



To: Common Council Executive Committee
Economic Development Committee

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Subject: Draft Review of City of Madison “Jobs Project” TIF Loan Underwriting Policy

The City of Madison adopted its current Jobs TIF Loan Underwriting Policy in 2014. The City funded its initial three Jobs TIF investments in 2017. Per the request of the Mayor and Common Council Executive Committee (“CCEC”), the City staff involved in underwriting Jobs TIF projects met to review these projects in the context of the current Policy. Following are several recommendations for changes to Jobs TIF Policy. Staff has divided its recommendations into two categories: simple and complex. In the event that the Common Council supports any of these recommendations, staff will require further time to draft appropriate language for final Council consideration.

SECTION 1: SIMPLE JOBS TIF POLICY RECOMMENDATIONS

1) Consolidate the Jobs TIF Program - Gap Analysis Waiver Only

The current Jobs TIF Policy offers two options to Employers:

1. Gap Analysis—the City’s customary approach, wherein an Employer must demonstrate a financial gap, but toward the objective of job retention and/or creation and may receive TIF assistance of up to 60% of the TIF generated by the project; or
2. A Gap Analysis Waiver—Employers creating and/or retaining at least 100 jobs may receive 40% of the TIF generated by the project without a gap analysis.

Employers have not been interested in participating in gap analysis, seeking the Gap Analysis Waiver instead. A few developers have submitted proposals, on behalf of an Employer, to construct and lease a facility to them. Such proposals qualify for gap analysis under the existing 50% TIF standard (allowing an additional 5% under the 55% Gateway without need for a policy exception).

Staff recommends consolidating the Jobs Project TIF program to include only the Gap Analysis Waiver allowing 40% of TIF to qualified Employers.

Staff also recommends consideration of adding the following additional “but for” standards to the Jobs TIF standards Section 8c.:

“An Employer shall create and/or retain at least 100 jobs to be eligible for the Jobs TIF Program or at least 30 jobs for the “Jobs TIF – B” program (see Section 7 below) and meet at least one of these additional “but for” standards:”

“a) After reviewing objective evidence, the City has determined that there is a credible risk, as defined herein, that the Employer may create jobs outside of the City of Madison due to a financial incentive from a competing community either inside or outside of Dane County if an investment of TIF is not made by the City of Madison. The recommended definitions of a created job, retained job and the definition of credible risk is found in Section 6, but is also provided below:

Staff recommends defining a created job as:

“...any job that does not exist in Dane County at the time the Employer receives Common Council approval for investment of Jobs TIF funds.”

Staff recommends defining a retained job as:

“...any job that is under a credible risk to be relocated outside of Dane County.”

Staff recommends defining “credible risk” of job creation outside of the City as:

“Staff determines the credible risk of created jobs moving outside of the City by reviewing objective evidence of public assistance from a community outside of the City. Such objective evidence would include, but not be limited to: review of the applicable community’s TIF project plans other financial assistance program guidelines, capital / operating budgets, authorizing resolutions for TIF or financial assistance , relevant land records indicating an Employer’s purchase, option, or ownership of property within the applicable community, securing land use entitlements, interviews with staff from the applicable community, an existing, operating facility in the applicable community, and/or similar records from State economic development organization of the location being considered.”

“b) The proposed building in the City of Madison has remained vacant for more than 5 years.”

“c) Employer proposes to locate or expand on a site that is platted and zoned for employment in the City of Madison and said site has remained vacant for more than 10 years. The proposed sale price of such site shall conform to the City’s land sale due diligence policy. (See map of platted sites suitable and zoned for employment.)

“d) The project is located or proposes to locate within a designated area of the City in need of investment, as identified herein by the attached map. Projects located adjacent to or outside of such designated areas shall not be eligible regardless of their closeness to a designated boundary. The project must also demonstrate one of the following:

- 1. A credible risk that new and/or existing jobs may be created and/or relocated outside of the City;*
- 2. Employer demonstrates that it no longer has the capacity at the current facility and*

needs to expand operations;

3. *Employer has operated at the location within the designated area map for at least 5 years."*

Staff also recommends that authorizing resolutions for Jobs TIF and Jobs TIF - B support include a clause that articulates a finding that the "but for" standard has been met through one or more of the aforementioned standards.

2) Amendments to Jobs TIF Process

Staff recommends adding the following conditions concerning the Jobs TIF process to the Jobs TIF Policy Section 8c:

- a) *"Jobs TIF authorizing resolutions shall be submitted to the TIF Joint Review Board for final consideration and approval."*
- b) *"An Employer that has received Common Council authorization for Jobs TIF by demonstrating credible risk of job retention and/or creation shall not invoke the threat of "credible risk" as defined herein within 5 years of the Common Council authorization for Jobs TIF under that section. The Employer may apply for future TIF assistance but must demonstrate the creation of no less than 100 jobs within five years, in addition to demonstrating a gap or demonstrating an alternative "but for" in Section 1, paragraphs b), c), d)2 or d)3."*

(The following paragraphs are still under staff team consideration and discussion.)

- c) **"Employers that complete Gap Analysis and are provided a gap finding by TIF staff are not eligible to re-apply for Jobs TIF."**
- d) **"An Employer receiving Jobs TIF shall not be eligible to apply for Jobs TIF for a subsequent project or phase until the second disbursement of the original Jobs TIF has occurred, as described herein in Section 3."**

3) Establish a Fixed Disbursement Method for Jobs TIF Funds

As a rule, the City disburses TIF funds into an escrow account for projects that receive TIF assistance through gap analysis. Staff releases portions of the TIF funds after reviewing the developer's draw requests against the figures represented in the TIF Application. This practice ensures that the City release only those funds that bridge the actual financing gap and for the purposes stated in the TIF Application.

In contrast, Jobs TIF Policy states that TIF staff may determine a disbursement schedule based upon the completion of the project and the creation and/or retention of jobs over a five-year period. The negotiation of such disbursement under such loose guidelines has led to pressure on staff and policy makers to disburse most or all of the Jobs TIF funds up front. Once the City disburses most or all of the TIF funds, it is not practicable to recover the TIF funds in the event the Employer fails to perform.

Staff recommends that the City withhold an established percentage of funds for all Jobs TIF projects until the completion of the project and the retention and/or creation of the promised jobs. The City should codify a standard disbursement schedule in policy.

For example, staff recommends that the City:

1. *Disburse 40% of the authorized TIF assistance to the Employer at closing of the Jobs TIF Loan upon receipt of a draw request (See Paragraph 3) below.)*
2. *Disburse 40% when Employer occupies the Project occupancy being evidenced by a Certificate of Occupancy and provides evidence that it has created and/or retained 50% of the projected jobs upon receipt of a draw request.*
3. *Disburse the remaining 20% when the Employer demonstrates that it has created and/or retained 100% of the projected jobs upon receipt of a draw request.*

4) Implement Draw Requests for Jobs TIF Disbursements

TIF Law prohibits a number of costs—in particular those that are operating costs of a developer or Employer, developer's share of special assessments, parks fees and other costs that may not be paid for with TIF funds.

Traditionally, staff is able to prevent TIF from inadvertently paying for ineligible costs by employing gap analysis, closing on TIF funds in escrow and reviewing the developer's draw requests before disbursing funds. However, the current Jobs TIF disbursement method does not have such a protection against TIF payment of ineligible costs. Using the current system, an Employer might receive a portion of Jobs TIF Funds and use them to pay for ineligible expenses.

Staff recommends that Jobs TIF Policy include a provision to close on Jobs TIF funds in escrow and distribute funds upon a fixed draw request system including contractor invoices at least equal to the amount disbursed per the disbursement formula described herein.

5) Implement Credit Analysis for Jobs TIF Projects to Ensure Performance

A traditional gap analysis approach to TIF requires applicants to provide the City with significant financial information about the proposed project cost and the project's ability to attract investment. A Jobs TIF project may receive TIF assistance to create or retain jobs, rather than bridge a financing gap. Such Employers are not required to provide the City with financial information.

However, staff has discovered that credit analysis is still important to determine the Employer's financial capacity to create and/or retain jobs. The current Jobs TIF Policy did not anticipate this procedure. Credit analysis determines whether the Employer's sales growth, earnings, working capital and other factors demonstrate a strong potential for the Employer to prosper and achieve jobs goals with Jobs TIF assistance. In cases of large, publicly traded Employers, staff may engage an outside source to evaluate the financial capability of the Employer.

Staff recommends implementing a credit analysis requirement of Employers in the Jobs TIF Policy to identify any potential risks associated with entering into a Jobs TIF loan with that Employer. Depending on the complexity of the project, TIF staff may complete this analysis and/or retain an outside third party to complete the analysis.

6) Define a “Retained Job” and a “Created Job”

At the time of the Jobs TIF Policy’s creation, Council expressed a goal to use the Jobs TIF program to create and/or retain a significant number of jobs. The policy established a minimum threshold of 100 jobs as a primary eligibility requirement.

Policy makers also expressed many viewpoints that boiled down to two objectives: 1) Prevent large numbers of City residents from losing their jobs due to relocation; or 2) Create significant employment for unemployed or underemployed City residents.

Staff recommends defining a created job as:

“...any job that does not exist in Dane County at the time the Employer receives Common Council approval for investment of Jobs TIF funds.”

Staff recommends defining a retained job as:

“...any job that is under a credible risk to be relocated outside of Dane County.”

Staff recommends defining “credible risk” as:

“Staff determines the credible risk of jobs moving outside of Dane County by reviewing objective evidence of public assistance from a community outside of Dane County. Such objective evidence would include, but not be limited to: review of the applicable community’s TIF project plans other financial assistance program guidelines, capital / operating budgets, authorizing resolutions for TIF or financial assistance , relevant land records indicating an Employer’s purchase, option, or ownership of property within the applicable community, securing land use entitlements, interviews with staff from the applicable community, an existing, operating facility in the applicable community, and/or similar records from State economic development organization of the location being considered.”

7) Create a Jobs TIF Program for Medium-Sized Employers – “Jobs TIF - B”

Although the Jobs TIF program has shown promise for projects creating and/or retaining 100 or more jobs, there is no program for medium-sized Employers retaining and/or creating between 30 and 100 employees that may benefit from some type of weighted “Jobs TIF - B” program.

The main consideration is to maintain balance between the original Jobs TIF that leverages large numbers of jobs (100 jobs or more) with a program that provides measured Jobs TIF assistance for lesser numbers of jobs.

A weighted Jobs TIF program for medium-sized Employers, or “Jobs TIF – B”, would comprise the following:

“A medium-sized Employer would be defined as an Employer that is creating and/or retaining between 30 and 99 jobs, as defined herein, within a five year period beginning at and evidenced by a Certificate of Occupancy or other appropriate City approval.”

“A medium-sized Employer is eligible for a percentage of Jobs TIF represented by the

number of jobs created and/or retained, by the definitions above, divided by 100, said percentage being applied to the amount of Jobs TIF available to the project at 40% of TIF.”
“All other TIF policies would apply to the Jobs TIF - B program, including the creation of a minimum of \$3,000,000 of incremental value, the requirement that a project be self-supporting and all other adopted City TIF policies.”

For example, assuming a \$10 million project value, an Employer creating or retaining 100 jobs would be eligible for about \$560,000 at 40% of TIF. Using the weighted formula above, a medium-sized Employer with 20 existing employees but creating and/or retaining 30 jobs would be eligible for 30% of that figure or \$168,000. At 50 jobs, the Employer could receive \$280,000, etc.

Staff recommends that the Council consider creation of a weighted “Jobs TIF - B” program for medium-sized Employers.

8) Improve Policy Language Concerning Owner, Employer and Developer Relationship

Staff recommends clarification of the Jobs TIF Policy to state:

“Jobs TIF and Jobs TIF – B is only available when the Employer is the applicant, either as the owner or lessee of property they occupy. In some cases, an Employer-affiliated LLC controlled by a parent company may own the real estate and improvements, lease them back to the Employer and still be eligible for Jobs TIF or Jobs TIF - B. In such cases, a jobs and tax increment guaranty shall be required from the parent company if the applicant is a subsidiary of parent company.”

“In situations where a developer, not the Employer, is the applicant, the traditional gap analysis underwriting shall be used.”

9) Implement the Finance Committee Review of Jobs TIF at Beginning of Process

Jobs TIF and Jobs TIF – B require a Gap Analysis Waiver. The Gap Analysis Waiver is an exception to TIF Policy, requiring an extra closed session Finance Committee meeting.

Staff recommends that the Finance Committee consideration of the Gap Analysis Waiver occur after staff has received a project value estimate, completed a TIF run estimating the amount of Jobs TIF considered and conducted a credit review of the Employer.

SECTION 2: COMPLEX JOBS TIF POLICY RECOMMENDATION

The following are potential changes that would substantially amend the current Jobs TIF Policy. Staff requires Council guidance whether to pursue these changes.

10) Consider Creation of a “Small Cap” Business TIF Program

For smaller TIF amounts to assist likely smaller companies/projects (below the jobs thresholds of Jobs TIF and the proposed Jobs TIF - B, the City could develop a Small Cap Business TIF Program similar to the residential small cap TIF programs and State Street Retail programs. Generally, staff envisions that a “Small Cap” Business TIF Program would function similar to the residential programs, with a healthy TID supporting a set amount of TIF investments that meet the specific program and policy guidelines.