

**CITY OF SOUTH PADRE ISLAND  
ECONOMIC DEVELOPMENT CORPORATION  
NOTICE OF WORKSHOP  
BOARD ORIENTATION AND STRATEGIC PLANNING**

Note: One or more members of the South Padre Island City Council may attend this meeting. If so, this statement satisfies the requirements of the Open Meetings Act.

Notice is hereby given that the Economic Development Corporation of the City of South Padre Island, Texas, will hold a **Workshop on Tuesday, April 28th, 2015 at 9:00 a.m. at the Municipal Complex, 2<sup>nd</sup> floor Joyce Adams Conference Room, 4601 Padre Blvd.,** South Padre Island, Texas. Following is the agenda on which action may be taken:

1. **Call to order**
2. **Pledge of Allegiance**
3. **Public Comments and Announcements**
4. **Welcome / Overview including recap of Strategic Planning Workshop session held on January 20<sup>th</sup>, 2015**
5. **Review Community Survey Results**
6. **Discussion regarding future goals and objectives**
7. **Discussion regarding next steps**
8. **Adjournment**

We reserve the right to go into Executive Session regarding any of the items posted on this agenda, pursuant to Sections 551-071, Consultation with Attorney; 551.072, Deliberations about Real Property; 551.073, Deliberations about Gifts & Donations; 551-074, Personnel Matters; 551-076, Deliberations about Security Devices; and/or 551.086, Discuss (A) Commercial or Financial Information Received from a Business Prospect with which the Economic Development Corporation is Conducting Negotiations, or (B) Financial or Other Incentives to the Business Project.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Directors of the City of South Padre Island Economic Development Corporation is a true and correct copy of said Notice and that I posted a true and correct copy of said notice on the bulletin board at City Hall by April 24th, 2015 at 5:00 p.m., which will remain so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Dated this the 22nd day of April, 2015

S E A L

  
\_\_\_\_\_  
Darla Lapeyre  
Executive Director

*This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact Jay Mitchim, ADA-designated responsible party, at (956)761-1025.*



**SOUTH PADRE ISLAND ECONOMIC DEVELOPMENT CORPORATION**

*Meets 3rd Tuesday @ 8:30 a.m. each month*

EDC Liaison: Darla Lapeyre

<u>Member Information</u>	<u>Phone Numbers</u>	<u>Appointed</u>	<u>Expires</u>
Bill DiLibero (Council) 4601 Padre Boulevard South Padre Island, TX 78597 <a href="mailto:wdilibero@myspi.org">wdilibero@myspi.org</a>	956-433-1251 (M) 956-761-8108 (W)	01/01/15	12/31/16
*Bob Friedman (Council) 170 S. San Roman Rd. Bayview, TX 78566 <a href="mailto:bofb228@aol.com">bofb228@aol.com</a>	956-433-9405	01/15/14	12/31/15
**Ron Pitcock (Council) 5820 Gulf Boulevard South Padre Island, TX 78597 <a href="mailto:ronpitcock@earthlink.net">ronpitcock@earthlink.net</a>	956-761-4887	02/18/15	12/31/15
Dan Stanton (Council) Vice President 218 W. Carolyn South Padre Island, TX 78597 <a href="mailto:louiesbackyard@aol.com">louiesbackyard@aol.com</a>	956-498-7779 (M) 956-761-6406 (W)	01/01/15	12/31/16
Joe Townsend (EDC) Secretary/Treasurer 112 E. Red Snapper St. South Padre Island, TX 78597 <a href="mailto:joetownsend67@gmail.com">joetownsend67@gmail.com</a>	979-204-3533 (M)	01/01/15	12/31/16
Beth Vance (Council) 4808 Gulf Boulevard P. O. Box 3185 South Padre Island, TX 78597 <a href="mailto:drtbeth@yahoo.com">drtbeth@yahoo.com</a>	956-778-5254 (M) 956-969-2727 (W)	01/01/15	12/31/16
Joanne Williams (EDC) President 1300 Gulf Boulevard #1801 South Padre Island, TX 78597 <a href="mailto:jowilliams0212@gmail.com">jowilliams0212@gmail.com</a>	956-433-7282 956-772-1113 (F)	01/01/15	12/31/16

\*Filling vacancy created by the resignation of Robert Fudge

\*\*Vacancy created by the resignation of Murray Meggison



***ECONOMIC DEVELOPMENT CORPORATION***

***VISION STATEMENT:***

South Padre Island will become a world-class tourism destination

***MISSION STATEMENT:***

To enhance economic and recreational opportunities in South Padre Island

***EDC HISTORY AND BACKGROUND:***

**Beach Nourishment and Annual Beach Surveys from 1995 through 2011 when the Coastal Resources Manager position was created**

**Tompkins Channel**

**Gateway Project**

**Second Causeway (Feasibility Study and Regional Mobility Authority)**

**Engaging Hillco Partners as Lobbyist**

**South Padre Island Birding and Nature Center**

**Election to change to a Type B Economic Development Corporation**

**Aquarium (Corps of Engineers Permit and some design plans)**

**Economic Resources including the Comprehensive Resort Market Analysis, Annual Economic Index, Economic Impact Study, Feasibility Studies for a Convention Centre Full Service Hotel and a Marina**

**SpaceX**





Upgrade spiedc

My Surveys Examples Survey Services Plans & Pricing

+ Create Survey

Upgrade to get meaningful results: View all your responses and get powerful analysis. [View Pricing](#)

### Strategic Plan 2015

Summary Design Survey Collect Responses **Analyze Results**

CURRENT VIEW

+ FILTER + COMPARE + SHOW

#### No rules applied

Rules allow you to FILTER, COMPARE and SHOW results to see trends and patterns. [Learn more](#)

SAVED VIEWS (1)

Original View (No rules applied)

+ Save as...

EXPORTS

SHARED DATA

#### No shared data

Sharing allows you to share your survey results with others. You can share all data, a saved view, or a single question summary. [Learn more](#)

Share All

RESPONDENTS: 73 of 73

Export All Share All

Question Summaries Data Trends Individual Responses

All Pages

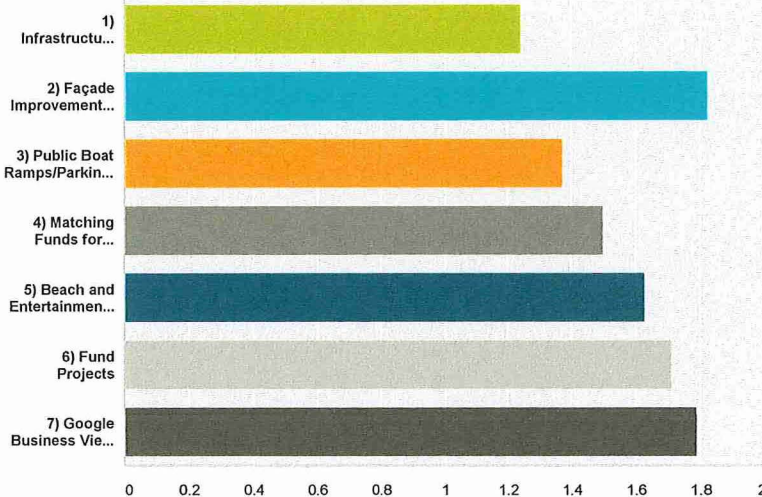
PAGE 1: Welcome to My Survey

Q1

Customize Export

### Please rate the following items, identified by the EDC during their first Strategic Planning Session:

Answered: 73 Skipped: 0



	Very Important	Maybe-Need more information	Not Important	Total	Weighted Average
1) Infrastructure-Sidewalks, Bike Trails, Beautification	80.56% 58	15.28% 11	4.17% 3	72	1.24
2) Façade Improvement Grant Program	30.99% 22	56.34% 40	12.68% 9	71	1.82
3) Public Boat Ramps/Parking for Boat Trailers/Bayside Marina	68.57% 48	25.71% 18	5.71% 4	70	1.37
4) Matching Funds for Grants	57.14% 40	35.71% 25	7.14% 5	70	1.50
	53.42%	30.14%	16.44%		

Comments (24)

	Very Important	Maybe-Need more information	Not Important	Total	Weighted Average
5) Beach and Entertainment District Bathrooms	39	22	12	73	1.63
6) Fund Projects	37.88% 25	53.03% 35	9.09% 6	66	1.71
7) Google Business View for existing Businesses	38.24% 26	44.12% 30	17.65% 12	68	1.79

[Comments \(24\)](#)

Q2 [Export](#)

### Please let us know your suggestions to enhance recreational and economic opportunities for the Island:

Answered: 29 Skipped: 44

[Responses \(29\)](#) [Text Analysis](#) [My Categories](#)

**PRO FEATURE**  
Use text analysis to search and categorize responses; see frequently-used words and phrases. To use Text Analysis, upgrade to a GOLD or PLATINUM plan.  
[Upgrade](#) [Learn more »](#)

Categorize as...  Filter by Category   [?](#)

Showing 29 responses

Make the Island more attractive (sidewalks, bike paths, plantings, etc.). Multi-purpose park including skate park. Turn the birding center into a multi-purpose center since the "bird" theme isn't working financially.  
4/20/2015 10:02 AM [View respondent's answers](#)

Entertainment District outdoor amphitheater. It can be simple but would give back in spades. With the stage facing the Island and the audience facing the setting sun over the bay. Music brings people here. We need a 'real' place to have concerts. Simple structure - maybe no walls needed. A stage and an area where people can bring their own chairs and coolers.  
4/17/2015 1:51 PM [View respondent's answers](#)

Bike lanes on Padre Blvd are very dangerous for cyclists year round. Too many inebriated drivers and those who consistently drive in those lanes. Also no safe crossing other than lights.  
4/17/2015 11:26 AM [View respondent's answers](#)

Public pool or splash pad needed! Dog park.  
4/17/2015 10:46 AM [View respondent's answers](#)

Is there anywhere else on the island that would tolerate constant boat/trailer/vehicle traffic blocking their entrance to their property? Why should a typical residential street handle 10-30 boat launches every weekend day? The people on the inside streets of the island were able to stop people from parking in front of their house on the easement. Pity about us 80+ residents in Sunset Condos and our neighbors on Polaris that suffer the

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4/13/2015 9:00 PM [View respondent's answers](#)

Marketing...tell the world what we have to offer but start in Texas and Mexico where most of our business is from.

4/13/2015 9:46 AM [View respondent's answers](#)

Purchase the land that is for sale there and convert to parking area for boat trailers and trucks.

4/13/2015 7:02 AM [View respondent's answers](#)

ya gotta bury those power lines at any cost,

4/11/2015 9:00 AM [View respondent's answers](#)

Basketball courts and a skate park. Kids need more than the beach.

4/11/2015 7:52 AM [View respondent's answers](#)

All side streets on SPI NEED speedbumps and 20mph speed limit signs in order to make SPI much safer for locals and visitors--this cannot be overemphasized! Too many drivers blasting dangerously fast down our sidestreets daily! This is a huge discouragement to walking and cycling (non-polluting modes of transportation) around island. SPI is not pedestrian/bicyclist- friendly. This needs to change if we wish to gain new "higher-end" residents and tourists. Sidewalks are filthy dirty and unsafe and unworthy of using throughout many areas of SPI. We have street sweepers--do they ever get used--or do the employees know how to use them properly?-Sure doesn't seem so.... Too many restrictions on minimal signage for small businesses on SPI. The city and its representatives needs to understand and respect that its tax revenue depends a great extent on the success of its many small businesses. Preferential treatment and "grandfathering" of city rules and regulations for non-US citizen owned t-shirt shops needs to come to an end. These are just the beginning--you asked.

4/10/2015 8:33 PM [View respondent's answers](#)

Allocate resources to a more coherent marketing program targeting a population and stick to it. what happened to the "new" marketing group last year. Marketing is an ongoing, consistent effort over the long run.

4/10/2015 8:00 PM View respondent's answers

Stop Spring Break. Initiate bonded child day care for vacationing young couples while parents go to the beach or golf. Upscale open shopping and outdoor cafe' pedestrian area. Reduce T-shirt shops and drunks. Bury Padre Blvd. electrical lines.

4/10/2015 1:06 PM View respondent's answers

Need more things for young families to do after day at beach. They will not be partying at night clubs.

4/10/2015 12:09 PM View respondent's answers

We need more of a year around business to encourage developers to invest in activities.

4/10/2015 10:10 AM View respondent's answers

Move on the park project ASAP, keep up existing parks, work with city hall to keep roads and sidewalk in excellent shape.

4/10/2015 10:05 AM View respondent's answers

EDC should at a minimum help put together infrastructure projects that will lead to greater tourism. That is our economy.

4/10/2015 8:39 AM View respondent's answers

Become more business friendly. To many restrictions, how can a business flourish and pay taxes when the city restricts their growth and makes it difficult to advertise themselves and become more visible.

4/10/2015 7:08 AM View respondent's answers

We really need a dog park

4/10/2015 6:19 AM View respondent's answers

Emphasize keeping everything clean. Improve recycling. Keep beaches clean.

4/10/2015 5:32 AM View respondent's answers

Speed up progress improving recreational accesses and sanitation for beach visitors and make better use of existing, poorly designed I infrastructure..i.e. Gulf blvd

4/10/2015 1:50 AM View respondent's answers

Recycle recycle recycle....bottle & can deposits, recycle vending macines, visible and maintained receptacles,and collection sites. If we want more people to come to SPI we need to also maintain a sustainable environment by teaching and being responsible inhabitants of this precious place.

4/9/2015 11:47 PM View respondent's answers

We get a lot of requests for umbrella service from our guests. There may be an economic opportunity in setting up umbrellas and lounge chairs for guests.

4/9/2015 9:07 PM View respondent's answers

Stop dropping existing groups and events ie roar by the shore, college basketball tournament. Need to go out and get businesses to hold meetings onbour Island. Family activities and events.

4/9/2015 8:17 PM View respondent's answers

Would like to see the convention centre remodeled asap.

4/9/2015 7:47 PM View respondent's answers

chair lift from PI to SPI would be useful and fun

4/9/2015 7:15 PM View respondent's answers

We need more activities year round to draw more people to the island. More beach front entrainment. We are loosing possible traveler to Galveston and North Padre Island. They have a lot more beach entertainment.

4/9/2015 6:19 PM View respondent's answers

yes, it has been years we need to see the edc more and updated info on current project.

4/9/2015 5:32 PM View respondent's answers

Continue your advertising campaigns - the more people know the more likely they are to visit this area.

4/9/2015 5:13 PM View respondent's answers

Increase Island visibility on the internet. Get all our businesses on Google Business View.

4/9/2015 2:49 PM View respondent's answers

## Permissible Use of Funds -

### Section 4B Projects

The Development Corporation Act provides a wide variety of purposes for which Section 4B tax proceeds may be expended. Section 4B tax proceeds may be spent on land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements for items that fit the definition of "project" under Sections 2(11) and 4B(a) of the Act. It is important to emphasize that any activities of a development corporation must always be in furtherance of and attributable to a "project."<sup>149</sup> Further, the definition of "project" was significantly amended by House Bill 2912 in the 2003 Legislative Session.<sup>150</sup> Changes made by the bill apply only to a project that is undertaken or approved after the effective date of the bill, June 20, 2003. Any projects undertaken or approved before the effective date of House Bill 2912 are governed by the law that was in effect on the date the project was undertaken or approved.<sup>151</sup>

The 2005 Legislative Session also made some amendments to the definition of "project". House Bill 2928 loosened some of the restrictions that were imposed by the 78<sup>th</sup> Legislature for certain 4B corporations. There are some projects that a section 4B corporation can do that do not require them to create or retain primary jobs.<sup>152</sup>

### Section 4B Projects Which Must Create or Retain Primary Jobs

In 2003, the Texas Legislature amended the definition of project in Section 2(11) and Section 4B(a)(2)(B) to require certain projects result in the "creation or retention of primary jobs".<sup>153</sup>



I. The Sales Tax for Economic Development

Accordingly, most Section 4B projects must now create or retain primary jobs. Yet, not all projects contain this requirement. "Primary job" is defined to mean a job that is "available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy;" and meet any one of a certain enumerated sector numbers of the North American Industry Classification System (NAICS).<sup>154</sup> The enumerated sector numbers are:

111	Crop Production
112	Animal Production
113	Forestry and Logging
11411	Commercial Fishing
115	Support Activities for Agriculture and Forestry
211 to 213	Mining
221	Utilities
311 to 339	Manufacturing
42	Wholesale Trade
48 and 49	Transportation and Warehousing
51 (excluding 51213 and 512132)	Information (excluding movie theaters and drive-in theaters)
523-525	Securities, Commodity Contracts, and Other Financial Investments and Related Activities; Insurance Carriers and Related Activities; Funds, Trusts, and Other Financial Vehicles
5413, 5415, 5416, 5417, and 5419	Scientific Research and Development Services
551	Management of Companies and Enterprises
56142	Telephone Call Centers
922140	Correctional Institutions; or

a job that is included in North American Industry Classification System (NAICS) sector number 928110, National Security, for corresponding index entries for Armed Forces, Army, Navy, Air Force, Marine Corps and Military Bases.

For more information on the North American Industry Classification System, please visit <http://www.census.gov/epcd/naics02/naicod02.htm>

Section 4B corporation may do the project listed under Section 2(11) of the Development Corporation Act of 1979, Article 5190.6, which encompasses the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements (one or more) that are for the creation or retention of primary jobs that are found by the board of directors to be required or suitable for any of the following projects:

- 1) Manufacturing and industrial facilities.
- 2) Research and development facilities.
- 3) Military facilities.
- 4) Transportation facilities (including but not limited to airports, ports, mass commuting facilities, and parking facilities).
- 5) Sewage or solid waste disposal facilities.

- 6) Recycling facilities.
- 7) Air or water pollution control facilities.
- 8) Distribution centers.
- 9) Small warehouse facilities.
- 10) Primary job training facilities for use by institutions of higher education.
- 11) Regional or national corporate headquarters facilities.

Additionally, Section 4B corporations may provide land, buildings, equipment, facilities, and improvements found by the board of directors to promote or develop new or expanded business enterprises that create or retain primary jobs, including a project to provide:<sup>155</sup>

- 1) Public safety facilities.
- 2) Streets and roads.
- 3) Drainage and related improvements.
- 4) Demolition of existing structures.
- 5) General Municipally owned improvements.
- 6) Any improvements or facilities that are related to any of those projects and any other projects that the board in its discretion determines promotes or develop new or expanded business enterprises that create or retain primary jobs.

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

There are some section 4B projects that do not require the creation or retention of primary jobs. the following categories are also authorized Section 4B projects pursuant to Section 2(11) of the Act.

- 1) **Job training classes.** Certain job training required or suitable for the promotion of development and expansion of business enterprises can be a permissible project. Section 4B corporations may spend tax revenue for job training classes offered through a business enterprise only if the business enterprise commits in writing to certain conditions. The business enterprise must agree to create new jobs that pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area; or agree to increase its payroll to pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area.<sup>156</sup> The creation or retention of primary jobs is not a mandatory requirement for funding permissible job training classes.
- 2) **Certain infrastructure improvements which promotes or develops new or expanded business enterprises.** "Project" also includes expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop

new or expanded business enterprises limited to streets and roads, rail spurs, water and sewer utilities, and electric utilities, gas utilities, drainage, site improvements, and related improvements, and telecommunications and Internet improvements, and beach remediation along the Gulf of Mexico.<sup>157</sup> Accordingly, Section 4B corporations may assist with limited infrastructure improvements, which the board finds will promote or develop new or expanded business development. The funding of these infrastructure improvements do not have to be conditioned upon the creation or retention of primary jobs.

**3) Career centers.** Certain career centers can also be provided land, buildings, equipment, facilities, improvements and expenditures found by the board of directors to be required or suitable for use if the area to be benefitted by the career center is not located in the taxing jurisdiction of a junior college district.<sup>158</sup>

Additionally, Section 4B(a)(2)(A), (C), (D), and (E) of the Act specifically permits expenditures of Section 4B tax proceeds for land, buildings, equipment, expenditures, and improvements suitable for the following types of projects:

**1) Professional and amateur sports and athletic facilities.** Professional and amateur sports and athletics, including stadiums and ballparks are a permissible Section 4B project.<sup>159</sup>

**2) Entertainment, tourist and convention facilities.** Entertainment, tourist, and convention facilities, including auditoriums, amphitheaters, concert halls, museums, and exhibition facilities are a permissible Section 4B project.<sup>160</sup>

**3) Public parks and related open space improvements.** Public parks, park facilities and events, and open space improvements are permissible Section 4B projects<sup>161</sup>

**4) Affordable housing.** Projects required or suitable for the development and expansion of "affordable housing" as defined by federal law (42 United States Code Section 12745) are a permissible Section 4B project.<sup>162</sup>

**5) Water supply facilities.** Any water supply facilities, including dams, transmission lines, well field developments, and other water supply alternatives can be a permissible Section 4B project.<sup>163</sup> Nonetheless, to undertake a water supply facility a majority of the qualified voters of the city voting in an election called and held for that purpose must approve the water supply project.<sup>164</sup> The ballot proposition for the election shall be printed to provide for voting for or against the proposition:<sup>165</sup>

"The use of sales and use tax proceeds for infrastructure relating to  
\_\_\_\_\_ (insert description of water supply facility)."

**6) Water conservation programs.** Water conservation programs, including incentives to install water-saving plumbing fixtures, educational programs, brush control programs, and programs to replace malfunctioning or leaking water lines and other water facilities can be a permissible Section 4B project.<sup>166</sup> Similar to water supply facilities, to undertake a water conservation program a majority of the qualified voters of the city voting in an election called and held for that purpose must approve the water conservation program.<sup>167</sup> The ballot proposition for the election shall be printed to provide for voting for or against the proposition:<sup>168</sup>

**“The use of sales and use tax proceeds for infrastructure relating to \_\_\_\_\_ (insert description of water conservation program).”**

Further, the 79<sup>th</sup> Legislature gave certain section 4B corporations the ability to undertake projects involving airports, ports, and sewer or solid waste disposal facilities without the requirement of creating or retaining primary jobs.

**7) Airport Facilities.** Section 4B corporations located within twenty-five (25) miles of an international border, with a city population of less than 50,000 or an average rate of unemployment that is greater than the state average rate of unemployment during the preceding twelve (12) month period may assist with land, buildings, facilities, infrastructure, and improvements required or suitable for the development or expansion of airport facilities.<sup>169</sup>

**8) Airports, Ports, and Sewer or Solid Waste Disposal Facilities.** Section 4B corporations located in a city wholly or partly in a county that is bordered by the Rio Grande, has a population of at least 500,000, and has wholly or partly within its boundaries at least four cities that each have a population of at least 25,000 (Hidalgo County). May provide certain assistance with infrastructure necessary to promote or develop new or expanded business enterprises, including airports, ports, and sewer or solid waste disposal facilities, provided section 4B sales tax revenues does not support the project.<sup>170</sup>

Lastly, certain section 4B corporations have been given a broader latitude in deciding what types of projects that they can do with the requirement of creating or retaining primary jobs, but they must meet the requisite requirements.

**9) Revenue Requirement.** Section 4B corporations, which have not generated more than \$50,000 in revenues in the preceding two (2) fiscal years, may provide land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for the development, retention, or expansion of business enterprises, provided city council authorizes the project by adopting by adopting a resolution following two (2) separate readings conducted at least one (1) week apart.<sup>171</sup>

**10) Population Requirement.** Section 4B corporation with a population of 20,000 or less, may provide land, building, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the board of directors to promote new or expanded business development, provided projects which require an expenditure of more than \$10,000 city council must adopt a resolution authorizing the project after giving the resolution at least two (2) separate readings.<sup>172</sup>

**11) Landlocked Communities.** Section 4B corporations located wholly or partly in a county with a population of 2 million or more (Dallas and Harris County) and has within its city limits and extraterritorial jurisdiction less than 100 acres that can be used for the development of manufacturing or industrial facilities in accordance with the zoning laws or land use restrictions of the city, the term "project" also includes expenditures found by the board of directors to be required for the promotion of new or expanded business enterprises within the landlocked community.<sup>173</sup>



## Undertaking Projects Located Outside of the City

Section 23(a)(1) of the Act provides that an economic development corporation may undertake projects outside of the city limits with permission of the governing body that has jurisdiction over the property. In other words, if the corporation wants to undertake a project that is located completely in the city's extraterritorial jurisdiction or beyond, it should get approval from the governing body of the county, the county commissioners' court. The language of the Act, however, does not seem to require this approval if the project is located at least partially within the boundaries of the city. If the project is located completely within the jurisdiction of another municipality, the corporation would need approval of the city council for that municipality.

## Use of Section 4B Tax for "Sports Venue" Facilities

As previously noted, Section 4B tax monies may be used to fund projects relating to professional and amateur athletic facilities. Under Texas law, there is additional statutory authority for funding athletic facilities that qualify as a "sports venue."<sup>174</sup> Special statutory provisions apply to projects involving such a "sports venue." A facility qualifies as a "sports venue" if it is an arena, coliseum, stadium, or other type of area or facility that meets all of the following three criteria:<sup>175</sup>

1. The primary use or primary planned use of the facility is for one or more professional or amateur sports or athletics events.
2. A fee for admission to the sports or athletics events is charged or is planned to be charged, except that a fee need not be charged for occasional civic, charitable, or promotional events.
3. The facility is not and will not be owned and operated by a state-supported institution of higher education.<sup>176</sup>

Texas law specifies that any money authorized by the voters to be spent on a "sports venue and related infrastructure" may be spent on any on-site or off-site improvements that relate to a sports venue and that enhance the use, value, or appeal of the sports venue, including areas adjacent to it. This would include any expenditures reasonably necessary to construct, improve, renovate, or expand the sports venue. The law specifically lists the following uses as examples of permissible "related infrastructure": stores, restaurants, concessions, on-site hotels, parking facilities, area transportation facilities, roads, water or sewer facilities, parks, and environmental remediation. Again, however, these facilities must relate to and enhance the sports venue.<sup>177</sup>

A city may submit to its voters a ballot proposition that would authorize the use of Section 4B tax monies for a specific sports venue project or category of projects, including any infrastructure related to that project or category. Such a ballot proposition could contain language enabling the Section 4B corporation to use any Section 4B tax money already collected to support the sports venue project. Before an election to authorize the use of the Section 4B tax for a sports venue, however, a public hearing must be conducted. At that hearing, the city's residents must be informed of the cost and impact of the proposed project or category of projects. It appears that the hearing may be conducted at any time before the election takes place, but the city is required to first publish notice of the hearing

in a newspaper of general circulation in the city at least 30 days before the date set for the hearing.<sup>178</sup> The notice must include the time, date, place, and subject of the hearing and must be published on a weekly basis until the date of the hearing. Accordingly, the city will need to schedule its public hearing early enough so that it can provide at least 30 days notice of the hearing.

In an election to approve the use of Section 4B sales tax monies for a sports venue, the law requires that a specific sports venue project or category of projects be clearly described on the ballot.<sup>179</sup> The description must be clear enough for the voters to discern the limits of the specific project or category of projects to be authorized. State law does not indicate what constitutes a clear description or how to indicate the limits of the specific project. At a minimum, the ballot proposition should clearly indicate the types of projects anticipated. Additionally, if Section 4B monies are to be used to pay the maintenance and operating costs (and not just initial construction cost, etc.) of a sports venue project, then the ballot proposition must state that fact.<sup>180</sup>

A city may have the voters consider the use of Section 4B funds for a sports venue at the same election in which the voters are considering the creation of the Section 4B tax itself. Also, a city may arguably have the voters consider authorizing the use of Section 4B funds for several different sports venue projects or categories of projects at the same election. Before the 79<sup>th</sup> Legislative Session, the initial authorization of the Section 4B tax would be considered by the voters as a separate ballot proposition. Similarly, any sports venue project must be considered by the voters as a separate ballot proposition. However, with the passage of House Bill 3195, it would seem that authorizing the Section 4B tax and the consideration of several sports venue project can be considered by the voters in a combined ballot proposition.<sup>181</sup> But, a city is not required to combine these issues into one ballot proposition. A city that pursues such a combined proposition should consult with its local legal counsel and with the Texas State Comptroller's Office on this issue. State law requires that any sports venue election be held on a uniform election date. If a sports venue project or category of projects fails to win voter approval, the city must wait at least one year before holding another election on that particular project or category.

### **Use of Section 4B Tax Proceeds for Training Seminars**

Certain Section 4B economic development and city officials are required to complete a training seminar.<sup>182</sup> The officials must complete a seminar once every 24 months.<sup>183</sup> At least one person from each of the following are required to attend a seminar each 24 month period:

- 1) the city attorney, the city administrator, or city clerk; and
- 2) the executive director or other person who is responsible for the daily administration of the corporation.<sup>184</sup>

The corporation is authorized to use Section 4B sales tax proceeds to pay for the costs of attending a seminar.<sup>185</sup> The certificates of completion are issued by the person, entity, or organization providing the training seminars, on a form approved by the Comptroller's office.<sup>186</sup> The Comptroller's Office may impose an administrative penalty in an amount not to exceed \$1,000 for the failure to attend the seminar.<sup>187</sup>

## Public Hearing Requirement for Expending Section 4B Tax Proceeds

A Section 4B corporation must hold at least one public hearing on a proposed project, including a proposal to expend funds on maintenance and operating expenses of a project.<sup>188</sup> This hearing must be held before the corporation expends any Section 4B funds on the project. There is nothing in the Act that prohibits the Section 4B corporation from holding one public hearing to consider a group of Section 4B projects. After the projects have been considered at a public hearing and 60 days have passed since the first public notice of the nature of the projects, the development corporation is free to make expenditures related to the projects pursuant to the adopted budget.

## Public Notice Requirement and the 60-Day Right to Petition

The public has a right to gather a petition objecting to a particular Section 4B project.<sup>189</sup> The petition must be submitted within 60 days of the first published notice of a specific project or type of project and must be signed by more than 10 percent of the registered voters of the city. State law does not indicate what would constitute the first published notice of a project. A city should ensure that it provides 60 days notice of the specific project or the category of projects.

If a petition is pursued by the public, the petition can ask that the city hold an election on the issue before that specific project or type of project is undertaken. If the petition is submitted in a timely manner and an election is required, the corporation may not undertake the project until the voters approve the project at an election on the issue. If the voters disapprove the project at the election, the Section 4B tax proceeds may not be used for that purpose.

It is important to note that a petition cannot force an election on a project if the voters have previously approved the specific project or that general category of projects at an earlier election called under the Act. Cities that know what types of projects they want to undertake may be well advised to specifically list each of these types of projects in the ballot wording when the Section 4B tax is first considered by the voters. If the city includes each of these types of projects in the original ballot proposition, it can assert that the public has already approved that type of project at a prior election. In this scenario, the city arguably would not be required to call an additional election even if a petition were submitted regarding the project.

## Specific Costs of a Section 4B Project That May be Funded

Cities must understand what general categories are available for expenditures. They additionally need to know what types of specific expenditures are contemplated within each of these categories. For assistance in understanding what is permitted under the Act, cities should review the definition of the term "cost" under Section 2(4) of the Act. Section 2(4) of the Act defines what costs may be applied to a Section 4B project. It states in pertinent part that costs for a project may include:

- a) **Land and facility improvements:** the cost of acquisition, construction, improvement, expansion of land, buildings, and acquisition of right-of-way.

- b) **Machinery and supplies:** the cost of machinery, equipment, inventory, raw materials, and supplies.
- c) **Financial transaction costs:** the cost of financing charges, certain interest prior to and during construction, and necessary reserve funds.
- d) **Planning costs:** the cost of research and development, engineering and legal services, development of plans and specifications, surveys, and cost estimates; and other expenses necessary or incident to determining the feasibility and practicability of undertaking the project.
- e) **Cleanup costs:** the cost of cleaning up contaminated property.<sup>190</sup> Nonetheless, a Section 4B corporation may use Section 4B sales tax proceeds to clean up contaminated property only if use of sales tax proceeds for this purpose is approved by the voters in an election called and held for that purpose. The ballot wording that must be used is as follows:<sup>191</sup>

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

Due to the definition of the term “project” and of the term “cost” contained in the Development Corporation Act, a strong argument can be made that any expenditure by a Section 4B corporation, other than job training classes, must be related to the acquisition or physical improvement of land, buildings, equipment, or facilities. Of course, an expenditure could also include administrative or planning costs associated with such an acquisition or improvement.

### **Administrative Expenses of a Section 4B Project**

Section 2 (4) of the Act states that the cost of a project may also include the administrative and other expenses that are incident to placing the project into operation. The law provides that these expenses could include administrative expenses for the acquisition, construction, improvement, expansion, and financing of the project. It is this authority that could be cited for the hiring of administrative staff to implement the work of the Section 4B development corporation with regard to its projects. Accordingly, cities that perform some of the administrative functions for the corporation could cite this authority for reimbursement from Section 4B funds for administrative costs related to projects that city staff oversee. Additionally, Section 4B(b) specifically permits a Section 4B corporation to contract with other private corporations to carry out industrial development programs or objectives. Effective June 20, 2003, should a Section 4B corporation contract with a broker, agent or other third party for business recruitment, a written contract approved by the board of directors is required for any payment of a commission, fee, or other thing of value to the third party.<sup>192</sup> Failure to enter into a written contract could result in a civil penalty not to exceed \$10,000.

Additionally, Section 4B(a-2) states that the costs of a publicly owned and operated project may include the maintenance and operating costs for the project. The Act, however, allows the voters to object to such an expenditure by submitting a petition of 10 percent of the registered voters of the city. The public has 60 days from the date when notice is first given that the tax will be used for this purpose to submit the petition. Such a petition would ask



the city to hold an election to approve the payment of maintenance and operating costs for projects. An election is not required, however, if the voters had previously approved the use of Section 4B tax proceeds for this purpose at an earlier election under the Act.

Cities that are aware that they want to use Section 4B tax proceeds to pay the maintenance and operating costs of projects would be well advised to list this type of expenditure on the ballot when the Section 4B tax is first considered by the voters. By including this provision in the original ballot proposition, the city can assert that the public has already approved this type of expenditure at a prior election. Accordingly, if the city uses such a ballot provision, it cannot be required to hold an additional election even if a petition is submitted regarding these costs.

## Promotional Expenses

In the 2001 Legislative Session, the Texas Legislature clarified the use of Section 4B proceeds for promotional expenses. Now, Section 4B(b) limits Section 4B corporations to spending no more than 10 percent of the corporate revenues (Section 4B tax proceeds) for promotional purposes.<sup>193</sup> Yet, the attorney general has concluded a promotional expenditure "must advertise or publicize the city for the purpose of developing new and expanded business enterprises."<sup>194</sup> Further, a corporation is limited to spending not more than 10 percent of its current annual revenues for promotional purposes in any given year. Nonetheless, unexpended revenues specifically set aside for promotional purposes in past years may be expended along with ten percent of current revenues without violating the cap.<sup>195</sup> Additionally, city council may disapprove a promotional expenditure.<sup>196</sup> If there is some question as to whether a particular expenditure should be considered a promotional or an administrative expense, the development corporation should consult with its local legal counsel.

## Debt Obligations

The Section 4B development corporation may issue bonds, notes, and other contractual obligations to fund its projects.<sup>197</sup> Prior to September 1, 2001, a Section 4B corporation's bond and other obligations could not exceed \$135 million. This limitation was removed in the 77<sup>th</sup> Legislative Session.<sup>198</sup> Further, a bond or debt instrument of the corporation is not an obligation of the city, nor is it backed by the city ad valorem tax rate.<sup>199</sup> The tax proceeds received by the Section 4B corporation may be used to pay the principal and interest on the bonds and any other related costs.<sup>200</sup> The Legislature has not addressed whether a Section 4B development corporation is prohibited from paying principal or interest on a debt if the debt existed before the date the city created the Section 4B corporation.

## Initiating an Election to Approve a Section 4B Tax

An election to adopt a Section 4B economic development sales tax may be initiated by either:

- city council approval of an ordinance calling for an election on the imposition of the tax;<sup>201</sup> or
- a petition signed by a number of qualified voters that equals at least 20 percent of the voters who voted in the most recent regular city election. If