MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date:	June 29, 2022
Department:	Board of Commissioners
Agenda Planning Date:	
Time required:	5 min
☐ Audio/Visual aids	
Contact:	Tim Glisson
Phone:	503-302-4700
Department Head Signature:	

TITLE	Approval of the Recapture/Resale Policy for the 2021-2022 HOME Program Year
Issue, Description & Background	Before expending any HOME Funds participating jurisdictions must adopt written recapture/resale policies for homebuyer activities. As part of each Annual Action Plan these policies must be submitted to HUD for approval. As such under Program Year 2021-2022 Marion County received an extension to submit the written policies along with the Substantial Amendment #1 that was previously approved.
Financial Impacts:	none
Impacts to Department & External Agencies	none
Options for Consideration:	A.) Approve the Resolution B.) Do Not Approve the Resolution
Recommendation:	Recommend Approval of the Resolution
List of attachments:	Resolutions for Recapture/Resale Policy
Presenter:	Tim Glisson

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:	

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of adopting the)
Program Year 2021-2022 Recapture)
Resale Policy)

RESOLUTION # ____________

This matter came before the Board of Commissioners at its regularly scheduled public meeting on June 22, 2022, to adopt the Recapture/Resale Policy under the Program Year 2021-2022 CDBG/HOME Program.

WHEREAS under the requirements of 24 CFR 92.205(b) an entitlement jurisdiction must submit guidelines for resale or recapture and obtain HUD's specific written approval if it intends to use HOME funds for homebuyers activities.

WHEREAS by allocating funds to down payment assistance and to a community housing development organization under program year 2021-2022 Marion County must submit its recapture/resale policy to HUD before any projects may begin.

WHEREAS it should be noted that in the future Marion County will submit and changes to its Recapture/Resale Policy as part of its Annual Action Plan submission to the United Stated Department of Housing and Urban Development (HUD).

IT IS HEREBY ORDERED that the Board of Commissioners adopt the recapture/resale policy to be implemented for homebuyer activities and to authorize the Community Development Division to submit the policy to HUD.

DATED at Salem, Oregon, this 22nd day of June 2022.

MARION COUNTY BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

Recapture/Resale Policy

Marion County Board of Commissioners Office

Marion County-Recapture/Resale Policy

April 2022

Introduction

Marion County is a participating jurisdiction in HUD's HOME Investment Partnerships Program. Federal regulations require the County to establish written recapture/resale policies that comply with HOME statutory and regulatory requirements for the purpose of carrying out HOME-assisted homeownership activities. These policies are set forth in the Annual Action Plan and clearly describe the recapture/resale provisions, the specific circumstances under which these provisions will be used, and how the County will enforce the provisions for HOME-funded homeownership projects. HUD reviews and approves the provisions as part of the Annual Action Plan process.

The purpose of this section is to provide the policies for the Marion County's HOME Investment Partnerships Program. Marion County may use HOME funds for different types of programs to assist with single-family residences:

- Down Payment Assistance provided to new homebuyers
- New Construction of Affordable Housing

2021 Homebuyer Projects

Once amended the County's 2021 Annual Action Plan will include two homebuyer activities:

- **Down Payment Assistance**- HOME funds will be used to provide down payment assistance for up to 19 households
- **New Construction**- HOME funds will be used in conjunction with a CHDO as a development subsidy for the construction of a to be determined number of homes.

The Down Payment Assistance will be subject to the recapture provisions and the New Construction will be subject to Resale Provisions.

General HOME Property Restrictions

For a homebuyer or homeowner to be eligible for HOME assistance, they must have a low to moderate income, at or below 80% of area median income, as provided by HUD. The household must be purchasing, constructing, or rehabilitating a home that they intend to maintain as their primary residence. Depending on the amount of HOME assistance provided to the residence, the property must remain affordable for the number of years indicated in the County's written agreement with the homebuyer. If the property is sold during this time, or if it is no longer the primary residence of the household, the recapture/resale provisions will be enforced.

Recapture Policy

Marion County uses a "recapture" model for the down payment assistance program to assist homebuyers in the purchase of a new home. Under HOME recapture provisions, financial assistance is provided directly to the buyer or the homeowner and must be repaid if the property is sold during the affordability period. Once the funds are repaid to Marion County the property is no longer subject to any HOME restrictions and the County may then use the funds for other HOME-eligible activities. Recapture will be enforced over a 99-year period for the Homeownership Program.

Homeownership Program: As a new entitlement community receiving funds from HUD Marion County is establishing its first down payment assistance program. A maximum amount of $25,000 can be acquired for down payment assistance from an eligible homebuyer. HOME assistance will be in the form of a 0% interest, deferred payment loan whereby 100% of the amount provided must be repaid if sold within the first 5 years and then from years 6-10 the loan will decline $3,000 a year until there is $10,000 remaining balance. After 10 years the remaining $10,000 will remain on the property as a 99-year lien until the property is sold and the funds are paid back to the county. The $25,000 may be increased program-wide at the County's discretion based on need and housing prices. Underwriting will be conducted on each property to determine the amount of subsidy to contribute to each household. A written agreement, signed by all parties, in the form of a promissory note and trust deed will serve as the security for these loans. The lien will be recorded in the land records of Marion County. If an increase of down payment assistance is determined to be needed by the County and it results in over $40,000 or more in assistance the County will update its recapture provisions to determine an appropriate finance mechanism.

To satisfy the recapture requirement, the home buyer must pay back the direct HOME Subsidy at the time of sale, transfer, or if they no longer occupy the property as the primary residence. *Recapture is calculated by taking the sales price minus loan repayments (Non-HOME loan) and closing costs. This amount is the "Net Proceeds."* ***The County's recapture is limited to the net proceeds****, if any.*

Marion County will prorate all loans based upon the exact amount of assistance provided as permitted by the underwriting policy of the County.

Explanation of Recapture:

Sales price – loan debt (non-HOME debt) – closing costs = Net Proceeds (HOME amount to be recaptured, if any.)

Net Proceeds – direct HOME Subsidy = Equity (if any)

Example

$150,000 - $120,000 (1st Mortgage) - $5,000 (closing Costs) = $25,000 (Net proceeds available for recapture).

$25,000 due if sold in Year 1

$25,000 due if sold in Year 2

$25,000 due if sold in Year 3

$25,000 due if sold in Year 4

$25,000 due if sold in Year 5

$22,000 due if sold in Year 6

$19,000 due if sold in Year 7

$16,000 due if sold in Year 8

$13,000 due if sold in Year 9

$10,000 due if sold in Year 10

$10,000 due at time of sale after year 10

Additional Example (If there is less than $25,000 being loaned)

If $10,000 is being loaned then the following mechanism will apply

$10,000 due if sold in Year 1-5

Since $10,000 is 40% of $25,000 the prorated decline each year from years 6-10 will result in 40% of the original loaned amount due after 10 years. In this example that would be $4,000 so over years 6-10 the amount due would decline based upon $6,000 in equal intervals over the five-year period (i.e. $6,000/5 years = $1,200 decline each year) reaching the $4,000 amount owed after 10 years.

Resale Policy

The resale method is used when Marion County provides funding directly to a developer as a subsidy to reduce development costs, thereby, making the price of the home affordable to the buyer. Commonly referred as a "Development Subsidy," these funds are not repaid by the developer to the County but remain with the property for the term of affordability. These subsidies are subject to resale provisions. It is the policy of the Marion County Board of Commissioners to offer development subsidies up to the maximum amount permitted by HUD.

When resale is triggered during the Period of Affordability, the Developer/Sponsor or Subrecipient shall notify the County who will:

1) Agree to the new sale price with consultation from the Subrecipient and written determination from a realtor or appraiser;
2) Confirm the Fair Return calculation to the seller and/or County;
3) Review the income eligibility of the subsequent buyer; and
4) Determine the amount of time left to assume on the Period of Affordability.

The HOME statue states that "resale provision must limit subsequent purchase of the property to income-eligible families, provided the owner with a fair return on investment, including any improvements, and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers."

Marion County's policy is to assist households whose income is between 60-80% of AMI through its HOME-funded homeownership activities. Marion County considers affordability as a household spending no more than 30% of its income on the fixed costs of owning a home (payments of principle, interest, taxes, and insurance).

If the housing is voluntarily transferred during the term of affordability, it must be made available for subsequent purchase to a buyer who qualifies as low-income and will use the home as the family's principal residence.

The property obtained must always be the homebuyer's principal residence during the term of affordability.

Homebuyers must enter into a restrictive covenant, outlining resale requirements.

Restrictive covenants between the original homebuyer and the City must be signed prior to purchase. This must state the amount of HOME subsidy, the Period of Affordability, and state the Fair Return provision. The new homebuyer must be low or moderate income, meeting the HOME Program definition, and occupy the property as the principal residence during the remaining term of affordability.

Deed Restrictions on the property and Promissory Note must be executed and recorded by the Developer/Sponsor or Subrecipient on behalf of the County. It must include the number of years for the Period of Affordability; the amount of HOME subsidy used by the homebuyer; the terms of occupancy required as principal residence; and the restriction of the property's sale to income-eligible homebuyers during the remaining term of affordability.

New HOME funds invested for a subsequent low-income homebuyer at resale, will extend the period of affordability according to the HOME guidelines.

Pre-payment of HOME funds does not terminate the Period of Affordability. The owner will be required to reside in the unit the Period of Affordability has concluded. The exception to this is the sale of the residence or foreclosure.

Fair Return on Investment

Marion County will administer its resale provisions by ensuring that the original homebuyer receives a fair return on his/her investment and that the home will continue to be affordable to a specific range of incomes. Fair Return on Investment means the total homeowner investment which includes the total cash contribution plus the approved capital improvements credits as described.

1. The amount of the down payment at the time of purchase;
2. The cost of any capital improvements, documented with receipts provided by the homeowner (and approved by), including but not limited to:

    a) Any additions to the home such as a bathroom, bedroom, or garage
    b) Replacement of HVAC systems
    c) Accessibility improvements (bathroom modifications for disabled or elderly, installation of wheelchair ramps and grab bars, etc.) any and all of which must have been paid for directly by the homeowner and were not installed with federal, state, or locally funded grant programs; and
    d) Outdoor improvements (driveways, walkway, retaining wall, or fence)

    Note: All capital improvements will be visually inspected to verify existence.

3. The percentage of change as calculated by the Housing Price Index (HPI) Calculator of the federal Housing Finance Agency. The HPI Calculator is currently located at http://wwwfhfa.gov/datatools/tools/pages/HPICalculator.aspx and projects what a given house purchased at a point in time would be worth today if it appreciated at the average rate of all homes in the area.

Calculating Fair Return on Investment

Down Payment: The original amount of money the homebuyer was required to put down in earnest and was not returned to the homebuyer at closing.

For Example: homebuyer made a down payment of $1000.
Cost of capital improvements: Any capital improvements that were made by the original homebuyer. The project was originally approved, receipts were provided and a visual inspection confirms the project is still in existence.

For example: homebuyer had a privacy fence installed at the cost of $1,500 and provides receipts; inspection supports that fence is there; verified it was approved.

Principal Paid: Amount of money that the original homebuyer has paid towards the loan

For example: The original homebuyer's mortgage was $55,000 at 6.75% interest for 30 years and has made payments for 48 months. The current mortgage balance is $52,460. The principal amount paid is $2,540.

Percentage of Change: Using the Federal Housing Finance Agency's Housing Price index for a quantitative measure of change in the value of a property.

For Example: The original homebuyer purchased the house for $55,000 and the amount of developer subsidy was $25,000; requiring a 10-year term of affordability. For the purposes of calculating the HPI, the home was purchased in the 3rd quarter of 2010, and be calculated using the most current quarter available, 1st quarter 2014. Using the HPI calculator, the house would be $16,147.

Calculating the Fair Return to the original homebuyer
Down Payment: $1,000
Capital Improvements: $1,500
Principal Paid: $2,540
Increase Value: $16,147
$21,187 Fair Return on Investment

In order to realize a fair return on investment to the original homebuyer, the sales price must be set at roughly $73,700 (i.e., $55,000 ($2,540 in principal payments made plus remaining mortgage balance $52,460) + $1,000 down payment + $1,500 capital improvements + $16,147 HPI increase $73,647

If the property is sold to an eligible HOME borrower (meet income eligibility guidelines) and the debt to ratios do not exceed 30% of the annual household income; then the borrower could assume the mortgage at the at the prorated amount left.

Continued Affordability

HOME-assisted properties subject to resale requirements must be affordable to low-income homebuyers. Affordable is defined as household income at or below 80 percent of area median income: no more than 30% of household income on housing debt (principal, interest, mortgage insurance, property taxes, insurance, etc.)

Non-compliance with the residency requirement will necessitate the immediate repayment of HOME funds invested into the property unless the house is reoccupied by the original homebuyer or subsequently sold.

Resale is triggered when the house is sold or occupied by a household other than the original homebuyer during the term of affordability and a direct subsidy was provided to a developer.

When resale is triggered during the Period of Affordability, the Developer/Sponsor or Subrecipient shall notify the County who will:

1.) agree to the new sale price with consultation from the Subrecipient and written determination from a realtor or appraiser
2.) confirm the Fair return calculation to the seller and/or the County
3.) review the income eligibility of the subsequent buyer; and
4.) determine the amount of time left to assume on the period of affordability

New HOME funds invested for a subsequent low-income homebuyer at resale, will extend the period of affordability according to the HOME guidelines

Marion County will use a market rate (fee simple) appraisal conducted by an independent, state licensed appraiser to establish the value of the property prior to the initial purchase of the home, Marion County follows the standard practice for all real estate purchase transactions. By obtaining a new market rate fee simple appraisal, upon notice of intent to sell by the homebuyer, the County ensures that standard methods for determining property values are always used. In this way, market values are easily measured, professionally determined, and publicly accessible. No subjective judgments are made by the County or the homeowner as to what constitutes value and how value is determined.

Pre-payment of HOME funds will not terminate the Period of affordability. The owner will be required to reside in the unit until the Period of Affordability has concluded. The exception to this is the sale of the residence or foreclosure.

The County may invest additional HOME funds to preserve affordability of the unit in the event of foreclosure.

The County will seek to collect the HOME investment due if the house is sold or goes into foreclosure and no subsequent qualified low-income homebuyer can be identified. The collection will be limited to the net proceeds available.