

# Overview of Transportation Reinvestment Zones

## WRITTEN BY

Brian L. O'Reilly | C. Brian Cassidy

---

Transportation Reinvestment Zones (“TRZs”) are an innovative tool for generating funding by capturing and leveraging the economic growth that results from a transportation project. Development of new projects, and the expansion or improvement of existing projects, often spurs increased economic development in areas around a project. This economic development can be in the form of construction of new homes and businesses in previously undeveloped areas or through the redevelopment of existing areas which, as a result of a project, experience improved access to homes and businesses. As development or redevelopment occurs, property values in those areas increase. A TRZ allows a municipality, county, or a port authority to designate a geographic area around a transportation project and to capture the increase in ad valorem tax revenues resulting from the increase in property values for use in connection with the financing of the project.<sup>[1]</sup> ***In this manner the economic growth attributable to the project is used to support the funding of the project.***

It is important to note that ***a TRZ does not result in a tax increase*** — it is merely a specific dedication of the incremental tax revenues generated within the boundaries of a TRZ. A TRZ operates in a similar manner to a tax increment reinvestment zone (“TIRZ”), formed under Chapter 311 of the Texas Tax Code, and the related tax increment financing that is often used by local governments to support economic development within an area. However a TRZ is focused specifically on transportation project funding, and the process for forming and administering a TRZ is much simpler than for a TIRZ.

The creation of a TRZ was authorized by Senate Bill 1266, passed in 2007 by the 80th Legislature and now codified in Sections 222.105-.111 of the Texas Transportation Code. In addition to cities and counties, port authorities and certain navigation districts may use TRZs to advance port improvements (Transp. Code §222.1075).

## Municipal TRZs

Municipal TRZs are governed primarily by Sec. 222.106, and one of the provisions that section contains is specific authority for municipalities to collect a tax increment and to pledge all or part of that increment to secure debt issued by the municipality. Unlike counties, municipalities have specific constitutional and statutory authority to engage in tax increment financing. See TEX. CONST. art VIII, § 1-g(b). This represents a very powerful financing option for municipalities, and while it is not the only way in which TRZ revenues may be utilized, it is an option that allows a municipality to generate significant funding to dedicate to a transportation project.

## County TRZs

The formation and operation of County TRZs is primarily governed by Sec. 222.107. As noted above, counties do

not have the constitutional authority to issue bonds secured by TRZ revenues because article VIII, section 1-g(b) of the Texas Constitution only grants that authority to “an incorporated city or town”. But despite the lack of authority to issue bonds, it was previously believed that counties could nonetheless collect the tax increment and use it in a “pay-as-yougo” manner. However, following Texas Attorney General Opinion KP-0004 in 2015, the belief that counties could collect and use tax increments in any manner has been called into question. In other words, the authority of counties to collect the increment and assign it to a developer or local government partner to contribute to the costs of a project no longer seems to be assured.

## **Proposition 2**

Proposition 2 on the November 2, 2021 Constitutional Amendment Ballot would give counties the same constitutional authority to engage in tax increment financing that cities currently have, subject to certain limitations. Unlike the authorization granted to cities, Proposition 2 restricts counties to using a maximum of 65% of a tax increment to secure county-issued bonds, and does not allow any county-issued bond proceeds to be used for toll roads. However, those restrictions are limited to county-issued bonds and bond proceeds; they do not restrict the ability to use up to 100% of an increment to support a project or to assign the entire increment to another entity (e.g., a regional mobility authority (“RMA”)) to use in connection with project funding needs.

### **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 (see limitation on use of county-issued bond proceeds for toll roads discussed above)
- 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 §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. In addition to local projects, 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(s) to be supported), and few, if any, administrative costs and burdens. The process is set forth in Transp. Code §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 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 (Transp. Code §370.303). It will likely work with other potential partners as well.

Cities have another valuable financing alternative which, if Proposition 2 passes, will also be available to counties in a limited form. 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. Proposition 2 would remedy this disparity, placing cities and counties on equal footing in their ability to issue bonds. However, as noted above, if a county issues bonds directly, it may not pledge more than 65% of TRZ revenues to pay for the bonds, thus limiting the direct bonding capacity in a manner not applicable to cities.

### **Joint Support for TRZ Projects**

It is not unusual for a city or county to agree with a neighboring city or county 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 agreement 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 in 2013 by the 83rd Legislature. 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 §222.111.

For questions or additional information, contact C. Brian Cassidy at [bcassidy@lockelord.com](mailto:bcassidy@lockelord.com) or Brian O'Reilly at [boreilly@lockelord.com](mailto:boreilly@lockelord.com).

---

[1] TRZs can also be formed to capture the incremental growth in sales tax in an area resulting from increased commercial activity. See TEX. TRANSP. CODE §222.110.