

# TAX INCREMENT FINANCING IN RAPID CITY

## A Guide for Applicants

### INTRODUCTION

In 1978, the South Dakota Legislature approved the use of tax increment financing by municipalities to help finance certain development and 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 are requirements and guidelines, but they 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 existing growth and to guide future growth of the community.

### GENERAL RULES OF THE TAX INCREMENT FINANCING PROGRAM

All approved projects must comply with the following general rules.

1. Tax increment financing cannot be used for the construction of residential structures pursuant to SDCL 11-9-15 and SDCL 11-9-42.
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 tax increment funds received by the City.
4. If the developer needs financing for the project, the developer must provide a tax increment financing proposal (from a prospective lender of the developer's choosing) that provides the following loan terms and conditions:
  - Fixed rate
  - Loan term
  - Rate adjustment period
  - Collateral

The City Finance Officer will review and analyze the proposed financing terms and put a recommendation of approval or disapproval of the financing terms in the City staff report that will be provided to the Planning Commission. 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 will also be put in the City staff report.

The City reserves the right to require the refinancing of any existing tax increment finance loan utilizing whatever means the City decides is most beneficial to the taxpayers while the tax increment financing district (TIFD) is in existence. This will 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 must include language that allows the City to be reimbursed for any and all project costs should the City elect to either finance or refinance the tax increment financing loan.

For purposes of development of the project plan, all interest expenses must be calculated utilizing a fixed rate not to exceed either: a) the Wall Street Journal Prime Rate + .75% or b) a rate otherwise approved by the City Finance Officer. This interest amount will be included in the project plan. The Developer will not be reimbursed from the TIFD fund for any actual interest expense that exceeds the amount budgeted in the project plan. The loan origination fee will not exceed 1% of the principal balance of the loan request.

At its sole discretion, the City may offer to finance any tax increment finance loan. The offer will be based upon the cash flow availability of the City and the interest and project benefit to the City as a whole. The City will require a personal guarantee from each member of the entity/person applying for financing. If the City offers to finance a project and the developer chooses to not accept such an offer, the developer may not receive interest reimbursement at a rate higher than that offered by the City.

5. An imputed administrative fee in the amount of \$25,000 will be charged by the City for every TIFD for which a project plan is adopted. Such fee will be paid to the City as a project cost from the TIFD fund; no proceeds from the TIFD fund will be disbursed to the developer (or any other party other than the City) until the City is paid the \$25,000 fee in full from the TIFD fund. For an initial TIFD application that includes phases, an additional \$2,500 City imputed administrative fee will be added to the \$25,000 City fee charged by the City in the same manner as the \$25,000 fee. Should subsequent amendment of a TIFD result in a

phased project plan, an additional \$5,000 imputed administrative fee will be charged by the City and paid to the City in the same manner as the \$25,000 fee.

6. Pennington County will charge every developer of a TIFD for which a project plan is adopted an imputed administrative fee of \$15,000. The developer will pay such fee directly to Pennington County within ninety (90) days after the approval of the TIFD by the City Council, and the developer will be entitled to include such fee in its project plan costs as an expense reimbursable from the TIFD fund.
7. At the discretion of City staff and based upon the availability of proposed increment cash flow, additional public improvements that will benefit the citizens of Rapid City and that are needed within the proposed TIFD boundaries or outside the immediate area of the proposed TIFD boundaries may be added to the request. If the additional public improvements are added to the request, the proposed TIFD boundaries will be changed to include the area encompassing the additional public improvements needed. Examples include, but are not limited to: City parks, City recreational facilities, City public safety facilities, improvements to existing City infrastructure, and expansion of City infrastructure. If additional improvements are added to the request by the City, the City will be responsible for the additional costs of those improvements. The developer's portion of the costs will be reimbursed first by tax increment funds. The City's portion of the costs will be reimbursed second.
8. To promote infill development within the City limits and make use of existing City infrastructure, the TIFD can partially fund the purchase of land upon which development is proposed. This requires a recommendation by City staff and approval by City Council. The developer must demonstrate that the cost of infill land would be more expensive to acquire as opposed to land where limited infrastructure may be in place. The developer must demonstrate that the development fulfills a high need within the community. Examples include, but are not limited to: affordable housing and significant economic development opportunities.
9. Prior to the developer certifying the costs of improvements, such improvements must be accepted by the City, warranty surety provided, and any required easements or right-of-way dedicated to the City.

In order to expedite certification, the developer will provide the City with a copy of the first TIFD-related construction bank draw for the project as it is made to the bank. At this time the developer must meet with the Finance Office to review whether costs are adequately itemized in a spreadsheet tabulation. Following the first draw, the developer must provide the City copies of all TIFD-related construction bank draws, and the updated spreadsheet tabulation, as they are made to the bank.

Meeting(s) to review the costs may be provided upon request of the developer or the City. Upon completion and acceptance of the improvements, the developer must certify to the Finance Officer that such improvements have been completed and must certify the amount of money disbursed therefore. Submission of the final cost certification must be made to the Finance Department no later than 180 days after the City's acceptance of the last of the public improvements within the TIFD boundary as provided in the project plan. The certification must be a statement, sworn on oath or affirmation under penalty of perjury, made by an authorized officer or director of developer. The certification must be

accompanied by sufficient supporting documentation.

The developer must provide sufficient documentation to certify that the terms of the TIFD agreement are complied with. In addition to the certification statement, the developer must provide a spreadsheet tabulation of all project costs that includes a summary of all expenditures per project plan cost item. The City will have the right to require documentation to establish that the amounts set forth have, in fact, been disbursed for the costs contemplated in the project plan, that state bid laws have been complied with, and that the provisions in the TIFD agreement have been met. The decision of whether documentation is sufficient is in the City's lone discretion. The developer professional services invoices submitted for certification must sufficiently describe the professional activity. If an invoice references any report, study, location, design, layout, survey, or similar drawings, the referenced item must be provided as an attachment to the invoice. All documentation provided in support of certification must be provided in both paper and digital (.pdf) format.

The developer may certify its costs by phase. Certification for each phase will require completion and acceptance of all improvements in such phase, as detailed in the project plan, prior to submission. If no phasing is identified in the project plan, then the developer will not be allowed to certify its costs until the entirety of the improvements contained within the project plan are completed and accepted by the City.

#### APPLICATION REQUIREMENTS

An application for the use of tax increment financing must include all of the following information or the application will not be processed:

1. A detailed project description;
2. Purpose of the tax increment financing district;
3. A list of project costs to be funded by the TIFD including identification of typical developer costs, exceptional costs and oversizing costs. The developer must 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 must include an itemized list of all estimated costs, including the professional fees;
4. A preliminary development financing plan, including sources of funds, identification of lender, interest rates, financing costs and loan terms;
5. If the developer is an entity, paperwork showing that the entity is registered with the South Dakota Secretary of State's Office. The City reserves the right to request, and the developer must provide upon the City's request, any further documentation or disclosures about the identity of all persons and entities that have an interest in the entity applying for the TIFD and the composition of those entities that have an interest.
6. If requested by City staff, documents identifying the parties with an ownership and/or encumbrance interest in the property involved in the project. This may include, but is not limited to, deeds, contracts for deed, or other contractual information relating to control of the property and the developer's ability to complete the project;

7. A pro forma indicating projected costs and revenues;
8. A statement and demonstration that the project would not proceed without the use of tax increment financing;
9. A statement identifying the specific Statutory Criteria, Municipal Criteria, Additional Local Criteria, and Discretionary Criteria that the developer believes the request meets;
10. Conceptual plans, sketches, maps or site plans for the project;
11. A development time schedule, including specific phasing of improvements and project costs;
12. A list of the specific public improvements and a list of the specific private improvements proposed to be constructed along with the project;
13. If the developer desires to seek City financing for the TIFD request, a financial statement of the corporation, partnership, or individual for the most recent five years or life of the company;
14. For an industrial or retail request, a copy of the proposed wage scale and full-time and part-time employment levels;
15. In the case of an affordable housing project, a copy of any applicable federal housing grant program;
16. A \$5,000 non-refundable application fee for requests up to \$10,000,000. A fee of 0.1% of requested capital costs for applications with capital costs over \$10,000,000; however, such fee will not exceed \$15,000; and
17. Any other information that may be required by City staff or the Planning Commission.

#### 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 TIFD. 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 TIFD and to enter into a TIFD agreement with any developer are wholly discretionary. There is no right for a developer to have a TIFD created or to have the City enter into a TIFD agreement.

#### Statutory Criteria

The tax increment financing application must demonstrate how the project meets South Dakota's statutory requirements. Please refer to South Dakota Codified Law Chapter 11-9, which can be found online at <https://sdlegislature.gov/statutes>.

#### Municipal Criteria

A project must meet at least two of the following six criteria:

1. The project is not economically feasible without the use of tax increment financing, as demonstrated by the developer's application. In addition, if the project has site alternatives, the proposal would not occur in Rapid City without tax increment financing, as demonstrated by the developer's application.
2. The project will eliminate actual or potential hazard to the public or eliminate statutory blight. Hazards may include condemned or unsafe buildings, sites, infrastructure, or structures.
3. For a retail project, the project will objectively enhance the services and/or amenities offered within the city limits of Rapid City.
4. The project will bring new or expanded employment opportunities as demonstrated by proposed wage scales and employee benefits that are at least 15% higher than the region's average within the industry. The project may include a mixture of full and part-time employees.
5. The project will result in additional redevelopment in the Downtown District (see Appendix A for description).
6. The project will meet the requirements in SDCL Chapter 13-13, allowing it to be considered an affordable housing TIFD. Furthermore, the project meets the definition of either a rental affordable housing project or an owner-occupied affordable housing project. A rental affordable housing project is defined as a development where a minimum of fifty-one percent (51%) of the dwelling units of the proposed development are occupied by households that meet one of the following requirements:
  - a) the household income is at or below eighty percent (80%) of the area median income
  - b) the rental rate for the unit, including the costs of all utilities, is either: i) no greater than thirty percent (30%) of the renter-household's gross income or ii) less than the Fair Market Rent (FMR) for the Section 8 Program.

The development will continue to meet the definition of a rental affordable housing project for a period of ten years or until the TIFD is dissolved, whichever is longer. If the development fails to meet the definition of a rental affordable housing project within the timeframe above, the developer will only be entitled to a prorated amount of the tax increment based upon the portion of time that the project met the definition of a rental affordable housing project. This may mean that the developer will have to repay the City a portion of the tax increment payment that the developer (or its assignee) has received. An owner-occupied affordable housing project is defined as a project where the original sales price of any house within the project is at or below the first-time homebuyer purchase price limit being used by the South Dakota Housing Development Authority as of the date the house is sold.

#### 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:
  - a. Oversizing costs for sewer, water and streets required by the City of Rapid City;
  - b. Extension of off-site sewer, water, street and public improvements to the development site;
  - c. Oversizing costs for storm drainage detention and transmission facilities to accommodate storm water runoff beyond that generated by the development;
  - d. Reconstruction of existing streets, water, sewer, sidewalks or other public infrastructure;
  - e. Regional lift stations, pump stations or other public facilities to be owned by the City of Rapid City;
  - f. Public playgrounds, parks and recreational improvements to be owned by the City of Rapid City;
  - g. Demolition costs for the removal of existing structures or infrastructure;
  - h. Interest and financing fees;
  - i. Imputed administrative fees due to the City and County;
  - j. Removal and replacement of contaminated soils;
  - k. Professional service fees limited to engineering, design, survey and construction management associated with the allowable project costs;
  - l. Costs associated with land acquisition as authorized in the General Rules;
  - m. Costs, at the discretion of the governing body, which are demonstrably necessary to catalyze the development; and
  - n. Costs, at the discretion of the governing body, which are found to be necessary or convenient to the creation of the TIFD or the implementation of the project plan.

#### Discretionary Criteria

In addition, the project should meet several of the following criteria. The project will be evaluated relative to the criteria outlined below.

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 will be 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 units available 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 Chapter 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 measured by assessments from the Pennington County Department 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 REVIEW AND APPROVAL PROCESS

Submission. All applications to create a TIFD must be submitted to the Finance Office. Incomplete applications will not be accepted. In addition, the developer must pay an application fee to the City for each request for the creation of a TIFD. The fee amount will be set pursuant to a resolution passed by the City Council.

County and School District Input. The application will be sent to the Pennington County Board of Commissioners, the Pennington County Equalization Department, and the Rapid City Area School District. Any comments received from the Board of Commissioners, the Equalization Department, or the School District will be forwarded to the Rapid City Planning Commission.

Staff Review. City staff will be given up to forty-five days to review the application. Progress reports will be given to the developer at a minimum of every 15 days. City staff will prepare a project plan for the proposal. City staff will prepare a staff report that includes all written comments received from the County and the School District and a recommendation from staff to approve or deny. City staff will prepare a draft resolution creating the district; this resolution will designate the boundaries of the district. City staff will also prepare a draft resolution adopting the project plan. After the 45-day review timeframe, the application to create the TIFD will be put on a subsequent Planning Commission agenda.

Notification of Public Hearing. Prior to the Planning Commission hearing, the City will publish notice of the anticipated hearing in front of the Planning Commission at least once, not fewer than ten nor more than thirty days before the date of the hearing, in a legal newspaper having a general circulation in the redevelopment area of the political subdivision. Before the publication of the notice, the City will send a copy of the notice to the chief executive officer of each local governmental entity having the power to levy taxes on property located within the proposed district and to the school board of any school district that has property located within the proposed district by first class mail.

Planning Commission Hearing(s). The Planning Commission will hold a public hearing at which interested parties are afforded a reasonable opportunity to express views on the proposed creation of a district and the district's proposed boundaries. Public comment on the proposal will be taken. Pursuant to SDCL 11-9-4, and in order for the City Council to be able to consider whether to approve the creation of the TIFD, the Planning Commission must designate the

boundaries of the district that the Planning Commission recommends be created. In order for the Planning Commission to recommend that the City Council approve the TIFD resolution creating the district (which designates the boundaries of the district), a majority of the members of the entire Planning Commission must vote in favor of recommending that the TIFD resolution creating the district be approved. The Planning Commission recommendation for approval of the resolution creating the district will be sent to the City Council.

Unless the resolution creating the district does not get recommended for approval by the Planning Commission or does not get approved by the City Council, Planning Commission will hold a public hearing on the proposed adoption of the TIFD project plan. Public comment on the proposal will be taken. The proposed creation of the district and the proposed adoption of the project plan may be heard at the same Planning Commission meeting. Pursuant to SDCL 11-9-13, and in order for the City Council to be able to consider whether to adopt a project plan for the TIFD, the Planning Commission must adopt a project plan and submit it to the City Council. In order for the Planning Commission to recommend that the City Council approve the TIFD resolution adopting the project plan, a majority of the members of the entire Planning Commission must vote in favor of recommending that the TIFD resolution adopting the project plan be approved. The Planning Commission recommendation for approval of the resolution adopting the project plan will be sent to the City Council.

City Council Hearing(s). If the Planning Commission recommends approval of the resolution creating the district, the City Council will hold a public hearing. Public comment on the proposal will be taken. In order to approve the resolution creating the district, a majority of the members of the entire City Council must approve the resolution. If a majority of the members of the entire Council vote to deny the approval of the resolution, resubmission of a TIFD application cannot occur for thirty (30) days from the date of the Council's denial.

If the Planning Commission recommends approval of the resolution adopting the project plan, the City Council will hold a public hearing. Public comment on the proposal will be taken. The proposed creation of the district and the proposed adoption of the project plan may be heard at the same City Council meeting. In order to approve the resolution adopting the project plan, a majority of the members of the entire City Council must approve the resolution.

Approval of the TIFD Agreement. Following the approval of the resolution creating the district and the resolution adopting the project plan, the City Attorney's Office will draft a TIFD agreement. The agreement sets forth the mutual responsibilities of both parties. The agreement will include a provision stating that 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 TIFD agreement. This includes 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 TIFD agreement will include language that allows the City to be reimbursed for any and all project costs should the City elect to either finance or refinance the tax increment financing loan.

The TIFD agreement is reviewed by the City Council, and the City Council will make the decision about whether to authorize the Mayor and Finance Officer to sign the agreement on behalf of the City.

#### PROCESS FOR REVISING ADOPTED TIFD PROJECT PLANS

If a developer desires to amend a project plan, the developer will follow the same process as is required for a new application.

#### ONGOING MONITORING OF TIFD PROGRAM

The City Finance Office will provide an "Annual Summary of all Active Tax Increment Financing Districts" to the City Council on or before July 31 of each year. The report will include the following information:

1. Summary of current interest rate on active districts.
2. Anticipated payoff date for existing TIFDs.
3. Initial assessments, current assessments, and revenues received for each active TIFD.
4. Total assessed valuation within the City and the total base valuation of all active TIFDs within the City.

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

COUNCIL AMENDED AND APPROVED March 18, 2013

COUNCIL AMENDED AND APPROVED -----