

Economic Development

Presented by:
T. Daniel Santee

Partner | DNRBSZ

AUS | SA | RGV | TxGC



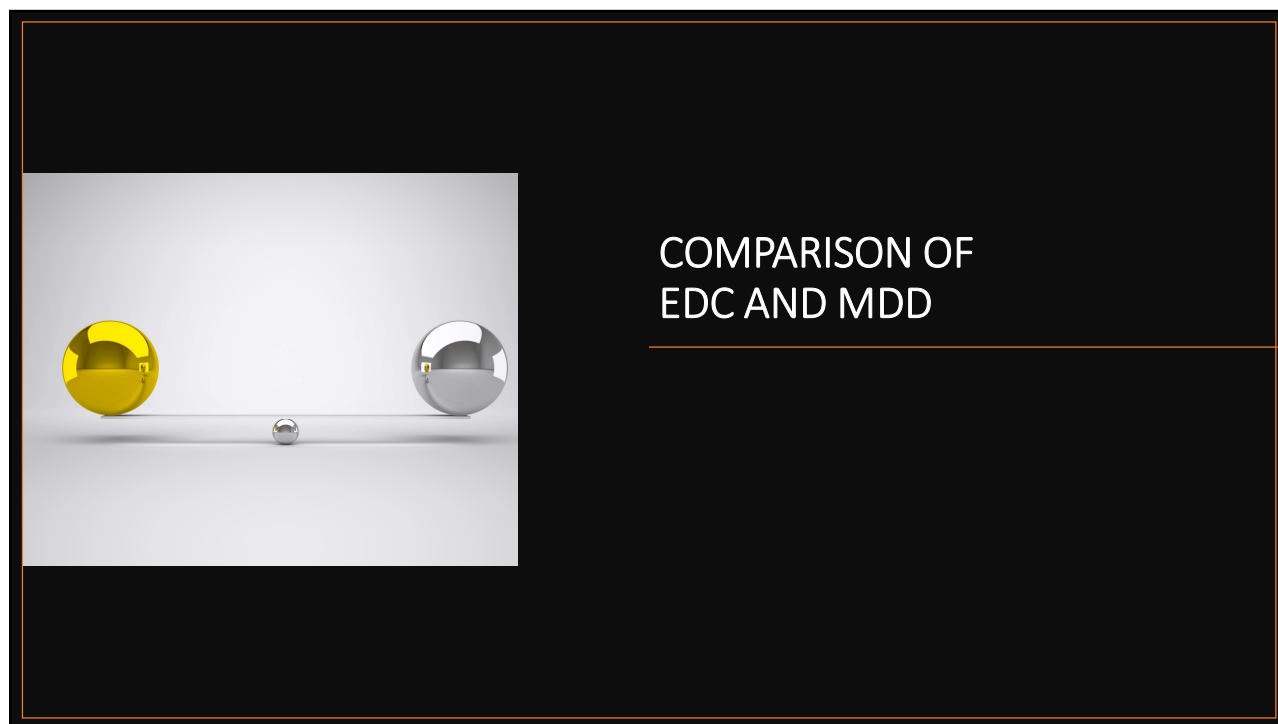
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ECONOMIC DEVELOPMENT OPTIONS FOR SMALL COMMUNITIES

- Economic Development Corporations
- Municipal Development Districts
- Chapter 380/381 Agreements
- Neighborhood Empowerment Zones
- Tax Increment Reinvestment Zones
- Public Improvement Districts



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Understanding the Fundamental Differences		
Nature of the Entities		
Type A	Type B	MDD
Misc. limiting provisions	All Cities	All Cities
A corporation which administers the sales and use tax	A corporation which administers the sales and use tax	Not a corporation - a district and political subdivision of the state and the city
Files Articles of Incorporation	Files Articles of Incorporation	No Articles of Incorporation (not a corporation)
Corporation is governed by the Development Corporation Act of 1979 found now in Chapters 501-505 of the Local Gov't Code ("LGC") and the Texas Non-Profit Corporation Act (Business Organizations Code formerly Art. 1396-1.01. V.T.C.S)	Same as Type A	Created by LGC Ch. 377

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Understanding the Fundamental Differences

Nature of the Entities		
<u>Type A</u>	<u>Type B</u>	<u>MDD</u>
Bylaws	Bylaws	Authorized to adopt rules to govern the operation of the district and its employees and property [LGC §377.071(5)]
Not a political subdivision	Not a political subdivision	Political subdivision of the state and the city [LGC §377.022]
Boundaries: City limits	Boundaries: City limits	Boundaries of MDD: (1) within all or part of city limits; (2) within all or part of city limits; and ETJ; or (3) within all or part of ETJ
Tax: 1/8, 1/4, 3/8 or 1/2 of 1% of sales and use tax	Same	Same

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Understanding the Fundamental Differences

Board of Directors		
<u>Type A</u>	<u>Type B</u>	<u>MDD</u>
At least 5 members; appointed by the city council	Seven members exactly; appointed by the city council; three members of the Board must not be employees, officers or city council members	Governed by a board of at least four directors; appointed by the city council; City employees and members of the City Council may be on the board
May be removed by city council at will	Same	Same
Terms not to exceed 6 years	2-year terms (not necessarily staggered)	Staggered two-year terms
Qualification are not specified by statute	If City has population less than 20,000, must be a resident of the city; of the county in which the majority of the city is located; or reside within 10 miles of the city in a county which borders the county in which a majority of the city is located.	Director must reside within boundaries of the City or the MDD

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Understanding the Fundamental Differences

Board of Directors		
<u>Type A</u>	<u>Type B</u>	<u>MDD</u>
All expenditures authorized require approval by City Council	Same	Establishes a Development Project Fund by resolution to pay costs of planning, acquiring, establishing, developing, constructing or renovating a project, and for operating and maintaining a project. [LGC §377.072]
Conflict of Interest: Ch. 171, LGC does not apply; Bylaws apply	Conflict of Interest: Ch. 171, LGC does not apply; Bylaws apply	Conflict of Interest: Ch. 171, LGC does apply; and may not have a personal interest in a contract executed by the district [LGC §377.051]
Compensation: Reimbursement only	Same	Same [LGC §377.052]
Quorum: Majority of entire membership	Same Majority of entire membership	Quorum: Not specified in LGC Ch. 377, Gov't Code Ch. 551 is applicable

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Understanding the Fundamental Differences

Public Hearings and Performance Agreements		
<u>Type A</u>	<u>Type B</u>	<u>MDD</u>
<p>Public Hearings: Not required for Type A projects.</p> <p>But they are required for Type B (LGC Ch. 505) projects – along with a special election to be held on a uniform election date. [LGC §504.152 - §504.153]</p> <p>Plus: two (2) separate readings are required by the City Council if the project expenditure is \$10,000 or more. [LGC §505.158(b)]</p>	<p>Public Hearings: At least one public hearing is required on a proposed project before spending money to undertake the project <u>unless</u> the project is a project that is defined under Subchapter C, Ch. 501 of the LGC) <u>and</u> if the population of the city is < 20,000. [LGC §505.159]</p>	<p>None; no publications, public hearings, performance agreements, or elections are required.</p>
None unless a <u>Type B project</u>	60 day waiting period to expend funds following first public notice of a Type B project only	None
Performance agreement required	Same	None

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Economic Development Corporations

- Texas Local Government Code
 - Chapter 501 - Provisions governing Development Corporations
 - Chapter 502 – Provisions Applicable to Type A and Type B Corporations
 - Chapter 504 – Type A Corporations
 - Chapter 505 – Type B Corporations




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Additional Authority

- Texas Business Organizations Code
 - Chapter 22 – Non-Profit Corporations Act
 - See Texas Local Government Code Section 501.054:
GENERAL POWERS, PRIVILEGES, AND FUNCTIONS.
(a) A corporation has the powers, privileges, and functions of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or formed under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code. To the extent that the provisions governing powers, privileges, and functions of a nonprofit corporation under those laws are in conflict with or inconsistent with provisions of this subtitle governing powers, privileges, and functions of a nonprofit corporation, the provisions of this subtitle prevail.



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Revenue Use – Type A Sales Tax

Tax is primarily intended for manufacturing and industrial development primary job creation and may be used to acquire or pay for land, building equipment, facilities, expenditures, targeted infrastructure and improvements

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Revenue Use – Type B Sales Tax

Provides cities with a wider range of uses and includes projects for quality-of-life improvements, including economic development that attracts and retains primary employers.



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Revenue Use - MDD Sales Tax

- "project" as that term is defined by Sections 505.151-505.158 (Type B Projects)
- a convention center facility or related improvement such as a convention center, civic center, civic center building, civic center hotel, or auditorium, including parking areas or facilities that are used to park vehicles and that are located at or in the vicinity of other convention center facilities.



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Specific Statutory Provisions to Remember for Smaller Communities

- 504.171 allows cities smaller than 7500 that has a Type A and Type B EDC to authorize by ordinance, the Type A to do Type B projects
- 505.158 broadens the definition of project for cities smaller than 20,000
- 505.159 waives the public hearing requirement for a city smaller than 20,000 when the project is defined by 501 Subchapter C
- 505.052 authorizes appointment of directors who live outside the city for communities of fewer than 20,000

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Budgeting Requirements for Projects and Marketing

Critical that your finance director or EDC accountant establish project funds that carry forward encumbered amounts for each fiscal year of a project



Carry forward and designate any unspent marketing funds for use in future years...can always be undesignated if needed for other expenditures



City Council approves EDC programs, expenditures and bylaws....this does not necessarily translate to everything an EDC does having to go to the City Council for approval....though it can if so desired by the City Council



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THE AUTHORIZING UNIT'S ROLE

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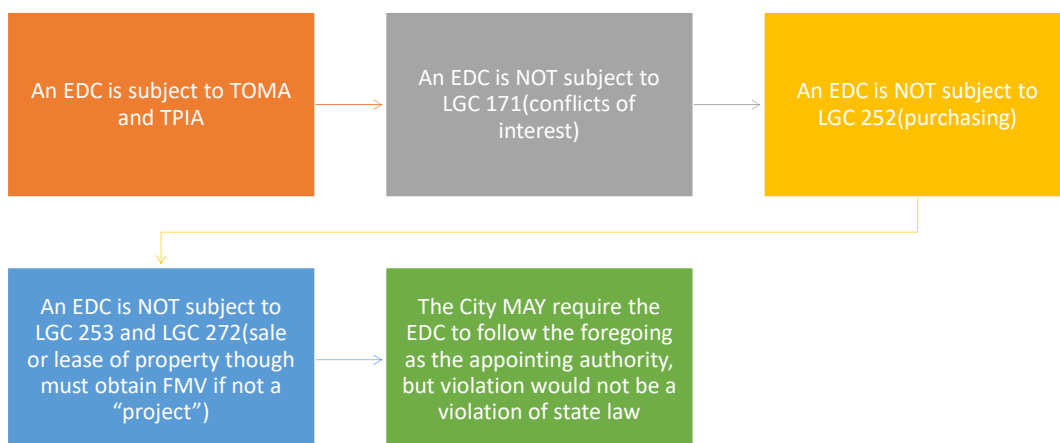
The “Authorizing Unit”

Texas Local Government Code

- Section 501.051 - Authorizes Creation of the Corporation
- Section 501.056 - Approves the Certificate of Formation
- Section 501.062 – Appoints the Board of Directors
- Section 501.064 - Approves the By-laws
- Section 501.073 – Approves all programs and expenditures of the corporation and annually reviews any financial statements; is entitled to access to the corporate books and records
- Section 501.007 – a municipality may not lend its credit or grant public money or another thing of value in aid off the corporation except under a contract authorized under TLGC Section 380.002

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Do we have to follow all the City rules?



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Can the City Spend EDC Money?

"The Act provides that the governing body of a city that has created a development corporation will approve all programs and expenditures of the corporation, thus authorizing the governing body to disapprove programs and expenditures, but the Act does not authorize the city's governing body to spend the development corporation's sales and use taxes." [Tex. Att'y Gen. Op. No. GA-0086 \(2003\)](#)

More general provisions of the Act expressly contemplate that the authorizing unit that created the development corporation will continue to exercise control over it. See generally [Gaut v. Amarillo Econ. Dev. Corp., 921 S.W.2d 884, 887 \(Tex. App.-Austin 1996, no writ\)](#) (per curiam) (stating that development corporation's "broad powers" are subject to creating unit's control); House Comm. on Ways & Means, Bill Analysis, Tex. S.B. 971, 71st Leg., R.S. (1989) at 2 (stating that section 4A development corporation would be within city council's "total control"); see also Tex. Att'y Gen. Op. No. JC-0553 (2002) at 4 ("A creating unit retains control and responsibility over the corporation.").

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Structure

Wholly "Independent"

Partially "Independent"

Wholly "Dependent"

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REAL PROPERTY...THE BEST TOOL IN THE TOOLBOX



Property owned by a City, County, or EDC is the single best tool you have to entice or attract a business



You are placing property back on the tax roll



You can enter long term leases rather than selling if preferred



You can expend funds on property you own without performance agreements or limitation to make the property shovel ready



Your recapture provisions on property are more meaningful and achievable

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PARTNERING WITH THE CITY ON INFILL INITIATIVES

- Small communities struggle to attract business and new construction to older portions of town
- Depressed property values can be reversed through economic development investment
- Affordable housing is broader than you may think and is a great option for infill development and expanding housing stock to relieve blight
- Homebuilders are excellent partners in the process
- City can provide lots, EDC can upgrade infrastructure and incentives and home builders are able to construct with no overhead and sell new homes



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Land Banking and other options: the Basics			
Entity	Land Bank	Type B	Chapter 380
Governing Law	TLGC 379E	TLGC 505.153	TLGC 380
Purpose	Acquisition of vacant real property at tax lien foreclosure sale for purposes of affordable housing development	Land, buildings, equipment, facilities, and improvements found to be required or suitable for the promotion of development and expansion of affordable housing, as described by 42 U.S.C. Section 12745.	Permits municipalities to establish programs for loans and grants "to promote state or local economic development and to stimulate business and commercial activity in the municipality."
Affordability Requirements	Mortgage payment or rent no more than 30% AMFI	<p><u>Rentals:</u> Rent payments \leq 30 % of adjusted income for family w/income \leq 65% of AMI</p> <p><u>Purchases:</u> Initial purchase price \leq 95% of the median purchase price for the area; buyer/family must be "low income;" resale restrictions; energy efficiency requirements</p>	N/A
Who Can Create?	Generally, cities with a population of less than 1.8M	<ul style="list-style-type: none"> ➤ Those which can create a Type A EDC ➤ Those in a county with 500k or more; combined tax rate 8.25% or less ➤ Cities with population of 400k+ 	Any municipality

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Land Banking and other options: other considerations			
Entity	<u>Land Bank</u>	<u>Type B</u>	<u>Chapter 380</u>
Governing Law	TLGC 379E	TLGC 505	TLGC 380
Other Requirements	<ul style="list-style-type: none"> ➤ Adoption of Land Bank Program ➤ Program must comply with annual plan (requires public hearing) ➤ Land must be transferred to qualified participating developer within 3 years ➤ Deed restrictions/reversionary rights required for subsequent transfers to maintain affordability intent ➤ CHDOs get ROFR in subsequent transfer 	<ul style="list-style-type: none"> ➤ Requires findings by Type B EDC Board that land, buildings, equipment, facilities, and improvements are required or suitable for the development and expansion of affordable housing (Resolution) ➤ Requires Performance Agreement under TLGC 501.158 if development will be undertaken by private business entity 	<ul style="list-style-type: none"> ➤ Requires establishment of a program to implement the incentives ➤ Provide safeguards/clawbacks in 380 agreements to ensure the public purpose is served by the incentives
Benefits	<ul style="list-style-type: none"> ➤ Allows Land Bank to bypass tax foreclosure auction for property sale and purchase directly 	<ul style="list-style-type: none"> ➤ No right of redemption ➤ Doesn't have to be tax-foreclosed property 	<ul style="list-style-type: none"> ➤ Flexibility
Issues	<ul style="list-style-type: none"> ➤ Limited to certain tax-delinquent vacant properties (five-year delinquency min.) ➤ Numerous post-conveyance requirements ➤ Properties subject to right of redemption by taxpayer ➤ Acquisition requires permission from other taxing entities via ILA 	<ul style="list-style-type: none"> ➤ Resale restrictions apply as per Federal law ➤ 60-day notice period following public notice (unless provided for in ballot language) ➤ Additional Federal Requirements 	<ul style="list-style-type: none"> ➤ Incentives must be found to promote economic development and stimulate business and commercial activity


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Land Banking and other options: other considerations			
Entity	<u>Land Bank</u>	<u>Type B</u>	<u>Chapter 380</u>
Governing Law	TLGC 379E	TLGC 505.153	TLGC 380
Administration	Governing body of municipality	Type B EDC board; projects and expenditures subject to approval by authorizing unit (municipality)	Governing body of municipality
Collaboration among these or other entities?	<ul style="list-style-type: none"> ➤ No express prohibition against working with EDC or Chapter 380 ➤ Public hearing on plan requires notice to all CHDOs and neighborhood associations identified as serving the neighborhoods where properties are located ➤ Public hearing also requires 60+ days prior availability of program to be available to public 	<ul style="list-style-type: none"> ➤ No express prohibition against administering Land Bank. ➤ 379E has stricter thresholds for "affordable housing" than TLGC 505.153/42 USC Section 12745 	<ul style="list-style-type: none"> ➤ Commonly used for the grant of or to repay permitting and other fees (i.e. utility connections)

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Neighborhood Empowerment Zones

- A municipality may create a neighborhood empowerment zone covering a part of the municipality if the municipality determines the creation of the zone would promote the creation or rehabilitation of affordable housing or increase economic development in the zone
- A municipality may create a zone if the governing body of the municipality adopts a resolution containing a finding of the above, the boundaries of the zone, increase the public health/safety/welfare, and meets the requirement of Tax Code 312.202
- (312.202(6))be reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the municipality

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Neighborhood Empowerment Zones

- In addition to other powers that a municipality may exercise, a municipality may:
 - waive or adopt fees related to the construction of buildings in the zone, including fees related to the inspection of buildings and impact fees
 - enter into agreements, for a period of not more than 10 years, for the purpose of benefiting the zone, for refunds of municipal sales tax on sales made in the zone
 - enter into agreements abating municipal property taxes on property in the zone subject to the duration limits of Section [312.204](#), Tax Code
 - set baseline performance standards, such as the Energy Star Program as developed by the Department of Energy, to encourage the use of alternative building materials that address concerns relating to the environment or to the building costs, maintenance, or energy consumption

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Tax Increment Reinvestment Zone (Tax Code 311)

- When a municipality or county creates a Tax Increment Reinvestment Zone (TIRZ), it records all taxable value of property within the zone.
- The year a TIRZ is created is the base year. The appraised value of property within the zone during the base year is the base value.
- As development or redevelopment occurs, the appraised value of the property in the zone should increase. The difference between the increased appraised value of property in the zone and the base value is the captured appraised value.
- $\text{Current Appraised Value} - \text{Base Value} = \text{Captured Appraised Value}$
- Taxes levied and collected on the base value remain with the participating taxing units.
- The portion of the taxes collected on the captured appraised value, or tax increment, is deposited in a Tax Increment Fund (TIF). Revenues in the TIF can only be used for improvement projects in the TIRZ.
- The duration of the TIRZ is set when it is created. When the TIRZ ends, all taxes from the zone go to the taxing units in the zone.

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Public Improvement Districts (LGC 372)

What is a Public Improvement District (PID)?

A Public Improvement District is a special district created by a City or County under the authority of Chapter 372 of the Texas Local Code. The statute allows for a city or county to levy a special assessment against properties within the District to pay for improvements to the properties within the District.

What are PID Assessments?

PID Assessments are payments made to cover the costs associated with improvements and services in the District. Most common PIDs are the type that are known as a fixed assessment that is allocated to each lot located within the District to pay for improvements that provide a special benefit to the properties within the District.

What do the PID Assessments pay for?

The fixed assessments levied against properties in the public improvement districts pay for improvements to the properties that may include: Roads, Water Distribution Lines, Wastewater Collection Lines, and Drainage Improvements, Landscaping and Irrigation, Trails, Parks, Open Space, and Monuments and Entry Features. Each PID document lists the improvements to be paid for by that district's assessment.

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WORKFORCE INVESTMENTS THROUGH EDUCATION AND TRAINING INITIATIVES



Partner with the school district to begin training entry level workforce who may not want to go directly to college....available workforce in smaller communities is a limiting factor for business location



Partner with technical colleges and junior colleges to establish distance learning options or satellite locations



Directly fund training initiatives for primary job employers



Partner with your businesses to create training programs for those who need trained in exchange for hiring those persons once trained...i.e. welding initiatives

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The County as a Partner

- A County may create or participate with the City for either a PID or TIRZ
- A County, under LGC 381, may contract with the EDC of a City to administer an economic development program
- A County can collaborate with a City and/or School District on workforce training and opportunities and on literacy programs and initiatives

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Questions?

DENTON NAVARRO RODRIGUEZ BERNAL SANTEE & ZECH, P.C.			
San Antonio Office	Rio Grande Valley Office	Austin Office	Texas Gulf Coast Office
2517 North Main Avenue San Antonio, Texas 78212-4685 Phone (210) 227-3243 Fax (210) 225-4481	701 East Harrison Suite 100 Harlingen, Texas 78550-9165 Phone (956) 421-4904 Fax (956) 421-3621	2500 W William Cannon Drive Suite 609 Austin, Texas 78745-5320 Phone (512) 279-6431 Fax (512) 279 6438	549 N. Egret Bay Blvd. Suite 200 League City, TX 77573 Phone (832) 632-2102