

760 CMR 22

760 CMR 22.00:

TAX INCREMENT FINANCING

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22.01: Scope, Purpose, and Applicability

760 CMR 22.00 establishes the standards and procedures for designation of Tax Increment Financing (TIF) Zones and for the development of Tax Increment Financing Plans, pursuant to M.G.L. c. 40, § 59 and M.G.L. c. 59, § 5. It endeavors to promote the stable economic and physical development of cities and towns of the Commonwealth and to encourage municipalities to participate in a comprehensive planning process to promote economic development and increased industrial and commercial activity, and to enhance the tax base of designated zones. 760 CMR 22.00 shall be effective on November 15, 1996. 760 CMR 22.00 replaces prior regulations appearing at 751 CMR 11.00.

22.02: Definitions

As used in 760 CMR 22.00, unless the context clearly requires otherwise, the following terms shall mean:

Adjustment factor - see 760 CMR 22.05(4)(b)3.

Base valuation - see 760 CMR 22.05(4)(b)2.

Betterment and Special Assessments - a tax assessed on real property located within a limited and determinable area receiving benefit or advantage, other than the general advantage to the community. The betterment shall be equivalent to a proportionate share of the cost of such improvement.

Blighted Open Area - a predominantly open area which is detrimental to the safety, health or sound growth of a community and which is predominantly open because it is unduly costly to develop it soundly through the ordinary operations of private enterprise. Factors which might make an area unduly expensive to develop include, but are not limited to: existence of hazardous materials or other contaminants, existence of ledge, rock, unsuitable soil, or other physical conditions, need for unduly expensive excavation, fill or grading, need for unduly expensive foundations or retaining walls, need for unduly expensive waterproofing, drainage or flood prevention measures, need for unduly expensive measures to protect adjacent areas and the water tables therein, need for unduly expensive measures incident to building around or over rights-of-way through the area, existence of obsolete, inappropriate or otherwise faulty platting or subdividing, deterioration of site improvements or facilities, division of the area by rights-of-way, diversity of ownership, inadequate transportation facilities inadequate utility systems, tax and special assessment delinquencies, a substantial change in business or economic conditions or practices, an abandonment or cessation of work begun on improvements, any combination of the above, or any other condition or conditions which are detrimental to the safety, health, morals or sound growth of a community.

Decadent Area - an area which is detrimental to the safety, health or sound growth of a community because of the existence of buildings which are physically deteriorated, unfit for human habitation, obsolete, or in need of major maintenance, renovation, or repair, or because much of the real estate in recent years has been sold or taken for non-payment of taxes or upon foreclosure of mortgages, or because buildings have been torn down and not replaced and in which under existing conditions it is improbable that the buildings will be replaced, or because of a substantial change in business or economic conditions, or because of inadequate light, air, or open space, or because of excessive land coverage, or because diversity of ownership, irregular lot sizes or obsolete street patterns make it improbable that the area will be redeveloped by the ordinary operations of private enterprise, or by reason of any combination of the foregoing conditions.

Economic Assistance Coordinating Council (EACC) - the council established pursuant to M.G.L. c. 23A, § 3B.

Economic Development and Industrial Corporation (EDIC) - a public body politic and corporate established pursuant to M.G.L. c. 121C.

Economic Opportunity Area (EOA) - an area of the Commonwealth, located wholly within an Economic Target Area, which is designated by the EACC pursuant to M.G.L. c. 23A § 3E and regulations promulgated by the EACC as an Economic Opportunity Area.

Economic Target Area (ETA) - an area of the Commonwealth designated as such by the EACC pursuant to M.G.L. c. 23A, § 3D and regulations promulgated by the EACC.

Exemption Percentage - See 760 CMR 22.05(4)(b)1..

Industrial Development Financing Authority (IDFA) - a municipal board established pursuant to M.G.L. c. 40D and empowered to finance projects through the issuance of tax exempt and taxable bonds.

Inflation factor - see 760 CMR 22.05(4)(b)4..

Municipality - a city or town in the Commonwealth or, in a case in which two or more cities or towns agree to act jointly for some purpose hereunder then, collectively, all cities and towns participating in such a collaborative agreement.

Private Project - a commercial or industrial development project that will be developed within a TIF Zone by a private or not-for-profit developer in furtherance of the objectives of a TIF Plan and in accordance with a TIF Agreement between the property owner and the municipality.

Public Project - public construction or construction-related activities which will support development activities within a TIF Zone including, but not limited to, infrastructure improvements, building construction, renovation or demolition, road and sidewalk improvements, traffic mitigation, site remediation of contaminated land, and expansion or improvements to mass transit.

Redevelopment Authority - a public body politic and corporate created pursuant to M.G.L. c. 121B, § 4.

Substandard Area - an area wherein dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to the safety, health, welfare or sound growth of a community.

Tax Increment Exemption - See 760 CMR 22.05(4).

TIF Agreement - See 760 CMR 22.05(8).

TIF Plan - the comprehensive plan of one or more municipalities for the development of a TIF Zone. The TIF Plan shall be prepared in accordance with the requirements of M.G.L. c. 40, § 59 and 760 CMR 22.05 and must be certified as an approved plan by the EACC pursuant to its regulations.

TIF Program - a program administered by the EACC which allows a municipality to use property tax incentives to encourage development in a TIF Zone.

TIF Project - any private project within a TIF Zone or any public project necessary to further the objectives of the TIF Plan and for which a property owner and a municipality have entered into a TIF Agreement.

TIF Zone - See 760 CMR 22.04; a TIF Zone shall be:

(a) within an area designated by the Director of Economic Development as "presenting exceptional opportunities for increased economic development", pursuant to regulations adopted by the EACC; or

(b) wholly within an EOA, as designated by the EACC pursuant to M.G.L. c. 23A, § 3E and 402 CMR 2.00.

Urban Redevelopment Corporation - a corporation established pursuant to M.G.L. c. 121A for the purpose of carrying out a project authorized and approved by the Department of Housing & Community Development

22.03: Overview of the TIF Program

(1) Purpose of the Program. In an effort to revitalize cities and towns in the Commonwealth and encourage sound growth and economic development, the legislature has authorized the creation of the Tax Increment Financing (TIF) Program. Based upon economic development and land use planning principles, cities and towns will designate appropriate locations as TIF Zones. Local designation of TIF Zones will enable municipalities to encourage private development with the assistance of public infrastructure improvements, and property tax incentives. These incentives will make available capital that will facilitate the financing of TIF Projects.

Furthermore, local governments are encouraged to utilize existing statutory entities that have proven to be effective in the development of local economic development projects, such as: urban redevelopment corporations, pursuant to M.G.L. c. 121A; redevelopment authorities, pursuant to M.G.L. c. 121B; economic development and industrial corporations, pursuant to M.G.L. c. 121C; and, industrial development financing authorities, pursuant to M.G.L. c. 40D.

(2) The TIF Process.

(a) The municipality designates an area as a TIF Zone.

(b) The municipality prepares a TIF Plan in accordance with the procedures set forth in 760 CMR 22.05. The TIF Plan must:

1. specify the area designated as the TIF Zone;
2. describe the public and private projects contemplated for the TIF Zone;
3. describe the financing proposed for the public and private projects contemplated for the TIF Zone;
4. authorize tax increment exemptions from property taxes;
5. establish the maximum percentage of the costs of any public project that can be recovered through betterments or special assessments against property eligible for tax increment exemptions from property tax;
6. identify the owner of each parcel of real property located in the TIF Zone;
7. delegate to one municipal board, agency or officer the authority to execute TIF Agreements between the municipality and the owners of parcels of real property which are located in the TIF Zone;
8. include the executed TIF agreements;
9. contain evidence of local approvals of a TIF Zone and a TIF Plan.

(c) The municipality must adopt the TIF Zone and relevant elements of the TIF Plan, including the authority to implement tax increment exemptions from property taxes and the maximum percentage of the costs of any public project that can be recovered through betterments or special assessments as determined by a vote of the City Council with the approval of the Mayor, by a vote of the Board of Selectmen, or as otherwise required by local law.

(d) The municipality must execute TIF Agreements with each owner of a parcel of real property located in the TIF Zone who chooses to participate in the TIF Plan and must incorporate each agreement into the TIF Plan.

(e) The municipality must submit the TIF Plan to the EACC for approval, pursuant to its regulations.

22.04: Designation of Tax Increment Financing Zones

The TIF Plan shall describe in detail which areas of the city or town have been designated as TIF Zones. TIF Zones must meet the following requirements:

(1) Each TIF Zone must be wholly within an area which is:

(a) an Economic Opportunity Area (EOA) as described in regulations adopted by the EACC in accordance with M.G.L c. 23A, § 3C; or

(b) designated by the Director of Economic Development, pursuant to regulations adopted by the EACC in accordance with M.G.L c. 23A, § 3C as "presenting exceptional opportunities for increased economic development", provided that:

1. prior to seeking designation of any blighted, open, decadent, or substandard area as an area "presenting exceptional opportunities for increased economic development," the municipality, with the concurrence of the EACC, must declare the area to be blighted, open, decadent or substandard,

2. with respect to all other areas "presenting exceptional opportunities for increased economic development," EACC review and concurrence is not required prior to the Director's designation.

(2) In the case of a TIF Zone that is not located within an EOA and is not located in an area previously designated by the Director of Economic Development as an area "presenting exceptional opportunities for increased economic development," the municipality must enclose with the TIF Plan submitted to the EACC a written request to the Director of Economic Development for the designation of the TIF Zone as an area "presenting exceptional opportunities for increased economic development." The EACC will forward such request to the Director of Economic Development.

(3) In the case of a TIF Plan adopted by more than one city or town, the areas designated as TIF Zones shall be contiguous areas of such cities or towns.

(4) The TIF Plan must include data demonstrating that the TIF Zone is appropriately located to create new economic development opportunities and that there is a sufficient likelihood that development of the TIF Zone will result in a net economic benefit to the municipality. Such data may include:

(a) analysis of proposed and potential land uses within the TIF Zone and the appropriateness of the designated TIF Zone for the proposed economic development;

(b) the extent and condition of existing infrastructure and telecommunications networks within the TIF Zone;

(c) proximity of the TIF Zone to mass transit and to major rail, highway, or other modes of transportation for shipping and delivery;

(d) identification of all principal commercial and industrial tenants within the TIF Zone.

22.05: Tax Increment Financing Plans

The Tax Increment Financing Plan shall include the following elements:

(1) Designation of the TIF Zone. The TIF Zone shall be designated in accordance with the requirements of 760 CMR 22.04.

(2) Description of the public and private projects. The TIF Plan shall describe in detail the projects proposed for development within the TIF Zone. The TIF program is designed to promote the timely development of public and private projects which have been thoroughly planned and to which the municipality and private parties are prepared to commit themselves. The TIF Plan and the incorporated TIF Agreements embody those commitments as representations to the EACC that the parties will proceed forthwith with the development program described in the TIF Plan in accordance with the time schedules included in the TIF Plan. The description shall include:

(a) A description of all public projects contemplated for the TIF Zone that will be financed through betterments or special assessments. The description shall specify the scope and general design of the infrastructure improvements and construction-related activities proposed for the project area, a budget for proposed project expenditures with

supporting data and a time schedule for completion of all infrastructure improvements and public project improvements.

(b) A description of private industrial and commercial projects proposed for the TIF Zone that will receive tax increment exemptions. The TIF Plan must include documentary evidence of the level of the developer's commitment to any construction required for the TIF Project, including, but not limited to, architectural plans and specifications, engineering reports, letters of commitment from local lending institutions, and evidence of participation in other federal, state or local economic development programs. The TIF Plan shall include a budget for proposed project expenditures with supporting data.

(c) The TIF Plan shall include relevant business plans for the private projects within the TIF Zone, including time schedules for development from initial planning to project completion, projected returns on the investment, the expected increase in job opportunities, and estimated tax revenues based upon increased valuation of the parcel within the TIF Zone.

(d) The TIF Plan shall include maps of the project area showing:

1. Boundaries of the TIF Zone;
2. Property lines and the outline of each building in the TIF Zone;
3. All thoroughfares, public rights of way and easements;
4. The location of each proposed public and private project within the TIF Zone, identifying the location of any buildings to be cleared, proposed additions to existing buildings and the location of proposed road and infrastructure improvements;
5. Existing and proposed land uses and zoning.

(e) The TIF Plan shall identify any parcels within any public or private project area that are confirmed as disposal sites or are listed as locations to be investigated in accordance with M.G.L. c. 21E and shall describe any public or private site remediation activities contemplated to enable and encourage the reuse of these parcels;

(3) Costs, Betterments Financing. The TIF Plan shall contain a detailed project cost estimate and financing plan, including:

(a) A detailed projection of the costs of the public construction and a betterment schedule for the defrayal of such costs, provided that no costs of public construction shall be recovered through betterments or special assessments imposed on any party which has not executed an agreement in accordance with the provisions of 760 CMR 22.05(8).

(b) A description of the method proposed for financing private projects, including evidence of private financing commitments, and material assumptions and requirements.

(c) One option for financing includes the issuance of tax exempt and taxable revenue bonds through a local Industrial Development Financing Authority (IDFA), pursuant to M.G.L. c. 40D, or through the Massachusetts Industrial Finance Agency.

(4) Tax increment exemptions from property taxes. The TIF Plan shall authorize the tax increment exemptions from property taxes, for each parcel located in a TIF Zone for which an agreement has been executed with the owner of the parcel in accordance with 760 CMR 22.05(8).

(a) Term of the exemption. Each exemption shall be for a term no longer than the period specified in the agreement, not to exceed 20 years.

(b) Calculation of the exemption. The exemption shall be calculated for each fiscal year of the specified term. The amount of the exemption shall be equal to the exemption percentage multiplied by the amount by which the property's then current valuation exceeds the product of its base valuation multiplied by the adjustment factor, where the:

1. exemption percentage for each year of the term of the TIF Agreement is established by the municipality and stated in the TIF Plan, provided that such exemption percentage does not exceed 100%. The amount of the exemption percentage specified in the TIF Plan may vary from year to year but may, for each year, be stated as a percentage or as established by formula.

2. the base valuation is the assessed value established for the most recent fiscal year immediately prior to the fiscal year in which the property first becomes eligible for an exemption under 760 CMR 22.05(4).

3. the adjustment factor is equal to the product of the inflation factors for each fiscal year following the year of which the parcel first became eligible for the tax increment exemption, under 760 CMR 22.05(4); and

4. the inflation factor for each fiscal year shall be calculated as a fraction, the numerator of which shall equal the total assessed value of all parcels of commercial and industrial real estate in the municipality that are assessed at full and fair cash value for the current fiscal year minus the new growth adjustment for the current fiscal year attributable to the commercial and industrial real estate as determined pursuant to M.G.L. c. 59, § 21C(f) (the new growth adjustment pursuant to "Proposition 2½") and the denominator of which shall equal the total assessed value for the preceding year of all parcels included in the numerator. If the fraction is less than one, then the inflation factor for that fiscal year shall be one.

(c) Calculation of property taxes. Taxes on property eligible for exemption under M.G.L. c. 40, § 59 shall be assessed only on that portion of the value of the property that is not exempt hereunder.

(d) Effective date tax increment exemption. The property becomes eligible for the tax increment exemption on the July first following the date on which the EACC approves the TIF Plan.

(5) Betterments or special assessments. The TIF Plan shall establish a maximum percentage of the costs of any public projects that can be recovered through betterments or special assessments against any parcel with respect to which an agreement has been executed pursuant to M.G.L. c. 40, § 59. If the Plan incorporates public projects to be financed through a schedule of betterments or special assessments, the Plan must include a detailed projection of the cost of the public projects and a betterment or special assessment schedule for defrayal of such costs, provided that no cost of any public project that is included as part of the TIF Plan shall be recovered through betterments or special assessments imposed on any party which has not executed an agreement in accordance with the provisions of 760 CMR 22.05(8).

(6) Identification of the owner of each parcel of real property located in the TIF Zone. The TIF Plan shall include a list of the owners of each parcel of real property located within the TIF Zone as shown in the records of the Assessor's office of the municipality.

(7) Delegation of authority to execute TIF agreements. The TIF Plan shall refer to an ordinance or bylaw delegating to one municipal board, agency or officer the authority to execute TIF Agreements and subsequent modifications thereto between the municipality and the owners of parcels of real property which are located in the TIF Zone.

(8) Executed TIF Agreements. The TIF Plan shall require executed agreements between the municipality and each owner of real property located within the TIF Zone who chooses to participate in a TIF Plan.

Each agreement shall include:

(a) All material representations of the parties which served as the basis for the descriptions contained in the TIF Plan pursuant to the provisions of 760 CMR 22.05(2), including, but not limited to, commitments about the proposed project, the proposed construction and any financing;

(b) A detailed description of the tax increment exemptions and the maximum percentage of the cost of any public project that can be recovered through betterments or special assessments against such parcel of real property pursuant to 760 CMR 22.05(3) and (4);

(c) A detailed description of all other direct material benefits and responsibilities inuring to and assumed by the parties to the agreement;

(d) A provision that the agreement shall be binding upon all parties to the agreement and, to the extent that the agreement pertains to the particular parcel of land, the agreement shall be binding upon subsequent owners of the property.

(9) Local Approvals. The TIF Plan shall be accompanied by evidence of local approvals of a TIF Zone and a TIF Plan, in accordance with 760 CMR 22.06.

22.06: Plan Certification

(1) The municipality or municipalities shall submit the TIF Plan to the EACC for approval in accordance with its regulations.

(2) Nine copies of the TIF Plan shall be submitted to the EACC. On the front cover of each copy the municipality shall clearly identify: the name of the municipality or municipalities submitting the plan, the location of the TIF Zone, the date of the plan and the title "Tax Increment Financing Plan."

(3) The Plan may be certified by the EACC as an approved TIF Plan if the EACC finds, based upon the information submitted and such additional investigation as the EACC may make, that:

(a) the plan is consistent with the requirements of 760 CMR 22.05;

(b) there is a high likelihood that the TIF Plan will result in actual economic benefits to the community; and

(c) the TIF Plan supports the public purpose of encouraging increased industrial and commercial activity in the Commonwealth.

(4) A TIF Plan may be amended from time to time, subject to the approval of the EACC, as required by changing circumstances.

22.07: Local Approval and Implementation of Tax Increment Financing Plans

(1) A municipality, acting on its own behalf or in conjunction with one or more cities or towns, may adopt a TIF Plan by vote of its town meeting, town council, or city council, with the approval of the mayor where required by law.

(2) A municipality may proceed with the implementation of its TIF Plan only after:

(a) each city and town proposing the TIF Plan formally adopts the TIF Plan and

(b) the TIF Plan is approved by the EACC.

(3) The board, agency or officer of the municipality authorized to execute TIF Agreements shall forward to the board of assessors a copy of each TIF Agreement, together with a list of the parcels included therein.

22.08: Plan Revocation

(1) A municipality may at any time revoke its TIF Plan and, as a consequence of such revocation, shall immediately cease the execution of any additional agreements(s) pursuant to 760 CMR 22.05(8).

(2) Such revocation shall not affect existing agreements relative to tax increment exemptions, and limitations on betterments and special assessments, pursuant to 760 CMR 22.05 which were executed prior to the revocation.

(3) If the municipality shall recommend and the EACC shall find, that one or more parties to the TIF Plan and the TIF Agreements incorporated in the TIF Plan have deviated from the TIF Plan without the approval of an amendment to the TIF Plan, pursuant to 760 CMR 22.06(4), so substantially as to constitute a material misrepresentation to the EACC and so as to jeopardize the realization of significant economic benefits that provided part of the basis for the EACC's original approval of the TIF Plan, then the EACC may revoke its approval of all or the relevant portions of the TIF Plan. The effect of such revocation shall be the elimination of the tax increment exemption for the property or properties designated in the revocation. To initiate the revocation process, the municipality must formally adopt its recommendation of revocation in the same manner as that in which the TIF Plan was adopted, prior to submitting it to the EACC.

22.09: Records and Documents

(1) The municipality shall maintain accurate records and accounts of all TIF Zone activities, including documentation of plans for public projects within the TIF Zone, schedules of betterments and special assessments for public projects within the TIF Zone, competitive bids and proposals of contractors and engineers for work on public projects within the TIF Zone, progress reports, and records of receipts and expenditures for public project activities within the TIF Zone.

(2) The municipality shall permit the Director of Economic Assistance, appointed pursuant to M.G.L. c. 23A, § 3C, and staff or auditors reporting to said Director to examine all records and accounts of the TIF Zone, as requested.

(3) The board, agency or officer of a municipality authorized to execute agreements in accordance with 760 CMR 22.05(7) and 22.07 shall annually submit a report to the Director of Economic Assistance including:

- (a) a detailed status report on all public and private projects planned, under construction, or completed, in connection with the TIF Plan;
- (b) records and accounts of public project expenditures within the TIF Zone during the most recent fiscal year;
- (c) betterments and special assessments against parcels within the TIF Zone for the most recent fiscal year;
- (d) property tax revenues from parcels within the TIF Zone for the most recent fiscal year.

22.10: Project Completion

When a TIF project within the TIF Zone is complete, the property owner shall request that the EACC issue a Certificate of Compliance.

When all projects within the TIF Zone are complete and all aspects of the TIF Plan are complete, the municipality shall submit to the Director of Economic Assistance such completion documents as may, from time to time, be prescribed by the EACC.

REGULATORY AUTHORITY

760 CMR 22.00: M.G.L. c. 6A; St. 1993 c. 19.