



**Department of City Development**  
City Plan Commission  
Redevelopment Authority of the City of Milwaukee  
Neighborhood Improvement Development Corporation

**Lafayette L. Crump**  
Commissioner

**Vanessa L. Koster**  
Deputy Commissioner

**To: Common Council of the City of Milwaukee**

**From: Lafayette L. Crump, Commissioner of City Development**

**Date: September 28, 2020**

**Re: Common Council Resolution File #200459 -  
Resolution directing the Commissioner of City Development to prepare  
a report on the feasibility of using tax incremental financing for a  
homeownership assistance program**

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### **The Council Resolution and Background**

The City of Milwaukee's Common Council (the "**Council**"), in [Council Resolution File No. 200459](#) (the "**Resolution**"), the Council recognized Wisconsin's Tax Incremental District ("**TID**") Law, Wis. Stat. [66.1105](#), as "an economic *development* tool used frequently in Milwaukee for spurring *development*" (emphasis added), and that there "is a dire need within Milwaukee to provide assistance to individuals attempting to purchase homes," and the Council directed the Department of City Development ("**DCD** or the "**Department**") to report to the Council about the feasibility of using Tax Incremental Funding ("**TIF**") for a homeownership assistance program to help individuals attempting to purchase homes as owner-occupants.

The Council's request was very timely as DCD, with support from Mayor Tom Barrett (the "**Mayor**"), has been examining means and methods to increase homeownership in Milwaukee. It is well understood that homeownership is a path to financial stability and wealth, and that, as the Council noted in its Resolution, "[h]omeownership and owner-occupancy have enormous benefits to a community." Furthermore, it is increasingly understood that centuries of deliberate constraints on the ability of some residents to achieve this important component of the "American Dream" have resulted in entrenched demographic inequities. These inequities have only been worsened by the financial crisis a decade ago and the current COVID-19 crisis. The Mayor and DCD share the Council's concerns, as expressed in the Resolution, about the importance of ameliorating these inequities and providing "assistance to individuals attempting to purchase homes."

## **The Council Resolution and TID Law**

The Council has asked that the Department examine homeownership assistance while noting that TIDs are enacted to spur “development.” There is, of course, a difference between developing (or constructing, or rehabbing, or improving) a home and purchasing a home. That difference is important when it comes to the TID Law, as addressed and codified in great detail in the State of Wisconsin’s Statutes (Wis. Stat. 66.1105).

One component of increasing homeownership is a need to help promote home affordability. Affordability impacts not just owner-occupancy, but also who is capable of investing in non-owner-occupied homes; as reported by Marquette University, Milwaukee has seen an increase of homes owned by non-Milwaukeean investors. See: *“It’s an unsettling day in the neighborhoods. Two trends – the end of residency requirements for city employees and a surge of homes owned by people from outside the city – are altering the fabric of Milwaukee’s residential life,”* Mike Gousha and John Johnson, [Marquette Lawyer, Summer 2020](#).

TIDs are governed, and confined, by Wis. Stat. 66.1105. Generally, TID Law is used to aid development and real estate improvement, which adds value to the underlying real estate in order to generate increased property values and TID increment, in order to make the TID use economically feasible and in line with the TID statutory language and purpose. It would be problematic to create or attempt to use a TID solely to aid home purchases.

Generally, under the TID Law, to create a TID, the Redevelopment Authority of the City of Milwaukee (“**RACM**”) as the 66.1105 (3)(f) Council-designated planning commission, approves TID boundaries, identifies property in the boundaries as blighted or in need of rehabilitation or conservation work, and adopts a TID Project Plan for the proposed TID. The Project Plan must, among other things:

- Identify the kind, number and location of all proposed *public works* or *improvements* within the TID;
- contain an economic feasibility study;
- contain a “detailed list of estimated project costs,” and a description of the method of financing all estimated “project costs;”
- identify the time when the related costs or monetary obligations are to be incurred;
- contain a map showing existing uses and conditions of property in the TID
- contain a map showing proposed *improvements* and uses in the TID and
- indicate how creation of the TID will promote orderly *development* of the City. Wis. Stat. 66.1105 (4)(f).

Again, TID Law contemplates a development and real estate improvement.

In addition to RACM approval of the TID Project Plan, the Common Council must also approve the plan by resolution (the “**TID Resolution**”) that, among other things, contains findings that the TID Project Plan is feasible and in conformity with the City’s master plan. Wis. Stat. 66.1105 (4)(g). The Council’s TID Resolution must also contain findings **(i)** that not less than 50% by area of real property within the TID is at least one of the following: a blighted area, in need of rehabilitation or conservation work, suitable for industrial sites and zoned for industrial use, or suitable for mixed-use development; **(ii)** that the *improvement* of the area is likely to enhance significantly the value of substantially all of the other real property in the TID; and **(iii)** that the “project costs” relate directly to eliminating blight, directly serve to rehabilitate or conserve the area, or directly serve to promote industrial or mixed-use development, consistent with the purpose for which the TID was created. Wis. Stat. 66.1105 (4)(gm)4.

Also, the Joint Review Board (“**JRB**”) (comprised of a Milwaukee Public Schools (“**MPS**”) Board member, a Milwaukee Area Technical College (“**MATC**”) member, a Milwaukee County (“**County**”) member, a City of Milwaukee (“**City**”) member, and a public member) must approve the TID. Wis. Stat. 66.1105 (4)(gs) and (4m). The MPS, MATC, and County members represent the other taxing districts that will forego getting their respective share of the increased property taxes during the TID until TID termination or expiration, at which time those other taxing districts will begin getting their share of property taxes based on the then-higher assessed value because of the improvement (real estate development) that the TID funded.

No TID may be created and no Project Plan may be amended without JRB approval. The JRB approval requires an assertion that, in the JRB’s judgment, “the *development* described in the documents the [JRB] has reviewed...would not occur without the creation of ....[the TID]...” (Emphasis added). This is known as the “but for” test – but for the TID, the development would not have occurred. Wis. Stat. 66.1105 (4m)(b)2. The JRB must base its decision on the following criteria:

“a. Whether the *development* expected in the [TID] would occur without the use of tax incremental financing.<sup>1</sup>

b. Whether the economic benefits of the [TID], as measured by increased employment, business and personal income and property value, are insufficient to compensate for the cost of *improvements*.

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<sup>1</sup> Reaffirmation of the “but for” test.

c. Whether the benefits of the proposal outweigh the anticipated tax increments to be paid by the owners of property in the overlying taxing districts.” Wis. Stat. 66.1105 (4m)(c)1. (Emphasis added).

Once a TID is created, the TID creation and approval documents are submitted to the Wisconsin Department of Revenue (“**DOR**”), and the tax increment base is determined. Wis. Stat. 66.1105 (5). Thereafter, positive tax increments from the TID (over the base) are allocated to the City for each year commencing after the date when the TID Project Plan was adopted by the Common Council until the end of the TID. Wis. Stat. 66.1105 (6).

Accordingly, as indicated, one can see from the words that the State of Wisconsin Legislature (the “**Legislature**”) chose to use in drafting the TID law (Wis. Stat. 66.1105) that the Legislature contemplated a development, and improvement to real estate, that is economically feasible and that involves “project costs” (statutorily defined, Wis. Stat. 66.1105 (2)(f)1) where the improvement (development) will also lead to likely enhancement of value of other property in the TID and to other benefits, and where the development/improvement would not happen or be possible, but for, the creation of the TID.

While certainly helping promote owner-occupied homeownership is a worthy goal, it is not a development or improvement to real estate as required by TID law in order to create a TID.<sup>2</sup> For typical TID use, under the TID Law, there must be a vetted development project, where property is being improved, in a project that is economically feasible, that generates positive TID increment.

### **TIDs and City of Milwaukee Affordable and Rehabilitated Housing**

The City has used TID Law and development projects to promote and create affordable housing, such as recently approved (by the City, RACM, and JRB) Community in the Corridor project, 37<sup>th</sup> Street School and McKinley School projects, all development projects where the development itself created affordable housing. In these TIDs, there was a developer with an approved development project to construct upon, and improve, real estate, which added value to the real estate and, in compliance with Wisconsin TIF law, created the TID increment.

The City has also used TID Law and development projects to promote rehabilitation of housing stock. The following are just some examples of City, RACM, and JRB-approved TIDs involving a development project, where, in addition to the underlying development, there was also included as a TID project cost, a component to assist homeowners with housing rehabilitation (i.e. real estate improvement): Mitchell Street TID; Century City TID; Bishop’s Creek TID. In

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<sup>2</sup> A mere change in ownership of a home does not necessarily lead to an increase in property value and, as a result, tax increment.

these TIDs, again, clearly, there was a developer with an approved development project to construct upon, and improve, real estate, and in addition to that, a fund was created to promote rehab of surrounding homes. This ancillary TID use to promote rehabilitation thus meant further improvement to real estate and further enhancement of property value so as to add more value to the real estate and more TID increment.

There have not been, however, stand-alone TIDs approved by the City, RACM and JRB to assist with individual home purchases, where there has not also been an underlying development project by a developer or by the City. We are also unaware of any such TIDs statewide. We will be investigating further.

As we are limited by the TID Law (Wis. Stat. 66.1105) as it actually is written and exists, it would be legally and practically problematic to create a TID, or to amend a TID, to create a home-buying assistance fund to assist individuals to buy homes. While a worthy goal, conveyance of title to a new owner (even one who will owner-occupy) does not itself equate to real estate improvement or development and it does not necessarily create TID increment and added property value. Some hurdles include: **(i)** the absence of real estate development and improvement (a premise to TID Law use); **(ii)** stand-alone homebuyer assistance programs failing to qualify as an allowable TID “project cost” under the TID Law; **(iii)** recognition that assistance in buying a home does not necessarily equate to improvement of property, increased value, or generation of positive increment, thus also calling into question economic feasibility; and **(iv)** the “but for” test since homes may be sold and purchased by buyers and sellers with or without a TID.

### **An Opening and its Hurdles**

The difficulty with utilizing TID financing to promote homeownership is amplified, and more pronounced, when one considers that the Legislature provided in the TID Law, Wis. Stat. 66.1105 (6)(g), a special subsection that does allow for an up-to-one-year extension of a TID that has paid off its “project costs” for the City to use the extra year’s worth of increment to improve the City’s housing stock and to benefit affordable housing<sup>3</sup> in the City. See, also, MCO 304-96, “*Tax Incremental Districts – Extension to Fund Affordable Housing and Improvements to the City’s Housing Stock.*” Note while this special housing subsection exists in the TID Law, there is no other special TID subsection that specifically allows for funding of worthy goals such as helping individual citizens purchase a home. More on this below.

In Council Resolution File No. 200459 itself, the Common Council recognized that the TID Law is “an economic *development* tool used frequently in Milwaukee for

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<sup>3</sup> “Affordable housing” is defined in Wis. Stat. 66.1105 (2)(ab) to mean housing that costs a household no more than 30% of the household’s gross monthly income, and “household” is defined in Wis. Stat. 66.1105 (2)(bq).

spurring *development*” (emphasis added). That concept of “development” and “improvement to real estate” that adds value and that produces TID increment, to promote economic feasibility of the TID, is a critical TID premise.

In light of the above, there are practical hurdles associated with attempting to stretch the TID Law beyond its actual words and requirements to fund a stand-alone home-buying assistance fund. See, also, November 6, 2019, City Attorney Opinion to City Clerk Jim Owczarski where the City Attorney’s Office opined that it would not be proper to use TID Law to fund demolition not directly tied to new construction or to a development project.

The TID Law, as indicated, does, however, contain 66.1105 (6)(g), and that special subsection is available to the City to improve housing stock and to benefit affordable housing. That is a subsection that the City can and does use. See [Milwaukee Common Council File #131751](#), implementing [MCO 304-96](#), which the City has utilized, along with the referenced TID provision, to extend nine TIDs, creating about \$2.3M for home repair and homeownership programs.

In particular, that part of subsection (6)(g) that allows TIDs to benefit affordable housing in the City could be used to promote home-buying and affordable housing. In the 2019-2020 legislative session, the City’s Department of Administration – Intergovernmental Relations Division came close to getting the TID Law amended to expand the one-year extension of TIDs for improving housing stock and for benefitting affordable housing to 3 years. See [2019 AB 859](#). DCD has been working with the Department of Administration to support continued pursuit of that legislative expansion as a way to generate more TID increment dollars to benefit affordable housing. Such an expansion could lead to increased opportunity for the City to create affordable home-buying assistance programs using TID dollars.

Also, as the Council is aware, DCD encourages sales of City-owned property-tax-foreclosed homes to owner-occupants by marketing those parcels first to only owner-occupants. The City also has other programs that it uses to assist with owner-occupied home-buying such as the Strong Neighborhoods Homebuyer Assistance Program, and the Tenant Transition to Ownership Lease-to-Own Program (the “**T3OP Program**”).

In Milwaukee, as a result of the foreclosure crisis and nationwide recession, the homeownership rates in one and two family properties declined 7 % between 2010 and 2020. In addition, there is a significant disparity in the homeownership rates for communities of color. Creating and preserving homeownership is one of the key priorities in the Mayor’s 10,000 Homes Initiative (more on this later), and all those seeking to promote owner-occupancy in Milwaukee must consider supporting creative methods of doing so, including embracing alternative home-ownership models.

## **Alternative Home Ownership Models**

At Council direction, DCD has been exploring the availability and efficacy of alternative home ownership models to potentially address the barriers to homeownership. These models are also designed to create lasting affordability over time. Redevelopment and Special Projects Manager Maria Prioletta will be sharing her full findings in the coming days. A brief outline of these models is presented below.

### **Community Land Trusts**

A Community Land Trust (“CLT”) is a nonprofit, community-based organization whose mission is to provide affordable housing in perpetuity by owning land and leasing it to those who live in houses built on the land.

In a common CLT, a CLT owns the underlying land (or “lot”) on which a home is located, and a homeowner holds title to the structure/home. The homeowner leases the underlying land from the CLT. Through its land ownership, the CLT preserves affordability by maintaining control over initial and subsequent uses of the land.

One of the underlying concepts of a CLT is that the home will be more affordable because the homeowner is only buying the home and not the land.

There are over 200 CLT’s operating in the United States. Recently, the [Milwaukee Community Land Trust](#) incorporated and is in its organization building and fund raising stage.

### **Housing Cooperatives**

In a housing cooperative, members do not own real estate but each own a share in a cooperative, which entitles them to an ownership interest and the right to occupy a property/unit that is owned by the cooperative. Occupancy is governed by an occupancy agreement. Housing cooperatives may own units in an apartment building, single family homes, townhomes or a combination of housing types. There are more than 1.2 million housing cooperative units in the United States.

In limited equity and affordable housing cooperatives, there are restrictions on the price at which a share may be bought and sold. In some instances, the share price is below the market price at which a property or unit would normally be valued. In many affordable housing cooperatives, share prices are typically even more modest, e.g., equivalent to the amount of a security deposit. Some limited equity cooperatives allow credit for “sweat equity” as part of a member’s share price or allow members to pay for their share price on an instalment plan.

Members can sell their “share,” but must obtain approval from the cooperative’s board of directors. There are limits in regard to the sale price of the share. In models where the initial share price is relatively modest, the increase in the share price or appreciation a member may realize is often tied to inflation, rather than the increase in the value of the property.

**Proposal to Utilize TID Proceeds to Promote Homeownership and Affordable Housing**

Recognizing the constraints of TID law, but also the paramount importance of ensuring affordability of housing and increasing owner-occupancy in Milwaukee, we have developed a plan to utilize TID proceeds to promote homeownership and affordable housing. Via extension of the Beerline Tax Incremental District (TID 22) for one year under the provisions of Wis. Stat. 66.1105 (6)(g), approximately \$6,500,000 will be available for home ownership assistance, with a focus on affordability. With an eye toward the opportunities and methods described above, we have proposed the following:

**Homeownership Program to provide  
down payment assistance for home purchase: \$1,400,000**

The proposed program would provide down payment assistance for home purchase in the City of Milwaukee, helping address one of the barriers to homeownership for Milwaukee families.

We hope to collaborate with the Council in regard to final design/guidelines for the program. Initial thoughts are that the program would be income targeted, available for first time homebuyers and would potentially provide higher incentives in target areas. We propose working in partnership with [Take Root Milwaukee](#) and local home buying counseling agencies to promote and administer the program and also work to leverage this investment with other resources, such as from lenders and local and national philanthropy. Regardless of final design, our efforts will focus on the disparity in homeownership rates for communities of color and how the program can help address this through both design and outreach.

With an allocation of \$1,400,000 and an average grant amount of \$7,000 per purchase, this level of funding could potentially support 200 home purchases.

**Limited Equity Homeownership Models: \$1,500,000**

We also propose using \$1,500,000 in funding to support the development of limited equity homeownership models including community land trusts and cooperative housing. The value of these models is that they preserve lasting affordability beyond the initial acquisition. Neighborhood residents and stakeholders have been



working to advance the availability of these models in the community and we look forward to supporting them.

Funding will provide capital subsidies for the effort. With an allocation of \$1,500,000, it is estimated that 50-75 housing units could be supported via pilot projects.

In order to further expand the reach of this effort, we also envision bootstrapping additional support, such as technical assistance and discounted City-owned property and including the effort as part of a broader plan to develop these models in Milwaukee.

### **Contribution to Housing Trust Fund: \$1,000,000**

We propose contributing an additional \$1,000,000 to the City of Milwaukee's Housing Trust Fund (the "**Fund**"), which supports the development of affordable housing for rent and for purchase.

On an annual basis, capital dollars for the Fund have typically been in the \$400,000 - \$500,000 range.

Providing an additional \$1,000,000 – more than twice what is normally contributed - would allow the Fund to assist more projects, including affordable rental projects, which would complement the City's homeownership efforts detailed above.

### **Strong Homes Loan Program: \$1,300,000**

The existing Strong Homes Loan Program ("**Strong Homes**") provides low interest loans for essential repairs to homeowners throughout the city. The program was designed to preserve homeownership by providing loans to homeowners who could not obtain conventional financing from lenders because of a lack of home equity due to the drop in home values post foreclosure crisis and/or their inability to qualify for bank financing for other reasons (e.g., credit, income).

Strong Homes also provides technical assistance as part of the process, including the preparation of a cost estimated scope of work, help in the bidding process, assistance with identifying and obtaining a contractor and construction oversight services.

### **Strong Neighborhoods Initiative: \$900,000**

We also propose allocating \$900,000 to support the City's existing programming under the Strong Neighborhoods Initiative ("**Strong Neighborhoods**") to responsibly dispose of the City's tax foreclosed property inventory. This includes the Homebuyer Assistance Program, Rental Rehabilitation Program and Lease to Own Program.

Strong Neighborhoods funding would also provide funding for existing efforts under the Milwaukee Employment / Renovation Initiative 2.0 (“**MERI 2.0**”) program, working with local and emerging developers to renovate City-owned tax foreclosed properties for quality homeownership and rental opportunities and providing job opportunities for local residents.

### **Mayor’s 10,000 Homes Initiative: \$400,000**

In early 2018, the Mayor indicated that the City would create or improve 10,000 housing units over 10 years. Through mid-2020, even in the midst of a historically difficult number of months, the City was on track, with more than 2,500 new or improved housing units. To ensure that we maintain this pace, we propose putting \$400,000 toward the 10,000 Homes initiative, with specifics to be determined.

### **Conclusion**

While Wisconsin Tax Incremental Financing law does not currently allow for the creation of a Tax Incremental District strictly for the purposes of providing home buying assistance, there are opportunities to utilize existing TIDs to support home buying, through the extension of TIDs and using the additional funds to support down payments and alternative housing models.

We are hopeful that through partnerships, we will leverage the resources allocated by the City to bring in additional resources to multiply the impact of our efforts. In addition, should the State of Wisconsin amend its TID law to allow for a three year extension, or scattered site / noncontiguous TIDs, more homeownership may result.

Finally, the Department of City Development will continue to examine opportunities for City government, the private market and the philanthropic and community-based agency sectors to broaden opportunities for a more equitable distribution of home ownership, as well as examine efforts in other parts of the country and the world to use TID law and other means to help achieve more ownership and other methods of wealth generation and sustainability among all demographic groups in Milwaukee.

*Special thanks to Assistant City Attorney Gregg Hagopian for his assistance with this report.*