

## Transformational Mixed-Use Development Program Program Guidelines September 2021

1. **Definitions.** Except as otherwise provided, terms used in this document have the same meaning as Section 122.09 of the Ohio Revised Code (ORC) and Section 122:29 of the Ohio Administrative Code (OAC).
  - a. “Development” will refer to the entire transformational mixed-use development as conceptualized, including all phases both completed and planned.
  - b. “Development Costs” means costs for land acquisition, building acquisition, demolition, site improvement, new construction – building, new construction – open space, renovation of existing buildings, leasehold (tenant) improvements, private infrastructure, architect and engineering fees, and other costs acceptable to the Director of the Ohio Department of Development.
  - c. “Fifteen or more stories” shall include any above-ground parking structure levels that are part of the building.
  - d. “Increase in tax collection” means, for purposes of determining the tax credit using the standard method, the following taxes: real property tax (including any service payments associated with programs such as Tax Increment Financing), lodging tax, sales tax, income tax (both state, local and school district, if applicable). Any taxes that have been abated by action of the local or county elected officials will not be considered in this calculation during the abatement period.
  - e. “Major City” for purposes of the Transformational Mixed-Use Development Program include, as defined: Columbus, Cleveland, Cincinnati, Toledo, Akron, and Dayton.
  - f. “Major City Project” is a project that is located either within the corporation limits of a major city (as defined) or within 10 miles of the corporation limits of a major city.
  - g. “General Project” is a project that is not located inside or within 10 miles of the corporation limits of a major city (as defined).
  - h. “Open Space” includes, but is not limited to, parks, common outdoor areas and event or entertainment space. “Open space” does not include any entry feature or retention pond space that may be required by local zoning codes.
  - i. “Structured Parking” does not include a surface parking lot. Structured parking must be multiple levels, above ground or underground, that is an independent structure or a portion of a building.
  - j. “Surrounding Area” shall include any zip code covered in whole or in part by the definition of Surrounding Area provided in the Ohio Administrative Code.

## **2. Eligible Applicants.**

- a. Eligible applicants can include one or multiple of the following, all referred to as Property Owner:
  - i. Owner, meaning an applicant with a fee simple interest in the property, as evidenced by either a:
    1. Deed for the property or county auditor's card for parcel, or
    2. Executed sale and purchase agreement for all parcels if the property was sold recently and the deed is not yet available.
  - ii. Holder of leasehold interest, meaning an applicant holds a lease of the property from the owner of the land, as evidenced by an executed lease.
  - iii. Capital lessee, meaning lessor only finances the leased asset, and all other rights of ownership transfer to the lease (capital lessee must gain ownership at the end of the lease period).
  - iv. Insurance company, meaning an Active Authorized Insurance Company with a NAIC ID#.
- b. If a project includes multiple property owners, each must be included in the application, with a lead applicant as the project representative, responsible for the submission of the application and administration of the award, if approved.

## **3. Development/Project Eligibility**

- a. To be considered, the Development must have a transformational impact on the site and surrounding area. This must include an influence on both economic and social well-being that will produce long-term change for the use of the site and as well as instigate an increase in economic activity in the surrounding area.
- b. The project must include a combination of uses, as set forth in OAC 122:29-1-02(D). A use can only be considered for purposes of mixed use if it is open to the public, otherwise it is considered a single use (i.e. gym for residents inside a residential building is part of the residential use).
- c. Based on location of the Development, it must satisfy the following:
  - i. For Major City Projects, the project must include these minimum criteria to be eligible to submit an application:
    1. At least one new or vacant building (vacant meaning at least 51% vacant for the last 12 months prior to the application) that is either:
      - a. 15 or more stories in height, which may include above ground parking levels; or
      - b. At least 350,000 sq.ft. of floor area (floor area: sum of the area of each floor of the building, measuring to the outer surface of the outer walls including lobbies, cellars, elevator shafts and common spaces. Balconies and rooftops are excluded from this sq.ft. calculation but can be included as part of the project.); OR
    2. Employment accounting for at least \$4 million in annual payroll after completion of the Development; OR
    3. Two or more connected buildings, located on the same or contiguous parcels, and collectively have a floor area of at least 350,000 sq. ft.

- ii. For General Projects, the project must include these minimum criteria to be eligible to submit an application:
  - 1. At least one new or vacant building (vacant meaning at least 51% vacant for the last 12 months prior to the application) that is either:
    - a. Two or more stories in height; or
    - b. Contains a floor area of at least 75,000 sq.ft. OR
  - 2. Two or more connected buildings, located on the same or contiguous parcels, and collectively have a floor area of at least 75,000 sq.ft.
- d. The estimated increase in tax collections when considering the tax types identified in the definitions for both the project site and surrounding area exceed 10% of the Development Costs (defined in Section 5) of the project as identified in the application.
- e. The project must evidence that the tax credit is a major factor in the ability to start or complete the project. This evidence must include:
  - i. A narrative describing the financing circumstances of the project and the deficiencies in the capital stack that that make the tax credit necessary for the project;
  - ii. A sources and uses document that illustrates the financing gap; and
  - iii. A description as to how the tax credit will be used in the financing. Any plans to transfer the tax credit to increase the capital stack must be included in this description.
- f. If an application contains multiple phases, the submitted phases must be contiguous in time, either overlapping or incurring directly after one another.
- g. For a project to be eligible for review, at least 51% of funding sources for the project must be committed, evidenced by a commitment letter, term sheet, third-party equity verification or closing document.

#### **4. Economic Impact of Project**

- a. An economic impact statement shall be provided as part of the application. This statement must be completed using an input/output model identifying the economic impacts of the Development on the Surrounding Area.
- b. The increase in tax collections, outlined in OAC 122:29-1-05, includes those derived from the economic activity occurring within the Development site and the Surrounding Area during the completion period of the project.
  - i. This can include the increase in tax collections due to increases in property values of other properties in the Surrounding Area, as well as tax collections due to increases in employment and sales in the Surrounding Area.
- c. The increase in tax collections can include those taxes collected under chapters 718, 5705, 5739, 5741, and 5747 of the Ohio Revised Code. Additionally, the increase in tax collections calculation may include any amounts collected by an alternative method, such as through tax increment financing agreements, payments in lieu of taxes, and new community authority development charges.
- d. The Authority will also consider the potential impact of the Development on the project site and Surrounding Area in terms of:

- i. Architecture - meeting zoning requirements, architecture overlay or historic district requirements
- ii. Accessibility to pedestrians - looking at the EPA National Walkability Index
- iii. Job creation - quantity and quality of new jobs resulting from the Development
- iv. Connectivity - how to get from one place to another, i.e. public transport and other available modes of transportation.

## **5. Eligible Development Costs**

- a. To be an eligible cost under the program, a cost must meet the definition of a Development Cost identified in ORC 122.09(A).
  - i. It must be an expenditure paid or incurred by the property owner after the project is certified by the Authority.
    - 1. Except for architectural or engineering fees associated with the project, which can be incurred prior to the project being certified by the Authority.
  - ii. This only includes expenditures associated with the project and not expenditures incurred for other phases of the Development.

## **6. Application and Certification Process**

- a. Up to \$100 million in tax credits will be awarded each fiscal year.
  - i. Not more than \$80 million may be approved for Major City Projects.
  - ii. Not more than \$40 million can be approved to a single Development under the Transformational Mixed Use Development Program.
- b. Applications periods will be held in annual rounds for consideration of the fiscal year's \$100 million allocation.
- c. An application fee of \$2,500 shall be submitted with the application.
- d. Applications and application fees must be received by close of business (5:00 p.m. EST) on the final day of the application submission period. Any application and/or application fee received after the 5:00 p.m. EST will not be considered for the application round.
- e. Applicants may revise online applications until 5:00 p.m. EST on the final day of the application submission period. After such time, all submitted applications will be considered final, and no additional information may be provided by the applicant unless requested by the Ohio Department of Development.
- f. During the application review period, applications will be reviewed for eligibility and completeness.
- g. Applicants that are not approved during an application period are eligible to re-apply in any subsequent application period, provided the project can still meet the major factor requirement for submittal.
- h. If a project includes multiple Property Owners, each must be included in the application, with a lead applicant responsible for the submission of the application and administration of the award, if approved. If a property owner or owners are not party to the application, their land and/or building will not be considered part of the project for purposes of the tax credit calculation.

- i. Property Owners must identify in the application the allocation of tax credit percentages among themselves (totaling 100%).
  - ii. Property Owners not party to the agreement can still have the property considered as part of the more global development for economic impact purposes.
- i. Applications will be reviewed and scored by the Ohio Department of Development based on scoring criteria approved by the Authority.
  - i. A potential interview may occur at the request of the Authority as part of a public meeting after scores have been compiled but before the Authority certifies the application.
  - ii. Based on the results of the scoring process, the Ohio Department of Development will make a recommendation to the Authority for consideration and certification.
  - iii. Beginning with the highest scores in each category, the Authority will commit the amount requested in the application until there is no longer a sufficient allocation of credits to do so.
  - iv. If additional allocation remains, the Authority may offer a partial credit amount to the next highest scoring applicant.

**Please see the Application Guidance for more information about what information and documentation is required in the application.**

#### **7. Application scoring**

- a. If the amount of tax credits applied for exceeds \$80 million in Major City Projects, then such applications will be scored and ranked in order based on the scoring criteria.
- b. If the amount of tax credits applied for exceeds \$20 million for General Projects, then such applications will be scored and ranked in order based on the scoring criteria.
- c. Should two or more applications in a category receive the same points total according to the scoring criteria, the Authority will determine which applications to approve by prioritizing applications in the following order:
  - i. Project Development Cost as a percentage of total Development Cost of the Development;
  - ii. Percentage of funding secured for the project; then
  - iii. Number of mixed-use categories of the project.

#### **8. Agreement and Amendments**

- a. Following certification of the project by the Authority, an agreement will be sent to the lead applicant for signature.
- b. All property owners identified in the project application must be a party to the agreement.
- c. Insurance companies will have their own agreement, even if it is party to an owner-application project.

- d. If an agreement is not executed and returned to the Director within 60 days of receipt by the applicant, the Authority may rescind the certification of the project and tax credit allocation.
- e. Amendments to the agreement must be requested in writing prior to any changes in the project scope as identified in the application.
- f. Amendments that materially change the certified project scope including, but not limited to, uses, building or parking structure square footage, or project site size will be considered on a case-by-case basis.
- g. If a Property Owner sells property to a new owner(s), the agreement must be amended to reflect the change. If not included in the agreement, costs on that land cannot be considered for tax credit calculation (same as application).
  - i. Proof of the ownership change must be included in the notice along with a signed letter from the previous property owner acknowledging the sale and transfer of the property and tax credits associated with the property, if applicable.
- h. Any amendment changing project information including, but not limited to, scope, end use, or other essential project information outlined in the application requires documentation of reviewable progress. This includes, but is not limited to, a viable financial plan, copies of final construction drawings, required approvals, and building permits. These amendments will require a detailed explanation for the change and may involve providing additional required information for an amendment determination.
- i. The applicant will receive communication from the Ohio Department of Development within 45 business days either containing a determination or a request for additional information. If additional information is requested, the applicant will have 15 business days to respond to the request. These established response timelines will continue until an amendment determination is made.
- j. If a project is certified under the alternative method, the project cannot be materially changed in scope unless the certification is verified under the new scope by the Authority.
- k. The Authority has the discretion to approve amendments in whole or in part.

## **9. Reporting Requirements**

- a. Start of Construction Report. A Start of Construction Report must be submitted to the Authority within 12 months of the date of the certification of the project by the Authority, evidencing, to the satisfaction of the Authority, that construction has commenced on the project.
  - i. Construction of the project includes events undertaken by the general contractor or company contracted for Project construction.
  - ii. For purposes of determining when construction of the project begins to meet the 12-month requirement, the Authority will consider the following actions:
    1. Demolition of existing structures on the project site;
    2. Excavation of the project site;
    3. Construction of new structures; or
    4. Development of private roadways within the project site.

- iii. The Authority will not consider public utility work or work done by the local jurisdiction or county as meeting the construction of the project implementation requirements.
  - iv. The following information will be required in the Start of Construction Report to verify the project has commenced construction:
    - 1. Construction schedule for the project showing the beginning of construction;
    - 2. Evidence of project showing actual physical construction has begun - photos, payroll evidence, contracts;
    - 3. Update on viable financial plan – providing an updated sources and uses document for the project, identifying any financing secured after the project’s certification, closing dates for loan/grant/incentive agreements, confirmation of grants or awards if the closings have not yet occurred;
    - 4. Certified payroll reports for site workers;
    - 5. Verification of permits, architectural approvals, zoning, neighborhood planning; commission approvals;
    - 6. Executed local incentive agreements; and
    - 7. Additional information as required by the Director.
  - v. The Start of Construction Report must be submitted to the Authority within 15 calendar days of the first anniversary of the Authority’s certification of the project. Failure to provide this report within this timeline will result in the rescission of the tax credit by the Authority per ORC 122.09(D).
  - vi. The Authority shall review the submitted evidence and may request additional documentation from the applicant, if necessary. The applicant will have 30 calendar days to provide the information requested, otherwise the approval may be rescinded at the discretion of the Authority.
- b. Construction Progress Report. The Construction Progress Report will be compiled annually during project construction, starting on the second anniversary of the date the project is certified by the Authority, and submitted to the Authority to provide information on the ongoing progress of the project prior to completion.
- i. The following information will be required in the Construction Progress Report to verify that the project is progressing according to the construction schedule:
    - 1. Construction schedule, updated if necessary;
    - 2. Update on the viable financial plan if sources of funds were still outstanding as of the previous report;
    - 3. Update on permits (if necessary);
    - 4. Photos documenting progress;
    - 5. Identification of the percentage of the project that is completed. Included in this identification is a narrative that speaks to the project progress for all aspects of the project (i.e. building(s), parking structure(s), open space, etc.);
    - 6. Costs spent in conjunction with the project construction; and
    - 7. Additional information as required by the Director.

- c. Completion Report. Within 90 days after the completion of the project, the applicant shall file the Completion Report with the Authority. This report will verify that the project, as presented to the Authority at the time of certification, was completed and is the basis for tax credit calculation and distribution.
  - i. The project will be considered completed when:
    - 1. All buildings and parking structures have received a certificate of occupancy or other documentation verifying that all relevant state and local regulations pertaining to the health and safety of occupants are met for the project as described in the application;
    - 2. All open space identified within the project scope has been constructed;
    - 3. All public infrastructure construction on the project site has been completed; and
    - 4. All utility work on the project site has been completed;
    - 5. All landscaping has been installed, unless the current season is preventing final installation.
  - ii. The following information will be required in the Completion Report, as prescribed by the Director:
    - 1. Certificates of Occupancy or other documentation verifying that all relevant state and local regulations pertaining to the health and safety of occupants are met for each building and parking structure either constructed or rehabilitated in conjunction with the project;
    - 2. Photos of the completed project, including interior and exterior of the building(s), open space, landscaping and parking structures to verify construction completion;
    - 3. Open space and landscape completion verification provided by the general contractor for the project. This verification can take the form of a letter written to the Director stipulating that this construction is completed; and
    - 4. Report prepared by a third-party CPA that contains detailed accounting of the actual Development Costs. Detailed project expenditures should include items such as acquisition costs, construction costs, furniture, fixtures, and equipment, construction interest, architect and engineer, taxes and insurance, legal and professional fees, financing fees, project overhead, developer fees, marketing and advertising, and any other major expenditure involved in the project an incurred after the Authority originally certified the project (other than the architectural and engineering fees for the project that may have been incurred prior).
- d. Any time prior to issuance of a tax credit certificate, the Director may, upon reasonable notice of not less than three business days, conduct a site visit to the project to inspect and evaluate the project's progress. Notice may be provided by mail or electronically via email to the contact listed in the agreement.
- e. Failure to submit a report identified in these guidelines may result in rescission of the tax credit certification by the Authority, as set forth in OAC 122:29-1-07.

## **10. Tax Credit Calculation and Certificate**

### **a. Standard Tax Credit Calculation**

- i.** Unless the Authority grants a request to issue the tax credit certificates using the alternative method, the tax credits shall be calculated pursuant to ORC 122(H).
- ii.** If the tax credit is calculated using the standard calculation, the Property Owner may request in writing that the Authority update the increase in tax collections during the completion period.
  - 1.** The request must be made within 30 days following the first, second, third, fourth and fifth anniversaries of the date the project is completed.
  - 2.** If the Authority determines there is an increase in tax credit value, the Authority shall issue an additional tax credit to each person that previously received a certificate.

### **b. Alternative Tax Credit Calculation**

- i.** After a project is certified by the Authority and before it is completed, the Property Owner may request that the value of the tax credit certificates awarded in connection with the project be computed using the alternative method described in ORC 122.09(I).
  - 1.** A third party acceptable to the Authority shall be engaged at the expense of the Property Owner to verify that the project is reasonably certain to increase the tax collections by at least 10% of the estimated Development Costs within one year after the project is complete.
  - 2.** This determination must be made using an input/output economic impact model acceptable to the Authority and may be the same economic impact study submitted with the application, if appropriate.
  - 3.** The Authority may request the third party attend an Authority meeting to explain its calculations and answer any questions the Authority may have.
- ii.** If the Authority grants a request to calculate the tax credits using the alternative method, then the tax credits shall be calculated pursuant to ORC 122(I).
- iii.** Once the Authority determines it is reasonably certain of the required increase in tax collections, a project cannot be amended in any material way.
  - 1.** If a project requires an amendment, the previous determination by the Authority shall become invalid.
  - 2.** The Property Owner may subsequently make another request for the value of the tax credit certificates to be computed using the alternative method.

### **c. Certificate**

- i.** The certificate issued by the Director shall include the following:
  - 1.** Application tracking number;
  - 2.** Name of the Property Owner;
  - 3.** Whether the property owner is an Insurance Company
  - 4.** If the certificate is due to an acquired right from the Property Owner, the name of the person entitled to claim the certificate.

5. Address and location of the project;
6. Amount of actual Development Costs incurred for the project;
7. The amount of the tax credit;
8. Taxable year in which the tax credit can be claimed; and
9. Listing of how the credits will be applied to the tax liability of the Property Owner.

#### **11. Transfer of the Unissued Tax Credit**

- a. Per O.R.C. Section 122.09(E), an applicant that is the property owner and is preliminarily approved for a tax credit under this section may sell or transfer the rights to that credit to one or more persons for the purpose of raising capital for the certified project.
- b. Within 30 days of the sale or transfer of any credit, the Property Owner shall notify the Authority of the sale or transfer via submission of the transfer form provided by the Ohio Department of Development. This form shall identify the person or persons to which the credit was sold or transferred, the date of the transfer, the credit amount sold or transferred to each person, and any other information necessary as determined by the Director.
- c. Additionally, the Property Owner will create an updated sources and uses document to identify where any capital raised as a result of the sale or transfer of the credit will be utilized in the project. This updated document will be submitted as an attachment to the transfer form.
- d. Once a particular credit amount is sold or transferred by the Property Owner, the recipient may not sell or transferred that tax credit.
- e. The transfer of ownership of a parcel or parcels included in the project will not be considered a “transfer” for purposes of the tax credit.

#### **12. Maintenance of Records**

- a. The applicant shall establish and maintain for a period of four years following the effective date on a project tax credit certificate such records as required by the Director. Such records include, but are not limited to, records documenting project expenditures and documents verifying project completion.
- b. The applicant shall make such records available for review and verification by the Director, Superintendent of Insurance or Tax Commissioner, or appropriate staff as well as other appropriate state agencies.
- c. In the event the Director determines an applicant has submitted a report containing erroneous information or data not supported by records established and maintained under this provision, the Director may, after providing notice, require the applicant to resubmit corrected reports.