

Affordable Housing PILOTs

Summary of Qualifications and Process

March 29, 2023

BACKGROUND

What is an Affordable Housing PILOT?

A Payments in Lieu of Taxes (“PILOT”) Agreement is a legal agreement between a property taxpayer and the taxing authority which allows a company to make property tax payments on an agreed schedule instead of paying the standard tax amount. The Department of Housing and Community Development (“DHCD”) coordinates the Affordable Housing PILOTs for non-profit-owned and Housing Authority-sponsored projects as further described below. The process for Affordable Housing PILOTs is separate and distinct from commercial PILOTs originated by the Baltimore Development Corporation for economic development purposes.

Types of Affordable Housing PILOTs

There are two different types of Affordable Housing PILOTs commonly pursued in Baltimore City enabled under the State statutes: those for non-profit owned projects (Section 7-503 of the Tax - Property Article of the Annotated Code of Maryland) and those for Housing Authority-sponsored projects (Section 12-104 of the Housing and Community Development Article of the Annotated Code of Maryland)

Non-profit Owned PILOTs

Section 7-503 of the Tax - Property Article of the Annotated Code of Maryland allows for PILOT Agreements for “qualified low income housing projects” as defined under Section 42 of the Internal Revenue Tax Code (which provides for the Low-Income Housing Tax Credit program) that meet certain ownership requirements.

Section 7-503 offers several routes to qualify for a PILOT Agreement, based either (1) the owner of the property being tax-exempt, (2) the property being subject to a government program that does not allow it to produce net income, or (3) the owner being a limited partnership whose managing general partner meets certain requirements. Most frequently, Affordable Housing PILOTs are pursued under this third alternative, which is subject to the following additional requirements:

1. The owner is a limited partnership, and
2. Its managing general partner fits one of 4 categories:
 - a. A housing authority,
 - b. A tax-exempt corporation,
 - c. A limited liability company owned wholly by a non-profit corporation, or
 - d. A for-profit corporation that is 100% owned by a non-profit corporation.

The common theme in all of these is that the limited partners of the limited partnership owner can be for-profit, but the managing general partner must be either a non-profit itself or owned entirely by a non-profit. Most commonly, non-profit-involved PILOTs are pursued under an ownership structure where the managing general partnership is a limited liability company owned wholly by a non-profit corporation (2.c. above).

Housing Authority-sponsored PILOTs

Section 12-104 of the Housing and Community Development Article of the Annotated Code of Maryland allows for PILOT Agreements for property that is used for housing for “persons of eligible income” and which is wholly or partially owned by a subsidiary of the Baltimore Housing Authority entity. A “person of eligible income” is an individual or family that meets the income requirements of a State or federal program that funds the project, typically Low-Income Housing Tax Credits and other associated financing programs. These PILOTs may only benefit the affordable units restricted to residents at or below 80% of area median income and exclude any unrestricted market rate units within a larger affordable housing project. These projects typically include those financed under the Rental Assistance Demonstration (“RAD”) program, developed as part of a Choice Neighborhoods grant, or other projects with substantial involvement through the inclusion of Project-Based Vouchers resulting in an ownership stake by the Housing Authority of Baltimore City.

PROCESS

Request

The request for an affordable housing PILOT is initiated by emailing Alexandra Hoffman, DHCD Director of Project Finance, at alexandra.hoffman@baltimorecity.gov an initial submission including the following:

1. Existing and Proposed Organizational Chart, indicating entity types, percentage ownership, and current non-profit status if applicable;
2. A project narrative describing the proposed development, capital stack, and the terms of any income or use restrictions that impact the property; and
3. A draft opinion from the developer’s attorney opining, subject to appropriate qualifications, that the proposed organizational structure satisfies the legal requirements of the applicable State statute, indicating the relevant section.

Threshold Determination

The request is forwarded to the Law Department to determine if the project satisfies the statutory requirements, with additional information and/or changes to the organizational chart or draft opinion required as needed. Once complete, the Law Department will notify the Affordable Housing PILOT Coordinator or their findings and if a positive determination is made the PILOT will proceed to underwriting.

Underwriting

Once the Law Department determines that the project meets the statutory requirements for an Affordable Housing PILOT, DHCD will request additional due diligence, including:

1. CDA form 202 with the sources and uses, detailed development budget, and proforma;
2. Letters of commitment for other financing sources, including debt, equity, project-based rental assistance, etc.;
3. An appraisal which includes an estimate of the property taxes absent a PILOT;
4. A sponsor profile;
5. A list of other property's owned;
6. Two years of property audited financial statements if applicable (or two years of tax returns if financial statements are unaudited); and
7. Any other documentation deemed necessary by the Department of Housing and Community Development.

Affordable housing PILOTs are typically calculated as a percentage of the “shelter rent”, or the gross residential rental income net any project-based governmental subsidy and owner-paid utility expenses. A PILOT payment is always sized to the needs of the project after other sources have been sought and secured and developer fee has been deferred until year 15, but is most commonly calculated at ten percent (10%) of shelter rent per year. The term of a PILOT may be as long as the property remains income restricted.

Based on the due diligence reviewed, the Department of Housing and Community Development prepares an Underwriting Report with their analysis and recommendation to the Affordable Housing PILOT Committee. The Department of Housing and Community Development’s recommendation is based on the following criteria:

1. Is the project necessary to preserve or create affordable housing?
2. Does the project need the subsidy to proceed?
3. Has the developer actively sought out other sources of funding and subsidy before requesting the City PILOT?

Affordable Housing PILOT Committee

The Department of Housing and Community Development coordinates the Affordable Housing PILOT Committee tasked with vetting requests for Payments in Lieu of Taxes (“PILOTs”) for affordable housing prior to the presentation of these requests to the Board of Estimates. The Affordable Housing PILOT Committee includes representatives from the following offices and departments within Baltimore City government:

1. Department of Housing and Community Development (Coordinator)
2. Department of Finance
3. Office of the Council President
4. Comptroller’s Office/Department of Real Estate
5. Law Department (Nonvoting)

The Affordable Housing PILOT Committee is convened on an *ad hoc* basis to review PILOT requests as they are received. If the Committee is in favor, the request is forwarded to the Department of Finance to introduce to the Board of Estimates at the discretion of the Director of Finance.

Board of Estimates

Once the Director of Finance has determined that the Affordable Housing PILOT will be submitted to the Board of Estimates for their consideration, the PILOT Agreement and legal opinion will be finalized and executed, and the necessary Board of Estimates materials will be submitted submits the Affordable Housing PILOT to the Board of Estimates at their discretion, informed by the recommendation of the Affordable Housing PILOT Committee.

The PILOT Agreement goes into effect at the time of the Board of Estimates approval, or if being approved in anticipation of a transfer into the eligible ownership structure, goes into effect at the time of the transfer. The approved PILOT Agreement must be provided by the Department of Finance to the Maryland Department of Assessment and Taxation for their acceptance.

QUESTIONS?

Please reach out to Alexandra Hoffman, DHCD Director of Project Finance, at alexandra.hoffman@baltimorecity.gov or (443)202-6385 with any questions.