



Attorneys & Counselors

OVERVIEW OF TRANSPORTATION REINVESTMENT ZONES

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Transportation Reinvestment Zones (“TRZs”) are an innovative tool for generating funding by capturing and leveraging the economic growth that results from a transportation project. A TRZ allows a city or county to designate a geographic area around a proposed transportation project and capture the incremental property tax or sales tax revenue generated in the area for use in funding the development of that project. A TRZ is not a tax increase—it merely allows for the dedication of all or a portion of the incremental increase in tax revenues generated within the boundaries of the TRZ to support the funding of the project which influenced the growth in tax revenues.

The creation of a TRZ was authorized by Senate Bill 1266, passed in 2007 by the 80th Legislature and now codified in Chapter 222 of the Texas Transportation Code. Growing recognition of the potential benefits of TRZs in advancing transportation projects has led to the TRZ legislation being improved and expanded since its initial enactment in 2007. In addition to cities and counties, port authorities and certain navigation districts may now use TRZs to advance port improvements (Transp. Code Sec. 222.1075), and the TRZ framework became the model for the recently enacted county energy transportation reinvestment zone program intended to assist counties in funding improvements to roads damaged by energy sector activities (Transp. Code Secs. 222.1071-1072).

Scope of TRZ Supported Projects

A city or county can support a wide variety of transportation projects through formation of a TRZ. These include:

- toll roads
- non-tolled roadways with a functional classification greater than a local road or rural minor collector
- tolled or non-tolled bridges
- parking facilities and collection devices for parking fees
- passenger and freight rail facilities and equipment
- pedestrian or bicycle facilities
- transit systems
- intermodal hubs
- public utility facilities

- certain types of airports
- air quality improvement initiatives
- other improvements in a properly designated TRZ

(Transp. Code Sec. 222.1001).

Projects can be implemented by a city or county or in partnership with other entities, such as a regional mobility authority (“RMA”) or TxDOT. TRZs can be used to help fund projects on the state highway system provided they are developed in coordination with TxDOT and, if the city, county, or other partner is to develop the project, through an implementation agreement with TxDOT which allocates relative roles and responsibilities.

Formation Process for a TRZ

The process for creating a city or county TRZ is fairly simple. Unlike traditional tax increment reinvestment zones, there is no separate board of directors, no requirement for a detailed plan (other than identifying the project to be supported), and few, if any, administrative costs and burdens. The process is set forth in Transp. Code Secs. 222.106 (city) and 222.107 (county), and requires:

Public Hearing

- At least 30 days before the governing body (i.e., city council or commissioners court) proposes to designate a TRZ by order or resolution, the governing body must hold a public hearing on the creation of the TRZ and its benefits to the city or county and to the property in the proposed TRZ.
- At least 7 days prior to the public hearing, notice of the hearing and of intent to create the TRZ must be published in a newspaper of general circulation in the city or county.
- At the hearing, interested persons must be permitted to speak for or against the designation of the TRZ, including its boundaries and the proposed method for capturing TRZ revenues.

Passage of Resolution or Order

- At least 30 days after the public hearing, the governing body must pass a resolution or order that designates a contiguous geographic area in the jurisdiction of the city or county as a TRZ.
- The resolution or order must:
 1. Describe the boundaries of the TRZ with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the TRZ;
 2. Provide that the TRZ takes effect immediately upon adoption of the resolution or order;

3. Assign a name to the TRZ for identification purposes, with the first TRZ created by a city or county named “Transportation Reinvestment Zone Number One, [City or County] of _____” and subsequent TRZs named and numbered accordingly; and
 4. Designate the base year for purposes of establishing the tax increment base of the city or county, which must be the year of passage of the order or resolution or some year in the future.
- The city council or commissioners court should also make findings that:
 1. the area of the proposed TRZ is unproductive and underdeveloped;
 2. the designation of the area as a TRZ will (i) promote public safety, (ii) cultivate the improvement, development, or redevelopment of property; (iii) facilitate the movement of traffic; and (iv) enhance the city or county’s ability to sponsor a transportation project.

Determination of the Tax Increment

- The tax increment for a year is defined as the amount of ad valorem taxes levied and collected by the city or county for the year on the captured appraised value of real property taxable by the city or county and located in the TRZ.
- The captured appraised value of real property taxable by the city or county for a year is the total appraised value of all real property taxable by that entity and located in the TRZ for that year, less the tax increment base of the entity for the property in the TRZ.
- The tax increment base of a county is the total appraised value of all real property taxable by the city or county and located in the TRZ for the year in which the TRZ is designated.

Amendment and Termination of a TRZ

- The boundaries of a TRZ may be amended due to changes in project scope, provided that property may not be removed from a TRZ if any part of the tax increment has been assigned or pledged to secure bonds or other obligations.
- A TRZ terminates once any contractual requirements secured by a pledge or assignment of TRZ revenues has been satisfied or on December 31 of the 10th year after the year in which the TRZ was designated if the TRZ is not used for the purpose for which it was designated prior to that date.

Use of TRZ Revenues

While all of the TRZ revenues are required to be deposited to a tax increment account, a city or county can specify the amount (usually stated as a percentage) to be dedicated to one or more transportation projects located in the TRZ. The remainder will be available for use in the entity’s general budget, just as if the TRZ had not been formed. The amount to be dedicated to a transportation project will usually be specified in the TRZ adoption order or resolution (e.g.,

50% of the TRZ revenues), or shortly thereafter once the project costs are identified and a tentative financing plan has been developed. If the TRZ revenues are to be transferred to another entity for use in project funding, commitments related to that transfer are typically set forth in an interlocal agreement or similar agreement. Those commitments set forth in the interlocal agreement or similar agreement will include, at a minimum, restrictions on the use of the funds being transferred (i.e., only for project purposes), and requirements that the pledge not be rescinded by the city or county until the project obligations are satisfied.

There are a variety of ways that a TRZ revenues may be used in connection with project financing. For example, a city or county may contract with a public or private entity to develop, redevelop, or improve a transportation project in a TRZ and to pledge and assign all or a specified amount of money in the tax increment account to that entity. The city or county may not rescind that pledge or assignment once made if the entity that received the pledge or assignment has itself pledged or assigned the amount to secure bonds or other obligations. In this scenario the obligation of the city or county is fixed- it holds no obligation on debt incurred by the development entity; it is merely assigning the agreed upon portion of TRZ revenues as part of the developer's overall project funding sources. This scenario is specifically contemplated in connection with an RMA, which has express statutory authority to receive an assignment of TRZ revenues and to use those revenues for project financing purposes. It will likely work with other potential partners as well.

Cities have another valuable financing alternative that is not available to counties. Cities may pledge TRZ revenues to secure bonds issued by the city itself. For example, if a city were willing to accept responsibility for project funding (even it were going to assign that funding to TxDOT or another entity), it could issue bonds secured by a pledge of the TRZ revenues. This type of tax increment financing is allowed for cities under the Texas Constitution, but not for counties. The relevant constitutional provision is article VIII, section 1-g(b). There was an effort in 2011 to amend the Texas Constitution to allow for county tax increment financing, but the amendment failed by a wide margin. In the event there was any lingering doubt, the Attorney General has since concluded definitively that counties do not, in fact, have the legal authority to engage in tax increment financing. (Tex. Att'y Gen. Op. No. GA-- 953 (2012)).

Recognizing from the outset that this could be an issue, the drafters of the TRZ legislation included certain alternative means for counties to collect revenues which could be directly used in connection with the issuance of debt. One alternative is for a county to form a road utility district ("RUD") pursuant to Chapter 441 of the Transportation Code with the same geographic boundaries as a TRZ. The county could then abate taxes in the zone in the amount of the tax increment, which would allow for the RUD, a separate legal entity with taxing authority, to impose a tax in the same amount. The RUD does have authority to issue bonds secured by taxes it collects, so the same objective can be accomplished. However, the formation and operation of a RUD is not simple, and requires an election to authorize the issuance of bonds.

Another alternative allowed under the TRZ statutes is to abate taxes in the TRZ and then collect that amount through an assessment, rather than as a "tax". This is very similar to a public improvement district, which is authorized to levy assessments against property within the district and then use those revenues to leverage additional financing. Again, however, creating an

assessment structure lacks the simplicity and transparency of a TRZ and may not be as flexible to incorporate in project financing structures .

Joint Support for TRZ Projects

It is not unusual for a city and county to agree to jointly support a project which benefits residents and infrastructure in both jurisdictions. Questions arise as to whether the entities can jointly form a TRZ, with each agreeing to contribute a portion of their respective TRZ tax increment to the project funding. The short answer is that the entities cannot form a joint (single) TRZ, but they can each form a TRZ and agree through an interlocal agreement or similar document to combine their funding for project development. In other words, the objective of a joint TRZ can be accomplished through separate TRZs with appropriate agreements in place.

In addition, while as a general matter a TRZ can be formed only to support projects located within the TRZ boundaries, an exception to that requirement was authorized during the most recent legislative session. A city or county may now form a TRZ to support a project outside of its jurisdiction if the city or county finds that the project will benefit property and residents located in the TRZ (even though the project is not located there); the creation of the TRZ serves a public purpose of the city or county forming the TRZ; a TRZ has been formed by a city or county (or both) for the project in the jurisdiction where the project is located; and there is an agreement for joint support of the project entered into by the city or county forming the TRZ for a project not within its boundaries and an entity which formed a TRZ where the project is located. Transp. Code Sec. 222.111.