

760 CMR 62.00: COMMERCIAL AREA TRANSIT NODE HOUSING PROGRAM

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62.01: Scope, Purpose and Applicability

(1) 760 CMR 62.00 is promulgated by the Department of Housing and Community Development (Department) to establish rules, standards and procedures to regulate the Commercial Area Transit Node Housing Program (CATNHP) authorized by St. 2002, c. 244, § 2, budget line item 7004-7016 (CATNHP I Legislation) and reauthorized by St. 2008, c. 119, § 2, budget line item 7004-0038 (CATNHP II Legislation), St. 2013, c. 129, § 2, budget line item 7004-0048 (CATNHP III Legislation), and St. 2018, c. 99, § 2, budget line item 7004-0058 (CATNHP IV Legislation).

(2) CATNHP provides financial support for the development of residential housing units and Mixed Use Developments within Neighborhood Commercial Areas and Transit-oriented Developments Proximate to Public Transit Nodes. For funding for residential housing Projects located within Neighborhood Commercial Areas under CATNHP II, the Department shall give priority to developments for which Municipalities have adopted a housing tax increment financing plan (UHC-TIF Plan) in an Urban Center Housing Zone pursuant to M.G.L. c. 40, § 60. For funding for Transit-oriented Development located Proximate to a Public Transit Node, eligible activities shall include, without limitation, planning grants, financing subsidies and environmental assessment.

62.02: Definitions

Area Median Income. Income, adjusted for family size, and for the pertinent region, as determined by the United States Department of Housing and Urban Development (HUD).

CATNHP Guidelines. Guidelines issued by the Department setting out, clarifying and further explaining 760 CMR 62.00, program policy and procedure, as amended, supplemented or replaced. The CATNHP Guidelines shall apply to all CATNHP financing programs subject to 760 CMR 62.07 and 62.08.

CATNHP Legislation. Collectively, the CATNHP I Legislation, the CATNHP II Legislation, the CATNHP III Legislation, and the CATNHP IV Legislation, or, where the context so requires, the specific legislation applicable, respectively, to CATNHP I, CATNHP II, CATNHP III, CATNHP IV financial support, as appropriate.

Commercial Component. The portion of a Mixed Use Development that is commercial or retail.

Department. The Department of Housing and Community Development (DHCD).

Eligible Project/Activity (Project). The development of residential housing units located within Neighborhood Commercial Areas or Transit-oriented Development located Proximate to Public Transit Nodes.

For-profit Organization. An entity, including a corporation, partnership or trust organized under the laws of the Commonwealth or another state. To qualify as a For-profit Organization for purposes of CATNHP, no member, shareholder, director, officer or employee of the corporation or its board of directors can profit, in any way, from the CATNHP financial support or from the Project. The For-profit Organization must also demonstrate to the satisfaction of the Department, its capability of managing all of its responsibilities to the Eligible Project.

62.02: continued

Low or Moderate Income Person or Family. An individual or family whose adjusted income is less than 80% of the Area Median Income.

Mixed Use Development. A development that includes both residential housing units and commercial or retail space, including projects which have residential units above commercial space.

Municipality. A city or town of the Commonwealth of Massachusetts.

Neighborhood Commercial Areas. Areas characterized by a predominance of commercial land uses, a high daytime or business population or a high concentration of daytime traffic and parking, including areas designated as main street areas, as specified in the CATNHP Guidelines.

Nonprofit Corporation. A corporation organized under M.G.L. c. 180, which may also be required by DHCD to be a 501(c)(3) organization under the Internal Revenue Code at the time of application or financing closing. To qualify as a Nonprofit Corporation for purposes of CATNHP, no member, shareholder, officer or employee of the corporation or its board of directors can profit, in any way, from the CATNHP financial support or from the Project. The Nonprofit Corporation must also demonstrate, to the satisfaction of the Department, the capability of managing all of its responsibilities to the Project.

Project Sponsor. A Municipality, a Nonprofit Corporation or a For-profit Organization that meets the requirements of 760 CMR 62.00.

Proximate to Public Transit Nodes. An area within .25 (¼) miles of a Public Transit Node that constitutes an eligible location pursuant to the Executive Office of Transportation's regulations at 701 CMR 6.03: *Definitions*. An Eligible Location shall have adequate access to the Public Transit Node or will have adequate access resulting from the proposed Project.

Public Transit Node. An existing transit station or planned public transit station, including a commuter rail station, subway station, ferry terminal, bus station or bus rapid transit station. A Public Transit Node shall include, without limitation, parking areas proximate to the existing or planned transit station, entrance gates and ticket dispensers.

Transit-oriented Development. One or more planned, proposed, or existing housing developments around a Public Transit Node characterized by a predominance of the following: higher density, a mix of uses, pedestrian-oriented design, facilities for non-motorized transportation such as bicycle transportation, parking ratios that reflect access to transit, and direct and convenient access to a Public Transit Node.

UCH-TIF Plan. A plan for an urban center housing tax increment financing (UCH-TIF) program for an Urban Center Housing Zone that meets the requirements set out in 760 CMR 58.06: *The UCH-TIF Plan*.

Urban Center Housing Zone. A commercial center in a Municipality or Municipalities for which a UCH-TIF Plan has been adopted and approved by the Municipality or Municipalities and which is approved by the Department in accordance with 760 CMR 58.11: *Assignment of Option, Right of First Refusal*. In the case of a UCH-TIF Plan adopted by more than one Municipality, the areas designated as Urban Center Housing Zones shall be contiguous areas of those Municipalities.

62.03: Eligible Projects/Activities

(1) The Department shall approve CATNHP financial support only for an Eligible Project/Activity that meets each of the following requirements and otherwise complies with the CATNHP Guidelines:

62.03: continued

- (a) The Project shall be residential housing units, including residential units above commercial space, located either within a Neighborhood Commercial Area or a Transit-oriented Development located Proximate to a Public Transit Node or a Mixed Use Development located within a Neighborhood Commercial Area;
- (b) The Project Sponsor shall be in good standing with the Department and its programs as measured by its prior performance in carrying out previously awarded programs funded by the Department, as set out in the CATNHP Guidelines; and
- (c) Not less than 50% of the units in a Project receiving CATNHP financial support shall be occupied by and affordable to Low or Moderate Income Persons or Families.

(2) In the case of CATNHP funding for residential housing units located within Neighborhood Commercial Areas, the Department shall give priority to developments for which Municipalities have adopted a UHC-TIF Plan in an Urban Center Housing Zone pursuant to M.G.L. c. 40, § 60.

62.04: Financial Support, Terms and Conditions

(1) The Department may provide financial support to Project Sponsors for the development of residential housing units or Mixed Use Developments located within Neighborhood Commercial Areas and to fund Transit-oriented Developments located Proximate to Public Transit Nodes that meet the requirements established in 760 CMR 62.03, 62.04 and 62.05.

(2) For funding pursuant to the CATNHP I Legislation, the Department shall offer financial support through an initial demonstration of CATNHP funding to Projects located within Neighborhood Commercial Areas and to Transit-oriented Developments located Proximate to Public-transit Nodes.

(3) For funding pursuant to the CATNHP II Legislation, the Department shall conduct competitive funding rounds for financial support in accordance with 760 CMR 62.05 and the CATNHP Guidelines.

(4) For funding pursuant to the CATNHP III or CATNHP IV Legislation, the Department may offer financial support for the Commercial Component of Mixed Use Developments in accordance with 760 CMR 62.05 and the CATNHP Guidelines. No financial subsidy for the commercial portion of a project shall exceed 25% of the total development cost of the commercial portion of the project or \$1,000,000, whichever is smaller.

(5) Forms of Financial Support.

(a) The Department may provide CATNHP financial support in the form of loans for the development of residential housing units located within Neighborhood Commercial Areas, in accordance with the CATNHP Guidelines.

(b) The Department may provide CATNHP financial support in the form of loans for the development of residential housing units or other financial assistance including, without limitation, planning grants, financing subsidies and environmental assistance, for Transit-oriented Development located Proximate to Public Transit Nodes, in accordance with the CATNHP Guidelines.

(6) Terms of Financial Support. All financial support under CATNHP shall be consistent with 760 CMR 62.05, the CATNHP Guidelines and the Department's funding documents. Funded CATNHP Projects may receive funds in combination with other affordable housing projects, including the Low-income Housing Tax Credit Program, the HOME Investment Partnerships Program, the Housing Innovations Fund, the Facilities Consolidation Fund, the Community-based Housing Program, the Housing Stabilization Fund and the Affordable Housing Trust Fund. The funding terms under 760 CMR 62.00 shall be consistent and compatible with all applicable regulations and guidelines of the Department concerning the funding of affordable housing projects.

(7) Funding Proceeds. The proceeds of the CATNHP funding shall be used solely for the development of the Eligible Project approved by the Department.

62.04: continued

(8) Affordability. The affordability restrictions proposed for Projects shall conform to statutory requirements. Not less than 50% of the units in a Project receiving CATNHP financial support for Transit-oriented Development located Proximate to Public Transit Nodes shall be occupied by and be affordable to Low or Moderate Income Persons or Families. Project Sponsors and owners of CATNHP funded Transit-oriented Developments located Proximate to Public Transit Nodes shall execute recordable deed restrictions and/or other applicable documents with affordable rent or sales limitation structures for a minimum of 30 years from the date of the closing on the CATNHP funds in accordance with the CATNHP Guidelines.

62.05: Application Requirements

(1) Requests for Proposals. The Department shall conduct competitive funding rounds for CATNHP funding in accordance with the CATNHP Guidelines.

(2) Applications. Project Sponsors shall comply with the application procedures, standards and requirements for CATNHP financial support set out in 760 CMR 62.00 and the CATNHP Guidelines.

(3) Department Review. The Department shall approve CATNHP funding in accordance with the CATNHP Guidelines regarding application content, criteria for competitive review and consideration of preferential features. The Department shall not consider an application that does not substantially comply with the requirements of 760 CMR 62.05 and the CATNHP Guidelines.

62.06: Interpretation and Consistency with Other Regulations

(1) 760 CMR 62.00 is intended to be consistent and compatible with existing regulations and guidelines of the Department that regulate the funding of affordable housing projects, including the Low-income Housing Tax Credit Program, the HOME Investment Partnerships Program, the Housing Innovations Fund, the Facilities Consolidation Fund, the Community-based Housing Program, the Housing Stabilization Fund and the Affordable Housing Trust Fund.

(2) In the event of any actual or potential inconsistency between or among the provisions of 760 CMR 62.00, the applicable CATNHP Legislation and/or the CATNHP Guidelines, and the documents evidencing financial support made under the CATNHP program, such provisions shall be interpreted, to the extent reasonably possible, to reconcile any such inconsistencies. If such provisions cannot reasonably be reconciled, the provisions of the applicable CATNHP Legislation, 760 CMR 62.00, the CATNHP Guidelines, and such documents, in the foregoing order of priority, shall control.

62.07: Waiver

The Undersecretary of the Department may waive, in writing, any provision of 760 CMR 62.00 not required by the CATNHP Legislation on findings that such waiver is consistent with the purposes set out in the CATNHP Legislation and in 760 CMR 62.00, and that desirable relief in the public interest will be accomplished through such waiver. A request for waiver shall be in writing to the Undersecretary, Department of Housing and Community Development, 100 Cambridge Street, Suite 300, Boston, MA 02114. The request shall contain a reliable showing that the waiver meets all the requirements of 760 CMR 62.07.

62.08: Severability

The provisions of 760 CMR 62.00 are severable, and if any provision is held unconstitutional or a violation of law by any court of competent jurisdiction, or shall otherwise cease to be effective, all other provisions of 760 CMR 62.00 shall remain in effect.

REGULATORY AUTHORITY

760 CMR 62.00: M.G.L. c. 23B; St. 2002, c. 244, § 2, budget line item 7004-7016; St. 2008, c. 119, § 2, budget line item 7004-0038; St. 2013, c. 129, § 2, budget line item 7004-0048; and St. 2018; c. 99, § 2, budget line item 7004-0058.