

C Community Development Committee
Meeting date: November 7, 2011

ADVISORY INFORMATION	
Date:	November 2, 2011
Subject:	Revision to Livable Communities Act Grant Amendment Guidelines
District(s), Member(s):	All
Policy/Legal Reference:	MN Statutes Sec. 473.5
Staff Prepared/Presented:	Paul Burns, Manager, Livable Communities Act Communities Program 651-602-1106
Division/Department:	Community Development/Livable Communities

Proposed Action

That the Metropolitan Council approve the attached *Livable Communities Act Grant Amendment Process* for amendments to Livable Communities Act grant agreements.

Background

Over the course of several years, the process and guidelines for considering requests from grantees for extensions and other amendments to the grant agreements has evolved through several Community Development Committee (CDC) actions and Council staff experiences with those amendments. The attached guidelines consolidate the past actions, and incorporate provisions Council staff is recommending to improve and streamline the process to the benefit of both the Council and grantees. Two versions are attached. The annotated version explains, through strikethroughs, underlining and comment notes in the margins, where and why Council staff is recommending a limited number of changes to past practices. The "clean" version is the document staff is recommending be adopted.

Rationale

The consolidated guidelines will help clarify the process and expectations of grantees proposing extensions and amendments. The changes recommended by staff are intended to help streamline the process for grantees and the CDC, while still bringing requests for significant changes to the CDC for review and action.

Funding

Approval of the guidelines will not affect funding.

Known Support / Opposition

Council staff is not aware of any opposition to this recommendation.

Livable Communities Act Grant Amendment Process

I. Introduction

The Metropolitan Council ("Council") anticipates that grantees of the Livable Communities Demonstration Account (LCDA), Local Housing Incentives Account (LHIA), and Tax Base Revitalization Account (TBRA) will complete their Projects within the timelines and conditions identified in their applications and grant agreements. However, occasionally circumstances may delay Project implementation or create the potential for changes to the Project. The Council may consider amendments to grant agreements at its discretion. Grantees should contact Livable Communities (LCA) staff as soon as they become aware of the potential for needed amendments.

II. Procedure

A. Definitions

1. For TBRA Contamination Cleanup grants, LCDA Development grants and LHIA grants, **Project** means the development or redevelopment project identified in the Attachment A to the grant agreement that through its design and execution will deliver benefits such as housing, connections, jobs, and/or an increase to the tax base to the region.
2. For LCDA Pre-Development grants and TBRA Contaminated Site Investigation grants, the **Pre-Development Project** is the set of Grant Funded Activities for which funding is requested in the application. The **Future Development Project** is the future development or redevelopment that through its design and execution will deliver benefits such as housing, connections, and/or jobs.
3. For TBRA Contamination Cleanup grants, LCDA Development grants and LHIA grants, **Grant-Funded Activities** are components of the Project described in the Attachment A to the grant agreement. The Grant-Funded Activities do not in and of themselves comprise the Project for which grant funds are awarded.
4. Project **Commencement** means initiation of development – e.g., tangible work on a building, such as laying a foundation.
5. **Site Control** means having acceptable evidence, such as a purchase commitment, option, or letter of intent from a government body or sole developer, etc. If there will be no transfer of ownership, then a warranty deed or contract for deed is acceptable. The evidence of site control must be current, fully executed, include a legal description of the land, and extend to the anticipated date of the funding recommendation.
6. **Significant Change** to the Project or to the demonstrative value(s) of the Grant Funded Activities is defined based on considerations of account-specific legislative outcomes and on factors considered when the application for funding was scored. These account specific legislative outcomes and factors are listed below in Section VII.
7. The **Directors** are the Director of Community Development and the Director of Housing and Livable Communities.

B. Amendment Types

Grant agreements may be amended for the following reasons:

1. Change in the term of the grant agreement;
2. Change in the Grant Funded Activities;
3. Change to the Project, and/or

4. Change to both Grant Funded Activities and to the Project

C. Requirements

To request and be considered for a grant agreement amendment:

1. The request for an amendment must be submitted in writing to Livable Communities staff no less than 90 days prior to the expiration of the grant agreement.
2. The requested amendment must be consistent with the scope and intent of the original grant award made by the Council's governing body.
3. The amendment must be executed by both parties prior to the current grant agreement expiration date.

III. Request for a Change in the Grant Term

In addition to the requirements listed in section II. C., a request for an extension to the term of the grant agreement must include information evidencing:

1. site control;
2. significant progress toward full financing;
3. significant progress toward an executed development agreement;
4. a schedule showing the commencement and completion dates for all Grant-Funded Activities as described in Attachment A of the grant agreement;
5. a schedule showing the commencement and completion dates of the Project described in Attachment A the grant agreement.
6. The schedules must demonstrate that the Grant-Funded Activities will be completed **and** the Project will have Commenced within the requested extension timeframe.

Note: Neither TBRA Contaminated Site Investigation grants nor LCDA Pre-Development grants are eligible for extensions to the term of the grant agreement.

Exception to the Policy Governing the Extension of TBRA Grants:

The Directors may authorize additional 24-month extensions to the term of a TBRA grant agreement beyond the typical twenty-four month extension period, in order to pay for costs associated with MPCA-required air and/or groundwater monitoring, until all MPCA-required air and/or groundwater monitoring is completed or until all TBRA award funds are expended, whichever comes first. Each request for such an extension must be submitted to Livable Communities staff in writing and include a status report on Grant-Funded Activities.

IV. Request for a Change in Grant Funded Activities

In addition to requirements listed in section II.C. a request for a change in the Grant Funded Activities, including budget variances of more than twenty percent (20%) for any individual grant-funded activity identified in Attachment A to the grant agreement, must:

- A. state the proposed eligible use(s);
- B. explain the impact the proposed change(s) will have on:
 1. the Project, the account-specific factors on which the application was scored, and on the Project benefits identified in the grant application, such as affordable housing units or jobs;
 2. the schedule for the completion of the Grant Funded Activities;
 3. the schedule for completion of the Project; and
- C. submit a revised Project budget.

V. Request for a Change in the Project

In addition to the requirements listed in II.C. a request for a change in the Project must:

- A. describe the specific change(s) to the Project;
- B. explain what impact the proposed change(s) will have on:
 - 1. the Project and the account-specific factors on which the application was scored, and on the Project benefits identified in the grant application, such as affordable housing or jobs;
 - 2. the schedule for the completion of the Grant Funded Activities; and
 - 3. the schedule for completion of the Project; and
- C. submit a revised Project budget.

VI. Request for a Change in the Grant Funded Activities and in the Project

In addition to the requirements listed in section II.C. a request for a change in the Project must comply with the requirements in sections IV and V, above:

VII. Review and Approval or Denial

- A. The Directors have discretion to administratively approve:
 - 1. an extension to the term of a grant agreement for a period up to 24 months and for additional periods as identified in the exception policy for TBRA grants; and/or
 - 2. a change in the Grant-Funded Activities and/or the Project when they determine that the proposed change(s) do not “significantly change” the Project or, for LCDA, the demonstrative value(s) of the Grant Funded Activities or Project.

The determination of “significant” change will be based on consideration of the account-specific factors considered when the application for funding was scored. Only the factors applicable to the Project as originally proposed and scored will be evaluated.

- a) For the **Tax Base Revitalization Account** Cleanup grants, a proposed change will be considered **significant** if the change:
 - 1. proposes to replace the Project as originally proposed with a completely different Project, or
 - 2. will result in a reduction of 20 percent or more of the total net tax capacity expected to be generated by the Project as originally proposed, or
 - 3. proposes to reduce by 15 percent or more, or by 50 jobs (whichever is higher), the total number of new or retained jobs, or
 - 4. proposes to reduce by 10 percent or more, or by 50 units (whichever is higher), the total number of housing units, or
 - 5. proposes to reduce the total percentage of affordable housing units by 20 percent or more from the Project as originally proposed.
- b) For the **Tax Base Revitalization Account** Site Investigation grants, a proposed change will be considered **significant** if the change:
 - 1. proposes adding a residential land use that was not included in the Project land uses(s) identified in Attachment A to the grant agreement
 - 2. proposes excluding a residential land use that was included in the Project land use(s) identified in Attachment A to the grant agreement
- c) For the **Livable Communities Demonstration Account** development grants, a proposed change will be considered significant if the change:
 - 1. proposes to replace the Project as originally proposed with a completely different Project, or
 - 2. proposes to substantially change the mix and type of land uses originally proposed in a way inconsistent with program objectives or that substantially change the nature of the Project originally proposed, or

3. will reduce the overall Project density and/or land use intensity below the density guidelines for developments in the Project location, or 20 percent below the density and/or land use intensity originally proposed (whichever is higher), or
 4. proposes to reduce the total percentage of affordable housing units from the Project as originally proposed.
- d) For the **Livable Communities Demonstration Account** Pre-Development grants, a proposed change will be considered **significant** if the change:
1. proposes to replace the Project as originally proposed with a completely different Project, or
 2. proposes to substantially change the intended grant funded activities for which the funds were awarded.
- e) For the **Local Housing Incentives Account**, a proposed change will be considered **significant** if the change:
1. proposes to replace the Project as originally proposed with a completely different Project, or
 2. proposes to reduce the total percentage of affordable housing units, or
 3. no longer meets Minnesota Housing funding requirements resulting in the withdrawal of Minnesota Housing funds from the Project.
- B. When the change is deemed to be significant by Livable Communities staff, the request will be presented to the Community Development Committee (CDC) for their consideration. Staff will provide the CDC with a memorandum assessing the proposed amendment's eligibility and compliance with additional account-specific criteria and reporting the results of the rescoring (when possible) of the Project as proposed. Representatives of the grantee will present to the CDC their amendment request(s) and answer Committee members' questions. The CDC will make a final decision regarding disposition of the request(s).
- C. The CDC, or the Directors, in the case of determinations made under their administrative discretion, may authorize an amendment to the grant agreement and to the Project Summary description included as Attachment A to the grant agreement provided that the Project, as revised, will produce the intended results described in the Livable Communities Act (shown below in italics) and meets additional account-specific conditions as follows:
1. **Tax Base Revitalization Account—**
 - *provide the highest return in public benefits for the public costs incurred, encourage development that will lead to the preservation or growth of living-wage jobs or the production of affordable housing, and enhance the tax base of the recipient municipality, and,*
 - meets the account eligibility criteria, and
 - if the revised Project is acceptable to the Council's funding partners that have also granted funds to the project, and
 - if the revised Project would score similarly to the original Project (i.e., it would have ranked within the list of Projects recommended for funding) in the areas of jobs/housing and net tax capacity increase;
 2. **Livable Communities Demonstration Account—**
 - *interrelate development or redevelopment and transit; interrelate affordable housing and employment growth areas; intensify land use that leads to more compact development or redevelopment; involve development or redevelopment that mixes incomes of residents in housing, including introducing or reintroducing higher value housing in lower income area to achieve a mix of housing opportunities; or encourage public infrastructure investments which connect urban neighborhoods and suburban communities, attract private sector redevelopment investment in commercial and residential properties adjacent to the public improvement, and provide project area residents with expanded opportunities for private sector employment, and*

- meets the account eligibility criteria, and
- if an examination of the record of review for the grant award indicates that the development/redevelopment Project, as amended, would still include the elements of demonstration and innovation that contributed to the Livable Communities Advisory Committee's recommendation of the Project for funding, and, in addition,
- if the revised Project would have at least met the minimum evaluation point scoring threshold in the staff technical evaluation.

3. Local Housing Incentives Account—

- *create incentives for developing communities to include a full range of housing opportunities; create incentives to preserve and rehabilitate affordable housing in the fully developed area,*
- meets the account eligibility criteria, and
- if the revised Project is acceptable to the Council's Metropolitan Housing Implementation Group funding partners that have also granted funds to the project.

D. The Community Development Committee will endeavor to inform grantees of the committee's decision regarding requested amendments in writing within 45 days of receipt of the grantee's written requests, subject to the committee's meeting schedule.

VIII. Appeal Process

The Community Development Committee will be informed of any request for a grant amendment denied by the Directors. A grantee may appeal the decision of the Directors to the Council's Community Development Committee by submitting a written appeal request to Livable Communities staff. Staff will schedule an appeal discussion on an upcoming Committee meeting agenda, subject to the committee's schedule and committee workload.

Livable Communities Act Grant Amendment Process

I. Introduction

The Metropolitan Council ("Council") anticipates that grantees of the Livable Communities Demonstration Account (LCDA), Local Housing Incentives Account (LHIA), and Tax Base Revitalization Account (TBRA) will complete their Projects within the timelines and conditions identified in their applications and grant agreements. However, occasionally circumstances may delay Project implementation or create the potential for changes to the Project. The Council may consider amendments to grant agreements at its discretion. Grantees should contact Livable Communities (LCA) staff as soon as they become aware of the potential for needed amendments.

II. Procedure

A. Definitions

1. For TBRA Contamination Cleanup grants, LCDA Development grants and LHIA grants, **Project** means the development or redevelopment project identified in the Attachment A to the grant agreement application that through its design and execution will deliver benefits such as housing, connections, jobs, and/or an increase to the tax base to the region.
2. For LCDA Pre-Development grants and TBRA Contaminated Site Investigation grants, the **Pre-Development Project** is the set of Grant Funded Activities for which funding is requested in the application. The **Future Development Project** is the future development or redevelopment that through its design and execution will deliver benefits such as housing, connections, and/or jobs.
3. For TBRA Contamination Cleanup grants, LCDA Development grants and LHIA grants, **Grant-Funded Activities** are components of the Project described in the Attachment A to the grant agreement application. The Grant-Funded Activities do not in and of themselves comprise the Project for which grant funds are awarded.
4. Project **Commencement** means initiation of development – e.g., tangible work on a building, such as laying a foundation.
5. **Site Control** means having acceptable evidence, such as a purchase commitment, option, or letter of intent from a government body or sole developer, etc. If there will be no transfer of ownership, then a warranty deed or contract for deed is acceptable. The evidence of site control must be current, fully executed, include a legal description of the land, and extend to the anticipated date of the funding recommendation.
6. **Significant Change** to the Project or to the demonstrative value(s) of the Grant Funded Activities is defined based on considerations of account-specific legislative outcomes and on factors considered when the application for funding was scored.

Comment [pdb1]: This is a clarification to recognize the current format of the grant agreements.

These account specific legislative outcomes and factors are listed below in Section VII.

7. The **Directors** are the Director of Community Development and the Director of Housing and Livable Communities.

B. Amendment Types

Grant agreements may be amended for the following reasons:

1. Change in the term of the grant agreement;
2. Change in the Grant Funded Activities;
3. Change to the Project, and/or
4. Change to both Grant Funded Activities and to the Project

C. Requirements

To request and be considered for a grant agreement amendment:

1. The request for an amendment must be submitted in writing to Livable Communities staff no less than 90 days prior to the expiration of the grant agreement.
2. The requested amendment must be consistent with the scope and intent of the original grant award made by the Council's governing body.
3. The amendment must be executed by both parties prior to the current grant agreement expiration date.

III. Request for a Change in the Grant Term

In addition to the requirements listed in section II. C., a request for an extension to the term of the grant agreement must include information evidencing:

1. site control;
2. significant progress toward full financing;
3. significant progress toward an executed development agreement;
4. a schedule showing the commencement and completion dates for all Grant-Funded Activities as described in Attachment A of the grant agreement;
5. a schedule showing the commencement and completion dates of the Project described in Attachment A the grant agreement.
6. The schedules must demonstrate that the Grant-Funded Activities will be completed **and** the Project will have Commenced within the requested extension timeframe.

Note: Neither TBRA Contaminated Site Investigation grants nor LCDA Pre-Development grants are eligible for extensions to the term of the grant agreement.

Exception to the Policy Governing the Extension of TBRA Grants:

The Directors may authorize additional 24-month extensions to the term of a TBRA grant agreement beyond the typical twenty-four month extension period, in order to pay for costs associated with MPCA-required air and/or groundwater monitoring, until all MPCA-required air and/or groundwater monitoring is completed or until all TBRA award funds are

expended, whichever comes first. Each request for such an extension must be submitted to Livable Communities staff in writing and include a status report on Grant-Funded Activities.

IV. Request for a Change in Grant Funded Activities

In addition to requirements listed in section II.C. a request for a change in the Grant Funded Activities, including budget variances of more than twenty percent (20%) for any individual grant-funded activity identified in Attachment A to the grant agreement, must:

- A. state the proposed eligible use(s);
- B. explain the impact the proposed change(s) will have on:
 - 1. the Project, the account-specific factors on which the application was scored, and on the Project benefits identified in the grant application, such as affordable housing units or jobs;
 - 2. the schedule for the completion of the Grant Funded Activities;
 - 3. the schedule for completion of the Project; and
- C. submit a revised Project budget.

Comment [pdb2]: A shift of 20% or more of a grant's line item budget warrants staff review to ensure that grantees are not spending the funds inconsistent with the grant award. Without this flexibility, our experience has been that, fairly minor, and entirely appropriate budget line item changes had to be disallowed or unnecessarily took up time on Community Development Committee agendas.

V. Request for a Change in the Project

In addition to the requirements listed in II.C., a request for a change in the Project must:

- A. describe the specific change(s) to the Project;
- B. explain what impact the proposed change(s) will have on:
 - 1. the Project and the account-specific factors on which the application was scored, and on the Project benefits identified in the grant application, such as affordable housing or jobs;
 - 2. the schedule for the completion of the Grant Funded Activities; and
 - 3. the schedule for completion of the Project; and
- C. submit a revised Project budget.

VI. Request for a Change in the Grant Funded Activities and in the Project

In addition to the requirements listed in section II.C. a request for a change in the Project must comply with the requirements in sections IV and V, above:

VII. Review and Approval or Denial

- A. The Directors have discretion to administratively approve:
 - 1. an extension to the term of a grant agreement for a period up to 24 months and for additional periods as identified in the exception policy for TBRA grants; and/or
 - 2. a change in the Grant-Funded Activities and/or the Project when they determine that the proposed change(s) do not "significantly change" the Project or, for LCDA, the demonstrative value(s) of the Grant Funded Activities or Project.

The determination of "significant" change will be based on consideration of the account-specific factors considered when the application for funding was scored. Only the factors applicable to the Project as originally proposed and scored will be evaluated.

a) For the **Tax Base Revitalization Account** Cleanup grants, a proposed change will be considered **significant** if the change:

1. proposes to replace the Project as originally proposed with a completely different Project, or
2. will result in a reduction of 20 percent or more of the total net tax capacity expected to be generated by the Project as originally proposed, or
3. proposes to reduce by 15 percent or more, or by 50 jobs (whichever is higher), the total number of new or retained jobs, or
4. proposes to reduce by 10 percent or more, or by 50 units (whichever is higher), the total number of housing units, or
5. proposes to reduce the total ~~number~~ percentage of affordable housing units by 20 percent or more from the Project as originally proposed.

Comment [pdb3]: This change would help ensure that changes to the proportion of affordable units to total units in a Project, not just the number of units, would be scrutinized before they would be allowed.

b) For the Tax Base Revitalization Account Site Investigation grants, a proposed change will be considered significant if the change:

1. proposes adding a residential land use that was not included in the Project land uses(s) identified in Attachment A to the grant agreement
- ~~1.2.~~ proposes excluding a residential land use that was included in the Project land use(s) identified in Attachment A to the grant agreement

Comment [pdb4]: This change recognizes the recent addition of TBRA Site Investigation grants

b)c) For the **Livable Communities Demonstration Account** development grants, a proposed change will be considered significant if the change:

1. proposes to replace the Project as originally proposed with a completely different Project, or
2. proposes to substantially change the mix and type of land uses originally proposed in a way inconsistent with program objectives or that substantially change the nature of the Project originally proposed, or
3. will reduce the overall Project density and/or land use intensity below the density guidelines for developments in the Project location, or 20 percent below the density and/or land use intensity originally proposed (whichever is higher), or
- ~~4. proposes to reduce by 10 percent or more, or by 50 units (whichever is higher), the total number of housing units, or~~
- ~~5.4.~~ proposes to reduce the total ~~number~~ percentage of affordable housing units ~~by 20 percent or more~~ from the Project as originally proposed.

Comment [pdb5]: This change addresses reduction in intensity of all land uses in a proposal, not just housing.

Comment [pdb6]: This criteria was redundant to criteria 3 above.

Comment [pdb7]: Same as a) 5. above.

e)d) For the **Livable Communities Demonstration Account** Pre-Development grants, a proposed change will be considered **significant** if the change:

1. proposes to replace the Project as originally proposed with a completely different Project, or
2. proposes to substantially change the intended grant funded activities for which the funds were awarded.

e)e) For the **Local Housing Incentives Account**, a proposed change will be considered **significant** if the change:

1. proposes to replace the Project as originally proposed with a completely different Project, or
2. proposes to reduce ~~by 20 percent or more~~ the total ~~number~~ percentage of affordable housing units, or
3. no longer meets Minnesota Housing funding requirements resulting in the withdrawal of Minnesota Housing funds from the Project.

Comment [pdb8]: Same as a) 5. above

B. ~~When~~ the change is deemed to be significant by Livable Communities staff, ~~a Review Panel subcommittee of the Community Development Committee, consisting of three committee members appointed by the committee chair, will be convened to consider the request will be presented to the Community Development Committee (CDC) for their consideration. Representatives of the grantee will present to the Review Panel their amendment request(s) and answer panel members' questions.~~ Staff will provide the ~~Review Panel~~CDC with a memorandum assessing the proposed amendment's eligibility and compliance with additional account-specific criteria and reporting the results of the rescoring ~~(when possible)~~ of the Project as proposed. ~~Representatives of the grantee will present to the CDC their amendment request(s) and answer Committee members' questions. The Review Panel will consider the information provided and make recommendations to the CDC for will make~~ a final decision regarding disposition of the request(s).

Comment [pdb9]: The change to this provision is the elimination of the naming of a Review Panel of Community Development Committee members that was assigned to review the proposed Project changes and make a recommendation to the full CDC. This process has proved to be a burden on Committee members schedules and has not reduced discussion at the CDC meeting.

C. The ~~full CDC, or the Directors, in the case of determinations made under their administrative discretion~~ may authorize an amendment to the grant agreement and to the Project Summary description included as Attachment A to the grant agreement provided that the Project, as revised, will produce the intended results described in the Livable Communities Act (shown below in italics) and meets additional account-specific conditions as follows:

1. Tax Base Revitalization Account—

- *provide the highest return in public benefits for the public costs incurred, encourage development that will lead to the preservation or growth of living-wage jobs or the production of affordable housing, and enhance the tax base of the recipient municipality, and,*
- meets the account eligibility criteria, and
- if the revised Project is acceptable to the Council's funding partners that have also granted funds to the project, and
- if the revised Project would score similarly to the original Project (i.e., it would have ranked within the list of Projects recommended for funding) in the areas of jobs/housing and net tax capacity increase;

2. Livable Communities Demonstration Account—

- *interrelate development or redevelopment and transit; interrelate affordable housing and employment growth areas; intensify land use that leads to more compact development or redevelopment; involve development or redevelopment that mixes incomes of residents in housing, including introducing or*

reintroducing higher value housing in lower income area to achieve a mix of housing opportunities; or encourage public infrastructure investments which connect urban neighborhoods and suburban communities, attract private sector redevelopment investment in commercial and residential properties adjacent to the public improvement, and provide project area residents with expanded opportunities for private sector employment, and

- meets the account eligibility criteria, and
- if an examination of the record of review for the grant award indicates that the development/redevelopment Project, as amended, would still include the elements of demonstration and innovation that contributed to the Livable Communities Advisory Committee's recommendation of the Project for funding, and, in addition,
- if the revised Project would have at least met the minimum evaluation point scoring threshold in the staff technical evaluation.

3. Local Housing Incentives Account—

- *create incentives for developing communities to include a full range of housing opportunities; create incentives to preserve and rehabilitate affordable housing in the fully developed area,*
- meets the account eligibility criteria, and
- if the revised Project is acceptable to the Council's Metropolitan Housing Implementation Group funding partners that have also granted funds to the project.

- D. The Community Development Committee will endeavor to inform grantees of the committee's decision regarding requested amendments in writing within 45 days of receipt of the grantee's written requests, subject to the committee's meeting schedule.

VIII. Appeal Process

The Community Development Committee will be informed of any request for a grant amendment denied by the Directors. A grantee may appeal the decision of the Directors to the Council's Community Development Committee by submitting a written appeal request to Livable Communities staff. Staff will schedule an appeal discussion on an upcoming Committee meeting agenda, subject to the committee's schedule and committee workload.