



NEW HOME DEVELOPMENT
PROGRAM
GUIDELINES
Effective: July __, 2018



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DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
SINGLE-FAMILY - NEW HOME DEVELOPMENT PROGRAM

I. Introduction and Authority

The objective of the City of Houston's (City) New Home Development Program is to provide newly constructed, affordable single-family homes for low and moderate-income homebuyers. These guidelines will govern the implementation of this program. Possible sources of funding for the New Home Development Program will be Community Development Block Grant (CDBG) (to the extent such funds are subject to a waiver granted by the US Department of Housing and Urban Development (HUD) permitting their use for the construction of new homes), CDBG-Disaster Recovery funds, Tax Increment Reinvestment Zone affordable housing set-aside funds, any related program income, and any other funding that may be available.

These Guidelines will govern current allocations, and any future allocations of federal and/or local funds for New Home Development Program activities. The staff of the Housing and Community Development Department (HCDD) will administer the program on behalf of the City in accordance with HUD regulations. The Director of the HCDD (Director) or a Designee will have approval authority for administrative matters related to the New Home Development Program and may delegate said authority by written instrument.

II. Definitions

Acquisition and Development Agreement: An agreement between the City and Houston Land Bank providing for the development of new single-family homes on land owned or acquired by the Houston Land Bank and the sale of the completed homes to eligible homebuyers.

AMFI: Area Median Family Income, as determined by HUD for the City of Houston -The Woodlands-Sugar Land MSA.

Community Development Block Grant Program – Disaster Recovery (CDBG-DR): A federal program administered by HUD which funds recovery efforts from Presidentially declared disasters. Funds are allocated by Congress depending on the disaster.

Community Development Block Grant Program (CDBG): A federal program administered by the HUD which funds local community development activities.

Community Land Trust (CLT): An existing (or to be created) community land trust operating in the City, organized as a Texas nonprofit corporation under Texas Business Organizations Code §22.001(5) and/or any applicable section of the Local Government Code.

Contractor: An entity to which the City provides funding for the construction of new homes.

Director: The Director of HCDD or any other person(s) that may be designated to perform the various functions assigned to the Director.

Homebuyer: Person(s) eligible to purchase a home developed under the New Home Development Program.

Housing and Community Development Department (HCDD): The City of Houston Department that administers federal, state, and local funding for affordable housing and economic development projects.

Housing and Urban Development (HUD): The Federal Department that manages and establishes regulations and rules for housing funds, including, but not limited to CDBG, CDBG-DR, and HOME.

Houston Land Bank: Land Assemblage Redevelopment Authority dba Houston Land Bank, a Texas local government corporation created pursuant to Tex. Transp. Code Ann. §431.101.

Low- Moderate Income: A household/family having an income equal to or less than 80% of the AMFI established by HUD by Metropolitan Statistical Areas.

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Master Contractor Agreement: Agreements to be executed between the City and each Contractor that sets forth the terms and conditions applicable to their participation in the New Home Development Program.

New Home Development Program Loan: The loan from the City to the Homebuyer under the New Home Development Program.

Program Funds: Funds that have been duly appropriated or allocated to the New Home Development Program.

Project Funding: Any and all governmental and private funds, used to pay for hard and soft costs to carry out the construction of a new single-family home.

Real Estate Brokerage Service: A licensed third-party brokerage service that will market, list, and sell properties to eligible homebuyers.

Real Estate Professional: Persons employed by the Real Estate Brokerage Service who are licensed to represent buyers and sellers in real estate transactions.

Recapture: The New Home Development Program Loan documents will include recapture provisions consistent so that if the net proceeds from the sale of a property are not sufficient to recapture the full balance of the New Home Development Program Loan after payment of the full balance of any loan secured by a senior lien, the Homebuyer's down payment and any documented capital improvement investment made following acquisition, the New Home Development Program Loan and the Homebuyer will share in the net proceeds (the sale price minus senior loan repayment and closing costs) in accordance with the formula set forth in 24 CFR 92.254 (a)(5)(ii)(A)(3), regardless of whether the New Home Development Program Loan was funded with HOME funds.

TIRZ (Tax Increment Reinvestment Zone) Affordable Housing Set-Aside: TIRZ's designated under Section 311.005(a)(4) of the Tax Code, where the population of the county exceeds 3.3 million, must contribute at least one-third of the tax increment of the zone toward the provision of affordable housing, during the term of the zone. These funds, collectively, are referred to as TIRZ Set-Aside funds.

Tri-Party Agreement: An agreement entered into by the City, the Houston Land Bank, and a Contractor for funding and construction of specific homes developed through the New Home Development Program.

III. Acquisition Process

- A.** The Houston Land Bank and the City of Houston will enter into an Acquisition and Development Agreement pursuant to which Houston Land Bank agrees to acquire certain properties at the City's expense and to set aside, at the City's request, certain properties previously acquired. Houston Land Bank will hold said properties for the development of new homes which will be constructed by HCDD and sold to eligible homebuyers in accordance with customary policy and procedures noted in the Acquisition and Development Agreement.
- B.** Houston Land Bank will hold title for such properties and the City will reimburse Houston Land Bank for all reasonable costs associated with acquisition and maintenance of these properties pursuant to the Acquisition and Development Agreement.

IV. Property Considerations

A. Lots for Construction

All homes built under the New Home Development Program will be within the property tax jurisdiction of the City of Houston. The Acquisition and Development Agreement will describe

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the process by which HCDD will identify lots to be built upon and define duties and responsibilities of the respective parties for the acquisition and development of such lots. The City may also fund the development of lots where eligible owners of damaged homes wish to exchange their damaged real property for a new home developed by the City on another lot. The damaged home would either be repaired, or demolished and rebuilt, or converted into green space or other public use.

B. Environmental Review

Prior to any action, HCDD will require a title report, a survey, an environmental review (including a Phase I and a Phase II, if necessary), and an environmental report on each property.

V. Construction

A. Generally

HCDD will act as the developer of properties and will cover all eligible costs associated with the development and construction of new single-family homes. The City will enter into a Tri-Party Agreement with a Contractor and the Houston Land Bank for the construction of each new home. Each participating contractor will also sign a Master Contractor Agreement. Prior to the commitment of funds for any new construction, construction budgets and plans will be approved by the Director or designee.

The Contractor will be responsible for obtaining all necessary permits and construction documents. The Contractor will also be responsible for identifying the site-specific cost items to be included in its budgeted soft and hard costs for construction. HCDD will develop independent cost estimates with industry-standard software to ensure cost reasonableness.

B. Funding of Construction Work and Soft Costs

Program funds shall be made available to pay for all eligible hard and soft costs up to amounts indicated in the approved construction budget.

- Fees and Interest Payments

Reasonable and customary fees and interest payments for lines of credit and construction loans secured by the contractors may be eligible costs for reimbursement by the City and will be counted toward the total cost basis of the development of the property. HCDD will review these costs to determine if they are eligible for reimbursement.

- Performance and Payment Bonds

Contractors will be responsible for obtaining performance and payment bonds and builder's risk insurance, in accordance with, or in addition to, the terms of their Master Contractor Agreement and Tri-Party Agreement.

VI. Pricing of Homes and New Home Development Program Loan Terms

It is the intent of the New Home Development Program to develop homes that are affordable to income-eligible homebuyers. The final sales price of a home will be its after-construction market value

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determined by an appraisal. Income-eligible homebuyers may receive assistance from the City in the form of a New Home Development Program Loan. The New Home Development Program Loan will not bear interest and payment will be deferred until the property is transferred, as further described in these guidelines. The amount of the New Home Development Program Loan will be based on the difference between (i) the sales price of the home and (ii) the maximum amount of the first lien purchase money loan whose payments (based on a 30-year term, level payments and fixed, market rate interest) will be affordable to the homebuyer, based on HCDD's application of the HUD guidelines for housing affordability. Unless otherwise approved by the Director, the maximum amount of a New Home Development Program Loan is \$50,000.00. The New Home Development Program Loan will be evidenced by a promissory note and will be secured by a lien against the property that may be subordinate to other liens as described in these guidelines. Additional information will be on the City HCDD website.

VII. Marketing and Sales of Homes

The marketing and sales of homes may be implemented through the following: Houston Land Bank, digital marketing platform and community outreach program, Community Land Trust (if existing), the Real Estate Professional Services market, and the Homebuyer Assistance Program. Title to a developed property will be held, and the home will be insured and maintained by the Houston Land Bank until the closing of the sale to a qualified homebuyer.

At time of transfer of title from the Houston Land Bank to a Homebuyer, the Contractor will have been paid by the City pursuant to the Tri-Party Agreement, and the purchase price will be paid with funds from the purchaser and, if applicable, proceeds of a New Home Development Program Loan (which may be evidenced by a reduction in proceeds to be returned to the City). Proceeds from sale will be disbursed to pay: (i) closing costs and other eligible expenses associated with the transfer of title, (ii) all reasonable costs incurred by Houston Land Bank associated with the lots, pursuant to the agreement, and (iii) any remaining proceeds from closing shall be returned to the City. Any such proceeds returned to the City will be deemed program income and shall be recycled for affordable housing purposes. The positive difference between the amount advanced by the City to produce a home and the market value of the home does not provide an economic benefit to the Homebuyer and is not expected to be reflected in the proceeds returned to the City.

A. Responsibility for Marketing and Sales

Houston Land Bank will secure the services of a Real Estate Brokerage Professional, Houston Land Bank will be fully responsible for marketing New Home Development Program homes and selling to income eligible homebuyers unless the home is transferred to the Community Land Trust, where the Community Land Trust will be responsible for marketing and selling the homes to income eligible homebuyers.

B. Marketing Plan

HCDD is committed to affirmatively furthering fair housing through its affirmative marketing policies. Affirmative marketing goals are to ensure that outreach and communication efforts reach eligible homebuyers from all racial, ethnic, national origin, religious, familial status, the disabled, "special needs", and gender groups.

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Prior to marketing the first completed home, the Real Estate Professional must obtain written approval from Houston Land Bank and HCDD for a program marketing plan. The marketing plan will include the following elements:

- Methods of affirmative outreach to residents
- Other means of advertising homes for sale, including, but not limited to, Multiple Listing Service, advertising, flyers, etc.
- Flyers, advertising and listings regarding income qualifications of buyers and financing being offered to buyers must be available in approved languages
- Method and timing of prequalifying prospective buyers, in terms of income eligibility and eligibility for mortgage financing
- Policy for managing a waiting list of potential buyers
- Applicable disclosure statements to be given and explained to buyers prior to signing purchase agreements and at closing
- Applicable form of purchase contract
- Provisions for establishing and adjusting sale prices

VIII. Homebuyer Eligibility

All prospective homebuyers must meet income criteria to be eligible for assistance under the New Home Development Program. To meet the income eligibility requirement for homes developed by HCDD using federal funds, applicant's household must earn less than 80% of the Area Median Family Income (AMFI) for the Houston-The Woodlands-Sugar Land MSA. For nonfederal funds unless otherwise required by applicable laws, regulations, or program guidelines, the households of applicants for homes developed with nonfederal funds must earn less than 120% of the AMFI to be income eligible for the New Home Development Program. HUD publishes AMFI levels annually and New Home Development Program income eligibility will be based on the most recent HUD income limits, adjusted by family size. The income limits are subject to change without notice by HUD and the most current AMFI link can be found at: <https://www.huduser.gov/portal/datasets/il.html#2018>

HCDD staff will determine household income based on the HUD definition described in the Code of Federal Regulations, Title 24 – Housing and Urban Development – Section 5.609 – Annual Income (24 CFR 5.609) known as “Part 5”.

In addition to the income criteria above, each potential Homebuyer must meet the following eligibility requirements:

- Complete an eight-hour certified Homebuyer Education Course through a HUD-approved counseling agency.
- Must be a U.S. citizen or permanent resident alien.

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- Must be able to obtain a 30-year fixed-rate mortgage for the purchase price. The program does not accept adjustable-rate mortgages (ARM) or seller-financed mortgages.
- Must agree to occupy the Home as their principal residence.
- Must accept a lien placed on the property to secure the New Home Development Program Loan, which will be in place until the property is sold. This lien may be subordinated to the purchase money mortgage, a refinance of the unpaid balance of the purchase money mortgage, and a no-cash-out home repair loan. This lien will not be subordinated to a home equity or other cash-out loan.

IX. Recapture Restrictions

The New Home Development Program Loan will be used to fill the affordability gap for the income eligible homebuyers. The New Home Development Program Loan will be repayable and the Director, by written notice to the Homebuyer, may declare the loan to be due and payable, subject to recapture requirements, at sale or at transfer of title (except thru heirship, as described below) and may accelerate the Promissory Note following an uncured event of default, such as the failure to pay taxes or maintain insurance.

In the event of the death of a Homebuyer, the surviving heir(s) can request one of the following options:

A. Loan Payoff

To repay the New Home Development Program Loan or to sell the home and repay the New Home Development Program Loan, subject to recapture requirements, according to the terms established in the Deed of Trust and Promissory Note.

B. Modification of the Loan

A modification request can be submitted to HCDD that will allow surviving heirs to assume the original terms of the New Home Development Program Loan and reside in the home as their principal residence. The proposed modification, subject to the approval of the HCDD Director, will require the requestor to be determined to be eligible to participate in the New Home Development Program. If the requestor is not determined to be eligible for assistance, HCDD will require payment of the New Home Development Program Loan.

X. Monitoring Throughout Lien Period

A. Sale or Transfer of Property

If a Property is sold or transferred (except thru heirship), the Director may declare, by written notice to the Homebuyer, the unpaid balance of the New Home Development Program Loan to be due and payable.

B. Monitoring

HCDD reserves the right to periodically monitor each property to determine if it was transferred or sold during the time the lien is active. The following sources of verification may be used:

- Title report
- Lien and ownership search in the applicable County Clerk's Office online records

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- Ownership verification in applicable tax office appraisal records
- Certification from owner

C. Releases of Liens

Releases of liens will be issued once a Homebuyer has successfully complied with all the terms and conditions of the New Home Development Program documents.

D. Verification of Insurance

If required, property insurance and/or flood insurance must be maintained throughout the New Home Development Program zero interest loan and must be furnished upon request.

E. Payment of Taxes

Property taxes must be paid before they are delinquent and evidence of payment must be furnished upon request.

XI. Regulatory Considerations

A. Davis-Bacon Overview

All federal government construction contracts and most contracts for federally-assisted construction over \$2,000 must include provisions for paying workers on-site no less than the local prevailing wages and benefits paid on similar projects. Residential properties containing fewer than eight (8) units are exempt from Davis-Bacon (see Section 110(a), Housing and Community Development Act (HCDA) of 1974). The eight-unit threshold applies to the number of units on a property; not the number of units being rehabilitated or constructed nor the number of units being funded with federal funds. A property is defined as one or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly-owned and operated as one rental, cooperative, or condominium project. Considering the above, HCDD does not expect that homes constructed under the New Home Development Program will be subject to Davis-Bacon requirements.

B. HUD Section 3 Program

The Section 3 policy of the Housing and Urban Development Act of 1968 was established to ensure that “employment, training and contracting opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.” Section 3 requirements apply to contractors and subcontractors performing work on Section 3 covered projects for which the amount of the assistance exceeds \$200,000; and the contract or subcontract exceeds \$100,000.

C. Minority Women Small Business Enterprises

It is the policy of the City to stimulate the growth of local minority, women and small business enterprises by encouraging the full participation of these business enterprises in various phases of city contracting. Contracting departments are responsible for ensuring contractors make a

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good faith effort to meet minority participation goals. Goal-oriented contracts requirements are based on construction contracts more than \$1,000,000 or the supply of goods or non-personal or non-professional services in excess of \$100,000.

The HCDD has a MWSBE goal of 34% for federally-funded construction projects. Progress made towards meeting MWSBE goals will be counted based on participation credits of companies certified through the City of Houston, Office of Business Opportunity. If a project is not federally funded, other City MWSBE requirements may be imposed.

D. Acquisition/Relocation

The **Uniform Relocation Assistance and Real Property Acquisition Policies Act** of 1970 (as amended) (URA), is a federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) for federal or federally funded projects. The acquisition objectives of the URA is to provide uniform, fair and equitable treatment of persons whose real property is acquired and to encourage and expedite acquisition by agreement and without coercion.

XII. Property Insurance

Homebuyer shall maintain property insurance, and, if applicable, flood insurance in accordance with city, state and federal laws and regulations, and as may be required in these Guidelines or any related Program document. If the Homebuyer fails to maintain the property insurance required by this Program or fails to notify any transferee of the Property of such insurance requirements, and the Property is damaged by a future disaster, then Homebuyer's property **may not** be eligible for future assistance. In addition, if the property is in the 100-year floodplain and the Homebuyer fails to maintain flood insurance, then the Homebuyer's property **will not** be eligible for any further assistance.

If an insurance check is received for damages to a New Home Development Program Property in the amount of \$10,000 or more, the progress of repairs to the Property may be monitored by the City and, under certain circumstances, the insurance proceeds may be deposited in an escrow account maintained by the City or the senior lender.

XIII. Close-Out

Upon completion of a New Home Development Program activity and closure of a project under the New Home Development Program, a close-out audit will commence.

XIV. Complaints and Appeals Process

HCDD has developed a complaint and appeals process, which will be provided to a Homebuyer upon request.

Fair Housing Act

The federal Fair Housing Act prohibits the discrimination in all housing transactions based on race, color, national origin, sex, religion, handicap, or familial status (having children under the age of 18). Homebuyers that feel they have been discriminated against can contact:

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U.S. Department of Housing & Urban Development – Fair Housing & Equal Opportunity

Discrimination inquiries and/or complaints

800-669-9777 (Voice)

1-800-927-9275 (TTY)

HUD Local 713-718-3199 (Ask for a
FHEO)

www.hud.gov/offices/fheo

OR

Texas Workforce Commission

Civil Rights Division

1-888-452-4778 (Voice)

1-800-735-2989 (TTY)