

Introduction.

The Maine Tax Increment Financing Program allows a municipality to retain TIF proceeds for public infrastructure improvements or TIF eligible expenses, as provided for by statute.

The Town has the option of using some or all of the new property taxes generated by a capital investment within a designated geographic district, 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.

1.0 Purpose of this Policy

The purpose of this policy is to provide guidance and outline 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 Credit Enhancement Agreements 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.

2.0 TIF Process

All new TIF application proposals, amendments to existing TIF, or new or amended Credit Enhancement Agreements (whether initiated by the Town or requested by a developer or business) will be presented to the Town Manager. The Town Manager has designated the Planning Department as the TIF application process coordinator.

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. Consideration of the application may include the

Town Manager, Planning Department, Assessor's Office, Windham Economic Development Corporation, Town Counsel, and the Windham Town Council, with all final approvals granted by the Windham Town Council and the Maine Department of Economic and Community Development (DECD).

While the format and details of individual TIF and CEA proposals may vary, the application proposal must use a standard format for summary information submitted to the Town Manager and Council about the proposal, consistent with forms filed with Maine DECD, in order to facilitate review and analysis.

Preliminary meetings with a prospective applicant are strongly encouraged; however, before any formal review of a proposed TIF, and accompanying CEA, if applicable, may be conducted, the applicant must prepare a proposal application package consistent with this policy and submit the package, along with a payment of a non-refundable application fee of five hundred dollars (\$500.00).

4.0 TIF Goals

The Town will evaluate TIF application proposals according to their ability to address community and economic development goals, including but not limited to those listed below:

- a. Creating or expanding public infrastructure beyond the limits of the project
 1. Transportation – roads and sidewalks
 2. Utilities
 - i. Wastewater
 - ii. Water main extensions
 - iii. Electricity
 - iv. Natural gas
 - v. Telecommunications
 3. Streetscaping, landscaping, and green spaces
 4. Bicycle and pedestrian amenities
- b. Supporting community projects or goals
 1. 21st Century Downtown plan elements
 2. Design standards
- c. Job creation and retention
- d. Creation of significant long-term employment
- e. Improvement in the local economy

- f. Broadening the tax base
- g. Improving blighted areas
- h. Creating other public benefits

5.0 TIF Districts

TIF districts may be designated for periods of up to 30 years; bonds for TIF-financed improvements may be issued for up to 20 years, and are subject to approval pursuant to the Town's Charter and state law. The designation of a TIF district requires proper notice, a local public hearing, a majority vote of the Town Council, and approval by the Maine Department of Economic and Community Development.

The following elements and considerations must be reflected in any TIF application proposal, whether Town-initiated or applicant-initiated:

- a. Eligible Expenses. Eligible expenses include design, permitting, and construction of necessary infrastructure to support the proposed project. Other eligible expenses are defined by Maine DECD administrative rules and state law, both of which are subject to periodic amendment. The Town Council will only consider proposals that further community and economic development goals expressed in adopted plans, policies, budgets, or other official acts, such as:
 - 1. The Comprehensive Master Plan
 - 2. Capital improvement plans
 - 3. The 21st Century Downtown plan
- b. Minimum Value. For Town-initiated TIF districts, there will be no minimum value that must be created to be considered, except that the proposed district should be projected to create sufficient value to cover costs related to the establishment of the district and to make substantial contributions to one or more community and economic development goals. For applicant-initiated TIF districts, the minimum amount of value to be created should be not less than \$5 million total taxable value of proposed development and improvements.
- c. Documentation. For an applicant-initiated TIF, 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.
- d. 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.
- e. Personal Property. In general, taxable personal property will not be included in any calculations for a proposed TIF. Personal property may be considered for inclusion on a case-by-case basis if it represents a substantial part of a proposed TIF and is any part of a proposed Credit Enhancement Agreement (CEA).
 - f. TIF Districts may include the one or more Credit Enhancement Agreements

6.0 Credit Enhancement Agreements

Credit Enhancement Agreements (CEAs) may be created if TIF funds are to be used, in whole or in part, to reimburse a developer or business for development project costs. The CEA is 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 generated by the new investment to pay certain authorized project costs with the return of certain taxes paid by the developer or business 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 collected in the TIF or 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 applicable statute, but should address as many community and economic development goals as outlined in Section 4 of this policy as the nature of the development will support. Priority will be given to:
 - 1. Incentives for the provision of public infrastructure beyond the limits of the project, which should be structured, as much as possible, to immediately follow the installation of the improvement, and
 - 2. Incentives for other costs related to the implementation of elements of the 21st Century Downtown plan, such as meeting design standards, providing green space, and other public amenities, which should be structured, as much as possible to immediately follow the completion of the elements and de-

crease annually during the duration of the CEA, but over not more than five (5) years.

- 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.

7.0 Application Proposal Requirements for Credit Enhancement Agreements

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
 - Equity commitments of owners/partners
 - Financial commitments of project lenders
 - Gap financing that the CEA is proposed to fill
 - A project implementation plan and schedule.
- c. The project creates incremental tax value equal to or greater than \$5 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.

8.0 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)
- Consistency with other local, State and federal rules
- Evidence of need, and
- Capacity to carry out the project.

9.0 Transfer of Ownership

If the applicant transfers ownership of property in the TIF district subject to a CEA to which the applicant is a party, the applicant must notify the Town Manager in writing prior to finalizing the transfer. The prospective new owner must agree, in writing, to accept the provisions of the agreement as presented to and approved by the Town Council before the Town will release any further TIF reimbursements under the CEA. Failure to provide notice of a transfer of ownership by the applicant, or for the prospective new owner to accept the terms of the CEA prior to the transfer shall render the CEA invalid and no further payments under it shall be authorized.

Adopted: October 24, 2017 (Order 17-184)