

Metropolitan Nashville-Davidson County



PILOT Program for New Low Income Housing Tax Credit Projects

Administered by

**Metropolitan Development and Housing
Agency (MDHA)**



Adopted: November 2015

APPLICATION POLICIES AND PROCEDURES

Metropolitan Development and Housing Agency (MDHA) PILOT Program for New Low Income Housing Tax Credit Projects

Administered By:

The MDHA Department of Urban Development
35 Peabody Street, Suite 301
Nashville, TN 37210

Introduction

MDHA's PILOT (Payment in Lieu of Taxes) Program is a financial incentive, in the form of a tax abatement, designed to encourage new construction and substantial rehabilitation of affordable multi-family housing in Metropolitan Nashville-Davidson County. Projects that have applied for federally sponsored low income housing tax credit (LIHTC) programs through the Tennessee Housing and Development Agency (THDA) are eligible to apply. The PILOT program will provide significant property tax relief for a period of up to ten (10) years and encourage developers to expand the supply of affordable housing within Nashville-Davidson County.

MDHA has the annual authority to negotiate up to \$2,500,000 per program year in tax abatement (over and above the pre-development assessed value of the property). MDHA **does not have** final approval authority for PILOTs on individual properties – each PILOT must also be approved by the Metropolitan Council of Nashville-Davidson County via resolution. Once MDHA staff determines there is a financial need for the PILOT, staff must obtain approval of the MDHA Board of Commissioners prior to submitting the PILOT request to Metro Council for final approval.

Basic Eligibility Requirements

Property Location: Metropolitan Nashville-Davidson County.

LIHTC Properties: PILOT tax abatement will only be awarded to projects for properties that have received a new allocation of LIHTCs.

Site Control: The applicant must have site control equivalent to fee simple title, 99-year lease, or option to purchase with no contingencies except financing.

Financial Need: The applicant must show a need for the tax abatement and demonstrate proof that the financial viability of the project is at stake without the proposed PILOT. Financial need will be demonstrated by the pro forma for the new LIHTC projects.

Application Process

1. ***Pre-Submittal Conference*** – A mandatory meeting with the Director of Urban Development or his staff designee shall be held prior to submission of a PILOT application. The purpose of this meeting is to acquaint all parties with the scope of the Project and any related issues. This meeting also serves to

familiarize the Applicant with the overall submittal and review process, as well as PILOT policies and basic eligibility requirements.

2. **Submittal of Application** – The PILOT application starts on page 6 of this package. Each applicant must submit three (3) hard copies and one (1) electronic copy of the application, with all required attachments. Applications for projects pursuing allocations of LIHTCs will be accepted from January 1st to June 30th and August 1 through November 30th. Acceptance of applications at other times of the year will be at the sole discretion of MDHA. Applicant should make their application no more than one hundred eighty (180) days prior to the anticipated construction loan closing date.

The applications should be delivered to:

MDHA
Department of Urban Development
35 Peabody Street, Suite 301
Nashville, TN 37210

3. **Staff Review** – Staff will review applications as they are received. For an application to be reviewed, it must be complete and contain all supporting documentation. Applications deemed incomplete and lacking support documentation will not be reviewed. Staff may contact Applicants as necessary to answer questions and/or obtain additional information regarding the project. The review process will take approximately four (4) weeks. Projects that meet the eligibility criteria, and demonstrate a financial need for the PILOT will enter PILOT Lease negotiations with Staff and then be scheduled for consideration by the MDHA Board of Commissioners.

4. **MDHA Board Review** – The MDHA Board of Commissioners typically meets on the second Tuesday of each month. Meeting locations and start times are as advertised. Upon approval of the proposed PILOT by the MDHA Board, MDHA staff will file the PILOT with Metro Council for final approval via resolution.

5. **Metro Council Review** – MDHA will prepare the necessary legislation and file with Metro Council. It is recommended that the Applicant reach out to the relevant District Councilperson to make them aware of the Project. Once the proposed PILOT resolution has been placed on the Metro Council agenda, it may pass in a single Council meeting. The Metro Council meets on the first and third Tuesday of each month in the David Scobey Council Chamber of the Historic Metro Courthouse at One Public Square, Nashville TN. If the PILOT for the property receives Metro Council approval, MDHA staff and General Counsel will work with applicant and their attorney(s) to close the PILOT.

6. **Closing** – Upon approval by the Metro Council, MDHA's General Counsel will prepare and finalize PILOT documents and arrange a PILOT closing. At the PILOT closing, regulatory and compliance agreements will be executed, and all required documents will be filed with the Metropolitan Nashville-Davidson County taxing authority and will be duly recorded with the Nashville-Davidson County Register of Deeds.

Applicant Fees

Application Fee

The Application Fee is a non-refundable fee, due and payable upon submission of the application, of \$2,500.00 per project.

Closing Fee/Time for Closing

The Closing Fee is ten percent (10%) of the estimated annual PILOT payment, plus applicable attorney fees and filing fees. Closing Fees are assessed and due at Closing. The Applicant will have up to one (1) year from the time of approval by the Metro Council to close the PILOT transaction. If the transaction has not closed within that time, the PILOT application process must start again. The Project must be resubmitted, reviewed and reapproved by MDHA as a new PILOT application.

PILOT Transfers

Each PILOT transfer must be approved by the MDHA Board after consideration of a formal written request for a PILOT Transfer and an updated PILOT Application submitted by the potential transferee. The Transfer Fee is \$1,250.00, plus applicable expenses including reasonable attorney fees. The Transfer Fee shall be submitted with the updated PILOT Application.

Annual Fees

Annual fees are annual PILOT payments to the Metropolitan Nashville-Davidson County taxing authority.

Monitoring and Reporting Fee

Properties will be charged a fee of up to five percent (5%) of the annual PILOT payment for annual monitoring and reporting. For each year the PILOT is in effect, MDHA will issue an invoice for the Monitoring and Reporting Fee.

Other Closing Requirements

The following must be provided at Closing:

- Proof of property insurance on the property with coverage amount equal to the full value of the property.
- Proof of liability insurance on the property with coverage amount equal to \$2,000,000 per occurrence.
- Proof that MDHA is named as an additional insured through an insurance certificate provided prior to closing. Said certification shall provide thirty (30) days notification to MDHA if insurance on the property is being reduced, terminated, or lapse in coverage.
- Proof that a Lender Approved Environmental Assessment has been completed on the property.

- Satisfactory Evidence of the ability of the developer to complete the project. Such evidence may include a Payment and Performance Bond.

MDHA Contacts:

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ATTACHMENTS:

❖ **GENERAL POLICIES AND PROCEDURES – EXHIBIT A**

APPLICATION for the PILOT Program for New Low Income Housing Tax Credit Projects

Applicant Information

1. Name _____
Address _____

E-mail _____ Phone _____
2. Applicant's representative(s) names _____
Other project financial guarantor(s) _____

Contact information if different from above
Name _____
Address _____

E-mail _____ Phone _____
(Note: Attach additional pages as needed.)
3. Relevant background information about the Applicant and Guarantors, including development experience and all other relevant information this organization may need to consider while reviewing the application. Describe the corporate or partnership structure as applicable. Staff reserves the right to review the information provided.

(Attach additional pages as needed.)
4. List three references for the Applicant.

5. Is Applicant, Guarantor or any other person involved with the Project currently engaged in any civil or criminal proceeding? (Yes) ____ (No) ____ Has any individual involved with the Project has ever been charged or convicted of any felony or currently under felony indictment? (Yes) ____ (No) _____. If "yes" to either question, please supply detailed information. (Attach pages as needed.)

Applicants including principals and member(s), must be current in all financial obligations to MDHA. MDHA will not recommend award of PILOT to Applicant that has failed to complete any MDHA funded projects or that has outstanding monitoring findings or disallowed costs, defaulted loans, debarment actions, or any other legal encumbrances.

NOTE: Staff reserves the right to review background records for criminal and credit information. Any expense related thereto will be the responsibility of Applicant and chargeable as an expense to Applicant.

6. Is there any previous or current relationship between Applicant or any Guarantor and any elected government official of Metropolitan Nashville-Davidson County? _____ (Yes) _____ (No). If yes – describe in detail.

7. Is there any previous or current relationship between Applicant or any Guarantor and any MDHA Board or Staff member? _____(Yes) _____(No). If yes – describe in detail.

Project Information

1. Attach LIHTC Approval Information and provide electronic copy of application for same.
2. Attach a letter describing any changes to the project since submission of the LIHTC application and justification of why you need the PILOT to move forward with the project.
3. Brief project description.

4. Briefly state marketing approach/plans for the intended market. Identify and provide contact information for the proposed management company and provide projected lease-up schedule.

5. Location of proposed project including Metro Council District, census tract, street address, parcel number, and legal description.

(Note: Attach additional pages as needed.)

- a. Name of the property owner at the time of application submittal

- b. Evidence of site control in the form of deed, long term lease, or option agreement
- attached _____(Yes)

- c. Describe any and all existing financing, options and liens on the property

6. **State the proposed timing/anticipated dates for the following –**

- a. **Closing of the loan or contributing financing availability -** _____
- b. **First expenditure of funds related to the Project -** _____
- c. **Anticipated date of demolition or construction start -** _____
- d. **Anticipated completion date -** _____
- e. **Projected lease-up date -** _____

Note: According to Tennessee State Statute and the guidelines of this program, title for the subject property must be conveyed to MDHA for the term of the PILOT.

1. State the tax parcel number(s) for all property involved with the Project
2. State the current assessed value of all Project property
3. Indicate any tax assessments under appeal, and status of appeal
4. Indicate any subdivision of tax parcels that will result from Project
5. Indicate name in which property will be held

Project Financing Information

1. Fifteen year cash flow pro forma* showing Project's ability to service its debt

- attached _____ (Yes)

*** The Project pro forma is to be completed in two scenarios – one with and one without the proposed PILOT. It is anticipated that these pro formas may be reviewed by a contracted financial advisor. At a minimum, the pro formas should include a breakdown of the Project's projected income, operating expenses, fees, replacement reserves, taxes (without a PILOT agreement) and debt service. The pro formas should also include a total development budget with proposed funding sources and the Applicant's projected return on investment.**

2. Financial history of the Project and previous attempts to develop or finance

– attached _____ (Yes) _____ (NA)

Sponsors of projects approved under this PILOT Program will be required to submit annual reports certifying tenant income levels. MDHA reserves the right to monitor the project periodically and perform an annual on-site inspection. This monitoring and inspection right shall be a covenant of, and condition to the continued participation in the PILOT program.

This application is made in order to induce MDHA and Nashville-Davidson County Metro Council to grant financial incentives to the Applicant. By signing below, the Applicant hereby represents that all statements contained herein are true and correct and that all information materially significant to MDHA and Nashville-Davidson County Metro Council in its consideration of this PILOT application is included. By signing below, the applicant further acknowledges and understands that any false statements or false information made on this application will result in immediate denial of the application for the PILOT program. The Applicant expressly consents to MDHA's investigation of its credit in connection with this application. The Applicant acknowledges that it has reviewed the descriptions of the PILOT program for which it is applying and agrees to comply with those policies. The Applicant further acknowledges that it has received a copy of MDHA's General Policies and Procedures for the PILOT program, and acknowledges that the General Policies and Procedures are an integral part of the application process. The Applicant shall also be required to show a good faith effort with regard to the employment of Diversity Business Enterprises in the construction of this project. The Applicant specifically agrees to pay all reasonable costs, fees and expenses incurred by MDHA whether or not the incentive is granted or Project completed.

Applicant

By: _____

Title: _____

Date: _____

Original signature (in blue ink) required on original application form.

Copies of original signature page may be included in the 3 copies of the application.

EXHIBIT A

GENERAL POLICIES AND PROCEDURES

The Tennessee Code Annotated (TCA), Section 13-20-104 et seq (the "Act"), grants The Metropolitan Development and Housing Agency of Metropolitan (MDHA), as the Housing Authority for Nashville-Davidson County, the ability to negotiate a Payment in Lieu of Taxes (PILOT) with Low Income Housing Tax Credit Properties in its jurisdiction. Low Income Housing Tax Credit Property means low-income property restricted under government regulations pursuant to § 42 of the Internal Revenue Code of 1986 as amended (the low-income housing tax credit program). The annual allocation limit for the PILOT program as established by the Metropolitan Council of Nashville-Davidson County is \$2,500,000. Applications for projects pursuing new allocations of LIHTCs will be accepted from January 1st to June 30^h and from August 1st to November 30th with additional application openings at MDHA discretion. MDHA staff will receive applications before LIHTC award letters have been received but PILOT lease documents may not be prepared until the Applicant has received an award letter from THDA.

To obtain tax abatements for any LIHTC Project, the developer/owner of the proposed LIHTC Project must convey the property to MDHA and then lease such property back from MDHA. While MDHA owns the property, the property is exempt from property tax by statute. The property owner and MDHA enter into a payment in lieu of tax agreement (the "**Tax Agreement**"), which provides that the property owner will make payments in lieu of property tax ("**PILOT**") in an agreed amount following the conveyance of the property to MDHA. Because leasehold interests in real property where the property owner is exempt from tax are subject to tax in Tennessee, the sale-leaseback transaction with respect real property must be structured so that the rent payable under the lease is at or above market rent so that the leasehold has no value.

PILOT Qualifications

The following criterion sets forth the requirements for a property to qualify under MDHA's PILOT program:

1. The project must be a multi-family residential property located in Metropolitan Nashville-Davidson County that has received a new award letter for LIHTCs that meets the affordability requirements of the LIHTC program.
2. The Applicant must have site control equivalent to fee simple title, 99-year lease, or option to purchase with no contingencies except financing.
3. The Applicant must show a need for the tax abatement and demonstrate proof that the financial viability of the project is at stake without PILOT relief.

Approval

All applicants are required to attend a mandatory pre-submittal conference with the Director of Urban Development or his staff designee wherein the Applicant will be further apprised of the PILOT review process, PILOT policies and basic eligibility requirements.

Review of applications will be done by MDHA Staff. For an application to be reviewed, it must be complete and contain all supporting documentation. Applications deemed incomplete and lacking support documentation will not be reviewed. Staff may contact Applicants as necessary to answer any questions and/or obtain additional information regarding the project. The review process will take approximately four (4) weeks. Projects that meet the eligibility criteria and demonstrate a financial need for a PILOT will enter PILOT Lease negotiations with Staff and then be scheduled for review by the MDHA Board of Commissioners.

In the event there is an over subscription in the annual allocation, projects in the following categories will receive priority according to the order listed below for MDHA Board Approval prior to other projects:

1. Projects with allocations of 4% LIHTCs in conjunction with the Tax Exempt Multi-Family Revenue Bond program.
2. Projects with HOME and/or Barnes Fund Subsidies.
3. **Projects located in MDHA Redevelopment Districts.

** MDHA Redevelopment Districts can be viewed at the following address: http://www.nashville-mdha.org/wp-content/uploads/2015/08/Redevelopment_Districts_Map.pdf

If the request for the proposed PILOT is approved by the MDHA Board, MDHA staff will file the proposed PILOT with Metro Council for final approval via resolution.

Closing Schedule

The Applicant will have up to one (1) year from the time of approval by the Metro Council to close the PILOT transaction. If the transaction has not closed within that time, the Project must be resubmitted, reviewed and reapproved by MDHA and will be subject to an additional Application Fee.

Fee Schedule

The Closing Fee assessed by the MDHA for issuing the PILOT to all projects shall be ten percent (10%) of the estimated annual PILOT payment.

Project Cost

There will be a preliminary and final evaluation of total project cost. The preliminary evaluation will be done in the pre-submittal conference, with the final evaluation held at Closing. **For purposes of the final evaluation, the Project will be required to submit an Architect's Inspection certificate or Lender's certificate to evidence and certify the total project cost prior to Closing.**

PILOT Documents

The required documentation for an approved PILOT transaction includes, at a minimum, the following:

- a. PILOT Agreement;
- b. Lease Agreement; and
- c. Quit Claim Deed transferring title to the property to MDHA.

Reporting/Monitoring

It is the purpose of this program to benefit low and moderate income tenants. As a result, properties included in this tax relief program are subject to annual reporting and monitoring requirements for compliance with both the terms of this program and with other fair housing practices. Each approved applicant will submit reports to MDHA to insure compliance with PILOT program requirements. Said compliance requirements will be provided in the pre-submittal conference, but will include at a minimum annual monitoring letters from THDA or THDA notices of non-compliance with the Applicant's responses to such notices. **The costs of the reporting and monitoring services shall be the responsibility of the Applicant and will be five percent (5%) of the annual PILOT payment. The reporting and monitoring by MDHA may be provided by a third party vendor, and will include, but is not limited to, tracking on an annual basis of the following:**

1. Value of the property, as estimated by the applicant;
2. The amount of payments made in lieu of property taxes for the property;
3. A calculation of the taxes which would have been due for the property if the property were subject to taxation.
4. Evidence of percentage of tenants whose income falls within 50% or 60% of the area median income;
5. Evidence of general liability insurance renewals;

If after review any Project is found to be deficient in meeting the PILOT standards, the Applicant will be allowed a sixty (60) day period within which to redress any and all deficiencies. If the deficiencies are not cured in a timely way, it will be a material default and the PILOT will be subject to termination by MDHA.

Additional Guidelines

1. The maximum allowable term for a PILOT lease shall be ten (10) years.
2. A PILOT will not affect taxes on the property for its unimproved value, but will only reduce the taxes paid on the property above its pre-development value.
3. An applicant must own the property or have an option or other right to purchase the property in order to be eligible to apply for a PILOT. Said site control shall be the equivalent of fee simple title, 99 year lease or an option to purchase with no contingencies except financing.
4. Applications for PILOT approval must include a fifteen (15) year project pro forma/financial analysis of the project's income and expenses with and without the PILOT.
5. If the property approved for a PILOT becomes vacant and unoccupied for a period of two years, the PILOT agreement will be terminated and the property may return to the tax rolls at the then current tax assessment and rate.
6. All PILOT transactions will be closed in the name of the Applicant or party designated in the application as the owner of the project. Prior written approval of MDHA will be required for substitution of another party under any PILOT agreement prior to closing thereof.
7. Upon completion of any Project subject to a PILOT agreement, the Project shall be reviewed to determine if the Project was completed as set forth in the application with respect to such project plans and specifications as approved by MDHA and Metro Council.
8. In the event the Project is sold or refinanced, it is possible to continue the PILOT, subject to certain conditions as approved by MDHA, but any legal or other costs associated with the matter will be borne by the Applicant.
9. If minor errors exist in a submitted and eligible application, MDHA may allow the applicant up to 10 business days to make the needed corrections.
10. Any change in liability insurance is to be immediately reported to MDHA, as MDHA is to remain an additional insured party at all times during the term of the project's PILOT.
11. Changes made to the on-site management or the name of a property requires prior written notification be provided to MDHA immediately with new contact information if applicable.

Transfer of PILOT

There shall be no automatic transfers of the PILOT by the Applicant, and any attempt to do so shall be void ab initio. However, for Projects with a recorded Land Use Restriction Agreement exceptions may apply. Each PILOT transfer must be approved by MDHA after consideration of a formal written request for PILOT Transfer and an updated PILOT Application submitted by the potential transferee. As a condition of transfer, the transferee must agree to comply with the terms of the PILOT Agreement and other PILOT conditions, including compliance and monitoring, and general liability insurance requirements. The transfer fee is \$1,250.00, plus applicable MDHA expenses including reasonable attorney fees. The transfer fee shall be submitted with the updated PILOT Application. Transfer applicants may be subject to background checks. **All applications for transfer must be submitted to the MDHA Director of Urban Development a minimum of six (6) weeks prior to the MDHA Board meeting at which the application for transfer will be considered.**

Deeds of Trust

MDHA will agree to enter into a Deed of Trust, as requested, in order for the Applicant to obtain permanent financing after PILOT approval. MDHA assumes no liability whatsoever, financial or otherwise, for payment of the obligations of the Applicant as evidenced by any note secured thereby. Anything to the contrary in a Deed of Trust notwithstanding, in the event of default on the note by the Applicant, the sole remedy for a lender against MDHA is the conveyance of the property to lender. A lender, by accepting the Deed of Trust, agrees that it shall not sue for, seek or demand any deficiency judgment or other money judgment or to impose any liability against MDHA or its successors and assigns (including any incorporator, member, director, employee or agent) for repayment of any debt and is fully exculpated therefrom by lender, trustee, and Applicant.