A BRIEF OVERVIEW
of
COMMUNITY REINVESTMENT AGENCIES
&
UTAH REDEVELOPMENT LAW
Title 17C UTAH CODE

J. CRAIG SMITH & ADAM LONG

SMITH HARTVIGSEN, PLLC
257 East 200 South, Suite 500
Salt Lake City, UT 84111
Telephone: (801) 413-1600
Facsimile: (801) 413-1620
E-Mail: jcsmith@shutah.law; along@sshutah.law
Website: www.smithhartvigsen.law

July 15, 2019

Introduction

What is now the "**Community Reinvestment Agency Act**", comprising all of Title 17C of the Utah Code, contains Utah's "redevelopment" statutes—laws enabling the use of Tax Increment Financing and local point-of-sale sales taxes to help cities, towns and counties to promote economic development or address problems of underdeveloped, unproductive, or blighted property.[1] Put simply, Tax Increment Financing allows counties, cities, and towns to redirect, for a fixed period, future increased tax revenues toward specific areas where the money can help achieve economic development and goals such as job creation, increased tax base, or enhanced quality of life. Increasingly, to attract or keep desirable employers, such as Merit Medical, Proctor and Gamble, eBay, Facebook, and many, many others, incentives and inducements are necessary. Nearly every state offers incentives and inducements and in Utah for the state to do so, local participation, typically through the Tax Increment process, is required. Tax Increment is a classic post-performance incentive. Tax Increment is only created by created new value increasing the value of real and personal property at a particular site, known as a Project Area. This process and its associated tools are more generally referred to as "redevelopment."

History of Redevelopment in Utah

Redevelopment first came to Utah in 1969 as the Utah Neighborhood Development Act, which was modeled after California's Community Redevelopment Law. The Neighborhood Development Act was designed to address growing concerns about urban decay and blight that had been plaguing many American cities since before World War II through the establishment of local Redevelopment Agencies and the establishment of tax increment financing. Utah's redevelopment laws went through significant revisions in the ongoing years, including changes such as allowing agencies to issue bonds (1977), limiting the size and length of redevelopment projects (1983), limiting tax increment collection to 25 years (1983), and granting agencies the power of eminent domain (1983). In 1993, the Utah legislature created another redevelopment track called "economic development" intended specifically to facilitate job creation (rather than addressing urban blight) as part of a full rewrite of the redevelopment statutes.

In addition to creating the economic development track, the 1993 Redevelopment Agencies Act streamlined and (relatively) simplified the redevelopment process in Utah.

[1] In 2019 the Utah Legislature eliminated the use of the term "blight" and replaced it with "development impediment."

Again, various changes were made over the years in response to specific needs of Utah communities and the demands of various interested parties—particularly public entities levying property taxes from which agencies could use funds to finance redevelopment projects.

Utah's redevelopment statutes were again entirely rewritten in 2006, and redevelopment agencies were rebranded as Community Development and Renewal Agencies, although the "redevelopment agency" moniker has remained in common use. This rewrite maintained the two existing redevelopment tracks—urban renewal focusing on blight, and economic development focusing on job creation—but added a third track called "community development." The community development project area concept was intended as a much more flexible and less restrictive approach to redevelopment, and relied heavily on negotiation and cooperation between an Agency and the respective taxing entities, rather than on specific statutory procedures and requirements. Due to the flexibility designed into the community development project area concept, a significant majority of new redevelopment projects created in the state since the 2006 revisions have been community development project areas, or "CDAs".

Community Reinvestment Projects

In 2016, the law was overhauled once again, changing the nomenclature from "community development and renewal agency" to "community reinvestment agency". The 2016 amendment made significant changes to the redevelopment procedures found in Title 17C. Significantly, the three types of project areas—urban renewal areas for addressing urban blight, economic development areas for promoting job creation, and community development areas based on negotiations between agencies and individual taxing entities—have been replaced with a new "community reinvestment project area" ("**CRA**"). Existing project areas will be allowed to continue, but all new project areas will be CRAs as addressed in § 17C-5. The CRA track retains much of the flexibility of the community development project area, while incorporating key aspects of the other current project area types.

Existing Agencies may be renamed as Community Reinvestment Agencies (but are not required to do so). An Agency board begins the process of creating a CRA by adopting a survey area resolution that identifies the areas to be studied by the Agency to determine the feasibility of creating one or more CRAs and authorizes the Agency to create a draft plan for each CRA.[2] If the Agency desires limited powers of eminent domain in the project area, the Agency must

[2] § 17C-5-103

also include a statement that the survey area requires study to determine whether a development impediment exists and must authorize the Agency to conduct a development impediment study.[3] The requirements that a community must satisfy prior to adopting a CRA plan, including notice and publication requirements, are substantially the same as under the previous project area types.[4] The public hearing requirement[5] prior to a Plan adoption and the requirements that an Agency mail and publish notice once a Plan is adopted[6] likewise carry over, substantially unchanged, from the previous version of the redevelopment statutes.

The Act requires that every project area have a written Budget setting forth the Agency's predictions for the Project Area, as well as the financial details about the project area and the agency's expected activities.[7] Previously, a written Budget was only required for Urban Renewal areas and Economic Development areas and was not required for a Community Development Project Area.

To receive Tax Increment, an Agency must enter into Interlocal Agreements with participating Taxing Entities, authorizing the payment of Tax Increment to the Agency. Prior to May 14, 2019, in CRAs where the Agency sought to eliminate Blight and exercise limited powers of eminent domain, the Budget, authorizing the Agency to receive Tax Increment, had to be approved by a Taxing Entity Committee, much like the Budget approval process for the old Urban Renewal Project track. Going forward, the authority for the Agency to receive Tax Increment will be through Interlocal Agreements with taxing entities for all new Project Areas.

Community Reinvestment Agencies

In order to implement the Act, a municipality or county must first create an Agency. Only a municipality or county may create an Agency. The steps to create an Agency are found in the Act. See UCA §17C-1-205.1. Once properly created, the Agency is a separate legal entity and political subdivision of the State of Utah. See UCA § 17C-1-102(4). This protects the entity which created the Agency from liability for the Agency's actions. The Agency has statutorily specified powers. See UCA §17C-1-202. The Agency has its own governing board which must

[3] § 17C-5-103(2)
[4] § 17C-5-104
[5] § 17C-5-104(2)(d)
[6] §§ 17C-5-110 and -111
[7] §§ 17C-5-202(3) and -303

be comprised of the governing body of the municipality or county that created it. See UCA §17C-1-203. Once created, the Agency will continue to exist until such time that it is dissolved pursuant to UCA §17C-1-701.5.

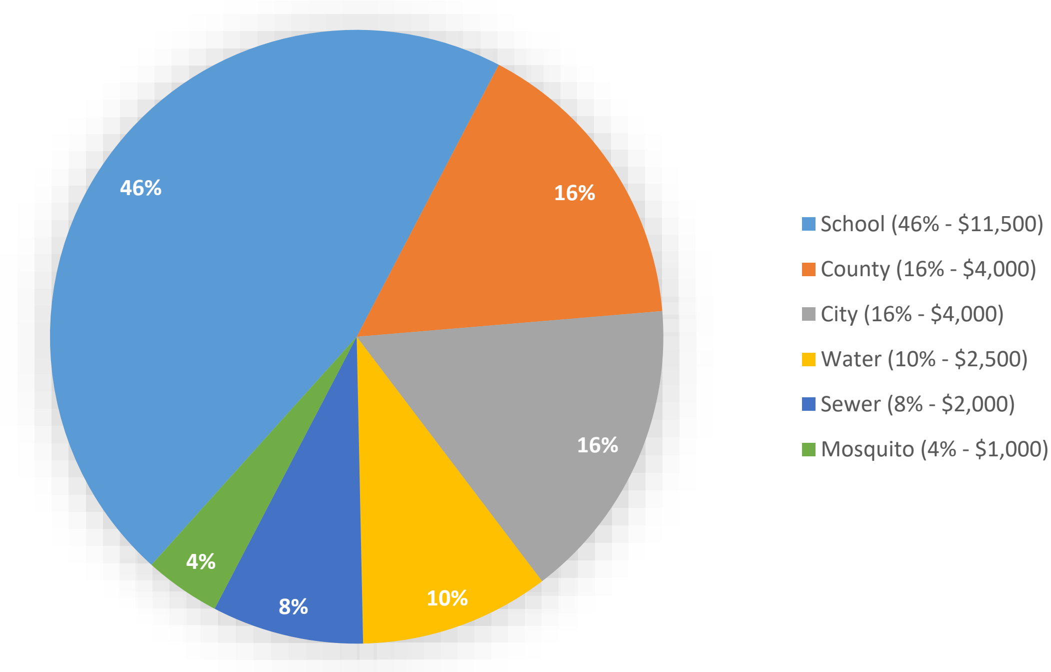
Tax Increment Financing

Tax Increment Financing (or "**TIF**")—the use of taxes arising from increased value as development capital—is the primary funding mechanism for projects. In a sense, it is self-funding development, rotating available revenue back into the development which created it. Also, the City or County portion of sales tax may be utilized.

What is Tax Increment?

Tax Increment Financing is the redirection to an agency, for a specified term, all or part of property taxes arising from new development on the land within a project area. First, a base year value must be established. Second, each taxing entity's current certified tax rate. If there is an increase in the certified tax rate during the period that tax increment is being taken, the increase of Tax Increment due to the increase in the certified tax rate will only paid to the agency if provided for in the interlocal agreement between the agency and taxing entity.

The mechanism generally relies upon approval by specific taxing entities of an interlocal agreement, for project areas created before May 14, 2019, a Taxing Entity Committee could be utilized to approve the Budget. The interlocal agreement or formerly TEC approval of a project area budget "freezes" tax revenue going to the relevant taxing entities at the amount flowing to them at the time of budget approval. Let us assume a (tiny) project area producing a revenue flow of, say, $25,000 per year, with an allocation of that revenue thus:



This graph represents the tax revenue from our hypothetical project area prior to any redevelopment. TEC budget approval freezes these levies as of the time of approval, and this amount constitutes the "base taxable value" for the project area.

Additional tax revenue arising from development pursuant to the project area plan (in this example, some $75,000 per year) are generally received by the Agency to be put to whatever uses may be or become necessary or desirable for the prosecution of the project.

Note, however, that the original base taxable value continues to flow to the taxing entities throughout the project. The cumulative outlay over the life of the project—let us say 15 years—would be approximately as follows:

Years	School	County	City	Water	Sewer	Mosquito	Add'l Value
1	$ 11,500	$ 4,000	$ 4,000	$ 2,500	$ 2,000	$ 1,000	$ 75,000

Years	School	County	City	Water	Sewer	Mosquito	Add'l Value
2	11,500	4,000	4,000	2,500	2,000	1,000	75,000
3	11,500	4,000	4,000	2,500	2,000	1,000	75,000
4	11,500	4,000	4,000	2,500	2,000	1,000	75,000
5	11,500	4,000	4,000	2,500	2,000	1,000	75,000
6	11,500	4,000	4,000	2,500	2,000	1,000	75,000
7	11,500	4,000	4,000	2,500	2,000	1,000	75,000
8	11,500	4,000	4,000	2,500	2,000	1,000	75,000
9	11,500	4,000	4,000	2,500	2,000	1,000	75,000
10	11,500	4,000	4,000	2,500	2,000	1,000	75,000
11	11,500	4,000	4,000	2,500	2,000	1,000	75,000
12	11,500	4,000	4,000	2,500	2,000	1,000	75,000
13	11,500	4,000	4,000	2,500	2,000	1,000	75,000
14	11,500	4,000	4,000	2,500	2,000	1,000	75,000
15	11,500	4,000	4,000	2,500	2,000	1,000	75,000
Total	$ 172,000	$ 60,000	$ 60,000	$ 37,500	$ 30,000	$ 15,000	$1,125,000

By the 15th tax year following the Agency's first year of taking TIF, the Agency has received—and almost certainly disbursed—$1.125 million to finance all or some part of the contemplated project. Meanwhile, the taxing entities have continued to receive their established share of the $25,000 long since established by the taxing entities themselves. This is the same amount they would have received had no new development taken place. Their 15-year total comes to some $374,500. However, it is common to share the Tax Increment with the taxing entities. A 75% Agency / 25% Taxing Entities split is commonly used. There are advantages in having the Agency collect the entire Tax Increment and distribute the portion represented by the split to the taxing entities.

A Note on TIF Payments.

As shown in the following table, assessments are prepared by January 1st of each year; these values, and the taxes due thereon—after ten months for objections, appeals, etc.—must be equalized by October 31st as those values take effect on November 1st. Taxes are due by or before November 30th, and these sums are disbursed to the various taxing entities the following March 31st. Thus, for example, for a plan taking effect in, say, August of Year II, the first year the Agency could receive tax increment from the project area would be at the end of March of Year IV, when the taxes collected for Year III are disbursed.

Uses of TIF

And what could our hypothetical Agency do with its $1,125,000? Depending on the provisions of the approved budget, it could apply these TIF funds to infrastructure installation, land purchase, tax refunds, business incentives, etc. The specifics are set forth in UCA § 17C-1-409:

1. Any purpose for which TIF is authorized under Title 17C.
2. Administrative costs, overhead, legal fees, Agency operating expenses, consultant fees, business resource centers and so forth.
3. Financing or refinancing:
    a. Project area development in a project area, including environmental remediation activities occurring before or after adoption of the project area plan.
    b. Housing-related expenditures, projects, or programs as described in Section 17C-1-411 or 17C-1-412. New in 2019, student housing for a public non-profit college or university.
    c. An incentive or other consideration paid to a participant under a participation agreement.
    d. Subject to Subsections (1)(c) and (4), the value of the land for and the cost of the installation and construction of any publicly owned building, facility, structure, landscaping, or other improvement

within the project area from which the project area funds are collected.

e. The cost of the installation of publicly owned infrastructure and improvements outside the project area from which the project area funds are collected if the board and the community legislative body determine by resolution that the publicly owned infrastructure and improvements benefit the project area.

Furthermore, the expected revenue stream from this tax increment can be bonded upon, thus creating a substantial sum that can be used at the front end. *See* UCA § 17C-4-501 *et seq*. And, an Agency may authorize a loan of tax increment proceeds from one project area to another project area, so long as the Agency projects that the borrowing project area will generate sufficient tax increment revenues to repay the loan in time for use of the tax increment according to the plan for the loaning project area.

Eminent Domain

Although the community reinvestment project area is the sole type of project area that may be created under the Act, an Agency must meet significant additional requirements in order to use the limited power of eminent domain in a project area—essentially the same requirements for use of eminent domain in an urban renewal project area under the old redevelopment statutes. As noted earlier, the process for enabling the power of eminent domain in a CRA begins with the survey resolution requesting the study of development impediment passed by an Agency as the initial step in the CRA creation process. An Agency must also complete a development impediment study to determine whether development impediment exists in the proposed project area, hold a properly-noticed development impediment hearing, and, for project areas created prior to May 14, 2019, and receive approval of the development impediment findings from the Taxing Entity Committee.[8] The development impediment study continues to require a parcel-by-parcel survey of the property within the survey area, along with other requirements. The portions of the revised statutes governing the development impediment study, development impediment hearing, conditions on the Agency's determination of development impediment, and use of eminent domain are effectively the same as the current statutes governing the use of eminent domain in urban renewal areas. There is also limited eminent domain power to address stalled projects.

[8] Title 17C, Chapter 5

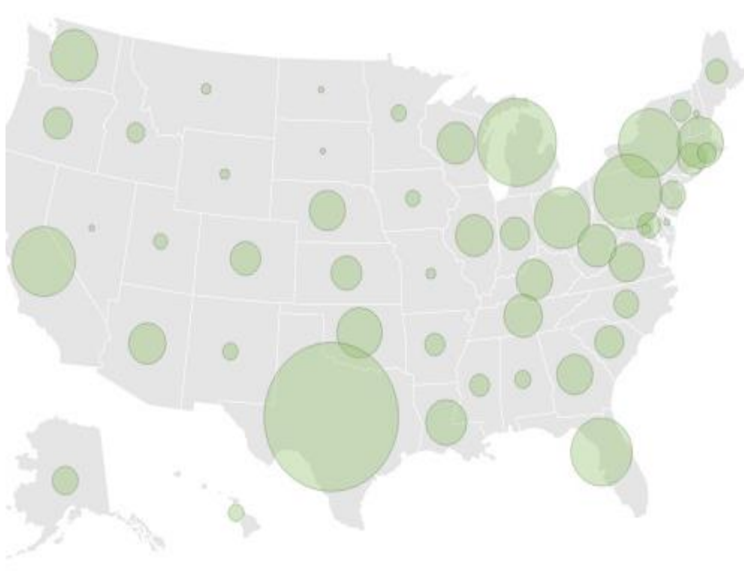
Miscellaneous Provisions

The Act provides the ability of an Agency to create projects outside of its boundaries. For an Agency created by a municipality that would be in a neighboring municipality or, in the case of a county Agency an incorporated municipality within the county. However the consent of the city or county is required. This allows a single county Agency to operate within smaller communities in the county which do not have their own Agency. The important issue of making sure that new growth created in a project area is paid to the taxing entities at the end of payment to an Agency is addressed, as well as creating a formal process to terminate a project area. It also provides for Participation Agreements as the vehicle to memorialize the terms and conditions of the payment of Tax Increment or other benefits to a property owner or developer. A single November Report designed to provide more useful information is all the reporting that is required. Annual Taxing Entity Committee meetings, for project areas that utilized a Taxing Entity Committee, are optional.

New legislation in 2019 limits reporting by Agencies to the requirements under Utah law and in 2021 GOED is required to have a data base with information on all Project Areas in the state.

Per Capita Incentive Comparison by State

All states provide incentives for businesses to locate or expand. The map below shows the per capita comparison as of 2016.



Utah has the smallest per capita incentive of all of its neighbors at $75.00, except for Nevada at $12.00. Colorado provides $198.00, Idaho $216.00, Arizona $213.00, and New Mexico $123.00. Alaska has the highest per capita incentive at $99.00. Texas provides the most incentive in the country at $19.1 billion ($759.00 per capita).[9]

Conclusion

This is only a brief overview to acquaint the reader with the basics. For more information please contact the authors.

[9] Source New York Times, 2016.