

ORDINANCE NO. 11-2200

AN ORDINANCE TO PROVIDE FOR A SERVICE CHARGE IN LIEU OF TAXES FOR A PROPOSED MULTIPLE FAMILY DWELLING PROJECT FOR PERSONS OF LOW INCOME TO BE FINANCED OR ASSISTED PURSUANT TO THE PROVISIONS OF THE STATE HOUSING DEVELOPMENT AUTHORITY ACT OF 1966, AS AMENDED

THE CITY OF ISHPEMING ORDAINS:

Section 1. This Ordinance shall be known and cited as the "City of Ishpeming Tax Exemption Ordinance."

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 citizens of low income and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the State Housing Development Authority Act of 1966 (1966 PA 346, as amended, MCL 125.1401, *et seq*). The City 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 persons of low income is a public necessity, and as the City will be benefited and improved by such housing, the encouragement of the same by providing certain real estate tax exemption for such housing is a valid public purpose; further, that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance on such tax exemption.

The City acknowledges that Ishpeming Phelps Apartments Limited Dividend Housing Association, LLC, (the "Sponsor") has offered, subject to receipt of a Mortgage Loan from the Michigan State Housing Development Authority or the U.S. Department of Agriculture, to erect, own, renovate, rehabilitate, and operate a housing development identified as Phelps Apartments on certain property located at 700 East North Street, Ishpeming, Michigan 49849, in the City of Ishpeming to serve persons of low income, and that the Sponsor has offered to pay the City on account of this housing development an annual service charge for public services in lieu of all taxes.

Section 3. Definitions.

- A. Authority means the Michigan State Housing Development Authority.
- B. Act means the State Housing Development Authority Act, being Public Act 346 of 1966 of the State of Michigan, as amended.
- C. Annual Shelter Rent means the total collections during an agreed annual period from all occupants of a housing development representing rent or occupancy charges, exclusive of charges for gas, electricity, heat, or other utilities furnished to the occupants.

- D. Housing Development means a development which contains a significant element of housing for persons of low income and such elements of other housing, commercial, recreational, industrial, communal, and educational facilities as the Authority determines improve the quality of the development as it relates to housing for persons of low income.
- E. Mortgage Loan means a loan to be made to the Sponsor for the construction, renovation, rehabilitation, and/or permanent financing of the Housing Development.
- F. Utilities mean natural gas, water, sanitary sewer service, and/or electrical service.
- G. Sponsor means person(s) or entities which have applied for a federally-aided mortgage or to the Authority for a Mortgage Loan to finance a Housing Development, which for purposes of this Ordinance is Ishpeming Phelps Apartments Limited Dividend Housing Association, LLC.
- H. Miscellaneous all terms and provisions used in this Ordinance, and not otherwise defined in this Section 3 shall have same meaning as used or as identified or defined in the Act.

Section 4. Class of Housing Developments.

It is determined that the class of Housing Developments to which the tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be those serving low-income persons or families, which are financed or assisted pursuant to the Act. It is further determined that Phelps Apartments is of this class.

Section 5. Establishment of Annual Service Charge.

Subject to the provisions of Section 7(b) herein, the Housing Development identified as Phelps Apartments and the property on which it shall be constructed shall be exempt from all property taxes from and after the commencement of construction, renovation, or rehabilitation. The City acknowledges that the Sponsor and the Authority have established the economic feasibility of the Housing Development in reliance upon the enactment and continuing effect of this Ordinance and the qualification of the Housing Development for exemption from all property taxes and a payment in lieu of taxes as established in this Ordinance, and in consideration of the Sponsor's offer, subject to receipt of a federally-aided Mortgage Loan or a Mortgage Loan from the Authority, to construct, renovate, rehabilitate, own and operate the Housing Development, the City agrees to accept payment of an annual service charge for public services in lieu of all property taxes. The annual service charge shall be equal to 4% of the difference between Annual Shelter Rents actually collected and the expenses for utilities actually paid by the Sponsor.

Section 6. Limitation on the Payment of Annual Service Charge.

Notwithstanding Section 5 above, the service charge to be paid each year in lieu of taxes for the part of the Housing Development which is tax exempt and 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 Development if the Housing Development were not tax exempt.

The term "low income persons or families" as used herein shall be the same meaning as found in Section 15(a)(7) of the Act.

Section 7. Contractual Effect of Ordinance.

- (a) Notwithstanding the provisions of section 15(a)(5) of the Act to the contrary, a contract between the City and the Sponsor, with a federally-aided mortgage or 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. The sponsor shall provide to the city an unqualified written acceptance of the terms of this Ordinance on or before December 30, 2012, and in default thereof the City may repeal the Ordinance.
- (b) Anything to the contrary in this Ordinance notwithstanding and as a part of the contract referred to in Section 7(a) above, and irrespective of any term or provision in the Act or in any mortgage document executed by the owner of Phelps Apartments, the tax exemption granted under Section 5 of this Ordinance to Phelps Apartments shall be of no force and effect, and shall be null and void, unless on or before December 30, 2015, Phelps Apartments furnishes to the Ishpeming City Manager written proof satisfactory to the City Manager that the owner of Phelps Apartments has spent in excess of Seven Hundred Fifty Thousand (\$750,000.00) Dollars to renovate and rehabilitate the buildings, units, and the site that comprise the Phelps Apartments. The expenditure of more than Seven Hundred Fifty Thousand (\$750,000.00) Dollars required in order to obtain the tax exemption granted under this Ordinance shall be in addition to the acquisition cost of the housing project known as Phelps Apartments. This condition is imposed based upon written assurances given to the City of Ishpeming by the Sponsor that the Sponsor intends to invest over \$750,000 to renovate the buildings, units, and site which comprise the Phelps Apartments, which written assurances are a material reason for and the most significant factor in influencing the City of Ishpeming to grant the tax exemption provided by this Ordinance.
- (c) If the Sponsor fails to provide satisfactory written proof to the City Manager on or before December 30, 2015, that the Sponsor has spent in excess of \$750,000 to renovate and rehabilitate the buildings, units, and site that comprise the Phelps Apartments, thereby causing the tax exemption granted under Section 5 herein to become null and void, then pursuant to the powers granted to the City under Section 15(a)(2) of the Act, the service charge to be paid by the Sponsor/Phelps Apartments shall be in the same amount as the real property taxes that would be paid if Phelps Apartments was not granted any tax exemption under the Act.

Section 8. Payment of Service Charge.

The annual service charge in lieu of property taxes, as determined under this Ordinance, shall be paid to and collected by the City in the same manner as general property taxes, except that the annual service charge shall be paid in one (1) annual payment, which annual payment shall be paid to the City on or before May 1 of each year for the previous calendar year. If all or any part of the annual service charge is not paid when due, the City shall have a lien for all such unpaid amounts, plus interest and penalties, against the real property comprising the Phelps Apartments, and the collection of the unpaid amounts shall be collected in the same manner as unpaid taxes on real property are collected under the provisions of the General Property Tax Laws of the State of Michigan. If all or any part of the service charge is not paid when due, the City shall send written notice of such delinquency to the Sponsor at 380 Franklin Street, #104, Harbor Springs, Michigan 49740, and to the

Authority at 735 East Michigan Avenue, Lansing, Michigan 48912, Attn: Director of Legal Affairs.

Section 9. Duration.

Subject to the provisions of Section 7(b) and Section 7(c) above, the provisions of Section 5 of this Ordinance shall remain in effect and shall not terminate so long as the Mortgage Loan remains outstanding and unpaid or the Authority has any interest in the property; provided, that construction, renovation, or rehabilitation of the Housing Development identified as Phelps Apartments commences within two years from the effective date of this Ordinance; and provided further that in no event shall the exemption granted under Section 5 of this Ordinance continue for more than 30 years. In the event that Phelps Apartments fails to meet the requirements in Section 7(b) above, then this Ordinance may be amended in the sole discretion of the Ishpeming City Council.

Section 10. Filing of Annual Audit.

The Sponsor, or its successor, shall file simultaneously with the City Manager a copy of all annual audits required to be provided to any agency of the federal government, to any agency of the State of Michigan, and/or required to be provided to the Authority with respect to the Phelps Apartments. Every audit filed with the City Manager shall include detail with respect to occupancy of the Phelps Apartments, Annual Shelter Rents actually collected by Phelps Apartments, and the cost of utilities during the audit period.

Section 11. 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 the 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; provided, however, that if any section or provision of this Ordinance is found to be invalid, unconstitutional, or unenforceable, then the Ishpeming City Council reserves the right to amend, modify, or change such section or any other provision to bring this Ordinance into compliance with the law.

Section 12. Effective Date.

This Ordinance shall become effective upon final adoption as provided in the Charter. All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Adopted: August 8, 2012

Amended: December 4, 2013