TAX INCREMENT FINANCING IN TEXAS: AN ADVOCATE'S TOOLBOX

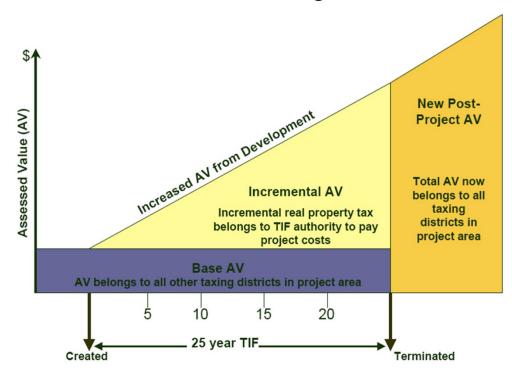


By: Bria Guthridge and Professor Heather K. Way The University of Texas School of Law May 2019



What is Tax Increment Financing?

- Tax Increment Financing (TIF) is an economic development tool that allows cities and counties to capture tax revenue from Tax Increment Reinvestment Zones (TIRZs).
- When a TIRZ is formed, the amount of existing tax collections originating from inside the zone's boundary is set as the baseline. As tax revenues increase in future years, the amount that exceeds the baseline is redirected out of the city's general fund (which funds things like parks, public safety, and sidewalks across the city) into the TIF fund for the zone.
- The TIF fund can be used for:
 - Project costs that benefit the zone (costs of public works, public improvements, programs, and other projects benefiting the zone); and
 - Certain costs can be outside the zone: public infrastructure, affordable housing, and areas of public assembly.
- A large amount of property tax revenues in several Texas cities get diverted to TIF funds. The City of Dallas, for example, had 18 active total TIF districts as of 2017, with combined project budgets of more than \$2.9 billion. In FY 2018, the city redirected \$53.4 million out of the city's general revenue fund towards its TIRZs.



Tax Increment Financing – How It Works

Tax Increment Financing in Texas: Tax Code Section 311

Creation of a TIRZ

- There are two ways to create a TIRZ in Texas:
 - Citizen-led petition by owners of properties constituting at least 50% of the zone's appraised value, OR
 - City or county governing body adopts. § 311.005
- Before a TIRZ is created, there must be a:
 - o preliminary financing plan, AND
 - o public hearing. § 311.003
- Petition-created TIFs are usually brought forward by a developer, with a pre-designated project plan in mind.



Houston Street TIF, city-created, San Antonio



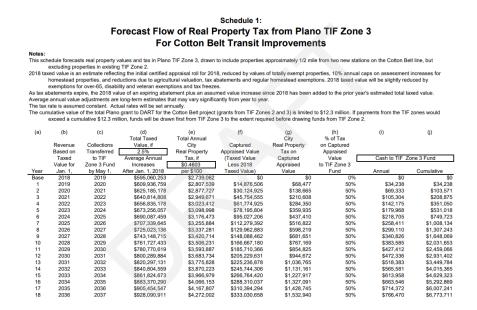
TIRZ No. 3, petition-created, Farmer's Branch

Criteria for a TIRZ

- To create a TIRZ, the city or county must determine that investment in the area "would not occur solely through private investment in the reasonably foreseeable future." § 311.003(a)
- The land in a TIRZ must also "substantially arrest or impair the sound growth of the municipality or county designating the zone" as result of several factors listed in the statute, such as deteriorating buildings or faulty street layout. These are known as the "blight" criteria. § 311.005
 - Given the subjective nature of the "blight" criteria, these factors are relatively easy to meet. One example of a "blighted" area is the North Fort Worth Cabela's development, where the blight criteria was a stream on the property.
- For petition-TIRZs (initiated by property owners), no blight criteria apply. § 311.005(a)(4)

Preliminary Financing and Project Plans

- Before a TIRZ is created, the city council or commissioner's court must prepare and approve a preliminary reinvestment zone financing plan. § 311.003(b).
- The financing plan is often created or shaped by a developer or petitioner for the TIRZ.



Public Hearing

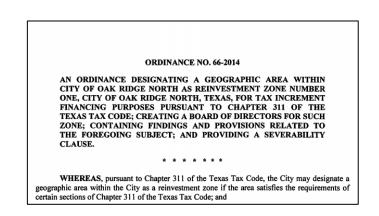
- Before adopting a TIRZ, the governing body of the city or county must hold a public hearing on the proposed zone and publish a hearing notice at least a week before the hearing. Public hearings are typically regularly-scheduled city council or commissioner's court meetings. § 311.003(c)
- At the hearing, an interested person may speak for or against the creation of the zone, the zone's boundaries, or the concept of tax increment financing. § 311.003(c)
- The owner of property must be given a reasonable opportunity to protest the inclusion of the property in a proposed TIRZ. § 311.003(d)
- Notices of these hearings are posted online:
 - Dallas: <u>https://dallascityhall.com/government/citysecretary/Pages/Public-</u> <u>Meetings.aspx</u>
 - Fort Worth: http://apps.fortworthtexas.gov/council packet/create council agenda.asp
 - o Houston: https://www.houstontx.gov/council/committees/econdev.html
 - o San Antonio: <u>https://sanantonio.legistar.com/Calendar.aspx</u>

TIF Creation Timeline



Ordinance Creating the Zone

- A city will create a zone through an ordinance while a county will issue an order. § 311.003(a)
- The ordinance or order must contain:
 - The boundaries of the zone,
 - o The initial board of directors,
 - A termination date for TIRZ, and
 - How the zone meets the criteria for creating a TIRZ. § 311.004



Board of Directors

- The board of directors of a TIRZ generally consists of at least 5 and not more than 15 members.
- Petition TIRZs have a board of directors with 9 members.
- The board consists of:
 - A chairperson, appointed by the city or county,
 - Appointed members from each taxing unit participating in the TIRZ, and
 - The state senator and state representative in whose district the TIF is located. Either may designate another individual to serve in the member's place.
- The remaining members of the board are appointed by the governing body of the city or county that created the zone. § 311.009(a)
- All members must be at least 18, and
 - In a petition-created TIRZ, own real property in the zone or be an employee of someone who owns real property in the zone.
 - In a city- or county-created TIRZ, reside in the county where the TIRZ is located (or the adjacent county) or own property in the zone. § 311.009(e)
- When a board member leaves, the taxing unit who appointed that board member appoint another representative from the taxing unit. § 311.009(d)

Final Project and Financing Plans

- The board of directors of the TIRZ must adopt a project plan and final reinvestment zone financing plan for the TIRZ, and submit the plans for approval by the governing body of the city or county that created the TIRZ.
- The final financing plan must include a number of items, including:
 - A detailed list describing the estimated project costs of the zone, including administrative expenses;
 - A statement listing the proposed kind, number, and location of all public improvements to be financed by the zone;
 - An economic feasibility study;
 - The estimated time when related costs are to be incurred;
 - A description of the methods of financing all estimated project costs and the expected sources of revenue to finance or pay for the costs; and
 - The estimated amount of bond indebtedness. § 311.011(c)
- The final project plan must include:
 - A map showing existing uses and proposed uses of property in the zone;
 - Any proposed changes to zoning ordinances, the city's master plan, building codes, or other ordinances;
 - A list of estimated nonproject costs, and
 - Statement of a method of relocating persons to be displaced, if any, as a result of the project. § 311.011(b)

| Fort Worth Avenue TIF District Project Plan Budget (NPV, 2008 dollars) | | | | |
|---|--------------|--|--|--|
| Category | TIF Budget* | | | |
| Public infrastructure improvements: paving, streetscape, water/wastewater, storm sewer, utility burial/relocation, and land acquisition | \$37,259,794 | | | |
| Affordable housing | \$5,000,000 | | | |
| Environmental remediation & demolition | \$6,000,000 | | | |
| Parks, open space, trails, and gateways | \$6,000,000 | | | |
| Façade restoration | \$3,000,000 | | | |
| Economic development grants | \$10,000,000 | | | |
| Administration and implementation | \$2,200,000 | | | |
| Total project costs | \$69,459,794 | | | |
| * As approved in the Final Project Plan and Reinvestment Zone Financing Plan. | | | | |

Funds and Financing

- The board of directors or governing body of the city or county can enter into agreements utilizing TIF funds for any project costs that the board or governing body "considers necessary or convenient" to implement the project plan and financing plan. § 311.010(b)
- TIF funds may be used to pay for certain projects outside the zone, including:
 - o Public infrastructure,
 - o Affordable housing, and
 - Areas of public assembly. § 311.010(b)
- After the city has met all obligations and paid all project costs, any leftover TIF money will be given back to the city and respective taxing units. § 311.014(d)
- TIF funds may be transferred to an adjacent zone if:
 - The same taxing units participate in each of the two zones and contribute the same portion of tax increment to each zone,
 - Each of the taxing units agrees to the transfer; and
 - The holders of any tax increment bonds or notes agree to the transfer. § 311.004(f)
- In Houston's petition TIRZs, the financing plan must stipulate that at least one-third of the tax increment be used for affordable housing. § 311.011(f)
- The city may utilize bonds or pay as you go financing to fund the project. Some cities, such as San Antonio, prefer pay as you go financing.¹

Disadvantaged Businesses

- Disadvantaged businesses in a petition-created TIRZ should receive preference when the board procures supplies, materials, services, and equipment. § 311.0101
- The board of a petition-created TRIZ must implement:
 - A program targeted to disadvantaged businesses to inform them of the zone's procurement process and opportunities to participate,
 - Steps that are necessary to ensure that all disadvantaged businesses are made fully aware of opportunities in the zone. § 311.0101(b).
- The board must also:

¹ "Pay as you go" financing and reimbursing front-end public redevelopment costs with tax increment revenues are preferable to bond financing and are to be considered and used when appropriate (San Antonio TIF Policy) <u>https://www.sanantonio.gov/Portals/0/Files/NHSD/TIF/ProgramPolicy.pdf</u>

- Require contractors to make a "specific showing of how they intend to maximize participation by disadvantaged businesses as subcontractors." The board must evaluate these actions when selecting prime contractors.
- Identify disadvantaged businesses in the county that provide or have the potential to provide supplies, materials, services, and equipment to the zone; and identify their barriers to participation.
- Prepare an annual report listing all contracts by number and dollar amount awarded to disadvantaged businesses, and then all contracts awarded. § 311.0101. Many TIRZs across Texas appear to be falling short of this goal.
- Cities may require disadvantaged businesses to certify themselves as a minority or women owned business enterprise (M/WBE), a small business enterprise (SBE), or disadvantaged business enterprise (DBE).
- Fort Worth, Dallas, Houston, and San Antonio all have their own DBE policies and certification parameters.

| Vickery Meadow TIF District M/WBE Participation | | | |
|---|------------|--------------------------------|--------------------------------------|
| Project | Contractor | Total Contract Award Amount | Percentage Minority Participation |
| Park Lane (Public Work – goal 25%) | Varies | \$13,624,760 | 37.85% (\$5,156,683) |
| Park Lane (Private Shell – goal 5%) | Varies | 195,538,520 | 9.67% (\$18,911,015) |
| Total | | \$209,163,280 | 11.51% (\$24,067,698) |

Source: Vickery Meadow TIRZ Annual Report

Opportunities for Advocacy

1. Oversee and Provide Input on Project and Financing Plans for the TIRZ

- The city council must hold a public hearing on the following:
 - o Creating the TIRZ,
 - Approving the final financing and project plan, and
 - o Amendments to the plans.
 - When a TIRZ's project and financing plans are put forward for adoption or amendments, there are a number of areas for potential advocacy, including:

- Equity considerations: Who is benefitting from these TIF investments? How will disadvantaged workers and small businesses benefit?
- Affordable housing
 - Will there be any affordable housing? What percentage of units will be affordable and at what MFI levels? Will they be accessible to families with children and current residents of the zone?
 - Will the property be required to accept tenants with vouchers?
 - Will the property provide for enhanced tenant rights (such as a right to cure, prohibition against nonrenewal of leases without cause, etc.)
- o Workers' rights such as fair wages and safety protections.
- Local businesses support, such as inclusion of affordable commercial space for local businesses.
- o MWBE contracts
 - All petition-created TIRZs are required to serve disadvantaged businesses.
 § 311.0101.
- o Displacement
 - All TIRZ Project Plans must include a notice if any displacement is going to occur as a result of the TIRZ, along with a plan to relocate displaced persons. § 311.011(b)(4). Most project plans say no displacement will occur, but this may not always be accurate.

2. Get on the TIRZ Board

- Most of a TIRZ's board members are appointed by the governing body of the city or county that created the zone. § 311.009(a)
 - In Houston, the mayor and city council appoint the city's members to the TIRZ boards, which are called Redevelopment Authorities. <u>Apply here.</u>
 - In Fort Worth, the city's members are chosen by the city council after nomination from the mayor or recommendation from the Economic Development Department. The Department recommends board members chosen by outside organizations and community stakeholders involved in the particular area being served by the TIF. <u>Apply</u> <u>here.</u>
 - o In San Antonio, the city council appoints the city's representatives. <u>Apply here.</u>
 - Dallas appears to follow a similar process. Apply here.

• The board of directors for the City of Austin's TIRZs currently consists of all the city councilmembers, along with one representative from each participating taxing jurisdiction. There are no public representatives designated by the city.

3. Oversee and Police On-Going Expenditures of TIRZ funds

- TIRZs are subject to the Texas open meeting and records laws.
- Each TIRZ must produce an annual report, which is available for public review and must be presented to each taxing entity in the zone. The annual reports for Dallas's TIRZs are available on the city's <u>website</u>. Annual reports often lack detail needed to scrutinize expenditures. It may be necessary to file public information requests with the TIRZ to get more information.
- In reviewing the annual reports, look for:
 - Conflicts of interest (Someone on the board is awarded a project in the district, for example)
 - o Unreasonable expenditures
 - o Conflicts between the annual report and project and finance plans.
 - <u>San Antonio</u> and <u>Dallas</u> list all finance and project plans for TIRZs on their websites.
 - Monitor any affordable housing and disadvantaged business requirements.
 - Dallas audit found noncompliance with TIF policy's affordable housing requirements.
 - HUD Letter of Finding of discrimination against City of Dallas concerning TIFs:
 HUD rec: TIF properties must accept voucher holders in at least 25% of units
 - Houston Chronicle coverage on Houston's mismanagement of its 30% affordable housing set aside.
- Attend public meetings and hearings for the TIRZ. The TIRZ board must meet at least once a year and is subject to Texas open meetings laws.
 - Some board meetings operate like a public hearing, with portions of time reserved for public comment. Check the meeting agenda for this information.
 - The meeting times must be posted for the public but may be difficult to find online.
 TIRZs go by different names in cities such as "Redevelopment Authorities." Links for the largest Texas cities are provided below:
 - Dallas: <u>https://dallascityhall.com/government/citysecretary/Pages/Public-Meetings.aspx</u>

- Fort Worth:
 - http://apps.fortworthtexas.gov/council packet/create council agenda.asp
- Houston: <u>https://www.houstontx.gov/council/committees/econdev.html</u>
- San Antonio: <u>https://sanantonio.legistar.com/Calendar.aspx</u>

4. Shape Local TIF Policy

- Most cities have a policy that governs the expenditure of TIF funds in the city. This policy could address a number of important social justice considerations. For example, a TIF policy could address:
 - Affordable housing requirements. Address income targeting, length of affordability terms, family units.
 - Requirements to not discriminate against voucher holders and a ban on minimum income policies.
 - Enhanced tenant protections. See Austin policy.
 - Worker protections.
- Portland, Oregon has a policy to set aside a minimum 30% of TIF funds for the development, preservation, and rehabilitation of housing serving families below 100% AMI. In the policy's first five years, more than \$152 million of TIF funds were invested in affordable housing. The policy was created in response to advocacy by local housing advocacy organizations. Advocates in the neighborhoods of N/NE Portland also successfully advocated in getting the city to redirect \$100 million in TIF funding for the area towards addressing displacement and affordable housing.
- A number of Texas cities have policies regarding the use of TIF funds for funding or incentivizing affordable housing but the policies could be strengthened through advocacy.
 - San Antonio: The City "may require" that up to 20% of the proposed housing units in a TIRZ be affordable in accordance with city guidelines (affordable = serving households making a maximum of 60% AMI).
 - Advocacy opportunity: Make AH mandatory versus optional. Ensure voucher holders are serviced.
 - Houston: 30% of TIF funds in each petition TIRZ must be used for affordable housing (required by Section 311 of the Tax Code; only applies to Houston; no definition of "affordable").
 - Advocacy opportunity: Define affordable housing and create program guidelines. Monitor implementation.

- Fort Worth: Any residential projects receiving TIF support must set aside a minimum 20% of the units as affordable housing (10% of units at or below 80% AMI, and 10% of units at or below 60% AMI).
 - Advocacy opportunity: Strengthen the affordability terms. Ensure families with children are being served, along with voucher holders.
- Dallas: At least 20% of all housing receiving TIF funding must affordable to households earning no more than 80% of the Dallas AMI. "Affordable" rents out of reach for most low-income renters (80% Dallas AMI = \$50,000 income for 2person households; \$1,250 for one-bedroom apartment).
 - Advocacy opportunity: Deeper and longer affordability; units for families with children.

5. Advocate for new TIRZs to Advance 100% Social Equity Goals

- Up to 100% of TIRZ funding can be dedicated towards affordable housing and other equitable development goals.
- Community groups that own a significant amount of land can also formally petition to create a TIRZ covering that land to support affordable housing development. For example, the Alamo Community Group Community Group successfully petitioned the City of San Antonio to create a TIRZ on the west side of San Antonio to fund public improvements for a new 60-unit single family subdivision of affordable homes.

6. Challenge Systemic Inequities with TIRZ Funding

- Policy advocacy can highlight systematic racial and ethnic disparities in expenditures on infrastructure across the city, and through coalition building and community education can lead to local reforms.
- Litigation is another strategy. In April 2019, the Grassroots Collaborative filed a civil rights <u>lawsuit</u> against City of Chicago in April 2019 alleging that the City's use of TIF funding has a disparate impact on persons of color . ddisparate impact claim brought under Illinois Civil Rights Act.

Case Studies

1. Fort Worth: Downtown TIRZ

- Created In 1995.
- Over \$73 million in public improvements over the TIRZ's lifetime.

- The city has primarily financed infrastructure improvements through the TIRZ. This includes leasing out privately-owned parking garages to provide free public parking and streetscape improvements.
- Investments include historic preservation (Ashton Hotel), \$1 million to construct a new STEM school, and affordable housing (Hunter Plaza).
 - The TIF project plan was amended in 2012 to fund Hunter Plaza, a mixed-income project of the Fort Worth Housing Authority.
- Examples of where the TIF money is going:
 - \$1 million in incentives for the restoration and reopening of Fort Worth's Heritage Park.
 - AC Marriott Hotel: \$4.1 million in TIRZ dollars, with \$3.1 million going to the electrical system for the building.
 - 25-story Frost Tower: \$4.8 million in TIRZ dollars for electrical system and infrastructure work.
 - \$1.5 million in 2018 to subsidize downtown parking. \$38 million in parking lease subsidies since 1995.

2. Dallas: Vickery Meadow TIRZ

- Created in 1992
 - o Two separate areas: Five Points and Park Lane
 - Park Lane has transformed into The Shops at Park Lane, with an assessed value of almost \$300 million and \$30 million TIRZ participation.
- Changes from the original project plan:
 - Geographic area amended to include 5.7 new acres of land from the Northwest Highway area.
- Overall amount spent so far:
 - \$33 million on one project, the Shops at Park Lane. 548 market apartments + retail and office space. No affordable units.
 - TIF funds used for "Environmental remediation, interior/exterior demolition, street/utility improvements & relocation, streetscape improvements, land acquisition, enhanced pedestrian area design & acquisition, engineering & design."
 - \$445,000 towards transit initiative.
- No inclusion of affordable housing in the project plan.

• The TIRZ annual reports for Dallas do not go into substantial detail regarding expenses. Half Price Books, a multi-phase plan to redevelop the former Parker Plaza site, was completed in 2015, yet no TIRZ funds have been allocated to this project yet. Every annual report since 2014 say the Half Price Books project has a "TBD" investment.

3. Dallas: Cedars TIRZ

- Created in 1992.
- Slow to take off.
- \$6.3 in TIRZ projects + \$1.9 million tax abatements.
- Projects include:
 - 144 Belleview Apartment: Low Income Housing Tax Credit apartments. Received
 \$1.6 million in TIF funds for infrastructure.
 - Southside Flats. \$1.9 million tax abatement for market-rate apartments.
 - Lorenzo Hotel: \$2.3 million; with 237 hotel rooms, 1,800 sf retail.
- Changes from the original project and financing plan:
 - City Council approved up to \$207,830 in additional TIF funding to the "Southside Pedestrian Improvement Project." The funds were utilized in conjunction with private and federal funding for sidewalk and streetscape improvements on South Lamar Street and along Belleview Street from the Convention Center to the Cedars DART station.
- Future plans include revitalization of Dallas Heritage Village and the Ambassador Hotel.

4. San Antonio: Houston Street TIRZ

- Created in 1999. Termination extended to 2034.
- Total TIRZ revenues (1999-2034): \$145 million.
- Projects include:
 - o San Pedro Creek redevelopment
 - o Alameda Theater Revitalization Project
- Examples of where the TIRZ money is going:
 - \$15 million to San Antonio Police Department for an increased police presence in the San Pedro Creek project.
 - \$9.2 million to the Alameda Theater for renovation, including 1000-seat capacity tiered seating and a thrust stage.
 - \$15,000 for new gas lights on the Maverick Distillery Building facing Peacock Alley

- Maverick Apartments: Conversion of affordable federally-subsidized apartments to luxury housing. \$416k tax abatement from TIRZ along with additional tax abatements. TIRZ plan said "no displacement."
- o Frost Bank Tower: \$3 million for public infrastructure
- \$15k for new gas lights on the Maverick Distillery Building.
- Walgreens/Stuart and Kress building renovations.
- \$6.3 million in parking subsidies for two corporations.
- Potential \$2m in tax abatements for USAA parking lot expansion and improvements to One Riverwalk Plaza.

5. San Antonio: Midtown TIRZ

- Created in 2008.
- Overall TIRZ funds: \$106 million.
- Focused on providing tax breaks (reimbursements) to new market developments
 - \$8.6 million tax abatement and rebate for 10-story office tower for bank (1803 Broadway)
 - \$3.9 million in tax abatement and reimbursement for Brewery South; 223-unit market-rate apartment complex
 - o \$3.1 million for 120 9th Street Apartments (rents: \$1,300 to \$5,000 a month)
 - \$3.3 million tax reimbursement for the Cellars apartments (rents: \$2000 to \$14,000 a month)
 - \$2.7 million debt repayment for the Brackenridge Garage
 - o \$3.3 million tax reimbursement for the Alamo Manhattan luxury apartments
 - No mention of affordable housing in project plan.
- One affordable housing development: Museum Reach Lofts. 94-unit new Federal Low Income Housing Tax Credit apartment complex. Received \$2.8 million in TIRZ funds.
 - 42 units will be offered to households at 60 percent AMI (rents between \$624-794), 35 units at 50 percent AMI (\$513-\$651), and nine units at 30 percent AMI (\$290-\$365). The other eight units will be market-rate.

6. San Antonio: Tarasco Gardens TRIZ

- Petition-created TIRZ proposed by Alamo Community Group.
- Alamo Community Group bought the land through financing, then petitioned for a TIRZ to build an affordable housing community.

- TIRZ funding \$1.3 million in infrastructure for the affordable development.
- Projected to build 60 affordable single-family homes for purchase.
 - Half of the homes will be available for buyers who make 80 percent of AMI, the other half for those at 120 percent.
 - This project aims to fill the void in housing available for families at 80 percent of AMI (\$50,800).