



MEMORANDUM

TO: Mayor and Council

FROM: Rebecca Giello, Interim Director 
Economic Development Department

DATE: May 29, 2019

SUBJECT: Response to City Council resolutions regarding an Economic Development Entity

Through two resolutions – 20141211-122 and 20170216-040 --the Austin City Council directed the City Manager to “deliver a feasibility study” and “bring forward...specific proposals” related to the creation of an economic development entity with the capacity to “create or support development of affordable housing, redevelopment, revitalization and other priority projects and goals of the City.”

The attached report identifies two regulatory approaches, a development corporation and a local government corporation, and evaluates the delivery mechanism each provide to advance economic development outcomes. Through staff’s research, the value of an external economic development entity lies both in its ability to respond quickly and decisively to opportunities as well as to be proactive in matters of community development.

The Economic Development Department (EDD) acknowledges the broad application an economic development entity can have in serving as a vehicle to administer economic development activities on behalf of the City of Austin or as a key community partner. Should Council authorize to create a corporation, staff recommends contracting with a subject matter expert to carry out activities applicable to the creation of a corporation. Staff anticipates it would require a 12-month period following the successful hiring of a contractor to deliver an implementation plan, which could include a proposed agency program of work and governance structure informed by stakeholders.

For more information please contact myself at 512-974-3045 or David Colligan at 512-974-6381.

xc: Spencer Cronk, City Manager
Elaine Hart, Deputy City Manager
J. Rodney Gonzales, Assistant City Manager

Attachment

A FEASIBILITY OVERVIEW: ECONOMIC DEVELOPMENT CORPORATIONS

Report by the City of Economic Development Department

May 29, 2019

EXECUTIVE SUMMARY

The economic environment of Austin is fast-paced and growth-oriented. While many have benefited, many have struggled as housing costs outpace income growth, particularly among lower income and minority residents. The City has responded to these and other challenges through the creation of multiple strategic planning documents designed to translate broad long-range goals into more immediate and specific actions. Simultaneously, the organization shifted to a wider perspective of Economic Development, evidenced by the revision of its Economic Development Policy in 2018, and the request for analyzing the creation of an external economic development entity. These actions signal that Council is looking to strengthen the organization's positioning and community's ability to competitively ensure the strategies identified in the *Strategic Direction 2023* are deployed and outcome areas are addressed.

The creation of an external economic development corporation or entity may provide the ability to clearly outline, align and solidify roles amongst existing organizations in the community to support the City Council's broader expectations of economic development. Establishing the objective of this entity as one that operates to complement the City's vision and programming for inclusive economic development through the formation of public-private partnerships and facilitation of resulting projects that generate additional resources or revenues for the City also opens the door to new innovative solutions that go beyond Economic Opportunity and Affordability to connect with other strategic outcomes, such as Mobility, Safety, and Health and Environment. While there are a number of factors and decision points to creating an economic development entity, this particular type of tool can support the current shift in perspective to holistic and inclusive economic development, as it addresses strengths and weaknesses of the City's capabilities and constraints when working in newly-defined spaces.

Several Council directed and staff oriented documents have elevated community feedback and informed professional recommendations for the development of an external economic development entity. In documents such as the Downtown Austin Plan and South Central Waterfront Framework Plan recommendations point to the need to explore potential structures to initiate the creation of a "special entity... to leverage actions by both public and private sectors to develop projects that benefit the community, such as affordable housing, parks, cultural facilities and public infrastructure." The Music and Creative Ecosystem Omnibus of 2016 initiated a request to establish a partnership with an entity that functions "like a land bank for creative space and business preservation and development," leading to further ongoing discussions regarding the role of a cultural or creative trust and its connection to such an external entity.

Economic development efforts in competitive communities are supported by formal economic development organizations staffed by full-time professionals with specialized functions. The entity is designed to program and deploy targeted activities carrying out an overall strategy designed by community input. The governing structure for the organization should maximize its access to resources as well as its organizational flexibility. There is no one-size-fits-all model for an economic development organization; a community should take the history of the area and the local political situation into account when designing the entity.

Overall however, the effectiveness of an economic development entity rests in its ability to operate with speed and agility in an environment that prioritizes its external and largely independent positioning in the market.

EVALUATION OF TEXAS DEVELOPMENT ENTITIES

Through two resolutions – 20141211-122 and 20170216-040 - Council directed the City Manager to “deliver a feasibility study” and “bring forward...specific proposals” related to the creation of an economic development entity with the capacity to “create or support development of affordable housing, redevelopment, revitalization and other priority projects and goals of the City.” While the City has several entities to serve very specific and limited economic development roles (i.e. neighborhood housing development, industrial development, urban revitalization), this report evaluates and identifies an entity that could collaboratively address a holistic and inclusive economic development strategy through the facilitation of mixed projects with external partners.

Municipal Economic Development Entities

There is a broad set of requirements to consider in recommending an economic development entity for adoption by the City of Austin. Table 1 identifies some of the types of external economic development entities that may be established by a municipality under Texas law. These entities *act on behalf of and through the latitude granted by* the governing body of the incorporating city, as permitted by state law. In general, as long as the entities are using City funds, the City must still ensure that the funds are being used for a municipal purpose, that the City is getting a benefit that is roughly equivalent to what it is spending, and that there are controls in place to make sure that the taxpayers are getting that benefit.

At the onset, three of the identified entities can be set aside: community land trusts, housing finance corporations, and public facilities corporations. Each has too narrow a scope to address the broad range of objectives Austin can achieve through an economic development entity.¹

Table 1. Initial Options for Creating a City of Austin Strategic Economic Development Entity

- Community Land Trust
- Development Corporation
- Housing Finance Corporation
- Local Government Corporation
- Public Facilities Corporation

Austin has previously created entities of these types, sometimes as a vehicle to authorize bond financing for specific projects. For example, Austin Convention Enterprises and the Austin-Bergstrom Landhost Corporation are Public Facility Corporations created by the City of Austin to “own, finance, and operate” the Austin Convention Center Hotel² and to “[finance] the cost of acquiring, improving, and equipping a full-service hotel on airport property.”³

In addition, the Austin Housing Finance Corporation (AHFC) was created by the City to “generate and implement strategic housing solutions for the benefit of low- and moderate-income residents.”⁴ The City of Austin Community Land Trust is administered by AHFC to support access to affordable housing (See Appendix C for full list).⁵

1 Authorizing Legislation: Community Land Trust – *Local Government Code, Chapter 373B*; Housing Finance Corporation – *Texas Local Government Code, Chapter 394*; Public Facilities Corporation – *Local Government Code, Chapter 303*.

2 <http://stevieray.ci.austin.tx.us/departament/austin-convention-enterprises-inc>.

3 <http://www.austintexas.gov/departament/austin-bergstrom-landhost-enterprise-inc>.

4 See: <http://www.austintexas.gov/departament/austin-housing-finance-corporation>.

5 Appendices A and B include, respectively, the two resolutions calling for this memo and a listing of the Economic Opportunity and Affordability Strategies present in Strategic Direction 2023.

Development Corporations

With passage of the Development Corporation Act of 1979 (DCA), the State Legislature authorized the creation of Economic Development Corporations (EDCs) by Texas municipalities, counties, and districts with the intent of “...promoting the welfare of the residents of this state economically by securing and retaining business enterprises and as a result maintaining a higher level of employment, economic activity, and stability.”⁶ Two types of development corporations are defined by the act – Type A and Type B.⁷ However, since the law limits cities of Austin’s size (> 500,000) to the option of creating a Type B development corporation, the discussion will focus solely on this type.

Extent of Adoption in Texas. On a biennial basis, the Texas State Comptroller’s Office is mandated to report to the Legislature on the activities of development corporations.⁸ As of the 2016-2017 fiscal years, there were 510 Type B development corporations active in Texas. This represents an almost threefold increase (277%) over a roughly two-decade period (1997-2015). However, only 18 of the Type B development corporations were in cities with populations of greater than 75,000. And only one (Fort Worth) of the 13 largest Texas cities (populations > 200,000) had an active Type B corporation.⁹ Generally, Type B development corporations are funded by sales and use taxes. The Comptroller’s 2017 report lists Fort Worth as having an active Type B EDC with no dedicated sales tax. As a consequence, Fort Worth’s EDC is limited financially in its ability to provide economic development support. Instead, Fort Worth primarily relies on an independent privately-operated entity named Alliance Lending Corp. for economic development. This corporation is independent of the City. It has provided a variety of loans to encourage business development. Currently, it lends Small Business Assistance (SBA) funds and is operated without any government funding beyond the fees and allowable charges for these loans. Appendix D lists the 50 largest Texas cities with a Type B corporation.

Eligible Projects. A detailed list of project types available to Type B development corporations is provided as Appendix E. The projects fall into four broad categories - *Creation and Retention of Jobs, Job Training, Infrastructure Improvement Projects, and Affordable Housing* – as well as six more targeted to specific projects.¹⁰ A Type B development corporation must hold at least one public hearing before spending money to begin a project.

If, after notice is given of a proposed project, the governing municipality receives a petition from ten percent or more of the registered voters, an election must be held to determine whether the project can move forward. The issue with Austin creating a Type B development corporation, however, is that under the current allocation of the sales and use tax, an Austin Type B development corporation cannot rely on sales and use taxes for funding. Section 505.002 of the Local Government Code prohibits the combined rate of all sales and use taxes imposed by cities, the state, and other political subdivisions from exceeding 8.25%. Currently, Austin’s combined sales and use tax is 8.25% (Austin – 1%; Capital Metro 1%; State –

6 Texas Local Government Code, Chapters 501, 504, and 505.

7 The primary distinction between Type A and Type B development corporations lies in the range of projects they may undertake. Municipalities were initially restricted to either a Type A or Type B development corporation based on their size. However, updates to the law removed the restrictions of smaller communities and gave them the option of creating a Type A and/or Type B corporation.

8 The next report is expected in November 2018 and will cover 2016 and 2017. The 2014-15 as well as earlier reports can be found on the website of the Texas Comptroller of Public Accounts: <https://comptroller.texas.gov/transparency/reports/economic-development-corporation/>.

9 The Fort Worth development corporation is the FW Sports Authority which owns the Texas Motor Speedway.

10 The other categories include: *Water Supply Facilities and Water Conservation Programs, Recreational or Community Facilities, Military Bases or Missions, Career Center Projects Outside of Junior College District, Airport Facilities or Other Projects Authorized by Certain Border Municipalities, and Infrastructure Projects by Corporations Authorized by Municipalities in Certain Border Counties.*

6.25%). Although Austin can create a Type B development corporation, its funds will have to derive from grants, loans, bonds, interest on loans, user and admission fees, and real estate profits. An EDC can only issue bonds if the EDC has a revenue stream to back the bonds. It will need a revenue stream to obtain loans as well. There are two ways that Austin could fund an Austin Type B development corporation with sales and use taxes: (1) Austin, through an election, decreases its sales and use tax rate and then, through an election, the voters adopt a sales and use tax for the Austin Type B development corporation or (2) Capital Metro, through its board or an election, decreases its sales and use tax rate and then, through an election, the voters adopt a sales and use tax for the Austin Type B development corporation. The sales and use tax revenue that would be dedicated to the EDC could then fund loans, or if the funding was sufficient, it could be the backing for bonds. A major issue with decreasing sales and use taxes to either the City or Capital Metro is that these taxes already may be dedicated to debt relief, identified projects, or budgetary items.

Funding Sources. Previously, corporations authorized under the DCA were restricted to private sources of funding due to the prohibition by the Texas Constitution on the use of public funds to promote private business. A 1987 amendment to the Texas Constitution removed this restriction, opening the way for the use of sales and use tax revenue, as well as other public funds, to finance public development corporations. The challenge for many large cities, including Austin, is that the combined sales and use tax rate is at the ceiling – 8.25%. Due to a portion of that tax being approved by the voters for Capital Metro, the process for adjusting the local sales tax rate is complicated. Either the City or Capital Metro will have to decrease its sales and use tax rate in order for the voters to adopt a sales and use tax for an Austin Type B development corporation. The City can decrease its sales and use tax rate in increments of 0.125%. However, Capital Metro only can decrease its sales and use tax rate in increments of 0.250%.

In order for the voters to adopt a sales and use tax for an Austin Type B development corporation, either the City or Capital Metro’s sales and use tax rate will have to be decreased. A local election will be necessary for the adoption of a sales and use tax for an Austin Type B development corporation.¹¹ It is important to note that development corporations can be created and operated absent a designated tax.

Structure and Governance. Incorporated as nonprofit corporations, development corporations created under the authority of Chapter 505 of the Local Government Code are quasi-independent entities. Governed by a municipally-appointed board, they are intended to further the economic development goals of the municipalities that establish them.¹² The board is subject to state open meeting and public information laws. The organization must include a president, secretary, and may have additional officers, as needed. With the consent of the municipality, employees may receive health and retirement benefits through the policies and programs available to government employees or through separate plans. Oversight by the municipality is provided through several mechanisms. As the authorizing entity, the municipality (i.e., city council) creates the bylaws and appoints the board members. Board members serve at the pleasure of the city for two-year terms (per statute) and may be removed from the board at any time and without cause.

¹¹ Note, neither a Type A nor Type B development corporation is required to levy a tax.

¹² The stated purpose of the resolution authorizing the creation of a development corporation must indicate that the purpose of the enterprise is “to promote and encourage employment and the public welfare.” A municipality may have a single development corporation of either type or both one Type A and one Type B, dependent on population size.

Each board member must be a resident of the City. And three members of the board must be persons who are not “employees, officers, or members of the governing body of the authorizing municipality.”¹³ Several important actions of the EDC must receive approval by the authorizing municipality (e.g., city council resolution). These include issuing bonds and approving projects and expenditures. The authorizing municipality must also approve proposals by the board to amend or adopt new bylaws.

Additionally, the authorizing body retains the right, at its sole discretion, to “alter the corporation’s structure, organization, programs, or activities,” or “terminate the corporation’s existence.”¹⁴ The corporation may also be dissolved should 10% of eligible voters petition for an election which then supports this action, or by vote of the board given written approval by the authorizing entity, provided that the “purposes for which the corporation was formed have been substantially fulfilled” and that “all bonds issued by the corporation have been fully paid.”

The voting public plays an additional oversight role. If 10% of voters petition the municipality to modify a tax adopted to fund a development corporation, the municipality must hold an election on this issue. Additionally, at such an election, voters may elect to limit the use of tax revenue to one or more specific projects. Voter approval is also required before a development corporation can engage in certain water related projects. Development corporations can function to shield a government from financial liability. When a development corporation issues bonds it does so without any obligation for the municipality to repay them in the event of default. Additionally, the municipality “is not liable for damages arising from the performance of a governmental function” by the development corporation.

One of the key features of a development corporation is the flexibility and speed of action it can provide. With the municipality’s approval, development corporations can enter into contracts, with both private and public entities, without the requirement to do so through a potentially lengthy and involved government process.¹⁵ However, final action must take place in an open meeting after providing notice under the Texas Open Meetings Act.¹⁶ This speed of execution allows a development corporation to match the often-quick pace of private businesses. Additionally, these organizations have more flexibility in staffing because they do not fall under civil service rules and regulations, allowing them to adapt more quickly to project demands.

A final benefit of a development corporation is its ability to manage and coordinate a wide range of development programs and funding streams individually or in concert. Additionally, individual development projects may not have the funding to support specialized expertise, but an overarching development corporation can spread expertise and costs across projects.

¹³ Texas Local Government Code, Chapter 505, Sec. 505.052(c).

¹⁴ Texas Local Government Code, Chapter 501, Secs. 501.401(a)(1) and (a)(2). Termination of the corporation requires a formal resolution of the governing authority.

¹⁵ Op. Tex. Att’y Gen. JC-0109 (A development corporation is not subject to section 272.001 of the Local Government Code, which establishes procedures political subdivisions must follow to sell land.)

¹⁶ Tex. Gov’t Code, Sec. 551.102.

In conclusion, in order to create an EDC, Council would need to determine the source of funds for an Austin Type B development corporation. If sales and use taxes are considered, either the City or Capital Metro will have to reduce their sales and use tax rate before voters can adopt a sales and use tax for an Austin Type B development corporation.

Local Government Corporations

The Texas Transportation Corporation Act grants municipalities the ability to create local government corporations (LGCs), non-profit organizations empowered to act on behalf of a municipality to “accomplish any governmental purpose.”¹⁷ In contrast to development corporations, which are well defined by statute and required to promote the welfare of residents of the state economically, LGCs have been described as having a “complex and ambiguous nature”¹⁸ with the ability to “aid or act on behalf of one or more local governments to accomplish *any* governmental purpose of those local governments.”¹⁹

Extent of Adoption in Texas. In contrast to development corporations, the State does not routinely release any summary data related to LGCs. However, we worked with the Texas Secretary of State’s Office to identify any data captured from incorporation records that would help us to understand the prevalence of these entities across the state. We received a data file listing all active and defunct LGCs of which they are aware.²⁰ Currently there are 100 local government corporations associated with Texas municipalities, 80 of which are associated with a single city, rather than counties or multiple cities.²¹ The City of Houston has established 26 local government corporations. Other large Texas cities with one or more LGCs include San Antonio (3), Dallas (2), El Paso (2), Austin (2), and Corpus Christi (2). Appendix F lists the full set of currently active local government corporations as well as their associated city.

Eligible Projects. The range of potential projects is wide and encompasses not only the types authorized under the development corporation statute but any project or activity that furthers a governmental purpose. As such, while our focus here is economic development related activities, it is worth noting that an LGC has even wider potential utility. The City of Houston, as one might expect given that it accounts for a quarter of the LGCs, provides several examples that illustrate the range of purposes to which an LGC may be put.²² The Houston Amateur Sports Park and the Houston Downtown Park Corporation LGCs are responsible for the development and management of certain recreational land in the city, the Houston Forensic Science Center provides forensic services previously provided by the Houston Police Department, and the Houston Zoo Development Corporation is responsible for, as one might suspect, running the zoo.

17 Texas Transportation Code, Chapter 431, Sec. 431.101. The organizations are also known as Chapter 431 Corporations referencing the chapter of the Texas Transportation Code where they are described. See Appendix G for primary legislation related to local government corporations.

18 Tx. Att’y Gen. Op. No. JC-0335, January 22, 2001.

19 Transportation Code, Title 6, Subtitle 1, Chapter 431, Subchapter D, Section 431.101.

20 The Texas Secretary of State’s Office attempts to categorize an entity as a local government corporation from its incorporation documents. While this identification process happens routinely, the Texas Secretary of State’s Office indicates that it is unlikely to have accounted for 100% of the local government corporations.

21 The others are associated with multiple cities or involve counties.

22 The full list of City of Houston local government corporations can be found in the City’s *Comprehensive Annual Financial Report* (CAFR): <http://www.houstontx.gov/controller/cafr/cafr2017printerfriendly.pdf>.

The largest group of Houston LGCs was established to work with specific tax increment reinvestment zones (TIRZs). Of particular relevance to this report are Houston First and the Hemisfair Park Area Redevelopment Corporation (HPARC), local government corporations engaging in long-term strategic redevelopment activities in Houston and San Antonio respectively. Houston First was created to manage Houston’s convention and performing arts facilities. Soon after its creation it began the process of creating a master plan to “guide the future development and success of Houston’s convention center” establishing a vision of how the world should see the city over the next 10 years (2015-2025).^{23,24} Houston First continues to play a key role in executing that plan by not only managing existing facilities, but also through large scale site development aligned with the plan.

The City of San Antonio, through HPARC, has also created an LGC with a long-range strategic planning perspective. HPARC was created by the San Antonio City Council in 2009 with the objective of managing and revitalizing the Hemisfair area, site of the 1968 World’s Fair. HPARC is tasked with the long-range execution of a development master plan created by the City of San Antonio, which includes responsibility for executing a diverse range of discrete projects such as the recently completed Yanaguana Garden play and recreational environment.²⁵

Funding Sources. The range of funds a municipality can use to finance a local government corporation is broad. The City would be able to transfer funds to the LGC through a contract. Among the potential sources of funding are fund transfers, hotel taxes (for allowable uses), TIF funds, that may serve as the backing for bonds and notes. Additionally, local government corporations can take out loans and issue bonds. If the bonds are not backed by City property taxes, they would not be considered City property-tax backed debt. As noted above for the EDCs, bonds and loans need sources of revenue behind them; so council would need to determine what source would fund the EDC’s debt.

Structure and Governance. The board of a local government corporation may consist of any number of directors. The majority of individuals serving on the board must live within the municipal boundaries and may be, but are not required to be, an elected official or employee of the municipality. Following the incorporation of the local government corporation, the board of directors named in the articles of incorporation meets to adopt bylaws. The bylaws, however, may not be inconsistent with the articles of incorporation.²⁶ The board officers must consist of a president, at least one vice president, a secretary, a treasurer, and may include additional officers and assistant officers as necessary. The board must comply with the Texas Open Meetings Act and the Texas Public Information Act. A director must be appointed (or elected) or removed in accordance with the procedure(s) specified in the articles of incorporation or bylaws. The local government corporation must also comply with the requirements relating to procurement of design and construction services with which the City complies, and must comply with competitive bidding requirements except in some certain instances when private investment is involved.²⁷

23 What is Houston First? A Corporate Overview:
https://www.houstonfirst.com/static/media/uploads/attachments/whatishfcbooklet_small.pdf

24 Soon thereafter Houston First worked with stakeholders to develop a 20-year long-range master-plan for a large-scale outdoor theatre complex.

25 For overview of HPARC/HemisFair, see: <https://hemisfair.org/>

²⁶ Tex. Loc. Gov’t Code, Sec. 394.035.

²⁷ Tex. Transp. Code, Sec. 431.101(g) & 431.110.

Several of these requirements differ substantially from those governing development corporations. As we discussed above, the authorizing municipality of a development corporation creates the bylaws and must approve any changes proposed by the corporation. Additionally, development corporation directors can be removed at any time and without cause by the municipality.

And, while a development corporation must have at three ‘external’ members – individuals not associated with the city government – a local government corporation may have any number of internal members, if any. Both development corporations and local government corporations can engage in the wide range of economic development activities captured by the City of Austin’s strategic planning documents. Additionally, their organizational form – quasi-independent corporations operating through the authority and under the oversight of the authorizing municipality – affords the opportunity to structure them to operate with the flexibility and speed required to capitalize on a range of market driven development opportunities.

Conclusion

As noted in this overview, the creation of a development corporation will require identifying where the funding will come from for the corporation to fund its activities. Similarly, if creation of a local government corporation is authorized, it will be necessary to identify how that entity will be funded if it is to have its own budget and the ability to fund development activity as well as identify programming activities. An additional consideration is the entity’s governance and operational structure that may be further informed by stakeholder feedback and funding sources. Should council authorize to create a corporation, staff recommends contracting with a subject matter expert to carry out applicable activities. Staff anticipates it would require a 12-month period following the successful solicitation of a contractor to deliver an implementation plan, which could include a proposed agency program of work and governance structure informed by community stakeholders.

Attachments

- Appendix A** Austin City Council Resolutions 20141211-122 and 20170216-040
- Appendix B** Economic Opportunity and Affordability Strategies, Strategic Direction 2023
- Appendix C** City of Austin Economic Development Entities
- Appendix D** Top 50 Texas Type B Economic Development Corporations by 2010 Population Size
- Appendix E** Economic Development Projects Authorized Under the Development Corporation Act
- Appendix F** Local Government Corporations Associated with Texas Cities
- Appendix G** Primary Legislation Related to Local Government Corporations

RESOLUTION NO. 20170216-040

WHEREAS, the State of Texas gives municipal governments the authority to create entities in their communities that can structure public-private partnerships and help local governments accomplish holistic goals related to economic development; and

WHEREAS, entities such as nonprofit Economic Development Corporations (EDCs) can help create new and expanded infrastructure or enterprises in their local communities; and

WHEREAS, EDCs can issue taxable and tax-exempt bonds for projects and activities related to economic development; and

WHEREAS, such an entity could help the City engage in socially beneficial real estate development, among other economic development projects; and

WHEREAS, the Downtown Austin and the South Central Waterfront plans recommend the creation of an EDC or other type of corporation to achieve goals such as workforce housing, minority business development, and district revitalization; and

WHEREAS, both the Downtown Austin Alliance and Travis County have created affiliated economic development corporations; and

WHEREAS, cities around the state have created similar development corporations to leverage investments for economic development, affordable housing, and job creation/retention among other community priorities; and **WHEREAS**, Resolution No. 20141211-122 directed the City Manager within 180 days to deliver a feasibility study and timeline for creating an Economic Development Corporation or another appropriate corporate structure that could manage economic development projects, including the development of workforce housing; and

WHEREAS, a memo from the City's Economic Development Department dated October 12, 2016, in response to this directive concluded, "an EDC could assist in addressing affordability and equity issues currently impacting our residents and neighborhoods, small businesses, and cultural, creative and music venues" and recognized workforce housing as another possible area of focus; and

WHEREAS, the Economic Development Department has conducted significant research on the benefits of EDCs and has completed considerable work related to conceptualizing how such an entity could operate within the City of Austin; and

WHEREAS, City representatives from multiple departments attended the New York Economic Development Corporation's Real Estate Asset Management Peer Cities summit on January 19, 2017, to learn about the role economic development corporations play in New York City as well as in cities such as Miami, Los Angeles, Philadelphia, Boston, and Tucson; **NOW, THEREFORE**,

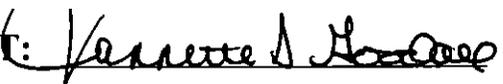
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Manager is directed to work with staff from Financial Services, Real Estate, and Economic Development to bring forward for Council consideration specific proposals for creating an Economic Development Corporation or similar entity that could create or support development of affordable housing, redevelopment, revitalization and other priority projects and goals of the City. The entity should also be capable of structuring public-private partnerships. The proposal should include a comparison of the benefits offered through different corporate structures and examples of the projects that could be undertaken by each such entity.

BE IT FURTHER RESOLVED:

The City Manager is further directed to return to Council no later than May 4, 2017.

ADOPTED: February 16, 2017

ATTEST: 
Jannette S. Goodall
City Clerk

RESOLUTION NO. 20141211-122

WHEREAS, corporations, such as Economic Development Corporations (EDCs) are a tool that can be used by municipal governments to be proactive about community development by providing a suite of pre-development and development services as well as access to financing; and

WHEREAS, the State of Texas gives cities the ability to finance new and expanded infrastructure or enterprises in their local communities through non-profit economic development corporations and other corporate structures such as local government corporations; and

WHEREAS, to establish a corporation that can assist with economic development, key decisions about the sources and application of funds as well as the governance structure need to be determined; and

WHEREAS, City of Austin studies and plans have frequently recommended that an EDC or other type of corporation be formed with focus areas that are either geographic (Innovation District, Transit Oriented Developments) or based on functional areas (workforce housing, minority business development); and

WHEREAS, there is an interest in addressing service gaps that exist with current community development; and

WHEREAS, the supply of workforce housing has already been identified as a current community need that a tool such as an EDC may be useful in addressing; **NOW, THEREFORE**,

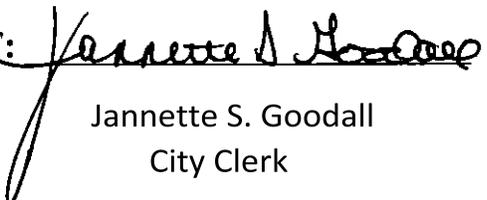
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Manager is directed to deliver a feasibility study for initiating and, administering a corporation such as an EDC, or other appropriate corporate structure to assist with the development of workforce housing within 180 days. The study should include a timeline for any feasible scenarios.

BE IT FURTHER RESOLVED:

The City Manager is directed to review all other prior recommendations for EDCs from city plans and analyze community needs that could be serviced through the use of an economic development corporation, or other appropriate corporate structure, and make a recommendation for other focus areas based on needs as well as potential sources and applications of funding within 180 days.

ADOPTED: _December 11, 2014

ATTEST: 
Jannette S. Goodall
City Clerk

Appendix B

Economic Opportunity and Affordability Strategies, *Strategic Direction 2023*

INTRODUCTION: Economic Opportunity and Affordability strategies focus on reducing economic disparities by understanding and addressing root causes, leveraging public-private partnerships, and supporting children and adults toward long-term success. These strategies also foster economic resiliency by strengthening the small-business sector, aligning worker skills and employer needs, and developing an inclusive workforce. In addition, several strategies address the need for better data and systems to ensure our efforts are cost-effective and impactful to the people we serve.

1. Influence the supply of jobs to support availability of and access to middle-skill jobs and expansion of jobs/employers to benefit communities experiencing high unemployment or lacking access to jobs.

2. Influence the skills of our local workforce by developing and implementing a City of Austin workforce development roadmap to meet regional goals. Align local workforce skills with needs of employers and track outcomes with a special focus on economic improvement for people of color and historically marginalized communities.

3. Assess outcomes of our programs that support entrepreneurship and designated small, minority-owned, women-owned and disadvantaged businesses and optimize for participant success (e.g., *business expansion, revenue, profitability*).

4. Serve as a model employer in addressing workplace inequity and influence other employers in Austin to adopt similar practices.

5. Develop and act on recommendations to reduce the number of households and businesses displaced from Austin due to unaffordability.

6. Implement “highest potential impact” actions identified in Austin’s Strategic Housing Blueprint.

7. Acknowledge Austin’s history of racial segregation and counter it by applying an equity perspective to the City’s land development code and associated programs and policies, aligning with community priorities as articulated in *Imagine Austin*, and ensuring affordable housing options throughout Austin.

8. Define and enact our response to homelessness focusing on efficient and effective use of our resources to address disparities, prevent homelessness, and support housing stability.

9. Develop and enact recommendations for supporting successful housing and employment outcomes for individuals re-entering the community following incarceration.

10. Create equitable access to quality Early Childhood Education (ECE) by supporting families who do not qualify for existing free programs and cannot afford quality programs on their own, increasing availability of quality ECE programs, and encouraging living wages for ECE providers.

11. Advance economic mobility by equipping and empowering families with wraparound services over a multi-year period so that parents can succeed in the workforce and children are prepared to succeed in adulthood.

12. Support a resilient business environment that supports a climate of innovation, entrepreneurship, and investment and reflects our community values by optimizing City processes and regulations to improve affordability and timeliness.

Appendix C

City of Austin Economic Development Entities

Public Facility Corporation, Local Government Code – Chapter 303

- Austin Convention Enterprises
- Austin-Bergstrom Landhost Corporation

Local Government Corporation, Transportation Code – Chapter 431

- Mueller Local Government Corporation
- Austin/Travis County Sobriety Center Local Government Corporation
- Waller Creek Local Government Corporation
- Austin-Rosewood Community Development Corporation
- Austin Sports Development Authority

Housing Finance Corporation, Texas Housing Finance Corporation Act - Chapter 394

- Austin Housing Finance Corporation

Development Corporation (Type A or Type B) – Development Corporation Act

- Austin Industrial Development Corporation
- ABIA Development Corporation

Community Land Trust – Local Government Code, Chapter 373B

- City of Austin Community Land Trust

Appendix D

Top 50 Texas Type B Economic Development Corporations
By 2010 Population Size

City	Corporation	Population (2010)
Fort Worth	FW Sports Authority	741,206
Brownsville	Brownsville Community Improvement Corp.	175,023
Pasadena	Pasadena Second Century Corp.	149,043
Mesquite	Mesquite Quality of Life Corp.	139,824
McKinney	McKinney CDC	131,117
McAllen	DC of McAllen	129,877
Frisco	Frisco CDC	116,989
Midland	Midland Football, Soccer & Baseball Complex Dev.	111,147
Wichita Falls	Wichita Falls 4B Sales Tax Corp.	104,553
Round Rock	Round Rock Transportation System DC	99,887
Tyler	Tyler 1/2 Cent Sales Tax Corp.	96,900
Lewisville	Lewisville DC	95,290
San Angelo	City of San Angelo DC	93,200
Pearland	Pearland EDC	91,252
Allen	Allen CDC	84,246
League City	League City 4B IDC	83,560
Sugar Land	Sugar Land 4B Corp.	78,817
Mission	Mission EDC	77,058
Pharr	Pharr EDC II	70,400
Harlingen	Harlingen Community Improvement Board	64,849
Flower Mound	Flower Mound CDC	64,669
North Richland Hills	North Richland Hills Park & Recreation Facilities Corp.	63,343
Victoria	Victoria Sales Tax DC	62,592
New Braunfels	New Braunfels Infrastructure/Improv. Corp.-4B	57,740
Mansfield	Mansfield Park Facilities DC	56,368
Conroe	Conroe IDC	56,207
Euless	Euless DC	51,277
DeSoto	DeSoto Park DC	49,047
Cedar Park	City of Cedar Park CDC	48,937
Galveston	Galveston IDC	47,743
Georgetown	Georgetown Transportation Enhancement Corp.	47,400
Bedford	Bedford Street Improvement EDC	46,979
Pflugerville	Pflugerville CDC	46,936
Grapevine	Grapevine 4B EDC	46,334
Cedar Hill	Cedar Hill CDC	45,028

Haltom City	Haltom City EDC	42,409
Wylie	Wylie Parks & Recreation Facilities DC	41,427
Keller	Keller DC	39,627
Coppell	Coppell Recreation DC	38,659
Duncanville	Duncanville Community & EDC	38,524
Hurst	City of Hurst	37,337
Burleson	Burleson Community Services DC	36,690
Lancaster	Lancaster Recreational DC	36,361
The Colony	The Colony CDC	36,328
Lufkin	Lufkin EDC	35,067
San Juan	San Juan EDC	33,856
La Porte	La Porte EDC	33,800
Schertz	Schertz EDC	31,465
Rosenberg	Rosenberg DC	30,618
Waxahachie	Waxahachie CDC	29,621

Appendix E

Economic Development Projects Authorized Under the Development Corporation Act

1. Creation and Retention of Jobs - projects for the creation or retention of primary jobs^a and required or suitable for the development, retention, or expansion of:

- a. Manufacturing and industrial facilities*
- b. Research and development facilities*
- c. Military facilities*
- d. Transportation facilities*
- e. Sewage and waste disposal facilities*
- f. Recycling facilities*
- g. Air or water pollution control facilities*
- h. Facilities for furnishing water to the public*
- i. Distribution centers*
- j. Small warehouse facilities for decentralized storage and distribution*
- k. Primary job training facilities for use by institutions of higher education*
- l. Regional or national corporate headquarters facilities*

2. Job Training - training required or suitable for the promotion and expansion of business and other enterprises

No specific projects noted

3. Infrastructure Improvement Projects - required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises

- a. Streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities*
- b. Telecommunications and Internet improvements*
- c. Beach remediation along the Gulf of Mexico*

4. Affordable Housing – land, buildings, equipment, facilities, and improvements required or suitable for promoting the development and expansion of affordable housing

No specific projects noted

5. Water Supply Facilities and Water Conservation Programs – land, buildings, equipment, facilities, and improvements required or suitable for the development or improvement of water supply facilities and/or the development and institution of water conservation programs

- a. Incentives for installing water saving fixtures
- b. Educational programs
- c. Brush control programs
- d. Replacement of malfunctioning or leaking water lines and other water facilities

6. Recreational or Community Facilities – land, buildings, equipment, facilities, and improvements required or suitable for amateur and professional sports and athletics, entertainment, tourism, conventions, and public park purposes as well as related infrastructure

- a. stadiums and ball parks
- b. auditoriums, amphitheaters, concert halls
- c. parks and park facilities
- d. museum and exhibition facilities
- e. related retail, food, parking, and transportation facilities
- f. related road, street, water and sewer, and other related enhancing improvements

7. Military Bases or Missions – limited to jobs related to export to regional, statewide, national, or international markets

- a. Promoting or supporting a military base in active use to prevent the possible future closure or realignment of the base*
- b. Attracting new military missions to a military base in active use*
- c. Redeveloping a military base that has been closed or realigned, including a military base closed or realigned according to the recommendation of the Defense Base Closure and Realignment Commission*

8. Career Center Projects Outside of Junior College District – for the benefit of an area not located in the taxing jurisdiction of a junior college district

- a. Career center related land, buildings, equipment, facilities, improvements and/or expenditures*

9. Airport Facilities or Other Projects Authorized by Certain Border

Municipalities – applies only to corporations created by municipalities located within 25 miles of an international border, having a population of less than 50,000 and/or a rate of unemployment greater than the State average

- a. Development or promotion of new or expanded business enterprises through transportation facilities through projects related to land, buildings, facilities, infrastructure, and improvements*

10. Infrastructure Projects by Corporations Authorized by Municipalities in Certain Border Counties – applies only to municipalities in counties bordering

the Rio Grande river, having a population of 500,000 or more, and with 4 or more municipalities within its boundaries with populations of 25,000 or more

a. Promotion or development of new or expanded business enterprises, including airports, ports, and sewer or solid waste disposal facilities through projects not supported with sales and use tax revenue

^a Primary jobs are jobs “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” and belonging to the North American Industry Classification System (NAICS) sectors specified by the Act.

Appendix F

Local Government Corporations Associated with Texas Cities

(Excludes LGCs associated wholly or in part with counties)

City	Name of Local Government Corporation
Alvin	Kendall Lakes TIRZ Redevelopment Authority
Amarillo	Amarillo Local Government Corporation
Arlington	Arlington Convention Center Development Corporation
Austin	Mueller Local Government Corporation
	Waller Creek Local Government Corporation
Baytown	Baytown Redevelopment Authority
Buda	Dupre Local Government Corporation
College Station	Spring Creek Local Government Corporation
Corpus Christi	Corpus Christi Port Facilities Corporation
	North Padre Island Development Corporation
Dallas	Dallas Convention Center Hotel Development Corporation
	Trinity River Corridor Local Government Corporation
Deer Park	Deer Park Community Development Corporation
Del Rio	Del Rio Economic Development Corporation
Edcouch	Edcouch Housing Finance Corporation-Delta Place Apartments
Edinburg	Local Government Corporation of Edinburg
El Paso	City of El Paso Downtown Development Corporation
	El Paso Children’s Museum Development Corporation
Elsa	Elsa Medical Facility Finance Corporation
	Elsa Vantage Medical Center Corporation
Floresville	River Bend Community Development Corporation
Freeport	City of Freeport Redevelopment Authority, A Local Government Corporation
Friendswood	Friendswood Downtown Economic Development Corporation
Galveston	Galveston Island Redevelopment Authority
Garland	Garland Foundation for Development, Inc.

Hidalgo	City of Hidalgo, Texas Municipal Facilities Corporation
Houston	Brays Oaks Redevelopment Authority
	East Downtown Redevelopment Authority
	Fourth Ward Redevelopment Authority
	Gulf Coast Community Protection and Recovery District, Inc.
	Gulfgate Redevelopment Authority
	Hardy/Near Northside Redevelopment Authority
	Harrisburg Redevelopment Authority
	Hobby Area Improvement Corporation
	Houston First Corporation
	Houston Forensic Science Center, Inc.
	Houston Parks Board LGC, Inc.
	Houston Recovery Center LGC
	Lake Houston Redevelopment Authority
	Land Assemblage Redevelopment Authority
	Leland Woods Redevelopment Authority II
	Main Street Market Square Redevelopment Authority
	Memorial-Heights Redevelopment Authority
	Midtown Redevelopment Authority
	Old Spanish Trail/Alameda Corridors Redevelopment Authority
	Penitas Redevelopment Authority
Sharpstown Economic Development Authority	
Southwest Houston Redevelopment Authority	
Spring Branch Redevelopment Authority	
The Greater Greenspoint Redevelopment Authority	
The South Post Oak Redevelopment Authority	
Uptown Development Authority	
Hutto	Frame Switch Local Government Corporation
Iowa Colony	Iowa Colony Development Authority
Katy	Katy Development Authority
Kilgore	Kilgore Redevelopment Authority

Kosse	Kosse Economic Development Corporation
La Porte	La Porte Redevelopment Authority
Leander	Leander Development Authority
Manvel	South Manvel Development Authority
Midland	Midland Spaceport Development Corporation
Midlothian	Midlothian Development Authority
Mission	Mission Redevelopment Authority
Missouri City	Missouri City Recreation and Leisure Local Government Corporation
Nassau Bay	Nassau Bay Redevelopment Authority
New Braunfels	New Braunfels Development Authority
Pearland	Development Authority of Pearland
Port Neches	Port Neches Riverfront Development Authority
Richwood	City of Richwood Economic Development Corporation
Rockwall	County of Rockwall Emergency Services Corporation
San Antonio	City of San Antonio, Texas Empowerment Zone Development Corporation
	City of San Antonio, Texas Municipal Facilities Corporation
	HemisFair Park Area Redevelopment Corporation
Sealey	Sealy Development Authority
Snook	Snook Recreation and Festival Authority
Stafford	East Fort Bend County Development Authority
Sugar Land	Sugar Land Town Square Development Authority
Texas City	Lago Mar Development Authority
The Colony	The Colony Local Development Corporation
Tyler	Tyler Development Authority
Whitesboro	Texoma Area Solid Waste Authority

Note. As of August 2018.

Appendix G

Primary Legislation Related to Local Government Corporations

Transportation Code, Chapter 431, Local Government Corporations

Sec. 431.101. CREATION OF LOCAL GOVERNMENT CORPORATION. (a) A local government corporation may be created to aid and act on behalf of one or more local governments to accomplish any governmental purpose of those local governments. To be effective, the articles of incorporation and the bylaws of a local government corporation must be approved by ordinance, resolution, or order adopted by the governing body of each local government that the corporation is created to aid and act on behalf of.

(b) A local government corporation has the powers of a corporation authorized for creation by the commission under this chapter.

(c) The provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) relating to powers, standards of conduct, and interests in contracts apply to the directors and officers of the local government corporation.

(d) A provision of this chapter relating to the creation, dissolution, administration, or supervision of a corporation by the commission does not apply to a local government corporation.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1129, Sec. 5.01(4), eff. September 1, 2011.

(f) A member of the board of directors of a local government corporation:

(1) is not a public official by virtue of that position; and

(2) unless otherwise ineligible, may be appointed to serve concurrently on the board of directors of a reinvestment zone created under Chapter 311, Tax Code.

(g) A local government corporation must comply with all state law related to the design and construction of projects, including the procurement of design and construction services, that applies to the local government that created the corporation.

(h) A local government corporation formed by a navigation district shall not condemn a right-of-way through any part of a municipality without the consent of the municipality's governing body.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.24, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 983, Sec. 12, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1370, Sec. 2, 3, eff. June 16, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 15, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(4), eff. September 1, 2011.

Sec. 431.102. APPLICATION OF CHAPTER 394, LOCAL GOVERNMENT CODE. (a) In the manner in which Chapter 394, Local Government Code, applies to a corporation created under that chapter, that chapter applies to:

(1) the manner in which a local government corporation is created and dissolved;

(2) the appointment of the board of a local government corporation and the members' terms of service;

(3) the manner and the conditions under which the board serves; and

(4) the form, execution, approval, filing, and amending of the articles of incorporation and bylaws of a local government corporation.

(b) The property of a local government corporation and a transaction to acquire the property is exempt from taxation in the same manner as a corporation created under Chapter 394, Local Government Code, except that property of a local government corporation created by a municipal power agency that was created under Subchapter C, Chapter 163, Utilities Code, is not exempt from ad valorem taxation if the property is located outside of the boundaries of each of the municipalities that created the municipal power agency.

(c) The requirement of Section 394.021(a), Local Government Code, that all directors must be residents of the local government shall not be applicable to directors of a local government corporation except that a person may not be appointed to the board of a local government corporation if the appointment of that person would result in less than a majority of the board members being residents of the local government.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 983, Sec. 13, eff. June 18, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 654 (S.B. 1120), Sec. 1, eff. June 17, 2011.

Sec. 431.103. CONTRACTS WITH POLITICAL SUBDIVISIONS. A local government corporation may contract with a political subdivision of this state in the manner and to the same extent as any other corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.104. ASSUMPTION OF POWERS AND DUTIES. (a) The governing body of a local government may assume for the local government the powers and duties of a local government corporation created by the local government.

(b) A local government that assumes the powers and duties of a local government corporation assumes the assets and liabilities of the corporation.

(c) The powers and duties of a local government corporation created by more than one local government may be assumed only if each local government that created the corporation agrees to the assumption.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.105. CONTRACTUAL AUTHORITY. (a) A state agency, including the commission, or a political subdivision may contract with a local government corporation to accomplish a governmental purpose of the sponsoring local government in the same manner and to the same extent that it:

(1) may contract with any other corporation created under this chapter; and

(2) is authorized to contract under Subchapter A, Chapter 472.

(b) A local government may contract with a corporation to accomplish the purposes of the sponsoring local government in the manner provided under Subchapter C, Chapter 224.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.106. PUBLIC SAFETY RULES. A local government that creates a local government corporation may establish and enforce traffic and other public safety rules on a toll road, toll bridge, or turnpike of the corporation. Local governments that jointly create a local government corporation may jointly establish and enforce those rules.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.107. INCOME OF LOCAL GOVERNMENT CORPORATION. (a) A local government creating a local government corporation is entitled at any time to receive any income earned by the local government corporation that is not needed to pay the corporation's expenses or obligations.

(b) The earnings of a local government corporation may not benefit a private interest.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.108. GOVERNMENTAL FUNCTIONS. (a) A local government corporation is a governmental unit as that term is used in Chapter 101, Civil Practice and Remedies Code.

(b) The operations of a local government corporation are governmental, not proprietary, functions.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.109. CONTRACTS FOR HISTORICALLY UNDERUTILIZED BUSINESSES. (a) This section applies only to a local government corporation serving a county with a population of more than 3.3 million.

(b) A local government corporation shall set and make a good faith effort to meet or exceed goals for awarding contracts or subcontracts associated with a project it operates, maintains, or constructs to historically underutilized businesses.

(c) The goals must equal or exceed:

(1) the federal requirement on federal money used in highway construction and maintenance; and

(2) the goals adopted by the department under Section 201.702.

(d) The goals apply to the total value of all contracts and subcontracts awarded, including contracts and subcontracts for construction, maintenance, operations, supplies, services, materials, equipment, professional services, the issuance of bonds, and bond counsel.

(e) In this section, "historically underutilized business" means:

(1) a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities is owned, managed, and in daily operations controlled by one or more persons who have been historically underutilized because of their identification as members of certain groups, including African Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans, who have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(2) a sole proprietorship formed for the purpose of making a profit that is 100 percent owned and in daily operation is controlled by a person described by Subdivision (1);

(3) a partnership formed for the purpose of making a profit in which at least 51 percent of the assets and interest in the partnership are owned by one or more persons described by Subdivision (1) and who also have proportionate interest in the control, daily operation, and management of the partnership's affairs;

(4) a joint venture in which each entity in the joint venture is a historically underutilized business; or

(5) a supplier contract between a historically underutilized business and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies or materials.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 132, eff. September 1, 2011.

Sec. 431.110. COMPETITIVE BIDDING EXCEPTION FOR CERTAIN IMPROVEMENTS. Any competitive bidding requirement or restriction on a local government that created a local government corporation does not apply to an expenditure by the local government corporation for:

(1) an improvement:

(A) that is constructed in a reinvestment zone; and

(B) the construction of which is managed by a private venture participant; or

(2) an improvement constructed by the corporation for which more than 50 percent of the construction is funded by a private entity.

Added by Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 16, eff. September 1, 2007.

Sections of Local Government Code, Chapter 394 Applicable to Local Government Corporations as Specified in Transportation Code, Chapter 431

Sec. 394.011. APPLICATION FOR INCORPORATION. (a) The governing body of a local government shall consider a written application for the incorporation of a housing finance corporation filed with the governing body by at least three residents of the local government who are citizens of this state and at least 18 years of age.

(b) If the governing body by resolution determines that the formation of the housing finance corporation is wise, expedient, necessary, or advisable and approves the form of the proposed articles of incorporation of the corporation, the articles may be filed as provided by this chapter. A corporation may not be formed unless the application is filed with the governing body and the governing body adopts the resolution.

(c) The approval of the articles of incorporation of one housing finance corporation does not preclude the approval by the governing body of the articles of incorporation of additional corporations that have names or designations sufficient to distinguish them from previously created corporations. The governing body may not permit the incorporation on its behalf of more than one corporation that has the power to make or acquire home mortgages, or to make loans to lending institutions, the proceeds of which are to be used to make home mortgages or to make loans on residential developments.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.012. APPLICATION FOR INCORPORATION OF, AND OTHER SPECIAL PROVISIONS FOR, JOINT CORPORATION. (a) The governing bodies of more than one local government may consider a written application for the incorporation of a joint housing finance corporation to act on behalf of the local governments filed by at least three residents of each sponsoring local government who are citizens of this state and at least 18 years of age.

(b) If each governing body by resolution determines that the formation of the joint housing finance corporation is wise, expedient, necessary, or advisable and approves the form of the proposed articles of incorporation of the joint corporation, the articles may be filed as provided by this chapter. The joint corporation may not be formed unless the application is filed with the governing body of each sponsoring local government and each governing body adopts the resolution.

(c) The approval of the articles of incorporation of the joint housing finance corporation does not preclude the approval by the governing body of the articles of incorporation of additional corporations that have names or designations sufficient to distinguish them from previously created corporations. A governing body that creates the joint corporation may not later create a corporation that has the power to make home mortgages or to make loans to lending institutions, the proceeds of which are to be used to make home mortgages or to make loans on residential developments.

(d) Each incorporator or director of the joint housing finance corporation must reside in a sponsoring local government. The initial directors of the joint corporation shall be appointed by all the sponsoring local governments. Succeeding directors shall be appointed by one or more of the sponsoring local governments as provided in the articles of incorporation or the bylaws of the joint corporation.

(e) The sponsoring local governments of the joint housing finance corporation are considered to be one local government for the purposes of this chapter. If the action of the governing body of a local government is required, this chapter requires the action to be taken by the governing body of each sponsoring local government of the joint corporation.

(f) The joint housing finance corporation has all the powers granted to a housing finance corporation under this chapter. The joint corporation acts on behalf of each of the sponsoring local governments as provided by the articles of incorporation.

(g) The net earnings of the joint housing finance corporation and funds and properties of the joint housing finance corporation on dissolution shall be disbursed to the sponsoring local governments as provided by the articles of incorporation.

(h) For the purposes of determining the applicable population for Section 1372.026, Government Code, the joint housing finance corporation may only consider areas in its own state planning region.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1420, Sec. 10, eff. June 20, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.344, eff. Sept. 1, 2001.

Sec. 394.013. INCORPORATORS. Three or more residents of the local government who are at least 18 years of age may act as incorporators of the housing finance corporation by signing, verifying, and delivering in duplicate to the secretary of state the articles of incorporation for the corporation. An incorporator may be a member of the governing body, an officer, or an employee of the local government.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.014. ARTICLES OF INCORPORATION. (a) The articles of incorporation of the housing finance corporation must contain:

- (1) the name of the corporation;
- (2) a statement that the corporation is a public, nonprofit corporation;
- (3) the period of duration, which may be perpetual;
- (4) a statement that the corporation is organized solely to carry out the purposes of this chapter;
- (5) a statement that the corporation is to have no members;
- (6) any provision not inconsistent with law, including any provision required or permitted under this chapter to be included in the bylaws, for the regulation of the internal affairs of the corporation;
- (7) the street address of the corporation's initial registered office, which must be located in the local government, and the name of its initial registered agent at that address;
- (8) the number of directors constituting the initial board of directors and the names and addresses of those directors, with a statement that each of them resides in the local government;

(9) the name and street address of each incorporator with a statement that each of them resides in the local government; and

(10) a statement that a resolution approving the form of the articles of incorporation has been adopted by the governing body of the local government and the date of the adoption of the resolution.

(b) A housing finance corporation may exercise any power prescribed by this chapter regardless of whether the power is stated in its articles of incorporation. The articles may prohibit the exercise of any power prescribed by this chapter.

(c) Unless the articles of incorporation provide that a change in the number of directors may be made only by amendment to the articles, a change in the number of directors may be made by an amendment to the bylaws. In all other cases if a provision of the articles is inconsistent with the bylaws, the articles provision controls.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.015. FILING OF ARTICLES OF INCORPORATION; ISSUANCE OF CERTIFICATE OF INCORPORATION. (a) Duplicate originals of the articles of incorporation must be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to this chapter, the secretary shall, when a \$25 fee is paid:

- (1) endorse on each duplicate original the word "Filed" and the date of the filing;
- (2) file one of the duplicate originals in the office of the secretary of state; and
- (3) issue a certificate of incorporation, to which the secretary shall affix the other duplicate original.

(b) The secretary of state shall deliver the certificate of incorporation, with the affixed duplicate original, to the incorporators or their representatives.

(c) On the issuance of the certificate of incorporation, corporate existence begins. The certificate of incorporation is conclusive evidence that all conditions precedent required to be performed by the local government and the incorporators have been met and that the housing finance corporation is properly incorporated under this chapter.

(d) The housing finance corporation constitutes a public instrumentality and a nonprofit corporation under the name stated in the articles of incorporation. The corporation does not constitute a municipality, county, or other political corporation or subdivision of this state. The corporation may issue bonds and carry out the public purposes for which it is incorporated on behalf of and for the benefit of the general public, the local government, and this state.

(e) A copy of the articles of incorporation shall be delivered to the Texas Department on Aging.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.016. AMENDMENT OF ARTICLES OF INCORPORATION. (a) The articles of incorporation may be amended at any time in the manner provided by this section.

(b) The board of directors of the housing finance corporation may file a written application with the governing body of the local government requesting permission to amend the articles and specifying the proposed amendment. The governing body shall consider the application. If the governing body by resolution determines that the making of an amendment is wise, expedient, necessary, or advisable, authorizes the amendment, and approves the form of the amendment the board of directors may amend the articles by adopting the amendment at a meeting and delivering articles of amendment to the secretary of state.

(c) At a meeting, the governing body in its sole discretion may amend the articles of incorporation to change the structure, organization, programs, or activities of the housing finance

corporation, including the power to terminate the corporation, subject to any limitation on the impairment of contracts. The governing body shall deliver the articles of amendment to the secretary of state.

(d) The articles of amendment must be executed in duplicate. The president or vice-president of the housing finance corporation and the secretary or assistant secretary of the corporation must execute articles of amendment adopted by the board of directors. The presiding officer of the governing body of the local government and the local government's secretary or clerk must execute articles of amendment adopted by the governing body. The articles of amendment must be verified by one of the officers signing the articles. The articles of amendment must contain:

- (1) the name of the corporation;
- (2) if the amendment alters an original or amended provision of the articles of incorporation, an identification by reference to or description of the altered provision and a statement of the text as amended;
- (3) if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of the added provision; and
- (4) the date of the meeting of the board of directors or the governing body at which the amendment was adopted and a statement that the amendment received a majority vote of the corporation's directors or the governing body's members in office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.017. FILING OF ARTICLES OF AMENDMENT; ISSUANCE OF CERTIFICATE OF AMENDMENT. (a) Duplicate originals of the articles of amendment must be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, the secretary shall, when a \$25 fee is paid:

- (1) endorse on each duplicate original the word "Filed" and the date of the filing;
- (2) file one of the duplicate originals in the office of the secretary of state; and
- (3) issue a certificate of amendment, to which the secretary shall affix the other duplicate original.

(b) The secretary of state shall deliver the certificate of amendment, with the affixed duplicate original, to the housing finance corporation or its representative.

(c) On the issuance of the certificate of amendment, the amendment takes effect and the articles of incorporation are amended accordingly.

(d) An amendment does not affect an existing cause of action or any pending action to which the housing finance corporation is a party, or the existing rights of persons other than members. If the amendment changes the housing finance corporation's name, the change does not abate a suit brought by or against the corporation under its former name.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.021. BOARD OF DIRECTORS. (a) A housing finance corporation must have a board of directors in which all the powers of the corporation are vested. The board may consist of any number of directors, all of whom must be residents of the local government. A director may be a member of the governing body, an officer, or an employee of the local government.

(b) Members of the initial board of directors hold office for the period specified in the articles of incorporation. After the initial directors, the governing body of the local government shall appoint directors in the manner and for the terms provided by the articles of incorporation or the bylaws. Directors may be divided into classes, and the terms of office of the various classes may differ.

(c) Each director shall hold office for the term for which the director is elected or appointed and until the director's successor is elected or appointed and has qualified. A director may be removed from

office under any removal procedure provided by the articles of incorporation or the bylaws. The governing body shall fill any vacancy in the board of directors by appointment in the manner provided by the articles of incorporation or the bylaws.

(d) A majority of the directors constitutes a quorum. The directors may take action by a majority vote when a quorum is present. Board meetings may be held inside or outside this state. A regular meeting may be held with or without notice as provided by the bylaws. A special meeting may be held on notice as provided by the bylaws.

(e) The officers of a housing finance corporation consist of a president, one or more vice-presidents, a secretary, a treasurer, and other officers and assistant officers as considered necessary. Each officer shall be elected or appointed in the manner and for the term provided by the articles of incorporation or the bylaws.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.022. ORGANIZATIONAL MEETING. (a) After the issuance of the certificate of incorporation, the board of directors named in the articles of incorporation, at the call of a majority of the incorporators, shall hold an organizational meeting to adopt bylaws, elect officers, and consider other issues that come before the meeting. The meeting may be held inside or outside this state.

(b) The incorporators who call the meeting must give at least three days' notice of the meeting to each director by mailing to the director a notice that states the time and place of the meeting.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.026. DISSOLUTION OF CORPORATION. (a) If the board of directors determines by resolution that the purposes for which the housing finance corporation was formed have been substantially met and that all bonds issued by and all obligations incurred by the corporation have been fully paid, the directors shall execute a certificate of dissolution stating those facts and declaring that the corporation is dissolved. The directors shall file the certificate for recording in the office of the secretary of state. The directors shall execute the certificate under the corporation's seal.

(b) On the filing of the certificate of dissolution, the corporation is dissolved. The title to all funds and property owned by the corporation at the time of dissolution vests in the local government to be used exclusively by the local government to provide for the housing needs of individuals and families of low and moderate incomes, including single-family units and mixed income multifamily projects found by the local government to serve the interests of low and moderate income individuals and families if the single-family and multifamily projects have as a major purpose the provision of safe, sanitary, and decent housing for individuals and families of low income. The funds and property shall be promptly delivered to the local government.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 951, Sec. 8, eff. June 16, 1995

