OFFICE OF COMMUNITY & ECONOMIC DEVELOPMENT
Collaborative solutions for a promising future

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Date: January 8, 2021

To: Housing and Human Services Advisory Board

From: Teresa Gillotti, Office of Community & Economic Development

- Re: Recommendations for changes to City Ordinance, tax exemption for housing projects.

Each year the Office of Community and Economic Development conducts income and rent certification on all affordable housing developments in the City of Ann Arbor. Part of the review is to assist the Assessor's office with compliance related to the tax exemption or Payment in Lieu of Taxes (PILOT) available to affordable housing developments. Ann Arbor currently charges $1 per unit in taxes on properties that meet MSHDA standards.

Recently both the Ann Arbor Housing Commission and Avalon Housing noted that there have been changes in federal affordable housing funding that allow for "income averaging." The idea is that residents' income at lease-up can vary from 0-80% of the Area Median Income as long as the average for the entire development is 60% of the Area Median Income.

The City of Ann Arbor's ordinance currently indicates that a unit is eligible if the family occupies has an income up to 60% of the Area Median Income. Jennifer Hall of the Ann Arbor Housing Commission suggested that the City's ordinance be updated to allow for income averaging, in the case that this tool is helpful for development of affordable housing.

Staff also took the opportunity to review and update the ordinance, making minor edits. One concern was to ensure that Cooperatives who meet the state ownership standards are eligible. Staff will be sending the draft amendment to MSHDA for a review to ensure that is the case, prior to it going to City Council.

Attached is a slide deck from MSHDA explaining the requirements for the tax exemption, along with a the draft ordinance amendment.

Payments in Lieu of Taxes (PILOTs)

- Created under Section 15a of the MSHDA Act (MCL 125.1415a).
  - Provides for exemption from all *ad valorem* property taxes if the development qualifies.
  - Provides for a payment in lieu of taxes.

- Qualified developments.
  - Must be owned by an eligible entity.
    - Limited dividend Housing Association (MCL 125.1481, *et seq*.).
    - Non profit housing corporation (MCL 125.1461, *et seq*.).
    - Consumer housing cooperative (MCL 125.1471, *et seq*.)
    - Various mobile home parks.

- Must be subject to a federally-aided or Authority-aided mortgage.
  - Authority-aided mortgage is a mortgage made, held purchased or assisted by MSHDA.
  - Federally-aided mortgages:
    - A below market interest rate mortgage insured, purchased, or held by the secretary of the department of housing and urban development.

- A market interest rate mortgage insured by the secretary of the department of housing and urban development and augmented by a program of rent supplements.
- A mortgage receiving interest reduction payments provided by the secretary of housing and urban development.

- A mortgage on a housing project to which MSHDA allocates low income housing tax credits.
- A mortgage receiving special benefits under other federal law designated specifically to develop low and moderate income housing, consistent with the act.

- Amount of PILOT.
  - 10% of annual shelter rents, or the tax on the development in the year before construction or rehabilitation began.
  - For new construction, it is the greater of the above amounts.
  - For rehabilitation, it is the lesser of the above.

Annual shelter rents are the total collections during a year from all occupants of a housing project representing rent or occupancy charges, exclusive of charges for gas, electricity, heat, or other utilities furnished to the occupants.

- Duration: as long as the mortgage is outstanding, but no more than 50 years.
- Portions of the development not occupied by low income families is subject to ordinary property tax.
  - Applies to commercial space rather than residential tenants.
  - Pursuant to the Act, "low income persons and families" are defined as persons or families eligible to live in the development.

- Virtually all provisions may be changed by ordinance.
  - Can eliminate PILOTs entirely
  - Can extend or shorten the term.
  - Can raise or lower the annual payment.

- Can limit PILOTs to certain types of developments.
- Can limit PILOTs to certain types of financing
- **Cannot** make PILOT greater than the taxes that would otherwise be paid.

- Payments are divided among the various taxing authorities in the same proportions as the taxes were divided in the year before the PILOT.
- The state will not reimburse a local unit for any taxes lost.
- Owner must notify the local assessor of the PILOT.

- Notification must be filed by November 1 of the year before the PILOT is to take effect.
  - MSHDA views this as a ministerial act, not a requirement for obtaining a PILOT.
  - Assessor may accept notification and remove development from tax rolls as long as notification is filed by December 31.

- Owner sends notification to MSHDA for approval.
- MSHDA approves and sends to assessor.
- For authority-aided mortgage, owner only files once.

- For federally-aided mortgage:
  - Owner must send organizational documents and copy of the mortgage to MSHDA with the notification.
  - After the first year, the owner must send a verification to MSHDA each year (not sent on to assessor).
- We are working on what to do when the mortgage is discharged.

Non Profit Housing Corporations

("NPHCs")

- Formed under Chapter 4 of the MSHDA act (MCL 125.1461, *et seq*.)
  - Must be formed as a non profit corporation.
  - Must have “non profit housing corporation” as part of its name

- Must have certain statutory provisions in its articles of incorporation (See act for exact wording).
  - Purpose must be exclusively to serve low income persons and families
  - Income shall be for corporate purposes, and not for the benefit of anyone else.
  - Cannot be controlled by a for-profit entity seeking to increase income or decrease losses.
  - Operations may be supervised by MSHDA or by a governmental agency designated by MSHDA.

- Articles of incorporation must state that MSHDA can appoint a majority of the corporation’s board of directors under certain circumstances.
  - The NPHC has received a loan, and it may not be repaid according to its terms.
  - The NPHC has received a loan for the construction of a development, and the development is in danger of not being constructed.
  - Income may be going to a private individual or firm.

- The NPHC is controlled by a for-profit entity seeking to increase income or decrease losses.
- The NPHC is in violation of MSHDA's rules.
- The NPHC is in violation of any of its agreements with MSHDA.

- NPHC must send its articles to MSHDA to be approved. MSHDA then files them with the corporations bureau.