

Livable Communities Act (LCA) Frequently Asked Questions

May 2007

Participation in the Livable Communities Act

1. What steps need to be taken to participate in LCA?

- The municipality elects to participate in the program by passing a resolution to participate in the Local Housing Incentives program.
- The Metropolitan Council and the municipality negotiate affordable and life-cycle housing goals for the municipality.
- The municipality invests annually its Affordable and Life-Cycle Housing Opportunities Amount (ALHOA) representing the minimum amount of local discretionary expenditures or contributions to assist the development or preservation of affordable and life-cycle housing for the community as determined by a formula in the law.
- The municipality prepares a Housing Action Plan identifying how it will address its housing goals.
- The municipality is then eligible to apply for funding from any or all of the three LCA grant programs.

2. What is the Affordable and Life-Cycle Housing Opportunities Amount (ALHOA)?

To participate in the Local Housing Incentives Account Program, communities are required to contribute a specified amount of local resources to affordable housing each year they participate in the program. This contribution, or expenditure, is called the Affordable and Life-Cycle Housing Opportunities Amount (ALHOA). The ALHOA is equal to the community's share of the Council's annual LCA assessment which is determined based on a formula in the Livable Communities Act. It is not a grant from the Livable Communities Account. In order to continue to participate in the program, communities must expend or contribute at least 85% of their annual ALHOA obligation. Communities have some flexibility in determining which local expenditures fulfill the ALHOA contribution. Examples of ALHOA-eligible expenditures include housing assistance, development or rehabilitation efforts, the costs of local housing inspection and code enforcement, and local taxes to support a local or county Housing and Redevelopment Authority.

3. After a municipality elects to participate in LCA, when is it eligible to compete for LCA funds?

Once the municipality and Metropolitan Council negotiate housing goals, the municipality is eligible to apply for LCA grant programs.

4. What if a municipality chooses not to participate in the LCA?

Municipalities that elect not to participate in the LCA are not eligible to participate in LCA grant programs, nor are they eligible to apply for funds under the Department of Employment and Economic Development's polluted sites clean-up program. The Metropolitan Council is required by the LCA to consider a municipality's participation in the LCA when making other discretionary funding decisions.

5. If an application is funded, what are the obligations that accompany the grant?

Each grant fund has specific reporting requirements that are stated in the grant agreement. In general, every grant recipient must report periodically to the Metropolitan Council on the progress of the funded project including submission of a final report when grant-funded activities are completed or all grant funds are expended. Grant funds are generally paid to reimburse grant recipients for expenses incurred. Requests for reimbursement must include appropriate documentation.

Affordable and Lifecycle Housing

1. What is considered "affordable" housing?

The Council considers housing "affordable" if it costs 30 percent or less of the total income of a family of low or moderate income. The Council's definition of low or moderate income is consistent with the income limits used by other housing development and ownership assistance programs. Most Minnesota Housing (formerly known as Minnesota Housing Finance Agency [MHFA]) programs provide homeownership assistance to households with incomes at or below 80 percent of the median income. The federal low-income housing tax credit program for rental production targets incomes at or below 50 percent of the median income. When negotiating affordable and lifecycle housing goals with communities choosing to participate in Livable Communities programs the Council uses the following definitions:

- **Ownership housing:** housing that is affordable to buyers earning 80% of area median income — in 2007, a household earning this income could afford a home costing approximately \$206,800.
- **Rental housing:** housing that is affordable to renters earning 50% of area median income — in 2007, a household earning this income could afford to pay \$883 per month for rent and utilities for a two-bedroom unit.

2. What is "lifecycle" housing?

Lifecycle housing refers to varied housing options that meet people's preferences and circumstances at all of life's stages, providing a balance of single-family homes, apartments, condominiums, townhomes and senior housing for independent living or with a range of assisted-living services.

3. Are the affordable and life-cycle housing goals, negotiated between the municipality and the Metropolitan Council, achievable?

Yes, in time. The goals agreed to by the Metropolitan Council and the municipality are intended to be long-term objectives for advancing or retaining affordable and diverse housing options within the community. A municipality prepares a Housing Action Plan that identifies the steps it intends to take to move towards its long-range goals. Progress toward the goals depends on the efforts of the community, the private market, the availability of affordable and lifecycle housing resources and the use of local controls to create opportunities for meeting goals.

Tax Base Revitalization Account (TBRA)

1. How and when are TBRA funds available?

The TBRA provides funds to clean up polluted land to make it available for economic redevelopment, job retention and job growth or the production of affordable housing to enhance the tax base of the recipient municipality. TBRA funds are raised by a legislatively authorized levy capped at \$5 million annually. The funds are available annually with applications accepted twice each year (the first regular business day on or after May 1 and November 1). The TBRA is coordinated with complementary programs at the Minnesota Pollution Control Agency (MPCA), the Minnesota Department of Employment and Economic Development (DEED), Hennepin County and Ramsey County.

2. Who is eligible to apply for TBRA grants?

Statutory or home rule charter cities or towns that are *participating in the Metropolitan Livable Communities Housing Incentives Program* are eligible to apply. Metropolitan counties and local development authorities (e.g., Housing and Redevelopment Authority, Economic Development Authority or Port Authority) are also eligible to apply for projects that are located in LCA participating communities. Applications may be determined ineligible for funding if:

- adequate clean-up funding is available from other public sources;
- an analysis of the proposal determines the funding is not needed in order for the project to proceed;
- the project requires extensive new (regional) infrastructure beyond that which is already planned;
- the proposal is not consistent with the redevelopment component of the municipality's comprehensive plan (in re: Minn. Stat. section 473.859, Subd. 5); or
- the proposed redevelopment activities include a residential element, but do not include an affordable component within the project.

3. What criteria are used to determine which applications are eligible for TBRA funding?

Applications will be ranked according to the extent to which they address the following criteria and compared with other competing proposals in the grant cycle:

A. Promote the policies of the Metropolitan Development Guide (2030 Regional Development Framework)

Up to 25 points are assigned to projects that are designed and implemented in a way that directly supports the Council's development goals and regional systems plans.

Framework Goals (16 points)

- Accommodate growth - 0 to 10 points
- Promote multi-modal transportation options - 0 to 2 points
- Provide housing choices - 0 to 2 points
- Conserve vital natural resources - 0 to 2 points

Regional Systems (9 points)

- Transportation/transit/aviation - 0 to 3 points
- Environmental Services - 0 to 3 points
- Regional Parks - 0 to 3 points

B. Clean up polluted land in the metropolitan area

Up to 25 points are awarded to projects that use funds to clean up the most polluted sites. The Minnesota Pollution Control Agency helps evaluate the projects and ranks the projects based on the environmental threat and health risk of each project. The evaluation includes assessing the contamination's threat to ground and surface water.

C. Preservation or growth of living wage jobs or the production of affordable housing

Up to 25 points are given to projects that preserve or increase the number of jobs and/or affordable housing within the seven-county region. Points for jobs are assigned for the number of new jobs and retained jobs, the number of living wage jobs and the number of jobs in areas of concentrated poverty. Points for "affordable housing" are based on the number of ownership units affordable at 80% of area median income (AMI) plus the number of rental units at 50% or less AMI to be built.

D. Enhance the tax base of communities

Up to 25 points are assigned to projects based on the projected amount of tax base increase relative to the amount of TBRA funding requested.

E. Additional Factors

Up to 25 points are assigned for the following categories as noted.

- **Readiness for Clean up and Reuse** - 10 points. Points are assigned based on how ready the project is to begin implementing the clean up and redevelopment so that the community benefits from the completed project as soon as possible.
- **Efficiency - Life cycle cost/benefits** - 5 points. Points are given to projects that use energy, water and other natural resources efficiently.
- **Innovative partnerships** - 5 points. Points are assigned to projects that represent innovative partnerships.
- **Supplemental funding requests** - 5 points. Projects that have received a prior TBRA award and encounter significant unanticipated contamination or contamination found in significantly higher amounts than originally estimated are eligible for additional points.

4. What investigation costs are eligible for TBRA grant funds?

TBRA grants funds are eligible to be used for environmental site investigation costs related to contaminated sites provided the costs are incurred within the 180-days prior to the TBRA application deadline. Eligible costs include conducting Phase I and Phase II investigations and preparation of Response Action Plans (RAP) developed in conjunction with the MPCA for hazardous waste; or abatement programs that meet the requirements for the VPIC/LUST (Voluntary Petroleum Investigation and Cleanup/Leaking Underground Storage Tank) program at MPCA; or for conducting asbestos abatement plans that meet AHERA (Asbestos Hazard Emergency Response Act) standards; or lead-based paint abatement plans that meet Minnesota Department of Health standards. The investigation work should be done within the 180-days prior to the TBRA application deadline. The costs for the investigation work will only be reimbursed if the TBRA applicant's overall project is recommended for funding.

5. What specific cleanup costs related to soil and ground water contamination are eligible for TBRA funds?

TBRA funding can help pay the cost difference between building on a contaminated site and building on a clean site. Only soil remediation costs directly related to contaminated soil and ground water are eligible for TBRA grant funds

- For soil that is being removed solely to remove contamination, all of the soil remediation costs including excavation, transportation, disposal fees and back fill are eligible for grant funding.
- When removal of soil is required in order to develop the site, only the cost difference between removing and properly managing clean soil and contaminated soil is eligible for reimbursement from this fund. (The standard costs for excavating, transporting and disposing of clean soil generally are not eligible.)
- The costs for replacing contaminated fill with clean fill are eligible to the extent that the soil replacement is related to removing contamination. The costs related to improving the geotechnical qualities of the soil for building foundation purposes are not eligible.

In order to minimize the amount of funds needed to replace contaminated fill, applicants are encouraged to design and implement projects in a way that minimizes the amount of backfill needed to replace the contaminated soils. (e.g. underground parking, basements). Any underground use must be consistent with the approved RAP.

6. Can TBRA grant funds be used to clean up petroleum based contamination?

Costs for remediation of contamination related to above and below ground petroleum storage tanks and other petroleum based contamination are eligible for consideration only after all available Petrofund sources have been utilized. The Petrofund is administered by the Minnesota Department of Commerce.

7. Are the disposal costs of other hazardous wastes, non-hazardous wastes and debris eligible for TBRA funding?

Remediation funds for building renovation or pre-demolition abatement are primarily for asbestos and lead-based paint abatement. Costs for abating small quantities of other types of hazardous contamination found in buildings, such as mercury in thermostats, oils in door closers, and other contamination related to HVAC systems, are generally not eligible for reimbursement.

Non-hazardous wastes such as household waste, construction debris, and old tires are not eligible for TBRA grant funding.

8. If the project includes a housing component, is a portion required to be affordable?

Yes, if the proposed redevelopment includes a housing component, a portion of the housing is required to be affordable. Ownership units are considered affordable if they can be purchased by buyers earning 80% of the area median income (AMI). Currently this includes any units for sale at \$206,800 or less. Affordable rental units are those renting at the Low-Income Housing Tax Credit rent limits based on 50% of the AMI. The maximum rental amount to be affordable at this level is based on the number of bedrooms as follows: efficiency \$687, 1-bedroom \$736, 2-bedrooms \$883, 3-bedrooms \$1,020, 4-bedrooms \$1,138.

9. Is funding for site acquisition or building demolition eligible?

Site acquisition costs are generally not eligible unless they are a part of the 13% match to a DEED funded project. Building demolition costs are eligible when such removal is identified in an MPCA approved Response Action Plan (RAP) in order to gain access to remediate soil and ground water contamination. Pre-demolition costs related to the abatement of asbestos or lead-based paint are eligible.

10. Can a project be funded if eminent domain was used for acquisition?

Beginning in 2006, no applicant for a Metropolitan Council LCA/TBRA grant is eligible for grant funds if the project for which funding is requested used eminent domain power to acquire property unless eminent domain was used for a "public use or public purpose." For purposes of the policy, the term "public use or public purpose" includes mitigation of a "blighted area," remediation of an "environmentally contaminated area," reduction of "abandoned property," or removal of a "public nuisance" as those terms are defined in statute. To read the Council's policy restricting Metropolitan LCA Grants for projects using eminent domain see <http://www.metrocouncil.org/services/livcomm/EminentDomainPolicy.htm>

11. Can funds be requested for cleanup costs incurred between grant rounds?

If an applicant chooses to proceed with cleanup work between TBRA funding rounds they may be eligible for reimbursement of the clean up costs in the next funding round but there is no guarantee. In order to be considered, the applicant must meet the following conditions:

- A. The cleanup work for which funding is being requested must have been done no earlier than 180 days before the TBRA application deadline (November 1st or May 1st).
- B. For soil and ground water remediation work the MPCA must have approved a RAP for the project prior to commencing the work; for asbestos abatement a Minnesota Department of Health (MDH) licensed inspector/contractor must have completed an asbestos evaluation and plan according to Asbestos Hazard Emergency Responses Act (AHERA) standards; for lead-based paint abatement an MDH licensed inspector/contractor must have completed a lead-based paint evaluation according to MDH standards.
- C. The applicant must have contacted the Metropolitan Council TBRA staff prior to commencing any clean up work. A site visit with the applicant and TBRA staff is recommended so that there is clear understanding of the project and proposed remediation.
- D. The applicant must explain why the applicant needs to commence the clean up work prior to the TBRA application deadline.
- E. Before starting the cleanup work the applicant must provide a letter to the Council TBRA staff that states:
 - The applicant is going to start project clean up work before the next TBRA application deadline; and the applicant has the appropriate approvals (see B above).
 - The applicant understands that while this notification process makes the work done after the Council receives the letter eligible for consideration in the next TBRA grant round, it DOES NOT commit the Council to funding the project

12. Can previously funded projects get additional TBRA funding if they encounter additional cleanup costs?

Applicants that have already been awarded TBRA grant funds are eligible to apply for additional funds for a project if during the clean up, significantly larger quantities of contamination are encountered than the preliminary investigation estimated; or significant amounts of contamination not identified in the investigation are encountered.

Applicants requesting supplemental funding for soil remediation must provide an amended RAP or provide documentation that the MPCA has approved the changes for which additional funding is being requested. Applicants requesting supplemental funding for additional asbestos and/or lead-based paint abatement must provide documentation that a licensed inspector/contractor has been involved in the additional abatement and that

the additional work was done according to Asbestos Hazard Emergency Responses Act (AHERA) and/or MDH standards.

13. Is the funding targeted for Minneapolis and St. Paul?

No. The TBRA program reserves at least one-quarter of the funding available in each grant cycle for projects outside the two core cities and restricts any one municipality from receiving more than half the funding in any funding round. Since 1995, 214 TBRA grants have been awarded to 34 different communities in the seven-county metropolitan area.

14. How can I learn more about brownfield clean up funding opportunities?

Workshops are held prior to every Spring and Fall grant cycle to provide information on brownfield clean up funding programs and opportunities available in Minnesota. The workshops are co-hosted by the Metropolitan Council, the Minnesota Department of Employment and Economic Development, the Minnesota Pollution Control Agency, the Minnesota Department of Agriculture, the Minnesota Department of Health, and other brownfield partners. For details about future workshops, contact the TBRA grant coordinator or watch the "Upcoming Events" space on this website's Livable Communities main page.

15. Is a local funding match required?

No funding match is required for TBRA grants. However, in the application evaluation process points are awarded for projects that involve multiple financial partners, including the private sector, various units of government and the non-profit sector. TBRA funds can be used as a part of the match required for a grant from DEED's Contamination Cleanup Grant Program. DEED grants provide no more than 75% of the cleanup costs and require that 12% of the cost is local match. TBRA funds may be requested to cover the other 13% of the cost.

16. If a TBRA application is funded, what are the obligations that accompany the grant?

Similar to the other LCA grant programs, the recipient submits a reimbursement request form requesting reimbursement for work completed and includes copies of invoices or other appropriate documentation. In addition, annual progress reports for TBRA funded projects are required for up to five years after the end of the grant term.

Livable Communities Demonstration Accounts (LCDA)

1. How and when are LCDA funds available?

LCDA funds are available through one annual application cycle. Application materials are available in the Spring (usually April). For 2007, a pre-application is due on June 11 (a new step this year), applications are due July 16, and it is expected that the Council will award grants in December. See <http://www.metrocouncil.org/grants/lcda/LCDAApplicationGuide.pdf>. Funding criteria and application materials may change for future years.

2. Who is eligible to apply for LCDA funding?

Application is open to municipalities that participate in the Local Housing Incentives Program of the Livable Communities Act (LCA), to local housing and redevelopment authorities, economic development authorities or port authorities in LCA-participating cities, or to counties on behalf of projects located in LCA-participating cities. Participation in the Local Housing Incentives Program requires communities to negotiate housing goals with the Council and prepare a Housing Action Plan.

3. What types of projects does the LCDA program fund?

The LCDA program funds development and redevelopment projects that demonstrate efficient and cost-effective use of land and infrastructure, and achieve connected development patterns linking housing, jobs and services. As the name of the account suggests, LCDA funds are intended to be used for projects that demonstrate innovative and new ways to achieve and implement the statutory objectives, not merely to fill project funding needs.

4. What costs are eligible for LCDA grants?

LCDA grants may be used to fund basic public infrastructure and site assembly to help local jurisdictions support projects that achieve their development goals, working in partnership with developers and other private entities. Included in basic public infrastructure are new streets, street extensions or realignments; public parking structures, extensions of local public sewer, water and telecommunications lines; public connecting elements such as sidewalks and trails that connect to transit, site-integrated transit shelters, and stormwater management improvements. Eligible site-assembly costs include land acquisition, demolition, and site preparation costs such as site grading and soil correction. For the complete list of ineligible and ineligible uses, see pages 2-3 of the 2007 LCDA criteria at <http://www.metrocouncil.org/grants/lcda/LCDAcriteria2007.pdf>.

5. What criteria are used to determine which applications are eligible for LCDA funding?

The Metropolitan Council approves criteria in the spring of each year that apply to the program for that year. See <http://www.metrocouncil.org/grants/lcda/LCDAcriteria2007.pdf> for the 2007 program criteria. The criteria focus on using land efficiently; connecting development to available transit, jobs and services; providing a range of

housing; developing in ways to protect and enhance natural resources; and employing effective regulatory tools and partnerships. Financial and other readiness is also taken into account.

6. Is a local funding match required?

No funding match is required for LCDA grants. However, financial partnerships that include local participation are evaluated and viewed positively.

7. Can a project be funded if eminent domain was used for property acquisition?

Beginning in 2006, no applicant for a Metropolitan Council LCDA grant is eligible for grant funds if the project for which funding is requested used eminent domain authority to acquire property unless eminent domain was used for a "public use or public purpose." For purposes of the policy, the term "public use or public purpose" includes mitigation of a "blighted area," remediation of an "environmentally contaminated area," reduction of "abandoned property," or removal of a "public nuisance" as those terms are defined in statute. To read the Council policy restricting LCA grants for projects using eminent domain, see <http://www.metrocouncil.org/services/livcomm/EminentDomainPolicy.htm>.

8. Is the funding targeted to any cities or geographic area?

Funding is available to all cities within the urbanized metropolitan area. Up to 40 percent of the funds available in a grant cycle may be awarded to projects located in Minneapolis and St. Paul (the average amount that has been awarded to the two cities over the life of the program).

9. How can I learn more about LCDA funding opportunities?

Council staff holds a workshop each spring, designed to help potential applicants understand the application and evaluation process. Interested applicants are encouraged to attend one of two workshop dates and locations. For future workshop dates, contact the LCDA grant coordinator or watch the "Upcoming Events" space on this website's Livable Communities main page.

10. If an LCDA application is awarded a grant, what is the process for receiving the funds?

Shortly after the grant is awarded, Council staff will work with the grantee to prepare and execute a signed grant agreement, which specifies what the funds may be used for, consistent with the Council action in awarding the grant. Once the grant agreement is fully executed with all grantee and Council signatures, the grant recipient may submit payment requests for eligible activities that have been performed as of the date of the grant award. To request funds, the grant recipient submits a form requesting reimbursement for work completed and includes copies of invoices or other documentation.

Local Housing Incentives Account (LHIA)

1. How and when are LHIA funds available?

LHIA funds are available to assist affordable housing development or preservation through the Request for Proposal (RFP) process administered by the Minnesota Housing Finance Agency (MHFA). As members of the Metropolitan Housing Implementation Group (MHIG), MHFA, the Family Housing Fund and the Metropolitan Council collaborate on the RFP solicitation, selection and funding process. The RFPs are issued by MHFA in December/January for ownership programs and May/June for both ownership and rental programs, with funding decisions made in late spring and fall. Applications and information on the RFP are available on the MHFA website: Single family – www.mhfa.state.mn.us/rfp_sf.htm
Multifamily - www.mhfa.state.mn.us/multifamily/multifamily_forms.htm

2. Who is eligible to apply for LHIA funding?

Only municipalities that participate in the Local Housing Incentives program of the Livable Communities Act (LCA) are eligible for LHIA funding. Participation in the Local Housing Incentives programs requires communities to negotiate housing goals with the Council and prepare a Housing Action Plan. Applications through the RFP process by non-municipal applicants must include acknowledgment by the local government that it will accept the award of LHIA funds and distribute the funds to the applicant for the funded proposal.

3. What costs are eligible for LHIA grants?

LHIA funds may be used to fill value and/or affordability gaps to facilitate the development or preservation of affordable housing units (ownership or rental), or housing units that are integral to a local redevelopment or revitalization program.

4. What criteria are used to determine which applications are eligible for LHIA funding?

The MHFA website identifies the criteria MHIG uses to award LHIA grants: MHFA website: <http://www.mhfa.state.mn.us/rfp.htm>

5. Can a project be funded if eminent domain was used to acquire the project site?

Beginning with grant funding cycles initiated in calendar year 2006, no applicant for a Metropolitan Council LCA grant shall be eligible for LCA grant funds from the Metropolitan Council if the project for which an LCA grant is requested requires the exercise of eminent domain authority over private property for purposes of *economic development*. For purposes of this policy, the term "economic development" means the taking of private property from one private person or entity, without the consent of the owner, and conveying or leasing such property to another private person or entity, for commercial enterprise, or to increase tax revenue, tax base, employment, or general economic health, provided that such term shall not include:

- (a) acquiring private property for public ownership and public use, such as for a roadway, park, sanitary sewer, hospital, public school, or similar use;
- (b) acquiring private property to remediate or clean up pollution or contamination that threatens or may threaten public health or safety or the environment, if the Applicant certifies: (i) the property owner is unable or unwilling to pay for appropriate remediation or clean up; (ii) remediation or clean up must occur expeditiously to eliminate or mitigate the threat to public health or safety or the environment; and (iii) no Responsible Party has been identified or is financially capable or carrying out the remediation or clean up;
- (c) leasing property to a private person or entity that occupies an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building;
- (d) acquiring abandoned property or acquiring "blighted" property as the term "blighted" is defined and used in Minnesota Statutes chapter 469;
- (e) removing a public nuisance; or
- (f) clearing defective chains of title.