

LEGISLATIVE GUIDE TO URBAN RENEWAL AND TAX INCREMENT FINANCING



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TABLE OF CONTENTS

I. Preface.....	1
II. Introduction.....	1
III. Authorization to Conduct Urban Renewal.....	1
IV. Establishment of an Urban Renewal Area.....	2
A. Adoption of Resolution Establishing Urban Renewal Area.....	2
B. Preparation and Approval of Urban Renewal Plan.....	2
1. Proposed Plan.....	2
2. Notice and Consultation.....	3
3. Hearings and Approval.....	3
V. Limitations on Urban Renewal Plans and Areas.....	4
A. Durational Limitations.....	4
B. Geographical Limitations.....	4
VI. Urban Renewal Powers.....	4
A. General, Planning, and Improvement Powers.....	4
B. Appraisal and Moving and Rental Payment Powers.....	5
C. Real Property Powers – Condemnation.....	5
D. Financing Powers.....	6
E. Assessment Powers.....	6
F. Land Transfer Powers.....	6
VII. Financing Urban Renewal.....	7
A. Tax Increment Financing.....	7
1. Property Tax Division and Reallocation.....	7
2. Hypothetical Example.....	8
3. Certification of Indebtedness From Special Fund.....	8
4. School District Exemption From Reallocation.....	9
5. Application of Assessment Limitation to Base Valuation.....	9
6. Authority Over Excess Incremental Revenues.....	9
B. Urban Renewal Financing Mechanisms.....	10
C. Bonding Authority and Constitutional Debt Limitations.....	10
1. Statutory Bonding Authority.....	10
2. Constitutional Debt Limitations.....	10
3. Taxation and Issuance of Bonds.....	11
D. Targeted Jobs Withholding Tax Credit.....	12
VIII. Low-income Assistance Requirements.....	13
IX. Urban Renewal Reporting.....	14

Urban Renewal and Tax Increment Financing



I. Preface.

This Legislative Guide provides an overview of Iowa's urban renewal and tax increment financing (TIF) law and a history of the evolution of the urban renewal statute. References in this Legislative Guide to the Iowa Code incorporate both the 2007 Iowa Code and 2007 Iowa Code Supplement. If the footnoted item was substantively amended by a 2007 enactment, a 2007 Iowa Acts citation is included in the footnote.

II. Introduction.

Iowa law allows municipalities to establish urban renewal areas to finance public improvements such as streets, sewers, sidewalks, and other infrastructure related to residential, commercial, or industrial development; to redevelop slum or blighted areas; to fund private economic development; and to finance construction of low and moderate income housing.¹ The primary source of funding for urban renewal projects in Iowa is tax increment financing. Tax increment financing is a method whereby a portion of the property taxes levied by all taxing authorities within a tax increment financing district (urban renewal area) are reallocated to the municipality that is undertaking the urban renewal project. Certain property tax levies are exempt from reallocation to the municipality. These exceptions, and tax increment financing in general, are discussed in more detail in this Guide.

All 50 states and the District of Columbia authorize the use of tax increment financing. In Iowa, the urban renewal law contained in Code chapter 403 was first enacted in 1957.² The use of tax increment financing to fund urban renewal was first implemented in 1961 in Oregon.³ Iowa followed suit in 1969 when the General Assembly amended the urban renewal law to add Code section 403.19, which authorized municipalities to collect and expend incremental property tax revenues to finance urban renewal projects.⁴

III. Authorization to Conduct Urban Renewal.

The enabling legislation in 1957 defined "municipality" as "any city or town in the state."⁵ In 1991, that definition was expanded to include counties. However, the legislation provided that counties could use urban renewal and tax increment financing for industrial property only.⁶ In 1994, counties' urban renewal authority was expanded to include taxes levied on all taxable property if the county had, by joint agreement with a city, established an urban renewal area within the boundaries of the city or within two miles of the city.⁷ The law was again amended in 1996 to remove the restriction on counties to use urban renewal and tax increment financing for industrial property only, so that currently counties possess the same urban renewal powers as cities.⁸

¹ See Iowa Code §§ 403.3, 403.6, and 403.17(25).

² 1957 Iowa Acts ch. 197.

³ Edward D. McDevitt, "Tax Increment Financing Proposed," West Virginia School Boards Association publication, 1998.

⁴ 1969 Iowa Acts ch. 237, § 2.

⁵ 1957 Iowa Acts ch. 197, § 17.

⁶ 1991 Iowa Acts ch. 214, §§ 1-4.

⁷ 1994 Iowa Acts ch. 1182, § 12.

⁸ 1996 Iowa Acts ch. 1204, § 23.



Urban Renewal and Tax Increment Financing

Under current law the area of operation of a city, for purposes of urban renewal, is the area within the corporate limits of the city and, with the consent of the county, the area within two miles of the city. However, the area of operation does not include the area within two miles of a city if that two-mile area includes the territorial boundaries of another city, unless that other city, by resolution, declares a need to be included in the city's area of operation. For counties, the area of operation is the area outside the corporate limits of cities except those areas within two miles of the corporate limits of a city unless the city agrees to allow the county to establish an urban renewal area in that two-mile area. Also, a county may establish an urban renewal area within the corporate boundaries of a city, but only by joint agreement with that city.⁹

IV. Establishment of an Urban Renewal Area.

A. Adoption of Resolution Establishing Urban Renewal Area.

To establish an urban renewal area, a municipality must first adopt a resolution of necessity which outlines the reasons that an area is appropriate for designation as an urban renewal area. The resolution must make a finding that the proposed urban renewal area (with specified boundaries) is a slum area, a blighted area, or an economic development area¹⁰ and that rehabilitation, conservation, redevelopment, or development of the area is necessary for the public health, safety, or welfare of the residents of the municipality.¹¹ It is well settled that Code chapter 403 gives municipalities broad powers to carry out the purposes of the urban renewal law.¹² This includes determining the facts necessary to resolve that an area is a slum, blighted, or economic development area. Code chapter 403 does not limit the size of an urban renewal area nor does it require that land included in an urban renewal area be contiguous.¹³

B. Preparation and Approval of Urban Renewal Plan.

1. Proposed Plan.

After the resolution establishing the urban renewal area is adopted, the municipality must prepare an urban renewal plan outlining the objectives to be accomplished within the proposed urban renewal area.¹⁴ "Urban renewal plan" is defined in Code section 403.17, subsection 24, and includes in that definition a requirement that if the plan proposes use of tax increment financing, the plan shall include "a list of the current general obligation debt of the municipality, the current constitutional debt limit of the municipality, and the proposed amount of indebtedness

⁹ Iowa Code § 403.17(4).

¹⁰ "Economic development areas" were added in 1985. See 1985 Iowa Acts ch. 66, §§ 1-3 and §§ 6, 7, and 9. That legislation defined an economic development area as "an area of a municipality designated by the local governing body as appropriate for commercial and industrial enterprises."

¹¹ Iowa Code § 403.4(2).

¹² *Webster Realty Co. v. City of Fort Dodge*, 174 N.W.2d 413, 417 (Iowa 1970); *Dilley v. City of Des Moines*, 247 N.W.2d 187, 190 (Iowa 1976). Iowa Code § 403.6 provides that a municipality is vested with "all the powers necessary or convenient to carry out and effectuate the purposes and provisions of [chapter 403]."

¹³ The Iowa Supreme Court ruled that two noncontiguous areas and a connecting highway corridor may be consolidated and designated as one urban renewal area. The Court further noted that, in general, cities may combine urban renewal areas without needing to have any contiguous property between the areas. See *Fults v. City of Coralville*, 666 N.W.2d 548 (Iowa 2003).

¹⁴ Iowa Code § 403.5.

Urban Renewal and Tax Increment Financing



to be incurred, including loans, advances, indebtedness, or bonds which qualify for payment from the special fund referred to in Code section 403.19, subsection 2."¹⁵ The proposed urban renewal plan is then transmitted to the planning commission of the municipality for review. The planning commission must review the plan and determine if the plan is consistent with the general plan of the municipality.¹⁶ The commission may make recommendations to change the proposed urban renewal plan. If no comments are received within 30 days, the municipality may proceed with the approval process for the proposed urban renewal plan.¹⁷

2. Notice and Consultation.

Prior to its approval of an urban renewal plan, the municipality must send notice of the proposed plan by regular mail to affected taxing entities.¹⁸ "Affected taxing entity" is defined as "... a city, community college, county, or school district which levied or certified for levy a property tax on any portion of the taxable property located within the urban renewal area in the fiscal year beginning prior to the calendar year in which a proposed urban renewal plan is submitted to the local governing body for approval."¹⁹ The notice of the proposed plan must also include notice of a consultation to be held between the municipality and the affected taxing entities. A representative of an affected taxing entity may recommend, in writing, modifications to the proposed plan relating to the division of revenue (i.e., tax increment financing) to be implemented under the plan. The written recommendations for modification must be submitted to the municipality no later than seven days after the consultation. The municipality must respond, in writing, to any proposed modifications no later than seven days before the public hearing on the proposed plan is held.²⁰

3. Hearings and Approval.

After the consultations with the affected taxing entities have been conducted, public hearings are held on the proposed urban renewal plan for the urban renewal area.²¹ Notification of the public hearing is by publication in a newspaper of general circulation in the area of operation of the municipality. After the public hearing the municipality may adopt a resolution approving the urban renewal plan.²² After an urban renewal plan is approved, it may be amended or modified at any time. The municipality must notify and consult with affected taxing entities in the same manner as for adoption of the plan if the amendment or modification involves refunding bonds or refinancing that would result in an increase in debt service or if the amendment or

¹⁵ Iowa Code § 403.17(24)(c). The "special fund" is the fund into which tax increment revenues are deposited.

¹⁶ "General plan" is not defined in Code chapter 403, but in most cases it is probably the municipality's comprehensive plan adopted pursuant to Code chapter 335 for counties or Code chapter 414 for cities.

¹⁷ Iowa Code § 403.5(1) and (2).

¹⁸ Iowa Code § 403.5(2).

¹⁹ Iowa Code § 403.17(1).

²⁰ Iowa Code § 403.5(2).

²¹ Iowa Code § 403.5(3). Prior to 1996, the law required that a public hearing be held on each urban renewal project undertaken in accordance with an urban renewal plan. See 1996 Iowa Acts ch. 1204, §§ 14, 15, amending 1995 Iowa Code § 403.5. "Urban renewal project" is defined in Iowa Code § 403.17(25).

²² Iowa Code § 403.5(4).



Urban Renewal and Tax Increment Financing

modification provides for the issuance of bonds or other indebtedness to be paid primarily with tax increment revenues.²³

V. Limitations on Urban Renewal Plans and Areas.

A. Durational Limitations.

Until 1994, no limits were placed on the length of time an urban renewal area could be in existence. That is still the case for urban renewal areas created based on a finding that an area is a slum or blighted area. In 1994, the law was amended to provide that economic development urban renewal areas are limited in duration to 20 years from the year that revenue is first divided (i.e., from the year that tax increment revenues are first collected and paid to the municipality).²⁴

B. Geographical Limitations.

The only geographical limitations on urban renewal areas relate to agricultural land. A slum urban renewal area or blighted urban renewal area cannot include real property assessed as agricultural property for purposes of property taxation.²⁵ This limitation was enacted in 1994 and applied to urban renewal plans establishing slum or blighted urban renewal areas approved on or after January 1, 1995.²⁶ In 1989, the definition of "economic development area" was amended to provide that the area cannot include land which is part of a century farm.²⁷ In 1996, the definition was amended again to provide that an economic development area could include land that was part of a century farm if the owner of the land agrees to its inclusion.²⁸ Finally, in 1999, the definition of "economic development area" was amended to provide that an economic development area cannot include agricultural land without the consent of the owner of the land.²⁹

VI. Urban Renewal Powers.

A. General, Planning, and Improvement Powers.

Municipalities have a great deal of authority to effect the rehabilitation, conservation, redevelopment, or development of an urban renewal area. A municipality has the power to undertake and carry out urban renewal projects in its area of operation and to make and execute contracts and other instruments necessary for the exercise of its power in an urban

²³ Iowa Code § 403.5(5).

²⁴ 1994 Iowa Acts ch. 1182, § 8, amending the definition of "economic development area" now found in Iowa Code § 403.17(10).

²⁵ Iowa Code § 403.17(5) and (22).

²⁶ 1994 Acts ch. 1182, §§ 8 and 15.

²⁷ 1989 Iowa Acts ch. 299, § 4.

²⁸ 1996 Iowa Acts ch. 1050, § 1. The Act also defined "century farm" as "a farm in which at least forty acres of such farm has been held in continuous ownership by the same family for one hundred years or more." See Iowa Code § 403.17(10).

²⁹ 1999 Iowa Acts ch. 171, § 38. This change was part of a larger bill whose general subject was eminent domain and condemnation proceedings. The Act also defined "agricultural land" in Iowa Code § 403.17 as follows: "... real property owned by a person in tracts of ten acres or more and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, and that has been used for the production of agricultural commodities during three out of the past five years. Such use of property includes, but is not limited to, the raising, harvesting, handling, drying, or storage of crops used for feed, food, seed, or fiber; the care or feeding of livestock; the handling or transportation of crops or livestock; the storage, treatment, or disposal of livestock manure; and the application of fertilizers, soil conditioners, pesticides, and herbicides on crops. Agricultural land includes land on which is located farm residences or outbuildings used for agricultural purposes and land on which is located facilities, structures, or equipment for agricultural purposes. Agricultural land includes land taken out of agricultural production for purposes of environmental protection or preservation."

Urban Renewal and Tax Increment Financing



renewal area.³⁰ A municipality has broad planning powers in relation to urban renewal areas, including the power to plan for the compulsory or voluntary repair, rehabilitation, demolition, or removal of buildings and improvements within its area of operation and to zone or rezone any part of the municipality or to make exceptions from building regulations in furtherance of an urban renewal project.³¹ It has the power to furnish, repair, or construct public improvements related to an urban renewal project, including streets, roads, utilities, parks, and playgrounds.³² A municipality also has authority to close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places in an urban renewal area.³³

B. Appraisal and Moving and Rental Payment Powers.

A municipality has the power to enter into any building or property located in an urban renewal area in order to make inspections, surveys, and appraisals; to insure or provide for insurance on real or personal property or on operations of the municipality against any risks or hazards relating to an urban renewal project; and to relocate persons and businesses displaced by an urban renewal project and to make relocation payments to those persons and businesses for moving expenses and losses of property if reimbursement or compensation is not otherwise made.³⁴ A municipality has further authority to supplement, for no more than five years, the rental payments of a family that has been displaced by an urban renewal project if the family does not have sufficient means to pay rent at its new location.³⁵

C. Real Property Powers – Condemnation.

A municipality has the power to condemn real property that it deems necessary for or in connection with an urban renewal project,³⁶ to sell and convey real property in furtherance of an urban renewal project; and to mortgage, pledge, or otherwise encumber or dispose of any real property located in an urban renewal area.³⁷ With respect to exercise of its condemnation powers within an urban renewal area, a municipality is required to follow the general provisions in Code chapters 6A and 6B relating to eminent domain authority and condemnation of property, including the requirement that the taking be for a public use, public purpose, or public improvement as those terms are defined in Code section 6A.22.³⁸ However, a municipality is prohibited from condemning agricultural land included within an economic development area unless the owner of the land consents to condemnation or unless the land is necessary or useful for the operation of a city utility, city franchise, or combined utility system.³⁹ In a condemnation proceeding for purposes of an urban renewal project, if a municipality proposes to take a part of a lot or parcel of real

³⁰ Iowa Code § 403.6(1).

³¹ Iowa Code § 403.6(6) and (8).

³² Iowa Code § 403.6(2).

³³ Iowa Code § 403.6(9).

³⁴ Iowa Code § 403.6(3) and (7).

³⁵ Iowa Code § 403.6(14).

³⁶ Iowa Code § 403.7.

³⁷ Iowa Code § 403.6(3) and (13).

³⁸ Iowa Code §§ 403.5(4) and 403.7(1) and (2).

³⁹ Iowa Code § 403.7(1).



Urban Renewal and Tax Increment Financing

property, the municipality is required to take the remaining part of the lot or parcel if requested by the owner.⁴⁰

D. Financing Powers.

A municipality has the power to levy taxes and assessments and to appropriate funds and make expenditures that are necessary for urban renewal purposes.⁴¹ For purposes of urban renewal, a municipality is authorized to borrow money and to apply for advances, loans, grants, contributions, and other forms of financial assistance from the federal government, the state, the county, or any other public or private body and to provide security and enter into and carry out contracts in connection with receiving such financial assistance.⁴² The authority to receive financial assistance includes the authority to advance matching funds as a condition of obtaining a grant of money.⁴³ A municipality is authorized to invest urban renewal project funds held in reserves or sinking funds and other project funds not required for immediate disbursement. However, the investments are limited to property or securities in which a state bank may legally invest funds subject to its control.⁴⁴

E. Assessment Powers.

A municipality may provide in its urban renewal plan for the exclusion from taxation of value added to real estate during construction for up to two years or until construction of the facility is more than 80 percent completed as of the most recent date of assessment for property tax purposes, whichever occurs first.⁴⁵ A municipality has the authority to enter into an agreement with a developer of taxable property in an urban renewal area to provide that, upon completion of all improvements, the property shall be assessed at not less than a minimum actual value. Such a minimum assessment agreement does not prevent the assessor from determining a higher actual value nor does it prevent an owner from seeking reduction of the actual value as long as the reduction does not result in an actual value of less than the minimum actual value set by the agreement. The termination date for a minimum assessment agreement shall not be later than the date after which incremental property taxes are no longer paid to the special fund of the municipality.⁴⁶

F. Land Transfer Powers.

A municipality may sell, lease, or otherwise transfer real property or an interest in real property for purposes of urban renewal. A lessee or transferee of such property is obligated to use and develop the property in accordance with the urban renewal plan adopted by the municipality. The municipality shall not sell, lease, or otherwise transfer the

⁴⁰ Iowa Code § 403.7(3); 1985 Iowa Acts ch. 66, § 4.

⁴¹ Iowa Code § 403.6(8).

⁴² Iowa Code § 403.6(5).

⁴³ *Brady v. City of Dubuque*, 495 N.W.2d 701, 707 (Iowa 1993).

⁴⁴ Iowa Code § 403.6(4).

⁴⁵ See 1984 Iowa Acts ch. 1210, § 1, amending the municipality powers provision of 1983 Iowa Code chapter 403 now found in Iowa Code § 403.6(18).

⁴⁶ See 1984 Iowa Acts ch. 1210, § 1, amending the municipality powers provision of 1983 Iowa Code chapter 403 now found in Iowa Code § 403.6(19).

Urban Renewal and Tax Increment Financing



property at less than its fair market value.⁴⁷ When selling, leasing, or otherwise transferring real property, a municipality must follow competitive bidding procedures.⁴⁸ However, a municipality may sell, lease, or otherwise transfer real property at less than its fair market value and without complying with competitive bidding procedures if the property is being developed and the developer has entered into a minimum assessment agreement with the municipality and the minimum assessment indicates that there will be sufficient incremental taxes to pay any indebtedness or other costs the city has incurred with regard to the property within four tax years after the development is operational.⁴⁹ A municipality may also forego competitive bidding procedures if the real property transferred will be used for the purpose of developing an industrial building or facility, facilities for use as a center for export for international trade, or a home or regional office facility for a multistate business.⁵⁰

VII. Financing Urban Renewal.

A. Tax Increment Financing.

1. Property Tax Division and Reallocation.

An urban renewal plan may contain several projects to be undertaken in the urban renewal area. Urban renewal projects are typically financed by a division and reallocation of property taxes collected in the urban renewal area. This is called tax increment financing. Under tax increment financing, the property taxes collected from the consolidated tax rate levied against the increase in taxable valuation over the base valuation of property in the urban renewal area are segregated. Those segregated property tax receipts are deposited in a special fund of the municipality and used to pay obligations incurred for urban renewal purposes. The consolidated tax rate is the sum of all property tax levies certified to the county to be collected as property taxes in the urban renewal area. In order to determine the portion of property tax receipts available to the urban renewal area and to the other tax-certifying bodies, the property valuation assessments are frozen in a particular assessment year. The increase in assessed value after that year is considered the incremental value, and revenues from taxes collected on that portion of the value, i.e., the increment, are available to the municipality to fund urban renewal projects.⁵¹

The assessment year⁵² which serves as the base year for creation of the valuation increment is determined in one of the following two ways:

Option 1. The base year for the increment is the assessment year preceding the first calendar year in which the municipality certifies urban renewal debt to the county auditor.⁵³

⁴⁷ Iowa Code § 403.8(1).

⁴⁸ Iowa Code § 403.8(2).

⁴⁹ See 1984 Iowa Acts ch. 1210, § 3, amending the sale or lease of property provision of 1983 Iowa Code chapter 403 now found in Iowa Code § 403.8(3).

⁵⁰ See 1984 Iowa Acts ch. 1210, § 2, amending the sale or lease of property provision of 1983 Iowa Code chapter 403 now found in Iowa Code § 403.8(2).

⁵¹ Iowa Code § 403.19.

⁵² An assessment year begins January 1 and ends December 31. See Iowa Code § 441.46.

⁵³ Iowa Code § 403.19(1).



Urban Renewal and Tax Increment Financing

Option 2. If the affected taxing entities agree, the base year for the increment is the assessment year beginning January 1 of the calendar year preceding the effective date of the ordinance establishing the urban renewal area.⁵⁴

2. Hypothetical Example.

For purposes of establishing a base year, consider the following example:

In 1995, a city approves an urban renewal plan for an urban renewal area within the corporate boundaries of the city and adopts an ordinance in 1995 creating the urban renewal area. In 1996, the city issues bonds to fund an urban renewal project. Principal and interest on the bonds are first payable in the fiscal year beginning July 1, 1998. According to statutory requirements, the city in December 1997 certifies to the county auditor the amount of indebtedness incurred for urban renewal purposes. Under option 1 above, the base year for purposes of creating a valuation increment is the assessment year beginning January 1, 1996, i.e., the assessment year preceding the first calendar year in which the municipality certifies urban renewal debt to the county auditor. Under option 2 above, the base year for purposes of creating a valuation increment is the assessment year beginning January 1, 1994, i.e., the calendar year preceding the effective date of the ordinance establishing the urban renewal area. Under either option, any increase in valuation in subsequent assessment years is incremental valuation.

Continuing with the hypothetical set of facts with the 1996 base year established under option 1: For assessment year 1996, the assessed valuation of taxable property located in the urban renewal area is \$10 million. For assessment year 1997, the assessed valuation of taxable property located in the urban renewal area is \$10.5 million. The base amount of property valuation in the urban renewal area is \$10 million, which is the valuation for the assessment year beginning January 1, 1996, i.e., the assessment year preceding the first calendar year in which urban renewal debt is certified to the county auditor. The incremental valuation is \$500,000, or the increase in valuation between the 1996 assessment year and the 1997 assessment year. The amount of property taxes realized from the consolidated property tax rate applied against the amount of the base valuation is, when collected, distributed to all the tax-certifying bodies whose rates make up the consolidated rate. The amount of property taxes realized from the consolidated rate applied to the amount of valuation exceeding the base valuation is disbursed to the urban renewal city for deposit in the special (urban renewal) fund. If for the 1998 assessment year the valuation climbs to \$11 million, then the incremental valuation increases to \$1 million.

3. Certification of Indebtedness From Special Fund.

A municipality is required to certify to the county auditor by December 1 the amount of indebtedness payable from the special fund of the municipality. This amount need only be certified once to the county auditor unless loans, advances, indebtedness, or bonds are subsequently issued and are in addition to the amount

⁵⁴ Iowa Code § 403.19(1). This option for creation of the increment was added in 1994. See 1994 Iowa Acts ch. 1182, § 10.

Urban Renewal and Tax Increment Financing



already certified. Also, if the municipality takes action that results in a reduction of the amount of an urban renewal obligation already certified, the municipality shall certify the amount of the reduction to the county auditor.⁵⁵

4. School District Exemption From Reallocation.

Certain types of property taxes are exempt from division and reallocation and deposit in the special fund of a municipality. Taxes for the payment of principal and interest on bonds of each taxing district (tax-certifying body) must be collected and paid to the taxing district. In 2001, the law was amended to provide that property taxes for the regular and voter-approved physical plant and equipment levy of a school district must be collected and paid exclusively to the school district. However, if the municipality and the county auditor certify that the revenue is necessary to pay principal and interest on bonds issued prior to July 1, 2001, all or a portion of the physical plant and equipment levy must be paid to the municipality for deposit in the special fund.⁵⁶

5. Application of Assessment Limitation to Base Valuation.

Code section 403.20 provides that the equivalent dollar amount of the percentage reductions in assessed valuations of property in an urban renewal area due to application of the assessment limitation in Code section 441.21 (often referred to as the "rollback") shall be deducted from the base valuation, rather than from the incremental valuation.⁵⁷ This provision was enacted in 1980,⁵⁸ presumably to protect and provide some stability to the amount of tax increment revenues projected for future years.

6. Authority Over Excess Incremental Revenues.

A question has arisen whether a municipality is entitled to all tax increment revenues in an urban renewal area once taxes are first divided and for the life of the projects in the urban renewal area. Code section 403.19, subsection 2, provides that "[w]hen such loans, advances, indebtedness, and bonds, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such urban renewal area shall be paid into the funds for the respective taxing districts in the same manner as taxes on all other property." However, as stated earlier, Code section 403.6, subsection 4, allows a municipality to invest urban renewal project funds (which include tax increment revenues) held in reserves or sinking funds or not needed for immediate disbursement. This would imply that a municipality can receive tax increment revenues in excess of what is needed to pay indebtedness due during a fiscal year. Also, Code section 403.19, subsection 5, provides that, in any year, a municipality may certify a request to the county auditor on or before December 1 to increase the allocation of taxes to the tax-certifying bodies by

⁵⁵ Iowa Code § 403.19(5), as amended by 2006 Iowa Acts ch. 1131, § 1.

⁵⁶ Iowa Code § 403.19(2) and (7). See also 2001 Iowa Acts ch. 176, §§ 40, 41, and 47. Authorization for the physical plant and equipment levy is found in Iowa Code § 298.2.

⁵⁷ Iowa Code § 441.21 provides that statewide aggregate property tax assessments of a class of property (commercial, industrial, residential, or agricultural) shall not increase by more than 4 percent per year. If the value of any class of property, on a statewide basis, increases by more than 4 percent that value is "rolled back" to a 4 percent increase.

⁵⁸ See 1980 Iowa Acts ch. 1128, § 2.



Urban Renewal and Tax Increment Financing

decreasing the amount of incremental taxes to be paid to the municipality in the following fiscal year. This, too, implies that a municipality may receive tax increment revenues in excess of what is needed to pay indebtedness due during a fiscal year.

B. Urban Renewal Financing Mechanisms.

Under its broad authority to finance urban renewal projects, a municipality may issue bonds or may take out loans, payable from tax increment revenues. A municipality may also use tax increment revenues on a pay-as-you-go, or self-financing, basis. A municipality may use incremental revenues to rebate, refund, or reimburse property taxes paid by a developer on property located in an urban renewal area. A municipality may also agree to exempt the property from the city property tax levy or to suspend or abate the taxes on the property.⁵⁹

C. Bonding Authority and Constitutional Debt Limitations.

1. Statutory Bonding Authority.

A municipality has authority to issue bonds for urban renewal purposes under Code section 403.9 and Code section 403.12.⁶⁰ In *Webster Realty Company v. City of Fort Dodge*, the Iowa Supreme Court characterized bonds issued pursuant to Code section 403.9 as revenue bonds payable from "revenues and other funds of the municipality derived from or held in connection with the undertaking and carrying out of urban renewal projects..."⁶¹ and bonds issued pursuant to Code section 403.12 as general obligation bonds secured by the general revenues (property taxes) of a municipality.⁶² In 1969, Code section 403.9 was amended to provide that bonds issued pursuant to that section were also payable from tax increment property tax revenues deposited in the special fund created in Code section 403.19.⁶³

2. Constitutional Debt Limitations.

Code section 403.9 also provides that bonds issued under the authority of that section for purposes of urban renewal shall not constitute indebtedness within the meaning of any constitutional or statutory debt limitations, presumably including Iowa Constitution, Article XI, section 3, which prohibits counties or other political or municipal corporations from becoming indebted in any manner to an aggregate amount exceeding 5 percent of the value of taxable property within the corporation. However, the Iowa Supreme Court in *Richards v. City of Muscatine* ruled that urban renewal bonds issued pursuant to Code section 403.9 are indeed indebtedness subject to the constitutional limitation because the bonds are payable from the general revenues of the city and not from a special assessment or from the operating revenues of a municipal enterprise that generates income. The Court stated that, although

⁵⁹ Urban renewal indebtedness is often referred to in Code chapter 403 as "loans, advances, indebtedness, or bonds payable from the division of property tax revenue." See, Iowa Code §§ 403.17(10) and (24), 403.19(1) and (5), 403.22(5), and 403.23.

⁶⁰ Iowa Code § 403.9(1) states that bonds may be issued "to pay the costs of carrying out the purposes and provisions of this chapter ..." while Iowa Code § 403.12(5) states that bonds may be issued "(f)or the purposes of this section, or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project of a municipality... "

⁶¹ See Iowa Code § 403.9(1).

⁶² *Webster Realty* at 417.

⁶³ 1969 Iowa Acts ch. 237.

Urban Renewal and Tax Increment Financing



incremental property tax revenues collected under Code section 403.19 and deposited in the special fund for urban renewal purposes were only a portion of a city's general revenues, they were general revenues all the same. Therefore, a bond issuance in which principal and interest on the bonds are payable from the special urban renewal fund in Code section 403.19 is indebtedness subject to the constitutional limitation.⁶⁴

In 2003 the Iowa Supreme Court handed down its decision in *Fults v. City of Coralville*⁶⁵ ruling that urban renewal indebtedness subject to an annual appropriation provision is a contingent obligation that does not constitute debt for purposes of the constitutional limitation on indebtedness of a municipality. An annual appropriation provision (also known as a "nonappropriation clause") means that the indebtedness incurred by a municipality is subject to repayment only if the governing body of the municipality annually appropriates the funds necessary for repayment in the coming fiscal year and there is no legally enforceable obligation to continue repayments in the future. The Court stated that debt subject to the constitutional limitation is that which a municipality obligates itself to pay without further action on the part of the city. The Court stated that the repayment of debt that is not certain to take place is not subject to the constitutional debt limitation because the city cannot be held legally responsible for the debt for a year other than one in which funds for repayment have been appropriated. Therefore, the city's obligation is restricted to the fiscal year within which the city council appropriates money for repayment. It is that annual amount appropriated, therefore, that is included in the aggregate amount of debt when computing whether a municipality exceeds the constitutional limitation.

3. Taxation and Issuance of Bonds.

Income and interest from bonds issued under Code section 403.9 are exempt from taxation.⁶⁶ Code section 403.9 also provides that a municipality may capitalize interest on urban renewal bonds for a period not to exceed three years from the date the bonds are issued. Code section 403.9 provides that urban renewal bonds issued under that section shall not be subject to the provisions of any other law relating to the authorization, issuance, or sale of bonds. The section was amended in 1996, though, to require publication notice of the proposed issuance and to require a public meeting before issuance of urban renewal bonds.⁶⁷ This is the procedure currently in place for issuance of revenue bonds by a county or a city and for issuance of general obligation bonds for an essential county or essential corporate purpose.⁶⁸

The law was also amended in 1975 and 1994 to include urban renewal bonds in the definition of "essential corporate purpose" and "essential county purpose," respectively,⁶⁹ and provided that such bonds are subject to the right of petition for an

⁶⁴ Richards v. City of Muscatine, 237 N.W.2d 48, 64 (Iowa 1975). Although the Court only considered bonds issued under the authority of Iowa Code § 403.9, the same reasoning could apply to bonds issued under the authority of Iowa Code § 403.12(5), because those bonds are also payable from incremental property tax revenues.

⁶⁵ Fults v. City of Coralville at 557.

⁶⁶ Iowa Code § 403.9(2). See also Iowa Admin. Code 701-40.3(2).

⁶⁷ 1996 Iowa Acts ch. 1204, § 18.

⁶⁸ See Iowa Code §§ 331.464 and 384.83 and §§ 331.443 and 384.25.

⁶⁹ 1975 Iowa Acts ch. 203, §§ 31 and 32, amending 1975 Iowa Code § 384.24 and 1994 Iowa Acts ch. 1182, § 5, amending 1993 Iowa Code Supplement § 331.441.



Urban Renewal and Tax Increment Financing

election.⁷⁰ However, the language used in the definitions of essential corporate purpose and essential county purpose does not specifically identify bonds issued under the authority of Code section 403.9. Rather the language refers generally to the "aiding of the planning, undertaking, and carrying out of urban renewal projects under the authority of chapter 403 and for the purposes set out in section 403.12." Only Code section 403.12 is specifically cited when referring to issuance of bonds in the definitions of "essential corporate purpose" and "essential county purpose." By contrast, the procedure outlined in Code section 403.9, which provides for notice and hearing before issuance of bonds, does not provide for an election by petition as in the definitions described above.⁷¹

D. Targeted Jobs Withholding Tax Credit.

In 2006, Code section 403.19A was enacted, creating a pilot project whereby certain cities approved as pilot project cities could assist in funding projects in the cities' urban renewal areas by means of a targeted jobs credit from withholding.⁷² Businesses seeking to locate in a pilot project city urban renewal area that are already located elsewhere in the state must either create 10 new jobs or make at least \$500,000 in capital investment within the urban renewal area. The credit is 3 percent of the amount of gross wages paid to the employees of the targeted jobs by the business. The credit is paid to the pilot project city to be used to pay for debts incurred or assistance provided by the city for urban renewal projects related to the business in the urban renewal area. The withholding credit is available to each targeted job of the business in the area provided the job's wage is equal to at least the average county wage. A withholding agreement may be applicable for a period of up to 10 years but may not be entered into after June 30, 2010. A pilot project city must arrange for a match of at least \$1 for each \$1 of withholding credit it receives. The match is to be used for the business project. If the employer ceases to meet the requirements of the withholding agreement, the agreement shall be terminated and any withholding tax credits for the benefit of the employer shall cease. However, in regard to the number of new jobs that are to be created, if the employer has met the number of new jobs to be created pursuant to the withholding agreement and subsequently the number of new jobs falls below the required level, the employer shall not be considered as not meeting the new job requirement until 18 months after the date of the decrease in the number of new jobs created.

The four pilot project cities are cities with three or more census tracts and include one located in a county that borders Nebraska, one located in a county that borders South

⁷⁰ In most cases, essential corporate purpose bonds and essential county purpose bonds are subject only to notice and hearing. See Iowa Code §§ 384.25 and 331.443. The petition requirement for cities is signatures of eligible electors of the city equal in number to 10 percent of the persons who voted at the last preceding regular city election, but not less than 10 persons. See Iowa Code § 362.4. The petition requirement for counties is signatures of eligible electors of the county equal in number to at least 10 percent of the votes cast in the county for president of the United States or governor at the preceding general election. See Iowa Code § 331.306.

⁷¹ The language in the definition of essential corporate purpose for cities and essential county purpose for counties mirrors each other except for the internal references to city procedure under Iowa Code chapter 384 and county procedure under Iowa Code chapter 331. Following is the statutory language defining "essential county purpose" in Iowa Code § 331.441(2)(b)(14): "The aiding of the planning, undertaking, and carrying out of urban renewal projects under the authority of chapter 403 and for the purposes set out in § 403.12. However, bonds issued for this purpose are subject to the right of petition for an election as provided in section 331.442, subsection 5, without limitation on the amount of the bond issue or the population of the county, and the board shall include notice of the right of petition in the notice of proposed action required under section 331.443, subsection 2."

⁷² See 2006 Iowa Acts ch. 1141, § 1.

Urban Renewal and Tax Increment Financing



Dakota, and two located in counties that border states other than Nebraska or South Dakota.⁷³ To be eligible to be designated as a pilot project city, a city must have applied by October 1, 2006. A pilot project city will lose its status if it does not enter into a withholding tax agreement within a year of being approved as a pilot project city.

VIII. Low-income Assistance Requirements.

In 1996, Code chapter 403 was amended to provide that property tax increment revenues could be used to pay for public improvements related to housing and residential development.⁷⁴ Prior to that amendment, the construction of housing for low and moderate income families was the only type of residential development allowed to be financed with property tax increment revenues. The same legislation enacted Code section 403.22 which provided that if tax increment revenues collected in an economic development urban renewal area were to be used to pay for public improvements related to housing and residential development, the project had to include assistance for low and moderate income family housing.⁷⁵ The amount of assistance for low and moderate income family housing is required to equal or exceed the percentage of the project cost equal to the percentage of low and moderate income persons in the county. If a municipality can show that it cannot undertake an urban renewal project if it has to meet the low-income housing assistance requirements, the required amount may be reduced if the reduced amount is agreed to by the Department of Economic Development. However, for municipalities with a population over 15,000, the reduced amount cannot be less than an amount equal to 10 percent of the original project cost. In 1997, Code section 403.22 was amended to provide that a municipality with a population of 5,000 or less is not required to provide low-income housing assistance if the municipality can show, based upon a housing needs assessment, that it has no low and moderate income housing need and the department agrees with that assessment.⁷⁶

The required assistance may be for low and moderate income housing located within or outside the urban renewal area. Besides acquisition of lots for, and construction of, low and moderate income housing, the assistance may be used to provide direct assistance to low and moderate income families living within the area of operation of the municipality or for deposit in a low and moderate income housing fund established by the municipality. Moneys in the fund may be used for these purposes and to provide matching funds for any state or federal moneys for low and moderate income housing.⁷⁷

Code section 403.22 also provides that, for a municipality with a population of 15,000 or more, an urban renewal project whose purpose is to provide public improvements related to housing and residential development is limited to 10 years of incremental tax collections. A municipality with a population under 15,000 may extend the 10-year limitation for up to five years in order to adequately fund the urban renewal project if the

⁷³ If two eligible cities located in a county with a population of less than 45,000 are approved, the two cities shall be considered one pilot project city. See 2007 Iowa Acts ch. 2, § 1.

⁷⁴ 1996 Iowa Acts ch. 1204, §§ 13, 16, and 21.

⁷⁵ 1996 Iowa Acts ch. 1204, § 24. Iowa Code § 403.22(3) provides that sources for low and moderate income housing assistance may also include payments from developers or other private parties and any other sources which are legally available.

⁷⁶ 1997 Iowa Acts ch. 214, § 9.

⁷⁷ Iowa Code § 403.22(2).



Urban Renewal and Tax Increment Financing

municipality secures the approval of the governing bodies of all other affected taxing districts.

IX. Urban Renewal Reporting.

Under prior law, a municipality that had established an urban renewal area was required to report to the Department of Management and to the county auditor the total amount of urban renewal loans, advances, indebtedness, or bonds outstanding at the close of the most recently ended fiscal year that qualified for payment from the special fund into which incremental revenues were deposited. The report was due by December 1 of each odd-numbered year.⁷⁸ If the municipality did not file the required report by December 1 of each odd-numbered year, the county treasurer was instructed to immediately withhold disbursement of incremental taxes to the municipality until the report was filed.⁷⁹ This provision was repealed in 2007 and replaced with a requirement that a city or county budget, as applicable, include information on tax increment financing revenues and debt. This type of budget information received by the Department of Management is to be made available by electronic means.⁸⁰

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⁷⁸ 2007 Iowa Code § 403.23(1). Prior to 2003, municipalities were required to report annually and the report was to contain more specific information, including, among other things, the establishment date of the urban renewal area, the base and incremental valuation of the urban renewal area, and the uses for the incremental funding. See 2003 Iowa Code, § 403.23 and 2003 Iowa Acts ch. 178, § 18.

⁷⁹ 2007 Iowa Code § 403.23(3).

⁸⁰ 2007 Iowa Acts ch. 186, §§ 3, 4, and 28, amending 2007 Iowa Code, §§ 331.434(1) and 384.16(1), and repealing 2007 Iowa Code § 403.23.