



Public Facility Corporations

March 19, 2024
ID 23-2349

A vibrant mural on a wall, featuring a large blue bird with white and yellow accents on its wings, perched among large yellow and pink flowers. The mural is set against a background of green foliage. The entire scene is framed by a diagonal border of blue, white, and red stripes.

COMMUNITY SERVICES

BACKGROUND–PRIOR COUNCIL ACTIONS

- [November 14, 2023](#): Council Member Watts made a two-minute pitch request and received support for work session to discuss the City creating Public Facility Corporations to develop affordable housing in the City of Denton, including a comprehensive analysis of the definition, creation, and administration of Public Facility Corporations. ([ID 23-227](#)).

PRIOR ACTIONS:

- [June 28, 2022](#): Council Member Watts made a two-minute pitch request and received support for work session to discuss the City creating Public Facility Corporations to partner with developers to develop affordable housing in Denton ([ID 22-420](#)).
- [October 25, 2022](#): Council provided direction to staff to create a development program authorizing the formation of Public Facility Corporations for future affordable housing projects ([ID 22-1453](#))
- [May 2, 2023](#): Council did not provide approval to proceed with creating a Public Facility Corporation program. ([ID 23-865](#))

LEGAL STATUS AND PUBLIC BENEFIT

PUBLIC FACILITY CORPORATION (PFC) is a corporation created by a local government entity to hold title to and provide funding for any real, personal, or mixed property, or an interest in property devoted to public use.

- Authorized by Chapter 303 of the Texas Local Government Code – the Public Facility Corporation Act (Act)
- It is a **nonprofit** corporation created through Texas Secretary of State

LEGAL STATUS AND PUBLIC BENEFIT

A sponsor (municipality, county, school district or housing authority) may create one or more of the nonprofit public facility corporations to acquire, construct, rehabilitate, renovate, repair, equip, furnish, or place in service public facilities such as affordable housing developments.

A PFC could use the corporation to:

- Issue bonds
- Finance public facilities
- Loan the proceeds of the obligations to other entities

LEGAL STATUS AND PUBLIC BENEFIT

- **Incentivizes creation** of affordable housing toward City's Affordable Housing Strategic Toolkit and Affirmatively Furthers Fair Housing goals.
- Provides the opportunity to **generate revenue** with unrestricted proceeds available for a public purpose such as to offset some portion tax exemption, fund City's Affordable Housing Strategies, grant funds to public assistance programs, and/or fund future public projects.
- PFC has **negotiating power** over affordability, revenue, and Council priorities such as:
 - *Requiring deeper affordability* than the minimum required in PFC program.
 - *Negotiating revenues* from the operation and/or sale of the development.
 - *Enhancing protection for renters* such as requiring income qualified rent restrictions, etc.

H.B. 2071 - 88th LEGISLATURE

PFC changes made to Chapter 303 and Chapter 392 added additional:

- Affordability
- Transparency
- Jurisdiction Rights
- Tenant Protections

CREATION OF A PFC

Step 1:

- Preparing Bylaws and Certificate of Formation

Step 2:

- City Council Approval

Step 3:

- Submission to the Secretary of State

Step 4:

- File for Franchise Tax Exemption and EIN

Step 5:

- Organizational Meeting

ADMINISTRATION OF THE PFC

- Complete **PFC Formation**
 - Submission to Secretary of State and approval.
 - Organizing Meeting: Initial Board of Directors Orientation, Articles, By-laws, Establish Key Priorities and Define Role in Deal Structures.
- **Inform Development Community** of PFC Program and Application Process
- **Operation** of the PFC
 - Receive and Review Applications to ensure that the project would only be feasible with a property tax exemption and the project is alignment with the City's affordable housing goals
 - Board sets Terms and Negotiates Agreements to the maximum public benefit.

ADMINISTRATION OF THE PFC

To Deliver Meaningful Public Benefit, Key Points of Negotiation:

- The role of PFC in Project Ownership Structure that would most benefit the public.
- The affordability level of the residential units and the period of affordability (including a mix of income levels).
- Any revenue to the PFC which may include the following:
 - Acquisition Fee – A one time fee paid at closing.
 - Annual Revenue – A percentage of net cash flow or a lease payment.
 - Sale/Refinance Proceeds – The PFC should receive a percentage of proceeds.
- How the partnership should be reimbursed for incurred expenses including
 - Administrative
 - Legal
 - Owner Representation

TO APPROVE A PFC

There are two actions necessary to complete the formation of the PFC.

1. Approval of the Resolution by City Council accepting the formation documents and approving submissions to the Secretary of State and necessary filings required to form the PFC.
2. Appoint the initial board members to the PFC to complete the bylaws.

OPTIONS

- Direct staff to create a development program authorizing the formation of Public Facility Corporations for future affordable housing projects
- Take no further action regarding the formation of Public Facility Corporations