



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Erin Roseman
Director of Finance

SUBJECT: Enhanced Infrastructure District
Timeline & Procedural Recommendation

DATE: November 29, 2022

City Administrator Approval 

Date Dec 7, 2022

RECOMMENDATION

Staff Recommends That the City Council Receive An Informational Report From The City Administrator Outlining The Timeline And Process For A Proposal To Establish An Enhanced Infrastructure Financing District (EIFD) Exclusively For East Oakland, Exclusively For West Oakland, and For East And West Oakland Combined

EXECUTIVE SUMMARY

This informational report responds to the City Council directives adopted on November 1, 2022 via [Resolution No. 89480 C.M.S.](#), expressing the City's interest in establishing one or more enhanced infrastructure financing districts to fund affordable housing. The City Administrator was directed to return to Council with a report and recommendation outlining the timeline and process for a proposal to establish an enhanced infrastructure financing district exclusively for East Oakland, exclusively for West Oakland, and exclusively for East and West Oakland combined. The process outlined below is the same for all proposed district areas.

BACKGROUND/LEGISLATIVE HISTORY

On November 1, 2022, the Oakland City Council adopted [Resolution No. 89480 C.M.S.](#), that expressed the City's interest in establishing one or more enhanced infrastructure financing districts to fund affordable housing.

[Kosmont Companies](#), through a nonprofit, has provided the City with presentations and some basic analysis of generalized areas and made recommendations that an EIFD may be viable under certain circumstances.

ANALYSIS AND POLICY ALTERNATIVES

An Enhanced Infrastructure Financing District (EIFD) is a form of tax increment financing. Tax Increment financing (TIF) is an economic development mechanism where an area is geographically targeted to capture the increase in property taxes resulting from new development and is then used to subsidize the development in that established area. TIF works in such a way that the current property taxes for the designated area are considered the baseline property value. Once new development begins, it will provide greater property value resulting in new property taxes. The difference between the baseline property value and the new property value to be taxed is called "tax increment". This increment, rather than flow to the City and County general revenues, will flow to the targeted district in which the new property value was obtained. The revenues are then dedicated to the targeted area for specific infrastructure that is in support of the new development basically, keeping it in the neighborhood. California Government code allows a maximum of 45 years from the first bond issuance, for the increment to be collected and pledged. At the end of the timespan, the tax increment will then flow to the City and County like general property taxes.

Process and Timeline To Implement An Enhanced Infrastructure Financing District

The timeline to establish and implement an EIFD can take anywhere from 3 to 5 years under optimal conditions. The more complexity an EIFD contains, i.e., governmental contributors, overlap with previous Redevelopment Areas, development needs, and greater geography, the longer the timeline. The timeline can expand upwards to seven years when taking these into consideration. The statutory requirements alone set the baseline timeline at 18 months. However, prior to undertaking the statutory requirements, a detailed analysis of the efficacy of an EIFD is warranted based on the amount of time and potential cost to its legal creation.

A baseline study of the particular areas identified for an EIFD should focus in on the exact geography that has the most potential to produce the desired outcome of maximized tax increment, greatest policy effect, most positive economic indicators to support long-term financing and public infrastructure, produces the greatest residual economic outcomes such as a positive outcome on general revenues to the taxing entities and to the residents of the community.

The basic components that need to be studied are a specific geography on a parcel level, to include existing and future real estate values, specific ideal developments to produce the desired outcome, revenue, and expenditure impact on government finances, and determine the public infrastructure needed to produce and support the ideal development. The market conditions for financing, development activity, cost of opportunity, multiple government participation must be factored in the analysis. The specific legal constraints of governmental activity must also be taken to account as several disciplines of law and California government code converge, i.e., taxation, municipal debt, redevelopment, economic development, and appraisal. This baseline study will then inform and be the starting point for the statutory requirements of the Resolution of Intent, Public Financing Authority, Infrastructure Financing Plan, and Community Facilities Districts.

The ability to establish an EIFD is found in California Gov. Code §§ 53398.50 – 53398.88 Enhanced Infrastructure Financing District. Outlined below in high-level detail are 23 steps to that must be completed before an EIFD is fully established. Implied in the process, is the requirement of a determination of the exact geography in which the EIFD will encompass. The

exact geography defined by specific parcel data of the EIFD is critical in all aspects of the foregoing processes.

Table 1. Enhanced Infrastructure Financing District Timeline, as of 4.2021

Step	Action	Estimated Timeframe	Statutory Reference
1	<p><i>Former Redevelopment Agency and Redevelopment Project Areas.</i></p> <ul style="list-style-type: none"> Ensure compliance with applicable conditions if City created a redevelopment agency or wishes to include a former redevelopment project area in the EIFD 	1-2 months	Gov. Code §§ 53398.54, 53398.55
2	<p><i>Affected Taxing Entities Preliminary Action</i></p> <ul style="list-style-type: none"> Affected Taxing Entities designate members of Public Financing PFA described below. 	2-4 months	Gov. Code § 53398.51
3	<p><i>Resolution of Intention (ROI).</i></p> <ul style="list-style-type: none"> Oakland City Council (“City Council”) adopts resolution of intention to establish the EIFD. Resolution shall: <ul style="list-style-type: none"> Set boundaries of EIFD (may refer to map). State type of facilities/development to be financed/assisted by EIFD. State that property tax increment of City may be used, if applicable. State that City may allocate sales and use tax to EIFD.¹ Set time for public hearing. Direct mailing of ROI (or notice) 	12-24 months	Gov. Code §§ 53398.59, 53398.60

¹ This schedule assumes that the City is not establishing a district under the Neighborhood Infill Finance and Transit Improvements Act (NIFTI) under Gov. Code § 53398.75.5 or the Second Neighborhood Infill Finance and Transit Improvements Act (NIFTI-2) under Gov. Code § 53398.75.7.

Step	Action	Estimated Timeframe	Statutory Reference
4	<p><i>Formation of Public Financing Authority ("PFA").²</i></p> <ul style="list-style-type: none"> • City Council adopts resolution forming PFA. • If City is only affected taxing entity, PFA membership consists of 3 members of City Council, plus 2 members of public chosen by the City Council. • If other affected taxing entities are involved, PFA membership consists of a majority of members from the legislative bodies of the participating entities, plus 2 members of public. 	<p>12-24 months</p> <p>(Must occur at the same time as ROI)</p>	Gov. Code § 53398.51.1
5	<p><i>Mailing of Resolution of Intention or Notice.</i></p> <ul style="list-style-type: none"> • City official designated by City Council must mail: <ul style="list-style-type: none"> ○ Copy of Resolution of Intention to each affected taxing entity and the PFA. ○ Alternative to mailing Resolution of Intention: mail one-page notice of intention or copy of Resolution of Intention to each owner of land within EIFD. 	1-2 months	Gov. Code §§ 53398.60-62
6	<p><i>PFA Resolution Directing Infrastructure Financing Plan.</i></p> <ul style="list-style-type: none"> • PFA must adopt a resolution directing the City engineer or "other appropriate official" to prepare an Infrastructure Financing Plan ("IFP"). 	1-2 months	Gov. Code § 53398.62

² Affected taxing entities are not limited to those agencies that allocate revenues to the EIFD. "Affected taxing entity" means any governmental taxing agency which levied or had levied on its behalf a property tax on all or a portion of the property located in the proposed district in the fiscal year prior to the designation of the district, but not including any county office of education, school district, or community college district. An "affected taxing entity" may include a special district if the special district is providing any portion of the funding included in the infrastructure financing plan adopted pursuant to Section 53398.63. For the purposes of this section, "special district" means an agency of the state formed for the performance of governmental or proprietary functions within limited geographic boundaries and shall not include a school district or community college district. Gov. Code § 53398.51(a).

<u>Step</u>	<u>Action</u>	<u>Estimated Timeframe</u>	<u>Statutory Reference</u>
7	<p><i>Consultation and Meeting with Affected Taxing Entity.</i></p> <ul style="list-style-type: none"> • Designated official consults with each affected taxing entity. • Upon request, meets with representatives of affected taxing entity. 	1-2 months	Gov. Code § 5398.65
8	<p><i>Preparation of IFP.</i></p> <ul style="list-style-type: none"> • IFP must include, among others: <ul style="list-style-type: none"> ○ Map and legal description of EIFD. ○ Description of proposed public facilities. ○ Finding that development and financial assistance are of communitywide significance. ○ Financing section: <ul style="list-style-type: none"> ▪ Specification of maximum portion of tax increment allocated to the EIFD (may be different for affected taxing entities and may change over time) ▪ Projection of tax increment revenue ▪ Plan for financing facilities, including intention to incur debt ▪ Date on which EIFD will cease to exist, which cannot be more than 45 years after issuance of bonds is approved. ▪ Analysis of costs to City of providing facilities and services to EIFD and projected revenues from development in EIFD ▪ Analysis of projected fiscal impact of the EIFD and associated development upon each affected taxing entity 	12-24 months	Gov. Code § 53398.63

Step	Action	Estimated Timeframe	Statutory Reference
9	<p><i>Mailing of IFP or Notice.</i></p> <ul style="list-style-type: none"> IFP and CEQA report, if required for the public facilities or proposed development project for which the public facilities are needed, must be mailed to each owner of land within the EIFD and to each affected taxing entity. IFP must also be mailed to the PFA, the City planning commission, and the City Council. IFP must also be made available for public inspection Alternative to mailing IFP/CEQA Report: notice mail be mailed to each landowner, resident and affected taxing entity. 	1-2 months	Gov. Code § 53398.64
10	<p><i>Provide Notice of Meeting to Present IFP.</i></p> <ul style="list-style-type: none"> Post notice of meeting on EIFD's website at least 10 days before the meeting. Mail notice to each landowner, each resident, and each taxing entity at least 10 days before the meeting. 	1-2 months	Gov. Code §§ 53398.66(c)(1) and 53398.66(i)
11	<p><i>Meeting to Present IFP.</i></p> <ul style="list-style-type: none"> PFA must hold a meeting at which the draft IFP is made available to the public and each landowner within the EIFD. Purposes are to present IFP, answer questions, and consider comments. 		Gov. Code § 53398.66(b)
12	<p><i>Provide Notice of First Public Hearing.</i></p> <ul style="list-style-type: none"> Publish at least once a week for four successive weeks before the hearing in newspaper of general circulation. Post notice of meeting on EIFD's website at least 10 days before the meeting. Mail notice to each landowner, each resident, and each taxing entity at least 10 days before the meeting. 	1-2 months	Gov. Code § 53398.66(i)(1)
13	<p><i>First Public Hearing.</i></p> <ul style="list-style-type: none"> PFA shall hear all written and oral comments about the proposed adoption of the IFP and the regularity of proceedings but take no action. 		Gov. Code § 53398.66(a)(2)

<u>Step</u>	<u>Action</u>	<u>Estimated Timeframe</u>	<u>Statutory Reference</u>
14	<p><i>Provide Notice of Second Public Hearing.</i></p> <ul style="list-style-type: none"> • Publish at least 10 days before hearing in newspaper of general circulation. • Post notice of meeting on EIFD's website at least 10 days before the meeting. • Mail notice to each landowner, each resident, and each taxing entity at least 10 days before the meeting. • Notice shall include summary of changes made to IFP as a result of the first hearing and identify accessible location where public can review the IFP. 	2-6 months	Gov. Code §§ 53398.66(c)(1)(D) and 53398.66(i)(2)
15	<p><i>Second Public Hearing.</i></p> <ul style="list-style-type: none"> • PFA shall consider any additional written and oral comments about the proposed adoption of the IFP and the regularity of proceedings and act to modify or reject the IFP. 		Gov. Code § 53398.66(a)(3)
16	<p><i>Resolution Approving Division of Taxes with EIFD.</i></p> <ul style="list-style-type: none"> • Each affected taxing entity that will be subject to division of taxes (i.e., City and County) must adopt a resolution approving the IFP. <p>Note: City Council must hold a public hearing before it adopts this resolution. Gov. Code §53398.59(f)</p>	2-6 months	Gov. Code § 53398.68
17	<p><i>Provide Notice of Third Public Hearing.</i></p> <ul style="list-style-type: none"> • Publish at least 10 days before hearing in newspaper of general circulation. • Post notice of meeting on EIFD's website at least 10 days before the meeting. • Mail notice to each landowner, each resident, and each taxing entity at least 10 days before the meeting. • Notice shall include copy of IFP and inform landowner or reside of right to submit oral or written protest before the close of the public hearing. 	2-6 months	Gov. Code §§ 53398.66(c)(1)(E) and 53398.66(i)(3)

<u>Step</u>	<u>Action</u>	<u>Estimated Timeframe</u>	<u>Statutory Reference</u>
18	<p><i>Third Public Hearing.</i></p> <ul style="list-style-type: none"> • PFA shall consider all written and oral protests and recommendations of affected taxing entities. • PFA shall conduct a protest hearing. • PFA shall terminate proceedings if there is a majority protest.³ • PFA shall call an election if 25-50% of combined number of landowners and residents file a protest. • No election required if less than 25% of combined number of landowners and residents protest. 		Gov. Code § 53398.66(c)(2)-(g)
19	<p><i>Election (if Needed After Third Public Hearing).</i></p> <ul style="list-style-type: none"> • Following majority protest, PFA holds mail ballot election of landowners and residents. • PFA must first adopt election procedures at a duly noticed public hearing 	Within 90 days of third public hearing	Gov. Code §§ 53398.66, 53398.70, 53398.71
20	<p><i>Resolution Finding No Majority Protest, Proposing Adoption of IFP and Formation of the EIFD</i></p> <ul style="list-style-type: none"> • After third public hearing, assuming no protest sufficient to require an election, PFA may adopt resolution proposing adoption of the IFP and formation of the EIFD. 	1-2 months (After third public hearing)	Gov. Code § 53398.69
21	<i>Resolution Authorizing Issuance of Bonds.</i>	Date Consideration: Adoption of this resolution may trigger 45-year allocation period (see § 53398.63).	Gov. Code § 53398.77

³ A majority protest exists if protests have been filed representing over 50 percent of the combined number of landowners and residents in the area who are at least 18 years of age. Gov. Code § 53398.66(c)(2).

<u>Step</u>	<u>Action</u>	<u>Estimated Timeframe</u>	<u>Statutory Reference</u>
23	<p><i>Expiration of Statute of Limitations.</i></p> <ul style="list-style-type: none"> Any action to attack the adoption of the IFP or formation of the EIFD must be commenced within 30 days of the resolution adopting the IFP. Any action to determine the validity of the issuance of bonds must be commenced within 30 days after adoption of the Resolution Authorizing Issuance of Bonds 	<p>Date Consideration: Adoption of § 53398.77 resolution may trigger 45-year allocation period (see § 53398.63).</p>	<p>Gov. Code §§ 53398.57 and 53398.69 (IFP and formation of EIFD)</p> <p>Gov. Code § 53398.58 (bonds)</p>

Recommendation

Receive this report and provide for continued exploration for EIFD's in East Oakland, West Oakland, and East and West Oakland Combined with more robust analysis. Due to the enormous complexity of establishing an EIFD and the various analyses needed, it is recommended that a more thorough analysis be conducted by the City with the assistance of an economic consultant with an expertise in EIFD development, financial advisors, real estate economists, and specialized legal counsel to determine if an EIFD would be beneficial to the City and the residents of the proposed areas.

To facilitate the study of the various EIFD's, the Department of Finance has released an informal request for proposals (IRFP) to bring on an economic consultant to comprehensively review the reports provided to the City from Kosmont Companies and outline the next appropriate steps for dedicated review of each possible district. The IRFP responses were due back to the Finance Department on November 30th. The Department is in the process of reviewing, awarding, and contract execution. The department expects that a consultant can be on-board at the beginning of the next year. Following the engagement of the consultant, Department of Finance would expect to bring back additional recommendations and budgetary considerations for fully engaging in detailed EIFD analysis using the Kosmont Company analysis and reports as the starting point.

This report advances the citywide priority of being a responsive, trustworthy government by returning to the Finance and Management Committee timely as requested by the City Council.

FISCAL IMPACT

There is no fiscal impact to receive this informational report, however, the implementation of any EIFD is a great undertaking and can cost in excess of \$2 million annually in consultant fees, inclusive of real estate, economic, financial, and legal counsel for the exploration and formation phase.

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for this informational report beyond the standard City Council agenda noticing procedures.

COORDINATION

This report was coordinated by the following departments: City Administrator's Office, City Attorney's Office, and Finance Department.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with the receiving of this informational report. However, the economic opportunities that will arise from the establishment of an EIFD are undetermined at this time.

Environmental: There are no environmental opportunities associated with the receiving of this report.

Race and Equity: A racial equity analysis has not been conducted. The racial equity impacts that may arise from the establishment of an EIFD are undetermined at this time.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That the City Council Receive An Informational Report From The City Administrator Outlining The Timeline And Process For A Proposal To Establish An Enhanced Infrastructure Financing District (EIFD) Exclusively For East Oakland, Exclusively For West Oakland, and For East And West Oakland Combined.

For questions regarding this report, please contact Brittany Hines, Assistant to the Director, at (510) 238-7078.

Respectfully submitted,



ERIN ROSEMAN
Director of Finance