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1. Introduction

The purpose of this policy is to outline standards and processes that the Town of Windham (the "Town") will use in initiating or considering applications for the creation of Tax Increment Financing (TIF) districts and directing the funds they generate toward approved purposes. Notwithstanding this policy, decisions to create a TIF district and enter into TIF agreements and/or Credit Enhancement Agreements shall be made on a case-by-case basis by the Town Council.

Obtaining a TIF is not a right under Maine law, and meeting the terms of this policy should not be interpreted as creating any rights or entitlements in any application. TIF is predominantly a "real estate based" tax incentive program (State of Maine, DECD Municipal Tax Increment Financing publication, dated January 20, 2011), although it may also be applied to certain personal property otherwise subject to municipal property taxation.

2. TIF Process

TIF applications (whether initiated by the Town or requested by a developer or business) will be considered by the Town Manager, Planning Department, Windham Economic Development Corporation, and the Town Council, with all final approvals granted by the Town Council and the Maine Department of Economic Development (DECD).

The Planning Department will coordinate all activities regarding applications and will assist the developer throughout the TIF process. The terms and specific details of each TIF agreement will be developed on a case by case basis. The Town Manager and the Manager's designated representatives will negotiate for the Town based on the merits of the project and this policy, following the process laid out in this document.

3. TIF Agreements

TIF agreements allow a municipality to participate in financing local projects by using some or all of the new property taxes generated by a capital investment within a designated geographic district. The Town may retain TIF proceeds for public infrastructure improvements or TIF eligible expenses, as provided for by statute.

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The Town has the option of using the “incremental” taxes to retire bonds it has issued for the project, to fund eligible municipal economic development activities, or to reimburse a developer or business for development project costs under a Credit Enhancement Agreement.

4. TIF Districts

TIF districts may be designated for periods of up to 30 years, and bonds may be issued for up to 20 years. The designation of a TIF district requires proper notice, a local public hearing, a majority vote of the Town Council, Town Meeting approval, and State DECD approval.

- a. Eligible Expenses. Eligible TIF expenses include design, permitting, and construction of necessary infrastructure to support the proposed project. Other eligible expenses are defined by the State of Maine in its TIF Publication and Statutes (which are subject to periodic amendments). The Town Council will only consider proposals that further community and economic development goals expressed in adopted plans, policies, budgets, or other official acts.
- b. Documentation. The applicant is required to provide all documentation associated with the application. This documentation provides the basis for reviewing the project’s implementation for compliance with final approvals.
- c. Geographic Boundaries. The Town reserves the right, during the application process, to establish the geographic size of the district necessary to meet the needs of the applicant or to meet the needs of infrastructure improvements deemed necessary by the community in accordance with State statutes.
- d. Personal Property. Personal property shall not be included in the calculations for the TIF.
- e. Excess Funds. TIF agreements that include a Credit Enhancement Agreement (CEA) shall include a provision that directs any excess funds after the CEA is satisfied to be directed to economic development uses.

5. Credit Enhancement Agreements

A Credit Enhancement Agreement (CEA) will be created if the TIF funds are to be used, in whole or in part, to reimburse a developer or business for development project costs. The CEA is essentially a contract between the municipality and developer or business. It is a mechanism to assist the development project by using all, or a percentage of, the incremental tax revenues

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generated by the new investment to pay certain authorized project costs with payments made directly to the developer or business.

- a. Amount of Funds. The TIF funds reimbursed/returned to the developer (via a CEA) will not exceed, over time, the amount of funds agreed to in the TIF document. The applicant is required to submit all documentation that will justify the expenditure to be reimbursed as estimated in the TIF agreement.
- b. Terms. Terms shall be negotiated between the Town and the applicant on a case-by-case basis and will be consistent with State statute. Agreements can extend between 1 and 30 years and, depending upon the merits of the project, 20% to 100% of the incremental value can be captured. These terms shall, at a minimum, be consistent with State statute.
- c. Suspension and Recapture of Benefits. Credit Enhancement Agreements may contain provisions for the suspension, termination, and/or recapture of benefits to the applicant. These actions may occur when the applicant does not meet the compliance standards outlined in this document. This will also include any statements or representations made by the applicant, which have a bearing on the Town Council's decision to participate in a TIF and at what level. The agreements also may provide for the termination and/or recapture of benefits from the applicant if the applicant relocates all or a substantial portion of the TIF project operation outside the project area, during the term of the agreement, or fails to meet new employment projections.
- d. Level of Funding Adjustments. During the application process and during the life of the TIF (and CEA), the applicant shall demonstrate the funds are being used at appropriate levels for the purpose intended. If the level of funds the applicant receives exceeds the projected need, the Town may adjust the amount to the applicant.

6. TIF Goals

The Town will use various criteria to determine participation, including those listed below:

- a. Job creation
- b. Job retention
- c. Creation of significant long-term employment
- d. Improvement in the local economy

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- e. Broadening the tax base
- f. Improving blighted areas
- g. Creating or expanding public infrastructure beyond the limits of the project
- h. Supporting community projects or goals
- i. Creating other public benefits

7. Application Requirements for projects that include a Credit Enhancement Agreement

Applicants for a CEA should demonstrate that the Town's participation is economically necessary in order for the developer to undertake the project. Such justification is demonstrated by:

- a. The cost of public infrastructure improvements unique to the project or site.
- b. The developer demonstrates the financial capacity to undertake the project and provides evidence in support of this capacity. Evidence will include but is not limited to:
 - Development budget and pro-forma
 - Financial commitments of project lenders
 - A project implementation plan and schedule.
- c. The project creates incremental tax value equal to or greater than \$1 million, excluding personal property
- d. The developer is compliant with all statutory and regulatory guidelines of the Town of Windham and the State of Maine.

All information provided by the applicant shall be kept confidential to the extent permitted by law. The Town Council, Town staff and Council designee(s) will sign non-disclosure agreements only if deemed necessary and to the extent permitted by law.

8. Waiver of Provisions

The Town Council reserves the right under certain conditions to waive the provisions of this policy. The decision to do so shall be made by applying the intent of the following guidelines to insure that the project remains within the general parameters of Windham's economic and community development vision(s). Criteria to be considered when granting the waiver are:

- Consistency with the Windham Comprehensive Plan
- Consistency with the Town's economic and community development vision(s)

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- Consistency with other local, State and federal rules
- Evidence of need, and
- Capacity to carry out the project.

9. Transfer of Ownership

If the applicant transfers ownership of property in the TIF district, the applicant must notify the Town Manager in writing prior to finalizing the transfer. The new owner must agree, in writing, to accept the provisions of the agreement as presented to and approved by the Town Council and Town meeting, before the Town Treasurer will release any further TIF reimbursements.