

Legal Q&A

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What is a neighborhood empowerment zone?

A neighborhood empowerment zone is an economic development tool available exclusively to cities. Created by the legislature in 1999, it is a relatively little known chapter in the Local Government Code (Chapter 378). Although few neighborhood empowerment zones have been created by Texas cities, they are a simple and flexible way to implement a number of different economic development incentives and programs.

How is a neighborhood empowerment zone adopted?

A city council creates a neighborhood empowerment zone through a two-step process. First, the council “determines” that the creation of the zone would promote at least one of the following: (1) the creation of affordable housing, including manufactured housing, in the zone; (2) an increase in economic development in the zone; (3) an increase in the quality of social services, education, or public safety provided to residents in the zone; or (4) the rehabilitation of affordable housing in the zone. Tax Code § 378.002. The determination mentioned by the statute could take the form of a council vote or resolution.

The second step is for the council to pass a resolution containing the following elements: (1) a copy of the determination described above; (2) a description of the boundaries of the zone (which can be any portion of the city’s territory); (3) a finding by the council that the creation of the zone benefits and is for the public purpose of increasing the public health, safety, and welfare of the persons in the municipality; and (4) a finding by the governing body that the zone meets the requirements of a reinvestment zone under Section 312.202 of the Tax Code. Tax Code § 378.003(a).

What may a city do within a neighborhood empowerment zone?

A city may do any of the following within a neighborhood empowerment zone: (1) waive building, inspection, or impact fees; (2) enter into sales tax rebate agreements lasting up to ten years; (3) enter into property tax abatement agreements lasting up to ten years; and (4) set baseline performance standards to encourage alternative building materials that address environmental or energy consumption concerns. Tax Code § 378.004.

The ability to waive building, inspection, and impact fees is significant; Chapter 378 appears to be the only state law allowing a city to do so. The other elements appear elsewhere in state law, but require different procedures or zones. A neighborhood empowerment zone allows all incentives to be implemented through one process.

How is property tax abatement conducted in a neighborhood empowerment zone different from property tax abatement conducted under Chapter 312 of the Tax Code?

Property tax abatement conducted in a neighborhood empowerment zone is subject only to the duration provision of Chapter 312 of the Tax Code, which limits property tax abatements to ten years in length. Otherwise, none of the other procedural requirements of the Tax Code provisions apply to tax abatements conducted in a neighborhood empowerment zone. Some of the procedures in Chapter 312 that aren't present in the neighborhood empowerment legislation are the following: (1) adoption of formal tax abatement guidelines and criteria, including biennial re-adoption; (2) public hearings; (3) written notice to other taxing entities; (4) mandatory tax recapture provisions; (5) yearly reporting by the property owner; and (6) limitations on the uses of property within the zone.

How are sales tax rebates conducted in a neighborhood empowerment zone different from sales tax rebates or abatements conducted under other laws?

Prior to adoption of the neighborhood empowerment zone laws, cities had only two options if they wished to grant sales tax abatements or rebates: (1) enterprise zones; and (2) Chapter 380 economic development agreements. Enterprise zones are cumbersome to create because they require state approval, and Chapter 380 requires the creation of an economic development "program" with respect to a business entity receiving benefits. Neighborhood empowerment zones are easier to create and don't require an economic development program. The only drawback to a sales tax abatement in a neighborhood empowerment zone is a ten-year limit on the duration of the rebate agreement.

What is a municipal development corporation?

A municipal development corporation (not to be confused with a 4A or 4B *economic* development corporation) is another little-used city economic development tool that focuses on workforce training and development. The legislation authorizing municipal development corporations (MDCs) was passed in 2001 and is titled the "Better Jobs Act." MDCs are ideal for long-term job training and early childhood development programs within cities. The statute authorizing MDCs is located in Chapter 379A of the Local Government Code.

How are MDCs funded?

A city may call an election to levy a sales tax to fund an MDC's programs. The sales tax may be levied at the rate of one-eighth, one-fourth, three-eighths, or one-half of one percent. The tax must be reauthorized every 20 years.

What may an MDC spend its sales tax revenues on?

An MDC may fund programs for: (1) job training; (2) early childhood development that prepares children to enter school; (3) after-school programs for primary and secondary schools; (4) postsecondary institutions and scholarships; (5) literacy programs; and (6) any other

undertaking that the MDC's board determines will facilitate the development of a skilled workforce within the city.

How does an MDC operate?

Similar to an economic development corporation, an MDC is governed by a board of directors that is appointed by and serves at the will of the city council. A director may not be an employee or officer of the city that created the MDC. The budget for MDC program expenditures must be approved by the city council.

May an MDC be limited as to which programs it may pursue?

Yes, the city council may provide that an MDC's sales tax ballot proposition be limited to specific programs, rather than all of the purposes authorized by the MDC statute. For instance, a city council could ensure that MDC revenues be spent only on job training, and not on other projects that the council might wish to avoid, by limiting the ballot proposition to job training projects.