



## DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

*Grants Management Division*

### **m e m o r a n d u m**

**TO:** Elizabeth H. Tyler, FAICP, Community Development Director

**FROM:** Kelly H. Mierkowski, Manager, Grants Management Division

**DATE:** May 18, 2012

**SUBJECT:** **A RESOLUTION AUTHORIZING THE SUBMISSION OF A REQUEST TO THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR AN EXCEPTION TO THE HOME INVESTMENT PARTNERSHIPS PROGRAM CONFLICT OF INTEREST PROHIBITION**

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### **Description**

Included on the agenda of the May 22, 2012 meeting of the Urbana Community Development Commission is a Resolution Authoring the Submission of a Request to the U.S. Department of Housing and Urban Development (HUD) for an Exception to the HOME Investment Partnerships (HOME) Program Conflict of Interest Prohibition. The current conflict involves Ms. Sheila Dodd, Executive Director of Habitat for Humanity of Champaign County (Habitat). Ms. Dodd formerly worked for the City of Champaign, which is a member of the Urbana HOME Consortium and Subrecipient of HOME funding. According to the federal guidelines established at 24 CFR 92.356 (attached), Ms. Dodd may not hold any contractual interest regarding HOME activities for one year after her tenure with the City of Champaign. She has violated this provision under the HOME Rule.

The Habitat Board of Directors oversees the Champaign County Neighborhood Alliance for Habitat (Neighborhood Alliance), a Community Housing Development Organization (CHDO) certified by the Urbana HOME Consortium. Neighborhood Alliance is currently under two contracts with the Consortium for HOME allocations of CHDO operating and project funds. Due to the close nature of Habitat for Humanity and Champaign County Neighborhood Alliance for Habitat, there is a conflict of interest with Ms. Dodd's acceptance of the Executive Director position at Habitat. The City is requesting an exception with HUD and must publicly disclose the nature of the conflict as part of the exception process.

### **Background**

In 2010, former Habitat Executive Director Beverly Huffman worked closely with City of Urbana staff to form a Community Housing Development Organization (CHDO) in conformance with the HOME Program Rules and Regulations. After filing Articles of Incorporation with the

State, Ms. Huffman requested a 501(c)(3) determination letter from the Internal Revenue Service in support of the organization's nonprofit status. This final component of the CHDO application process was received in June, 2011 and was presented to the Urbana Community Development Commission for CHDO certification on June 26, 2011. The Urbana City Council later approved Neighborhood Alliance as a CHDO by Resolution 2007-07-025R on July 18, 2011.

During the certification process, Consortium Members moved forward with funding allocations for CHDO project and operating proposals. On July 8, 2011, the HOME Technical Committee, which consists of members from the City of Champaign, Champaign County, and the City of Urbana, met to formally vote on proposed CHDO project and operating funding allocations for Fiscal Year (2011-2012). Among the allocations approved at the meeting were two contracts with the Champaign County Neighborhood Alliance for Habitat (Neighborhood Alliance). The first funding allocation approved provided for a \$140,000 subsidy to construct four (4) single-family units in the low-income target area. The second allocation provided for \$27,528 in operating funds to support administrative costs associated with these CHDO activities.

The proposed contracts were presented, along with the resolution certifying Neighborhood Alliance as a CHDO, to the Urbana City Council at its July 11, 2011 regular meeting of the Committee of the Whole. The proposed certification and contracts were forwarded for approval to the next City Council meeting on July 18, 2011 and were approved on that date. Ms. Huffman signed the contracts as Executive Director of Neighborhood Alliance on July 27, 2011. Ms. Huffman later resigned from Habitat in August.

While still employed by the City of Champaign as Grant Compliance Coordinator, Ms. Sheila Dodd applied for the open position of Executive Director at Habitat on August 17, 2012. Ms. Dodd's duties as a Grant Compliance Coordinator for the City of Champaign included drafting and executing HOME agreements with program participants, logging the matching funds for HOME dollars spent, as well as input of project and activity data into the federal Integrated Disbursement & Information System. She had also previously worked as a part-time Community Development Associate for the City of Urbana to assist with daily tasks associated with the HOME Program. Her last day as a Community Development Associate was March 6, 2009.

Ms. Dodd was offered the Executive Director position with Habitat and announced her resignation from the City of Champaign on October 13, 2011. Her last day at the City of Champaign was October 27, 2011, and she then took up her responsibilities as Executive Director of Habitat on October 28, 2011. Staff presented the conflict issue to its legal counsel and was advised to inquire further with a HUD representative.

In accordance with HUD's guidance regarding the conflict of interest, City Attorney Curt Borman performed a state and local legal review. An opinion letter was submitted to HUD on January 17, 2012 indicating that no state or local laws had been violated when Ms. Dodd took on her responsibilities as Executive Director of Habitat. HUD recommended that an exception request with supporting documentation be submitted for the conflict.

On March 6, 2012, City staff submitted an exception request regarding a potential conflict of interest. HUD's response in a letter dated April 27, 2012, indicated that additional public

disclosure and clarification was needed before HUD could make a determination as to whether the request should be granted. The attached revised Resolution is staff's follow up to this initial response received from HUD.

## **Nature of the Conflict**

According to the federal guidelines for conflicts of interest in regards to the federal HOME Investment Partnerships Program found at 24 CFR 92.356, no employee of a Subrecipient may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement during their tenure or for **one year thereafter**. While Neighborhood Alliance is operated by the Board of Directors, due to the organization's close relationship with Habitat, Ms. Dodd's position with Habitat represents a conflict of interest on the part of the HOME Program.

## **Exception Request**

Staff originally submitted an exception request on March 6, 2012. HUD responded that the public disclosure undertaken was insufficient and requested that staff submit a clearer request for the conflict of interest at hand.

HUD allows participating jurisdictions to request an exception to the federal conflict of interest provision on a case-by-case basis when no state or local law has been violated, and the exception serves to further the effective and efficient administration of the participating jurisdiction's program. Several factors are considered when applying for an exception, including:

- Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
- Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific activity in question;
- Whether the interest or benefit was present before the affected person was in a position to receive HOME funds;
- Whether undue hardships will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- Any other relevant considerations.

Staff and Habitat are confident that each of the above considerations has been met. The collaboration between Habitat and Neighborhood Alliance allows for a much more affordable homeownership product that is otherwise unavailable as part of the Consortium's CHDO program. Neighborhood Alliance's Affordable Homeownership Program targets homebuyers at or below 60 percent of the Median Family Income (MFI), while the remaining certified CHDOs produce units that are marketed to homebuyers at or below 80 percent MFI. The program run by Neighborhood Alliance also utilizes volunteer sweat equity, which reduces the cost of construction. Currently, the average subsidy provided to participating CHDOs is approximately \$55,000 per unit, whereas Neighborhood Alliance produces units for a \$35,000 subsidy.

Neighborhood Alliance is able to produce more homes with significantly less subsidy than has traditionally been required to effectively produce affordable units in our area. This represents a significant cost benefit to the Consortium's HOME Program.

Ms. Dodd brings an exceptional level of expertise to the program, having worked with the HOME program since the Consortium was first formed in the early 1990s. For over ten years she has provided financial education to patrons participating in the City of Champaign's programs. She is also a Certified HOME Specialist and has an in-depth knowledge of the HOME Program's rules and regulations. Having worked in the Champaign-Urbana area for an extended period of time, she is well attuned to the needs of the low-income community. This community-specific knowledge, combined with her expertise in regards to the HOME Program, would otherwise not be available to Neighborhood Alliance.

Upon deciding to apply for the Habitat Executive Director position, Ms. Dodd immediately removed herself from any decision-making role in the Consortium. She no longer attended any HOME Technical Committee meetings after deciding to apply in August, 2011. Due to the conflict of interest, Ms. Dodd has deferred to the Neighborhood Alliance Board of Directors regarding the organization's daily operations and program management. Neighborhood Alliance had a construction contract with Habitat to build the first of four units at 901 North Division, Urbana. Paul Zindars, Construction Manager for Habitat, completed the project on schedule and was recently approved by the Board as a part-time Executive Director of Neighborhood Alliance. Neighborhood Alliance is currently interviewing for an administrative position to assist with running its day-to-day operations.

In determining whether the contractual interest or benefit was present before Ms. Dodd took on her responsibilities as Executive Director of Habitat, Urbana staff presented a timeline of events at the Urbana Community Development Commission regular meeting on November 28, 2011. The timeline indicates that the funding allocations made to Neighborhood Alliance were in place before the potential for an open Executive Director position at Habitat was evident.

Perhaps most important to the City's application for an exception is the aspect of undue hardship that will result when weighed against the public interest served by avoiding the prohibited conflict. When Ms. Dodd took on the responsibilities as Habitat's Executive Director, 901 North Division was approximately 80 percent constructed. Neighborhood Alliance finished construction and completed the sale to the selected low-income buyer. As part of the contract executed with Neighborhood Alliance, the City provided \$19,830 in CHDO down payment assistance to the buyer to make the sale possible. The City has not been reimbursed through the federal Treasury account for the project due to the conflict, and Neighborhood Alliance has not been reimbursed for development subsidy promised as part of the project. These funds will have to be drawn from another source if the exception does not move forward.

In addition to the project completed, there are three homebuyers under contract for the remaining units promised as part of the CHDO contract signed by Neighborhood Alliance. These projects, and the expectant homebuyers, are on hold until the conflict of interest exception is granted. This presents a serious difficulty for the Consortium in meeting the two-year commitment requirements for HOME projects, which must be met by October, 2012. No HOME applications

for CHDO projects have been received for this Fiscal Year to date. If the City is unable to commit the funds that were allocated to Neighborhood Alliance the Consortium's shortfall will be increased by \$140,000. This will jeopardize future HOME grant allocations as a participating jurisdiction since Neighborhood Alliance will not be allowed to carry out its current contracts or any future allocations until after October 28, 2012, and the deadline compliance date is June 30, 2012.

## Options

1. Forward the Resolution Authorizing the Submission of a Request to the United States Department of Housing and Urban Development for an exception to the HOME Investment Partnerships Program Conflict of Interest Prohibition to the Urbana City Council with a recommendation for approval
2. Forward the Resolution with a recommendation for approval with suggested changes.
3. Forward the Resolution with a recommendation for disapproval.

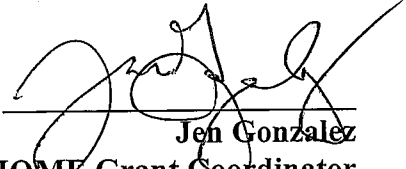
## Fiscal Impacts

If the exception is not approved, \$19,830 provided for down payment assistance at 901 North Division must be reimbursed through a different source of funds since HOME funding would be ineligible if the exception were not approved. The Consortium's timely expenditure of funds will also be impacted if the contracts are not allowed to be committed prior to the deadline compliance date on June 30, 2012.

## Recommendations

Staff recommends that the Urbana Community Development Commission forward the Resolution with a recommendation for approval to the Urbana City Council.

Memorandum Prepared By:

  
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Jen Gonzalez  
HOME Grant Coordinator  
Grants Management Division

## Attachments:

1. A RESOLUTION AUTHORIZING THE SUBMISSION OF A REQUEST TO THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR AN EXCEPTION TO THE HOME INVESTMENT PARTNERSHIPS PROGRAM CONFLICT OF INTEREST PROHIBITION

2. Code of Federal Regulations, Title 24, Volume 1, Part 92 HOME Investment Partnerships Program, Section 92.356 – Conflict of Interest provisions

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE SUBMISSION OF A REQUEST TO THE  
UNITED STATES DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT FOR AN EXCEPTION TO THE HOME INVESTMENT  
PARTNERSHIPS ("HOME") PROGRAM CONFLICT OF INTEREST PROHIBITION

WHEREAS, the Urbana HOME Consortium ("Consortium") was created to obtain federal grant funds from the Home Investment Partnerships ("HOME") Program of the United States Department of Housing and Urban Development ("HUD") for affordable housing initiatives in the local area; and

WHEREAS, the City of Urbana ("City") serves as lead entity of the Consortium; and

WHEREAS, the Consortium uses HOME funds to reimburse Habitat for Humanity of Champaign County ("Habitat") and its certified Community Housing Development Organization, Champaign County Neighborhood Alliance for Habitat ("Neighborhood Alliance"), for costs associated with purchasing lots within the Cities of Urbana and Champaign and preparing them for building homes; and

WHEREAS, Sheila Dodd, while acting as a grant compliance administrator in the City of Champaign Neighborhood Services Department, served as a member of the Consortium technical committee and participated in a July 2011 decision to approve funding for Neighborhood Alliance; and

WHEREAS, Dodd left her positions with the City of Champaign and with the Consortium in October 2011 to accept the job of executive director of Habitat; and

WHEREAS, in her capacity as executive director of Habitat, Dodd also functioned as director of Neighborhood Alliance; and

WHEREAS, HUD has determined that Dodd violated the conflict of interest prohibition of 24 C.F.R. § 92.356 by failing to wait one year before obtaining a financial interest or benefit from Habitat after leaving a position in which she participated in funding decisions related to Habitat; and

WHEREAS, the Consortium has suspended payment of previously approved HOME funds to Neighborhood Alliance pending resolution of said conflict; and

WHEREAS, the City Council, acting through the Consortium, desires to transfer the remaining previously approved HOME funds to Neighborhood Alliance before the requisite one year funding restriction ends in October 2012; and

WHEREAS, HUD has provided the Consortium with procedures to be followed to request an exception to the conflict prohibition of 24 C.F.R. § 92.356, which procedures specify in pertinent part that (1) the Consortium must provide an opinion from its legal counsel that the interest for which the exception is sought would not violate State or local law; and (2) the Consortium must publicly disclose the conflict; and

WHEREAS, the acting city attorney has provided HUD with a legal opinion that concludes an exception to a prohibited federal conflict under the circumstances described herein would not be contrary to Illinois state or local law; and

WHEREAS, the Consortium, after due notice to the public, has presented the facts to the City Council for discussion and decision as to whether there is good cause to support a request for an exception to the conflict prohibition of 24 C.F.R. § 92.356; and

WHEREAS, the City Council has reviewed the facts and has determined that there is good cause to recommend pursuit of an exception; and

WHEREAS, the City Council finds that an exception to the conflict prohibition of 24 C.F.R. § 92.356 will serve to further the purposes of the HOME Program and the effective and efficient administration of the Consortium.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

The Community Development Services Department director is authorized to submit a request to HUD on behalf of the Consortium for an exception to the HOME conflict of interest prohibition of 24 C.F.R. § 92.356 to allow the Consortium to provide HUD funds to Neighborhood Alliance and is authorized to execute all necessary documents for said purpose.

Section 2.

The City Council hereby directs that the record of the discussion of this matter be reflected in the official minutes of the meeting.

Motion was made by Alderman \_\_\_\_\_, seconded by Alderman \_\_\_\_\_ that the Resolution be adopted.

PASSED BY THE CITY COUNCIL this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Laurel Lunt Prussing, Mayor



# Code of Federal Regulations

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## Title 24 - Housing and Urban Development

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Volume: 1

Date: 2004-04-01

Original Date: 2004-04-01

Title: Section 92.356 - Conflict of interest.

Context: Title 24 - Housing and Urban Development. Subtitle A - Office of the Secretary, Department of Housing and Urban Development. PART 92 - HOME INVESTMENT PARTNERSHIPS PROGRAM. Subpart H - Other Federal Requirements.

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### § 92.356 Conflict of interest.

(a) *Applicability.* In the procurement of property and services by participating jurisdictions, State recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.

(b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decisionmaking process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(d) *Exceptions: Threshold requirements.* Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;

(5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

(f) *Owners and Developers.* (1) No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

(2) *Exceptions.* Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted housing in question;

(iii) Whether the tenant protection requirements of § 92.253 are being observed;

(iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed; and

(v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28930, May 28, 1997]