**Request for City Council Committee Action**
**From the Department of Community Planning & Economic Development**

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| **Date**: | June 21, 2005 |
| **To**: | Council Member Lisa Goodman, Community Development Cmte<br>Council Member Barbara Johnson, Ways and Means/Budget Cmte |
| **Prepared by**: | Tom Daniel, Manager, Economic Development,<br>Phone 612-673-5079. |
| **Presenter in Committee**: | Tom Daniel, Manager, Economic Development |
| **Approved by**: | Chuck Lutz, Deputy CPED Director ___________ |
| **Subject**: | **Target Center Capital Improvement Program Financing**<br>**Ten Percent Private Payment Exemption** |

**RECOMMENDATION**: Modify the current authorization to permit privately financed capital improvements for Target Center provided the present value of all "private payments" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended, related to such improvement projects does not exceed ten percent of the original principal amount of the 1995 City and Agency Arena Acquisition Bonds for the life of said Bonds, such amount determined by qualified bond counsel. **Forward to MCDA Board of Commissioners.**

**Previous Directives**:
On March 10, 1995, the City Council and Board of Commissioners approved the terms and authorized the execution of the Target Center Purchase Agreement, related lease and financing documents, and the issuance of $84,650,000 in tax exempt bonds. Included in the terms of the documents, and as a condition of the tax exempt financing, is the obligation of MCDA as owner of Target Center to undertake and pay for certain types of Capital Improvements and the prohibition of the private entities from doing so without the prior written approval of the MCDA.

On April 18, 2003, the City Council and Board of Commissioners authorized MCDA staff to permit privately financed capital improvements for Target Center provided the present value of all "private payments" and "private loan payments" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended, related to such improvement projects does not exceed five percent of the original principal amount of the 1995 City and Agency Arena Acquisition Bonds for the life of said Bonds, such amount to be determined by qualified bond counsel.

**Financial Impact** (Check those that apply)

___ No financial impact - or - Action is within current department budget.
(If checked, go directly to next box)

___ Action requires an appropriation increase to the Capital Budget

___ Action requires an appropriation increase to the Operating Budget

___ Action provides increased revenue for appropriation increase

___ Action requires use of contingency or reserves

_X_ Other financial impact (Explain): Approval will allow some capital improvements to be financed privately that otherwise would have to be paid from the Target Center Capital Improvements Fund.

___Request provided to the Budget Office when provided to the Committee Coordinator

**Community Impact** (Summarize below)

**Ward**: 5

**Neighborhood Notification**: N/A

**City Goals**: Create an environment that maximizes economic development opportunities within Minneapolis by focusing on the City's physical and human assets.

**Comprehensive Plan**: N/A

**Zoning Code**: N/A

**Living Wage/Job Linkage**: N/A

**Background/Supporting Information**

As a condition for maintaining the tax exempt nature of the bonds issued by the City and MCDA for the Target Center acquisition in 1995, the MCDA, as fee owner of the facility, must undertake and pay for certain types of capital improvements and equipment purchases. The various leases and related documents with Midwest Entertainment Group ("Manager"), Minnesota Timberwolves ("Team"), and Northwest Athletic Club ("Health Club") require that all proposed capital projects be submitted through Manager to MCDA for determination as to whether they must be done by MCDA pursuant to the bond restriction. The documents also define the contractual obligations of MCDA to pay for certain capital improvements: (a) structural integrity requirements; (b) those necessary for the arena to be open to the public for the uses originally intended; (c) scoreboard replacement.

The Target Center Capital Improvement Program is funded through the public revenues that comprise the Target Center Finance Plan. As approved in 1995, these revenues consisted of Target Center tax increment (and City share of the base taxes), City Entertainment Tax from Target Center events, payments from the Minnesota Amateur Sports Commission (dependent on annual appropriation), and Parking Fund allocations. In 2003, due to the drastic reduction in project tax increment attributable to the State reduction in tax classification rates and exclusion of the State Education Tax Levy from tax increment, the Finance Plan was amended to include allocations from the Common Project.

In 2003, the Council and MCDA Board also authorized staff to permit privately financed capital improvements under certain circumstances. Prior to 2003, if a private party desired a project and was willing to finance it, but the project included a “capital improvement” component (e.g., modification to plumbing or HVAC systems), we were required to pay for the “capital improvement” portion. Because public funding for such activities was limited, the Council and MCDA Board authorized a change in our practice to allow “private payments” provided the present value of all such payments did not exceed five percent of the original principal amount of the 1995 City and Agency Arena Acquisition Bonds (the “Bonds”) for the life of the Bonds.

The five percent limit was based on a 1995 legal opinion from City Bond Counsel that had advised we were subject to both a “private security or payment test” and a “private loan financing test” under Sections 141(b)(2) and 141(c) of the Internal Revenue Code of 1986, as amended (the “Code”). City Bond Counsel has recently revisited this opinion and concluded the private loan financing test does not apply to capital expenditures made by nongovernmental users of the Target Center as long as all such capital expenditures are made voluntarily and not pursuant to any agreement with the City.

Thus, City Bond Counsel has advised staff that, provided the cumulative total of such private payments over the thirty-year life of the bonds is less than **ten** percent of the original principal amount of the Bonds, such payments would not cause the Bonds to become taxable. For the $84,650,000 1995 Target Center bonds, this cumulative cap would equal approximately $8,465,000, and doubles the amount of privately-financed investment that can be permitted in the Target Center.

Furthermore, each private payment amount can be discounted at the yield on the Bonds back to the date of issuance. Therefore, the later in the term of the Bonds that a payment is received or incurred, the less impact it would have in reducing the cumulative cap.