



# City of Madison TIF Loan Underwriting Policy

## ~~TIF Policy Committee:~~

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## **The City of Madison Common Council reserves the right to make exceptions to the TIF Loan Underwriting Policy.**

The City of Madison has adopted these TIF Loan underwriting policies to provide a consistent, measurable, transparent process for the underwriting review and analysis of all applications for TIF assistance. This document is primarily meant to be used by prospective applicants for TIF assistance, elected officials, and City Staff.

### **SECTION 1: TIF LOAN UNDERWRITING**

#### **TIF Loan Policies – All Development**

- 1) **Land Cost Due Diligence, Excessive Land Costs.** The City may consider write-downs from the value of the current land use to the market value of the proposed use provided that Developers shall demonstrate proper due diligence in the purchase of land, including but not limited to studies of soil conditions, comparable land prices, environmental issues. Prior to purchase, developers seeking TIF shall provide the City with documented market evidence that the purchase price negotiated is within an acceptable range of values for the property's current land use and condition. Developers shall conduct initial meetings with the district alder and planning staff concerning building height, land use and other issues and shall provide such findings to the City. Developers are encouraged to option land while such studies are performed. The City shall not assist write-downs for land purchases that greatly exceed the assessed value of the current land use(s), as determined by the City. The City of Madison is not obligated to provide TIF assistance for land costs, whether purchased or optioned. Developer shall provide all such studies or reports to the City at the time of application
- 2) **Environmental Remediation.** The City may consider the cost to remediate environmentally contaminated property when it exceeds the reasonable cost experienced on typical redevelopment projects. However, the City shall not provide TIF write-downs that eliminate a responsible party's obligation to remediate contaminated property.
- 3) **Assessable Infrastructure Costs.** TIF may not be used to pay for public infrastructure expenditures that are paid for by special assessments or other City charges. Non-assessable public infrastructure expenditures may be funded with TIF.
- 4) **Operating Costs.** Operating Costs including, but not limited to, lease-up reserves, buyer/r/1 or tenant representative broker's fees (i.e. broker's hired by parties other than the Developer) and working capital are not eligible TIF expenses.
- 5) **City Fees.** Parks dedication, sewer, water assessments, etc. are not TIF-eligible.
- 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 investment, other federal and state funds, bonds, tax credits, loans, etc. Except/r/2 as authorized in Jobs TIF in Section 9 below. TIF assistance shall be utilized as gap financing as determined through gap analysis, ~~except as described in Section 1.7 below.~~ Each project must demonstrate a probability of success.
- 7) **55% Gateway.** Projects other than Jobs TIF shall comply with the 55% Gateway, as outlined in the *TIF Goals, Objectives and Process* document, Section 3.1.7.
- 8) **Gap Analysis-~~Methods~~Projects.** There are ~~three~~ two types of projects that the City of Madison may consider for TIF assistance using gap analysis to prove that "but for" TIF assistance the project would not otherwise occur:

- a. (Re)Development Project. The construction, rehabilitation (including the rehabilitation of contributing buildings in a designated historic district) 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 the Developer based the developer's identified need in a Wisconsin Housing and Economic Development Authority (WHEDA) Low Income Housing Tax Credits (LIHTC) application scoring estimate. Developer shall provide City Staff with their own WHEDA scoring estimate, based upon the current WHEDA LIHTC scoring sheet / formula.

9) Jobs Project TIF Project—“Pay for Performance”. TIF assistance may be provided to an eligible<sup>[r3]</sup> Employer to accomplish the 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 Subpar. 1.8(e)4) below.the following:

- a. **Eligible Employers.** Employers from the following primary industry sectors as defined by their respective NAICS code are eligible for Jobs TIF assistance:
  1. Manufacturing
  2. Medical/Biotechnology
  3. Agriculture/Biotechnology
  4. Digital Technology
  5. Finance and Insurance
  6. Alternative Energy, Water and Sustainability
  7. Other Sectors Consistent with the Economic Development Plan
- b. **Jobs TIF—Eligible Project Requirements.** Eligible Jobs TIF Projects must meet all of the following requirements. Employers eligible for Jobs TIF assistance shall:
  1. Jobs TIF is only available when the Employer is the applicant, either as the owner or<sup>[r4]</sup> 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. In such cases a jobs and tax increment guaranty shall be required from the parent company if the applicant is an affiliate or subsidiary of a parent company.
  2. In situations where a developer, not the Employer, is the applicant, the traditional gap analysis underwriting shall be used.
  3. An Employer shall ~~C~~construct and occupy (or lease and occupy) a newly -constructed or redeveloped facility for not less than the projected life of the Jobs TIF assistance~~loan~~.
  4. Except as provided in 9j, Aan Employer shall ~~C~~create and/or retain at least 100 full-time, living-wage jobs as defined in 9c. below, ~~or between 30 and 99 full-time living-wage jobs for the “Jobs TIF – B” program~~ over a period not to exceed five (5) years. Substantiation of jobs and benefits created and/or retained as defined in 9c. below must be provided annually to the City as defined by Madison General Ordinance (MGO) 4.20, over the projected life of the Jobs Project TIF loan; and

5. An Employer shall generate and guaranty tax increment (unless Employer is leasing the property from a Developer providing an increment guaranty) sufficient to recover the Jobs Project TIF loan within the remaining statutory life of the TID; and

6. An Employer shall provide TIF staff with objective evidence that the project meets at least one of the following alternative “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; or, will not retain jobs in Dane County due to a financial incentive from a competing community outside of Dane County if an investment of TIF is not made by the City of Madison.

Such objective evidence would include, but is not limited to:

1) Review of the applicable community’s TIF project plans or other financial assistance program guidelines

2) Capital/operating budgets of said community;

3) Authorizing resolutions for TIF or other financial assistance;

4) Relevant land records indicating an Employer’s purchase, option, or ownership of property within the applicable community;

5) Securing land use entitlements;

6) Interviews with staff from the applicable community;

7) An existing, operating facility, owned by Employer located within the applicable competing community that demonstrates potential for expansion, including a larger vacant building or vacant building with adjacent land zoned and platted for expansion, adjacent development land or other available zoned and platted land suitable for its expansion.

8) Similar records from a state economic development organization of the location being considered.

b) The building to be occupied ~~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.)~~ The attached maps attempt to identify sites that currently meet this standard; however, the maps are not intended to represent an exhaustive list of 100% of the sites within the City that could meet this standard at any point in time.

d) The project is located within a Tax Incremental District (TID) that has been designated or is proposed to be designated as an “Opportunity Zone Tax Incremental District” (Opportunity Zone TID), meeting all of the following conditions:

- 1) More than 50% of the land area, excluding right-of-way, located within a TID boundary are also located within a federally designated Opportunity Zone at the time of TID creation or amendment.
- 2) Designation as an Opportunity Zone TID shall include a finding by the TIF Joint Review Board that “but for” TIF, proposed projects within the TID would not occur due to economic conditions within the Opportunity Zone.
- 3) Only Employers qualifying for Jobs TIF are eligible under provision d). No developers shall use this provision in lieu of traditional gap analysis.
- 4) All other TIF Policy requirements, such as TIF assistance to projects being self-supporting, the amount of TIF invested, Employer equity equaling or exceeding the amount of TIF, etc. shall apply under this subparagraph.
- 5) A project utilizing subparagraph d) shall also demonstrate one of the following:
  - i. A credible risk that new and/or existing jobs may be created and/or relocated outside of the City;
  - ii. Employer no longer has the capacity at their current facility and needs to expand operations;
  - iii. Employer has occupied and operated a facility within the proposed or existing Opportunity Zone TID for at least five (5) years.
- 6) The geographic areas of the City that are eligible for designation as an Opportunity Zone TID are those geographic areas designated by the Federal Government as Opportunity Zones in 2018, regardless of future changes to the Federal Opportunity Zone Program. The City reserves the right to review and revise these boundaries at a future date based on future Census information and periodic review of the City’s TIF Policy.

In the event that the federal government eliminates the Opportunity Zone program or changes the boundaries of Opportunity Zones such that an existing Opportunity Zone TID no longer includes more than 50% of the land area, not including right-of-way, the City shall no longer utilize this subparagraph for that TID.

**c. Jobs TIF Process.**

1. Employers shall submit a Jobs TIF Application, financial statements and non-refundable fee of 0.005% of the amount of Jobs TIF to TIF staff for credit analysis.
2. Upon ~~satisfactory completion of receiving~~ a project value estimate from the Assessor’s office, completion of a TIF run estimating the amount of Jobs TIF to be considered and credit analysis, TIF staff presents the application and staff report to the Finance Committee for a gap analysis waiver.
3. When a waiver is awarded, TIF staff drafts a term sheet, signed by Employer, that sets forth the terms and conditions of the Jobs TIF assistance, that will be incorporated into an authorizing resolution.
4. Upon approval of the authorizing resolution by the Common Council, the resolution, application and TIF staff report is submitted to the TIF Joint Review Board for final approval.

5. Upon Joint Review Board approval, a loan agreement and security documents are prepared for closing into escrow. Jobs TIF funds are disbursed according to a schedule established in paragraph 9h.

**d. Ineligible Projects.**

1. An Employer that has received Common Council authorization for Jobs TIF by demonstrating credible risk of job retention and/or retention shall not invoke the threat of “credible risk” as defined herein within 5 years of the Common Council authorization for Jobs TIF. 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” as set forth in Paragraph 9b.
2. Employers that complete Gap Analysis and are provided a gap finding by TIF staff are not eligible to re-apply for Jobs TIF for that project.
3. An employer receiving Jobs TIF support shall not be eligible to receive Jobs TIF support for a subsequent project or phase unless receiving the specific approval of the Finance Committee. An Employer receiving Jobs TIF may apply for Jobs TIF for a subsequent phase, but introduction of an authorizing resolution to the Common Council for said phase shall not occur until the second disbursement of the original Jobs TIF loan has occurred, as described herein in Paragraph 9h.

**e. Definitions:**

1. “Created Job.” Any job that does not exist in Dane County at the time the Employer receives Common Council approval for investment of Jobs TIF funds.
  2. “Retained Job.” Any job that is under a credible risk to be relocated outside of Dane County.
  3. “Living Wage Job.” A living wage job is defined by Madison General Ordinance 4.20 and requires that said jobs are sufficient to qualify for health insurance benefits<sup>[r5]</sup> and shall be created and retained over a period not to exceed five (5) years. Employer shall provide substantiation of jobs and benefits created and/or retained herein annually to the City.
  4. “Credible Risk.” Staff shall determine the credible risk of 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 and other financial assistance guidelines, capital / operating budgets, authorizing resolutions for TIF or other 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, and/or similar records from State economic development organization. of the location being considered.
- 4) ~~Jobs TIF Project – Gap Analysis Waiver. Gap analysis may be waived only if an eligible<sup>[r6]</sup> 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 retained over a period not to exceed five (5) years. Substantiation of jobs so created must be provided annually to the City. 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 [r7] 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 [r8] communities that do not require gap analysis. The City will give greater consideration to applicants that provide documented proof of such bids.~~

~~Similar to the U.S. Small Business Administration job creation standard, Employers [r9] receiving a gap analysis waiver may receive a Jobs Project TIF loan not exceeding the standard established by the Small Business Administration for investment per job of TIF loan per job created or retained and total TIF assistance and shall not exceed 40% of the net present value of tax increments generated by the Employer's project.~~

- d) ~~Staff shall determine the appropriate disbursement method for TIF assistance [r10].~~

5. "Anchor Tenant Leases, Sales or Transfers"--In the event that Employer is leasing a [r11] 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 disbursal 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.

f. Amount of Jobs TIF Assistance Available. ~~Similar to the U.S. Small Business Administration job creation standard, Jobs TIF assistance shall equal 40% of the net present value of tax increments generated by Employer's Jobs TIF project. Employers receiving a gap analysis waiver may receive a~~ The Jobs Project TIF assistance shall not exceeding the standard established by the U.S. Small Business Administration for investment per job of TIF loan per job created or retained.

g. Credit Analysis. As stated in 9c., Employer shall provide the City with historical financial statements that demonstrate Employer's ability to guaranty job creation and tax increment. Depending on the complexity of the project, TIF staff may complete this credit analysis and/or retain an outside third party to complete the analysis.

h. Disbursement. As stated in 9c., the City shall disburse Jobs TIF in the following manner:

1. After Council authorization and closing documents are prepared, the City shall close on Jobs TIF funds for the project in escrow. There shall be three disbursements. The City shall disburse Jobs TIF funds upon the City's receipt and satisfactory review of a draw request, comparing it to costs estimated in the TIF Application and project costs allowed under TIF Law. Draw requests shall include contractor invoices at least equal to the amount disbursed per the disbursement formula described herein.
2. The City shall disburse 40% of the authorized TIF assistance at closing of the Jobs TIF assistance upon receipt of a draw request.
3. The City shall disburse an additional 40% of the authorized TIF assistance when the Employer occupies the project, occupancy being evidenced by Certificate of Occupancy and provides evidence that Employer has created and/or retained 50% of the projected jobs upon receipt of a draw request.

4. The City shall disburse the remaining 20% of the authorized TIF assistance when the Employer demonstrates that it has created and/or retained 100% of the projected jobs upon receipt of a draw request.

i. **Joint Review Board Authorization.** As stated in 9c., the City shall submit the authorizing Jobs TIF resolution, staff TIF report to the TIF Joint Review Board for final approval of the alternative “but for” finding.

j. **Jobs TIF (B) for Small and Medium-Sized Employers.** Employers creating and/or retaining between 30 and 99 jobs and meeting all other Jobs TIF Eligibility and TIF Policy requirements may apply for Jobs TIF (B) financial assistance.

1. 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. In such cases, a jobs and tax increment guaranty shall be required from the parent company if the applicant is a subsidiary or an affiliate of a parent company.

2. All other Jobs TIF Eligibility Requirements and TIF Policies apply, including but not limited to that projects create a minimum \$3 million incremental value and be self-supporting (i.e. generate sufficient tax increment to repay the Jobs TIF assistance). An eligible Jobs TIF (B) project requires that the Employer create and/or retain between 30 and 99 full-time jobs as described herein within a five (5) year period beginning at and evidenced by a Certificate of Occupancy or other appropriate City approval.

3. The amount of Jobs TIF (B) is determined as the number of jobs being created between 30 and 99, divided by 100 and applying this percentage to the amount of Jobs TIF available to the project at 40% of the net present value of tax increments generated by the project, or:

$$\text{Number of Jobs}/100 \times 40\% \text{ of the NPV of tax increments}$$

4. The Jobs TIF (B) application, ~~and approval process and~~, disbursement of funds ~~and job verification requirements~~ are identical to Jobs TIF.

**10) TIF Underwriting Criteria.** ~~Staff conducts a gap analysis of each project (unless Employer is granted a waiver under Section 1.8. A Staff recommendation for TIF assistance to the project is submitted to the Common Council based upon the following factors enumerated in Section 3.1.8) of the TIF Goals, Objectives, and Process document:~~

- a. The amount of TIF requested
- b. The type of project: Redevelopment, Affordable Housing, ~~or Jobs~~ TIFProject or Jobs TIFProject (B).
- c. 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).
- d. The effect of an anticipated tax credit application upon the project (if applicable), and the effect of proposed TIF Loan on the project’s score for tax credits given known previous successful scores.
- e. The estimated value and projected increment created by the project.



- f. The financial health and age of the TID
- g. Compliance with TIF Underwriting Policy
- h. If applicable:
  - 1) Quantity of living-wage jobs created and/or retained
  - 2) Quantity of affordable housing units and level of affordability
  - 3) Number of rehabbed contributing buildings in a historic district
- i. The amount of TIF (if any) recommended.
- j. A general statement of comments or issues concerning the project, including recommendations on the Council's evaluation, given the policy guidance in Section 3.4 and the criteria in Section 3.1(9) of the *TIF Goals, Objectives, and Process* document.
- k. Identify any requested exceptions to TIF policy

**11) Equity Greater, Equal to TIF.** TIF assistance shall not exceed the amount of equity provided by the Developer. Equity is defined as cash or un-leveraged value in land or prepaid costs attributable to the project. Donated Developer or Construction Management fees shall not be constituted as equity investment. This section may not apply to non-profit developers. See Section 1.18.

**12) No Rent or Sales Price Write-Down.** TIF assistance will be limited to the amount necessary to make a project competitive with other similar projects in the Madison metropolitan market area. TIF Assistance not to provide below-market sales prices or rent subsidies to assisted projects, except as applied to assist affordable housing.

**13) Self-Supporting Projects.**

- a. Each for-profit project demonstrating a need for TIF assistance must generate sufficient tax increment to cover or repay both the TIF contribution to the project and a portion of the planned public infrastructure costs within the tax incremental district.
- b. No increment from other private development projects within a tax increment district may be used to supplement another project's inability to generate sufficient tax increment.

**14) No Mortgage Guarantees.** The City will not provide mortgage guarantees.

**15) Guaranty.**

- a. Increment Guaranty - The City will require a personal guaranty of increment, sufficient to recover the City's debt service on City-financed TIF loans.
- b. Loan Agreement Guaranty - The City shall also require a personal guaranty to provide the highest level of security to the City, of the terms and conditions of the loan agreement. A corporate guaranty may be acceptable if it provides the City with adequate security.

**16) Private Development Projects Used by Government Units.** The City may provide TIF assistance to a private development project wherein a unit of County, State or U.S. Government leases space when the project addresses all of the following situations:

- a. Satisfies all other underwriting policies for TIF assistance to private development projects.
- b. Maintains or expands existing employment or reuses a blighted or vacant property.

- c. Provides an anchor for an overall development plan that will include other commercial, office, housing or mixed uses.
- d. Advances a development plan in an already established tax incremental district.
- e. Private development projects assisted under this policy will be required to provide a full reimbursement of the City's financial assistance and expenses for the project in the event the project is removed from the tax roll.
- f. Projects will be funded under this policy with sources other than general obligation debt to the maximum possible extent, in accordance with the general policy of the City's use of TIF.

**17) Land Use or Contract Violations.** Agreements for TIF assistance shall provide for remedies in the event the applicant violates the land use approvals or other contractual arrangements.

**18) Method of TIF Funding.** The City reserves the right to determine the method of financing TIF loans that is in the best interests of the taxpayer. The City will consider using accrued tax increment, general obligation borrowing, internal borrowing, and developer-financed or pay-as-you-go financing. When utilizing pay-as-you-go financing, the City reserves the right to negotiate terms such as interest costs, time frames, maximum award amounts, disbursement schedules, and the percentage of increment available to developers. For projects using a substantial portion of increment or projects with multiple components or phases, the City may require pay-as-you-go financing at its discretion. Regardless of the financing method, all TIF expenditures will require Common Council approval.

**19) Non-Profit Applicants.** Non-Profit Applicants for TIF assistance will be analyzed on a case-by-case basis.