

## TAX INCREMENT FINANCING DISTRICTS IN VERMONT

The following is an outline of the full process to create a Tax Increment Financing District in Vermont and to apply for authority from the state to utilize incremental Education Tax revenue to finance public infrastructure improvements to ensure the development or redevelopment of the District. Steps that are required by statute cite the section of statute containing that requirement. Other steps are for guidance purposes only. Note that a municipality may have additional requirements that must be followed to comply with other state or local law.

### 1. INITIATE THE ESTABLISHMENT OF A TIF DISTRICT

- a. **Determine project feasibility:** The potential feasibility of utilizing the TIF District financing tool should be initiated by the municipality, a private sector developer or a non-profit agency interested in the development or redevelopment of a specific geographic area within a municipality. TIF can be considered when adequate financing is not available from other public and private sector sources and a substantial amount of public infrastructure is required in order for the development or redevelopment to occur. The decision to utilize the TIF District financing tool should include consideration of the following factors:
  - Is there a need for substantial development or redevelopment to improve the economic viability of a defined area with the municipality?
  - Are substantial new public infrastructure improvements or public infrastructure improvements required to ensure that the development/redevelopment occurs?
  - Are the normal and available financing mechanisms not available or are they insufficient to ensure the public infrastructure is built or improved?
  - Are there parties interested in development within the District if the infrastructure is built/improved?
  - Will the potential development/redevelopment generate incremental property taxes sufficient to help finance the debt incurred to build/improve the infrastructure?
  - Is there a commitment by the municipality to champion the project through the approval processes.
- b. **Involve decision-makers:** The specific project should be discussed by public and private sector decision-makers addressing several development issues:
  - Eligibility of the project area
  - Needs of the community
  - Financial feasibility
  - Expected economic benefits
  - Expected non-economic benefits and public good
  - Interest in project by private sector developers and potential for private-public partnerships

- Impact on the area in and around district
- If required by municipality, consider and involve an eligible agency to act as “coordinating agency” for the TIF District.

## 2. FORMULATE A PLAN

- a. **Create a redevelopment plan:** Utilizing land development planning and project financing, generate a redevelopment plan. The plan will serve many purposes, but primarily it should be a planning tool that sets forth the objectives and project timetable, and forms the written basis for communicating these matters to stakeholders and approval bodies, including the taxpayers, the municipal legislative body and the state entity approving use of incremental education funds for TIF financing. The plan should state clear objectives of the redevelopment plan and should reflect the interests, goals, and objectives of existing plans of the community and region. The plan should also discuss any special features pertinent to overall TIF District creation policies of the municipality, region, and the state, such as environmental protections, affordable housing requirements, neighborhood impact statements, transportation improvements, and any legal and practical guidance on land takings and negotiating and executing contracts with private firms. Refer to statute (24 VSA §1898(e) and 32 VSA §5404a(h)) and other sections of this guide for required elements of a TIF District Plan.
- b. **Determine the geographical boundaries of the TIF District:** Determine which properties will be involved in the TIF. The area of the TIF District may be larger than the actual area of new construction. Generally, if a surrounding area will receive an economic benefit from the TIF project, it should be included. However, municipalities should be cautious about drawing the lines too broadly and negatively impacting the success of approval or adversely impacting the financial viability of the TIF District. Part of the approval criteria for utilization of incremental Education Property Tax revenue requires a determination that every parcel included in the TIF District has nexus to the proposed infrastructure improvements. Stakeholders and representatives of the affected and adjacent properties should be involved early in the process.
- c. **Estimate project timeline and costs:** Based on the properties included in the District and the projected properties to be developed, estimate the project timeline including TIF District approvals (local and state), bonding approvals, infrastructure improvement schedule, development and/or redevelopment build out schedules, and debt financing schedules. Estimates should also be made of all costs, including debt and project costs other than debt servicing. Detailed cost estimates of the infrastructure to be built should also be developed.
- d. **Estimate tax base and revenue increment and establish debt financing policies:** Estimate the tax base within the District and the increment to be produced by any development. Establish and put in place any debt financing policies such as the amount of debt to be issued, the authority to issue debt, and any limitations on the amount of debt and/or maximum allowable debt service payments. Begin process to get these policies approved by the municipality. Begin process to gain approval for any required local, regional, or state land use policy changes or exemptions (takings, ordinances, zoning, permitting).
- e. **Establish evaluation requirements and termination date:** Develop criteria that will be used to measure success and set benchmarks for evaluating those criteria throughout and at the end of the project. Determine local and state reporting requirements and incorporate tracking of reporting requirements in a benchmarking plan (State reporting requirements are contained in 32 VSA §5404a (i and j) and may be supplemented by requirements of VEPC and/or the

Department of Taxes). Set a date for termination of the TIF District. In Vermont, a TIF District exists until all TIF District debt is paid (24 VSA §1894(a)(3)).

### 3. ADOPTION OF TIF PLAN

#### a. Local Approval of TIF Plan:

- i. The municipality, through its appropriate legislative body, enacts any ordinance, zoning or other changes required to implement the TIF District improvements.
- ii. The municipality, through its legislative body (defined by 24 VSA §1891(3)):
  1. Develops, provides evidence to support, and passes a finding that establishing a TIF District and incurring indebtedness will serve the public purpose of a TIF as stated in statute (see below). (24 VSA §1893)

#### *24 VSA § 1893. PURPOSE*

*The purpose of tax increment financing districts is to provide revenues for improvements that serve the district and related costs, which will stimulate development or redevelopment within the district, provide for employment opportunities, improve and broaden the tax base, or enhance the general economic vitality of the municipality, the region, or the state.*

2. Describes the TIF District by its boundaries and properties therein and shows the district in a plan entitled “Proposed Tax Increment Financing District (municipality name), Vermont.” (24 VSA §1892)
  3. Provides public notice of one or more public hearings on the proposed TIF District plan. (24 VSA §1892). (See also information below for what must be included in the plan to meet subsequent State requirements).
  4. Holds one or more public hearings on the proposed TIF District plan (24 VSA §1892).
  5. Adopts the TIF District plan through a vote of municipality’s legislative body in accordance with municipality’s ordinance and/or resolution (24 VSA §1892).
  6. Records the TIF District plan with municipal clerk and lister or assessor (24 VSA §1892).
  7. Designates a coordinating agency, if desired, to administer the TIF District and ensure compliance with statutory or other requirements for TIF Districts (24 VSA §1898(e) permits designation and allows cost to be counted as “related costs, but statute does not require designation of a coordinating agency).
- b. State Approval of TIF Plan: If seeking approval for utilization of Education Fund Revenue for TIF District debt (32 VSA §5404a (f, g, h, and i)).**
- i. In accordance with the rules and procedures established by the Vermont Economic Progress Council, including the requirement to submit an “Intent to Apply” notice prior to submitting an application, submit an application and application fee to the Vermont Economic Progress Council for consideration.

- ii. The Council must determine if the application meets statutory approval criteria based on need (But For), process, location, project goals, and nexus and proportionality and must approve a TIF District Financing Plan:
  1. **But For** (32 VSA §5404a(h)(1)): Unless the TIF District is located within a designated growth center under 24 VSA §2793c, VEPC must determine that the new real property development would not have occurred or would have occurred in a significantly different and less desirable manner but for the proposed utilization of the incremental property tax revenues. If the TIF District is located or will be located within a designated growth center under 24 VSA §2793c, it is deemed to have complied with the But For requirement. The But For review must take into account:
    - a. The amount of additional time, if any, needed to complete the proposed development within the District and the amount of additional cost that might be incurred if the project were to proceed without TIF District debt financed with incremental property tax revenues.
    - b. How the proposed development components and size would differ, if at all, without TIF District debt financed with incremental property tax revenues.
    - c. The amount of additional property tax revenue expected to be generated as a result of the proposed development; the percentage of that revenue that will be paid into the education fund, the percentage that shall be paid to the municipality, and the percentage of that revenue paid to the municipality that will be used to pay financing of TIF District infrastructure debt.
  2. **Process requirements** (32 VSA §5404a(h)(2)): VEPC must determine that each application meets **ALL** the following requirements:
    - a. The municipality has held public hearings and established a TIF District in accordance with 24 VSA §§ 1891- 1900;
    - b. The municipality has developed a TIF District plan that includes:
      - i. Project description;
      - ii. All information required for local approval (24 VSA §1892 and §1898(e). (See requirements above);
      - iii. An infrastructure development financing plan;
      - iv. A pro forma projection of expected costs (including “related costs”);
      - v. A projection of revenues;
      - vi. A statement and demonstration that the project meets the But For;
      - vii. Evidence that the municipality is actively seeking or has obtained other sources of funding and investment in the project;
      - viii. A development schedule including a list, cost estimate, and schedule of public improvements and projected private development that will occur as a result of the TIF District improvements; and

- ix. The amount of additional revenue expected to be generated as a result of the proposed development; the percentage of that revenue that will be paid into the education fund, the percentage that shall be paid to the municipality, and the percentage of that revenue paid to the municipality that will be used to pay infrastructure debt.
  - c. The municipality has approved or pledged incremental municipal tax revenues for TIF purposes in the same proportion as education tax revenues; and
  - d. The proposed infrastructure improvements and the projected development or redevelopment are compatible with approved municipal and regional development plans and the project has clear local and regional significance for employment, housing, and transportation improvements.
3. **Location criteria** (32 VSA §5404a(h)(3)): VEPC must determine that each application meets **ONE** of the following requirements:
- a. The development or redevelopment is compact, high density, and located in or near existing industrial areas;
  - b. The proposed District is within an approved growth center (as defined by 24 VSA §2793c), designated downtown, designated village center, or new town center (as defined by 24 VSA, Chapter 76A, §2793a); or
  - c. The development will occur in an area that is economically distressed, which means the area has experienced patterns of increasing unemployment, a drop in average wages, or a decline in real property values.
4. **Project criteria** (32 VSA §5404a(h)(4)): VEPC must determine that each application meets **THREE** of the following requirements:
- a. The development within the District clearly requires substantial public investment over and above the normal municipal operating or bonded debt expenditures.
  - b. The development includes housing that is affordable (as defined by 10 VSA §6001(29)) to the majority of the residents living within the municipality and is developed at a higher density than at the time of application.
  - c. The project will affect the mitigation and redevelopment of a brownfield located within the District. “Brownfield” is defined as an area in which a hazardous substance, pollutant, or contaminant is or may be present, and that situation is likely to complicate the expansion, development, redevelopment, or reuse of the property.
  - d. The development will include at least one entirely new business or business operation or expansion of an existing business within the District, and the business will provide new, quality, full-time jobs that meet or exceed the prevailing wage for the region as reported by the Vermont Department of Labor.

- e. The development will enhance transportation by creating improved traffic patterns and flow or creating or improving public transportation systems.
- 5. **Nexus and Proportionality:** VEPC must determine that the proposed infrastructure and related costs serves the District and that the portion of the infrastructure and related costs that will be paid for with the incremental state and municipal property taxes generated from within the District are proportionate to the degree by which the infrastructure and related costs serve the District (24 VSA §1897(a)).
- 6. **TIF District Financing Plan:** A TIF District Financing Plan must either be submitted for approval by VEPC concurrent with the TIF District Plan or at a later date, but prior to local voter approval on the TIF Financing Plan (24 VSA §1894(c)).
  - a. The TIF Financing Plan must contain (24 VSA §1898(e)):
    - i. A statement of costs and sources of revenue;
    - ii. Estimates of assessed values within the district;
    - iii. The portion of those assessed values to be applied to the proposed improvements;
    - iv. The resulting tax increments in each year of the financial plan;
    - v. The amount of bonded indebtedness or other financing to be incurred;
    - vi. Other sources of financing and anticipated revenues; and
    - vii. The duration of the financial plan.
  - b. The council will:
    - i. Assure that the TIF financing plan is consistent with the TIF plan previously approved or approved concurrently (24 VSA §1894(c)).
    - ii. If the plan includes financing other than bonded debt, the Council will also assure the viability and reasonableness of the financing plan (24 VSA §1894(c)).
- iii. **Approval:** If approved by the Vermont Economic Progress Council, the Council will provide the municipality with an approval document including determinations, exclusions, and conditions in regards to the approval criteria.
- iv. **Denial:** If not approved by the Vermont Economic Progress Council, the Council will provide the municipality with an explanation for the denial, including determinations in regards to the approval criteria.
- v. **Limitation:** VEPC may approve no more than six (6) TIF Districts between July 1, 2008 and June 30, 2013, with no more than one newly created TIF District to be approved for any municipality (Act 190 (2008) §67).

#### 4. IMPLEMENTATION OF TIF DISTRICT

- a. **Seek state and voter approval to incur debt for TIF District infrastructure improvements:**
  - i. **State Approval:** If a TIF District Financing Plan was not approved by VEPC concurrent with the TIF District Plan, in accordance with the rules and procedures established by the Vermont Economic Progress Council,

provide the Council with all information related to the proposed TIF infrastructure debt in a TIF District Financing Plan (24 VSA §1894(c)).

1. The TIF Financing Plan must contain(24 VSA §1898(e)):
    - a. A statement of costs and sources of revenue;
    - b. Estimates of assessed values within the district;
    - c. The portion of those assessed values to be applied to the proposed improvements;
    - d. The resulting tax increments in each year of the financial plan;
    - e. The amount of bonded indebtedness or other financing to be incurred;
    - f. Other sources of financing and anticipated revenues; and
    - g. The duration of the financial plan.
  2. The council will:
    - a. Assure that the TIF financing plan is consistent with the TIF plan previously approved (24 VSA §1894(c)).
    - b. If the plan includes financing other than bonded debt, the Council will also assure the viability and reasonableness of the financing (24 VSA §1894(c)).
- ii. **Local Approval:** Seek authorization by the legal voters of the municipality to pledge the credit of the municipality for the purposes of TIF District Debt:
1. Provide public notice of one or more public hearings on the proposed TIF District Financing Plan (24 VSA §1898(e)).
  2. Hold one or more public hearings on the proposed TIF Financing Plan (24 VSA §1898(e)).
  3. Bonds may only be issued if the legal voters of the municipality, by a majority vote of all voters present and voting on the question at a special or annual municipal meeting duly warned for the purpose, give authority to the legislative body to pledge the credit of the municipality for these purposes (24 VSA §1897(a)).
  4. Notwithstanding any provision in any municipal charter, regardless of the type of debt to be incurred, the legal voters of the municipality, by a single vote, must authorize the municipal legislative body to pledge the credit of the municipality up to a specified maximum dollar amount for all debt obligations to be financed with the incremental state property tax revenues to be generated within the TIF District (24 VSA §1897(a)).
  5. The municipality's pledge of credit for financing TIF District infrastructure debt must include notice that if the tax increment received by the municipality from any property tax source is insufficient to pay the principal and interest on the debt in any year, for whatever reason, including a decrease in property value or repeal of a state property tax source, unless determined otherwise at the time of such repeal, the municipality shall remain liable for full payment of the principal and interest for the term of indebtedness (24 VSA §1897(b)).
- b. **Statutory limitations and requirements for TIFs and TIF debt:**
- i. **General rules:**
    1. The municipal legislative body may pledge and appropriate in equal proportion any part or all of the state and municipal tax

increments received from properties contained within the tax increment financing district for the financing for improvements and for related costs in the same proportion by which the infrastructure or related costs directly serve the district at the time of approval of the project financing by the Council (24 VSA §1897(a)).

2. No more than 75 percent of the state property tax increment and no less than an equal percent of the municipal tax increment may be used to service this debt. (24 VSA §1897(a)).
3. Any utilization of TIF increment is in addition to any payments to the municipality under Title 16, Chapter 133 (education block grants) (32 VSA §5404a(g)).
4. TIF District approval affects the grand list beginning April 1 the year following approval and revenues remain available to the municipality for the full period authorized and are restricted only to the extent that the real property development giving rise to the increased value to the grand list fail to occur within the authorized period (32 VSA §5404a(g)).

ii. **Bonded debt rules (refer to statute for further provisions):**

1. Bonds issued for TIF District purposes are declared to be for an essential public and governmental purpose (24 VSA §1898).
2. Bonds issued for TIF District purposes may be subject to further limitations established through resolution or ordinance of the municipality (24 VSA §1898).
3. Bonds may be sold at not less than par at public or private sales held after published notice prior to the sale in a newspaper having circulation in the area of the municipality, or may be on the basis of par (24 VSA §1898).
4. Signatures of municipal officials on the bonds issued for TIF District purposes remain valid even after such officials are no longer in office (24 VSA §1898).
5. Bonds issued for TIF District purposes are fully negotiable regardless of other law to the contrary (24 VSA §1898).
6. Bonds issued for the purposes of TIF District improvements that recite that the bond has been issued by the municipality for TIF District purposes shall be conclusively deemed to have been issued for such purposes in case of any suit, action, or proceeding involving the validity or enforceability of any such bond (24 VSA §1898).
7. Certain investment bodies (as listed in 24VSA, §1899) may legally invest any sinking funds, moneys, or other funds in any bonds or other obligations issued by a municipality for TIF District purposes.

c. **Manage Project and TIF Finances**

i. **Life of a TIF District and borrowing period:**

1. A TIF District continues until the date and hour that all indebtedness, incurred for the purposes of developing and redeveloping public infrastructure, is retired (24 VSA §1894(a)(3)).
2. If, as described above, a TIF Plan is approved by VEPC and the TIF Financing Plan is approved by VEPC and by a local vote, the

municipality can incur debt against anticipated property tax revenues of the TIF District at any time during the 20 year period following the creation of the TIF District by the municipality. The 20-year period during which debt may be incurred commences at 12:01 am on the April 1 of the year the TIF District creation is voted by the municipal legislative body (24 VSA §1894(a)(1)).

3. Any indebtedness incurred during this 20 year period can be retired over any period authorized by the municipal legislative body (24 VSA §1894(a)(1)).
  4. If no debt is incurred within the first five years after creation of the TIF District, the municipality must seek re-approval of the TIF District Plan and TIF District Financing Plan from VEPC before any debt may be incurred (24 VSA § 1894(a)(2)).
  5. For any debt incurred within the first five years after creation of the district by the municipal legislative body, or within the first five years after re-approval by VEPC, **but for no other debt**, the education tax increment may be retained for up to 20 years beginning with the initial date of the first debt incurred within the first five years. (In other words, the first debt that is incurred within five years of being approved triggers the 20 year period during which 75% of the incremental property tax revenues may be retained to pay for any TIF District debt incurred during that first five year period) (24 VSA § 1894(a)(2)).
- ii. **Original Taxable Value:** Lister/Assessor Establishes and Certifies Original Taxable Value and certifies annual increase or decrease:
1. By 12:01 am on April 1 of the first year after the TIF is approved by the municipal legislative body, the lister/assessor certifies the valuation of all taxable real property within the TIF District, setting the “original taxable value.” (24 VSA §1895).
  2. Each subsequent year during the life of the TIF District, the lister/assessor certifies the amount by which the original taxable value has increased or decreased and the proportion which the increase or decrease bears to the total assessed value of the real property for that year (24 VSA §1895).
- iii. **Calculating the tax increments generated by the increases in the original taxable value** (24 VSA §1896(a)):
1. In each subsequent year, the listers or assessor include no more than the *original taxable value* of the real property in the assessed valuation upon which the listers or assessor computes the rates of all taxes levied by the municipality, the school district, and every other taxing district in which the Tax Increment Financing District is situated.
  2. But the listers or assessor extend all rates so determined against the entire assessed valuation of real property for that year. In each year for which the assessed valuation exceeds the original taxable value, the municipality treasurer must hold apart, rather than remit to the taxing districts, that proportion of all taxes paid that year on the real property in the district which the excess valuation bears to the total assessed valuation. The amount held apart each year is the “tax increment” for that year. So much of the tax increments received with respect to the district and for the payment for

financing for improvements and related costs, but not more than 75% of the education property tax revenues and an equal proportion of the municipal property taxes, must be segregated by the municipality in a special account on its official books and records until all capital indebtedness of the district has been fully paid.

3. The final payment must be reported to the lister or assessor, who shall thereafter include the entire assessed valuation of the district in the assessed valuations upon which tax rates are computed and extended and taxes are remitted to all taxing districts.

iv. **Reappraisal** (24 VSA §1896(b)):

1. If there occurs a reappraisal of 20% or more of all parcels in a municipality that has a TIF District, the value of the original taxable property in the district must be changed by a multiplier, the denominator of which is the municipality's education property tax grand list for the property within the district in the year prior to the reappraisal or partial reappraisal and the numerator of which shall be the municipality's reappraised or partially reappraised education property tax grand list for the property within the district.
2. The state education property tax revenues for the district in the first year following a town-wide reappraisal or partial town-wide reappraisal must not be less than the dollar amount of the state education property tax revenues in the prior year.

v. **Distribution of excess revenues** (24 VSA §1900):

1. Of the municipal and education property tax increments received in any tax year that exceed the amounts pledged for the payment of the financing of public infrastructure improvements and related costs in a TIF District, an equal portion of each increment may be used for prepayment of principal and interest on the financing, placed in escrow for financing payment, or otherwise used for defeasance of the financing.
2. Any remaining portion of the excess municipal tax increment shall be distributed to the city, town, or village budget, in proportion that each budget bears to the combined total of the budgets unless otherwise negotiated by the city, town, or village.
3. Any remaining portion of the excess education tax increment shall be distributed to the education fund.

**5. BUILD PUBLIC INFRASTRUCTURE AND MANAGE REDEVELOPMENT OF TIF DISTRICT**

- a. Obtain land
- b. Prepare sites
- c. Build infrastructure
- d. Implement private-public partnerships to accomplish real property redevelopment
- e. Post-construction TIF financing management

**6. EVALUATION, REPORTING AND TERMINATION**

- a. **Evaluation:** Evaluate TIF District project based on criteria established in TIF District plan and required by municipality.
- b. **Reporting** (24 VSA §1901 and 32 VSA 5404a(i)):
  - i. Track and report annually to VEPC and the Vermont Department of Taxes, on a form provided by VEPC, the following:

1. Details of actual public infrastructure and real property development that has occurred;
  2. Current value of original taxable property;
  3. Tax increment generated each year;
  4. Amount of tax increment generated, utilized for TIF District debt, and submitted to the taxing authorities each year; and
  5. Any other information required by VEPC or the Department of Taxes in annual reports.
- ii. Track and report to VEPC according to the municipal audit cycle (24 VSA §1681):
    1. Actual investments in public infrastructure;
    2. Debt repayments;
    3. Escrow status; and
    4. Related costs, including payments to a coordinating agency.

**c. Termination**

- i. Make final payments on debt.
- ii. When the final payment on the debt is made, it must be reported to the lister/assessor, who then includes the entire assessed valuation of the District in the assessed valuations upon which tax rates are computed and taxes are remitted to all taxing authorities (24 VSA §1896).
- iii. Through municipal legislative body, dissolve TIF District