

# C Community Development Committee

Meeting date: December 3, 2007

## ADVISORY INFORMATION

<b>Date:</b>	November 28, 2007
<b>Subject:</b>	Additional Revisions to Livable Communities Program Grant Administration Procedures-Changes to End Projects
<b>District(s), Member(s):</b>	All
<b>Policy/Legal Reference:</b>	MN Statutes Sec. 473.25 Livable Communities Act
<b>Staff Prepared/Presented:</b>	Guy Peterson, Director, Community Development Jan Gustafson, Manager, Livable Communities Program
<b>Division/Department:</b>	Community Development/Livable Communities

### Proposed Action/Motion

That the Metropolitan Council direct staff to implement the additional proposed grant administration procedures to address requests for revisions to the end projects (not LCA-funded elements) originally proposed as the development or redevelopment outcome in proposals assisted by Livable Communities grant awards.

### Background

On September 26 the Metropolitan Council approved a Community Development Committee (CDC) recommendation directing staff to implement grant administration procedures to address requests for revisions to the end projects (not Livable Communities Act [LCA]-funded elements) originally proposed as the development or redevelopment outcome in proposals assisted by Livable Communities grant awards. The procedures included a three-step process to:

1. determine whether the requested amendment is a significant change,
2. evaluate any proposed amendment deemed significant to determine its compliance with account-specific conditions, and
3. invite the grantee to present the proposed amendment to a Community Development Committee Review Panel comprised of three CDC members. In addition to hearing from the grantee, the panel members also hear a report summarizing the results of staff's review of the amendment, after which the panel makes a determination regarding disposition of the request and takes its recommendation to the CDC for action.

Subsequent to approval of the procedures, a Review Panel was convened in response to a letter from the City of Minneapolis dated September 6, 2007, "requesting approval of certain modifications to previously approved project outputs" described in two Livable Communities grants (one from the Tax Base Revitalization Account [TBRA] and one from the Livable Communities Demonstration Account [LCDA]) for the Longfellow Station project. The proposed changes were the result of the downturn in the condominium market—condominiums originally intended as part of the housing provided within the Longfellow Station Project are not feasible in the current market.

The Review Panel, consisting of Chair Steffen, Council Member Georgie Hilker and Council Member Brian McDaniel met on Thursday, October 4, to consider the city's request. Chair Steffen also invited Livable Communities Advisory Committee Vice Chair Dan Marckel to participate in the meeting during discussion of the LCDA grant.

The panel, taking into account the information provided by representatives of the City of Minneapolis and the staff assessment, recommended that the Community Development Committee direct staff to amend the project

descriptions shown as Attachment A in the two grants to incorporate City of Minneapolis-requested post-award changes to the project. The CDC approved the Review Panel's recommendation during its October 15 meeting.

In the case of the two Longfellow Station grants, the City of Minneapolis had not expended any of the awarded grant funds prior to the Review Panel's approval of requested grant amendments. However, the city's participation in the Review Panel process prompted questions from the city about how the Council would respond to requests to amend the end projects (not LCA-funded elements) originally proposed as the development or redevelopment outcome if the project change became necessary after some or all of the awarded grant funds had been expended by the grantee.

Livable Communities staff responded that they would consult with the Council's legal counsel and auditor to prepare additional information for consideration by the CDC for inclusion in the grant administration procedures that would describe clearly the Council's response to the specific circumstances described by the city.

Katie Shea, Director of Internal Audit, advised that if grant funds were spent for the purposes for which they were awarded, it would be difficult to seek reimbursement based on changes in other elements of the larger project not paid for with Livable Communities funds, particularly given the Livable Communities Act's provision of grant funds to cities, counties and economic development authorities who, in turn, pass the funds on to others to complete the funded work. Such a course of action would require cities to recover funds from contractors for work those contractors had completed satisfactorily for reasons not at all related to the particular work itself. Further, since LCA-funded elements are often implemented early in the timeframe of project completion, end project changes could occur many months—or even years—after grant funds were expended. Holding grantees responsible for returning funds expended for eligible purposes months or years after the work was completed could expose the grantee to risks sufficient to discourage participation in the program.

Rather, LCA grants should be administered with the assumption that the grantee accurately described the end project at the time of application and spent the funds in good faith, informing the Council of changes to the end project when and if they occurred. If the Community Development Committee denied a request to amend an end project, further encumbrance of funds by the grantee should stop and further expenditures should be discontinued. However, Ms. Shea advised, the Council should reimburse the grantee for any documented eligible expenses incurred prior to the date of the CDC's action and no attempt should be made to recover funds already paid to grantees for documented eligible activities.

Dave Theisen, Council legal counsel, concurred with Ms. Shea's assessment and indicated that, if approved by the CDC, he would include additional language in the Livable Communities grant agreement informing grantees that they are required to advise the Council of any changes to end projects in a timely manner.

Following consultations with legal counsel and the Council's auditor, Livable Communities staff prepared and recommended to the Community Development Committee on November 19 additions—reviewed, edited and approved by Ms. Shea and Mr. Theisen—to the approved LCA Grant Amendment Procedures.

During the CDC's discussion, members expressed concerns about whether the procedures, as drafted, adequately dealt with consequences for cities that failed to inform the Council of changes to end projects or otherwise acted in bad faith. Legal counsel advised the CDC that the Livable Communities Act gives the Council the authority to determine who is eligible to receive LCA funding, e.g. the Council could disqualify non-complying cities from eligibility for future grant awards. The discussion concluded with the CDC chair directing legal counsel to put this approach in writing for the CDC to review at the next meeting. The CDC delayed action on the recommendation pending additional information and discussion at the CDC's December 3 meeting.

The following procedures have been revised to incorporate the additional language requested from counsel by the CDC (additional underlined text shown in **bold type**).

Grant agreements will include language requiring grantees to advise the Council of any changes to the end development or redevelopment project as described in Attachment A of the grant agreement as soon as those changes are known. **Grantees will be informed that failure to notify the Council of changes to end development or redevelopment projects in a timely manner will jeopardize the grantees eligibility for funding in future LCA funding cycles.**

LCA grant agreements currently contain provisions that require each grantee to: (1) use the grant funds only for the Council-approved purposes and activities described in the grantee's application; (2) use the grant funds only for costs directly associated with the proposed activities for which the grant funds were awarded (i.e., grant funds cannot be used for various "soft costs"); and (3) return "in a prompt manner" any grant funds that were not used for the authorized purposes. The following new language (or similar language) will be added to grant agreements beginning with grants awarded in December 2007:

"The grantee must promptly inform the Council of any changes to the project for which the grant funds were awarded, as well as any potential changes to the grant-funded activities described in Attachment A. Failure to inform the Council of any changes to the project or changes to grant-funded components of the project, and failure to use grant funds for eligible authorized purposes, will jeopardize the grantee's eligibility for future LCA awards."

Section 473.25(c) of the Livable Communities Act states that the Council "shall establish guidelines governing who may apply for a grant or loan from the [Metropolitan Livable Communities] fund." Accordingly, the proposed new grant provision referring to grantees' eligibility for future LCA grant awards will be addressed in the Council's annual LCA Fund Distribution Plan and LCA grant application materials.

Following the recommendation from the CDC Review Panel regarding a request to amend an end development or redevelopment project,

- ✓ If the Community Development Committee approves the request to amend the grant agreement to make significant changes to the end development or redevelopment project and the request is made prior to the expiration of the grant agreement, the grant will be amended following the established administrative process.
- ✓ If the Community Development Committee denies the request to amend the grant agreement to make significant changes to the end development or redevelopment project, the steps taken will depend upon the status of funds awarded as follows:
  - If any portion of the awarded funds has been encumbered or expended by the grantee for eligible uses prior to the Community Development Committee's decision, the grant will be terminated without recovery of any of the encumbered or expended funds. Any unencumbered or unexpended funds remaining in the grant award on the date of the Community Development Committee's decision will be returned to the funding account from which the grant was awarded for inclusion in a future grant funding round.
  - If an end development or redevelopment project changes at any point after all awarded funds have been expended or encumbered by the grantee for documented eligible uses, the Council will assume that funds were expended/encumbered in good faith and without malfeasance. No attempt will be made to recover the funds provided they were expended/encumbered for the specific purpose(s) for which they were awarded.
- ✓ If the grantee's end development or redevelopment project as described in Attachment A of the grant agreement is terminated in its entirety at any time during the original two-year term of the grant agreement, the grantee will be reimbursed for any eligible funds encumbered or expended up to the

point the end project is terminated. All remaining grant funds will be reserved for the grantee until the grant agreement expires to provide the grantee with an opportunity to replace the original project with a similar project reviewed and approved by the Community Development Committee as described in the amendment procedures. If the grant agreement expires without an approved end development or redevelopment project in place, no further extension of the grant agreement deadline will be authorized. All unencumbered/unexpended funds will be returned to the fund account from which the grant was awarded. The grantee may reapply for funding during a future grant round.

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