

Date: 5 February 2013

To: Mr. Agustin Olvera, Director
CDA Housing Operations Division
215 Martin Luther King, Jr. Blvd, Ste. 120
Madison, WI 53703
Sent VIA EMAIL to aolvera@cityofmadison.com

From: Heidi M. Wegleitner
Staff Attorney, Legal Action of Wisconsin, Inc.

RE: Comments on CDA Draft ACOP

Dear Mr. Olvera:

I have reviewed the draft ACOP and submit the following comments for your review and consideration. Legal Action has very limited resources and did not have adequate time to review this voluminous plan to ensure compliance with all applicable law. We have, however, come up with the following preliminary suggestions based on our experience in public housing legal matters. Should you have any questions or concerns regarding our comments, please let us know. Please keep us informed of any upcoming proceedings and revisions regarding the ACOP. Thank you.

2-I.B. NON-DISCRIMINATION (2-4)

LAW Suggestion:

CDA should list all protected classes in the City of Madison (Chapter 39 of the Madison General Ordinances) and Dane County (Chapter 31 of the Dane County Code of Ordinances), to recognize its obligation to comply with local fair housing and equal opportunity law and specifically incorporate the local ordinances into this section. This was already recognized in the preceding section, so additional protected classes should be incorporated herein.

Providing Information to Families

LAW Suggestion:

CDA should add language indicating that it will inform tenants of their right to request a reasonable accommodation in all notices of adverse action.

Language should be added as follows:

If the CDA observes an individual experiencing difficulty with a certain rule policy, practice or service, the CDA will ask the applicant or participant if he/she is experiencing difficulty and if s/he is having any difficulties because of physical or mental health conditions. If the applicant or participant answers affirmatively, the CDA will ask the applicant or participant if he/she wants help completing the CDA reasonable accommodation form.

Language should be added to ensure that anytime a reasonable accommodation is requested, the CDA has a duty to process it (i.e. investigate , evaluate and decide) before they can come to a determination that it does not qualify for protection for one of the reasons stated in this section.

Notification of adverse action should include the following information: *If you believe the issues stated in this notice relate to the disability of you or a family member, you have the right to request a reasonable accommodation to a rule, policy, practice or service on account of the disability. We recommend you make your reasonable accommodation request in writing stating the particular rule, policy, practice or service for which you are seeking an accommodation.*

2-II.C. REQUEST FOR AN ACCOMMODATION (2-9)

LAW Suggestion:

Add the following:

If it is not obvious what type of accommodation is needed, the family should try to explain the type of accommodation needed.

Modify as follows:

The CDA will encourage the family to make its request in writing using a reasonable accommodation request form, ~~and the reasonable accommodation request form must be submitted within 10 business days.~~ However, the CDA will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted. ~~If an informal request is made by the family, the family must explain what type of accommodation is needed to the CDA within 10 business days.~~

CDA has a duty to engage in an interactive process with the family once a reasonable accommodation has been requested. [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act.] Both the family and the CDA have a duty to be responsive and communicate during the interactive process to facilitate a resolution regarding the requested accommodation.

3-I.C. FAMILY BREAKUP AND REMAINING MEMBER OF TENANT FAMILY (3-4)

LAW Suggestion:

When the CDA makes a decision regarding who will retain the subsidized housing benefit (tenancy or waitlist spot), it will notify both parties in writing of the decision and the right for the aggrieved party to request a grievance hearing regarding the decision.

3-I.J. GUESTS [24 CFR 5.100]

LAW Suggestion:

~~A resident family must notify the CDA when overnight guests will be staying in the unit for more than 3 days. A guest can remain in the unit no longer than 7~~ 14 consecutive days or a total of ~~14~~ 45 cumulative calendar days during any 12 month period.

The CDA will notify guests that they are prohibited from CDA property by issuing a no-trespassing notice with the resident (if known) and the guest (in person, by mail to a known address, or by posting a notice on the CDA's property). Notices will include information regarding the resident's right to request a grievance hearing regarding the no-trespass decision.

~~Former residents who have been evicted are not permitted as overnight guests.~~

3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5, Subpart E] (3-15)

U.S. Citizens and Nationals

LAW Suggestion:

Revise CDA Policy as follows: "Family members who declare citizenship or national status will not be required to provide additional documentation unless the CDA receives information indicating that an individual's declaration may not be accurate. The CDA will provide the information forming the basis for the supplemental documentation request and the source of the information and provide copies of anything in writing regarding the same."

3.III.B. REQUIRED DENIAL OF ADMISSION [24 CFR 960.204] (3-20)

CDA Policy (as drafted)

Currently engaged in the illegal use of a drug means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)]

Currently engaged in is defined as any use of illegal drugs during the previous 12 months. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]

LAW Suggestion:

The proposed definition for “*currently engaged in*” any use of illegal drugs during the previous six months is too expansive. We propose the definition be limited to the use of illegal drugs within the previous thirty (30) days.

CDA Policy (as drafted)

The PHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

Pattern of use of drugs or abuse of alcohol is defined as more than one incident on or off the premises during the previous 24 months.

LAW Suggestion:

Define pattern to include more than two incidents threatening the health, safety, or right to peaceful enjoyment of the premises by other residents on the premises within 12 months. CDA may not make a determination that there is a pattern of use of drugs or abuse of alcohol based solely on hearsay. CDA’s determinations under this section are subject to applicable fair housing law and the right of an applicant to a reasonable accommodation.

3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION

Criminal Activity [24 CFR 960.203(c)]

LAW Suggestion:

Modify section as follows:

CDA Policy

(3-22) “*Disposition Date*” means

- The date the applicant household member completed probation, completed parole, or was released from incarceration for the criminal activity that is being considered as a basis for denial.
 - If sentencing includes a fine and does not include confinement, parole, or probation, the disposition will be the date the applicant household member was ordered to pay a fine for the criminal activity or civil offense that is being considered as a basis for denial.
 - Outstanding fines, penalties, restitution or court costs will not be a factor in determining a disposition date.
- ~~*• For criminal activity for which there was not a conviction, the disposition date will be the date the activity occurred.~~

*The CDA should not be denying for criminal activity that did not result in a conviction. Decisions to deny may not be based solely on hearsay.

LAW Suggestion:

~~The CDA considers any drug-related civil activity as drug-related criminal activity.~~

~~The CDA will also consider criminal acts involving drug paraphernalia to be drug-related criminal activity. *Drug paraphernalia* is defined as any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under the Controlled Substances Act [21 USC 863(d)]; or~~

LAW Suggestion:

~~Evidence of such criminal activity includes, but is not limited to:~~

~~**Convictions:** Any conviction for criminal activity listed in 1. through 5. above and with a disposition date within the past two (2) years.~~

~~**Arrests:** Any arrests for criminal activity listed in 1. through 5. above with a disposition date within the last two (2) years.~~

~~**Police Contacts:** Any police contact for criminal activity listed in 1. through 5. above with a disposition date within the last two (2) years.~~

~~**Civil Ordinance Violations:** Any civil ordinance violations for criminal activity listed in 1. through 5. above with a disposition date within the last two (2) years.~~

~~**Evictions:** Any record of an eviction resulting in an eviction judgment from public or privately owned housing as a result of criminal activity listed in 1. through 5. above within the past two (2) years (See section 3-111B. REQUIRED DENIAL OF ADMISSION, for mandatory denial based upon an eviction for drug-related criminal activity.)~~

~~*A conviction for criminal activity will be given more weight than an arrest or police contact for such activity.~~

~~*Reference to weight given to evidence is unnecessary if the only acceptable evidence is a conviction. A finding of criminal activity should not be based solely on hearsay.~~

Previous Behavior [960.203(c) and (d) and PH Occ GB, p. 48] (3-25)

LAW Suggestion:

The CDA ~~will~~ may deny admission to an applicant family if the CDA determines that the family:

Owes rent or other amounts to the CDA or to any other PHA or owner in connection with any assisted housing program which is known by the family, undisputed, and the family has failed to take any responsibility for the debt. In cases where the CDA determines that any member of an applicant household owes a debt to the CDA or to another PHA and the applicant family member has included the PHA in a bankruptcy filing or the PHA debt has been discharged by the

bankruptcy court, the CDA will consider the amount owed to the PHA to be discharged, but will may deny admission based on the previous negative behavior and suitability for tenancy.

The CDA will not consider an undisputed debt to a previous landlord that is in the process of being paid as sole or automatic grounds for denial. A debt that has been disputed by the applicant family will not be grounds for denial.

Families may not have a present ability to immediately pay undisputed debts and should not be denied solely on the basis of that debt so long as reasonable good faith efforts have been made to repay the debt.

~~If any household member has engaged in criminal activity listed in 6. through 8. above, or if any household member is currently required to register as a sex offender on any state sex offender registry for a period of less than a lifetime, the CDA will consider all credible evidence, including but not limited to convictions and arrests with a disposition date more than two (2) years from the date of application as permitted by 24 CFR 960.203(c)(3)(ii).~~

Resources Used to Check Applicant Suitability [PH Occ GB, pp. 47-56] (3-30)

LAW Suggestion:

Applicants will not be denied for a failure to meet a financial obligation, including rent, during a time when their housing burden was more than 50% of their monthly income.

(3-31)

LAW Suggestion:

Applicants must be able to demonstrate the ability to pay rent and other charges as required by the lease. The CDA must verify that applicants can pay the CDA's minimum rent payment, utilities if applicable, and a security deposit. ~~Insufficient income to pay the cost of rent, utilities if applicable, and to make standard security deposit payments will be grounds for denial of admission.~~

CDA Policy (as drafted)

Disturbances of Neighbors, Destruction of Property or Living or Housekeeping Habits at Prior Residences that May Adversely Affect Health, Safety, or Welfare of Other Tenants, or Cause Damage to the Unit or the Development

Police and court records will be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in police contact, arrest, fine, or conviction.

LAW Suggestion:

Add: A decision to deny will not be based solely on hearsay.

3-III.E. CRITERIA FOR DECIDING TO DENY ADMISSION

Evidence: CDA Policy (3-33)

LAW Suggestion:

CDA admissions staff will make admissions decisions based on the preponderance of the evidence standard.

Removal of a Family Member's Name from the Application [24 CFR 960.203(c)(3)(i)] (3-34)

CDA Policy (as drafted):

As a condition of receiving assistance, the CDA may, on a case-by-case basis, agree to allow a family to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the public housing unit, and the family must provide ~~verifiable~~ evidence of the former applicant family household member's current living address, if any.

LAW Suggestion:

Allow them to visit, so long as the participant certifies he/she will not allow the culpable family member to engage in violent crime or drug activity. Revise the policy to allow them to certify that the excluded household member is not living there even if the excluded household member does not have an address due to homelessness. Certification of shelter residence or self-certification of homelessness, if not served by shelter, should be accepted.

3-III.G. NOTICE OF ELIGIBILITY OR DENIAL (3-38)

LAW Suggestion:

CDA Policy

If an applicant family appears to be ineligible, the CDA will notify the family of the proposed decision to deny admission in writing. The denial notice will include a brief statement of the reason(s) for the proposed denial, citation to the applicable regulation(s) or CDA policy, the date, the source of the information—including the name and title of individuals contacted—and a resume of the information received, and a summary of the facts that form the basis for each reason for denial (see also Chapter 14.I.B.) The details related to the factual basis for the denial will include, but are not limited to, information such as the following (as applicable):

- criminal, police case, or other court case number;
- name or description of offense;
- offense date;
- disposition date;
- housing provider information or rental address if related to negative rental information, and eviction, or if related to debts owed to a housing provider or housing authority;
- credit reporting agency name and contact information, specific negative credit information the CDA used in making its decision including name of creditor, account

number, and account balance if related to negative credit or unsuitable past performance in meeting financial obligations; and

- any other facts relevant to the basis for the denial of admission.

Denial notices, and all other notices of adverse action, should also include the following language. “Legal Action of Wisconsin, Inc. provides free legal services to low-income clients in housing law matters. You may contact their office by visiting it at 31 S. Mills St. or calling 608-256-3304 or 1-800-362-3904 for more information about applying for their services.”

4-II.F. UPDATING THE WAITING LIST [24 CFR 960.202(a)(2)(iv)] (4-11)

LAW Suggestion:

Regarding waitlist policies and purging the waitlist, we recommend adding a provision requiring the CDA to place at least one phone call to each phone number on file for the family to attempt a telephone contact to obtain current contact information if written notice is returned as undeliverable.

LAW Suggestion re preferences:

Restore preferences for homelessness and victims of domestic violence.

7-II.D. FAMILY RELATIONSHIPS

Absence of Adult Member (7-17)

LAW Suggestion:

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a signed lease or utility bill, or documentation of homeless status). *If the adult family member is incarcerated, a document from the court or prison should be obtained stating how long they will be incarcerated.* If no other proof can be provided, the CDA will accept a notarized statement from the family attesting that the person no longer resides at the address and that they have tried and were unable to provide documentation.

Excess Utility Charges (8-9)

CDA Policy

When applicable, families will be charged for excess utility usage according to the CDA’s current posted schedule. Notices of excess utility charges will be mailed monthly and will be in

accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the CDA may not take action for nonpayment of the charges until the conclusion of the grievance process.

Nonpayment of excess utility charges is a violation of the lease and is grounds for eviction.

Change to:

When applicable, families will be charged for excess utility usage according to the CDA's current posted schedule. Notices of excess utility charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. The notice will inform the tenant of their right to request a payment plan and/or grievance hearing within the required timeframe. The notice shall include the specific information used to form the basis of the decision that there was excessive utility usage.

If the family requests a grievance hearing within the required timeframe, the CDA may not take action for nonpayment of the charges until the conclusion of the grievance process. The CDA will extend an affordable repayment plan option to the tenant when requested. Failure to repay utility charges due to an inability to pay is not grounds for eviction.

Maintenance and Damage charges (8-10)

CDA Policy

When applicable, families will be charged for maintenance and/or damages according to the CDA's current schedule. Work that is not covered in the schedule will be charged based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable).

Notices of maintenance and damage charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the CDA may not take action for nonpayment of the charges until the conclusion of the grievance process.

Nonpayment of maintenance and damage charges is a violation of the lease and is grounds for eviction.

LAW Suggestion:

When applicable, families will be charged for maintenance and/or damages to the unit or items damaged by the tenant that is beyond normal wear and tear according to the CDA's current schedule. Work that is not covered in the schedule will be charged based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable).

Notices of maintenance and damage charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. The notice will inform the tenant of their right to request a payment plan and/or grievance hearing within the required timeframe. The notice shall include the specific information that was used to form the basis of the decision that

the maintenance charges are the responsibility of the tenant and/or the damages were both caused by the tenant and beyond normal wear and tear.

If the family requests a grievance hearing within the required timeframe, the CDA may not take action for nonpayment of the charges until the conclusion of the grievance process. The CDA will extend an affordable repayment plan option to the tenant when requested. Failure to repay maintenance charges due to an inability to pay is not grounds for eviction.

12-III.C. ELIGIBILITY FOR TRANSFER (12-10)

LAW Suggestion:

Except where reasonable accommodation is being requested, the CDA will only consider transfer requests from residents that are in good standing, including, but not limited to meeting the following requirements:

Have no negative rental history, including delinquency in rent or other charges, currently owe back rent, other charges, or a debt to the CDA, have a pattern of late payment, or have housekeeping lease violations. The CDA may consider a transfer if the tenant has cured previous problems related to negative rental history, delinquency in rent or other charges, owing back rent or other charges, debts to the CDA, a pattern of late payments or housekeeping lease violations.

13-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(l)(5)]

Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)] (13-9), Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)] (13-10), Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)] (13-10), Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)] (13-11), Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)] (13-11), Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)] (13-12, 13)

LAW Suggestion:

Add language that makes it clear that is the CDA's burden, by a preponderance of credible evidence, that the household member has engaged in criminal activity/other program violation.

Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)] (13-9)

LAW Suggestion:

CDA Policy

“The CDA ~~will~~ may terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant’s household or guest, and any such activity engaged in on the premises by any other person under the tenant’s control.”

Add language that makes it clear that drug-related criminal activity engaged in by a guest of the tenant off the premises that the tenant did not know of, or had no reason to know of is not grounds for lease termination.

The CDA ~~will~~ may consider all credible evidence, including ~~but not limited to~~, any record of conviction, ~~arrest, police contact, or civil ordinance violation~~ or nuisance notices from law enforcement agencies of covered persons related to the drug-related criminal activity.

13-III.C. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(l)(2) and (5)(ii)(B)]

Family Absence from Unit [24 CFR 982.551(i)] (13-15)

LAW Suggestion:

Add language that CDA may permit an absence exceeding 90 days in case of verifiable medical treatment with proper notification to CDA.

13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY

Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)] (13-16)

LAW Suggestion:

CDA Policy

As a condition of the family’s continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member’s current living address upon CDA request. If no such evidence is available to the family, the CDA will accept a notarized statement from the head of household that the former household member no longer resides at the address and that the head of household attempted but was unable to obtain such evidence.

13.III.D ALTERNATIVES TO TERMINATION OF ASSISTANCE

Change in Household Composition (13-16)

LAW Suggestion:

We recommend removing the complete prohibition of the excluded family member visiting in the unit. We believe this may be problematic for the family, particularly in cases where there are children involved.

13-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3)]

Form, Delivery, and Content of the Notice (13-27)

LAW Suggestion:

The notice must state the specific grounds for termination, specifically what rules, regulations or published standards were violated, the individual who committed the violation, what specific program obligation was violated, the date(s) of the violation, the source of the information—including the name and title of individuals contacted, a resume of the information received, and a summary of the facts that form the basis for each reason for denial. The notice must also include the date the termination will take place, the resident’s right to reply to the termination notice, and their right to examine PHA documents directly relevant to the termination or eviction. If the PHA does not make the documents available for examination upon request by the tenant, the PHA may not proceed with the eviction [24 CFR 966.4(m)].

When the PHA is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with the PHA’s grievance procedure and their right to be represented by legal counsel at the hearing. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed.

The notice should also contain the following language “Legal Action of Wisconsin, Inc. provides free legal services to low-income clients in housing law matters. You may contact their office by visiting it at 31 S. Mills St. or calling 608-256-3304 or 1-800-362-3904 for more information about applying for their services.”

14-I.B. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58] (14-3)

LAW Suggestion:

The informal hearing will be conducted in accordance with hearing procedures laid out in Chapter 68 of Wisconsin Statutes or Madison General Ordinances § 9.49.

Notice of Denial [24 CFR 960.208(a)] (14-3)

LAW Suggestion:

The PHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain The denial notice will include a brief statement of the reason(s) for the proposed denial, citation to the applicable regulation(s) or CDA policy, the date, the source of the information—including the name and title of individuals contacted—and a resume of the information received, a summary of the facts that form the basis for each reason for denial a brief statement of the reasons for the PHA decision, and must also state that the applicant may request

an informal hearing to dispute the decision. (see also Chapter 3-III.G.) The notice must describe how to obtain the informal hearing.

Scheduling an Informal Hearing (14-4)

A request for an informal hearing must be made by the applicant, in writing, and delivered to the CDA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the CDA's notification of denial of admission.

LAW Suggestion:

Notice of a scheduled hearing will also inform the applicant of their right to be represented by counsel at the informal hearing, to review and copy documents directly relevant to their denial prior to the hearing, and that the hearing shall be recorded by a recording device.

Conducting an Informal Hearing [PH Occ GB, p. 58] (14-4)

LAW Suggestion:

The person conducting the informal hearing or a person employed for that purpose shall take notes of the testimony and shall mark and preserve all exhibits. The hearing shall be recorded by a recording device.

LAW Suggestion:

Add language allowing for the rescheduling of a hearing upon request if the participant's attorney can't attend.

14-III.E. PROCEDURES TO OBTAIN A HEARING [24 CFR 966.55]

Expedited Grievance Procedure [24 CFR 966.55(g)] (14-16)

LAW Suggestion:

Remove language that creates an expedited grievance procedure. Ongoing criminal activity and any resulting threat to the health, safety or right to peaceful enjoyment of premises can be appropriately handled within the criminal justice system.

14-III.G. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]

Rights of Complainant [24 CFR 966.56(b)] (14-18)

The opportunity to examine before the grievance hearing any PHA documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

CDA Policy

The tenant will be allowed a copy of any documents related to the hearing at a charge equal to the current rate published under local general ordinance, MGO 3.70...

LAW Suggestion:

Add language that the hearing will follow procedures laid out in Wisconsin Statutes Chapter 68 or MGO §9.49 and shall be recorded either by a recording device or stenographer.

16-III.B. Repayment Policy (16-10,11)

LAW Suggestion:

We suggest adding language to require the CDA to cooperate with, abide by and honor all petitions and orders for amortization of debts pursuant to Chapter 128, Wis. Stats. We also suggest adding a provision which allows the CDA to deviate from their repayment scheme if the person meets the earnings garnishment exceptions in Wis. Stat. 812.34.