

COMPARISON OF TYPE A, TYPE B AND MDD ECONOMIC DEVELOPMENT ENTITIES

Nature of the Entities

<u>Type A</u>	<u>Type B</u>	<u>MDD</u>
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
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

Board of Directors

Type A

Type B

MDD

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 (All council could be directors. I would recommend at least a 5 member board for purposes of a quorum)
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
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 other than as an employee, officer, or member of the city council [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

Administrative Expenses

Type A

Type B

MDD

Authorized to pay the administrative expenses (including staff) to implement the projects.	Same	Employ necessary personnel [LGC §377.071(4)]
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Open Meeting, Public Hearings and Public Information

Type A

Type B

MDD

Subject to TOMA (Gov't Code, Ch. 551) [LGC §501.072]	Same	Subject to TOMA as a political subdivision
Meetings to be held in the city or county in some cases (new law)	Same	Meetings to be held in the city
Public Hearings: Not required for Type A projects. 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] Plus: two (2) separate readings are required by the City Council if the project expenditure is \$10,000 or more. [LGC §505.158(b)]	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) and if the population of the city is < 20,000. [LGC §505.159]	None; no publications, public hearings, performance agreements, or elections are required.
60 day waiting period to expend funds following first public notice of a Type B project only	Same	None

Subject to Public Information Act (Gov't Code Ch. 552) [LGC §501.072]	Same	Subject to PIA as a political subdivision
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Projects

Type A

Type B

MDD

Intended for manufacturing and industrial development	For economic development and community development	Very similar to Type B ("for the purpose of finance development projects beneficial to the district") [LGC §377.021]
<u>Projects that Create or Retain Primary Jobs</u> A Type "A" economic development corporation may fund the following projects provided the projects create or retain "primary jobs:" See LGC §501.002 for definition of "primary job" which means a "job that is ... available at a company for which a majority of the products or services of that company are <u>ultimately exported</u> to regional, statewide, national or international markets <u>infusing new dollars</u> into the local economy"; and that is included in one of nearly sixteen (16) NAICS sector codes.¹ See LGC §§501.101 and 504.103 for description of projects authorized under Chapters 501 and 504.	<u>Projects that Create or Retain Primary Jobs</u> A Type "B" economic development corporation may fund the following projects, <u>provided</u> the projects create or retain "primary jobs:" Type B corporations may provide land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements (one or more) that are for the creation or retention of primary jobs and that are found by the board of directors to be required or suitable for the development, retention, or expansion of: (1) manufacturing and industrial facilities; (2) research and development facilities, (3) military facilities, including closed or realigned military bases; (4) transportation facilities (including	Same as Type B [LGC §505.151-505.158] Plus: 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 vehicle and that are located at or in the vicinity of other convention center facilities. [LGC §377.001(3)]

¹ The NAICS sector code categories include: crop production; animal production; forestry and logging; commercial fishing; support activities for agriculture and forestry; mining; utilities; manufacturing; wholesale trade; transportation and warehousing; information; securities, commodity contracts, and other financial investments and related activities; scientific research and development services; management of companies and enterprises; telephone call centers; correctional institutions; and a job included within National Security sector number 928110.

<u>Authorized Projects for “Primary Jobs” under §501.101:</u> (1) manufacturing and industrial facilities; (2) research and development facilities; (3) military facilities; (4) recycling facilities; (5) distribution center; (6) small warehouse facilities; (7) primary job training facility by institutions of higher education; and (8) regional or national corporate headquarters. [LGC §501.101] <u>LGC § 501.101 projects which are excluded under Chapter 504 – for Type A corporations</u> (1) transportation facilities ; (2) sewage or solid waste disposal facilities; (3) air or water pollution control facilities; [LGC §504.103]	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 capable of serving as decentralized storage and distribution centers; (10) primary job training facilities for use by institutions of higher education; and (11) regional or national corporate headquarters facilities. [LGC 505.151; See LGC § 501.101] Type B corporations may provide land, buildings, equipment, facilities, and improvements found by the board of directors to promote or develop new or expanded business enterprises <u>that create or retain primary jobs</u>, including a project to provide: (1) public safety facilities; (2) streets and roads; (3) drainage and related improvements; (4) demolition of existing structures; (5) general municipally owned improvements; and (6) any improvements or facilities that are related to any of those projects and any other project that the board in its discretion determines promotes or develops new or expanded business enterprises <u>that create or retain primary jobs</u>. [LGC §505.155]	
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Projects that are NOT Required to Create or Retain Primary Jobs Additionally, Type A corporations may fund the following projects <u>without</u> creating or retaining primary jobs: <u>Ch. 501 Authorized Projects:</u> (1) job training classes [LGC §501.102, See also §501.162]; (2) certain targeted infrastructure projects 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, telecommunications and Internet improvements, and beach remediation along the Gulf of Mexico [LGC §501.103]; 3) land, buildings, equipment, facilities, and expenditures required or suitable for a career center not located within the taxing jurisdiction of a junior college [LGC § 501.105]; <u>Ch. 504 (expressly Type A) Projects:</u> (4) a general aviation business airport which is an integral part of an industrial park [LGC §504.103(c)(1)]; (5) port related facilities [LGC §504.103(c)(2)]; (6) airport-related facilities for communities located 25 miles from U.S./Mexico border only [LGC § 504.103(c)(3)];	Projects that are NOT Required to Create or Retain Primary Jobs Additionally, Type B corporations may fund the following projects <u>without</u> creating or retaining primary jobs: <u>Ch. 501 Authorized Projects:</u> (1) job training classes [LGC §505.151; See §501.162]; (2) certain targeted infrastructure projects 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, telecommunications and Internet improvements, and beach remediation along the Gulf of Mexico [LGC §501.103]; (3) land, buildings, equipment, facilities, and expenditures required or suitable for a career center not located within the taxing jurisdiction of a junior college [LGC § 501.105]; <u>Ch. 505 (expressly Type B) Projects:</u> (4) land, buildings, facilities, and related improvements that enhance projects consisting of professional and amateur (including children's) sports, athletic, entertainment, tourist, convention, and public park purposes and events [Local Gov't Code § 505.152]; (5) affordable housing projects [LGC §505.153]; (6) water supply facilities projects,	
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Ch. 502 Projects: (7) development, improvement, expansion, or maintenance of facilities relating to the operation of commuter rail, light rail, or motor buses [LGC § 502.052];	with the requisite voter approval [LGC § 505.154(1) and § 505.304]; (7) water conservation programs, with the requisite voter approval [LGC § 505.154(2) and § 505.304]; (8) development or expansion of airport or railport facilities, including hangars, maintenance and repair facilities, cargo facilities, and related infrastructure located on or adjacent to an airport or railport facility, if the project is undertaken by a Type B corporation and enters into a development agreement with an entity who acquires a leasehold or other possessory interest from the Type B corporation and is authorized to sublease the entity's interest for other authorized projects [LGC § 505.1561]; and Ch. 502 Projects: (9) development, improvement, expansion, or maintenance of facilities relating to the operation of commuter rail, light rail, or motor buses [LGC § 502.052]; Ch. 505 Certain Small Cities Projects: (10) Type B corporations with a city population of 20,000 or less, may provide land, buildings, 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 the city council must adopt a resolution authorizing the project after giving the resolution at least two (2) separate readings [LGC § 505.158].	
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<u>Ch. 504 Additional Projects</u> <u>(8) Type “B” projects with voter approval</u> [LGC § 504.152 - .153]; and	Note: LGC §505.158 the operative word here is “<u>expenditures</u>” versus “<u>improvements</u>” as found in other provisions.	
<u>Ch. 504 Promotional Purposes:</u> <u>(9) promotional projects</u> [LGC § 504.105].	<u>Ch. 503 Promotional Purposes:</u> <u>(11) promotional projects</u> [LGC § 505.103].	
<u>Performance Agreements</u> <u>(w/ Business Enterprises):</u> Necessary for Projects under §§501.101-501.107 and §§505.151 – 505.161 [See §501.158]	<u>Performance Agreements</u> <u>(w/ Business Enterprises):</u> Necessary for Projects under §§501.101-501.107 and §§505.151 – 505.161 [See §501.158]	
<u>HB 3302 – Recently adopted as LGC §504.171</u> (Effective 06/17/11) <u>Type A corporations in Cities with population under 7,500 having both a Type A and a Type B EDC may now, if permitted by ordinance of the authorizing municipality, undertake any project that a Type B corporation may undertake under Chapter 505.</u> Until this new provision, a Type A could undertake a Type B project only by conducting a special election to gain public approval and conduct a public hearing.	<u>Payment of Maintenance and Operation Costs:</u> LGC §505.303 allows payment of M & O costs <u>of a publicly owned and operated project “<u>purchased or constructed under this Chapter.</u>” (Ch. 505)</u>	