

Town of Scarborough

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



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Policy and Process for Tax Increment Financing Districts and Credit Enhancement Agreements

I. BENEFITS OF CREATING TAX INCREMENT FINANCING DISTRICTS

The Town of Scarborough invests in economic development and affordable housing through the State's Tax Increment Financing (TIF) District program.

Under this program, the Town may create districts for a specified period of time within the municipal borders where property taxes paid on new value associated with development can be segregated and used for specific purposes. The use of the funds is regulated by State Statute.

In addition to creating a way for the Town to invest in the community, the TIF District designation also allows the Town to "shelter" new value from State funding formulas which determine how much financial aid the Town receives each year. Within the State funding formulas, the more value from properties within a town, the less that town will receive from the State. With a TIF district in place, all new value generated is not counted in the funding formula, thus increasing the amount of funds received from the State each year. Value is also a factor in the amount assessed to the Town from County government. With sheltered value, the County tax is lower.

Within an established district, the Town MAY choose to partner with a developer, company, organization or other private entity under a contract known as a Credit Enhancement Agreement (CEA). With a CEA in place, the Town may return a percentage of property taxes collected on new development to the partner. The CEA agreement outlines the period of time covered by the agreement, the purpose of the funds and may include performance standards. All CEA's must be part of a Town and State approved TIF District.

The Town may also choose to invest the segregated funds for their own purposes such as infrastructure or services to support new development.

CEA's can also be a way to acknowledge the relationship between housing initiatives and economic development. The adequate supply and diversification of housing in Scarborough is critical to ensuring a robust local economy. Affordable housing can benefit a local economy by increasing spending in local businesses, creating construction and property management jobs, reducing employee costs, expanding the labor market for skilled workers, and generating tax revenue for the Town.

II. PURPOSE OF POLICY

The purpose of this policy is to outline the policies, standards, and processes that the Town of Scarborough will use in initiating, considering and potentially approving applications for Tax Increment Financing Districts (TIF) and for Credit Enhancement Agreements (CEA) associated with an existing or proposed district. The policy sets out guidance to gather relevant information for consideration to inform decision making. The ultimate decision regarding whether to grant a TIF or CEA is at the sole discretion of the Town Council.

Notwithstanding this policy, the creation of a TIF District, adoption of a development program or an associated CEA is a decision made on a case-by-case basis by the Scarborough Town Council. For a CEA, this policy outlines some minimum thresholds that must be met to begin the process. Meeting the initial thresholds in no way guarantees an ultimate approval of a CEA by the Town Council.

In addition to the Town review process, all TIF District applications and CEA's must be consistent with State statutes regulating Affordable Housing Development Districts (30-A M.R.S.A. §§5245-5250-G) and/or Economic Development Districts (30-A M.R.S.A Chapter 206).

Receiving a TIF District designation or CEA 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. This policy will apply to TIF Districts and CEAs for both economic development and housing projects. The policy applies to both area wide and site-specific designations.

Scarborough's TIF Policy supports investment in municipal economic development programs, affordable housing and infrastructure in area-wide and individual specific sites.

III. ESTABLISHMENT OF TIF DISTRICTS

The Town Council may establish and/or amend any district within municipal borders. Guidance for the Council on the creation of Districts include the following.

- 1. Time Frame:** TIF Districts may be designated for up to 30 years. The designation of a TIF district requires, at a minimum, legal notice, a public hearing, the majority vote of the municipal legislative body, and state approval.
- 2. 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).
- 3. Comprehensive Plan:** The Town Council should consider proposals that further economic development or affordable/workforce housing goals consistent with the most recent Comprehensive Plan. Designated Growth Areas and the Rate of Growth Ordinance should be considered as part of consistency with the current Comprehensive Plan
- 4. CEA Approval:** Should there be a CEA component of the establishment of a TIF District, the CEA must be approved as part of the CEA portion of this policy. The Council may consider a CEA request simultaneously with a new or amended TIF District
- 5. Geographic Boundaries:** District boundaries will be established by the Town Council taking into consideration any specific needs of an applicant under the CEA section of the policy and/or infrastructure improvements deemed necessary by the Comprehensive Plan, the Town's capital improvement program, or in other supporting documents recognized by the community.
- 6. Personal Property:** Personal property shall not be included in the calculation of revenues available for CEA purposes.
- 7. Excess Funds in a CEA:** TIF districts with development programs that include one or more CEA's shall include a provision that directs any excess funds after the CEA is satisfied to qualified project costs as defined by the District and State economic development uses, or to the Town's general fund depending upon the Council's determination.
- 8. Staff Analysis:** Staff shall provide an annual assessment of the captured value and revenues associated with each district. The assessment will compare the revenues generated to the approved development program expenses to ensure there is alignment. If there is a gap between revenues generated and current development program expenses, Council may choose to revise the development program or return funds to the Town's general fund.

9. **Shelter Benefit Analysis:** Staff shall monitor the shelter benefit of all TIF's on a regular basis and report to Council.
10. **Percentage Modification of Retained Taxes.** The Town by vote of Council majority may modify the portion of tax revenue to be retained in the designated development district.
11. **Amendments:** Some amendments made by the Town Council to an established District may require State approval.

IV. CREDIT ENHANCEMENT AGREEMENT (CEA)

If a project within a TIF district seeks assistance from the Town in the form of a reimbursement of a portion of their property taxes, the Town may enter into a partnership through a Credit Enhancement Agreement (CEA).

A 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.

General Priorities

The general priorities to consider for determining whether to create a CEA include, but are not limited to:

1. Meaningful increasing the Town's affordable housing stock.
2. Creating new jobs and/or assisting existing business to retain jobs.
3. Introducing a unique and/or extraordinary opportunity.
4. Improving the local economy.
5. Broadening the tax base.
6. Improving blighted areas.
7. Supporting community projects.
8. Creating public benefits for other workers and/or businesses.

General considerations for CEA's:

- 1) **Application.** The applicant must make application under the guidelines outlined in this policy.
- 2) **Amount of Funds.** The CEA will stipulate the percentage reimbursement and the specific years in which the reimbursement will be in effect. A dollar cap may be established that governs the CEA. Once met, reimbursements will halt, unless otherwise stipulated in the agreement.
- 3) **Contracts.** All CEA's will be performance-based contracts with stipulations that address, as appropriate, the intended use of the funds and associated costs, the timing of projects, and the level of development. All contracts will stipulate the performance measurements and the consequences of not meeting agreed upon measurements.
- 4) **Terms of Agreement.** Terms should include:
 - a) Term of Agreement, which should extend between fifteen (15) and thirty (30) years (or other term as authorized by State Statute), depending on the length of the associated TIF District.
 - b) The percentage of the incremental value to be captured.
 - c) Terms shall be consistent with State Statutes.
 - d) The CEA partner will report annually to the Town on the status of the project, the use of funds and the progress toward any contract performance measures outlined in the CEA.
 - e) Additional expectations on reporting will be negotiated as part of the credit enhancement agreement.

f) 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.

5) **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. The Town Manager will determine each year whether or not a CEA is in good standing. If the Town Manager determines that a CEA is not in good standing, Council will be informed and make the final determination of any Town action.

6) **Financial Analysis.** For Economic Development CEA requests, the applicant will provide an analysis of how the requested funds will be used, why a Town investment is needed, and demonstrate the net fiscal impact to the Town. The applicant will include a cost to serve analysis and an estimate for the tax shift benefit at the time of application process. For proposed CEAs requesting up to \$10,000,000 in reimbursement, staff will work with applicants to review and assist with the preparation of needed financial analysis requested by Town Council. Proposed CEAs greater than \$10,000,000 in reimbursement will have an external expert financial analysis completed.

For Affordable Housing CEAs, SEDCO will work with the applicant to conduct the financial analysis leveraging the Town's Fiscal Impact model.

7) **Rate of Growth Permits.** For any project involving housing, the Planning Director will advise Council on available permits under the current Rate of Growth Ordinance.

V. CEA APPLICATION PROCESS

The Executive Department will coordinate all activities regarding applications for CEAs and CEA Amendments. The Town Manager will include the Housing Alliance, the SEDCO Board, SEDCO staff or other relevant staff to assist in working with an applicant, coordinating the process and /or producing requested analysis needed by the Council as part of their decision-making process. Each applicant shall be assigned a staff coordinator.

The CEA process can precede other local approvals; however, the final CEA approval can make receipt of such approvals as a condition. Working with applicants, the designated staff coordinator will coordinate the following process:

Step 1: An applicant will begin the process by contacting the Town Manager's office or the SEDCO Executive Director regarding interest in a CEA. If the request starts at SEDCO, SEDCO will inform the Town Manager. The Town Manager then designates a staff coordinator. The designated staff coordinator will provide information on Scarborough's TIF/CEA policy to the applicants and will then be the point of contact for the applicant throughout the process.

Step 2: The applicant will prepare a letter to the Town Manager, outlining the basics of the project and which thresholds the project meets from Section VI of this policy.

Step 3: The Town Manager reviews the letter and makes a determination on whether the project meets the required thresholds outlined in Section VI and whether or not proposed project fits within an existing TIF District. The Manager will inform the applicant in a letter either 1) that the project has met the initial threshold standards and may continue in the process or 2) that they have not met the threshold standards, and the process stops. Applicants may resubmit. If the Town Manager finds that the thresholds are not met, the Town Council leadership will be consulted. With the consent of the applicant, a failed submission will be shared with the full Council. If an application is determined viable, the

Town Manager shall notify the Town Council that an application is forthcoming. If the application is for a Housing CEA, the Town Manager will also inform the Housing Alliance.

Step 4: The applicant shall file a preliminary application with the Town through the designated staff coordinator. The staff coordinator shall review the application for completeness and then submit to the Town Manager for joint discussion.

Step 5a: For economic development applications, 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 through a CEA. At that meeting:

- a) The applicant shall provide an overview of the development project.
- b) The Town Manager and staff coordinator shall provide any preliminary comments.
- c) The Town Council and SEDCO Board shall provide comments.
- d) There should be a preliminary discussion of terms for the CEA contract.

Step 5b: For Housing CEA Applications, the Town Manager will work with the Housing Alliance chair to schedule a Housing Alliance workshop with the applicant to review the application. The workshop should result in feedback to the applicant on the appropriate use of TIF funding through a CEA. At the meeting with the Housing Alliance:

- a. The applicant shall provide an overview of the development project
- b. The Town Manager and staff coordinator shall provide any preliminary input.
- c. The Housing Alliance shall provide comment, as appropriate
- d. There should be a preliminary discussion of terms
- e. All comments and/or recommendations on the application from the Housing Alliance will be provided to the Finance Committee

Step 6: Using the comments from the Town Council Workshop or the Housing Alliance workshop, the applicant may apply for final application approval. The Town Manager and Staff Coordinator shall proceed with the following:

- a) Meet and obtain input from appropriate department heads, specifically Finance and Assessing
- b) Unless otherwise specified by the Town Council, the applicant may be asked to obtain Master Plan approval, preliminary subdivision of preliminary site plan approval before the CEA is approved. Approval of the CEA does not guarantee any required permit.
- c) Applicant will, in consultation with the Town Manager and other appropriate representatives, draft an agreement specifying all terms.
- d) The Town Manager will revise and renegotiate with the applicant as necessary.

Step 7: Finance Committee reviews the final application:

- a) Applicant will highlight how the final application addresses workshop comments
- b) A summary of all staff, SEDCO Board, or Housing Alliance comments including financial impacts and proposed terms will be provided to the Finance Committee
- c) Finance Committee will review and accept the financial analysis. If questions on the analysis arise, the applicant will address the additional questions.
- d) Finance Committee reviews and accepts the draft agreement. Should there be unresolved concerns over the terms, the Town Manager and a member of the Finance Committee will negotiate with the applicant.
- e) Finance Committee scores the application based on CEA standards

- f) Finance Committee makes recommendation to the Town Council. All applications, regardless of the Finance Committee finding, will be sent to the full Council for final review and consideration.

Step 8: Town Council starts final approval process.

- a) Reviews Finance Committee Recommendations
- b) Final 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.

VI. CEA APPLICATION THRESHOLDS AND PRELIMINARY APPLICATIONS

A. Economic Development CEA's

- a) Projects requesting an Economic Development CEA must meet at least 4 or more of the following objectives/thresholds:
 - 1. The Project is consistent with the current Comprehensive Plans as well as other strategic planning documents
 - 2. Assistance supports public infrastructure projects typically funded through municipal budgeting
 - 3. The infrastructure project is identified as needed and or determined to deliver a public benefit
 - 4. Development project cannot move forward without specified investment and/or infrastructure
 - 5. Development project will create or retain sustainable employment opportunities
 - 6. Development project will enhance environmental protections
 - 7. Development project is financially advantageous to the Town
 - 8. Development project provides partnership with and support of the School Department through internships or other investments
 - 9. Development project supplies other local businesses with needed resources and inputs.
 - 10. The project is located in an existing TIF district.
- b) The Applicant will draw upon this list to develop a letter to the Town Manager to initiate a CEA project as outlined in Step 2 of the process.
- c) Narrative in the Preliminary Applications must include:
 - 1. Documentation of which of the above objectives are met by the project.
 - 2. How the project will attract, retain or expand the Town's economic base
 - 3. How the project will implement specific recommendations from the Town's strategic planning documents including the Comprehensive Plan
 - 4. How the project is consistent with the current Comprehensive Plan
 - 5. A projection of new or retained employees.
 - 6. How the project will provide infrastructure beyond the current project
 - 7. How the project will enhance streetscape and the pedestrian experience
 - 8. How the quality of development and overall aesthetics goes beyond minimum requirements
 - 9. How the project adheres to higher standards of building design, materials, and energy efficiency
 - 10. How the project will enhance environmental protections resulting in a more sustainable community or will enhance/increase access to natural resources
 - 11. How the project makes financial and economic sense for the Town
 - 12. An accounting of value created, tax revenues generated and percentage of reimbursement of tax revenues requested by year
 - 13. A brief description of what is unique and/or extraordinary about the project

- d) Narrative in the Final Application must include:
 - 1. All information in the preliminary application
 - 2. Any additional Financial Analysis not provided in the preliminary application including a cost to serve analysis and a tax shift analysis.
 - 3. Revisions or additional information based on comments from the joint workshop
 - 4. A draft contract

B. Affordable Housing Projects

- a) For Housing CEA's, the applicant must meet the following State Requirements:
 - 1. At least 33% of the housing units in the project must be for households earning no more than 130% of area median income (AMI).
 - 2. The affordability of rental units must be maintained for at least 20 years, and the affordability of homeownership units must be maintained for at least 30 years.
- b) For Housing CEA's, the application must meet the following Local Requirements:
 - 1. For an affordable housing only project, 100% of units must be below 80% AMI as defined in Chapter 405 – the Zoning Ordinance.
 - 2. If project is a mix of affordable and workforce housing, 100% of units must meet the definition of affordable and workforce housing as defined in Chapter 405 – the Zoning Ordinance.
- c) Applications that need approval for a specific round of competition for funding at MaineHousing must submit at least 6 months before the deadline.
- d) In addition to these requirements by the State, the project will meet at least 4 or more of the following objectives:
 - 1. The project will increase the supply of affordable housing units, including workforce housing, in the Town of Scarborough.
 - 2. The project will demonstrate consistency with the Town's Comprehensive Plan and other Policy documents.
 - 3. The project will leverage additional funding that is equal to or greater than the CEA request, including all types of equity and/or market financing.
 - 4. The project will target at least 75% of units to those with incomes meeting 40% to 60% of AMI.
 - 5. The project will demonstrate a long-term commitment to affordability.
 - 6. The project meets a specific housing goal of the Town Council.
 - 7. The project is located in an area with sufficient access to local services and job opportunities.
 - 8. The project provides a walkable environment for residents.
 - 9. The project is located in an established TIF District.
 - 10. The Project includes, in accordance with applicable law and regulations, a preference for individuals lining or working in Scarborough.
- e) The Applicant will draw upon this list to develop a letter to the Town Manager to initiate a CEA project as outlined in Step 2 of the process.
- f) The Narrative in the Preliminary Application must include:
 - 1. Documentation on which of the above objectives are met by the project
 - 2. How the project will affect the current housing supply in Scarborough
 - 3. An accounting of all units by type and affordability classification
 - 4. An explanation of how the affordable units will be held as affordable into the future

5. A description of the applicant's experience, technical capacity, initiative and creativity in the development of affordable housing
 6. An accounting of what role the CEA plays in the overall financing of the project
 7. A description of how the project will implement specific recommendations from the Town's strategic planning documents other than the Comprehensive Plan, if relevant.
 8. How the project is consistent with the current Comprehensive Plan
 9. A description of the target market for the units.
 10. An accounting of value created, tax revenues generated and percentage of reimbursement of tax revenues requested by year.
 11. Whether the project will provide infrastructure beyond the current project
 12. Whether the project will enhance streetscape and the pedestrian experience beyond the project
 13. How the project adheres to higher standards of building design and energy efficiency.
 14. How the project will embrace sustainable practices
 15. An explanation of how the CEA fulfills different point values in the MaineHousing application.
 16. A brief description of what is unique and/or extraordinary about the project.
- g) Narrative in the Final Application must include:
1. All information in the preliminary application
 2. Any additional Financial Analysis not provided in the preliminary application including a cost to serve analysis and a tax shift analysis.
 3. Revisions or additional information based on comments from the Housing Alliance workshop
 4. A draft contract

Application Fee

All economic development 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. 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.

APPENDIX A
ASSESSMENT CRITERIA for PROPOSED CEA's

Credit Enhancement Agreement Criteria to be Assessed			
Does the project:	Possible Score	Applicant Self-Score	Finance Committee Score
1. Attract, retain or expand businesses for the purpose of improving the Town's economic base <ul style="list-style-type: none"> ● Documentation of financial projections must be provided by the party making the request and will serve as the basis for the agreement 	0-5		
2. Directly implement specific recommendations of the Town's strategic planning documents such as the Comprehensive Plan	0-5		
3. Present extraordinary development/redevelopment costs such as: <ul style="list-style-type: none"> ● Remodeling/Rehabilitation/Demolition ● Environmental Remediation ● Capital purchases ● Facility expansion ● Public infrastructure 	0-6		
4. Include new employment potential <ul style="list-style-type: none"> ● Number of new employees ● Skill and education levels required for the jobs ● Range of salary and compensation rates for the jobs as compared with the median income level for the community 	0-5		
5. Create incremental tax value equal to or greater than \$2 million, excluding personal property, for Economic Development CEA's	0-5		
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	0-5		
13. For Affordable and Workforce Housing, the extent the projects deliver tangible advancement of affordability in Scarborough			
14. For Affordable Housing projects, extent to which the project implements and applies in accordance with applicable law and regulations a local preference for individuals living or working in Scarborough.	0-5		
15. Other criteria.			