CDFA/TEDC TIRZ SEMINAR

Understanding Texas TIRZ Statute – Chapter 311 Texas Tax Code

**Clark Stockton Lord** 

## **Constitutional Authority**





## Creation of Tax Increment Reinvestment Zone

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- Municipality or county can create a TIRZ pursuant to Ch. 311, Texas Tax Code.
- But only a city may issue bonds pursuant to the Texas Constitution.

#### **Methods of Creation**



#### • Criteria:

- substantial number of substandard, slum, deteriorated or deteriorating structures;
- predominance of defective or inadequate sidewalk or street layout;
- faulty lot layout in relation in size, adequacy, accessibility or usefulness;
- unsanitary or unsafe conditions;
- deterioration of site or other improvements;
- tax or special assessment delinquency exceeding the fair value of the land;
- defective or unusual conditions of title;
- conditions that endanger life or property by fire or other cause;
- alleviate certain vacant commercial buildings;
- area is predominantly open with obsolete platting, deterioration of structures or site improvements, or other harmful factors; or
- petition signed by owners of at least 50% of the appraised value of property in the area (still must be "unproductive, underdeveloped, or blighted area").

- Prepare a preliminary reinvestment zone financing plan (Final Plan must be substantially similar).
- Provide a 60-day written notice of the City's intent to designate the TIRZ and of the hearing on the proposed designation of the TIRZ to the other taxing units that levy property taxes within the area of the TIRZ (May be waived by governing body).
  - a description of the proposed boundaries of the TIRZ;
  - the tentative plans for the TIRZ's development; and
  - an estimate of the general impact of the TIRZ on property values and tax revenues.



- Provide any additional information requested by the other taxing units, and agree to meet with representatives of such taxing units upon their request to discuss matters relevant to the proposed TIRZ.
- Provide a formal presentation to the governing body of each taxing unit that levies real property taxes within the proposed TIRZ
  - cover the proposed boundaries of the TIRZ;
  - the tentative plans for development of the TIRZ; and
  - an estimate of the general impact of the TIRZ on property values and tax revenues.
  - The City shall give notice of these presentations to all taxing units that tax property within the proposed TIRZ.



- Hold a public hearing on the creation of the proposed TIRZ:
  - evaluate the proposed benefits of the zone; and
  - allow any interested person to speak and voice objection to the inclusion of property within the proposed TIRZ.
- Publish notice of the public hearing at least seven days' prior to the hearing in a newspaper of general circulation.



#### • Designating a contiguous area as the TIRZ:

- a finding that development of the area would not occur in the foreseeable future solely through private investment;
- a description of the boundaries of the TIRZ with sufficient detail to identify the territory within the TIRZ;
- a designation of the board of directors for the TIRZ the number of directors of the board;
- a provision that the TIRZ will take effect immediately on passage of the ordinance;
- the date for termination of the TIRZ;
- a name for the TIRZ as provided under Tax Code Section 311.004(5);
- a provision establishing a tax increment fund for the TIRZ;



- findings that the improvements within the TIRZ will significantly enhance the value of the taxable property within the TIRZ and will be of general benefit to the City;
- a finding that the area meets the criteria for designation of a reinvestment zone under Tax Code Section 311.005.
- findings that the total appraised value of taxable real property in the proposed TIRZ, and in the City's existing reinvestment zones, does not exceed fifteen percent of the total appraised value of taxable real property in the City and in the industrial districts created by the City; and that the proposed TIRZ does not contain more than fifteen percent of the total appraised value of real property taxable by any county or independent school district that taxes property within the TIRZ.
- authorization for the board of directors of the TIRZ to exercise any of the City's powers with respect to the administration, management or operation of the TIRZ or the implementation of the project plan for the TIRZ.





- Adopt an ordinance approving the Project Plan and Reinvestment Zone Financing Plan:
  - approved by the TIRZ Board first.
  - adopt findings that plans are feasible and conform to the master plan, if any, of the City.

- Project Plan shall include at a minimum the following:
  - a map showing existing uses of real property within the TIRZ and any proposed improvements;
  - any proposed changes to zoning ordinances, the master plan of the City, building codes or other municipal ordinances;
  - a list of estimated non-project costs;
  - a statement of the method for relocating persons who will be displaced as a result of implementation of the plans;





- Financing Plan shall include at a minimum the following:
  - a detailed list of the estimated project costs of the TIRZ, including administrative expenses;
  - a list of the kind, number and location of all proposed public works or public improvements within the TIRZ;
  - an economic feasibility study;
  - the estimated amount of bonded indebtedness to be incurred;
  - the timing for incurring costs or monetary obligations;
  - the methods for financing all estimated project costs and the expected sources of revenues, including the percentage of tax increment to be derived from the property taxes of each taxing unit that levies taxes on real property within the TIRZ;
  - the current total appraised value of taxable real property in the TIRZ;
  - the estimated captured appraised value of the TIRZ during each year of its existence; and
  - the duration of the zone.

- Negotiate with other taxing units for participation of all or a portion of their tax increment.
- Create a local government corporation ("LGC") and approve its articles and bylaws and initial board of directors
  - Application filed by 3 residents to create such LGC to act on behalf of the City in the administration of the TIRZ and the implementation of the plans for the TIRZ.
  - Negotiate agreement detailing powers and duties of LGC



#### **Benefits of a TIRZ**

- Constructs needed public infrastructure.
- Encourages development, thus increasing property values and long term property tax collections.
- Reduces the developer's cost of development by providing reimbursement for eligible public improvements. This reduction in the cost of development may ensure the viability of certain types of development.



#### **Types of TIRZ Financing**

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- The Creating Entity may establish a Local Government Corporation ("LGC") under Section 431, Transportation Code, manage the affairs of the TIRZ or implement the project and financing plans.
- Tax Increments Pay as you go
- Development Agreement
- Sales Tax Revenue
- 380 Grants or Loans

#### **Structure and Management of a TIRZ**

 State law provides for the appointment of a TIRZ Board of Directors (the "Board"). The Board is charged with implementing the Project Plan. In general, the Board is appointed by the Creating Entity and other participating taxing jurisdictions.

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• Establish LGC, under Chapter 431, Transportation Code.

## **Examples of TIRZ Improvements**



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New Street signs bearing Midtown logo Improvements to landscaping along Main Street rail line TIRZ money used to acquire land and construct a park in the middle of Midtown area. Now, Midtown Management District maintains the park.





## **New Developments in Midtown**











Public Improvements to create a more liveable and walkable community, V&E including new benches, trash receptacles and enhanced sidewalks







## **Recent Changes to TIRZ Law**

- County can now create TIRZ.
- Municipalities can contribute sales tax revenue to a TIRZ.

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- Chapter 380 economic development powers-curbing unemployment and diversifying the economy.
- Municipality can determine amount of increment paid to the tax increment fund and can alter their participation with some restrictions (applies to Houston and Fort Worth).

#### **Recent Changes to TIRZ Law (cont.)**

- TIRZ Board can acquire land, development rights or conservation easement in land located OUTSIDE the boundaries of the TIRZ if used for:
  - (1) rail project;
  - (2) preserving the land in its natural condition;
  - or (3) land is located in the county in which the TIRZ is located.
  - But, <u>only if</u> the land mitigates the urbanization effects of mass transit, <u>and</u> the county participates equally with the city.



## **Recent Changes to TIRZ Law (cont.)**

- Expanded reasons for the TIRZ.
  - new designation includes alleviation of buildings (other than single-family residential) abandoned or vacant for at least 12 years most likely in a downtown area

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provides support for use of eminent domain

## Recent Changes to TIRZ Law (cont.)

 Restricts municipality from placing certain restrictions on property owner submitting a petition to create the TIRZ (San Antonio).

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• Competitive Bidding does not apply to a dedication, pledge or other use of tax increment revenue.

## **New Tools**

#### **Sales Tax Increment:**

- Allows cities to dedicate all or a portion of its sales tax increment to fund TIRZ eligible projects (in addition to or instead of property tax increment).
- This would be most useful in mall or largely commercial zones.
- Sales tax increment would potentially enable the City to complete a TIRZ project plan faster, thus enabling an earlier termination date for a zone.
- Provides for an annual "pay-as-you-go" scenario and the ability for a city or a local government corporation to issue debt obligations using sales tax increment as security.
- Nationally, a sales tax increment is used in the District of Columbia, California, Colorado, Kansas, Illinois, Louisiana, Maine, Missouri, Pennsylvania, and Wyoming.



## **New Tools**

- Flexible City Participation
- Enables a City to *contribute* tax increment below 100% participation
- Enables a City to *reduce* its tax rate below 100% participation:
  - Limitations & Restrictions: applies to Houston and Fort Worth
  - Allows City to adjust participation as TIRZ matures



### **New Tools**

- Loans & Grants for Economic Development
- Emulates Chapter 380 of Local Government Code
- Provides a dedicated source of economic development funds

Example: Houston Pavilions CDB Mixed-Use Project, \$14 ED Grant for equity on loan.



#### **Houston Pavilions**







#### **Houston Pavilions**

#### Policy Considerations / Economic Development Objectives

- Catalyze mixed use development in the central business district
- Enhance downtown as a retail and entertainment destination
- Encourage future residential development
- Should the City structure incentive as a loan or a grant?
- Denver Pavilions paid \$25M up front in exchange for job creation, lien on property and sharing in net profits
- How much "risk" should the city share, ie. How much up-front incentive to offer?
- How is the project unique?--What extraordinary public benefits warrant public financial support?

#### **Houston Pavilions**



#### **Steps to Allow Economic Development Grant**

- Enlarge TIRZ Boundary
- Set City Tax Rate for new Boundary
- Amend Project Plan
- Adopt Economic Development Policy
- Amend County Participation
- Negotiate Development Agreement

#### New Tools Municipal Services



- City's Ability to Recover the Cost of Municipal Services from a Tax Increment Reinvestment Zone
- Amount must be tied to incremental costs due to development of the zone

Example: Can do Fiscal Impact Per Capita Methodology, but, need to Weigh Political realities, and can't have a cost that exceeds entire TIRZ annual budget.



# **Questions & Answers**