

City of Minot



Ad Hoc Committee Meeting

Tuesday, November 15, 2022 at 2:00 PM

City Council Chambers, City Hall (515 2nd Ave SW)

Any person needing special accommodation for the meeting is requested to notify the City Clerk's office at 857-4752.

1. DISCUSSION OF THE MAGIC FUND GUIDELINES

Documents:

[MAGIC FUND GUIDELINES WORKING DOC_DRAFT_V3_11.15.2022.PDF](#)

**MINOT AREA GROWTH BY INVESTMENT AND COOPERATION
(MAGIC) FUND**

GENERAL POLICY GUIDELINES

AS APPROVED BY THE CITY COUNCIL OF THE CITY OF MINOT ON:

June 2, 2003

AMENDED BY THE CITY COUNCIL:

February 6, 2006

AMENDED BY THE CITY COUNCIL:

April 6, 2009

AMENDED BY THE CITY COUNCIL:

December 3, 2018

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HISTORY AND GENERAL PURPOSE

In 1990, the voters of the City of Minot approved a portion of the 1-percent City sales tax for use in economic and industrial development. The funds accumulated for this purpose shall be called the Minot Area Growth by Investment and Cooperation (MAGIC) Fund.

The MAGIC Fund is intended to provide financing incentives to businesses that desire to expand or locate in the greater Minot trade area. The eligible uses of the Fund are financing projects to support business growth in the Primary Sectors, match local requirements associated with the State of North Dakota Program Initiatives like the Bank of North Dakota PACE Program, capitalization of revolving loan funds dedicated to addressing financing needs of small businesses not available through traditional financial institutions, and marketing directly connected to attraction of opportunities to accomplish business growth in the Primary Sectors and use of capitalized small business revolving loan funds (RLF).

All uses of the MAGIC Fund must support one or more of the following goals:

- Create new jobs
- Save existing jobs
- Expand the local tax base
- Increase capital investment
- Improve the entrepreneurial climate of the region
- Enhance workforce solutions
- *OPTION TO CONSIDER: Improve quality of life in the Minot area*

As part of the annual City of Minot budgeting process, the Minot City Manager will consult with the Minot Area Chamber EDC President for a recommendation regarding the level of funding to be used. The funding recommendation shall be acted upon by the Minot Area Chamber EDC Board of Directors and a recommendation from the Minot Area Chamber EDC Board of Directors shall be considered by the Minot City Council.

FUND USES, LIMITS, AND FISCAL CONTROLS

The MAGIC Fund may be used for the following programs, subject to limitations specified.

[insert MAGIC Fund distribution schematic here]

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A. FUND USES AND LIMITS

Funds available through the MAGIC Fund for project financing fall into three categories.

Tier 1: Primary Sector Program

The goal of the Primary Sector Program is to facilitate the growth of the primary sector in the Minot area. The Primary Sector Program may be utilized by a primary sector business as defined in North Dakota Century Code 1-01-49.11. Additionally, the Primary Sector Program may be utilized by businesses which provide substantive support to the growth of the primary sector in the Minot area.

Funds available to Primary Sector may be used to provide temporary or permanent financing of any cost related to the eligible project provided that temporary financing may only be in the form of a non-forgivable loan while permanent financing may be in the form of a non-forgivable loan or combination of forgivable loan and non-forgivable loan with a grant being no more than 20% of total project financing. If an applicant can demonstrate through detailed financial documentation that project feasibility requires a forgivable loan greater than 20% of total project financing, the application may be approved with a supermajority of the Minot City Council. The MAGIC Fund may not be used for restructuring existing debt, unless it can be demonstrated that the restructuring will create definable, measurable benefits for the greater Minot trade area that meet at least one of the MAGIC Fund goals.

Tier 2: State of North Dakota Program Initiatives

Funds available through the MAGIC Fund shall be used to satisfy the local match requirements associated with Bank of North Dakota's PACE Program. If the applicant can demonstrate they will be able to meet the 'Minimum Investment' or 'Jobs Created' thresholds of the BND's PACE Program the MAGIC Fund may be used as a forgivable loan. If the applicant cannot demonstrate that they will be able to exceed the thresholds, the MAGIC Fund shall be used as a non-forgivable loan with terms comparable to similar BND buydown match programs administered in the Minot area.

MAGIC Fund may be considered to satisfy the local match requirements associated with other state programs tied to key initiatives.

Tier 3: Small Business Program The goals of the Small Business Program are to support growth of new small businesses, enhance the entrepreneurial climate of the Minot area, and expand the local tax base.

Funds available through the MAGIC Fund Small Business Program may be used to capitalize a revolving loan fund to satisfy local match requirements associated with BND's Flex PACE Program. MAGIC Fund Small Business Program proceeds may be supplemented with other state and federal sources to further capitalize the revolving loan fund to meet the demands of small business in the Minot area. BND Flex PACE applications shall be considered and administered by the Souris Basin

Planning Council (SBPC).

Limits:

Businesses that don't qualify include the following: gaming establishments, retail trade, educational services, religious organizations, adult entertainment, public administration, food and beverage establishments, and hotels (lodging).

Non-profit organizations will be considered for these funds only when it can be determined that the non-profit venture meets a purpose and goal for which the MAGIC Fund can be used based on these guidelines.

As a matter of policy, financial assistance will not be approved for any new or existing business that gives the applicant a business advantage over other like or similar businesses through the use of the financing from the MAGIC Fund unless the location is in an area the city has identified as requiring new investment such as the downtown district and/or is through a capitalized revolving loan fund serving a rural area of the Minot region which does not have products, services, or other benefits otherwise not accessible in such area.

B. FISCAL CONTROLS

Expenditures from the MAGIC Fund must be listed with the monthly bills approved by the City Council before payment is made. To the extent applicable to the features of a particular project, as part of such process, detailed invoices and receipts must be provided to the City.

Any proposal to obligate MAGIC Fund money beyond what is currently available, plus what is expected to accrue by the end of the current fiscal year, will be clearly stated to the public during a public hearing prior to City Council action.

A public hearing is required prior to City Council action when the proposed use of the MAGIC Funds is for infrastructure related projects. The MAGIC Fund Screening Committee will specifically address and communicate to the City Council when the proposal is for infrastructure and the basis of the infrastructure project connected to job creation/retention, retention of existing business/industry, and/or creation of new business/industry consistent with the MAGIC Fund guidelines.

MAGIC Fund recipients are required to enter into a Business Incentive Agreement with the City of Minot which meets the requirements of North Dakota Century Code 54-60.1-03 (when applicable). A previous MAGIC Fund recipient that meets or exceeds its obligations under a previous Business Incentive Agreement may be eligible for additional funding from the MAGIC for new or expansion initiatives.

MAGIC FUND SCREENING COMMITTEE

The MAGIC Fund Screening Committee, appointed by the Mayor and confirmed by the City Council, will have flexibility in the types of financing tools available to it to pursue general economic and industrial development goals guided by the following examples: unsecured loans, mortgages or secured financial instruments, equity positions, equipment and building purchase and lease-back, interest buy-downs, grants, and other financing vehicles as may be necessary and appropriate. All methods of financing which are utilized must be supported by vetted and verified applicant financials, business plan, and clearly measurable performance benchmarks.

Members will be appointed to retain expertise on the Committee in the following areas:

Number	Expertise/Profession/Background
1	Professional
2	Labor
1	Business
1	Trade Area
2	Finance

The MAGIC Fund Screening Committee will make an annual written report to the City Council, including a report prepared by an independent private consultant. The chairperson of the Committee will make an oral report to the Council and answer questions from both the Council and the public. The oral report will be made concurrent with the public release of the written report. The annual report shall include:

- (1) Independent financial accounting for all tax money spent during the reporting period from the economic development portion of City of Minot sales tax by category of spending. This portion of the report will include MAGIC Fund balance information as of the report closing date.
- (2) An assessment of the performance of the programs funded through the MAGIC Fund using the “Project Tracking” guidance found in this policy.
- (3) A listing of all applications that were not approved by the MAGIC Fund Screening Committee.
- (4) An assessment of the financial and management health of the MAGIC Fund, to include matters that are recommended for policy change and/or need redefinition.

CONFLICT OF INTEREST

Officers, directors, members or employees of the City of Minot, Minot Area Chamber EDC, MAGIC Fund Screening Committee or Minot City Council are to follow their established Conflict of Interest policies during the review of any MAGIC Fund application. Applicants shall disclose known conflicts of interest at the time of the application.

Additionally, if any director of the Minot Area Chamber EDC, member of the MAGIC Fund Screening Committee or member the Minot City Council has a conflict of interest, it shall be disclosed in a written letter or email, to the corresponding board, committee, or city council before the item is considered by the corresponding board, committee, or city council. A conflicted board member, committee member, or city council member shall not participate in any activities to evaluate or debate the merits of a proposal. A conflicted board member, committee member, or city council member may present factual information regarding a proposal and may answer questions from other board member, committee members, city council members, or other agency staff involved in the evaluation of the application to the MAGIC Fund.

APPLICATION PROCESSES

The City of Minot and Minot Area Chamber EDC shall develop application procedures and administrative processes that are comprehensive enough to protect the community interests, assuring prudent and accountable use of all funds, but are streamlined enough so as not to discourage potential applicants from seeking financial assistance.

Depending on the program applied for, applicants may be required to submit a complete business plan, financial statements (if an existing concern), and identification of all sources and uses of funds for the proposed project. If the lead agency believes that the application has merit, it may negotiate financial terms with the applicant to include performance and measurable benchmark standards. The MAGIC Fund Screening Committee may contract for professional advice/services to assist in its deliberations, in addition to the Minot Area Chamber EDC which by contract with the City of Minot shall provide specified services and support to the MAGIC Fund Screening Committee. Any such procurements should follow the city's procurement policies and procedures.

At least one representative of the company with authority to represent the company applying for funding must present the application to the MAGIC Fund Screening Committee and respond to questions about the company and its job creation/retention, expansion/retention, and/or related plans. All applications and attendant paperwork must be submitted in sufficient time (according to the schedule adopted annually by the MAGIC Fund Screening Committee) to allow the MAGIC Fund Screening Committee to do its due diligence work.

Applicants requesting marketing funding will submit an application, adequately outlining how the marketing direct supports the goals and purposes of the MAGIC Fund, and others sources of

funds to match the requested amount. Applicants shall also specify the timeline for such use, measurable outcomes, and intended uses. An applicant must commit that, when the project is completed, a report will be issued by it to the MAGIC Fund Screening Committee, noting the completion.

MAGIC Fund participation in projects sponsored, supported or initiated by other political subdivisions is authorized consistent the goals and purposes of the MAGIC Fund. The MAGIC Fund Screening Committee shall exercise discretion in considering applications for projects outside Ward County. The Committee may jointly participate with other political subdivisions in extending assistance to applicants.

The City Council will review and grant final approval for all projects that are proposed for funding through the MAGIC Fund. If a project is denied funding by any of the boards (Minot Area Chamber EDC) or committee (MAGIC Fund Screening Committee) which precede City Council action the project shall be deemed ineligible for consideration by the Minot City Council.

Confidentiality shall be observed for information of a personal nature, such as Social Security numbers and the like, both as a statutory obligation and as a matter of policy. Confidentiality of other information (including proprietary information and trade secrets) submitted to the lead agency will be provided only upon a clear showing of the need for such confidentiality (giving due regard to the difficulty of proving the need for confidentiality without, at the same time, disclosing the information sought to be kept confidential).

When confidentiality is provided by the lead agency and subsequent approving authorities, their obligation in that regard shall be limited to making reasonable good-faith efforts to preserve such confidentiality under the applicable North Dakota open meetings and open records laws (including, when permissible, the return of all copies of such information to the person who, or the entity which, submitted it). No absolute or unconditional guarantee of confidentiality will be made.

APPLICATION REVIEW GUIDANCE

The following guidelines are intended to serve as a source of general guidance for application reviewers (Minot Area Chamber EDC staff and board of directors, City of Minot staff, MAGIC Fund Screening Committee, Minot City Council, etc.) in the administration of this program. It is important to note that the economic development needs of the area are such that a large degree of procedural flexibility may be necessary to capitalize on windows of opportunity. In that context, administration of the MAGIC Fund must be dynamic enough to ensure that the monies made available by this tax are prudently applied to the economic development needs of the area consistent with the MAGIC Fund Guidelines, which are regularly reviewed and updated by the Minot City Council.

The acid test of the value of an application will be the relative positive “impact mix” of the business on the economy of the region. “Impact mix” is defined in general terms as the number of jobs created or saved; quality of those jobs in terms of salary/benefit levels and the expected length of time the job will be viable; expansion of the tax base; financial mix—to include the appropriate level of owner’s equity required to make the venture successful; organizational growth potential of the venture; environmental impact; uses of regional materials in the production process; the amount of third-party participation in the venture; and the amount of primary money generated by the project. The Committee will look for these factors in determining the relative worth of an applicant’s venture to the economy of our region consistent with the uses defined and allowed with the MAGIC Fund.

Regardless of the factors ultimately determined to be the basis by the application reviewers in recommending financing for an Applicant, there must be clear, measurable performance benchmarks which can be used to regularly monitor compliance and performance.

The ratio of public-supported funding versus private-supported funding on each project should be carefully scrutinized so that the MAGIC Fund does not take a disproportionate equity position in any particular project. All funds (MAGIC Fund and matching funds) authorized for the project and activity must be documented and verifiable. If an applicant can demonstrate through a justifiable business plan with clear minimum five-year growth projections that it needs a higher contribution of MAGIC Fund participation than established through these MAGIC Fund Guidelines to assure project feasibility, then consideration can be given by the application reviewers. Final approval by supermajority (2/3 vote) of the City Council is necessary for projects which request a higher contribution of MAGIC Funds than established through these MAGIC Fund Guidelines.

Interest rates need not be fixed but, rather, may be based upon the relative risk involved, the desirability of the project to the area, and the immediate and long-term growth potential of the business. It is important that, to the greatest extent possible, financial packages be tailored to meet the needs of the applicant, balanced with protecting the integrity and sustainability of the MAGIC Fund as well as clearly carrying out the intent and purposes of the Fund. Repayment schedules that provide a significant increase in the probability of project success may be considered, provided that the economic development potential of such arrangement justifies the non-traditional repayment arrangement.

Projects that call for expenditures by the MAGIC Fund to be made over a period of time, and then conditioned upon certain performance benchmarks being reached by the project, are to be preferred over projects that make heavy “up front” expenditure demands. Any project that is heavily front-ended must demonstrate offsetting desirable features not found in the average project. Any project involving front-ended distribution of the MAGIC Fund share prior to Applicant’s contribution shall require Applicant guarantees offering reasoned and reasonable repayment of the MAGIC Fund contribution should all obligations not be met, and three years of certified, audited financial statements from the Applicant in the immediate three years prior to date of Application.

PROJECT TRACKING AND CONTRACTS

The Business Incentive Agreement shall specify project tracking procedures for each project approved. The procedures for tracking will provide periodic feedback from the company receiving job creation/retention funding on the status of business operations. The Business Incentive Agreement shall establish the specific frequency, content, and manner of presentation of these reports prior to funding disbursement and be made enforceable.

Standard Form (i.e. fillable blank) Business Incentive Agreements (or equivalent if Business Incentive Agreements are not applicable) shall be developed by the program's lead agency for the following programs to simplify and expedite the contracting process (i.e. Bank of North Dakota PACE Buydown Match).

For the Bank of North Dakota FlexPACE Buydown Match Loan program, an agreement shall be made between the City of Minot and Souris Basin Planning Council which governs the use of MAGIC Funds for capitalization of a revolving loan fund for small businesses who qualify for the Bank of North Dakota's FlexPACE Buydown program, administered by Souris Basin Planning Council, shall enter into a standard form agreement with Souris Basin Planning Council which meets the requirements of the Bank of North Dakota, City of Minot, and other entities which have contractual requirements stemming from the use of their funds for capitalization of the revolving loan fund for small businesses.

The Contract Committee shall consist of a City Council representative, a City Finance representative, a Minot Area Chamber EDC representative, and a person representing the project, with the assistance of legal counsel, to structure each development contract and forward it to Minot Area Chamber EDC Board, MAGIC Fund Screening Committee, and the Minot City Council concurrent with other project application materials.

For contracts with consultants and service providers (such as the Minot Area Chamber EDC), there should be expectations and performance standards built into the contract. The return from the service providers and consultants should be proportionate to the money they receive. An annual independent contract audit on the use of these funds will be required as part of the contract.

To the extent appropriate under the circumstances of a particular project, its development contract shall call for the provision of detailed receipts and invoices as a precondition of the expenditure of funds by the City pursuant to the contract.

Business Incentive Agreements shall provide for suitable collateral or security to protect the City's interests and, in addition (or when necessary in lieu thereof), "claw-back" provisions. Business Incentive Agreements shall prescribe specific reporting requirements to be met by the recipient of funds, in accordance with North Dakota Century Code 54-60.1-03.

Each project file should maintain a checklist that corresponds to the contract requirements to

ensure all documentation is current and complete.

At the discretion of the City Council, an independent contractor shall review employment records at the company site and sign an affidavit of verification.

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