Report of the Task Force on Baltimore City Public/Private Development Financing Efforts

October 2011

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SUMMARY

A Task Force comprised of business, philanthropic, institutional, and community leaders was convened in January 2011 by Councilman Carl Stokes to review Baltimore's process for awarding and then monitoring tax increment financing (TIFs) and Payments In Lieu of Taxes (PILOTs). At this time of national economic uncertainty and very limited availability of private capital for development these and other public capital resources are even more valuable and necessary to support the economic and neighborhood growth of Baltimore. The committee was also directed to explore whether TIFs and PILOTs were being committed at the expense of neighborhood priorities.

Working with Baltimore's Department of Finance, Housing and Community Development and Baltimore Development Corporation the Task Force found that the city explores various means of supporting economic development throughout the city and has a process for awarding public financing with stages in the process for public engagement.

The Task Force concluded that the process could be improved and in this report makes several recommendations which follow. Among them the city should:

- require a greater and consistent return for all economic concessions and investments;
- carefully and continually measure the economic results and social returns to the community that are promised by developers and limit the time for developers to begin work;
- enhance the involvement of Planning in the pre-legislative process to oversee that incentive programs fit the needs identified in the city's master plan;
- increase communication with communities and citizens during the process;
- evaluate other creative ways to provide tax incentives;
- implement ways to make transparent all considerations for TIFs and PILOTs;
- increase efforts to find ways to use PILOTS and TIFS for community revitalization, "public good" projects, and building a larger middle class; and,
- research a way to adjust the formula used to calculate state aid to Baltimore City.

Other topics discussed by the Task Force included providing more or additional incentives to developers working in "priority" areas in neighborhoods; forming policy to minimize the possibility of favoritism; and devising a way for small businesses to benefit from similar incentives.

The Task Force realizes and appreciates the role of developers in the physical aspects of community and economic development. The City's role is to incentivize economic development goals in a manner which addresses the priorities of the City.

Baltimore has great potential and the city needs to direct development efforts to fulfilling that potential, which includes investment downtown and in neighborhoods. The Task Force was unanimous in the belief there are many development opportunities that will benefit from aggressive market-driven public/private partnerships in all corners of the city and that Baltimore must seek out every source of available capital.

MISSION AND OBJECTIVES

The Task Force was charged with reviewing the overall effect of the city's current and past development efforts and recommending policies for future public financial support of private development projects.

The following considerations were among the issues reviewed and addressed by the Task Force:

1. Should the city financially support private development?
2. What type of projects should be considered?
3. What are the current criteria for consideration for assistance?
4. Should additional criteria be considered when considering support of private development such as job creation, MBE/WBE participation and ownership, accountability, etc.?
5. Should there be a cap on the amount offered?
6. Should there be a time certain for expiration of tax incentives on any one project?
7. How do other cities/ counties address private development?
8. What are considered best practices within the industry?
9. What has Baltimore City gained thus far with the use of incentives through related revenue, job creation, etc.?
10. What alternatives might there be for supporting private development (i.e. significantly lowering the property tax)?

PUBLIC FINANCING TOOLS

The two financing tools discussed by the Task Force were Tax Increment Financing (TIF) and Payment In Lieu of Taxes (PILOT). Typically, TIF's and PILOT's are initiated by either the Baltimore Development Corporation (BDC) or Baltimore Department of Housing and Community Development (Baltimore Housing) with support by the Department of Finance.

<u>Tax Increment Financing</u> is a public financing tool that allows state and local government to borrow to invest in public infrastructure and other public improvements by capturing the future incremental real property taxes generated by the improvements.

<u>Payment In Lieu of Taxes</u> permits private developments to pay a smaller, negotiated, portion of real property taxes for economic development projects located in urban renewal areas.

TASK FORCE MEMBERSHIP

The Task Force held its first meeting on January 11, 2011 with seven subsequent meetings held in January, February, March, May, and June and one small workgroup meeting.

Co-Chairs
Wendy Blair, W.L. Blair Development
Calman "Buddy" Zamoiski, Independent Distributors Incorporated

Members
Peter Angelos/Tom Marudas, Law Offices of Peter Angelos
Paul Bernard, Walker & Dunlop
Robert Embry, The Abell Foundation
Andy Frank, Johns Hopkins University
Ronald Kreitner, Westside Renaissance, Inc.
Jody Landers, formerly of the Greater Baltimore Board of Realtors
Linda Loubert, PhD, Morgan State University
Robert Manekin, Colliers International
Jonathan Melnick, Jonathan Melnick Auctioneers
Gary Rodwell, PhD, Coppin Heights Community Development Corporation
Mark Sissman, Healthy Neighborhoods
Mark Wasserman, University of Maryland Medical System
Maria Welch, Respira Medical

Council Staff
Councilman Carl Stokes
Kelley Ray, Legislative Analyst

City Representatives
Carolyn Blakeney, Office of the City Council President
M. Jay Brodie/Irene Van Sant, Baltimore Development Corporation
Paul Graziano, Department of Housing
Steve Kraus, Department of Finance
Tom Stosur, Department of Planning
Colin Tarbert, Office of the Mayor

Meetings
The Task Force met on the following dates:
January 11, 2011
January 25, 2011
February 8, 2011
February 22, 2011
March 1, 2011*
March 8, 2011
March 22, 2011
May 12, 2011
June 28, 2011
* This was a small group meeting to discuss specific recommendations. The meeting was open to all Task Force members.

INTRODUCTION

The Task Force began its work with briefings from the Baltimore Development Corporation, Department of Planning, Baltimore Housing, and the Department of Finance. The state enabling legislation that allows Baltimore City to offer TIFs and PILOTs was explained. Enabling legislation to provide payment in lieu of taxes (PILOT) to development projects in the downtown area was passed in 1999 (HB559) and the tax increment financing (TIF) enabling legislation in 2000 (SB238). The respective sections of Tax Property Articles and City Charter are noted:

- Commercial PILOTs in the Downtown and other areas: Tax Property Article Section 7-501 (City-wide PILOT Law for land owned by the City or other governmental entity) Section 7-504.3 (Downtown PILOT Law) and Section 7-505.2 (Class B Conversion PILOT law) of the Maryland Annotated Code.
- TIFs: Article II, Section 62 of the Baltimore City Charter

The use of commercial PILOTs and TIFs to support private investment in Baltimore is relatively recent and largely unstudied. The proposed use of TIFs has accelerated in the past five years. The Mayor and City Council and the Board of Estimates have not adopted a detailed policy for the use of these subsidies, however, the Baltimore Development Corporation and the Board of Finance Commissioners have separately put in place policy guidelines.

The Task Force then convened meetings to discuss current policy and consider alternative approaches to utilizing these and other public incentives.

CURRENT CITY PROJECTS

Information shared by the Baltimore Development Corp. is provided in Appendices A-C. Appendix A lists the 10 TIFs located throughout the city and Appendix B lists the 12 downtown/midtown PILOTs along with relative job and tax information for each. Appendix C maps the various projects. Appendix D, provided by the Finance Department lists various housing PILOTs citywide.

The following is a breakdown of the current active TIF and PILOT projects in Baltimore City:

Type	Agency	Number
TIF	BDC	10
TIF	City	1 (EBDI)
PILOT	BDC	12
PILOT	Housing	70
PILOT	MPA or MIDFA	8

Specifics on each TIF project can be found in Appendix E. Not all TIF projects have debt associated with them. Westport is in development (no bonds issued yet) and Harbor Point has been designated as a development district per City Council ordinance in December 2010. As of October 2010, total TIF debt issued by the city is $135 million.[1] The Westport and Harbor Point Projects will require the issuance of another $315 million in bonds.[2]

For all TIF projects, any real property taxes collected over and above the necessary amount to pay the TIF debt service goes to the City General Fund. All TIF projects pay full taxes on other city taxes including parking, energy, personal income, telephone, hotel, and property.

The current PILOT projects pay some real estate taxes and generate new taxes such as parking, energy, personal income, and telephone. The 11 completed downtown PILOTs exempt real property tax in excess of $12.8 million[3]. The new taxes (parking, energy, telephone, etc.) generated are approximately $15.4 million[4].

All BDC PILOTs have a termination or expiration date (i.e., at some future date, all of these projects will go to pay full real property taxes). Eight of 12 BDC PILOTs pay an ever increasing stepped up percentage of the property under their PILOT agreement.

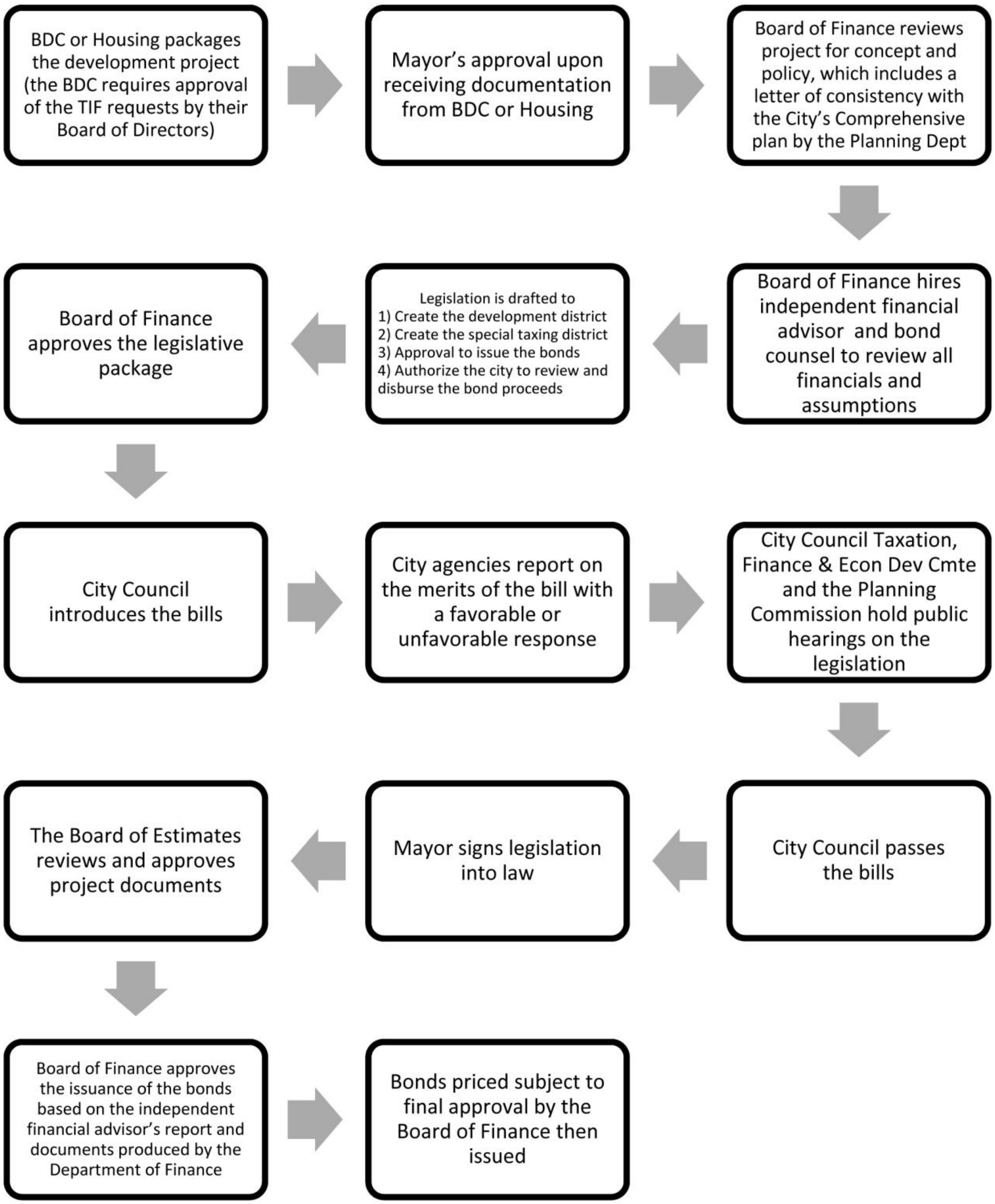
CURRENT CITY PROCEDURES

All TIFs and PILOTs with the exception of the Class B Conversion PILOTs must be approved by the City Council, Board of Estimates and signed into law by the Mayor of Baltimore. Under state law, the Class B Conversion PILOTs only require Board of Estimates approval.

TIF proposals are presented by the Baltimore Development Corporation or Baltimore Housing, and reviewed by the Board of Finance and a third party consulting firm retained by the City. During the Board of Finance review, a letter of consistency with the Comprehensive Plan is provided by the Planning Department, PILOT proposals are also presented by the BDC or Baltimore Housing as appropriate before legislation is introduced to the City Council. The following charts illustrate the process for BDC TIF and PILOT projects.

[1] Appendix E, "TIF Policy and Implementation White Paper," p. 5, Baltimore Development Corp, 10/27/2010
[2] Appendix E, "TIF Policy and Implementation White Paper," p. 5, Baltimore Development Corp, 10/27/2010
[3] Appendix B
[4] Appendix B (NOTE: These taxes may not necessarily be new taxes if the economic development activity was a relocation within Baltimore City and the old location was not backfilled with a new business or new residents. Or they could be saved taxes in the case of a business that would have relocated out of town but for the new development. All of these considerations add to the complexity of analyzing the true benefits of PILOTs and TIFs.)

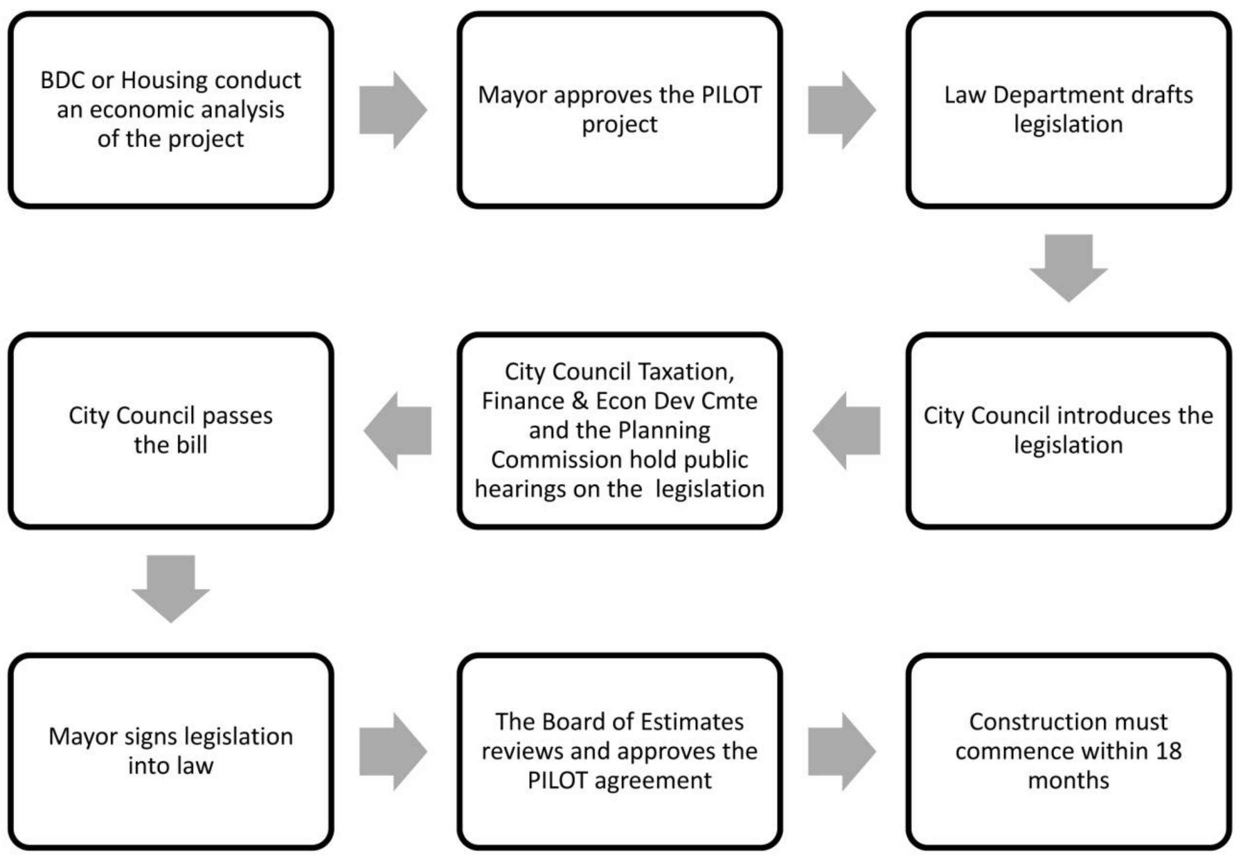
Tax Increment Financing (TIF)



Because most TIFs require the issuance of bonds it is important to understand the policy limits and bond rating considerations. The rating agencies view TIF bonds as taxpayer supported debt similar to general obligation bonds. The following information was provided by the City's Bureau of Treasury Management:

1. Because TIF debt is considered by the rating agencies as tax supported debt, it is included in the calculation of the City's general credit debt profile.
2. Moody's Investor Service has established rating guidelines measuring a city's debt burden. One important ratio compares total tax supported debt to the estimated actual value of taxable property.
3. In general, Moody's states that a city's total tax supported debt burden (general obligation bonds), including outstanding TIF debt, should remain below 4 percent of the assessed value of taxable property.
4. Accordingly, the Policy states the City's total tax supported debt, including outstanding TIF debt, should remain below 4 percent of the City's estimated actual value of property.

<u>Payment In Lieu of Taxes (PILOT)</u>



CURRENT CITY LAWS, POLICY & ELIGIBILITY CRITERIA

The City of Baltimore has many economic development goals. The absence of any stated prioritization of these goals gives the appearance that the process is developer driven and thus reactionary. Additionally, a negative bias regarding the marketability of Baltimore exists, which seems to perpetuate the status quo. For example, comments like "no one is banging down the door to develop in Baltimore" or "you take what you can get" promote a sense of passivity. Current City policy is missing any plan or process for the prioritization of the award of City resources to developments other than review by the Planning Commission for consistency with the City's Master Plan. This was recognized by all as an insufficient review. Public funding should seek to achieve the best outcomes for the City's scarce resources.

The eligibility criteria for TIFs are outlined in the City Charter and PILOTs are specified in the Annotated Code of Maryland.

Tax Increment Financing Eligibility Criteria

Article II, Section 62 of the Baltimore City Charter gives the City the authority to establish TIF and issue TIF bonds and lists what is required in order to issue and sell the bonds and includes:

1. the cost of purchasing, leasing, condemning, or otherwise acquiring land or other property, or an interest in them, in the designated development district area or as necessary for a right-of-way or other easement to or from the development district area;
2. site removal;
3. surveys and studies;
4. relocation of businesses or residents;
5. installation of utilities, construction of parks and playgrounds, and other necessary improvements including streets and roads to, from, or within the development district, parking, lighting, and other facilities;
6. construction or rehabilitation of buildings provided that such buildings are:
    a. devoted to a governmental use or purpose;
    b. abandoned property;
    c. distressed property; or
    d. will provide units of affordable housing.
7. reserves and capitalized interest on the bonds;
8. necessary costs of issuing bonds; and
9. payment of the principal and interest on loans, money advanced, or indebtedness incurred by the Mayor and City Council of Baltimore for any of the purposes set out in this section.

Payment in Lieu of Taxes Eligibility Criteria

There are three PILOT laws in Baltimore City.

Section 7-501 PILOT Law
Under Section 7.501(b) of the Maryland Annotated Code, the City may negotiate a PILOT of any amount for land owned by the City (or State) and leased to an entity in connection with a for-profit business.

There are no geographic or project requirements under the Section 7-501 statue. A PILOT requires approval by a City Council Ordinance; the Board of Estimates must also approve the PILOT agreement.

Section 7-504.3 Economic Development Projects in Baltimore City (1999 PILOT Law)
The 1999 PILOT law permits the City to provide exemption from City real property taxes for economic development projects located in Downtown urban renewal areas for a PILOT term not to exceed 25 years if the property owner pays, at a minimum, "the sum of the taxes on the property before the construction or rehabilitation of the project and 5% of the Baltimore City real property taxes …that would have otherwise been due absent the agreement". Amount rebated cannot exceed 95% of the incremental real property taxes. City real property taxes prior to development cannot be rebated.

Eligibility Criteria

1. Projects must be newly constructed or rehabilitated commercial office, hotel, retail, parking facilities, or multi-family residential projects that receive a Certificate of Occupancy after January 1, 1999.
2. The projects must be located in one of the following Downtown Urban Renewal Areas:: Camden Station Area; Central Business District; Inner Harbor East; Inner Harbor Project 1; Inner Harbor West; Market Center; Market Center West; or Key Highway
3. The project must satisfy the specific use criteria as shown in the table below.

	Commercial Office	**Hotel**	**Retail Facilities**	**Parking Facilities**	**Multi-family Housing**
Minimum Job Opportunities (FTE)	150 Jobs	100 Jobs	100 Jobs	No minimum job requirement; must contain minimum 250 parking spaces	No minimum job requirement
Minimum Private Capital Investment (Equity and Debt) Required	$20 Million	$20 Million	$10 Million	$2.5 Million	$5 Million
Minimum Developer Equity Required	10% of the total Development Cost	10% of the total Development Cost	10% of the total Development Cost	$250,000	$250,000

A PILOT requires approval by a City Council Resolution. The Board of Estimates must also approve the PILOT agreement. Construction must commence within eighteen (18) months of the PILOT agreement under the Law.

Section 7-505.2 Vacant and Under-utilized commercial buildings in Baltimore City
In 1989, the Baltimore City Department of Housing and Community Development and Downtown Partnership of Baltimore proposed a PILOT law that would permit the City to provide exemption from City real property taxes to vacant and under-utilized buildings that are converted to rental residential housing.

Eligibility Criteria

1. Project must be located in the Downtown Management District and meet two of the following criteria:
    a. Improvements on the property must be older than 25 years;
    b. The property was last used as commercial space;
    c. The property has been 75% vacant for more than three years.
2. 75% of the total leasable square footage must be used for rental residential housing.
3. Developer must contribute $500,000 in private capital.

A PILOT under Section 7-505.2 requires approval by the Board of Estimates only. All PILOTs under this enabling legislation were booked by the Downtown Housing Council under the Department of Housing and Community Development.

<u>Public Policy</u>

Some members expressed concern that the City only uses TIFs and PILOTs reactively, meaning that developers who control property initiate the request for a subsidy. Examples include Mondawmin Mall, Frankford Estates, Belvedere Square, Harbor Point, Harbor East, and Clipper Mill. The alternative to a developer requesting a TIF from the City is the City creating a TIF district to attract private sector development. Some members noted that the EBDI and West Baltimore TIF districts were created prior to identifying a developer. In these cases, the City used TIF proceeds to acquire and assemble parcels for redevelopment.

Until the city approaches the 4 percent cap, the proactive and reactive use of TIF bonds are not mutually exclusive. However, this may not be far off if a pending project, State Center, is funded.

The Board of Finance, which reviews the financial analysis on each proposed project, has a published policy booklet on Tax Increment Financing dated 2008. This document identifies what the Board of Finance must consider in order to approve a TIF application:

1. includes a significant developer/private sector contribution to the project;
2. advances the City's strategic land use, economic development and public improvement goals;
3. is not feasible and would not be completed (within a reasonable time frame) without the proposed TIF assistance ("but for" test) and assistance is limited to the amount required to make the project feasible; and
4. will create positive tax revenues to the City, taking into consideration the costs of public services to be provided to the new development and the tax increment revenues that will be required to repay the bonds.

BEST PRACTICES

The following best practices from other cities were discussed.

Transparency

The **City of Chicago** has an extensive TIF website offering documents, explanations, reports, and application packets for their TIF programs. The site even includes a form for city residents and organizations to sign up for the Interested Parties Registry for one or more TIF redevelopment project areas. Of note is that the city requires that you are either 1) a city resident or 2) an organization actively engaged in work in the city. The City of Baltimore should consider a residency requirement as well.

The site includes the following documents for all current TIF projects plus an application and FAQ[5]:

1. TIF Projection Report - a three-year planning document used to evaluate resources and project balances to determine how much funding has been committed and how much funding is available for potential projects in each of the City's TIF districts. This report is routinely updated with the latest available information and does not represent a final accounting of funds in any TIF district.[6]
2. TIF District Annual Reports - Annual reports are issued on June 30th every year for the previous fiscal year.
3. Combined statement of revenues, expenditures and changes in fund balance – posted at the end of each fiscal year.
4. Maps of each TIF district including the designated year, end year, and explanation
5. Redevelopment Plan submitted as part of the TIF application
6. Recently proposed and approved TIF redevelopment projects

According to the ***Tax Increment Finance Best Practices Reference Guide*** published in 2007 by the Council of Development Finance Agencies (CDFA) and the International Council of Shopping Centers (ICSC), transparency is essential to address community buy-in. "Operational transparency" addresses the need to have an open and proactive communication plan including regular reports, communications, use of a website for posting, etc. "Financial transparency" encourages credible reporting mechanisms for cash management, project-related disbursements, and the performance of the underlying bond issues. "Thorough accounting, routine reporting, and annual audits are hallmarks of the financial integrity that can help provide comfort to the participating jurisdictions with the additional benefit of ready access to information."[7]

Policy

In October 2010, the **Prince George's County Council** adopted a resolution to revise the 2006 resolution that established a policy for the County to use specific criteria in determining the appropriateness and necessity of applying TIF and other financial incentives. The revisions include stronger minority and local business participation, setting goals for local job creation, and encouraging public-private partnerships.

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[5] www.cityofchicago.org/city/en/depts/dcd/provdrs/tif.html
[6] www.cityofchicago.org/city/en/depts/dcd/supp_info/tif_projection_reports.html
[7] *Tax Increment Finance Best Practices Reference Guide*, 2007, Council of Development Finance Agencies and International Council of Shopping Centers, p. 23

This resolution provides policy which the county economic development entity must use in order to introduce a TIF development project to County Council by way of an ordinance.

The **ICSC/CDFA best practices report** states that TIF should be used to promote public policy goals and to encourage development where it might not otherwise occur. It goes on to state that successful communities use TIF as "a public policy tool rather than a financing resource."[8] This means that TIF serves as a leveraging opportunity to encourage the direction of development rather than as a source for private sector financing.

The **City of Madison, WI**, adopted TIF policies and objectives in 2009 that state that projects with a job creation guaranty receive priority and the details of the guaranty are listed; blight is defined as a combination of several factors; and requires an annual TIF strategy review among several other things.[9]

<u>Evaluation and Monitoring</u>

The **Government Finance Officers Association** outlines how to develop an economic development incentive policy.[10] Specifically, the evaluation and monitoring section provides excellent recommendations in this area.

A clearly defined evaluation process should be outlined in an economic development policy for the purposes of consistency and transparency. Evaluation activities and factors typically include:

1. How a proposal measures up to established economic development criteria
2. A cost/benefit analysis
3. An evaluation of tax base impact, both in terms of increases in taxable value and, where a TIF is proposed, the impact on all overlapping taxing jurisdictions.
4. Analysis of the impact of a project on existing businesses
5. A determination of whether the project would have proceeded if the incentive is not provided

A process should be established for regular independent monitoring and auditing of the economic development incentives granted and the performance of each project receiving incentives. Monitoring will enable Baltimore City to evaluate results. The policy should also provide for organizational placement and staffing of this activity. The monitoring process should examine performance standards relative to each economic development agreement and determine whether the goals for each project are achieved within the defined timeframe. Ongoing monitoring of these projects should become part of an overall economic development program.

[8] *Tax Increment Finance Best Practices Reference Guide*, 2007, Council of Development Finance Agencies and International Council of Shopping Centers, p. 4
[9] www.cityofmadison.com/planning/tidmaps/tifpolicy.pdf
[10] www.gfoa.org/index.php?option=com_content&task=view&id=1596

RECOMMENDATIONS

The Task Force on Baltimore City Public/Private Development Financing Efforts offers the following ten recommendations for consideration.

1. Establish policies and procedures that foster greater transparency such as consistency in the "but for" argument.
2. Establish standard criteria for profit sharing on all projects.
3. Establish independent systems to evaluate and monitor proposed and active TIFs and PILOTs, including an independent advisory body with staff support independent of the development agencies. TIF and PILOT commitments should expire after a reasonable amount of time if the developer has failed to move ahead on the project; transfers should be subject to City approval.
4. Prioritize the Economic Development Goals of the City and examine the use of TIF and PILOTS for "Public Goods" projects as well as building a larger middle class.
5. Develop an Economic Development Incentive Program to advance area specific goals. And to foster better integration of the City's development and financing tools.
6. Foster better coordination between the City Economic Development Agencies (HCD and BDC) and the Department of Planning.
7. Clearly articulate the various PILOT programs and evaluate their successes.
8. Give thought to the mix of TIFs and GO bonds/ and Pay-Go TIFs as well as shifting more TIF's to MEDCO.
9. Establish better tracking of outside sources of fund (federal, state, private, philanthropic) as well as innovations in economic development financing tool.
10. Address the need to adjust the formula used by the state to calculate Aid to Local Governments.

RECOMMENDATION #1

Establish policies and procedures that foster greater transparency and most importantly clear criteria and consistency in the "but for" argument.

The committee supports the use of economic incentives to support development including TIF, PILOT, and general obligation bonds when, without such support, a project that has a significant public purpose cannot gain the remainder of financing necessary to proceed. The City's current stated TIF and PILOT policies clearly detail the "but for" test as one of the requirements of approval[11]. However, some in the public perceive that support is not equally available to all projects and developers, and that the financial analysis used to establish the "but-for" is not applied uniformly.

The Government Finance Officers Association (GFOA) lists as a Best Practice for TIF, "Feasibility studies, which include an evaluation and review to determine whether redevelopment could take place within an acceptable timeframe, without economic assistance from the local government (e.g. "but for" TIF assistance, the development would not be possible)"[12].

[11] The Board of Finance of Baltimore City Department of Finance Bureau of Treasury Management, "Tax Increment Financing Policy and Project Submission Requirements August 1, 2008", states: "The Board of Finance shall consider a TIF for projects with a significant public purpose and benefit, i.e., City-sponsored projects, or, otherwise, for developer-sponsored projects when the project:…(5) Is not feasible and would not be completed (within a reasonable time frame) without the proposed TIF assistance ("but for" test) and assistance is limited to the amount required to make the project feasible;

[12] "Tax Increment Financing as a Fiscal Tool (2006) (DEBT and CEDCP), Government Finance Officers Association (GFOA)

City agencies should err on the side of maximum transparency when evaluating competing projects (e.g. there should never be any instances of one project passing the “but-for” test and receiving public funds but six months later another competing project is rejected).

Additionally, the City of Baltimore should establish a publicly accessible information database for commercial TIFs and PILOTs.

RECOMMENDATION #2

Establish standard criteria and percentage requirement for profit sharing and/or joint City ownership on all projects.

Profit sharing is an effective means of capturing revenue if a project performs better than the projections on which the original subsidy was based.

The Task Force found that although City development agencies appear to be moving towards a more standard policy on profit sharing, no standard currently exists. Profit sharing above a specified developer return on investment that is commensurate with the risk should be established for the sharing of cash flow as well as the benefits of sale or refinancing. Once a project has achieved an internal rate of return of any amount, the city should receive a percentage of the profit amount that is relative to the city’s total investment, e.g. if the project is estimated at $1 million and the city is providing a tax incentive of $200,000 over the life of the project, than the city’s profit share is 20%. The city automatically becomes an investor at that amount. Once established, the profit sharing policy should be applied uniformly.

The City should also look at potential joint City ownership as was done on the Hyatt project.

RECOMMENDATION #3

Establish independent systems to evaluate and monitor proposed and active TIFs and PILOTs, including an independent advisory body (appointed jointly by the City Council and the Mayor) with staff support independent of the development agencies.

The advisory body would generate a report on each proposed TIF or PILOT and annual reporting on all active TIFs and PILOTs. The report on proposals should be submitted before City Council or Board of Estimates hearings for action, and it should include a review of the developer’s financial statement, an evaluation of risk, and estimates of costs and benefits including reduced State financial aid for Baltimore, jobs, profits, and surrounding economic activity. The annual report should provide a project-by-project review of actual costs and benefits, including a review of project tax returns/audits, assessment records, and an analysis of total TIF obligations relative to the City’s debt capacity.

A monitoring mechanism should be established that tracks subsidized projects the same way a lender monitors its loans or a landlord monitors its gross receipts leases. This compliance unit should be separate from the City’s “development agency” or Baltimore Housing due to the ongoing relationship with the development community and should report to an independent body appointed by the Mayor and City Council of respected business people. This is consistent with how lenders typically separate the loan origination with the loan servicing. Project financials including profit to the developer should be included. This information would allow the City to track the profit sharing arrangements as well as project performance against projections.

The application of PILOTs and TIFs covers the majority of the growth in the City's commercial tax base, effectively diverting new revenue from the City's general fund. If other currently proposed TIFs are implemented close to 50 percent of the City's commercial property will no longer generate property tax to support general City operations.

There is no independent monitoring or auditing of TIFs and PILOTs. Projections are done for the Board of Finance when a TIF is prepared; however, there is no independent follow up to determine actual public revenue and benefit. The assumptions regarding additional public revenue and public costs are not monitored or verified. For instance if a mixed-use project assumes that a business or resident is new to the City, but the project involves relocation of existing businesses or residents within the City then the assumptions regarding additional revenues from phone taxes, income taxes, etc. may be incorrect. The City Council should restore the position of financial advisor independent of the Department of Finance to provide counsel directly to the Council.

Furthermore, the current analysis for TIF and PILOT projections does not recognize that 70 percent of state aid is tied to wealth-based formulas. All commercial TIFs and PILOTs are counted as though they paid full taxes to the City's general fund. For instance the initial TIFs approved by the City have already led to a reduction of $1.7 million in aid for education. PILOTs account for an even larger reduction in state aid and the additional planned or proposed TIFs are more than double those already developed. This requires further study but the reduction in state aid should clearly be a factor in considering TIFs and PILOTs.

RECOMMENDATION #4

TIF and PILOT commitments should expire after a reasonable amount of time if the developer has failed to move ahead on the project; transfers should be subject to City approval.

TIF and PILOT commitments should expire after a reasonable amount of time, such as 12 – 18 months, if the developer has failed to move ahead on the project. If the developer is making progress, he or she can seek an extension, the approval of which would involve a review of the progress being made and the likelihood of the project moving forward. Transfers should be subject to City approval. This language can be included in the City Council ordinance.

RECOMMENDATION #5

Examine the use of TIF and PILOT for "public goods" projects as well as building a larger middle class.

The Task Force identified "public goods" projects as those that are not strictly real estate related such as public schools, public parks, and public transportation. TIF financing of public goods projects may require the public use being tied to a very specific private project that generates enough increment to support the project and the public use.

The counter argument is that better schools improve real estate values and increase real estate taxes; however, creating a TIF district around a new school and banking on the surrounding houses to increase in value because of the school is virtually impossible. Unless the bonds are guaranteed, bond buyers would have very little evidence that the property values will increase at amount and pace needed to pay the debt. TIFs, except for "Pay Go", may not be the correct financing tool for public initiatives except when integrated within a larger private initiative which generates the direct tax increment. However, "Pay-Go" TIFs for public goods projects such as improving schools should be considered especially when the City is able to provide an initial seed investment that sparks tax increments.

RECOMMENDATION #6

Prioritize the economic development goals of the City and develop Economic Development Incentive Programs to advance area specific goals and to foster better integration of the City's development and financing tools.

TIFs and PILOTs should complement the City's development and economic goals. The Administration must prioritize the City's community and economic development goals and seek creative and cost effective ways of financing the most critical goals. The Incentive must be targeted specifically to the types of projects that the City desires (i.e. housing, commercial, retail).

The City should consider priming the demand for neighborhood development by defining a district and offering tax incentives. If the measure of the value of a TIF is the amount of incremental tax revenue returned to the City then the City ought to explore TIF financing for other community projects that will increase values and tax revenue, e.g. schools. A City commission of community and economic development and finance experts ought to be empowered to thoroughly explore opportunities in addition to real estate development.

This is not to say that the City should not continue to consider "opportunistic development" projects but should explore the use of TIF to revitalize communities targeting those areas most in need of development. In the majority of TIFs, the City is responding to developers who already own the land on which development will occur. In addition, while these projects are characterized as "economic development driven," they are more real estate development driven.

Chicago offers two alternatives to the standard TIF that could prove helpful in Baltimore -- Streamlined Tax Increment Financing and Small Business Improvement Fund.[13] According to the City of Chicago website, "The Streamlined-TIF program provides expedited access to valuable grants for the improvement of industrial, commercial, retail or residential mixed-use properties in Tax Increment Financing (TIF) districts citywide. The program incorporates an easy-to-use application form and efficient approval process to pay up to 25 percent of renovation, expansion, or redevelopment costs. Assistance ranges from $25,000 to $1,000,000."

According to the same website, the Small Business Improvement Fund uses tax increment financing (TIF) revenues to help owners of commercial and industrial properties within specific TIF district to repair or remodel their facilities for their own business or on behalf of tenants. Program participants can receive matching grants to cover up to half the cost of remodeling work, with a maximum grant amount of $150,000. The grant does not have to be repaid.

Underwriting any major public private partnership should include an analysis of the project's indirect positive and negative impacts. Project based incentives can raise policy issues that should be carefully considered. For example, does the public investment stimulate new economic activity or shift it around.

[13] www.cityofchicago.org/city/en/depts/dcd/provdrs/tif.html

RECOMMENDATION #7

Foster better coordination between the City Economic Development Agencies (HCD and BDC) and the Department of Planning.

The Task Force recommends that the Planning Department participate in the review earlier, prior to the Mayor's review, on all projects for which public incentives are requested. The Planning Department should determine whether the project is consistent with the city's comprehensive plan and/or small area neighborhood plans.

BDC, Baltimore Housing, and the Mayor's Office of Economic Development should coordinate regularly with the Planning Department to determine action plans for realizing the Comprehensive Plan. The current system creates too many different constituencies each with a separate point of view and role with no effective administration.

RECOMMENDATION #8

Clearly articulate the various PILOT programs and tax relief (credit) programs and evaluate their successes, costs, and benefits.

Many critics of TIFs and PILOTs ask why these benefits are given to the wealthy and denied to the rest of our citizens in the "neighborhoods." What is not mentioned by the critics are the millions of dollars similarly awarded to homeowners and low income renters in tax reduction that are, in effect PILOTs , and are not referred to as PILOTS. To address the perception that TIFs and PILOTs are available to developers, but that there are no tax incentive programs available to the average citizen, the City should highlight the many incentive programs available to homeowners.

Some examples are:

1. Home Improvement Property Tax Credit
2. Arts & Entertainment District Property Tax Credit
3. Homeowner Tax Credit
4. Homestead Property Tax Credit
5. Homeowner Energy Efficiency Improvement Tax Credit
6. Newly Constructed Dwelling Tax Credit
7. Payment in lieu of taxes paid by public housing (this is called a PILOT).
8. Enterprise Zone Credits

When asked for the policy on PILOTs, the Task Force was provided with a synopsis of Section 7-501(b) of the Maryland Annotated Code, Section 7-504.3, and Section 7-505.2.[14] Upon further discussion it was evident that many more types of PILOTs exist including affordable housing PILOTs and CHAP PILOTs. According to the Commissioner of Housing, PILOTs have been utilized in very creative ways to capitalize renovations at affordable housing developments. The monitoring recommended above would address this issue of not having a comprehensive database that is continuously updated.

[14] Section 7.501(b) allows the City to negotiate a PILOT of any amount for land owned by the City (or State) and leased to an entity in connection with a for-profit business. There are not geographic or project requirements under this section. Both a City Council Ordinance and Board of Estimates approval is necessary. Section 7-504.3 called the 1999 PILOT Law allows the City to provide exemption from City real property taxes for economic development projects located in Downtown urban renewal areas. Section-505.2 permits the City to provide exemption from City real property taxes to vacant and under-utilized buildings that are converted to rental residential housing.

RECOMMENDATION #9

Decrease the cost of providing TIF through a mix of TIF and GO bonds, and Pay-Go TIF. Also, evaluate shifting more TIFs to MEDCO.

According to the Department of Finance, the rating agencies do not want the City's total taxpayer supported debt, which includes TIF debt, to exceed 4 percent of the City's taxable base. In 2011, the taxable base was approximately $33.8 billion. Therefore, the City's total taxpayer supported debt should not exceed $1.35 billion. Current taxpayer supported debt equals 2.66 percent so there is capacity in the 4 percent ceiling. Careful monitoring and reporting of the City's debt loan is advised.
The Task Force was told that TIF's issued by MEDCO are not counted as part of the 4 percent cap. If this is in fact true, consideration should be given to more MEDCO issuances. Both Westport and Harbor Point TIF's were to be issued through MEDCO, presumably outside the 4 percent cap.

City officials stressed that the City has no financial exposure in the event of a TIF default, which is extremely rare. Some member expressed concerns that failed TIF borrowings will ultimately impact the rate at which the City can borrow. Recently, Clipper Mill, a TIF development, did not generate enough money to cover a bond repayment. The shortfall will be addressed with a special additional tax to the current property owners which include BB&T, the bank that financed the project and foreclosed on unfinished portions of the development in 2009. In the event the special tax is not paid, the property would go to tax sale.

The City should give thought to the mix of TIFs and general obligation bonds issued given the rating agencies view that the sum of lending under both program's will affect the City's bond rating. TIF borrowing is 50 percent more expensive than general obligation borrowing.[15] The Task Force recognizes, however, that general obligation bonds carry the city's full faith and credit which is why the borrowing costs are lower.

In addition, the City should give thought on how to coordinate or leverage its public financial assets including the creative use of Block Grant or other available resources.

RECOMMENDATION #10

Establish better tracking of outside sources of fund (federal, state, private, philanthropic) as well as innovations in economic development financing tools.

The City should continuously improve its leadership in public finance. Most recently, financing for the East Baltimore Biotech was heralded as being very creative[16] with its "complex mix of short-term and long-term sources, including a $45-million TIF, HUD 108 loan guarantees (which monetize CDBG funds)[17], private foundation and business contributions, a shared equity mortgage investment pool, and federal low income housing tax credits, historic tax credits and new markets tax credits."

[15] An alternative approach to the city's general obligation bond financing might have been to issue TIF bonds with a general obligation-backing that fades away when certain credit milestones are met; for example, when annual tax increment revenue is equal to some predetermined coverage requirement above debt service. In this regard, the city would have enjoyed the benefits of the improved interest rate on the bonds with the possibility of eliminating the general obligation backing in the future. – Tax Increment Finance Best Practices Reference Guide, Council of Development Finance Agencies and International Council of Shopping Centers

[16] "Increments of Renewal," by Adam Burns. *Site Selection* magazine March 2007.

[17] The City was able to borrow against future CDBG allocations.

The City should seek to better track and integrate all of the available sources of funds in the City as well as new potential sources of funds for economic development and innovations in financing tools.

RECOMMENDATION #11
Address the losses of state aid due to the large percentage of properties in the city included in the total assessment of properties that do not pay property tax including those owned by nonprofits that receive a PILOT and for-profit developments receiving PILOTs or TIFs.

State aid is based on the total assessed value of all real property; therefore, Baltimore "looks" like a very wealthy jurisdiction. Unfortunately, 27 percent of the full cash value of properties is tax exempt in Baltimore, a loss of $332.6 million in additional tax revenue. So, the state's formula for Aid to Local Governments is based on an inflated number because our wealth is only based on 73 percent of the city's assessed value.

In order to address how local aid is calculated, the Mayor, City Council and State Delegation should work together to introduce statewide legislation to have the formula changed. Until this formula changes, the lost taxes should be incorporated into the analysis of the fiscal impact of any financial incentive offered by the city.

CONCLUSION

Cities around the country have experienced diminished federal and state aid as well as bank (private) financing. The use of TIF's and PILOTs has grown as a result. In order to evaluate the appropriateness and success of the City of Baltimore's response to diminished resources with the use of TIF's and PILOT's, a better framework for analysis needs to be implemented.

The City should continue to financially support private development based on the recommended and currently established policies and criteria. The City's stated policies are consistent with best practices around the country, however, stricter adherence to the policies, more transparency, better monitoring, and a defined strategic economic development plan is strongly recommended.