Legislation Details (With Text)

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Title: An Ordinance to Amend Chapter 19 (Tax Exemptions for Housing Projects) of Title I of the Code of the City of Ann Arbor (ORD-23-06)

Sponsors: Christopher Taylor, Jen Eyer, Erica Briggs

Indexes:

Code sections:

Attachments: 1. ORD-23-06 Briefed and Approved.pdf, 2. ORD-23-06 Briefed.pdf, 3. Ordinance to Repeal and Replace Chapter 19.pdf, 4. Current Chapter 19-Ann Arbor, MI Code of Ordinances.pdf, 5. 2022 Ann Arbor AMI and Affordable Monthly Housing Costs.pdf, 6. ORD-23-06 Approval Notice.pdf, 7. WLN clipping ORD-23-06 Tax Exempt Housing Projects - Public Hearing Notice.pdf

Date	Ver.	Action By	Action	Result
2/21/2023	1	City Council	Held and Closed	
2/21/2023	1	City Council	Adopted on Second Reading	Pass
2/6/2023	1	City Council	Approved on First Reading	Pass

An Ordinance to Amend Chapter 19 (Tax Exemptions for Housing Projects) of Title I of the Code of the City of Ann Arbor (ORD-23-06)

Attached for your review and approval is an amendment to Chapter 19, which is the City's ordinance that allows property tax exemption for certain low-income housing projects, also known as a PILOT (Payment in Lieu of Taxes), as permitted by State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401, et seq. The current Chapter 19 may be found in the attached pdf or online at:
<https://library.municode.com/mi/ann_arbor/codes/code_of_ordinances?nodeId=TITIAD_CH19TAEXHOPR>

The primary purpose of this amendment is to increase the minimum income for eligible housing projects from 60% of Area Median Income to 80%; and to allow tax exemption for projects where the average income does not exceed 60%. As discussed below, this reflects current practices related to grants for affordable housing from the federal Department of Housing and Urban Development.

This chapter was originally enacted in 1968, and has been amended several times. The ordinance as written is inconsistent with current best practices for tax exemption ordinances in Michigan. Therefore, the amendment repeals and replaces the existing chapter in its entirety. This amendment was reviewed by the Michigan State Housing Development Authority (MSHDA) for consistency with State law and is based on their model PILOT ordinance.

Detail

At its meeting on November 10, 2022, the Housing and Human Services Advisory Board passed a resolution recommending that the PILOT ordinance be amended to make it consistent with the Low-Income Housing Tax Credit (LIHTC) and other state and federal affordable housing programs.

MCL 125.1415a. (1) defines an eligible housing project:

> “If a housing project owned by a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association is financed with a federally-aided or authority-aided mortgage or advance or grant from the authority, then, except as provided in this section, the housing project is exempt from all ad valorem property taxes imposed by this state or by any political subdivision, public body, or taxing district in which the project is located…”

The City’s current PILOT ordinance is consistent with this language by referencing the authorizing Act and the State of Michigan and the City Assessor’s office must determine if a project is eligible under the State statute. An “authority-aided mortgage” refers to the Michigan State Housing Development Authority (MSHDA). The current City ordinance further defines eligible projects as projects exclusively for elderly persons and low-income persons up to 60% of the Area Median Income.

After discussion with MSHDA staff and the City Assessor, City and Housing Commission staff determined that there were no housing projects in the City that qualified as projects for the elderly that did not also qualify as low-income projects for purposes of tax exemption. Furthermore, under the Michigan General Property Tax Act, MCL 211.7d, housing projects for the elderly can apply for tax exemption without regard to income status of residents. Therefore, this section of the current ordinance is redundant and the revised ordinance does not include a reference to housing projects for the elderly, which is consistent with the MSHDA model ordinance and State law. This change will not result in any housing project losing eligibility for tax exemption in the City.

The City’s current PILOT ordinance provides that housing projects for persons or families with incomes at or below 60% of Area Median Income are eligible for tax exemption. Housing Commission staff recommends that the City ordinance be amended to include eligible households up to 80% of AMI, to be consistent with the Consolidated Appropriations Act of 2018. Prior to 2018, the Low-Income Housing Tax Credit (LIHTC) applied to projects with a minimum set-aside of either 20% of households at 50% AMI OR 40% of households at 60% AMI. In 2018, the IRS added a 3rd option called income averaging as an additional set-aside option. To qualify for LIHTC through income-averaging, a minimum of 40% of the residential units must be rent-restricted and occupied by tenants whose income does not exceed 20, 30, 40, 50, 60, 70 or 80% of AMI, and the average income must not exceed 60% of AMI. The purpose is to encourage some units to be set-aside for lower incomes by allowing some units to be set-aside at higher incomes, without negatively impacting the gross rent.

MCL 125.1415a. (3) establishes the length the PILOT is in effect:

> “The exemption from taxation granted by this section shall remain in effect for as long as the federally-aided or authority-aided mortgage or advance or grant from the authority is outstanding, but not more than 50 years. The municipality may establish by ordinance a different period of time for the exemption to remain in effect.”

The City’s PILOT ordinance currently limits the exemption to 50 years. Housing Commission staff and

MSHDA recommend that the exemption from taxation remain in effect for as long as the project is eligible, which may be less than or exceed 50 years. Staff recommend that City Council adopt the length of the tax exemption by resolution specific to the individual project. Even though the City has a PILOT ordinance in place, the State of Michigan requires a project-specific PILOT resolution from a municipality to receive points under competitive applications for LIHTC and other programs.

MCL 125.1415a.(6) Establishes that units occupied by households that are not low-income, will pay full taxes for that portion of the project.

> "Notwithstanding subsection (2), the service charge to be paid each year in lieu of taxes for that part of a housing project that is tax exempt under subsection (1) and that is occupied by other than low income persons or families shall be equal to the full amount of the taxes that would be paid on that portion of the project if the project were not tax exempt. The benefits of any tax exemption granted under this section shall be allocated by the owner of the housing project exclusively to low income persons or families in the form of reduced housing charges."

Housing Commission staff recommends a change to the City ordinance to clarify that a PILOT-eligible unit continues to be PILOT-eligible if the household was income-eligible when they initially moved into the unit and the household's income changes. If the household's income increases the unit should still be PILOT-eligible as long as the household is still eligible to live in the unit under the housing program that made the unit PILOT-eligible. For example, if a family moves into a PILOT-eligible unit through the LIHTC program and moves into a unit that is set-aside for a 50% AMI household, if the family's income increases to 65% AMI while living in the unit, the household is not required to move out of the unit and the unit is still eligible for a PILOT.

Housing Commission staff recommends that the definition of low-income persons or families be defined as 80% AMI to remain consistent with the income averaging definition recommendation above as well as the income limit for HUD programs such as HOME and CDBG. Staff acknowledges that the Michigan House and Senate have passed legislation, that may be signed by the Governor, amending Michigan PA 346 of 1966, MCL 125.1415a, to broaden the definition of low-income to 120% AMI.

Housing Commission staff recommends against defining low-income as households up to 120% AMI, as some other communities may choose to do, due to the very high incomes in the Ann Arbor Metropolitan Statistical Area, which includes all of Washtenaw County, and because developers are currently building rental housing that is affordable to households between 80% AMI and 120% AMI without tax incentives. The Ann Arbor/Washtenaw County 2022 Median Income is $117,800. The 2022 Area Median Income in the state of Michigan ranges from $64,100 to $123,620. Consequently, it might make sense to increase the definition of low-income in other communities in Michigan based on their local market conditions.

Prepared by: Jennifer Hall, Executive Director, Ann Arbor Housing Commission
Reviewed by: Derek Delacourt, Community Services Administrator
Christopher Frost, Senior Assistant City Attorney
Approved by: Milton Dohoney Jr, City Administrator
(See Attached Ordinance)

Sponsored by: Mayor Taylor and Councilmembers Eyer and Briggs