

## **Changes in the New DHCD Comprehensive Permit Guidelines**

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This document describes substantially new changes to the New England Fund, Housing Starts, and LIP guidelines. With noted exceptions, it does not include additions to the guidelines that were clarifications of commonly used practices.

### **Section I: Introduction**

Clarifies definitions. The effective date of the guidelines, unless otherwise specified is February 22, 2008.

### **Section II: Measuring Progress Towards Local Goals**

#### **A. Subsidized Housing Inventory**

Replaces the previous Eligibility Summary for the subsidized housing inventory

- Increases the asset limit for non-age restricted units to \$75,000.
- Increases the asset limit for age-restricted homeownership projects to \$75,000 for liquid assets and \$200,000 for property. *This applies to NEF, LIP and Housing Starts projects that received site eligibility determinations on or after February 22, 2008.*
- Housing Cost: includes a 3% downpayment requirement of which half must come from the buyer's funds; requires a 30-year, fixed-rate mortgage that is no more than 2 percentage points above the current MassHousing rate; caps monthly housing costs at 38% of monthly income for a household earning 80% of the area median income adjusted for household size.
- Guidelines for Continuing Care Retirement Communities: establishes parameters regarding allowable entry fee and monthly fees and health care reserve fund.

#### **B. Housing Production Plans**

Clarifies the changes to the Housing Production Plan language in the new regulations.

### **Section III: Affirmative Fair Housing Marketing Plan (AFHMP)**

Some portions of this section are entirely new and some are the same or merely clarifications of commonly used practices. The new sections are noted below.

#### **A. Developer Staff and Contractor Qualifications**

*This section is entirely new.* It clarifies that the Subsidizing Agency can reject the qualifications for any developer or contractor to conduct the outreach and marketing and lottery but establishes criteria that entities and individuals must meet:

- Entity has successfully (hasn't required intervention to address fair housing complaints and hasn't violated any fair housing laws) carried out similar responsibilities for a minimum of 3 projects in MA or the individual has carried out similar responsibilities for a minimum of 5 projects in MA.
- The entity has the capacity to address matters related to English language proficiency.

#### B. Affirmative Fair Housing Marketing Plan

- Requires that marketing outreach be targeted and listed specifically with: the Boston Fair Housing Commission's Metro List for units in the Boston Metro Area; the Mass Access Housing Registry for rental and homeownership units that are accessible; CHAPA's affordable lottery web page; and Massachusetts Affordable Housing Alliance web site.
- Clarifies that marketing should be included in non-English publications based on the prevalence of particular language groups in the regional area.
- The fair housing logo and slogan should be included on all marketing materials.
- Advertisements must include a telephone where applicants can request applications via mail.
- Phased developments can recalculate the affordable sales prices prior to marketing each phase. Each phase requires a new AFHMP.

#### C. Local Preference

- Communities must demonstrate the need for local preference and demonstrate that it will not have a disparate impact on protected classes.
- The Subsidizing Agency must approve of the local preference scheme, ideally prior to the finalization of the comprehensive permit.
- Clarifies that durational residency preferences are not permitted.
- Advertising cannot include local residency preferences.

#### D. Household Size/Larger Households Preferences

- Includes an expanded definition of "larger household preference". This is mostly new for NEF – the LIP guidelines previously included something similar.

### E. Lotteries

- Requires that the lottery administrator request full documentation prior to the lottery (3 years tax returns, 5 pay stubs, 3 most recent bank statements). This removes the ability for applicants to “self-qualify” for the lottery.
- Only applicants who meet the eligibility requirements should be in the lottery.
- The waiting list can generally be retained for one year. Some factors can extend the list.

### F. Homeownership

- There are several new definitions that would make a household eligible as a first time homebuyer if they have owned a within the preceding three years of the application:
  - A new displaced homemaker definition;
  - Single parents, where the individual owned a home with his or her partner or resided in a home by the partner and is a single parent;
  - Households that owned a principal residence not permanently affixed to a permanent foundation; and
  - Households that owned a property that was not in compliance with state, local or model building codes and cannot be brought into compliance for less than the cost of construction a permanent structure.
- Closing of the sale is contingent upon the Subsidizing Agency’s approval of the buyer’s financing.
- The AFHMP must address the resale of the affordable units.

### **Section IV: Responsibilities of the Subsidizing Agency**

This section includes many of the requirements currently included in the MHP guidelines from November 2005 and MassHousing’s Cost Certification Examination Program from August 2007.

- Design Guidelines: includes density guidelines based on housing type and number of units: Low Rise/Town Houses: 8-40; Garden Style Apartments: 24-70; Midrise: 40-160 units per acre.
- Financial Surety: effective for all projects that have not received Final Approval as of April 1, 2008; requires that developers provide a financial surety through credit, bond and cash to ensure completion of the cost examination. The amount varies from \$25,000 for smaller projects to \$100,000 for large projects.

- Prequalification of Certified Public Accountants: effective for all projects that have not achieved substantial completion by May 1, 2008; DHCD will require that CPAs be prequalified to perform cost examinations.
- Land Valuation: Appraisals may, in accordance with USPAP, take into account the probability of obtaining a variance, special permit, or other zoning relief but it must exclude any value relating to the possible issuance of a Comprehensive Permit.

**Section V: Housing Programs in Which Funding is Provided by Other Than a State Agency**

This effectively replaces the New England Fund Guidelines and is much shorter because most of the other provisions have been moved to the above mentioned sections.

**Section VI: Local Initiative Program (LIP)**

The following chart summarizes changes to LIP guidelines relative to the July 2007 program guidelines. As detailed below, most LIP-specific changes are minor. However, reviewers should note that LIP is also affected by some of the other new guidelines governing lotteries, resident preferences, density, and cost certifications which have changed more extensively.

	<i>New Guidelines (2/22/2008)</i>	<i>Change from July 2007</i>
<b>Introduction</b> Green Building	Encouraged to incorporate elements (Green Building Resource Sheet added to Appendix)	NEW
<b>Comprehensive Permit Projects</b>		
Application Process	<u>drops</u> requirement for -documentation of legal interest in property (deed, option) -appraisal reflecting by-right value prepared by certified appraiser and conducted per Appendix D -lottery plan	These now covered by general requirement for all comp permit projects
	<u>adds</u> requirement for: -certification that it will comply with profit limitations if not nonprofit, public agency - letter from developer certifying age restricted housing will comply with fair housing laws -for age-restricted housing – marketing study for applicable HUD region, info on status of similar projects in area -for continuing care retirement communities – same as above plus demonstrate demand for the affordable units	These were previously required – just not specifically referenced as part of application
Use of Other Subsidies	Any project that expects to seek funds from DHCD or another subsidizing agency must apply to that funding program for site approval, not to LIP	NEW
Design/Construction Standards	Encourage first floor master bedrooms and bathrooms in units for elderly, disabled and or age-restricted	EXPANSION - this was already in for age-restricted

	<i>New Guidelines (2/22/2008)</i>	<i>Change from July 2007</i>
	Drops requirement for 3 <sup>rd</sup> party 5 year extended warranties for units	CHANGE
Income and Asset Limits	<u>For rental units</u> , appears to drop requirement that calculation of household income include an imputation of 5% of the value of total household assets (except for age-restricted housing)	CHANGE
Definition of Assets	Adds Life Estate to definition of assets (Item 11 – Appendix II -A.2-2 of general guidelines)	CHANGE – previously counted only for age-restricted
	Drops requirement that sale of any assets at less than full value be declared at <i>recertification</i> .	CHANGE
	Revises treatment of assets sold at below market value- only look at sales <i>one year</i> prior to application (rather than two) and count full and fair cash value of asset (rather than amount actually received) – (first paragraph of Appendix II A.2-1)	CHANGE except two year limit still applies for age-restricted housing
	Drops specific reference to exclusion of assets not accessible to the applicant that provide no income to applicant.	CHANGE
Asset Limitations	Raises limit to \$75,000 (from \$50,000)	CHANGE
Maximum Rents	30% of maximum limit (e.g. 30% of 80%)	Same as old guidelines but higher than current use restrictions (30% at 70%)
Tenants who become over-income	can stay up to 140% of maximum allowable limit (e.g. 112% AMI if limit 80%) and count as LMI unit	Wasn't in old guidelines but is consistent with recent LIP Affordable Housing Restrictions
Lease Provisions	Leases must provide a minimum 60 day notice to tenants of non-renewal	NEW
Determination of Project Eligibility	DHCD must find that the proposed site plan is appropriate in the context of the surrounding area and taking into account previous municipal action to meet affordable housing needs. (VI-9)	NEW
Regulatory Agreement and Use Restrictions	Regulatory Agreement shall serve as final written approval. DHCD Model Agreement must be used absent extraordinary circumstances. Must be recorded at Registry of Deeds	Adds recording requirement
Project Monitoring and Property Taxation	Eliminates review of project's Certified Cost and Income Statement from <i>municipal</i> responsibilities (both at initial completion and annually for rental)	CHANGE
<b>Local Action Units (non-CP units)</b>		
Description	Must meet all LIP standards aside from those related to comprehensive permit requirements	Assume this is effectively no change
<b>Accessory Apartments</b>		
Use Restrictions	Must use DHCD model Accessory Apartment regulatory agreement and file at Registry	NEW – prior guidelines just required <i>DHCD-approved</i> restriction
Early Termination	DHCD will approve accessory apartment programs that allow owners to terminate or revoke use restriction (with at least 60 days notice to tenant). Examples of the type of early termination provisions DHCD will approve include automatic termination upon transfer of property or voluntary option by owner to terminate at end of a tenant's lease term and cancel special permit. Such terminated units no longer count on SHI.	CHANGE – prior guidelines called for minimum term of 15 years for existing/rehabbed units and 30 years for new construction

	<i>New Guidelines (2/22/2008)</i>	<i>Change from July 2007</i>
Rent for Over-Income tenants	Dropped provision that allowed rents to rise based on 30% of household income (with DHCD review/approval) and required owner to pay the additional rent received to the municipality	CHANGE
<b>Resales and Refinancing</b>		
Resales	Drops reference to Regional Non-Profits marketing	CHANGE
Resale Fee	Requires addition of 2% resale fee to the universal deed rider for all new LIP units	CHANGE – has been 2.5%
Fair Marketing	Requirements apply to resales (see page III-11)	
Refinancing Appraisals	Owners with deed riders other than the Universal Deed Rider must submit a fair market appraisal of their home with their request to refinance – appraisal can be no more than 120 days old	CHANGE – before, all owners had to submit appraisal
Inheritance	No language in current guidelines	CHANGE – old guidelines let spouse and/or children to inherit
<b>ITEMS NOW COVERED IN OTHER GUIDELINES</b>		
Continuing Care Retirement Communities (CCRC) Entry Fee	Entry fees must be reasonable recognizing that many households have not owned home before – fee equal to a 10% downpayment on a home for which at household earning 80% of median could afford shall be deemed reasonable	NEW – old language assumed buyer had maximum asset amounts
CCRC Resident Selection	Must comply with lottery or other fair procedure approved by subsidizing agency	no change vis a vis LIP
CCRC Monthly Fees	Generally can't exceed 35% of monthly income plus allowance for meals (if provided) following DHCD approved method	new – old language call for reasonable monthly charges for continuing care
CCRC Asset Limits	no special language	Change – prior language said household asset limits to be established consistent with above guidelines and that no low-mod household with maximum assets shall be financially ineligible for the affordable units
Lotteries; Resident Preferences		Now covered in Affirmative Fair Housing Marketing Plan Guidelines – includes some changes
Resident Preferences		
First-Time Homebuyer exceptions		
Profit Limits		Now in Project Eligibility Requirements
Allowable Development Costs		