



AGENDA CITY COUNCIL ECONOMIC DEVELOPMENT COMMITTEE

FRIDAY, APRIL 14, 2017
11:00 A.M.
EMMA HARVAT HALL
CITY HALL

1. Call to Order
2. Continue Discussion of TIF Policies
3. Staff report
4. Committee time
5. Other business
6. Adjournment

If you need disability-related accommodations in order to participate in this program/event, please contact Wendy Ford, Economic Development Coordinator at 319-356-5248 or wendy-ford@iowa-city.org. We ask that contact us early to allow sufficient time to meet your access needs.



CITY OF IOWA CITY MEMORANDUM

Date: April 12, 2017
To: Economic Development Committee
From: Wendy Ford, Economic Development Coordinator
Re: TIF Policy Review meeting Friday, April 14, 2017

At your meeting on March 23, you began discussion of TIF policy outlined in the staff memo dated March 10, included again with this packet. At your meeting on April 5, you continued the discussion. On Friday, April 14, you plan to pick up the discussion with building height, the last of 6 areas of policy review.

Included in this packet for the April 14, 2017 EDC meeting:

- The March 10 staff memo outlining TIF policy review points
- A memo from the City Attorney regarding Up-front cash vs. TIF Rebates
- A letter from the Greater Iowa City Area Home Builders Association

Minutes from the April 5 meeting are not available yet.

Please let me know if you have any questions.



CITY OF IOWA CITY MEMORANDUM

Date: March 10, 2017
To: Economic Development Committee
From: Wendy Ford, Economic Development Coordinator
Re: TIF Policy Review

Introduction

In January of 2016, the City Council established a set of seven Strategic Planning Priorities, including one to **Promote a Strong and Resilient Local Economy**. In support of that planning priority, Council listed seven initiatives, including one to review and consider amending the City's Tax Increment Finance (TIF) policy.

The Economic Development Committee asked staff to frame key policy decisions. The goal is to tailor a set of TIF policies that offer a balance of specificity and flexibility. Ideally, policy decisions will align with Strategic Plan objectives, other City planning documents, and standard measures such as the state's high quality jobs thresholds, blight remediation and expansion of tax base.

Staff conducted eight focus groups between June and November, 2016. Focus groups included developers, architects, engineers, members of labor and worker justice organizations, members of social service oriented non-profit groups, members of community promotional non-profit groups, taxing entities and others. A lengthy report was presented to the Economic Development Committee (EDC) at your December 13, 2016 meeting. Feedback from the focus groups indicated that those associated with the development process were critical of the project and design approval process in part because of a lack of clarity for what is required for a project to merit TIF. People with expertise in sustainability seemed to reach consensus that LEED Silver Certification could be required of most traditional TIF projects. It was also noted that place-making is a public benefit, important to making a welcoming community, and includes the provision of Arts, Cultural and Social Services yet it is difficult to fund these public benefits using project-based TIF.

Upon reviewing the focus group work in December, 2016, the EDC asked staff to solicit additional stakeholder input on key decisions for the next meeting. The issues EDC members identified for further discussion include building height and form, sustainable features, and the process through which incentives are considered. Local organized labor leaders have also reached out to the City with recommendations for TIF policy revisions. Staff conducted a roundtable to refine the focus group input. This roundtable consisted of three architects and a developer. Staff also communicated with a local labor representative to ensure a solid understanding of their issues.

This memo organizes the economic development issues addressed during the review process, provides supporting information from community focus groups and staff and presents policy decision points for each.

1. Balancing building height and form with building economics

Deemed the most important policy by developers and architects, the building height issue downtown is critical because it determines more than the aesthetics of new downtown buildings. It shapes the residential population and thus, downtown diversity because of the economics of the buildings themselves.

Developers note that the vast majority of student housing developers do not seek TIF because student housing projects cash flow on their own and need no external support. In Iowa City, student housing developments tend to be 4-7 stories tall, the maximum allowable with wood frame construction. There is one recent exception in the RISE at Court and Linn, a large development with a high rise tower dedicated to housing more than 500 students. Large or small, the market value for student housing developments is so high they are able attract enough investors and debt to avoid a financial gap. The economics are simple: smaller buildings are less expensive to build requiring only wood framing, and are *very* lucrative because of their premium downtown location and the ability at times to attract large rents from people living together.

Developers indicated that there is very little market for permanent residents in smaller buildings downtown. First, the student-aged population can typically outbid other segments of the market. Second, the older demographic wants dwelling units in buildings that are differentiated from the student population, with amenities, other permanent residents and, often with views found in higher rise buildings.

Developers say there might be a market for permanent residents in mid-rise buildings, but the economics of mid-rise buildings are challenging. Generally, the requirement for steel construction begins when the building exceeds 5 stories, essentially doubling framing costs per square foot. Limiting a building to 7 or 8 stories does not allow for enough additional income to pay for the added expense of the steel frame building without incentives. When there isn't enough income, the value is lower and so is the appeal to investors and bankers, which creates an unnecessarily large financial gap per square foot of building. As the building gets taller, the market value begins to be high enough to attract investment and banker interest, thus shrinking the financial gap per square foot.

Developers point out that of more than 2,000 housing units in downtown Iowa City, only 75 condos are occupied by permanent residents; fewer than 4% of all downtown residents. The other 96% is predominantly student-aged persons. Each new permanent resident downtown adds to the diversity that we have been working to encourage. By allowing only mid-rise buildings in mid-block parcels downtown, the diversity we seek in our downtown population will be harder to achieve and the financial gaps will be more expensive per square foot. More

importantly, the development community may likely focus on the lucrative student market thus not even attempting to work with the City on TIF projects.

Policy Decision points:

- a) Determine a clear, predictable policy on building height for TIF projects.
Is the height permitted by the underlying zoning code sufficient or is there another guideline the Council wishes to use?
- b) Determine how to consider architectural impact on adjacent properties.
Is staff design review sufficient? It is important to note that most projects are not fully designed at the development agreement phase. Changes are often necessary throughout the design process; general compliance with initial concepts rather than exact adherence to early design phase documents can be used.
- c) Promotion of Historic Preservation and reinvestment into existing building stock.
Project-based TIF depends on substantial increases in property value. Often times this cannot be achieved when density is not increased. Thus, Council may want to consider district-wide TIF applications for renovations or less time consuming processes such as tax abatement.

2. Sustainability Features

There was consensus that LEED, while imperfect for every project type, is a good standard to achieve for most new construction. In discussions with architects who design to LEED standards regularly, there was consensus that LEED Silver Certification is the appropriate level to require for a downtown building project, with some exceptions based on project scope or location.

Focus group participants agreed that LEED is a good standard because it covers a wider group of metrics than just energy efficiency and thus, leverages higher quality projects. Buildings earn LEED points across a range of categories such as site, water, energy, materials, indoor environmental quality, etc. One concern from a roundtable member after our meeting was that a building could achieve LEED Silver without scoring any points in energy efficiency, so her suggestion was to require LEED Silver certification with a minimum of 8 energy efficiency points. For those projects that would not be appropriate for LEED Silver certification (perhaps outside of downtown and RFC or rehabs of historic buildings), one idea was to require documentation of energy efficiency equal to 8 LEED points. The 8 point standard was not reviewed and addressed with other focus group members. Roundtable participants also noted that a metric other than LEED may be needed for manufacturing facilities; their discussion applied generally to residential and mixed use buildings.

They agreed that while downtown projects should be able to achieve LEED Silver, achieving LEED Gold certification would be a greater burden financially, requiring more financial gap filling by the City.

Other measures of sustainability were also discussed, such as simply exceeding the current energy code by 20%. This could be a measure or option available to developers when projects are not well-suited for LEED.

Policy Decision point:

- a) Determine sustainability standards to require for TIF projects. Options may include LEED Silver, LEED Silver with a baseline for energy efficiency points, or for those projects not suited for LEED, 20% or greater than energy code requirements, if applicable.

3. Affordable Housing

In May of 2016, Council adopted a resolution approving inclusion of affordable housing goals in Economic Development policies. The following policies are for new construction projects that include residential dwelling units and have requested City financing:

- ❖ A minimum 15% of the residential units must be affordable for a minimum of 20 years, or the term of the developer's agreement, whichever is longer. It should be noted that only the gap between affordable units required through economic incentives and those otherwise required by code (for example, the required 10% in Riverfront Crossings) will be considered for City financing.
- ❖ For rental housing, dwelling units shall be targeted to households at a maximum of 60% Area Median Income (AMI). The City may negotiate dwelling units being designated for households at a lower AMI.
- ❖ For owner-occupied housing, dwelling units should be targeted to households at a maximum of 110% AMI.
- ❖ The City may negotiate a fee-in-lieu of on-site affordable housing with the fee to be used for affordable housing purposes (for example, grants/loans for construction of affordable housing, down payment assistance for income-qualified households, etc.). Fee-in-lieu of negotiations currently allow the flexibility for providing affordable housing units off-site; off-site provision is something Council may consider addressing more explicitly.

Policy Decision point:

- a) Determine any refinements to above policy such as flexibility in the location of where affordable units required for a project may be alternatively located.

4. Social Justice

Wage Theft

In November of 2015, Council adopted a resolution aimed at ensuring the City will not contract with any person or entity who has participated in Wage Theft by violation of the Iowa Wage Payment Collection law, the Iowa Minimum Wage Act, the Federal Fair Labor Standards Act or any comparable state statute or local ordinance, which governs the payment of wages.

Contractors in TIF building projects

Representatives of organized labor have submitted four recommendations for changes to the City's economic development policies. The recommendations address organized labor's concerns regarding contractors and subcontractors who use leased employees, sometimes known as independent contractors. The concern is that an independent contractor can operate essentially as an employee without the protection and benefits afforded to employees.

The labor representative made four recommendations for any project involving TIF. Staff understands the goals of these recommendations, and believes to some degree the City's economic development policies can help meet these objectives. However, there are significant enforcement challenges and in some cases existing enforcement mechanisms better suited to meet these goals. The four recommendations with staff commentary are listed below.

- i. The requirement that all contractors and subcontractors be in compliance with all tax obligations (workmen's comp, payroll, corporate, etc.);

Staff comment: Annual rebate certifications required by the City could also require a statement from developers that to the best of their knowledge, all tax obligations have been met. However, existing state and federal enforcement mechanisms are more appropriate, as there may be cases in which there is a dispute as to whether obligations have been met.

- ii. That there be no use of leased employees (sometimes known as independent contractors);

Staff comment: Monitoring of this requirement would be extremely challenging, and the goal of this recommendation could be partially met with the inclusion of items iii and iv below.

- iii. That all contractors be in compliance with registration/licensing requirements at the Iowa Workforce Development's Iowa Contractor Registration; and
- iv. All subcontractors are disclosed.

Staff comment on recommendations iii and iv: Not all contractors and subcontractors will be known by the developer at the time of the development agreement. A policy could

include that the City, at its sole discretion, may request disclosure during the construction process. Violations of State registration and licensing requirements are more appropriately enforced by the State.

Policy Decision point:

- a) Determine whether to adopt any of the recommendations above.

5. Other requirements

When certain projects are presented that align with other stated City goals and priorities, related standards apply. Below are four for your consideration.

- 1) Quality of jobs created and/or maintained. An EDC member asked for clarification on the definition of high quality jobs. The City has required that for a project to be awarded incentives based solely on jobs, the jobs must meet the same quality standards as those used by the State of Iowa High Quality Jobs Program. Each year, the State updates its Average Wage and Laborshed Area data. Traditionally, the City has also required that most jobs to be created meet or exceed 120% of the average, which for FY17 is \$24.17 per hour. This threshold could be adjusted down to the average or to any other point the Council feels is appropriate.
- 2) Class A office space. Historically, the City has required that new office space or office space in an old building on first floor or above be built or renovated to BOMA (Building Owners and Managers Association International) Class A standards (see below for definitions):

Class A

Most prestigious buildings competing for premier office users with rents above average for the area. Buildings have high quality standard finishes, state of the art systems, exceptional accessibility and a definite market presence.

Class B

Buildings competing for a wide range of users with rents in the average range for the area. Building finishes are fair to good for the area. Building finishes are fair to good for the area and systems are adequate, but the building does not compete with Class A at the same price.

Class C

Buildings competing for tenants requiring functional space at rents below the average for the area.

- 3) Hotels. The City views hotels positively because of the visitor population they attract and the hotel motel tax they generate. Visitors spend money and their economic impact is

significant. The 7% hotel tax on every room-night sold is also a boon to the community, adding up to more than \$1 million per year in Iowa City.

- 4) Community engagement. Iowa City values the tangible aspects of new buildings, new jobs, new office space, historic rehabilitation, etc., There may be another measure to consider too: the level of community engagement of the entity requesting TIF. Exemptions may include a company offering a job training program or willingness to improve and maintain a public space. You may want to consider stating this value in an introductory paragraph about TIF policy.
- 5) Public Improvements. You may want to consider a statement in the policy as it relates to the use of TIF for Public Improvements. TIF revenues can be used to forward the goal of ensuring a vibrant and walkable core. Stating this in the TIF policy reinforces the link between public improvements and economic development with projects such as the pedestrian mall renovation and/or streetscape improvements. Likewise, catalyst projects, such as the Riverfront Crossings Park that will drive the private redevelopment opportunities in the neighborhood would be another means to further economic development activity in the Riverfront Crossings Area. The public improvements category could also encompass the Arts, a significant component of place making and arguably, an economic development catalyst.

Policy Decision points:

- a) Determine whether to adopt a wage threshold for incentives based on jobs alone.
- b) Determine whether to specify that any office space in buildings receiving incentives meet BOMA Class A office standards.
- c) Determine if we want to consider prioritizing hotels, assuming a positive market study showing need.
- d) Determine whether to state community engagement is important to prospective TIF recipients.
- e) Determine whether to make a policy statement about the use of TIF for public improvements serving as economic development catalysts.

6. TIF Mechanics

- 1) Rebate vs. upfront TIF. The EDC has previously stated a preference to grant TIF rebates. The reason for this simple: it puts the majority of the risk on the developer. The project has to be successfully built, meet taxable valuation requirements and pay property taxes in order to receive the first rebate. Conversely, if the City grants TIF up front, the funds are spent and there is no guarantee that the project will be built and pay taxes, generating the TIF to repay the City's up front financing. As a safeguard against the possibility that TIF would not be generated from a project granted upfront financing, the City has used Minimum Assessment agreements to ensure that property taxes from developers' *other* property holdings will be used to repay the City when upfront TIF is granted.

At the Developer roundtable, a concern was raised that without upfront TIF, more significant projects will not happen because they will not be able to attract the necessary financing. This, in turn, will feed into the diversity problem noted in the building height discussion above. There was discussion that perhaps the size and scope of projects could determine eligibility for upfront TIF, but there was no consensus on what size or scope to merit upfront financing might be. It may be appropriate to consider additional public benefit for any upfront TIF.

- 2) Developer Equity. The EDC has historically required that Developer Equity be at least equal to the TIF, ensuring that the developer has as much 'skin in the game' as they are asking from the City. Developer equity does not include project debt. This has proven to work well and you may wish to consider keeping the policy going forward.
- 3) Length of TIF term. The length of a TIF term, whether in the form of rebates to the developer or repayments to the City for funding upfront incentives, has been determined by the need demonstrated in the financial analysis. A policy you may wish to consider would be whether to cap the length of time a TIF can be allowed or remain flexible, depending on the project.

Policy Decision points:

- b) State whether rebates or upfront are preferred or not and under what conditions, if any, upfront TIF may be granted.
- c) State whether Developer Equity should be equal to the gap filled by TIF.
- d) Determine caps, if any on term length for TIF.

We will discuss these policy decision points at your meeting on March 23. If you need any background information, please feel free to email or call me (wendy-ford@iowa-city.org: 319-356-5248).



CITY OF IOWA CITY MEMORANDUM

Date: April 4, 2017
 To: City Council Economic Development Committee (EDC)
 From: Eleanor M. Dilkes, City Attorney *E. Dilkes*
 Re: TIF: Up-front vs. Rebate

Several years ago, after a recommendation from the EDC, the city amended the TIF policies to expressly state a strong preference for rebates. This was done because up-front TIF shifts developer risk to the City. A rebate agreement eliminates a number of significant risk factors for the City. With a rebate agreement, if the Development fails and the taxes aren't paid, there are no taxes to rebate; if the ongoing obligations are not met, the City does not rebate the taxes.

With an upfront cash agreement the City assumes significant risks that are traditionally held by the developer, including non-development, under-development, changes in valuation, changes in the TIF formula, destruction of the project, and failure to meet obligations such as employment targets or sustainability certifications. If the City incurs debt in order to provide the money up front the City risks not receiving the taxes promised by the development and will not have the non-payment of rebates as an enforcement tool. As with any contract it is far less risky for the City to have the money in hand and disburse it when the condition is satisfied than it is to provide the money before the conditions are satisfied and try to get it back when things go sour. In this case the City would be obligated to use non-project revenue to pay back the debt that was issued to support the project. While requiring a minimum assessment agreement with an up-front TIF will assure that the property is taxed at a certain value, it does not guarantee that the taxes will be paid.

Bond counsel has advised that when the City provides up-front funds it is acting as a bank and should secure itself against the risks as a bank would. The easiest illustration of this is the typical home mortgage. If I borrow \$300,000 from the bank to buy a home I sign a Promissory Note agreeing to pay that loan. That Note is my personal obligation and would not, alone, make the bank whole if I did not make the payments. That's why the bank requires that I sign a mortgage as security for my personal obligation. If I don't/can't make the payments, the bank can foreclose the mortgage and take back the house in order to cover the debt.

With agreements for up-front TIF it is the security that poses the problem. For this reason, in addition to expressing a preference for rebates, the current policy also states that security is required for up front financing:

The use of TIF rebates shall be considered highly preferable to the alternative "cash up-front" TIF.....

.....For up front financing security is required

While the City can get a personal obligation and guaranty from the Developer to cover any "shortfall" in taxes available to pay the debt, the city has not been successful in prior attempts to obtain additional security such as an Urban Renewal Revenue Note whereby the City agrees to contribute up-front proceeds from a Note that is purchased by a bank identified by the

Developer and guaranteed solely by the TIF revenues received on the Project. Note that while the City can sell revenue bonds, the financing costs are higher, and the TIF revenue from the entire district secures those bonds, not just the ones for the Project for which the bond is issued. Securing the bonds with proceeds from the entire district also may constrain the City's ability to use such increments for other projects or from releasing the increments back to all the taxing bodies including the City of Iowa City itself.

For these reasons, the Ahlers firm (the city's bond counsel) always recommends rebates if at all possible. They have estimated that Development Agreements that include only up-front grants are somewhere in the neighborhood of 5% of all Agreements they assist clients in negotiating. Bob Josten of the Dorsey and Whitney firm also provided a 5% estimate to Wendy Ford. While these are estimates, these two firms likely provide a good amount of the representation needed by cities and counties in connection with such matters. Therefore, 5% is likely a fairly good estimate of the frequency of up-front TIFs in Iowa. I understand that the most likely scenario for a large up-front grant is when the Developer simply won't/can't do the project without up-front money and it is a project that the City really wants to see happen. The other type of up-front arrangement Ahlers sees is when the Developer is looking for a relatively small up-front grant. In these cases, the city typically has the money readily available and thinks the project provides a desirable public benefit, and it appears to be a relatively low risk that the City is willing to assume. Iowa City has used such grants, typically with non-TIF money, for projects such as façade grants.

The current policy is a prudent one that gives Council the flexibility to use an up-front TIF in those instances when after an evaluation of all the facts and circumstances presented by a particular project, including the available security and risk and public benefit, the Council decides that up-front financing is necessary to make a project with the desired level of public benefit a reality.

Please give me a call if you have questions.

Cc: Geoff Fruin, City Manager
Wendy Ford, Economic Development Coordinator
Dennis Bockenstedt, Finance Director
Sara Greenwood Hektoen, Assistant City Attorney



11 South Gilbert
P.O. Box 3396
Iowa City, Iowa 52244
Phone: (319) 351-5333
Fax: (319) 358-2443
E-mail: Karyl@hbaofic.org
www.iowacityhomes.com

ADVOCATES FOR HOMEOWNERSHIP BY PROMOTING STANDARDS FOR QUALITY AND AFFORDABILITY

April 10, 2017

To: Iowa City Economic Development Committee; Iowa City, City Council

From: The Greater Iowa City Area Home Builders Association

Dear Committee and Council Members,

On behalf of the Greater Iowa City Area Home Builders Association (HBA), I would like to comment on the Economic Development Committee's consideration of the City's Tax Increment Financing (TIF), Policies.

While it is good to have a well-defined economic development policy on TIF, the HBA believes the City's policy should articulate public policy goals and aspirations, rather than memorialized requirements. These public goals should include several key considerations that are also important to our HBA members: affordable workforce housing; functionality and use (such as Class A office space); community amenities; degree of sustainability (LEED Silver, Gold or Platinum); and preference for the mechanics of the TIF requested.

Ultimately, each of these public policy considerations are likely to add expense to any project. However, because TIF is really gap financing, the City should retain flexibility to approve projects that achieve many, but perhaps not all, aspirational goals. A point system that credits public policy goals is a better methodology for implementing TIF than instituting rigid TIF requirements. Projects that meet a greater number of stated outcomes should receive a greater degree of TIF assistance and vice-versa. In any event, it is shortsighted for the City to require certain defined criteria (such as LEED Gold) which may discourage many development opportunities. Rather, the City should retain flexibility to approve projects on a case by case basis based on the likely public outcomes and the City's commitment toward investment.

Thank you for your time and attention to this matter. Please let me know if you would like further input from our organization

Karyl Bohnsack

Executive Officer

Greater Iowa City Area Home Builders Association