

**City of Helena, MT
Downtown TIF District
Board Financial Report
As of 4/30/22**

Beginning Cash July 1, 2021		\$ 276,162
Revenue:		
Real Property Taxes		112,037
Personal Property Taxes		124
Penalty & Interest		150
Interest		-
Total Revenue		<u>\$ 112,312</u>
Expenditures:		
Contracted Services		215,035
Capital Outlay		-
Total Expenditures		<u>\$ 215,035</u>
Ending Cash - April 30, 2022		\$ 173,439
Less:		
Project Commitments		76,106
10% Reserve for Affordable Housing*		17,937
Cash Available		<u><u>\$ 79,397</u></u>

*** Resolution 20630 Passed 11/20/20*

**City of Helena, MT
Downtown TIF District
Board Financial Report
Project Listing
As of 4/30/2022**

Project #	FY	Description	Budget	Actual	Balance	Notes
TF1901	2021	Hill Park Theatre	19,391	18,642	749	Paid to Eagle Electric, SOD Works & Tabert Construction
Total - FY 2021			\$ 19,391	\$ 18,642	\$ 749	
TF1902	2021	BID Trees & Planters	30,000	16,400	13,600	Paid to Helena BID - Trees from Chadwicks
TF1093	2022	Placer Comm	77,800	38,900	38,900	Paid on 8/26/21 to Placer Commercial
TF1904	2022	Consistory Shrine	25,000	2,143	22,857	Paid on 3/29/22 to Consistory Shrine Temple Assoc
TF1905	2022	Dowling Architects	72,075	72,075	-	Paid on 8/11/21 to Dowling Architects
TF1906	2022	Seeley Building	50,667	50,667	-	Paid 1/20/2022 to Seeley Bldg Inc.
TF2901	2022	Rodney Laundry	18,500	18,500	-	Paid on 3/11/22 to Rodney Street Laundry
TF2902	2022	B&B Market	16,350	16,350	-	Paid on 4/8/22 - to B&B Market
Total - FY 2022			\$ 290,392	\$ 215,035	\$ 75,357	

MEMORANDUM

To: Thomas Jodoin, Interim City Manager

From: Erik Coate, Interim City Attorney *EAC*

Date: March 16, 2022

Re: Proper Uses of Tax Increment Funds

QUESTION PRESENTED

1. Does applicable law restrict the ways in which a city can spend tax increment funds?

BRIEF ANSWER

1. Yes. Tax increment funds can be spent on the items expressly laid out in § 7-15-4288, MCA, but only if the spending is related to an underlying public purpose.

BACKGROUND

The City of Helena (the “City”) has created several urban renewal districts. The City established the Railroad Urban Renewal District in 2016, the Downtown Urban Renewal District in 2018, and the Capital Hill Urban Renewal District in 2021. Each of the urban renewal districts is benefitted by tax increment financing (“TIF”). Broken down its basics, TIF permits a city or town to use a portion of the real property taxes collected from an urban renewal district for certain projects in the district.

In connection with allowing TIF in its urban renewal districts, the City created district-specific boards to oversee disbursement of the TIF. In a nutshell, if a person desires funding for a project, the person can apply to the appropriate TIF board for disbursement of funds. If the TIF board votes in favor of the expenditure, the application then moves the City Commission for final approval.

The TIF boards sometimes receive applications for projects that are borderline eligible for TIF dollars and, unfortunately, eligibility decisions can be very difficult. The difficulties led the Interim City Manager to request a memorandum that better defines the types of projects that are eligible for TIF dollars.

DISCUSSION

1. Does applicable law restrict the ways in which a city can spend tax increment funds?

Yes. Tax increment funds can be spent on the items expressly laid out in § 7-15-4288, MCA, but only if the spending is related to an underlying public purpose.

In the 1940s, the Montana Legislature enacted statutes that gave local governments new tools to revitalize and improve unhealthy and neglected areas in their jurisdictions. *See* Mont. Code Ann. § 7-15-4201, *et seq.* (2021) (hereinafter referred to as the “Urban Renewal Law”). Under the Urban Renewal Law, if a local government determines an area of its jurisdiction is “blighted,” the local government can designate the area as an urban renewal district; devise and adopt an urban renewal plan for the district; and begin redevelopment, rehabilitation, and revitalization of the district pursuant to the adopted urban renewal plan. Mont. Code Ann. §§ 7-15-4203 and 7-15-4209 (2021).

The Urban Renewal Law also allows an adopted urban renewal plan to utilize TIF. Mont. Code Ann. § 7-15-4282(1) (2021). As mentioned earlier, TIF permits a city or town to use a portion of the real property taxes collected from the urban renewal district for certain projects in the district. *See* Mont. Code Ann. § 7-15-4282, *et seq.* (2021). However, the city or town cannot spend TIF dollars on all projects proposed to occur in the urban renewal district. Specifically, pursuant to the Urban Renewal Law, Montana local governments are limited to paying the following costs

(if the costs arise from a project to be completed inside the urban renewal district and if the project is in line with the approved urban renewal plan):

1. land acquisition;
2. demolition and removal of structures;
3. relocation of occupants;
4. the acquisition, construction, and improvement of public improvements or infrastructure, publicly owned buildings, and any public improvements authorized by Title 7, chapter 12, parts 41 through 45; Title 7, chapter 13, parts 42 and 43; and Title 7, chapter 14, part 47, and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;
5. costs incurred in connection with the redevelopment activities allowed under 7-15-4233;
6. acquisition of infrastructure-deficient areas or portions of areas;
7. administrative costs associated with the management of the urban renewal area[];
8. assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the local government itself at its fair value;
9. the compilation and analysis of pertinent information required to adequately determine the needs of the urban renewal area[];
10. the connection of the urban renewal area...to existing infrastructure outside the area or district;
11. the provision of direct assistance to secondary value-adding industries to assist in meeting their infrastructure and land needs within the area or district; and
12. the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution.

Mont. Code Ann. § 7-15-4288 (2021).

Notably, § 7-15-4288(5), MCA, allows TIF dollars to be spent in connection with “redevelopment activities” allowed under § 7-15-4233, MCA. Section 7-15-4233, MCA, empowers “the local governing body” to enable “the urban renewal agency or department or other officers of the municipality to” perform the redevelopment activities listed below.

- (a) to prepare urban renewal plans, except that the local governing body shall approve the inclusion of a tax increment provision;
- (b) to prepare recommended modifications to an urban renewal project plan;
- (c) to undertake and carry out urban renewal projects as required by the local governing body;

- (d) to make and execute contracts as specified in 7-15-4251, 7-15-4254, 7-15-4255, and 7-15-4281, with the exception of contracts for the purchase or sale of real or personal property;
- (e) to disseminate blight clearance and urban renewal information;
- (f) to exercise the powers prescribed by 7-15-4255, except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body;
- (g) to enter any building or property in any urban renewal area in order to make surveys and appraisals in the manner specified in 7-15-4257;
- (h) to improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area;
- (i) to insure real or personal property as provided in 7-15-4258;
- (j) to effectuate the plans provided for in 7-15-4254;
- (k) to prepare plans for the relocation of families displaced from an urban renewal area and to coordinate public and private agencies in such relocation;
- (l) to prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;
- (m) to conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects;
- (n) to negotiate for the acquisition of land;
- (o) to study the closing, vacating, planning, or replanning of streets, roads, sidewalks, ways, or other places and to make recommendations with respect thereto;
- (p) to organize, coordinate, and direct the administration of the provisions of this part and part 43;
- (q) to perform duties as directed by the local governing body to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

As seen above, a city can expend TIF dollars in many areas. However, no matter the project on which a city desires to spend TIF dollars, every expenditure must be connected to a public purpose. Article VIII, Section 1 of the Constitution of the State of Montana mandates that “[t]axes shall be levied by general laws for public purposes.” Article VIII, Section 1 has been interpreted to mean that funds a government acquires by way of taxation may only be expended for public purposes. *See, e.g., Grossman v. Dept. of Nat. Res.*, 209 Mont. 427, 682 P.2d 1319 (1984). But what are public purposes?

In *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P.2d 656 (1939), the Montana Supreme Court cited, with approval, a definition for “public purpose” found in a North Dakota Supreme Court case that was later upheld by the United States Supreme Court.

A public purpose has for its objective the promotion of the general welfare of all the inhabitants or residents within a given political division, as, for example, a state, the sovereignty and sovereign powers of which are exercised to promote the public health, safety, morals, general welfare, security, prosperity, contentment, and equality before the law of all the citizens of the State.

107 Mont. at 517 (emphases added) (citing *Green v. Frazier*, 44 N.D. 395, 176 N.W. 11 (1920), affirmed 253 U.S. 233 (1920)). Later, in *Grossman*, Montana’s highest court said that “public purposes” are synonymous with “governmental purposes.” 209 Mont. at 457.

When it comes to public purposes, several more maxims are worth mentioning. First, Montana courts have made it clear that, ultimately, the question of whether a tax is levied for public purposes is for the legislature and, as a result, courts “will indulge every reasonable presumption in favor of the legislative decision in this respect.” *Grossman*, 209 Mont. at 457. Second, whether a purpose is public depends more on the use of the funds than it does on the recipient of the funds.

The fact that individuals, associations, or corporations derive special benefit from an expenditure does not necessarily affect its validity; as long as the legislation authorizing the expenditure serves a public purpose, the recipient may be a nonpublic entity such as a private nonprofit corporation. The test is not who receives the money, but whether the purpose for which it is to be expended is a public one.

42 G 89 (1988) (internal citations omitted) (emphasis added).

CONCLUSION

TIF funds can be spent on the items expressly laid out in § 7-15-4288, MCA, provided the spending is for a public purpose. Private individuals, associations, or corporations may gain some

benefit from an expenditure and might receive money, but those facts do not automatically remove the expenditure from the category of public purpose.

Considering relevant law, the lawyers in the City Attorney's Office suggest that TIF boards and the City Commission employ the process seen below (or one that is similar) when evaluating a project's eligibility for TIF funds.

1. Will the funding be used in connection with a project that is proposed for an area that falls inside the boundaries of an urban renewal district?
 - a. If no, the project does not qualify for funding.
 - b. If yes, proceed to question 2.

2. Does the request for funding fit into one of the specific categories laid out in § 7-15-4288(1) through (12), MCA?
 - a. If no, the project does not qualify for funding.
 - b. If yes, proceed to question 3.

3. Does the funding request fit the goals of the applicable urban renewal plan?
 - a. If no, the project does not qualify for funding.
 - b. If yes, proceed to question 4.

4. Will the funds be used for a public or governmental purpose – that is, are the funds going toward a project that has for its objective the promotion of the general welfare of all inhabitants or residents of the City of Helena?
 - a. If no, the project does not qualify for funding.
 - b. If yes, the project qualifies for funding.