

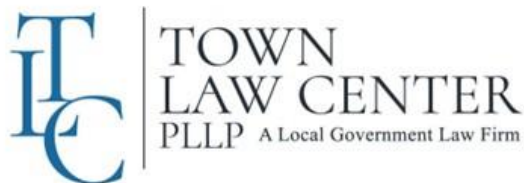


City Council Special Meeting Agenda

June 01, 2026 at 5:30 PM

Pipestone City Hall- 119 2nd Ave SW #9, Pipestone, MN 56164

- 1. Call to Order and Roll Call**
- 2. Work Session**
 - A. Development Funding and Community Development**
- 3. Adjournment**



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MEMORANDUM

To: City Council, City of Pipestone
Stephanie LaBrune, City Administrator

From: Jason M. Hill, City Attorney

Date: May 29, 2026

Re: Development Funding and Community Development

This memorandum is intended to address recent questions regarding the funding of private development projects and the paths that the City can use to fund and advance community development. To summarize, City's cannot generally pay for infrastructure improvements for private entities that do not serve a public interest. In doing so, the City would be requiring the taxpayers of the City to pay for a development that primarily and financially benefits a private entity. However, there are paths that the City can use to promote commercial, industrial and residential development.

Funding of Private Development Projects

A Minnesota city paying for infrastructure for private development is not a legal public expenditure. This is well-settled law, and it arises out of the Minnesota Constitution and case law.

The initial legal requirement is the "public purpose" requirement for expenditures by Minnesota cities. Article X, Section 1 of the Minnesota Constitution provides that taxes can be "collected for public purposes". This requirement has been addressed and interpreted on many occasions by the Minnesota Supreme Court, and generally, if a development project primarily benefits a private interest, it is not allowed. In *Visina v. Freeman*, 89 N.W.2d 635 (Minn. 1958), the Court noted that a "public purpose" is "such an activity as will serve as a benefit **to the community as a body and which, at the same time, is directly related to the functions of government.**" In *Burns v. Essling*, 194 N.W. 404 (Minn. 1923), the Court found, "It is equally well settled that, **if the primary object is to promote some private end, the expenditure is illegal, although it may incidentally serve some public purpose also.**" (See also *Behrens v. City of Minneapolis*, 271 N.W. 814 (Minn. 1937) – "indirect or incidental benefits which may result to the public do not make the purpose a public one where the direct object is private. It is the primary purpose which is controlling.")

In recognition of this limitation, Minnesota Statutes, section 462.358, subd. 2a provides that in the context of the subdivision of properties, a city's regulations "may permit the municipality to condition its approval on the construction and installation of sewers, streets, electric, gas, drainage,

and water facilities, and similar utilities and improvements or, in lieu thereof, on the receipt by the municipality of a cash deposit, certified check, irrevocable letter of credit, bond, or other financial security in an amount and with surety and conditions sufficient to assure the municipality that the utilities and improvements will be constructed or installed according to the specifications of the municipality.” This is reflected in the City’s development agreement requirements.

If the City unlawfully funds private development, it could face taxpayer lawsuits (all taxpayers of the City are paying for a development that primarily benefits the financial interests of a private developer) and noncompliance findings by the State Auditor.

To note, funding of a public expenditure would include the provision of equipment and materials.

Housing and Economic Development

If a city has statutory authority to fund private projects, it can proceed in accordance with those statutes. However, there are frequently public benefit requirements. The following are examples of authorized paths to support development:

Business Subsidies

Business subsidies are grants, tax abatement, contributions of personal property, real property, infrastructure or the principal amount of a loan at rates below those commercially available to the recipient as set forth in Minnesota Statutes, section 116J.993 through 116J.995. It’s my understanding that the City has already adopted a business subsidy policy, and the program is in place. A significant element of business subsidies is the lengthy list of specific items for which they cannot be provided, including (not the entire list):

- A business subsidy of less than \$150,000;
- Assistance that is generally available to all businesses or to a general class of similar businesses;
- Public improvements to buildings or lands owned by the state or local government that serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made;
- Assistance provided for the sole purpose of renovating old or decaying building stock or bringing it up to code and assistance provided for designated historic preservation districts, provided that the assistance is equal to or less than 50 percent of the total cost;
- Assistance for housing;
- Assistance for energy conservation;
- Workers’ compensation and unemployment insurance;
- Indirect benefits derived from assistance to educational institutions;
- Funds from certain bonds;
- Assistance for a collaboration between a Minnesota higher education institution and a business;
- Assistance for a tax increment financing soils condition district as defined under Minnesota Statutes, section 469.174, subdivision 19;

- Redevelopment when the recipient's investment in the purchase of the site and in site preparation is 70 percent or more of the assessor's current year's estimated market value; and
- Business loans and loan guarantees of \$150,000 or less.

Housing and Redevelopment Authority (HRA)

The City has established an HRA in accordance with Minnesota Statutes, section 469.003. The establishment of the HRA is based upon findings that (1) substandard, slum, or blighted areas exist which cannot be redeveloped without government assistance or (2) there is a shortage of decent, safe, and sanitary dwelling accommodations available to persons of low income and their families at rentals they can afford. An HRA is a separation, governmental entity, and the HRA's powers include:

- To sue and be sued.
- To employ staff and an executive director and to delegate powers or duties it seems proper.
- To undertake projects within its area of operation and to provide for the construction, reconstruction, improvement, extension, alteration, or repair of any project or part of a project.
- To give, sell, transfer, convey or dispose of real or personal property or any interest therein subject to Minnesota Statutes, section 469.026 (existing buildings for rehabilitation into low-rent housing).
- To cooperate with and use state and federal financial assistance programs or carry out housing projects owned and operated by the federal government.
- To develop rehabilitation and code enforcement techniques.
- To receive loans, contributions, grants, gifts, services, or other assistance from any public or private body.
- To issue bonds for any of its corporate purposes backed by the pledge of revenues, grants, or other contributions.
- To identify where blight exists or where there is unsafe, unsanitary, or overcrowded housing.
- To implement renewal or redevelopment programs using tax increment financing.
- To own, hold, improve, lease, sell, or dispose of real or personal property.
- To designate substandard, slum, or deteriorating areas needing redevelopment, and unsafe, unsanitary, and overcrowded housing.
- To make necessary expenditures to carry out the purposes of the HRA law.
- To develop and administer an interest reduction program to assist the financing of the construction, rehabilitation, or purchase of low- or moderate-income housing.

With the consent of the City, the HRA issues its own levy, subject to a statutory cap.

The primary goals of an HRA are to advance the rehabilitation of blighted properties and to support low-income housing.

Economic Development Authority (EDA)

The City has established an EDA in accordance with Minnesota Statutes, section 469.091. The EDA is a separate entity, but unlike an HRA, the EDA's funding is levied by the City, upon the request of the EDA. There is also a statutory cap on the amount of EDA funding. EDA powers can be limited in the City's establishment resolution, but generally, EDA authorities include:

- To sue and be sued.
- The issuance of loans to businesses, for-profit organizations, nonprofit organizations, or individuals to effectuate the purpose of the EDA. The purpose of the EDA is to promote economic or industrial development in the City, and the goals for residential development include affordable housing and the rehabilitation of blighted properties.
- Acquire property and facilities to create economic development districts, but in most circumstances cannot authorize the issuance of debt without the approval of the electors.
- Any economic development districts created within the City must have boundaries which are contiguous. Economic development districts do not need to meet the "blight" test and may use tax increment financing.

The primary method for EDA's to advance development is the purchase and sale of property. The EDA can purchase property, and sell the property, if it determines that the sale is in the best interests of the City and its people and that the transaction furthers its general plan of economic development. The EDA must hold a public hearing on the sale. The EDA must make its findings and decision on whether the sale is advisable and enter its decision on its records within 30 days of the hearing. The EDA can impose significant conditions upon the sale, through a development agreement, including (1) financial security to assure that the property will be use as proposed, (2) construction timelines and (3) right of reverter. If the purchaser fails to commence construction within one year, the EDA may cancel the sale and title to the property return to the EDA. The EDA can extend the time to comply if the purchaser has good cause. A purchaser cannot transfer title to within one year of purchase without the consent of the EDA.

The EDA may sell the property for less than market value, but in the approval resolution, there should be findings addressing the proposed use and the public benefits to the City.

Housing Programs

Minnesota Statutes, section 462C.01 authorizes cities to develop and administer programs of (1) making or purchasing mortgage or rehabilitation loans pursuant to section 462C.03 (prepared housing plan) to finance the acquisition or rehabilitation of single family housing by low and moderate income persons and families or (2) making or purchasing loans to finance multifamily housing developments or the rehabilitation of multifamily housing developments. This program does not involved developers.

Tax Increment Financing (TIF) and Property Tax Abatement

The City has established TIF districts in the past, as well as tax abatement programs, and I generally defer to the City's bond counsel for TIF and tax abatement matters. Very broadly, TIF's use the additional property taxes in a certain area that are paid due to the new development to pay for the development costs. TIF's are generally used to:

- Redevelop areas occupied with substandard buildings.
- Build housing for low-income and moderate-income families.
- Clean up pollution.
- Provide general economic development incentives.
- Finance public infrastructure, such as streets, sewer, water, sidewalks, and similar improvements. (This is not an explicit purpose of TIF, but Minnesota cities frequently use it for this purpose).

To establish a TIF district, the City must find that the development would not happen through solely private investment and that the new development will result in a net increase in market value for the site, compared to the likely development that would occur without TIF.

Property tax abatement, in accordance with Minnesota Statutes, section 469.1813, cities have authority to grant a current or prospective abatement of city-imposed taxes on a parcel of property or defer payments of such taxes and abate the interest and penalty that would otherwise apply. The procedures and requirements of property tax abatement are set forth in statutes. The abatement applies to property owners and not developers.

JMH