Request for City Council Committee Action from the Finance Department

Date: August 10, 2010

To: Council Member Lisa Goodman, Chair, Community Development Committee
Referral to: Council Member Betsy Hodges, Chair, Ways & Means/Budget Committee

Subject: Housing Improvement Areas (HIA)

Recommendation: Direct the Finance Officer to Have Drafted for Council Consideration a Housing Improvement Area Policy and Related Procedures

Previous Directives: None

Department Information

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Presenter in Committee: Jeff Streder, Director, Development Finance, 612-673-5130

Financial Impact
- No financial impact

Community Impact
- Neighborhood Notification – Not Applicable
- City Goals – 1) A Safe Place to Call Home - Healthy homes, welcoming neighborhoods; 2) Livable Communities, Healthy Lives - High-quality, affordable housing for all ages and stages in every neighborhood
- Comprehensive Plan - Not Applicable
- Zoning Code - Not Applicable

General Description of Housing Improvement Areas

A housing improvement area (HIA) is a financing tool that is available to home rule charter and statutory cities in the State of Minnesota. In situations where condominium or townhome associations can not obtain private financing for needed repairs and improvements to their building(s), a city can provide public financing for these improvements. This tool is not available for multi-family rental housing.

A city can lend funds to the homeowners association for eligible repairs and improvements using either 1) available funds on hand, or 2) bond proceeds from the city's issuance of taxable general obligation bonds. Pursuant to state statutes, eligible costs may include improvements to exterior and interior common areas such as roofing, siding, windows, HVAC, etc. Repayment is accomplished by the city imposing an annual fee on all or most of the homeowners in the association. The fee is similar to a special assessment, appears on the homeowner's property tax statement, and is due in the same manner and at the same time as their property taxes. A number of cities in the metro area have established HIAs since 1996, including Hopkins, St. Louis Park, Little Canada, Eagan and Columbia Heights.

This financing tool requires a city to assume a certain amount of risk. Construction risk involves the possibility that the improvements will not be completed in a timely manner and within a prescribed budget. This risk can be mitigated with guaranteed maximum price contracts, adequate construction oversight, and industry standard disbursement procedures. Repayment risk involves the risk that some homeowners in the HIA may become delinquent in the payment of their fees. This risk can be mitigated by having the homeowners association assume responsibility for all delinquent fees, maintain adequate reserves for this purpose, and pledge all association assets to the city. Although these risk management techniques can help decrease risk to the city, they will certainly not eliminate it entirely.

Statutory Authority

The underlying authority for a city to establish an HIA is contained in Minnesota Statutes, Sections 428A.11-428A.21, which was initially passed into law in 1996. This authority to establish new HIAs is currently scheduled to sunset (terminate) on June 30, 2013. The major provisions contained in these sections of the statutes are summarized below:

Petition Requirement

- A city may only establish an HIA and impose fees therein, if owners of 50% or more of the housing units in the HIA file a petition with the city clerk requesting public hearings on these actions.

Establishing an HIA

- A city may only establish an HIA by ordinance. The ordinance must describe the area included in the HIA, the basis for the fees imposed, and the number of years the fees will be in effect. The ordinance must also include findings that the improvements could not be made without the HIA, and that the HIA will maintain and preserve housing units.

- A public hearing is required before adoption of the ordinance. Written notice must be 1) published in the official newspaper of the city at least seven days before the public hearing, and 2) mailed to all homeowners in the proposed HIA at least 10 days before the public hearing.

- A preliminary list of the proposed housing improvements in the HIA shall be made available at the public hearing. The city must also fully disclose the terms of any loans, bonds, or other financing arrangements for the HIA, and whether the city or homeowners association will contract for the improvements.

- Individual homeowners may file written objections to having their property included in the HIA. Such objections must be received before adoption of the ordinance, and the city council shall make a determination on the objection within 60 days of filing.

- The ordinance may be adopted by a majority of the city council anytime within six months after the public hearing.

Imposing Fees

- The city may adopt a resolution imposing a fee on some or all of the housing units in the HIA in order to repay the financing provided. This fee may be based on each unit's value (net tax capacity), size (square footage), or other methodology deemed to be more fair and reasonable.

- A public hearing is required before adoption of the resolution. Written notice must be 1) published in the official newspaper of the city at least seven days before the public hearing, and 2) mailed to all homeowners in the proposed HIA at least seven days before the public hearing. The notice must specify the amount of the fee by housing unit, the number of years the fee will be in effect, and what prepayment options are available.

- The resolution may be adopted by a majority of the city council anytime within six months after the public hearing. Prior to adoption of the resolution, the homeowners association shall submit to the city a long-term financial plan (prepared by an independent third party) for the operation and maintenance of the common areas of the building(s).

Veto Powers

- The effective date of any ordinance or resolution described above must be at least 45 days after it is adopted. A summary of the ordinance and resolution must be mailed to each affected homeowner in the HIA within five days after its adoption. The mailing shall inform homeowners of their collective right to veto the ordinance or resolution.

- If owners of 45% or more of the housing units in the HIA file an objection to the ordinance, then the ordinance does not become effective. If owners of 45% or more of the affected housing unit's tax capacity file an objection to the resolution, then the resolution does not become effective.

Other Provisions

- The fees imposed on an HIA are not included in the calculation of levy limits.

- Fees are collected by the county and distributed to the city in the same manner as special service charges and special assessments.

- After a construction contract has been signed for the improvements, the city may issue taxable general obligation bonds to pay for some or all of the required improvements and other related expenses. A referendum is not required, and the bonds are not included in the calculation of the total net debt of the city.

- The city may create and appoint an advisory board for the HIA.

- The association must annually submit audited financial statements and other relevant information to the city.

Financing Agreement

The primary legal document between the city and association that lays out the rights, responsibilities, and terms of this tool is the financing agreement. Although this contract is not statutorily required, it is highly advisable and would address many topics and issues including, but not limited to, the following:

- All financing terms including principal amount of loan, term, interest rate, prepayment options, city and county administrative fee, etc.
- Description of methodology for assessing annual fees to individual homeowners, and a list of any homeowners exempt from the fee.
- Description of additional security provided by the association. This may include required reserve funds, an assignment of association assets to the city, a requirement that the association pay fees on behalf of delinquent homeowners, or that fees are assessed with a safety margin (i.e. 105% of debt service). The disposition of any excess fees would also be addressed.
- Selection of a general contractor. Usually the responsibility of the association. City approval may be required.
- Schedule for construction of housing improvements. The responsibility of the association and general contractor.
- Disbursement of city funds or city bond proceeds. Typically the responsibility of the city or third-party disbursing agent.
- Requirement and selection of professional property manager. Usually the responsibility of the association. City approval may be required.
- Submittal of annual audited financial statements and an updated long-term management/capital improvement plan for the association. The responsibility of the association. City approval may be required in selecting the certified public accountants and consultants preparing these documents.
- City approval of any additional debt incurred by the association, and a requirement that the association increase association dues as needed to fund the most current long-term management/capital improvement plan.
- Other terms, conditions, and requirements typically found in redevelopment agreements between the city and developers.

City Housing Improvement Area Policy

If a city wishes to establish one or more HIAs within its boundaries, the first step should be the drafting and adoption of a City Housing Improvement Area Policy (the "City HIA Policy"). This policy would spell out the purpose, authority, and goals of establishing an HIA and providing public financing for private improvements. Goals may include items such as upgrading existing housing stock, preventing the loss of tax base, promoting neighborhood stabilization and revitalization, correcting housing and building code violations, etc.

The policy and related procedures should also describe the application and approval process for the use of this tool, a description of any applicable fees and charges, and a list of the minimum criteria that all applicants must meet. These criteria may include items such as:

- Project must meet one or more of the City HIA Policy goals.
- Evidence from a minimum numbers of lending institutions that private financing is not available.
- The minimum number of units in the project.
- An allowable range of assistance per unit (i.e. $10,000-$25,000 per unit).
- The maximum term of assistance.
- A maximum average market value per unit.
- A list of terms that are required to be included in the Financing Agreement
- A list of eligible improvements.
- Preliminary support from a minimum percent of homeowners in the proposed HIA (statutory minimum is 50%).
- Required financial guarantees from the association.
- Any advisory board requirements.
- Favorable review from CPED, Finance, City Bond Counsel, and City Financial Advisor.

Next Steps

The city has been approached over the past 12 months by several associations interested in discussing, and in one case pursuing, the City's establishment of an HIA for their building. In order for CPED and Finance to respond to this request, it is necessary for the City Council to first decide on whether this financing tool should be utilized or not. If so, the next step would be the drafting of a City HIA Policy and related procedures as described above. The policy and procedures would be jointly prepared by CPED, Finance, and the City Attorney's Office and brought forward for City Council consideration as soon as practical.