

# Memorandum



CITY OF DALLAS

DATE May 22, 2020

TO The Honorable Members of the Housing and Homeless Solutions Committee:  
Chad West, Chair, Casey Thomas, Vice-Chair, Carolyn King Arnold,  
Lee M. Kleinman, Paula Blackmon, Cara Mendelsohn, Jaime Resendez

SUBJECT **Response to Questions Regarding Low Income Housing Tax Credit Developments and the Urban Design Peer Review Panel**

This memorandum is intended to summarize staff response to why Low-Income Housing Tax Credits (LIHTC) developments are not required to go through the Urban Design Peer Review Panel (UDPRP) and how to procedurally make this a requirement.

## **Summary**

After a request for information on requiring LIHTC developments to go through the UDPRP process was made, the City Manager's Office (CMO), Office of Economic Development (OED), Department of Planning & Urban Design (PUD), and the Department of Housing & Neighborhood Revitalization (HOU) all provided feedback to this question in relation to their specific service goals and developed the interdepartmental response below.

## **Background**

On May 4, 2020, the Economic Development Committee was briefed on four LIHTC applications requesting Resolutions of No Objection from the City for their application to the Texas Department of Housing and Community Affairs (TDHCA) for 4% non-competitive housing tax credits (HTC). Questions about why one of the applicants, Gateway Oak Cliff, is preparing to go through UDPRP review process, and another applicant, The Oaks, is not were raised. There were concerns with the design of The Oaks including the site layout, pedestrian access, lighting, and other design factors that could result in recommended changes by the UDPRP.

The Comprehensive Housing Policy (CHP) does not require Applicants to undergo UDPRP review or any other formal design review. Per the CHP, 4% non-competitive HTC applications are reviewed and recommended by staff based solely on completion, threshold requirements, and fair housing review. A 4% non-competitive HTC application meeting all requirements is then presented to Council for a Resolution of No Objection. LIHTC applications are required to provide maps and list the development's proximity to amenities such as high-frequency transit, public parks, full-service grocery stores, etc. If the applicant requires a zoning change, the applicant must apply for rezoning with the department of Sustainable Development and Construction. As a part of the development review process, multiple departments are routed applications to provide comments, including PUD. The departments work together to ensure appropriate design language is included in the rezoning, if applicable. This process can involve meeting with the applicant.

The UDPRP was initially set up to raise the bar on urban design expectations for private projects that receive City incentives and public projects in key areas where urban design guidelines have been established. This approach was taken with the knowledge that UDPRP review would result in design expectations that would go above and beyond existing zoning

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requirements and could entail increased project costs. The City's current written policy regarding projects that require design review by the UDPRP is as follows:

- Projects that are applying for TIF funds;
- Municipal Projects within existing or previous TIF Districts or designated area plans;
- Projects at the applicant's request; and
- Other projects as designated by the City Manager or by the Director of Sustainable Development, Director of Housing, or Director of Economic Development with the approval of the City Manager.

OED has required real estate development projects applying for TIF funds to undergo UDPRP review since UDPRP was initially established in 2013. For many other real estate development projects located outside of TIF districts and requesting non-TIF incentives (i.e. grants, loans, or abatements), the Director of the Office of Economic Development has required UDPRP review. The recommendations of the UDPRP are considered advisory (not regulatory) but are in the vast majority of cases successfully and amicably incorporated into development agreements through subsequent board and council action. The recommendations are ultimately enforced by OED through their contract management process. These design expectations are unrelated to zoning and are not enforced by Building Inspection.

The Gateway Oak Cliff applicants have discussed with OED staff a potential need for gap financing from TIF funding or non-TIF incentives and it was recommended the applicants start the UDPRP process. While The Oaks application included a line item in their proposed sources labeled "Gap Funding," The Oaks applicants have not discussed the incentive application requirements with OED staff and have not commenced the UDPRP process at this time.

### **Issue**

Why all LIHTC applications are not required to go through the UDPRP process has been questioned and staff has identified several issues with implementing such a requirement. LIHTC developments generally do not receive City funding and only seek Resolutions of No Objection from the City. In most instances there would not be a development agreement between the City and the developer in which to include specific design recommendations to enforce any design expectations.

It is also important that LIHTC developments are not arbitrarily subjected to special City requirements that would not apply to other non-LIHTC housing development in similar circumstances, thus appearing to discriminate against affordable housing development. Higher urban design standards may add project costs that could be seen to render the project unviable. However, some LIHTC applicants do seek and receive City funding. In these instances, depending on whether the funding request is handled through OED or HOU, the respective department Directors or the City Manager could certainly require that the UDPRP process takes place. In these instances, there would also be a development agreement that could serve as an effective mechanism to enforce compliance, and City funding would be seen to help offset any added project costs.

Due to the lengthy development schedule of the LIHTC application process, most applicants requesting Resolutions of No Objection have not completed the high level of design work needed to begin the UDPRP process. Applicants generally have a basic site plan and elevations to determine the project's estimated construction costs and tax credit requirements but are

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reluctant to commit resources to significant design work without receiving a Resolution of No Objection. Once an applicant receives a Resolution of No Objection from the City, they must then apply for and obtain a Certificate of Reservation (CAR) from the Texas Bond Review Board (TBRB) before applying for an award of HTC. Applications for a CAR must be submitted at least two weeks before a TBRB meeting. Once a project receives a CAR, it must submit its application for HTC at least 75 days prior to one of the monthly meetings of the TDHCA board. For the past two years, the State of Texas private activity bond allocation has been oversubscribed so it is crucial that applicants are able to apply for a CAR as soon as possible. Significant design work is typically completed after a CAR is submitted to the TBRB. A design review could potentially take place during this time period, but as stated above, non-LIHTC developments would not be subject to such requirements.

It should be noted that LIHTC developments must go through the City's development process where standard zoning requirements will be enforced. Applicants are also required to receive building permits from the City in order to close on the bond financing so standard building codes will also be enforced.

### **Recommendation**

Staff does not recommend a requirement that LIHTC developments go through the UDPRP process as the potential design changes cannot be properly enforced, non- LIHTC development is not subjected to the same requirements, and most applicants have not completed the level of design work necessary to participate in a UDPRP review and requirement of such design work could significantly delay the application schedule. However, the City should continue requiring LIHTC applicants requesting City funding go through the UDPRP process.

If the City wishes to establish additional urban design expectations for projects that do not receive City funding/incentives, it should do so consistently and proactively through tools such as form-based zoning. Through the proposed citywide comprehensive land use plan update, there will be policy conversations along these lines and opportunities for the Council to pursue such objectives strategically if desired.



Dr. Eric A. Johnson  
Chief of Economic Development and Neighborhood Services

c: Honorable Mayor and City Council  
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