

## City of Chattanooga

### Health and Education Board

#### Payment in Lieu of Tax (PILOT) Program for Affordable Housing

##### GENERAL PROGRAM DESCRIPTION

**Purpose:** To incentivize construction or renovation of multi-unit housing providing below market rate rents.

**Program Overview:** The City of Chattanooga and HEB offer a program whereby a percentage of property taxes are abated for a specified number of years in exchange for the provision of housing affordable to low and moderate income households. The amount of abatement is contingent upon the quantity of affordable units provided and level of affordability.

##### Minimum Requirements

- **Project Location:** The proposed project shall be in the City of Chattanooga.
- **Project Scale:** The proposed project shall provide a minimum of 10 units in total.
- **Eligible Projects:** PILOTs may be issued for new construction or renovation of existing structures with substantial capital improvement.

##### PILOT Abatement and Affordability Terms

- **Calculation of PILOT Abatement:** Abatement amounts are calculated based on the difference in monthly rents at market value according to HUD Published Annual Small Area Fair Market Rent and affordable rents according to HUD published Area Median Incomes. The City will publish all relevant information on its website on an annual basis.
  - **Eligible Abatement:** Abatement applies to up to one-hundred percent of the assessed value of the proposed improvements on the property.
- **Calculation of PILOT:** The payment in lieu of taxes shall be calculated according to the abated improvement value, the predevelopment value of the property at a fixed amount, and other taxes, including County school taxes for the duration of the PILOT term.
  - **Abated Improvement Value** shall be equal to the assessed value of the improvements, less the PILOT abatement. As the assessed value of the PILOT project changes, the percentage of City and County taxes abated shall remain fixed for the duration of the PILOT term.
  - **Predevelopment Value** shall be equal to the assessed value of the property according to the Hamilton County Tax Assessor at the time of the PILOT award as documented in the PILOT agreement, prior to new improvements on the property. This amount shall be

“frozen” at a fixed amount for the duration of the PILOT term.

- **County School Taxes and other taxes and fees** are not subject to abatement under this program. County school taxes shall be calculated according to the full assessed value of the complete project.
- **PILOT term:** The PILOT will remain in effect for 15 years, starting from the first tax year the PILOT project is placed in service. The project shall comply with the affordability terms for the duration of this 15 year period.
- **Renewal:** Program participants may apply for renewal for a second 15-year PILOT term in exchange for continued affordability if the project has remained in compliance with the terms of these guidelines and the PILOT Agreement. The City and HEB may negotiate terms of affordability based on the PILOT program in effect at the time the renewal application is submitted.
- **Annual PILOT Abatement Cap:** No more than \$2 million in abatements to the value of improvements shall be awarded on PILOT projects in any given fiscal year.

#### **Other Program Requirements**

- Projects receiving LIHTC and/or HUD subsidies are eligible. Affordable housing developers may apply PILOT abatement to required affordable units funded through these programs.
  - Projects receiving Section 8 Project Based Vouchers or Housing Choice Vouchers shall calculate gross rental income, including voucher subsidy, and gross rent shall determine the level of affordability, except in the case of Permanent Supportive Housing Projects or projects in which 100% of units are affordable below 60% Area Median Income.
- PILOT recipients must provide tenants with a lease, which must include language that covers the following terms:
  - Notifies the tenant their monthly rent is set according according to the City of Chattanooga’s Affordable Housing PILOT program;
  - Notifies the tenant that their income at the time of signing the lease determines their eligibility for a certain level of rent restriction, and they will periodically be required to verify their gross household income to verify they are eligible for the program;
  - Notifies the tenant they may become ineligible to remain in the unit should their gross household income exceed the HUD AMI standard for the year they signed the lease by more than 160;.
  - Guarantees at least 60 days advance written notice of any increase in the Tenant's rent. The Notice will state the new amount the Tenant is required to pay, the date the new amount is effective, and the reasons for the change in rent. The Notice will also advise the Tenant that he/she may meet with the Landlord to discuss the rent change; and
  - Documents the month and year the PILOT lease and program requirements are expected to expire

- Tenant leases in for PILOT projects **shall not** include:
  - Agreement to be Sued. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
  - Treatment of Property. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a Court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the household unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with state law;
  - Excusing Owner From Responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent; Waiver of Notice: agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
  - Waiver of Legal Proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
  - Waiver of Right to Appeal Court Decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease;
  - Tenant Chargeable with Cost of Legal Actions Regardless of Outcome. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses; and
  - Termination of Tenancy. An owner may not terminate the tenancy or refuse to renew the lease of a tenant except for serious or repeated violation of the terms and conditions of the lease, violation of applicable federal, state, or local law, for completion of tenancy period for transitional housing, or other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.
  
- Property owners shall be required to give notice to income-restricted tenants 12 months prior to lapse of the PILOT Agreement.
- Income-restricted units shall be comparable to market rate units in quality, size, configuration, and location.
- Property owners shall comply with all applicable fair housing laws.
  - Prior to executing the PILOT agreement, applicants must provide documentation of having completed a Fair Housing Training with a nationally certified training organization.

## Application Requirements

The approval process for projects will consist of the filing of an application and approval by the Department of Economic Development's Office of Housing and Community Investments (HCI). Once evaluated and approved by the HCI staff, it may be approved by City Council and HEB if project is not participating in the LIHTC program.

- An applicant shall apply for a PILOT before commencement of construction or rehabilitation of a project;
- An applicant shall own the subject property or have an enforceable option to purchase the property before applying;
- HCI staff and Hamilton County Assessor's staff shall review the applications prior to submittal to the City Council or HEB;
  - Projects participating in the Low Income Housing Tax Credit (LIHTC) program shall not require approval of City Council.
- The predevelopment PILOT Freeze shall go into effect when the PILOT lease is executed. If the project subject to a PILOT Lease does not break ground within one (1) year, the PILOT Lease will be terminated and the property will be returned to private ownership and full property taxation;
- The period of affordability and PILOT term shall begin after the property obtains a Certificate of Occupancy;
- PILOTs may not be assigned without the prior written approval of the HEB and without a written commitment from the assignee that the new company acknowledges they are bound by the terms in the original agreement;
- Upon completion of any project qualifying for a PILOT the project shall be reviewed by HCI and the HEB, or its designee, for the duration of the PILOT term to determine if it was completed substantially in accordance with the representation set forth in the application. If appropriate, the term of the PILOT Lease will be revoked by action of the HEB;
- The PILOT lease shall remain in effect for the duration of the PILOT term regardless of change in ownership of the PILOT property;
- To voluntarily terminate the PILOT lease, the lessor must pay 150% of the present abatement value for each committed affordable unit.

## Compliance Requirements

- **Owner Contact Information - Developer / Owner Responsibilities.** If there is a change in ownership at any point during the PILOT lease, the owner shall submit updated contact information to the City for the principal owner and property manager.
- **After executing the PILOT agreement and prior to releasing the Certificate of Occupancy,** applicants must provide:
  - Documentation of having completed a Fair Housing Training with a nationally certified training organization

- A sample lease agreement and other documents provided to tenants benefitting from PILOT units
- **Annual Review - Developer Responsibilities.** No later than February 1 of each year, all active PILOT Program participants must submit a compliance report provided by a third-party, such as a project management company, affordable housing consultant, or HUD contractor, verifying the project complies with the committed rents and qualifying tenant incomes indicated in the PILOT contract.
- **Annual Review - City Responsibilities.** No later than March 15 of each year, HCI Staff shall provide a report to the HEB on the Affordable Housing PILOT Program:
  - a list of all the real and personal property owned by the HEB 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 Hamilton County Tax Assessor's Office;
  - 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

This report can be provided to the City Council by request.

- **Failure to Comply with Affordability Terms:** All PILOT Agreements shall contain mandatory language stating the PILOT Lease can be terminated and the property will be returned to private ownership and full property taxation should a project fall out of compliance. To voluntarily terminate the PILOT lease, the lessor must pay 150% of the present abatement value for each committed affordable unit.
- **Habitability Compliance:** The City may conduct code inspections pursuant to Chapter 21, Article V. of City Code - Interior Requirements in years 5, 10, 12, and 14 of the PILOT term. The City may conduct inspection of the interiors of units and public spaces in response to tenant complaints at any time. If code violations cited under Chapter 21, Article V. of City Code - Interior Requirements are not remedied within 6 months, the PILOT lease shall be terminated and the property will be returned to private ownership and full property taxation. A penalty fee of \$5,000 per non-compliant unit shall be collected and placed in the Affordable Housing Fund if found non-compliant.

**Definitions:**

“PILOT” means the payment in lieu of ad valorem taxes. PILOTs shall be equal to the Hamilton County School portion of the property taxes according to the assessment of the complete project in any given year, plus the pre-development value at the “PILOT freeze” amount, plus the City and County taxes remaining after deducting PILOT abatement from the improvement value of the property.

**“Predevelopment Value”** shall be equal to the assessed value of the property according to the Hamilton County Tax Assessor at the time of the PILOT award and approval of the PILOT lease with HEB, prior to new improvements on the property. This amount shall be “frozen” at a fixed amount for the duration of the PILOT term.

**“PILOT Abatement”** means the amount that is subtracted from the assessed value of the improvements according to the affordability terms committed for each project. Abatement applies to up to one-hundred percent of the assessed value of the proposed improvements on the property.

**“Affordability terms”** the number of affordable rental units committed at a certain level of affordability according to HUD Area Median income and size (according to bedrooms), which shall be documented in the PILOT agreement.

**“PILOT Term”** means the 15 year period of time during which annual PILOTs are due in exchange for provision of affordable rental units in accordance with the affordability terms of the PILOT.

**“PILOT Lease”** means the lease from the HEB to the developer of property subject to this Program.