

Section 4A and 4B Sales Tax

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Prepared and Presented by:

Jeff Moore
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081
(214) 747-6100

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General:

What is section 4A and 4B sales tax?

Section 4A and section 4B sales tax are sales taxes which cities may impose for economic development. These sales taxes are authorized pursuant to the Development Corporation Act of 1979.¹ Cities must hold a sales tax election to adopt either a section 4A or 4B sales tax. If adopted, the city could not exceed the two percent (2%) local sales tax limit. The sales tax for economic development is one of the most popular tools used by cities to promote economic development. Currently, 515 cities have either a section 4A, section 4B sales tax or both.

How many cities have adopted a section 4A or 4B sales tax?

Currently, 122 cities have adopted a section 4A economic development sales tax. 305 cities have adopted a section 4B economic development sales tax, and 88 cities have adopted both a section 4A and a section 4B sales tax.

Adoption of Tax:

How are sections 4A or 4B sales tax adopted?

To adopt either a section 4A or 4B sales tax the voters must approve the sales tax at a sales tax election.²

Who can initiate a section 4A or 4B sales tax election?

Section 4A or 4B economic development sales tax may be initiated by city council approving an ordinance calling an election on the imposition of the sales tax; or by a petition signed by a number of qualified voters that equals at least twenty percent (20%) of the voters who voted in the most recent regular city election. If the city receives a petition signed by the required number of qualified voters then the city is required to pass an ordinance calling an election on the imposition of the tax.³

When must a section 4A or 4B sales tax election be held?

Section 4A or 4B sales tax election must be held on a uniform election date as provided by Chapter 41 of the Election Code. Effective October 1, 2005, for elections ordered on or after

¹ TEX. REV. CIV. STAT. ANN. art. 5190.6 (Vernon 1987 & Supp. 2005).

² TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(d) & 4B(d).

³ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(e) & 4B(f).

October 1, 2005, the uniform election dates are the second Saturday in May, or the first Tuesday after the first Monday in November.⁴

Can every city adopt a section 4A or 4B sales tax?

Not every city is authorized to adopt a section 4A sales tax. Yet, it appears every Texas city could adopt a section 4B sales tax provided the city does not exceed two percent (2%) in local sales tax.

Eligible section 4A cities include a city located in a county with a population of 500,000 or fewer; a city which has a population of less than 50,000 and is located within two or more counties, one of which is Bexar, Dallas, El Paso, Harris, Hidalgo, Tarrant or Travis County; or a city which is under 50,000 population and is within the San Antonio or Dallas Rapid Transit Authority territorial limits, but has not elected to become part of the transit authority.⁵

Eligible 4B cities include an eligible section 4A city; a city located in a county with a population of 500,000 or more according to the most recent federal decennial census and the current combined sales tax rate does not exceed eight and one-quarter percent (8.25%) at the time the section 4B tax is proposed; or a city which has a population of 400,000 or more according to the most recent federal decennial census, and is located in more than one county, and the combined state and local sales tax rate does not exceed eight and one-quarter percent (8.25%).⁶ Given, an eligible section 4A city is a city located in a county with a population under 500,000, and an eligible section 4B city is a city located in a county with a population of 500,000 or more, it appears every Texas city is eligible to adopt the section 4B sales tax provided the local sales tax rate does not exceed two percent (2%).⁷

If the section 4A or 4B sales tax proposition fails at a sales tax election when could the city resubmit a section 4A or 4B sales tax proposition to the voters for voter approval?

If voters do not approve a section 4A or 4B sales tax proposition, another election to adopt a section 4A or 4B sales tax could not be held for one (1) year.⁸ The Election Code allows a municipality to hold a subsequent election on the corresponding uniform election date that occurs approximately one (1) year later, even if the date falls several days before a full year has elapsed.⁹

⁴ TEX. ELEC. CODE ANN. § 41.001(a) (as amended by Texas House Bill 57, 79th Legislature, Regular Session (2005) (Effective date October 1, 2005).

⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(a).

⁶ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(1).

⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(a)(1), 4B(a)(1)(A) and 4B(a)(1)(C).

⁸ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(e) & 4B(f) and TEX. TAX CODE ANN. § 321.406 (Vernon 2002).

⁹ TEX. ELEC. CODE ANN. § 41.0041(a) (Vernon 2003).

Tax Rate:

What is the tax rate for a section 4A or 4B sales tax?

The sales tax rate for either a section 4A or 4B sales tax is 1/8th, 1/4th, 3/8ths or 1/2 of one percent. The total rate of all local sales and use taxes may not exceed two percent (2%).¹⁰

Can section 4A or 4B increase/decrease a tax rate once it is adopted?

The section 4A sales tax may be increased or reduced if the proposition is approved by the voters at an election called and held for that purpose. A city which imposes a section 4A tax may, on its own motion, call an election to increase or reduce the section 4A sales tax. Further, on petition signed by at least ten percent (10%) or more of the registered voters of the city, the city may be required to call an election on a proposed increase or decrease of the section 4A tax rate.¹¹

There is not statutory authority to increase or decrease the Section 4B sales tax rate after its initial adoption.

Can a city create more than one section 4A or 4B corporation?

A city cannot create two section 4A or section 4B corporations and assess total sales and use tax of one percent (1%). The Development Corporation of 1979 specifically precludes the creation of more than one section 4B corporation.¹² Likewise, section 4A prohibits the creation of more than one section 4A corporation.¹³ Nevertheless, provided the total local sales and use taxes did not exceed two percent (2%), an eligible city could create one section 4A corporation and one section 4B corporation. Currently, 88 Texas cities have both a section 4A and 4B sales tax.

¹⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(d) & 4B(e).

¹¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(o).

¹² TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(b) (provides in pertinent part, “[a]n eligible city may not create more than one corporation governed by this section.”).

¹³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(b)(1) (provides in pertinent part, “[a] city may not create more than one corporation governed by this section.”).

Permissible Expenditures of Sales Tax Proceeds:

What are permissible section 4A projects?

Section 4A Projects Which Must Create or Retain Primary Jobs

In 2003, the Texas Legislature enacted a requirement that certain Section 4A projects create or retain primary jobs. The term “primary job” is defined further in the Act and is discussed below.¹⁴ However, not all Section 4A projects are required to create or retain primary jobs. Section 2(11)(A) of the Act requires the following Section 4A projects create or retain primary jobs:

- (1) Section 4A corporations may provide land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements (one or more) that are for the creation or retention of primary jobs and that are found by the board of directors to be required or suitable for the development, retention, or expansion of:¹⁵
 - (a) manufacturing and industrial facilities;
 - (b) research and development facilities,
 - (c) military facilities, including closed or realigned military bases;
 - (d) recycling facilities;
 - (e) distribution centers, small warehouse facilities capable of serving as decentralized storage and distribution centers;
 - (f) primary job training facilities for use by institutions of higher education; and
 - (g) regional or national corporate headquarters facilities.

Section 4A Projects Which Are Not Required to Create or Retain Primary Jobs

The following section 4A projects are not required to create or retain primary jobs:

- (1) job training classes;¹⁶
- (2) certain targeted infrastructure projects necessary to promote or develop new or expanded business enterprises, limited to streets and roads, rail spurs, water and sewer utilities, and electric utilities, gas utilities, drainage, site improvements, and related improvements, telecommunications and Internet improvements, and beach remediation along the Gulf of Mexico;¹⁷

¹⁴ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 2(17) (definition of “primary job”).

¹⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 2(11)(A).

¹⁶ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 2(11)(B) and 38(b).

¹⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 2(11)(C).

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- (3) land, buildings, equipment, facilities, and expenditures required or suitable for a career center not located within the taxing jurisdiction of a junior college;¹⁸
- (4) general aviation business service airport that is an integral part of an industrial park;¹⁹ and
- (5) port-related facilities to support waterborne commerce.²⁰

In addition, certain section 4A corporations meeting the requisite revenue amounts, population, and other requirements specified in the Act, may assist with certain section 4A projects without the creation or retention of primary jobs. These projects include the following:

- (1) section 4A corporations located within twenty-five (25) miles of an international border, with a city population of less than 50,000 or an average rate of unemployment that is greater than the state average rate of unemployment during the preceding twelve (12) month period may assist with land, buildings, facilities, infrastructure, and improvements required or suitable for the development or expansion of airport facilities;²¹ and
- (2) section 4A corporations, located in Hidalgo county, may provide certain assistance with infrastructure necessary to promote or develop new or expanded business enterprises, including airports, ports, and sewer or solid waste disposal facilities, provided section 4A sales tax revenue does not support the project.²²

¹⁸ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 2(11)(D) (as added by Tex. H.B. 1253, 79th Leg., R.S. (2005)).

¹⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(i)(1) (as amended by Tex. H.B. 2928, 79th Leg., R.S. (2005)).

²⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(i)(2) (as amended by Tex. H.B. 2928, 79th Leg., R.S. (2005)).

²¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 2(11)(D) and 4A(i)(3) (as added by Tex. H.B. 2928, 79th Leg., R.S. (2005)).

²² TEX. REV. CIV. STAT. ANN. art. 5190.6, § 2(11)(E) (as added by Tex. H.B. 2928, 79th Leg., R.S. (2005)).

What are permissible section 4B projects?

Section 4B Projects Which Must Create or Retain Primary Jobs

Not all Section 4B projects are required to create or retain primary jobs. Nonetheless, certain sections of the Act require certain Section 4B projects create or retain primary jobs. The sections of the Act which require Section 4B projects create or retain primary jobs are sections 2(11)(A) and 4B(a)(2)(B) of the Act. Consequently, Section 4B corporations may assist with the following projects, provided the following project creates or retains a primary job:

(1) Section 4B corporations may provide land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements (one or more) that are for the creation or retention of primary jobs and that are found by the board of directors to be required or suitable for the development, retention, or expansion of:²³

- (a) manufacturing and industrial facilities;
- (b) research and development facilities,
- (c) military facilities, including closed or realigned military bases;
- (d) transportation facilities (including but not limited to airports, ports, mass commuting facilities, and parking facilities);
- (e) sewage or solid waste disposal facilities;
- (f) recycling facilities;
- (g) air or water pollution control facilities;
- (h) distribution centers, small warehouse facilities capable of serving as decentralized storage and distribution centers;
- (i) primary job training facilities for use by institutions of higher education; and
- (j) regional or national corporate headquarters facilities.

(2) Section 4B corporations may 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 a project to provide:²⁴

- (a) public safety facilities;
- (b) streets and roads;
- (c) drainage and related improvements;
- (d) demolition of existing structures;
- (e) general municipally owned improvements; and
- (f) any improvements or facilities that are related to any of those projects and any other project that the board in its discretion determines promotes or

²³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 2(11)(A).

²⁴ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(2)(B).

develops new or expanded business enterprises that create or retain primary jobs.

Section 4B Projects Which Are Not Required to Create or Retain Primary Jobs

Not all section 4B projects are required to create or retain primary jobs. The following section 4B projects are not required to create or retain primary jobs:

- (1) job training classes;²⁵
- (2) certain targeted infrastructure projects necessary to promote or develop new or expanded business enterprises, limited to streets and roads, rail spurs, water and sewer utilities, and electric utilities, gas utilities, drainage, site improvements, and related improvements, telecommunications and Internet improvements, and beach remediation along the Gulf of Mexico;²⁶
- (3) land, buildings, equipment, facilities, and expenditures required or suitable for a career center not located within the taxing jurisdiction of a junior college;²⁷
- (4) projects consisting of professional and amateur (including children's) sports, athletic, entertainment, tourist, convention, and public park purposes and events;²⁸
- (5) affordable housing projects;²⁹
- (6) water supply facilities projects, with the requisite voter approval;³⁰ and
- (7) water conservation programs, with the requisite voter approval.³¹

In addition, certain section 4B corporations meeting the requisite revenue amounts, population requirements, and other requirements specified in the Act, may assist with certain section 4B projects without the creation or retention of primary jobs. These projects include the following:

- (1) section 4B corporations located within twenty-five (25) miles of an international border, with a city population of less than 50,000 or an average rate of unemployment

²⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 2(11)(B) and 38(b).

²⁶ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 2(11)(C).

²⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 2(11)(D) (as added by Tex. H.B. 1253, 79th Leg., R.S. (2005)).

²⁸ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(2)(A).

²⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(2)(C).

³⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4B(a)(2)(D) and 4B(a-5).

³¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4B(a)(2)(E) and 4B(a-5).

that is greater than the state average rate of unemployment during the preceding twelve (12) month period may assist with land, buildings, facilities, infrastructure, and improvements required or suitable for the development or expansion of airport facilities;³²

(2) section 4B corporations, located in Hidalgo county, may provide certain assistance with infrastructure necessary to promote or develop new or expanded business enterprises, including airports, ports, and sewer or solid waste disposal facilities, provided section 4B sales tax revenue does not support the project;³³

(3) section 4B corporations, which have not generated more than \$50,000 in revenues in the preceding two (2) fiscal years, may provide land buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for the development, retention, or expansion of business enterprises, provided city council authorizes the project by adopting a resolution following two (2) separate readings conducted at least one (1) week apart;³⁴

(4) section 4B corporations with a population of 20,000 or less, may provide land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the board of directors to promote new or expanded business development, provided projects which require an expenditure of more than \$10,000 city council must adopt a resolution authorizing the project after giving the resolution at least two (2) separate readings;³⁵ and

(5) section 4B corporations located wholly or partly in Dallas or Harris county and has within its city limits and extraterritorial jurisdiction less than 100 acres that can be used for the development of manufacturing or industrial facilities in accordance with the zoning laws or land use restrictions of the city, the term project also means section 4B expenditures found by the board of directors to be required for the promotion of new or expanded business enterprises within the landlocked community.³⁶

What are permissible section 4B projects for a section 4B corporation which received less than \$50,000 in section 4B sales tax revenue?

In 2005, the Texas Legislature authorized certain section 4B corporations to use section 4B sales tax revenue for land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for the development, retention, or expansion of business

³² TEX. REV. CIV. STAT. ANN. art. 5190.6, § 2(11)(D) (as added by Tex. H.B. 2928, 79th Leg., R.S. (2005)).

³³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 2(11)(E).

³⁴ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(2)(F).

³⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(3).

³⁶ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(4).

enterprises. This broad use of sales tax revenue is available for section 4B corporations which have not for each of the preceding two fiscal years received more than \$50,000 in section 4B sales tax revenues, and the governing body of which has authorized the project has adopted a resolution only after giving the resolution at least two separate readings conducted at least one week apart.³⁷

What are permissible section 4B projects for a section 4B corporation located in a city with a population of 20,000 or less?

Section 4B corporations located in a city with a population of 20,000 or less may rely on the various definitions of “project” contained within the statute. Yet, in 2005, the Texas Legislature made a significant revision affecting eighty-six percent (86%) of all section 4B economic development corporations.³⁸ Eighty-six percent (86%) of all section 4B corporations may look solely to section 4B(a)(3) to fund section 4B projects. As of 2003, this amounts to 328 of the 380 section 4B economic development corporations.

This specific provision authorizes a section 4B corporation located in a city with a population of 20,000 or less to assist with land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements. Nonetheless, the board of directors must determine the assistance will promote new or expanded business development. If the assistance will promote new or expanded business development, the section 4B corporation is authorized to fund the project. The statute requires the following of certain procedural requirements for expenditures exceeding \$10,000. The section 4B corporation may not undertake a project authorized by this section that requires an expenditure of more than \$10,000 until city council adopts a resolution authorizing the project after giving the resolution at least two (2) separate readings.³⁹

What are permissible section 4B projects for a section 4B corporation located in a “landlocked community”?

A “landlocked community” may rely on the various definitions of “project” contained in the Act. However, a landlocked community may also look only to a specific provision added recently by the Texas Legislature. In 2005 the Texas Legislature authorized a section 4B corporation located in a “landlocked community” to use section 4B sales tax revenue towards “expenditures found by the board of directors to be required for the promotion of new or expanded business enterprises within the landlocked community.”⁴⁰ The term “landlocked community” is defined to mean a city which is located wholly or partly located in a county with a population of 2 million

³⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(2)(F).

³⁸ TEXAS COMPTROLLER, ECONOMIC DEVELOPMENT CORPORATION REPORT FISCAL 2002-2003, Appendix E at 55-66 (Nov. 2004) (328 of the 380 section 4B economic development corporations are from an eligible city with a population of 20,000 or less. This is eighty-six percent (86%) of all section 4B corporations.).

³⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(3).

⁴⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(4)(A)&(B).

or more and has within its city limits and extraterritorial jurisdiction less than 100 acres that can be used for the development of manufacturing or industrial facilities in accordance with the zoning laws or land use restrictions of the city. Accordingly, this specific provision is limited to section 4B corporations located wholly or partly within Harris or Dallas counties.

What is a “primary job”?

In 2003, the Texas Legislature amended the Development Corporation Act to require certain section 4A or 4B projects create or retain primary jobs.⁴¹ Yet, not all projects must create or retain primary jobs. The term primary job means “a job that is . . . available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy; and” is included in one of nearly sixteen (16) different North American Industry Classification System (NAICS) sector codes.⁴²

The NAICS sector code categories include: crop production; animal production; forestry and logging; commercial fishing; support activities for agriculture and forestry; mining; utilities; manufacturing; wholesale trade; transportation and warehousing; information (excluding movie theaters and drive-in theaters); securities, commodity contracts, and other financial investments and related activities; scientific research and development services; management of companies and enterprises; telephone call centers; and correctional institutions.⁴³ Further, a job included within the national security sector code classification for the armed forces, army, navy, air force, marine corps, and military bases meet the definition of “primary job.”

Can a section 4A corporation fund a section 4B project?

Section 4A sales tax may be used to fund section 4B projects with voter approval.⁴⁴ A public hearing must be conducted within the city to inform the residents of the city of the cost and impact of the project prior to the election.⁴⁵ Further, the city must publish notice of the hearing in a newspaper with general circulation in the city at least thirty (30) days before the date set for the hearing. The notice must include the date, time, place, and subject of the hearing and must be published on a weekly basis until the date of the hearing.⁴⁶

⁴¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 2(11) & 4B(a)(2)(B).

⁴² TEX. REV. CIV. STAT. ANN. art. 5190.6, § 2(17).

⁴³ *Id.*

⁴⁴ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(s)(1).

⁴⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(s)(3).

⁴⁶ *Id.*

Can section 4A or 4B corporations expend sales tax proceeds for promotional purposes?

Both section 4A and 4B corporations may spend no more than ten percent (10%) of the corporate revenues for promotional purposes.⁴⁷ Recently, the Texas Attorney General considered promotional expenditures and concluded a promotional purpose is a question of fact for the board of directors to resolve in the first instance, subject to judicial review and the supervisory authority of the city council.⁴⁸ Further, the city council could approve or disapprove of a particular promotional expenditure. The Attorney General noted a corporation may not spend more than ten percent (10%) of its current annual revenues for promotional purposes in any given year. Yet, unexpended revenues specifically set aside for promotional purposes in past years may be expended for such purposes.⁴⁹

Can section 4A or 4B corporations expend sales tax proceeds for job training classes?

A section 4A or 4B corporation may spend sales tax proceeds for job training offered through a business enterprise under certain conditions. The business enterprise must commit in writing to create jobs which pay wages that are at least equal to the prevailing wage for the applicable occupation in the local market area, or increase its payroll to pay wages that are at least equal to the prevailing wage for the occupation in the local labor market area.⁵⁰

Can section 4A or 4B corporations expend sales tax proceeds for training seminars?

In the 2001 legislative session, the Texas Legislature amended the Development Corporation Act to require certain section 4A and 4B economic development officials to complete a training seminar which ensures officials properly and legally operate the corporation and administer the tax imposed for the benefit of the section 4A or 4B corporation.⁵¹ One of the following three city officials are required to attend a seminar each twenty-four (24) month period: the city attorney, the city administrator, or city clerk. Further, the executive director or other person who is responsible for the daily administration of the corporation must attend a seminar in each twenty-four (24) month period.⁵² The Development Corporation Act specifically authorizes to use of section 4A or 4B sales tax proceeds to pay for the costs of attending the seminar.⁵³

⁴⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(b)(1) and 4B(b).

⁴⁸ Tex. Att’y Gen. Op. No. GA-0086 (2003).

⁴⁹ *Id.*

⁵⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 2(11)(B) & 38(b)(1)&(2).

⁵¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 39.

⁵² TEX. REV. CIV. STAT. ANN. art. 5190.6, § 39(b)(1) &(3).

⁵³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 39(d).

Can section 4A or 4B corporations grant or gift section 4A or 4B proceeds to a business entity without a performance agreement?

In 2003, the Texas Legislature amended the Development Corporation Act of 1979 to address business incentives and performance agreements. Section 4A and 4B corporations may not provide a direct incentive or make expenditures on behalf of a business enterprise unless the corporation enters into a performance agreement with the business enterprise.⁵⁴ The performance agreement at a minimum must provide for a schedule of additional payroll or jobs to be created or retained and the capital investment to be made as consideration for any incentives.⁵⁵ Further, the agreement must specify the terms for any repayment should the business fail to meet the performance requirements specified in the agreement.

Can section 4A and 4B corporations hire an independent third party to conduct business recruitment or development?

Section 4A and 4B corporations may hire a third party for the purposes of conducting business recruitment or development.⁵⁶ Nonetheless, the corporation must enter into a written contract approved by the corporation's board of directors in connection with the payment of a commission fee, or thing of value to a broker, agent, or third party who is involved in business recruitment or development.⁵⁷ This requirement does not apply to the business recruitment or development activities conducted by the executive director or other employees of the section 4A or 4B corporation.⁵⁸ Should the corporation hire a third party for the purposes of business recruitment or development without a written contract approved by the board, the corporation could be liable to the State of Texas for a civil penalty in an amount not to exceed \$10,000.⁵⁹ Further, the Texas Attorney General's office could bring an action to recover the penalty in Travis County District Court or the district court in the county in which the violation occurred.⁶⁰

⁵⁴ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 40(a).

⁵⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 40(b).

⁵⁶ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 41(a)-(d).

⁵⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 41(b).

⁵⁸ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 41(a).

⁵⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 41(c).

⁶⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 41(d).

Can section 4A or 4B corporations use sales tax proceeds to cleanup contaminated property?

Section 4A or 4B corporations may use sales tax proceeds to undertake the cleanup of contaminated property if the use is approved by a majority of the qualified voters of the city voting in an election called and held for that purpose. The ballot proposition is as follows:⁶¹

“The use of sales and use tax proceeds for the cleanup of contaminated property.”

Can section 4B corporations expend sales tax proceeds for water supply facility projects?

A water supply facility is a permissible section 4B project provided the voters approve the project in an election called and held for that purpose.⁶² The term “water supply facility” includes dams, transmission lines, well field developments, and other water supply alternatives.⁶³ The ballot proposition which must be used to vote for or against the water supply facility is as follows:⁶⁴

“The use of sales and use tax proceeds for infrastructure relating to _____ (insert water supply facilities or water conservation programs, as appropriate).”

Can a section 4B corporation expend sales tax proceeds for a water conservation program?

Water conservation programs include 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.⁶⁵ These programs are permissible section 4B projects provided the project is approved by a majority of the qualified voters in an election called held for that purpose. The ballot wording which must be used for such a proposition is as follows:⁶⁶

⁶¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(t) & 4B(p).

⁶² TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4B(a)(2)(D) & 4B(a-5)(1).

⁶³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(2)(D).

⁶⁴ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a-5)(1).

⁶⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(2)(E).

⁶⁶ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a-5)(1).

“The use of sales and use tax proceeds for infrastructure relating to _____ (insert water supply facilities or water conservation programs, as appropriate).”

Can section 4A or 4B corporations undertake projects which are located outside the city limits of the eligible city?

An economic development corporation may undertake projects outside of the city limits with permission of the governing body that has jurisdiction over the property.⁶⁷ Consequently, should a section 4A or 4B corporation decide to undertake a project located completely in the city’s extraterritorial jurisdiction or beyond, it should get approval from the county commissioners court.

Section 4A Ballot Wording:

Is there required ballot wording for the adoption of a section 4A sales tax?

The Development Corporation Act provides the ballot wording to adopt the section 4A sales tax. The proposition must be worded as follows:⁶⁸

“The adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of _____ of one percent” (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate).

Is there required ballot wording to increase or decrease the section 4A sales tax rate?

A city may on its own motion or on the petition of at least ten percent (10%) or more of the registered voters of the city call an election to increase or reduce the section 4A sales tax rate.⁶⁹ The section 4A sales tax rate may be reduced or increased in one or more increments of one-eighth of one percent to a minimum of one-eighth of one percent and a maximum of one-half of one percent. Nevertheless, the Development Corporation Act does not provide the ballot wording for such a proposition. The Act simply provides that “[t]he ballot shall be printed in the same manner as the ballot under Subsection (m) of this section.” Subsection (m) contains the wording to adopt the section 4A sales tax.

⁶⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 23(a)(1).

⁶⁸ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(m).

⁶⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(o).

Is there required ballot wording to abolish a section 4A sales tax?

There is required ballot language a city must use for a ballot proposition to abolish a section 4A sales tax. The Development Corporation Act of 1979 provides that the proposition for dissolution must be worded as follows:⁷⁰

“Dissolution of the _____ (name of the corporation).”

Is there required ballot wording if a city wished to impose a section 4A sales tax for a certain time period?

A city is authorized to limit the imposition of a section 4A sales tax for a certain time period. If a city decides to impose the sales tax for a limited period, the required ballot wording is as follows:⁷¹

“The adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of _____ (insert one-eighth, one-fourth, three-eighths, or one-half, as appropriate) of one percent to be imposed for (insert number of years that the tax would be imposed) years.”

Is there required ballot wording should a city decide to limit the use of section 4A sales tax proceeds to certain projects?

A city is authorized to limit the use of section 4A sales tax to a specific project or projects. Should a city decide to limit the uses of the tax, the ballot proposition is as follows:⁷²

“The adoption of a sales and use tax for the promotion and development of (insert description of the project) at the rate of (insert one-eighth, one-fourth, three-eighths, or one-half, as appropriate) of one percent.”

Is there required ballot wording should a city which imposes a sales tax for property tax relief decide to reduce the tax to adopt a section 4A sales tax?

The section 4A sales tax and the sales tax for property tax relief may appear as separate ballot propositions. Cities may also offer a joint ballot proposition on the sales tax for property tax relief and section 4A sales tax. If a city offers a joint proposition, the ballot proposition is as follows:⁷³

⁷⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(k).

⁷¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(n).

⁷² TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(r).

⁷³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(p).

“The adoption of a sales and use tax within the city for the promotion and development of new and expanded business enterprises at the rate of (insert one-eighth, one-fourth, three-eighths, or one-half, as appropriate) of one percent and the adoption of an additional sales and use tax within the city at a rate of (insert one-eighth, one-fourth, three-eighths, or one-half, as appropriate) of one percent to be used to reduce the property tax rate.”

Is there required ballot language should a section 4A corporation choose to reduce or abolish their section 4A sales tax to adopt a section 4B sales tax?

A city may offer a joint ballot proposition to reduce or abolish an existing section 4A sales tax and at the same time adopt a section 4B sales tax. However, the Development Corporation Act does not provide statutory ballot wording for such a proposition. Also, a city can still choose to have the voters vote on repealing or reducing a section 4A tax and adopting a section 4B tax as separate ballot propositions.⁷⁴ If the city separates the measures into separate ballot propositions, it is possible that one, both, or neither of the items would be approved at the election.

Is there required ballot wording should a section 4A corporation choose to use sales tax proceeds to cleanup contaminated property?

A section 4A corporation may use sales tax proceeds to undertake the cleanup of contaminated property if the use is approved by a majority of the qualified voters of the city voting in an election called and held for that purpose. The ballot wording which must be used is as follows:⁷⁵

“The use of sales and use tax proceeds for the cleanup of contaminated property.”

Section 4B Ballot Wording:

Is there required ballot wording for the adoption of a section 4B sales tax?

The Development Corporation Act of 1979 does not contain mandatory ballot language to adopt a section 4B sales tax. The Texas Election Code simply provides that the city has authority to frame the ballot proposition, unless a statute provides the wording.⁷⁶ The ballot proposition must indicate the rate proposed for the section 4B sales tax. The voters then vote for or against the proposition.

⁷⁴ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(e).

⁷⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(t).

⁷⁶ TEX. ELEC. CODE ANN. § 52.072(a) (Vernon 2003).

Is there required ballot wording to increase or reduce the section 4B sales tax rate?

There is not statutory authorization for the section 4B tax rate to be increased or reduced at a subsequent election.

Is there required ballot wording to abolish a section 4B sales tax?

There is not ballot wording to abolish a section 4B corporation created before September 1, 1999. The city, by resolution, could terminate or dissolve the section 4B development corporation.⁷⁷ If the city passes such a resolution, the corporation and the tax would continue only for the time period necessary to pay off any outstanding debt.

The Act provides that a city must hold an election on dissolving a section 4B corporation created on or after September 1, 1999, if a proper petition is submitted to the city council. The petition must be signed by at least ten percent (10%) of the registered voters of the city.⁷⁸ The ballot proposition to dissolve a section 4B corporation created on or after September 1, 1999 is as follows:⁷⁹

“Dissolution of the _____ (name of the corporation).”

Is there required ballot wording if a city wished to impose a section 4B sales tax for a certain time period?

The Development Corporation Act does not specifically address a section 4B tax imposed for a certain time period. The Act simply provides that the section 4B tax ends once all bonds or other obligations of the corporation have been paid in full.⁸⁰

Is there required ballot wording should a city decide to limit the use of section 4B sales tax proceeds to certain projects?

The Development Corporation Act does not specifically address a section 4B tax imposed for certain projects. If a city wants to limit the use of section 4B tax proceeds to certain projects, it may choose to list on the ballot only those permissible projects it desires.

⁷⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 34.

⁷⁸ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(o)(1).

⁷⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(o)(2).

⁸⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(i).

Is there required ballot wording should a city which imposes a sales tax for property tax relief decide to reduce the sales tax for property tax relief to adopt a section 4B sales tax?

In 2005, the Texas Legislature amended chapter 321 of the Texas Tax Code by addressing combined municipal sales and use tax propositions.⁸¹ The statute provides that a city may by a combined ballot proposition lower or repeal any dedicated or special purpose municipal sales tax, including the additional sales tax for property tax relief, and by the same proposition raise or adopt any other dedicated or special purpose municipal sales tax, including the additional sales tax for property tax relief. In addition, a city can still offer the propositions as separate ballot propositions.

Is there required ballot language should a section 4A city choose to reduce or abolish their section 4A sales tax to adopt a section 4B sales tax?

A city is authorized to offer a joint ballot proposition to reduce or abolish an existing section 4A sales tax and adopt a section 4B sales tax.⁸² Nonetheless, the Development Corporation Act does not provide ballot wording for a combined proposition. A city may still offer the propositions as separate measures.

Is there required ballot wording should a section 4B corporation choose to use sales tax proceeds to clean up contaminated property?

Section 4B corporation may use sales tax proceeds to undertake the cleanup of contaminated property if the use is approved by a majority of the qualified voters of the city voting in an election called and held for that purpose. The ballot wording proposition is as follows:⁸³

“The use of sales and use tax proceeds for the cleanup of contaminated property.”

Can section 4B corporations expend sales tax proceeds for water supply facility projects?

A water supply facility is a permissible section 4B project provided the voters approve the project in an election called and held for that purpose.⁸⁴ The term “water supply facility”

⁸¹ TEX. TAX CODE ANN. § 321.409 (as added by Tex. H.B. 3195, 79th Leg., R.S. (2005)).

⁸² TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(e). *See also*, TEX. TAX CODE ANN. § 321.409 (as added by Tex. H.B. 3195, 79th Leg., R.S. (2005)).

⁸³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(p).

⁸⁴ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4B(a)(2)(D) & 4B(a-5)(1).

includes dams, transmission lines, well field developments, and other water supply alternatives.⁸⁵ The ballot proposition which must be used to vote for or against the water supply facility is as follows:⁸⁶

“The use of sales and use tax proceeds for infrastructure relating to _____ (insert water supply facilities or water conservation programs, as appropriate).”

Can a section 4B corporation expend sales tax proceeds for a water conservation program?

Water conservation programs include 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.⁸⁷ These programs are permissible section 4B projects provided the project is approved by a majority of the qualified voters in an election called and held for that purpose. The ballot wording which must be used for such a proposition is as follows:⁸⁸

“The use of sales and use tax proceeds for infrastructure relating to _____ (insert water supply facilities or water conservation programs, as appropriate).”

Administration of Sales Tax:

General:

Who administers and oversees a section 4A or 4B sales tax?

Once the section 4A or 4B sales tax is adopted, the sales tax revenues are administered by the corporations. Non-profit corporations must be created to administer these sales taxes. These corporations are governed by the Development Corporation Act of 1979, Texas Revised Civil Statutes Article 5190.6, and Texas Non-Profit Corporation Act, Texas Revised Civil Statutes

⁸⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(2)(D).

⁸⁶ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a-5)(1).

⁸⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a)(2)(E).

⁸⁸ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a-5)(1).

Article 1396-1.01 et seq.⁸⁹ The corporations determine which projects to fund, with city council retaining approval authority over all expenditures of the corporation.⁹⁰

If a city has both section 4A and 4B sales tax must the city create separate corporations for administration of the section 4A and 4B sales tax?

The city must establish separate corporations and boards of directors to administer the section 4A and section 4B taxes.⁹¹

Role of City Council:

Does city council have to approve expenditures for permissible section 4A and 4B projects?

The development corporation has the power to expend the proceeds of the economic development sales tax for purposes authorized by the Development Corporation Act.⁹² Nonetheless, city council retains authority to “approve all programs and expenditures of the corporation.”⁹³ City council’s oversight includes the authority to approve promotional expenditures as well.⁹⁴

Can city council fund certain section 4A or 4B projects on their motion?

City council cannot expend section 4A or 4B funds on their own initiative. Approval for funding of projects begins with the board of directors. Should the board of directors decide to fund a particular project, city council approval is required. Nonetheless, city council cannot fund a project on their initiative.⁹⁵ The board of directors must also approve the project.

⁸⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(b)(1), 4B(b) & 23(a).

⁹⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 21 (“The unit [city council] will approve all programs and expenditures of the corporation and annually review any financial statements of the corporation, and at all times the unit [*i.e.* city council] will have access to the books and records of the corporation”).

⁹¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(b)(1) and 4B(b).

⁹² TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(f) and 4B(g).

⁹³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 21.

⁹⁴ Tex. Att’y Gen. Op. No. GA-0086 (2003) at 3 – 5 (concluding city council may approve or “disapprove” a particular promotional expenditure).

⁹⁵ Tex. Att’y Gen. Op. No. JC-0488 (2002) at 3 (“Before addressing the City’s principal concern, we address its assumption that the City, rather than its section 4B development corporation, may expend the sales tax proceeds for the purposes authorized by the voters. This assumption is contrary to the Act.”).

Can a quorum of city council attend a section 4A or 4B corporation meeting?

A quorum of city council could attend a section 4A or 4B meeting. However, attendance by a quorum of city council would require compliance with the Open Meetings Act. Consequently, the city would want to post an agenda of the city council meeting for 72 hours prior to the meeting.⁹⁶ Further, recent amendments to the Open Meetings Act may require the agenda be posted on the city's Internet website.⁹⁷

Is city council entitled to the financial records of a section 4A or 4B corporation?

The Development Corporation Act provides that city council will annually review the financial records of the corporation and at all times will have access to the books and records of the corporation.⁹⁸

Does city council appoint the directors of the section 4A and 4B corporation?

The board of directors of a section 4A corporation consists of at least five (5) directors who are appointed by city council.⁹⁹ Similarly, seven (7) directors appointed by city council serve on the section 4B board.¹⁰⁰

Could city council discuss the appointment of the directors of the section 4A or 4B corporation in executive session?

A city council may only meet in executive session under the personnel exception if the person being discussed is an officer or employee of the city. Neither the appointment of advisory committee members nor the hiring of independent contractors are proper subjects for executive sessions under the personnel exception.¹⁰¹ Whether a particular position is an officer or employee of the city is a question of fact.

In Texas Attorney General Letter Opinion 94-063 the Attorney General considered whether the Dallas City Council could deliberate in executive session the appointment of board members to

⁹⁶ TEX. GOV'T CODE ANN. §§ 551.041 and 551.043 (Vernon 2004).

⁹⁷ TEX. GOV'T CODE ANN. § 551.056 (b) (as added by Tex. S.B. 1133, 79th Leg., R.S. (2005)).

⁹⁸ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 21.

⁹⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(c).

¹⁰⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(c).

¹⁰¹ Tex. Att'y Gen. Op. No. DM-149 (1992) (members of advisory committee are not public officers or employees); *Board of Trustees v. Cox Enterprises*, 679 S.W.2d 86, 90 (Tex. App. – Texarkana 1984), *aff'd in part, rev'd in part on other grounds*, 706 S.W.2d 956 (Tex. 1986) (governing body may meet in executive session to discuss officers and employees only; independent contractors are not officers or employees).

the Dallas Area Rapid Transit Authority (DART). Although, the Attorney General noted factual determinations could not be resolved in the opinion process, the opinion concluded city council could discuss in executive session appointees to the Dallas Area Rapid Transit Authority. This conclusion was based on several factors, including: a public officer generally has a fixed term of office and could be removed only in accordance with law; public officers perform governmental functions “largely independent of the control of others;” and city council was authorized by state law to appoint members to the DART board.

Can city council remove the directors of a section 4A or 4B corporation?

Section 4A board of directors serve terms not to exceed six (6) years and are subject to removal at any time by city council.¹⁰² Section 4B board of directors serve two (2) year terms and are subject to removal at any time by city council.¹⁰³

Can the city provide services or money to a section 4A or 4B corporation?

The Development Corporation Act generally prohibits a city from lending its credit or granting any public money or thing of value to an economic development corporation. The city may not provide any funding or services to a development corporation unless the city is reimbursed for the expenditure.¹⁰⁴

In 2001, the Texas Legislature did create an exception to this general rule. A home rule city is now authorized to grant public money to a section 4A or 4B corporation under a contract authorized by section 380.002 of the Texas Local Government Code.¹⁰⁵ The section 4A or 4B corporation is required to use the grant of city 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.”¹⁰⁶

Who receives the section 4A or 4B sales tax proceeds?

Once the section 4A or 4B sales tax is effective, the sales tax is remitted to the State Comptroller who then remits the section 4A and 4B sales tax proceeds to the city. The city upon receiving its local sales tax allotment from the Comptroller must remit the sales tax to the section 4A or 4B corporation.¹⁰⁷

¹⁰² TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(c). *See also*, Tex. Att’y Gen. Op. No. JC-0349 (2001).

¹⁰³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(c).

¹⁰⁴ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 21 (“ . . . No unit is or shall be authorized to lend its credit or grant any public money or thing of value in aid of a corporation, except that a city may grant public money to a corporation under a contract authorized by Section 380.002, Local Government Code. . .”). *See also*, Tex. Att’y Gen. Op. No. JC-0109 (1999) at 3-5.

¹⁰⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 21.

¹⁰⁶ TEX. LOC. GOV’T CODE ANN. § 380.002 (b) (Vernon Supp. 2005).

¹⁰⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(f) & 4B(g).

Can city council sell land held by a section 4A or 4B corporation without the section 4A or 4B board's approval?

In Texas Attorney General Opinion JC-0109 (1999), the Attorney General addressed land sales of a section 4B corporation. The opinion noted, "the powers of the corporation are vested in the board of directors, . . . a section 4B development corporation may not sell land without board approval. The board of directors of a development corporation is subject to the Open Meetings Act and therefore may not take final official action on a land sale except in an open meeting."¹⁰⁸

Section 4A and 4B Board of Directors:

How many board members serve on a section 4A and 4B board of directors?

The board of directors of a section 4A corporation consists of at least five (5) directors who are appointed by city council.¹⁰⁹ Seven (7) directors serve on the section 4B board.¹¹⁰

How long a term do section 4A and 4B board of directors serve?

Section 4A board of directors serve a term not to exceed six (6) years.¹¹¹ Section 4B board members serve a two (2) year term.¹¹²

Can section 4A and 4B board of directors be removed for any reason?

Both section 4A and 4B board of directors serve at the pleasure of city council and may be removed by city council at any time without cause.¹¹³

Can a section 4A or 4B director be reappointed to a subsequent term?

The Attorney General concluded a section 4A board member could be reappointed to a subsequent term, absent any contrary provision in the articles of incorporation or bylaws, or in a city charter, ordinance or resolution of the city.¹¹⁴

¹⁰⁸ Tex. Att'y Gen. Op. No. JC-0109 (1999) at 2&3.

¹⁰⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(c).

¹¹⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(c).

¹¹¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(c).

¹¹² TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(c).

¹¹³ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(c) & 4B(c).

¹¹⁴ Tex. Att'y Gen. Op. No. JC-0349 (2001).

Can the board of directors appoint someone to fill a vacancy when a board member resigns in the middle of his or her term?

The Development Corporation Act of 1979 provides that the board of directors is appointed by the “governing body of the city.”¹¹⁵ Consequently, city council would fill any vacancy on the section 4A or 4B board.

Who determines which board members serve as President and Secretary of the corporation?

The section 4A and 4B board of directors appoint the president, secretary, and the other officers which the city council considers necessary.¹¹⁶

Must a section 4A board member be a resident of the city?

The Development Corporation Act of 1979 does not specify any residency requirement for a section 4A board member. A section 4A director is not required to be a resident of the city.

Must a section 4B board member be a resident of the city?

In a city with a population of 20,000 or more, the section 4B board of directors must be residents of the city.¹¹⁷ In a city with a population of less than 20,000, each section 4B director must be a resident of the eligible city; a resident of the county in which the major part of the area of the eligible city is located; or reside at a place that is within ten (10) miles of the eligible city’s boundaries and is in a county bordering the county in which the major part of the area of the eligible city is located.

Moreover, a person may serve on the section 4B board if the person was a section 4A director at the time the section 4A corporation was dissolved, and replaced with a section 4B corporation.¹¹⁸ Since the directors of section 4A corporations are not required to be residents of the city, a non-resident of the city could serve as a section 4B director in this instance.

¹¹⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(c) & 4B(c).

¹¹⁶ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(c) & 4B(c).

¹¹⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(c).

¹¹⁸ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(e-1).

Can city council members serve as directors on the section 4A or 4B corporation?

The Development Corporation Act of 1979 limits the number of city officers or city employees who may serve as section 4B directors. The Act provides that three (3) of the seven (7) directors may not be employees, officers, or members of the governing body of the eligible 4B city.¹¹⁹

The Development Corporation Act of 1979 does not address whether council members may serve on the section 4A board. Nonetheless, the Texas Attorney General noted service on the board of directors of a section 4B board is not a “public officer” for the purposes of the common-law doctrine of incompatibility.¹²⁰ Accordingly, such dual service on the section 4A board would not violate the common-law doctrine of incompatibility nor the Texas constitutional prohibition on holding two paid offices. However, such service could be prohibited by local ordinance or bylaws of the corporation.

Could a mayor or council member serve for a section 4A or 4B corporation in a paid capacity such as executive director of a section 4A or 4B corporation?

Recently, the Texas Attorney General concluded the mayor of an eligible section 4B city could also serve as the paid executive director of the section 4B corporation.¹²¹ Although such dual service may not be prohibited, such dual service may implicate the conflict of interest provisions applicable to local public officials under chapter 171 of the Local Government Code. Accordingly, a mayor or council member with a “substantial interest” in the section 4A or 4B corporation would have to file the required affidavit and abstain from voting or discussing matters of the corporation when the action contemplated will have an economic effect on the corporation that is different from its effect on the public.

What constitutes a quorum of the section 4A or 4B board of directors?

A majority of the board constitutes a quorum. Consequently, three (3) members of a five (5) member section 4A board constitute a quorum.¹²² If a section 4A corporation should increase their board membership, a quorum would be a majority of the number of board members. Four (4) members of the seven (7) member section 4B board constitute a quorum.¹²³

¹¹⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(c) (“ . . . Three directors shall be persons who are not employees, officers, or members of the governing body of the eligible city. . . ”).

¹²⁰ Tex. Att’y Gen. Op. No. JC-0547 (2002) at 3. (“As we have noted, an industrial development corporation, by statute, has none of the ‘attributes of sovereignty,’ and that, as a result, . . . a member of the board does not hold a ‘public office’”).

¹²¹ Tex. Att’y Gen. Op. No. JC-0547 (2002).

¹²² TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(c).

¹²³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(c).

Are section 4A or 4B board of directors paid?

Section 4A and 4B board members may not be paid. The directors serve without compensation but must be reimbursed for actual expenses.¹²⁴

Would the nepotism statute preclude city council from appointing family members or relatives to the section 4A or 4B board of directors?

The nepotism statute, Texas Government Code Chapter 573, prohibits a public official from appointing, confirming the appointment, or voting on the appointment of a “close relative” of certain city officials to paid positions.¹²⁵ Since, neither section 4A nor 4B board members are paid, the state nepotism statute would not preclude such appointments.¹²⁶ Nonetheless, a home rule city could enact more restrictive nepotism limitations and preclude such appointments.¹²⁷

Are the board meetings of section 4A or 4B board subject to the Open Meetings Act?

Section 4A and 4B corporations and the board of directors are subject to the Open Meetings Act.¹²⁸ Further, all meetings of the section 4A or 4B board must occur within the city limits.¹²⁹

Can the board of directors of section 4A or 4B corporations take action without a meeting if the board of directors consents in writing?

Section 14(c) of the Development Corporation Act provides that “action which may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all of the directors.” However, in 1983 the Development Corporation Act was amended by providing that the board of directors is subject to the Open Meetings Act.¹³⁰ Consequently, in Texas Attorney General Opinion JM-120 (1983), the Attorney General concluded the addition of section 11(b) subjecting the board of directors to the Open Meetings Act “impliedly repealed” section 14(c) of the Development Corporation Act. As

¹²⁴ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 11(a).

¹²⁵ TEX. GOV'T CODE ANN. § 573.041 (Vernon 2004).

¹²⁶ Tex. Att’y Gen. LO 96-010 (1996) (concluding because a member of the board of directors of an industrial development corporation, established under the Development Corporation Act of 1979, V.T.C.S. article 5190.6, receives only reimbursement for the member’s expenses, the member was not “directly or indirectly compensated from public funds or fees of office.” Thus, section 573.041 of the Government Code, which generally prohibits nepotistic appointments, was inapplicable).

¹²⁷ See, Tex. Att’y Gen. LO 93-30 (1993).

¹²⁸ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 11(b).

¹²⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(c) & 4B(c).

¹³⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 11(b).

a result, the board of directors of section 4A or 4B corporations may not take official action by written agreement without a meeting. All official actions of the section 4A or 4B corporation must occur in a posted meeting in full compliance with the Open Meetings Act.

Are section 4A and 4B corporations subject to the Public Information Act (formerly the Open Records Act)?

Both section 4A and 4B corporations are subject to the Public Information Act.¹³¹

Are the section 4A and 4B directors subject to the state conflicts of interest statute?

Generally, directors of non-profit corporations do not constitute a “local public official” subject to the conflicts of interest statute. Consequently, absent a local provision to the contrary directors of a section 4A or 4B corporation are not subject to chapter 171 of the Texas Local Government Code.¹³² However, the Texas Non-Profit Corporation Act may prohibit certain transactions. In Texas Attorney General Opinion JC-338 (2001), the Attorney General noted the Texas Non-Profit Corporation Act prohibited the board of directors from approving a loan to a director of the section 4B corporation.

Corporation Powers and Duties:

Once a section 4A or 4B corporation is formed must city council approve articles of incorporation?

The articles of incorporation for all development corporations must be approved by city council.¹³³ Further, the articles of incorporation of a section 4A or 4B corporation must state that the corporation is governed by either section 4A or 4B of the Act,¹³⁴ and must be filed in triplicate with the Secretary of State’s Office.¹³⁵ Upon the issuance of the certificate of incorporation, the corporate existence begins. Once the certificate of incorporation is issued, the board of directors are required to hold an organizational meeting for the purposes of adopting the corporation’s bylaws and to elect officers.¹³⁶

¹³¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 14A.

¹³² Tex. Att’y Gen. Op. No. JC-0338 (2001) at 3 (concluding that a development corporation created under the Act is not a political subdivision nor any other “local governmental entity” subject to chapter 171 of the Local Government Code).

¹³³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4(a).

¹³⁴ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(b)(1) & 4B(b).

¹³⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 7.

¹³⁶ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 12.

Who can amend the articles of incorporation?

The Development Corporation Act provides that the articles of incorporation may be amended at any time by the board of directors or city council.¹³⁷ The board of directors is required to file with city council a written application requesting city council approve the amendments. The written application must specify the proposed amendments. If city council, by appropriate resolution, determines that it is advisable that the proposed amendments be made, authorizes the same to be made, and approves the form of the proposed amendment, the board of directors shall proceed to amend the articles of incorporation.¹³⁸ The articles of incorporation may also be amended at any time by city council by resolution.¹³⁹ Again, city council would be required to file the articles of amendment with the Secretary of State.

Must city council approve bylaws for the section 4A or 4B corporation?

City council must approve the initial bylaws. After the issuance of the certificate of incorporation, the board of directors is required to hold an organizational meeting to adopt the bylaws and to elect officers.¹⁴⁰ The initial bylaws must be adopted by the board of directors and approved by city council by resolution.¹⁴¹

Can a section 4A or 4B corporation amend its bylaws?

A section 4A or 4B corporation is authorized “to make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this state.” In addition, amendments to the bylaws must be approved by resolution of the city council.¹⁴²

Are section 4A or 4B corporations governed by the Texas Non-Profit Corporation Act?

Section 4A and 4B corporations are governed by the Development Corporation Act of 1979 (Article 5190.6) and the Texas Non-Profit Corporation Act (Article 1396-1.01 *et seq.*). To the extent the provisions of the Texas Non-Profit Corporation Act conflict with the provisions of the Development Corporation Act, the Development Corporation Act of 1979 prevails.¹⁴³

¹³⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 17(a).

¹³⁸ *Id.*

¹³⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 17(b).

¹⁴⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 12.

¹⁴¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 13.

¹⁴² TEX. REV. CIV. STAT. ANN. art. 5190.6, § 23(a)(11).

¹⁴³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 23(a).

Can a section 4A or 4B corporation assume a debt?

A section 4A economic development corporation is prohibited from assuming a debt or making “any expenditure to pay principal or interest on a debt if the debt existed before the date the city created the corporation.”¹⁴⁴ The Development Corporation Act does not address whether a section 4B corporation is prohibited from paying principal or interest on a debt if the debt existed before the date the city creates a section 4B corporation.

When a section 4A or 4B corporation sells real property must the corporation comply with certain notice and bidding requirements applicable to cities?

The Texas Attorney General determined an economic development corporation who sells real property unrelated to a project is not required to comply with the notice and bidding procedures applicable to Texas cities, chapter 272 of the Texas Local Government Code.¹⁴⁵ Nonetheless, a section 4A or 4B corporation must obtain fair market value when selling real property unrelated to a project.¹⁴⁶

Role of Citizens:

Can citizens initiate section 4A or 4B sales tax election?

An election to adopt either the section 4A or 4B sales tax may be initiated by citizens. If the city council receives a petition signed by a number of qualified voters that equals at least twenty percent (20%) of the voters who voted in the most recent city election, city council would be required to pass an ordinance ordering an election on the imposition of the tax.¹⁴⁷ Additionally, city council on its own initiative may approve an ordinance calling for an election to adopt either the section 4A or 4B sales tax.¹⁴⁸

Can citizens object to section 4A expenditures?

When a section 4A corporation pursues a project, it is required to obtain city council approval of the project.¹⁴⁹ Generally, there is no additional requirement of notice or hearing for projects

¹⁴⁴ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(q).

¹⁴⁵ Tex. Att’y Gen. Op. No. JC-0109 (1999).

¹⁴⁶ *Id.* at 2.

¹⁴⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(e) & 4B(f) (stating Chapter 321 of the Texas Tax Code governs the imposition, computation, administration, collection, and remittance of the section 4A and 4B sales tax) and TEX. TAX CODE ANN. § 321.401(c) (Vernon 2002) (requiring city council to pass an ordinance ordering an election on the section 4A or 4B sales tax if a petition is presented).

¹⁴⁸ TEX. TAX CODE ANN. § 321.401(b) (Vernon 2002).

¹⁴⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 21 (“The unit will approve all programs and expenditures of the corporation...”).

undertaken by section 4A corporations. Nonetheless, citizen taxpayers through an action in district court could seek declaratory and or injunctive relief to prevent the funding of a particular project.¹⁵⁰

Can citizens object to section 4B expenditures?

A section 4B corporation must hold at least one public hearing on a proposed project.¹⁵¹ This hearing must be held prior to the expenditure of any funds on the project. The section 4B corporation may hold one public hearing to consider one project or a group of projects. After the projects have been considered at a public hearing and sixty (60) days have passed since the first published notice of the project, the section 4B corporation may make expenditures related to the project.¹⁵²

Further, the public has a right to gather a petition to object to a particular expenditure.¹⁵³ The petition must be submitted within sixty (60) days following the first published notice of the project or categories of projects. This petition must be signed by ten percent (10%) or more of the registered voters of the city requesting an election be held before the project is undertaken. If the petition is submitted in a timely manner and is signed by the requisite number of voters, an election is required. The corporation may not undertake the project until the voters approve the project at an election on the issue. If the voters disapprove the project at the election, the section 4B tax proceeds may not be used for the project. An election is not required to be held after the submission of a petition if the qualified citizens of the city have previously approved the undertaking of a specific project or projects.¹⁵⁴

Can the citizens force the funding of a particular section 4A or 4B project?

The Development Corporation Act does not address the ability of citizens to force the directors of a section 4A or 4B board to fund a particular project.

Can citizens seek to abolish a section 4A sales tax?

On a petition signed by at least ten percent (10%) or more of the registered voters of the city, the city can be required to order an election on the dissolution of the section 4A corporation. If the election for dissolution is approved, the section 4A tax would continue to satisfy any remaining obligations that were executed prior to the date of the dissolution election. When the last of the

¹⁵⁰ See *Gaut v. Amarillo Economic Development Corporation*, 921 S.W.2d 884 (Tex. App. – Austin 1996) (plaintiffs filed a petition seeking declaratory and injunctive relief to prevent section 4A corporation's performance of jet service contract with American Airlines for continued jet service for DFW Airport to the Amarillo airport).

¹⁵¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(n).

¹⁵² TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a-1).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

obligations are satisfied, any remaining assets of the corporation shall be transferred to the city, and the corporation is dissolved.¹⁵⁵

Can citizens seek to abolish a section 4B sales tax?

An eligible section 4B city must hold an election on the issue of dissolution of a section 4B corporation created on or after September 1, 1999¹⁵⁶ if a proper petition is submitted to the city council.¹⁵⁷ The petition requesting the election on the dissolution of the section 4B corporation must be signed by at least ten percent (10%) of the registered voters of the city. At the dissolution election, the ballot shall be printed to permit voting for or against the proposition. The ballot proposition to dissolve a section 4B corporation created on or after September 1, 1999 is as follows:¹⁵⁸

“Dissolution of the _____ (name of the corporation).”

For section 4B corporations created prior to September 1, 1999, the city could pass a resolution to dissolve the corporation.¹⁵⁹ If the city passed the resolution, the tax would continue to pay off any outstanding obligations.

Procedural Requirements:

Hearing Requirements:

Must section 4A corporations conduct hearings prior to funding section 4A projects?

Generally, when section 4A corporations pursue projects they are required to obtain city council approval of the project.¹⁶⁰ Section 4A corporations generally do not have additional notice and hearings requirements on individual projects undertaken by the corporation. Nonetheless, there are exceptions requiring the section 4A corporation to conduct a public hearing. If a section 4A corporation desires to pursue a sports venue project, or a section 4B project, a public hearing is required.¹⁶¹

¹⁵⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(k).

¹⁵⁶ See, Texas Senate Bill 269, Section 2, 76th Legislature, Regular Session (1999).

¹⁵⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(o).

¹⁵⁸ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(o)(2).

¹⁵⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 34.

¹⁶⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 21 (“The unit [city council] will approve all programs and expenditures of the corporation and annually review any financial statements of the corporation, and at all times the unit [*i.e.* city council] will have access to the books and records of the corporation”).

¹⁶¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(s)(1) & (3).

If section 4A corporations pursue a section 4B project must the section 4A corporation conduct hearings?

Section 4A corporations must conduct a public hearing prior to the section 4B project.¹⁶² If the economic development corporation desires to use section 4A proceeds to undertake a section 4B project, it is required to conduct a public hearing prior to the election.¹⁶³ The hearing must be held in the city and must inform the residents of the cost and impact of the project or category of projects. Additionally, the city must publish notice of the hearing in a newspaper of general circulation in the city at least thirty (30) days prior to the hearing date. The notice must indicate the date, time, place and subject of the hearing. The notice must be published on a weekly basis until the date of the hearing.¹⁶⁴

Must section 4B corporations conduct a public hearing prior to funding section 4B projects?

Section 4B corporations must conduct at least one public hearing on proposed section 4B projects.¹⁶⁵ Additionally, the section 4B corporation must obtain city council approval of the expenditure.¹⁶⁶ Section 4B corporations could conduct one public hearing to consider several projects. Nonetheless, notice of the project or projects must be published in a newspaper of general circulation in the city. After the projects have been considered at a public hearing and once sixty (60) days have passed since the first published notice of the projects, the section 4B corporation is authorized to make expenditures related to the projects.

Can citizens object to section 4B expenditures?

The public has a right to gather a petition objecting to a particular section 4B project.¹⁶⁷ The petition must be submitted within sixty (60) days of the first published notice of a specific project or type of project, and must be signed by more than ten percent (10%) of the registered voters of the city. If the governing body of the city receives a petition from more than ten percent (10%) of the registered voters of the city requesting an election be held before that specific project or the general type of project is undertaken, the corporation may not undertake the project until the voters approve the project at an election called and held to consider the proposed section 4B project.¹⁶⁸ An election is not required to be held after the submission of a petition if the

¹⁶² *Id.*

¹⁶³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(s)(3).

¹⁶⁴ *Id.*

¹⁶⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(n).

¹⁶⁶ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 21.

¹⁶⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a-1).

¹⁶⁸ *Id.*

voters have previously approved the specific project at an election called for that purpose or in conjunction with another section 4B election.

Must a section 4B corporation conduct a hearing to pursue a sports venue project?

Section 4B corporations must conduct at least one public hearing to consider a sports venue project.¹⁶⁹ Initially, the city would have to call an election on a uniform election date to consider the sports venue project.¹⁷⁰ At the election, the voters of the city would vote on a ballot proposition authorizing the section 4B corporation to use the sales and use tax, “including any amount previously authorized and collected, for a specific sports venue project.” The project or category of projects must be clearly described on the ballot proposition so that a voter will be able to discern the limits of the specific project or category of projects authorized by the proposition.¹⁷¹ If maintenance and operating costs are to be paid from the sales or use tax, the ballot proposition must clearly state that fact. Again, a public hearing must be held within the city to inform the residents of the city of the cost and impact of the project prior to the election. At least thirty (30) days before the date set for the hearing, a notice of the date, time, place, and subject of the hearing must be published in a newspaper of general circulation within the city. The notice must be published on a weekly basis until the date of the hearing.¹⁷²

Publication of Notice:

Must section 4A corporations publish notice of any hearings on proposed projects?

Generally, there is not a requirement that a section 4A corporation conduct hearings. Consequently, section 4A corporations generally do not have a publication requirement. When a section 4A board pursues a particular project city council must approve the project. Yet, there is no requirement for additional public notice on individual projects undertaken by the section 4A corporations.¹⁷³ Nonetheless, there are exceptions which require publishing notice for sports venue projects, pursuing section 4B projects,¹⁷⁴ and maintenance and operating costs of a project.¹⁷⁵

¹⁶⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a-3)(3).

¹⁷⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a-3)(1).

¹⁷¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a-3)(2).

¹⁷² TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a-3)(3).

¹⁷³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 21.

¹⁷⁴ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4A(s)(1)&(3).

¹⁷⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(c-1).

Must a section 4A corporation publish notice of their hearing for a sports venue project?

Section 4A corporations must publish notice of their hearing to consider a sports venue project.¹⁷⁶ Initially, the city would have to call an election on a uniform election date to consider the sports venue project.¹⁷⁷ At the election, the voters of the city would vote on a ballot proposition authorizing the section 4A corporation to use the sales and use tax, “including any amount previously authorized and collected, for a specific project or for a specific category of projects, including a sports venue” project.¹⁷⁸ The project or category of projects must be clearly described on the ballot proposition so that a voter will be able to discern the limits of the sports venue project.¹⁷⁹ If maintenance and operating costs are to be paid from the sales or use tax, the ballot proposition must clearly state that fact. A public hearing must be held within the city to inform the residents of the city of the cost and impact of the project prior to the election. At least thirty (30) days before the date set for the hearing, a notice of the date, time, place, and subject of the hearing must be published in a newspaper of general circulation within the city. The notice must be published on a weekly basis until the date of the hearing.¹⁸⁰

Must a section 4A corporation publish notice to expend sales tax proceeds on maintenance and operating costs of a section 4A project?

Section 4A corporations may use section 4A sales tax proceeds on maintenance and operation expenses for a section 4A project.¹⁸¹ Yet, the voters of the city may petition for an election on the use of section 4A proceeds for maintenance and operation costs of a particular project within sixty (60) days of the first published notice of the use of sales tax proceeds to pay maintenance and operating costs. This petition must be signed by ten percent (10%) of the registered voters of the city requesting that an election be held prior to tax proceeds being used to pay for the maintenance and operating costs of a project.¹⁸²

When must a section 4B corporation publish notice of their hearing on a proposed project?

Section 4B corporations must hold at least one public hearing on proposed section 4B projects.¹⁸³ Further, after a public hearing has been held on the proposed project, section 4B corporations

¹⁷⁶ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(s)(3).

¹⁷⁷ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(s)(1).

¹⁷⁸ *Id.*

¹⁷⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(s)(2).

¹⁸⁰ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(s)(3).

¹⁸¹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4A(c-1).

¹⁸² *Id.*

¹⁸³ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(n).

must wait sixty (60) days after first publishing notice of the specific project or category of projects before expending any monies for the section 4B project.¹⁸⁴ Excluding sports venue projects and absent a local provision, there is not a requirement the published notice of the hearing be published a certain number of days prior to the hearing.

When must a section 4B corporation publish notice of their hearing on a sports venue project?

Section 4B corporations must conduct at least one public hearing on a proposed sports venue project.¹⁸⁵ The public hearing is required to be held in the city to inform the residents of the city of the cost and impact of the project or category of projects. “At least 30 days before the date set for the hearing, a notice of the date, time, place, and subject of the hearing shall be published in a newspaper with general circulation in the city in which the project is located.”¹⁸⁶ The notice must be published on a weekly basis until the date of the hearing.¹⁸⁷

Must a section 4B corporation publish notice to expend sales tax proceeds on maintenance and operating costs of a section 4B project?

Section 4B corporations must hold at least one public hearing on proposed section 4B projects.¹⁸⁸ Further, after a public hearing has been held on the proposed project, section 4B corporations must wait sixty (60) days after first publishing notice of the specific project or category of projects before expending any monies for the section 4B project. This includes the maintenance and operating costs of a section 4B project. The Development Corporation Act of 1979 specifically provides that the voters may object to expenditures for maintenance and operating costs of section 4B projects by submitting a petition signed by more than ten percent (10%) of the registered voters of the city.¹⁸⁹ The public has sixty (60) days from the date of the first published notice of the project to submit the petition.

¹⁸⁴ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a-1).

¹⁸⁵ TEX. REV. CIV. STAT. ANN. art. 5190.6, §§ 4B(n) & 4B(a-3)(3).

¹⁸⁶ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a-3)(3).

¹⁸⁷ *Id.*

¹⁸⁸ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(n).

¹⁸⁹ TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(a-1).