

# TAX INCREMENT FINANCING IN RAPID CITY

## A Guide for Applicants

### INTRODUCTION

In 1978, the South Dakota Legislature approved the use of Tax Increment Financing (TIF) by municipalities to help finance redevelopment projects. Tax Increment Financing is a method of funding public investments in an area by capturing, for a time, all of the increased tax revenue that results when public investment stimulates private investment.

Tax Increment Financing is one of the few economic development and community redevelopment tools currently available to municipalities in South Dakota. Rapid City has effectively used Tax Increment Financing since the creation of the first district in 1983. However, as with any technique, Tax Increment Financing should be used according to carefully specified criteria. These criteria will assure that projects help fulfill the City's objectives for economic development and redevelopment and avoid unnecessary subsidies. This guide outlines criteria and procedures for evaluating proposals for the use of Tax Increment Financing. These criteria should be considered guidelines only and do not guarantee approval of a request for Tax Increment Financing.

Purpose of Tax Increment Financing. The City of Rapid City recognizes the following purposes for the use of Tax Increment Financing:

1. To encourage the redevelopment of deteriorated, or otherwise blighted real property in Rapid City through the investment of public funds;
2. To stimulate economic development in the community by assisting projects that promote the long term economic vitality of the community;
3. To stimulate increased private investment in areas that would have otherwise remained undeveloped or under-developed and which will, in the long term, provide a significant source of additional tax revenues to all taxing entities;
4. To stimulate the construction of safe and affordable housing units for low and moderate income residents and workers in the community; and,
5. To facilitate the reconstruction, maintenance and completion of the City's existing infrastructure network to support the existing growth and guide the future growth of the community.

### PROJECT REVIEW PROCESS

TAX INCREMENT FINANCE PROJECT REVIEW COMMITTEE. Each applicant seeking to use Tax Increment Financing must submit a complete application to the Growth Management Department which will be forwarded to the Tax Increment Finance Project Review Committee for evaluation. The Tax Increment Finance Project Review Committee will make recommendations on the use of Tax Increment Financing to the Planning Commission and the City Council. The Tax Increment Finance Project Review

Committee consists of the following seven members: two City Council members appointed by the Mayor and Council leadership; two Planning Commission members appointed by the Mayor; Economic Development Partnership President or his/her representative; one representative of the Rapid City Area School District or his/her representative appointed by the School Board President; and, one representative of the Pennington County Board of Commissioners or his/her representative appointed by the Pennington County Board of Commissioners.

The applicant and his designees shall meet with the Tax Increment Finance Project Review Committee to present the proposed Tax Increment District, Project Plan and/or Project Plan revisions. The meeting of the Tax Increment Finance Project Review Committee shall be a public meeting at which minutes will be taken and streaming audio recorded and made available to the public. Notice of the meeting shall be given. Public comment on the proposed Tax Increment District, Project Plan and/or Project Plan revisions shall be taken and considered by the Committee. A majority of the Tax Increment Finance Project Review Committee members present at the meeting where the Tax Increment Finance proposal is evaluated must concur for the request to receive a positive recommendation.

Application Requirements. An application for the use of Tax Increment financing must include the following information or the project will not be processed:

1. A detailed project description; and,
2. Purpose of the Tax Increment Financing; and,
3. List of project costs to be funded by the Tax Increment Financing including identification of typical developer costs, exceptional costs and oversizing costs. The applicant shall provide written justification when the sum of the Necessary and Convenient Costs and Contingency Cost line items exceed 10% of the total Project Costs. The proposed project costs shall include an itemized list of all Estimated Costs, including the Professional Fees.; and,
4. A preliminary development financing plan, including sources of funds, identification of lender, interest rates, financing costs and loan terms; and,
5. The applicant shall identify all persons and entities that have an interest in the project and/or in the entity applying for the tax increment financing district. The disclosures shall require identification of all members of an LLC or LLP, other partners, investors, shareholders and directors of a corporation or any other person who has a financial interest in the project or in the entity applying for the tax increment financing. This provision requires identification of all persons who have an interest in the project, including those whose interest exists through, an LLC, LLP, corporation (whether as a director or shareholder) or other legal entity. The applicant shall be under a continuing obligation to update this disclosure within thirty (30) days of any changes throughout the application process and throughout the life of the developer's agreement. If the applicant is a publicly traded company, the applicant shall be deemed to have complied with this provision if it has provided the City a copy of its most recent annual report with the application; and,

6. A pro forma indicating projected costs and revenues; and,
7. A statement and demonstration that the project would not proceed without the use of Tax Increment Financing; and,
8. A statement identifying the specific Statutory Criteria, Other Local and Discretionary evaluation criteria that the applicant believes the request meets; and,
9. Conceptual plans, sketches, maps or site plans for the project; and,
10. A development time schedule including specific phasing of improvements and project costs; and,
11. A list of the specific public improvements and a list of the specific private improvements proposed to be constructed along with the project; and,
12. Corporation, LLC, partnership papers or other business documents identifying the parties with ownership interest in the corporation and property involved in the project, including land ownership, contract for deed or other contractual information relating to control of the property and the applicant's ability to complete the project; and,
13. A financial statement of the corporation, partnership, or individual for the most recent five years or life of the company; and,
14. A copy of the proposed wage scale, employee benefits package, and full and part time employment levels or, in the case of an affordable housing project, a copy of the applicable federal housing grant program; and,
15. The applicant shall notify by certified, return receipt mail every owner of property contained within the proposed boundaries of a tax increment district and shall notify by first class mail every owner of property that is adjacent to the proposed boundaries of the tax increment district. The notification shall contain the proposed boundaries as well as a description of the proposed improvements. The Growth Management Department shall provide the applicant with a list of property owners to be notified. The return receipts shall be directed to the Growth Management Department. The applicant shall pay a fee of \$20.00 per list for the cost of compiling the two property owners lists;
16. A \$1,000 non-refundable application fee;
17. Other information that may be required by the Tax Increment Finance Project Review Committee.

All applications for Tax Increment Financing must be submitted to the Growth Management Department. The Tax Increment Project Review Committee will schedule a meeting within thirty (30) days at which the applicant will present his/her project and financing request.

Criteria for Evaluation. Projects applying for assistance through Tax Increment Financing must qualify by meeting certain criteria. Some criteria are statutory and must be met in order for the City to establish a Tax Increment Financing District. Others are discretionary, and enable the City to determine the benefits of the project. The project application must demonstrate how the project meets the required criteria. However, in all cases, the decisions to create a Tax Increment Financing District and to enter into a developer's agreement with any applicant are wholly discretionary. There is no right for an applicant to have a Tax Increment Financing District created or to have the City enter into a developer's agreement.

### Statutory Criteria

#### **SDCL 11-9-8. Findings required as to blighted areas—Likelihood of enhanced value from improvements.**

To implement the provisions of this chapter, the resolution required by 11-9-5 shall contain findings that:

- (1) Not less than twenty-five percent, by area, of the real property within the district is a blighted area; and
- (2) The improvements of the area is likely to enhance significantly the value of substantially all of the other real property in the district.

It is not necessary to identify the specific parcels meeting the criteria. No county may create a tax incremental district located, in whole or in part, within a municipality, unless the governing body of such municipality has consented thereto by resolution.

#### **SDCL 11-9-9. Areas conducive to disease or crime defined as blighted.**

Any area, including slum area, in which the structures, buildings or improvements, by reason of:

- (1) Dilapidation, age, or obsolescence;
- (2) Inadequate provisions for ventilation, light, air, sanitation, or open spaces;
- (2) High density of population and overcrowding;
- (4) The existence of conditions which endanger life or property by fire and other causes; or
- (5) Any combination of such factors;

are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and which is detrimental to the public health, safety, morals, or welfare, is a blighted area.

#### **SDCL 11-9-10. Developed areas impairing growth defined as blighted.**

Any area which by reason of:

- (1) The presence of a substantial number of substandard, slum, deteriorate, or deteriorating structures;
- (2) Predominance of defective or inadequate street layouts;
- (3) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- (4) Insanitary or unsafe conditions;
- (5) Deterioration of site or other improvements;
- (6) Diversity of ownership, tax, or special assessment delinquency exceeding the fair value of the land;
- (7) Defective or unusual conditions of title;
- (8) The existence of conditions which endanger life or property by fire and other causes; or

(9) Any combination of such factors; substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use, is a blighted area.

**SDCL 11-9-11. Open areas impairing growth defined as blighted.**

Any area which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of a municipality, is a blighted area.

In addition, a project must meet two of the following six criteria:

1. The project must demonstrate that it is not economically feasible without the use of Tax Increment Financing. In addition, if the project has site alternatives, the proposal must demonstrate that it would not occur in Rapid City without Tax Increment Financing.
2. The project will eliminate actual or potential hazard to the public. Hazards may include condemned or unsafe buildings, sites, or structures.
3. The project will not provide direct or indirect assistance to retail or service businesses competing with existing businesses in the Rapid City trade area.
4. The project will bring new or expanded employment opportunities as demonstrated by proposed wage scales, employee benefits and mixture of full and part-time employees.
5. The project will result in additional redevelopment in the following Tax Increment Financing Target Areas:
  - A. Downtown District (see Appendix A for description)
6. The project will result in the construction of affordable housing units defined as housing where the occupant is paying no more than thirty percent (30%) of gross income for housing costs including utilities and complies with the following requirements:
  - A. Affordable housing projects must target residents at or below eighty percent (80%) of median income with rents at thirty percent (30%) of the tenants income or the Fair Market Rent (FMR) for the Section 8 Program whichever is greater. A minimum of 51% of the dwelling units of the proposed development shall be occupied by households meeting this income guideline;
  - B. Affordable housing is required to remain affordable as defined above for ten (10) years. If affordability is less than ten (10) years, repayment of prorata share of increment benefit will be due and payable to the City.

Additional Local Criteria.

1. The project must comply with the adopted Comprehensive Plan and all other appropriate plans and regulations.
2. The use of Tax Increment Financing for the project will not result in the net loss of pre-existing tax revenues to the City and other taxing jurisdictions.
3. Allowable Project Costs: To accomplish the purposes of Tax Increment Financing, the following costs are determined to be allowable costs:
  1. Oversizing costs for sewer, water and streets required by the City of Rapid City;
  2. Extension of off-site sewer, water, street and public improvements to the development site;
  3. Oversizing costs for storm drainage detention and transmission facilities to accommodate storm water runoff beyond that generated by the development;
  4. Reconstruction of existing streets, water, sewer, sidewalks or other public infrastructure;
  5. Regional lift stations, pump stations or other public facilities to be owned by the City of Rapid City;
  6. Public playgrounds, parks and recreational improvements to be owned by the City of Rapid City;
  7. Demolition costs for the removal of existing structures or infrastructure;
  8. Interest and financing fees;
  9. Imputed administrative fees due to the City;
  10. Removal and replacement of contaminated soils;
  11. Professional service fees limited to engineering, design, survey and construction management associated with the allowable project costs; and,
  12. Costs, at the discretion of the governing body, which are found to be necessary or convenient to the creation of the Tax Incremental District or the implementation of the Project Plan.

Project Costs Not Allowed: The following costs are not allowed unless specifically authorized by the Rapid City Council:

1. Acquisition of equipment or other permanent fixtures;
2. Private Development site improvements including but not limited to parking lots, landscaping, driveways, site lighting, sidewalks, signs, grading and fill;
3. Real property assembly costs including land acquisition;
4. Clearing and grading of land;
5. Relocation costs;
6. Organizational costs;
7. Professional service fees including engineering, design, survey and construction management fees associated with project costs not allowed as part of the Project Plan;
8. Alteration, remodeling, repair or reconstruction of existing buildings or structures; and,
9. Legal and developer fees.

Discretionary Criteria. In addition, the project should meet several of the following criteria. The project will be evaluated relative to the criteria outlined below. The extent to which a project meets these criteria will be used in evaluation of the project including the length of time a district may run.

1. The project will generate at least one full-time job for each \$10,000 in principal value of the Tax Increment Financing; or would create a minimum of 50 new jobs.
2. All Tax Increment Financing proceeds are used for the construction of public improvements.
3. The project involves the rehabilitation of a building listed on or eligible for listing on the National Register of Historic Places.
4. The project will directly benefit low and moderate income people, as defined by the U.S. Department of Housing and Urban Development as applied to the Community Development Block Grant Program. A project will meet this criterion if at least 51% of the jobs created will be held by or available to low and moderate income people.
5. The building or site that is to be redeveloped itself displays conditions of blight as established by the provisions of SDCL 11-9.
6. The project involves the start-up of an entirely new business or business operation within the City of Rapid City.
7. The project involves the expansion of an existing business located within Rapid City.
8. The project site has displayed a recent pattern of declining real property assessments, as measured by the Pennington County Director of Equalization.
9. The project costs are limited to those specific costs associated with a site that exceed the typical or average construction costs (i.e. excessive fill, relocation costs, additional foundation requirements associated with unusual soil conditions, extension of sewer or water mains, on-site or off-site vehicular circulation improvements, etc.)
10. The developer agrees to waive the five-year tax abatement.

#### TAX INCREMENT FINANCING APPROVAL PROCESS

Following the review of the request to create a Tax Increment District or approval of a project plan by the Tax Increment Finance Project Review Committee, the staff shall notify the applicant of the Committee's action within seven (7) days.

If after reviewing the application the Tax Increment Finance Project Review Committee recommends approval of the creation of the Tax Increment District or approval of the project plan or revision to the project plan, the following approval process shall be initiated:

1. Notification Process. The Growth Management Department-Development Services Center will prepare two property owners lists: property owners inside the District boundaries and property owners adjacent to the District boundaries. The Growth Management Department-Development Services Center will notify the petitioner when the lists are ready (there is a minimum charge to the petitioner of \$20 per list). The Growth Management Department-Development Services Center will prepare an official letter of notification which must be sent by certified, return receipt mail to the property owners inside the proposed District boundaries and by first class mail to the property owners adjacent to the District boundaries. **NOTE:** *The date stamped white receipts must be submitted to the Growth Management Department-Development Services Center within three days of completing the mailing and the green cards must be submitted to the Growth Management Department-Development Services Center by 12:00 p.m. (noon) the day prior to the Planning Commission hearing. If all the green cards have not been returned, those that have been returned must be submitted to the Growth Management Department-Development Services Center by the date and time identified. Green cards returned subsequently must be forwarded to the Growth Management Department-Development Services Center.*
2. Preparation of a Project Plan. The City Staff shall prepare a Project Plan for the proposal. The Project Plan must meet certain statutory requirements including information about the use of the Tax Increment Financing funds. It shall also include a Resolution defining the proposed Tax Increment District. The Project Plan shall identify the actual percentage of commercial and industrial zoned acreage in the proposed District. The Staff shall forward the draft Resolution and Project Plan along with the Tax Increment Finance Project Review Committee recommendation to the Planning Commission.
3. Notification of Public Hearing. The City Staff shall prepare and publish a notice of public hearing by the Planning Commission prior to recommending the creation of the Tax Increment District.
4. Approval of the Project Plan. The Resolutions creating the Tax Increment District and Project Plan are then submitted to the Planning Commission for its recommendation. Following Planning Commission review and recommendation, the City Council shall set the recommended Resolution and Project Plan for Public Hearing at a future City Council meeting. The recommendation of the Legal and Finance Committee is forwarded to the City Council for its consideration following the Public Hearing.
5. Approval of the Development Agreement. Following approval of the Resolutions creating the Tax Increment District and the Project Plan by the City Council, the City Attorney shall draft a Development Agreement. The Agreement sets forth the mutual responsibilities of both parties. The Development Agreement is reviewed by the City Council who must authorize the Mayor and Finance Officer to sign the agreement.

If the Tax Increment Finance Project Review Committee does not recommend approval of the creation of the Tax Increment District, the applicant may appeal that decision to the Planning Commission. Upon approval by the Planning Commission, City Staff shall prepare the resolution creating the District and the proposal shall be reviewed as

outlined above in Steps 1, 2 and 3. The decision of the Planning Commission on the creation of the Tax Increment District shall be final.

If the Tax Increment Finance Project Review Committee does not recommend approval of the project plan, the applicant may appeal that decision to the Planning Commission. If the Planning Commission authorizes the preparation of the plan, City Staff shall prepare the project plan and the proposal shall be reviewed as outlined above in Steps 1, 2 and 3. If the Planning Commission denies the request to authorize the preparation of the project plan, the applicant may appeal that decision to the Legal and Finance Committee who shall make a recommendation to the City Council. If the City Council authorizes the preparation of the project plan, the proposal shall be reviewed as outlined above in Steps 1, 2 and 3. If the City Council does not authorize the preparation of the project plan, no further action shall be taken.

If the application is denied, resubmission of the request cannot occur for thirty (30) days from the date of denial.

#### Process for Revising Approved Tax Increment District Project Plans

1. Submit written request to Growth Management Staff.
2. Growth Management Staff schedules a Tax Increment Finance Project Review Committee meeting for review of the request.
3. The Tax Increment Finance Project Review Committee shall meet with the applicant, review the request, take public comment and make a recommendation. If approved by the committee, the staff shall prepare the revised project plan. If denied by the committee, the applicant may appeal the decision to the Planning Commission. If the Planning Commission authorizes the preparation of the revised project plan, the staff shall prepare the revised project plan and submit the request in accordance with the procedures that follow. If the Planning Commission does not authorize the preparation of the revised project plan, the applicant may appeal that decision to the Legal and Finance Committee who shall provide a recommendation to the City Council. If the City Council authorizes the preparation of the revised plan, the staff shall prepare the revised project plan and submit the request in accordance with the procedures that follow. If the City Council does not authorize the preparation of the revised project plan, no further action shall be taken.
4. Pursuant to the provisions of SDCL 11-9-18, the Planning Commission considers the proposed revisions and approves any changes by resolution.
5. Upon approval by the Planning Commission, the request is forwarded to the Legal and Finance Committee.
6. The recommendation of the Legal and Finance Committee is forwarded to the City Council; City Council may approve, amend or reject the revised Project Plan.
7. The City Finance Office shall provide an "Annual Summary of all Active Tax Increment Financing Districts" to the City Council on or before July 31 of each year

utilizing the Summary of Current Interest Rate on Active Districts spreadsheet with the addition of Prior Assessment and Revenues Received Information.

### GENERAL RULES OF THE TAX INCREMENT FINANCING PROGRAM

All approved projects must comply with the following general rules.

1. Tax Increment Financing shall not be used for the construction of residential structures.
2. Any Tax Increment Financing assisted rehabilitation within a National Historic District must be carried out according to the Secretary of the Interior's Standards for Rehabilitation.
3. The Developer is responsible for acquiring all necessary financing. The City assumes no responsibility for the repayment of any loan or bond beyond the tax allocations outlined in the Project Plan and the funds received.
4. Each applicant shall provide a Tax Increment Financing proposal from a prospective lender of his choosing which shall address these loan terms and conditions:
  - Fixed or variable interest rate, if variable state frequency of pricing adjustments
  - Interest rate index
  - Interest rate spread over/under index, if any
  - Loan term
  - Collateral
  - Guaranty requirements from the developer
  - All identity of interests between developer and lender

The City Finance Officer will review and analyze the proposed financing terms and forward a recommendation for approval or disapproval to the City Council along with the Developers Agreement or proposal for refinancing. If the City Finance Officer concludes that the proposal is not competitive with current market conditions or is otherwise unsatisfactory, a report detailing the deficiencies shall also be forwarded to the City Council.

The City reserves the right to require the refinancing of any existing Tax Increment Finance loan utilizing whatever means the City decides most beneficial to the taxpayers at any time during the term of the developer's agreement. This shall include the City's right to require that the developer assign and/or reassign the Tax Increment Finance loan to the City or any other entity designated by the City. Each project plan and developer's agreement shall include language that allows the City to be reimbursed for any and all project costs should they elect to either finance or refinance the Tax Increment Finance loan.

For purposes of development of the project plan all interest expenses shall be calculated utilizing a fixed rate not to exceed 9 percent annual interest. This interest amount shall be included in the project plan and at no time during the

term of the project shall the actual interest expense exceed the amount budgeted in the project plan.

5. An Imputed Administrative Fee shall be charged by the City of Rapid City to every Tax Increment District for which a Project Plan is approved in the amount of \$20,000. Such fee shall be paid to the City as a project cost from the tax increment fund balance in year five of the Tax Increment District. For an initial Tax Increment District application that includes phases an additional \$2,000 of Imputed Administrative Fee shall be paid to the City. Should subsequent amendment of a Tax Increment District result in a phased Project Plan an additional \$5,000 of Imputed Administrative Fee shall be paid to the City.
6. Submission of the final costs certification shall be made to the Finance Office no later than 120 days after acceptance of the final project within the phase and receipt of warranty surety, if required.

COUNCIL APPROVED December 2, 1991

COUNCIL AMENDED AND APPROVED March 21, 1994

COUNCIL AMENDED AND APPROVED April 18, 2005

COUNCIL AMENDED AND APPROVED March 20, 2006

COUNCIL AMENDED AND APPROVED May 5, 2006

COUNCIL AMENDED AND APPROVED April 7, 2008

COUNCIL AMENDED AND APPROVED December 15, 2008

COUNCIL AMENDED AND APPROVED December 6, 2010