

CITY OF SEALY, TEXAS

Policy Statement:

The City of Sealy is dedicated to the development and revitalization of neighborhoods and commercial districts in the City of Sealy, by using multiple development incentive tools, including Tax Increment Reinvestment Zones (TIRZs or Zones). A TIRZ project should act as an economic stimulus to the surrounding areas. By leveraging private investment for certain types of development within a targeted area, a TIRZ can be a tool used to assist in financing needed public improvements and enhancing infrastructure.

TAX INCREMENT REINVESTMENT ZONE GUIDELINES

A. Purpose of Guidelines

The purpose of these guidelines is to establish the policy for the City of Sealy to exercise the power granted by Texas Increment Financing Act and Article VIII, Section 1-g of the Texas Constitution to finance the development and redevelopment of unproductive, underdeveloped or blighted areas within the City.

The City Council may designate a contiguous geographic area as a Zone to promote development or redevelopment of the area, if the City Council determines that development or redevelopment would not occur solely through private investment in the reasonably foreseeable future. Any TIRZ that is designated must comply with Tax Increment Financing Act.

B. Criteria

In considering creation of a Reinvestment Zone, City Council will take into consideration the factors described in the Tax Increment Financing Act. Additional considerations may include, but are not limited to, as follows:

- 1) a substantial absence, deterioration or substandard condition in the City's infrastructure, streets, water and sewer lines, and storm drainage;
- 2) a statement from applicant certifying that "but for" the creation of the Zone, the investment or reinvestment would not occur.

C. Redevelopment Activities

Redevelopment activities for the Zone must:

- 1) be in accordance with redevelopment and land use plans approved

by the City Council, and consistent with the City's development regulations; and

- 2) be reasonably likely to increase the aggregate taxable value of property within the Zone by at least twenty (20%) percent during the life of the Zone; and
- 3) provide adequate infrastructure improvements to serve the Zone, including but not limited to streets, water and waste water facilities, and drainage structures, designed and constructed according to City standards; and
- 4) provide relocation assistance for low/moderate income persons residing in the Zone who may be displaced by the implementation of the project plan (as defined in the Tax Increment Financing Act), and as such persons are defined by the U.S. Department of Housing and Urban Development.

D. Application. Applicants requesting the City, whether by petition or otherwise, to create a TIRZ with other incentives to support eligible types of development in targeted areas must fully complete an "Application for Tax Increment Reinvestment Zone." The application and accompanying documentation must be finalized and submitted to the City on or before September 1, in order for a Zone to be created and to take effect on the following tax year.

Pre-Application Review Process. Developer may request a meeting with appropriate City Staff prior to submitting a TIRZ application, in order to address TIRZ requirements and development processes.

Application Fee. A non-refundable application fee of \$5,000.00 must accompany all Applications for Tax Increment Reinvestment Zone. The application fee should be in the form of a check or money order and made payable to the "City of Sealy", to cover costs associated with the review and processing of the application.

The City will require that applicants/developers desiring a TIRZ must, as part of the application submission:

- 1) demonstrate financial wherewithal to meet project costs and complete project (i.e., financial statement, complete Sources and Uses budget, or Letter of Credit from Bank);
- 2) submit a disclosure document listing owners, principals, and general partners, to identify persons associated with the proposed

development. A condition of any subsequent approval for the establishment of a TIRZ shall include the written notification within 30 days upon any change in the initially submitted information;

- 3) submit a completed market feasibility study;
- 4) delineate, in detail, the developer's equity contribution to the project illustrating the proposed financial structure;
- 5) identify proposed security, collateralization, or credit enhancement;
- 6) demonstrate commitment to the quality of development, the project area, and project completion;
- 7) submit detailed pro formas for the proposed project, including any secured participation levels from each taxing entity;
- 8) submit a Phase I Environmental Site Assessment of the proposed area not older than 2 years in accordance with guidelines set forth in the American Society for Testing and Materials (ASTM), Standard E1527-00, Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. Contingent upon the findings of the Phase I ESA, City may require completion and submission of a Phase II Subsurface Investigation and environmental remediation, if necessary, in accordance with federal, state and local requirements. The City will also require applicant to assess and submit documentation regarding potential environmental impacts, such as water quality, endangered species, and cultural resources;
- 9) submit a preliminary site plan of any proposed parks to include layout of any proposed improvements;
- 10) demonstrate previous experience developing similar scale and type of project;
- 11) submit a detailed listing of public improvements with estimated costs (eligibility of said list is contingent upon City approval);
- 12) submit a schedule indicating timing of public improvements (i.e., commencement and completion dates);
- 13) assist the City, including paying the cost of preparations, in the statutorily required presentations to the other taxing entities subsequent to the Sealy City Council calling for a public hearing for

possible creation of a TIRZ;

- 14) agree to pay for professional consultants retained by the City related to the project even if the project is not finalized and a TIRZ is not established; and
- 15) submit the following:
 - a) a description of the proposed boundaries of the proposed Zone, including both a map (showing existing uses and conditions of real property in the Zone) and a legal description;
 - b) tentative plans and schedules for the development or redevelopment of the Zone, including conceptual drawings or descriptions of the public improvements proposed to be financed by the Zone, including a preliminary estimate of the total costs of the improvements;
 - c) an estimate of the general impact of the proposed Zone on property values and the tax revenues of the City and the other governmental entities levying ad valorem taxes throughout the life of the proposed Zone;
 - d) a schedule indicating total appraised values for the proposed Zone for the previous ten years (if available);
 - e) evidence that all tax arrearages and public liens on property owned or controlled by the petitioner has been satisfied; and
 - f) a statement certifying that “but for” the creation of the Zone, the Zone would not occur.

E. Eligible Project Costs

In conformance with the Tax Increment Financing Act, the City shall consider the “but for” requirements required for the creation of the Zone and make a determination of the project costs necessary to implement the project plan and reinvestment zone financing plan. The City may consider the following project costs but is neither obligated nor limited to the following:

1. Off-site utilities required to bring utilities to the Zone (e.g. water, sewer road and drainage facilities, street lighting and traffic lights);
2. Upgrade existing infrastructure to advance future development

within the Zone (e.g. lift stations, water, sanitary sewer, and storm drainage improvements, turning lanes/intersection improvements, water and wastewater treatment plant enhancements);

3. Land assembly costs;
4. Public infrastructure construction within the Zone including water, sanitary and storm sewer facilities, natural gas utilities, street lighting, signage and streetscape/landscape improvements;
5. Specialty items that include the construction of sound barriers, buffering landscape between residential and nonresidential uses, and common recreation areas;
6. Eligible project costs for a residential development, which may be reimbursed at up to 70% of the total cost as approved on a case-by-case basis; and
7. Eligible off-site utility costs and costs associated with eligible projects that provide a regional need, which may be reimbursed at up to 100% as approved on a case-by-case basis.

The City may retain funds as provided in the Tax Increment Financing Act, to be reimbursed for the following:

1. Imputed administrative costs, including reasonable charges for the time spent by employees of the City in connection with the implementation of the project plan and reinvestment zone financing plan;
2. The amount of any contribution made by the City from general revenue for the implementation of the project plan;
3. Payments made at the discretion of the governing body of the City that the City finds necessary or convenient to the creation of the Zone or to the implementation of the project plan and reinvestment zone financing plan; and
4. Operating costs of public facilities/services. If public facilities/services are required to meet the demands of the new development, City and applicant and/or developer will negotiate the construction, operating costs, pro rata share and timing.

F. Term of Reinvestment Zone. As prescribed under Section 311.017 of the Tax Increment Financing Act, Zones shall terminate on the *earlier* of:

- 1) Termination date designated in the ordinance(s) creating and/or amending the Zone; or
- 2) The date on which all project costs and interest have been paid in full.

In addition, the duration of a Zone should not exceed 30 years from the creation date of the TIRZ. City may elect to terminate a TIRZ if the City determines such a termination is in the City's longer term development interests. Any outstanding debt of the Zone would become the obligation of the City in such an instance.

Furthermore, any default of the terms contained in the Development Agreement that is not cured within the 90-day timeframe contained in the Development Agreement may also result in Zone Termination.

G. Project Plan and Reinvestment Zone Financing Plan

The board of directors of the Zone shall submit a proposed project plan and reinvestment zone financing plan for the approval of City Council. The plans must be prepared in accordance with the Tax Increment Financing Act.

H. Use of Funds

The tax increment or the proceeds of bonds, notes or obligations issued for any project or projects secured by the tax increment may be used for any purpose authorized in the project plan and reinvestment zone financing plan.

Proceeds shall be used for project facilities and improvements which are approved by the City and which have an estimated average useful life at least equal to the life of the Zone or notes financing such improvements, if any. However, the City may use the tax increment or proceeds of bonds, notes or obligations to reimburse a developer on a pro-rata basis for project facilities or improvements with an estimated life which is less than the life of the Zone or notes financing such improvements.

The funds of the Zone shall be budgeted, expended and audited in the same general manner as City bond and tax funds with such changes required by the provisions of state law. The costs of such City financial controls shall be included in the costs of administration of the Zone. The Zone budget must be submitted annually to the City Finance Department for approval. A copy of the Zone's Annual Audit must be forwarded to the City Finance Department after board approval.

I. Obligation to Reimburse a Developer

In consideration for the construction of public improvements by a Developer, and pursuant to Section E above, the Zone shall reimburse a Developer for qualified costs of the public improvements from the tax increment attributable to the Property through (1) the issuance of bonds, notes, or other obligations of the Zone payable from the tax increment attributable to the property, or (2) the direct payment of the tax increment attributable to the property. Any obligation of the Zone to a Developer constitutes an irrevocable lien on and pledge of the Tax Increment attributable to the property. The lien on, pledge of, and rights in and to the tax increment attributable to the property established, made, and granted to the Developer shall constitute a first and senior lien thereon subject only to (1) the rights of any of the holders of bonds, notes, or other obligations that have been heretofore or are hereafter issued by the City or the County and are payable from and secured by a general levy of ad valorem taxes throughout the taxing jurisdiction of the City or the County, as applicable, and (2) the pledge of such funds to pay or reimburse principal of and interest on Zone Obligations. A Developer, its successors, and assigns shall have no right to payment out of any funds of the City other than the tax increment attributable to the property and the proceeds of Zone obligations.

J. Risks to Developer

The decision to establish a TIRZ or approve a Development Agreement rests solely with the Sealy City Council. Meeting the guidelines and criteria in this or subsequent policies **does not** create an obligation for approval by the City Council.

Any contributions made by applicant or other developer in anticipation of reimbursement from tax increments shall not be, nor construed to be, financial obligations of the City of Sealy, other taxing entities, or applicable reinvestment zone board. Developer shall bear all risks associated with reimbursement, including: incorrect estimates of tax increment, changes in tax rates or tax collections, changes in state law or interpretations thereof, changes in market or economic conditions impacting the project, changes in interest rates or capital markets, changes in development codes requirements, default by tenants, unanticipated effects covered under legal doctrine of *force majeure*, and/or other unanticipated factors.

K. Variances

An applicant for a TIRZ and/or developer seeking a reimbursement from an existing TIRZ may request a variance to any provision of this ordinance. Such requests will be considered on a case by case basis, and must include the justification for the variance request, the cost benefit to the developer, and all

information including developer pro-formas, financing documents, engineering estimates, and any other documents the TIRZ board and the City deem necessary and appropriate to review in consideration of the variance requested. All requests will be promptly reviewed upon receipt of the information requested. Approval for any variance must be received by majority vote of both the TIRZ board of directors, and the Sealy City Council in order to be effective. Neither the TIRZ Board of Directors nor the City Council is obligated to approve a request for a variance to these guidelines.