

**Erie County Policy on
Payment in Lieu of Taxes (PILOT)
for Housing for Low and Very Low Income Households**

I. Background

In the past decade, federal tax credit financing under section 42 of the Internal Revenue Code has become the most widely-used method of financing affordable housing. Tax credit financing is a process whereby private-sector investors and developers form a limited partnership to fund the development of affordable housing. Typically, a private-sector investor provides project funding, while a not-for-profit corporation controls the construction and operation of the housing units. Through this symbiotic relationship, developers, communities and Working families, earning up to sixty percent of the local area median income, realize the numerous benefits of affordable housing, while investors realize the benefits of tax credits.

However, the ownership structure employed in tax credit financing - a limited partnership - poses a financial challenge. By forming a for-profit entity, the not-for-profit developer loses his tax exempt status and is therefore subject to full taxation on the new development. Thus, while the tax credit structure creates greater efficiencies in financing low income developments, it also imposes what can be an insurmountable real property tax burden on developers.

For-profit developers using tax credits and affordable housing developers not using tax credits may face similar unmanageable tax burdens when constructing and operating housing for low and very low income households. Recognizing this, and determined to provide assistance for low income citizens, the State of New York passed Articles 5 and 11 of the New York State Private Housing Finance Law and section 421-e of the New York State Real Property Tax Law, which allow municipal governments to enter into agreements with developers to make a payment in lieu of taxes (PILOT).

While PILOT agreements help to ensure the financial feasibility of housing for low and very low income households, implementation of a standardized PILOT Policy also improve a developer's chances of securing state or federal funding. The total governmental funds available to help finance affordable housing projects are limited by the federal and state budget process. Local communities must therefore compete with other areas of the state to obtain this funding. A PILOT Policy that provides predictability and efficiency to the PILOT agreement process makes local developers more competitive when attempting to secure limited government funding.

II. Statement of Objective

Through adoption of a Payment in Lieu of Taxes (PILOT) Policy, Erie County hopes to stimulate development of affordable housing in the region, especially for those individuals with the lowest levels of income. In addition, Erie County strives to enhance its competitiveness against other regions of New York State in securing limited state and federal tax dollars for housing by bringing predictability and efficiency to the PILOT agreement process. Erie County also expects that adoption of a PILOT Policy will yield additional benefits, such as county revitalization through the attraction of public and private investment capital to the County and economic and aesthetic enhancement of development areas.

III. Definitions

- a. "Development" means an individual rental project eligible under New York State law for

a payment in lieu of taxes (PILOT) agreement with local municipalities.

- b. "Total Effective Income" is the sum of the net residential income, total ancillary income and net commercial income. The calculation for the Total Effective Income can be found in the Rent Plan submitted with a New York State Division of Housing and County Renewal Unified Funding Application.
- c. A unit is "Affordable" for a resident when no greater than 30% of such resident's imputed income, as defined by Section 42 of the Internal Revenue Code, is necessary for housing costs.
- d. "Housing for Low Income Households" refers to a Development:
 - (1.) in which at least 60% of the units are affordable to persons earning no greater than 60% of the area median income, adjusted for family size, as determined by the Department of Housing and Urban Development; and
 - (2.) for which there is a fifteen year commitment for low-income use that includes appropriate regulatory restrictions, such as ones disallowing placement of alien on any object governed by a PILOT agreement.
- e. "PILOT A" refers to the PILOT agreement that shall be used with housing for low income households.
- f. "Housing for Very Low Income Households" refers to a Development:
 - (1.) in which at least 60% of the units are affordable to persons earning no greater than 50% of the area median income, adjusted for family size, as determined by the Department of Housing and Urban Development; and
 - (2.) for which there is a fifteen year commitment for very low-income use that includes appropriate regulatory restrictions, such as ones disallowing placement of a lien on any project governed by a PILOT agreement.
- g. "PILOT B" refers to the PILOT agreement that shall be used with housing for very low income households.

IV. PILOT Policy

- a. Under a PILOT A agreement, the initial annual payment in lieu of taxes will equal 5% of the housing project's Total Effective Income. In each and every subsequent year, a straight 3% escalator will be applied to the previous year's PILOT payment to determine the payment amount. Payments will continue for fifteen years, after which time the property will be subject to full taxation.
- b. Under a PILOT B agreement, the initial annual payment in lieu of taxes will equal 3% of the housing project's Total Effective Income. In each and every subsequent year, a straight 3% escalator will be applied to the previous year's PILOT payment to determine the payment amount. Payments will continue for fifteen years, after which time the property will be subject to full taxation.
- c. Under PILOT A and PILOT B agreements, 75% of the PILOT payment will be paid directly to the local taxing jurisdiction in which the Development is located and 25% of the PILOT payment will be paid directly to the County by the taxpayer. A schedule of payments for the fifteen year period will be attached to the PILOT agreement.
- d. This PILOT Policy will be used as the benchmark for reviewing PILOT applications. The County will consider non-standard applications when necessary and appropriate to advance County objectives in assisting low and very low income households.

- e. Except as otherwise provided in Section IV, subsection d, a Development other than housing for low or very low income households, will be subject to taxation, or other forms of PILOTs as provided by law.
- f. This PILOT Policy will be applied only to Developments that do not have signed
- g. PILOT agreements as of the effective date of this policy.

V. Application Process

- a. Application. The following information must be provided by the applicant regarding the Development for which a PILOT agreement is being requested:
 - (1.) Percentage of units for low and very low income residents.
 - (2.) Project Proposal.
 - (3.) Description of the Development's sources of and uses for funding.
 - (4.) Five Year Operating Budget, including:
 - i. administrative cost;
 - ii. utilities;
 - iii. maintenance and operating fees;
 - iv. taxes and insurances;
 - v. projected rental schedule;
 - vi. projected vacancy rate; and
 - vii. projected total effective income.
 - (5.) Five-Year Plan of Management.
 - (6.) Number of residential units and square footage.
 - (7.) Site plan.
 - (8.) A copy of the applicant's organizational documents:
 - i. certificate of organization;
 - ii. copy of organization's by-laws; and
 - iii. 501(c)(3) letter, if applicable.
 - (9.) A list of all of the parties who are involved in the development and operation of the Development, including the specific role (e.g. management, developer) of each party.
 - (10.) For Developments funded with tax credits, a description of the projected take out of the property after the first fifteen year compliance period.
 - (11.) A letter indicating community support from the chief elected official, or his designee, located within the community in which the proposed Development will be located.

To avoid duplication of effort, applications for funding that contain this information, such as the Unified Funding Application, may be used to fulfill this requirement.

- b. Submission. Applications for a PILOT Agreement should be simultaneously submitted to:
 - (1.) County of Erie
 Department of Environment and Planning
 95 Franklin Street
 Buffalo, New York 14202
 Attn: PILOT Request
 - (2.) Local Taxing Jurisdiction in which the Development is located.
- c. Review of Applications. The Erie County review process will proceed as follows:

- (1.) The Commissioner of Environment and Planning will respond within fifteen business days upon receipt of the application with a letter acknowledging such receipt. A copy of this letter will be sent to the local taxing jurisdiction in which the Development is located.
- (2.) The Commissioner of Environment and Planning will write a letter of recommendation to approve or disapprove the PILOT request within thirty days of receipt of a completed application. A copy of this recommendation will be sent to the local taxing jurisdiction in which the Development is located.
- (3.) The Commissioner of Environment and Planning expects that the party requesting a PILOT agreement with the County will concurrently seek approval for a PILOT from the local taxing jurisdiction in which the Development is located. The Commissioner of Environment and Planning may withhold approval of a PILOT agreement with the County if such a process is not taking place.
- (4.) If recommended for approval, the Commissioner of Environment and Planning will submit a PILOT agreement recommended for approval to the County Legislature within forty days of receipt of the application. A copy of this recommendation will be sent to the local taxing jurisdiction in which the Development is located.
- (5.) Once approved by the County Legislature, the PILOT agreement will be submitted to the County Executive for his signature.

VI. Inquiries

Applicants interested in entering into a PILOT agreement with the County of Erie should direct initial inquiries to:

County of Erie
Commissioner
Department of Environment and Planning
95 Franklin Street
Buffalo, New York 14202
phone: 716-858-6716 fax: 716-858-7248