



Development Finance Programs

Agenda Item

Presentation, Discussion and Possible Approval of the Publication of Draft Amendments to TSAHC's Joint Venture Development Guidelines for Public Comment.

Background

Staff is presenting draft amendments to the Joint Venture Development Guidelines and is requesting approval from the Board to post the draft for public comment. The draft will be published on our website, and a notice will be provided on the Texas Register.

In December 2017, TSAHC's Board approved a resolution and guidelines that would guide our participation in partnerships with Developers to create affordable rental housing. The guidelines were previously amended in 2020, 2023, and 2024. Now, TSAHC has completed two projects and has two additional projects under construction. To ensure that new applications to the program fulfill the public purpose of TSAHC, the following amendments are being proposed.

- Section 1(c) – The definition of a Smaller Urban Market is being revised to match changes made in other programs' policies.
- Section 2 – This is a new section that includes new Threshold Requirements for all Developments. This section provides clarity to Applicants regarding TSAHC's intent to increase and preserve affordable housing, and to avoid misuse of its property tax exemption status.
- Section 5(a) – The application fee for Joint Venture projects is increased from \$500 to \$1,500.

Additional minor changes to wording and punctuation have been made, along with technical changes provided by counsel. If approved, the blacklined version of the guidelines will be published on the TSAHC website for public comment and will return to the Board after at least 30 days. All public comments received will be summarized and provided to the Board at the time of final approval.

Staff Recommendation:

Staff recommend that the Board approve the publication of the proposed draft amendments to the Joint Venture Development Guidelines for public comment.

Texas State Affordable Housing Corporation

Joint Venture Development Guidelines

The Texas State Affordable Housing Corporation (TSAHC) has adopted these guidelines (Guidelines) to direct staff in the creation of joint ventures, limited liability companies or partnerships (hereinafter Joint Ventures) for the purpose of acquiring, constructing, rehabilitating or equipping affordable multifamily properties (singularly referred to as a Development). These guidelines set forth the circumstances under which TSAHC will consider undertaking a Joint Venture, the process for reviewing such requests, organizing the Joint Venture and expectations for the operation and management of the Development.

1. Eligible Developments:

In order to ensure that TSAHC adheres to its legislative mandate, only Developments that meet at least one of the following housing needs may be considered:

- a. Small scale developments (50 units or less) located in urban areas that will reserve at least 50 percent of the units for individuals and families with incomes at or below 60 percent of the median family income, adjusted for family size;
- b. Developments serving extremely low-income households, with at least 10% or more of total units reserved for households earning 30% or less than median income, and that provide onsite ~~or, or~~ free access to ~~offsite-sight~~, supportive services targeted to households at risk of homelessness. ~~These d~~ Developments meeting the foregoing criteria will be defined as “Permanent Supportive Housing”, per these guidelines;
- c. Developments located in rural or smaller urban areas. Rural rental housing Developments must be located within an area that is: (a) outside the boundaries of a primary metropolitan statistical area (PMSA) or metropolitan statistical area (MSA); or (b) within the boundaries of a PMSA or MSA, if the area has a population of 20,000 or less and does not share a boundary with an urban area. Smaller Urban Markets rental housing Developments must be located within a city of less than 150,000 persons; but not within ~~or adjacent to a PMSA or MSA~~ a County of more than 500,000 persons and not adjacent to an urban area based on USDA census tract designations; and
- d. Developments that are intended for individuals 62 years of age or older or intended and operated for occupancy by at least one individual 55 years of age or older; and at least 20% of total units are affordable and reserved for households earning 50% or less than the area median income.

2. Threshold Requirements:

To fulfill the public purpose of TSAHC, Applicants must provide evidence that the Development meets all of the following minimum requirements.

- a. The Development meets TSAHC’s program policies and requirements for Affordable Communities of Texas Land Bank Program;
- b. The Development will be constructed or rehabilitated in accordance with the TSAHC’s accessibility and construction standards;
- c. The Development is infeasible without the utilization of a property tax exemption, provided, however, reaching such conclusion shall be in the sole determination of TSAHC based on the evidence provided;
- d. The Development has not entered into construction or rehabilitation financing, excluding predevelopment financing, prior to TSAHC’s proposed involvement in the transaction.

Texas State Affordable Housing Corporation

Joint Venture Development Guidelines

2.3. Application and Approval Process:

TSAHC will make available an application for potential Joint Venture partners to complete to assess if the Development will meet TSAHC's underwriting and program requirements. TSAHC's application will include, but is not limited to:

- Financial proformas and summary of sources and uses to assess the financial feasibility of the project in accordance with TSAHC's program requirements, including projected gaps in financing sources and proposed solutions and proposed fee splitting;
- Summary of the Applicant's previous experience with affordable housing development;
- Summary of property tax implications (i.e. the anticipated savings TSAHC's involvement creates and implications to the local property tax base);
- Summary of proposed ownership structure in the form of an organization chart (with owner entity preferably to be organized as a limited liability company) identifying owner entities, developer entities and guarantors;
- List of all confirmed and potential parties involved as financial sources (i.e. lenders, foundation, etc.) and development team members (i.e. architects, property managers, etc.), disclosing any affiliations with Applicant;
- Term sheets for all development sources of funds and/or descriptions and applications for any pending sources;
- Whether a sales tax exemption will be sought through TSAHC serving as general contractor and, if so, the identity of the master contractor (if known) and bonding capacity; and
- Summary of developer's proposed long-term timeline for development, including ~~securing~~ securing financial resources, ~~closing dates for~~ acquisition, ~~permanent financing~~, s and occupancy by qualified low-income households.

Once TSAHC has determined, based on its own assessment, that the proposed Joint Venture meets these Guidelines, a project summary, along with initial underwriting will be presented to TSAHC's board of Directors for approval. If approved, TSAHC will then negotiate and enter into a Memorandum of Understanding ("MOU") with the Applicant, or Applicant's affiliates.

Prior to the ~~closing~~ closing of any Development, TSAHC will be required to obtain approval, in the form of a resolution, of the final financing structure and ratifying the creation of subordinate entities from its Board of Directors.

If the Development includes the issuance of Private Activity Bonds, ~~with TSAHC, or any other entity, as bond issuer~~, TSAHC will not permit the submission of an application for reservation of ~~bonds allocation~~ to the Texas Bond Review Board until such time as TSAHC has agreed to and executed the MOU.

3.4. Ownership Structure:

The owner entity should in almost all cases be a limited liability company (TSAHC's preferred vehicle) or a limited partnership (Owner Entity). TSAHC may create one or more affiliated entities in connection with

Texas State Affordable Housing Corporation

Joint Venture Development Guidelines

the undertaking of its duties in connection with the Development. In addition, ~~TSAHC will require the formation of a development member (or similar entity) to act in conjunction with the TSAHC-affiliated Managing Member (or General Partner) in connection with the development and management of the Development in such a manner so as to preserve eligibility for a property tax exemption as TSAHC's attorneys may determine.~~ TSAHC may create one or more of the following entities, in its sole discretion, to manage specific functions of the Development and Owner Entity and ownership of the property.

- a. Managing Member (or General Partner) Entity. A separate entity, established and wholly controlled by TSAHC, may be established by TSAHC to serve as Managing Member (or General Partner). The Managing Member or General Partner Entity will be the de facto managing entity of the ~~Development~~ Owner Entity in cooperation with any development members (or limited partners or similar entities). The Managing Member (or General Partner) must have authority to review and approve all financing terms and commitment letters, as well as contracts with the owner including without limitation development team members and will have authority to approve engineering and architectural plans for the Development. The Managing Member (or General Partner) or an affiliate thereof may also receive ~~a percentage of any typical or customary developer fees due from development proceeds,~~ an asset oversight fee from rental revenues of the Development and a percentage of ongoing net revenues or cash flow after the payment of all debts and obligations of the Development. The Managing Member (or General Partner) will also be entitled to sales proceeds and will have an option and/or right of first refusal to purchase the ~~Development~~ and/or the other members' (or partners') interests in the Owner Entity upon disposition on or before year 15 of operations and thereafter. TSAHC and its affiliates will not be required to provide any guaranties or indemnities and will be fully indemnified by the Owner Entity and the developer and such other ~~Joint Venture~~ entities for their participation in the Development except to the extent of TSAHC's gross negligence or willful misconduct.
- b. General Contractor Entity. A separate entity, established and wholly controlled by TSAHC, may be used by TSAHC to serve as General Contractor. The General Contractor will be used to administer all construction contracts, oversee the approval of draws, and conduct other customary due diligence needed to complete the Development. TSAHC may utilize a pre-existing General Contractor entity that has been used in previous developments. TSAHC's affiliate will earn a fee equal to a percentage of the sales tax savings. TSAHC may engage a third party construction reviewer to inspect work and draw request documentation at the expense of the owner.
- c. Land Ownership Entity. TSAHC or a separate entity, established and wholly controlled by TSAHC, may be used by TSAHC to serve as fee owner of the land for the Development. In general, (1) the land will be leased to the Owner Entity ~~limited partnership (or limited liability company)~~ for a term not to exceed 99 years, and (2) the ~~Development~~ Owner Entity will own the Development structures, including existing and to-be-constructed structures, improvements, and equipment ~~and new construction~~. TSAHC, as ground lessor, will have a continuing option to buy the improvements and leasehold estate from the Owner Entity so as to qualify for the property tax exemption. TSAHC will earn a fee in exchange for providing the property tax-exempt structure.

Texas State Affordable Housing Corporation

Joint Venture Development Guidelines

- d. Developer Entity. A separate entity, established and wholly controlled by TSAHC, may be used by TSAHC as a development-related entity, to manage development activities related to the Development and earn TSAHC's share of the developer fee.

Note: Each of the foregoing affiliated entities, together with TSAHC, are required to be indemnified by the Applicant or Developer and its parent organization (and/or any other entity specified by TSAHC) for such affiliated entity's actions or omissions that do not constitute willful misconduct or gross negligence.

4.5. Fees:

- a. Application Fee: ~~\$1,500~~500 (this fee is in addition to TSAHC's standard multifamily bond application fee, if applicable, or any other fees associated an application for financing to TSAHC).
- b. Start-Up Fee: Applicants will be required to fund TSAHC's organization and legal costs of establishing TSAHC's subordinate entities through the Start-Up Fee. A deposit of \$15,000 towards the Start-Up fee will be due and payable to TSAHC upon the approval of the Joint Venture by TSAHC's Board of Directors.
- c. Asset Management Fee: As part of TSAHC's Joint Venture responsibilities, the Development's annual operating budget must include an Asset Management Fee of \$10,000, with an annual increase during Development operations of 3%.
- d. Developer Fee: For participating in a Joint Venture, TSAHC will receive a portion (minimum of 25%) of the Developer Fee paid from the Development's financing sources and revenues. TSAHC will be paid proportionally with the Developer for any deferred payments of the Developer Fee (regardless of source). TSAHC will consider lowering the minimum developer fee to 20% for ~~projects~~ Developments considered to be Permanent Supportive Housing. In no event shall TSAHC or any of its participating entities be required to make a capital contribution to fund the Owner Entity's payment of Developer Fee.
- e. General Contractor Fee: If TSAHC or its affiliates serve as the general contractor of record, it will be entitled to a minimum fee equal to 15% of the sales tax savings (no less than \$30,000) and must be fully indemnified. The closing documents, including the master subcontract, must include specific indemnification language provided by the Corporation in the MOU.
- f. Cash Flow and Revenue Sharing: Following the repayment of all amounts owed to the Developer and TSAHC for the Developer Fee, net cash flow from the Development may be (1) used to fund supportive services in addition to any services required by the Development's compliance or regulatory agreements; (2) escrowed by TSAHC in a fund (the "Local Services Fund") to support local educational, health and welfare service providers or agencies that benefit residents of the Development; and/or (3) shared ~~between~~ the Developer member and ~~TSAHC Corporation~~ affiliated managing member (or general partner). At a minimum, TSAHC's shares of net cash flow and capital event proceeds shall be 30%. The inclusion of subordinate financing, either from a third party or an affiliate of the ~~Development~~ team, will require the creation of an annual supportive service fee ("Supportive Service Fee") to be paid above the line as an operating expense from the project's operating income and prior to any distribution of cash flow.
- g. Professional Fees: TSAHC's Joint Venture Counsel will provide services related to the creation of affiliated entities and negotiation of TSAHC's duties in its related roles, the terms of the

Texas State Affordable Housing Corporation

6701 Shirley Avenue, Austin, Texas 78752

Texas State Affordable Housing Corporation

Joint Venture Development Guidelines

limited partnership or limited liability company documents, the terms of applicable indemnifications, and other ancillary matters. The Joint Venture Counsel shall charge a fixed fee (or an hourly based fee) to be established based on the facts of the financing structure to be used and approved by TSAHC.

Issuer Fees Not Included. For the avoidance of doubt, TSAHC's fees as bond issuer (if applicable) will be provided under separate cover.

5.6. Community Outreach:

TSAHC is intent on ensuring that local support is in place prior to approving its participation in a Joint Venture. In order to identify such support, Applicants shall be required to submit at least two letters that clearly state the Development project will be exempt from property taxes from the following entities or persons:

- a. The City or County housing department;
- b. The City or County housing finance agency;
- c. The City or County public housing agency;
- d. The office of the Mayor or County Judge;
- e. A member of the City Council or County Commissioner's Court;
- f. The State Representative or Senator serving the district where the property is located; or
- g. The Superintendent of Public Schools serving the project Development site.

Projects-Developments utilizing housing tax credits will also be required to obtain a resolution from the city or county government where the Development is located, that meets the standards for low-income housing tax credit program pursuant to section 2306.67021 of the Texas Government Code. The submission of this resolution may be done after application but must be received prior to receipt of the reservation of private activity bonds, if included in the financing structure.