and
- Primary Job Training Facilities by Higher Education Institutions.

Non-Primary Job projects include

- Job Training classes and career centers
- Business airport facilities and port related facilities
- Clean-up of contaminated project sites with special election and ballot Language
- Infrastructure assistance to retail or commercial projects
- Business-related sewer utilities and site improvements
- Beach remediation in Gulf communities required or suitable to promote or develop new or expanded business enterprise
- Projects designed to attract new military missions, prevent closure of existing missions, and redevelop a closed or realigned military base
- General airport facilities for communities within 25 miles of the US/Mexico border only
- Light rail, commuter rail, and motor buses
- Sports venue facilities with a special election and specific ballot language
- Certain projects based in Hidalgo County
- Any Type B project listed below that is also approved through a special election and voter approval for that specific project

For Type B EDCs, the projects include

- Everything authorized under Type A, including retail and commercial projects
- Water supply facilities with a special election and ballot language
- Projects to improve a community's "quality of life", which includes, but is not limited to parks, professional and amateur sport and athletic facilities, tourism and entertainment facilities (any project approved by both the board and governing authority to promote "quality of life" is generally an acceptable project so long as the resolution language contains that phrase and findings)
- Affordable housing projects
- Any other type of improvement or expenditure that promotes "new or expanded business" activity that creates or retains "primary jobs"
- Direct incentives for retail in communities with fewer than 20,000 residents and/or certain land-locked communities
- Sewer or solid waste facilities in Hidalgo County
- Hangars, airport maintenance and repair facilities, air cargo facilities, and related infrastructure located on or adjacent to an airport facility
- Other airport facilities not listed so long as those facilities are subject to a development agreement with the municipality that will acquire a leasehold or other possessory interest in the facility from the owner or EDC
- Rail ports, rail switching facilities, marine ports, and inland ports

For most eligible projects for both a Type A and Type B corporation, it all comes down to a "primary job" being created.

Texas law defines a primary job as an employment position 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, (2) is also included in one of the following sectors of the North American Industry Classification System (NAICS):

- Crop Production
- Animal Production
- Forestry and Logging

- Commercial Fishing
- Support Activities for Agricultural and Forestry
- Mining
- Utilities
- Manufacturing
- Wholesale Trade
- Transportation
- Warehousing
- Information & Data Services
- Securities, Commodities, Insurance, Funds, Trusts, and Other Financial and Investment Related Activities
- Scientific Research
- Development Services
- Management Companies and Enterprises
- Telephone Call Centers
- Correctional Institutions
- National Security

Publishing

Type A EDCs are not required to publish projects. A Type B EDC must publish in a local publication each project it plans to undertake before EDC funds are expended on the project. This must be published at least 60 days before the funds are expended. The reason is to provide the citizens 60 days to circulate any objections to the project with a petition of at least ten percent (10%) of the registered voters. Should a petition be presented during this time frame, then a special election is required for the project to move forward. See *Texas Local Government Code § 505.160 & 505.303*.

All projects for both Type A and B EDCs must be approved by the board of directors and the governing authority.

Boards of Directors are determined by the type of EDC

For a Type A EDC, the board can be made up of any person, without statutory criteria for their selection. However, the board must be comprised of at least five (5) board members appointed by the governing authority. A Type A EDC can have more than five (5) if the governing authority and bylaws or certificate of formation permit it. There are no restrictions on the residence or employment of a director for a Type A EDC. This differs from a Type B EDC. See *Texas Local Government Code § 504.051*

For a Type B EDC, the criteria are governed by *Texas Local Government Code Chapter § 505.051-.52*, and the Code contains employment and residence restrictions on directors. The Code also differentiates between communities of less than 20,000 people and those with over 20,000.

All Type B EDCs, regardless of size, must have exactly seven (7) directors. The governing authority and bylaws cannot permit a lesser or greater number of directors than seven (7). At least three (3) of the seven (7) directors must be persons who are not employees, officers, or members of the governing authority/city. Should the Type B EDC be created by the conversion of a Type A into a Type B, then any person who was serving on the Type A EDC board at that time may serve on the newly created Type B EDC board of directors regardless of the above rules (until such time as their term expires by law). These rules apply to all Type B EDCs regardless of size.

Type B's EDCs and 20,000 Population

Type B EDCs located within communities that are over 20,000 in population must have all their directors residing within the city limits. All seven (7) directors must be residents of the city.

For communities of less than 20,000 people, the governing authority may appoint directors who are (1) a resident of the city; (2) a resident of the county in which the major part of the area of the city is located; or (3) reside within ten (10) miles of the city's boundaries and reside in a county bordering the county in which most of the area of the city is located.

City Charters and Director Qualifications

A city charter of the governing authority may be more specific and/or more restrictive on the criteria for the board of directors. For example, the city charter could require board members to reside within the city. Yet, a Type B EDC cannot have any more or less than seven (7) directors, so a city charter provision cannot alter that number. However, a city charter can state that its Type B EDC is required to have one (1) city council member, one (1) member of a specific industry, and five (5) other individuals who have resided in the city limits for at least two (2) years.

No director under either Type A or B EDC is allowed to be compensated for their service on the board. All directors are entitled to be indemnified by the corporation for all corporate decisions and activities.

EDC as a City Department

In some instances, an EDC may be established as a department of a city or municipality. The EDC remains a non-profit corporation as established under the Development Corporation Act and responds to the direction of its board of directors. However, in this instance the EDC may also be a department of the city or municipality. In such instances, the executive director, or lead staff member, may report to the EDC board and the city manager.

Section 3

Economic Development Fundamentals: Important Facts You Should Know

The City Council's and EDC's Goals, Vision and Mission should be aligned

The city council's policies, goals and vision for the city should to be communicated with and carried out by their EDC. The EDC should have its own mission statement and development goals, but the mission and goals should be in alignment with their city. The governing authority's officials are elected to set the city's policies, including all EDC projects and expenditures.

The city council and the EDC's board of directors should meet at least once a year. Depending on a city's growth and changes in leadership, then more meetings could always be considered. This is not a state law requirement, but routine joint meetings ensure both entities share the same vision for growth and business development.

The city manager and the EDC's executive director, or lead staff member of the EDC, should also conduct regular meetings to make sure they are both carrying out policies in accordance with this shared vision and mission. Although not required by law, the EDC's bylaws may contain a provision requiring annual joint meetings between the city council and board of directors.

EDC Policies and Procedures

An EDC should also have written policies and procedures governing the conduct of the EDC, the board of directors, the executive director or lead staff member, and its employees. Policies and procedures are not legally required under statute, but they are a best practice to ensure the board and all employees have written expectations and rules to follow. They provide the EDC board with the authority to remove directors or employees for reasons outlined in the policies. Without them, the board is left to a broad state statute that simply says they can be removed "for cause" without defining those reasons outside of criminally- related conduct.

The policies and procedures should not conflict with the city charter, any city ethics rules, or other ordinances governing the city council, or the appointment of boards or commissions. It is recommended that the city attorney and the EDC's attorney (if different) draft these policies and procedures together to prevent any such conflict.

The EDC's mission statement and policies and procedures should be maintained on the website of the EDC. This prevents any confusion to the public and potential projects about the EDC's and city's expectations for projects. The policies and procedures should also contain a method and process the EDC undergoes to determine viable projects.

A form-based application establishing measurables and metrics for each project provides the board of directors and city council with apples-to-apples comparisons from one project to the next. For each project the EDC wishes to fund with grants and/or provide other incentives, the EDC should have an application that sets out the project's economic impact, number of primary jobs, quality of life impact, and/or any other metric the city and EDC board determines should be measured.

These types of board approved applications ensure the mission and goals of the city and EDC are carried out with each project. More importantly, they check the legal boxes required for both Type A and Type B EDC projects, such as primary jobs.

Texas Open Meetings Act

Any regular or special meetings of an EDC must be conducted in accordance with the Texas Open Meetings Act (the “Act”). Violations of the Act can lead to criminal fines and prosecution. They can also void any decision rendered by an EDC if that decision was done in violation of the Act. *Chapter 551 of the Texas Government Code* contains all the specific requirements of the Open Meetings Act. Directors and employees should conduct annual Texas Open Meetings Act training to prevent any violations.

The Texas Open Meetings Act covers joint meetings with city council and workshops. However, a “social gathering” where a majority of directors happen to be present, the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, or press conference, or the attendance by a quorum of a governmental body at a candidate forum, appearance, or debate to inform the electorate, does not constitute a “meeting” under the Act (e.g., a ribbon cutting or a fundraiser for an organization like a chamber of commerce) provided formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, press conference, forum, appearance, or debate.

A “meeting” under the Texas Open Meetings Act is defined as any quorum of directors who deliberate either in person, over the phone, or virtually. A “quorum” is defined as a majority of directors who deliberate over a matter, which is typically three (3) of the five (5) directors for a Type A EDC, and four (4) of the seven (7) directors for a Type B EDC. Any deliberation or decision made between a majority of directors outside of a meeting constitutes a “quorum” and can be a violation of the Texas Open Meetings Act. Directors must be cognizant of their discussions before and after meetings begin and end to prevent a violation of the Texas Open Meetings Act.

Under Texas law, an EDC must do the following for any meeting between a quorum of directors who are going to discuss any public business, policy, project, or personnel matter:

- Agendas are required to be made available to the public and shall be posted both online and at either city hall or the EDC’s location at least 72 hours before any such meeting takes place
- All agendas shall outline each item to be discussed or voted on by the board of directors (an item not on the agenda cannot be discussed or voted on at that meeting)
- All agendas shall set forth the time and location for each meeting (website URL for any meeting being held virtually in real-time)
- The meeting’s location must be in the city limits of the governing authority with exception to city located in a county with less than 30,000 in population (those EDCs can meet anywhere in the county)
- The agenda shall contain the decorum and rules for public comment
- The meeting shall allow for public comment on each item posted on the agenda
- Meeting minutes shall be recorded and maintained by the EDC’s board or staff, and previous meeting minutes shall be approved at any subsequent meeting
- All notes, memoranda, or other communications between employees and/or board of directors are public information subject to any public information request and should be maintained in accordance with the policies and procedures of the governing authority and Chapter 552 of the Texas Government Code.
- For more information on public meetings and maintaining records of an EDC see *Chapters 551 and 552 of the Texas Government Code*.

Closed Meetings or Executive Sessions

A board of directors may convene into executive session, which is a “closed meeting” not open to the public only consistent with the Texas Open Meetings Act. The basis for such a closed meeting is specific and outlined in *Sections 551.071-091 of the Texas Government Code*. Generally, an EDC convenes in executive session to discuss attorney-client privileged matters related to contracts, litigation, EDC projects, property purchases or negotiations, and personnel matters (unless the employee requests a public hearing on the matter). An attorney must be present in a closed meeting to receive legal advice (telephone or virtual attendance is allowed).

Closed meetings must still post an agenda in accordance with the Texas Open Meetings Act setting forth, generally, what is going to be discussed. Most EDCs convene into executive session to discuss a potential project and possible incentives, and posting an agenda with the projects name with a statement that it is an “attorney-client” privileged discussion regarding a contract is all that is required.

Training, Reporting and Filing

Training is required under Texas law for the executive director “or other person who is responsible for the daily administration” of the EDC. *Texas Local Government Code TLGC 502.101(a)(1)-(2)*. This training is required to be taken every twenty-four (24) months. If any EDC does not have an executive director, president, or CEO, then the board chair or other staff member may take the training seminar. The Texas Economic Development Council (TEDC) provides the training that meets the statutory requirements that is available throughout the state each year. EDC funds may be used to pay for the costs of the seminar and travel. Proof of attendance is required to be filed with the Texas Comptroller’s office every two (2) years and failure to do so can allow for a penalty of \$1,000 to be imposed. *Texas Local Government Code TLGC 502.103(b)*.

Annual reports are required to be filed with the Texas Secretary of State and the Texas Comptroller’s Office. The Secretary of State requires the following to be filed as soon as possible (no statutory deadline, but any such filings are not valid until received by the Secretary of State):

- Articles of Incorporation (or Certificate of Formation)
- Registered Agent
- Board of Directors
- Any amendments or changes to the Articles, Registered Agent, or the Board of Directors
- Certificates of Termination to terminate or dissolve the EDC after election and approval by the governing authority

All tax abatements and abatement guidelines for a city or county must be on file with the Texas Comptroller’s office. In addition, cities and counties are required to file chapter 380 and chapter 381 agreements with the Texas Comptroller’s office.

No later than April 1st of each year, the EDC shall submit a report to the Texas Comptroller’s Office in the form found on the Comptroller’s website and not to exceed one-page the following statements:

- (1) a list of the corporation’s capital assets, including land and buildings;
- (2) the corporation’s primary economic development objectives;
- (3) the corporation’s total revenue during the preceding fiscal year;
- (4) the corporation’s total expenditures during the preceding fiscal year; and,
- (5) the corporation’s total expenditures during the preceding fiscal year for each of the following categories listed separately:

- a. administration expenses;
- b. personnel expenses;
- c. marketing and promotional expenses;
- d. direct business incentives;
- e. job training;
- f. debt service;
- g. capital costs;
- h. affordable housing; and,
- i. payments to taxing units, including school districts, counties, MUDs, MMDs, and/or PIDSs.

Comptroller's Website for filing:

<https://comptroller.texas.gov/economy/local/type-ab/report.php>

The Comptroller may impose a fine of \$200 for failure to timely file a report in compliance with the requirements of *Texas Local Government Code § 502.151* above. The Comptroller will provide a late notice and allow thirty (30) days to timely file should an EDC forget to comply.

Promotional Expenses

Both Type A and B EDC are limited in the amount of revenues they can use for promotional expenses. Promotional expenses include sponsorships of events, billboards advertising their community, advertising, signage, etc. This is a gray area of Texas law. To be sure your expenses are categorized correctly as “promotional” it is best to consult with your EDC attorney and/or the Texas Comptroller's office.

Type A EDCs may not spend more than ten percent (10%) of their annual revenues for promotional purposes. A Type A EDC can spend twenty-five percent (25%) of its annual revenues on promotions, if the Type A is located in two (2) counties, has a population of less than 24,250 (as of 1990), and is located wholly or partially within 10 miles of a federal military reservation. See *Texas Local Government Code § 504.105*.

No Type B EDC may spend more than ten percent (10%) of its annual revenues on promotional purposes regardless of size and location. However, it is important to note that unexpended revenues specifically set aside for promotional purposes in past years may be expended along with the ten percent (10%) of the current year's revenue without violating the cap.

Debt Issuance and Loans

Both Type A and B EDCs can issue loans and receive bonds to be used on qualifying projects. Bonds and debts can be leveraged against future EDC revenue, as well as existing capital and improvements. It is recommended all EDCs consult with an attorney and/or a municipal bond consultant before issuing any such obligations.

Section 4

Local Economic Development Incentives and Special Districts

Performance Agreements

Economic development corporations cannot simply provide gifts of sales tax proceeds. A contract is required of both Type A and Type B EDCs before any funds may be provided to a project, regardless of the amount. The contract is referred to as a “performance agreement” under *Chapter 501 of the Texas Local Government Code*.

At a minimum, the performance agreement must:

- (1) be signed by the parties;
- (2) set forth a schedule of additional payroll, additional jobs, or metrics for the business enterprise’s economic impact and expansion within the community;
- (3) outline in dollars and cents the capital investment to be made by the business enterprise;
- (4) contain the amount of funds or other monetary or in-kind incentives provided to the business enterprise;
- (5) the terms under which repayment must be made by the business enterprise to the EDC should the business fail to meet its contractual obligations; and,
- (6) contain statutory legal disclaimers required by all Texas political subdivisions and EDC’s under the Texas Tax Code, Texas Government Code, and Texas Local Government Code (this includes language that the business enterprise will not employ undocumented workers and will not use the funds to pay delinquent income or property taxes, etc.).

Due to the technical nature of performance agreements and their required legal disclaimers it is recommended a municipal law attorney draft those contracts.

The performance agreement is required to be approved by both the board of directors and the governing authority.

Contracts are also required for all third-party agreements for economic studies, brokerage fees or commissions, or business recruitment. These contracts are required to be signed by all parties and approved by the board of directors. Failure to enter a written contract for such services can result in a civil penalty against the EDC in an amount not to exceed \$10,000.00. See *Texas Local Government Code § 502.051*.

Chapter 380 and 381 Agreements

Chapter 380 of the Texas Local Government Code allows municipalities and private entities to contract with one another for the purpose of economic development and related programs. This includes taking out bonds or loans for infrastructure and other improvements designed for economic development. In fact, many private entities and cities contract with one another for roads and other forms of infrastructure development to help a large business relocating or to develop an industrial park.

Chapter 380 Agreements for cities and Chapter 381 Agreements for counties authorize the contracting with private entities to share in infrastructure and utility expenses and planning. These Agreements can include the parties sharing project costs, addressing property taxes or offsetting sales tax revenue.

Both Chapter 380 and 381 contracts must be signed and approved by both the city or county’s governing body, as applicable, and the private entity. In addition, Chapter 380 and 381 agreement must also be filed with the Texas Comptroller’s Office within fourteen (14) days after being entered.

Property Tax Abatements

Chapters 311-313 of the Texas Tax Code govern tax abatements, special taxing districts, and other types of taxing zones allowed under Texas law. Cities and counties (“taxing units”) may initiate a tax abatement that allows a business to pay a portion of the property taxes on their land and/or any improvements for a fixed and agreed to period of time. The abatement can be on the land, the improvement, or both. Tax abatement agreements cannot exceed ten (10) years in length.

Local governments often use tax abatements to attract new industry and commercial enterprises, as well as to encourage the retention and growth of existing businesses within their community. The laws governing abatements for cities, counties and school districts are contained in Chapters 312 and 313 of the Texas Tax Code. School districts are more restricted in their ability to provide tax abatements, which typically apply only to appraisal values being fixed or reduced for a specific period not to exceed ten (10) years.

If the property subject to the abatement is located exclusively within the city limits, then the city must initiate the abatement proceedings. If the property is located within the city’s ETJ either the county or city may initiate the abatement proceedings. If the property is located exclusively in the county then the county must initiate the abatement. See Texas Tax Code §312.204-206.

The ten (10) steps for tax abatements are as follows:

- (1) Each taxing unit wishing to consider a tax abatement proposal must adopt a resolution by the governing body indicating its intent to participate in the tax abatement.
- (2) Each taxing unit must adopt general tax abatement guidelines and criteria for all abatements that are effective for two (2) years (these criteria can be flexible and amended, changed or altered by the governing body at any time).
- (3) The taxing unit must deliver in writing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed reinvestment zone notice of the public hearing designating a reinvestment zone. This mailed notice must be delivered not later than the seventh (7th) day before the date of the public hearing on the designation of a reinvestment zone.
- (4) The taxing unit must also publish in a newspaper of general circulation with the city notice of the public hearing designating a reinvestment zone. This notice must be published not later than the seventh (7th) day before the date of the public hearing
- (5) Hold a public hearing and provide the required notice under the Texas Open Meetings Act that the taxing unit is seeking an abatement and they are designating the area/land subject to the abatement as a “reinvestment zone.”
- (6) Following a public hearing, a city may designate an area within the taxing jurisdiction or ETJ of the municipality as a tax abatement reinvestment zone. The city must designate the reinvestment zone by ordinance.
- (7) At least thirty (30) days before the scheduled time of the meeting to approve a tax abatement agreement, the taxing unit must provide public notice of a meeting (bulletin board notice) at which the unit will consider approving a tax abatement agreement. The public notice must include the following: (1) the name of the property owner and the name of the applicant for the tax abatement agreement; (2) the name and location of the reinvestment zone; (3) a general description of the nature of the improvements and repairs; and (4) the estimate cost of the improvements and repairs.
- (8) At least seven (7) days before the date on which a city enters into a tax abatement agreement, the city must deliver to the presiding officer of the governing body of each other taxing unit in which the property subject to the agreement is located a written notice that the city intends to enter into a tax abatement agreement. The notice must include a copy of the proposed agreement. Failure to deliver the notice does not affect the validity of any agreement.

(9) The agenda to consider the approval of a tax abatement agreement must indicate the following: (1) the name of the property owner and the name of the applicant for the tax abatement agreement; (2) the name and location of the reinvestment zone; (3) a general description of the nature of the improvements and repairs; and (4) the estimate cost of the improvements and repairs.

(10) The majority of the governing body of each taxing unit where the property is located must approve of the abatement at a regularly scheduled meeting (not a special meeting per the statute). See *Texas Tax Code § 312.207*.

Counties and Chapter 381

Counties are limited in how they can use tax money to fund economic development projects. Most of their projects and use of tax funds for economic development are limited to *Chapter 381 of the Texas Local Government Code*. Chapter 381 Agreements are used as a means for allocating county resources to economic development projects. Specifically, *Texas Local Government Code § 381.004* does not authorize a county or commissioner's court to appropriate funds to a small business development program that is not administered by another entity (such as an EDC) under contract with the county. Before entering into such a contract with an EDC, a county must first adopt a 381 policy to provide county resources to economic development projects.

County Alliance Corporations

Chapter 506 of the Texas Local Government Code allows for counties to join with adjacent counties to form economic development alliance corporations. County Alliance Corporations with less than ten (10) member counties are required to have three (3) directors from each member county, and those with over ten (10) counties in the alliance must have two (2) members from each county. See *Texas Local Government Code § 506.001-.101* for all laws regarding County Alliances' formation and governance. The remaining rules and laws governing County Alliances are the same as those under Type A and B EDCs under *Texas Local Government Code Chapter 501*.

County Development Districts

The Texas legislature provides counties with additional tools for aiding in the growth of a community's tourism industry through the County Development District Act. See *Texas Local Government Code § 383.001-.112*. A County Development District's main purpose is to "use sale tax... for the promotion and development of tourism". See *Texas Local Government Code § 383.033*. These Districts are funded solely for tourism related projects. This differs from standard EDC funds and projects, which generally cannot be used for development of tourism, unless that tourism provides full-time employees and/or business growth and retention of a community. The number and qualifications for board of directors, requirements for the bylaws, and formation and election information for County Development Districts is governed by *Texas Local Government Code § 383.021-.040*.

Spaceport Development Corporations

A relatively new addition to the Texas economic development toolkit is *Chapter 507 of the Texas Local Government Code* establishing "Spaceport Development Corporations". Spaceport Development Corporations can be formed by election by any county, or by a municipality of more than two million, or by any combination of a county or municipality. See *Texas Local Government Code § 507.003*. The scope of a Spaceport Development District's purpose is limited solely to improvements to "land, buildings, equipment, and facilities... required or suitable for the use or promotion or development of a spaceport", or "related facilities" that includes, roads, sewer facilities, and any other type of construction project needed for a spaceport. See *Texas Local Government Code § 507.002* for full list of allowed expenditures.

Municipal Management Districts (MMDs)

A Municipal Management District (“MMD”) allow municipalities and local business owners to finance facilities, infrastructure, and services beyond those already being provided by a local municipality. Specifically, MMDs allow for a defined location to be taxed for a defined purpose to supplement services for that specific area. These are mostly used for historic downtown areas. For example, a historic downtown may require special sidewalk, internet, sewer and/or water upgrades that the remainder of a city does not need. Therefore, a municipality may create a MMD to accomplish these goals.

An MMD is created through a majority of the property owners of the proposed MMD area. Then, there is a five (5) step process through Texas Commission on Environmental Quality (TCEQ). This process requires (1) filing a petition with the local municipality and TCEQ describing the location and purpose of the MMD; (2) TCEQ sets the petition for a hearing; (3) all property owners within the MMD receive notice of the hearing and petition; (4) TCEQ holds a public hearing; and, (5) TCEQ approves of the MMD and the MMD appoints its officer/board of directors. See *Texas Local Government Code § 375.001-.069* for all requirements of an MMD.

Municipal Development Districts (MDDs)

Chapter 377 of the Texas Local Government Code enables cities to form MDDs. MDD oversight is vastly different than that of Type A and Type B EDCs. Type A and Type B EDCs are independent non-profit corporations with restrictions on who may serve on their boards. Specifically, Texas law strictly states a Type B organization must have at least three (3) directors who are **not** city employees, or employees of the governing authority. These three board members must be citizens who meet the city defined criteria other than being city employees or officers. Some members must also reside within the city limits.

Chapter 377 allows a city to hold an election approving an MDD and then appoint a board of directors of no less than four members who may be exclusively made up of city employees or officers. The board of directors of the MDD may also be residents of the ETJ (extraterritorial jurisdiction) and not exclusively within the city limits and serve two-year staggered terms.

MDDs must hold meetings under the Texas Open Meetings Act to approve any type of project (defined by status as a Type B project in *Section 505.15-505.18 of the Texas Local Government Code*), or any additional types of civic projects outlined in Chapter 377. The additional types of projects afforded to MDDs include civic centers, auditoriums, convention centers, parking facilities, and other tourism related facilities not expressly allowed as Type B projects. See *Texas Local Government Code § 377.001(3)(B)*.

MDDs are formed with defined boundaries that are required to be defined on the ballot to approve the MDD. These boundaries may be both within the city's limits and the city's ETJ. That MDD can then tax exclusively within that defined boundary for MDD approved projects within either the boundary or within the city limits or ETJ. The MDD projects may be outside the MDD boundary, so long as they are approved and found to be "beneficial to the district" by the MDD's board and governing authority. MDDs may be formed independently of or formed in conjunction with a Type A or Type B EDC.

Public Improvement Districts (PIDs)

The Public Improvement District Act allows cities or counties to levy taxes both inside as well as outside its city, county or extra-territorial jurisdiction's (ETJ) limits. Aiding in construction projects and providing services outside of the city or county's ETJ is a unique tool Public Improvement Districts ("PIDs"). PIDs help growing cities and counties provide services outside their jurisdictional limits. PIDs use taxes, bonds, and grants to improve infrastructure, such as inadequate streets, landscaping, parks and fountains, sidewalks, water and wastewater equipment and facilities, as well as repair and maintain any other inferior services, facilities, or equipment.

There are ten (10) steps to form a PID. The first step is to circulate a petition that is signed by at least fifty percent (50%) of the property owners located within in the area of the proposed PID. Then, a committee may be appointed to oversee the process along with a feasibility study and report outlining the benefits and feasibility of the PID being formed. The city or county requesting the PID must then hold a public hearing with a notice sent to all property owners in the PID at least fifteen (15) days prior to the hearing. The PID may then be adopted by resolution, and once approved by the city or county's governing body construction may begin within the PID. Any PID assessments levied under the PID must then be approved by the city or county by ordinance or resolution. All projects within the PID and tax money expended must be accounted for and reviewed annually by the governing authority. *See Texas Local Government Code § 372.001-.023.*

Tax Increment Reinvestment Zones (TIRZ)

Chapter 311 of the Texas Tax Code governs various methods tax money may be used by local cities and counties. One of those methods is by initiating a Tax Increment Reinvestment Zone ("TIRZ"). There must be a statutory need for a TIRZ for a city or county. These needs include deteriorating structures, inadequate roads or sidewalks, faulty lot layouts, unsanitary or unsafe conditions, or other unsafe or defective conditions with property, title, structures, or utilities.

There are eight (8) steps to establish a TIRZ. First, the city or county must prepare a "preliminary financing plan" that contains a detailed list of the estimated cost of the TIRZ, as authorized by *Texas Tax Code § 311.002-.010*. The county or city must then hold a public hearing and place notice of the hearing in a newspaper at least seven (7) days in advance. The city or county must then approve of the TIRZ at this public hearing by resolution or ordinance. This hearing and ordinance must set forth the geographical location and boundaries of the TIRZ, as well as the initial board of directors of the TIRZ. The board of directors must then hold a meeting to establish the "project plan" and "financing plan" for the TIRZ. Lastly, once the TIRZ board of directors approves of the TIRZ "plans" above, they must file those plans with the city or county and begin collecting TIRZ tax revenues in accordance with *Texas Tax Code § 311.011*. The city council or commissioners court as applicable must then approve the project plan and financing plan.

The TIRZ board of directors must provide the governing authority with an annual report containing in detail all revenues and expenses of the TIRZ. This should be done in conjunction with the city or county's annual budget reporting timeline.

http://



Important Contacts and Helpful Resources

TEDC MEMBERSHIP, RESOURCES & SALES TAX WORKSHOP

TEXASEDC.ORG
512-480-8432

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

COMPTROLLER.TEXAS.GOV
800-252-5555

TEXAS COMPTROLLER OF PUBLIC ACCOUNT'S ANNUAL EDC FILINGS

COMPTROLLER.TEXAS.GOV/TRANSPARENCY/REPORTS/ECONOMIC-DEVELOPMENT-CORPORATION

TEXAS SECRETARY OF STATE

SOS.STATE.TX.US
512-475-2705

TEXAS SECRETARY OF STATE NON-PROFIT CORPORATION'S FILING & INFORMATION

HTTPS://WWW.SOS.STATE.TX.US/CORP/FORMS_BOC.SHTML

TEXAS MUNICIPAL LEAGUE

TML.ORG
512-231-7400

TEXAS MUNICIPAL LEAGUE HANDBOOK

TML.ORG/DOCUMENTCENTER/VIEW/1471/2020-ECONOMIC-DEV-HDBK-_FINAL

TEXAS GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT AND TOURISM

GOV.TEXAS.GOV/BUSINESS
512-936-0100

TEXAS ATTORNEY GENERAL'S OFFICE & OPEN MEETINGS ACT INQUIRIES

TEXASATTORNEYGENERAL.GOV/OPEN-GOVERNMENT
877-673-6839

TEXAS STATUTES & EDC LAWS ONLINE

STATUTES.CAPITOL.TEXAS.GOV



LOCAL ECONOMIC DEVELOPMENT GUIDE BOOK



TEXAS ECONOMIC DEVELOPMENT COUNCIL

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