

# **Joint Meeting between the City Council and The Development Corporation of Abilene Inc.**

**March 25<sup>th</sup> 2015, at 1:00 p.m.**

## **CITY COUNCIL OF THE CITY OF ABILENE, TEXAS COUNCIL CHAMBERS, CITY HALL**

The City Council of the City of Abilene, Texas met in a Joint Special Called Session on March 25<sup>th</sup> 2015, at 1:00 pm in the Council Chambers, 555 Walnut St. Mayor Archibald was present and presiding with Councilmen Shane Price, Joe Spano, Anthony Williams, Jay Hardaway, and Steve Savage. Councilman Kyle McAlister was absent. Also present were Interim City Manager David A. Vela, City Secretary Danette Dunlap, City Attorney Dan Santee and various members of city staff.

Training on Texas Economic Development Sales Tax legislation and regulations by Jeff Moore, attorney with Brown & Hofmeister, LLP in Richardson, Texas.

Kent Sharp CEO of the Development Corporation of Abilene introduced Jeff Moore. Mr. Moore briefed both the council and the DCOA board on the Type A and Type B Sales Tax Corporate Requirements.

The following topics were covered:

- What is Type A and Type B Sales Tax?
- How many cities have adopted a Type A or Type B Sales Tax?
- When must a Type A or Type B Sales Tax Election be held?
- What is the Tax Rate for a Type A or Type B Sales Tax?
- Can Type A or Type B corporations grant or gift Type A or Type B proceeds to a business entity without a performance agreement?
- Can Type A and Type B Corporations Hire an Independent third party to conduct business recruitment or development?
- Can Type A or Type B corporations undertake projects which are located outside the city limits of the eligible city?
- Who administers and oversees a Type A or Type B Sales Tax?
- Does City Council have to approve expenditures for permissible Type A and Type B Projects?
  - 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 Type A and Type B Corporation?
- Who receives the Type A or Type B sales tax proceeds?
- How Long a term do Type A and Type B Board of Directors serve?
- Can a Type A or Type B director be reappointed to a subsequent term?
- Who determines which board members serve as President, Secretary and other Officers of the Corporation?
- How long a term do the President, Secretary and other officers serve as an officer?
- Must a Type A Board Member be a resident of the City?
- Can City Council members serve as Directors on the Type A or Type B Corporation?
- What Constitutes a quorum of the Type A or Type B Board of Directors?
- Are Type A or Type B board of directors paid?
- Are the Board meetings of Type A or Type B Board subject to the Open Meetings Act?

- Are Type A and Type B Corporations Subject to the Public Information Act?
- Can a Type A or Type B Corporation amend its bylaws?
- Must Type A Corporations conduct public hearings prior to funding Type A Projects?
- Must Type A Corporations publish notice of any hearings on proposed projects?
- Economic Development Corporation Report

#### Type A and Type B Sales Tax Permissible Projects

#### What are Permissible Type A Projects?

- Currently, Type A corporations may fund the following projects which must create or retain primary jobs:
  - manufacturing and industrial facilities;
  - research and development facilities;
  - Military facilities
  - recycling facilities;
  - Distribution centers;
  - small warehouse facilities;
  - Primary job training facility by institutions of higher education; and
  - Regional or national corporate headquarters.
    - Tex. Loc. Gov't Code §§ 501.101 and 504.103.
- Additionally, Type A corporations may fund the following projects without creating or retaining primary jobs:
  - Job training classes;
  - Certain targeted infrastructure;
  - Career center not located within the taxing jurisdiction of a junior college district;
  - a general aviation business airport which is an integral part of an industrial park;
  - port related facilities; and
  - Development, improvement, maintenance commuter rail, light rail, or motor buses.
  - Development or construction of housing facilities for public state college. Expires 9/1/2017. Tex. H.B. 2473, 83<sup>rd</sup> Leg., R.S. (2013).

#### The infrastructure improvements are limited to :

- streets and roads,
- rail spurs,
- water and sewer utilities,
- electric utilities,
- gas utilities,
- drainage, site improvements, and related improvements,
- telecommunications and Internet improvements,

- beach remediation along the Gulf of Mexico.
  - **Tex. Loc. Gov't Code § 501.103.**

Type A corporation created by a city located within 25 miles of an international border, may provide land, buildings, facilities, infrastructure, and improvements:

- required or suitable for the development or expansion of airport facilities OR
- Other projects if
  - population of less than 50,000 or
  - average rate of unemployment that is greater than the state average rate of unemployment during the most recent 12-month period.

**Tex. Loc. Gov't Code § 501.106.**

**What is a "Primary Job"?**

- In 2003, the Texas Legislature required most Type A or Type B projects 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) NAICS sector codes

- 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
  - 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.

### Streets and Sewers

Could a Type A or Type B Corporation fund street and/or sewer projects?

#### Section 501.103

- “Project” includes expenditures 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: **streets and roads**, . . . , water and **sewer utilities**, . . . **drainage**.
- **Section 505.152** “‘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, . . . , including . . . **related roads, streets, and water and sewer facilities**, and other related improvements that enhance any of the items described by this section.
- **Attorney General Opinion LO-95-072 (1995)**

Section 4B (now Type B) authorizes the board of directors to determine whether the construction of sanitary sewer lines in an existing residential subdivision would promote or develop new or expanded business enterprises, although it seems unlikely to promote or develop new or expanded business.

#### Attorney General Opinion GA-320 (2005)

- ⊙ “An expenditure for road construction may qualify as a “project” under section 2(11)(A) [now 501.103] of the Development Corporation Act . . . provided the board of directors of an industrial development corporation finds that the expenditure is “required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises.”

#### Attorney General Opinion JC-488 (2002)

- ⊙ Lake Jackson’s Type B corporation may fund the construction of the access road to service undeveloped commercially zoned property, provided that the access road will “promote new or expanded business enterprises.”

### Public Parks

Can Type A or Type B Corporation fund park projects?

- ⊙ **Section 505.152** “Project” includes “land, buildings, equipment, facilities, expenditures, 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, amphitheaters, concert halls, **parks and park facilities**, open space improvements, . . .
- ⊙ **Attorney General Opinion JC-400 (2001)** Sonora EDC is not precluded from using Section 4B [now Type B] funds for a “nature/birding center” or a public park project not specifically approved by the voters because it was within scope of the purpose for which the voters approved the tax.

### Type A Pursuing a Type B Project

- Election on uniform election date authorizing Type A sales tax proceeds for Type B project, or “specific category of projects”

- project or category of projects must be clearly described on the ballot
- If maintenance and operating costs are to be paid, the ballot language must clearly state that fact.
  - **Tex. Loc. Gov't Code Ann. § 504.152.**
- Must conduct public hearing in City prior to election. § 504.153.
- Must publish notice of the hearing at least 30 days before the date set for the hearing. The notice should be published on a weekly basis. § 504.153.
- The statute does not address how much in advance of the election the hearing must be held

#### Type A and Retail

- ⊙ If a Type A corporation wishes to assist with retail development, the Type A corporation may provide economic development assistance in the following areas:
  - Section 501.103 – targeted infrastructure
  - Section 504.105 – promotional expenditures
  - Section 501.162 – job training classes

Discussion included: 1) best practices for approvals of projects; 2) DCOA board by-laws; 3) Military projects; and 4) update of the current bills being presented at Austin while the Legislators are currently in session.

There being no further business the meeting was adjourned at 2:27 p.m.

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Danette Dunlap, TRMC  
City Secretary

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Norm Archibald  
Mayor