

# **BEAR CREEK TOWNSHIP TAX EXEMPTION ORDINANCE**

**ORDINANCE NO. 15-01**

ADOPTED: June 6, 2001

EFFECTIVE: June 13, 2001

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 TOWNSHIP OF BEAR CREEK ORDAINS:**

**SECTION 1.**

This ordinance shall be known and cited as the "Bear Creek Township 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 payment in lieu of property taxes in accordance with the Michigan State Housing Development Authority Act of 1966 (1966 PA 346, as amended, MCLA Section 125.1401 et. seq., MSA Section 116,114(1) et. seq.). The Township 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 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 Township 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 Township acknowledges that Hillside Club II LDHA LP (the "Sponsor") has offered, subject to receipt of a Mortgage Loan from the Michigan State Housing Development Authority, to construct, own and operate a housing development identified as Hillside Club Apartments - Phase Two on certain property located in the Township on property legally described on Exhibit A.

The Benefited Units in the Housing Development shall serve persons of low and moderate income, and the Sponsor has offered to pay the Township on account of the Benefited Units of the Housing Development an annual service charge for public service 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, water and sanitary sewer service, or other utilities furnished to the occupants.
- D. Benefited Units means those apartment units occupied by persons whose income is 60% or less than the area median income as defined by the U.S. Department of Housing and Urban Development. Of the 104 units in Hillside Club Apartments - Phase Two, 64 units will be Benefited Units and 40 units will be non-benefited units.
- E. Contract Rents are as defined by the U. S. Department of Housing and Urban Development in regulations promulgated pursuant to the U. S. Housing Act of 1937, as amended, (Delete if inapplicable.)
- F. 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.
- G. Mortgage Loan means a loan to be made by the Authority to the Sponsor for the construction and/or permanent financing of the Housing Development.
- H. Utilities means gas, electricity, water and sanitary sewer service, or other utilities furnished to the occupants and paid by the Housing Development.
- I. Sponsor means person(s) or entities, which have applied to the Authority for a Mortgage Loan to finance a Housing Development.

### **SECTION 4. CLASS OF HOUSING DEVELOPMENTS.**

It is determined that the class of Housing Development to which the tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be the Benefited Units of the Housing Development, which are financed or assisted pursuant to the Act. It is further determined that the Benefited Units of Hillside Club Apartments - Phase Two are of this class.

### **SECTION 5. ESTABLISHMENT OF ANNUAL SERVICE CHARGE.**

The Benefited Units of the Housing Development within Hillside Club Apartments - Phase Two shall be exempt from all property taxes from and after the commencement of construction, and 61.54% of the land on which the Housing Development shall be constructed shall also be exempt from Property Taxes.

The Community Building, Swimming Pool, and other similar types of amenities are not exempt from Property Taxes pursuant to this Ordinance. The Township, acknowledging that the Sponsor and the Authority have established the economic feasibility of the Benefited Units of the Housing Development in reliance upon the enactment and continuing effect of this Ordinance and the qualification of the Benefited Units 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 Mortgage Loan from the Authority, to construct, own and operate the Housing Development, 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 five percent (5%) of the Annual Shelter Rents actually collected from the Benefited Units, less utilities paid by the Sponsor prorated for the Benefited Units, for the first year following issuance of the final Certificate of Occupancy for the Housing Development, increasing one-quarter of a percent (1/4%) per year for each year thereafter through the 18<sup>th</sup> year. In the 19<sup>th</sup> year and thereafter the annual service charge shall be equal to 10% of the Annual Shelter Rents actually collected, less utilities paid by the Sponsor, as prorated for the Benefited Units. In the 36<sup>th</sup> year and thereafter this ordinance shall be void and of no further force and effect.

Notwithstanding the foregoing, the following additional amounts shall be paid to the Township, on an annual basis and not cumulatively, and only from and to the extent of available funds that are available for distribution, for the prior year to the Sponsor, as approved by the Housing Authority, without a future claim for any amount not available for distribution in such year. Each year following the 18<sup>th</sup> year after issuance of the final Certificate of Occupancy for the Housing Development an amount in addition to the annual service charge shall also be paid. That amount shall be a sum equal to the difference between the annual service charge to the paid in lieu of taxes in accordance with this Ordinance and the amount that would otherwise be due as ad valorem taxes on the Benefited Units and land. If the full amount of the difference is not available, any lesser amount available for distribution shall be paid to the Township.

## **SECTION 6. PAYMENT OF SERVICE CHARGE.**

The service charge in lieu of taxes as determined under the Ordinance shall be payable in the same manner as general property taxes are payable to the Township except that the annual payment shall be paid on or before the first day of August in the year following the year for which the payment is due. The Sponsor shall provide a statement from its certified public accountant certifying to the calculation of the amount due to be paid as the annual service charge hereunder by the 1st day of May of each year. In the event that, after receipt of an invoice for payment of the annual service charge, the Owner shall fail to pay the annual service charge within 60 days following issuance of the invoice for the service charge, the property shall be returned to the tax rolls for general property taxes, for the year in which the service charge was not paid and thereafter; provided, however, no payment shall be due before the first of August.

Notwithstanding Section 5, 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. DURATION**

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, not to exceed thirty-five years

after the issuance of the final Certificate of Occupancy for the Housing Development. Provided, however, that if construction does not commence within one year from the effective date of this Ordinance, or if the Mortgage Loan is at any time satisfied and the Authority does not have any interest in the property, this Ordinance shall be void and of no further force and effect. In the event that there is nonpayment of service charges, and the property goes back on the tax rolls for general property taxation purposes, this Ordinance is automatically repealed.

**SECTION 8. 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.

**SECTION 9. EFFECTIVE DATE.**

This Ordinance shall become effective on the first day after its publication. All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

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Judy Mays  
Township Clerk

*June 6, 2001*

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Date