CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: **Economic Development**

AGENDA DATE: **July 20, 2010**

CONTACT PERSON/PHONE: **Kathy Dodson, PhD, Director 541-4670**

DISTRICT(S) AFFECTED: **All**

SUBJECT:
Discussion and action on the creation of a TIRZ Policy to establish guidelines for the future creation of Tax Increment Reinvestment Zones within city limits.
[Economic Development, Kathryn B. Dodson, PhD, (915) 541-4670]

BACKGROUND / DISCUSSION:
The proposed City of El Paso Policy and Guidelines for Establishing a Tax Increment Reinvestment Zone (TIRZ) sets forth the parameters for establishing a TIRZ in El Paso and is intended to be a tool to clarify requirements and create guidelines for future TIRZ projects. City staff will review all application for the creation of TIRZ and ensure that all guidelines are met. The policy is intended to assure the City's tax base is not compromised by taking into account the overall economic benefits of the TIRZ. Final designation of a TIRZ will be considered on a case by case basis, and the decision to approve or deny incentives shall be at the discretion of the City Council.

PRIOR COUNCIL ACTION:
N/A

AMOUNT AND SOURCE OF FUNDING:
N/A

BOARD / COMMISSION ACTION:
Taken to June 10 Economic and Community Development, Quality of Life and Tourism Legislative Review Committee meeting; no action taken.

**********REQUIRED AUTHORIZATION**********

DEPARTMENT HEAD: _____
Department Head

Information copy to appropriate Deputy City Manager

RESOLUTION APPROVING THE CITY OF EL PASO POLICY AND GUIDELINES FOR ESTABLISHING A TAX INCREMENT REINVESTMENT ZONE (TIRZ)

WHEREAS, the Policy and Guidelines for Establishing a Tax Increment Reinvestment Zone ("Policy") sets forth the parameters for establishing a TIRZ in El Paso; and

WHEREAS, the Policy is intended to be a tool to clarify requirements and create guidelines for future TIRZ projects; and

WHEREAS, the Policy is intended to assure the City's tax base is not compromised, taking into account the overall economic benefits of the TIRZ, which are demonstrated to the reasonable satisfaction of the City of El Paso; and

WHEREAS, the final designation of a TIRZ will be considered on a case by case basis, and the decision to approve or deny incentives shall be at the discretion of the City Council;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City of El Paso Policy and Guidelines for Establishing a Tax Increment Reinvestment Zone attached hereto as Exhibit A are hereby adopted.

ADOPTED this the _____ day of July 2010.

THE CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Kathryn B. Dodson, Ph.D., Director
Economic Development Department

ECO/10/Reso/TIRZ Policy 2010
Document: #57562 /MTAY

City of El Paso

Policy and Guidelines for Establishing a Tax Increment Reinvestment Zone (TIRZ)

This policy is adopted to provide clear guidelines for establishing a Tax Increment Reinvestment Zone (TIRZ) and to assure the City's tax base is not compromised, taking into account the overall economic benefits of the TIRZ, which are demonstrated to the reasonable satisfaction of the City of El Paso.

Section I. General Guidelines:

1. Each TIRZ application must demonstrate:
    a. "but for" the creation of a TIRZ, quality development is not likely to occur in the proposed area without financial assistance from a TIRZ; and
    b. An area is ripe for development or redevelopment provided that public infrastructure is constructed to support the revitalization of the area; and
    c. Use of a TIRZ is the appropriate incentive tool to recruit or relocate a catalyst project worthy of public investment; and
    d. The area proposed for designation as a TIRZ will have an increase in real property taxable value within the first two (2) tax years following designation. TIRZ will terminate if there is no increase in real property taxable value due to development.

2. The term of any newly created TIRZ may not exceed 21 years (20 years of tax increment collection), unless otherwise approved by City Council. Only a TIRZ in which total investment is over $100 million and where all land within the TIRZ is zoned for SmartCode development may have a term greater than 21 years.

3. City of El Paso participation in any TIRZ will be limited to ad valorem real property taxes and preference will be given to participation at or less than 50 percent of the tax increment;

4. City of El Paso Economic Development Department will receive and evaluate all TIRZ requests and applications; and

5. City of El Paso Economic Development Department will be responsible for all TIRZ administration unless otherwise approved by the El Paso City Council in the Preliminary Project and Financing Plans.

Section II. Overview, Requirements, and Criteria

1. *Local Authority*. The City of El Paso adopted these guidelines by Resolution _____ on _____. The intent of this Policy is to provide direction to City Staff and interested parties regarding the development and establishment of TIRZs within the City of El Paso.

2. *Statutory Authority*. Under authority of Chapter 311 of the Texas Tax Code, municipalities are permitted to establish TIRZs. The City of El Paso will comply with all requirements of Chapter 311 of the Texas Tax Code.

3. *TIRZ Goals and Objectives*. It is the City's goal to utilize TIRZs as an economic development tool in targeted development or redevelopment areas. Targeted redevelopment areas are those located in a Federal Empowerment or Enterprise Zone or State designated zone, in a Census Tract with greater than 20% poverty, or in a City defined redevelopment area. The City of El Paso may use TIRZs to finance needed public improvements and enhance infrastructure within those targeted areas. It is the intent of the City to use TIRZs for the primary purpose of supporting the development of designated redevelopment areas or targeted infill areas in the City.

4. *Determining Eligibility.* City Staff will undertake an economic analysis and risk assessment of each proposed TIRZ before arriving at a recommendation to the City Council as to whether the TIRZ should be created. The analysis, assessment, and recommendation of all requested TIRZs will be based on the applicant's ability to address the following questions:
    a. What is the public purpose of the proposed TIRZ? Will the area develop without being designated as a TIRZ? What are the required public improvements?
    b. What is the financial need for public investments and/or subsidy? Will use of the TIRZ recruit or relocate a catalyst project or incentivize a new development type as SmartCode or Transit-Oriented Development?
    c. How will the City's general fund be impacted as a result of TIRZ designation?
    d. What is the potential success of the TIRZ?
    e. What is the appropriate level of participation by the City and other taxing entities?
    f. What are the risks associated with creation of the TIRZ?
    g. What alternative economic development tools are available in lieu of the TIRZ? How does the proposed Project and Financing Plan meet the needs of the proposed projects?
    h. How will the TIRZ impact targeted public project improvements that are not proposed as TIRZ projects?

5. *TIRZ Tax Increment.* Once a TIRZ has been established in accordance with Chapter 311 and these guidelines, incremental real property taxes resulting from new construction, public improvements, and redevelopment efforts, will accrue to the various taxing entities. Participating entities may deposit all, a predetermined portion, or none of the incremental taxes in a designated TIRZ fund for the purpose of financing the planning, design, construction or acquisition of public improvements to the TIRZ.

6. *Use of TIRZ Proceeds.* TIRZ funds may be used only to reimburse or to pay for those public works and public improvements authorized by Chapter 311 of the Texas Tax Code. TIRZ proceeds cannot be used to support exclusively private purposes. Projects that reimburse the costs of public works and public improvements and do not require bonding of TIRZ revenue are highly preferable.

7. *Demonstration of Community Revitalization Impact.* It is the intention of the City of El Paso to use TIRZs for the purpose of supporting community revitalization and redevelopment projects in targeted areas. As part of the application, a requestor must describe:
    a. How the planned investment will contribute to revitalization activities in the zone in question and/or the surrounding area of the community; and
    b. How the input of nearby neighborhood residents and businesses has been solicited in the planning process.

8. *Participation by Other Taxing Entities.* Under Section 311.01 of the Texas Tax Code, other local taxing entities retain the right to determine the amount of tax increment that each will retain, or each may decide to retain all of the tax increment. The City of El Paso will enter into written agreements with all participating taxing entities to specify:
    a. The conditions for payment of the tax increment into a TIRZ;
    b. The portion of tax increment to be contributed by each entity to the TIRZ; and
    c. The term of the agreement.

9. *Term of a Reinvestment Zone.* As prescribed under Section 311.017 of the Texas Tax Code, the term of reinvestment zones shall terminate on the earlier of:
    a. The termination date designated by the ordinance or order adopted creating the zone, subject to Number 2 in Section 1; or
    b. The date on which all project costs, tax increment bonds and interest on those bonds, and other obligations have been paid in full.

10. *Criteria for TIRZ District Creation Requests.* In addition to the items outlined above, before reviewing an application for the creation of a TIRZ, the City will require that the requestors provide the following as part of their application:
    a. A statement of the public purpose objectives met by the project.
    b. Demonstrated commitment to the quality of development, the project area, and project completion.
    c. A summary that includes a general description of the proposed TIRZ, including proposed boundaries, an overview of the proposed

d. A legal description (metes and bounds) and a map of the real property proposed for TIRZ designation.
e. An economic impact study as prescribed in Section 311.003 of the Texas Tax Code.
f. A minimum of four (4) years of tax value information from the tax appraisal district for all properties in the proposed TIRZ.
g. Description of applicants professional experience and evidence demonstrating its financial capacity (including funding sources for both horizontal and vertical development) to undertake the project.
h. A proposed Project Plan as described in Sections 311.003 and 311.011 of the Texas Tax Code, with detailed descriptions of the projects and their costs, including detailed pro formas. The Project Plan should include but is not limited to:
    i. Detailed description and timing of proposes bond issuance, including interest rate assumptions, funding and sizing of debt service fund and capitalized interest assumptions;
    ii. Amount of developer equity or investment in infrastructure costs, along with source and timing of contribution;
    iii. Operating plan which includes annual operating expenditures regarding public improvements;
    iv. Itemization of types and costs of public infrastructure; and
    v. Detail of type, amount and source of private investment.
i. A proposed Financing Plan as described in Sections 311.003 and 311.011 of the Texas Tax Code, with complete tax increment projections for the entire term of the TIRZ. The Financial Plan should include but is not limited to:
    i. Feasibility study prepared by an independent professional with appropriate expertise that is mutually agreed upon between the City and the developer;
    ii. Analysis of financing, financing plan for private development, market absorption study which shall take into account the effect, if any, that the proposed debt financing and other costs are expected to have on the marketability of the private development;
    iii. Absorption calendar and sensitivity analysis regarding the impact of slower than projected absorption;
    iv. Demonstrated clear financial gap (e.g. the profitability and feasibility of the project both with and without public assistance, including a detailed delineation of the developer equity contribution into the project and the overall proposed financial structure of the project); and
    v. Proposed security, collateralization, or credit enhancement**.**
j. A complete and detailed cost benefit analysis; the direct and indirect benefits of a development proposal shall be determined

k. Third party market analysis
l. Access to all financial data of requestor related to the project and its principals so that a financial analysis may be conducted by the City of El Paso or a city-chosen third party analyst.

All information must be provided in both paper and electronic form. A minimum of five (5) copies must be provided.

Section III. Application Process and Fees

Depending on the exact nature and complexity of the proposed TIRZ, the estimated timeframe to complete the process for designation is at least six (6) months. Therefore, applications for the creation of a TIRZ must be submitted to the City by June 30 in order for the TIRZ to be established in the same calendar year. Applications submitted to the City after June 30 will not be considered for designation until the following calendar year. In addition, requestors must submit at least five (5) copies of the application.

All applications for creation of a proposed TIRZ and applicable fee(s) should be delivered to:

City of El Paso
Economic Development Department
2 Civic Center Plaza
El Paso, Texas 79902

1. *Application Form*. Requestors desiring to designate a TIRZ must fully complete an "Application for Designation of Tax Increment Reinvestment Zone", provide all information required by this Policy and submit the required application fee, as set forth in Subsection 3 below.

2. *Pre-Application Review Process*. A requestor may request a meeting with appropriate City Staff prior to submitting an application in order to address TIRZ requirements and development processes. The meeting can be scheduled through the Economic Development Department.

3. *Application Fee*. A non-refundable application fee of $5,000 must accompany all petition applications. The application fee should be in the form of a check or a money order and made payable to "The City of El Paso". The application fee is to support administrative costs of initial review for completeness, internal processes, and presentations as well as outside consulting and legal services. It is understood by the applicant that payment of the fee does not impose a duty on the City of El Paso to create the reinvestment zone. Additional fees may be charged as required in Number 6 of this section.

4. *Preliminary Review*. City Staff will review the application within ten 10 working days to ensure compliance with these guidelines. If City Staff determines that an application does not meet the criteria hereunder, the requestor will be so notified, the application fee will not be refunded, and no further action on the application will occur. The requestor will have 30 days to supply any information that is lacking without having to resubmit a new application.

5. *Application Review*. If City Staff determines that an application meets these Guidelines, a full financial and programmatic review of the proposed project will occur. This review may be conducted by City Staff, an outside agency, or consultant, and includes at a minimum an analysis of said items under Section I or may result in a City Staff recommendation that TIRZ designation is not appropriate.

6. *Fees*. All costs and expenses incurred by the City in connection with the application and formation of the TIRZ shall be paid by the applicant and will be deposited into a reserve escrow account with the City's Financial Services Department. Costs and expenses incurred by the City in connection with the application and formation of a TIRZ shall not be liabilities of the City, and shall include, but are not limited to, bond counsel and other attorneys, financial advisors, planners, urban designers, engineers, appraisers, and tax consultants. Consultants shall be paid their normal rate for services. In addition to the non-refundable $5,000 application fee, the Applicant will be asked to place an initial amount of $20,000 in the escrow account to pay all qualified expenses. Upon periodic receipt of invoices for such expenses, the City will pay such invoice(s) and provide the Applicant with appropriate documentation of such expenses and the remaining balance of the account. If qualified expenses total an amount lower than $20,000 following the establishment of the TIRZ, any amount remaining in escrow will be refunded back to the Applicant. If the escrow account is depleted below $10,000, the City may request the Applicant to place an additional $20,000 in escrowed funds for use in payment of the additional costs and expenses If the Applicant fails to replenish the escrow account as needed within thirty days of the City's request, the City will cease all work on the application and that application will be cancelled without further notice. Any remaining funds left in escrow upon the establishment of the TIRZ to be refunded back to the Applicant. No amount placed in escrow by the Applicant shall be used for purposes other than payment for eligible expenses as defined above.

7. *Open Records Act*. Upon submission of an application, all project information provided to or developed by the City could become “public information”, and therefore may be subject to provisions of the Texas Open Records Act.

Section IV Stipulations for Establishment of a TIRZ

1. Any TIRZ created and administered under this policy must meet the statutory requirements of Chapter 311 of the Texas Tax Code.

2. Existing City policies for development, growth management and conservation shall remain in effect and shall not be waived or relaxed upon the creation of a TIRZ. The TIRZ may use bond proceeds or other TIRZ funds to purchase rights-of-way or other real property to be used for public infrastructure improvements, unless such real property would be required to dedicated and conveyed to the City by the development upon development of the developers property.

Any questions regarding this Policy should be directed to the City of El Paso Economic Development Department, 2 Civic Center Plaza, El Paso, Texas 79902, or by phone, 915.541.4670.