



Boulder County Housing Authority Special Limited Partnership Development Participation Policy

[Approved: October 3, 2017]

[Amended: June 27, 2025]

1.0 INTRODUCTION

This policy provides guidance on the procedure Boulder County Housing Authority (“BCHA”) will use to evaluate unsolicited Special Limited Partnership (“SLP”) development participation proposals from private and nonprofit affordable housing developers (“Developers”). Proposed projects may benefit, under agreement with BCHA, from an exemption, in whole or in part, from property taxes, special assessments, sales and use taxes during construction and/or other benefits.

BCHA’s mission is to provide quality affordable housing and related services for low-income residents of Boulder County. BCHA strives to ensure its properties continue to be affordable, well-maintained, safe for residents, energy efficient, aesthetically pleasing and contribute to increased property values in local neighborhoods.

The application process is *not* competitive, and each project will be evaluated on individual merits. However, the Board of Commissioners of the Boulder County Housing Authority (“The Board”) reserves the right to accept or reject any proposal, as well as revise, change, modify, or eliminate this policy at any time, in its sole and absolute discretion.

2.0 BACKGROUND

The County Housing Authority Enabling Act provides at C.R.S. § 29-4-507 that BCHA and its property “shall be exempt from all taxes and special assessments on the same basis and subject to the same conditions as provided for city housing authorities in sections 29-4-226 and 29-4-227.” These two statutes, as amended in 2019, are included as **Appendix A** to this policy. In addition, a copy of the Colorado Department of Revenue’s Final Rule, 1 CCR 201-4:39-26-704(1.5), the purpose of which is to establish guidelines for the sales and use tax exemption authorized by § 39-26-704(1.5), C.R.S., is included as **Appendix B** to this policy.

County housing authorities are also empowered to grant or lend moneys or otherwise provide financing to any person, firm, corporation, city, or government for any project or any part thereof; to pledge or otherwise encumber any of its moneys in support of or in connection with a project; and to establish entities controlled by the authority that may own, operate, act, invest in as a partner or other participant, or take any and all steps necessary or convenient to undertake or otherwise develop a project. C.R.S. § 20-4-505 (referencing § 29-4-209).

This exemption is a privilege; thus, BCHA must ensure that any partnership into which it enters is in alignment with the BCHA mission, and that sufficient benefit will accrue to the public, in furtherance of the housing authority's mission to address community needs, as opposed to primarily benefitting a private sector developer.

BCHA recognizes that the decision to grant tax and assessment exemptions authorized by the statute will have an impact on other stakeholders including other public bodies who would otherwise receive the tax revenue, and on communities desiring the development of additional affordable housing.

Because BCHA has limited staff and financial resources, it is necessary to establish the procedures and criteria that staff will use to evaluate and recommend proposals submitted by Developers to The Board.

APPENDIX A - Text of C.R.S. §§ 29-4-226 (special assessment exemption) and 29-4-227 (tax exemption)

APPENDIX B - Copy of Colorado Department of Revenue's Final Rule, 1 CCR 201-4:39-26-704(1.5)

APPENDIX C – DEVELOPMENT PARTICIPATION APPLICATION FORM

3.0 PROCEDURE FOR PARTNER SELECTION

3.1 APPLICATION

- a) Developer must have an initial conversation with BCHA staff to determine if the project meets threshold criteria. Reach out to bchadevelopment@bouldercounty.gov.
- b) Developer must [submit a completed Development Participation Application Form](#) with all documents as listed, unless waived by the BCHA Board or Executive Director.
- c) Developer must remit a non-refundable application fee.
- d) BCHA staff shall consider applications as they are received and will review projects for their technical and financial feasibility per the Application Evaluation Criteria.

3.2 REFERRAL AND CONSULTATION

- a) BCHA staff will consult with relevant land use, zoning, or community development departments to confirm consistency of the project with the jurisdiction's comprehensive plan, zoning, subdivision, building, and other development codes and policies.
- b) BCHA staff will determine if additional review or input is desired from other related and/or impacted entities, such as a jurisdiction that maintains its own Housing Authority, and consult with that entity.

3.3 BOARD APPROVAL

- a) BCHA staff will recommend Applications to the Board for approval at a duly noticed public hearing at which the Developer may make a brief presentation to the Board. The Public may be allowed to comment in written form or at the hearing.
- b) The Board will consider the Application Evaluation Criteria and in its sole discretion may approve as proposed, approve with conditions, or deny.
- c) The Board may place conditions on any approval and may give direction to staff on terms to negotiate in a final partnership agreement including but not limited to:
 - 1) Exemption from property tax, sales and use tax, and special assessment, or any combination of the three;
 - 2) The duration of the affordability period;
 - 3) Specific affordability restrictions and unit mix requirements;
 - 4) The right to perform annual property inspections and file audits;
 - 5) A requirement for periodic reporting;
 - 6) A requirement that the project accept vouchers;
 - 7) Ability to terminate/revisit the exemption.
- d) Unless the Board delegates authority to staff to sign closing documentation, Board approval must be obtained prior to execution of final binding agreements.

4.0 FEES

- a) Application fee – non-refundable fee of a minimum \$20,000 due at time of application to compensate BCHA for due diligence and analysis efforts. Application fee may increase if significant changes are required beyond standard forms. A new application fee will be required if a complete application resubmission is -necessary as determined by BCHA.

- b) Closing fee to be negotiated with BCHA staff, considering project unit affordability levels, but generally not less than 10% of net present value of taxes over a 15-year period with 3% escalation to be paid at project financial closing.
- c) Ongoing compliance monitoring fee depending on project-specific requirements, but generally not less than \$1,000 annually.
- d) Reimbursables - If, in the opinion of the County Attorney, special tax or partnership counsel must be retained, the Board may require additional incurred costs be reimbursed by the Developer.

5.0 APPLICATION EVALUATION CRITERIA

- a) Threshold Criteria - The proposed project must meet the following threshold criteria to be considered:
 - 1) The Developer has submitted a complete Development Participation Application Form and application fee.
 - 2) The Developer has site control as defined by the Colorado Housing Finance Authority's (CHFA).
 - 3) The Developer certifies all housing units benefitting from tax exemption will remain affordable for a period that aligns with the CHFA affordability period. The Developer is committed to executing a restrictive covenant for the affordability period.
 - 4) No environmental or legal impediments are present that could delay or terminate the project.
 - 5) Determination that the proposed project is not financially viable at specified income and rent levels without BCHA's participation. BCHA will not participate in the project merely to increase the Developer's profit margin. The Developer must demonstrate why exemptions are necessary for the project to be viable.

Projects may not be in competition with development work of BCHA.

- b) Application Evaluation Criteria – The proposed project will be evaluated on the following required criteria:
 - 1) Participation in the project will further BCHA's mission to provide safe, affordable housing and related services to the residents of Boulder County.

- 2) Type of housing (number of bedrooms, product type, income restrictions, etc.) must be consistent with any applicable current market analysis or needs assessment identified by BCHA staff.
 - 3) All units benefiting from the partnership will serve households earning 30-120% AMI.
 - 4) The Developer's fee and any other compensation are reasonable under the circumstances and aligned with the developer fee standards in CHFA's Qualified Allocation Plan.
 - 5) The Developer has demonstrated capacity and experience to successfully construct, place in service, and operate the project.
 - 6) BCHA will participate in excess cash flow.
 - 7) BCHA may obtain a right of first refusal or other comparable purchase rights.
 - 8) If the property is eligible for property tax exemption under alternative means (i.e. religious institution, charitable purposes, etc.), the Developer must demonstrate the ongoing tax exemption achieved through the partnership with BCHA provides significantly greater benefit.
- c) Other Project Information – The proposed project will be evaluated on the following other information:
- 1) The duration of BCHA's participation in the project and duration of affordability, with the minimum for LIHTC-funded projects being the initial 15-year compliance period. Projects offering permanent affordability are given priority.
 - 2) Other public and local funding sources committed to the project.
 - 3) Alignment with Boulder County's sustainability goals and proposed use of energy efficiency and green building practices.
 - 4) The degree to which the project increases the economic diversity of a neighborhood, addresses unmet housing needs, including homeownership opportunities, or otherwise furthers BCHA's strategic housing missions.
 - 5) Opportunities for BCHA to provide property management and/or other compensated services in support of the project.

Any other rights and entitlements afforded to BCHA and deemed beneficial in furtherance of the organization's strategic housing missions.

6.0 WAIVERS

An applicant may request in writing that one or more of the provisions of this policy be waived for good cause. The BCHA Board or Executive Director may grant such waivers after consulting with the County Attorney to ensure that such waiver will not jeopardize the project's compliance with all applicable laws.

APPENDIX A

Text of C.R.S. §§ 29-4-226 (special assessment exemption) and 29-4-227 (tax exemption)

C.R.S.A. § 29-4-226

§ 29-4-226. Exemption from special assessments

Effective: August 2, 2019

Currentness

1. Except as otherwise provided in subsection (2) of this section, the following are exempt from the payment of any special assessments to the state, any county, city and county, municipality, or other political subdivision of the state:
 - a. A housing authority;
 - b. The property of a housing authority;
 - c. All property leased to a housing authority; and
 - d. The portion of a project that is not used as a store, office, or other commercial facility that is occupied by persons of low income and that is owned by or leased to an entity:
 - i. That is wholly owned by an authority;
 - ii. In which an authority has an ownership interest; or
 - iii. In which an entity wholly owned by an authority has an ownership interest.
2. The exemptions from the payment of special assessments set forth in subsection (1) of this section do not preclude a housing authority, the owner of property that is leased to or from a housing authority, or an entity in which an authority has an ownership interest from voluntarily applying to include its eligible real property, as defined in section 32-20-103(4), into the boundaries of the Colorado new energy improvement district created in section 32-20-104(1) and accepting the levying by the district of a special assessment, as defined in section 32-20-103(14), against the eligible real property.

C.R.S. § 29-4-226

Amended by 2019 Ch. 358, § 2, eff. 8/2/2019.

L. 37: p. 671, § 5. CSA: C. 82, § 55(3). CRS 53: § 69-3-26. C.R.S. 1963: § 69-3-26. L. 2000: Entire section amended, p. 883, § 8, effective August 2.

C.R.S.A. § 29-4-227
§ 29-4-226. Tax exemptions
Effective: August 2, 2019
Currentness

1.
 - a. Except for the administrative fees collectible in connection with the inclusion of property within the boundaries of the Colorado new energy improvement district as authorized by section 29-4-226(2), an authority is exempt from the payment of any taxes or fees to the state or any county, city and county, municipality, or other political subdivision of the state. All property of an authority is exempt from all local and municipal taxes. Bonds, notes, debentures, and other evidences of indebtedness of an authority are declared to be issued for a public purpose and to be public instruments, and, together with interest thereon, are exempt from taxes. All property leased to an authority for the purposes of a project is also exempt from taxation, as is the income derived from the authority by the lessor under the lease.
 - b. A project that is owned by, leased to, or under construction by an entity that is wholly owned by an authority, an entity in which an authority has an ownership interest, or an entity in which an entity wholly owned by an authority or of which an authority is the sole member has an ownership interest is exempt from both property tax and, during construction, from the payment of sales tax and use tax to the state or any county, city and county, municipality, or other political subdivision of the state in proportion to the percentage of the project that is for occupancy by persons of low income. The determination by an authority of the percentage of the project that qualifies for the exemptions from payment of property taxes and sales and use taxes may be made on the basis of either the relative square footage or cost and is presumed valid absent manifest error.
2. This section, as amended, applies to property owned by or leased to an authority and property owned by, leased to, or under construction by an entity in which an authority has an ownership interest, or an entity in which an entity wholly owned by an authority or of which an authority is the sole member has an ownership interest on or after August 2, 2000. Nothing in this section, as amended, entitles or shall be interpreted to entitle any entity to a refund of taxes from the state for any period beginning before January 1, 2013, or to a refund of taxes from any county, city and county, municipality, or other political subdivision of the state paid prior to August 10, 2016. Notwithstanding the provisions of section 39-26-703(2)(d), C.R.S., from August 10, 2016, until December 31, 2016, an entity may file a claim for a refund of all state taxes overpaid under this section for the period from January 1, 2013, to August 10, 2016. On and after January 1, 2017, all claims for refund under this section are subject to the provisions of section 39-26-703(2)(d), C.R.S.

C.R.S. § 29-4-227

Amended by 2019 Ch. 358, § 3, eff. 8/2/2019. Amended by 2016 Ch. 177, § 2, eff. 8/10/2016. L. 35: p. 552, § 28. CSA: C. 82, § 56. CRS 53: § 69-3-27. C.R.S. 1963: § 69-3-27. L. 2000: Entire section amended, p. 883, § 9, effective August 2. L. 2016: Entire section amended, (HB 16-1006), ch. 609, p. 609, § 2, effective August 10. L. 2019: (1)(a) amended, (HB 19-1272), ch. 3289, p. 3289, § 3, effective August 2.

For the legislative declaration in HB 16-1006, see section 1 of chapter 177, Session Laws of Colorado 2016.

APPENDIX B

Copy of Colorado Department of Revenue's Final Rule, 1 CCR 201-4:39-26-704(1.5)

1 CCR 201-4:39-26-704(1.5) 201-4:39-26-704(1.5). Basis and Purpose Currentness

The basis for this rule is § 39-21-112(1), § 39-26-704(1.5), § 29-4-227, § 29-1-204.5, and § 29-4-507, C.R.S. The purpose of this rule is to establish guidelines for the sales and use tax exemption authorized by § 39-26-704(1.5), C.R.S., including the process for requesting exemption certificates and refunds for tax paid. To alleviate the administrative burden on housing authorities, an affidavit, as described in this rule, may be submitted in lieu of receipts for refund claims for state sales and use tax paid prior to September 30, 2016. Receipts are required for refunds of state sales and use tax paid after September 30, 2016 and for local sales tax paid after August 10, 2016. These refund claims requiring receipts are expected to be infrequent because, beginning August 10, 2016, exemption certificates will be available to prevent the payment of tax at the point of sale, thus reducing the burden on housing authorities. Receipts are required for refunds of all local sales taxes claimed because local sales taxes can often be exempted at the point of sale with a building permit, which would have been obtained for all projects prior to construction.

1. General Rule.

- a. *Exemption for Housing Authorities.* All sales to and all storage, use, or consumption of tangible personal property or otherwise taxable services by Housing Authorities are exempt from state, local, and special district sales and use taxes.
- b. *Exemption for Qualifying Projects.* Beginning August 10, 2016, an exemption from state, local, and special district sales and use taxes is allowed to any Qualifying Entity for any Qualifying Project in the manner described in this rule. Only state sales and use taxes paid prior to August 10, 2016 are eligible to be refunded. Local sales and use taxes paid prior to August 10, 2016 are not eligible to be refunded. Eligible Qualifying Projects should obtain exemption certificates beginning August 10, 2016 in order to make purchases tax-free after that date. In the event, expected to be rare, that sales and use taxes are paid on or after August 10, 2016, refunds for all sales and use taxes paid will be made in accordance with subsection (3)(f) of this rule.

2. Definitions.

- a. "Authority" or "Housing Authority" means:
 - i. A city housing authority as defined in § 29-4-203(1), C.R.S., or

- ii. A multijurisdictional housing authority established under § 29-1-204.5, C.R.S., or
 - iii. A county housing authority as defined in § 29-4-502(1), C.R.S.
- b. “Department” means the Department of Revenue.
- c. “Qualifying Entity” means an entity that is wholly or partially owned by:
 - i. A Housing Authority, or
 - ii. An entity that is wholly owned by a Housing Authority, or
 - iii. An entity of which a Housing Authority is the sole member. CODE OF COLORADO REGULATIONS 1 CCR 201-4 Taxpayer Service Division – Tax Group 49
- d. “Qualifying Project” means a project, as defined in § 29-4-203(12), C.R.S., that is wholly owned by, leased to, or under construction by a Qualifying Entity. A Qualifying Project will involve capitalizable expenditures.

3. **Sales and Use Tax Exemption for Qualifying Projects.**

- a. The exemption for Qualifying Projects under paragraph (b) of subsection (1) of this rule applies only to tangible personal property and otherwise taxable services purchased, acquired, stored, used, or consumed for Qualifying Projects during the construction period determined under paragraph (b) of this subsection (3).
- b. *Determination of Construction Period.* The exemption under paragraph (b) of subsection (1) of this rule applies only during the construction of a Qualifying Project. The Housing Authority shall determine and certify the beginning and ending dates for the construction of the Qualifying Project and the period of time defined thereby will be the construction period for the Qualifying Project.
- c. *Determination of Low-Income Percentage.* The exemption allowed under paragraph (b) of subsection (1) of this rule is in proportion to the percentage of the project that is for occupancy by persons of low income. The Housing Authority shall determine and certify this percentage and such determination shall be presumed valid absent manifest error.
 - i. With respect to the definition of “low income” used in the determination made under this paragraph (c), no manifest error exists where a Qualifying Entity uses a definition established by the United States Department of Housing and Urban Development, the Colorado Housing and Finance Authority, or any similar public lender for Qualifying Projects.
 - ii. With respect to the calculation of the percentage of the project that is for occupancy by persons of low income made under this paragraph (c), no

manifest error exists where the calculation by the Qualifying Entity is consistent with any such calculation made in accordance with rules prescribed by the United States Department of Housing and Urban Development, the Colorado Housing and Finance Authority, or any similar public lender for Qualifying Projects.

- d. *Application for Exemption for Qualifying Projects.* Exemption certificates may be requested from the Department for any Qualifying Project to allow Qualifying Entities and contractors to make tax-free purchases for the Qualifying Project. The exemption certificate may be requested by the Qualifying Entity, the general contractor for the Qualifying Project, or both by completing and submitting the appropriate application. The application must be accompanied by a statement from the Housing Authority detailing the Authority's ownership interest in the Qualifying Entity, certifying the percentage calculated under paragraph (c) of this subsection (3), and certifying the construction period determined under paragraph (b) of this subsection (3).
- e. *Remittance of Tax for Mixed Use Qualifying Projects.* Qualifying Entities that own, lease, or construct Qualifying Projects for which an exemption certificate is issued under paragraph (d) of this subsection (3), and for which the percentage calculated under paragraph (c) of this subsection (3) is less than 100% periodically must file sales tax returns and remit payment of the sales tax for the percentage of the Qualifying Project that is not exempt.
 - i. Except as provided in subparagraph (ii) of this paragraph (e), such filing and payment shall be made at least quarterly and shall be made in accordance with all rules governing the filing and payment of sales tax generally. CODE OF COLORADO REGULATIONS 1 CCR 201-4 Taxpayer Service Division – Tax Group 50
 - ii. If the aggregate annual sales or use tax a Qualifying Entity must remit under this paragraph (e) is less than five thousand dollars, the Qualifying Entity may request from the executive director and the executive director may grant permission to file and remit sales tax under this paragraph (e) on an annual filing basis.
- f. *Refund Claims for Qualifying Projects.* A Qualifying Entity that owns, leases, or constructs a Qualifying Project may, subject to the percentage determined under paragraph (c) of this subsection (3), submit a refund claim for sales and use taxes paid.
 - i. A refund claim for a Qualifying Project must be submitted by the Qualifying Entity, not by a contractor performing work for the Qualifying Project.

- ii. Any refund claim submitted under this paragraph (f) must meet the following requirements:
 - 1. The refund claim must be submitted on the appropriate Departmental form (“Claim for Refund of Tax Paid to Vendors”).
 - 2. The refund claim must be accompanied by a statement from the Housing Authority certifying:
 - a. The Housing Authority’s place in the ownership structure of the Qualifying Entity, and
 - b. The percentage determined under paragraph (c) of this subsection (3).
 - 3. In the case of state sales or use taxes paid prior to September 30, 2016, the refund claim must be accompanied by an affidavit, signed under penalty of perjury by the Housing Authority, affirming that:
 - a. The refund claim is for sales or use tax that actually was paid to vendors or was paid directly to the Department, and
 - b. The amount of the claim includes only Colorado state sales or use tax and not any local or special district taxes.
 - 4. In the case of local and special district sales and use taxes paid on or after August 10, 2016 or state sales and use taxes paid on or after September 30, 2016, the refund claim must be accompanied by all necessary documentation, including receipts or invoices, required under Department rules, guidance, and instructions for refund claims generally.

Cross Reference(s):

- FYI Income 90.
- Form DR 0137B and associated instructions