TAX INCREMENT FINANCING FOR AFFORDABLE HOUSING

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QUESTION:

How is tax increment financing (TIF) used to fund affordable housing projects in other states?

SHORT ANSWER:

The following is an overview of how TIF is used to finance affordable housing in Maine, Massachusetts, Minnesota, Texas, and Utah. Additionally, this memorandum examines how a TIF project is created and managed in several of Wyoming's surrounding states, including Colorado, Kansas, and Montana. These surrounding states do not have language specific to affordable housing in their TIF laws; however, they require TIF be used for projects with a "public purpose" and for "public use". TIFs are often implemented with other programs that support affordable housing and economic development and can be tools to support privately and publicly funded development.[1]

TAX INCREMENT FINANCING OVERVIEW:

Tax increment financing (TIF) is a tool employed by many local governments to encourage development in struggling or blighted areas of a community. TIF can be used to coordinate the actions of the government and private sector in addressing these blighted areas. The TIF tool can be used to fund development by designating an area for development and setting aside the anticipated property tax revenue increases (increment) that will result if the TIF investment stimulates new development and real estate appreciation. The increment from the TIF can be used to repay bonds issued to cover initial project development costs. Alternatively, increments can be used on a pay-as-you-go basis to fund individual projects. In some states, private developers may self-finance infrastructure improvements, with the municipality reimbursing them from the tax increment as tax proceeds are received.[2]

[1] Council of Development Finance Agencies, Tax Increment Finance State-by-State Report, 2015, **https://www.cdfa.net/cdfa/cdfaweb.nsf/ordredirect.html?open&id=201601-TIF-State-By-State.html**.

[2] U.S. Department of Transportation, Federal Highway Administration, Tax Increment Financing Fact Sheet, 2017, **https://www.fhwa.dot.gov/ipd/pdfs/fact_sheets/program_value_cap_tax_increment_financing.pdf**.

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As implemented in most states, TIF allows municipal governments to divert revenues of overlying governments, such as counties, school districts, and special districts, to fund economic development activities. TIF typically operates under the rationale that the diverted revenues are produced by the same economic development they fund, and therefore would not exist "but for" the TIF that enabled the development. Therefore, there is theoretically no revenue loss to the overlying governments.[3]

State legislation outlines the conditions under which TIF districts may be established. Municipalities are generally granted the right to operate TIF districts, subject to state oversight. Typically, a municipality passes an ordinance creating a TIF district and specifies the goals, allowed expenditures, and terms of operation.[4] Most states require areas to be blighted to qualify for TIF. The definition of "blight" varies from state to state with common themes such as the presence of a slum area or deteriorated structures, unsanitary or unsafe conditions, environmental contamination, and inadequate provisions for ventilation, light, air, or open spaces. Additionally, some states may have a "but for" requirement to form a TIF district, stipulating that TIF may only be used if there is unlikely to be any improvement to the area "but for" the TIF.[5] Feasibility studies or cost-benefit analysis are required in several states before establishing a TIF district. These studies are intended to ensure the district projects are only undertaken if they will generate more revenue than costs.[6]

Some states require approval from several government entities or agencies before a TIF district is created, such as the municipality, county, school board or district, state, community redevelopment agency board, or TIF commission. Furthermore, some states allow certain taxing entities to opt-out or opt-in to the TIF upon approval of the governing body. States may also require that some taxing entities receive the same mill levies from the increment as would be distributed without the TIF, such as school districts.[7]

AFFORDABLE HOUSING TIF PROGRAMS:

Maine

[3] David Merriman, Improving Tax Increment Financing (TIF) for Economic Development, Lincoln Institute of Land Policy, Sept. 2018, **https://www.lincolninst.edu/publications/policy-focus-reports/improving-tax-increment-financing-tif-economic-development/**.
[4] Id.
[5] Council of Development Finance Agencies, Tax Increment Finance State-by-State Report, 2015, **https://www.cdfa.net/cdfa/cdfaweb.nsf/ordredirect.html?open&id=201601-TIF-State-By-State.html**.
[6] U.S. Department of Transportation, Federal Highway Administration, Tax Increment Financing FAQs, March 2021, **https://www.fhwa.dot.gov/ipd/value_capture/defined/value_cap_faq_tif_march_2021.aspx#:~:text=However%2C%20there%20are%20States%20where,for%20funding%20(e.g.%20Virginia).&text=Some%20States%20require%20other%20governmental,municipal%20or%20county%20TIF%20district**.
[7] Id.

The Affordable Housing Tax Increment Financing (AHTIF) Program offers municipalities a financing tool to assist affordable housing[8] projects and support related infrastructure and facilities by designating a specific area of the municipality as an affordable housing development district and adopting an affordable housing development program for the district.[9] Prior to establishing an affordable housing development program for a designated affordable housing development district, the legislative body of a municipality must consider whether the proposed district or program will contribute to the expansion of affordable housing opportunities within the municipality or to the betterment of the health, welfare or safety of the inhabitants of the municipality.[10] AHTIF enables communities to use the incremental tax revenues from the affordable housing district to help construct affordable housing and pay for related costs.

The AHTIF statutes, 30-A M.R.S.A. §§ 5245 through 5250-G, describe required elements of an AHTIF district and its affordable housing development program. Key requirements include:

- At least 25 percent of the district area must be suitable for residential use, in a blighted area, or in need of rehabilitation or redevelopment.
- Development within the district must be primarily residential.
- At least 33 percent of the housing units developed in the AHTIF district must be designated for households earning no more than 120 percent of area median income (AMI).
- The affordability of rental units must be maintained for at least 30 years, and the affordability of homeownership units must be maintained for at least 10 years.
- A district may contain only homeownership units or only rental units or a combination of both, but a minimum of 33 percent of the total number of housing units in the district must be affordable for the required time, i.e., 10 or 30 years, depending on the housing type.[11]

The designation of an AHTIF district and the adoption of a program to develop affordable housing in the district must first be approved by the municipality's legislative body after a minimum 10-day public notice period and a public hearing.[12] Maine law requires municipalities to apply to the Maine State Housing Authority (MaineHousing) for review of the district and development program approved by the municipality to ensure compliance with the conditions set out in the AHTIF statutes.[13]

[8] Me. Rev. Stat. tit. 30-A, § 5246(1) defines "Affordable housing" as "a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended."
[9] Me. Rev. Stat. tit. 30-A, § 5245.
[10] Me. Rev. Stat. tit. 30-A, § 5247(2).
[11] Me. Rev. Stat. tit. 30-A, § 5247(3).
[12] Me. Rev. Stat. tit. 30-A, § 5250(1).
[13] Me. Rev. Stat. tit. 30-A, § 5250(2).

A municipality may retain all or part of the tax increment revenues generated from the increased assessed value of an affordable housing development district for the purpose of financing the affordable housing development program. The amount of the increment the program retains is determined by designating the captured assessed value.[14] When an affordable housing development program is adopted, the municipal legislative body adopts a statement of the percentage of increased assessed value to be retained as captured assessed value in accordance with the affordable housing development program. The statement of percentage may establish a specific percentage or percentages or may describe a method or formula for determination of the percentage.[15]

Eligible uses of incremental tax revenues from a district include capital and operating costs of affordable housing and public infrastructure improvements, support services for residents of the affordable housing, and costs of recreational and childcare facilities. Costs outside the AHTIF district can be funded with tax increment revenues from the district only if those costs are directly related to or made necessary by the establishment or operation of the district, and then only to a proportional extent. Examples include infrastructure and public safety improvements, costs to mitigate adverse impacts (including to local schools), and costs to establish a permanent housing development revolving loan or investment fund.[16]

A non-residential use included in a development program may be funded with tax increment revenues from the district, provided that the non-residential use contributes to a specific, identified improvement of the health, welfare, or safety of the residents of the municipality, including a specific, identified benefit to the residents of the district, or to the expansion of affordable housing within the municipality. The district and development program must otherwise comply with the requirements of the TIF statutes, including the requirement that the district be a primarily residential development. Tax increment revenues may not be used to construct new "pure" commercial facilities within a district or to rehabilitate those facilities.[17]

Massachusetts

The Urban Center Housing Tax Increment Financing (UCH-TIF) program authorizes cities and towns to encourage affordable housing and commercial development in commercial centers through TIF.[18] TIF available through the UCH-TIF program takes the form of property tax exemptions on all or part of the increased value of improved real estate, for a term not to exceed

[14] Me. Rev. Stat. tit. 30-A, § 5250-A(1). "Captured assessed value" means the amount, as a percentage or stated sum, of increased assessed value that is utilized from year to year to finance the project costs contained within the affordable housing development program. Me. Rev. Stat. tit. § 5246(6).
[15] Me. Rev. Stat. tit. 30-A, § 5250-A(1).
[16] Me. Rev. Stat. tit. 30-A, § 5249.
[17] MaineState, TIF Application, July 2020, **https://www.mainehousing.org/docs/default-source/applications/tif-applicatione03be6fbdce26f639ad9ff0000e8bc8d.pdf?sfvrsn=f173a915_8**.
[18] Mass. Ann. Laws Ch. 40, § 60; 760 CMR 58.02.

20 years.[19] The property tax exemption amount is agreed upon between the property owner and the municipality, between 0 and 100 percent of the tax increment beyond the property tax base value prior to any improvements authorized by the plan.[20] TIF may be combined with grants and loans from other local, state, and federal development programs. The program aims to increase the amount of affordable housing for households with incomes at or below 110 percent of AMI; therefore, residential housing development and improvement should be the primary focus of UCH-TIF plans.[21] The Executive Office of Housing and Livable Communities (EOHLC) administers the program at the state level, reviewing and approving applications submitted by local jurisdictions.

Prior to seeking EOHLC approval, UCH-TIF zones and plans must complete a local review and approval process which conforms to the requirements outlined in rule.[22] The following outlines the required steps prior to EOHLC submission:

1. Designate a UCH-TIF Zone and prepare a UCH-TIF plan. The chief executive of a municipality or another authorized officer or entity may designate the UCH-TIF zone.[23]
2. Hold a public hearing to receive public comment on the proposed zone and plan.
3. The municipal legislative body will finalize and adopt the zone and plan. This approval will include the authority to implement tax increment exemptions.
4. Negotiate UCH-TIF agreements with property owners specified in the proposed UCH-TIF plan.[24]
5. Municipality submits proposed UCH-TIF zone, plan, and agreements to the EOHLC for approval.
6. UCH-TIF zone, plan, and agreements become effective when granted approval by the EOHLC. The EOHLC may disapprove specific parts of the zone, plan or agreements, upon which the municipality may vote to adopt amendments and resubmit the documents for approval. Any additional UCH-TIF agreements with property owners in the UCH-TIF zone must be submitted to the EOHLC for approval.

The UCH-TIF plan outlines how the municipality will meet the requirements of the UCH-TIF program.[25] The plan should contain a statement describing how the plan will encourage increased residential housing growth including affordable housing in the designated UCH-TIF zone. Descriptions of all parcels and existing improvements and buildings must also be covered in the plan. Proposed construction, reconstruction, remodeling, and rehabilitations must also be

[19] Id.; Mass. Ann. Laws Ch. 40, § 60(a)(iii).
[20] 760 CMR 58.13.
[21] 760 CMR 58.02.
[22] 760 CMR 58.00.
[23] 760 CMR 58.05; UCH-TIF zone documentation shall contain sufficient description to show the exact delineation of the zone. The documentation shall establish with reasonable certainty that the area is a commercial center.
[24] 760 CMR 58.07.
[25] 760 CMR 58.06.

described in the plan, as well as the useful life of planned affordable housing within the UCH-TIF zone. The description must include zoning compliance, and schedule and cost of proposed construction. Also required in the plan is a description of the affordable housing development in the zone. This description includes the building type, number, and tenure of affordable housing units to be created on each property. The UCH-TIF program requires 25 percent of all housing units created on each property for which the owner receives UCH-TIF exemptions to be affordable housing.[26]

A UCH-TIF tax exemption may only be granted if the property owner satisfies one of the following affordability thresholds:

1. At least 15 percent of housing units assisted by a UCH-TIF agreement will be affordable to occupants with incomes at or below 80 percent AMI as defined by the United States Department of Housing and Urban Development (HUD);
2. At least 25 percent of housing units assisted by a UCH-TIF agreement will be affordable to occupants at or below 110 percent of the AMI as defined by HUD; or
3. The property will satisfy the requirements of an existing inclusionary zoning ordinance or by-law in the city or town, under which the property owner is required to make a portion of the housing units assisted by the UCH-TIF agreement affordable to low- and moderate-income households.[27]

Minnesota

Minnesota law authorizes municipalities to create housing districts to use TIF for affordable housing project development.[28] A housing project is a development that is intended for occupancy, in part, by low- and moderate-income individuals, as defined under a federal, state, or municipal law.[29] Increments from a housing district may only be used to finance a "housing project" or public improvements that are directly related to the project, as well as the authority's administrative expenses.[30] The cost of a project includes items such as acquisition, construction, or rehabilitation of the housing, planning, engineering, and architectural services, and related financing costs. Public improvement or infrastructure costs must be directly related to the project. For example, sewer and water connections for or a public access road to the housing could be financed. However, an adjacent road that serves the public likely could not be financed with TIF.

[26] 760 CMR 58.03 defines "Affordable Housing" as "[r]ental or ownership housing units which are restricted to and occupied by households with incomes at or less than 110% of area median income as determined by the U.S. Department of Housing and Urban Development (HUD) adjusted for household size. Rents or sales prices of affordable housing shall meet standards set by HUD or by the Department in guidelines for determination of affordable rents or sales prices."
[27] Mass. Ann. Laws Ch. 40, § 60(b).
[28] Minn. Stat. Ann. § 469.175.
[29] Minn. Stat. Ann. § 469.174(11).
[30] Minn. Stat. Ann. § 469.176(4)(d).

Some commercial development is also a permitted expense of housing district funds; Minnesota law allows up to 20 percent of the total square footage of improvements to be used for purposes other than low- and moderate-income housing.[31] This 20 percent share could be used for commercial developments, such as office or retail space. (It also could be used for housing for occupancy by individuals who do not meet the definition of low- and moderate-income housing under the federal, state, or municipal law.) In applying the 20 percent test, only developments that received assistance count.

Separate income limits are established for rental and owner-occupied developments. Rental limits apply for the duration of the TIF district, while the owner-occupied limits apply only to the first purchaser of the housing. Housing districts have a 25-year term limit from receipt of the first increment.[32] Rental developments must meet one of two tests taken from federal law:

1. 20-50 test: 20 percent of the units are occupied by individuals whose incomes are 50 percent or less of the AMI.
2. 40-60 test: 40 percent of the units are occupied by individuals whose incomes are 60 percent or less of the AMI.[33]

Special rules with higher income limits apply if the project receives a grant from the Minnesota Housing Finance Agency Challenge Program.[34] For those projects, the income limits under the Challenge Program apply (generally 80 percent of the applicable median income).[35]

Owner-occupied developments have considerably higher income limits than the rental developments. The general limit is 115 percent of the greater of (1) the AMI or (2) the statewide median income.[36]

Housing districts are exempt from two requirements or rules that apply to other types of Minnesota TIF districts. First, the municipality is not required to make the increase in market value finding under the but-for test before approving a housing district.[37] The Minnesota Legislature provided this exemption because low-income housing will rarely generate the largest increase in market value for a site and often may generate a lower market value than the use of the site that would be provided solely by the private market.[38] The public benefit of housing districts is thought to be the expansion of the supply housing for low-income families, not the expansion of the property tax

[31] Minn. Stat. Ann. § 469.174(11)
[32] Minn. Stat. Ann. § 469.176(1b).
[33] Minn. Stat. Ann. § 469.1761(3); 26 U.S.C.S. § 142(d).
[34] Minn. Stat. Ann. § 469.1761(5).
[35] Minn. Stat. Ann. § 462A.33(5).
[36] Minn. Stat. Ann. § 469.1761(2); 26 U.S.C.S. § 143(f).
[37] Minn. Stat. Ann. § 469.175(3)(b)(2)(ii).
[38] Minnesota Legislature, Housing TIF Districts, July 2017, **https://www.house.mn.gov/hrd/issinfo/tif/hsgdist.aspx**.

base, which lies at the heart of the market value component of the but-for test. Second, housing districts may be created on parcels with property tax values limited under the Green Acres, Minnesota Open Space Property Law, or the Metropolitan Agricultural Preserves Act.[39] In general, parcels in these programs may not be included in TIF districts. The rationale for this prohibition is that these programs are intended to encourage continued use of the property in less intensive uses (e.g., as farms or golf courses) by providing reduced taxes. Given this, the legislature considered it inappropriate to allow public subsidies to encourage development of these properties, shortly after they had received subsidies in return for not doing so. The exemption for housing districts was provided, possibly because the public benefits of expanding the supply of low-income housing was thought to outweigh these concerns.[40]

Texas

In Texas, a Tax Increment Finance District is called a Tax Increment Reinvestment Zone, or TIRZ. A TIRZ can be initiated by a city council or by petition of landowners who own at least 50 percent of the appraised value of real property within the proposed district.[41] TIRZ districts can be created with an initial life span of as many as 30 years, with an option to extend the period. When contemplating the creation of a district, Texas law only requires that public hearings be held for TIRZ district authorization (whether the zone should exist and its boundaries).[42] The terms of the district, such as the life span, are not subject to public comment.

The Texas statute does not use the term "blight," but does indicate a TIF designation should be in a zone with "a substantial number of substandard, slum, deteriorated, or deteriorating structures."[43] The Texas version of "but for" is "if the governing body determines that development or redevelopment would not occur solely through private investment in the reasonably foreseeable future."[44]

Texas' Tax Increment Financing Act gives municipalities the ability to use sales tax and use taxes generated in the reinvestment zone to pay project costs and retire bond debt in addition to the property tax increment.[45] Taxes collected within the TIRZ district can also be spent outside of the TIRZ boundary.[46]

[39] Minn. Stat. Ann. § 469.176(7).
[40] Minnesota Legislature, Housing TIF Districts, July 2017, **https://www.house.mn.gov/hrd/issinfo/tif/hsgdist.aspx**.
[41] Tex. Tax Code § 311.005(a)(4).
[42] Tex. Tax Code § 311.003(c).
[43] Tex. Tax Code § 311.005(a)(1).
[44] Tex. Tax Code § 311.003(a).
[45] Tex. Tax Code § 311.0123.
[46] Tex. Tax Code § 311.003(b).

TIRZ districts created by petition as set forth in Tex. Tax Code § 311.005(a)(4) in a county with a population of 3.3 million or more must allocate at least one third of the tax increment to provide affordable housing during the term of the TIRZ.[47] Currently this provision applies only to Harris County (which includes the City of Houston). The City of Dallas, however, implements an affordable housing set aside at the local level. In Dallas 20 percent of all housing receiving TIF funding must be set-aside for families earning less than 80 percent of Area Median Family Income (AMFI) for a period of 15 years (except City Center and Downtown Connection TIF Districts, which have a 10 percent set-aside). Additionally, maximum affordable rents must be set at 30 percent of 80 percent of AMFI, adjusted annually.[48]

Utah

TIF projects are implemented in Utah at the local level and facilitated through a community reinvestment agency ("agency"). Legislative changes in 2016 and 2019 eliminated the three previous tracks of redevelopment, including urban renewal, economic development, and community development, consolidating into a single community reinvestment agency program. A municipality may create a community reinvestment agency by ordinance.[49]

A TIF project may be initiated by a community reinvestment project area plan.[50] Under the terms of an interlocal agreement, a community reinvestment agency receives a tax increment from the property taxes and in some cases, sales taxes levied by various taxing entities in a project's boundaries.[51] To determine the share of the tax increment diverted to the community reinvestment agency, the agency works independently with each taxing entity located within the project area.[52] The agency and each taxing entity may approve an interlocal cooperation agreement giving the agency a portion of tax increment generated in the community reinvestment project area from that taxing entity.[53]

A multi-step process must be followed to adopt a community reinvestment plan and budget. The main elements include:

- The agency board adopts a resolution designating the project area which includes a description, survey area, map, and directing a plan and study.[54]

[47] Tex. Tax Code § 311.011(f).
[48] City of Dallas, Economic Development, Tax Increment Financing, Last visited July 2024, **https://www.dallasecodev.org/358/Tax-Increment-Financing-Districts#:~:text=Affordable%20Housing%20Policy&text=20%25%20of%20all%20housing%20receiving,a%2010%25%20set%2Daside)%3B**.
[49] Utah Code Ann. § 17C-1-201.5.
[50] Utah Code Ann. § 17C-5-104.
[51] Utah Code Ann. § 17C-1-401.5.
[52] Utah Code Ann. § 17C-5-202.
[53] Utah Code Ann. § 17C-5-204.
[54] Utah Code Ann. § 17C-5-103.

- The agency conducts a development impediment study and finds that there is a development impediment determination in the project area.[55]
- The agency prepares a community reinvestment plan and project area budget describing the development project and goals to accomplish as a result of the agency's participation.[56]
- All taxing entities, the public, and other interested parties have the opportunity to review and consult with the agency on the proposed plan and budget.[57]
- The agency board holds one or more public hearings to obtain comments and suggestions on the proposed plan and budget. The agency board may then adopt, adopt with modifications, or reject the plan. Adopting the plan establishes the project area.[58]
- The agency provides notice of the plan's adoption and provides for a 30-day notice period.[59]
- The agency will negotiate and then enter interlocal agreement(s) with affected taxing entities for the use of each entity's tax increment.[60]

Community reinvestment projects with interlocal agreements with taxing entities to receive a portion or all the tax increment levied by the taxing entity must allocate at least ten percent of the total project funds for housing purposes, if the total budget provides for more than $100,000 of annual project funds to be distributed to the agency. These housing funds are managed by the agency in separate accounts from project funds. An agency is exempt from the housing funds allocation if the agency and county agree in an interlocal agreement to not require the allocation, and that the project plan only provides for nonresidential development and provides that 60 percent of the jobs created in the project area will have an annual gross wage that is at least 125 percent of the average wage of the county in which the project is located.[61]

SURROUNDING STATES TIF LAWS:

Colorado

Colorado law authorizes urban renewal authorities (URAs) and downtown development authorities (DDAs) to use TIF to incentivize redevelopment projects. Most of the provisions concerning URAs and DDAs and TIF in Colorado are identical, therefore this memorandum will focus on those related to a URA, and note distinctions of a DDA as needed.[62] To establish a URA, at least 25 electors must file a petition with a municipal clerk declaring a need to form a URA.[63]

[55] Utah Code Ann. §§ 17C-5-403 through 17C-5-405(1).
[56] Utah Code Ann. § 17C-5-302.
[57] Utah Code Ann. § 17C-5-304.
[58] Utah Code Ann. § 17C-5-302(2).
[59] Utah Code Ann. § 17C-5-302(3).
[60] Utah Code Ann. § 17C-5-202.
[61] Utah Code Ann. § 17C-5-307.
[62] An exception is the formation of a DDA, which may be created only after the qualified electors in the municipality have approved the establishment of a DDA at a regular or special election. The election question must state the boundaries of the DDA district and whether an ad valorem tax or sales tax, or both, will be used to finance DDA operations.
[63] Colo. Rev. Stat. § 31-25-104(1)(a).

Upon filing a petition, the municipality's governing body will hold a public meeting to discuss the need to form a URA, and vote on its formation. Prior to the vote, the municipality must establish a presence of blight in the community to warrant a URA.[64] Whether an area suffers blight is measured by the presence of at least four factors including:

- Slum, deteriorated, or deteriorating structures;
- Predominance of defective or inadequate street layout;
- Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- Unsanitary or unsafe conditions;
- Deterioration of site or other improvements;
- Unusual topography or inadequate public improvements or utilities;
- Defective or unusual conditions of title rendering the title nonmarketable;
- The existence of conditions that endanger life or property by fire or other causes;
- Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities;
- Environmental contamination of buildings or property; or
- The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements.[65]

Additionally, a property is considered blighted if it substantially impairs or arrests the sound growth of the municipality, slows the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare. Such a property may be included in an urban renewal area if owners and tenants do not object.[66]

The first step a URA must take prior to commencing an urban renewal project is tocreate an urban renewal plan for the municipality. This plan will also establish the boundaries of the urban renewal area, which are to be as narrowly defined as possible to complete the development objectives of the URA.[67] For a URA to establish an urban renewal project, the area slated for the project must be determined to contain slum or blight. The URA must conduct a study to determine the presence of blight, and present evidence at a public meeting of the URA's governing body.[68]

[64] Colo. Rev. Stat. § 31-25-104(1)(b).
[65] Colo. Rev. Stat. § 31-25-103(2)(a) through (k.5)
[66] Colo. Rev. Stat. § 31-25-103(2)(l).
[67] Colo. Rev. Stat. § 31-25-107(1)(c)(I).
[68] Colo. Rev. Stat. § 31-25-107(1)(a).

An urban renewal plan administered by a URA may contain a provision implementing TIF with a term not to exceed 25 years.[69] URAs may issue bonds to finance its development activities which are repaid through the tax increment.[70] Colorado statute provides direction to county treasurers on calculating property taxes in relation to a TIF area.[71] The county assessor's role in TIF is to track and separate the two property value components, the tax base and increment, annually for the maximum duration authorized by statute, or until the assessor is notified that a project is completed, whichever comes first.[72]

If an urban renewal plan contains a TIF which allocates any taxes of any taxing entity other than the municipality, the governing body of the URA is required to notify the board of county commissioners and the governing body of each taxing entity whose incremental property tax revenues would be allocated under the urban renewal plan. After notifying the taxing entities affected, the URA must meet with each entity and form an agreement, either with each entity or a joint agreement, concerning the incremental revenue to be allocated to the project's fund. The agreement must also address the estimated impacts of the urban renewal plan on county or district services associated with the plan.[73]

A URA does not have the authority to levy ad valorem taxes. It can only receive property tax revenue if that revenue is derived from ad valorem taxes on increment value from an urban renewal plan with a TIF provision, or by agreement with another taxing body.[74] A municipality is authorized to levy up to five mills on behalf of its DDA.[75] If the total valuation for assessment within a downtown development plan area is divided pursuant to a TIF provision, this levy is on the base (net) valuation within the downtown development plan area. A DDA therefore has potentially two separate property tax revenue streams authorized by two separate statutory provisions. Revenue from the ad valorem tax on the base (net) valuation may be used for a development project, for non-debt funded expenditures of the authority, and for its annually budgeted operations.[76] TIF revenues paid into a special fund (which includes the increment portion of the DDA's mill levy) are to be used to finance project debt.[77]

Kansas

[69] Colo. Rev. Stat. § 31-25-107(9)(a); Colo. Rev. Stat. § 31-25-807(3)(a) (DDAs may implement a TIF not to exceed 30 years in duration); Colo. Rev. Stat. § 31-25-807(3)(a)(IV) (A DDA may extend the period of the TIF with 20-year extensions; however only half of the revenue attributable to the increment can be distributed to the DDAs special fund, with the remainder distributed to the relevant taxing entities according to their mill levies).
[70] Colo. Rev. Stat. § 31-25-109(1).
[71] Colo. Rev. Stat. § 31-25-107(9)(a)(III).
[72] Colorado Department of Local Affairs, Chapter 12 – Special Topics Tax Increment Financing, **https://arl.colorado.gov/chapter-12-special-topics**.
[73] Colo. Rev. Stat. § 31-25-107(9.5)(a).
[74] Colo. Rev. Stat. § 31-25-113.
[75] Colo. Rev. Stat. § 31-25-817.
[76] Id.
[77] Colo. Rev. Stat. § 31-25-809.

The process by which TIF may be used for a redevelopment project in Kansas includes the establishment of a redevelopment district, creating a redevelopment plan, conducting a feasibility study, holding a public hearing, and issuing a municipal resolution.

In Kansas, TIF districts may also capture city sales taxes and city franchise fees generated within a TIF district.[78] This variation is less commonly used than property tax increment but may provide a significant funding resource with which to supplement property TIF. Bonds issued for TIF generally cannot exceed a term of 20 years.[79] All ad valorem property taxes levied by any taxing entity derived from a redevelopment district are allocated to the special fund created for the district and used to pay the cost of the project, including the principal and interest of the TIF bonds.[80] Kansas law does not stipulate whether a taxing entity may "opt-out" of a TIF.

At the public hearing, disclosure of the development plan and potential boundaries of the area is required to establish a development district. After the public hearing concerning the development project and the use of TIF, a municipality's governing board may vote to approve the project and issue a resolution approving the issuance of a bond for the TIF.[81] TIF may be used for projects which serve a public purpose in a redevelopment district if the area is blighted.[82] A blighted area can be identified as such by a state or federal environmental protection agency, through a resolution of a municipal governing body,[83] or the presence of a majority of the following factors:

- A substantial number of deteriorated or deteriorating structures;
- Predominance of defective or inadequate street layout;
- Unsanitary or unsafe conditions;
- Deterioration of site improvements;
- Tax or special assessment delinquency exceeding the fair market value of the real property;
- Defective or unusual conditions of title including, but not limited to, cloudy or defective titles, multiple or unknown ownership interests to the property;
- Improper subdivision or obsolete platting or land uses;
- The existence of conditions which endanger life or property by fire or other causes; or
- Conditions which create economic obsolescence.[84]

The feasibility study to be presented at the public hearing examines whether the proposed use of TIF is expected to meet or exceed the project's funding requirements. The study must include a statement regarding how the taxes diverted by the project will contribute to the economic

[78] Kan. Stat. Ann. § 12-1774(a)(E).
[79] Kan. Stat. Ann. § 12-1771(e).
[80] Kan. Stat. Ann. § 12-1778.
[81] Kan. Stat. Ann. § 12-1774(b)(2).
[82] Kan. Stat. Ann. § 12-1770.
[83] Kan. Stat. Ann. § 12-1770a(c).
[84] Kan. Stat. Ann. § 12-1770(c)(1).

development of the project area and the anticipated principal and interest payment schedule of the bonds.[85]

Montana

TIF is authorized by Montana statute and regulated by the Department of Revenue.[86] TIF districts are authorized for a period of 15 years but may potentially be extended up to an additional 25 years if all or part of the TIF dollars have been pledged to the repayment of a bond.[87] The decision to create a TIF district is made at the local level, but its formation must follow a public process that reflects local community planning and public policy. TIF districts may only be formed for a public purpose and use.[88] Urban renewal agencies, areas, and plans may be authorized by a municipality for the purpose of addressing blighted areas in the municipality and spurring redevelopment or rehabilitation.[89]

Municipalities through their governing body or via an urban renewal agency established in the municipality, may approve an urban renewal plan which incorporates TIF to address blighted areas.[90] An urban renewal plan must receive a public hearing before a municipality's governing body or urban renewal agency may approve the plan.[91] Notice of the public hearing to consider an urban renewal plan must include the details of the hearing, the proposed boundaries of the urban renewal area, the scope of the plan, the rehabilitation or redevelopment goals of the urban renewal area, and whether TIF will be utilized in accomplishing the plan.[92] The urban renewal agency or municipal governing body must notify applicable taxing entities of a potential TIF and provide an opportunity to meet and discuss the tax revenue implications of the TIF project.[93]

Along with the process outlined above, to use TIF in an urban renewal area a municipality must issue a resolution which finds one or more blighted areas exist in the municipality, and the rehabilitation or redevelopment of a blighted area is necessary in the interest of public health, safety, morals, or welfare of the municipality's residents.[94] A finding of blight requires the presence of three or more of the following factors:

- The substantial physical dilapidation, deterioration, age obsolescence, or defective construction, material, and arrangement of buildings or improvements, whether residential or nonresidential;

[85] Kan. Stat. Ann. § 12-1770(k)(2).
[86] Mont. Code Ann. § 7-15-4285.
[87] Mont. Code Ann. § 7-15-4292.
[88] Mont. Code Ann. § 7-15-4204.
[89] Mont. Code Ann. § 7-15-4209.
[90] Mont. Code Ann. § 7-15-4231.
[91] Mont. Code Ann. § 7-15-4214.
[92] Mont. Code Ann. § 7-15-4215.
[93] Mont. Code Ann. § 7-15-4282.
[94] Mont. Code Ann. § 7-15-4210.

- Inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers based on an examination of the building standards of the municipality;
- Inappropriate or mixed uses of land or buildings;
- High density of population and overcrowding;
- Defective or inadequate street layout;
- Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- Excessive land coverage;
- Unsanitary or unsafe conditions;
- Deterioration of site;
- Diversity of ownership;
- Tax or special assessment delinquency exceeding the fair value of the land;
- Defective or unusual conditions of title;
- Improper subdivision or obsolete platting; or
- The existence of conditions that endanger life or property by fire or other causes.[95]

In addition to urban renewal agencies, areas, and plans, local governments may authorize by ordinance the creation of a targeted economic development district. To form a targeted economic development district, a local government must adopt a resolution stating the existence of one or more infrastructure-deficient areas exist in the local government, and the improvement of infrastructure in the area is necessary for the residents' welfare.[96] Targeted economic development districts may use TIF to support value-adding economic development projects. A local government must develop a comprehensive development plan prior to creating a targeted economic development district. If the targeted economic development district intends to use TIF, the plan must describe how the tax increment will promote the development of infrastructure to encourage the location and retention of value-adding projects in the district.[97] As with urban renewal plans, taxing entities effected by a potential TIF project must receive notice and a chance to meet to discuss the tax revenue implications.[98]

Approved uses of TIF funds include land acquisition, demolition and removal of structures, public improvements, infrastructure construction and improvements, acquisition and construction of public buildings, and administrative costs associated with urban renewal areas and targeted economic development districts.[99]

[95] Mont. Code Ann. § 7-15-4206(2).
[96] Mont. Code Ann. § 7-15-4280.
[97] Mont. Code Ann. § 7-15-4279.
[98] Mont. Code Ann. § 7-15-4282.
[99] Mont. Code Ann. § 7-15-4288.

The local governing body may, during the life of a district, elect to return a certain portion of the funds to the other taxing jurisdictions in proportion to the number of mills levied by each. This can be achieved permanently through adjustments to the base year value or annually through remittance agreements.[100]

If you have any further questions, please do not hesitate to contact LSO Research at 777-7881.

[100] Mont. Code Ann. § 7-15-4291.