



Ken Winkles
PEDC Director

August 24, 2017

Mr. Winkles,

There may still be some confusion out in the community as to what the City is trying to accomplish by proposing a Municipal Development District, and I was hoping you could help me spread the word on the City's actions. Please send this information to the members of your board and feel free to forward this message to anyone else who may be interested in the subject.

When Mr. Honeyfield was here, he had asked Rod Ponton, City Attorney, to look into ways that the City could expand its tax base. In Mr. Ponton's research, he came across Municipal Development Districts, which can expand the city's sales tax to the Extraterritorial Jurisdiction (ETJ) of the city at a rate of 0.5% (the City being the primary recipient who then passes those funds onto the MDD). Our ETJ extends one mile beyond our city limits because of our population size. Municipal Development Districts (MDD) can be used for all the same purposes and projects as a Type B Economic Development Corporation (As you know, Pecos has a Type B Corporation).

In research and in speaking with the State Comptroller (which governs issues regarding sales tax), it became obvious that we are not able to exceed a 2% local sales tax. Since Reeves County Hospital District collects a 0.5% sales tax, the City is left with 1.5% to contend with. Of that 1.5%, 0.125% goes toward economic development and 0.375% goes to street maintenance as "dedicated" taxes. The State Comptroller informed us that we would need to eliminate these two dedicated taxes if we wished to create an MDD and create a sales tax to fund the MDD.

One of the reasons why we are trying to expand sales tax into the ETJ is to avoid "free riders"- those who benefit from all the services the city (and the EDC) offers, without paying into the city coffers through property tax, leaving the burden on our citizens. Obviously, the City is also looking for additional revenues to help pay for our burgeoning city, and having a larger area to collect tax from will help accomplish this. While not our primary goal, imposing a sales tax on the "free riders" also makes businesses located within city limits just a little more competitive when compared to those who locate on the City's fringes, who can undercut business within city limits by at least 0.5%. While this may not be much, razor thin advantages can make all the difference for a business.

All of these items led us to the point when we revealed to the Council and the public our proposal to place the MDD on the November 7, 2017 ballot. At that time we knew that three questions needed to be placed before the citizens (as the citizens are the only ones that can decide a sales tax change): 1) Eliminating the dedicated road maintenance tax, 2) Eliminating the Economic Development dedicated sales tax, and 3) Approving the creation of an MDD and its associated maximum 0.5% sales tax.

As we worked through the process, we realized that under three separate questions, it was entirely possible that the voters could approve eliminating the economic development and/or street maintenance taxes without approving the Municipal Development District and its tax. Again, working through the process and in working with the State Comptroller, we combined the three questions into one ballot question (the language is attached). This way, we do not run the risk of losing our existing 0.5%, and with it the EDC and street maintenance funding, without replacing them with a broader geographical area for collection. We have also split the language between those who reside within city limits- giving them the opportunity to vote on removing and replacing the existing sales tax (i.e. with an MDD), and language for those outside city limits- who will only vote on the creation of a municipal development district.

I fully realize and appreciate there are those in the community which have questioned why I did not make our intentions known several months in advance of asking the City Council to consider an Order of Elections. Even at the beginning of my conversations with Mr. Ponton, I realized that people would be upset with the thought of eliminating the Economic Development Corporation- and rightly so, given all of the positive things the EDC has accomplished over the years. In retrospect, I realize that I did not do enough to stress the fact that in reality, we are not trying to eliminate the EDC, but rather to replace it with an MDD (which again, can perform all of the same projects as our EDC), and expand its tax base. The second thing I realized when this started was that in order to protect the City's boundaries and "buffer" i.e. the ETJ, we would need to beat Reeves County to the punch and establish our portion of a sales tax in the County (our ETJ) before they did.

The unfortunate downside to the last two months is that both my concerns have become reality: people have become quite upset with the idea of eliminating the EDC, not fully realizing that we are simply changing the authority under which economic development will continue, and the County, sure enough, has made the motions necessary to impose their own sales tax in the City's ETJ at 1.5%. Please know that it was never my intention to do this under the "dark of night" nor was it ever my intention to eliminate the EDC without replacing it with the MDD and a bigger tax base. Again, in retrospect, since my fears came true anyways, it may well have been better to get this out into the public sooner-lesson learned.

As you may know, John Prewit has filed a Temporary Restraining Order against the City to try to prevent us from holding this election based on his understanding that the City Council does not have the authority to abolish the EDC without a 10% petition from the voters. Chapter 501 of the Local Government Code is pretty clear that since the City Council is the authorizing board for the EDC that it also has the authority to abolish the EDC at any time. However, the Council has made it very clear that it has no intention of doing away with the EDC without replacing it with

the MDD, and therefore would only pass the required resolution AFTER the election SHOULD the MDD measure pass.

The language on the ballot describing the abolishment of the EDC is for transparency only, so that voters will understand the natural consequence of creating the MDD. The Council will have to further pass a resolution to dissolve the Pecos Economic Development Corporation. The language for the resolution would provide for a future date so that, as an example, the EDC would cease at 11:59 PM one day, and the MDD would begin at 12:00 AM the next day, and no progress or momentum would be lost. This future date would not be until *at least* the end of the first full quarter of the year AFTER the quarter in which the election is held. During this time, if not before, the bylaws of the MDD would be created and approved by the City Council.

We will continue to work with the courts over the coming weeks to resolve the Temporary Restraining Order issue, as our stance is that we have complied with all required state statutes necessary to hold the election for the creation of an MDD. Additionally, I have attached an opinion from Randy Reynolds, District Attorney which reinforces the City's position and our resolve to move forward.

Finally, as mentioned above, Reeves County has called for an order of elections to implement a 1.5% sales tax throughout the County, excluding the areas within the city limits of Balmorhea, Toyah and Pecos. I requested of Judge Bang to only implement a 1% sales tax in the Pecos Extraterritorial Jurisdiction (i.e. 1 mile buffer outside city limits) in order to prevent any potential conflicts with the Assistance District and the Municipal District, however the Commission decided against that proposal.

This is unfortunate, as Chapter 323 of the Tax Code states that if two sales tax questions come before the voters at the same time, one from the County and one from the City, and they both pass, that the City's would be implemented, but the County's election would have "no effect". In other words, if the MDD and the County Assistance District both pass, the MDD would go into effect, but the County Assistance District vote would be nullified- even if it passes- since the hospital district (at 0.5%), the MDD (at 0.5%) and the Assistance District (at 1.5%) would exceed the local maximum of 2.0% in our ETJ (Texas Tax Code 323.101(e) – if you are curious).

If the MDD vote does not pass, but the County Assistance District (CAD) does get approved, the City would still have, as a County Commissioner stated, the opportunity to annex new areas if the City wants the sales tax. While the City will likely continue with annexations in the near future, especially with recent state legislation moving to limit a home-rule city's ability to do so, it is unfortunate that with the language in the County's Order of Elections, it will now have to be one or the other- the MDD or the CAD- or neither for that matter.

It is my hope that voters will take a "Pecos First!" attitude toward expanding the City's tax base and spread the word on the positive virtues of moving to an MDD, especially in light of this: since the County's proposed County Assistance District does not include the city limits of Balmorhea, Toyah, and Pecos, the citizens of those towns will not be allowed to vote on the County sales tax issue. Therefore, it is not really about Pecos Citizens choosing one tax over the other- that decision will only be placed before the voters who reside in Pecos' ETJ, but rather it

is a question of whether or not expanding the sales tax base for economic development and infrastructure- prior to annexation of those areas- is the right thing for Pecos.

It is also my hope that for anyone who may read this lengthy email will contact me with any questions which they may have about the City's intentions or purposes behind this election. I can be reached at 432-445-2421. I feel the MDD is an excellent opportunity to expand the tax base for economic development and infrastructure improvement and to continue to positive work that the Town of Pecos City and the Pecos Economic Development Corporation have been doing over the last few years.

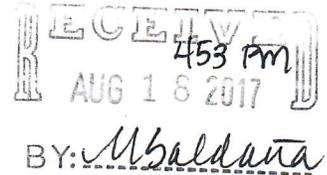
Sincerely,

Seth A. Sorensen, MPA, P.E.
Acting City Manager



August 2, 2017

Dianne Flores, County Clerk
Reeves County, Texas
100 E. 4th St. Suite #101



Re: Ballot Language

To Whom It May Concern:

Please use the following language for the November 7, 2017 election for citizens of the Town of Pecos City, Texas:

- A. Authorizing the creation of the Pecos Municipal Development District and the imposition of a sales and use tax at the rate of one-half (1/2) of one percent within the Town of Pecos City and its extraterritorial jurisdiction for the purpose of financing projects beneficial to the district; Replacing the current 0.375% additional sales and use tax within the city designated for street maintenance with a 0.375% additional sales and use tax imposed by the Pecos Municipal Development District within the Town of Pecos City and its extraterritorial jurisdiction for street maintenance and other lawful government purposes; Terminating the Pecos Economic Development Corporation and the 0.125% sales and use tax for economic development within the city and replacing it with the Pecos Municipal Development District and a 0.125% sales and use tax for economic development within the Town of Pecos City and its extraterritorial jurisdiction. The total sales and use tax imposed within the city limits by the Town of Pecos City will remain at 1.5%

FOR AGAINST

- A. Autorización para crear el Distrito de Desarrollo Municipal de Pecos e imponer un impuesto de ventas y uso a una tarifa de la mitad (1/2) del uno por ciento dentro de los límites de la Ciudad y su jurisdicción extraterritorial con el propósito de financiar proyectos benéficos para el distrito; Reemplazando el impuesto de ventas y uso adicional existente de 0,375% en la ciudad designada para mantenimiento de calles con un impuesto de ventas y uso adicional de 0,375% impuesto por el Distrito de Desarrollo

Municipal de Pecos dentro de los limites de la Ciudad y su jurisdicción extraterritorial para mantenimiento de calles y otros propositos para fines legales; Terminando asi "Pecos Economic Development Corporation" y el 0,125% de impuestos de ventas y uso para el desarrollo económico dentro de la ciudad y reemplazándolo con el Distrito de Desarrollo Municipal de Pecos y un 0,125% de impuestos sobre ventas y uso para el desarrollo económico dentro de los limites de la Ciudad de Pecos y su jurisdicción extraterritorial . El impuesto de ventas y uso total obligatorio dentro de los límites de la ciudad de Town of Pecos City permanecerá en el 1,5%

A FAVOR EN CONTRA

Please use the following language for the November 7, 2017 election for Reeves County citizens residing in the extraterritorial jurisdiction of the Town of Pecos City, Texas (i.e. who live within a one-mile radius of Pecos City Limits):

- A. Authorizing the creation of the Pecos Municipal Development District and the imposition of a sales and use tax at the rate of one-half (1/2) of one percent within the Town of Pecos City and its extraterritorial jurisdiction for the purpose of financing projects beneficial to the district, including: street maintenance, economic development and other lawful government purposes.

FOR AGAINST

- A. Autorizacion para crear el Distrito de Desarrollo Municipal de Pecos e imponer un impuesto de ventas y uso a una tarifa de la mitad (1/2) del uno por ciento dentro de los limites de la Ciudad de Pecos y su jurisdicción extraterritorial con el fin de financiar Proyectos beneficiosos para el distrito, incluyendo: mantenimiento de calles, desarrollo económico y otros propósitos para fines legales.

A FAVOR EN CONTRA

Please feel free to contact me at (432) 445-2421 with any questions or concerns which you may have.

Thank You,



Seth Sorensen
Acting City Manager

The Town Council of the Town of Pecos City met in Special City Council Meeting in the City Council Chambers on August 1, 2017 6:00 P.M. with the following present:

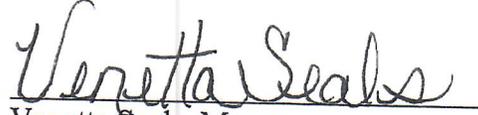
Venetta Seals	Mayor
Gerald Tellez	Mayor Pro-Tem
Wally Moon	Councilman
Veronica Baca	Councilwoman
Arthur Orona	Councilman
Oscar Ornelas	Councilman
Seth Sorensen	Acting City Manager
Syra Nichols	City Secretary
Heather Ramirez	Finance Director
Rod Ponton	City Attorney

Item A. Mayor Venetta Seals called the August 1, 2017 meeting to order at 6:00 pm.

1. **ORDER OF ELECTION** Seth Sorensen, Acting City Manager, presented the council with an Order of Election calling a joint election between the Town of Pecos City and Reeves County to hold elections on November 7, 2017. Councilman Orona questioned if a legal opinion had been sought. Rod Ponton, City Attorney, stated that he had requested multiple opinions and they seem to be in agreement with the ballot language. Kenneth Winkles, PEDC Director, stated with the word changes made he fully backed the decision to follow through with the ballot language. Seth Sorensen, Acting City Manager, went on to remind the Council that the by-laws and structure of the PEDC, if dissolved and established as an MDD, will be all at the discretion of the Council. On motion by Councilman Tellez and seconded by Councilwoman Baca, the council voted unanimously to approve the Order of Election, with the noted changes as discussed including street maintenance and infrastructure in the ballot language.
2. **BUDGET** Seth Sorensen, Acting City Manager, presented the Council with a presentation highlighting budget debt, tax rate comparison, internal funds, business accounts and RRLF. Mr. Sorensen stated that the Town of Pecos City needs to practice conservative budgeting to create a healthy general fund reserve in case of a "rainy day". Mr. Sorensen went on to state that this fiscal year he will be working alongside department heads to establish a zero-based budgeting "baseline" for city functions and activities, to find inefficiencies, and to establish levels of services. Mr. Sorensen went on to present and update the Council on the city debt situation and where it stands as far as debt payments. There was also talk about tax rate comparison to other cities and the city's tax rate history. Internal funds will be used to fund business, such as purchasing trucks, backhoes, and computers. Business funds will be intended to be self-sufficient and the city currently has a utility fund, Mr. Sorensen stated there are potential funds to be collected from ambulance, landfill and trash collections, criminal justice center and the

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BY: *Raunna J. Syles*

airport. Basically, it means that excessive revenues go back into the fund for future activities such as repair and cover of administrative cost. Mr. Sorensen also stated that in order to move forward the Council must be willing to let unprofitable sectors go. The last topic discussed was the Residential Revolving Loan fund that was adopted on July 13, 2017. The City will pay for infrastructure or construction of homes and will get repaid back the funds as homes sell to keep the flow of money moving onto future projects.



Venetta Seals, Mayor

Attest:



Syra Nichols, City Secretary

TOWN OF PECOS CITY
ORDER OF ELECTION
ORDEN DE ELECCION

RECEIVED
AUG 18 2017
BY: *Pamela J. Reyes*

A General/Special Election is hereby ordered to be held on **November 7, 2017** for the purpose of:
(Por medio de la presente se ordena una eleccion general que se celebrara el 7 de noviembre 2017 con el proposito de)

- A. The Town of Pecos City desires to expand its authorized sales tax boundaries. Under state law, the City may impose a maximum 0.5% sales tax in its Extra-Territorial Jurisdiction or "ETJ" by creating a Municipal Development District or "MDD" through an election. The City's ETJ extends one mile beyond its city limits. Under state law, the maximum local sales tax is 2.0%; however the Reeves County Hospital District imposes a 0.5% sales tax, capping the Town of Pecos City at a maximum of 1.5%.
- B. The Town of Pecos City desires to create an MDD. The proposed MDD would be known as the Pecos Municipal Development District (PMDD) and would have the legal right to impose a sales tax of 0.5% within both the city limits, and within the city's ETJ. A city may not impose a sales tax in the ETJ without the creation of an MDD.
- C. The Texas Comptroller reports that for the Town of Pecos City to be able to impose the maximum allowable sales tax within the City and its ETJ, the current EDC and Street maintenance tax (i.e. special tax districts) must be abolished. An EDC also may not impose a sales tax in the ETJ. The City Council will establish a budget for street maintenance, economic development and other government purposes as part of the City's annual budget out of MDD sales tax revenues.
- D. In order to expand its authorized sales tax boundaries and maximize potential sales tax revenue for the City, The City Council must agree to:
- (1) Place proposals abolishing the two current sales tax special districts on the November 2017 ballot.
 - (2) Place the creation of the Pecos Municipal Development District on the November 2017 ballot.
- E. Voters in the city may vote on abolishing the EDC and Street maintenance tax and creating an MDD. Voters in the City and the ETJ may vote on creating an MDD to impose a 0.5% sales tax within the City and its ETJ.
- F. Voters must agree to:
- (1) Abolish the current street maintenance sales tax of 0.375% (3/8 %); **AND**
 - (2) Abolish the PEDC, or Pecos Economic Development Corporation and the corresponding 0.125 % (1/8 %) sales tax apportioned to the PEDC for a total abolishment of 0.5% sales tax; **AND**
 - (3) Create the proposed Pecos Municipal Development District (PMDD); this District will have the legal right to impose a sales tax of 0.5% within both the city limits, and within the city's ETJ.
- G. If all three ballot measures should pass:
1. The new Pecos MDD would be a political subdivision of the Town of Pecos City.
 2. The PMDD Board would consist of city council members or council appointees.
 3. The PMDD would be able to use sales tax revenue for economic development and all other lawful general government purposes.
 4. Within the Town of Pecos City limits, the sales tax accruing to the City would continue to be 1.5% (1.0% city, 0.5% PMDD).
 5. Within the City's ETJ, the sales tax accruing to the City would be 0.5% (.5% PMDD).
 6. Sales tax rates within city limits would automatically extend to include all new areas annexed by the Town of Pecos City.

7. The sales tax boundaries of the PMDD shall conform automatically to any changes to the boundary limits of the ETJ. The boundary limits of the PMDD will always be the same as the boundaries of the ETJ.
- H. If any of the three ballot measures should fail:
1. There will be no change to how the City and/or PEDC currently accrue sales tax.
 2. The proposal of an MDD may not be placed on another ballot for a period of one (1) year.
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- A. El pueblo de Pecos ciudad desea expandir sus límites impuestos autorizado. Bajo la ley estatal, la ciudad podrá imponer un máximo 0.5% impuesto de ventas en su Jurisdicción Extraterritoriales o "ETJ" mediante la creación de un Municipal Desarrollo Distrito o "MDD" a través de una elección. Los Jurisdicción Extraterritoriales se extienden una milla más allá de los límites de la ciudad. Bajo la ley estatal, el impuesto de ventas local máxima es 2.0%; sin embargo el Hospital de distrito del Condado de Reeves impone 0.5% impuesto sobre las ventas, y por eso el pueblo de Pecos tiene un máximo de 1.5% impuesto sobre las ventas.
- B. Pecos ciudad desea crear un MDD. MDD propuesta sería conocida como el "Pecos Municipal Development District" (PMDD) y tendría el derecho legal de imponer un impuesto de 0.5% dentro de los límites de la ciudad y también en la "ETJ". Una ciudad no puede imponer un impuesto de ventas en la ETJ sin la creación de un MDD.
- C. La Contraloría de Texas informa que para que la ciudad de Pecos ciudad poder imponer máxima admisible impuesto sobre la ventas dentro de la ciudad y su ETJ, debe eliminarse la EDC y la calle mantenimiento impuesto corriente (es decir, distritos de impuesto especial). Un EDC también puede imponer un impuesto de ventas en la ETJ. El Consejo de la ciudad establecerá un presupuesto para el mantenimiento de las calles, desarrollo económico y otros propósitos de gobierno como parte del presupuesto anual de la ciudad de los impuestos del MDD.
- D. Con el fin de ampliar sus límites autorizados impuesto sobre las ventas y maximizar los ingresos potenciales de impuestos sobre las ventas para la ciudad, el Ayuntamiento debe estar de acuerdo a:
- (1) Propuestas de lugar supresión de los dos distritos especiales actual impuesto de ventas en la boleta de noviembre de 2017.
 - (2) Lugar a la creación del Distrito de Desarrollo Municipal de Pecos en la boleta de noviembre de 2017.
- E. Votantes en la ciudad pueden votar en abolir el impuesto de mantenimiento calle y EDC y la creación de un MDD. Votantes en la ciudad y que residen en Los Jurisdicción Extraterritoriales pueden votar sobre la creación de un MDD para imponer un impuesto de ventas de 0.5% dentro de la ciudad y su ETJ.
- F. Los votantes deben estar de acuerdo a:
- (1) Abolición el actual impuesto de ventas de mantenimiento calle de 0.375% (3/8%); **Y**
 - (2) Abolir lo PEDC, o "Pecos Economic Development Corporation" de desarrollo económico y el correspondiente 0,125% (1/8%) los impuestos asignados a lo PEDC para una abolición total de 0.5% impuesto sobre las ventas; **Y**
 - (3) Crear el proyecto "Pecos Municipal Development District" (PMDD); este distrito tendrá el derecho legal de imponer un impuesto de 0.5% dentro de los límites de la ciudad y en los Jurisdicción Extraterritoriales de la ciudad.
- G. Si todas las medidas de la balota se pasaría:
- a. El nuevo Pecos MDD sería una subdivisión política de la ciudad de Pecos.
 - b. La Junta Directiva del MDD consistiría de miembros del Concejo Municipal o asignados.
 - c. El PMDD podira utilizar los ingresos de impuestos para todos los propósitos de gobierno general legal y desarrollo económico.

- d. Dentro de los límites de la ciudad de Pecos, el impuesto sobre las ventas correspondientes a la ciudad seguirá siendo 1,5% (1,0% ciudad, 0,5% PMDD).
 - e. Dentro de la ciudad, los impuestos correspondientes a la ciudad sería 0,5% (0,5% PMDD).
 - f. Los límites de la ciudad en el cual se imponen el impuesto sobre las ventas se extenderían automáticamente para incluir todas las áreas nuevo anexadas a la ciudad de Pecos.
 - g. Límites de impuesto sobre la ventas de la PMDD se ajustarán automáticamente a cualquier cambio en los límites de la frontera de la ETJ. Los límites de lo PMDD será siempre igual a los límites de la ETJ.
- H. Si se falla cualquiera de las tres medidas:
- 1. No habrá ningún cambio en cómo la ciudad o el PEDC acumulan actualmente impuesto de ventas.
 - 2. La propuesta de un MDD no puede estar en otra boleta electoral para un período de un 1 año.
-

Early voting by personal appearance will be conducted each weekday at:
(La votacion adelantada en persona se llevara a cabo de lunes a viernes en el)

PECOS COMMUNITY CENTER - 508 South Oak Street, Pecos, Texas
(Centro de la Comunidad de Pecos - 508 Calle Oak, Pecos, Texas)

Applications for ballot by mail shall be mailed to:
(Las solicitudes de boletas que se enviaran por correo deberan enviarse a)
DIANNE FLOREZ -Early Voting Clerk *(Nombre de la Secretaria de la Votacion Adelantada)*
P.O. Box 867, Pecos, TX 79772

Applications for ballots by mail must be received no later than the close (5:00pm) of business on October 27, 2017
(Las solicitudes de boletas que se enviaran por correo deberan recibirse antes de las 5:00p.m. el 27 de Octubre , 2017)

Issued this the 1st day of August 2017. *(Emitida este dia 1° de Agosto 2017)*



Signature of Mayor
(Firma del Alcalde)



RANDY REYNOLDS

**DISTRICT ATTORNEY
143RD JUDICIAL DISTRICT
REEVES – WARD – LOVING COUNTIES**

P.O. BOX 2012
500 SOUTH CEDAR STREET
PECOS, TEXAS 79772
(432) 445-2010
FAX (432) 445-2015

ASSISTANT DISTRICT ATTORNEY:
ALAN NICHOLAS
CRIMINAL INVESTIGATORS:
ARMANDO (MONDIE) GRANADO
JAVIER CONTRERAS
DANNY RODRIQUEZ

August 18, 2017

The Honorable Arthur Orona
Councilman for the Town of Pecos City, Texas

The Honorable Venetta Seals
Mayor for the Town of Pecos City, Texas

Dear Councilman Orona and Mayor Seals:

On August 15, 2017, I received a written request from Councilman Orona requesting my legal opinion regarding the proposed termination of the Pecos Economic Development Commission (PEDC). Since Mayor Seals was provided with a copy of that request, I am also providing her with a copy of this opinion.

The issue is whether the only method for terminating a Texas Economic Development Corporation whose tax at issue is a Type B Sales Tax Created on or after September 1, 1999, is by ordering an election after a petition requesting the election that is signed by at least 10 percent of the registered voters of the municipality, is presented. In other words, is such a petition required before an election can be ordered?

In my opinion, the answer is no.

It is my understanding that on August 10, 2017, the City Council, on their own initiative, ordered an election to dissolve and terminate the Pecos Economic Development Corporation. It is also my opinion that such an election may not be required under the facts in this instance.

I understand that certain council members and the Acting City manager desire to terminate the PEDC and replace it with a different form such as a Municipal Management District. The decision to terminate the PEDC was at the instance of the council and not requested by the citizens through a

tion or otherwise. In reaching this opinion, I presume that the Town of Pecos City is the authorizing unit of the PEDC and that the City Council is the governing body for the Town of Pecos City. This opinion also is provided with the understanding that the PEDC involves a Type B Sales Tax created on or after September 1, 1999.

In my opinion, in a situation where a city council desires to dissolve and terminate any Economic Development Corporation involving a Type B Sales Tax, regardless of when created, as the governing body of the corporation's authorizing unit of the EDC they can do so at any time in its sole discretion, by authority of Tex. Local Gov't Code § 501.401 (2017) which states as follows with emphasis added:

Alteration or Termination by Authorizing Unit.

(a) *At any time a corporation's authorizing unit, in its sole discretion, may in accordance with this subtitle:*

(1) alter the corporation's structure, organization, programs, or activities; or

(2) *terminate the existence of the corporation.*

(b) 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.

(c) 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.

Further, an election may not be proper when terminating an EDC under Tex. Local Gov't Code § 501.401(c) (2017) which states, "*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.*" Emphasis added.

In reaching this opinion I further considered the 2013 Economic Development Handbook published by the Attorney General of Texas, and Tex. Local Gov't Code § 505.352 (2017). It is my opinion that Section 501.352 would also apply, in addition to Section 501.401, and not exclusively. In a situation where a group of citizens desire that the EDC be terminated and the city council declines to terminate the EDC under section 501.401, then the procedures outline in Section 505.352 could be initiated by the citizens, even over the protest by the City Council. In that instance, citizens can force the issue to an election by filing a petition that meets the requirements of Section 505.352. Then the city council must order the election on the issue.

Tex. Local Gov't Code § 505.352 (2017) provides:

Sec. 505.352. Election to Terminate Existence of Corporation on Petition.

(a) The governing body of an authorizing municipality shall order an election on the termination of the existence of the Type B corporation on receipt of a petition requesting the election that is signed by at least 10 percent of the registered voters of the municipality.

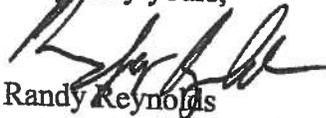
(b) The authorizing municipality shall hold the election on the first available uniform election date that occurs after the time required by Section 3.005, Election Code.

A rationale further considered in support of the premise and this opinion that Section 501.352 would also apply, in addition to Section 501.401, and not exclusively, is that we are really talking about the levying and collecting of taxes by a government from the citizens. Terminating a EDC will have the effect, one way or another, of terminating the taxes collected for the purposes of funding the EDC. It is widely thought that taxes are a burden on the citizens but a necessary evil. If the government makes a determination that taxes should be repealed, relieving a burden on the citizens, it is generally left to the government to repeal the taxes on their own initiative, and in their sole discretion. Section 501.401 provides that authority. When the citizens and not the governing body determine by majority vote that, even over the objections of the governing body, an EDC should be terminated and the associated taxes repealed, then Section 505.352 provides the authority and process for these citizens to pursue resulting in the termination of such an EDC at issue herein, which will effectively repeal the associated tax.

In conclusion, the City Council for the Town of Pecos City, as the governing body of the authorizing unit for the Pecos Economic Development Corporation, in its sole discretion, may terminate the Pecos Economic Development Corporation's existence, by a written resolution, by the authority of Tex. Local Gov't Code § 501.401(c) (2017). Further, an election to determine whether the PEDC should be terminated may not be required or even authorized by law, but I leave that question to be considered further by legal counsel for the Town of Pecos City, Texas.

As always, I will reconsider the above opinion should additional case law or statutory law be brought to my attention. This is my opinion only.

Very truly yours,



Randy Reynolds
143rd Judicial District Attorney