



Communication to the City Commission

TO: City Commission
COPY:
FROM: Lauren Tribble-Laucht, Attorney
MEMO DATE: September 22, 2023
SUBJECT: Ordinance Amendment - PILOT

EXECUTIVE SUMMARY:

This ordinance is based on the model ordinance that I worked with MSHDA and other attorneys across the State to prepare. It contains the necessary provisions to implement the newly enacted law under the Michigan State Housing Development Authority Act (Act 346 of 1966) that allow the City to approve PILOT projects without the requirement that they are awarded MSHDA funding. The Ordinance indicates "the application and selection process for a workforce housing exemption shall be governed by the Payment in Lieu of Taxes (PILOT) Policy adopted by the City Commission, as it may be amended from time to time."

Also for consideration is the proposed revised Payment-In-Lieu of Taxes (PILOT) Policy for approval.

RECOMMENDATION:

(5 affirmative votes required)

that amendments to the Traverse City Code of Ordinances Workforce Housing PILOT Ordinance Chapter 883, as recommended by the Ad Hoc Committee, be enacted with an effective date eight days after publication; and further

that the Payment-In-Lieu of Taxes (PILOT) Policy, be approved.

ROADMAP FOR PILOT PROCESS

1

APPLICATION SUBMISSION

Sponsor submits an application for a Workforce PILOT.

2

STAFF REVIEW

Staff has 28 days to review the application then sends it to the Commission with a recommendation.

3

COMMISSION ADOPTION

Commission adopts a PILOT Resolution approving the request.

4

CERTIFIED COPY OF RESOLUTION

City Clerk delivers to the Sponsor a certified copy of the resolution approving the application.

5

MSHDA CERTIFICATION

Sponsor submits an affidavit to MSHDA for certification that the project is eligible for the workforce housing exemption.

6

CERTIFIED NOTIFICATION OF EXEMPTION FILING

Upon receipt of notification from MSHDA that the project is eligible for a workforce housing exemption, the Sponsor or MSHDA must file the certified notification of exemption with the City Assessor before November 1 of the year preceding the tax year in which the exemption is to effective.

7

CERTIFIED NOTIFICATION OF EXEMPTION TO COUNTY TREASURER

Not later than 5 business days after receipt of the certified notification of exemption, the assessor shall provide a copy of the certified notification of exemption to the County Treasurer.

8

CERTIFIED NOTIFICATION OF EXEMPTION REVIEW

The County has 45 days after the county treasurer's receipt of the certified notification of exemption, to pass a resolution, by majority vote that opts out of the County's portion of the exemption.

9

AD VALOREM PROPERTY TAX EXEMPTION

The project will be exempt from all ad valorem property taxes as of December 31 of the year in which construction or rehabilitation commences.

10

CONSTRUCTION TIMELINE REQUIREMENTS

Construction must start within eighteen (18) months of the date of MSHDA's notification of exemption or such longer period of time as may be provided by the PILOT Resolution.

11

ANNUAL INDEPENDENT AUDIT SUBMISSION

Every year by April 29, or such other date provided for in the PILOT Resolution, Sponsor shall submit its independent audit to the City Assessor.

12

ANNUAL PILOT PAYMENTS TO CITY

No later than July 1, the City Treasurer shall issue an invoice showing the PILOT payment due for the current year, which payment shall be paid no later than July 31.

**TRAVERSE CITY CODE OF ORDINANCES
ORDINANCE AMENDMENT NO. 1203**

Effective date:

TITLE: Workforce Housing Pilot Ordinance

THE CITY OF TRAVERSE CITY ORDAINS:

That Chapter 883, of the Traverse City Code of Ordinances, be enacted/amended to read in its entirety as follows:

An ordinance to provide for approval of an exemption from ad valorem property taxes for housing being developed or rehabilitated for workforce housing for persons and families whose household income is not greater than 120% of area median income, as authorized by provisions of the State Housing Development Authority Act of 1966, Public Act 346 of 1966, as amended, MCL 125.1401, et seq.

WORKFORCE HOUSING PILOT ORDINANCE

THE CITY OF TRAVERSE CITY, COUNTY OF GRAND TRAVERSE AND LEE LANAU, STATE OF MICHIGAN, ORDAINS:

SECTION 1. Title. This Ordinance shall be known and cited as the “Traverse City Workforce Housing PILOT Ordinance.”

SECTION 2. Preamble.

It is a proper public purpose for the City of Traverse City to encourage the development or rehabilitation of workforce housing for persons and families whose household income is not greater than 120% of area median income by exempting such housing from all ad valorem property taxes imposed by any taxing jurisdiction and providing for payment of an annual service charge for public services in lieu of all such taxes. A PILOT, or service charge payment in lieu of taxes, is an effective means of incentivizing the construction of workforce house. A stable and predictable service charge paid in lieu of all ad valorem property taxes for a fixed period is essential to the determination of the economic feasibility of workforce housing projects developed or rehabilitated in reliance on such tax exemption. The City is authorized by section 15a of Public Act 346 of 1966, as amended, MCL 125.1415a, to establish, or change by any amount it chooses, the service charge to be paid in lieu of all ad valorem taxes in accordance with section 15a with respect to new or rehabilitated workforce housing, but not an amount that exceeds the taxes that would be paid but for this authorization or the other limitations imposed by that section. Because workforce housing for individuals and families whose household income is not greater than 120% of area median income is a public necessity, and because the City will be benefited and improved by such housing, encouraging the same through an ad valorem property tax exemption is a valid public purpose.

SECTION 3. Definitions.

(A) "Additional Amount" means an amount equal to the difference between the following:

(1) the millage rate levied for operating purposes by the County multiplied by the current Taxable Value of a workforce housing project for which a PILOT Resolution has been adopted, and

(2) the amount of the annual service charge paid in lieu of ad valorem property taxes by the housing project under subsection (4)(C) that is distributed to the County pursuant to MCL 125.1415a(5).

(B) "Annual Shelter Rent" means the total collections during an agreed annual period from or paid on behalf of the occupants of a housing project representing rent or occupancy charges, exclusive of charges for gas, electricity, heat, or other utilities furnished to the occupants and paid for by the housing project.

(C) "Sponsor" means any person or entity applying for a workforce housing exemption under this Ordinance, and includes any person or entity who subsequently owns the housing project.

(D) "Authority" means the Michigan State Housing Development Authority.

(E) "Restrictive Covenant" means a recorded agreement between Sponsor and the City running with the land that restricts the use of the housing project to workforce housing, as defined in this Ordinance, for a period not to exceed 15 years, or such greater or lesser period of time as may be authorized by state law and as may be required by the PILOT Resolution.

(F) "County" means the County of County of Grand Traverse or Leelanau, depending on where the proposed project is located.

(G) "PILOT Resolution" means a project-specific resolution adopted by the City Commission that approves a housing project for exemption under this Ordinance.

(H) "Taxable Value" means taxable value as calculated under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(I) "Workforce housing" means rental units or other housing options that are reasonably affordable to, and occupied by, a household whose total household income is not greater than 120% of the area median income published by the United States Department of Housing and Urban Development.

SECTION 4. Authorization and Establishment of Workforce Housing Exemption.

(A) The class of housing projects to which the tax exemption shall apply and for which a service charge may be paid in lieu of all ad valorem property taxes are housing projects being developed or rehabilitated for workforce housing.

(B) Subject to the recording of a Restrictive Covenant, workforce housing and the property on which such housing is or will be located shall be exempt from all ad valorem property taxes as of December 31 of the year in which construction or rehabilitation commences. Construction must start

within eighteen (18) months year of the date of the Authority's notification of exemption or such longer period of time as may be provided by the PILOT Resolution.

(C) The City will accept payment of an annual service charge in lieu of all ad valorem property taxes for public services from the owner of a housing project for which the City has received a certified notification of exemption from the Authority in accordance with the following:

(1) Subject to subsections (D), (E) and (F), for a new construction project, an amount that is the greater of the tax on the property on which the project is located for the tax year proceeding the date on which the construction is commenced or 10% of the Annual Shelter Rent obtained from the project.

(2) Subject to subsections (D), (E) and (F), for a rehabilitation project, an amount that is the lesser of the tax on the property on which the project is located for the tax year proceeding the date on which rehabilitation is commenced or 10% of the Annual Shelter Rent obtained from the project.

(3) The service charge paid in lieu of taxes shall not exceed the amount in ad valorem taxes that the Sponsor would have otherwise paid if the workforce housing project were not tax exempt.

(D) Notwithstanding the provisions of MCL 125.1415a(3)(b) and 125.1415a(7) to the contrary, upon the adoption of a PILOT Resolution and receipt of a certified notification of exemption from the Authority, a contract shall be deemed effected between the City and the Sponsor, to provide a tax exemption and accept service charge payments in lieu of taxes as previously described by this section.

(E) Notwithstanding subsection (C), the service charge paid each year in lieu of taxes for that part of a workforce housing project that is tax exempt under this Ordinance but not used for workforce housing must be equal to the full amount of the taxes that would be paid on that portion of the project as if the project were not tax exempt. The owner of the project shall allocate the benefits of any tax exemption granted pursuant to this Ordinance exclusively to workforce housing or to the maintenance and preservation of the housing project as a safe, decent, and sanitary workforce housing.

(F) The annual service charge under subsection (C) for a workforce housing project for which a PILOT Resolution has been adopted must be increased by the Additional Amount if both of the following requirements are met:

(1) Not later than 45 days after the county treasurer's receipt of the certified notification of exemption, the County Board of Commissioners passes a resolution, by majority vote, that provides that the Additional Amount must be paid.

(2) The approval of the resolution described in subparagraph (1) is in accordance with an ordinance or resolution adopted by the County Board of Commissioners establishing the factors to be considered when assessing whether the Additional Amount must be paid.

SECTION 5. Workforce Housing Exemption Application, Review and Approval Process.

(A) The Sponsor of a workforce housing project must own the property that is the subject of the application or must be the purchaser under a purchase or option agreement or otherwise

demonstrate that it has control over the property. The property that is the subject of the application must be zoned for the intended use at the time of application.

(B) The application and selection process for a workforce housing exemption shall be governed by the Payment in Lieu of Taxes (PILOT) Policy adopted by the City Commission, as it may be amended from time to time.

(C) The Sponsor shall submit its application for a workforce housing exemption using the form provided by the City.

(D) Approval of an exemption for a workforce housing project requires passage of a PILOT Resolution by five (5) members of the City Commission.

(E) If the workforce housing exemption application is approved, the City Clerk will deliver to the Sponsor a certified copy of the resolution approving the application.

(F) To defray the administrative cost of processing an application for a workforce housing exemption, the City Commission shall include a workforce housing application fee in its annually adopted fee schedule.

SECTION 6. Authority Affidavit and Assessor Notification.

(A) Following adoption of the PILOT Resolution, the Sponsor must submit an affidavit to the Authority in the form required by the Authority for certification by the Authority that the project is eligible for the workforce housing exemption.

(B) Upon receipt of notification from the Authority that the project is eligible for a workforce housing exemption, the Sponsor or the Authority must file the certified notification of exemption with the city assessor before November 1 of the year preceding the tax year in which the exemption is to effective.

(C) Not later than 5 business days after receipt of the certified notification of exemption, the assessor shall provide a copy of the certified notification of exemption to the County treasurer.

SECTION 7. Payment of PILOT.

(A) No later than April 29, or such other date provided for in the PILOT Resolution, Sponsor shall submit to the city assessor, Sponsor's budget for Annual Shelter Rent for the current calendar year and a copy of Sponsor's audited financial statements for the preceding calendar year, prepared in accordance with generally accepted auditing standards or, if Sponsor is not subject to an audit requirement, Sponsor's compiled financial statements for the preceding calendar year prepared in accordance with generally accepted accounting principles and certified by Sponsor. No later than July 1, the city treasurer shall issue an invoice showing the PILOT payment due for the current year, which payment shall be paid no later than July 31.

(B) Except as otherwise provided in this section and section 4, any payments for public services under this Ordinance shall be distributed to the governmental units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. The

distribution to those governmental units shall be made as if the number of mills levied for local school district operating purposes were equal to the number of mills levied for the purposes in 1993 minus the number of mills levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, for the year for which the distribution is calculated. The amount of payments in lieu of taxes to be distributed to a local school district for operating purposes under this subsection must not be distributed to the local school district but instead must be paid to the state treasury and credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(C) Any PILOT payment or portion of PILOT payment remaining unpaid as of the due date shall bear interest at 1% per month and require payment of a 3% penalty fee. The collection of past due PILOT payments shall otherwise be in accordance with the provisions of Chapter 211 of the General Property Tax Act, Act 206 of 1893, as amended; MCL 211.44 et seq.

SECTION 8. Duration and Recorded Restrictive Covenant.

(A) A workforce housing project approved for an exemption by a PILOT Resolution shall be encumbered by a Restrictive Covenant recorded in the office of the register of deeds for the County.

(B) The Restrictive Covenant shall acknowledge (i) that the economic feasibility of the workforce housing project depends on the approval and continuing effect of the payment in lieu of all ad valorem taxes as approved by the PILOT resolution; (ii) the City's agreement to accept payment of an annual service charge in lieu of all ad valorem taxes in consideration of the Sponsor's offer to construct or rehabilitate workforce housing; and (iii) the amount of the annual service charge to be paid for each operating year.

(C) The Restrictive Covenant shall provide (a) for the reporting and monitoring of the Sponsor's compliance with the Restrictive Covenant, this Ordinance and the PILOT Resolution; (b) that the Restrictive Covenant is enforceable by the City and any Tenants to be benefitted at law or in equity; (c) shall provide other remedies available to the City for non-compliance, including termination of the exemption and repayment of all prior years' tax savings under the workforce housing exemption after notice and hearing; and (d) that the Restrictive Covenant cannot be modified or terminated except in a written instrument executed by the Sponsor or then current owner and the City.

SECTION 9. Severability.

The provisions of this Ordinance shall be deemed to be severable, and should any provision be declared by any court of competent jurisdiction to be unconstitutional or invalid, the same shall not affect the validity of this Ordinance as a whole or provision of this Ordinance, other than the provision so declared to be unconstitutional or invalid.

SECTION 10. Inconsistent Ordinances.

All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent necessary to give this ordinance full force and effect.

SECTION 11. Effective Date.

This Ordinance shall become effective on [insert effective date].

At a regular meeting held on _____, 20[___], on motion made by _____ and supported by _____, this Ordinance was adopted on by a ___ vote.

AYES:

NAYS:

ORDINANCE 2023-___ IS ENACTED.

CITY CLERK

	CITY OF TRAVERSE CITY POLICY TITLE: PAYMENT IN LIEU OF TAXES (PILOT)	POLICY NO: CC-055
		SUBMITTED BY: PILOT Ad Hoc Committee.
		APPROVED BY:
Adopted Date: October 2, 2023 Effective Date: October 2, 2023 Supersedes No: N/A Procedure Reference No: CC-055 Page 1 of 3	HISTORY: Initial Adoption Date: November 7, 2016 Amended Date: Amended Date:	

I hereby certify that this Policy was adopted by the City Commission of the City of Traverse City at its Regular Meeting held on October 2, 2023, in the Commission Chambers, Governmental Center, 400 Boardman Avenue, Traverse City Michigan.

 Benjamin Marentette, MMC, City Clerk

I. Purpose:

The purpose of this policy is to administer the Traverse City Code of Ordinances Chapters 881 and 883, which establish a class of housing developments pursuant to State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401 et seq.; MSA 16.114(1) et seq.) which are exempt from payment of property taxes, and as an in lieu thereof pay a service charge. It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its citizens of low income and to encourage development of such housing by providing for a service charge, in lieu of property taxes, in accordance with State Housing Development Act of 1966. City of Traverse City is authorized by this Act to establish or change the service charge to be paid in lieu of taxes (PILOT) by any or all classes of housing exempt from taxation under this Act at any amount it chooses, but not to exceed taxes that would be paid by for if not for this Act.

It is further acknowledged that such housing for persons of low income is a public necessity, and as the City of Traverse City will be benefited and improved by such housing, the encouragement of the same by providing certain real estate tax exemption for such housing is a valid public purpose. Further, that the continuance of the provisions of this article for tax exemption and the service charge in lieu of taxes during the period contemplated in this article are essential to the determination of economic feasibility of this housing development, which will be constructed and financed in reliance on such tax exemption.

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		SUBMITTED BY: PILOT Ad Hoc Committee.
		APPROVED BY:
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It is the duty of the City Commission, with help from the City Planning Commission, that this community is developed in a manner consistent with the adopted Comprehensive (Master) Plan. Therefore, each application must be considered for its consistency with the overall goals and objectives of the future planning and development for the City of Traverse City. The existence of this policy and Chapters 880, 881, and 883 of the Code of Ordinances for the City of Traverse City in no way infers a right to such tax exemption, and the City Commission's action on each application is within its discretion.

II. Additional Authority

- State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401 et seq.; MSA 16.114(1) et seq.)
- Traverse City Code of Ordinances Chapter 880 - Tax Exemptions
- Traverse City Code of Ordinances Chapter 881 - Low Income Housing Tax Exemption
- Traverse City Code of Ordinances Chapter 1376 – Affordable Housing Standards
- Traverse City Code of Ordinances Chapter 883 - Traverse City Workforce Housing PILOT Ordinance

III. Scope/Applies to

This policy applies to the City Commission for the City of Traverse City, and to all City Departments responsible for reviewing requests for a Payment in Lieu of Taxes arrangement and making recommendations to the City Commission for the City of Traverse City regarding same.

IV. Responsibility

The City Manager is responsible for the implementation of this policy and for the development of and administration of the accompanying procedure.

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		SUBMITTED BY: PILOT Ad Hoc Committee.
		APPROVED BY:
Adopted Date: October 2, 2023 Effective Date: October 2, 2023 Supersedes No: N/A Procedure Reference No: CC-055 Page 3 of 3	HISTORY: Initial Adoption Date: November 7, 2016 Amended Date: Amended Date:	

V. Definitions

The terms used in this policy shall have the meanings attributed to them in the relevant ordinances and statutes governing payment in lieu of taxes for housing.

VI. Policy Statement

The City of Traverse City places a high value on preserving the natural environment, affording a diversity of housing options, and providing opportunities for multi-modal transportation, which strengthens the City's long-term sustainability. It is the policy of the City of Traverse City that PILOT Agreements are granted to those entities who best demonstrate a shared value in these areas, through the development of a project that incorporates green building techniques, has a high percentage of affordable housing units, and is located near multi-modal transportation opportunities and close access to daily needs. It should be noted that PILOT Agreements are not entitlements, and will be evaluated on a case by case basis.

City employees responsible for reviewing requests for a PILOT arrangement and making recommendations to the City Commission for the City of Traverse City regarding same shall use Procedure No. CC-055 when considering requests for PILOT agreements.