

Type A and Type B Economic Development Corporations and City Councils

Charles E. Zech
Denton Navarro Rocha Bernal & Zech, P.C.

fppt.com

1

Role

What is the role of an Economic Development Corporation?

fppt.com

2

ED Corporations

Authority

- Texas Local Government Code
 - Chapter 501 - Provisions governing Development Corporations
 - Chapter 502 – Provisions Applicable to Type A and Type B Corporations
 - Chapter 504 – Type A Corporations
 - Chapter 505 – Type B Corporations

fppt.com

3

ED Corporations

Authority

- Texas Business Organizations Code
 - Chapter 22 – Non-Profit Corporations Act
 - See Texas Local Government Code Section 501.054:

GENERAL POWERS, PRIVILEGES, AND FUNCTIONS. (a) A corporation has the powers, privileges, and functions of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or formed under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code. To the extent that the provisions governing powers, privileges, and functions of a nonprofit corporation under those laws are in conflict with or inconsistent with provisions of this subtitle governing powers, privileges, and functions of a nonprofit corporation, the provisions of this subtitle prevail.

fppt.com

4

ED Corporations

Training Requirements

At least once in each 24-month period, the municipal attorney, administrator, or clerk of the municipality that authorized the creation of the corporation; and the corporation's executive director or other person responsible for the corporation's daily administration shall attend a training seminar regarding the operation of a corporation as required by the code.

fppt.com

5

ED Corporations

Reporting Requirements

Not later than April 1 of each year, the board of directors of a corporation shall submit a report to the comptroller that includes:

A statement of:

(A) the corporation's primary economic development objectives; (B) the corporation's total revenue during the preceding fiscal year; (C) the corporation's total expenditures during the preceding fiscal year; and (D) the corporation's total expenditures during the preceding fiscal year in each of the following categories:

(i) administration; (ii) personnel; (iii) marketing or promotion; (iv) direct business incentives; (v) job training; (vi) debt service; (vii) capital costs; (viii) affordable housing; and (ix) payments to taxing units, including school districts.

fppt.com

6

ED Corporations

Reporting Requirements

A list of the corporation's capital assets, including land and buildings; and any other information the comptroller requires to determine the use of the sales and use tax imposed under Chapter 504 or 505 to encourage economic development in this state.

The report:

- (1) must be in the form required by the comptroller; and
- (2) may not exceed one page.

fppt.com

7

ED Corporations

Revenue Use - Type A Sales Tax

Tax is primarily intended for manufacturing and industrial development primary job creation and may be used to acquire or pay for land, building equipment, facilities, expenditures, targeted infrastructure and improvements for purposes related to:

fppt.com

8

ED Corporations

Revenue Use - Type A Sales Tax

(A) manufacturing and industrial facilities; (B) research and development facilities; (C) military facilities; ~~(D) transportation facilities;~~ ~~(E) sewage or solid waste disposal facilities;~~ (F) recycling facilities; ~~(G) air or water pollution control facilities;~~ ~~(H) facilities for furnishing water to the public;~~ (I) distribution centers; (J) small warehouse facilities capable of serving as decentralized storage and distribution centers; (K) primary job training facilities for use by institutions of higher education; or (L) regional or national corporate headquarters facilities.

fppt.com

9

ED Corporations

Revenue Use - Type B Sales Tax

Provides cities with a wider range of uses and includes projects for quality-of-life improvements, economic development that attracts and retains primary employers, and for smaller cities projects which promote new and expanded business development.

fppt.com

10

YES OR NO

**The Economic
Development Corporation
is a **Distinct and Separate**
Corporation.**

fppt.com

11

The “Authorizing Unit”

Texas Local Government Code

- Section 501.051 - Authorizes Creation of the Corporation
- Section 501.056 - Approves the Certificate of Formation
- Section 501.062 – Appoints the Board of Directors
- Section 501.064 - Approves the By-laws
- Section 501.073 – Approves all programs and expenditures of the corporation and annually reviews any financial statements; is entitled to access to the corporate books and records
- Section 501.007 – a municipality may not lend its credit or grant public money or another thing of value in aid off the corporation except under a contract authorized under TLGC Section 380.002 (Grants of public money by cities over 100,000 in population).

fppt.com

12

Board Make Up

Boards Serve at the Will and Pleasure of City Council

- Type A - City's governing body appoints at least a five-member board for a term not to exceed six years.
- Type B - City's governing body appoints a seven-member board for two-year terms. Three of the seven **cannot** be employees, officers or members of the city's governing body.

fppt.com

13

YES OR NO

**The Economic
Development Corporation
is a **Distinct** and **Separate**
Corporation.**

fppt.com

14

Statement of Fact?

Relationships between Boards and City Councils are becoming more fractured than usual.

fppt.com

15

Current Realities

- Shrinking dollars
- Unfunded mandates
- Shrinking revenues
- Cities on the hunt for dollars

fppt.com

16

Current Realities

These realities have resulted in increased conflicts between City Councils and Boards of Directors.

fppt.com

17

Role

**The EDC should not be a
tool of the City.**

**It should be a partner in
desired outcomes.**

fppt.com

18

Role

- Checks and Balance?
- Vetting?

fppt.com

19

Structure

- Wholly “Independent”
- Partially “Independent”
- Wholly “Dependent”

fppt.com

20

Desired Outcomes

- Clear Goals and Objectives
- Alignment
- Solid Relationships
- Appropriate Use of Tax Dollars

fppt.com

21

Desired Outcomes

sym·bi·ot·ic

simbī'ädik/

adjective

Denoting a mutually beneficial relationship between different people or groups.

fppt.com

22

Getting There



fppt.com

23

Getting There

- Communicate and Collaborate
 - At Board level
 - At Staff Level
- Communication should be a 2-way street
- Get Feedback
- Set Clear Goals
- Understand who does what
- Don't Micro-Manage

fppt.com

24

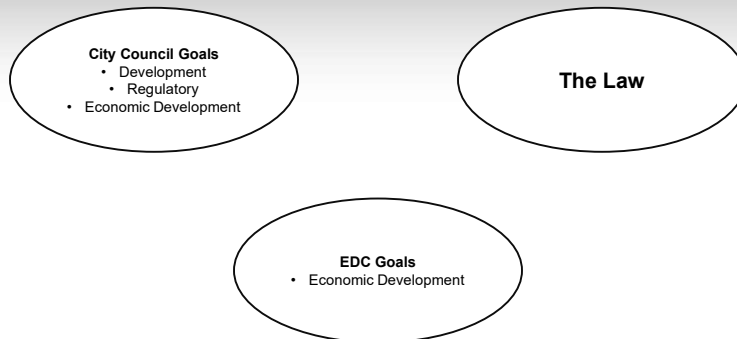
Role

What is the role of an Economic Development Corporation?

fppt.com

25

Alignment



fppt.com

26

Alignment



fppt.com

27

Questions?

Charles E. Zech
cezech@rampagelaw.com

Denton Navarro Rocha Bernal & Zech, P.C.

Austin: 2500 W. William Cannon Dr., Suite 609
Austin, TX 78745-5257
(512) 279-6431

San Antonio: 2517 N. Main Ave
San Antonio, TX 78212-3111
(210) 227-3243

RGV: 701 East Harrison, Suite 100
Harlingen, TX 78550
(956) 421-4904

TGC: 549 N. Egret Bay Blvd., Suite 200
League City, TX 77573
(832) 632-2102

fppt.com

28