
LEGAL MEMORANDUM

TO: CORPUS CHRISTI TYPE A BOARD

FROM: JULIAN GRANT, SENIOR ASSISTANT CITY ATTORNEY

SUBJECT: FUNDING AFFORDABLE HOUSING WITH SALES TAX MONEY

DATE: APRIL 21, 2014

ISSUE

What are the standards for funding projects with the \$500,000 annual contribution of the local Type A sales tax for economic development? Must the Type A Board follow HUD (Housing and Urban Development) guidelines?

ANSWER

The Type A Corporation is allowed to fund affordable housing after voter approval due to this state law provision in the Texas Local Government Code:

Sec. 505.153. PROJECTS RELATED TO AFFORDABLE HOUSING. For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for the promotion of development and expansion of affordable housing, as described by 42 U.S.C. Section 12745.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

I have referenced below the relevant federal provision that this state law mandates be used for local ED sales tax funded projects.

I would add that any HUD recommendation or requirement not found in this statute or administrative rule interpreting the statute would not be binding upon the Board's program.

42 U.S.C.A. § 12745

§ 12745. Qualification as affordable housing
Effective: December 27, 2000

(a) Rental housing

(1) Qualification

Housing that is for rental shall qualify as affordable housing under this subchapter only if the housing--

(A) bears rents not greater than the lesser of (i) the existing fair market rent for comparable units in the area as established by the Secretary under [section 1437f](#) of this title, or (ii) a rent that does not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for number of bedrooms in the unit, except that the Secretary may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes;

(B) has not less than 20 percent of the units (i) occupied by very low-income families who pay as a contribution toward rent (excluding any Federal or State rental subsidy provided on behalf of the family) not more than 30 percent of the family's monthly adjusted income as determined by the Secretary, or (ii) occupied by very low-income families and bearing rents not greater than the gross rent for rent-restricted residential units as determined under [section 42\(g\)\(2\) of Title 26](#);

(C) is occupied only by households that qualify as low-income families;

(D) is not refused for leasing to a holder of a voucher or certificate of eligibility under [section 1437f](#) of this title because of the status of the prospective tenant as a holder of such voucher or certificate of eligibility;

(E) will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property, as determined by the Secretary, without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this Act, except

upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action (i) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure, and (ii) is not for the purpose of avoiding low income affordability restrictions, as determined by the Secretary; and

(F) if newly constructed, meets the energy efficiency standards promulgated by the Secretary in accordance with [section 12709](#) of this title.

(2) Adjustment of qualifying rent

The Secretary may adjust the qualifying rent established for a project under subparagraph (A) of paragraph (1), only if the Secretary finds that such adjustment is necessary to support the continued financial viability of the project and only by such amount as the Secretary determines is necessary to maintain continued financial viability of the project.

(3) Increases in tenant income

Housing shall qualify as affordable housing despite a temporary noncompliance with subparagraph (B) or (C) of paragraph (1) if such noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to the Secretary are being taken to ensure that all vacancies are filled in accordance with paragraph (1) until such noncompliance is corrected. Tenants who no longer qualify as low-income families shall pay as rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this Act for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to [section 42 of Title 26](#).

(4) Mixed-income project

Housing that accounts for less than 100 percent of the dwelling units in a project shall qualify as affordable housing if such housing meets the criteria of this section.

(5) Mixed-use project

Housing in a project that is designed in part for uses other than residential use shall qualify as affordable housing if such housing meets the criteria of this section.

(6) Waiver of qualifying rent

(A) In general

For the purpose of providing affordable housing appropriate for families described in subparagraph (B), the Secretary may, upon the application of the project owner, waive the applicability of subparagraph (A) of paragraph (1) with respect to a dwelling unit if--

(i) the unit is occupied by such a family, on whose behalf tenant-based assistance is provided under [section 1437f](#) of this title;

(ii) the rent for the unit is not greater than the existing fair market rent for comparable units in the area, as established by the Secretary under [section 1437f](#) of this title; and

(iii) the Secretary determines that the waiver, together with waivers under this paragraph for other dwelling units in the project, will result in the use of amounts described in clause (iii)¹ in an effective manner that will improve the provision of affordable housing for such families.

(B) Eligible families

A family described in this subparagraph is a family that consists of at least one elderly person (who is the head of household) and one or more of such person's grand² children, great grandchildren, great nieces, great nephews, or great great grandchildren (as defined by the Secretary), but does not include any parent of such grandchildren, great grandchildren, great nieces, great nephews, or great great grandchildren. Such term includes any such grandchildren, great grandchildren, great nieces, great nephews, or great great grandchildren who have been legally adopted by such elderly person.

(b) Homeownership

Housing that is for homeownership shall qualify as affordable housing under this subchapter only if the housing--

(1) has an initial purchase price that does not exceed 95 percent of the median purchase price for the area, as determined by the Secretary with such adjustments for differences in structure, including whether the housing is single-family or multifamily, and for new and old housing as the Secretary determines to be appropriate;

(2) is the principal residence of an owner whose family qualifies as a low-income family--

(A) in the case of a contract to purchase existing housing, at the time of purchase;

(B) in the case of a lease-purchase agreement for existing housing or for housing to be constructed, at the time the agreement is signed; or

(C) in the case of a contract to purchase housing to be constructed, at the time the contract is signed;

(3) is subject to resale restrictions that are established by the participating jurisdiction and determined by the Secretary to be appropriate to--

(A) allow for subsequent purchase of the property only by persons who meet the qualifications specified under paragraph (2), at a price which will--

(i) provide the owner with a fair return on investment, including any improvements, and

(ii) ensure that the housing will remain affordable to a reasonable range of low-income homebuyers;
or

(B) recapture the investment provided under this subchapter in order to assist other persons in accordance with the requirements of this subchapter, except where there are no net proceeds or where the net proceeds are insufficient to repay the full amount of the assistance; and

(4) if newly constructed, meets the energy efficiency standards promulgated by the Secretary in accordance with [section 12709](#) of this title.

CREDIT(S)

([Pub.L. 101-625, Title II, § 215](#), Nov. 28, 1990, 104 Stat. 4101; [Pub.L. 102-550, Title II, §§ 208](#), 209, Oct. 28, 1992, 106 Stat. 3754; [Pub.L. 103-233, Title II, § 203](#), Apr. 11, 1994, 108 Stat. 364; [Pub.L. 105-276, Title V, § 599B\(b\)](#), Oct. 21, 1998, 112 Stat. 2660; [Pub.L. 106-569, Title IX, § 904](#), Dec. 27, 2000, 114 Stat. 3027.)

CONCLUSION

The Type A Corporation can only fund affordable housing projects that are defined as “affordable” under federal law because of the state law requirement that they do so. The Corporation is otherwise free to define its programs as a local project not receiving federal money and therefore not bound by any other federal restrictions.