

RCW 39.114.020 Designation of increment areas by local governments—Project analysis—Fees may be charged to private developers—Mitigation plan with fire protection districts or regional fire protection service authorities—Reimbursement of costs—Ordinance adoption requirements.

(1) A local government may designate an increment area under this chapter and use the tax allocation revenues to pay public improvement costs, subject to the following conditions:

(a) The local government must adopt an ordinance designating an increment area within its boundaries and describing the public improvements proposed to be paid for, or financed with, tax allocation revenues;

(b) The local government may not designate increment area boundaries such that the entirety of its territory falls within an increment area;

(c) The increment area may not have an assessed valuation of more than \$200,000,000 or more than 20 percent of the sponsoring jurisdiction's total assessed valuation, whichever is less, when the ordinance is passed. If a sponsoring jurisdiction creates two increment areas, the total combined assessed valuation in both of the two increment areas may not equal more than \$200,000,000 or more than 20 percent of the sponsoring jurisdiction's total assessed valuation, whichever is less, when the ordinances are passed creating the increment areas;

(d) A local government can create no more than two active increment areas at any given time and they may not physically overlap by including the same land in more than one increment area at any time;

(e) The ordinance must set a sunset date for the increment area, which may be no more than 25 years after the first year in which tax allocation revenues are collected from the increment area;

(f) The ordinance must identify the public improvements to be financed and indicate whether the local government intends to issue bonds or other obligations, payable in whole or in part, from tax allocation revenues to finance the public improvement costs, and must estimate the maximum amount of obligations contemplated;

(g) The ordinance must provide that the increment area takes effect on June 1st following the adoption of the ordinance in (a) of this subsection;

(h) The sponsoring jurisdiction may not add additional public improvements to the project after adoption of the ordinance creating the increment area or change the boundaries of the increment area. The sponsoring jurisdiction may expand, alter, or add to the original public improvements when doing so is necessary to assure the originally approved improvements can be constructed or operated;

(i) The ordinance must impose a deadline by which commencement of construction of the public improvements shall begin, which deadline must be at least five years into the future and for which extensions shall be made available for good cause; and

(j) The local government must make a finding that:

(i) The public improvements proposed to be paid or financed with tax allocation revenues are expected to encourage private development within the increment area and to increase the assessed value of real property within the increment area;

(ii) Private development that is anticipated to occur within the increment area as a result of the proposed public improvements will be

permitted consistent with the permitting jurisdiction's applicable zoning and development standards;

(iii) The private development would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future without the proposed public improvements; and

(iv) The increased assessed value within the increment area that could reasonably be expected to occur without the proposed public improvements would be less than the increase in the assessed value estimated to result from the proposed development with the proposed public improvements.

(2) In considering whether to designate an increment area, the legislative body of the local government must prepare a project analysis that shall include, but need not be limited to, the following:

(a) A statement of objectives of the local government for the designated increment area;

(b) A statement as to the property within the increment area, if any, that the local government may intend to acquire;

(c) The duration of the increment area;

(d) Identification of all parcels to be included in the area;

(e) A description of the expected private development within the increment area, including a comparison of scenarios with the proposed public improvements and without the proposed public improvements;

(f) A description of the public improvements, estimated public improvement costs, and the estimated amount of bonds or other obligations expected to be issued to finance the public improvement costs and repaid with tax allocation revenues;

(g) The assessed value of real property listed on the tax roll as certified by the county assessor under RCW 84.52.080 from within the increment area and an estimate of the increment value and tax allocation revenues expected to be generated;

(h) An estimate of the job creation reasonably expected to result from the public improvements and the private development expected to occur in the increment area;

(i) An assessment of any impacts on the following:

(i) Affordable and low-income housing;

(ii) The local business community;

(iii) The local school districts; and

(iv) The local fire service, public hospital service, and emergency medical services; and

(j) The assessment of impacts under (i) of this subsection (2) must include any necessary mitigation to the local fire service, public hospital service, and emergency medical services; and

(k) An assessment of any impacts of any other junior taxing districts not referenced in (i) of this subsection (2).

(3) The local government may charge a private developer, who agrees to participate in creating the increment area, a fee sufficient to cover the cost of the project analysis and establishing the increment area, including staff time, professionals and consultants, and other administrative costs related to establishing the increment area.

(4) Nothing in this section prohibits a local government from entering into an agreement under chapter 39.34 RCW with another local government for the administration or other activities related to tax increment financing authorized under this section.

(5) (a) If the project analysis indicates that an increment area will impact at least 20 percent of the assessed value in a public

hospital district, fire protection district, or regional fire protection service authority, or if the public hospital district's or the fire service agency's annual report, or other governing board-adopted capital facilities plan, demonstrates an increase in the level of service directly related to the increased development in the increment area, the local government must enter into negotiations for a mitigation plan with the impacted public hospital district, fire protection district, or regional fire protection service authority to address level of service issues in the increment area.

(b) If the parties cannot agree pursuant to (a) of this subsection (5), the parties must proceed to arbitration to determine the appropriate mitigation plan. The board of arbitrators must consist of three persons: One appointed by the local government seeking to designate the increment area and one appointed by the junior taxing district, both of whom must be appointed within 60 days of the date when arbitration is requested, and a third arbitrator who must be appointed by agreement of the other two arbitrators within 90 days of the date when arbitration is requested. If the two are unable to agree on the appointment of the third arbitrator within this 90-day period, then the third arbitrator must be appointed by a judge in the superior court of the county within which the largest portion of the increment area is located. The determination by the board of arbitrators is binding on both the local government seeking to impose the increment area and the junior taxing district.

(6) The local government may reimburse the assessor and treasurer for their costs as provided in RCW 39.114.010(6)(e).

(7) Prior to the adoption of an ordinance authorizing creation of an increment area, the local government must:

(a) Hold at least two public briefings for the community solely on the tax increment project that include the description of the increment area, the public improvements proposed to be financed with the tax allocation revenues, and a detailed estimate of tax revenues for the participating local governments and taxing districts, including the amounts allocated to the increment public improvements. The briefings must be announced at least two weeks prior to the date being held, including publishing in a legal newspaper of general circulation and posting information on the local government website and all local government social media sites, and must occur no earlier than 90 days after submitting the project analysis to the office of the treasurer and all local governments and taxing districts impacted by the increment area;

(b) Submit the project analysis to all local governments and taxing districts impacted by the increment area no less than 90 days prior to the adoption of the ordinance; and

(c) Submit the project analysis to the office of the treasurer for review and consider any comments that the treasurer may provide upon completion of their review of the project analysis as provided under this subsection. The treasurer must complete the review within 90 days of receipt of the project analysis and may consult with other agencies and outside experts as necessary. Upon completing their review, the treasurer must promptly provide to the local government any comments regarding suggested revisions or enhancements to the project analysis that the treasurer deems appropriate based on the requirements in subsection (2) of this section. [2024 c 236 s 2; 2023 c 354 s 2; 2021 c 207 s 2.]

Effective date—2023 c 354: See note following RCW 39.114.010.