



# Type B Sales Tax

CITY OF MCKINNEY, TEXAS

OCTOBER 22, 2020

# Must the MCDC Conduct a Public Hearing Prior to Funding Type B Projects?

- Must conduct at least one public hearing on proposed Type B projects. § 505.159.
- Must obtain city council approval of the expenditure.
- Must publish notice of the project in newspaper.
- 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. § 505.160(a).

## When must a Type B corporation publish notice of a proposed project?

- ▶ Type B corporations must publish notice of all projects pursuant to section 505.160(a) of Texas Local Government Code.

**Can the MCDC grant or gift Type B proceeds to a business entity without a performance agreement?**

- ▶ Must have a performance agreement. Performance agreement must contain the following:**
  - schedule of additional payroll or jobs to be created or retained**
  - schedule of capital investment to be made, and**
  - specify the terms for any repayment.**
    - Tex. Loc. Gov't Code § 501.158.**

# WHO ADMINISTERS AND OVERSEES THE TYPE B SALES TAX?

- Type B sales tax are administered by non-profit corporations – the MCDC.
- The corporations through a board of directors determine which projects to fund.
- City council retains approval authority over all expenditures of the corporation. § 501.073(a) and 501.054(b)(2).

# Does City Council have to Approve Expenditures for Type B Projects?

- ▶ The MCDC has the power to expend the sales tax revenue.
- ▶ Yet, City Council retains authority to “approve all programs and expenditures of a corporation.” § 501.073(a).
- ▶ City Council’s oversight includes the authority to approve promotional expenditures as well.
  - ▶ Op. Tex. Att’y Gen. No. GA-0086 (2003).

# Does City Council Appoint the Directors of the MCDC?

- The MCDC board of directors consists of seven (7) directors.
- Type B director must reside within the City of McKinney.
- Type B board members are appointed by City Council and can be removed with or without cause.

## How Long a Term do Type B Board of Directors serve?

- ▶ Type B board members serve a two (2) year term. § 505.051(b).
- ▶ Under the MCDC Bylaws, board members may serve a total of three 2-year terms.



# **Who determines which board members serve as chairman, vice-chairman, secretary and treasurer of the corporation?**

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The board of directors appoint the officers to serve as chairman, vice-chair, secretary, and treasurer.

- Tex. Loc. Gov't Code § 505.053.

# How long is the term for officers of the MCDC?

- ▶ The MCDC bylaws provide for a one-year term of office.
- ▶ If the certificate of formation or bylaws do not address the term of office, the officers are elected annually.
  - ▶ Tex. Loc. Gov't Code § 501.065(b).

# What Constitutes a Quorum for the MCDC?

- ▶ A majority of the board constitutes a quorum.
- ▶ **Type B**: Four (4) members of the seven (7) member Type B board constitute a quorum.
- ▶ Tex. Loc. Gov't Code § 505.054.

# Are the MCDC meetings subject to the Open Meetings Act?

- Yes. Type B corporations are subject to the Open Meetings Act. Sec. 501.072.

## Is the MCDC subject to the Public Information Act?

- ▶ **Yes. Type B corporations are subject to the Public Information Act. Section 501.072.**

# Can the MCDC amend its bylaws?

- ARE AUTHORIZED TO ADOPT AND AMEND BYLAWS NOT INCONSISTENT WITH:
  - CERTIFICATE OF FORMATION; OR
  - STATE LAW.
- AMENDMENTS TO THE BYLAWS MUST BE APPROVED BY RESOLUTION OF THE CITY COUNCIL.
  - Tex. Loc. Gov't Code § 501.064(c).

# Economic Development Corporation Report

- Section 502.151 of the Texas Local Government Code provides the following:
- Requires all Type A & Type B's to submit an annual report to the State Comptroller's Office
- The report must be submitted by April 1<sup>st</sup> each year (formerly Feb. 1<sup>st</sup>) (S.B. 450 (2019)).
- \$200 penalty failure to file
- Comptroller must report to Legislature in even numbered years.

# Economic Development Corporation Report



TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

**ECONOMIC DEVELOPMENT CORPORATION REPORT**  
 —Fiscal Year Ending 2003

Corporation name			
Contact person		Title	
Street address			
City		State <b>TEXAS</b>	ZIP code
Phone (Area code and number)	FAX (Area code and number)	E-mail address (if applicable)	Type of corporation <input type="checkbox"/> 4A <input type="checkbox"/> 4B

As required by Vernon's Ann. Civ. St. Art. 5190.6 §4C, please complete and return this form to the Comptroller's office by February 1, 2004. Your reply must be postmarked no later than February 1, 2004. Please use the enclosed self-addressed envelope. You may also complete and fax this form to 512/475-0664 no later than the due date. Failure to file a completed report form by February 1, 2004 may result in an administrative penalty. Instructions are on the back of this form.

1. Indicate your corporation's fiscal year \_\_\_\_\_
2. Check the corporation's primary economic development objective(s):
 

<input type="checkbox"/> Job Creation/Job Retention	<input type="checkbox"/> Infrastructure Projects
<input type="checkbox"/> Tourism	<input type="checkbox"/> Other (You may use a separate sheet to provide additional information, if desired.)
<input type="checkbox"/> Sports Facilities/Recreation	
3. List the corporation's total revenues during the preceding fiscal year.
 

Sales Tax Revenue .....	\$ _____
State/Federal Grants and Matching Contributions .....	_____
Rental/Lease/User Fees Income .....	_____
Bond Proceeds/Loans Obtained .....	_____
Other Revenue .....	_____
<b>TOTAL FISCAL YEAR-END 2003 REVENUES .....</b>	<b>\$ _____</b>
4. List the corporation's total expenditures during the preceding fiscal year in each of the following categories:
 

Personnel .....	\$ _____
Administration .....	_____
Marketing and Promotion .....	_____
Direct Business Incentives (Do not include payments to other taxing units) .....	_____
Job Training .....	_____
Debt Service .....	_____
Capital Costs .....	_____
Affordable Housing .....	_____
Payments to Taxing Units (e.g., school districts, municipalities, counties, etc.) .....	_____
Other .....	_____
<b>TOTAL FISCAL YEAR-END 2003 EXPENDITURES .....</b>	<b>\$ _____</b>
5. List the corporation's capital assets. (Exclude office equipment.)
 

_____	_____	_____
_____	_____	_____

**PERSON COMPLETING THE FORM**

Print name		Title	
Signature		Phone (Area code and number)	



If you have questions concerning the instructions or survey, call the Comptroller's Local Government Assistance Division, toll free at 1-800-531-5441, ext. 9-4679. The Austin number is 512/469-4679.



# Type B Sales Tax Permissible Projects



# Sec. 501.101. PROJECTS RELATED TO CREATION OR RETENTION OF PRIMARY JOBS.

In this subtitle, "project" includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are:

- 1) for the creation or retention of primary jobs; and
- 2) found by the board of directors to be required or suitable for the development, retention, or expansion of:
  - 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; . . .



## Sec. 501.101. PROJECTS RELATED TO CREATION OR RETENTION OF PRIMARY JOBS. (cont'd)

- f) recycling facilities;
- g) air or water pollution control facilities;
- h) facilities for furnishing water to the public;
- i) distribution centers;
- j) small warehouse facilities capable of serving as decentralized storage and distribution centers;
- k) primary job training facilities for use by institutions of higher education; or
- l) regional or national corporate headquarters facilities.



# What is a “Primary Job”?

**Tex. Loc. Gov’t Code § 501.002(12)**

- **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) NAICS sector codes.**

# What is a “Primary Job”? (cont’d)

- 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
  - securities, commodity contracts, and other financial investments and related activities;
  - scientific research and development services;
  - management of companies and enterprises;
  - Telephone call centers;
  - correctional institutions; and
  - A job included within National Security sector number 928110.

## Sec. 501.103. CERTAIN INFRASTRUCTURE IMPROVEMENT PROJECTS.



In this subtitle, “project” includes expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to:

- 1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements;
- 2) telecommunications and Internet improvements; or
- 3) beach remediation along the Gulf of Mexico.

## Sec. 502.052. USE OF TAX REVENUE FOR MASS TRANSIT-RELATED FACILITIES.

A corporation may, as authorized by the corporation's board of directors, spend tax revenue received under this subtitle for the development, improvement, expansion, or maintenance of facilities relating to the operation of commuter rail, light rail, or motor buses.

## Sec. 505.152. PROJECTS RELATED TO RECREATIONAL OR COMMUNITY FACILITIES.



For purposes of this chapter, “project” includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for use for professional and amateur sports, including children's sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheatres, concert halls, parks and park facilities, open space improvements, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of the items described by this section.



## Sec. 505.153. PROJECTS RELATED TO AFFORDABLE HOUSING.

**For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for the promotion of development and expansion of affordable housing, as described by 42 U.S.C. Section 12745.**

# Sec. 505.154. PROJECTS RELATED TO WATER SUPPLY FACILITIES AND WATER CONSERVATION PROGRAMS.

For purposes of this chapter, “project” includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for:

- 1) the development or improvement of water supply facilities, including dams, transmission lines, well field developments, and other water supply alternatives; or
- 2) the development and institution of water conservation programs, including incentives to install water-saving plumbing fixtures, educational programs, brush control programs, and programs to replace malfunctioning or leaking water lines and other water facilities.

**See**, Section 505.304 of Texas Local Government Code for ballot wording.

## **Sec. 505.155. PROJECTS RELATED TO BUSINESS ENTERPRISES THAT CREATE OR RETAIN PRIMARY JOBS.**

For purposes of this chapter, "project" includes 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:

- 1) a project to provide public safety facilities, streets and roads, drainage and related improvements, demolition of existing structures, general municipally owned improvements, and any improvements or facilities related to a project described by this subdivision; and
- 2) any other project that the board of directors in the board's discretion determines promotes or develops new or expanded business enterprises that create or retain primary jobs.

# APPROVAL OF PROJECTS

# Type B Corporations

## **Sec. 501.073. SUPERVISION BY AUTHORIZING UNIT.**

- (a) The corporation's authorizing unit will approve all programs and expenditures of a corporation and annually review any financial statements of the corporation.
- (b) A corporation's authorizing unit is entitled to access to the corporation's books and records at all times.

# Type B Corporations

## **Sec. 505.159. HEARING REQUIRED TO UNDERTAKE PROJECT.**

- a) Except as provided by Subsection (b), a Type B corporation shall hold at least one public hearing on a proposed project before spending money to undertake the project.
- b) A Type B corporation the creation of which was authorized by a municipality with a population of less than 20,000 is not required to hold a public hearing under this section if the proposed project is defined by Subchapter C, Chapter 501.

# Type B Corporations

## **Sec. 505.160. ELECTION REQUIRED FOR PROJECT; PETITION.**

- a) A Type B corporation may undertake a project under this chapter unless, not later than the 60th day after the date notice of the specific project or general type of project is first published, the governing body of the authorizing municipality receives a petition from more than 10 percent of the registered voters of the municipality requesting that an election be held before the specific project or general type of project is undertaken. . . .

# Type B Projects Approval Process

## Procedural Steps - Generally:

- 1) Publish notice of project/public hearing in the newspaper (Section 505.160(a)) (Publication can occur later in the process)
- 2) Type B posts agenda (72 hours in advance)
- 3) Type B meeting
  - Conduct public hearing on project (Section 505.159(a))
  - Board takes action on the item (votes up or down the project)
- 4) City Council posts agenda (72 hours in advance)
- 5) City Council meeting
  - City Council takes action on the item (votes up or down the project)
- 6) Once 60 days runs from published notice (step 1) can fund the project (need a performance agreement) (Section 505.160(a))



# PROMOTIONAL EXPENDITURES

## **Sec. 505.105. LIMITATION ON USE OF REVENUES FOR PROMOTIONAL PURPOSES.**

A Type B corporation may spend not more than 10 percent of the corporate revenues for promotional purposes.

# JOB TRAINING

# Sec. 501.162. USE OF TAX REVENUE FOR JOB TRAINING.

A corporation may spend tax revenue received under this subtitle for job training offered through a business enterprise only if the business enterprise has committed in writing to:

- (1) create new jobs that pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area; or
- (2) increase its payroll to pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area.



**THE END**