

Memo

To: Blue Ribbon Committee
From: Robert T. Herrera, City Manager
Date: April 20, 2016
Re: Explanation of Subject Matter on Tax Increment Reinvestment Zone
cc: Mayor/City Council | M. Luft, Director of Economic Development

I am attaching for your review an internal document entitled, "Explanation of Subject Matter on Tax Increment Reinvestment Zone" as prepared by the City's Economic Development Director, Mark Luft.

This staff report will be presented to the Cibolo Economic Development Corporation on April 21, 2016 during their Board meeting. Mr. Luft's study and overview may be a good source of information to outline key aspects of how to create and work with a Tax Increment Reinvestment Zone.

I believe you may find the enclosed information beneficial.

Thank you,

Robert T. Herrera

Robert T. Herrera
City Manager

Enclosure

Enclosure provided for review prior to the next Blue Ribbon Committee meeting, May 5, 2016.



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EXPLANATION OF SUBJECT MATTER ON TAX INCREMENT REINVESTMENT ZONE

**Presentation to Board of Directors
April 21, 2016**

Tax Increment Financing Program:

Chapter 311 of the Texas Tax Code (the TIF Act) authorizes the governing body of a municipality or a county to promote reinvestment in and redevelopment of a contiguous geographic area by designating it a Tax Increment Reinvestment Zone (TIRZ). The future value of private investment within a TIRZ is leveraged to finance public improvements, to enhance existing public infrastructure, and to maximize the benefits of other incentive tools. Public investment in TIRZ, using tax increment as a financing mechanism, stimulates private sector investment in areas of the City that would not otherwise attract market interest. Taxing entities can opt in at a participation rate of their choosing, electing to contribute 0% to 100% of their tax increment.

Key Points:

- 1) Chapter 311 of the Texas Code controls all procedures for the creation for Tax Increment Financing.
- 2) Base value set at current assessed value
- 3) Development increase assessed value
- 4) Higher assessed value results in additional real property tax revenues

What are eligible project cost?

Tax increment collected in a TIRZ can only be used in certain ways as specified by Texas statute. These uses, known as "eligible project costs," include:

The acquisition and construction of public works,
Engineering
Surveying
Contingency
Construction Management
Public Improvements

Streets & Approaches
Drainage
Sewer
Water
Sidewalks
Street Lights
Site Work
New Public Buildings
Rehabilitation Cost of Existing Buildings
Financing Cost
Administrative Cost

How are TIF funds managed?

Each TIRZ is managed by a board that oversees the funds generated through the TIF mechanism. Board members are appointed by City Council and help to make decisions about how the money is spent. TIRZ board members are responsible for helping to create or amend the TIRZ Project and Finance Plans; the guiding documents of the TIRZ, and approving contractual agreements and reimbursement request from developers and other participating taxing entities. To be eligible for appointment to the board, an individual must: 1) be at least 18 years of age; 2) own real property in the zone or be an employee or agent of a person that owns real property in the zone; 3) City Council member and/or City staff (City Manager); 4) business or civic leader whose residence or business is located within the city; and 5) representatives appointed by other taxing entities.

How can a developer benefit from the TIRZ?

Developers who wish to benefit from this incentive can petition the City to create a TRIZ. These are known as “Developer” or “Petition-initiated” TIRZ. To do this, the developer must own at least 50% of the property in a given area. A property developer can also benefit if their property is already located in a pre-existing City-initiated TIRZ.

TIRZ developers can access TIF funds through TIRZ board approval for reimbursements on eligible project cost. In previous projects approvals of future TIF fund reimbursements have also assisted developers in securing financing for their projects.

What is the reimbursement process like?

Developers first submit their invoices and appropriate documents to the TIF the City Manager and the City Finance Director for review. Upon staff approval, a TIRZ board meeting will be scheduled to obtain approval. Developer’s reimbursements are processed pending the availability of funds and after all other priority payments have been issued.

How do I know if I am eligible to participate in this incentive?

The City and TIRZ board determine eligibility based on the economic impact of individual development projects, and the developer's financial and development capacity.

In reviewing development capacity, the TIRZ board evaluates the following:

- Experience of the organization that is relevant to the scope of services
- Experience with public entities
- Number of employees and offices available to support this project
- Experience of teaming partners
- Professional qualifications and experience of staff
- Percentage of time key personnel will devote to the project

The proposed project plan is evaluated by ensuring the plan addresses key areas of importance to the City and TIRZ boards, including:

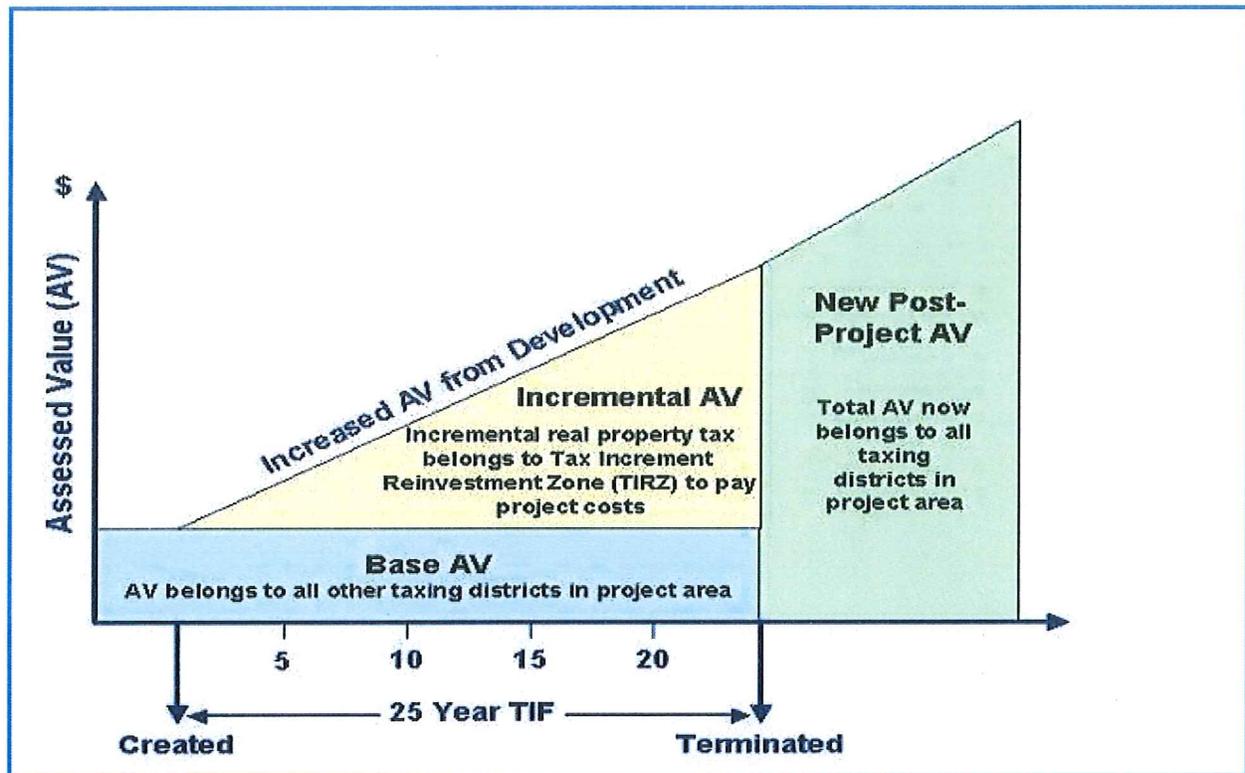
- Providing a positive and financial impact to the City through added taxable property value that can contribute to the TIRZ
- Complementing surrounding developments
- Incorporating sustainable opportunities for small and local businesses
- Incorporating sustainability, green building and alternative energy
- Corresponding with the established vision and community plans for the area

Financial capacity is evaluated by exploring the proposer's access to potential sources and uses of financing including both public and private dollars as well as potential incentives.

Other factors that are reviewed included the:

- Proposed timeline of the project and
- Plan to market the proposed project

How TIF's Work:



Protecting the City's Interest:

The City Council Does:

- Approve the final Project and Financing Plan
- Appoints Board of Directors
- Approves development financing agreements
- Approves the issuance of debt, if any
- Approves any amendments to Project and Financing Plan

Tax Increment Reinvestment Zone Process Steps

Step One:

- City identifies specific geographic area for TIRZ
- City Council considers a Resolution of Intent to create the zone
Resolution is non-binding
- City Staff prepares Preliminary Project Plan and Preliminary Financing Plan

Step Two:

The City must provide a 60-day written notice of its intent to designate a reinvestment zone, and of the hearing on the proposed zone, to the other taxing units that levy property taxes within the area.

Step Three:

Once the City has provided its 60-day notice of a proposed zone, the other affected taxing units within 15 days must designate a representative to meet with the local government creating the zone to discuss the project and financing plans.

Step Four:

In addition to meeting with the other taxing unit representatives, the City must provide a formal presentation to the governing body of each taxing unit that levies real property within the proposed zone.

Step Five:

After the City has made its formal presentation to the other taxing units, it must hold a public hearing on the creation of the reinvestment zone.

Step Six:

After the public hearing, the City Council may, by ordinance, designate a continuous area as a reinvestment zone for tax increment purposes.

Ordinance must include:

- Description of zone;
- Name of zone;
- Zone criteria;
- Zone Board (5 to 15 members)
- Termination date of zone

Step Seven:

After the City has adopted the ordinance or order creating the zone, the board of directors of the zone must prepare the final project plan and final reinvestment zone financing plan.

Step Eight:

After the project plan and the reinvestment zone are approved by the board of directors and by the City, the other taxing units with property within the zone contract with City regarding the percentage of their increased tax revenues that will be dedicated to the increment fund.

Step Nine:

Once the reinvestment zone is established, the board of directors must make recommendations to the governing body of the City on the implementation of the tax increment financing.

Step Ten:

The City must submit an annual report to the chief executive officer of each taxing unit that levies taxes on property within the zone.

Board of Directors Make Up

If TIRZ was created by the city on its own initiative, the board of directors must consist of at least five and no more than fifteen members, unless more than fifteen members are required under Tax Code Section 311.009.

Board Composition

Five members at the least must have appointee from each taxing unit that levies on real property in the zone.

A taxing unit has an option to waive its right to appoint a member to the board.

Board Member Eligibility

- Must be eligible to vote in the City;
- Must be at least 18 years of age;
- Own real property in the zone

Elements Common to all TIRZ:

Fee Structure

The following represents the set fees associated with City – initiated TIRZ projects:

- **Processing Fees: \$40,000.00**

Fees will be assessed to the developer upon City Council approval of the addition of their projects to the Final Project and Finance Plans

- **Startup fees: \$75,000.00**

Fees will be assessed to the TIRZ Fund to cover costs associated with setting up the zone.

- **Annual Fees: \$15,000.00 (minimum)**

Fees will be determined on a case by case basis, depending on the size of the TIRZ. Fees will be assessed to the TIRZ Fund to cover costs associated with annual activities to include but not limited to: collecting increment, administering the TIRZ Fund, providing annual reports to the State Comptroller, staffing the TIRZ Board, monitoring construction, reviewing and recommending approval of TIRZ invoices, issuing checks to all parties involves, etc. Fees will be adjusted on an annual basis in accordance with the annual Consumer Price Index (CPI).

- **Amendment Fees: \$50,000.00 (maximum)**

Fees will be assessed to the TIRZ to cover costs associated with updating the Project and Finance Plans and legal documents.

- **Infrastructure Failures: \$10,000.00 (minimum)**

Fees will be assessed to the TIRZ Fun to cover costs associated with addressing public infrastructure failures. This fee will be assessed only after a developer/contractor has failed to cure after the third notice. Fee will be assessed for each occurrence.

Maximum City Participation

The TIF Act authorizes taxing entities to determine the amount of tax increment to contribute to a TIRZ. The City determines its participation rate using the pro-forma analysis as described in the "Need for Public Assistance". The City will negotiate a maximum participation cap based on the following:

- Ensure ability to provide adequate municipal services through comprehensive service analysis.
- Completion of a gap analysis that accounts for financial capacity of the developer(s) if any and the minimum amount needed to meet the gap.
- Prioritization of public improvements needs.
- Factor a reasonable annual growth assumption.
- Consider developer contribution of land for public use needs and/or minimum financial contribution.

Petition – Driven Tax Increment Reinvestment Zones

Petition – driven TIRZ allow property owners, residents and project developers to contract with the City to bring high quality development/redevelopment to areas that have not seen any significant development in recent history. The city issues an annual call for TIF petitions. Petitions are submitted by the property owners whose ownership constitutes at least 50% of the appraised value of the property in the TIRZ, according to the most recent certified appraisal roll.

Pre – petition Meetings

A petitioner or developer considering the submission of a petition may request a meeting with the City Manager at any time. The meeting fee is \$200.00 per hour for the City Manager, \$200.00 per hour for the City Finance Director, \$150.00 per hour for the Economic Development Director and \$350.00 per hour for the City Attorney.

Call for Petitions

Petitioners must respond to the call for petitions by the announced deadline with a completed application and a fee of \$40,000.00. The fee finances staff implementation of complete application through designation, including review of economic feasibility analysis and need for public assistance pro-forma, public presentations, meetings, negotiation of Project and Financing Plans, and any other elements described in the call for petitions. Applications must include a TIF petition as required by the TIF Act plus any additional information detailed in the call for petition as necessary for financial and economic impact analysis. City staff reviews complete applications pursuant to the requirements posted in the call for petitions; applications missing information are deemed nonresponsive, are not evaluated and the \$40,000.00 fee is returned.

Preliminary review

The City Manager and staff performs a preliminary review of each application's content, limited at this stage to the following categories of statutory and policy requirements. A thorough preliminary review is required before an application can be presented to City Council for consideration of a Resolution of Intent. As an example the lack of an appropriate market study terminates the application process. The following are the components of the preliminary review:

1) ELIGIBILITY

Projects must demonstrate that they are eligible to use TIF support. A project area must meet the general consensus to expand economic opportunities that will be a benefit the community and is in a geographic area which has been under developed in the past. Eligibility does not guarantee that a tax

increment reinvestment zone will be created nor does it mean that the City will participate in a TIRZ created by the County.

2) MARKET RESEARCH: ECONOMIC FEASIBILITY STUDY

To comply with TIF Act requirements for an economic feasibility study, each application must demonstrate a thorough understanding of the existing and emerging markets for residential and commercial development in the area of the proposed TIRZ by including an independent economic feasibility study.

3) NEED FOR PUBLIC ASSISTANCE

In order to accurately communicate the value of the TIF incentive and to statutory requirements that development or redevelopment in the proposed TIRZ would not occur solely through private investment in the reasonably foreseeable future, each application must demonstrate a quantifiable need for public assistance. This analysis determines the amount of tax increment to be generated by the TIRZ, as well as the length of time the TIRZ will be in existence. The following information is also required:

- Demonstrate financial wherewithal to meet project costs and complete project (i.e. the most current three years of financial statements, complete Sources and Uses budget, and Letters of Credit from Bank).
- Identify all sources of funds, including other public sources, private financing, and developer equity contribution into the project.
- Identify all project costs, including acquisition, construction, soft costs, and long term management costs.
- Submit detailed pro-forma that identify pre-TIF rate of return and gap in project financing.
- Submit detailed pro-forma that identify project-plus TIF rate of return and financial structure.
- Identify proposed security, collateralization or credit enhancement.
- Demonstrate previous experience developing similar scale and type of project.
- Demonstrate that no construction is taking place within the proposed TIRZ boundaries. No petition-driven TIRZ can include sites where construction has been initiated or where construction is ongoing and the costs of such construction cannot be financed through TIF.

4) DEVELOPMENT PATTERN

Since TIF is a long term incentive, development support by TIF must add long term value to the public realm. Accordingly, projects must be built using design principles that recognize the importance of the long term safety and comfort of all public infrastructure users (pedestrian and vehicular traffic, etc.). Such design principles should recognize and implement the land use, zoning, subdivision and street design characteristics that ensure that TIF projects are accessible to people of all ages and abilities. In practical terms, this means

that many areas within the TIF projects give priority to the safety of pedestrians by carefully controlling vehicular design speeds on public right of way. The City's Unified Development Code (UDC) sets out a menu of requirements to assist designers and developers meet the City's design policies.

5) IMPLEMENTATION OF ADOPTED PLANS

Each application must demonstrate how goals and recommendation of the land use plan for the proposed TIRZ will be applied to or enhanced by existing or nearby redevelopment efforts encouraged by the City (i.e. Downtown Revitalization Action Plan).

6) COORDINATED REVITALIZATION

The proposed land use plan lead by the developer shall support the development of new partnerships and the use of existing partnership programs which promote cooperation among public agencies, industry and community to enhance economic growth throughout the city. The application must describe how the development supported by the TIRZ will contribute to ongoing or proposed revitalization activities in the surrounding area, and how the TIRZ will leverage additional revitalization activity.

7) COMMUNITY PARTICIPATION

Because the creation of a TIRZ requires the substantial involvement of many stakeholders, the application must indicate how the input of these stakeholders has been integrated into the details of the development proposal. Presentation materials, meeting notes, list of meetings and letters of support should be included in the application.

8) RESOLUTION OF INTENT

If an application is complete and meets the TIF requirements as reviewed by City staff and the concept is in agreement with the goals of the City Council then the staff will present the Preliminary Review findings and the suggested City's participation level to the City Council for consideration of a Resolution of Intent. The Resolution of Intent authorizes staff to notify participating taxing entities of a potential new TIRZ and to begin developing the Preliminary Project Plan and the Preliminary Financing Plan.

9) OTHER TAXING ENTITIES

Several other taxing entities have adopted independent review processes and criteria for proposed TIRZ. In order to expedite the other taxing entities' review processes, applicants must independently contact the other taxing entities impacted by the proposed TIRZ and provide updates to the City Manager regarding any commitments or negotiations.

While no taxing entity is obligated to participate in a TIRZ, the TIF Act does require a designated representative from each taxing entity to meet with City

staff no later than the 15th day after the date the City notifies the taxing entity of a potential TIRZ. In addition, the City is required to make presentations describing the preliminary plans for the proposed TIRZ to all affected taxing entities.

10) FULL INTERDEPARTMENTAL REVIEW

After passage of the Resolution of Intent, a full financial and programmatic review of the proposed project occurs. This review is conducted by an interdepartmental team directed to analyze and troubleshoot the viability of the proposed zone, and could result in an entirely different financing plan than the one initially proposed in the application. The findings of the interdepartmental review form the basis for the Preliminary Project and Financing Plan, which is presented to City Council during consideration of the TIRZ Designation. As described in the following sections, designation officially names the TIRZ, creates a Board of Directors for the TIRZ, establishes effective start and termination dates for the TIRZ and creates a tax increment fund.

TIRZ DOCUMENTS

Following the City Council's approval of a resolution of Intent for either a City – initiated or Petition – driven TIRZ, a Preliminary Project Plan and a Financing Plan are prepared and forward to the staff for review, comments and verification. Upon the creation of a TIRZ, a Final Project Plan and a Final Financing Plan are prepared by City staff for consideration by the TIRZ Board and the City Council. These project and financing documents and the Interlocal Agreements, development Agreements and other contracts necessary to implement TIF are described below.

PROJECT PLAN

The Project Plan describes the existing physical and social conditions of the area of the TIRZ, the nature, cost and phasing of the public and private improvements to be supported by the TIRZ, and the procedural and substantive requirements for TIRZ implementation. Due to the unique conditions of each TIRZ and the variety of approaches encouraged TIF's, TIRZ specific requirements and/or conditions are common. However, some requirements are general to all TIRZ for reasons of state law, local ordinance or policy. These are not limited to the following:

- 1) Economic Feasibility Study
- 2) Eligible Project Cost
- 3) Ineligible cost and prohibitions
- 4) Cost-benefit analysis
- 5) Payment and Performance Bonds in the full amount of general contracts
- 6) Small Business Economic Development Opportunities

- 7) Insurance (including General Liability, Workers Compensation, etc.)
- 8) Indemnification
- 9) Competitive Bidding and Payment of Prevailing Wages
- 10) Prohibition of Manufactured Homes
- 11) Acknowledgment of Requirements for the use of TIF

Economic Feasibility Study

The TIF Act requires an economic feasibility study to be completed as part of any TIRZ Project Plan. Studies must communicate a thorough understanding of the existing and emerging markets for residential and commercial development in the area of the proposed TIRZ, and must be completed in time to have the findings incorporated into the Project Plan.

Eligible Project Costs

Sections 311.002, 311.008 and 311.010 of the Act define Eligible Project Costs. ***The City finances only eligible project costs incurred after the execution of a Development Agreement and Final Project and Financing Plans. Any costs incurred prior to the execution of those documents are not eligible for tax increment financing.*** If public facilities are required to meet the demands of the new development, the City and the applicant and/or Developer negotiates the construction, operating costs, pro rat share and timing of payments for the facilities.

Ineligible Cost And Prohibitions

- a) No retroactive TIF: Costs incurred prior to the date of execution of a development agreement and Final Project and Financing Plan are not eligible for reimbursement or financing.
- b) TIF proceeds cannot be used to support private purpose. Contracts for Professional Services (professional services are defined in the TIF Act as those services provided by architects, engineers, planners and attorneys) shall not include a contingency fee based on the tax increment generated by the TIRZ or the tax increment funds used to reimburse a developer for his eligible project cost.
- c) Lobbying services shall not be an eligible project cost reimbursable with tax increment funds.
- d) Except to the extent prohibited by law, persons who are engaged in litigation against the City are ineligible to obtain the use of TIF as principals or participants for the duration of the litigation. A principal or participant includes the TIF applicant, developer, sponsor, development team member, or an employee, affiliate, agent, relative of the first degree of consanguinity or representative of the above. Accordingly, the City shall not consider a project proposing the use of TIF, designate a TIRZ, enter into any TIF contracts or agreements with, or authorize or make any payments to persons engaged in litigation with the City. Ineligible persons shall be excluded from participating

as either participants or principals in all TIF projects during the term of their litigation. "Person" includes an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity.

The City shall not enter into any agreements with individuals or parties who:

- owe the City money for delinquent real estate taxes, rents, water and sewer charges, or other indebtedness;
- have been convicted of felonies or are currently under indictment for such crimes;
- have defaulted on loans or other legally binding agreements (i.e. Development Agreements or liens);
- have been convicted of violating any law, code, statute or ordinance regarding conditions of human habitation;
- are employed by the City of Cibolo

The applicant must provide the City with a release of information, acceptable to the City, permitting the City to obtain the above information.

COST BENEFIT ANALYSIS

An analysis measuring costs and benefits to the City must be reviewed by the City Manager's Office prior to designation of a TIRZ. Each Cost Benefit analysis is reviewed by City staff using a Quantitative and Qualitative assessment process in order to identify the costs associated with the delivery of City services and the implications of broader community benefits and revitalizations goals. In the event that revenue shortfalls are projected for service costs, City staff analyzes the qualitative benefits of these projects with respect to compatibility with the City's Master Plan policies, goals and objectives relating to infill, mixed-use or new urbanist projects. If projects do not meet these Master Plan policy goals, further review of the project financing is undertaken, which may result in at least one of the following: (1) increased developer contribution; (2) reduced City participation; and/or (3) redefinition of the project's scope.

City staff may also determine not to support the designation of a TIRZ for which the analysis shows that the costs exceed the benefits.

PAYMENT AND PERFORMANCE BONDS

All TIRZ developers must and shall, prior to beginning construction on any Phase of the Project, tender to the City original payment bond and performance bonds, under Chapter 2253 of the Texas Government Code, in an amount sufficient to cover the entire cost of the Public Infrastructure Improvements for that Phase in their respective contracts. The original bonds must be reviewed, approved and retained by the City prior to the commencement of construction or the TIRZ may be terminated. The bonds

must name the City of Cibolo as an obligee of the bonds. The bonds and the prime contracts which are attached to the bonds must be delivered to the City before construction commences.

COMPETITIVE BIDDING AND PREVAILING WAGES

Eligible Project Costs financed through TIF proceeds shall comply with the competitive bidding provisions of Chapter 252 of the Texas Local Government Code, use prevailing wages and be constructed by the Developer, *unless*: (1) tax increments go toward financing 30% or less of the cost for a specific public improvement; and (2) such a public improvement is not a building of any sort.

Under above scenario, the private Developer could request to construct the public improvement; however, City approval is required. This provision compliance with Sections 212.071 and 212.072 of the Local Government Code and similar provisions.

PROHIBITION ON MANUFACTURED HOMES

All homes in the TIRZ shall be constructed on permanent foundations using materials and uniform building industry standards of the day and in compliance with the most current City building ordinances and zoning requirements. No manufactured homes, as defined in the City of Cibolo Unified Development Code, and as amended, may be moved on any lot in the TIRZ. No HUD Code manufactured homes shall be placed on any lot in the TIRZ. This prohibition specifically includes the use of a manufactured home in which the axle and wheels have been removed and placed upon a concrete slab. This prohibition also specifically includes a manufactured home upon which wheels have been left attached. Construction trailers will be allowed while construction is ongoing, but must be removed immediately after the cessation of construction.

ACKNOWLEDGMENT OF REQUIREMENTS FOR THE USE OF TIF

Each TIF applicant and TIRZ developer must agree, in writing, that he/she/it will comply with all requirements of the City Codes of the City of Cibolo and all TIF requirements in all aspects of TIF development. The signed acknowledgment must be submitted with a TIF application (in a petition-driven context) or with a Statement of Qualifications/Proposal (in a City-initiated context). Failure to submit the acknowledgment shall render an application Statement of Qualification/Proposal ineligible for consideration for the use of TIF.

FINANCING PLAN

The Financing Plan describes in detail the projected and actual construction schedules, incremental value, tax collections and reimbursements. The Financing Plan is updated annually to bring projections in line with actual events of the preceding year.

1) CALCULATION OF TAX INCREMENT

Once a Reinvestment Zone has been established, incremental real property taxes resulting from new construction, public improvements and redevelopment efforts accrue to the various taxing entities.

Under Section 311.013 of the TIF Act, local taxing entities retain the right to determine the amount of the tax increment. The City enters into written Interlocal Agreements with all participating taxing entities to specify: (1) the conditions for payment of tax increment into a tax increment fund, (2) the portion of tax increment to be paid by each entity into the tax increment fund, and (3) the term of the Interlocal Agreement.

The amount of a taxing unit's tax increment for a year is the amount of property taxes levied and collected by the unit for that year on the "captured" appraised value of real property taxable by the unit and located in the TIRZ.

Captured appraised value is the total appraised value of all real property taxable by the unit and located in a TIRZ for that year less the total appraised value of taxable real property in the base year (year in which zone was designated by ordinance).

The city and other local taxing entities reserve the option to jointly or independently negotiate the percentage of tax increment deposited in the tax increment fund for any TIRZ.

2) TIF BONDS

The City may consider the issuance of tax increment bonds in certain instances and commensurate with the value of the project. In such cases, risk of default and length of term should be reduced to the greatest extent feasible. Safety factors are included to minimize risk exposure, including a reserve fund. Special covenants, timing the issuance of TIF bonds contingent on the creation of a minimum threshold of assessed value, and/or special structuring of the debt repayment schedule. The TIF Act limits the term of any TIF bonds to 20 years.

3) RISK TO DEVELOPER

Any contributions made by a TIF application and/or TIRZ developer in anticipation of reimbursement from tax increments shall not be, nor construed to be, financial obligations of the City, other taxing entities, or TIRZ board. An

applicant and/or a TIRZ developer shall bear all risk associated with reimbursement, including, but not limited to: delays, 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.

Agreements

Agreements between the City and other political subdivisions of the state take the form of Interlocal Agreements. Agreements between the City and a developer are called Development Agreements. In order to enter into an Interlocal Agreement or a Development Agreement, the City must find that the terms of the proposed agreement meet the requirements set forth by the City Council.

The TIRZ Board of Directors, the City Council, and any participating taxing entities must approve the Final Project and Financing Plans, and execute any Development Agreement and all Interlocal Agreements, if a party, before these documents may take effect. Pre-contract negotiations will not create an implied contract, a claim for detrimental reliance, or any other legal rights.

1) DEVELOPMENT AGREEMENT

The City requires that each developer seeking the use of TIF enter into a Development Agreement with the City prior to starting any construction.

A developer is required to comply with all City and state laws relating to the construction of public infrastructure, including Cibolo UDC regulations, contracting requirements for public works contracts, such as payment and performance bonds, workers compensation coverage, payment of prevailing wages, competitive and other requirements

2) ASSIGNMENT

Any agreement entered into between the City and TIRZ Board with a private Developer may be assignable to a new owner only with prior City Council approval.

3) OTHER AGREEMENTS

The TIF Act authorizes municipalities and TIRZ Boards to enter into other agreements as necessary to achieve the purpose of the Project Plan.

Termination of Zones

The City may elect to terminate a TIRZ if actual housing and commercial construction falls behind the projected construction schedule. Specifically, the City may terminate if

at the end of the first three (3) years, 50% or more of the non-infrastructure construction projected for each of those years, or its equivalent value, is not complete. Furthermore, any default of the terms contained in the Interlocal and/or Development Agreements that is not cured within the timeframe contained in the Interlocal and/or Development Agreements will also result in TIRZ Termination.

TIRZ ADMINISTRATION

TIRZ administration is a shared responsibility of the City and the Board of Directors of each TIRZ (TIRZ Board), whether City-initiated or Petition-driven.

The TIF Act requires the City Council to establish a Board of Directors for each TIRZ that is created. There are four (4) categories of the TIRZ Board, determined by the process used and the year of the zone designation. For each category, the TIF Act describes the basic eligibility requirements for appointees and composition of the boards. For example, the TIF Act describes the minimum number of members for each board, whether state legislators are members of a board, and which taxing entities may appoint members to a board. The City has approved additional requirements applicable to all existing and future TIRZ Boards.

In addition to preparing and adopting Project and Financing Plans, Interlocal Agreements, and Development Agreements (as described previously in the "TIRZ Documents section), the City and each TIRZ Board commit to certain long-term responsibilities for the duration of each TIRZ.

CITY'S LONG TERM RESPONSIBILITIES

The City generally acts as the administrator of all TIRZ for the purposes of reviewing compliance with Interlocal Agreements and Development Agreements. Specific long term responsibilities of the City include:

1) CONSTRUCTION COORDINATION AND POLICY ENFORCEMENT

The City Manager is responsible for tracking progress in each TIRZ. The Project Plan, Financing Plan, Interlocal, and Development Agreements set out the specific standards, timetables, and policy goals that each TIRZ is designated to implement. Should discrepancies or schedule issues arise during project build out, the City Manager seeks to accurately report the situation, provide a detailed analysis of possible remedies, and assist in the implementation of remedies.

2) TIRZ BOARD OVERSIGHT

As part of the management of the City's TIRZ Boards, the City provides Board training, coordinates and facilitates TIRZ Board meetings, and manages TIRZ Board membership for City appointed Board members, including vacancies,

applications and appointments. The City also ensures compliance with Open Meetings requirements, Robert's Rule of Order, TIRZ Board policies, and City ethics requirements, such as Municipal Leadership Institute and the filing of annual Financial Disclosure reports.

3) **TAX INCREMENT ADMINISTRATION**

The city administers the tax increment fund on behalf of each TIRZ board. The City is responsible for invoicing, collecting, and depositing tax increment revenues from participating taxing entities. The City is also responsible for the investment, disbursement, and general accounting of funds. The City reviews all request for tax increment funds, including reimbursement invoices, for compliance with provisions of the Project Plan, Financing Plan, Development Agreement, and Interlocal Agreement(s) and presents such request for payment to the TIRZ boards for approval prior to making distributions.

In addition, the City is responsible for submitting regular reports to the other taxing entities and to the State Comptroller on the status of the TIRZ. Those reports must include, among other things, the amount and source of revenue in the fund, the amount and purpose of expenditures, the total amount of tax increment revenues received, and other information pertaining to the tax increment funds.

TIRZ BOARD RESPONSIBILITIES

According to the TIF Act, TIRZ Board responsibilities include making recommendations to the City Council regarding tax increment financing for the Zone, acting under authority delegated by the City Council for the implementation of the Project Plan, and entering into agreements as necessary to implement the Project Plan.

TIRZ Board actions necessary to fulfill these responsibilities include the finalization and approval of a Project Plan, Financing Plan, development Agreement, and Interlocal Agreement(s). Once a TIRZ Project Plan, Financing Plan and other necessary legal documents are approved by the TIRZ Board, the Board monitors the ongoing performance of the TIRZ by: reviewing the construction status of proposed public improvements and amenities; reviewing the status of the tax increment fund; approving subsequently proposed amendments to the Project Plan, Financing Plan, and legal agreements: approving payments from the tax increment fund, including reimbursements to the developer of eligible construction and project-related costs; and recommending certain actions by City Council related to the TIRZ. The TIRZ Board provides direction to the City Manager on specific issues related to the TIRZ for which it is responsible.

Each board has the responsibility to review request for payments from the respective tax increment fund and the power to approval request for disbursements prior to disbursal by the City. All disbursements shall be made in accordance with all applicable

Interlocal Agreements entered into with the TIRZ Boards and other participating taxing entities, and in accordance with the TIF Act.

Each TIRZ Board must comply with the Texas Open Meetings as well as with all subsequent City Code provisions for City Boards, Commissions and Committees, to the extent that there is no conflict with the TIF Act.