

Adopting a City Budget and
Property Tax Rate
Training
Austin Texas
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Leela R. Fireside, Assistant City Attorney, Austin Texas.
(contact info: leela.fireside@austintexas.gov or (512) 974-2163)

(Note: this paper solely reflects the opinions of the author and is not an official statement of the City of Austin, or the Austin City Attorney).

Introduction

A bit shy of seven years ago, I had the good fortune to start working at the City of Austin. Having been a lawyer filing civil lawsuits against polluters and other ne'er does wells for many years, I have the pleasure of a job in which I learn new things every day. Helping the City adopt its budget and its property tax rate each year is part of the annual adventure.

Adopting the budget and the tax rate are two of the most important processes your city will go through each year. The legislature has provided a process for each action that is designed to give citizens notice of each action and of the impact of each action. The process also includes an opportunity for people to speak to city council about the budget and the tax rate. I hope this paper will guide you in helping your city complete each of these processes legally.

When I refer to “adopting the budget” be mindful that there may be many pieces to “the budget.” However, this paper only looks at the budget as if it was one whole thing.

Our city holds rate hearings for utilities such as solid waste services, drainage, water and waste water, and electric (if increases to the rates are needed). We also adopt ordinances relating to EMS, fire, and police positions. We have some local government corporations that adopt their budgets at the same time too so notice of their board meetings must be posted and scheduled, and resolutions prepared to adopt those budgets. We adopt ordinances and resolutions relating to financing for various parts of the budget as well (bonds, certificates of obligation, and contractual obligations). We adopt the operating budget separately from the capital budget. Finally, since we have a myriad of fees that we charge, unless a statute requires the fee to be in a certain place in the city code, we adopt a “fee ordinance” that contains all the city fees – including any proposed changes to those fees. The Local Government Code provisions relating to the municipal budget do not cover the processes that our city has to follow to complete each of these other parts of budget adoption.

When I refer to “adopting the property tax rate” this also includes adoption of any property tax exemptions authorized by state law that the city

has elected to offer (such as over 65, homestead, disabled, historic property). Make sure that you are clear on the requirements for adopting these exemptions, both under state law, and under your charter and that the adoption is done in compliance with these requirements. I use the phrase “property tax” instead of “ad valorem tax” because I prefer trying to keep things in as plain English as I can.

When I refer to “hearings” these are mostly hearings that are public open meetings at which citizens are specifically allowed to speak as set out in the statutes. After we have had these hearings, with ample public comment, we close the public comment portion of the hearings, continue the adoption of the actual budget and property tax rate portion to a different day, and conduct the adoption in a properly noticed (in accordance with the requirements of the Tax Code, the LGC, and the Open Meetings Act) public hearing at which no citizens speak.

I. BASIC PROCESS OF BUDGET AND TAX RATE ADOPTION

The Statutes

There are three statutes that set out the mechanics of adopting a city’s tax rate and budget. These are:

- Texas Property Tax Code Chapter 26;
- Texas Local Government Code Chapter 102; and
- Chapter 140 of the Texas Local Government Code.

These Codes are referred to in this paper as “Tax Code” and “LGC.” These Codes share two main features. Each has specific notice requirements and each has specific hearing requirements. Conveniently, or diabolically, they don’t match. They are also different for small and large cities. The notice requirements from the Tax Code were completely rewritten by the provisions of Chapter 140 of the LGC. Chapter 140 mandates that larger cities have a simplified notice process for their truth-in-taxation notices. Small cities may still choose the process that is in Tax Code Chapter 26 because they only have to do one hearing under that process.

Practice tip: refer to schedule on TML web site http://www.tml.org/legal_topics/legal_finance.asp for a combined schedule of dates for adopting both the budget and the property tax rate. TML has one schedule for large cities and one for small cities. A large city levies over \$500,000 in total property taxes or has a tax rate of over fifty cents per \$100 valuation. (Tax Code 26.052).

The Bojorquez Law Firm also has worksheets for budget scheduling: for example, <http://texasmunicipallawyers.com/pdf/BudgetDeadlinesWorksheetSimplified.pdf> is for small cities that levy under \$500,000 in taxes, or large cities if they are not raising their taxes.

If you use the schedule from the State Comptroller's Truth in Taxation information <http://www.window.state.tx.us/taxinfo/proptax/tnt/> you only get half the picture. That schedule only contains the Truth in Taxation deadlines, not the budget information.

The Comptroller has online training. It is a series of narrated power point presentations. It was updated for 2014 requirements. Check this part of the Comptroller's website for updates over the summer for 2015. <http://www.window.state.tx.us/taxinfo/proptax/education/videos.html>

Tax Rate/Truth-in-Taxation

The State legislature does not set the city's property, or "ad valorem" tax rate. However, they have hemmed in the amount that a city can raise its property taxes before leaving the city open to a citizen-initiated election on the rate. These elections are called "rollback" elections because the vote will be whether to "rollback" the rate below the higher rate the city has adopted.

Effective and Roll-back Rates:

Generally speaking, there are two rates that you will hear discussed in reference to the property tax rate. The "effective rate" and the "rollback rate." Usually, the effective rate is the property tax rate that would give the city the same amount of money that it had for the past fiscal year. The rollback rate is currently about 8% higher than the *operating* effective rate plus mandated or required taxes to pay for general obligations bonds (both

principal and interest). If the city goes above that rate, this is what triggers the right of the citizens to initiate a rollback election. When I say 8% higher – this means it is 8% higher on the operating and maintenance part of the equation – the debt portion always is what the City needs to pay back the City’s debt. The statute contains formulae for calculating these rates. Tax Code 26.04(c). The calculations are also discussed in the Texas Comptroller’s Truth-in-Taxation guide. The training on the Comptroller’s web site walks through the calculations. In broad terms – the tax rate will always be what it costs to make the lawfully required payments on your debt, plus the amount that it takes to run your city – this second part is the “operating” rate.

Caution: if your city has experienced an increase in the taxable value of property above 8%, you may find that your rollback rate is lower than your current tax rate. Of course, if your valuations are coming in that much higher, you will need to make sure that the appraiser has the right amount of value not under protest when he or she certifies the rolls. More people tend to protest when their appraised values jump up. Finally, there are bills (HB 365 – Elkins; SB 182 – Bettencourt) this session to lower this percentage to 4%.

Certifying the Rolls:

The calculations all flow from the chief appraiser, or appraisers, for the taxing district certifying the tax rolls. This is supposed to be completed by July 25th. The notice and hearing dates for the Tax Code flow from this July 25th date. It is critical that you coordinate with your tax appraiser on the certified rolls before finalizing your calculations.

Cautionary Note:

What if the appraiser does not certify the rolls timely? This has happened to Austin and the surrounding cities. The appraiser cannot certify the rolls until more than a certain percent of the total valuation is certified for the County. In Travis County, this percentage is 90% because Travis County has over one million in population. Valuation in protest must continue to be resolved until the required percentage is reached. Tax Code 41.12. In our case, the appraiser certified the rolls in error, this was caught by tax experts in the city and Travis County, and so the rolls were de-certified and re-certified later. The result of failure to timely receive the

certified rolls is that all the dates for your notices and hearings for adopting the property tax rate must be recalculated using the 60 day adoption date set out in Tax Code 26.05.

Triggering the Tax Rate Increase Process:

If your City needs a tax rate that is higher than the lower of the rollback or effective tax rates you must publish notice. But, how does the City get that process started? The Tax Code applies special notice requirements “[i]f the ordinance, resolution, or order sets a tax rate that, if applied to the total taxable value, will impose an amount of taxes to fund maintenance and operation expenditures of the taxing unit that exceed the amount of taxes imposed for that purpose the preceding year.” Tax Code 26.05(b). This part of Chapter 26 is not superseded by LGC Section 140.010.

The mechanism Austin uses to set the process in motion is an item on council’s agenda for a resolution to adopt a proposed maximum tax rate that the city will consider and set the date that council will consider adoption of the actual tax rate.

In the resolution adopting the proposed maximum property tax rate, we recommend that Austin adopt the highest rate that keeps us below the trigger for citizens to take action to roll back the rate. Council then can consider various budget scenarios in the upcoming months that may lower the rate needed to generate the revenue for the upcoming fiscal year’s budget, but they know the cap and the cap is public. A sample of this resolution is at <http://www.cityofaustin.org/edims/document.cfm?id=141378>

When we adopt this resolution, we make clear in the agenda notice, and in statements made by the Mayor at the meeting adopting this resolution, that the council may ultimately adopt a property tax rate that is lower than the maximum set out in the notice. We adopt the proposed property tax rate using a roll call vote where each person’s vote is recorded after the clerk reads their names. This is still required by Tax Code 26.05(b). However, you no longer need to publish this information in the notice required by LGC 141.010. (See LGC 141.010(c)). Your city will still need to follow the wording in 26.05 for the form of the action, and put the notice on your city’s web site as set out in Tax Code 26.05(b)(2).

So, the steps are:

- (1) properly posted open meeting item on council agenda to adopt maximum tax rate;
- (2) council adopts proposed maximum tax rate in open meeting with roll call vote (each elected official stating their vote);
- (3) publish the notice required by LGC 140.010 if large taxing entity, or may use Chapter 26 notice if small taxing entity;
- (4) put notice of action on city web site and on city's public access TV channel.

Notice of Rates and Hearings:

If the appraisal rolls are certified timely, the next step is for the city or its representative to publish the rollback and effective rates.

Small taxing entities can use either the notice in Tax Code Chapter 26 (a simplified single notice), or the notice in LGC 140.010(e). Large taxing entities must use the LGC 140.010(e) notice.

LGC Notice Requirements:

- Must be published by September 1st.
- Must contain the effective and rollback rates.
- Must give contact info for the tax-assessor-collector.
- Must contain certain calculations.
- Must give the hearing dates, times, and locations.
- Can be published in any part of the newspaper of general circulation.
- Must be on the city website (if you have one) from September 1 until the council adopts the tax rate.
- Must be at least ¼ page in the newspaper and have 24 point headline.

The form for the notice is established by the State Comptroller. If your city does this, it is exempt from the notice and publication requirements of 26.04(e). And, providing the notice as required by LGC 140.010 operates as a defense to a suit for an injunction to prevent the implementation of the tax rate (LGC 140.010(c)).

Make sure your tax collector assessor knows what is going into the notice because the statute requires their contact information to be in the newspaper.

Note: there are no instructions about what happens if you get the certified rolls too late to provide the notice by September 1st. If you find yourself in this position, look at whether the good faith standards in the Tax Code and case law will benefit you.

Practice Tip:

If the taxing unit has free access to a television channel, the taxing unit also has to request that the channel carry a 60 second notice of the public hearing at least 5 times a day between the hours of 7 a.m. and 9 p.m. for a set number of days. The Tax Code states extra requirements for the internet and television notices in Tax Code 26.065. A taxpayer cannot get an injunction to restrain collection of taxes if the taxing unit has, in good faith, attempted to comply with Tax Code 26.065. Tax Code 26.065(f). A taxpayer also cannot get an injunction if you follow the requirements of LGC 140.010. (See, 140.019(c)).

Hearings:

If your city adopted a proposed property tax rate that is higher than the lower of the effective rate or the roll-back rate, the city must publish more notice, hold two specific hearings (small cities may only need to hold one hearing), and adopt the rate using specific statements set out in the Tax Code. To make sure that each action is taken in compliance with the applicable legal requirements, Austin uses a simple script for each of the council actions.

Hearings: LGC 140.010 exempts cities from the notice requirements, but not the hearing requirements of Tax Code 26.06.

- Each hearing must be held on a weekday that is not a public holiday.
- Each hearing must be in certain buildings that are open to the public. Tax Code 26.06(a).
- The second hearing must be at least 3 days after the first hearing. *Id.*

After both these hearings are completed, the governing body of the taxing unit has to vote on the tax increase.

- Meeting to adopt must be at least 3 days after the second hearing, but no later than 14 days after that hearing. Tax Code 26.06(e).

- The governing body must adopt the tax rate before the later of September 30, or the 60th day after the date the certified appraisal roll is received. Tax Code 26.05(a).

Practice Tip:

Since the Tax Code uses the phrase “before the later of September 30th ...” one might think this refers to whichever is later, September 30th or the 60th day after the date the certified roll is received. However, in an abundance of caution, both the Truth in Taxation guide and the TML schedule state that the rate must be adopted no later than September 29th in case the “before” modifies September 30th. So, if you’ve received your certified appraisal roll timely, you adopt your tax rate by September 29th.

Contents of the adopting document: The ordinance or resolution used to adopt the actual tax rate must contain specific statements in type that is larger than the rest of the document’s type-size. Tax Code 26.05(b)(1).

Vote: A vote to adopt the tax rate must:

- Be separate from the vote to adopt the budget. Tax Code 26.05(b).
- Be a “record vote” with each person’s vote recorded.
- Follow the exact words of the statute.
- Be done *after* the vote on the budget (and *after* the vote to ratify the property tax increase contained in the budget. LGC 102.006
- Be “separate” from the budget vote – but not necessarily on a different day. If the dates fall in line, one can set these votes as separate items on the agenda for one meeting, and take each one up in the right order.

Practically speaking, think of the order as: first, vote to adopt a budget with a specific amount of money to run the city; second acknowledge publically that council knows this budget will cost more than last year’s budget; third, vote to adopt the actual tax rate that will generate the revenue needed for that budget.

More Notice: Before imposing the property tax rate for the year, notice of the final rate must be put on the home page of any internet web site operated by the taxing unit. The wording for this notice is set out in Tax Coe 26.05(b)(2). There is not a time frame for how long this notice must be

kept on the web site. Austin normally leaves this notice up for several weeks.

Practice Tip:

Failure to follow the exact mechanism set out in the statute means that the taxing entity has to use the lower of the effective tax rate, or the tax rate adopted the prior year. Tax Code 26.05(e). Even this rate must be “ratified” by the taxing entity within 5 days the tax rate is established using the same script and notice requirements set out in Tax Code 26.05(b).

Suit to Enjoin Adoption of Tax Rate:

The Tax Code contains a specific provision authorizing a taxpayer to bring a suit to enjoin the taxing entity from adopting its tax rate if the taxing entity has not computed the tax rate, or followed the publication requirements of the statute, and the failure to comply was not “in good faith.” Tax Code 26.04(g).

One court has held that this suit must be filed before the tax rate is actually adopted. *Hairgrove v. City of Pasadena*, 80 S.W. 3d 703 (Tex. App. Houston [1st Dist] 2002, pet. denied).

A case from El Paso defines good faith under this Tax Code provision. *El Paso County Hosp. Dist. v. Gilbert*, 64 S.W. 3d 200 (App. 8 Dist. 2001, reh’g overruled, review denied 2002). In *Gilbert*, the court noted that the Tax Code does not contain a definition of “good faith.” *Gilbert at 204*. The court adopted a formulation as follows: “. . . an assessor or designated officer or employee of a taxing unit acts in good faith when he subjectively believes that he has complied with the computation or publication requirements of Section 26.04, if that belief is reasonable in light of existing law.” *Gilbert at 205*. The El Paso court concluded that, since the taxing entities involved in this suit had been enjoined before because they failed to include certain funds in their calculations completed pursuant to the “truth in taxation” requirements, their belief that they could continue to exclude these funds was not reasonable and the taxing entities therefore acted in bad faith. *Id.*

Practice Tip:

I check the TML schedule, and count the days on calendars with the people in our office who prepare the notices and get the hearings set up for council. I usually count days in November at the latest, and check the TML calendar as soon as it comes out. I also have found a blank calendar on the internet and I put dates into that and save that for my budget and tax binder. It is very important to count these days and figure out your tax and budget schedule before your council adopts its meeting schedule for the year. You do not want to find out that you have to call special meetings, or have council undo its vacation schedule because of budget and tax rate adoption requirements.

Adopting the Budget

Texas Local Government Code Chapter 102 contains the requirements for adopting and amending a municipal budget for home rule cities. Chapter 101 has the requirements for Type A General Law municipalities. There are also provisions in Chapter 101 that set out how to define a fiscal year for a plethora of municipalities. The budget adoption description below is for a home rule municipality.

Budget Adoption Requires Record Vote and Additional Information on Cover Page.

In 2013, the legislature amended 102 of the LGC and it now requires:

- The city council's vote to adopt a budget to be a record vote; and
- An adopted budget to contain a cover page that includes:
 - A specific statement about whether the budget raises more, less, or the same amount of property tax revenue compared to the previous year's budget;
 - The record vote of each member of the governing body by name voting on the adoption of the budget;
 - The city property tax rates for the preceding and current fiscal years, including the adopted rate, effective tax rate, effective maintenance and operations tax rate, rollback tax rate, and debt rate; and
 - The total amount of city debt obligations secured by property taxes.

- A city with a website to post the cover page above, on the city's website, and keep the record vote information on the city's website for at least one year after the budget is adopted; and
- The city council to amend the cover page to include the property tax rate information for the current fiscal year if the rates are not included on the cover page when the budget is filed with the city secretary.

Know Thy Budget Officer: The Mayor is the budget officer for the governing body of a city, unless the city has a city-manager form of government, in which case the city-manager is the budget officer. LGC 102.001. (*See also*, Tex. Atty. Gen'l Op. JC-0544 (2002) for a description of who may be the budget officer for each type of city).

Budget Officer Responsibilities: The budget officer is responsible for preparing the budget. LGC 102.002. The contents are set out in the statute. LGC 102.003. However, be mindful that your city's Charter may contain additional requirements. Austin's charter, for example, contains a requirement that the ordinances that will be used to adopt the budget be included in the budget. Since we do not know the numbers that go into those ordinances at the time we adopt the budget, we use sample ordinances that are filled in after council adopts the budget and tax rate.

Practice Tip:

We at times get into discussions about who has responsibility for which part of the budget, the council or the city manager. The line between big-picture policy and the role of the entity adopting the budget versus the day-to-day policy and the role of the person making sure the big-picture policies are carried out in a fiscally responsible manner can be difficult to draw. To the extent that your city has guidance in its Charter or in prior research provided by your city attorney's office, it is helpful to keep this handy.

Filing with City Clerk and Notice:

The budget officer must file the proposed budget with the city clerk before the 30th day (read, at least 31 days) before the governing body levies (adopts) the tax rate. LGC 102.005(a).

If the budget will require more property tax revenue than the previous year's budget, it must contain a cover page with an 18 point or larger type notice with specific words. LGC 102.005(b). Austin puts this notice on the inside of the cover page.

The proposed budget must be available for inspection by any person. And, if the city maintains a web site, the budget must be posted on that web site. LGC 102.005(c).

Notices and Hearing for Budget Adoption:

The provisions in LGC 102 relating to the budget adoption hearing and the notice for the hearing are challenging to read since the requirements for each piece of this process are interspersed between multiple sections of the code provisions.

The notice requirements are:

A) Date: Publish the notice no earlier than the 30th day and not later than the 10th day before the hearing. The hearing date for the hearing must be set at least 16 days after the date the budget is filed with the city clerk.

B) Contents: The hearing notice must be published in at least one newspaper of general circulation in the county where the city is located. The notice has to include the statement that must be on the cover of the budget. The type size for this part of the notice has to be the same as the type size for the rest of the notice.

The hearing requirements are:

A) One public hearing: Chapter 102 of the LGC only requires one hearing to adopt the budget. The hearing must be open to the public and any person may attend and participate. LGC 102.006(a). At the conclusion of the public hearing the municipality shall take action on the proposed budget. LGC 102.007(a).

A number of cities do not adopt the budget on the same day that they hear public comment. TML notes on its budget calendar as follows: "**September 28** – last day for **hearing on budget**. LGC § 102.006(b)

(hearing shall be before the date of the tax levy). Note, the hearing must be after the 15th day after the proposed budget is filed with the clerk. Also, must take some sort of **action on the budget** at conclusion of hearing. LGC 102.007. This action could be adoption of the budget, or else a vote to postpone the final budget vote. It is generally agreed that the city need not adopt the budget at the end of the hearing.” Austin makes sure that the budget is adopted before the tax rate in order of the items on its agenda, but it does not adopt the budget the day before adopting the property tax rate (although, if the property tax rolls are certified timely, we do all of our actions at least a few weeks before the end of September).

B) Voting requirements: Adoption of the budget must be done as a separate vote that council takes before they adopt the tax rate. LGC 102.006(b). If the city is adopting a budget that requires more property tax revenue than last year, council must *also* vote separately to ratify the tax increase reflected in the budget. LGC 102.007(c). The vote must be a “record vote” – e.g., the vote of each council member must be recorded by the City Clerk or Secretary.

Practice Tip – Last Day to Adopt Budget September 28th:

The hearing date should be no later than September 28th (assuming you’ve received your tax levy timely). Why? The budget must be adopted before the tax rate. The tax rate must be adopted before September 30th - a date which is calculated by the Comptroller and TML as being September 29th (see Tax Code 26.05). Therefore, the budget adoption must be before September 29th.

Practice Tip – ways to listen to the citizens:

If your city wants to hear from citizens about the budget on more than one date, and, perhaps, would like to vote on the budget on a date separate from the dates of citizen input, you may decide to begin the hearing on the budget on one or more days, close the public comment portion of the hearing, but continue the hearing and take action on a different day. Be mindful that your city charter may have provisions that impact your process. LGC 102.011 states that charter provisions can control, *if* the city is also complying with the notice and property tax provisions of these LGC sections.

Requirements after budget is adopted:

The city must file the budget with the city clerk, and if the city has a web site, the budget must be posted on that web site. LGC 102.008. See also cover page requirements noted above.

Be mindful that if your city budget is adopted by ordinance, it can only be amended by an action of equal dignity – that is, another ordinance. Attempts to amend the budget any other way are “without effect.” Tex. Atty. Gen’l Op. GA-0431(2006) at 2.

Property Tax Exemptions:

Property tax exemptions can be found in Chapter 11 of the Tax Code. Some of these are mandatory, and some are optional. Cities can increase some of the exemptions above a minimum.

Examples of exemptions include:

- homestead,
- over 65,
- partial and full disability,
- veterans, and
- historic properties.

You can either adopt these exemptions when you adopt the ordinance with the property tax rate in it, or you can adopt them earlier in the year. You must review each exemption to see if it has specific adoption requirements. Tax Code 11.13(n), for example, requires adoption of the homestead exemption by the governing body no later than July 1. We have found it useful to confer with the Appraisal District on the timing so that they know what exemptions the City has granted and they can include that information in the estimated property tax notices they send out.

Adjusting Property Taxes in the Event of a Disaster:

Tax Code 23.02 sets out the process for adjusting property taxes in the event of a disaster. The property must be declared a disaster by the Governor. The local taxing entity (e.g. city), must request the Appraisal District reappraise the property. If there is a fee for the reappraisal, the local

taxing entity is responsible for paying that fee. After reappraisal, the tax rate for the year in which the disaster occurred is applied to the property and the taxes are reduced from the disaster date to the end of that year.

If your city does this, be mindful that the loss in taxes may result in your city needing to amend the city budget to reflect that reduction in revenue. Amending the budget must be done using the same type of action as you used for adopting the budget; that is, use an ordinance to amend if you used an ordinance to adopt.

Conclusion

Adopting the property tax rate and the budget are two of the most important actions a city must take. The requirements for proper adoption are complex and detailed. Make sure you and the staff people working on the budget and property tax rate calculations are on the same page for each piece of the schedule and the notices. Be clear regarding who is responsible for getting the notices published and posted. Do not hesitate to contact TML – they are very helpful in thinking through the simplest pieces of the process and the most complex.