



2017 Uniform Multifamily Application Templates

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Austin, TX 78701

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Template Overview

The Texas Department of Housing and Community Affairs (the “Department” or “TDHCA”) continues to emphasize the importance of conducting business within the State of Texas in a manner that is both transparent and inclusive of local stakeholders. To that end, the Department has integrated into its rules for multifamily development mandatory requirements to communicate information about proposed plans to develop multifamily rental housing to the local community and elected officials.

The purpose of this document is to provide Applicants of Multifamily Funding Programs with templates that may be used for certain required communications with local government officials, state Representatives and Senators, neighborhood organizations, and lenders, and resolutions which may be required to be adopted by local governing bodies for various purposes relating to proposed tax credit developments. The following templates may be used or referenced by Applicants at various stages of the Application process. The templates are not required, but when used (properly completed) for the explicit purpose indicated on the template they will be accepted by staff as having satisfied the requirements of the applicable rule. Use of other formats is permitted, but in developing and using alternative formats it is the responsibility of the person developing and using them to ensure that they meet applicable requirements and achieve the intended purpose.

Each template is labeled with a brief description of the template’s purpose, followed by a reference to the Uniform Multifamily Rule or Qualified Allocation Plan (“QAP”), including due dates associated with the requirements underlying the template.

SOME OF THESE TEMPLATES (OR SIMILAR LETTERS OR RESOLUTIONS DEVELOPED WITHOUT USE OF THE TEMPLATES) MAY INVOLVE FORMING AND EXPRESSING CONCLUSIONS AND EXPRESSING VIEWS WITH RESPECT TO PROPOSED AFFORDABLE HOUSING DEVELOPMENTS. ANYONE ADDRESSING SUCH MATTERS SHOULD TAKE CARE, INCLUDING SEEKING THE ADVICE OF LEGAL COUNSEL OF THEIR CHOOSING, REGARDING ANY POTENTIAL IMPLICATIONS UNDER STATE AND FEDERAL LAWS REGARDING FAIR HOUSING, INCLUDING, BUT NOT LIMITED TO, CONSISTENCY WITH ADOPTED PLANNING DOCUMENTS GOVERNING USE OF HUD BLOCK GRANT FUNDS AND ANALYSES OF IMPEDIMENTS TO FAIR HOUSING CHOICE.

The governing body of a city or county may develop and use its own form of resolution but is reminded that it should consult legal counsel of its choosing to ensure that the resolutions ultimately developed and used meet their intended purpose and fulfill the requirements of applicable laws and rules.

Using the Templates

To use the following templates, an Applicant must complete the template by incorporating development or application specific information. Applicants will be able to identify areas where Development information is required by locating the highlighted and bold text in brackets. Upon completion of the highlighted portions of the templates, the Applicant completing the template should re-format the text as in the examples below. The templates are being made available in a word processing format so that Applicants have the ability to cut, paste, and format as necessary.

Example:

The name of the Development is **[insert name of Development]** and it will be **[insert construction type e.g., new construction]**.

The name of the Development is County Estates and it will be rehabilitation.

Public Notification Template

Pursuant to §11.8(b)(2)(B) and (C) of the QAP, §12.5 of the Multifamily Housing Revenue Bond Rule and §10.203(2) and (3) of the Uniform Multifamily Rule the following template may be used to create a letter to notify individuals and/or entities identified in the above referenced rules.

Public Notification letters must be sent no later than the date the pre-application (if submitted) for competitive HTC Applications, or full Application (for all applications) is submitted. For Tax-Exempt Bond Developments, notifications must not be older than three months prior to the date Parts 5 and 6 of the Application are submitted.

[Date]

[Appropriate Individual/entity pursuant to §§11.8(b)(2)(B)(i) through (viii) of the QAP and 10.203(2)(A) through (H) of the Uniform Multifamily Rules]

[Address]

[City, State, ZIP]

Dear [xxxxxx],

[Applicant Name] is making an application for [Name all TDHCA Programs for which Applicant is applying] with the Texas Department of Housing and Community Affairs for [Development name, address, city, and county]. This [New Construction/Reconstruction/Adaptive Reuse/Rehabilitation] is a(n) [apartment/single family/townhome/high rise/duplex] community [if applicable, on # sites], and comprised of approximately [#] units of which [#] will be for low-income tenants.

In the spring, the Department will hold public hearings in various locations around the state to gather input on competitive HTC applications; comments can be made on any and all applications at each hearing. The hearing schedule along with contact information for written public comment will be posted on TDHCA's [Public Comment](#) Center website later this year.

For Tax-Exempt Bond applications where the Department is the issuer, there will be a public hearing to receive public comment on the proposed development. Information regarding the date, time, and location of that hearing will be disseminated at least 30 days prior to the hearing date on the Department's website (<http://www.tdhca.state.tx.us/multifamily/communities.htm>) . For Tax-Exempt Bond applications that utilize a local issuer interested individuals are encouraged to contact the local issuer for information regarding the public hearing.

Sincerely,

Representative of [the Applicant Name)

[Title]

[Name, Address, email, and telephone number if not on letterhead]

Twice the State Average Per Capita – Sample Resolution

Pursuant to §11.3(b) of the QAP, for applications located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), applicants must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. That approval must also contain a written expression of support in the form of a resolution, and that resolution must include a reference to Tex. Gov't Code §2306.6703(a)(4) and authorize an allocation of Housing Tax Credits for the Development. A list of the areas with more than twice the state average of units per capita can be found in the 2017 HTC Site Demographic Characteristics Report posted on the Department's website. A sample resolution is provided below.

WHEREAS, **[Applicant]** has proposed a development for affordable rental housing at **[address of proposed site]** named **[name of development]** in the **[city/county of xxxxx]** and

WHEREAS, **[Applicant]** has communicated that it intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2017 Housing Tax Credits or Private Activity Bonds for **[name of development]**

It is hereby

RESOLVED, that as provided for in §11.3(b) of the Qualified Allocation Plan, it is expressly acknowledged and confirmed that the **[city/county of xxxxx]** has more than twice the state average of units per capita supported by Housing Tax Credits or Private Activity Bonds and

FURTHER RESOLVED, that the **[city/county of xxxxx]** hereby supports the proposed **[name of development]**, and confirms that its governing body has voted specifically to approve the construction and/or rehabilitation of the Development and to authorize an allocation of Housing Tax Credits for the Development pursuant to Tex. Gov't Code §2306.6703(a)(4), and

FURTHER RESOLVED that for and on behalf of the Governing Body, **[name, position of authorized person]** are hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs.

One Mile, Three Year Rule – Sample Resolution

Pursuant to §11.3(c) of the QAP, an Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured by a straight line on a map from the closest point on each development) from another Development that:

- (A) serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and
- (B) has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued);
- (C) has not been withdrawn or terminated from the Housing Tax Credit Program; and
- (D) does not meet one of the other exceptions listed in §11.3(c)(2)(A) – (F).

Such Developments shall be considered ineligible, unless the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described above. A sample resolution is provided below.

WHEREAS, **[Applicant]** has proposed a development for affordable rental housing at **[address of proposed site]** named **[name of development]** in the **[city/county of xxxx]** and

WHEREAS, **[Applicant]** has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2017 Housing Tax Credits or Private Activity Bonds for **[name of development]**

It is hereby

RESOLVED, that as provided for in 10 TAC §11.3(c) it is hereby acknowledged that the proposed New Construction or Adaptive Reuse Development is located one linear mile or less from a Development that serves the same type of household as the proposed Development and has received an allocation of Housing Tax Credits (or private activity bonds) for New Construction since **[1/5/2014 or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued]** and

FURTHER RESOLVED, that the governing body of the **[city/county of xxxx]** has by vote specifically allowed the construction of the **[name of development]** and to authorize an allocation of Housing Tax Credits for the Development, and

FURTHER RESOLVED that for and on behalf of the Governing Body, **[name, position of authorized person]** are hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs.

Greater than 20% HTC Units per Total Households in Census Tracts – Sample Resolution

Pursuant to §11.3(d) of the QAP, applicants applying for Competitive Housing Tax Credits and/or Private Activity Bonds that propose the New Construction or Adaptive Reuse of a Development located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey and the Development is in a Place whose population is greater than 100,000 shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with jurisdiction's obligation to affirmatively further fair housing. A sample resolution is provided below.

WHEREAS, **[Applicant]** has proposed a development for affordable rental housing at **[address of proposed site]** named **[name of development]** in the **[city/county of xxxx]** and

WHEREAS, **[Applicant]** has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2017 **[Housing Tax Credits/Private Activity Bond]** funds for **[name of development]**

It is hereby

RESOLVED, that as provided for in 10 TAC [§11.3(d) and §11.4(c)(1)], it is hereby acknowledged that the proposed New Construction or Adaptive Reuse Development is located in a census tract that has more than 20% Housing Tax Credit Units per total households and

FURTHER RESOLVED, that the **[city/county of xxxx]** hereby confirms that its Governing Body has voted specifically to allow the construction of the Development pursuant to §11.4(c)(1) of the Qualified Allocation Plan and

FURTHER RESOLVED, that the governing body affirms that the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing, and

FURTHER RESOLVED that for and on behalf of the Governing Body, **[name, position of authorized person]** are hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs.

Local Government Support – Sample Resolution

Pursuant to §11.9(d)(1) of the QAP and in accordance with Tex. Gov't Code §2306.6710(b), an Application may qualify for up to seventeen (17) points for a resolution or resolutions from the municipality and/or county in which the proposed development site is located. Resolutions that expressly set forth that the municipality or county supports the Application or Development are worth maximum points while resolutions setting forth that the municipality or county has no objection to the Application or Development are worth fewer points. Pursuant to §11.9(d)(1) once a resolution has been submitted it may not be changed or withdrawn. A sample resolution is provided below.

WHEREAS, **[Applicant]** has proposed a development for affordable rental housing at **[address of proposed site]** named **[name of development]** in the **[city/county/extraterritorial jurisdiction of xxxx]**; and

WHEREAS, **[Applicant]** has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs for 2017 Competitive 9% Housing Tax Credits for **[name of development]**

It is hereby

RESOLVED, that the **[city/county]**, acting through its governing body, hereby confirms that it **[has no objection to/supports]** the proposed **[name of development/development located at address/Application number]** and that this formal action has been taken to put on record the opinion expressed by the **[city/county]** on **[date]**, and

FURTHER RESOLVED that for and on behalf of the Governing Body, **[name, position of authorized person]** are hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs.

Notice, Hearing and Resolution for Tax-Exempt Bond Developments

Pursuant to §2306.67071, Tax-Exempt Bond Applications applying for Housing Tax Credits after September 1, 2013 must submit a resolution of no objection from the applicable Governing Body. Such resolution must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. For an application with a Development Site that is located within a municipality, the resolution must come from the Governing Body of that municipality; if within the ETJ of a municipality a resolution must be submitted from both the Governing Body of that municipality and the Governing Body of the county; if within a county and not within a municipality or the ETJ of a municipality, a resolution must be submitted from the Governing Body of the county. The resolution must confirm that each applicable Governing Body has held a public hearing in accordance with Tex. Gov't Code §2306.67071(b) and §10.204(4)(B) of the Uniform Multifamily Rules. A sample resolution is provided below.

WHEREAS, **[Applicant]** has proposed a development for affordable rental housing of **[xxx]** units that will be located at **[address of proposed site]** in the **[city/county of xxxx]** and

WHEREAS, **[Applicant]** has submitted an application to the Texas Department of Housing and Community Affairs for **20xx** Housing Tax Credits for **[name of development]**

It is hereby

RESOLVED, that in accordance with the requirements of Tex. Gov't Code §2306.67071 and Texas Administrative Code §10.204(4), it is hereby found that:

1. Notice has been provided to the Governing Body in accordance with Tex. Gov't Code, §2306.67071(a); and
2. The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development; and
3. The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code, §2306.67071(b); and
4. After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application; and

FURTHER RESOLVED that for and on behalf of the Governing Body, **[name, position of authorized person]** are hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs.

Third Party Legal Opinion for Nonprofit Set-Aside

Pursuant to §10.204(14)(A)(iii) of the Uniform Multifamily Rules, Competitive HTC Applications involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements must submit a Third Party Legal Opinion. **NEW THIS YEAR: The opinion must state that the nonprofit entity has the ability to do business as a nonprofit in Texas.** A sample opinion is provided below.

[Date]

To: Texas Department of Housing and Community Affairs
P.O. Box 13941
221 East 11th Street
Austin, TX 78711-3941

Re: **[Name of Development]**
[Address of Development]
[Development Owner]

Ladies and Gentlemen:

[Applicant entity], a limited partnership, is the Applicant. **[Nonprofit entity]**, a nonprofit corporation, is the **[managing general partner/managing member]** of the Applicant. We have been asked to render our legal opinion to meet the requirements of Tex. Gov't Code, §2306.6706 and 10 TAC §10.204(14)(A)(iii). This opinion is issued to the Texas Department of Housing and Community Affairs (the "Department") so that the Department, its governing board, and its staff may rely on it in making any determinations that the Applicant is eligible under Tex. Gov't Code, §2306.6706(b) for a housing tax credit allocation from the nonprofit set-aside.

In rendering our opinion, we have reviewed the Certificate of Formation and Bylaws of **[Nonprofit corporation]**, the **[managing general partner/managing member]** of the Applicant and the Letter of Determination dated **[date]** from the Internal Revenue Service regarding the managing general partner's status as an organization exempt from taxes under the Internal Revenue Code. We have also examined the records of **[Nonprofit corporation]** to determine whether or not there exists any identity of interest between **[Nonprofit corporation]** and any for-profit sponsors of the above-referenced development, (the "Development"). We have reviewed the original or certified copies of the development agreement, the partnership agreement, and such other documents, instruments, and writings as we deemed necessary or advisable to enable us to render this opinion. We have assumed and relied upon the genuineness of all certifications and have no reason to question them. The review of all such documents, individually and collectively, forms the basis for our opinion.

Based upon the foregoing, it is our opinion that:

- (1) **[Nonprofit corporation]** is not affiliated with or Controlled (within the meaning of 10 TAC §10.3(a)(29)) by a for-profit organization with respect to the Development.
- (2) **[Nonprofit corporation]** is a “Qualified Nonprofit Organization” within the meaning of §2306.6706 and §42(h)(5) of the Internal Revenue Code.
- (3) **[Nonprofit corporation]** is an organization described in paragraph (3) or (4) of §501(c), is exempt from taxation under §501(a) of the Internal Revenue Code, and is an organization that has its Internal Revenue Service documentation of designation as a Section 501(c)(3) or 501(c)(4) organization as of the beginning of the Application Acceptance Period. **[Nonprofit corporation]** is the sole **[managing general partner/managing member]** of the Applicant.
- (4) **[Nonprofit corporation]** is an organization which specifically has the providing of low-income housing as one of its tax exempt purposes and the development and operation of the Development as low income housing is a legal purpose of the Applicant.
- (5) **[Applicant]** is eligible for a housing credit allocation from a set-aside reserved for the use of qualified nonprofit organizations. **[Provide the basis for that opinion. Eligibility is contingent upon the non-profit organization controlling the Development, or if the organization’s Application is filed on behalf of a limited partnership, or limited liability company, being the sole General Partner (or Managing Member); and otherwise meeting the requirements of §2306.6706 and §2306.6729 of the Tex. Gov’t Code and §42(h)(5) of the Internal Revenue Code].**
- (6) **[Applicant]** will have the managing general partner or an affiliate or subsidiary that is also a nonprofit entity or its nonprofit affiliate or subsidiary **meeting the requirements of §2306.6706 and §2306.6729 of the Tex. Gov’t Code and §42(h)(5) of the Internal Revenue Code** be the Developer or co-Developer as evidenced in the development agreement.
- (7) **[Nonprofit entity]** prohibits any member of its board of directors, other than a chief staff member, serving concurrently as a member of the board, from receiving material compensation for service on the Board.
- (8) **[Nonprofit entity]** has the ability to do business as a nonprofit in Texas.

Sincerely,

[Name of attorney rendering opinion]

Financial Feasibility – Sample Language

Pursuant to §11.9(e)(1) of the QAP an Application may qualify to receive a maximum of eighteen (18) points for evidence of financial feasibility. To qualify for points, a 15-year *pro forma* itemizing all projected income, including Unit rental rates and basis for the rental rate assumptions, operating expenses and debt service, specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The *pro forma* can be prepared by the Applicant or can be independently prepared by the Third party construction or permanent lender. The *pro forma* must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of the lender. In addition to the signed *pro forma*, a lender approval letter on lender letterhead must be submitted. **NEW THIS YEAR: the term sheet must include an acknowledgement of the amounts and terms of all other anticipated sources of funds.** If the approval letter evidences review of Development feasibility alone it will receive sixteen (16) points. If the letter evidences review of Development feasibility and the Principals of the Development Owner, it will receive eighteen (18) points.

Sample language for 16 & 18 point letters are provided below (*Note: the required language for points can be included in the commitment and/or term sheets from the construction and/or permanent lender*).

Sample Language eligible for 16 Points:

“The attached 15-year *pro forma* was prepared by the [Applicant] or [independently prepared by [name of lender] for [Development name] located in [Development City]. The *pro forma* is consistent with the unit rental rate assumptions, total operating expenses, net operating income, and debt service coverage based on [name of lender] current underwriting parameters and consistent with the loan terms indicated in the term sheet and preliminarily considered feasible pending further diligence review. The debt service for each year maintains no less than a 1.15 debt coverage ratio.”

Sample Language eligible for 18 Points:

“The attached 15-year *pro forma* was prepared by the [Applicant] or [independently prepared by [name of lender] for [Development name] located in [Development City]. The *pro forma* is consistent with the unit rental rate assumptions, total operating expenses, net operating income, and debt service coverage based on [name of lender] current underwriting parameters and consistent with the loan terms indicated in the term sheet and is preliminarily considered feasible, pending further diligence review. The debt service for each year maintains no less than a 1.15 debt coverage ratio.

Additionally, we have performed a preliminary review of the credit worthiness of [Development Owner] and its Principals. At this time, [name of lending institution] has no reservations with the Development Owner or any of the Principals. We anticipate no additional guarantors or financial strength will be needed to facilitate a loan to this borrower, other than those requirements disclosed herein.”