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March 12, 2008

Mr. Calvin Aguillard  
Fiscal Officer  
New Orleans City Council  
1300 Perdido Street, Room 1E04  
New Orleans, LA 70112

Re: Proposed Policies for Establishing TIF Districts in New Orleans

Dear Mr. Aguillard:

The Bureau of Governmental Research appreciates the opportunity to comment on the draft document entitled "Proposed Policies for Establishing Tax Increment Financing Districts in The City of New Orleans" (Draft Policies). The Mayor's Office of Recovery and Development Administration (ORDA) presented the document to the City Council's Special Development Projects and Economic Development Committee on February 27, 2008.

This comment letter follows, and should be read in conjunction with, our November 19, 2007 letter to City Council commenting on the City's task force report on tax increment financing (Task Force Report). In that letter, we emphasized that tax increment financing (TIF) should not be viewed as free money. Furthermore, TIF based on sales tax, the type favored by Louisiana law, can produce negative effects on businesses and City finances. If the City chooses to pursue TIF, it should evaluate proposals stringently and take steps to mitigate the risk of adverse impacts. A copy of the earlier letter is enclosed.

We begin this letter with some general comments and then proceed with issues in the order presented by the Draft Policies.

**General Comments**

To help the City in the revision process, BGR reviewed TIF policies from San Antonio, Texas; Kansas City, Mo.; and Allegheny County, Pa. (Pittsburgh). Each jurisdiction operates under a state law that permits TIF based on property and sales tax increments.

San Antonio's policy manual offers useful guidance for New Orleans policymakers. It connects TIF proposals to local planning goals and identifies eligible areas for TIF districts. It sets forth separate processes for evaluating and approving TIF proposals initiated by the city or by

developer's petition. For city-initiated TIF, San Antonio designates a TIF area, develops plans and solicits developers via requests for proposals (RFP). For developer-initiated projects, the city issues an annual call. San Antonio's policy manual also describes documentation requirements and TIF district administration. We have posted the manual on our web site, [www.bgr.org](http://www.bgr.org).

## **Comments on Draft Policies**

The following discussion of the Draft Policies tracks the document on a section-by-section basis.

### **(A) Overview**

This section contains two points that ORDA and City Council should re-examine. First, it recommends that the "governing principles and project eligibility criteria" be adopted by resolution. We do not understand why adoption is limited to those elements. Nor do we understand why adoption is by resolution, which is non-binding. We urge the Council to adopt a full-fledged TIF policy by ordinance.

Second, the overview indicates that a Mayoral Oversight Committee will assess proposals for, and monitor awards of, TIF. On page 4, the Task Force appears to recommend only an oversight role for that committee. As we discuss later, having the same body evaluate proposals and monitor developments creates a potential conflict of interest. Moreover, we have concerns with the proposed committee structure. These are also addressed later in this letter.

### **(B) TIF Selection Criteria**

This section consists of 12 bullet-point criteria related to the creation of TIF districts, the selection of developers and projects, the uses of tax increments and the terms of TIFs. It is unclear whether the criteria relating to developers and projects serve as minimum standards, or provide automatic authorization for projects that meet them. We strongly believe that the criteria should be minimum standards for consideration of a TIF. We will address the individual criteria in the order presented in the section.

***Creation of TIF Districts.*** The first criterion defines where TIF may be used in New Orleans. It limits TIF districts to areas "within a designated recovery area or other special economic or redevelopment district or zone as established by the City of New Orleans." Limiting eligible areas is a good start, but the criterion is too vague. The policies should clearly define what is meant by a recovery area and a special economic or redevelopment district or zone. In addition, the City should set clear boundaries for eligible areas and provide illustrative maps.

We recommend that the City limit TIF districts to areas that meet a "but for" determination and a finding of blight based on established criteria. Neither is required by Louisiana's TIF laws, but both would direct TIF investment to areas with the greatest need for public assistance. We also recommend limiting TIF districts to areas that can become self-sustaining and are not exposed to a high risk of catastrophic flooding, based on objective criteria.

We define a “but for” test as a finding that appropriate development would not occur in an area within a reasonable time frame without the TIF. State laws in Texas, Missouri and Pennsylvania incorporate similar versions of this test.

The City can define blight in qualitative or quantitative terms. Most state laws set forth criteria for the blight finding in qualitative terms, such as deterioration of buildings, inadequate street layout and dangerous conditions. A few states quantify blight as a minimum percentage of buildings in an area that exhibit the characteristics of blight. The requirement for a blight finding reflects the genesis of TIF as a tool for urban revitalization.

The City’s policies should require an independent study of a proposed TIF area to support the “but for” and blight findings. For example, Kansas City requires the local TIF Commission to hire an independent consultant to complete a “blight study.” Each study must contain “substantial visual evidence” of the conditions in the proposed redevelopment area and a market analysis that demonstrates the lack of private investment and the reasonable anticipation that development will not occur without the TIF plan.

***Selection of Developers and Projects.*** The second through 10th criteria pertain to the selection of developers and projects. The City should revise these to address certain issues and inconsistencies:

- The third criterion requires adherence to “mixed-use and recovery-based planning concepts.” The reference to planning concepts is too vague to provide useful guidance. It is unclear how these concepts relate to the “highest and best use from a public perspective.” The Draft Policies should provide further explanation and refer to any relevant plans or documents.
- The fourth criterion requires the developer to contribute “up to 25% cash equity.” However, page 4 requires “a minimum of 25% cash equity.” We suggest amending the recommendation to require that the owner/investor maintain equity in the greater of (i) that amount or (ii) the amount that lenders would typically require to finance a similar project in a healthy environment. We also recommend clarifying what type of investment counts as equity.
- The fifth criterion states that a project “must entail a cost to benefit ratio at or above \$1 to \$3 as detailed through project proforma or financial analysis.” It does not indicate whether the ratio is based on economic or fiscal costs and benefits. It should apply separately to each. The policies should also set forth standards for the analysis, addressing what items to include as benefits and costs, the appropriate time horizon and what documentation is necessary to evidence the numbers.
- The sixth criterion provides that the TIF must provide “but for” financing for the project. The City should define the test more clearly. In any case, TIF should provide only the minimum assistance necessary for a project to proceed and allow no more than a reasonable rate of return to the developer. In addition, the criterion would allow the City to rely solely upon a developer’s pro forma financial projections or a lender’s statement

to make the determination. The Draft Policies should require an independent analysis of the project's financial claims.

- The eighth criterion, that the TIF not provide profit for a project, needs further clarification.
- The ninth criterion requires that the project ensure that at least 20% of its permanent jobs pay at least the metropolitan area's living wage. This appears to allow up to 80% of the jobs to pay a lesser amount. Are minimum wage jobs worth a public investment? We submit not and suggest that the City aim higher.
- There is no requirement for a minimum number of new jobs. One quality job paying a living wage would be sufficient to meet the articulated standard. We strongly recommend setting minimum standards.
- The 10th criterion requires that projects "commercial in nature" provide public amenities and spaces, and those "housing in nature" make at least 20% of units affordable. There is no explanation of how these types of projects relate to the requirement for "mixed-use planning concepts" stated in the third criterion. In addition, the criterion does not clearly describe the type of public amenities and spaces required of commercial projects.

**Uses of Tax Increments.** The 11<sup>th</sup> criterion provides that the "TIF must finance all enhancements or alterations to public infrastructure directly related to the project or geographic location to be supported, with any remaining undedicated portion of the TIF available to other project costs as permitted by law." First, we suggest eliminating the word "all" from the criterion. It implies that the entire cost of public infrastructure must be paid by TIF, regardless of whether the transaction warrants a public investment of that magnitude or whether other public or private sources may be available. Second, we suggest that the City revise this criterion as follows:

- In the case of property tax TIF, limit "other project costs" to prep work needed to make the urban landscape more attractive for investment, such as demolition, site preparation, property assembly and environmental clean-up.
- In the case of sales tax TIF, limit "other project costs" to other public improvements accessible to the public (e.g., streets, parks, promenades) or to environmental remediation costs that cannot be financed by other means.

We strongly recommend against using sales tax TIF to pay for private improvements. When TIF provides capital for privately owned assets, it risks compensating for financial weaknesses in a transaction or developer. Incorporating broad language that the remaining TIF should fund "other project costs as permitted by law" invites such subsidies, because Louisiana law allows new buildings, renovations and a host of other private costs.

**Terms of TIFs.** The 12<sup>th</sup> criterion calls for establishing a "minimum and maximum tax increment threshold" and the duration for each TIF district on a "project-by-project basis." We assume this refers to funding limits on individual TIFs, but the criterion is unclear. We suggest two additional requirements:

- The City should establish a maximum duration for any TIF district equal to the shorter of 20 years or the term of the original bond issue. Texas and Pennsylvania law both use 20 years, while Missouri law uses 23 years.
- The criterion should establish a percentage cap on the amount of incremental revenues captured annually by any TIF district (e.g., 80% of eligible incremental revenues). The excess incremental revenue should either be used to prepay TIF debt or be returned to the City's General Fund. Our previous comment letter contains examples of caps.

### **Issues Not Addressed by TIF Selection Criteria**

The Draft Policies do not address four important issues relevant to the selection criteria:

*Planning.* The City should make findings that the project conforms with, and promotes the objectives of, the City's economic development plan or, in its absence, clearly stated goals and priorities in the TIF policy. Among other things, the priorities should identify the types of industries that the City contemplates subsidizing with TIF.

*Private-to-Public Investment.* We suggest adding a requirement for a high ratio of private to public investment. This would ensure that private funding is significant compared to public equity.

*Program Cap.* To encourage prioritization and careful targeting of projects, the City should establish a cap, based on a dollar amount or a percentage of the General Fund, on the amount of taxes that can be diverted to TIF districts citywide.

*Fees and Expenses.* Charging adequate fees is critical to funding high-quality analysis of applications. The applicant should bear the cost of the City's evaluation, whether conducted by City staff or consultants. We note that San Antonio charges \$31,000 per application and a fee for any meetings requested with city staff.

### **(C) Purpose and Scope**

The last sentence of the first paragraph states that "given the City's post-disaster financial posture and existing *Ad valorem* millage obligations, it is important to assess how best to structure TIFs for maximum efficacy or otherwise limit the scope of TIFs in the short term." We do not understand the last part of the sentence and request clarification.

### **(D) Task Force Recommendations**

Our comments on the Task Force Recommendations follow the order in which they appear in the Draft Policies.

**1. TIF Procedures in the City of New Orleans.** We support the recommendation that the City establish a uniform system for evaluating and approving TIF districts. We also support a standard set of procedures, forms, guidelines and supporting documents.

We note that the Draft Policies provide no information on important aspects of the process, such as who is conducting the review and making the decision on TIF applications. While the document mentions an oversight committee, it is unclear whether that committee's role is limited to monitoring of projects that have already been approved.

We recommend that the City:

- Establish separate evaluation and approval processes for City-initiated TIF districts and for those proposed by developers
- To the extent possible, consolidate the administration of TIF districts into one body to maximize transparency and accountability

**2. Geographic Considerations During Recovery and Rebuilding.** This section recommends that the City limit TIF to the following geographic areas: areas included in medical districts, areas designated for riverfront development and redevelopment, existing commercial corridors and Recovery Management Target Zones defined as "Rebuild" and "Redevelop." The Draft Policies do not explain how these areas relate to the first criterion under TIF Selection Criteria. The policies include them with no information as to why the City chose them, what boundaries they would have, or how the City would deploy proceeds from TIFs.

In their current, unrefined state, the area recommendations appear to be overly broad. Take for example, the Riverfront. This area presumably refers to the four-mile stretch that has been the focus of recent efforts by the Port of New Orleans, the New Orleans Building Corp. and the City Planning Commission. Some of this area is not appropriate for a TIF, since it consists in part of prime real estate and healthy, developed areas. If the intent is to derive tax increments from new development to pay for public space along the riverfront, the policy should clearly specify that.

To take another example, "commercial corridors" is also too broad a geographic designation, since it also picks up thriving areas.

We suggest that the City replace these overly broad areas with well-defined eligible geographic areas for TIF. See the earlier discussion on p. 2 under "Creation of TIF Districts."

**3. Streamlined and Consolidated Process for Consideration.** We agree that there should be a single point of entry and standardized forms. However, the policies should describe in specific detail the approval process for TIF and the entities involved. We recommend that the process should incorporate a preliminary review phase, similar to San Antonio's, to determine whether each proposal meets basic criteria, such as location in an eligible area and promotion of planning goals. Only if the proposal meets the criteria does San Antonio conduct additional review and planning.

**4. Clarification of Expectations by City Authorities for TIF Recipients.** This Task Force Recommendation would require applicants to submit a proposed timeline, financial statements "and related documentations which verify the necessity of a TIF," a cost-benefit analysis, and any existing business plans. We agree that these are important requirements, but the City should

require more documentation, including a business plan in all cases. We provide a more comprehensive list at page 9 of our previous comment letter.

**5. *Enhanced Public Participation.*** We agree with the Task Force Recommendation to expand public involvement beyond current State law. Such opportunities should be provided early in the process before critical decisions have been made.

All meetings relating to TIFs, including those of the oversight and other deliberative committees, should be conducted in accordance with both the letter and the spirit of the open meetings law. Practices that undermine transparency, such as one-on-one briefings and behind-closed-door negotiations among the administration, councilmembers and potential developers, should be avoided.

All documentation relating to TIF proposals and deliberations should be available to the public and posted on-line.

**6. *Oversight, Monitoring and Accountability.*** We agree with the spirit of the Task Force Recommendation to evaluate the progress and compliance of projects that receive TIF support. However, we do not support the proposed oversight committee, which would include designees of ORDA, the Chief Administrative Officer, the City Attorney's Office, the City Planning Commission, the New Orleans Redevelopment Authority, the Industrial Development Board, the City Council's Special Projects and Economic Development Committee, and an "independent expert."

The committee includes entities intimately involved with the creation of a TIF, such as ORDA, and entities that typically have no dealings with TIF, such as NORA and the IDB. The document does not discuss the qualifications, role and selection of the independent expert. Overall, the committee would lack the independence needed to properly evaluate TIF performance. We reiterate our earlier recommendation to have the Office of Inspector General perform the monitoring function.

We note that accountability requires a well-crafted legal agreement between the developer and the City. The agreement should spell out the expected performance, such as a certain number of quality jobs created, and require owners of TIF projects to provide the City with the information necessary to compare the projected benefits with actual benefits on an annual basis. The City should structure TIF investments to recapture all or a portion of the public subsidy to the extent practicable.

To protect the interests of residents and taxpayers, the City should obtain advisors or staff with the sophisticated financial, legal and managerial expertise needed to evaluate, establish and administer such districts effectively. They should be subject to strong ethical standards and conflict of interest rules. The City should select any consultants via an RFP process.

To allow the public to judge the performance of TIFs, the City Council should provide an annual report on TIF districts, including information on the amount of public funds they receive and their performance.

### **(E) Background and Rationale**

This section makes several references to Louisiana law with no citations. This creates confusion because there are at least three TIF laws that apply generally in Orleans Parish: a property TIF statute, La. R.S. 33:9032; a sales tax TIF statute, La. R.S. 33:9033.3; and a set of statutes that permits either property or sales tax TIF, La. R.S. 33:9038.31 *et seq.* We suggest that the TIF policy limit the creation of TIF districts to those based on the statutes at La. R.S. 33:9038.31 *et seq.* because they authorize the State to pledge a portion of its sales tax revenues to match the local contribution. The other statutes do not contain such an authorization.

### **(F) Recommended Next Steps**

The Draft Policies recommend a number of next steps. The second step is to “develop and issue a semi-annual Request for Information from developers seeking TIF.” This needs further explanation. What is it? How will it be used? Will this be the exclusive way to pursue TIF? Will it be a competitive process?

The third step calls for coordinating with the Industrial Development Board on the use of financial consultants. The City should proceed cautiously in this area, since the IDB has no formal process for choosing consultants and is currently dealing with quality issues.

### **(G) Application**

The draft application form needs significant revision to address the following issues:

- It is unclear how the application form relates to the TIF approval process. If developers must submit the form in response to an RFP, the application should specify this.
- The form should identify any application fees.
- The documentation requested in the application is insufficient. We provide a more comprehensive list at page 9 of our previous comment letter.
- The form is specific in some sections, such as the construction timeline, but remains too vague in others, such as the development budget requirements.
- The form does not define the term “living wage” under the section on projected job creation.
- It is unclear whether and how job creation or wage goals would relate to performance standards in a redevelopment agreement.

### **(H) TIF Evaluation Form**

We note that developing a scoring system is premature until the City has completed a guiding policy.

From the information provided, it is difficult both to understand the reason for the scoring system and to envision its practical application. Typically, a scoring system is used to evaluate competing proposals. Is it here meant to apply to an RFP process for redevelopment of individual sites? Or would it apply to the evaluation of proposals for multiple sites across the city? Or is it intended to help the City evaluate projects that have already met minimum requirements for approval?

Regardless of its use, the proposed scoring system is seriously inadequate. It does not address all of the criteria in the Draft Policies, such as the “catalytic” effect and “significant improvement to public infrastructure” required by the second criterion. It also provides points for the “fulfillment of public good,” a matter not included in the current criteria. In addition, it provides no information on how points will be awarded. Each score should serve as a minimum threshold for evaluation, not automatic approval for projects.

In closing, we hope our comments on the Draft Policies and the enclosed documents help the City to craft an effective TIF policy. ORDA and the City Council deserve credit for tackling this important economic development matter.

Sincerely yours,

Janet R. Howard  
President

Enclosure

cc: Dr. Edward J. Blakely  
Hon. James Carter  
Hon. Jacquelyn Brechtel Clarkson  
Hon. Arnold Fielkow  
Hon. Stacy S. Head  
Hon. Cynthia Hedge-Morrell  
Hon. Shelley Midura  
Hon. Cynthia Willard-Lewis