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Statement of Position TIF Plan Modifications

The Tax Increment Financing (TIF) Act allows TIF plans to be modified. When modifying a TIF plan, a TIF authority should be aware of: 1) approval procedures for different types of modifications, 2) parameters and limitations affecting modifications, and 3) deadlines for filing modified TIF plans with the State.¹

Approval Procedures

Some modifications may only occur upon the same discussion, notice, public hearing, and findings required for the original TIF plan. Other modifications, (often referred to as “administrative” modifications), only require simple approval by the authority.

The authority must follow the discussion, notice, public hearing, and finding requirements for the following modifications:

- (1) any reduction or enlargement of geographic area of the project or TIF district that does not meet the exception discussed below;
- (2) an increase in the amount of bonded indebtedness to be incurred;
- (3) a determination to capitalize interest on the debt if that determination was not part of the original plan;
- (4) an increase in the portion of the captured net tax capacity to be retained by the authority;
- (5) an increase in the estimate of the cost of the project, including administrative expenses, that will be paid or financed with tax increment from the district; or
- (6) designation of additional property to be acquired by the authority.²

If the only modification is to eliminate parcels from the project, it does not need to follow the more extensive approval procedures if:

- (A) the current net tax capacity of the eliminated parcels equals or exceeds the net tax capacity of those parcels in the district’s original net tax capacity (ONTC), or

¹ Minn. Stat. § 469.175, subd. 4 & 4a.

² Minn. Stat. § 469.175, subd. 4(b).

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This Statement of Position is not legal advice and is subject to revision.

(B) the authority agrees that, notwithstanding the normal certification requirements, the ONTC will be reduced by no more than the current net tax capacity of the eliminated parcels.³

In essence, if the modification removes parcels and the removal does not increase the captured value of the district (which would occur if ONTC values of the parcels was greater than the current values), then the modification may be approved without following the full discussion, notice, public hearing, and findings procedures.

Modifications not listed as requiring the full discussion, notice, public hearing, and findings procedures can be approved “administratively.” A few examples of administrative modifications include:

- reducing the estimate of costs of the project;
- updating parcel references (but not changing the geographic area) after splits, combinations, or replatting has occurred,
- changing line amounts within the total estimate of the cost of the project without increasing the total estimate;⁴ or
- changing the names of developers or amending the description of development activities.

A resolution would suffice for these administrative modifications that do not require the full discussion, notice, public hearing, and findings procedures.

There are other practical procedures to consider regarding communication with the county. A request for certification by the county auditor is necessary whenever a modification includes an enlargement or reduction to the geographic area, or otherwise affects the determination of the ONTC of the district. Other changes that impact the amount of captured value, the first receipt of increment, the fiscal disparities election, or other changes that affect how tax increment is calculated or distributed, must also be communicated to the county auditor so that the modification can be properly administered. Other TIF plan modifications, such as budget changes, may not necessarily require notification to the county auditor, but such communication may help avoid potential problems.

Parameters and Limitations

Generally, a modified TIF plan must contain all of the required content of an original TIF plan.⁵ TIF plans, whether original or modified, must contain various statements, lists, estimates, and identifications. This does not necessarily require a full redrafting of the plan document. For example, if a modification only increased the amount to be spent on site improvements and reduced the amount spent on land acquisition by the same amount (i.e.,

³ Minn. Stat. § 469.175, subd. 4(e).

⁴ Estimates of “the cost of the project” and “interest as a financing cost” are separate amounts. Reallocations between “land acquisition” and “utilities,” for example, would not increase the cost of the project. However, reallocating a portion of the interest cost to a project cost, does increase the cost of the project.

⁵ See Minn. Stat. § 469.175, subd. 1. See the Statement of Position on TIF Plan Requirements.

no net increase in the cost of the project), then the change might be memorialized in the resolution itself, or an addendum or exhibit. Maintaining a fully updated document may be a best practice to avoid mistakes and oversights, especially as there may be staff changes, or changes in advisors or counsel, over the life of the district.

The TIF Act requires that the TIF plan's estimates of the cost of the project and interest as a financing cost cannot exceed its estimate of tax increment to be generated.⁶ A modified TIF plan should not identify costs in excess of the estimated tax increment, and should comply with this contemporary requirement.

A TIF plan cannot be modified to retroactively change a budget to eliminate the existence of excess increment. Excess increment is determined based on the TIF plan in effect on December 31 of each year.⁷

If a redevelopment district or a renewal and renovation district (which must meet coverage and blight criteria) is enlarged by a modification, the reasons and supporting facts for the determination that the addition to the district meets the criteria, must be documented.⁸ The addition must qualify separately, not just the enlarged area as a whole.

The geographic area of a TIF district may be reduced, but cannot be enlarged after five years following the date of certification of the original net tax capacity by the county auditor.⁹

Changing the type of a TIF district (*e.g.*, from redevelopment to economic development) is not a modification.¹⁰ An authority desiring such a change must decertify the existing district and follow the procedures set forth in the TIF Act to adopt a new TIF plan, including requesting certification of the new district's net tax capacity by the county auditor.

Filing Plan with the State

An authority must file copies of modified TIF plans and modified project plans with the Office of the State Auditor and Minnesota Revenue.¹¹ This must be done within 60 days after the latest of:

- (1) the filing of the request for certification of the modified plan;
- (2) approval of the modified plan by the municipality; or
- (3) adoption of the modified plan by the authority.

⁶ Minn. Stat. § 469.175, subd. 1(a)(5)(i), as amended by 2009 Laws of Minn. ch. 101, art. 2, § 90, and ch. 88, art. 5, § 4, effective for TIF plans approved after June 30, 2009.

⁷ Minn. Stat. § 469.176, subd. 2(a).

⁸ Minn. Stat. § 469.175, subd. 4(d).

⁹ Minn. Stat. § 469.175, subd. 4(f). Pre-1979 districts (which are all now decertified) were not allowed to be enlarged after August 1, 1984.

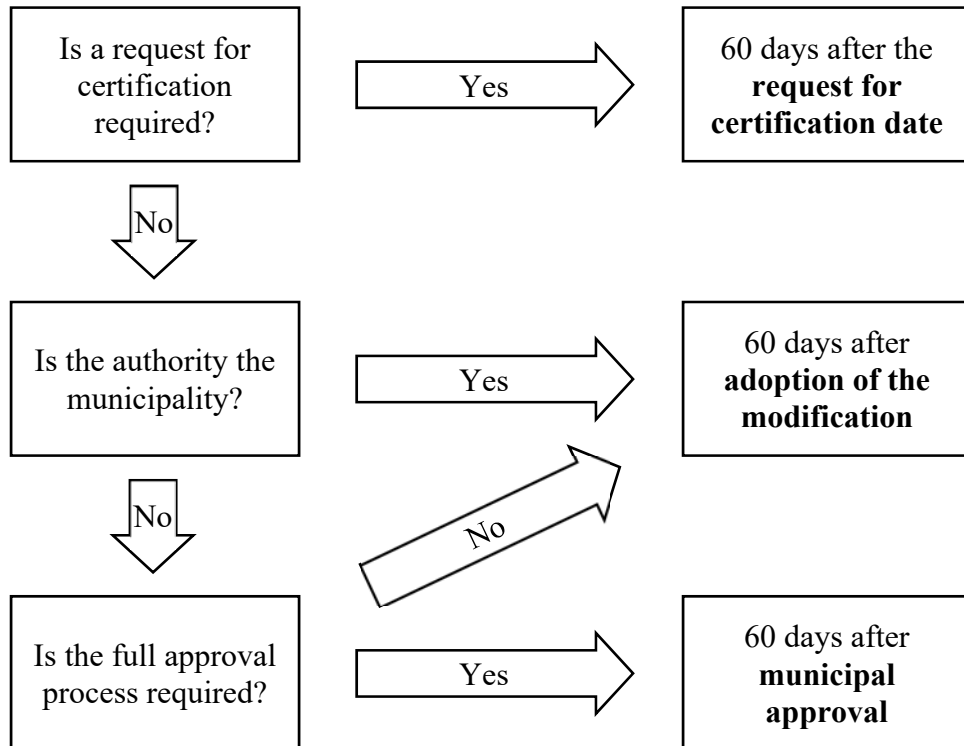
¹⁰ Minn. Stat. § 469.175, subd. 4(c).

¹¹ Minn. Stat. § 469.175, subd. 4a.

When a request for certification is required, 60 days from the date of the request would be the deadline. If no request for certification is required and the authority is not the municipality (e.g., the authority is a housing and redevelopment authority), the municipality must approve any modifications that require the full approval procedures required for the original TIF plan. In these cases, the deadline for filing would be 60 days after the municipal approval. Other modifications, requiring only the adoption of the modified plan by the authority, must be filed within 60 days after the adoption of the modified TIF plan. (See the chart summarizing these parameters below).

Submit modified TIF plans via the State Auditor Form Entry System (SAFES) using the form for the appropriate district listed under “TIF Plan Collection Form – Modified District.” The modified plan and any resolutions need to be combined in a single PDF file to accompany the form.¹² Please do not mail TIF plans.

Summary of Deadlines for Filing Modified Plans



¹² For instructions on completing and submitting modified TIF plans, please refer to “Tax Increment Financing (TIF) Forms” under the “Forms” menu on the OSA website.