

# Economic Development

Presented by:

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# Topics

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- Chapter 380 Agreements
- Tax Abatement Agreements
- Tax Increment Financing
- Type A and Type B Sales Tax
- Miscellaneous Issues

# Grandscape Master Plan

## MASTER PLAN



### GRANDSCAPE

798,469 SF RETAIL / REST / THEATER  
358,680 SF OFFICE  
375,000 SF HOTEL/CONVENTION  
1,532,149 SF TOTAL



MASTER SITE PLAN - COLOR

# **Nebraska Furniture Mart of Texas**

- NFM uses 90 acres of the 433 acre site
  - 560,000 square foot retail showroom
  - 1.3 million square foot distribution center, nearly 18 football fields
  - 100 aisles in the distribution center, equaling 6.5 miles
  - Opened in 2015
  - 2,000 employees
  - 4,000 construction jobs
  - 8-10 million visitors projected annually
-

# Nebraska Furniture Mart of Texas

- The Nebraska Furniture Mart Store is the size of 6 Ikea's or 10 Home Depots.
- The Nebraska Furniture Mart Store provides 850 Full-Time Employment Equivalent Jobs (50% or 425 jobs shall be offered to City or Denton County residents).



# Nebraska Furniture Mart of Texas

- **Taxable Sales** - Nebraska Furniture Mart is estimated to have annual taxable sales of \$600 million -- growing at 7% annually for the first 10 years and 3% growth thereafter.
- **Sales Tax Generated** - \$600 million in annual sales

State – 6.25% - \$37,500,000.00

City – 1% - \$6,000,000

Type A – 0.50% - \$3,000,000

Type B – 0.50% - \$3,000,000



# Chapter 380 Agreements

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- Chapter 380 of the Texas Local Government Code.
- Texas cities may provide monies, loans, city personnel, and city services for promotion and encouragement of economic development.
- The Texas Constitution requires all expenditures of municipal funds serve a “public purpose.” TEX. CONST. art. III, § 52(a). *See also, Texas Mun. League Intergovernmental Risk Pool v. Tex. Workers’ Comp. Comm’n*, 74 S.W.3d 377, 384 (Tex. 2002)



# Chapter 380 Agreements

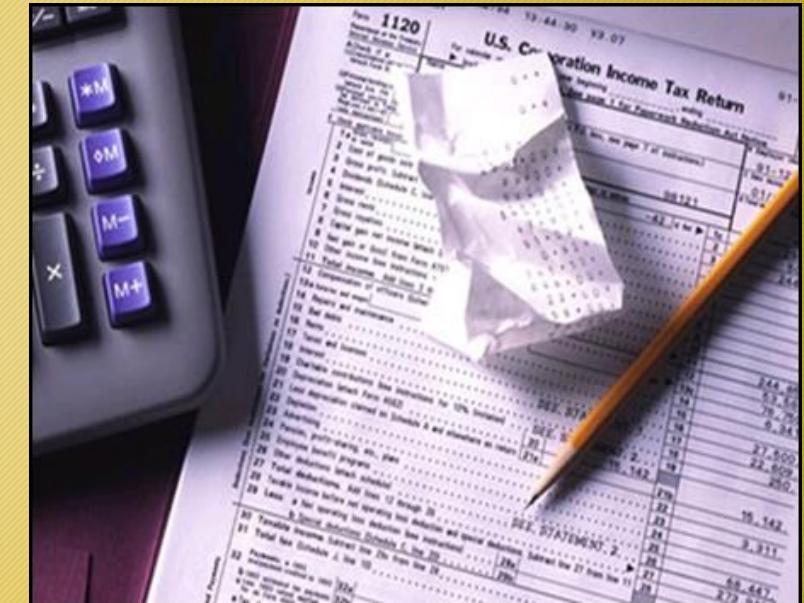
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- Article III, section 52-a of the Texas Constitution authorizes “the making of loans and grants of public money . . . for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state . . . or the development or expansion of transportation or commerce in the state.”

# Tax Abatement Agreements

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- Chapter 312 of the Texas Tax Code.
- Chapter will expire on September 1, 2019, unless a bill is passed extending the chapter.
  - HB 3143 (2019) and HB 360 (2019) (extend chapter to September 1, 2029)



# Tax Abatement Agreements

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- Tax Abatement Agreements can be no more than 10 years in length.
- Abate the taxes paid on the increased value of the property due to the repairs or improvements of the property.
- Developer has to submit to appraisal district by April 30<sup>th</sup> of each year for the exemption
  - Comptroller's form 50-116.



# Tax Abatement Agreements - Steps

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- 1) Resolution electing to become eligible to enter into tax abatements;
- 2) Approve tax abatement guidelines and criteria
  - Include statement concerning undocumented workers - Chapter 2264 of Texas Government Code;
- 3) Deliver in writing to presiding officer of each taxing unit notice of public hearing on reinvestment zone;

# Tax Abatement Agreements - Steps

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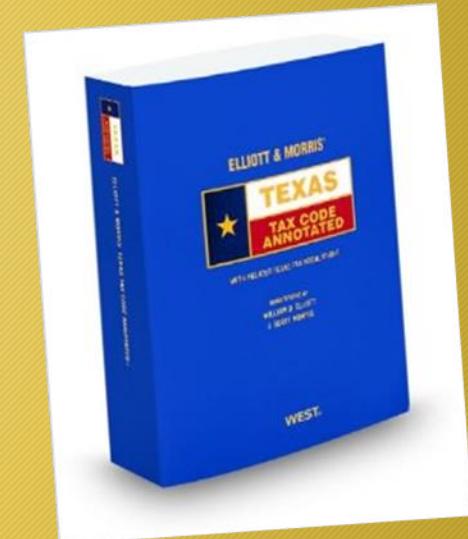
- 4) Publish in newspaper notice of public hearing at least 7 days prior to public hearing;
- 5) After public hearing designate area as tax abatement reinvestment zone;
  - City by ordinance, § 312.201(a)
  - County by order, § 312.401(a)



# Tax Abatement Agreements - Steps

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- 6) At least 7 days prior to date, deliver to presiding officer of each taxing unit notice of intent to enter into a tax abatement agreement.
  - Provide copy of the proposed agreement.
- 7) Execute tax abatement agreement.
  - Affirmative vote of majority of members at a regularly scheduled meeting; § 312.207.



# Tax Abatement Agreements - Reinvestment Zone

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## Reinvestment Zone Criteria - §312.202(a)

- (1) substantially arrest or impair the sound growth of the city creating the zone;
- (2) be predominantly open and, because of obsolete platting, deterioration of structures or site improvements - substantially impairs or arrests the sound growth of city;
- (3) be in a federally assisted new community located in a home-rule city;

# Tax Abatement Agreements - Reinvestment Zone

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## Reinvestment Zone Criteria - §312.202(a)

- (4) meets Section 119 of the Housing and Community Development Act of 1974;
- (5) encompasses signs, billboards, or advertising structures designated by city for relocation, reconstruction, or removal;
- (6) reasonably likely due to designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone.

# Tax Cuts and Job Act

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- On December 22, 2017, President signed into law H.R.1, known as the Tax Cuts and Job Act.
- Largest rewrite of the federal tax code since 1986.
- Impact on State and Local Economic Development Incentives
- Previously under federal law 26 U.S.C. § 118 (contributions to capital provision) contribution of money or property by a governmental entity constituted “contribution to capital” and was excluded from corporate taxpayer’s gross income.

# Tax Cuts and Job Act

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- 26 U.S.C. § 118 was amended to provide the following:
- “Exceptions. For purposes of subsection (a) (contribution to capital), the term “contribution to the capital of the taxpayer” does not include . . . (2) any contribution by any governmental entity or civic group (other than a contribution made by a shareholder as such).
- Joint Committee on Taxation estimated this provision would generate approximately \$6.5 billion to the federal government between 2018 and 2027.

# Tax Increment Financing

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- Chapter 311 of the Texas Tax Code
- Monies put into TIRZ or TIF fund can be used to pay “project costs”
- City can initiate a TIRZ or property owner may petition for the creation of a TIRZ
- Sales tax increment or property tax increment pays for “project costs.”

# Tax Increment Financing - Project Costs

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- Can fund “project costs.” They include:
  - Capital costs; financing costs;
  - Real property assembly costs;
  - Professional service costs, including architectural, planning, engineering, and legal;
  - Interest before and during construction;
  - Costs for operating the reinvestment zone;
  - Payments made at the discretion of the City or County.
    - Section 311.002(1)(A)-(L)

# Tax Increment Financing - Steps

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- 1) City initiates or receives a petition;
- 2) Preliminary reinvestment zone project and finance plan;
- 3) City publishes notice of public hearing at least 7 days before creation of TIRZ;
- 4) City conducts public hearing;
- 5) City designates area as TIRZ;

# Tax Increment Financing - Steps

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- 6) City designates Board of Directors for TIRZ;
- 7) Board prepares final project and finance plan;
- 8) After plan is approved, contract with each taxing unit with regard to the percentage of participation;

# Tax Increment Financing - Steps

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- 9) Board makes recommendations to City on implementation of TIRZ and agreements;
- 10) City must submit annual report to CEO of each taxing unit that levies taxes within TIRZ; and
- 11) File annual report with State Comptroller.

# Nebraska Furniture Mart - TIRZ

- Property Tax Increment: The Colony Local Development Corporation Tax Increment Contract Revenue Bonds - \$19,515,000.00 - (Nebraska Furniture Mart Texas Project Infrastructure Bonds), Series 2013
  - acquisition of 12.9 acres of land within the zone for public infrastructure;
  - cost of the construction of the public infrastructure;
  - cost of site improvements including grading and drainage.

# Nebraska Furniture Mart - TIRZ

- Sales Tax Increment: The Colony Local Development Corporation Sales Tax Increment Contract Revenue Bonds - \$15,875,000.00 - (Nebraska Furniture Mart Texas Project Infrastructure Bonds), Series 2013
  - the acquisition of 12.9 acres of land within the zone for public infrastructure;
  - cost of the construction of the public infrastructure;
  - cost of site improvements including grading and drainage.



# Nebraska Furniture Mart - TIRZ

- Sales Tax Increment: The Colony Local Development Corporation Sales Tax Increment Contract Revenue Bonds, Series 2013A - \$106,850,000.00
- Bonds are fully insured by Berkshire Hathaway Assurance Company.
  - the acquisition of 281 acres of land within the zone;
  - the acquisition of 25 acres of land within the zone for public parking facilities;
  - construction of public parking facilities;
  - cost of site improvements within the zone (grading and drainage)

# Nebraska Furniture Mart - TIRZ

- Denton County Participation Agreement
- Agreed to pay into tax increment fund 90% of the real property taxes collected.
- Term through December 31, 2051
- TIRZ board of directors consists of nine (9) voting members, two (2) members appointed by Denton County.



# TYPE A AND TYPE B ECONOMIC DEVELOPMENT SALES TAX

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- Chapters 501 to 505 of Texas Local Government Code
- Approved by voters at a sales tax election
- Sales tax can fund projects, promotional activity, and job training.



# TYPE A AND TYPE B ECONOMIC DEVELOPMENT SALES TAX

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- Type A Projects - Chapters 501, 502, and 504 of Texas Local Government Code.
- Type B Projects - Chapters 501, 502, and 505 of Texas Local Government Code.



# TYPE A AND TYPE B ECONOMIC DEVELOPMENT SALES TAX

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- Non-profit corporation.
- Board of directors are appointed and removed with or without cause by City Council.
- Board has to approve expenditures.
- City Council gets to approve all expenditures.



# TYPE A AND TYPE B ECONOMIC DEVELOPMENT SALES TAX

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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:
  - (1) for the creation or retention of primary jobs; and
  - (2) found by the board of directors to be required or suitable for the development, retention, or expansion of:
    - (A) manufacturing and industrial facilities; . . .
    - (B) research and development facilities;
    - (I) distribution centers;
    - (J) small warehouse facilities . . . and distribution centers; . . .
    - (L) regional or national corporate headquarters

# TYPE A AND TYPE B ECONOMIC DEVELOPMENT SALES TAX

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- 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:
  - (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements;
  - (2) telecommunications and Internet improvements; or
  - (3) beach remediation along the Gulf of Mexico.

# TYPE A AND TYPE B ECONOMIC DEVELOPMENT SALES TAX

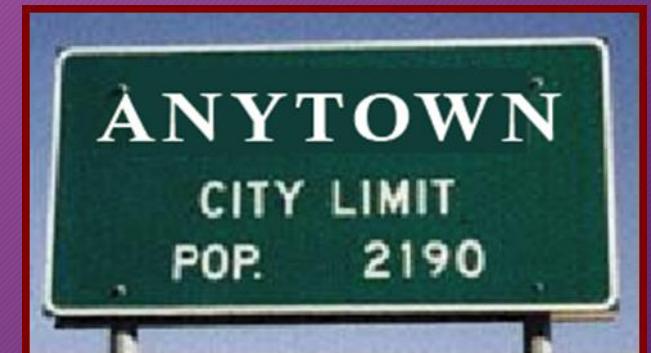
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- **Sec. 505.152. PROJECTS RELATED TO RECREATIONAL OR COMMUNITY FACILITIES.** For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for use 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.

# TYPE A AND TYPE B ECONOMIC DEVELOPMENT SALES TAX

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- Sec. 505.158. PROJECTS RELATED TO BUSINESS DEVELOPMENT IN CERTAIN SMALL MUNICIPALITIES.
- (a) For a Type B corporation authorized to be created by a municipality with a population of 20,000 or less, "project" also includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the corporation's board of directors to promote new or expanded business development.
- (b) A Type B corporation may not undertake a project authorized by this section that requires an expenditure of more than \$10,000 until the governing body of the corporation's authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings.



# **Nebraska Furniture Mart - Type A Sales Tax**

- The Colony Economic Development Corporation Sales Tax Revenue Bonds - \$29,580,000.00 (Nebraska Furniture Mart Texas Project Infrastructure Bonds), Series 2013
  - construction of public infrastructure inside and outside zone related to distribution, warehousing and regional headquarters;
  - acquisition of 9.8 acres of land for infrastructure;
  - cost of site improvements related to distribution, warehousing and regional corporate headquarters.

# **Nebraska Furniture Mart - Type B Sales Tax**

- The Colony Community Development Corporation Sales Tax Revenue Bonds - \$29,580,000.00 - (Nebraska Furniture Mart Texas Project Infrastructure Bonds), Series 2013
  - construction of public infrastructure inside and outside zone related to distribution, warehousing and regional headquarters;
  - acquisition of 9.8 acres of land for infrastructure;
  - cost of site improvements related to distribution, warehousing and regional corporate headquarters.

# Miscellaneous Issues

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- Undocumented Worker Provision
- Chapter 2264 of the Texas Government Code
- Provides restrictions on the use of “public subsidies” to employ undocumented workers.
- “Public Subsidy” A public program or public benefit or assistance of any kind that is designed to stimulate economic development including grants, loans, loan guarantees, fee waivers, tax refunds, tax rebates or tax abatements.



# Miscellaneous Issues

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- Undocumented Worker Provision
- Requires the state, agency, instrumentality, or political subdivision of the state, including a county, a municipality, a public school district, a special-purpose district or authority, or economic development corporation (Type A or Type B):
  - Statement Required in Applications
  - Provision for repayment required in agreements



- Undocumented Worker Provision

## Statement in Applications

Shall require a business that submits an application to receive a public subsidy to include in the application a statement certifying that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker.

- Section 2264.051 of Texas Gov't Code.

# Miscellaneous Issues

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- **Conveyance of Real Property Issue:**
- Are there notice and bidding requirements to convey real property?
- Section 272.001(b)(6) of Texas Local Government Code – TIRZ's
- City land that is located in a reinvestment zone designated as provided by law the city desires to have developed under a TIRZ project plan is exempt from Chapter 272.

# Miscellaneous Issues

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- Conveyance of Real Property Issue:
- Section 253.009 of Texas Local Government Code
  - City may convey to Type A/Type B economic development corporation real property that has been conveyed by gift to the city or conveyed to city as part of a legal settlement and that is adjacent to an area designated for development by the corporation.
  - Describe the property to be conveyed
  - Conveys fee simple estate; and
  - States the consideration paid.

# Miscellaneous Issues

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- Conveyance of Real Property Issue:
- Section 253.012 of Texas Local Gov't Code
- Applies to cities - less than 20,000 in population
- Convey real property to Type A or Type B corporation without complying with Chapter 272.
- Property must be used to promote “public purpose”
- Must contain a reverter clause reverting back to city.



- Public Information Act Issues:
- Section 552.131 of Texas Gov't Code
  - Trade secret of business prospect;
  - Commercial or financial information which causes substantial competitive harm.
- Tax Abatement Agreements
  - Provides confidentiality of tax abatement agreements and information provided by business.
  - Information public once agreement is executed.

# Miscellaneous Issues

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- Open Meetings Act Consideration:
- Section 551.087 of Texas Gov't Code – authorizes executive session
  - (1) to discuss or deliberate regarding commercial or financial information that the g/b has received from a business prospect that the g/b seeks to have locate, stay, or expand in or near the territory . . . ; or
  - (2) to deliberate the offer of a financial or other incentive to a business prospect.



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