

DATE: February 6, 2019

TO: City Manager Bill Nicklas

FROM: Raymond Munch, Assistant City Manager
Jo Ellen Charlton, Community Development Director
Dean Frieders, City Attorney

SUBJECT: Adopting Chapter 37 “Tax Increment Financing Regulations”. (Second Reading)

I. Summary

This item contemplates the adoption of a new Chapter to City Code implementing local regulations to govern the utilization of Tax Increment Financing (“TIF”) Districts within the City of DeKalb.

II. Background

The City of DeKalb has engaged in extensive public discussions regarding the existing and proposed future TIF Districts in the community. This proposed ordinance would govern all TIF Districts within the City, and incorporates a number of critical restrictions on future use of TIF. Those include:

1. The City would conduct Joint Review Board (JRB) meetings on a quarterly basis, with taxing districts affected by a TIF but who are not formally members of the JRB being given equal notice and an opportunity to be active participants and *ex-officio* members of the JRB. The City would prepare a detailed quarterly financial report for submission to the JRB (in arrears) that would show all TIF expenditures. Expenditures would be identified with the TIF-eligible statutory citation to demonstrate compliance with the TIF Act. JRB meetings would be recorded and televised, and their meeting minutes would be included within Council agendas to maintain disclosure to the City Council of current JRB activities.
2. The City would implement and maintain those restrictions on use of TIF expenditures to cover administrative expenses as were proposed in the intergovernmental agreement, to maintain greater transparency and accountability.

3. The City would agree to not utilize TIF revenues for standalone infrastructure projects such as street resurfacing, water main or storm sewer replacements. Infrastructure costs associated with a given development project would remain eligible for TIF expenditures, as would infrastructure expenditures at DeKalb Taylor Municipal Airport (given the regional benefit of the airport). If the City felt a standalone infrastructure project were appropriate, it could present that project to the JRB, and if the JRB concurred, the City could complete the project within the JRB recommended amounts.
4. For any redevelopment project, the City would be required to prepare and publicly disclose analysis of return on investment (ROI). While ROI analysis is not necessarily determinative of whether a project would be approved (as some projects have placemaking benefits or indirect ROI benefits), this requirement would ensure that the Council and public would have an opportunity to discuss this consideration as it relates to the purpose of TIF districts and individual redevelopment projects.
5. The ordinance also includes language indicating that any amendment of Chapter 37 would require: a) discussion with the JRB prior to adoption; b) a 2/3 supermajority vote approving the amendment; and, 3) both first and second reading (i.e. no waiver of second reading).

That last point bears special discussion. In full disclosure, under Illinois law, unless the Illinois Municipal Code includes a supermajority vote requirement for a given task (and a limitation on home rule authority), even a home rule municipality lacks the ability to restrict the actions of future Councils. While future Councils would be required to adhere to these restrictions while they remain in the Code, a future Council could amend Chapter 37 to remove Section 37.02 (relating to amendments) by a simple majority vote. Had the intergovernmental agreement been approved, it would have been an enforceable regulation that the City could not have unilaterally changed. In the absence of that agreement, this ordinance represents a concerted effort to locally adopt greater restrictions on TIF and its utilization to address publicly discussed concerns. However, in the interests of transparency, these regulations are not unchangeable. As the recent intergovernmental and public discussions relating to TIF have demonstrated, however, the impact of public discussions can be considerable, and any amendment to the Code, if adopted, would require public discussion and approval by the Council.

The ordinance passed on first reading on November 26, 2018. However, at that time, Council expressed interest in adding additional language regarding performance reporting for TIF-incentivized private development projects. The ordinance has been updated with a proposed revision to Section 37.05 to incorporate annual performance reporting. Staff has reached out to the Illinois Department of Revenue for confirmation of acceptable reporting standards based upon sales tax reporting. Pending further discussion with the Department, a conservative approach is taken by the draft ordinance to not publicly disclose any form of sales tax information on an individually identifiable basis. The revisions are shown in redline in the attached document. A sample reporting form is also included.



III. Community Groups/Interested Parties Contacted

This item is anticipated passed first reading at a City Council meeting occurring on November 26, 2018. At that time, the Council provided further direction with regard to proposed revisions, and it returned on December 10, 2018. At the December 10, 2018 Council meeting, the Council voted unanimously to postpone consideration of the ordinance. The ordinance now returns for consideration of passage on second reading. The City Manager has also engaged in significant discussion with the City's Joint Review Board regarding Chapter 37, and has received positive feedback with respect to those portions affecting the Board.

IV. Legal Impact

Implementing the Code would create a set of regulations for the City to comply with in the administration of its TIF Districts. These regulations would be first of their kind in adopting a model of enhanced TIF reporting, accountability and transparency.

V. Financial Impact

While this ordinance would require greater administrative work to comply with the enhanced reporting requirements and additional meetings, the benefits associated with the program are believed to outweigh the detriments.

VI. Options

1. City Council may approve the Ordinance as originally drafted.
2. City Council may approve the Ordinance as proposed to be amended.
3. City Council may direct other amendments to the Ordinance.
4. City Council may reject the Ordinance.

VII. Recommendation

Based upon the public discussion engaged in by the City Council, this ordinance has been drafted to address concerns raised with past City practices relating to TIF. Adoption is a policy consideration for the City Council. If the Council wishes to adopt with the amendments as shown in redline, specific mention of approval of the ordinance as *amended* is requested.



ORDINANCE 2018-085

ADOPTING CHAPTER 37 "TAX INCREMENT FINANCING REGULATIONS" TO THE MUNICIPAL CODE OF THE CITY OF DEKALB, ILLINOIS.

WHEREAS, the City of DeKalb is a home rule municipality with the power and authority conferred thereupon by virtue of the Illinois Municipal Code, the Illinois Constitution, the Illinois Liquor Control Act and the City Code of the City of DeKalb; and

WHEREAS, the City Council has determined that it is necessary and advantageous to adopt certain regulations pertaining to the use and conduct of business relating to Tax Increment Financing Districts ("TIF Districts") within the City of DeKalb; and

WHEREAS, the City Council wishes to adopt a progressive, transparent and proactive policy to improve the utilization and effectiveness of TIF Districts within the City;

THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of DeKalb, DeKalb County, Illinois, as follows:

SECTION 1. Chapter 37 "Tax Increment Financing Regulations" shall be adopted as follows:

37.01 Tax Increment Financing Regulations: The contents of this Chapter 37 shall govern the use and operation of any tax increment financing districts ("TIF Districts") which the City of DeKalb may from time to time establish or maintain pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et. seq.*, ("the TIF Act"). The regulations contained herein shall be applicable to TIF Districts within the City of DeKalb in addition to the regulations contained in the TIF Act.

37.02 Amendment of Chapter 37: Notwithstanding any contrary provision of City Code, the provisions of this Chapter 37 may only be amended with an affirmative, 2/3 supermajority vote of the City Council members then holding office, and second reading of any such ordinance amending this Chapter 37 may not be waived. Any such amendment shall only be presented for consideration after submittal of the proposed amendment to the Joint Review Board(s) ("JRB") which are then-presently in existence.

37.03 Joint Review Board:

- a) The City shall maintain a JRB for each TIF District within the City pursuant to the requirements of the TIF Act. In addition to the requirements contained therein, the City shall convene meetings of each JRB (which meetings may be conducted in sequence at the same date/location, or may be conducted as joint meetings of all JRBs), on a not less than quarterly basis.
- b) The members of each JRB shall be provided with a detailed financial report for each of the City's then-existing TIF Districts in the form and content described in Section 37.04 ("the TIF Report") not less than ten days in advance of the scheduled meeting, providing financial reporting for a preceding quarter. Financial reporting shall be completed in the TIF Report one quarter in arrears (i.e. the first quarter of the year

shall be reported at the third quarter JRB meeting, and so on). The JRB shall also be provided with a copy of the annual report required under the TIF Act. The TIF Report and the annual report shall also be posted on the City's website not later than the date of posting of the JRB meeting agenda for the meeting at which they are presented, and shall be included in the City Council meeting agenda packet for the first or second regular City Council meeting occurring after circulation of the TIF Report to the JRB.

- c) The City shall engage the JRB to make a recommendation prior to adopting any revisions to this Chapter 37.
- d) The City may convene one or more special meetings of the JRB as may be required from time to time in order to fulfill the requirements of the TIF Act or this Chapter 37.
- e) Meetings of the JRB shall be public meetings conducted in accordance with the Open Meetings Act.
- f) The City shall give notice of JRB meetings to all taxing districts levying property taxes against property within a given TIF District, regardless of whether said taxing district is formally recognized as a member of the JRB under the TIF Act. Each such taxing district shall have the right to participate in JRB meetings as a non-voting, *ex-officio* member. Such members shall not be counted towards a quorum or any applicable vote requirement, but shall be recorded in the JRB meeting minutes.
- g) The City shall utilize its best efforts to record and televise meetings of the JRB in accordance with then-current practices.
- h) Minutes of any JRB meeting shall be included within the City Council agenda packet for the first or second regular City Council meeting occurring after their approval by the JRB, for purposes of ensuring that the City Council is aware of present JRB discussions.

37.04 TIF Report: The City shall prepare a quarterly TIF Report which shall provide updated and detailed reporting on TIF revenue projections, TIF expenditures, and encumbered TIF funds which have been approved for expenditure but not yet expended. Such reports shall provide adequate detail so as to demonstrate compliance with the TIF Act, and also the requirements of this Chapter 37. Each expenditure identified in the TIF Report shall include an explanation of the statutory citation authorizing the expenditure as a TIF-eligible expense under the TIF Act. This report shall be made publicly available and circulated to the JRB and City Council as provided in Section 37.03.

37.05 Project Performance Reporting: The City shall prepare an annual report of all private development projects funded by TIF that are within the term of their development agreement. Such report shall include for each project:

- a) Reference to the Resolution or Ordinance approving the development agreement.

- b) Terms of the development agreement in regards to repayment of any forgivable loans or grants (e.g. property tax or sales tax increment, maintenance of improvements funded by agreement, employment, etc.).
- c) Expiration date of the term of the agreement.
- d) Additional terms or requirements related to the development agreement (e.g. annual affidavit of employment).
- e) Status of whether the project is compliant with the terms of the agreement. In instances where the repayment of a forgivable loan is tied to incremental property tax generation, the report shall provide exact dollar amounts of the incremental property tax that has been generated by the property within the terms of the agreement. Projects that are also required to generate incremental sales tax shall be prohibited from publicly providing any data that would violate the City's reciprocal agreement with the Illinois Department of Revenue. An annual report shall still be prepared that indicates the sales tax performance of any required project(s), but that portion of the report shall only be shared with City staff or elected officials that are included on the reciprocal agreement and have the authority to view sales tax information.

37.06 Additional TIF Funding Restrictions: In addition to the funding restrictions contemplated in the TIF Act, the City shall further restrict expenditures from any City TIF District in accordance with the following requirements:

- a) **Administrative Expenses:** The City may incur and pay administrative expenses as may be eligible for reimbursement under subsection 11-74.4-3(q)(1) of the TIF Act (or any amendment thereto). The City expressly notes the limitation on administrative expenses set forth in subsection 11-74.4-3(q)(1.5) of the TIF Act. Where the City is required to perform a task that constitutes an administrative expense under the TIF Act, the costs of such task shall not be disqualified from reimbursement simply because the task is performed by City staff (in lieu of utilizing and incurring costs of a third-party consultant). However, any such costs reimbursed shall be based on the actual costs incurred by the City, as reflected in the TIF Report. The City may satisfy this determination by allocating a percentage of certain expenses to a TIF District where the City has reasonably determined that the expenditure is equivalent to or lesser than the actual TIF-eligible expense, and provided that the City provides an accounting of the percentage allocation(s), if any. The City shall not complete general, unallocated transfers of funds from any TIF District Special Tax Allocation Fund ("STAF") to the City's general fund or any other City fund (other than a legally permissible transfer from one STAF to another STAF for the purpose of paying TIF-eligible expenses in accordance with the TIF Act.
- b) **Infrastructure Expenses:** The City has, in the past, utilized TIF funds to provide for the construction of infrastructure projects within TIF Districts, such as road resurfacing and related projects that are not tied directly to a redevelopment project. While such projects are TIF eligible expenses, the City shall not approve of the use of TIF District incremental revenues for the payment of costs relating to standalone maintenance projects for City Infrastructure (defined herein as including roadway replacement or

resurfacing, water main replacement or storm sewer replacement, and excluding projects at DeKalb Taylor Municipal Airport) unless such costs are directly related to a discrete TIF eligible redevelopment project that is approved by the City (e.g. roadway resurfacing relating to a TIF-eligible construction project adjacent to and utilizing the roadway in question). In the event that the City believes a standalone City Infrastructure project is merited and should be funded, in whole or in part, by TIF incremental revenues, the City may present such project to the JRB for the affected TIF District. If a majority of the members of a properly convened JRB meeting support the utilization of TIF funds for all or some portion of a project which purely involves City Infrastructure, the City may proceed to utilize TIF funds for such purpose, within the amounts recommended by the JRB and within the then-current expense eligibility standards applicable under the TIF Act.

- c) Return on Investment: Prior to approving any project-based TIF expenditure, the City shall evaluate the return on investment for such project, and shall provide public disclosure of such analysis. While individual projects may be appropriate based upon their support of placemaking or other concepts that do not include a directly calculable return on investment, the City Council shall prioritize projects that fulfill the general objectives of the TIF Act in encouraging redevelopment that expands the property tax base (and other forms of economic growth, job creation and elimination or prevention of blight).

SECTION 2. All ordinances or portions thereof in conflict with this ordinance, including the prior versions of the ordinances included above, are hereby repealed.

SECTION 3. Should any provision of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and affect the same as if the invalid provision had not been a part of this Ordinance.

SECTION 4. This Ordinance shall be in full force and effect after passage and publication pursuant to law. Publication date: _____, 2018. Effective date: _____, 2018.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the ____ day of _____, 2018 and approved by me as Mayor on the same day.

ATTEST:

LYNN FAZEKAS, City Clerk

JERRY SMITH, Mayor