

City Official Checklist regarding the Community Development Law (TIF)

DISCLAIMER: A municipality must always consult statutes prior to attempting any redevelopment project as the Community Development Law is subject to change by the Nebraska Legislature. Municipalities are also strongly encouraged to consult with their city or village attorney or hire a legal counsel specializing in TIF.

Community Development Agency or Community Redevelopment Authority:

___ A municipality forms a Community Redevelopment Authority (CRA) or Limited Community Redevelopment Authority (18-2102.01)

_____ (Date ordinance adopted)

___ In the alternative, a municipality may appoint a Community Development Agency which has the same power as a CRA. (18-2101.01)

_____ (Date ordinance adopted)

Preliminary Steps:

General Plan:

___ A governing body of a city or village must adopt a general plan for the development of the city or village before a CRA can recommend a redevelopment plan to the governing body. (18-2110)

Substandard and Blighted, or Extremely Blighted Declaration:

___ A governing body of a city or village declares area to be substandard and blighted, or extremely blighted and in need of redevelopment by resolution after a public hearing and notice. A CRA cannot prepare a redevelopment plan for a redevelopment project area until the substandard and blighted, or extremely blighted declaration. See Below. (18-2109; 18-2101.02)

_____ (Date/proof of publication)

___ Prior to the declaration, the governing body of a city or village is required to conduct a study or analysis on whether the area is substandard and blighted, or extremely blighted. (18-2109; 18-2101.02)

___ Copies of the substandard and blighted study, or extremely blighted study, need to be posted on the city or village's website or made available at a location designated by the city or village. (18-2109; 18-2101.02)

___ A governing body of a city or village is required to submit the question of whether an area is substandard and blighted, or extremely blighted to the planning commission or board of the city or village for its review and recommendation prior to the governing body of a city or village making the declaration of whether an area is substandard and blighted (18-2109; 18-2101.02)

___ The planning commission or board is required to hold a public hearing and give notice. The notice provisions are outlined in the section "Requirements of Public Notice for Substandard and Blighted, Extremely Blighted, and Redevelopment Plan Hearings." The notice also needs to include a map showing

the area to be declared substandard and blighted or contain information on where to find the map. Notice also needs to include information on where to find a copy of the substandard and blighted study. (18-2109; 18-2101.02; 18-2115.01)

____ The planning commission or board submits its written recommendations to the governing body of the city or village within 30 days after the public hearing. Upon receipt of the recommendations or after 30 days if no recommendation is received, the governing body of the city or village holds a public hearing after giving notice. The notice provisions are outlined in the section “Requirements of Public Notice for Substandard and Blighted, Extremely Blighted, and Redevelopment Plan Hearings.” The notice needs to include a map showing the area to be declared substandard and blighted, or extremely blighted, or information on where to find the map. Notice also needs to include information on where to find a copy of the substandard and blighted study, or extremely blighted study. (18-2109; 18-2101.02; 18-2115.01)

____ After the public hearing, the governing body of a city or village may make its declaration that the area is substandard and blighted, or extremely blighted, by resolution. (18-2109; 18-2101.02)

_____ (Date resolution adopted and where substandard and blighted study is filed)

____ Extremely blighted study and hearings may be held in conjunction with the substandard and blighted study and hearings (18-2101.02)

_____ (Date resolution adopted and where extremely blighted study is filed)

Redevelopment Plan:

____ A CRA may prepare a redevelopment plan or any person or a developer may submit a redevelopment plan to a CRA. (18-2111)

____ A redevelopment plan needs to be sufficiently complete to outline local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements, and the proposed land uses and building requirements in the redevelopment project area. (18-2111)

____ The redevelopment plan needs to include, but not be limited to, the following:

- (1) The boundaries of the redevelopment project area, with a map showing the existing land uses and condition of the real property;
- (2) a map showing proposed land uses of the area;
- (3) information regarding population densities, land coverage, and building intensities in the area after redevelopment;
- (4) a statement of the proposed changes, if any, in zoning ordinances or maps, street layouts, street levels or grades, or building codes and ordinances;
- (5) a site plan of the area; and

(6) a statement of additional public facilities or utilities which will be required to support the new land uses in the area after redevelopment. (18-2111)

___ OPTIONAL: A redevelopment plan may include a proposal for the designation of an enhanced employment area. (18-2111)

Cost-benefit Analysis:

___ A CRA conducts a cost-benefit analysis for each proposed redevelopment project which includes a division of taxes, otherwise known as tax-increment financing (TIF). (18-2113)

___ A CRA is required to use a cost-benefit model developed for use by local projects. A cost-benefit model used must consider and analyze the following factors:

- (a) Tax shifts resulting from the use of TIF;
- (b) Public infrastructure and community public service needs impacts and local tax impacts caused from the approval of the redevelopment project;
- (c) Impacts on employers and employees of firms locating or expanding within the boundaries of the area of the redevelopment project;
- (d) Impacts on other employers and employees within the city or village and the immediate area that are located outside of the boundaries of the area of the redevelopment project;
- (e) Impacts on the student populations of school districts within the city or village; and
- (f) Any other impacts determined by the authority to be relevant to the consideration of costs and benefits arising from the redevelopment project. (18-2113)

___ The cost-benefit analysis must be in writing. Copies of the written cost-benefit analysis are required to be posted on the city or village’s website or made available for public inspection at a location designated by the city or village. (18-2113)

_____ (Where cost-benefit analysis is filed)

Planning Commission and Other Considerations:

___ A CRA submits the proposed redevelopment plan to the planning commission or board of the city or village for review and recommendations as to its conformity with the general plan of the municipality. (18-2112)

___ The planning board or planning commission of the city or village is required to conduct a public hearing on the redevelopment plan or substantial modification of the plan after giving notice. The notice provisions are outlined in the section “Requirements of Public Notice for Substandard and Blighted, Extremely Blighted, and Redevelopment Plan Hearings.” The notice needs to include a map to show the area to be redeveloped or information on where to find the map. The notice needs to also include information on where to find copies of the cost-benefit analysis. (18-2115)

___ The planning commission or board submits its written recommendations on the proposed redevelopment plan to the CRA within 30 days after receipt of the plan for review. (18-2112)

_____After a CRA receives the recommendations of the planning commission or board or, if no recommendations are received within 30 days, then without such recommendations, a CRA may recommend the redevelopment plan to the governing body of the city or village for approval. (18-2112)

_____A CRA needs to consider, before recommending the proposed redevelopment plan to the governing body, whether the proposed land uses and building requirements in the redevelopment project area are consistent with accomplishing the goals of the general plan for the municipality. (18-2113)

Recommending Plan to Governing Body:

_____A CRA must include certain statements with the recommendation of a redevelopment plan to the governing body. The recommendation to the governing body must be accompanied by:

- (a) The recommendations, if any, of the planning commission concerning the redevelopment plan;
- (b) A statement of the proposed method and estimated cost of the acquisition and preparation of the redevelopment project area
- (c) Estimated proceeds or revenue from land sales to the redevelopers
- (d) A Statement of the proposed method of financing the redevelopment project
- (e) A statement of a feasible method for the relocation of families who will be displaced from the redevelopment project area. (18-2114)

Duties of the Governing Body:

_____After the planning commission or board holds its public hearings, the governing body of the city or village must hold a public hearing, following proper notice, on any redevelopment plan or substantial modification recommended by the CRA. The notice provisions are outlined in the section “Requirements of Public Notice for Substandard and Blighted, Extremely Blighted, and Redevelopment Plan Hearings.” The notice also needs to include a map of sufficient size to show the area to be redeveloped or information on where to find the map. The notice also needs to provide information on where to find copies of the cost-benefit analysis. (18-2115)

_____ (Date/proof of publication and date of public hearing)

Requirements of Public Notice for Substandard and Blighted, Extremely Blighted, and Redevelopment Plan Hearings:

(Applies to Both Planning Commission and Governing Body Hearings)

_____Notice given by publication in a legal newspaper in or of general circulation in the community at least once a week for 2 weeks.

___ Time of the hearing must be at least 10 days from the date of last publication.

___ The notice must describe the time, date, place, and purpose of the hearing.

___ Interested parties must be given the opportunity to express their views on the plan at the public hearing.

___ At least 10 days prior to the public hearing, the governing body of the city or village provides notice of the hearing to each registered neighborhood association whose area of representation is located in whole or in part within a 1-mile radius of the area to be declared substandard and blighted, extremely blighted, or redeveloped in the manner requested by the association.

___ At least 10 days prior to the public hearing, the governing body of the city or village provides notice of the hearing by certified mail, return receipt requested, to the president or chairperson of the governing body of each county, school district, community college, educational service unit, and natural resources district in which the real property to be declared substandard and blighted, extremely blighted, or subject to the redevelopment plan or major modification is located.

___ Each neighborhood association wanting to receive notice of any hearing is required to register with the municipality's planning department or, if there is no planning department, with the municipal clerk, and include certain information. (18-2115.01)

Approving the Redevelopment Plan:

___ When the governing body approves the redevelopment plan (or amendment) it must make specific, written findings:

(a) The plan is feasible and in conformity with the general plan for the development of the city or village and the plan is in conformity with the legislative declarations and determinations. (18-2116)

(b) If TIF is used, the "but-for" test must be met which includes: (a) whether the project would be economically feasible without the use of tax-increment financing, and (b) whether the project would occur in the community redevelopment area without the use of TIF. The "but-for" test must be in writing.

_____ (Where "but-for" test documents are filed)

(c) The governing body must also consider the costs and benefits of the redevelopment project and whether the plan is in the long-term best interest of the community. (18-2116)

_____ (Date of approval and where redevelopment plan or amendment is filed)

___ A redevelopment plan which has not been approved by the governing body when recommended by the CRA may again be recommended to it with any modifications deemed advisable. (18-2117)

___ A CRA is not allowed to acquire real property for a redevelopment project unless the governing body of the city in which the redevelopment project area is located has approved the redevelopment plan. (18-2108)

Substantial Modifications to the Redevelopment Plan:

___ If a redevelopment plan will be modified or amended in a substantial way, the governing body must approve the modification or amendment. (18-2117)

___ If the modification or amendment is after the lease or sale of property in the project area, the redeveloper must consent to the change. (18-2117)

OPTIONAL: Construction of Workforce Housing

___ In a rural community or an extremely blighted area within a municipality, construction of workforce housing may be part of a redevelopment project. (18-2103)

___ Rural community means any municipality in a county with a population of fewer than 100,000 inhabitants (every county except Douglas, Lancaster, and Sarpy). (18-2103)

___ Prior to approving a redevelopment project to carry out the construction of workforce housing, a governing body needs to do the following:

- (1) receive a housing study which is current within 24 months,
- (2) prepare an incentive plan for construction of housing in the municipality targeted to house existing or new workers,
- (3) hold a public hearing on the incentive plan with the same notice as required for public hearings on substandard and blighted declarations, extremely blighted declarations or redevelopment plans, and
- (4) after the public hearing find that the incentive plan:
 - a) is necessary to prevent the spread of blight and substandard conditions within the municipality,
 - b) will promote additional safe and suitable housing for individuals and families employed in the municipality, and
 - c) will not result in the unjust enrichment of any individual or company.

___ The public hearing required on the incentive plan needs to be separate from the public hearing held required to approve a redevelopment plan or substantial modification. (18-2142.05)

OPTIONAL: Enhanced Employment Area:

___ If the redevelopment plan includes the designation of an enhanced employment area, the governing body must find, before it approves such plan, that any new investment will result in a certain amount of investment and new employees based on population of the county. (18-2116)

___ A governing body may rely upon written statements provided by any redeveloper about application for approval of the redevelopment plan. (18-2116)

___ If a redevelopment plan is an enhanced employment area, the redevelopment contract must include a statement of the redeveloper's consent to the designation. (18-2119)

Costs Reimbursed Prior to Approval of Redevelopment Project

___ A redevelopment project that includes TIF cannot provide for the reimbursement of costs incurred prior to approval of the redevelopment project, except for costs relating to:

- (1) The preparation of materials and applications related to the redevelopment project;
- (2) The preparation of a cost-benefit analysis;
- (3) The preparation of a redevelopment contract;
- (4) The preparation of bond and other financing instruments;
- (5) Land acquisition and related due diligence activities, including, but not limited to, surveys and environmental studies; and
- (6) Site demolition and preparation. (18-2117.03)

Report to Property Tax Administrator:

_____ On or before December 1 each year, each municipality which has approved a redevelopment plan financed by TIF is required to report to the Property Tax Administrator (18-2117.01)

Report to Governing Body and Other Political Subdivisions:

_____ On or before May 1 of each year, each authority is required to compile information on the progress of redevelopment projects that are financed in whole or in part through TIF and report to the governing body of the city or village. (18-2117.02)

_____ The progress report will also be sent to the governing body of each county, school district, community college area, educational service unit, and natural resources district whose property taxes are affected by such division of taxes. (18-2117.02)

_____ The report needs to include the following information:

- (1) The total number of active redevelopment projects within the city or village that have been financed in whole or in part through TIF;
- (2) The total estimated project costs for all such redevelopment projects;
- (3) A comparison between the initial projected valuation of property included in each redevelopment project as described in the redevelopment contract and the assessed value of the property included in each such redevelopment project as of January 1 of the year of the report;
- (4) The number of redevelopment projects for which financing has been paid in full during the previous calendar year and for which taxes are no longer being divided;
- (5) The number of redevelopment projects approved by the governing body in the previous calendar year;
- (6) Information specific to each such redevelopment project approved by the governing body in the previous calendar year, including the project area, project type, amount of financing approved, and total estimated project costs; and
- (7) The percentage of the city that has been designated as blighted.

Redevelopment Contract

____ If a CRA wants a redeveloper to redevelop land owned or to be owned by the CRA, a process with public request for proposals must be used. (18-2119)

____ A CRA must give notice of the invitation for proposals in a legal newspaper once a week for 2 consecutive weeks. (18-2119) _____(Date/proof of publication)

____ A CRA must consider all redevelopment proposals and financial and legal ability of the redevelopers to carry out their proposals. (18-2119)

____ A CRA must give at least 30 days' notice to the governing body of its intention to accept a redevelopment contract proposal. (18-2119)

____ If a redeveloper owns the land to be developed, no public request for proposals is necessary but the contract should provide details of the project. (18-2119)

____ Prior to entering into a redevelopment contract for a redevelopment plan that includes the use of TIF, the redeveloper must certify the following:

- (a) Whether the redeveloper has filed or intends to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act for a project located or to be located within the redevelopment project area;
- (b) Whether such application includes or will include, as one of the tax incentives, a refund of the municipality's local option sales tax revenue; and
- (c) Whether such application has been approved under the Nebraska Advantage Act. (18-2119)

____ A redevelopment contract that includes the use of TIF is required to include a provision requiring that the redeveloper retain copies of all supporting documents that are associated with the redevelopment plan or redevelopment project and that are received or generated by the redeveloper for three years following the end of the last fiscal year in which ad valorem taxes are divided. (18-2119)

____ The redeveloper is required to provide copies to the city or village as needed to comply with the city or village's retention requirements. (18-2119)

____ A redevelopment contract that includes the use of TIF may include a provision requiring that all ad valorem taxes levied upon real property in a redevelopment project be paid before the taxes become delinquent. (18-2119)

____ A redevelopment contract that includes the use of TIF may include additional requirements to ensure plan or project complies with comprehensive development plan, affordable housing action plan, zoning regulations, and other reasonable planning requirements. (18-2119)

Division of Taxes (TIF)

____ A redevelopment plan may contain a provision to divide taxes, for a period not to exceed the allowed number of years, after the effective date as identified in the project redevelopment contract or in the resolution of the CRA authorizing the issuance of bonds. (18-2147)

___The municipality must incur a debt before the taxes can be divided on a redevelopment project. The debt can be in the form of a bond, a note, an advance of money, or other form of indebtedness. (18-2147)

___The portion of the ad valorem tax on real property, as provided in the redevelopment contract or bond resolution, in the redevelopment project in excess of such amount must be allocated to and, when collected, paid into a special fund of the CRA to be used solely to pay the principal of, the interest on, and any premiums due for the debt incurred by the municipality as part of the redevelopment project. (18-2147)

___ To the extent that a redevelopment plan authorizes the division of ad valorem taxes levied upon only a portion of the real property included in such redevelopment plan, any improvements funded by such division of taxes must be related to the redevelopment plan that authorized the division of taxes. (18-2147)

___The effective date for dividing ad valorem taxes will not occur until the real property in the redevelopment project is within the corporate boundaries of the municipality, other than the exception for a formerly used defense site. (18-2147)

___The notice for dividing ad valorem taxes must be sent to the county assessor on or before August 1 of the year of the effective date of the provision on forms prescribed by the Property Tax Administrator. (18-2147)

___When the bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the CRA is required to notify the county assessor and county treasurer and all ad valorem taxes upon taxable real property in such a redevelopment project will be paid into the funds of the various political subdivisions. (18-2147)

OPTIONAL: Expedited Reviews of Redevelopment Plans (Micro-TIF)

___A city council or village board may decide by resolution to allow expedited reviews of redevelopment plans. (18-2155)

Projects Eligible for Expedited Review

___A redevelopment plan is eligible for expedited review if:

- (a) The redevelopment plan includes only 1 redevelopment project;
- (b) The redevelopment project involves the repair, rehabilitation, or replacement of an existing structure or the redevelopment of a vacant lot within the municipality for at least 60 years and located within a substandard and blighted area;
- (c) The redevelopment project is located in a county with a population of less than 100,000 inhabitants, meaning every county except Douglas, Lancaster and Sarpy County; and
- (e) The assessed value of the property within the redevelopment project area when the project is complete is estimated to be no more than: (i) \$350,000 for a redevelopment project involving a single-family residential structure; (ii) \$1,500,000 for a redevelopment project involving a multifamily residential structure or commercial structure; or (iii) \$10,000,000 for a

redevelopment project involving the revitalization of a structure included in the National Register of Historic Places. (18-2155)

Steps for Expedited Review

_____ A redeveloper prepares the redevelopment plan using a standard form.

_____ The redeveloper submits the redevelopment plan directly to the governing body along with any building permit or other permits necessary to complete the redevelopment project and an application fee in an amount set by the city council or village board.

_____ The application fee cannot exceed \$50, which is separate from any fees for building permits or other permits needed for the project.

_____ If the city council or village board has elected to allow expedited reviews of redevelopment plans and the submitted redevelopment plan meets the requirements listed under “Projects Eligible for Expedited Review”, the city council or village board is required to approve the redevelopment plan within 30 days after submission.

_____ Each city or village may select an appropriate employee or department to conduct expedited reviews. (18-2155)

Record Retention:

_____ On and after October 1, 2018, each city that has approved one or more redevelopment plans or redevelopment projects that are financed in whole or in part through TIF needs to retain copies of:

(a) all redevelopment plans and

(b) all supporting documents associated with the redevelopment plans or redevelopment projects and with any related substandard and blighted declaration that are received or generated by the city.

_____ The city or village needs to retain the redevelopment plans and supporting documents (which includes substandard and blight studies, extremely blighted studies, cost-benefit analyses, and any invoice, receipt, or claim received or generated by the city) for the period of time required under any applicable records retention schedule adopted under the Records Management Act or for three years following the end of the last fiscal year in which ad valorem taxes are divided, whichever period is longer. (18-2117.04)

_____ Each redevelopment contract that involves TIF must have a provision requiring the redeveloper to retain copies of all supporting documents that are associated with the redevelopment plan or project for three years following the last year that taxes are divided. (18-2119)

Other Provisions to Consider:

_____ A municipality may undertake a redevelopment project that includes property outside the corporate limits if the property is a formerly used defense site. (18-2123.01)

____ In cities of the second class or a village, a redevelopment project area may include, when it involves the construction of an agricultural processing facility, annexed land that is not contiguous or adjacent or urban or suburban in character. (17-405.01)

____ If the provisions of the Community Development Law are inconsistent with the provisions of any other law or of any city charter, the provisions of the Community Development Law are controlling. (18-2144)

____ City or village charters may include additional notice and fact-finding requirements for approval of redevelopment contracts.