



Legislation Text

File #: RES 23-252, **Version:** 1

Resolution approving the adoption of a Supplement to the Spending Plan under Minnesota Statutes, Section 469.176, Subd 4n, Citywide

WHEREAS, the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (the "HRA") is a public body corporate and politic established pursuant to the provisions of Minnesota Statutes, Sections 469.001 to 469.047, as amended (the "HRA Act").

WHEREAS, the HRA has the power to engage in development or redevelopment activities under Minnesota law and the HRA is authorized to engage in activities relating to (a) housing projects and development, (b) removal and prevention of the spread of conditions of blight or deterioration, (c) bringing substandard buildings and improvements into compliance with public standards, (d) disposition of land for private redevelopment, and (e) improving the tax base and the financial stability of the community, and the HRA has the power to engage in the aforementioned activities when these activities cannot be undertaken solely by private initiative alone and to promote these activities in targeted neighborhoods; and the HRA is authorized to create redevelopment projects as defined in Minnesota Statutes, Section 469.002, Subd. 14.

WHEREAS, various private entities have requested or identified the need for financial assistance from the HRA for various housing and redevelopment projects.

WHEREAS, the HRA and the City of Saint Paul, Minnesota (the "City") have previously established the following tax increment financing districts located in the City (collectively, the "TIF Districts"), and adopted tax increment financing plans therefor, pursuant to the HRA Act and Minnesota Statutes, Sections 469.174 through 469.1794, as amended (the "TIF Act"): (1) Block 4/MN Mutual Redevelopment; (2) North Quadrant Housing; (3) Riverfront Renaissance Redevelopment; (4) Emerald Park Redevelopment; (5) Straus Building-Housing; (6) Phalen Village Redevelopment; (7) Osceola Park Housing; (8) Bridgecreek Senior Place Housing (aka Parkway Gardens); (9) Shepard Davern Redevelopment No. 1 (Owner Occupied Housing); (10) Shepard Davern Housing No. 2 (Rental Housing); (11) Shepard Davern Housing No. 3 (Senior Rental Housing); (12) Koch Mobil Redevelopment; (13) Carlton Lofts Housing; (14) Highland Pointe Lofts Housing (aka Riverpointe Lofts); (15) Minnesota Building Housing; (16) Pioneer Endicott Redevelopment; (17) Schmidt Brewery Housing; (18) West Side Flats Phase I Housing; (19) Custom House/Post Office Redevelopment; (20) East 7th & Bates Senior Housing; (21) 2700 University at Westgate Station Housing.

WHEREAS, Section 469.176, subdivision 4n of the TIF Act ("Subd. 4n") authorizes the HRA to spend available tax increment from any existing tax increment financing district, notwithstanding any other law to the contrary, to provide improvements, loans, interest rate subsidies, or assistance in any form to private development consisting of construction or substantial rehabilitation of buildings and ancillary facilities, if the following conditions exist:

- (1) Such assistance will create or retain jobs in the State of Minnesota, including construction jobs;
- (2) Construction commences before December 31, 2025;
- (3) The construction would not have commenced before December 31, 2025 without the assistance;
- (4) Tax increments under the spending plan are spent by December 31, 2025; and
- (5) The City Council of the City (the "City Council") approves a written spending plan (after a duly noticed public hearing) that specifically authorizes the HRA to take such actions.

WHEREAS, the HRA holds regularly scheduled meetings on the 2nd and 4th Wednesdays of each month and the schedule of such meetings is posted on the HRA's website and is maintained on file, beginning of January of each year. In addition, the City Council holds regularly scheduled meetings on the 1st, 2nd, 3rd and 4th Wednesdays of each month and the schedule of such meetings is posted on the City's website and is maintained on file, beginning of January of each year.

WHEREAS, the HRA and the City Council scheduled consideration of the proposed adoption of resolutions approving that certain Spending Plan for Various Tax Increment Financing Districts Adopted Pursuant to Minnesota Statutes, Section 469.176, Subd 4n (the "Spending Plan") which authorizes the use of tax increments from the TIF Districts to provide improvements, loans or assistance for private development that will create or retain jobs in this state to be heard before the HRA on June 22, 2022, to be immediately followed, if approved, by a public hearing and consideration before the City Council later on June 22, 2022.

WHEREAS, in anticipation of the public hearing before the City Council, the City delivered to Pioneer Press on June 10, 2022 for publication in the Sunday Edition of Legal Notices on June 12, 2022 a notice of a public hearing to be held on the Spending Plan (the "Original Notice").

WHEREAS, on June 10, 2022, Pioneer Press confirmed its intention to publish the Original Notice on June 12, 2022. The City further caused the Original Notice to be published on the City's website on June 10, 2022 wherein the Original Notice contained the date, time and place of the public hearing and instructions for obtaining a copy of the Spending Plan.

WHEREAS, on June 15, 2022, the Pioneer Press published the Original Notice that it had failed to publish on June 12, 2022, through no fault of the City.

WHEREAS, Minnesota Statute section 331A.05, subdivision 7 provides: "If through no fault of the political subdivision, an error occurs in the publication of a public notice, the error shall have no effect on the validity of the event, action, or proceeding to which the public notice relates."

WHEREAS, in accordance with the regular meeting schedule, the HRA placed on the Agenda for the June 22, 2022 regular meeting of the Board of Commissioners of the HRA the proposed adoption of RES 22-955 approving a Spending Plan. In addition to the notice of regular meeting posted pursuant to the schedule, the Agenda for the meeting containing a link to the Resolution and Spending Plan to be taken up was posted to the public five days in advance of the meeting (on June 17, 2022) by: (1) Early Notification System (ENS), an electronic email delivery system in which members of the public can sign up for emails and alerts for HRA-related notifications, (2) publication on Legistar, an internet and cloud based system that posts and tracks legislative activities of the HRA, and (3) on the City's Calendar.

WHEREAS, in accordance with the regular meeting schedule, the City placed on its Agenda for the June 22, 2022 regular meeting of the City Council the public hearing and proposed adoption of RES PH 22-172 approving a Spending Plan. In addition to the notice of regular meeting posted pursuant to the schedule, the Agenda for the meeting, including the public hearing, and containing a link to the Resolution and Spending Plan to be taken up was posted to the public: (1) on June 16, 2022 by Early Notification System (ENS), an electronic email delivery system in which members of the public can sign up for emails and alerts for City Council-related notifications, (2) on June 16, 2022 by publication on Legistar, an internet and cloud based system that posts and tracks legislative activities of the City, and (3) on June 17, 2022 by publication in the Pioneer Press.

WHEREAS, pursuant to Subd. 4n, on June 22, 2022, at its regularly scheduled meeting open to the public, the HRA adopted RES 22-955 approving a Spending Plan.

WHEREAS, on June 22, 2022, the City Council conducted a public hearing on the adoption of the Spending Plan, at its regularly scheduled meeting. At said public hearing all interested parties were provided a reasonable opportunity to express their views on the Spending Plan which had been approved by the HRA earlier in the day at its regularly scheduled public meeting subject to the notices above-mentioned.

WHEREAS, on June 22, 2022, following the closure of the public hearing, the City Council considered the findings and determinations of the HRA respecting the Spending Plan and considered the documentation submitted in support of the same and took into account the information and knowledge gained in the public hearing and thereafter, in reliance on Minnesota Statutes, Section 331A.05, subd. 7, and for other good reason set forth in the record and resolution, adopted RES PH 22-172 approving the Spending Plan.

WHEREAS, on August 31, 2022, the City received a summons and complaint, in *H A B, Inc. d/b/a Heppner's Auto Body, et. al. v. City of St. Paul, et. al.*, Court File No. 62-CV-22-4915 claiming in part, that the June 22, 2022 public hearing and resulting resolution RES PH22-172, is procedurally defective because (1) notice of the public hearing was not published in the Pioneer Press on or before June 12, 2022 and (2) the Spending Plan did not specifically identify a forgivable loan of up to \$1,400,000 to Listening House of St. Paul, Incorporated for a private facility serving unsheltered populations at 421 East 7th Street as an authorized expenditure of transferred tax increments under the Spending Plan.

WHEREAS, Minnesota case law recognizes the inherent authority of law-making authorities such as the City to correct any alleged deficiencies existing in legislative acts and law making for purposes of responding to claims in litigation or otherwise.

WHEREAS, to cure the alleged procedural defect related to publication of the hearing notice for purposes of resolving an issue in litigation without an admission of wrongdoing or defectiveness, the City Council determined to conduct a supplemental public hearing on the Spending Plan, concluding that it was in the interest of public as a whole to avoid the further costs and burdens of litigation and for other good reason to give the Plaintiffs in the above-stated litigation as well as any other interested persons, an additional opportunity to be heard.

WHEREAS, on September 28, 2022, the City Council conducted a public hearing on the efficacy of the Spending Plan, following published notice on the City's public website on September 16, 2022 and in the Pioneer Press, a newspaper of general circulation in the City, on September 18, 2022, in accordance with applicable law, and at said public hearing all interested parties were provided a reasonable opportunity to express their views on the Spending Plan.

WHEREAS, after considering the findings and determinations of the HRA respecting the Spending Plan and considering the documentation submitted in support of the same and taking into account the information and knowledge gained as summarized above and in both public hearings, the City Council approved and adopted the Spending Plan on September 28, 2022, and authorized transferring all tax increments under the Spending Plan to a segregated account by December 31, 2022 and spending tax increments under the Spending Plan by December 31, 2025 for projects which commence construction by December 31, 2025.

WHEREAS, it is intent of the HRA to cure for now and all times the alleged procedural defect related to the detail of uses in the Spending Plan for purposes of resolving an issue in litigation without an admission of wrongdoing or defectiveness. Thus, the City Council determined to conduct a public hearing on the date hereof on a resolution to supplement the Spending Plan, concluding that it is in the interest of public as a whole to avoid the further costs and burdens of litigation and for other good reason to give the Plaintiffs in the above-stated litigation as well as any other interested persons, an additional opportunity to be heard.

WHEREAS, pursuant to Subd. 4n, the HRA proposes to adopt a certain supplement (the "Supplement") to the Spending Plan set forth as **Exhibit A** below, which itemizes specific expenditures that have been approved by

the HRA since the adoption of the Spending Plan and which fall within the detailed uses of tax increments transferred under the Spending Plan.

WHEREAS, the City Council will hold a public hearing on this same date, following published notice on the City's public website on February 10, 2023 and in the Pioneer Press, a newspaper of general circulation in the City, on February 12, 2023, in accordance with applicable law, and will consider a resolution to approve the Supplement; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners (the "Board") of the HRA as follows:

Section 1. Approval of the Supplement.

1.01 The Board hereby finds that the Spending Plan as supplemented by the Supplement is intended and, in the judgment of the Board, its effect will be, to create an impetus for development and redevelopment activities in the City, including, but not limited to, developing or redeveloping blighted or underutilized sites, lands or areas within the City, providing necessary public improvements for private development in the City, and otherwise promoting certain public purposes and accomplishing certain objectives as specified in the Spending Plan as supplemented by the Supplement. The Board finds that the projects described in the Spending Plan as supplemented by the Supplement would not have commenced by December 31, 2025 without the assistance being offered by the HRA as permitted by Subd. 4n and that assistance will stimulate private development and the creation or retention of jobs in the state, including construction jobs. The Board makes all the findings set forth in the Spending Plan as supplemented by the Supplement, which are incorporated herein by reference.

1.02 The Board finds that the tax increments transferred under the Spending Plan are not needed to pay obligations of the applicable Tax Increment Financing Districts due within the six months following such transfer and were not improperly retained, received, spent, or transferred.

1.03 The Board finds that the unobligated tax increments were transferred to a segregated account pursuant to the Spending Plan not later than December 31, 2022 in accordance with Subd. 4n and that, as of the date hereof, none of the transferred tax increments have been spent for authorized uses.

1.04 The Board finds that a forgivable loan of up to \$1,400,000 to Listening House of St. Paul, Incorporated for a private facility serving unsheltered populations at 421 East 7th Street in the City is an authorized use of transferred tax increments under Section 2) A) i) e) of the Spending Plan and the expenditure of up to \$5,000,000 for the installation of sanitary sewer infrastructure in the area bounded by the Mississippi River on the north, Wabasha Street on the east, Smith Avenue on the west and the bluff on the south in connection with private development served thereby, including without limitation an approximately 221-unit rental housing and commercial space development to be constructed by 150 Farwell Yards, LLC at 150 Water St. in the City and an approximately 63-unit affordable rental housing development to be constructed by 115 Plato, LP at 115 Plato St. in the City is an authorized use of transferred tax increments under Section 2) A) i) a) of the Spending Plan.

1.05 Contingent upon approval by the City Council after the public hearing, the Supplement is hereby approved and adopted and the Spending Plan as supplemented by the Supplement shall be placed on file in the office of the Executive Director of the HRA. The HRA authorizes spending tax increments under the Spending Plan as supplemented by the Supplement by December 31, 2025 for projects which commence construction by December 31, 2025.

1.06 The HRA's staff, advisors and legal counsel are authorized and directed to identify potential uses, in addition to those itemized in Section 1.04, which are in accordance with the Spending Plan for projects that are likely to result in the most efficient and effective use of the identified funds, to proceed with

the implementation of the Spending Plan and to negotiate, draft, and prepare all further plans, resolutions, documents and contracts necessary for this purpose for future approval by the Board.

1.07 The staff of the HRA is hereby directed to file a copy of the Supplement with the Office of the State Auditor.

EXHIBIT A

SUPPLEMENT TO THE SPENDING PLAN FOR VARIOUS TAX INCREMENT FINANCING DISTRICTS ADOPTED PURSUANT TO MINNESOTA STATUTES, SECTION 469.176, SUBD 4N

1) PURPOSE

The Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (the "HRA") previously adopted a spending plan (the "Spending Plan") in accordance with Minnesota Statutes, Section 469.176 Subd. 4n (the "Temporary TIF Act").

The purpose of the Spending Plan is to develop or redevelop sites, lands or areas within the City of Saint Paul, Minnesota (the "City") in conformance with the City's Comprehensive Plan by using unobligated tax increments transferred into a segregated account pursuant to the Spending Plan to provide improvements, loans, interest rate subsidies or assistance in any form (including without limitation making an equity or similar investment in a corporation, partnership, or limited liability company that the HRA determines is necessary to make construction of a development described herein financially feasible) to private development consisting of the construction or substantial rehabilitation of buildings and ancillary facilities, which will create or retain jobs in this state, including construction jobs, as long as construction commences before December 31, 2025 and would not have commenced before that date without the assistance.

The purpose of this supplement to the Spending Plan (the "Supplement") is to identify specific expenditures that have been requested and approved by the HRA since the adoption by the HRA and the City Council of the City (the "City Council") of the Spending Plan and which are authorized uses identified in the Spending Plan. Except as supplemented herein, all terms and provisions of the Spending Plan shall remain in full force and effect.

2) SUPPLEMENT TO THE SPENDING PLAN

The authorized uses of transferred tax increments under the Spending Plan and under this Supplement expressly include, but are not limited to:

a) Under Section 2) A) i) a) of the Spending Plan, an expenditure of up to \$5,000,000 for the installation of sanitary sewer infrastructure serving the area bounded by the Mississippi River on the north, Wabasha Street on the east, Smith Avenue on the west and the bluff on the south (the "Sewer Upgrade") in connection with private development served thereby, including without limitation an approximately 221-unit rental housing and commercial space development to be constructed by 150 Farwell Yards, LLC at 150 Water St. in the City and an approximately 63-unit affordable rental housing development to be constructed by 115 Plato, LP at 115 Plato St. in the City.

In connection with such assistance, the HRA expressly finds that: redevelopment in the area is not possible as no new building permits can be issued, so no private development would occur, without the completion of the Sewer Upgrade. The improvements will result in the commencement of private development including new construction by December 31, 2025, and the creation of hundreds of construction jobs, new housing production, and increased tax base.

b) Under Section 2) A) i) e) of the Spending Plan, a forgivable loan of up to \$1,400,000 to

Listening House of St. Paul, Incorporated for a private facility serving unsheltered populations at 421 East 7th Street in the City.

In connection with such financial assistance, the HRA expressly finds that: there is urgency to commence private development of private facilities serving unsheltered populations, to address the City's housing crisis and without financial assistance the private development would not commence construction and create construction jobs. The assistance will result in the commencement of private development by December 31, 2025, which private development and the creation of construction jobs would not occur by this date without the financial assistance.

c) Notwithstanding the developments detailed in a) and b) above, or otherwise in the Spending Plan, the HRA is authorized to spend transferred tax increments for any other private development in the City for which the HRA finds that the private development will create or retain jobs in the State (including construction jobs); that the private development will commence before December 31, 2025; and that such construction would not have commenced before December 31, 2025 without the assistance under the Spending Plan. The HRA must document its findings under this section at the time of approval of assistance to each development.

d.) This Supplement and the Spending Plan authorize, but do not obligate, the HRA to spend transferred tax increments.