

## **City of New Braunfels City Council Policy - DRAFT**

### **Policy on Public Facility Corporations (PFCs) under Chapter 303 of the Texas Local Government Code**

- I. Purpose: This policy establishes guidelines for the creation, operation, and oversight of Public Facility Corporations (PFCs) formed under Chapter 303 of the Local Government Code, with an emphasis on promoting affordability in public facility projects to serve the best interests of the community.

### **II. Definitions**

1. "Area Median Income": The midpoint of the San Antonio-New Braunfels area's income distribution adjusted for household size and calculated on an annual basis by the Department of Housing and Urban Development (HUD)
2. "Public Facility Corporation" (PFC): A nonprofit corporation created by the City Council under Chapter 303 to assist in financing, constructing, or managing public facilities
3. "Affordable Facilities": Public facilities or housing projects developed or managed by the PFC that meet affordability criteria as specified by State of Texas statute and city ordinances
4. "Chapter 303": Chapter 303 of the Texas Local Government Code
5. "Housing and Urban Development" (HUD): The United States Department of Housing and Urban Development
6. "Household Income": Annual income calculated in accordance with HUD rules under 24 C.F.R. Section 5.609
7. "New Braunfels Housing Authority":
8. "Baseline Income Requirements": The minimum percent of units dedicated as Restricted Units
9. "Restricted Units": Those units reserved for households at 80% or below AMI to meet statutory requirements of Chapter 303.

### **III. Authorization**

1. The City Council may authorize the creation of a PFC by passing a resolution that outlines the specific public facilities to be developed, emphasizing the inclusion of affordable facilities.
2. If the sponsor of the PFC is the New Braunfels Housing Authority, the PFC may operate only within the housing authority's statutory area of operation.
3. A PFC must deliver notice of the proposed transaction to the presiding officer of each taxing unit with jurisdiction over the property at least 30 days prior to (i) the date the PFC takes action to approve the transaction and (ii) the date of any required public hearing. Taxing units receiving the notice are not required to provide their consent for the proposed transaction to close.
4. Each PFC must operate in accordance with state law, this policy, and adhere to mandated affordability requirements.

#### IV. Board Composition

1. Each PFC will be governed by a Board of Directors, all of whom must be appointed by the City Council.
2. The Board will consist of at least five members, including at least one member of the City Council, and one expert in affordable housing or public facility management.

#### V. Compliance, Audit and Monitoring

1. PFCs must maintain high standards of transparency, especially regarding adherence to affordability requirements. Regular public reports are required, detailing financial status, project progress, compliance with legal obligations, and specifically reporting on affordability metrics.
2. Audit results and compliance reports must be publicly accessible to ensure transparency and accountability.
3. All PFC-managed Affordable Housing Properties must adhere to Chapter 303 of the Local Government Code, ensuring income and rent restrictions are met according to the set guidelines.
4. An annual compliance audit must be conducted by an independent auditor with experience in affordable housing. This audit will verify adherence to all applicable regulations.
5. The initial audit report must be submitted to the Texas Department of Housing and Community Affairs (TDHCA) and the Chief Appraiser of the applicable appraisal district within one year of property acquisition or completion of new construction, followed by annual submissions.
6. The TDHCA will review audit reports to ensure compliance. Non-compliance findings must be addressed within 60 days to maintain the property's tax exemption status.
7. PFCs must post detailed compliance information on their website, including rent structures, income verification, and occupancy details.

#### VI. Calculation of Household Income: Household income is calculated in accordance with HUD rules under 24 C.F.R. Section 5.609.

1. Definition of Income: Household income includes all amounts, monetary or not, which go to, or on behalf of, the household head or spouse (even if temporarily absent) or to any other household member, including:
  - Wages and salaries, overtime pay, commissions, fees, tips and bonuses;
  - Income from assets (savings accounts, stocks, bonds, etc.);
  - Social Security, retirement funds, pensions;
  - Unemployment and disability compensation, welfare assistance;
  - Periodic allowances such as alimony, child support, and regular contributions from persons not residing in the household.
2. Exclusions from Income: Certain types of income are not considered when calculating household income, such as:
  - Income from employment of children under age 18;
  - Payments received for the care of foster children or foster adults;

- Lump-sum additions to family assets, such as inheritances, insurance payments, etc.;
  - Amounts which are specifically for or in reimbursement of the cost of medical expenses;
  - Certain types of temporary, nonrecurring, or sporadic income (e.g., gifts).
3. **Verification and Documentation:** The PFC must verify income through appropriate and reasonable documentation, which may include pay stubs, tax returns, employer verification, and other relevant documents. This documentation is required to be updated annually to reflect current income levels.
  4. **Adjustments for Household Size:** The income limits and affordability calculations may be adjusted based on the size of the household, with specific scales provided annually by HUD or relevant state authorities.
  5. **Annual Updates:** Income limits applicable to affordability criteria will be updated annually based on HUD's published guidelines or any adjustments specific to state legislation that may supersede federal guidelines.

## VII. Project Approval and Oversight

1. All projects undertaken by a PFC must receive prior approval from the City Council, which will consider the project's public benefits, financial feasibility, alignment with city priorities, and compliance with affordability requirements.
2. At least 30 days before approving a transaction for an Affordable Housing Property, the PFC or its Sponsor must obtain an underwriting assessment from a professional entity that has experience with affordable housing and has no financial interest in the transaction. The underwriting assessment must be published on the PFC's website and must allow the PFC to make a good faith determination that:
  - For an occupied property the amount by which the rent will be reduced on the Restricted Units will equal at least 60% of the anticipated ad valorem tax the property would have otherwise paid in the second, third and fourth years of operation, without the affordability restrictions.
  - For a newly constructed property, the property would not be feasible without the participation of the PFC.
3. If the Sponsor is the New Braunfels Housing Authority, it must hold a public hearing at a Housing Authority Commissioners Meeting to approve the transaction.
4. The City Council will review and approve all major contracts and obligations undertaken by the PFC, ensuring that affordability criteria are met.

## VIII. Affordability Periods: The minimum affordability periods for new constructions or acquisitions by a Public Facility Corporation (PFC) are as follows:

1. **New Construction:** For new affordable housing developments constructed by a PFC, the property must maintain affordability conditions for a minimum of 30 years from the date of completion of the construction. This period is essential to ensure long-term affordability in the community.

2. Acquisition of Existing Developments: When a PFC acquires an existing housing development, the minimum affordability period should be maintained or extended to at least 20 years from the date of acquisition. This requirement helps preserve the availability of affordable housing and prevent displacement.
3. Renewal and Extensions: At the end of the initial affordability period, the PFC should evaluate the possibility of renewing or extending the affordability terms. Extensions should be considered based on community housing needs and the physical condition of the property.
4. Regulatory Agreements: Each PFC must enter into a regulatory agreement with the local housing authority or another designated agency to enforce these affordability periods. The agreement should specify the conditions and terms under which the property must operate during the affordability period.

IX. Affordability and Restricted Units

1. Each Affordable Housing Property must reserve at least 10% of the units for households with incomes at 60% of AMI or less and at least 40% of the units for households with incomes at 80% of AMI or less

X. Ethics and Conflict of Interest

1. All board members and employees of the PFC must adhere to the city's ethics policy to prevent any conflicts of interest.
2. Declarations of potential conflicts of interest are mandatory and must be addressed prior to the approval of any project or contract, particularly those involving affordability components.

XI. Amendments

1. This policy may be amended only by a majority vote of the City Council, particularly to further refine or adjust affordability requirements in response to changing legislative and economic conditions.