



## **City of Buffalo & Housing & Redevelopment Authority of Buffalo Developmental Tools Policy April 2024**

### **INTRODUCTION:**

This Policy is adopted to govern the use of public financial assistance for private development within the City of Buffalo ("City") and for purposes of satisfying the business subsidies act, pursuant to Minnesota Statutes, Sections 116J.993 through 116J.995, as amended (the "Statutes"). Terms used in this Policy are intended to have the same meanings as those used in the Statutes. Subdivision 3 of Section 116J.993 specifies forms of financial assistance that are not considered a business subsidy. This list contains exceptions for several activities, including redevelopment, pollution clean-up, and housing, among others. By providing a business subsidy, the city commits to holding a public hearing, as applicable, and annually reporting to the Department of Employment and Economic Development ("DEED") on job and wage goal progress if and when required by the Statutes.

### **1. PURPOSE AND AUTHORITY:**

- A. The purpose of this document is to establish criteria for the City and the Buffalo Housing & Redevelopment Authority ("HRA") for the granting of business assistance and public financial assistance for private development within the City. As used in this Policy, the term "City" shall be understood to include the HRA. The criteria outlined in this Policy shall be used as a guide in processing and reviewing applications requesting business assistance and/or City public financial assistance. As used in this Policy, the term "business assistance" includes, but is not limited to, assistance constituting a "business subsidy" under the Statutes.
- B. The City's ability to grant business assistance is governed by the limitations established in the Statutes and other provisions of Minnesota law. The City may choose to apply the criteria contained herein to other development activities not covered under the Statutes. City public financial assistance may or may not be considered a business subsidy as defined by the Statutes.

- C. Business assistance include grants by state or local government agencies, contributions of personal property, real property, infrastructure, the principal amount of a loan at rates below those commercially available to the recipient of the assistance, any reduction or deferral of any tax or any fee, tax increment financing (TIF), abatement of property taxes, loans made from City funds, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business. Certain types of business assistance may not be considered business subsidies under the Statutes.
- D. The criteria contained herein shall be used in conjunction with other relevant policies of the City. Compliance with the Development Tools Policy shall not automatically mean compliance with such separate policies.
- E. The City, at its sole discretion, may deviate from the job and wage goals criteria outlined in Section 5 D, E, and F below by documenting in writing the reason(s) for the deviation. The documentation shall be submitted to DEED with the next annual report.
- F. The City may amend this document at any time. Amendments to this Policy are subject to public hearing requirements contained in the Statutes.

## **2. CITY'S OBJECTIVE FOR THE USE OF PUBLIC FINANCING:**

- A. As a matter of adopted policy, the City may consider using public financial assistance which may include tax increment financing (TIF), tax abatement, and other forms of public financing as appropriate, to assist private development projects. Such assistance must comply with all applicable statutory requirements and accomplish one or more of the following objectives:
  1. Remove blight and/or encourage redevelopment in area(s) – particularly in the downtown - per the goals and visions established by the City.
  2. Expand and diversify the local economy and tax base.
  3. Enhance the City's position as a regional destination.
  4. Encourage additional unsubsidized private development in the area, either directly or through secondary "spin-off" development.
  5. Offset increased costs for redevelopment over and above the costs that a developer would incur in normal urban and suburban development (determined as part of the "But-For" analysis).

6. Facilitate the development process and promote development on sites that could not be developed without this assistance.
7. Retain local jobs and/or increase the number and diversity of quality jobs.
8. Provide opportunities for small businesses and/or entrepreneurs and promote resident economic stability.
9. Meet other uses of public policy, as adopted by the City from time to time, including but not limited to promotion of quality urban design, quality architectural design, and decreasing the capital and operating costs of local government when feasible.

### **3. PUBLIC FINANCING PRINCIPLES:**

- A. The guidelines and principles set forth in this document pertain to all applications for City public financial assistance regardless of whether they are considered a business subsidy as defined by the Statutes. The following general assumptions of development/redevelopment shall serve as a guide for City public financial assistance:
  1. All viable requests for City public financial assistance shall be reviewed by staff, and, if so designated, a third-party financial advisor will inform the City of its findings and recommendations. This process - known as the "But For" analysis - is intended to determine if the project would not be feasible but for the City assistance.
  2. City staff and a third-party financial advisor will prepare a memorandum for the City Council and HRA documenting the "But For" Test has been met.
  3. The City shall establish mechanisms within the development agreement to ensure that adequate checks and balances are incorporated in the distribution of financial assistance where feasible and appropriate, including but not limited to:
    - a. Establishment of "look back provisions"
    - b. Establishment of minimum assessment agreements
    - c. Documentation of all costs
  4. The City's preference is to provide TIF and tax abatement on a pay-as-you-go basis after completion of the project to reimburse documented qualified costs. Any alternative request for upfront assistance will be evaluated on its own merits and may require security to cover any risks assumed by the City.

5. The City may set up TIF districts in accordance with the maximum number of statutory years allowable; however, this does not mean that the applicant will be granted assistance for the full term of the district. Only projects that provide a significant public benefit as determined below and/or are in key development areas of the city – such as the Downtown Development Area as identified in Exhibit A – shall be prioritized for a full term. All market-rate developments outside of the Downtown Development Area shall be limited to 15 years of assistance.
6. Public financing will not be used in projects that would give a significant competitive financial advantage over similar projects in the area due to the use of public assistance. Applicants should be able to provide information to support that City public financial assistance will not create such a competitive advantage. Priority consideration will be given to projects that fill an unmet market need.
7. Public financial assistance will not be used in a project that involves a land and/or property acquisition where the price is in excess of the fair market value.
8. The applicant shall pay all applicable application fees and pay for the City's fiscal and legal advisor time as stated in the Public Assistance Application.
9. The applicant shall proactively attempt to minimize the amount of City public assistance needed through the pursuit of grants, innovative solutions in structuring the deal, and other funding mechanisms. At least one form of grant or financial assistance from another agency shall be pursued prior to awarding the City's TIF or tax abatement assistance.
10. If deemed necessary by the sole determination of the City, assisted developments will be subject to execution and recording of a Minimum Assessment Agreement.

#### **4. PROJECTS WHICH MAY QUALIFY FOR PUBLIC FINANCING ASSISTANCE:**

- A. MINIMUM QUALIFICATIONS. All new applications for public financial assistance that are considered by the City must meet each of the following minimum qualifications. However, it should not be presumed that a project meeting these qualifications will automatically be approved for assistance. Meeting the qualifications does not imply or create contractual rights on the part of any potential applicant to have its project approved for assistance.
  1. In addition to meeting the applicable requirements of State law, the project shall meet **five** or more of the "Desired Qualifications" public financing objectives outlined in Sec. B.3 below.

2. The applicant must demonstrate to the satisfaction of the City that the project is not financially feasible "but for" the use of public financial assistance.
3. The project is, or will be through the City approval processes, consistent with the Comprehensive Plan, Zoning Ordinances, adopted Design Guidelines or any other applicable land use documents of the City.
4. Prior to approval of a financing plan, the applicant shall provide any requested market and financial feasibility studies, appraisals, soil borings, private lender commitments, and/or other information the City or its financial advisors may require in order to proceed with an independent evaluation of the proposal.
5. The applicant must provide adequate financial guarantees to ensure the repayment of any public financing and completion of the project. These may include, but are not limited to, assessment agreements, letters of credit, personal deficiency guarantees, guaranteed maximum cost contract, etc.
6. Any applicant requesting public financial assistance must be able to demonstrate a previous capability for successful development, as well as specific capability regarding the type and size of the development proposed. Public financing shall not be used when the applicant's credentials, in the sole judgment of the City, are inadequate due to previous history relating to completion of projects, general reputation, and/or bankruptcy, or other problems or issues considered relevant to the City.
7. The applicant, or its contractual assigns, shall retain ownership of any portion of the project long enough to complete it, stabilize its occupancy, establish project management and/or needed mechanisms to ensure successful operation.

#### **B. DESIRED QUALIFICATIONS:**

1. Projects providing a high ratio of private investment compared to City public investment shall receive priority consideration. Private investment includes developer cash, government and bank loans, conduit bonds, tax credit equity, and land if already owned by the applicant.
2. Proposals that significantly increase the amount of property taxes paid after redevelopment will receive priority consideration.
3. Proposals that encourage the following will receive priority consideration:
  - a) Encompasses the goals and strategies stated in the 2040 Buffalo Community Plan and 2040 Downtown Visions Plan.

- b) Implements the City's vision and values for a City-identified development area, including but not limited to Buffalo's downtown.
- c) Attracts or retains an employer within the City.
- d) Promotes housing investment that meets the following City goals:
  - i. Increase housing choice within the community; diversify existing housing stock; and provide options that do not currently exist
  - ii. Attract young professionals and young families to the community
  - iii. Provide clean, safe, and affordable housing units
  - iv. Multi-family housing with high-end amenities considered luxury and/or market rate.
- e) Provides opportunity for the attraction of destination-oriented uses such as outdoor recreation, entertainment, and shopping.
- f) Provides opportunities for small businesses and/or entrepreneurs.
- g) Projects that promote resident economic stability through affordability in housing.
- h) Redevelops a blighted, contaminated and/or challenged area.

## **5. BUSINESS SUBSIDY PUBLIC PURPOSE, JOBS, AND WAGE REQUIREMENT:**

- A. All business subsidies, as defined by, and for purposes of, the Statutes must meet a public purpose with measurable benefit to the City as a whole, and satisfy the criteria outlined in this section.
- B. Job retention may only be used as a public purpose in cases where significant (5 or more) job losses may reasonably be expected to occur in the downtown area or in the City's industrial parks.
- C. The creation of new tax base shall not be the sole public purpose of a subsidy.
- D. Unless the creation of jobs is removed from a particular project pursuant to the requirements of the Statutes, the creation of jobs is a public purpose for granting assistance. Creation of at least 2 Full-Time, or Full-Time Equivalent (FTE) jobs is a

minimum requirement for consideration of assistance. For the purposes of this Policy, FTE jobs must be permanent positions with set hours, and be eligible for benefits.

- E. Part-Time Equivalent jobs may receive a partial credit and be counted toward the job goals.
- F. The wage floor for wages to be paid for the jobs created shall be not less than 200% of the State of MN Minimum Wage. The City will seek to create jobs with higher wages as appropriate for the overall public purpose of the assistance. Wage goals may also be set to enhance existing jobs through increased wages, which increase must result in wages higher than the minimum under this Section.
- G. After a public hearing, if the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero.

## **6. PUBLIC ASSISTANCE AGREEMENT:**

- A. In granting public assistance, the City shall enter into an agreement with the recipient that specifies the terms associated with the financing. The agreement must be in draft form [and ready for execution] prior to any public hearing necessitated by the form of assistance.
- B. In cases of a business subsidy, the public assistance agreement must provide the following minimum information:
  - 1. Wage and job goals (if applicable)
  - 2. Commitment to provide necessary information for reporting purposes
  - 3. Five-year operation commitment after the benefit date
  - 4. Recourse for failure to meet goals required by the Statutes
- C. The public assistance agreement may be incorporated into a broader development agreement for a project.
- D. For assistance that does not constitute a business subsidy under the Statutes, the grantee or recipient and the City will enter into an agreement setting forth the terms of the assistance and satisfaction of the Developmental Tools Policy as applicable.

## **7. PUBLIC FINANCING PROJECT EVALUATION PROCESS:**

A. The following methods of analysis for all public financing proposals will be used:

1. Project is deemed consistent with City's Goals and Objectives
2. Consideration of project meeting minimum qualifications
3. Consideration of project meeting desired qualifications
4. Project meets "but-for" analysis and/or statutory qualifications

***Please note that the evaluation methodology is intended to provide a balanced review. Each area will be evaluated individually and collectively and in no case should one area outweigh another in terms of importance to determining the level of assistance.***

EXHIBIT A:  
Downtown Development Area