

MEMORANDUM

TO: City Council

FROM: David J. Deutsch
City Manager

SUBJECT: Adopting A Tax Increment Financing (TIF) Policy -- R-45-10

DATE: July 1, 2010

In February 2010, Council listened to a request from JBG Rosenfeld to provide and support tax increment financing for their Bowie Marketplace project. Council thereafter directed staff to develop a draft tax increment financing (TIF) policy and to return it to Council for review, discussion, and potential adoption.

In the ensuing months, staff researched policies from other jurisdictions, collected and read TIF guides, and consulted with outside experts including bond counsel.

The attached draft policy is the result of that extensive effort.

Staff recommends Council review and discussion of this proposed policy and approval of Resolution R-45-10 if that is your desire.

DJD: jff / jhk

RESOLUTION

OF THE COUNCIL OF THE CITY OF BOWIE, MARYLAND
ADOPTING A TAX INCREMENT FINANCING POLICY

WHEREAS, the City Council wishes to adopt a policy which governs the use of tax increment financing by the City; and

WHEREAS, this policy will state the conditions which must be met and the processes which must be followed for the use of tax increment financing by the City;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Bowie, Maryland, that the City of Bowie Tax Increment Financing (TIF) Policy attached to this Resolution, is hereby adopted by the City of Bowie.

INTRODUCED AND PASSED by the Council of the City of Bowie, Maryland at a Regular Meeting on July 6, 2010.

G. Frederick Robinson, Mayor

ATTEST:

Pamela A. Fleming, City Clerk

City of Bowie Tax Increment Financing (TIF) Policy

I. Purpose of Policy

The purpose of this policy is to:

- guide staff in forming recommendations regarding the use of tax increment financing and negotiating contract terms with developers;
- guide staff in forming recommendations regarding the pledge of City tax increment revenues to support tax increment financing issued by Prince George's County;
- provide a framework within which the City Council and City Staff can evaluate and compare proposed uses of tax increment financing; and
- inform the public of the City's position on the use of tax increment financing and the process through which decisions regarding the use of the tool are made.

No right or entitlement is created for any applicant seeking financing under this policy and the guidelines set forth herein.

Terms used herein have the same meaning as they do in the Maryland Tax Increment Financing Act.

The City views tax increment financing as a last course of action and prefers to consider its use only in the rarest of circumstances and then only if the County is also participating in a TIF for the project.

This policy is effective as of **MONTH, DAY, 2010**.

II. Development Objectives

The City intends to use tax increment financing to fund utilities and other improvements or activities permitted by the Maryland Tax Increment Financing Act to accomplish one or more of these major objectives:

- A. Eliminate blighting influences throughout the City.
- B. Support neighborhood retail services, commercial corridors and employment hubs.
- C. Increase the City's property tax base and maintain its diversity.

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D. Attract new and expand existing services, developments and employers to and in the City.

E. Promote development of an array of housing choices that meet the needs of current residents and attract new residents to the City, with an emphasis on promoting development of senior housing and workforce housing.

III. General Guidelines in the Use of Tax Increment Financing

These general guidelines will guide the City:

A. The City will comply with all requirements of the Maryland Tax Increment Financing Act and, to the extent applicable, federal tax law.

B. The City will undertake a rigorous analysis to ensure that the proposed project satisfies a “but for” test. The “but for” test must demonstrate to the city’s satisfaction that the developer cannot obtain conventional financing at satisfactory rates and that other avenues of financial assistance have been explored without success. The “but for” test is to provide an explanation of why the TIF is needed to make the project feasible—why the project would not occur “but for” the TIF funding. The intent is to prevent TIF funds from being used in place of available private financing, grants, or other non-tax supported funding sources. Evidence must also be provided showing that the TIF assistance provided is limited to the assistance required to make the project feasible.

C. The City will use tax increment financing only when a clearly identified City development objective is served and only to the degree necessary to accomplish that development objective.

D. Any proposed development project seeking tax increment financing must be in concert with the approved Bowie and Vicinity Master Plan.

E. Tax increment financing will only be used in cases where the Council deems it fiscally prudent to provide such assistance and the developer can clearly demonstrate that the development will serve a public purpose and that such development will likely generate incremental tax revenues sufficient to support such tax increment financing.

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F. Only those project and other costs permitted by the Maryland Tax Increment Financing Act and directly associated with or needed to service the proposed project should be financed through tax increment financing.

G. Tax increment financing should be used only as part of an overall funding package for projects that benefit the City and add long term property tax revenues.

H. Once bonds are issued, incremental tax revenues shall be applied to pay administrative expenses related to the development district.

I. The City shall employ a TIF project manager to monitor and review the public construction, and certify all related invoices. Such expenses shall be paid by the bond proceeds or by the developer.

J. The disbursement of all bond proceeds shall be undertaken in a manner acceptable to the City.

K. The City may charge an applicant an upfront application fee and other fees as permitted by law. At the City's request, the developer will be required to fund an escrow to cover costs incurred by consultants to the City, including, without limitation, the City's financial advisor and bond counsel, whether or not tax increment financing bonds are issued for a particular project.

IV. Economic Analysis and Risk Assessment Process

A. Proposed uses of tax increment financing will be subject to rigorous economic analysis and risk assessment. City Staff will be responsible for overseeing the analysis and assessment process. Consultants paid for by the applicant will be used to complete needed analysis and assessment as appropriate.

B. The analysis and assessment of all proposed uses of tax increment financing will address the following questions as part of the standard format for reports to the City Council:

- What is the public purpose of the financial assistance to the project?
- Why is there a financial need for public investment and/or subsidy?
- What is the total cost of the project?
- What is the appropriate level of public participation?

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- What are the risks associated with the project?
- What are the alternative plans for managing the risk?
- How does the proposed project finance plan compare with previously approved comparable projects?
- What is the project's impact on other publicly financed projects? What does external expert advice say about the impact of the proposed financing on the current city credit rating; and, will the proposed debt impact the city's ability to issue other rated debt?

C. The results of the economic analysis and risk assessment will be presented to the City Council at the time of the request for approval of the proposed use of tax increment financing. The report will identify any elements of the proposed project that are not in conformance with this Tax Increment Policy.

V. Application for Tax Increment Financing

The City Manager will develop an application form that requests sufficient detailed information as may from time to time be needed to complete a staff analysis and to provide Council with the information they need for decision making.

The City will charge a reasonable fee. For Fiscal Year 2011 there will be an initial application fee of \$1,000 to be submitted with the application and an additional \$9,000 fee to be submitted if the project is approved by the City for TIF financing. In each subsequent fiscal year the fees will be set through the City's existing budget process. The City expects these fees to be paid even if the County or other TIF funders do not act upon or approve an application made to them for the same project.

VI. Evaluation Process and Criteria

A. **General Guidance:** The following items will be taken into consideration in the evaluation of any development proposal requesting tax increment assistance.

1. Need For Public Assistance – In all cases, it is required that the need for public assistance be demonstrated and documented by the developer to the satisfaction of City Staff. All such documentation, including development budgets, cash flow projections, market studies and other financial and market information, must be submitted by the developer along with an application for public financial assistance.

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2. Amount of Public Assistance versus Private Investment - All development proposals should seek to maximize the amount of private investment per dollar of public assistance. Public assistance as a percentage of total development costs will be determined for each project (or discrete portion of a project receiving a subsidy) and compared to other development projects or subprojects of similar scope and magnitude whenever possible.

3. Term of Tax Increment Financing –The term of the tax increment financing shall be kept to a minimum. The proposed term of any tax increment financing shall be fully documented and explained to the City Council.

4. Development Benefits and Costs – The direct and indirect benefits of the development proposal to the city shall be determined and quantified to the degree possible. Costs of the development proposal to the City shall also be identified to the degree possible; such costs would include ongoing operation and maintenance of public improvements.

5. Credit Enhancement – The City may require that credit enhancement be used to support a particular tax increment financing issue in order to protect the City's taxpayers and fiscal reputation. The credit enhancement provided may take the form of a third party guaranty satisfactory to the City, a special taxing district legally tied and coincident to the development district which is the subject of a particular tax increment financing issue, a letter of credit, posting of satisfactory collateral, bond insurance, or other credit enhancement vehicle that is satisfactory to the City.

B. Due Diligence: A due diligence investigation performed by the City or its agents must confirm information regarding the developer's demonstrated ability to complete the project as well as the property owners and the prospective occupants of the project. The investigation shall also include a review of the developer's and property owner's financial resources to sustain the project.

C. Transparency and Public Process: Once an application for tax increment financing is deemed acceptable by the City Manager, he will notify Council. Thereafter, at least two separate public meetings with Council will be held: an initial work session and an official public hearing session at the conclusion of which Council can act.

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VI. Evaluation Process and Criteria

The City reserves the right to deviate from this policy, in its sole discretion, to the extent the City Council determines any such deviation is in the City's best interest.

END