



Legislation Text

File #: 20-186, Version: 1

STRATEGIC PRIORITY: Economic and Neighborhood Vitality
AGENDA DATE: February 26, 2020
COUNCIL DISTRICT(S): All
DEPARTMENT: Office of Economic Development
EXECUTIVE: Michael Mendoza

SUBJECT

Adopt a resolution **(1)** authorizing and approving the creation of a public facility corporation in accordance with the Texas Public Facility Corporation Act, Chapter 303 of the Texas Local Government Code, as amended (“Act”), to be named the Dallas Public Facility Corporation (“Corporation”); and **(2)** approving the Corporation’s proposed Articles of Incorporation and Bylaws - Financing: No cost consideration to the City

BACKGROUND

The Act authorizes the City, as a Texas municipality (“Sponsor”) to create one or more nonmember, nonprofit, public facility corporations (“PFC”) for the specific purposes provided in the Act. In order to create the PFC, the City Council, as the governing body of the Sponsor, must determine that it is in the public interest and to the benefit of its residents and the citizens of Texas that a corporation be created to finance, refinance, or provide the costs of public facilities. Additionally, the City Council must authorize and approve the creation of the PFC on behalf of the sponsor and approve its proposed Articles of Incorporation and Bylaws. The Act authorizes the Sponsor, subject to the limitations set forth therein, to:

(a) create a PFC to:

- (1) issue bonds under the Act, including bonds to purchase Sponsor obligations;
- (2) finance public facilities on behalf of the Sponsor; or
- (3) loan the proceeds of the obligations to other entities to accomplish the purposes of the Sponsor; and

(b) use the public facility corporation to:

- (1) acquire, construct, rehabilitate, renovate, repair, equip, furnish, or place in service public facilities; or
- (2) issue bonds on the Sponsor’s behalf to finance the costs of public facilities.

A public facility is defined in the Act as any real, personal, or mixed property, or an interest in property devoted or to be devoted to public use, and authorized to be financed, refinanced, or provided by Sponsor obligations or bonds issued under the Act. In addition to municipalities, the Act authorizes counties, school districts, housing authorities, and special districts such as a hospital district or authority and a junior college district to create PFCs. PFCs have been used in other jurisdictions to develop a variety of public facilities including workforce housing.

A PFC is legally separate from its sponsor. The PFC's board must be appointed by the governing body of the sponsor. The members of the governing body or an officer or employee of the sponsor (City councilmembers or City staff) are eligible to serve on a PFC board as directors. Directors of the board have the same immunity from liability as is granted under the laws of the state to a member of the sponsor's governing body if the director was acting in good faith and in the course and scope of the duties or functions within the PFC. Board meetings must be open to the public and are subject to the Texas Open Meetings Act.

Public facilities owned or leased by a PFC are tax exempt as authorized under the Act. For multifamily residential developments owned by a PFC that was created by a housing authority under the Act which does not have at least 20% of its units reserved for public housing units, the tax exemption only applies to the development if the housing authority holds a public hearing to approve the development; and at least 50% of the units in the multifamily residential development are reserved for occupancy by individuals and families earning less than 80% of the area median family income ("AMFI"). Generally, PFCs, as public nonprofit corporations, are not subject to taxation, including sales tax.

Also under the Act, a user of a public facility is considered an owner of the facility for tax purposes and would subject that user to any tax assessment or tax exemption that a public facility would be subject to including sales and use taxes in construction, sale, lease, or rental of the public facilities being used; and exemptions from other taxes imposed by the state or a political subdivision of the state. The tax-exempt status of a user of a PFC-owned public facility would need to be evaluated on a case by case basis and would require a predetermination of tax-exempt status. Such potential tax exemption, if applicable, could provide flexibility and a viable mechanism for the development and construction of a PFC-owned public facility. For its interest in a development, a PFC could generate revenue from fees and receive a share of the cash flow. Development of public facilities include mixed-income housing, student housing, conference facilities, parking garages, parks, and downtown developments. PFCs, subject to the restrictions of the Act, are authorized to own, acquire, construct, rehabilitate, renovate, repair, equip, furnish or place in service the aforementioned public facilities. Other powers granted to PFCs include lending, investing, and borrowing money; accepting, granting, or mortgaging the public facility, or granting other security; making contracts and incurring liability.

PUBLIC FACILITY CORPORATION VS. HOUSING FINANCE CORPORATION

PFCs differ from Housing Finance Corporations ("HFC") which are authorized under Chapter 394 of the Texas Local Government Code. HFCs typically have equitable title to a development for the tax exemption which requires the HFC to serve as the general partner in the entity that owns the improvements and have an option to acquire title at any time in the improvements. This impacts the ability to sell the development as buyers may not want a governmental general partner or give the option to transfer title. HFCs issue private activity bonds for single family and multifamily residential

housing. For 4% Housing Tax Credits deals, the tax credits must be coupled with private activity bonds and HFCs can serve as the issuer of the bonds. Therefore, HFCs primarily partner on 9% (Competitive) and 4% (Noncompetitive) Housing Tax Credit developments issued through the Texas Department of Housing and Community Affairs (“TDHCA”).

Subject to the requirements of the Act, public multifamily residential developments could potentially be financed without the assistance of 9% and 4% Housing Tax Credits issued by TDHCA in a PFC deal structure. Moreover, if a potential private user of a PFC-owned public facility is determined to be statutorily tax exempt, PFCs should not require additional investment from the City as the potential tax exemption would help to fill financing gaps. A tax-exempt PFC structure would also allow for a private developer to finance, construct and assume the risk of development through private equity.

STRUCTURE OF CORPORATION

Staff recommends that the three Councilmembers identified in the articles of incorporation, serve as the incorporators and initial directors of the Corporation. [It is recommended that the Chair of the Economic Development Committee, Chair of the Housing and Homelessness Solutions Committee, and a Mayor appointee serve as the initial incorporators.](#) The permanent board of directors will be comprised of fifteen members and must be appointed by the City Council. The officers of the Corporation will be the President, Vice-President, Secretary, and Treasurer. The [Assistant](#) Treasurer will be a City employee. Directors may not serve for a term of more than six years and may be removed at any time [with or](#) without cause [by City Council](#). Officers may not serve for a term of more than ~~three~~ [two](#) years and may be removed by persons authorized to elect or appoint the officer if it is in the best interests of the PFC. Additionally, staff recommends City employees serve as liaisons of the PFC in the capacity of General Manager and Assistant General Manager in order to assist the board in the management of the Corporation’s operations. The overall structure and specific requirements of the Corporation, as required by the Act, are in the attached articles of incorporation and bylaws.

Regular or special board meetings will be held in accordance with state law and the PFC’s articles of incorporation and bylaws. The Corporation’s agendas will be posted with the City Secretary’s Office at least 72 hours prior to any meeting.

PUBLIC PURPOSE OF CORPORATION

[Creation of a PFC will assist the City in meeting its production goals established under the Comprehensive Housing Policy \(“CHP”\), adopted on May 9, 2019 by Resolution No. 18-0704, as amended. The PFC will be used to develop housing for the “missing middle” or workforce. The purpose of the Corporation is to develop mixed income, multifamily residential in areas of opportunity and to be used as a tool for redevelopment to deconcentrate poverty and provide greater fair housing choice. The tax exemption allowed under the PFC will be utilized as an operating subsidy to offset the loss in potential revenue that would have otherwise been generated by a development if the development were to maximize rents. As a guide, the affordability mix in a development shall be dependent upon the market and location. However, the affordability mix of a PFC development shall be no less than 30% of the total units and no more than 50% of the total units set aside as affordable with the remaining units being market rate.](#)

As a reference, areas of opportunity can include the following:

1. A, B, and C markets under the Market Value Analysis;
2. Redevelopment Reinvestment Strategy Areas (“RSA”) as identified in the CHP;
3. Transit Oriented Development (“TOD”) sites,
4. Census tracts with a poverty rate of 20% or less; and/or
5. Tax Increment Finance (“TIF”) Districts.

In areas of opportunity, staff recommends the affordability mix in a PFC development have 50% of the units be reserved for individuals or families whose income is 80% or less than the AMI and the remaining units must be market rate.

As a tool for redevelopment the PFC could be utilized in the following areas:

1. Emerging RSAs where there is other investment occurring including private and from the City;
2. Designated Opportunity Zones;
3. Racially or Ethnically Concentrated Areas of Poverty (R/ECAP);
4. TODs; and
5. TIFs.

For redevelopment areas, staff proposes that no less than 30% of the total units be set aside for households earning 80% or less of AMI and the remaining units market rate.

The Corporation shall not participate in any multifamily residential development unless i) the development could not be feasible but for the Corporation’s participation and ii) the multifamily residential development is in furtherance of the CHP, as amended. Furthermore, any public facility related to multifamily residential must adhere to Chapter 20 A of the City Code, as amended, with respect to voucher requirements. Any net revenue generated by the Corporation by multifamily residential developments shall be solely utilized to further the City’s housing programs, policies, and initiatives. Staff will vet any potential development, conduct financial and developer underwriting, ensure any proposed development brought forward for consideration by the Corporation adheres to the CHP, and negotiate terms amendable to both the City and the Corporation’s board.

BENEFITS AND RISKS

Creation of a PFC will assist the City in meeting its production goals established under the Comprehensive Housing Policy, adopted on May 9, 2019 by Resolution No. 18-0704, as amended. The PFC can be used to develop housing for the “missing middle” or workforce since 50% of the units will be reserved for individuals whose income is 80% or less than the AMFI. Although the Act only requires the occupancy and set aside of housing authorities for multifamily residential developments, it is recommended, for the public purpose of the Corporation, to utilize the required set aside as a guide for the creation of workforce housing for Dallas residents. Additionally, tThe tool will create mixed-income housing, provide greater housing choice for the City’s residents, and deconcentrate poverty as the other 50% of the units in the development will be market rate or non-rent restricted.

Due to the market rate component, PFCs lead to the creation and successful lease-up of high quality, class A developments which can catalyze other class A development or lead to economic

development. [Economic development can occur due to the additional rooftops and households with higher incomes needed to attract retail.](#) PFCs can also demand desired terms for design requirements, approval of plans, rent and unit set asides, tenant selection criteria, etc. It is a tool that can be used for redevelopment and to provide quality housing in areas of opportunity and could potentially minimize any Not In My Back Yard “NIMBY” issues.

The risk associated with a PFC is that a private developer of any proposed public facility development may default on private financing arrangements which may result in failure of the public facility and may result in any applicable recourse by the developer’s financier.

Public facilities owned by the Corporation will not increase the City’s tax base or generate revenue for the City or other taxing entities unless it is determined that a private user is subject to taxation. However, the tax exemption can be leveraged to invest in an **often overlooked** [often-overlooked](#) critical infrastructure need, quality, or workforce, and address the City’s housing shortage. To offset any loss in revenue from the tax exemption, any net revenue generated by the PFC from its interest in a development may be used to fund programs and/or projects for the benefit of the City such as City housing programs or City rental subsidy initiatives [as proposed for the structure of the Dallas PFC.](#) Additionally, as part of the underwriting of each proposed public facility development project, staff would determine when and if the tax exemption would no longer be vital to the operations of the development. As part of any development agreement, there would be provisions that establish specific schedules for payment in lieu of taxes (“PILOT”) once a development reaches a certain threshold with respect to a reasonable yield from operating cash flow. Such PILOT arrangements would need to be reviewed on a case by case basis with all applicable taxing authorities.

RECOMMENDATION

The Housing Policy Taskforce and staff recommends the creation of the PFC, approval of the articles of incorporation and the bylaws and if approved, the articles of incorporation will be filed with the Texas Secretary of State in accordance with the requirements of the Act. The overall purpose of the PFC shall be, pursuant to the provisions of the Act, provide for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing, and placement in service of public facilities. This would **potentially** include the provision of [high](#) quality, [mixed income, residential](#) housing in areas of opportunity and [in](#) other redevelopment opportunities within the City. Although the PFC is authorized by the Act to issue debt, staff does not propose that the PFC do so, and any proposed issuances [or other powers authorized under the Act](#) would be subject to Dallas City Council approval pursuant to the PFCs Articles of Incorporation and Bylaws.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On May 24, 2019, staff briefed the Development Process subcommittee of the Housing Policy Taskforce.

On June 11, 2019, the Steering Committee of the Housing Policy Taskforce was briefed, and the creation of the Corporation was recommended for City Council consideration.

The Economic Development Committee was briefed on this item on December 2, 2019.

[On January 17, 23 and 24, 2020, the Housing Policy Taskforce hosted 3 stakeholder input sessions to address questions and establish a guide or priorities on how the PFC could be best utilized as tool for the City.](#)

The Economic Development Committee was briefed regarding this matter on December 2, 2019 [and February 3, 2020.](#)

~~The Economic Development Committee was briefed regarding this matter on February 3, 2020.~~

FISCAL INFORMATION

No cost consideration to the City.