

**Committee of the Whole Work Session of October 18, 2022.**

5:30 p.m. Call to Order.

Roll Call.

A. Discussion on the Brownfield Redevelopment Incentive Policy.

1. Review and discuss the proposed updates to the City of Portage Brownfield Redevelopment Incentive Policy.

B. Petitions and Statements of Citizens:

C. Summary of Discussion / Next Steps.

Adjournment.

**TO:** Honorable Mayor and City Council

**FROM:** Pat McGinnis, City Manager

**SUBJECT:** Brownfield Redevelopment Incentive Policy

**SUPPORTING PERSONNEL:** Kelly Peterson, Director of Community Development

**ACTION RECOMMENDED:** Review and discuss the proposed updates to the City of Portage Brownfield Redevelopment Incentive Policy.

The City of Portage Brownfield Redevelopment Incentive Policy is scheduled for review every two years, and the prior policy was last approved on June 11, 2019. This memorandum summarizes proposed updates to the City of Portage Brownfield Redevelopment Incentive Policy and has been prepared for review and discussion at the October 18, 2022, Committee of the Whole meeting. These updates to the Policy will achieve the following goals identified by the Administration in alignment with Council's strategic initiatives:

1. **Create a Standardized Application**
2. **Achieve City Housing and Sustainability Goals:** Frames the inclusion of multi-family development proposals, provides incentives for more workforce housing and more sustainable development, and addresses the need for more housing in the community.
3. **Pursue State of Michigan Participation:** Directs applicants to seek State brownfield funding through the Michigan Strategic Fund (MSF) and/or Michigan Department of Environment, Great Lakes, and Energy (EGLE).
4. **Strengthen Local Brownfield Revolving Fund:** Establishes a 10% capture set-aside to cover administrative costs, including reimbursement of costs incurred during the application process, with the remaining capture allocated to the Local Brownfield Revolving Fund, in addition to the current five-year capture at the end of the payoff of eligible expenses to the applicant.
5. **Incentivize Better Projects:** Establishes a tiered system of investment criteria. The system reduces the baseline capture period to ten years but increases and expedites the reimbursement of eligible activities for proposals meeting additional City and Brownfield Redevelopment Authority goals and objectives. Meeting three or more investment criteria triggers multiple improvements to incentives.
6. **Ensure Policy is Aligned with Best Practices:** Protective language added to ensure coverage of City of Portage legal fees during the review process, compliance, and reporting, vetting of applicants, and other elements consistent with other successful municipal and county Brownfield Redevelopment Incentive policies.

In the process of updating the Policy, City staff conducted a peer review process with five environmental and legal consultants and five governmental entities, including the Michigan Economic Development Corporation. Following your honorable body's review of the draft Policy, legal counsel shall also review, and the updated Policy will be submitted at a future City Council meeting for final approval.

**FUNDING:** Not applicable.

- Attachments:**
1. 2022 City of Portage Brownfield Policy
  2. Brownfield Map
  3. Brownfield Redevelopment Summary Matrix

## CITY OF PORTAGE BROWNFIELD REDEVELOPMENT INCENTIVE POLICY

### **PURPOSE**

To establish guidelines for the administration of the City of Portage Brownfield Redevelopment Authority (BRA) program and agreements, to include tax increment financing tools, brownfield loan and grant administration, and all other economic development opportunities available under Statute.

### **BACKGROUND**

In 1996, the State of Michigan Legislature approved Public Act 381, MCL 125.265 *et seq.* (the “Act”) to authorize municipalities to create Brownfield Redevelopment Authorities to promote the reuse and revitalization of properties. The Brownfield Redevelopment Program (the “Program”) provides for the utilization of certain tax increment revenues to pay for or reimburse the costs of Eligible Activities as defined in the Act. The City of Portage created the City of Portage Brownfield Redevelopment Authority (BRA) in 2001. This policy guides the administration of the BRA’s Program under the Act.

### **ADMINISTRATION & EVALUATION**

#### **1. Application**

To be considered for inclusion in the Program, the applicant will request a pre-application meeting with the Community Development Department. Department staff will share the Program criteria and will review the applicant’s proposed project. Following the meeting, department staff will provide the applicant with a summary review of the project and a determination of whether the project would qualify for participation in the Program. When the applicant has made the necessary preparations, an application must be submitted to the Community Development Department in electronic format. All submittals may be in draft version up until such a time that legal review is requested, prior to which, the final version must be completed. The application must include, at a minimum:

- a. Application Form
  - a. Among other required information, based on the individual project, applicant is to provide:
    - i. New and Retained job details – classification, wages, full-time/part-time status, benefits, etc.
    - ii. Use Type and Area – square footage, planned use, new and/or rehabilitated spaces in the project.
    - iii. Residential Unit Detail – if applicable, unit type, number of units, square footage, monthly rent, income restrictions, percentage AMI of restriction, proposed method of certification and duration of affordability impact (MS Excel or equivalent, not PDF).
  - b. Documentation of Site Control
  - c. Conceptual Site Plan – requirements forthcoming

- d. Project financials: MEDC proforma preferred, or, at a minimum, sources and uses of fund document (MS Excel or equivalent, not PDF). Highly recommended that applicant calculate a pro-forma with, and without BRA TIF assistance and share Debt Service Coverage Ratio for each. Also, financial structure and financing commitments.
- e. Documentation of property eligibility under the Act (environmental site assessment, due care plan, or other appropriate eligibility documentation).
- f. Photos of existing site conditions.
- g. Renderings if Available
- h. Evidence of Good-Faith Community Engagement (Optional); Applicants are advised to present their project to any established neighborhood, community, and business groups where the project is proposed and obtain letters of support from these organizations.

## 2. Review

Upon receipt of a complete application, staff will provide the relevant details of a project to other City departments to confirm that the applicant is eligible to do business with the City and the project is permissible as proposed. The staff review process timeline is a minimum of three (3) weeks. The results of this review must confirm the following:

- a. That the applicant (including all individuals and non-person entities that will have an ownership interest in the project) are current on all State and Federal income tax obligations, including filings, employee withholdings, and payments.
- b. That the project is compatible with the City's zoning ordinance or plans to comply.
- c. That the applicant is not delinquent on any financial obligation to the City.
- d. The applicant has no pending or current litigation against the city (including appeals to the Michigan Tax Tribunal or Board of Review).
- e. That the applicant does not have outstanding written orders or code compliance violations.
- f. That the proposed tax capture does not impair the financial soundness of any of the affected taxing jurisdictions.
- g. That the development will be compatible with current municipal services (roads, utilities, public safety, etc.)
- h. That the applicant will actively pursue State of Michigan funding through an Act 381 Work Plan and will share updates with the Community Development Department throughout the application process. The City of Portage may waive this criterion under some circumstances; however, lack of State of Michigan support may be a deciding factor in City of Portage approval.
- i. That the project pro forma, financial structure and financing commitments justify the project need and financial viability. Additional financial information may be requested of the applicant if submittal is vague or incomplete.
- j. Prior to Portage City Council approval, applicant will have provided a valid copy of recorded and notarized deed for subject property/properties.

### 3. Fees

- a. Application and processing fees will be levied for applications in accordance with an annually approved fee schedule to be posted on the City of Portage's website.
- b. Applicants will be responsible for paying the fees of the City of Portage Brownfield Redevelopment Authority's legal counsel in connection with review, approval and processing of the application in accordance with the billing policies of said legal counsel and with final payment within 30 days of Portage City Council decision. Legal counsel shall provide copies of all invoices to City of Portage administrative staff prior to billing applicant and shall bill in monthly cycles. Fees will be capped at \$15,000, subject to further discussion and agreement.
- c. Modifications to the approved Brownfield Plan or Development and/or Reimbursement Agreement may be considered and are subject to the standard preparation fees, reviews, and public hearing requirements, resulting in an adopted resolution for the Amended Plan.

### 4. Miscellaneous Provisions

- a. If a project is located in another tax increment financing district (i.e., Downtown Development Authority, Corridor Improvement Authority, etc.), staff will seek a recommendation from the district's governing board on the application. If the project warrants it, an Interlocal Governmental Agreement may be approved to accommodate the Program.
- b. The City intends for the Brownfield Redevelopment program to function in partnership with the State of Michigan Brownfield Programs operated through the MEDC and EGLE. As such, the BRA will only participate in projects that intend to seek full approval by the State, through the Michigan Strategic Fund (MSF) and/or Michigan Department of Environment, Great Lakes, and Energy (EGLE), unless the BRA Board explicitly recommends approval to the Council that a project to be reimbursed only from local tax increment revenues.
- c. The local tax capture is limited to a maximum of 10 years or when 100% reimbursement of eligible expenses is achieved, whichever time period is shorter. An applicant that meets multiple investment criteria may qualify for additional years of capture adding up to no more than 25 years of local tax total capture. In all cases, an extra five years will be allocated for TIF capture by the Local Brownfield Revolving Fund.
- d. Reimbursable Brownfield Plan Amendment and Work Plan preparation fees will be limited to a maximum of \$30,000, or to \$15,000 in the event the applicant is permitted to apply for a local-only Brownfield program.
- e. Upon acquisition of the property included in a Brownfield Plan Amendment, and before becoming eligible to receive reimbursement pursuant to an approved agreement, the applicant shall have filed a completed [Michigan Department of Treasury Form 2766 – Property Transfer Affidavit L-4260](#) and a valid copy of recorded and notarized deed for subject property/properties with the City Assessor related to its acquisition of the property. The Property Transfer Affidavit shall be considered incomplete if the purchase price of the real estate is not entered on the form.

### 5. Project Review and Evaluation Criteria

- a. The City of Portage Brownfield Redevelopment Authority is authorized to utilize Tax Increment Financing of "eligible activities", as defined in Section 2 of the Act, by utilizing incremental taxes generated by and captured from the redevelopment of eligible property to reimburse developers and property owners for those costs.

- b. For projects meeting the minimum qualification criteria contained in the Act, the City of Portage Brownfield Redevelopment Authority retains an annual TIF capture equal to 10% of the annual increment during the entire capture period of the project to reimburse administrative costs as they are incurred, to cover actual expenses related to operating the Brownfield Redevelopment program, to reimburse Department-specific activities conducted by/on behalf of the authority related directly to the work conducted on prospective eligible properties prior to approval of the brownfield plan, and to fund the Local Brownfield Revolving Fund with the remaining fee balance. Actual administrative expenses will be reimbursed with only local incremental taxes. The City of Portage Brownfield Redevelopment Authority will, where applicable, provide to the State Treasury an amount required by PA 381 of 1996 to fund the State Brownfield Redevelopment Fund. Remaining annual tax increment revenues from a project will be utilized to reimburse the developer for eligible costs incurred and documented.
- c. For projects that meet the above criteria and that assist in achieving certain City Investment Criteria enumerated in Section 6 below, an additional financial incentive shall be available by reducing or eliminating the annual administrative fee of the City of Portage Brownfield Redevelopment Authority based on the following schedule:

<b>PROJECT EVALUATION</b>	<b>LEVEL OF INCENTIVE</b>
<i>Base Level of Support (Meets project eligibility criteria, but does not meet any City Investment Criteria)</i>	<i>10% Annual BRA Administrative Fee</i>
<i>Meets One City Investment Criteria</i>	<i>5% Annual BRA Administrative Fee</i>
<i>Meets Two City Investment Criteria</i>	<i>No Annual BRA Administrative Fee</i>
<i>Meets Three City Investment Criteria</i>	<i>No Annual BRA Administration Fee; qualifies for payment of interest on carrying costs up to 3.5%*, eligible for reimbursement up to 20 years of local tax capture;</i>
<i>Meets Four or More Investment Criteria</i>	<i>No Annual BRA Administration Fee; qualifies for payment of interest on carrying costs up to 3.5%*, eligible for reimbursement up to 25 years of local tax capture;</i>

\*The reimbursement of interest on unreimbursed environmental and non-environmental activities will be allowed where actual interest expenses and carrying costs are incurred by the applicant. All costs for which interest is being requested must be eligible environmental or non-environmental activities. The total amount of interest, and the interest rate, shall be determined in accordance with MEDC guidelines.

## **6. Investment Criteria**

The City Investment Criteria described below have been identified in various plans developed with input from the Portage community to incentivize outcomes desired by the City of Portage and the community. These criteria shall be applied at the sole discretion of City Administration, the City of Portage BRA, and City Council and are not intended to be prescriptive in nature.

- a. Sustainable Development: Achieve LEED Gold Certification, Net-Zero Energy Certification, or similar alternatives.
- b. Income and Housing Diversity: (address one of the following.)
  - i. At least 20% of the residential housing units are affordable to individuals or families earning 80% to 120% of the Area Median Income (AMI). These units may be affordable due a financing mechanism (i.e., Low-Income Housing Tax Credits) or be “affordable by design” (which, for purposes of this policy, is defined as having total occupancy costs that are 80% to 120% of AMI rental limits according to the current rent limits for a one-bedroom and two-bedroom units in Kalamazoo County published by the Michigan State Housing Development Authority (MSHDA). At least one third of the affordable units shall meet the 80%-of-AMI threshold and one third shall meet the 100%-of-AMI threshold, and one third shall meet the 120%-of-AMI threshold. At least 50% of the AMI units shall be two bedrooms. Total occupancy costs include rent, plus the allowances for basic utilities included in the current *Allowances for Tenant-Furnished Utilities* provided by the U.S. Department of Housing and Urban Development, this provision to be construed in conformance with the Michigan Public Act 226 of 1988 (MCL 123.411)
  - ii. Provides a housing type (single-family attached, single-family detached, duplex, or multi-family) that is less than 20% of the existing housing in a census tract, according to the most recent decennial census, or if the census data is more than five years old, according to the most recent American Community Survey data.
- c. Quality Architecture and Site Design: Site design provides for a reduction or consolidation of required curb cuts, equal to 33% or greater reduction than the current code requirements. Other site design and architectural elements that provide benefit to the community, such as additional open space through density measures, improvements to traffic safety, will be considered on a case-by-case basis.
- d. Activation in Designated Sub-Areas of Portage: (address one of the following.)
  - i. Provides major activation of plan goals/objectives on parcel(s) located in designated Master Plan sub-areas, including City Centre District and Lake Center District, in addition to Crossroads Mall area properties.
  - ii. Provides activation at parcel(s) targeted by the City of Portage for environmental clean-up or redevelopment.
- e. Promote Utilization of Multimodal Transportation: (address one of the following.)
  - i. For projects located within ¼ mile of a bus transit station, or within 500 feet of a permanent covered bus shelter, provide transit passes to each resident and employees for duration of Project reimbursement for eligible expenses.
  - ii. Project provides land (by conveyance or easement) for, and/or finances improvements related to, a transit station, electronic charging stations, bike share, a covered/sheltered transit stop, pedestrian infrastructure where not already present.

- f. Job Creation: Provides the greater of 20 FTE jobs or a 25% increase in FTE jobs for non-residential developments over and above existing in-state operations over the next three years, with annual wage/salary of the new jobs averaging more than twice the current State of Michigan minimum wage at the time of hiring.
- g. Child Care Facilities: Includes the development of a State of Michigan licensed child daycare center as outlined in MCL 722.111(f)(iv).

## 7. Compliance and Reporting

- a. Compliance requirements will be detailed in a project's Development Agreement and/or Reimbursement Agreement.
- b. Annual Reporting will be due by/before June 30 for the previous year and shall be consistent with the MEDC Act 381 reporting requirements.
- c. A project completion survey must be submitted within 120 days of the issuance of a Certificate of Occupancy for the project in a format acceptable to the BRA for reimbursement of eligible activity costs.

The project must be built, operated, and maintained in compliance with all applicable City ordinances, State code, including certification of compliance with current Michigan Building and Residential Codes.

## 8. Local Brownfield Revolving Fund

PA 381 of 1996 authorizes the creation of a Local Brownfield Revolving Fund (LBRF) that can be used for eligible activities such as: site investigation (e.g., environmental studies such as Baseline Environmental Assessments and Due Care Plans); preparation of a Brownfield Redevelopment Plan; environmental cleanup; demolition; site clearing, and other activities. The LBRF can fund future brownfield redevelopment projects that require additional assistance with up-front due diligence and planning costs required to prepare a Brownfield Redevelopment Plan, and/or the cost of eligible redevelopment activities where a project may not otherwise be economically feasible.

Funding for a LBRF typically consists of funds from tax increment revenue from specified projects, as appropriate, in excess of the amount required to reimburse the developer, the local Brownfield Redevelopment Authority for administrative expenses, and the State Brownfield Redevelopment program. However, funding for an LBRF may also be derived from appropriations and/or grants from public and private sources. In the case of the Portage Brownfield Redevelopment Authority, the LBRF will initially be funded from tax increment revenue derived from approved Brownfield Redevelopment Plans. The LBRF will capture excess tax increment revenue for a period not to exceed five years (which must fall within the maximum 30-year capture period). The LBRF will also capture any remaining funds from the annual BRA Administrative Fee, if applicable, and in accordance with PA 381.

## 9. Coordination with Kalamazoo County Brownfield Redevelopment Authority

The Kalamazoo County Brownfield Redevelopment Authority (KCBRA) was created in 2002 and provides incentives for brownfield redevelopment. The Portage BRA will coordinate with Kalamazoo County and will collaborate as appropriate.

## 10. Default

Default terms and/or conditions will be detailed in the Development and/or Reimbursement Agreement.

**11. Waiver**

The City of Portage Brownfield Redevelopment Authority (BRA) or City Council may waive this policy, or any portion of it, when it is determined to be in the best interest of the City.

Inquiries concerning this policy can be directed to the Department of Community Development (269.329.4477), or the Office of the City Clerk (269.329.4511) in Portage City Hall, 7900 South Westnedge Avenue, Portage, Michigan 49002.

**DATE OF ADOPTION BY CITY COUNCIL: tbd**

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**Summary of Current Brownfield Redevelopment Projects - City of Portage  
October, 2022**

Site	Location	Applicant / Owner	City Council Approval	Square Footage	Site Acres	Proposed Total Reimbursement Amount	Period	Tax Start Year	Tax End Year	Applicant's Proposed Investment	Proposed Jobs	Proposed Salary Range	Note
<b>City of Portage Approved Plans</b>													
1	Portage Centre Plaza, 129 W Centre Avenue	Portage Centre Plaza LLC	9/4/2001			NO TIF							
2	Milham Business / Technology Park, 901 E Milham Avenue	D&J Real Estate LLC	5/13/2003			NO TIF							
3	Milwood Animal Clinic, 5942 Lovers Lane	Dame & Updike LLC	7/29/2003			NO TIF							
4	Restaurant & Retail, 5311 South Westnedge Avenue	5311 S Westnedge LLC (PlazaCorps)	7/29/2003			NO TIF							
5	Trade Center, 420 DeHaan Avenue	H&G LLC	8/26/2003	80,000sf. Office building	6	NO TIF				\$13.5 million	195 jobs		
6	Terminated 9/17/2019; 8019, 8037 and 8043 Portage Rd.	Treystar Holdings LLC	9/12/2006 12/15/2009	53,000 sf. Multi-building business center	8	\$297,000	n/a			\$8 million	150		
7	Quad 6 Lovers, 6666 Lovers Ln	Southwest Michigan First / Lovers Lane Properties, LLC	8/20/2019	6,000 sf. Office Facility for Comcast	2.48	\$182,903; \$7,912 administrative cost; to State Brownfield Redevelopment Fund \$3,826; Capitalization of LBRF \$66,485	20 years	2020	2039	\$725,000	25-30 full-time	average wage of \$30,000	
8	Centre Port Commons, 8015, 8043, 8061 Portage Rd and 2610 and 2700 East Centre Avenue	Treystar Holdings, LLC and TOF Centreport I, LLC	12/17/2019	12,600 sf. Medical office building		\$147,000 approved from 2009 plan; \$25,000 in public infrastructure; \$17,976 administrative cost; \$172,000 for LBRF	10 years	2020	2029	\$6 million	28 new full-time-equivalent	average annual salary of \$125,000	Originally submitted as #6
9	Kotobuki, 5200 S. Sprinkle Rd.	Kotobuki Seating Inc.	7/26/2022	32,000 sf. manufacturing building	8.6	\$461, 825; \$38,781 administrative cost; \$3,900 State Brownfield Redevelopment Fund; \$289,015 LBRF	17 years	2024	2041	\$5.5 million	50 new jobs	\$15-\$18/hr unskilled; \$19-\$24/hr skilled factory labor	
10	Tall Timbers, 3413 W. Centre Ave.	Tall Timbers Portage, LLC	8/9/2022	180 leed units with 147-space parking deck	13.525	\$11,182,806; \$592,080 administrative cost; \$815,618 State Brownfield Redevelopment Fund; \$1,456,384 LBRF	30 years	2024	2053	\$42 million	3.5 FTE jobs, 10% units at 80-120% AMI	\$18	Res. Exception to Policy
11	New warehouse, 801 E. Milham	IPUSA	8/9/2022	240,000 sf.	35.865	\$2,146,901; \$348,055 administrative cost; \$20,679 State Brownfield Redevelopment Fund; \$1,199,080 LBRF	20 years	2024	2043	\$20 million			IDD also approved
<b>Kalamazoo County Approved Plans</b>													
1	Buds Auto, 9008 Portage Rd	South Portage Rd LLC	11/19/2013	1500 SF addition		\$69,280; admin costs \$5k; State Rdvt. Fund \$3,836; KCBRF \$11,570.	27 years	2013	2040	n/d			
2	RAI Jets, 5825 & 5901 Willoughby	RAI AZO, LLC	4/12/2016	n/a; airport flight service and parking lot		\$102,403; State Brownfield Rdvt. Fund \$11,010; LSRRF \$77,127.	15 years	2016	est 2029	\$766,500			
3	Stryker; 1306 & 1700 E Milham Ave; 6000, 6100, & 6520 Portage Rd; 1405 Ramona Ave	Stryker Corp	2/14/2017	485,000 SF R&D complex	170.8	\$11,013,156; admin costs \$240k; State Rvling Fund \$897k; KCBRF \$2.5M;	30 years	2018	est 2026	\$130-150 million			
0	Project Spartan, 6701 Portage Rd	Southwest Michigan First / Scannell Properties	10/15/2019 (1 meeting)	321,000 sf. Distribution Center	37.4	\$7,599,033; admin costs \$214k; State Redvt. Fund \$34,340; KCBRF \$1,475,677	23 years	2021	2043	\$25 million with \$15-20 million personal property	766 FT & 158 contract employees		