



**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: PLANNING DIRECTOR JIM GILMOUR**

**DATE: MAY 17, 2017**

**SUBJECT: TAX INCREMENT FINANCING POLICY**

The Planning and Development Department and the Finance Department have begun a review of the Tax Increment Financing. This review has included a review by our financial advisors, who have both provided written comments.

The current policy is available for public review and comment. I also plan to distribute the policy to developers for comments.

I have a planner working on a draft policy that will incorporate some of the comments. The Tax Exempt Review Committee, the Renaissance Zone Authority, and the Finance Committee can review this draft policy and all written comments.

The Cass County Commission and the Fargo Board of Education will have the opportunity for participation in the review of TIF agreements because of changes in state law. Therefore, meetings to discuss the new policy should be held with them.

Attached is a draft schedule and process.

**RECOMMENDED MOTION:** Direct the Planning and Development Department and Finance Department to proceed with the development of a new Tax Increment Financing Policy as outlined.

Attachment



## TIF Policy Review

This is an outline of the proposed process and schedule for review of the City of Fargo Tax Increment Financing Policy

### To Date:

- Planning staff has been reviewing the policy
- City financial advisors, PFM and Springsted, have reviewed and provided written comments
- Finance Department review and comments from Kent Costin
- The existing TIF policy distributed for public comment

### May:

- Tax Exempt Committee review of TIF policy (5-23-17)
- Finance Committee review of existing policy (5-30-17)
- Existing TIF policy distributed to developers for comment

### June - July

- Planning Department prepares revised policy/alternatives
- Planning Department study of past and existing TIF plans
- Review by Tax Exempt Committee
- Review by Renaissance Zone Authority
- Review by Finance Committee
- Development of amendments recommended by committees
- Public review of draft policy
- Meetings with Cass County Commission and Fargo Board of Education on draft policy

### July - August

- Public Hearing for Tax Exempt Review Committee and Renaissance Zone Authority
- City Commission adoption

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APPROVED BY THE BOARD  
OF CITY COMMISSIONERS

9-10-07

City of Fargo

North Dakota

Tax Increment Financing

Policy & Application

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 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 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. 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 in the area, either directly or indirectly through "spin off" development.
- To facilitate the development process and to achieve development on sites which would not be developed without TIF assistance.
- To remove blight and/or encourage redevelopment of commercial and industrial areas in the City that result in high quality redevelopment and private reinvestment.
- To offset increased costs of redevelopment (i.e. contaminated site clean up) 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.

- To assist development of underdeveloped commercial or industrial property that has been unoccupied for a significant period of time.

### III. POLICIES FOR THE USE OF TIF

#### Policy #1

In areas of the City other than downtown, 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 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.

#### Policy #2

In areas of the City other than downtown, when undertaking a redevelopment or development project on an under-developed parcel(s) of land, a TIF exemption or a TIF revenue note will be the preferred method of financing. Exceptions to this rule must be accepted 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 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 15 years.

#### Policy #4

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 parcel(s) of land, 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 #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. 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:

- (a) the total acquisition cost for the property, provided that the acquisition cost is no more than 150% of the assessor's market value for the property;
- (b) 50% of the total public assistance; and,
- (c) 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).

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

- a. The cost of acquiring, or the market value, of all or a 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 #6**

TIF 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 TIF assistance will equal or be less than 15% of hard construction costs, plus the land acquisition costs, and 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**

When undertaking any TIF project within the City of Fargo 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. 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 subject to approval by the City on a case-by-case basis .

#### **Policy #8**

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 must be paid by the developer after final approval by 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 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 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 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 developer and as allowed by the urban renewal law (N.D.C.C. Chapter 40-58). The \$5,000 deposit and any other additional sums paid to the City will be offset against and accredited toward 5% administrative fee.

#### **Policy #9**

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 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.

#### **Policy #10**

The redevelopment 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 standard 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 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 City Finance Director, with consultation with the City's financial advisor as may be needed.

## IV. PROJECT QUALIFICATIONS

All TIF projects considered by the City of Fargo 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 in property taxes, 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 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.
- e. 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.

## V. APPLICATION PROCESS

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.

2. Applicant submits the completed application along with all application fees. (See Policy #7 - \$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.