

ECONOMIC DEVELOPMENT TOOLS

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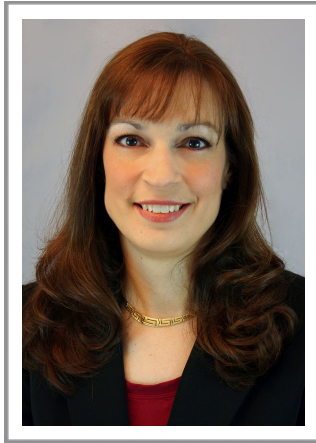


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ECONOMIC DEVELOPMENT TOOLS

Article III Section 52-a of the Texas Constitution, adopted November 3, 1987, and entitled "Assistance to Encourage State Economic Development," declared as public purposes the development and diversification of the economy, the elimination of unemployment or underemployment, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, and the development or expansion of transportation or commerce, thereby authorizing the use of public money for economic development purposes. The Texas Legislature thereafter developed various economic development statutes, providing for retention or expansion of primary employment and the development, retention, and expansion of local business. This paper addresses several of the economic development tools available to municipalities.¹ Ultimately, a municipality should structure its economic development incentives in a way as to successfully achieve one or more of the goals stated in the applicable statute.

LOANS AND GRANTS OF PUBLIC FUNDS: CH. 380 OF THE TEX. LOCAL GOV'T CODE

Chapter 380 of the Texas Local Government Code grants municipalities broad discretion to make loans and grants of public funds or provision of public services (with or without cost) to promote local industrial, commercial, and retail business development.² Specifically, the statute authorizes a governing body to establish and provide for the administration of one or more programs to promote state or local economic development, and to stimulate business and commercial activity in the municipality.³ A municipality may extend its economic development incentive program to its extra territorial jurisdiction and areas annexed by the municipality for a limited purpose.⁴

A municipality and a business prospect may tailor an economic development incentive agreement to address their unique needs. The Legislature intended Chapter 380 to authorize a municipality to implement any range of programs designed to promote economic development. Basically, the types of incentives offered are wholly discretionary with the municipality, provided: (1) the program serves a public purpose; (2) the projects are funded by current revenue or authorized debt; and (3) the municipality complies with its Charter and applicable statutes.

1. Public Purpose. Art. III, Section 52(a) of the Texas Constitution generally prohibits a municipality from lending its credit or granting public money or thing of value in aid of or to an individual or corporation.⁵ Section 52-a, however, provides an exception to this general rule. The provision adopted in 1987 and amended in 2005, provided for the creation of programs and making of loans and grants of public money for the public purposes of:

¹ The discussion of economic development tools in this paper does not address all the state and federal economic development programs available to municipalities. For further information regarding the programs addressed herein as well as the programs not discussed in this paper, see the Texas Attorney General Economic Development Handbook for Texas Cities at www.oag.state.tx.us/AG_Publications/pdfs/econdevhb2013.pdf.

² TEX. LOCAL GOV'T CODE § 380.001.

³ TEX. LOCAL GOV'T CODE § 380.001.

⁴ TEX. LOCAL GOV'T CODE § 380.001(a)(1) and (2).

⁵ TEX. CONST. art. III, § 52(a).

- Development and diversification of the economy of the state;
- The elimination of unemployment or underemployment in the state;
- The stimulation of agricultural innovation;
- The fostering of the growth of enterprises based on agriculture; or
- The development or expansion of transportation or commerce.⁶

A municipality that institutes a program to promote economic development under Chapter 380 must ensure that it complies with this public purpose requirement.⁷ Municipalities, therefore, must include in the economic development agreement sufficient controls to guarantee that it is accomplishing a public purpose with the expenditure of public resources. Particularly, the agreement should: (1) condition the grant or loan incentive on the creation of employment, construction of improvements, continued operations for a stated period of time, and/or other public purpose; (2) contain tangible measures and milestones allowing the municipality to determine whether the public purpose is being served; and (3) require recapture of the grant or loan amount if the recipient does not fulfill the conditions of the grant.

2. *Lawfully Available Funds.* To fund grants or loans, the municipality may use funds derived from any source lawfully available to the municipality under its charter or other law, other than from the proceeds of bonds or other obligations of the municipality payable from ad valorem taxes.⁸ City Council must approve all grants and loans made pursuant to Chapter 380, and should include the amount in the city budget or fund it through other authorized proceeds. Some municipalities include a specific allocation in their budgets for Chapter 380 grants.

Chapter 380 does not expressly authorize a municipality to finance an economic development incentive through the issuance of debt or bonds; however, a home-rule city can derive such authority from its charter. A home-rule city may issue bonds to the extent provided in the city charter *assuming that the bonds have been first authorized by voters in election held on the issue*. If the city charter is silent, a home-rule city must find other statutory authority that allows the issuance of bonds or debt to finance the economic development incentive.

A general law municipality may not issue debt without specific statutory authority. Without specific legislative authority contrary to Section 380.002(c) of the Texas Local Government Code, a general law municipality may only fund economic development programs through current city funds and revenues.

3. *Compliance with Charter and Applicable Laws.* A home rule municipality should review its charter for provisions that might restrict its ability to enter into an incentive agreement. While home-rule cities are authorized to take any action not prohibited by the Texas Constitution or statutes, the City Charter may limit such programs. General law municipalities, on the other hand, are only limited by state law, and must rely on a specific statute authorizing their action. Section 380.001 provides authority to create economic development incentive programs;

⁶ TEX. CONSTIT. art. III, § 52-a.

⁷ See Atty. Gen. Op. JM-1255 (1990)(Section 52-a did not change the requirements that public resources and powers be used for “the direct accomplishment of a public purpose” and that transactions using such resources and powers contain sufficient controls “to insure that the public purpose be carried out.”)

⁸ TEX. LOCAL GOV'T CODE § 380.002(c).

accordingly, if the municipality has available funds, it may provide a grant or loan to fulfill a public purpose.

ECONOMIC DEVELOPMENT INCENTIVE PROGRAM

Chapter 380 requires that, in order for a municipality to provide a loan or grant, it must establish a program.⁹ A city may elect to have its program administered by use of municipal personnel or through contract with another entity, such as the federal government, a Type A or Type B Economic Development Corporation, or the Chamber of Commerce.¹⁰ The statute does not provide any specific requirements for administration of the program; nevertheless, a municipality should adopt a written plan setting forth guidelines and policies, and describing the available economic development incentives and the criteria for eligibility. These guidelines and policies provide a framework for negotiating the agreement with the business prospect, and ensure that the project meets constitutional requirements.

In establishing its program(s), a municipality may provide for general incentives and criteria that allows for flexibility in the type of development eligible for consideration, or may set forth specifics that limit the types of incentives available and provide for strict eligibility criteria. Factors a municipality may want to consider addressing in its program include:

- the duration/number of years condition applies;
- maximum amount or limits on incentive;
- geographical limitations on restrictions based on zoning district;
- generation of certain levels of sales tax revenue;
- creation of a certain number and type of jobs;
- employment of local residents;
- restrict to certain types of industry or commercial activity;
- environmental restrictions;
- provision for required capital or infrastructure improvements;
- provision for required level of investment; and/or
- provision for required development standards.

A municipality would have to comply with any self-imposed limitations or restrictions included in its program.

INCENTIVES

Neither Chapter 380 nor Article III, Section 52-a specifies the type of incentives that a municipality may include in a program to promote state or local economic development. The incentives offered are limitless, unless otherwise addressed in the law.¹¹ Incentives used by municipalities under Chapter 380 have included the following:

⁹ TEX. LOCAL GOV'T CODE § 380.001(a).

¹⁰ See TEX. LOCAL GOV'T CODE § 380.001(b).

¹¹ For example, Chapter 1502 of the Government Code generally prohibits city-owned utilities from providing free utility services. See TEX. GOV'T CODE ANN. § 1502.057(b).

1. Funding for the renovation of shopping center or other business facilities conditioned on the generation of a certain level of sales tax revenue with the use of the sales tax revenue to fund the grant.
2. Use or loan of city personnel, equipment, and facilities for economic development projects.
3. Lease of city owned land or buildings to business.
4. Grant equivalent to refund/rebate of sales tax or property taxes to offset the absence of Freeport Exemption or tax abatement, or to provide more than 10 years of abatement.
5. Construction of roads, sewers, site or building improvements, or infrastructure improvements or funding for the same.
6. Waiver, reduction or credit against impact fees, parkland dedication fees, or other fees associated with construction and development.
7. Funding for business acquisition of real property, improvements, equipment, and fixtures.
8. Rent subsidies;
9. Funding for relocation expenses, landscaping or other amenities.
10. Acquisition of land, improvements, equipment or fixtures for business.
11. Funding for advertising, promotion, marketing, travel, travel expenses, billboards, or advertisements for business.
12. Providing or funding training and education for specific business or companies.
13. Sale of real property and improvements for less than fair market value through credit/funding of purchase price for business.

CONTRACTUAL TERMS

Providing Chapter 380 economic development incentives through contracts allows a municipality to regulate growth and ensure quality construction and development in the community. A city may condition the incentive upon the creation of employment, construction of improvements, continued operations in a city for a stated period, or other public consideration. The agreement should, at a minimum, contain the following terms:¹²

1. Reference to Chapter 380, Texas Local Government Code;
2. Reference to Texas Constitution Article VIII, Section 52-a;
3. Reference to Economic Development guidelines;
4. Reference to job creation or retention, sales tax generation, added tax base, construction or development of specific project or other public consideration for the incentive;

¹² Following the 2005 amendment to Section 52-a of the Texas Constitution, the financial commitment by a municipality under a Chapter 380 agreement that does not contain a pledge of property taxes or financing through bonds is not a debt under art. VII, Section 5 of the Texas Constitution, thereby forgoing the necessity of an appropriations clause in the contract.

5. Condition the payment of the incentives on achieving milestones or performance standards;
6. Identify method of payment – loan, grant, or grant equivalent to tax abatement, Freeport or percentage of sales tax;
7. Contain one or more of the following:
 - a. The kind, number and location of proposed improvements;
 - b. Limit, control or restrict the use of the property to a specific development goal;
 - c. Minimum taxable values of sales tax;
 - d. Minimum term of occupancy or continued operations within a city;
 - e. Occupancy by specific tenant, business, or activity or type thereof;
 - f. Creation and maintenance of employment positions; and
 - g. Required deed restrictions or land use controls.
8. Provide access to and authorize inspection of the property to ensure compliance with the agreement;
9. Require annual written certification that recipient is in compliance with the agreement;
10. Authorize the municipality to terminate or modify the agreement if recipient fails to comply with the agreement; and
11. Provide for the recapture of the grant or incentive, if recipient breaches the agreement.¹³

Cities throughout Texas have utilized Chapter 380 to attract businesses and jobs to their communities. The statute allows for implementation of progressive and innovative approaches to promote economic development in a community. Often, Chapter 380 Agreements are an effective tool for competing for new business or expansion of existing facilities when tax abatement and other economic incentive tools are not available.

**ECONOMIC DEVELOPMENT SALES TAX:
CH 501-505 OF THE TEX. LOCAL GOV'T CODE**

The Development Corporation Act (the “Act”) authorizes municipalities to create a nonprofit corporation funded by local sales tax revenue to promote and develop new and expanded business enterprises and job training. A municipality may adopt one-eighth, one-fourth, three-eighths or one-half of one percent sales tax for economic development.¹⁴ Two options are available to a municipality to adopt this tax—Type A and Type B.

¹³ Chapter 380 agreements provide for a variety of recapture provisions in the event of default. The city should have the right to seek reimbursement of the incentives that were provided if the business does not fulfill its obligations. The recapture of incentives for a breach must be significant enough to deter the recipient from breaching its contractual obligations and/or relocating to another jurisdiction that has offered greater incentives. In the absence of significant liquidated damages there is no incentive for business to continue to comply with the terms of the agreement and fulfill its obligations to promote economic development.

¹⁴ TEX. LOCAL GOV'T CODE §§ 504.252(b), 505.252(b) (West Supp. 2011).

Most incorporated municipalities may impose a Type A sales tax, which an economic development corporation acting on behalf of a municipality may use to implement programs related to industrial development, business infrastructure, and the promotion of new and expanded business enterprises that create or retain primary jobs. All incorporated municipalities, however, may impose a Type B sales tax, which the economic development corporation may use on a wide variety of projects, including public parks and business development. Chapters 501 through 505 of the Texas Local Government Code govern the initiation of an economic development sales tax, the creation of economic development corporations, and the use of the economic development sales tax proceeds.

ADOPTION AND USE OF ECONOMIC SALES TAX

1. ***Eligibility***. The Development Corporation Act sets forth eligibility requirements for adopting an Economic Development Sales Tax.

a. ***Eligibility to Adopt a Type A Sales Tax***. A municipality is eligible to adopt a Type A tax with voter approval if the new combined local sales tax would not exceed two percent and:¹⁵

- the municipality is located in a county with a population of fewer than 500,000; or
- the municipality has a population of less than 50,000 and is located within two or more counties, one of which has a population of 500,000 or more (Bexar, Dallas, El Paso, Harris, Hildago, Tarrant, or Travis); or
- the municipality has a population of less than 50,000 and has not elected to become part of the transit authority.¹⁶

b. ***Eligibility to adopt a Type B Sales Tax***. A municipality may impose a Type B sales tax with voter approval if the new combined local sales tax rate would not exceed two percent and one of the following applies to the municipality:¹⁷

- the municipality is eligible to adopt a Type A sales tax;
- the municipality is located in a county with a population of 500,000 or more and the current combined state and local sales tax rate does not exceed 8.25 percent at the time the Type B sales tax is proposed;
- the municipality has a population of 400,00 or more and is located in more than one county, and the combined state and local sales tax rate does not exceed 8.25 percent.

By statute, every Texas municipality appears eligible to adopt a Type B sales tax, provided the city's combined local sales tax rate does not exceed two percent.

¹⁵ See TEX. LOCAL GOV'T CODE §§ 504.002, 504.251, and 504.254(a).

¹⁶ Participation in a rapid transit authority does not invalidate a municipality's ability to adopt a Type A tax if adoption of the tax would not place the municipality above its statutory cap for the local sales tax rate. TEX. LOCAL GOV'T CODE § 504.259; see also TEX. TRANSP. CODE ANN. § 452.6025 (West Supp. 2011)(authorizing the reduction of a Type A sales tax "to the highest rate that will not impair the imposition of the [regional transportation] authority's sales and use tax," if a majority of voters adopt a regional transportation authority proposition.)

¹⁷ TEX. LOCAL GOV'T CODE §§ 505.002, 505.251.

2. ***Election to Adopt a Type A or Type B Sales Tax.*** The initiation of an election to adopt a Type A or Type B economic development sales tax may occur either by city council approval of an ordinance calling for an election on the imposition of the tax, or by a petition signed by a number of qualified voters that equals at least 20 percent of the voters who voted in the most recent regular city election.¹⁸ If the governing body receives a petition meeting the requirements, it must pass an ordinance to call an election on the imposition of the tax.¹⁹ Generally, a municipality passes an ordinance calling for a Type A or Type B sales tax election on its own motion.

A municipality that orders an election for an economic development sales tax must follow all the applicable requirements in the Texas Election Code, the Municipal Sales and Use Tax Act (Chapter 321 of the Tax Code), and any other Texas statutes relating to elections.²⁰ The ballot for a Type A sales tax proposition must provide for or against the proposition, and use the following specific wording:²¹

The adoption of a sales and use tax for the promotion and development of new and expanded enterprises at the rate of *(insert one-eighth, one-fourth, three-eighths, or one-half, as appropriate)* of one percent.

The ballot for a Type B sales tax proposition does not require any specific wording, but must specify the rate of tax to be adopted.²²

Other considerations for inclusion on the ballot proposing an economic sales tax include the following:

- a. ***Limitation on duration of tax.*** A municipality may include in the wording of the ballot proposition a limitation on the length of time in years that the municipality will impose the economic sales tax.²³ Once the voters approve a proposition with such a limit, the municipality may only extend the economic sales tax beyond the time limit if the municipality has an election and a majority of the qualified voters of the city voting in the election approve the extension or re-imposition of the economic sales tax.²⁴
- b. ***Election to reduce or increase tax rate.*** A municipality that has adopted a Type A sales tax may, in the same manner and by the same procedure for imposition of the tax, reduce

¹⁸ TEX. LOCAL GOV'T CODE §§ 504.255, 505.256 (West Supp. 2011); TEX. TAX CODE § 321.401(a) and (c) (West 2008).

¹⁹ *Id.*

²⁰ TEX. LOCAL GOV'T CODE §§ 504.255, 505.256 (West Supp. 2011)(providing that Chapter 321 of the Texas Tax Code governs elections under Chapters 504 and 505 of the Texas Local Government Code); TEX. TAX CODE § 321.403 (West 2008)(providing that an election held under Chapter 321 of the Tax Code must be held on the next available uniform election date).

²¹ TEX. LOCAL GOV'T CODE § 504.256.

²² TEX. LOCAL GOV'T CODE § 505.254.

²³ See TEX. LOCAL GOV'T CODE §§ 504.257, 505.2565.

²⁴ TEX. LOCAL GOV'T CODE §§ 504.257(e), 505.2565(b).

or increase the tax rate.²⁵ The tax rate may be modified in increments of one-eighth of one percent, but cannot be reduced below one-eighth of one percent or increased more than one-half of one percent.²⁶ A municipality that holds an election to reduce or abolish a Type A sales tax at the same election may adopt a Type B sales tax.²⁷ The statute does not provide for the modification of a Type B sales tax after its initial adoption.

- c. *Limiting Sales and Use Tax for Specific Project.* A municipality may limit the use of an economic sales tax to a specific project.²⁸ If voters approve such a limitation, the City may not broaden the purposes for which the economic development sales tax may be used unless it holds another election.²⁹ Generally, municipalities seek to broaden the uses for the economic sales tax, and this proposition is never used.

3. ***Creation of a Type A or Type B Economic Development Corporation.*** Either the municipality or a group of citizens may initiate the creation of a Type A or Type B economic development corporation.³⁰ The initiation by citizens requires a group of three or more individuals who are qualified voters of the municipality to file a written application with the City requesting approval of an economic development corporation.³¹ The municipality may not charge a fee for consideration of the application.³² If the governing body determines that the creation of the corporation is advisable and approves the certificate of formation proposed for organizing the corporation, the municipality may create the corporation by resolution.³³ The certificate of formation must state either that the corporation is governed by Chapter 504 of the Local Government Code (Type A),³⁴ or Chapter 505 of the Texas Local Government Code (Type B),³⁵ and contain the following information.³⁶

- the name of the corporation
- that the corporation is a nonprofit corporation;
- the duration of the corporation, which may be perpetual;
- the specific purpose for which the corporation is organized and may issue bonds on behalf of the unit;
- that the corporation has no members and is a nonstock corporation;
- any provision consistent with law for the regulation of the corporation's internal affairs, including any provision required or permitted by the statute to be stated in the bylaws;

²⁵ TEX. LOCAL GOV'T CODE § 504.258(a); *but see* Tex. Atty Gen. Op. DM-137 (1992)(stating that if a reduction or limitation on an economic sales tax is approved in an election, the reduction or limitation may not apply to any bonds issued prior to the date of the election).

²⁶ TEX. LOCAL GOV'T CODE § 504.258(c).

²⁷ TEX. LOCAL GOV'T CODE § 505.255.

²⁸ *See* TEX. LOCAL GOV'T CODE §§ 504.260, 505.2575.

²⁹ *Id.*

³⁰ TEX. LOCAL GOV'T CODE §§ 501.051(a); 504.003(a); 505.003(a).

³¹ TEX. LOCAL GOV'T CODE § 501.051(a).

³² *Id.*

³³ TEX. LOCAL GOV'T CODE § 501.051(b).

³⁴ TEX. LOCAL GOV'T CODE § 504.004.

³⁵ TEX. LOCAL GOV'T CODE § 505.004

³⁶ TEX. LOCAL GOV'T CODE § 501.056.

- the street address of the corporation’s initial registered office and the name of the corporation’s initial registered agent;
- the number of directors of the initial board of directors, and the name and address of each;
- the name and street address of the organizer; and
- that the municipality has by resolution specifically authorized the corporation to act on the municipality’s behalf to further the public purpose stated in the resolution and certificate of formation and approved the certificate of formation.

The municipality must file the certificate of incorporation with the Secretary of State as required by Section 501.057 of the Texas Local Government Code.³⁷ After issuance of a certificate establishing the filing of the certificate of incorporation, the board of directors must hold an organizational meeting to adopt the bylaws of the corporation and to elect officers.³⁸ The municipality must approve the bylaws by resolution.³⁹

a. *Board of Directors.*

- (1) *Type A.* At least a five-member board of directors governs a Type A corporation.⁴⁰ The city council appoints the directors by a majority vote at an open meeting for a term not to exceed six years.⁴¹ The Act does not set forth any requirements or qualifications to serve as a director; however, the director serves without compensation and is only reimbursed for actual expenses incurred for handling corporation business.⁴² The directors serve at the pleasure of the City Council, and may be removed prior to the end of their term without cause.⁴³
- (2) *Type B.* A Type B corporation is governed by a seven-member board of directors, who are appointed for a two-year term by a majority vote of the city council at an open meeting.⁴⁴ A Type B director must meet certain qualifications to serve as a director; a director of a Type B corporation created in a municipality with a population of 20,000 or more must be a resident of the city, and a director of a Type B corporation created in a municipality with a population of less than 20,000 must (1) be a resident of the city; (2) be a resident of the county in which a majority of the municipality is located; or (3) reside within 10 miles of the municipality and in a county that borders the county in which a majority of the municipality is located.⁴⁵ State law also provides that city officials or city employees cannot fill three of the seven positions.⁴⁶ Like a Type A corporation, the director serves without compensation, and is only reimbursed for actual expenses.⁴⁷ The

³⁷ TEX. LOCAL GOV’T CODE § 501.057.

³⁸ See TEX. LOCAL GOV’T CODE § 501.063. This section also requires that the directors receive notice of the first meeting by mail at least three days prior to the meeting.

³⁹ TEX. LOCAL GOV’T CODE §§ 501.064.

⁴⁰ TEX. LOCAL GOV’T CODE § 504.051(a).

⁴¹ TEX. LOCAL GOV’T CODE § 504.051(c).

⁴² TEX. LOCAL GOV’T CODE § 501.062(d).

⁴³ TEX. LOCAL GOV’T CODE §§ 501.062(c), 504.051(b).

⁴⁴ TEX. LOCAL GOV’T CODE § 505.051(a).

⁴⁵ TEX. LOCAL GOV’T CODE § 505.052.

⁴⁶ TEX. LOCAL GOV’T CODE § 505.052(c).

⁴⁷ TEX. LOCAL GOV’T CODE § 501.062(d).

directors serve at the pleasure of the City Council, and may be removed prior to the end of their term without cause.⁴⁸

b. General provisions.

- (1) A majority of the board constitutes a quorum.⁴⁹
- (2) The board of directors is subject to both the Open Meetings Act and the Public Information Act.⁵⁰
- (3) The Board must conduct all of its meetings within the municipality's corporate limits, unless the municipality is located in a county with a population of less than 30,000.⁵¹ If the economic development corporation is located in a county with a population of less than 30,000, then the board may conduct its meetings within the county.⁵²
- (4) The Board is required to elect a president, a secretary, and any other officers that the governing body of the municipality considers necessary.⁵³
- (5) The corporation's registered agent must be a resident of Texas, and the corporation's registered office must be within the boundaries of the municipality.⁵⁴
- (6) The executive director of the economic development corporation, or other person who is responsible for the daily administration of the corporation, and either the city attorney, city administration, or city clerk must attend a training seminar once every 24-months.⁵⁵ The corporation may use Type A or Type B funds to pay for the costs of attending a seminar.⁵⁶ Failure to comply with this provision could result in an administrative penalty in an amount not to exceed \$1,000.⁵⁷

c. Powers and Duties of Type A and Type B Economic Development Corporations.

- (1) *Power of Non-profit corporation.* The corporation has all the powers, privileges, and functions of a non-profit corporation under the Texas Non-Profit Corporation Act (Chapter 22 of the Texas Business Organizations Code), except to the extent such powers would conflict with or be inconsistent with the Development Corporations Act.⁵⁸
- (2) *Power to expend tax proceeds.* The economic development corporation may expend the proceeds of the economic development sales tax for purposes authorized by the Act,

⁴⁸ TEX. LOCAL GOV'T CODE §§ 501.062(c), 505.051(c).

⁴⁹ TEX. LOCAL GOV'T CODE §§ 504.053, 505.054.

⁵⁰ TEX. LOCAL GOV'T CODE §§ 501.072, 505.054.

⁵¹ TEX. LOCAL GOV'T CODE §§ 504.054, 505.055.

⁵² *Id.*

⁵³ TEX. LOCAL GOV'T CODE §§ 504.052, 505.053.

⁵⁴ TEX. LOCAL GOV'T CODE §§ 504.003(b), 505.003(b).

⁵⁵ TEX. LOCAL GOV'T CODE § 502.101(a).

⁵⁶ TEX. LOCAL GOV'T CODE § 502.101(d).

⁵⁷ TEX. LOCAL GOV'T CODE § 502.103(b).

⁵⁸ TEX. LOCAL GOV'T CODE § 501.054(a).

provided that a majority of both the Board of Directors and the City Council approves the expenditure.⁵⁹

- (3) *Financial Transaction Powers.* The corporation has the power to contract,⁶⁰ purchase property,⁶¹ finance projects,⁶² issue bonds,⁶³ lease or sell a project,⁶⁴ and make secured and unsecured loans.⁶⁵
 - (4) *Limited Power to Own or Operate a Project.* An economic development corporation may not own or operate a project as a business, other than as a lessor, seller, or lender, or according to the requirements of any trust agreement securing a credit transaction.⁶⁶ This limitation, however, does not apply where the project is a military installation or military facility that has been closed or realigned.⁶⁷
 - (5) *Eminent Domain Power.* A Type A corporation does not have authority to exercise the power of eminent domain, except by the action of City Council.⁶⁸ A Type B Corporation, on the other hand, may exercise eminent domain with approval of the action by the municipality and in accordance with and subject to the laws applicable to the municipality.⁶⁹
 - (6) *Tort Claims Act Protection.* The economic development corporation directors and employees are not liable for damages arising out of the performance of governmental functions of the corporation.⁷⁰
- d. *Limitation on financial obligations.* An economic development corporation may not incur debt that cannot be paid from:⁷¹
- (1) bond proceeds;
 - (2) revenue realized from the sale or lease of a project;
 - (3) revenue realized from a loan; or
 - (4) money granted from a municipality under a contract
- e. *Limitation on sales tax funds for promotional expenses.* The Act limits Type A and Type B corporation spending for promotion purposes to no more than 10% of its current annual revenues in any given year.⁷² However, unexpended revenues specifically set aside for promotional purposes in past years may be expended along with 10% of current revenues

⁵⁹ TEX. LOCAL GOV'T CODE § 501.054(b)(2); *see also* Tex. Atty Gen. Op. JC-0488 (2002)(sales tax proceeds expended by board of directors subject to city council approval).

⁶⁰ TEX. LOCAL GOV'T CODE § 501.158.

⁶¹ TEX. LOCAL GOV'T CODE § 501.101.

⁶² TEX. LOCAL GOV'T CODE § 501.151.

⁶³ TEX. LOCAL GOV'T CODE § 501.201.

⁶⁴ TEX. LOCAL GOV'T CODE § 501.153.

⁶⁵ TEX. LOCAL GOV'T CODE § 501.155.

⁶⁶ TEX. LOCAL GOV'T CODE § 501.160(a).

⁶⁷ TEX. LOCAL GOV'T CODE § 501.160(d).

⁶⁸ TEX. LOCAL GOV'T CODE § 504.106.

⁶⁹ TEX. LOCAL GOV'T CODE § 505.105.

⁷⁰ TEX. LOCAL GOV'T CODE §§ 504.107, 505.106.

⁷¹ TEX. LOCAL GOV'T CODE § 501.008.

⁷² TEX. LOCAL GOV'T CODE §§ 504.105, 505.103.

without violating the cap.⁷³ The Act does not define “promotional purposes”; the Texas Attorney General, however, has determined that a promotional expenditure “must advertise or publicize the city for the purpose of developing new and expanded business enterprises.”⁷⁴

4. ***Economic Development Corporation Projects.*** The Development Corporation Act provides a wide variety of “authorized projects” for which an economic development corporation may expend economic sales tax proceeds.

a. *Projects related to creation or retention of primary jobs*⁷⁵. The Act specifically allows funding for land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are for creation or retention of primary jobs and found by the Board of Directors to be required or suitable for the development, retention, or expansion of.⁷⁶

- Manufacturing and Industrial Facilities
- Research and Development Facilities
- Military Facilities
- Transportation Facilities
- Sewage or Solid Waste Disposal Facilities
- Recycling Facilities
- Air or Water Pollution Control Facilities
- Facilities for Furnishing Water to the Public
- Distribution Centers
- Small Warehouse Facilities
- Primary Job Training Facilities
- Regional or National Corporate Headquarters

Type B corporations only may also 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 projects 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 above or that the board in its discretion determines promotes or develops new or expanded business enterprises that create or retain primary jobs.⁷⁷

b. *Projects without requirement of creating or retaining primary jobs.* The Act authorizes the following projects without the condition of creating or retaining primary jobs:

⁷³ See Tex. Atty. Gen. Op. GA-0086 (2003).

⁷⁴ *Id.*

⁷⁵ “Primary job” means a job that is available at a company for which a majority of the company’s products or services are ultimately exported to regional, statewide, national, or international markets, infusing money into the local economy, and are included in one of the North American Industry Classification Sectors set forth in Section 501.002(12)(A)(iii) or (B). See TEX. LOCAL GOV’T CODE § 501.002(12).

⁷⁶ TEX. LOCAL GOV’T CODE § 501.101.

⁷⁷ TEX. LOCAL GOV’T CODE § 505.155.

- (1) *Projects related to certain job training.* Project includes job training required or suitable for the promotion of development and expansion of business enterprises.⁷⁸
- (2) *Certain Infrastructure Improvement Projects.* 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:⁷⁹
 - Streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements;
 - Telecommunications and Internet improvements; or
 - Beach remediation along the Gulf of Mexico.
- (3) *Career Center Projects Outside of Junior College District.* Project includes the land, buildings, equipment, facilities, improvements, and expenditures found by the Board of Directors to be required or suitable for use for a career center, if the area to be benefitted by the career center is not located in the taxing jurisdiction of a junior college district.⁸⁰
- (4) *Mass Transit-Related Facilities.* As authorized by the Board of Directors, a Type A or Type B corporation may expend tax revenue received under the Act for the development, improvement, expansion or maintenance of facilities relating to the operation of commuter rail, light rail, or motor buses.⁸¹
- (5) *Airport Facilities or Other Projects Authorized by Certain Border Municipalities.* A Type A or Type B corporation authorized by a municipality, any part of which is located within 25 miles of an international border, may fund a project that includes land, buildings, facilities, infrastructure, and improvements that:⁸²
 - (a) the Board of Directors finds are required or suitable for the development or expansion of airport facilities, or
 - (b) are undertaken by the corporation where the municipality at the time the corporation approves the project has a population of less than 50,000 or an average rate of unemployment greater than the state average for unemployment during the most recent 12-month period.

In addition to these projects, a Type A corporation only may also undertake projects concerning business airports and port-related facilities without the requirement of creating or retaining primary jobs.⁸³

- c. *Projects authorized for Type B Corporations only that do not require the creation or retention of primary jobs.* Sections 505.152 through Section 505.154 of the Texas Local Government Code specifically authorizes expenditures of Type B sales tax proceeds for land, buildings, equipment, expenditures and improvements required or suitable for the following projects:

⁷⁸ TEX. LOCAL GOV'T CODE § 501.102; *see also* TEX. LOCAL GOV'T CODE § 501.162.

⁷⁹ TEX. LOCAL GOV'T CODE § 501.103.

⁸⁰ TEX. LOCAL GOV'T CODE § 501.105.

⁸¹ TEX. LOCAL GOV'T CODE § 502.052.

⁸² TEX. LOCAL GOV'T CODE § 501.106.

⁸³ TEX. LOCAL GOV'T CODE § 504.103.

- (1) *Recreational or Community Facilities*. Projects include:⁸⁴
- professional and amateur sports facilities, including stadiums and ballparks
 - entertainment, tourist, and convention facilities, including auditoriums, amphitheaters, concert halls, museums and exhibition facilities
 - parks, park facility, and open space improvements
- (2) *Affordable Housing*. Projects for promotion of development and expansion of affordable housing.⁸⁵
- (3) *Water Supply Facilities and Water Conservation Programs*. Projects for:⁸⁶
- Development or improvement of water supply facilities, including dams, transmission lines, well field developments, and other water supply alternatives; or
 - 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.
- Note: A project for water supply facilities or water conservation requires a majority of the qualified voters of the municipality voting in an election called for the purpose to approve the project.⁸⁷
- (4) *Airport Facilities*. Projects related to 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, provided the corporation:⁸⁸
- a. Enters into a development agreement with an entity in which the entity acquires a leasehold or other possessory interest from the corporation and is authorized to sublease the entity's interest for other projects authorized by this section; and
 - b. The municipal governing body has authorized the development agreement by adopting a resolution at a meeting called as authorized by law.
- (5) *Business Enterprises in Certain Municipalities*. Projects for development, retention, or expansion of business enterprises in municipalities that have not generated more than \$50,000 in sales and use tax revenues in the preceding two fiscal years, and that city council authorizes the project by adopting a resolution following two separate readings conducted at least one week apart.⁸⁹
- (6) *Business enterprises in Landlocked Communities*. Projects for development of manufacturing or industrial facilities for a municipality wholly or partly located in a county with a population of two million or more and has within its municipal limits and extraterritorial jurisdiction less than 100 acres that can be used for the development of

⁸⁴ TEX. LOCAL GOV'T CODE § 505.152.

⁸⁵ TEX. LOCAL GOV'T CODE § 505.153.

⁸⁶ TEX. LOCAL GOV'T CODE § 505.154.

⁸⁷ TEX. LOCAL GOV'T CODE § 505.304.

⁸⁸ TEX. LOCAL GOV'T CODE § 505.1561.

⁸⁹ TEX. LOCAL GOV'T CODE § 505.156.

manufacturing or industrial facilities in accordance with zoning laws or land use restrictions of the municipality. Projects may also include expenditures related to the promotion of new or expanded business enterprises within the landlocked community.⁹⁰

(7) *Business Development in Certain Small Municipalities.* Projects for promotion of new or expanded business development in a municipality with a population of 20,000 or less, provided that, for projects which require an expenditure of more than \$10,000, the city council authorizes by adopting a resolution following two separate readings.⁹¹

d. *Use of Type A Tax for Type B projects.* By an election, voters of an area may approve the use of Type A economic development sales tax funds for a project authorized under Chapter 505 of the Texas Local Government Code. The municipality must conduct a public hearing on the issue prior to the election, at which the municipality's residents must receive information regarding the estimated cost and impact of the proposed project or category of projects. The municipality must publish notice in a newspaper of general circulation in the municipality at least 30 days before the date set for the hearing. In the election, the municipality must identify on separate ballot propositions the particular Type B project(s) or category of Type B projects for voter approval. Additionally, if the Type A funds will pay maintenance and operating costs, and not just initial construction costs, then the ballot proposition for the Type B project must state that fact.

e. *Projects for Sports Venue Facilities.* Type A and Type B funds may fund "sports venue" projects, provided the project meets certain requirements and the development corporation follows certain procedures. The requirements for a "sports venue" project are set forth in Sections 504.151, *et seq.* and 505.201, *et seq.* of the Texas Local Government Code.

5. ***Performance Agreement.*** An economic development corporation may not provide a direct incentive to or make an expenditure on behalf of a business under a project provided for by the Act, unless the corporation enters into a performance agreement with the business enterprise.⁹² A performance agreement between a corporation and business enterprise must:⁹³

- a. provide, at a minimum, for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by the corporation under the agreement; and
- b. specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement.

The Act does not establish any minimum payroll or job requirements (other than being a primary job), nor does the Act require the repayment of the incentive in the event the business does not meet the performance standards. Additionally, in regard to the repayment of the incentive there are no statutorily imposed conditions under which the development corporation must require repayment of the incentive.

⁹⁰ TEX. LOCAL GOV'T CODE § 505.157.

⁹¹ TEX. LOCAL GOV'T CODE § 505.158.

⁹² TEX. LOCAL GOV'T CODE § 501.158.

⁹³ *Id.*

6. ***Specific Requirements for a Type B Corporation to Expend Type B Tax Proceeds.***

- a. ***Hearing required.*** A Type B corporation shall hold at least one public hearing on a proposed project before spending money to undertake the project.⁹⁴ This requirement does not apply to a Type B corporation whose authorizing municipality has a population of less than 20,000 and the proposed project is defined by Subchapter C, Chapter 501.⁹⁵
- b. ***Election Requirement.*** A Type B corporation may undertake a project unless, not later than the 60th day after the date of notice of the specific project or general type of project is first published, the governing body receives a petition from more than 10% of the registered voters of the municipality requesting an election before the specific project or general project is undertaken.⁹⁶ The municipality is not required to hold an election if the voters of the municipality previously approved the undertaking of the specific project or general type of project.⁹⁷

7. ***Annual Report.*** Not later than February 1st of each year, the Board of Directors of an economic development corporation must submit a report to the Texas Comptroller, which includes a statement of the corporations primary economic development objectives; the corporation's total revenue during the preceding fiscal year; the corporation's total expenditures during the preceding fiscal year; and the corporation's total expenditures during the preceding fiscal year in the categories of administration, personnel, marketing or promotion, direct business incentives, job training, debt service, capital costs, affordable housing, and payments to taxing units; a list of the corporation's capital assets; and any other information the comptroller requires to determine the use of the sales and use tax imposed under Chapter 504 or Chapter 505.⁹⁸

**III.
PROPERTY TAX INCENTIVES**

**A.
TAX ABATEMENT**

A tax abatement is an agreement between a taxing unit and a property owner that exempts all or part of an increase in the value of real property and/or tangible personal property from taxation for a period not to exceed 10 years. Municipalities often use this traditional economic tool to attract new business and encourage the retention and expansion of existing businesses. The Texas Legislature in 2009 re-authorized the continued use by local governments of tax abatements until September 1, 2019.⁹⁹ Chapter 312 of the Texas Tax Code, the *Property Redevelopment and Tax Abatement Act*, governs tax abatements.

⁹⁴ TEX. LOCAL GOV'T CODE § 505.159(a).

⁹⁵ TEX. LOCAL GOV'T CODE § 505.159(b).

⁹⁶ TEX. LOCAL GOV'T CODE § 505.160(a).

⁹⁷ TEX. LOCAL GOV'T CODE § 505.160(b).

⁹⁸ TEX. LOCAL GOV'T CODE § 502.151.

⁹⁹ TEX. TAX. CODE ANN. § 312.006 (West Supp. 2011).

Incorporated municipalities, counties, and special districts may enter into a tax abatement agreement under Chapter 312 of the Texas Tax Code; school districts, however, may not enter into tax abatement under the chapter.¹⁰⁰ Each taxing unit¹⁰¹ that wants to consider tax abatement agreements must first establish guidelines and criteria governing tax abatement agreements and adopt a resolution stating that the taxing unit intends to participate in tax abatement agreements.¹⁰² The taxing unit may not enter into tax abatement under Chapter 312 unless it finds that the terms of the agreement and the property subject to the agreement meet the applicable guidelines and criteria adopted by the governing body.

PROCESS TO PARTICIPATE IN A TAX ABATEMENT AGREEMENT

1. ***Approve a resolution stating intent to participate in tax abatement.*** A municipality may not enter into a tax abatement agreement and a municipality's governing body may not designate an area as a reinvestment zone unless the governing body has passed a resolution stating that the taxing unit elects to become eligible to participate in tax abatement.¹⁰³ The resolution need merely indicate the municipality's intent to consider providing tax abatements. By adopting the resolution, the governing body does not bind the municipality to grant approval of any proposed agreement.

2. ***Adopt guidelines and criteria governing tax abatement agreements.*** A municipality must also adopt guidelines and criteria setting forth the conditions under which property is eligible for tax abatement and terms for tax abatement.¹⁰⁴ The guidelines and criteria must provide for the availability of tax abatement for both new facilities and structures and for the expansion or modernization of existing facilities and structures.¹⁰⁵ The guidelines and criteria are effective for two years from the date of adoption.¹⁰⁶ During that period, a governing body may only amend or repeal the guidelines and criteria by a vote of three-fourths of the members of the governing body.¹⁰⁷

The adoption of guidelines and criteria by the governing body does not limit the discretion of the governing body to decide whether to enter into a specific tax abatement agreement.¹⁰⁸ This action also does not create any property, contract, or other legal right in any person to have the governing body consider or grant a particular application or request for tax abatement.¹⁰⁹ Rather, it merely sets forth the conditions under which the governing body may consider tax abatement.

¹⁰⁰ TEX. TAX. CODE ANN. § 312.002(f) (West 2008). Instead, a school district may limit appraised values and provide tax credits under Chapter 313 of the Texas Tax Code, the *Texas Economic Development Act*. See TEX. TAX. CODE ANN. Ch. 313 (West 2008 and West Supp. 2011).

¹⁰¹ For purposes of Chapter 312, "taxing Unit" means a county, an incorporated city or town (including a home-rule city), a special district or authority or other political unit of the state, except a school district, that is authorized to impose and imposes ad valorem taxes on property. See TEX. TAX. CODE ANN. § 312.002(g) (West 2008).

¹⁰² TEX. TAX. CODE ANN. § 312.002(a) (West 2008).

¹⁰³ TEX. TAX. CODE ANN. § 312.002(a) (West 2008).

¹⁰⁴ TEX. TAX. CODE ANN. § 312.002(b) (West 2008).

¹⁰⁵ TEX. TAX. CODE ANN. § 312.002(a) (West 2008).

¹⁰⁶ TEX. TAX. CODE ANN. § 312.002(c) (West 2008).

¹⁰⁷ TEX. TAX. CODE ANN. § 312.002(c) (West 2008).

¹⁰⁸ TEX. TAX. CODE ANN. § 312.002(d)(1) (West 2008).

¹⁰⁹ TEX. TAX. CODE ANN. § 312.002(d)(3) (West 2008).

The criteria and guidelines usually address the following:

- the duration tax abatement is available;
- the percentage of taxes or value subject to abatement;
- the maximum amount or limit of tax abatement;
- the geographical areas or zoning districts subject to tax abatement;
- the types of industry or development subject to tax abatement;
- a minimum capital investment;
- minimum sales tax revenue generation requirements:
- creation or maintenance of a certain number and types of jobs;
- the employment of local residents;
- requirement to contract with minority or woman-owned businesses and/or local merchants;
- requirement for certain infrastructure improvements;
- imposition of environmental restrictions;
- the imposition of landscaping or other development upgrades; and
- a minimum occupancy or presence in the taxing unit

Additionally, the guidelines and criteria generally require the submission of a formal application for tax abatement, along with supporting information, including but not limited to: (a) a legal description of the land; (b) sales tax impact; (c) projected number of jobs created and/or maintained; (d) projected capital investment; (e) financial information; (f) applicant's experience and credentials; (g) a description of the proposed project; and (h) an explanation of how the applicant meets and satisfies the guidelines and criteria for tax abatement.¹¹⁰

3. ***Designate a Reinvestment Zone for Tax Abatement.*** A municipality by ordinance may designate as a reinvestment zone an area within its territorial jurisdiction or extraterritorial jurisdiction that satisfies one of the following criteria:¹¹¹

- (1) Area in its present condition and use that substantially arrests or impairs the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and menace to the public health, safety, morale, or welfare because of the presence of:

¹¹⁰ The applicant should ensure that any information provided to the taxing unit does not contain any trade secrets or other confidential information. The taxing units are subject to the Public Information Act, Texas Government Code, Chapter 552; and may not be able to maintain the confidentiality of the applicant's information indefinitely. *See* TEX. TAX. CODE ANN. § 312.003 (West 2008).

¹¹¹ TEX. TAX. CODE ANN. § 312.202(a)(West 2008).

- a) a substantial number of substandard, slum, deteriorated, or deteriorating structures;
 - b) predominance of defective or inadequate sidewalks or streets;
 - c) faulty size, adequacy, accessibility, or usefulness of lots;
 - d) unsanitary or unsafe conditions;
 - e) deterioration of site or other improvements;
 - f) tax or special assessment delinquency exceeding the fair value of the land;
 - g) defective or unusual conditions of title;
 - h) conditions that endanger life or property by fire or other cause; or
 - i) any combination of these factors.
- (2) Area is predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality.
- (3) Area is within or adjacent to a federally assisted new community located in a home-rule city, or the entire area meets the requirements for federal assistance under Section 119 of the Housing and Community Development Act of 1974;
- (4) Area encompasses signs, billboards, or other outdoor advertising structures designated by the governing body of the municipality for relocation, reconstruction, or removal for purpose of enhancing the physical environment of the municipality;
- (5) Area reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would benefit the property and contribute to the economic development of the municipality.

The ordinance must describe the boundaries of the zone and the eligibility of the zone for residential tax abatement or commercial-industrial tax abatement or tax increment financing (discussed in Section B).¹¹² The zone may include multiple tracts of land or be limited to the specific property for which the applicant has requested abatement.¹¹³ Large zones usually target particular areas for development.

The statute does not prescribe any shape or size for a reinvestment zone. The Texas Attorney General, however, has opined that the area for a reinvestment zone must be contiguous and

¹¹² See TEX. TAX. CODE ANN. § 312.201(b)

¹¹³ If a reinvestment zone includes several properties, each tax abatement agreement between a taxing unit and owners of property in the same tax abatement reinvestment zone must contain identical terms relating to the duration and amount of value that is to be exempt. See TEX. TAX. CODE ANN. § 312.204(b). Please note that the taxing unit is not obligated to grant a tax abatement to the property owner. Also, tax abatement agreements between a property owner and other taxing units for property in the same tax abatement reinvestment zone do not have to contain the identical terms relating to the duration and the amount of value that is to be exempt.

include the underlying land.¹¹⁴ Once a reinvestment zone is officially designated, there is no authority to modify its boundaries.

The designation of a reinvestment zone for residential or commercial-industrial tax abatement expires five years after the date of the designation, and is renewable for periods not to exceed five years.¹¹⁵ The term of a tax abatement agreement may continue up to 10 years, even if the reinvestment zone is not renewed after the initial five-year term.¹¹⁶

The designation of an area as an enterprise zone under Texas Government Code Chapter 2303, the *Texas Enterprise Zone Act*, also constitutes a designation of an area as a reinvestment zone.¹¹⁷ Reinvestment zones that are enterprise zones are effective for the seven-year duration of the enterprise zone. An applicant receiving tax abatement in an enterprise zone must meet the administrative requirements for a tax abatement agreement under Chapter 312 of the Texas Tax Code.

- a. *Notification of public hearing regarding reinvestment zone.* Before the governing body may adopt an ordinance designating a reinvestment zone, it must hold a public hearing.¹¹⁸ The municipality at least seven days before the hearing must send written notice to the presiding officer of each of the other taxing units that has taxing jurisdiction over real property within the zone.¹¹⁹ The municipality at least seven days before the hearing must also publish notice of the hearing in a newspaper of general circulation in the municipality.¹²⁰ There is not statutorily required wording for either of these notices.
- b. *Public hearing on reinvestment zone.* During the public hearing on the reinvestment zone, the governing body should consider whether the improvements sought are feasible and practical, and would benefit the zone after the expiration of the tax abatement. The governing body should also determine whether the zone meets one of the applicable criteria for reinvestment zones. The criterion most often cited is that the reinvestment zone's designation is reasonably likely to contribute to the retention or expansion of primary employment or would attract major investment to the zone. At the hearing, interested persons are entitled to speak and present evidence for or against the designation.¹²¹
- c. *Approve Reinvestment Zone.* The governing body prior to designating a reinvestment zone by ordinance must first make and approve findings that: (a) the improvements sought are feasible and practical, and would benefit the reinvestment zone after the expiration of the tax abatement agreement, and (b) the area meets one of the applicable

¹¹⁴ Tex. Atty Gen. Op. DM-456 (1997)(a reinvestment zone under Chapter 312 must be contiguous and may not consist of only a portion of a building.)

¹¹⁵ TEX. TAX. CODE ANN. § 312.203.

¹¹⁶ TEX. TAX. CODE ANN. §§ 312.203, 312.204(a) and (c)(West 2008).

¹¹⁷ TEX. TAX. CODE ANN. § 312.2011 (West 2008).

¹¹⁸ TEX. TAX. CODE ANN. § 312.201(d).

¹¹⁹ TEX. TAX. CODE ANN. § 312.201(d).

¹²⁰ TEX. TAX. CODE ANN. § 312.201(d)(West 2008).

¹²¹ TEX. TAX. CODE ANN. § 312.201(d)(West 2008).

criteria for reinvestment zones.¹²² The governing body should have the findings noted in the meeting minutes.

4. ***Written notice of intent to grant tax abatement.*** At least seven days before a municipality enters into a tax abatement agreement, the governing body shall deliver to the presiding officer of the governing body of each other taxing unit in which the property subject to the agreement is located, written notice that the municipality intends to enter into the agreement.¹²³ The notice must include a copy of the proposed agreement.¹²⁴

5. ***Approve tax abatement agreement at regularly scheduled meeting.*** To be effective, a majority of the members of the governing body of a municipality must approve the tax abatement agreement by an affirmative vote at a regularly scheduled meeting.¹²⁵ The governing body, therefore, may not consider the agreement at a specially called or emergency meeting.

During the meeting in which the tax abatement agreement is considered, the governing body must make a finding that the terms of the agreement and the property subject to the agreement meet the applicable guidelines and criteria.¹²⁶ The governing body after approval of the agreement will execute the tax abatement agreement in the same manner as other contracts entered into by the applicable taxing unit.¹²⁷

Property within the reinvestment zone owned or leased by a member of the municipality's governing body or planning and zoning board or commission is not eligible for tax abatement.¹²⁸ If the owner or lessee of the property has entered into a tax abatement agreement and subsequently becomes a member of the governing body or planning and zoning board or commission, the property owner does not lose the benefit of the tax abatement agreement.¹²⁹

6. ***Other taxing units may elect to enter into an abatement agreement.*** If a municipality executes a tax abatement agreement for property located within the municipality, the other taxing units may also execute a written tax abatement agreement.¹³⁰ Each taxing unit may adopt a tax abatement agreement with terms that differ from the agreement adopted by the municipality.¹³¹ The other taxing units do not have a deadline to execute their agreements, and may elect not to enter into an agreement.¹³²

¹²² TEX. TAX. CODE ANN. § 312.201(d)(West 2008).

¹²³ TEX. TAX. CODE ANN. § 312.2041.

¹²⁴ TEX. TAX. CODE ANN. § 312.2041.

¹²⁵ TAX. CODE ANN. § 312.207.

¹²⁶ TAX. CODE ANN. § 312.002(b).

¹²⁷ TAX. CODE ANN. § 312.207(b).

¹²⁸ TAX. CODE ANN. § 312.204(d).

¹²⁹ TAX. CODE ANN. § 312.204(d).

¹³⁰ TAX. CODE ANN. § 312.206(a).

¹³¹ TAX. CODE ANN. § 312.206(a).

¹³² TAX. CODE ANN. § 312.206(a).

TAX ABATEMENT AGREEMENT

A tax abatement agreement may exempt from taxation all or part of the *increase* in the value of the real property, leasehold interest, or fixture for each year covered by the agreement, provided the property owner makes specific improvements or repairs to the property.¹³³ The exemption only applies to the extent that the property's value for the year exceeds its value for the year in which the agreement was executed ("Base Value"); the real property's Base Value may not be exempted from taxation.¹³⁴ The Base Value is the taxable value of the real property and any fixed improvements as of January 1st of the year of the tax abatement agreement.¹³⁵

A tax abatement may not exceed a period of 10 years.¹³⁶ The statute, however, permits a property owner to defer the beginning of the abatement period until a date in the future other than the January following execution of the agreement.¹³⁷

Section 312.205(a) of the Texas Tax Code sets forth certain mandatory provisions for a tax abatement agreement. A tax abatement agreement must:¹³⁸

- (1) List the kind, number, and location of all proposed improvements of the property;
- (2) Provide access to and authorize inspection of the property by municipal employees to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement;
- (3) Limit the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that the property tax exemptions are in effect;
- (4) Provide for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement;
- (5) Contain each term agreed to by the owner of the property;
- (6) Require the owner of the property to certify annually to the governing body of each taxing unit that the owner is in compliance with each applicable term of the agreement; and
- (7) Provide that the governing body of the municipality may cancel or modify the agreement if the property owner fails to comply with the agreement.

Section 312.205(b) of the Texas Tax Code provides a list of optional provisions that a municipality may include in the tax abatement agreement, which include provisions for:

¹³³ TAX. CODE ANN. § 312.204(a) (West 2008).

¹³⁴ See TAX. CODE ANN. § 312.204(a).

¹³⁵ Accordingly, if at the time of execution of the contract, the Base Value for the property was \$100,000, and in subsequent years the property increased in value to \$500,000 due to improvements and repairs made by the property owner, the property owner would be entitled to an abatement on \$400,000—the amount that exceeds the Base Value.

¹³⁶ TAX. CODE ANN. § 312.204(a) (West 2008).

¹³⁷ TAX. CODE ANN. § 312.007(b) (West Supp. 2011).

¹³⁸ TAX. CODE ANN. § 312.205(a).

- (1) Improvements or repairs by the municipality to streets, sidewalks, and utility services or facilities associated with the property, except that the agreement may not provide for lower charges or rates than are made for other services or properties of similar character;
- (2) An economic feasibility study, including a detailed list of estimated improvements costs, a description of the methods of financing all estimated costs, and the time when related costs or monetary obligations are to be incurred;
- (3) A map showing existing uses and conditions of real property in the reinvestment zone;
- (4) A map showing proposed improvements and uses in the reinvestment zone;
- (5) Proposed changes of zoning ordinances, the master plan, the map, building codes, and city ordinances; and
- (6) The recapture of all or a portion of property tax revenue lost as a result of the agreement if the owner of the property fails to create all or a portion of the number of new jobs provided by the agreement, if the appraised value of the property subject to the agreement does not attain a value specified in the agreement, or if the owner fails to meet any other performance criteria provided by the agreement, and payment of a penalty or interest, or both, on that recaptured property tax revenue.

Although the tax abatement reinvestment zone may not be altered, a tax abatement agreement may be amended during the term of the agreement to include any term or condition that could have originally been included.¹³⁹ However, the amendment may not be retroactive.¹⁴⁰

What types of property are eligible for tax abatement?

Land, buildings, improvements, tangible personal property (machinery, equipment, furniture, fixtures, vehicles, inventory, and supplies) and leasehold interests in exempt and non-exempt property.

May a city abate property taxes for more than 10 years?

The maximum time period for abatement of taxes for property is 10 years. A municipality may not grant tax abatement for property that was the subject of a previous ten-year tax abatement agreement.¹⁴¹ A city may, however, effectively grant additional years of tax abatement by providing annual economic development grants equivalent to the amount of taxes that would have been abated through a Section 380 agreement.¹⁴²

Who may qualify for tax abatement?

Certain eligible taxing units may enter into a tax abatement agreement with the owner of taxable real property, the owner of a leasehold interest on tax-exempt real property, or lessees of taxable

¹³⁹ See TEXAS TAX CODE § 312.208.

¹⁴⁰ See Tex. Atty. Gen. Op. GA-0134 (2004).

¹⁴¹ See Tex. Atty. Gen. Op. JC-0133 (1999).

¹⁴² See TEX. LOCAL GOVT. CODE §380.001.

real property.¹⁴³ The tax exemption may include a portion of the real property's value, the tangible personal property's value that is located on the real property, or both.¹⁴⁴

B. **TAX INCREMENT FINANCING**

Tax increment financing ("TIF") is an economic development tool that a municipality may use to publicly finance needed structural improvements and enhanced infrastructure within a reinvestment zone. The improvements constructed in a TIF zone are intended to stimulate growth and development in the area, attract new business to the area, and to promote and encourage the development, redevelopment and expansion of existing business in the area. The cost of the improvements is repaid by the contribution of future tax revenues. Chapter 311 of the Texas Tax Code governs tax increment financing.

Only a municipality or a county may establish tax increment financing.¹⁴⁵ Each taxing unit may choose to dedicate all, a portion of, or none of the tax revenue attributable to the increase in property value resulting from the improvements for repayment of the cost of financing the public improvements.

Similar to a tax abatement agreement, TIF establishes a base tax value for property in the reinvestment zone,¹⁴⁶ and the tax revenue generated from property in the zone in excess of the base value is considered the "tax increment."¹⁴⁷ The costs of the improvements in the reinvestment zone are paid from a specific allocated portion of the tax increment. Basically, the taxing unit projects ad valorem tax revenue will increase in the reinvestment zone as a result of the added improvements and enhanced infrastructure, and dedicates a portion of this increase in tax revenue from the property within the reinvestment zone for repayment of the costs for the improvements and infrastructure. By using TIF, the costs for improvements in the reinvestment zone are financed by an increase in the taxable value of real property in the zone rather than property taxes of property owners and taxpayers outside the tax increment zone who did not directly benefit from the improvements.

CREATING A TIF

1. Designate reinvestment zone. The governing body of a municipality by ordinance may designate a contiguous or noncontiguous geographic area that is in the municipality's corporate limits, the municipality's extraterritorial jurisdiction, or both as a reinvestment zone to promote development or redevelopment of the area if the governing body determines that development or redevelopment would not occur solely through private investment in the reasonably foreseeable future.¹⁴⁸

¹⁴³ See TEX. TAX CODE ANN. §312.204(a); see also, Tex. Atty Gen. Op. GA-0600 (2008).

¹⁴⁴ TEX. TAX CODE ANN. §312.204(a).

¹⁴⁵ TEX. TAX CODE ANN. §311.003 (West Supp. 2011).

¹⁴⁶ A municipality may, but is not required to contribute municipal sales tax to the TIF fund.

¹⁴⁷ TEX. TAX CODE ANN. §311.012.

¹⁴⁸ TEX. TAX CODE ANN. §311.003.

a. *Criteria for reinvestment zone.* To be designated as a reinvestment zone, an area must:¹⁴⁹

- (1) substantially arrest or impair the sound growth of the municipality designating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and menace to the public health, safety, morale, or welfare because of the presence of:
 - (a) a substantial number of substandard, slum, deteriorated, or deteriorating structures;
 - (b) the predominance of defective or inadequate sidewalk or street layout;
 - (c) faulty lot layout in relation to size, adequacy, accessibility, or usefulness of lots;
 - (d) unsanitary or unsafe conditions;
 - (e) the deterioration of the site or other improvements;
 - (f) tax or special assessment delinquency exceeding the fair value of the land;
 - (g) defective or unusual conditions of title;
 - (h) conditions that endanger life or property by fire or other cause; or
 - (i) structures, other than single-family residential structures, less than 10 percent of the square footage of which has been used for commercial, industrial, or residential purposes during the preceding 12 years, if the municipality has a population of 100,000 or more.
- (2) Be predominantly open or undeveloped and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality.
- (3) Be a federally assisted new community located in the municipality or in an area immediately adjacent to a federally assisted new community; or
- (4) Be an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the municipality by the owners of property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

The governing body of a municipality may also designate as a reinvestment zone an area in which the proposed project plan for a potential area includes the use of land in the zone in connection with the operation of an existing or proposed regional commuter or mass transit rail system, or for a structure or facility that is necessary, useful, or beneficial to such a regional rail system.¹⁵⁰

A court will give deference to a governing body's decision to create a reinvestment zone under the first or second criteria listed above should a challenge to the creation of the zone occur. Unless the decision is arbitrary or capricious, willful and unreasoned, or taken without

¹⁴⁹ TEX. TAX CODE ANN. §311.005(a).

¹⁵⁰ TEX. TAX CODE ANN. §311.005(a-1).

consideration and in disregard of the facts and circumstances, the Court will uphold the governing body's decision.¹⁵¹

b. Restrictions on Composition of Reinvestment Zone. A municipality may not create a reinvestment zone if:¹⁵²

- (1) More than 30% of the property in the proposed zone, excluding property that is publically owned, is used for residential purposes (*this provision does not apply to a reinvestment zone created by petition of the owners of property in the zone¹⁵³);
- (2) The total appraised value of taxable property in the proposed zone and in existing reinvestment zones exceeds:
 - (a) 25% of the total appraised value of taxable real property in the municipality and in the industrial districts created by the municipality, if the municipality has a population of 100,000 or more; or
 - (b) 50% of the total appraised value of taxable real property in the municipality and in the industrial districts created by the municipality, if the municipality has a population of less than 100,000.

Subject to these limitations, a municipality by ordinance or resolution may reduce or enlarge the boundaries of an existing reinvestment zone.¹⁵⁴ The governing body may also extend the term of all or a portion of the zone after notice and hearing.¹⁵⁵ A taxing unit other than the municipality that created the zone is not required to participate in the zone for portion of the zone for the extended term unless the taxing unit enters into a written agreement to do so.¹⁵⁶

2. Prepare a preliminary reinvestment zone financing plan. Before adopting an ordinance designating a reinvestment zone, the governing body must prepare a preliminary reinvestment zone financing plan.¹⁵⁷ Section 311.003(b) of the Texas Tax Code does not specify the contents of the preliminary plan; best practices, however, suggest should contain the following:¹⁵⁸

- Detailed description of estimated project costs¹⁵⁹

¹⁵¹ See *Hardwicke v. City of Lubbock*, 150 S.W.3d 708, 716-17 (Tex. App.—Amarillo 2004, no pet.).

¹⁵² TEX. TAX CODE ANN. §311.006(a).

¹⁵³ TEX. TAX CODE ANN. §311.006(e).

¹⁵⁴ TEX. TAX CODE ANN. §311.007(a).

¹⁵⁵ TEX. TAX CODE ANN. §311.007(c).

¹⁵⁶ *Id.*

¹⁵⁷ TEX. TAX CODE ANN. §311.003(b)

¹⁵⁸ See TEX. TAX CODE ANN. §311.011.

¹⁵⁹ “Project costs” means the expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the municipality designating a reinvestment zone that are listed in the project plan as costs of public works, public improvements, programs, or other projects benefiting the zone, plus other costs incidental to those expenditures and obligations. See TEX. TAX CODE ANN. §311.002(1). This amount includes: capital costs; financing costs; real property assembly costs; professional service costs; imputed administrative costs; relocation costs; organizational costs; interest before and during construction and for one year after completion of construction; cost of operating the reinvestment zone and project facilities; the amount of any contribution made by the municipality from general revenue for implementation of the project plan; costs of school buildings or other educational buildings or facilities; and payments made at the discretion of the governing body that it found necessary or convenient to the creation of the zone or to the implementation of projects in the zone. See TEX. TAX CODE ANN. §311.002(1)(A-L).

- List of proposed kind, number, and location of public works and public improvements to be financed (including programs for economic development grants)
- An economic feasibility study
- Estimated amount of bond indebtedness to be incurred
- Estimated time when costs or monetary obligations are to be incurred
- Methods of financing project costs and expected sources of revenue to finance or pay project costs, including the percentage of tax increment from property taxes
- Current appraised value of taxable real property in the zone
- Estimate captured appraisal value during each year of its existence
- Duration of the zone

The municipality at this time should also prepare a proposed project plan, which should include: (a) a map showing existing uses of real property within the zone and any proposed improvements; (b) any proposed changes to zoning ordinances, the master plan of the City, building codes, or other municipal ordinances; (c) a list of estimated non-project costs; and (d) a statement of the method for relocating persons who will be displaced as a result of implementation of the plan.¹⁶⁰

3. ***Public hearing.*** Before the governing body may adopt an ordinance designating a reinvestment zone, it must hold a public hearing on the creation of the zone and its benefits to the municipality and to property in the proposed zone.¹⁶¹ The municipality at least seven days before the hearing must publish notice of the hearing in a newspaper of general circulation in the municipality.¹⁶² At the hearing a person may speak for or against the creation of the zone, its boundaries, or the concept of tax increment financing.¹⁶³ The municipality must provide a reasonable opportunity for the owner of property to protest the inclusion of the property in a proposed reinvestment zone.¹⁶⁴

4. ***Ordinance adopting TIF and establishing TIF board.*** After public hearing, the governing body by ordinance may designate an area within the municipality, its extraterritorial jurisdiction, or both as a reinvestment zone for tax increment financing purposes.¹⁶⁵ A governing body may adopt the ordinance by a simple majority vote at an open meeting, unless the city's charter requires a larger majority. The adopted ordinance must include a finding that development in the area would not occur in the foreseeable future solely through private investment.¹⁶⁶ The ordinance must also comply with Section 311.004 of the Texas Tax Code, and contain the following:¹⁶⁷

¹⁶⁰ TEX. TAX. CODE ANN. §§ 311.008(b)(1), 311.011(b).

¹⁶¹ TEX. TAX. CODE ANN. § 311.003(c).

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ TEX. TAX. CODE ANN. § 311.003(d).

¹⁶⁵ TEX. TAX. CODE ANN. § 311.003(a).

¹⁶⁶ *Id.*

¹⁶⁷ TEX. TAX. CODE ANN. § 311.004(a).

- (1) A description of the boundaries of the zone with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the zone;
- (2) Creation of a board of directors for the zone and specify the number of directors of the board as required by law;
- (3) A provision that the zone take effect immediately upon passage of the ordinance or order;
- (4) A provision identifying the date for the termination of the zone;
- (5) A name for the zone for identification, with the first zone created as by a municipality designated as “Reinvestment Zone Number One, City (or Town if applicable) of (name of municipality),” and subsequently created zones assigned names in the same form numbered consecutively in order of their creation;
- (6) A provision establishing a tax increment fund for the zone;
- (7) Findings that: (A) improvements in the zone with significantly enhance the value of all the taxable real property in the zone and will be of general benefit to the City; and (B) the area meets the requirements of Section 311.005. This finding does not have to identify the specific parcels of real property.¹⁶⁸

If a municipality designates a reinvestment zone on the petition of property owners, the municipality must also specify in its ordinance that the reinvestment zone is designated pursuant to Section 311.005(a)(4) of the Texas Tax Code.¹⁶⁹

BOARD OF DIRECTORS

The size, composition and qualifications of the board of directors depend on whether the reinvestment zone was initiated by the municipality or by a petition of property owners.

a. Board of Directors for TIF zone initiated by Governing Body.¹⁷⁰

- Consists of five members, but no more than 15 members
- Appointments:
 - Each taxing unit that approves the payment of all or part of its tax increment into the tax increment fund is entitled to appoint a number of members to the board in proportion to the taxing unit’s pro rata share of the total anticipated tax increment to be deposited
 - A taxing unit may waive its right to appoint a director
 - Municipality creating the zone cannot appoint more than 10 directors to the board
 - Members are appointed for two year terms, which may be staggered
- To be eligible for appointment:
 - Must be at least 18 years of age;

¹⁶⁸ TEX. TAX. CODE ANN. § 311.004(b).

¹⁶⁹ TEX. TAX. CODE ANN. § 311.004(c).

¹⁷⁰ TEX. TAX. CODE ANN. § 311.009(a), (c)-(e)(1).

- A resident of the county in which the zone is located or a county adjacent to that county OR
 - Own real property in the zone, whether or not the individual resides in the county in which the zone is located or a county adjacent to that county or be an employee or agent of a person that owns real property in the zone
- Vacancy on the board is filled for the unexpired term by appointment of the governing body of the taxing unit that appointed the director who served in the vacant position

b. Board of Directors for TIF zone initiated by Petition of Property Owners.

- Consists of nine members, but no more than 15 members
- Appointments:
- Each taxing unit that approves the payment of all or part of its tax increment into the tax increment fund is entitled to appoint a number of members to the board in proportion to the taxing unit's pro rata share of the total anticipated tax increment to be deposited¹⁷¹
 - A taxing unit may waive its right to appoint a director
 - The member of the State Senate in whose district the zone is located is a member of the board¹⁷²
 - The member of the State House of Representatives in whose district the zone is located is a member of the board¹⁷³
 - Members are appointed for two year terms, which may be staggered
- To be eligible for appointment:
- Must be at least 18 years of age
 - Own real property in the zone or be an employee or agent of a person that owns real property in the zone
- Vacancy on the board is filled for the unexpired term by appointment of the governing body of the taxing unit that appointed the director who served in the vacant position

Each year, the governing body of the municipality creating the zone appoints one member of the board to serve as chairman.¹⁷⁴ The chairman serves for a term of one year that begins on

¹⁷¹ If fewer than seven taxing units, other than the municipality that designated the zone, are eligible to appoint members of the board of directors, the municipality may appoint a number of board members so that the board comprises nine members; otherwise, the municipality may only appoint one member. *See* TEX. TAX. CODE ANN. § 311.009(b).

¹⁷² If the zone is located in more than one senate district, then the senator in whose district a larger portion of the zone is located is the member of the zone's board. *See* TEX. TAX. CODE ANN. § 311.009(b).

¹⁷³ If the zone is located in more than one house district, then the representative in whose district a larger portion of the zone is located is the member of the zone's board. *See* TEX. TAX. CODE ANN. § 311.009(b).

¹⁷⁴ TEX. TAX. CODE ANN. § 311.009(c).

January 1st of the following year.¹⁷⁵ The board of directors may elect a vice-chairman to preside in the absence of the chairman, and other officers the board deems appropriate.¹⁷⁶

The statute specifies that a member of a TIF board of directors is not a public official by virtue of position on the board.¹⁷⁷ Accordingly, a person appointed to the board of directors is not subject to the Texas Constitutional prohibition of dual office holding, thereby permitting city council members or other public officials to serve as directors.¹⁷⁸

5. ***Board of Directors prepares project plan and reinvestment zone financing plan.*** The board of directors shall prepare and adopt a project plan and a reinvestment zone financing plan for the zone, and submit the plans to the governing body of the municipality that designated the zone.¹⁷⁹

➤ ***Project Plan must include.***¹⁸⁰

- (1) Map showing existing uses of real property within the zone and any proposed improvements;
- (2) Any proposed changes to zoning ordinances, the master plan of the City, building codes, or other municipal ordinances;
- (3) A list of estimated non-project costs; and
- (4) A statement of the method for relocating persons who will be displaced as a result of implementation of the plan.

➤ ***The reinvestment zone financing plan must include.***¹⁸¹

- (1) A detailed list of the estimated project costs of the zone, including administrative expenses;
- (2) A list of the kind, number and location of all proposed public works or public improvements within the zone;
- (3) An economic feasibility study;
- (4) The estimated amount of bonded indebtedness to be incurred (Note: all bonds must mature within 20 years of the date of issue);
- (5) The timing for incurring costs or monetary obligations;
- (6) The methods for financing all estimated project costs and the expected sources of revenues, including the percentage of the tax increment to be derived from the property taxes of each taxing unit that levies taxes on real property within the zone;
- (7) The current total appraised value of taxable real property in the zone;

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ TEX. TAX. CODE ANN. § 311.009(g).

¹⁷⁸ See Tex. Atty Gen Op. GA-0169 (2004).

¹⁷⁹ TEX. TAX. CODE ANN. § 311.011(a).

¹⁸⁰ TEX. TAX. CODE ANN. § 311.011(b).

¹⁸¹ TEX. TAX. CODE ANN. § 311.011(c).

- (8) The estimated captured appraised value of the zone during each year of its existence; and
- (9) The duration of the zone—a tax increment financing reinvestment zone terminates on the earlier of: the termination date designated in the original or amended ordinance creating the zone, or the date on which all project costs, tax increment bonds, and interest on those bonds have been paid in full.

The board of directors of the zone shall make recommendations to the governing body of the municipality that created the zone regarding the administration of the TIF.¹⁸² At any time after the TIF is adopted, the board of directors may adopt an amendment to the project plan.¹⁸³ The amendment takes effect on the approval of the change by ordinance of the municipality's governing body that created the TIF.¹⁸⁴ If an amendment reduces or increases the geographic area of the zone, increases the amount of bond indebtedness to be incurred, increases or decreases the percentage of tax increment contributed by a taxing entity, increases the total estimated project costs, or designates additional property in the zone to be acquired by the municipality, then the governing body must hold a public hearing before adoption of the amendment by ordinance.¹⁸⁵

6. Governing body of municipality approves by ordinance the project plan and reinvestment zone financing plan.¹⁸⁶ The governing body of the municipality that designated the zone must approve a project plan and reinvestment zone financing plan after its adoption by the board.¹⁸⁷ The plans are approved by ordinance, which must include a finding that the plan is feasible.¹⁸⁸ The governing body either at the time it establishes the reinvestment zone or when it approves the project and reinvestment zone financing plans must determine the portion of the tax increment that the municipality must pay into the tax increment fund for the zone.¹⁸⁹ If the municipality does not determine the portion for payment in the fund, then the municipality must pay the entire tax increment produced by the municipality in the zone.¹⁹⁰

The governing body of the municipality by ordinance or resolution may authorize the board to exercise any of the municipality's powers¹⁹¹ with respect to the administration,

¹⁸² TEX. TAX. CODE ANN. § 311.010(a).

¹⁸³ TEX. TAX. CODE ANN. § 311.011(e).

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ TEX. TAX. CODE ANN. § 311.011(d).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ TEX. TAX. CODE ANN. § 311.013(l); *see also* TEX. TAX. CODE ANN. § 311.013(m) (providing special rules related to tax increment in populous areas).

¹⁹⁰ *Id.*

¹⁹¹ TEX. TAX. CODE ANN. § 311.008(b) provides that the municipality may exercise any power necessary and convenient to carry out Chapter 311 of the Texas Tax Code, including the power to:

- (1) Cause project plans to be prepared, approve and implement the plans, and otherwise achieve the purposes of the plan;
- (2) Acquire real property by purchase, condemnation, or other means and sell real property, on the terms and conditions and in the manner it considers advisable, to implement project plans;

management, or operation of the zone or the implementation of the project plan for the zone, except the issuance of bonds, imposition of taxes or fees, exercise of eminent domain power, final approval of the project plan (or amendments thereto).¹⁹² Further, the governing body must approve any acquisition or sale of real property by the board of directors.¹⁹³ The municipality by ordinance or resolution also may choose to restrict any power granted to the board of directors under Chapter 311.¹⁹⁴

Once the municipality approves a project plan and reinvestment zone financing plan, it must by April 1st of the year following the year the zone is designated deliver to the Texas Comptroller's Office a report containing a general description of the reinvestment zone, a copy of each project plan or reinvestment zone financing plan adopted, and any other information required by the Comptroller that helps in the administration of the central registry and tax refund for economic development.¹⁹⁵

7. Other taxing entities with property in the zone may contract with governing body to contribute to tax increment financing fund.¹⁹⁶ Other taxing entities may contribute to the tax increment fund. The decision as to what percentage of the increased tax revenues to contribute is entirely discretionary with the governing body of each taxing unit.¹⁹⁷ A taxing unit may decide to retain all the tax increment for itself and not contribute to the tax increment fund.¹⁹⁸

An agreement by a taxing unit to contribute to a tax increment fund must identify the portion of the tax increment dedicated to the fund, as well as the number of years the taxing unit will contribute the portion of its tax increment.¹⁹⁹ The agreement may also specify the projects to be paid by the taxing units tax increment, and identify the base year later than the original

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- (3) Enter into agreements, including agreements with bondholders, determined by the governing body of the municipality to be necessary or convenient to implement project plans and achieve their purposes, which agreements may include conditions, restrictions, or covenants that run with the land or that by other means regulate or restrict the use of land; and
 - (4) Consistent with the project plan for the zone:
 - a. Acquire blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed real property or other property in a blighted are or in a federally assisted new community in the zone for the preservation or restoration of historic sites, beautification or conservation, the provision of public works or public facilities, or other public purposes;
 - b. Acquire, construct, reconstruct, or install public works, facilities, o r sites or other public improvements, including utilities, streets, street lights, water and sewer facilities, pedestrian malls and walkways, parks, flood and drainage facilities, or parking facilities, but not including educational facilities; or
 - c. In a reinvestment zone created on or before September 1, 1999, acquire, construct, or reconstruct educational facilities in the municipality.

¹⁹² TEX. TAX. CODE ANN. § 311.010(a).

¹⁹³ TEX. TAX. CODE ANN. §§ 311.008(b)(2), and 311.010(d)(2).

¹⁹⁴ TEX. TAX. CODE ANN. § 311.010(d)(1).

¹⁹⁵ TEX. TAX. CODE ANN. § 311.019(b).

¹⁹⁶ TEX. TAX. CODE ANN. § 311.013.

¹⁹⁷ See TEX. TAX. CODE ANN. § 311.013(f).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

agreement for computation of the tax increment.²⁰⁰ The agreement may contain other conditions for payment.²⁰¹ The agreements and conditions in the agreement are binding on the taxing unit.²⁰²

The participating taxing units' contributions of the portion of their increased tax revenues that are collected each year under the plan make up the tax increment fund.²⁰³ The taxing units may determine the amount of their tax increment for a year by one of two methods—either the amount of property tax levied and *assessed*, or the amount of property taxes levied and *collected*.²⁰⁴

Unless otherwise specified by an agreement between the taxing unit and the municipality that created the zone, payment of the taxing unit's increment into the fund is due by the 90th day after the later of: (1) the delinquency date for the unit's property taxes; or (2) the date the municipality that created the zone submits to the taxing unit an invoice specifying the amount of the tax increment produced by the taxing unit that is owed.²⁰⁵ A delinquent payment incurs a penalty of 5% the amount unpaid and accrues interest at an annual rate of 10%.²⁰⁶ The taxing unit, however, is not required to pay into the tax increment fund the portion of a tax increment attributable to delinquent taxes until those taxes are actually collected.²⁰⁷

8. Once the reinvestment zone is established, the Board of Directors must make recommendations to the City Council on implementation of the tax increment financing.

Either the Board or the City may enter into agreements that are necessary or convenient to implement the project plan or reinvestment zone financing plan.²⁰⁸ Such agreements may pledge or provide for the use of revenue from the tax increment fund, and provide for the regulation or restriction of land use.²⁰⁹ If the reinvestment zone was created by petition, the board with the approval of the municipality may impose certain zoning restrictions within the zone.²¹⁰

With the approval of the municipality creating the reinvestment zone, the board of directors may establish and provide for the administration of programs for a public purpose of developing and diversifying the economy, eliminating unemployment and underemployment, and developing business and commercial activity in the zone.²¹¹ This power includes programs to make grants or loans from the tax increment fund.²¹²

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ TEX. TAX. CODE ANN. §§ 311.013, 313.014.

²⁰⁴ TEX. TAX. CODE ANN. § 311.012(a).

²⁰⁵ TEX. TAX. CODE ANN. § 311.013(c).

²⁰⁶ TEX. TAX. CODE ANN. §§ 311.013(c-1).

²⁰⁷ TEX. TAX. CODE ANN. §§ 311.013(i).

²⁰⁸ TEX. TAX. CODE ANN. § 311.010(b).

²⁰⁹ *Id.*

²¹⁰ TEX. TAX. CODE ANN. § 311.010(c).

²¹¹ TEX. TAX. CODE ANN. § 311.010(h).

²¹² TEX. TAX. CODE ANN. § 311.010(h).

Sales Tax Increment

The governing body of a municipality may determine either in the ordinance designating an area as a reinvestment zone or in an ordinance adopted subsequent to the designation of the zone that a portion or amount of increased tax increment generated from municipal sales and use taxes attributable to the zone may be deposited into the tax increment fund.²¹³ A municipality, however, is not required to contribute sales tax increments into the tax increment fund.²¹⁴

Tax Abatement Agreements

A taxing unit (other than a school district) may enter into a tax abatement agreement with an owner of real or personal property in a reinvestment zone, regardless of whether the taxing unit deposits or agrees to deposit any portion of its tax increment into the tax increment fund.²¹⁵ An agreement to abate taxes on real property in a reinvestment zone is only effective if approved by: (1) the board of directors of the reinvestment zone; and (2) the governing body of each taxing unit that imposes taxes on real property in the reinvestment zone and deposits or agrees to deposit any of its tax increment into the tax increment fund for the zone.²¹⁶ If a taxing unit enters into a tax abatement agreement, taxes that are abated are not considered taxes imposed or produced by the taxing unit in calculating the amount of the tax increment for the taxing unit or the amount of the taxing unit's deposit into the tax increment fund.²¹⁷

Tax Increment Bonds and Notes

A municipality designating a reinvestment zone may issue tax increment bonds or notes, and use the proceeds to: (a) make payments pursuant to agreements made under Section 311.010(b); (b) to pay project costs for the reinvestment zone on behalf of which the bonds and notes were issued; or (c) to satisfy claims of holders of the bonds or notes.²¹⁸ Tax increment bonds are issued by ordinance without any additional approval other than that of the attorney general.²¹⁹ Tax increment bonds and notes are payable, as to both principal and interest, solely from the tax increment fund established for the reinvestment zone.²²⁰ The requirements for tax increment bonds or notes are set forth in Section 311.015 of the Texas Tax Code.

9. ***Annual report.*** The City must submit an annual report to the Chief Executive Officer of each taxing unit that levies taxes on property within the zone, and provide a copy to (1) the Public Finance Division in the Office of the Attorney General and (2) the Texas State Comptroller's Office.²²¹ The report must be provided within 150 days of the end of the city's fiscal year, and include the following:²²²

²¹³ TEX. TAX. CODE ANN. § 311.0123(b).

²¹⁴ *Id.*

²¹⁵ TEX. TAX. CODE ANN. § 311.0125(a).

²¹⁶ TEX. TAX. CODE ANN. § 311.0125(b).

²¹⁷ TEX. TAX. CODE ANN. § 311.0125(d).

²¹⁸ TEX. TAX. CODE ANN. § 311.015(a).

²¹⁹ TEX. TAX. CODE ANN. § 311.015(c).

²²⁰ TEX. TAX. CODE ANN. § 311.015(b).

²²¹ TEX. TAX. CODE ANN. § 311.016(a) and (b).

²²² TEX. TAX. CODE ANN. § 311.016(a).

- Amount and source of revenue in the tax increment fund established for the zone
- The amount of purpose of expenditures from the fund
- Amount of principal and interest due on outstanding bond indebtedness
- Tax increment base and current captured appraised value retained by zone
- The captured appraised value shared by the city and other taxing units
- Total amount of tax increments received
- Any additional information necessary to demonstrate compliance with the tax increment financing plan adopted by the municipality.

IV. PUBLIC IMPROVEMENT DISTRICTS: CH. 372 OF THE TEX. LOCAL GOV'T CODE

The Public Improvement District Assessment Act allows any municipality to levy and collect special assessment on property that is within the municipality or its extraterritorial jurisdiction.²²³ A municipality may use this tool to make certain improvements in their infrastructure to facilitate economic growth in an area by providing adequate streets, utility services, or other public facilities and services. Chapter 372 of the Texas Local Government Code provides the authority for a Public Improvement District (“PID”).

A public improvement project under Chapter 372 may include:²²⁴

- (1) landscaping;
- (2) erection of fountains, distinctive lighting, and signs;
- (3) acquiring, constructing, improving, widening, narrowing, closing or rerouting of sidewalks, streets or any other roadways, or their rights-of-way;
- (4) construction or improvement of pedestrian malls;
- (5) acquisition and installation of pieces of art;
- (6) acquisition, construction or improvement of libraries;
- (7) acquisition, construction or improvement of off-street parking facilities;
- (8) acquisition, construction, improvement or rerouting of mass transportation facilities;
- (9) acquisition, construction, or improvements of water, wastewater or drainage improvements;
- (10) the establishment or improvement of parks;
- (11) projects similar to those listed as 1 through 10 above;
- (12) acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;
- (13) special supplemental services for improvement and promotion of the district, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and cultural enhancement;
- (14) payment of expenses incurred in the establishment, administration, and operation of the district; and
- (15) the development, rehabilitation, or expansion of affordable housing.

²²³ TEX. LOCAL GOV'T CODE § 372.003(a).

²²⁴ TEX. LOCAL GOV'T CODE § 372.003(b).

CREATING A PID

1. ***Define an area as a Public Improvement District.*** The governing body of a municipality or a group of affected property owners may initiate a petition that calls for designation of a defined area of the municipality as a PID.²²⁵ The petition must state:²²⁶

- (1) the general nature of the proposed improvements;
- (2) the estimated cost of the improvements;
- (3) the boundaries of the proposed assessment district;
- (4) the proposed method of assessment, which may specify included or excluded classes of property subject to the assessment;
- (5) the proposed appropriation of costs between the public improvement district and the municipality as a whole;
- (6) designate management of the district by the municipality, by the private sector, or by a partnership of the two;
- (7) that the persons signing the petition request or concur with the establishment of the district; and
- (8) that an advisory board may be established to develop and recommend an improvement plan to the governing body of the municipality.

The petition is sufficient if signed by: (1) owners of taxable real property representing more than 50 percent of the appraised value of taxable real property liable for assessment under the proposal, as determined by the current roll of the appraisal district; and (2) by record owners of real property who constitute more than 50 percent of all record owners of property liable for assessment under the proposal, or own taxable real property that constitutes more than 50 percent of the area of all taxable real property liable for assessment under the proposal.²²⁷ The petition must meet both requirements, and be filed with the municipal secretary.²²⁸

2. ***Municipality may appoint advisory board to develop and recommend improvement plan for PID.*** After receipt of the petition, the city council may appoint an advisory board to develop an improvement plan for the public improvement district.²²⁹ The membership of the board must be composed of:²³⁰

- (1) owners of taxable real property representing more than 50 percent of the appraised value of taxable real property liable for assessment under the proposal, as determined by the current roll of the appraisal district; and
- (2) record owners of real property who constitute more than 50 percent of all record owners of property liable for assessment under the proposal, or own taxable real property that

²²⁵ TEX. LOCAL GOV'T CODE § 372.005.

²²⁶ TEX. LOCAL GOV'T CODE § 372.005(a).

²²⁷ TEX. LOCAL GOV'T CODE § 372.005(b).

²²⁸ TEX. LOCAL GOV'T CODE § 372.005(c).

²²⁹ TEX. LOCAL GOV'T CODE § 372.008(a).

²³⁰ TEX. LOCAL GOV'T CODE § 372.008(b).

constitutes more than 50 percent of the area of all taxable real property liable for assessment under the proposal

3. ***Municipality prepares feasibility report.*** After receiving a petition, the governing body causes the preparation of a feasibility report to determine whether the proposed improvements should be made as set forth in the petition, or in combination with other improvements as authorized by Chapter 372.²³¹ Municipal employees or outside consultants may prepare the report.

4. ***Public hearing on advisability of the improvements.*** After completion of the feasibility study, the governing body must hold a public hearing to determine the advisability of the proposed improvements.²³² Notice of the public hearing must be published more than 15 days prior to the hearing in a newspaper of general circulation in the city and the area in the extraterritorial jurisdiction proposed for inclusion in the PID.²³³ The municipality must also sent written notification via first class mail to the owners of property within the proposed PID more than 15 days prior to the hearing.²³⁴ The notice must state the time and place of the hearing; the general nature of the proposed improvements; the estimated cost of the improvements; the boundaries of the proposed assessment district; the proposed method of assessment, and the proposed apportionment of cost between the PID and the municipality as a whole.²³⁵ The municipality must make findings by resolution regarding the advisability of the proposed improvements, including their costs and the assessments, based on the public hearing.²³⁶

5. ***Adopt resolution authorizing creation of PID.*** The governing body of the municipality must adopt a resolution by majority vote authorizing the creation of the PID within six months of the public hearing.²³⁷ The authorization is effective once notice of the resolution is published in a newspaper of general circulation in the municipality or municipality's extraterritorial jurisdiction where the district is located.²³⁸

6. ***Municipality may begin construction of improvements twenty days after authorization of PID takes effect.*** The municipality can begin construction of the improvements twenty days after authorization of the public improvement district unless presented within twenty days with a protest petition, signed by owners representing at least two-thirds of the total area of the district, or by two-thirds of all the landowners in the district.²³⁹ The statute does not address the procedure for a municipality to address a protest petition. Nonetheless, after receiving the protest, the city council may elect to assess only part or none of the district.

7. ***Municipality must develop a five-year on-going service and assessment plan.*** The advisory board or other entity in the absence of an advisory board shall prepare an ongoing service plan

²³¹ TEX. LOCAL GOV'T CODE § 372.007(a).

²³² TEX. LOCAL GOV'T CODE § 372.009.

²³³ TEX. LOCAL GOV'T CODE § 372.009(c).

²³⁴ TEX. LOCAL GOV'T CODE § 372.009(d).

²³⁵ TEX. LOCAL GOV'T CODE § 372.009(c).

²³⁶ TEX. LOCAL GOV'T CODE § 372.009(b).

²³⁷ TEX. LOCAL GOV'T CODE § 372.010(a).

²³⁸ TEX. LOCAL GOV'T CODE § 372.010(b).

²³⁹ TEX. LOCAL GOV'T CODE § 372.010(c).

and present the plan to the city council for review and approval.²⁴⁰ The plan must cover a period of at least five years and define the annual indebtedness and projected costs for improvements.²⁴¹ The service plan must be reviewed and updated annually for purposes of determining an annual budget for improvements.²⁴²

An assessment plan must be included in the annual service plan.²⁴³ The governing body of the municipality shall apportion the cost of an improvement to be assessed against property in a PID based on the special benefits accruing to the property because of the improvement.²⁴⁴ The municipality may assess the costs of improvements: (a) equally per front foot or square foot; (b) according to the value of the property as determined by the governing body, with or without regard to improvements on the property; or (c) in any other manner that results in imposing equal shares of the cost on property similarly benefitted.²⁴⁵

The governing body may establish by ordinance the reasonable classifications and formulas for the apportionment of the cost between the municipality and the area to be assessed, and the methods of assessing the special benefits for various classes of improvements.²⁴⁶ Assessments may be adjusted annually upon review of the service plan.²⁴⁷

8. ***Prepare proposed assessment roll, and provide public hearing on proposal.*** After a municipality forms a district, a copy of the proposed assessment roll must be filed with the city secretary.²⁴⁸ The municipality must publish notice of a public hearing on the proposed assessment roll in a newspaper of general circulation at least 10 days before the date of the hearing.²⁴⁹ The notice must state the time and place of the hearing; the general nature of the improvements; the cost of the improvements; the boundaries of the assessment district; and that written or oral objections will be considered at the hearing.²⁵⁰

Notice of the public hearing on the assessment roll must also be mailed to affected property owners.²⁵¹ At the public hearing, the governing body must hear and rule on any objections raised.²⁵² The governing body may amend a proposed assessment on any parcel.²⁵³

9. ***Levy by ordinance the special assessment against the taxable property within the district.*** Once the governing body has heard and considered all the objections, it may levy by ordinance a special assessment against property in the PID.²⁵⁴ The ordinance shall specify the method of

²⁴⁰ TEX. LOCAL GOV'T CODE § 372.013(a).

²⁴¹ TEX. LOCAL GOV'T CODE § 372.013(b).

²⁴² *Id.*

²⁴³ TEX. LOCAL GOV'T CODE § 372.014(a).

²⁴⁴ TEX. LOCAL GOV'T CODE § 372.015(a).

²⁴⁵ TEX. LOCAL GOV'T CODE § 372.015(b).

²⁴⁶ TEX. LOCAL GOV'T CODE § 372.015(c).

²⁴⁷ TEX. LOCAL GOV'T CODE § 372.015(d).

²⁴⁸ TEX. LOCAL GOV'T CODE § 372.016.

²⁴⁹ TEX. LOCAL GOV'T CODE § 372.016(b).

²⁵⁰ *Id.*

²⁵¹ TEX. LOCAL GOV'T CODE § 372.016(c).

²⁵² TEX. LOCAL GOV'T CODE § 372.017(a).

²⁵³ *Id.*

²⁵⁴ TEX. LOCAL GOV'T CODE § 372.017(b).

payment of the assessment.²⁵⁵ The municipality may defer an assessment until a date specified in the ordinance.²⁵⁶ Additionally, the municipality may contract with another taxing unit or the Board of Directors of the appraisal district to collect special assessments.²⁵⁷

- a. Installment payments. The governing body may provide for payment of assessments in periodic installments, at an interest rate and period of time approved by the governing body.²⁵⁸ The amount of installments must be in amounts necessary to meet annual costs for improvements and must continue for the period necessary to retire the indebtedness on the improvements or the period approved by the governing body for installment payments.²⁵⁹
- b. Limitation on interest rate for installment payment and liens. Should the municipality issue general obligation bonds, revenue bonds, time warrants, or temporary notes to finance the improvements, the interest rate identified in the assessment ordinance may not exceed a rate that is one-half of one percent higher than the actual rate paid on the debt.²⁶⁰ Further, the interest that accrues between the effective date of the assessment ordinance and the first installment payment must be added to the first installment payment.²⁶¹
- c. Lien. The assessment is a first and prior lien against the property, superior to all other liens and claims except liens for state, county, school district, or city ad valorem taxes.²⁶² The lien is also a personal liability charge against the owners of the property, regardless of whether they are named.²⁶³ An assessment lien is effective from the date of the assessment ordinance until the assessment is paid.²⁶⁴ Further, the assessment runs with the land, and a foreclosure purchaser of the property is subject to the assessment lien and any associated obligations.²⁶⁵ The municipality may enforce the lien in the same manner as it enforces an ad valorem tax lien against real property.²⁶⁶
- d. Delinquent payment of assessment installments. Delinquent payment of assessment installments shall incur interest, penalties and attorney's fees in the same manner as delinquent ad valorem taxes.²⁶⁷ The interest on any delinquent installment shall be added to each subsequent installment until all delinquent installments are paid.²⁶⁸ Unless a property held a homestead exemption prior to the assessment, the property is subject to foreclosure and forced sale for nonpayment.²⁶⁹

²⁵⁵ *Id.*

²⁵⁶ *Id.*; see also TEX. LOCAL GOV'T CODE § 372.0055.

²⁵⁷ TEX. LOCAL GOV'T CODE § 372.0175.

²⁵⁸ TEX. LOCAL GOV'T CODE § 372.017(b).

²⁵⁹ *Id.*

²⁶⁰ TEX. LOCAL GOV'T CODE § 372.018(a).

²⁶¹ *Id.*

²⁶² TEX. LOCAL GOV'T CODE § 372.018(b).

²⁶³ *Id.*

²⁶⁴ TEX. LOCAL GOV'T CODE § 372.018(c).

²⁶⁵ TEX. LOCAL GOV'T CODE § 372.018(d).

²⁶⁶ TEX. LOCAL GOV'T CODE § 372.018(e).

²⁶⁷ TEX. LOCAL GOV'T CODE § 372.018(f).

²⁶⁸ TEX. LOCAL GOV'T CODE § 372.018(a).

²⁶⁹ See Tex. Atty Gen. Op. GA-237 (2004).

10. **Municipality may make additional assessments against property within district to correct omissions or mistakes regarding costs of improvements.** After notice and hearing, the governing body of a municipality may make supplemental assessments to correct omissions or mistakes in the assessment related to the total cost of the improvements.²⁷⁰ Notice must be given and hearing held as required for the original levy of assessments.²⁷¹

11. **Payment of Costs.** Costs of improvements are payable or reimbursable in any combination of methods described in Section 372.023.²⁷² A municipality may pay a cost payable wholly by itself from general funds available for the purpose or other available general funds.²⁷³ A cost payable from a special assessment that is paid in full shall be paid from that assessment.²⁷⁴ A cost payable from a special assessment that is payable in installments may be paid by any combination of the following methods:²⁷⁵

- a. under an installment sales contract or a reimbursement agreement between the municipality and person who acquires, installs, or constructs the improvements;
- b. as provided by a temporary note or time warrant issued by the municipality or county and payable to the person who acquires, installs, or constructs the improvements; or
- c. by the issuance and sale of bonds.

The payee without consent of the municipality may assign an installment sales contract, reimbursement agreement, temporary note, or time warrant.²⁷⁶

The cost of more than one improvement may be paid from: (1) a single issue and sale of bonds without other consolidation proceedings before the bond issue, or (2) under a single installment sales contract reimbursement agreement, temporary note, or time warrant.²⁷⁷ If bonds are issued, the municipality must create a separate fund in the treasury to which the proceeds from the sale of bonds, temporary notes, time warrants or other sums appropriated are credited.²⁷⁸ The fund may only pay the costs incurred in making an improvement.²⁷⁹ Once the improvement is completed, the balance of the assessment for the improvement must be transferred to the fund established for retirement of bonds.²⁸⁰

²⁷⁰ TEX. LOCAL GOV'T CODE § 372.019.

²⁷¹ *Id.*

²⁷² TEX. LOCAL GOV'T CODE § 372.023.

²⁷³ TEX. LOCAL GOV'T CODE § 372.023(b).

²⁷⁴ TEX. LOCAL GOV'T CODE § 372.023(c).

²⁷⁵ TEX. LOCAL GOV'T CODE § 372.023(d).

²⁷⁶ TEX. LOCAL GOV'T CODE § 372.023(d-1).

²⁷⁷ TEX. LOCAL GOV'T CODE § 372.023(g).

²⁷⁸ TEX. LOCAL GOV'T CODE § 372.022.

²⁷⁹ *Id.*

²⁸⁰ *Id.*