

FARGO TAX EXEMPT REVIEW COMMITTEE
Tuesday, June 26, 2018 – 1:00 p.m.
City Commission Room
AGENDA

- 1. Approve Tax Exempt Review Committee meeting minutes of 5/22/2018 meeting**
 - a) May 22, 2018 minutes [Page 1]

- 2. Discussion on Recommended Revisions to TIF policy (Jim Gilmour)**
 - a) Summary Cover Letter [Page 4]
 - b) Summary of Proposed TIF Policy Changes [Page 5]
 - c) Draft Proposed TIF Policy [Page 6]
 - d) Redline Copy of Proposed TIF Policy [Page 14]

- 3. Discussion on Review of Apartment Incentive Policies (Jim Gilmour)**
 - a) Draft Proposed Downtown & Low Income Housing Policy [Page 31]
 - b) Current UMU Housing Incentive Policy [Page 32]
 - c) Downtown Housing Incentive Area Map [Page 39]

TAX EXEMPT REVIEW COMMITTEE
Fargo, North Dakota

Regular Meeting

Tuesday, May 22, 2018

The March meeting of the Tax Exempt Review Committee of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 1:00 p.m., Tuesday, May 22, 2018. The committee members present or absent are:

Present: Dave Piepkorn, Mayor Tim Mahoney, Bruce Grubb, Jessica Ebeling, Jim Gilmour, Ben Hushka, Robert Wilson, Erik Johnson

Absent: Mark Lemer, Chuck Hoge, Jim Buus, Kent Costin

Others Present: Patti Richards representing Jackie Gapp

Commissioner Piepkorn called the meeting to order at 1:00 p.m.

A motion was made by Mayor Mahoney, seconded by Jessica Ebeling, to approve the minutes from the March meeting held on March 27, 2018. Motion carried.

Presentation by Jim Gilmour of Proposed Changes To Downtown Incentive Policy

Jim Gilmour said that we should discuss how we get to the end of this review and get to the point of recommending adoption of the policy changes. He said that he will bring the recommended scoring criteria to the June meeting and hopefully finalize the changes, put it out for public comment as well as to the Renaissance Zone Authority, the County, and School, and then to City Commission for adoption. He said that Commissioner Grindberg suggested that when this gets adopted in July, that it would be for a term of at least two years so developers would know this would be the policy at least until the next election cycle. He asked if anyone has any additional input.

Bruce Grubb asked about the previous discussions regarding a look back process for projects receiving an incentive. Mr. Gilmour said that part of it is an issue of which projects would be subject to the look back. He said that there is also a question of what type of information would be part of that review. He said that there was a certain amount of push-back from some developers questioning exactly how this would be done. Mr. Gilmour said that we'd need to look at how we would do the audit and who would do it and pay for it. Jessica Ebeling said that we had talked about only doing it for the larger projects and that it may not be cost effective to do for all projects.

Commissioner Piepkorn asked if this could be made available online as well as having some type of summary highlighting what is being changed.

Ben Hushka asked Mr. Gilmour about his suggestions at the last meeting for the evaluation criteria. Mr. Gilmour said that he sees the evaluation criteria being a little different than the previous point system. He stated that we have three different types of projects. There is commercial redevelopment, affordable housing, and downtown mixed use. He suggested that there would be three different score sheets; one for each type of project. He suggested that there could be eight or nine different goals for each type of project and that you would need to meet at least five to qualify.

Mayor Mahoney said that there should not only be a look back on incentives granted for the purpose of claw-backs if they are unsuccessful but, also to show where they are successful and are working to attract businesses and low income housing. The Mayor said that some of the incentives today need to go up to 10 to 15 years because of the lower tax rates requiring a longer term to get the return on the investment. Commissioner Piepkorn said that these incentives are very low risk because there are no actual cash outlays on the City's or taxpayer's part.

Mayor Mahoney asked about how the new opportunity zones will work and what will the City of Fargo do now that the zones are established? Jim Gilmour said that the IRS and the State will be issuing some guidance later this year. He said that we should work with the EDC and Downtown Partnership to publicize that these areas are opportunity zones and there are advantages for developers and investors.

Mayor Mahoney asked if there could be a goal set for the number of low income housing units we would like to see over the next few years. Jim Gilmour said that we could look back at the last housing study that was done. He said that with the cutback in State funding for low income housing units, we need to look at other things we can do in our policy. Mayor Mahoney said that with the upcoming legislative session, we should be putting together what Fargo needs to assist in the development of low income housing.

Continued Discussion on the Review of the Apartment Incentive Policy

Jim Gilmour gave a brief history of how the current policy came to be, dating back to 1999. He said that most of the downtown housing units were lower income and there was no middle or higher end housing units. Gilmour said the goal then was mostly to get more housing units downtown. He said the policy was that new housing units downtown would get a 100% improvement exemption for 5 years and a 75% improvement exemption for 5 years. He said there was no pro-forma or "but-for" test. Gilmour said that a proposed policy for market rate apartments would be a standard 100% exemption for five years, similar to the Renaissance Zone exemption, with no "but-for" test required. If the development needed more than that, there would be a "but-for" test required. He said that we would go up to 15 years if the test showed that it was needed. Mr. Gilmour said that some suggestions from developers on the scaling of the decreasing exemption amount over time, was that it be more gradual. He suggested an exemption scale of 100% for 4 years and then for the remaining 11 years, scaling the exemption off in 10% increments per year (90%, 80%, 70%,...). He said with a scale like that, tax entities would begin to get money sooner. Mr. Gilmour said that he compared the taxes per year, per apartment unit, in a couple of downtown projects and they were about \$1,700/per year/per unit. He said other projects outside of downtown, out on 12th Avenue north were \$1,300. Commissioner Piepkorn said that he really likes the idea of the more gradual phase-out of the exemption because it makes it a little easier to plan.

Jim Gilmour addressed the policy for low income housing units. Mr. Gilmour suggests that the policy would include 15 year, \$0 payment and require a "but-for" test and the determination of the incentive would be based on need. He spoke of the two different types of low income housing tax credits; 9% credit and 4% credit. He said that they have not really figured out how to use the 4% credit to make them work. He said that we may need to allow

higher density than what can be built now. Gilmour said that statute has addressed the non-profit projects by providing for a payment in lieu of tax based on actual income and expenses.

Jim Gilmour presented and described the proposed changes to the map of the PILOT incentive area for downtown. He said that he feels we should be able to approve the downtown and housing incentive policy changes as well as the map changes now and the TIF policy changes later.

Commissioner Piepkorn asked if there can be additional blocks added for another Renaissance Zone. Jim Gilmour said that he would have to review the statute but, he believes that several satellite blocks can be added to the existing plan. Mr. Gilmour said that development could also be done as effectively with Tax Increment Financing.

Jim Gilmour said that the Renaissance Zone and Opportunity Zones are currently layers on the City of Fargo GIS maps.


Robert Wilson said that the follow-up and dialogue with the County Commission will be critical. He said that there is a demarcation in the minds of a number of commissioners for going above the 10-year mark. Commissioner Piepkorn said that we need to have a joint meeting with them to discuss these things. Mr. Wilson said that the County Commission did go along with a West Fargo incentive for longer than 10 years after long dialogue. Mayor Mahoney said that we should have a brown bag session with graphs and charts. Commissioner Piepkorn said we should also invite developers and the City of West Fargo.

The meeting adjourned at 1:39p.m., Tuesday, May 22, 2018.



MEMORANDUM

TO: TAX EXEMPT REVIEW COMMITTEE

FROM: JIM GILMOUR, STRATEGIC PLANNING DIRECTOR 

DATE: JUNE 19, 2018

RE: TAX INCREMENT FINANCING AND PILOT POLICIES

Attached for your review is information on the update of the Tax Increment Financing (TIF) policy, proposed revisions to the PILOT policy for housing, and an existing PILOT policy for housing in the University Mixed-Use (UMU) zoning district.

The TIF policy includes three documents.

- First, there is a summary of changes. Please be sure to review policies #17 and #18 as those were added after our discussion at the last meeting. The policy for a minimum increase of \$25,000 in property taxes was eliminated to allow for consideration of smaller projects.
- Second, the new policy is included for your review. Please review the Evaluation Criteria as this was added since our last meeting.
- Third, there is a redline showing the changes from the previous policy.

There is a document with proposed changes to the PILOT policy for market rate downtown housing projects, and for lower income housing projects throughout the city.

I have also attached a current policy for the use of PILOT incentives for housing projects in the University Mixed-Use zoning district. It's been three years since one of these projects has been approved, but I expect an application soon. I wanted you to review this policy since we are reviewing the TIF and Downtown PILOT policies at this time.

Let me know if you have any questions or concerns.

Summary of Changes – Fargo TIF Policy

New Format (Recommended by Public Financial Management)

1. Policy Purpose
2. Objectives of Tax Increment Financing
3. Designated Redevelopment Areas (City added)
4. City of Fargo Policies for the Use of TIF
5. Application Process
6. Evaluation Criteria

Policy #1 and #2 – Explains the difference between a TIF with blight and one with only commercial/industrial development.

Policy #3 – This policy is now specific to developer assistance

Policy #4 – This policy identifies uses when the time period is beyond 15 years.

Policy #5 – Relocation – minor edits.

Policy #6 – Allows land acquisition to be more than 50% of costs, to add flexibility.

Policy #7 – Minor edits.

Policy #8 – Reduces maximum TIF assistance for project from 15% to 10%. Adds developer equity policy. Some exemptions for public benefits.

Policy #9 – Policy on P3 projects.

Policy #10 – Minor edits.

Policy #11 – Minor edits.

Policy #12 – Set fees by schedule rather than including in policy.

Policy #13 – Application form no longer attached to policy.

Policy #14 – Minor edits.

Policy #15 – Interest rates set by schedule.

Policy #16 – New policy to require the developer to be in “good standing”. No code issues and taxes current.

Policy that called for a minimum increase in tax revenue of \$25,000 a year eliminated to allow for smaller scale renewal plans.

Policy # 17 – Policy that allows for the City to review financial records of a project after 3 to 5 years, and reduce the level of assistance if the project had a much higher than expected rate of return.

Policy # 18 – Policy to encourage the creation of replacement low density housing when a higher density housing redevelopment project replaces lower density housing.

Process has been updated.

1. Policy Purpose

The purpose of this policy is to establish the City of Fargo's (City) position relating to the use of Tax Increment Financing (TIF) for private development above and beyond the requirements and limitations set forth by State Law. This policy shall be used as a guide in the processing and review of applications requesting tax increment assistance. The fundamental purpose of TIF in Fargo is to encourage desirable development or redevelopment that would not otherwise occur but for the assistance provided through TIF.

The City of Fargo is granted the power to utilize TIF by the Tax Increment Financing Act. It is the intent of the City to provide the minimum amount of TIF at the shortest term required for the project to proceed. The City reserves the right to approve or reject projects on a case-by-case basis, taking into consideration established policies, project criteria, and demand on city services in relation to the potential benefits from the project. Meeting policy criteria does not guarantee the award of TIF to the project. Approval or denial of one project is not intended to set precedent for approval or denial of another project.

This policy will be effective upon adoption by the City Commission, and it is the intent of the City Commission that this policy

2. Objectives of Tax Increment Financing

As a matter of adopted policy, the City will consider using TIF to assist development projects to achieve one or more of the "City Objectives" listed in the evaluation criteria section of this policy.

3. Designated Redevelopment Areas

In order to maximize the ability of the City to meet its redevelopment goals, the City may designate redevelopment areas. In order to designate a redevelopment area, a plan for the redevelopment area will:

- Document existing conditions;
- Describe the plan for the future, and;
- Outline activities needed to implement the plan

Designation of the Redevelopment may occur in two ways.

- The designation may be at the request of a property owner and/or developer that has a proposed redevelopment plan.
- The designation may be initiated by the City Commission for an area where the City would like to see development, and then work with property owners within the TIF district to implement projects consistent with the development plan.

4. City of Fargo Policies for the Use of TIF

These policies are to provide guidance to developers who are considering making a request for TIF funding, and to guide City Commission decisions in the development of renewal plans and development agreements. When renewal plans are initiated by the City, not all of these policies are applicable to those plans.

Policy #1

When undertaking a redevelopment project on a defined parcel(s) of land, slum or blighted conditions on a portion of the property or properties should exist. A City Commission declaration of underdeveloped property for the purposes of using TIF assistance will outline activities needed to implement the redevelopment.

Policy #2

When undertaking a redevelopment or development project on an underdeveloped parcel(s) of land, a TIF exemption or TIF revenue note will be the preferred method of providing assistance directly to a developer. Exceptions to this rule will be considered by the City Commission and be based on reasons that can be documented by the developer and confirmed after review by the City's bond consultant.

Policy #3

When undertaking a redevelopment or development project using a TIF exemption or TIF revenue note, the length of the term of this note is limited to 15 years.

Policy #4

The length of a TIF may extend beyond 15 years when used for city infrastructure, public parking, or community development efforts, such as, affordable housing, replacement housing, public space, and public art.

Policy #5

To the extent required by state, federal, or local law or regulations, a relocation plan should be provided in the development or renewal plan. When undertaking a redevelopment project on underdeveloped parcel(s) of land, relocation payments to tenants of businesses or residential uses must be made. These relocation payments must follow state and federal guidelines, as applicable, for assistance.

Policy #6

Land acquisition or land write-down costs must meet the requirements outlined as follows:

- The eligible costs recouped to the developer shall be evaluated in a case-by-case basis, but the maximum should be the lesser of:

- The total acquisition cost for the property, provided the acquisition cost is no more than 150% of the assessor's market value for the property.
- The difference between what was paid by the developer for the property less the assessor's market value for the land (as opposed to land and buildings).

Policy #7

With respect to non-blighted, or non-slum development or redevelopment, eligible costs, as stated in state law, are limited to the following:

- A. The cost of acquiring, or the market value, of all or part of the industrial or commercial property;
- B. Costs of demolition, removal, or alteration of buildings and improvements on the industrial or commercial property, including the cost of clearing and grading land;
- C. Costs of installation, construction, or reconstruction of streets, utilities, parks, and other public works or improvements necessary for carrying out the development or renewal plan; and
- D. All interest and redemption premiums paid on bonds, notes, or other obligations issued by the municipality to provide funds for the payment of eligible public costs of development.

Policy #8

TIF assistance to the developer should be limited to a percentage of up to 10% of hard capital costs of development including the costs of acquisition. In other words, The TIF assistance will equal or be less than 10% of hard construction costs including the land acquisition costs, hard capital costs excluding the costs of professional fees, developer fees, furniture and fixtures, interest, profit, and other soft costs. In addition, the developer must provide at least 10% of total capital costs as developer's equity in the project.

The limit of 10% may be exceeded if the project will include a community development purpose, for example, accepting lower rates of return to provide affordable housing, or other public benefits. Examples:

- Direct investment in public or free publicly accessible private spaces.
- Direct and ongoing investment in public art.
- Development of affordable or replacement housing.
- City equity treated equally to other investor equity with City returns to be used by City for community development purpose, which should be used in the nearby neighborhoods

Policy #9

If funds are used for a City lead project, a public-private partnership, or for public benefit, the total TIF costs may exceed the limits stated in policy #8, including but not limited to the following:

- If funds are going to pay for public parking, public infrastructure, or other public investments such as rehabilitation or provision of affordable or replacement housing in the nearby neighborhoods or areas, or other public improvement not directly related to the project.
- Affordability provided housing, ideally in conjunction with the use of 4% or 9% Low Income Housing Tax Credits

Policy #10 - ROI Analysis, Reasonable Assistance Requirement

When undertaking any TIF project that provides assistance to a developer, the due diligence procedures in determining the feasibility and level of public assistance must be reviewed by the City's financial consultant in conjunction with the City's staff. The financial consultant must use accepted public financing procedures in determining project feasibility and levels of public assistance. Particularly when public assistance includes substantial reimbursement to the developer costs of acquisition or land write-down amounts, review of the level of public assistance may include an estimate of the return on investment anticipated by the project and analysis as to whether the expected return on investment, including the public assistance, is within reason.

Policy #11 - Projection of Future Increments

For purposes of projecting future increments to be generated, an assumed maximum increase in valuation will be limited to two percent (2%) per annum. The exact assumptions made for projections is subject to approval by the City on a case-by-case basis.

Policy #12

When undertaking any TIF project within the City of Fargo, a non-refundable administrative fee set by schedule, must be paid by the developer after final approval of the City Commission and prior to or at the closing of the transaction. These fees are to reimburse the City for costs expended by staff and consultants to determine the feasibility, level of public assistance, and the preliminary costs of project development by the City. Other City costs such as engineering, bond carrying costs, and annual administration will be in addition to the administrative fee if warranted. To the extent that TIF assistance exceeds \$2 million the administrative fee on said excess may be negotiated to a sum of less than 5%. A non-refundable deposit, set by schedule, shall be paid to the City along with an initial application for a TIF project. The City may require additional sums to be deposited from time to time, to defray such costs initially borne by the City. Such sums may be recouped by the developer as eligible costs as may be agreed between the City and the developer and as allowed by the urban renewal law (N.D.C.C. Chapter 40-58). The non-refundable deposit and any other additional sums paid to the City will be offset against and credited towards the administrative fee.

Policy #13

Applications for TIF assistance are to be submitted to the Department of Planning and Development. The application must include a description of the project and an estimate of the level of assistance needed to proceed with the project. A checklist and application will be available from the Department of Planning and Development.

Policy #14

The redevelopment should be compatible with long-term City redevelopment plans, and create a high quality redevelopment that will have a positive impact on the tax base and the surrounding area. The developer's agreement should include design standards to ensure that the development will be compatible with the long-term plans for the area.

Policy #15

The maximum interest rates allowed to be recouped as eligible costs will be set by schedule. The City Finance Director in consultation with the City's financial consultant will recommend the actual rate.

Policy #16 – Good standing

Applicants for TIF assistance must be in good standing with the City. Good standing means current in property taxes, utility fees, and no history of code violations

Policy #17 – Post Project Review

Developers' agreements will include terms that require documentation of TIF eligible costs, and allow for an audit at the discretion of the City. On large scale projects, the City may require a review of the financial performance of the project in the future, and if the project has a significantly higher than expected return on investment, the amount of the TIF assistance may be reduced.

Policy #18 – Renewal Plans may include terms that allow for the city to use a portion of the TIF revenue for the preservation or replacement lower density housing in neighborhoods adjacent to higher density housing projects. The housing plan would be outlined in the Renewal Plan.

Application & Review Process for Developer Request for TIF Assistance

1. Applicant submits letter requesting TIF support for a project. The letter shall describe the project and shall be submitted to the City Commission for preliminary review and direction authorizing staff to move forward with the application process. City Commission approval is required to proceed to application review and plan development.

2. Applicant submits the completed application along with all application fees.
3. City Staff reviews the application and completes the Application Review Worksheet. The application and supporting documentation will be submitted to the City's financial consultant for due diligence consideration. Allow at least three (3) weeks for due diligence review and consideration [upon submittal of a complete and approved application].
 - a. As part of the application review, City staff are authorized to inquire as to the character, reputation, fitness of the applicant to engage in the project and to bear the responsibilities entailed therein, and any other pertinent information. Such inquiries may include background checks on the applicant and principles of the applicant as the case may be.
 - b. With respect to certain proprietary, commercial, and financial information that is submitted as part of the application, and review process, said information may be exempt from the North Dakota Open Records Law, Chapter 44-04, N.D.C.C., and to the extent that N.D.C.C. 44-04-18.4 allows, it is the City's intention to maintain confidentiality of such information when requested by the applicant.
 - c. In advance of submission to the City of such confidential records or information, the City and Applicant will make appropriate arrangements for the handling of such information and records to protect the confidentiality thereof.
4. The results of the financial review will be reviewed by the Finance Department and the Finance Committee. The Finance Committee may recommend a specific level of assistance based on the review of the financial advisor.
5. Results of the reviews are submitted to the Renaissance Zone and/or the Tax Exempt Review Committee, for recommendation.
6. The renewal plan or development plan along with all necessary notices, resolutions, and certificates are prepared by City staff and/or consultants.
7. Notices mailed and published as required.
8. Public hearing(s) on the proposed project are held.
9. The City Commission grants final approval or denial of the plans and development agreements.

Application & Review Process for City Initiated Renewal Plans and TIF Districts

1. Renewal Plans and TIF Districts may be proposed by any City Commissioner, the Planning Commission, the City Administration, or the Planning Department. The proposal shall include a boundary, a description of existing conditions, and general plan for development.
2. City Commission directs the preparation of the renewal plan.
3. City Staff prepares a plan for future development.
4. The renewal plan or development plan along with all necessary notices, resolutions, and certificates are prepared by City staff and/or consultants.
5. Notices mailed and published as required.

6. Public hearing(s) on the proposed project are held.
7. The City Commission grants final approval or denial of the plans and tax increment financing district.

5. Evaluation Criteria for Assistance to Developers

Evaluation Criteria

The City of Fargo has established multiple objectives that should be met to qualify for Tax Increment Financing. Since there are different types of developments, the objectives for each of the development types is different. The three types of projects anticipated are:

1. Housing
2. Commercial or Industrial
3. Downtown or Mixed Use

Housing projects should meet at least 5 of the 7 objectives listed below.

- The housing development is served by existing infrastructure of the development or will upgrade the infrastructure to meet the needs of the development.
- The housing is compatible with the adjacent area or the future land use in the area.
- Sidewalks and bike trails connect to the housing development. A transit stop is within 4 blocks of the development.
- The project has a high quality design, exceeding the requirements of the Land Development Code.
- The project includes affordable housing, workforce housing, or includes a plan to replace some of the housing eliminated by the development
- The housing project eliminates blighted conditions or substandard buildings.
- The project will create significant growth in the tax base on the site.

Commercial projects should meet at least 5 of the 8 objectives listed below.

- The development is served by existing infrastructure of the development or will upgrade the infrastructure to meet the needs of the development.
- Sidewalks and bike trails connect to the development. A transit stop is within 4 blocks of the development.
- The commercial/industrial development is expected to contain some primary sector business or jobs.
- The development will include some public spaces or public art.
- The project cleans up brownfield conditions.
- The project eliminates blighted conditions or substandard buildings.
- The project will create significant growth in the tax base on the site.
- The project is expected to encourage additional development on adjacent sites.

Downtown or Mixed Use (Mixed use is commercial/housing in the same development.) Projects should meet at least 7 of the 11 objectives listed below.

- The development is served by existing infrastructure of the development or will upgrade the infrastructure to meet the needs of the development.
- The project is compatible with the adjacent area or the future land use in the area.
- Sidewalks and bike trails connect to the development. A transit stop is within 4 blocks of the development
- There is an adequate parking and access plan, preferably with shared parking by the different land uses.
- The development is expected to contain some primary sector business or jobs.
- The development will include some public spaces or public art.
- The project cleans up brownfield conditions.
- The project eliminates blighted conditions or substandard buildings, or replaces surface parking.
- The project will create significant growth in the tax base on the site.
- The project is expected to encourage additional development on adjacent sites.
- The project contains businesses that will provide needed services or goods used by adjacent land uses.

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APPROVED BY THE BOARD
OF CITY COMMISSIONERS
9-10-az

~~City of Fargo~~

~~North Dakota~~

1. Tax Increment Financing Policy & Application Purpose

Adopted:

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~~I. POLICY PURPOSE~~

~~For the purposes of this document, the term "City" shall include the Fargo City Commission.~~

The purpose of this policy is to establish the City of ~~Fargo's~~Fargo's (City) position relating to the use of Tax Increment Financing (TIF)~~}]~~ for private development above and beyond the requirements and limitations set forth by State Law. This policy shall be used as a guide in the processing and review of applications requesting tax increment assistance. The fundamental purpose of ~~tax increment financing~~TIF in Fargo is to encourage desirable development or redevelopment that would not otherwise occur but for the assistance provided through TIF.

The City of Fargo is granted the power to utilize TIF by the Tax Increment Financing Act,~~as amended~~. It is the intent of the City to provide the minimum amount of TIF at the shortest term required for the project to proceed. The City reserves the right to approve or reject projects on a ~~case-by-case~~ basis, taking into consideration established policies, project criteria, and demand on city services in relation to the potential benefits from the project. Meeting policy criteria does not guarantee the award of TIF to the project. Approval or denial of one project is not intended to set precedent for approval or denial of another project.

~~II. This~~ **OBJECTIVES OF TAX INCREMENT FINANCING**
policy will be effective upon adoption by the City Commission, and it is the intent of the City Commission that this policy

2. Objectives of Tax Increment Financing

As a matter of adopted policy, the City will consider using TIF to assist ~~private~~ development projects to achieve one or more of the ~~following objectives~~:

~~To create opportunities for affordable housing.~~

▪ ~~To encourage additional unsubsidized private development~~ "City Objectives" listed in the area, either directly or indirectly through "spin-off" development evaluation criteria section of this policy.

▪ ~~To facilitate the development process and to achieve development on sites which would not be developed without TIF assistance.~~

3. To remove blight and/or encourage Designated Redevelopment Areas

▪ ~~In order to maximize the ability of the City to meet its redevelopment of commercial and industrial areas in the City that result in high quality goals, the City may designate redevelopment and private reinvestment.~~

■ ~~To offset increased costs of areas. In order to designate a redevelopment (i.e. contaminated site clean up) over and above the costs normally incurred in development area, a plan for the redevelopment area will:~~

■ ~~To contribute to the implementation of other public policies, as adopted by the City from time to time, such as the promotion of quality urban or architectural design, energy conservation, and decreasing capital and/or operating costs of local government.~~

- To assist development of underdeveloped commercial or industrial Document existing conditions;
- Describe the plan for the future, and;
- Outline activities needed to implement the plan

Designation of the Redevelopment may occur in two ways.

- The designation may be at the request of a property owner and/or developer that has a proposed redevelopment plan.
- The designation may be initiated by the City Commission for an area where the City would like to see development, and then work with property owners within the TIF district to implement projects consistent with the development plan.

- 4. City been unoccupied for a significant period of time. Fargo Policies for the Use of TIF

III. POLICIES FOR THE USE OF TIF

These policies are to provide guidance to developers who are considering making a request for TIF funding, and to guide City Commission decisions in the development of renewal plans and development agreements. When renewal plans are initiated by the City, not all of these policies are applicable to those plans.

Policy #1

In areas of the City other than downtown, when When undertaking a redevelopment project (as contrasted from underdeveloped commercial or industrial property) on a defined parcel(s) of land, slum or blighted conditions on a portion of the property or properties must should exist. A City Commission declaration of underdeveloped property for the purposes of using TIF assistance must also recognize that a slum and/or blighted condition also exists in order for the city to participate in redevelopment efforts will outline activities needed to implement the redevelopment.

Policy #2

In areas of the City other than downtown, when When undertaking a redevelopment or development project on an under-developed underdeveloped parcel(s) of land, a TIF exemption or a TIF revenue note will be the preferred method of financing providing assistance directly to a developer. Exceptions to this rule must will be accepted considered by the City Commission and be based on reasons that can be documented by the developer and confirmed after review by the City's City's bond consultant.

Policy #3

When undertaking a redevelopment or development project using a TIF exemption or TIF revenue note, the length of the term of this financing method will be limited to 15 years or less as stated

~~in NDCC 40-58. The only exception to this policy will be if this exemption is integrated with other public exemptions (Renaissance Zone exemption) or when tax increment is utilized to pay special assessments, in which case the repayment period for such special improvement districts is likely to exceed~~note is limited to 15 years.

Policy_#4

The length of a TIF may extend beyond 15 years when used for city infrastructure, public parking, or community development efforts, such as, affordable housing, replacement housing, public space, and public art.

Policy #5

To the extent required by state, federal, or local law or regulations, a relocation plan should be provided in the development or renewal plan. When undertaking a redevelopment project on ~~an under-developed~~underdeveloped parcel(s) of land, relocation payments to tenants of businesses or residential uses must be made. These relocation payments ~~should~~must follow state ~~and~~ federal guidelines, as applicable, for assistance ~~(E.g. NDCC Ch. 54-01.1 and USC);.~~

Policy #5

~~When undertaking any TIF project within the City of Fargo the cost of land acquisition or land write-down that is part of public assistance requested for a project cannot exceed 50% of the total amount of the public assistance provided~~

by the city.

Policy #6

Land acquisition or land write-down costs must meet the requirements outlined as follows:

- The eligible costs recouped to the developer shall be evaluated in a case-by-case basis, but the maximum should be ~~limited to~~ the lesser of:

~~(b)~~ (c) ~~the~~ The total acquisition cost for the property, provided ~~that~~ the acquisition cost is no more than 150% of the ~~assessor's~~ assessor's market value for the property;

~~(d)~~ 50% of the total public assistance; and,

~~(f)~~ (e) The difference between what was paid by the developer for the property ~~less~~ less the ~~assessor's~~ assessor's market value for the land (as opposed to land and buildings).

Policy #7

With respect to non-blighted ~~or~~ or non-slum development or redevelopment, eligible costs, as stated in ~~the urban renewal~~ state law ~~(N.D.C.C. §40-58-20.1)~~, are limited to the following:

~~a.~~ A. The cost of acquiring, or the market value, of all or ~~a~~ part of the industrial or commercial property;

~~e.~~ B. Costs of demolition, removal, or alteration of buildings and improvements on the industrial or commercial property, including the cost of clearing and grading land;

~~d.~~ C. Costs of installation, construction, or reconstruction of streets, utilities, parks, and other public works or improvements necessary for carrying out the development or renewal plan; and

~~f.~~ D. All interest and redemption premiums paid on bonds, notes, or other obligations issued by the municipality to provide funds for the payment of eligible public costs of development.

Policy #68

TIF assistance to the developer should be limited to a percentage of up to ~~45~~ 10% of hard capital costs of development including the costs of acquisition. In other words, ~~the~~ The TIF assistance will equal or be less than ~~45~~ 10% of hard construction costs, ~~plus including~~ the land acquisition costs, ~~and hard capital costs~~ excluding the costs of professional fees, developer fees, furniture and fixtures, interest, profit, and other soft costs. In addition, ~~Developer~~ the developer must provide at least 10% of total capital costs as ~~Developer's~~ developer's equity in the project.

The limit of 10% may be exceeded if the project will include a community development purpose, for example, accepting lower rates of return to provide affordable housing, or other public benefits.
Examples:

- Direct investment in public or free publicly accessible private spaces.
- Direct and ongoing investment in public art.
- Development of affordable or replacement housing.
- City equity treated equally to other investor equity with City returns to be used by City for community development purpose, which should be used in the nearby neighborhoods

Policy ~~#7~~ #9

If funds are used for a City lead project, a public-private partnership, or for public benefit, the total TIF costs may exceed the limits stated in policy #8, including but not limited to the following:

- If funds are going to pay for public parking, public infrastructure, or other public investments such as rehabilitation or provision of affordable or replacement housing in the nearby neighborhoods or areas, or other public improvement not directly related to the project.
- Affordability provided housing, ideally in conjunction with the use of 4% or 9% Low Income Housing Tax Credits

Policy #10 - ROI Analysis, Reasonable Assistance Requirement

When undertaking any TIF project ~~within the City of Fargo~~ that provides assistance to a developer, the due diligence procedures in determining the feasibility and level of public assistance must be reviewed by the ~~City's~~ City's financial consultant in conjunction with the ~~City's~~ City's staff. The financial consultant must use accepted public financing procedures in determining project feasibility and levels of public assistance. Particularly when public assistance includes substantial reimbursement to the developer ~~of~~ costs of

acquisition or land write-down amounts, review of the level of public assistance may include an estimate of the return on investment anticipated by the project and analysis as to whether the expected return on investment, including the public assistance, is within reason.

Policy #11 - Projection of Future Increments

For purposes of projecting future increments to be generated, an assumed maximum increase in valuation will be limited to two percent (2%) per annum, ~~which any such increase and its term.~~ The exact assumptions made for projections is subject to approval by the City on a case-by-case basis.

Policy ~~#8~~ #12

When undertaking any TIF project within the City of Fargo, a non-refundable administrative fee ~~equal to 5% of the total cost of the public assistance~~ set by schedule, must be paid by the developer after final approval ~~by~~ of the City Commission and prior to or at the closing of the transaction. These fees are to reimburse the City for costs expended by staff and consultants to determine the feasibility, level of public assistance, and the preliminary costs of project development by the City. Other City costs such as engineering, bond carrying costs, and annual ~~special assessment~~ administration will be in addition to ~~this~~ the administrative fee if warranted. To the extent that TIF assistance exceeds \$2 million ~~or more~~, the administrative fee on said excess may be negotiated to a sum of less than 5%, ~~as may be appropriate.~~ A non-refundable deposit ~~of \$5,000, set by schedule~~, shall be paid to the City along with an initial application for a TIF project. The City, ~~upon approval of the Finance Committee~~, may require additional sums to be deposited, from time to time, to defray such costs initially borne by the City. Such sums may be recouped by the developer as eligible costs as may be agreed between the City and the developer and as allowed by the urban renewal law (N.D.C.C. Chapter 40--58). The ~~\$5,000 non-refundable~~ deposit and any other additional sums paid to the City will be offset against and ~~accrued toward~~ 5% credited towards the administrative fee.

Policy ~~#9~~ #13

Applications for TIF ~~Assistance~~ assistance are to be submitted to the Department of Planning and Development. The application must include a description of the project and an estimate of the level of assistance needed to proceed with the project. ~~[A checklist and application form are attached.] The application will be reviewed by the City Commission (or Community Development Committee as to the development features and Finance committee as to financial features) to determine if city staff, city financial advisors, and city attorney should proceed with a development plan, review of the project pro-forma, and draft of a developer's agreement. A checklist and application will be available from the Department of Planning and Development.~~

Policy ~~#10~~ #14

The redevelopment should be compatible with long-term City redevelopment plans, and create a high quality ~~development~~redevelopment that will have a positive impact on the tax base and the surrounding area. The ~~developers'~~developer's agreement should include design ~~standard~~standards to ~~insure~~ensure that the development will be compatible with the long-term plans for the area.

Policy #~~11~~15

~~Interest~~The maximum interest rates allowed to be recouped as eligible costs ~~under N.D.C.C. §40-58-20 and 20.1 shall be one percent (1%) over the municipal bond indexed rate for taxable municipal bonds or over such indexed rate for tax-exempt municipal bonds, as appropriate, as identified by the~~ will be set by schedule. The City Finance Director, ~~with in~~ in consultation with the City's City's financial ~~advisor as may be needed~~ consultant will recommend the actual rate.

~~IV.~~ PROJECT QUALIFICATIONS

~~All~~ Policy #16 – Good standing

Applicants for TIF projects considered by the City of Fargo assistance must meet each of the following requirements:

a. ~~To be eligible for TIF, a project shall result in a minimum increase of \$25,000 per year~~ be in good standing with the City. Good standing means current in property taxes, ~~or, if not, the developer shall establish that other goals and objectives of the project warrant approval.~~ utility fees, and no history of code violations

b. ~~The project shall meet at least one of the objectives set forth in Section II and satisfy all the provisions set forth in Section III of this document.~~

c. ~~The developer shall demonstrate that the project is not financially feasible but for the use of TIF. The projected internal rate of return as determined by the City's financial advisor based upon information provided by developer must be no more than a percentage that provides a reasonable rate of return of a particular project.~~

d. ~~The project must be consistent with the City's Comprehensive Plan, Land Use Plan, and Zoning Ordinances.~~

~~— The project shall serve at least two of the following public purposes:~~

- ~~• Increase of tax base.~~
- ~~• Enhancement or diversification of the city's economic base.~~
- ~~• Industrial development that will spur additional private investment in the area.~~

~~Removal of blight or the rehabilitation of a high profile or priority site.~~

~~APPLICATION PROCESS~~ Policy #17 – Post Project Review

Developers' agreements will include terms that require documentation of TIF eligible costs, and allow for an audit at the discretion of the City. On large scale projects, the City may require a

review of the financial performance of the project in the future, and if the project has a significantly higher than expected return on investment, the amount of the TIF assistance may be reduced.

Policy #18 – Renewal Plans may include terms that allow for the city to use a portion of the TIF revenue for the preservation or replacement lower density housing in neighborhoods adjacent to higher density housing projects. The housing plan would be outlined in the Renewal Plan.

Application & Review Process for Developer Request for TIF Assistance

V.

1. Applicant submits letter requesting TIF support for a project. The letter shall describe the project and shall be submitted to the City Commission for preliminary review and direction authorizing ~~the~~ staff to move forward with the application process. City Commission approval is required to proceed to application review and plan development.

~~3-2.~~ Applicant submits the completed application along with all application fees.
(See ~~Policy #7 – \$5,000 non-refundable deposit.~~)

~~5-3.~~ City ~~staff~~Staff reviews the application and completes the Application Review Worksheet. The application and supporting documentation will be submitted to the ~~City's~~City's financial ~~advisor~~consultant for due diligence consideration. ~~At~~Allow at least three (3) weeks ~~should be allowed~~ for due diligence review and consideration [upon submittal of a complete and approved application-].

~~B-a.~~ As part of the application review, ~~the Director of Planning and Development shall be~~City staff are authorized to inquire as to the character, reputation, fitness of the applicant to engage in the project and to bear the responsibilities entailed therein, and any other pertinent information. Such ~~inquiry~~inquiries may include background checks on the applicant and principles of the applicant, as the case may be.

~~D-b.~~ With respect to certain proprietary, commercial, and financial information that is submitted as part of the application, and review process, said information may be exempt from the North Dakota Open Records ~~law~~Law, Chapter 44-04, N.D.C.C., and to the extent that N.D.C.C. §44-04-18.4 allows, it is the ~~City's~~City's intention to maintain confidentiality of such information when requested by the applicant. ~~Section 44-04-18.4, N.D.C.C., provides:~~

~~"Confidentiality of trade secret, proprietary, commercial, and financial information.~~

~~—Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.~~

~~1. "Trade secret" includes:~~

~~—A computer software program and components of a computer software program which are subject to a copyright or a patent, and any formula, pattern, compilation, program, device, method, technique, or process supplied to any state agency, institution, department, or board which is the subject of efforts by the supplying person or organization to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons or organizations that might obtain economic value from its disclosure or use; and~~

~~—A discovery or innovation which is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, method, technique, or process supplied to or prepared by any public entity which is the subject of efforts by the supplying or preparing entity, person, business, or industry to maintain its secrecy and that may derive~~

~~independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, any person who might obtain economic value from its disclosure or use.~~

~~2. "Proprietary information" includes information received from a sponsor of research conducted by a public entity, as well as any discovery or innovation generated by that research, technical, financial, and marketing information and other documents related to the commercialization, and any other discovery or innovation produced by the public entity which an employee or the entity intends to commercialize.~~

~~3. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.~~

~~3. Unless made confidential under subsection 1, the following economic development records and information are exempt~~

~~— Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, or expand within this state. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.~~

~~— Trade secrets and commercial or financial information received from a person, business, or industry that is interested in or is applying for or receiving financing or technical assistance, or other forms of business assistance.~~

~~3. Unless made confidential under subsection 1 or made exempt under subsection 5, bids or proposals received by a public entity in response to a request for proposals by the public entity are exempt until such time all of the proposals have been received and opened by the public entity or until such time that all oral presentations regarding the proposals, if any, have been heard by the public entity. Records included with any bid or proposal naming and generally describing the entity submitting the proposal shall be open."~~

c. In advance of ~~the~~ submission to the City of such confidential records or information, the City and Applicant will make appropriate arrangements for the handling of such information and records to protect the confidentiality thereof. ~~4.~~

4. The results of the financial review will be reviewed by the Finance Department and the Finance Committee. The Finance Committee may recommend a specific level of assistance based on the review of the financial advisor.

5. Results of the Worksheet reviews are submitted to the appropriate Finance Renaissance Zone and/or the Tax Exempt Review Committee, for its recommendation ~~and City Commission for preliminary approval of the proposal.~~

The

6. ~~If preliminary approval is granted, the~~ renewal plan or development plan, ~~as the case may be,~~ along with all necessary notices, resolutions, and certificates are prepared by City staff and/or consultants.
7. Notices ~~are~~mailed and published as required.
8. Public hearing(s) on the proposed project, ~~as may be required by law,~~ are held.
9. The City Commission grants final approval or denial of the ~~proposal, plans and development agreements.~~

Application & Review Process for City Initiated Renewal Plans and TIF Districts

1. Renewal Plans and TIF Districts may be proposed by any City Commissioner, the Planning Commission, the City Administration, or the Planning Department. The proposal shall include a boundary, a description of existing conditions, and general plan for development.
2. City Commission directs the preparation of the renewal plan.
3. City Staff prepares a plan for future development.
4. The renewal plan or development plan along with all necessary notices, resolutions, and certificates are prepared by City staff and/or consultants.
5. Notices mailed and published as required.
6. Public hearing(s) on the proposed project are held.
7. The City Commission grants final approval or denial of the plans and tax increment financing district.

5. Evaluation Criteria for Assistance to Developers

Evaluation Criteria

The City of Fargo has established multiple objectives that should be met to qualify for Tax Increment Financing. Since there are different types of developments, the objectives for each of the development types is different. The three types of projects anticipated are:

1. Housing
2. Commercial or Industrial
3. Downtown or Mixed Use

Housing projects should meet at least 5 of the 7 objectives listed below.

- o The housing development is served by existing infrastructure of the development or will upgrade the infrastrure to meet the needs of the development.
- o The housing is compatible with the adjacent area or the future land use in the area.
- o Sidewalks and bike trails connect to the housing development. A transit stop is with within 4 blocks of the development.

- The project has a high quality design, exceeding the requirements of the Land Development Code.
- The project includes affordable housing, workforce housing, or includes a plan to replace some of the housing eliminated by the development
- The housing project eliminates blighted conditions or substandard buildings.
- The project will create significant growth in the tax base on the site.

Commercial projects should meet at least 5 of the 8 objectives listed below.

- The development is served by existing infrastructure of the development or will upgrade the infrastrure to meet the needs of the development.
- Sidewalks and bike trails connect to the development. A transit stop is with within 4 blocks of the development.
- The commercial/industrial development is expected to contain some primary sector business or jobs.
- The development will include some public spaces or public art.
- The project cleans up brownfield conditions.
- The project eliminates blighted conditions or substandard buildings.
- The project will create significant growth in the tax base on the site.
- The project is expected to encourage additional development on adjacent sites.

Downtown or Mixed Use (Mixed use is commercial/housing in the same development.) Projects should meet at least 7 of the 11 objectives listed below.

- The development is served by existing infrastructure of the development or will upgrade the infrastructure to meet the needs of the development.
- The project is compatible with the adjacent area or the future land use in the area.
- Sidewalks and bike trails connect to the development. A transit stop is with within 4 blocks of the development
- There is an adequate parking and access plan, preferably with shared parking by the different land uses.
- The development is expected to contain some primary sector business or jobs.
- The development will include some public spaces or public art.
- The project cleans up brownfield conditions.
- The project eliminates blighted conditions or substandard buildings, or replaces surface parking.
- The project will create significant growth in the tax base on the site.
- The project is expected to encourage additional development on adjacent sites.
- The project contains businesses that will provide needed services or goods used by adjacent land uses.

New Apartment Buildings within the Downtown Housing Incentive Area

PILOT Years % of Building Exempt Equivalent

Years 1 through 5 - 100% exempt on the increased value of the improvements.

Market Rate Apartments: Years 6 through 15 – The percentage exempt will be based on a financial review and “but for” test. The amount exempt will be no more than 90% of the improved value.

Lower Income Apartments: Years 6 through 20 – The percentage of the exemption may be up to 100% of the value of the buildings based on a financial review and “but for” test.

Apartment Buildings for Lower Income Households outside the Downtown

PILOT Years % of Building Exempt Equivalent

Lower Income Apartments: Years 1 through 20 – The percentage of the exemption may be up to 100% of the value of the buildings based on a financial review and “but for” test.

Incentives for lower income apartments may be for new buildings and substantial rehabilitation necessary to maintain existing lower income apartments units.

Lower income apartments are those where the developer is required to rent to lower income households at below market rents as required by the Department of Housing and Urban Development, the Low Income Housing Tax Credit Program, or the ND Housing Finance Agency.

I. POLICY PURPOSE

For the purposes of this document, the term "City" shall include the Fargo City Commission.

The purpose of this policy is to establish the City of Fargo's position relating to the use of Payment in Lieu of Taxes (PILOT) for private development above and beyond the requirements and limitations set forth by State Law. This policy shall be used as a guide in the processing and review of applications requesting Payment in Lieu of Taxes. The fundamental purpose is to encourage desirable development or redevelopment that would not otherwise occur but for the assistance.

The City of Fargo is granted the power to utilize PILOT by the TAX EXEMPTIONS FOR NEW AND EXPANDING BUSINESSES, as amended. It is the intent of the City to provide the minimum amount of tax exemptions at the shortest term required for the project to proceed. The City reserves the right to approve or reject projects on a case by case basis, taking into consideration established policies, project criteria, and demand on city services in relation to the potential benefits from the project. Meeting policy criteria does not guarantee the award of PILOT to the project. Approval or denial of one project is not intended to set precedent for approval or denial of another project.

II. OBJECTIVES OF PILOT program in the University Mixed Use Zone

As a matter of adopted policy, the City will consider using PILOT to assist private development projects to achieve one or more of the following objectives:

- To create opportunities for affordable housing.
- To encourage additional unsubsidized private development in the area, either directly or indirectly through "spin off" development.
- To assist developers enough to achieve development on sites which would not otherwise be developed without PILOT assistance.
- To remove blight and/or encourage the development of new housing that is of high quality and provides housing in close proximity to North Dakota State University.
- To offset increased costs of redevelopment (i.e. contaminated site cleanup, infrastructure needs, and higher land costs) over and above the costs normally incurred in development.
- To contribute to the implementation of other public policies, as adopted by the City from time to time, such as the promotion of quality urban or architectural design, energy conservation, and decreasing capital and/or operating costs of local government.

III. POLICIES FOR THE USE OF PILOT - University Area Housing

Policy #1

The property must be zoned University Mixed Use.

Policy #2

The maximum PILOT incentive will be a 100% exemption for the first 5 years and a 50% exemption for an additional 5 years.

Policy #3

To the extent required by state, federal or local law or regulations, a relocation plan should be provided by the developer. Relocation payments to tenants of businesses or residential uses must be made. These relocation payments should follow state/federal guidelines, as applicable, for assistance (E.g. NDCC Ch. 54-01.1 and USC).

Policy #4

The amount or value of the PILOT tax exemption will be limited to the extraordinary costs of development, and the extraordinary costs are limited to following costs. The amount of the assistance is defined as the estimated present value of the future PILOT tax exemptions, which would include an allowance for interest.

1. The costs of land acquisition, subject to the limits outlined in Policy #5.
2. Relocation of existing tenants.
3. The costs of demolition, including the removal of building foundations, parking lots, and the removal and replacement of unsuitable soil.
4. Public Improvements that are in the public right-of-way such as sidewalks, driveway approaches, lighting, and connections to the water, sanitary sewer, and storm water systems.
5. On site storm water retention including the cost of excavation, underground storm water lines, or underground storage facilities. It does not include water collection systems such as parking lots, sidewalks, or curb/gutters.
6. Architectural and engineering costs are limited to those necessary services to implement other activities allowed by this policy. Developer fees and legal costs are not permitted.
7. The required city fees and the estimated costs of interest from the time the costs are paid by the developer and the next February 15 date after property tax statements are mailed.

Policy #5

Land acquisition assistance should not encourage the acquisition of land at excessive prices, the assistance should not be the primary extraordinary costs, and the assistance should not reduce the cost below the base value of the land. Therefore, Land acquisition costs are limited to the lowest of the following amounts.

1. The total acquisition cost allowed by the PILOT program may not be more than 150% of the assessor's market value for the property for property tax purposes.
2. The cost of land acquisition allowed for by the PILOT program must be less than the total of other (non-property acquisitions costs) allowed in Policy #4.
3. The cost of land acquisition allowed for by the PILOT program must be less than the difference between the actual purchase price paid by the developer and the assessor's market value for the land (as opposed to land and buildings).

Policy #6

The estimated value of the PILOT assistance should be limited to a percentage up to 15% of hard capital costs of development including the costs of acquisition. In other words, the tax exemption assistance will be equal to or less than 15% of hard construction costs plus the land acquisition costs, excluding the costs of professional fees, developer fees, furniture and fixtures, interest, profit, and other soft costs. In addition, Developer must provide at least 10% of total capital costs as Developer's equity in the project.

Policy #7

PILOT assistance for UMU projects should not be viewed by the developer as an entitlement. When undertaking any PILOT project the due diligence procedures in determining the feasibility and level of public assistance must be reviewed by the City's financial consultant in conjunction with the City's staff. The financial consultant must use accepted public financing procedures in determining project feasibility and levels of public assistance. Particularly when public assistance includes substantial reimbursement to the developer of costs of acquisition or land write-down amounts, review of the level of public assistance may include an estimate of the return on investment anticipated by the project and analysis as to whether the expected return on investment, including the public assistance, is within reason.

Policy #8

When undertaking a PILOT project a non-refundable administrative fee equal to 5% of the total value of the estimated tax exemption must be paid by the developer after final approval by the City Commission and prior to the final approval of the development agreement. These fees are to reimburse the City for costs expended by staff and consultants to determine the feasibility, level of public assistance and the preliminary costs of project development by the City. Other City costs such as engineering, bond carrying costs, and annual special assessment administration will be in addition to this administrative fee if warranted. To the extent that PILOT assistance exceeds \$2 million or more, the

administrative fee on said excess may be negotiated to a sum less than 5%, as may be appropriate. A non-refundable deposit of \$5,000 shall be paid to the City along with an initial application for a PILOT project. The City, upon approval of the Finance Committee, may require additional sums to be deposited, from time to time, to defray such costs initially borne by the City. The \$5,000 deposit and any other additional sums paid to the City may be offset against and accredited toward 5% administrative fee.

Policy #9

Applications for PILOT Assistance are to be submitted to the Department of Planning and Development and the City Assessor. The application must include a description of the project and an estimate of the level of assistance needed to proceed with the project. [A checklist and application form are attached.] The application will be reviewed by the appropriate Committee and the City Commission to determine if city staff, city financial advisors, and city attorney should proceed with a review of the project pro-forma, and draft of a developer's agreement.

Policy #10

The development should be compatible with long term City redevelopment plans, and create a high quality development that will have a positive impact on the tax base and the surrounding area. The developers' agreement should include design standards to insure that the development will be compatible with the long term plans for the area.

Policy #11

Interest rates allowed to be recouped as eligible costs shall be one percent (1%) over the municipal bond indexed rate for taxable municipal bonds or over such indexed rate for tax-exempt municipal bonds, as appropriate, as identified by the City Finance Director, with consultation with the City's financial advisor as may be needed.

IV. PROJECT QUALIFICATIONS

All University Mixed Use Zoning PILOT projects considered by the City of Fargo must meet each of the following requirements:

- a. To be eligible, a project shall result in a minimum increase of \$1 million in property valuation, or, if not, the developer shall establish that other goals and objectives of the project warrant approval.
- b. The project shall meet at least one of the objectives set forth in Section II and satisfy all the provisions set forth in Section III of this document.
- c. The developer shall demonstrate that the project is not financially feasible but for the use of the PILOT program. The projected internal rate of return as determined by the City's financial advisor based upon information provided by developer must be no more than a percentage that provides a reasonable rate of return of a particular project.
- d. The project must be consistent with the City's Comprehensive Plan, Land Use Plan, and Zoning Ordinances.

V. APPLICATION PROCESS

1. Applicant submits letter requesting PILOT support for a project. The letter shall describe the project and shall be submitted to the City Commission for preliminary review and direction authorizing the staff to move forward with the application process.
2. Applicant submits the completed application along with all application fees. (See Policy #8 - \$5,000 non-refundable deposit.)
3. City staff reviews the application and completes the Application Review Worksheet. The application and supporting documentation will be submitted to the City's financial advisor for due diligence consideration. At least three (3) weeks should be allowed for due diligence review and consideration [upon submittal of a complete and approved application.]
 - A. As part of the application review, the Director of Planning and Development shall be authorized to inquire as to the character, reputation, fitness of the applicant to engage in the project and to bear the responsibilities entailed therein and any other pertinent information. Such inquiry may include background checks on the applicant and principles of the applicant, as the case may be.
 - B. With respect to certain proprietary, commercial and financial information that is submitted as part of the application and review process, said information may be exempt from the North Dakota Open Records law, Chapter 44-04, N.D.C.C., and to the extent that N.D.C.C. §44-04-18.4 allows, it is the City's intention to maintain confidentiality of such information when requested by the applicant. Section 44-04-18.4, N.D.C.C., provides:

"Confidentiality of trade secret, proprietary, commercial, and financial information.

 1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
 2. "Trade secret" includes:
 - a. A computer software program and components of a computer software program which are subject to a copyright or a patent, and any formula, pattern, compilation, program, device, method, technique, or process supplied to any state agency, institution, department, or board which is the subject of efforts by the supplying person or organization to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons or organizations that might obtain economic value from its disclosure or use; and
 - b. A discovery or innovation which is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, method, technique, or process supplied to or prepared by any public entity which is the subject of efforts by the supplying or preparing entity,

person, business, or industry to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, any person who might obtain economic value from its disclosure or use.

3. "Proprietary information" includes information received from a sponsor of research conducted by a public entity, as well as any discovery or innovation generated by that research, technical, financial, and marketing information and other documents related to the commercialization, and any other discovery or innovation produced by the public entity which an employee or the entity intends to commercialize.

4. This section does not limit or otherwise affect a record pertaining to any rule of the State Department of Health or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.

5. Unless made confidential under subsection 1, the following economic development records and information are exempt:

a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, or expand within this state. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

b. Trade secrets and commercial or financial information received from a person, business, or industry that is interested in or is applying for or receiving financing or technical assistance, or other forms of business assistance.

6. Unless made confidential under subsection 1 or made exempt under subsection 5, bids or proposals received by a public entity in response to a request for proposals by the public entity are exempt until such time all of the proposals have been received and opened by the public entity or until such time that all oral presentations regarding the proposals, if any, have been heard by the public entity. Records included with any bid or proposal naming and generally describing the entity submitting the proposal shall be open."

In advance of the submission to the City of such confidential records or information, the City and Applicant will make appropriate arrangements for the handling of such information and records to protect the confidentiality thereof.

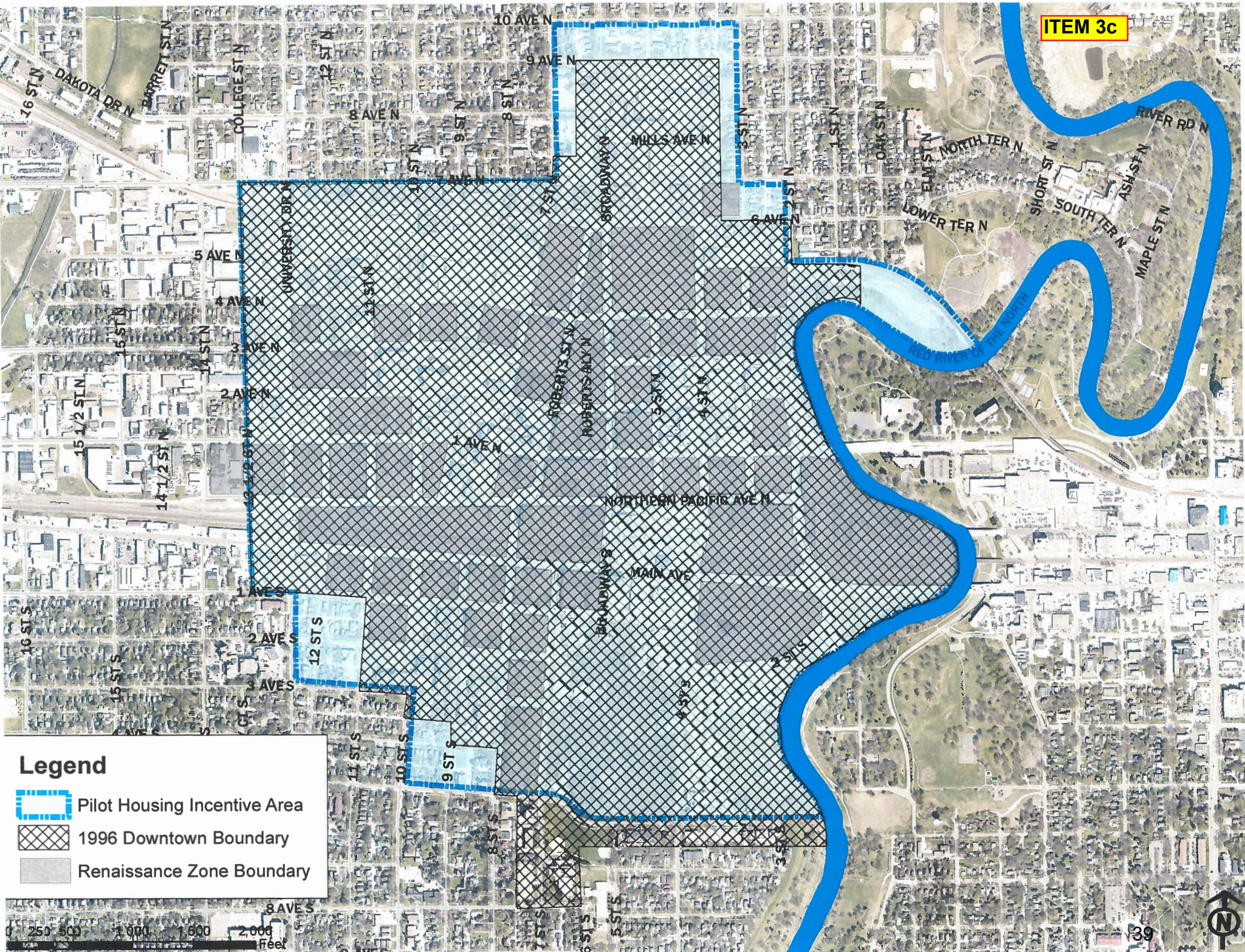
4. Results of the Worksheet are submitted to the appropriate Finance Committee for its recommendation and City Commission for preliminary approval of the proposal.

5. If preliminary approval is granted, the renewal plan or development plan, as the case may be, along with all necessary notices, resolutions and certificates are prepared by City staff and/or consultants.




6. Notices are published as required.

7. Public hearing(s) on the proposed project, as may be required by law, are held.

8. The City Commission grants final approval or denial of the proposal.



Legend

-  Pilot Housing Incentive Area
-  1996 Downtown Boundary
-  Renaissance Zone Boundary