

ORDER NO. \_\_\_\_\_



IN THE STATE OF TEXAS  
COUNTY OF COMAL

§  
§

IN THE COMMISSIONERS COURT  
COMAL COUNTY, TEXAS

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**ORDER ADOPTING COMAL COUNTY, TEXAS' GUIDELINES FOR  
PARTICIPATION IN TAX INCREMENT FINANCING  
UNDER CHAPTER 311 OF THE TEXAS TAX CODE**

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**WHEREAS**, The Commissioners Court of Comal County, Texas (“Commissioners Court”) desires to establish guidelines governing the establishment of Tax Increment Financing (“TIF”) in a Tax Increment Reinvestment Zone (“TIRZ”) (collectively the “Guidelines”);

**WHEREAS**, Chapter 311 of the Texas Tax Code (“The Tax Increment Financing Act”) authorizes counties to participate in tax increment financing;

**WHEREAS**, The Commissioners Court will only participate in a TIF Project in order to help alleviate underdeveloped, unproductive, and/or blighted areas in Comal County that, without such participation and upon reasonable proof, would not normally be developed or re-developed solely by private developers;

**WHEREAS**, the Commissioners Court of Comal County will only consider participating its tax increment toward public improvements within the geographic boundaries of a TIRZ;

**WHEREAS**, the intent of this policy is to partner with private developers and businesses to foster responsible and orderly development with positive tax benefits to the citizens of Comal County, Texas;

**WHEREAS**, the Commissioners Court shall not be obligated to approve any TIF Project and will consider a TIF Project on a case-by-case basis. No person shall rely on the Commissioners Court approving a TIF Project for any reason, including but not limited to a person complying with the Requirements of the Guidelines; and

**WHEREAS**, the Guidelines are attached as Exhibit A to this order and incorporated herein for all purposes.

**IT IS ORDERED** that the Commissioners Court of Comal County, Texas hereby **ADOPTS** the Guidelines on Tax Increment Financing as attached as Exhibit A.

**SIGNED AND EFFECTIVE** this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

\_\_\_\_\_  
DANNY SCHEEL, COUNTY JUDGE

\_\_\_\_\_  
JACK DAWSON,  
COUNTY COMMISSIONER PCT. #1

\_\_\_\_\_  
JAY MILLIKIN,  
COUNTY COMMISSIONER PCT. #2

\_\_\_\_\_  
GREGORY PARKER,  
COUNTY COMMISSIONER PCT. #3

\_\_\_\_\_  
JAN KENNADY,  
COUNTY COMMISSIONER PCT. #4

ATTEST:  
\_\_\_\_\_  
JOY STREATER, COUNTY CLERK

**COMAL COUNTY, TEXAS' GUIDELINES FOR PARTICIPATION IN  
TAX INCREMENT FINANCING PROJECTS**

**UNDER CHAPTER 311 OF THE TEXAS TAX CODE**

**I.**

**INTRODUCTION**

These Guidelines shall be used to inform a prospective Applicant of the criteria that the Commissioners Court shall require in order for the Commissioners Court to evaluate Comal County's participation in a development or re-development of an area using tax increment financing. Chapter 311 of the Texas Tax Code, as well as any amendment, repeal, or substitution thereto ("The Tax Increment Financing Act"), shall govern in instances where these Guidelines are silent or in instances where a provision of these Guidelines is subordinate to the Tax Increment Financing Act through the Supremacy Clause of the Texas Constitution or any provision of the Constitution of the United States of America.

**II.**

**DEFINITIONS**

All words not specifically defined in Chapter 311 of the Texas Tax Code or in these Guidelines shall be given their plain and ordinary meaning. Any definition or description of a word or phrase within Chapter 311 of the Texas Tax Code shall apply.

- a. Applicant – an individual representing him or herself in an individual capacity or an individual representing a legally recognized business entity under state or federal law who seeks to develop or re-develop an area through TIF.
- b. Application – a formal written undertaking, by an Applicant, to the Commissioners Court of Comal County, Texas, meeting the conditions of the General Requirements as set out

in these Guidelines and Chapter 311 of the Texas Tax Code requesting Comal County's participation in a proposed TIF Project.

- c. County Regulations – any applicable, then-existing, State and Comal County, Texas laws and regulations related to subdivisions, development, or property use, including but not limited to lot size, on-site sewage facilities, water availability, drainage, right-of-ways, roads, and frontage.
- d. Project Plan – the collective various projects that are intended, by the Applicant and the participating taxing entities, to be developed or re-developed in a TIRZ using TIF and meeting the criteria of §311.011 of the Texas Tax Code and these Guidelines.
- e. Public Improvement – any project described in a Project Plan, of which the costs of development or re-development would not solely benefit the Applicant, but can be proven to benefit the taxpayers of Comal County, Texas, and do not consist of a project already obligated to be undertaken by another taxing entity, private entity, or individual.
- f. Reinvestment Zone Financing Plan – the financing plan that utilizes TIF for the development or re-development of an area within a TIRZ that meets the criteria established in §311.011 of the Texas Tax Code and these Guidelines.
- g. Tax Increment Financing (“TIF”) – A financing formula designed to allow Comal County to contribute a percentage of its tax increment toward the funding of a TIF Project. See also §311.012 of the Texas Tax Code.
- h. Tax Increment Reinvestment Zone (“TIRZ”) – a contiguous geographic area within the boundaries of Comal County, Texas that meets the requirements of §311.005 of the Texas Tax Code and these Guidelines.

- i. TIF Project – the combined Project Plan and Reinvestment Zone Financing Plan for the development or re-development of an area within a TIRZ.

### **III.**

#### **GENERAL REQUIREMENTS**

Comal County will consider participating in a TIF Project on a case-by-case basis when an Application is received by the Commissioners Court of Comal County, Texas and when the Application is accompanied by all of the information outlined below which will be used by the Commissioners Court of Comal County, Texas to evaluate Comal County's participation:

- a. The TIRZ and the TIF Project must meet the eligibility requirements contained in Chapter 311 of the Texas Tax Code and these Guidelines;
- b. The TIRZ and the TIF Project must meet the requirements of County Regulations;
- c. The Applicant, including any other public entity participating in a TIF, must execute written agreements that include, but not necessarily are limited to, the following provisions:
  - i. The Applicant must initially fund all "Project Costs", as that term is defined in Chapter 311 of the Texas Tax Code, with repayment of the Project Costs being made through a percentage of the County's "tax increment", as that term is described in §311.012 of the Texas Tax Code;  
or
  - ii. The Applicant must provide an acceptable form of surety or financial security protecting Comal County's participation in the TIF Project;
- d. An explanation of why the TIF Project is needed;

- e. The estimated life of the TIF Project and a description of the proposed private sector development, its investment level, and its implementation schedule;
- f. The submission of either a detailed financial forecast of what growth will occur in the proposed TIRZ if the TIRZ is not created or does not become operational and the assessed valuations of the proposed TIRZ for each of the past five years;
- g. A detailed description of what Public Improvements will be undertaken, how they will be funded, and how these improvements relate to the area's barriers to growth;
- h. A description of the level and duration of the Reinvestment Zone Financing Plan that is being requested for each taxing entity;
- i. A detailed description of anticipated annual TIF Project revenues, costs, increments, and debt service requirements;
- j. An explanation of and basis for the TIF Project's financial and economic growth assumptions;
- k. A detailed description of the TIF Project's impact on the local economy and the County's property tax base and, if applicable, a description of the number/types of new permanent jobs to be created and the projected payroll/or the number/types of housing units to be created and the projected sales/rental prices of each type of housing or business;
- l. The results of present value analysis which show in what year the additional tax revenue benefits to the County will equal or exceed the incremental revenues that the County will forego;
- m. A copy of a map which clearly illustrates the location and the boundaries of the TIF Project and the TIRZ;
- n. A copy of any existing marketing and feasibility study;

- o. A description of the Applicant's background, its record at undertaking similar projects, the background of its major principals, its relocation/expansion history over the past fifteen years, its financial condition over the past five years, and its source of financing for the TIF Project;
- p. An explanation, if applicable, of how the TIF Project will revitalize economically distressed areas and/or provide employment for the chronically unemployed;
- q. A discussion of how the TIF Project avoids, addresses, and/or alleviates displacement and environmental concerns;
- r. The name, address, and telephone number of a contact person; and
- s. Any other information that may be requested that reasonably relates to development or re-development of an area intended to be used for a TIF Project.

#### **IV.**

#### **COMAL COUNTY PARTICIPATION**

- a. The Commissioners Court of Comal County shall consider what percentage of tax increment that Comal County will participate on a case-by-case basis through proper and reasonable negotiations with an Applicant and other participating taxing entities.
- b. The Applicant must be the actual developer for the proposed TIF Project.
- c. Comal County's participation in a TIF Project shall not exceed twenty years.
- d. Comal County's participation in a TIF Project shall only be limited to Public Improvements within a TIRZ.
- e. Comal County will not participate its tax increment toward the following TIF Project costs:

- i. Non-Public Improvement professional costs borne by the Applicant, including but not limited to architectural, planning, engineering, and/or legal advice and services;
- ii. Non-Public Improvement administrative costs borne by the Applicant, including but not limited to consulting and/or management costs of the TIF Project;
- iii. Relocation costs of the Applicant, including but not limited to the cost to move property or personnel;
- iv. Non-Public Improvement organizational costs, including but not limited to the costs of conducting environmental impact studies or other studies, the cost of publicizing the TIF Project, and/or the cost of implementing the TIF Project;
- v. Non-Public Improvement interest costs before or during construction;
- vi. Non-Public Improvement capital costs, including costs of acquisition and construction of new buildings, structures, and fixtures; the actual costs of the acquisition, demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures or fixtures; and the actual costs of the acquisition of land and equipment and the clearing and grading of land;
- vii. Non-Public Improvement financing costs, including but not limited to fees and interest; and
- viii. Non-Public Improvement real property assembly costs.

- f. Comal County will not waive the 60 day notice requirement under §311.003(e) of the Texas Tax Code.

**V.**

**PROCEDURES FOR CREATING A  
TAX INCREMENT REINVESTMENT ZONE (“TIRZ”) FOR A  
TAX INCREMENT FINANCING DISTRICT (“TIF”)**

- a. The Commissioners Court evaluates a TIF Project as submitted by an Applicant under the requirements of Chapter 311 of the Texas Tax Code and these Guidelines.
- b. The County prepares a “Preliminary Reinvestment Zone Financing Plan.”
- c. The County sends the following to the governing body of each taxing unit that levies taxes on real property in the proposed zone (the “Other Taxing Entities”):
  - i. Copy of the Preliminary Reinvestment Zone Financing Plan;
  - ii. Written Notification;
    - 1. that the County intends to establish a TIRZ;
    - 2. a description of the proposed boundaries of the TIRZ;
    - 3. the tentative plans for the development or re-development of the TIRZ; and
    - 4. an estimate of the general impact the TIRZ on property values and tax revenues.
  - iii. Not later than the 15<sup>th</sup> day after the written notification is given, the Other Taxing Entities shall designate a representative to meet with the County to discuss the project and financing plan and notify the County of such designation (the “Representatives”).

- d. The County makes a formal presentation to the governing body of each City Council or School District that levies taxes on property in the proposed zone.
  - iv. The County shall notify all other taxing units that levies taxes on property in the proposed zone of the presentation.
  - v. The presentation shall include:
    - 1. that the County intends to establish a TIRZ;
    - 2. a description of the proposed boundaries of the TIRZ;
    - 3. the tentative plans for the development or re-development of the TIRZ; and
    - 4. an estimate of the general impact the TIRZ on property values and tax revenues.
- e. The County will provide a reasonable opportunity for the owners of property to protest inclusion of their property in a proposed TIRZ, including but not limited to holding a public hearing to receive protests shortly after conducting the hearings in step V(d), above.
- f. After County receives notification of the Representatives, it shall call, at a minimum, one meeting of the Representatives to discuss the following (there should be multiple meetings so the Representatives have an opportunity to receive input from their respective entities):
  - vi. boundaries of the proposed TIRZ
  - vii. development of the proposed TIRZ;
  - viii. the tax increment that each taxing unit will contribute to the tax increment fund;

- ix. the retention by a taxing unit of a portion of its tax increment;
- x. the exclusion of particular parcels of property from the proposed TIRZ;
- xi. the board of directors for the proposed TIRZ;
- xii. the tax collection for the proposed TIRZ; and
- xiii. any other matter relevant to the proposed TIRZ, including but not limited to:

- 1. protests of private property owners; or
- 2. likelihood of development or re-development solely through private investment in the reasonably foreseeable future.

g. The Commissioners Court shall publish notice of a Public Hearing to enact a TIRZ at least seven (7) days before the date of the hearing.

h. The Commissioners Court shall hold a Public Hearing to enact a TIRZ.

xiv. Unless WAIVED (not recommended), the hearing shall be conducted no earlier than sixty (60) days after the County sent notice as described in step c, above. (All steps a-f should be thoroughly complete before the Public Hearing to Enact a TIRZ is scheduled).

xv. At the hearing the following occurs:

- 1. An “interested person” may speak for or against the creation of the TIRZ, its boundaries, or the concept of tax increment financing.
- 2. The County determines that development or re-development would not occur solely through private investment in the reasonably foreseeable future.
- 3. The County issues a written order creating the TIRZ.

## VI.

### CONTENTS OF REINVESTMENT ZONE ORDER

- a. Describe the boundaries of the TIRZ with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the TIRZ (recommendation: should be done by metes and bounds survey and plat);
- b. Create a board of directors for the TIRZ and specify the number of directors of the board.
- c. Provide that the TIRZ take effect immediately upon passage of the order;
- d. Provide a date for termination of the TIRZ;
- e. Assign a name to the TIRZ for identification as “Reinvestment Zone Number\_\_\_\_, Comal County;”
- f. Establish a Tax Increment Fund for the TIRZ; and
- g. Contain findings that:
  - i. Improvements in the TIRZ will significantly enhance the value of all the taxable property in the TIRZ and will be of general benefit to the County;  
and
  - ii. The area meets the following requirements of §311.005:
    1. Substantially arrest or impair the sound growth of the Comal County; 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 presence of:
      - a. a substantial number of substandard, slum, deteriorated, or deteriorating structures;

- b. the predominance of defective or inadequate sidewalk or street layout;
  - c. faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
  - d. unsanitary or unsafe conditions;
  - e. the deterioration of site or other improvements;
  - f. tax or special assessment delinquency exceeding the fair value of the land;
  - g. defective or unusual conditions of title;
  - h. conditions that endanger life or property by fire or other cause; or
  - i. 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;
- 2. Be predominately open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the county;
  - 3. Be in a federally assisted new community located in the county or in an area immediately adjacent to a federally assisted new community; ***OR***

4. Be an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the Commissioners Court by the owners of the 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.