

## CITY OF KNOXVILLE

### II. HOME/CHDO SET-ASIDE PROGRAM REQUIREMENTS

January 2008

The Community Housing Development Organization set-aside is made available from an entitlement grant the City of Knoxville receives from the U.S. Department of Housing and Urban Development (HUD) HOME Investment Partnerships Program. The City and the CHDO must abide by the federal regulations governing the HOME Program. These regulations are in part 92 of subtitle A of the Code of Federal Regulations and were published in the Federal Register as follows: Final Rule on September 16, 1996.

Before the City reserves or commits funds for a CHDO project, the City and CHDO must enter into a written agreement ensuring compliance with the HOME Program requirements. The major requirements are as follows:

1. **Affordability** - All housing assisted with HOME funds must meet affordability requirements. All HOME funds must be repaid if the housing does not meet the affordability requirements for the specified time period.
2. **Income limits** - The income limits to be used for compliance with HOME funded affordable housing will be computed annually by the U.S. Department of Housing and Urban Development. The current income limits as of March 14, 2007 by family size are:

Family Size	1	2	3	4	5	6	7	8
50% Limit	19,200	21,900	24,650	27,400	29,600	31,800	34,000	36,150
60% Limit	23,040	26,280	29,580	32,880	35,250	38,160	40,800	43,380
80% Limit	30,700	35,100	39,450	43,850	47,350	50,850	54,350	57,900

### 3. B. Maximum Per-Unit Subsidy Amount

The following limits are currently effective for Knoxville. Actual HOME assistance will be limited to what is necessary to provide affordable housing.

Efficiency	\$69,472
1-Bedroom	\$79,636
2-Bedroom	\$96,837
3-Bedroom	\$125,275
4-Bedroom	\$137,513

### 4. Homebuyer/First Home Programs: The prospective purchaser household must meet two key eligibility criteria in order to participate:

- a. In the case of a contract to purchase existing housing, must be low-income at the time of purchase; that is, the purchaser must have a gross annual income that does not exceed 80% of the median income for the area, adjusted for family size (see income limits above). In the case of a contract to purchase housing to be constructed, the applicant must be low-income at the time the contract is signed.
- b. The applicant must occupy the property as the principal residence.
- c. Resale/Recapture restrictions: The homeownership housing will be subject, for a period of up to 20 years to resale or recapture restrictions established by the City and approved by HUD.  
Resale/Repayment Restriction: When HOME funds are used to assist homebuyers in acquiring homes, the housing will be subject to resale restrictions or recapture provisions for a minimum period of five years where the per unit amount of HOME funds provided is less than \$15,000; 10 years where the per unit amount of HOME funds provided is \$15,000 to \$40,000; and 15 years where the per unit amount of HOME funds provided is greater than \$40,000. The following resale/recapture restrictions will apply:

The purchaser will be required to sign a restrictive covenant that will limit the resale of the house only to a low income family that will use the property as its principal resident at an affordable price. The affordability restrictions will terminate upon foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the property.

Housing remains affordable if the subsequent purchaser's monthly payments of principal, interest, taxes, and insurance do not exceed 30% of the monthly income of a family with an income that is 75% of the median for the area, adjusted for family size [1 bedroom house, use family size of 1; 2 bedroom house use family size of 3; 3 bedroom house, use family of 4, 4+ bedroom house, use family size of 6], as established by HUD, or, for purchasers with incomes between 75% and 80% of median, 30% of the actual income, adjusted for family size.

If the affordable price means that the owner cannot get a fair return on investment, then the City will need to provide additional HOME assistance to the subsequent buyer.

Fair return will be the lesser of:

- 1) The appraised value of the property at sale minus indebtedness and costs of the sale paid by the seller.
- 2) The original purchase plus cost of improvements made by the seller plus increases in the CPI minus indebtedness and costs of the sale to be paid by the seller

d. In cases where there are HOME funds subject to recapture:

The City will recapture the full HOME investment out of net proceeds, except that the HOME investment amount may be reduced prorata based on the time the homeowner has owned and occupied the unit measured against the required affordability period. Typically a 20-year Deferred Payment Loan will be used to finance the HOME assistance to the homebuyer and the HOME amount will be reduced by 5% per year. If the net proceeds (i.e., the sales price minus loan repayment, other than HOME funds, and closing costs) are not sufficient to recapture the full HOME investment less the reduction plus enable the homeowner to recover the amount of the homeowner's down payment and any capital improvement investment, the amount of the HOME investment that must be repaid will be reduced further to allow the homebuyer to recover all the homebuyers investment (down payment and capital improvements) first before recapturing the HOME investment.

e. The recapture provision will be enforced through the homebuyers financing agreement with the City which will be secured by a Deed of Trust. The City subsidy will be in the form of a Deferred Payment Loan (DPL) the CHDO must transfer the HOME loan/grant obligations and resale requirements to the HOME-qualified, low-income homebuyer as follows:

The homebuyer must agree that housing that is resold during the affordability period will be offered to a low-income family that will use the property as its principal residence; and at a price that is affordable to the new homebuyer while providing the seller with a fair return on investment.

Housing remains affordable if the subsequent purchaser's monthly payments of principal, interest, taxes and insurance do not exceed 30% of gross income of a family with an income equal to 75% of median for the area, as determined by HUD with adjustments for smaller and larger families. A Fair Return will be determined by the market method. The seller will be entitled to any resulting increase in value that remains after all debt, including subsidies, are repaid.

The resale restrictions must be enforced through deed restrictions or restrictive covenants. Any purchase subsidy to the homebuyer must be secured by a promissory note and deed of trust in favor of the City. Any HOME subsidy to the buyer shall be in the form of a Deferred Payment Loan (DPL). Some or all of the DPL will be repayable upon sale as follows:

1. To ensure affordability - If the sales price is not affordable (and the sales price does not exceed the Fair Market Value at the time of sale), the subsequent buyer may assume some or all of the DPL. The amount assumed will depend on the amount needed to make the purchase affordable. The amount not assumed must be repaid to the City's Home

Investment Trust Fund local account.

2. To ensure a fair return - If at the time of sale to the initial buyer, the actual development cost exceeds the fair market value (Example: In a purchase/rehabilitation program in inner-city neighborhoods, the total cost of purchase and rehabilitation often exceeds the after-rehab fair market appraised value of the property), the amount of the development cost in excess of the fair market value does not need to be included in the sales price and is not subject to recapture.

f. Property value restrictions. Housing that is for purchase by a family qualifies as affordable housing only if the housing:

1. Has an initial purchase price that does not exceed the mortgage limit for the type of single family housing for the area under HUD's single family insuring authority under the National Housing Act (\$190,152 for a single-family property). For a cooperative unit, the purchase price for a cooperative share may not exceed the balance remaining after subtracting from the 1-family mortgage limit an amount equal to the blanket mortgage covering the cooperative development which is attributable to this cooperative unit; and

2. Has an estimated appraised value at acquisition, if standard, or after any repair needed to meet property standards, that does not exceed the appropriate mortgage limit described above.

5. **Project Proceeds Restrictions:** CHDO set-aside funds that a CHDO recovers from a project (proceeds) are required to be returned to the City. Project proceeds generated by a CHDO's activities will be held by the City and will be reallocated to support future affordable housing projects for that CHDO.

## 6. **Rental Housing**

Only units receiving HOME monies are considered "HOME assisted units" and HOME expenditure limits, rent and occupancy rules only apply to HOME assisted units.

a. Rent Restrictions: Every HOME assisted unit is subject to rent controls designed to make sure that rents remain affordable to lower-income families over time. There are two HOME rents established for projects:

1) Low HOME Rents: for projects containing five or more assisted rental units, or in the case of an owner who has multiple projects which together contain a total of five or more assisted rental units, a minimum of 20% of all the HOME assisted units must have rents, adjusted for utilities, that do not exceed 30% of the gross income for a household earning 50% of the median income for the area; and

2) High HOME Rents: all other HOME assisted units in each project must have rents, adjusted for utilities, that do not exceed the lesser of Section 8 Fair Market Rents or 30% of the adjusted income for a household earning 65% of the median income for the area.

The Low and High HOME rents (including utilities), as of March 1, 2007 for Knoxville by number of bedrooms per unit are:

# of Bedrooms	0	1	2	3	4
Low HOME Rent	427	491	592	712	795
High HOME Rent	427	491	592	793	819

Adjustments for utility allowances for tenant-paid utilities such as water, sewer, electric, heating, etc. reduce the maximum allowable rents. The amount of the adjustment varies depending on the type of building (single-family, duplex, etc.), and the type of utilities provided (gas, electric, etc.). The amount of each deduction will be in accordance with Knoxville's Community Development Corporation's (KCDC) utility allowance schedule for the Section 8 Existing Housing Program (current schedule attached). The Low and High HOME rents for each unit's bedroom-size are computed annually by the U.S. Department of Housing and Urban Development.

To protect existing tenants residing in HOME assisted projects from economic displacement, no rehabilitation project will be undertaken that would result in a rent increase such that the total of the after-rehabilitation tenant paid rent plus applicable utility allowances would exceed 30% of the tenant's gross monthly income. This rule applies to all properties occupied prior to rehabilitation regardless of whether the occupied unit(s) will be assisted with HOME funds.

b. Occupancy Requirements: The occupancy of all HOME assisted units must be restricted to low-income tenants as follows:

1) for projects containing five or more assisted rental units, or in the case of an owner who has multiple projects which together contain a total of five or more assisted rental units, a minimum of 20% of all the assisted units must be occupied by tenants with adjusted household incomes that do not exceed 50% of the median income for the area adjusted for family size paying no more than the Low HOME Rents; and

2) all other assisted units must be occupied by tenants with adjusted household incomes that do not exceed 60% of the median income for the area adjusted for family size.<sup>1</sup>

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<sup>1</sup> An exception to this requirement is made for projects containing 10 or more HOME assisted units. Ten percent of the HOME assisted units in larger projects may be occupied by households having adjusted incomes up to 80% of the median income adjusted for family size.

No exceptions to the occupancy rules noted above are made for existing tenants who reside in a project prior to rehabilitation. Therefore, occupied units are only eligible for assistance to the extent that existing tenants will not have to be physically displaced in meeting these occupancy requirements. However, where a project consists of more than one unit, a mixed-income project is allowable as long as private financing is used to rehabilitate the non income/rent restricted units.

c. Minimum Affordability Period: Rent and occupancy restrictions remain in force for the minimum affordability period. The minimum affordability period depends on the amount of HOME financing as follows:

REHABILITATION OR ACQUISITION OF EXISTING RENTAL HOUSING:

TOTAL HOME FINANCING LESS THAN \$15,000 PER UNIT: Minimum affordable period shall be for five years following project completion.

TOTAL HOME FINANCING \$15,000 to \$40,000 PER UNIT: Minimum affordable period shall be for ten years following project completion.

TOTAL HOME FINANCING OVER \$40,000 PER UNIT: Minimum affordable period shall be for 15 years following project completion.

NEW CONSTRUCTION OR ACQUISITION OF NEWLY CONSTRUCTED RENTAL HOUSING:

Minimum affordable period shall be for 20 years following project completion.

During the minimum affordability period, the owner must lease all assisted units to income eligible tenants for no more than the maximum allowable rents. The maximum allowable rents and utility allowances must be recalculated annually subject to review and approval by the City. New rent information will be published annually by the U.S. Department of Housing and Urban Development to help all owners establish new maximum allowable rents for their projects. Should the maximum allowable rent amount decrease from the previous year's calculation, the rents for assisted units must be decreased accordingly for all new or renegotiated leases. However, rents are not required to be lower than the HOME rent for the project in effect at time of project commitment. If the maximum allowable rent amount increases, the owner may determine whether to implement a rent increase for any new or renegotiated leases. Before any annual rent increase may be implemented, tenants must be given at least 30 days written notice of the increase. Increases in rent are also subject to any other governing provision(s) of the lease agreement.

During the affordability period, the owner is also responsible for certifying the incomes of all initial tenants who lease an assisted unit. In addition, the owner must provide the City with an annual recertification of the incomes of all tenants residing in HOME assisted units.

Should an annual income re-certification indicate that a tenant's household income exceeds 80% of the median income for the area, he/she may not be asked to move. However, an over-income tenant's rent must be adjusted such that he/she pays a minimum of the lesser of 30% of the household income for rent and utilities, or the amount payable by the tenant under State or local law. After the over-income tenant vacates the HOME assisted unit, restricted rent levels and occupancy restrictions must be reinstated.

**Tenant Assistance Policy:** The CHDO/owner must adhere to all provisions of the City's "Tenant

Assistance Policy" (TAP) and must cooperate with the City in administering the provisions of the TAP including:

- 1) Informing all existing tenants of the application for HOME assistance and that a City representative may be contacting them to discuss the Program;
- 2) Providing the City with initial information regarding existing tenants (such as names, phone numbers, family-size, income, etc., and arranging meetings as necessary) and notify the City of any changes in tenancy;
- 3) Once the application for HOME assistance has been approved, the owner must notify all prospective new tenants who apply to move into vacant units of any proposed rent increase that will be implemented following rehabilitation completion. The owner must also notify prospective new tenants that their occupancy may be subsequently terminated in order that the rehabilitation work be completed or due to the occupancy restrictions that will be imposed following rehabilitation completion.

If the owner does not inform prospective new tenants as noted above, the rehabilitation project will be canceled if the rehabilitation would then result in the physical or economic displacement of the new tenant.

- 4) Offering existing tenants residing in the Property prior to acquisition or rehabilitation an opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling in the property upon completion of the project.
- 5) If temporary relocation of an existing tenant is required in order to carry out the rehabilitation work, the owner must:
  - a. provide a suitable vacant unit to the tenant, if available, for the temporary relocation period at a rent equal to or less than the current rent charged to the tenant; or
  - b. if the owner does not have a unit available, then he/she must help the tenant locate a suitable replacement unit.
  - c. reimburse the tenant for all reasonable out-of-pocket increases housing costs and moving expenses related to the temporary relocation. The cost of temporary relocation is an eligible HOME project expense.

**Tenant Selection Policy:** An owner of rental housing assisted with HOME funds must adopt written tenant selection policies that:

- 1) are consistent with the purpose of providing housing for very low-income and low-income families;
- 2) are reasonably related to Program eligibility and the applicant's ability to perform the obligations of the lease;
- 3) provide for the selection of tenants from a waiting list in the chronological order of their application insofar as is practicable; and

- 4) provide for the prompt written notification to any rejected applicant of the grounds for rejection.

In marketing vacant units, the owner must carry out affirmative marketing efforts as described in the HOME Program Agreement.

**Lease Provisions:** A lease must be executed between the property owner and a tenant for all HOME assisted units. The lease must be for a period of not less than one year, unless a lesser period is mutually agreed upon by the property owner and the tenant. Specific provisions that may not be included in the lease are listed in the HOME Program Agreement.

- 1) Agreement to be sued. Agreement by the tenant to be sued, to admit guilt, or to a judgement in favor of the owner in a lawsuit brought in connection with the lease;
- 2) Treatment of property. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with state law;
- 3) Excusing owner from responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
- 4) Waiver of notice. Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
- 5) Waiver of legal proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
- 6) Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury;
- 7) Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
- 8) Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant may, however, be obligated to pay costs if the tenant loses.

**Termination of Tenancy:** An owner may not terminate the tenancy, or refuse to renew the lease, of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. Written notice must be provided at least 30 days in advance of any termination or refusal to renew which specifies the grounds for the action.

**Tenant Participation Plan:** The CHDO must adhere to a fair lease and grievance procedure approved by the City and provide a plan for a follow a program of tenant participation in management decisions.

**Program Monitoring:** The City will regularly monitor each HOME assisted rental project for compliance with program requirements. On site inspections for compliance with Section 8 Housing Quality Standards will be made at least once every three years for projects containing 1-4 units, once every two years for projects containing 5-25 units, and annually for projects containing 26+ units. In addition, the City will annually review the owner's compliance with all written agreements. Noncompliance with program requirements will result in default of all HOME financing, and the balance(s) of any City provided financing will become immediately due and payable.

## **7. Property Standards**

All housing that is assisted with HOME funds, at a minimum, must meet the Section 8 Housing Quality Standards. All properties rehabilitated or newly constructed must comply with the City's Neighborhood Housing Standards, (which include Section 8 Housing Quality Standards), existing housing codes related to health and safety, work needed to comply with lead-based paint requirements, and cost-effective energy conservation measures. New construction of infill housing must meet handicapped visitability standards as required by the City. In addition, property on, or eligible for, the National Register of Historic Places must comply with the Secretary of Interior's Standards for rehabilitation of Historic Properties. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

## **8. Religious Organizations**

HOME funds may not be provided to primarily religious organizations, such as churches, for any activity including secular activities. HOME funds may not be used to rehabilitate or construct housing owned by primarily religious organizations. However, HOME funds may be used by a secular entity to acquire property from a primarily religious organization or the primarily religious organization may transfer title to a wholly secular entity eligible to participate in the HOME program. The completed housing project must be used exclusively for secular purposes with no religious or membership criteria for tenants of the property.

## **9. Other Federal Requirements**

The CHDO must comply with all federal laws and regulations described in subpart H of the HOME regulations, except for environmental and intergovernmental review responsibilities. These requirements include: Equal Opportunity and Fair Housing, Affirmative Marketing; Displacement, Relocation and Acquisition; Labor; Lead-Based Paint; Conflict of Interest; Debarment and Suspension; and Flood Insurance. A copy of subpart H is attached.

## 10. Lead Based Paint

The CHDO will comply with the U.S. Department of Housing and Urban Development (HUD) regulations covering lead-based paint in federally associated housing. HUD has issued regulations under *Sections 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992*, which is Title X of the Housing and Community Development Act of 1992. Sections 1012 and 1013 of Title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, which is the basic law covering lead-based paint in federally associated housing. The new regulations appear within Title 24 of the Federal Regulations as Part 35 (24 CFR). The regulation, "Requirement for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance," was published in the Federal Register on September 15, 1999. The regulations include requirements for disclosure and notifications, paint testing, risk assessments, hazard reduction, safe work practices, prohibited methods of paint removal, occupant protection and ongoing maintenance.

## 11. Affirmative Marketing

The CHDO must affirmatively market vacant units and assisted units, which become vacated during the required affordability period. In order to comply with the affirmative marketing requirements and procedures established by the City, the CHDO and/or Owner must comply with the following:

- 1) During the required affordability period, the CHDO shall inform and solicit applications from persons not likely to apply for the housing without special outreach by notifying the Knoxville Area Urban League immediately when it is known that a vacancy will occur and/or provide the unit as a referral for tenants on KCDC's Existing Housing waiting list, and
- 2) Keep data on:
  - A) the racial, ethnic, and gender characteristics of
    - tenants occupying assisted units before rehabilitation
    - buyers/tenants moving from and into assisted units in the project initially after project completion
    - applicants for tenancy/purchase of assisted units
  - B) how the applicants heard about the housing opportunity

INFORMATION REGARDING APPLICANTS FOR INITIAL OCCUPANCY OF ASSISTED UNITS MUST BE PROVIDED TO THE CITY WITHIN 120 DAYS FOLLOWING REHABILITATION COMPLETION.

- 3) The CHDO will also keep during the required period of affordability, information on all vacancies of assisted units, and copies of all newspaper advertisements to fill vacancies of assisted units. COPIES OF THESE ADVERTISEMENTS MAY BE SUBMITTED DIRECTLY TO THE CITY.

If the project consists of five or more assisted units, the CHDO/Owner must also:

- 1) Use the Equal Housing Opportunity logo type or slogan in advertising vacant assisted units during

the required affordability period.

2) Advertise assisted unit vacancies in the Knoxville News Sentinel if more than four such vacancies exist in a project and there is not a sufficient waiting list to fill these vacancies, or to list the property with KCDC's list of properties available for Rental Assistance Certificate holders during the required affordability period.

## **12. Records and Reports**

During the required affordability period, the CHDO must keep records adequate to document compliance with the HOME Agreement all HOME Program requirements; such as: loan documents; contracts; invoices; materials; personnel and payroll records; conditions of employment; books of account; and any other documentation pertinent to the project development and the disposition of the Loan proceeds; as well as records of all written agreements; tenant leases; income certifications; rent and utility allowance determinations; records of the income and expenses related to the rental of the property; and any other documentary data pertaining to the rental of, sale, and occupancy of, the property. The CHDO shall permit the City, the United States Department of Housing and Urban Development, the Comptroller of the United States, and their designees to have full and free access to these records for the purpose of making audits, examinations, excerpts, and transcriptions. For monitoring purposes, the owner shall maintain all records needed to document compliance with the HOME Program Agreement for at least three years after completion of the minimum affordability period.

## **13. Restrictive Covenants**

In addition to a Promissory Note and Deed of Trust securing HOME financing, the CHDO and the City will enter into an agreement creating a Restrictive Covenant enforcing the affordability requirements for HOME assisted units for the minimum affordability period.