

**Town of Scarborough**

**Policy and Process for  
Economic Development Tax Increment Financing Districts  
Involving Credit Enhancement Agreements**



**Adopted November 4, 2020**

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# SCARBOROUGH TAX INCREMENT FINANCING POLICY AND PROCESS

## **I. PURPOSE**

The purpose of this policy is to outline standards and processes that the Town of Scarborough will use in initiating or considering applications for Tax Increment Financing (TIF) and for Credit Enhancement Agreements (CEA). Notwithstanding this policy, the creation of a TIF district and adoption of a development program is a decision made on a case-by-case basis by the Scarborough Town Council and the Maine Department of Economic & Community Development (*Maine DECD*) *must also review all TIF districts for statutory compliance*. Receiving a credit enhancement agreement is not a right under Maine law and meeting the standards contained in this policy should not be interpreted as creating any rights or entitlements in any application.

Tax Increment Financing (TIF) is an economic development program authorized under state law to support municipal projects. The TIF program allows municipalities to provide financial assistance to local economic development projects and programs – from infrastructure, economic development programs and staff, to business expansions - by using new property taxes that result from new commercial or residential investment associated with the corresponding increase in property value. The Town of Scarborough may choose to create TIF districts to shelter expected new assessed value to reduce our County tax obligations and to increase the level of State funding we receive. TIF districts may also be created with the intention of entering into CEA with developers and businesses to incentivize development seen as advantageous to the Town’s goals.

Scarborough’s TIF Policy supports investment in municipal economic development programs, infrastructure investment (which is general through the establishment of area wide or neighborhood TIF districts) and individual project site specific TIF districts to support either infrastructure or individual private project financing needs. Consistent with MRSA Title 30-A Chapter 206, this does not include purely residential development projects.

## **II. RULES AND CONDITIONS**

### **Tax Increment Financing**

Economic development projects will be eligible to apply for Credit Enhancement Agreement (CEA) when they meet at least three of the following objectives:

- The projects receiving TIF assistance are public infrastructure projects in support of the development that would typically be projects the community might fund through the general fund, or capital fund, but did not do so;
- The project is a public infrastructure project identified as needed by the community or an identified public benefit for the community;
- The development project cannot move forward without the infrastructure support;
- The development project itself will create or retain significant and sustainable employment opportunities;
- The project will enhance environmental protections resulting in a more sustainable community; or,
- The project is financially advantageous to the Town.

## **Applications**

Applications (Appendix A & B) for Tax Increment Financing requested by a developer or business will be considered by Town staff and the Scarborough Economic Development Corporation (SEDCO), reviewed for recommendation to the Town Council by the Finance Committee, with all final approval vested with the Scarborough Town Council and the Maine DECD. The terms and specific details of each TIF district, development program and credit enhancement agreement are developed on a case by case basis. The Town Manager, the Manager's designated departments, and a representative from the Town Council will negotiate for the Town based on the merits of the project and this policy, following the criteria scoring system shown in Appendix C of this policy. In developing the application, the applicant (the Town or the developer) shall meet the following basic provisions, as well as the policies and requirements stipulated in subsequent sections.

## **TIF Development Programs**

TIF is a tool that permits a municipality to participate in local project financing by using some or all of the new property taxes from a capital investment within a designated geographic district. The Town has the right to retain TIF proceeds for public infrastructure improvements or TIF eligible expenses that may be located inside or outside the district. Any expenditures out of this TIF fund may only be spent in keeping with the requirements set forth in the Town Charter. The municipality has the option of using the "incremental" taxes to retire bonds it has issued for the eligible projects, fund eligible municipal economic development activities, or reimburse a developer or business for development project costs via a Credit Enhancement Agreement.

**TIF Districts** may be designated for up to 30 years. The designation of a TIF district requires legal notice, a public hearing, the majority vote of the municipal legislative body, and state approval.

- **Eligible Expenses.** Eligible TIF expenses are defined by the State of Maine in the relevant State statutes found in Title 30-A of the Maine Revised Statutes in Sections 5221 through 5235 and Sections 5245 through 5250-G and in regulations related thereto (which may be amended from time to time). The Town Council will consider proposals that further economic development goals endorsed by the Comprehensive Plan.
- **Documentation.** The applicant is required to provide all documentation associated with the application. This documentation becomes the basis by which the project's implementation is reviewed for compliance with final approvals.
- **Geographic Boundaries.** The Town reserves the right during the application process to establish the size of the district necessary to meet the needs of the applicant or to meet the needs of infrastructure improvements deemed necessary by the Comprehensive Plan, the Town's capital improvement program, or in other supporting documents recognized by the community.
- **Personal Property.** Personal property shall not be captured in a TIF.
- **Excess Funds.** TIF districts and development programs that include one or more CEAs shall include a provision that directs any excess funds after the CEA is satisfied to economic development uses, or to the Town's general fund depending upon the Council's determination.
- **Percentage Modification.** The Town by vote of Council majority may modify the portion of tax revenue to be retained in the designated development district.

## **Credit Enhancement Agreement**

If the TIF funds are to be used to reimburse a developer or business for development project costs, a Credit Enhancement Agreement (CEA) is created. The CEA, or contract between the municipality and developer or business, is a mechanism to assist the development project by using all, or a percentage of, the tax revenues generated by the new investment to pay certain authorized project costs with payments made directly to the developer or business.

The following four items only apply to TIFs that include credit enhancement agreements:

- **Amount of Funds.** The TIF funds reimbursed/returned to the developer (via a CEA) will not exceed, over time, the amount of funds agreed to in the CEA. During the application process the applicant is required to submit all documentation that will justify the expenditure to be reimbursed as estimated in the TIF development program and CEA.
- **Terms.** Terms shall be negotiated between the Town and the applicant on a case-by-case basis.
  - Agreements shall extend between 1 and 30 years; and up to 100% of the incremental value can be captured depending upon the merits of the project
  - These terms shall be consistent with state statute
  - Terms shall have performance measures that will be assessed regularly and, if adopted, whose assessment will be provided to the Town in an annual report by the developer.
  - Terms may include a reimbursement cap, in dollars, that the CEA will not exceed over the life of the agreement.
  - To the degree the Town is interested in frequent reporting from the developer such expectations will be negotiated as part of the credit enhancement agreement
  - Assignments will be allowed only for conventional commercial financing purposes or where the proposed assignee agrees to be bound by the same terms and conditions as the original applicant unless otherwise amended by agreement.
- **Suspension, Reduction, and/or Termination of Benefits.** Credit Enhancement Agreements may contain provisions for the suspension and/or termination of benefits to the applicant as provided for in the agreement. This may include penalties for not meeting agreed upon targets and performance thresholds and timing.
- **Level of Funding Adjustments.** The Council may consider including a requirement in a CEA that during the application process and during the life of the TIF (and CEA), the applicant shall demonstrate that the funds are being used at appropriate levels for the purpose intended. If the level of funds the applicant receives exceeds the projected need, the amount returned to the applicant shall be adjusted.
- **Financial Analysis** - Will include a comprehensive cost to serve analysis, tax shift disclosure, and expert analysis. Expert analysis will not be required for proposed CEAs under \$2,000,000. Proposed CEAs between \$2,000,000 and \$5,000,000 will have a staff provided analysis. Proposed CEAs greater than \$5,000,000 will have an external expert analysis completed.

### **III. APPLICATION PROCESS FOR CREDIT ENHANCEMENT AGREEMENTS (CEA)**

SEDCO and the Executive Department will coordinate all activities regarding applications for economic development tax-Increment Financing with possible CEAs and CEA Amendments. It is understood that the TIF/CEA process can precede other local approvals, however, the final TIF/CEA approval can make receipt of such approvals as a condition. Working with applicants, the Departments will coordinate the following process:

- Step 1: SEDCO Staff will provide information on Scarborough's Tax Increment Financing program to the applicants and discuss the merits of the development project proposal(s).
- Step 2: SEDCO and the Town Manager will meet to review the viability of any potential application. Where appropriate, the Executive Department will reach out to obtain preliminary input from Town departments, Tax Assessor, Town Attorney, Codes Enforcement Officer, Director of Public Works, Director of Public Safety, and advise applicants on the findings of Town staff. The Town Manager shall have final authority to invite an application. If an application is determined viable, the Town Manager shall notify the Town Council that an application is forthcoming.
- Step 3: The applicant shall file a preliminary application with the Town through SEDCO. SEDCO shall review the application for completeness and then submit a complete application, to include a complete Financial Analysis (see Section II above), to the Town Manager for joint discussion.
- Step 4: The Town Manager, in consultation with the Town Council Chair, will schedule a joint workshop with the Town Council and SEDCO Board of Directors. The workshop should result in feedback about whether the application is an appropriate use of TIF funding. At that meeting:
  - The applicant shall provide an overview of the development project
  - The Town Manager and SEDCO shall provide any preliminary input from staff, and
  - The Town Council shall provide comment, as appropriate
  - There should be a preliminary discussion of terms including those involved with a CEA
- Step 5: Using the comments from that workshop, the applicant may apply for final application approval (the application is a separate document). The Town Manager and SEDCO shall proceed with the following:
  - Meet and obtain input from appropriate department heads, specifically Finance and Assessing
  - Unless otherwise specified by the Town Council, the applicant may be asked to obtain Master Plan approval, preliminary subdivision or preliminary site plan approval
  - Revise, and renegotiate with the applicant as necessary, and
- Step 6: Present the analysis of the factors identified in section IV above, generated by Town Departments and the SEDCO Board of Directors, to the Finance Committee who shall score the application in accordance with the scoring criteria in Appendix C. The Finance Committee shall present a composite score (based on individual members' scores) to the Town Council along with a recommendation. If the Town Council agrees that the application has met the established thresholds, then Council will vote to allow the Town Manager to form a negotiating team to include a Town Council member.

- Step 7: Final TIF/CEA proposal brought to Council for approval using a full public process including a first reading, a public hearing, and a second reading prior to the final vote. At the Town Council's discretion, the public hearing and final action may occur at the same meeting.

### **Application Fee**

All developer or business applicants are required to:

- At the time of final application submission to the Town Council, a retainer of \$2,500 will be made by the applicant to account for staff time, legal fees, consulting costs, and any other professional services required to process or consider the application. Any funds not used during that time may be returned when the construction project is completed. If the retainer is insufficient to cover all related costs, the applicant agrees to assume responsibility for all third-party costs as broadly outlined above.
- Applications will be provided by the Scarborough Economic Development Corporation, 360 US Route 1, Scarborough, Maine 04074. Application materials are available on the Town of Scarborough's website, [scarboroughmaine.org](http://scarboroughmaine.org), as well as on the SEDCO website, [sedcomaine.com](http://sedcomaine.com).

## Appendix A - TIF/Credit Enhancement Agreement Application

Name of Applicant:
Applicant's Address:
Applicant's Phone:
Applicant's e-mail:
Location of Project: (map/lot)
Brief Project Description: (new building, square footage, use)
Reason for the TIF and Credit Enhancement Request:
Estimated project cost:
Current assessed value of land and existing development:
Proposed duration of credit enhancement benefit:
Proposed amount of credit enhancement benefit:
Projected project completion date:
Anticipated additional development within the next 5 years:
Waivers from the standards contained in the Town's TIF policy requested if any:
Retainer of \$2,500 received from developer



## **Appendix B – TIF/CEA Applicant Narrative**

Name of Applicant:
Name of Project:

Date:

Please describe below how the proposed development project meets the criteria listed in Appendix C.

1. Attract, retain or expand businesses for the purpose of improving the Town’s economic base
2. Directly implement specific recommendations of the Town’s strategic planning documents such as the Comprehensive Plan
3. Present extraordinary development/redevelopment costs such as:
  - Remodeling/Rehabilitation/Demolition
  - Environmental Remediation
  - Capital purchases
  - Facility expansion
  - Public infrastructure
4. Include new employment potential
5. Create incremental tax value equal to or greater than \$2 million, excluding personal property
6. Have infrastructure value beyond the current project
7. Enhance the streetscape and pedestrian experience
8. Preserve or rehabilitate a locally significant historic structure.
9. Have a quality of development and overall aesthetics (architectural, site design, landscaping, etc.) beyond that which is minimally required by the Zoning Ordinance.
10. Adhere to higher standards of building design, materials, and energy efficiency such as meeting LEED certification, Energy Star, etc.
11. Enhance environmental protections resulting in a more sustainable community or enhance/increase access to natural resources
12. Makes financial/economic sense for the Town - positive Return-On-Investment

### **Application Component Checklist**

- Completed TIF/CEA Application, including application fee
- Inclusion of accompanying financial documents
- Request for policy waivers or modifications, if any
- Retainer of \$2,500.00 toward reimbursement for town staff time and direct expenses

## APPENDIX C

### ASSESSMENT CRITERIA for PROPOSED CREDIT ENHANCEMENT AGREEMENTS

The Town Council will use the following rubric to determine the value of proposed projects and to decide if a CEA is appropriate and, if so, under what terms.

<b>Credit Enhancement Agreement Criteria to be Assessed</b>			
Does the project:	Possible Score	Applicant Self-Score	Finance Com Composite Score
1. Attract, retain or expand businesses for the purpose of improving the Town's economic base <ul style="list-style-type: none"> <li>● Documentation of financial projections must be provided by the party making the request and will serve as the basis for the agreement</li> </ul>	0-10		
2. Directly implement specific recommendations of the Town's strategic planning documents such as the Comprehensive Plan	0-10		
3. Present extraordinary development/redevelopment costs such as:	0-10		
<ul style="list-style-type: none"> <li>● Remodeling/Rehabilitation/Demolition</li> <li>● Environmental Remediation</li> <li>● Capital purchases</li> <li>● Facility expansion</li> <li>● Public infrastructure</li> </ul>			
4. Include new employment potential <ul style="list-style-type: none"> <li>● Number of new employees</li> <li>● Skill and education levels required for the jobs</li> <li>● Range of salary and compensation rates for the jobs as compared with the median income level for the community</li> </ul>	0-5		
5. Create incremental tax value equal to or greater than \$2 million, excluding personal property	0/15		
6. Have infrastructure value beyond the current project	0-5		
7. Enhance the streetscape and pedestrian experience.	0-5		
8. Preserve or rehabilitate a locally significant historic structure.	0-5		

9. Have a quality of development and overall aesthetics (architectural, site design, landscaping, etc.) beyond that which is minimally required by the Zoning Ordinance.	0-5		
10. Adhere to higher standards of building design, materials, and energy efficiency such as meeting LEED certification, Energy Star, etc.	0-5		
11. Enhance environmental protections resulting in a more sustainable community and enhance/increase access to natural resources	0-5		
12. Makes financial/economic sense for the Town - positive Return-On-Investment	0-10		
<b>Total</b>	0-90		