Memorandum

CITY OF DALLAS

DATE November 16, 2018

TO Honorable Mayor and Members of the City Council

SUBJECT **November 28, 2018 Agenda Item #30 Regarding Proposed Amendments to the Comprehensive Housing Policy**

On November 28, 2018, City Council will vote on Agenda Item #30, to authorize certain amendments to the Comprehensive Housing Policy (Policy). This memorandum serves three purposes, to: (1) summarize the proposed amendments to the Policy that are included in Agenda Item #30, (2) distinguish these proposed amendments to the Policy from the one proposed amendment to the Policy considered and deferred by Council on October 24, 2018 and (3) respond to questions about the proposed amendments to the Policy posed by members of the Economic Development and Housing Committee (Committee) on November 5, 2018.

Summary of Proposed Amendments to the Comprehensive Housing Policy Included in Agenda Item #30

Background
On May 9, 2018, the Dallas City Council adopted a Comprehensive Housing Policy by Resolution No. 18-0704. The Policy created or amended program statements for the Dallas Homebuyer Assistance Program, the Home Improvement and Preservation Program and the New Development and Substantial Rehabilitation Program and set forth underwriting standards for reviewing both homeowner and rental housing development project proposals. These program statements contain detailed information related to applicant eligibility, terms of assistance, and credit standards, among other items. Likewise, the underwriting standards address an even wider range of topics including eligible costs, cost reasonableness, sales/rental price, environmental reviews, and other federal requirements applicable to housing developments that receive City of Dallas funding or support.

Over the past six months, staff have begun working with families, housing developers, and other stakeholders to implement the programs, tool and strategies outlined in the Policy and received feedback regarding the Policy during pre-proposal conferences for the NOFA and at Housing Policy Taskforce meetings. During this half-year implementation period, the Department of Housing and Neighborhood Revitalization (H&NR) developed a list of proposed amendments that, if adopted, will help staff better work to achieve the overarching goals of the Policy. The proposed amendments will: resolve inconsistencies in program requirements, correct items that were inadvertently included in or omitted from the Policy and modify requirements that have created programmatic constraints.

Inconsistencies in Program Requirements:

- The Policy contains inconsistencies regarding whether the Dallas Homebuyer Assistance Program (DHAP) will serve households earning as low as 40% of Area Median Income (AMI) or 60% of AMI. The proposed change resolves the inconsistency by stating that the lowest qualifying income is 60% AMI.

- The section of the current program statement for the DHAP related to assumption of the loan by income-qualified heirs states that if the heir(s) do not meet the income requirements of the program, the remaining balance of the loan is due immediately and payable in full if the loan is still within the period of affordability. Because the DHAP provides a deferred, zero percent interest (0%) loan, the "remaining balance" on the loan will always be the full loan amount. The requested change clarifies the terms of the program.

Inadvertent Additions and Omissions:

- The program statement for the Home Improvement and Preservation Program (HIPP) states that applicants who received a Major Systems Repair Loan in the last ten (10) years will be ineligible to participate in the HIPP. However, the HIPP program statement does not set a time period in which a homeowner who receives home repair/reconstruction assistance under newly-created City programs or received assistance under the old Home Reconstruction program is prohibited from applying for additional assistance. The proposed change resolves this omission by stating that, if an applicant's property was previously assisted with City funds and the project is still within the period of affordability, per the written agreement with the applicant, the applicant will not be eligible to receive funding for the same property.

- The Rental Development Underwriting standards include a maximum monetary limit for developer fees. The inclusion of this maximum monetary limit was an oversight. The underwriting standards already cap the developer fee at 15% of development costs, which provides a sufficient standard to ensure that the developer is not earning an excessive fee and is consistent with TDHCA underwriting standards. By removing the maximum monetary limit and requiring that the fee be "reasonable," staff believe they will have the necessary flexibility to evaluate and recommend funding for projects.

Programmatic Constraints:

- Both the DHAP and HIPP program statements contain credit standards stating that qualifying debt to income ratios for program participants are 30% on the front end and 43% on the back end. Over the course of the past six months, staff have screened and denied assistance to applicants whose debt to income ratios were slightly outside of the limits set forth in the Policy but who did not actually pose a greater credit risk due to the nature of their existing debt (i.e. a loan with a low-interest rate). Staff are requesting to be able to exercise a small amount of discretion when evaluating the nature of the debt carried by applicants and be allowed to qualify applicants who vary from the existing debt to income ratios so long as the variation is within 5 percentage points and where compensating factors exist. Staff will use this discretion on a limited basis to allow applicants who do not pose a greater credit risk to access the program.

- The DHAP program statement does not currently require an applicant to demonstrate that he or she has any cash reserves. Staff are proposing an amendment to the program statement that will require an applicant to demonstrate that she or he has at least two months of cash available and equal to applicant's projected monthly mortgage payment, including principal, interest, taxes, insurance, and any associated fees. A cash reserve requirement is a standard practice in the lending industry, it helps identify applicants who are most likely to be able to consistently pay their monthly housing payments, and it was standard practice within H&NR prior to the adoption of the Policy.

- The program statement for the New Construction and Substantial Rehabilitation Program contains standards related to the form of financial assistance that can be provided under the program and the repayment terms for the financial assistance. For both the form of financial assistance and the repayment terms, the program statement allows staff to elect to structure the financial assistance and the repayment terms in one of two ways; however, no such discretion is allowed where a project involves housing tax credits. Staff are requesting that the language related to housing tax credits be removed so that the financial underwrite of the project can guide staff in structuring the financial assistance and the repayment terms for projects, including those involving housing tax credits.

- The Policy contains several references to the Chief of Economic Development and Neighborhood Services. Staff are requesting to replace all such references with "the City Manager and/or his or her designee" so that administrative approvals authorized by the Policy can occur without being dependent upon the existence of a Chief of Economic Development and Neighborhood Services.

Distinction Between the Proposed Comprehensive Housing Policy Amendment Considered and Deferred by Council on October 24, 2018 and the Proposed Amendments to the Comprehensive Housing Policy Included in Agenda Item #30

On October 24, 2018 the City Council considered one proposed change to the Policy related to housing development projects that use Low Income Housing Tax Credits (LIHTC). Specifically, Council considered a proposal to amend the Policy for developers requiring Resolutions of Support or No Objection for multi-family rental housing development projects seeking Housing Tax Credits (HTC) through the Texas Department of Housing and Community Affairs (TDHCA) to allow the City Manager to publish a schedule each year, which may be amended from time to time, for issuing one or more Request for Applications for Resolutions of Support or No Objection and to brief the appropriate City Council Committee on the annual schedule. The City Council voted to defer the item for six months until the city manager:

1. Drafts recommendations regarding how to identify and evaluate rehabilitation of properties and to determine whether the rehabilitation affirmatively furthers fair housing;
2. Drafts recommendations regarding a schedule for accepting applications for resolutions of support or no objection for housing development projects seeking housing tax credits through the Texas Department of Housing and Community Affairs;
3. Engages the Housing Policy Taskforce to ensure that staff recommendations consider feedback from the development community and neighborhood stakeholders;
4. In the interim, regarding HUD-subsidized properties in substandard condition, aggressively petition HUD to issue findings that the private landlords are in default of any agreements with HUD so that portable vouchers are issued; and
5. After a period of time, if in the city manager's opinion the tactic discussed in item #4 is not working, the city manager activates the High Impact Landlord Initiative Program.

On November 5, 2018, H&NR briefed the Economic Development and Housing Committee (Committee) on the proposed amendments to the Policy that are summarized in the first section of this memorandum. In the briefing, H&NR also included the proposed amendment to the Policy that was considered and deferred by Council on October 24, 2018. However, H&NR has not included this proposed amendment in Agenda Item #30, as the Department is still in the process of completing the five action items mandated by Council in their vote on October 24, 2018 to defer the proposed amendment. Several efforts to comply with the action items are already underway, including a training course co-sponsored by H&NR, the Housing Policy Taskforce and the Texas Real Estate Council (TREC) titled "Housing Tax Credit 101 for Policymakers" that will occur on November 27, 2018 from 1:00-4:00 p.m. in the City Hall Auditorium.

Responses to Questions Posed on November 5, 2018 by Members of the Economic Development and Housing Committee

At the November 5, 2018 briefing of the Economic Development and Housing Committee, Committee members asked several questions that required more detailed follow-up. Below are answers to those questions.

Proposed Change to the Timetable for Issuing Requests for Applications for Resolutions of Support or No Objection

Question: Staff presented a proposal to modify the Policy for developers requiring Resolutions of Support or No Objection for multi-family rental housing development projects seeking Housing Tax Credits (HTC) through the Texas Department of Housing and Community Affairs (TDHCA) to allow the City Manager to publish a schedule each year, which may be amended from time to time, for issuing one or more Request for Applications (RFA) for Resolutions of Support or No Objection and to brief the appropriate City Council Committee on the annual schedule. A committee member asked for more information about how proposals submitted in response to such an RFA will be reviewed, including whether all proposals, regardless of score, will be subject to a fair housing review and how staff will decide whether a proposal is placed on a Council agenda.

Response: In December 2018, the City will issue an RFA for Resolutions of Support or No Objection. In the RFA, staff will describe the proposal-review process, including scoring, the fair housing review, and the circumstances under which a proposal will be placed on Council's agenda. Additionally, starting this month and continuing through early 2019, the Housing Policy Taskforce will hold a series of meetings to solicit and review feedback from stakeholders about the City's process for evaluating multi-family rental housing development projects seeking housing tax credits, including the timetable for soliciting such proposals. As the Taskforce meetings are scheduled, the Department of Housing and Neighborhood Revitalization will notify the City Council of the dates, times and locations of the Taskforce meetings.

<u>Proposed Change to the Credit Standards for the Dallas Homebuyer Assistance Program and Home Improvement and Preservation Program</u>

Question: Staff presented a proposal to modify both the Dallas Homebuyer Assistance Program (DHAP) and Home Improvement and Preservation Program (HIPP) program statements to allow staff to be able to exercise a small amount of discretion when evaluating the nature of the debt carried by applicants and be allowed to qualify applicants who vary from the existing debt to income ratios so long as the variation is within 5 percentage points and where compensating factors exist. Several committee members asked about the criteria staff use in evaluating credit risk, including whether a minimum credit score is imposed and how staff distinguish between "good" and "bad" debt.

Response: Neither program sets a minimum credit score; instead each application for financial assistance is reviewed comprehensively to evaluate the applicant's risk of defaulting on their debt by failing to make required payments. As part of the analysis, staff consider the applicant's debt to income ratio, including that nature of the debt. The full HUD-approved City of Dallas Homebuyer Assistance Program Underwriting Guidelines are attached to this memo for your review.

<u>Proposed Requirement of Cash Reserves for Persons Applying to DHAP</u>

Question: Staff presented a proposed amendment to the DHAP program statement to require an applicant to demonstrate that he or she has at least two months of cash available and equal to applicant's projected monthly mortgage payment, including principal, interest, taxes, insurance, and any associated fees. A committee member asked whether staff will consider amounts of money saved in a retirement plan such as a 401k as a permissible source of "cash reserves."

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Response: Cash reserves must be liquid assets that are readily convertible to cash, such as assets held in a savings, checking or money market account. Assets held in a tax-preferred retirement account, such as a 401k or a pension, are not readily convertible to cash and therefore, cannot serve as the basis of the required cash reserve amount. However, an applicant for DHAP assistance may be able to withdraw money from a retirement account and deposit it in a savings, checking or money market account. An applicant considering making such a withdrawal from a retirement account should review IRS regulation §1.401(k)-1(d)(3) and the terms of their retirement plan to determine if such distributions are allowed.

Should you have any further questions, please contact the Director of the Department of Housing and Neighborhood Revitalization, David Noguera.

T.C. Broadnax
City Manager

c: Chris Caso, City Attorney (I)
Carol A. Smith, City Auditor (I)
Bilierae Johnson, City Secretary
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CITY OF DALLAS HOMEBUYER ASSISTANCE PROGRAM
UNDERWRITING GUIDELINES

General

The City of Dallas is a Participating Jurisdiction (PJ) under the federal HOME Investments Partnership Program, receiving an allocation of HOME funds from the US Department of Housing and Urban Development that is used to support affordable housing activities in the community. As part of the local HOME Program, the PJ provides assistance to low income homebuyers. This assistance can be used toward an eligible buyer's down-payment or closing costs or can be used as direct financing that reduces the size of a buyer's primary loan (i.e. first mortgage) to a level that is affordable.

In providing assistance to homebuyers, the PJ has to balance potentially competing perspectives. First, the PJ wants to ensure that participating buyers will be successful homeowners, so the program should target households who are ready for homeownership and provide enough assistance to make the home affordable. At the same time, buyers should only be provided with the assistance they "need" so that the program can serve as many households as possible with limited HOME funds. Finally, the PJ seeks to ensure that assisted buyers are informed consumers and avoid the use of risky lending products.

To balance these priorities, the PJ has developed these underwriting guidelines, which are based on the following key principles.

- Assisted buyers should have good credit and qualify for competitive lending products on par with those offered to credit-worthy unassisted buyers in the local market. Buyers who can only qualify for subprime loans are not only less likely to sustain homeownership but also require larger subsidies, reducing the impact of the PJ's HOME program.

- Assisted buyers should make reasonable and meaningful contributions to their home purchase in terms of both up-front investments and monthly payment without being overburdened by their monthly payment or left without cash reserves after closing. HOME assistance should not be used to artificially reduce buyers' payments, particularly when a buyer's ability to qualify for a loan is the result of excessive consumer debt.

Applicability & Exceptions

This policy is applicable to all homebuyer units supported by the PJ's HOME program. This includes situations where HOME funds are being used to provide direct buyer assistance (e.g. downpayment and closing costs) supporting a buyer's purchase of a home for sale by a private seller. It also applies to the sale of any home built or rehabilitated by a participant in the PJ's HOME program (including subrecipients, developers, or CHDOs) whether or not the ultimate sale to the buyer includes direct assistance.

While there may be individual cases where these requirements may be waived, program participants should request specific exceptions in writing prior to making any commitments to prospective buyers who cannot qualify within these criteria. The PJ's HOME partners are reminded that they will be responsible for representations and/or commitments made to prospective buyers without prior approval by the PJ.

Maximum Homebuyer Assistance

- The maximum HOME-assistance available for a buyer is based on need as determined by the following underwriting criteria. Not all buyers will qualify for assistance. The assistance available to any given buyer is based on the PJ's assessment of the buyer's need, taking into account the additional criteria outlined below.

Buyer Expectations

To ensure that buyers are likely to sustain homeownership, assisted buyers must:

- Be purchasing the home for a reasonable price that does not exceed the fair market value as determined by an independent appraisal. In most cases, the PJ will coordinate with the buyer's senior lender to obtain a copy of the lender's appraisal. Additionally, the home must have a sales price less than or equal to the applicable HOME Homeownership Value limit for the type (new or existing) and location of the home. These limits are updated annually by HUD and can be obtained from the PJ.

- Have incomes between 40% and 80% of the Area Median Income (AMI) as adjusted for household size. HOME limits assistance to households with incomes at or below 80% AMI. While the PJ is concerned about the housing needs of lower income households, it also recognizes that homeownership requires buyers to have sufficient discretionary income to maintain their homes over time, absorb increases in taxes and insurance, and otherwise address unexpected expenses. As a result, the PJ focuses its homebuyer assistance to buyers with incomes in excess of 40% AMI.

- Contribute at least $1,000 toward downpayment and closing costs. Additionally, buyers should have sufficient cash resources (including savings, checking, money market, or other similar non-retirement accounts) such that after closing they have savings of at least two (2) times their total monthly payment, including principal, interest, taxes, insurance, and any association fees.

  Buyers with liquid assets in excess of $10,000 will be required to invest assets above $10,000 toward the purchase of the home before receiving HOME-assistance. For purposes of this requirement, liquid assets are those readily convertible to cash (including but limited to savings or checking accounts, certificates of deposit, stocks and bonds, etc.). Liquid assets, however, exclude life insurance policies and any savings held in a tax-preferred retirement account (e.g. pension, 401(k), IRA, etc.), college savings plan (e.g. 529 account), or health savings account recognized by the Internal Revenue Service.

- Obtain a loan whose monthly payment (i.e. front end ratio) does not exceed 30% of monthly income and that does not result in a total debt burden (i.e. back end ratio) in excess of 43%. While the recent foreclosure crisis has reduced the availability of lending products that allow buyers to take on excessive monthly payments, some such products are still available. Even when assisted buyers are willing to take on larger monthly payments, the PJ has determined that buyers with excessive payments are less likely to sustain homeownership.

- Be qualified by their lender to spend at least 20% of their monthly gross income on their housing. Lenders often qualify borrowers to spend between 28-33% of monthly gross income, so buyers qualifying only at payment levels below 20% of income usually have high consumer debt which increases both subsidy costs and the likelihood of foreclosure later.

  Note, this criterion is not intended to eliminate buyers whose loan is limited by the lender's loan-to-value ratio resulting in a monthly payment less than 20% of income. For example, if a buyer could qualify to purchase a $100,000 home at a 28% ratio, but because the household is purchasing a $50,000 home, the actual payment will be less than 20% of monthly income.

- Complete Pre-Purchase Homeownership as required below.

- Obtain a mortgage or senior loan that meets the requirements outlined below.

Pre-Purchase Counseling Requirement

To ensure that buyers receive are informed consumers, the PJ requires:

- Attendance within the past year at a PJ-approved pre-purchase homeownership counseling course by all adult household members who will hold title and be party to the senior loan; and

- That such counseling consists of at least 8 hours of instruction by a HUD-certified counselor.

The PJ has a list of certified counseling agencies that they will provide to potential buyers. Potential buyers should contact an agency on this list to register for an upcoming class.

Primary Loan Expectations

To ensure that buyers receive high quality loans that are sustainable over time, the PJ requires that any buyer receiving HOME assistance towards closing costs, downpayment, or a portion of the purchase price receive a senior loan (i.e first mortgage) meeting the following criteria:

- The loan must be a conventional, FHA, VA or portfolio loan from an approved lender. The loan can not be a High Cost or Sub-Prime Loans, Adjustable Rate Mortgages (ARM), Interest only loans, Discount Points paid by Borrower, and Cash Back at Closing.

- Interest rates must be competitive and must NOT be a "Higher Priced" loan as defined by CFPB. Higher priced loan are those that exceed the Average Prime Offer Rate by more than 1.5% as of the date of the loan's rate lock. Loans can be checked against the Average Prime Offer Rate by visiting the following website: http://www.ffiec.gov/ratespread/newcalc.aspx

- Lending products should be fully amortizing 30-year fixed rate loans. While some buyers may prefer shorter (e.g. 15 year) loans, the PJ will only consider such loans on an exception basis if it determines that the buyer's payment is sustainable and that the use of a shorter term product does not require additional HOME assistance compared to a 30-year loan.

- Loan products used must generally allow loan-to-value (LTV) ratios of at least 95%. While assisted buyers are not required to be approved for loan amounts equal to 95% of the purchase price, buyers who use more restrictive lending products (such as those limiting the LTV to 80%) will not receive HOME assistance toward their purchase if they could otherwise afford the monthly payment on a larger loan. In short, buyers should obtain the largest loan they can reasonably afford, and the PJ will not subsidize purchases more deeply just to avoid mortgage insurance on higher LTV lending products.

Subordination of HOME-Funded Liens

After providing assistance to eligible homebuyers the PJ has ongoing interests in the success of those buyers from the standpoint of both the HOME program and as a local government concerned about the impact of foreclosures on its residents and neighborhoods. To help prevent future foreclosures and to protect the PJ's financial investment in assisted units, subordination of HOME-funded liens to future refinancing by assisted buyers will only be considered under the following circumstances. This policy will also apply to HOME-funded liens resulting from homeowner rehabilitation programs and to any of the PJ's subrecipients or CHDOs who hold secondary liens securing direct assistance provided to buyers or homeowners.

- The new loan must be for the sole purpose of improving the rate and/or extending the term of the existing loan and must result in a low monthly payment for the homeowner. The PJ (including any of its subrecipients or CHDOs who hold secondary liens securing direct assistance provided to buyers) will not subordinate for "cash out" refinancing.

  For purposes of this requirement, the new loan may allow the assisted homeowner to finance their closing costs without being considered cash out. Additionally, nominal cash back at closing of less than $500 resulting from last-minute adjustments to payoff figures, closing costs, tax/insurance escrows and the like will not be considered "cash out."

- The proposed new loan must meet all requirements in the Primary Loan Expectations section above.

- The proposed new loan must result in a lower monthly payment for the assisted owner.