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# **Tax Increment Reinvestment Zone (TIRZ) Agreements: Protecting the City's Interest**

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In 1987, the Texas Legislature adopted the Tax Increment Financing Act to permit the public financing of various projects within discrete areas, or zones, of a city or county from the additional *ad valorem* taxes generated by the increase in property values in that zone. See Tex. Tax Code Ch. 311; R. Davis, Urban Renewal, 72 Tex.Jur.3d § 56 (2014); D. Brooks, Tax Increment Financing Act, Tex. Prac. § 9.27 (2014). The Act effectively enables a city or county to capture property taxes within a zone and to pledge them for a public project without any public referendum.<sup>1</sup>

Originated in California in 1952, the District of Columbia and every state, except Arizona, allows for tax increment financing (TIF) programs. See Council of Development Financing Agencies (CDFA), Tax Increment Financing State Statutes (2006), <http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/tifstatestatutes.html> (last visited Feb. 24, 2014). In Texas, a city or county may create, or designate, a “reinvestment zone” and finance “project costs”, such as “public works and public improvements, programs or other projects benefiting the zone”, with the *ad valorem* “tax increment” or the “sales tax increment” attributable to the zone. Tex. Tax Code §§ 311.002, 311.012 and 311.0123. The tax increment financing of the public improvements in a tax increment reinvestment zones (TIRZ)<sup>2</sup> may be combined with other economic development programs, such as tax abatement agreements (Tex. Tax Code §§ 311.002(1), 311.0125, 312.001 et seq.) and chapter 380 and 381 agreements (Tex. Loc. Gov’t Code ch. 380 and 381).

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<sup>1</sup> See also Tex. Const. Art. 8 §1-g(b). The legislature by general law may authorize an incorporated city or town to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, blighted areas within the city or town and to pledge for repayment of those bonds or notes increases in *ad valorem* tax revenue imposed on property in the area by the city or town and other political subdivisions.

<sup>2</sup> TIF and TIRZ are sometimes used interchangeably.

The Texas Comptroller gives an overview of the Tax Increment Financing Act at her central registry. [http://texasahead.org/reports/TIF\\_Abatement/2012/registry.pdf](http://texasahead.org/reports/TIF_Abatement/2012/registry.pdf). In 2012, the Comptroller reported 192 Reinvestment/Enterprise Zones in 31 counties. The zones showed varying success, with City of Houston's "Uptown" TIRZ #16 capturing \$1.7 billion in appraised value (\$19 million in annual revenue). Meanwhile, San Antonio's "Westside" TIRZ #30 lost \$8 million in appraised value and Dallas's TOD TIF lost \$16.9 million in captured appraised value. *Id.* A transit-oriented development TIRZ, the TOD TIF proposes to capture over \$3 billion in tax value by 2038 in five station areas connected by the Dallas Area Rapid Transit (DART). See [http://www.dallas-ecodev.org/wp-content/uploads/2012/04/TOD\\_TIF\\_plan.pdf](http://www.dallas-ecodev.org/wp-content/uploads/2012/04/TOD_TIF_plan.pdf).

The success of a TIRZ is measured by the extent to which public and private improvements to real property enhance the value of the real property within the designated zone. TIF agreements, at their heart, depend upon real estate development. TIF agreements are funded by, and therefore dependent upon, an increase in land valuation within the TIRZ. To the extent that a city becomes a party to the real estate development by participating in the funding of the public improvements, the municipality is subject to the same risks as any other real estate developer. These risks include: changes in land value due to market circumstances (interest rates, inflation, demand and supply), construction risks (price, design, quality and execution of construction projects), political risks (changes in government and regulations), and partner risks (changes in financial condition of the other parties). See, e.g. *SE Ranch Holdings, Ltd. v. City of Del Rio*, 2007 WL 2428081 (Tex.App.-San Antonio 2007, pet. denied) (petition for public referendum to disapprove TIRZ project plan). A city or county should enter such agreements with eyes wide open; any agreements related to the "acquisition and construction

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