



OFFICE OF THE CLERK/TREASURER

City of Burlington

City Hall, Room 20, 149 Church Street, Burlington, VT 05401

Voice (802) 865-7000

Fax (802) 865-7014

TTY (802) 865-7142

February 17, 2023

Senate Committee on Finance
State of Vermont
Via Chair Ann Cummings

Dear Chair Cummings and Committee,

Thank you for providing the opportunity to testify to the committee on Friday, February 3. As discussed, I am providing a brief summary of Burlington's position on each of the three recommendations made by the State Auditor to the Legislature within the Burlington Waterfront Tax Increment Financing District report.

Recommendation 1: Amend statute to specify whether noncompliance with public information or public vote procedural requirements could invalidate a vote.

The City's position on this recommendation is that there is existing statute and case law around invalidating a public vote, and caution should be exercised before legislatively imposing a separate and distinct legal framework for TIF around invalidating a public vote. The City faced a legal challenge after the 2016 ballot measure for its Waterfront TIF District. The City prevailed when the court ruled that even if the plaintiff's allegations of procedural requirements were true, the violations would not be significant enough to invalidate the vote. VEPC then looked into the circumstances and made a ruling that clarified how the City would proceed going forward. This shows that the system as presently established worked.

Recommendation 2: Clarify whether excess ed tax increment is to be distributed to the ed fund at the end of FY25.

Burlington maintains that the basic principles of legal interpretation of legislative language dictate a finding that Act 134 (2016), which authorized the extension of the City's Waterfront TIF District subject to certain conditions, is clear on its face and that any surplus retained (i.e. accumulated) through FY2025 can be utilized for debt service and related costs during the remaining life of the district (including the extension period if the conditions are met). No further legislative clarification is required. Under the law, the existing Waterfront TIF District receives an extension with certain conditions. Therefore, all legal requirements for the district continued unless expressly extended, modified or terminated by the language of the Act 134 amendment. In a memo from ACCD General Counsel, John Kessler, dated 12/9/2019, he stated that the City has the "authority to potentially use increment retained through 2025 to supplement the increment retained through 2035 on the three separate parcels involved in the BTC redevelopment to service the City's related infrastructure debt related to the same."

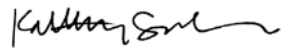
Recommendation 3: Clarify components of the tax increment calculation for the three parcels commencing in FY26.

Burlington also maintains that the basic principles of interpreting legislative language dictates a finding that Act 134 (2016), which authorized the extension of the Waterfront TIF District subject to certain conditions, is clear on its face as to what base values are to be used to calculate incremental value for the properties included in the extension during the FY2026 to FY2035

period. Additionally, the percent of education tax increment retained, the percent of education tax increment required to be paid to the Education Fund, and the percent of municipal tax increment to be allocated to the Waterfront TIF District Fund during those years are already clear as well. Simply put, in the absence of specific language to the contrary, all provisions in place prior to the extension authorized under this amending provision of law remain in place. There is, therefore, no need for legislative clarification of these relevant referenced provisions of Act 134 (2016).

Please do not hesitate to request further testimony on our recent audit or anything Burlington TIF related in the future.

Best,



Katherine Schad
Chief Administrative Officer
kschad@burlingtonvt.gov