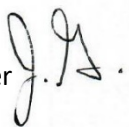




MEMORANDUM

To: Mayor and Council Members
From: Jesús Garza, Interim City Manager 
Date: July 19, 2023
Subject: City Council July 20, 2023, Agenda Item 127

At your July 20, 2023, Council meeting, you will consider approving a resolution that would allow the Housing Authority of Travis County (HATC) to participate in a proposed development on FM 969 and one on Tillery Street. The proposed developments are two of seven developments being proposed by the Travis County Supportive Housing Collaborative, three of which are proposing to participate in a property tax abatement agreement with HATC. This memorandum provides staff's recommended approach and is based on information provided by Capital A Housing and the Travis County Supportive Housing Collaborative ("the Collaborative"), as well as publicly available information. Based upon the reasoning provided below, City staff recommends that City Council consider authorizing the Cooperative Agreements for 6314-6400 FM 969 and for 701 Tillery Street.

Furthermore, staff was tasked with reviewing additional HATC PFC projects that are outside of the Travis County Supportive Housing Collaborative. Staff has thoroughly reviewed those PFC proposals and has met with representatives of the developer (Bercy Chen) in person and virtually. As discussed below, staff cannot recommend approval of the Bercy Chen development agreements.

The Request

Capital A Housing is requesting Council authorize the Housing Authority of Travis County (HATC) to participate in two proposed developments, one to be located on FM 969 and one on Tillery Street. The FM 969 transaction includes the Collaborative partner (Austin Area Urban League and Capital A Housing), private developer, and a public facility corporation (PFC) affiliated with HATC (known as TCFC). The Tillery Street transaction includes the Collaborative partners (LifeWorks and Capital A Housing), as well as the other entities listed above. If the resolution is approved, the HATC/TCFC will be allowed to participate in the proposed developments and will provide a property tax abatement.

In addition, Bercy Chen is requesting Council authorize HATC to participate in two proposed developments, one located on North Lamar (District 7) and one located on Burleson Road (District 2). Council may amend the resolution to add these two developments, allowing HATC/TCFC to provide a property tax abatement. Each of the proposed developments is discussed in detail below.

Background

For more information regarding Public Facility Corporations, including recent legislation and regulatory requirements for Housing Authority PFCs, please see the [June 8, 2023, Memo to Mayor and Council regarding Agenda Item 84](#). For a comparative example of a Permanent Supportive Housing development

sponsored by the Austin Housing Finance Corporation, which confers similar benefits to those of the PFC, please see page 3 of the June 8, 2023, memo.

Over the last two months, staff has been asked to assess and recommend action on six requests to permit HATC to participate in PFC developments. HATC's participation in these developments would confer a 100% property tax abatement. Staff has assessed each development with the understanding that the tax abatement constitutes a subsidy for the affordable housing. Staff measures this subsidy against the community benefits that the development provides, including the unit mix, affordability levels, proximity to services, and community amenities.

Travis County Supportive Housing Collaborative

The Collaborative is a collection of local nonprofit providers that are focused on developing deeply affordable supportive housing and services for individuals who face systemic barriers to housing. The Collaborative consists of seven nonprofit organizations: A New Entry, Austin Area Urban League, Caritas of Austin, Family Eldercare, Integral Care, LifeWorks, and SAFE Alliance. The Housing Department and Austin Housing Finance Corporation (AHFC) have worked extensively with six of the seven partners on programs and projects serving the low-income community.

The Collaborative was formed in response to the growing need for Permanent Supportive Housing (PSH) for people experiencing homelessness in the City and Travis County. With an influx of Covid-related federal funding, Travis County pledged \$50 million to the Collaborative's proposed PSH response.

On June 8, 2023, Council approved a resolution authorizing HATC to participate in the Family Eldercare-sponsored PFC development located on Real Street. Staff based the recommendation for approval on multiple factors including the commitment of federal funds from Travis County, the approved RHDA award, and the committed Project Based Vouchers from the Housing Authority of the City of Austin. Additionally, the development will provide 60 units of Permanent Supportive Housing, recognized by staff as a significant community benefit.

6314-6400 FM 969 (Austin Area Urban League)

6314-6400 FM 969 is currently owned by Narrow Road Group (NRG) who plans to construct a 360-unit multifamily development on the 10-acre site, 80 units of which will be developed by the Austin Area Urban League and Capital A Housing. The development will include 180 affordable units below 80% AMI and, of those 180 units, 80 will be very-low-income permanent supportive housing (PSH) units. This unit mix qualifies the property for benefits established under the PFC provisions.

Parcel Owner	Narrow Road Group
Size	10 Acres
Current Use	Office, Undeveloped, Common Areas
Zoning	CS-1-MU-CO-NP, CS-MU-CO-NP, GO-NP, GO-MU-NP, LR-MU-NP, and
TCAD Assessment	\$2,396,193
Estimated Taxes (2022)	\$39,307
Total Units	360 units
Affordability Mix	80 units of PSH; 100 units at 80% AMI
Market Rate Units	180 units

Details on the public cost of the proposed deal are below:

Public Funding Sources	Value
Estimated Property Tax Exemption (Upon Full Build Out)	\$1,155,000
Travis County ARPA (committed)	\$8,661,402
RHDA Loan (awarded)	\$4,000,000
SMART Housing Fee Waivers (granted to date on the full development) ¹	TBD
Project Based Vouchers from HACA	TBD
APH Support Services Contracts (Estimated)	\$1,172,607

The value of the property tax exemption is estimated to be more than \$86,625,000 in today's dollars over the 75-year affordability period. While 25% of the value of the annual property tax exemption is committed to funding supportive services at the Collaborative properties, \$866,250 of the value of the property tax exemption is accruing to the benefit of the private development partner annually.

701 Tillery Street (LifeWorks)

701 Tillery Street is currently owned by 3423 Tillery LLC who plans to construct a 1,000-unit multifamily development on the site, 120 of which will be developed by LifeWorks and Capital A Housing. The development will include 500 affordable units below 80% AMI and, of those 500 units, 120 will be very-low-income permanent supportive housing (PSH) units. This unit mix qualifies the property for benefits established under the PFC provisions.

Parcel Owner	3423 Tillery LLC
Size	13.02 acres
Current Use	Commercial, undeveloped
Zoning	CS-MU-CO-NP; SF-3-NP
TCAD Assessment	\$26,659,596
Estimated Taxes (2022)	\$245,550
Total Units	1,000 units
Affordability Mix	120 units of PSH; 380 Units at 80% AMI
Market Rate Units	500 units

Details on the public cost of the proposed deal are below:

Public Funding Sources	Value
Estimated Property Tax Exemption (Upon Full Build Out)	\$1,252,765
Travis County ARPA (committed)	\$12,992,103
RHDA Loan (awarded)	\$8,000,000
TDHCA HOME ARP (pending)	\$5,500,000
SMART Housing Fee Waivers (granted to date on the full development)	\$4,599
Project Based Vouchers from HACA (25) ²	\$582,000/year

¹ The value of SMART Housing fee waivers reflects fees waived thus far, including site plan application and review fees. Further fees will be waived as part of site and subdivision inspections, building permits, processes, and applications which have not been initiated yet.

² Estimated Value of awarded vouchers = \$1940 x 12 months x the number of vouchers awarded

APH Support Services Contracts (Estimated)	\$2,033,887
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The value of the property tax exemption is estimated to be more than \$93,957,375 in today's dollars over the 75-year affordability period. While 25% of the value of the annual property tax exemption is committed to funding supportive services at the Collaborative properties, \$939,573 of the value of the property tax exemption is accruing to the benefit of the private development partner annually.

5916 North Lamar Boulevard (Bercy Chen)

5916 North Lamar Boulevard is currently owned by Bercy Chen, who plans to construct a 326-unit multifamily development on the 2.05-acre site. The original development proposal included 112 affordable units below 80% AMI and 50 affordable units below 60% AMI. This unit mix qualifies the property for benefits established under the PFC provisions. The draft partnership documents would allow the PFC units to forgo the property tax exemption and be converted to market rate after 10 years. The developer has opted into the City's VMU2 density bonus program and will meet the affordability requirement for the VMU2 bonuses by providing 15% of units (51) at or below 60% AMI for 40 years. The developer has also opted into the City's SMART Housing program and will meet the affordability requirement to receive 100% eligible SMART fee waivers by providing the minimum 40% of units at or below 80% AMI for at least 5 years. Through conversations with staff, Bercy Chen and HATC agreed to reduce the fees paid to HATC and increased the affordability levels to provide nearly 10% of the development at 50% AMI, as noted below.

Parcel Owner	5916 N Lamar Investor LLC
Size	2.05 acres
Current Use	Commercial
Zoning	CS-MU-V-CO-NP
TCAD Assessment	\$1,749,800
Estimated Taxes (2022)	\$34,557
Total Units	326
Affordability Mix	32 units at 50% AMI; 34 units at 60% AMI (VMU2 requirement); 97 units at 80% MFI (PFC minimum to meet 50% of units as affordable)
Market Rate units	163

Details on the public cost of the proposed deal are below:

Public Funding Sources	Value
Estimated Property Tax Exemption (Upon Full Build Out)	\$1,423,197
Travis County ARPA (committed)	N/A
RHDA Loan (awarded)	N/A
Project Based Vouchers from HACA	N/A
APH Support Services Contracts	N/A

The property tax exemption will be secured for at least 10 years with the possibility of extending to 75 years. The value of the property tax exemption is estimated to be more than \$1,423,197 million in the first year of operations, totaling \$14,231,970 over the initial ten years. One-time upfront payments to HATC are estimated at \$1,426,033 and HATC would receive an ongoing annual admin and ground lease fee of roughly \$363,551 for the length of the property tax exemption, totaling \$3,635,510 over ten years. There would be a one-time estimated fee of \$855,124 to HACA. The net benefit of the property tax abatement

to the development over ten years, after deducting all payments to HATC and HACA, totals \$8,315,303.

7800 Burleson Road (Bercy Chen)

7800 Burleson Road is currently owned by Bercy Chen who plans to construct a 315-unit multifamily development on the 15.1 acre site. The original development proposal included 158 affordable units below 80% AMI and 32 affordable units below 60% AMI. This unit mix qualifies the property for benefits established under the PFC provisions. The draft partnership documents would allow the PFC units to forgo the property tax exemption and be converted to market rate after ten years. The developer has opted into the City's SMART Housing program and will meet the affordability requirement to receive 100% eligible SMART fee waivers by providing the minimum 40% of units (158) at or below 80% AMI for at least 5 years.

Parcel Owner	7800 Burleson QOZB LLC (Purchased 2020)
Size	15.1 acres
Current Use	Greenfield
Zoning	GR-MU-NP
TCAD Assessment	\$2,376,076
Estimated Taxes (2022)	\$46,926
Total Units	315
Affordability Mix	32 units at 50% AMI; 32 units at 60% AMI (PFC minimum requirement of 10% of units at 60% AMI units); 94 units at 80% MFI (PFC minimum to reach 50% of units as affordable)
Market Rate units	157

Details on the public cost of the proposed deal are below:

Public Funding Sources	Value
Estimated Property Tax Exemption (Upon Full Build Out)	\$1,399,274
Travis County ARPA (committed)	N/A
RHDA Loan (awarded)	N/A
Project Based Vouchers from HACA	N/A
APH Support Services Contracts	N/A

The property tax exemption will be secured for at least 10 years with the possibility of extending to 75 years. The value of the property tax exemption is estimated to be more than \$1,399,274 million in the first year of operations, totaling approximately \$13,992,740 over ten years. One-time upfront payments to HATC are estimated at \$1,272,302 and HATC would receive an ongoing annual admin and ground lease fee of roughly \$374,819 for the length of the property tax exemption, totaling \$5,020,492 over ten years. There would be a one-time estimated fee of \$800,664 to HACA. The net benefit of the property tax abatement to the development over ten years, after deducting all payments to HATC and HACA, totals \$8,171,584.

Ownership Model, Lease Agreement, and Regulatory Agreement

Under the proposed PFC scenario, the land will be owned by the HATC PFC (TCFC), and it will be leased to an affiliate of the developer ("Tenant"). This affiliate will be a single-asset entity.

If the Tenant is seeking the tax exemption, the Lease Agreement requires the Tenant to maintain affordability. However, the Lease Agreement does not consider the Tenant's failure to maintain affordability an event of default. This means that the Tenant can unilaterally decide to forgo the tax exemption by not complying with the affordability requirements. If the tax exemption is lost for any reason, the Regulatory Agreement and the related affordability covenants will terminate. When the Regulatory Agreement is terminated, the Tenant is only required to meet the affordability requirements imposed by the applicable City program (SMART Housing, VMU, or AU).

Concerns and Recommendation

Generally speaking, the benefits of the tax abatement provided by a PFC greatly outweigh the benefits of the limited provision of moderately affordable housing. The abatement of property taxes for up to 75 years has a clear and real impact on the financial health of the City of Austin, Travis County, and other taxing entities. Therefore, staff has reviewed each proposed development with the understanding that the current PFC requirements, 10% of the units affordable at 60% AMI and 40% of the units affordable at 80% AMI, serve as the *minimum* requirement. Each development has also applied to participate in one or more City-sponsored programs for affordable housing, such as SMART Housing or Affordability Unlocked. Where City-sponsored program requirements exceed the PFC requirements, staff views these additional affordable units as part of the minimum requirement and not as justification for the tax abatement.

As noted above, staff also considered the overall financial structure of the partnerships. For each Bercy Chen development, HATC has negotiated a considerable developer fee and ground lease. For the two Travis County Supportive Housing Collaborative projects, HATC has allowed these funds to be redirected to fund support services for the Permanent Supportive Housing units. However, it is important to note, for the Bercy Chen developments, the fees will accrue to HATC for their use *outside* of the City of Austin.

The public benefit arguments associated with the Collaborative deals are compelling and similar in structure to the Collaborative project approved by Council on June 8, 2023. After carefully weighing the balance of the tax abatement against the community benefit, City staff recommends that City Council authorizes the Cooperative Agreements for 6314-6400 FM 969 and for 701 Tillery Street. These projects are providing community benefit – in the form of PSH that will provide housing to individuals who are experiencing homelessness. These projects will be a component of the community's homeless response system and demonstrate the potential of the public sectors (including the city and the county), as well as the private sectors coming together to address common community concerns.

The other developments for consideration present a challenge. Due to a lack of communication and coordination, these developments are at the end of their pre-development timelines with construction financing closing dates approaching rapidly. As mentioned, with appropriate time, staff may have been able to better design the deal structure to take advantage of more programs or identify alternative funding sources. Staff met with Bercy Chen last week to discuss potential improvements and to better understand the financing of the deals. Staff requested Bercy Chen provide 50% AMI units in place of some of the 80% AMI units and a commitment on all affordable units for at least 40 years. The development team was able to pencil in 10% of units at 50% AMI for both 5916 North Lamar and 7800 Burleson by reducing HATC's upfront fees and annual ground lease payment. They were also able to confirm their financing partners would be comfortable with a 40-year affordability commitment on all units.

To reach a deeper level of affordability or more affordable units would require further reduction in HATC fees or an additional subsidy source beyond the property tax abatement and development incentive programs. However, since the developments are already permitted and essentially “baked” there is not enough time to incorporate these potential tools. Moreover, the status of these deals also limits the City’s ability to incorporate provisions such as a Right of First Refusal or other Land Use Restriction Agreement that could ensure long-term affordability. Staff cannot recommend approval of the Bercy Chen development agreements. The financing and design considerations were determined long before staff was able to assist. Though the developer has been an open and engaged partner in this late review, the proposed terms of the affordable housing do not meet the cost of the taxes abated.

It is important to note that the required consent for HATC to operate outside their jurisdiction came to staff very recently – functionally at a point that was too late in the process for staff to have a meaningful discussion about the structure of the Bercy Chen deals. Had this followed the expected route, and City staff were involved earlier in the process, the structure of these deals would be significantly different, likely following a more traditional path with more meaningful affordability. Since learning of several PFCs under development by HATC, staff has met regularly with HATC and HACA to better align programs and avoid communication errors.

Next Steps

The PFC tool is a new and evolving mechanism to achieve affordability. Staff anticipates a full City Council discussion regarding policies related to PFCs. To that end, staff will provide a presentation and recommendations on minimum PFC requirements to City Council (alternatively, the Housing and Planning Committee) in fall 2023. As previously stated, at a minimum, those community priorities include alignment with Austin Strategic Housing Blueprint goals, deep affordability, tenant protections, assignment of ownership interest, regulatory oversight, reinvestment of fees into the City of Austin jurisdiction, and long-term compliance/monitoring.

Staff is in the process of updating our Housing Development Program Guidelines to ensure developments provide a complete development picture, including all applicable incentive program usage, to ensure staff can evaluate awards based on all relevant information and can make recommendations for funding to the AHFC Board accordingly.

If you have any questions, please contact Rosie Truelove, Housing Director, at 512-974-3064 or rosie.truelove@austintexas.gov.

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