

## **PAYMENTS IN LIEU OF TAX POLICY FOR LOW AND MODERATE INCOME RENTAL HOUSING PROGRAMS**

The BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, a body corporate and politic of the State of Maryland ("Board") hereby establishes its revised policy for Payments in Lieu of Tax ("PILOT") agreements required to support housing projects located within Frederick County (both within and outside of municipalities) that provide decent, safe, and sanitary housing to low or moderate income citizens when that housing cannot be provided without the waiving of real property taxes. Nothing herein shall be deemed to require the Board to enter into a PILOT agreement in support of an eligible housing project. This revised policy replaces that "Policy for Frederick County Program for Payments in Lieu of Taxes in Support of Low/Moderate Income Housing" adopted by the Board on April 15, 1991.

### **1. Definitions**

- a. Project – A housing development complying with the requirements and intent of this Policy, which, by virtue of Board resolution and PILOT agreement by and between the Board and the project owner, is authorized to pay a negotiated amount in lieu of Frederick County real property tax.
- b. Frederick County Real Property Tax – That real property tax which would normally be collected by Frederick County Government based on the full-assessed value of a property and its improvements at the tax rate in effect at the time of collection. State of Maryland and municipal real property taxes, County fire and rescue tax, other special taxing district and community development agreement taxes and assessments, and other fees or charges from government entities shall not be subject to a PILOT agreement and shall be paid by the project or property owner.
- c. Payments in Lieu of Tax ("PILOT") Agreement – An agreement between the Board and project owner for the payment of a negotiated amount in lieu of payment of Frederick County real property tax on an approved housing development, either new construction or rehabilitation, that provides rental housing for low or moderate income citizens.
- d. Low to Moderate Income Household – A household whose gross income is at or below the income limit established by the U.S. Department of Housing and Urban Development (HUD), the Maryland Community Development Administration (CDA), or other funding agency, at the time of agreement. Unless otherwise required or appropriate, HUD limits will be used rather than those of another agency.
- e. Regulatory Agreement – A recorded agreement between a public agency lender and the project owner covering administrative, occupancy, and financial requirements of the loan.

### **2. Resolution Required For PILOT Agreement**

The Board may, by resolution, authorize the County to enter into a PILOT agreement if permitted by Maryland statutes and if it has been determined:

- a. The proposed housing project will serve the public purpose of providing decent, safe, and sanitary housing for low to moderate income citizens, at rents that are not attainable on the open market, and where the granting of tax relief through the PILOT program is essential to the attainment of those rents;
- b. A principal funding agency, such as HUD or CDA, requires a significant local contribution from the County before it will finance a qualifying project, and the PILOT program will be acceptable as that contribution;
- c. The PILOT agreement is essential to the success of a County funded project, such as one funded with Community Development Block Grant funds; or
- d. The PILOT agreement will provide sufficient savings to a project to permit qualifying housing to be created without the utilization of HUD, CDA, or other public agency's financing.

### 3. Project Eligibility

Any project that the Board determines facilitates or fulfills the public purpose of providing low to moderate income housing may be eligible for a PILOT agreement. Eligible projects may be located anywhere within Frederick County, within or outside of municipalities, on properly zoned and serviced sites.

### 4. Joint City-County Participation

For projects located within municipal limits of The City of Frederick ("City"), the Board will not authorize a PILOT agreement unless there are assurances that the City will enter into a similar agreement, with essentially identical terms. For projects located within other Frederick County municipalities, the Board will not authorize a PILOT agreement unless there is approval of the project by the municipality within which the project is located.

### 5. Annual Audit Required

Within ninety (90) days after December 31 of the year in which a PILOT agreement is entered into, and within 90 days of each subsequent December 31 thereafter, the project owner shall submit to the Frederick County Government Division of Finance and the Frederick County Government Department of Housing and Community Development a complete operating financial report in such detail as may be required by the Division of Finance. This financial report shall be based on an examination of the project's and project owner's books and records, prepared in accordance with generally accepted accounting principles, and shall be prepared and certified to by a Certified Public Accountant registered to practice in the State of Maryland.

## 6. Cash Distributions Limited

The project owner shall not be entitled to any cash distribution except as permitted in accordance with the Regulatory Agreement and the PILOT agreement.

## 7. Transfer or Exchange of the Property

- a. The project owner shall not transfer or exchange ownership of the project or property or otherwise change the use of the project from a residential low or moderate income rental project while the project is subject to a PILOT agreement, except as permitted by the Regulatory Agreement and with the advance written consent of the Board.
- b. In the event the project owner wishes to transfer or exchange ownership of the property or project or change the use of the project while the project is subject to a PILOT agreement, the owner shall notify the Board (and the City if a joint project), in writing, at least ninety (90) days prior to undertaking any such action, and must obtain advance written consent of the Board (and the City if a joint project) for such transfer, exchange or change in the nature of the project. Absent such advance written consent, the project owner shall be deemed to be in material default under the project PILOT agreement and the Board may exercise all available rights under the PILOT agreement, at law and in equity.

## 8. PILOT Payments

- a. Except as set forth below, negotiated payments in lieu of tax under PILOT agreements may be established in such manner as the Board believes necessary to support a project and carry out the intent of this Policy to support low and moderate income rental housing. For example, negotiated payments in lieu of Frederick County's real property tax might be set dollar amounts (for an entire project or by rental unit), percentages of what the real property tax would have been, or reflect reducing what the real property tax would otherwise have been by a fixed dollar amount (again, either for an entire project or by rental unit). Negotiated payments in lieu of tax shall reflect fiscal, rather than calendar, year periods. Projects that come on line during the first six months of a fiscal year shall pay one half of what the negotiated payment for the entire fiscal year would have been.
- b. In no event shall a project's payments in lieu of tax be less than \$100 dollars per qualifying rental unit, subject to such annual increase as the Board may determine to be appropriate.
- c. In the case of projects involving the Board and City, since both County and City real property taxes would otherwise be collected, the Board and City must agree on required payments in lieu of taxes. On such joint projects the division of payments in lieu of taxes will be in accordance with the ratio each tax rate bears to the total combined tax rate.
- d. Payments in lieu of tax for rehabilitation projects shall be determined considering a project's assessed value and the tax rate in effect immediately prior to rehabilitation, so that no rehabilitation project shall pay less in taxes after entering into a PILOT agreement with the Board than paid before the PILOT agreement.

## 9. Term of PILOT Agreement

Each PILOT agreement shall remain in effect for a predetermined number of years; "evergreen" agreements are not permitted. The term of a PILOT agreement may, with the Board's consent, coincide with the term(s) set by another agreement, such as an Internal Revenue Service low income housing tax credit agreement or CDA regulatory agreement.

## 10. Termination Prior to Expiration of the Term

If, during the term of a PILOT agreement the project owner removes any or all of the qualifying housing units from service as low to moderate income rental housing, then it shall be as though there never were a PILOT agreement on the units removed from low to moderate income housing, and all Frederick County real property tax that would have been imposed from the initial effective date of the PILOT agreement, less any payments previously made, will be immediately due and payable to the County.

## 11. Recordation of Agreement

PILOT agreements shall be recorded in the Frederick County land records and shall constitute a lien on the project and real property.

## 12. Maximum Dollar Limits

- a. The Board does not intend that the maximum amount of taxes effectively waived under PILOT agreements entered into during any fiscal year exceed \$31,200.
- b. The maximum aggregate total of effectively waived taxes resulting from all PILOT agreements during any fiscal year shall not exceed \$312,000

## 13. Notification Requirement

While the project is subject to a PILOT agreement, written notification from the project owner of anticipated project disposition must be given the Board in writing at least eighteen (18) months, but no more than twenty-four (24) months, prior to the termination of any agreement that requires the project to remain as low or moderate income rental housing.

## 14. Right to First Refusal

If the PILOT is coterminous with the regulatory agreement, the Board must have the right of first refusal to purchase a PILOT agreement project at the end of the service period at a cost reflecting the value established by the primary lender, regulatory agreement or project fair market rate, or the minimum purchase price provided in Section 42(i)(7) of the Internal Revenue code of 1986, as amended, whichever is lowest. The Board shall have ninety (90) days from receipt of notification of Owner of intention to sell and presentation of a bonafide offer.

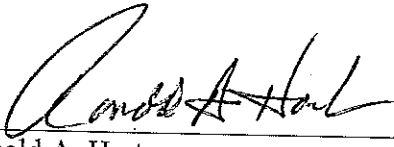
15. Incorporation Into PILOT Agreements.

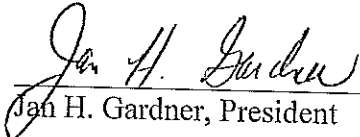
All PILOT agreements must incorporate as a term and condition this Payments In Lieu of Tax Policy for Low and Moderate Income Rental Housing Programs.

Approved by the Board of County Commissioners of Frederick, Maryland on June 24, 2008.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF  
FREDERICK COUNTY, MARYLAND

By:   
Ronald A. Hart  
County Manager

By:   
Jan H. Gardner, President