

**AUSTIN AFFORDABLE
PFC, INC.**

**BOARD OF DIRECTORS
Regular Meeting**

**Thursday, February 16, 2023
5:00 PM**

**HACA Central Office, 1124 S. Interstate Highway 35, Austin, TX
Austin, TX**

**PUBLIC NOTICE OF A MEETING
TAKE NOTICE OF A BOARD OF DIRECTORS
REGULAR BOARD MEETING
OF THE AUSTIN AFFORDABLE PFC, INC.**

**TO BE HELD AT
HACA Central Office, 1124 S. Interstate Highway 35, Austin, TX
Austin, TX
(512.477.4488)**

**Thursday, February 16, 2023
5:00 PM**

CALL TO ORDER, ROLL CALL

CERTIFICATION OF QUORUM

Public Communication (Note: There will be a three-minute time limitation)

CONSENT ITEMS

1. Presentation, Discussion, and Possible Action regarding the Approval of the Board Minutes Summary for the Board Meeting held on December 7, 2022

ACTION ITEMS

2. Presentation, Discussion and Possible Action on Resolution No. 00097 Declaring intent to issue Bonds to provide financing for a multifamily residential rental development for persons of low and moderate income (Kingswood); Prescribing certain terms and conditions of such Bonds; Authorizing the filing of an application for allocation of Private Activity Bonds with the Texas Bond Review Board; and containing other provisions relating to the subject

EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public) Pursuant to:

- a. 551.071, Texas Gov't Code, consultations with Attorney regarding legal advice, pending or contemplated litigation; or a settlement offer;
- b. 551.072, Texas Gov't Code, discussion about the purchase, exchange, lease or value of real property;
- c. 551.074, Texas Gov't Code, discuss the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee.
- d. 551.087, Texas Gov't Code, discuss certain economic development negotiations.

OPEN SESSION

If there is an Executive Session, the Board will return to Open Session for discussion, consideration and possible action of matters discussed in Executive Session.

REPORTS

The Board accepts the following reports:

- President's Report
- Other Staff Reports

- Commissioners' Reports/Questions to the Department Staff

ADJOURNMENT

"Pursuant to 30.06, Penal Code, (trespass by holder of license with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not attend this meeting with a concealed handgun."

"Pursuant to 30.07, Penal Code (trespass by holder of license with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not attend this meeting with a handgun that is carried openly."

"En virtud del 30.06, Código Penal, (traspaso titular de licencia con una pistola), una persona bajo el subcapítulo H, capítulo 411, código de gobierno (Ley de licencia de arma o pistola), no se permiten en esta reunión con una arma o pistola.

"En virtud de 30.07, Código Penal (prevaricación por titular de la licencia con un arma o pistola abiertamente llevado), una persona bajo el subcapítulo H, capítulo 411, código de gobierno (Ley de licencia de arma o pistola), no se permiten en esta reunión con un arma o pistola que lleva abiertamente.

*The Housing Authority of the City of Austin (HACA) Board of Commissioners reserves the right to discuss and consider items out of order on the agenda on an as needed basis.

The Housing Authority of the City of Austin is committed to compliance with the Americans with Disability Act. Reasonable modifications and equal access to the communications will be provided upon request. Meeting locations are planned with wheelchair access. If requiring Sign Language Interpreters or alternative formats, please give notice at least 2 days (48 hours) before the meeting date. Please call Nidia Hiroms at HACA at 512.477.4488, for additional information; TTY users route through Relay Texas at 711. For more information on HACA, please contact Nidia Hiroms at 512.477.4488 x 2104.

AUSTIN AFFORDABLE PFC, INC.

BOARD ACTION REQUEST

ITEM NO. 1.

MEETING DATE: February 16, 2023

STAFF CONTACT: Ron Kowal, Vice President of Housing Development/Asset Mgmt

ITEM TITLE: Presentation, Discussion, and Possible Action regarding the Approval of the Board Minutes Summary for the Board Meeting held on December 7, 2022

BUDGETED ITEM: N/A

TOTAL COST: N/A

ACTION

The Board is being asked to review and approve the Board Minutes Summary for the Board Meeting held on December 7, 2022.

ATTACHMENTS:

- ▣ **20221207 AAPFC Minutes Summary**

**AUSTIN AFFORDABLE PFC, INC.
BOARD OF DIRECTORS
REGULAR BOARD MEETING**

December 7, 2022

SUMMARY OF MINUTES

AUSTIN AFFORDABLE PFC, INC. (HACA) BOARD OF DIRECTORS REGULAR BOARD MEETING NOTICE WAS POSTED FOR 8:00 AM ON WEDNESDAY, DECEMBER 7, 2022, AND WAS HELD AT THE HACA CENTRAL OFFICE, 1124 S. IH 35, AUSTIN, TX AND VIRTUALLY

CALL TO ORDER, ROLL CALL, CERTIFICATION OF QUORUM

Carl S. Richie, Jr., HACA Chairperson called the Board of Directors Regular Board Meeting of the Affordable PFC, Inc., of December 7, 2022, to order at 8:12 am. The meeting was held at the HACA Central Office, 1124 S. IH 35, Austin, TX and virtually.

Roll call certified a quorum was present on the call.

MEMBERS PRESENT:

Edwina Carrington, Chairperson
Charles Bailey, Vice-Chairperson
Mary Apostolou, 2nd Vice-Chairperson
Dr. Tyra Duncan-Hall, Director
Carl S. Richie, Jr., Director

MEMBER(S) ABSENT:

ALSO IN ATTENDANCE:

Wilson Stoker, Cokinos Law Firm
Bill Walter, Coats Rose Law Firm

STAFF PRESENT:

Gloria Morgan, Jimi Teasdale, Keith Swenson, Kelly Crawford, Leilani Lim-Villegas, Lisa Garcia, Michael Cummings, Michael Gerber, Nidia Hiroms, Ron Kowal, Suzanne Schwertner, and Sylvia Blanco

PUBLIC COMMUNICATION - (3 minute time limit)

NONE

Public communication was opened during each item on the agenda. No one provided any communication during any of the items.

CONSENT AGENDA

APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

ITEM 1: Presentation, Discussion, and Possible Action regarding the Approval of the Board Minutes Summary for the Board Meeting held on October 20, 2022

Director Duncan-Hall moved the Approval of the Board Minutes Summary for the Board Meeting held on October 20, 2022. **2nd Vice-Chairperson Apostolou** seconded the motion. The motion Passed (5-Ayes and 0-Nays).

ITEM 2: Presentation, Discussion, and Possible Action of Resolution No. 00095: Resolution declaring intent to issue bonds to provide for a multifamily residential rental development for persons of low and moderate income (Bridge at Canyon View); prescribing certain terms and conditions of such bonds; authorizing the filing of an application for allocation of Private Activity Bonds with the Texas Bond Review Board; and containing other provisions relating to the subject

Austin Affordable PFC, Inc. issued bonds for the Bridge at Canyon View (located at 4506 E. William Cannon, Austin 78744) in December 2019 and construction started soon after. When complete, the property will include 215 units affordable to families earning 60% AMI and below with family friendly amenities. The project is financed using the 4% tax credit/tax-exempt bond structure. Unit breakdown: 71 one bedroom/one room/ two bath and 90 three bedroom/two bath units. All units will be marketed to HACA's Housing Choice Voucher residents.

The year after Bridge at Canyon View closed, Congress passed legislation which raised the floor of the 4% tax credits to a true 4%. Up until 2020, the rate floated and was as low as 3.2%. The tax credits received on this development were based on a tax credit rate of less than 4%. With TDHCA's approval, we are able to request a supplemental issuance of tax credits to bring us up to the current 4% floor. Under this program, the tax credits go hand and hand with the tax-exempt bonds. In order to obtain the

supplemental credits, we are required to obtain additional tax-exempt bonds.

Austin Affordable PFC, Inc. requested an inducement for a supplemental issuance of tax-exempt bonds in an amount not to exceed \$5,000,000. This resolution will begin the initial process to submit applications for supplemental tax credits and bond approval. Staff will be return future months on the progress and for specific approval for the supplemental issuance.

Director Duncan-Hall moved the Approval of Resolution No. 00095: Resolution declaring intent to issue bonds to provide for a multifamily residential rental development for persons of low and moderate income (Bridge at Canyon View); prescribing certain terms and conditions of such bonds; authorizing the filing of an application for allocation of Private Activity Bonds with the Texas Bond Review Board; and containing other provisions relating to the subject bonds in an amount not to exceed \$5,000,000. **2nd Vice-Chairperson Apostolou** seconded the motion. The motion Passed (5-Ayes and 0-Nays).

Chairperson Carrington left at 11:28 am.

Director Richie left at 11:30 am, AAPFC Vice-Chairperson Bailey presiding over meeting.

ITEM 3: Presentation, Discussion, and Possible Action of Resolution No. 00096: Resolution declaring intent to issue bonds to provide for a multifamily residential rental development for persons of low and moderate income (Estates at Norwood); prescribing certain terms and conditions of such bonds; authorizing the filing of an application for allocation of Private Activity Bonds with the Texas Bond Review Board; and containing other provisions relating to the subject

Austin Affordable PFC, Inc. issued bonds for the Estates at Norwood (located at 916 Norwood Park, Austin 78753) in December 2019 and construction started soon after. When complete, the property will include 228 units affordable to families earning 60% AMI and below with family friendly amenities. The project is financed using the 4% tax credit/tax-exempt bond structure. Unit breakdown: 36 one bedroom/one bath, 108 / two bath and 84 three bedroom/two bath units. All units will be marketed to HACA's Housing Choice Voucher residents.

The year after Estates at Norwood closed, Congress passed legislation which raised the floor of the 4% tax credits to a true 4%. Up until 2020, the rate floated and was as low as 3.2%. The tax credits received on this development were based on a tax credit rate of less than 4%. With TDHCA's approval, we are able to request a supplemental issuance of tax credits to bring us up to the current 4% floor. Under this program, the tax credits go hand and hand with the tax-exempt bonds. In order to obtain the supplemental credits, we are required to obtain additional tax-exempt bonds.

Austin Affordable PFC, Inc. requested an inducement for a supplemental issuance of tax-exempt bonds in an amount not to exceed \$6,000,000. This resolution will begin the initial process to submit applications for supplemental tax credits and bond approval. Staff will be return future months on the progress and for specific approval for the supplemental issuance.

Director Duncan-Hall moved the Approval of Resolution No. 00096: Resolution declaring intent to issue bonds to provide for a multifamily residential rental development for persons of low and moderate income (Estates at Norwood); prescribing certain terms and conditions of such bonds; authorizing the filing of an application for allocation of Private Activity Bonds with the Texas Bond Review Board; and containing other provisions relating to the subject in an amount not to exceed \$6,000,000. **2nd Vice-Chairperson Apostolou** seconded the motion. The motion Passed (3-Ayes and 0-Nays).

EXECUTIVE SESSION

The Board did not recess into Executive Session.

2nd Vice-Chairperson Apostolou moved to adjourn the meeting. **Director Duncan-Hall** seconded the motion. The motion Passed (3-Ayes and 0-Nays).

The meeting adjourned at 11:40 am.

Michael G. Gerber, Secretary

Edwina Carrington, Chairperson

AUSTIN AFFORDABLE PFC, INC.

BOARD ACTION REQUEST

RESOLUTION NO. 00097

ITEM NO. 2.

MEETING DATE: February 16, 2023

STAFF CONTACT: Suzanne Schwertner, Director of Development

ITEM TITLE: Presentation, Discussion and Possible Action on Resolution No. 00097 Declaring intent to issue Bonds to provide financing for a multifamily residential rental development for persons of low and moderate income (Kingswood); Prescribing certain terms and conditions of such Bonds; Authorizing the filing of an application for allocation of Private Activity Bonds with the Texas Bond Review Board; and containing other provisions relating to the subject

BUDGETED ITEM: N/A

TOTAL COST: N/A

ACTION

The Board is being asked to approve Resolution No. 00097 Declaring intent to issue Bonds to provide financing for a multifamily residential rental development for persons of low and moderate income (Kingswood); Prescribing certain terms and conditions of such Bonds; Authorizing the filing of an application for allocation of Private Activity Bonds with the Texas Bond Review Board; and containing other provisions relating to the subject.

SUMMARY

Background:

Austin Affordable Housing Corporation is being presented with an opportunity to partner with LDG Multifamily LLC on a certain 23.054 acre tract of land located at southeast corner of FM Road 812 and Burklund Farms Road, Austin, Texas 78617 in the Austin extraterritorial jurisdiction (ETJ). The project (Kingswood) will consist of 328 family apartment units serving tenants at or below 60% of median family income. This property was initially presented to the Board in 2020, but we were unable to obtain a bond reservation at that time. The nearest properties in AAHC's current portfolio are Pointe and Villages of Ben White to the northwest.

This property will benefit HACA and AAHC with deep affordability, a large number of family units and close proximity to TESLA and all the businesses that are building close to TESLA. Once built, we will name the property Bridge at Kingswood.

Process:

The development will use a mixture of 4% tax credits and bonds to finance the development with a total

project cost of approximately \$100,000,000. The planned development will consist of 48 one bedroom and one bath units, 132 two bedroom and two bath units, 132 three bedroom and two bath units, and 16 four bedroom and two bath units. All units will be marketed to HACA's Housing Choice Voucher residents. HACA, through its Public Facility Corporation is requesting the approval of an issuance of tax-exempt bonds in an amount not to exceed \$50,000,000. This approval will begin the initial process to submit applications for tax credits and bond approval. Staff will be presenting back to the Board in the future months on the progress and specifically any and all agreements and approvals.

Staff Recommendation:

Staff recommends approval of Resolution No. 00097.

RESOLUTION NO. 00097

Resolution declaring intent to issue bonds to provide financing for a multifamily residential rental development for persons of low and moderate income (Kingswood); prescribing certain terms and conditions of such bonds; authorizing the filing of an application for allocation of Private Activity Bonds with the Texas Bond Review Board; and containing other provisions relating to the subject

WHEREAS, the Board of Commissioners of the Housing Authority of the City of Austin (the "**Unit**") has, pursuant to the Public Facility Corporation Act, Chapter 303, Texas Local Government Code, as amended (the "**Act**"), approved and created the Austin Affordable PFC, Inc., a nonprofit corporation (the "**Issuer**");

WHEREAS, on November 5, 2012, the Issuer's Certificate of Formation was filed with the Secretary of State of the State of Texas;

WHEREAS, the Issuer, on behalf of the Unit is empowered to issue bonds to finance, refinance, or provide one or more public facilities, as such term is defined in the Act, which projects will be within the Unit's boundaries, including Austin, Texas;

WHEREAS, LDG Kingswood, LP, a Texas limited partnership, or such other limited partnership as the sole member of the general partner of the User designates (the "**User**"), has requested that the Issuer finance a low and moderate income multifamily housing project consisting of up to approximately 328 units to be located at approximately the southeast corner of FM Road 812 and Burklund Farms Road in Austin, Travis County, Texas (the "**Project**"), and further that the Issuer adopt this Resolution with respect to the acquisition and construction of the Project;

WHEREAS, the User has advised the Issuer that a contributing factor which would further induce the User to proceed with providing for the acquisition and construction of the Project would be a commitment and agreement by the Issuer to issue revenue bonds pursuant to the Act (the "**Bonds**") to finance and pay for the Project;

WHEREAS, in view of a shortage of decent, safe and sanitary housing for persons and families of low income at prices or rentals that they can afford, it is considered essential that construction of the Project be completed at the earliest practicable date, but at the same time, the User wishes to begin construction of the Project after satisfactory assurances from the Issuer, subject to the conditions set forth herein, that the proceeds of the sale of the Bonds, or other obligations, of the Issuer in an amount necessary to pay the costs of the Project will be made available to finance the Project; and

WHEREAS, the Issuer finds, intends, and declares that this Resolution shall constitute its official action, subject to the conditions set forth herein, to issue Bonds, or other obligations, pursuant to the Act in an amount prescribed by the User not to exceed the maximum aggregate principal amount up to \$50,000,000 for tax-exempt obligations and to expend the proceeds thereof to acquire, construct, and install the Project and to pay all expenses and costs of the Issuer in connection with the issuance of the Bonds; and

WHEREAS, in order to finance and pay for the Project through the issuance of revenue bonds, the interest on which is excludable from the gross income of the holders thereof under the Internal Revenue Code of 1986, as amended (the "**Code**"), the Issuer must submit an Application for Allocation of Private Activity Bonds or an Application for Carryforward for Private Activity Bonds (the "**Application**") to the Texas Bond Review

Board (the "**TBRB**") for a reservation of state ceiling available to "**private activity bonds**" (as defined in the Code) for a calendar year;

THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE AUSTIN AFFORDABLE PFC, INC. THAT:

Section 1. Subject to the terms hereof, the Issuer agrees that it will:

(a) Issue the Bonds, and if the User and the Issuer agree, other evidences of indebtedness providing temporary financing of the Project, which will be issued after the date hereof and be refunded by the Bonds pursuant to the Act, or any other Texas legislation heretofore or hereafter enacted which may provide a suitable method of financing in addition to or in substitution for the Act.

(b) Cooperate with the User with respect to the issuance of the Bonds, and, if arrangements therefor satisfactory to the User and the Issuer can be made, the Issuer will take such action and authorize the execution of such documents and will take such further action as may be necessary or advisable for the authorization, execution, and delivery of any contracts or agreements deemed necessary or desirable by the User or the Issuer in connection with the issuance of the Bonds (collectively, the "**Contracts**"), providing among other things for payment of the principal of, interest on, redemption premiums, paying agents' charges, and Trustee's fees, if any, on the Bonds; payment of fees and charges of the Issuer or the Unit; acquisition, construction, and improvement of the Project or reimbursement of Project costs; and use, operation, and maintenance of the Project (and the execution of any appropriate and necessary guaranty agreements), all as shall be authorized, required, or permitted by law and as shall be mutually satisfactory to the Issuer, the Unit, and the User.

(c) If the proceeds from the sale of the Bonds are insufficient, take such actions and execute such documents as may be necessary to permit the issuance from time to time in the future of additional bonds on terms which shall be set forth therein, whether on a parity with other series of bonds or otherwise, for the purpose of paying the costs of completing the acquisition and construction of the Project, as requested by the User and within then applicable limitations.

(d) Take or cause to be taken such other actions as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

The Bonds shall specifically provide that neither the State of Texas, the Unit, nor any political issuer, subdivision, or agency of the State of Texas shall be obligated to pay the same or the interest thereon and that neither the faith and credit nor the taxing power of the State of Texas, the Unit, or any political issuer, subdivision, or agency thereof is pledged to the payment of the principal of, premium, if any, or interest on the Bonds.

The obligation of the Issuer to issue the Bonds is specifically subject to satisfaction of each of the following conditions:

(i) the receipt of a ruling from the Internal Revenue Service or an opinion from nationally recognized bond counsel, substantially to the effect that the interest on the Bonds is excludable from gross income tax purposes under existing law;

(ii) approval of the Bonds by all other governmental agencies required to approve the Bonds including, but not limited to, approval of the Bonds by the Mayor of the City of Austin, Texas, the Attorney General of the State of Texas and any other applicable governmental authority; and

(iii) any other conditions reasonably imposed by the Issuer.

Section 2. The Issuer hereby authorizes the submission of an Application to the TBRB for a reservation of the state ceiling for "private activity bonds" for program year 2023 (or other available bond funds administered by the TBRB) and each subsequent calendar year at the User's request to finance the Project. Any officer of the Issuer is hereby authorized to execute and submit an Application to the TBRB in such form as may be approved by the TBRB for such purpose.

Section 3. It is understood by the Issuer and the Unit, and the User has represented to the Issuer, that in consideration of this Resolution and by filing the Application, and subject to the terms and conditions hereof, the User has agreed that:

(a) Prior to the sale of the Bonds in one or more series or issues from time to time as the Issuer and the User shall hereafter agree to in writing, the User will enter into the Contracts with the Issuer under the terms of which the User will obligate itself to pay to the Issuer (or to a Trustee, as the case may be) sums sufficient in the aggregate to pay the principal of, interest on, redemption premiums, paying agents' fees, and Trustee's fees, if any, on the Bonds, as and when the same become due and payable, with such contract to contain the provisions described in Section 1 hereof and such other provisions as may be required or permitted by law and to be mutually acceptable to the Issuer and the User.

(b) The User will (1) pay all Project costs which are not or cannot be paid or reimbursed from the proceeds of the Bonds and (2) at all times, indemnify and hold harmless the Issuer against all losses, costs, damages, expenses, and liabilities of whatsoever nature (including but not limited to attorneys' fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments) directly or indirectly resulting from, arising out of or related to the issuance, offering, sale, or delivery of the Bonds, or the design, construction, operation, use, occupancy, maintenance, or ownership of the Project.

(c) The User will provide to the Issuer all information required to be submitted to the TBRB and any other governmental agencies for approval of the Project or the Bonds and will execute all necessary documents in connection therewith.

Section 4. The Issuer finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Project will promote the public purposes set forth in Section 303 of the Act, including, without limitation, assisting persons of low and moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

Section 5. Neither the User nor any other party is entitled to rely on this Resolution as a commitment to loan funds, and the Issuer reserves the right not to issue the Bonds either with or without cause and with or without notice, and in such event the Issuer shall not be subject to any liability or damages of any nature. Neither the User nor anyone claiming by, through or under the User, nor any investment banking firm or potential purchaser of the Bonds shall have any claim against the Issuer whatsoever as a result of any decision by the Issuer not to issue the Bonds.

Section 6. It is recognized and agreed by the Issuer that the User may exercise its rights and perform its obligations with respect to the financing of the Project either through (i) itself in its own name; (ii) any of its wholly-owned subsidiaries; (iii) any "related person" as defined in Section 144(a)(3) of the Code; or (iv) any legal successor thereto, respectively, subject to approval of the Issuer's bond counsel and, provided that suitable guaranties necessary or convenient for the marketability of the Bonds shall be furnished, if required by the Issuer, and all references to the User shall be deemed to include the User acting directly through itself or any such approved entities.

Section 7. This Resolution is affirmative of official action taken by the Issuer towards the issuance of the Bonds within the meaning of Sections 1.1038(a)(5)(i) and (ii) and 1.150-2, Title 26, Code of Federal Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that

Bonds issued to reimburse Project costs may qualify for the exemption provisions of Section 142(a)(7) of the Code and that the interest on the Bonds will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 8. The Issuer hereby authorizes the filing and any resubmission of an Application with the TBRB, and that Coats Rose, P.C. be designated as the authorized representative of the Issuer for purposes of an Application (“**Bond Counsel**”). Any officer of the Issuer is hereby authorized and directed to execute an Application on behalf of the Issuer and to take any and all other actions related to such Application or necessary or desirable to carry out the provisions of this Resolution, including any further revisions to this Resolution.

Section 9. Notwithstanding any other provision of this Resolution, the officers of the Issuer are each hereby authorized to make or approve such revisions to this Resolution and in the form of the documents hereby approved, in the opinion of Bond Counsel, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution; and approval of such changes by the Issuer shall be indicated by such officers’ execution of the documents.

PASSED, APPROVED AND ADOPTED this 16th day of February, 2023.

Edwina Carrington, Chairperson

ATTEST:

Secretary