



The *Gwosdz*
Law Firm, PLLC

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Enforcement of Economic Development Agreements

— or —

Examining the Relative Effectiveness
of Alternate Enforcement Methodologies

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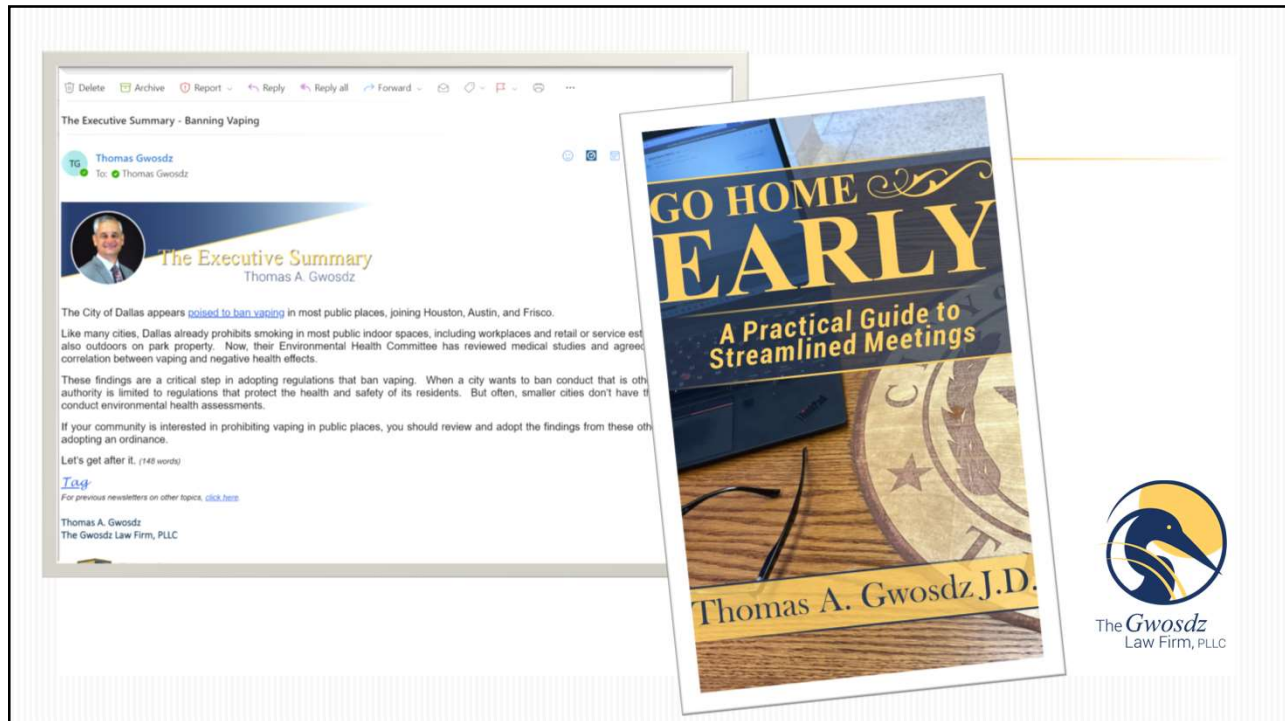
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Who Am I?

Attorney

- 20+ years representing local governments; 5 as TASB staff attorney
- Founder of The Gwosdz Law Firm, PLLC

Author

- *The Executive Summary*
- *Go Home Early*

Educator

- TEA lifetime certified in English and speech communication
- Frequent speaker at conferences and local training



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"Traditional" Economic Development

PlastiCorp

\$6m / 290 FTE

6-yr Tax
Abatement

Starlight

\$5m / 383 FTE

6-yr Tax
Abatement

\$300,000 Capital
Reimbursement



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"Traditional" Economic Development

Traditional Enforcement

312 Tax
Abatement

Sales Tax
Development



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“Traditional” Economic Development

Traditional Enforcement

312 Tax Abatement

Sales Tax Development

Tex. Tax Code Ann. § 312.205(a)(1):

Abatement agreement must contain a recapture provision providing 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.

Tex. Tax Code Ann. § 312.205(b)(6):

Abatement agreement may include recapture provision providing for recapture if owner fails to create jobs, if improved property fails to meet appraised value, or if other violations of agreement.



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“Traditional” Economic Development

Traditional Enforcement

312 Tax Abatement

Sales Tax Development

Tex. Loc. Gov't Code Ann. § 501.158

When providing direct expenditures, the corporation must enter into a performance agreement with the business enterprise.

Tex. Loc. Gov't Code Ann. § 501.158

The performance agreement must specify, among other things, “the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement.”




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"Traditional" vs. "New"

<p style="text-align: center;"><u>Traditional Enforcement</u></p> <p>312 Tax Abatement</p> <p>Sales Tax Development</p>	<p style="text-align: center;"><u>380 Agreements</u></p> <p>Stimulate Economy</p> <p>Ensure Public Purpose</p> <p>Limited to Money?</p>
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"New" Economic Development

§ 380.001. Economic Development Programs (a) The governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality. For purposes of this subsection, a municipality includes an area that:

- (1) has been annexed by the municipality for limited purposes; or
- (2) is in the extraterritorial jurisdiction of the municipality.

(b) The governing body may:

- (1) administer a program by the use of municipal personnel;
- (2) contract with the federal government, the state, a political subdivision of the state, a nonprofit organization, or any other entity for the administration of a program; and
- (3) accept contributions, gifts, or other resources to develop and administer a program.

(c) Any city along the Texas-Mexico border with a population of more than 500,000 may establish not-for-profit corporations and cooperative associations for the purpose of creating and developing an intermodal transportation hub to stimulate economic development. Such intermodal hub may also function as an international intermodal transportation center and may be collocated with or near local, state, or federal facilities and facilities of Mexico in order to fulfill its purpose.

§ 380.002. Economic Development Grants by Certain Municipalities (a) A home-rule municipality with a population of more than 100,000 may create programs for the grant of public money to any organization exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 as an organization described in Section 501(c)(3) of that code for the public purposes of development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development or expansion of commerce in the state. The grants must be in furtherance of those public purposes and shall be used by the recipient as determined by the recipient's governing board for programs found by the municipality to be in furtherance of this section and under conditions prescribed by the municipality.

(b) A home-rule municipality may, under a contract with a development corporation created by the municipality under the Development Corporation Act (Subtitle C1, Title 12), grant public money to the corporation. The development corporation shall use the grant money for the development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development and expansion of commerce in the state.

(c) The funds granted by the municipality under this section shall be 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.

§ 380.003. Application for Matching Funds From Federal Government
A municipality may, as an agency of the state, provide matching funds for a federal program that requires local matching funds from a state agency to the extent state agencies that are eligible decline to participate or do not fully participate in the program.

380
Agreements

Stimulate
Economy

Ensure Public
Purpose

Limited to
Money?



"New" Economic Development

Tex. Loc. Gov't Code Ann. § 380.001

(a) The governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality.

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"New" Economic Development

Tex. Loc. Gov't Code Ann. § 380.001

(a) The governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, **to promote state or local economic development and to stimulate business and commercial activity in the municipality.**

380
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"New" Economic Development

Tex. Loc. Gov't Code Ann. § 380.001

(a) The governing body of a municipality may establish and provide for the administration of one or more programs, **including programs for making loans and grants of public money and providing personnel and services of the municipality,** to promote state or local economic development and to stimulate business and commercial activity in the municipality.

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"New" Economic Development

The *Economic Development Handbook* states that a city should ensure the expenditure meets a public purpose:

- Enter into a binding contract that outlines what steps the business will take that justify the provision of public funding, such as the creation of jobs, expansion of the tax base, or enhancement of physical facilities.
- Include in the agreement tangible means for measuring whether the industry has met its obligations under the contract.
- Include in the contract a recapture provision.

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"New" Economic Development

Ex parte City of Irving, 343 S.W.3d 850, 855 (Tex. App. 2011), reh'g overruled (June 29, 2011), review granted, judgment vacated, and remanded by agreement (Nov. 4, 2011)

"Additionally, section 52-a states that "the legislature may provide for the creation of programs and the making of loans and grants of public money ... for the public purposes of development and diversification of the economy of the state..." Tex. Const. art. III, § 52-a (*emphasis added*). It does not state that the economic development program has to make loans or grants of public money, as the Attorney General contends. *See id*"

380
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The Impact

Forward-looking reimbursements

- Capital reimbursement upon completion of construction.
- Annual payments based on performance triggers
- Recapture?

Donnell Apartments

\$19 M/240u.

4-year ad-valorem rebate up to \$200,000

Duckworth Hotel

Conf. Center

5-year 50% HOT Funds rebate up to \$240,000



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Forward-looking reimbursements

- Capital reimbursement upon completion of construction.
- Annual payments based on performance triggers
- Recapture?



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