# CREATING A TAX INCREMENT FINANCING DISTRICT IN VERMONT

The following is an outline of the full process to create and implement a Tax Increment Financing District in Vermont, including application to the Vermont Economic Progress Council (VEPC) for authority from the State of Vermont to utilize incremental Education Property Tax revenue to finance public infrastructure improvements to ensure the development or redevelopment of the District.

Statute (24 V.S.A. Chapter 53, Subchapter 6) gives municipalities the authority to create and implement a TIF District that will utilize only incremental municipal property tax revenue without State approval. This document is for guidance only and is superseded by state and local laws, subsequent changes to law not yet reflected here, or provisions enacted that apply to specific TIF Districts or municipalities. Steps that are required by Vermont statute cite the section of statute containing that requirement. Other steps are for guidance purposes only.

## 1. INITIATE THE ESTABLISHMENT OF A TIF DISTRICT

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

b. **Involve decision-makers:** The specific project should be discussed by public and private sector decision-makers addressing several development issues:
   - Eligibility of the project area
   - Needs of the community
   - Financial feasibility
   - Expected economic benefits

- Expected non-economic benefits and public good
- Interest in project by private sector developers and potential for private-public partnerships
- Impact on the area in and around district
- If required by municipality, consider and involve an eligible agency to act as "coordinating agency" for the TIF District.

**2. FORMULATE A PLAN**

a. **Create a redevelopment plan:** Utilizing land development planning and project financing, generate a redevelopment plan. The plan is often based on previous planning efforts of the municipality. The plan will serve many purposes, but primarily it should be a planning tool that sets forth the objectives and project timetable, and forms the written basis for communicating these matters to stakeholders and approval bodies, including the taxpayers, the municipal legislative body and the state entity approving use of incremental education funds for TIF financing. The plan should state clear objectives of the redevelopment plan and should reflect the interests, goals, and objectives of existing plans of the community and region. The plan should also discuss any special features pertinent to overall T1F District creation policies of the municipality, region, and the state, such as environmental protections, affordable housing requirements, neighborhood impact statements, transportation improvements, and any legal and practical guidance on land takings and negotiating and executing contracts with private firms. Refer to statute (32 VSA §5404a(h)) and other sections of this guide for the elements of a TIF District Plan and TIF Financing Plan that are required by law and for approval.

b. **Determine the geographical boundaries of the TIF District:** Determine which properties will be involved in the TIF. The area of the T1F District may be larger than the actual area of new construction. Generally, if an area will be impacted by the infrastructure improvements, it should be included. However, municipalities should be cautious about drawing the lines too broadly and negatively impacting the success of approval or adversely impacting the financial viability of the TIF District. Part of the approval criteria for utilization of incremental Education Property Tax revenue requires a determination that every parcel included in the TIF District have nexus to the proposed infrastructure improvements. Stakeholders and representatives of the affected and adjacent properties should be involved early in the process.

c. **Estimate project timeline and costs:** Based on the properties included in the District and the projected properties to be developed, estimate the project timeline including TIF District approvals (local and state), debt approvals, infrastructure improvement schedule, development and/or redevelopment build out schedules, and debt financing schedules. Estimates should also be made of all costs, including debt and project costs other than debt servicing. Detailed cost estimates of the infrastructure to be built should also be developed.

d. **Estimate tax base and revenue increment and establish debt financing policies:** Estimate the tax base within the District and the increment to be produced by any development. Establish and put in place any debt financing policies such as the amount of debt to be issued, the authority to issue debt, and any limitations on the amount of debt and/or maximum allowable debt service payments. Begin process to get these policies approved by the municipality. Begin process to gain approval for any required local, regional, or state land use policy changes or exemptions (takings, ordinances, zoning, permitting).

**e. Establish evaluation requirements and termination date:** Develop criteria that will be used to measure success and set benchmarks for evaluating those criteria throughout and at the end of the project. Determine local and state reporting requirements and' incorporate tracking of reporting requirements in a benchmarking plan (State reporting requirements are contained in 32 VSA §5404a(i) and may be supplemented by requirements of VEPC and/or the Department of Taxes). Set a date for termination of the TIF District. In Vermont, a TIF District exists until all TIF District debt is paid (24 VSA §1894(a)(3)).

## 3. ADOPTION OF TIF PLAN

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

- **i.** The municipality, through its appropriate legislative body, enacts any ordinance, zoning or other changes required to implement the TIF District improvements.
- **ii.** The municipality develops a TIF District Plan in accordance with the requirements of the municipality and state requirements. (See also information below for what must be included in the plan to meet subsequent State requirements).
- **iii.** The municipality, after providing appropriate public notice, holds one or more public hearings on a proposed TIF District plan. (24 VSA §1892(a)).
- **iv.** The municipality, by a vote(s) of its municipal legislative body, as appropriate under the ordinances of the municipality and state statute, at a meeting that has been properly warned, takes the following actions:
  - Adopts a finding that creation of a TIF District will serve the public purposes stated in 24 V.S.A. §1893 (24 V.S.A. §1892(a)).
  - Establishes the TIF District. (Note that the District exists as of April 1 of the year so voted). (24 V.S.A. §1892)
  - Adopts the TIF District Plan that describes the District by its boundaries and properties therein and shows the district in a plan entitled "Proposed Tax Increment Financing District (municipality name), Vermont (24 VSA §1892).
  - Pledges a minimum of 85 percent of the incremental municipal property tax revenue (24 V.S.A. §1894(c)).
  - Authorizes municipal officials to make application to the state entity which will consider the TIF District Plan for authorization to utilize incremental education property tax revenue for the TIF District purposes (VEPC).
  - Designates a coordinating agency to implement the TIF District, if desired (24 V.S.A. §1892(c).
- **v.** The municipal clerk and lister or assessor records the TIF District Plan (24 VSA §1892).
- **vi.** Lister/Assessor certify the original taxable value (OTV) of the TIF District to the municipal legislative body.

**b. State Approval of TIF Plan: (32** VSA **§5404a (f, g, h)).**

- **i.** Municipality files a Letter of Intent to File a TIF application.
- **ii.** In accordance with the rules and procedures established by the Vermont Economic Progress Council, including the requirement that an application cannot

be filed until 60 days following the receipt of a letter of Intent to File, the municipality submits an application and application fee to the Vermont Economic Progress Council for consideration.

iii. The Council must determine if the application meets statutory approval criteria based on need (But For), process, location, project goals, purpose, nexus and proportionality, determine viability, and must approve a TIF District Financing Plan. For details, see the TIF Primer. (32 VSA §5404a(h)

iv. **TIF District Financing Plan:** A TIF District Financing Plan must either be submitted for approval by VEPC concurrent with the TIF District Plan or at a later date, but prior to local voter approval of the first instance of TIF debt (24 VSA §1894(c)).

v. **Approval:** If approved by the Vermont Economic Progress Council, the Council will provide the municipality with an approval document including determinations, exclusions, and conditions regarding the approval criteria.

vi. **Denial:** If not approved by the Vermont Economic Progress Council, the Council will provide the municipality with an explanation for the denial, including determinations regarding the approval criteria.

vii. **Limitations: VEPC may approve n**o more than six new Districts and no more than two per county, as follows:

- No municipality with an existing District can apply for a new one until debt retired.
- If the cap is met and VEPC receives an application that "would otherwise qualify," VEPC can present the application to the Emergency Board, who may "in its discretion," increase the cap.
- Existing Districts do not count against two per county limit.
- If a County has one approved new TIF and VEPC receives two applications at once for that county, VEPC shall approve the application that, in its discretion, "best meets the economic development needs of the county."
- If a municipality with a new District does not proceed or does not incur debt, VEPC can consider and approve another District in its place.

## 4. IMPLEMENTATION OF TIF DISTRICT

a. Seek **state and voter approval to incur debt for TIF District infrastructure improvements:**

i. **State Approval:** If a TIF District Financing Plan was not approved by VEPC concurrent with the TIF District Plan, in accordance with the rules and procedures established by the Vermont Economic Progress Council, provide the Council with all information related to the proposed TIF infrastructure debt in a TIF District Financing Plan (24 VSA §1894(d)). The TIF Financing Plan must contain:

- A statement of costs and sources of revenue;
- Estimates of assessed values within the district;
- The portion of those assessed values to be applied to the proposed improvements;
- The resulting tax increments in each year of the financial plan;
- The amount of bonded indebtedness or other financing to be incurred;
- Other sources of financing and anticipated revenues; and
- The duration of the financial plan.

ii. **Local Approval:** Seek authorization by the legal voters of the municipality to pledge the credit of the municipality for the purposes of TIF District Debt (24 VSA §1894(h) and (i)):

- A public vote is required on each instance of debt: Notwithstanding any provision of any municipal charter, each instance of borrowing to finance or otherwise pay for tax increment financing district improvements shall occur only after the legal voters of the municipality, by a majority vote of all voters present and voting on the question at a special or annual municipal meeting duly warned for the purpose, authorize the legislative body to pledge the credit of the municipality, borrow, or otherwise secure the debt for the specific purposes so warned.
- Each request to pledge the credit of the municipality for the purposes of financing tax increment financing district improvements shall include the new amount of debt proposed to be incurred and the total outstanding tax increment financing debt approved to date.
- Notice to voters: The municipality must provide, at a minimum, the information to the public prior to the public vote. The information must include the amount and types of debt and related costs to be incurred, including principal, interest, and fees, terms of the debt, the improvements to be financed, the expected development to occur because of the improvements, and the following notice: "If the tax increment received by the municipality from any property tax source is insufficient to pay the principal and interest on the debt in any year, for whatever reason, including a decrease in property value or repeal of a State property tax source, unless determined otherwise at the time of such repeal, the municipality shall remain liable for the full payment of the principal and interest for the term of indebtedness."
- If inter-fund loans within the municipality are used, the information must also include documentation of the terms and conditions of such loan. If inter-fund loans within the municipality are used as the method of financing, no interest shall be charged.

b. **Statutory limitations and requirements for TIFs and TIF debt:**

- The municipal legislative body must pledge and appropriate at least 85 percent of the municipal tax increment received from properties contained within the tax increment financing district for the financing of TIF District improvements and for related costs. (24 VSA §1894(c)).
- No more than 70 percent of the education property tax increment may be used for the financing of TIF District improvements and for related costs. (24 VSA §1894(b)).
- Any utilization of TIF increment is in addition to any payments to the municipality under Title 16, Chapter 133 (education block grants) (32 VSA §5404a(g)).
- TIF District approval affects the grand list beginning April 1 the year following approval and revenues remain available to the municipality for the full period authorized and are restricted only to the extent that the real property development giving rise to the increased value to the grand list fail to occur within the authorized period (32 VSA §5404a(g)).

c. **Manage Project and TIF Finances**

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

- A TIF District continues until the date and hour that all indebtedness, incurred for the purposes of developing and redeveloping public infrastructure, is retired (24 VSA §1894(a)(3)).
- If, as described above, a TIF Plan and a TIF Financing Plan is approved by VEPC, the municipality must incur the first instance of debt against anticipated property tax revenues of the TIF District within five years (24 VSA §1894(a)(1)). If debt is incurred within five years. The District has a total of ten years to incur all TIF District debt.
- Incurrence of the first instance of debt must be reported to VEPC.
- Incurrence refers to the actual execution of the debt instrument, not the public vote.
- Any debt incurred during this 10-year period can be retired over any period authorized by the municipal legislative body (24 VSA §1894(a)(2)).
- If no debt is incurred within the first five years after creation of the TIF District, the municipality must seek re-approval of the TIF District Plan and TIF District Financing Plan from VEPC before any debt may be incurred (24 VSA § 1894(d)).
- For any TIF District debt incurred within the first ten years after creation of the District, but for no other debt**,** the education tax increment may be retained for up to 20 years beginning the year the initial debt is incurred. (In other words, the first debt that is incurred within five years of being approved triggers the 20-year period during which up to 70% of the incremental education property tax revenues and a minimum of 85% of the incremental municipal property tax revenue may be retained to pay for any TIF District debt incurred during the first ten-year period) (24 VSA § 1894)**.**

ii. **Original Taxable Value:** Lister/Assessor Establishes and Certifies Original Taxable Value and certifies annual increase or decrease:

- Based on the property values as of 12:01 am on April 1 of the year the TlF District is created by the municipal legislative body, the lister/assessor certifies to the municipal legislative body the valuation of all taxable real property within the TIF District, setting the "original taxable value." (24 VSA §1895).
- Each subsequent year during the life of the TIF District, the lister/assessor certifies the amount by which the original taxable value has increased or decreased and the proportion which the increase or decrease bears to the total assessed value of the real property for that year (24 VSA §1895).

iii. **Calculating the tax increments generated by the increases in the original taxable value** (24 VSA §1896(a)):

- In each subsequent year, the listers or assessor include no more than the *original taxable value* of the real property in the assessed valuation upon which the listers or assessor computes the rates of all taxes levied by the municipality, the school district, and every other taxing district in which the Tax Increment Financing District is situated.
- But the listers or assessor extend all rates so determined against the entire assessed valuation of real property for that year. In each year for which the

assessed valuation exceeds the original taxable value, the municipality treasurer must hold apart, rather than remit to the taxing districts, that proportion of all taxes paid that year on the real property in the district which the excess valuation bears to the total assessed valuation. The amount held apart each year is the "tax increment" for that year. So much of the tax increments received with respect to the district and for the payment for financing for improvements and related costs, but not more than 70% of the education property tax revenues and no less than 80% of the municipal property taxes, must be segregated by the municipality in a special account on its official books and records until all capital indebtedness of the district has been fully paid.

- Notwithstanding any charter or other provision, any property tax assessed within the District is subject to the TIF District share. This includes special rates enacted or voted by the municipality for specific purposes. The only exceptions are special assessments levied under 24 VSA Chapters 76A and 87 or under municipal charter which are used exclusively for operating expenses and not for improvements within the District as defined by 24 VSA §1891.
- The final payment must be reported to the lister or assessor, who shall thereafter include the entire assessed valuation of the district in the assessed valuations upon which tax rates are computed and extended and taxes are remitted to all taxing districts.

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

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

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

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

## 6. EVALUATION. REPORTING AND TERMINATION

**a.** **Evaluation:** Evaluate TIF District project based on criteria established in TIF District plan and required by municipality.

**b.** **Reporting** (24 VSA §1901 and 32 VSA 5404a(i)):

i. Track and report annually to VEPC and the Vermont Department of Taxes, on a form provided by VEPC, the following:
    1. Details of actual public infrastructure and real property development that has occurred;
    2. Current value of original taxable property;
    3. Tax increment generated each year;
    4. Amount of tax increment generated, utilized for TIF District debt, and submitted to the taxing authorities each year; and
    5. Any other information required by VEPC or the Department of Taxes in annual reports.

ii. Track and report to VEPC according to the municipal audit cycle (24 VSA §1681):
    1. Actual investments in public infrastructure;
    2. Debt repayments;
    3. Escrow status; and
    4. Related costs, including payments to a coordinating agency.

**c. Termination**

i. Make final payments on debt.

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

iii. Through municipal legislative body, dissolve TIF District