

Legal Framework for Funding Venues Under the Texas Local Government Code Chapter 334 and for using Hotel Occupancy Tax under Texas Tax Code Chapter 351



Venue Statute

- Texas law authorizes cities to pay for a variety of civic buildings and sites with certain types of funding.
- These venue projects and the funding options are set out in Chapter 334 of the Local Government Code.



Process

- The legislature requires cities to follow a specific and detailed process to approve venue projects.
 - Council must act to formally start the process.
 - The Texas Comptroller must review the project for fiscal impact.
 - If the Comptroller okays the project, then council must order an election.
 - Voters must approve both the project and the type of financing for that project. (See 334.021 and .022)



Legal Framework To Issue Debt

- The City must carefully follow the law on debt issuance for all of its bonds and other debts.
- Cities and other local government entities must have specific state law authority to issue debt.
- The City must submit all bonds and similar obligations to the Attorney General for review before the bonds can be issued. (1202 Gov't Code)



Venues Defined in Chapter 334

4) "Venue" means:

- **(A) an arena, coliseum, stadium, or other type of area or facility:**
 - (i) that is used or is planned for use for one or more **professional or amateur sports events, community events, or other sports events, including rodeos, livestock shows, agricultural expositions, promotional events, and other civic or charitable events; and**
 - (ii) for which a **fee for admission** to the events is charged or is planned to be charged;
- **(B) a convention center, convention center facility** as defined by Section [351.001](#)(2) or [352.001](#)(2), Tax Code, or **related improvement such as a civic center hotel, theater, opera house, music hall, rehearsal hall, park, zoological park, museum, aquarium, or plaza located in the vicinity of a convention center or facility owned by a municipality or a county;**
- **(C) a tourist development area along an inland waterway;**
- **(D) a municipal parks and recreation system,** or improvements or additions to a parks and recreation system, or an area or facility that is part of a municipal parks and recreation system;
- **(E) a project authorized by Section 4A or 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), as that Act existed on September 1, 1997; and**
- **(F) a watershed protection and preservation project; a recharge, recharge area, or recharge feature protection project; a conservation easement; or an open-space preservation program intended to protect water.**



Types of Venue Funding in Chapter 334

- The chapter is divided into subchapters for each type of funding:
- C: general powers; includes a limit on using property tax backed debt for most venues.
- D: Sales and Use Tax
- E: Short-Term Car Rental Tax
- F: Admissions Tax
- G: Event Parking Tax
- H: Hotel Occupancy Tax
- I: Facility Use Tax (for major league teams)
- K: Livestock Facility Use Tax



Matching venues with funding

- **Property taxes or property tax backed debt** cannot be used for any venue project except (D) and (F) (parks and watershed projects) (see 334.041).
- **Sales and use taxes** can be used for watershed projects under (F) and the projects do not have to be within the city (see 334.081).
- **Short-term motor vehicle taxes** (car rental taxes) cannot be used for city parks and recreation projects (See 334.1015).
- **Admissions taxes** can only be used for facilities the city builds (see 334.151).
- **Event parking taxes** can only be charged in a parking facility for an approved venue project. (see 334.201) (approved venue projects are ones the voters approve – see 334.001(1)).
- **Hotel Occupancy Taxes** cannot be used for: parks; for many projects developed through Economic Development Corporations. (See 334.2515), nor for watershed projects (334.2517).
- **Facility Use Tax** can be charged to each member of a major league team that plays professional sport games in an approved venue project only if the city issued bonds for the facility. (See 334.302).
- **Livestock Facility Use Taxes** eligible cities or counties can charge if they are using the tax to pay for bonds for the rodeo or similar facilities. The voters must approve the tax. (See 334.402 and 403)



Not all hotel occupancy taxes are the same

- The hotel occupancy taxes authorized for a venue project under Chapter 334 of the Local Government Code are not the same as the hotel occupancy taxes under Texas Tax Code 351.
- 334 is the authority for not more than 2% for specific venues.
- 351 is the general 7% hotel occupancy tax, as well as limited authority for a separate 2% tax.



Austin's venue funded with 2% Hotel Occupancy Tax (HOT)

- In 1998, the voters approved using the Chapter 334 2% HOT to fund expansion of the Austin Convention Center and a portion of the Waller Creek Tunnel.
- When the bonds backed by these taxes are paid off in 2029, Austin could ask the voters to approve a new venue payable from the same type of taxes.



Austin's Venue Funded With Car Rental Tax

- In 1998, Austin voters approved Palmer Auditorium, adjacent parkland that is part of the venue, and the parking garage.
- Voters approved this venue to be funded with Car Rental Tax that repays the bonds and pays for the operations and maintenance of the facilities.
- These bonds are due to be paid back by 2029. Voters could then approve another venue funded with this tax.



Summary

- Austin can pay for venues using the process set out in Chapter 334 of the Local Government Code.
- The definition of venue is broad, but City must match funding with appropriate type of venue.
- Austin has paid for two venues using this process.
- Critical to follow the statute to allow City to issue bonds to construct the venues.



Texas Tax Code

Hotel Occupancy Tax

- The Texas Tax Code (Chapter 156) authorizes collecting hotel occupancy tax from hotels –
- Hotel means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast and a short-term rental.
- The room must cost at least \$15 and be used for less than 30 days.



Use of the 2% available under Chapter 351 Texas Tax Code

- The Tax Code (Ch. 351) allows a city to increase its hotel occupancy tax to 9% only for construction or expansion of an existing convention center, or by a county for certain specific projects. (See 351.1015).
- Since a local government needs specific authority in state law to issue bonds, the Tax Code also contains that authority for this use of the 2% extra tax. (See 351.1065(a)).



Texas Tax Code Chapter 351

- This is the law that allows cities to collect and use HOT.
- The law defines terms such as convention center facilities, tourist, and visitor information center.
- The law has a framework to spend the funds including eligible uses, limits on use, and tracking requirements.



Eligible Uses of HOT

- Section 351.101(a) says: Revenue from the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following...”
- This is the first part, or “step” of the 2-part test to use the funds.



Eligible Uses (cont.)

- Some of these uses fit Austin - Second Step – the list:
 - convention center facilities and visitor information centers,
 - registering convention delegates,
 - advertising to attract tourists and convention delegates,
 - the arts, (a)(4)
 - historic restoration and preservation projects and activities to encourage tourists and convention delegates to visit historic sites near the convention center or in areas reasonably likely to be visited by tourists or convention delegates, (a)(5)
 - signs directing people to sites visited by hotel guests
 - Admin expenses incurred directly in the promotion and servicing expenditures authorized under Section 351.101(a)
 - Transport for tourists from hotels to other named places. Sec 351.110



How much HOT can Austin use for arts and historic sites?

- Under 351.103(c) Cities the size of Austin can use up to 15% for uses that fit under the arts category and up to 15% for uses that fit under the historic sites category.



Limits on HOT

- 351.101(b) states: Revenue derived from the tax ... shall be expended in a manner directly enhancing and promoting tourism and the convention and hotel industry' as permitted by Subsection (a). That revenue *may not be used for the general revenue purposes or general governmental operations of a municipality.*
- 351.101(c) allows the City to delegate spending HOT as allowed by the statute only if the City has a contract with the entity and only if the City approves the HOT spending budget.
- 351.101(e) and (f) allow limited spending on salaries, admin expenses, and travel.



Questions?

