Request for City Council Committee Action from the Finance Department

Date: February 1, 2011

To: Council Member Lisa Goodman, Chair, Community Development Committee
Referral to: Council Member Betsy Hodges, Chair, Ways & Means/Budget Committee

Subject: Housing Improvement Area (HIA) Policy

Recommendation: Approve the attached Housing Improvement Area Policy

Previous Directives: On August 20, 2010 the City Council directed the Finance Officer to have drafted for City Council consideration a Housing Improvement Area Policy and Related Procedures.

Department Information

Prepared by: Mark Winkelhake, Manager, Development Finance, 612-673-5105
Approved by: Patrick Born, City Finance Officer _____________
Steven Bosacker, City Coordinator _____________
Presenter in Committee: Mark Winkelhake

Financial Impact

- No financial impact

Community Impact

- Neighborhood Notification – On December 16, 2010 the proposed HIA policy was sent to all neighborhood groups for review and comment by January 31, 2011.
- City Goals – 1) A Safe Place to Call Home - Healthy homes, welcoming neighborhoods; 2) Livable Communities, Healthy Lives - High-quality, affordable housing for all ages and stages in every neighborhood
- Comprehensive Plan - Not Applicable
- Zoning Code - Not Applicable

General Description of Housing Improvement Areas

A housing improvement area (HIA) is a financing tool that is available to home rule charter and statutory cities in the State of Minnesota. In situations where condominium or townhome associations can not obtain private financing for needed repairs and improvements to the common elements of their building(s), a city can provide public financing for these improvements. This tool is not available for multi-family rental housing.

A city can lend funds to the homeowners association for eligible repairs and improvements using either 1) available funds on hand, or 2) bond proceeds from the city's issuance of taxable general obligation bonds. At the present time, it is very unlikely that the City of Minneapolis would lend to a homeowners association using funds on hand, but rather it would most likely use bond proceeds from the issuance of taxable G.O. bonds. This bond issuance would require authorization by a super-majority (nine votes) of the City Council.

Pursuant to state statutes, eligible costs may include improvements to exterior and interior common areas such as roofing, siding, windows, HVAC, etc. Repayment is accomplished by the city imposing an annual fee on all or most of the homeowners in the association. Typically, the homeowners association would determine if any of its members are exempt from the annual fee. The fee is similar to a special assessment, appears on the homeowner's property tax statement, and is due in the same manner and at the same time as their property taxes. A number of cities in the metro area have established HIAs since 1996, including Hopkins, St. Louis Park, Little Canada, Eagan and Columbia Heights.

This financing tool requires a city to assume a certain amount of risk. Construction risk involves the possibility that the improvements will not be completed in a timely manner and within a prescribed budget. This risk can be mitigated with guaranteed maximum price contracts, adequate construction oversight, and industry standard disbursement procedures. Repayment risk involves the risk that some homeowners in the HIA may become delinquent in the payment of their fees. This risk can be mitigated by having the homeowners association assume responsibility for all delinquent fees (including those resulting from foreclosure or bankruptcy), maintain adequate reserves for this purpose, and pledge all association assets to the city. Although these risk management techniques can help decrease risk to the city, they will certainly not eliminate it entirely.

Statutory Authority

The underlying authority for a city to establish an HIA is contained in Minnesota Statutes, Sections 428A.11-428A.21, which was initially passed into law in 1996. This authority to establish new HIAs is currently scheduled to sunset (terminate) on June 30, 2013. The major provisions contained in these sections of the statutes are summarized below:

Petition Requirement

- A city may only establish an HIA and impose fees therein, if owners of 50% or more of the housing units in the HIA file a petition with the city clerk requesting public hearings on these actions.

Establishing an HIA

- A city may only establish an HIA by ordinance. The ordinance must describe the area included in the HIA, the basis for the fees imposed, and the number of years the fees will be in effect. The ordinance must also include findings that the improvements could not be made without the HIA, and that the HIA will maintain and preserve housing units.

- A public hearing is required before adoption of the ordinance. Written notice must be 1) published in the official newspaper of the city at least seven days before the public hearing, and 2) mailed to all homeowners in the proposed HIA at least 10 days before the public hearing.

- A preliminary list of the proposed housing improvements in the HIA shall be made available at the public hearing. The city must also fully disclose the terms of any loans, bonds, or other financing arrangements for the HIA, and whether the city or homeowners association will contract for the improvements. Typically, the homeowners association contracts for all of the improvements.

- Individual homeowners may file written objections to having their property included in the HIA. Such objections must be received before adoption of the ordinance, and the city council shall make a determination on the objection within 60 days of filing. If an individual homeowner's objection is granted, their portion of the cost of the improvements must be born by the remaining homeowners in the HIA.

- The ordinance must be adopted by a majority of the city council anytime within six months after the public hearing.

Imposing Fees

- The city may adopt a resolution imposing a fee on some or all of the housing units in the HIA (as determined by the homeowners association) in order to repay the financing provided. This fee may be based on each unit's value (net tax capacity), size (square footage), or other methodology that the homeowners association may deem to be more fair and reasonable.

- A public hearing is required before adoption of the resolution. Written notice must be 1) published in the official newspaper of the city at least seven days before the public hearing, and 2) mailed to all homeowners in the proposed HIA at least seven days before the public hearing. The notice must specify the amount of the fee by housing unit, the number of years the fee will be in effect, and what prepayment options are available.

- The resolution may be adopted by a majority of the city council anytime within six months after the public hearing. Prior to adoption of the resolution, the homeowners association must submit to the city a long-term financial plan (prepared by an independent third party) for the operation and maintenance of the common areas of the building(s).

Veto Powers

- The effective date of any ordinance or resolution described above must be at least 45 days after it is adopted. A summary of the ordinance and resolution must be mailed to each affected homeowner in the HIA within five days after its adoption. The mailing shall inform homeowners of their collective right to veto the ordinance or resolution.

- If owners of 45% or more of the housing units in the HIA file an objection to the ordinance, then the ordinance does not become effective. If owners of 45% or more of the affected housing unit's tax capacity file an objection to the resolution, then the resolution does not become effective.

Other Provisions

- The fees imposed on an HIA are not included in the calculation of levy limits.

- Fees are collected by the county and distributed to the city in the same manner as special service charges and special assessments.

- After a construction contract has been signed for the improvements, the city may issue taxable general obligation bonds to pay for some or all of the required improvements and other related expenses. A referendum is not required, and the bonds are not included in the calculation of the total net debt of the city.

- A city may create and appoint an advisory board for the HIA. However, this is typically not deemed necessary..

- The association must annually submit audited financial statements and other relevant information to the city.

Financing Agreement

The primary legal document between the city and association that lays out the rights, responsibilities, and terms of this tool is the financing agreement. Although this contract is not statutorily required, it is highly advisable and would address many topics and issues including, but not limited to, the following:

- All financing terms including principal amount of loan, term, interest rate, prepayment options, city and county administrative fee, etc.

- Description of methodology for assessing annual fees to individual homeowners, and a list of any homeowners exempt from the fee.

- Description of additional security provided by the association. This may include required reserve funds, an assignment of association assets to the city, a requirement that the association pay fees on behalf of delinquent homeowners, or that fees are assessed with a safety margin (i.e. 105% of debt service). The disposition of any excess fees would also be addressed.

- Selection of a general contractor. Usually the responsibility of the association.

- Schedule for construction of housing improvements. The responsibility of the association and general contractor.

- Disbursement of city funds or city bond proceeds. Typically the responsibility of the city or third-party disbursing agent.

- Requirement and selection of professional property manager. Usually the responsibility of the association. City approval may be required.

- Submittal of annual audited financial statements and an updated long-term management/capital improvement plan for the association. The responsibility of the association. City approval may be required in selecting the certified public accountants and consultants preparing these documents.

- City approval of any additional debt incurred by the association, and a requirement that the association increase association dues as needed to fund the most current long-term management/capital improvement plan.

- Other terms, conditions, and requirements typically found in redevelopment agreements between the city and developers.

City Housing Improvement Area Policy (see Exhibit A)

On August 20, 2010 the City Council directed the Finance Officer to have drafted for City Council consideration a Housing Improvement Area Policy and related procedures. In September a HIA Work Group was assembled and began working on these tasks. The Work Group was composed of staff members from the Finance Department, CPED and the City Attorney's Office. In the following months staff reviewed the applicable HIA statutes, consulted with staff in other cities that have previously established HIAs, and consulted with City bond counsel and several financial advisors familiar with this financing tool.

Based on the information collected and internal meetings and discussion, the Work Group then drafted the attached HIA Policy (see Exhibit A) for City Council consideration. On December 16, 2010 this proposed HIA Policy was sent to all neighborhoods for their review and comment by January 31, 2011. Any such comments received will be summarized in the oral presentation of this report.

Section I states the basic purpose of the HIA Policy, and specifies that this is a financing tool of "last resort". Section II states the goals and objectives of the policy, which include stabilizing or enhancing the City's tax base and level of owner-occupied housing units, eliminating blighting influences, correct building code violations, etc.

Section III lists the guidelines for use of the tool. Of particular note are #3 which states that this tool will only be provided to condominium and townhome associations, and #5 which states that the City Council is under no obligation to approve assistance using this tool even if the applicant meets all of the City's guidelines and criteria.

Section IV lists the minimum criteria that a project must meet in order to be considered for HIA assistance. Of particular note is #1 which requires that owners of 75% or more of the housing units must file a petition requesting this type of assistance. This is significantly higher that the 50% minimum required by state statute.

Section V notes that in addition to the HIA policy, there are additional administrative processes and procedures (see Exhibit B) that are applicable and can be approved or changed by the City Finance Officer and the Director of Community Planning and Economic Development.

Exhibit A

City of Minneapolis

Housing Improvement Area Policy

I. Purpose

This Housing Improvement Area (“HIA”) Policy (“Policy”) establishes the conditions under which HIAs may be approved by the Minneapolis City Council, and provides a framework within which requests for the establishment of HIAs will be considered.

Pursuant to Minnesota Statutes, Sections 428A.11 to 428A.21, the City of Minneapolis (“City”) is authorized to establish HIAs within its corporate limits. Within an HIA the City may lend funds to a homeowners association or similar entity (“Association”) for the purpose of funding the cost of improvements made to common elements of their property(s). The City will consider the establishment of an HIA only on a “last resort” basis, when the Association is unable to obtain other financing for the needed repairs and improvements.

The City may lend funds to the Association from either available City cash or proceeds from the City’s issuance of taxable bonds. Loan repayment is accomplished through the imposition of HIA fees on the owners of units included in the HIA. Existing housing units receiving HIA assistance are exempt from the affordable housing provisions contained in Section 2 of the Unified City of Minneapolis Housing Policy.

II. Goals and Objectives

In establishing an HIA, the City strives to achieve the following goals and objectives:

1. Stabilize or enhance the City’s property tax base.
2. Promote neighborhood stabilization and livability through the revitalization of existing housing stock.
3. Stabilize or increase the level of owner-occupied housing units within a neighborhood.
4. Eliminate blighting influences.
5. Correct housing or building code violations.
6. Promote energy conservation in order to reduce the overall impact of the built environment on human health and the natural environment.
7. Maintain or obtain FHA mortgage eligibility.

III. Guidelines

1. The City will only consider establishing an HIA when the Association has demonstrated to the City's satisfaction that the project meets one or more of the goals and objectives listed in Section II of this Policy.

2. The property to be included in the HIA must be in compliance with the City's comprehensive plan, zoning ordinances, and any applicable redevelopment plans.

3. HIA financial assistance will only be provided to condominium and townhouse associations. Such assistance will not be available to other forms of ownership housing or rental housing.

4. HIA financial assistance will only be considered for a project when the Association has demonstrated to the City's satisfaction that there are no other feasible financing options. The Association must provide the City with any requested documentation needed to substantiate this conclusion.

5. The project must meet the minimum criteria listed in Section IV of this Policy. Additional requirements are also contained in separate documentation from this Policy. The process and procedures for HIA application, review, approval, and implementation are also contained in separate documentation from this Policy. The City Council is under no obligation to approve assistance with this tool even if the applicant meets all of the criteria listed in this Policy and other existing requirements.

6. The Association must enter into a financing agreement with the City ("Financing Agreement") that spells out the rights and responsibilities of both parties.

IV. Minimum Criteria

1. The City will only consider establishing an HIA if all owners of 75 percent or more of the housing units that would be subject to fees in the proposed HIA file a petition requesting a public hearing on the matter.

2. The term of the HIA financing should be as short as practical while making the annual fees affordable to applicable members of the Association. The maximum financing term is 20 years, but in no case will it exceed the useful life of the assets or improvements being financed.

3. Only improvements and repairs to the common elements of the property(s) are eligible for HIA financing. Improvements and repairs to luxury assets, as determined by the City, are not eligible for HIA financing.

4. The minimum amount of HIA assistance the City will provide an Association is $500,000.

5. A nonrefundable application fee of $3,000 will be charged to any Association seeking HIA assistance. A one-time nonrefundable processing fee, in an amount not to exceed $30,000, will be charged to any Association granted HIA assistance. An annual administrative fee, in an amount not to exceed $7,500 per year, will be included as part of the HIA fees imposed on the owners of the housing units in the HIA. The processing and administrative fees will be determined based on the projected City staff time and

other costs associated with the approval and implementation of the HIA financing.

6. The Association must provide the City with adequate financial guarantees to ensure the timely payment of all HIA fees and the performance of all other requirements of the Financing Agreement.

7. The Association must have adopted a reasonable financial plan, prepared by an independent third party that's acceptable to the City, that provides for the Association to finance maintenance and operation of the common elements and a long-range plan to conduct and finance capital improvements. For the term of the HIA financing, the Association must annually provide to the City its audited financial statements and an updated long-term maintenance and capital improvement plan for the project.

V. Process and Procedures

Requests for the establishment of HIAs will be reviewed and approved or rejected in accordance with state law, this HIA Policy, and the administrative process and procedures contained in separate documentation from this Policy. Changes to this Policy require City Council approval. Changes to the documentation describing the administrative process and procedures may be approved by the City Finance Officer and Director of Community Planning and Economic Development.

Exhibit B

City of Minneapolis

Administrative Process and Procedures for Establishing a Housing Improvement Area (HIA)

1) City staff from CPED/Finance/Legal ("Staff") hold an initial meeting(s) with representatives from the homeowners association ("Association"), after notifying the City Councilmember of the affected ward of the intent to meet. Association provides denial letters from three banks that are either headquartered or have local branches in the Twin Cities metropolitan area. Additional denial letters may be requested by Staff. Internal Staff meeting(s) are held to discuss the project and the request for HIA assistance.

2) Association submits an HIA application to CPED that includes a $3,000 application fee and evidence that all owners of at least 75% of the housing units that would be subject to the HIA fees are supportive of the proposed HIA. Included with application is a financial plan, prepared by an independent third party (acceptable to City), that demonstrates how annual operation and maintenance of the common areas and long-term capital improvements will be funded.

3) Staff reviews HIA application for completeness and compliance with the City HIA Policy.

4) CPED staff prepares a Request for Council Action ("RCA") seeking Project Analysis Authorization ("PAA"). The RCA describes the project and financing, specifies the City processing fee, and is presented to the Community Development Committee. City Council subsequently approves or denies PAA.

5) If PAA is approved, then Association pays 50% of the City processing fee upfront (or lesser amount if deemed appropriate by Staff). The City processing fee is based on Staff estimates of staff time and other costs associated with the review and processing of the request for HIA assistance. The Association pays the remaining portion of the fee at closing. The City processing fee may ultimately be included in the overall financing and paid through the imposition of HIA fees.

6) Staff analyzes HIA request. If HIA assistance is deemed appropriate by Staff, the Association bids out the project in a fair open and competitive manner to a qualified bonded and insured contractor. The basic terms and conditions of the HIA assistance are then negotiated.

7) Staff prepares materials describing HIAs that the Association distributes to owners of all housing units subject to HIA fees. Materials include an explanation of individual owners' rights to object to the establishment of the HIA and the imposition of fees.

8) Staff prepares the form of petition and sends to Association. Petition includes individual acknowledgements that HIA materials have been received and understood.

9) Association files petition with CPED Deputy Director requesting public hearing on both the establishment of the proposed HIA and imposition of HIA fees. Petition must be signed by all owners of at least 75% of the housing units that would be subject to the HIA fees.

10) Finance and Legal staff prepare HIA ordinance and HIA fee resolution. Ordinance must describe the portion of the city included in the HIA, the basis and reasonableness for the imposition of the HIA fees, and the number of years the HIA fees will be in effect. Additionally, the ordinance must designate CPED as the "implementing entity", and find that without the HIA the proposed improvements could not be made by the association or housing unit owners and the designation is needed to maintain and preserve the housing units. Author of the ordinance is typically the Councilmember representing the Association.

11) CPED staff prepares RCA which presents the petition, lists the housing improvements to be made in the proposed HIA and identifies those improvements made to the common elements, lists those housing units exempt from the HIA fees (if any), states that the Association will contract for the housing improvements, describes all other terms and conditions of HIA assistance, and calls for a public hearing on the establishment of the proposed HIA and imposition of HIA fees. RCA is presented to the Community Development Committee. At the following City Council meeting, the Councilmember representing the Association introduces the ordinance (first reading) and public hearing is set for a Community Development Committee meeting at least 10 days later.

12) Finance staff prepares a notice of public hearing and mails to owner(s) of each housing unit within the proposed HIA. Notice must be mailed not less than 10 days before the public hearing, and must include:
- The time and place of hearing.
- A map showing the boundaries of the proposed HIA.
- A statement that all owners in the proposed HIA and other interested parties have a right to be heard and to object to the establishment of the HIA.
  The estimated costs of improvements (including adm. costs) to be paid by HIA fees.
- The HIA fees to be charged against each property.
- The rights of property owners to prepay the HIA fees.
- The number of years the HIA fees will be in effect.
- A statement that the Association has filed the required petition described above.

13) Finance staff publishes the notice of public hearing in Finance and Commerce, the official newspaper of the City, not less than seven days before the public hearing.

14) CPED staff prepares RCA for public hearing.

15) Community Development Committee conducts public hearing and refers item to Ways and Means/Budget Committee. At the following City Council meeting the ordinance gets second reading. Ordinance and HIA fee resolution are adopted, denied, or referred. Adoption (by majority vote) must occur within six months of the public hearing. If adopted, the effective date of the ordinance and HIA fee resolution must be at least 60 days later.

    Before adoption, any owner of a housing unit in the proposed HIA may file a written objection with CPED Deputy Director asserting that their property should not be included in the proposed HIA or be subject to the HIA fee since their property would not benefit from the improvements. The City must make a determination on the written objection within 60 days of its filing.

16) Within five days after adoption of the ordinance, Finance staff must mail a summary of the ordinance and HIA fee resolution to each owner of a housing unit in the proposed HIA, and state that a copy of the ordinance and HIA fee resolution are on file at the City. The mailing must also explain the following veto rights to owners subject to the HIA fees.

If 45% or more of the owners subject to the HIA fees in the proposed HIA file an objection to the ordinance or HIA fee resolution before the effective date, then the ordinance or resolution does not become effective. If owners of 45% or more of the housing units' tax capacity subject to the HIA fees file an objection to the ordinance or resolution before the effective date, then the ordinance or resolution does not become effective.

17) Finance staff mails a copy of the ordinance to the Commissioner of Revenue within 30 days after adoption.

18) After establishment of the HIA many additional steps will take place including Legal staff preparing the Financing Agreement, City bond issuance (requires authorization by a super-majority of the City Council), etc.