Metropolitan Nashville and Davidson County, TN

Legislation Text

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An ordinance authorizing the Health and Educational Facilities Board of The Metropolitan Government of Nashville and Davidson County to negotiate and accept payments in lieu of ad valorem taxes from its lessees operating mixed-income multifamily housing facilities including housing for low and moderate-income persons and approving the program for determining qualifications and eligibility for such payments.

WHEREAS, increasing demand for affordable rental housing and tight rental market conditions continues to exist in the Metropolitan Government of Nashville and Davidson County ("Metropolitan Government" or "Nashville") area; and

WHEREAS, housing affordability is a primary concern of the citizens of Nashville, as it continues to be a major barrier to economic progress for many individuals in Nashville; and

WHEREAS, increasing the supply of housing for low and moderate-income persons supports economic growth and is an important tool in reducing poverty in Nashville; and

WHEREAS, the Affordable Housing Task Force ("AHTF") Report (June 8, 2021) projected that 44,772 rental units for households with incomes at or below 80% of the area median income ("AMI") are needed to meet the current demand and future growth over the next ten years; and

WHEREAS, the current production level utilizing existing resources and tools would yield approximately 13,000 units over the next years; and

WHEREAS, the Metropolitan Government currently has a successful payment in lieu of ad valorem tax program ("MDHA PILOT Program") operated by the Metropolitan Development and Housing Agency ("MDHA") for MDHA lessees operating Low Income Housing Tax Credit ("LIHTC") properties resulting in a positive impact on the supply of affordable housing in Nashville; and

WHEREAS, MDHA's PILOT Program is limited by state law to properties that have received LIHTC, and the need for affordable housing is much greater than what can be provided by this program alone; and

WHEREAS, the AHTF Report recommended the creation and expansion of tools and resources to address the City's housing affordability challenges, including the creation of a payment-in-lieu of taxes ("PILOT") to support non-LIHTC developments to fund long-term housing options in partnership with nonprofit and private developers; and

WHEREAS, mixed-income housing in market rate developments creates affordability options that may not otherwise exist and, therefore, increases the supply of housing for low and moderate-income persons; and

WHEREAS, The Health and Educational Facilities Board of the Metropolitan Government of Nashville and Davidson County ("HEFB") was created pursuant to Chapter 101 of Title 48 of the Tennessee Code Annotated (the "Act") with a public purpose, among other things, to provide for safe and sanitary low and moderate income multi-family housing facilities; and

WHEREAS, Tennessee Code Annotated § 48-101-312 provides that the HEFB performs a public function on behalf of the Metropolitan Government and is a public instrumentality of the Metropolitan Government and, therefore, exempt from taxation in the state of Tennessee; and

WHEREAS, the Act allows the Metropolitan Government to delegate to the HEFB the authority to negotiate and accept payments-in-lieu of ad valorem taxes from the HEFB's lessees operating multifamily housing facilities upon finding that the payments are in furtherance of the public purpose of the HEFB; and

WHEREAS, the Metropolitan Government determines that it is in the best interest of the citizens of the Metropolitan Government to expand upon the affordable housing efforts by creating a new program administered through HEFB to negotiate and accept payments in lieu of taxes for multifamily housing projects operating without LIHTC that meet certain affordability thresholds.

NOW, THEREFORE BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

SECTION 1. That the Metropolitan Council hereby finds that the Mixed-Income PILOT Program, attached hereto as Exhibit A and incorporated herein, furthers the HEFB's public purpose and hereby approves the Mixed-Income PILOT Program.

SECTION 2. That the Metropolitan Council hereby delegates to the HEFB the authority to negotiate and accept PILOTs from its lessees operating mixed-income multifamily housing properties pursuant to the Act and in accordance with the Mixed-Income PILOT Program.

SECTION 3. At no time shall any PILOT be less than the taxes that would have been paid to the Metropolitan Government for the tax year prior to the year in which the PILOT was approved for the Project.

SECTION 4. PILOT payments shall be remitted to the Metropolitan Trustee and retained by The Metropolitan Government and associated fees shall be remitted to and retained by the HEFB to support costs for administering and operating the Mixed-Income PILOT Program.

SECTION 5. The Metropolitan Housing Division shall assist the HEFB with the implementation and oversight of the Mixed-Income PILOT Program and may contract with a third party for administration, compliance, reporting, legal services, and market analysis to determine future taxes.

SECTION 6. No later than March 15 of each year, the Metropolitan Housing Division, on behalf of the HEFB, shall submit a report on the Mixed-Income PILOT Program to the Metropolitan Council containing the following information:

a) a list of all the real and personal property owned by the HEFB and its associated entities and subsidiaries with respect to which payments in lieu of taxes have been negotiated;
b) the value of each listed property, as estimated by the lessee of the property;
c) the date and term of the lease for each listed property;
d) the amount of payments made in lieu of property taxes for each listed property;
e) the date each listed property is scheduled to return to the regular tax rolls; and
f) a calculation of the taxes which would have been due for each listed property if the properties were privately owned or otherwise subject to taxation.

SECTION 7. Annually, the Metropolitan Housing Division will review the performance of the Mixed-Income PILOT Program with the HEFB and the Metropolitan Council to assess the need for adjustments to the Mixed-Income PILOT Program. Any such adjustments may be made by Resolution.

SECTION 8. That this Ordinance shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This ordinance authorizes the Health and Education Facilities Board ("HEFB") of the Metropolitan Government to negotiate and accept payments in lieu of ad valorem taxes ("PILOT") from its lessees operating mixed-income multifamily housing facilities, including housing for low and moderate-income persons. This ordinance also approves the program for determining qualifications and eligibility for these PILOT payments.

Currently, the Metropolitan Development and Housing Agency ("MDHA") operates a PILOT program for MDHA lessees operating Low Income housing Tax Credit ("LIHTC") properties. MDHA's PILOT program is limited to properties receiving LIHTC.

This ordinance would allow for a PILOT program for non-LIHTC developments. Tenn. Code Ann. § 48-101-312 provides that the HEFB performs a governmental function on behalf of the Metropolitan Government and is a public instrumentality of the Metropolitan Government and, therefore, is not subject to taxation. State law further allows the Metropolitan Government to delegate to the HEFB the authority to negotiate and accept PILOTs from the HEFB's lessees operating multifamily housing facilities upon finding that the payments are in furtherance of the public purpose of the HEFB. This ordinance provides that the Metropolitan Government has determined that it is in the best interests of the citizens of the Metropolitan Government to authorize the HEFB to operate this new PILOT program for multifamily housing projects operating without LIHTC that meet certain affordability thresholds.

This ordinance approves the Mixed-Income PILOT Program, which is attached to the ordinance as Exhibit A. The Mixed-Income PILOT Program ("Program") would aim to incentivize mixed-income housing that is affordable to households with incomes at 50% or 75% or less of the area median income ("AMI") for the Nashville-Davidson Metropolitan Statistical Area in multifamily properties that otherwise would not have any income-restricted units. Program applicants would apply to receive a property tax abatement for a specified number of years where the abatement value is determined by a tiered programmatic structure based on specific AMI levels and percentage of reduced rent units proposed in the development, as detailed in Exhibit A. For example, in order to incentivize greater affordability, if the percentage of AMI is higher, the available abatement will be lower.

The total annual abatement amount for new projects is limited to $3,000,000 annually. This annual limitation is modeled after the $2,500,000 annual cap on MDHA PILOTS for LIHTC properties.

Other program parameters include:

- Property must be in Nashville-Davidson County.
- At least 60% of the units must not be income restricted and the project must demonstrate a range of rents.
- Cannot be combined with other PILOT programs, LIHTC, or any other local subsidy.
- Term for income-restricted units is 15 years. Can apply for renewal for a second 15-year term.
- Tax abatement steps down 20% in years 11-15.
- Requires new construction or significant capital improvement resulting in increased property assessment value (tax abatement must never be greater than the tax liability at time of application).
- Abatement applies only to residential portion of the development.

- All units must be built and maintained to uniform standards in both construction and operations. Income-restricted units must be comparable to unrestricted units.
- Must comply with fair housing laws and must develop an affirmative marketing plan.
- Must list units on the Metropolitan Housing Division's resident portal.
- Abatement percentage based on post-construction/improvement tax liability.

The ordinance further provides that at no time shall the PILOT be less than the taxes that would have been paid to the Metropolitan Government for the tax year prior to the year in which the PILOT was approved for the project. PILOT payments would be remitted to the Metropolitan Trustee and retained by the Metropolitan Government. Associated administrative fees would be remitted to the HEFB and retained to support costs of administering the Program. The Metropolitan Housing Division would assist the HEFB with the implementation and oversight of the Program and may contract with third-parties to assist in this role.

No later than March 15 of each year, the Metropolitan Housing Division would submit an annual Program report to the Council containing the following information:

- a list of all the real and personal property owned by the HEFB and its associated entities and subsidiaries with respect to which payments in lieu of taxes have been negotiated;
- the value of each listed property, as estimated by the lessee of the property;
- the date and term of the lease for each listed property;
- the amount of payments made in lieu of property taxes for each listed property;
- the date each listed property is scheduled to return to the regular tax rolls; and
- a calculation of the taxes which would have been due for each listed property if the properties were privately owned or otherwise subject to taxation.

Adjustments to this program made be made by resolution.

While this Program is similar to MDHA PILOTs for LIHTC properties, the individual projects receiving abatements through the Mixed-Income PILOT Program will not be separately approved by the Council. The Council approves the individual projects receiving abatements though the MDHA PILOT program by resolution.

Fiscal Note: The annual abatement for the Mixed-Income PILOT Program is capped at $3 million. The tax abatement steps down 20% in years 11 to 15. The tax abatement resulting from the increased property assessment value will not be greater than the tax liability at the time of application for the proposed development. The fees collected through the program will provide for the administrative and operational costs to support the program.