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# Type A and Type B Sales Tax Corporate Requirements



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## 1. What is Type A and Type B Sales Tax?

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## 5. When Must a Type A or Type B Sales Tax Election be Held?

Type A or Type B sales tax election must be held on a uniform election date.

The uniform election dates are:

The first Saturday in May in odd numbered years;

The first Tuesday after the first Monday in November.



The first Saturday in May in even numbered years for political subdivisions other than counties; or

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**8. What is the Tax Rate for a Type A or Type B Sales Tax?**

The sales tax rate for either a Type A or Type B sales tax is in increments of 1/8 <sup>th</sup> of one-percent.	$\frac{1}{8}$
The total rate for all local sales and use taxes may not exceed two (2) percent.	< 2%

Tex. Loc. Gov't Code Ann. §§ 504.252(b) and 505.252(b).

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**23. Can Type A or Type B corporations grant or gift Type A or Type B proceeds to a business entity without a performance agreement?**

Must have a performance agreement. Performance agreement must contain the following:

schedule of additional payroll or jobs to be created or retained

schedule of capital investment to be made, and specify the terms for any repayment.

Tex. Loc. Gov't Code § 501.158.

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**24. Can Type A or Type B Corporations Hire an Independent Third Party to Conduct Business Recruitment or Development?**

The Act requires a written contract approved by the board of directors for third party business recruitment efforts.

The penalty is

- Up to \$10,000 fine **\$10,000**

Texas Attorney General's office may bring an action to recover the penalty in Travis County District Court or the district court in which the violation occurred.

Tex. Loc. Gov't Code § 502.051.

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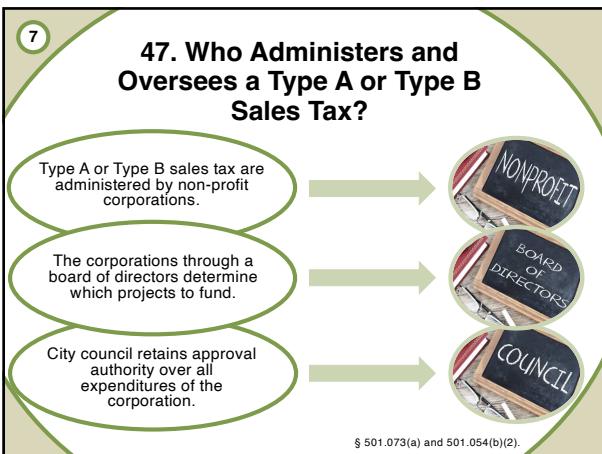
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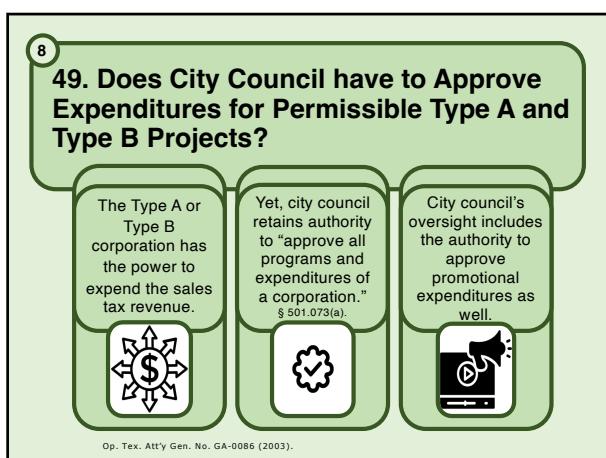
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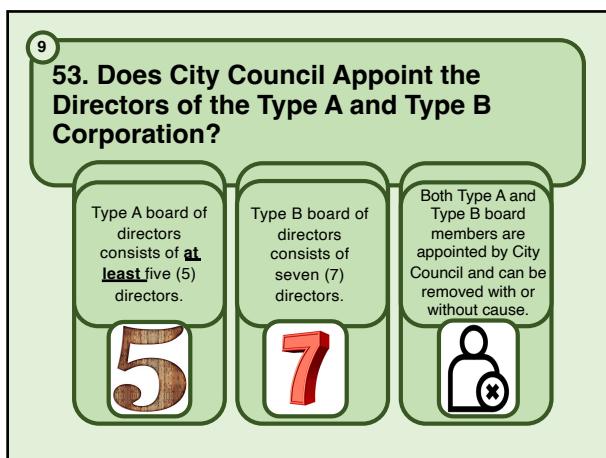
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## 60. How Long a Term do Type A and Type B Board of Directors serve?

Type A board of directors serve a term not to exceed six (6) years.  
§ 504.051(c).

Type B board members serve a two (2) year term.  
§ 505.051(b).

**6 ≥ term**

**2 = term**

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## 62. Can a Type A or Type B director be reappointed to a subsequent term?

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**64. Who determines which board members serve as president, secretary and other officers of the corporation?**

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The board of directors appoint the officers to serve as president, secretary, and other officers.

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**65. How long a term do the President, Secretary and other officers serve as an officer?**

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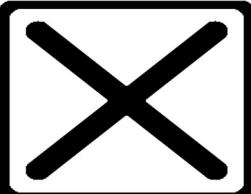
- One term as officer is the term provided for in the certificate of formation or bylaws.
- But, one term cannot exceed three (3) years.
- If the certificate of formation or bylaws do not address the term of office, the officers are elected annually.

Tex. Loc. Gov't Code § 501.065(b)

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## 66. Must a Type A Board Member be a Resident of the City?

The Development Corporation Act does not require a Type A director to be a resident of the city.



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**67. Must a Type B Board Member be a Resident of the City?**

### City with a population of 20,000 or more,

**must be a resident of the city.**

## City with a population of less than 20,000,

- o a resident of the county in which the major part of the area of the eligible city is located; or
- o reside at a place that is within ten (10) miles of the eligible city's boundaries and is in a county bordering the county in which the major part of the area of the eligible city is located.

Tex. Loc. Gov't Code § 505.052.

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16	<h2>70. What Constitutes a Quorum of the Type A or Type B Board of Directors?</h2>
	<p><b>A majority of the board constitutes a quorum.</b></p>
<b>Type A:</b>	<p><b>Generally, three (3) members of a five (5) member Type A board constitute a quorum.</b></p>
	<p><b>§ 504.053</b></p> <p><b>Type B:</b></p> <p><b>Four (4) members of a seven (7) member Type B board constitute a quorum.</b></p>
	<p><b>§ 505.054</b></p>

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## 71. Are Type A or Type B Board of Directors paid?

The directors serve without compensation but must be reimbursed for actual expenses.

§ 501.062(d).



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**80. Can a Type A or Type B Corporation amend its bylaws?**

Are authorized to adopt and amend bylaws not inconsistent with:

certificate of formation; or

state law

Amendments to the bylaws must be approved by resolution of the City Council.

- Tax. Loc. Gov't Code § 501.064(c).

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**87. Are Type A and Type B corporations required to file a Form 990 with the IRS?**

Form 990 is a form used by tax exempt organizations to file annual information returns.

A form to use with the IRS to receive an exemption from the Form 990 filing requirements is IRS Form 8940. There is a fee for filing this form.

The IRS in Revenue Procedure 95-48, I.R.B. 1995-47, 13., (Nov. 20, 1995) concluded governmental units and affiliates of governmental units are exempt from the Form 990 filing requirements.

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**94. Must Type A Corporations Conduct Public Hearings to Funding Type A Projects?**

Type A corporations are required to obtain city council approval of a project.

Type A corporations generally do not have additional public notice and public hearings requirements on individual projects.

**Two Exceptions:**

- Sports venue project, or
- Type B project.

§ 504.152 and 504.153.

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**96. Must Type B Corporations Conduct a Public Hearing Prior to Funding Type B Projects?**

Generally, must conduct at least one public hearing on proposed Type B projects. § 505.159.

- Type B's in a city with a population of less than 20,000 are not required to hold public hearings on projects authorized by sections 501.101 to 501.107 of the Act. §505.159(b).

• Must obtain city council approval of the expenditure.

• Must publish notice of the project in newspaper.

• Once sixty (60) days have passed since the first published notice of the projects, the Type B corporation is authorized to make expenditures related to the projects.

§505.159(b).

§ 505.160(a).

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## 99. Must Type A corporations publish notice of any hearings on proposed projects?

- Generally, Type A corporations are not required to publish notices of proposed projects.
- When a Type A board pursues a particular project city council must approve the project.
- Three exceptions requiring the publishing of notices:
  - sports venue projects,
  - pursuing Type B projects, and
  - maintenance and operating costs of a project.



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**102. When must a Type B corporation publish notice of a proposed project?**

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Type B corporations must publish notice of all projects pursuant to section.

505.160(a) of Texas Local Government Code.

The Act does not require public hearings on projects authorized by sections 501.101 to 501.107 of the Act for Type B corporations located in a city with a population of less than 20,000. Nonetheless, notice of the “project” must still be published.

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## Economic Development Corporation Report

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Section 502.151 of the Texas Local Government Code provides the following:

- Requires all Type A & Type B's to submit an annual report to the State Comptroller's Office
- **The report must be submitted by April 1<sup>st</sup> each year (formerly Feb. 1<sup>st</sup>) (S.B. 450 (2019)).**
  - \$200 penalty failure to file
- Comptroller must report to Legislature in even numbered years.

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### Sec. 501.101. PROJECTS RELATED TO CREATION OR RETENTION OF PRIMARY JOBS

In this subtitle, "project" includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are:

<p><b>1</b> for the creation or retention of primary jobs; and</p>	<p><b>2</b> found by the board of directors to be required or suitable for the development, retention, or expansion of:</p>	<p><b>a</b> manufacturing and industrial facilities;</p> <p><b>b</b> research and development facilities;</p> <p><b>c</b> military facilities, including closed or realigned military bases;</p> <p><b>d</b> transportation facilities, including airports, hangars, railports, rail switching facilities, maintenance and repair facilities, cargo facilities, related infrastructure located on or adjacent to an airport or railport facility, marine ports, inland ports, mass commuting facilities, and parking facilities. <b>[removed for Type A corporations pursuant to 504.103(a)(1)]</b></p> <p><b>e</b> sewage or solid waste disposal facilities; <b>[removed for Type A corporations pursuant to 504.103(a)(2)(a)(3)]</b> . . .</p>
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**28** Sec. 501.101. PROJECTS RELATED TO  
CREATION OR RETENTION OF PRIMARY JOBS.  
(cont'd)

- f** recycling facilities;
- g** air or water pollution control facilities; **[removed for Type A corporations pursuant to 504.103(a)(5);]**
- h** facilities for furnishing water to the public; **[removed for Type A corporations pursuant to 504.103(a)(4);]**
- i** distribution centers;
- j** small warehouse facilities capable of serving as decentralized storage and distribution centers;
- k** primary job training facilities for use by institutions of higher education; or
- l** regional or national corporate headquarters facilities.

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## What is a “Primary Job”?

Tex. Loc. Gov't Code § 501.002(12)

## A job that is:

- available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy; and
- is included in one of nearly sixteen (16) NAICS sector codes.

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## 30 What is a “Primary Job”? (cont’d)

NAICS sector code categories include:



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**31 Sec. 501.103. CERTAIN INFRASTRUCTURE IMPROVEMENT PROJECTS.**

In this subtitle, “project” includes expenditures that are 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:

<p>streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements;</p>	<p>telecommunications and Internet improvements; or</p>	<p>beach remediation along the Gulf of Mexico.</p>
<p>1</p>	<p>2</p>	<p>3</p>

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## **Sec. 501.104. PROJECTS RELATED TO CERTAIN MILITARY BASES OR MISSIONS.**

In this subtitle, "project" includes the infrastructure, improvements, land acquisition, buildings, or expenditures that:

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are for the creation or retention of primary jobs or jobs that are included in . . . (NAICS) sector number 926120, Regulation and Administration of Transportation Programs, for the corresponding index entry for Coast Guard (except the Coast Guard Academy); and

- are found by the board of directors to be required or suitable for:
  - 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; or
  - c) redeveloping a military base that has been closed or realigned

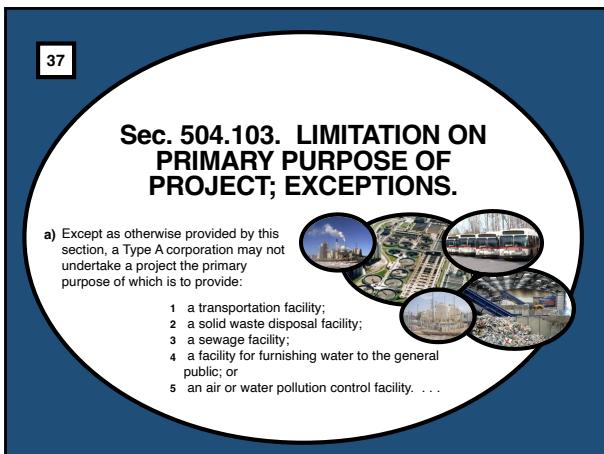
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**Sec. 501.105. CAREER CENTER  
PROJECTS OUTSIDE OF  
JUNIOR COLLEGE DISTRICT.**

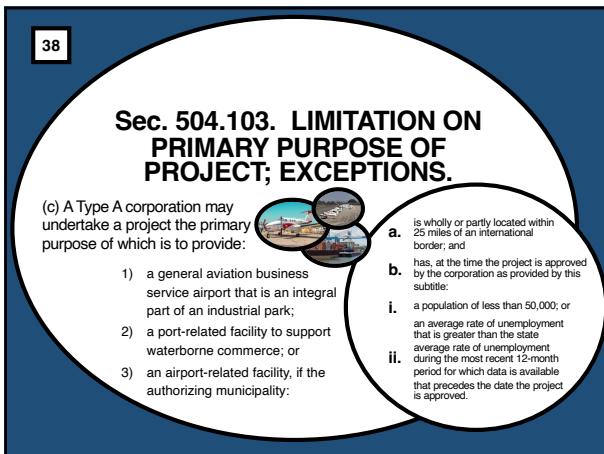
In this subtitle, "project" includes the land, buildings, equipment, facilities, improvements, and expenditures found by the board of directors to be required or suitable for use for a career center, if the area to be benefited by the career center is not located in the taxing jurisdiction of a junior college district.

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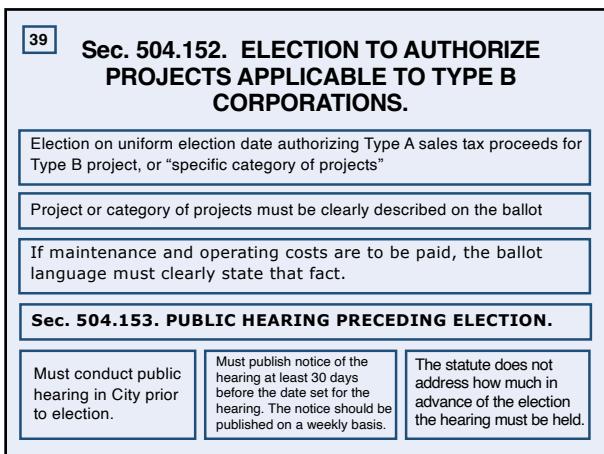




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### **Sec. 504.171. AUTHORITY OF CERTAIN CORPORATIONS TO UNDERTAKE TYPE B PROJECTS.**

**a)** This section applies only to a Type A corporation the creation of which was authorized by a municipality:

1 that has also authorized the creation of a Type B corporation; and

2 that has a population of 7,500 or less.

Notwithstanding Section 504.152, if permitted by ordinance of the authorizing municipality, a Type A corporation to which this section applies may undertake any project that a Type B corporation, the creation of which was authorized by the same municipality, may undertake under Chapter 505.

**c)** [City Council may also revoke the authority by ordinance.]

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### **Sec. 505.152. PROJECTS RELATED TO RECREATIONAL OR COMMUNITY FACILITIES.**

For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for use for professional and amateur sports, including children's sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, parks and park facilities, open space improvements, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of the items described by this section.

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### **Sec. 505.153. PROJECTS RELATED TO AFFORDABLE HOUSING.**

For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for the promotion of development and expansion of affordable housing, as described by 42 U.S.C. Section 12745.



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**43 Sec. 505.154. PROJECTS RELATED TO WATER SUPPLY FACILITIES AND WATER CONSERVATION PROGRAMS.**

For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for:

1 the development or improvement of water supply facilities, including dams, transmission lines, well field developments, and other water supply alternatives; or

2 the development and institution of 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.

*See*, Section 505.304 of Texas Local Government Code for ballot wording.

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**44 Sec. 505.155. PROJECTS RELATED TO BUSINESS ENTERPRISES THAT CREATE OR RETAIN PRIMARY JOBS.**

For purposes of this chapter, "project" includes 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:

1 a project to provide public safety facilities, streets and roads, drainage and related improvements, demolition of existing structures, general municipally owned improvements, and any improvements or facilities related to a project described by this subdivision; and

2 any other project that the board of directors in the board's discretion determines promotes or develops new or expanded business enterprises that create or retain primary jobs.

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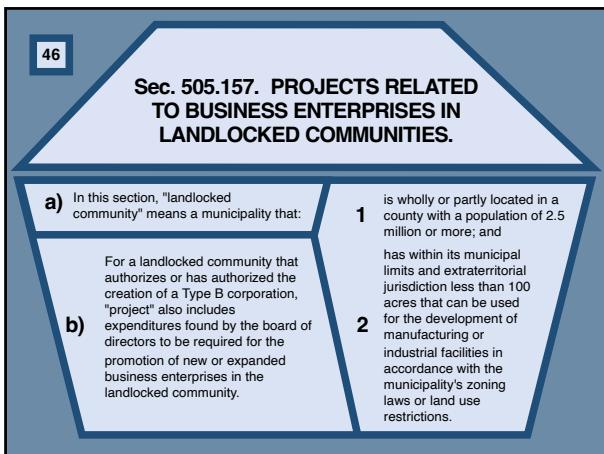
**45 Sec. 505.156. PROJECTS RELATED TO BUSINESS ENTERPRISES IN CERTAIN MUNICIPALITIES.**

For purposes of this chapter, "project" includes 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 if the project is undertaken by a Type B corporation authorized to be created by a municipality:

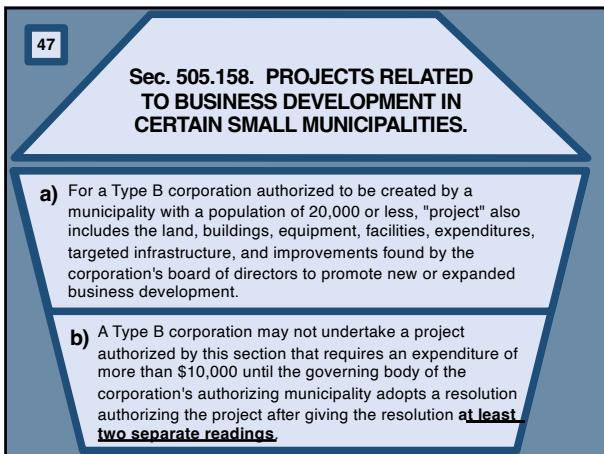
1 that has not for each of the preceding two fiscal years received more than \$50,000 in revenues from sales and use taxes imposed under this chapter; and

2 the governing body of which has authorized the project by adopting a resolution only after giving the resolution at least two separate readings conducted at least one week apart.

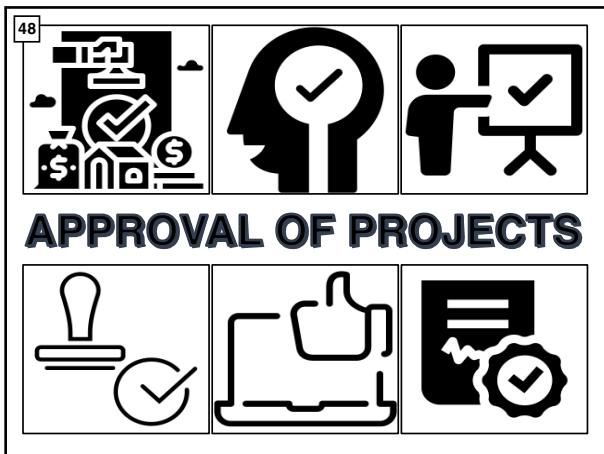
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# Type A Corporations

## Sec. 501.073. SUPERVISION BY AUTHORIZING UNIT.

- a) The corporation's authorizing unit will approve all programs and expenditures of a corporation and annually review any financial statements of the corporation.
- b) A corporation's authorizing unit is entitled to access to the corporation's books and records at all times.



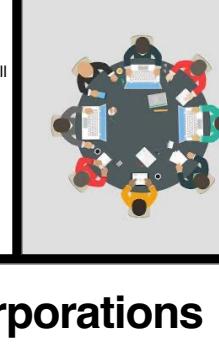
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50	<h1>Type A Projects Approval Process</h1>
1 Type A posts agenda (72 hours in advance)	
Type A meeting	
2 Board takes action on the item (votes up or down the project)	
3 City Council posts agenda (72 hours in advance)	
City Council meeting	
4 City Council takes action on the item (votes up or down the project)	

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**Sec. 501.073. SUPERVISION BY AUTHORIZING UNIT.**

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- b)** A corporation's authorizing unit is entitled to access to the corporation's books and records at all times.



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## **Sec. 505.159. HEARING REQUIRED TO UNDERTAKE PROJECT.**

- a) Except as provided by Subsection (b), a Type B corporation shall hold at least one public hearing on a proposed project before spending money to undertake the project.
- b) A Type B corporation the creation of which was authorized by a municipality with a population of less than 20,000 is not required to hold a public hearing under this section if the proposed project is defined by Subchapter C, Chapter 501.

## Type B Corporations

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**Sec. 505.160. ELECTION  
REQUIRED FOR PROJECT;  
PETITION.**

a) A Type B corporation may undertake a project under this chapter unless, not later than the 60th day after the date notice of the specific project or general type of project is first published, the governing body of the authorizing municipality receives a petition from more than 10 percent of the registered voters of the municipality requesting that an election be held before the specific project or general type of project is undertaken. . . .



## Type B Corporations

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### **Procedural Steps - Generally:**

<b>1</b> Publish notice of project/public hearing in the newspaper (Section 505.160(a)) (Publication can occur later in the process)	<b>4</b> City Council posts agenda (72 hours in advance)
<b>2</b> Type B posts agenda (72 hours in advance)	<b>5</b> City Council meeting <ul style="list-style-type: none"><li data-bbox="499 1543 657 1560">o City Council takes action on the item (votes up or down the project)</li></ul>
<b>3</b> Type B meeting <ul style="list-style-type: none"><li data-bbox="238 1560 447 1579">o Conduct public hearing on project (Section 505.159(a))</li><li data-bbox="238 1579 447 1594">o Board takes action on the item (votes up or down the project)</li></ul>	<b>6</b> Once 60 days runs from published notice (step 1) can fund the project (need a performance agreement) (Section 505.160(a))

## Type B Projects Approval Process

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**Procedural Steps – Chapter 501 – Less Than 20,000 in Population**  
(Only difference - No public hearing is required pursuant to 505.159(b))

- 1 Publish notice of project/public hearing in the newspaper (Section 505.160(a)) (Publication can occur later in the process)
- 2 Type B posts agenda (72 hours in advance)
- 3 Type B meeting
  - o Board takes action on the item (votes up or down the project)
- 4 City Council posts agenda (72 hours in advance)
- 5 City Council meeting
  - o City Council takes action on the item (votes up or down the project)
- 6 Once 60 days runs from published notice (step 1) can fund the project (need a performance agreement) (Section 505.160(a))

## Type B Projects Approval Process

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- 1 Publish notice of project/public hearing in the newspaper (Section 505.160(a))
- 2 Type B posts agenda (72 hours in advance of meeting)
- 3 Type B meeting
  - o Conduct public hearing on project (Section 505.159(a))
  - o Board takes action on the item (votes up or down the project)
- 4 City Council posts agenda (72 hours in advance of meeting)
- 5 City Council meeting
  - o Section 505.158 – conducts first reading of resolution
- 6 City Council posts agenda (72 hours in advance of meeting – Meeting at least one (1) week apart)
- 7 City Council meeting
  - o Section 505.158 – conducts second reading of resolution
  - o City Council takes action on the item (votes up or down the project)
- 8 Once 60 days runs from published notice (step 1) can fund the project (need a performance agreement) (Section 505.160(a))

**Procedural Steps - Section 505.157 (Only Difference - City Council Meetings at Least 1 Week Apart)**

## Type B Projects Approval Process

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- 1 Publish notice of project/public hearing in the newspaper (Section 505.160(a))
- 2 Type B posts agenda (72 hours in advance of meeting)
- 3 Type B meeting
  - o Conduct public hearing on project (Section 505.159(a))
  - o Board takes action on the item (votes up or down the project)
- 4 City Council posts agenda (72 hours in advance of meeting)
- 5 City Council meeting
  - o Section 505.158 – conducts first reading of resolution
  - o Section 505.158 – conducts second reading of resolution (or conduct second reading at separate City Council meeting) (if project is less than \$10,000 readings are not required)
  - o City Council takes action on the item (votes up or down the project)
- 6 Once 60 days runs from published notice (step 1) can fund the project (need a performance agreement) (Section 505.160(a))

**Procedural Steps - Section 505.158 (Only Difference - City Council Meetings at Same Meeting or Separate Meetings)**

## Type B Projects Approval Process

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# Promotional Expenditures

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## **Sec. 504.105. LIMITATION ON USE OF REVENUES FOR PROMOTIONAL PURPOSE.**

- a) Except as provided by Subsection (b), a Type A corporation may spend not more than 10 percent of the corporate revenues for promotional purposes.
- b) A Type A corporation may spend not more than 25 percent of the corporate revenues for promotional purposes if the authorizing municipality:
  - 1 is located in two counties;
  - 2 has a population of less than 24,250 according to the 1990 federal census; and
  - 3 is located wholly or partly within 10 miles of a federal military reservation.

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**Sec. 505.105. LIMITATION ON  
USE OF REVENUES FOR  
PROMOTIONAL PURPOSES.**

A Type B corporation may spend not more than 10 percent of the corporate revenues for promotional purposes.

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# Job Training

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## Sec. 501.102. PROJECTS RELATED TO CERTAIN JOB TRAINING.

In this subtitle, "project" includes job training required or suitable for the promotion of development and expansion of business enterprises and other enterprises described by this subtitle, as provided by Section 501.162.



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## Sec. 501.162. USE OF TAX REVENUE FOR JOB TRAINING.

A corporation may spend tax revenue received under this subtitle for job training offered through a business enterprise only if the business enterprise has committed in writing to:

- 1 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
- 2 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.

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**THE END**