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CITY OF SWEETWATER & SEED BOARD JOINT MEETING MINUTES – JULY 31, 2017

PRESENT: David Vela, Larry May, Jim Lee, Jim McKenzie, Ken Becker, Billy Whisenant, Jerod Peek, Kirby Andrews, Carolyn Lawrence, Kathleen Barkley, Richard Fergeson, Leah Andrews, Brian Frieda, Mark Rushing, Kirk Harris, Russell Jones, Eddy Campbell, Tonya Challis, Lisa Adames, Kirk Maberry, Art Maberry, Peter Sheridan, Lance Hall, Gill Cherry, Larissa Place

CALL TO ORDER: 11:03 AM by Mayor Jim McKenzie and SEED President Billy Whisenant

PRAYER: Jim Lee

PLEDGE: Jerod Peek

CITY MANAGER DAVID VELA

Introduce Dan Santee. Mr. Vela and Mr. Santee have had a working relationship previously in Abilene. They have done work together before. Mr. Santee is here to discuss the legal items surrounding changing the current Type A organization to a MDD.

DAN SANTEE

- Charlie Zech could not make it.
- Mr. Santee was a city attorney in Abilene. He is familiar with W. Texas.
- He currently only represents government entities on the defense side. Currently representing 35 cities with 23 attorneys in the firm.
- There are many other cities looking into this same change. Copper Cove is in a similar situation as Sweetwater wanting to change over including an ETJ.

PRESENTATION

Municipal Development District: What is it?

A municipal development district (MDD) sales tax is an optional city sales tax that closely resembles a Type B economic development sales tax. It can be levied within a specified area of the city or its extraterritorial jurisdiction or both.

How Does an MDD Compare to a 4A or 4B EDC

- Not a corporation – a district and political subdivision of the state and the city.
- Bylaws – Authorized to adopt rules to govern the operation of the district and its employees and property.
- Boundaries – (1) within all or part of the city limits; (2) within all or part of the city limits and ETJ; or (3) within all or part of ETJ
 - Boundaries are what you decide they are
- Board of Directors – 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.
 - There can be as many members on the board as the council sees fit.
 - Jerod Peek asked if you can put rules in place to require city council approval.
 - Yes you can write those into the bylaws.
 - Ken Becker asked if population restrictions like in Type A/B?
 - No restrictions on MDD
- Public Hearings and Performance Agreements – None; no publications, public hearings, performance agreements, or elections are required.
 - Performance agreements are not required but a good idea to have.

Creating an MDD

Sec. 377.021.

(a) municipality may call an election on the question of creating a municipal development district... to plan, acquire, establish, develop, construct, or renovate one or more development projects beneficial to the district.

(b) The order calling the election must:

- (1) define the boundaries of the district; and
- (2) call for the election to be held within those boundaries

(c) The district is created if a majority of the registered voters of the proposed district voting at the election favor creation of the district.



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(d) If a majority of the registered voters of the proposed district voting at the election to create the district vote against creation of the district, the municipality may not hold another election on the question of creating a municipal development district before the first anniversary of the most recent election concerning creation of a district.

(e) In the order calling the election, the municipality may provide for the district boundaries to conform automatically to any changes in the boundaries of the portion of the municipality's extraterritorial jurisdiction included in the district.

Boundary Option – Your choice will dictate the manner in which the elections may be held

- Within all or part of city limits
- Within all or part of the city limits; and ETJ
- Within all or part of the ETJ
 - A proposed Boundary map was provided at the meeting which included all of the City and ETJ

Order Calling the Election

"The boundaries of the Municipal Development District are hereby established to be the same as the corporate boundaries and extraterritorial jurisdiction of the City of Sweetwater as such corporate boundaries and extraterritorial jurisdiction now exist in Nolan County, Texas and as may be expanded or decreased from time to time."

"It hereby ordered that a Municipal Special Election be held on Tuesday, November 07, 2017 for the purpose of asking the registered voters within the boundaries of the Municipal Development District to vote for or against the proposition set out in italics below:"

Required Ballot Language

"Authorizing the creation of the Sweetwater Municipal Development District and the imposition of a sales and use tax at the rate of one-half of one percent for the purpose of financing development projects beneficial to the district."

- In November it can't impose a tax. The district itself must impose a tax at a later date.

Complications of Including ETJ

- Cannot have a joint proposition to abolish 4A/repeal tax and create MDD/authorize tax
- The ETJ residents vote on the creation of the MDD if ETJ is included
- The ETJ residents cannot vote on the 4A question
- Have two ballot propositions in the same election could mean a 4A repeal passes and the MDD creation fails
- Two step process allows creation of MDD in November
- The 4A question will only go to City voters in May
- Combined proposition as done in Brownwood cannot include ETJ
- MDD unlike 4A cannot have projects in ETJ unless it is within district boundaries
- This has been a big problem in Brownwood

The Brownwood Ballot

Shall the City of Brownwood Economic Development Corporation (Type A) be terminated with the abolition of its sales and use tax for the promotion and development of new and expanded business enterprises at the rate of one-half of one percent, and concurrently, authorize the creation of the City of Brownwood Municipal Development District with the imposition of a sales and use tax within the incorporated City limits of the City of Brownwood, Texas, which boundaries shall automatically conform to any changes in the corporate boundaries of the City at the rate of one-half of one percent for the purpose of financing development projects beneficial to the district? Yes or No

- Larry May asked if Type A can remain and disperse the money how they see fit
 - In theory you can not do that



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The Election is a Success! (now what do we do?)

Process for MDD

- **Appoint the MDD Board**
 - The board must consist of at least 4 members... could appoint current SEED Board
 - Directors may be removed by the city council at any time
 - Board members must reside in the city or in the City's ETJ
 - City council members, city officers, and city employees may be members of the board, but may not have a personal interest in a contract executed by the district
- **Establish Development Project Fund**
 - The board must pass a resolution establishing a "development project fund."
 - It is into this fund that the sales tax proceeds are deposited for expenditure on authorized MDD projects.
- **Authorized MDD Projects**
 - "Development project" means: a "project" as that term is defined by Sections 505.151-505.158
 - Sec..505.151. Authorized Projects. In this chapter, "project" means land, buildings, equipment, facilities, expenditures, and improvements included in the definition of "project" under Chapter 501, including: (1) job training as provided by Section 501.162; and (2) recycling facilities
 - Sec.505.152 Projects related to recreational or community facilities
 - Sec.505.153 Projects related to affordable housing
 - Sec.505.154 Projects related to water supply facilities and water conservation programs
 - Sec.505.155 Projects related to business enterprises that create or retain primary jobs
 - Regulations still apply regarding affordable housing

Most Relevant to Sweetwater

For a municipality with a population of 20,000 or less, "project" also includes the land, building, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the corporation's board of directors to promote new or expanded business development

Anything the Board deems improvement will qualify

Richard Ferguson asked if market rate housing is allowed – Yes

Specific MDD Revenue Use

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

Sales And Use Tax

- A district by order may impose a sales and use tax under this subchapter
- A district may impose a tax under this subchapter only if the tax is approved at an election held under Section 377.021
- A district may not adopt a sales and use tax under this subchapter if the adoption of the tax under this subchapter would result in a combined tax rate of all local sales and use taxes of more than two percent in any location in the district.

Imposition Of Tax

- If the district adopts the tax, a tax is imposed on the receipts from the sale at retail of taxable items in the district at the rate approved at the election.
- There is also imposed an excise tax on the use, storage, or other consumption in the district of tangible personal property purchased, leased, or rented from a retailer during the period that the tax is effective in the district. The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sale price of the tangible personal property.



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Effective Date of Tax

Except as provided by Section 377.107, the adoption of the tax, the change of the tax rate, or the repeal of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date on which the comptroller receives a notice of the results of the election adopting, changing, or repealing the tax.

***Dependent on notice – won't know the whole story till May with 2 process election

WHAT BECOMES OF THE 4A TAX AND CORPORATION: The election to repeal the 4A tax and the dissolution of the corporation.

Limitation on duration of tax. For a Type A EDC: A sales and use tax that is approved without limiting the period during which the tax is imposed remains in effect until repealed by election.

Election to Repeal the 4A Tax

- A special election would need to be held within the municipal boundaries in May 2018 to repeal the 4A tax allocation so that the MDD tax could be imposed by the District.
- If the election fails to repeal the 4A tax, the MDD tax may not be imposed even though the District was successfully created.
 - Inform the community or it will fail
 - They will only see more tax, new board, etc.. you must inform the voters

The Change in Allocation

- The State Comptroller's Office as well as the Secretary of State's Office have agreed that the elections may be held in the manner proposed.
- The Comptroller stated that the change in allocation can be seamless once they receive the notice that the 4A tax as repealed and the MDD tax has been imposed

Alteration or Termination by Authorizing Unit

- At any time a corporation's authorizing unit, in its sole discretion may in accordance with this subtitle:
 - Alter the corporation's structure, organization, programs, or activities;
 - Terminate the existence of the corporation
- The authority of an authorizing unit under this section is limited only by the law of this state on the impairment of contracts entered into by the corporation.
- An authorizing unit may make an alteration or may terminate the corporation's existence only by a written resolution of the authorizing unit's governing body

Assets on Termination

On termination the title to all funds and property owned by the corporation is transferred to the corporation's authorizing unit (City of Sweetwater). Funds will move to the City's general fund ledger.

- It is solely in the discretion of the city as to whether or not they choose to allocate all or part of the assets of the former 4A corporation to be used by the MDD for economic development purposes.
- Often cities will choose to do so by entering into a 380 agreement that allocates funds that must be used for economic development purposes.
- Could choose to specify an amount to be used solely for "4A" projects
 - Larry May asked if new board has to agree to rules before funds are allocated. Yes
 - So the City can make the MDD allocate % of funds to Type A projects. Yes



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Timeline

- Must call the special election by August 21st for a November 7th election to create an MDD District that includes all of Sweetwater and the Sweetwater ETJ
- If approved the Sweetwater MDD is created and the authority granted to impose a sales and use tax.
- Must then call a special election in February 2018 to be held in May 2018 to repeal the 4A tax.
- Notices must be provided to the Comptroller
- The tax that is collected will not change but will be allocated to the MDD rather than the 4A EDC.

End of presentation. Opened it up to questions from City Commissioners and SEED Board of Directors

Carolyn Lawrence asked can you have both if you don't repeal 4A to allocate to MDD?

The election in November will reduce the 4A – MDD wouldn't include ETJ. Don't gain a lot by doing that.

Kirby Andrews has concerns about not being able to provide assistance to businesses outside the ETJ.

Larry May advised the Larry Locke project would be outside the ETJ and would not qualify.

Ken Becker stated that the physical location is inside the ETJ even though the business runs outside.

Ken Becker advised that Cape & Son are annexed so they would be ok.

Jerod Peek asked if there are any retail restrictions – No

Richard Ferguson asked if there are any restrictions for the city to not use funds as they want to – nothing you can do to stop city using money as they see fit.

Jerod Peek asked if when the MDD is voted in and the money goes to the city can it just go straight to the MDD – no. The comptroller sends the money to the city general fund.

Jerod Peek asked if the MDD can adopt SEED's image – most likely yes, depends on how it was developed.

It was noted that Brownwood changed their identity.

Larry May stated he does not see the need to dissolve SEED completely. This is the only means of helping Buzzi or other surrounding industries not within city limits or ETJ.

Jerod Peek made mention that historically we have not needed that.

Ken Becker advised the projects like the power plant would go away, Buzzi training would be gone (unless held within city limits), option to help Eagle Rail would be gone.

Larry may asked if at the May election can an allocation of sales tax to keep MDD and Type A just change % for each.

Abolish the tax rate but not the corporation so SEED can still go outside city limits. – No

Jim Lee advised that scenario would handicap the MDD. Jerod Peek stated it would shut the door on MDD projects

Billy Whisenant asked the reason for the MDD is to react quickly to retail, housing...

Jerod Peek – Yes it takes speed of expanded projects

Art Maberry asked if staff can still reach out to companies outside ETJ just not fund projects?

There is no limitation.

David Vela made mention that if you were to have a Type A & MDD there would need to be two boards.



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Richard Ferguson stated to fix the city limit issues he would be in favor of one election

Jerod Peek stated that would not allow them to include the ETJ

Kirby Andrews said if this happens it needs to be done right the first time. Not to have same problems Brownwood is having even if it takes longer

Leah Andrews asked if 4A projects that are existing now when the MDD is approved would these still continue?

Yes

Recess for lunch

1:16 Call to order Mayor Jim McKenzie

Jerod Peek stated with the MDD in place with the ETJ they would be able to do any project and not be restrained.

It was asked if a call for expenditures in excess of \$1 Million can we require a vote to approve that expenditure? Does the community have a say? The City Commissioners will have the final say.

Training can be held within the city limits for those business residing outside of city or ETJ.

Jerod Peek – if the community is not growing it is dying. We are not growing. It's time to get on the ball.

Larry May – Type A can do it all. Just not as fast and with the community involved.

Jerod Peek – An MDD will change our mindset

Carolyn Lawrence – less than 20,000 population is broader with MDD than B projects?

It's the same

Kirby Andrews – The people ultimately have a say. They voted for the commissioners. They can make a change if necessary.

Dan Santee – Brownwood's situation with ETJ was unfortunate. Not all their fault, they didn't push the Comptroller.

Richard Ferguson – this will change our mindset and allow the community and economic development to get together.

Mayor Jim McKenzie – we are not creating and MDD. We are giving the people the opportunity to vote it in.

Adjourn: Mayor Jim McKenzie asked to adjourn. Jim Lee made the motion to adjourn. Larry May seconded. The motion carried

Adjourn: Board to consider adjourning. There being no further business, Kirby Andrews made the motion to adjourn. Carolyn Lawrence seconded. The motion carried.