

## **CITY OF MCKINNEY LOW INCOME HOUSING TAX CREDITS RESOLUTION POLICY**

### **Purpose**

To provide administrative procedures by which the City will review and process requests for resolutions to be considered by the City Council of the City of McKinney ("City Council") on housing development projects utilizing low income housing tax credits as a component of project financing, consistent with the City of McKinney Affordable Housing Policy, City ordinances, and applicable law.

### **Authority**

The Federal Government makes available federal income tax credits to stimulate private developers to invest in and construct low-income housing 26 U.S.C. § 42 (2011). Those federal tax credits are allocated between the states and awarded at the state level by a designated housing credit agency. The Texas Legislature has designated the Texas Department of Housing and Community Affairs ("TDHCA") to administer the state's low income housing tax credit ("LIHTC") program. TEXAS GOVERNMENT CODE, Chapter 2306 (Vernon 2016); 10 T.A.C. Chapter 11. Federal law requires the TDHCA to allocate tax credits pursuant to a Qualified Allocation Plan ("QAP"), which must include certain selection criteria. The TDHCA is also required by State law to biennially adopt the QAP and corresponding manual.

In evaluating an application filed with the TDHCA requesting an allocation of low income housing tax credits, the TDHCA is required to determine whether the application satisfies specified threshold criteria required by the QAP, and shall score and rank the application using a point system that prioritizes ten (10) additional criteria. One specific criterion evaluates the application based upon "quantifiable community participation with respect to the development, evaluated on the basis of a resolution concerning the development that is voted on and adopted by ... the governing body of a municipality in which the proposed development site is to be located." That criterion applies if the proposed development is located within the municipality's jurisdiction, and also it applies if the proposed development is located in the extraterritorial jurisdiction of a municipality.

This statutory requirement for a resolution from the governing body of a municipality applies to each development application submitted to the TDHCA, which applications are reviewed on an individual basis. There are no specific guidelines provided in Federal or State law that inform or direct a municipality's evaluation of an application in order to comply with the requirement to consider a resolution concerning the proposed development. The City is nonetheless required to follow applicable Federal and State fair housing statutes and regulations, cases interpreting and applying those laws, and the City's own housing ordinances and policies.

### **Low Income Housing Tax Credit Resolution Process**

A. Receive LIHTC Application/Request for Resolution

Upon the City's receipt of a development application containing LIHTC financing being considered by the TDHCA, or a request from an applicant for a City Council resolution concerning a development containing LIHTC financing, immediately log the matter noting the application, applicant contact information, date of receipt, and anticipated City Council meeting schedule. Immediately distribute the application and review forms (containing the criteria listed in this policy) to appropriate City departments for consideration of the evaluation criteria and factors listed in the next section.

B. Evaluate LIHTC Application/Request for Resolution

The following evaluation criteria and factors shall be considered for each application:

1. Project location, including whether the project is located one linear mile or less from a development that serves the same type of household as the new development;
2. Housing needs characteristics;
3. Project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan;
4. Sponsor/developer characteristics and experience, and list the name, including company name, of the contact person, with address and telephone number, and the identification of those persons providing developmental or operational services to the development, including:  
(a) the development owner; (b) architect; (c) attorney; (d) tax professional; (e) property management company; (f) consultant; (g) market analyst; (h) tenant services provider; (i) syndicator; (j) real estate broker or agent or a person receiving a fee in connection with services usually provided by a real estate broker or agent; (k) the owners of the property on which the development is located; (l) developer; and (m) builder or general contractor;
5. Whether the anticipated tenant population includes persons with special housing needs;
6. McKinney Housing Authority ("MHA") waiting lists, and whether the development is supported by MHA;
7. Whether the anticipated tenant population includes individuals with children;

8. Whether the project is intended for eventual tenant ownership;
9. The energy efficiency of the project;
10. The historic nature of the project, including an evaluation of anticipated impact of the development on City historical areas, sites, building or other structures;
11. Whether at the time of application the City has more than twice the state average of units per capita supported by housing tax credits or private activity bonds, unless the applicant: (a) has obtained prior approval of the development from the City Council, and (b) has included with the development application a written statement of support from the City Council referencing Texas Government Code § 2306.6703 and authorizing an allocation of housing tax credits for the development;
12. Whether the applicant has notified the following entities about the filing of the application: (a) any neighborhood organizations on record with the State or Collin County; (b) the superintendent and the presiding officer of the board of trustees of the applicable independent school district; (c) the Mayor and City Councilmembers of the City Council; (d) the Collin County Commissioner's Court and County Judge; and (e) the State senator and State representative of the district containing the development, including whether the City has received any input from such persons or entities;
13. Whether the development at the proposed location constitutes: (a) an approved land use permitted under the City's zoning ordinance provisions; and whether the development's proposed land use change, if applicable, at the proposed location is (b) consistent with the City's Comprehensive Plan and housing priorities;
14. Whether the applicant is in the process of seeking the appropriate zoning from the City and has signed and provided to the City a release agreeing to hold the City and all other parties harmless in the event that the appropriate zoning is denied;
15. Whether the development is financed through a private activity bond program, including private activity bonds issued by the TDHCA, the Texas State Affordable Housing Corporation, or a local issuer, such as the McKinney Housing Finance Corporation ("MHFC"), and if so, review of any staff or City Council requested financial analysis provided by an issuer related to the applicant's financing;

16. Whether the development complies with accessibility standards required under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); 24 C.F.R. Part 8, Subpart C; and related authorities concerning accessibility standards;

17. An evaluation of anticipated impact of the development on City services and related infrastructure, including but not limited to, police and fire services; water, sanitary sewer, and stormwater capacities and facilities; traffic patterns; and any environmental issues; and

18. An evaluation of compliance with City health and safety codes.

C. Forward to City Council for Public Hearing and Consideration of Resolution

Prepare a City staff report that analyzes each of the above-listed evaluation criteria and factors in regards to the application, taking into account the City's ordinances, policies and priorities, and the application's ability to promote McKinney housing. An evaluation by the City Attorney's Office may accompany the staff report if necessary regarding legal issues. The information provided in the staff report can then be used by the City Council to evaluate the development, allowing the City Council to exercise its discretion regarding passage of a resolution regarding the development. The ultimate decision on any factor(s) and the weight to give any of the above criteria lies with the City Council. The City staff report will not offer a recommended course of action to the City Council. Attach three draft resolutions for consideration and action by the City Council, as follows: (1) Resolution in support of the development; (2) Resolution of no objection to the development; and (3) Resolution opposed to the development. See form resolutions, attached. Forward the staff report, application, agenda item and related materials through usual City procedures for the matter to be included on the next available City Council meeting agenda for public hearing and action on the resolution.

**Definitions**

In addition to definitions provided in the City of McKinney Affordable Housing Policy, the following additional definitions are provided which are specific to this policy:

1. "Applicant" means any person or affiliate of a person who files an application with the TDHCA requesting a housing tax credit allocation, and files an application for a development with the City.
2. "Application" or "development application" means an application filed with the TDHCA and the City by an applicant and includes any exhibits or other supporting materials.

3. "Development" means a proposed qualified low income housing project, as defined by 26 U.S.C. § 42(g), that consists of one or more buildings containing multiple units, that is financed under a common plan, and that is owned by the same person for federal tax purposes, including a project consisting of multiple buildings that: (a) are located on scattered sites; and (b) contain only rent-restricted units.

See *also* terms defined in Internal Revenue Code, 26 U.S.C. § 42; Texas Government Code, Chapter 2306; and TDHCA Rules published in the Texas Administrative Code.

