



CEDAR

PARK

HANDBOOK FOR
COMMUNITY DEVELOPMENT (TYPE B)
CORPORATION BOARD MEMBERS

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WELCOME

Congratulations on your appointment to the Community Development (Type B) Corporation Board of the City of Cedar Park, Texas. This handout is intended to provide a quick overview of basic legal considerations facing the Board, as well as explain several key staff roles and resources. If you have any questions concerning legal matters relating to your role or the business affairs of the City, please do not hesitate to contact the Legal Department.

City Charter

The City of Cedar Park is a home-rule municipal corporation and holds the full power of self-government, subject to any restrictions provided by federal and State law. The Cedar Park City Charter was adopted in 1987 and may be amended by the majority vote of the registered voters of the City of Cedar Park. The City Charter is best described as the City's constitution; it has the force of law and directs the City Council and City staff on how the City is to be operated. The current Charter is available via the City's website and this link: <http://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=cedarparkset>.

Cedar Park Code of Ordinances

The Cedar Park Code of Ordinances, along with adopted policies, rules, and resolutions, are the written embodiment of City policy. The Code of Ordinances has the force of law, and its regulations are binding upon every person within the City's corporate limits and extraterritorial jurisdiction. The Code of Ordinances may be amended by Council action after two (2) public readings. The current Code of Ordinances is available via the City's website and this link: <http://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=cedarparkset>.

Mayor

The Mayor presides at all meetings and shall vote on all issues. The Mayor is the official spokesperson for the City. The Mayor has no power of veto over the actions of the majority of the City Council. The Mayor's role is like a chairman of a corporate board of directors.

City Council

The City Charter provides for governance under the "Council-Manager" form of government, whereby the Council enacts local laws, adopts budgets, determine policies, and appoints the City Manager, who is then responsible for day-to-day City operations and administration. The City Council, by ordinance or resolution, may pass laws and establish policy for the City. Usually this requires only a simple majority vote of four (4) members, however, there are circumstances for which a supermajority is required or in which action may be effected by less than four (4) votes.

Type B Board

The Cedar Park Community Development (Type B) Corporation is a non-profit corporation organized under the Texas Development Corporation Act of 1979, now codified as Chapters 501-505 of the Texas Local Government Code, as amended (the “Development Corporation Act” or “Act”). It is supported by sales tax collected with the City of Cedar Park and dedicated to community development, with a primary purpose of promoting economic development within the City of Cedar Park and State of Texas in order to eliminate unemployment and underemployment, and to promote and encourage employment and the public welfare of, for, and on behalf of the City, and for streets, roads, drainage, and other related transportation system improvements, including the payment and maintenance and operating expenses associated with such authorized projects in accordance with the Act.

An affirmative vote of four (4) members of the Board is required for the Board to take action on any item. A copy of the Type B Board Rules and Procedures is available on the City’s website and at this link: <http://www.cedarparktexas.gov/government/boards-commissions/community-development-co-type-b-board>. The City Council approves all programs and expenditures of the Corporation and annually reviews any financial statements of the Corporation.

Authorized Projects

Type B tax revenues may be used for eligible Type B Board expenditures with approval by the City Council. Eligible expenditures include: (1) those for which Type A tax revenues may be used including those related to the creation and retention of primary jobs and certain infrastructure improvement projects, and include those; and (2) those related to recreational or community facilities. The statutory limits of each of these eligible expenditures is set forth below.

- (a) Primary Jobs: Eligible expenditures include those for land, buildings, equipment, facilities, targeted infrastructure and improvements that are for the creations or retention of primary jobs and are found by the board of directors to be required for 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 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;
 - (5) Sewage or solid waste
 - (6) Air or water pollution control facilities;
 - (7) Facilities for furnishing disposal facilities;
 - (8) Recycling facilities;
 - (9) water to the public;
 - (10) Distribution centers;

- (11) Small warehouse facilities capable of serving as decentralized storage and distribution centers;
- (12) Primary job training facilities for use by institutions of higher education; or
- (13) Regional or national corporate headquarters facilities.

(b) Infrastructure Improvements. Eligible expenditures include those that are found by the Board 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; or
- (2) Telecommunications and Internet improvements.

(c) Recreational or Community Facilities: Eligible expenditures 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 part 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.

Expenditure of Type B Funds: Procedural Requirements

The Type B Corporation must publish notice of each Type B project it plans to undertake 60 days prior to the date of the expenditure of Type B funds for that project. The Type B Corporation is also required to hold at least one public hearing on any proposed project, which must be held before the corporation expends any Type B funds on the project. After the project has been considered at a public hearing and 60 days have passed since the first public notice of the nature of the projects, the Type B funds may be expended.

City Employee Relations

By the City Charter, the City Council and individual Council members are prohibited from dictating the appointment or removal of a City employee or dealing directly with a City employee who is subject to the direction and supervision of the City Manager. All inquiries of and requests for staff action shall be directed through the Designated Staff Liaison(s) or City Manager (or if relating to legal matters, the City Attorney, as stated below).

Designated Staff Liaison

One or more City staff persons are assigned as the Designated Staff Liaison(s) for each Board or Commission. The designated staff liaison(s) are responsible for implementing policies, carrying out projects, and executing contracts recommended by the Boards and Commissions with approval of the City Council. The Designated Staff Liaison for the Type B Board are the

Director of Community Affairs. Board Members may direct project-related questions and requests for agenda items to the Designated Staff Liaison.

City Manager

The City Manager is responsible for day-to-day City administration of City operations, much like the president of a corporation. The City Manager assigns one or more Designated Staff Liaison(s) to each Board and Commission.

City Attorney

The City Attorney represents the City of Cedar Park and is responsible for providing legal advice and representation to the City Council, Boards and Commissions and the City staff in all matters affecting City business, handling of all proceedings in the City's Municipal Court, including the prosecution of Class C Misdemeanor criminal matters, and supervising the City's Legal Department staff and all retained outside legal counsel. The City Attorney does not represent the Council, Boards, Commissions, and staff members in their individual capacities or regarding non-City business.

City Secretary

The City Secretary is responsible for administration of elections, public information (including archiving and retention), and open meetings. Because these areas are highly governed by State law, the City Secretary works under the direct supervision of the City Attorney.

Attorney-Client Privilege

The Legal Department represents the City of Cedar Park via its City Council and Boards & Commissions regarding legal matters within their respective subject areas and authorities. Communications between Board & Commission members and the Legal Department for the purpose of soliciting and providing legal advice are generally privileged and confidential, except where the Legal Department's keeping of information in confidence would result in illegal activity or harm to the City. In the event of a conflict between a Board or Commission and the City, the Legal Department represents the City, would recuse itself from further representation of the Board or Commission on that matter, and would recommend the appointment of independent outside legal counsel for that matter.

Public Information

State law requires that all records of "official City business" kept by or on behalf of Type B Board Members or City employees be public information and must be disclosed to the public when requested. The term "official City business" is construed broadly and pertains to anything undertaken by or relating to any City activity. Therefore, all communications relating to City matters, regardless of the medium and even if on your personal computer, mobile device, or notes, are subject to public disclosure if they exist at the time a public information request is

received. Deletion or destruction of such information after a request is received has serious criminal consequences far more serious than any consequences of disclosure.

Open Meetings

State law requires that all regular, special and emergency meetings of the Type B Board shall be open to the public and all final decisions made by the Board shall be made in an open meeting. The law is strongly construed in favor of transparency, and in most instances, public notice of Type B Board meetings must be posted seventy-two (72) hours in advance, otherwise they are illegal. Whenever a quorum of Board Members is gathered and Type B Board business is discussed, a meeting exists, regardless of whether a “meeting” was intended. This means that a meeting can take place merely by a quorum of Board Members discussing Type B Board business over the internet or at a social event. It is against the law to attempt to circumvent the Open Meetings law by discussing Type B Board business in piecemeal via several groups each consisting of less than a quorum of Board Members. This is called a “walking quorum” and is strictly prohibited. There are criminal penalties for violations of the Open Meetings Act and Attorney General has obtained criminal indictments for open meetings violations. All meetings are required to have minutes prepared by the Board Secretary, approved by the Type B Board, and filed with the City Secretary.

Executive Session

By State law, discussion of certain matters may be held in a closed executive session. These discussions are generally limited to litigation, real estate transactions, personnel issues, security, economic development negotiations, and issues subject to the City Attorney’s requirements under the State Bar of Texas Disciplinary Rules of Professional Conduct. Such meetings are “closed” in that they are not open to the public and may include only the Type B Board and necessary staff, consultants, and advisors. The policy underlying this limited authorization recognizes and protects the City’s sensitive legal and financial interests, and Board Members should therefore refrain from communicating confidential information received in closed executive sessions. Additionally, disclosure of sensitive legal and financial interests received in executive session could implicate Texas Penal Code Section 39.06, summarized herein. There are no minutes for executive sessions, only a certified agenda, which by State law may not be disclosed. By State law, any action of the Type B Board, including any regarding matters discussed in closed executive session, must take place in a public, open meeting.

Conflicts of Interest

Type B Board Members are generally required to subordinate their personal interest to the interest of the City. Important provisions of state law, the City Charter, and the Code of Ordinances governing conflicts of interest are summarized below.

Texas Penal Code:

- (a) *Section 36.02 Bribery*: This Section prohibits a Board Member from offering or accepting a benefit as consideration for the member’s vote or recommendation or

other exercise of discretion as a Board Member, or any benefit as consideration for a violation of legal duty imposed on a member. An offense under this Section is a second degree felony.

- (b) *Section 36.03 Coercion of Public Servant or Voter:* This Section prohibits a Board Member from influencing a public servant to violate the public servant's known legal duty or influences a voter not to vote or to vote in a particular manner. An offense under this Section is a Class A misdemeanor.
- (c) *Section 36.07 Acceptance of an Honorarium:* This Section prohibits a Board Member from accepting an honorarium for services that the Board Member would not have been requested to provide but for the Board Member's official position. For example, receipt of a payment for giving a speech is a prohibited honorarium if the Board Member would not have been asked to speak but for the Board Member's official status. An offense under this Section is a Class A misdemeanor.
- (d) *Section 36.08 Gift to Public Servant by Person Subject to His Jurisdiction:* This Section prohibits a Board Member from soliciting or accepting a benefit from a person subject to regulation, inspection, or investigation by the Type B Board or the City.

This Section also prohibits a Board Member from receiving a benefit from a person the Board Member knows is interested in or could be interested in a contract or pecuniary transaction if the Board Member exercises discretion in connection with a contract or other pecuniary transaction of the City.

An offense under this Section is a Class A misdemeanor.

Exemptions: *Section 36.10 Non-Applicable* includes exemptions to Section 36.08, which include:

- (1) A benefit that is a fee prescribed by law to be received by the Board Member or any other benefit that the Board Member is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a Board Member;
- (2) A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
- (3) Political contributions;
- (4) An item with a value of less than \$50, excluding cash or other negotiable instrument;
- (5) An item used by the City that allows use of the property or facilities owned, leased, operated by the City;

- (6) Transportation, lodging, and meals in connection with a conference or similar event in which the Board Member renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory; and
 - (7) Food, lodging, transportation, or entertainment accepted as a guest, and if the Board Member is required to report those items, reported by the Board Member in accordance with that law;
- (e) *Section 39.02 Abuse of Official Capacity* – This Section prohibits a Board Member from intentionally violating a law relating to the Board Member’s office or misusing City property, services, personnel, or any other thing of value belonging to the City that is in the Board Member’s possession by virtue of the Board Member’s office. An offense under this Section is either a Class A, B, or C misdemeanor depending on specifics of the violation.

*Note that this statute was held unconstitutional by *Ex parte Perry*, 483 S.W.3d 884 (Tex. Crim. App. 2016), but only to the extent that the statute conflicts with the Separation of Powers Clause of the U.S. Constitution.

- (f) *Section 39.06 Misuse of Official Information*: This Section prohibits a Board Member from using information that the Board Member has by virtue of the Board Member’s office and that has not been made public: (1) to acquire or aid in acquiring an interest in any property, transaction, or enterprise that may be affected by the information; or (2) to speculate on the basis of the information. This Section also prohibits a Board Member from using nonpublic information for a nongovernmental purpose that the Board Member has access to by means of their office to intentionally obtain a benefit or harm or defraud another. An offense under this Section is a Class C Misdemeanor.

Cedar Park City Charter:

- (a) *Section 11.08 Prohibitions*: This Section prohibits (a) Board Members from directly or indirectly giving anything of value to anyone in connection with the appointment; and (b) Board Members from soliciting any contribution for any political purpose from a City official or City employee.
- (b) *Section 11.09 Conflicts of Interest Prohibited*: This Section prohibits: (a) Board Members from acting in any way which places personal interest in conflict with the City’s interest; (b) accepting a gift, favor, privilege, or employment from a person or business entity that does business with the City; having a pecuniary interest in a contract with the city or having an interest in the sale of land, tangibles, or intangibles to the City; and (c) serving as surety for the performance of a person doing business with the City or serving as a surety for a City officer or employee required by the Charter to make a surety bond.

Type B Board Rules and Procedures, Rule 3.5 Applicant Discussions

Type B Board Members may not meet with or discuss with any applicant issues subject to authority of the Board outside of an open meeting.