



CITY OF NORMAN, OK CITY COUNCIL STUDY SESSION

Municipal Building, Executive Conference Room, 201 West Gray, Norman,
OK 73069

Tuesday, December 06, 2022 at 5:30 PM

MINUTES

It is the policy of the City of Norman that no person or groups of persons shall on the grounds of race, color, religion, ancestry, national origin, age, place of birth, sex, sexual orientation, gender identity or expression, familial status, marital status, including marriage to a person of the same sex, disability, retaliation, or genetic information, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in employment activities or in all programs, services, or activities administered by the City, its recipients, sub-recipients, and contractors. In the event of any comments, complaints, modifications, accommodations, alternative formats, and auxiliary aids and services regarding accessibility or inclusion, please contact the ADA Technician at 405-366-5424, Relay Service: 711. To better serve you, five (5) business days' advance notice is preferred.

CALL TO ORDER

PRESENT

Mayor Larry Heikkila
Councilmember Ward 2 Lauren Schueler
Councilmember Ward 3 Kelly Lynn
Councilmember Ward 4 Helen Grant
Councilmember Ward 5 Rarchar Tortorello
Councilmember Ward 7 Stephen Holman
Councilmember Ward 6 Elizabeth Foreman
Councilmember Ward 8 Matthew Peacock

ABSENT

Councilmember Ward 1 Brandi Studley

AGENDA ITEMS

1. DISCUSSION REGARDING AFFORDABLE HOUSING INCLUDING TAX CREDIT PROGRAMS.

Mr. Darrell Beavers, Housing Development Director for the Housing Finance Agency, said Congress created the Housing Tax Credits in 1986 to offset the high cost of rental housing construction and rehabilitation, and to provide affordable rent rates for low-income families that are at low or below 60% of area median income. Oklahoma created a State Tax Credit in 2014. Tax Credits provide a ten-year reduction in tax liability for developers who construct or rehabilitate affordable rental housing that is income and

Item 1, continued:

rent restricted. Developers sell Tax Credits to Fortune 500 companies and other investors and the money obtained from the sale is used to lower financing costs and lower rent for families. He said in Oklahoma, 40,272 housing units have been produced or preserved since 1986 through 2022. He said without Tax Credits, the rental income generated by an affordable housing complex would be insufficient to cover costs of developing and maintaining the property.

Tax Credit Equity provides between 65% to 90% of the total development costs for a project and the large equity means lower permanent debt, which translates to lower rent for residents. Residents are required to earn at or below 60% of the Area Median Income (AMI) for the county in which the project is located. Mr. Beavers said a database of funded developments can be located at ofha.org.

Low Income Housing Tax Credits (LIHTC) can be applied to new construction; adaptive reuse; acquisition rehabilitation; acquisition rehabilitation on historic buildings; and single or multi-family structures that include apartments, duplexes, and assisted living facilities. To access 4% Tax Credits, at least 50% of a development must be financed with tax-exempt multi-family bonds. The 4% Tax Credits differ from 9% Tax Credits in that they are non-competitive with no maximum. The 9% Tax Credit calculation for a \$10 million project is 90 cents on the dollar (Tax Credit - \$810,000 per year with \$7,290,000 in total equity) on the dollar while the 4% Tax Credit calculation for a \$10 million project is 50 cents on the dollar (Tax Credit - \$280,800 per year with \$1,527,200 in total equity).

Councilmember Foreman asked if converting a hotel or motel into affordable housing would qualify as a Tax Credit Project and Mr. Beavers said yes, a lot of hotels and/or motels struggled during the pandemic and many closed. He said developers/builders/investors have purchased the properties and converted them into affordable housing.

The Oklahoma Affordable Housing Act of 2014 granted Oklahoma Housing Finance Agency (OHFA) the authority to allocate Oklahoma State LIHTC to qualified projects. Total State LIHTCs allocated in any given year cannot exceed \$4 million and like the Federal LIHTC is good for a ten-year period. Requirements for compliance also mirror the Federal LIHTC and no separate application is required. State Tax Credits will be available for both new construction and acquisition/rehabilitation activities. In funding Period One, \$4 million of the State Tax Credits will be available to applicants applying for 4% Tax Credits and Bond Financing only. Any State Tax Credits remaining after funding Period One will be available to 4% and 9% applications in Period Two with priority going to 4% applicants. The 9% Tax Credits Program is highly competitive and the maximum amount of State Tax Credits awarded to any developer is \$2 million annually.

Mr. Beavers said Cleveland County is in the Oklahoma City (OKC) Metropolitan Statistical Area (SMA) which has an area median income of \$85,300 and highlighted affordable housing income limits that include \$34,440 for one person; \$39,360 for two persons; \$44,280 for three persons; \$49,140 for four persons; \$53,100 for five persons; \$57,060 for six persons; \$60,960 for seven persons; and \$64,920 for eight persons. He

Item 1, continued:

said maximum rent for the number of bedrooms would be \$861 for an efficiency; \$922 for one bedroom; \$1,107 for two bedrooms; \$1,278 for three bedrooms; and \$1,426 for four bedrooms, if those rents include utilities. If rents do not include utilities, rents will be lower.

Mr. Beavers said OHFA issues approximately \$10 million in Tax Credits each year resulting in nearly \$158 million of construction activity statewide with a maximum award of \$900,000 per development. There are two 9% applications cycle deadlines and awards, the January deadline typically awards in May and the June deadline typically awards in November. The 4% Tax Credit application must be received at least 60 days prior to the OHFA Board meeting held in odd months. He said if the 4% Tax Credit application is applied for in conjunction with the State Tax Credit, it follows the 9% Tax Credit application cycle deadlines and awards. He said for-profit developers, non-profit organizations, public agencies, units of local government, and tribal governments are eligible to apply for Tax Credits.

OHFA awards Tax Credits based on local need, population, and economic growth trends. To obtain Tax Credits in Oklahoma, a development must pass threshold, achieve a higher score than competing development, and must meet State housing needs. OHFA must limit allocation of Tax Credits to the amount necessary to make each development financially feasible and viable as affordable housing for the required long-term affordability period. OHFA analyzes the application and performs three separate rigorous financial evaluations, which analyze sources and uses of funds, other government subsidies, reasonableness of costs, and developer or builder profits.

Mr. Beavers highlighted threshold and selection criteria as follows:

- Threshold
 - Market Study
 - Capacity and prior performance (experience)
 - Financial feasibility and viability (underwriting)
 - Readiness to Proceed (zoning, site control, preliminary site plans, floor plans)
- Selection
 - Targeting lower incomes
 - Development location
 - Amenities
 - Development cost efficiency

Mr. Beavers said compliance is administered by OFHA and the Affordable Housing Tax Credits Program is one of the most closely regulated provisions within the tax code. Tax credit apartments or housing must be rented to persons earning no more than 60% of the area median income and restricted rents are enforced for a minimum of 30 years. OHFA monitors tax credit developments regularly during the 30-year affordability period for compliance with stringent income, rent, and physical condition requirements. OHFA must report non-compliance to the Internal Revenue Service who can recapture tax credits from non-compliant owners. All developments are monitored a minimum of one every three years by OHFA's compliance staff. The private sector discipline imposed

Item 1, continued:

on tax credits developments, from initial site selection through years of upkeep and compliance under threat of severe tax penalty is an unprecedented departure from all previous federal housing programs. This is a key element in the success of the OHFA Program.

Councilmember Schueler said if the City of Norman purchases property for affordable housing, should the City partner with developers or agencies who are experienced with using Tax Credits for affordable housing and Mr. Beavers felt that would be the best option for the City. He said the application process is very complex and rules on how to use the money must be stringently followed.

Mr. Pyle said the City could use American Rescue Plan Act (ARPA) funds to acquire property for affordable housing and potentially have the property zoned, etc., while working with an experienced developer regarding types of structures.

Councilmember Schueler asked how the City could leverage ARPA funds in conjunction with Tax Credits and Mr. Anthony Francisco, Director of Finance, said that would need to be a separate conversation with the Legal Department.

Items submitted for the record

1. PowerPoint presentation entitled, "Affordable Housing Tax Credits," presented by Darrell Beavers, Housing Development Director, Oklahoma Housing Finance Agency

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2. DISCUSSION REGARDING A CONTRACT WITH BLUE PEAK TO PROVIDE VIDEO SERVICES TO CITIZENS OF NORMAN USING THE CITY OF NORMAN'S RIGHTS-OF-WAY.

Ms. Heather Poole, Assistant City Attorney, said Blue Peak/Clarity Video Services (Blue Peak) approached Staff regarding a franchise agreement similar to those implemented in other cities. She said by Oklahoma Statute, utility franchise agreements must be voted on by residents, are usually for longer terms than licensing or right-of-way agreements, and are non-exclusive except for utilities granted regional coverage by statute. Norman's other cable television agreements have "favored nation" clauses and Cox, AT&T, etc., want a level playing field.

Ms. Poole said video and broadband agreements require no public election and allow licenses for access to rights-of-way for purposes of providing cable services for video programming and internet. These agreements are also non-exclusive. Video programming, including cable services, is provided through wireline facilities located at least in part in the rights-of-way without regard to the delivery technology, including internet protocol. The franchise agreement proposed by Blue Peak does not include video programming provided by mobile service providers and does not include access to content, information, electronic mail, messaging, or other services offered over the internet.

Item 2, continued:

Ms. Poole said there is an overlap of State, Federal, and local law. The Federal Communications Commission (FCC) historically provided broad guidelines and regulations for cable television service, with an emphasis on local regulatory control. The Oklahoma Constitution prevents a municipality from granting a franchise without the approval of a majority of the qualified electors residing within the municipality. The City of Norman provides a license for streaming services and other programming that allows installation of cable/fiber and other infrastructure. The City provides similar terms for all such providers within the city limits.

The City can charge up to 5% of the gross revenues as payment for access to the rights-of-way and request up to six channels for governmental programming, which is programming provided by the governmental or educational entity. The streaming or video provider does not have to provide programming services.

The Oklahoma Statute 11 O.S. § 22-107.1 (B) states, "No municipality shall grant any overlapping certificate, license, permit, or franchise for cable television service within its jurisdiction on terms or conditions more favorable or less burdensome than those in any existing certificate, license, permit, or franchise within such municipality."

Ms. Poole said there has been an increase in cable television competition, i.e., AT&T (DirectTV), Dish Network, and EchoStar, as well as a shifting regulatory landscape. She said recent FCC orders and opinions indicate a trend toward increased competition and decreased local regulation. On October 31, 2007, the FCC banned exclusivity clauses in apartment complexes and on December 20, 2006, the FCC passed a law preventing municipalities from unreasonably refusing to award competitive franchises.

Federal law prohibits a municipality from unreasonably refusing to grant a competitive franchise while the Oklahoma Constitution requires a municipality to deny a franchise if the voters disapprove the franchise for any reason; however, the Oklahoma Constitution is pre-empted by federal law to the extent it conditions the renewal of a cable franchise upon a vote of the electors of a municipality.

The Oklahoma Constitution grants telephone companies statewide authority to construct and operate lines to provide their services and telephone companies are not required to obtain municipal franchise agreements prior to using telephone lines to provide television service.

Ms. Poole highlighted current franchise agreements and said the AT&T franchise agreement is a five-year contract with a 5% fee and has capacity for six Public, Educational, and Governmental (PEG) channels, no production of City meetings, no public access channel, and no reporting requirements. The Cox franchise agreement is a five-year fee and has capacity for five PEG channels, no production of City meetings/events, and the City is responsible for infrastructure to provide programming for any public channel.

Blue Peak offers to provide access channels comparable to other agreements and the same percentage of profits as other agreements with same definition of gross profits. Blue Peak agrees not to limit access to services within its service area and to charge the same rates to all subscribers.

Item 2, continued:

Councilmember Holman asked if Blue Peak would be under the same restrictions as small cell service and Ms. Kathryn Walker, City Attorney, said no, small cell service has entirely different restrictions than video/cable services. She said there will be oversight by the City on the installation of fiber.

Items submitted for the record

1. PowerPoint presentation entitled, "Blue Creek/Clarity Video Services Agreement," dated December 6, 2022

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ADJOURNMENT

The meeting was adjourned at 6:51 p.m.

ATTEST:

City Clerk

Mayor