

RESOLUTION NO. 2016-79

**A RESOLUTION APPROVING THE AMENDED GUIDELINES FOR THE
DOWN PAYMENT ASSISTANCE PROGRAM.**

WHEREAS, the City of Wayne desires to amend its guidelines for the down payment assistance program, particularly to change the 100% AMI to 120% AMI; and

WHEREAS, the Department of Economic Development, upon review of the City's guidelines, recommended changes therein to bring said guidelines up to today's program requirements.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Wayne, Nebraska, that the "Amended Guidelines for the Down Payment Assistance Program" are hereby adopted as amended in Attachment "A."

PASSED AND APPROVED this 15th day of November, 2016.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk

ATTACHMENT “A”

CITY OF WAYNE AMENDED GUIDELINES FOR DOWN PAYMENT ASSISTANCE PROGRAM

PURPOSE

The purpose of the City of Wayne Affordable Housing Development Program is to provide financial assistance to low-to-moderate income families, for the purchase of single-family residential housing units, which are safe, decent, sanitary and affordable, utilizing Nebraska Affordable Housing ~~Program Funds~~ **Trust Funds (NAHTF)**. It is an important goal to increase the number of good, habitable dwelling units and improve the housing stock by providing low-interest loans to homeowners to purchase a home in the City of Wayne. Wayne Community Housing Development Corporation (WCHDC) has been contracted / organized to facilitate and coordinate the development of housing and economic development initiatives. The City of Wayne will provide assistance to those persons of greatest need, improve the availability of housing, promote home ownership, and increase attractiveness of designated underdeveloped neighborhoods and increase local employment. This program will be operated and administrated by the City of Wayne and Wayne Community Housing Development Corporation (WCHDC).

This program is in compliance with the Fair Housing Act. The City of Wayne and the Wayne Community Housing Development Corporation will comply with the following sections of the Fair Housing act and the following regulations:

Section 818. [42 U.S.C. 3617] Interference, coercion, or intimidation enforcement by civil action. City of Wayne and WCHDC’s housing programs do not coerce, intimidate, threaten, or interfere with any person seeking housing funds. City of Wayne and WCHDC do not discriminate when loaning housing funds based on race, color, religion, sex, handicap, familial status, or national origin and has adopted a Fair housing Resolution. The City of Wayne and WCHDC will follow the following CFR regulations for implementing the Fair Housing Act for HUD funded program.

Title 24 CFR 100 Subpart C provides City of Wayne’s housing down payment assistance program with interpretations when providing financial assistance for the rehabilitation of a dwelling. City of Wayne does not discriminate when loaning rehabilitation funds based on race, color, religion, sex, handicap, familial status, or national origin and has adopted a Fair Housing Resolution.

Title 24 CFR 100 Subpart D provides City of Wayne’s housing rehabilitation program with guidance to permit handicapped persons reasonable modifications of the existing dwelling that is being rehabilitated.

Title 24CFR 100 Subpart F provides the City of Wayne’s housing rehabilitation program with guidance of conduct that is lawful under Section 818 of the Fair Housing Act.

Title 24 CFR 107 is used to take action necessary and appropriate to prevent discrimination because of race, color, religion, sex, handicap, familial status, or national origin. Under this section, the City of Wayne insures that all legal documents contain provisions regarding discrimination. The city of Wayne maintains racial, national origin and sex data required by the department in connection with its programs.

Title 24 CFR 110 sets forth regulations regarding the purpose and location of posters. The City of Wayne has its posters prominently displayed, and of proper size, so they can be read by all persons seeking housing. The City of Wayne’s letterhead and all housing brochures bear the Fair

Housing logo.

1.0 APPLICATION PROCESS WILL BE BASED UPON NEED

1.1 General (Conflict of Interest)

No member of the governing body and no other official, employee, agent, or any member of their immediate family of the City of Wayne or the Wayne Community Housing Development Corporation who exercises policy, decision-making functions or responsibilities in connection with the planning and implementation of this Down Payment Assistance program shall directly or indirectly benefit from this program. This prohibition shall continue for one year after an individual's relationship with the City of Wayne and WCHDC ends. Any other employee, officer, or committee member may be eligible, but will be treated no differently in the determination of applications accepted for funding. Enclosed with this person's application shall be a statement of disclosure, which outlines the nature of the possible conflict and a description of how the public disclosure was made. Included will also be verification that the affected person has withdrawn from the active involvement in any Down Payment Assistance loan related issues.

1.2 Income Eligibility

All determinations for assistance will be based upon need. Households receiving assistance from this program will be using 24 CFR 5.609 Annual Gross Income (in accordance with HUD guidelines) for the household that does not exceed ~~100%~~ **≤120%** of the **Area Median Income of Wayne** ~~the county in which they reside. Annual Employer verification, recent pay stubs or tax returns will determine anticipated income.~~ **Annual anticipated gross income as defined in HUD HUD 24 CFR 5.609 is the gross income of all adult household members that is anticipated to be received during the upcoming 12 months. Third party verifications and various credit checks, recent pay stubs and tax returns will determine the applicant's eligibility for the program. For the purpose of confidentiality, a statement by the Housing Specialist, who has been presented with adequate documentation to verify that program participants meet the income thresholds as defined by HUD, shall be deemed sufficient to document low-to moderate income status when applications are presented to the City of Wayne.**

1.3 Family Status

To qualify for a home mortgage under this Down Payment Assistance Program, the applicant must be a minimum of a one-person household.

1.4 Real Property

In order to qualify under the program, an applicant shall not currently own or have any other interest in other real property. The property to be purchased must be the principal residence of the applicant during the period of the loan. **The property will not be inspected and we will not offer Down Payment Assistance on properties that are an occupied rental or the property had tenant occupancy within the last year.**

1.5 Marketing Procedures

The City of Wayne and Wayne Community Housing Development Corporation will market the program to local, regional residents and tenants of public housing with income of ~~100%~~ **120%** or less of the median area income for Wayne County. The marketing program will include news articles in the area papers, public access, posters and brochures displayed at area where qualified homebuyers might use on a regular basis. This will include those living in manufactured housing or other families assisted by public housing agencies. Included in the marketing program will be households who are least likely to apply but eligible under these guidelines.

2.0 PROPERTY ELIGIBILITY

2.1 Location

The housing units to be purchased by the ~~new construction grant program (07 HP 5004)~~ participants will be located in the ~~Western Ridge Subdivision~~ **City** of Wayne, Nebraska and subject to limitations set by individual NAHP grant rules.

2.2 Purchase Price

The **maximum purchase price of each housing unit will not exceed 95% of the median purchase price of the area.** For more information see: <http://www.neded.org/community/community-info/documentslibrary-a-form/trust-fund>. ~~offered in the program shall not exceed the higher of the current single family mortgage limits under Section 203(b) of the National Housing Act or the Nebraska Investment Finance Authority single family price limits for existing properties.~~

2.3 Maximum Per Unit Subsidy

Financial assistance provided to the homebuyer shall not exceed the maximum per unit NAHP subsidy. **The subsidy limits by county can be located at the following website:** <http://www.neded.org/community/community-info/documentslibrary-a-forms/trust-fund>.

2.4 Energy Efficiency Criteria

Newly-constructed housing will meet or exceed the ~~2006~~ **2009 (or most current)** International Model Energy Code. All units assisted with Nebraska Affordable Housing Program (NAHP) will be made to meet Housing Quality Standards (HQS) **and NDED Minimum Rehabilitation Standards.**

2.5 Owner-Occupied

The Down Payment Assistance program shall be for only owner-occupied principle residence purchase and shall not be retained for rental purposes. **Homebuyer and subsequent homebuyers must occupy the property purchased as a principal residence for at least 5 years. Regardless if resale or recapture provisions are utilized, the Affordability Period for the project must be a minimum of 5 years.**

2.6 Unit Characteristics

Existing or newly constructed single-family housing units are eligible for this program. Housing connected to other space used for commercial purposes, mobile homes, and rental properties are not eligible for assistance. Duplexes are eligible for assistance if the unit is owner-occupied and a definitive property boundary is established.

3.0 TYPES OF FINANCIAL ASSISTANCE

3.1 Loan Program

All applicants will be required to secure a Single-Family Mortgage Loan from a lender of their choice to purchase a single-family home. The applicant will need **pre-qualification letter and a good faith estimate** ~~or a pre-approval letter~~ from the primary lender prior to applying for the down payment assistance funds. The Primary Lender and its underwriting criteria determine the basis for City of Wayne Down Payment Assistance. The amount of the down payment **assistance** loan will be determined at the time of application and will not exceed 20% of the purchase price of the **housing unit and will be no more than \$30,000 for either an existing or newly constructed single family housing unit.** ~~home. The maximum amount of down payment assistance to any borrower is \$30,000. The total loan will be used towards the down payment of one housing unit and associated closing costs.~~ The applicant will be required to provide \$1,000 towards closing costs ~~for new construction activity.~~ The primary lender will appraise the property.

A subordinated lien will be placed upon the property at the time of signing the promissory note in an amount equal to the loan. This lien in favor of the City of Wayne will take a subordinate position to the primary lender's original mortgage. Future refinancing, home equity loans and all future liens will take a subordinated position to the City of Wayne loan. At the request of the borrower, future equity

loans, which require a release or subordination of the City of Wayne lien, will require our balance to be paid off unless the committee receives a written explanation of need. Any subordination must require at least an 80% loan-to-value (LTV) ratio. The homeowner will be required to pay all closing and filing costs associated with the refinancing and subordination if approved by the City of Wayne council members.

The loan shall consist of a 0% deferred loan. No debt service of the borrower will be required for the down payment assistance loan until the note to the primary lender for the purchase of the property is repaid. The forgivable loan is non-transferable, has no (0%) interest, and has a ~~10 to 15~~ 5 year recapture provision. See section 3.1a on Affordability period. Forgiveness of the loan is based on the number of full years the owner occupied the property as their primary residence. A year is calculated from the exact date of the loan closing to the corresponding date one year later. No forgiveness will be recognized for partial years. The amount of the loan forgiven will be 20% for each full year of residence after five (5) years with 100% forgiveness at the end of the the 10th year. ~~for a 15 year affordability period the amount of the loan forgiven will be 10% for each full year of residence after five (5) years with 100% forgiveness at the end of 15 years.~~

In the event the borrower or his/her heirs shall sell or move to another principal residence or transfer said property, repayment of the loan to the City of Wayne is required. If the net sale price received less the primary lender's loan is not sufficient to repay the City of Wayne. **The City of Wayne** shall allow the available proceeds from the resale to repay the homeowner's investment first. The subsidy is then repaid to the extent that proceeds are available. The purchaser may apply to the City of Wayne to assume the outstanding loan, but terms will be established based upon the purchaser's financial information.

3.1a Affordability Period

Trust Funds invested per Trust Funds-assisted unit:	Affordability Period
\$0- \$40,000 \$30,000	10 5 years
>\$40,000	15 years

The affordability period is based upon the amount of Trust Funds invested in a **Trust Fund assisted** particular unit. The amount of Trust Funds invested in each particular unit within the project may vary-

3.2 Foreclosure

Lender shall give the notice to Borrowers following Borrowers' breach of any covenant or agreement in the Note and the Deed of Trust of which it secures. The notice shall specify (a) the default, (b) the action required to cure the default, (c) a date not less than thirty (30) days from the date the notice is given to Borrowers' by which the default must be cured, and (d) failure to cure the default on or before the date specified in the notice may result in acceleration of the sum secured, the deed of trust and resale of the property. Upon acceleration of the sum secured and resale of the property, the City of Wayne shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale including, but not limited to, the City of Wayne's fees as permitted by Nebraska law and reasonable fees; (b) to all sums secured by this security agreement; and (c) any excess be recaptured by the City of Wayne. The City of Wayne will recapture the net proceeds in the case of foreclosure

3.3 Construction Subsidy

~~New Construction includes the hard costs for acquiring land, constructing homes and development subsidy (the difference between the cost to develop and build the home and the appraised value~~

~~of the home). If the purchase price of the housing unit is higher than income ratios or mortgage eligibility allow then gap subsidy (the difference between the appraised value and the sale price of the home) may be applied to lower the purchase price to allowable limits. This may be used in conjunction with or independent of down payment assistance.~~

4.0 APPLICATION PROCESS

4.1. Application

~~The City of Wayne will give notice in the Wayne Herald and local radio stations.~~ In order to obtain the application forms the applicant must contact the Wayne Community Housing Development Corporation to schedule an appointment to make an application for assistance. Staff will explain the assistance available through the program and be responsible for processing the application, verifying income by third party verifications and determining the applicant's eligibility for participation in the program. During the application review, Wayne CHDC will make recommendations and referrals to other programs available such as USDA Direct Rural Housing Loans.

4.2 Underwriting Criteria

The Wayne CHDC housing specialist will take into consideration the following mitigating factors in making a credit recommendation to the WCHDC Board of Directors:

- A. Credit Guidelines - Credit payment history, revolving accounts, any collections, judgments, liens, bankruptcy, foreclosures, repossessions, and credit depth.
- B. Debt to Income Ratios - Housing expense ratios between 25% - 28% and Total household expense ratios between 33% - 40%.
- C. Compensating Factors - Any of the following may be considered in compensating factors providing they are strong: ratios, equity, assets, **credit scores**, time on the job.
- D. ~~Loans to provide down payment assistance for the purpose of new single family homes will be made to eligible families with an income no greater than 100% of the median income of the county in which they reside by Section 8 Part 5 standards established by HUD for lower income assisted housing and meeting all of the criteria that was previously set. The home mortgage loan must be obtained from a local financial institution.~~

4.3 Procedure for Approval or Denial

Applications will be taken on a first ready, first serve **basis**. First ready will mean that the applicant will have completed a preliminary application/initial interview, receive income verification forms to include: SSI/SS Benefits, Child Support, Alimony, ADC, Pay stubs, Asset and other forms needed to determine income; Eligibility Worksheets/Income Calculations; pre-approval letter from primary lender and/or good faith estimate; income worksheet; board loan summary; and homebuyer education certificate. The Wayne CHDC shall maintain a list of applicants. All applicants will be notified as to approval or denial in writing. Approved applicants will be notified. Non-approved applicants will be notified stating the reason for not being selected.

4.4 Purchase Agreement

Once the applicant is approved, the applicant will sign a purchase agreement and attend a Homebuyer Education Workshop.

4.5 Request for Funds

Following the signing of a purchase agreement and the determination of down payment and closing cost assistance, a Request for NAHP funds will be prepared approximately four (4) weeks prior to the anticipated closing date.

It is expressly understood that WCHDC may activate its line of credit in order to expedite the loan closing by request of the borrower. It is also understood that the estimated interest accrual from the time of loan closing and the date that the City of Wayne receives reimbursement from the State of Nebraska can be drawn down as a cost to the project as hard costs.

4.6 Homeowner Education Workshop

Each applicant must attend a Homeowner Education Workshop prior to closing. The home buyer education must be provided by HUD-approved housing counseling agencies, REACH affiliated organization or a Nebraska Department of Economic Development approved equivalent. The homebuyer education must be provided by HUD-approved housing counseling agency, REACH affiliated organization of a Nebraska Department of Economic Development approved equivalent. The Homebuyer Education Workshop, which includes an educational packet and instructional materials on topics including family financial management, record keeping, maintenance, and up keeping landscaping, lawns and pest management, appliances and home furnishings. A copy of the certificate of completion of the Homebuyer Education Workshop is to be provided to WCHDC.

4.7 Fair Housing Act of 1968

Title VII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents of legal custodians, pregnant women, and people securing custody of children under the age of 18), and handicap (disability).

No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available or inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting)

5.0 Lead-Based Paint

5.1 Lead-Based Paint Brochure

The HUD/EAP Disclosure Rule includes the following language on homebuyer's right to conduct a lead hazard evaluation Program participants shall receive, as part of their application packet a copy of the HUD brochure on lead-based paint entitled "Protect Your Family From Lead In Your Home". The receipt of this brochure by the program participant shall be documented by signature of the homebuyer on the "Notification – Watch out for Lead-Based Paint Poisoning" form included in the application packet.

5.2 Work Plan in Accordance with 24 CFR Part 35, Subpart A

1. After signing a purchase agreement, the buyer has 10 days to perform a risk assessment or paint inspection of the home. The buyer and seller may mutually agree to lengthen or shorten this 10-day time period. If the buyer exercises the right, the buyer is responsible for scheduling and paying for the risk assessment or the paint inspection.

2. WCHDC will conduct visual assessment on all units built prior to 1978
3. If the lead hazard evaluation indicates that lead-based paint hazards are found, the buyer has the right to cancel the contract. However, this right does not exempt the buyer from any costs of cancellation if the right to cancel is not made clear in the contingency to the sales contract.
4. If a lead hazard is found, it would be stabilized using lead safe work practices by trained and certified workers.
5. Lead safe work practices are not required if the area of repair falls below de minimis threshold.
6. Clearance will be achieved before occupancy of the unit.
7. Four options for addressing lead hazards found due to such evaluations are (this will be determined on a case by case basis):
 - a. Refer buyer to a purchase/rehabilitation/resell program.
 - b. Reject home with lead hazards from the program and assist buyer in finding another home.
 - c. Have the seller fix the hazard prior to purchase.
 - d. Negotiate the price of the home down to provide funds for the buyer to fix the hazards.

6.0 LOAN CLOSING

6.1 Closing

The WCHDC will schedule the loan closing with the borrower and the primary lender. The primary lender will prepare all closing documents for its loan. The WCHDC will prepare and have the borrower execute at closing:

- Promissory Note
- Deed of Trust
- Loan Agreement

Upon signing of the three closing documents, the City of Wayne will file the Deed of Trust at the Register of Deeds Office of the county in which the property is located.

6.2 Insurance

Owner-occupants will need to carry a basic property insurance policy of at least one-hundred (100%) percent of replacement cost. Homes located in a designated special flood hazard will be required to carry flood insurance. Any insurance payment of a claim over \$1,000 will require a review of the board. Homeowners insurance and flood insurance, if applicable, must be carried on the dwelling throughout the loan repayment period in order to remain eligible for the program. The City of Wayne is to be named as a loss-payee on all insurance policies.

6.3 Close-Out

WCHDC shall maintain and keep all applications as well as all other required documents, records and other evidence in conformance with NAHP regulations.

7.0 RELOCATION POLICY-PROPERTY MAINTENANCE

The relocation of persons for acquisitions of properties either by voluntary or involuntary means must adhere to the federal rules and regulations as stated in 49.CFR 24.1201. In cases where either voluntary or involuntary acquisition is anticipated, the Nebraska Department of Economic Development will be contacted prior to any action.

~~All properties purchased with Nebraska Affordable Housing Program funds shall be maintained in compliance with local ordinances and subdivision covenants.~~

8.0 — CONSTRUCTION SUPERVISION

~~All single family units are built under this program shall be subject to appraisal to verify completed value. All development is subject to review and inspection.~~

9.0 — DEVELOPER CONTRACTOR DISPUTES

~~Construction related developer/contractor disputes or deficiencies and/or any disagreements between the homebuyer and seller or developer to the construction of the homes shall be resolved prior to loan closing in a manner acceptable to all parties. Informal resolution of disagreements is recommended. Acceptance of the home and delivery of the deed at loan closing shall constitute the homebuyer's waiver of any rights concerning known defects or existing disputes or disagreements between the homebuyer and seller, subject only to such special warranty given by the seller on the home and as set forth in the documents delivered and accepted at the time of closing. The foregoing shall not limit warranty express or implied as may otherwise exist as a matter of law.~~

10.0 GRIEVANCE PROCEDURES

In the event that any applicant feels he or she has been unfairly treated or discriminated against during the process of selection of projects to be funded, excluding the determination of ability to secure a Home Mortgage Loan from a financial institution, or within any other segment of this Down Payment Assistance Program, he or she may appeal the decision of the **Wayne Community Housing Development Corporation to the City of Wayne. The appeal must be submitted in writing to the Mayor and for their consideration and be postmarked within 14 calendar days of the decision.** The City of Wayne Council Members will act to support or overturn the action within 30 days of the receipt of the appeal. The City of Wayne Council Members will have final authority in the decision. **The Nebraska Department of Economic Development will be contacted in cases where grievance issues cannot be resolved by the grantee's normal grievance procedures.**

Appeals regarding loan ability shall be made to the financial institutions in accordance with their procedures.

11.0 AMENDMENTS TO THE GUIDELINES

In an ongoing effort to improve the quality of the Wayne Down payment assistance Program, the City of Wayne will receive any suggestions on amendments to the guidelines from the public, program participants, Realtors, financial institutions or members of the WCHDC Board. Upon approval and adoption of the amendment by the Wayne City Council, the amendment will be included in the program guidelines and submitted to the DED program rep for approval.

12.0 OFFICIAL CONTACT OFFICE

The place of contact for this program shall be the office of the Wayne Community Housing Development Corporation in Wayne, Nebraska. Any grievances, suggestions, or requests for information should be directed to that office. This in no way shall be construed to limit other interested parties from distributing information about the program or receiving suggestions for amendments to the program. All grievances shall be directed to the WCHDC in writing.

13.0 PROGRAM INCOME REUSE & RECAPTURE REUSE PLAN

In the event repayment of the NAHP assistance occurs after the grant period, funds will be used to continue the WCHDC Down Payment Assistance Program as stated in this Section. Loans to provide down-payment assistance for the purchase of new or existing single-family homes will be made to eligible families with an income no greater than ~~100%~~ 120% of the ~~area~~ median income of the county in which they reside by 24 CFR 5.609 standards established by HUD for lower income assisted housing and meeting all of the criteria that was previously set. The home mortgage loan must to be obtained from a local financial institution

In the event repayment of the NAHP assistance occurs during the affordability period recapture of all NAHP assistance funds is required. Loans to provide down-payment assistance for the purchase of new or existing single-family homes will be made to eligible families with an income no greater than ~~100%~~ 120% of the area median income of the county in which they reside by 24 CFR 5.609 standards established by HUD for lower income assisted housing and meeting all of the criteria that was previously set. Up to 10% of the reuse funds may be used for general and housing administration costs, however no funds can be used for general or housing admin if recovered during the federally imposed affordability period. These percentages will not exceed the maximum percentages allowed in the original grant.

APPROVED this 15th day of November, 2016.

THE CITY OF WAYNE, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

These Housing Guidelines are hereby approved by the Nebraska Department of Economic Development (NDED) this _____ day of _____, 2016.

DED Representative