

# Administration of Public Improvement Districts and Tax Increment Reinvestment Zones

Prepared for the Texas City Attorney Association  
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# Public Improvement Districts



# Service and Assessment Plan

1. The advisory body, or if no advisory board, city staff or a plan administrator, must prepare an ongoing service plan and present the plan to the governing body of the municipality for review and approval.
2. The plan must cover a period of at least five years and must also define the annual indebtedness and the projected costs for improvements.
3. The plan shall be reviewed and updated annually for the purpose of determining the annual budget for improvements.
4. An assessment plan must be included in the annual service plan.

*Practice Tip:* The SAP is the city's plan. It may not be in the city's best interest to allow the developer and/or its consultant to draft the SAP and/or annual update thereto.

# Contents of SAP include:

1. Property included in the PID;
2. Public improvements and projected costs;
3. Assessment plan (benefits, allocation of costs):
  - a. Assessment methodology must result in imposing equal share of costs on property similarly benefitted; and
  - b. Allocations of costs for improvements that benefit the PID and the city as a whole Examples include utility capacity expansions, pools and parks Financing of costs allocated to the city or property owners outside of PID;
4. Service plan (sources and uses of funds);
5. Annual indebtedness;
6. Assessment roll;
7. Ownership and management of public improvements; and
8. Dedicated, conveyed, leased or otherwise provided for the benefit of a city, a county, or other political subdivision.

# Administration of PIDs



# Update SAP at Least Annually

*Practice Tip:* The Annual SAP Update should be provided to the City Staff, City Financial Advisor, Bond Counsel, and City Attorney, for review well in advance of placing on the Council Agenda for approval.

1. Updated costs of improvements and total budget;
2. Update five-year service plan, including projected costs and annual indebtedness;
3. Update assessment roll:
  - a. interlocal agreement with County Tax Assessor-Collector;
  - b. due to County Tax Assessor-Collector generally before September 1;
  - c. certain County Tax Assessor-Collectors do not have the software to include assessments on tax bills; and

*Practice Tip:* For new parcels or lots, assessment rolls must reflect the collection agency's identification methodology.

- d. installment schedule and interest rate upon issuance of bonds.

# Collection of Assessments

1. Prepare and send assessment rolls to Tax Assessor-Collector;
2. Monitor assessment payments;
3. Prepare deposit certificates for city depository or bond trustee;
4. Track delinquent assessments;

*Practice Tip:* The Public Finance Division of the Texas Attorney General's office deems an assessment levy "stale" if it is not collected within two years of the assessment levy, unless proper procedures under Chapter 372 are followed for deferring the collection of the assessments.

# Allocation of Cost and Assessments Upon Subdivision or Final Plat

1. Methodology and allocation procedures documented in SAP

*Practice Tip:* Ensure that original SAP identifies the methodology and allocation procedures, and that any future Annual SAP Update is not submitted that arbitrarily changes those procedures without input from bond counsel to ensure compliance with state and federal law.

2. If developer rezones a parcel or lot counts differ from original SAP could trigger state law and federal tax law issues:
  - a. Under state law assessments must be levied on the basis of special benefits accruing to the property because of the improvements;
  - b. If tax-exempt PID Bonds were issued, Internal Revenue Code requires that assessments are:
    - i. imposed pursuant to a state law of general application that can be applied equally; and
    - ii. repaid on an equal basis.



# Allocation of Cost and Assessments Upon Subdivision or Final Plat, cont.

3. True up provisions so that maximum assessment is not exceeded; and
  - Example: If the subdivision of any assessed property by a final subdivision plat causes the special assessment per lot for any lot type to exceed the maximum assessment, the owner must prepay the portion of the assessment for each assessed property that exceeds the maximum assessment in an amount sufficient to reduce the assessment to the maximum assessment.
4. Mandatory prepayment if property is no longer benefiting from improvements.

*Practice Tip:* Independent School Districts may only payment assessment by agreement, even if property is sold to an ISD after the levy. Identifying such property prior to the levy is most beneficial to both the city and the developer.

# Payment Requests

1. Cost of improvement may be paid from the following:
  - a. The proceeds of bonds, temporary notes or time warrants; and
  - b. Assessment revenues pursuant to an installment sale contract or reimbursement agreement
2. Determine if costs submitted are qualified improvement costs

*Practice Tip:* A city cannot enter into a reimbursement agreement with a developer until the 21<sup>st</sup> day following publication of resolution creating the PID. If improvements were constructed prior to entering into reimbursement agreement, the city cannot acquire improvements that have already been accepted by the city.

# Payment Requests, cont.

3. Review controlling agreements, such as financing agreement or reimbursement agreement for backup that must be submitted with each payment request. Backup generally includes the following:
  - a. A certification/request for payment executed by the project engineer and construction manager specifying the amount of work that has been performed and the cost thereof;
  - b. An affidavit from the contractor stating that it has paid each person in full for all labor and materials used in the construction of the applicable improvement (a “Bills Paid Affidavit”);
  - c. Copies of all supporting invoices with respect to such payment;
  - d. Waivers of liens for work on the applicable improvements through the previous certification/request for payment and receipts for payment from the contractor; and
  - e. If final payment, maintenance bond and warranties.

*Practice Tip:* Due to the nature of the allocation of costs, the city should control the accounting for the various dollars identified in the certification/request for payment made by the developer. Typically, the certificate/request for payment allows the city 10-15 days to review all the documentation and prepare a response.
4. Save payment records until final maturity of the bonds, plus 3 years.

# Notice to Residential Homebuyer

1. Texas Property Code requires the seller of residential real property located in a PID to give to purchaser of the real property a written notice that reads substantially similar to the following:

NOTICE OF OBLIGATION TO PAY PUBLIC IMPROVEMENT DISTRICT ASSESSMENT TO (municipality or county levying assessment) CONCERNING THE PROPERTY AT (street address)

As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Subchapter A, Chapter 372, Local Government Code, or Chapter 382, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

# Notice to Residential Homebuyer, cont.

## 2. Homebuyer disclosure program:

- a. Form of homebuyer disclosure should be appendix to SAP, including assessment and amortization schedule;
- b. Developer/homebuilder to include in materials provided to potential homebuyers; and
- c. Only city can enforce homebuyer disclosure program.

*Practice Tip:* Homebuyer disclosures should also include clarification that PID assessments are not property taxes, and certain individuals, such as disabled veterans or over 65 exceptions still must make assessment payments which typically appear on property tax statements.

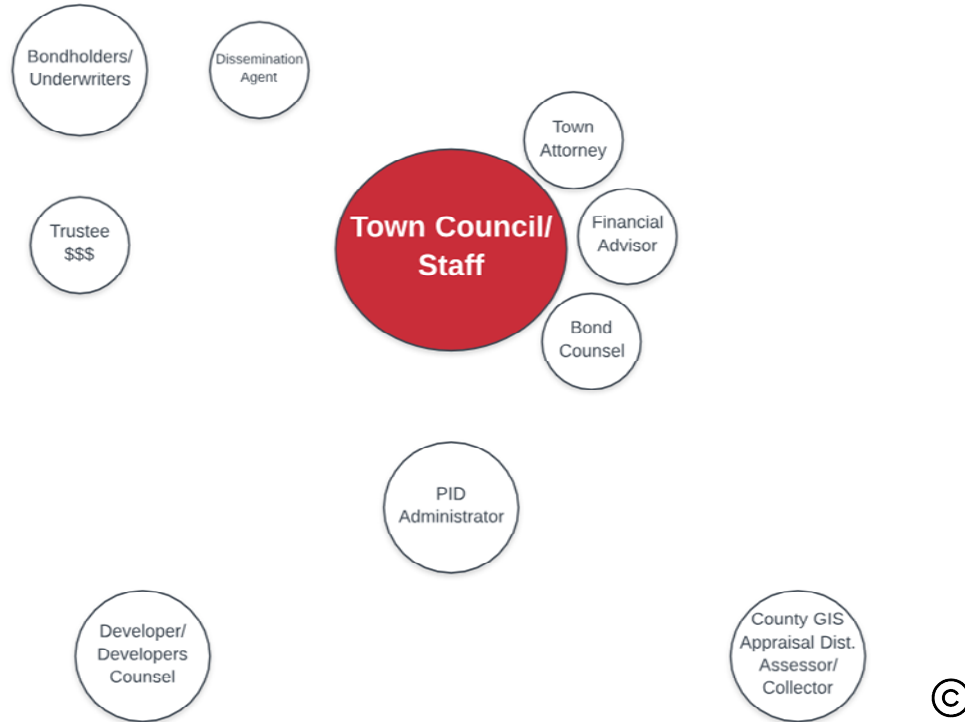
3. If landowner prepays assessment in full, prepare lien release for city attorney to file in public records and mail to homeowner.

# Continuing Disclosure Compliance

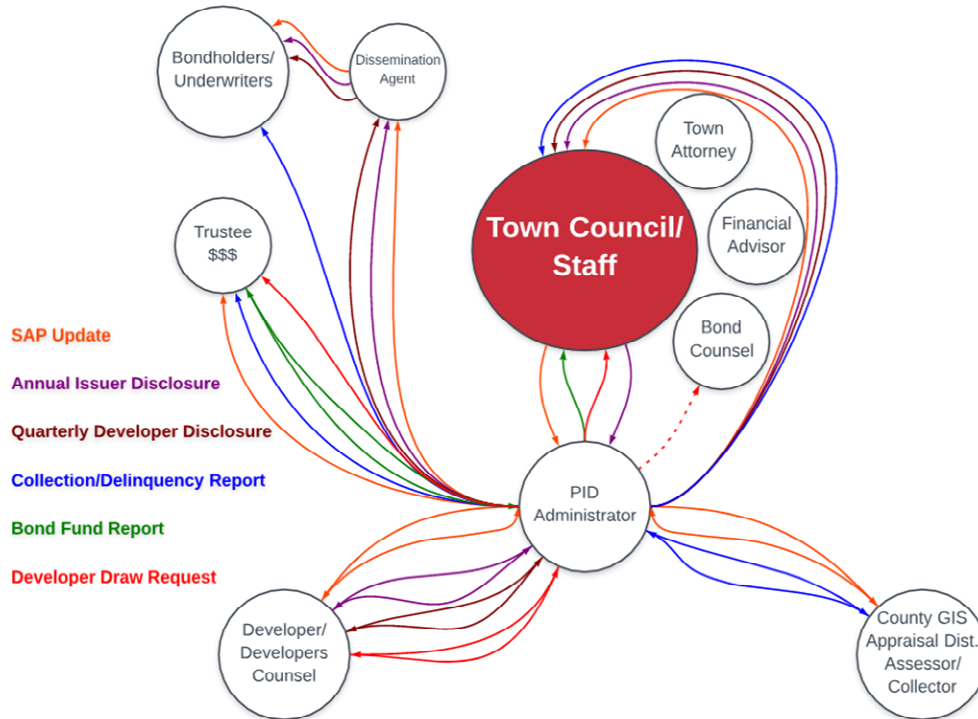
1. If bonds were publicly offered, assist with preparing reports for continuing disclosure undertakings of city and developer pursuant to SEC Rule 15c2-12.
  - a. DO NOT miss a filing deadline. The SEC takes meeting your deadlines very seriously.
  - b. In advance of each developer quarterly filing, provide forms or excel spreadsheets covering contents of report to developer.

*Practice Tip:* Review the developer's quarterly filing, even if provided on the city's form. Attention to detail, as well as meeting SEC deadlines are critical to the entire PID Administration process.

# PID Parties



# PID Parties





# Tax Increment Reinvestment Zone



# Project Plans

*Practice Tip:* The Preliminary Project and Finance Plan should not be the first step in discussing a TIRZ with the city council or any other taxing entity that might participate. Discussion of projects that are mutually beneficial to all entities can help align the Project Plan components.

If an area qualifies as a TIRZ, the city must prepare a preliminary reinvestment zone financing plan, which should include:

1. A detailed list of project costs of the zone;
2. A statement listing the kind, number and location of all public works or public improvements to be financed by the zone;
3. A finding that the plan is economically feasible and an economic feasibility study;
4. The estimated amount of bonded indebtedness to be incurred;

# Project Plans, cont.

5. The estimated time when related costs or monetary obligations are to be incurred;
6. Description of the methods for financing project costs and the expected sources of revenue to finance or pay project costs, including the percentage of tax increment to be derived from the property taxes of each taxing unit anticipated to contribute tax increment to the zone;
7. The current total appraised value of taxable real property in the zone;
8. The estimated captured appraised value of the zone during each year of its existence; and
9. The duration of the zone.

# Project Plans, cont.

The city should also create a preliminary project plan, which should contain:

1. A description and map showing existing uses of real property within the zone and any proposed improvements;
2. Any proposed changes to zoning ordinances, the master plan of the city, building codes, or other municipal ordinances;
3. A list of estimated non-project costs; and
4. A statement of the method for relocating persons who will be displaced as a result of implementation of the plan.

*Practice Tip:* Non-project costs should include a city's estimated cost of service associated with the improvements and a quantified net benefit or cost to the city. Commercial AND residential uses should be included in this calculation and estimated sales tax should be included in the cost benefit revenue stream. Engaging professional help to fully analyze this cost/benefit equation and presenting it to the various entities can make this process much more productive and less time consuming on city administrative personnel.

# Final Plans

The Board of Directors must prepare both a final project plan and a final reinvestment zone financing plan and submit the plans to the governing body of the city. Both plans are required to include the same provisions as the preliminary plans. The city must approve the plans by ordinance, which must include a finding that the plan is feasible.

*Practice Tip:* Cities frequently design TIRZ projects to assume county and other taxing district participation. These negotiations can be lengthy and arduous if the city and other taxing entities have not considered the cost/benefit of the TIRZ for all entities. The city oftentimes takes the lead in providing these analyses to the taxing entities if requested and be prepared to assist these entities in any way possible to obtain their consent to participate. Be aware that not every entity will agree to the same participation rate as the city, so care should be taken in differentiating these participation rates in advance of finalizing a Final Plan.

*Practice Tip:* The statute allows the TIRZ to be amended under certain conditions and following certain procedures. It is not uncommon that TIRZ boundaries be expanded to take in new development that provides a mutual benefit to the city and the participating entities. Each entity must independently consider any amendment to the TIRZ following a review and recommendation by the TIRZ Board.

# TIRZ Agreements

1. The Board of a TIRZ and the city that creates a TIRZ may each enter into agreements to implement the project plan and reinvestment zone financing plan and achieve their purposes.
2. An agreement may during the term of the agreement dedicate, pledge, or otherwise provide for the use of revenue in the tax increment fund to pay any project costs that benefit the TIRZ.

*Practice Tip:* Participation Agreements between the city and other participating taxing entities is critical to properly providing documentation to the collecting agency for the allocation of appropriate TIRZ revenues.

# Administration of TIRZ



# Annual Status Report

1. On or before the 150th day following the end of the fiscal year of the municipality, the governing body of a municipality must submit to the chief executive officer of each taxing unit that levies property taxes on real property in a reinvestment zone a report on the status of the zone. The report must include:
  - a. The amount and source of revenue in the tax increment fund established for the zone;
  - b. The amount and purpose of expenditures from the fund;
  - c. The amount of principal and interest due on outstanding bonded indebtedness;
  - d. The tax increment base and current captured appraised value retained by the zone; and
  - e. The captured appraised value shared by the municipality or county and other taxing units, the total amount of tax increments received, and any additional information necessary to demonstrate compliance with the tax increment financing plan adopted by the governing body of the municipality or county.
2. The city must also send a copy of a report made under this section to the comptroller.



# Public Improvement District with Tax Increment Reinvestment Zone Overlay



# PID/TIRZ

Under certain facts and circumstances a city may desire to create a PID with a TIRZ overlay. To the extent that assessment revenues generated by the PID are not sufficient to fully reimburse a developer, all or a percentage of the TIRZ revenues may be used to finance additional improvement costs.

*Practice Tip:* It is not advisable for the city to agree to a percentage of TIRZ credit in ancillary agreements until the TIRZ preliminary project and finance plan, and the PID service and assessment plan basic financial details have been created and reviewed by the city.

1. Annual cash flow basis pursuant to a reimbursement agreement with a developer; and
2. Annual credit against assessment portion of annual installment of assessments.
  - a. TIRZ revenues must be allocated on a lot by lot basis;
  - b. TIRZ revenues are deposited with trustee under bond indenture thereby reducing the assessment portion of the annual installment; and
  - c. Delay in application of TIRZ Revenues as credit.

# Documents Overview

## City Documents

- Service and Assessment Plan (SAP) and Annual Assessment Roll
- Bond Indenture
- Development Agreement
- Construction/Funding Agreement
- TIRZ Project and Finance Plan
- TIRZ Agreement
- Annual TIRZ State Comptroller Reports
- Assessment Reconciliation/Delinquency Reports
- Trustee Monthly Asset Statements
- Monthly Bond Fund Reports

## Other Documents

- Issuer Continuing Disclosure Agreement
- Developer's Quarterly Disclosure Agreement
- Homebuyers' Disclosure Documents
- County Parcel Tax Roll
- County Collection Reports
- Developer Draw Requests
  - Developer construction invoices for Authorized Improvements
  - Developer lien releases/All bills paid affidavits
  - City inspector report
  - Cancelled checks for Authorized Improvement construction
- Developer's continued construction plans, plats, and development and/or zoning changes/amendments



- Orrick, Herrington & Sutcliffe LLP is a full service law firm with more than 1,300 lawyers, including 28 Public Finance lawyers in Austin and Houston.
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P3Works represents numerous municipalities and communities across the State, involving Public Improvement Districts, Tax Increment Reinvestment Zones, and Municipal Management Districts. Mary has structured and administers numerous projects which include PIDs, TIRZs, MMDs, or combinations of PIDs with TIRZ overlays.



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Julie graduated from University of San Diego School of Law. Julie is a partner at Orrick, Herrington & Sutcliffe LLP. Julie serves as bond counsel to various state agencies and local governmental entities, including, special districts, cities, counties and local government corporations and as underwriter counsel to various investment banking firms that underwrite tax-exempt and taxable governmental obligations. Julie's representation of counties and cities, includes financing public infrastructure through public improvement districts and tax increment reinvestment zones. Prior to entering private law practice, Julie served as an assistant attorney general in the Public Finance Division of the Office of the Attorney General of the State of Texas.

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