Inter-Departmental Communication

DATE: January 27, 2003

TO: Evert Asjes, Chair, and Members of the Finance and Audit Committee

FROM: Mark Funkhouser, City Auditor

SUBJECT: Analysis of TIF Commission's Tax Increment Financing Proposal

You asked that we provide an analysis of the TIF Commission's November 2002 tax increment financing proposal.

Conclusions

The TIF commission disagreed that a TIF policy is needed in July 2002. Their November 2002 proposal merely describes current operating methods without providing any additional controls. Their November proposal does not identify goals for the TIF program, limit eligibility, specify consequences for inadequate performance, or measure program impact. These policy components, recommended by the Government Finance Officers Association for economic development incentives, are incorporated in Resolution 010924, which establishes a policy for using TIF.

Work Performed

We reviewed Resolution 010924; a July 2002 TIF Commission memorandum[1]; a September 2002 City Auditor's Office's memorandum[2]; the commission's November 2002 TIF proposal[3]; recent adopted budgets; and our previous audit work examining the city's use of TIF. We also compared the resolution and the commission's proposal to recommendations regarding economic development incentive policies from the Government Finance Officers Association (GFOA).[4]

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1 Memorandum from Laura Whitener, Director and Chief Operating Officer of the Tax Increment Financing Commission, to Councilman Evert Asjes, Chairman, and members of the City Council Finance and Audit Committee, July 10, 2002.

2 Memorandum from City Auditor Mark Funkhouser to Councilman Evert Asjes, Chair, and members of the Finance and Audit Committee, September 24, 2002.

3 Laura Whitener, Director and Chief Operating Officer of the Tax Increment Financing Commission, *Tax Increment Financing Policies and Procedures*, November 2002.

4 *Economic Development Incentives*, Government Finance Officers Association, 1990, downloaded from www.gfoa.org/services/rp/budget/budget-economic-development.pdf.

Background

TIF Is a Significant Public Expenditure

In fiscal year 2002, the city passed through more than $22 million to the TIF Commission, including about $8 million in payments in lieu of taxes (PILOTs) from counties and other taxing jurisdictions. The city spent another $5.8 million on debt service for Super TIF projects. The 2003 adopted budget includes expenditures of over $42 million for 42 TIF and Super TIF projects. City staff estimate total TIF and Super TIF expenditures will be approximately $38.8 million during fiscal year 2004.

TIF Policy Development History

In February 2000, the City Manager recommended the City Council and Economic Development Corporation staff develop a public policy to manage the use of TIF. The recommendation was addressed in June 2001, when Councilman Asjes introduced Resolution 010924, proposing a city policy for the use of tax increment financing for economic development. The resolution was held in committee, pending comment from the TIF Commission. In July 2002, Laura Whitener, TIF Commission Director and Chief Operating Officer, provided the Finance and Audit Committee members with the commission's response to the policy issues contained in the resolution. (The commission's July 2002 response is attached.)

In September 24, 2002, I wrote a memorandum to the Finance and Audit Committee regarding the TIF Commission's response. (This memo is also attached.) My memo reiterated a TIF policy is needed to:

- Limit overall financial risk to the city;
- Assure public confidence in the integrity of the TIF process;
- Recognize the costs of the TIF program and its administration;
- Emphasize the fact that the City Council's role is to develop the city's policy and the TIF Commission's role is to implement that policy;
- Focus TIF as a tool to achieve clear, specific, measurable public goals; and
- Make developers understand what the City Council expects when TIF plans and projects come to it for final approval.

Throughout the fall of 2002, Councilman Asjes and I met with Andi Udris, President and CEO of the Economic Development Corporation of Kansas City, Missouri, and Ms. Whitener, to discuss the development of a policy to guide the TIF process. In November 2002, Ms. Whitener provided the TIF Commission's alternative TIF proposal. (Also attached.)

Analysis

TIF Commission Opposes Resolution

Resolution 010924 outlined a proposed TIF policy designed to strengthen the city's control over the use and accountability for economic development incentives. In July 2002, the TIF Commission only partially agreed with two of the resolution's 11 policy elements. (See Exhibit 1.)

Exhibit 1. TIF Commission's July 2002 responses to Resolution 010924 policy elements

Resolution's Policy Elements	TIF Commission's Responses
TIF usage will be limited to reimbursement for public infrastructure construction.	Disagree
The total assessed value of parcels in TIF plans cannot exceed a percentage of the city's total assessed valuation.	Not Needed
All incremental property taxes will be used for payments in lieu of taxes (PILOTs).	Not Needed
Incremental Economic Activity Taxes (EATs) will not be used for reimbursement of redevelopment costs.	Disagree
Shortfalls in PILOT revenues used to support debt will be covered by general fund.	Not needed
Infrastructure construction must begin within three years of plan or project approval.	Partially agree
Project completion date extensions cannot exceed three years.	Partially agree
City can impose additional requirements for individual TIF projects.	Not Needed
TIF Revenues will not be used for TIF Commission operating or administrative costs. General Fund will provide TIF Commission funding.	Disagree
Reimbursements requests will be denied when infrastructure construction begins after scheduled project completion date. No completion date will extend beyond six years from initial project approval.	Disagree
Developers will be required to submit annual budgets of anticipated expenditures and revenue sources, and budgets and actual expenditures for prior years. Information should conform to city's fiscal year.	Not Needed

Sources: Resolution 010924 and Memorandum from Laura Whitener, Director and Chief Operating Officer of the Tax Increment Financing Commission, to Councilman Evert Asjes, Chairman, and members of the City Council Finance and Audit Committee, July 10, 2002.

The TIF Commission disagreed that a TIF policy is needed, questioning policy elements that would impose limits on the use of TIF, asserting that some policy elements were already addressed in current state statutes or city practices, and expressing concerns that some projects need broader assistance and more time to complete.

A TIF policy is still needed. The TIF Commission argues that because the City Council has final authority to approve or disapprove TIF plans and projects, there is no need for an overall policy that addresses the appropriate use of TIF. This argument misconstrues the function of an elected body such as the City Council. A *primary role* of the City Council is to set policy; only secondarily does Council approve or disapprove plans and projects in accordance with Council policy. For example, in land-use planning the City Council's primary responsibility is to adopt a land-use plan for the entire City; only secondarily does the City Council review and approve specific land uses within the context of its formal land-use policy. Imagine how unfocused land use might be in the City if the use of each individual land parcel were reviewed separately and without a policy context by a succession of city councils. Review and approval of separate TIF plans and projects is virtually meaningless in the absence of an overall policy, and reduces the City Council's role to one of ministerial review, rather than city-wide policymaking.

Adopting a TIF policy would increase the Council's ability to target TIF to projects that conform to prospective requirements enacted by the Council. A formally adopted city policy would give the Council a means for holding the TIF Commission and its staff accountable for reviewing and approving developer proposals that conform to city policy.

TIF Commission Proposal Inadequate

The TIF Commission's November 2002 alternative proposal does not identify goals for the TIF program, limit eligibility, specify consequences for inadequate performance, or measure TIF's impact. Instead, the commission's proposal merely describes current operating methods without providing any additional controls.

In 1990, the GFOA recommended policy components to guide jurisdictions in their administration of economic development incentives. The GFOA recognized that the costs and benefits of these incentives often do not clearly appear in the budgets or financial statements of state and local governments and that their impact may take place over several years. To address these concerns, the GFOA recommended four components that should be included in a public policy for economic development incentives:

- Specific goals and criteria that define the economic benefit both the government and the entities receiving the incentives expect to gain.

- The conditions under which the incentives are to be granted.

- The actions to be taken should actual benefits differ from planned benefits.

- The economic benefits to the government and the costs of the incentive should be measured and compared against the goals and criteria that have been previously established.

TIF Commission proposal does not address GFOA policy components. The November 2002 TIF Commission proposal does not adequately address the four policy components recommended by the GFOA. The proposal identifies a purpose for TIF but does not identify specific goals the city will seek to achieve from its use. The proposal identifies broad conditions for determining eligibility of TIF proposals, along with criteria for approving TIF project submissions, but does not limit eligibility. The proposal does not identify any actions to be taken should the actual benefits differ from those identified in approved plans or include mechanisms for determining economic benefits for comparison against established goals. The proposal merely incorporates current TIF operating methods without providing any additional controls.

Resolution Addresses GFOA's Recommendations

The resolution specifies the goals of TIF, the conditions for granting incentives, consequences for nonperformance, and a method of determining the actual economic impact. The resolution also proposes other mechanisms that help strengthen the city's control over the use of TIF.

Program goals. The resolution specifies that TIF will be used to address the city's infrastructure deficit. The developer benefits from reduced costs for infrastructure construction and increased property values.

Conditions for granting the incentive. The resolution identifies the types of costs that TIF will reimburse and establishes deadlines for when infrastructure construction should begin and the project should be completed.

Consequences for nonperformance. The resolution specifies that developer reimbursement requests will be denied and the development agreement will expire if infrastructure construction is not begun within established deadlines.

Measurement of economic impact. The resolution requires developers submit annual budgets showing anticipated expenditures and sources of revenue, using the city's fiscal year. It further requires developers compare budgeted and actual expenses for all prior years.

Other control mechanisms. The resolution includes other control mechanisms that strengthen the city's control of TIF. These include specifying the sources of TIF funding, establishing the Council's authority to impose additional requirements for individual projects, and pledging the city's coverage of PILOT appropriation shortfalls. The resolution also funds the TIF Commission through the city's general fund budget. Currently the TIF Commission is funded by a portion of project revenues. The current funding mechanism creates an incentive for TIF to be used in places where development could occur without public assistance.

If you would like to discuss these issues further, either individually or as a committee in an open and public session, please let me know.

Attachments

cc: Mayor Kay Barnes
Members of the City Council
Robert L. Collins, City Manager
Andi Udris, President & CEO of the Economic Development Corporation of Kansas City, Missouri
Laura Whitener, Director and Chief Operating Officer, TIF Commission

TAX INCREMENT FINANCING COMMISSION OF KANSAS CITY, MISSOURI

July 10, 2002

Councilman Evert Asjes, Chairman,
and Members of the City Council
Finance and Audit Committee
City Hall – 24th Floor
414 E. 12th Street
Kansas City, Missouri 64106

Re: Resolution NO. 010924

Dear Councilman Asjes and Committee Members:

Members of the City Council have requested preparation of economic development policies. Councilman Asjes and other members of the Finance and Audit Committee have specifically requested the TIF Commission establish policies for the use of tax increment financing. To that affect, Resolution No. 010924 was introduced to City Council in early 2001 containing eleven factors proposed for inclusion in and for purpose of constituting the City'92s policy for the use of tax increment financing. Resolution No. 010924 has been held off the docket at the Finance and Audit Committee awaiting a response from the TIF Commission. The TIF Commission approved a series of policies at its March 2002 meeting in response to the request for policies and forwarded those policies to the Finance and Audit Committee on June 19, 2002 for its review and approval.

On June 19, 2002, the City Finance and Audit Committee expressed concern that the eleven specific factors had not been specifically addressed in Resolution No. 010924. This letter is intended to the address those factors contained in the resolution, which are not directly detailed in the TIF Commission's policies. At it's July 10, 2002 meeting the TIF Commission directed staff to respond to the specific policies. The response to each factor is as follows:

1. Maximum assessed valuation for use of TIF – The total assessed valuation of parcels for which tax increment financing has been approved will not exceed a percentage of the total assessed valuation of the City, which percentage will be determined by the Council.

Response: Missouri TIF Statue is silent regarding limitation on the designation of TIF in relation to assessed value. The question comes down to what would this policy accomplish. As the basis of the tax increment financing program is strictly about the

ECONOMIC DEVELOPMENT CORPORATION OF KANSAS CITY, MISSOURI
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creation of new tax revenues, putting limits on TIF eligibility based on the assessed value would only serve to limit the further creation of new tax revenues for the City. It is unclear how this limitation on assessed value will help the City and whether this policy is relevant.

The TIF Commission has not addressed this in the policies as approved by the Commission in March 2002. The Commission believes that the "but for" test and the "pay-as-you-go" nature of the majority of TIF plans and projects protects the City from any negative impact. The "but for" analysis is intended to insure that the projects would not occur without the use of TIF assistance, and therefore there would be no deferral of property tax revenues or economic activity taxes which otherwise would occur and flow to the City's general fund. The "pay-as-you-go" nature insures that the City is not at risk of providing any assistance unless more than an equal amount of new value is created and PILOTS and EATS are paid to the affected taxing district. It is believed that these two conditions (i.e., but for, pay-as-you-go) do not reduce the existing assessed value and that the resulting TIF plans and projects have actually enhanced the existing assessed value within the designated areas and the surrounding areas. Ultimately, it is up to the City Council to determine whether the plan and/or project should be approved.

2. Use of TIF limited to public infrastructure. Tax increment financing may be used to reimburse costs directly related to the construction of public infrastructure, such as streets, sidewalks, bridges, sewers, and storm water drainage facilities.

Response: Section 99.800 RSMo provides for a broad range of reimbursable costs in addition to just infrastructure. The statute reads that eligible reimbursable costs "include the sum total of all reasonable or necessary costs incurred or estimated to be incurred, and any such costs incidental to a redevelopment plan or redevelopment project, as applicable." The intent of the statute is to use TIF to eliminate blighting conditions and to pursue economic development efforts. In order to guarantee that TIF is used for a public purpose, the statute requires that the City find that the proposed plan and projects are consistent with the City's comprehensive plan. The statue provides that the City is the sole and ultimate arbiter as to whether or not to approve a specific plan or projects while granting the City broad discretion regarding eligible reimbursable costs..

In practice a significant majority of the approved TIF plans and projects have been for the purpose of providing public infrastructure. More than 70% of the TIF reimbursements go for costs associated with public infrastructure, such as streets, sidewalks, bridges, sewers, and storm water drainage facilities and another 24% go to constructing parking. The remaining TIF has gone for rehabilitation of and construction of convention center related hotel rooms to support Bartle Hall, housing related activities and a few other city sanctioned uses.

To date TIF has been a valuable resource in implementing City identified priorities set forth in FOCUS, other relevant planning documents and City resolutions. In addition to public infrastructure, TIF has been used to assist in: the construction of downtown

parking garages consistent with the goals set forth for the parking commission; provision of downtown convention center hotel rooms consistent with City Council Resolution No. 941748 providing for additional city incremental revenue ("Super TIF"); and provision of housing as set forth in Resolution No. 990405 and in Ordinance No. 010814 most recently providing for the Midtown Housing program.

It is ultimately up to the City Council to determine whether TIF should be used solely for infrastructure. It is recommended that the City continue to look at projects on an individual basis and to judge those projects in light of the public benefit and furtherance of public objectives. By limiting the use of TIF strictly to infrastructure, the City may be forswearing a valuable tool that may help in forwarding other public objectives. The City can never be sure what the next project will be and whether TIF will be the tool that will insure the City can successfully implement its objectives. For example, if an opportunity to assist in development of a life sciences development project should present itself, but the City has determined that TIF shall only be used to construct infrastructure improvements, such a policy might jeopardize the City's ability to successful implement its objective to make Kansas City a leader in the life sciences.

3. TIF Commission funded through the general fund. Tax increment financing revenues generated by new tax increment financing plans will not be used to pay the costs of operating the Tax Increment Financing Commission or administering the tax increment financing program. Tax Increment Financing Commission costs, except those attributable to existing plans, will be annually appropriated through the City's 92 budget process.

Response: This proposal is inconsistent with both the existing agreements among the City Council, the Economic Development Corporation and affiliated agencies. Under the current and previous contracts between the City and the Economic Development Corporation and affiliated agencies, including the Tax Increment Financing Commission, the Contract states:

> WHEREAS, it is the intent of this Council to maintain EDC as a viable and efficient economic development, business retention, and development planning agency of the City for the current fiscal year ending April 30, 2003, and to the extent possible for the EDC and the Statutory Agencies to become financially self sustaining entities, and that the Statutory Agencies involved will work cooperatively with the City on all projects represented by the City;"

This proposed policy would reduce the viable and efficient operation of the EDC and the Statutory Agency known as the TIF Commission, hampering the entities ability to become financially self-sustaining entities. Last fiscal year and this fiscal year the City Council has reduced the EDC budget by at least $350,000. In addition to the TIF revenues being used to support the operation of the TIF, TIF supports the EDC through annual payments. These payments reimburse documented costs fronted by the EDC to keep the TIF Commission operational during the early years when there were insufficient TIF revenues to pay for TIF expenses. Those early expenses made it possible for the TIF Commission to: respond to litigation which established the validity of TIF (e.g., the Dunn Case); lobby the State in order maintain a viable TIF program; and maintain the day to day operations of the program. The TIF continues to repay the EDC for past documented expenses and to reimburse for current overhead costs associated with housing the TIF Commission and staff. Without the ability to use the TIF program to support the TIF program and in turn the EDC, the City would need to find additional funding just to maintain both the TIF program and the EDC.

4. Use of PILOTS. The City will devote 100 percent of the increment in property taxes to payments in lieu of taxes.

Response: This is dictated in State Statute. Section 99.845 RSMo requires the use of 100% of the PILOTS.

5. Prohibition on use of EATS. The City will not approve tax increment financing plans which call for allocation of incremental economic activity taxes for payment of redevelopment costs for tax increment financing plans.

Response: This is contrary to State Statute. Section 99.845.3 RSMo requires that "fifty percent of the total additional revenue from taxes, penalties and interest which are imposed by the municipality or other taxing districts, and which are generate by economic activity activities within the area of the redevelopment project over the amount of such taxes generated by economic activities within the area of the redevelopment project in the calendar year prior to the adoption of the redevelopment project by ordinance, while tax increment financing remains in effect...shall be allocated to, and paid by the local political subdivision collecting officer to the treasurer or other designated financial officer of the municipality, who shall deposit such funds in a separate segregated account within the special allocation fund".

6. Appropriation for shortfall in PILOTS. If tax increment financing is used to support debt and there is a shortfall in payments in lieu of taxes below that estimated by the Tax Increment Financing Commission and developer, the City will appropriate general fund revenues to make up for the short fall.

Response: This is consistent with current practice and contractual obligations of the City. The decision to obligate the City to support debt is determined solely by the City Council and is provided for in agreements entered into by the City Council. Such obligations are limited currently to six TIF projects (Americana Hotel, Muehlebach Hotel, Midtown, Uptown). In the majority of TIFS there is no City backed debt as the TIF projects are in the form of pay-as-you-go projects or through TIF issued bonds, with all the risk of shortfall lies with the redeveloper.

7. Annual budgets/reports required. For each tax increment financing plan the developer will be required to provide annual budgets, conforming to the City's 92 fiscal year, showing anticipated expenditures and source of revenue, and will include comparisons of actual budgeted expenditures for all prior years.

Response: This procedure is already in practice and is required by the City. In regards to the redevelopment budget and sources and uses, the redeveloper is required to submit a budget for estimated project costs and sources of funds at the time of approval of the plan and/or project. The budget and sources of funds are reviewed and recommended by the TIF Commission to the City Council for their ultimate approval. Typically the City Council's Planning, Zoning and Economic Development Committee receives the Plan, including the budget and sources and uses, as well as the recommendation by the TIF Commission and makes the final recommendation to the City Council. The budget and sources typically do not change once the plan has been approved and, if they change significantly, the redeveloper is obligated under the redevelopment agreement to return to the Commission.

Annual reports and budgets are already required under the City budgeting process. The TIF Commission works with the City Budgeting staff on an annual basis to provide annual budgets and to update the five-year budget forecast. These are brought to the Finance and Audit Committee of the City Council annually as a part of the annual budget process. This process provides for comparisons of actual to budgeted expenditures for all prior years. In addition, the TIF Commission has incorporated as part of its State required annual report, a graphic representation of comparisons of actual and budgeted expenditures for prior years. This annual report is sent to the City Council for its review each Fall.

8. Required commencement of construction. All development agreements will require construction of public infrastructure in an approved tax increment financing project to begin within three years of City Council approval of the plan or project, unless otherwise extended for up to an additional three years.

Response: This proposal is consistent with the desire by the TIF Commission to insure timely commencement of public infrastructure, though scheduling of construction of public infrastructure to date has been considered on a case-by-case basis in context of the specific TIF plan. In most cases construction of public infrastructure has started within three years, though this may not be feasible in all cases if the only source of TIF revenues is dependent upon market driven, TIF generating redevelopment. The TIF Commission has relied upon the approved TIF plan, contractual agreements, annual reports, on-site visits, cooperative efforts with City staff, and, in some cases, advice from TIF Commission created committees (some with City Council representation), to determine and monitor timeliness of construction of public infrastructure. Still the TIF Commission will further consider proposed policies for including in all future redevelopment agreements the requirement to begin construction of public infrastructure in a timely manner.

9. Extension of project completion dates. A project completion date may be extended for up to an additional three years when the developer establishes the existence of unforeseen and unanticipated conditions that reasonably prevented the commencement or completion of actual construction during the initial approved period.

Response: This proposal is consistent with the desire by the TIF Commission to insure timely commencement and completion of public infrastructure, though scheduling of construction of public infrastructure to date has been considered on a case-by-case basis in context of the specific TIF plan. In some cases where the TIF is strictly for construction of public infrastructure (e.g., Walnut Creek, Shoal Creek, Searcy Creek, KCI Corridor, Universal Floodwater TIFS) there may not be a scheduled completion date (other than that required under State Statute) as the plan provides that public infrastructure will be completed when funds become available and to the extent funds become available. In order to make sure that public infrastructure is completed in a timely manner, the TIF Commission has relied upon the approved TIF plan, contractual agreements, annual reports, on-site visits, cooperative efforts with City staff, and, in some cases, advice from TIF Commission created committees (some with City Council representation) to determine and monitor timeliness of construction of public infrastructure. Still the TIF Commission will further consider proposed policies to further insure timely completion of public infrastructure.

10. Limitation on reimbursement. All development agreements will require that if actual construction of public infrastructure has not commenced by the completion date, including the completion date as extended. The development agreements will expire and payments in lieu of taxes will not be available to reimburse costs related

to public infrastructure. No completion date will extend beyond six years from the initial approval of the project.

Response: The TIF Commission also wishes to insure timely completion of all public infrastructure, but sometimes six years is not enough time to accomplish the goals of constructing public infrastructure. In some cases where the TIF is strictly for construction of public infrastructure, the plans (e.g., Shoal Creek, KCI Corridor) have been structured so that there will be phased construction of infrastructure over the life of the plan, with construction occurring when TIF revenues become available and to the extent that funds become available. In the case of some of the existing TIF Plans the City would lose its opportunity to construct desired road improvements because the improvements had not been completed within 6 years (e.g., Shoal Creek, Walnut Creek, Universal, Santa Fe). There also may not be any more TIF Plans for public infrastructure along the lines of Shoal Creek, Santa Fe or KCI, as the six year limitation may appear too daunting a risk to individual redeveloper and they become unwilling to take the initiative to construct City roads and wait for reimbursement. Therefore it is recommended that each public infrastructure TIF plan be viewed on a case-by-case basis in order to increase the likelihood that the public infrastructure will be completed.

11. Individual projects. The City may impose additional requirements on a project-by-project basis to insure responsible use of the tax increment financing.

Response: This is already being done as each plan and project are individually analyzed and heard by both the TIF Commission and the City Council. The TIF Commission analyzes each plan and project on an individual basis and may impose additional requirements as a part of its recommendation to the City Council. The City Council as the ultimate decision maker can, and has, imposed additional requirements to TIF Plans, which requirements are incorporated in the TIF redevelopment agreement or other applicable agreements between the City and the redeveloper.

Related to this factor the TIF Commission did approve one new policy for review and approval by the Finance and Audit Committee. This new proposal provides that all TIF plans and projects also be provided to the relevant City staffs prior to review by the TIF Commission in order to insure additional input and comment to the City Council. In addition, the TIF Commission and the City Planning and Development Department have agreed that all projects be submitted to the City Planning and Development Department for review of land use, design and other planning issues prior to review by the TIF Commission. This new policy and new protocol will enable the TIF Commission and

City Council to determine if there is need for any additional requirements on a project-by project basis.

Sincerely,

Laura Whitener

Laura Whitener
Director and Chief Operating Officer

Inter-Departmental Communication

DATE: September 24, 2002

TO: Evert Asjes, Chair, and Members of the Finance and Audit Committee

FROM: Mark Funkhouser, City Auditor

SUBJECT: Need for a policy to control and direct Tax Increment Financing

Resolution 010924, introduced in June 2001, would establish city policy for the use of tax increment financing for economic development. On July 10, 2002, the Finance and Audit Committee received a memorandum from Laura Whitener, Director and Chief Operating Officer of the Tax Increment Financing Commission, which responds to the specific items contained in Resolution 010924. (A copy of Ms. Whitener's memorandum is attached.)

The purpose of this memorandum is to comment on Ms.Whitener's response. Taken as a whole, her comments seem to disparage the idea that the city should have a policy that limits in any way the use of tax increment financing (TIF). Throughout her memorandum, she argues that because the City Council has the final authority to approve or disapprove TIF plans and projects, there is no need for a policy that limits the use of TIF.

Although Ms. Whitener believes that individual TIF plans and projects should be considered by the City Council on a case-by-case basis, the city needs a policy to control and direct the use of TIF in order to:

- Limit the overall financial risk to the city;
- Assure public confidence in the integrity of the TIF process;
- Recognize the costs of the TIF program and its administration;
- Emphasize the fact that the City Council's role is to develop the city's policy and the TIF Commission's role is to implement that policy;
- Focus TIF as a tool to achieve clear, specific, measurable public goals; and
- Make developers understand what the City Council expects when TIF plans and projects come to it for final approval.

Limit the financial risk to the city. Resolution 010924 proposes that the Council establish a limit on the amount of total assessed valuation subject to TIF. Ms. Whitener's memorandum points out that the state law does not limit TIF in relation to assessed value and asks what the policy would accomplish. The policy would limit the risk to the city by limiting the city's exposure.

The city's risk with regard to TIF is a function of two elements: the probability of an error and the city's potential financial exposure. The possible errors are that the "but for" test could be applied incorrectly, the amount of tax subsidy required to make the project feasible could be over-stated, or substitution could occur wherein some or all of the sales tax revenue generated was not in fact new revenue but was generated by sales that were previously occurring at existing businesses. The exposure is the amount of revenue redirected to the developers under TIF agreements or the amount of real estate designated as subject to TIF.

Ms. Whitener's memorandum assumes that the probability of an error is zero and therefore it is not necessary to limit exposure. The fact is, people make mistakes. It is illogical to assume that a group of people making a certain series of decisions have, for several years, always been right and will continue to always be right for the foreseeable future.

Assure public confidence in the integrity of the process. The absence of a formally adopted policy for the use of TIF erodes public confidence in the integrity of the process. It can seem as if the public bodies involved, including the TIF Commission and the City Council, are simply responding to project-specific pressure. To the public, as well as to knowledgeable insiders, it can appear that the critical element required for plan approval is not how well the proposed TIF advances agreed upon public goals while limiting the risk to the city, but instead how well connected the developer's attorneys are. With a clear and specific policy, stakeholders can compare what has been suggested by a developer to the criteria embodied in the policy and make a reasonable judgment about whether the proposal complies and should be approved. The chances of political manipulation are greatly reduced when decision-makers have formal criteria for making their decisions.

Recognize the costs of the TIF program and its administration. Resolution 010924 calls for funding the TIF Commission through the general fund rather than through a percentage of TIF revenues, as is presently the case. As Ms. Whitener's memorandum correctly points out, this proposal is inconsistent with the existing agreements between the Economic Development Corporation and the TIF Commission. However, the agreements, which are adopted annually by the parties involved, can be changed. The present situation provides a built-in conflict of interest wherein the body that approves the plans and projects gets a portion of the revenue from approved plans and projects. Worse, the present situation basically keeps the cost of the administration of the program "off the books." Hidden costs are much more difficult to control. Funding the administrative costs of TIF out of the city's general fund through the annual budget and appropriation process would improve the integrity and the management of the program by clearly identifying the costs of the program, bringing the program under the scrutiny of the City Council and other stakeholders, and making the program subject to the same budgetary and financial controls as other programs that compete for city funding.

Emphasize the city's role as body establishing policy. Ms. Whitener's memorandum states "Councilman Asjes and other members of the Finance and Audit Committee have specifically requested the TIF Commission establish policies for the use of tax increment financing." That assertion is incorrect. Chairman Asjes asked for the Commission to comment on Resolution 010924, which, if adopted, would establish city policy with regard to TIF. Establishing policy is the City Council's role and not that of the TIF Commission.

Ms. Whitener's memorandum points out repeatedly that the City Council has ultimate approval authority for TIF projects and can review the projects and plans on a case-by-case basis. However, as long as the Council deals with these decisions on a case-by-case basis it is reacting to developer driven proposals, often after the deal has been largely put together and under significant time pressure. Adopting a TIF policy would increase the power of the Council to control TIF by forcing projects to conform to prospective requirements enacted by the Council. A formally adopted city policy would also give the Council a means for holding the TIF Commission and its staff accountable for appropriately reviewing and approving developer proposals that conform to city policy—as opposed to the current situation, which forces the Council to grapple with individual projects only on a case-by-case basis, without an overall policy framework.

Focus TIF as a tool to achieve clear, specific, measurable public goals. The need for improvements to public infrastructure is widely recognized in Kansas City. Improvements to infrastructure, including reducing the city's large backlog of deferred capital maintenance, has been a high priority of the City Council through the last several budget cycles. In that context, Resolution 010924 proposes that the use of TIF be limited to public infrastructure.

Ms. Whitener's memorandum states, "It is ultimately up to the City Council to determine whether TIF should be used solely for infrastructure. It is recommended that the city continue to look at projects on an individual basis and to judge those projects in light of public benefit and furtherance of public objectives. By limiting the use of TIF strictly to infrastructure, the city may be forswearing a valuable tool that may help in forwarding other public objectives." Focusing TIF on a clear and specific public goal, such as improving public infrastructure, will provide more accountability for its use, improve the prospects for meaningful cost-benefit analyses, and improve the potential impact of the program by concentrating benefits on one aspect of the city's diverse needs. Such a goal is more likely to be achieved if it is communicated clearly to stakeholders in advance.

Make developers understand what the City Council expects. Resolution 010924, if adopted, would provide a formal, written record of the City Council's expectations with regard to TIF. In the long run, this is clearly less costly for developers and for citizens than having developers spend the money to prepare and present and having the government spend the money to review and then reject individual proposals.

If you would like to discuss these issues further, either individually or as a committee, please let me know.

Attachment

cc: Mayor Kay Barnes
Robert Collins, City Manager
Laura Whitener, Director and Chief Operating Officer, TIF Commission

TAX INCREMENT FINANCING
Policies and Procedures

Purpose

Tax Increment Financing (TIF) is a redevelopment financing tool that captures a portion of the new tax revenues generated as a result of an approved project and redirects it to finance a specified public purpose. Redevelopment that occurs in a designated tax increment financing district is premised on the resulting increase in the value of real property and local economic activity taxes levied on such items as sales, utility, corporate profits and wages. The increased local tax revenue resulting from redevelopment projects in the designated redevelopment area are called the "tax increment." The tax increment from local real property taxes (PILOTS) and 50% of the increment from economic activity taxes (EATS) are available to finance eligible project costs, such as the construction of public infrastructure, site clearance and related private project expenses.

The City Council created and authorized the Tax Increment Financing Commission (TIFC), a Board of six members, augmented by five members from the affected taxing districts, to review and make recommendations to the City Council on all TIF projects and plans. The TIFC shall operate in accordance with Ordinance No. 54556 dated November 24, 1982 and as amended by Ordinance No. 911076 dated August 29, 1991. **All TIF projects and plans must receive final approval from the City Council.** The TIF concept derives its origin from the Real Property Tax Increment Allocation Act (Section 99.800 et seq., RSMo 1997).

Eligibility Criteria

Developers using Tax Increment Financing must submit an application and plan to the Tax Increment Financing Commission (TIFC) and the City Council. Missouri statute requires TIF projects to be redevelopment projects that would not reasonably be expected to develop (i.e., "but-for") without the assistance of TIF. A designated TIF area also must qualify under the TIF Act with the City Council determining one of three designations:

- The district is a "Blighted Area," which means a finding of blight or blighting conditions in any area whereby by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals or welfare in its present condition and use; or

- A finding that the district meets the requirements of a "Conservation Area" in which 50% or more of the structures have an age of 35 years or more. Such an area is not yet a blighted area but is detrimental to the public health, safety, morals, or welfare and may become a blighted area because of any three or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; or lack of community planning; or

- A finding that the district is an "Economic Development Area," which means the area meets the following requirements: the area is not a "Blighted Area" or "Conservation Area;" the City Council finds that redevelopment will not be solely used for development of commercial business which unfairly compete in the local economy; and the City Council finds that redevelopment is in the public interest because it will discourage economic development activities from moving to another state, result in increased employment in the City, or result in the preservation or enhancement of the tax base of the City.

Program Benefits

A. Revenue Source

1. Payment in Lieu of Taxes (PILOTS) – New, real property tax rates are frozen for a term of up to 23 years per project. Increases in city and county taxes due to new construction, rehabilitation and infrastructure improvements associated with the TIF plan are abated. Property owners make PILOTS in an amount equal to the tax abatement granted. These funds are deposited in a special allocation fund.

2. Economic Activity Taxes (EATS) – 50% of new locally collected taxes including sales, earnings, food and beverage, corporate profit, and utility taxes generated by redevelopment in the area are deposited in a special allocation fund.

B. Reimbursement of Redevelopment Project Costs

Reimbursable redevelopment project costs include the costs of studies, surveys, plans and specifications, land acquisition, land preparation, professional service costs and fees, and construction costs of both public and private improvements. When TIF funds are used to reimburse private improvements, additional public purpose justification shall be required.

C. Bonds

The TIFC may also issue bond obligations up to 23 years to pay for redevelopment project costs.

D. Power of Eminent Domain

The City's or County's condemnation powers can be used in a TIF area to acquire property for use by a private developer implementing a project contemplated in the TIF plan.

Approval Criteria

To ensure that City Council's policies and objectives are being followed and to better determine the overall financial risk to the City, the TIFC shall evaluate an applicant's proposed projects and plans based upon the following documentation provided by the applicants or TIF staff:

A. Redevelopment Area Eligibility

Applicant shall submit a condition study completed by a recognized professional for consideration by the TIFC. TIFC staff will review the condition study to determine whether the redevelopment area meets the definition of a "Blighted Area," "Conservation Area," or "Economic Development Area." In the case of a "Blighted Area," there must be factual evidence showing that at least one of the five blighting factors currently exist within the area as a whole and that a causal connection between such blight factor(s) and one of the three referenced designations must be shown to exist. TIFC staff shall present its recommendation to the TIF Commission and the City Council. The TIFC and the City Council will determine whether the area meets one of the three conditions as defined by the state statute.

B. Redevelopment Plan Conforms to City's Comprehensive Plan

The City Planning Commission (CPC) and the City Planning and Development staff shall review and advise the TIFC staff regarding whether the proposed redevelopment plan and related projects conform with the City's comprehensive plan as embodied by FOCUS and other relevant documents. TIFC staff and the City Planning and Development staff will present the CPC's recommendation to the TIFC. The actual finding of whether the redevelopment plan conforms to the City's comprehensive plan shall be made by City Council.

C. Cost Benefit Analysis

A cost-benefit analysis shall be generated to aid the TIFC and the City Council in evaluating the TIF Proposal.

The Economic Development Corporation, in coordination with the City's Finance Department and the City's Planning and Development Department, will present the cost-benefit analysis of the project seeking TIF assistance. The emphasis of the cost-benefit analysis will be on expected revenue to the City generated by the project (benefits) compared to the taxes redirected and new City services generated (costs) by the project. Similarly, the EDC and City staff will work in cooperation with the affected taxing district to estimate the cost-benefit to each of those districts.

D. Community Impact Analysis

A community impact analysis shall be performed on all TIF proposals. The intent of the community impact statement is to provide the TIF Commission and the City Council with a comprehensive picture of the development's impact. The community impact statement will address the following issues:

1. The project and/or plan's integration with the FOCUS development priority zones.
2. Cost-benefit of the project and/or plan, as outlined in C. above, for the City and the school district.
3. The project and/or plan's proposed strategy to comply with the TIFC's affirmative action policies in project development, construction and hiring.
4. Clear evidence and documentation of the need for the TIF assistance (i.e., the "but for").
5. An evaluation of the general character of the proposal, including:
    a) The project and/or plan's annual tax revenue by type of tax over the life of the TIF project and/or plan.
    b) Estimated increase in assessed value of real property.
    c) Estimated increase in sales activity.
    d) Identification of businesses moving into redevelopment area and/or project area, to extent possible.
    e) Previous location of any specified business locating within the redevelopment area and/or project area and whether the move into that area qualifies as relocation or new facility.
    f) Estimated increase in job creation and/or retention. The total amount of TIF assistance per new/retained job will be documented. Employer benefits (e.g., health, training, insurance, etc.) should be identified, to the extent possible. Projects generating more than $50,000 of TIF assistance per

new job and $35,000 per retained job shall require additional justification for project approval.

g) Estimated amount of new, private real and personal property investment.

h) Character of the employment regarding skill levels and job training.

i) Capability to attract sales from outside the City.

j) Financial strength of the tenant/business/developer.

k) Projected number of new residential units and estimated number of new residents.

l) Potential for future expansion.

m) Estimated number of construction jobs and wages to be generated.

n) Estimated number of full-time versus part-time jobs.

o) General environmental impact on the area, with a focus on environmental remediation, preservation of historic property, addition of green space, or addition of public infrastructure.

p) Use of federal, state, and local incentives for the project, including tax abatements, tax credits, loans and grants used in the past and proposed for the future.

q) Evidence of the impact of the plan and project(s), both positive and negative, upon the affected taxing districts

r) Proposed phasing of projects and improvements.

s) Affected school districts' status under the state funding formula.

t) Private investment:
   (1) Private investment versus public incentives.
   (2) Cash equity of the private developer/business versus public incentives.
   (3) Annual appropriation pledge to support TIF bonds, in case of City pledge or guarantee.

u) Social Factors:
   (1) Does the project and/or plan result in the displacement of other businesses or the dilution of an existing market within the City?
   (2) Will the investment serve as a likely catalyst for improvement to other properties in the immediate area?
   (3) Does the project and/or plan promote foreign trade opportunities?
   (4) Does the project and/or plan provide or support a desired social service?
   (5) Does the project and/or plan promote affordable housing opportunities or market rate housing in areas of the City deemed desirable?

(6) Are the jobs in a target industry (e.g., life sciences), skill intensive, designed for export, and will the employer hire unemployed or disadvantaged workers?
(7) Does the project and/or plan require acquisition of property?
(8) Does the project and/or plan require relocation of residential or commercial uses?
(9) Does the project and/or plan promote higher quality of design than normally required by the City?
(10) Does the project and/or plan benefit surrounding residential and commercial property users?
(11) Does the project and/or plan support additional parking?
(12) Does the project and/or plan support public transit?
(13) Will the project and/or plan provide for creation of an advisory or neighborhood group to provide input?
(14) Does the project and/or plan support historic preservation?
(15) Does the project and/or plan compliment other public projects?
(16) Does the project and/or plan expedite the provision of public infrastructure?

TIF staff, in cooperation with City Planning and Development Department and City Finance Department, will prepare the Community Impact Statement. **All proposed TIF plans will be reviewed by the City Planning Commission prior to TIFC review to evaluate planning and land use issues.**

Approval Process

A. An applicant shall prepare a TIF application which shall include all the necessary information to be able to evaluate the plan and/or project.

B. A redevelopment proposal is originated by or is presented to TIFC staff. Staff works with the applicant to prepare a redevelopment plan. TIFC staff works with various City staff in reviewing potential plans.

C. TIF plans are often accompanied by rezoning requests that are handled by City Planning and Development Department staff. A recommendation of approval or denial is forwarded by the City Plan Commission to the Plans, Zoning and Economic Development Committee of City Council, and finally passes on to the full Council for approval or denial.

D. TIFC staff will work with the City's Human Relations Department and the applicant to ensure best faith efforts to meet the TIFC Affirmative Action Policy.

E. TIFC staff will notify affected taxing districts and affected property owners of the proposed TIF plan and/or project by certified mail; publish notice in the Kansas City Star and publications providing services to the minority community; and notify other interested parties who have previously requested notification.

F. TIFC staff will work with the applicant and stakeholders to conduct due diligence and to make a recommendation to the TIF Commission.

G. A public hearing with the TIFC is held to review the redevelopment plan and/or project and consider approval.

H. The TIFC must make actual findings within 30 days as required by State statute and vote on a recommendation to the City Council.

I. If the TIFC recommends approval, then the appropriate ordinances are introduced to the City Council not earlier than 14 days and not later than 90 days from the close of the public hearing. If the TIFC recommends denial, the decision will also be forwarded to the Council.

J. Upon approval of the project by City Council, the 23-year clock for the TIF project(s) is initiated. The relevant State statute allows a 10-year period to activate projects within the approved TIF area. A TIF Agreement must be executed between the TIFC and the applicant within 90 days from the date of City Council approval. Failure for an applicant to execute the TIF Agreement shall require that the proposed project be resubmitted for TIFC and City Council approval.

K. Approved projects must receive necessary building permits and commence construction within one year from the date of City Council approval. All TIF projects shall be completed within three years from commencement. Any extensions of these provisions shall require a public hearing before the TIFC. Project phasing shall be allowed at the discretion of the TIFC and City Council.

L. TIFC staff has the responsibility of preparing an annual report of TIF projects. The annual report will provide a description of each TIF plan, the plan location, and project objectives. The annual report will also describe the performance measures regarding job creation, total investment since plan inception, construction completed, public improvements and impact on property taxes in the district. A public hearing shall be held every five years following plan approval to provide citizens an opportunity to comment on the performance of approved TIF projects.

TIFC Administrative Requirements

A. Annual Report

The TIFC, shall in cooperation with TIF and the City Finance Department, annually prepare and/or audit the following:

1. An annual budget including all program costs and administrative expenses.
2. TIF developer's submissions for reimbursement and compliance with businesses within TIF districts documenting economic activity taxes to the City's Finance Department.
3. Projected versus actual job creation/retention data.
4. Bond retirement payments, if applicable.
5. Environmental issues specified in the community impact statement.

B. Certification of Costs

The TIFC shall retain the services of a professional auditor to verify submission of costs by developer. The certifier shall forward its recommendation to the TIFC for its approval and certification of costs.

C. Approval of Contracts

The TIFC shall negotiate and enter into contracts necessary for implementation of TIF plans and/or projects. In the case where the City guarantees or additional City support if provided, the TIFC and its staff will cooperate with the appropriate City bodies in the preparation and negotiation of the appropriate contracts and agreements.

D. Ongoing Coordination

1. MBE/WBE participation coordination with the City's Human Relations Department.
2. EATS documentation and collection coordination with the City's Finance Department for businesses within the TIF district.
3. Public infrastructure improvements coordination with the City's Public Works Department, Missouri Department of Transportation, and the Federal Government.

Legislation

RSMo 99.800 to 99.865, as amended.