

MEMORANDUM

TO: TIF Policy Review Ad Hoc Committee
FR: Joe Gromacki, TIF Coordinator
DATE: September 19, 2013

SUBJECT: DRAFT OF RE-CONSTRUCTED “BUT FOR” STANDARD

Background

At the August 29 meeting, the Committee instructed TIF staff to construct language that attempts to strike a balance between the EDC proposal and current TIF Policy. The committee identified the following issues to explore:

1. WHEDA's tax credit scoring system has created an artificial financing gap, causing a dilemma for staff and policymakers to justify a “but for”.
2. The EDC proposal expands upon the “but for” definition seeking a rationale for competitive TIF-bidding for large employers.

Affordable Housing: Addressing the “WHEDA Gap”

WHEDA's standards allow tax credit allocation to affordable housing developers in sufficient quantity that most often there is no gap. Yet, WHEDA's scoring system enables developers to receive preferred access to tax credits if they receive TIF assistance. So there are TIF Applicants that don't need TIF and if they don't get TIF, they don't get tax credits.

So, if there is no real gap, how would TIF policy justify one?

For tax credit projects, TIF policy should require developers to provide units to persons with a lower area median income (AMI) than WHEDA requires. If a WHEDA-standard project requiring that 40% of its units be made available to persons at 60% of AMI does not have a gap, then requiring that 40% of the units be made available to persons at 40% of AMI would likely have a gap. WHEDA would still be able to provide tax credits to the applicant, TIF would then be eligible. Providing housing for lower-AMI households is a legitimate public purpose for both the City and WHEDA.

Competitive TIF

EDC's primary concern is that large employers often seek competitive TIF incentives from surrounding communities. Current TIF Policy requires that such a company must demonstrate a “but for” through gap analysis. Some employers are either unable or unwilling to provide financial statements that demonstrate a “but for”. Our neighbors don't require gap analysis to demonstrate “but for”. Madison is thereby left outside of the competitive bidding process for such employers.

Public funds invested in private activities must serve a public purpose, and the City must ensure that the recipient of public funds follows through on that public purpose. Without gap analysis, the City may be financing a private project that has not demonstrated a financial or public purpose need for such use of taxpayer funds.

So what is a fair, balanced, consistent and secure approach to Competitive TIF?

First, a policy amendment should tie all business development-related TIF to a legitimate public purpose—in this case job creation and/or retention.

Second, a policy amendment should reward those companies that comply with TIF Policy more than those that do not. Toward that end, staff proposes creating a two-pronged “Jobs Project” category:

Conventional Applicant:

- All size employers
- Provides TIF Application, financials, gap analysis
- Loan sized up to 60% of estimated increment and one (1) living-wage job per \$65,000 of TIF
- End-loan with 10% of funds disbursed at loan closing
- Balance of TIF disbursed as living-wage jobs created and/or retained
- 10% of jobs created and/or retained must offer career advancement
- Corporate Increment Guaranty

Competitive Applicant:

- Employers of more than 100 full-time, living wage jobs created and/or retained
- Simplified TIF Application, no financials, gap analysis waived
- Loan sized up to 40% of estimated increment and one (1) living-wage job per \$65,000 of TIF
- No initial disbursement
- TIF disbursed as living wage jobs created and/or retained
- 10% of jobs created and/or retained must offer career advancement
- Corporate Increment Guaranty

The end result is that conventional applicants may receive more TIF in return for complying with TIF Policy and demonstrating need. Competitive applicants are now eligible for TIF (albeit less than conventional TIF applicants) that previously would not have been made available to them. Jobs Project TIF loans are not disbursed until the goal of jobs created and/or retained, so there is no concern of claw-backs for non-performance. A public purpose is met. Risk and cost impact on the TID is managed through either the 40% or 60% Rules and the job cost ratio of one job per \$65,000 of TIF.

PROPOSED RECONSTRUCTED LANGUAGE

4.1 (6) “But For” Standard. Each project must demonstrate sufficient need for the City’s financial assistance, so that without that assistance, the proposed project could not occur. Every other financial alternative is to be exhausted prior to the use of TIF, including equity ~~participation~~-investment, other federal and state funds, bonds, tax credits, loans, etc. TIF assistance shall be utilized as gap financing as determined through gap analysis. Each project must demonstrate a probability of success.

4.1 (7) Types of TIF - Assisted Projects. There are three types of projects that the City of Madison may consider for TIF Assistance:

(a) Redevelopment Project: The construction, rehabilitation or expansion of a structure that creates property tax increment in a blighted area TID. TIF assistance shall be determined by gap analysis conducted through a formal TIF Application submitted by Developer.

(b) Affordable Housing Project: TIF assistance may be provided to a residential real estate project in which no less than 40% of the units are affordable to households making less than or equal to 40% of Area Median Income (AMI)*, said units made affordable for a period of not less than 30 years. TIF assistance shall be determined by gap analysis of a formal TIF Application submitted by Developer.

(c) Jobs Project - "Pay for Performance": TIF assistance may be provided to an eligible Employer as an end-loan ("Pay for Performance") to accomplish the City's public purpose goal of job creation and/or retention. TIF assistance shall be determined by gap analysis of a formal TIF Application. In some instances a waiver of gap analysis may be granted to the Employer providing Employer complies with Subparagraph (c) 4. below.

1. *Eligible Employers*. Employers from the following primary industry sectors as defined by their respective NAICS code, are eligible for Jobs Project TIF assistance:

- a. Manufacturing
- b. Medical/Biotechnology
- c. Agriculture/Biotechnology
- d. Digital Technology
- e. Finance and Insurance
- f. Alternative Energy, Water and Sustainability
- g. Other Sectors Consistent with the Economic Development Plan

2. *Employer Requirements*. Employers eligible for Jobs Project TIF assistance shall:

- a. Construct and occupy (or lease and occupy) a newly-constructed or redeveloped facility for not less than the projected life of the Jobs Project TIF loan; and
- b. Create and/or retain living-wage jobs as defined by Madison General Ordinance (MGO) 4.20, with at least 10% of said jobs offering potential career advancement over the projected life of the Jobs Project TIF loan; and

- c. Generate and guaranty tax increment (unless Employer is leasing under 3.c. below) sufficient to recover the Jobs Project TIF loan within the remaining statutory life of the TID.
3. *Jobs Project Analysis Method.* TIF assistance shall be determined by gap analysis (unless the City grants Employer a Gap Analysis Waiver in Subparagraph 4. below) and measured according to the following standards:
 - a. Similar to the U.S. Small Business Administration job creation standard, TIF assistance to a Jobs Project shall not exceed \$65,000 in TIF assistance per job and shall not exceed 60% of the present value of tax increments generated by the Employer's project.
 - b. Ten percent (10%) of the total Jobs Project TIF loan shall be disbursed to the Employer initially, with the remaining balance disbursed as a "Pay for Performance" end-loan upon completion of pre-established job creation and/or retention thresholds not to exceed five (5) years from the loan closing.
 - c. *Anchor Tenant Leases, Sales or Transfers*--In the event that Employer is leasing a significant amount (more than 30% of the net leasable area) of newly-constructed or redeveloped space from a Developer, or Developer constructs a "build to suit" structure that is initially leased and then sold or transferred to Employer, or some other method of property transfer, Developer shall guaranty that tax increments are sufficient to recover the Jobs Project TIF Loan from the date of loan disbursement to Employer. Employer shall guaranty that jobs are created and/or retained for a period not to exceed five (5) years. Developer's increment guaranty obligations shall transfer to Employer upon the sale or transfer of the property to Employer.
4. *Jobs Project – Gap Analysis Waiver.* Gap analysis may be waived only if an eligible Employer proposes to retain and/or create at least 100 full-time, living-wage jobs, and meets one or more of the following criteria and upon acceptance of the City's Jobs Project TIF Loan offer, provides a sufficient tax increment guaranty to repay the Jobs Project TIF Loan and a guaranty that living wage jobs, as defined by MGO 4.20, shall be created and/or retained over a period not to exceed five (5) years. A waiver may be granted under one or more of the following conditions:
 - a. The Employer is a subsidiary of a large parent corporation, does not measure financial performance independently of the parent and is therefore unable to provide financial statements to facilitate gap analysis.
 - b. The Employer is soliciting or has received financial incentive bids from other communities that do not require gap analysis.
 - c. Similar to the U.S. Small Business Administration job creation standard, Employers receiving a gap analysis waiver may receive a Jobs Project TIF loan not exceeding \$65,000 of TIF loan per job created or retained and total TIF assistance and shall not exceed 40% of the present value of tax increments generated by the Employer's project.

- d. TIF assistance shall be disbursed to the Employer as a “Pay for Performance” end-loan upon completion of pre-established job creation thresholds over a period not to exceed five (5) years.
- e. *Anchor Tenant Leases, Sales or Transfers*--In the event that Employer is leasing a significant amount (more than 30% of the net leasable area) of newly-constructed or redeveloped space from a Developer, or Developer constructs a “build to suit” structure that is initially leased and then sold or transferred to Employer, or some other method of property transfer, Developer shall guaranty that tax increments are sufficient to recover the Jobs Project TIF Loan from the date of loan disbursement to Employer. Employer shall guaranty that jobs are created and/or retained for a period not to exceed five (5) years. Developer’s increment guaranty obligations shall transfer to Employer upon the sale or transfer of the property to Employer.

4.1 (8) TIF Underwriting Criteria. Staff conducts a gap analysis of each project (unless Employer is granted a waiver under 4.1(7)). A staff recommendation for TIF assistance to the project is submitted to the Common Council based upon the following factors:

- (a) The type of project: Redevelopment, Affordable Housing or Jobs Project
- (b) Whether or not a gap has been identified by TIF staff through gap analysis (if not, indicate that Jobs Project gap analysis waiver is requested).
- (c) The estimated value and projected increment created by the project
- (d) The financial health and age of the TID
- (e) Comparison of gap to 50% Rule or Jobs Project Rules
- (f) If applicable:
 - 1. Quantity of living-wage jobs created and/or retained
 - 2. Quantity of affordable housing units and level of affordability