



## Legislation Text

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**File #:** 45160, **Version:** 1

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### **Fiscal Note**

The City's 2017 Adopted Capital Budget authorizes up to \$4.72 million for the Affordable Housing Fund (Community Development Division Project No. 17110). That sum includes \$4.5 million of GO Borrowing in 2017 and \$220,000, reauthorized from the 2016 Adopted Capital Budget. A Resolution authorizing City financial support from the 2017 Capital budget of \$3.15 million for three projects is seeking Council support on November 22, 2016 (Legistar #44932). This provides a remaining balance of up to \$1.57 million for construction of Phase III of the City's permanent supportive housing initiative for adults experiencing homelessness (also known as the Park Street project).

### **Title**

Authorizing the Mayor and City Clerk to execute loan agreements with Heartland Housing, Inc. (and/or an affiliate legal entity) for up to \$1,570,000 from the Affordable Housing Fund for the development (pre-development and construction) of approximately 63 units of permanent supportive housing for adults experiencing homelessness proposed to be developed at 1202 S. Park Street.

### **Body**

#### **Body**

WHEREAS, funds for pre-development and construction costs associated with the development of permanent supportive housing for adults experiencing homelessness (Phase III, a/k/a the Park Street project) are authorized in the City's 2017 Adopted Capital Budget.

This Resolution authorizes an award of up to \$1,570,000 (a total of up to \$155,000 for pre-development and up to \$1,415,000 million for development costs) to Heartland Housing, Inc., for the development of the Phase III permanent supportive housing project proposed to be developed at 1202 S. Park Street.

### **Background**

On June 7, 2016 (RES-16-00435, Legistar # 42709), the Common Council directed the CDA to draft and issue a request for qualifications (RFQ) for development services associated with the development, operation and financing of housing for homeless adults (Phase III of the City's permanent supportive housing initiative).

As a result of that RFQ process, on July 19, 2016 (RES-16-00548, Legistar #43550), the Common Council approved the selection of a team comprised of Heartland Housing, Inc., to develop and provide property management services for the housing project; and Heartland Health Outreach to provide support services to the residents of that housing.

Beginning in 2015, the City's Capital Budget authorized funds for the first phase of the City's permanent supportive housing initiative and also authorized funds necessary for the second and subsequent phases of that initiative per DPCED Project No. 42 (Affordable Housing Fund). The initiative's stated goal is to develop approximately 250 units of affordable housing serving homeless persons per DPCED Project No. 25 (Permanent Supportive Housing),

### **Action**

WHEREAS, the City's 2017 Adopted Capital Budget, approved on November 14, 2016 authorizes up to \$4.5

million for the Affordable Housing Fund (Community Development Division Project No. 17110). That sum includes funds to support the development of a third phase of the City's permanent supportive housing initiative for homeless adults, Phase III is also known as the Park Street project; and

WHEREAS, the 2016 Adopted Capital Budget's Affordable Housing Fund includes a balance of \$70,000 that is also available to support the development of affordable housing and/or permanent supportive housing.

NOW, THEREFORE BE IT RESOLVED that the Mayor and Common Council hereby authorize a total allocation of up to \$1,570,000 from the CDD's Affordable Housing Fund (\$1.5 million in 2017 AHF funds plus \$70,000 in 2016 AHF funds) to Heartland Housing, Inc., and/or an affiliate legal entity ("Heartland"), to support the proposed permanent supportive housing development at 1202 S. Park Street; and,

BE IT FURTHER RESOLVED, that up to \$155,000 of this allocation shall be made available to Heartland Housing to be used for pre-development activities under the following terms:

**Form of Loan**

- a) The purpose of the Loan is to provide predevelopment financing that will enable Borrower to pay certain predevelopment costs associated with the project (e.g., securing site control and, architectural, legal, permits and other fees); and
- b) The loan shall be evidenced by a promissory note made by developer payable to the City in the amount equal to the loan at zero percent (0%) interest; and
- c) The loan shall be forgivable in the event that the developer fails to secure tax credits, except if the developer fails to apply for tax credits; and
- d) A twelve percent (12%) interest rate will apply in the case of default.

**Events of Default**

- a) Borrower fails to make any payment of principal of or interest on the Note within ten (10) days after the date on which such payment is due; or
- b) Borrower fails to observe or perform any other term, covenant, undertaking or agreement contained in this Agreement or any other Loan Document, and such failure continues unremedied for a period of thirty (30) days after written notice has been given to Borrower by Lender, or, if such failure is not reasonably capable of being remedied within such period of thirty (30) days, Borrower has not commenced remedial action or is not proceeding with diligent efforts to remedy such failure; or
- c) Any representation or warranty made by Borrower, in this Agreement or the other Loan Documents, or any statement or representation made in any certificate, report or opinion delivered pursuant to this Agreement or the other Loan Documents, proves to have been false, misleading or incorrect in any material respect when made or deemed made; or
- d) Borrower becomes insolvent, or fails or ceases to pay its debts as they mature or makes an assignment for the benefit of creditors or files a petition in bankruptcy or is adjudicated insolvent or bankrupt, or petitions or applies to any tribunal for the appointment of any receiver or any trustee, or commences any proceeding under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or any such proceeding is commenced against Borrower that is not dismissed within a period of sixty (60) days, or Borrower, by any act indicates its consent to, approval of, or acquiescence in any such proceeding or the appointment of any receiver of or any trustee for it or any substantial part of its property, or suffers any such receivership or trusteeship to continue undischarged for a period of sixty (60) days; or
- e) Any material adverse change occurs in the financial condition of Borrower that Lender in its reasonable judgment believes may materially adversely affect the ability of Borrower to repay the Note or the ability of Borrower to perform their respective obligations under this Agreement or the other Loan Documents and Lender is not provided with reasonably satisfactory evidence to the contrary or Collateral sufficient to reduce the risk within thirty (30) days following notice to Borrower; or
- f) A default occurs (and continues beyond any applicable notice and cure period) under any portion of

the Construction Financing or under the terms of any instrument or document evidencing or securing, or otherwise executed or delivered in connection with, any portion of the Construction Financing, or any portion of the Construction Financing is terminated, canceled, withdrawn, or reduced for any reason and such action is likely to have a material adverse effect on Borrower's ability to obtain Construction Financing; or

- g) A default occurs (and continues beyond any applicable notice and cure period) under any other loans now or financing now or in the future provided to Borrower or Lender or under the terms of any instrument or document evidencing or securing, or otherwise executed or delivered in connection with, any other loans or financing now or in the future provided to Borrower or Lender; or
- h) Borrower fails to apply for Section 42 tax credit financing of the Project on or before February 3, 2017.

### **Assignment**

- a) Lender may assign or otherwise transfer its rights under this Agreement at any time or times, in its sole and absolute discretion, without any prior approval or consent from Borrower; and any holder or holders of the Note or other Loan Documents shall be deemed an assignee of such rights. Lender agrees to notify Borrower of any assignment or transfer within ten (10) business days after the effective date of such assignment or transfer; provided, however, that the failure to give such notice shall not invalidate in any way any assignment or transfer.
- b) Borrower may assign its rights and delegate the performance of its obligations under this Agreement to its assign. Borrower shall provide to Lender an executed copy of such assignment within ten (10) business days of its effective date.

### **Material Changes - developer shall not**

- a) Permit or enter into any modification or amendment to its certificate of limited partnership or limited partnership agreement or articles of organization or operating agreement, as applicable, if such modification or amendment is likely to materially adversely affect City's ability to collect on the Note; or
- b) Dissolve, liquidate, consolidate with, merge into, or form a partnership or joint venture with, any corporation or other organization, or otherwise acquire all or substantially all of the assets, capital stock, or properties of any corporation or other organization.
- c) City agrees and acknowledges that the developer intends to add an investor member to its ownership structure, which will be documented by amending and restating the developer's operating agreement. Developer represents and warrants that such modification/amendment will not materially adversely affect City's ability to collect on the Note.

BE IT STILL FURTHER RESOLVED that up to \$1,415,000 shall be provided to Heartland for development activities, upon the following terms:

### **Form of Loan**

- a) The assistance be a 0% interest, long-term deferred loan payable upon sale or change in use of the property; and
- b) The developer shall apply the proceeds of the Loan to the expense of acquiring, constructing and/or rehabilitating the property which includes no fewer than 60 units to be used as affordable housing for income eligible households as specified above.
- c) The disbursement of City funds continues to remain contingent upon each project developer demonstrating that it has secured financing sufficient to complete the project, including LIHTC's; that it has received from the City all necessary land use and permit approvals; and that it has satisfied any other City requirements or documentation, including commitment to a 30-year period of affordability; and
- d) The Loan will be secured by a subordinate mortgage, note and Land Use Restriction Agreement; and
- e) The Loan Agreement will be in full force and effect until the loan is repaid or at the expiration of the period of affordability, whichever is longer.

**Assignment**

- a) The loan shall not be assigned without permission of the City except for an assignment to an affiliate entity of the developer prior to loan closing.

**Closing**

- a) Prior to closing, the developer must submit to the City a standard ALTA commitment for a loan policy of title insurance in the amount of the Loan for such Property, which will be subject only to municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, mortgages, security agreements, assignments of leases and rents, regulatory and land use restriction agreements and an extended use commitment pursuant to Section 42 of the Internal Revenue Code, recorded building and use restrictions and covenants, taxes levied in the year of closing, and any other encumbrances acceptable to the City; and
- b) Provide evidence of property insurance as required by the Mortgage containing a standard loss payee endorsement identifying the City as mortgagee. Developer agrees to provide evidence of property insurance annually by February 10th or before expiration of current policy.

BE IT FINALLY RESOLVED, that the Mayor and City Clerk are hereby authorized to execute, deliver, accept and record any and all requisite documents and take such other actions as shall be deemed necessary or desirable to accomplish the purpose of this Resolution, in a form approved by the City Attorney.