

# **760 CMR 55**

## **760 CMR 55.00:**

### **Housing Production and Replacement Program**

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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 110 of the Acts of 1993 § 2 item 3222-9006 appropriates \$704,344 in Fiscal Year 1994 for "phase I of a pilot program to promote economic diversity in family public housing" to be implemented in three family developments in Boston pursuant to regulations of the Executive Office of Communities and Development. Fiscal year 1994 ended without the expenditure of any of the appropriated funds or the promulgation of regulations. The appropriation has not been renewed in subsequent years, and there is no currently effective, statutory authorization for an economic diversity pilot program, and hence the provision for matching grants in Chapter 494 of the Acts of 1993 Section 2 item 3722-8891 is no longer effective with the result that matching grants are no longer required.

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 in the City of Lowell 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 2 of Chapter 97 specified that the "development plan" provide for "rental or homeownership of at least 45 percent of the total number of units in the new mixed income development by very low income households and by low and moderate income households." The section requires that 75% of these units shall provide rental or homeownership housing permanently affordable to very low income households. The section requires that the development plan "provide for the adequate relocation of all existing residents..."

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 for costs of

planning, engineering, necessary studies, design, development plan and construction of infrastructure, including environmental remediation, of the new mixed income development described in section 1. The Lowell Housing Authority was authorized to 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. 760 CMR 55.00 et seq. shall become effective upon promulgation. The program is intended to finance creation of quality new public housing, including the replacement of public housing which has become uninhabitable because of Life and Safety Code violations not reasonably correctable. The program may also finance Housing Units affordable to households of Very Low Income if the Department finds that these Housing Units are necessary to meet a critical housing need as demonstrated in a Development Plan approved by the Department. The program shall also finance a grant of up to \$2.7 million to the Lowell Housing Authority as provided in Chapter 97 of the Acts of 2002.

### **55.03 Definitions**

The definitions contained in G.L. c. 121B § 1 are applicable herein. The following definitions also apply in 760 CMR 55.00 et seq.

(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: (1) The detailed program required by Chapter 97 of the Acts of 2002 as approved by the Department for the development of Affordable Housing Units which establishes the material rights, obligations and duties of participants in the development of such units, provision for ongoing management of rental units, and provision for monitoring and enforcement of all obligations and duties reasonably required to ensure affordability and compliance with restrictions and other requirements during the term of affordability; or (2) A program and data approved by the Department demonstrating that proposed Affordable Housing Units for Households of Very Low Income are necessary to meet a specific critical housing need.

(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 as defined in 760 CMR 6.02, 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 (domicile) occupied by all members of a household not less than nine months of the year.

(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 sited in groupings of no more than 25 public housing units per site or in developments in which public housing units constitute no more than 50% of total Housing Units, whichever is greater.

(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 to a housing authority for costs of development of Housing Units as provided in 760 CMR 55.06. If a grant of up to \$2.7 million is awarded to Lowell Housing Authority for a Mixed Income Housing Development authorized by Chapter 97 of the Acts of 2002 to be developed by the Residents First Development Corporation, the Lowell Housing Authority may subgrant some or all of the grant to the Residents First Development Corporation; such grant to Lowell Housing Authority and/or subgrant to Residents First Development Corporation shall be used for some or all of the following costs: planning, engineering, necessary studies, design, development plan, and construction of infrastructure including environmental remediation; the costs of the development plan shall be the costs of development required thereby and may include required relocation expense.

#### **55.05 Applications for Grants**

A new application for a Housing Production and Replacement Program grant shall describe the purposes for the grant in material detail and 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 including infrastructure and 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. Any such 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.

(10) Other information requested by the Department.

The application for a grant by Lowell Housing Authority pursuant to Chapter 97 of the Acts of 2002 shall include the Development Plan approved by the Department and the City of Lowell.

#### **55.06 Purposes of Grants**

(a) A grant may provide for new public housing for Elderly Persons of Low Income or for Families of Low Income. (b) A grant 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) A grant may provide for rental Housing Units for Households of Very Low Income 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) A grant may be made to the Lowell Housing Authority for a Mixed Income Housing Development to be developed by the Residents First Development Corporation pursuant to Chapter 97 of the Acts of 2002 provided that a Development Plan has been approved therefore by the Department.

#### **55.07 Determination of Grant Applications**

The Department shall give preference to the grant to the Lowell Housing Authority authorized by

Chapter 97 of the Acts of 2002. In determining whether to approve other new grants the Department shall give preference in the following order to a qualifying development which meets the listed criteria:



(a) at least 75% permanently affordable rental units for Households of Very Low Income and/or for Households of Low or Moderate Income.

(b) at least 75% rental units affordable for at least 40 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 rental Housing Units for Households of Very Low Income and for Households of Low or Moderate Income at low public cost, including anticipated future subsidy cost.

#### **55.08 Grant Agreements**

The material terms of new Housing Production and Replacement Program grants shall be set out in a contract for financial assistance or 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 effective monitoring and enforcement of the affordability of the Affordable Housing Units. In the event that the Lowell Housing Authority shall make a subgrant to Residents First Development Corporation (RFDC) for development of a Mixed Income Housing Development RFDC's obligations shall be 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

et seq. 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 §5 of the Acts of 1998; Chapter 97 of the Acts of 2002