

TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 11	QUALIFIED ALLOCATION PLAN (QAP)
SUBCHAPTER B	SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS
RULE §11.101	Site and Development Requirements and Restrictions

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent federal or local requirements they must also be met. Applicants requesting NHTF funds from the Department must also meet the federal environmental provisions under 24 CFR §93.301(f)(1)(vi). Applicants requesting HOME, HOME-ARP, or NSP PI funds from the Department must meet the federal environmental provisions under 24 CFR Part 58, as in effect at the time of execution of the Contract between the Department and the Owner. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain.

Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement, to the extent NHTF is not being requested from the Department. All Developments located within a 100 year floodplain must state in the Tenant Rights and Resource Guide that part or all of the Development Site is located in a floodplain, and that it is encouraged that they consider getting appropriate insurance or take necessary precautions. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the 100 year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Undesirable Site Features. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA) and Developments encumbered by a TDHCA LURA the earlier of the first day of the Application Acceptance Period for HTC, Application Acceptance Date for Direct Loan, or date the pre-application is submitted (if applicable) may be granted an exemption;

however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this chapter (related to Criteria promoting the efficient use of limited resources and applicant accountability) may be granted an exemption, and such exemption must be requested at the time of or prior to the filing of an Application. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that specifies the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. Pre-existing zoning does not meet the requirement for a local ordinance. If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may issue a Deficiency. If staff identifies an undesirable site feature reflected in subparagraphs (A) - (J) of this paragraph and it was not disclosed the Application will be terminated. An Applicant's failure to disclose an Undesirable Site Feature is not curable by Administrative Deficiency. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit a request for pre-determination at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer a request for a pre-determination may be submitted prior to Application submission. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Undesirable Site Features become available while the Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and may result in an Administrative Deficiency or re-evaluation. The following are Undesirable Site Features:

- (A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Texas Transportation Code §396.001;
- (B) Development Sites located within 300 feet of a solid waste facility or sanitary landfill facility or illegal dumping sites (as such dumping sites are identified by the local municipality);
- (C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local

Government Code §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless:

(i) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone covering the area within 500 feet of the Development Site;

(ii) the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(iii) the railroad in question is commuter or light rail;

(E) Development Sites located within 500 feet of heavy industry (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or maintains fuel storage facilities (excluding gas stations);

(F) Development Sites located within 10 miles of a nuclear plant;

(G) Development Sites in which the buildings are located within the accident potential zones or the runway clear zones of any airport;

(H) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids or Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance (PIPA);

(I) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily;

(J) Development Sites that are located in a Clear Zone, any Accident Potential Zone, or within any Noise Contour of 65 decibels or greater, as reflected in a Joint Land Use Study for any military Installation, except that if the Development Site is located in a Noise Contour between 65 and 70 decibels, the Development Site will not be considered to have an Undesirable Site Feature if the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated. If staff believe that a Site should be deemed unacceptable under this provision due to information that was not included in the Application, it will provide the Applicant with written notice and an opportunity to respond.

(3) Neighborhood Risk Factors.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer a request for a pre-determination may be submitted

prior to Application submission. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax-Exempt Bond Development or Direct Loan only Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and staff may issue an Administrative Deficiency. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application will be terminated. Applicant's failure to disclose a Neighborhood Risk Factor is not curable by Administrative Deficiency. The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. Mitigation to be considered by staff, including those allowed in subparagraph (C) of this paragraph, are identified in subparagraph (D) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.

(B) The Neighborhood Risk Factors include those noted in clauses (i) - (iii) of this subparagraph and additional information as applicable to the neighborhood risk factor(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. In order to be considered an eligible Site despite the presence of Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently mitigated or significantly improved prior to placement in service and that the risk factor demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the Neighborhood Risk Factor disclosed.

(i) The Development Site is located within a census tract that has a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13). Rehabilitation Developments are exempt from this Neighborhood Risk Factor.

(ii) The Development Site is New Construction or Reconstruction and is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com. Rehabilitation developments are exempt from this Neighborhood Risk Factor.

(iii) The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a TEA Accountability Rating of "Not Rated: Senate Bill 1365" for 2022. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. Schools with an application process for admittance,

limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance [Cont'd...](#)

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