

## Potential Impact of “Stop Domain Subsidies” Charter Amendment on City’s Existing Contract Obligations

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Austin City Council

## Charter Amendment Key Points

- Would prohibit City from providing “financial incentives”
- In connection with development or redevelopment of real property
- That includes “Retail Uses”

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## Applicability

- Charter Amendment would apply to City's future agreements
- It would apply to City's "pending agreements" that are "contingent on or subject to" future appropriations

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## Background on "Future Appropriation" Clauses

- Why does City make long term contractual obligations "subject to future appropriation?"
- Because the Texas Constitution prohibits cities from taking on unfunded future debt

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## Addressing the “Debt Prohibition”

- Texas Courts have ruled that cities may take on debt that is subject to “future appropriations” provisos
- Since 2005, a new constitutional exception states that unfunded debt in “Chapter 380 agreements” does not violate the prohibition

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## The Domain Agreement

- Chapter 380 Economic Development Agreement signed in June 2003, Amended in 2004
- City’s funding obligations in Domain Agreement would trigger Charter Amendment’s prohibition on financial incentives

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## Domain Agreement: If Amendment Passes

- Charter would prohibit City from providing “financial incentives” under this agreement, but
- Contract obligates City to “pay . . . grants” on an annual basis, subject to future appropriations, if Owner meets certain obligations
- Result is potential conflict between City Charter prohibition and existing contract obligation

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## Domain Agreement: If Amendment Passes

- Domain Agreement also addresses damages and termination rights if City does not “appropriate funds”
- Agreement does not address consequences if City is prohibited from appropriating funds

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## Mueller (RMMA) MDA

- Master Development Agreement with Catellus from 2004
- Agreement ongoing (probably 10-15 years more)
- The MDA requires City to fund project costs that meet definition of “financial incentives”
- The Mueller project involves extensive retail uses

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## Mueller MDA Financial Incentives

- Reinvestment of land sale proceeds
- Project Infrastructure funded by City sales tax bonds and property tax bonds
- City funds offsite infrastructure typically funded by developer
- City makes annual payment for pond maintenance
- City makes annual payment for park maintenance

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## Mueller MDA

- Most financial incentives are “subject to annual appropriations by the City” (See MDA, Sections 5 2(a)(1) and (u), 5.4, 8 2(c), (h) and (1))
- Other “financial incentives” are not specifically made subject to annual appropriations

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## Conclusions as to Mueller

- Charter Amendment could prohibit future City funding required by MDA
- Failure to provide funding could lead to legal claims (termination, specific performance or actual damages)
- Problem for City would be complying with conflicting Charter prohibition and contract obligations

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