

# Memorandum



CITY OF DALLAS

DATE February 1, 2019

TO Members of the Economic Development & Housing Committee: Tennell Atkins, Chair, Rickey D. Callahan, Vice-Chair, Lee M. Kleinman, Scott Griggs, Casey Thomas, II, B. Adam McGough, Mark Clayton, Kevin Felder, Omar Narvaez

SUBJECT Amendments to Chapter 20A to Outline the Procedures for Monitoring Developers' Compliance with Mixed Income Housing Development Bonuses

On Monday, February 4, 2019, the Economic Development and Housing Committee (Committee) will reconsider an amendment to Chapter 20A that outlines the procedures for monitoring developers' compliance with mixed income housing development bonuses.

## Summary

This memorandum summarizes stakeholder feedback and City staff's responses and recommendations related to proposed amendments to Chapter 20A that outline the procedures for monitoring developers' compliance with mixed income housing development bonuses.

## Background

On November 5, 2018, staff briefed the Committee on proposed amendments to both the Dallas Development Code to allow for mixed income housing development bonuses and to Chapter 20A of the Dallas City Code to create regulations that set forth the manner in which a developer identifies households that are eligible to lease reserved dwelling units, the applicable rents that must be charged, and the documentation that must be reviewed and maintained during the 15 year affordability period, among other items. On December 12, 2018, the City Council referred the item back to the Committee for further consideration after receiving proposed changes to the Development Code and Chapter 20A amendments from The Real Estate Council (TREC), Legal Aid of North West Texas (LANWT), and the Inclusive Communities Project (ICP).

On January 14, 2019, City staff met with representatives from TREC, LANWT and ICP to discuss the written feedback. Thereafter, City staff reviewed the proposed amendments and developed the following responses and recommendations.

## **Stakeholder Feedback and Staff Responses and Recommendations**

### **1. Modify the definition of "voucher payment standard" (ICP)**

The Inclusive Communities Project (ICP) noted that the proposed Chapter 20A definition of "voucher payment standard" does not align with the federal definition of "payment

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standard” found in 24 CFR Section 982.4. After discussing the concerns with ICP and reviewing the definition found in the federal regulations, staff agree that the proposed ordinance should be amended to use the term “payment standard” and the definition found in 24 CFR Section 982.4 so that the City’s definition aligns with the commonly-used definition of payment standard.

**2. Clarify that a developer obtaining a mixed income housing development bonus cannot discriminate against holders of housing vouchers (ICP)**

ICP noted that the cross-references in the proposed ordinance create confusion regarding whether a developer who receives a mixed income housing development bonus is prohibited from discriminating against holders of housing vouchers. Staff’s intent when drafting the ordinance was to require that developers who receive a mixed income housing development bonus be prohibited from discriminating against holders of housing vouchers. Therefore, City staff agree that the proposed ordinance can be clarified by removing the cross reference in Section 20A-30 to Section 20A-4.1 (which prohibits discrimination against holders of housing vouchers in all housing accommodations that benefit from a *subsidy* approved by the city council).

**3. Modify the requirements related to quarterly compliance reports to: (a) collect sufficient demographic data to ensure that the program is affirmatively furthering fair housing and share the data with the public (ICP) and (b) require developers to submit annual rather than quarterly reports (TREC)**

ICP recommended that the City collect sufficient demographic data to ensure that the mixed income housing program is affirmatively furthering fair housing and that the City share the data with the public. Staff provided ICP, TREC and LANWT with a copy of a draft compliance reporting form.

Staff do not believe it is necessary to add additional reporting requirements to the ordinance because the proposed ordinance allows the Director to request information that is reasonably related to the mixed income housing program. Staff are committed to working with the Office of Equity and Human Rights and external stakeholders to gather data that helps track the success of the program, including whether it is affirmatively furthering fair housing.

Likewise, TREC recommended requiring developers to submit annual rather than quarterly reports. Staff believe it is important to collect compliance data on a regular basis to identify deficiencies. Specifically, regular review of data will help staff identify developments where existing or new property management staff need compliance training and will allow staff to offer support when owners are experiencing difficulty filling reserved dwelling units.

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After receiving the draft compliance form, TREC informed City staff that it did not object to quarterly reports since the requested data encompasses information that is regularly collected by owners. TREC requested that City staff continue to seek stakeholder feedback during implementation of the final ordinance.

**4. Add requirements to the ordinance regarding affirmative fair housing marketing (ICP)**

ICP requested that the City amend the ordinance to require the City to create a website containing a description of the mixed income housing program and its non-discrimination provisions, along with the following information for each development participating in the program: (a) the approved Affirmative Fair Housing Marketing Plan, (b) the address and contact information for the development, including the number of reserved dwelling units, the unit types, the development's waiting list policies and whether the units are available for rent (updated monthly), and (c) information about when the affordability period will expire. Staff agree that information about the program and reserved dwelling units should be shared with the public but do not believe the ordinance needs to be amended. The Housing Policy Taskforce Marketing and Finance subcommittee is in the preliminary stages of examining the feasibility, cost and best practices related to creating a comprehensive database of affordable housing units. Staff will recommend that the proposed database include the information identified by ICP.

**5. Add protections for tenants who are displaced as a result of a developer receiving a mixed income housing development bonus (LANWT)**

LANWT requested that the ordinance be amended to include: (a) relocation assistance equivalent to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), and (b) "first right" policy for displaced tenants to afford them priority in returning to the new and improved rehabilitated units created as a result of this program. Staff recognize that while the City has codified a relocation policy in Dallas City Code Chapter 39A, the provisions of that chapter apply only to City of Dallas projects and code enforcement, rehabilitation, or demolition programs. The City does not currently have a comprehensive policy that addresses relocation of low- and moderate-income tenants from aging apartments that are redeveloped but are not part of a City project.

Staff is seeking this Committee's feedback regarding whether staff should start developing recommendations for a comprehensive relocation policy that would be briefed to this Committee at a later date.

**6. Do not charge compliance fees to developers (TREC)**

In December 2018, the Housing and Neighborhood Revitalization Department received the results of a fee study related to the costs to the City of monitoring developments participating in the mixed income housing program. The study examined the full costs of

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evaluating developments during the permitting process as well as during the proposed 15-year affordability period. The study examined costs related to meeting with developers during the permitting phase, reviewing and approving restrictive covenants and affirmative fair housing marketing plans, reviewing quarterly compliance reports, and conducting onsite inspections and monitoring. Full cost recovery would result in the following one-time fees: (a) Pre-application fee: \$642.00 and (b) Compliance Monitoring (15 years): \$3124.00. Staff recommend adding the proposed fees to the proposed Chapter 20A amendments.

TREC does not support charging a compliance monitoring fee and notes that any fees charged will likely be passed on to the consumer and may create a disincentive for developers to participate in the mixed income housing program. Staff note that a robust and consistent compliance monitoring program is necessary to ensure that a primary goal of the program is being met—i.e. creating and maintaining housing units that are reserved for and occupied by low- and moderate-income households. Recovering the costs of engaging in compliance activities via a fee ensures that the City has the financial resources to effectively monitor developments.

### **Issues**

Staff recognize that it will be important to continue to engage with developers, fair housing advocates and other stakeholders to ensure that the program is publicized and monitored in a manner that achieves the goals of the program while not creating unnecessary reporting or other regulatory burdens.

### **Fiscal Impact**

If the Committee does not approve of adding a fee that would be charged to developers who apply for and obtain a mixed income housing development bonus, the City would need to identify another funding source that could pay for the staff time associated with engaging in compliance monitoring activities.

### **Departments/Committee Coordination**

Administering mixed income housing development bonuses will require coordination amongst the Sustainable Development and Construction Department, the Department of Housing and Neighborhood Revitalization, the Office of Equity and Human Rights and the Department of Planning and Urban Design.

### **Staff Recommendation**

Staff recommends that the Economic Development and Housing Committee vote to forward the proposed amendments to City Council for consideration with the changes discussed today to: (1) replace the definition of “voucher payment standard” with “payment standard” as defined in the federal regulations, (2) clarify that developers

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participating in the program may not discriminate against holders of housing vouchers, and (3) add a compliance monitoring fee.



**David Noguera**  
**Director, Department of Housing & Neighborhood Revitalization**

- c: Chris Caso, City Attorney (l)  
Carol A. Smith, City Auditor (l)  
Billerae Johnson, City Secretary  
Preston Robinson, Administrative Judge  
Kimberly Bizer Tolbert, Chief of Staff to the City Manager  
Majed A. Al-Ghafry, Assistant City Manager
- Jon Fortune, Assistant City Manager  
Joey Zapata, Assistant City Manager  
Nadia Chandler Hardy, Assistant City Manager and Chief Resilience Officer  
M. Elizabeth Reich, Chief Financial Officer  
Directors and Assistant Directors

# **Amendments to Chapter 20A to Outline the Procedures for Monitoring Developers' Compliance with Mixed Income Housing Development Bonuses**

**Economic Development and Housing Committee  
February 4, 2019**

**Maureen Milligan, Interim Assistant Director  
Housing & Neighborhood Revitalization  
City of Dallas**



# Presentation Overview

- Purpose
- Background
- Overview of stakeholder feedback and staff recommendations
- Overview of proposed compliance monitoring fee
- Recommendation



# Purpose

- Brief the Committee on potential updates to the proposed amendments to Chapter 20A of the Dallas City Code to create regulations for monitoring developers' compliance with mixed income housing development bonuses
- Brief the Committee on the results of the fee study related to anticipated costs associated with monitoring developers' compliance with the mixed income housing program
- Seek Committee approval to forward amendments to City Council for consideration



# Background

- On November 5, 2018, the Economic Development and Housing Committee (EDH) was briefed on the Ch. 20A amendments and recommended forwarding the amendments to City Council for consideration
- On December 12, 2018, the City Council referred the item back to EDH for further consideration after receiving proposed changes to the Ch. 20A amendments from The Real Estate Council (TREC), Legal Aid of North West Texas (LANWT), and the Inclusive Communities Project (ICP)

# Background

- Proposed **Development Code** amendments address the regulations that apply to the reserved dwelling units in properties that take advantage of mixed income housing development bonuses
- Proposed amendments to **Chapter 20A** set forth the:
  - manner in which an owner identifies households that are eligible to lease reserved dwelling units,
  - applicable rents that must be charged,
  - documentation that must be reviewed and maintained during the affordability period, among other items, and
  - compliance monitoring fee



# Background

- After the December 12, 2018 Council meeting, staff met with the stakeholders to discuss their feedback and to receive clarification
- This briefing:
  - covers feedback related to Chapter 20A – Fair Housing
  - provides an overview of the results of the fee study related to anticipated costs associated with monitoring developer's compliance with the mixed income housing program

# Stakeholder Feedback – 20A

- Modify the definition of “voucher payment standard” (ICP)
- Clarify that a developer obtaining a mixed income housing development bonus cannot discriminate against holders of housing vouchers (ICP)
- Modify the requirements related to quarterly compliance reports:
  1. Ensure that sufficient demographic data is collected to ensure that the program is affirmatively furthering fair housing and share the data with the public (ICP)
  2. Require developers to submit annual rather than quarterly reports (TREC)
- Add requirements to the ordinance regarding affirmative fair housing marketing (ICP)
- Add protections for tenants who are displaced as a result of a developer receiving a mixed income housing development bonus (LANWT)
- Do not charge compliance fees to developers (TREC)

# 1. Voucher Payment Standard

- The Inclusive Communities Project (ICP) noted that the proposed 20A definition of “voucher payment standard” does not align with the federal definition of “payment standard”
- Staff agree that the proposed ordinance should be amended to use the term “payment standard” and the definition found in 24 CFR Section 982.4

## 2. Non-Discrimination Against Voucher Holders

- ICP noted that the cross-references in the proposed ordinance create confusion regarding whether a developer who receives a mixed income housing development bonus is prohibited from discriminating against holders of housing vouchers
- Staff agree that the proposed ordinance can be clarified by removing the Sec. 20A-30 cross reference to Sec 20A-4.1

### 3. Compliance Reporting

- ICP recommended that the City collect sufficient demographic data to ensure that the program is affirmatively furthering fair housing and that the City share the data with the public
  - Staff provided ICP, TREC and LANWT with a copy of a draft compliance reporting form
- The proposed ordinance allows the Director to request information that is reasonably related to the mixed income housing program
  - Staff do not believe it is necessary to add additional reporting requirements to the ordinance
  - Staff are committed to working with the Office of Equity and Human Rights and external stakeholders to gather data that helps track the success of the program, including whether it is AFFH

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### 3. Compliance Reporting (cont.)

- TREC recommended requiring developers to submit annual rather than quarterly reports
  - Staff provided ICP, TREC and LANWT with a copy of a draft compliance reporting form
- Staff believe it is important to collect compliance data on a regular basis in order to identify any deficiencies
  - Regular review of data will help staff identify developments where existing or new property management staff need compliance training
  - Regular review of data will allow staff to offer support when owners are experiencing difficulty filling reserved dwelling units
  - After receiving the draft compliance form, TREC informed City staff that it did not object to quarterly reports since the requested data encompasses information that is regularly collected by owners. TREC requested that City staff continue to seek stakeholder feedback during the implementation phase.

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## 4. Affirmative Fair Housing Marketing

- ICP requested that the City amend the ordinance to require the City to create a website containing a description of the mixed income housing program and its non-discrimination provisions, along with the following information for each development participating in the program:
  - The approved Affirmative Fair Housing Marketing Plan
  - The address and contact information for the development, including the number of reserved dwelling units, the unit types, the development's waiting list policies and whether the units are available for rent (updated monthly), and
  - Information about when the affordability period will expire
- Staff agree that information about the program and reserved dwelling units should be shared with the public but do not believe the ordinance needs to be amended
  - The Housing Policy Taskforce Marketing and Finance subcommittee is in the preliminary stages of examining the feasibility, cost and best practices related to creating a comprehensive database of affordable housing units
  - Staff will recommend that the proposed database include the information <sup>12</sup> identified by ICP

## 5. Relocation

- LANWT requested that the ordinance be amended to include a:
  - relocation assistance equivalent to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), and
  - “first right” policy for displaced tenants to afford them priority in returning to the new and improved rehabilitated units created as a result of this program
- The City does not currently have a comprehensive policy that addresses relocation of low- and moderate-income tenants from aging apartments that are redeveloped
  - Projects that receive federal housing dollars are subject to URA requirements
  - Staff is seeking this Committee’s feedback regarding whether staff should start developing recommendations for a comprehensive policy that would be briefed to this Committee at a later date

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## 6. Compliance Monitoring Fee

- In December 2018, the H&NR Department received the results of a fee study related to the costs to the City of monitoring developments participating in the mixed income housing program
  - Study examined the full costs of evaluating developments during the permitting process as well as during the 15 year affordability period
  - Study examined costs related to meeting with developers during the permitting phase, reviewing and approving restrictive covenants and affirmative fair housing marketing plans, reviewing quarterly compliance reports, and conducting onsite inspections and monitoring
- Full cost recovery would result in the following fees:
  - Pre-application fee: \$642.00
  - Compliance Monitoring (15 years): \$3124.00

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## 6. Compliance Monitoring Fee (continued)

- TREC does not support charging a compliance monitoring fee
  - TREC notes that any fees charged will likely be passed on to the consumer and may create a disincentive for developers to participate in the mixed income housing program
- Staff note that a robust and consistent compliance monitoring program is necessary in order to ensure that a primary goal of the program is being met—i.e. creating and maintaining housing units that are reserved for and occupied by low- and moderate-income households
  - Recovering the costs of engaging in compliance activities via a fee ensures that the City has the financial resources to effectively monitor developments

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# Recommendation

Staff recommends that the Economic Development and Housing Committee vote to forward the proposed amendments to City Council for consideration with the changes discussed today to:

- replace the definition of “voucher payment standard” with “payment standard” as defined in the federal regulations
- clarify that developers participating in the program may not discriminate against holders of housing vouchers, and
- add a compliance monitoring fee

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**Maureen Milligan, Interim Assistant Director  
Housing & Neighborhood Revitalization  
City of Dallas**



# Appendix

# Proposal

## Household Eligibility Determinations

- Owner must assess household's eligibility prior to approving a household to lease a reserved dwelling unit and on an annual basis
- Eligibility determinations must be performed in accordance with the HUD Handbook 4350.3 unless ordinance specifically exempts compliance
  - Determine family size and annual income in accordance with handbook
  - Use Part 5 method of determining income
- Use source documents to verify household's eligibility at initial lease; self-certification by household at lease renewals
  - At project's affordability period years 6 and 12, owner must re-certify all eligible households using source documents



# Proposal

## Affordable Rent

- Rent that may be charged for a reserved dwelling unit will vary depending on household's adjusted income
  - Affordable rent = rent is no more than 30% of eligible household's adjusted income

## Tenant Selection and Other Written Policies

- Ordinance requires that policies must be *created* but does not dictate the *terms* of the policies
  - Applicant screening, tenant selection, wait list, occupancy standards, unit transfers, etc.
  - Owner may not discriminate against households using vouchers

## Affirmative Fair Housing Marketing Plan

- Plan must be approved prior to marketing any units for lease
- Plan must describe the advertising, outreach and other marketing activities that will be used to inform underserved renters of the available reserved dwelling units
  - City will provide form

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# Proposal

## Other regulations

- Reserved dwelling unit must be eligible household's primary residence
- No sub-leasing/short-term rental of reserved dwelling unit
- Financial assistance received by students in excess of amounts received for tuition is included in annual income

# Proposal

## Reporting Requirements

- Quarterly status reports
  - For the reserved dwelling units, provide: unit number and unit type, household income, certification/re-certification date, rent, etc.
    - City will provide form

## Recordkeeping and Audit/Inspection

- Owner must maintain required documentation in the eligible household's file
- City may audit files and inspect reserved dwelling units (and non-reserved dwelling units for comparison purposes)

# Proposal

## Notice and Opportunity to Cure

- Written notice of deficiency must be provided to owner
- 30 day corrective action period for failure to file quarterly status report
- 90 day corrective action period for other deficiencies

## Enforcement

- Affordability period will be extended for period of significant non-compliance
- Restrictive covenants may be enforced through specific performance (i.e. City could seek court order requiring non-compliant owner to provide reserved dwelling units)
- Violation of ordinance is also a Class-C misdemeanor offense

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