

TO: Municipal Officials, All Sponsors and Their Attorneys
FROM: Legal Affairs Division, Michigan State Housing Development Authority
RE: Model Tax Abatement Ordinance - Development Specific, Federally-Aided Mortgage with LIHTC

The model tax abatement ordinance which follows is intended as a guide format to be used by those municipalities adopting tax abatement for a specific housing that receives an allocation of Low Income Housing Tax Credits by the Michigan State Housing Development and is financed by a federally-aided mortgage, as defined in the State Housing Development Authority Act of 1966 (1966 PA 346). Further information on tax abatement under Section 15a of the Act (see MCL 125.1415a) may be obtained by calling the Legal Affairs Division at (517) 373-8295 during business hours.

[insert name of municipality]

ORDINANCE NO. _____

TAX EXEMPTION ORDINANCE

ADOPTED: *[insert date of adoption]*

An Ordinance to provide for a service charge in lieu of taxes for a housing project for low income persons and families to be financed with a federally-aided Mortgage Loan pursuant to the provisions of the State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401, *et seq*) (the "Act"). *[this section is required]*

THE CITY/TOWNSHIP OF *[insert name of municipality and delete inapplicable reference]*
ORDAINS:

SECTION 1. This Ordinance shall be known and cited as the "*[insert name of municipality]* Tax Exemption Ordinance-*[insert name of housing project]*."

SECTION 2. Preamble.

It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its low income persons and families and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the Act. The City/Township *[delete inapplicable reference]* is authorized by this Act to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that

would be paid but for this Act. It is further acknowledged that such housing for low income persons and families is a public necessity, and as the City/Township *[delete inapplicable reference]* will be benefited and improved by such housing, the encouragement of the same by providing real estate tax exemption for such housing is a valid public purpose. It is further acknowledged that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of all *ad valorem* taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of the housing projects that is constructed or rehabilitated with financing extended in reliance on such tax exemption. *[this section is required]*

The City/Township *[delete inapplicable reference]* acknowledges that the Sponsor (as defined below) has offered, subject to receipt of an allocation under the LIHTC Program by the Michigan State Housing Development Authority, to construct/acquire and rehabilitate *[delete inapplicable reference]*, own and operate a housing project identified as *[insert name of housing project]* on certain property located at *[insert brief description of real property]* in the City/Township *[delete inapplicable reference]* to serve low income persons and families, and that the Sponsor has offered to pay the City/Township on account of this housing project an annual service charge for public services in lieu of all *ad valorem* property taxes. *[this section is required]*

SECTION 3. Definitions. *[this section may be modified]*

- A. Authority means the Michigan State Housing Development Authority.
- B. Annual Shelter Rent means the total collections during an agreed annual period from or paid on behalf of all occupants of a housing project representing rent or occupancy charges, exclusive of Utilities. *[Delete this definition if the project receives project-based Section 8 rental subsidy]*
- C. Contract Rents means the total Contract Rents (as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to Section 8 of the U.S. Housing Act of 1937, as amended) received in connection with the operation of a housing project during an agreed annual period, exclusive of Utilities. *[Delete this definition if the project does NOT receive project-based Section 8 rental subsidy]*
- D. LIHTC Program means the Low Income Housing Tax Credit program administered by the Authority under Section 42 of the Internal Revenue Code of 1986, as amended.
- E. Low Income Persons and Families means persons and families eligible to move into a housing project.
- F. Mortgage Loan means a loan that is Federally-Aided (as defined in Section 11 of the Act) or a loan or grant made or to be made by the Authority to the Sponsor for the construction, rehabilitation, acquisition and/or permanent financing of a housing project, and secured by a mortgage on the housing project.
- G. Sponsor means *[insert name of developer or proposed owner, if known]* and any entity that receives or assumes a Mortgage Loan.

H. Utilities means charges for gas, electric, water, sanitary sewer and other utilities furnished to the occupants that are paid by the housing project.

SECTION 4. Class of Housing Projects.

It is determined that the class of housing projects to which the tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be housing projects for Low Income Persons and Families that are financed with a Mortgage Loan. It is further determined that [insert name of housing project] is of this class. *[this section may be modified to define the class of housing projects that are exempt]*

SECTION 5. Establishment of Annual Service Charge.

The housing project identified as [insert name of project] and the property on which it is/or will be located *[delete inapplicable reference]* shall be exempt from all *ad valorem* property taxes from and after the commencement of construction or rehabilitation. The City/Township *[delete inapplicable reference]* acknowledges that the Sponsor and the Authority have established the economic feasibility of the housing project in reliance upon the enactment and continuing effect of this Ordinance, and the qualification of the housing project for exemption from all *ad valorem* property taxes and a payment in lieu of taxes as established in this Ordinance. Therefore, in consideration of the Sponsor's offer to construct/rehabilitate *[delete inapplicable reference]* and operate the housing project, the City/Township agrees to accept payment of an annual service charge for public services in lieu of all *ad valorem* property taxes. Subject to receipt of a Mortgage Loan, the annual service charge shall be equal to _____% of the Annual Shelter Rents/Contract Rents *[delete inapplicable reference]* actually collected by the housing project during each operating year. *[this section may be modified to change the amount of the annual service charge]*

SECTION 6. Contractual Effect of Ordinance.

Notwithstanding the provisions of section 15(a)(5) of the Act to the contrary, a contract between the City/Township *[delete inapplicable reference]* and the Sponsor with the Authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance. *[this section is required]*

SECTION 7. Limitation on the Payment of Annual Service Charge.

Notwithstanding Section 5, the service charge to be paid each year in lieu of taxes for the part of the housing project that is tax exempt but which is occupied by other than low income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the housing project if the housing project were not tax exempt. *[this section is required]*

SECTION 8. Payment of Service Charge.

The annual service charge in lieu of taxes as determined under this Ordinance shall be payable in the same manner as general property taxes are payable to the City/Township and distributed to the several units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. The annual payment for each operating year shall be paid on or before [insert date service charge is payable] of the following year. Collection procedures shall be in accordance with the provisions of the General Property Tax Act (1893 PA 206, as amended; MCL 211.1, *et seq*). *[this section may be modified to specify the date on which payments are due and how payments are to be made or collected]*

SECTION 9. Duration.

This Ordinance shall remain in effect and shall not terminate so long as a Mortgage Loan remains outstanding and unpaid and the housing project remains subject to income and rent restrictions under the LIHTC Program. *[this section may be modified to change the duration]*

SECTION 10. Severability.

The various sections and provisions of this Ordinance shall be deemed to be severable, and should any section or provision of this Ordinance 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 any section or provision of this Ordinance, other than the section or provision so declared to be unconstitutional or invalid. *[this section is required]*

SECTION 11. Inconsistent Ordinances.

All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict. *[this section is required]*

Section 12. Effective Date.

This Ordinance shall become effective on [insert effective date], as provided in the City/Township *[delete inapplicable reference]* Charter.

TOWNSHIP/CITY CLERK
[delete inapplicable reference]