

# Memorandum



CITY OF DALLAS

DATE February 9, 2024

TO Honorable Mayor and Members of the City Council

SUBJECT **Development Programs Update and Proposed Policy Amendments**

The purpose of this memorandum is to summarize feedback received from the development community on the development programs and to provide proposed policy amendments on recommended solutions.

The following updates have been provided to-date see attached:

- November 14, 2023, briefing to the Housing and Homelessness Solutions Committee (HHSC) (Exhibit 1)
- December 8, 2023, City Manager's Friday Memo (Exhibit 2);
- January 22, 2024, HHSC briefing on challenges facing two developer programs administered by Housing: 1) the Land Transfer Program (LTP), and 2) the Single-Family Homeownership Development Requirements Program (SFHDR)(Exhibit 3).

The areas of the Development Policy that have received feedback are as follows:

## **A. Land Transfer Program (LTP)**

The Dallas Housing Policy 2033 (DHP33) and the Dallas Housing Resource Catalog (DHRC), which set forth the City's housing programs, authorize the sale of surplus lots (subject to Texas Local Government Code, Section 272.001(g)) or tax-foreclosed lots (subject to Texas Tax Code, Section 34.051) to qualified developers through the LTP. The sale of land transfer lots to qualified developers facilitates the construction of affordable housing units for low- and moderate-income households (as well as targeted commercial uses).

### **1. Barriers with Land Transfer Program and Dallas Homebuyer Assistance Program Conflicting Deed Restrictions**

Federal requirements prohibit both resale and recapture deed restrictions on the same property. A conflict arises when a qualified homebuyer in the LTP program, which requires resale deed restrictions, is also a Dallas Homebuyer Assistance Program (DHAP) participant, which requires recapture deed restrictions. Currently, developers who purchased LTP lots to construct homes for sale to low- to moderate-income homebuyers needing DHAP assistance are unable to close on the sales.

### **1. Recommended Solution**

A proposed policy amendment to address the barriers with LTP and DHAP deed restrictions that authorizes 1) the release of Land Transfer Program deed

restrictions when qualified homebuyers are also DHAP participants, and 2) impose the more stringent federally required DHAP deed restrictions on the property.

## **2. Land Transfer Program Right of Reverter**

The reverter discourages lenders from participating in the program fearing the reverter can occur during construction. The sale of land transfer lots to qualified contractors/developers facilitates the construction of affordable housing units for low- and moderate- income households, as well as targeted commercial uses. Pursuant to applicable law, Housing sells the property subject to a right of reverter. The reverter allows the property to revert back to Housing's inventory when the builder does not meet the terms of the LTP deed restrictions.

## **2. Recommended Solution**

We have researched the Right of Reverter release, but are not prepared to present a proposed solution at this time. This item is for information only.

## **3. Land Transfer and Land Bank Programs with DHAP Underwriting Guidelines**

The DHAP underwriting guidelines are overly stringent hindering sales for non-federally funded projects. The underwriting guidelines were designed to ensure long- term sustainable homeownership for buyers which cover the 1) maximum sales price, 2) household income eligibility determination for maximum AMI (120% AMI for Land Transfer and 115% AMI for Land Bank), 3) minimum contribution of \$1,000, 4) ability to obtain mortgage loan reflecting a mortgage payment does not exceed 35% of monthly income (front-end ratio) and total debt burden does not exceed 45% of monthly income (back-end ratio), 5) complete pre-purchase homeownership counseling, and 6) obtain a mortgage loan that meets applicable requirements.

## **3. Recommended Solution**

A proposed policy amendment to address the barriers with Land Transfer, Land Bank and DHAP underwriting guidelines will include amending the program statements for both Land Transfer and Land Bank to state 1) if no direct homebuyer assistance is being provided, the buyer )will only be required to meet the required AMI band based on verification of household income, obtain proof of mortgage approval from a reputable lender, and will use home as primary residence, and 2) if a qualified homebuyer receives direct homebuyer subsidy through DHAP or other assistance program, all Homebuyer Underwriting Guidelines must be met by the homebuyer.

## **B. Single Family Homeownership Development Requirements Program (SFHDR)**

Under the Dallas Housing Policy 2033 (DHP33) and Dallas Housing Resource Catalog (DHRC), the SFHDR provides gap financing to developers constructing single-family homes through a competitive Notice of Funding Availability (NOFA) process. Gap financing is provided in the form of a repayable loan with a maximum term of two years. The repayable loan is repaid on a pro-rata amount as each home is sold limited to net sales proceeds to a low- to moderate-income homebuyer.

### **4. Barriers to SFHDR**

The current challenge under the SFHDR with the repayable loan creates a financial burden on developers when providing affordable homes to households ranging from 60%-80% Area Median Income (AMI). Current non-profit and for-profit developers utilizing the SFHDR or NOFA funds for developer subsidy, to construct and develop single-family housing options, have expressed the financial burden on their proformas when required to repay a pro-rata share of the developer subsidy at the time each home is sold to an eligible homebuyer. Additionally, Builders of Hope Community Development Corporation, a certified Community Housing Development Organization, has already closed two transactions whereby repayments totaling \$86,000.00 were made to the City at the time of closing as required per the DHRC. Developers have informed us about the current market conditions such as increased costs, interest rates, and lot development costs over the past three years that have created undue hardships on their bottom line resulting in their inability to provide affordable single-family housing options to families at the 60-80% AMI range in addition to the required repayment of City funds at each closing.

### **4. Recommended Solution**

A proposed policy amendment under the Single-Family Homeownership Development Program to change the repayment terms to a forgivable loan rather than a repayable loan to non-profit single-family developers with current development projects underway and for future projects.

Per the recent discussion at the January 22, 2024 HHSC meeting, proposed policy amendments addressing all changes discussed in this memo will be considered as upcoming agenda items on February 14, 2024, to authorize a proposed amendment to the Dallas Housing Resource Catalog and the applicable program statements.

Should you have any questions or require any additional information, please contact me or Cynthia Rogers-Ellickson, Interim Director, Department of Housing & Neighborhood Revitalization at [cynthia.rogersellic@dallas.gov](mailto:cynthia.rogersellic@dallas.gov) or 214-670-3601

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**Majed A. Al-Ghafry, P.E.**  
**Assistant City Manager**

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| T.C. Broadnax, City Manager                 | M. Elizabeth (Liz) Cedillo-Pereira, Assistant City Manager |
| Tammy Palomino, City Attorney               | Dr. Robert Perez, Assistant City Manager                   |
| Mark Swann, City Auditor                    | Carl Simpson, Assistant City Manager                       |
| Biliera Johnson, City Secretary             | Jack Ireland, Chief Financial Officer                      |
| Preston Robinson, Administrative Judge      | Genesis D. Gavino, Chief of Staff to the City Manager      |
| Kimberly Bizer Tolbert, Deputy City Manager | Directors and Assistant Directors                          |
| Jon Fortune, Deputy City Manager            |  |



**City of Dallas**

# **Update on Development Programs**

**Housing and Homelessness Solutions  
Committee  
November 14, 2023**

Darwin Wade, Assistant Director  
Department of Housing & Neighborhood Revitalization  
City of Dallas

# Presentation Overview



- Purpose
- Background/History
- Development Programs
  - Single-Family Homeownership Development Requirements
  - Land Transfer Program
- Operational Challenges
- Next Steps



# Purpose



- Provide an introductory briefing
- Solicit feedback and direction
- Discuss next steps



# Background/History



- On May 9, 2018, City Council authorized the adoption of the Comprehensive Housing Policy (CHP) by Resolution No. 18-0704
  - Single-Family Homeownership Development Requirements
  - Land Transfer Program
- Authorized multiple amendments to the CHP since its inception





# Background/History (Continued)



- On August 7, 2020, staff issued a Notice of Funding Availability (NOFA) for gap financing in the form of repayable loan support acquisition and rehabilitation of affordable housing units
- On April 12, 2023, City Council adopted the Dallas Housing Policy 2033 (DHP33) to replace the CHP by Resolution No. 23-0443 and the Dallas Housing Resource Catalog to include approved programs by Resolution No. 23-0444



# Single-Family Homeownership Development Requirements



- Funds developers of affordable single-family homebuyer units, including for-profit developers, non-profit developers, and City of Dallas-designated Community Housing Development Organizations (CHDOs)
- Require new construction of a minimum of 1,200 square feet, at least 3 bedrooms, 1.5 baths
- Award funds through a competitive Notice of Funding Availability (NOFA) in accordance with scoring criteria



# Single-Family Homeownership Development Requirements (Continued)



- Loan Types and Terms
  - Provided in the form of a repayable loan
  - No grants awarded
  - Loans may be used for acquisition and construction financing
  - Maximum term of 2 years
  - Repayable in full upon sale, refinancing, or transfer of the property except that payment will be limited to the net proceeds of a City of Dallas-approved sale to a low-income buyer



# Single-Family Homeownership Development Requirements (Continued)



- Net sales proceeds will exclude any portion of the sale proceeds used to repay senior construction debt, developer equity, approved sales costs, and any HOME-assistance to the buyer at closing as direct homebuyer assistance
- Secured with promissory note, mortgage, and liens
- Allow for a percentage of proceeds to be retained by the City-designated CHDO



# Land Transfer Program



- Incentivize 1) development of quality, sustainable housing that is affordable to Dallas residents, and 2) development of other uses that complement the City's DHP33, economic development policy, or redevelopment policy.
- Authorizes the City to sell qualifying city-owned real property and resell tax foreclosed real property to for-profit, non-profit and/or religious organizations in a direct sale at less than fair market value of the land; consistent with authorizing state statute or city ordinance.
- The sale of real property pursuant to the Land Transfer Program will enable the City to facilitate the development of housing units that will be offered for sale, lease or lease-purchase to low- and moderate-income households and, on appropriate parcels of land, enable the City to facilitate the development of commercial uses such as neighborhood retail.



# Land Transfer Program (Continued)



- Tax foreclosed property is sold at \$1,000 for the first 7500 SF of the lot size, plus \$0.133 per SF for lots exceeding 7500 SF
- Surplus property is sold at Comparative Market Value (CMV), qualifying developers may demonstrate through a proforma that a discount is necessary
- Participating developers should complete construction and sale of each affordable housing unit to an income eligible homebuyer within 2 years from the date of acquisition
- Targeted income of eligible homebuyers include households earning between 61%-120% of Area Median Income
- Developers of for-sale housing units may only sell to homebuyers who meet the eligibility criteria set forth in the Dallas Homebuyer Assistance Program (DHAP), or other successor program



# Land Transfer Program (Continued)



Type	Term of Affordability	Activity	Enforcement
Homeownership	5 years	Transfer from developer to homebuyer	Deed Restrictions and Right of Reverter
Rental and Commercial uses	20 years	Date the first unit is occupied by an eligible tenant	Deed Restrictions and Right of Reverter
Lease-purchase	Negotiated	Negotiated on case-by-case basis in accordance with goals of Program	Deed Restrictions and Right of Reverter



# Operational Challenges for Development Programs



Program	Factors	Challenges
Single Family Homeownership Development Program	<p>Repayment of developer subsidy</p> <p>Example: City awards \$880,000 to certified non-profit Community Housing Development Organization in the form of a repayable loan using HOME funds to construction 20 single-family homeownership homes to low-income families.</p> <p>\$880,000/20 homes = \$44,000 in developer subsidy for each home Liens are filed and promissory note is signed for the total amount at contract signing</p> <p>As each home is sold, a repayment of \$44,000 is payable to the City</p>	<p>Developers both non-profit and for-profit are required to repay City's construction subsidy pro-rata amount as each home is sold from sales proceeds</p> <p>Creates financial burden on single-family developers' proforma resulting in project not financially feasible</p>





# Operational Challenges for Development Programs (Continued)



Program	Factors	Challenges
Land Transfer Program	Affordability Requirements	1) Deed restrictions are imposed by the City to ensure long-term affordability of homes occupied by low-mod households (resale provisions), 2) Conflicts with Dallas Homebuyer's Assistance Program deed restrictions based on the amount of subsidy provided to buyer (recapture provisions)
	LTP Resale provisions/ DHAP Recapture provisions	1) HUD does not allow resale and recapture on same property, 2) City is required to select one based on HUD Con Plan and its recapture.
	Releasing right of reverter and LTP deed restrictions upon sale to qualified homebuyer and imposing DHAP recapture deed restrictions	Land Transfer Program Statement in DHP33 lacks explicit authority for release of right of reverter and deed restrictions for LTP and under what conditions



# Operational Challenges for Development Programs (Continued)



Program	Factors	Challenges
Land Transfer	LTP home sales to income eligible homebuyers using DHAP	1) Homebuyers and developers are affected if they can not utilize the DHAP assistance with the home purchase due to issue with resale and recapture provisions, and 2) Increasing backlog of prospective homebuyers waiting



# Next Steps



Activity	Date
Solicit and compile feedback from HHS Committee	November 14
HHS Committee December briefing on updates feedback	December 12
Development updates and feedback in Friday Memo	January 2024
HHS Committee February briefing on Development changes	February TBD
Development updates action item on City Council agenda	March TBD





**City of Dallas**

# **Update on Development Programs**

**Housing and Homelessness Solutions  
Committee  
November 14, 2023**

Darwin Wade, Assistant Director  
Department of Housing & Neighborhood Revitalization  
City of Dallas

## Land Transfer Program Pillars 1, 2, 6, 7

Added May 22, 2019 by Resolution No. 19-0824

The purpose of this Land Transfer Program (the “Program”) is to incentivize: (1) the development of quality, sustainable housing that is affordable to the residents of the City and (2) the development of other uses that complement the City’s Comprehensive Housing Policy, economic development policy, or redevelopment policy. Specifically, this Program authorizes the City to sell qualifying city-owned real property and resell tax-foreclosed real property to for-profit, non-profit and/or religious organizations in a direct sale at less than fair market value of the land, consistent with the authorizing state statute or city ordinance.

The sale of real property pursuant to the Land Transfer Program will enable the City to facilitate the development of housing units that will be offered for sale, lease or lease-purchase to low- and moderate-income households and, on appropriate parcels of land, enable the City to facilitate the development of commercial uses such as neighborhood retail.

### **Consistency with City’s Affordable Housing Development Goals**

The operation of the Land Transfer Program shall align with the City’s existing affordable housing production goals as outlined in the adopted Comprehensive Housing Policy. The portfolio of real property sold under this Program shall be developed to serve the range of income bands as well as the percentage of each income band identified in the production goals of the Comprehensive Housing Policy.

When seeking City Council approval to sell a parcel or parcels of real property pursuant to this Program, staff must identify the proposed developer, indicate the income band for which the parcel(s) of real property is reserved, and provide the City Council with a map depicting the location of the real property that contains the current Market Value Analysis (MVA) and Racially and Ethnically Concentrated Areas of Poverty (R/ECAP) data layers, if such layers exist. The map must also depict the location of all parcels of real property previously sold to the proposed developer pursuant to this Program or any other City affordable housing program in the past two years and the income bands for which each parcel of real property was reserved.

On an annual basis, the Housing and Neighborhood Revitalization Department, or its successor department, shall brief the appropriate City Council committee regarding the year-to-date production data for the Program.

### **Consistency with Fair Housing Laws**

On an annual basis, the Land Transfer Program will be reviewed by the Office of Equity and Human Rights, or its successor department, to ensure that the Program is being operated in a manner that is consistent with fair housing laws. The City will collect and maintain data regarding the location of parcels of real property sold via the Program and demographic information regarding the eligible households who occupy housing units developed pursuant to the Program.

### **Application Process for Submitting a Proposal to Purchase Parcels of Real Property**

The City will create, and will periodically update, an application that is consistent with this Program and the authorizing state statute or city ordinance to be used by developers who are interested in purchasing real property pursuant to the Land Transfer Program. The City may accept proposals to purchase lots on a rolling basis or may solicit purchase proposals through a competitive solicitation process. Only proposals that meet or exceed the minimum developer and project

eligibility criteria will be referred to the appropriate City Council Committee for approval. City Council must approve all sale of real property through the Land Transfer Program.

Each purchase of real property must clarify which Texas statute it is operating under.

	Type of Property	Type of Developer	Uses term low/mod income	Defines targeted incomes	Type of Development Allowed	Add'l state statutory requirements
DCC 2-26 (aka HB 110)	Tax-foreclosed or seized	Nonprofit	Low-income	80% AMFI or below	Affordable housing	Enabling Statute: TLGC 253.010
TLGC 253.010	Any land acquired by municipality	Non-profit and religious organizations	Low-income	Municipality may determine; Should consider AMFI	Affordable housing or a use approved in a written agreement with City	
TLGC 272.001(g)	Any city-owned land except land acquired by condemnation	No limitation	Low- and Mod-income	No	Low- and moderate income housing	
TPTC 34.051	Tax-foreclosed land	No limitation	Primarily Low- and Mod- income	No	A purpose consistent with City urban redevelopment or affordable housing plan	Interlocal agreement among taxing entities; land must be vacant/distressed & tax-delinquent 6+ years

### Developer Eligibility Criteria

To be eligible to purchase real property pursuant to the Land Transfer Program, a developer must meet all the following criteria, unless the land is sold pursuant to Dallas City Code Section 2-26.4:

- Developer may be an individual, or may be organized as a corporation, partnership, joint venture or other legal entity, regardless of whether developer is a for-profit, non-profit, or religious organization.
- Developer must be in good standing with the State of Texas and the City, including that the City has not issued a charge against the developer for violating Chapter 20A of the Dallas City Code or Chapter 46 of the Dallas City Code within the past 5 years, may not be debarred under the federal System for Award Management (SAM), may not have uncured violations of Chapter 27 of the Dallas City Code for which it has received notice, may not be indebted to the City or delinquent in any payment owed to the City under a contract or other legal obligation, and must be current on payment of taxes and liens owed to any other affected taxing unit under the Texas Property Tax Code.
- If developer seeks to purchase two or more parcels of real property for the purpose of constructing housing units, developer must have constructed one or more housing units within the three-year period preceding the submission of the proposal to acquire the parcels of real property via the Program. If developer seeks to purchase one or more parcels of real property for the purpose of developing a multifamily or commercial use, developer must demonstrate that it has developed at least one comparable use within the three-year period preceding the submission of the proposal to acquire the parcel of real property via the Program.
- Developer must submit a development plan for all parcels of real property developer seeks to acquire via the Program.
- Developer must demonstrate that it has the financial capacity and staffing/sub-contractor capacity to develop and complete the sale, lease, or lease-purchase, within a two-year period, of its inventory of parcels of real property acquired through the Program. The City Manager or his/her designee may grant up to one, one-year extension of any deadlines in

the development agreement. Any additional extensions of the development agreement must be approved by City Council.

Staff may impose additional eligibility criteria that are consistent with this Program, state statute and city ordinance. If land is sold pursuant to Dallas City Code Section 2-26.4, developer must comply with the eligibility criteria set forth in the ordinance.

### **Project Eligibility Criteria**

To be eligible to purchase real property pursuant to the Land Transfer Program, the proposed project must meet all the following criteria, unless the land is sold pursuant to Dallas City Code Section 2-26.4:

- Parcels of real property must be developed with: (1) a housing unit or units that are offered for sale, lease or lease-purchase, or (2) a commercial use that will complement the City's Comprehensive Housing Policy, economic development policy, or redevelopment policy.
- Housing units developed on the parcels of real property may only be sold, leased, or offered as a lease-purchase to households whose incomes are within the income bands prioritized by the adopted Comprehensive Housing Policy.
- Housing units developed on the parcels of real property may be either a single family, duplex, or multi-family housing use.

Staff may impose additional eligibility criteria that are consistent with this Program, state statute and city ordinance. If land is sold pursuant to Dallas City Code Section 2-26.4, the project must comply with the eligibility criteria set forth in the ordinance.

### **Identification of Eligible Households, Affirmative Fair Housing Marketing and Other Policies**

Developers of for-sale housing units must comply with all the terms of the Mixed Income Housing Program as set forth in Chapter 20A of the Dallas City Code, as amended, if applicable. Developers of for-sale housing units may only sell to homebuyers who meet the eligibility criteria set forth in the City of Dallas Homebuyer Assistance Program (DHAP), or a successor program.

Developers of rental housing or lease-purchase units must comply with all the terms of the Mixed Income Housing Program as set forth in Chapter 20A of the Dallas City Code, as amended, if applicable. Such exemptions will be clearly set forth in the development agreement.

### **Sales Price of Parcels of Real Property Sold via the Land Transfer Program**

City-owned real property: Properties will be initially offered at fair market value ("FMV"), as determined by a comparative market analysis. A discount will be available if project underwriting indicates that the discount is needed either to ensure the viable sale, lease or lease-purchase to an income-qualified buyer or the viable development of a commercial use. The discount is subject to City Council approval.

Tax-foreclosed real property: A fixed price of \$1,000 for up to 7,500 square feet of land purchased under a single proposal, plus \$0.133 for each additional square foot of land purchased under the proposal. If land is sold pursuant to Dallas City Code Section 2-26.4, the sales price set forth in the ordinance applies.

### **Sales Price of For-Sale Housing Units Developed via the Land Transfer Program**

For-sale units produced under the Land Transfer Program must be sold at the fair market value as determined by an "as-completed" or "subject to completion" appraisal completed by an

independent state-licensed appraiser. However, the terms of the development agreement for each parcel of real property purchased pursuant to the Program will include any seller-discount that must be provided to the eligible purchaser so that the amount paid by the eligible purchaser is affordable based on their income.

### **Rental Rates for Rental Housing Units Developed via the Land Transfer Program**

Rental units produced under the Land Transfer Program must be leased at affordable rental rates in accordance with the approved development agreement and Chapter 20A of the Dallas City Code, as amended. If land is sold pursuant to Dallas City Code Section 2-26.4, the rental rates set forth in the ordinance applies.

### **Term of Affordability**

The term of affordability for for-sale housing units is 5 years from the filing date of the deed transferring the unit from developer to homebuyer.

The term of affordability for rental units and commercial uses is 20 years from the date that the first unit is occupied by an eligible tenant.

The term of affordability for lease-purchase units will be negotiated on a case-by-case basis in accordance with the goals of this Program.

If land is sold pursuant to Dallas City Code Section 2-26.4, the term of affordability set forth in the ordinance applies.

### **Deed Restrictions and Right of Reverter**

The City will impose restrictive covenants on all parcels of real property its sells pursuant to the Land Transfer Program. If land is sold pursuant to Dallas City Code Section 2-26.4, the deed restrictions and right of reverter requirements set forth in the ordinance applies.

The restrictive covenants will require the parcels of real property to be developed and maintained in accordance with the development agreement and all applicable city, state and federal laws. These restrictions will include that housing units developed on the parcels of real property be offered for sale, lease or lease-purchase to low- and moderate-income households and be occupied by low- and/or moderate-income households for the entire term of the affordability period.

Land acquired by a developer pursuant to the Land Transfer Program may revert to the City if the City Manager or his/her designee determines that the developer has:

- failed to take possession of the land within 90 calendar days after receiving the deed to the parcels of real property;
- failed to complete construction of all required housing units or other required development on the real property, or failed to ensure occupancy by eligible households within the development timeframe set forth in the development agreement;
- incurred a lien on the property because of violations of city ordinances and failed to fully pay off the lien within 180 days of the City's recording of the lien; or
- sold, conveyed, or transferred the land without the consent of the City.

Upon determination by the City Manager or his/her designee that a condition described above has occurred, the City Manager or his/her designee is authorized to execute an instrument, approved as to form by the City Attorney, exercising against the parcel of real property the City's



possibility of reverter with right to reentry. The City Manager or his/her designee shall file notice of the reverter and reentry of the land by the City in the real property records of the county in which the parcel of real property is located, which notice must specify the reason for the reverter and reentry. The City Manager or his/her designee shall provide a copy of the notice to the developer in person or by mailing the notice to the developer's post office address as shown on the tax rolls of the City or of the county in which the land is located.

#### **Release of Non-Tax Liens, Release of Restrictive Covenants and Right of Reverter**

Pursuant to this Program and contingent upon City Council approval, and in consideration for developer agreeing to construct affordable housing units or other approved uses on parcel(s) of real property, the City Manager or his/her designee is authorized to execute instruments, approved as to form by the City Attorney, releasing any non-tax City liens that may have been filed by the City during the City's ownership of the parcel(s) of real property.

Additionally, the City Manager or his/her designee is authorized to execute instruments, approved as to form by the City Attorney, releasing the City's possibility of reverter with right of reentry and terminating the restrictive covenants on the land upon compliance with all terms and conditions of the development agreement and this Program.

#### **Type of Transfer**

The City will transfer all City-owned parcels and resell all tax-foreclosed parcels via a deed without warranty, approved as to form by the City Attorney.

# Single Family Development Requirements/Underwriting

## A. Eligible Developer Applicants

The City of Dallas will fund developers of affordable single-family homebuyer units, including for-profit developers, non-profit developers, and City of Dallas-designated CHDOs, with City of Dallas HOME single-family development program funds. Developers must demonstrate the capacity and previous experience developing projects of the type presented in their proposals. Prior to committing funds, the City of Dallas will review the status of any organization seeking funds from the CHDO set-aside to ensure that it meets all HOME requirements and that it has sufficient staff and financial capacity to carry out the project.

### Project Location

Projects must be located within the city limits of Dallas.

### Project Types

Funds will be provided for new construction projects. In general, the City of Dallas will require that all homes constructed have a minimum square footage of 1,200 square ft, at least 3 bedrooms, and at least 1.5 bathrooms. RFPs issued by the City of Dallas may further specify or provide priority for eligible project types.

### Parameters of HOME Investment

Applications must include an investment of \$1,000 in HOME funds per HOME unit. In no case will the City of Dallas investment exceed the maximum HOME investment allowed under 24 CFR 92.250.

Additionally, for projects involving both City of Dallas other HOME funds, the combined HOME funding investment shall not exceed the total maximum HOME investment allowed under 24 CFR 92.250.

Typically, the City of Dallas will also establish a maximum cap on its investment in a single home. Such a limit will be based on the availability of funding and other City of Dallas priorities and will be addressed in any NOFA or Request for Applications (RFA) process issued by the City of Dallas.

## B. Eligible Costs

Costs funded with the City of Dallas HOME funds must be eligible according to HOME Final Rule 24 CFR 92.206. The following additional limitations also apply:

- HOME funds shall not be used for luxury improvements according to 24 CFR 92.205.
- Acquisition costs shall be supported by an independent appraisal of the property. Acquisition costs exceeding the appraised value of the property will be ineligible for HOME funding reimbursement.
- HOME funds shall not be used for non-residential accessory structures such as free-standing garages, carports, or storage structures. Applicants must delineate project costs in a manner that allows free-standing structures to be clearly paid for using other project funds.

### City of Dallas Eligible Project Soft Costs

The HOME program allows the City of Dallas to include, as project costs, its internal soft costs specifically attributable to a HOME project. These may include consulting, legal, inspection, and staff costs associated with reviewing, processing, and overseeing the award of funds to the project. Projects must provide budget allowances for “City of Dallas-Lender Due Diligence & Legal Costs” in the project’s sources and uses.

#### Cost Reasonableness

Per the requirements of 92.250(b) and 2 CFR 200 Subpart E (formerly known as OMB Circular A-87), all project costs must be reasonable, whether paid directly with HOME funds or not. The City of Dallas will review project costs, including hard and soft costs, to evaluate their reasonableness and may, at its option, require applicants to obtain additional quotes, bids, or estimates of costs.

#### Identity of Interest

Developers must disclose any identity of interest situations that may occur when contracting with related companies during either the development or ongoing operation of the project. City of Dallas staff must be allowed the opportunity to conduct a cost analysis to determine costs reasonableness. Applications may be determined ineligible if access is not granted or costs are determined to be unreasonable.

#### C. Property Standards

To meet both HOME regulations and City of Dallas goals, all HOME-funded projects must meet certain physical standards intended to provide quality affordable housing that is durable and energy efficient.

Construction must meet all local codes. The City of Dallas regularly adopts and enforces various codes from the International Code Council, as amended. Applicants are responsible for maintaining familiarity with the City’s adopted building codes available here:

[https://dallascityhall.com/departments/sustainabledevelopment/buildinginspection/Pages/construction\\_codes.aspx](https://dallascityhall.com/departments/sustainabledevelopment/buildinginspection/Pages/construction_codes.aspx)

All HOME projects must meet applicable Section 504/UFAS requirements. Pursuant to 24 CFR 8.29, single-family housing developed with Federal funds must be made accessible upon the request of the prospective buyer if the nature of the prospective occupant’s disability so requires. Developers must ensure that projects are designed in a way that can accommodate such a request. Should a prospective buyer request a modification to make a unit accessible, Developer must work with the homebuyer to provide the specific features that meet the need(s) of the prospective homebuyer or occupant. If the design features that are needed for the buyer are design features that are covered in UFAS, those features must comply with the UFAS standard. Developers shall be permitted to depart from the standard in order to have the homebuyer/occupant’s needs met.

Site shall be served by public sewer, public water, and public road. Sites should have ready access to recreational opportunities such as parks, playgrounds, etc., nearby shopping and services including transportation, grocery, banking, and medical facilities, and otherwise be located in neighborhoods that provide amenities that support residential development. The City of Dallas also generally prefers that sites have safe, walkable connections—including sidewalks—to the surrounding neighborhood.

Site shall be in a designated Fire District or served by a Fire Department.

Units must be equipped with the following appliances: Refrigerator, range/oven, dishwasher, and garbage disposal. Developers may also propose to include in-unit clothes washers and dryers, microwave/vent fan combination units, as appropriate. If the Energy Star program rates the type of appliances being installed, the developer must furnish the units with Energy Star rated appliances. Note however that not all appliances are rated by the Energy Star program.

#### D. Sales Price

The sales/purchase prices for homes developed under this program cannot exceed the HOME Homeownership Value Limits published by HUD in effect at the time of project commitment. The City of Dallas will identify the applicable limits in any NOFA or Request for Applications (RFA) process issued.

Units produced under the City of Dallas' single-family development program must be sold at the fair market value as determined by an "as-completed" or "subject to completion" appraisal completed by an independent state licensed appraiser. Developers shall submit such an appraisal prior to project commitment, and the City of Dallas may require an updated appraisal prior to construction completion if the appraisal is more than 9 months old at that point. Any reductions in list or sales price below the City of Dallas-approved appraised value must be approved in writing by the City of Dallas and will generally require updated market information.

#### E. Eligible Homebuyers

Homebuyers for units produced under the City of Dallas single-family development program must meet the income eligibility guidelines associated with the funding for the development.

#### F. Environmental Review Requirements

Federally-assisted projects are subject to a variety of environmental requirements. Developers should be familiar with these requirements and are strongly encouraged to discuss any questions they have with City of Dallas staff prior to entering into a purchase agreement or submitting an application.

All projects shall be implemented in accordance with environmental review regulations as defined 24 CFR Part 58.

The City of Dallas shall be responsible for conducting the environmental review and completing all necessary public notifications, and the request for release of funds (RROF) from HUD. The applicant is responsible for cooperating with the City of Dallas in the environmental review process and providing information necessary for the City of Dallas to fulfill its responsibilities under Part 58 and other applicable regulations.

Submitting an application for HOME funds triggers environmental review requirements under 24 CFR 58, including the National Environmental Policy Act (NEPA). Once an application for federal funds is submitted, a development proposal is now subject to the environmental review requirements and requires an environmental clearance and issuance of a Release of Funds (ROF) by the US Department of Housing and Urban Development.

Developers are prohibited from undertaking or committing or expending any funds to (including non-federal funds) any physical or choice-limiting actions on the site prior to an environmental clearance as required by Part 58. Physical and choice limiting actions include, but are not limited to, property acquisition, demolition, movement, rehabilitation, conversion, repair or construction. This prohibition applies regardless of whether federal or non-federal funds are used, and taking

a choice limiting action prior to completion of the required environmental clearance process will result in the denial of any HOME funds from the City of Dallas.

#### G. Other Federal Requirements

##### Nondiscrimination and Equal Opportunity

The following federal nondiscrimination and equal opportunity guidelines apply to all projects and affect both development and sales of assisted housing:

- The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 et seq.;
- Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107;
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d- 2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1;
- The Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146;
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title;
- Title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.; 24 CFR part 8; Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135;
- Executive Order 11246, as amended by Executive Orders 11375, [[Page 41]] 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966- 1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60;
- Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971- 1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and
- Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise). The nondiscrimination provisions of Section 282 of the National Affordable Housing Act of 1982.

##### Uniform Relocation Act (URA)

All projects fall under requirements of the URA. Any project resulting in permanent relocation/displacement of households will not be funded by the City of Dallas. Applicants must further document that any purchase of property meets the requirements of URA, including provision of notices to the seller identifying the transaction as a voluntary sale not under the threat of eminent domain. To ensure compliance with URA, applicants should consult the City of Dallas to understand the requirements of URA and reference the URA forms included in the RFP prior to submitting an application involving an occupied property.

##### Davis Bacon

Davis Bacon federal prevailing wage requirements shall apply to all projects with 12 or more units assisted with HOME funds.

## Excluded Parties

The City of Dallas will not fund projects owned, developed, or otherwise sponsored by any individual, corporation, or other entity that is suspended, debarred, or otherwise precluded from receiving federal awards. Nor may the developer contract with any other entity (including but not limited to builders/general contractors, property management companies, or other members of the development team) that are suspended, debarred, or otherwise so precluded. Similarly, the general contractor will be required to determine that subcontractors are not so precluded.

## H. Ongoing Project Requirements

### Deadlines

*Construction Start-* If construction is not started within 12 months of the date the City of Dallas commits funds to a project, the commitment will be subject to cancellation. If the project is cancelled as a result of failure to meet this deadline, the Developer must repay to the City of Dallas any HOME funds disbursed for the project.

*Completion Deadline-* Project completion occurs when construction is complete, all HOME funds have been disbursed by the City of Dallas and drawn from the US Treasury, title to the property has transferred to an eligible buyer, and required completion data has been entered in HUD's IDIS system. Project completion must occur within 2 years of the date of commitment of funds to the project. If the Developer fails to meet this 2-year deadline, it must repay to the City of Dallas any HOME funds disbursed for the project.

*Sales Deadline-* Pursuant to 24 CFR 92.254(a)(3), Developers must have a ratified sales contract with an eligible buyer for each HOME-funded unit within nine (9) months of completion of construction or the unsold units must be converted to rental housing or the project will be deemed ineligible and all HOME funds drawn must be repaid to HUD.

If a unit is unsold after six (6) months, the Developer must present an updated sales and marketing plan to the City of Dallas outlining steps being taken to identify buyers. At the City of Dallas option, the Developer may be required to i) take further steps--such as listing the home with a licensed realtor, adjusting the sales price, etc.—as the City of Dallas may require to facilitate the sale of the home or ii) to transfer title to the City of Dallas or to another entity selected by the City of Dallas that can otherwise identify buyers prior to the regulatory deadline.

At the City of Dallas option, if a unit remains unsold after nine (9) months, the developer shall be required i) to repay the entire HOME investment, including any City of Dallas project soft costs; ii) to convert the project to rental housing in accordance with 24 CFR 92.252; or iii) to transfer title to the City of Dallas or to another entity selected by the City of Dallas for conversion to rental housing.

Units converted to rental housing must be rented to eligible tenants in accordance with 24 CFR 92.252, which includes tenant income eligibility and rent limit requirements. Further, any units converted to rental properties shall be operated in compliance with the City of Dallas Rental Housing Program guidelines.

### Reporting and Record Keeping

To allow effective oversight of funded projects and document compliance with applicable HOME requirements, all projects must submit periodic reports to the City of Dallas. While this section outlines standard reporting requirements, the City of Dallas reserves the right to require additional reporting or to alter the reporting format or frequency based on future changes to HOME

requirements or City of Dallas policy. Additionally, the City of Dallas reserves the right to require additional or more frequent reporting for projects with compliance deficiencies.

- Developers are required to report monthly during the development phase and sales phase. During the construction phase, developers must provide monthly reports detailing construction progress and barriers to progress, copies of invoices being paid, and evidence of appropriate lien waivers.
  - During the sales phase, developers are required to provide monthly reports detailing the number of additional sales, total sales, and marketing activity. These reports are required until all units are sold.
  - The City of Dallas may require more frequent reporting due to findings identified during the development and sales phases.
  - At the City of Dallas option, Developers may be required to obtain and submit an audit of project costs (i.e. cost certification) prepared by an independent Certified Public Account.
  - Developers shall allow City of Dallas, HUD, State of Texas, the Comptroller General of the United States (aka the GAO), and all other pertinent Federal or State agencies or their designated representative the right to inspect records and property.
- Conflict of Interest

To comply with HOME requirements and to maintain a high standard of accountability to the public, conflicts of interest and perceived conflicts of interest must be avoided. Developers shall maintain compliance with all HUD conflict of interest provisions as stated in 92.356(f).

Developers with officers, employees, family members, consultants, or agents that are otherwise eligible to purchase HOME-funded units must receive waiver/approval from City of Dallas staff before entering into a sales agreement with HOME eligible employees. 92.356(f) provisions apply to all HOME projects.

## I. Structure of Transaction

### Loan Types and Terms

The City of Dallas will provide HOME funds in the form of a loan to the entity that owns the property. No grants will be awarded, and Funding commitments are not transferable without prior written City of Dallas approval.

The City of Dallas HOME Loan may be used for acquisition and construction financing. Proceeds of the HOME loan will only be released following satisfaction of all requirements outlined below.

In all cases, The HOME loan will:

- Have a maximum term of 2 years;
- Be repayable in full upon sale, refinancing, or transfer of the property or upon maturity, except that repayment will be limited to the net proceeds of a City of Dallas-approved sale to a low-income buyer. Net sales proceeds will exclude any portion of the sale proceeds used to repay senior construction debt, return of City of Dallas-recognized developer equity, approved sales costs, and any HOME-assistance transferred to the buyer(s) at closing as direct homebuyer assistance.; and
- Be secured with a promissory note, mortgage, and appropriate UCC liens. Mortgages will be recorded with the Dallas County Clerk and generally may be subordinate only to an approved amortizing first mortgage.

- Allow for a percentage of proceeds to be retained by the CHDO as CHDO proceeds (as outlined in 24 CFR 92.300 (a) (2)). On a project-by-project basis, CHDO may request to retain proceeds from a HOME-funded project for eligible activities provided the CHDO remains in good standing as a certified CHDO and complies with all contractual obligations as determined in the sole discretion of the City. All proceeds retained by a CHDO that are not used in accordance with the contract within two years after being generated must be returned to the City.

#### Guarantees

Unless otherwise determined by the City of Dallas, all underlying individuals, corporate entities, partnerships, or limited liability companies with an interest in the project will be required to provide a completion guarantee including provisions guaranteeing construction completion of the project. For nonprofit organizations, including community housing development organizations (CHDOs), a guarantee shall not be required, but in all cases the City of Dallas may require a performance bond or irrevocable letter of credit acceptable to the City of Dallas to ensure project completion.

#### HOME Agreement

In addition to any financing documents, developers of HOME-financed projects must sign a HOME agreement with the City of Dallas. The HOME agreement will identify requirements for compliance with the HOME regulations and the City of Dallas Single-Family Development Program requirements and will remain in effect in the event of any prepayment of the HOME loan.

#### J. Underwriting & Subsidy Layering Reviews

##### Market Demand

Developers must, as part of their application, provide evidence of sufficient demand for the proposed units. Developers shall provide information from the multiple listing service pertaining to recent sales in the neighborhood, average time on the market for recent sales, availability of other product and average “months of supply” currently available, and any known or planned projects.

Additionally, Developers must complete the HOME Sales and Marketing Plan, identifying among other items the profile of typical buyers, relationships with homeownership counseling agencies or other sources of buyer referrals, and plans for marketing the homes.

In some cases, the City of Dallas may only commit to a specific project (or may limit the number of projects under construction by a given developer) upon demonstration that a home has been pre-sold to an identified low-income buyer who has, at least, executed a reservation or initial purchase agreement with the Developer.

##### Project Underwriting

All HOME applications must include financial statements from all underlying owners and guarantors. Developers must have a net worth equal to 10% of the total development cost with net liquid assets equal to 3% of the total development cost.

Applicant must provide the amounts and terms for any other financing being provided to the project.

##### Proforma Requirements

The proforma must explicitly show:



- An itemized breakdown of development hard and soft costs by unit including any allowances for soft costs such as architectural fees, carrying costs, etc.
- The hard costs of any stand-alone accessory buildings, including free-standing garages, carports, or storage structures should be specifically itemized in the Development Sources and Uses so that the City of Dallas can complete preliminary HOME cost allocation calculations. (Stand-alone accessory structures like a detached garage may be included in the project but are not HOME-eligible and must be paid for with another funding source.)
- Costs and fees to be paid to the City of Dallas as permitted by the HOME program. The HOME program allows the City of Dallas to include, as project costs, its internal soft costs specifically attributable to the project. These may include consulting, legal, inspection, and staff costs associated with reviewing, processing, and monitoring award of funds to a project. The City of Dallas will notify Developers of the amounts to include in their Development Sources and Uses for City of Dallas-Lender Due Diligence & Legal Costs.
- Estimates of the sales transaction to an eligible homebuyer, including a calculation of the proposed buyer's ability to qualify for a mortgage meeting City of Dallas requirements, the anticipated need to provide direct HOME assistance (e.g. down payment and closing cost assistance) to the buyer, projected sales costs (e.g. realtor's commissions), and the distribution of sales proceeds (including toward repayment of private construction financing)

#### Cost Limitations

All project costs must be reasonable and customary. The City of Dallas reserves the right to review any line-item cost to ensure that total project costs are not excessive. Additionally, HOME projects will be subject to the following specific cost limitations:

- The maximum allowable developer fee is 15% of total development costs less the developer fee itself and seller's closing costs.
- Acquisition costs are limited to fair market value as determined by a third-party appraisal.
- Unless prior approval has been obtained from the City of Dallas. All project hard costs and all project professional fees should be the result of a competitive bidding process. While developers are not subject to federal procurement rules and may use less formal bid processes, the City of Dallas generally expects developers to seek multiple bids and identify the most advantageous bidder based on cost, track record, and other pertinent factors.

#### Other Funding Sources

Developers must disclose all other public and private sources or applications for funding with their initial HOME Single-Family Development application to the City of Dallas at the time of application and upon receiving any additional commitments of public source funding. The City of Dallas will conduct a subsidy layering review as part of the underwriting process for all projects. Using its underwriting criteria, the City of Dallas will assess the project and may require changes to the transaction to ensure that return to the owner/developer are not excessive. Changes may include a reduction in HOME funds awarded.

The City of Dallas will consider adjusting its underwriting in consultation with other public funders, if applicable, to the project. The City of Dallas retains, at its sole discretion, the power to decide whether to accept alternative standards.

#### K. Construction Process

#### City of Dallas Construction Inspections

The City of Dallas must be provided with copies of all contractor invoices and provided reasonable notice of monthly draw inspections during the construction period. City of Dallas staff will participate in all draw reviews whether or not the specific draw is being funded with HOME or other project funds and conduct inspections to ensure that the project is progressing and that work completed is consistent with all applicable HOME requirements.

#### Davis Bacon

When Davis Bacon applies to a project, the City of Dallas must be provided with compliance documentation throughout the construction period. Prior to commencing construction, the City of Dallas must approve current wage determinations applicable to the project. The contractor will be required to provide weekly payroll forms to the City of Dallas and allow access to the site and workers for the purpose of completing worker interviews.

#### Drawing City of Dallas HOME Funds

Proceeds of the HOME loan will only be released as reimbursement for eligible project costs following:

- Review and acceptance of appropriate source documentation by the City of Dallas including evidence of appropriate lien waivers and/or title endorsements.
- A determination by the City of Dallas that all HOME requirements pertaining to the development of the Project have been met, including but not limited to monitoring of Davis Bacon compliance.

For nonprofit developers, including CHDOs, the City of Dallas may release payment based upon outstanding invoices for costs incurred and work completed. In such cases, the City of Dallas reserves the right to disburse through a title company, directly to the vendor, or with two-party checks.

#### Project Closeout

Developers are required to submit homebuyer eligibility packets to the City for approval of the homebuyers. Data shall include elderly status, race, gender, female head of household, number of household members, and income.

The City of Dallas requires a copy of the final project sources and uses statement and, at the City of Dallas option, may require the submission of the project cost certification prepared by an independent Certified Public Accountant following completion of construction and payment of all development costs.

# Memorandum



CITY OF DALLAS

DATE December 8, 2023

TO Honorable Mayor and Members of the City Council

SUBJECT **Development Programs Update**

The Department of Housing & Neighborhood Revitalization (Housing) briefed the Housing and Homelessness Solutions Committee (HHSC) on November 14, 2023 on development program updates. The presentation highlighted current challenges facing two developer programs administered by Housing, 1) the Single-Family Homeownership Development Requirements Program (SFHDR) and, 2) the Land Transfer Program (LTP). The overall purpose of the introductory briefing was designed to solicit feedback and direction on the ongoing challenges.

Under the SFHDR, gap financing is provided to developers constructing single-family homes in the form of a repayable loan which is repaid on a pro-rata amount as each home is sold from sales proceeds. The current challenge under the SFHDR with the repayable loan creates a financial burden on developers when providing affordable homes to households ranging from 60%-80% Area Median Income (AMI). Under the LTP, City-owned lots are sold at below-market prices to developers to spur additional affordable housing. LTP lots are secured by deed restrictions to ensure long-term affordability of the homes occupied by low-income to moderate-income homebuyers which conflicts with the federal deed restriction requirements once a home is subsequently sold to an income-eligible homebuyer receiving homebuyer assistance through the Dallas Homebuyer Assistance Program (DHAP).

The purpose of this memo is to summarize the feedback received by the Committee and solicit any additional feedback from City Council Members as we determine next steps in this process to remove any barriers to single-family homeownership opportunities for Dallas residents.

During the discussion at the November Committee meeting staff was asked to look into alternative funding sources that are less restrictive than federal sources to assist in the development of single-family housing. Currently, Housing utilizes a plethora of funding sources in the Notice of Funding Available (NOFA) both federal and non-federal. Federal funding sources include Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), Community Development Block Grant Disaster Recovery (CDBG-DR), and Coronavirus State and Local Fiscal Recovery Funds through the American Rescue Plan Act (ARPA) to provide acquisition, rehabilitation, and construction of affordable housing projects. CDBG funds cannot be used for new construction but can be used for a variety of uses to include acquisition, rehabilitation, infrastructure improvements, neighborhood development, neighborhood facilities, and to expand economic opportunities for primarily low-income to moderate-income households. Utilizing all federal funds set aside in the NOFA for acquisition costs in development

projects and non-federal sources for other projects would restrict the funds needed by developers as deals are brought forth for gap financing for a variety of uses to include rehabilitation, vertical construction costs, and acquisition. The non-federal sources include the Mixed Income Housing Development Bonus Program Fee-in-lieu fund (MIDHB) and any future allocation of bond funds. These funds are less stringent than federal funds and can be used for a variety of uses to help produce more affordable and mixed-income housing opportunities.

Current non-profit and for-profit developers utilizing the SFHDR or NOFA funds for developer subsidy, to construct and develop single-family housing options, have expressed the financial burden on their proformas when required to repay a pro-rata share of the developer subsidy at the time each home is sold to an eligible homebuyer. Developers have informed us about the current market conditions such as increased costs, interest rates, and lot development costs over the past three years that have created undue hardships on their bottom line resulting in their inability to provide single-family housing options to families at the 60-80% AMI range in addition to the required repayment of City funds at each closing.

Additional discussions centered around the Land Transfer Program (LTP) five-year deed restrictions to ensure long-term affordability which will transfer from the developer to the low-income to moderate-income homebuyer upon closing. Should the eligible homebuyer utilize the DHAP program for homebuyer assistance to purchase the home, a DHAP deed restriction is required pursuant to HUD regulations for a specified period of time due to the amount of direct subsidy provided to the homebuyer. This conflict the with the LTP deed restrictions.

### **Recommended Solutions**

A potential resolution to this challenge as discussed during the meeting included the update to the Dallas Housing Resource Catalog changing terms for the Single-Family Homeownership Development Requirements Program to a forgivable loan rather than a repayable loan to non-profit and for-profit single-family homeownership developers with current development projects underway and future ones. This recommendation would require an amendment to the current program statement.

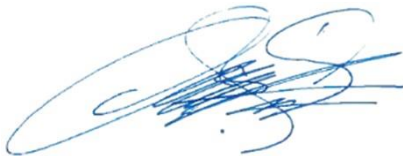
Currently, the Dallas Housing Resource Catalog LTP program statement is silent on the authority to release the LTP deed restriction when a developer sells a home to an income-eligible homebuyer as a potential resolution. A potential solution to this challenge would require an amendment to the LTP program statement to provide explicit authority for the release of the LTP deed restrictions and right of reverter upon the following conditions: 1) City will release the right of reverter upon build of an affordable unit and sale of property to qualified homebuyer in compliance with developer agreement, 2) for LTP properties that sell to qualified homebuyer participating in the Dallas Homebuyer Assistance Program (DHAP) or other program using federal dollars and having deed restrictions with recapture provisions, LTP deed restrictions will be released upon sale to the qualified

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SUBJECT **Programs Update 3 of 3**  
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homebuyer and DHAP or other program deed restrictions will recapture provisions will be placed on the property instead. The HUD minimum affordability period under the DHAP program is based on the amount of homebuyer assistance provided directly to the homebuyer. For example, less than \$15,000 in assistance requires a five-year deed restriction, \$15,000 to \$40,000 is 10 years, and any assistance more than \$40,000 requires a 15-year deed restriction to ensure long-term affordability. As a result of this recommended solution with replacing the LTP deed restriction with the DHAP recapture deed restriction for eligible homebuyers, the City has the option to enforce additional years on the affordability period to mitigate any risk ensuring any assisted homes remain affordable for a longer period of time under the DHAP recapture provisions.

We will continue to solicit any additional feedback and questions as we work to recommend workable policy solutions to these current challenges for both programs. Housing staff will present updates to any additional feedback at the HHS Committee meeting on January 22, 2024.

Should you have any questions or require any additional information, please contact Cynthia Rogers-Ellickson, Director (I), Department of Housing & Neighborhood Revitalization [cynthia.rogersellic@dallas.gov](mailto:cynthia.rogersellic@dallas.gov) or 214-670-3601.



Majed A. Al-Ghafry, P.E.  
Assistant City Manager

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| T.C. Broadnax, City Manager                 | M. Elizabeth (Liz) Cedillo-Pereira, Assistant City Manager |
| Tammy Palomino, City Attorney               | Dr. Robert Perez, Assistant City Manager                   |
| Mark Swann, City Auditor                    | Carl Simpson, Assistant City Manager                       |
| Biliera Johnson, City Secretary             | Jack Ireland, Chief Financial Officer                      |
| Preston Robinson, Administrative Judge      | Genesis D. Gavino, Chief of Staff to the City Manager      |
| Kimberly Bizer Tolbert, Deputy City Manager | Directors and Assistant Directors                          |
| Jon Fortune, Deputy City Manager            |  |

# Memorandum



CITY OF DALLAS

DATE January 22, 2024

Honorable Members of the City Council Housing and Homelessness Solutions  
TO Committee: Jesse Moreno (Chair), Cara Mendelsohn (Vice Chair), Zarin Gracey, Gay  
Donnell Willis, Chad West

SUBJECT **Development Programs Update**

The purpose of this memorandum is to summarize feedback received from the developer community on the development programs and to seek direction on recommended solutions. This update follows the November 14, 2023 briefing to the Housing and Homelessness Solutions Committee and the December 8 City Manager's Friday Memo on challenges facing two developer programs administered by Housing: 1) the Land Transfer Program (LTP), and 2) the Single Family Homeownership Development Requirements Program (SFHDR). Also, this update will summarize additional feedback received from developers affected by the Dallas Homebuyers Assistance Program (DHAP) underwriting guidelines (front-end and back-end ratios) required for homebuyers purchasing homes under Land Transfer and Land Bank Programs.

## **Land Transfer Program**

Under the current Dallas Housing Policy 2033 (DHP33) and the Dallas Housing Resource Catalog (DHRC), the LTP authorizes the City to sell City-owned lots and resell tax foreclosed lots to for-profit, non-profit and/or religious organizations at less than fair market value of the land consistent with authorizing state statute or City ordinance. The sale of property under the LTP helps the City facilitate the development of housing units offered for sale to low- and moderate-income households as well as commercial uses. Pursuant to the applicable state statute or ordinance, the City will impose restrictive covenants and right of reverter on all property sold under the program. Additionally, per the current policy, developers of for-sale housing units may only sell to homebuyers who meet the eligibility criteria set forth in the City of Dallas Homebuyer Assistance Program (DHAP), or a successor program. When homes are sold to eligible homebuyers, a five-year (resale) deed restriction and right of reverter is recorded on the property to ensure affordability requirements.

## **Barriers with LTP and DHAP Deed Restrictions**

The current DHRC is silent on the expressed authority to release the LTP deed restrictions when a developer builds and sells a home using LTP lots to an income eligible buyer who needs down payment and closing cost assistance. DHAP guidelines, per federal regulations imposed by the U.S. Department of Housing and Urban Development (HUD), require a (recapture) deed restriction be recorded on the property for a specified

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affordability period based on the amount of direct subsidy or homebuyer assistance provided to the homebuyer ranging from five to 15 years. The affordability period ensures the home remains affordable and sustainable for the homeowner. Federal requirements prohibit both resale and recapture deed restrictions on the same property which therein lies the conflict by which the DHRC does not address.

Currently, developers who purchased LTP lots to construct homes for sale to low- to moderate-income homebuyers utilizing DHAP assistance are not allowed to close on any homes until the policy is amended to address the conflict between the LTP resale deed restriction and the DHAP recapture deed restriction. Non-profit developers such as Notre Dame Place, Inc., (NDP), Builders of Hope Community Development Corporation (BOHCDC), Dallas Housing Foundation (DHF), and other for-profit developers are adversely affected by this issue. NDP currently has seven homes located in the Five Mile neighborhood area of Dallas either complete or nearly complete. BOHCDC has currently eight homes in West Dallas that are unable to close due to this conflict. DHF currently has four units under construction with an additional 6 units to start construction in the Jeffries Meyers neighborhood. Due to the severity of the issue, developers are faced with the increased security costs along with the risk of vandalism to homes left vacant for 60 or 90 days, increased interest expense on construction financing, and other holding costs pending a resolution to this issue.

Additionally, the impasse with the DHRC is potentially disastrous to current buyers under contract to purchase who do not have the financial resources needed for alternative living situations. Current homebuyers are unable to close on their homes resulting in increased costs due to having to find temporary living arrangements with family and/or other accommodations at their own expense. Other risk factors include expiration of mortgage prequalification and interest rate lock with lenders, the potential loss of earnest money deposits, and the cancellation of their purchase agreement by the seller. As a result of these challenges, many homebuyers are faced with the daunting and costly task of restarting the homebuying process to find another home at an affordable price point in a volatile interest rate environment.

### **Single Family Homeownership Development Requirements Program**

Under the DHP33 and DHRC, the SFHDR provides gap financing to developers constructing single-family homes through a competitive Notice of Funding Availability (NOFA) process. Gap financing is provided in the form of a repayable loan with a maximum term of two years. The repayable loan is repaid on a pro-rata amount as each home is sold limited to net sales proceeds to a low- to moderate-income homebuyer.

### **Barriers to SFHDR**

The current challenge under the SFHDR with the repayable loan creates a financial burden on developers when providing affordable homes to households ranging from 60%-80% Area Median Income (AMI). Current non-profit and for-profit developers utilizing the SFHDR or NOFA funds for developer subsidy, to construct and develop single-family

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housing options, have expressed the financial burden on their proformas when required to repay a pro-rata share of the developer subsidy at the time each home is sold to an eligible homebuyer. Additionally, BOHCDC, a certified Community Housing Development Organization, has already closed two transactions whereby repayments totaling \$86,000.00 were made to City at the time of closing as required per the DHRC. Developers have informed us about the current market conditions such as increased costs, interest rates, and lot development costs over the past three years that have created undue hardships on their bottom line resulting in their inability to provide single-family housing options to families at the 60-80% AMI range in addition to the required repayment of City funds at each closing.

### **Land Transfer and Land Bank Programs with DHAP underwriting**

Additional feedback has been received from developers participating in both Land Transfer, as described above, and Land Bank programs. Under the DHRC, the Dallas Housing and Acquisition Development Corporation (DHADC or Land Bank), a non-profit entity organized under the Texas Nonprofit Corporation Act, acts as a duly constituted instrumentality of the City of Dallas. The Land Bank: 1) provides safe, affordable housing for the benefit of low- and moderate-income persons, 2) promotes economic development, and 3) tasked with increasing the supply of new affordable housing for working individuals and families to attract and retain economic growth. The Land Bank as authorized by Chapter 379C of the Texas Local Government Code, acquires and transfers, at less than market value, tax foreclosed vacant or distressed properties pursuant to Section 34.051 of the Texas Property Tax Code.

Pursuant to the current DHRC policy governing both Land Transfer and Land Bank Programs, developers of for-sale housing units may only sell to homebuyers who meet eligibility criteria set forth in the City of Dallas Homebuyer Assistance Program utilizing the Homebuyer Underwriting Guidelines, or a successor program. The underwriting guidelines were designed to ensure long-term sustainable homeownership for buyers which cover the following: 1) maximum sales price, 2) household income eligibility determination for maximum AMI (120% AMI for Land Transfer and 115% AMI for Land Bank), 3) minimum contribution of \$1,000, 4) ability to obtain mortgage loan reflecting a mortgage payment does not exceed 35% of monthly income (front-end ratio) and total debt burden does not exceed 45% of monthly income (back-end ratio), 5) complete pre-purchase homeownership counseling, and 6) obtain a mortgage loan that meets applicable requirements.

### **Barriers with Land Transfer, Land Bank and DHAP underwriting guidelines**

The current challenges expressed by affected developers under both programs centers around the requirement as set forth in the DHRC requiring all homebuyers meet the DHAP Homebuyer Underwriting Guidelines whether or not the buyer receives any down payment assistance through the DHAP program. Per the underwriting guidelines, homebuyers are required to document citizenship, provide additional source documentation to certify income eligibility based on federal income determination



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guidelines as found in 24 CFR Part 5. Homebuyers who are under contract to purchase a home from a developer without any additional subsidy from the City are currently denied approval to purchase a home if they do not meet the DHAP Homebuyer Underwriting Guidelines e.g., front-end, and back-end ratios.

Several developers have informed us of the effects the underwriting guidelines have created in the current market with rising interest rates and the ability to qualify homebuyers at the lower 60%-80% AMI range when factoring in consumer debts. Over the past three months, Marcer Construction, a developer under both programs, has had six homes representing \$1.5M on the open market while accruing interest in the amount of \$12,000 monthly with no buyers meeting the underwriting guidelines resulting in denials. Marcer has informed us that over 30 plus buyers have been encountered but none would meet the current underwriting guidelines in this market. Many of the denied buyers include working families with such occupations as a Dallas ISD teacher and single mother, an accounting manager and single mother of two, security software professional and single mother to be, and a DART employee and father of three. All of these prospective homebuyers were denied due to the debt-to-income ratios.

### **Recommended Solutions**

A recommended solution to address the barriers with LTP and DHAP deed restrictions would require a policy amendment by the City Council to the DHRC LTP program statement providing explicit authority for the release of the LTP deed restrictions and right of reverter upon the following conditions: 1) City will release the right of reverter upon build of an affordable unit and sale of property to qualified homebuyer in compliance with developer agreement; and 2) for LTP properties that sell to qualified homebuyer participating in the DHAP program or other program using federal/non-federal dollars and having deed restrictions with recapture provisions, LTP deed restrictions will be released upon sale to the qualified homebuyer and DHAP or other program deed restrictions with recapture provisions will be placed on the property instead.

A potential recommendation under Single Family Homeownership Development Program is to seek Committee direction on changing the repayment terms to a forgivable loan rather than a repayable loan to non-profit and for-profit single-family developers with current development projects underway and going forward.

Potential proposed solutions to the barriers with Land Transfer, Land Bank and DHAP underwriting guidelines include amending the program statements for both Land Transfer and Land Bank to state: 1) if no direct homebuyer assistance is being provided the buyer will only be required to meet the required AMI band based on verification of household income, obtain proof of mortgage approval from a reputable lender, and will use home as primary residence; and 2) if a direct homebuyer subsidy is being provided to the homebuyer through DHAP or other assistance program, all Homebuyer Underwriting Guidelines must be met by the homebuyer.

DATE January 22, 2024

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Should you have any questions or require any additional information, please contact me or Cynthia Rogers-Ellickson, Interim Director, Department of Housing & Neighborhood Revitalization at [cynthia.rogersellick@dallas.gov](mailto:cynthia.rogersellick@dallas.gov) or 214-670-3601



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