Housing Department
Affordable Housing Gap Financing

GUIDELINES

DRAFT as of ~~October 26~~December 8, 2017

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GENERAL GUIDELINES

Background

The mission of the Housing Department is to strengthen and revitalize our community through housing and neighborhood investment. As a part of this mission and the execution of its housing element plan, the City supports the new construction and rehabilitation of housing for extremely low-, very low-, and low-income families with various policies and programs. The primary program administered by the Housing Department is the provision of gap financing for affordable housing projects. This program is guided by these general policies and guidelines as well as specific guidelines that may be included in Notices of Funds Available (NOFAs) issued from time to time.

Purpose

The purpose of this document is to provide developers and other stakeholders with clear and transparent policies, guidelines, and requirements that drive project financing projections in the very early stages of predevelopment. It is intended that this will encourage smooth underwriting and negotiations in further stages of development, loan approval and loan closing. These guidelines are supplemented with NOFAs, an asset management manual, and recapitalization manual.

Basic Eligibility

Eligible Sponsors	• Sponsors (Sponsors) may be non-profit and for-profit housing corporations, joint ventures, limited liability companies, and partnerships • Sponsors must have documented experience owning/operating affordable housing projects or partner with an entity that does have the required experience • All transactions require a developer with a non-profit managing general partner
In Good Standing with the City	• All Sponsors' projects must be 100% compliant with all standing loan documents for ~~the City regarding~~ past projects/loans, if applicable
Eligible Uses of Funds	• Predevelopment expenses • Acquisition/construction financing • Permanent financing
Exceptions	• The City may recommend exceptions to these guidelines to Council when warranted

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Financing Options and Fees

Predevelopment Loan	
Amount	Maximum of $1,000,000, of which up to $200,000 may be non-recourse with an assignment of plans & specifications
Term	12 to 24 months, with two six-month extensions
Rate	Up to 4% simple, accrued interest may be capitalized
Loan-to-value	N/A
Recourse	~~Full recourse, developer guaranty, requires security~~ Full recourse to the borrower including repayment guaranties from project sponsor and parent organizations, as applicable

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Financing Options and Fees

Acquisition Loan	
Amount	Based on LTV limitations
Term	12 to 36 months, with two six-month extensions
Rate	Up to 4% simple; accrued interest may be capitalized
Loan-to-value	Up to ~~95~~100% total LTV of the City loan plus all senior debt
Recourse	~~Full recourse, developer guaranty, requires security~~Full recourse to the borrower including repayment guaranties from project sponsor and parent organizations, as applicable; requires real estate security in form of DOT
Construction Loan	
Amount	Up to $~~100~~125,000 per ~~affordable~~ unit + prior and construction capitalized interest
Term	12 to 36 months, with two six-month extensions~~.~~
Rate	Up to 4% simple; accrued interest may be capitalized
Loan-to-value	100% total LTV of the City loan plus all senior debt
Recourse	~~Full recourse, developer guarantee~~Completion guaranty, requires real estate security in the form of DOT
Permanent Loan	
Amount	Up to $~~100~~125,000 per ~~affordable~~ unit + prior capitalized interest
Term	30-55 years~~ – rate reset after compliance period~~
Rate	AFR, 360-day year, actual basis
Loan-to-value	100% total LTV of the City loan plus all senior debt
Recourse	~~Full~~Non-recourse, ~~developer guarantee,~~ requires real estate security in the form of DOT
Fees	• City ~~F~~fees are generally set by an annual budget process intended to ~~cover~~ reflect costs incurred • ~~; c~~Current fees are available from your department contact and may be further outlined in the City's commitment letter~~;~~ • ~~t~~There is no application fee • Loan Origination Fee (2017): $46,535 per new construction and $43,570 per recap • Construction Monitoring Fee (2017 estimate): $5,000 closing plus $1,000 per month, unless sharing consultant with another lender • Loan Conversion Fee (2017): $43,595 per transaction • Multi-Family Loan Servicing Fee (2017): $27.65 per unit per year, escalating 3% • Multi-Family Affordability Restriction Monitoring Fee: $27.65 per unit, escalating 3% • Other fees for restructuring, refinancing, payoffs, etc. may apply

Loan Terms and Conditions

Loan Repayment	• Please see Operating Expense and Residual Receipts Policy for the calculation of Residual Receipts for Permanent Loans • Generally, the City requires 50% of Residual Receipts

Loan Terms and Conditions	
General Affordability Restrictions	• The City's affordability level requirements will reflect ~~reflect those of the~~ the policies and regulations of the funding sources used by the City (e.g. ~~redevelopment agency~~Low and Moderate Income Housing Asset Fund (LMIHAF), HOME, inclusionary in lieu ~~of~~ fees, etc.) or a ~~;~~ NOFA~~s may have additional affordability criteria~~ • Affordability targets will be documented with an Affordability Restriction (AR) that will not be subordinated • 55-year minimum • ~~If the project's rental assistance or operating subsidy is terminated through no fault of the owner, the City will work with the developer on alternative subsidies, financing structures and/or affordability restrictions~~
Subordination	• The City will not subordinate its Affordability Restriction • The City may consider subordination of its Deed of Trust if 1) ~~If~~ the conventional lender (Senior Lender) requires a senior lien position; 2) ~~(Senior Lender), the City may consider subordination if~~ the form of subordination provides City with sufficient rights to cure a default under the Senior Lender's loan (Senior Loan);~~,~~ and 3) the form of subordination allows the City to address defaults under the City's loan documents • In the event that t~~T~~he City is in first lien position, the City will allow a standstill ~~language~~ agreement giving the subordinate lender(s) the right to cure ~~in the~~ an event of a default ~~of~~ under the City's loan documents • ~~In the event of a foreclosure by the Senior Lender, rents will be allowed to float up to 60% of area median income (AMI)~~
Float-up Provision	• The City may include a float-up of affordability restrictions up to 60% AMI in the AR under certain conditions (generally, loss of rental subsidy and foreclosure) conditioned up the developer demonstrating an increase is needed for project feasibility

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Loan Terms and Conditions

Ground Lease	• See the Ground Lease Policy for more details • To ensure the long-term affordability and viability of publicly funded housing, the City requires a ground lease for new construction ~~any~~ projects that ha~~s~~ve not yet received a ~~its~~ gap financing commitment from the City (projects with existing City loans are not subject to this policy) • The term shall be between 55-99 years • Lease payments will be $1.00 per year, • ~~calculated at 3% (simple) of the appraised Fair Market Value (FMV) of the land as determined by an appraisal acceptable to the City (based on restricted rents)~~ • ~~Ground lease payments will be payable with Residual Receipts pari passu with any City loan out of the City's share of net cash flow~~ • ~~Any unpaid ground lease payments shall accrue without interest~~
~~Design and Construction Costs~~	• ~~The City's Housing Department has a fiduciary responsibility to ensure that City financing supports as many affordable housing units as possible; controlling construction costs is essential in this effort~~ • ~~To ensure the City's funds are used most effectively, the City requires a design and construction cost review in the early predevelopment phase for all projects eventually financed under this program, regardless of loan product type~~ • ~~The City's Housing Department will primarily rely on the City's Building Division to ensure that all buildings constructed and rehabilitated in the City meet a high standard of aesthetic design as well as responsible building standards~~
Green Building Costs	~~•~~ Any Green building applications above the minimum City building requirements ~~or as required by other funding sources~~ must be approved on a case-by-case basis by housing department staff or designee, unless required by another lender, investor or agency
Land Use Entitlements	• For Construction/Permanent loans, the applicant must demonstrate that the proposed project has met all discretionary land use entitlements prior to the City issuing a funding commitment • For real estate secured loans, a Phase 1 for the City's benefit is required

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Underwriting Guidelines ~~–~~ Development

Developer Fee	• Please see Developer Fee Policy for definitions and policies • If necessary, a portion of the Developer Fee may be deferred and structured as a loan with interest subject to TCAC limits and City policy • Both principal and interest on any Deferred Developer Fee shall be paid out of the ~~owner's~~ developer's share of Residual Receipts
Rent Levels	• Underwritten ~~R~~rents shall be at least 10% below market rents for all project units

Underwriting Guidelines ~~–~~ Development	
~~Moderate~~ Rehabilitation Projects	• An acceptable 15- to 20-year capital needs assessment and 15-yr replacement reserve study are required • Minimum of $30,000/unit in hard costs (market rate properties converting to affordable will be exempt from this policy) • The project must have a rehabilitation or replacement plan for all major systems and components of property with a useful life of 15 years or less
GC Contract	• GC contract shall be a Cost Plus a Fee with a Guaranteed Maximum Price (standard AIA A102) on all projects, with the stipulation that all savings go to the Owner • Contracts under $250,000 are not subject to this policy, but the construction contract will still need to be approved by the City • Contracts must be in the most recent AIA form including a clearly-defined scope of work, a detailed construction budget, and a schedule acceptable in form to the City • All materials and workmanship must have at least a one-year warranty; the roof must be covered by a manufacturers' NDL 20-year roof guaranty • City specific exhibits must be included in GC contract
~~Project Cost~~Total Development Budget Savings ~~and GC Contract~~	• ~~GC contract shall be a Cost Plus a Fee with a Guaranteed Maximum Price (standard AIA A102) on all projects, with the stipulation that all savings go to the Owner~~ • ~~Exceptions may be granted (with City approval) for contracts under $250,000~~ • ~~Contracts must be in the most recent AIA form including a clearly-defined scope of work, with a detailed construction budget, and schedule acceptable in form to the City~~ • ~~All materials and workmanship must have at least a one-year warranty; the roof must be covered by a manufacturers' NDL 20-year roof guaranty~~ • Total project cost~~s~~ savings as determined by the Cost Certification shall return 100% back to the City after the reduction in tax credits due to downward adjustor (if any) or any other adjustments made to project sources and uses • Developer's accountant shall provide a cost savings accounting report
Contractor Profit, Overhead and General Conditions	• Per TCAC regulations and City proforma, the developer should clearly identify and break out hard construction costs, contractor profit, general requirements and contractor overhead (a detailed breakdown of general requirements should be included in the schedule of values included in the GC contract) • Contractor profit cannot exceed the following amounts of the total contract for site improvements, offsite improvements and building construction: 6% for contract amounts under $10 million, 5% for any contract amount between $10 million and $15 million, and 4% for any contract amount over $15 million~~; a total maximum of $1,250,000 (the City may approve a higher or lower amount depending on the project scope of work)~~ • Combined contractor overhead and general conditions cannot exceed 8% of the total contract for site improvements, offsite improvements and building construction • General conditions may not include the purchase of capital items with an expected life of over 12 months • If actual costs needed to support the builder's presence on the site total less than 8%, the project budget must reflect only actual costs • Contractors' liability insurance and bonding should be a separate construction budget line and not included in Overhead or General Requirements • Per TCAC, ~~construction costs,~~ contractor profit, general requirements and contractor overhead cannot total more than 14% of the cost of construction

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Underwriting Guidelines ~~–~~ Development	
GC Performance and Payment Bonds	• The City will defer to the construction lender's requirement for performance and payment bonds, if reasonable • If there is no conventional construction lender, the GC must obtain performance and payment bonds for the full amount of the proposed contract from a surety approved by the City (and licensed in California with an AM Best rating or higher) or provide guaranties for the same • If a bond is required by either of the above two policies, ~~T~~the City of San Jose must be named as obligee on the bonds
Change Orders	• ~~Any material changes to the project or any change orders above $5,000 individually and $50,000 in the aggregate will require prior City or its designee's approval as a budget adjustment or as a submittal for payment~~The City will negotiate change orders on a case-by-case basis • General contractor markups on change orders are limited to the percentage of profit allowed in the contract and subcontractors are limited to 15% maximum markup on change orders
Hard Cost Contingency	• Minimum of 5% for new construction projects and 10% for rehabilitation projects, but the City may require more
Soft Cost Contingency	• Soft costs defined as costs not directly related to the acquisition of land, site improvements or construction of buildings and are related to professional work, such as offsite improvements, architectural & engineering, financing, governmental fees and permits, developer fees, reserves, etc. and a contingency of 3% of soft costs is required
Reasonable Development Costs	• In particular, architecture, survey, engineering and legal costs must be reasonable and within industry standards

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Underwriting Guidelines ~~–~~ Development	
Costs Excluded from Development Budget	• ~~Reimbursements to a Sponsor for corporate expenses, such as salaries, overhead or operating expenses or for contract expenses for services that are typically provided by the Sponsor~~ • ~~Real estate broker or agent (their affiliates or related party) fees~~ • ~~Nonrefundable deposits and deposits not attributable to the purchase price~~ • ~~Excessive consultant fees~~ • ~~"Non-arm's length" contracts (the Sponsor must identify all financial interests it has with entities with which it enters into contracts in relation to the project)~~ • ~~Construction management costs above those paid for in General Contracting services shall be reimbursed out of developer fee~~ • ~~Offsite improvements not required for the City's planning and development approvals~~ • The City will follow TCACs exclusions, including ~~N~~nonresidential uses or land allocated for nonresidential uses (see Commercial Space for more details) ~~shall follow TCAC rules and not be included in the financing of the residential portion of the project; however, the financing plan for the nonresidential shall be provided to the City~~, unless otherwise required City funding sources • No payment for stored materials unless previously approved by the City • ~~Bid or Design Contingency must be excluded for construction and permanent loans~~Design contingencies and allowances may be allowed but are subject to the City's approval
Section 8 or Subsidy Transition Reserve	• Will accept if required by Senior Lender or investor, but the calculation methodology will be subject to the City's approval • Upon maturity of the senior loan, any unused reserves shall be repaid to the City
Capitalized Operating Reserve	• City policy mirrors TCAC's guideline of a minimum of three~~3~~ months of OERDS (operating expenses, reserves and debt service) • May be higher if required by the ~~syndicator~~investor or lender, but City funds won't pay amounts in excess of policy
~~Lease-up~~Rental Income During Construction	• Net rental income from operations during rehab or from lease-up prior to conversion to permanent loan ~~M~~may be included as a source of construction funds and included in the calculation of project cost savings
Project Development Consultant	• City policy is consistent with the TCAC requirement that development consultant fees are included in the definition of developer fee
Prevailing Wage	• Required by broader City policy, which is updated from time to time
Other Budget Considerations	• Reimbursements to the project, such as CDLAC deposits and utility deposits, may be used to pay other costs in the project budget if is identified as both a source and use of funds in the project budget; otherwise, the refunded amounts can only be used to reduce the amount of the City's subsidy • City exemptions from ordinance fees or taxes may be included as a source of funds if they are also classified as a use of funds (the Sponsor should consult with their tax advisor on the proper accounting and income tax treatment for these various items)

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Underwriting Guidelines – Development	
Relocation	• Any Sponsor proposing to acquire land or rehabilitate existing structures using City funds that may result in the displacement of tenants or businesses must fully comply with both State and federal relocation laws • Sponsor to provide assessment of potential displacement of tenants or businesses, including a detailed summary of tenants or businesses and estimated costs and timing of relocation, along with the name, resume and contact information of the proposed qualified relocation consultant • Prior to acquisition or construction funding, the City must review and approve a relocation plan • In the event State or federal laws require the approval of the governing body, the relocation plan must be approved by the City Council

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Underwriting – Operations	
Revenue and Operating Expense Inflators	• City policy mirrors TCAC policy
Commercial ~~Income~~Space	• Commercial spaces should be clearly excluded from underwriting assumptions of housing units and follow all other applicable TCAC guidelines • The financing plan for nonresidential space shall be provided to and approved by the City • ~~Commercial space should be condo-ized and underwritten separately from housing~~ • ~~An exception may be made for daycare spaces that are available only to the residents of the project~~ • ~~May not be relied on to pay first mortgage debt~~ • Must be priced = or < Mkt per Sq. Ft. • Master lease encouraged • City funding sources may impose additional requirements
Vacancy Rate Assumptions	• City policy mirrors TCAC policy: (5%) for family, seniors, and at-risk proposals, and ten percent (10%) for special needs and SRO
Total Operating Expenses	• Minimum operating expenses set by TCAC per region and project type (does not include property taxes, replacement reserves, depreciation or amortization expense, or the costs of any service amenities) • Maximum operating expenses to be approved by City in its sole discretion based on portfolio, surveys and/or developer information (developer to provide basis/comparable data for all estimated expenses if appraisal not available)
Replacement Reserves	• New construction = minimum $250/unit and maximum $350/unit per annum; may be determined by a 20-year replacement schedule • Rehabilitation = minimum $300/unit and maximum $400/unit per annum; must be determined by a 20-year replacement schedule based on a physical needs assessment • Exceptions may be granted for other financing or project requirements ~~(e.g. permanent supportive housing (PSH), Mental Health Services Act (MSHA), state Housing and Community Development (HCD), etc.)~~

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Underwriting ~~–~~ Operations

Partnership and Asset Management Fees	• Maximum Partnership and Asset Management Fees combined may not exceed $30K with no inflator or $25K with 3% annual inflator • May only be paid after the payment of eligible operating expenses, reserves and debt service • Any amounts in excess of maximum shall be paid from the developer's share of Residual Receipts • ~~Unpaid fees shall accrue but not be paid until after the City's full share of Residual Receipts has been paid~~Unpaid fees may accrue, but any accrued fee must be paid out of the developer's share of cash flow; only current fees can be paid above the line • The Asset Management fee shall terminate when the limited partner exits the partnership
Resident Services Coordination	• Resident services coordination expenses will be limited to the following: **~~Senior and Family~~ Units Restricted to:** / **Maximum Allowed Per Unit / Per Year** 0 – 30% AMI: $~~500~~575 31 – 49% AMI: $~~400~~475 50 – 60% AMI: $~~250~~325
Homeless Case Management	• It is expected that ~~E~~expenses for case management for units restricted to the homeless shall be paid by a separate source other than project income
Property and Incentive Property Management Fees	• Property Management Fees: A maximum of $~~6~~70 per unit per month, escalation tied to the annual increases in the Area Median Income (AMI), but in any event no more than 7% Effective Gross Income (EGI) per TCAC regulations, unless excess is paid out of developer's share of Residual Receipts • Property management fees must be inclusive of compliance management • Incentive property management fees may be payable out of developer's share of Residual
Operating Reserve Withdrawals and Replenishment	• Operating Reserve replenishment (if required by limited partner or TCAC) to be funded from developer's share of Residual Receipts (see Residual Receipts policy for definition)
Senior Loan Debt Service Coverage Ratio	1.15x to 1.20x in first stabilized year based on projected eligible income and expenses (pending Senior Lender~~oan~~ approval), but in any event no less than • ~~Minimum~~ 1.00x throughout the compliance period unless the total estimated deficit is covered by reserves, as approved by the City

Property Management

On-Site Property Management	• All projects must include on-site management staff during normal business hours • The City must approve the property's management agreement and related documents

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Property Management	
Qualifications for Property Managers	• Qualifications of the management entity must be submitted prior to the closing of the City's permanent loan • The proposed management firm, or a principal in the firm, is required to submit evidence of successfully managing at least five projects with over ten units each and subject to a recorded regulatory agreement for at least three years prior to the application
Management Plan	• A comprehensive management plan, lease agreement, and related documents shall be submitted and approved with the application • Once approved, neither the management plan nor the lease agreement may be changed without City approval
Security Plan	• ~~Owners~~ Developers must submit a security plan for review and approval by the City
Permanent Supportive or Special Needs Housing	• If intensive services are required for permanent supportive housing or special needs populations, a supportive services plan and budget (including sources and uses for services) will be required and evaluated as part of the long-term viability of the project
Ongoing Compliance	• All projects must be in compliance with the City's reporting and record-keeping requirements and Housing Qualify Standards (HQS) requirements • City staff will conduct compliance reviews of the project annually, or more often if necessary • New projects must comply with the City's monthly lease-up requirements outlined in the City's loan documents) until the property is placed in service

DEVELOPER FEE POLICY

Eligibility

All developments seeking City of San José (City) funding or restructuring in conjunction with the new construction or rehabilitation of affordable housing properties will be subject to this policy. This includes recapitalization projects. This policy applies to any project that has not yet received its gap financing commitment from the City by the date of publication of the final policy.

Purpose

The purpose of this policy is to establish a guideline for the amount of development fees on affordable housing projects in the City. Given the rent restrictions on affordable housing projects, affordable housing developers do not make the majority of their profit through project cash flow like developers of market-rate rental housing. Developer fees are recognized as a significant part of the income on which affordable housing organizations depend for their survival and growth. The low-income housing tax credit (LIHTC) program is the primary financing structure for almost all affordable housing. The California Tax Credit Allocation Committee (TCAC), the state organization that administers the LIHTC program, has established policy that allows developers to include a reasonable fee in a project's budget. The City supports general consistency with the TCAC policy, with a few modifications.

Definitions

Developer Fee	Developer Fee is defined the same as TCAC. As of the 5/17/2017 TCAC Regulations (defined below), Developer Fee is defined as follows: "All Funds paid at any time as compensation for developing the proposed project, to include all development consultant fees, processing agent fees, developer overhead and profit, construction management oversight fees if provided by the developer, personal guarantee fees, syndicator consulting fees, and reserves in excess of those customarily required by multi-family housing lenders."
Capitalized Developer Fee	This is the amount Developer Fee that can be paid out of project development sources (i.e., a "project cost") up to and including permanent loan conversion and 8609 issuance (final limited partner contribution).
Deferred Developer Fee	Deferred Developer Fee is defined as the amount of Developer Fee payable out of the developer's portion of project operating cash. In order to be included in tax credit basis, this amount must be payable within a time frame established by the project's tax counsel (typically around 12 years).
Contributed Developer Fee	This is the amount of Payable Developer Fee that can be contributed by a party other than the developing partnership (e.g., the partnership general partner). In order to be included in tax credit basis, this amount must be an equity contribution as defined by the project's tax counsel.
Excess Developer Fee	Excess Developer Fee is defined as the combination of the Deferred Developer Fee and Contributed Developer Fee.

Developer Fee in Basis and Payable Developer Fee

This policy ~~generally~~ mirrors the maximum limitations established in the TCAC Regulations Implementing the Federal and State Low Income Housing Tax Credit Laws in the California Code of Regulations Title 4, Division 17, Chapter 1 dated May 17, 2017 and as updated from time to time (TCAC Regulations) Section 10327(c)(2)~~, with some further limitations as described below~~. However, ~~T~~the City reserves the right to further lower the Developer Fee in its sole discretion, for example, to ensure project feasibility.

Project Type	Maximum Developer Fee	
	Capitalized Developer Fee in Project Budget	Project Basis
9% credits	• The maximum allowable ~~Payable~~ Capitalized Developer Fee mirrors TCAC Regulations • Subject to a 15% of basis limit, $2,200,000 for new construction and $2,000,000 for rehabilitation projects • The City may require a lower Developer Fee in its sole discretion	• Mirrors TCAC Regulations: $1,400,000 with higher amounts for projects in excess of 200 units
4% credits – New Construction	• The maximum allowable Capitalized Developer Fee ~~is $2,200,000~~mirrors TCAC Regulations capped at $2,500,000 plus $10,000 per tax credit unit in excess of 100 • ~~Any Excess Developer Fee must be paid through Deferred or Contributed Developer Fee~~ • As per TCAC, all fee in excess of the maximum shall be Deferred Developer Fee or Contributed Developer Fee • The City may require a lower Developer Fee in its sole discretion	• Mirrors TCAC Regulations: 15% of the project's unadjusted eligible basis
4% credits – Rehabilitation *or* Acquisition & Rehabilitation	• The maximum Capitalized Developer Fee ~~is $2,000,000~~mirrors TCAC Regulations capped at $2,500,000 plus $10,000 per tax credit unit in excess of 100 • ~~Any Excess Developer Fee must paid through Deferred or Contributed Developer Fee~~ • As per TCAC, all fee in excess of the maximum shall be Deferred Developer Fee or Contributed Developer Fee • The City may require a lower Developer Fee in its sole discretion	• Mirrors TCAC Regulations: 15% of the project's construction basis and 5% or 15% of the project's acquisition basis
All other projects	• For projects not using bonds and/or tax credits, such as small supportive housing developments or small rehabilitation projects, the maximum developer fee shall be determined on a per unit basis: • $30,000 per unit for the first 20 units • $20,000 per unit for units 21 through 40	N/A

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Developer Fee in Basis and Payable Developer Fee		
	• $15,000 per unit for units 41 and above	

Deferred Developer Fee

Any Deferred Developer Fee shall be paid from the developer's share of Residual Receipts (typically 50% of net cash flow but further defined in the Operating Expense and Residual Receipts Policy). Any interest on Deferred Developer Fee shall also be payable from the developer's share of Residual Receipts.

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Allowable Developer Fee Payment Schedule

~~The following chart shows the maximum amounts available for disbursement per project milestone (further defined in City loan documents) if feasible. No Payable Developer Fee may be disbursed from any source without the approval of the City.~~

- ~~25% at construction loan closing~~
- ~~25% at project completion~~
- ~~40% at permanent loan closing (stabilization)~~
- ~~10% at 8609~~If reasonable and considered within market, the City will defer to the lender and/or investor for the Capitalized Developer Fee payment schedule.

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Developer Fee Policy Example

The following is an example of a 120-unit ~~large~~ 4% LIHTC new construction property:

- ~~-~~Developer Fee included in basis is $4,000,000
- Capitalized Developer Fee is $2,~~2~~700,000 ($2,500,000 + ($10,000 * 20))
- Excess Developer Fee is $1,~~8~~300,000, to be payable through a combination of Deferred Developer Fee and Contributed Developer Fee
- The project operating cash flow projection indicates that only $~~8~~300,000 of Deferred Developer Fee can be paid out of the Developer's 50% share of cash flow over the period determined by tax counsel (e.g., 12 years)
- The remaining $1,000,000 in Payable Developer Fee will contributed by the general partner as equity

GROUND LEASE POLICY

Eligibility

All new construction developments seeking ~~new~~ financing from the City of San José (City) will be subject to this policy. Specifically, this policy applies to any project that has not yet received its gap financing commitment from the City by the date of publication of the final policy.

Purpose

The purpose of this policy is to ensure the long-term affordability and viability of publicly funded housing.

Ground Lease Policy

Term	• Minimum 55 years, can be extended to coincide with term of permanent debt upon permanent conversion • Maximum 99 years • At expiration of term, or when the lease is otherwise terminated under the terms of the lease, title to the improvements shall revert to and vest in lessor without cost to lessor or lessor may require demolition
Annual Rent	• $1.00~~3% simple interest on the Fair Market Value (FMV) of the land, as determined by an appraisal acceptable to the City based on the project's restricted rents~~ • ~~To be paid from Residual Receipts in proportion to the value of the land relative to the amount of the City's gap financing~~ per year
Affordability Restrictions	• General ~~A~~affordability ~~R~~restrictions at 60% AMI will be documented in an AR recorded against the fee interest • Project-specific affordability restrictions will be recorded on the leasehold interest and can be subordinated if necessary~~that typically encumber the land will be documented in the Ground Lease~~ • ~~In the event of a default or loss of operating subsidies, the City may modify the Affordability Restrictions at their discretion~~
Assignment	• The Ground Lease may not be assigned without express written approval from the City
Title	• Security for any other loans can only be recorded against the leasehold interest and not fee interest • Without exception, this also applies to any HCD funding
Effecting Acquisition	• The City's loan documents will include an unconditional option to purchase the property

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OPERATING EXPENSE AND RESIDUAL RECEIPTS POLICY

Eligibility
All projects will be subject to this policy, including any new ~~developments~~ projects and ~~seeking~~ projects with existing City of San José (City) funding, ~~-~~seeking and increase, recapitalization, restructure, or refinancing ~~in conjunction with the new construction or rehabilitation of affordable housing properties will be subject to this policy. This includes projects with recapitalization, restructures or refinancing.~~ However, terms and definitions in existing loan documents for portfolio properties will maintain priority over this policy.

Purpose
The objective of this policy is to clearly define eligible and ineligible operating expenses for the determination of a project's net cash flow and Residual Receipts payments.

Calculation of Effective Gross Operating Income	
Gross Potential Rent	• Rental rate per unit subject to affordability restrictions
Subsidy Income	• Section 8, other rental subsidy income, or tenant services subsidy up to allowable limits (the amount of increment above restricted rent)
Other Income	• Other income collected from tenants or lessees such as parking, laundry, vending, etc.
Vacancy, Collection, Concessions Losses	• Income lost due to tenants vacating the property and/or tenants defaulting (not paying) their lease payments
Effective Gross Operating Income	• The sum of all of the above

Calculation of Total Operating Expenses	
Administrative Expenses	• Marketing/advertising, computers/software licensing, audits, legal, dues/subscriptions, office supplies, telephone/internet, travel/mileage, bank charges/postage and training • ~~Accounting, legal, etc.~~
Property Management Fees	• $7~~6~~0 per unit per month, with escalation tied to the annual increases in the Area Median Income (AMI), but in any event no more than 7% EGI per TCAC regulations • Property Management Fees will cover services as described in the City-approved management agreement
Salaries and Benefits	• The cost of the direct part-time and full-time personnel that run the property, outside of the property management fee
Repairs and Maintenance	• The cost of repairs and maintenance for the property
Utilities	• Owner-paid electricity, water, sewer and gas
Taxes and Insurance	• Property taxes and property insurance
Other Operating Expenses	• ~~Any e~~Expenses particular to the property and/or required by its financing partners should be ~~, to be specified~~ disclosed and will be subject to ~~approved by~~ the City's reasonable approval

Calculation of Total Operating Expenses	
Total Operating Expenses	• The sum of all of the above
Net Operating Income	• Effective Gross Operating Income less Operating Expenses
Senior Loan Debt Service	• Must-pay debt service • May include trustee fees, bond administration fees, and other financial expenses if applicable and expressed approved by the City as a "permitted expense"
Other Debt	• The City must approve all other debt and its repayment terms, including GP and LP loans
Total Operating Expenses	• The sum of all of the above

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Operating Adjustments	
Purchase of fixed assets/capital items	• The cost of capital items typically paid for by replacement reserves
Depreciation / amortization	• To be excluded from the cash flow calculation
Net deposits into restricted cash	• Includes deposits into all reserves subject to City policy limits net of withdrawals
Other adjustments	• For example, prior year expenses or partnership loans if approved by the City as a permitted expense
Operating Adjustments	• The sum of all of the above

Other Permitted Expenses	
Ground Lease	• Must-pay portion of ~~a~~ third-party ground lease if applicable and approved by the City
Partnership Management and/or Asset Management Fees	• Partnership and Asset Management Fees combined may not exceed $30K with no inflator or $25K with 3% annual inflator • May only be paid after the payment of eligible operating expenses, reserves and debt service • Any amounts in excess of these maximums shall be paid from the developer's share of Residual Receipts • ~~Unpaid fees shall accrue but may not paid until after the City's full share of Residual Receipts has been paid~~ • The Asset Management fee shall terminate when the limited partner exits the partnership
City Asset Management Fee	• The amount owed to the city, plus inflation factor, to reimburse the cost of asset management, including loan servicing and affordability restriction monitoring • The schedule of fees to be determined in underwriting subject to the City's approved fee schedule
Resident Services Coordination and Homeless Case Management	• See Resident Services Coordination policy and Homeless Case Management policy for allowable amounts for tenant services expense and homeless case management expenses

Other Permitted Expenses	
Other Permitted Expenses	• The sum of all of the above and any other unique expenses specifically approved for the project by the City

Calculation of Residual Receipts

Effective Gross Operating Income, less
Total Operating Expenses, less
Operating Adjustments, less
Other Permitted Expenses =
Net cash flow used to make Residual Receipts payments

Residual Receipts Policy

Generally, the City shall require a payment of fifty percent (50%) of net cash flow as a Residual Receipts payment per the calculation outlined above. However, if there is additional soft financing, the City may require the share of net cash flow for Residual Receipts payments to increase up to two-thirds (⅔). Of this ⅔ of net cash flow, the portion of Residual Receipts payments going to the City will be determined on a pro rata basis of the total gap financing. For example, if the project receives $10 million in total gap financing, of which $5 million is provided by the City, the City would receive 50% of the ⅔ of net cash flow owed to the gap lenders as its Residual Receipts payment.

Expenses Expressly Not Permitted in Calculation of Residual Receipts

Any operating costs or fees in excess of City policy, including but not limited to:

- Property Management Fee, including incentive management fees in excess of policy
- Partnership Management Fees and Asset Management Fees in excess of policy
- Resident Services Coordination and Homeless Case Management in excess of policy
- Replenishment of Operating Deficit Reserve
- Deferred Developer Fee payments