

TIF District Merger Approval Ordinance

AN ORDINANCE APPROVING THE COMBINATION OF THE EXISTING TAX INCREMENT FINANCING DISTRICTS IN THE CITY OF WHEELING, WEST VIRGINIA KNOWN AS “CITY OF WHEELING REDEVELOPMENT PROJECT DISTRICT NO. 1” AND “CITY OF WHEELING REDEVELOPMENT DISTRICT NO. 2” AS APPROVED BY THE WEST VIRGINIA DEPARTMENT OF ECONOMIC DEVELOPMENT; COMBINING THE TAX INCREMENT FINANCING FUND FOR THE EXISTING DISTRICTS AND PROVIDING FOR OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, The City of Wheeling, in Ohio County, West Virginia (the “City”) is authorized by the West Virginia Tax Increment Financing Act, Chapter 7, Article 11B of the Code of West Virginia, 1931, as amended (the “Act”) to create a development or redevelopment project area or district, cause project plans to be prepared, issue tax increment financing obligations and take other actions to facilitate the orderly development and economic stability of the City, all as more fully set forth in the Act;

WHEREAS, Ohio Valley ADC, Inc. (“ADC”) has requested that the City consider combining the existing City of Wheeling Redevelopment Project District No. 1 (“TIF District No. 1”) with the existing City of Wheeling Redevelopment District No. 2 (“TIF District No. 2” and together with TIF District No. 1, the “Existing TIF Districts”), into a combined tax increment financing district in the City to be known and designated as “The City of Wheeling Combined Redevelopment District No. 1 and No. 2” (the “Combined TIF District”), and approval of a project plan to be known and designated as “Combined Project Plan No. 1” (the “Project Plan”);

WHEREAS, the City has received and reviewed the Tax Increment Financing Application dated May 17, 2022 relating to the proposed combination of the Existing TIF Districts and the approval of the Project Plan (the “Application”);

WHEREAS, the City did, on May 17, 2022, following proper notice thereof, hold a public hearing with respect to the Application wherein interested parties were afforded a reasonable opportunity to express their views on the proposed combination of the Existing TIF Districts and the resulting boundaries of the Combined TIF District and the proposed Project Plan for the Combined TIF District;

WHEREAS, the City submitted the Application to the Secretary of the West Virginia Department of Economic Development (the “Secretary”) for his review and approval, all in accordance with the applicable provisions of the Act;

WHEREAS, the Secretary has, by letter dated July 19, 2022, notified the City that the West Virginia Department of Economic Development has reviewed the Application and has found the Application to be complete and thereby approved, which approval letter is attached hereto as **Exhibit A**;

WHEREAS, it is hereby found and determined that the Application meets the criteria set forth in the Act for combination of two existing tax increment financing districts and the approval of a project plan therefor; and

WHEREAS, the City Council of the City (the “City Council”) has determined to enact this Ordinance which approves and certifies the combination of the Existing TIF Districts into the Combined TIF District, approves and certifies the Project Plan and combines the tax increment financing funds previously established for the Existing TIF Districts (the “Existing TIF Funds”) into a single tax increment financing fund for the Combined TIF District (the “Combined TIF Fund”).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL, AS FOLLOWS:

1. Justification for and Approval of Combination of Existing TIF Districts into Combined TIF District. It is hereby found and determined that the real property within each of the Existing TIF Districts will be benefitted by combining the Existing TIF Districts into the Combined TIF District by eliminating or preventing the development or spread of slums or blighted, deteriorated or deteriorating areas, discouraging the loss of commerce, industry or employment, increasing employment therein or any combination thereof. Accordingly, the combination of the Existing TIF Districts into the Combined TIF District pursuant to the provisions of the Act is hereby approved, ordered and effectuated.

2. Approval of Project Plan. The Project Plan for the Combined TIF District, an excerpt of which is set forth in **Exhibit B**, is hereby expressly found to be economically feasible and is hereby approved and certified. The projects set forth in Project Plan, or any portion thereof subsequently deemed by the City to be included (the “Projects”), are hereby approved and declared to be eligible for funding in whole or in part, from tax increment financing obligations and from moneys remaining in the Combined TIF Fund after there has first been paid all debt service, reserve fund deficiency and other payments payable in connection with any bonds, notes or other obligations payable from the Combined TIF Fund, which the City, in its discretion, may determine to issue from time to time in accordance with the provisions of the Act.

3. Combination of Existing TIF Funds into Combined TIF Fund. The Existing TIF Funds are hereby combined into the Combined TIF Fund, which is hereby established as a separate fund into which all tax increment revenues and other revenues designated by the City, for the benefit of the Combined TIF District shall be deposited, and from which all costs of the Projects shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if tax increment financing obligations are issued by the City. The City may determine to use either of the Existing TIF Funds as the Combined TIF Fund from and after the date hereof.

4. Use of Proceeds of Tax Increment Financing Obligations. Proceeds from tax increment financing obligations anticipated to be issued by the City under the Act and revenues available in the Combined TIF Fund may only be used to pay for costs of development or redevelopment projects to foster economic development in the Combined TIF District, when such development or redevelopment project or projects would not reasonably be expected to occur without tax increment financing.

5. Need for TIF Financing. The City Council hereby expressly finds and states that the Projects included in the Project Plan are not reasonably expected to occur without the use of tax increment financing.

6. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

7. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

8. Conflicting Provision Repealed. All ordinances, resolutions, indentures or orders, or parts thereof, that conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed with respect to the subject matter of this Ordinance.

9. Covenant of Due Procedure, Etc. The City covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption and entry of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, City Manager, City Clerk and members of the City Council were at all times when any actions in connection with this Order occurred and are duly in office and duly qualified for such office.

10. Effective Date. This Ordinance shall take effect immediately upon enactment.

11. Statutory Notice and Public Hearing. Following the first reading by title hereof, an abstract of this Ordinance, determined by the City to contain sufficient information as to give notice of the contents hereof, shall be published once a week for two successive weeks within a period of fourteen consecutive days, with at least six full days intervening between each publication, in *The Intelligencer* and in *The Wheeling News Register*, newspapers published and of general circulation in the City, together with a notice stating that this Ordinance has been introduced and that the City Council of the City contemplates the final enactment thereof and that any person interested may appear before City Council upon a date certain, not less than ten days subsequent to the date of the first publication of said abstract and notice, and present

Adopted this ___ day of _____, 2022.

CITY OF WHEELING

By: _____
Its City Manager

By: _____
Its Mayor

APPROVED:

By: _____
Its City Solicitor

CERTIFICATION

The undersigned, being the duly qualified, elected and acting Clerk of the City of Wheeling, does hereby certify that the foregoing Ordinance was duly adopted by the City Council of the City of Wheeling at a regular meeting duly held, pursuant to proper notice thereof, on _____, 2022, a quorum being present and acting throughout, and which Ordinance has not been modified, amended or revoked and is a true, correct and complete copy thereof as of this ___ day of _____, 2022.

By: _____
City Clerk

Exhibit A

West Virginia Department of Economic Development Approval

(attached hereto)

Exhibit B

Section II.A of Combined Project Plan No. 1

(attached hereto)

SECTION II. PROJECT INFORMATION

A. DETAILED DESCRIPTION OF PROJECT

Include a description of how the project fits with the overall development plans for the redevelopment project area or district or the overall development plans of the municipality, county, or region.

The Combined TIF District

W. Va. Code § 7-11B-9(c) provides that the City may combine one or more existing redevelopment districts pursuant to lawfully adopted amendments to the original plans for each district so long as the governing body of the City determines that the combination of the redevelopment districts will not impair the security for any tax increment financing obligations previously issued pursuant to the West Virginia Tax Increment Financing Act (the “TIF Act”). In creating a combined redevelopment district pursuant to this section, the TIF Act provides (i) that the base assessed value of the real and tangible personal property located in the Combined TIF District shall be the same base assessed value as existed for real and tangible personal property in each of the separate redevelopment districts prior to such combination; and (ii) that the termination date for the Combined TIF District shall be the termination date for the redevelopment district which had the latest termination date prior to the combination of such districts. *See id.* & W. Va. Code § 7-11B-10.

The Developer and the City propose to combine the existing Modified TIF District No. 1 and TIF District No. 2 into a combined tax increment financing district to be designated as “City of Wheeling Combined Redevelopment District No. 1 and No. 2” in order to facilitate additional redevelopment activities in the Combined TIF District. Pursuant to W. Va. Code § 7-11B-9(c)(2), because the City enacted an ordinance creating TIF District No. 2 on December 5, 2017, the termination date for the proposed Combined TIF District will be December 5, 2047, if this application is approved.

Combined Project Plan No. 1

The City and the Developer propose to develop certain capital improvements within or contiguous to the Combined TIF District and which serve the Combined TIF District. Combined Project Plan No. 1 provides for the design, permitting, acquisition, construction and equipping of site, infrastructure, and other improvements, both public and private, that will facilitate development within, or for the benefit of, the Combined TIF District (the “TIF Projects”), including, without limitation, water lines and waterworks facilities, sanitary sewer lines and sewerage facilities, stormwater facilities, electric, natural gas, telecommunications, cable, fiber optics, and other utility improvements and utility relocations, land acquisition, site preparation and excavation, renovations to existing buildings, demolition, community facilities, new construction of and improvements to roads, bridges, streetscape, including but not limited to sidewalks, curbing and gutters, street lighting and traffic signals, and site preparation and other earthwork which is necessary in connection with the foregoing, and specifically to include:

- Redevelopment and restoration of the former Wheeling Pittsburgh Steel Building and the McFadden Building, including necessary acquisition costs;
- Redevelopment and restoration of the Williams Lea-Stone Center;
- Renovations and partial or full demolition of the Center Wheeling Parking Structure as part of a new significant regional medical facility at the site of the former Ohio Valley Medical Center (“OVMC”), including the demolition of the OVMC buildings and the construction of a new, approximately 95,000 square foot medical facility; and

- Renovations of four city-owned buildings in the 1400 block of Market Street into commercial and residential space.

Tax Increment Financing Obligations

To finance the costs of the TIF Projects, the City proposes to issue tax increment revenue bonds or other obligations (collectively, the “TIF Obligations”) in an amount not to exceed \$40,000,000, with maturities not later than the December 5, 2047, the termination date of the Combined TIF District. The TIF Obligations may be issued from time to time in one or more series and at such time or times as may be determined, at the discretion of the City. Proceeds of the TIF Obligations are generally planned to be used to (i) refund outstanding City of Wheeling Tax Increment Refunding and Revenue Bonds, Series 2016 (Bank Qualified) (the “Series 2016 Bonds”) issued in the original par amount of \$9,167,000; (ii) finance costs of the TIF Projects, including architectural, engineering, legal and other professional fees and expenses; (iii) finance costs of combining the Existing TIF Districts into the Combined TIF District and obtaining approval of Combined Project Plan No. 1; (iv) fund reserves for the TIF Obligations, as necessary; (v) fund capitalized interest on the TIF Obligations, as necessary; and (vi) pay costs of issuance of the TIF Obligations and related costs. To the extent that surplus tax increment funds are available, portions of the TIF Projects may be financed directly with such surplus. See **Section II.E** for more detailed Financing information and **Section II.G** for additional information on the proposed TIF Obligations.