

TAX INCREMENT FINANCING POLICY AND PROCEDURES

**AS ADOPTED BY THE CITY COUNCIL OF THE CITY OF NEW
BRAUNFELS, JULY 2021**

I. Overview

Tax Increment Financing is defined as a public financing mechanism through which the growth in taxes (increment) associated with new development or redevelopment can be captured and used to pay costs

associated with economic development for the public good.

Certain acronyms are used throughout this policy and have the following meaning:

TIF	Tax Increment Financing
TIRZ	Tax Increment Reinvestment Zone
ENB	Envision New Braunfels (City's Comprehensive Plan)
EDSP	2017 Economic Development Strategic Plan
DIP	2010 Downtown Implementation Plan
SCAMP	South Castell Area Master Plan

II. Authority

Under the authority of Chapter 311 of the Texas Tax Code (the "TIF Act"), municipalities are permitted to establish TIRZs. The City of New Braunfels (the "City") will comply with all requirements of the TIF Act regarding TIF expenditures. Investments that identify and target underutilized neighborhoods where additional public investments are needed to draw private dollars will also be considered. The City adopted the Tax Increment Financing Policy and Procedures and Tax Increment Financing Assistance Application in ____ 2021.

III. Purpose

The fundamental purpose of TIF is to encourage economic development or redevelopment within a geographic area known as a TIRZ that would not occur without the assistance provided through TIF. The policies and guidelines contained herein are established to sustain, develop, and expand the City's economic base by leveraging private investment for specific types of development.

It is the policy of the City Council and appropriate TIRZ Boards to consider the judicious use of TIF establishment and expenditures for those projects that demonstrate a substantial and significant public benefit and promote development of an area if such development would not occur solely through private investment in the reasonably foreseeable future. Judicious use of the incentive means those projects that fulfill one or more of the following principles:

- Financing **public** infrastructure/improvements
- Funding **extraordinary** costs
- Subsidizing a proposed project that is "**above market**," non-market driven or helping to establish an unproven market
- Obtaining **higher quality** development than the market will generate on its own
- Incentivizing to **attract or retain investment** in a strategic area

Goals envisioned include strengthening the employment and economic base of the City by creating a diversity of mixed ENB land uses, making planned improvements and investments in areas identified in City plans, undertaking additional investments that encourage vertical growth, infill development and the development of key areas to take advantage of existing infrastructure capacity (Actions 1.3, 1.6, 2.33 ENB).

IV. Criteria for Establishment of a Reinvestment Zone

A fundamental consideration for the establishment of either petition or city created TIRZ is whether the proposed public investments are targeted in underutilized neighborhoods and where it can be reasonably asserted that the investments are needed to draw private dollars. To be designated as a reinvestment zone, the area must substantially arrest or impair the sound growth of the municipality designating the zone,

retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:

- a substantial number of substandard, slum, deteriorated, or deteriorating structures;
- the predominance of defective or inadequate sidewalk or street layout;
- faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- unsanitary or unsafe conditions;
- the deterioration of site or other improvements;
- tax or special assessment delinquency exceeding the fair value of the land;
- defective or unusual conditions of title;
- conditions that endanger life or property by fire or other cause;
- structures, other than single-family residential structures, less than 10 percent of the square footage of which has been used for commercial, industrial, or residential purposes during the preceding 12 years, if the municipality has a population of 100,000 or more;

Additionally, the area can be predominantly open or undeveloped and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the City or be an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the City Council by the owners of property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

V. Public Benefits and Qualifying Projects

Per Chapter 311.004 and as a required finding, improvements in the TIRZ must significantly enhance the value of all taxable real property in the TIRZ and must be of general benefit to the City. Care will be exercised in the use of TIF by thoroughly evaluating each project to ensure that the benefits, which will accrue from the approval of a TIF investment project, are appropriate for the costs that will result.

In addition to the ENB goals identified in Section III, the policies and guidelines herein exist to achieve, as permitted by the TIF Act the following public goals and benefits:

- To promote a desirable mix of uses including residential, commercial, and industrial developments that would otherwise not occur
- To increase and diversify the long-term tax base of New Braunfels
- To remove blight by encouraging redevelopment of residential, commercial, or industrial structures and/or areas
- To finance appropriate public improvements to support a growing population in preferred locations. (Action 1.7 ENB)
- To revitalize the core of New Braunfels to ensure balanced development (Action 3.4 ENB)
- To undertake area improvements planned and identified in the DIP, SCAMP, or the EDSP (Action 1.15 ENB)
- To encourage additional unsubsidized private development either directly or indirectly into areas as designated in the ENB and EDSP
- Encourage diversification of commercial activity Downtown to build on and sustain existing historic resources and maximize structure utilization for economic expansion (Action 2.5 ENB)
- To increase the local employment base and provide economic diversity
- To connect existing and new destinations and experiences (Action 2.12 ENB)

- To promote aesthetically appropriate architectural designs
- To encourage the use of existing facilities to expand to year-round facilities through public/ private partnerships with booking policies that encourage sports, market shows, conventions, and meetings (Action 2.23 ENB)
- To cultivate an environment where a healthy mix of different housing products at a range of sizes, affordability, densities, amenities, and price points can be provided across the community as well as within individual developments (Action 3.13 ENB)
- To build a performing arts center that can accommodate performances that attract larger audiences and increases the diversity and value of the performing/visual arts (Action 2.28 ENB)
- To make unifying and transitional connections to and from Downtown through efforts like the South Castell Visioning Plan that encourages thoughtful mixed-use projects that blend in with the character and design of the community (Action 7.27 ENB)
- To implement recommendations as they relate to parking in the 2016 Downtown Parking Study and from Action 7.28 of ENB
- To reduce or abate environmental hazards which create a barrier to development or to achieve any of the objectives above
- To accomplish goals, strategies, or objectives as set forth in an approved TIRZ Project and Financing Plan

VI. Other Public Policy Considerations

The City will utilize TIFs to attract investment in underutilized areas and provide some tangible benefits and mitigate impacts to area residents, if any. TIF projects can exacerbate property value increases that compound existing housing affordability issues and that potentially displace residents. Proactive planning and the inclusion of workforce housing in the project, however, can help avoid displacement and mitigate impacts to existing residents. When appropriate, the City will consider utilizing additional policy tools such as a Neighborhood Empowerment Zones (NEZ) that can help the City provide tax and other incentives to achieve community and economic development goals in a particular area. Other community development objectives such as public space, parks and trail connections should also be considered in the project plan.

VII. General Policy Requirements

Per Chapter 311.006, the City may not designate a reinvestment zone if more than 30 percent of the property in the proposed zone, excluding property that is publicly owned, is used for residential purposes or 50 percent of the total appraised value of taxable real property in the City and in the industrial districts created by the City.

The City Council will determine the extent of tax increment participation based upon the project and after the due diligence period is completed.

“Pay as you go” financing and reimbursement for eligible project costs are preferred. Bond financing is discouraged until tax revenues are available from the improvements for the TIRZ to issue bonds that can sufficiently support the bond’s debt service.

VIII. TIRZ Administration

State law provides for the appointment of a TIRZ Board of Directors (the “Board”), which is charged with implementing the Project Plan. TIRZ administration is a shared responsibility of the City and the 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. Each Board member is appointed for terms of two years,

which are staggered and commence on December 1 in which they were appointed. Each year, the City Council shall appoint one member of the Board to serve as Chairperson for a term of one year that begins on January 1 of the following year.

For a petition created TIRZ, the following requirements for membership on the Board apply:

- An individual must be at least 18 years of age and must own real property in the zone or be an employee or agent of a person that owns real property in the zone;
- Each taxing unit that designated the zone can appoint a majority of members to the Board so that the composition of the Board is at least five and not more than fifteen (15) members;
- The County that levies taxes on real property in the zone and has approved the payment of all or part of the tax increment produced by the unit into the tax increment fund for the zone is entitled to two (2) appointments to the Board;
- Each taxing unit, other than the City that designated the zone and the County that receives appointments as detailed above, that levies taxes on real property in the zone and has approved the payment of all or part of the tax increment produced by the unit into the tax increment fund for the zone, is entitled to one member;
- The members of the state senate and state house of representative in whose districts the zone is located are each a member of the board, except that either may designate another individual to serve in the member's place.

In a city or county created TIRZ, the following requirements for membership on the Board apply:

- An individual must be at least 18 years of age and own real property in the zone, whether or not the individual resides in the county in which the zone is located or a county adjacent to that county;
- The Board may consist of at least five and not more than fifteen (15) members;
- The County that levies taxes on real property in the zone and has approved the payment of all or part of the tax increment produced by the unit into the tax increment fund for the zone is entitled to two (2) appointments to the Board;
- The governing body of the municipality or county that designated the zone may appoint not more than 10 directors to the board; except that if there are fewer than five directors appointed by taxing units other than the municipality or county, the governing body of the municipality or county may appoint more than 10 members as long as the total membership of the board does not exceed 15.

The City administers each 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 requests 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 requests 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 amount of principal and interest due on outstanding bonded indebtedness, if applicable, the total amount of tax increment revenues received, the tax increment base and current captured appraised value retained by the TIRZ, the captured appraised value shared by the municipality or county and other taxing units within the TIRZ, and other

information pertaining to the tax increment funds.

IX. Interlocal Cooperation

TIF is designed to maximize the TIF incentive by pursuing public-private and interagency cooperation. More resources can be dedicated to a reinvestment goal when organizations coordinate their efforts. To accomplish this, the City could at its discretion identify a collaborator or collaborators at designation or at any point throughout the TIF process. As partnerships are identified the City can make an application or formal request for participation in the TIF. If the proposed partner has adopted a formal policy governing their participation in the TIF, the Interlocal Cooperation Agreement should reflect those guidelines to the greatest extent possible and as practicable.

X. General Application and Submittal Requirements

Projects seeking TIF assistance must provide the following as part of their application. In order to accurately communicate the value of the TIF incentive, and to satisfy statutory requirements that development or redevelopment in the proposed TIRZ would not occur solely through private investment in the reasonably foreseeable future, each application for TIRZ funding 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 information is required to evaluate and establish a demonstrable gap in financing for the project to fulfill “but for” requirements promulgated by TIF Act and as required by this policy. Such information shall include:

- 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/or Letters of Credit from Bank), including but not limited to:
 - All sources and uses of funds, including other public sources, private financing, and developer equity contribution into the project.
 - Details of the debt and equity composition and the parties providing sources. Include letters of interest or commitment along with term sheets, signed by agents authorized to provide such commitments.
- Detailed project development budget, including acquisition, construction, soft and hard costs, financing costs, including capitalized reserves or other requirements by a lender, if applicable—include any estimated tax credit basis and the basis for construction estimate i.e. construction bids or architect estimate on cost per square foot etc.
- Detailed pro-forma that identifies the pre-TIF rate of return and gap in project financing
- Detailed pro-forma that identifies project-plus-TIF rate of return and financial structure
- Identify proposed security, collateralization, or credit enhancement
- Development team structure with roles and responsibilities detailed. Statement of Qualifications & References for the development team (include experience with public financing sources)
- Most recent financial Statement of owner/developer
- Appraisal of property or as-built appraisal of proposed improvement conducted not more than twelve (12) months from the date of submittal (if applicable)
- Environmental - Phase I (Phase II if applicable)
- Elevations, engineering plans, schematics or site plans of the proposed improvement(s)
- A complete and detailed market feasibility study that addresses the feasibility (viability) of the proposed uses of the development (absorption, vacancy, expenses, capture rates, etc.), unless a sufficient market study is included in the appraisal

- Information to describe the estimated employment, wages, market value of new development, housing benefits- number of new rental or ownership benefits related to the project, parking impacts, etc.)
- A schedule indicating timing of improvements (i.e. commencement and completion dates).

XI. Qualifying Expenditures

Tax incentives must be used as authorized by the TIF Act. Money may be disbursed from the tax increment fund only to satisfy claims of holders of tax increment bonds or notes issued for the TIRZ, to pay project costs for the zone, to make payments pursuant to an agreement made under Section [311.010\(b\)](#) dedicating revenue from the tax increment fund, or to repay other obligations incurred for the zone. Examples of eligible projects include but are not limited to the following:

- Public infrastructure within the TIRZ
- Purchase of land for public infrastructure
- Public utility upgrades including electric, water, wastewater, gas, and telecommunications
- Parks and landscaping
- Pedestrian malls and walkways
- Streets, Sidewalks, Streetscapes
- Road improvements
- Façade improvements
- Demolition of existing structures
- Street lighting
- Public parking facilities
- Abatement and remediation of environmental hazards
- Land acquisition
- Administrative fees and operational costs of TIRZ

XII. TIF Project Process

The creation of a TIRZ is a multi-step process. Below is a brief overview of the steps required to create a TIRZ:

- Prepare a preliminary financing plan (showing details how the improvements will be paid for)
- Hold a public hearing (and publish notice of such) to gain public input
- Designate a reinvestment zone (through adoption of an Ordinance), outlining the zone timeframe, formally establishing the zone, noting certain findings that indicate the zone meets criteria, and creating the TIRZ Board of Directors
- Prepare a project plan and a financing plan (Final Plans) to be consistent with preliminary plans and be approved by the TIRZ Board and City Council
- Seek approval of other participating taxing units (County) through public hearing and formal consideration by that taxing unit's governing body
- Implement TIRZ (begin implementation of the outlined plan) through the TIRZ Board and City Council actions
- Submit an Annual Report (once the TIRZ is in place, the governing body produces an annual report indicating the status of the zone)

Once a TIRZ is established the procedures for TIF project approval, management and funding include:

- Pre-Application Meeting: Meeting is held with City staff and may include TIRZ Board members (if appropriate), to discuss the proposed project, potential TIF eligibility, and the TIF Application Process and Forms. TIRZ Board members may attend meetings as necessary.
- After the required pre-application meeting, the applicant (including the City) may submit a fully completed “Application for Tax Increment Financing Assistance” to the designated City staff member. If assistance requested is \$50,000 or less, the applicant may submit a “Short Form Application.”
- Preliminary Review: City staff will review the application within 10 working days of receipt to ensure substantial compliance with the guidelines. If City staff determines that an application materially fails to meet the specified criteria, the applicant will be so notified of any additional information needed. The applicant will have 60 days to submit the requested information without having to submit a new application.
- TIRZ Board Review (if applicable): Once City staff has completed the preliminary review, staff will place the proposed project on the next regularly scheduled TIRZ Board agenda for discussion. Once City staff and the applicant have come to agreement on a proposed incentive, staff will develop a “Proposed Term Sheet” and present the draft proposal with a recommendation for TIF funding to the applicable TIRZ Board for consideration. Final terms will be negotiated between the TIRZ Board and applicant.
- If the TIRZ Board recommends approval of the project, the Board will direct staff to prepare the final Term Sheet which will be forwarded with Board recommendation to the City Council and other appropriate governing entities for review and final approval.
 - If the project is not approved, the applicant may submit an amended application.
 - Once approved by the City Council, appropriate officials representing the City, TIRZ Board, and applicant will execute the Development Agreement.
 - TIF eligible expenses will only be paid if all conditions of the Development Agreement are met.
 - Once a project is approved, the TIRZ Chair, Vice Chair and Comal County or Guadalupe County Representative(s) (if applicable), as a committee, are authorized to grant adjustments in the project time line throughout the duration of the project, without further TIRZ Board action, up to a cumulative total of 180 days.
 - Upon submission of an application, all project information provided to or developed by the City is subject to provisions of the Texas Public Information Act and could become public information.
 - Exceptions include certain information made confidential by law; certain personnel information; information relating to litigation; information related to competitive bidding; certain commercial information; location and price of property; legislative documents; certain law enforcement records; and attorney-client privileged information.