



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**
Jane Swift, Governor ♦ Jane Wallis Gumble, Director

Public Housing Notice 2002-04

NOTICE

To: Interested Parties
From: Marc A. Slotnick, Associate Director for 
Public Housing & Rental Assistance
Subject: Proposed Adoption of DHCD Regulations
Date: July 1, 2002

Under the provisions of M.G.L., c. 30A, § 2 notice is hereby given of the following proposed action:

Adopt the following regulations:

760 CMR 55.00 Housing Production and Replacement Program

under the regulatory authority provided to DHCD under MGL c.23B; MGL c.121B and Chapter 257 of the Acts of 1998 Section 5.

The Department of Housing and Community Development will hold a public comment period on the above from July 1, 2002 – July 26, 2002.

Written comments during the public comment period should be directed to: Department of Housing & Community Development, One Congress Street, 10th Floor, Boston, MA 02114 Attention: LEGAL DEPARTMENT

Copies of the proposed amendments will be available for inspection at the offices of DHCD during regular business hours - 8:45 a.m. - 5:00 p.m. prior to and during the public comment period.

We again ask that each LHA provide a copy of this memo and the enclosed to its LTO(s). Thank you for your assistance.

PUBLIC NOTICE

The Department of Housing & Community Development (DHCD)
Proposed Regulation
760 CMR 55.00 Housing Production And Replacement Program

Under the provisions of M.G.L. c.30A §3 notice is hereby given of the following proposed action:

The promulgation of regulations 760 CMR 55.00 - Housing Production And Replacement Program under the regulatory authority provided to DHCD under MGL c.23B; MGL c.121B and Chapter 257 of the Acts of 1998 Section 5.

The Department of Housing and Community Development will hold a public comment period on the above from July 1, 2002 - July 26, 2002.

Written comments during the public comment period should be directed to: Department of Housing & Community Development, One Congress Street, 10th Floor, Boston, MA 02114
Attention: LEGAL DEPARTMENT

Copies of the proposed amendments will be available for inspection at the offices of DHCD during regular business hours - 8:45 a.m. - 5:00 p.m. prior to and during the public comment period.

760 CMR: DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

760 CMR 55.00 Housing Production and Replacement Program

Section

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55.01 Introduction

Chapter 494 of the Acts of 1993 Section 2 item 3722-8891 authorizes \$20 million for a program pursuant to which the Department will give grants to housing authorities for construction of housing projects for families of low income pursuant to G.L. c. 121B § 34 or for elderly persons of low income pursuant to G.L. c. 121B §41. Any grant for conventional public housing for families is to be matched by a grant for public housing for families incorporating economic diversity and opportunity as contained in authorization for a pilot program at specified family housing developments in the City of Boston in Chapter 110 of the Acts of 1993 § 2 item 3222-9006.

Chapter 257 of the Acts of 1998 Section 5 amended item 3722-8891 so that, notwithstanding any contrary provisions in the item, up to \$15 million could be expended for design, preparation of plans and construction of Scattered Site Housing Units or for the acquisition of other Housing Units for Very Low or Low Income Households.

The 1998 amendment to item 3722-8891 required that, insofar as reasonably possible, Housing Units which replace other housing units should have similar affordability as the units which are replaced. Replacement of Project Based Housing Units will be permissible where the units to be replaced are uninhabitable because of their failure to meet Life and Safety Code requirements. Grants may also be given “to develop affordable housing units which are deemed necessary by the Department as part of a development plan.”

The 1998 amendment authorized the Department to issue regulations for implementation of item 3722-8891 as amended.

Chapter 97 of the Acts of 2002 (replacing Chapter 193 of the Acts of 2000) authorized in Section 1(b) the demolition of the Julian D. Steele state aided public housing development and its replacement with “a mixed income housing development with rental and homeownership

opportunities to households with very low incomes, households with low or moderate incomes and households with incomes between 80 percent and 150 percent of area median income, based on household size...in accordance with a development plan approved by the department.” Section 3 of Chapter 97 authorized the Department to provide a grant pursuant to item 3722-8891 as amended, in an amount not to exceed \$2.7 million, to Lowell Housing Authority:

- (1) for costs of planning, engineering, necessary studies, design, development plan and construction of infrastructure, including environmental; and
- (2) remediation, of the new mixed income development described in section 1, and the Lowell housing authority may grant all or part of such funds to the Residents First Development Corporation for such purposes.

55.02 Purpose and Effective Date

760 CMR 55.00 et seq. establishes standards and procedures for the Housing Production and Replacement Program authorized in Chapter 494 of the Acts of 1993 Section 2 item 3722-8891 as amended by Chapter 257 of the Acts of 1998 Section 5 and by Chapter 97 of the Acts of 2002. The program is designed to create quality new housing, which may include new housing to replace in whole or in part aging state-assisted public housing projects designated in special acts. 760 CMR 55.00 et seq. shall become effective upon promulgation.

55.03 Definitions

The definitions contained in G.L. c. 121B § 1 are applicable herein. The following definitions also apply:

- (a) **Affordable Housing Unit:** a Housing Unit of Sufficient Unit Size, whether homeownership or rental, within the financial reach of a Household with income not exceeding a stated range of household income without unreasonable hardship.
- (b) **Development Plan:** a detailed program which has been approved by the Department for the development of Affordable Housing Units and which establishes (1) the material rights, obligations and duties of participants in the development of such units; (2) provision for ongoing management of rental units; and (3) provision for monitoring and enforcement of obligations and duties.
- (c) **Department:** the Department of Housing & Community Development as defined in MGL c.23B;
- (d) **Household:** a Household consists of:
 - (A) two or more persons who live or will live regularly in a Housing Unit as their Primary Residence:
 - (i) whose income and resources are available to meet the household’s needs; and

- (ii) who are either related by blood, marriage, or operation of law, or who have otherwise evidenced a stable inter-dependent relationship; or
- (B) one person.
- (C) a full-time live-in personal care attendant, whether or not he or she shares income, shall be deemed a household member.

(e) **Household of Low or Moderate Income:** A Household with Gross Household Income, as determined pursuant to 760 CMR 6.05 (2) and (3), which does not exceed eighty percent (80%) of area median income, as determined by HUD for a similarly sized household in the city or town in which a Housing Unit is located.

(f) **Household of Very Low Income:** A Household with Gross Household Income, as determined pursuant to 760 CMR 6.05 (2) and (3), which does not exceed fifty percent (50%) of area median income as determined by HUD, for a similarly sized household in the city or town in which a Housing Unit is located.

(g) **Housing Unit:** a decent, safe and sanitary dwelling used and intended for use as a Primary Residence by the members of a Household. A Housing Unit may be contained in an attached or detached single family dwelling, in a structure containing two or more units, or in a structure with more than one use.

(h) **HUD:** the United States Department of Housing and Urban Development or any successor agency providing determinations of median income for a relevant area.

(i) **Life and Safety Code:** the State Sanitary Code and the State Building Code.

(j) **Mixed Income Housing Development:** a housing development, in which Affordable Housing is provided to Households with incomes in defined ranges, at least one of which is significantly higher than another.

(k) **Primary Residence:** principal home and domicile in which a person resides more than a total of six months in any twelve month period.

(l) **Project:** a state-assisted public housing project as defined in G. L. c. 121B § 1.

(m) **Project Based Housing Unit:** a Housing Unit in a Project.

(n) **Scattered Site Housing:** state assisted public Housing Units which are not contained in a Project on a single lot of land but which are contained in a Project comprising smaller groupings of Housing Units on lots of land separated from each other.

(o) **Sufficient Unit Size:** the size of a Housing Unit is sufficient for a Household if the unit meets the following criteria:

- (i) Each bedroom shall meet all applicable requirements of the State Sanitary Code for a room occupied for sleeping purposes. No bedroom shall be shared by more persons than permissible thereunder.

- (ii) Only bedrooms may be used for sleeping purposes by household members; the living room, kitchen, bathroom and hallways shall not be used for sleeping purposes by any household member.

55.04 Housing Production and Replacement Program Grants

The Department, upon application by a housing authority, may award a grant not to exceed three million dollars (\$3,000,000) to a housing authority for costs (not to exceed 50% of the total costs) of development of Housing Units pursuant to an approved Development Plan, provided that, if a grant is awarded for a Mixed Income Housing Development to be developed by a non-profit entity, the grant shall be awarded to the housing authority for subgrant to the non-profit entity for some or all of the following costs: planning, engineering, necessary studies, design, development plan, and construction of infrastructure including environmental remediation.

55.05 Applications

An application for a Housing Production and Replacement Program grant shall include a copy of the Development Plan approved by the Department. The total amount of the requested grant, together with the proposed uses of the grant and their projected costs shall be specified. The Department may request additional information as may be deemed necessary for determination of the grant application.

55.06 Development Plan

(A) No Housing Production and Replacement Program grant shall be made by the Department unless it shall have first approved a Development Plan with respect to the Housing Units for which a housing authority seeks the grant. (a) The Development Plan may provide for new Scattered Site Housing for Elderly Persons of Low Income or for Families of Low Income, provided that at least half of any grant for family housing shall provide for family housing at one or more of the specified developments in the City of Boston, incorporating economic diversity and opportunity as provided in Chapter 110 of the Acts of 1993 § 2 item 3222-9006. (b) The Development Plan may provide for new Scattered Site Housing to replace Project Based Housing Units which have become uninhabitable because of Life and Safety Code violations and of which rehabilitation at a reasonable cost is not practical. (c) The Development Plan may provide for Affordable Housing Units if the Department shall have made a finding that under all the relevant circumstances the proposed Housing Units are necessary to meet one or more specific critical housing needs beyond the general need for additional affordable housing. (d) The Development Plan may provide for a Mixed Income Housing Development to be developed by a non-profit entity pursuant to authorization by special act provided that at least 45% of the Housing Units shall be permanently restricted, part to Households of Very Low Income and part to Households of Low or Moderate Income.

(B) The Development Plan shall contain detailed information about the proposed development, including but not limited to the following:

- (1) The number of Affordable Housing Units, the terms of affordability, the income levels of the households to be served, and projected rents or purchase prices.
- (2) Financial projections as to the construction, operation and maintenance of rental developments and as to the construction and sale of homeownership developments and the operation and maintenance of retained infrastructure or facilities. The financial projections shall identify sources and uses of all funds, including grant funds. The financial projections shall identify the source and use of any necessary future operating or maintenance subsidies for the proposed development.
- (3) Plans for creating, monitoring and enforcing the affordability restrictions during the term[s] of affordability. Such plans shall include draft documents imposing such restrictions and enabling effective monitoring and enforcement by the entity or entities with the responsibility for monitoring and enforcement of affordability.
- (4) A showing that the current zoning for the site of the development will allow construction of the proposed development or that construction is proposed pursuant to a comprehensive permit. If construction is dependent on future issuance of a special permit or future issuance of a comprehensive permit, there shall be an assessment of the likelihood of issuance of such a permit.
- (5) Effective control of the site by the grant applicant or any subgrantee.
- (6) The projected project schedule, setting out the anticipated timetable for construction and occupancy of the proposed development.
- (7) Preliminary concept design renderings, including a preliminary site plan, sample unit plan and sample building elevations. The preliminary concept design will be subject to change as it is further developed.
- (8) A relocation plan in the event relocation will be necessary.
- (9) Likely ability to comply with environmental laws and regulations in the event all or part of the site is subject to such laws or regulations.

55.07 Determination of Grant Applications

The Department shall give first preference to developments for which grants have been authorized by special acts prior to the effective date of these regulations. In determining whether to approve a grant application the Department shall give preference in the following order to a qualifying development which meets the listed criteria:

- (a) at least 75% permanently affordable units for Households of Very Low Income and/or for Households of Low or Moderate Income.
- (b) at least 75% units affordable for at least 25 years to Households of Very Low Income and Households of Low or Moderate Income with emphasis on housing Households of Very Low Income.
- (c) development of affordable units for Households of Very Low Income and for Households of Low or Moderate Income at low public cost, including anticipated future subsidy cost.

A grant shall only be issued to fill a limited and definable gap in projected financing costs for a development. A development shall be eligible to receive not more than one grant under this program.

55.08 Grant Agreements

The material terms of Housing Production and Replacement program grants shall be set out in a grant agreement between the Department and the housing authority to which the grant is made. Appropriate provisions enforceable by the Department shall be made to ensure that the Affordable Housing Units are and remain permanently affordable and for monitoring and enforcement of the affordability of the Affordable Housing Units. In the event that the housing authority shall make a subgrant to a non-profit entity for development of a Mixed Income Housing Development such provisions as to such non-profit entity shall be contained in the subgrant, enforceable by the Department.

55.09 Waiver

The Director of the Department or its designee may waive, in writing, any provision of 760 CMR 55.00 not required by statute if the Director determines that waiver is reasonably required and will serve a public purpose and the requirements of the program.

REGULATORY AUTHORITY

MGL c.23B; MGL c.121B; Chapter 257 of the Acts of 1998 Section 5