# CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS ACTING AS THE GOVERNING BODY OF THE CLACKAMAS COUNTY EXTENSION AND 4-H SERVICE DISTRICT

## Study Session Worksheet

**Presentation Date:** 10/16/13 **Approx Start Time:** 9:45 **Approx Length:** 15 min

**Presentation Title:** Revenue Sharing Resolution for Wilsonville TIF Zones

**Department:** County Counsel, County Administration, Business & Community Services

**Presenters:** Chris Storey, Assistant County Counsel; Laurel Butman, County Administration

**Other Invitees:** Gary Barth & Catherine Comer, BCS; Barb Cartmill & Dan Johnson, Transportation & Development

**WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?**

Consideration of Wilsonville's request for a Resolution concurring with certain TIF Zones Revenue Sharing formula and agreeing that revenue limitation otherwise applicable under ORS 457.440(4) will not apply.

**EXECUTIVE SUMMARY:**
The City of Wilsonville is proposing to use urban renewal funds as an incentive for private sector conversion of under-utilized industrial buildings into higher value manufacturing uses in five (5) Urban Renewal TIF Zone Areas (Areas) located in Clackamas County. This Wilsonville project will provide tax rebates to qualifying investments in each of the Areas which comprise a portion of any incremental property tax increases due to development. A $12 million maximum indebtedness is proposed for each of the Areas.

The Clackamas County Extension and 4-H Service District of has received, as legally required, the proposed urban renewal plans for the Areas as an overlapping taxing district. The revenue sharing proposed by Wilsonville with the taxing jurisdictions is different than that defined in state statute and exceed the revenue sharing defined in ORS 457. Specifically, Wilsonville proposes an under-levy of 25% to be shared back with the taxing districts while 75% is returned to each respective Area developer as an incentive for investment. Please see Attachment A for a deeper legal and statutory discussion.

**FINANCIAL IMPLICATIONS (current year and ongoing):**
Please see Attachment B, Clackamas County Development Agency memorandum as to financial impacts of concurrence.

**LEGAL/POLICY REQUIREMENTS:**
Concurrence of taxing districts comprising 75% of the tax base for each area is required to enact the alternate revenue sharing approach as proposed by Wilsonville. See legal memorandum for additional detail.

**PUBLIC/GOVERNMENTAL PARTICIPATION:**
The Extension Service and 4-H District of Clackamas County has received required notice of these actions by Wilsonville. In addition, Wilsonville voters have approved the urban renewal plans for each Area through an Advisory vote in march 2013.

***OPTIONS:***

1. Concur with Wilsonville's request and schedule Resolution Concurring with the Revenue Sharing Formula in Wilsonville TIF Zones for approval at an upcoming Board business meeting.
2. Oppose Wilsonville's request and schedule dissenting Resolution for approval at an upcoming Board business meeting.
3. Do nothing.

**RECOMMENDATION:**

Staff has no recommendation.

**ATTACHMENTS:**
1. Attachment A: Legal & Statutory Memo from County Counsel
2. Attachment B: Urban Renewal & Financial Memo from the Development Agency
3. Attachment C: Wilsonville TIF Area Notices

**SUBMITTED BY:**
Division Director/Head Approval _____
Department Director/Head Approval _____
County Administrator Approval _____

For information on this issue or copies of attachments, please contact Chris Storey @ 503-742-4623

# Attachment A

CLACKAMAS COUNTY

OFFICE OF COUNTY COUNSEL
PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

**Stephen L. Madkour**
County Counsel

**David W. Anderson**
**Kimberley Ybarra**
**Kathleen Rastetter**
**Chris Storey**
**Scott C. Ciecko**
***Alexander Gordon***
**Amanda Keller**
**Nathan K. Boderman**
Assistants

MEMORANDUM

DATE: October 15, 2013

TO: Board of County Commissioners
Donald Krupp, County Administrator
Laurel Butman, Deputy County Administrator

FROM: Chris Storey, Assistant County Counsel

RE: Legal Implications of Wilsonville Single Property Urban Renewal Request

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This memorandum sets forth the legal basis and background for the City of Wilsonville's ("City's") request and notice to Clackamas County, the Library District of Clackamas County ("Library District"), and the Clackamas County Agricultural Extension and 4-H District ("Extension District") received September 10, 2013. In that notice, the City communicated that it intended to form 6 single-parcel urban renewal districts, 5 of which are within Clackamas County and affecting 3 jurisdictions within the County sphere. We are holding separate study sessions for each of the County and two districts; however, the legal analysis is identical for all three entities and for ease of reference this memorandum is drafted to address all three simultaneously.

The Oregon Constitution, Article IX, Section 1c authorized urban renewal. It states:

> **Section 1c. Financing redevelopment and urban renewal projects.** The Legislative Assembly may provide that the ad valorem taxes levied by any taxing unit, in which is located all or part of an area included in a redevelopment or urban renewal project, may be divided so that the taxes levied against any increase in the assessed value, as defined by law, of property in such area obtaining after the effective date of the ordinance or resolution approving the redevelopment or urban renewal plan for such area, shall be used to pay any indebtedness incurred for the redevelopment or urban renewal project. The legislature may enact such laws as may be necessary to carry out the purposes of this section.

As authorized, the City must provide appropriate notice to all underlying taxing districts of the proposed new urban renewal districts pursuant to ORS 457.085. In addition to setting out the contents of the notice, it states in relevant part:

**457.085 Urban renewal plan requirements; accompanying report; contents; approval required.** ***** (5) An urban renewal plan and accompanying report shall be forwarded to the governing body of each taxing district affected by the urban renewal plan and the agency shall consult and confer with the taxing districts prior to presenting the plan to the governing body of the municipality for approval under ORS 457.095. Any written recommendations of the governing body of each taxing district shall be accepted, rejected or modified by the governing body of the municipality in adopting the plan.

**457.105 Approval of plan by other municipalities.** *****. A proposed plan for an urban renewal area which is wholly within the boundaries of a city, or which is wholly within the boundaries of a county and does not include any area within the boundaries of a city, must be approved only by the governing body of the municipality in accordance with ORS 457.095.

Therefore the City must provide notice to each of the County, Library District and Extension District, which the City has done in staggered fashion. It is also required to confer with each as an underlying taxing district. As you can see from ORS 457.105, the City does not actually need the consent of the underlying taxing districts, just to confer with them, so long as it stays within the statutory guidelines and the proposed boundaries of the plan area does not go outside the City.

However, in the packet of materials from the City attached to the staff report you will note that they are seeking a BCC resolution endorsing the formation of the 5 urban renewal districts within Clackamas County. This is because it appears the City is proposing a distribution plan in excess of the formula proscribed by statute. The consent is required by statute if the formula is not utilized. The proposal can be summarized thus:

- The City, instead of keeping 100% of the Tax Increment Financing ("TIF") monies generated by the urban renewal plan areas, is proposing to keep 75%. The 75% would be used to rebate the property taxes resulting from the increased private investment.
- The other 25% is proposed to be distributed to the underlying taxing districts in proportion to their assessed rate, including the County, Library District and Extension District.
- The 25% distribution plan as designed by the City is in excess of the distributions typically allowed under the ORS 457.470 formula for the early years.
- Therefore pursuant to ORS 457.470(7), the City requires the consent of the underlying jurisdictions that compose at least 75% of the underlying ad valorum taxes to go forward with their distribution plan.

**ORS 457.470 Modification of assessed value; indexing; concurrence of taxing districts; rules.** ******** (7) Limitations imposed under this section and ORS 457.190 (4), 457.220 (4) and 457.455 *do not apply to the extent* the municipality approving a plan obtains the *written concurrence* of taxing districts imposing *at least 75 percent of the amount of taxes imposed under permanent rate limits in the urban renewal area.* For plans that are initially approved or substantially amended on or after January 1, 2010, compliance with this section is determined based on the amount of taxes imposed under permanent rate limits in

> the fiscal year prior to the fiscal year in which the plan is approved or amended, as applicable. (*emphasis added*)

Therefore under the overall plan proposed by the City, including the under levy/distribution plan, the consent of the County, Library District and Extension District is requested. The main differences between the City proposal and the statutory methodology is that the City is seeking to (i) under levy in excess of the percentage amounts authorized, and (ii) send out more monies earlier in the life of the plan area and less at the end, while the formula would call for the reverse. The amounts and impacts of those scenarios vary greatly depending on the level of investment and whether or not the life of the TIF refund is extended by an additional 5 years.

Based on the information provided, taxing districts representing up to $2,990,806 can object and the plan would still go forward. Clackamas County represents $2,226,867 of the ad valorum value, the Library District represents $368,088 of the ad valorum value, and the Extension District represents $46,313 of the ad valorum value for a total of $2,641,268. Therefore if the County, Library District and Extension District all objected, the City could go forward unless additional underlying taxing district(s) with an ad valorum value greater than $349,538 also objects to the City's proposal.

If the City does not receive the requisite 75% consent, it has two options. First, it could implement the plan with a lower distribution out to the underlying taxing districts per the formula in state statute. Or, it could not proceed with the proposed plan. We posed this question to City staff and they informed us that if they do not receive sufficient consents they will restart their process and propose something new to both their city council and potentially their electorate for another advisory vote on the issue.

Regardless of the City's response, the County, Library District, and Extension District each have an independent right to consent or not consent to the City's TIF plan as proposed. To consent or not consent, each entity would have to adopt a resolution which could be drafted by staff for the Board's consideration at a business meeting. A lack of action by any or all of the entities would act as a rejection of the City's proposal, without articulating the entity's concerns.

CS

**Attachment B**

# Memorandum

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|---|---|
| To: | Donald Krupp, County Administrator |
| From: | Dan Johnson, Development Agency |
| CC: | Laurel Butman; Deputy County Administrator |
| | Barbara Cartmill; Department of Transportation and Development |
| | Chris Storey; Assistant County Counsel |
| Subject: | Wilsonville Proposed Single-Property Urban Renewal Plans |
| | **County Extension District Analysis** |
| Date: | October 9, 2013 |

Over the last year, the City of Wilsonville has been engaged in a community wide discussion to develop an Economic Development Strategy. One tool under consideration was the formation of small, limited term and limited scope urban renewal plans. At the request of City Council, the concept was put forward on the ballot to the Wilsonville community in the form of an advisory vote. In March of this year the citizens of Wilsonville voted in favor of creating up to six single-property Urban Renewal Districts, referred to as "TIF Zones", with the single purpose of incentivizing capital investment and job creation by manufacturers.

Pursuant to ORS 457.085, any jurisdiction considering formation of an Urban Renewal District shall consult and confer with each affected taxing district prior to presentation of the plan to the governing body. The City of Wilsonville has provided notice of their intent to form six single-property Urban Renewal Areas, five of which are located within Clackamas County.

The following is for informational purposes only and provided to assist in your analysis and future consideration by the Board of County Commissioners.

Plan Summary

- Location: Five unique urban renewal plans limited to five individual properties ranging in size from 3.8 to 11.67 acres. Each site contains an existing industrial structure. (See Figure 1)
- Single Project Plans: Each of the TIF Zones has one specific project, to incentivizing capital investment and job creation by manufacturers by offering a three year rebate of up to 75% of the remaining property tax increment for qualifying companies. [1] Rebate may be extended due to higher wage thresholds or new investment.
- Capital Investment: Each plan analysis assumes capital investment of approximately $400 million primarily consisting of personal property.
- Maximum Indebtedness: $12 million per plan area.
- Borrowing: No borrowing is proposed.

[1] A qualifying company will need to invest a minimum of $25 million in capital improvements and/or qualified equipment, and create 75 or more new, permanent, full-time jobs that pay a minimum of 125% of the average Clackamas County wage rate (not including benefits) in effect at the time the rebate is paid, which for 2012, equals $25.33 per hour, or a $52,693 annual wage.

- Term: 15 year maximum plan life. If no qualifying investment is made within five years of plan adoption the plan is terminated and the properties are returned to the tax rolls.
- Under-levy: Plan proposes that 25% of the increasing property tax increment be shared with the overlapping taxing districts via an annual under-levy.
- Administration: Approximately 1% of the 75% tax increment viable for incentive is to be collected by the Wilsonville Urban Renewal Agency is for administrative purposes.

*Financial Analysis*

Investment Assumptions: Any analysis of financial risk and benefit is predicated on an investment scope, scale and type. While the City of Wilsonville program targets a minimum private investment of $25 million dollars to be considered a qualifying company, the financial analysis provided assumes a private investment of approximately $400 million, the amount of private investment needed to reach the full financial benefit ("Maximum Indebtedness") from one of these plans. The investment schedule assumes a three year investment cycle of approximately $135 million per year.

Personal Property Improvements: As all the sites contain existing structures, the financial models provided assume the majority of investment will consist of equipment, also known as Personal Property for taxation purposes. Improvements of this nature customarily include depreciation schedule. For the purposes of this analysis the plan has assumed a 10-year recovery or depreciation period.

Tax Revenue Foregone: As with all urban renewal districts, the financing for plan projects is secured through Tax Increment Financing. Financing of this nature requires overlapping taxing districts to forego tax revenue over the life of the plan. The plan includes an analysis of estimated revenue foregone should investment of the scope and scale proposed occur.

Under-Levy: Unlike other Urban Renewal areas, the Wilsonville plan proposes a minimum 25% share of net tax increment proceeds to the overlapping taxing districts through under-levying. While Wilsonville's analysis assumes an aggressive investment schedule, the result of which would result in a greater return to the districts, for the purposes of this assessment we have assumed a straight 25% under-levy.

The aforementioned financial considerations are summarized in the following table.

Table 1: Tax Revenue Analysis: Private Investment of $400 Million (Approximately)

| Item | Single Plan Annual Average | Single Plan Total (15 years) | Five Plan Cumulative Annual Average | Five Plan Cumulative Total (15 years) |
|---|---|---|---|---|
| Clackamas County Permanent Rate Revenue Foregone (Est.) | $3,088 | $46,313 | $15,438 | $231,565 |
| | | | | |
| Clackamas County Under-Levy Revenue (Est.) | $772 | $11,578 | $3,859 | $57,891 |
| | | | | |
| Proportional Incentive Cost | $2,316 | $34,735 | $11,579 | $173,674 |

At the request of the County, the City provided an analysis of a more moderate amount for consideration. These findings are summarized below in Table 2.

| Table 2: Tax Revenue Analysis: Private Investment of $30 Million (Approximately) | | | | |
|---|---|---|---|---|
| Item | Single Plan Annual Average | Single Plan Total (15 years) | Five Plan Cumulative Annual Average | Five Plan Cumulative Total (15 years) |
| Clackamas County Permanent Rate Revenue Foregone (Est.) | $227 | $3,402 | $1,134 | $17,010 |
| | | | | |
| Clackamas County Under-Levy Revenue (Est.) | $57 | $851 | $283 | $4,253 |
| | | | | |
| Proportional Incentive Cost | $170 | $2,551 | $851 | $12,757 |

In conclusion, the City of Wilsonville is proposing a number of specialized Urban Renewal districts that emulate Enterprise Zones, customary economic development programs allowing tax abatement for a certain number of years based on investment and employment criteria. While these programs are common throughout Clackamas County, they are not present in the City of Wilsonville. While these programs are similar in nature, it should be noted that the incentives proposed by these plans are approximately four times greater than those allowed under the Enterprise Zone program.

The City's proposed TIF Zones are limited in scope and term, both of which have been a concern with overlapping taxing districts in the past. While there is no guarantee on the marketability or realization of the impact or benefits outlined in the plan, the analysis assumes development of this size and scale would not occur "but for" programs of this nature. If the Board concurs with this philosophy, the County would benefit from the approval of these plans through the receipt of the additional tax revenue, identified as "under-levy", estimated in the above tables.

Included in the notice from the City is a request for concurrence and draft resolution for the Boards consideration. ORS 457 stipulates specific provisions for under-levying the incremental tax value within urban renewal districts. The resolution is warranted as the amount of under-levy proposed by the City exceeds statutory limitations. Pursuant to ORS 457.470(7) alternative under-levy scenarios are possible with concurrence of taxing districts imposing at least 75% of the amount of taxes imposed under permanent rate limits in the plan area. County Counsel should be consulted as to the form of the proposed resolution.

This analysis only contemplated financial impacts to the Extension District. It should be noted that revenue to a number of County Service Districts will be foregone.

Figure 1 – Proposed TIF Zones